Neutral Citation Number: [2019] EWHC 1359 (Comm)

Case No: D40MA072

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS IN MANCHESTER
CIRCUIT COMMERCIAL (QB)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: 19th June 2019

Before :

His Honour Judge Eyre QC

- -

Between :

THE NATIONAL UNION OF MINEWORKERS	**Claimant**
- and -	
ORGANISATION INTERNATIONALE DE L'ENERGIE ET DES MINES	**Defendant**

- -
- -

Miss Tina Ranales-Cotos (instructed by **Clarke Willmott LLP**) for the **Claimant**
Arthur Scargill as President of the Defendant for the **Defendant**

Hearing dates: 19th, 20th, 21st, 22nd, and 25th March 2019

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JUDGMENT

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

HH Judge Eyre QC:

Introduction.

1. The Claimant ("the NUM") brings proceedings as a trade union although as will be seen the Defendant disputes its entitlement to do so. The Defendant is an *association declarée* under French law and has a French business registration number. The Defendant is an international body to which a number of trade unions are affiliated. Those unions operate in different countries but all represent workers engaged in the fields of mining and/or energy supply. The name the Defendant uses in English is the International Energy and Mineworkers' Organisation ("the IEMO") and it is the successor to the International Mineworkers' Organisation ("the IMO") following a merger in 1994.

2. At trial the Defendant was represented before me by Mr. Arthur Scargill, its Co-President. Mr. Scargill had been for many years the President and then the Honorary President of the Claimant. It became apparent, however, that there is now a degree of ill-feeling and mistrust between Mr. Scargill and the current officers of the Claimant.

3. The proceedings relate to the parties' respective rights in relation to sums recovered by the Defendant from Mr. Roger Windsor in August 2012 after prolonged legal proceedings in the French Republic and in England. Those proceedings were undertaken in the name of the Defendant but funded in part by the Claimant. There is a shortfall between the sums recovered and the amounts of the principal debt and the legal costs of the proceedings. The parties are in dispute as to the distribution of the sums recovered from Mr. Windsor; as to which should bear any shortfall between the sums recovered and the costs incurred in the proceedings; and as to the amounts which each has paid by way of costs in those proceedings.

4. The underlying indebtedness which resulted in recovery being made against Mr. Windsor derived from a loan of £29,500 which the Claimant made to him in 1984. He was then the Claimant's Chief Executive Officer and the loan was made by way of assistance with house purchase following the relocation of the Claimant's headquarters from London to Sheffield in 1983. There was a repayment of that loan in November 1984 but it is common ground that to the extent that there was such a repayment it came from funds which had been lent to Mr. Windsor in circumstances I will consider below. In 1986 the right to recover payment from Mr. Windsor (either of the original loan or of the subsequent loan) was assigned to the IMO.

5. The parties' current rights depend on an analysis of the dealings in 1984 and 1986 and of the effect of an agreement made in 1990. Those dealings took place against the background of and in the context of the 1984/85 strike by the Claimant's members; the sequestration of the Claimant's assets; and the placing of the Claimant's affairs in the hands of receivers and trustees. Moreover, the 1990 dealings were against the background that Mr. Windsor had made various allegations about the source of sundry funds which had been provided to support the striking miners and about the use of those funds by Mr. Scargill and Mr.

Peter Heathfield, the General Secretary of the Claimant at the time of the miners' strike. The Claimant had appointed Gavin Lightman QC, as he then was, to report on the allegations and Mr. Lightman's investigation and report together with the Claimant's reaction to them were an important part of the context of the 1990 dealings.

6. I will have to make findings as to what happened at times in 1984, 1986, and 1990 and as to the interpretation of some of what was said and done. However, this judgment is in relation to the dispute between the parties and I will make findings only in respect of those matters which are relevant to determining that dispute. There were references in the evidence and documentation before me to a number of points of criticism or vindication of the conduct of Mr. Scargill and others many of which were irrelevant to the questions I have to decide and upon which I will make no finding.

The Claimant's Status and Entitlement to bring the Proceedings.

7. The Defendant contended that the Claimant was no longer a trade union and, therefore, lacked the status to commence or continue the proceedings.

8. Section 10 (1)(b) of the Trade Unions and Labour Relations (Consolidation) Act 1992 provides that:

> "(1) A trade union is not a body corporate but—
> (b) it is capable of suing and being sued in its own name, whether in proceedings relating to property or founded on contract or tort or any other cause of action"

9. A trade union is defined by section 1 of that Act as:

> "an organisation (whether temporary or permanent)—
> (a) which consists wholly or mainly of workers of one or more descriptions and whose principal purposes include the regulation of relations between workers of that description or those descriptions and employers or employers' associations; or
>
> (b) which consists wholly or mainly of—
> (i) constituent or affiliated organisations which fulfil the conditions in paragraph (a) (or themselves consist wholly or mainly of constituent or affiliated organisations which fulfil those conditions), or
>
> (ii) representatives of such constituent or affiliated organisations,
>
> and whose principal purposes include the regulation of relations between workers and employers or between workers and employers' associations, or the regulation of relations between its constituent or affiliated organisations."

10. The Defendant says that the Claimant no longer has any members who are workers in the mining industry. Accordingly, it does not consist of such workers and cannot have the purpose of regulating relations between them and their employers. Mr. Scargill referred in that regard to the removal of a number of the Claimant's areas from the list of trade unions.

11. The 1992 Act provides for the Certification Officer to maintain a list of trade unions. The Claimant produced the annual return for the year to 31st December 2017 which it had made to the Certification Officer on 31st May 2018 on form AR21. The form was signed by Christian Kitchen, the Claimant's General Secretary, and stated that the Claimant had 319 members. However, that number included retired and unemployed members and the number of contributing members who were still workers was said to have been 112. Mr. Kitchen was cross-examined about this. He said that the figure was accurate and that the Claimant did indeed have 112 contributing worker members and he set out the arrangements which the Claimant used for collating the figures.

12. The Claimant produced a letter dated 18th June 2018 from Ms. Shanta Halai, the Operations Manager of the Certification Office. The letter was in response to a letter from the Claimant giving information about its membership. Ms. Halai's letter informed the Claimant of the Certification Officer's view that the Claimant's North East and Scotland areas no longer met the definition of trade unions and gave the Claimant an opportunity to make representations in regard to the Certification Officer's proposed removal of those areas from the list of trade unions. However, that was preceded by the statement that the Certification Officer was "satisfied that the NUM and most of the NUM areas meet the statutory definition of a trade union."

13. For the Claimant Miss. Ranales-Cotos sought to invoke section 8 of the 1992 Act in relation to that letter. That section provides that

> "(1) A certificate of independence which is in force is conclusive evidence for all purposes that a trade union is independent; and a refusal, withdrawal or cancellation of a certificate of independence, entered on the record, is conclusive evidence for all purposes that a trade union is not independent.
>
> (2) A document purporting to be a certificate of independence and to be signed by the Certification Officer, or by a person authorised to act on his behalf, shall be taken to be such a certificate unless the contrary is proved."

14. Miss. Ranales-Cotos contended that the letter of 18th June 2018 should be seen as a document purporting to be a certificate of independence and as such conclusive evidence of the Claimant's status as a trade union. I reject those contentions. The letter of 18th June 2018 was not a document purporting to be a certificate of independence but simply a letter informing the Claimant of the Certification Officer's assessment of whether the Claimant and its areas did or did not meet the statutory definition of a trade union. In any event the issue raised by the Defendant was not whether the Claimant was an independent trade union but whether it satisfied the definition of being a trade union in the first place.

15. There was, however, rather more force in the Claimant's invocation of section 2 of the 1992 Act. The relevant parts of this provide that:

> (1) The Certification Officer shall keep a list of trade unions containing the names of—

> (a) the organisations whose names were, immediately before the commencement of this Act, duly entered in the list of trade unions kept by him under section 8 of the Trade Union and Labour Relations Act 1974, and
>
> (b) the names of the organisations entitled to have their names entered in the list in accordance with this Part.
>
> (2) …
>
> (3) A copy of the list shall be included in his annual report.
>
> (4) The fact that the name of an organisation is included in the list of trade unions is evidence … that the organisation is a trade union."

16. I have been provided with copies of the Certification Officer's annual reports for 2016- 2017 and 2017 – 2018. Those included copies of the list of trade unions as it stood at 31st March of 2017 and 2018 and indicated which unions had been added to the list during the year and which had been on it throughout the relevant year (as the Claimant had been). I have also seen a copy of the list as at 31st October 2018. These demonstrate that the Claimant was on the list of trade unions throughout the period from 1st April 2016 to 31st March 2018 and that it was still on that list at 31st October 2018.

17. Mr. Scargill contended that the Claimant had failed to show that it remained a trade union because it had not provided the names and addresses and occupations of the alleged 112 members. He said that this meant it was not possible to check whether any of those persons were in fact workers engaged in the relevant industry and so the Claimant had not proved it had the necessary status. That argument misunderstands the effect of the statutory provisions. The entry of the Claimant on the Certification Officer's list for the relevant years is, by reason of section 2 (4), evidence of the Claimant's status as a trade union. That evidence was supplemented by the oral evidence of Mr. Kitchen and the copy of form AR21. I am satisfied that Mr. Kitchen was giving honest evidence and that he had compiled the form by reference to the Claimant's records honestly taking the view that the Claimant had 112 members. Although Mr. Scargill did not accept that the Claimant had the requisite members he did not suggest to Mr. Kitchen that the latter had deliberately fabricated the figures. The contention that the Claimant did not have such members was in large part based on the proposition that under the Claimant's rules each member was to be allocated to an area and it was said that the only areas listed in the AR21 were stated to have no contributing members. The argument appears to have been that I should deduce from the Claimant's failure to show the areas to which members were allocated that there were no members of the Claimant. That misunderstands the relation between the Claimant's rules and the legislation. I make no finding as to whether or not members of the Claimant should have been allocated to areas under the Claimant's rules but the absence of evidence as to the number of members broken down by area cannot outweigh the evidence I have of the Claimant's membership.

18. In those circumstances I am satisfied that the Claimant was a trade union on 28th September 2017 when these proceedings were commenced and that it has remained such throughout.

Jurisdiction and the Applicable Law.

19. The Defendant's Acknowledgement of Service was dated 19th December 2017 and stated that the Defendant intended to contest jurisdiction. On 29th December 2017 the Defendant applied for an order seeking dismissal of the claim. The application referred to a draft order which had a recital saying that it was "regarding the issue of jurisdiction" and which in the body of the proposed order provided for dismissal of the claim "on the grounds that the claim is time barred by the Limitation Act 1980 (England and Wales) (sic) and in breach of the legally binding agreement between the NUM and the IMO signed by the Claimant on 19th September 1990". The latter element being a reference to the Release Agreement which I will consider below.

20. The court ordered that the application be treated as an application for summary judgment or strike out and it came before HH Judge Pelling QC on 30th January 2018. In a statement provided for that hearing the Defendant accepted that the scope of the application was to be that of dealing with the questions of limitation and the effect of the Release Agreement.

21. The Defendant's application was dismissed and there was no other application seeking to challenge the court's jurisdiction.

22. Before me the Defendant contended that the court lacked jurisdiction. It is common ground that the Defendant is domiciled in the French Republic. The Defendant contended that the effect of the Recast Judgments Regulation EU 1215/2012 is that proceedings are to be brought against it in France and that none of the exceptions to that course provided for in the Regulation apply.

23. The Claimant said that the courts of England and Wales had jurisdiction by reason of Articles 7 (1) and 25 (1)(b) of the Regulation but that in any event the effect of CPR Pt 11 (5) is that the Defendant is to be treated as having accepted that the court has jurisdiction to try this matter.

24. The Claimant's second point is correct and is conclusive of the question of jurisdiction. The relevant parts of CPR Pt 11 provide that:

> (1) A defendant who wishes to–
>
> (a) dispute the court's jurisdiction to try the claim; or
>
> (b) argue that the court should not exercise its jurisdiction,
>
> may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.
>
> …
>
> (4) An application under this rule must–
>
> (a) be made within 14 days after filing an acknowledgment of service; and

(b) be supported by evidence.

(5) If the defendant–

(a) files an acknowledgment of service; and

(b) does not make such an application within the period specified in paragraph (4)

he is to be treated as having accepted that the court has jurisdiction to try the claim.

25. The Defendant did make an application to the court within 14 days of filing the acknowledgement of service. However, it expressly accepted that the application was to be regarded as relating to the questions of limitation and of the effect of the Release Agreement. The material put before Judge Pelling made extensive reference to the Recast Judgments Regulation and to sundry other legislation but did so in that context. In particular that material was put forward in support of the contention that the claim was statute-barred either by reference to the Limitation Act 1980 or by reference to the French limitation provisions. There was no wider or more fundamental challenge to the court's jurisdiction. It follows that there was a deliberate decision to confine the jurisdiction challenge in those respects. Indeed it was a decision not to challenge the jurisdiction but to contend that the claim fell to be defeated either by way of summary judgment or strike out. There was no subsequent application challenging the jurisdiction and the Defendant has taken a full part in the proceedings which have followed Judge Pelling's decision. It follows that the only application which was made was one which amounted to accepting the jurisdiction of the court but made the contention that the claim fell to be dismissed as being fundamentally flawed. Properly seen in context the application was not one for an order declaring that the court had no jurisdiction or that it should not exercise its jurisdiction. There was, accordingly, no application within the scope of CPR Pt 11 and the provisions of Pt 11 (5) come into play with the effect that the Defendant is to be treated as having accepted the court's jurisdiction. In those circumstances I need not address the question of the effect of the Recast Judgments Regulation.

26. The Defendant also argued that the proceedings were to be regarded as subject to French law and in particular the French limitation provisions which impose a time limit of three years for claims. The Defendant made reference to the Civil Jurisdiction and Judgments Act 1982 and the Foreign Limitation Periods Act 1984. The contention was that French law was applicable because the judgments against Mr. Windsor were obtained in France and then registered in England and Wales. That argument was misconceived. Such an argument might have relevance if the issue were one of the enforcement of the judgments against Mr. Windsor though I make no finding on that question. The current proceedings are not concerned with the enforcement of the judgments against Mr. Windsor but with the distribution of the sums which have been received by the Defendant as a result of the litigation against Mr. Windsor. It follows that the provisions to which the Defendant made reference can have no relevance to the current proceedings. The Defendant made passing reference to the fact that it is domiciled in France but this was not the principal basis of the contention that French law was applicable and without more it would not cause the parties'

dealings to be governed by French law. In those circumstances the parties' rights and liabilities are to be determined by reference to the law of England and Wales and any questions of limitation are governed by the Limitation Act 1980.

My Assessment of the Witnesses.

27. The witnesses giving evidence for the Claimant were in large part uncontentious. Mr. Kitchen became General Secretary of the NUM in October 2007 and was not involved in the earlier dealings. It was apparent that while Mr. Scargill for the Defendant contended that certain actions of Mr. Kitchen had not been appropriate he did not suggest that the latter was not seeking to give truthful evidence Mr. White had worked as the Claimant's Assistant Finance Officer to 1989 and then as Finance Officer to 6th April 1998 and had rejoined the Claimant's employment in 2009. There was dispute as to the interpretation of some of the entries made by Mr. White and others in the Claimant's accounting records but no suggestion that Mr. White was not seeking accurately to explain what he had done. In any event Mr. White was not involved in the crucial discussions and agreements but instead recorded what he had been told by others to record. It follows that Mr. Scargill was the only person giving evidence from his own recollection of many of the key events. There was, however, considerable dispute about the accuracy of that recollection and even more as to the interpretation placed by the Defendant on the relevant dealings with the Claimant saying that the account given by Mr. Scargill was not consistent with the contemporaneous documents or with his subsequent actions.

28. In assessing contentious factual evidence I am entitled to take account of the demeanour of a witness and the impression I formed having seen that witness give oral evidence. However, in doing so I have to be conscious that by itself demeanour can be an untrustworthy guide to the reliability of a witness's evidence. Thus what might appear to one judge to be evasion and a reluctance to answer questions indicative of unreliability in the evidence of a particular witness might to another judge be seen as commendable caution and care in giving evidence indicative of the reliability of the same witness's evidence.

29. I also have to be conscious of the fact that any witness is inevitably recollecting matters from a particular viewpoint. I have regard to the common human capacity and tendency for a witness genuinely but mistakenly to recollect past events as having actually happened in the way in which the witness now with hindsight believes they would, or indeed should, have happened. In that respect I have also had regard to the cautionary note sounded by Leggatt J in *Gestmin SGPS S A v Credit Suisse (UK) Ltd & another* [2013] EWHC 3560 (Comm) at [15] – [22] as to the unreliability of human memory.

30. Those difficulties are compounded in this case by the very considerable period of time which has passed since the key events. Moreover, it was apparent that there are still high feelings about the events of the miners' strike and their aftermath. It was apparent that Mr. Scargill remained aggrieved by the allegations which Mr. Windsor had made against him and by the conclusions which Mr. Lightman reached in his investigation of those allegations nearly thirty years ago. Mr. Scargill remained concerned to assert that his actions at that time and before had been justified and appropriate.

31. In many cases the difficulties inherent in relying on the recollection of witnesses cause the court to say that the witnesses' evidence must be viewed through the prism of the contemporaneous documents and that the safest course is for findings of fact to be based on inferences drawn from such documents. There are, however, difficulties with even that course in this case. A number of the relevant documents were drawn up in the context of the miners' strike and of the concern that the Claimant's assets would be placed in the hands of sequestrators. As Mr. Scargill explained when he was answering questions raised by Mr. Lightman in 1990 this meant that a number of documents were deliberately backdated. This was done to indicate that certain actions had been taken before the Claimant received notice of the appointment of sequestrators. The Claimant does not criticise this conduct. For the Claimant Miss. Ranales-Cotos described the position correctly in my judgement by saying that it was an "open secret" that the documents and the affairs of the Claimant had been organised with a view to protecting assets from the sequestrators to the extent that this could be done. The unreliability of the contemporaneous documents continued after the end of the miners' strike. Thus on 21st July 1986 Mr. Scargill wrote to Mr. Windsor on behalf of the IMO saying that the latter would lend Mr. Windsor £29,500. The letter said that the sum of £29,500 was enclosed but Mr. Scargill accepted before me that this was incorrect and that no money had been enclosed with the letter. It is also of note that many of the documents put before me were themselves compiled some years after the crucial dealings (which were in the period 1984 to 1990) and so were of only limited assistance in assessing what had in fact happened and how the parties' actions were to be interpreted.

32. In those circumstances I must take care in drawing inferences from the documents. My consideration of the documents as well as of the witness evidence must be undertaken in the light of the context and date of the documents and having regard to the inherent likelihood or unlikelihood of the parties' contentions as to what was done or intended.

33. Miss. Ranales-Cotos invited me to conclude that Mr. Scargill was being deliberately evasive in the answers he gave when cross-examined and for that reason to reject his evidence. I do not find that Mr. Scargill was deliberately seeking to avoid answering the questions he was asked. Indeed at times he answered at great length the points being made to him. However, he was markedly unwilling to make any concessions or to accept that his account might be mistaken even when it was contrary to uncontentious documents or to inherent likelihood.

34. There were repeated instances when Mr. Scargill sought to explain statements he had made at various times in the past both orally and in writing as having been made in error or without reflection. By way of example, Mr. Scargill told the 1998 annual conference of the NUM that the proceedings against Mr. Windsor related to a debt owed to the NUM. Similarly he told a special delegate conference in January 2002 that the proceedings were for money owed to the NUM but were being brought by the IEMO on the NUM's behalf and said "the money involved will come from the IEMO to the NUM". Those statements are directly contrary to the case now being maintained by the Defendant. Mr.

Scargill said that his comments on those occasions had been made in error because he had been commenting on reports prepared by others and had not picked up the errors. I was unable to accept that explanation in the light of Mr. Scargill's detailed involvement in and knowledge of the dealings with Mr. Windsor. Indeed the comments made in 2002 had been immediately preceded by an assertion by Mr. Scargill that he had done all the work on the case. That detailed knowledge and involvement was apparent from Mr. Scargill's evidence in these proceedings. In the light of that involvement and the context in which the comments were made it is neither realistic nor credible for Mr. Scargill to say that he made mistakes through a failure to pick up on errors made by others and I reject that contention.

35. Similarly Mr. Scargill sought to deny that he was involved in authorising various actions or documents in the past when I am satisfied he was involved. Again by way of example Mr. Scargill signed a letter dated 5th June 2000 to the NUM's auditors in relation to the 1999 accounts. This letter referred to an entry in the accounts which showed Mr. Windsor as a debtor of the Claimant in the sum of £29,500. The letter said that the sum was due from Mr. Windsor, that it was fully realisable, and made reference to the French legal proceedings. Mr. Scargill was not able to explain why Mr. Windsor appeared as a debtor in the NUM's accounts and said that the entry was erroneous. Significantly for the current purpose Mr. Scargill said that he had not read the letter of 5th June 2000 before signing it. I reject that explanation. It is clear that the letter was based on a memorandum sent to Mr. Scargill by Hazel Riley, the NUM's finance officer, asking for confirmation of the points to be made in a letter to the auditors. That memorandum referred to the sum owed by Mr. Windsor but it is noteworthy that the letter contained additional material relating to the French proceedings which was within the knowledge of Mr. Scargill. I find that Mr. Scargill received the memorandum and authorised the letter having given additional instructions as to its contents. Mr. Scargill's assertion that he was unaware of the letter is an instance of his refusal to acknowledge matters which are inconvenient for the Defendant's current case and of his preparedness to deny that he had knowledge which he clearly did have and to deny that he took action which he clearly did take.

36. It follows that there is a marked contrast between Mr. Scargill's evidence now and the picture which appears from his past words and actions. Moreover, as I will explain below there are aspects of Mr. Scargill's account of the parties' dealings in 1990 which are so contrary to what I conclude was intrinsically probable as to be incapable of belief.

37. In those circumstances I have concluded that I cannot regard Mr. Scargill's evidence about the past dealings as reliable save where it is supported by inherent probability or by undisputed and reliable contemporaneous documents. I do not need to and do not make a finding as to whether that unreliability is because Mr. Scargill has persuaded himself that matters happened in the way which he now believes was appropriate (and in that respect I remind myself of the matters I have set out at [29] above) or because he has no actual recollection of the relevant events and is giving evidence based on current reflections as to what he thinks would have happened or because he was giving an account which

he did not believe to be true. The significant feature is that I cannot rely on this evidence.

38. The Claimant invited me to draw inferences adverse to the Defendant from its failure to put forward evidence either from Alain Simon or from George Rees. The former was the General Secretary of the Defendant in 1990 and the latter was part of the team involved on behalf of the Claimant in the negotiations in 1990. Both of those gentlemen are still alive and the Claimant says that they could be expected to have given evidence supporting the Defendant's account of matters if that account were true. I reject that contention and draw no inference from the Defendant's failure to call those gentlemen as witnesses. I do so in large part because of the passage of time since the relevant events. The matters about which M. Simon and Mr. Rees would have been giving evidence took place in 1990 and before. It would not be appropriate to draw an adverse inference based on a party's failure to call a witness to give evidence about events nearly thirty years before the trial. In addition I find that there is force in the point made by Mr. Scargill that Mr. Rees was listed together with others who were not in fact called as witnesses in the Claimant's Case Management Information Sheet as a witness whom the Claimant anticipated calling. It would be as appropriate to draw inferences adverse to the Claimant from the absence of Mr. Rees as it would be to draw inferences adverse to the Defendant but I do not do so in respect of either side.

The Loan to Mr. Windsor and the purported Repayment.

39. In May 1984 the Claimant lent Mr. Windsor £29,500. The loan was made by way of a payment to the Leeds Permanent Building Society and was on terms that it be repaid as soon as possible and no later than 31st December 1984.

40. At this time the miners' strike was already underway and the leaders of the Claimant were alert to the possibility of its assets being placed in the hands of sequestrators or receivers. Steps were taken in an attempt to ensure that if this happened the work of the Claimant could be continued. It is of note that the Claimant, through Mr. Kitchen, did not suggest those actions were improper and indeed accepted that they were understandable and appropriate. Whether that view was correct was not an issue before me and is immaterial to the questions I have to decide. Accordingly, I make no finding in that regard.

41. Funds were provided by other trade unions and by persons and bodies sympathetic to the stance being taken by the striking miners. It was common ground that those funds were provided and retained in cash and were under the control of Mr. Scargill and Mr. Heathfield. On 21st October 1984 Mr. Scargill and Mr. Heathfield executed a deed of trust with a view to regularising their control of those monies.

42. The trust deed created a fund which was to be called the "Miners Action Committee fund" (the "MACF") and Clause 1 stated that the fund was to be:

> "for the purpose of supporting the National Union of Mineworkers' campaign to save pits, jobs and mining communities, preserving the fabric of the NUM itself, alleviating hardship in mining communities and assisting in a general campaign industrially and politically…"

43. The deed proceeded to set out four purposes for which the fund was to be applied and those were:

> "a) to assist in the general, industrial, and political campaign being conducted by [the NUM] in defence of jobs, pits and mining communities;
>
> b) to provide financial assistance to maintain the fabric of [the NUM] by making available monies from the Fund for the purpose of paying bills, etc., which cannot be met by the Union and its Areas as a result of sequestration and/or receivership;
>
> c) to provide assistance for alleviating hardship in mining communities;
>
> d) to authorise the issue and defence of any legal proceedings in relation to the affairs and functions of the NUM, its Officials and its members".

44. At the end of November or in early December 1984 (the difference in dates between the accounts of the NUM and of the MACF is immaterial for these purposes) the sum of £29,500 was paid to the Claimant in cash from the MACF in discharge of Mr. Windsor's indebtedness to the former. At that stage the monies in the MACF consisted of sums which had been received from the Confédération Genėralė du Travail ("the CGT") a French trade union organisation; the National Union of Railwaymen; and Mr. Scargill with just over half of those funds having come from the CGT.

45. The Claimant's position is that the MACF was held on behalf of and/or for the purposes of the NUM and that the monies in it are to be regarded as having been a fund of the NUM. The Claimant says that this has the consequence that the repayment to the NUM of Mr. Windsor's loan was made with the NUM's own money. Accordingly, it says that Mr. Windsor is to be regarded as still having been indebted to the Claimant in the sum of £29,500. The Defendant says that although the MACF was to be used to support the work of the NUM it was a separate fund. The Defendant says that after the repayment Mr. Windsor was no longer indebted to the Claimant but was indebted to the MACF.

46. As I have explained at [5] in 1990 Mr. Windsor made a number of allegations which caused the Claimant to appoint Gavin Lightman QC to prepare a report. Mr. Lightman's terms of reference required him to consider whether monies had been received from the USSR or Libya; if they had been received what had become of them; whether they were used to repay home loans for the benefit of Mr. Scargill, Mr. Heathfield, or Mr. Windsor; and whether there had been any misapplication of funds or assets of the NUM.

47. Mr. Lightman produced a report (the "Lightman Report") of 17 chapters running to 133 pages with in excess of a further 140 pages of annexes.

48. At paragraph 67 Mr. Lightman referred to the deed setting up the MACF and said:

> "It is apparent that the trusts set out in that Deed were intended to benefit the NUM exclusively. I have no doubt that this deed created a trust in favour of the NUM

> and that the NUM was at all times intended to be the sole beneficiary…. The monies held in this trust … were monies of the NUM".

49. At paragraph 250 Mr. Lightman addressed the repayment of the loan to Mr. Windsor with money from the MACF reiterating his view that the money in that fund was "the property of the NUM". In the light of that Mr. Lightman said that the repayment from the MACF meant that "money has simply been moved from one NUM account to another and should still be repayable to the NUM".

50. A substantial body of extracts from that report was put before me including the passages I have just summarised. Mr. Scargill objected to the admission of the report but for reasons I gave in a short oral judgment I admitted it in evidence. However, it is important that I make clear the extent to which and the matters in respect of which the report and Mr. Lightman's conclusions are and are not evidence before me.

51. The report and Mr. Lightman's conclusions clearly formed part of the context of the dealings which took place after the report had been received by the Claimant and are to be taken into account as part of that context. The report and its annexes also provide a record of the documents provided to Mr. Lightman and of the information provided to him both orally and in writing. The report is evidence of those matters and provides a helpful source of contemporaneous documents and comments. To the extent that there is dispute about what was actually said to Mr. Lightman then the report is not conclusive but it does indicate Mr. Lightman's contemporaneous belief and recollection as to what had been said to him.

52. Does the Lightman Report have any greater evidential weight or relevance? At paragraph 5 of the Particulars of Claim the Claimant asserts that that the monies lent to Mr. Windsor remained owing to the Claimant after the 1984 repayment because that repayment from the MACF had come from the Claimant's funds. The Particulars of Claim identify the Lightman Report as one of the matters on which the Claimant relies in support of the contention that the repayment from the MACF was a repayment using the Claimant's own money. In her opening submissions Miss. Ranales-Cotos sought to argue that the report was relevant not only in the respects I have set out at [51] but also that the conclusions were evidence of the beneficial ownership of the funds in the MACF. In her closing submissions Miss. Ranales-Cotos moderated that contention saying that the conclusions were relevant to the extent that they had been adopted by a conference of the NUM but she appeared still to maintain that when so adopted Mr. Lightman's conclusions were relevant to the issue of the beneficial ownership of the funds in the MACF.

53. I reject that contention for the following reasons.

    i) The investigation undertaken by Mr. Lightman was clearly a major undertaking. It was not, however, a court hearing. Mr. Lightman did not receive sworn evidence and the assertions made to him were not subject to cross-examination (although Mr. Lightman did question at least some of those who gave him information). As Mr. Lightman explained, at paragraph 5 of the report, he had no power to compel anyone to answer

his questions. It is apparent that at least some persons and bodies declined to provide information. Thus Alain Simon of the IMO declined to be interviewed by Mr. Lightman and responded to the latter's written questions with a reply which, in Mr. Lightman's view, "totally failed" to answer those questions. Similarly, the CGT responded to Mr. Lightman's queries by asserting simply that it had confidence in Mr. Scargill.

ii) The report was an exercise of the Claimant and not one undertaken by or on behalf of the Defendant. Indeed, as just explained, the Defendant failed to engage with the investigation. The Defendant is a separate body from the Claimant and there is no suggestion that it agreed to be bound by Mr. Lightman's conclusions either at the time of the investigation or subsequently.

iii) Finally and fundamentally, the conclusions set out by Mr. Lightman represent his opinion and his interpretation of matters in the light of the material before him. Such an opinion even one from such a distinguished source cannot be evidence in support of the correctness of the conclusion reached if that is itself an issue in subsequent litigation. At one point in her submissions Miss. Ranales-Cotos characterised the report as being akin to legal advice given to the NUM. In my judgement that was a fair way of looking at matters because although the report involved findings of fact it can be seen as advice given to the NUM by a distinguished lawyer setting out the conclusions he reached on the material put before him and the recommendations he made in the light of those conclusions. Those conclusions are no more evidence of the beneficial ownership of the monies held in the MACF than would be an advice given following instructions from a solicitor.

54. The Lightman Report is, therefore, relevant in the respects set out at [51**]** but no further.

55. Following the publication of the Lightman Report HM Revenue & Customs investigated matters to determine whether the NUM was liable to pay tax on the interest and/or investment income generated on the MACF (and other funds). It appears that HMRC concluded that such tax was payable by the donors of the money and/or the trustees of the funds rather than by the Claimant. Mr. Scargill contended that I should take account of this as demonstrating that the Claimant was not the beneficial owner of the MACF. It does appear that HMRC did not regard the income generated by the MACF as income of the NUM and presumably did so because it did not regard the NUM as the owner of that fund. However, this does not assist me any more than does the Lightman Report in that regard and for similar reasons in that it can be no more than an indication of the opinion arrived at by HMRC on the material which that body considered.

56. In August 1990 the Certification Officer brought criminal proceedings against the NUM, Mr. Scargill, and Mr. Heathfield in the Sheffield Magistrates Court. That prosecution was based on conclusions derived from the Lightman Report which were said to show that there had been breaches of the requirements of the Trade Union and Labour Relations Act 1974. The prosecution was abandoned

in June 1991 when District Judge Crompton ruled that the report was inadmissible as prosecution evidence. That conclusion was manifestly correct in those criminal proceedings. However, it did not mean that the report was not admissible before me for the limited purposes I have set out above nor was it in any way a finding as to whether the NUM was or was not the beneficial owner of the monies held in the MACF. Similarly the fact that the NUM's Special Delegate Conference held on 10th October 1990 voted to note the Lightman Report (whereas the NUM's National Executive Committee had previously proceeded to implement the report's recommendations) does not advance matters.

57. It follows that I must assess whether the funds held in the MACF belonged beneficially to the Claimant by reference to the terms of the trust deed creating that fund and by reference to the evidence before me. In the light of that material I have concluded that the NUM was not the beneficial owner of the MACF.

58. In that exercise I have taken account of the intentions of those who provided the monies which went into the MACF. I accept Mr. Scargill's evidence that those providing this money were doing so on the footing that it should not to be regarded as the money of the NUM and that they were doing so in the knowledge that funds belonging to that union were liable to sequestration. The surrounding circumstances make it abundantly clear that this was the basis on which the contributions were made. That, however, can have only minimal relevance to the question of the beneficial ownership of the MACF. If as a matter of law the consequence of the dealings was that the NUM was the beneficial owner of that fund the fact that those contributing to the fund did not desire that consequence could not alter the position.

59. The question is to be determined by reference to the terms of the deed of trust which constituted the MACF. That provided that the fund was to be for the purposes of supporting a particular campaign by the NUM and preserving that union's fabric but also for the purpose of alleviating hardship in mining communities. That further purpose is, in my judgement, of particular note. As is the fact that the fund was not to be applied for the work of the NUM generally but rather in supporting for the particular campaign; preserving of the fabric of the NUM; and meeting of the costs of legal proceedings. There was no suggestion in the trust deed that decisions as to the allocation of funds should be made by reference to the decisions or wishes of the NUM or in consultation with the NUM. It would have been entirely legitimate under the terms of the trust for the entire fund to be spent in the alleviation of hardship in mining communities. Conversely the deed would not permit contribution to the general work of the NUM save to the extent that such work was part of the particular campaign; preserved the union's fabric; alleviated hardship in mining communities; or involved meeting the costs of legal proceedings. The deed envisaged and sought to create a fund standing alongside the work of the NUM but with the fund being used for particular purposes which were in some regards (the support of a particular campaign and preservation of the NUM's fabric) narrower than the general work of the union and in others potentially wider (in that at least some expenditure on the alleviation of hardship in mining communities might fall outside the scope of that on which the NUM could spend

its funds). The NUM was not the owner of the fund in the classic sense of a beneficiary who under the rule in *Saunders v Vautier* (1841) Cr. Ph 240 could call for the fund to be determined and the monies paid to it to use howsoever it wished. In that regard it is of note that when the MACF's account was closed in March 1992 the remaining balance of £573 was paid not to the NUM itself but to the Miners' Solidarity Fund for Victimised Miners.

60. If that interpretation of the deed of trust is correct then it was an attempt to create a non-charitable purpose trust. In the light of that conclusion it may well have been ineffective to create a trust and the beneficial ownership of the funds provided may have remained with the donors (which appears to have been the conclusion reached by HMRC). However, I need not reach any concluded view on that because I am satisfied that the Claimant was not the beneficial owner of the MACF and that the use of money from that fund to repay Mr. Windsor's loan was not the use of the NUM's own money. The repayment was accordingly effective to end Mr. Windsor's indebtedness to the Claimant under the original loan.

The Assignment to the IMO and the alleged Assignment Agreement.

61. It is common ground that the right to recover the loan from Mr. Windsor was assigned by the MACF to the IMO in July 1986. The Claimant says that this assignment was pursuant to an oral agreement ("the Assignment Agreement") to which it was party and it relies upon sundry alleged express and implied terms of that agreement. The Claimant avers that the Assignment Agreement was made at its offices between Mr. Scargill and M. Simon on behalf of the Claimant and the Defendant.

62. The Claimant says that the terms of the Assignment Agreement included provision for the IMO to bring court proceedings against Mr. Windsor to the extent that was necessary. It is said that the Claimant was to fund the costs of those proceedings. However, the Claimant also asserts that there was a term that in the event of a partial recovery of the loan and costs leaving a shortfall between the amounts recovered and the costs incurred the sums recovered would be apportioned in the following order:

    i) Repayment of the loan of £29,500 to the Claimant.

    ii) Payment to the Claimant of any interest due on that loan.

    iii) Repayment to the Claimant of sums spent by it on the legal expenses of the proceedings.

    iv) Repayment to the Defendant of such legal costs or other expenses as it had incurred in obtaining repayment.

63. Thus the Claimant's position was that the proceedings should be for its benefit and to the extent that there was any shortfall between the sums recovered and the sums expended in achieving recovery the same should be borne first by the Defendant. That term was alleged to have been agreed expressly but there is an alternative averment that it arose by implication.

64. The Defendant denied that there was any such agreement. It says that the assignment was agreed between the trustees of the MACF, Mr. Windsor, and the IMO with no involvement on the part of the Claimant.

65. The only direct evidence as to the Assignment Agreement came from Mr. Scargill who denied that the Claimant was a party to it. Nonetheless the Claimant contended that the documentation and the parties' actions were such as to enable me to find that there was such an agreement. Accordingly, I turn to such documentation as there is.

66. On 21st July 1986 Mr. Scargill wrote to Mr. Windsor saying that he was

> "writing on behalf of [the IMO] to confirm that we are prepared to give you and interest free personal loan/bridging loan for a period of 12 months from the date of this letter."

67. The letter went on to say that the loan would be in the sum of £29,500 and that that sum was enclosed. It was accepted by Mr. Scargill that in fact no money was enclosed and that no money changed hands between the IMO and Mr. Windsor or between the IMO and the MACF. When he was cross-examined about this Mr. Scargill said that the letter had said it had enclosed money when it had not as a way of making clear that the money was now owed to the MACF. I was unable to understand that as an explanation of why the letter was phrased in the way it was and find that it demonstrates that the reliability and accuracy of the contemporaneous documents cannot be assumed in this case.

68. Mr. Windsor replied on 22nd July 1986. The letter was addressed to Mr. Scargill as "President, National Union of Mineworkers" at the Claimant's address. That is a matter on which the Claimant places considerable weight as indicating that it was a party to the Assignment Agreement. Mr. Windsor's letter acknowledged receipt of the sum of £29,500 (although again I note that no money in fact changed hands) which he accepted represented an interest free loan to be repaid by 21st July 1987 "to [the IMO]".

69. In his witness statement Mr. Scargill said that the assignment had been agreed between the trustees of the MACF and the IMO without any involvement on the part of the Claimant. In his response to questions posed by Mr. Lightman in June 1990 Mr. Scargill had said that it was not possible "to repay the same loan to the NUM twice" and that it was for that reason that Mr. Windsor had agreed to "repay the loan to the IMO". He added that when Mr. Windsor did this "the IMO will pay the money to the NUM". When he was cross-examined about this transaction Mr. Scargill gave a series of explanations. At one stage he said that by the time of the assignment the MACF was no longer operating; at another point he said that the right of repayment was assigned to the IMO because the bulk of the original funds had come from the CGT which was intimately connected with the IMO; at yet another point he said that this was being done as a convenience because the MACF was being wound up and the assignment was to get the entitlement off the MACF's books. In relation to the last point I note that it was not until March 1992 that the MACF's bank account was closed although I accept that it may well have ceased its active operations significantly before that. The various explanations given by Mr. Scargill were not necessarily

irreconcilable but they did not readily fit together and I formed the impression that they were the product of reflection on what might have been the explanation rather than a genuine current recollection of what had been agreed at the time.

70. On 1st September 1987 Mr. and Mrs. Windsor executed a charge on their home in favour of Messrs Scargill, Simon, and Heathfield as trustees for the IMO securing on that property the repayment of the sum of £29,500 together with interest. On 16th September 1987 Mr. Scargill wrote to the Claimant's solicitors on NUM notepaper and signing himself as "President". He enclosed the mortgage document and said it related to "the mortgage facility advanced by the NUM and later transferred into the name of the [the IMO]". This coincided with the end of the twelve-month interest free period referred to in the exchanges in July 1986.

71. On 9th August 1989 there was a telephone conversation between Mr. Windsor and Steve Hudson who was then the Claimant's Finance Officer. Following the conversation Mr. Hudson drafted (but apparently did not send) a brief letter to Mr. Windsor and made a file note of the conversation. It seems that the conversation had been initiated by Mr. Windsor because Mr. Scargill had been pressing him to pay the £29,500 and interest to the IMO. In his note Mr. Hudson recorded that he had confirmed that "as far as the NUM was concerned all debts had been discharged" (emphasis in original). Much of the conversation appears to have involved Mr. Windsor making comments about the IMO and asking Mr. Hudson for information about the source of the funds used for the repayment with Mr. Hudson saying that he had no knowledge of that matter. The note and the letter record that after the conversation Mr. Hudson recollected that he had understood the funds to have come from the CGT. These exchanges indicate that as at August 1989 the Claimant's Finance Officer was saying that the loan to Mr. Windsor had been repaid but it is clear that Mr. Hudson had not been involved to any significant degree in the arrangements made in 1986.

72. Following his conversation with Mr. Hudson Mr. Windsor wrote to Mr. Scargill. In his letter of 2nd September 1989 Mr. Windsor acknowledged the "NUM bridging loan" had been repaid but questioned who had repaid it and to whom he owed repayment. He questioned whether repayment was due to the IMO saying that organisation had not been constituted until September 1985. The Defendant points out the contrast between this stance and the letter of 22nd July 1986 in which Mr. Windsor had acknowledged that repayment was due to the IMO. Mr. Scargill replied on 12th September 1989 saying that "to protect your [Mr. Windsor's] position during the miners' strike the loan was taken over by [the CGT] and ultimately from them by [the IMO]". This is noteworthy in showing Mr. Scargill maintaining that the repayment was due to the IMO at a time when he was still the President of the NUM and before the claims leading up to and arising out of the Lightman Report had been made.

73. The Claimant seeks to support its case that there was an Assignment Agreement to which it was a party by reference to the addressing of Mr. Windsor's letter of 22nd July 1986 to Mr. Scargill as President of the Claimant at the Claimant's offices and by the use of the Claimant's headed paper for Mr. Scargill's letter of 16th September 1987. Those matters carry very little weight. The text of the July 1986 letter made no reference to the Claimant and was acknowledging a

loan avowedly from the IMO. Mr. Scargill was at that time the President of the Claimant and it is not surprising that Mr. Windsor wrote to him as such at the Claimant's office. Similarly I cannot regard the use of the Claimant's headed paper for the letter of 16th September 1987 as significant. The bundle does contain some letters written on IMO headed paper and bearing the address of the IMO offices in France. However, I found credible Mr. Scargill's explanation that the officers of the IMO who were themselves senior officers of various mineworkers' unions across the world would send letters dealing with IMO business on the headed paper of their respective national unions. In any event the letter was clearly dealing with the affairs of the IMO because it related to the charge to which Mr. Windsor and the IMO were parties.

74. It follows that there is a notable lack of clarity about what precisely happened in 1986 and Mr. Scargill's account did not appear to be based on a genuine recollection of those matters. That is hardly surprising given the passage of time. In addition I find that it is unlikely that any of those involved in 1986 would have anticipated the difficulties and expense which would have been involved in recovering payment from Mr. Windsor. At that time it could hardly have been foreseen that it would take many years and repeated hearings at different levels of the French court system to obtain payment of the loan of £29,500. So it is not surprising that minds were not focused in 1986 on the details of the arrangements. Accordingly, there may well have been a degree of informality and I have reservations about the account given by Mr. Scargill.

75. The Claimant's case is that there was an assignment agreement to which it was a party and in respect of which it alleges a detailed set of express terms. The Claimant does not put forward any direct evidence of its involvement in this alleged agreement but says that the agreement and the terms are to be inferred from the documents, from inherent likelihood, and from the subsequent comments. However, in my judgement these do not form any basis for concluding that there was such an agreement. I have already explained that I attach little weight to the use of the Claimant's headed notepaper for some of the correspondence and to the addressing of the letter sent by Mr. Windsor. Oher than that there is no basis for inferring that the Claimant was party to the assignment. Such material as there is indicates that it was not a party to that assignment let alone that there were detailed express terms of an assignment agreement. The inadequacy of the explanation given by Mr. Scargill does not justify making a finding of such an agreement.

76. The inferences which the Claimant invites me to make are in large part influenced by the Claimant's contentions as to the beneficial ownership of the MACF. The argument is that as that fund was held on trust for the Claimant so an assignment of an entitlement by that fund's trustees should be regarded as having been done on behalf of the Claimant or by an arrangement to which the Claimant was a party. However, as explained above I have concluded that the MACF was not held on trust for the Claimant and so this argument does not assist the Claimant. Even if the premise of beneficial ownership were to be accepted the conclusion asserted that there was an agreement to which the Claimant was a party would not necessarily follow .

77. In those circumstances I find that the Claimant was not a party to the assignment of the Windsor loan from the MACF to the IMO and consequently there was no agreement between the Claimant and the IMO as to the terms of the assignment.

78. I do, however, find that it was the intention of the IMO at the time of the assignment and thereafter that the sums recovered from Mr. Windsor should be paid to the Claimant. In June 1990 Mr. Scargill told Mr. Lightman that the IMO would pay the money to the NUM. Also in June 1990 M. Simon on behalf of the IMO had signed a letter ("the IMO Declaration") which stated that it had always been the intention of IMO to repay the £29,500 plus interest to the NUM when it was recovered. I will deal further with the declaration below but in short I conclude that it reflected the genuine position of the IMO. I also find that the intention had subsisted from the time of the assignment the IMO acquired rights against Mr. Windsor. At the time the intention was formed in 1986 neither the IMO, the MACF, nor the Claimant anticipated how difficult and costly the recovery exercise would be and I find that there was no express consideration at that stage of how the costs of that exercise would be met. I do, however, find that although the IMO intended to pay the proceeds of the recovery exercise to the Claimant that intention related to the net proceeds of that exercise. There is no basis for a finding that the IMO intended that any shortfall between the costs of the exercise and any recovery made in that regard from Mr. Windsor should be met out of its own funds. Such an intention would have been inherently unlikely and although thought was probably not given to the possibility of a shortfall in recovery there cannot have been an intention that there would be repayment to the NUM even at the price of leaving the IMO out of pocket.

79. The inherent unlikelihood of such an intention is why even if I had found in favour of the Claimant's contention that it was party to the assignment agreement I would have rejected its argument that there was an express or implied term that any shortfall between the costs of recovery and the sums recovered should be borne by the IMO. There is no direct evidence of the agreement of such a term nor any basis for saying its implication would be appropriate either on the grounds of the needs of business efficacy or on those of obviousness.

The Dealings in 1990 and their Effect.

80. In 1989 Mr. Windsor resigned from his post with the NUM and moved to live in France. He had not at that stage made any repayment of the £29,500 or the interest thereon either to the MACF or to the IMO. In March 1990 the Daily Mirror newspaper and the Cook Report television programme published various allegations about the receipt and use of funds during the miners' strike. Those allegations derived in large part from Mr. Windsor. In essence it was said that during the strike funds had been received in cash from various foreign sources including sources in the USSR and the regime of Col Ghaddafi in Libya; that the funds had been controlled by Mr. Scargill and Mr. Heathfield; and that rather than being used for the purposes of the NUM or for alleviating hardship being suffered by striking miners the funds had in part been used for the personal purposes of Messrs Scargill and Heathfield and others. One allegation was that the funds had been used to repay relocation loans, mortgages, and the like owed by Mr. Scargill, Mr. Heathfield, and Mr. Windsor to the NUM.

81. The NUM appointed Mr. Lightman to investigate those allegations. In the course of the investigation M. Simon provided "the IMO Declaration" in a letter addressed to the Claimant's National Executive Committee. The letter is undated but it is common ground that it was sent at the same time as a declaration dated 8th June 1990 by which the IMO accepted that two properties of which it was the registered proprietor were held on trust for the NUM. The letter referred to the 1987 mortgage and to Mr. Windsor's agreement to pay £29,500 plus interest to the IMO. It went on to say:

> "It has always been the intention of [the IMO] that when recovered from Mr. Windsor the sum of £29,500 plus interest would be paid to [the NUM]. The IMO hereby declares that it is content for the said money to be paid by Mr. Windsor to the NUM or to the Miners' Solidarity Fund as the National Executive Committee of the NUM chooses.
>
> "The IMO will once the National Executive Committee has decided whether it requires the funds to be paid to the NUM or the Miners' Solidarity Fund directed Mr. Windsor so to pay the money. If Mr. Windsor refuses to pay the money then the IMO will at the choice of the National Executive Committee either take steps to assign all its right and interest in the debt due … to the NUM or to the Miners' Solidarity Fund as the NEC directs to enable the relevant body to take legal action to recover the money or continue the legal proceedings already commenced in France for the benefit of the NUM or the Miners' Solidarity Fund."

82. Mr. Scargill said that the IMO Declaration did not represent the true position of the IMO but had been provided under duress and in response to pressure seemingly from Mr. Lightman or by way of a threat of legal proceedings. I reject that suggestion. As I have noted at [53 (i)] above M. Simon declined to be interviewed by Mr. Lightman and provided a written reply to questions which did not engage with the questions asked. Indeed M. Simon's letter of 18th May 1990 to Mr. Lightman was expressed in robust terms maintaining the propriety of the actions of the striking miners and of those foreign bodies who had supported them. It is apparent that the IMO and M. Simon were in no way intimidated by Mr. Lightman or the investigation he was conducting. Accordingly, I am satisfied that the reference to the IMO's intention was made voluntarily and that as explained in [78] above this had been the IMO's intention since 1986.

83. Mr. Lightman provided his report in July 1990. On 3rd July 1990 the Claimant's National Executive Committee received the report and agreed to accept its recommendations. That course was approved by the NUM's annual conference later in July 1990. In October 1990 a special delegate conference of the NUM considered matters and "noted" rather than approved the Lightman Report. Mr. Scargill regarded that as a matter of considerable importance and as meaning that no weight could be attached to the report. I have already explained the limited purposes for which the Lightman Report has relevance to these proceedings. That limited relevance is not affected by the stance taken at the special delegate conference and in particular the report provided the context for the dealings in July – September 1990 to which I will now turn.

84. On 19th July 1990 the NUM commenced proceedings against Messrs Scargill, Simon, and Heathfield and Norman West. In those proceedings the NUM sought declarations that it was the beneficial owner of sundry monies held or received by various of the defendants to those proceedings. The declarations sought included one that Messrs. Scargill and Heathfield had received and held the MACF monies as trustees for the NUM.

85. The commencement of those proceedings led to a number of meetings in Paris between a sub-committee of the NUM's National Executive Committee and Messrs. Simon, Scargill, and Heathfield. There appear to have been two meetings at which all three of the latter attended and one between the NUM's representatives and M. Simon. There were discussions in those meetings about the proceedings against Mr. Windsor but the primary focus was on the proceedings being brought by the NUM itself. Those proceedings were resolved by an arrangement whereby the IMO caused a sum of just over £742,000 to be donated to the NUM. That represented funds held to the credit of the Miners' International Research, Education, Defence, and Support Fund in a Dublin bank account. That fund was described in the subsequent minutes of a meeting of the NUM's National Executive Committee as "IMO's International Solidarity Fund". Mr. Scargill says that the fund was separate from the IMO but agrees that it was regarded as an international solidarity fund. He says that although separate from the IMO it was a fund of which the trustees or at least some of them were officers of the IMO. The distinction is immaterial for present purposes and it is clear that it was a fund over which the IMO was able to exercise control.

86. The discussions culminated in the signing on behalf of the Claimant and the Defendant of an agreement ("the Release Agreement") settling the proceedings. The Release Agreement recited the proceedings which had been brought by the Claimant; the denial of liability by the defendants to those proceedings; and an agreement having been made to resolve "all outstanding matters at issue" in the "spirit of fraternal cooperation". It then provided for the donation of the funds in Dublin and set out the NUM's undertakings to discontinue all proceedings commenced since July 1990 and to obtain the discharge of all injunctions and other orders in its favour. At clause 2 it provided as follows:

> "The NUM, its officers and National Executive Committee declare and acknowledge that the NUM has no further claim to nor any interest in any funds or assets held by or under the control of the IMO otherwise than as affiliated members of the IMO. The NUM, its officers and Executive Committee further undertake that they will not commence or attempt to restore to cause, encourage or support financially or otherwise any legal proceedings anywhere in the world in which any such claim is made or any such interest is asserted."

87. Henry Richardson had led the NUM team in these negotiations and he had reported the proposed terms to the NUM's solicitors. The solicitors responded advising that the sum of just over £700,000 which would be obtained under the proposed arrangement was markedly less than the solicitors believed that the NUM would recover if the proceedings continued. They went so far as to say that a recovery of at least £1.5m could be expected. Notwithstanding that

warning the NUM's National Executive Committee approved the proposed agreement and it was then signed on behalf of the NUM and the IMO.

88. On 7th March 1990 the IMO had commenced proceedings against Mr. and Mrs. Windsor in the French courts seeking payment of £29,500 plus interest. Those proceedings had been preceded by a letter of demand on 12th September 1989. It follows that the proceedings were underway at the time of the discussions which led to the Release Agreement. Mr. Scargill's evidence was that there was discussion about these proceedings at the meeting when the terms of the Release Agreement were agreed. He says that the NUM team accepted that it had agreed to withdraw all the NUM's claims and that the team then agreed to pay the IMO's costs of the proceedings against Mr. Windsor in recognition of the donation which was being made. Mr. Scargill said that the agreement was that the IMO would reimburse the NUM after it had itself received the sum of £29,500 plus interest and had recouped its own costs.

89. Thereafter, as I will describe more fully below, the IMO continued the proceedings against Mr. Windsor and payments were made by the NUM in reimbursement and discharge of the costs of those proceedings.

90. The Defendant's initial stance had been that the claim which the IMO had against Mr. Windsor was an asset of the IMO. It said that as such the claim fell within the scope of clause 2 of the Release Agreement and that the NUM had thereby abandoned any claim to an interest in the proceeds of the claim. The wording of the Release Agreement would justify such a conclusion because the IMO's claim against Mr. Windsor was clearly an asset held by or under the control of the IMO. However, it is clear that the parties did not at the time envisage or intend that the terms of the Release Agreement covered the claim against Mr. Windsor and I find that when seen in context the Release Agreement did not have that effect. There were separate discussions about the proceedings against Mr. Windsor and both sides were proceeding on the footing that the IMO would continue that litigation but would receive reimbursement from the NUM. That was the arrangement which continued after the Release Agreement. It follows that even if the IMO claim against Mr. Windsor had been caught by the Release Agreement there were subsequent dealings in relation to that claim and a determination would be needed as to the basis on which those were conducted.

91. Although not conceding the point at trial Mr. Scargill's main argument was not that the Release Agreement concluded the matter. Rather he in practice accepted that there was an agreement as to the funding of the litigation but disagreed with the Claimant as to the terms of that agreement. The Defendant's case contained two elements. First, that the Claimant had agreed to fund the IMO's proceedings in gratitude for the donation which the IMO had made under the Release Agreement. Second, that the IMO had decided to pay £29,500 to the NUM if the proceedings against Mr. Windsor were successful but that this was a voluntary decision on the part of the IMO. The Defendant said that it made this decision because Mr. Windsor had said that he had regarded part of the money which he was to receive for the television programme and/or the newspaper article as properly due to the NUM as repayment of the original loan which he said he regarded as still outstanding. The Defendant said that in those circumstances it regarded it as appropriate that to the extent that it made a

recovery from Mr. Windsor then it should treat £29,500 of that recovery as coming from funds which Mr. Windsor had said were to be regarded as due to the NUM.

92. The Claimant said that the IMO was obliged to pay the Claimant the proceeds of the litigation against Mr. Windsor because the claim against Mr. Windsor was in reality the claim of the NUM. It said that the arrangement was that out of the fruits of the litigation the NUM would be paid £29,500 plus interest together with the reimbursement of the sums it had contributed to the costs of the proceedings with the risk of any shortfall in recovery falling on the IMO reimbursement of whose expenditure was to have last call on the funds recovered.

93. I reject both those versions of the parties' arrangements as being incompatible with the surrounding circumstances and with inherent likelihood. Mr. Scargill's contention that the NUM agreed to fund the litigation which was to be for the benefit of the IMO because of the NUM's gratitude for the payment which had come from the International Solidarity Fund is contrary to any credible interpretation of the parties' dealings and realistic intentions at the time. The payment which the IMO had caused to be made was in settlement of hostile litigation and was to resolve that litigation. Moreover, it was substantially less than the NUM's lawyers had advised would be recovered in the proceedings. It is inherently unlikely that in those circumstances the NUM should feel a debt of gratitude to the IMO causing it to agree to meet the costs of litigation of which the IMO was to have the benefit. There are no contemporaneous documents suggesting that the NUM had any such intention and I reject that contention. Similarly, the contention that the IMO decided voluntarily to pay £29,500 to the NUM because of Mr. Windsor's comments is not credible. It was difficult to follow the reasoning which Mr. Scargill said was the basis for this decision. I was unable to understand why it would be that comments from Mr. Windsor would cause the IMO to regard it as appropriate to pay the NUM sums which the IMO otherwise regarded as its own. Moreover, for the reasons I have set out at [78] I have found that the IMO had intended to make repayment to the NUM from the time of the assignment to it of the claim against Mr. Windsor. There is no suggestion in the IMO Declaration nor in Mr. Scargill's comments to Mr. Lightman that the intention to make payment to the NUM was the result of what Mr. Windsor had said. Indeed, the IMO Declaration said that such repayment had "always" been the intention of the IMO. I find that such intention continued and I reject the contention that there was a voluntary decision caused by Mr. Windsor's comments. In that regard it is of note that in his witness statement Mr. Scargill gave a different account saying that the arrangement at the time of the Release Agreement was that the IMO was to retain for itself the sum of £29,500 together with the interest thereon. Under cross-examination Mr. Scargill accepted that the contention that the IMO had decided to pay £29,500 to the NUM, whether as a result of what Mr. Windsor had said or at all, had not appeared either in the Defence or in his witness statement.

94. Mr. Scargill's adamant maintenance at trial of these assertions which I have concluded are not credible is one of the matters which caused me to conclude that I could not regard his evidence of the dealings in 1990 as reliable.

95. However, the NUM's contention that the arrangement was that the IMO was to run the risk of any shortfall in recovery is also incompatible with inherent likelihood and also has no support in the contemporaneous documents. There would be no reason why the IMO should agree to such an arrangement. The proposed agreement is moreover inconsistent with the arrangement, which both sides accept was in place, whereby the NUM was to provide reimbursement of the costs incurred by the IMO as the litigation proceeded. The making of reimbursement by the NUM to the IMO on a continuing basis would not fit readily with an agreement that it was the IMO which was to bear the ultimate risk of any shortfall. Clear persuasive evidence in the form of contemporaneous documents or other equally compelling evidence would be needed before I could find that the IMO agreed to proceed on that basis and there is no such evidence here.

96. Accordingly, I find that after the Release Agreement the parties proceeded in respect of the action against Mr. Windsor on the same basis as before. The parties were agreed that the IMO would continue the proceedings against Mr. Windsor. The expenses incurred by the IMO in those proceedings would be reimbursed by the NUM. The funds recovered in the litigation would be paid to the NUM but subject to the payment to the IMO of any sums which it had incurred in costs and which had not already been reimbursed by the NUM. Accordingly, the risk of there being a shortfall in recovery was to be borne by the NUM, which was to have the benefit of the proceedings, rather than the IMO, which had no benefit from them.

97. By late 1990 the parties probably realised that Mr. Windsor would not be cooperative and that any claim for repayment would be resisted. It is unlikely that the extent and duration of that resistance was anticipated. Moreover, at that stage it was envisaged that the NUM would continue to fund the litigation and it did so until 2009. It follows that at the relevant time in 1990 the parties are unlikely to have anticipated that the IMO would incur significant expenses which were not reimbursed by the NUM. That, however, is a question of scale rather than of the allocation of risk. I find that there was agreement that the NUM would reimburse the IMO's costs and that such obligation extended to reimbursement even when if there turned out to be a shortfall in the final recovery.

98. The Claimant contended that the IMO Declaration should be regarded as having been a declaration of trust with the consequence that the IMO held the recoveries on trust for the Claimant. Miss. Ranales-Cotos did not put this at the forefront of her case but the contention was not abandoned. In my judgement the contention does not advance matters. The IMO Declaration was a statement of the IMO's intentions in respect of the sum of £29,500 and the interest thereon. It is not properly to be seen as a declaration whereby the IMO was constituting itself a trustee for the NUM. The declaration is a potent indication of the IMO's intentions and was important as a statement being made to the NUM of those intentions. As such it is of assistance in determining the basis on which the parties were proceeding in the period from 1990 onwards but it did not create a trust. Even if that is wrong and the IMO did by reason of the declaration become a trustee on receipt of the recoveries from Mr. Windsor that would not assist

with the crucial questions in this case. In particular it would not assist with the question of whether any shortfall between the recoveries and the costs incurred in the proceedings was to be borne by the NUM or by the IMO. There is nothing in the declaration to support the Claimant's case that the IMO was to bear the shortfall. Indeed, if it did create a trust the contrary would be the better analysis. If the IMO was acting as a trustee then on general principles it would be entitled to recover from the trust fund expenditure incurred in gathering in the trust assets. It would require the clearest of terms before it could be said that a trustee was abandoning its general right of indemnification from the trust fund and the declaration contains no such terms.

The Progress of the IMO and IEMO Proceedings against Mr. Windsor.

99. It is common ground that Mr. Scargill had sole responsibility for and control over the Defendant's actions against Mr. Windsor. It is also apparent that it was Mr. Scargill (at least in the period from about 1992 onwards following the retirement of Mr. Heathfield) who caused payments to be made from the Claimant to the Defendant and to the lawyers engaged in the proceedings against Mr. Windsor.

100. The Claimant's stance changed in 2009. Mr. Kitchen had become General Secretary of the NUM in October 2007. He became concerned about the sums being paid to the IEMO and the last reimbursement of legal expenses was made to that body on 7th September 2009. Thereafter the IEMO met the cost of the proceedings without reimbursement being made by the NUM.

101. The proceedings brought against Mr. Windsor in France were hard-fought. He and his wife repeatedly appealed orders made against them. In 2002 the IEMO obtained an order from the *Cour de Cassation* upholding the earlier judgments but even that did not lead to payment. In 2009 the IEMO obtained an order for the sale by auction of the property which Mr. and Mrs. Windsor owned in France. The sale took place on 15th December 2010 but the sale proceeds were then held in escrow (or the French equivalent thereof) pending the resolution of a claim being made by Mrs. Windsor to the proceeds of sale. That claim was not resolved until 29th August 2012 and it was only then that funds were released to the IEMO. On 29th July 2013 the IEMO made a payment of £29,500 to the Claimant describing the same as a donation. In the meantime the IEMO had obtained attachment of earnings orders against Mr. Windsor. The first order was obtained in the Central London County Court on 8th October 2010 in the sum of £50 per month. That was discharged by an order made on 28th April 2011. A further attachment of earnings order in the sum of £500 per month was obtained from the Worcester County Court on 21st February 2013. That was superseded by an order made by the same court on 23rd April 2013 providing for a payment of £350 per month. It appears that payment under that order is continuing.

The Parties' Rights and Obligations in respect of the Sums Recovered from Mr. Windsor.

102. The effect of the foregoing is that the Defendant is obliged to account for the sums it has received as a result of the litigation against Mr. Windsor and to pay the same to the Claimant. That obligation extends to the entirety of the sums received whether referable to the principal debt, interest thereon, costs, or

otherwise. It is, however, subject to an entitlement on the part of the Defendant to deduct from the sum paid an amount equivalent to the amount by which the sums which it spent on the proceedings exceeded the sums which it had received from the Claimant as reimbursement of its expenses. This has the effect that the risk of a shortfall between the recoveries and the expenses incurred in the proceedings falls first on the Claimant rather than on the Defendant.

The Limitation Defence.

103. For the reasons set out above the question of limitation is to be determined by reference to English law. The proceedings were commenced on 26th September 2017. The Defendant's obligation was to account for funds received from the proceedings against Mr. Windsor as and when those funds were received. Such funds were received in three tranches. First, by reason of the first attachment of earnings order in the period from October 2010 to April 2011. Second, when the funds from the sale of the Windsors' French property were released to the IEMO in August 2012. Finally, when the second attachment of earnings order was obtained in February 2013. The obligation to account was a continuing obligation with the Claimant's right to payment of the surplus after the costs had been met accruing afresh with each payment.

104. The Defendant was obliged to account for the sums received pursuant to the first attachment of earnings order. Those sums were received more than six years before the commencement of these proceedings. It follows that the claim is statute-barred to the extent that it required the Defendant to account for those sums. The Defendant's liability to account for the other sums arose when those sums were received. In relation to the proceeds of the house sale that was in August 2012. The fact that the sale was ordered and took place earlier does not affect that position. The IEMO did not receive the funds until they were released from escrow and was not obliged to account for them until then. Accordingly, the Defendant's liability and the Claimant's cause of action in respect of those sums accrued less than six years before the commencement of proceedings. Similarly, the sums paid under the second attachment of earnings order were first received in 2013 and so less than six years before the commencement of proceedings.

The Effect of the Discontinuance of the Proceedings against Mr. Scargill.

105. On 25th March 2014 the Claimant had issued proceedings against Mr. Scargill. Those proceedings were brought on the footing that the IMO (as it was called in the Particulars of Claim) was an unincorporated association and so Mr. Scargill was sued as the President or Co-President and a member of the management committee of the IMO. Those proceedings related to the same subject matter as the current claim and sought similar relief.

106. Mr. Scargill lodged a defence in those proceedings. In that he challenged the substance of the claim but also pointed out that the IEMO was an *association declarée* having a separate legal identity. He then applied to strike out the claim. That application was adjourned and before the resumed hearing the Claimant served a notice of discontinuance bringing those proceedings to an end.

107. The Defendant sought to argue that the discontinuance of the earlier proceedings against Mr. Scargill precluded the current action. That argument was misconceived and I reject it. The discontinuance of the previous proceedings would not have precluded a fresh action against Mr. Scargill although the court's permission would have been needed for the making of such a claim (see CPR Part 38.7) but it certainly can have no effect of the Claimant's entitlement to bring proceedings against the Defendant which is a separate entity.

The Figures.

108. It is common ground that there had been recovery of at least £138,710.71 and I did not understand it to be disputed that payments under the second attachment of earnings order were continuing. It is also common ground that a payment in the sum of £29,500 has been made to the Claimant. I have concluded that the claim for the Defendant to account is statute-barred in relation to the sums totalling £300 received under the first attachment of earnings order. The issue between the parties relates to the distribution of the balance of the sums recovered. In the light of my conclusions as to the terms on which the parties proceeded the question is the extent to which the Defendant has incurred expenditure in relation to the proceedings which has not been reimbursed by the Claimant. To the extent that there has been such expenditure the Defendant is entitled to recoup the same before paying the Claimant the sums received but save for that deduction the sums received are to be paid to the Claimant. There was dispute between the parties in relation to the sums which the Claimant said that it had spent in relation to the litigation in the period until it stopped making payments to the Defendant in 2009. I do not, however, need to resolve that dispute because the Claimant's expenditure is immaterial save to the extent that it is said that there was expenditure on the part of the Defendant which has not been reimbursed.

109. The Defendant put forward a number of schedules setting out the sums which it claimed to have expended and/or in respect of which it contended that it was entitled to credit against the Claimant. Those schedules had been prepared by a Mr. Capstick. There was no evidence from Mr. Capstick. Some copies of the Defendant's redacted bank statements were provided together with a limited amount of supporting documentation but there was very little before me by way of detailed substantiation of the figures. Mr. Scargill accepted that he had not prepared the schedules and that although he had checked cheque stubs against entries in the accounts he accepted that he could not speak to the detail of many of the items. The Defendant was the accounting party and had the burden of justifying the sums it sought to deduct and the lack of particularisation reduces the cogency of its contentions.

110. The first category of expenditure relates to the period to December 2008. The Defendant says that it made payments to the Claimant in sums totalling £27,070.90. The Defendant says that these payments were made to the Claimant in reimbursement of sums which the Claimant had paid by way of contribution to the costs of the proceedings against Mr. Windsor. I will turn shortly to the particular figures but begin by noting that I find that underlying assertion unpersuasive. In the period to December 2008 the Claimant was still making payments to the Defendant in reimbursement of the costs of the proceedings. At

that stage there had been no recovery from Mr. Windsor. In those circumstances it is hard to see what basis there could have been for the IEMO making payments to the Claimant in reimbursement of sums which the Claimant had itself paid in reimbursement or discharge of the Defendant's expenditure on the proceedings. There would be no sensible reason for the Defendant to make such payments. The Defendant accepts that it made payments to the Claimant in this period which related to matters other than the proceedings against Mr. Windsor and so a payment flowing from the Defendant to the Claimant cannot automatically be regarded as having been referable to those proceedings. In those circumstances cogent evidence would be needed before I could conclude that the payments related to the proceedings.

111. The Claimant accepts that it received sums totalling £11,160.30 in the period from 17th July 1990 to 7th August 1993 inclusive. The Claimant does not, however, accept that they are referable to the proceedings. In the course of the hearing the Defendant accepted that the sum of £5,151 paid on 7th August 1993 did not relate to the proceedings. The Claimant does not put forward any particular explanation of the other payments but equally other than asserting that the payments were attributable to the proceedings the Defendant does not itself put forward an explanation of the sums or the items to which they related. The lack of detail is not surprising in the light of the passage of time since the payments were made but I have already explained that I find improbable the Defendant's assertion that there was reimbursement being made to the Claimant. There is no evidence to support the Defendant's contention in respect of these figures other than the fact of payment and the assertion that the payments related to the proceedings and I find that the Defendant has failed to show that it is entitled to credit in these sums.

112. There are further sums totalling £11,310.60 in respect of payments made from 23rd August 1993 to 26th February 1996 inclusive. The Defendant says its records show such payments being made but the Claimant says that it has no record of these sums having been received. The passage of time means that the absence of any record of receipt is not as potent a factor as might otherwise be the case and I accept that these sums were paid to the Claimant. However, there is again no material to substantiate the assertion that they were a reimbursement of payments made by the Claimant in relation to the proceedings and here also I conclude that the Defendant has failed to show an entitlement to deduct these sums from the recoveries made.

113. In the period from 10th August 2007 to 8th December 2008 inclusive the Defendant made three further payments in sums totalling £4,500. The Claimant accepts it received these sums but says that in each instance exactly the same amount as had been received was paid out in cash almost contemporaneously with the receipt of the funds. The Claimant's books confirm those cash payments. The Claimant says that it was simply acting as a conduit for these funds. It says that the payments made to it were unrelated to the proceedings against Mr. Windsor and that the cash payments were made to or to the order of the Defendant. Mr. Scargill accepted that such an arrangement was made from time to time. He explained that it was a way of concealing the source of funds where it was legitimate and necessary so to do. In that regard Mr. Scargill gave

examples of instances where funds were being held for or provided to trade unionists in countries where their activities were illegal or where they were being subjected to persecution (he instanced apartheid South Africa as one such case). In the light of that and again in the light of any adequate explanation from the Defendant of why reimbursement in these amounts was being made to the Claimant I find that the payments were not referable to the proceedings and that the Defendant is not entitled to make a deduction from the recoveries in these sums.

114. The Claimant stopped funding the proceedings against Mr. Windsor in September 2009. The Defendant seeks to make deduction in sums totalling £110,728.22 in respect of the period since then. However, that total includes the sum of £29,500 which has been paid to the Claimant and to which I have already made reference.

115. The Defendant's figure of £110,728.22 also included the sum of £20,000 which was said to be due to the Defendant from the Claimant for affiliation fees. This was said to be £20,000 as the fee due for 2011. The Defendant also sought credit for £30,000 being the total of allowances given in earlier years but did not include this in the £110,728.22 figure. The Claimant did not accept that it was liable to pay these fees to the Defendant and there was no pleaded counterclaim or set off asserting an obligation on the Claimant to make such payment. In those circumstances the Defendant is not entitled to seek to deduct those sums from the payment to be made to the Claimant. Such a claim would have had to be properly pleaded and substantiated and a mere assertion without more would not suffice to entitle the Defendant to make the deduction. The Claimant had a secondary line of response to the Defendant's case in relation to the affiliation fees which was to say that they had been covered by payments totalling £145,000 made to the IEMO by the Claimant's Yorkshire area. I reject that contention. The documents make it clear that that payment was made by way of a donation to the IEMO and if the Defendant had been able to put forward the affiliation fees claim as a deduction then that donation could not have been set against any liability.

116. It follows that the true starting point in respect of the post 2009 period is the sum of £61,228.22 (£110,728.22 – [£20,000 + £29,500]) being the total of the payments which the Defendant says it has made in relation to the proceedings. The Defendant accepted that sums totalling £1,169.48 did not relate to the proceedings (£500 for travel expenses for M. Simon; £641.48 for the purchase of a computer; and two payments of £14 for couriers). The bulk of the remaining items were relatively modest sums for travelling expenses and the like and I find that those items related to expenditure properly incurred in respect of the proceedings against Mr. Windsor and are sums in respect of which the Defendant is entitled to make a deduction. The total of £61,228.22 did, however, contain two larger and more contentious items and I turn to those now.

117. The first is the sum of £29,999 in respect of solicitors' fees. The Claimant took issue with this sum questioning the absence of particularisation as to what had been done to justify this payment. However, the Defendant has established that this sum was paid to Pitmans Solicitors and the contemporaneous correspondence from that firm refers to the relevant fee note as relating to the

proceedings against Mr. Windsor. In the light of that I am satisfied that the Defendant has established that it paid solicitors' fees in that amount in respect of those proceedings and that it is entitled to make a deduction to that extent.

118. The second item is the sum of £12,030 which the Defendant described in its schedule as "photocopying" in the period "Feb 201 (sic) – 1/12/14" for the purpose of "legal case NUM v A. Scargill – Re Windsor case". The Claimant questioned whether this was in fact in relation to the proceedings against Mr. Windsor or instead to the proceedings which it had taken against Mr. Scargill. After the point had been raised the Defendant provided a further note about this. The note was provided with others making the various concessions I have set out above. In relation to the photocopying costs the note said "this amount obviously requires checking as NUM v Scargill wasn't launched until March 2014. The papers are all in London and will be checked as soon as possible." The burden is on the Defendant to justify the deductions which it seeks to make. In the light of the description of the purpose of the photocopying in the schedule and the absence of further particularisation the Defendant has failed to show that this amount relates to the proceedings against Mr. Windsor and that it is entitled to make a deduction in this sum from the recoveries.

119. In the light of those findings the deduction which the Defendant is entitled to make in respect of its expenditure on the proceedings against Mr. Windsor is £48,028.74 being £61,228.22 less £13,199.48 (£500 + £641.48 + £14 + £14 + £12,030).

Conclusion.

120. The sum recovered from Mr. Windsor stood at £138,710.71 at the time of the proceedings and further sums are being paid under the second attachment of earnings order. The Defendant is obliged to pay that sum to the Claimant subject to the deduction of the sum of £77,828.74 (£300 + £29,500 + £48,028.74). Accordingly, the further sum of £60,881.97 is payable by the Defendant to the Claimant in addition to the payment of £29,500 already made. The Defendant is moreover liable to account to the Claimant for such further sums as it has received from the proceedings and will receive (whether by way of the attachment of earnings order or otherwise) in excess of the figure of £138,710.71. At the handing down of this judgment I will hear submissions as to the appropriate form of order to give effect to those findings.