

Neutral citation number: [2023] EWHC 3360 (Ch)

**IN THE HIGH COURT OF JUSTICE**                      **Claim No. PT – 2021 - 001064**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES**  
**PROPERTY TRUSTS AND PROBATE LIST**

**MASTER MARSH (sitting in retirement)**

Rolls Building

Fetter Lane

London EC4A 1NL

**BETWEEN**

**(1) DOUGLAS STUART PONSFORD**  
**(2) MOVE ON NOW LIMITED**

**Claimants**

**and**

**(1) MESUD HABIB SALI**  
**(2) GIZEM YOZKAN**

**Defendants**

**JUDGMENT**

**ANDREW MAGUIRE** instructed by Ali Legal Limited appeared for the Claimants

The **First Defendant** appeared in person

The **Second Defendant** did not appear

**Trial 30 and 31 October, 1 and 2 November, 6 and 7 December 2023**

**Oral judgment delivered on 13 December 2023**

1. This is my judgment following a trial of issues arising in the course of taking an account relating to the former partnership between the first claimant (Mr Ponsford) and the first defendant (Mr Sali). The trial was held initially between Monday 30 October and Thursday 2 November 2023 and then resumed on 6 and 7 December 2023.

2. Andrew Maguire appeared for Cs. Mr Sali appeared in person. The second defendant, who is Mr Sali's wife, did not appear.

### **Background**

3. Mr Ponsford and Mr Sali entered into an informal partnership from about October 2010 as equal partners called 'Move on Now'. Then in 2014 Mr Ponsford and Mr Sali became equal shareholders in Move on Now Ltd and its joint directors. The company has been joined as second claimant. However, Mr Ponsford is the principal claimant.

4. In 2010 Mr Sali had recently graduated whereas Mr Ponsford had been in business for several decades. He was an insurance broker trading as Henderson Ponsford. When he later sold his interest in that business he retained his interest in property investments with business partner Mr Henderson.

5. Mr Sali enabled the partnership to use a system called 'Assisted Sale Agreements' ("ASA") to acquire property. The legal efficacy of this system and indeed its lawfulness must be in doubt but that is not an issue before the Court. An ASA (also described as a JV) works by the registered proprietor agreeing to sell their property for a guaranteed price. The seller receives an immediate cash payment equivalent to the current equity or payment at a later date (if there is any equity). The assisting purchaser is given a Power of Attorney and takes over payment of the mortgage with permission of the lender. Thus, the registered proprietor receives the equity and a guaranteed price as well as having the responsibility of paying the mortgage removed. The purchaser is protected by a restriction on the title.

6. The partnership traded successfully and happily for some years. Mr Ponsford says he became close to Mr Sali and treated him like a brother or son. It held a portfolio of about 15 properties. Mr Sali managed the properties and organised repairs, rentals and sales.

7. In 2021 Mr Ponsford discovered that Mr Sali had taken substantial money from the business. There were meetings in the early part of 2021 when the parties attempted to resolve their differences without success. Later in 2021 Mr Sali relocated his family to Turkey where they have remained ever since. He says, however, that he did not intend to sever all connections with England and intended to retain what he describes as the family home at 2 Walsingham Road, Orpington.

### **Chronology of Claim**

8. To put the trial in its proper context, I will start by providing a summary of the principal events in the claim.

9. The claim was issued on 13 December 2021. A freezing order was made without notice on 17 December 2021 and renewed on 6 January 2022. By that order Mr Ponsford was appointed as Receiver and Manager of the partnership property under paragraph 4 of the order.

10. On 30 March 2022 an order was made by Deputy Master Hansen. At that hearing both the claimants and the defendants were represented by Counsel. The order recites that the partnership dissolved on 1 December 2021. The order provided for the taking of accounts. Under paragraph 2 Mr Ponsford was to be at liberty “to submit any Claims as to just allowances which he may be advised ought to be made on account of his services in managing transactions and carrying on the business prior to and since the date of dissolution and whilst acting as receiver and/or manager.”

11. The order also provided for (a) a timetable for accounts to be produced and commented upon and (b) made orders for sale of the property assets belonging to the partnership. In fact, sales have been frustrated because the properties have a restriction on the title in favour of Mr Sali. In passing, it is not clear to me that the terms of the restriction in fact inhibited sale but that is not an issue I need to decide.

12. At a hearing before Deputy Master Lampert 30 September 2022 Mr Sali’s defence was struck out and new directions were given for taking an account.

13. In accordance with the amended directions, the claimants served a Forensic Accountant’s report drafted by Mr Tom Wachter on 1 July 2022. Mr Sali served a brief reply to it on 11 November 2022. The hearing to take the account was set up to come before me on 1 August 2023. However, the parties had not paid proper regard to the existence of substantial issues of fact that could not be resolved without cross examination. The hearing was adjourned with orders being made to remove the restrictions placed on titles by Mr Sali to enable sales to proceed.

14. The order identified five issues of fact to be tried:

- (1) The validity and scope of the “Declaration of Trust” which refers to 2 Walsingham Road, Orpington.
- (2) The legal and beneficial ownership of 2 Walsingham Road, and whether it is a partnership asset.
- (3) Whether a 20% interest rate had been agreed between Mr Ponsford and Mr Sali.
- (4) Whether the property known as 13 Mill Lane, Canterbury, Kent (“13 Mill Lane”), ought to be included as a partnership asset.
- (5) The appropriate rate and amount of remuneration for Mr Ponsford’s role as Court appointed Receiver and Manager.

### **Conduct of the trial**

15. Inevitably there was some imbalance between the parties. Mr Ponsford was represented by Mr Maguire who was instructed by solicitors. Mr Sali was unrepresented and without legal training. However, I am satisfied that a fair trial was conducted. Mr Sali was able to ask questions in cross-examination testing Mr Ponsford’s evidence and this assisted the Court in forming a view about his evidence.

16. There was late additional evidence from Mr Ponsford and two other witnesses, his wife Mrs Ponsford, and the partnership bookkeeper Mrs Apps. An application to admit that evidence was heard at beginning of trial and granted. Relief from sanctions was also given with a short reasoned judgment given ex tempore at the time.

17. On the third day of the trial, after Mr and Mrs Ponsford and Mrs Apps had given evidence, Mr Sali asked on an informal application for the Court to have regard to additional documents. This was opposed by Mr Maguire. On analysis one document, a video, and one photograph had already been disclosed, one document was a statement from Mr Sali that amounted to submissions, one document was a photograph of Mr Ponsford in Walsingham Road and hardly of major significance. The remaining documents had been obtained by Mr Sali from Henderson Ponsford's records. He wished to rely upon them to demonstrate that he was treated as having an interest in Mill Lane (and two other Henderson Ponsford properties). I decided to admit all the documents and gave reasons at the time. As it turned out some of the documents were already exhibits to Mr Sali's witness dated 25 August 2023 but those exhibits had been omitted from the bundle by the claimants' solicitors and seemingly had received scant consideration by the claimants' advisers.

18. The production of what were thought to be additional documents led to claimants being given time to consider them and take instructions. Mr Maguire submitted that claimants wished to have a full opportunity to consider the additional documents and submitted he also needed to consult Linda Apps who was said not to be immediately available. It was not possible for the trial to resume on Friday 3 November because Mr Ponsford was due to fly to India for an extended trip that had been booked a long time previously. In the circumstances the trial was adjourned part heard.

19. The claimants then issued an application seeking permission to rely upon additional evidence from Mr Ponsford and Mrs Apps which was heard when the trial resumed. It is extremely uncertain that Mr Ponsford's further witness statement provides evidence that is material to the issues I have to decide. However, Mr Sali made it clear that he relies upon the events of late 2021 and early 2022 at Walsingham Road and so the statement was admitted.

20. Mrs Apps' second statement was not admitted because it contains no material evidence.

21. Mr Ponsford returned to the witness box and was briefly cross-examined. Mr Sali then gave evidence and was cross-examined. It was during the course of his cross-examination I asked to be directed to the exhibits to his witness statement dated 25 August 2023. It only then emerged that they had not been placed in the bundle and were not immediately available. Later they were produced and Mr Sali's cross-examination continued. The absence of these documents from the bundle was detrimental to Mr Sali's case because his Exhibit 7 is an important selection of documents relating to the purchase of 2 Walsingham Road which he relied upon. The omission of Mr Sali's exhibits from the bundle was said to be an oversight.

22. The issues I am dealing with arise despite Mr Sali's defence having been struck out because it is essential for the taking of the account to establish the extent of the partnership assets and it would have been wrong to prevent Mr Sali from seeking to establish whether 2 Walsingham Road is a partnership asset or is beneficially owned by him. On his case the property has always been held outside the partnership. It is by far the most valuable single asset claimed to be partnership property.

23. Due to the manner in which this claim has proceeded and the stage at which the issues emerged there are no pleadings. The court has not had the benefit of knowing precisely how Mr Sali's case is put and inevitably as a layperson he has not addressed the intricacies of trust law. Submissions on the law made by Mr Maguire were succinct and legal issues were not

addressed in any detail. Furthermore, as we will see, Mr Ponsford's case has developed as the trial has proceeded. These factors have not made the court's task an easy one.

### **What will the outcome of the trial of issues lead to?**

24. It is clear that even with the issues of fact resolved it will not be possible for a final account to be prepared, unless the parties reach agreement, because the properties owned by the partnership will all have to be sold. The sale prices, mortgage debt and expenses of sale will all affect the sums that are available. However, it may be possible to make an order in respect of an interim account and make an order for an interim payment.

25. There is already an expert accountant's report which includes a valuation of the partnership. However, the valuation will be of limited assistance because the net proceeds of sale of the properties and expenses incurred in maintaining them until sale will be critical in establishing the net capital of the partnership before adjustments between the partners for capital contributions and drawings can be made.

### **Uncontentious background**

26. There is some common ground. Mr Ponsford was in a partnership from 1993 with Neil Henderson (originally three partners but from 1993 two partners) operating as insurance brokers and investing in residential property. In 2002 Mr and Mr Henderson set up Henderson Ponsford & Co Ltd operating the insurance broker business and in 2014 Mr Ponsford sold his interest in that business to Mr Henderson. They continued their property investment partnership. There is a peripheral issue about whether relations between the two of them were cordial but it is one I do not need to decide.

27. In parallel with the Henderson Ponsford partnership, a partnership under the Partnership Act 1890 came into being between Mr Ponsford and Mr Sali in October 2010. There was no written partnership agreement but it is accepted that they shared in capital and profits equally. Like the Henderson Ponsford partnership the business related to the purchase and management of residential property. However, the material difference between the two businesses is that Mr Ponsford and Mr Sali operated using the ASA model with Mr Sali as the executive partner. Although Mr Ponsford and Mr Sali worked together, Mr Ponsford left it to Mr Sali to operate the partnership. Mr Ponsford provided funds from his own resources and by facilitating mortgages; Mr Sali provided expertise (this is now disputed) and labour.

28. Mr Ponsford is now aged 69 and Mr Sali is aged 36. Mr Ponsford treated Mr Sali like a son and clearly there was for a long period of time a warm relationship between them. Relations soured in 2021 and Mr Ponsford's case is that funds have been stolen by Mr Sali. A less emotive way to describe events would be to say that Mr Sali made unauthorised drawings from the partnership and the Company's account. It does not appear that there was any defined arrangement for drawings. Mr Ponsford's concern was highlighted when it was found there were insufficient funds in the accounts to meet the outgoings of the business.

29. Thus Mr Ponsford was a partner at all material times in two property partnerships with largely distinct property portfolios. There are three properties, 40 Tunnel Avenue, 7 Fodbury Avenue and 13 Mill Lane which have been treated as being part of the Henderson Ponsford portfolio in relation to which Mr Sali claims he had an entitlement equivalent to a profit share. It is accepted that he assisted in their purchase before the Move on Now partnership

with Mr Ponsford came into being but they are not, according to Mr Ponsford, part of Move on Now Partnership or as Mr Sali says part of a mini-partnership under which he is entitled to 1/3 of the net proceeds of sale. The first two of these properties have been sold and Mr Sali has provided evidence to show that he received payments in respect of each property. Faced with evidence of these payments Mr Ponsford accepted they had been made. They were described as ‘commission’. However, he says Mr Sali had no entitlement to receive payment in respect of profits made relating to these three properties and payments were at his discretion. When the dispute arose, he says he opted not to make any further payments.

30. Issue 4 before the Court concerns 13 Mill Lane, Canterbury. The issue as it was defined in the order dated 1 August 2023 is whether 13 Mill Lane is an asset of the Move on Now partnership. It is agreed that the answer is ‘no’ on both party’s case. I will return to whether or not I should make any further findings later in this judgment.

## **2 Walsingham Road, Orpington**

31. The principal legal and factual issue between the parties concerns 2 Walsingham Road, Orpington BR5 3BW. Based on his statement, I have taken Mr Sali’s claim to 2 Walsingham Road as being based upon the creation of an express trust. He has not put forward a case based upon a common intention constructive trust or a resulting trust, although it might have been open to him to do so. It would not have been right for the court to have developed Mr Sali’s case for him in this way. His case, as I take it, stands or falls on whether an express trust concerning 2 Walsingham Rd came into being in one of two ways which I will come to.

32. There are some core facts about that property which are not disputed:

- (1) The property is comprised in title no. – K34234.
- (2) An ASA or JV Agreement was entered into between Mr Sali and the registered proprietor Mrs Linda Daniel on 1 October 2010. This was about the date when the Move on Now partnership commenced. Under the ASA Mr Sali became Mrs Daniel’s attorney and able to deal with the property.
- (3) In 2013 the property was purchased in the name of Mr Ponsford with a mortgage of £200,000 from Aldermore Bank plc. The purchase price £250,000. Oliver & Co in Chester acted for Mr Ponsford. King Prior Macdonald Bridge acted for the vendor Linda Daniel but dealt with Mr Sali as her attorney under the ASA. Mr Ponsford became registered proprietor 2 August 2013. There is a restriction on the title relating to the ASA agreement. There is no note of a trust in favour of Mr Sali on the title.
- (4) The value of the property is now in excess of £1m. In part that is due to changes in the market, but it is also to do with works carried out by Mr Sali which extended the property and created two dwellings where there had been one before.
- (5) 2 Walsingham Road became Mr Sali’s home and home to his family from about 2011.
- (6) The monthly mortgage payments to Aldermore Bank were paid out of the Move on Now account with Mr Sali contributing 50% of the monthly cost up to 2021. He says the payments were made to Mr Ponsford not to the partnership.
- (7) Mr Sali later received rental income from the property without accounting for it to the partnership.
- (8) Mr Sali carried out extensive works to the property funded by him.

- (9) Mr Ponsford visited to property on many occasions and was aware of occupation by Mr Sali and his family and of the works.
- (10) The London Borough of Bromley served an enforcement notice concerning breaches of the planning consent on 27 July 2020 on the basis that an extension to the property exceeded the size permitted under a planning consent. An appeal against the notice has been allowed providing consent to the building as built.
- (11) The enforcement notice was sent to Aldermore Bank by the London Borough of Bromley. Since then the mortgage payments have increased because consent for the works was not sought from the lender. Plainly this should have happened. However, Mr Ponsford was in the same position as Mr Sali to take that step. On Mr Ponsford's case the property is a partnership asset.
- (12) A declaration of trust relating to 2 Walsingham Road was signed by Mr Ponsford (but not as a deed) in April 2021. The circumstances of the signing are not agreed. The declaration has four recitals. The first three record (1) that Mr Ponsford is the registered proprietor, (2) provides the registered title number (3) that the property is subject to a mortgage and the (4)th provides:

*“The parties hereto have agreed that their respective shares in the Property shall be as hereinafter mentioned.”*

- (13) The operative terms of the document provide:

*“1, Douglas Stuart Ponsford will hold the said property with full title guarantee subject to the mortgage on trust to sell the same with power to postpone the sale and TO HOLD the gross proceeds of sale (after deducting thereout the balance of any money due under the mortgage and the legal Costs and disbursements in respect of any such sale) and the net income until sale in trust in the proportions hereinafter mentioned*

*“2. The entire proceeds of sale are to go to Mesud Habib Sali”*

*“3. It is hereby agreed and declared between the parties hereto that no sale of the property shall be effected without the prior written Consent of all parties”.*

- (14) Thereafter the standard signature rubric appears followed by signature clauses for Mr Ponsford Mr Sali and Mrs Ponsford (she is not a party to the agreement). Mr Ponsford has signed the document but his signature is not witnessed. Mr Sali has also signed it and his signature was witnessed by Mr Ponsford's brother.

33. The court has not seen partnership accounts for Move on Now. The court was told by Mrs Apps, who became the bookkeeper, that partnership returns and accounts were filed with HMRC but profits were small. This is perhaps surprising but there is no enquiry before the Court about those accounts. In due course it may be necessary for the Court to consider them so as to ensure that in taking a final account of the partnership, the correct starting point is taken.

34. The court has also not been provided by either party with bank statements for the period in 2013 when 2 Walsingham Road was purchased. This is but one of many gaps in the evidence about which no inference may be drawn in either direction.

## The law

35. The issues before the Court involve only one legal issue relating to whether Mr Ponsford holds 2 Walsingham Road subject to a trust in favour of Mr Sali. There has been little or no discussion of the relevant principles during the trial. Both parties confined themselves primarily to the issues of fact.

36. However, the position is not entirely straightforward. From Mr Ponsford's perspective, the focus has been on the validity and effect of the declaration of trust signed by him in April 2021. However, the declaration of trust is not the whole story. Mr Sali has focussed on what he says he agreed with Mr Ponsford about 2 Walsingham Rd rather than how a valid trust of land came into being.

37. For an express trust to have arisen, Mr Ponsford must have intended to create a trust of 2 Walsingham Road in favour of Mr Sali. Such intention may be derived from, or inferred from, his words and actions. But unless section 53(1)(b) of Law of Property Act 1925 is satisfied, no trust of the real estate can come into being. The section provides:

*“A declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will.”*

38. The requirements of the section 53(1)(b) only dictate that the declaration of trust “is manifested and proved by some writing ...” and that is signed by the person able to declare the trust. There is no requirement for the declaration of trust itself to be in writing and signed; and there is no requirement for there be an agreement to create a trust in a contractual sense although a trust may come into being that way. The formality that is required is written evidence of the declaration of trust.

39. A trust of land may be “declared” many years before it is manifested and proved in writing. Section 53(1)(b) only requires writing to make manifest and prove the existence of a trust. There may be a lengthy length of the gap between the declaration of trust and the proof in writing. Such a gap does not matter. A putative trust that was not effective or enforceable due to the absence of any writing becomes effective retrospectively if and when section 53(1)(b) is complied with. Where there is a gap, the writing does not create the trust which exists in a twilight zone in the sense that it is capable of retrospective validation.

40. Declarations of trust are often drafted as a deed but there is no requirement for this degree of formality. Often a declaration of trust operates both to declare the trust and to comply with section 53(1)(b), but that is not essential. In those types of case as long as there is no dispute about the declaration of trust being genuine, and no suggestion it was a sham, there is no need for an enquiry about whether there was a prior declaration of trust.

41. The effectiveness of the declaration of trust that relates to 2 Walsingham Road was challenged by Mr Ponsford. It appears to have been assumed by his advisers at the outset and up to this trial that the document was not effective because it is not a deed that complies with the requirements of section 1 of Law of Property (Miscellaneous Provisions) Act 1989. Mr Ponsford's signature is not witnessed and the document is not dated. Their assumption was of course incorrect as Mr Maguire now accepts. The document clearly contemplates it will be



executed as a deed but the absence of a witness to Mr Ponsford's signature does not prevent the document from creating a trust or being evidence of a trust unless the court were to conclude that it was never intended to be relied upon due to its incomplete state. If it were effective of itself to create a trust, it would create a trust of the proceeds of sale and therefore a trust of land governed by the provisions contained in Trusts of Land and Appointment of Trustees Act 1996 (TOLATA).

41. This manner of drafting is along the same lines as other declarations of trust that were executed in 2018 between Mr and Mrs Ponsford and Mr and Mrs Henderson. I was not addressed about Clause 3 which requires the consent of all parties to a sale and I say nothing further about it other than if it is applicable it would take effect subject to the provisions of TOLATA.

42. A trust relating to 2 Walsingham Road could have come into being in this case in one of two ways:

- (1) There was an agreement (in a non-contractual sense) as Mr Sali summarises in paragraph 13 of his witness statement that 2 Walsingham Road would be purchased in Mr Ponsford's name but held for him on trust, with the intention that a subsequent deed of trust to be executed "confirming the beneficial and proprietary interest of 2 Walsingham Road." The agreement could be sufficient to amount to a declaration of trust. The issue is then whether the signed declaration of trust complies with section 53(1)(b) in a manner which manifests and proves the trust created in 2013. The issue for the court would be whether there is sufficient match between the trust that was created in 2013 with the manifestation and proof contained in the declaration. The former trust is a trust of the legal estate in the land and the latter is a trust of the proceeds of sale. I will return to this mismatch later in this judgment.
- (2) The declaration itself, as signed by Mr Ponsford, could create a trust for sale in respect of 2 Walsingham Road, despite not having been executed as a deed because it satisfies section 53(1)(b). On this analysis, the declaration both declares the trust and evidences it. The subject matter of the trust is the proceeds of sale of the property.

43. In fact, there is no authority to confirm that section 53(1)(b) applies to a trust which provides an interest in the proceeds of sale of a property. It depends upon whether such an interest is properly regarded as "respecting any land or any interest therein". It might be said that if the trust purely relates to the proceeds of sale, it relates only to personalty and not realty. However, I consider that takes a too narrow view of section 53 and its underlying intention.

44. In *Lewin on Trusts* 20<sup>th</sup> ed. at para 3-009 the editors note:

*"There is no decision whether a trust of an interest in the proceeds of sale of land is within the section; it is submitted that, following the abolition of the doctrine of Conversion, it is."*

45. I respectfully agree with their view. A trust for sale that creates an interest in the proceeds of sale of land is a trust respecting land or an interest in land.

46. The core issue by the end of the trial was not whether there is an absence of form in the declaration, or whether it suffices to comply with section 53(1)(b), but whether, when the document was handed over after signature, its delivery was conditional upon Mr Sali agreeing to the terms of other documents settling issues between Mr Ponsford and Mr Sali, including a document acknowledging his debt to the partnership. In order to decide that question I will need to consider the evidence.

### **Burden of proof**

47. The only other legal issue I have had to consider is upon whom the burden of proof lies in respect of the issues before me. It is clear that the burden lies on Mr Ponsford in respect of issues (iii) (whether a 20% interest rate was agreed) and issue (v) (the appropriate rate of remuneration for Mr Ponsford as Manager and Receiver).

48. The position is not quite as clear in relation to issues (i) and (ii). Mr Maguire submitted that the burden is on Mr Sali as the party seeking to uphold the declaration of trust. It seems to me that misses out a step and the right approach is to consider the task the Court faces in two stages. First, the burden is on Mr Sali to establish the facts he relies upon to show the agreement to hold 2 Walsingham Road in trust made in 2013.

49. It is now common ground that Mr Ponsford signed a declaration of trust in April 2021 (the document was in fact prepared in 2018) in a form that satisfied section 53(1)(b) of the Law of Property Act 1925. It is Mr Ponsford who says that in light of the circumstances at the time it was signed it does not operate to satisfy section 53(1)(b). Mr Sali need only prove the document which speaks for itself. The second stage is for Mr Ponsford to seek to rebut its effect. It follows that the burden lies on Mr Ponsford to show that the declaration did not operate to satisfy section 53(1)(b) upon being signed.

50. The position in regard to 13 Mill Lane is different. Mr Sali no longer seeks to establish that 13 Mill Lane is a partnership property. To the extent there is any issue to decide, it is for Mr Sali to prove it.

### **Evidence**

51. The way I propose to proceed is to summarise the principal evidence as it relates to the issues, then assess the evidence and make findings issue by issue.

52. Mr Ponsford has made one affidavit and 10 witness statements. He relies upon two other witnesses:

(1) Mrs Linda Apps became the bookkeeper for the partnership in March 2019 has made two witness statements. She also worked for Henderson Ponsford & Co. I have not found that Mrs Apps has provided evidence which is of material assistance to me in relation to the issues.

(2) Mrs Jeanne Ponsford who principally provides evidence about whether a 20% interest rate was agreed.

53. There is one witness statement from Mr Sali dated 25 August 2023.

## **2 Walsingham Road**

### **Mr Sali's evidence**

54. Mr Sali's evidence can be summarised in the following way:

- (1) In 2010 2 Walsingham Road was introduced as a property that might be suitable for an ASA but Mr Ponsford thought the risks were too great given the level of mortgage arrears, the condition of the property and its occupation by an unsatisfactory tenant. As a result Mr Ponsford left the property for Mr Sali to pursue. Three other properties were accepted as being suitable and Mr Sali says they were treated as some form of joint venture between him, Mr Ponsford and Mr Henderson. He described it as a mini-partnership. The important point in relation to 2 Walsingham Road is that the ASA went ahead with Mr Sali alone, with him promoting the venture and without any arrangement with Mr Ponsford and/or Mr Henderson.
- (2) Mr Sali says that he dealt with the owner, Mrs Daniel, she signed an ASA, he paid the mortgage arrears, he obtained vacant possession (on her behalf) against a difficult tenant and he carried out repairs to satisfy an improvement notice served by London Borough of Bromley. All this was done at his expense.
- (3) Mr Sali continued to carry out work at his expense and moved into the property with family in about 2011. They remained living there until the end of 2021.
- (4) In 2013 the property was purchased in Mr Ponsford's name. Mr Sali's case is set out in para 13 of his w/st. He puts his case as follows:  
[para 13 read]
- (5) So the agreement was made in the context of the existing mortgage with GE Money in Mrs Daniel's name coming to an end and Mr Sali being unable obtain a mortgage in his name. Mr Ponsford obtained a mortgage of £200,000 from Aldermore Bank. Mr Sali as attorney for Mrs Daniel acted as vendor and instructed solicitors. After completion he says he repaid Mr Ponsford the amount of the deposit, stamp duty and expenses. The title ended up with Mr Ponsford because only he could borrow sufficient to buy the property. The intention was that Mr Ponsford held the property in trust for Mr Sali. This was the clear understanding between them. The only evidence of payment on completion is a completion statement from Mr Sali's solicitors showing that approx. £48,000 was transferred to him. He says he topped up the amount so that Mr Ponsford was fully covered for his expenditure with a small commission in addition.
- (6) After the purchase Mr Sali paid 50% of the mortgage direct to Mr Ponsford. This he accepts. The mortgage paid out of partnership account as was insurance.
- (7) Further works were carried out at Mr Sali's cost. He says he spent a total of between £100,000 and £200,000.
- (8) Mr Sali received the income from the property.
- (9) There was no objection by Mr Ponsford to occupation of the property by Mr Sali and his family and receipt by him of income it generated.
- (10) When declarations of trust for the partnership properties were produced and executed in 2018, a declaration for 2 Walsingham in a different form, with Mr Sali as sole the beneficiary, was drafted on instructions given by Mr Ponsford but the declaration not executed in 2018. The declaration for this property was an outlier and was not like others. When Mr Ponsford gave instructions for it to be produced in 2018 he clearly had in mind that 2 Walsingham Road would be Mr Sali's albeit nothing was done with the draft for several years.

- (11) Then came the meeting in April 2021. By then the amicable relationship was breaking down. Mr Sali owed a large sum to the partnership. There is no evidence about a request for the declaration but we know one was signed and handed over. Mr Sali's evidence about this is at paragraphs 18 and 19 of his witness statement.
- (12) Mr Sali's evidence makes no mention of the declaration and of the three agreements he does refer to the transfer of 2 Walsingham Road was clearly uppermost in his mind.
- (13) When he was cross-examined Mr Sali said he wanted the title to be transferred and he produced the Form TR1 with a purchase price of £200,000. There is also a draft Form TR1 with a price of £250,000. He accepts that advice obtained from accountant during the meeting and that Mr Ponsford was advised he should not transfer the property at £200,000 when the market value was higher.
- (14) There is one additional document which is an indemnity in favour of Mr Ponsford against CGT.
- (15) Mr Sali accepts he became angry when Mr Ponsford refused to transfer 2 Walsingham Road to him and he accepts he ripped up some of the documents he had signed. He was not certain which documents he ripped up but clearly it did not include the declaration of trust which is intact.
- (16) It is not in dispute that during the meeting the declaration was signed by Mr Ponsford and the original was handed to Mr Sali. Mr Sali left the meeting with the original (seemingly without objection) and Mr Ponsford never asked him to return it.

### **Mr Ponsford's Evidence**

55. Mr Ponsford's evidence about 2 Walsingham is less clear. He does not appear to dispute the events relied upon by Mr Sali prior to the transfer in 2013. He accepts that Mr Sali paid half the mortgage costs monthly up to 2021 but does not explain why. If the property were a partnership property there would be no reason for Mr Sali to make this payment.

56. He says that in 2013 the property became a partnership asset. He says there was no agreement for Mr Sali to live there other than as a short-term measure. He also describes it as a temporary arrangement.

57. In his affidavit dated 10 December 2021 made in support of the freezing order Mr Ponsford deals with the meeting on 29 April 2023 under the heading: "Knowledge and dishonesty of [Mr Sali]". His evidence is set out in paragraphs 82 to 87.

58. It is notable that he does not mention there the declaration of trust despite his duty to be frank with the court.

59. In his witness statement dated 12 May 2023 Mr Ponsford said:

*"Mr Sali has produced a deed of trust – which is null and void due to actions."*

60. It is not at all clear what this was intended to mean.

61. That was the state of his evidence when the claim came before me on 1 August 2023. Then, after the declaration of trust became an issue, he provided rather more information in

his witness statement dated 29 September 2023. The entirety of his evidence about the Declaration of trust was at that stage was set out in paragraphs 20 to 24 of that statement.

62. The core point he makes is that the declaration of trust was handed over in exchange for Mr Sali signing other documents. He maintained this version when he was cross-examined by Mr Sali. He said:

“I agreed to give him the declaration of trust if he would sign the documents showing his liability. He reneged on the deal by tearing up documents.”

63. He denied that he had received any payment for 2 Walsingham Road from Mr Sali in 2013.

64. He was asked about the Form TR1 presented to him at the meeting in April 2021. He said on advice from the partnership accountant he could not sign it because he would be committing fraud. In saying that it appears he was confusing the lawfulness of the transfer with what would need to be declared to HMRC. There would have been no reason at all why Mr Ponsford and Mr Sali should not have chosen £200,000 as the price being paid for the property.

65. Mr Ponsford denied that he was holding the property on trust.

66. Linda Apps deals with 2 Walsingham Road briefly in her first statement. She says that “to her knowledge” Mr Ponsford is the beneficial owner of 2 Walsingham Rd and that Mr Sali and his family lived at the property “as a perk”. However, no weight can be given to her evidence on this subject because she only started working for the two partnerships in 2019 and she does not state how she knows what she claims to know.

67. Mrs Ponsford deals with the meeting on 29 April 2021. Importantly, her recollection of the meeting is that after Mr Sali arrived he signed “quite peacefully” some forms (she does not specify what they were). It was only then that Mr Sali spoke to Mr Ponsford about him selling 2 Walsingham Road to Mr Sali at the same price he paid for it and only after Mr Ponsford refused did the meeting become fractious. She recalls it was then that Mr Sali tore up the signed forms and left. Her recollection must be imperfect however because it is common ground that Mr Sali did not tear up the declaration of trust and left with a signed copy.

### **Impressions of Mr Ponsford**

68. The anger Mr Ponsford feels toward Mr Sali is palpable. He is very aggrieved, perhaps because he trusted Mr Sali and developed a relationship that was close to being filial. His sense of betrayal can be seen from the tone of his oral and written evidence.

69. Mr Ponsford was cross-examined by Mr Sali and behaved largely in a dignified way given the exercise was plainly a difficult one for him. However, at times he feigned not to understand the question he was asked which was unconvincing. It was also plain that he has allowed his state of mind to affect his evidence. An example of this concerns the enforcement notice served by the London Borough of Bromley relating to 2 Walsingham Road. He claims the property for the partnership, he is the registered proprietor and mortgage holder, he was aware of the works and yet the failure to seek approval from Aldermore was, according to him, Mr Sali’s fault. His real complaint is that the enforcement notice brought the works to

the attention of Aldermore. He also only very grudgingly accepted that in light of the appeal consent had been obtained and he exaggerated the difficulty created by building the extension slightly larger than the dimension on the plan giving planning consent.

70. Another side to Mr Ponsford was revealed by a short video recording taken at 2 Walsingham Road on about 2 February 2022 at a time when Mr Sali and his wife had taken back possession of the property after Mr Ponsford claimed it had been abandoned. Mr Ponsford addressed Mr Sali in a highly aggressive way said to him:

“The police are going to arrest you. You have broken in. ... I own the property.”

71. He then turned to Mr Sali’s wife and said:

“And you’re going to get arrested as well. Your children are going to be taken into care. Because both of you have broken the law ...”

[recording ends]

72. To my mind these remarks, particularly the remark about Mr and Mrs Sali’s children, show a lack of balance.

73. I also found that Mr Ponsford was prone to exaggeration. Two examples suffice:

- (1) He suggested that the monthly mortgage sum due to Aldermore after default was far greater than the true amount.
- (2) His claim for receivership remuneration suggests he has spent chargeable hours in that capacity of between 35 and 50 hours every week since June 2022. I accept he may have spent many waking hours dealing with the partnership issues but to attribute all his time to the receivership was plainly inappropriate.

74. Finally, there is no doubt that his case about the declaration of trust has developed. It was not dealt with candidly in his affidavit made in December 2021. Even in his September 2023 evidence he challenged the validity of the declaration and was equivocal about whether it is his signature on the document. This is followed by his case about provision of the Declaration of trust being conditional.

75. My conclusion about his evidence is that it needs to be treated carefully and should not be accepted where it is uncorroborated. It is of note that his two brothers attended the meeting in April 2021 and they were not called as witnesses. His position now is fixed in opposition to Mr Sali in every respect and I am satisfied that this overlay has affected his evidence.

### **Impressions of Mr Sali**

76. Mr Sali feels equally strongly about the position. However, I found his version of events relating to the background events concerning 2 Walsingham Road to be plausible and consistent with the documents he produced. This property was not dealt with in the same way as others. It was from the outset his project. He dealt with it outside the partnership.

77. I found him to be a straightforward witness. He gave long answers to questions but I consider his approach to giving evidence was largely unaffected by his strength of feeling.

78. I accept his evidence about the transfer of the property to Mr Ponsford and payment for the deposit, stamp duty etc. He was left by Mr Ponsford to deal with the property, to carry out

alterations and extensive improvements at his cost. It was his home and a project for improvement. There is no sign of objection by Mr Ponsford who visited frequently.

79. Mr Sali's evidence is not only plausible but also consistent with the way in which 2 Walsingham Road was treated over a lengthy period and such documents as have been produced. It might be said that he failed to produce documents such as bank statements (to the extent he was able to do so) from 2013. However, the same point could be made about Mr Ponsford. Mr Ponsford's legal team appear to have ignored the important exhibits to Mr Sali's witness statement dated 25 Aug 2023. If they did not accept Mr Sali's version of events they could have pressed him to produce bank statements but did not do so. Given that there was no order for disclosure following the order made on 1 Aug 2023 it cannot be said that Mr Sali failed in his disclosure obligations in respect of a trial of issues upon taking the account.

### **Conclusions about 2 Walsingham Road**

80. Mr Sali says a trust came into being in 2013 but in the absence of a written document evidencing the trust he cannot succeed.

81. The evidence provided by Mr Sali is sufficient to establish that upon transfer of 2 Walsingham Road to Mr Ponsford in 2013 Mr Ponsford intended that he would hold the property on trust for Mr Sali. The intended trust was likely to have been of the property, not the proceeds of sale, although the practical difference between the two would have been minimal. The latter form of trust only surfaced when the declaration of trust was drafted by Mr Ponsford's lawyers in that form for reasons that are not known. There is ample evidence to corroborate the existence of the trust from the way in which Mr Ponsford and Mr Sali subsequently behaved.

82. The only reason for Mr Ponsford's involvement in 2013 was that he could obtain a mortgage. Unlike other properties that fell within the partnership, this property fell outside and was subject to a trust in favour of Mr Sali. It was always Mr Sali's property. The way in which the parties have behaved is consistent with this. Mr Sali and family lived in the house for about 10 years, very extensive works were carried out at Mr Sali's expense and when part of the property was let he held the income. All this happened with Mr Ponsford's tacit approval.

83. I turn to the declaration of trust and the meeting in April 2021.

84. The evidence from both side about that meeting is limited. The court has not been told how the meeting came about, how long the meeting lasted, how it started or when the declaration was signed and handed over. No indication has been given of the words used by each party. What is not in doubt, however, is that Mr Ponsford signed the declaration and handed the original to Mr Sali. It seems to me that, subject to one point I will come on to, from the moment of signature of the declaration by Mr Ponsford, section 53(1)(b) was satisfied unless somehow the declaration was held in suspense.

85. A difficulty for Mr Sali arises from the declaration being drafted as a trust of the proceeds of sale of the property. This gives rise to the question whether the declaration can be seen as a document in writing that manifests and proves a trust of the land itself? It can certainly be said that the declaration refers to the property, describes the parties to the trust, it refers to Mr Ponsford holding the property on trust and to Mr Sali being the beneficiary of the trust.

86. The essence of section 53(1)(b) is to ensure that there is sufficient evidence in writing of the existence of a trust that relates to land. The writing need not be precise or legalistic. On the facts of this case the writing must be evidence of the pre-existing trust which validates retrospectively a declaration of trust. The parties and the subject matter of the trust are essential items. I consider that the declaration is sufficient manifestation and proof of the intention to create a trust relating to 2 Walsingham Road. The declaration clearly identifies the property, the parties and the creation of a trust. There is clearly a difference between the property and the proceeds of sale but for the purposes of section 53(1)(b) the declaration suffices to evidence a trust of the land that was 'declared' in 2013.

87. Mr Maguire described the meeting in April 2021 as a settlement meeting. He relies upon Mr Sali's description of the meeting as leading to a number of agreements "to solve the issues". To describe the meeting as a settlement meeting places too much of a legal gloss on it. There were by then disagreements and the parties wished to wind up the partnership and 'move on'. However, the parties had different objectives at the meeting. Mr Ponsford wanted to obtain an acknowledgement of the sum due to the partnership from Mr Sali. Mr Sali wanted to obtain a transfer of 2 Walsingham Road into his name at the 2013 value. His objective was well beyond obtaining confirmation of a trust.

88. Mr Maguire's closing submissions relied upon two main propositions:

- (1) He submits that the declaration was not intended to be binding; the document was not completed because the parties were not ad idem. However, I do not consider it is open to me to reach that conclusion. Such evidence as there is about the declaration is that Mr Ponsford signed it, Mr Sali signed it and his signature was witnessed and the declaration was then handed over to Mr Sali. There is no evidence about a lack of consensus. There was a lack of form to make the document a deed but that has not featured as part of the evidence and the court should take the document as it appears.
- (2) Mr Maguire relies on the evidence from both parties that there were other aspects to the meeting and the declaration should be seen as part of the whole. He submitted that the court is not permitted to uphold the declaration when other documents forming part of the overall agreement were torn up. Another way of looking at what happened is that some documents were agreed but the Form TR1 was not signed.

89. Mr Ponsford's position focuses on the documents resolving issues between the parties. However, had the Form TR1 been signed the declaration would have been otiose. The trust (or at least the putative trust) and the declaration reflected historic dealings between the parties. The declaration was intended to reflect what the current position was in April 2021, not to wind up the trust by a transfer of the title at the behest of the beneficiary. Under the declaration Mr Ponsford's lawyer had drafted, Mr Sali would have been able to call for sale of the property but not transfer of the title. I do not see therefore that the negotiations were about the trust.

90. I am unable to accept Mr Ponsford's evidence that he only handed over the declaration upon a conditional basis and that basis was not fulfilled. His evidence about this I consider to be unreliable. Paragraph 23 of his witness statement dated 29 September 2023 does not have the appearance of being Mr Ponsford's own evidence about the meeting, which he deals with only fleetingly, but rather a rationalisation of the legal case he wished to put forward, no doubt with legal assistance. Mr Ponsford signed the declaration and handed it to Mr Sali. He



does not give evidence about words that may have been spoken that could have created conditionality.

91. The tax issue about transfer became a distraction at the meeting and is the reason for Mr Ponsford's refusal to sign it and Mr Sali's impetuous behaviour. But it does not alter the fact that Mr Ponsford signed the declaration and handed it to Mr Sali. It is telling that Mr Sali was able to leave the meeting with the signed declaration and at no time subsequently has Mr Ponsford asked for it back. The denial of the declaration "due to actions" was not a denial of the underlying trust. Mr Ponsford's real case has been about the invalidity of the declaration as a deed, a case that rightly was not pursued.

92. It is not open to Mr Ponsford to disown the declaration he signed. The document which was drafted as a deed was not fully executed and not dated. However, it was signed by him and handed over by him without pre-condition. It was not dated but it was none the less final for the purposes of section 53(1)(b). His subjective intentions when handing it over have no bearing where the declaration on its face satisfies s53(1)(b).

93. I am satisfied that a trust of the land was complete at the time Mr Ponsford signed the declaration. Handing it evinced the clear intention that it was to be relied upon and not held in suspense by some means.

94. It is unnecessary to make any finding on the alternative basis that the declaration itself created a trust of the proceeds of sale.

95. I find that 2 Walsingham Road is held by Mr Ponsford on trust for Mr Sali.

### **Abandonment/re-entry**

96. It is not essential to disposal of the trial to make findings about the events of late December 2021 and early 2022 at 2 Walsingham Road. I need only say that I do not accept Mr Ponsford's case that he was entitled to treat Mr Sali's occupation of the property as having been abandoned. I accept Mr Sali's evidence, which finds some support in the photographs, that some of his personal possessions remained in the property. This is completely consistent with him having relocated with his family to Turkey. It does not follow that he was giving up his interest in the property or his right to possession. As he pointed out in evidence it is common for property to be owned by the same person in more than one country.

### **20% interest rate**

97. Mr Ponsford's case is that at a meeting in April 2022 Mr Sali accepted he had taken money from the partnership that had to be returned. Mr Ponsford's evidence is very brief. He says a rate of 20% was agreed and then refers to the evidence of his wife and Linda Apps. I note that a return of that rate for any investment is very significant indeed and the absence of any risk would be very surprising.

98. Mr Sali says he does not recall agreeing to pay that figure but was always willing to pay interest at 5%.

99. Mrs Ponsford attended the meeting and her evidence is that during a meeting in March (not the meeting described as the settlement meeting at the end of April 2021) her husband told Mr Sali that he had lost the opportunity to invest in a scheme that would pay 20% interest. She then says that Mr Ponsford produced a document called a "statement of facts"

which she says states that a 20% interest rate would be applied. She says Mr Sali replied “yes, that’s fine”. However, her recollection is incorrect. The statement of facts does not refer to a 20% rate and only makes mention of Mr Ponsford’s plans to invest at various rates of return from 15% to 25%.

100. Linda Apps also recalls an interest rate was discussed at a meeting in March 2022. She says that Mr Ponsford proposed interest at a rate she cannot recall but it was either 10% or 15%. She then claims it was her who proposed 20% and she goes on to assert that Mr Sali agreed to it.

101. I observe that:

- (1) The claim to interest at 20% is not pleaded. The particulars of claim do not specify an interest rate.
- (2) This issue arose late on in the claim. It arises from Mr Ponsford’s witness statement made for the hearing in October 2023 and was only supported by the two additional witness statement at that stage.
- (3) The quality of evidence provide on behalf of Mr Ponsford is poor and contradictory.

102. In my judgment Mr Ponsford has not provided evidence which proves an agreement by Mr Sali to pay an astonishingly high rate of interest. It would have been highly detrimental to him to have agreed this. I consider that the evidence relied upon by Mr Ponsford does not prove an agreement to pay at this rate.

103. Furthermore, even if a promise to pay 20% could be derived from the evidence, such a promise does not have the character of an enforceable contractual promise. Mr Ponsford has not been able to point to consideration for the promise other than forbearance but that does not seem to have been part of the deal that he alleges was made.

104. I find in favour of Mr Sali on this issue.

### **13 Mill Lane, Canterbury**

105. This issue can be dealt with briefly. It is common ground that 13 Mill Lane was not part of the Move on Now partnership. I am therefore bound to hold in favour of the Mr Ponsford on this issue as it was drafted.

106. There is clear evidence that Mr Sali received payments in respect of 13 Mill Lane that were usually described as commission calculated on the basis of 1/3 of profit made. Furthermore, Mr Sali received similar commissions and 1/3 of the net profit on sale of 40 Tunnel Avenue and 7 Fodbury Court which were introduced in 2010 at the same time as 13 Mill Lane.

107. Mr Ponsford accepted that payments had been made to Mr Sali. He described them as being payments made within his discretion and after he discovered Mr Sali’s excess drawings, or theft as he would put it, he ceased to make any further discretionary payments.

108. I do not feel able to make findings in favour of Mr Sali on the issue that has been placed before me, the answer to which is clear and not in dispute.

109. I find in favour of Mr Ponsford on this issue.

## Remuneration

110. Mr Ponsford was appointed by the order dated 6 January 2022 as Manager and Receiver “to collect, get in and receive the debts now due and outstanding and other assets and property belonging to the partnership business of Move on Now ... and to pay the debts due from the said business.”

111. It is not in doubt that Mr Ponsford inherited a less than straightforward business. There were unfinished works and uncertainties about lettings. He says some of the building work carried out by Mr Sali was defective. In order to wind up the partnership he had to gather information, constitute the accounts and manage the business. Of course, as an equal sharing partner he had a duty to assist in the winding up the partnership and as a starting point it seems to me that he is only able to claim remuneration for work over and above the work he was duty bound to undertake as a partner. And, of course, in light of my finding the work he carried out in relation to 2 Walsingham Road on the basis it was a partnership property cannot be claimed.

112. Very belatedly there was a realisation by Mr Ponsford’s advisers that PD69 paragraph 9.4 required his claim for remuneration to be supported by written evidence.

*“9.4 An application by a receiver for the amount of his remuneration to be determined must be supported by –*  
*(1) written evidence showing –*  
*(a) on what basis the remuneration is claimed; and*  
*(b) that it is justified and in accordance with this Part; and*  
*(2) a certificate signed by the receiver that he considers that the remuneration he claims is reasonable and proportionate.”*

113. CPR rule 69.7(4) sets out the criteria which will normally be applied by the Court.

*“(4) Unless the Court orders otherwise, in determining the remuneration of a receiver the Court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account –*  
*(a) the time properly given by him and his staff to the receivership;*  
*(b) the Complexity of the receivership;*  
*(c) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;*  
*(d) the effectiveness with which the receiver appears to be carrying out, or to have Carried out, his duties; and*  
*(e) the value and nature of the subject matter of the receivership.”*

114. Mr Ponsford’s statement dated 27 October 2023 was served just a few days before the trial commenced. At the time the account came on for hearing on the first occasion there was no evidence other than in a statement dated 29 September 2023 which refers to a skeleton argument prepared by Mr Maguire for an earlier hearing. Paragraph 60 of that statement appears to have been intended to state the percentage remuneration he claimed but the figure is left blank. The skeleton argument claims 15% of the asset value of the partnership as the remuneration.

115. The witness statement dated 27 October 2023 is brief (the substance is one and a half pages long and the information it provides is given at a very high level of generality). Furthermore, it does not include the certificate that is required by PD69 para.9.4(2).

116. The fee Mr Ponsford is seeking is 15% of the net asset value of the partnership of £3,379,211 as provided at Appendix 3.8 of the expert report produced by Mr Tom Wachter of Kreston Reeves. However, that figure includes what he describes as ‘member balances’, the net figure being £2,812,501. Both those figures include the net value of 2 Walsingham Road which clearly will have to be deducted in light of my findings.

117. As I have indicated earlier in this judgment, I consider 15% of the capital value to be grossly excessive. It would provide remuneration of a figure in excess of half a million pounds. The precise figure is £506,881.85. I find it hard to believe that Mr Ponsford would be able to sign a certificate in good faith stating that he believes such a figure to be reasonable and proportionate. He is simply seeking to minimise the amount Mr Sali may receive from the partnership by whatever means.

118. The evidence Mr Ponsford has provided about the time he says he has spent lacks specificity. There are no records of his work. He estimates that he has spent between 25 and 50 hours every week since June 2021 on the task. However, his appointment was not until January 2022 and he has made no allowance for time spent as the claimant dealing with the litigation and no allowance for time he was duty bound to spend as a partner in a partnership that continued trading while being wound up. In cross-examination he said he estimated that 90% of his time related to his role as manager and receiver and that his lawyers were very good and this made his role as client easy. So only 10% of his time, he says, was spent on this very involved litigation.

119. I find Mr Ponsford’s evidence to be both exaggerated and implausible. I have no doubt that he has spent a substantial amount of time acting as manager and receiver but he has also spent much time giving instructions to lawyers and acting as a partner. He has failed to provide any meaningful breakdown of the time spent. He has also had no regard to proportionality.

120. It is open to the Court to refer the assessment of the fee he is entitled to receive to a Costs Judge. In the case of a professional receiver and manager charging an hourly rate with time records that might be a useful course of action. I do not consider it is the right approach here albeit that the Court is faced with a difficult task. I have decided that I will decline to set Mr Ponsford’s remuneration at this stage. I will adjourn the issue for determination at a later hearing when the account is finalised. He will have the benefit of the guidance I provide in this judgment. In summary:

- (1) I do not rule out approving a fee based upon asset value but rather more thought needs to be given for the requirement that the fee is reasonable and proportionate.
- (2) A percentage fee (leaving aside the need to remove 2 Walsingham Road) would need to relate to the assets which Mr Ponsford has dealt with as manager and receiver and be at a percentage that is far lower than 15%. There may be analogous fees that provide helpful guidance.

- (3) If time spent is to be used as a measure, Mr Ponsford will need to focus upon work he carried out as receiver and manager and to make sensible allowances for time spent as a partner and as a party to litigation.
- (4) I reject his evidence that he is entitled to claim a fee based upon 35 to 50 hours each week.
- (5) The fee can only run from the date of his appointment in January 2022.
- (6) If the fee is related to time spent and be assessed on an hourly or daily rate basis I consider it should be modelled on the litigant in person rate which is currently £19 per hour. That would equate to £152 per day.
- (7) The overall fee must be reasonable and proportionate and he must certify it as such.

### **Conclusions on the issues**

121. Issues 1 and 2 – I declare that the declaration is valid and that 2 Walsingham Road is held on trust by Mr Ponsford for Mr Sali.
122. Issue 3. A contractually binding interest rate of 20% was not agreed.
123. Issue 4. 13 Mill Lane is not a partnership asset.
124. Issue 5. The claim for remuneration is adjourned to be determined at a later date.

**Judgment compiled from notes of the oral judgment in the absence of a recording  
Master Marsh (sitting in retirement)**