



Neutral Citation Number: [2020] EWHC 1727 (Ch)

Case No: PT-2019-000951

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Date: 01/07/2020

Before:

THE HONOURABLE MR JUSTICE ROTH

Between:

(1) **JULIA GIBBONS**
(as executor of the estate of Sydney Gordon
Mills deceased)
(2) **LYN WOOLLEY**
(as co-administrator of the estate of Thomas Charles
Hartshorne deceased)

Claimants

- and -

(1) **MR ALFRED BASIL SMITH**
(2) **MR JOHN FEARN**
(3) **MR PHILLIP RAYMOND HADDON**
(4) **JULIA GIBBONS**
(as representative of the estate of Eric Unwin
deceased)

Defendants

Mr Timothy Sherwin (instructed by **Taylor & Emmet LLP**) for the **Claimants**
The Defendants did not appear and were not represented

Hearing date: 21 May 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to BAILII on the date shown at 10:30 am.

Mr Justice Roth:

1. This Part 8 claim concerns two adjacent plots of land by Station Road, Hollingwood, near Chesterfield, Derbyshire, registered under title nos. DY14370 (“Plot 1”) and DY214014 (“Plot 2”). Together they will be referred to as “the Land” and comprise some 8.3 hectares.
2. It seems relatively clear that both plots are held on trust or trusts. However, the position concerning those trusts is uncertain and confused and the Claimants ask the Court to resolve a number of issues, including the identity, nature and effect of those trusts. Further, the Claimants seek orders for the sale of the Land, directions for the distribution of the proceeds of sale, and consequential directions and relief.
3. The named trustees of the trust of Plot 1, Mr Sydney Mills, Mr Thomas Hartshorne and Mr Eric Unwin, are all deceased. The First Claimant (Ms Gibbons) is the executor of the estate of Mr Mills. Mr Mills was also a named trustee of Plot 2. The Second Claimant (Ms Woolley) is the daughter of Mr Hartshorne and co-administrator of his estate. Further, Ms Woolley is herself a member of any club on the trusts of which Plots 1 and 2 are held.
4. The First to Third Defendants are the named trustees of Plot 2.
5. Ms Gibbons, in her capacity as Fourth Defendant, represents the estate of Mr Unwin, the final named trustee of Plot 1.

THE FACTS

6. Although the facts are not always clear, they are not in dispute. The account below is largely derived from the helpful skeleton argument of Counsel for the Claimants, which reflects the evidence placed before the Court.
7. Mr Mills, Mr Hartshorne, and Mr Unwin were all train drivers. It appears that some time before 1986, possibly in the 1960s or 1970s, they formed a club in Hollingwood for railway workers. Ms Wooley explains in her evidence:

“... my father worked on the railways his whole life, and retired as a train driver. His job, and his colleagues were very important to him. He therefore set up some clubs for employees of the railways and for people who lived in his area. My recollection is that my father together with his friends and colleagues including Mr Mills and Mr Unwin began meeting from the 1960s and 1970s.

I do not know precisely when and how he formed these various clubs. For some years, especially prior to 1986, they may have been simple informal “clubs” without constitutions or property.”

8. On 20 June 1986, they purchased Plot 1 from Chesterfield Borough Council for £7,500. According to the preamble to the conveyance, they were purchasing as the

“present trustees of *The Chesterfield and District British Rail Staff Association* (hereinafter called “*the Association*”). Pursuant to clause 2 of the conveyance, Mr Mills, Mr Hartshorne, and Mr Unwin took Plot 1:

“upon trust for the Association and according to the Rules thereof to deal therewith whether by way of sale lease mortgage charge or otherwise as the Association shall from time to time direct.”

9. The register of title for Plot 1 records Mr Mills, Mr Hartshorne, and Mr Unwin as the registered proprietors, and contains a Form A restriction together with a restriction as follows:

“Except under an order of the Registrar, no disposition by the proprietors of the land is to be registered unless a certificate signed by the secretary or solicitor of *The Chesterfield and District Brimington Region and Staveley Area Sports and Welfare Club* has been furnished that such disposition does not contravene any of the rules of the said club.”

The name of the club in the register of title is therefore not the same as that in the conveyance.

10. On 31 October 1990, Mr Mills, Mr Hartshorne and Mr Unwin agreed to buy Plot 2 from the British Railway Board for £19,125. The contract of sale stated that they were purchasing as “*trustees of the club or association known as Chesterfield and District Brimington Region and Staveley Area Sports and Welfare Club of Station Road Staveley.*” It appears from clause 5 of the agreement that the club or association was already a tenant of Plot 2.
11. The conveyance of Plot 2, dated 9 November 1990, declared by clause 6(c) that:

“[Plot 2] shall be held by the Purchasers upon trust for the Railway Members and Retired Railway Members of the British Rail Staff Association and according to the rules or constitution of the Association to be sold leased mortgaged or otherwise dealt with by the Purchasers as the committee of the Association shall from time to time direct...”

The “Association” was defined by recital 1(c) to the conveyance as the “*Chesterfield and District Brimington Region and Staveley Area Sports and Welfare Club of Station Road Staveley.*”

12. There is an almost identical set of restrictions in the register of title for Plot 2 as in the register of title for Plot 1: see para 9 above.
13. It is apparent from the conveyances that whatever club or clubs existed by the time Mr Mills, Mr Hartshorne, and Mr Unwin bought the Land had a set or sets of rules and/or a constitution. Moreover, in the course of administering her father’s estate, Ms Woolley along with her brother and cousin found some boxes of papers in his house and the house of his brother (also now deceased) relating to the club or clubs, which

included the manuscript minutes of an AGM of the club held on 27 October 1991 that record as follows.

“Amendment of BRSA Rules and [illegible] of Chesterfield & District Brimington Region & Staveley Area Sports 7 Welfare Club. Proposed that all amendments to Rules be accepted”.

14. Unfortunately, no complete set of minutes has been found, nor has any finalised set of rules or constitution come to light. However, the documents found include:

i) A document entitled “Constitution” which states: “The Club will be called B.R.S.A. Club” and records its aims and objectives as being:

“a. To promote the Club within the local Community

b. To manage the BRSA Club

c. To ensure a duty of care to all members of the Club

d. To provide all the services in a way which is fair to everyone

e. To ensure that all present and future members enjoy fair and equal treatment”.

This “Constitution” further contains rules in respect of members, membership fees, and the management of the club through a management committee. However, this document is unsigned and undated and it is unclear whether or when this “Constitution” was adopted.

ii) A longer and more detailed document comprising a constitution and rules for the “Chesterfield and District Brimington Region and Staveley Area Sports and Welfare Club”. The “Aims and Objections” [sic] of the club are stated to be:

“To develop Social Recreation and Cultural activities amongst Railway Staff and their families and friends.”

Again, there are, rather more detailed, rules for membership and contributions, and management via a management committee. Rule 4 states that membership of the Club “shall be open to Employees of British Rail” and provides that the Club facilities shall be available also to retired members, members’ spouses and their dependent children. However, rule 39 is left in draft, and this document is also unsigned and undated.

15. In 1996-1997, there was an attempt with legal assistance to reconstitute the club (or clubs) as a charity. Minutes of a management meeting held on 30 June 1996 record:

“Correspondence read out and dealt with on our request for Charitable status via Taylor/Emmet Solicitors. They suggested we approach the Charity Commission and probably hive off the

bar to a separate unit under same Trustees and change rules to suit.

Sec to progress the subject.”

16. There are manuscript minutes of an Annual General Meeting held on 31 August 1997 which record:

“Discussions on Solicitors recommendation on a change of name for the Charitable status petition to “Hollingwood Welfare Association” and continue with the old title of Chesterfield & District BRSA Sports and Welfare Club as a business [illegible]. The 3 Trustees have duly signed the Document shown.

Proposed we accept the Solicitors recommendation.”

17. It is unclear what document was referred to in those minutes, but on 18 October 1997, Mr Mills, Mr Hartshorne, and Mr Unwin executed a deed (the “Association Deed”) entitled:

“Declaration of Trust and Rules of Charity
Hollingwood Welfare Association”

18. The Association Deed appears from its face to have been drawn up with the assistance of Taylor & Emmet, solicitors, and it comprises 54 clauses. It seems clear that it was intended to create a charity. Pursuant to clause 1(10), the clauses are referred to in the document as “rules”. Significantly:

- i) by clauses 1(1), 1(8), and 2, Mr Mills, Mr Hartshorne, and Mr Unwin declared that they held the Land, inter alia, “on the trusts hereinafter declared”;
- ii) by clause 4, the trustees were to hold the Land and all other funds vested in them on trust “to apply them for the following Objects:”

“(1) the provision and maintenance of club premises and other facilities for recreation and leisure-time occupation for the benefit of Residents [defined as individuals resident within the town or village or Hollingwood (near Chesterfield) its neighbourhood and surrounding residential areas] without distinction of political religious or other opinions with the object of improving the conditions of life for Residents and

(2) the provision of educational facilities for Residents”;

- iii) clauses 21 to 27 contained detailed rules regarding membership and different rates of subscription. Clause 21 states:

“MEMBERSHIP of the Charity [i.e. Hollingwood Welfare Association] shall be open to all Residents”;

Clause 22 provides that the Charity's facilities shall be available to retired members, their spouses and dependent children; and clause 23 states:

“MEMBERSHIP of the Charity shall be subject to approval of the Committee and their decision will be final.”

- iv) by clause 28(1), the Charity was “affiliated to the Federation of Railway Clubs and (if the Committee decides) also to the C.I.U. of Clubs”¹; and clause 28(2) provides:

“A Member of any other branch of the Federation of Railway Clubs and C.I.U. shall be permitted (as a visitor) to use the facilities of the Charity and shall undertake to abide by the rules of the Charity and shall produce his or her membership cards for inspection by any officer of the Charity”

- v) by clause 36(1), the Committee is empowered “to form Sections within the Charity as may be best calculated to promote the Objects of the Charity”, and clause 36(2) states:

“In particular there shall be a section forming part of the Charity with the particular role of assisting past and present railway staff (and their Dependants) in the District”

- vi) clause 49(1) provides that the premises and amenities therein are “for the sole use of the Members....”

- vii) clause 53 is as follows:

“NO person shall be admitted to membership of the Charity without prior nomination or application for membership and no person shall be admitted to membership or to any of the privileges of membership without an interval of at least two clear days between nomination or application and admission.”

19. The minutes of a “General Committee Meeting” of 22 February 1998 refer to a letter from the solicitors, Taylor & Emmet, to the effect that “the matter is being progressed”. But it appears that the Charity Commission then did not accept that the Association Deed created exclusively charitable trusts. The minutes of the “Management Meeting” held on 31 May 1998 record:

“Correspondence read out and dealt with regarding letter received from Taylor & Emmet on the clubs application for charitable status for the club and surroundings. The outcome was that the people at Liverpool turned us down saying that we did not meet the required standard for charitable status after all this time. We would have to be like a village hall open at various times during the week.”

¹ The Club & Institute Union: a federation of over 1000 individual clubs.

20. This was followed up at the Management Committee meeting on 27 September 1998, for which the minutes state:

“Letter from Taylor & Emmett [sic] regarding charitable status for the club unsuccessful. They have advised us to drop the case as it would cost the club a lot of money to employ a barrister to fight our case.”
21. It is apparent that the club (or clubs) continued to exist and to be managed for some time thereafter.
22. On 21 June 2000, Mr Thomas Hartshorne died. Mr Unwin died on 16 October 2007. This left Mr Mills as the sole surviving trustee of the Land.
23. On 29 September 2009, under circumstances which are unclear, Mr Mills together with the First to Third Defendants executed a TR1 form transferring Plot 2 into their joint names to be held on trust “in accordance with the Declaration of Trust and Rules of Charity dated 18th October 1997”, i.e., the Association Deed. However, the restriction in the register of title to that Plot referring to “The Chesterfield and District Brimington Region and Staveley Area Sports and Welfare Club” was not changed and remains in place in that form.
24. Mr Mills died on 4 May 2017, leaving no living trustee of Plot 1. Accordingly, Ms Gibbons as Mr Mills’ personal representative, is now the sole trustee of Plot 1: *Lewin on Trusts* (20th edn) at para 14-001. The First to Third Defendants remain the trustees of Plot 2.
25. The Club is no longer functioning. A meeting was held on 14 December 2018 attended by about 30 people including Ms Woolley. She spoke to the people at the meeting asking for their recollections, and says in her evidence that among those she spoke to there was general agreement that the club was dissolved in or around March 2013 and that members had ceased paying membership fees around the same date. She says that nothing had been done in respect of the club between “2013 at the latest” and December 2018. The First Defendant, Mr Smith, told the Claimants’ solicitors by telephone in response to a letter from them that the club had been dissolved in March 2013.
26. The December 2018 meeting had been arranged through an advertisement in the local press, apparently to discuss what should be done with Plot 2, on which there is a club house. Ms Woolley says that it was suggested that Plot 2 should be sold, but when she pointed out that in that case legal advice should be taken, this proposal was not pursued.
27. In recent years, car boot sales have been held on Plot 2. However, the Land is currently in a poor condition, with multiple break-ins to the club house, resulting in serious internal damage. A professional valuation of the Land in that state was carried out in December 2019 and valued it at around £380,000.

THE PROCEEDINGS

28. Although there is a lack of clarity regarding the identity and nature of the trust or trusts, it seems clear that the both plots are held on trust. Accordingly, this claim is made for directions in the administration of those trusts pursuant to CPR r. 64.2(a)(ii).
29. Ms Gibbons has standing to seek such directions as the personal representative of the final living trustee of Plot 1 (Mr Mills), who was also a beneficial object of the trusts, whatever trusts they are. Ms Woolley has standing both as the personal representative of a beneficial object of the trusts (Mr Hartshorne), and as a beneficial object in her own right.
30. However, the Claimants have been unable to find defendants willing to take any active part in the proceedings. The First and Second Defendants have acknowledged service indicating that they do not intend to contest the claim. The Third Defendant did not provide any acknowledgment of service at all.
31. On 30 May 2019, Ms Woolley advertised in the Derbyshire Times under all three potential names of the club, explaining that this application would be made and asking for any members/former members of the club with an interest to communicate with the Claimants' solicitors indicating their interest in the club and their proposals in relation to the distribution of the proceeds of the sale of the Land. This elicited 10 responses (including from the Second Defendant), giving details of the members of their families who were members and their views as to what should be done with the Land. A couple of those responding suggested that a Mr Barry Dawe should have the last list of members of the club. However, in response to a letter from the Claimants' solicitors, Mr Dawe's wife wrote on 22 March 2019 to say that her husband had been steward of the club but ceased to be employed there six years ago (i.e. March 2013), and that he had no relevant documents.
32. One independent member who responded to the advertisement, Mr Keith Thompson, provided a short witness statement on 6 January 2020 in which he said that he was willing to be appointed by the Court to represent the views of members of the club. He also said that he remained a member of the club until it ceased to function "approximately 5 years ago." However, Mr Thompson subsequently informed the Claimants that he did not want to be involved any further.
33. On 7 February 2020, Deputy Master Bartlett gave directions in the proceedings, including that the Claimants to write to the chairman of the Parish Council in which the Land is situated and to the Attorney General's office to invite their respective views on the claim. The Claimants' solicitors duly wrote to the Attorney General and in response the Treasury Solicitor requested copies of various relevant documents, which were supplied on 27 February 2020. Nothing further was heard from the Attorney General, who accordingly gave no indication that he wished to be heard on this matter. The Claimants' solicitors also wrote a full letter to the councillor for the area in which the Land is situated seeking his assistance. In response to his telephoning the solicitors, he was asked if he could provide any indication of the Council's views of the matter. Nothing further was heard until a week before the hearing of this case when, on 14 May 2020, the Town Clerk to Staveley Town Council ("the Council") sent two emails stating, first, that "the preferred option" of the Council was that the administration and management of the club should be run in future by the "Hollingwood Residents Association with the Staveley Town Council

as an umbrella organisation, available if required in terms of advice”; and, secondly, that if the Court did not decide on that course, then the Council

“is prepared to act as a guardian or trustee of the building and land until an appropriate solution is found.”

34. Accordingly, save as above, this matter comes before the Court with no opposition to the Claimants’ application and no one appearing to put forward any contrary views. Such a situation is not without precedent: see *Re Harper* [2009] EWHC 1396 (Ch), a somewhat similar application by trustees in respect of a sports and social members’ club, to which no defendant at all had been joined. After setting out the steps which the trustees of that club had followed in order to try to communicate with members of the club and inform them of the trustees’ intentions, the court was content to rule on the application.
35. I am satisfied that the Claimants have followed all appropriate and reasonable steps to bring this matter to the attention of potential beneficiaries and others who may have an interest, in accordance with PD 64B, para 7.7, and that the claim complies with CPR r. 64.4(1). It is accordingly appropriate for the Court to hear the application. However, as regards some of the matters raised by the application, which concern the three individual Defendants and come to be decided depending on the Court’s determination of various other aspects of the application, I think it will be appropriate to give those Defendants, who do not appear to have had legal advice, a further opportunity to participate in the proceedings once this can be explained to them in light of this judgment. I will return to that aspect below.
36. Para 7.1 of PD 64B provides that the trustees’ evidence should ensure full disclosure of relevant matters. Moreover, the Claimants have referred to the guidance given by the Privy Council regarding the duty of a trustee who applies to the court for directions, in *Marley v Mutual Security Merchant Bank and Trust Co Ltd* [1991] 3 All ER 198 at 201:

A trustee who is in genuine doubt about the propriety of any contemplated course of action in the exercise of his fiduciary duties and discretions is always entitled to seek proper professional advice and, if so advised, to protect his position by seeking the guidance of the court. If, however, he seeks the approval of the court to an exercise of his discretion and thus surrenders his discretion to the court, he has always to bear in mind that it is of the highest importance that the court should be put into possession of all the material necessary to enable that discretion to be exercised.
37. Although Ms Woolley is not herself a trustee, both Claimants have acknowledged that they should comply with this duty and have sought to do so.
38. In that regard, I note that the Claimants’ current solicitors were also the solicitors who acted for the club or its trustees in drafting the Association Deed and assisting the club in seeking charitable status in 1996-97. However, I was told that the solicitors did not retain their client papers after six years and that no further information was available from their records.

39. Further, especially as no one has appeared to oppose the application, the Claimants owe a duty to the court as explained by Sir Andrew Morritt C in *State Street Bank and Trust Company v Sompo Japan Insurance Inc* [2010] EWHC 1461 (Ch), at [30]:

“... If a trustee, of any description, applies to the court he is expected to assist the court by bringing to the court's attention any relevant legal proposition or argument affecting the position of unrepresented beneficiaries or parties ...”

40. The Claimants and their legal representatives were mindful of that duty and I consider that it was ably performed by Mr Sherwin in the written and oral submissions he addressed to the Court.

THE QUESTIONS RAISED BY THE APPLICATION

41. The outstanding questions raised by the Application were helpfully enumerated by Mr Sherwin in his skeleton argument. I shall address the relevant questions, as refined in oral submissions, in order.

(1) On what trust or trusts are Plot 1 and Plot 2 held?

42. Despite the difference in names as between the conveyance and the register of title of Plot 1, it seems highly likely that only one club was involved. Further, since the second of those two names was the Chesterfield and District Brimington Region and Staveley Area Sports and Welfare Club, and that is the name in which Plot 2 was purchased four years later, I think it is tolerably clear that both plots (i.e. the Land) was then held under the same trust. There is no reason why the same three trustees would have sought to hold the two adjacent plots under different trusts.

43. It is also clear that in 1996-1997 the club was seeking to secure charitable status and for that purpose the three trustees executed the Association Deed. The trustees would have power, subject to any rules or constitution, to change the name of the club and the application for charitable status evidently had general support. Therefore, from October 1997 onwards, I consider that the club was known as the Hollingwood Welfare Association and the Land was held on the trust declared by the Association Deed. That is irrespective of whether some of the members may have continued to refer to the club by its former name. This conclusion is reinforced by the fact that when Plot 2 was transferred by Mr Mills in 2009 to himself and the First to Third Defendants, this was expressly to hold Plot 2 on the trust in the Association Deed.

(2) Is the trust charitable?

44. The Association Deed, as noted above, was clearly intended to create a charitable trust and the question is therefore whether it succeeded in that intention, as a matter of law.
45. It is of course well-established that in order to constitute a charitable trust, the objects of a trust must be exclusively charitable. The objects in clause 4 of the Association Deed (see para 18(ii) above) appear to be modelled on the provisions of the Recreational Charities Act 1958 (the “1958 Act”). The introductory text to the statute declares that it is “[a]n Act to declare charitable under the law of England and Wales

the provision in the interests of social welfare of facilities for recreation or other leisure-time occupation,”

46. Section 1 of the 1958 Act states:

“(1) ... it shall be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:

Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.

(2) The requirement of the foregoing subsection that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—

(a) the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and

(b) either—

(i) those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances; or

(ii) the facilities are to be available to the members or female members of the public at large.

(3) Subject to the said requirement, subsection (1) of this section applies in particular to the provision of facilities at village halls, community centres and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.”

47. Therefore, it is clear that the conditions in both subsections 1(2)(a) and (b) must be fulfilled. However, although I think that Association Deed satisfies the requirements of section 1(1) and 1(2)(a), in my view it does not satisfy subsection 1(2)(b). Subsection 1(2)(b) itself offers two alternatives. I see no basis for suggesting that the first of those alternatives is satisfied. As regards the second alternative, the benefit of the club is stated in clause 4 to be for “Residents”, defined as “individuals resident within the town or village or Hollingwood (near Chesterfield) its neighbourhood and surrounding residential areas.” However, the later clauses of the Association Deed clearly restrict the benefits of the club to Members (subject to their right to bring immediate family members or guests) and membership is subject to approval of the club’s committee: see cls 23, 49(1) and 53, at para 18 above. A “Resident” who is not

a member is not entitled to use the club unless individually invited as a guest, in contrast to the position of members of other branches of the Federation of Railway Clubs and the C.I.U. Even if residency of a particular area may be sufficient to satisfy the “public at large” test, in my judgment it will not be satisfied once the right to use the facilities is further restricted in this manner.

48. In *Bath and North East Somerset Council v HM Attorney General/The Treasury Solicitor (Bona Vacantia)* [2002] EWHC 1623 (Ch), Hart J considered a pre-1958 Act conveyance of land to the Mayor and Citizens of Bath (“the Corporation”), to which the claimant was the statutory successor, for use as a sports and recreation ground. The habendum of the conveyance further provided that the Corporation “shall not show any undue preference to or in favour of any particular game or sport or any particular person club body or organisation” Although the conveyance contained no express reference to an intention to benefit the public, the judge found that the provision just quoted demonstrated that the beneficiaries must be taken to be “the public generally.” As he stated, at [30]:

“The test of not showing “undue preference to ... any particular person club body or organisation” can only be applied if one regards all persons clubs bodies or organisations as being potentially eligible as beneficiaries of the purposes. That, as it seems to me, necessarily implies that the public in general (or that section of it likely to want to avail themselves of the facilities) has to be considered when the Corporation or its successors are considering how to exercise the powers.”

This was reinforced by the public character of the Corporation itself. As the judge said, at [47]:

“Unless the purpose was perceived and intended to be the benefit of the residents of Bath and its surrounding area it is impossible to see what business the Corporation had in 1956 in purchasing the Recreation Ground.”

49. That contrasts with the circumstances in the present case. This was a private members’ club, and although *eligibility* for membership was restricted to Residents, those Residents were not entitled to use the facilities of the club unless they were admitted as members. And the membership requirement was clearly not a mere formality or a purely administrative arrangement: cls 23 and 55 of the Association Deed. While members were allowed to bring up two friends as guests at any one time, that expressly excluded “persons nominated for membership having been rejected”: cl 28(4) and 7(c) of the Association Deed.
50. If the club was not a charity under the terms of the 1958 Act, I think it is clear that it cannot be a charity under the general provisions of charity law outside that statute. The 1958 Act was passed to modify the effect of the decision in *IRC v Baddeley* [1955] AC 572. In that case, the House of Lords held that two deeds of conveyance declaring trusts were not charitable. The second concerned land laid out as playing fields, and in his leading speech Viscount Simonds stated in respect of it (at 589):

“this trust must fail by reason of its vagueness and generality. The moral, social and physical well-being of the community or any part of it is a laudable object of benevolence and philanthropy, but its ambit is far too wide to include only purposes which the law regards as charitable.”

The same objection applies to the Association’s object of “recreation and leisure- time occupation for the benefit of Residents.”

51. In short, as Mr Sherwin succinctly put it in argument, one cannot have a charitable private members’ club. I should add that Mr Sherwin very properly drew my attention to the judgment of the Northern Ireland Court of Appeal concerning the Northern Irish equivalent of the 1958 Act in *Springhill Housing Action Committee v Commissioner for Valuation* [1983] NI 184. That case concerned the holding of a community centre “to promote the benefit of the inhabitants of [a particular estate in Belfast comprising 196 houses] ... promoting general community projects of a social nature with the object of improving the conditions of life for the said inhabitants.” Somewhat surprisingly, the Northern Irish court focussed entirely on the proviso to s. 1(1) of the statute, i.e. whether the institution was “for the public benefit”, and did not consider the “public at large” requirement at all. I therefore find that this decision, which of course is not binding on me, is of limited assistance.
52. Having reached the conclusion that the trust established by the Association Deed was not charitable on this basis, it is unnecessary to consider a further potential objection, namely the preference which cls 24 and 25 of the Deed gave by reference to classes of members and rates of subscription according to whether an individual was a present or retired railway employee: cp *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297.

(3) What is the effect of the trust not being charitable?

53. I do not see that the failure of the Association Deed to constitute a charity had the effect of relegating the club to the antecedent trust. *In re Denley’s Trust Deed* [1969] 1 Ch 373 concerned a trust deed by which trustees were to maintain a certain piece of land for use as a sports ground “primarily for the benefit of the employees of the company and secondarily for the benefit of such other person or persons (if any) as the trustees may allow to use the same...” Goff J rejected the argument that as a trust for non-charitable purposes (i.e. a trust for providing recreation) it was void because it was therefore not for the benefit of individuals and/or for uncertainty. He said, at 382-384:

“I think there may be a purpose or object trust, the carrying out of which would benefit an individual or individuals, where that benefit is so indirect or intangible or which is otherwise so framed as not to give those persons any locus standi to apply to the court to enforce the trust, in which case the beneficiary principle would, as it seems to me, apply to invalidate the trust, quite apart from any question of uncertainty or perpetuity. Such cases can be considered if and when they arise. The present is not, in my judgment, of that character, and it will be seen that clause 2 (d) of the trust deed expressly states that, subject to

any rules and regulations made by the trustees, the employees of the company shall be entitled to the use and enjoyment of the land.... When ... a trust, though expressed as a purpose, is directly or indirectly for the benefit of an individual or individuals, it seems to me that it is in general outside the mischief of the beneficiary principle.”

Similarly here, the Members, as defined in the Association Deed, are entitled to the use and enjoyment of the Association’s premises and facilities, including specifically the Land.

54. As for uncertainty, Goff J held in that case that “the employees of the company” must mean those employees at any one time, who are therefore ascertained or ascertainable, and the inclusion of “such other persons (if any) as the trustees may allow” was not a trust but a power in partial defeasance of the trust in favour of employees which therefore did not make the trust uncertain.
55. Here, notwithstanding the purpose clause, the Association Deed provides that at clause 49(1) that the premises and amenities of the Association “are for the sole use of Members who shall be bound by the rules.” The Association is governed by a committee elected by the Members in general meeting, and the Association Deed includes detailed rules for governance. The Association Deed sets out the contractual rights and liabilities which the members have towards one another on which they take their interest. Therefore, I consider that there is no room for doubt in the present case that there are beneficiaries capable of seeking to enforce the trust, and as the Association is effectively run for the benefit of the members for the time being, the beneficiaries at any one time were ascertainable. This was not an abstract or impersonal trust.
56. It follows, in my judgment, that the trust is effective on the terms of the Association Deed although it is not a charity. The trust’s acquisition or ownership of assets, and in particular the Land, comes within the second of the three categories explained by Cross J in *Neville Estates Ltd v Maddon* [1962] Ch 832 at 849 (there discussing a gift in trust):

“...a gift to the existing members not as joint tenants, but subject to their respective contractual rights and liabilities towards one another as members of the association. It will accrue to the other members on his death or resignation, even though such members be persons who became members after the gift took effect.”

Moreover, on that basis, Cross J added that it will not be open to objection on account of perpetuity or uncertainty,

“unless there is something in the its terms or circumstances which precludes the members at any given time from dividing the subject matter of the gift between them on the footing that they are solely entitled to it in equity.”

57. Although there is nothing in the Association Deed which addresses what should happen if the club should be wound up, clause 54(1) provides that the rules may be amended by a vote of not less than two thirds of the members present and entitled to vote at any general meeting. The members could therefore vary the rules, and thus the contractual arrangements between them, to provide that the assets of the Association can be divided between the members at the time. Accordingly, perpetuity is not a problem here. See, to similar effect, *Re The Horley Town Football Club* [2006] EWHC 3286 (Ch) per Collins J at [112]-[115].

(4) Has the club been dissolved, and if so, when?

58. There is no evidence of any formal dissolution of the club by an AGM. What appears to have happened is that all activity of the club lapsed many years ago.
59. A similar problem was addressed in *In re GKN Bolts & Nuts Ltd (Automotive Division) v Birmingham Works Sports and Social Club* [1982] 1 WLR 774, where Sir Robert Megarry VC began his judgment stating (at 776): “This is a case of a sports and social club which became defunct.” He continued:

“As is common in club cases, there are many obscurities and uncertainties, and some difficulty in the law. In such cases, the court usually has to take a broad sword to the problems, and eschew an unduly meticulous examination of the rules and resolutions. I am not, of course, saying that these should be ignored; but usually there is a considerable degree of informality in the conduct of the affairs of such clubs, and I think that the courts have to be ready to allow general concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules. In other words, allowance must be made for some play in the joints.”

60. Turning to the particular question of dissolution, the Vice-Chancellor said, at 779:

“As a matter of principle I would hold that it is perfectly possible for a club to be dissolved spontaneously. I do not think that mere inactivity is enough: a club may do little or nothing for a long period, and yet continue in existence. A cataleptic trance may look like death without being death. But inactivity may be so prolonged or so circumstanced that the only reasonable inference is that the club has become dissolved. In such cases there may be difficulty in determining the punctum temporis of dissolution: the less activity there is, the greater the difficulty of fastening upon one date rather than another as the moment of dissolution. In such cases the court must do the best it can by picking a reasonable date somewhere between the time when the club could still be said to exist, and the time when its existence had clearly come to an end.”

61. The consensus at the gathering in December 2018 was that the club had been dissolved in about March 2013: para 25 above. That was also the view of the First Defendant. It seems to me clear in all the circumstances that the only reasonable inference is that the club has been dissolved: it is now over seven years since any membership fees have been collected, there have been no AGMs as the rules would require, and the club house is in serious disrepair.
62. The only question, as in the *GKN* case, is to determine the date of dissolution. As to that, I see no reason to depart from the consensus view of former members that this was in March 2013. In that regard, I note that this was also the time when the last steward of the club, Mr Barry Dawe, seems to have had his employment there terminated: para 31 above. While Plot 2 may have been used more recently for car boot sales, no one suggests that this was an activity of the club.

(5) What should happen to the club's property?

63. I mentioned above that the Council has by email to the Claimants' solicitors proposed that the management of the club should for the future be run by the "Hollingwood Residents Association". Since I have held that the club has been dissolved, that is of course not possible. The Council further suggested it would be prepared to act as trustee of the Land "until an appropriate solution is found". I do not know if the Council took any legal advice on the matter, but I see no basis as a matter of law or principle whereby the property of the dissolved club could either pass to a wholly distinct club or association with different membership or be held on trust by the Council. On the contrary, while the club has been dissolved, the Land continues to be held by the trustees on trust for the members as at March 2013.
64. As regards Plot 1, this vests in the personal representative of the last surviving trustee, i.e. the First Claimant, Ms Gibbons: para 24 above. As regards Plot 2, legal title rests in the First to Third Defendants. There is no legal difficulty in having different trustees for distinct parts of property that are held subject to a single trust.
65. It seems to me clear that the Land should now be sold. There is no conceivable benefit to anyone in it being retained. I am asked to direct that the Claimants' solicitors should have the conduct of the sale pursuant to section 50 of the Trustee Act 1925. That seems sensible and there will be a direction accordingly.
66. As to what should happen to the proceeds of sale, this question was also addressed in the *GKN* case. Sir Robert Megarry said, at 783:

"I think that where, as here, there is nothing in the rules or anything else to indicate a different basis, the distribution should be on a basis of equality, irrespective of the length of membership or the amount of the subscriptions paid. That seems to me to be particularly appropriate where, as here, the amount of the subscription is so small and the acquisition of the last remaining asset of the club occurred so long ago. The provenance of the sports ground is a matter of some obscurity. Whether the ground was purchased with money given to the club, or whether it was bought with the aid of a loan which was long ago either repaid or released, is not at all clear."

67. There is nothing which touches on this in the Association Deed, that sets out the club rules. The only real asset of the club is the Land. As in *GKN*, that was acquired a long time ago. I shall therefore follow the same approach as in that case and direct that when sold, the net proceeds of sale should be divided equally between those who were members as at March 2013, or their estates.

(6) Who were the members of the Association at the date of dissolution?

68. This question is of some practical importance since it is those members, or their heirs, who will be entitled to a share of the net proceeds of sale. Ms Wooley has produced a list of 25 members based on inquiries she conducted at the meeting in December 2018 and responses to the advertisement. That is a start, but I am not satisfied that it is decisive. I consider that now that the date of dissolution has been determined, there should be a mechanism set up for those claiming to have been members to come forward with their claim and any supporting evidence by a stipulated date, with an independent figure to resolve any disputed or doubtful claims. I will ask the Claimants' and their legal advisors to prepare a proposed scheme which I can consider with a view to making appropriate directions at a further hearing.
69. One issue concerns Family Members, i.e. those who were members by reason of being the spouse or dependent child of an active Member. Clause 26(1)-(2) of the Association Deed states:

“(1) A Family Member (being the spouse or dependent child of an Active or Retired Member) shall contribute such sum as is determined by the Committee.

(2) A Family Member shall not be eligible to take part in the management of the Charity.”

As I understand it, Family Members would generally receive an individual membership number. On balance, on the basis of the limited evidence before the Court, I conclude that each Family Member should count for the purpose of distribution as an individual member.

(7) Should the Plot 2 Trustees be ordered to account for any dealing with Plot 2 during the period of their trusteeship?

70. In his judgment in *Henchley v Thompson* [2017] EWHC 225 (Ch), the Chief Master stated, at [60]-[61]:

“The court has a discretion whether or not to make an order for an account in common form to be produced by a trustee. Although it would not be right to say that there is a presumption in favour of making an order for an account, in my judgment, the court will not decline to make an order lightly where a trustee holds or has held assets for beneficiaries of a trust.

The duty to account must also be seen alongside an obligation to keep and to retain records. Although it is perfectly

acceptable for trustees, amongst themselves, to divide responsibilities such that one of the trustees is designated to be the record keeper, that does not absolve the trustees collectively from their duties to the beneficiaries...”

71. The Claimants have made clear that they are not accusing the First to Third Defendants of default in their capacity as trustees of Plot 2, nor are they seeking to recover damages from them. But it is pointed out that as part of their legal ownership of Plot 2, the First to Third Defendants may have records which could assist with any sale, and they should also be able to provide an account of what happened regarding any arrangements for the car boot sales or liabilities for Council tax.
72. Although the proceedings were of course served on those Defendants and they indicated an unwillingness to take any part, I think they may not have appreciated that they are potentially subject to a personal order in this way. I shall therefore adjourn that question to a further hearing. That will give them the chance to read this judgment and reconsider whether they wish to make any representations on this question.

(8) Should Mr Mills, Mr Hartshorne and Mr Unwin be excused any liability for any breaches of trust?

73. The Claimants invited the court to make such an order pursuant to section 61 of the Trustee Act 1925, on the basis that those individuals acted reasonably and honestly throughout. That would also enable their personal representatives to complete the administration of their estates. I recognise the force of that submission, but since question (7) above is being adjourned to a further hearing, I consider that this question should be determined with it.

(9) How should the costs of the claim be dealt with?

74. I see no reason to adjourn this question. As noted in the submissions on behalf of the Claimants, the club's affairs have been in a state of complete disarray, with real uncertainty over the issues dealt with above. The Claimants have brought these proceedings for the benefit of the trusts and of the members, in order to resolve those issues. The reality is that those issues would not have been resolved without this claim being made and determined.
75. I accept the submission that this Part 8 claim accordingly sits somewhere between the well-known classes (1) and (2) set out in *Re Buckton* [1907] 2 Ch 406, 414-415. For either class, the costs of the claim should be paid out of the trust property as trust expenses, prior to any distribution.
76. Accordingly, I will order that the Claimants' and the Fourth Defendant's costs be paid out of the proceeds of sale of the Land as trust expenses, those costs to be assessed on an indemnity basis pursuant to CPR rule 46.3.