



Neutral Citation Number: [2023] EWHC 107 (Ch)

Case No: PT-2018-000556

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY TRUST AND PROBATE LIST (CH)**

Royal Courts of Justice  
Rolls Building, Fetter Lane EC4A 1NL

Date: 25/01/2023

**Before :**

**DEPUTY MASTER BOWLES**

**Between :**

**Rollerteam Limited**

**- and -**

**(1) Linda Riley**

**--and-**

**(2) Stephen Riley**

**Claimant**

**Defendants**

**Stephanie Jarron** (instructed by Direct Access) for the **Claimant**  
**Cheryl Jones** (instructed by Direct Access) for the **1<sup>st</sup> Defendant**  
**Mark Dencer** (instructed by Dr Anton van Dellen) for the **2<sup>nd</sup> Defendant**

Hearing dates: 11, 12 and 13 October 2022

**Approved Judgment**

I direct that pursuant to CPR PD 39A 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.

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**DEPUTY MASTER BOWLES**

**Deputy Master Bowles :**

1. The Claimant, Rollerteam Ltd (Rollerteam) was incorporated in 1984 by Mr John Aidiniantz (who, without, I hope, discourtesy I will refer to as John). John is the director and controlling mind of Rollerteam, although, as set out later in this judgment, this has not, at all times, been the case.
2. In these proceedings, issued on 18 July 2018, Rollerteam advances a number of claim against the first Defendant, John's half-sister, Linda Riley (Linda), arising out of her alleged conduct, as trustee, in respect of a trust deed, dated 11<sup>th</sup> April 2013 (the trust deed), pursuant to which Linda holds a property at 1 Parkgate Road, in Battersea (Parkgate), upon trust for Rollerteam.
3. The pleaded claims include a claim, for possession and sale of Parkgate, pursuant to the Trusts of Land and Appointment of Trustees Act 1996 (the 1996 Act), an order for sale pursuant to the terms of the trust deed, in both cases with vacant possession, alternatively the transfer of Parkgate to Rollerteam, again with vacant possession, together with claims for an account and damages, arising out of Linda's conduct, in breach of trust, in respect of her trusteeship of Parkgate. Linda defends these claims and counterclaims in respect of Rollerteam's failures to reimburse her for expenditure and, in particular, mortgage payments that she has been called upon to pay pursuant to the trust deed.
4. The claims for sale have not been pursued. Nor, for reasons explained later in this judgment, has the court been called upon, at this stage, to grant relief pursuant to the 1996 Act
5. At essence, however the issue before the court, albeit with a number of ramifications, is whether Linda, in circumstances where Rollerteam, as beneficial owner, has required her either to effect a transfer of Parkgate to Rollerteam, or to effect a sale of Parkgate, in either case with vacant possession, has been obliged to procure, or effect, a transfer, or sale, of Parkgate with vacant possession, such that her failure to effect such a sale, or transfer, has placed her in breach of the terms of the trust deed.
6. Underlying and closely linked with that question has been the question of the status, at Parkgate, of its current occupants and, specifically, whether Rollerteam's beneficial ownership of Parkgate is subject to any binding rights of occupation in favour of those occupants, or any of them, such as to preclude any sale with vacant possession, or whether, as submitted upon behalf of Rollerteam, Linda in allowing the current occupants to continue in occupation, has, in so doing, been in further breach of the terms of the trust deed.
7. The focus, in respect of these issues of occupancy has been the second Defendant, Stephen Riley (Stephen). Stephen is Linda's younger brother and half-brother of John. He has lived at Parkgate since 1997. Stephen was joined as a party to the proceedings by my order dated 26 April 2022. That order placed certain limitations upon the arguments available to Stephen, in support of his claim to a continuing right of occupancy in respect of Parkgate. Those limitations are set out and explained later in this judgment.

8. My earlier order, dated 14 December 2021 and discussed further below, had, in addition to Stephen, given an opportunity to another long term occupant of Parkgate, a Mrs Elizabeth Mackertich (Elizabeth), to join in these proceedings. Elizabeth was served with these proceedings, pursuant to CPR 19.8A, but has failed to respond. She will, nonetheless, be bound by the result
9. In order to ensure, against the background of wide ranging and somewhat diffuse pleadings, that the court could focus upon the fundamental issues, my order of 14 December 2021 defined five core issues for determination. It was not expected, nor intended, that the determination of those core issues would produce a complete finality; rather that they would resolve the key liability questions and, also, as then intended, resolve the discretionary question as to whether a sale of Parkgate should be ordered under the 1996 Act.
10. The core issues, as set out in the 14 December order are as follows:
  1. Is Linda required to procure vacant possession of Parkgate on transfer and/or sale by reason of (a) clause 10 or any other clause in the trust deed; (b) any term which is to be implied into the trust deed; (c) Linda's duty as trustee?
  2. Does the trust deed incorporate any express or implied terms as to mutuality of obligation such as to prevent any transfer or sale without the prior reimbursement of Linda's expenses?
  3. Is Linda in breach of trust in permitting the persons in occupation at the time of the execution of the trust deed to remain in occupation and/or in failing to procure occupation rent from time to time?
  4. Did/does Rollerteam have rights to occupy Parkgate during the existence of the trust created by the trust deed?
  5. Should the court exercise its discretion under section 14 of the 1996 Act to order a sale of Parkgate and if so on what terms?

In the event, as already indicated, issue 5 does not arise for determination. Nor, in respect of issue 3, is any claim pursued in respect of occupation rent.

11. To flesh out the bones of these core issues (including the underlying occupancy issues) and to understand the circumstances in which they have arisen for determination and the context and circumstances within which, in so far as necessary, they now fall to be determined, it is necessary and helpful to set out, in some little detail, the facts out of which these issues have developed.
12. A convenient starting point is the use of Rollerteam, in 1989, as the vehicle for the purchase of 239 Baker Street and the creation of a Sherlock Holmes museum at that address. John claims the museum as his idea. It is not in doubt, however, that the acquisition of 239 Baker Street was funded, at least in part, by his mother, Grace Aidniantz (Grace) and both Linda and Stephen see the museum as the creation of their mother. At all events, as from 1992, Grace and John were the directors of Rollerteam and Linda's evidence is that, at that stage, the shares in Rollerteam, although, as already stated, incorporated by John, had been transferred to Grace. At that stage, as I

understand it, not merely Grace and John but, also, John's half-siblings, Linda, Jennifer Decoteau (Jennifer) and Stephen were involved, to a greater or lesser extent, in the day to day running of the museum. Grace died in 2015, aged eighty eight.

13. In 1994, John was convicted of mortgage fraud and spent a period of time in prison. To meet the void, caused by this event, in 1996, Linda became a director of Rollerteam, in his place. On his release, in 1997, John did not resume his position as a director of Rollerteam. In his words, in evidence, he 'stood back' from the public management of Rollerteam, while remaining the decision maker, in the background, to whom others deferred. Linda did not accept this. Her contention was that, at least at that stage, she took a full part, with her mother, in the running of Rollerteam and of the museum.
14. Be that as it may, in 1997, the family, to use a neutral term, purchased 1 Parkgate Road, in Battersea. That property (Parkgate) and the occupancy of that property has been at the heart of the current litigation,
15. Parkgate was purchased at auction for circa £150,000. There is a dispute as to whether the successful bidder, at the auction, was John, as he says, or Linda, as she says. Although John says that Linda was not present it seems highly likely that she was, given that she seems to have been the contractual purchaser and given that her evidence, not, in terms, challenged by John, was that she put down the requisite £15,000 deposit from her own funds.
16. As to the details of the purchase, Linda, as already stated, told me that she put down the deposit of £15,000 from her own funds. The balance of the purchase monies came by way of a loan from Barclays Bank. It appears that the loan was actually granted to a company, Sherlock Holmes Ltd and secured over the assets of that company. John's evidence was that, although, as already stated, standing back, he had negotiated the loan. His contention was that Rollerteam had provided the funding, via Sherlock Holmes Ltd, as Rollerteam's subsidiary. That last was not true. Although, I am sure, associated with the museum and its activities and, to that extent, Rollerteam, the Sherlock Holmes Ltd extant in 1997 was owned by Grace and Linda and was not formally connected with Rollerteam.
17. Parkgate was registered in Linda's sole name, as proprietor, in March 1997. John's evidence is that, because of his conviction, he did not want Parkgate to be registered in his name.
18. The reason underlying the purchase of Parkgate is not in dispute. It was purchased because Grace had fallen in love with Parkgate and wanted to live there. Up to that time and until, following what were, I think, substantial works of renovation, she was able to move in to Parkgate, she had lived at 5 Parkgate Road. Stephen had also lived at 5 Parkgate Road. Linda's evidence is that he had lived in a rather damp basement at that property and that one of Grace's motivations in securing Parkgate was to provide Stephen with a better quality of accommodation.
19. Works to renovate Parkgate were funded by borrowings secured, by way of debenture, over the assets of either, or both of, Rollerteam and Sherlock Holmes Ltd. Linda's evidence is that some of the borrowings also went to fund the activities of the museum. One aspect of the works was to create a residential unit on the top floor of

Parkgate. Stephen moved into that unit as soon as Parkgate was habitable, probably towards the end of 1997, and he has remained living in that unit since that date. Correspondingly, Grace moved into the lower part of Parkgate, at the same time and, at or about this same time, the registered office of Rollerteam was transferred from 5 Parkgate Road to Parkgate. Either then, or shortly later, a lock-up, or store, was constructed in the garden of Parkgate, in order to house souvenirs to be sold at the museum and that user continued, as I understand it, at least until the 2013 trust deed was entered into.

20. John does not dispute that Linda took steps to repay the funding secured over Rollerteam and/or Sherlock Holmes Ltd. Linda's evidence is that, ultimately, those borrowings were repaid by way of a re-mortgage of Parkgate, in favour of the Bank of Ireland. John does not dispute that she took on the mortgage. His evidence was that Grace was too old to do so and that, because of his conviction, he was 'out of it'. It is my understanding that this re-mortgage took place in or about 2002.
21. Throughout this period and until December 2005, Linda remained, with Grace, a director of Rollerteam. John was not a director. Linda's evidence, however, is that, as time passed John came to exert a high degree of influence both over his mother, Grace, and over the management of Rollerteam and the museum. It is certainly the case that, by 2002, in a letter, dated 15 April 2002, to a company called The Mortgage Placement Company Ltd, John was holding himself out as controlling Rollerteam and, also, although neither a director nor shareholder, as acting on behalf of Sherlock Holmes Ltd, in respect of the possible purchase by Sherlock Holmes Ltd of other properties in London
22. Linda's evidence is that, in December 2005, she resigned as a director. John disputed that this was a voluntary resignation; his suggestion being that Linda was required to resign because of cash shortfalls in Rollerteam's accounts. Surprisingly, if this was the case, Linda apparently remained a director of another associated company, Sherlock Holmes International Society Ltd.
23. In 2006, John took Linda's place as a director of Rollerteam. In the same year, in December 2006, Linda again re-mortgaged Parkgate, on this occasion to a company called Mortgage Works. This mortgage, an interest only mortgage, remains in place and stands, currently, at a figure in the order of £750,000. Linda's evidence is that, after discharging the Bank of Ireland mortgage, the additional funds drawn down, by way of the re-mortgage, were paid to Rollerteam, which, at that stage, was having cash flow difficulties. John, although, by now, restored as a director of Rollerteam, told me that he was not able to say when he became aware of the re-mortgage, or, presumably, of any injection of funds, and told me, further that, as late as 2013, when the trust deed, which, since 2013, has regulated the relationship between Linda and Rollerteam, in respect of Parkgate, was entered into, he was not aware of the details of the mortgage account.
24. The arrangements in respect of the payment of the mortgage over Parkgate, in the period from 2006 until the trust deed was entered into, are not in dispute. The practice, of what, again, I will call the family, in those years, was that monies emanating from the museum (and, therefore, largely Rollerteam monies) was conveyed in cash to Parkgate each day and, pending banking and pending determination as to the uses to be made of the monies, lodged in a safe at Parkgate. It

was from these monies that mortgage payments in respect of Parkgate were made. Prior to 2006 and in respect of the earlier mortgage arrangements, the position is, perhaps, less clear. The letter of 15 April 2002, referred to in paragraph 21, seems to suggest that, at that stage, mortgage payments, albeit treated as 'rent' for tax purposes, were already being paid out of the resources of the museum. Taken overall, I do not think it to be in much doubt that, broadly, Parkgate, prior to the conclusion of the trust deed, was, in substance, financed out of the resources of the museum.

25. In September 2012, the arrangements which had, on the whole, been operating effectively albeit somewhat informally, in respect of the museum, imploded. Allegations were made by John that the museum's cash takings were not being properly accounted for. That allegation spiralled into litigation brought by John, in the name of Rollerteam, against Linda, Jennifer and Stephen. That litigation was met by litigation, whereby Linda sued John for possession in respect of his home, a property at 1 Albion Mews, London W2 (Albion Mews), which, like Parkgate, had been held in Linda's name and where, as I understand it, like Parkgate, mortgage payments had been sourced from the museum. John's answer to that claim was that Linda had held Albion Mews as trustee and that he, John, was the beneficial owner.
26. Further litigation was commenced by Linda and Jennifer, in the name of Sherlock Holmes International Society Ltd (SHIS), against John and Rollerteam, making the serious allegation that John had been misappropriating funds, from SHIS, to the extent of some £1.75M. Grace, too, commenced litigation, alleging that the entire share capital of Rollerteam and the museum business belonged to her beneficially. As put by Stephen, the allegation was that John had stolen her company. John, in his evidence to me, described the impact of all this litigation as cataclysmic.
27. The trust deed, with which I am concerned in this case, arises out of the settlement of the body of litigation which I have just outlined. As with the arrangements which had been put in place in respect of the earlier running of the museum and the payment of what I will call the property mortgages upon Parkgate and Albion Mews, the settlement, or, at least, the negotiations leading to the settlement, were characterised by a degree of informality. The details of those negotiations and the manner in which they fed in to the eventual settlement documents are set out at some length in the judgment of Robert Englehart QC, sitting as a Deputy Judge of the Chancery Division, ([2015]EWHC 1545 (Ch)), in subsequent litigation, (the settlement litigation), between Linda and Jennifer, on the one hand, and John and Rollerteam, on the other hand. The fundamental issue in that litigation was whether negotiations between Linda and John, both oral and by email and culminating in the execution of a number of settlement documents, including the trust deed and a broadly equivalent trust deed in respect of Albion Mews, had, in fact and law, given rise to a binding contractual settlement. The conclusion of the trial judge was that it had.
28. For present purposes, I need only to outline the shape of the negotiations. They arose out of an accidental meeting between John and Linda, when, I think, visiting their mother at Parkgate, on 7 April 2013. Altercation led on to a conversation in a local café, at which the idea of a resolution of all the family disputes was raised and was perceived to be potentially productive. The following day, 8 April 2013, John and Linda met for lunch at a club, Home House. Prior to that further meeting, Linda and Jennifer spoke on the telephone to discuss potential terms for settlement. There is no evidence that Stephen was brought into the discussion.

29. The meeting on 8 April 2013 was a success. Following the meeting John prepared and sent out an email to his solicitors, Davenport Lyons, copied to Linda. Relevant to this litigation, the key elements were that Linda and Jennifer would each receive £1M, Rollerteam would be granted the beneficial ownership of Parkgate. Linda would be reimbursed outstanding mortgage instalments, since September 2012 (the date when the family arrangements had collapsed), Rollerteam would take over the mortgage payments for Parkgate and would seek funding, via the museum, to redeem Linda's mortgage at the first opportunity.
30. The email dealt, also, with Albion Mews. A trust document was to be executed by Linda in favour of John and John would reimburse Linda in respect of the mortgage over that property, upon a broadly similar basis to that proposed in respect of Parkgate.
31. Proposals were also made in respect of the ownership of SHIS and Rollerteam such as to vest ownership of both in John. Rollerteam would pay the costs of Linda and SHIS.
32. No arrangements were agreed, or proposed, or even mentioned, in respect of Stephen's occupation of Parkgate, nor in respect of Grace's occupation of Parkgate, nor in respect of Elizabeth, or any other occupant of Parkgate.
33. John's evidence was that his and Linda's discussions had embraced Stephen's position, that he had indicated that it would be his intention to sell Parkgate when Grace died and that Linda had told him that it was her intention to buy Stephen a property from the money that she was receiving from the settlement. Linda's evidence was that there had been some discussion of Stephen, that, at one stage in their discussions, when she had been seeking a settlement payment of £4M, for herself and Jennifer, she had indicated a willingness to buy Stephen a property, but that, when it became clear that an offer in that sum was not forthcoming, she had told John that he would have to speak to Stephen about his, Stephen's, future and that there had been no further discussion either as to Stephen or Grace.
34. In evidence, in the settlement litigation, Linda had said something rather different, namely that, at the time of the settlement, she had considered that she was under a duty to look after Stephen and that she had, in consequence, told John that she would make provision for Stephen out of her £1M. Asked about her position, as it was at the date of the hearing of the settlement litigation, in April 2015, she had said that her position remained the same, that Stephen trusted her and that she would look after him. Cross examined by Ms Jarron, she told me that she saw her obligations to Stephen as moral, rather than legal, and that her responses in 2015 had been made because she felt that Stephen had been 'shafted', in the settlement, and because she felt guilty that Stephen had been left out. John had told her that he would speak to Stephen as to his future at Parkgate and had not. As appears later in this judgment, the context in which Linda gave her evidence, at the hearing, in 2015, of the settlement proceedings, was that, by that date, John and Rollerteam had already indicated a desire to remove Stephen from Parkgate.
35. The 8 April 2013 email was headed 'without prejudice' and marked 'confidential' and contemplated a stay of all proceedings to allow the legal documentation giving effect to the proposed arrangements to be put in place.

36. In the result, matters moved to a conclusion very quickly. On 11 April 2013, only three days after the email outlined above, there was a meeting at Parkgate, at which a number of key documents were signed. Subject to the presence of a solicitor, brought in to protect Grace's position (she was giving up all her rights in Rollerteam), no lawyers were present.
37. The documents signed on that occasion were the settlement agreement in respect of Grace's claim relating to the ownership of Rollerteam, under which she acknowledged John's ownership of Rollerteam, a receipt for £300,000, paid over to Jennifer, in cash at the meeting, a company resolution in respect of SHIS, whereby John became director of SHIS, in place of Grace and Jennifer, the trust deed and a similar trust deed in respect of Albion Mews. Grace, Stephen, Linda and Jennifer all signed the agreement in respect of Rollerteam. The trust deed was executed by Linda, John and, on the face of it, John's wife, Andrea von Ehrenstein. Neither Stephen, nor Grace, nor Elizabeth, all of whom were living at Parkgate, at the date of the trust deed, signed, or were party to, the trust deed.
38. Subsequent to the 11 April meeting, further settlement documents were executed, apparently on 21 and 22 May. Material to these proceedings, one of the documents signed on 21 May 2013, in settlement of Rollerteam's claim against Linda, Stephen and Jennifer, contained an agreement that the settlement was in full and final satisfaction of that claim and 'all and any other claims howsoever arising and of whatsoever nature which' (Rollerteam) had or might have against (Linda, Stephen and Jennifer) and which Linda, Stephen and Jennifer had, or might have, against Rollerteam. The only exception, or reservation, in respect of that agreement was that it preserved Rollerteam's 'rights and claims' against Linda in respect of Rollerteam's beneficial interest in Parkgate and, in so doing, explicitly acknowledged that Linda held Parkgate on trust for Rollerteam, pursuant to the trust deed. Stephen, along with Linda and Jennifer, was a signatory to this agreement.
39. A surprising feature of all these agreements and arrangements seems to have been the absence of any legal advice and assistance on behalf of Linda, Stephen and Jennifer. A firm of solicitors, Smithfields, had been instructed by Linda. John, however, had been keen that Linda should dismiss her lawyers. His rationale was that, now matters had been settled and given that he had agreed that Rollerteam would pay Linda's costs, he did not want her solicitors to run up bills at his expense. Rather more obscurely, he was anxious that Smithfields should not be aware of the financial details underlying the settlement.
40. One consequence of Linda's lack of representation is that the trust deed was not the subject of negotiation, but was presented to Linda for execution on 11 April 2013 without any prior discussion. John's evidence was that the trust deed and the equivalent deed in respect of Albion Mews was drafted by his solicitors, in the limited period between 8<sup>th</sup> and 11<sup>th</sup> April 2013, from an on-line template.
41. Before reverting to the factual chronology and to the events that have taken place, since the trust deed was entered into, it is helpful to set out the essential and relevant terms of the trust deed.



42. The fundamental provision of the deed is the declaration of trust set out in clause 2, whereby Linda declared that she held Parkgate and its net proceeds, following any sale, on trust for Rollerteam.
43. That declaration reflected the contention, set out in the trust deed, (Background (B) and (C)) that Rollerteam had 'paid or procured to be paid the costs of the purchase of (Parkgate)' and had 'procured to be paid or paid the outgoings in respect of (Parkgate) including mortgage payments with the intention of acquiring a beneficial interest in (Parkgate)' and that Linda 'now (wished) to declare the beneficial interest in (Parkgate).
44. As appears earlier in this judgment, that assertion, as to the provenance of the trust, might well be regarded as an over-simplification. It is not in doubt, however, that, from 2006 and, perhaps, prior to 2006, Rollerteam had been a considerable source of the monies used to maintain the purchase of Parkgate. Nor is it, in doubt, that, in executing the trust deed, Linda acknowledged and agreed the basis upon which the trust was declared.
45. Turning to the terms of the trust deed, material to these proceedings, the provisions most in point are clauses 3 and 10. Material, also, in the events that have occurred and to the issues left for my determination, are the provisions as to outgoings and mortgages, set out at clauses 7 and 8 of the trust deed.
46. Clause 3 of the trust deed provides, as relevant, that Linda should not, other than with the prior written consent of Rollerteam, (a) create, or permit, any incumbrance on, or in relation to, Parkgate; (b) sell, assign, transfer, part with possession, or otherwise dispose of in any manner, all or any part of or any interest in Parkgate; or (c) create or grant any interest in Parkgate in favour of a third party.
47. Clause 10 of the trust deed (headlined Additional Provisions) provides that Linda should 'at the direction of (Rollerteam) transfer the legal title to (Parkgate) to (Rollerteam) for the sum of £1' and that in that event Rollerteam should either discharge the amount of any mortgage secured upon Parkgate or make arrangements to transfer any such mortgage to Rollerteam thereby discharging Linda from any further liability under the mortgage. Alternatively, the clause provided that, at Rollerteam's option, Linda should sell Parkgate on terms as directed by Rollerteam, in its absolute discretion, and should pay to Rollerteam the net proceeds of sale, namely the gross proceeds of sale less the amount required to repay the mortgage and the costs of sale.
48. Clause 7 of the trust deed provides that, subject to reimbursement by or on behalf of Rollerteam, Linda should (a) pay all costs in connection with the supply of services and utilities to Parkgate; (b) pay (or procure payment of the same) when due all charges, rates, taxes, duties, assessments and other outgoings relating to or imposed upon (i) Parkgate; (ii) its use; (iii) any works carried out at Parkgate; (iv) on the occupier of Parkgate, other than any taxes payable by Rollerteam in connection with any dealing with or disposition of Rollerteam's equitable interest in Parkgate.
49. Clause 8 of the trust deed provides that, subject to reimbursement by, or on behalf of, Rollerteam, Linda should (a) pay all amounts due by way of mortgage, capital

repayment, or otherwise payable under, or in connection with any mortgage secured upon Parkgate; and (b) comply with the terms and conditions of any mortgage.

50. In addition to these express terms, John's case is that the trust deed was subject to a further implied term; namely that, in the event that Rollerteam directs Linda to transfer or sell Parkgate, pursuant to clause 10, Linda should so transfer or sell Parkgate, as the case might be, with vacant possession, excepting any occupier who could not legally be removed and to whose occupation Rollerteam consented pursuant to clause 3.
51. Regrettably, the arrangements put in place in April and May 2013 did not bring matters in respect of Parkgate, nor, generally, between John and Rollerteam and other members of the family, to a conclusion.
52. In August 2013, John and Rollerteam sought to assert that matters had not been brought to settlement, other than in respect of the settlement of the various actions and other than in respect of the execution of the two trust deeds. Their contention was that the other terms ostensibly agreed between Linda and John had never found their way into any binding agreement, such that, while John and Rollerteam had, effectively, achieved all that they wished, the other parties, specifically Linda and Jennifer, had achieved nothing. As Robert Englehart QC commented, at paragraph 31 of his judgment in the settlement proceedings, John and Rollerteam's position was thoroughly unmeritorious. As his judgment determined, it was also incorrect.
53. The position was not assisted by Linda's contention, resolved by Robert Englehart QC, in favour of John and Rollerteam, that the documents that she had signed on 11 April 2013, while amounting, or constituting, agreements to create trusts, had not been the two trust deeds which, in fact and as found by Robert Englehart QC, had been executed by Linda, on that day. Robert Englehart QC's conclusion, in that regard, at paragraph 36 of his judgment in the settlement proceedings, was that Linda had not analysed in any detail the documents she had executed on 11 April 2013 and that her mistrust in John, arising, no doubt, from his attempt to renege on their settlement, had coloured her recollection of the facts. I add to that, this; that the lack of any legal advice available to Linda, at the time she executed the two trust deeds, will not have assisted her in understanding and recognising what she had executed.
54. Alongside and at, or about, the same time as these disputes, as to the binding nature of the April and May 2013 arrangements, came to the surface, a further dispute developed as to the occupancy of Parkgate. The starting point seems to have been John's concern as to the well being of Grace, who, with a carer, remained in occupation of Parkgate. The suggestion seems to have been that Stephen, allegedly by reason of alcohol, had been abusing his mother. I make no findings as to that.
55. What, however, transpired was that, in mid-September 2013, John, on the footing that Rollerteam, pursuant to its status as beneficial owner under the trust deed, was entitled to possession of Parkgate, procured from Rollerteam a so-called 'lodgers agreement', expressed to be at a payment of £1 per month, and, on the strength of that document, moved himself into a room at Parkgate, in order, as he contends, to supervise the care of Grace. That occupancy terminated, as I understand it, when, as set out below, John was directed to leave Parkgate, by an order made in family proceedings.

56. The details of what transpired at Parkgate were not the focus of the current litigation and in consequence it would be wrong to make factual findings. What is clear is that John's introduction of himself to Parkgate created very considerable tensions, as between John and those, other than Grace, living at Parkgate. In litigation arising from these events, John was excluded from Parkgate, the District Judge, in those proceedings (FD13 F00829), describing, in her judgment given on 2 September 2014, the 'lodgers agreement' as a device and identifying John's purpose in moving into Parkgate, not as relating to the care and protection of Grace, but as being a means to secure the eviction of Elizabeth.
57. In these proceedings, John has described himself as living at Parkgate during the period outlined above. I do not find myself able to accept that characterisation. As the District Judge indicated, in her 2 September 2014 judgment (paragraph 5) John's home throughout the relevant period was his family home at Albion Mews, where he lived with his wife and daughter. Whatever the true purpose of John's occupancy, John was not, in any normal sense, living at Parkgate and his suggestion that he was is, to me, illustrative of the somewhat artificial and often legalistic approach that John has tended to adopt, not always accurately, in his dealings with his family.
58. Be that as it may, it was the matters last outlined that first brought the occupancy issues in respect of Parkgate to the forefront. While at Parkgate, John had asked Stephen and Elizabeth to leave. Stephen remembers this differently. He recollects John telling him, not to go, but to go to his rooms on the top floor. Whatever the truth of that, by letter dated 27 September 2013, Rollerteam's solicitors, Davenport Lyons, directed Linda, as trustee, to instruct Stephen and Elizabeth to leave Parkgate.
59. Linda did not acquiesce in that demand. At that stage, as already explained, she did not accept that the trusts over Parkgate and Albion Mews had been effected. On that same footing and on what can only be described as a tit for tat basis, in November 2013, Linda (as she now concedes, inadvisedly) purported to assert her ownership of Albion Mews and to direct John's wife, Andrea, to leave John's home at Albion Mews.
60. A further and continuing source of tension between Linda and John had, by the Autumn of 2013, begun to develop, namely Rollerteam's failure, contrary to the terms of the trust deed, to reimburse Linda in respect of the Parkgate mortgage. The last direct reimbursement made to Linda, in respect of the Parkgate mortgage, was in April 2013. Rollerteam's position is and remains that a consequence of Linda's alleged breaches of the trust deed, in respect of the occupancy of Parkgate, is that Rollerteam's obligation to reimburse has fallen away.
61. The obvious hardship to Linda, arising from Rollerteam's failure to reimburse, given that Linda is mortgagor and given that, as mortgagor, she is subject to her personal covenant to pay monies falling due under the Parkgate mortgage, has, at least until relatively recently been mitigated by orders made by Chief Master Marsh, arising out of an Inquiry directed by Robert Englehart QC, as part of the relief arising from his judgment in the settlement proceedings.
62. By his order, dated 5 June 2015, the Deputy Judge directed that there should be an Inquiry as to the monies due from John in satisfaction of the promises that he had

made in the settlement agreement, including his personal promise to pay all mortgage instalments falling due under the Parkgate mortgage since September 2012.

63. The same order provided for the payment into court, as security, among other things, for the sums that John might be obliged to pay, pursuant to the Inquiry, of an amount of £1.2M, increasing, after the sale of Albion Mews, as then directed by the court, to £2.2M.
64. The Inquiry directed by the Deputy Judge was conducted by Chief Master Marsh, who, in a judgment, dated 16 May 2018 ([2018]EWHC 1065 (Ch)), determined that John's then outstanding liability to Linda, in respect of his contractual promises in the settlement agreement, including outstanding mortgage payments from September 2012 until September 2017, was £319,506.43 and that that amount, together with interest thereon, should be paid out to Linda from the monies in court.
65. The Chief Master's order made provision for the recovery by Linda of further mortgage payments, falling due after September 2017, by standing over the Inquiry and, in due course, by orders dated 25 January 2019, 7 May 2019, and 4 July 2019, Linda was able to recoup from the monies in court mortgage instalments, paid in respect of the Parkgate mortgage, up to and including June 2019. Since that date, however and because, as I understand it, the monies in court have been exhausted, mortgage instalments, paid by Linda under the Parkgate mortgage, have not been reimbursed either by John or by Rollerteam.
66. Reverting to the chronology, by letter, dated 28 March 2014, Rollerteam's solicitors directed Linda, pursuant to clause 10 of each of the Parkgate and Albion Mews trust deeds, to transfer the legal title of each property to, respectively, Rollerteam and John. That letter, however, was written at a time when the settlement litigation was proceeding, when Linda had not acknowledged the validity of the trusts and when, of course, the payment due to her under the settlement agreement remained wholly unpaid. In the event, she did not respond to the direction and the matter, at that stage went into abeyance and stayed in abeyance, pending the trial of the settlement proceedings.
67. Following that trial and following, therefore, the court's confirmation as to the validity of the two trust deeds, Rollerteam's then solicitors, Gordon Dadds, wrote to Linda's solicitors, Smithfields, on 2 July 2015, indicating Rollerteam's ability to discharge the Parkgate mortgage and requiring Linda to confirm her willingness to sign a transfer of the legal estate upon receipt of the nominal consideration of £1, in respect of the transfer. The letter suggested that Linda give Smithfields her irrevocable authority to release the signed transfer upon evidence that the Parkgate mortgage had been discharged. It would appear that, prior to that date, by letter dated 24 June 2015, sent to Gordon Dadds under cover of a letter of 26 June, Linda had already sought to provide Rollerteam, or its lawyers, with the requisite authority to enable Rollerteam to deal with the mortgage.
68. In the result, by October 2015, matters were ready to proceed. Linda had signed a TR1 and Rollerteam was in funds to discharge the mortgage. However, on 22 October 2015, Gordon Dadds, for the first time, called upon Linda to give vacant possession on transfer and, following some limited correspondence, Smithfields indicated that

Linda was not obliged by the trust deed to give vacant possession and declined to do so. No reasons were given.

69. Following that refusal, matters fell into abeyance for over a year. They were resurrected when, in May 2017, Smithfields raised with Gordon Dadds Rollerteam's failure, as already outlined, to reimburse Linda in respect of the substantial sums, then some £83,000, that she had paid out since September 2013 in respect of the Parkgate mortgage.
70. In response to that correspondence, Gordon Dadds, by letter dated 23 May 2017, asserted that, by reason of Linda's failure to transfer Parkgate, when requested to do so in March 2014, Rollerteam was under no liability to reimburse Linda in respect of the Parkgate mortgage. In the same letter, Gordon Dadds, on behalf of Rollerteam, directed Linda to instruct Chesterton's Battersea office to sell Parkgate with vacant possession. Cross-examined by Ms Jarron, Linda described this direction as an illegal request and, again, at that stage, matters went no further.
71. In July 2018, the current proceedings, as outlined in paragraphs 2 and 3 of this judgment, were issued. Linda filed and served her Defence on 12 September 2018. Although a lengthy and wide ranging document, at its essence was the contention that, one way or another, Rollerteam was not entitled to require Linda to remove Stephen and Elizabeth and that Rollerteam's rights, as beneficial owner of Parkgate, were subject to their respective occupancies. One of the contentions advanced was that, in circumstances where Rollerteam had failed to properly reimburse Linda for mortgage instalments, she was entitled, pending indemnification, to retain her legal title.
72. Part of her Defence was that certain of Rollerteam's claims had been, or should have been, resolved in the settlement proceedings, such that Rollerteam was precluded from raising those claims in the current proceedings. In recognition, as I read it, of this contention, by an order of Chief Master Marsh, dated 2 August 2019, Rollerteam consented to the amendment of its Claim, by removing, among other things, paragraphs in its original Particulars of Claim, which had averred that the letter of 28 March 2014, referred to in paragraph 66 of this judgment, constituted a direction to transfer pursuant to clause 10 of the trust deed and which had placed reliance upon Davenport Lyons letter of 27 September 2013, referred to in paragraph 58 of this judgment, as a part of its case in respect of Linda's alleged breach of trust, in allowing Stephen and Elizabeth to remain in occupation of Parkgate, contrary to the terms of clause 3 of the trust deed.
73. The effect of those amendments was to place the focus of Rollerteam's pleaded claim, in respect of non-compliance with clause 10 of the trust deed, upon Linda's failure to comply with the directions as to transfer, set out at paragraphs 68 and 69 of this judgment and the direction to sell with vacant possession set out in Gordon Dadds' letter of 23 May 2017, referred to in paragraph 70 of this judgment, and, in respect of breach of clause 3 of the trust deed, simply upon the fact that Linda had permitted Stephen and Elizabeth to remain in occupation after the execution of the trust deed.
74. The initiation of the current proceedings did not bring negotiations as to Parkgate to an end. Since 2018 and prior to the trial before me, there have been two separate and unsuccessful attempts to achieve the transfer of Parkgate to Rollerteam and the corresponding termination of the trust under which Parkgate is held.

75. In July 2018, very shortly after Linda's Defence was filed, her then solicitors, Smithfields, by letter of 21 September 2018 proposed, in accord with what was described as Linda's long held position, that there should be a transfer of the legal title to Rollerteam, on the footing (1) that Rollerteam would first discharge the Parkgate mortgage; and (2) that Rollerteam confirmed that Linda was not obliged to sell (a mistake, I think, for 'transfer') Parkgate with vacant possession.
76. After some hesitation, occasioned by Smithfields requirement that the transfer was not to be with vacant possession, by letter of 22 October 2018, Gordon Dadds, indicated Rollerteam's willingness to accept a transfer on that basis and to adopt the procedure for transfer contemplated by clause 10 of the trust deed. Although initiated by Linda, the matter did not proceed.
77. The reason for this is obscure. My understanding, however, is that it was associated with Rollerteam's continuing unwillingness to reimburse Linda's mortgage payments, in respect of Parkgate (by this time outstanding since September 2017 and only remedied, as set out at paragraph 65 of this judgment, by the Chief Master's order of 25 January 2019) and Linda's frustration engendered thereby.
78. The position appears to have been compounded by Linda, as she put it, losing her solicitors, Smithfields, at this time and by what she would now agree to be her ill-advised decision to take and act upon the advice of a Mr Tariq Siddiqi and to send, or serve, Rollerteam with a species of demand, or notice, best described as legal gobbledegook and virtually guaranteed to preclude sensible progress in resolving the position in respect of Parkgate.
79. The final attempt, prior to this trial, to secure such a resolution was instigated by Rollerteam, by letter of 11 July 2019 from new solicitors, HPLP. That letter contained a formal direction to transfer, pursuant to clause 10 of the trust deed. It did not require a transfer with vacant possession, but contained a caveat to the effect that Rollerteam reserved its right to pursue Linda for breach of trust in the event that any possession proceedings brought by Rollerteam against the occupants of Parkgate (Stephen and Elizabeth) were defended by those occupants on grounds that evidenced that Linda had been in breach of trust in respect of redemption of the Parkgate mortgage.
80. As already set out, in paragraph 72 of this judgment, these proceedings were before Chief Master Marsh on 2 August 2019. In an effort to move the matter on, the Chief Master procured undertakings from Linda, in respect of the provision by Linda to HPLP of a signed and witnessed transfer, in respect of Parkgate, and her provision to HPLP of a letter of authority to Mortgage Works, such as to enable HPLP to make arrangements for the discharge of the Parkgate mortgage, together with undertakings from HPLP to hold the transfer to Linda's order until the Parkgate mortgage had been redeemed and to return the executed transfer to Linda in the event that redemption had not taken place by 2 November 2019.
81. In addition to taking undertakings, the Chief Master stayed the proceedings until 2 January 2020, in order that Rollerteam could take such steps as might be necessary to secure vacant possession of Parkgate. As I construe his order, his intention was that Rollerteam, having taken the transfer from Linda, would, then, have the opportunity to take possession proceedings against Stephen and Elizabeth.

82. Yet again, matters did not work out and yet again it was the question of reimbursement of the Parkgate mortgage instalments (now coupled with unpaid costs) which proved to be the bone of contention. Having provided the transfer and the letter of authority, as required by the Chief Master, by letter of 20 September 2019, written, on Linda's behalf by Mr Siddiqi, Linda called for the return of the transfer and, in due course, caused it to be collected from HPLP.
83. Despite this set back, Mr Eaton of HPLP seems to me to have worked hard to keep the transaction going and, for a period, there seemed to be a likelihood that he and Linda could get matters on track. What threw it, ultimately, off track was an intervention by Mortgage Works and its appointment of receivers in respect of arrears under the Parkgate mortgage. Inevitably, in context, this led to a disagreement as to the cause of and responsibility for the arrears and a further impasse, or, as Linda put it, 'stand off' in resolving the transfer.
84. The end result was that on 13 December 2019, Linda, by Mr Siddiqi, wrote to HPLP, asserting that Rollerteam was (it was not) in breach of the 2 August 2019 order and was in 'fundamental breach' of the agreement between the parties, such that Rollerteam no longer had any claim over Parkgate. A final response from HPLP, dated 24 December 2019 and asking Linda to provide a further authority and to reinstate the transfer, met with no response.
85. Linda's explanation to me of the foregoing was that she had had enough. She felt, obscurely, but, as I find, honestly, that the receivership had been orchestrated in some way by Rollerteam to obstruct the transfer. The, as she saw it, never ending battle for reimbursement of mortgage payments, coming from her own pocket, had left her wholly frustrated. Misguided, regrettably, by Mr Siddiqi, all bets were off.
86. Subject to some abortive further discussion towards the end of 2020 and in early 2021 directed towards the agreement of an order for sale and Linda's purchase of Parkgate, in the context of such a sale, no further steps were taken in respect of the transfer of Parkgate until, as set out later in this judgment, the final day of the trial before me.
87. Further litigation has, however, ensued.
88. Catalysed, perhaps, by attempts made by Rollerteam, in the person of John's daughter, to access Parkgate, on 16 December 2019 and by correspondence emanating from John and Andrea in January 2020, threatening proceedings for possession, and, perhaps, also, by a request from Linda, by email of 26 August 2020 (born, she told me, out of exhaustion with the continuing argument with John and Rollerteam), that he, Stephen, should leave Parkgate, Stephen took proceedings against Linda, as legal owner of Parkgate, in the Family Court and, on 7 September 2020, secured, with Linda's consent, an occupation order. In those proceedings, while indicating that Stephen should take steps to regulate the beneficial ownership of Parkgate, Linda apparently confirmed that Stephen had been promised Parkgate, had lived there (as he had) for a number of years and had acted on his mother's promise.
89. On 8 September 2020, Stephen issued proceedings, in this court (PT-2020-000688) asserting, in the first instance, that Parkgate had been promised to him and that Parkgate should be transferred to him. At a hearing on 30 November 2020, the

Particulars of Claim, but not the Claim itself, were struck out and Stephen was given the opportunity to replead his claim.

90. As re-pleaded, his claim relied upon assurances made to him by Grace that Parkgate would always be his home, that Parkgate was his and that he owned the beneficial interest in Parkgate, that John had understood and acknowledged Stephen's beneficial ownership, that, in reliance upon the assurances he had been given, Stephen had worked in the museum free of charge and that, in consequence, he was entitled, by way of proprietary estoppel to the entire beneficial interest.
91. That claim, together with an application by Rollerteam for an interim order for sale, was dismissed by Chief Master Marsh on 6 January 2021. The Chief Master concluded, in his judgment, that Stephen had, as a signatory to the consent order dated 21 May 2013, referred to in paragraph 38 of this judgment accepted the validity of the trust deed and, hence, Rollerteam's beneficial ownership of Parkgate. He further concluded that Stephen had no realistic prospect of establishing any collateral contract to the effect that his beneficial interest was acknowledged, or any realistic case that his signature to the relevant consent order was obtained by undue influence.
92. The Chief Master's order was not subject to any appeal and, in consequence, when, as set out in paragraph 7 of this judgment, Stephen was joined as a party, he was joined upon the explicit basis that his arguments before me, in respect of his occupancy, did not include any claims for a proprietary interest in Parkgate, by way of constructive trust or proprietary estoppel, did not seek to go behind, or relitigate, the Chief Master's 6 January 2021 judgment and did not seek to go behind the 2013 consent orders.
93. Reverting to Stephen's occupation order, that order was discharged by Her Honour Judge Evans-Gordon, on 22 February 2021, on the footing that Stephen had no current beneficial interest in Parkgate, or any proceedings in which he was asserting any such interest and on the further footing that there had never been any live issue between Linda and Stephen to justify the making of an occupation order and that, in the view of the judge, the proceedings had been brought to secure a tactical advantage in the current proceedings.
94. Finally, in terms of parallel, or related, litigation, I should record that, in February 2020, Linda and Jennifer issued proceedings against John and Rollerteam, alleging what was termed a 'repudiatory breach of the collateral contract completed between (Linda and Jennifer and John) on 11 April 2013' and claiming a recovery of circa £1.59M. That claim was struck out by Chief Master Marsh on 23 February 2021, as being totally without merit.
95. The last and final stage in the history of the Parkgate trust derives from an order made by me on the final day of the current trial. It had become clear throughout the trial that, for all their differences and for all their failures, in that regard, the one area where Linda and John shared common ground was in their desire to bring the Parkgate trust to an end. Linda, in particular, was deeply concerned, particularly if the court held that Rollerteam was entitled, as beneficial owner, to take possession of Parkgate, that her obligations in respect of the mortgage might continue into the indefinite future.



96. In the result, at the court's prompting the parties agreed an order, dated 14 October 2022, designed to secure the transfer of Parkgate to Rollerteam and to bring the Parkgate trust to an end, leaving open, for my determination the status of Stephen's and occupancies and, insofar as now relevant, the other core issues. As at the date of this judgment, the transfer has been effected, the Parkgate mortgage has been discharged and the Parkgate trust has, in consequence, been brought to an end.
97. The further consequence of the foregoing, as foreshadowed in paragraphs 4 and 10 of this judgment, is that no relief, whether as to sale, or otherwise, is now required, or sought, under the 1996 Act. Core issue 5 has, therefore, fallen away and, as it seems to me core issue 4, relating to Rollerteam's entitlement to occupation, as beneficial owner under the Parkgate trust, is also, now, redundant.
98. That last said, core issue 4 having been argued, it may be useful if I record, albeit in short form, that, on the facts of this case, I would not have determined that Rollerteam was entitled to take up occupation of Parkgate, during the pendency of the trust.
99. Rollerteam's entitlement to occupation, of Parkgate is governed by section 12 of the 1996 Act and requires the court to determine whether the purpose of the trust is to make the land available for occupation by the beneficiary, or is held by the trustee(s) so as (in the sense of 'in order to') to be available for the beneficiary's occupation.
100. Like Robert Englehart QC, when the question was raised before him, in the settlement proceedings, I am unpersuaded that the purpose of the Parkgate trust was to make the land available for Rollerteam's occupation, or that the land was held by Linda in order to be so available.
101. It seems clear to me that, placed in the context and circumstances, in which the trust came into being (namely as part of a speedily arranged settlement of the various disputes within the family), the trust was intended to be a short-term, or holding, arrangement, designed to regulate the position until such time as the land was transferred to Rollerteam, or sold, and that it was not the intention underlying, or the purpose of, the trust to create any long standing arrangement under which Rollerteam could have the occupation, or use of Parkgate under the trust. Had that been the purpose, or intent, then it is not realistic to think that the trust should have been put in place without very much more discussion and negotiation, or would have been drafted, as it seemingly was, on the basis, albeit, no doubt, with some adjustments, of an on-line template.
102. Perhaps, even more to the point, it is very hard to think of any good reason, at all, as to why either Linda, or Rollerteam, should wish to set up a trust under which Rollerteam should occupy Parkgate, as beneficiary, in circumstances where, upon the exercise of the termination provisions in the trust deed, it could occupy Parkgate, as freeholder, in its own right.
103. Be this last as it may, that the trust was intended to be a stop-gap arrangement, designed to hold the position until Rollerteam was in a position to take a transfer, or elected to direct a sale, and, correspondingly, that the intended purpose of the trust trust was not to make Parkgate available for Rollerteam's occupation, finds support, in particular from the two key provisions which have, as set out in this judgment, been at the heart of the dealings between Linda and Rollerteam.

104. The first such provision is clause 10, itself. The fact, as it seems to me, that the trust deed places such specific and explicit focus upon the mechanisms designed to bring the trust to an end, seems to me to be a clear indication that the intention of the parties to the trust deed, at the point of execution, was that this was to be a temporary measure and that the parties' mutual expectation was that Rollerteam would, at an early stage, bring the trust to an end.
105. The intended short term nature of the arrangement surfaces, perhaps, even more clearly, when consideration is given to the provisions for reimbursement of outgoings and, most particularly, the reimbursement of mortgage instalments. It is highly unlikely that the parties to a trust deed, intended to give rise to long term arrangements, should organise their affairs in such a way as to impose substantial financial obligations upon the trustee and to leave that trustee so dependent upon the goodwill and, indeed, solvency of the beneficiary. The difficulties, long term, of such arrangements are all too predictable and all too well demonstrated by the facts of this case. It is very much more likely that the arrangements contained in the trust deed were ad hoc arrangements, reflecting, as already stated, the parties' intention to create a short term holding position, until such time as Rollerteam was in a position to bring the trust to an end, and making short term provision for the financing of Parkgate, pending the expected and intended termination of the trust.
106. Other factors, also, render it unlikely that the purpose of the trust was to render Parkgate available for Rollerteam's occupation.
107. Most obviously, Parkgate was, as was well known to all concerned, at the point when the trust was executed, in long term occupation by Stephen and Elizabeth and, in particular, by Grace. It was her home. Against that simple background and in that context, it is not at all obvious, or likely, that the intended purpose of the trust was for Rollerteam to take up occupation in her, or their, stead.
108. It is, in any event, intrinsically unlikely that a corporate entity, such as Rollerteam, trading from and at the museum, would either wish, or need, to occupy residential premises, such as Parkgate, or, therefore, that that would have been the purpose underlying the Parkgate trust. The fact, prayed in aid, by Ms Jarron, that prior to the execution of the trust deed and when the family was in a degree of harmony, the museum used Parkgate to store souvenirs and lodged its takings in the family safe, or even that, in that era, Rollerteam had its registered office at Parkgate, does not seem to me to suggest, with any great force, that, in the different circumstances obtaining after 2012/2013, the purpose of the Parkgate trust was to enable Rollerteam to take up occupation.
109. Taking all these matters together, were not the matter moot, I would, as already stated, have determined core issue 4 against Rollerteam and found that Rollerteam was not entitled to occupy Parkgate as beneficiary under the Parkgate trust.
110. Turning, now, to the 'live' issues, as is clear from the foregoing narrative and as set out at paragraph 5 of this judgment, central to all the dealings that have taken place between Linda and Rollerteam, since 2013 has been the question, or extent, of Linda's obligations, in respect of the sale, or transfer of Parkgate and, in particular, whether her obligations to Rollerteam required her to effect any sale, or transfer, with vacant possession. It is that question, or issue, which forms core issue 1.

111. As set out in paragraph 10 of this judgment, the question is put three ways; whether clause 10, or any other clauses in the trust deed, created that requirement; whether that requirement arose out of the implied term alleged by Rollerteam and set out in paragraph 50 of this judgment; or whether the requirement arose out of Linda's general duties as trustee.
112. The starting point, since it is the clause of the trust deed which deals specifically with transfer and sale, is clause 10. That clause, together with the rest of the instrument, the trust deed, of which it forms a part, must be construed, as with any other contract, or instrument, on the textual and contextual basis explained in recent and familiar Supreme Court decisions.
113. Clause 10, literally construed, differentiates, somewhat, as between transfer and sale. In regard to transfer the clause, as set out in paragraph 47 of this judgment, provides, simply, that Linda should, at the direction of Rollerteam, transfer the legal title for £1. In regard to sale, the clause provides that Linda should sell Parkgate on the terms directed by Rollerteam, in its absolute discretion.
114. Taken in isolation and, in particular, having regard to the fact that the provision as to transfer is, specifically, a provision as to the transfer of the legal title, it seems to me that the intention of the parties was no more than to set up a mechanism for the transfer of the bare legal title to Parkgate, such that Rollerteam would acquire that title, but, otherwise, take Parkgate, as it stood, leaving Rollerteam, post transfer, to take such steps as it chose to deal with any occupancies of the property, or any other matters pertaining to the property.
115. That construction does not, however, as it seems to me, limit, or modify, Rollerteam's rights under the general law and, in particular the 1996 Act. As to that, section 11(1) (b) of the 1996 Act requires trustees of land to give effect to the wishes of the beneficiaries, so far as those wishes are consistent with the general interest of the trust.
116. In principle, it seems to me that that provision enables, or entitles, Rollerteam, when calling for a transfer, to require that the trustee effects the transfer with vacant possession. It does not seem to me that such a direction would contradict, or be inconsistent with, the general interest of the trust. As already discussed, this trust was intended to be a short term measure, with an expectation of early termination. A direction, therefore, supplementing the existing provisions as to termination, is not inconsistent with, or contradictory of, the general interest of the trust.
117. It follows that, subject to the matters discussed later in this judgment, Rollerteam's direction, or requirement, contained in Gordon Dadds' letter of 22 October 2015 (referred to in paragraph 68 of this judgment), that the transfer, then in contemplation, should be a transfer of the legal estate with vacant possession, was a direction binding on Linda, as trustee and, correspondingly, that her non-compliance with that direction was a breach of trust.
118. In regard to the alternative limb of clause 10, bearing upon sale, I have no doubt at all that, literally construed, the provision entitles Rollerteam to direct that any sale of Parkgate is effected with vacant possession.

119. There was some discussion, at trial as to the ambit, or width, of Rollerteam's 'absolute discretion' to give directions as to the terms of any sale. It was common ground that, notwithstanding the breadth of language used, there were undoubted limits upon the terms that Rollerteam could impose in respect of sale. The direction could not involve any illegality. Nor, in my judgment, could terms be imposed, or the direction given, other than in good faith. It could not, for example, be used maliciously to procure a sale at an undervalue, such that, on sale, Linda was left with an outstanding liability under the mortgage, pursuant to her personal covenant. None of that, however, precluded Rollerteam, if otherwise so entitled, from requiring a vacant possession sale of Parkgate.
120. The same conclusion, as to sale, is reached, in a case such as the present, by virtue, simply, of Linda's status, as trustee. In that capacity, if called upon, by the sole beneficiary, to sell the trust property, her obligation, as trustee, in the exercise of her duty of care as trustee and in the exercise of her obligation to her beneficiary under section 11(1)(b) of the 1996 Act, must be take all necessary steps to maximise the value of the trust property, on sale, and, in consequence and if otherwise entitled so to do, to secure a sale with vacant possession. The position, as to transfer, under the general law and the 1996 Act has already been discussed in paragraph 116 of this judgment.
121. In light of the foregoing, I turn to the implied term contended for by Rollerteam and set out at paragraph 50 of this judgment. The suggested term posits that on any transfer, or sale, Linda, unless otherwise directed, should procure that the transfer or sale should be effected with vacant possession, save and except for any occupier who could not be legally removed and to whose occupation Rollerteam had consented. The basis of the implication is said to be either necessity, or that the implication is so obvious as to go without saying.
122. I am not at all persuaded that the suggested term is necessary. As already set out, the trust deed, in combination with the 1996 Act, provides a more than sufficient mechanism to procure that any clause 10 transfer, or sale, is effected with vacant possession, provided that, as discussed in the next part of this judgment, there is no other legal bar to securing vacant possession.
123. Likewise, although it might be said that the substance of the term is obvious, it can equally be said that the content of the term is already sufficiently covered and that the proposed term is, simply, surplus. Putting it another way, if, as Mr Dencer, for Stephen, submitted, one applied the traditional 'officious bystander' test, then the answer to the question 'are you able, under the trust deed, to procure vacant possession, on sale, or transfer, other than against legally protected occupants' might well be 'of course' but would, also, be 'already dealt with'.
124. In that situation, where the position proposed to be covered by the implied term is already well provided for by the explicit provisions of the trust deed, as supplemented by the 1996 Act, it seems to me that there is no justification for the implication of a term. Accordingly, I decline to do so.
125. I add that even if I had felt it, otherwise, appropriate to imply a term, I would not have implied that part of the term that limited Linda's obligation to provide vacant possession, not, simply, to occupants who could not be legally removed, but, only, to

such of those occupants to whom Rollerteam had given consent to occupy, pursuant to clause 3 of the trust deed. Such a provision would not have been realistic. It would have required Linda, to seek to secure vacant possession against someone who could not be legally excluded (and, therefore, unsuccessfully), if that person had not been a consensual occupier. An unrealistic provision, of this nature, is, patently, not one that the court will imply.

126. It remains to consider whether there is anything in the particular facts and circumstances of this case such as to limit Rollerteam's apparent entitlement, under the trust deed and the 1996 Act, to require Linda, as trustee, to procure the transfer, or sale, of Parkgate with vacant possession..
127. That question sub-divides into two questions.
128. Firstly, whether, on the true construction of the trust deed, in the context and circumstances in which it was entered into, the beneficial interest that passed to Rollerteam was intended to be subject to the pre-existing occupancies of, for present purposes, Stephen and Elizabeth, irrespective of any independent rights of occupation that either might have in their own right.. Secondly, whether, independently of the trust deed, either Elizabeth or Stephen have rights of occupation, in respect of Parkgate, binding on Rollerteam.
129. In either event, it is accepted by Rollerteam that Rollerteam could not properly direct Linda to either sell, or transfer, Parkgate with vacant possession.
130. I am satisfied that, on its true construction, the beneficial interest that passed to Rollerteam, under the trust deed, was not subject to any reservation in favour of the occupancies of either Stephen or Elizabeth.
131. I have very little information about Elizabeth. She is Grace's sister and she has lived at Parkgate since about 2000. She was, therefore, a long term resident at the date of the execution of the trust deed. Linda's evidence is that she provided Grace with a lot of help, as Grace grew older and that she had also helped Grace, when Grace's children were young and when Grace was bringing them up as a single mother. It was Grace who invited Elizabeth to live at Parkgate and told her that she could live there payment-free for as long as she wished. She had, apparently, prior to 2012 helped out from time to time at the museum on a voluntary basis.
132. There is nothing in any of that to indicate anything other than that Elizabeth was a bare licensee, at Parkgate, prior to, at and since the execution of the trust deed and there is no evidence at all that her position at Parkgate was the subject of any discussion, or agreement, prior to the execution of the trust, or that there is anything to indicate that her position, following the execution of the trust, was intended to be any different to that which it had been before, or, therefore, that Rollerteam's beneficial interest in Parkgate was, in any way, subject to her occupancy.
133. Stephen, by contrast, was the subject of discussion, prior to the execution of the trust, as is set out in paragraphs 33 and 34 of this judgment. As appears from those paragraphs there is a dispute between Linda and John as to what was said and there is an undoubted inconsistency between Linda's evidence to me and her evidence, before the Deputy Judge, in the settlement proceedings. While I have regarded Linda as an

honest witness, trying to tell me the truth, on this point I prefer John's evidence, corroborated, as it is, by Linda's own evidence in the earlier proceedings. Accordingly, I am satisfied that the discussions, as to Stephen, in the course of the negotiations, from which sprung the trust deed, were to the effect that Stephen would be 'looked after' out of Linda's £1M.

134. The corollary of that is that there is no basis upon which it can properly be inferred that there was any understanding, as between Linda and John, on behalf of Rollerteam that the beneficial interest, vested in Rollerteam by the trust deed, should be subject to Stephen's occupancy. Rather, the plain expectation of the parties, at the point of execution of the trust deed, was that Stephen should be looked after elsewhere. It follows, as it seems to me, that when, in fact, Stephen remained in occupation, after the execution of the trust deed, in circumstances where no new arrangement, or understanding, had come into being, in respect of his occupancy, that occupancy continued upon the same basis as it had existed prior to the execution of the trust deed.
135. The question, then, is as to the basis of that occupancy and whether, subsequent to the execution of the trust deed, it bound Rollerteam, such that Rollerteam could not properly direct Linda to secure vacant possession by evicting, or attempting to evict Stephen.
136. For reasons, already explained, in paragraphs 90 to 92 of this judgment, Stephen is bound by the findings of the Chief Master, reflected in my order of 26 April 2022, and is not entitled to assert any proprietary claim by way of constructive trust, or estoppel. Although there is reference to Parkgate being held on trust for Stephen, in a number of emails sent by John to Linda, Stephen, himself, and Jennifer, in 2012, there is no evidence at all that any trust was ever formally declared in his favour and none is asserted. Likewise, although there is some evidence that steps were taken, in 2004, to procure housing benefit for Stephen, in respect of his occupation, there is no suggestion that he has ever held a tenancy over Parkgate, or any part of Parkgate.
137. What is clear is that Grace, with the approval of Linda, as legal owner, promised Stephen that he could live at Parkgate, without payment, for life. Stephen's own evidence, which I accept, is that all family members, including John, concurred in this promise, or understanding. The trust references, mentioned above, were, I think, no more than a lay description of this promise and this understanding. A bare promise, however, of this nature, however well reinforced is not sufficient to provide a proprietary interest, even if Stephen were permitted to assert such a claim.
138. In the result, the claim advanced by Mr Dencer was that the promises made to Stephen were supported by consideration, were contractual in nature and gave rise to a contractual licence binding on Rollerteam. Ms Jarron accepted that, if that were the correct analysis of Stephen's occupancy, then Rollerteam could not challenge that occupancy and could not, correspondingly, call for Linda to take steps against Stephen to secure vacant possession of Parkgate. She submitted, however, that the analysis was flawed and that, in any event, the consent order of 21 May 2013, referred to in paragraph 38 of this judgment prevented Stephen from asserting a claim to a contractual licence.
139. I agree with Ms Jarron.

140. The consideration advanced by Mr Dencer was said to be twofold. Firstly, Stephen's work from time to time in the museum, working without pay behind the till and assisting Grace in dealing with souvenirs to be sold at the museum, delivered to Parkgate. Secondly, the care that the provided for Grace as she became older and more frail.
141. I am content to accept that Stephen, on as he indicated in his written evidence, assisted in the museum, on an irregular basis and when called upon. I have no doubt at all that he, also, such as he could, assisted his mother. I say, such as he could, because Stephen describes himself, in his evidence, as being vulnerable and having mental health issues arising out of alcoholism and explains that it was because of these vulnerabilities that Grace, in particular, wanted Stephen to have Parkgate, as a stable place to live. Inevitably, as it seems to me, these vulnerabilities will have affected Stephen's ability to assist his mother.
142. Be that as it may, I am wholly unpersuaded that, whatever work Stephen carried out and whatever assistance he gave his mother, that work and that assistance was carried out, or performed, in reliance upon a contractual, or any, promise, or, to put it, another way, that the promise that he could live at Parkgate was conditioned, in any way, upon his working in and in respect of the museum, or upon his rendering assistance to his mother.
143. Although, in his written evidence, Stephen adverted to working in the museum, in reliance upon the promise that Parkgate would be his, Stephen's oral evidence was quite specific. When the averment, in his pleading in his struck out claim for a proprietary interest, that he had worked in the museum in reliance upon the promise that Parkgate was his, or was his home for life, was put to him in cross examination, Stephen emphatically repudiated that contention. His occupation was, he told me, as of right.
144. I have no doubt at all that that evidence was honestly given and accurately conveyed the basis upon which Stephen has regarded himself as living at Parkgate. He has not lived there in consideration of carrying out work, or affording care. He has lived there because, in his own mind, he is entitled to do so. Stephen's evidence, to me, could not have been more clear. His entire body of evidence was described, rightly, by Ms Jones, acting for Linda, as unfiltered and so it was. Stephen has not lived at Parkgate under the terms of an agreement under which he was to provide services, or care. He has lived there because he was promised that he could live there and that Parkgate was his and he has done so on the basis that that was his right.
145. There are, or would be, even if the agreement advanced by Mr Dencer could be made out, other difficulties in Mr Dencer's submission.
146. The first is whether any agreement that was made was made with Rollerteam. Although Linda and Grace were directors of Rollerteam when Stephen was invited into occupation of Parkgate, it is less than clear, even assuming Rollerteam to have been the beneficial owner of Parkgate, at that time, that the promise made to Stephen by his mother and approved by Linda was made on behalf of Rollerteam, or that Linda and Grace were acting in any corporate capacity when the promise was made.

147. It seems to me to be highly unlikely that that was the case. It is much more likely that Grace and Linda did not have Rollerteam in mind at all when the promise were made and were simply, in their personal capacities, as respectively, mother and sister, offering Stephen a home, without reflecting at all upon the legal basis upon which such a promise could be made, let alone intending to bind Rollerteam, by that promise.
148. Leading on from that, there is the question, given what seems to me to be the family nature of the promise and of any agreement of which the promise formed a part, as to whether any such agreement was, or would have been, intended to be legally binding.
149. Not without hesitation, I am inclined to conclude that if there had been the contract alleged and if Rollerteam had been a party to the contract, then, given the magnitude of the promise and given that, in this scenario, it was made by a corporate body, the likelihood is that the contract would have been intended to bind. That said, in my view there was no contract and Rollerteam was not, in any event, party to the promise made to Stephen.
150. The final barrier to Mr Dencer's submission is the consent order of 21 May 2013 and Stephen's agreement, expressed in the schedule to that order, that the terms contained in that schedule were in full and final satisfaction, not merely of the claim settled by the order, but of all other claims howsoever arising and of any nature that the defendants to the settled claim, including Stephen, had or might have against Rollerteam.
151. There is no doubt that claims in respect of Parkgate were among the claims that the parties had in contemplation when agreeing the terms of the schedule, since any claims that Rollerteam might have against Linda, arising out of the Parkgate trust deed are specifically excepted from the claims, or putative claims, which are expressed to be settled, or satisfied, by the consent order and the schedule to the consent order.
152. Accordingly, it seems to me that any claim that Stephen might have against Rollerteam, in respect of his occupation of Parkgate, whatever its other merits, was settled, or satisfied by the consent order and schedule and that, for that reason, as well as the other reasons that I have identified and discussed, Stephen is unable to advance that claim in these proceedings, [ or to assert that that claim has precluded Rollerteam either from terminating his occupation, in its own right, or from directing Linda to take steps to procure vacant possession against Stephen, in the context of a sale, or transfer, of Parkgate].
153. The end result of the foregoing is that I am satisfied that Stephen, like Elizabeth, is no more than a bare licensee, at Parkgate. Stephen can, by reason of the order of 6 January 2021, assert no proprietary claim, by way of constructive trust, or proprietary estoppel. No trust has been declared in his favour, nor has he ever held a tenancy over Parkgate, or any part of Parkgate. In the absence, as I find, of any contractual licence, binding on Rollerteam, and in the absence, in any event, of the ability, by reason of the consent order and schedule, to assert any such claim, or any other claim, in respect of his occupancy, there is no other status that he can assert.



154. The further consequence, or result, of the foregoing is that Rollerteam has not, during the pendency, or lifetime, of the trust, been precluded from directing Linda to take steps to procure vacant possession, both as against Stephen and as against Elizabeth, in the context of the sale, or transfer, of Parkgate. Nor, the trust now being at an end, is there, now, anything to preclude Rollerteam from securing possession from Stephen and Elizabeth.
155. There remains to consider, in respect of core issue 1, firstly, the effect, upon core issue 1 of core issue 2, namely whether Rollerteam's entitlement to require Linda to transfer, or sell Parkgate with vacant possession was affected by any question of mutuality of obligation, and, secondly, whether that entitlement was, or would be, in any given case, extinguished, or suspended, by Rollerteam's failure to offer, or provide, funding for the costs to be incurred in procuring vacant possession.
156. As appears from the history of this matter, as set out in this judgment, the question of mutuality has been largely prayed in aid by Rollerteam, as its justification for not reimbursing Linda, in respect of mortgage payments made under the Parkgate mortgage, and has been a major source of the problems that have beset the working out of the Parkgate trust. As set out in paragraph 71 of this judgment, Linda has, however, also, raised issues of, or akin to, mutuality, in justifying her failures to transfer, or sell Parkgate.
157. I am satisfied that no principles, nor provisions, as to mutuality apply in this case and that neither Linda, nor Rollerteam, has been entitled to use the breach of obligation by the other as justification for a failure of performance of their respective obligations.
158. In regard to Rollerteam and, specifically, in regard to the reimbursement of mortgage instalments, there is nothing, either explicit, or implicit, in the trust deed to suggest that Rollerteam's obligation to reimburse is conditional upon Linda's performance of her obligations under the trust deed. The deed does not impose any such condition. Further, given that Linda's obligation to use her own resources to pay the mortgage instalments, prior to reimbursement, is already an onerous obligation, the obvious intent, underlying the reimbursement provisions, must have been that they should provide a straightforward and effective mechanism for Linda's reimbursement and not one under which Rollerteam was enabled to leave Linda out of pocket. In that context, there is no scope for the implication of any term as to mutuality, either on the footing of necessity, or obviousness, or to modify, or contradict, the clear provisions of the trust deed.
159. By the same token, Linda's obligations, in respect of transfer, or sale, are, likewise, not conditional upon immediate reimbursement of mortgage instalments, or other outgoings. Again, the trust deed does not impose any such limitation upon her obligations. Furthermore, as trustee and as a fiduciary, Linda's core obligation is to act in the best interests of Rollerteam. In that context, it would require very clear words, here wholly lacking, before she could place her own entitlement to reimbursement before her obligations under the trust deed, in respect of transfer, or sale,
160. There remains the question, touched upon, principally, in closing arguments, as to whether, or to what extent, Linda's obligation to procure vacant possession, upon Rollerteam's direction, was contingent upon Rollerteam's provision of funding, such

that, in the absence of such provision, or of an adequate promise of indemnity, Linda was not obliged and, therefore, would not be in breach of trust if she failed to take steps to secure vacant possession and to incur the costs required for that purpose.

161. Although I have, in paragraph 155 of this judgment, put this question in general terms, it seems to me to be directly pertinent both as to the direction as to a vacant possession sale, contained in Gordon Dadds' letter of 23 May 2017, as set out in paragraph 70 of this judgment, and in respect of Gordon Dadds' earlier direction as to transfer, set out in paragraphs 67 and 68 of this judgment, and which, as explained in paragraph 73 of this judgment, are the current focus of Rollerteam's claim against Linda, in respect of her failure, when so directed, to transfer Parkgate, or to secure a sale with vacant possession.
162. It is clear to me that had Linda incurred significant personal costs in seeking to secure vacant possession of Parkgate from Stephen and Elizabeth, when so called upon, in May 2017, or when directed to transfer Parkgate, in October 2015, then she would have been entitled to look to the funds of the trust, arising on sale, for the recovery of her expenses reasonably incurred. She would, also, I think, have had a lien over those funds, if sufficient, for those expenses.
163. That, however, is not to say that, as trustee, Linda was under some open-ended obligation to invest her own money in procuring, if needs be via contested litigation, vacant possession of Parkgate, in the expectation, or hope, that, in due course, she would be indemnified, or could, otherwise, recover those costs. This must be, particularly, the case, in circumstances, such as those demonstrated, in this case, where Rollerteam has, wrongfully, as I find, been refusing, over a considerable period to, properly, reimburse Linda in respect of mortgage instalments falling due under the Parkgate mortgage.
164. Nor, however, was Linda, when faced with a valid direction to sell, or transfer, with vacant possession, but without any accompanying provision, or promise, of funding, or indemnity, simply, entitled to do nothing.
165. The direction, as to sale, given by Gordon Dadds, in their letter of 23 May 2017 was not, as Linda asserted, an illegal request, nor a request to be ignored. Nor was the October 2015 direction, as to transfer with vacant possession, one that could be, properly, declined. The fact, as I find, that it has been Linda's genuinely held view, in all her dealings in respect of the trust deed, that Stephen and Elizabeth have a moral right to retain their occupancies is not and was not an answer to either direction. As trustee, Linda could not place her own personal views ahead of the interests of her beneficiary, Rollerteam.
166. Faced with these direction, Linda's obligation, as trustee, acting in the best interests of her client and no-one else, was to take such steps as were available to her to implement, or give effect to, what were, as I find, valid directions. If, however, those steps would, on proper investigation, at the date of the directions, have been potentially costly, then she would have been entitled to seek funding, or a clear-cut indemnity from Rollerteam, before incurring significant costs. If funding, or an adequate indemnity was not forthcoming, then, in my view, a failure to act further would not have been a breach of her trust.

167. That, however, is not what occurred. Linda chose to treat the May 2017 directions as illegal and the October 2015 direction as one that could be declined. In so doing, she was in breach of trust. The consequences of those breaches, how matters would have played out had Linda not ignored, or declined, the directions and what, if any, equitable compensation may fall due to Rollerteam, arising from those breaches, are all questions for future consideration.
168. I turn, finally and relatively briefly to core issue 3, namely whether Linda has been in breach of clause 3 of the trust deed in permitting Stephen and Elizabeth to remain in occupation of Parkgate.
169. The short answer to that question is ‘no’.
170. As set out in paragraph 46 of this judgment, Linda’s obligations under clause 3 are threefold. She is not, without the written consent of Rollerteam, to (a) create, or permit any incumbrance on, or in relation to Parkgate; (b) sell, assign, transfer, part with possession of or otherwise dispose of in any manner all, or any part of, or any interest in, Parkgate; or (c) create or grant any interest in Parkgate in favour of a third party.
171. I am quite satisfied that Linda has not, in any way, offended against her obligations set out at (b) and (c) above. I am, likewise, satisfied that she has not created any incumbrance on, or in relation to Parkgate. All she has done is to permit Stephen and Linda to remain, as bare licencees, in occupation of Parkgate. The short question is whether, in so doing, she has permitted an incumbrance on, or in relation to Parkgate and, in my view, she has not.
172. In usual legal parlance, an incumbrance is normally regarded as something which encumbers, the title to land; some right to which the land is subject, commonly a mortgage, lien, or other security interest. A bare licence is not, in that sense, an incumbrance at all. It is not an interest in land and it is not something to which the land, or the title to the land, is subject
173. That does not mean, of course, that, in the context, of a particular instrument and particular circumstances, incumbrance might not bear a wider meaning. In this case, however, I see no indicia pointing to any special, or wider, meaning of incumbrance and, accordingly, I do not think that Linda, in permitting Stephen and Elizabeth’s licences to continue, following the execution of the trust deed, has permitted Parkgate, or the title to Parkgate, to be encumbered thereby.
174. In the light of this judgment and my conclusions and findings, as set out in this judgment, the parties must now take stock. I expect, in that context, all parties to cooperate in narrowing and defining outstanding issues, in agreeing, in so far as they can, matters signposted by this judgment and in agreeing directions to bring these proceedings to a conclusion.