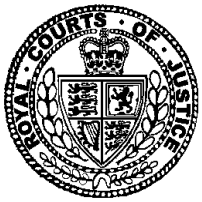

Neutral Citation Number: [2025] EWHC 407 (Ch)

Case No: PT-2023-000944

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUST AND PROBATE LIST

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 28/02/2025

Before:

MASTER KAYE

- -

Between:

BRIAN WILLIAMS (in his capacity as the Public Trustee of the Bailiwick of Guernsey)	**Claimant**
- and -	
(1) SHERBORNE CORPORATE SERVICES LIMITED (incorporated in the Republic of Seychelles, company no. 012277)	**Defendants**
(2) KENILWORTH CONSULTANTS INC (incorporated in the Republic of Seychelles company no. 012316)	
(3) TEMPLE PENSION AND INVESTMENTS LIMITED (incorporated in England and Wales company no. 08129086)	

- -
- -

Fenner Moeran KC (instructed by **Charles Russell Speechlys LLP**) for the Claimant
Roger Mewis and his McKenzie Friend attended for the Defendants on 7 January 2025
The Defendants did not attend and were not represented on 8 January 2025

Hearing dates: 7 and 8 January 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.00 am on 28 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MASTER KAYE

Master Kaye :

1. By an order of the Royal Court of Guernsey dated 29 March 2017 the Public Trustee of the Bailiwick of Guernsey ("**the Public Trustee**" or the "**Claimant**") was appointed as trustee of five Guernsey based pension schemes referred to collectively in this judgment as the **IXG Schemes**. Mr Brian Williams currently holds the office of Public Trustee having replaced Mr Luis Gonzalez during the course of this claim. The Public Trustee's appointment was initially for a period of six months but was extended until further order by an order of the Royal Court of Guernsey dated 22 September 2017 (the "**March Appointment Order**" and the "**September Appointment Order**").

2. The Public Trustee's powers and duties are set out in the Public Trustee (Bailiwick of Guernsey) Law 2002. Those powers and duties are broadly similar to that of the public trustee in England & Wales under the Public Trustee Act 1906.

3. This was the final disposal hearing of the Public Trustee's Part 8 claim for vesting orders as trustee of the IXG Schemes under the Trustee Act 1925 ss.44 and 51 in respect of a number of real property assets and investment portfolio accounts ("**the vesting application**") ("**the Assets**").

4. The First and Second Defendants were the trustees of the IXG Schemes prior to the March Appointment Order ("**the Former Trustees**" or "**Sherborne**" or "**Kenilworth**").

5. Sherborne was incorporated in the Seychelles on 22 July 2003. A certificate of Official Search of the Register of International Business Companies in the Seychelles dated 12 November 2024 confirmed that Sherborne was not of good standing for non-payment of the annual fees for 2024. On 10 December 2024, a Certificate of Incumbency was issued by A.C.T Offshore Limited as registered agent for Sherborne which confirmed that all fees had been paid up to date. It further confirmed that the present director of Sherborne was IXG Services Limited a Cypriot company ("**IXG Services**") and that Roger Paul Mewis was the present shareholder of Sherborne ("**Mr Mewis**").

6. Kenilworth was incorporated in the Seychelles on 24 July 2003. A certificate of Official Search of the Register of International Business Companies in the Seychelles dated 12 November 2024 confirmed that Kenilworth had been struck off the register for non-payment of the annual fees over a period of years.

7. Mr Mewis is a director of IXG Services, the corporate director of Sherborne. The Claimant believes that Sherborne and Kenilworth are owned beneficially by Mr Mewis and his brother.

8. The Third Defendant ("**Temple**") is an English registered company of which Mr Mewis is both sole director and shareholder. Temple hold some of the Assets as nominee for the Former Trustees.

9. The Former Trustees and Temple (together the "**Defendants**") have not had any legal representation during the course of this claim. Mr Mewis sought to represent the Defendants with the assistance of a McKenzie Friend.

10. Mr Mewis is in poor health. To assist the Defendants and Mr Mewis, all the hearings including those on 1 November, 12 November and 7 and 8 January were hybrid. This allowed Mr Mewis and his McKenzie Friend to attend the hearings remotely from Devon.

11. Mr Mewis's poor health was the reason for the Defendants' application to adjourn the final hearing listed to commence on 12 November 2024. On 1 November 2024 I refused the Defendants' application to adjourn the original final hearing and made an adverse costs order against them.

12. The Defendants failed to attend the final hearing on 12 November 2024 due to a deterioration in Mr Mewis's poor health. I adjourned the final hearing on terms which included an unless order requiring the Defendants to pay an outstanding adverse costs order made in September 2024. I made a second unless order on 18 November 2024 in respect of a further unpaid costs order. Unless the two costs orders were paid by the Defendants by 4pm on 29 November 2024 they would be debarred from defending the claim.

13. The effect of the debarring order was set out in clear and unambiguous terms in both debarring orders:

> "…For the avoidance of doubt, if this order takes effect then:
>
> (i) It will prohibit the Defendants from defending the claim including relying on any evidence whether in witness statement form or in correspondence and/or making any submissions in defence of the claim.
>
> (ii) The Claimant will still be required to prove their claim"

14. In the event that the Defendants complied with the unless order I had given directions about the steps which the Defendants had to take, and by when they had to take them, if they sought permission for Mr Mewis to represent them at the adjourned final hearing. The Defendants did not comply with those directions.

15. On 7 January 2025, the Claimant argued that the unless order had taken effect and the Defendants were debarred. I gave Mr Mewis limited permission to represent the Defendants to explain why the Defendants were not debarred. For the reasons I gave in a separate oral judgment on 7 January 2025 I determined that the Defendants had been debarred from defending the claim from 4pm 29 November 2024. I refused the Defendants' application for permission to appeal on 7 January 2025. This was recorded in an order dated 15 January 2025.

16. No application for permission to appeal has been made in respect of any of the 1 November 2024, 12 November 2024 or 18 November 2024 Orders. The time for doing so has long since passed. No renewed application for permission to appeal the 15 January 2025 Order has been made and the time for doing so has now expired.

17. Mr Mewis and his McKenzie Friend continued to observe the proceedings on 7 January 2025. On 8 January 2025 neither Mr Mewis nor his McKenzie Friend joined the hearing through the remote link. Neither Mr Mewis, his McKenzie Friend nor any other

representative of the Defendants made contact with the court to say they would not be attending or that they were having difficulties joining the hearing remotely or at all. There were other remote participants and no obvious technical issues from the court's perspective. The Defendants were therefore neither present nor represented on 8 January 2025.

18. If the Public Trustee can prove that the Assets are trust assets, then the Former Trustees (and their nominees) as retiring trustees must transfer the Assets to the Public Trustee, as replacement trustee, and must execute anything required for those transfers (see Trustee Act 1925 s.37).

19. If they do not then the Public Trustee can apply for a vesting order under the Trustee Act 1925 ss.44 and 51. Section 44 provides for vesting orders of land, and s.51 for vesting orders of personal property and in particular ss. 44(i) and 51(1)(i) apply:

> "44. In any of the following cases, namely:
>
> (i) Where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power…
>
> the court may make an order (in this Act called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct:
>
> Provided that—
>
> (a) Where the order is consequential on the appointment of a trustee the land or interest therein shall be vested for such estate as the court may direct in the persons who on the appointment are the trustees…
>
> 51(1) In any of the following cases, namely: -
>
> (i) Where the court appoints or has appointed a trustee, or where a trustee has been appointed out of court under any statutory or express power…"
>
> the court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover the thing in action, in any such person as the court may appoint
>
> Provided that—
>
> (a) Where the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees…"

20. In principle therefore provided that the court is satisfied that the Public Trustee is the current trustee of the IXG Schemes, and the Assets are trust assets the court has the power and jurisdiction to vest those assets in the Public Trustee. Indeed, the power to do so is not limited to a trustee who has been appointed by this court but also applies to a trustee who has been appointed "*out of court under any statutory or express power.*" The Claimant asks me to exercise that power and jurisdiction to vest the Assets in the Public Trustee.

21. But in any event on 27 September 2017 the Royal Court of Guernsey made express provision for the transfer of all trust assets of the IXG Schemes to the Public Trustee ("**the Surrender Order**"):

> "1. That the Former Trustees shall immediately take all such steps as are necessary to surrender to the Public Trustee all trust property held by or vested in or otherwise under the control of the Former Trustees or any one thereof;
>
> 2. That the Former Trustees shall complete the surrender of all trust property held by or vested in or otherwise under their control to the Public Trustee by no later than 4pm on 30 November 2017;"

22. The Surrender Order was made despite the Former Trustees' opposition and despite their argument that they had incurred liabilities as trustees of the IXG Schemes and should be allowed to retain trust assets to meet those liabilities. The recitals defined Liabilities and recorded:

> " AND UPON READING the First Affidavit of Catherine Rowe sworn on 22 June 2017, the Third Affidavit of Roger Paul Mewis sworn on 30 August 2017, the Third Affidavit of Catherine Rowe sworn on 6 September 2017, the Fourth Affidavit of Roger Paul Mewis sworn on 20 September 2017 and **the email from Ashfords LLP to Ferbrache & Farrell LLP dated 22 August 2017 which detailed specified liabilities (the Liabilities) said to have been incurred by the Second and Third Respondents in their capacities as the (former) trustees** of the pension schemes specified at Schedule 1 of the order of the Royal Court dated 29 March 2017 (the Former Trustees)"

23. At paragraph 3 the Surrender Order continued:

> "3. That with reference to the Former Trustees' requirement for the provision of reasonable security pursuant to section 43(1)(b) of the Trusts Law, following the transfer of trust assets by the Former Trustees in accordance with orders 1 and 2 (above) and at all times prior to the resolution of the Liabilities (whether by agreement between the parties or payment by the Public Trustee from trust assets or by order of the Royal Court), the Public Trustee shall retain trust assets totalling not less than £4,200,000."

24. The Surrender Order therefore determined that any security to which the Former Trustees may have been entitled under the Trusts Law (Guernsey) 2007 ("the **Trusts Law**") s.43(1)(b) was to be provided by the Public Trustee retaining £4.2m pending resolution of the Liabilities. Section 43(1)(b) provides for a former trustee to be provided with reasonable security before surrendering trust property. By the Surrender Order the court had determined what that security was and what was reasonable. The Former Trustees were not thereafter entitled to hold the Assets as security for the Liabilities nor were they entitled to therefore retain the Assets on the basis of a lien. Indeed, s.44 of the Trusts Law provides only for a non-possessory lien over trust property in respect of expenses and liabilities properly incurred, which could not and did not entitle the Former Trustees whether in 2017 or now to continue to retain the Assets in breach of the Surrender Order, s.44 itself or their duties as trustees.

25. The Former Trustees do not deny that the Assets were all originally trust assets and save in relation to four of the investment portfolio providers' accounts the Former Trustees' evidence is that they remain trust assets.

26. The Former Trustees' resistance to the transfer of the Assets other than the four investment portfolio providers' accounts was based on what they considered to be their continued entitlement to retain the Assets by way of lien or security in respect of the Liabilities and subsequent liabilities they say they have incurred following their removal as trustees. They were not entitled to do so whether as a consequence of the Surrender Order or by reference to the Trusts Law.

Conclusion:

27. I am satisfied that the Public Trustee is the current trustee of the IXG Schemes having been appointed by the March Appointment Order and their appointment having been extended by the September Appointment Order and continuing. I am also satisfied that the Assets were all trust assets and that they should now be immediately vested in the Public Trustee as trustee of the IXG Schemes.

28. For the reasons set out in this judgment the Former Trustees should have complied with their duties as Former Trustees and/or the Surrender Order including transferring the Assets to the Public Trustee. The Former Trustees and Temple have failed and/or refused to transfer the Assets to the Public Trustee.

29. At the conclusion of the final hearing, I made immediate vesting orders or declarations as appropriate in favour of the Public Trustee in relation to all the real property assets and five of the investment portfolio providers. In this judgment I provide my brief reasons for having made those immediate vesting orders and declarations.

30. I reserved my judgment in relation to the four investment portfolio providers' accounts affected by the Deeds of Assignment referred to below. For the reasons set out in this judgment I have concluded that immediate vesting orders or declarations as appropriate should now be made in favour of the Public Trustee in relation to the remaining investment portfolio providers' accounts.

31. A declaration is, of course, a discretionary remedy where the court declares a particular state of affairs. One of the purposes of a declaration is to avoid further argument in relation to that state of affairs. Given the Former Trustees' position and their and Mr

Mewis's conduct to date in relation to the Deeds of Assignment and the Assets more generally making declarations is the most effective way of resolving the issue upon which the world at large can rely and is an appropriate exercise of my discretion and has utility.

The Assets:

32. This claim concerns seven real property assets and seven investment portfolio providers who hold thirteen portfolio accounts in this jurisdiction.

33. Sherborne accepts that all the trust assets that are the subject of this vesting application other than the four investment portfolios providers said to be subject of the Deeds of Assignment are assets of the IXG Schemes and are therefore trust assets.

34. Legal title to three of the real property assets is still registered in the names of the Former Trustees as trustees of the IXG Schemes:

    i) 2 Londsdale Street, Bury. HMLR title number GM213392. Title registered to Former Trustees as "*the trustees of The Interim Executives (Guernsey) Limited Occupational Pension Scheme*".

    ii) Land to the north of Top O'th Knotts Farmhouse, Bolton. HMLR title number MAN154890. Title registered to Former Trustees as "*the Trustees of the Interim Executives (Guernsey) Limited Occupational Pension Plan 2*".

    iii) Land at Harry Fold, Bolton. HMLR title number MAN170369. Title registered to Former Trustees as "*the Trustees of the Interim Executives (Guernsey) Limited Occupational Pension Plan 2*".

35. The legal title to the other four real property assets is registered in the name of Temple:

    i) Top O'th Knotts Farmhouse, Bolton. HMLR title number GM749173. Title registered to Temple.

    ii) Land lying to the east side of Picow Farm Road. HMLR title number CH401314. Title registered to Temple.

    iii) 132 Weaste Lane, Salford. HMLR title number LA105047. Title registered to Temple.

    iv) 5 Horsefair Mews, Romsey. HMLR title number HP411313. Title registered to Temple.

36. The Former Trustees do not dispute that these properties are trust assets. Mr Mewis included three of the properties in various schedules of non-cash assets held by the IXG Schemes produced by him since at least January 2017. The Former Trustees' solicitor explained that Temple was a corporate nominee used by the Former Trustees for the purpose of holding assets on behalf of the IXG Schemes. I am satisfied that Temple holds the properties as nominee for the Former Trustees and they are trust assets.

37. I am therefore satisfied and find that all of the real property assets are trust assets.

38. There are seven investment portfolio providers who hold between them thirteen investment portfolio accounts. The Former Trustees do not dispute that all thirteen investment portfolio accounts were originally trust assets. Five of the investment portfolio providers hold the investment portfolio accounts in names that make it clear they are held in the name of the trustees of the IXG Schemes:

    i) St James Place – held in the name of "*the Trustees of Interim Execs (Guernsey) Ltd Occ Pen Sc No 2*". One portfolio.

    ii) LGT Wealth Management (formerly Vestra) – held in the name of "*Trustees of the IXG Occ Pension Scheme*". Four portfolios.

    iii) Quartet Investment Managers – held in the name of "*Trustees of the Interim Exec Ltd Occ Pens*". One portfolio.

    iv) Coutts & Co (formerly Adam & Co) – held in the name of "*Interim Executive (Guernsey) Limited Occupational Scheme*". One portfolio.

    v) UBS AG – held in the name of "Interim Executives (GSY) Execution Only", "*Interim Executives (GSY) IM Funds Solution*", "*Interim Executives (GSY) IM Funds Solution Ex*". Three portfolios.

39. Two investment portfolio providers have already transferred their portfolios into the name of the Public Trustee – Quilter Cheviot (two portfolios) and Janus Henderson (one portfolio). However, the Former Trustees have continued to assert rights over them. As a consequence, the Public Trustee (on behalf of itself and to provide comfort to those investment portfolio providers and the world at large) seeks a declaration of ownership rather than a vesting order in respect of Quilter Cheviot and Janus Henderson.

40. On 24 November 2016, the Former Trustees (Sherborne and Kenilworth) say that they executed valid Deeds of Assignment with Sherborne in its capacity as Scheme Administrator to assign the investment portfolios held by four of the investment portfolio providers to Sherborne (together the "**Deeds of Assignment**"). The Deeds of Assignment are in identical terms. The investment portfolio providers affected by the Deeds of Assignment are:

    i) St James Place (one portfolio)

    ii) LGT Wealth Management (formerly Vestra) (four portfolios)

    iii) Quartet Investment Managers (one portfolio)

    iv) Quilter Cheviot (two portfolios)

41. I am satisfied and find that all of the investment portfolio providers' accounts were originally trust assets. For the reasons set out in this judgment and notwithstanding the Deeds of Assignment I am satisfied that they all remain trust assets, and the Public Trustee is entitled to either vesting orders or declarations as appropriate.

The Vesting Application:

42. The vesting application was issued on 31 October 2023. The Defendants acknowledged service on 17 November 2023. The only substantive application prior to November 2024 was the Defendants' unsuccessful application for funding for legal expenses from the trust assets which was dismissed at a hearing in September 2024.

43. I have had the benefit of written and oral submissions from Mr Moeran. The vesting application is supported by Mr Williams' first and third witness statements dated 31 October 2023 and 13 December 2023, respectively. That evidence addressed the Defendants' objections to the vesting application.

44. The Defendants each filed a witness statement from Mr Mewis, dated 1 December 2023 which even without exhibits this ran to about 100 pages. The statements were substantially overlapping and repetitive and contained a considerable amount of submission. During the course of the vesting application Mr Mewis had, without permission, supplemented this evidence with numerous additional written submissions, lengthy letters and additional documents as well as other witness statements. Much of this was also overlapping, and repetitive. It appears to have largely repeated evidence and submissions that were advanced in the various Guernsey proceedings to which I refer below over the last 7 years. I had also received and read prior to the commencement of the hearing the written submissions made by Mr Mewis on behalf of the Defendants both in relation to this hearing and the 1 November and 12 November hearings.

45. There was a single joint expert report from Advocate Anthony Williams of Appleby (Guernsey) LLP. Sherborne had challenged the existence of a rule against self-dealing or conflict of interest in respect of trustees or fiduciaries in Guernsey. Advocate Williams was asked to opine on the agreed question:

> "In respect of the law of fiduciaries (and in particular trustees) and conflicts of interest, whether the law of Guernsey is the same as English law in the application of the 'self-dealing rule'? And in particular, whether a transaction entered into by a fiduciary in breach of the 'self-dealing rule' would render a recipient who was not a bona fide purchaser for value without notice liable as constructive trustee of the proceeds thereof?"

46. The report was thorough and detailed and was supported by the underlying authorities and materials referred to in it from Guernsey, Jersey and the Privy Council of England & Wales as well as academic commentaries in particular *Lewin on Trusts* (20th Ed) ("**Lewin**") and *Guernsey Trusts Law* (1st Ed) ("**Guernsey Trusts Law**").

47. Although I consider the report later in this judgment, Advocate Williams's conclusion was that the concept of self-dealing existed within Guernsey law and that the principles underlying it reflect the self-dealing rule under English law. He concluded that "*yes a transaction entered into by a fiduciary in breach of the 'self-dealing rule' would render the recipient who was not a bona fide purchaser value without notice liable as a constructive trustee of the proceeds thereof*" as a matter of Guernsey law.

48. That is perhaps unsurprising both as a matter of first principles and given the approach adopted in Guernsey as to the "hierarchy" of authorities when pursing an enquiry in respect of a "Guernsey trust law matter" as explained in Guernsey Trusts Law Chapter1 xiv.A p14.

49. Mr Moeran addressed the Defendants' arguments in both in his written and oral submissions despite the debarring order.

50. At the conclusion of the hearing I directed that the Claimant file a further short witness statement to confirm information provided in answer to queries raised by me relating to the value of the investment providers' portfolio accounts the subject of the Deeds of Assignment. Mr Birrell's witness statement dated 10 January 2025 provided this evidence. On the basis of the evidence available I was satisfied that the four investment portfolio providers' accounts that were the subject of the Deeds of Assignment provided adequate security for the Defendants' claim for security or a lien in respect of the alleged liabilities, pending my determination of the position in relation to the Deeds of Assignment.

51. The hearing concluded on 8 January 2025; Mr Birrell provided his evidence on 10 January 2025 enabling me to approve an order. On 20 January 2025 nearly two weeks after the hearing, and notwithstanding the debarring order, Mr Mewis wrote to the court seeking permission to file further evidence in response and explaining that the sums which the Former Trustees sought to recover from the trust assets were higher than the figure of £4.2m. However, even if I were to accept the figures put forward by Mr Mewis on 20 January without further scrutiny the security provided by the four investment portfolio providers' accounts would have been sufficient pending my determination.

The IXG Schemes:

52. The IXG Schemes are all subject to Guernsey law and consist of:

    i) Interim Executives (Guernsey) Limited Occupational Pension Scheme (established in 2006);

    ii) Interim Executives (Guernsey) Limited Occupational Pension Plan (established in 2006);

    iii) Interim Executives (Guernsey) Limited Occupational Pension Plan 2 (established in 2006);

    iv) Interim Executives (Guernsey) Limited Occupational Pension S.40(o) Plan (established in 2008); and

    v) Interim Executives (Guernsey) Limited Occupational Pension Plan 3 (established in 2011).

53. The designated Principal Employer of the IXG Schemes was Interim Executives (Guernsey) Limited.

54. Each IXG Scheme is similarly structured and designed to be operated as a defined contribution occupational pension scheme. Its assets were held by the trustees on trust and the members of the scheme have an entitlement to the defined benefits as set out in

the rules of each scheme ("**the Rules**") but do not have an entitlement to the assets themselves.

55. Each trust instrument sets out how the relevant IXG Scheme operates in "**the Clauses**". The trust instruments and updated trust instruments which governed each IXG Scheme are in identical terms for the purposes of this judgment. I had the benefit of conformed copies of each trust instrument.

56. Mr Moeran made submissions about the framework of the IXG Schemes, the Clauses and Rules. I do not intend to unnecessarily lengthen this judgment by setting out the relevant Clauses and Rules in full but rather will summarise the terms as necessary for the purposes of this judgment. That is not intended to detract from the full terms of those trust instruments, Clauses and Rules.

57. Each IXG Scheme establishes an occupational pension scheme under an irrevocable trust in accordance with the terms of each trust instrument and their Rules to be administered and managed in accordance with the Clauses and the Rules. The assets of the IXG Schemes vest in the trustees and are held on trust in accordance with the Clauses and Rules.

58. Each of the IXG Schemes recite that they are to be operated so that they are capable of obtaining approval in accordance with section 150, Income Tax (Guernsey) Law 1975 (as amended) ("**section 150**") and will be governed by the trust instrument and their Rules.

59. Clause 1.1 (a) requires the IXG Schemes to be operated in a manner consistent with the section 150 approval referred to above.

60. Clause 6 makes it clear that the trust assets referred to as **the Fund** include all contributions, investments, income and monies derived therefrom and that they are held on irrevocable trusts to be applied or disposed of in accordance with the provisions of the relevant IXG Scheme.

61. The Defendants do not believe that the IXG Schemes have current section 150 approval. They argue that in the absence of a current or continuing approval from the Income Tax Office under section 150 the IXG Schemes had somehow been terminated or had ceased to exist and could not be reinstated unless or until such approval had been obtained. This was advanced by the Defendants as a legal standing argument. They argued that since the IXG Schemes had been terminated or ceased to exist the Public Trustee could not advance any claim to the trust assets. They submitted that the IXG Schemes had been replaced by a constructive trust and that the Public Trustee's appointment had ceased with the termination of the IXG Schemes. The Defendants did not explain the legal basis for their argument that an irrevocable trust could or would be terminated by an absence of a section 150 approval given the terms of the trust instrument and Clauses. This was not only an unattractive argument but one of many hopeless arguments advanced by the Defendants. It demonstrated a fundamental misunderstanding and/or misreading of trust law, the trust instrument, the Clauses and the Rules.

62. The trusts set up by the IXG Schemes are irrevocable and are to be managed in accordance with the Clauses and the Rules. Those Clauses require the IXG Schemes to be capable of being approved and/or operated consistently with section 150. Neither of

those requirements is an absolute or mandatory requirement. There is no requirement for the IXG Schemes to be approved but neither is there any evidence that the IXG Schemes were not capable of being approved or were not being operated in a manner consistent with section 150.

63. The IXG Schemes have not been and are not at risk of being terminated or ceasing to exist for lack of section 150 approval from the Director of the Guernsey Revenue Service. They do not need to obtain such an approval to exist and do not need to be reinstated because they have not been terminated, nor have they ceased to exist. But even if they neither had approval nor were capable of being approved and/or were not being operated consistent with section 150 that would not and could not terminate the irrevocable trust. At best it might be a breach of trust by the trustees. None of that would affect the Public Trustee's appointment as trustee of the IXG Schemes. The Defendants' argument is hopeless and is not a basis for resisting the transfer of the Assets to the Public Trustee.

64. Even if it were not entirely hopeless it was also an argument that had been advanced and rejected by the Royal Court of Guernsey on more than one occasion. For example, the order of the Royal Court dated 11 May 2023.

> "The First Respondent's objection, that the Applicant has no locus standi to pursue the Account Application or the Applicant's Application (alternatively that the Account Application and therefore the Account Application or the Applicant's Application should be stayed or struck out) because the "IXG Schemes", the subject of the several trusts of which the Applicant was appointed Trustee in place of the First and Second Respondents on 29th March 2017 have since "terminated" is dismissed (a) on its merits and (b) because the point is res judicata (however formulated), having been previously dismissed by orders (2) and (3) of the Order of this Court made on 22 December 2020."

65. It is not open to the Defendants to pursue it again in this jurisdiction (see *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No.2)* [1967] 1 AC 853 and *The Sennar (No.2)* [1985] 1 WLR 490)).

66. Clause 3C sets out the provisions relating to the expenses of the trustees. It provides, so far as relevant, that those costs, charges and expenses incurred in connection with the administration and management of the IXG Schemes are to be paid from the assets of the IXG Schemes. In certain circumstances the Former Trustees may continue to be entitled to be paid expenses they incur in defending allegations made against them. However, the circumstances in which the Former Trustees would be entitled to be paid such expenses is set out in Clause 15 in a clause entitled Protection for Trustee. Clause 15A is entitled "Trustee Indemnity".

67. The present form of Clause 15A is in two parts. Again, the Former Trustees' reliance on Clause 3C and 15A is a misunderstanding or misinterpretation of the Clauses. They do not offer the Former Trustees the indemnities or rights they assert.

> "**15. Protection for Trustee**
>
> **A. Trustee's Indemnity**
>
> Without prejudice to any right of indemnity given by law to trustees:
>
> No trustee or member of a body corporate comprising a trustee for the time being (or former trustee or member of a body corporate) shall be liable for any act or omission not due to its own or his own wilful neglect or default and the trustee or former trustee shall be entitled to be indemnified out of the Fund. **The Trustee may retain and pay out of the Fund all sums necessary to give effect to such indemnity.** Where a trustee or member of a body corporate comprising a trustee for the time being (or former trustee or member of a body corporate) **is not indemnified from the Fund, they shall be indemnified by the Principal Employer in respect of all such liabilities and expenses properly incurred in the execution of the trusts hereof or of any powers authorities or discretions vested in the Trustees under the Governing Provisions.** (my emphasis)

68. Trustee with a capital T is defined in the IXG Schemes as the current trustees not the former trustees. Where the Clauses intend to refer to the former trustees they are specifically referred to. That difference is important for the purposes of reading Clause 15A.

69. The first part of the clause provides a right of indemnity from the Fund for a Trustee including a former trustee in respect of liability for acts or omissions which are not due to its own wilful neglect or default. That is not relevant to this application.

70. The second part of the Clause provides a separate indemnity from the Principal Employer not the Fund for liabilities and expenses properly incurred in the execution or purported execution of the trusts.

71. Clause 15A therefore permits a Trustee to retain and pay out of the Fund all sums necessary to give effect to that indemnity but not the Former Trustees. The Former Trustees cannot rely on this clause to assist them in seeking to retain trust assets to meet any liabilities and expenses even if properly incurred as to which see further below.

72. Clause 8 provides that the trustees' investment powers include the power to place assets/investments under the control of another individual or body corporate as a nominee. This power enabled Sherborne and Kenilworth to place assets under the control of Temple as their nominee. This is coupled with the Clause 10C proviso which provides the Trustees with certain non-delegable powers such as the power to invest under Clause 8 and any power to wind up the trust or distribute the Fund.

73. Clause 17 provides an exclusion of the rules against conflict for a member of the IXG Schemes who is also a trustee. That does not apply to the Former Trustees who are not members. Clause 17 does <u>not</u> exclude the rules against conflict in any other circumstances. Consequently, where Sherborne was both Scheme Administrator and

trustee there was no exclusion of the rule against conflicts of interest or self-dealing and the general Guernsey law applied.

74. Advocate Williams has confirmed that the rule against self-dealing applies to fiduciaries and trustees as a matter of Guernsey law. Where therefore Sherborne was both assignor and assignee of the Deeds of Assignment there is no exclusion and the usual strict provisions in relation to self-dealing and conflicts of interest apply to trustees and fiduciaries. Mr Mewis despite his extensive written submissions had not engaged with Advocate Williams' expert opinion on this issue.

75. Clause 5 provides power for the trustees to appoint or remove an auditor, administrator or fund manager. By a Management Agreement dated 1 June 2010 Sherborne was appointed by the Former Trustees as Scheme Administrator to undertake certain activities for the Principal Employer under the IXG Schemes. To differentiate it when considering its different roles, I will refer to it as **Sherborne qua SA** when considering its role in that capacity.

76. Under the terms of the Management Agreement Sherborne qua SA then appointed IXG Services as Scheme Manager to provide Outsourcing Services under an Outsourcing Services Agreement dated 2 February 2012. It was Sherborne qua SA not Sherborne qua trustee who was the contractual counterparty to the Outsourcing Services Agreement and responsible for meeting any invoices from or payments due to IXG Services under that contract.

The Resolutions:

77. The IXG Schemes appear to have been caught up in an alleged fraud which is said to have affected their liquidity. This lack of liquidity is said to have been funded by Sherborne qua SA and seems to be the underlying justification for a series of Resolutions and the Deeds of Assignment which would eventually result in the Former Trustees asserting that trust assets were assigned to them absolutely.

78. On 1 March 2012 (the "**2012 Resolution**") the Former Trustees resolved at (3) to (5):

> "That [Sherborne and Kenilworth] accept the proposal from [Sherborne qua SA] that where a shortfall exists within the funding to meet the obligation of Clause 3(C) (1), as stated in (2) above, [Sherborne qua SA] shall provide such funding to meet such obligation and any such funding shall be recorded within the Scheme accounts as a loan from [Sherborne qua SA].
>
> That the Trustees will reimburse such loan, as defined in (3) above, from the Fund, as defined in Clause 6 of the Trust Instrument, upon demand by [Sherborne qua SA].
>
> That [Sherborne qua SA] is authorised to issue such documentation or carry out any action or actions to effect the Resolutions so made."

79. The 2012 Resolution therefore records a loan from Sherborne qua SA as lender which is repayable to it on demand to cover any shortfall in funding from the Fund.

80. A resolution of the Former Trustees dated 16 October 2015 resolved as follows ("the **2015 Resolution**"):

> "(2) That the [Sherborne qua SA] has provided documentary evidence, in a report dated 15 April 2014, held in Scheme Records that a total of £1,326,646.78 (One Million Three Hundred and Twenty Six Thousand Six Hundred and Forty Six Pounds and Seventy Eight Pence) was used to support the Scheme.
>
> (4) That [Sherborne and Kenilworth] authorise that the said sum cited in Item (2) be treated as a loan to the Scheme and repaid accordingly to [Sherborne qua SA] as soon as funds are available following the transfer of Scheme Funds from Raiffeisen Bank to Valartis Bank or Frick Bank whichever is the soonest.
>
> (5) That [Sherborne qua SA] is to repay the two parties, who provided the loan, as given in Item (2) above, as soon as [Sherborne qua SA] is in receipt of the said funds as given in Item (4) above….
>
> (12) That [Sherborne qua SA] is authorised to issue such documentation to carry out any action or actions to give effect to the Resolutions so made."

81. As Mr Moeran notes that the 2012 and 2015 Resolutions record that it is Sherborne qua SA that is making loans to the IXG Schemes, even if it is borrowing from third parties. It is therefore Sherborne's qua SA obligation to repay those third parties not the IXG Schemes. Paragraph 10 of the 2015 Resolution records separate direct loans from employees and third parties to the IXG Schemes, differentiating it from the loans made by Sherborne qua SA.

82. On 22 November 2016, the Former Trustees held a further meeting at which they recorded further resolutions ("the **2016 Resolution**").

83. The 2016 Resolution recorded further/increased Sherborne's qua SA loans to the IXG Schemes. It records that Sherborne qua SA is to repay the third parties as soon as it is in receipt of funds, but that obligation was still Sherborne's qua SA's not Sherborne's qua trustee. It included resolutions relating to administration fees and charges which have not been paid to Sherborne qua SA and again direct loans from third parties.

84. At paragraphs 17 and 19 the 2016 Resolution addresses how the outstanding sums are to be secured or paid (with my emphasis in bold) as follows:

> "(17) [Sherborne and Kenilworth] confirm that these cited debts are **secured**, without any provision or caveat, **against the Fund**. Further [Sherborne and Kenilworth] are **mandated to grant security in such form as [Sherborne qua SA] may reasonably request.**

> 19) That [Sherborne qua SA] is authorised to issue such documentation to carry out any action or actions to give effect to the Resolutions so made."

85. The 2016 Resolution authorises the grant of security to Sherborne qua SA. It does not provide any authority for the Former Trustees to make an absolute assignment of trust assets to Sherborne qua SA.

Deeds of Assignment:

86. On 24 November 2016 two days after the 2016 Resolution the Former Trustees entered into Deeds of Assignment with Sherborne qua SA. For the purposes of this claim there are only four relevant Deeds of Assignment.

87. The parties to the Deeds of Assignment are the Former Trustees as trustees and Sherborne qua SA as the Assignee. Sherborne is in simple terms both assignee and assignor in circumstances where it is a trustee in a fiduciary position. This appears to me to be a clear breach of the rules against self-dealing.

88. The third recital to the Deeds of Assignment records:

> "C. Pursuant to their powers under clause 3.C.1 of a Conformed Trust Instrument dated June 2016 and [the 2016 Resolution] [Sherborne and Kenilworth] have agreed for the transfer of the assets specified in the Schedule to this Assignment to [Sherborne qua SA] on the terms of this Deed of Assignment."

89. The Deeds of Assignment were therefore made pursuant to the mandate in paragraph 17 of the 2016 Resolution which only provides for security for the sums loaned by Sherborne qua SA.

90. The terms of the Deeds of Assignment are effectively identical:

> "1 In consideration of [Sherborne qua SA] **forbearing from the immediate collection of all debts due from** [Sherborne and Kenilworth] and detailed in the Resolution ("the Debts") and in further consideration of one pound (£1) if demanded the [Sherborne and Kenilworth] with full title guarantee HEREBY ASSIGNS unto the Transferee the property described in the Schedule ("the Property") and all rights of any description attaching thereto TO HOLD the same unto [Sherborne qua SA] absolutely
>
> "2 The [Sherborne and Kenilworth] agrees to do all such other acts and things including but not limited to the execution of any further documents and the provision of any information concerning the Property as the Assignee may reasonably require at any time and on any number of occasions for the purpose of perfecting the Assignee's title to the Property and exploiting any benefits attaching thereto

> "3 And [Sherborne and Kenilworth] HEREBY APPOINTS the Assignee to be its true and lawful attorney for the purpose of executing any document and doing any other thing in the name or on behalf of the Transferor which the Transferor shall fail to do pursuant to its obligation under clause 2 of this Deed
>
> "4 **In the event that the debts are repaid in full the Assignee will at the request and cost of the Trustees reassign any remaining balance of the Property or assets representing the same to the Trustees**
>
> "5 This assignment shall be construed in accordance with the laws of England & Wales and the parties submit to the exclusive jurisdiction of the English courts." (my emphasis)

91. Mr Moeran submits that it is clear from the true nature and construction of the Deeds of Assignment, the 2016 Resolution, and the Former Trustees' own evidence, that they were intended to be deeds of security only despite the terms of clause 1 which says that the assignments are "*TO HOLD the same unto the Assignee absolutely*".

92. Notably the consideration for the assignment is Sherborne qua SA "*forbearing from the immediate collection of all debts due from the Trustees and detailed in the Resolution*". This is entirely consistent with the Deeds of Assignment being by way of security only. Sherborne qua SA is holding the Deeds of Assignment as security for not immediately demanding repayment of the loans as it was entitled to under the terms of the 2016 Resolution.

93. This is also entirely consistent with the Former Trustees' own position and evidence in the Guernsey proceedings. For example, in the Former Trustees' skeleton argument in the Guernsey Account Application in about May 2023 at paragraph 199 they quoted paragraph 17 of the 2016 Resolution and then continued "*The choice of security was a Deed of Assignment*". This was then recorded in the penultimate recital of the Guernsey Account Application final order dated 12 July 2023 which refers to all the Deeds of Assignment entered into by the Former Trustees not just the four with which this claim is concerned.

> "AND WHEREAS the Court makes no finding as to the validity or otherwise of the six purported deeds of assignment **by way of security** entered into between (i) the First and Second Respondents qua trustees of the Interim Executives (Guernsey) Limited Occupational Pension Scheme (one of the Schemes) and (ii) the First Respondent qua administrator of that Scheme, five of which are dated 24 November 2016 and one of which is dated 16 December 2016 ('the Deeds of Assignment");"

94. Mr Moeran argues that further support for the conclusion that they are in fact deeds of security can be derived from clause 4 which expressly provides that in the event that the debts due from Sherborne and Kenilworth to Sherborne qua SA "*are repaid in full the Assignee will at the request and cost of the Trustees reassign any remaining balance*

of the Property or assets representing the same to the Trustees". This makes it clear that the intention of the Deeds of Assignment was that the trust assets were only to be held until Sherborne qua SA had been repaid in full. Thereafter at the Former Trustees' request Sherborne qua SA was expected to reassign the trust assets back to the IXG Schemes. I agree that this is only consistent with the Deeds of Assignment being a security arrangement.

95. There is other evidence and factual background which supports the Public Trustee's position that if the Deeds of Assignment have any effect at all that they were merely deeds of security and/or should be treated with considerable caution.

96. In particular I note the following:

i) despite the Deeds of Assignment having been dated 24 November 2016 they were not provided to the Public Trustee until 20 September 2017. This was six months after the Former Trustees had been removed and 2 days before indefinite extension of the Public Trustee's appointment as trustee.

ii) The notice of assignment only appears to have been sent to the investment portfolio providers in about April 2017 two weeks after the removal of the Former Trustees.

iii) The Deeds of Assignment were not mentioned in Mr Mewis's first affidavit dated 17 March 2017. Instead, he explained that various family members had made loans to the IXG Schemes, and that various IXG Scheme fees and costs had not been paid. He provided copies of the Resolutions in support but not the Deeds of Assignment.

iv) The Former Trustees' solicitors, Ashford's letter of 25 April 2017 was relied on by the Former Trustees as providing evidence to support a claim for liabilities, costs, charges and expenses of £4.2m from the Fund. Neither the Former Trustees nor their solicitors mentioned the Deeds of Assignment. At that stage according to Mr Mewis's own evidence the value of the four investment portfolio providers' accounts as at 29 January 2017 was in excess of £5m and therefore exceeded £4.2m. If therefore the Former Trustees genuinely believed that the underlying assets had been transferred to Sherborne qua SA absolutely by the Deeds of Assignment, they did not need any security or lien.

v) Mr Mewis did not of course exclude the investment portfolio providers and portfolio accounts which are said to have been assigned by the Deeds of Assignment from his statement of non-cash investments dated 29 January 2017.

97. In the Defendants' skeleton argument for the vesting application Mr Mewis argued that there the Public Trustee would be entitled to a reassignment of the trust assets but only for the excess of their value after any accumulated debts due to the IXG Scheme creditors had been paid in full. That appears to be entirely consistent with an understanding on the part of the Former Trustees and Sherborne qua SA that the Deeds of Assignment were deeds of security.

98. I am satisfied that on the evidence available in so far as the Deeds of Assignment have any validity at all, that they were deeds of security and did not and were not intended

to assign the trust assets themselves. The authorisation under the 2016 Resolution was to grant security only and not to make an absolute beneficial assignment. The Former Trustees knew this and knew that they had in fact only granted Sherborne qua SA security by the Deeds of Assignment when they were removed in 2017. This remained their position in the Guernsey Account Application as set out in their skeleton argument as late as May 2023.

99. As set out below the liabilities which were intended to be secured by the Deeds of Assignment have now been determined at nil by the Royal Court of Guernsey. The trust assets to which they attach are therefore no longer required as security on any basis. The four investment portfolio providers' accounts should therefore be vested in the Public Trustee together with the other trust assets to which the vesting application applies.

The Guernsey Proceedings:

100. However, before finally drawing those threads together I need to consider the position in relation to the Guernsey proceedings and how that impacts on the Former Trustees' claim that they are still entitled to recover the substantial liabilities they say they have incurred in managing the IXG Schemes and/or being involved in these disputes both prior to their removal and since.

101. The Liabilities as defined in the Surrender Order amounted to £4.2m. The Former Trustees say they and others on their behalf have incurred very substantial further administration charges and fees since their removal which they say they are entitled to recover from the Fund and/or against which they are entitled to retain trust assets by way of security or lien.

102. In about December 2016 Mr Betts and other members of the IXG Schemes brought proceedings under s.69 of the Trusts Law which provides a general power to the court to exercise its equitable jurisdiction in relation to amongst other things the administration of trusts including the removal of trustees. The Principal Employer, Sherborne, Kenilworth, Temple and IXG Services were all defendants in the Betts proceedings.

103. Sherborne and Kenilworth were represented. Mr Mewis's first affidavit was filed in March 2017. The March Appointment Order removed the Former Trustees and replaced them with the Public Trustee. The Former Trustees, Principal Employer, Sherborne, IXG Services and Temple had their powers suspended including as Administrator, Scheme Manager and nominee. The September Appointment Order extended the Public Trustee's appointment until further order and remains in place.

104. Mr Mewis represented Sherborne and Kenilworth, IXG Services, Temple and various of the other respondents when the Surrender Order was made. He had filed affidavits on 30 August 2017 and 20 September 2017. He also relied on correspondence from the Former Trustees' solicitors setting out the alleged liabilities.

105. The Former Trustees were ordered to surrender all trust assets held or vested in or otherwise under the control of the Former Trustees by 30 November 2017. As set out above paragraph 3 of the Surrender Order provided that the Public Trustee should retain

trust assets to the value of £4.2m in respect of the alleged liabilities which were defined by reference to the Former Trustees' solicitors' letter in the Surrender Order.

106. The Former Trustees did not surrender the trust assets nor provide evidence or account to the Public Trustee to enable any agreement to be reached as to the quantum of the Liabilities as defined.

107. On 24 June 2020, the Public Trustee commenced **the Guernsey Account Application**. Sherborne, Kenilworth, IXG Services, and Mr Mewis were four of the respondents to the Guernsey Account Application. The Guernsey Account Application sought, amongst other relief, an account of the IXG Schemes' assets and liabilities, and the Former Trustees' dealings as trustees of the IXG Schemes.

108. The relief sought was extensive but the part of the Guernsey Account Application relevant to this judgment was set out at paragraph 8 as follows:

> "8 That, on the basis of the aforesaid relief and directions, the following Accounts and Inquiries be taken:
>
> (a) an Account of assets and liabilities subject to the trusts of the Schemes (or any of them);
>
> (b) an Account of the dealings of the First and Second Respondents as the trustees of the Schemes;
>
> (c) an Inquiry of what assets are now subject to the Schemes (or any of them);
>
> (d) **an Inquiry of what liabilities incurred by the First and Second Respondents are properly payable by the Applicant as trustee of the Schemes (or any of them) and out of what assets**;
>
> (e) subject to order 10, a declaration as to what constitutes the assets and liabilities to be attributed to the IMAs of each member of the Schemes (or any of them)." (my emphasis)

109. The Guernsey Account Application was therefore intended to determine the amount of the Liabilities and any administration costs and charges claimed by the Former Trustees arising after their removal which were <u>properly payable</u> out of the Fund/trust assets. At this stage, the Public Trustee was still required to retain the £4.2m under the terms of the Surrender Order.

110. Mr Mewis filed evidence and correspondence during the course of the Guernsey Account Application and attended the first day of a hearing in December 2020 only. Various directions were given and the Guernsey Account Application continued through 2021. But what Mr Mewis, and the respondents, including the Former Trustees, Sherborne qua SA and IXG Services, did not produce was the evidence to support the claim for £4.2m or any other sum.

111. On 23 December 2021, the Royal Court of Guernsey ordered the respondents to deliver up any documents relating to the assets and/or liabilities and/or administration of the

IXG Schemes and/or to execute mandates or instructions to various entities identified in the order to authorise them to provide the evidence and information (the "**Delivery Up Order**"). The Former Trustees' appeal against the December 2021 decision was dismissed.

112. The Public Trustee applied for an unless order on 24 October 2022. Sherborne wrote to the court but did not file any evidence in response and none of the respondents participated in the application or the hearing.

113. On 2 December 2022, the Royal Court of Guernsey determined that the respondents to the Guernsey Account Application had failed to comply with the Delivery Up Order and made an unless order in relation to the provision of information and evidence as required by the Delivery Up Order ("**the Unless Order**").

114. The Unless Order recorded that:

i) The court had received correspondence from Sherborne in response to the application for the Unless Order;

ii) the respondents were in breach of the Delivery Up Order;

iii) Mr Mewis, his brother and family controlled or beneficially owned the company respondents including Sherborne, Kenilworth and IXG Services and that Mr Mewis was their controlling mind; and

iv) that subject to approval by the court the Public Trustee intended to meet any unpaid but **properly incurred** charges of third-party creditors who had a claim against the assets of the IXG Schemes through the right of indemnity of the Former Trustees. This would therefore address the position in relation to any direct loans made to the IXG Schemes by third parties under the terms of the 2015 and 2016 Resolutions.

115. However, the terms of the Unless Order limited who amongst Mr Mewis's family might be in a position to take the benefit of these provisions and required there to be evidence to satisfy the Public Trustee that any charges/liabilities were properly incurred and properly payable.

116. The Unless Order provided:

> "1. Unless the Respondents comply with paragraphs 1, 2, 3 and 4 of the [Delivery Up Order] within 21 days after service of this Order upon them (such service to be effected in accordance with the Order of the Royal Court dated 2nd September 2020):
>
> (a) such **breach by any one Respondent shall be treated as a breach by all the Respondents**;
>
> (b) **the Respondents, (here including their assignees or any person otherwise claiming through them**) shall be severally **debarred from making or pursuing any claim (monetary, security or otherwise)** against the Applicant or against any assets of the Schemes in relation to:

> (i) **their costs and expenses or any future costs and expenses** in and of this Application and/or the Account Application; and
>
> (ii) **any claim (monetary, security or otherwise)** or any other matter arising from or raised in this Application and/or the Account Application; and
>
> (iii) **any claim (monetary, security or otherwise) in relation to or arising out of or in connection with the administration** and management of the Schemes, whether incurred or **purportedly incurred prior to or after** the appointment of the Applicant as trustee of the Schemes on 29 March 2017; and
>
> (iv) **any claimed entitlement to security in respect of any existing**, **future or contingent liabilities** including, for the avoidance of doubt, **any claimed entitlement that might arise under section 44 of the Trusts Law**.
>
> 2. Further, unless the Respondents comply with paragraphs 1, 2, 3 and 4 of the [Delivery Up Order] within 21 days after service of this Order upon them **the value of any claims or expenses or liabilities which the Respondents (or any assignee or person otherwise claiming through them) may be entitled to recover from the assets of the Schemes (save for proper professional disbursements) shall be determined at nil**." (Emphasis added.)

117. In simple terms therefore unless the respondents complied with the Unless Order the value of any of their claims, expenses or liabilities would be determined at nil. The claim for £4.2m which had been recorded in the Surrender Order and any claim to any subsequent expenses or liabilities would therefore fall away.

118. The Unless Order was widely drawn and inclusive such that it would in addition prevent any assignee (for example Sherborne qua SA) or any person claiming through the respondents (for example the members of the Mewis family) from making or pursuing claims for costs or expenses and/or administration costs incurred or yet to be incurred or from seeking to assert rights of security in relation to those sums whether under s.44 of the Trusts Law or otherwise.

119. For completeness, IXG Services as Scheme Manager provided its services to Sherborne in its capacity as Scheme Administrator. As set out above in so far as IXG Services had a claim for any outstanding fees or costs those were pursuant to its contract with Sherborne qua SA not with Sherborne qua Former Trustee. It would not therefore be a liability of the Former Trustees or the IXG Schemes to IXG Services directly. But in any event IXG Services was a respondent to the Guernsey Account Application and therefore in so far as it was entitled to seek to recover any sums claimed directly those would be determined at nil as part of the Guernsey Account Application if the respondents did not comply with the Unless Order.

120. It was a final opportunity for Mr Mewis and the other respondents to seek to provide evidence to justify the costs, expenses and administration costs. None of the respondents including Sherborne, Kenilworth, IXG Services and Mr Mewis complied

with the terms of the Unless Order. Mr Mewis says that the Unless Order was an unwarranted punishment. However, if the Former Trustees had not kept and/or provided the evidence to support the claims not only would that raise questions about their administration of the IXG Schemes more generally, but it would not enable the court or the Public Trustee to assess or determine what sums they claimed were properly payable. They would only ever be entitled to sums properly incurred in connection with the IXG Schemes (see Trusts Law s.44(1)).

121. The respondents re-engaged with the Guernsey Account Application in about May 2023 and sought to apply for funding under Clause 3C and for payment of fees said to be owed to the Former Trustees despite their failure to comply with the Unless Order. The arguments advanced on those applications appear to mirror many of the arguments advanced by the Defendants in the vesting application. Paragraphs 6 and 7 of the 11 May 2023 order are relevant to this judgment as set out below:

> "6. The First Respondent's application that the Applicant should be ordered forthwith to make payment on account (and thereafter any required further payments) to the appointed lawyers of the First and Second Respondents to enable them to be legally represented in this Court on this Application, pursuant to Clause 3(C))(3) of the relevant Trust Instrument, is dismissed (a) on its merits and (b) because the matter is res judicata, the same or materially the same application having been previously dismissed by order of this Court made on 17 May 2021 - alternatively by the striking out of the Respondents' Application for Further Funding by order of the court made on 5 August 2022, alternatively by the effect of the Unless Order of the Court made on 22 December 2022.
>
> 7. The First Respondent's application that the Applicant should be ordered forthwith to pay out of the IXG Scheme funds the fees outstanding and owed by the First Respondent (or the First and the Second Respondents) to the Court pursuant to s. 43(1)(b) of the Trusts (Guernsey) Law 2007 is dismissed (a) on its merits and (b) **for being precluded by the effect of the Unless Order of the Court made on 22 December 2022**." (my emphasis)

122. By May 2023, the Royal Court of Guernsey had therefore considered and determined that the effect of the Unless Order was to preclude the Former Trustees from relying on the Former Trustees' entitlement to require reasonable security before surrendering the trust assets.

123. The respondents' failure to comply with the Unless Order had much the same effect as the debarring order in this vesting application. The Guernsey Account Application proceeded to a final hearing at which the Public Trustee had to satisfy the court that the Public Trustee was entitled to the orders it sought. Following a hearing on 6 July 2023, on 12 July 2023 the Royal Court of Guernsey recorded in the recitals to its final order in the Guernsey Account Application that:

> "BUT THE COURT BEING SATISFIED THAT the claims or debts mentioned in such Deeds of Assignment are in any event

> all subject to the terms of the [Unless Order] made in the Account Application, (a copy of which Order is annexed hereto for ease of reference) (the "Debarring Order") which Order has in the event taken full effect"

124. The order permitted the Public Trustee to:

> "... and shall administer the assets of the [IXG Schemes] on the footing that the claims or debts that are the apparent subjects of the Deeds of Assignment have **nil value**".

125. Consequently, since 12 July 2023 the liabilities the Former Trustees contend for whether the Liabilities defined in the Surrender Order or any subsequent liabilities which includes any liabilities, charges, administration expenses or otherwise that they say are secured by the Deeds of Assignment had been assessed at the final hearing of the Guernsey Account Application as nil. Further, any challenge to that determination could only have been made in Guernsey. In the absence of any successful challenge to the Guernsey Account Application Order of 12 July 2023 determining the claims and debts at nil, it remains in full force and effect.

126. The Defendants sought to argue that it was not open to the Public Trustee to rely on the determinations of the Royal Court of Guernsey in this jurisdiction. For the reasons set out briefly below they are wrong about that. The final determination of the Royal Court of Guernsey on the Guernsey Account Application is a conclusive determination on the merits which creates an issue estoppel and is binding on this court.

The Vesting Application determination:

127. The court has the power and jurisdiction to vest the Assets in the Public Trustee under Trustee Act 1925 ss.44 and 51 and the Claimant asks the court to exercise that power.

128. The Public Trustee's position is that the Assets are accepted to be trust assets and there is no basis on which the Former Trustees can retain any of those Assets. They say the Liabilities claimed by the Former Trustees have been conclusively determined at nil in Guernsey, those decisions are final and conclusive on the merits such that the same point cannot be raised again in this application.

129. If that is wrong, then in any event the Former Trustees would have to surrender the Assets because they are only entitled as a matter of Guernsey Trust Law to a non-possessory lien and in any event the Guernsey court had already provided for their security in the Surrender Order. They do not have a right to retain the Assets on that basis either.

130. In any event, the Defendants are debarred. Kenilworth has been struck off the register in the Seychelles. Temple was only a nominee and a party to the vesting application for the purpose of perfecting title to the real property assets held in its name for the Former Trustees of the IXG Schemes. In reality therefore the Defendants' opposition was really that of Sherborne.

131. The Defendants' opposition is based on:

i) an asserted entitlement to retain the Assets by way of exercising a trustee's lien over them and/or right to retain trust assets for security for unpaid liabilities and charges which they consider they are still entitled to recover from the Fund, and

ii) the four Deeds of Assignment which they say prevent the vesting orders being made. The Former Trustees appear to argue that Sherborne qua SA is a bona fide purchaser for value of the purportedly assigned assets and thereby acquired a beneficial interest in the assigned assets. They do not accept that the rule against self-dealing or any conflict of interest prevented them from entering into the Deeds of Assignment.

132. It will be apparent from the background set out above that the terms of the Deeds of Assignment, the Former Trustees' own evidence and the decisions of the Royal Court of Guernsey would appear to fatally undermine the arguments advanced by the Former Trustees. I deal briefly with the key elements of those defences in the next section.

Res Judicata/issue estoppel:

133. On 12 July 2023, the Royal Court of Guernsey had finally determined the unpaid liabilities and charges claimed by the Former Trustees at nil. And further by the Unless Order it had disapplied s.44 of the Trusts Law and by the 11 May 2023 Order determined that the Former Trustees were precluded from relying on Trusts Law s.43. In combination this removed the Former Trustees' entitlement to require either reasonable security or a non-possessory lien over the Assets in respect of expenses and liabilities <u>including future or contingent expenses and liabilities</u>.

134. A decision of a foreign court can give rise to an issue estoppel and found a *res judicata*: see *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No.2)* [1967] 1 AC 853 918B to 919G, 927E to 928A, 935C-D, 966G to 967B and 969E to 970B (Lords Reid, Hodson, Guest and Wilberforce). Their Lordships held that issue estoppel can be based on a foreign judgment, so long as three conditions were fulfilled:

i) The judgment of the foreign court must be of a court of competent jurisdiction, and must be "*final and conclusive on the merits*";

ii) There must be identity of parties; and

iii) There must be identity of subject-matter, that is to say, the issues must be the same.

135. Lord Reid at 918 when considering what "final and conclusive on the merits' means said:

> "It is clear that there can be no estoppel of this character unless the former judgment was a final judgment on the merits. But what does that mean in connection with issue estoppel? **When we are dealing with cause of action estoppel it means that the merits of the cause of action must be finally disposed of so**

> **that the matter cannot be raised again in the foreign country**…." (Emphasis added.)

136. The phrase was considered further by Lord Diplock in *The Sennar (No. 2)* (H.L.(E.)) [1985] at 493E to 494 B.

> "In English law when a plaintiff, who, basing his claim on a particular set of facts, has already sued the defendant to final judgment in a foreign court of competent jurisdiction and lost, then seeks to enforce a cause of action in an English court against the same defendant based on the same set of facts, the defendant's remedy against such double jeopardy is provided by the doctrine of issue estoppel.
>
> It is far too late, at this stage of the development of the doctrine, to question that issue estoppel can be created by the judgment of a foreign court if that court is recognised in English private international law as being a court of competent jurisdiction. Issue estoppel operates regardless of whether or not an English court would regard the reasoning of the foreign judgment as open to criticism. Although in the instant case some15 days were taken up by oral argument in the courts below, together with voluminous citation of authorities, nevertheless the facts appear to me to present a case to which the now well-established doctrine of issue estoppel resulting from a foreign judgment incontestably applies.
>
> To make available an issue estoppel to a defendant to an action brought against him in an English court upon a cause of action to which the plaintiff alleges a particular set of facts give rise, the defendant must be able to show: (1) that the same set of facts has previously been relied upon as constituting a cause of action in proceedings brought by that plaintiff against that defendant in a foreign court of competent jurisdiction; and (2) that a final judgment has been given by that foreign court in those proceedings.
>
> It is often said that the final judgment of the foreign court must be "on the merits." The moral overtones which this expression tends to conjure up may make it misleading. **What it means in the context of judgments delivered by courts of justice is that the court has held that it has jurisdiction to adjudicate upon an issue raised in the cause of action to which the particular set of facts give rise; and that its judgment on that cause of action is one that cannot be varied, re-opened or set aside by the court that delivered it or any other court of co-ordinate jurisdiction although it may be subject to appeal to a court of higher jurisdiction."** (my emphasis)

137. The essential ingredients of a final and conclusive determination on the merits is that it is one that cannot be set aside in the sense that any appeals process has expired or been

exhausted, and the decision has become final and cannot be reopened. The decision prevents (or ought to prevent) the same point being raised again. It is not an interlocutory or procedural determination but final and conclusive.

138. The parties to the Guernsey Account Application were the Public Trustee and the Former Trustees and other respondents including IXG Services, Temple and Mr Mewis. It was intended to fix and determine the liabilities or charges which had to be met from the trust assets. It was to determine finally what sums the Public Trustee would have to pay to the Former Trustees or others in relation to the charges, costs and administration expenses said to have been incurred by the Former Trustees in administering the IXG Schemes.

139. The Royal Court of Guernsey was a competent jurisdiction to determine the Guernsey Account Application. The IXG Schemes were all subject to Guernsey law. The Defendants and the other respondents engaged with the proceedings in Guernsey filing evidence and attending some hearings. They appealed some orders but not others. They were aware of the proceedings and participated.

140. The purpose of the Guernsey Account Application was to achieve finality and to determine in equity the liabilities between the accounting parties. The Defendants failed to provide the evidence and information they had been directed to provide to enable the accounting to be undertaken and were eventually debarred following the Unless Order. That does not mean that the accounting process was not a decision on the merits.

141. As Mr Moeran submits although in the end there was an Unless Order the Royal Court of Guernsey's decision in July 2023 was still a final determination of the Guernsey Account Application on the merits. It was a final and conclusive decision on the merits subject only to any right of appeal. Any such right of appeal has long since expired. It is clear from the background set out in this judgment that the determination of the Guernsey Account Application meets the criteria for an issue estoppel, is final and conclusive and founds a *res judicata*.

142. I am satisfied that the 12 July 2023 Order finally determined the Liabilities at nil and in directing the Public Trustee to administer the assets of the IXG Schemes on that basis created an issue estoppel which is binding on this court.

143. The Defendants cannot use the vesting application to have another go whether that relates to the Liabilities as defined in the Surrender Order or any future or contingent expenses or liabilities after that date that they now seek to recover. Those are and were all matters for the Royal Court of Guernsey in respect of which there is a final and conclusive decision.

144. That being the case there is no sum which is secured by the Deeds of Assignment.

The Deeds of Assignment:

145. In this claim the Defendants argue that the Deeds of Assignment assign the four investment portfolio providers' accounts absolutely to Sherborne qua SA and not merely by way of security. They argue that they assign the trust assets absolutely and take effect under s.136 Law Property Act 1925. Further that since the Deeds of Assignment were executed whilst the Former Trustees were still the trustees that they

can only be challenged if the execution of those Deeds of Assignment fell outside the scope of the Former Trustees' powers or there was a conflict of interest amongst other arguments.

146. As set out above if the Deeds of Assignment are valid (i) their purpose was only to provide security and not to assign absolutely and (ii) the effect of the determination of the Guernsey Account Application is that there is nothing to be secured by those Deeds of Assignment.

147. The Deeds of Assignment provide for reassignment if the debts are repaid in full. It seems to me that if there is no debt at all then the same should apply.

148. By the Surrender Order and the Guernsey Account Application the Defendants are precluded from relying on the Trusts Law ss 43 and 44. But that would not have provided the Former Trustees with an entitlement to a possessory lien. They would not be entitled to retain the Assets but would still have to transfer them to the Public Trustee. But in any event until the Former Trustees failed to comply with the orders in the Guernsey Account Application the Public Trustee had been directed to retain trust assets to provide security pending determination of what was properly payable or incurred. Again, this provided no proper basis for the Former Trustees to retain the Assets in breach of the Delivery Up Order.

The Deeds of Assignment – Absolute or Security:

149. I am satisfied that the Deeds of Assignment if valid are merely by way of security for the reasons set out above.

150. Mr Moeran addressed the Former Trustees' argument that the Deeds of Assignment are absolute assignments not merely by way of security for debts and liabilities owed by the IXG Schemes to Sherborne which have now be determined at nil. I set out a summary of his submissions for completeness.

151. The Defendants sought to rely on the Law of Property Act 1925 s.136 but this does not assist them. It provides for legal assignment of choses in action:

> "(1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—
>
> (a) the legal right to such debt or thing in action;
>
> (b) all legal and other remedies for the same; and
>
> (c) the power to give a good discharge for the same without the concurrence of the assignor:

> Provided that, if the debtor, trustee or other person liable in respect of such debt or thing in action has notice—
>
> (a) that the assignment is disputed by the assignor or any person claiming under him; or
>
> (b) of any other opposing or conflicting claims to such debt or thing in action;
>
> he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under the provisions of the Trustee Act, 1925."

152. Mr Moeran notes the word "*absolute*" does not require "absolute by way of sale". *Guest on the Law of Assignment (5th edition)* at paragraph 2-20:

> "The word "absolute" does not, however, mean absolute by way of sale and an assignment may be "absolute" though by way of security for a debt. An assignment by way of security will be absolute within the meaning of the section if the assignor there and then transfers his entire interest in the debt or thing in action to the assignee even if there is an express or implied proviso for reassignment on redemption.120
>
> In *Tancred v Delagoa Bay and East African Railway Co* [(1889) 23 QBD 239] one T had assigned a debt to the claimants by deed of mortgage to secure an advance of £3,000 and further advances, with a proviso for redemption and reassignment upon payment of all moneys due under the mortgage. Denman J held that the assignment was absolute and rejected the argument that it was by way of charge only. He said:
>
> A document given 'by way of charge' is not one which absolutely transfers the property with a condition for re-conveyance, but is a document which only gives a right to payment out of a particular fund or particular property, without transferring that fund or property … The proviso for re-conveyance [in a mortgage] does not prevent it from being absolute".

153. In *Raiffeisen Zentralbank Osterreich AG v Five Star General Trading LLC (The Mount I)* [2001] QB 825 Court of Appeal at page 856:

> "I also accept that, for the purposes of section 136, an assignment is not prevented from being absolute by virtue of the fact that it may have been entered into for the purpose of security and may (as here) be subject to an equity of redemption, in the form of a provision for reassignment on repayment of the loan: see Chitty on Contracts, vol 1, p 1035, para 20-012."

154. Given the evidence of Mr Mewis, the terms of the Resolutions and the Deeds of Assignment themselves, the passage in *Raiffeisen* appears to aptly describe the nature of the Deed of Assignment here.

155. The provisions in the Deeds of Assignment for return of the assigned property in the event of the repayment of the debts is clear. The right to call for the reassignment of the trust assets is held by the Former Trustees and the assigned properties - the investment portfolio providers' accounts- are subject to an equity of redemption.

156. Mr Moeran argues that the Former Trustees should exercise their rights and transfer the trust assets to the Public Trustee, alternatively the court should give effect to that right by making the vesting orders sought.

157. Mr Moeran acknowledges that the court could simply order Sherborne to comply with its duties as a Former Trustee, but he argues that given the Former Trustees' resistance to comply with any order to deliver up trust assets to date that making a vesting order will short circuit the process.

158. I am satisfied that a vesting order is the appropriate course in circumstances where the Defendants have so far failed to comply with the Delivery Up Order for 7 years in respect of any of the Assets and have resisted this vesting application despite the Guernsey Account Application. There is no reason to have any confidence that they will comply with any order made in relation to the Deeds of Assignment or the Assets.

159. I keep well in mind that behind this application are the underlying members of the IXG Schemes who have been continuously adversely affected by the conduct of the Former Trustees and are entitled to expect that the Assets be delivered up to the Public Trustee. The Former Trustees have no entitlement to retain them and any further delay in transferring them to the Public Trustee cannot be justified.

Deeds of Assignment - the rule against self-dealing/conflicts of interest:

160. The Public Trustee's alternative argument is that the Deeds of Assignment are in any event void or voidable at the behest of the Public Trustee as the current trustee of the IXG Schemes because the Former Trustees were in a position of conflict and/or in breach of the rule against self-dealing when the Deeds of Assignment were entered into *ex debito justiciae*, i.e. without consideration of whether the transaction was in fact fair and reasonable. The Public Trustee has chosen to avoid them.

161. This is because in simple terms Sherborne as both assignor and assignee was in a position of conflict of duties (as trustee) and interest (as recipient of the assignments as Sherborne qua SA).

162. Mr Mewis argued that there was no equivalent rule as a matter of Guernsey law. The report of Advocate Williams concluded that the law of Guernsey was identical to the English law on this issue.

163. Importantly, so severe is the rule against self-dealing that unless specifically permitted by for example the terms of the trust instrument it would not matter whether Sherborne qua SA was a bona fide purchaser for value without notice but rather, they simply would

always take a voidable title. Here there was no such power in Clause 17 of the trust instrument which addressed the position on conflict.

164. As a matter of English law, the position is clear. Sherborne qua trustee could not enter into the Deeds of Assignment for the benefit of Sherborne qua SA whether they were an absolute assignment or simply a deed of security. And indeed, Sherborne qua trustee could not have done this even with the sanction of the co-trustee Kenilworth.

165. As Lewin puts it at paragraph 46-008:

> "…The rule, now often called the self-dealing rule, is based, not only upon the consideration that a trustee cannot be both seller and buyer …but also on the wider principle that **a trustee must not put himself in a position where there is a conflict or possible conflict between his interest and duty**…
>
> The **rule is thus a severe one which applies, however honest the circumstances even though the price was fair and irrespective of whether any profit is made by the trustee.** Where the rule applies, the trustee and his successors in title (other than a bona fide purchaser for value of a legal estate without notice) take a voidable title on the authorities as they stand, and any beneficiary whose claim is not barred by concurrence or delay is entitled to have the transaction set aside ex debito justitiae." (my emphasis)

166. Mr Moeran fairly acknowledged that this might be a rule of practice, rather than law as noted in *Lewin on Trusts* paragraph 46-008 and considered further at 46-047. But as discussed in *Lewin* it is only in an exceptional case that the rule will not be applied. An exceptional case might arise where the court was exercising its supervisory powers, for example where one of several beneficiaries sought rescission of a sale to a trustee made in breach of the self-dealing rule, but the court is satisfied that it would be contrary to the interests of the beneficiaries as a whole for the sale to be set aside.

167. Consistent with the strictness with which the courts approach enforcement of the rule against self-dealing the Deeds of Assignment therefore created a voidable title. Although the court retained a jurisdiction in exceptional circumstances to permit or excuse or give relief from the breach where it is in the interest of the beneficiaries, as part of its general supervisory jurisdiction over trusts this is plainly not such a case.

168. Mr Mewis did not engage with Advocate Williams's conclusions despite having insisted on expert evidence to address the question. He did seek to argue that the debts are those of third parties. They may be but the Deeds of Assignment, and the Resolutions are drafted such that it is Sherborne qua SA that is the effective counterparty not those third parties. The directions of the Former Trustees to Sherborne qua SA to pay any third parties on receipt of the monies as a resolution of the trustees of the IXG Schemes stands separate to the terms of the Deeds of Assignment and is, as Mr Moeran noted, a revocable direction. As noted above the Public Trustee had stated his intention to meet unpaid properly incurred charges of third-party creditors as part of the Delivery Up Order. This argument therefore goes nowhere.

169. Although I have referred to Advocate Williams's conclusion above it is helpful to set out briefly the basis for this opinion. He opines:

i) the concept of the 'self-dealing rule' does exist within the law of Guernsey at [40].

ii) At [56] sets out the Trusts (Guernsey) Law 2007 s.24 which prohibits unauthorised profits / entering into possible unauthorised profit transactions:

> "**Duty of trustee not to profit from trusteeship**.
>
> 24. A trustee shall not –
>
> (a) derive, directly or indirectly, any profit from his trusteeship,
>
> (b) cause or permit any other person to so derive any such profit, or
>
> (c) on his own account enter into any transaction with his co-trustees, or relating to the trust property, which may result in any such profit,
>
> except –
>
> (i) with the approval of the Royal Court,
>
> (ii) as permitted by the provisions of this Law, or
>
> (iii) as expressly provided by the terms of the trust."

iii) That the English law rules against unauthorised profits and conflicts of interest effectively apply in Guernsey law, supporting the existence of the self-dealing rule at [62] to [64].

> "62. The authors of *Guernsey Trust Law*[1] state that these are "two closely related duties" and that the "classic formulation of the general duty" is contained within the key English law case of *Bray v Ford* [[1896] AC 44, 51-52 per Lord Herschell]:
>
> "a person in a fiduciary position … is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict. It does not appear to me that this rule is, as has been said, founded upon principles of morality. I regard it rather as based on the consideration that, human nature being what it is, there is danger, in such circumstances, of the person holding a fiduciary position being swayed by interest rather than by duty and thus prejudicing those whom he was bound to protect. It has, therefore, been deemed expedient to lay down this positive rule".

[1] Guernsey Trust Law (2020) 1st Ed., Tony Pursall and Matthew Guthrie Chapter 8 I.I p136 and p 141

> 63. The authors of Guernsey Trust Law confirm that "It is clear that the usual incidents of fiduciary duties are intended to apply to trustees of Guernsey trusts by virtue of section 22, so the general rule also applies, except in so far as it has been amended by the Trusts Law. So, while the statutory provision is in slightly narrower terms than the general formulation of the rule under English law, it is not thought that it affects the general rule in any way".
>
> 64. In my opinion, this proposition provides for and supports the existence of the 'self-dealing rule' as a point of general law in Guernsey – such existence being supported by the case law …"

iv) He cites a number of Guernsey authorities which themselves refer to the self-dealing rule as examples: *Green v Torode* (Judgment No. 16/2017); *In the Matter of the Tchenguiz Discretionary Trust* [2017] GLR 13 and *In the Matter of the J and K Trusts* [2022] GRC 013 in which the court noted at [12]:

> "12. In the case of BA v Verité Trust Co Ltd re the E, L, O and R Trusts [2008] JRC 150,36 "the Royal Court of Jersey adopted the key aspects of the nature of a fiduciary duty identified by Millet LJ in *Bristol & West Building Society v Mothew* [1996] 4 All ER 698. The Royal Court of Guernsey stated that these "are equally applicable under Guernsey law", and that the "distinguishing obligation of a fiduciary was said to be the obligation of loyalty which gives rise to certain specific obligations referred to as the 'double-employment rule', the 'no inhibition principle' and the 'actual conflict rule'."

170. His full conclusion at paragraph 86 is set out below:

> "86. Having followed the approach to authorities as set out at paragraph 41, above, and having had regard to the authorities set out within Section J of this expert report, my views can be summarised as follows:
>
> **(a) The 'self-dealing rule' exists as a concept within Guernsey law.**
>
> **(b) I am confident that the principles underlying the 'self-dealing rule' in Guernsey law reflect those underlying the 'self-dealing rule' under English law**. My view here is informed in particular by the presence of s.24 of the Trusts Law, the case of Patel v Patel (Judgment 36/2016) (amongst others), and the presence of the general rule regarding unauthorised profits and conflicts of interest. 51 Further, the same is confirmed as a matter of Jersey law.
>
> (c) In terms of the application of the 'self-dealing rule', the approach under Guernsey law is informed by s.22, s.24, s.27, s.73 and s.77 of the Trusts Law in particular. While there are

> some important points to note, such as what is said to constitute a "breach of trust" as defined in s.80 of the Trusts Law and the precise nature of the constructive trust that arises under s.77, in the absence of detailed authority on the application of the 'self-dealing rule' in Guernsey customary law and/or case law, my opinion is that English authorities would be persuasive. This view is again informed by the reference to the English commentary within the context of Jersey law in the form of Snell's Equity (34th Ed.), 53 although I note that this was referring only to the remedy of rescission rather than a wider review of possible remedies for breach of the 'self-dealing rule'.
>
> (d) Therefore, in light of s. 73 and s. 77 of the Trusts Law and the approach to the authorities referred to above, **my view is that yes, a transaction entered into by a fiduciary in breach of the 'self-dealing rule' would render a recipient who was not a bona fide purchaser for value without notice liable as a constructive trustee of the proceeds thereof**." (Emphasis added.)

171. It is clear therefore that as a matter of Guernsey law that in light of Sherborne's dual role both as assignor and assignee that the Deeds of Assignment are voidable, and the Public Trustee has chosen to avoid them. Accordingly, the trust assets transferred under them were and remain trust assets of the IXG Schemes and should be subject to a vesting order.

172. It seems to me therefore that even if the Public Trustee were not in a position to rely on the determination in the Guernsey Account Application that the Deeds of Assignment still do not provide any basis for the Former Trustees or Sherborne qua SA to retain any of the Assets.

Limitation:

173. A further argument that had been raised by the Former Trustees which Mr Moeran addressed briefly in his skeleton was the question of Limitation. Although the Deeds of Assignment were entered into more than 6 years ago, this was a claim to recover trust property which has been wrongly retained by the Former Trustees or received by them and converted to their use. There can therefore be no limitation issue (see Limitation Act 1980 s.21(1)(b)). Mr Moeran submitted in the alternative that because the Deeds of Assignment would have been in breach of trust, Sherborne would have been a knowing recipient of property transferred in breach of trust. Since they are not a bona fide purchaser for value without notice, anything they took under the Deeds of Assignment was and continues to be held on constructive trust for the relevant IXG Scheme. Sherborne engaged in the breach of trust as recipient of the Deeds of Assignment in its capacity as Sherborne qua SA and so there is no possibility that there was not notice.

174. Either way it seems to me that there can be no limitation argument raised against the Public Trustee's vesting application, and I do not need to consider the question of limitation further.

175. Of course, it was not necessary for Mr Moeran to take time to engage with the Defendants' arguments given the debarring order but given the history of the Defendants' conduct it was understandable that he considered it appropriate to do so.

176. None of the arguments advanced by Mr Mewis on behalf of the Defendants had any merit and the Former Trustees should have surrendered the Assets in 2017 when the Surrender Order was made. Instead, they have unnecessarily and entirely inappropriately delayed and resisted the transfer of the trust assets. I briefly address the conduct during the course of the vesting application below, but it is clear from Mr Mewis's own evidence and documentation that the conduct has not been limited to this vesting application. This has now been ongoing since before 2017. It is enough.

177. For the reasons set out in this judgment I am satisfied that the Public Trustee is entitled to vesting orders or declarations as appropriate for all of the Assets the subject of the vesting application.

Conduct:

178. The Defendants have insisted throughout the vesting application that the only person who could represent them was Mr Mewis. I note that the Unless Order recorded that he was the controlling mind of the various respondents including the Defendants in these proceedings.

179. Despite Mr Mewis's poor health he has fully and extensively engaged in resisting the vesting application. Whilst Mr Mewis's oral submissions were generally made in a polite manner, often read from a pre-prepared script, they were not usually focussed on the issues which he needed to address. They would often contain ill focussed, repetitive, duplicative submissions and make unsupported allegations about his view of the Public Trustee and his legal representatives. This was unhelpful.

180. However, if Mr Mewis felt somewhat constrained when making oral submissions in court, his written communications cannot be said to have adopted the same approach.

181. Mr Mewis has emailed and/or written on occasion several times a day. Between the 12 November 2024 and 7 January 2025 alone he sent in excess of 35 communications, many were copied directly to the Public Trustee as well as his legal team. The communications often consisted of a combination of an email, an accompanying letter and additional documents. This documentation alone ran to about 200 pages. This approach was not however limited to the period from 12 November but was symptomatic of the Defendants' approach to the vesting application.

182. Much of the correspondence was written in intemperate and badgering language and made and repeated serious and unsubstantiated allegations against the Public Trustee, his legal team, and in particular Mr Moeran. At the same time Mr Mewis was sending separate and parallel communications directly to the Public Trustee and separately to his legal team. His complaints and allegations were not limited to those against the Public Trustee and his legal team. He says he has now made complaints of misconduct in public office to the Chief Constable of Guernsey about not only Luiz Gonzalez the previous Public Trustee but also the head of the Guernsey Civil Service, the Director of the Guernsey Revenue Service, and at least one of the Lt Bailiffs of Guernsey.

183. None of this helps him or the Defendants and will not change the legal position. The decisions in the Guernsey proceedings are binding on this court for the reasons I have given.

184. His campaign of communications with the court, the court staff, the Public Trustee and their legal team were made in increasingly intemperate language asserting positions and demanding responses or agreements with the position he asserted. The tone and nature of the correspondence was entirely inappropriate.

185. Despite the extensive nature of the correspondence Mr Mewis and the Defendants consistently failed to comply with court orders or directions or focus on the issues which the court would ultimately have to determine.

186. The Defendants sought to rely on both Mr Mewis's poor health and their lack of representation in an unfortunate manner. Neither Mr Mewis's poor health nor their lack of legal representation justified or excused their poor behaviour or a failure to comply with court rules, orders, or to behave in a reasonable and proportionate manner consistent with the overriding objective.

187. The Public Trustee, and his legal team are to be commended for the resilience they have shown in the face of such persistent inappropriate and bullying behaviour and the measured way in which they sought to respond.

188. I have not identified any supportable basis for the allegations and complaints made by the Defendants against the Public Trustee or their legal representatives in relation to the vesting application.

189. This behaviour has not only taken up a considerable amount of court resources to the detriment of other court users but has unnecessarily increased the Claimant's costs. I consider that the Defendants' conduct was unreasonable to a high degree and outside the norm. It will sound in costs.

190. This judgment will be handed down remotely by email. Consequential matters would usually be dealt with on paper and without a hearing. However, as the Defendants are unrepresented, I will fix a short 1-hour remote hearing. Although the Defendants are debarred, they are entitled to make submissions about, for example, the form of order and costs. I will give directions for that hearing when the judgment is handed down.