Neutral Citation Number: [2021] EWHC 1122 (Ch)

Case No: BL-2018-000544

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

7 Rolls Building, Fetter Lane
London, EC4A 1L

Date: 30 April 2021

Before:

MR JUSTICE ZACAROLI

Between:

(1) TONSTATE GROUP LIMITED **(2) TONSTATE EDINBURGH LIMITED** **(3) DAN-TON INVESTMENTS LIMITED** **(4) ARTHUR MATYAS**	**Claimants**
-and-	
(1) EDWARD WOJAKOVSKI **& 11 others**	**Defendants**
-and-	
CANDEY LIMITED	**Applicant in section 73 Application**
-and-	
QUASTUS HOLDINGS LIMITED **MASTEVE INVESTMENTS LIMITED** **IQ EQ JERSEY LIMITED** **(as trustee of the Tutella Trust)** **NADINE WOJAKOVSKI**	**Respondents to Property Transfer Application**
-and-	
RAYDENS LIMITED **(trading as Rayden Solicitors)** **KEIDAN HARRISON LLP**	**Respondents to Disclosure Application**

Andrew Fulton QC and Sam Goodman (instructed by **Rechtschaffen Law**) for the **Claimants**
Benjamin Williams QC and Stephen Ryan (instructed by **Candey Limited**) for **Candey**, the **Applicant in the Section 73 Application**
Andrew Dinsmore (instructed by **Keidan Harrison LLP**) for **Keidan Harrison LLP**
Leonora Sagan (instructed by **Rayden Solicitors**) for **Raydens Limited**
Mr Wojakovski appeared in person

Hearing dates: 22 and 23 April 2021
Further written submissions: 26 April 2021

APPROVED JUDGMENT

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10.00 am on 30 April 2021.

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MR JUSTICE ZACAROLI

Mr Justice Zacaroli:

1. This judgment deals with three applications made in the context of long-running proceedings involving the Tonstate group of companies and Mr Edward Wojakovski ("Mr Wojakovski"). A brief history of the proceedings is provided below.

2. The first (the "Section 73 Application") is an application by Candey Limited ("Candey"), solicitors for Mr Wojakovski, for the grant of a legal charge under section 73 Solicitors Act 1973 over 22,500 ordinary shares (the "Shares") in Tonstate Group Limited ("TGL").

3. The second (the "Disclosure Application") is an application by TGL and others for disclosure of information and documents relating to the funding of solicitors acting for Mr Wojakovski in other proceedings.

4. The third (the "Property Transfer Application") is an application for the transfer of legal title of certain properties whose beneficial title is vested in TGL or another company in the Tonstate group.

1. Section 73 Application

1.1 Introduction

5. Candey's application under section 73 is based on its claim to an equitable charge over the Shares as security for fees said to be due from Mr Wojakovski pursuant to a damages-based agreement entered into between it and Mr Wojakovski on 20 September 2019 (the "DBA"). The DBA related to all of the underlying proceedings. Candey contends that the Shares represent assets recovered and/or preserved for Mr Wojakovski as a consequence of its work representing Mr Wojakovski in those proceedings.

6. There is also a cross-application by the claimants in at least some of the underlying actions (who I will refer to for convenience as the "Claimants") for a declaration that the DBA is unenforceable, or that no payment has accrued under it, or that Candey is in any event not entitled to a charging order over the Shares in priority to the Claimants.

7. There is a long and complicated background to the underlying litigation. There are three actions:

   (1) Action number BL-2018-000544, a derivative action in which the claimants, principally Tonstate Group Limited ("TGL") and other companies in the Tonstate Group and companies in a related group known as "THH Group", seek the return of money wrongfully extracted from them by the first defendant, Mr Wojakovski (the "Main Action");

   (2) Action number BL-2019-000304, in which the claimants, Mr and Mrs Matyas, seek the rescission of transfers of shares in TGL made by them to Mr Wojakovski (the "Shares Claim"); and

(3) Action number BL-2018-002541, an unfair prejudice petition in which Mr Wojakovski seeks various orders against Mr and Mrs Matyas and other entities in the Tonstate Group (the "Petition").

8. I provided a summary of the background in a judgment dated 28 April 2020, in relation to an application for a debarring order made by the Claimants against Mr Wojakovski: [2020] EWHC 1004 (Ch). For convenience, I set out paragraphs 3 to 8 of that judgment:

> "3. By way of very brief background, the Tonstate Group is a group of companies that have been involved in the property investment business for over a quarter of a century. Mr Wojakovski was formerly married to Mr Matyas's daughter. The entire group is effectively deadlocked, as a result of the current dispute between Mr Wojakovski (who is the beneficial owner of 50% of the group) and Mr Matyas (who, with his wife, is the beneficial owner of the other 50% of the group).
>
> 4. It is common ground that both Mr Matyas and Mr Wojakovski had, for some years, been extracting funds from the Tonstate Group without lawful authorisation. Mr Wojakovski contends that all of the extractions that he made were done with Mr Matyas' knowledge and consent. Mr Matyas denies this. In light of Mr Wojakovski's admission that the extractions made by him were done for the purpose of defrauding the revenue, I concluded (for reasons set out in a judgment dated 5 December 2019) that even if all the shareholders in the Tonstate Group had consented to the extractions, Mr Wojakovski's defence based on the Duomatic principle was bound to fail.
>
> 5. There being no other defence raised to the Main Claim, on 20 November 2019 I therefore granted judgment in the Main Action against Mr Wojakovski for the sum of £12,994,642.43, being the sum of the monies he admitted he had wrongfully extracted from the Tonstate Group companies. In addition an Account was ordered against him of all payments wrongfully extracted from the Tonstate Group companies. These orders were temporarily stayed.
>
> 6. Subsequently, Mr Matyas consented to an Account being ordered against him in the same terms as that ordered against Mr Wojakovski and consented to repaying such amounts as he accepted he had wrongfully extracted from the companies. This was formalised in an order dated 16 January 2020, recording various matters either agreed or determined at a case management conference on that date. Among other things, in that order:

i) I directed a trial of the Shares Claim, along with the trial of certain claims made by Mr Wojakovski in the Main Action (the "Additional Claims");

ii) The Petition was stayed pending determination of the above claims;

iii) The stay on payment of the judgment debt owed by Mr Wojakovski was extended until 31 March 2020;

iv) Mr Wojakovski was restrained from dealing with any of the funds extracted from the Tonstate or THH companies or their proceeds;

v) Directions were given in relation to the taking of the mutual Accounts by Mr Matyas and Mr Wojakovski, including directions for disclosure.

7. The case management conference was restored for a further hearing on 2 March 2020. On that occasion:

i) The trial of the Shares Claim and the Additional Claims was listed for a hearing commencing on 18 June 2020 with a time estimate of 12 days, and directions were given for further disclosure, witness statements and other procedural matters relating to the trial;

ii) Mr Wojakovski was ordered to pay 85% of the total costs of (1) the case management conference held on 16 January 2020 and (2) the costs of all of the applications heard at the case management conference on 16 January 2020 or withdrawn by Mr Wojakovski. These costs were summarily assessed in the sum of £61,740.64. They were apportioned as to £23,152.74 in favour of TGL and as to £38,587.90 (plus VAT of £7,717.58) in favour of Mr Matyas. Those sums were payable by 30 March 2020.

iii) Mr Wojakovski was ordered to provide security for costs in respect of the defence of the sixth and seventh respondents to the Petition, in the sum of £135,244.90, such sum to be paid into court by 30 March 2020.

8. Mr Wojakovski has failed to pay any of the sums which fell due for payment by him on 30 March or 31 March 2020 (the judgment debt in the Main Action, the costs order of 2 March 2020 and the security for costs ordered on 2 March 2020)."

9. Subsequent to that judgment, the Shares Claim and the Additional Claims were settled on 20 May 2020. So far as the Shares Claim is concerned, it was settled on terms that Mr Wojakovski's shares in TGL were transferred to Mr Matyas, Mrs Matyas, and to Nadine Wojakovski, save for 22,500 (i.e. the Shares) which he was entitled to keep.

10. On 2 June 2020, the Claimants filed an application for an interim charging order over the Shares, in respect of the judgment debt obtained in the Main Action. On 7 July 2020 Candey consented on behalf of Mr Wojakovski to a final charging order. The charging order was made final (by consent) by an order dated 21 July 2020.

11. On 18 August 2020 a bankruptcy petition against Mr Wojakovski was presented by Mrs Rachel Robertson, who had been joined as a defendant to the Petition. On 15 October 2020 I made a bankruptcy order on that petition.

1.2 The issues

12. The issues in this application fall into three parts: (1) whether the DBA is unenforceable because it fails to comply with the Damages-Based Agreements Regulations 2013 (the "Regulations"); (2) whether any entitlement to payment has arisen in favour of Candey under the DBA; and (3) whether Candey is entitled to a charge over the Shares and, if so, whether such a charge has priority over the final charging order over the Shares in favour of the Claimants.

13. The application was listed for a one-day hearing. Mr Williams QC, who appeared with Mr Ryan for Candey, completed his submissions on the first two issues shortly before the short adjournment. It became apparent that it would be impossible to deal properly with all three issues within the day allotted for the hearing. Accordingly, with the agreement of the parties, the allotted time was spent dealing only with the first two issues, with a decision as to whether to proceed to hear submissions on the third issue being deferred until after judgment. In the event, submissions on issues 1 and 2 took until beyond the end of the court day.

14. Of the two issues considered in this judgment, logically the first to consider is whether Candey has any entitlement to payment under the DBA.

1.3 Has any entitlement to payment arisen under the DBA?

15. The DBA is a one-page agreement, comprising nine short paragraphs. Although not numbered, for convenience I will adopt Mr Williams' approach of referring to them as paragraphs 1 to 9.

16. The document annexes Candey's standard terms and conditions. The terms and conditions are in certain respects inconsistent with the DBA. Where that is so, Mr Williams submitted that the bespoke terms of the DBA take precedence over the standard terms. I agree, and did not understand Mr Fulton QC, who appeared with Mr Goodman for the Claimants, to dissent from that view.

17. By paragraph 2, Candey is entitled, in the event that Mr Wojakovski recovers any "Proceeds", to receive the "Payment". Proceeds are defined as:

> "…you recover damages, monies, costs incurred by your previous lawyers, other sums and/or derive any benefits (excluding our hourly rate costs and Counsel's fees) in or arising out of all of the current Court proceedings…"

"Payment" is defined as "25% of the Proceeds + VAT if applicable". The Payment was "net of any historic tax liabilities due to HMRC by Tonstate Group Companies, and any tax related to these companies should HMRC pursue you."

18. Paragraph 5 of the DBA states, however, that "If we [Candey] are unable to recover any monies you will not be liable to pay us anything."

19. Paragraph 4 (as required by Regulation 3(c) of the Regulations) states the reasons for setting the payment at that level. That was because: "it reflects our risk of not being paid anything even if you succeed at trial, the complexity of the matter, the emotional war that exists between the parties, the volume of material and our liability to pay Counsel's fees." This needs to be read together with Paragraph 7 of the DBA, which provides that Candey would provide in-house counsel to act for Mr Wojakovski at cost.

20. On 12 May 2020 the definition of Payment in the DBA was amended to "29% of the Proceeds + VAT if applicable".

21. Candey contends that notwithstanding the facts that Mr Wojakovski resoundingly lost most of the litigation, he is subject to a judgment to pay at least £13 million, and he failed to recover anything at all from the Claimants or any other party, the retention of the Shares is a benefit derived in or arising out of the proceedings within the meaning of paragraph 2 of the DBA.

22. Mr Williams submitted that this could properly be described as such a benefit because Mr and Mrs Matyas sought to deprive Mr Wojakovski of all of the shares held by him in TGL, but by the settlement agreement Mr Wojakovski had successfully resisted that claim as to one-quarter of his shares. Mr Williams also points to the fact that, although in some aspects of the overall proceedings Mr Wojakovski sought relief from other parties, in the Shares Claim he was solely a defendant, and made no claim for anything. Paragraph 9 of the DBA provides that the agreement was equivalent to a multiplicity of retainers intended to cover at least 15 different claims, and was divisible and severable. Mr Williams submitted that, as applied separately to the Shares Claim, the DBA made no commercial sense unless retention of the Shares was construed as a benefit derived in or out of the Shares Claim.

23. I am unable to accept these arguments. I consider that the phrase "derive any benefits from the litigation" in paragraph 2, when read in the context of the DBA as a whole, in particular paragraphs 5 and 8, is limited to such benefits as Mr Wojakovski *recovered* from another party in or as a consequence of the litigation.

24. Mr Wojakovski's ownership of the Shares pre-dated the proceedings and is not aptly characterised as a benefit derived from the proceedings. At most, what he derived from the proceedings was the avoidance of a detriment to the extent that he retained the Shares. This reading is supported by the fact that the agreement is entitled a "Damages Based Agreement", since the essential feature of damages is that they are recovered from another party in the proceedings.

25. The reference in paragraph 5 to the fact that Candey would be entitled to no payment at all if Mr Wojakovski did not recover any monies is important as an indication of the parties' intentions as to the scope of the DBA.

26. Mr Williams submitted that it is paragraph 2 (which contains the definition of Proceeds) and not paragraph 5 that is the relevant operative provision. Moreover, paragraph 5 was merely describing one of the consequences of the fact (as set out in paragraph 4) that Candey was at risk of not being paid anything "even if you succeed at trial". Paragraph 5 should be read, therefore, as applying only to the circumstances that a claim for monies was made by Mr Wojakovski but did not result in any monies actually being recovered. He pointed to the fact that paragraph 5 referred only to recovering "monies" whereas paragraph 2 clearly encompassed recoveries of a broader nature. For these reasons, the breadth of paragraph 2 could not be read down by paragraph 5.

27. Mr Fulton submitted that paragraph 5 is to be read as a pre-condition to Candey's entitlement to payment, beyond the condition laid down in paragraph 2: it meant that if any non-cash recoveries were made in the litigation, Candey would still have no entitlement to be paid anything unless and until those non-cash recoveries were converted into cash.

28. I do not accept Mr Fulton's reading of paragraph 5. I agree with Mr Williams that Candey's entitlement to payment is defined by paragraph 2 and that paragraph 5 is intended to be a description of the effect of the DBA – in the manner of a provision "for the avoidance of doubt", emphasising for Mr Wojakovski's benefit what must occur before Candey is entitled to any payment at all.

29. Neither, however, do I accept Mr Williams' submission that paragraph 5 is therefore irrelevant to the construction of paragraph 2 nor his submission that it is intended to relate only to such part of Mr Wojakovski's claims that seek to recover money.

30. It is true that in referring to "monies", paragraph 5 identifies only one of the types of recovery that constitute Proceeds in paragraph 2. The drafting of the DBA is poor in a number of respects, as Mr Williams pointed out. The important point in paragraph 5 however, is not the description of that which might be recovered, but the point that *recovery* is an essential pre-requisite to Candey's entitlement to payment.

31. The fact that, in seeking to make that point, the document has used an infelicitous shorthand for what might be recovered is understandable in the context of what Mr Wojakovski was in fact claiming.

32. Across the various proceedings the essence of Mr Wojakovski's case was that, while he admitted to having made wrongful extractions from the Tonstate group companies, Mr Matyas had done the same, there was an agreement between them for an overall reckoning, and this would result in a substantial payment in Mr Wojakovski's favour. In substance, his claims were indeed for money.

33. It is true, as Mr Williams pointed out, that Mr Wojakovski's claim in the Petition was for an order that he be entitled to buy out Mr Matyas' shares, and at a price that reflected the unfairly prejudicial conduct complained of. At the time of the entry into the DBA, however, that was unlikely to have been at the forefront of the parties' minds. Firstly, because the "benefit" to Mr Wojakovski in that event was not the shares themselves, but the right to expend money in order to purchase shares. Even though it may be that the value of the shares acquired would be greater than the price which Mr Wojakovski would have to pay for them, it would be very difficult to place a value on that benefit for the purposes of working out the "Payment" under the DBA. Secondly, because Mr Wojakovski's financial position made it unlikely that he would be in a position to find the money to acquire Mr Matyas' shares. I do not suggest that an order that Mr Wojakovski be permitted to acquire shares, if made in the Petition, would not be a benefit derived from the proceedings; I note the above merely as a likely explanation for paragraph 5 having used, as the shorthand for what might be recovered in the proceedings, "monies".

34. More importantly, although I agree that paragraph 5 is not an operative provision, the fact that, in emphasising the key effect of the DBA, it refers to the importance of *recovering* something supports the conclusion that Proceeds, in paragraph 2, is intended to encapsulate recovery made against other parties in the litigation.

35. This view is reinforced by paragraph 8 of the DBA, which provides that in the event that Mr Wojakovski terminates the agreement, he will be liable (either for the Payment, or for Candey's hourly rate) "…if you go on to recover any monies or derive any benefit <u>from your opponents</u>" (emphasis added).

36. As to Mr Williams' reliance on paragraph 9 of the DBA and the fact that the DBA made no commercial sense in relation to the Shares Claim as a separate and independent set of proceedings, I do not think that this is a strong pointer either way, for two reasons. First, one of the elements in the definition of Proceedings is the recovery of "costs incurred by your previous lawyers". Mr Wojakovski had instructed lawyers in connection with the Shares Claim prior to Candey's involvement so that, if he were to succeed in the Shares Claim and receive a costs order in his favour, such costs would be caught by the Proceeds, and thus the Payment, under the DBA. Second, the DBA is drafted as an umbrella agreement. It provides for a single entitlement to "Payment", calculated by reference to "proceedings" irrespective of which set of

proceedings recovery was made in. From Mr Wojakovski's perspective, the importance of including the Shares Claim within the ambit of the DBA was to ensure that his only obligation to pay any sum in respect of Candey's fees for work done in that claim, was if Proceeds were recovered in any of the proceedings. That was itself a commercial justification for including the Shares Claim in the DBA.

37. Finally, it is relevant to note that if it was contemplated that the Shares would be "Proceeds", the amount to be paid to Candey could not have been worked out under the terms of the DBA without the need to imply further provisions as to how that would be done and, even then, was likely to have taken many years. That is because of the provision requiring potential tax liabilities to be netted off from the Payment, quoted in [17] above.

38. The drafting of this sentence of the DBA is particularly unclear. On its face, given the positioning of the defined term "Payment" it requires the tax liabilities to be netted off against the amount which is equal to 29% of the Proceeds. Also, given the position of the comma in the sentence, it appears to require the netting off of both (a) historic tax liabilities of the Tonstate Group companies and (b) any tax related to those companies that is due from Mr Wojakovski, if HMRC were to pursue him. Mr Williams contended that in order to make sense of the provision: (1) it applied only to tax liabilities of Mr Wojakovski; (2) it required a netting off of those tax liabilities only if HMRC was, at the time that Payment otherwise fell due to Candey, "pursuing" or, perhaps, had determined to pursue, Mr Wojakovski; and (3) any tax liabilities were netted off against the whole of the Proceeds, with 29% of the remainder constituting the Payment.

39. I do not need to resolve these points of construction but, even accepting it is to be construed as Mr Williams suggests, the amount of the payment due to Candey could only be established if a value is ascribed to the Shares from which the tax liabilities could be netted off. A specific sum cannot be netted off against a non-cash asset of uncertain value. At the time of the execution of the DBA, to the knowledge of the parties to it, there was enormous uncertainty over the value of the Shares. This uncertainty stemmed in part from the lack of information (much of which was due to be provided by Mr Wojakovski) relating to the extractions from the Tonstate group companies and the internal accounting issues as between companies in the group. In addition, however, there was considerable uncertainty over the tax liabilities of the group. In a letter from Candey dated 14 November 2019, it was stated that the tax liability of the Tonstate group companies was likely to run into "tens of millions of pounds".

40. Since the value of the Shares could not be determined until the tax position of the companies had been resolved, potentially for many years, that meant that any amount due to Candey under the DBA similarly could not be identified for the same length of time, if the Proceeds included the Shares. That is so whether or not actual monies were recovered by Mr Wojakovski as well, because the Payment is defined as 29% of (all of) the Proceeds. The absence of any mechanism to address that issue, for example as to when and as at what date any shares retained by Mr Wojakovski would be valued, and how any

disputes over valuation would be resolved, suggests it is unlikely the parties envisaged that Proceeds would include any shares retained by Mr Wojakovski.

1.4 Enforceability of the DBA if Proceeds includes the Shares

41. Mr Fulton also contended that, even if the DBA was to be construed so as to entitle Candey to payment because Mr Wojakovski retained the Shares, then it was unenforceable because it was prohibited by the Regulations.

42. His starting point is that, as was submitted in the recent case of *Zuberi v Lexlaw* [2021] EWCA Civ 16, DBAs are permitted by statute as "islands of legality in a sea of illegality": see [26] of the judgment of Lewison LJ.

43. Section 58AA of the Courts and Legal Services Act 1990 ("section 58AA", inserted by section 45 of the Legal Aid, Sentencing and Punishment of Offendors Act 2012 – "LASPO") provides, so far as relevant, as follows:

> "(1) A damages-based agreement which satisfies the conditions in subsection (4) is not unenforceable by reason only of its being a damages-based agreement.
>
> (2) But… a damages-based agreement which does not satisfy those conditions is unenforceable.
>
> (3) For the purposes of this section—
>
> > (a) a damages-based agreement is an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services which provides that—
> >
> > > (i) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided, and
> > >
> > > (ii) the amount of that payment is to be determined by reference to the amount of the financial benefit obtained
>
> (4) The agreement—
>
> > (a) must be in writing;
> >
> > (aa) …
> >
> > (b) if regulations so provide, must not provide for a payment above a prescribed amount or for a payment above an amount calculated in a prescribed manner;

> (c) must comply with such other requirements as to its terms and conditions as are prescribed; and
>
> (d) ...
>
> (5) Regulations under subsection (4) are to be made by the Lord Chancellor and may make different provision in relation to different descriptions of agreements.
>
> …
>
> (7) In this section—
>
> "payment" includes a transfer of assets and any other transfer of money's worth (and the reference in subsection (4)(b) to a payment above a prescribed amount, or above an amount calculated in a prescribed manner, is to be construed accordingly); …"

44. In essence, a DBA is not enforceable unless it complies with the requirements of ss.(4). For present purposes, the relevant parts of ss.(4) are: (b), it must not provide for a payment above a prescribed amount or for a payment above an amount calculated in a prescribed manner; and (c) it must comply with such other requirements as to its terms as are prescribed.

45. In support of his contention that the DBA fails to comply with section 58AA(4), Mr Fulton relies on the following aspects of the Regulations:

(1) By Regulation 4(1), a DBA must not require an amount to be paid by the client other than "the payment" (net of certain amounts) and expenses incurred by the representative;

(2) "payment" is defined as "that part of the sum recovered in respect of the claim or damages awarded that the client agrees to pay the representative";

(3) Accordingly, aside from expenses incurred by the representative, the amount that a client can be obliged to pay to the representative is limited to a part (which by Reg 4(3) must not be more than 50%) of the "sum recovered" either in respect of the claim or damages awarded;

(4) It is accordingly a pre-requisite to there being an obligation on a client pursuant to a permitted DBA that a "sum" is "recovered" by the client;

(5) That is supported by Regulation 4(3) which limits the amount of a payment under a DBA to an amount equal to 50% of "…the sums ultimately recovered by the client."

46. In aid of this construction of the Regulations, the Claimants rely on:

(1) the Explanatory Memorandum to the Regulations, paragraph 2.1 of which describes a DBA as a private funding arrangement between a representative and his client whereby the representative's agreed fee is

contingent upon the success of the case "and is determined as a percentage of the compensation received by the client" (emphasis added);

(2) The Explanatory Note to the Regulations, which describes a DBA as a type of 'no win, no fee' agreement under which a representative can recover "an agreed percentage of a client's damages if the case is won…";

(3) The heading of the Regulations, which refers to "Damages-Based Agreement";

(4) The following statement of the Minister of State, Lord McNally, on 26 February 2013 in reporting to the House of Lords on the draft Regulations (in response to a question whether a DBA could be used by a defendant to proceedings):

> "I am informed that neither the Act nor the regulations enable defendants to use DBAs, not least because a DBA is enforceable only where the agreement makes provision for the payment of the fee from damages awarded."

(5) A letter dated 5 March 2013 from Lord McNally (following up on his promise to consider the point further) and placed in the library of both houses, saying:

> "I can confirm that neither the LASPO Act nor the regulations enable defendants to use DBAs, not least because a DBA is only enforceable where the agreement makes provision for the payment of the fee from damages awarded. DBAs are only one form of funding, and lawyers will need to consider carefully — and advise their clients appropriately — as to the available funding for their circumstances."

47. Mr Williams accepted that the first four of these are all sources of admissible evidence to the construction of the Regulations, but submitted that limited reliance could be placed on them, for the following reasons:

(1) While the heading of an Act (and, by extension, of secondary legislation) may be considered in construing its provisions, account must be taken of the fact that its function is merely to serve as a brief guide to the material to which it relates, and it may not be entirely accurate (citing Bennion, Bailey and Norbury on Statutory Interpretation, 8th ed. (2020) at 16.7). That was obviously so in relation to the Regulations, which on their face related to financial benefits recovered that went beyond "damages";

(2) Explanatory Notes are prepared by the government department responsible for the legislation, and while admissible as an aid to construction by casting light on the objective setting or contextual scene of the legislation, they should only be used as an aid to interpreting the meaning of particular words used in the legislation if there is an ambiguity (citing Bennion, at 24.14 and 24.24). The same is true of Explanatory Memoranda.

48. Mr Williams submitted, however, in post-hearing written submissions, that Lord McNally's letter is inadmissible, because it represents the views of a government official which were not publicly available prior to the making of the Regulations.

49. More broadly, Mr Williams submitted that these are all of only limited relevance and that the meaning of the Regulations should be determined primarily from the wording of the Regulations, construed in light of the Act under which they were made. That was particularly so when the language of section 58AA itself (as Mr Fulton was prepared to accept for the purposes of this argument) is neutral as between a claimant and a defendant so does not *preclude* a DBA being entered into by a defendant. Lord McNally was therefore wrong insofar as he said that LASPO did not enable a DBA to be entered into by a defendant and, if he was wrong about that, he might equally be wrong about the Regulations.

50. In my judgment, in agreement with Mr Fulton, the Regulations provide that any payment under a DBA from the client to the solicitor is to be calculated as a proportion of the sum that is "recovered" in respect of the claim. Accordingly, it is a necessary prerequisite to the entitlement of a representative to payment under a DBA that the client has made a recovery from the other side to the litigation. That is clear from the parts of the Regulations set out in [45] above.

51. I do not find it necessary to rely on the other materials cited at [46] above, but those materials are all consistent with that conclusion. The heading of the Regulations, and the terms of the Explanatory Notes and Memorandum, each support the conclusion that the purpose of a DBA is to enable a representative to obtain payment from its client as a proportion of damages or compensation received. The statement of Lord McNally in the House of Lords, recorded in Hansard (which is accepted to be admissible), is in my judgment a clear statement that the Regulations are intended to be limited to agreements made by a claimant and that the fee is to be set as a proportion of such sum as is recovered by the claimant in the proceedings. Even if (which I need not decide), Lord McNally's statement as to the scope of the Act is wrong, that does not diminish in my view the relevance of his statement to the scope of the Regulations under discussion and shortly to be made.

52. Since Lord McNally's letter merely repeated the same point, it is unnecessary to determine whether it, too, is admissible. I nevertheless consider it is also admissible. It is more than the private statement of a government official. Rather, it is a statement made public at the time (it is accepted that it was received by the House of Lords Library on the date it was sent), having been foreshadowed in the actual debate in the House of Lords.

53. Mr Williams alternatively submitted that insofar as the Regulations purported to prohibit a DBA unless it provided for payment as a proportion of amounts recovered from another party to the proceedings, they were ultra vires.

54. The problem with this submission is that even if section 58AA contemplates that a DBA may be entered into by a claimant or a defendant, and even though it defines "payment" and a damages-based agreement in terms broad enough to encompass an agreement by either a defendant or a claimant, it delegates to the Regulations the determination of such terms and conditions a DBA must contain in order to be enforceable.

55. Mr Williams submitted nevertheless that there are only two relevant parts of section 58AA under which regulations can be made: ss.4(b) and ss.4(c). Regulation 3 states in terms that it contains the requirements prescribed for the purposes of ss.(4)(c). That means that Regulation 4 (which limits the amount paid to the representative to the "payment" net of certain matters) cannot be prescribing terms and conditions under ss.(4)(c), so must be performing the function mandated by ss.(4)(b), i.e. providing the "amount calculated in a prescribed manner" above which payment cannot be made under a DBA.

56. I do not accept that, insofar as Regulation 4 does contain terms and conditions with which a DBA must comply so as to be enforceable, it would be ultra vires merely because it does not state in terms that it is doing so pursuant to the power in section 58AA(4)(c).

57. Further, even if Regulation 4(1) is to be regarded as being made only under ss.(4)(b), so that it could do no more than provide that a payment must not be "above an amount calculated in a prescribed manner", then that is in any event what Regulation 4(1), read with Regulation 4(3), does. Thus, Regulation 4(1) and the definition of "payment" specify that the amount paid by the client must be *some* part of the sum recovered in the proceedings, and Regulation 4(3) provides that, save in personal injury cases, it must be no more than 50% of that sum. That, it seems to me, is a prescribed manner for calculating the maximum amount of payment permitted by a DBA.

58. This reinforces, rather than detracts from, the overall point that to be enforceable under the Act, a DBA must provide that payment to the representative is a proportion of the amount recovered by the client in the proceedings.

59. For the above reasons, I conclude that:

(1) As a matter of construction of the DBA, it only entitles Candey to any payment from Mr Wojakovski if Mr Wojakovski recovers something in or as a consequence of the proceedings;

(2) The fact that Mr Wojakovski has retained the Shares does not, therefore, entitle Candey to any payment under the DBA;

(3) There being no other recovery by Mr Wojakovski in or arising out of the proceedings, Candey has no entitlement to payment of anything under the DBA; and

(4) If, contrary to the above, the Shares did constitute "Proceeds" as a matter of construction of the DBA, the DBA would not be enforceable – at least

> to that extent. (The question whether, if some other recovery had been made, the DBA would be enforceable to the extent of those other recoveries does not arise, and I do not need to consider it.)

1.5 Does the DBA comply with the Regulations?

60. In view of the conclusions I have reached above, it is unnecessary to consider whether the DBA is unenforceable. Since the point was fully argued, however, I set out my conclusions briefly, as follows.

61. The Claimants' first point is based on Regulation 3(c), which requires a DBA to specify "the reason for setting the amount of the payment at the level agreed…"

62. Mr Fulton submitted that insofar as paragraph 4 of the DBA cited "our liability to pay Counsel's fees" as a reason for setting the Payment at 25% of the Proceeds, that was plainly not true, because Candey (as stated in paragraph 7 of the DBA) were going to provide in-house counsel. He also submitted that no explanation at all was given for setting the level at 29% (as opposed to 25%) because when the DBA was amended to increase the percentage no further reasons were given at all.

63. I do not accept these submissions. The reference to the "liability to pay Counsel's fees" must be read together with the statement that Candey would provide in-house counsel "at our cost". The natural reading of these two provisions together is that one of the reasons for setting the level of the Payment was that Candey would be bearing (as an in-house cost) the cost of instructing counsel. That was true. As Mr Williams submitted, all that is required by Regulation 3(c) is that the DBA identifies the reason. It is irrelevant whether that is a good or bad reason.

64. While it is true that no reasons are stated for the *increase* in the level to 29%, with the amendment to the definition of "the Payment" by the replacement of 25% with 29%, the DBA then does set out the reasons for the payment being set at 29%. Whether or not those are sufficiently good reasons for setting the level at 29% of the Proceeds, when precisely the same reasons were said to justify the level being at 25% of the Proceeds, does not (for the reasons I have already given) lead to the DBA being unenforceable for failure to comply with Regulation 3(c).

65. Accordingly, I reject the contention that the DBA is unenforceable for lack of compliance with Regulation 3(c).

66. The Claimants' second point is based on Regulation 4(1) which, in full, provides that:

> "In respect of any claim or proceedings, other than an employment matter, to which these Regulations apply, a damages-based agreement must not require an amount to be paid by the client other than—

> (a) the payment, net of—
>
> > (i) any costs (including fixed costs under Part 45 of the Civil Procedure Rules 1998); and
> >
> > (ii) where relevant, any sum in respect of disbursements incurred by the representative in respect of counsel's fees,
>
> that have been paid or are payable by another party to the proceedings by agreement or order; and
>
> (b) any expenses incurred by the representative, net of any amount which has been paid or is payable by another party to the proceedings by agreement or order."

67. Mr Fulton submitted that this provides a comprehensive description of those things that may be netted off against the payment. In other words, if a DBA provides for something else to be netted off against the payment it renders the DBA unenforceable. Accordingly, the DBA in this case is unenforceable because it requires historic and potential tax liabilities to be netted from the Payment.

68. I do not accept this. As Mr Williams submitted, the definition of "payment" in the Regulations is that part of the amount recovered in respect of the claim or damages awarded that the client agrees to pay to the representative. I see nothing in the Regulations that prohibits the part of the amount recovered in respect of the claim that the client agrees to pay the representation being calculated by reference to a percentage of the sum recovered less another amount, whether that other amount is a fixed sum or calculated by reference to another formula. The fact that Regulation 4(1) then requires further matters to be netted off is not a prohibition on the client and representative reaching such an agreement.

69. Mr Fulton also submitted that the netting provision in this case would lead to such uncertainty that the client could not know, potentially for many years until the tax liabilities of the Tonstate group companies, and his own tax liabilities, were resolved. For the reasons I have set out above, I agree with the premise, but I do not agree with the conclusion. The fact that the netting off has that result may be relevant to the argument that, as a matter of the general law of contract, the DBA is unenforceable, but it does not render it unenforceable for non-compliance with Regulation 4(1).

70. For these reasons I conclude that insofar as the DBA provides for 29% of amounts recovered by Mr Wojakovski in the proceedings to be paid to Candey, it is not unenforceable for non-compliance with Regulation 3(c) or Regulation 4(1).

2. The Disclosure Application

2.1 Introduction

71. As noted above, this is an application by TGL and others for disclosure by Mr Wojakovski of information and documents relating to the source of funding for legal assistance provided to him by two firms of solicitors, Keidan Harrison LLP ("KH") and Raydens Limited ("Raydens"). The application is also made against KH and Raydens directly. Raydens are instructed by Mr Wojakovski in proceedings in the Family Court. KH are instructed by him for the purposes of advice only in relation to his bankruptcy.

72. The application is put on two bases.

73. The first basis is that Mr Wojakovski is in breach of the obligation contained in paragraph 6(a) of a worldwide freezing order made against him by Falk J on 27 August 2020 (the "WFO") to inform the applicants, before spending any money on legal expenses, where the money is to come from. As against KH and Raydens, the applicants contend that use of the funds held by them provided by the third-party funders to discharge their legal fees, in circumstances where they knew that Mr Wojakovski had not given prior notification to the applicants of the source of those funds, was itself a breach of the WFO and a contempt of court. The applicants rely on paragraph 10 of the WFO which provides that "it is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized."

74. The second basis (as against both Mr Wojakovski and the solicitors) is pursuant to the court's jurisdiction under section 37 of the Senior Courts Act 1981 to make orders ancillary to and in aid of enforcement of the WFO.

75. Mr Wojakovski opposes the application.

76. Raydens, by a witness statement of Katherine Rayden dated 19 April 2021, have confirmed that they have voluntarily provided the applicants with all of the information and documents requested. They contend that an order against them is, in the circumstances, unnecessary. They strongly object to the contention that they are themselves in breach of the WFO or have assisted a breach by Mr Wojakovski.

77. KH similarly strongly object to the contention that they are in breach of the WFO or have assisted a breach by Mr Wojakovski. They have not provided the information requested because to do so without being ordered by the court would be a breach of the duty of confidence owed to their client and of paragraph 6.3 of the SRA Code of Conduct for Solicitors and the professional principles set out in the Legal Services Act 2007. They do not object, however, to an order being made against them for disclosure pursuant to section 37 (although they suggest that the more appropriate jurisdiction would be an order against a non-party pursuant to the *Norwich Pharmacal* principles).

2.2 Breach of paragraph 6(a) the WFO

78. Paragraph 6(a) of the WFO (which is in the standard wording) provides as follows:

> "This order does not prohibit the Respondent from spending £1,000 a week towards his ordinary living expenses and also a reasonable sum on legal advice and representation. But before spending any money the Respondent must tell the Applicants' legal representatives where the money is to come from."

79. The applicants accept that the obligation under paragraph 6(a) of the WFO to inform the applicants where "the money" is to come from relates only to "money" that is within the scope of the WFO. They contend, however, that the money held on account by KH and Raydens is caught by paragraph 3 of the WFO.

80. Paragraph 2 of the WFO restrains Mr Wojakovski from removing from England and Wales or in any way disposing of, dealing with or diminishing the value of, his assets whether they are in or outside England and Wales up to the value of £15,78,975.88.

81. Paragraph 3 of the WFO, also in standard form, provides as follows:

> "Paragraph 2 applies to all the Respondent's assets whether or not they are in his own name and whether they are solely or jointly owned and whether the Respondent is interested in them legally, beneficially or otherwise. For the purpose of this order the Respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions."

82. As I have indicated, Raydens have disclosed the source of funding for their fees. In part this has come from a company called Intelligent Legal Solutions Limited ("ILS") and in part it has come from a longstanding personal friend of Mr Wojakovski, Mr Michael Marx. In both cases funds were advanced directly to Raydens. The evidence as to the basis of the funding from ILS is contradictory. It was first said to be advanced on the basis that Mr Wojakovski would be liable at some point to repay it, but it is now said to have been advanced wholly gratuitously. The funding from Mr Marx is wholly gratuitous. Although the source of the funding to KH has not been disclosed, the evidence (contained in a witness statement from Luke Harrison of KH) is that it has been provided voluntarily and gratuitously.

83. Mr Fulton, for the applicants, contends that it is irrelevant whether Mr Wojakovski is under an obligation to repay the money.

84. Although the applicants do not accept that any of the funding is genuinely third-party money (which is what underpins the alternative application for further disclosure under section 37) the claim that there is a breach of paragraph 6(a) of the WFO proceeds on the assumption that it is.

85. The applicants' case is that any money held by Mr Wojakovski's solicitors (from whatever source) is caught by the final two sentences of paragraph 3 of the WFO, because it is held subject to Mr Wojakovski's directions. It is so held, they submit, because whatever steps the solicitors take, whether in proceedings (so far as Raydens are concerned) or by way of advice (so far as KH are concerned), are taken only upon instruction from Mr Wojakovski. The automatic consequence of his giving instructions is that the solicitors will carry out work, which generates an entitlement to fees, and thus an entitlement to withdraw an amount from the funds held on account. That, it is said, is sufficient to establish that the funds are held "in accordance with [Mr Wojakovski's] direct or indirect instructions."

86. Mr Fulton submitted that this is clearly established by the Supreme Court in *JSC BTA Bank v Ablyazov (No.10)* [2015] UKSC 64.

87. In that case, the question was whether the proceeds of loan agreements were "assets" within the meaning of the extended definition of a paragraph in the freezing order which was in the same terms as paragraph 3 of the WFO.

88. The loans in question were made to Mr Ablyazov by way of agreements. In each of the loans, clause 1.1 obliged the lender to extend a loan facility to Mr Ablyazov in the principal amount of £10 million, and clause 1.12 stated that:

> "the proceeds of the Loan Facility shall be used at the Borrower's sole discretion. The Borrower may direct the Lender to transfer the proceeds of the Loan Facility to any third party."

89. The borrowed funds were used for a variety of purposes, including spending on a property, on corporate services provided and lawyers (see [8] of the judgment of Lord Clarke).

90. The Supreme Court concluded that the proceeds of the loan were "assets" within the extended meaning in the standard form of freezing order. Lord Clarke (at [41]) accepted the submission that the question which the extended definition poses is whether the respondent "had power to direct the lender what to do with the funds that it was contractually obliged to make available to him. I would further accept that the answer to that question is yes."

91. Mr Fulton relies on what Lord Clarke said (at [43] and [49]), namely that the last two sentences of the standard paragraph extend its scope to things which are not owned legally or beneficially, but over which the defendant has control. He also relies on Lord Clarkes' comment, at ([49]), that it was irrelevant that there was an obligation to reimburse the lender. He submitted that the fact that the proceeds were to be used at Mr Ablyazov's sole discretion

was merely part of the factual background to that case, and not an essential part of the reasoning.

92. I accept that *Ablyazov* confirms that the extended definition of "assets" in paragraph 3 of the WFO captures assets that are owned by third parties. I do not accept, however, that it leads to the conclusion that the funds held on account by the solicitors in this case are within the ambit of paragraph 3 of the WFO.

93. In particular, I disagree with Mr Fulton's submission that clause 1.12 of the loans in *Ablyazov* is an irrelevant piece of background. At [48], Lord Clarke summarised his conclusion as:

> "On the facts of this case, as I see it, the respondent did not own the relevant assets but under the Loan Agreements had power directly or indirectly to dispose of, or deal with them, as if they were his own."

94. In my judgment, the fact that Mr Ablyazov was entitled to use the proceeds at his sole discretion was fundamental in satisfying the requirement that they constituted an "asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own". Similarly, that fact was crucial to showing Mr Ablyazov had such power because the bank – prior to the drawdown of any funds – held or controlled the funds "in accordance with his direct or indirect instructions."

95. In the present case, Mr Wojakovski has no entitlement to direct that the funds be used for any purpose at all. He could not, for example, direct that they be paid to him or to anybody else. Mr Fulton accepted that if the solicitors' retainer was terminated leaving a surplus in the funds held on account, then the funds would be returned to the relevant third-party funder. Insofar as the funds were to be used to discharge the solicitors' fees, that was not at the direction of Mr Wojakovski, but was at the direction of the third party who provided the funds: the funds had been provided for that sole purpose.

96. I reject the submission that because the solicitors would only do work, and thus incur an entitlement to payment, if Mr Wojakovski instructed them to do work, that was sufficient to demonstrate that the funds were held, even indirectly, in accordance with his instructions. That conflates Mr Wojakovski's ability to direct what work his solicitors carry out with the ability to direct to what use the funds are to be put.

97. Ms Sagan, who appeared for Raydens, submitted that the applicants' construction would create considerable uncertainty and lead to fine distinctions and for that reason should be rejected: orders of this kind (because of the penal consequences for breach and the need for the defendant – and others – to know where they stand) should be construed restrictively: see *Ablyazov* at [19].

98. A particularly fine distinction would be created as to timing. Mr Fulton accepted that third party funds received by a solicitor *after* it had performed work and so become entitled to fees would not be an asset within paragraph 3 of the WFO (Ms Sagan said that was in fact the case in relation to at least part of the funds received by Raydens in this case). That is because there is no further instruction from the client necessary in order for the funds to be used to discharge their fees. On that logic, it seems to me that the same must be true in respect of funds received by a solicitor before they had done the relevant work but *after* they had been instructed to do something – for example issue proceedings – which would generate an obligation on them to do work without reference back to their client. In that case there would equally be no sense in which the work was being done pursuant to an instruction from the client received after the funds had been provided to the solicitors.

99. I agree that the risk of creating such uncertainty and fine distinctions supports the conclusion that the funds held by the solicitors in this case do not constitute assets within paragraph 3 of the WFO, although it is not necessary in order to reach that conclusion.

100. Accordingly, (on the assumption that the funds provided to Raydens and KH were genuine third-party monies) I reject the contention that Mr Wojakovski was in breach of 6(a) of the WFO by failing to notify the applicants before Raydens and KH were provided with funds from the relevant third parties or before they used any of those funds in payment of their fees.

101. I also reject the contention that either of Raydens or KH are or were themselves in breach of the WFO as a result of using any of the funds provided to them in discharge of their fees.

2.3 Further disclosure

102. The court has a discretion to order further disclosure, whether from a respondent to a freezing order or a third party such as the respondent's solicitor, if it is just and convenient to do so in order to ensure the effectiveness of the order: see *JSC BTA Bank v Solodchenko (No.3)* [2011] EWHC 2163 (Ch), per Henderson J at [26]. At [38], Henderson J set out six considerations to be taken into account. Those included, where disclosure was sought from a solicitor, the importance of confidentiality and legal professional privilege. That is of less relevance here, however, where the order sought against Mr Wojakovski is for details relating to payments made by third party funders (as to which no legal professional privilege attaches) and the orders sought against the solicitors merely mirror that which is to be ordered against Mr Wojakovski.

103. The essential reason for seeking further disclosure is in order to ensure that none of the monies being used to fund Mr Wojakovski's solicitors are in fact subject to the WFO or are the proceeds of monies wrongfully extracted from the Tonstate group of companies, over which the applicants have a proprietary injunction (dated 16 January 2020).

104. Mr Fulton points to various factors which cumulatively indicate that it is not enough to take Mr Wojakovski's word for it that this is so.

105. First, Mr Wojakovski has been less then frank about the source of funding for his lawyers in the past. For example, Mishcons, who represented him in proceedings until May 2019, told the court, no doubt on his instructions, that they were not being funded from the proceeds of any of the wrongful extractions. That turned out, however, to be wrong, but Mr Wojakovski has never provided an explanation for how he allowed Mishcons to be paid from extracted funds or how he allowed them to tell the court otherwise.

106. Second, after Mr Wojakovski had paid costs orders made against him in proceedings, he accepted that those were likely to have been paid out of extracted funds.

107. Third, notwithstanding the proprietary injunction made against him on 16 January 2020, Mr Wojakovski deliberately breached it by paying his former solicitors in family proceedings from funds caught by that injunction. On this being pointed out to him, he apologised and said that the money would be paid back, but it never was, and no application was ever made to vary the proprietary injunction.

108. Fourth, following a debarring order made against Mr Wojakovski in April 2020, Mr Wojakovski said he had exhausted all available funding, but then was able to find a further £200,000, later explained as coming from his brother's brother-in-law.

109. Fifth, despite evidence that his late mother's living costs had been funded from a BVI company which had also loaned Mr Wojakovski £700,000 and had financed the purchase of a flat in London for his daughter, Mr Wojakovski has been less than fully forthcoming over his entitlement to inheritance from either of his parents' estates. In response to an order requiring specific disclosure relating to that inheritance, Mr Wojakovski stated simply that any rights under his parents' wills was discretionary.

110. Sixth, Mr Fulton pointed to a long history of failure by Mr Wojakovski to provide disclosure, both in the context of the proceedings brought by the applicants and in the context of his bankruptcy. In relation to the latter, I received a letter from his trustee in bankruptcy which describes his experience that while Mr Wojakovski provides superficial cooperation, he "purposefully provides limited substantial cooperation that would allow the Trustees to carry out their statutory duties with regard to asset realisation, collection of useful information and the quantification of liabilities." Mr Wojakovski strenuously objected to this characterisation, referring to the fact that the trustees in bankruptcy had now delayed for many weeks in failing to respond to a document prepared by Mr Marx detailing the discrepancies in the inter-company position between that part of the Tonstate group in which Mr Wojakovski holds 50% of the shares and that part of the group in which he holds only 12.5% of the shares. I do not accept that the lack of substantive response by the trustees to that document is any reason to reject their statement as to Mr Wojakovski's lack of substantive cooperation in the

bankruptcy. Without needing to decide the extent to which he has failed to cooperate, the statement from his trustee in bankruptcy is at least evidence to put into the mix in considering whether it is just and convenient to make the further disclosure order sought.

111. It is of course possible, as Mr Wojakovski adamantly maintained, that his legal fees are being funded by friends concerned to ensure that he is afforded access to justice in relation to the ongoing disputes with the applicants and with his trustee in bankruptcy. That is not something that I could resolve on this application, however. Provided that I am satisfied, as I am, that the various matters to which Mr Fulton has referred give rise to a real risk that the ongoing funding of his legal expenses may be in breach of the WFO or the proprietary injunction, then I consider that on the facts of this case it is just and convenient to make the orders sought.

112. The main objection of Mr Wojakovski was that if he were required to reveal the details of those funding him, then those funders would be subject to aggressive and oppressive conduct from the applicants. In relation to those funding Reydens, this is water under the bridge, since the information has been given, but it remains an issue in relation to those funding KH.

113. It is true that the applicants have adopted a strikingly aggressive stance against Reydens and KH, as evidenced by the fact that while Reydens have provided the information sought voluntarily and KH have not opposed an order under section 37, the applicants have pursued arguments designed to establish that Reydens and KH are in contempt of court.

114. I do not think, however, that when set against the factors identified above, this disentitles the applicants from obtaining the orders sought in order effectively to police the WFO and the proprietary injunction of 16 January 2020.

2.4 Disposition

115. For the above reasons, I will make an order against Mr Wojakovski that he discloses the sources of payment of his legal expenses and documents evidencing the same. I will also order, by way of expansion upon the terms of paragraph 6(a) of the WFO, that before any further sum is paid in respect of his legal expenses, by any person, Mr Wojakovski shall provide written notice to the applicants of the details of the source of that funding. I will discuss the precise form of such order following hand down of this judgment.

116. I will also make an order against KH, pursuant to the jurisdiction under section 37, that insofar as the details of the funding of their fees and expenses is not provided by Mr Wojakovski, they will provide information and documents in their possession relating to that funding to the applicants.

117. So far as Raydens are concerned, in the face of a witness statement from Ms Rayden, as confirmed on instructions by Ms Sagan at the hearing, that they have provided everything within their possession, I do not think it is necessary to make an order against them. Mr Fulton submitted that an order was still necessary in case documents had come into their possession since the date of

Ms Rayden's statement and Mr Wojakovski himself now failed to provide those documents. I consider that to be unlikely and I accept the confirmation to the contrary provided on instructions by Ms Sagan. It is relevant to bear in mind in this respect that Reydens volunteered the information to the applicants in the first place. Accordingly, I decline to make an order against Reydens.

3. The Property Transfer Application

118. By my order of 16 January 2020, I declared that the sums which Mr Wojakovski had extracted from TGL and other companies in the Tonstate Group, and their traceable proceeds, were held on trust for the relevant companies.

119. I can deal with this application shortly because – as between the parties that are directly concerned in it – it is agreed.

120. The application concerns five properties: three in Edinburgh, the legal title of which is held by Quastus Holdings Limited (a Jersey company); one in Bournemouth, the legal title to which is held by Masteve Investments Limited (an Isle of Man company); and one in London, the legal title to which is held by Mr Wojakovski's wife, Nadine Wojakovski.

121. Each of those holders of the legal title has accepted that beneficial ownership vests in TGL or another Tonstate group company. The two corporate entities holding legal title were represented before me by Mr Parfitt to confirm that they had submitted to the jurisdiction of this court and did not oppose the application. Mr Wojakovski's trustees in bankruptcy have been served with the application, but they do not oppose the application. No interest in the properties is asserted on behalf of the bankruptcy estate.

122. Mr Wojakovski accepts that the purchase price of each of these properties was funded with monies which he had wrongfully extracted from the Tonstate group (in the case of one of the Edinburgh properties, 100% of the price for that part of the title (80%) which Quastus Holdings Limited owns was financed with such extracted funds). In relation to the London property, Mr Wojakovski had originally admitted only that half of the purchase price was funded with extracted monies, but he now accepts that the entirety of the purchase price was funded with extracted monies, although he claims that part was subsequently repaid from proceeds of sale of another property.

123. Mr Goodman, who presented this application on behalf of TGL and the other claimant companies, took me to bank statements and other financial records which provide strong corroboration for the conclusion that they were funded with extracted monies.

124. I am satisfied, on the basis of the above, that the beneficial interest in each of the properties is indeed held by one or other of the companies in the Tonstate group. I am also satisfied that it is appropriate to make declarations to that effect and (pursuant to the rule in *Saunders v Vautier* (1841) 4 Beav 115) to order that the legal estate be transferred to TGL.

125. Although Mr Wojakovski had no formal standing in relation to this application (as any interest which he might have had in the properties vests in his trustees in bankruptcy), he made submissions in opposition to it. His principal concern was that until the Accounts (which have been ordered against him and Mr Matyas in the Main Action) are completed, it cannot be known which particular company in the Tonstate group holds the beneficial interest in which property. That is of particular concern to him, because he (or rather his trustees in bankruptcy) hold a substantially larger proportion of the shares in THHL than in TGL.

126. The transfer of legal title to TGL, however, is expressly on the basis that TGL will hold on trust for whichever company in the Tonstate group is ultimately found to have the beneficial interest in the relevant property. There is no prejudice to Mr Wojakovski in the transfer of legal title to TGL.

127. Accordingly, I will make the order sought on the Property Transfer Application.