Neutral Citation Number: [2023] EWHC 2761 (Ch)

Case No: PT-2018-000193

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

The Rolls Building
Fetter Lane, London, London EC4A 1NL

Date: 3 November 2023

Before :

HHJ CADWALLADER SITTING AS A JUDGE OF THE HIGH COURT

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Between :

(1) MR SOLAD SAKANDAR MOHAMMED
(2) MR IBRAHIM AHMED SHAIKH
(3) MR MOLVI NOORUL HAQUE
(sued as trustees)

Claimants

- and -

(1) ~~MR BOSTAN MOHAMMED~~ ~~(sued as a trustee and personally)~~
(2) MR SABIR AHMED EBRAHIM DAJI (sued as a trustee and personally)
(3) ~~MR MOHAMMED ABDUL MUQIT (sued as a trustee and personally)~~
(4) MR MOHAMMED UMAIR ZULFIQAR
(5) MR MOHAMMED SHAIKIR ALAM
(6) MR MOHAMMED ZAHID MAHMOOD
(7) MR YASIR MUMTAZ
(8) MR MOHAMMED ESA MANSURI
(9) MR MEHBOOB KHAN
(10) MR MOHAMMED ISHAQ CHAUDHRY (sued as a trustee and personally)
(11) MR ABDUL MUMIN CHOUDHURY
(12) ABDUL HUSSEIN CHAUDHURY
(13) AWLAD ALI (sued as a trustee and personally)
(14) ZULFIQAR ALI (sued as a trustee and personally)
(15) HIS MAJESTY'S ATTORNEY GENERAL
(16) MUSHTAQ MOHAMMED (sued as a trustee)

Defendants

(17) HISHAM HASSAN MOHAMED SHAR LALA (sued as a trustee)
(18) MUHAMMAD ANISUZ ZAMAN CHOWDHURY (sued as a trustee)
~~(19) ASIF JAWAD (sued as a trustee)~~
(20) MOHAMMED HAYAT KHAN (sued as a trustee)
(21) SUHEL ABDUL SAMAD BHOLAT (sued as a trustee)
(22) YUSUF MOHAMED SEEDAT (sued as a trustee)
(23) ABDUL MALIK (sued as a trustee)
(24) USMAN ABDULLAH MUNSHI (sued as a trustee)

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Mark Sefton KC, Jonathan Fowles (instructed by **Mishcon De Reya**) for the **Claimants**
Andrew Westwood KC, Ted Loveday (instructed by **Lee Bolton Monier-Williams**) for the **Second, Tenth, Thirteenth, Sixteenth to Twenty-fourth Defendants**
William Hopkin (direct access Counsel) for the **Fourteenth Defendant** (part only)

Hearing dates: 20-23, 26-28 June, 4 July, 11 September 2023

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JUDGMENT

His Honour Judge Cadwallader :

Introduction

1. The dispute in this case concerns the ownership of a very substantial freehold site ("the Land") at Abbey Mills, Canning Town, London E15 on which is located the Abbey Mills Mosque, also known as the Masjid-e-Ilyas. Although the current structure is temporary, it can host a large number of worshippers.

2. In July 1998, title to the land was registered at HM Land Registry and the registered proprietors were and are Solad Sakandar Mohammed (the First Claimant), Ibrahim Ahmed Shaikh (the Second Claimant) and Zulfiqar Ali (the Fourteenth Defendant). They are recorded in the proprietorship register as being the trustees of Anjuman-e-Islahul of (London) U.K.

3. They acquired the land as trustees for £1.4m by a transfer dated 5 November 1996 in which they were described as trustees of Anjuman-e-Islahul Muslimeen of (London) U.K. The money had been raised over a period by an appeal to followers of Tablighi Jamaat (a reform movement within Islam to which I will refer without disrespect as "TJ" when convenient), who had contributed gifts and loans. By a deed of Declaration of Trust dated the same date and made by Zulfiqar Ali, Solad Sakandar Mohammed and Ibrahim Ahmed Shaikh ("the 1996 Trust Deed"), they declared themselves trustees of the land upon the religious, educational and other charitable trusts set out in that document. In this judgment I refer to that trust, for convenience only, as "the London Trust;"

and I refer to the parties, where convenient, by self-explanatory abbreviations.

The issues

The property claim

4. The Claimants claim a declaration that C1, C2 and D14 hold the Land upon the terms of the London trust. The surviving Defendants represented by Lee Bolton Monier-Williams, Solicitors, in these proceedings, that is, D2, 10, 13, and 16-24 ("the LBMW Defendants", of whom D23 and 24 were added after the trial, and of whom D19 was removed after trial by order of Master Kaye made on 8 September 2023) dispute that claim, and counterclaim for a declaration that C1, C2 and D 14 hold the Land upon the trusts of a deed of Declaration of Trust dated 25 June 1975 ("the 1975 Trust Deed") for the religious and other charitable trusts set out in that document, including for the purposes of the society known as "Anjuman-E-Islah Muslimeen", a copy of the constitution of which is appended to that deed. For convenience I will refer to that trust where appropriate as "the Dewsbury Trust," without prejudice to the question whether it is to be regarded as a nationwide charity, rather than a charity which is local to Dewsbury. The Dewsbury Trust is registered with the Charity Commission as charity 505732.

The removal claim

5. The Claimants also claim a declaration that D14 was replaced by Molvi Noorul Haque ("C3") as a trustee of the London Trust as the result of resolutions made in February 2018 and/or in November 2018, together with an order that D14

join in transferring title to the Land to the Claimants as the present trustees of the London Trust.

The cy-près claim

6. If the Claimants are unsuccessful in the property claim, so that the Land is found to be held on trust for the Dewsbury Trust, the Claimants seek a declaration that a cy-près occasion has arisen under section 62 (1) (e) (iii) Charities Act 2011. That is on the basis that, following a schism in about 2017 in the Tablighi Jamaat movement with which Abbey Mills Mosque is associated, the London Trust and the TJ community based in and around London, or a substantial proportion of it, follows the leadership of one faction (the World Shura), while the Dewsbury Trust follows the leadership of the other faction, led by Muhammad Saad Kandhlawi; and that in consequence it would be impossible for the World Shura followers in the London community to continue to use the mosque for the activities of TJ if the mosque were to be held and controlled by the Dewsbury Trust and the followers of Saad Kandhlawi. There is no equivalent counterclaim by any Defendants.

Issues for later determination

7. This trial has not dealt with parts of the pleaded claims: certain claims for injunctive relief or damages in relation to alleged violent disturbances and trespass on the Land were stayed by order dated 23 July 2019; and it was directed by order dated 20 January 2023 that the question what charitable scheme should be made if a cy-près occasion were found to have occurred should be determined if necessary at a later date. With the agreement of counsel for the Claimants, the LBMW Defendants and D14, I directed that it was also a

matter for subsequent determination, if it were found that a cy-près occasion had arisen, whether the discretion to direct a scheme should be exercised.

The parties

8. I have already introduced the Claimants. The LBMW Defendants and D14 are the current trustees of the Dewsbury Trust. D1 and D3 were also represented by Lee Bolton Monier-Williams, and had also been trustees of that charity, but died after the commencement of proceedings.

9. As already noted, D14 was also one of the original trustees of the London Trust. Until June 2021, D14 was also represented by Lee Bolton Monier-Williams with the LBMW Defendants, and the defence and counterclaim dated 16 March 2020 filed on behalf of the LBMW Defendants was also filed, on the face of things, on his behalf, and adopting the same position. He terminated the instructions of that firm in June 2021 and participated in proceedings sporadically thereafter as a litigant in person, providing no disclosure and serving no witness statement. Between about November 2022 and 11 June 2023 he was represented by Farrer & Co LLP, who on 23 May 2023 expressed his intention to start to take an active part in the proceedings, including by filing a defence, providing disclosure, filing witness evidence and being represented at trial. His application dated 2 June 2023 to file a separate defence and written evidence, and for relief from sanction, was dismissed on 6 June 2023 at the Pre-Trial Review, save that he was permitted to amend his defence and counterclaim to delete, on the basis that he accepted that the signature was genuine, the allegation which his Defence had previously contained, namely that his signature on the 1996 Trust Deed had been forged. I am told that his lawyers

departed the pre-trial review after the dismissal of his application and before the other case management issues for the trial were discussed.

10. On 11 June 2023 his solicitors gave notice that he would be acting in person. On 14 June 2023 he wrote to the court and the parties to say that he was instructing a barrister under the Public Access scheme and he submitted a position statement drafted by counsel dated 19 June 2023, the day before the trial. No doubt the statement represented his position accurately, but his position was unclear. Counsel for D14 appeared on the first day of trial and indicated that an application of some kind might be made at some point, but in the event no application was made; and although some documentation was produced by D14 through his Counsel, as to the admissibility of which I made a ruling, D14 took no further part, beyond producing a simplified position statement dated 25 June 2023 through Counsel on 26 June 2023.

11. D14 himself did not attend at any point, and at his Counsel's request I excused his Counsel's attendance for 27 and 28 June. On 29 June 2023 Counsel was disinstructed, and D14 emailed to the Court what was described as an agreed position statement as between D14 and the LBMW Defendants on behalf of D14 by his son, D4. That document invites the Court not to reach any conclusions as to whether or not D14's instructions to LBMW (or previous solicitors) were that he did not sign the 1996 Trust Deed, or as to his assertion that he never approved the Defence and Counterclaim (or even saw a draft copy of it) on the basis that investigations as to those matters were likely to continue after the conclusion of this trial.

12. The Attorney General has been joined as a defendant since these are charity proceedings, but has played no active role and was not represented at trial.

13. By order dated 13 August 2019, D4-13 have been prohibited from filing any statement of case or taking any further part in the proceedings (save in relation to costs or other outstanding issues in relation to them) without the Court's permission.

Materials

14. The material before the Court included 21 trial bundles, 5 supplemental bundles (one of which included some material which I determined could not be included in evidence); 3 bundles of authorities; skeleton arguments and written closings on behalf of the Claimants and the LBMW Defendants; two position statements from D14 and a position statement agreed between D14 and the LBMW Defendants; notes from D6 (Mohammed Zahid Mahmood) and D7 (Yasir Mumtaz) for which permission was required but in respect of which no applications for permission were made (so that I have not had regard to them); and a witness statement from D11 dated 30 June 2023 for which permission was required but in respect of which no application for permission was made (so that I have not had regard to it). Save as indicated above, I have had regard to all the admissible material and argument placed before the Court, even if I have not specifically mentioned it.

Course of trial

15. The trial took place over 9 days in June and July 2023. The effect of the late admission of the witness statement of Shafi Uddin Ahmed dated 4 July 2023

and its exhibits was that a further short hearing was held remotely (to save costs, and with the agreement of the legal representatives) on 11 September 2023 to receive a third witness statement from C1 upon which he was then cross-examined.

Witnesses

The Claimants' witnesses

16. I heard oral evidence for the Claimants from Husen Munshi, Muhammed Abdur Rahman, Nasir Kanchwala, Shoukat Maljee, Solad Sakandar Mohammed, Iqbal Dhoodat, Yakub Mohamed, Shabaz Hussain, Javed Malek, Aqeel Lone, Hanif Memon, and Isap Makkan. Neither C2 nor C3 gave evidence. The Claimants relied on the evidence of a further 101 witnesses who provided statements (nearly half of which had been translated from Urdu or Gujarati into English) which were admitted as hearsay evidence.

Defendants' witness evidence

17. Oral evidence was given for the LBMW Defendants by Shabir Daji, Mohammed Ishaq Chaudry, Mohammad Nurul Islam, Khalisur Rahman, Awlad Ali, Mohammad Hossain Howlader, Abubakar Gangat, Ammar Vali, Mohammed Aktaruzzaman, Azizul Islam and Wahid Ali. The LBMW Defendants relied on the evidence of a further 17 witnesses whose statements were admitted as hearsay evidence. In addition, I directed that the witness statement of Shafi Uddin Ahmed dated 4 July 2023 and its exhibits be received in evidence on behalf of the LBMW Defendants. No evidence was given on behalf of D14.

Approach to evidence

18. In considering the evidence, I bear in mind the guidance helpfully summarised in *Kimathi v FCO* [2018] EWHC 2066 (QB) at para.96, which is perhaps worth setting out here in full so that the parties understand my approach.

> "i) Gestmin:
>
> We believe memories to be more faithful than they are. Two common errors are to suppose (1) that the stronger and more vivid the recollection, the more likely it is to be accurate; (2) the more confident another person is in their recollection, the more likely it is to be accurate.
>
> Memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is even true of "flash bulb" memories (a misleading term), i.e. memories of experiencing or learning of a particularly shocking or traumatic event.
>
> Events can come to be recalled as memories which did not happen at all or which happened to somebody else.
>
> The process of civil litigation itself subjects the memories of witnesses to powerful biases.
>
> Considerable interference with memory is introduced in civil litigation by the procedure of preparing for trial. Statements are often taken a long time after relevant events and drafted by a lawyer who is conscious of the significance for the issues in the case of what the witness does or does not say.
>
> The best approach from a judge is to base factual findings on inferences drawn from documentary evidence and known or probable facts. "This does not mean that oral testimony serves no useful purpose… But its value lies largely… in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth".
>
> ii) Lachaux:
>
> Mostyn J cited extensively from Gestmin and referred to two passages in earlier authorities. I extract from those citations, and from Mostyn J's judgment, the following:

 "Witnesses, especially those who are emotional, who think they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist.
It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason, a witness, however honest, rarely persuades a judge that his present recollection is preferable to that which was taken down in writing immediately after the incident occurred. Therefore, contemporary documents are always of the utmost importance…"

 "…I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective fact proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities…"
 Mostyn J said of the latter quotation, "these wise words are surely of general application and are not confined to fraud cases… it is certainly often difficult to tell whether a witness is telling the truth and I agree with the view of Bingham J that the demeanour of a witness is not a reliable pointer to his or her honesty."

iii) Carmarthenshire County Council:

 The general rule is that oral evidence given under cross-examination is the gold standard because it reflects the long-established common law consensus that the best way of assessing the reliability of evidence is by confronting the witness.

 However, oral evidence under cross-examination is far from the be all and end all of forensic proof. Referring to paragraph 22 of Gestmin, Mostyn J said:

> "…this approach applies equally to all fact-finding exercises, especially where the facts in issue are in the distant past. This approach does not dilute the importance that the law places on cross-examination as a vital component of due process, but it does place it in its correct context."

19. In the present case, of course, most of the relevant events occurred many years ago; have been the subject of much discussion in the context, not only of this dispute, but of strongly felt and continuing religious and organisational disagreement, and amid allegations of violent disorder on a substantial scale.

20. In considering the hearsay evidence, I have borne in mind that its content, and the circumstances in which it was obtained, have not been tested by cross-examination. That, of course, tends to reduce the weight to be given to it.

The property claim

The property claim issues

23. It is agreed between the parties that the first 5 issues for determination are as follows.

(1) In the circumstances, with what objective intention on the part of the donors and lenders was £1.4 million contributed for the purchase of the Land? (POC 1-2, Def 4(a)(i), (ii) & (xii); Reply 4-8; RtDCC 6-7)

(2) In light of the answer to question (1) and any other circumstances that the court determines to be relevant, were the purchase monies in NatWest bank account no. 34522794:

(i) held for the purpose of C1, C2 and D14 acquiring the Land to fund the building of a mosque and community centre of which they would be the trustees, and to maintain and support the said mosque and community centre, in each case for the use and benefit of the Tablighi Jamaat community in the London region (see POC 2)); or

(ii) held for the religious and other charitable purposes stated in the 1975 trust deed for the Dewsbury Trust/Charity 505732, having been collected on behalf of that charity and held on trust for it (Def 4(a); RtDCC 7-8)?

(3) What was the origin of the deed of declaration of trust dated 5 November 1996 and what (if any) is its legal effect (Def 4(b)(iii)-(iv))? Among other things, did C1, C2 and D14 have authority to execute it?

(4) What are the circumstances in which C1 and C2 signed the documents of 26 October 1998, and in which C1, C2 and D14 signed the documents of 24 January 1999, and what (if any) is the significance of these documents?

(5) Are the factual and legal matters pleaded at Reply 29.1 – 29.7 made out and, if so, what significance do they have (if any)?

The law

24. I take the following general propositions of law, which I take to be uncontentious, from *Tudor on Charities*, 11th ed., 18-048ff

> "If a simple appeal is made for funds for particular purposes which are in law charitable, then as soon as funds are received pursuant to it a charitable trust will be constituted. Those funds will be held on trust for the purposes which have already been referred to in the terms of the appeal. Where a charitable trust is initially created by donors in general or vague terms, it may be open to the trustee to execute a more specific deed which limits the terms of the trust, provided that it does not conflict with the terms on which the donors made their donations.
>
> It is therefore important that the drafting of the appeal is given careful consideration, before the appeal is launched. Those organising the appeal should do all they can to make sure that the purpose of the appeal is clear and that donors know how their gifts will be used.
>
> Sometimes gifts may be sent before publication of the appeal. If there are more than can be acknowledged individually, the published appeal should indicate that gifts already made will be added to the appeal fund unless the donors notify the organisers within a reasonable time that this is not their wish.
>
> At one level the law is clear: a donation will be held for the purposes intended by the donor. That intention will be ascertained objectively by reference to the terms on which the donor made his gift to the recipient; construed against the factual background known to the donor. Broadly there are three classes of gift to a charity:
>
> (1)A gift to the charity which can be used for the general purposes of the charity.
>
> (2)A gift for a specific purpose which is different from, and typically narrower than the general purposes of the charity, and which the charity can properly accept. Such a gift will be held on trust for the specified purpose. Trusts of this nature are frequently called "special trusts" and the funds held on them are called "restricted funds".
>
> (3)A gift to an individual or committee for indefinite charitable purposes which gives the individual or the committee entrusted with the money implied authority for and on behalf of the donor to declare the trusts to which the sums contributed are to be subject: see *Khaira v Shergill [2014] UKSC 33*.

> Where an appeal results in a gift to a charity, and the terms of the appeal are unclear, considerable practical difficulty can arise in determining which class any donation falls into."

25. In the present case, the active parties are agreed that a donation will be held for the purposes intended by the donor and that in effect the choice is between options (1) and (3) above. That intention will be ascertained objectively by reference to the terms on which the donor made his gift to the recipient; construed against the factual background known to the donor (or, as leading Counsel for the Claimants put it, 'available to' the donor – but I did not understand him to mean more than 'known').

26. That is an approach consistent with the general rule that a lifetime settlement is to be interpreted by ascertaining the objective intention of the settlor: see *Lewin on Trusts* 20th ed., at 7-004 and 7-005. The admissible circumstances in construing a lifetime settlement do not include the subjective intention of the settlor: *ibid*. That applies equally here. A charitable donor is indistinguishable in principle from any other settlor of trust funds: see *Charity Commission v. Framjee* [2014] EWHC 2507 at para.28(d). *Re Church Army* (1906) 94 LT 559 concerned a charitable society which had solicited and received some donations. The question was, what were the terms of the trust on which the charitable society held those donations. The answer did not depend on the intention of the charitable society. It depended on the intention of the donors. As Collins MR put it at 198:

> "The real question at the heart of the whole thing is, What is the intention of the donor?"

I did not understand there to be any difference between the parties over this proposition, which applies to charitable appeals as it does to formal charitable settlements.

27. As stated in *Tudor on Charities*, 11th ed., 18-048, in the case of charitable appeals

> "If a simple appeal is made for funds for particular purposes which are in law charitable, then as soon as funds are received pursuant to it a charitable trust will be constituted. Those funds will be held on trust for the purposes which have already been referred to in the terms of the appeal. Where a charitable trust is initially created by donors in general or vague terms, it may be open to the trustee to execute a more specific deed which limits the terms of the trust, provided that it does not conflict with the terms on which the donors made their donations: *Khaira v Shergill* [2014] UKSC 33".

It is still a question of ascertaining the intention of the donors. The terms of the appeal to which the donors have responded will be at least good evidence, and perhaps (depending on the facts) determinative evidence, of the intention of the donors as ascertained objectively.

28. An issue more apparent than real arose between the active parties as to the role of concepts of agency in this context. In their opening skeleton argument, counsel for the LBMW Defendants said that C1, C2 and D14 were acting as local agents for the Dewsbury leadership of Charity 505732 in fundraising for the acquisition of the property. As was pointed out on behalf of the Claimants, whether they were actually agents of that charity or not is not of direct relevance: it is the donors' intention which matters. But, as the Claimants rightly conceded, if a contract of agency had been concluded, that might have an evidential relevance: it might tell you something about what the donors were told about why their donations were being sought, and therefore about the terms of the appeal to which they were responding. On that footing I accept the

submission made on behalf of the LBMW Defendants that, in terms of common sense, it would not be right to neglect the key question of who raised the funds, or in what capacity, if that was information which was available to donors. It would be a part of the factual context in which their intentions were to be ascertained. So here, if the funds were raised by persons holding themselves out to the donors as acting, in doing so, on behalf of the existing Dewsbury Trust and for its purposes, then that circumstance would be a factor tending (absent countervailing factors) to support the proposition that the donors intended to benefit that charity and that their donations were therefore held upon the trusts of that charity.

29. In general terms I would also accept that the approach to be adopted when considering how objectively to ascertain the donors' intention against the background factual matrix should be informed by the principles applicable to the ascertainment of intention when interpreting written or oral contracts, as set out, for example, in *Arnold v Britton* [2015] UKSC 36 and *Wood v. Capita* [2017] UKSC 24.

30. As already mentioned, where a charitable trust is initially created by donors in general or vague terms, it is open to the trustees to execute a more specific deed which limits the terms of the trust, provided it does not conflict with the terms on which the donors made their donations: *Attorney General v Mathieson* [1907] 2 Ch 383, discussed in *Khaira v Shergill* [2014] UKSC 33, para. 24ff; see also *Tudor on Charities*, 11th ed., 6-03, 8-01. As Cozens -Hardy MR said in *Mathieson*:

> "There is, moreover, a further difficulty in the way of the trustees. When money is given by charitable persons for somewhat indefinite purposes, a time comes when it is desirable, and indeed necessary, to prescribe accurately the terms of the charitable trust, and to prepare a scheme for that purpose. In the absence of evidence to the contrary, the individual or the committee entrusted with the money must be deemed to have implied authority for and on behalf of the donors to declare the trusts to which the sums contributed are to be subject. If the individual or the committee depart from the general objects of the original donors, any deed of trust thus transgressing reasonable limits might be set aside by proper proceedings instituted by the Attorney General, or possibly by one of the donors. But unless and until set aside or rectified, such a deed must be treated as in all respects decisive of the trusts which, by the authority of the donors, are to regulate the charity. And it is irrelevant to urge that the donors did not originally give any express directions on the subject . . ."

31. As noted in *Khaira v Shergill* [2014] UKSC 33, para. 27, there does not appear to have been much discussion or development of the principles laid down in the *Mathieson* case, either in the textbooks or in the cases. My attention was drawn to *Neville Estates v Madden* [1962] Ch 832, but that does not advance the argument at this point. The decision in *Fafalios v Apodiacos* [2020] EWHC 1189 (Ch) was concerned first to deal with a different aspect of the *Mathieson* case (the principle that trustees who have been appointed under the terms of a trust deed cannot challenge the validity of the deed) with which I am not presently concerned; and, so far as it was concerned with the rule presently under consideration, was directed to the validity of the trusts declared rather than the question in the present case, which is their applicability.

32. The principle bears many similarities to, and (although nothing turns on the point for present purposes) may be identical with, the law relating to executory trusts. Thus in *Lewin on Trusts*, 20th ed., at 7-002ff. one finds it stated that,

> "An *executed* trust is where the limitations of the equitable interest are complete and final whereas, in an *executory* trust, the limitations of the equitable interest are intended to serve merely as minutes or instructions for perfecting the settlement at some future period.

> A trust is called executory if it directs another, formal document to be executed, or where, instead of expressing exactly what the testator or settlor means, that is, filling up the terms of the trust, he tells the trustees to do their best to carry out his intention. This is executory in that he has not put the precise nature of the limitations into words, but has said in effect, "Now these are my intentions; do your best to carry them out", or he has used such words as, "You shall hold the property on such trusts as will best correspond with" some other dispositions which cannot be exactly mirrored. A trust is executory only where it contemplates, expressly or by implication, the execution of some further instrument to effect the intentions which it evinces. Those intentions must, however, not be too ambiguous as stated. Once a valid executory trust is established, the court will compel the execution of the further instrument and will determine the precise limitations which it is to contain. Executory trusts were typically found in marriage articles and wills, but many comparatively recent examples occur in the interim trust deeds of pension funds, and further examples may well occur in future."

33. In their skeleton argument, Counsel for the LBMW Defendants point out that the implied authority to declare trusts under *Mathieson* is subject to any evidence to contrary. That is right. They go on to cite *In re Orphan Working School* [1911] 2 Ch. 167 and *Fafalios v Apodiacos* [2020] EWHC 1189 (Ch) as examples. They proceed to argue that the Court must therefore examine the facts about how exactly the fundraisers (C1, C2 and D14) took on the task of collecting funds and acquiring the site, and whether they were acting consistently with the wishes of Charity 505732 and/or the various donors in doing so. I do not accept that. The Court is not concerned with whether the Dewsbury Trust authorised the fundraisers to declare a separate trust or sub-trust. The question is whether the donors gave money to be held on the terms of the Dewsbury Trust or instead authorised the original trustees to declare a trust giving effect to a different intention. Nor is the question whether the London Trust exceeded that authority. That is not a point in issue in these proceedings.

34. In fact, where a fund is raised for a charitable purpose, like that of founding a chapel, and the contributors are so numerous as to preclude the possibility of their all concurring in any instrument declaring the trusts, and such a declaration of trust is made by the persons in whom the property is vested at or about the time when the sums have been raised, that declaration may reasonably be taken *prima facie* as a true exposition of the minds of the contributors: *A-G v Clapham* 4 De G.M & G. 591; 43 E.R. 638. See also *Tudor on Charities*,11th ed., 7-030. But this does not, I think, necessarily answer the question whether the donors intended to donate to a different charity altogether.

35. Finally, it is worth noting in this context that, as stated in *Tudor on Charities*, 11th ed., 6-017, a charitable trust does not require certainty of objects but, rather, certainty that all potential objects are charitable. There is no issue about that in this case.

Issue 1: intention: discussion

36. The donors, fundraisers, the mosque, and (apart from the Attorney General) the parties to this dispute, are all associated with the Tablighi Jamaat movement of Sunni Islam ("TJ"). The nature and history of Tablighi Jamaat is relevant background, therefore, but it can I think be taken quite shortly. I have had the benefit of a very full agreed joint statement prepared by the Claimants and the LBMW Defendants pursuant to an order of the Court, and summarise some of the relevant information below. For present purposes I am only concerned with the history down to about 1996.

Tablighi Jamaat background

37. In summary, I am told that ‘Tablighi Jamaat’ is the name given to what the parties agree is one of the largest Islamic missionary movements in the world. It translates to 'preaching party' and it is an apolitical reformist movement within the Sunni branch of Islam. Its salient feature is what is known as the Effort, which is central to its practice and teaching. The Effort is the voluntary effort of revival of what is regarded as complete Islamic practice among Muslims by the Muslims. The Effort is made up of the Syllabus and the Activities. They involve the development of the six points of Tabligh (which I need not set out) by travelling group visits (staying in other mosques, for preference) to strengthen faith and practice and call others to do so (“jama’at”), or at home by joining small groups encouraging attendance at the local mosque (‘gasht’) and by reading prescribed booklets (‘ta’aleem’).

38. I am told that Tablighi Jamaat was started by a scholar, Muhammad Ilyas Kandhlawi, in Nizamuddin, New Delhi in about 1926 and that in August 1934, a mashwara (that is, a consultative meeting) agreed six points of Tablighi and how the Effort was to be conducted. Muhammad Ilyas Kandhlawi was the first Ameer and led the movement from the Nizamuddin markaz. A markaz is a centre where the Effort is pursued and is generally a central (regional, national or international) mosque where mashwaras are held.

39. When Muhammad Ilyas Kandhlawi passed away in 1944, his son Muhammad Yusuf Kandhlawi continued his work and was the second Ameer until his death in 1965. After the death of Muhammad Yusuf Kandhlawi, Inamul Hasan Kandhlawi was appointed as the third Ameer. In 1993, the Third Ameer nominated 10 dignitaries within the Tablighi Jamaat movement.

40. The parties agree over their identity, but the Claimants contend that this was a 'World Shura,' while the LBMW Defendants say that it was a temporary body whose sole purpose was to select his successor, and that it did not convene until after his death in 1995. The organisation of Tablighi Jamaat before and after the death of Inamul Hasan Kandhlawi is in dispute between the parties. This is relevant because it forms a part of the substrate of the dispute between factions of which the Claimants and the LBMW defendants are respectively members. But it is important to note that these disputes did not result in what some of the parties describe as a schism in the TJ movement until 2017, after the events with which the property claim is concerned.

41. I should add a further word about mashwaras in the UK. These are meetings at which members of the movement gather at a central location to co-ordinate the Effort, discuss ways of promoting the Syllabus, set targets, offer mutual support and find solutions to problems. Prior to approximately 2017, these would take place on city, national and European levels in the following way. On a city level, a mashwara would usually take place in a markaz, normally on Thursday nights. On a national level, a theoretically monthly gathering would take place (in practice, though, it was typically every 6 weeks) at the Markazi Masjid South Street, Dewsbury (the 'Dewsbury Markazi'). At a European level, for many decades there was a biennial 5-day conference at Nizamuddin Markaz for all the European countries. In addition, there would be various other gatherings and conferences for various regional groups across the UK, often in Dewsbury, at differing intervals.

42. As Shabir Daji (D2) confirmed in his evidence, and I did not understand it to be disputed, TJ itself did not need or have a formal group or organisation, because the followers would do the necessary work. That did not mean that formal structures were not created for particular purposes within the movement.

43. Tablighi members are required to pray five times a day. As a Muslim engaging in prayer, a TJ follower could attend any mosque anywhere in the world, whether or not it was affiliated with Tablighi Jamaat, or even in some cases with a particular faction of Tablighi Jamaat.

The arrival of Tablighi Jamaat in the UK: London and Dewsbury

44. Mr Shabir Daji (D2) confirmed in his evidence, and I did not understand it to be disputed, that the UK branch of the movement was founded in 1944 at 448/450 Commercial Road, Whitechapel, in London and later moved to Christian Street in 1979. I take it from his evidence, however, that by branch he meant a group or community of TJ followers, rather than an organisation or organ of a larger organisation. Mr Daji agreed that by 1975, considerably later, there was a significant body of TJ followers in Dewsbury, West Yorkshire. I accept this evidence.

Hierarchy

45. The evidence is that it is an important part of Islamic culture, and of Tablighi Jamaat culture in particular, that one should respect one's elders. That means that there is an obligation to do what your elders say, as Mr Daji described. To argue would be highly disrespectful. The nature of the obligation as described

is social, moral and spiritual: it is accurately described as a cultural and religious imperative. It extends to practical, moral and religious matters, as described in the evidence of Mr Kanchwala and Mr Maljee. How the elders exercise their leadership in this way is, in part, the subject of the current dispute within Tablighi Jamaat, but it seems always to have been supposed to involve at least a degree of consultation. Consistently with the informal way in which the TJ movement has historically organised itself, this leadership is not, however, exercised by way of any legal obligation.

46. I accept what is said on behalf of the Claimants in their closing submissions, that there is nonetheless a hierarchy within the TJ movement. Before the schism, the elders at the Nizamuddin mosque in India were unarguably at the top of the hierarchy. Within the UK, by about 1975 the elders at Dewsbury were at the top of the hierarchy. As Mr Daji said, one Hafiz Patel was regarded as the leader of the whole of the UK, and he was the most senior of all of the Dewsbury elders. Within the hierarchy, communities would consult and obey the level above them, about any significant matters relating to the movement. So, for example, the London Community consulted the elders in Dewsbury about the acquisition of the Land at Abbey Mills in the same way as Shabir Daji said in his evidence that the elders in Dewsbury would have consulted Nizamuddin if they wanted to move the central markaz to a new site. The guidance given would be both spiritual and practical.

The Dewsbury Trust and the Anjuman-e-Islah-Muslimeen

47. In about 1975, the Dewsbury TJ community decided to buy some land on South Street in that town for religious purposes. On 25 June 1975 that Land was

conveyed to the trustees of the Madrasa Taleem-ul-Islam, Savile Town, Dewsbury to hold upon the trusts of a Declaration of Trust of the same date. 'Madrasa Taleem-ul-Islam' is the name of the Islamic educational madrasa to be built on that Land and is now attached to the mosque in Dewsbury, as Mr Daji explained. Additional Land was acquired by the trustees of the Madrasa Taleem-ul-Islam on 17 May 1976 to hold upon the same trusts.

48. The Declaration of Trust dated 25 June 1975 declared trusts of the original Land and expressly contemplated that other Land and assets would come to be held upon those trusts. This is the Dewsbury Trust and, notwithstanding what Mr Daji had said in his witness statement to the contrary, it did not come into existence until 1975, nearly 30 years after the London TJ community had come into being.

49. The 1975 trusts were charitable trusts for worship, preaching and educational purposes according to the principles and usages of the Muslim faith,

> "and for the promotion of such religious and other charitable purposes as shall from time to time be directed by the Committee hereinafter referred to such premises being known as the Madrasa Taleem ul Islam And in particular shall permit the said premises and any such buildings as aforesaid to be used for the purposes of the Society known as Anjuman-E-Islah-Muslimeen (hereinafter called "the Society") a copy of the constitution of which is appended to this Deed so long as such purposes shall be exclusively charitable".

Thus there were general Islamic charitable purposes, and a specific obligation upon the trustees to allow the premises to be used for the purposes of that Society as long as those purposes were exclusively charitable.

50. The 1975 Declaration provided that subject to those trusts, the management and control of the mosque and its affairs should be vested in a Committee drawn

from the Society in accordance with the Constitution appended to the deed. But if there should be no committee in existence the trustees might exercise the powers to let or sell the premises and apply the net proceeds "for such charitable purposes in connection with the Muslim faith and in such manner as they themselves should direct" (Clause 7).

51. No trustee was to be appointed who was not a member of the Muslim faith, and any trustee who ceased to be a member of the Dewsbury madrasa should automatically cease to be a trustee (Clause 10). The Society should have the (non-exclusive) right to appoint trustees. The meetings of the trustees should be at the madrasa unless decided otherwise. The first chairman of the trustees should be Hafez (or Hafiz) Patel, to whom I have already referred. If the Society should remove to another locality, the powers of the trustees and of the Committee in relation to the trust property would be unaffected (Clause 14).

52. What was envisaged, therefore, was a trust of property in Dewsbury which might extend to other property in Dewsbury or elsewhere, the purposes of which were quite general in the sense of being Islamic charitable purposes, but which required the property (including property later acquired by the trust) to be used for the purposes of the Society, and placed the management and control of the Dewsbury mosque in the hands of a committee led by Hafiz Patel and drawn exclusively from the Society, whether it remained based in Dewsbury or not. If there was no such committee, the trustees (who were primarily to be appointed by the Society and who must be members of the Dewsbury madrasa, where their meetings were primarily to be held) would presumably have power to exercise their powers as trustees in accordance with the charitable purposes (including

making the property available for the purposes of the Society), but might sell and apply the proceeds to generally Islamic charitable purposes.

53. The Society was to be called Anjuman-E-Islah-Muslimeen, or the Society for the Reformation of Muslims. I am not sure that the copy of the Constitution placed in evidence is complete, since it ends abruptly at Clause 14 (c), but what can be seen is that the Constitution provided that the Society, which was to be an unincorporated association, was to be located at the Dewsbury madrasa. Its objects in summary were to make provision for religious education of adults and children, arrange and hold religious gatherings on a national and international basis, to establish mosques and schools and the like. The committee was to be elected by the members. Elections were to be held every 2 years. Every male muslim anywhere who adhered strictly to the Shariat Islamis law, it said, was eligible for membership.

54. One can see that, while the combination of Society and Trust was intended to be centred on Dewsbury at least initially, it was perfectly possible for the Society to expand its membership without limit and to move its location as convenient, and for it to control any number of similar charitable trusts should they be established in Dewsbury or elsewhere, or for the Dewsbury Trust to hold additional property in Dewsbury or elsewhere subject to the control of the Society. The set up was at least in theory, capable of accommodating ambitious expansion plans (although 2-yearly elections on the vote of large numbers of members might plainly become very unwieldy, perhaps impractically so).

55. The name of the Society is a reference to TJ in general. Muhammed Ilyas called this the "reformation of faith of Muslims", (Islahul-muslimeen). This effort is

commonly known across the world as "Tablighi" and the meaning of "Jamaat" is group, hence the name Tablighi Jamaat. I attribute no particular importance to this name, or to the names with which the Dewsbury Trust has since been registered, in considering whether the Dewsbury Trust is merely local or not.

56. The Claimants submit that the reason the Dewsbury Trust was created was not to provide a single centralised legal entity that thereafter would become the owner of all of the property in the UK that had previously been purchased, or that was going to be purchased in the future, by any adherents of the TJ movement in the UK. Rather, the Dewsbury Trust came into existence simply because land was being bought in Dewsbury as the site for a new mosque. In my judgment that is broadly right, but the position is more nuanced. What must have been contemplated (because that is what was provided for) was a local Society which might be capable of expanding nationally and even internationally, controlled by a democratically elected leadership, formed for purposes associated with Tablighi Jamaat, and for the purposes of which Society property was to be held under the Dewsbury Trust by trustees appointed by the committee of the Society, including but not necessarily limited to the Dewsbury mosque and madrasa, but for which purposes property might equally be held upon separate but similar trusts as convenient. Of course, it does not follow from that that any additional property was so held, or that any such additional trusts were ever created, or that the Society ever had any members, or that other TJ societies might not with equal validity be formed on similar or different lines. Nor would it affect any trusts which already applied to property held for TJ purposes.

57. What is plain is that the Society was intended to control the Dewsbury Trust, and not vice versa. Without the Society, the Dewsbury Trust was simply a trust of property in Dewsbury which might extend to other property in Dewsbury or elsewhere if that property were held as an accretion to the trust assets, the purposes of which were quite general in the sense of being Islamic charitable purposes, and not necessarily restricted to specifically TJ purposes.

58. In fact there is no evidence that the Society was ever formed or had a membership, and I find that it was not and did not. Mr Daji accepted that the provisions of the Constitution have never in fact been put into practice, and that there was no formal membership and no Committee. The evidence of Mohamed Mosa Hafeji in his affidavit for the Defendants concurred. The letter to the Charity Commission dated 4 April 2018 from Mohammed Ishaque Patel, the former chair of the Dewsbury Trustees, and which C1 and C2 also signed, is to the same effect, adding that no elections were ever held. In practice, the Dewsbury mosque and madrasa seem to have been run within the applicable trusts by the trustees for the time being of the Dewsbury Trust and for the purposes of the Tablighi Jamaat effort under the leadership of Hafiz Patel.

59. The Dewsbury Trust was registered with the Charity Commission on 15 November 1976 under number 505732. On 20 February 1980 by a declaration of trust purportedly made pursuant to a resolution of the Society (as the deed recited) the Dewsbury Trusts were said to have been varied such that the trust property was to be held solely to further the charitable purposes of the Society known as the Anjuman-E-Islahul- Muslimeen of U.K. (hereinafter called "the

Society") a copy of the amended Constitution of which was appended to the deed.

60. I am not concerned with the status of the 1980 declaration of trust, but note that it and the amended Constitution are otherwise broadly similar to those from 1975, and the differences are not material for present purposes. Again, for the avoidance of doubt, I repeat that no Society was ever actually formed or had members. Accordingly, the Dewsbury Trust on its terms was simply a trust of property in Dewsbury which might extend to other property in Dewsbury or elsewhere if but only if that property were held as an accretion to the trust assets.

61. A distinction needs to be made, which was not always made by the parties or the witnesses in this case, between the Dewsbury Trust and its trustees, and the Dewsbury TJ elders and leadership.

62. Furthermore, the Dewsbury Trust is an independent trust, and legally independent of Nizamuddin, as Mr Daji made plain and as is plain from the trust documentation. It keeps its own accounts, which are separate from whatever accounts are kept by the mosque in Nizamuddin; it has a separate balance sheet; it has separate income and expenditure accounts, all of which relate solely to the Dewsbury Trust; and it is separately registered with the Charity Commission. As Shabir Daji put it in his oral evidence, the Dewsbury Trust is separate from Nizamuddin, but is working under it. I accept this.

The relationship between Dewsbury and other UK TJ centres

63. Against that background, I turn to the relationship between the Dewsbury Trust and other TJ centres and properties in the UK as it would have been in the period up to the acquisition of Abbey Mills in 1996.

64. The Dewsbury Trust markaz at 9/11 Christian Street, Stepney was acquired in 1980 and was and is held upon the Dewsbury Trusts. The Declaration of Trust applicable to it is dated 3 November 1980 and expressly says so, and that the trustees acquired it for the purpose. That does not, of course, mean that all property associated with TJ in the UK is so held. In the case of Christian Street, it was acquired largely, if not entirely, through the generosity of a single individual, Haji Amtar Ali, who donated it to the Dewsbury Trust, as Messrs Daji, Maljee, Solad Mohammed, Rahman, and Chaudry all agreed. That adequately explains the ownership of Christian Street by the Dewsbury Trust, which therefore does not itself provide support for the idea either that all UK property was to be held upon that trust, or that the donors for the Abbey Mills markaz understood that all UK property was to be so held, or that they had any opinion about it at all at the time. In fact, it appears that at least some London TJ members who attended it but were not directly involved in its running had no idea that it was owned by the Dewsbury Trust, although obviously aware that Dewsbury was the national centre for TJ in the UK: I am thinking of Iqbal Ahmed Dhoodhat and Hanif Memon. No doubt there were many others.

65. The Dewsbury Trust's accounts before me (some are missing, and the earliest dates from 1998) neither disclose nor suggest a legal or financial connection with other TJ communities, trust or assets; rather the contrary. I reject the submission on behalf of the LBMW Defendants that the accounts do not have

probative value: they are formal documents, prepared by professionals, pursuant to legal obligations, and approved by the trustees.

66. Several of the Dewsbury Trust's accounts (including those of 1998) state that its principal activities are carried out at the Dewsbury markaz, and there is no suggestion that ever changed. Mr Daji accepted that each local community pays for its own day-to-day running costs (and this was backed up by the evidence of Nasir Kanchwala and Ebrahim Bhattay for the Claimants), and that, moreover, Dewsbury did not administer any institutions in the UK apart from the Dewsbury mosque and madrasa. I accept this evidence, and these are facts which, I infer, were available to potential donors to the purchase of the Abbey Mills mosque at the relevant time. For what it is worth, until 2020 almost all of the Dewsbury Trustees were based in Yorkshire, as Mr Daji accepted and the evidence showed. D14 was the exception, however. Apart from Abbey Mills, and the property at Christian Street, the evidence before me does not support the proposition that the Dewsbury Trust owns any properties save in Dewsbury. The accounts do not suggest it. There is evidence tending to show that it does not. For example, the transfer of the Birmingham Markaz declares it is held on trust for the Zakaria Mosque Trust, which refers to the name of the Birmingham mosque and not to the Dewsbury Trust. What appears to be an uninitialed interpolated provision in a different font or typeface, referring to the Dewsbury Trust, is inconsistent with the rest of the document, and I am not persuaded on the evidence before me that it was part of the document as executed. The Birmingham Markaz is not in the Dewsbury Trust accounts and Mr Daji's suggestion that this might be a mistake was both unconvincing and unsupported. The Land register for the Glasgow Markaz describes the proprietors as the

trustees of the Masjid Noor Mosque trust. Masjid Noor is the name of the Glasgow Markaz, as Mr Daji accepted. It is not on the Dewsbury Trust accounts either.

67. Abbey Mills itself was added to the Dewsbury Trust accounts balance sheet for the year ending 31 December 1996, which were signed off on 13 October 1998. No copy of the 1997 accounts is currently extant, but the figures are available from the 1998 accounts, which were signed off on 9 March 2000. It is clear from those figures that Abbey Mills had been removed from the balance sheet in the 1997 accounts and it did not appear thereafter. There was no disposal. The overwhelming inference is that the trustees and their accountants had concluded that Abbey Mills was not then an asset of the Dewsbury Trust. Mr Daji suggested that it had only been removed because the accountants were waiting for (unspecified) figures from someone. If so, it appears they never got them. But it is utterly implausible that a capital asset of this kind should be removed, having once been added, for mere lack of information; and I reject that suggestion. It is more likely that the asset was added because the Dewsbury Trustees thought they were getting it, and removed because they knew they had not. It would have been good to see what, if anything, the 1997 accounts had to say about its removal, since it would have called for explanation; but unhappily they are not in evidence.

68. It is a relevant circumstance that TJ properties are typically purchased with funds mostly raised locally, that is, from the very people most likely to benefit directly and in the case of Abbey Mills in particular, primarily from TJ members in London. That appeared from the evidence of Nasir Kanchwala for the

Claimants in cross-examination; Mr Daji for the LBMW Defendants in cross-examination, albeit sometimes grudgingly, accepted this (though he appeared to be saying at points that the donations were made because of the influence of the Dewsbury Trust, he pointed to no overt expression of that interest in that context) and he was concerned to say that other people also financed, for example, the Leicester and Blackburn acquisitions. It also appeared, in the case of Leicester, from the Leicester Markaz Trust accounts.

69. I accept, too, that markazi were purchased not only principally by the local community, but for the use primarily of the local community. That is only common sense, but it was recognised also by Mr Daji in his evidence, as well as by other witnesses. Of course they would also be visited by others, particularly in the practice of making outings/visits, and by speakers and teachers. There may have been an ambition on the part of some that in view of its size and London location, Abbey Mills would serve a much wider community, even extending outside the UK, but there can be no doubt that its primary purpose was to serve the London TJ community. Mr Daji accepted that in cross-examination.

70. In summary, the context at the time the funds were raised for the acquisition of Abbey Mills mosque was as follows.

(1) There was no consistent pattern of the Dewsbury Trust's owning TJ properties elsewhere, and on the contrary the indications are that local properties were locally owned, with the exception of Christian Street.

(2) There was no consistent knowledge or understanding among potential donors for the acquisition of the Abbey Mills site as to by whom and upon

what trusts TJ properties were or generally were held. It does seem to have been understood that funds for the acquisition of such properties would typically be raised locally and the markaz would be used primarily for the benefit of the local community.

(3) There was no financial or legal connection between the Dewsbury Trust and the other UK markazi, though some persons might be trustees of more than one trust, and donations might of course be made from one to another.

(4) The Dewsbury elders had a leadership role in the UK TJ movement, and, as with its relationship with Nizamuddin, I find that the obligation owed to the Dewsbury elders by regional markazi at the relevant time extended to practical, moral and religious matters, and its nature was moral and spiritual (and social), but was not legal.

71. Taking into account the totality of the evidence, I find that there would have been an expectation at the relevant time on the part of both the fundraisers for and the potential donors to the acquisition of property for a markaz in the UK that it could not be held on terms which might allow it to be devoted to purposes which excluded primary use, and at least a high degree of control, by local members of TJ, unless the contrary had been spelt out: the expectation would be that if bought by locals it would be used for and controlled by locals. That is not necessarily the same as an expectation about ownership, but it tends to point towards an intention that there should be local ownership on local terms.

The inception of the Land acquisition

72. It is not in dispute that the immediate factual context of the appeal for funds with which to purchase the Abbey Mills site was that the success and growth of TJ in London meant that the Christian Street premises were recognised no longer to be adequate to requirements, and larger and more suitable premises were needed. Mr Daji accepted in cross-examination that it was the London community which decided that larger premises were needed, not the Dewsbury elders or trustees, and that they were needed to meet the needs of the London community. I accept that.

73. The Abbey Mills site was found (there was some controversy about precisely who had found it first) and its size (including space for parking), its location and its transport links made it look highly suitable. As Mr Daji described, the London Shura had travelled to the national mashwara in Dewsbury in about autumn 1994, and they asked Hafiz Patel about buying the Land. The London Shura had asked for permission to buy the site, which the elders had granted, though they had made it clear that the money should be raised only from within the London TJ Community, not elsewhere, and they should 'stand on their own two feet' (as Shoukat Maljee put it in his evidence). I take it that was not only in the interests of sturdy self-reliance but also with a view to ensuring none outside the TJ movement could assert a claim over the property so acquired. These circumstances are not, of course, strictly inconsistent with an intention that it be acquired for the Dewsbury Trust, but they certainly do not support the LBMW Defendants' case in that regard. And given the leadership position of Dewsbury in the movement, the fact that permission was sought says nothing about the intention as to ownership. Moreover, the Dewsbury elders did not need it to be owned by the Dewsbury Trust for them to be able, as a matter of

fact, given their leadership role and the regard in which they were held, to be confident of exercising just as much control over its activities as might be required in the interests of the movement.

74. The London Shura had been given permission to raise funds to acquire the site. The Dewsbury elders had declined to undertake financial responsibility for fundraising or the day-to-day running of the markaz. The Dewsbury Trust did not have the money to purchase the site. There was no question of the money's being raised by an appeal in Dewsbury. Everyone knew and understood the fundraising was for a TJ markaz in London.

75. The Dewsbury elders did not purport to specify the terms upon which the funds might be raised, though they had insisted that they should not be raised outside the TJ movement. In particular, they did not specify that the property so acquired must be held by the Dewsbury Trustees or subject to the Dewsbury Trust. Mr Daji did at one point seem to suggest that the fundraisers had been told they had to raise the moneys 'for the Anjuman,' meaning Dewsbury. But the Dewsbury Trust had an internal meeting about the vendors' request for a bank guarantee of the purchase price and decided, as Mohamed Mosa Hafeji said in his affidavit and as Mr Daji accepted, that they "did not want any liability on our Dewsbury Trust if the London brothers were unable to pay for the same." That does not strictly exclude the possibility that as far as the Dewsbury Trustees were concerned the London Shura was supposed as this stage to raise the money at its own risk and acquire the property at the outset, and only later transfer the property so acquired to the Dewsbury Trust, but that was not the evidence of Mr Hafeji in his affidavit (on his account, the idea of a transfer only

came up after the purchase), and it is implausible that this could have been their plan at the outset. And the refusal of the guarantee does not sit well with the idea that the Dewsbury Trustees saw the London fundraisers as their agents (and if they did not, it is hard to see why the donors should have done so). I find that they did not.

76. Nor do I consider that there was anything in the context at that stage to imply that the site so acquired must be held upon the Dewsbury Trust, rather than any other independent TJ trust. Much emphasis was laid on the part of the LBMW Defendants on the new premises being needed to replace, or take the place of, the Christian Street premises. The implication was that this supports the proposition that it must have been intended to be held by the Dewsbury trustees upon the Dewsbury Trust, as Christian Street was. But that does not follow. The premises were being replaced as a matter of function, not ownership or control and, with the exception of Christian Street, properties tended to be locally owned.

77. In those circumstances, it was entirely up to the donors with what intention they made their donation or loan.

The November 1994 meeting at Christian Street

78. The Claimants rely strongly on a meeting said to have taken place at Christian Street in November 1994 and attended by about 60 local leaders at which the London Shura proposed that funds should be raised to purchase Abbey Mills. The meeting is important, because it was much discussed, and seems to have set the basis upon which the London TJ community approached the question of fundraising.

79. Shoukat Maljee, a helper of Mr Patel, mentioned the meeting at Christian Street but had little to say about it in cross-examination. Hanif Bilal Memon likewise mentioned it, but gave no detail: his witness statement was directed to the cy-près question. Nasir Kanchwala said he was there and said emphatically that he was the first one to stand up and say, 'we want to buy this place.' Yaqub Ali Mohammed was there but did not remember much about it. Aqeel Lone, Isap Vally Ismail Makhan, Javed Malik and Shabaz Hussain did not attend but heard about it afterwards and had little to say about what they understood to have been said. Iqbal Ahmed Dhoodat could not remember if he attended. About 8 of the Claimants' hearsay witnesses said they attended it, with varying degrees of recollection, and many others recalled hearing about it at the time.

80. Muhammed Abdur Rahman gave evidence that he had attended that meeting, and that Hafiz Patel had told them that they needed to buy a bigger place for London as Christian Street was too small, that they should not ask anyone else for help in raising the money to buy Abbey Mills, and that it could all be done in London from the London Community by means of loans and donations from London, and that everyone needed to help. In cross examination it became clear he had not meant to suggest that Mr Patel had been at that meeting, only at the earlier meeting in Dewsbury: I accept that.

81. The Claimants' other main witness on this meeting was Solad Sakandar Mohammed (C1), with whose evidence the evidence of the other witnesses on behalf of the Claimants was consistent. His evidence was in summary that the people who attended the November 1994 meeting were all active members of the London Community, and that they were told that the donations and loans

raised would be used to buy the Land, and that the Land was being bought to build a bigger mosque for the London community. Although it was suggested on behalf of the LBMW Defendants that he was not a reliable witness as to the meeting, or generally, and in particular that his evidence as to various November 1994 meetings was implausibly detailed (and although for reasons I mention later in this judgment I approach his evidence in general with some caution), I accept his evidence of this as plausible in context, and consistent with that of others, including Mr Rahman.

82. Of the Defendants' witnesses, none mention the November 1994 meeting at Christian Street save Muhammad Zillul Haque, who does not make it clear whether he attended or not; Muhammad Gias Uddin, who says he attended and thought his donation was for the site to be acquired for the Dewsbury Trust (he was not called to give oral evidence, however). Mohammed Ishaq Chaudry (D10) said he had been put in charge of fundraising for the purchase at the request of the Dewsbury Trust (a proposition which I do not accept in view of the detached approach of the Dewsbury Trust and elders to the financial and property aspects of the acquisition), but oddly did not mention the November 1994 meeting at Christian Street in his witness statement. Bostan Mohammed refers to it in his witness statement but without detail. D14, who was a key player at the meeting, gave no evidence. It is not mentioned in contemporaneous documentation, but that is not surprising.

83. In a sense, it might not have mattered much to those involved at the time whether the funds raised were to be held for the Dewsbury Trust or another trust, as long as they were applied for the purpose contemplated, the acquisition of the

mosque for the TJ movement in London to replace Christian Street premises. The TJ movement had not split, and in the sense discussed above, the Dewsbury leadership was the leadership of the whole UK. But there is some evidence that it did matter. Solad Sakandar Mohammed gave evidence that, historically, whenever the London community had substantial savings from community donations, they would assist Dewsbury when they needed funds (for present purposes it does not matter whether this is a reference to the Dewsbury Trust, the elders, or the community). That makes sense, not just because of the leadership role of Dewsbury, but because the Christian Street markaz was held by the Dewsbury Trust. His evidence was that in the mid-1980s when a large sum, of the order of £100,000, had been saved up from London donations and kept in cash in a safe at Christian Street, D3 (Mohammed Aqbul Muqit, now deceased) had given the money to Dewsbury without consultation, on the basis, simply, that Dewsbury needed it. The London community was very upset and suspicious about the fact that that their money had been used in this way without their consent. His evidence was that this caused some initial hesitancy about making contributions for the purchase of Abbey Mills on the footing that it might be diverted to Dewsbury. He said that in the November 1994 meeting people were saying to the organisers, "Whenever now we give you money, please don't give anything to anybody except only for this Land". The organisers, including Mr Mohammed, offered reassurance. Mr Mohammed referred to this again in his oral evidence and he was not cross-examined about it. Although it is not mentioned elsewhere in the evidence, it is plausible, given the way in which TJ has worked in the UK. I accept this evidence. It means that the distinction between Dewsbury and London did matter in London; that

it was expressly mentioned in the November 1994 meeting; that potential donors did not want their money or property to go to Dewsbury without their consent; and that reassurance was given.

84. Mr Mohammed's evidence was that it was at this meeting that it was decided to appoint proper trustees to be responsible for the project, and that D14, C2 and C1 should be those trustees. On the evidence before me, none of them had been responsible for the gift of the money in the safe to Dewsbury in the 1980s. D14 was involved in both communities, and the others were exclusively London trustees. They were chosen, according to Mr Mohammed, because they were members of the London Shura who were prepared to take on the responsibility. I accept this as highly plausible in the circumstances.

85. It is an important feature of the case, when identifying the intention as to the trust upon which the funds were to be held, when the charitable purposes were so similar, who the trustees were to be. They were not to be the Dewsbury Trustees (though D14 was one). That is a powerful indication, in my judgment, that the intention which was communicated to contributors was that while of course the purposes were TJ purposes, the trust was not the Dewsbury Trust. Moreover, the trustees had not been chosen by the Dewsbury Trust, as might have been expected (as a minimum) if they were to be mere agents or sub-trustees of Dewsbury: they were chosen by the London Shura or mashwara.

Source of funds raised and by whom raised

86. I have accepted that the London Shura had been told that the money should be raised only from within the London TJ Community. It is only to be expected that that is what happened. The records are incomplete. It was only loans, not

gifts, which were recorded. That was so that, if required, they could be repaid. For that reason, there is not likely to have been a substantial unrecorded amount of loans. The witness evidence did sometimes suggest that a witness raised loans although they do not appear in the loan book, or are recorded in a smaller sum than stated: for the most part this is likely to be because people sometimes like to think of themselves as more generous than they actually were, rather than due to the existence of substantial amount of unrecorded lending.

87. The first loan recorded was on 28 November 1994. There are unlikely to have been substantial unrecorded loans before that, both for the same reason and because the meeting which started the process had only occurred in November 1994. I am told, and it appears not to be disputed, that about £1.04m of loans are recorded in C1's loan book. The purchase price was £1.4m. The records identify the mosque which was attended by the individual lender. They are almost all at London and nearby addresses. None is recorded as coming from other city TJ communities or from Dewsbury. Only one gave an overseas address. I do not accept the undocumented recollection of some witnesses that that funds were contributed to any substantial degree from elsewhere.

88. The balance of the purchase price came from gifts. Although there is no contemporaneous record of the source of these gifts, it is most likely that they too came from the London TJ community, since they will have been raised by the same people in the same way.

What donors were told about entity to which contributing

89. A number of the Claimants' witnesses volunteered in their statements that when loans were made, not only were they recorded in the loan book, but receipts

were supplied: I am thinking of Mr Mohammed, Nasir Kanchwala, Muhammed Abdur Rahman, Shoukat Maljee, Muhammad Idrees Bhatti and Yakub Ali Mohammed in particular. None of them indicated on whose behalf the receipts were given, and it is natural to assume that they thought they were given by or on behalf of the London Shura or London trustees, as indeed they must have been. Some of them related to large sums of money. These witnesses were not asked about them in cross-examination.

90. None of the Defendants' witness statements mentioned receipts or that they might have been given on behalf of the Dewsbury Trust. Nor was it part of their pleaded case that they had been. On the 6 and 7th days of the trial, respectively, Shabir Daji and Mohammed Hossain Howlader volunteered in cross-examination that the receipts had been given in the name of the Dewsbury Trust.

91. I am told (letter to the Court 10 July 2023) that no receipts had been disclosed by the Claimants, and that the LBMW defendants had disclosed and produced four receipts (dated 2010, 2012, 2017 and 2018) which had been inadvertently omitted from the trial bundle.

92. On the 9th day of the trial the LBMW defendants sought and obtained permission to admit the evidence of Shafi Uddin Ahmed in a witness statement dated 4 July 2023. He produced photographs of a number of receipts. In consequence, a further hearing was held remotely on 11 September 2023 at which Mr Mohammed verified his 3rd witness statement prepared in response to Mr Ahmed's evidence, and was cross examined upon it. Mr Ahmed was not called to give oral evidence.

93. One of the receipts is dated 2 July 1997 and acknowledges the sum of £104,433.55. It is on headed paper in the name of Anjuman-e-Islahul Muslimeen of U.K., with Charity Commission registration number 505732, and the address of South Street, Dewsbury. The form contemplates that the sum received may be either qarde-hasanah (a 'goodly loan') or lillah (which I understand to refer to a gift). In this case, the entry for a goodly loan is circled. It is numbered in manuscript, in a way which makes it possible to identify the payment in the loan book; and there is a copy of the cheque by which it was made. The payee is also Anjuman-e-Islahul Muslimeen of U.K. The receipt records the lender as Mr Ahmed's father, though the cheque is paid from a law firm. The receipt is signed by Mr Mohammed (C1). The bank statement showing receipt of those funds relates to the National Westminster Bank account opened in the name of the Dewsbury trust in 1995 by D14, to which I will refer below. There are 4 other receipts. There is a receipt dated 12 January 2012 for £20,000 for a goodly loan, signed by one I Patel. The next is dated 12 January 2011 for £40,000 from a Mr Joshimuddin. The next is dated 28 April 2014 for £10,000 signed by Mr Mohammed. Finally there is a receipt dated 2013 or 2015 (it is unclear) for £5000 signed by Mr Mohammed. All of them can be traced into the loan book, and all of them are headed in the same way. The printed form states that the loans were 'for London New Markaz.' The Claimants accept that they are genuine documents.

94. In cross-examination, Mr Mohammed accepted that loan receipts were important, and it was important that they should be accurate, and clear about who was providing the money, and to whom. He accepted that the name and the charity number on the receipts was the name of the Dewsbury Trust, and that he

knew the name and number of the Dewsbury Trust at the time. Some of the receipts had a printed template date relating to the 1980s, and Mr Mohammed accepted that they must have been printed in the 1980s, although evidently they were being used after that decade. The one for £5000 had a template date relating to the 2000s.

95. Mr Mohammed said that until the purchase of the land only handwritten receipts on blank paper were given, and printed receipts had only been used after the purchase and all the way up until the split in the TJ movement. He said the book of receipts had been found at Christian Street and used for convenience, and that effectively a new book was produced through Dewsbury, also merely for convenience, for the 2000s. He asserted that the reference to the London New Markaz meant that the receipts were for London, not Dewsbury; that all the lenders had been giving to London, not Dewsbury; and that (although an accountant) he had never noticed the prominent reference to the Dewsbury Trust for that reason; and none of the lenders had ever commented. He indicated that it did not matter, because London and Dewsbury were working together at the time.

96. I find that the original receipt book did indeed come from Christian Street and had been printed in the 1980s. I find that the reference to the London New Markaz was a not a reference to the Christian Street markaz and its general expenses (even though it was new in the early 1980s), but specifically to the project of finding premises to replace it (because there are no receipts before me relating to such expenses, as opposed to loans in the loan book for that project, and because although the book pre-dates the Abbey Mills project, Mr

Mohammed gave evidence that about £100,000 had been raised in the mid-1980s for larger premises – this was the money that went to Dewsbury and caused upset). I find it is more likely than not that receipts in this form were used before the dates of the earliest receipt before me, and that they were used before the acquisition of the Abbey Mills site. I do not accept that Mr Mohammed never noticed that the receipts were being issued in the name of the Dewsbury Trust: his evidence on this was not credible. I do accept (and both sides relied upon this as a fact) that none of the recipients of those receipts ever raised a query about them. Moreover, against the background which I have already found, that the difference between the Dewsbury Trust and the London Shura mattered to the London Shura and its community, and that reassurance was given that the money raised by London would not be passed on this occasion, as it had been before, to Dewsbury, I reject Mr Mohammed's evidence in his last session of cross examination that the difference between the two did not matter (which would have been in conflict with his earlier evidence on this point). I accept, however, that, given that it did matter, neither he nor anyone else can have regarded the reference to the Dewsbury Trust on the receipts as being of any significance in relation to the funds raised for the purpose of acquiring the Abbey Mills site. If they had done so, at the very least further reassurance would have been sought (in the way that it was at the November 1994 meeting), or there would have been controversy (in the way that there was controversy when the Dewsbury trustees attempted to get the property transferred to them). Neither of those things occurred. For that reason, I do not consider the headings on the receipt to be evidence either that the London trustees or fundraisers regarded themselves as agents for Dewsbury, or as

evidence that the part of the donors or lenders intended the money for the Dewsbury Trust. It is not insignificant that the defendants placed next to no reliance on the terms of any receipts for this purpose until day 9 of the trial, despite the fact that other receipts, said to have been in similar terms, had been disclosed by the defendants but left out of the trial bundle; while the Claimants' witnesses had referred to them (though not to their terms) without embarrassment. Nor (to anticipate) do I regard it as evidence that the 1996 Declaration of Trust did not come into existence until the date which it bore. For the avoidance of doubt, I consider the untruths which I have found Mr Mohammed to have uttered in this context to be attributable to a desire to avoid the possibility of adverse findings as the result of the evidence of the receipts, which in the event I have not made anyway. It is another reason, however, why I must approach his evidence with caution.

The £100,000 paid by the Dewsbury Trustees

97. The LBMW Defendants claimed that the Dewsbury Trust had contributed £100,000 to the purchase price. Certainly £100,000 was paid to the London account opened by the London Shura on 5 March 1997, but completion of the purchase had occurred on 5 November 1996. It was not a direct contribution to the purchase price, because that had already been paid to the vendors. It was applied, as far as one can tell (because fundraising continued after the purchase was completed, and of course expenditure too) to the planning costs and the repayment of some of the loans made by the London community.

98. The LBMW Defendants argue that it should nonetheless be regarded as a contribution to the purchase price, and draw a comparison with the treatment by

Briggs J at paragraph [70] of a loan from the United States in *White v Williams* [2010] P.T.S.R. 1575. This needs to be unpacked a little. When considering the intention of the settlors, as determining the trusts upon which the property was held before and apart from the 1996 Declaration of Trust, the Claimants' case drew no distinction between outright donors and those who were invited to and did make loans. They were all treated as settlors. The Claimants explicitly pleaded in their re-amended Reply and Defence to Counterclaim that the sums were given and lent for the purpose of buying the Land to be used as a mosque and religious centre for the local community (para.8). There was no dispute between the parties that in principle lenders might be settlors just as much as donors. That seems to be right. A lender might or might not make a loan on terms that the money so lent should be applied by the recipients as an addition to the capital of a trust for certain charitable purposes; and whether it did or not would fall to be considered as a legally separate question from a consideration of the terms upon which the debt undertaken was to be repaid. But if the lender made the loan on terms that the money so lent should be applied by the recipients as an addition to the capital of a trust for certain charitable purposes, then they should be regarded as a settlor, and their intention should be taken into account in determining those purposes just as with any other settlor. Just as with any other settlor, as soon as funds are received pursuant to the appeal, a charitable trust will be constituted: *Tudor on Charities*,11th ed., 18-048ff, *supra*. That being so, the source of or intention behind a subsequent repayment of such a loan is nothing to the point in relation to the terms of the trust. The Dewsbury payment of £100,000 cannot have affected the trusts upon which C1, C2 and D14 held. In any case, it was those trustees who repaid the lenders, not the

Dewsbury Trust, and they can hardly be taken to have acted inconsistently in doing so with the trusts upon which they already held. In *White v Williams* [2010] P.T.S.R. 1575 the lender was clearly not regarded as a settlor, but simply as a lender. In this case, the lenders, just as much as outright donors, fall to be regarded as settlors because they were contributing to a charitable appeal upon terms that their contribution was to be applied to charitable purposes, albeit that the trust undertook a debt to them at the same time.

On whose behalf the trustees/fundraisers represented themselves to others as acting

99. There is a volume of contemporaneous documentation for the period from the start of the attempt to purchase Abbey Mills onwards, in which C1, C2 and D14 separately and together are said to have held themselves out in a variety of ways as acting on behalf of the Dewsbury Trust in relation to the purchase of the Land. The Defendants rely on this as contemporaneous and therefore reliable evidence of what they understood themselves to be doing at the time, and so of the intention of the settlors as reflected in their actions.

Holding out to Forsythes, Grimley JR Eve and the vendor

100. On 1 November 1994 Grimley JR Eve, the property consultants, wrote to Abu Umar of Streatham to bring the Abbey Mills site to his attention for potential sale. Abu Umar was a name which C1 used for convenience for some business purposes, as he belatedly accepted in cross-examination. He must have been on their mailing list. It was noteworthy that C1 appeared to consider that using a false name for business purposes to be perfectly acceptable. It is not.

101. As Mr Umar of Abu Umar and Co, C1 wrote again to Grimley JR Eve on 5 December 1994 saying that one of that concern's clients was very much interested in purchasing the Land (this was now after the November 1994 meeting, since the first loan was received on 29th of that month), offering £1.255 million subject to contract and saying that as far as the financial identity (that is, the purchaser) is concerned, they could give full assurity [*sic*] that there would be no problem.

102. After an initial contact in his own name, C1 approached Mr Isaacs of Forsythes solicitors to act on the purchase on behalf of Merri Made Ltd, over a period starting from 4 January 1995: I cannot think it was ever genuinely his intention that this company would be involved in the transaction, however. At some point before 14 February 1995, by which time the offer had been increased to £1.4m and accepted, he evidently told Mr Isaacs that the purchase might well be in the name of another company, but not which one it was. By 23 February 1995 Mr Isaacs was telling Grimley JR Eve that the purchase was to proceed in the name of Anjuman-e-Islahul-Muslimeen of UK, of Christian Street, and describing it, no doubt on instructions from C1, as the largest of the Muslim charities, referring to its bank account with National Westminster Bank plc, inviting them to write for references both to the bankers and the chairman of the charity. The letter said, "Some of the funds are available here in the United Kingdom now, and the remainder will be transferred here when needed."

103. Plainly that was a reference to the Dewsbury Trust, since only it met with the description. The bank account was in its name, albeit it was controlled by the individuals named on the mandate. The address was that of Christian Street,

which was property owned by that trust, albeit occupied by the London TJ community. There was no chairman in London, although D14 was described as such on the bank mandate. But if so, it was untrue to say what it said about funds: no funds were anticipated from the Dewsbury Trust, although the bank account was in its name; London had collected some money by then, but there was no expectation that the balance would be transferred from anywhere else.

104. The reference to the availability of funds from elsewhere, and to the size of the charity was, I take it, intended to reassure Grimley JR Eve that the prospective purchaser had substantial funds available, although at that point it did not. I do not regard that, therefore, as good evidence of the understanding at the time of C1, C2 and D14 as to the trust on behalf of which they regarded themselves as acting. I do regard it as evidence of a willingness to mislead third parties so far as might be convenient in pursuit of their objects. That impression was wholly borne out by the evidence, in particular, of C1 as he gave it before me.

105. On 16 May 1995 Mr Isaacs wrote to C1 specifically to confirm that the purchasers were properly described as Anjuman-e-Islahul-Muslimeen (assuming it was an unlimited company). Although the response to that letter is missing, by 20 June 1995, C1 was writing to Mr Isaacs with his instructions on elaborately headed notepaper bearing the name of Anjuman-e-Islahul-Muslimeen of UK, of Christian Street, which referred to it as a charity with registered charity number 505732. That was the registered charity number of the Dewsbury Trust. There are other examples thereafter. There is no evidence at all that they were authorised to hold themselves out as acting on behalf of the Dewsbury Trust, and I find that they were not, but that is what they were doing.

106. The position changed, however. The vendors' solicitors, Pothecary & Barrett, prepared a draft contract dated 7 August 1996 on the basis that the purchaser would be Anjuman-E-Islahul Muslimeen of (London) U.K., of Christian Street. That was actually signed by D14. A draft transfer identified the purchasers as C1, C2, and D14 as trustees of Anjuman-E-Islahul Muslimeen of (London) U.K. and signed by all three. Forsythes took no exception to the deposit cheque and the contract being in slightly different names. Contracts were exchanged, presumably also in the name of Anjuman-E-Islahul Muslimeen of (London) U.K., on 7 October 1996, and Mr Isaacs pointed out in his letter to C1 of that date that the property would need to be purchased in the names of the trustees of the society, which he requested. There was no such society at the time; but evidently a reference to the London Shura or trustees was intended and a distinction was being drawn from the Dewsbury Trust. Oddly, the letter setting out the names and addresses of the trustees who would purchase on behalf of this society is not in evidence, and nor is the completion statement enclosed in his letter of 25 October 1996, but the transferees, C1, C2 and D14 were described in the transfer, and subsequently on the register, as trustees of Anjuman-E-Islahul Muslimeen of (London) U.K. That is not a reference to the Dewsbury charity. It shows an intention to distinguish the purchaser from the Dewsbury Trust.

Holding out to National Westminster Bank plc

107. By now, they had set up the National Westminster Bank plc account in the name of charity 505732, that is, of the Dewsbury Trust. There is a letter dated 23 January 1995 from National Westminster Bank to D14 stating that a meeting

had taken place that day with C1 who described himself as being a representative of Abu Umar and Co. It confirmed the bank's willingness to open an account. The letter was addressed to D14 of Anjuman-E-Islahul-Muslimeen of UK at the East London Markazi Mosque at Christian Street. The natural inference is that C1 was holding D14 out in that way and at that stage as a representative of the Dewsbury Trust. He was not acting as such, however.

108. The bank was provided with a signed certificate dated 2 February 1995 that a resolution had been passed and entered in the minute book of Anjuman-E-Islahul-Muslimeen of UK (as a society/club/association) that the bank should have the appropriate authority to accept instructions on the signatures of D14 and C2 acting respectively as chairman and treasurer of that society. It was signed by C1 as secretary. This seems to have been done on behalf of the London Shura, of which D14 was effectively chairman, on the evidence of Solad Sakandar Mohammed, which I accept on this point. D14 had never been chairman of the Dewsbury Trustees. There was therefore what I take to have been a deliberate ambiguity. Cheques were drawn on that account in that name for the purchase and other expenditure.

109. The moneys raised for the Land were paid into that account. I accept that those who collected the money passed it on to the leadership in London who then paid it in. Many contributors will not have been aware of or cared about the name on the account. Moreover, set against the background, and in particular the knowledge of who the trustees were, I do not consider that any of the contributors who were aware of the bank account name would have been likely

to believe that they were paying into the Dewsbury Trust or, if they had so believed, that they would have made the payment.

110. When in 2014 C1 identified the trust to the bank for money-laundering purposes, he identified it as the Dewsbury Trust, but I am not persuaded that this shows that the then trustees regarded themselves as acting on behalf of the Dewsbury Trust. It is more likely, in my view, that they were using a similar name for convenience and, perhaps, to reassure those with whom they dealt.

Holding out to the Council

111. The trustees obtained business rates relief for the site, from and after 1997, on the basis that the site was owned and occupied by the Dewsbury Trust, identified by its registered charity number. Mr Daji completed the application for relief on that basis, and no business rates have been paid in respect of the site since then. I regard that as likely to have been another example of the blithe but deliberate use of the Dewsbury Trust details for the purposes of a different trust altogether. I do not regard it as reliable evidence of the understanding of the trustees at the time the trust was originally constituted. In saying so, I do not disregard the seriousness of the dishonesty which that finding, and similar ones above, seems to imply; though when giving his evidence C1, for his part, did not appear to understand it to be dishonest.

The events around completion

112. On 2 November 1996, just before completion took place, Hafiz Patel wrote a fax on behalf of Anjuman-e-Islahul-Muslimeen of U.K., that is, the Dewsbury Trust, to D14, asking him to go to the lawyer on Monday and enter on to what

he called the new deed which was about to be made for Abbey Mills the names of the present trustees of the Dewsbury Trust. I infer that he knew completion was about to take place because someone, perhaps D14, had told him so. The reference to 'the new deed which is about to be made for the new place' can only have been either a transfer or a declaration of trust for Abbey Mills. The language is perhaps more apt to a declaration of trust than a transfer. It contemplates a new declaration of trust, not an existing one; but even a new one might have been intended to refer to the existing Dewsbury Trust documents, or because it was to be a new trust altogether. The fact that the names were to be 10 trustees of the Dewsbury Trust strongly suggests that it was to be in favour of the Dewsbury Trust. Moreover, the reference to 'the new deed' suggests that the recipient was expected to know all about it already, and that what was proposed was in accordance with something which had already been mentioned, at least to D14; presumably, not long before. It is unclear from the document whether the motive for the injunction that he should keep the names to himself was a general desire for discretion, or a wish to conceal from the community the potentially controversial proposal that Dewsbury rather than London was to have the property.

113. Whether the document was unheralded or not, the intervention by Dewsbury was something new. Mr Daji, a witness for the Defendants, accepted the account of Mohamed Hafeji in his affidavit about what was going on. Mr Hafeji was one of the Dewsbury Trustees at the time. The Dewsbury Trustees had had a mixed reaction to the success of the London community in acquiring such a substantial site in the capital city. They were happy; they were both impressed and a little shocked; they were concerned that it might detract from the pre-

eminence of Dewsbury; and they felt they were more experienced at managing a markaz than the London Shura was. They decided it would be best if London transferred the Land to the Dewsbury Trust. Although Mr Daji said he did not understand the injunction to keep the names secret, the natural inference is that the Dewsbury Trustees realised that there might be anger in the London community at this late and abrupt takeover. I accept this. All of this tends to support the Claimants' case about the intention until this point. It must have put D14, in particular, in a very difficult position: he was required, out of respect, to do as asked by Dewsbury; but to do so, and moreover to do it secretly, would be a betrayal of the expectations of those who had contributed their time and effort over all this time; and not to tell his London community would also rob him of potential support in any resistance he might attempt. C1 describes this matter as being raised with the London shura, and D14 saying, in effect, that it should be ignored. I accept this evidence.

114. On 4 November 1996, £1,277,500 was withdrawn from the bank account in favour of Forsythes in preparation for completion.

115. Completion took place on 5 November 1996. C1, C2 and D14 were the transferees. They were expressed to be trustees for Anjuman-E-Islahul Muslimeen of (London) U.K. That was not a designation which the Dewsbury Trust used for itself, and there was no reference to its registered charity number. Nor was it a reference to the 10 named trustees identified by Mr Patel. Accordingly, what took place on completion did not comply with the Dewsbury request.

116. The 1996 Declaration of Trust is also dated 5 November 1996. It is a home-made document, not professionally prepared. It was plainly contrary to the Dewsbury request. There is an issue over whether it was executed on that date or not until much later, as the LBMW Defendants contend, or at a point between contract and completion , as C1 states. I deal with that below.

117. The terms of the document are evidently borrowed (not always appropriately) from the 1975 Dewsbury Declaration of Trust, inconsistently substituting reference to the Trustees or the Board for reference to the Committee of the Society, and removing reference to the Society. References to special resolutions are, however, inappropriately retained. D14 is described as the Chairman, rather as Mr Patel had been. Some other provisions were removed. The effect is that it is to provide for a general Muslim charity, not explicitly tied to TJ. I return to the question of its date later in this judgment.

118. The evidence of C1 is that Hafiz Patel celebrated the acquisition of Abbey Mills with members of the London shura, knew perfectly well that it had been transferred to the 3 transferees, and did not at this point pursue the matter of the 10 trustees. I accept this.

119. On 13 November 1996, however, Chadwick Lawrence, solicitors instructed on behalf of the Dewsbury Trust by Mr Daji, wrote to Mr Isaacs saying that the Dewsbury Trust had provided the purchase money for the property and had nominated four trustees (including D14) into whose name an amended transfer ought to transfer the property. They offered no explanation of the sense, if any, in which it might be true that they had provided the purchase money. They had not. In particular, it had not been collected on their behalf.

120. The affidavit evidence of Mr Hafeji, which Mr Daji accepted was accurate on this, was that members of the London community had raised objections that Dewsbury were trying to steal the Land from the London brothers, to whom it belonged, and had not contributed any funds for its purchase; and the London brothers had refused a transfer. I accept this. The letter of 13 November 1996 therefore represented a more aggressive approach proposed by Mr Daji, and approved (in some cases reluctantly) by Dewsbury. I accept this also.

121. Mr Isaacs checked with C1, and did not respond until 17 December 1996, saying that he had wanted to check the whole situation with C1, from whom his instructions had come from the outset, as secretary of the London Shura. That reinforces the conclusion that Mr Isaacs had not hitherto been instructed on the basis that Dewsbury was beneficially entitled to the property.

122. The evidence of C1 was that at the regular meeting in November 1996 at Dewsbury, in the context of excitement over the acquisition, Mr Patel had proposed, among other things, that the trusts be merged, Dewsbury would arrange for the mosque to be built, pay off the loans and make the London trustees trustees of the Dewsbury Trust. C1 understood this would mean transferring the Land to Dewsbury. Mr Hafeji describes this as a process of pacifying the London brothers. I accept this evidence.

123. Evidently Mr Isaacs' instructions had changed so as to require him to co-operate with the Dewsbury demands. I take it that this was the result of the process of pacification just described. His letter dated 17 December 1996, said that fresh transfers would be needed, which he would put in hand once he heard back from

Chadwick Lawrence. He did not address the assertion that the Dewsbury Trust had provided the purchase money. Moreover, he said,

> "I did prepare a declaration of trust by the 4 legal estate owners declaring they were holding the property upon trust for all 10 trustees of the Association. That declaration of trust will need some alteration to the names, but I take it you would still like to see one? Please confirm."

The reference to 4 legal estate owners is confusing, since at the time there were only 3. I do not think it was a mistake. It was, instead, a reference to the 4 trustees to which it was intended - by both sides at this point - that title to the property should be transferred, but to whom it had not yet been transferred. It reads as if he was volunteering the provision of a declaration of trust which he had already prepared (although it is not before the court), on the instructions of D14, and made by all those four persons in favour of all 10 trustees of the Association, that is, of the Dewsbury association, but which he had not previously supplied to Chadwick Lawrence. He was not referring to the 1996 Declaration of Trust, obviously since he had not prepared it, and it did not do what he said. I consider he was unaware of it at this point (if it existed) since otherwise he might have been expected to have referred to it. He was referring instead to a document which, again, is unfortunately not before the Court, and which reflected what Hafiz Patel had asked D14 to arrange just before completion – not, indeed, a transfer into 10 names (which would have been impossible), but a replacement transfer into 4 names to beheld on trust for the 10 Dewsbury Trustees. It seems that D14 had at some earlier stage done what Mr Patel had originally asked, to the point of having a draft trust deed prepared; but had not carried it into execution any more than the transfers requested. Read in context, it is not to be seen as an acceptance of what was being asserted by

the Dewsbury Trust, namely that the purchase money had been provided by it, nor that the property had always been intended to be held upon the Dewsbury Trusts.

124. The response from Chadwick Lawrence was that the declaration of trust should be contained in the transfer. It confirmed that the charity was not an exempt charity. Nothing was done right away, however. In the meantime, the Dewsbury Trust had paid over £100,000 on 5 March 1997. That was to make good on the assurances already given. At this point in time, both London and Dewsbury intended the Dewsbury Trust to hold the property, and so the various communications with third parties (about business rates relief and so forth) which referred to the Dewsbury Trust, or were purportedly made on behalf of the Dewsbury Trust, were not wholly inappropriate.

125. On 14 May 1997, C1 wrote to Mr Isaacs chasing confirmation that all the documents required for registration had been completed, and saying, "If there are any delays please follow up to change the names as requested in February". In doing so he was reconfirming his instructions to Mr Isaacs. Mr Isaacs responded that he had been in touch with Chadwick Lawrence repeatedly (if so, the documentation is not before the Court) but had waited to deal with the revised transfers until C1 was back in the United Kingdom in case there were any queries.

126. It was not until 18 June 1997 that Mr Isaacs appears to have written to Chadwick Lawrence again asking him to reassure his concerned clients about the property not yet having been transferred into the names of the 4 nominated trustees. He points out that the name of the charity would need to be changed, in that the

reference to London (which appeared in the transfers) would be deleted. He explains that he had left the file while C1 was abroad, and then had been unwell; but would be sending copies of the existing transfers, duly amended, the following Monday. That letter was copied to C1, who appears to have made no objection. Sometime later that month, he appears to have written again enclosing copies of the 2 main transfers which he had amended, seeking confirmation that these amendments were agreed, so that he could arrange for fresh transfers to be engrossed and sent for execution. Those amended main transfers are not before the court, but presumably had the names of the 4 specified transferees, and no longer referred to London.

127. It is not clear what happened then. On 21 August 1997 C1 was writing to RMJM, planning consultants for the development of the site, asking them to amend the name of the proposed contract party to that of the Dewsbury Trust. Argles and Court were instructed to carry out a corporate review in October 1997. The name of the organisation they were reviewing was given as that of the Dewsbury Trust, with its charity registration number. They seem to have understood it as an unincorporated association, but one whose assets would be held upon implied trusts, rather than the expressed trusts of the 1975 Trust Deed (as amended): presumably their instructions did not refer to it. They suggested amendments to a constitution, but also set out the advantages of incorporation given the size of the potential liabilities involved in the Abbey Mills project. A discussion paper was prepared by other planning consultants, Adrian Salt and Pang which referred again to the society.

128. There seems to have been a growing realisation and concern that the site presented complex and expensive problems. At some point -the date is not established and does not appear from the document - Hafiz Patel sought a ruling in Islamic law (or *fatwa*) whether Abbey Mills might be sold. Evidently, he knew that it might not be sold if it had been formally dedicated as a mosque; his concern was that donations and loans had been taken to buy it, but he thought they might seek permission to buy a place elsewhere from the contributors with their permission; and if not, he said, they would refund them (It is unclear how practical that might be, given the absence of records of donations, as opposed to loans). The question arose out of concern for liabilities arising out of ownership of the Land, and its condition, and the fact those liabilities might have to be met in satisfying planning conditions. The answer was that if it had not been dedicated it might be sold; and come back with details if it had been dedicated.

129. The evidence of C1 is that in October 1997 there had been a breakdown in the willingness of the two sides to work together precisely because the Dewsbury Trustees had sought permission to sell the Land. That is likely to have been the result of the concerns mentioned above. I accept this evidence. Mr Hafeji's evidence also mentions a desire on the part of the Dewsbury Trust to weaken the London community by splitting it between 4 centres. That is by no means implausible, and I accept it. I cannot accept Mr Daji's profession of neutrality: plainly, Dewsbury had got cold feet. I accept the evidence that this caused great discord.

130. It was for this reason, in my judgment, that on 30 June 1998 Mr Isaacs wrote again to C1 mentioning having had a telephone call from Chadwick Lawrence a week or so previously, and telling them "my instructions were to proceed now to register the title without alteration to any of the transfers, so the people in the North do now know what we are doing down here." This indicates both that C1's instructions had now changed, and that Chadwick Lawrence had been told that C1, C2 and D14 were going to be the registered proprietors. In that letter, he asserted that "the property does belong and has long since belonged to your Association." Since he was reassuring C1 that the Dewsbury Trust could not interfere with his application for planning permission, that can only have been an assertion that it belonged to London. The basis of that assertion does not appear from the letter, however.

131. It was not until a few days after, on 2 July 1998, that the application to register title was finally made (as appears from the registered title itself). It was made on the footing that, as appeared from the transfers, the transferees were trustees of Anjuman-e-Islahul-Muslimeen of (London) U.K., that is, of the London trust. C1's instructions had changed in the context of the change of heart by Dewsbury and the upset in London. London was going to keep the Land. Completion of the registration was, however, long delayed by various queries from the Land Registry.

132. There is no documentary evidence about what, if anything, happened about ownership of Abbey Mills under the new circumstances until 12 October 1998, when Dedat and Co, accountants, wrote to Mr Isaacs to say they had been appointed auditors of Anjuman-e-Islahul-Muslimeen of U.K. and that the

accounting functions of the London branch were incorporated into the charity's main accounts. That reflects the Dewsbury instructions, no doubt. They asked for a copy of the completion statement, and details of the persons in whom title was vested. The letter was copied to Christian Street. The following day, 13 October 1998, the accounts for the Dewsbury Trust for the year 31 December 1995 were signed off, and they did not reflect Abbey Mills as an asset of that trust, as I have mentioned above.

133. On 16 October 1998, Chadwick Lawrence wrote to D14 saying he had bought Abbey Mills as one of the trustees of Anjuman-e-Islahul-Muslimeen of (London) U.K., and that they understood from Anjuman-e-Islahul-Muslimeen of U.K that the property was held in trust for the latter, seeking confirmation, and a transfer in favour of their client. This letter appears (like others) to acknowledge the existence of a London trust, while asserting ownership of Abbey Mills. If there was any response, there was certainly no transfer.

134. The documentary record then contains a series of typed forms dated 26 October 1998 by which C1, C2 and D14 were to confirm that the property was held in trust for the trustees of Anjuman-e-Islahul-Muslimeen of U.K., state they are prepared to execute a transfer in favour of that charity, and that they are instructing Mr Isaacs to arrange it; and a separate series of the same date by which they were each to instruct Mr Isaacs to effect that transfer immediately. All those documents were signed by C1 and C2, and it is not disputed that the signatures were genuine. The signatures on the instructions were witnessed by M. Patel and M.S. Qureshi. The documents before me were not signed by D14, however.

135. There is no dispute that this was done on the occasion of a mashwara on 26 October 1998 at the Dewsbury mosque. It is obvious that the documents must have been prepared on behalf of the Dewsbury Trust to be presented to C1, C2 and D14 on that occasion for signature. Notwithstanding Mr Daji professing not to remember any pressure being applied, they are themselves powerful evidence that pressure was applied. They would not have been necessary if the signatories had been wholly willing. Nor in that event would they have been prepared by Dewsbury. They represented a volte face on the part of the signatories which they must have known would land them in hot water in London, as indeed it did. I therefore accept the evidence of C1 about this, and his evidence that D14 did not sign on this occasion.

136. On 27 October 1998 Mr Isaacs wrote to C1 about various matters concerning Abbey Mills, saying he had received a request for information from Dedat and Co as auditors, and asking whether they acted for the London section or simply for the northern section, and whether he wished them to give the information they were seeking. There was a long pause before he replied.

137. C1 responded on 4 January 1999 to ask him to let Dedat and Co know for their audit purposes that registration to Anjuman-e-Islahul-Muslimeen (London) of U.K. was under way. He seemed keen to ensure that neither they nor Chadwick Lawrence would write again. Away from the pressure, and notwithstanding the documents which had been signed, he had reverted to his former position that Abbey Mills was the property of the London trust.

138. In the event, Mr Isaacs did not respond (as appears from chasing letter of 27 April 1999) and on 24 January 1999 there was a further series of typed forms

confirming the same desire and instructions to transfer to Dewsbury, signed by C1, C2 and (this time) D14, representing a further about face on their part. There had been a further mashwara in Dewsbury on that date, and these documents had been presented to them to sign in a repeat of the previous manoeuvre. This only makes it all the more clear that they did not genuinely accept that the property was held for the Dewsbury Trust, and that their expressions of willingness to effect a transfer to it were reluctant. I accept C1's evidence that he reported back to London community, which was again very upset and did not want the Land to be transferred.

139. On 2 February 1999 Chadwick Lawrence sent these documents (which, tellingly, had been retained by Dewsbury) to Mr Isaacs and said they would themselves prepare the relevant transfer and send it to him for signature. Registration had still not been completed, and C1 was chasing Mr Isaacs to see whether it had been. He may have been hoping to present Dewsbury with a fait accompli.

140. By 27 April 1999 Dedat & Co were chasing a response from Christian Street (C1 and D14) having received none from Mr Isaacs. They complained that without the information they could not complete the audit of accounts for the year ended 1997, which were overdue. C1 instructed Mr Isaacs by letter dated 4 May 1999 to write that the title would be in the names of C1, C2 and D14. The same day, Mr Isaacs wrote to Dedat & Co identifying those individuals as transferees, as trustees of Anjuman-e-Islahul of (London) U.K. There must have been a response to Chadwick Lawrence by this stage, but it is not in evidence. Evidently, there was not going to be a transfer to the Dewsbury Trust.

C1 later wrote to Mr Isaacs to ask him to forget their 'friends at North' and progress as quickly as possible.

141. By 16 August 1999 Mr Isaacs had another letter from Chadwick Lawrence (a copy of which is not before the court) and sought instructions. C1's response to Mr Isaacs dated 17 August 1999 shows that he understood himself to be in a cleft stick: the London community were threatening legal action if the transfer were made to anyone except the people in London, but the Dewsbury Trust was insistent. He was concerned that Dewsbury should not object to the planning application then in process and wanted to leave it to Mr Isaacs how to respond, but clearly wanted registration to complete in the London names. Mr Isaacs responded on 23 August 1999 to say that no transfers had ever been signed in favour of the northern trustees, because, on C1's instructions, he had done nothing about it. His letter shows that he did not think the Dewsbury Trustees were trustees of Abbey Mills. There is no indication of his response, if any, to Chadwick Lawrence, but the Dewsbury Trust never got the transfers it sought, and did nothing more about to obtain them. Registration was finally completed on 9 April 2001.

142. None of this is evidence that C1 ever regarded themselves as trustees for Dewsbury, or that they ever considered that the contributions made to the purchase price had been made with the intention of benefiting the Dewsbury Trust.

143. Apart from a period between 2010 and early 2012 when they started holding themselves out as the Dewsbury Trust when dealing with Planning and

Transport for London, from 2001 onwards, C1 and C2 treated themselves as trustees of the London trust when dealing with third parties.

Issue 1: conclusion

144. For reasons which will become apparent, I will deal with the dating of the 1996 Declaration of Trust separately. Putting that on one side for the moment, I conclude that the objective intention on the part of the donors and lenders was that the £1.4 million contributed for the purchase of the Land should be held for the purpose of C1, C2 and D14 acquiring the Land to fund the building of a mosque and community centre of which they would be the trustees, and to maintain and support the said mosque and community centre, in each case for the use and benefit of the Tablighi Jamaat community in the London region. I reject the proposition that their intention was that it should be held for the religious and other charitable purposes stated in the 1975 trust deed for the Dewsbury Trust/Charity 505732, or that it had been collected on behalf of that charity or was held on trust for it.

145. In summary (and without derogating from the fuller discussion above), the mosque was intended primarily to meet the needs of the London community. The fundraising was to be organised and carried out by and from the London community. The money came from the London community. There would have been an expectation at the relevant time on the part of both the fundraisers for and the potential donors to the acquisition of property for a markaz in the UK that it could not be held on terms which might allow it to be devoted to purposes which excluded primary use and at least a high degree of control by local members of TJ, unless the contrary had been spelt out: the expectation would

be that if bought by locals it would be used for and controlled by locals. When London property had been treated as Dewsbury's without a 'by your leave' there had been upset in the past. This was an issue in the November 1994 meeting, at which reassurance to the contrary had been given. Separate London Shura trustees were chosen. The natural inference is that the intention expressed at the November 1994 meeting represented the basis upon which donations and loans were solicited thereafter, and the basis upon which contributions were made. The name given to the bank account does not change that. Nor do the terms of the receipts given for loans.

146. The Dewsbury community were not to be a focus of the fundraising activity. The Dewsbury Trust had declined to contribute to the purchase, or to undertake financial responsibility or risk in connection with the acquisition. The fundraisers were not acting on its behalf. There was (as I have found) no default practice that the Dewsbury Trust should hold all TJ properties or assets. The Dewsbury Trust would retain ownership of Christian Street. The Dewsbury Trustees knew the Land would be transferred to C1, C2 and D14. This was not on the basis that they should later transfer it to the Dewsbury Trust. The November 1994 meeting had not agreed to that. The acquisition proceeded on the footing that it was for a separate London trust. The late change of mind by the Dewsbury Trust, and its last minute attempts to get the Land transferred to itself, point to an understanding on their part too that the property was not otherwise held upon the Dewsbury trusts, as does its treatment of the Land in its accounts. The contribution of the £100,000 was not a contribution to the purchase price, does not evidence the intentions of contributors to the purchase

price, and did not change the trusts after they had been completely constituted on completion.

Issue 2: trusts of purchase money

147. The purchase monies in NatWest bank account no. 34522794 were therefore held for the purpose of C1, C2 and D14 acquiring the Land to fund the building of a mosque and community centre of which they would be the trustees, and to maintain and support the said mosque and community centre, in each case for the use and benefit of the Tablighi Jamaat community in the London region. Thy were not held for the religious and other charitable purposes stated in the 1975 trust deed for the Dewsbury Trust/Charity 505732.

Issue 4: the 1998 documents signed by C1 and C2, and the 1999 documents signed by C1, C2 and D14

148. The circumstances in which C1 and C2 signed the documents of 26 October 1998, and in which C1, C2 and D14 signed the documents of 24 January 1999, were as described above. They were of no legal effect. The trust of the Land had already been completely constituted on completion. They could not change that, and it was not contended that they could. Nor did they evidence or reflect the intention of the contributors as to the way in which the Land was to be held, or the understanding of the London Trustees as to the trusts upon which they held. They were signed under pressure and if acted upon would have represented a serious breach of trust. They tend if anything to support the Claimants' case on intention.

Issue 3: the dating of the 1996 Declaration of Trust

149. It is the LBMW Defendants' case that the 1996 Declaration of Trust was not executed until a much later date than it bears. The evidence of C1 is, as already mentioned, that it was executed between contract and completion, that is, just before the date which it bears. Neither C2 nor D14 provided evidence. Although described as a deed, it is not executed as a deed and so the signatures are not witnessed. C1 gave evidence that 4 or 5 other people saw it in 1996. He named only Maqbul Hussain Mubeen and Abdul Khalique, but neither of them gave evidence. C1 gave evidence that Hafiz Patel had seen a copy of it, but was unable to say how. The document is stamped and signed as certified by Forsythes, so it is likely that they saw it at some point. There is no copy of a letter sending it to them, however, and their own correspondence does not explicitly refer to it. They do refer to their own draft declaration of trust, however. The natural inference is that they did not know about it until at least after 17 December 1996, and there is no direct evidence apart from the certificate that they ever did. That is curious, if it existed, particularly in the context of discussions between them and their clients about the true owner of the Land. It is curious, in a different way, that they had not been asked to prepare it while they were acting in the acquisition; particularly since they evidently prepared a different declaration of trust in anticipation of a transfer to the Dewsbury Trust. C1 said he had provided a copy to Argles & Court, but it is not mentioned in their report or any of the associated material (albeit I have found that they were concerned with the constitution of the Dewsbury Trust): that throws doubt on the credibility of his assertions generally in relation to it. He said, too, that he had provided a copy to Forsters LLP in 2008; they appeared to be approaching the matter on the basis that a new charity was being or had

recently been set up, and there is no reference to it in the documentation. No decision was taken to register it until January 2018. C1 said it had not needed to be registered, until a change in the law in 2014 or 2015, because it was a 'private charity'. However, the effect of section 3 (3) Charities Act 1993 was that all charities had been required to be registered, subject to exceptions which did not apply. A qualified accountant such as C1 ought to have known that, or to have been in a position to check if there was any doubt. The apparently calm certainty with which he asserted his understanding of the law in oral evidence, when it was quite wrong, was not persuasive that it was ever actually his belief. Accordingly, no accounting records for the charity said to have been constituted by the 1996 Declaration of Trust were ever filed. C1 asserted that he had kept income and expenditure accounts from day one, but none were disclosed. A failure to keep such records would have been a serious breach of obligation on the part of the trustees. C1's account of the process by which it was prepared varied little from time to time, but his assertion that the 1975 Dewsbury Declaration of Trust had never been looked at for the purpose was absurd, from the face of the document.

150. These are powerful points, of which, I think, the most powerful are those relating to Mr Isaacs. I conclude that the 1996 Declaration of Trust did not come into existence until substantially after November 1996. If it did not exist in November 1996, it is most unlikely to have been executed until after the final determination to resist the demands of the Dewsbury Trust for a transfer. It is likely to have come into existence at some point between then and the application for registration, because Mr Isaacs is unlikely to have been happy, particularly in the context of an incipient dispute over the trust of which the

property was held, to have allowed registration to have occurred in terms mentioning a trust without having had sight of such a document. The application for registration was made on 2 July 1998, and I therefore conclude (notwithstanding the subsequent occasions when one might have expected it to be mentioned, though it was not) that he had seen it by then. The basis upon which he asserted, while reassuring C1 that the Dewsbury Trust could not interfere with his application for planning permission, that the property did belong and had long since belonged to C1's Association, that is, to the London anjuman, is likely to have been a reference to the 1996 Declaration of Trust which he must by then have seen. I conclude that it came into existence shortly beforehand, although perhaps he did not realise it.

151. What is to be made of this? In the first place it throws considerable additional doubt on the credibility of C1 in giving evidence. Accordingly, I have been careful not to rely on his evidence save where it is corroborated or inherently plausible. Secondly, it reduces the value of the 1996 Declaration of Trust as evidence of the objective intention of the settlors. Accordingly, I have been careful to place little reliance upon it for that purpose. Thirdly, however, it does not mean that a trust had not already been constituted before it was executed: such a trust had been constituted on completion although it was, in effect, an executory rather than an executed trust. Fourthly, it does not mean that the 1996 Declaration of Trust was or is invalid, or declared without the proper authority of the settlors: that authority will have continued after acquisition until a valid formal declaration of trust was declared. The question is whether it was within the terms of that authority. In my judgment, it was. As intended, it was a trust of Abbey Mills for the purpose of worship, preaching and teaching in the

Muslim faith. It is true that it did not specify control from London, but the trustees were London trustees of London property, and it was those trustees (and their successors) who had power to appoint additional trustees, as long as they were of the Sunni Muslim faith. It is true that it did not specify use for the purposes of Tablighi Jamaat, but that, I think, was adequately covered given the identity of the trustees appointed; and in any case, the intention was never that its use should be exclusively for TJ purposes.

Issue 5: the matters in the Claimants' Reply at paragraphs 29.1-29.7: discussion

152. The matters mentioned in the heading above do not arise or affect the trusts of the property.

Conclusion as to the property claim issues

153. Accordingly, I conclude that the Land is held upon the trusts of the 1996 Declaration of Trust.

The Removal Claim

154. The Claimants claim D14 was validly removed as trustee of the London trust in 2018 and replaced with C3. The LBMW Defendants are neutral. D14 did not oppose the claim at trial and Counsel voluntarily absented himself, on instructions. The facts are uncontested, and I take them from the closing written submissions of the Claimants.

155. D14 has not attended trustee meetings since about 2015 or 2016, saying that he left it to C1 and C2. He has refused to take part in the administration of the London Trust in relation to fundraising since about 2010 despite being asked

for assistance. In January 2018, C1 and C2 decided to call a trustees' meeting with him to replace him as trustee, since they did not consider that he was doing his job as trustee. He was invited to a meeting on 26 January 2018 by letter sent by recorded delivery on 12 January 2018 which is in the bundle. He ignored it. C1 and C2 met at 8.30pm at Abbey Mills mosque on 26 January. D14 did not attend (as appears from the minutes). At that meeting C1 and C2 decided, among other things, to amend the 1996 Trust Deed in paras. 9a, 9b, 9c to allow them to call meetings every fortnight, and thus to call a meeting on 9 February 2018 with an invitation to be sent by 3 February 2018. D14 was then invited to attend the next meeting at 8.30pm on 9 February 2018 by letter dated 26 January 2018, sent by recorded delivery to D14 on 3 February 2018, but D14 ignored it, and did not attend.

156. At that meeting C1 and C2 decided that he should be removed as trustee, and that C3 should be appointed (as appears from the written resolutions in the bundle).

157. Following that meeting, C1, C2, and C3 had regular meetings in relation to the administration of the London Trust. On 20 November 2018, they signed a Deed of Confirmation of Appointment and Removal of Trustees which is in the bundle.

158. It is clear given the findings of fact above that D14 was refusing to act within the meaning of clause 8(c) of the 1996 trust deed (which states that "a new trustee may be appointed in the place of any one of the trustees who …refuses or is unfit or is incapable of acting here") or under s.36(1), Trustee Act 1925.

159. There were two powers of trustee replacement available to the three original trustees: one under clause 8(c) of the 1996 Trust Deed and one under s.36, Trustee Act 1925. I accept that since section 36 of the 1925 Act is generally subject to procedural restrictions in the trust deed (by virtue of s.69(2) of that Act), it would have been necessary, for the exercise of either power for a majority of the trustees to resolve upon the replacement of D14 at a properly convened meeting. However, where the convening of meetings by notice is concerned, those who seek to challenge validity of notice must act with promptness and the courts will not seek to interfere on the basis of minor irregularities: 5-14, *Shackleton on the Law and Practice of Meetings*, 15th ed.

160. Until its amendment (see below) by resolution of C1 and C2 at the meeting of 9 February 2018, clause 9(c) of the Deed provided for meetings of the trustees of the London Trust to be convened by the Chairman upon two weeks' notice in writing. D14 was the chairman.

161. It must have been intended that the other trustees would be able to call a meeting to replace the Chairman, though, since clause 9(e) of the Deed contemplates that a chairman may be removed as such and/or as a trustee. In order for the 1996 Trust Deed to be practically and commercially coherent, the express obligation in clause 9(d) of the Deed to attend "meetings convened by the said Chairman" cannot apply. The meeting on 26 January 2018 was therefore properly called on two weeks' notice by C1 by his letter dated 12 January 2018.

162. That meeting satisfied the quorum requirement of two in clause 8(a) of the Deed, and the decisions at that meeting were made unanimously in accordance with clause 9 of the Deed.

163. Section 36 of the Trustee Act 1925, unlike clause 8(c), requires the resolution to be in writing, whereas a decision to appoint new trustee(s) must be by "special resolution" under clause 8(e)). These requirements are satisfied here in any event.

164. At the 26 January meeting, C1 and C2 must be taken to have exercised their power to amend the administrative provisions of the trust deed under s.280 Charities Act 2011. Where an unincorporated trust is concerned, as here, this requires a resolution of the trustees: the minutes of 26 January suffice. In substance, they record a decision to amend clauses 9(a) to (c) of the trust deed so that, among other things, meetings should be called every fortnight and the required notice period should be shortened from two weeks.

165. In accordance with those amendments, sufficient written notice was properly given of the 9 February meeting.

166. Since D14 was refusing to act as trustee, C1 and C2 therefore passed resolutions to remove him and replace him with C3 properly. The resolution appointing C3 was a "special" resolution in accordance with clause 8(e), in the sense that, as a matter of ordinary meaning, a 75% majority was required (as under s.283(1) Companies Act 2006). I do not see it as a reference to a resolution at a "special meeting" of the trustees under clause 10.

167. The effect of the Deed of 20 November 2018 was to confirm the appointment and to trigger s.40 Trustee Act 1925 (s.40(1)(b) and (3)), under which a trustee appointment by deed operates to vest in a new trustee the property of the trust with certain exceptions in s.40(4). Accordingly at this stage, the property of the

London Trust, aside from the Land itself (as to which alteration of the Land Register remains outstanding) was vested in C3 jointly with C1 and C2.

168. The register will need to be altered accordingly.

The Cy-près Claim

169. The cy-près claim is made under s.62(1)(e)(iii) Charities Act 2011 and is pursued only in the event that the Claimants' Property Claim fails. In the event it has succeeded. I have considered whether I ought nonetheless to make findings in relation to the cy-près claim. I have concluded that I ought not, since it would be disproportionate and probably impossible do so on the hypothetical footing that some or all of the conclusions to which I have already come about the Property Claim are wrong.

Conclusion

170. Accordingly, the Claimants succeed on the property claim and the removal claim, and the cy-près claim does not fall to be determined. I invite the parties to agree the terms of the order if possible.
