Neutral Citation Number: [2025] EWHC 1348 (KB)

Case No: QB-2021-000926

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 4 June 2025

**Before**:

**ANDREW KINNIER K.C.**
**Sitting as a Deputy Judge of the High Court**

**Between:**

**CENTURY PROPERTY (LEEDS) LIMITED**

**Applicant**

**- and –**

**(1) EVILLE & JONES (GROUP) LIMITED**
**(2) EVILLE & JONES (GB) LIMITED**

**Claimants**

**- and-**

**(1) Dr JASON ALDISS**
**(2) VETLINE LIMITED**

**Defendants**

**- and –**

**EMBARK PENSION TRUSTEES LIMITED**

**Third Party**

**Thomas Horton** (instructed by **Humphries Kerstetter LLP**) for the **Applicant**
**The First Defendant** appeared **in person**
**The Claimants**, **the Second Defendant** and **the Third Party** did not attend and were not represented

Hearing date: 29 April 2025
Draft judgment circulated to the parties: 23 May 2025

## APPROVED JUDGMENT

This judgment was handed down remotely on 3 June 2025 at 10.30 am by circulation to the parties or their representatives by e-mail and released to the National Archives.

**ANDREW KINNIER K.C. sitting as a Deputy Judge of the High Court :**

## Introduction

1. By an application (dated 16 October 2024) Century Property (Leeds) Limited ("**Century Property**") applies for mandatory injunctions against Dr Jason Aldiss, the First Defendant, and Embark Pensions Trustees Limited ("**Embark**"), the Third Party, to enforce a judgment debt against the First Defendant's self-invested personal pension of which Embark is the trustee ("**the application**").

2. In the same application notice Century Property also asks, under CPR 19.2(4) and/or CPR 19.4(11), to be substituted as the Claimant ("**the substitution application**").

3. In support of its application, Century Property, which is represented by Mr Thomas Horton of counsel, relies upon the third statement of Mr Toby Starr (dated 16 October 2024) and its exhibits.

4. Dr Aldiss represents himself. He has served no evidence in response either to the application or the substitution application.

5. Neither the Claimants, the Second Defendant nor Embark have participated in the progress or hearing of the application or the substitution application. None has served any evidence, attended the hearings or sought to make submissions.

## PART 1 – the relevant background

*The Tomlin order and the enforcement proceedings*

6. On 27 July 2023, Master Eastman approved a Tomlin order which contained the terms on which the Claimants and Dr Aldiss had compromised the original proceedings ("**the Tomlin order**"). Dr Aldiss agreed to pay £450,000 to the Claimants in two instalments: £150,000 on or before 28 October 2023 and the balance of £300,000 by 28 September 2025. The latter instalment was to be paid from Dr Aldiss' personal pension scheme which was described as "Options SIPP Re JK Aldiss, account number FW1013766SIP" ("**the pension fund**"). It was also agreed that if Dr Aldiss failed to pay the first instalment of £150,000 in full by 28 October 2023, the entire settlement sum of £450,000 would become immediately due and payable.

7. Dr Aldiss paid the sum of £47,500 on 30 October 2023 but he did not pay all the first instalment on or before 28 October 2023. Therefore, the balance of £402,500 became due and payable immediately. By an order of 31 October 2023, Master Eastman entered judgment against Dr Aldiss ("**the judgment order**") in the sum of £402,500 ("**the judgment debt**").

8. Dr Aldiss has not paid the judgment debt or any part of it. On the application of Century Property, on 23 April 2024, Master Eastman made an interim charging order over the pension fund ("**the interim charging order**"). That order was made final on 29 May 2024 ("**the final charging order**").

9. It is now some 22 months since the parties' settlement, as contained in the Tomlin order, was approved and there has been no effective challenge to that settlement, the Tomlin order or the judgment order. There was no appeal against, or any application to vary or set aside, the interim or final charging orders.

*The first hearing*

10. The first hearing of the application was before me on 12 February 2025 ("**the first hearing**"). It had been fixed in December 2024, some two months before. In pre-hearing correspondence with Century Property's solicitors, Dr Aldiss said that he would make various applications, but none was made and no evidence was served by him.

11. At the first hearing and without notice, Dr Aldiss asked for an adjournment of 42 days to allow him to gather evidence in answer to the application, including medical expert evidence about his mental capacity at the time when the settlement agreement was reached and the Tomlin order was made. Dr Aldiss said that the medical expert evidence would be available to him by 25 February 2025.

12. Dr Aldiss' application was opposed by Century Property on three principal grounds. First, Dr Aldiss had had more than enough time to gather his evidence before the first hearing but had not done so and no good reason had been given to explain that failure. Secondly, his failure to lodge evidence and the late adjournment application echoed Dr Aldiss' previous conduct when he had failed to comply with court orders. Finally, an adjournment would waste court time and money.

13. Notwithstanding the force of Century Property's submissions, I adjourned the application to give Dr Aldiss a further opportunity to respond to the application. He was permitted to file and serve any evidence upon which he wished to rely by 12 March 2025. Century Property was allowed to serve any evidence in response by 26 March 2025 and the next hearing was listed to be heard on the first available date after 9 April 2025. The recital to the order made on 12 February 2025 recorded Dr Aldiss' assurance to me that he "completely understood" that should he fail to file and serve any evidence in response to the application then, subject to the view of the judge at the next hearing, it would be unlikely that he would have any further opportunity to do so and that the application would proceed. On 27 February 2025, the application was re-listed to be heard on 29 April 2025, again before me ("**the second hearing**").

*Dr Aldiss' application to adjourn the second hearing*

14. By an application (dated 23 April 2025), Dr Aldiss sought an adjournment of the second hearing and a stay of the enforcement proceedings pending determination of his application to the Court of Appeal (also dated 23 April 2025) for permission to appeal the Tomlin order and the judgment order.

15. At the second hearing, Dr Aldiss told me that the Court of Appeal had declined to consider his application because the proper route of appeal against an order of a Master sitting in the King's Bench Division was to a Judge. The ground relied upon by Dr Aldiss to adjourn the second hearing and to stay the enforcement proceedings had therefore fallen away.

16. Dr Aldiss served no evidence at all in response to the application following the first hearing. There was no witness statement from him or anyone else which set out the facts and matters on which Dr Aldiss relied and there was no good explanation for why no witness statement had been served. Dr Aldiss also said that the NHS body which he had first approached to provide expert evidence about his mental capacity in 2023 had felt unable to assist. Instead, he had been referred to a company which provides medico-legal expert witness services. Regrettably, Dr Aldiss was unable to say when any expert report from that source might be available.

17. In the circumstances, for the reasons set out in my *ex tempore* judgment, I refused Dr Aldiss' application for an adjournment and a stay and heard the application (including the substitution application) to which I now turn.

## PART 2 – the substitution application

18. Century Property applies to be substituted as the Claimant and relies upon CPR 19.2(4) and CPR 19.4(11). The former allows the court to order a new party to be substituted for an existing one if the existing party's interest or liability has passed to the new party and it is desirable to substitute the new party so that the court can resolve the matters in dispute in the proceedings. The latter is a general power to remove, add or substitute parties in existing proceedings on the court's own initiative.

19. In support of its application, Century Property relies upon a deed of assignment, executed on 1 December 2023 following resolutions of both Claimants' boards, by which the Claimants assigned the judgment debt to Century Property. Notice of the assignment was sent to Dr Aldiss on the same day. Mr Horton submitted that the deed of assignment complied with the requirements of s. 136 of the Law of Property Act 1925 ("**the 1925 Act**") because it is absolute and does not take effect by way of a charge; it is in writing; it is given under the hand of the assignor and written notice of the assignment was given to the debtor. The Claimants have also given their consent to the proposed substitution. For these reasons, the requirements of CPR 19.2(4) and 19.4(11) have been satisfied and there is no good reason why the application should not be allowed.

20. Dr Aldiss opposed the application. In essence, he did not question the substance of the deed of assignment but contended that it was not lawfully executed primarily because of the nature and effect of certain unspecified disputes at the time of its execution. Unfortunately, Dr Aldiss lodged no evidence which supported his objection to the substitution application or explained the nature and relevance of the disputes to which he referred or their consequences for the lawfulness of the deed of assignment.

21. For the purposes of CPR 19.2(4), on the evidence before the court, there has been a valid assignment of the judgment debt by the Claimants to Century Property and, as Mr Horton submitted and I accept, the requirements of s. 136 of the 1925 Act have been met. Accordingly, the former's interest has passed to the latter and the Claimants have agreed to the proposed substitution. For those reasons, it is desirable to make the proposed substitution to allow the court to determine the application and any other

matters arising in the enforcement proceedings. If it were necessary to do so, I would also allow the substitution application under CPR 19.4(11) for the same reasons.

**PART 3 - the application**

22. Century Property seeks mandatory injunctions against Embark, under s. 37 of the Senior Courts Act 1981 ("**the 1981 Act**"), and a default order under s. 39 of that Act together with other ancillary orders. In summary, Century Property seeks orders that on reaching his 55th birthday on 17 August 2025, Dr Aldiss exercises his right to payment of a lump sum from the pension fund and, in default of completion of the relevant documentation by Dr Aldiss, Century Property would be entitled to complete it including any instructions for payments out of the pension fund. Following completion of the relevant documentation, Embark shall pay to Century Property, after deduction of any required taxes and/or fees, the lesser of the total sum owed by Dr Aldiss (presently, £450,939) or all of the sums remaining in the pension fund in satisfaction or part-satisfaction of the judgment debt, the charging order and any costs that may be awarded in the application.

*The relevant legal principles*

23. Under s. 37(1) of the 1981 Act, the High Court may by order (whether interlocutory or final) grant an injunction in all cases in which it appears to the court to be just and convenient to do so. In identifying the extent of the jurisdiction under s. 37(1), the demands of justice are the overriding consideration: *Tasarruf v. Merrill Lynch* [2011] UKPC 17, [2012] 1 WLR 1721, para. 51.

24. The jurisdiction to make the order sought by Century Property under s. 37(1) of the 1981 Act appears to be uncontroversial. The judgment of Gabriel Moss QC (sitting as a Deputy Judge of the High Court) in *Blight v. Brewster* [2012] EWHC 165 (Ch), reached two conclusions: first, that debtors should not be allowed to hide their assets in pension funds when they have a right to withdraw monies needed to pay their creditors: paras. 70 and 71. Secondly, that a debtor may be ordered to delegate the power of election to the creditor's solicitor: paras. 75 and 76.

25. In reaching those conclusions, Mr Moss QC relied upon the decision of the Privy Council in *Tasarruf*. That was a case concerning a right of revocation of a trust held by a debtor where the question was whether the court could order the defendant to exercise the power of revocation so that he would recover substantial trust assets over which the receivers appointed by way of equitable execution could take possession. As Mr Moss QC identified at para. 67 of his judgment, the questions for the Privy Council were, first, whether the power of revocation of a trust was sufficiently close to the notion of property so as to enable the equitable remedy of a receiver by way of equitable execution to be available to ensure that a judgment debtor did not put himself beyond the reach of the judgment creditor; and, secondly, whether the appointment can be made effective by ordering the debtor to transfer or delegate the power of revocation to the receivers and, in default, order the transfer or delegation to be executed on his behalf.

26. The Privy Council decided that the court could make those orders. Mr Moss QC concluded that the situation in *Blight* was analogous because the defendant had a right to elect to draw down 25 per cent of his pension as a tax-free sum. As indicated above,

at para. 70 of his judgment Mr Moss QC found that there was a strong principle and policy of justice that debtors should not be allowed to hide their assets in pension funds when they have a right to withdraw monies needed to pay their creditors. Two consequences flowed from that finding: first, the court had the power to avoid the unnecessary time and expense of appointing a receiver by way of equitable execution. The court therefore ordered the defendant debtor to delegate to the claimant's solicitor the power to make in the defendant's name the election to receive his tax-free payment of 25 per cent up to the amount needed to repay the balance of the judgment debt. Secondly, Mr Moss QC also ordered that, if the defendant did not comply with the order, the claimants would be authorised by the court to write to the pension trustee in his name, making the election on his behalf. The third party debt order was then made to take effect from the moment that the debt created by the election to take the lump sum became effective.

27. The *Blight* decision has been considered and applied in three later cases. In *Bacci v. Green* [2022] EWHC 486 (Ch) (7 March 2022), a judgment debtor had an interest in an occupational pension scheme. The claimants sought injunctions, under s. 37(1) of the 1981 Act, that the judgment debtor delegate to the claimant's solicitor his power to notify HMRC of the revocation of his "enhanced protection" affecting his lifetime allowance in relation to his pension; his right to call for a lump sum under the pension scheme and his right to call for a pension under the pension scheme. The objective was to allow the claimants, when the judgment debtor reached his 55$^{th}$ birthday, to take a tax-free lump sum, a lifetime allowance excess lump sum (which would not be tax-free) and a pension from the remaining pension funds. In *Bacci*, once those funds were deposited into the judgment debtor's bank account, the claimants would seek a third party debt order to recover the judgment debt from that account.

28. Mr Andrew Hochauser QC, sitting as a Deputy Judge of the High Court, decided that s. 91 of the Pensions Act 1995 did not prevent the court from making the order sought because it did not have the effect of restraining the debtor from receiving his pension. On the contrary, the order ensured that payment of the pension was made: para. 40. Relying upon the reasoning in *Blight*, Mr Hochauser QC concluded, at para. 56, that the court had jurisdiction to make the orders sought and that there was no public policy that prevented the exercise of the jurisdiction under s. 37(1) of the 1981 Act. On the facts of the case, Mr Hochauser QC made the orders sought.

29. In *Brake v. Guy* [2022] EWHC 1746 (Ch) (11 July 2022), the judgment debtor had an interest in a pension scheme from which he had the right to draw-down not only a tax-free lump sum (which he had already exercised) but also the remaining funds. The creditors sought an injunction, under s. 37(1) of the 1981 Act, to delegate the debtor's rights to authorise a draw-down from his pension; to provide the pension provider with any and all information or documentation required to facilitate the draw-down of the pension; and to require the pension provider to comply with any request and/or instruction received from the creditors to draw-down the pension under the delegated rights.

30. In *Brake*, the existence and scope of the jurisdiction to make the orders sought was not in issue. Instead, the parties' submissions concentrated on the question whether it was just and convenient to make the orders. HHJ Paul Matthews, sitting as a Judge of the

High Court, found that it was and in doing so he made two relevant findings: first, the scope of the power to make the orders sought under s. 37(1) of the 1981 Act is not limited to cases of fraud because there is no principled distinction to draw between different types of liability when considering whether to grant an injunction or not: paras. 67-69. Secondly, in considering whether it is just and convenient to make the orders, the fact that any draw-down would be liable to tax would generally be of minor importance. If, however, the amount of tax due were so great that there would be no real benefit to the judgment creditor, the court may decide that it would not be just or convenient to make the order: paras. 72 and 76.

31. Finally, in *Lindsay v. O'Loughnane* [2022] EWHC 1829 (QB); [2022] Pens. LR 13 (14 July 2022), a judgment debtor had an interest in three pension schemes. The claimant creditor sought three orders: the first required the defendant debtor to give written notice to each of the pension providers requesting that they continue to hold his pension, requesting draw-down on the date specified as his normal retirement age and directing payment to the claimant. Secondly, in default of such notice, the appointment of a named person as agent to give notice and, finally, making provision for the payment of any tax that fell due on the payments out by the three pension providers.

32. Mr Simon Birt QC, sitting as a Deputy Judge of the High Court, found that the *Blight* and *Bacci* decisions identified the jurisdiction to make the orders sought by the claimant: paras. 35 and 36. Mr Birt QC also reached three other relevant conclusions: first, in contrast to *Blight*'s case, the claimants sought all the funds held in the pension schemes. However, there was no point of principle that prevented the court from ordering payment of the entirety of the defendant debtor's pension funds rather than the tax-free 25 per cent. That said, in exercising the power under s. 37(1) of the 1981 Act there may be factors that should be taken into account such as any tax-related consequences: para. 35(1). Secondly, Mr Birt QC found that the timing of the application caused no difficulty in principle although it may be relevant to the court's discretion whether to make the order. The time that the application came before him (a year or so before the defendant's retirement age) was found to be appropriate as it allowed time to deal with any consequential matters such as non-compliance: para. 35(2). Thirdly, in response to a concern that a third party order could be made prospectively in respect of a debt that had not yet become payable, Mr Birt QC found that the order in *Blight* was not one which required the third party to pay a debt that had not yet accrued to the defendant (which is an order that cannot be made). Rather, it was an order that would direct payment by the third party once the debt had accrued due: paras. 37 and 38. On the basis of the facts in the case, the judge made the orders sought.

33. As to the proposed default provision, two points are relied upon by Century Property. First, the same or substantially similar relief was ordered in *Blight, Bacci* and *Brake* on the basis that it would avoid the need for a further application and court hearing, with the associated cost, in due course.

34. Secondly, s. 39(1) of the 1981 Act provides that where the High Court has given or made a judgment or order directing a person to execute any conveyance, contract or other document, then if that person neglects or refuses to comply with the judgment or order, the court may, on such terms and conditions, if any, as may be just, order that the

conveyance or contract or other document shall be executed by such person as the court may nominate for that purpose.

35. Although on its face s. 39 of the 1981 Act appears to be engaged only once the subject of a judgment or order has in fact neglected or refused to comply, Parker J concluded in *Savage v. Norton* [1908] 1 Ch 290 at 297 that, in relation to s. 39's materially identical predecessor (s. 14 of the Judicature Act 1884), if a person had by his conduct already shown the court that he does and will refuse to do the act which is ordered to be done, an order may be made.

*The relevant issues*

36. Having regard to the relevant principles and the facts of this case, there are three principal issues to be decided:

    (a) What benefits may Dr Aldiss take under the pension fund?
    (b) Is it just and convenient to grant the order sought in respect of those benefits which Dr Aldiss may take under the pension fund to be used in satisfaction of the judgment debt and the final charging order?
    (c) Should a default position be included in the order authorising Century Property's solicitors to execute the relevant documentation to elect Dr Aldiss' benefit under the pension fund in anticipation of any non-compliance by Dr Aldiss?

*What benefits is Dr Aldiss entitled to elect under the pension fund?*

37. Paras. 32-34 of Mr Starr's third witness statement identify the relevant provisions of the pension fund and the benefits which Dr Aldiss may choose to receive. In summary, Dr Aldiss may take benefits from the pension fund on reaching the age of 55, that is to say, on 17 August 2025: rule 5.1 of the rules in the Trust Deed. Dr Aldiss may choose to receive either a Pension Commencement Lump Sum or an Uncrystallised Funds Pension Lump Sum: rule 6.1 of the same rules.

38. In correspondence with Century Property's solicitors, Embark said that if, on reaching the age of 55, Dr Aldiss decided to withdraw the full value of the pension fund (whether as a Pension Commencement Lump Sum or an Uncrystallised Funds Pension Lump Sum), 25 per cent of any drawdown or withdrawal would not be subject to tax up to a limit of £268,275; thereafter, it would be taxed at Dr Aldiss' marginal rate.

39. Dr Aldiss did not disagree with the facts summarised in paras. 37 and 38 above. Furthermore, as Mr Horton submitted and I accept, there is nothing in the relevant documents which prevents the order sought by Century Property being made. Neither Dr Aldiss in his submissions, nor Embark in correspondence, suggested otherwise.

*Is it just and convenient to grant injunctive relief?*

40. Century Property contends that it is just and convenient to make the orders sought under s. 37(1) of the 1981 Act for five principal reasons. First and foremost, the relief sought largely reflects the substance of the parties' compromise agreement contained in the Tomlin order, namely that the judgment debt would be paid on 28 September 2025,

slightly more than a month after Dr Aldiss reaches the age of 55, with funds from his pension fund.

41. Secondly, the fact that a drawdown of more than 25 per cent of the pension's total value would be taxed at Dr Aldiss' marginal rate attracts little weight. As HHJ Paul Matthews concluded in para. 72 of his judgment in *Brake*'s case:

> " … the fact that any drawdown by Mr Brake would be subject to tax is in itself of minor importance. For example, if a judgment creditor obtains a charging order on assets owned by the judgment debtor, and thereafter obtains an order for their sale, that sale may involve a liability to capital gains tax on the part of the judgment debtor. But no-one suggests that, merely because there is a tax liability arising as a result of the sale, therefore the sale should not have been ordered, or should not have taken place. Selling assets to raise money to pay debts often involves costs which reduce the value available to pay creditors. (I accept of course that, if the amount of tax would be so great that as a result there was no real benefit to the judgment creditor, the court may well decide not to order the sale.)"

42. Thirdly, there is no evidence that Dr Aldiss has any other creditors or that he has any other available assets against which the judgment debt can be enforced.

43. Fourthly, the Claimants and Century Property have acted proactively in obtaining the final charging order and in making the application.

44. Finally, the final charging order and the application have been necessary and proportionate responses to Dr Aldiss' breach of the Tomlin order and his subsequent conduct. As to the latter, Century Property relies on four principal points:

    (a) Dr Aldiss' unsubstantiated contention that the Tomlin order (and the enforcement proceedings which rest upon it) is in some way invalid.
    (b) The hostile tone and content of Dr Aldiss' communications with Century Property's solicitors.
    (c) Dr Aldiss' failure to serve any evidence following the first hearing when he successfully sought an adjournment for that specific purpose thereby causing delay and increased costs.
    (d) Dr Aldiss' other efforts to delay enforcement of the judgment debt by various means including (but by no means confined to) (i) claiming that he was to be made bankrupt when that was not the case; (ii) making an unmeritorious application for permission to appeal the Tomlin order to the Court of Appeal and (iii) by threatening, but never pursuing, other challenges to the Tomlin order.

45. Dr Aldiss submits that it would not be just or convenient to make the orders sought. His overarching point is that the Tomlin order was not validly made. He contends that he was not of sound mind when the compromise agreement was made and the Tomlin order was approved. Also, contrary to its first recital, he was not formally represented

at the hearing on 27 July 2023. Because the Tomlin order is not valid and binding, the final charging order is also invalid and, in turn, any enforcement action to recover the judgment debt is also fatally flawed. For these reasons, it would be fundamentally unjust to grant the relief sought by Century Property.

46. In submissions, Dr Aldiss expanded upon his overarching argument thus:

    (a) Following his father's death in May 2018, Dr Aldiss suffered from manic depression and was subsequently diagnosed as bipolar. The effect of this episode on his professional life has been very significant and his health problems have been exacerbated by the fact that the original proceedings (which started in 2021) and the present enforcement proceedings have been stressful and deeply upsetting.
    (b) The Tomlin order was made at a time when he was unwell. At a hearing on 21 July 2023, six days before the hearing at which the Tomlin order was approved, Master Eastman was wrong to conclude that Dr Aldiss was able to conduct his case and to participate effectively in the original proceedings.
    (c) Although a friend who is a solicitor attended the hearing on 27 July 2023, he was not retained to act for Dr Aldiss.
    (d) Dr Aldiss recognised that the tone and content of some of his communications with Century Property' solicitors was reprehensible. He explained that although he held senior positions of responsibility in his professional life and discharged those roles effectively and courteously, the distinctively stressful circumstances of this litigation sometimes caused him to act unthinkingly and inappropriately.
    (e) Dr Aldiss questioned the timing of the application given that his 55th birthday is not until August 2025. The matter was not, therefore, pressing.
    (f) For obvious reasons, Dr Aldiss wants to preserve and protect his pension fund and so he considered it to be in his interests to defend the enforcement proceedings.

47. Given the parties' arguments, my starting point is the merits of Dr Aldiss' challenge to the validity of the Tomlin order. I should say at the outset that the principal difficulty confronting Dr Aldiss' overarching submission is the absence of any substantiating evidence. It is now more than six months since the application was issued and more than two months since the first hearing was adjourned, at his request, to allow him to gather and serve evidence to answer the application. Unfortunately, Dr Aldiss did not seize the opportunity given to him. On that point, on 30 April 2024 (at 15.53) Dr Aldiss sent an e-mail to Century Property' solicitors in response to the application for the interim charging order. Dr Aldiss said that he had not been medically fit when the agreement contained in the Tomlin order was made; no-one was instructed at the time to act for him and that the Tomlin order was "invalid in its entirety – no settlement has occurred and therefore no charging order can be made". Although he clearly set out his position in relation to the Tomlin order and the subsequent enforcement proceedings in April 2024, Dr Aldiss has taken no or no effective steps to prepare any evidence to make good his arguments in response to the applications for the charging orders or the present application.

48. There is, therefore, no witness statement from Dr Aldiss which answers the application. There is also no witness statement from the solicitor-friend who attended the hearing at which the Tomlin order was approved to confirm Dr Aldiss' submission that the former

was not formally retained. As set out above, there is no expert evidence on the question of Dr Aldiss' mental capacity in July 2023.

49. There is, however, some information available to the court about Dr Aldiss' capacity in July 2023. The bundle contains a transcript of Master Eastman's judgment, given on 21 July 2023 and so six days before the Tomlin order was approved, in relation to the Claimants' application to strike out Dr Aldiss' defence and to enter judgment for the Claimants. The basis of that application was Dr Aldiss' non-compliance with court orders concerning the preservation of evidence, disclosure and the exchange of witness statements and expert evidence. Dr Aldiss represented himself at the hearing for which he had also served a witness statement. His answer to the application was that he had been mentally unfit to comply with the relevant orders. The Master considered evidence about Dr Aldiss' state of health but he found that there was no expert report which dealt with the specific question of the latter's ability to participate in the litigation or to understand and comply with court orders. In the event, the Master was satisfied that Dr Aldiss had suffered from a mental illness but that it had not been such as to "give him effectively carte blanche to disobey any of the court orders in relation to these proceedings, which he has manifestly done". The Master also found that Dr Aldiss had "been able to, or chosen to, carry on with plenty of other business and professional affairs both at home and abroad when it suited him". Finally, the Master observed that Dr Aldiss had been "decidedly cogent and coherent" during the hearing.

50. Although Dr Aldiss submitted that the Master's decision was wrong, the consequential order was not, as I understand it, appealed. Although the judgment is not determinative of Dr Aldiss' overarching submission, it does show that there was no reason apparent to the Master to doubt Dr Aldiss' mental capacity on 21 July 2023.

51. Therefore, absent any evidence at all to support Dr Aldiss' overarching submission, there is no basis on which to doubt the validity of the compromise of the original proceedings, the Tomlin order, the judgment order or any of the subsequent steps in the enforcement proceedings.

52. Accordingly, I accept Century Property's submission that the order sought largely reflects the substance of the agreement contained in that order, namely that in default of payment of the first instalment, the entire outstanding sum would fall due and be satisfied by funds from Dr Aldiss' pension fund soon after his 55th birthday in August 2025. In my judgment, that is a substantial factor in favour of making the order sought.

53. I now turn to consider other factors which, on the distinctive facts of this case, are relevant to whether it is just and convenient to make the order sought.

Sufficient money in the pension fund

(a) As at 16 April 2025, the pension fund was worth £618,249.94. As at 29 April 2025 (the date of the second hearing), the judgment debt was £450,939 which was made up of (i) the outstanding debt of £402,500 due under the terms of the Tomlin order; (ii) interest of £48,168 and (iii) fixed costs of £271. The daily rate of interest is £88.22. There is, therefore, sufficient money in the pension fund to satisfy the judgment debt.

Tax consequences

(b) There were no specific submissions or evidence on the amount of any tax that Dr Aldiss may be liable to pay should the order be made. In that regard, I accept and adopt HHJ Paul Matthews' reasoning in *Brake*, set out in para. 30 above, that taxation of the draw-down of a sum in excess of the tax-free lump sum allowance is of minor importance. In any event, on the basis of the figures before me, it was not suggested by the parties that this is a case in which the tax liability is, or is likely to be, so great that no real benefit would accrue to Century Property were the order to be made.

Absence of other creditors

(c) There is no evidence of any other creditors. In submissions Dr Aldiss referred to a County Court judgment for some £10,000 against "AJ Catering", a company with which he had previously been involved, but he produced no documents about it. In any event, the judgment is irrelevant because it was not made against Dr Aldiss personally. Dr Aldiss also referred to various other substantial debts (including an anticipated substantial demand for tax by HMRC), but none was said to be the subject of a judgment, and he provided no documentary evidence about them.

Absence of any other asset against which to enforce the judgment debt

(d) There is no evidence of any other asset against which the judgment debt might be enforced.

Timing of the application

(e) Century Property has acted promptly and appropriately at all stages of the enforcement proceedings including in relation to the application itself. Dr Aldiss questioned the timing of the application but its issue in October 2024 was not unduly premature bearing in mind the practicalities of listing, Dr Aldiss' previous conduct (not least the delay caused by the adjournment of the first hearing) and the precautionary need to allow for time to respond to any non-compliance.

Necessity for the application

(f) Given the absence of any payments from Dr Aldiss since 30 October 2023 and his previous conduct in the original and the enforcement proceedings, I am entirely satisfied that the application was necessary in order to take effective steps to satisfy the judgment debt.

Dr Aldiss' email correspondence

(g) In the past, Dr Aldiss' e-mail correspondence with Century Property's solicitors and, occasionally his correspondence with court staff and Master Eastman, has been discourteous and even insulting. I accept that Dr Aldiss has found the litigation stressful and upsetting but that is not an excuse for the offensive tone and content of some of his communications. Although Dr Aldiss' recent e-mails have been

comparatively moderate and polite, if his correspondence is read in the round, it shows a marked antagonism to those involved in the original proceedings and a clear intention to delay Century Property's efforts to enforce the judgment debt (whether by claiming imminent bankruptcy when that was not the case; by threatening applications that either do not materialise or they are made but they are ineffective; or by advancing arguments impugning the validity of the Tomlin order that are not substantiated by evidence).

54. In the circumstances, for the reasons set out in paras. 51-53 above, I am satisfied that it is just and convenient to make the mandatory injunctions sought.

*Should the default provision be allowed in anticipation of non-compliance by Dr Aldiss?*

55. Century Property submits that, if granted, the order should contain a default provision, under s. 39(1) of the 1981 Act, by which its solicitors have authority to sign the relevant documentation on Dr Aldiss' behalf. Dr Aldiss made no specific arguments in response to this particular provision, but he effectively adopted the submissions he made in response to the application for the mandatory injunctions under s. 37(1) of the 1981 Act.

56. In my judgment, the default provision sought in the draft order is appropriate for the two reasons relied upon by Century Property. First, the justification for a default provision identified in *Blight* and followed in subsequent cases, equally applies here. Such a provision will better achieve the overriding objective, avoid the unnecessary cost of another hearing and the unnecessary waste of court resources. Given Dr Aldiss' approach to the original and the enforcement proceedings, that consideration is especially significant.

57. Secondly, there is clear evidence that, without the default provision, Dr Aldiss will or, at the very least, is likely to seek to frustrate and delay the enforcement process further by not completing the required documents to withdraw the required funds. The relevant evidence has been set out above, but in summary:

    (a) Dr Aldiss was debarred from defending the original proceedings because of his persistent failure, without good reason, to comply with court orders.
    (b) Dr Aldiss has also sought to delay the enforcement proceedings. Although the parties had two months' notice of the date, at the first hearing Dr Aldiss made a without notice request to adjourn it to allow him to obtain evidence in response to the application. No good reason was given for his failure to gather his evidence before the first hearing. Although the adjournment was granted to give Dr Aldiss another chance to prepare his case, no evidence was served by 12 March 2025 or at all. At the second hearing, there was no indication when any expert evidence might be provided and, as noted above, no satisfactory explanation was given for Dr Aldiss' failure to serve any evidence at all.
    (c) More recently, his application to the Court of Appeal for permission to appeal the Tomlin order was made on 23 April 2025, i.e. nearly one year after he first indicated his objection to its validity, more than two months after the first hearing and only three working days before the second hearing. On the back of that application, Dr Aldiss also applied to adjourn the second hearing and to stay the enforcement

proceedings until determination of his appeal. The plain aim of his application to the Court of Appeal was to delay the enforcement process even further.

(d) Viewed overall, the evidence unambiguously shows that Dr Aldiss will, or is likely to, continue to seek to delay the enforcement proceedings not least because, as he candidly said in submissions, he has an obvious interest in seeking to preserve his pension fund.

## Conclusion

58. For the reasons set out above, I allow the application and make the orders as sought in the draft. With the benefit of the parties' written submissions, I will decide costs and any other matters separately. I do not anticipate that another hearing will be necessary.

59. Since April 2024 Dr Aldiss has disputed the validity of the Tomlin order and has said that he intends to challenge both it and the judgment order. Thus far, he taken no effective steps to do so. As I said to him at the second hearing, if he wishes to pursue his threatened challenge and before any further substantial costs are incurred, I would strongly urge Dr Aldiss to take professional advice on the merits of his position (particularly, the appropriate procedural route to pursue any challenge should he be advised to do so) as soon as possible.

60. Finally, I would like to express my thanks to Mr Horton and Dr Aldiss for their assistance and also to those who prepared the application bundles.