Neutral Citation: [2017] EWHC 2476 (Ch)

Case No: C30LS503

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

RE. NORTH HARROW TENNIS CLUB

Before :
MR EDWARD PEPPERALL QC
SITTING AS A DEPUTY HIGH COURT JUDGE

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Between :

(1) JOYCE IRENE HARDY
(2) DIANE OWEN **Claimants**

- and -

(1) DAVID JOHN HOADE
(2) ROBERT JEFFREY RODGERS
(3) ROY HENRY PETER RODGERS
(4) SANDIP PATEL
(5) KATIA MUGHAL
(6) SHAFF MUGHAL
(7) ARTHUR DENNY (also known as Denny Arthur)
(8) JOHN CHRISTOPHER SAYER
(9) SANDRA JUDITH STAPLES
(10) ANN DENISE BURDITT
(11) AMIT RUPARELIA
(12) THORSTEN NILSSON
(13) KISHAN SANGANI
(14) ALPEN KHAGRAM
(15) KEITH HARDY
(16) RAAJ SANGANI
(17) HEATHER C HURLE
(18) NICHOLAS JOHN HURLE
(19) HELEN DOLAN
(20) ANISH RUPARELIA **Defendants**

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Mr Bruce Walker (instructed by **Irwin Mitchell LLP**) for the **Claimants**

Hearing dates: 4-5 October 2017
Judgment: 6 October 2017

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Approved Judgment

I direct that pursuant to CPR PD39A para 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

MR EDWARD PEPPERALL QC:

1. Between 1927 and 2012, the North Harrow Tennis Club ["the Club"] operated a small tennis club in Cumberland Road, Harrow in Middlesex. The Club's premises consisted of a 17,500 sq ft plot of land on which there were three tarmacadam tennis courts, a pavilion and two huts. Unlike other local clubs, the Club did not boast either floodlights (thereby limiting its use during the winter) or parking facilities. The lack of parking became more of an issue over the years as the streets around the Club became increasingly congested with residents' own cars. In recent years, membership dwindled until the Club eventually ceased operating in 2013.

2. The claimants were longstanding members and officers of the Club. For many years, they were the backbone of the Club, tirelessly striving to make a success of this small club for the benefit of all members. Joyce Hardy joined in 1968. She was, for some 27 years, the Club's Secretary and thereafter its Chairman. Diane Owen joined in 1967. She became the Club's Treasurer in about 1970. Although not formally appointed Secretary, she latterly acted in that role for want of any other volunteers. The two women are now the sole trustees of the Club. Furthermore, they hold the title to the Club's freehold property as trustees.

3. Membership in 2012 was at an all-time low. Mrs Hardy and Mrs Owen told me that efforts to attract new members had failed and indeed the last regular tennis four stopped playing during 2012 as further members left for other clubs. No members came forward to renew their membership in 2013 and the claimants concluded that the Club could no longer continue to operate. As a result, they did not call an AGM in the spring of 2013. As they put it to me, there were no members to convene a meeting.

4. By this claim, the claimants sought the Court's directions as to the proper winding up of the Club's affairs. Specifically, they sought a declaration that they might sell the Club's land and directions as to the distribution of the net proceeds of sale.

5. The question of sale has been dealt with. On 4 May 2017, District Judge Goldberg granted a declaration that the claimants held the freehold land on

trust for sale and that they might sell the land without further reference to the Club's members and former members. The land was sold by auction on 14 September 2017 for £460,000. The sale is due to complete by 14 October 2017. From that sum, the trustees will have to pay the auctioneer's fees, their legal costs incurred in dealing with objections to the proposed sale and the legal costs of these proceedings. I am told that the net funds available for distribution are likely to be in the region of £260,000.

6. In order to ensure that all potential claimants might be identified, on 30 November 2016, District Judge Goldberg ordered that the claimants should place advertisements in newspapers and display a notice on the property seeking a response from any members or former members who might seek to claim a share of the proceeds of sale. The claimants complied with such directions and twenty former members came forward. They were duly added as defendants.

7. At the hearing on 4 May 2017, District Judge Goldberg ordered both the claimants and the defendants to file witness statements supporting their own claims for a share of the net assets. The claimants and fifteen of the defendants filed statements. Finally, on 14 July 2017, the judge ordered that the claimants should give specific disclosure of the Club's records to any defendant so requesting. He also gave permission for the defendants to serve replacement statements although, in the event, none did.

8. The issue before me is to determine how the trustees should distribute the Club's assets. Mr Walker argues that:

   8.1 The general principle upon the dissolution of a members' club is that its net assets should be divided equally between the members, excluding honorary members, at dissolution on a per capita basis.

   8.2 Since, however, membership of an unincorporated association is governed by contract, such position only arises in the absence of contrary provision. In this case, Mr Walker argues, the Club's rules do make contrary provision in that, upon its true construction, rule 18 applies to any dissolution irrespective of whether it was preceded by a resolution at a general meeting.

   8.3 Alternatively, he argues the Court should imply a term extending the rule 18 regime to all cases of dissolution.

9. While four defendants have filed skeleton arguments, only the Eleventh (Amit Ruparelia) and the Twentieth (Anish Ruparelia) Defendants have made submissions as to the proper construction of the rules. Both of their skeleton arguments assume that rule 18 applies but make helpful submissions as to the proper construction of the terms "Members" and "playing membership", and as to the qualifying period under rule 18. I shall consider these arguments in due course, but first I must determine the general basis for distribution.

THE DISSOLUTION OF CLUBS

10. In support of the general principle, Mr Walker cites the following passage from Halsbury's Laws of England (Vol. 13), at para. 291:

> "On the dissolution of a members' club the property and assets are sold and realised, and after the discharge of the debts and liabilities of the club the surplus is divisible equally amongst the members for the time being, other than the honorary members, subject to any provisions in the rules to the contrary."

11. There is some conflict in the authorities as to the true default position. In a number of cases, the Courts have ordered the division of the net assets in proportion to the amounts contributed by the members:

11.1 In Re. Printers and Transferrers Amalgamated Trades Protection Society [1899] 2 Ch. 184, Byrne J. ordered the net assets of a trade union to be distributed among its members at the time of dissolution in accordance with the sums contributed on the basis that there was a resulting trust.

11.2 This approach was followed by Warrington J. in Re. Lead Company Workmen's Fund Society [1904] 2 Ch. 196 upon the dissolution of an unregistered friendly society.

11.3 O'Connor M.R. was critical of the application of the law of resulting trusts to such cases in Tierney v. Tough [1914] 1 I.R. 142. Tierney also concerned the dissolution of a friendly society. Although the Court preferred to analyse the case in contract, it nevertheless directed distribution pro rata to the members' contributions.

12. Yet in other cases, the Courts have preferred a simple per capita approach:

12.1 In Brown v. Dale (1878) 9 Ch.D. 78, the court ordered a per capita distribution on the dissolution of a club.

12.2 In Feeney & Shannon v. MacManus [1937] I.R. 23, the Court found that it was impossible to determine the members' proportionate contributions. Accordingly, it ordered equal division on a per capita basis.

12.3 In Re. Blue Albion Cattle Society [1966] C.L.Y. 1274, Cross J. ordered a per capita distribution upon the dissolution of a cattle-breeding society.

12.4 In St Andrew's Allotment Association [1969] 1 W.L.R. 229, Ungoed-Thomas J. applied the per capita approach to the dissolution of an allotment association.

12.5 In Re. Sick & Funeral Society St John's Sunday School, Golcar [1973] Ch. 51, Megarry J. applied the per capita approach to the dissolution of a scheme to provide sickness and death benefits to the members of a Sunday school.

13. In St Andrew's (supra), Ungoed-Thomas J. sought to reconcile the two lines of authorities, at p.238, when preferring the per capita approach:

> "It is conceivable that a basis for distinguishing the friendly and mutual benefit society cases may be that, whereas in the club cases

enjoyment ab initio and equality are contemplated, yet in the friendly and mutual benefit society cases what are contemplated are advantages related to contributions."

14. In Re. Sick & Funeral Society (supra), Megarry J. suggested, at p.59, that much of the difficulty had arisen from confusing the property-law concept of resulting trusts with the essentially contractual questions of the payment of subscriptions and receipt of benefits through the membership of a club. While not being entirely persuaded by the tentative reasons given by Ungoed-Thomas J. for distinguishing the friendly society cases, Megarry J. preferred the per capita approach. He said, at pp.59-60:

> "... membership of a club or association is primarily a matter of contract. The members make their payments, and in return they become entitled to the benefits of membership in accordance with the rules. The sums they pay cease to be their individual property, and so cease to be subject to any concept of resulting trust. Instead, they become the property, through the trustees of the club or association, of all the members for the time being, including themselves. A member who, by death or otherwise, ceases to be a member thereby ceases to be the part owner of any of the club's property: those who remain continue owners.
>
> If, then, dissolution ensues, there must be a division of the property of the club or association among those alone who are owners of that property, to the exclusion of the former members. In that division, I cannot see what relevance there can be in the respective amounts of the contributions. The newest member, who has made a single payment when he joined only a year ago, is as much a part owner of the club or association as a member who has been making payments for 50 years. Each has had what he has paid for: the newest member has had the benefits of membership for a year or so and the oldest member for 50 years. Why should the latter, who for his money has had the benefits of membership for 50 times as long as the former, get the further benefit of receiving 50 times as much in the winding up?"

15. In my judgment, this reasoning is particularly apposite in the case of a tennis club. Those who have been members for 50 years have had the opportunity to play tennis and use the club's other facilities for five decades. They have only paid in more because they have been entitled to the benefits of membership for longer. There may be a different rule in the case of a friendly society in which the purpose of membership is to build the assets of the society for distribution according to the members' contributions. Accordingly, I am satisfied that the proper default position in the case of a tennis club is for the per capita distribution of the net assets among the members at the time of the club's dissolution.

16. This debate is, however, to put the cart before the horse. Since, as Megarry J. identified in Re. Sick & Funeral Society, membership is primarily a matter of contract, the Court must first consider the terms of the contract.

THE TRUST DEED

17. The land was acquired for the Club on 30 January 1930 by its original trustees, Frederick Thomas Dyke and Arthur Thomas Dawson. The two men held the property pursuant to the terms of a trust deed of the same date to permit the Club's members to use it in accordance with the Club's rules and regulations. By clause (iii) of the trust deed, the trustees were empowered to sell the land upon a resolution supported by two-thirds of the Club's members. Clause (iv) provided:

> "ALL money arising from any sale … shall be assets of the Club in like manner as if the same had arisen from the subscription of Members."

18. Over the years, the land was transferred from the outgoing officers of the Club to their successors. While the paper trail is not complete, the land was transferred to Mrs Hardy and to the late Brian William Hall by a conveyance dated 10 January 1994. Following Mr Hall's death, Mrs Owen was appointed as trustee of the Club at an EGM on 23 October 2012. By an undated form TR1, the now registered title to the land was vested in the claimants' joint names. They expressly held the land on trust for the Club's members.

THE CLUB'S RULES

19. The Club amended its rules from time to time, most recently at the EGM on 23 October 2012. As events unfolded, that was the last meeting of the Club's members. While the minutes do not record any indication that the Club was about to close imminently, they do record that the future did not *"look very bright"* and called on all members to put effort into recruiting new blood.

20. The minutes recorded that the Club's rules needed updating and that specific changes had been recommended by HMRC. Among other changes, rule 12 was deleted. Save that it was re-numbered in consequence of the deletion of rule 12, there was no change to what was now rule 18, which provided:

> "If the club resolves at a General Meeting not to continue it's (sic) activities then the assets of the Club shall, after payment of all the Club's liabilities, be divided proportionately as between past and present Members in the ratio of the length of playing membership, which division in no event shall be applicable to any person with less than three years playing Membership."

21. The word "three" was, however, struck through in manuscript and replaced with "five", thereby purporting to extend the qualifying period before new members might have an interest upon a dissolution of the Club. The minutes of the October EGM were silent as to this amendment.

22. Rule 19 also requires citation in full:

> "Provided that no person whose Membership has been determined in accordance with rule twelve or a member who has defaulted in Payment of his or her annual subscription shall be entitled to any part of the Club's assets. Provided and notwithstanding Rule 18, that no alteration of this rule shall be made except with the consent of such a

number of persons as would be jointly entitled to two thirds or more of the Assets of the Club, if the date of the proposed alteration were treated as the date of the discontinuance of the Club's activities."

THE CONSTRUCTION ARGUMENT

23. There is an immediate problem in Mr Walker's construction argument since rule 18 is qualified by its opening words:

> "If the club resolves at a General Meeting not to continue it's (sic) activities …"

24. No such resolution was passed at a general meeting. Mr Walker seeks to circumvent this difficulty by invoking the observations of Sir Robert Megarry V.-C. in Re. GKN Bolts & Nuts Ltd (Automotive Division) Birmingham Works Sports & Social Club [1982] 1 W.L.R 774, at p.776:

> "As is common in club cases, there are many obscurities and uncertainties, and some difficulty in the law. In such cases, the court usually has to take a broad sword to the problems, and eschew an unduly meticulous examination of the rules and resolutions. I am not, of course, saying that these should be ignored; but usually there is a considerable degree of informality in the conduct of the affairs of such clubs, and I think that the courts have to be ready to allow general concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules. In other words, allowance must be made for some play in the joints."

25. While there is force in these observations, the rules of a club, like any other contract, fall to be construed in accordance with the well-known principles identified by the House of Lords and the Supreme Court in a series of recent cases. Such principles were authoritatively summarised by Lord Neuberger in Arnold v. Britton [2015] UKSC 36, [2015] AC 1619, at [15]:

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to 'what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean', to quote Lord Hoffmann in Chartbrook Ltd v. Persimmon Homes Ltd [2009] AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

26. Here, there is no doubt that the natural and ordinary meaning of rule 18 is that it only applies in the event of there being a resolution at a general meeting to dissolve the club. That is plainly a very significant factor in the exercise of construing rule 18. Indeed, as Lord Neuberger observed, at [18]:

> "… the clearer the natural meaning the more difficult it is to justify departing from it."

27. There is no other provision in the rules that applies directly although rule 19 does merit further consideration. Implicit in the second sentence of rule 19 (cited in full at para. 22 above) was the expectation that the assets of the Club would be distributed in accordance with rule 18 upon dissolution.

28. I then consider the question of overall purpose. The rules were plainly intended to provide a scheme for governing membership of this club. It may well be that rules 18 and 19 were intended to provide a comprehensive solution to the question of the distribution of assets upon dissolution, but that is not how the rules were drafted.

29. In Arnold, Lord Neuberger said, at [22]:

> "… in some cases, an event subsequently occurs which was plainly not intended or contemplated by the parties, judging from the language of their contract. In such a case, if it is clear what the parties would have intended, the court will give effect to that intention. An example of such a case is Aberdeen City Council v. Stewart Milne Group Ltd [2012] UKSC 240, where the court concluded that 'any … approach' other than that which was adopted 'would defeat the parties' clear objectives', but the conclusion was based on what the parties 'had in mind when they entered into the contract."

30. Such observation is apposite in this case in that the rules appear to have assumed that dissolution would only be by resolution of the members. This left a lacuna in that they failed to deal with the situation where the members simply drifted away such that the Club stopped operating without any positive resolution to that effect. Equally, the rules failed to provide a solution to the problem of the officers of the Club being unable to convene a quorate general meeting in order to vote upon a resolution for dissolution.

31. I turn then to commercial common sense. In my judgment, it is here that the observations of Sir Robert Megarry in GKN might properly be brought into play. The court should, in other words, recognise that the rules of a club might well be somewhat informal and badly drafted and, together with the court's consideration of the overall purpose of the rules, the court might be persuaded to look to a common-sense construction consistent with the parties' broad purpose.

32. There are, however, limits to this approach. Whether it be a club case or not, the court is bound by the limits identified by the Supreme Court. In Arnold, Lord Neuberger said, at [17]:

> "... the reliance in some cases on commercial common sense and surrounding circumstances ... should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision."

33. Taking these matters in the round, there are indications that the members might well have intended rules 18-19 to provide a comprehensive scheme for the distribution of assets upon dissolution but that they simply failed to foresee dissolution occurring other than by way of resolution. In my judgment, such considerations might well be important when considering what terms might be implied to fill the vacuum, but, at this stage of the enquiry, they do not justify a departure from the clear words used in rule 18. For these reasons, I reject Mr Walker's submission that the Court should construe rule 18 to apply to all cases of dissolution.

IMPLIED TERM

34. As Lord Neuberger observed in Marks & Spencer plc v. BNP Paribas Securities Services Trust Co. (Jersey) Ltd [2015] UKSC 72, [2016] A.C. 742, at [28], it is only after the process of construing the express words of a contract is complete that the Court can consider the issue of the implication of terms. Here, the Court is concerned with what Sir Thomas Bingham M.R. described in Philips Electronique Grand Public SA v. British Sky Broadcasting Ltd [1995] E.M.L.R. 472 (CA) as:

> "a different and altogether more ambitious undertaking: the interpolation of terms to deal with matters for which, ex hypothesi, the parties themselves have made no provision."

35. In BP Refinery (Westenport) Pty Ltd v. Shire of Hastings (1977) 180 CLR 266 (PC), Lord Simon said, at p.283:

> "for a term to be implied, the following conditions (which may overlap) must be satisfied: (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that 'it goes without saying'; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract."

36. In the Marks & Spencer case, Lord Neuberger added six comments to this summary of the law, at [21]:

> "First, in Equitable Life Assurance Society v. Hyman [2002] 1 A.C. 408, 459, Lord Steyn rightly observed that the implication of a term

was 'not critically dependent on proof of an actual intention of the parties' when negotiating the contract …

Secondly, a term should not be incorporated into a detailed commercial contract merely because it appears fair or merely because one considers that the parties would have agreed it if it had been suggested to them. Those are necessary but not sufficient grounds for including a term.

However, and thirdly, it is questionable whether Lord Simon's first requirement, reasonableness and equitableness, will usually, if ever, add anything: if a term satisfies the other requirements, it is hard to think that it would not be reasonable and equitable.

Fourthly, …. although Lord Simon's requirements are otherwise cumulative, I would accept that business necessity and obviousness, his second and third requirements, can be alternatives in the sense that only one of them needs to be satisfied, although I suspect that in practice it would be a rare case where only one of those two requirements would be satisfied.

Fifthly, if one approaches the issue by reference to the officious bystander, it is 'vital to formulate the question to be posed by [him] with the utmost care', to quote from Lewison, The Interpretation of Contracts …

Sixthly, necessity for business efficacy involves a value judgment. It is rightly common ground on this appeal that the test is not one of 'absolute necessity', not least because the necessity is judged by reference to business efficacy. It may well be that a more helpful way of putting Lord Simon's second requirement is, as suggested by Lord Sumption JSC in argument, that a term can only be implied if, without the term, the contract would lack commercial or practical coherence."

37. At first blush, it might be thought that there is no need to imply a term to deal with the consequences of dissolution other than by a members' resolution since the common law provides a default position as discussed at paras 10 to 16 above. That is, however, to misunderstand the basis on which such general principle operates. Subscriptions to a tennis club are paid in return for the privileges of membership and, accordingly, as demonstrated above, the proper approach to the distribution of the assets of a private members' club is to consider the matter in contract law. Indeed, the authorities defer to any contrary contractual provision, typically found in the individual club's membership rules. In Re. Bucks. Constabulary Widows' and Orphans' Fund Friendly Society (No. 2) [1979] 1 W.L.R. 936, Walton J. rejected a submission that the proper distribution of the net assets of a dissolved friendly society was a matter of equity, observing, at p.953:

> "The members are not entitled in equity to the fund, they are entitled at law. It is a matter, so far as the members are concerned, of pure contract, and, being a matter of pure contract, it is in my judgment, as far as distribution is concerned, completely divorced from all questions of equitable doctrines."

38. Properly understood, I therefore consider that the authorities are not setting out some immutable rule of law which applies upon the dissolution of any

club in the absence of a contrary express term. Rather, the authorities set out the term that will ordinarily be implied in the absence of any contrary provision. The distinction is important. In my judgment, wherever the rules of a club are silent as to the proper basis for distribution upon dissolution, the Court will have to imply a term in order to give the rules business efficacy. Absent contrary indication, such implied term is likely, as the discussion above demonstrates, to favour an equal per capita distribution. It is not, however, a case of Mr Walker seeking to set up the implied term for which the trustees contend against a workable default regime, but the exercise remains to determine what term to imply in this particular case in order to give these rules business efficacy.

39. Starting from this position, I consider that rules 18-19 clearly indicate a contrary intention, namely that the assets of the Club are upon dissolution to be distributed in accordance with the length of playing membership of each of the members. In my judgment, this is a case in which the members simply failed to foresee that there might be dissolution other than following a members' resolution. If asked whether rules 18-19 were intended to be a comprehensive scheme for the distribution of the Club's assets on dissolution, I am satisfied that the members would have replied positively. Put another way, they would not, in my judgment, have intended that there be a very different distribution of assets upon dissolution depending upon the matter of chance of whether the dissolution was preceded by a resolution at a general meeting or the members simply drifted away. I am fortified in this by the terms of rule 19 which assume that distribution will necessarily be in accordance with rule 18 upon a dissolution.

40. For these reasons, there was, in my judgment, an implied term in the rules that the net assets of the Club would be distributed in accordance with the provisions of rules 18-19 upon a dissolution other than following a resolution of a general meeting.

THE QUALIFYING PERIOD

41. There is a further issue as to whether the qualifying period under rule 18 requires three years' membership (as the typed version of the October 2012 rules provides) or five years' membership (as the manuscript alteration suggests). As to this, there are six versions of the rules before me. I take them in chronological order:

41.1 Version 1: The first version was undated but obviously predated decimalisation given the references in rule 10 to subscriptions in pounds, shillings and pence. Rule 21 provided for a three-year qualifying period.

41.2 Version 2: The second version was also undated but again dated back to the pre-decimal era. It was probably later in time than version 1 given the slight increase in subscriptions evident at rule 10. Rule 21 provided for a five-year qualifying period.

41.3 Version 3, 25 March 1996: Rule 20 of the typed version of the 1996 rules referred to a three-year qualifying period. This was, however, amended in manuscript to read five years.

41.4 Version 4, March 2003: Rule 20 of the 2003 rules referred to a three-year qualifying period.

41.5 Version 5, October 2012 draft: There is then a further set of the rules with the handwritten annotation "This was updated Oct 12 because of a CASC recommendation." It appears to be a draft showing the proposed new rules but still containing rule 12 that was recommended for deletion. Indeed, a manuscript line has been put through the text of rule 12. Rule 19 (as it was then numbered) referred to a three-year qualification period. On the balance of probabilities, I find that this was probably the draft placed before members at the EGM on 23 October 2012 showing both the term to be deleted and the proposed new text.

41.6 Version 6, 23 October 2012: This is the final version. The old rule 12 had been deleted and the following rules renumbered. As already recounted, rule 18 (as now numbered) referred to a three-year qualifying period albeit it was crossed through in manuscript and the word "five" added.

42. The minutes of the October 2012 EGM do not record any amendment having been made to the qualifying period. Mrs Owen told me that the manuscript amendment to the 2012 rules was in her handwriting, but she could not now explain it. In any event, both Mrs Hardy and Mrs Owen confirmed that they had always understood the qualifying period to be one of three years, although I note that Mrs Hardy had offered the contrary view at para. 15 of her second witness statement. Neither woman recalled any discussion about amendment of the qualifying period during the many decades in which they were involved with the Club.

43. Accordingly, it does not appear that there was ever a decision of the members to lengthen the qualifying period to 5 years. Rather it appears likely that a mistake was made in retyping the rules for the purpose of typing up version 2 (as enumerated in my analysis at para. 41) back in the days when a document could not simply be amended in a word processing package. That might be, as Mrs Hardy suggested in evidence, because the typist was working from a faint copy of an earlier set of rules. In any event, even if the rules were at one time amended to lengthen the qualifying period to 5 years, I am satisfied on the balance of the evidence before me that the final version of the rules as approved by the members at the October 2012 EGM only provided for a three-year qualifying period.

THE OPERATION OF RULE 19

44. Rule 19 excludes the claims of any member whose membership had been determined in accordance with the former rule 12. On the evidence, this was a theoretical issue only since there was no evidence of the Club's ever having exercised such power. Indeed, its efforts had always been focused on attracting new members rather than expelling those that it had.

45. There is a further exclusion for those in default. In my judgment, Mr Walker was right to submit that former members could not be held to be in default by virtue of having decided not to renew their membership. The concept of

default would, I consider, only arise if a member had taken some act to renew his or her membership but then defaulted in the payment of the required subscription. Again, there was no evidence that any members had been in default.

CLASSES OF MEMBERSHIP

46. In some club cases, distribution is limited only to certain classes of member. There is no such restriction in rule 18. Distribution is to be between past and present members provided only that they have at least three years' qualifying playing membership. In identifying the share of each member, one must then calculate the length of their playing membership. In my judgment, this term includes years of playing membership both as a junior and an adult.

THE MEMBERS' RESPECTIVE SHARES

47. Twenty-two claims are before the Court, namely the claims of the two trustees as members and those of the twenty former members who registered claims and were added as defendants to these proceedings. The Fifth, Sixth, Seventh, Eighth and Thirteenth Defendants failed to file any evidence. The remaining fifteen defendants filed witness statements. None of the defendants attended the trial, although, as indicated above, I received helpful skeleton arguments from four defendants.

48. Evidence at trial should, subject to any contrary provision in the rules or order of the court, be given by oral evidence: r.32.2 of the Civil Procedure Rules 1998. That said, this claim proceeds under Part 8 and the Court has not made an order under r.8.6(2) requiring parties to give oral evidence at the hearing. I therefore take into account the witness statements filed by the defendants. I also take into account the arguments presented in the skeleton arguments lodged by four of the defendants.

49. Of course, it would be difficult for any of us to remember the precise dates of our membership of a club. Bare assertions, not backed up by documents or other evidence to explain why a particular party is now able to provide the dates of his or her membership with accuracy, are not therefore likely to be as reliable as the written records of the Club. Accordingly, I have been provided with five lever arch files from the Club's archives. Specifically, I have:

    49.1 Membership lists from 1971 to 1974, 1992 and 1994 to 2012.

    49.2 A small number of further spreadsheets and tables showing the members of the Club at various points.

    49.3 The Club's accounting books from 1938 to 2005.

    49.4 The minutes of meetings from 1950 to 2007 together with the minutes of the EGM on 23 October 2012.

50. I have been greatly assisted by the industry of Mr Walker in marshalling all of this information in order to verify the competing claims before the Court.

51. In my judgment, two claims fail entirely. Katia and Shaff Mughal (the Fifth and Sixth Defendants) claim only to have been members in 2012/3. Neither has filed any evidence and their claims do not derive support from the Club's records. That said, they might well have been two of the new members who paid the club coach, Bob Rodgers, in cash but whose names were never passed to Mrs Owen. As it happens, they have not, however, been prejudiced by their failure to file witness evidence since their claims would in any event fail by reason of the fact that they were not members for the minimum qualifying period of three years.

52. Each of the other claims before me succeeds to the extent set out below after each member's name:

52.1 Joyce Irene Hardy, 37 years:

(a) With the sole exception of 1969, Mrs Hardy's claim to have been a member in each of the years from 1968-2008 and again in the Club's final two years of operation (2011-2012) is supported by the Club's records (i.e. its membership records, cashbook entries and the minutes of its meetings).

(b) I accept Mrs Hardy's evidence that her membership was continuous from 1968 to 2008 and accordingly that she was a playing member in 1969 despite the lack of documentary evidence now available to corroborate such claim.

(c) While Mrs Hardy was a member in each of 2005, 2006, 2007, 2008, 2011 and 2012, it is clear from the records that she was a non-playing member. Indeed, she explained in her second witness statement that she wasn't playing in 2005-7 because of a knee operation. She did not pay a subscription in 2009 or 2010 because her late husband, Bruce, was ill and then died in 2010. She re-joined in 2011 but as a non-playing member. Accordingly, such years do not count for the purpose of rule 18.

52.2 Diane Owen (formerly Sayer), 44 years:

(a) With the sole exception of 2010, Mrs Owen's claim to have been a member in each of the years from 1967-2012 is supported by the Club's records. As to 2010, Mrs Owen has produced evidence that a payment was made from her bank account.

(b) While Mrs Owen was a member in both 2011 and 2012, she was recorded in the records as a non-playing member. This sits a little uneasily with Mrs Owen's evidence that she made up a four as late as 2012. The question is under rule 18 is not, however, whether she played tennis but whether she was a playing member. Upon the evidence of the Club's records and indeed para. 8 of her own witness statement, she was not a playing member in either 2011 or 2012 and accordingly such years do not count for the purpose of rule 18.

52.3 David John Hoade, 8 years:

(a) Mr Hoade's initial claim was that he had been a member for 9 years from 2002 to 2010. By his subsequent statement, he amended this to 7 years, being each of the years from 2002 to 2009 excluding 2008.

(b) In fact, the Club's records support his claim to have been a member from 2002 to 2009, but also show, and I find, that he was a member in 2008.

52.4 Robert (Bob) Jeffrey Rodgers, 16 years:

(a) Bob Rodgers has put his case on three different bases. He initially claimed to have been a member for 17 years from 1993 to 2009. By his statement, he put his membership at 18 years from 1995 to 2012 making the point that in later years his annual subscription had been waived in return for his services as the Club's coach. Finally, by his skeleton argument he put his membership at 16 years from 1997 to 2012.

(b) The Club's records do not support Bob Rodgers' original claims to have been a member from either 1993 or 1995. In my judgment, he was right in his skeleton argument to restrict his claim to the period from 1997.

(c) Mrs Owen told me that Bob Rodgers had been the captain of the men's team right up until 2012. She confirmed his claim, and I find, that his subscriptions had been waived in lieu of services provided as the Club's coach.

52.5 Roy Henry Peter Rodgers, 6 years:

(a) Roy Rodgers initially claimed 8 years' membership from 1993 to 2000. By his statement, he added a claim for 2001, but by his skeleton argument he restricted his claim to the 6 years from 1996 to 2001.

(b) The Club's records do not support Roy Rodgers' original claims in respect of 1993 to 1995. In my judgment, he was right in his skeleton argument to restrict his claim to 1996 to 2001.

52.6 Sandip Patel, 16 years:

(a) Mr Patel initially claimed to have been a member for the 11 years from 1999 to 2009. By his statement, this was enlarged to a 15-year claim for the years 1998 to 2012.

(b) The Club's records actually show that he joined in 1997. There are, however, gaps in the evidence in that there is nothing in the records to corroborate his claims in respect of 2004, 2006, 2007 or 2008. While at first blush it might be difficult to see how Mr Patel's membership could have been repeatedly missed, he is not the only defendant who was definitely a member before 2004, in 2005 and after 2007 and yet for whom these four years are missing from the records. Accordingly, and on the balance of probabilities, I accept that Mr Patel's membership was continuous from 1997 to 2012.

52.7 Arthur Denny (or Denny Arthur), 10 years:

(a) There was some doubt at trial as to whether this member's name was Arthur Denny or Denny Arthur. Although he gave very little assistance in calculating his potential claim, the Club's records show, and I find, that he was a member in each of the 9 years from 2003 to 2011.

(b) In addition, both Claimants told me that Mr Denny was a member right up until the end. He was part of the last regular four that played at the Club. Accordingly, on the balance of probabilities, I find that he was also a member in 2012.

52.8 John Christopher Sayer, 9 years: The Club's records show, and I find, that Mr Sayer was a member in each of the years from 1967 to 1975.

52.9 Sandra Judith Staples (née Burditt), 11 years: While Mrs Staples initially claimed membership from 1988 to 1999, she abandoned her claim for 1999 by her statement. Such amended claim accords with the Club's Records.

52.10 Ann Denise Burditt, 14 years:

(a) Miss Burditt originally claimed 14 years' membership from 1988 to 2001. This was increased to 15 years by the addition of a claim for 2002 in her statement.

(b) The Club's records support her claim to have been a member right up until 2002 but indicate, and I find, that she did not join until 1989.

52.11 Amit Ruparelia, 7 years: Mr Ruparelia initially claimed 10 years' membership from 1998 to 2007. By his statement, he reduced his claim to the 8 years from 1999 to 2006. While the Club's records support his claim from 1999 to 2005, they indicate, and I find on the balance of probabilities, that he was no longer a member in 2006.

52.12 Thorsten Nilsson, 4 years: Mr Nilsson has consistently asserted an 11-year claim, albeit his dates moved from 1992-2002 to 1993-2003. In fact, the Club's records indicate, and I find, that he was only a member from 1996 to 1999.

52.13 Kishan Sangani, 7 years: Mr Sangani claims 10 years' membership from 1998 to 2007. In fact, the Club's records indicate, and I find, that he was only a member from 1999 to 2005.

52.14 Alpen Khagram, 10 years:

(a) Mr Khagram initially claimed 15 years' membership from 1995 to 2009. By his statement, he reduced this to the 12 years from 1998 to 2009.

(b) In fact, the Club's records evidence his membership from 1997 to 2003 and then in 2005. There is also an entry for 2011.

(c) Given that he was definitely a member before 2004 and again in 2005, and given the similar position of Mr Patel, I find on the balance of probabilities that Mr Khagram's membership was continuous from 1997 to 2005. It appears, and I find on the balance of probabilities, that he then left the Club but re-joined for the 2011 year.

52.15 Keith Hardy, 27 years: Mr Hardy initially claimed 28 years' membership from 1982 to 2009. By his statement, he reduced his claim to the 27 years from 1983 to 2009. In fact, the Club's records show, and I find, that he was probably a member in 1982 but that he did not renew in 2009.

52.16 Raaj Sangani, 7 years: Mr Sangani initially claimed 10 years' membership from 1998 to 2007. By his statement, he reduced his claim

to the 8 years from 1999 to 2006. While the Club's records support his claim from 1999 to 2005, they indicate, and I find on the balance of probabilities, that he was no longer a member in 2006.

52.17 Heather Hurle, 46 years:

(a) Miss Hurle initially claimed at least 46 years' membership from 1955 until after 2000. By her statement, this was reduced to 45 years, being 1955 to 1969 and 1971 until after 2000.

(b) The records for the 1950s are patchy. There is evidence to support her claim from 1959. As she herself asserted, there is evidence of a break in membership a decade later, but the missing years were a little longer than she recalls (1970, 1971 and 1972) before she re-joined in 1973. Her membership continued, however, right up to 2007. In all the records support her claim for 46 years' membership, and I so find, despite the actual years being slightly different from those that she recalled.

52.18 Nicholas Hurle, 17 years:

(a) Mr Hurle initially claimed around 22 years' membership from 1955 until the late 1970s. By his statement, this was reduced to 16 years, being 1955 until about 1970.

(b) In fact, the records support a claim for membership from 1958 until 1974.

52.19 Helen Dolan (formerly Stewart), 7 years: The Club's records support Ms Dolan's claim for 7 years' membership from 1992 to 1998.

52.20 Anish Ruparelia, 9 years:

(a) Anish Ruparelia initially claimed 12 years' membership from 1998 to 2009. By his statement, he reduced his claim to the 11 years from 2000 to 2010.

(b) In fact, the Club's records evidence his membership from 2000 to 2006 and then in 2009 and 2012, he having been present at the EGM on 23 October 2012. While, if it were a matter of a single missing year or two between proven periods of membership, it might be possible to infer that membership had been continuous, the lack of any evidence to prove membership in each of 2007, 2008 and 2010 and the fact that there is no claim for membership in 2011 before the apparent (but unclaimed) evidence of membership in 2012 lead me to the conclusion, and I so find, that the records are to be preferred.

COSTS

53. In my judgment, the trustees have throughout this matter acted reasonably and with admirable attention to detail. They plainly needed the Court's directions given the impossibility of convening an effective general meeting of the Club. Given the uncertainty created by the rules, they reasonably required guidance from the Court as to the proper approach to distribution of the net assets. Further, in view of the width of the class of members and former members entitled to a share of the net proceeds of sale, they reasonably required the assistance of the Court in evaluating the competing claims.

54. Of course, the trustees faced a conflict of interest in that they were also long-serving members of the Club with potentially significant claims in its dissolution. Far from seeking to maximise their own shares, I have been impressed by the fair and even-handed way in which they have sought to evaluate members' individual claims. I have no hesitation in ordering that the trustees are entitled to an indemnity from the proceeds of sale in respect of the costs and expenses properly incurred in dealing with the property, the sale and these proceedings.