[2022] EWHC 486 (Ch)

IN THE HIGH COURT OF JUSTICE **Claim No. BL-2018-001572**

BUSINESS AND PROPERTY COURTS

OF ENGLAND AND WALES

BUSINESS LIST (ChD)

BEFORE ANDREW HOCHHAUSER QC, sitting as a Deputy Judge of the High Court

Royal Courts of Justice

Rolls Building, Fetter Lane,

London, EC4A 1NL

Date: 7 March 2022

BETWEEN: -

(1) DAVID BACCI

(2) MICHAEL BOYLE

(3) PAUL MUNDY

(4) MAREK ZWIEFKA-SIBLEY

(by way of an assignment dated 27 March 2020

by the Joint Administrators of FundingSecure Ltd)

Claimants/Applicants

- and -

MR MATTHEW GREEN

Defendant/Respondent

- and -

THE TRUSTEES OF THE RICHARD GREEN (FINE PAINTINGS) EXECUTIVE PENSION SCHEME

Interested Party

Saaman Pourghadiri (instructed by CANDEY Limited) for the Claimants,

Fenner Moeran QC (instructed by Mr Richard Quinn of Sehgal & Co) for the Defendant,

Michael Ashdown (instructed by Blake Morgan LLP) for the Interested Party, and

Robert Purdie (instructed by Landau & Cohen) for Mrs Green

Hearing date: 2 March 2022

APPROVED JUDGMENT

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be Monday 7 March 2022 at 3pm

I direct that pursuant to CPR PD 29A 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 ANDREW HOCHHAUSER QC

Introduction

1. This is the hearing of the Claimants' application, by an Application Notice dated 2 June 2021, for orders designed to enable the Claimants to enforce a judgment previously obtained against the Defendant, Mr Matthew Green ("**Mr Green**"), in the sum of £3,233,625.76 and costs against his beneficial interest in the Richard Green (Fine Paintings) Executive Pension Scheme, ("**the Pension Scheme**"). which is an HMRC registered money purchase occupational pension scheme ("**OPS**"). The Interested Party comprises the present trustees of the Scheme ("**the Trustees**").

2. Mrs Allison Green ("**Mrs Green**"), the estranged wife of the Defendant, has also appeared by Counsel, who has made representations on her behalf in relation to the impact of the Pension Sharing Order ("**PSO**") recently made by Moor J on 28 February 2022, pursuant to s.24B of the Matrimonial Causes Act 1973. Mr and Mrs Green married on 15 October 1990 and separated in October 2017. Mrs Green presented a divorce petition on 23 October 2017. A decree nisi of divorce was pronounced on 16 July 2018 but has not yet been made absolute. An application has been made for the decree to be made absolute, whereupon the Trustees can implement the pension share on that date or 28 days from the date of Moor J's Order, whichever is the later

Representation

3. At the hearing the Claimants were represented by Saaman Pourghadiri, Mr Green by Fenner Moeran QC, the Trustees by Michael Ashdown and Mrs Green by Robert Purdie. As I stated at the conclusion of the hearing on Wednesday, 2 March 2022, I am most grateful for the able written and oral submissions of all Counsel.

4. At the conclusion of the hearing, I indicated that I was willing to grant the relief sought by the Claimants, subject to amendments to their revised draft Order, to take account of certain points taken by the Trustees and Mrs Green. This judgment sets out my reasons for that decision.

Background

5. In 2017 the Defendant sought and obtained financing from FundingSecure Ltd ("**FSL**"), a peer-to-peer lender. Mr Green purportedly secured the loans by way of mortgages over various artworks that he either did not own or had pledged or sold to a third party. As a result, the mortgages were not effective and, as was ultimately found upon the disposal of the Claimants' summary judgment application in their deceit claim, Mr Green acted dishonestly in relation to the loans.

6. The result was:

   (1) since 26 July 2018 Mr Green has been subject to a worldwide Freezing Order ("**WWFO**") in the sum of £2,908, 987.74. This was originally made by Barling J on that date, continued by Ms Julia Dias QC, sitting as a deputy Judge of the High Court, on 29 January 2019 (" **the January 2019 Order**") "until further order", and varied first by Mann J on 4 March 2019, and then by Fancourt J on 2 October 2019. The WWFO enables Mr Green to spend £500 per week towards his ordinary living expenses;

   (2) a judgment against Mr Green in the sum of £3,233,625.76 and costs: see paragraphs 1 and 2of the January 2019 Order.

7. The dishonesty element of the judgment debt is important because this meant that Mr Green's debts were incurred in respect of "*fraud*" within the meaning of s.281(3) of the Insolvency Act 1986 ("**the 1986 Act**"). S.281(3) provides: "Discharge does not release

the bankrupt from any bankruptcy debt which he incurred in respect of, or forbearance in respect of which was secured by means of, any fraud or fraudulent breach of trust to which he was a party." The third recital of the January 2019 Order made clear that the Court considered that the judgment debt set out therein was incurred in respect of Mr Green's fraud within the meaning of that subsection of the 1986 Act. The consequence of this is that bankruptcy does not extinguish the relevant debt.

8. The judgment creditor, FSL, went into administration on 23 October 2019. The Claimants took an assignment of the judgment debt. As part of that arrangement, 25% of the recoveries from this action will be paid to FSL, which in turn will return those sums to investors, including 1,393 individual investors. The Claimants are four of those individual investors. They personally lent some £811,000 of the total sums loaned to Mr Green, all of which they lost due to his fraud.

9. Mr Green was declared bankrupt on 25 February 2019. As a result of that bankruptcy most types of his assets fell into his estate in bankruptcy. However, pursuant to s.11 of the Welfare Reform and Pensions Act 1999, one exception to this was his rights under the Pension Scheme.

10. Given his bankruptcy, his interest as a member ("**Member**") of the Pension Scheme is now Mr Green's primary asset, and the Claimants are seeking to enforce their bankruptcy-surviving judgment against it.

11. The Claimants initially sought to enforce their judgment by obtaining a charging order over Mr Green's interest in the Pension Scheme. This failed, essentially on the basis that there is statutory protection against charging an interest under an OPS: see s.91 of the Pensions Act 1995.

12. The Claimants seek to enforce their judgment by means of obtaining directions – effectively injunctions - under s.37 of the Senior Courts Act 1981 – as set out in the Claimant's revised draft order that Mr Green delegate to the Claimants by CANDEY Limited ("**CANDEY**"), their solicitors:

a. his power to notify HMRC "*that he is revoking his Enhanced Protection concerning his lifetime allowance*". The relevant statutory provision is under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006/131 reg.4(8) and requires the taxpayer to notify HMRC that he "*no longer wishes to rely on paragraph 12*" of Schedule 36 to the Finance Act 2004 ("**the 2004 Act**")
b. his right to call for a lump sum under the Pension Scheme;
c. his right to call for a pension under the Pension Scheme.

13. The Claimants seek the authority to exercise those delegated powers by giving notice to the Trustees, so that on 28 October 2022, when Mr Green turns 55 (the minimum age for taking a lump sum and/or pension), they can call for both a pension commencement lump sum ("**PCLS**") (i.e. the tax free cash lump sum) as well as a Lifetime Allowance Excess Lump Sum ("**LAELS**") (i.e. a lump sum subject to a 55% tax charge) as well as a pension from the remaining pension funds. Those lump sums and pensions would be paid into one of Mr Green's bank accounts as nominated by the Claimants.

14. At that stage, the Claimants then intend to seek recovery of the judgment debt out of that nominated bank account by means of a third party debt order, if not volunteered by Mr Green.

15. I should add that Mr Green has also been indicted by the Department of Justice of the United States of America for his involvement in a money laundering scheme. In early 2019, Mr Green was concerned not to enter the United Kingdom for fear of extradition to the United States. He currently resides in Alicante, Spain.

The Pension Scheme

16. The Pension Scheme's only asset is a freehold property at 33 New Bond Street, London W1 ("**the Property**"), which was last valued in 2019 at some £55 million. The Trustees are members of Mr Green's family. Mr Green was himself a Trustee at the time the most recent Trust Deed and its Rules ("**the Rules**") were executed.

17. The interest of a Member in the Pension Scheme is his or her "Accumulated Credit", as defined by Rule 4(e). I was informed that Mr Green's Accumulated Credit is presently calculated as 20.07% of the total Fund, which is calculated by reference to the value of the Property.

18. Pursuant to Rule 5, once a Member notifies the Trustees of his election to receive pension benefits from the Scheme, the Trustees are required to:

    "realise sufficient of the assets of the Fund to produce a sum equal to the Member's Accumulated Credit (or a part thereof, as the Member shall direct) and apply the same by providing benefits in accordance with the Member's instructions (subject to complying with the provisions of Part Ill of this Schedule)."

19. Rule 11 of the Scheme Rules effectively prohibits the benefits from being assignable to another person. That, of course, is concerned with the rights under the Scheme. Once a payment has been made by the Scheme to the Member, such that he has funds in his bank account, he can freely assign those funds.

20. Part III of the Schedule to the Rules specifies the types of payment which may be made to, or in respect of, any Member. Those Rules, in effect, follow the authorised member payments regime in the 2004 Act and prohibit unauthorised payments.

21. As stated earlier, Mr Green is entitled to receive payments from the Scheme from the day he turns 55.

22. Rule 4 of Part III of the Schedule sets out the lump sum payments a Member is entitled to. For present purposes, the following are relevant:

    (1) The PCLS**,** being the tax-free lump sum which a Member is entitled to take at the outset of drawing down on their pension benefits. It is typically calculated as 25% of the total pension up to the applicable Lifetime Allowance, being the maximum total pension benefits a person can have, without being subject to tax charges). To access the PCLS a Member is required to begin receiving their regular pension payments.

    (2) The LAELS**,** being a lump sum payment that a Member can elect to receive if they have exhausted their Lifetime Allowance and they have benefits in excess of this. Such lump sum payments are subject to a 55% tax charge which is paid directly by the Scheme.

23. The regular payments of pension which a Member is entitled to pursuant to the Scheme rules are a Scheme Pension, Lifetime Annuity, Unsecured Pension or Alternatively-Secured Pension – see Rules 4 and 6. These are each different means by which regular pension payments can be received by the Member.

24. When the regime of the 2004 Act was introduced, Members who had pension benefits over a certain value were entitled to apply for "Enhanced Protection" (see paragraphs 12-17A of Schedule 36 to the 2004 Act).

25. Mr Green did in fact apply for and receive Enhanced Protection. The effect of this Enhanced Protection was that Mr Green was not subject to the Lifetime Allowance. However, pursuant to paragraph 12(3)(b) of Schedule 36 to the 2004 Act, the payment of a LAELS to the individual is not permitted.

26. As HMRC's letter dated 20 December 2007 to Mr Green made clear, a Member is entitled to notify HMRC that they no longer wish to benefit from Enhanced Protection (see Regulation 4(8)(c) of the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006/131).

27. The effect of this will be that a Member will lose their Enhanced Protection. Albeit having lost Enhanced Protection, that Member can benefit from "Individual Protection 2016" which would set the Lifetime Allowance at £1.25m: see paragraphs 9-13 of Schedule 4, Part 2 to the Finance Act 2016.

28. The effect of renouncing Enhanced Protection is that the Member becomes entitled to the LAELS.

29. Thus, Mr Green has a pension fund worth around £8.5m, although 56.1% of that now belongs to Mrs Green as a result of the PSO. That fund is subject to various rules governing the means by which Mr Green can elect to receive his benefits. However, there is a route through which Mr Green can immediately access a substantial proportion of that fund (albeit subject to a tax charge, which will be far greater than it would have been if the Enhanced Protection were still in place). With the Enhanced Protection in place, Mr Green would have been entitled to a PCLS £375,000. If this protection is revoked, that sum reduces to £312,500, with the benefit of Individual Protection 2016, but Mr Green will also be entitled to a LAELS payment of about £1.3m. That will still leave a sum of

about £1m to provide him with a pension, but, until the WWFO is discharged, he will be subject to the limit of £500 per week towards his ordinary living expenses.

The Claimants submissions in support of the relief sought

30. The Claimants rely upon the decision of Mr Gabriel Moss QC, sitting as a Deputy Judge of the High Court) in the case of *Blight v Brewster* [2012] EWHC 165 (Ch), [2012] 1 WLR 2841, in relation to the orders presently sought.

31. There are a number of similarities between the facts of that case and the present one. There the claimants were the victims of a fraud perpetrated by the defendant and obtained summary judgment against him. Amongst his assets was an interest in a pension scheme. The defendant was entitled to draw down a PCLS comprising 25% of his total pension benefits from the scheme.

32. At [75]-[76], Gabriel Moss QC held that the Court could order the defendant to delegate his power to elect to receive the PCLS to the claimant's solicitors. The delegation to the solicitors was a proportionate shortcut to the appointment of a receiver by way of equitable execution pursuant to s.37(1) Senior Courts Act 1981 ("**s.37(1)**").

33. Mr Pourghadiri submits that, by parity of reasoning, the Court should order that the power to draw the PCLS is delegated to CANDEY, the Claimants' solicitors. As the judge in *Blight v Brewster* made clear at [76] *"There is no question here of assigning the right to make the election: there is simply a question of authorising another party to act on the defendant's behalf."* As such, the prohibition on assignment at Rule 11 is not breached. It is accepted on behalf of Mr Green that such a course would not amount to a breach.

34. The Claimants also ask the Court to order that Mr Green delegate to CANDEY his power to elect to revoke his Enhanced Protection, together with the right to elect to receive the LAELS and other pension payments. They submit the delegation of these powers is consistent with authority. The extent of the power to appoint a receiver by way of equitable execution was authoritatively set out by the Privy Council in *Tasarruf v Merrill Lynch* [2011] UKPC 17, [2012] 1 WLR 1721. At [56], the Privy Council cited *Masri (No.2)* [2009] QB 450 as confirming or establishing the following principles:

> "*the court was not bound by pre-1873 practice to abstain from incremental development. The jurisdiction could be exercised to apply old principles to new situations. Masri (No 2) confirms or establishes the following principles*:

(1) *the demands of justice are the overriding consideration in considering the scope of the jurisdiction under section 37(1);*

(2) the court has power to grant injunctions and appoint receivers in circumstances where no injunction would have been granted or receiver appointed before 1873;

(3) a receiver by way of equitable execution may be appointed over an asset whether or not the asset is presently amenable to execution at law; and

(4) the jurisdiction to appoint receivers by way of equitable execution can be developed incrementally to apply old principles to new situations."

35. The power in question in *Tasarruf* was the power to revoke a trust. The Privy Council held at [59] that such a power could be regarded as the defendant having ownership of the assets which were the subject of the power. Critically this was because the power was not a fiduciary power, rather the only discretion was whether the defendant wished to exercise the power in his own interest: see [62].

36. Mr Pourghadiri submits the analogy with the powers in question in this case is plain. The powers are not fiduciary in nature. They are available to Mr Green for him to exercise at his own absolute discretion. The effect of the exercise of them is to give him a direct enforceable right to very large sums of money. In his reply submissions, Mr Pourghadiri submitted that the fact that there is a two stage process: first the revocation of the Enhanced Protection and secondly the election to draw down on his pension, does not amount to an impermissible extension of *Blight v Brewster* because they are an integral part of a process by which the Claimants are able to access an LAELS payment.

37. In the present case, Mr Pourghadiri contends the demands of justice are irresistible. As Mr Gabriel Moss QC put it when rejecting the suggestion that he could not make the order proposed:

"*60. As a matter of impression, if this were correct then this would work a substantial injustice to the claimants, who have been the victims of fraud and forgery. The idea that the fraudster and forgerer can enjoy an enhanced standard of living at his retirement instead of paying the judgment debt would be a very unattractive conclusion. The defendant clearly has the means of paying the 25% to the claimants: all he has to do is to give notice to Canada Life.*

...

70 … There appears to me to be a strong principle and policy of justice to the effect that debtors should not be allowed to hide their assets in pension funds when they had a right to withdraw moneys needed to pay their creditors."

38. In *Blight v Brewster* the scheme appears to have been a personal pension scheme. In the present case it is an OPS. There appears to be established precedent in the Family Division of *Blight v Brewster* orders being granted in respect of OPSs. Similar principles therefore can be applied here. I do not understand Mr Moeran to suggest the contrary.

39. S.91 of the Pensions Act 1995 ("**the 1995 Act**") applies to OPSs. It states:

"(1) Subject to subsection (5), where a person is entitled to a pension under an occupational pension scheme or has a right to a future pension under such a scheme

(a) the entitlement or right cannot be assigned, commuted, or surrendered,

(b) the entitlement or right cannot be charged or a lien exercised in respect of it, and

(c) no set-off can be exercised in respect of it,

and an agreement to effect any of those things is unenforceable.

(2) Where by virtue of this section a person's entitlement to a pension under an occupational pension scheme, or right to a future pension under such a scheme, cannot, apart from subsection (5), be assigned, no order can be made by any court the effect of which would be that he would be restrained from receiving that pension.

(4) Subsection (2) does not prevent the making of—

(a) an attachment of earnings order under the Attachment of Earnings Act 1971, or

(b) an income payments order under the Insolvency Act 1986."

40. S.91 of the 1995 Act does not prevent the Court granting the Order. The Order does not have the effect of restraining Mr Green from receiving the pension. It does the precise opposite - it ensures that payment of Mr Green's pension is effected, rather than remaining trapped in the Fund. Again, as a matter of principle, Mr Moeran does not rely upon s.91 of the 1995 Act to oppose the orders sought.

41. The Claimants also seek an order that also requires Mr Green to disclose his bank account details such that it is known to what account payment can be made. The funds in such an account would be frozen pursuant to the WWFO.

42. Before turning to the submissions made by Mr Moeran on behalf of the Mr Green, I should deal with the position of the Trustees and Mrs Green.

The Trustees' position

43. The Trustees are taking a neutral position on the merits of the Claimants' application. They wish to safeguard the interests of the Scheme as a whole, in circumstances where it is proposed to make mandatory orders against the Trustees, and to ensure that whatever Order is made is one which the Trustees can carry into effect without undue difficulty.

44. To that end, they wish the following points to be considered in the event an order is made:

    (1) Any order made should make clear that it only confers on the Claimants or CANDEY rights which Mr Green already has under the Trust Deed and Rules, and do not purport to confer any right to receive a lump sum or pension to which Mr Green would not otherwise be entitled under the Rules;

    (2) CANDEY's right to choose which bank account belonging to Mr Green should receive his pension payments should be limited to UK bank accounts denominated in sterling, simply to avoid difficulty with actually making the payments;

    (3) Finally, the Trustees ask that the present order make express reference to the PSO and make clear that the rights conferred on the Claimants or CANDEY by the order relate only to that part of Mr Green's entitlement which is not affected by the PSO.

45. The Claimants do not oppose any of these points, save that in the event that Mr Green does not have a UK bank account, then they should be permitted to nominate one of his foreign bank accounts. I accept this reservation, but otherwise the order should accommodate all the points made.

Mrs Green's position

46. The position of Allison Green is that the WWFO does not prevent Matthew Green from complying with the PSO. Any claim for a *Blight v Brewster* provision can only be effective against that part of Matthew Green's pension that remains to him after complying with the PSO. Provided that the PSO is implemented, Mrs Green has no further interest in these proceedings. She has no interest in Mr Green's tax position. She

too seeks the amendment to the Claimants' revised draft order sought by the Trustees as set out at paragraph 44(3) above.

Mr Green's submissions

47. In his detailed and careful submissions, Mr Moeran developed two principal points:

(1) the Court had no jurisdiction to make the order sought.

(2) if, which is denied, it did have jurisdiction, in the exercise of its discretion, the Court should not make an order which required Mr Green to terminate his Enhanced Protection.

No jurisdiction – Mr Green's submissions

48. Mr Moeran contended that the course proposed by the Claimants was an impermissible extension of the principle in *Blight v Brewster*. He accepted that (a) there is property for the purposes of the s.37(1) jurisdiction in relation to a non-bankrupt member's unfettered right to call for a lump sum and (b) further, in principle, this also applies to the power to call for an annuity as and when it arises.

49. However, what is not property for s.37(1) purposes is the power to terminate Enhanced Protection, or any property which such an action would be made available for execution by exercising such a power. At its heart such a power is not anything like property – it is neither a power to appoint nor a power to call for property:

(i) it does not give a right to call for or direct payment of property.

(ii) it does not trigger a transfer of property.

(iii) it does not give unfettered access to property.

(iv) all it does is change the tax treatment of property.

50. Mr Moeran drew my attention to [59] of *Tasarruf* and the conclusion that: "*The powers of revocation are such that in equity, in the circumstances of a case such as this, Mr Demirel can be regarded as having rights tantamount to ownership*". As such the interests of justice required an order appointing a receiver and delegating to them the power to revoke the settlement: see [59] to [61]. At [57]-[58], however, the Privy Council, observed:

"57. Masri (No 2) also confirmed that section 37(1) does not confer an unfettered power. It pointed out that there are many decisions on the injunctive power to that effect: South Carolina Insurance Co v Assurantie Maatschappij "De Zeven Provincien" NV [1987] AC 24 , 40, per Lord Brandon of Oakbrook: "although the terms of section 37(1) of the Act of 1981 and its predecessors are very wide, the power conferred by them has been circumscribed by judicial authority dating back many years…"
"58. So too in Masri (No 2) [2009] QB 450 it was confirmed that the power to appoint receivers under section 37(1) is also not unfettered, and Lawrence Collins LJ said, at para 180, that it was doubtful whether suggestions by Sir John Donaldson MR and Browne-Wilkinson LJ in Parker v Camden London Borough Council [1986] Ch 162 , 173 and 176, that the jurisdiction to appoint a receiver is unlimited, could stand with the rejection by the House of Lords in P v Liverpool Daily Post and Echo Newspapers plc [1991] 2 AC 370 , 420–421 of similar statements by Lord Denning MR in Chief Constable of Kent v V [1983] QB 34 , 42, in relation to the power to grant injunctions.

51. Although the Privy Council at [59] nonetheless held that:

"*In the opinions of their Lordships the decisions in Masri (No 2)…and its predecessors lead to the conclusions that in the present case the jurisdiction should be exercised. The powers of revocation are such that, in equity, in the circumstances of a case such as this, Mr Demirel can be regarded as having rights tantamount to ownership*.",

Mr Moeran submitted that the powers of execution are not available where what is being done is not execution, or assistance in execution, against an asset of the debtor - but rather it is to fundamentally alter the debtor's position so that there come into existence assets against which execution can then be made. In this regard he relied upon the dicta of Lord Hoffman's dicta (with which Lords Nicholls, Hobhouse and Millett agreed) [54] and [62] in *Société Eram Shipping Co Ltd v Cie Internationale de Navigation* [2004] 1 AC 260, and as was quoted in Masri (No.2) at paragraph 45:

52. In summary, it was submitted that the proposed order changes the nature of the exercise of the power from execution against an asset to changing a debtor's position so as to create (at a cost to him) an asset on which execution can be levied. Whilst creditors have a right to payment, they do not have a right to make the debtor incur greater liabilities so that they can be paid.

Mr Green's submission that no order should be made under s.37(1)

53. On the basis that I found the Court had jurisdiction to make the order sought, Mr Moeran submitted I should not make an order under s.37(1). He set out the history of the position on pensions on bankruptcy and the 1993 Report of the Pensions Law Review Committee

("**the Goode Report**"), which recommended that pensions should not fall into bankruptcy. I do not set out all those submissions here, which I have carefully considered. Suffice it to say that the legislation which resulted from the Goode Report, namely the Pensions Act 1995 ("**the 1995 Act**"), by s.91(3) excluded from the estate in bankruptcy any entitlement or right under an OPS, although OPS forfeiture provisions on bankruptcy were preserved by s.92(1). However, as effectively a quid pro quo and to protect creditors from abuse of this regime s.95 of the 1995 Act also inserted section 342A-342C into the 1986 Act, which allow for recovery by the trustee in bankruptcy of excessive pension contributions by the bankrupt.

54. Mr Moeran submitted that the aim of the legislation has been clearly to provide protection for Members' pensions on bankruptcy and against creditors, as has been recognised by the Court of Appeal in *Horton v Henry* [2016] EWCA Civ 989, [2017] 1 WLR 391 at [45]. In this case, however, the creditors are seeking to take advantage of the fact that their debt was not extinguished by the termination of the bankruptcy so as to circumvent this public policy. Whilst a debtor must enter bankruptcy to avail themselves of the protection against creditors, it would be contrary to public policy to exercise the powers of execution over Mr Green's pension rights – particularly where that public policy has resulted in the exclusion of the bankruptcy forfeiture provisions of the Pension Scheme for the purpose of protecting his right to a pension.

55. Finally, it is submitted that it is not "just, equitable or convenient" to make an order against Mr Green. He has already gone bankrupt. He has not sought to abuse the system and there is no suggestion that the benefits to which he is entitled under the Pension Scheme are in any way the result of dishonesty or the events giving rise to the judgment debt. Making the proposed order will trigger a substantial additional tax charge, although in oral submissions Mr Moeran candidly admitted that the loss of Enhanced Protection is unlikely to have any practical effect on Mr Green, given his personal circumstances and the existing WWFO. The value of maintaining it is its impact on what Mr Moeran described as a "contingent future event", namely the ability to reach a compromise with the Claimants.

Discussion and conclusion

56. In my judgment the Court does have jurisdiction to make the orders sought by the Claimants in the present case. I reach that conclusion for the following reasons:

    (1) I do not regard the order in relation to revocation of the Enhanced Protection as an impermissible extension of *Blight v Brewster*. In my view, it is wrong to regard the act of revocation of Enhanced Protection in isolation, as opposed to being an integral part of the means of obtaining immediate access to Mr Green's property, namely the LAELS. Such a revocation is the only way that access to that asset could be obtained. I accept the submissions made in reply on behalf of the Claimants that, taken together with the other order referred to paragraph 12(b) above, the two-stage exercise must be regarded as part of an overall process of getting access to an asset owned by Mr Green. I note that that paragraph 4 of the WWFO provides:

        "*For the purpose of this order the Respondent's assets include any asset which he has the power, directly or indirectly to dispose or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.*" ;

        Regarding these as two steps as part of one exercise is consistent with that paragraph in the WWFO;

    (2) In my view, there is no public policy which prevents the s.37(1) jurisdiction from being exercised. On the contrary, the overriding public policy consideration is that contained in s.281(3) of the 1986 Act, which was expressly referred to in the January 2019 Order when granting the Claimants summary judgment. Fraudsters should not prosper. I refer in particular to [60] and [70] of the judgment of Mr Gabriel Moss QC, set out at paragraph 37 above.

    (3) In the exercise of my discretion, I find that it is just, equitable and convenient to make the orders sought by the Claimants, subject to the necessary amendments to take account of the points made by the Trustees and Mrs Green set out above. There are compelling reasons for the Claimants, who are amongst those who have been defrauded by Mr Green to be able to have

access to his money to satisfy the judgment debt. None of the points made on behalf of Mr Green set out at paragraph 55 above detract from this. Indeed, the fact that the revocation of the Enhanced Protection is unlikely to have any practical impact upon him is a point in favour of granting the relief sought, not for declining to make it. I attach little weight to the possible impact on the future contingent event of a compromise with the Claimants.

57. I invite the parties to agree a draft Order reflecting this decision and I will hear the parties on any consequential matters.