Neutral citation number [2025] EWHC 855 (Ch)

IN THE HIGH COURT OF JUSTICE **CLAIM NO. PT-2023-000595**

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY TRUSTS AND PROBATE LIST

MASTER MARSH (sitting in retirement)

Rolls Building

Fetter Lane

London EC4A 1NL

BETWEEN:

(1) ANDREW FRANK PITMAN HUBBARD
(2) NIGHAT HUBBARD

Claimants

and

(1) ROBERT WILLIAM PITMAN HUBBARD
(2) ANN VERONICA HUBBARD

Defendants

NIGEL WOODHOUSE instructed by Benchmark Solicitors LLP appeared for the Claimants

STEPHEN WILLIAMS of Williams Solicitors LLP appeared for the First Defendant

JAMES FENNEMORE instructed by Sinclair Gibson LLP appeared for the Second Defendant

JUDGMENT

Hearing 5-7 March 2025

This judgment will be handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be **10:00am on Wednesday 23 April 2025**

Introduction

1.This judgment follows the trial of an account in common form in respect of the defendants' dealings as trustees with land held pursuant to a trust. The Trust came into being pursuant to a declaration of trust dated 16 August 2005 pursuant to which the defendants were appointed as trustees. The defendants are accounting to the claimants as two of the beneficiaries under the Trust. The defendants are the other beneficiaries.

2.The parties are related. The first claimant and the first defendant are twin brothers. The claimants are married. The defendants were married when the Trust was created but divorce proceedings had already been commenced. The first defendant later married Karen Hubbard who was appointed a trustee of the Trust upon the second defendant's resignation on 24 August 2023. During the trial the parties were referred to using their given names and I will follow that convention in this judgment. I will refer to them in the following way:

First claimant – Andrew

Second claimant – Nikki as her preferred shortening of Nighat

First defendant – Robert

Second defendant – Ann

Karen Hubbard – Karen

The Trust

3.The Trust relates to three parcels of land at East Bergholt, Colchester, Essex:

3.1 High Trees Farm, Quintons Road, East Bergholt held under Land Registry title no. SK248663 (defined in the Declaration as the First Property). The registered proprietors were Robert and Ann.

3.2 Freehold Land at High Trees Farm held under Land Registry title no. SK263026 (defined in the Declaration as the Development Land). The registered proprietors were Robert and Ann.

3.3 High Trees Bungalow, Gaston End, East Bergholt held under Land Registry title no. SK248661 (defined in the Declaration as the Second Property but also referred to

as the Bungalow and Moore's Cottage). The registered proprietors were Robert and Andrew until 2010.

4.The Trust had the effect of redistributing the beneficial interests in the three parcels of land between Robert on the one hand and Andrew and Nikki on the other and provided for a division of property interests between Robert and Ann as part of their divorce. The Trust refers to an order made in the Family Division dated 18 October 2005 (but clearly it was intended to refer to an order made in 2004). It was drafted by Withers LLP who acted for Ann in the divorce proceedings and, later, before and after these proceedings were commenced. Robert and Ann's property interests in their divorce proceedings were worked through much later leading to a settlement agreement between them dated 4 May 2023, 19 years after their decree nisi of divorce.

5. The terms of the Trust anticipated that the First Property and the Development Land would be developed but there is no trustee charging clause. The account concerns the sales income generated by the trustees in developing this land and the expenses they say were incurred that are chargeable to the Trust. Most of the contentious issues relate to expenditure. Ann played a much smaller role than Robert in developing the land and only one expense item is left in the account that is directly attributable to her. However, she too is an accounting party albeit she says she played no part in instructing accountants to draft the trustees' account.

6. Under clause 3 of the Trust:

> "Robert Hubbard and Ann Hubbard declare that they hold the First Property and the Development Land as trustees of land and Robert Hubbard, Ann Hubbard and Andrew Hubbard declare that they hold the Second Property as trustees of land on trust as follows:
>
> 3.1 In respect of the Development Land only:
>
> (a) as to Robert's Plot for Robert Hubbard absolutely;
>
> Then as to the Remaining Development Land:
>
> (b) as to 80% for Robert Hubbard and Ann Hubbard as set out in clause 5
>
> (c) as to 10% for Andrew Hubbard absolutely
>
> (d) as to 10% for Nighat Hubbard absolutely

3.2 In respect of the First Property and the Second Property

(a) as to 40% for Robert Hubbard absolutely

(b) as to 40% for Ann Hubbard absolutely

(c) as to 10% for Andrew Hubbard absolutely

(d) as to 10% for Nighat Hubbard absolutely"

7. Clause 7 contains an acknowledgement on the part of Andrew and Nikki that "the Properties" (the First and Second Properties and the Development Land) are held on the trusts set out.

8. An issue of construction arises in connection with the provisions in the Trust that relate to "Robert's Plot" and the value to be attributed to it in the account. Robert's Plot is defined as:

> "a plot for a single private residential dwelling on the Development Land as indicated on the plans or drawings that accompanied the application for Planning Permission and to be selected or determined in accordance with clause 4;"

9. Clause 4 provides (so far as is material) provides:

> "4.1 Within 10 Working Days of the date on which Planning Permission is granted, Robert Hubbard shall select a plot for a single private residential dwelling on the Development Land … which he shall be entitled to absolutely".

Background

10. In 2003 Robert and Ann were living at 17 Barrowgate Road, London W4. Robert had undertaken several property developments and at around that time he and Ann were developing an adjoining house. He had previously used finance provided by John Chart and Leanna Devine (Mr and Mrs Chart) and David and Erlinda Jull (Mr and Mrs Jull) and bank borrowing to fund his developments.

11. The principal events which took place which form the background to the account are:

> 11.1 In 2003, Robert inherited a 75% interest in the Bungalow with Andrew inheriting a 25% interest. Robert inherited a 100% interest in the remaining land at High Trees Farm (the First Property and the Development Land).

11.2 On 28 October 2004 Robert and Ann agreed the terms of a financial order in their divorce. Decree nisi had been pronounced on 7 October 2004.

11.3 On 2 August 2005 Mr and Mrs Chart entered into what was described as a joint venture with Robert with a view to maximising the financial potential of the land at High Trees including the Bungalow. The sum invested gave Mr and Mrs Chart a 10% interest in the "Estate" and their interest was secured by a charge being registered. The agreement formalised an earlier arrangement. The investment of £250,000 by Mr and Mrs Chart was made in 2003.

11.4 Between June 2005 and January 2006 Mr and Mrs Jull invested £125,000 in return for a 5% share of the High Trees development along similar lines as Mr and Mrs Chart.

11.6 On 16 August 2005 the Trust was executed. Ann's case is that from that point onward she lived a completely separate life from Robert and that she had no significant involvement with the developments.

11.7 In March 2006 Andrew agreed to a charge over the Bungalow in respect of a loan facility with Lloyds TSB Bank for Robert and Ann in the sum of £550,000. The charge was dated 27 September 2006. The loan was used to repay Robert's borrowing from NatWest Bank.

11.8 Between 2007 and 2008 Robert undertook works of renovation and improvement to the Bungalow. Robert and Karen started living there and have remained living there since.

11.9 On 5 February 2010, the Bungalow was transferred from the joint names of Robert and Andrew into Robert's sole name and on the same date Robert transferred the remaining land from his sole name into the joint names of himself and Ann. Andrew's position as a trustee of the Bungalow with Robert was treated as having ended.

11.10 At around the same time a section 106 agreement was entered into with the planning authority relating to the planning consent Robert had obtained enabling the two barns to be converted and two further houses to be built.

11.11 On 22 October 2010 Robert and Ann entered into a Development Agreement with Knight Developments Limited ("Knight") for Knight to develop and sell the two barns and to build two new houses. Lloyds TSB Bank PLC is also a party (described as the Lender) for the purpose of providing consent to the development. Robert and Ann remained the registered proprietors of the land.

11.12 On the same date Robert and Ann granted an option to Knight in consideration of an option fee of £40,000 for the development of much of the remaining land at High Trees Farm. Lloyds TSB and Mr and Mrs Chart were parties to the agreement. Paul Robinson Solicitors acted for Knight and it is likely that Mr Chart's law firm, Barnett Alexander Conway Ingram LLP (otherwise BACI), acted for Robert and Mr and Mrs Chart. Under the option Knight agreed to use "every reasonable endeavour" in consultation with Robert and Ann to obtain planning consent for a residential development on the land.

11.13 Between 2012 and 2013 the barn and house developments were built and sold. The last of the four properties was sold in December 2013.

11.14 On 10 October 2014 a parcel of farmland was sold to Michael and James Harris for £532,875.

11.15 Robert says a document that has been called 'the 2014 spreadsheet' showing the income received and expenditure incurred was produced in 2014. It does not include the proceeds of the Harris sale but appears to include expenses claimed until the end of 2014.

11.16 In 2016 the option agreement was assigned by Knight to Countryside Properties Limited ("Countryside").

11.17 In 2017 Countryside obtained planning consent for the construction of 144 houses on the High Trees land. The consent was challenged by the Parish Council. By July 2020 the planning consent was free from further challenge.

11.18 On 9 October 2020 Penningtons Manches Cooper LLP, acting on behalf of Andrew and Nikki, wrote to Robert and Ann asking them to provide an account.

11.19 On 15 April 2021 an offer to settle the account on a payment of £1,030,985.20 to Andrew and Nikki was made in a letter from Williams Solicitors acting on behalf of Robert. An account was provided with the letter.

11.20 On 28 October 2021 Hubbard Developments Limited borrowed £242,232.12 (with £335,249.51 being repayable at the end of 18 months) from Ascent Funding Limited.

11.21 On 17 December 2021 this claim was commenced by Andrew and Nikki (Benchmark Solicitors LLP were acting for them).

11.22 On 9 February 2022 the option granted to Knight (and later assigned to Countryside Properties) was varied.

11.23 On 30 March 2022 Countryside acquired the land under the option agreement for £5.5 million. Countryside sold the option and the housing development pursuant to the planning consent was subsequently built and the plots sold by another developer.

11.24 On 4 May 2023 Robert and Ann reached agreement between them about the proceeds of sale held by the solicitors acting for them on the sale, Barker Gotelee, and Robert provided Ann with an indemnity about any future liability relating to the Trust.

11.25 Robert and Ann's divorce was then concluded, Ann resigned as a trustee and Karen was appointed in her place.

12. One of the curiosities of this claim is that none of the parties appears to have recalled the existence of the Trust until after these proceedings were commenced in December 2021. It has never been in issue, however, that there would have to be an account between the parties in relation to development of the land in which there were joint beneficial interests.

13. Andrew and Nikki's claim was originally framed on the basis of an oral agreement and what was termed "the written barbecue agreement". It was said they had an equity pursuant to a proprietary estoppel that was equivalent to a 20% interest in the Development Land and that Robert held the Bungalow for himself and Andrew pursuant to a resulting trust. The claim included a prayer for an account to be taken. The claim was defended, again without reference to the Trust, and the defendants counterclaimed seeking relief to prevent the claimants interfering with the sale of the development land. The Trust then emerged in July 2022 when Robert produced a copy of it and on 23 August 2022 the claimants served

amended particulars of claim relying upon the Trust and seeking relief as beneficiaries under the Trust.

14. On 19 June 2023 an order was made by Master Brightwell which had the effect of re-calibrating the proceedings. The order recited that:

> 14.1 The defendants admitted in their amended defences that they had entered into the Trust.
>
> 14.2 The Development Land had been sold by the defendants to Countryside on 30 March 2022 for £5.5 million.
>
> 14.3 The defendants' conveyancing solicitors Barker Gotelee had held £1.2 million from the proceeds of sale and £650,000 had been paid to the claimants as an interim payment.
>
> 14.4 The parties had agreed that it remained open to Robert to select a plot pursuant to clause 4.1 of the Trust and that he had selected Plot 69.

15. The order went on to declare that the remaining land in the three titles had been, and in part continued to be, held by the defendants as to 10% for Andrew and 10% for Nikki. It required the parties to consider mediation and directed that a further hearing be held "… to order such enquiries and accounts as may be necessary to determine the value of the Claimants' claim…". Thus, some 18 months after the claim was issued, it was able to progress on a sound footing towards the taking of an account.

16. An account was prepared by Thomas Quinn Chartered Accountants and then a further hearing took place before Deputy Master Francis on 8 May 2024. Orders were made by the Deputy Master requiring the claimants to file a witness statement saying what information they required about the income, expenditure and/or disposals of the trust assets and defendants were required to provide a witness statement giving the information that was sought. In addition, the defendants were required to provide an updated version of the account drafted by Thomas Quinn covering the full period of the trust.

17. The Deputy Master directed there to be a further hearing as to the form of the account and that hearing took place before Master Brightwell on 12 August 2024. He ordered that:

> "1. By 4 p.m. on 2 September 2024 the Claimants shall file and serve in the form of a Scott Schedule ("the Scott Schedule") their objections ('the Objections") to the

Defendant's account as set out in the "Final Account" prepared by Thomas Quinn dated 4 June 2024 for the period 2004 to 31 October 2023.

2. Any application by the First Defendant to strike out or seeking summary judgment on the Objections shall be made by 4 p.m. on 9 September 2024.

3. By 4 p.m. on 23 September 2024 the Defendants shall file and serve their responses to the Objections in the appropriate column in the Scott Schedule and at the same time file and serve any further witness statements on which they rely. The Defendants shall by the same time also disclose by copy any further documents relied on and any known adverse documents.

4. By 4 p.m. on 14 October 2024 the Claimants shall file and serve their response to the Defendants' responses in the appropriate column in Scott Schedule and at the same time file and serve any further witness statements on which they rely. The Claimants shall by the same time also disclose by copy any further documents relied on and any known adverse documents.

5. A hearing shall be listed to determine the Objections and to settle the account, with a time estimate of 3 days plus 1 day of pre-reading. The account shall not be on the footing of wilful default."

18. The order provided full trial directions with a mechanism for a trial date being fixed in a 3 month window commencing on 14 November 2024. It was later suggested by Mr Williams that paragraph 2 of this order amounted to encouragement from Master Brightwell to pursue an application for summary judgment. However, as I found when dismissing Robert's application dated 5 September 2024 seeking to strike out the account, or alternatively seeking summary judgment on the account, that was a misconception. Judgment dismissing Robert's application was delivered on 5 November 2024.

19. Little thought had been given by the parties to the practicalities of a trial that involved 63 objections. In addition, there was an obvious degree of hostility between Robert and Andrew and between their representatives and the parties had already filed numerous witness statements with many of them touching upon issues relevant to the account. Without composite trial witness statements, it would have been very hard to discern their respective cases relating to an account with such a large number of items in it. It was also clearly essential for objections to be grouped or for objections to be tried as samples.

20. I directed the parties' representatives to meet to discuss and seek to agree proposals for the conduct of the trial of the account objections and to file either agreed proposals or competing proposals for Master Brightwell to consider. This ultimately led to an order made by Master Brightwell on 13 January 2025 which included an agreed grouping of the issues to be tried; there were four issues about the receipt of income by the trustees and 16 issues about expenses. The parties were required to exchange witness statements providing the witness evidence they relied upon to deal with the issues in the account. The parties could have been in no doubt from the date judgment was delivered on the strike out application that they would be required to serve and file complete trial witness statements providing all the evidence upon which they relied. The order also provided an agreed timetable for the trial which had been given a time estimate of three days.

21. Practice Direction 57AD does not apply directly to the taking of an account. Under Practice Direction 40A paragraph 1.1 the court has power to give directions about the manner in which an account is to be taken and paragraph 3 specifies what steps are to be taken where objections are taken to items in the account. The procedure is a flexible one and it is open to the court when taking an account in the Business and Property Courts to make an order in relation to disclosure, adapting Practice Direction 57AD in an appropriate manner. The issues in the account will emerge from the objections to the account and there should be no need for Part 1 of the DRD to be used. Part 2 may be useful in some case in which the sources and types of documents may be controversial. In this case paragraphs 3 and 4 of Master Brightwell's order dated 12 August 2024 (as set out above) required each party to disclose "any further documents relied on and any known adverse documents" with respectively the defendants' response to the claimants' objections and the claimants' response to those responses. The order was therefore similar to Model B disclosure, adopting the definition of known adverse documents in paragraph 2.8 of Practice Direction 57AD.

22. The way disclosure was to be dealt with is important because the defendants produced and relied upon a remarkably small pool of documents. The order for disclosure did not require them to undertake searches. On the other hand it was, if their response to the objections was to be accepted, strongly in their interests to undertake diligent searches to obtain documents from their own and third party sources in light of the burden of proof relating to expenditure. The defendants' witness statements are notably silent about the steps they took to find documents. I will return to this point when dealing with the evidence.

23. There have been various iterations of the account The account which is under consideration now is the final account prepared by Thomas Quinn dated 4 June 2024 covering the period from 2004 to 31 October 2024. It shows just over £9 million of income generated and £5.87 million of expenditure. On the same date as the account, Robert and Karen, purportedly acting as trustees, resolved to accept the account. The resolution records that they had on 15 December 2023 resolved to end the trust. Clearly neither resolution has any consequence, not least because (a) the trustees still hold trust property in the form of the Bungalow and a small parcel of High Trees land and (b) by 4 June 2024 the court had ordered that an account was to be taken. The trustees' resolution to declare the trust at an end was merely wishful thinking on their part.

24. The Thomas Quinn account contains a report to the trustees which says that an income and outgoings statement and a balance sheet have been prepared "from the entity's [sic] accounting records and from information and explanations you have given to us." Appendix 1 comprises a statement of distributions. It asserts that there is a first charge due to Robert in relation to Robert's plot of £710,000. This appears to attribute to Robert the value of plot 69 in its developed state, namely the sale price of the plot with a house built on it.

25. Thomas Quinn record that they have not verified the accuracy or completeness of the accounting records or information and explanations provided by the trustees and they do not express any opinion on the financial information. It has not been revealed what records and information was supplied to them. It is fair to say that accountant's certificate is very cautious and provides no imprimatur of authenticity or accuracy.

26. The Income and Outgoings statement is not easy to follow. Income and costs are divided into five columns – "2004 -2014", "Via Barker Gotelee account", "RH account", "Assets" and "Unpaid". RH clearly refers to Robert but it is not clear precisely what "RH account" signifies. There is no comparable notional account for Ann. The five headings are followed through to a Balance Sheet prepared as at 31 October 2023. Appendix 1, in addition to providing details of distributions that have been made, provides 11 notes to the Income and Outgoings statement.

27. A Scott Schedule has been produced listing the 63 objections (the numbering runs to 73 but jumps from 60 to 70) with columns for the claimants' objections, the defendants' responses (they are provided in separate columns by each of them) and the claimants' reply. As a result of engagement between the parties pursuant to my order made on 5 November

2024, the issues have narrowed and have been grouped as the order dated 13 January 2025 records. The number of objections further reduced during the trial.

28. The objections and responses follow a pattern. The majority relate to expenditure included by the defendants in the account. The claimants' objections to items of expenditure:

> 28.1 Record the amount objected to and assert that the account is overstated by the amount in question.
>
> 28.2 State that the defendants have not produced evidence about how the amount is made up or that it is an authorised deductible expense in whole or in part.
>
> 28.3 Put the defendants to strict proof of the item of expenditure.

29. There is some variation in the objections. For example, in relation to legal fees charged to the account the claimants have, in addition to the points summarised above, claimed an order for the costs claimed to be assessed under section 71(3) of the Solicitors Act 1974.

30. The defendants' responses are set out in separate columns. The main response in each case is from Robert. The pattern his responses follow is:

> 30.1 To assert that the objection is deficient due to failure to comply with paragraph 3.2 of Practice Direction 40A.
>
> 30.2 To rely upon the trustees having made a decision to incur the item of expenditure relying on their power under section 8 of the Trustee Act 2000.
>
> 30.3 In the case of older items of expenditure, to rely upon limitation if the allegation is one of breach of trust. Robert refers to *Kekwick v Kekwick*.

31. There are variations depending upon the item concerned and in some objections Robert adds that the claimants show no grounds for disputing the expenditure. The point taken by Robert about a failure to comply with Practice Direction 40A was dealt with and dismissed on the hearing of Robert's application to strike out the claimants' objections or seek summary judgment.

32. Ann's responses are very cautious and she says in each case:

> "While D2 cannot speak to the specific factual allegations underlying D1's response, she does not disagree with it. To the extent that the Court accepts D1's response, D2 adopts and relies upon it."

The trial

33. Master Brightwell's order dated 13 January 2025 recorded an agreement between the parties about the running order for witnesses at the trial with agreed time limits and agreed time limits for closing submissions. For understandable reasons it was not possible to stick precisely to the timetable. However, counsel for all three parties worked hard to conclude the account in the time available and I am grateful to them for their assistance in achieving that objective.

34. The court heard evidence from Robert, Karen and Ann first, followed by Andrew, Nikki and Mr Jull. At the end of the second day Mr Williams was part way through cross-examining Nikki Hubbard. However, there was an interruption to the trial when it commenced at 10.00 on the third day. Mr Williams made an oral application on behalf of Robert to adjourn the trial on the grounds that (a) Karen had suffered from a haemorrhage in an eye the previous day and had been taken to hospital and (b) his client, Robert, had made contact with Andrew overnight saying he wished to settle the account. Having heard submissions from Mr Williams I refused to grant an adjournment on the basis that compelling reasons to adjourn had not been made out. My reasons included (a) that Karen's evidence was by then complete and (b) a desire on Robert's part to settle (it was not put higher than that) was a considerable distance from settlement being a reality. I concluded that the balance came down firmly in favour of the trial continuing.

35. Having given that decision, Mr Williams then announced, without having forecasted it, that his instructions to act on behalf of Robert had been withdrawn. He said he had been informed of this in the early hours. He then left court. After brief cross-examination of Nikki by Mr Fennemore acting for Ann, Nikki was then discharged from the witness box.

36. The parties remaining in court were given an opportunity to re-assess their respective positions before the trial resumed. For the sake of completeness I should add that I was provided with a text message from Robert to Andrew and a voicemail message from Robert was played. Neither had any effect on the conduct of the trial and it resumed on a hybrid basis after contact had been made with Robert and a link to his home arranged. He attended the remainder of the trial and was able to provide closing submissions. The court did not, however, have the benefit of closing submissions from Mr Williams. After the conclusion of the trial Mr Williams was reinstated by Robert.

37. Robert had a serious accident in 2019 and says he suffered from 3 frontal lobe strokes and a heart attack. He says he has difficulty concentrating. However, there was no request made on his behalf for special measures to be taken and the trial timetable was agreed well before the trial commenced.

38. Andrew has also suffered ill-health which he details in his statement. He opted to leave the main evidence relevant to the account to Nikki. Again, there was no request for special measures.

The law

39. Before dealing with the remaining live objections and the evidence it is necessary to summarise the law that is relevant to taking an account in common form:

39.1 Trustees are under a duty to keep accounts and records: *Henchley v Thompson* [2017] EWHC 225 (Ch) [16] which sets out a helpful passage from G Thomas and A Hudson in the law of Trusts 2nd ed. at 10.146 and *Snell's Equity* 35th ed. Chapter 29.

39.2 The consequences of a failure to keep and preserve records can be very serious. In *Snell* at 20-010 the principle is put in the following way:

> "The accounting party must therefore be prepared to document each item, and presumptions may be made against them if they have not kept proper records or have destroyed them. The court will lean particularly hard against a professional who has not kept adequate records or anyone who destroys records in bad faith. In other circumstances, the court may not require documentary evidence for every entry in an account. A non-professional fiduciary who has acted in good faith may be granted fair and reasonable allowances despite having neglected to keep proper accounts."

Gray v Haig (1885) S.C. 13 Beav. 65; 52 ER 587 is cited in Snell at 20-010 as authority where a professional trustee has not kept proper records or has destroyed them. The case concerned the failure by an agent to preserve records. Indeed, it appears from the report that records were destroyed by the agent after proceedings were commenced. At [226] Sir John Romilly MR said:

"… the case is very different when the transactions to which they relate are recent, where the accounts arising from them have not been finally adjusted, or the balance

ascertained or paid, and still more when that destruction takes place by the person who has actually filed a bill to have the accounts taken of those very transactions to which these books relate. In such a case some very cogent reason must be given to satisfy the Court that the destruction was proper or justifiable, and, in the absence of any such satisfactory reason, which is the fact here, I am compelled to act on the principle laid down in the well-known case of Armory v. Delamirie (1 Strange, 505), and presume, as against the person who destroyed the evidence, everything most unfavourable to him, which is consistent with the rest of the facts, which are either admitted or proved."

He said at the end of his judgment:

"I cannot conclude this case without expressing my regret that I have felt it my duty to make a decision on these points which will lead to so stringent a decree against Mr. Gray. It cannot, however, be too generally known or understood, amongst all persons dealing with each other, in the character of principal and agent, how severely this Court deals with any irregularities on the part of the agent, how strictly it requires that he who is the person trusted shall act, in all matters relating to such agency, for the benefit of his principal, and how imperative it is upon him to preserve correct accounts of all his dealings and transactions in that respect, and that the loss, and still more the destruction of such evidence, by the agent, falls most heavily on himself."

Robert and Ann are not professional trustees and the court has no basis for leaning hard on them on that basis alone. Nevertheless, a trustee who fails to keep records, or destroys them, can expect only limited sympathy from the court, unless there is a full and clear explanation about what has happened and a careful attempt to explain entries in the account. Where the destruction of records is recent, or where a cogent reason for the destruction of records is not provided, the court is likely to lean against trustees in favour of the beneficiaries.

39.3 There are three stages to the taking of an account in common form. First, establishing whether there is a right to an account and, if there is, whether the court should exercise its discretion to make an order for an account to be taken; secondly, the taking of the account; and thirdly whether consequential orders should be made: *Snell* at 20-006. Here, stage one has been established. Stages two and three remain to

be completed. The essential point is that consequential orders do not follow automatically from the account being finalised.

39.4 The purpose of trust accounts is to tell beneficiaries what the trust assets were, what has been done with them, what they currently comprise and what distributions have taken place: see *Ball v Ball* [2021] EWHC 1020 (Ch) at [24]. This necessarily involves the court considering whether expenses claimed by the trustees are properly chargeable to the trust.

39.5 There is no set form for the provision of accounts: see *Henchley v Thompson* at [41]. The level of detail that the trustees must provide and the formality of the account statements is context specific. It will vary with the size and nature of the trust: see *Ball v Ball* at [25]. In the context of a trust of land which contemplated its development and sale, the trustees are required to keep full records of income and expenditure and to retain them.

39.6 The burden of proof varies according to the nature of objection. Where the objection relates to income, the burden lies upon the beneficiaries; where it relates to expenditure and outgoings, the burden lies on the trustee: see *Exsus Travel Limited v James Turner* [2014] EWCA Civ 1331 McCombe LJ at [21]-[22] and *Snell* at 20-010. The way it is put in Lewin 20th ed. at 41-005 is as follows:

> "A claimant to an account in common form need not allege or prove any default in the trustee's dealings. An order for an account of administration in common form requires the trustee to account only for what he has actually received, and his disbursement and distribution of it. Accordingly, such an account enforces the trustee's primary duty to hold the trust property for the beneficiaries, paying out sums only as he is authorised to do under the terms of the trust. It is thus incumbent on the trustee to justify any payments made, and not on the beneficiary to prove any breach of trust." *Lewin* 20th ed. 41-005

39.7 Traditionally it is said that income is 'surcharged' and expenses are 'falsified'. Although those terms have been in use for many years, for my part, I do not find them helpful; their meaning is obscure, and they are not readily understandable by anyone other than trust lawyers. I note that Practice Direction 40A, which governs the taking of accounts, uses the neutral term "objection" and in paragraphs 3.1 and 3.2 seek to put in plain English the different notions that may be considered in relation to income

and expenditure, including those that are relevant to an account taken on the basis of wilful default. Although there may be imperfections in the drafting (see: *Hubbard v Hubbard* [2024] EWHC 3123 (Ch) at [35]-[36] the language used is much preferable to archaic terms such as surcharge and falsify.

39.8 An account in common form is distinct from an account on the basis of wilful default. The former is an account based upon what has actually been done with the trust assets, what they comprise and what recoverable expenses the trustees have incurred for which they wish to be indemnified. By contrast, in an account taken on the basis of wilful default the court may investigate what ought, or ought not, to have been done and what the trust assets ought to comprise. Essentially the difference is between the 'is' and the 'ought'. Thus, it is not part of the account in this case to look into whether the developments could have been undertaken in a different way, or could have achieved a higher return, or whether agricultural land could have been let for a greater rent than was achieved. Equally it is not the court's role to investigate whether services could have been obtained at a lower cost; see *Snell* at 20-17 and *Lewin* 41-003.

40. At one time the claimants put in issue the defendants' ability to borrow but this point is no longer relied upon. The trustees had power to borrow pursuant to either section 6 of the Trusts of Land and Appointment of Trustees Act and section 8 of the Trustee Act 2000. However, as Briggs J (as he then was) put it in *White v Williams* [2011] EWHC 494 (Ch) at [53]-[56] when discussing unsecured borrowing:

> "The real question is whether, in relation to any particular unsecured borrowing, the trustees are entitled to an indemnity as against the trust property, in respect of that personal liability. That will largely depend upon whether the purpose for which the money was raised by an unsecured borrowing was a proper purpose of the trust, such that the borrowing and expenditure of the money was not a breach of trust."

41.The claimants rely upon a principle that is derived from *Leigh v Dickinson* (1884) 15 Q.B.D. 60 and *Re Jones* [1894] 2 Ch 461 in relation to jointly owned land where one joint owner is in occupation. Improvements by a co-owner are only recoverable upon sale and in the amount spent or the increase in value, whichever is the lower. I will return to this issue when dealing with the relevant objection.

42. Ann invites the court to find that any liability that may flow from the account should not result in an order against her on the basis that a trustee is not liable for the acts or defaults of their co-trustee: see Lewin on Trusts 20th ed. at 41-094. The principle was at one time embodied in section 30(1) of the Trustee Act 1925 but that section has been repealed. The authorities establishing the principle remain good law.

43. In the alternative Ann relies upon section 61 of the Trustee Act 1925 which provides that:

> "If it appears to the court that a trustee … is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same."

The evidence

Discharging the BOP in relation to expenditure

44. The defendants carry the burden of satisfying the court that items of expenditure to which objection is taken may be treated as chargeable to the Trust. They have taken issue with the way in which many of the objections are drafted, particularly in relation to the claimants' assertion that some items are not authorised. However, the defendants have been put to strict proof of the expenditure that they claim to have incurred "in whole or in part". This forecasted the possibility that the defendants might seek to recover, in the alternative, lesser sums for some items of expenditure but in the event that was not an approach the defendants adopted. The claimants have nothing they have to prove unless they rely upon evidence providing a reason to disallow expenditure; in that case they have to prove such evidence before it can be evaluated and added to the evidential mix.

45. As I have observed already, Robert's approach is a curious one. He focussed on the manner in which the claimants' objections are put forward and feigned not to understand them, rather than engaging wholeheartedly with the task facing him of proving the expenditure he seeks to charge to the Trust. He appears not to have understood, or closed his eye to, the effect of the burden of proof.

46. The particular difficulties in this case include (a) the lengthy period covered by the account (b) the very limited number of relevant documents that have been produced (c) the claim that documents have been destroyed (d) the very limited efforts made by the defendants

to locate documents (e) the poor quality of the trial witness statements produced by Robert and Karen and (f) the very limited knowledge about the trust claimed by Ann and her inability to provide helpful evidence about much of the expenditure said to have been incurred on behalf of the trust.

47. The 'gold standard' is where trustees provide an explanation why the expenditure was incurred in the amount claimed, an invoice(s) or other evidence of payment such as from a bank account held by the trustees and oral evidence about why the type of expenditure and the amount incurred is a proper expense of the Trust. However desirable such evidence may be, trustees may be able to discharge the burden on them, which is not unduly onerous, with lesser evidence. The older the expenses the more forgiving the court may feel inclined to be provided that the trustees have made a real effort to locate adequate documentary evidence and explained what steps they have taken. The sort of questions the court will have in mind include, without having to resort to drawing adverse inferences:

> 47.1 Is it plausible that the expenditure was incurred? Is it of a type which would be expected?
>
> 47.2 Are there any documents which provide evidence of the expenditure being incurred and paid?
>
> 47.3 Is there plausible oral evidence of the expenditure being incurred and paid, whether or not there are documents?
>
> 47.4 If there is an absence of material documents, is there a good reason for that absence?
>
> 47.5 What efforts have been made to locate and produce documents by the party upon whom the burden lies?
>
> 47.6 Is the court able to reach conclusions about expenditure having been incurred and paid based upon the evidence (oral, documentary and inferential) taken together?
>
> 47.7 If there is sufficient evidence of an item of expenditure being incurred, was it was incurred on behalf of the trust, as opposed to being for the personal benefit of the trustee?

48. I will first provide an assessment of the quality of the evidence provided by the witnesses and secondly make findings of fact issue by issue. The majority of the issues relate to expenditure incurred by Robert.

49. Robert, Ann and Karen gave evidence on behalf of the Defendants.

Robert Hubbard

50. Robert was the central witness in the account and the principal witness in relation to the expenses claimed. Given that he was required to justify expenditure in the region of £4.8 million he said was incurred between 2004 and 2023 his statement was remarkably lacking in detail and the volume of documents he produced is very modest. The expenses included well over £1 million in legal fees charged to the trust. The only building expenditure he seeks to recover is £298,000 spent on renovating the Bungalow but that expenditure is wholly undocumented. Robert seeks to justify a development fee of 15% of the sale price to Countryside, a fee of £825,000, and an annual payment to him of £25,000, albeit he explained for the first time in his trial witness statement that the annual payment was no more than "a contingency fund, necessary to cover the numerous costs that did not warrant a separate mention in the account." This was done, he says, to simplify the accounting process.

51. Robert provided a witness statement of variable quality that purports to comply with Practice Direction 57AC. He certified that he understood his function and that this did not include arguing the case. However, this certificate immediately follows nearly two pages of submissions under two headings "overview" and "conclusions".

52. Paragraph 11 of his statement is inaccurate. He says that the order made by Master Brightwell on 19 June 2023 allowed him "… belatedly to select Robert's plot for £709,995." [my emphasis] In fact, the order says nothing about the value to be attributed to the plot which is an item at large in the account.

53. At paragraph 12 he says that on 12 August 2024 "Master Brightwell by his Order verified and approved the Account of the property development business with over 450 pages of supporting documentation and no allegations of wilful default or breach of trust." This is inaccurate and there is a considerable degree of conflation. Master Brightwell did not verify and/or approve the Thomas Quinn account. On the contrary, he gave directions for objections to be provided and for there to be a trial of those objections, albeit he directed that it should not be on the footing of wilful default. There is no mention in the order of there being over 450 pages of supporting documentation that were considered by the court when the order was made.

54. The witness statement returns to the subject of Master Brightwell's order at paragraph 93 making yet more submissions. Although it is correct that the account was ordered to take place in common form, it does not follow that the court is unable to reach a conclusion that

income is understated, or that claimed expenditure should be disallowed. The claimants do not need to show that there were breaches of trust. An item of expenditure charged to the trust that is disallowed, because the trustees cannot discharge the burden on them, may, or may not, reveal a breach of trust. Breaches of trust are not the focus on taking the account. The account is merely seeking to establish what income was obtained and what expenses were incurred that are properly chargeable to the Trust.

55. These errors suggest not just a casual approach to what is true, or not true, but also a fixed, but inaccurate, view about the nature of this account. Robert must discharge the burden of proof in relation to claimed expenditure and, in considering the evidence he provides, the court is entitled to have regard to the destruction or loss of documents and his efforts to obtain duplicates of documents he once held. These are subjects to which I will return. I merely note at this stage he has not provided the court with any bank statements that show items of expenditure he claims in the account. He has produced some bank statements to show his borrowing when the trust was declared and statements showing receipts from the sales of the Barns developments and the Harris land which went to reduce his very considerable borrowing from Lloyds TSB.

56. Robert discusses his and his solicitor's lack of understanding of the claimants' objections including objections in terms that the claimed item of expenditure was either "not authorised" or that he is "put to strict proof". He says:

> "14. Given past events neither my solicitor Mr Williams nor I understood what was meant by "not authorised" until a meeting between legal advisers on Microsoft Teams on 15th November 2024 to which I listened in. In response to a question from Mr Williams Mr Woodhouse explained that "not authorised" meant:
>
> 14.1 There was no charging clause specified in the Trust Deed; and
>
> 14.2 The Trustees did not ask for or obtain permission from their clients to develop the site.
>
> This was the first occasion these allegations had been raised in what is now a 19-year period since the signing of the Declaration of Trust.
>
> 15. Given the above summary and the contents of C's Particulars of Claim, Pennington's letter of October 2020 and much more, I became very surprised at being called upon to answer these objections but in this statement, I will do my best. I

cannot prepare this statement or give evidence on any basis that is not set out in those objections as I would not have notice of any other challenges or time to prepare for them. I ask the court to bear with me please as in 2019, following a serious accident . I suffered from 3 frontal lobe strokes and a heart attack, therefore I can have difficulty concentrating."

57. At paragraph 87 he says:

> "As I prepare for the final hearing, following the submissions of the C's objections to the accepted Account, I am still unsure what the actual dispute is."

58. At paragraph 88 he records that a payment of £700,000 had been made to the claimants and £1,400,000 to Ann. The latter payment arises from a settlement agreement between Robert and Ann dated 4 May 2023. In return of the payment in full settlement of her claims against Robert he provides her with an indemnity in respect of any liability as a trustee.

59. Robert's statement then proceeds to assert the following at paragraph 89:

> "After the C's and Ann's beneficial interests had been fully paid, I became the sole beneficiary of the trust. Therefore, the trust was closed, this position being formally ratified by the trustees in December of 2023. The value of the remaining trust assets were insufficient for my own beneficial interest to be fully discharged."

60. These passages are further examples of legal submissions being provided in Robert's trial witness statement. Whatever the trustees' purported ratification may be (it is not clear what is being referred to), they are unable to treat the trust as being closed when it continues to hold trust assets, and the trustees have not provided accounts which have been approved at the end of the accounting process. Rather obviously, if items of expenditure are disallowed in the account there will be corresponding credit entries in the Trust account.

61. Robert appears to suggest that he (and his lawyer) had difficulty understanding the claimants' objections. This seeks to go back over territory that was covered in Robert's misguided application to strike out the claimants' objections (or obtain summary judgment in respect of them) that is the subject of my judgment dated 4 November 2024. In dismissing the application, I stated I was satisfied the claimants had set out their objections adequately and there was no need to make an order requiring them to re-state the objections. I do not accept that Robert was unable to understand the claimants' objections. The impression is given in Robert's statement that he begrudges having to justify his expenditure. Importantly, he does

not explain what efforts he made, having been put to strict proof, to obtain documents to support his account.

62. Robert refers in paragraph 15 to an accident in 2019. There is no dispute that he had a serious accident with the serious medical consequences at the time. He returns to this subject at paragraph 92 of his statement saying that the timing of the claimants' "attack" on him was based upon two factors one of which was his accident in 2019 "… which left me vulnerable and highly unlikely to be in a position to defend myself…". In the previous paragraph he accuses the claimants of having "knowingly inflicted considerable financial and personal hardship upon myself and my family an outcome openly admitted by C2."

63. The court was not provided with medical evidence about Robert's current state of health and whether he is vulnerable and has difficulty concentrating. He said when cross-examined that he had "struggled" for the last four or five years. He was cross-examined for the first day of the trial, with a short break in the afternoon, and for part of the morning on the second day. He made reference to his accident in 2019 on several occasions but did not display any discernible deficit or inability to cope.

64. Robert describes himself as a retired property developer. Like his brother he is also a retired police officer. He says he made arrangements with Mr and Mrs Chart and Mr and Mrs Jull for them to invest in his proposed development of High Trees. He undertook a development at 15 Barrowgate Road and 11 Russell Gardens, Kensington but says nothing about them in his statement albeit that at least one of them overlapped with the High Trees development. The Chart and Jull investments totalled £375,000. In making those contributions they acquired, as between themselves and Robert (and possibly Ann), a share of the future development value in return for providing working capital to pay professional fees and carry out works of renovation to the Bungalow. Their investments were repaid in 2021 and 2022 respectively at £845,727 and £374,088.22. In the case of Mr and Mrs Jull the repayment included sums in respect of 15 Barrowgate Road and 11 Russell Gardens.

65. Robert says that in February 2009 an application for planning consent was made on his behalf by Bidwells to build two new houses on the High Trees site which was refused. He describes the period after the banking crash of late 2008 as being difficult and he was facing pressure from Lloyds TSB. He put in a further application for planning consent for four properties using Roger Balmer, a local architect, learning from the failure of the Bidwells' application which was granted. Using Bidwells, he had produced a plan for 120 houses on the

remainder of the site. He is seeking to recover £154,300 for their fees up to 2009 without being able to produce any document that records their involvement and no evidence of payment to them.

66. He approached Knight Developments and the terms of a Development Agreement, and two option agreements were agreed. He says he prepared the development agreement and Mr Chart of Barnett Alexander Conway Chart LLP ("BACI") drafted the option agreements. The documents record that Paul Robinson Solicitors acted for Knight and that BACI acted for Robert and Ann. It is clear that BACI had some involvement with the legal work although how Mr Chart reconciled his conflict of interest is unclear. The BACI 'invoice' for charges over the period 2011 to 2021 claiming £49,248 was not produced until much later. (There is an entry in the 2014 spreadsheet for £15,000 for BACI's fees in the 2010 column. The rounded figure would suggest there was no vat invoice). The later BACI 'invoice' does not bear a date or an invoice number and so is not recognisable as a VAT invoice. It is also unspecific about what work was done. It simply refers to "charges in connection with all Estate legal matters for the [defendants] including Moores Lane development site during the above ten-year period".

67. Robert says work started in 2012 and it is common ground that Knights converted the two barns and built two properties which they sold. Knights incurred the building costs. The development agreement contemplates joint marketing between Robert and Knight but there is no evidence about his involvement. Land adjacent to Pond House was sold to Mr George Harris in late 2014. The net sums due to Robert and Ann under the development agreement were paid to their lawyer Ms McAleese. Interim payments, £30,000 to Mr and Mrs Jull and £92,000 to Mr and Mrs Chart were made.

68. Robert claims to have had an active part in negotiating extras for the four properties to ensure that the right level of finishes that were applied. It is completely unclear from his statement how the bank and other funding he obtained were applied in relation to this aspect of the development. Nevertheless, he had an active role in obtaining planning consent, negotiating the development agreement and the options, instructing lawyers and supervising the construction period and the sales.

69. Robert describes work of renovation to the Bungalow between March 2007 and March 2008 after which he moved into the property as his home. He says the work included:

> "46.1 Externally-

1) All windows resized and replaced with wooden framed, double-glazed units.
2) All external brickwork waterproofed, rendered and painted.
3) A wooden framed, double-glazed conservatory was constructed.
4) Landscaping to the land adjacent to the property.
5) Installation of underground LPG tank.
6) Laying down several hundred meters of fencing and hedging.

46.2 Internally –

1) All internal walls, ceilings and floors were removed and reconstructed.

2) The internal square footage was increased from approximately 1,900 sq ft to approximately 2,970 sq ft, a consequence of the construction of a new first floor running the full length of the property.

3) The whole property was rewired, replastered, new central heating system, new Kitchen, bathrooms, new floor coverings throughout, new internal woodwork, including staircase, doors etc, with the whole property being decorated to the required standard."

70. Robert says he accounted to "all participants" including Andrew after sale of the four Barns houses and sale of land to Mr Harris with a spreadsheet now known as the 2014 spreadsheet. He does not say how it was supplied. The 2014 spreadsheet simply contains a single entry for 2008 of £298,000 – "Development of Bungalow up to 2008". There are no later entries. He says that the cost to a developer of this work would be approximately £445,000 whereas the renovation cost he claims is £298,000. His opinion about the cost of a developer undertaking the work is not supported by expert evidence and he has not produced any documents to verify the extent of the work he carried out, invoices or bank statements that show the cost of the work being incurred or the source of funds. He says he did the work assisted by his former site manager Mr A Rashed who supplied the workforce.

71. Robert does not deal with the assignment of the option agreement by Knight to Countryside or the subsequent exercise of the option in any detail. The claimants accept that he appointed Grier & Partners to conduct negotiations with Countryside. There are no details provided about what work they did. However, their charges of £72,857 are not disputed. Barker Gotelee Solicitors were instructed to act for the trustees on the sale to Countryside.

72. One of the most substantial items in the account is legal fees. Robert says that following the instruction of Benchmark Solicitors by the claimants in June 2021 “all things changed”. He says the claimants threatened to stop the Countryside sale “by lodging numerous injunctions with HM Land Registry on trust titles.” He is in fact referring to attempts to lodge restrictions to protect the claimants’ beneficial interest in the land. He was concerned that the planning consent would expire in November 2021 and the sale agreed at £5.5 million would be lost. He says that Mr Williams forced Countryside to exchange contracts under the option. He had arranged a standby contractor to implement the permission at a cost of £1,000 to cover the event that exchange did not take place.

73. This claim was issued on 17 December 2021 prior to completion of the sale to Countryside on 30 March 2022. He says that the deed of variation signed on 9 February 2022 included a clause at Countryside’s insistence that they could decline to complete if the sale was challenged in legal proceedings, and he claims that steps were taken by the clamant to interfere with the sale. Robert borrowed money at a very high cost from Ascent Funding to enable him to pay Mr Williams.

74. In paragraph 32 of his statement when dealing with an item of expenditure he says, in passing, that “details were recorded in my laptop which disappeared from my home following a visit from Andrew.” When dealing with items of claimed expenditure up to 2014 he refers to ‘the 2014 spreadsheet’, which was prepared by Karen, and says that the entries were recorded by Karen “from financial information at the time which would have included an invoice and other supporting information.” Nothing else is said about what happened to the invoices and information.

Karen Hubbard

75. Karen made a statement which deals with record keeping and the supply of information to Andrew. Like Robert she also makes legal and other submissions. As with Robert’s evidence, I will consider her evidence about the individual issues in the account in due course. She describes herself as a self-employed bookkeeper with 5 years’ experience working as an accountant in practice. She says she was Robert’s administrator and bookkeeper and prepared accounts on a yearly basis for Robert’s property development business.

76. She says the claimants have been given “all relevant bank statements” and invoices for major transactions. She says:

"8. I prepared the income expenditure accounts with the aid of bank statements, cheque book stubs and invoices. This is the way I produce every set of accounts I prepare for my clients. Robert used his business account for all transactions.

…

9. The developments at High trees Farm were run as a business. The first I knew of the trust was when Mr Copson of Withers solicitors produced it in 2021. I knew there was a written agreement to give Andrew 20%, but I had no knowledge of any detail. Robert always said to me we must account to his brother for 20% of the profit after he settled with Ann.

…

12. In 2014 after the barn sales, I compiled spreadsheets [sic] showing the totals to date using the yearly data I had recorded. These spreadsheets were shared with Andrew, Ann, John Chart, Dave Jull and Param. It was up to Andrew to keep Nikki informed. All data was seen and accepted by everyone at that time. The claimants have never asked for any information on the accounts produced in the 2014 spreadsheet until this litigation began.

13. Due to the laptop in which I did all the work until 2017 disappearing, I do not have the historic spreadsheets. The 2014 spreadsheet exhibited by Robert was produced on my own business laptop and remained there. I used my own device for the accumulations as it was easier to produce with the figures in front of me on Robert's device. There was no cloud to save documents to.

14. … full records were kept. The claimants saw the 2014 spreadsheet and asked for no further information. Every year my practice was to dispose of all paperwork over 6 years old. … AS far as I am concerned however all the transactions are properly recorded to 2014 in the 2014 Spreadsheet. I will go through the objections with my accountants [sic] hat on, but <u>without any evidence from the claimants that the figures are incorrect I feel my job is done</u>." [my emphasis]

77. An earlier statement made by Karen dated 30 April 2024 was put to her in cross-examination. In that statement she said at paragraph 6 in relation to the 2014 spreadsheet that Ann, Robert, John Chart and Dave Jull all accepted the figure whereas:

> "Andrew just said he didn't understand them even though they were explained. Unfortunately, all the bank statements and the laptop which contained my work were stolen during a visit from Andrew shortly after Robert's release from hospital. I was fortunate in that all of the important information was duplicated in other documents that I retained.
>
> …".

78. Her accounts in these two statements are inconsistent and she was unable to reconcile them in a meaningful way when cross-examined. She accused Andrew of stealing Robert's laptop. She said the 2014 spreadsheet was on her laptop but was uncertain whether she had more than one document relating to that period. The yearly spreadsheets were on Robert's laptop. She reiterated that she destroyed business documents that were at least six years old but added, as Robert had done in his oral evidence, that some documents were destroyed in a fire in 2019.

Ann Hubbard

79. She describes herself as a retired property developer. Her decree nisi of divorce was pronounced on 7 October 2004 and subsequently the Trust was produced. She does not explain why her divorce from Robert was not made final until 2023. She says that once the Trust was created she played only a very limited role in relation to the High Trees land. She claims that her role as a trustee was not explained to her. She seeks to minimise her role saying she visited the site on only three occasions while the development work was being carried out. However, she signed the development agreement with Knights, the option agreements and the deed of variation. She also held at least one joint bank account with Robert during this period.

80. Her evidence about banking arrangements with Robert is hard to follow. She accepts that she and Robert shared a joint business account with Lloyds TSB and that she received monthly statements but says would not have reviewed them thoroughly as she left dealings with the account to Robert. She says Robert used the Lloyds TSB for spending in relation to the development of the High Trees property. But she goes on the say that the majority of the entries in the statements she obtained from the bank for the period December 2003 to December 2014 do not have an identifiable purpose. She says Robert would inform her on occasion about payments out of the account. Robert attended meetings with the bank alone. This evidence is puzzling because the bank statements that have been produced do not

contain any entries that Robert was able to identify as being attributable to expenditure on the development. The proceeds of the Barns sales coming into the account can be identified as well as interest payments and charges. The other outgoings are not identifiable.

81. One of the items in the account (item 39) is an opening bank borrowing with NatWest bank which was transferred to Lloyds TSB. Ann says she was unsure specifically what the borrowing was used for but she recalls a meeting "at the very outset" at which Robert informed Andrew about the bank debt and it would have to be repaid before distributions were made to beneficiaries.

82. She does not mention receiving the 2014 spreadsheet or the provision of accounting information to her during the period 2005 to 2021.

83. Ann says she played no part in producing the account drafted by Thomas Quinn. Two of the entries in the account relate to legal fees paid to Ann's solicitors - £200,000 received by Ann on 31 March 2022. She says the payment "… was intended to reimburse me for fees incurred with Withers or future legal costs to be incurred in connection with these proceedings. A further £20,000 was paid on 6 June 2022 to her current solicitors Sinclair Gibson "… on account of costs for work which was ongoing in relation to matters arising out of the Declaration of Trust." During the course of the trial her counsel, Mr Fennemore, conceded on her behalf that the two items for fees (items 43 and 44) should not be included in the account. I only observe that this was a sensible concession. They should never have been part of the account provided by Robert and the concession should have been made, at the latest, in her response to the objections.

Andrew Hubbard

84. His statement is short. He explains in some detail that since September 2021 he has been seriously ill and has had extensive surgery. He is still under a pain management regime and taking morphine and tramadol. He suffers from acute clinical anxiety, severe depression and PTSD for which he takes medication. He was not challenged about his medical condition.

85. His statement deals with a small number of account items. He states he did not take Robert's laptop or any papers connected with the development. In cross-examination by Mr Williams, he repeatedly stated that he was unable to deal with matters of detail and deferred to Nikki. He said he was still taking powerful drugs which had affected his mental acuity. When questions were put to him that he felt unable to answer he agreed with the proposition.

He agreed that Robert undertook the development although he doubted that Robert carried it out “for him”. He accepted that the two barns had been developed, two houses were built and land was sold to Mr Harris.

86. He agreed that he signed a loan agreement with Lloyds TSB for £550,000 and accepted that interest was payable to the bank. He said that in 2010 he became nervous about Robert’s lack of transparency. He said he pressed Robert to provide information in emails but no information was supplied. He was adamant that he did not receive the 2014 spreadsheet. Although he visited the Bungalow when the renovation was being carried out and later between 2011 and 2014 he was not provided with information about the development.

87. He was asked about payment to Robert for his work on the development. He said he accepted in a general way that Robert would be paid but qualified his answer saying “it was not as stonecast as that.” He did not accept there was a firm agreement for Robert to be paid a fixed amount as the developer.

Nikki Hubbard

88. Her witness statement deals in detail, and in a clear and helpful way, with each of the disputed items in the account. She was cross-examined by Mr Williams but her cross-examination was curtailed by his withdrawal from the trial on the final morning after his application to adjourn the trial was refused.

89. Her evidence when cross-examined was that she had asked Robert in 2014 for an account but was told by him there was no profit. She was clear that the 2014 spreadsheet had not been received and that Robert dealt with her and Andrew. She denied that steps taken in 2021 were disruptive to the exercise of the option. She and Andrew were not trying to stop the sale but wanted the proceeds of sale to be protected.

David Jull

90. He has known Robert since 1982 and Robert was best man at his wedding. Notwithstanding that relationship he gave a statement in support of Andrew’s case. He and his wife lent Robert £125,000 in return for a 5% interest in the proceeds of the High Trees development. He was aware that John Chart and his wife had invested £250,000 for a 10% stake. He later invested a further £7,500 and lent Robert £1,550.

91. He asked Robert in 2013 for the return due on his investment following the sale of the barns but was told by Robert there were no profits which surprised Mr Jull. In October 2014 he was paid £32,000 by Robert following the sale of a parcel of land. After June 2019 Robert started to provide spreadsheets and on 7 July 2020 Robert sent a link to a spreadsheet providing details of income and expenditure. The email from Robert is addressed to Ann and Mr Chart as well as Mr Jull (not Andrew or Nikki). Robert refers to a document he says was distributed in 2014 (the 2014 spreadsheet) and says he has a clear memory of discussing the document with each of them and answering questions. In cross-examination, Mr Jull said he had spoken to Robert in 2014 prior to the payment of £32,000 but he had not received any documentation such as the 2014 spreadsheet. In an email dated 14 November 2020 to Andrew and Nikki, Mr Jull said he had not received full accounts from 2005 to the present date.

92. In 2022 Mr Jull threatened court action against Robert and Ann which led to a settlement under which Mr and Mrs Jull accepted a payment from Robert of £374,088.22. This was less than the £435,000 he was seeking. The settlement agreement includes two recitals that are material. The first recital records that Mr and Mrs Jull had invested in three projects: (a) High trees; (b) 11 Russell Gardens Kensington; and (c) 15 Barrowgate Road. In the second recital they agreed and acknowledged the appropriateness of Robert's costs and expenses. Mr Jull was adamant that he had only agreed to the settlement sum and the terms of the agreement because of his personal circumstances at the time and that he did not in fact agree the expenses, particularly Robert's charging fees.

Witness evaluation

93. The vast majority of issues in the account relate to expenditure and the burden of proof lies on Robert and Ann as trustees. They, and particularly Robert (and Karen), are, or were in possession of the information that is needed to discharge the burden on them. The extent to which they are able to produce relevant documents, have searched third party sources if they were lost or destroyed, and their explanations for the steps they took are central to the account.

94. I have already made some observations about Robert's trial witness statement. Before I comment upon his oral evidence it is instructive to consider Robert and Ann's business account with NatWest and then Lloyds TSB. Three statements for the NatWest account 17008182 have been produced. The three statements cover the period 14 January 2005 to 30 June 2006. Other than interest accruing the only transaction on the account is a withdrawal

for £6,400 on 30 September 2005 marked “Barrowgate Lnd/Dev”. The account was therefore largely inactive. The overdraft at 30 June 2006 was £822,591.17DR. By then both Mr and Mrs Jull and the Charts had invested although it is not known into which account their investment was paid.

95. The Lloyds TSB “Corporate Current Account Hubbard RW & AV – Business A/C” opens on 11 September 2006. The same account is later re-named Development Account. The address on the statements is Ann’s address at 17 Barrowgate Road. On 27 September 2006 two transfers into the account were received for £525,000 and £195,000. On the same date £1,062,293.90 was paid out to Birketts (possibly to repay NatWest). This left the account overdrawn by £289,398.64. Further sums are paid out - £134,000 in October 2006 with £18,000 paid in. Gradually the overdraft increases until it reaches £1,466,618.05 in November 2012. Standing order and other payments are made out to another account in Robert and Ann’s names. Between December 2012 and October 2014 sums are paid in from the sales of the barn developments ultimately leaving a credit balance of about £5,000 in November 2014.

96. Neither Robert nor Ann (nor Karen) have explained the transactions in this account. It is entirely clear, however, that this account was not used, as Karen suggested, for all transactions and there was at least one further bank account in operation. Moreover, it is impossible to correlate the entries in the account for which statements have been provided with entries in the 2014 spreadsheet either as to payments out or interest. If Robert was making the payment he claims to have made in the 2014 account, he must have used another account which has not been produced to the court. Ann’s evidence about use of the account is obviously wrong.

97. I found Robert to be an unhelpful witness. He displayed a poor understanding of the information set out in the Thomas Quinn account. He did not listen to questions and as the cross-examination proceeded, and he was challenged, he showed an increasing tendency to make long speeches that were only distantly related to the question he was asked. He was a witness who resorted to irrelevant detail when pressed.

98. His evidence about the destruction of records relevant to the account was extremely hard to understand. It is not dealt with in his statement prepared for the trial. His attention was drawn in cross-examination to the account he provided in his second statement dated 20 December 2023. At paragraph 17 he said that expenditure was closely recorded and

monitored by the banks (plural). A spreadsheet would be compiled based upon documents such as invoices, chequebook stubs and invoices. He goes on to say:

> "18. This work was done by the trustees in 2014. The details of which are summarised in the 2014 spreadsheet.
>
> 19. Several years after the compilation of the spreadsheet, the paperwork used to compile these accounts was destroyed. At least six year period prior to their disposal, an account position statement was presented to all participants, who in turn accepted the information produced. …"

99. He was unwilling to accept the natural meaning of paragraph 19, assuming the spreadsheet was as he says produced in 2014, that documents were destroyed in or after 2020. The letter from Penningtons seeking an account is dated 8 October 2020. He and Karen were aware of the need to provide an account to Andrew and Nikki.

100. He also took steps to embellish the lack of detail in his witness statement on several occasions with information that he had not previously revealed. Five examples of embellishment suffice as illustrations:

> 100.1 Although it is crucial to Robert's case, he deals very sketchily in his trial witness statement about providing the 2014 spreadsheet to Andrew and Nikki. He just says it was provided to all participants without saying how that was done. Mr Woodhouse took him to his first witness statement dated 24 March 2023 in which he said at paragraph 25 the spreadsheet was sent to only three people, Mr Jull, Mr Chart and Ann. Notably he did not say it was sent to Andrew or Nikki. However, when cross-examined, he first said Andrew had received the spreadsheet in 2014 and when it was pointed out there was no record of it being sent electronically, he said it was handed to him in August or September 2014.
>
> 100.2 His evidence about the loss of his laptop was significantly developed. He confirmed that he believed Andrew had taken it and provided much detail of when this happened in 2019. The laptop was an old one that he had not used for three or four years. It was on his desk upstairs with an envelope containing bank records. Andrew went upstairs while Robert was confined to a wheelchair downstairs and took both items. How he managed to leave the house without the theft being obvious was not explained. Robert said the theft had been reported to the police but no crime

number was provided in the evidence. Crucially, Robert's evidence about why the old laptop was important was jumbled and incoherent and does not mesh with Karen's evidence.

100.3 Having maintained that his business account bank statements provided information about expenditure including interest charged to the Trust in the 2014 spreadsheet, he then said he another account at Coutts Bank which had not been mentioned previously.

100.4 At one point he was asked about attempts to obtain records from Bidwells. He said he had written to them but had not obtained anything. He later volunteered that he had some invoices from Bidwells on his phone.

100.5 When questioned about the destruction of records he mentioned for the first time that boxes containing records has been burnt in 2019.

101. I consider Robert's evidence to be unreliable about the expenditure he claims to have incurred for the Trust. Where his evidence is contradicted by the oral evidence of others, or is unsupported by documents, I reject it.

102 I consider Karen's evidence is equally unreliable. She is incorrect to say that business expenses can be seen from the Lloyds TSB bank account statements. Her cross-examination was not lengthy but her approach was not a witness seeking to help the court. Her dismay at being asked to explain her and her husband's accounting processes was palpable. Perhaps of greatest significance is her evidence about the destruction of documents. She failed to mention in her statement, until after Robert had brought it up at a time in the trial when she was not in court, that documents were destroyed in a fire in 2019. Her evidence about the relevance of the allegedly stolen laptop was fanciful. She was the bookkeeper with her own laptop and yet the loss of redundant lap belonging to Robert in 2019 somehow made it impossible to produce contemporary records that they between them had created. She pointed out that there was no 'Cloud' in 2014. She did not address other forms of back-up or the retrieval of records from email accounts. My very clear impression was that neither she nor Robert made any effort to locate records that were material to the account. She says she produced accounts for Robert's tax return but they were not disclosed.

103. It is simply implausible that a bookkeeper would destroy records during an ongoing development project when it would have been obvious that an account would have to be provided to investors and co-owners and to HMRC.

104. Ann sought to distance herself from Robert's actions. I accept that she and Robert were living separate lives by 2005 and she had limited involvement with the day to day side of the High Trees developments. However, as a joint landowner she was a signatory to the development agreement and the option agreements. She held a joint account with Robert. I am unable to accept her evidence where it is contrary to the claimants' evidence.

105. I found Andrew to be an open and helpful witness. He was cautious about his memory of events in light of the drugs he is taking. However, when pressed about such matters as receipt of the 2014 spreadsheet he was unequivocal. I accept his evidence.

106. Nikki Hubbard dealt with her cross-examination in a forthright way. She was unafraid to correct Mr Williams. She has strong views about Robert and the account which she made clear. Her cross-examination was only partly complete when Mr Williams withdrew. Her witness statement is a carefully produced and helpful document. Notwithstanding the strength of her views, I accept her evidence.

107. Mr Jull was a helpful witness. He is unhappy about the terms of the settlement agreement. He described it as "extortion". However, I am satisfied that despite his strong feelings he was trying to provide helpful evidence for the court and he did not deviate from this statement when cross-examined.

108. The 2014 spreadsheet is an important part of Robert's case. I am also satisfied that Robert and Karen's case that they were unable to produce further documentary evidence about the expenditure up to 2014 is unreliable. The case they put forward in their statements is based upon the premise that they did not need to prove expenses. I do not accept that most paper and electronic records are unavailable. There is marked lack of evidence about any efforts they may have made, there may indeed be none, to reconstitute records. It is astonishing that Robert is seeking to rely upon a bank account that does not support his case.

109. I turn to deal with the items in the account that need to be dealt with in turn following the grouping agreed between the parties in the schedule to the order dated 13 January 2025. The main numbering under the headings Income and Expenditure refers to the numbering in that schedule.

Income

(1) Countryside sale

110. The receipt of £5.5 million from Countryside is not in dispute. The objection concerns Robert's plot which Robert says is a first charge on the proceeds in the sum of £710,000. This objection gives rise to a short point of construction of the Trust. The applicable legal principles are well-known and I refer to the summary in the judgment of Carr LJ (as she then was) in *ABC Electrification Ltd v Network Rail Infrastructure Ltd* [2020] EWCA Civ 1645 at [17] - [19]. It is unnecessary to set out that citation in this judgment. It is simply worth noting that the trust falls to be construed at the date it was created in its relevant factual context. 2005 was long before the development of the High Trees land proceeded and it pre-dates the option and its exercise.

111. Robert's plot is defined in a way that refers to an undeveloped plot – "a plot for a single private residential dwelling". The "for" is significant because it looks to the future. Clause 4.1 is consistent with the definition. Robert's selection was due to take place within 10 working days of the date upon which planning consent was granted. This would be long before the erection of the dwelling and the value of the plot with a completed dwelling could not have been readily ascertained. The drafting could have provided a different formulation. For example, it could have referred to a plot on which a dwelling has been erected or that it is to be valued as if a dwelling had been erected.

112. Furthermore, the significance of Robert's plot as between him and Ann is clarified in clause 5. The value to be attributed to the plot as between him and Ann is the "Gross Development Value" which is the subject of a definition providing for the value to be taken on the assumption it has been developed. This assumption has no place in the attribution of value as between Robert and Andrew and Nikki. Crucially, the sale price of the development land sold pursuant to the option was of the land valued in its undeveloped state, before dwellings were erected. The value to be attributed to Robert of plot 69 needs to be a relevant proportion of the sale price, not a proportion of the value ultimately achieved by the developer having expended a significant amount of money constructing housing on the land.

113. Nikki has provided a calculation of the appropriate value to be attributed to plot 69 in her witness statement at paragraph 7. She is not an expert witness. However, her calculation is logical and has not been challenged. I accept it as the best evidence that is available to the court and I attribute a rounded figure of £50,690 to plot 69.

114. It follows that the sale price of the land needs to be adjusted downward by that sum and £50,690 attributed to Robert in the account.

Rental income

115. Robert has put a figure of £86,002 for rental income received by him for the land before it was developed and sold. His witness statement does not provide a calculation of what is a very precise sum. In a witness statement dated 20 December 2023 (his second statement) at paragraphs 4 to 11 he provided a calculation of rental income at £107,500. In another document produced later he calculated the rental income received at £116,695.

116. Neither Robert nor Karen made any effort to obtain documentary evidence. There are no entries in Robert's business account which are referrable to rent received. If it was paid other than in cash it must have been paid into another account in his name.

117. Nikki was able to obtain some invoices from the farmer who rented the land and it is only after those were disclosed that Robert sought to reduce the sum he received for rent. When cross-examined he said for the first time that he had notes on his lost laptop.

118. The burden rests with the claimants to show that the correct figure for rent received is greater than £86,002. In the absence of a new calculation from Robert, I am satisfied that the claimants have discharged the burden of them and that the best evidence for rental income is that provided by Robert in his second statement namely £107,500 made up of £18,000 attributable to the Orchard and £89,500 to the Hawes family.

(2) Barns and Harris sale Income

119. At one point the income received by Robert for the sales of the first phase of the development was contested. The claimants no longer take the point and I accept the figure at £2,053,298.

(3) Accruing interest

120. This objection relates to interest accruing on £550,000 held by Barker Gotelee from the sale to Countryside. There is no doubt that such interest accrues for the Trust and falls into the account in full. Robert and Karen are wrong to say that the trust has ended. It has not.

Expenditure

(1) Costs to 2014 – objections 11 and 53 to 71. [There is a gap in the numbering between 60 and 69]

121. Objection 11 is a composite item totalling £749,468 and objections 53 to 71 comprise the individual items of expense that are included in that total. The 2014 spreadsheet, as it has been described by Robert, is central to his account.

122. The only other document the defendants have produced to support expenditure up to 2014 comprise (1) three NatWest Bank statements on Robert's business account 17008182 covering the period 15 September 2005 to 39 June 2006, (2) Lloyds TSB statements for a joint business account in the name of Robert and Ann 03375617 covering the period September 2006 to November 2014 and (3) an incomplete invoice from BACI Solicitors that covers the period 2011 to 2021.

123. Robert's case is that the 2014 spreadsheet was compiled by Karen from invoices and bank records (statements and cheque book stubs), that the spreadsheet was supplied to Andrew, Mr Chart, Mr Jull and Ann in 2014 and any issues about it were dealt with at that stage.

124. Mr Jull, Andrew and Nikki were all adamant that they did not receive the spreadsheet in 2014. Robert has produced an email from him to Ann, Mr Chart and Mr Jull dated 7 July 2020 which attaches the spreadsheet and asserts that it was supplied to each of them in 2014. It goes on to say that Robert has a clear memory of discussing the contents of the spreadsheet and dealing with questions. The spreadsheet is provided by a link. No check on the metadata has been put in evidence. It is notable that the email was not sent to Andrew or Nikki and Ann does not deal with it in her evidence. She is silent about receipt of the 2014 spreadsheet.

125. There is no documentary evidence to support the creation of the 2014 spreadsheet in 2014. The last sale of land in that period was on 10 October 2014 to George Harris but the spreadsheet does not include that sale. There is also an almost entire lack of documents to support the entries in the spreadsheet. Robert and Karen's evidence about 'loss' of the laptop in 2019 was muddled and implausible. It was muddled because neither of them was clear about why records said to be on a laptop that had not been used for several years were material and could not be retrieved and implausible about the theft of the machine by Andrew and a package of bank statements and documents in 2019. Their evidence about the

destruction of documents was equally implausible. Karen claimed that she destroyed records annually once they were more than 6 years old. This would mean that by 2014 she had already destroyed documents pre-dating 2008. Records that relate to a trust should be retained for as long as they may be needed in order to account to the beneficiaries. Even if it were to be right that the existence of the Trust had been forgotten about, it was always understood that Robert and Ann would need to account to Andrew and Nikki (and Mr and Mrs Chart and Mr and Mrs Jull). I do not accept that records of expenditure up to the end of 2014 were destroyed. Furthermore, such evidence as has been provided by Robert, Ann and Karen about attempts to reconstitute records (and this was negligible) fails to show that adequate steps were taken to try to obtain documents for the purposes of the account.

126. Moreover, although it might have been thought that bank statements covering the material period would assist, they do not. There are no identifiable items of expenditure in the bank statements Robert and Karen have relied upon other than bank interest and charges and even in that case the amounts recorded in the statements cannot be matched to the 2014 spreadsheet. As Robert accepted when cross-examined, he had used another account and mentioned in passing an account held with Coutts Bank.

127. I am satisfied that the 2014 spreadsheet was not created in 2014 and that the figures it records are unreliable. It is then necessary to consider whether any items can be accepted in whole or in part based upon the oral evidence. Ann's evidence is that she recalls the involvement of some of the professionals and is able to provide some limited explanations. It is not in doubt that Robert acted, with professional help, to obtain planning consents in respect of the Barns and High Trees developments, was involved in the sale of the Barns properties, undertook some work of improvement to the Bungalow, negotiated the development agreement and the options and ultimately ensured that Countryside exercised the option to buy the High Trees land for £5.5 million. It is equally not in doubt that he must have incurred significant expenditure in taking these steps. However, evidence to prove the sums he claims in the account is almost non-existent. He has not put his case on the basis that the court is able to allow a lesser sum than the amount claimed, or to make an allowance, despite the claimants' objections being to items of expenditure 'in whole or in part'. I will return to that subject later in this judgment.

128. The objections follow a set pattern is relation to items 53 to 71. The claimants' objection in each case is that the defendants have not explained what the item of expenditure

comprises, whether it has been paid or whether it is an authorised deduction in whole or in part. Robert's responses to do not engage with the objection and do not supply information and explanation. Instead, it focuses on ways in which the claimants' objection is said to be deficient and on limitation.

129. I will deal with each item in turn.

Objection 53 – Phil Summers £6,622

130. Robert says in his witness statement that this charge was for "general consultation advice in estate planning matters". Ann says Mr Summers was a land agent who was involved as the beginning of the project (around 2004 to 2007) and she recalls meeting him. Nikki suggests an alternative, namely that Mr Summers carried out a valuation for Robert's mother before the Trust was created.

131. No detail has been provided about Mr Summer's qualifications or the work he carried out and no invoices has been produced or bank entries showing payment.

132. Robert and Ann have not discharged the burden in them to show that £6,622 was incurred on behalf of the trust and is a recoverable item.

Objection 54 – Birkett Long £4,465

133. Robert says the charges were for "necessary legal advice" without saying to what it related. His evidence begs the question whether it was incurred for the Trust and was necessary for the purposes of the Trust. Robert's Lloyds TSB account has an entry for 27 September 2006 showing that £1,000,293 was transferred to Birketts immediately after the Lloyds refinancing. Whether Birkett Long was acting for Robert or NatWest is unclear. Later, Birkett Long acted for Knight Developments on the exercise of the option. Ann says Birkett Long was a firm which acted for Robert and she has no knowledge of the advice they provided. Nikki says Robert instructed Birkett Long in respect of his divorce proceedings and they later charged in relation to this claim.

134. No detail has been provided about the legal work that was undertaken, how it related to the Trust and no invoices have been produced or evidence of payment. Robert and Ann have not discharged the burden in them to show that £4,465 was incurred on behalf of the trust and is a recoverable item.

Objection 55 – Bidwells up to 2009 £154,300

135. Bidwells is a well-known firm providing agency and consultancy. The fee claimed in this case is said to comprise fees up to 2009 and is substantial. They are referred to in the Option Agreement dated 22 October 2010 granted to Knight Developments as the "Owner's Agent". Robert and Ann are defined as the "Owner". In passing I note that Barnett Alexander Conway Ingram LLP are described as the Owner's Solicitors.

136. Robert says Bidwells were involved in two ways. First, with an unsuccessful application to develop the Barns. Secondly, in relation to the housing development scheme for the High Trees land in 2007 for 120 houses which was created by Robert and drafted by Bidwells. He goes on to say that their charges were for all work necessary for the submission of planning application for this development and the preliminary work to get to this point. It is significant, however, that at the time the option was granted Robert had not obtained planning consent for the main housing development. That consent was obtained by Countryside.

137. When cross-examined, Robert said he wrote to Bidwells "a long, long time ago" to obtain their invoices but had not asked them to confirm that he had paid them the sum now claimed. Later he said he had some invoices from Bidwells on his phone to a value of £75,000. He had not produced any such invoices.

138. Ann says:

> "21.3 Bidwells carried out a lot of the early work, beginning in 2005. My recollection is that they were paid large sums for this work, which involved putting together the planning applications. As far as I can remember, I would have been involved alongside Robert in instructing them and signing documents (but I cannot remember the specifics)."

139. Ann has not said that she made any attempt to obtain Bidwells' invoices or confirmation of the charges that are claimed.

140. The evidence points to Bidwells having played an important role in the development of the land and yet there is no evidence to prove the fees that are claimed and that they were paid. There is no satisfactory evidence that either of the trustees made efforts to obtain copies of documents and no banking documents to show payment of this substantial sum. Although I have expressed doubts about the veracity of Robert and Ann's evidence, subject to the court's ability to make an allowance, I am faced with a binary decision between allowing £154,300

or nothing. I am not satisfied on the balance of probabilities on the very slender evidence provided by the trustees that this sum was incurred and paid for the benefit of the trust.

Objection 56 – BACI (Barnett Alexander Conway Ingram LLP) £15,000

141. There is a separate claim (objection 14) in respect of a claim for £49,248 in relation to which there is an invoice that states it covers the period from 2011 to 2021. There is no documentary evidence to support the claim for £15,000. Mr Chart was one of Robert's investors and was a partner in BACI.

142. Robert says the fee for £15,000 was for assisting with the production of the option agreement in which BACI is described as the Owner's Solicitors. The document's filing identification on Paul Robinson Solicitors' system includes "`\jchart\". Ann says she has a recollection of the firm being involved. It seems very likely that BACI did some legal work leading up to the grant of the option agreement. There is, however, no evidence to support the figure of £15,000 which is a rounded number. If it is vat inclusive the charge for legal fees was an odd figure. The amount would suggest that no vat invoice was involved.

143. Given that Mr Chart was, according to Robert, actively involved up to 2021 it would have been relatively easy to provide further information to justify this charge even if the firm's records were not available. Mr Chart could have been called as a witness to explain the nature of the work he undertook, the approximate time involved and the arrangement under which BACI acted as to fees and retainer.

144. This is another example of the court being able to conclude on the balance of probabilities that work of some sort was carried out for the Trust but not being satisfied that the amount has been established to the requisite standard. The sum claimed is not proven.

Objection 57 – Roger Balmer up to 2010 - £24,675

145. Robert says Rober Balmer was an architect who obtained planning consent for the development of the Barns in 2009. Ann is unable to provide any direct assistance and there is no documentary evidence or evidence of an attempt to obtain any.

146. Planning consent must have been obtained, and the level of fees is rather more proportionate than the sum claimed for Bidwells. However, in the absence of any documents about the fee being incurred and/or paid, or evidence about efforts to obtain such evidence, I am not satisfied that the trustees have discharged the burden on them.

Objection 58 – Bank valuations £7,682

147. Robert says valuations were required by the banks for ongoing financial support for the property developments. He puts dates on the valuations as being 2006, 2009, 2011. Ann says she can recall that Robert had to pay for bank valuations. Nikki says the only valuation of which she was aware related to the loan of £550,000 from Lloyds TSB in 2006.

148. There is real doubt that Robert's overdraft that was transferred from NatWest to Lloyds TSB was borrowing for the Trust. I accept that some working capital was needed. Whether funds were required in addition to the funding supplied by Mr and Mrs Chart and Mr and Mrs Jull is not known. Leaving aside work to the Bungalow which he undertook to create a home for himself and Karen, his outgoings were limited to professional fees and some expenditure in maintaining the land. I am unable to accept a mere assertion by Robert that the borrowing and therefore the bank valuations were a necessary expense chargeable to the Trust.

Objection 59 (1) [there are two entries numbered 59] – Development of Bungalow up to 2008 £298,000

149. The 2014 spreadsheet contains a single entry in 2008 for this very substantial figure and this is the only source of the figure. I have set out earlier in this judgment the evidence that Robert has provided about the work he says was carried out and its value. Ann simply says that she was aware the Bungalow was in need of renovation and modernisation.

150. Andrew and Nikki both accept that work was carried out to the Bungalow. Nikki's understanding was that the work was rather less extensive than Robert has suggested and involved a loft conversion creating two new rooms, knocking down a wall between the kitchen and the dining room and painting. Nikki says that Robert is now intending to demolish the Bungalow and sell the land for development. I prefer her evidence to Robert's.

151. There are no records of the work carried out: no drawings or specification, no approvals and no invoices. There are no entries in Robert's Lloyds TSB account that relate to the work. And there is no evidence about any attempt to obtain records or evidence of payments made.

152. I am unable to accept the figure Robert has provided as being an accurate cost of work incurred for the Trust. It might have been possible for an allowance to have been made if evidence to support the cost of works had been provided. It would have been possible, for example, for Robert (with permission from the court) to have produced evidence from a

Quantity Surveyor to describe the cost of the works. However, no such evidence has been produced.

153. I do not need to decide the claimants' submission that expenditure on a jointly owned property may only be recovered from the co-owner on its sale.

Objection 59(2) – Bank solicitors and Gerry £5,160

154. Robert says these expenses were solicitors' costs of the Barns' development. No other details have been provided. Ann, slightly more helpfully, explains that "Gerry" is Geraldine McAleese who was a property solicitor in Chiswick who was instructed by her and Robert in relation to various items of development work. Ann was unsuccessful in obtaining documents from her.

155. The Development Agreement defines "Owner's Solicitors" as being BACI "or such other firm of solicitors for the time being that may be notified in writing by thew Owner to the Developer." Clause 11.4.1 specifies that Knight's solicitors, Paul Robinson, were to deal with sales and the transfers into Robert and Ann's joint account of the net sum payable on each sale were made by Paul Robinson. It follows that neither BACI nor Geraldine McLeese would have incurred fees on sales.

156. No attempt has been made to break down this item between fees passed on by the bank and fees incurred with Geraldine McAleese.

157. Once again there is a complete absence of documents to support this item. There is no basis for approving this item of claimed expenditure in the absence of credible evidence that the expenditure was incurred or that it was a proper expense of the Trust.

Objection 60 – RWH costs £35,670

158. The total sum of £35,670 is made up from an entry in each year from 2004 to 2014 in the 2014 spreadsheet. The amount entered for each year ranges between £2,180 and £5,250. All the figures are rounded.

159. Robert says the amounts relate to visits to banks, potential business partners and instructed consultants. The figure for 2011 is the largest at £5,250 which Robert says was the year he was working to obtain finance and a builder for the barns.

160. No documents or further explanations have been provided. It is not even clear what type of expenditure is claimed. The trustees have not discharged the burden on them.

Objection 70 – Land Acquisition £10,800

161. Robert has put a date of 2006 in this item. He says the purchase of the unspecified parcel of land was necessary to make the construction of a fourth house on the farmyard site viable. Ann says the sum related to the purchase of several small additional parcels of land to the rear of the four plots known as the Barns. No documents have been provided.

162. Since these acquisitions relate to land there must have been a file of documents, it is likely lawyers would have been involved and historic title entries showing the change of ownership and the consideration are likely to have been obtainable. Robert and Ann do not agree whether it was one purchase or several. No real effort has been made by the trustees to establish that this expenditure was incurred for the Trust and they have not discharged the burden on them.

Objection 71 – High Trees Bungalow running costs (also described as High Trees costs/fees) £187,094

163. This entry in the account forms part of the total costs to 2014 (objection 11). There are annual entries in the 2014 spreadsheet of differing amounts for each year from 2004 to 2014 described as "Hightrees Bungalow running costs". There is no documentary evidence to support any of the figures. Robert's evidence, however, does not seek to justify annual expenditure that relates to running costs. Instead, he says that he should have been paid a 15% developer's fee for the income he generated from the Barns' development, namely £2,053,298. This would have produced a fee of £307,995. He says there were insufficient funds for him to receive the full amount so he "reconciled matters with a payment of £187,094" and he wrote off the difference. He does not explain why the 2014 spreadsheet describes the item as running costs or how the annual figures were back-calculated.

164. Robert's evidence is wholly implausible, and I reject it. The trustees have not established this item of expenditure.

(2) Loan interest – objections 12, 24, 28 and 73.

Objections 12 and 73 - £278,849 (the two objections relate to the same item).

165. The objection is that:

> "D's were not empowered to take out loans and D's have to date provided no evidence that the loan was used for authorised purposes and not Ds' personal expenses and purposes."

166. The claimants are not correct to assert that the trustees lack the necessary power to borrow money. Section 6(1) of the Trusts of Land and Appointment of Trustees Act 1996 and section 8 of the Trustee Act 2000 give trustees of land all the powers of an absolute owner. They are also entitled to borrow in anticipation of trust income to be received later. However, it is necessary for the defendants to show that the borrowing and therefore the interest that accrued was obtained for the purposes of the trust and not for personal use.

167. Objection 12 relates to interest said to have been incurred between 2004 and 2014. The figure of £278,849 matches the figure for interest plus bank arrangement fees in the 2014 spreadsheet. The defendants' case at a high level is that as developers it was obviously necessary to borrow. I accept that some working capital was required to pay for professional fees. However, the development land was already owned (save for a small amount of land) and Knight paid for the cost of converting the barns and building the new properties. Although the cost of work to renovate the Bungalow is uncertain, some borrowing may have been needed. However, the claim for interest at £278,849 is completely out of proportion to the level of borrowing that may have been needed.

168. Ann gives evidence about a conversation she recalls in about 2004 (before the Trust came into being) between Robert and Andrew to the effect that there was borrowing which would have to be repaid before distributions could be made to the beneficiaries. Even if her recollection is right, it does not follow that Robert's existing bank borrowing in 2004 was a charge to the Trust. As a matter of practicality, existing borrowing had to be repaid first before profit could be distributed, but it is not possible to understand the conversation to which Ann refers as an agreement to add existing borrowing to trustee expenses. To the extent that existing borrowing had to be repaid before distributions could be made, the borrowing would fall to be deducted from Robert's (possibly Robert and Ann's) share of the proceeds of sale of the development.

169. Andrew agreed to borrowing charged against the Bungalow of £550,000 but it does not follow that he authorised the defendants to use that borrowing for purposes other than the Trust's. The position about interest is not easy to follow and neither Robert nor Ann have provided a great deal of illumination. The fact that Robert had other development projects

does not assist. Robert's Nat West business account records borrowing by him at 30 June 2006 of £822,591.17. His evidence is that he changed his borrowing arrangements in 2006. The first statement on the Corporate Current Account with Lloyds TSB he has provided is sheet 65 of 67 and opens with a credit balance of £20.22 on 11 September 2006. On 27 September 2006 £525,000 and £195,000 was paid into the account and £1,002,293.90 was paid out to Birketts on behalf of the account holders. After the arrangement fees are charged there was an overdraft on the account of £289,398.64DR on 28 September 2006.

170. There then follow payments out of the account such that by November 2012 the account is overdrawn by £1,468,418.05. After that the overdraft reduces with each sale of the Barns development until by November 2014 the account is in credit by £5,120.21. The payments out of the account do not appear to relate to expenses of the development or any identifiable trust expense. About £75,000 in total is paid out to an account in Robert and Ann's name, sometimes by standing order. It is impossible to relate the interest charged to the account to the figures in the 2014 spreadsheet and Robert has not provided a calculation of the total claimed for interest by reference to the bank statements. Ann merely says she was aware Robert had borrowed money for the development but knows nothing about specific loans or their purposes. Karen's evidence does not provide any assistance.

171. It follows that the defendants have not established the purposes behind the borrowing and therefore the reason why the sum they claim as interest chargeable to the trust can be deducted.

Objection 24 – Lloyds loan interest repaid - £50,000

172. Once again, no documents have been provided to support a further amount of chargeable interest of £50,000. It is a round sum which itself is implausible. Robert's evidence is sparse. He describes the objection as "Loan D1 to C1 for household improvements". There is a dispute between the parties about whether the payment of £30,000 (sic) from Robert to Andrew (it is not clear from which account the payment was made) was a loan from Robert to Andrew for household improvements or as Andrew and Nikki maintain a gift. The fact of the payment is accepted. Nikki is adamant that had the money been offered as a loan she (and Andrew) would have refused because they did not wish to incur further borrowing. I prefer Andrew and Nikki's evidence on this point.

173. On any view interest on a loan of £30,000 could not amount to £50,000. It is not suggested that the sum of £50,000 includes the principal sum Robert claims he lent. The sum claimed is not chargeable to the Trust.

Objection 28 – Ascent Funding loan interest £80,523

174. The basis for this item of expenditure is convoluted. Robert has provided a loan offer document from Ascent Funding Limited dated 28 October 2021. The loan was for 18 months under which Hubbard Developments Limited (not Robert) borrowed a net sum of £242,232.12. The sum repayable with retained interest and fees was £335,249.51. This was very expensive borrowing. It is also the only occasion on which Hubbard Developments Limited appears in the documents. There is no evidence about directorships and shareholding in the company.

175. Robert's case is that he is entitled to charge the trust with loan interest of £80,523. No calculation or documents evidencing that sum have been provided. He says the loan was needed and is a proper charge to the Trust because he had to pay legal fees to Mr Williams' firm "to protect trust assets from attacks by the claimants." It is certainly correct that from October 2020 the claimants were pressing for information about the trust. Penningtons wrote on behalf of the claimants on 8 October 2020. On 1 June 2021 Benchmark Solicitors who acted for the claimants subsequently wrote to Mr Williams seeking to secure Andrew and Nikki's interest in the proceeds of sale under the option on the sale to Countryside. The claimants were seeking an undertaking to preserve the proceeds of sale and later threatened to apply for an injunction to secure the proceeds of sale. On 9 February 2022 a document entitled Deed of Variation and Conditional Deemed Exercise was entered into between the trustees and Countryside. The defendants point to clause 2.1.10 which inserted a new clause 9.7 in the Option to the effect that Countryside was not obliged to complete unless the title was clear of third-party interests.

176. It appears to me that the claimants had no interest in interfering with the sale under the option. They took no issue with the sale price and it was in their interests for the sale to be completed. Their interest lay in preserving an appropriate amount of the proceeds of sale and obtaining a proper account from Robert which had not been provided. There had been a complete breakdown of trust between the claimants and Robert and he was unwilling to provide an undertaking. The claimants' objection to this borrowing is closely related to their objection concerning Mr Williams' fees. The defendants have not established the claimed

legal fees in the account and it follows that borrowing to pay a proportion of those fees is also not recoverable. In any event, the cost of the very expensive borrowing made by Robert to fund legal costs was not warranted. It would have been simple for an undertaking to be provided and I do not accept the defendants' case that the claimants were seeking to disrupt the sale. Although trustees are in principle entitled to an indemnity for the proper cost of borrowing and legal fees, Robert is not entitled to an indemnity for this cost of borrowing because (a) his evidence of the borrowing being used to fund legal costs is not accepted and (b) the borrowing was not a reasonable cost for him to incur.

(3) Barker Gotelee – objection 13

177. The objection made by the claimants relates solely to the amount of Barker Gotelee's charges that the defendants seek to recover from the Trust. The objection states:

> "No objection to £76,395 expense but Cs seek an order for assessment under s71(3) of the Solicitors Act 1974".

It is accepted that Barker Gotelee acted for the trustees on the sale of the High Trees development land to Countryside. Barker Gotelee charged £49,946 for their work in relation to the conveyancing.

178. Barker Gotelee also charged £26,448.60 pursuant to an invoice dated 29 March 2022. The invoice is titled "Dispute re: Property Development". It does not provide any narrative of the work or a breakdown of charges. I was not addressed about whether it can be regarded as a 'statute bill'. Robert says in his evidence that the work was required to protect the development and sale to Countryside Properties from the challenges made by the claimants. The trial bundle contains some correspondence in 2021 concerning the claimants' attempt to register restrictions against two of the titles and to obtain an undertaking to hold part of the proceeds of sale.

179. I am satisfied that work carried out by Barker Gotelee that is associated with ensuring the sale went through is chargeable to the Trust. The trustees were in dispute between themselves and the beneficiaries were unhappy about the lack of accountability by the trustees. The objection in fact is very narrow and, although no point was taken at the trial, it is not open to the claimants to object to part of the fees.

180. I am in any event satisfied that the Barker Gotelee charges in total are a recoverable expense of the Trust. I am encouraged to reach that view by the fact that Barker Gotelee acted

for both trustees and had no prior association with either of them. It is reasonable to assume, therefore, that Barker Gotelee acted in a professional and dispassionate manner.

(4) BACI – objection 14

181. The claimants object to the sum of £49,248 which is the amount paid to BACI from the proceeds of sale held by Barker Gotelee on completion of the sale to Countryside. The sum is claimed in addition to £15,000 that forms objection 56 for work said to have been carried out up to 2014.

182. Once again there are few particulars of the work claimed. £19,600 + vat is charged for the period 2011 to November 2014 and £21,400 + vat for the period from November 2017 to April 2021. Charging rates for the period up to November 2017 were £249 per hour and for the remainder of the period at £265 per hour.

183. The document that is provided is not a vat invoice. It is undated, has no invoice number and does not include an address for the Robert and Ann to whom it is addressed. There is no client care letter or retainer and it is unusual for a firm of solicitors to permit credit for fees to be given over a period of nearly 10 years. Since the document must have been produced after April 2021 it clearly would have been possible to provide the court with further details. All Robert says in his witness statement is that John Chart's firm, BACI, assisted him through the development of the Barns and gave ad hoc advice as required to 2021. This falls a long was short of providing an adequate explanation. It seems likely there is some overlap with the work of other solicitors who were acting for the trustees individually in part of the same period. Duplication of effort seems to be very likely together with a significant degree of self-interest on the part of Mr Chart. No reason has been given why he was not called as a witness to assist the court when he provided Robert with a witness statement in his matrimonial proceedings.

184. Similar considerations to those relating to objection 56 apply. Although there is evidence of payment of the amount claimed in the Barker Gotelee completion statement, the defendants have not provided satisfactory evidence that BACI were engaged on behalf of the trustees for necessary work for the benefit of the Trust.

185. I disallow the full sum claimed on the basis that the defendants have not provided adequate evidence to prove that it is a recoverable expense despite there being evidence of payment.

(5) Williams Solicitors – Objection 15, 18 – 20

Objection 15 - £62,000 (notes 5 and 11 in the Thomas Quinn account)

Objection 18 - £533,648 (note 11 in the TQ account)

Objection 19 – £64,300 (note 5 in the TQ account)

Objection 20 - £285,467 (notes 5 and 11 in the TQ account)

Total - £945,415

186. Note 5 reads: "Amounts received by Barker Gotelee and paid out by them." Note 11 reads: "£891,115 proforma invoices from Williams Solicitors LLP. Less amounts paid on account of £347,457."

187. The objection in each case is:

> "D's have failed to provide evidence as to how this sum is made up or that it is an authorised deductible expense in full or in part. Ds put to strict proof. Cs in any event seek an order for assessment under s71(3) of the Solicitors Act 1974".

188. Robert's answer to these objections is:

> "Objection is deficient in (a) the understated amount received by the accounting party, (b) how much more the accounting party should be treated as having received, (c) the respects in which account is not accurate; and (d) the grounds on which each contention is made (CPR PD 40A paragraphs 3.2 (a) to (d). Trustee authorised (TA s. 8). Proforma invoices produced with daily entries in narrative produced contemporaneously as work done. Costs considerably exacerbated by C's 8 threats of injunctions and HMLR notices designed to stop the sale to Countryside Properties to bust the trust [Costs Bundle Part 2 pp6-118, 156-221]"

189. The reference to threats of injunctions and HMLR notices and their effect on the sale has limited significance and can only be relevant prior to the sale completing at the end of March 2022. The period covered by Mr Williams' bills extends well beyond this date. As I indicated at the hearing of Robert's strike out/Part 24 application, the reference to these steps being designed to "bust the trust", despite being a pleasing alliterative phrase, has no obvious meaning.

190. Robert's explanation for these fees, which are very large in the context of the Trust, appears in paragraphs 58 to 61 and 65 to 68 of his statement. In summary, he says that the claimants threatened to stop the Countryside sale "by lodging numerous injunctions with HM Land Registry on trust titles." In saying this he appears to be conflating attempts to register restrictions on the titles with threats to apply for an application for an injunction to prevent the proceeds of sale being distributed. The former sought to protect the claimants' beneficial interests; the latter related to the position after a sale had taken place.

191. Robert says that Mr Williams forced Countryside Properties to exchange contracts before the expiry of the planning consent although, of course, Grier Partners were negotiating on behalf of the trustees with Countryside about the exercise of the option and Barker Gotelee were acting for the trustees on the sale. Robert goes on to say that Mr Williams was successful in defending trust assets from this claim which commenced on 17 December 2021. Later in his statement Robert says his brief to Mr Williams was to continue to work through his 2004 divorce consent order and by May 2023 all beneficial interests were calculated and financial matters between him and Ann concluded.

192. Karen says Mr Williams' invoices "… deal with matters to settle the trust with Ann, business partners and the claimants."

193. Mr Williams' fee notes are described by Robert as pro-forma invoices. He says he agreed with Mr Williams that his firm would be fully paid at the end of this claim and that pro-forma invoices would suffice in the meantime. No retainer or client care letter has been disclosed. All the fee notes state that they are not VAT invoices. What their status is for the purposes of the Solicitors Act 1974 is unclear but it seems unlikely that they are 'statute' bills.

194. There is no evidence from Mr Williams to explain and support the claim in the account for legal costs. All that Robert says is:

> "67. Mr Williams has assured me that the pro forma invoices represent a true final position of his charges. He always supplied a detailed narrative in the invoices he supplies at the time he performs the work."

195. The documents that have been provided by the defendants show a very muddled picture. In summary:

195.1 Pro-forma invoice 1550 is dated 26 July 2021. Its description of the charges says “To part payment on the sale of High Trees Farm Development as agreed. Narrative attached.” The charge is £35,000 + vat = £42,000. There is no narrative attached.

195.2 Pro-forma invoice 1522 is provided in three versions. The first version is dated 26 July 2021. It comprises 12 pages and is for a total of £102, 349.76 including vat and disbursements. The second version is dated 22 May 2023 and comprises 45 pages. It totals £571,762.44 including vat and disbursements. The third version is dated 29 May 2024. It comprises 8 pages plus a separate narrative that runs to 21 pages. It also totals £571,762.44.

195.3 Pro-forma invoice 1575 is dated 29 May 2024. It comprises 26 pages and is for a total of £257,183.20.

195.4 Pro-forma invoice 1603 is also dated 29 May 2024. It comprises 7 pages and is for a total of £52,169.

196. The sum involved is very substantial. The bills are very detailed and they show that Mr Williams was dealing with numerous parties including:

196.1 Barker Gotelee (acting for the trustees)

196.2 Birketts (acting for Countryside)

196.3 Grier and Giles Perry of Openview (both firms negotiated with Countryside on behalf of one or both trustees).

196.4 Withers and later Sinclair Gibson (acting for Ann)

196.5 Benchmark Solicitors (acting for Andrew and Nikki)

196.6 Mr Chart (as an investor and up to 2021 as a solicitor acting for the trustees)

196.7 Bennett Griffin (acting for Mr Jull, another investor)

196.8 Ascent Funding

196.9 Planning Officers

196.10 Anglian Water

197. Mr Williams acted for Robert, but not Ann, in relation to at least five distinct strands of work:

197.1 The sale to Countryside (the extent of overlap between Mr Williams and Barker Gotelee is not known).

197.2 Negotiations with Withers (later Sinclair Gibson) acting for Ann and dealing with Robert's matrimonial proceedings.

197.3 Negotiations with investors.

197.4 The dispute between Robert and the claimants both before and after the claim was issued.

197.5 Arranging borrowing for Hubbard Developments Limited.

198. The accounts prepared by Thomas Quinn include £200,000 for Ann's legal fees with Withers and £20,000 in relation to Sinclair Gibson. She conceded only during the trial that these items should be removed from the account.

199. I am unable, due to a lack of evidence to disentangle from the invoices that have been provided which items might properly be regarded as relating to legal services provided to Robert in his capacity as a trustee that might be chargeable to the trust and the subject of an indemnity. The court has not been provided with anything other than very generalised submissions. In those circumstances I am led to the inevitable conclusion that Robert has not discharged the burden of proof on him and all of Mr Williams' fees are disallowed as part of the account. I would add that all the entries showing time recorded are for rounded figures charged in whole hours or hours and a half and many are for substantial periods of time. There is no explanation for disbursements including counsel's fees. Even if items chargeable to the trust could be isolated, there would be significant issues to resolve about the amount that has been charged.

200. Costs of the claim will be dealt with at a hearing after this judgment has been handed down.

(6) Farm running costs/maintenance – objection 17

201. This item comprises a claim for £36,189. In the Thomas Quinn account note 1 applies which reads:

> "This income has been received since 2005. Any income generated from the farm rental has been used to cover farming costs."

202. The claimants' objection is based upon a failure on the part of the defendants to provide evidence to show how the sum is made up or that it is an authorised deductible expense in whole or in part. The defendants are put to strict proof. The defendants' response follows a similar format to other responses complaining about issues of form and relying upon limitation. Robert's witness statement (speaking about himself in the third person) says:

> "This item represents some of the spending on the farm paid by Robert as shown in the RH Account column of the Account."

203. Karen provides more information. She says the monies were mostly paid to Pat Payne who:

> "40. … looked after the cutting of 6 acres of grassland, arranging for and looking after any tools necessary for the maintenance of 1.5 miles of hedging to be cut, keeping the weeds and brambles at bay, and reducing the rabbit population."

204. She goes on:

> "41. We paid him every month for his work as well as paying for invoices for tools, lawn mower servicing repairs and fuel."

205. £36,189 appears to be a figure that has been calculated. However, the defendants have not provided a calculation or any documents (invoices or bank statements) that support this item. They have not said in which period the expenses were incurred. I note that farm running costs do not appear in the 2014 spreadsheet.

206. The defendants have not provided sufficient evidence to show how the sum is calculated or evidence that it was incurred. They have also failed to establish that the sum claimed in whole or in part is an expense of the trust as opposed to a personal expense of Robert.

(7) RH costs reimbursed – objections 21-23, 25 and 34

Objection 21 is "RH costs reimbursed (paid by BG) [Barker Gotelee] - £200,000 (note 5)

Objection 22 is "RH costs reimbursed (from Rashid money)" – £85,000 (notes 4 and 6)

Objection 23 is "RH costs reimbursed "from Lloyds loan drawdown)" - £35,000 (notes 3 and 6)

Objection 34 is “RH costs” - £14,708

207. The claimants object to these items on the basis of a failure to provide evidence either about how each sum is made up or that it is an authorised deductible expense and the defendants are put to strict proof. The defendants’ responses follow a familiar pattern but in addition it appears from the response to objection 21 that costs means legal costs and the response to objection 23 takes a limitation point. In fact, Robert’s evidence claims that items 21, 22 and 23 relate to legal costs. Item 34 he says is a continuation of “RWH Costs” recorded in the 2014 spreadsheet relating visits to banks, consultants etc.

208. Notes 4 and 5 merely record the source of the payment to Robert – respectively sale of land for £220,000 to Mr Rashid and sums held by Barker Gotelee. Note 6 explains why what appear to be cash items are included in the account. It says:

> “Costs reimbursed to RH have been deducted from the total reimbursement due. £825,000 due to RH – 15% commission fee on sale. Less amounts paid.”

209. Robert says of items 21, 22 and 23 that they are payments “used to reduce the total due to me in costs and fees”. Karen says of all four items that they are payments “into Robert’s business account for costs past, present and future. He did not receive this money for his personal use, nor is it recorded that way in the accounts.” The business account to which she refers has not been disclosed.

210. Although it was not initially clear, by the end of the trial this aspect of the trustees’ account was better understood. The account includes an item for Robert’s claimed developer’s fee of 15% of the sale price to Countryside, a fee of £825,000 (objection 37). However, the entry in the account seeks payment only of £284,470. This is because the following sums paid to Robert have been deducted:

19 – Williams £64,300

21 – RH costs reimbursed (paid by BG) £200,000

22 – RH cost reimbursed (from Rashid monies) £85,000

23 – RH costs reimbursed (from Lloyds drawdown) £35,000

25 – RH costs reimbursed (Ascent loan) £156,230

211. These five sums total £540,530 and have been included in the account to reduce the fee claimed from £825,000 to £284,470. This was a very unhelpful way of presenting the account.

212. The five items are cash payments, not a record of expenses incurred by the trust. But for the reduction to the fee of £825,000, they would duplicate sums claimed under different entries. The real issue in the account is whether Robert is entitled to a developer's fees of £825,000 which is dealt with as objection 37.

213. Items 34 is in a different category. Robert claims it as expenditure incurred by him relating to the development. It is, however, like the comparable entries in the 2014 spreadsheet, wholly unsupported. Robert says it relates to the period after 2014 but no detail of the cost of visits to banks and professional advisers.

(8) Openview Developments Ltd - objection 29 - £66,000

214. A fee of £66,000 for Openview is claimed. It was paid from funds held by Barker Gotelee on the instructions of the trustees. Ann says she instructed Giles Perry of Openview, a firm of property consultants and negotiators, to assist with the negotiations of the sale to Countryside. She is unable to provide the date when Openview was instructed but recalls that it was following Robert's accident in 2019. In cross-examination she said that when she instructed Openview, Grier Partners were not involved and that Grier dealt with the negotiations at a later stage.

215. Neither Ann nor Robert has provided Openview's letter of appointment and there is no description of exactly what they did. The bundle contains a puzzling message dated 16 June 2020 on Ann's email account from Robert to Dave Jull but addressed to Giles Perry thanking him for his work and saying there is no further role for him. However, there is one further message from Giles Perry to John Radford of Grier and Partners dated 19 April 2021 from which it appears he was acting for Ann at that date. Robert merely says that Openview's involvement is explained in the account (which it is not).

216. There are three invoices from Openview addressed to Ann:

> 216. 1 July 2019 £3,600 – "Fees in respect of advice and consultancy relating to Land under option to Countryside Plc at Moores lane, East Bergholt".

216.2 14 January 2020 £2,400 – This invoice describes the work undertaken in the same way as the first invoice.

216.3 1 March 2020 £66,000 – "Fee agreed, in respect of the Sale Land at Moores Lane, East Bergholt. The invoice charges a fee of 1% of the sale price of the land at £5.5 million.

217. The first two invoices are not claimed as part of the account. No written or other evidence has been provided about an agreement to pay Openview a 1% fee based upon the sale price of the land. There is some evidence to show that Openview performed a role in negotiations with Countryside and that the fees incurred in the first two invoices were trust expenses. There is no evidence that those invoices have been paid. By contrast there is no doubt that the third invoice has been paid but little or no evidence to support a contractual commitment by the trustees to pay a fixed 1% of the sale price.

218. There could have been no real difficulty in providing further evidence about these fees. It is not for the court to speculate how contractual arrangements came about that provided for a fixed fee of 1% of the sale price achieved and whether in light of the work carried out, which appears to have been very limited, the fee can be justified as a proper expense charged to the trust. There is some real doubt about whether Openview were acting for the trustees or for Ann in her personal capacity. I conclude that the sum claimed must be disallowed due to insufficient evidence being provided.

(9) Miscellaneous objections – 30-33 and 36

Objection 30 - Insurance £5,875

Objection 31 – Ground maintenance £10,350

Objection 32 – Environment Agency £2,250

Objection 33 – Lawn mower repairs/fuel £3,300

Objection 36 – Mike Wooley £3,000

219. The defendants are put to proof of these four items. The evidence Robert and Karen has provided is sparse.

219.1 Insurance – Robert says the claim is for the cost of insuring trust properties. Karen asserts that they never included insurance on the Bungalow in the trust

accounts. The charge includes insuring a road for public liability. Karen says "… there are no historic invoices but I am convinced the figure is properly recorded." But she does not say where the invoices were recorded or how the trustees arrived at a figure of £5,875 without having any records. I accept that some insurance expenditure would have been incurred but the amount has not been established.

219.2 Ground maintenance – Karen says these charges were for road repairs, fencing, hedge planting etc but there are no "historic receipts". Robert says the claim "was compiled from charges as they were made." Similar considerations arise to those mentioned above. It is unclear how a figure of £10,500 has been arrived at in the absence of any records. I accept that some expenditure on ground maintenance would be expected but the amount has not been established.

219.3 Environment Agency – Robert says the charge is a normal charge for a farm the size of High Trees. Karen says it is the charge by the Agency for draining farmland water into ditches and she refers to an invoice showing it is an annual cost. The invoice is for the financial year 1 April 2019 to 31 March 2020 and is for general drainage charges for £175.68. This is another example of a puzzling approach to the account on the part of the trustees. They do not explain how the figure of £2,250 has been calculated or estimated or the period that is covered. They do not say what efforts, if any, have been made to obtain duplicate invoices or a summary of historic charges.

219.4 Lawn mower repairs/fuel – Robert says this was an obvious, necessary cost and the amount was compiled from charges as they were made. As on previous occasions he does not say where the record was compiled or produce it. This item would also appear to overlap with the charges under item (6) above – objection 17.

219.5 Mike Wooley – Robert says Mike Wooley was a consultant he hired (he does not say when) for housing market analysis. Karen says something slightly different. She says Mike Wooley was employed to do some work on the property market, cost of building materials etc. "He provided useful information in working out the costs to Countryside Properties for build out before negotiations began." But no documentary evidence of the fee being incurred or paid has been produced. It is unclear how the trustees know how much was paid in the absence of any records at all.

220. The trustees have not discharged the burden on them to prove these expenses.

(10) RWH Annual Payment - objections 35 and 72

(11) RWH 15% Countryside sale – objection 37

Objection 35 is RWH annual payment of £25K per annum - £425,000

Objection 72 is RWH annual payment - £25K per annum - £250,000

221. Objections 35 and 72 overlap. The Thomas Quinn account includes an item totalling £425,000 split between £250,000 for fees up to 2014 and £175,000 for the period beyond that date. It is also convenient to consider objection 37 with objections 35 and 72 because its subject matter is similar. Objection 37 relates to what Robert has called a developer's fee of 15% of the sale price to Countryside; a fee of £825,000.

Annual payment:

222. Robert is put to strict proof of this item. The claimants point out that there is no charging clause in the Trust and no agreement by them as beneficiaries to the charges. Robert's response to the objection is that the annual charge was "trustee authorised being wholly and necessarily incurred as D1 managed whole development process on site from 2004." Ann's response for this item is the same as her other responses. Notably she does not say she agreed the annual charge of £25,000.

223. Robert's evidence is that the charge was authorised by him and Ann as trustees and it was reflected in the 2014 spreadsheet which was handed to all interested parties in 2014. He says Andrew showed little interest. He also points to the Deed of Release signed by Mr Jull in which he says he approves the costs and charges. However, Robert goes on to say:

> "81. …. In practice this £25,000 was no more than a contingency fund, necessary to cover the numerous costs that did not warrant being recorded in the common account as a 'payment for my time' done so in order to simplify the accounting process."

224. Karen says:

> "50. £25,000 was paid for 17 years and recorded correctly, which covered all monies paid to Robert for running the development and covering all other business expenses not in the account."

225. Ann says:

> "30. It was agreed by Robert, Andrew and I (I cannot remember exactly when) that Robert would be paid in return for the works he was overseeing in relation to the property developments. I do not recall the agreement ever being formalised or written down. I know that Nikki was not privy to these conversations, but I always assumed she would have been told by Andrew."

226. Her evidence in her witness statement does not accord with her response to the objection where she says she cannot speak to the specific factual allegations.

227. An email from Robert to Mr Chart dated 11 May 2020 he refers to it having been agreed that he will receive a fee of 15% and he goes on to say:

> "In 2010, it was agreed that R Hubbard would receive from the consortium a total of £42,200 per year, calculated retrospectively from 2005, which would cover ongoing consortium expenses. Consortium members were to pay their pro-rata amount.
>
> No money was paid to me by anybody until 2016. At the end of 2014, following the sale of a property, I effectively paid myself back from the money that I earned (up to the end of 11/14)."

228. It is impossible to reconcile Robert's assertions in this email with his evidence now that the annual sum was £25,000. The email is also inconsistent with the 2014 spreadsheet which records an entitlement to an "annual payment" of £25,000, not a contingency payment. I reject Robert's and Ann's evidence that there was an agreement between them and Andrew that Robert would receive an annual payment of £25,000 (or any amount). Moreover, it would not be open the trustees to approve an arrangement to pay a fixed sum of this size against unspecified expenses when, in reality, the expenses would be very modest. The annual charge is not a recoverable expense.

15% developer's fee - £825,000

229. The objection is similar to objection 35. Ann's response is again equivocal saying she cannot speak to the specific factual allegations underlying Robert's response (necessarily including his assertion that a fee of 15% was agreed by her) but does not disagree with Robert's response. Robert's response relies upon two additional points. First, he says there was a trustee decision to remunerate him as he acted as a professional developer and the fees was wholly and necessarily incurred. Secondly, he relies upon advice from a barrister, Clive Moys of Radcliffe Chambers. He has produced an email from Mr Moys to Mr Williams dated

10 March 2022. The email states that Mr Moys is content with an unidentified draft document and then draws attention to a document produced by the RICS which he describes as "one authoritative source of the well-recognised development industry benchmark of "Developer Return" assumption of 15% - 20% of GDV as "suitable"". (GDV means gross development value). However, the defendant's case (the burden of proof rests on them) is made on a factual basis. Robert says 15% was agreed with Ann. The defendants have not relied upon expert evidence.

230. Robert says that he and Ann "at the inception of the trust" discussed a developer fee to be paid at the end if the development was successful and agreed 15% of the final sale price of any development scheme. Ann's evidence when dealing with the developer's fee refers back to paragraph 30 of her statement (the £25,000 annual fee) and says she cannot remember the figure of 15% being discussed. It is clear that she is taking both items together and she does not support Robert's case that he was entitled to both an annual fee and a developer's fee or that a developer's fee of 15% was agreed. In light of Robert's evidence about the annual figure being a contingency figure, it appears he is now saying his remuneration was solely or principally the developer's fee.

231. Andrew and Nikki are adamant that they did not agree to a developer's fee being payable to Robert. Mr Jull says he did not agree to a payment which he says had not been mentioned prior to a spreadsheet being provided by Robert in 2022.

232. I reject Robert's evidence that a 15% developer's fee was agreed or, as Ann puts it, that Robert would be paid in return for the works he was overseeing. Robert's 15% developer fee has no contractual basis between him and the trust and was not authorised by the trustees.

233. Robert relies upon the reference by his then counsel, Mr Moys, to an RICS Guidance Note which suggests the return for a developer should be 15% to 20% of gross development value. Robert's evidence that he is entitled to a 15% fee has been related back by him from a general understanding that he would receive some remuneration to a fixed 15%. In any event, the note to which reference is made is only of limited assistance. Robert did not develop the farmland in the sense that he carried out a development of it. He entered into an option and negotiated with the assistance of professionals a sale price for the land on exercise of the option. However, he was instrumental, again with professional assistance, in agreeing the option agreement with Knight which led to the land having a substantially increased value.

234. It is not in doubt that Robert was the force behind the developments and that ultimately Andrew and Nikki (and Ann) will benefit from his efforts. He was persistent in his approach over a protracted period. Although Robert's case was put forward in a restricted manner, (15% or nothing) it is a different type of claim in the account to other items because it is not an expense said to have been incurred by Robert or Ann; it does not relate to having paid money to a third party the cost of which is included as an item chargeable to the Trust. Robert's fee is in essence a claim for an allowance and I consider that it is open to the court to consider whether an allowance should be made, despite Robert's response to the objection not being advanced in this way.

235. Mr Fennemore, in the absence of Mr Williams following his retainer being terminated, helpfully referred the court to *Foster v Spencer* [1996] 2 All ER 672 and *Cleverly v Atkinson* [2022] EWHC 1348 (Ch). I note also that the Supreme Court in the recent decision in *Rukhadze v Recovery Partners GP Limited* [2025] UKSC 10 endorsed the principle that on taking an account the court may exercise a discretion to make an allowance for the application of work, risk and skill – see Lord Briggs at [75].

236. For the purposes of this judgment, the principles that apply to an executor, applying with equal application to a trustee, are helpfully set out in Master Clark's judgment in *Cleverly v Atkinson* at [75]-[79] and I gratefully adopt them. To avoid unnecessarily lengthening this already long judgment I will not set out the citation here. This trust was set up with development of the land in mind and it is implicit in the Trust that Robert would be the 'developer'. It cannot be said that Robert was supplying skills that were unique to him but he was in a unique position by virtue of being in occupation of the land and having some experience of property development. It is open to the court to provide him with an allowance.

237. I have not had the benefit of submissions as to the amount of an allowance. It seems to me that 15% of the gross sale price of the farmland is much too substantial. A developer's return on a development is a very different matter to a fee paid to a trustee who has by undertaking considerable work facilitated a development by others. Robert's capital at risk was modest. The court is required to fix an allowance that is reasonable in all the circumstances. I consider that 5% of the gross sale price of the Barns which Robert puts at £2 million and 5% of the sale price under the option is appropriate. I approve an allowance of £375,000.

(12) Thomas Quinn – objection 38

238. The account includes £8,640 for Thomas Quinn's fees. The claimants object to this fee being charged to the trust on the basis that the defendants had unreasonably failed to account to them. The Thomas Quinn accounts were produced pursuant to the defendant's obligation to account and pursuant to orders made by the court for an account to be served. If the account had been produced before these proceedings commenced, it might have been appropriate to approve the expense incurred with Thomas Quinn. However, there are two issues. First, the expense of producing the account should be seen as a litigation cost in contested proceedings. It would be illogical to approve the expense if most or many of the items in it are disallowed. Secondly, I have significant misgivings about the account. I noted earlier that Thomas Quinn have not said what accounting records, information and explanations were provided to them and they provide no certificate about the accuracy of the accounts. I have noted elsewhere that some items are hard to follow; for example Robert's claim to a fee of 15% as it is dealt with in note 6.

239. For these reasons I disallow these fees as an expense of the trust. It may be open to the defendants to seek to recover them as litigation costs if a costs order is made in their favour.

(13) Opening bank balance – objection 39

240. This is a very odd item in the account and to some extent it has already been dealt with at (2) above when considering loan interest. Thomas Quinn have included as a cost incurred by the trust £766,878 of borrowings from 2004 (before the Trust came into being). It is not in doubt that in 2004 and 2005 Robert had borrowing from Nat West and he later re-financed that borrowing with Lloyds TSB. In order to secure that borrowing on the Bungalow, Andrew's consent was required at a joint owner.

241. Robert says there was already development activity with borrowing from Mr Chart and his wife and Mr and Mrs Jull. If that were right, the sums borrowed from them would have been shown as income to the trust.

242. Robert's explanation about this item is cursory. He says Andrew agreed there was a property development business on the High Trees land before it became trust property. Ann has little to add. She does not know what the borrowing was used for but says Andrew was informed by Robert (in her presence in about 2004) that there was a debt to the bank which would have to be repaid prior to distributions being made to beneficiaries. That is no more

than saying the bank had a first charge that was payable. It cannot be taken as Andrew agreeing for the development to start with a debt in excess of £750,000 at a time when no expenses of the development had been incurred. There is no basis upon which the court could conclude that this item is an expense of the trust (or indeed the development) and it is surprising that Thomas Quinn thought it appropriate to include it.

(14) Chart and Jull payments – objections 41 and 42

243. The account in the column 2004-2014 records as an expense "John Chart share of Harris land £92,000" and "Dave Jull share of Harris land £30,000". Note 8 refers to what is described as the 2014 Summary. It provides a profit and loss account for the Barns development with figures for expenses that are familiar from the account (including the £25,000 per annum payment but no developer fee of 15%). It shows the overall income was £2,053,298 and after deducting expenses of £1,278,317 there is a net return of £774,981. From that figure "Investor shares" of £122,000 are deducted leaving a net return after investor payments of £652,981.

244. Robert explains the payments were made as interim payments to investors. There is no doubt that initial investments were made, £280,000 in the case of Mr Chart and £132,500 in the case of Mr Jull, and equally that payments were made to them in 2014.

245. The objections state that:

> "This appears to be borrowing of Ds or D1's for Ds or D1's living expenses or purposes."

246. Robert's response (in addition to the usual response) says: "Payment required to investors".

247. The defendants' evidence simply does not explain how the investments relate to the Trust. Mr Chart's loan of £250,00 (later increased to £280,000) was made in 2003. Mr Jull's loan of £125,000 was made between June 2005 and January 2006. Robert has not explained into which account the loans were paid in or for what purposes these sums were expended. Furthermore, the loans are not treated in the account as being loans to the Trust because, unlike bank loans, they do not appear as income.

248. The defendants have failed to explain these entries in the account and have not justified them as a proper expense of the Trust.

(15) AH Legal Costs – objections 43-44

249. These objections have been conceded by Ann.

(16) Limitation and wilful default

250. These two issues arise in connection with a number of the objections. It is convenient to deal with them in reverse order.

251. Robert's case places reliance on the fact that the account has been ordered to be provided in common form. He appears to conclude that it is therefore not open to the claimants to rely upon a breach of trust. In my judgment he misunderstands the nature of an account in common form. The defendants in this case as trustees are required to explain their dealings with trust assets. The trustees have chosen to undertake a development over a lengthy period and must establish in an account what income has been generated and what expenses have been incurred. So far as expenses are concerned, the burden is firmly on them to justify items in the account. The claimants do not have to prove anything and they are entitled to put the trustees to proof. How the trustees go about doing so will vary from case to case. Documentary evidence including bank accounts and invoices supplemented by oral evidence will be the best. If records have not survived efforts should be made to reconstitute them including seeking documents from third parties.

252. If it transpires that items of expenditure have been incurred that are not a proper expense of the trust, or cannot be proven to be such, it may be the trustees have acted in breach of trust. It is not necessary, however, to make any finding to that effect on taking an account in common form. If the beneficiaries can prove that income was greater than that recorded in the account, the income side of the account will be adjusted accordingly. Similarly, if the trustees are unable to prove to the satisfaction of the court that one or more items of expenditure were incurred or are properly an expense chargeable to the trust, the expenses claimed will be adjusted. The resulting account will show the true position, and the third stage of the accounting process will consider what consequential relief (if any) should follow. At stage 2 no findings about a breach of trust are needed.

253. The issue of limitation does not strictly arise in stage 2 of the accounting process. Brief submissions have been provided about it. I have concluded that limitation should be dealt with following the finalisation of the account in light of this judgment.

Allowances

254. The court has not received any submissions on this topic but out of fairness to the defendants, and in light of Mr Williams' absence at the end of the trial it one that needs to be addressed. Here I am referring to allowances in a different way to allowances of the *Phipps v Boardman* type. There are many items of claimed expenditure that have been disallowed in full because the trustees have not discharged the burden of proof on them to show that the sum claimed was incurred and paid and was a proper expense of the trust. The issue is whether there are circumstances in which the court is able to make an allowance of less than the sum claimed. The final sentence in the passage from *Snell* at 20-010 (see paragraph 39.2 above) suggests that a non-professional trustee who has acted in good faith, but who has not kept records, may be entitled to a fair and reasonable allowance. The decision in the House of Lords on a Scottish Appeal in *Barnes v Ross* [1896] AC 625 is cited as the basis for this proposition. However, the facts in *Barnes v Ross* were very particular. The respondent's father died when he was aged 11 and his mother, the appellant, acted as his guardian during his minority in respect of a substantial estate in Scotland. When the respondent reached his majority, he brought a claim against his mother on the basis that the level of expenditure she had incurred in his upbringing was too great and unjustified. The appellant had not kept records of expenditure of the establishment and personal expenditure incurred on behalf of the respondent such as schooling, travel, accommodation when she visited him at Eton on trips from Scotland, the purchase of guns, boats and the like. Her case was that the court should approve an annual allowance for such items. The appeal concerned the broad allowances that had been made at first instance for the respondent's upkeep. Lord Halsbury LC began his speech in the following way:

> "My Lords, the question with which your Lordships have to deal in this case does not admit of very precise treatment. How much money belonging to a ward may be spent upon his bringing up must in each case depend upon the circumstances of the case, and no rule applicable to every case can ever possibly be laid down so as to bring out a definite sum.
>
> …
>
> The only rule that can be laid down in such a case is that the boy should be brought up in such a way as is appropriate to the position which he is afterwards to fill."

255. He went on later in his speech to say:

> "I do not propose to go into details. As I have said, I do not think the matter is susceptible of being treated as if one could go through every item of this account, or even heads of the account, and say what was spent, or what ought to have been spent, in a particular month or in a particular year."

256. I am unconvinced that the decision supports a general principle of the breadth suggested by the editors of Snell. The essence of the case before the House of Lords was about an annual allowance for the upkeep of the respondent, not about the approval of specific items of expenditure. In my judgment, the decision does not establish the general principle that in the absence of records the court may make an allowance of a lesser sum than the specific amount claimed. In this case, the defendants have in many instances claimed as expenses sums they say were charged to them (or to Robert) by professionals and others and claimed sums for interest they say were paid to banks for borrowing they incurred. I have found that they have not discharged the burden on them. There are some instances (for example fees relating to planning) where it is likely that some expenditure of a particular type with a named supplier was incurred. The amount claimed has been disallowed due to a lack of evidence. The claimants' objection is to items of expenditure is made to such items "in full or in part". However, the defendants have not put their case on the basis that it is open to the court to approve a lesser sum than that claimed or to make an allowance. Each item of expenditure is claimed on an all or nothing basis.

257. Even if that were seen as an unduly restrictive view of the account based upon the issues arising from the way in which the objections and responses are framed, it is not open to the court to make an allowance for an item of expenditure without some evidential basis. The court cannot, in my judgment, and taking as an example fees incurred with planning consultants, disallow the sum claimed due to lack of evidence but allow a lesser sum where there is no evidential basis for the court to be able to assess a figure. The court is not in a position to draw upon judicial knowledge or experience. It may well be that in *Barnes v Ross* their Lordships felt on safe ground making an assessment of an annual sum for the upbringing of a young member of the aristocracy to place him as he "should be properly fitted for the station in life which he is afterwards to fill". However, in this case, in absence of records it was always open to the defendants to provide some evidence upon which an assessment could have been made but as with most aspects of this account there has been a singular failure to address the evidential needs of their case.

Ann's liability as trustee

258. Although I have received submissions from her counsel on this subject, I consider that a determination should be dealt with when the account has been finalised and I have considered what consequential orders, if any, should be made in light of my findings.

Findings in the account

Income

259. Income is to take account of the following items:

259.1 Countryside sale proceeds reduced from £5.5m to £5,449,310.

259.2 Rental income £107,500.

259.3 Sale of Rashid land £220,000.

259.4 Option agreement £40,000.

259.5 Land sold to Pond House £1,000.

259.6 Barns and Harris land £2,053,298.

259.7 Interest received as of 22/04/2025-£51,719.73.

Expenditure

260. The following entries in the account have either been conceded or been disallowed in full:

Cost to 2014 - £749,468

Loan interest - £278,849

BACI - £49,248

Williams Solicitors - £945,415

Farm running costs - £36,189

RH costs reimbursed - £200,000, £85,000, £35,000, £156,230

Lloyds loan £50,000

Ascent loan interest - £80,523

Openview Developments - £66,000

Insurance - £5,875

Ground maintenance - £10,350

Environment agency - £2,250

Lawn mower repair/fuel - £3,300

RWH costs - £14,078

RWH annual payment - £425,000

Mike Wooley - £3,000

Thomas Quinn - £8,640

Opening bank borrowing 2004 - £766,878

John Chart - £92,000

Dave Jull - £30,000

Sinclair Gibson - £20,000

Ann Hubbard legal fees - £200,000

261. In relation to Robert’s claim for fees, I have allowed £375,000 in place of £825,000.