Neutral Citation Number: [2014] EWHC 4384 (CH)

Case No: HC12C03233

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION (on transfer from the Queens Bench Division)

B E F O R E:

THE CHANCELLOR OF THE HIGH COURT

SIR TERENCE ETHERTON

THE NATIONAL CRIME AGENCY

Claimant

-and-

GARY JOHN ROBB

Defendant

-and-

(I) PATRICIA ANNE CLARKE
(II) SUSAN AND JOHN LATCHFORD
(III) SANDRA AND GRZEGORZ KOCINSKI
(IV) BRUCE AND PATRICIA NEIL-GOURLAY
(V) PETER BROOKS
(VI) BETHAN BRYN JONES
(VII) STUART SCOTT
(VIII) PHYLLIS AND JAMES BOYD
AND OTHERS

Additional Claimants

- -
- -

Nicholas Cox (instructed by **NCA Legal Department**) for the **Claimants**
Robert Morris (instructed by **Ison Harrison**) for the **Lead Additional Claimants**

Hearing dates: 2nd, 3rd and 4th December 2014

APPROVED JUDGMENT

The Chancellor (Sir Terence Etherton) :

Introduction

1. These are proceedings for the civil recovery of the proceeds of unlawful conduct within Part 5 of the Proceeds of Crime Act 2002 ("POCA"). They began as a CPR Part 8 claim in the Queen's Bench Division by the Serious

Organised Crime Agency ("SOCA") against Gary John Robb to recover the funds standing to the credit of a specified NatWest Bank account ("the Fund") as recoverable property within the meaning of section 304 of POCA. Recoverable property, that is to say property obtained through unlawful conduct as defined by section 241 of POCA, is, practically speaking, forfeited to the State: POCA sections 266, 280 and 460(2).

2. Following a hearing over three days in the Queen's Bench Division in March 2012 Mr Justice Mackay made an order dated 30 March 2012 declaring that, without prejudice to any application by any third party, as between SOCA and Mr Robb the Fund represents recoverable property obtained by Mr Robb through unlawful conduct within the meaning of Part 5 of POCA.

3. Subsequently, the proceedings were transferred to the Chancery Division, the National Crime Agency ("the NCA") has been substituted for SOCA, which has ceased to exist and whose functions in relation to POCA have been assumed by the NCA, and 71 people have been reconstituted (having originally been third parties) or added as additional claimants. They are all people who seek declarations under section 281 of POCA ("section 281") that part of the Fund belongs them. As at 18 November 2014 the Fund stood at £1,499,487.09.

4. This is my judgment on the hearing of the section 281 applications of eight of the additional claimants ("the lead claimants").

Background

5. The following summary of the factual background is taken from the judgment of Mackay J. Save insofar as any details of the precise amounts and routes of payments may be inconsistent with the up-to-date figures mentioned in my findings below, the following facts have not been challenged by any of the parties represented before me.

6. Mr Robb was born in South Shields on 6 September 1962. His previous convictions include obtaining services by deception in January 1994 when he was fined, and in the following September for two counts of handling he received concurrent terms of six months' imprisonment.

7. In 1997 he stood trial at Teesside Crown Court on two counts of allowing club premises to be used for the supply of drugs. In the course of the trial he absconded to the Turkish Republic of Northern Cyprus ("TRNC"), an entity not recognised as a country by the UK (or by any country other than Turkey) and with which this country has no arrangements for extradition.

8. He worked as a builder-cum-developer of small scale projects. In February 1999 he formed a limited company Aga Developments Ltd (AGA), incorporated under the laws of the TRNC, and in due course embarked on two large scale and ambitious projects. The smaller of the two, Hz Omer, was to comprise about 65 properties and for which marketing began in late 2003. The larger was Amaranta Valley which was intended to consist of 250 properties initially, with the potential to grow even larger. Marketing of these began in

the spring/early summer of 2004 through Unwins, an English run firm based in the TRNC, acting as agents for AGA.

9. Buyers (who were called "investors" by Mackay J and in the hearing before me and I shall call the same for consistency) were principally from the UK. They bought off plan, paid a deposit and thereafter agreed to make stage payments as the work on the ground reached certain defined stages of construction. Most of the Hz Omer houses were built albeit with a high number of complaints as to the conduct of Mr Robb and AGA's performance of its contractual obligations. Only one house has ever been completed at Amaranta, and that was achieved by an investor who took over the task of construction himself.

10. While Unwins were still acting as the agents they transferred a total of £1.675 million into an AGA account with Limassol Turkish Co-operative Bank ("Mr Robb/AGA's Account 2"). £1.384 million was from Amaranta investors and the balance mainly from Hz Omer investors.

11. On 21 October 2004 Mr Robb opened a personal account (Mr Robb's Account 1"), and £1.8m was transferred into it from Mr Robb/AGA's Account 2. On 24 May 2005 a further £125,000 was paid in from Mr Robb/AGA's Account 2, probably representing the remaining sums from investors that had been paid to Unwins.

12. In December 2004 Mr Robb went to Thailand for the first time. It is unclear how long he spent there or how many times he went. He made substantial capital investments there in development land and in a company.

13. In February 2005 Unwins' agency was determined and collection of deposits and stage payments was taken over by Mr Talat Kursat, Mr Robb's lawyer.

14. Mr Kursat operated three accounts of relevance. One account was a UK account with HSBC into which investor payments were received. He had another account at the same bank called "Talat Kursat & Co clients account". A third account ("Mr Kursat's Turkish Account 10") was a sterling account in the TRNC into which investor payments from the other two accounts were transferred. He also had what has been called a "ghost account" – "EFEKTIV YATAN 892 1009609 775 058688852 NOLU CEK TALAT KuRSATTR YT".

15. In March 2005 an incentive scheme was offered to Hz Omer investors under which those who paid in full in advance would be guaranteed completion of their home within three months. In April 2005 a second incentive scheme offering a 10 per cent reduction for cash purchasers was introduced and offered also to Amaranta investors.

16. In addition to the £1.8 million paid in October 2004, between 1 April 2005 and 22 July 2005 a further £1.476 million was paid into Mr Robb's Account 1, of which over £1 million came from Mr Kursat's accounts and the balance from another source which must as a matter of reasonable and probable inference also represent investor money.

17. Between 1 April 2005 and 22 July 2005 Mr Robb procured the transfer of a total of £1,119,757 to Thailand, either by Mr Kursat from Mr Kurst's Account 10 or by a Mr Alan Gowland, an associate of Mr Robb, or from Mr Robb's Account 1.

18. Investor disquiet began to express itself increasingly from about April 2005, the month in which the first of many inhibition orders (the TRNC equivalent of injunctions) were granted against AGA and Mr Robb. On 25 May 2005 a European Arrest Warrant was issued for Mr Robb by the Republic of Cyprus.

19. On 22 July 2005 Mr Robb gave written instructions from Thailand to transfer £1.495 million from Mr Robb's Account 1 to his personal account in Thailand. On 25 July those funds were restrained by Collins J when in the accounts of the Thailand Bank's corresponding bank in London.

20. On 21 December 2005 the TRNC Council of Ministers issued an edict prohibiting Mr Robb's return to the country. This was lifted on 22 February 2006.

21. In March or April 2006 (the date is not clear) Mr Robb says he was effectively deported to the TRNC on terms that he collaborate with the efforts of others to achieve the completion of the Amaranta development. He claims he was prevented from doing so.

22. In December 2007 a Protocol was entered into between the AGA Buyers Committee, AGA and Mr Robb as to steps to be taken to complete the project. It failed to achieve significant results.

23. In January 2009 the TRNC removed Mr Robb to England for "firearms offences". Mr Robb claims that was an illegal act as he was a citizen of the TRNC and no deportation treaty existed with the UK. On 8 July 2010 he pleaded guilty to two counts relating to offences under the Misuse of Drugs Act 1971 and was sentenced to five years' imprisonment. Having served that term he was then extradited to the Republic of Cyprus where he was charged with and pleaded guilty to charges relating to the illegal use of what the Greek part of the island considers to be stolen land; he was sentenced to 10 months' imprisonment.

24. On 17 September 2009 Walker J made a property freezing order in respect of the Fund pursuant to section 245A of POCA. That was subsequently extended by Mackay's J's order of 30 March 2012.

The judgment of Mackay J

25. Mackay J found that Mr Robb's instruction of 22 July 2005 to transfer a further £1.495 million from Mr Robb's Account 1 to Thailand, had the restraining order not been obtained, would have resulted in his removing a total of £2,693,757 of investor money (excluding the Gowland payments) from where it could be applied for the purposes for which it had been paid to AGA, and to a place where he could treat it as his own. Mackay J concluded in paragraph [57] that:

> "this was plainly a course of action which [Mr Robb] set in train dishonestly and in order to defraud his customers, having abandoned such intention as he had to give them what they had contracted to receive."

26. Mackay J rejected, however, SOCA's case that all Mr Robb's actions in relation to the proposed development were always intended to be a vehicle by which he could deprive investors of their money by promising to complete properties he knew would never be completed. He held that the business was not one which was fraudulent from the outset.

27. He found that the turning point came at the beginning of 2005. He described the change in paragraph [68] as follows:

> "By the beginning of the year 2005 the picture is very different. The turning point, I consider, was [Mr Robb's] first visit to Thailand at the end of 2004, when I am satisfied he probably formed the idea of starting fresh business enterprises and property developments in Thailand with money abstracted from AGA. By the beginning of February, the month in which Unwins retainer was cancelled, a significant event in this affair as I find, the scheme was in place, albeit some work on the ground continued on a diminishing and cosmetic basis over the next few months. By the beginning of February, I am satisfied on balance of probabilities, [Mr Robb] had formed the intention to extract with the help of Talat Kursat and others as much cash from the business as he could, and that the incentive schemes, often the hallmark of fraud in such circumstances were introduced to that end. It became his intention to remove himself and as much customer money as he could to make a fresh start in the east. For the whole of the period from 1 February 2005 until the attempted transfer of the 22 July 2005 he was acting dishonestly and fraudulently, and was conspiring with others principally Kursat to achieve that end."

28. Mackay J held in paragraph [58] that the actions of Mr Robb from February 2005 could compendiously be described as fraudulent and more particularly, in terms of the law of England and Wales, offences of obtaining property/money transfers by deception under sections 15 and 15A of the Theft Act 1968, the common law offence of conspiracy to defraud, and fraudulent trading under section 458 of the Companies Act 1985, then in force but since repealed.

29. He said the following at paragraph [71] of his judgment:

> "All credits in [Mr Robb's] [A]ccount 1 were held by the defendant personally and had the common feature that they represented money investors had paid, as they believed, to AGA in expectation that it would be spent solely and exclusively on completion of their contracts. It therefore follows, as I find, that the attempt to remove £1.495m on 22

> July 2005 was itself unlawful conduct in that it was a fraudulent step in the conspiracy to defraud investors by appropriating the credit in that account, representing as it did their aggregated payments, and putting it to a use which as the defendant knew was inconsistent with the purpose for which the payments were made. This was achieved by [Mr Robb] acting in a conspiracy to defraud investors with Talat Kursat and probably other employees at AGA in the TRNC."

30. Mackay J held that, if it were necessary for SOCA to show dual criminality within the meaning of section 241(2) of POCA, that condition was satisfied on the evidence.

31. Mackay J concluded that the Fund then standing to the credit of Natwest account 3924426 was, subject to any claims by third parties, recoverable property within the meaning of section 304 of POCA.

Section 281

32. Section 281 enables victims of crime who can satisfy the statutory condition set out in that section to obtain a declaration in civil proceedings that property alleged by the NCA to be "recoverable property" as defined in POCA belongs to them.

33. Section 281 is as follows:

> **"281 Victims of theft, etc.**
>
> (1) In proceedings for a recovery order, a person who claims that any property alleged to be recoverable property, or any part of the property, belongs to him may apply for a declaration under this section.
>
> (2) If the applicant appears to the court to meet the following condition, the court may make a declaration to that effect.
>
> (3) The condition is that—
>
> (a) the person was deprived of the property he claims, or of property which it represents, by unlawful conduct,
>
> (b) the property he was deprived of was not recoverable property immediately before he was deprived of it, and
>
> (c) the property he claims belongs to him.
>
> (4) Property to which a declaration under this section applies is not recoverable property."

34. Section 316 of POCA contains general interpretation provisions. Section 316(4) to (7) are relevant and provide as follows:

> "(4) Property is all property wherever situated and includes—
>
> (a) money,
>
> (b) all forms of property, real or personal, heritable or moveable,
>
> (c) things in action and other intangible or incorporeal property.
>
> (5) Any reference to a person's property (whether expressed as a reference to the property he holds or otherwise) is to be read as follows.
>
> (6) In relation to land, it is a reference to any interest which he holds in the land.
>
> (7) In relation to property other than land, it is a reference—
>
> (a) to the property (if it belongs to him), or
>
> (b) to any other interest which he holds in the property.

35. Section 316(1) provides that "interest", in relation to any property other than land, includes any right (including a right to possession of the property).

Issues

36. Chief Master Marsh gave directions in the section 281 applications by an order made on 14 May 2014.

37. He gave directions that any person wishing to make an application in these proceedings under section 281, and who was not already a third party to the proceedings, must apply to join the proceedings by no later than 4pm on 30 June 2014. He directed that any existing third parties who wished to continue to pursue a claim under section 281 should notify the court of their wish by no later than the same date and time. All such persons, whether existing third parties or new applicants, were designated "additional claimants". As I have said there are 71 additional claimants. The total number of investors is not known but there were not less than 178 of them.

38. Chief Master Marsh also ordered that the applications of the lead claimants be listed for trial and that, without prejudice to any further issues which might later be identified or agreed, the "preliminary issues" set out in schedule 2 to his order be considered at that trial. Those issues are set out in the appendix to this judgment.

39. It is hoped that decisions on those issues and the lead cases will assist the resolution of the applications by the other additional claimants.

My findings

40. I consider that each of the lead claimants has a proprietary claim to part of the Fund on ordinary principles of law and equity. Although Mr Nicholas Cox, counsel for the NCA, highlighted several possible difficulties with such a claim, he did not at the end of the day firmly oppose it. There are two possible routes by which the lead claimants can establish a proprietary claim. The first is that, as from February 2005 when Mr Robb and AGA conspired to defraud by ceasing to honour their obligations to the investors and to transfer all investors' payments to Mr Robb for his personal use and enjoyment, Mr Robb and AGA held the payments by the lead claimants or their traceable proceeds on constructive trust for the lead claimants ("the fraud constructive trust"). The second is that, from the time when the lead claimants claimed the return of their payments, that is to say, at the latest, when they joined the present proceedings, their transactions were rescinded and their payments or their traceable proceeds were held on trust for them ("the rescission trust").

41. The fraud constructive trust was described Lord Browne-Wilkinson in the following well-known passage in *Westdeutsche* at p. 716

> "I agree that [the] stolen moneys are traceable in equity. But the proprietary interest which equity is enforcing in such circumstances arises under a constructive, not a resulting, trust. Although it is difficult to find clear authority for the proposition, when property is obtained by fraud equity imposes a constructive trust on the fraudulent recipient: the property is recoverable and traceable in equity. Thus, an infant who has obtained property by fraud is bound in equity to restore it: *Stocks v. Wilson* [1913] 2 K.B. 235, 244; *R. Leslie Ltd. v. Sheill* [1914] 3 K.B. 607. Moneys stolen from a bank account can be traced in equity: *Bankers Trust Co. v. Shapira* [1980] 1 W.L.R. 1274, 1282C-E: see also *McCormick v. Grogan* (1869) L.R. 4 H.L. 82, 97".

42. The view expressed there by Lord Browne-Wilkinson has been subject to intense scrutiny and much criticism by scholars and also some judges, most notably Rimer J in *Shalson v Russo* [2003] EWHC 1637 (Ch), [2005] Ch 281, esp. paras. [108] to [119]. Some of the criticism has focused on the conceptual difficulty of finding a constructive trust in the case of theft where the stolen goods are still identifiable and the victim has not lost legal title: Virgo, The Principles of Equity & Trusts (2012) at pp. 298-299. That particular issue does not arise in present case or the usual case of fraud where title has passed to the criminal.

43. In the context of transactions impeachable for fraud, objection to the proposition that a constructive trust in favour of the victim arises immediately upon the commission of the fraud has focused on the difference between a void and a voidable transaction. The overall consensus, both judicial and

academic, is that where a transaction is not void but is voidable for fraud, the fraudster acquires legal and beneficial title to the victim's property and when the transaction is rescinded or set aside, but not before then, the equitable title to that property revests in the victim: see *Russo v Shalson* at [120] to [127] and the cases cited there; cf the analysis of Ben McFarlane in The Structure of Property Law" (2008) at p. 302 of a distinction between a trust immediately imposed on the fraudster and rescission necessary for the victim to assert his power, as beneficiary of the trust, to impose a duty on the fraudster to transfer the right held on trust to the victim.

44. Although there are judicial statements and arguments to the contrary, sitting as I am at first instance I am bound to follow the approach of Atkin LJ and Bankes LJ in *Banque Belge pour l'Etranger v Hambrouck* [1921] 1 KB 321 at 332 and 325, Rimer LJ in *Russo v Shalson*, and Millett J in *El Ajou v Dollar Land Holdings plc* [1993] 3 All ER 717, 734, that in the case of a voidable transaction a property interest only revests in the victim of fraud when the transaction is rescinded. Prior to that event, the victim's power to rescind constitutes a "mere equity".

45. I turn, therefore, to the rescission trust. Mr Cox conceded, for the purpose of these proceedings, that the lead claimants rescinded their contracts, at the latest, when they joined the present proceedings and that, if it had not already arisen, a trust of any traceable proceeds of their payments then arose in their favour. That concession rightly extended to Mr and Mrs Kocinski, whose prospective property was purportedly re-sold by Mr Robb to another investor in 2005, but who rescinded by seeking repayment of their money in 2006.

46. Even if that concession had not been made by Mr Cox, I would have reached the same conclusion despite some controversial aspects of the matter.

47. There is authority binding on a first instance court that rescission for fraud is effected when the innocent party clearly indicates that he or she is rescinding the contract: *Car and Universal Finance Ltd v Caldwell* [1965] 1 QB 525; *Shalson v Russo* at paragraph [120]; and generally O'Sullivan, "Rescission as a self-help remedy: a critical analysis" [2000] 59 CLJ 509. The additional claimants plainly gave that indication when they joined these proceedings in order to claim a declaration under section 281 that part of the Fund belongs to each of them.

48. The question which then arises, however, is whether a transaction is voidable for fraud even where the transaction, as here, was not induced by fraud but is affected by supervening fraud at a later time: cf Virgo, The Principles of Equity & Law (2012) at pp. 299-300. There are some who would say that a proprietary restitutionary remedy for unjust enrichment cannot lie where the transaction was legitimate at the outset and title was intended to pass. On one view that may be seen as linked to the question whether the trust which arises on rescission for fraud is a resulting trust or a constructive trust.

49. Millett LJ expressed the view in *El Ajou v Dollar Land Holdings plc* at 734 that the trust which arises on rescission for fraud is a resulting trust. Lord Browne-Wilkinson in *Westdeutsche* thought it was a constructive trust. Both

views have academic support. I prefer that of Lord Browne-Wilkinson for the reasons given by Professor Graham Virgo in The Principles of Equity & Trusts at p. 300. I should add, for completeness, that William Swadling is the leading academic proponent of the view that no trust of any kind arises on rescission: William Swadling, "Rescission, property and the common law" (2005) 121 LQR 123; William Swadling, "The Fiction of the Constructive Trust" (2011) 64 Current Legal Problems 399. That, however, is not the present state of the jurisprudence binding on me.

50. Contrary to some scholarly analysis (see Burrows', "The Law of Restitution" (3rd ed) pp. 174-179 and the academic material to which he refers, including, in particular, various writings of Professor Robert Chambers), I also consider that the fact that fraud only subsequently arises in a transaction which began as a legitimate transaction is not, of itself, a bar to rescission or to a constructive trust then arising. There is no binding authority on that point one way or the other: see generally the discussion in Goff & Jones, The Law of Unjust Enrichment (8th ed) paras. 37-07 to 37-24 on the limits of proprietary relief for unjust enrichment. Whatever may be the position in other cases, fraud is special. As Lord Bingham said in *HIH Casualty & General Insurance Ltd v Chase Manhattan Bank* [2003] UKHL 6 at paragraph [15]:

> "… fraud is a thing apart. This is not a mere slogan. It reflects an old legal rule that fraud unravels all: fraus omnia corrumpit. It also reflects the practical basis of commercial intercourse. Once fraud is proved, 'it vitiates judgments, contracts and all transactions whatsoever': *Lazarus Estates Ltd v Beasley* [1956] 1 All ER 341 at 345, [1956] 1 QB 702 at 712 per Denning LJ."

51. I consider that there are good policy reasons for enabling a victim of fraud, which supervenes in a transaction, to set aside the transaction so as to pursue a proprietary claim even though that will have priority over other unsecured creditors of the fraudster or of any other person who has received traceable proceeds. On ordinary principles, however, rescission is not possible where it would prejudice the interests of innocent third parties, or substantial restitution by both parties is not possible, or the innocent party has affirmed the transaction; and a constructive trust is no longer possible when it has ceased to be possible to identify the transferred property or its traceable proceeds in the hands of the wrongdoer. All of those bars are more likely to arise in the case of supervening fraud than where the transaction has been induced by fraud. In the case of the lead claimants, none of those bars are present in relation to their respective interests in the Fund. There has been no suggestion in the case of any of the lead claimants that rescission was precluded by prejudice to third parties or by affirmation of their contracts.

52. The next question, therefore, is whether there were any identifiable original payments or their traceable proceeds to which the rescission trust could attach and which are presently represented by any particular part of the Fund to which the lead claimants can make a claim under section 281.

53. The payments made by investors passed through a number of different accounts where they were mixed with other investors' money and, in some

cases, money from other sources, some identifiable and some not. The payment routes are described in the 11th witness statement of David Templeman, who is employed by the NCA as a financial investigator. It is convenient to describe the payment routes with reference to the diagrams attached to this judgment.

54. Diagram 1 is a simplified version of a coloured plan handed to the Court during the trial ("Diagram 1"). As that diagram indicates, the Fund (shown on the right hand side of the diagram) was paid from Mr Robb's Turkish HSBC account ("Mr Robb's Account 1"). That account received total net credits (viz net of credits and debits attributable to temporary dated deposit investments and interest) of £3,350,951.75. Those net credits came from 5 different sources, which are identified in 5 different boxes on Diagram 1. Those different sources were (1) Mr Robb/AGA's Account 2 (which is Box 1); (2) Mr Kursat's Turkish Account 10 (which is Box 3); (3) Unwin's LTC north Cyprus account (Unwins' Account 3") (which is Box 4); (4) an unidentified account ("the unidentified account") (which is Box 2); and (5) unidentified sources ("the unknown sources") (which is Box 5).

55. Mr Templeman identified nine different routes through which investors' money was channelled. It is not necessary to explain them in detail here. Mr Templeman states that the majority of investors purchased through Unwins. NCA concedes that, apart from the money from two investors, Mr Hawkins and Mr Priest, which was paid into Mr Robb's Account 1 directly from Unwins' Account 3, all the investors' net payments (viz. less fees and commission) made through Unwins eventually found their way into Mr Robb/AGA's Account 2. Some investors paid directly into that account. NCA also concedes that investors' payments made to Mr Kursat directly or indirectly found their way into Mr Kursat's Turkish Account 10. It follows that, provided investors can show that they made payments through Unwins or Mr Kursat (payment routes1,2,3,4,6) or directly into Mr Robb/AGA's Account 2 (payment route 7), NCA will accept that the net payments made by them found their way into one of the three accounts – Mr Robb/AGA's Account 2, Mr Kursat's Turkish Account 10 and Unwins' Account 3 (Boxes 1, 3 and 4 on Diagram 1) - that can be identified as feeding Mr Robb's Account 1, from which the Fund was itself paid. It is common ground that, on the present state of the evidence, any investor money channelled through the other three payment routes identified by Mr Templeman (payment routes 5,8,9) cannot be traced through to the Fund.

56. It follows that, in pursuing a proprietary claim to part of the Fund, the question is whether it is possible for the investors who can show they paid by routes 1,2,34,6 or 7, and the eight lead claimants in particular, to trace their payments from Mr Robb/AGA's Account 2, Mr Kursat's Turkish Account 10 and Unwins' Account 3 into Mr Robb's Account 1 and from there into the Fund. Sections 304 to 307 and 308(1) of POCA lay down statutory rules for following and tracing recoverable property, which broadly mirror ordinary principles of law and equity. There are no similar statutory provisions applicable to a victim who seeks to show that property belongs to him or her for the purposes of an application for a declaration under section 281. I

consider that the investors generally, and lead claimants in particular, can, to the following extent and in the following way, show that part of the Fund belongs to each of them applying ordinary principles of law. Both Mr Robb/AGA's Account 2 and Mr Kursat's Turkish Account 10 were accounts in which investors' money and non-investors' money was mixed and from which there were debits from time to time.

57. Mr Templeman has identified that as at 9 February 2004 Mr Robb/AGA's Account 2 was in credit to the amount of £303,703.44, and that a total of £6,394,452.78 was credited to that Account between 9 February 2004 and 21 October 2004, of which £1.675 million was attributable to investors' payments through Unwins or direct and a further £561,110 was attributable to money transferred from Mr Kursat's Turkish Account 10. The balance standing to the credit of that account on 21 October 2004 was £2,122,394.76 before the debit of £1.8 million paid to Mr Robb's account 1. After the payment of that sum the balance on Mr Robb/AGA's Account 2 was £322,394. A further payment of £125,000 was paid out of that account to Mr Robb/AGA's Account 1 on 25 May 2005, making an aggregate of £1,925 million paid from Mr Robb/AGA's Account 2 to Mr Robb's Account 1.

58. It is possible to attribute to particular investors the £1.675 million paid into Mr Robb/AGA's Account 2 between 9 February 2004 and 21 October 2004 through Unwins or direct. It is not possible to attribute to particular investors the £561,110 transferred to that account from Mr Kursat's Turkish Account 10 during that period. It is not disputed by NCA, however, that the £561,110 is attributable generally to investors both as a matter of evidence and principle. As regards principle, insofar as investors' money was mixed with non-investor money the assumption must be that the non-investor money was dissipated before investor money: cf *Re Hallett's Estate, Knatchbull v Hallett* (1880) 13 Ch D 696 and Snell's Equity (32nd ed) para. 30-057.

59. Accordingly, the position so far as concerns Mr Robb/AGA's Account 2 is that a total of £2,236,110 investors' money was paid in between 9 February 2004 and 21 October 2004 and there was a credit balance at that date of £2,122,394.76 immediately before the debit of £1.8 million. Again, adopting the assumption that non-investor money was dissipated first, the entirety of that credit balance is to be treated as investors' money. The balance of £113,715.24 of investors' money (viz. the difference between the total of £2,236,110 of investors' money and the credit balance of £2,122,394.76 on 21 October 2004) must also have been dissipated. The credit balance of £2,122,394.76 as at 21 October 2004 was more than the aggregate of £1.925 million transferred to Mr Robb's Account 1 in part on that day (£1.8 million) and in part on 25 May 2005 (£125,000), and so the entirety of that £1.925 million is to be treated as investors' money.

60. The fact that it is not possible to attribute to any particular investors the £561,110 investors' money transferred from Mr Kursat's Account 10 to Mr Robb/AGA's Account 2 is best resolved by treating both accounts as one for tracing purposes since payments from all investors, other than Mr Hawkins and Mr Priest, were channelled into one or other or both of those accounts. It has been established that a total of £2,956,187 investors' money was credited

to Mr Kursat's Turkish Account 10 between 1 April 2005 and 11 July 2005 (the date the Fund was paid out of Mr Robb's Account 1). A total of £775,000 was paid out of that account into Mr Robb's Account 1 during that period, in four tranches. On the footing that non-investor money was dissipated first, the whole of the £775,000 is attributable to investor money. I was not told whether it is possible to establish whether any investor money other than the £775,000 paid into Mr Robb's Account 1 had been dissipated by the time the final one of the four payments making up the £775,000 had been paid.

61. Amalgamating Mr Robb/AGA's Account 2 and Mr Kursat's Account 10 for tracing purposes means that, on the information currently before the court, there was a total of £5,192,297 total investor payments into those accounts during the relevant periods (being the aggregate of £2,236,110 paid into Mr Robb/AGA's Account 2 between 9 February 2004 and 21 October 2004 and £2,956,187 paid into Mr Kursat's Turkish Account 10 between 1 April 2005 and 11 July 2005). Out of those investor payments, a total of £2.7 million was paid into Mr Robb's Account 1 (being the aggregate of £1.925 million from Mr Robb/AGA's Account 2 and £775,000 from Mr Kursat's Turkish Account 10).

62. The tracing exercise now requires the following steps. First, it is necessary to establish what proportion of the £2.7 million payment from Mr Robb/AGA's Account 2 and Mr Kursat's Turkish Account 10 is represented by the respective payments made by each investor into those accounts.

63. Secondly, it is necessary to establish the proportion of the £3,350,951.75 in Mr Robb's Account 1 as at the date of the payment of the Fund on 22 July 2005 represented by each of the sources from which the £3,350,951.75 was derived. Those proportions are 80.57 per cent from Mr Robb/AGA's Account 2 and Mr Kursat's Turkish Account 10 taken together (£2.7 million); 4.58 per cent from Unwin's account 3 (£153,414), of which 1.44 per cent represents the proportion attributable to the investors Mr Hawkins and Mr Priest (£48,314) and 3.14 per cent represents the proportion attributable to non-investors (£105,100); 10.07 per cent from the unidentified account (£337,436); and 4.78 per cent from the unknown sources (£160,101.75).

64. The traditional way in which debits are matched to credits in the case of a dispute between several claimants to a mixed fund is by the so-called rule in *Clayton's Case*, *Devaynes v Noble* (1816) 1 Mer 572, namely that the sum first paid in is first paid out: debits are allocated to credits in the order in which they take place. That principle is, however, one of convenience and will be displaced if, for example, another approach is more practical or more consistent with the intention of those contributing to the fund: *Barlow Clowes International Ltd v Vaughan* [1992] 4 All ER 22.

65. It is common ground in the present case that, due to the complexity of the task, it would be practically impossible to match credits against debits in accordance with the principles in *Clayton's Case* so as to establish, in accordance with those principles, from which of the five sets of funds paid into Mr Robb's Account 1 and making up the £3,350,951.75 credited to that account, and in what amount from each such source, the Fund paid out of that

account on 22 July 2005 was derived. Furthermore, it was a critical finding of Mackay J (in paragraph [71] of his judgment) that all the investors believed that the money they paid would be spent solely and exclusively on the completion of their contracts. It is fair and reasonable to infer, therefore, that it is in accordance with the intention of the investors that, in the event of the impracticality of allocating credit and debits in accordance with *Clayton's Case*, the Fund should be treated as derived from the five sources making up the £3,350,951.75 in Mr Robb's Account 1 in the same proportions as they made up that amount in that account. That would be similar to the pro rata approach applied in *Barlow Clowes*.

66. It follows from the above that each of the lead claimants can establish a proprietary interest in the Fund by tracing their payments through Mr Robb/AGA's Account 2 and Mr Kursat's Turkish Account 10 into Mr Robb's Account 1. In establishing what part of the £2.7 million transferred from those accounts into Mr Robb's Account 1 is attributable to each of the lead claimants, it is again practically necessary and consistent with the inference to be drawn as to the investors' intentions to adopt a *Barlow Clowes* pro rata approach rather a traditional *Clayton's Case* analysis. In accordance with that approach, and making no distinction between the position of the additional claimants and the other investors, each additional claimant's share of the £2.7 million is to be calculated in the following way: (1) establish the percentage of the total investors' payments of £5,192,297 represented by the total payments of that additional claimant into Mr Robb/AGA's Account 2 and Mr Kursat's Turkish Account 10; (2) that same percentage is applied to the £2.7 million to establish that additional claimant's share in that sum. Each lead claimant's share of the Fund would then be that same percentage of the 80.57 per cent of the £3,350,951.75 in Mr Robb's Account 1.

67. That approach can be illustrated by the case of Mr Bruce Neill-Gourlay depicted on Diagram 2. He paid a total of £78,428, partly through Mr Robb/AGA's Account 2 and partly through Mr Kursat's Turkish Account 10. That is 1.51 per cent of the £5,192,297 investors' money credited to those accounts during the relevant periods. He therefore had a 1.51 per cent share of the £2.7 million paid from Mr Robb/AGA's Account 2 and Mr Kursat's Turkish Account 10 into Mr Robb's Account 1. The payment of £2.7 million made from Mr Robb/AGA's Account 2 and Mr Kursat's Account 10 amounts to 80.57 per cent of the £3,350,951.75 which was credited to Mr Robb/AGA's Account 1. Mr Neill-Gourlay's interest in Mr Robb's Account 1 was, therefore, 1.51 per cent of the 80.57 per cent, that is to say 1.22 per cent. He has a proprietary claim to the same percentage of the Fund since the Fund is to be treated as derived pro rata from the same sources as Mr Robb's Account 1 from which the Fund was paid.

68. Mr Robert Morris, counsel for the lead claimants, claims that Mr Neill-Gourlay and the other lead claimants are entitled to a greater share of the Fund than a proprietary interest calculated in that way. His submissions on this aspect were refined in the course of the trial. As I understood his original argument, he submitted that on a purposive interpretation of section 281 the additional claimants are entitled to the entire Fund insofar as their payments

equal or exceed the value of the Fund because section 281 should be interpreted to assist victims and to protect them to the greatest possible extent; consistently with that, the words "deprive" and "belong" should have the same wide meaning as in the Theft Act 1968; only the 71 claimants have come forward to claim an interest in the Fund and no more can come forward now in view of the time limit for such claims imposed by Chief Master Marsh; the NCA will be entitled to any part of the Fund which the court does not acknowledge "belongs" to the claimants for the purposes of section 281, and to that extent the victims will be out of pocket and only the State (through the NCA), which has suffered no loss, will benefit. Mr Morris supported his argument with references to the Theft Act, the United Kingdom's obligations under the UN Convention Against Transnational Organised Crime of 2000 ("The Palermo Convention") and statements in Parliament by Lord Falconer of Thoroton, the promoter of the Proceeds of Crime Bill in the House of Lords.

69. Some of those submissions go beyond what it is strictly necessary to decide in these proceedings. On conventional property law principles (1) the money paid by the additional claimants plainly "belonged" to them immediately prior to payment to Unwins and Mr Kursat; and (2) the money paid by the investors can be traced through Mr Robb/AGA's Account 2, Mr Kurat's Account 10 and Mr Robb's Account 1 into the Fund and so their proportionate interest in each of those funds "belonged" or "belongs" to them and represented or represents (as the case may be) their property.

70. As to the substance of that submission of Mr Morris, I regard the contention that the additional claimants were entitled to any part of the money in Mr Robb's Account 1, or are now entitled to any part of the Fund, which was never in fact derived directly or indirectly from money paid by them as not seriously arguable. I can see nothing whatever in POCA, the Theft Act, the Palermo Convention or Lord Falconer's statements in the House of Lords which would support such an extravagant result. It amounts in substance to no more than an argument that POCA should be interpreted in such a way that the State should never be able to recover under Part 5 of POCA any part of a fund of money which was obtained by a fraud, and in part of which victims of the fraud can establish a proprietary interest under section 281, if the claimants would be left out of pocket, irrespective of whether the balance of the fund was in fact derived from their payments or not. That would turn section 281 into a provision for the payment of compensation rather than a provision which recognises and enforces some kind of right, however wide, in respect of specific property of which the claimant was deprived by the fraud: cf section 283, which does not permit an application for compensation in respect of property if the court has made a declaration in respect of the property under section 281.

71. In his oral submissions in reply, however, Mr Morris argued consistently with ordinary principles of law for a much more limited enlargement of the proprietary interest of each of the lead claimants in the Fund than would be established in accordance with the tracing analysis I have described earlier. His argument was that, prior to rescission, none of the investors had a property

interest in the amounts standing to the credit of any of the relevant accounts of Mr Robb or AGA or Mr Kursat. He said there was no evidence that anyone, other than the additional claimants, had rescinded their respective transactions. He further contended that some or all of the other investors may well have been associates of Mr Robb and implicated in his fraud. It followed, he submitted, that, in accordance with the principles to which I have referred above, the assumption should be made that the money of those investors who are not additional claimants in these proceedings was dissipated, like the other funds of Mr Robb, AGA and Mr Kursat in the relevant accounts, before the traceable money of the additional claimants. On that footing, the entirety of the £2.7 million transferred from Mr Robb/AGA's Account 2 and Mr Kursat's Account 10 to Mr Robb's Account 1 should be treated as belonging only to the additional claimants and not any other investors.

72. I have no hesitation in rejecting the suggestion that the court should make an assumption that the investors other than the additional claimants were implicated in the fraudulent conspiracy of Mr Robb and AGA. I was not referred to any evidence capable of supporting such an assumption or inference.

73. I have found Mr Morris' submission on rescission, or rather its absence, by the other investors more troubling. The burden is on each of the lead claimants to prove his or her property interest in the Fund. Insofar as that depends on there having been no rescission by the investors other than the additional claimants, the burden of proof is on the lead claimants. There is no direct evidence on the point one way or the other. I have reached the conclusion, however, that on the particular facts of the present applications the probability is that the other investors have not rescinded.

74. By his order of 14 May 2014 Chief Master Marsh directed that any person seeking to make an application in these proceedings under section 281, and who was not one of the 41 persons already third parties to the proceedings, had to apply to the court no later than 4pm on 30 June 2014. He also ordered that Ison Harrison, the solicitors for the lead claimants, should take all reasonable steps to publicise the order on or through its website, other relevant websites or social media and that the NCA should also make available a copy of the order on or through its website. In the light of those matters, I consider it probable that any investor who had rescinded or wished to rescind his or her purchase contract would have applied to join these proceedings.

75. I agree with Mr Morris that, in the circumstances, the money of investors who are not additional claimants is to be treated, for tracing purposes, in the same way as other money of Mr Robb and AGA and to have been dissipated before the traceable money of those additional claimants who can establish a property interest in part of the Fund. Mr Morris did not illustrate or give any examples as to how this would affect the calculation of the property interest of the lead claimants in the Fund.

76. It plainly enlarges the interest of each lead claimant in the £2.7 million transferred from Mr Robb/Aga's Account 1 and Mr Kursat's Turkish Account 10 to Mr Robb/AGA's Account 1 and, for that reason, increases the interest of

each lead claimant in the Fund. The extent of the increase depends upon whether the aggregate payments of the additional claimants are greater or less than the £2.7 million. That has not yet been established and, indeed, may be affected by whether or not other investors seek and obtain the permission of the court to apply to join the proceedings out of time but before the proceedings are concluded.

77. The position can be illustrated again by reference to the case of Mr Neill-Gourlay. Diagram 3 shows the position if the aggregate payments of the additional claimants tracing through Mr Robb/Aga's Account 2 and Mr Kursat's Turkish Account 10 exceed £2.7 million. It assumes, purely for illustrative purposes, that the aggregate payments made by the additional claimants traceable into those accounts is £3,921,400. The total of £78,428 paid by Mr Neill-Gourlay is 2 per cent of that sum. That was also his percentage share of the £2.7 million. Mr Neill-Gourlay's share of the Fund is, therefore, 2 per cent of the 80.57 per cent of Mr Robb's Account 1 constituted by the £2.7 million, namely 1.61 per cent.

78. Diagram 4 shows the position if the aggregate payments of the additional claimants tracing through Mr Robb/Aga's Account 1 and Mr Kursat's Turkish Account 10 is less than £2.7 million. It assumes, again for purely illustrative purposes, that the aggregate payments made by the additional claimants traceable into those accounts is £2 million, which is 59.68 per cent of £2.7 million. The total of £78,428 paid by Mr Neill-Gourlay is 3.29 per cent of that sum. Mr Neill-Gourley's share of the Fund is, therefore, 3.29 per cent of the 59.68 per cent of Mr Robb's Account 1 constituted by that £2 million, namely 2.34 per cent.

79. This approach satisfies the requirements of section 281 and, in particular, the condition in section 281(3). As to section 281(3)(a), each lead claimant was deprived of the money represented by his or her interest in the Fund (and the other accounts through which the money can be traced) by unlawful conduct. That unlawful conduct was constituted by the continued retention by Mr Robb/AGA of the lead claimant's money pursuant to a criminal conspiracy from February 2005 as described by Mackay J in paragraphs [57] to [64] of his judgment.

80. Mr Cox submitted that section 281(3)(a) can only be satisfied if an applicant under section 281 can show that he or she first owned the relevant property of which they were then deprived. He questioned whether, in the case of rescission for fraud, it could be said that ownership preceded deprivation by unlawful conduct. I see no difficulty. The right or power to rescind, which arose in February 2005, was a property right (albeit not a legal or equitable interest): *Blacklocks v JB Developments (Godalming) Lt*d [1982] Ch 183; *Latec Investments Ltd v Hotel Terrigal Pty Ltd* [1965] HCA 17. The rescission, when it was effected, operated to vest in the lead claimants a property interest in their traceable money retrospectively to the date that the equity arose. In any event, giving section 281 a purposive interpretation, the continued retention of the Fund pursuant to the property freezing order is to be treated, for the purposes of section 281(3)(a), as a continuing deprivation of

the claimants of their property by, that is to say in consequence of, Mr Robb's fraud and criminal conspiracy.

81. So far as concerns section 281(3)(b), it is not in dispute that the proprietary interest of each lead claimant in the traceable proceeds of their payments was not recoverable property immediately before he or she was deprived of it.

82. So far as concerns section 281(3)(c), each lead claimant can establish a present and subsisting proprietary interest in part of the Fund.

83. Mr Cox questioned whether the lead claimants were entitled to any part of the interest which had accrued on the Fund between the time the Fund was frozen and the time they rescinded their transactions by joining the proceedings. For the reasons I have already given I do not see that this is a problem. The effect of rescission was to vest in the lead claimants retrospectively to February 2005 their property interest. On ordinary legal principles, they are entitled to interest which has accrued on their property. Mr Morris referred to section 307 of POCA but that only deals with interest on recoverable property whereas the lead claimants are concerned to claim interest accrued on their non-recoverable property.

84. One of the preliminary issues specified in Chief Master Marsh's order was whether any claim for relief under section 281 by any of the additional parties is precluded by expiry of any limitation period. Mr Cox confirmed that no limitation argument is advanced by the NCA.

85. It is also common ground that preliminary issue 8 concerning foreign law is not pursued at this trial. Without prejudice to its position in any future case, the NCA does not oppose the determination of the additional claimants' property rights on the basis that English law applies.

86. The next issue was as to costs. In the absence of the other additional claimants I am limited in what can be decided at this stage. The NCA and the lead claimants have agreed not to seek costs against each other.

87. The lead claimants would like to have an order which spreads the burden of their costs among all the additional claimants on the basis that what has been decided in this trial will assist the resolution of the claims of the other additional claimants. Mr Cox maintained that the court has no jurisdiction to exclude from the property freezing order relating to the Fund any sum for costs of the additional claimants prior to them establishing their property interest to at least the same amount. Although I have held that the lead claimants have a property interest in part of the Fund, the precise quantification of the interest of each of them will have to be determined in due course in accordance with the principles I have set out above. None of the other additional claimants has yet established a property interest in any part of the Fund.

88. I consider that Mr Cox's submission that in the circumstances the court has no jurisdiction to make an exclusion order for costs at this stage is plainly wrong. Section 245C(5) of POCA expressly recognises that the court has power to

make an exclusion from a property freezing order to enable a person to meet legal expenses that he has incurred, or may incur, in respect of proceedings under Part 5 of POCA. Section 245C(5), (6)and (8) specify conditions for the exercise of that power. It may impose other conditions under section 245C(4). Mr Cox advanced various policy considerations as to the undesirability of any such jurisdiction but the wording of section 245C is clear and unambiguous. Mr Cox also submitted that the additional claimants do not fall within the ambit of those provisions because they are not parties to the proceedings. Again, with respect to Mr Cox, that is plainly wrong. They are all parties to these proceedings for the purpose of making their respective applications under section 281. Some were originally joined as third parties. All are now constituted as "additional claimants" pursuant to the order of Chief Master Marsh. The existence of the jurisdiction is reflected in the provisions of PD – Civil Recovery Proceedings, paragraph 7A.1 of which provides that the court, when it makes an order or gives directions in civil recovery proceedings, will at the same time consider whether it is appropriate to make or vary an exclusion for the purpose of enabling any person affected by the order or directions to meet his reasonable legal costs.

89. The precise way in which the court should exercise its discretion, pursuant to the jurisdiction, is a quite different matter. The jurisdiction cannot, in any event, be exercised in favour of the lead claimants or the other additional claimants at the present time. Section 245B(5) provides that, before exercising its power to vary a freezing order, the court must give the parties to the proceedings and any other person who may be affected by its decision an opportunity to be heard. Paragraph 7.2 of the Practice Direction requires the application for the variation to be served on all such persons. My understanding is that those provisions have not been satisfied at the present time. Furthermore, paragraphs 7.3 and 7A of the Practice Directions specify the evidence to be given in support of any such application. Those provisions have also not been satisfied at the present time.

90. Mr Morris submitted that those provisions in the Practice Direction only apply to an application for legal costs out of the Fund by Mr Robb, as the respondent whose conduct was unlawful, and not to the additional claimants who seek to exclude their property from what is recoverable by the NCA. The Practice Direction does not in terms make that distinction, and I cannot see any reason to imply such a distinction. Whether the Practice Direction has any relevance in relation to the appropriate order for costs as between the additional claimants once all the section 281 applications have been determined is a different matter and one which cannot be determined without permitting the other additional claimants to make submissions.

91. For all the above reasons, it is necessary to adjourn the determination of any application by the lead claimants as to the costs of this trial.

92. Finally, on this issue of costs, I should add I was not referred to any of the provisions of the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005 made pursuant to section 286A of POCA.

93. Pursuant to orders for costs and variation of the property freezing order already made in these proceedings in its favour, the NCA has withdrawn part of the Fund to meet its costs and part of the Fund has been paid to Mr Robb to meet his legal costs. No order has been made as to whether those costs should be borne by the entire Fund or only that part comprising recoverable property (i.e. not any part in respect of which the additional claimants obtain declarations under section 281). Mr Cox did not object to an order that the NCA's costs paid out of the Fund be borne by that part of the Fund which is recoverable property. He submitted that the part paid out to meet Mr Robb's costs should, however, be deducted from the Fund as a whole on the footing that all the additional claimants as well as the NCA will have benefited from the NCA bringing the proceedings.

94. It is consistent with POCA, and in particular the statutory exclusion of victim's property from the proceeds of unlawful conduct confiscated by the State, that both NCA's costs and those of Mr Robb should be payable out of recoverable property if that is sufficient to bear them. So far as concerns the part of the Fund paid out to Mr Robb for his costs, that is also consistent with the general principle that the fraudster is assumed to have dissipated his money before that of his victims.

1. Whether the Lead Claimants were 'deprived' of the property they claim, or of property which it represents, by unlawful conduct which occurred after 31 January 2005;

2. Whether there was unlawful conduct upon which the Lead Claimants may rely prior to 1 February 2005;

3. Whether and to what extent the Lead Claimants may rely upon the judgment of the court in the trial in the proceedings dated 30 March 2012 to establish unlawful conduct in 1) and 2) above;

4. What must be established to demonstrate that the 'property' upon which the Lead Claimants rely was or 'represents' property of which they were deprived by unlawful conduct to satisfy the condition in s 281(3)(a) of the Act;

5. Whether for the purposes of their claims under section 281 of the Act the Lead Claimants need to have, and have, rescinded their purchase contracts.

6. What is the nature of the claim the Applicants must establish in order to satisfy the condition in s.281(3)(c) of the Act that "*the property he claims belongs to him*";

7. Whether the monies held in the account at Nat West Bank No 39524426 sort code 60-00-01 ("the Account") includes 'property' which 'belongs to' any of the Lead Claimants within the meaning of s.281(3)(c) of the Act. and, if so, what proportion of the monies in the Account belongs to each of them;

8. Whether any of the above matters fall to be determined by reference to any, and if so which, foreign law.

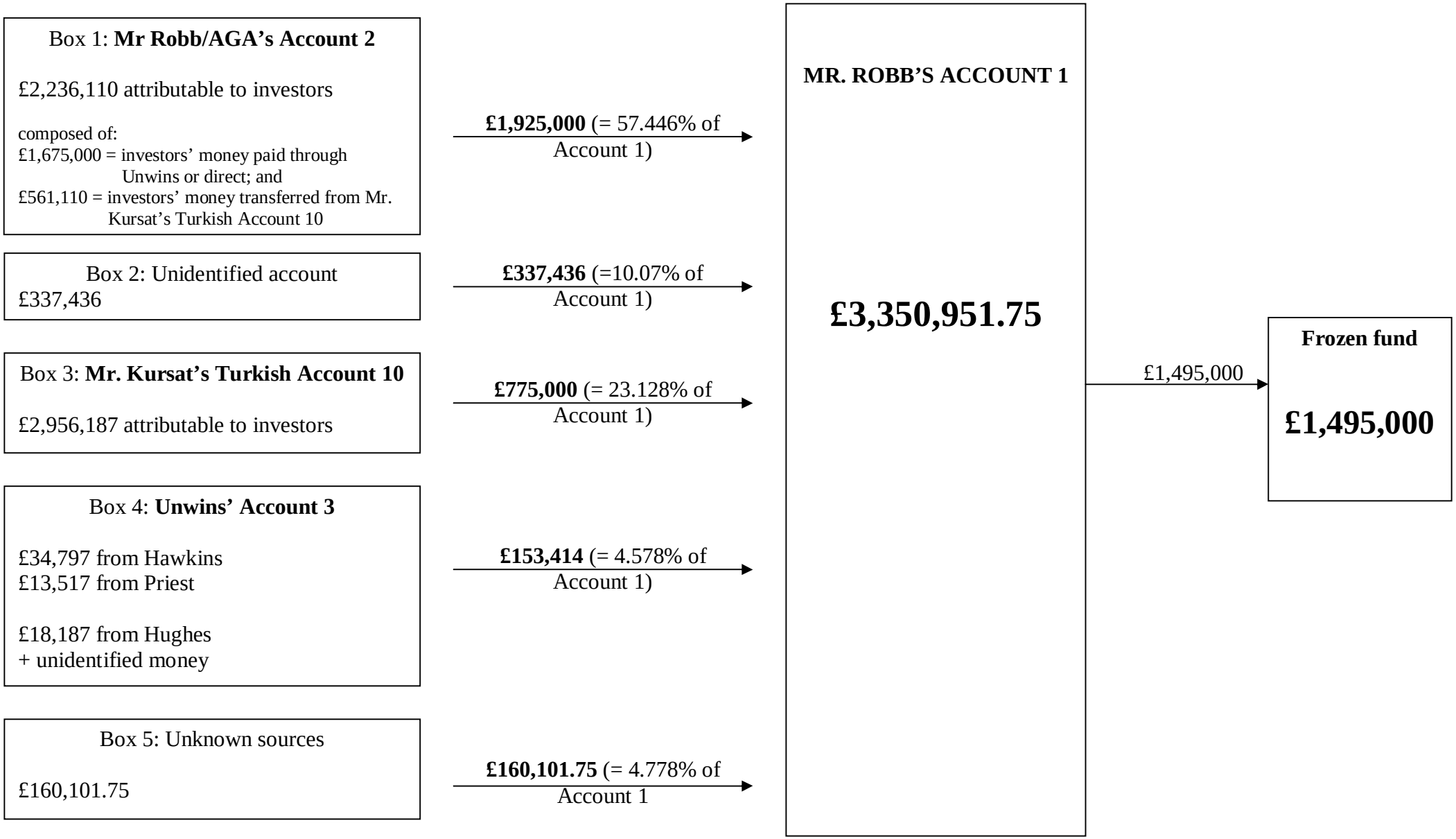
9. If the total amount of claims under s.281 by all Additional Parties to this claim against the monies in the Account exceeds the amount held in the Account how are the monies to be apportioned as between the Additional Parties;

10. Whether any claim for relief under s 281 by the Lead Claimants or any Additional Parties is precluded by expiry of any limitation period or otherwise.

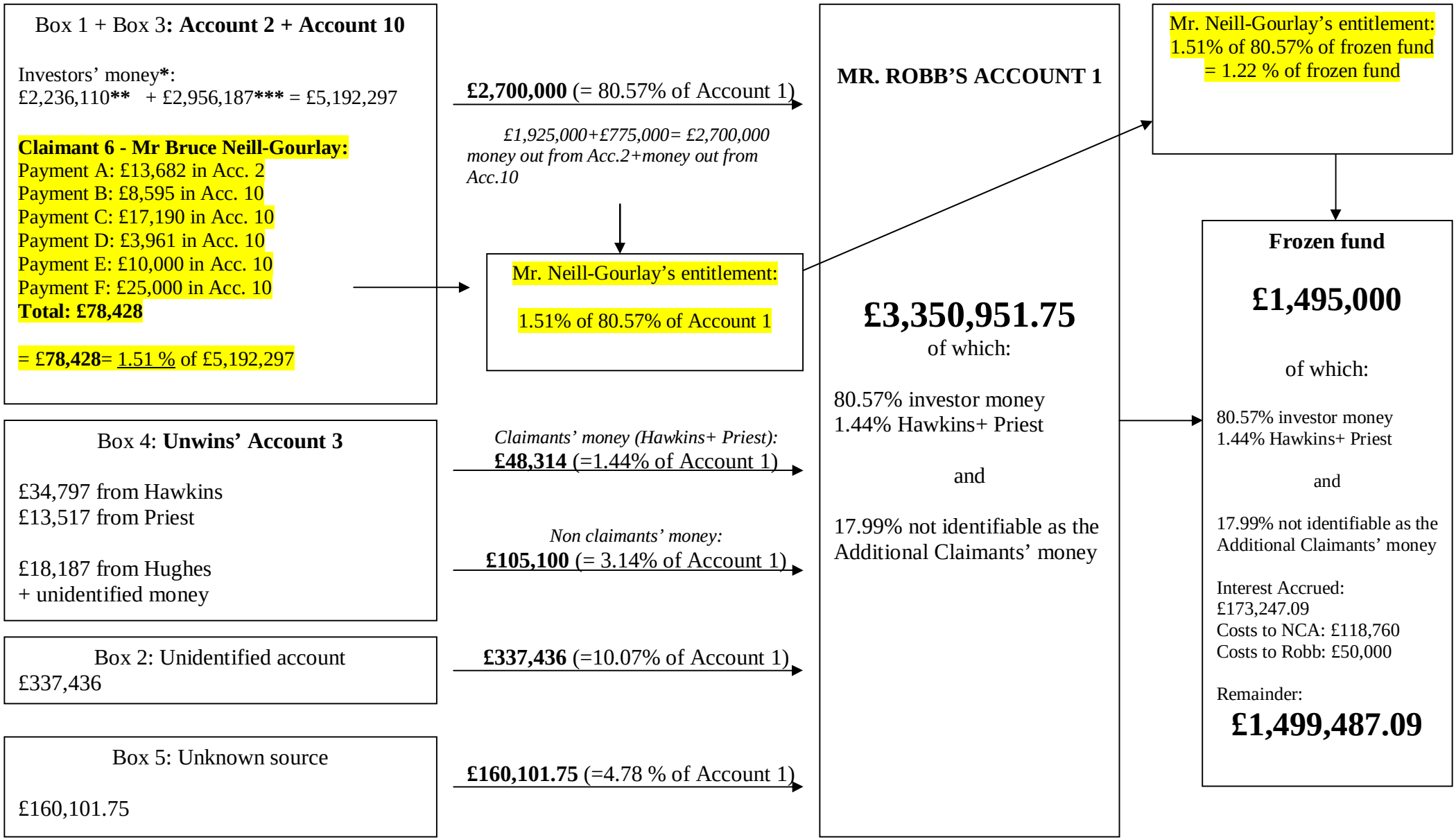
11. Whether any part of the Lead Claimant's or Additional Parties' costs of bringing their Additional Claims may lawfully be paid out of any part of the Account which does not 'belong to them' and is (or may be) 'recoverable property' within the meaning of the Act.

7

SIMPLIFIED VERSION OF THE GRAPHIC HANDED IN COURT
DIAGRAM 1



EXAMPLE OF TRACING (MR. BRUCE NEILL-GOURLAY)
DIAGRAM 2

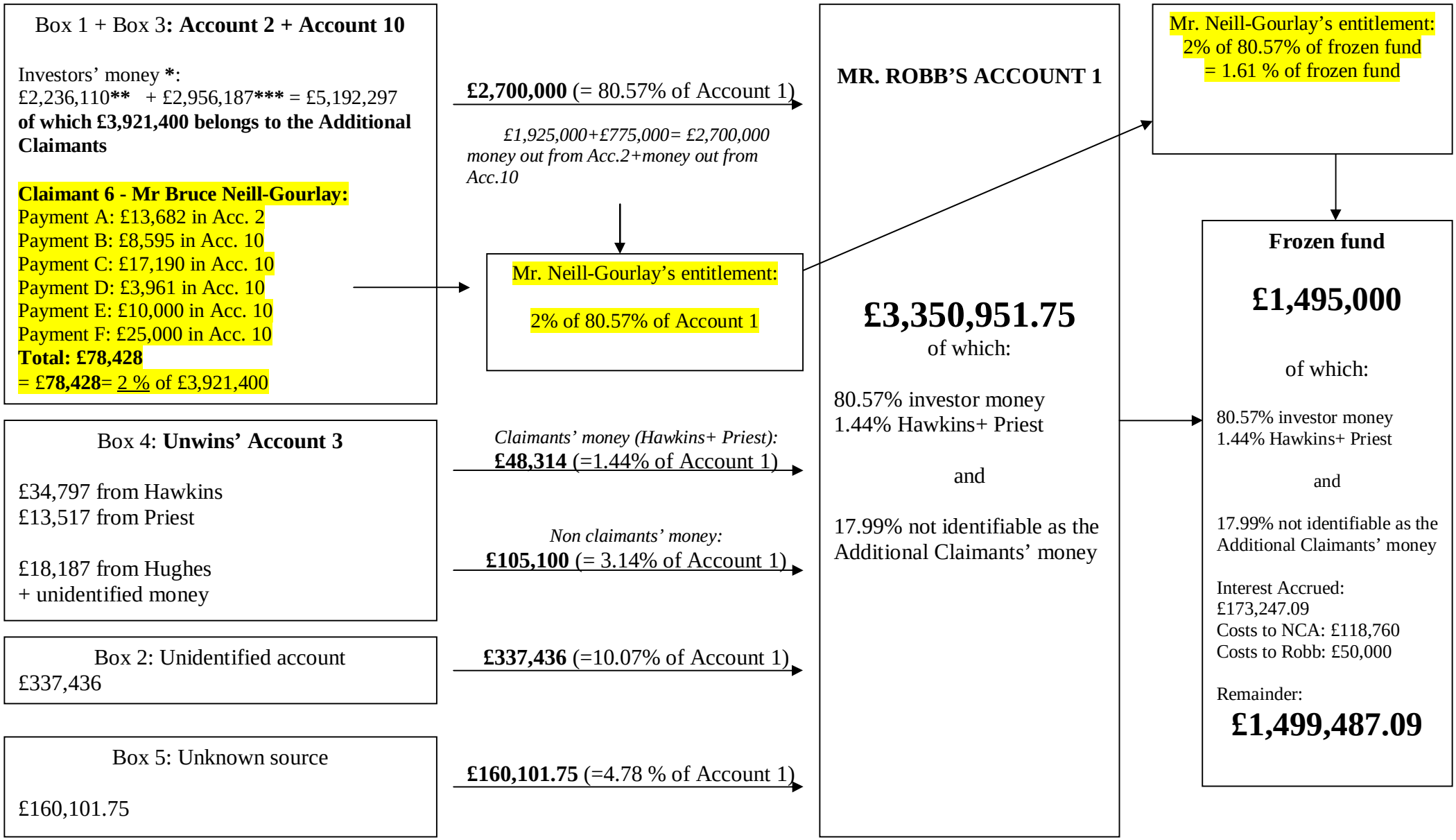


Footnotes: * Investors' money refers to all investors including the Additional Claimants; the figure was deemed not to represent any of the fraudster's money because at the point of the transfer of the £2.7 mil only £300k were left in the account, which was still short of what the investors contributed; the fraudster's own money was deemed to have been dissipated first

** £2,236,110 = investors' money from Acc. 2 = £1,675,000 + £561,110

*** £2,956,187 = investors' money into Acc. 10 related to Amaranta, Hz Omer and Karmi paid before the 11 July 2005 (final date monies were paid out to Acc. 1).

EXAMPLE OF TRACING (MR. BRUCE NEILL-GOURLAY): A DIAGRAM 3



Footnotes: * Investors' money refers to all investors including the Additional Claimants; the figure was deemed not to represent any of the fraudster's money because at the point of the transfer of the £2.7 mil only £300k were left in the account, which was still short of what the investors contributed; the fraudster's own money was deemed to have been dissipated first

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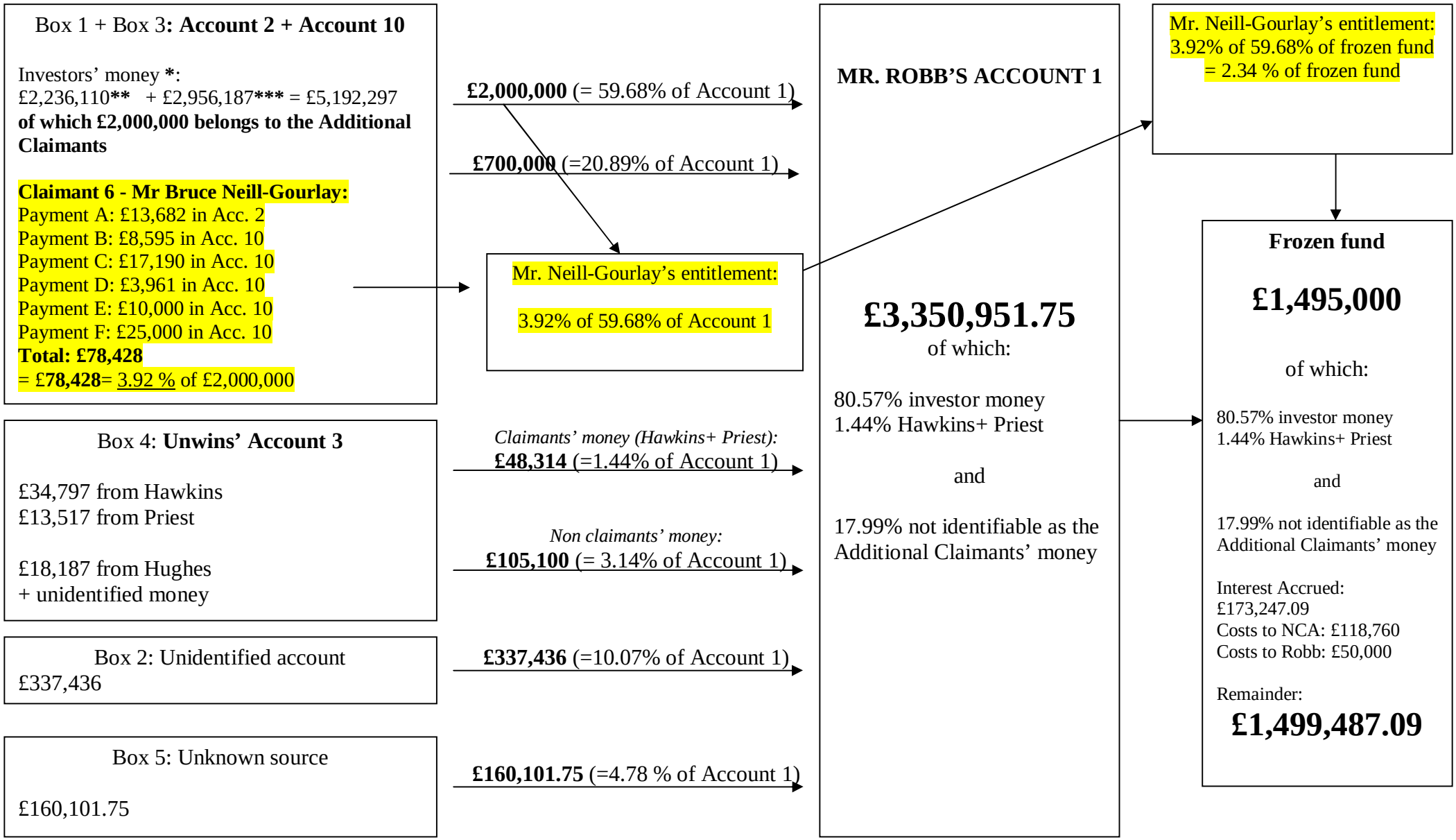
EXAMPLE OF TRACING (MR. BRUCE NEILL-GOURLAY): B
DIAGRAM 4



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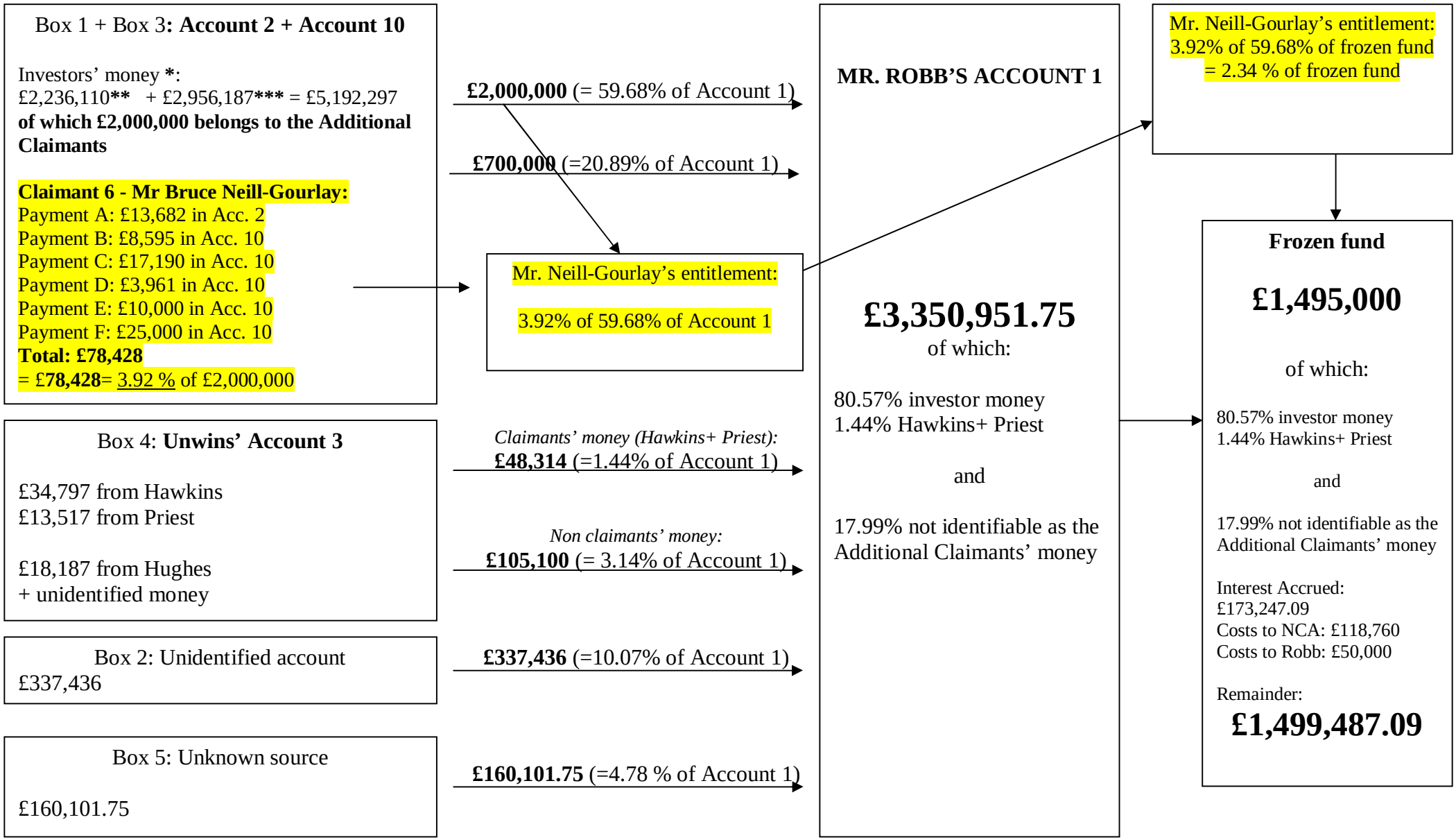
EXAMPLE OF TRACING (MR. BRUCE NEILL-GOURLAY): B
DIAGRAM 4



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** £2,236,110 = investors' money from Acc. 2 = £1,675,000 + £561,110

*** £2,956,187 = investors' money into Acc. 10 related to Amaranta, Hz Omer and Karmi paid before the 11 July 2005 (final date monies were paid out to Acc. 1).