Judgment – Enforcement – Occupational pension – Whether court can compel judgment debtor to draw down pension benefits to satisfy judgment debt – Senior Courts Act 1981, ss. 37 (1), 39 (1) – Pensions Act, 1995, s. 91 (2)

Neutral Citation Number: [2023] EWHC 567 (Ch)

Case No: CR-2021-MAN-000222

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
IN MANCHESTER
INSOLVENCY AND COMPANIES LIST (ChD)

Manchester Civil Justice Centre,
1 Bridge Street West,
Manchester
M60 9DJ

Date: Thursday, 16 March 2023

Before :

HIS HONOUR JUDGE HODGE KC

sitting as a Judge of the High Court

IN THE MATTER OF LLOYDS BRITISH TESTING LIMITED (IN LIQUIDATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between:

MANOLETE PARTNERS PLC

Applicant

- and -

IAN RUSSELL WHITE

Respondent

Mr Joseph Curl KC and **Mr Jon Colclough** (instructed by **Addleshaw Goddard LLP**, Manchester) for the **Applicant**
Mr Tom Asquith (instructed by **Farleys Solicitors LLP**, Preston) for the **Respondent**

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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HIS HONOUR JUDGE HODGE KC

Hearing date: 13 March 2023
Judgment handed down: 16 March 2023

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Remote hand-down: This judgment was handed down at a remote hearing at 2.00 pm on Thursday 16 March 2023 by circulation to the parties or their representatives by email and by release to The National Archives.

The following cases are referred to in the judgment:

Bacci v Green [2022] EWHC 486 (Ch), [2022] BPIR 641

Bacci v Green [2022] EWCA Civ 1393, [2023] Pens LR 2

Blight v Brewster [2012] EWHC 165 (Ch), [2012] 1 WLR 2841

Brake v Guy [2022] EWHC 1746 (Ch)

Lindsay v O'Loughnane [2022] EWHC 1829 (QB), [2022] Pens LR 13

Office of the Bankruptcy Adjudicator v Shaw [2021] EWHC 3140 (Ch), [2022] BPIR 807

Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank and Trust Co (Cayman) Ltd [2011] UKPC 17, [2012] 1 WLR 1721

His Honour Judge Hodge KC:

I: Introduction

1. The core issue raised by this insolvency application is whether the court can, and should, compel the respondent judgment debtor to draw down his benefits under an occupational pension scheme financed by his employer in order to satisfy a substantial outstanding judgment debt in favour of the assignee of claims for breach of director's duties brought following the insolvent administration and voluntary liquidation of the employer company. The respondent contends that the orders sought by the applicant would be in breach of the prohibition in s. 91 (2) of the Pensions Act 1995 (the **Pensions Act**) and that the court should decline to follow the case law authority which suggests otherwise. It is for this reason that I reserved judgment at the conclusion of the one day hearing.

II: Background

2. The applicant is a specialist insolvency litigation funder and the assignee of claims asserted on behalf of Lloyds British Testing Limited (the **company**) and its liquidators against the respondent, Mr Ian Russell White, who will be 61 years of age the day after this judgment is due to be handed down and who served as a director of the company between 26 June 2002 and 23 December 2016. Mr White has explained that the company was formed on 21 May 2002 after he had led a successful management buy-in of the business with the assistance of bank finance and a substantial personal investment; and that the company was his *"life's work"*. The respondent states that he was central to the company floating on London's AIM stock exchange which led to the company's bank making a 20% return on its investment before the company reverted to private ownership. The company entered into administration on 24 November 2016 and then into creditors' voluntary liquidation on 28 November 2017. Prior to its insolvency, the company had grown to be a prominent provider of inspection, testing and repair services of lifting equipment.

3. On 10 March 2006, the company was granted a lease of land and buildings on the north-east side of Fabian Way, Crymlyn Burrows, Swansea (the **property**) for a term of ten years. The landlords were the trustees of the Lloyds British Small Self-Administered Pension Scheme (the **Scheme**) who, at that time, were Mr Hayden Davis, the respondent and Mr Trevor Dale. The register of title for the leasehold interest (CYM 285910) is at page 59 of Bundle B. At paragraph 24 of his witness statement, the respondent states that the Scheme purchased the property in 2004 and that: *"The purchase was made using the company's funds"*. The reversionary estate is now a long lease for a term of 125 years from 24 June 2007 granted to the Scheme trustees on 17 December 2008 and first registered on 15 January 2009. The register of title for the long leasehold reversion (CYM 432674) can be found at page 64 of Bundle B. I queried the discrepancy over the dates of purchase of the property at the beginning of the hearing but although the respondent was present in court throughout, I received no explanation for it. I infer that there must have been some form of surrender and re-grant of an earlier reversionary leasehold interest. The property is the only asset of any substance within the Scheme, which was created on 1 July 2003 and is subject to a deed of amendment entered into on 14 August 2006 and the Standard Life General Rules for Small Self-Administered Schemes, code SAS71 (the **Scheme Rules**).

4. As at 2 September 2022 the registered proprietors of the long leasehold reversion are shown as the respondent, his son Ryan, and Barnett Waddingham Trustees Ltd, who were registered in their capacity as the then Scheme trustees on 29 November 2018. As explained at paragraph 18 of the respondent's witness statement, Barnett Waddingham Trustees Ltd are no longer the scheme's professional trustee as they have resigned over a dispute. Mr Ryan White is the professional trustee, although he has no other interest in the Scheme; and the respondent is its only beneficiary. During the course of this hearing, it became common ground that the respondent is the managing trustee of the Scheme. Upon reaching the age of 55 in 2017, the respondent withdrew the 25% tax-free part of his pension by taking some money from the Scheme and all of the money from his Standard Life scheme. He says that he has since spent all of that lump sum; but he accepts that he does *"still have an interest in the [Scheme] subject to my tax-free lump sum having already being taken"*; and that he is its *"only beneficiary"*. The property is presently occupied by a company called SA1 Business Park Limited, paying an annual licence fee of £60,000. The respondent claims that the tenant has an option to purchase the property; but Mr Curl says that in fact the emails on which he relies only show a discussion about the possibility of the grant of an option, and do not evidence any option having in fact been granted.

5. On 26 August 2020, the applicant took an assignment of claims that the respondent had breached fiduciary duties owed to the company by causing it to make various payments in the period of some 20 months leading up to the company entering into administration, between 1 April 2015 and 24 November 2016. These included payments towards a Bentley Flying Spur and a Bentley Continental, two Lamborghinis, a Porsche, foreign holidays in the Caribbean and the Maldives, the respondent's home, the rent on his son's flat, substantial direct payments to the respondent, and the cost and expenses of acquiring and operating a helicopter. The applicant alleged that these payments were made in breach of the respondent's duties as a director of the company.

6. Under the terms of the relevant purchase agreement, the applicant is under a contractual obligation to return a substantial part of any net recoveries to the company's insolvent estate: (i) 50% of the first £500,000; (ii) 60% of anything between £500,000 and £1,000,000; and (iii) 65% of anything above £1,000,000. According to the list of creditors which the applicant has obtained from the liquidators, there are roughly 500 creditors that have lost money by reason of the liquidation. Most of these are small trade creditors (typically electricians, plumbers, cleaners, and various suppliers) left unpaid for a few hundreds or thousands of pounds; and the filed claims are in the region of £3.3m.

7. The applicant issued an insolvency originating application against the respondent on 19 April 2021. The trial took place before me over three days between 15 and 17 August 2022, with Mr Jon Colclough (of counsel) representing the applicant and the respondent acting as a litigant in person. I delivered an extemporary judgment on 18 August 2022, finding that the respondent had made various payments in breach of the fiduciary duties he owed to the company. Following a consequentials hearing on 25 August 2022, I made an order upholding the claim against the respondent in part. He was ordered to pay: (1) £ 657,149.85 in respect of the principal element of the claim; (2) simple interest to the date of judgment of £ 124,768.45 in respect of interest; (3) £ 64,095.92 as an additional sum because the applicant had bettered its own Part 36

offer; and (4) costs to be assessed, with a payment of £ 150,000 on account of such costs. That resulted in a total judgment debt of £ 996,014.22, which was payable within 14 days (and thus by 8 September 2022). To date, the respondent has paid not a penny towards this judgment debt. The respondent makes the point that the applicant had sought to recover the sum of £ 6,913,323.05 from him but was only awarded £ 657,149.85, plus costs and an additional award under CPR 36.17 (4) (d), together with interest, and that the balance of the applicant's claims were dismissed.

III: Application

8. The application now before the court is dated 22 September 2022. It is supported by the first witness statement of Ms Rebecca O'Callaghan, a solicitor and legal director with Addleshaw Goddard LLP, the applicant's solicitors, dated 22 September 2022, together with exhibit ROC 1. There have been no less than three case management orders made by DJ Woodward, on 14 December 2022, on 1 February 2023 (by consent), and (again by consent) on an unspecified later date. Evidence in answer is contained in the witness statement of the respondent dated 8 February 2023, together with exhibit IW 1. Evidence in reply is contained in Ms O'Callaghan's second witness statement dated 28 February 2023, together with exhibit ROC 2. There was no application to cross-examine any of the witnesses.

9. The application proceeded by way of an attended hearing on Monday 13 March 2023. There was a core bundle of 44 pages, an exhibits bundle of 276 pages, and a joint authorities bundle of 204 pages. The applicant was represented by Mr Joseph Curl KC, leading Mr Colclough. The respondent was represented by Mr Tom Asquith (of counsel). Counsel had produced detailed and helpful written skeleton arguments, both dated 8 March 2023 which I had had the opportunity of pre-reading, together with all of the core bundle, some of the exhibited documents, and all of the case law authorities.

10. In his skeleton argument Mr Asquith has helpfully summarised the key points to be derived from the witness evidence, as follows:

(1) Ms O'Callaghan's first witness statement

(a) There is a commercial property in Swansea comprised within the respondent's pension fund: paragraph 10.

(b) The registered proprietors are the respondent, Mr Ryan Russell White, and Barnett Waddingham Trustees Limited, recorded as the trustees of the Lloyds British Small Self-Administered Pension Scheme: paragraph 15.

(c) The value of the property as at 9 November 2018 was stated to be £800,000: paragraph 16.

(d) The applicant is also aware of two other pensions: (i) an executive pension plan with Standard Life, with a fund value of £ 171,879.39 and (ii) a Lloyds Konecranes pension scheme with a value of £ 65,167: paragraph 17.

(e) The court can order a judgment debtor to draw down his or her pension: paragraph 19.1.

(f) The court can order a debtor to delegate pension powers to a creditor's solicitor, and authorise the solicitor to exercise that power: paragraph 19.2.

(g) The court can make a third party debt order that becomes effective when the debtor has elected to draw down on his or her pension and a debt becomes due: paragraph 19.3.

(h) A court can enforce against the whole pension, and not just the tax-free amount: paragraph 19.4.

(i) The court is capable of crafting a remedy to meet the facts of the relevant case, including ordering the debtor to provide or sign such documentation as the creditor may reasonably require. The court can also order the pension trustee simply to pay the money to the creditor: paragraph 19.5.

(j) The applicant seeks an order that Ms O'Callaghan be authorised under s. 39 [sic] of the Senior Courts Act 1981 to exercise Mr White's right to: (i) instruct the trustees of the Scheme to sell the property, (ii) draw down such sums from the proceeds of sale up to the amount of the judgment debt, and (iii) direct the trustees to pay the sums drawn down to the applicant in satisfaction, or partial satisfaction, of the judgment debt, alternatively a third party debt order that is to become effective when the debt becomes due to the respondent: paragraph 20.

(k) The applicant also seeks an order that Ms O'Callaghan be authorised under s. 39 [sic] of the Senior Courts Act 1981 to exercise Mr White's right to: (i) instruct the trustees of the Standard Life executive pension plan and the Lloyds Konecranes pension scheme to draw down such sums up to the amount of the judgment debt; and (ii) direct the trustees to pay the sums drawn down to the applicant in satisfaction, or partial satisfaction, of the judgment debt, alternatively a third party debt order that is to become effective when the debt becomes due to the respondent: paragraph 21.

(2) The respondent's witness statement

(a) The applicant refers to three pensions: (i) the Scheme, (ii) the Standard Life executive pension plan and (iii) the Lloyds Konecranes pension scheme: paragraph 9.

(b) As to the Standard Life executive pension plan, the respondent no longer has any interest in it: paragraph 11.

(c) As to the Lloyds Konecranes pension scheme, this was transferred as part of the respondent's divorce settlement: paragraph 15.

(d) As to the Scheme, the respondent retains an interest, although his tax-free lump sum has already been taken: paragraph 18.

(e) The trustees of the Scheme are the respondent and his son Ryan. Mr White is the only beneficiary: paragraph 18.

(f) The Scheme is an occupational pension scheme. It is not, and never has been, a personal pension scheme: paragraph 19.

(g) The cash available in the Scheme is very modest; and it owes substantial debts to Barnett Waddingham: paragraph 22.

(h) Aside from the property and its very limited cash, the Scheme does not possess any other assets: paragraph 23.

(i) Whilst it appears from the title register that the property was purchased on 29 November 2018, in reality it was purchased 19 years ago. 29 November 2018 is simply the recorded date of a transfer consequent upon a change of professional trustee: paragraph 24.

(j) The property is currently occupied under a licence paying £60,000 a year: paragraph 28.

(k) The applicant seek relief which is at odds with s. 91 of the Pensions Act because the Scheme is an occupational pension scheme: paragraph 34. Mr Curl accepts that, on the evidence, he is in no position to challenge that this is an occupational pension scheme; and he accepts that the court will have to proceed on the basis that it is.

(l) The applicant seek relief which is inconsistent with the Scheme rules: paragraph 35.

(m) Where the applicant seeks authorisation for Ms O'Callaghan to be authorised to take certain steps under s. 39 of the Senior Courts Act 1981, such relief is not available to the applicant because the respondent has not failed to do something which he has been ordered to do: paragraphs 36 and 37.

(n) The relief sought is unclear: paragraph 38.

(o) The court should exercise its discretion in the respondent's favour due to his impecunious situation. The property is all he has: paragraphs 39 to 50.

(3) Ms O'Callaghan's second witness statement

(a) The applicant's claim against the respondent was in respect of various large payments made for non-company purposes. It was wrong to say that it did not relate to breaches of his duties as a director: paragraphs 7 and 8.

(b) It is irrelevant to compare the applicant's financial position with the respondent's. The applicant was obliged to return a substantial part of any net recoveries to the company's insolvent estate: paragraph 9.

(c) If the respondent argues that the steps to be taken to access his pension are slightly different to those suggested in Ms O'Callaghan's first witness statement, then the court is invited to make an order to give effect to the remedy sought: paragraph 12.

(d) The Scheme bank statements should be more up to date: paragraph 13.

(e) References in the first witness statement to s. 39 of the Senior Courts Act 1981 should have been to s. 37: paragraph 14.

11. Mr Asquith points out that Ms O'Callaghan makes no attempt to dispute the respondent's evidence that: (1) the Standard Life executive pension plan has already been drawn down and so has no value; (2) the Lloyds Konecranes pension scheme was transferred to the respondent's ex-wife (and therefore also has no value from his perspective); and (3) the Scheme is an occupational pension scheme. Although making no formal concessions, Mr Curl accepts that he is in no position to challenge the respondent's evidence on these points and so the focus of the application is on the Scheme; and the relief sought at paragraph 21 of Ms O'Callaghan's first witness statement therefore falls away.

12. At the outset of the hearing, Mr Asquith raised the preliminary point that the applicant was now seeking entirely different relief from that sought by the original application. That change had not been foreshadowed in the reply evidence but had only surfaced for the first time last Wednesday in the applicant's skeleton argument, and so it had not been addressed in Mr Asquith's own skeleton argument. The draft order now produced represents a further significant change in the relief sought by the applicant. Mr Asquith emphasises that this application had not been preceded by any pre-application correspondence requesting any details of the respondent's pension entitlement. He submits that there has been such a shift in the applicant's case, including the apparent abandonment of any claim for a third party debt order (to which Mr Asquith had objected at paragraphs 49 to 52 of his skeleton argument, both on jurisdictional and discretionary grounds), that the court should refuse to allow the applicant to pursue its new heads of relief, and should dismiss the present application, leaving the applicant to persuade the court (if so advised) that it should be allowed to run its reformulated claim for relief on some further application. Mr Asquith confirmed that he did not seek any adjournment of the hearing should the court decide to permit the application to proceed.

13. Mr Curl's response was that Mr Asquith is focussing on the form, rather than the substance, of the application. It has always been clear that what the applicant is seeking is substantive injunctive relief under s. 37 (1) of the Senior Courts Act 1981 (**s. 37**). The issue (as recognised by Mr Asquith) has always been (and remains) whether the respondent should be required to access his *"pension pot"* so as to enable him to satisfy his substantial judgment debt. The mechanics for achieving this are essentially a matter of form rather than substance. Mr Curl's present draft order has been crafted with a view to meeting certain of the objections raised by Mr Asquith in his skeleton argument. However, the applicant is not wedded to that particular form of order, and it is content to leave it to the court to craft an appropriate form of order.

14. The application notice seeks:

> Pursuant to section 37 (1) of the Senior Courts Act 1981, and in accordance with the principles first set out in *Blight v Brewster* [2012] EWHC 165 (Ch), the applicant's solicitor be given the authority to take the steps set out in paragraphs 19 and 20 of the witness statement of Rebecca O'Callaghan in relation to the respondent's pension(s).

It was, I think, common ground that this should be treated as a reference to paragraphs 20 and 21 of Ms O'Callaghan's witness statement. As previously noted, paragraph 21 relates to the two further pension schemes in which the respondent states that he longer retains any interest. Without making any formal concession, Mr Curl accepts

that he cannot go behind that evidence and so they fall out of the picture, leaving only the relief referred to in paragraph 20 of Ms O'Callaghan's first witness statement. This reads:

> In this case, the applicant is seeking an order that I (as the applicant's solicitor) be authorised under section 39 of the Senior Courts Act 1981 to exercise the respondent's right to: (i) instruct the trustees of the Lloyds British Small Self-Administered Pension Scheme to sell property with HMLR title number CYM432674; (ii) draw down such sums from the proceeds of sale up to the amount of the judgment debt; and (iii) direct the trustees to pay the sums drawn down to the applicant in satisfaction or partial satisfaction of the judgment debt. In the alternative to (iii) above, the applicant seeks a third party debt order that becomes effective the moment the debt becomes due to the respondent.

15. At paragraph 52 of his skeleton argument, Mr Curl reformulated the relief sought by the applicant as follows:

> (1) An injunction requiring the respondent to delegate to Ms O'Callaghan (the applicant's solicitor) all his powers to draw down funds from the Scheme, including his right to nominate a bank account into which payment can be made.
>
> (2) An order setting out how the waterfall of proceeds should be applied, namely: (a) any outstanding sums due to Barnett Waddingham as former professional trustee; (b) all tax owing to HMRC as a result of the drawdown; and (c) the balance to the applicant, up to the amount of the outstanding judgment debt.

16. The relief sought was further reformulated in Mr Curl's draft order, as follows:

> <u>Injunction</u>
>
> (1) The Respondent shall, by 4pm on 20 March 2023, delegate to Rebecca O'Callaghan of Addleshaw Goddard LLP (the Applicant's solicitors): (a) his power to draw down funds from the Pension Scheme; and (b) his power to nominate the bank account into which payment of any funds drawn down from the Pension Scheme shall be paid.
>
> (2) In the event that the Respondent fails to delegate his powers under paragraph (1) above, Rebecca O'Callaghan of Addleshaw Goddard LLP shall be authorised (and is hereby authorised) to exercise the powers in paragraph (1) (a) and (b) above.
>
> <u>Application of drawdown</u>
>
> (3) Upon receipt of any funds drawn down under paragraph (1) above, the Applicant shall apply the funds as follows:
>
> (a) First, to pay any outstanding sums owing to Barnett Waddingham Trustees Limited, the former professional trustee of the Pension Scheme.

(b) Second, to pay any tax owing to HMRC as a result of the pension drawdown.

(c) Third, to the Applicant up to the outstanding amount of, and by way of discharge of, the Judgment Debt.

(4) In respect of paragraph 3 (b) above, the Applicant shall co-operate with HMRC to ensure that the appropriate tax liability is calculated and paid.

17. I accept Mr Asquith's submission that there has been a substantial reformulation of the relief sought by the applicant on this application. But I also accept Mr Curl's submission that the court should focus on the substance, rather than the form, of the relief sought on this application. It has always been clear that what the applicant is seeking is substantive injunctive relief under s. 37. The issue (as Mr Asquith clearly recognises) has always been (and remains) whether the respondent should be required to access his *"pension pot"* so as to enable him to satisfy his substantial judgment debt. The mechanics for achieving this are essentially a matter of form rather than substance. I accept that Mr Curl's draft order has been crafted with an eye to meeting certain of the objections raised by Mr Asquith in his skeleton argument; but the applicant is not wedded to this particular form of order, and it is content to leave it to the court to craft an appropriate form of order. I am entirely satisfied that Mr Asquith is put at no disadvantage by the shift in the focus of the relief sought on this application, which, in any event, is ultimately a matter for the court. I am also satisfied that it would be contrary to the overriding objective of dealing with the case justly, and at proportionate cost, to decline to deal with the application on its merits at this hearing: the respondent is on an equal footing with the applicant and is able to participate fully in the proceedings, engaging with the relevant issues; and were the court to decline to deal with the substance of the case on the merits would only result in delay and additional, and unnecessary, expense, and would also involve an inappropriate, and unnecessary, waste of available court resources. For these reasons, I resolved to proceed with the hearing.

IV: The submissions in summary

18. Mr Curl identifies as the short question for the court whether the respondent should be required to draw down his pension pot in order to pay his substantial judgment debt to the applicant and (indirectly) the company's creditors; or whether he should keep the benefit of a £800,000 property, and annual income of £60,000, to the detriment of his creditors. Unsurprisingly, Mr Curl submits that that question should be answered in favour of the applicant. He contends that this is an unusually straightforward case on the merits. The following primary facts are said to be incapable of dispute:

(1) The respondent is the only beneficiary of the Scheme.

(2) The only asset of the Scheme (other than limited cash at bank) is an income-producing commercial property.

(3) The acquisition of the property was entirely funded by the company.

(4) The court has found that the respondent has committed acts of misfeasance against the company.

(5) The respondent is a judgment debtor of the applicant (as assignee of the company's rights) and has paid nothing in discharge of that debt.

(6) The company's creditors stand to benefit if the applicant makes recoveries from the Scheme.

19. Mr Curl submits that this is also a clear case on the law: the respondent's only legal argument in resisting a ***Blight v Brewster*** order (named after the first case in which such an order was made: ***Blight v Brewster*** [2012] EWHC 165 (Ch), [2012] 1 WLR 2841) is said to be based on a misapprehension of s. 91 of the Pensions Act. Mr White's error on this point was recently confirmed by the High Court in ***Bacci v Green*** [2022] EWHC 486 (Ch), [2022] BPIR 641 (which was affirmed on appeal at [2022] EWCA Civ 1393, [2023] Pens LR 2). Thus, s. 91 of the Pensions Act is said to present no bar to the making of a ***Blight v Brewster*** order.

20. Mr Asquith submits that this application should be refused. In summary, he contends that the court is unable to restrain the respondent from receiving his occupational pension by s. 91 of the Pensions Act; much of the relief sought is premature in nature, such as authorising the applicant's lawyer to do things which the respondent has not yet even been ordered to do himself, or (as originally sought) making a third party debt order; and the respondent's financial circumstances are such that the court should not exercise its discretion against him in any event.

V: Relevant statute law

21. The following provisions of the Senior Courts Act 1981 and the Pensions Act 1995 are of particular relevance to this application:

(1) Section 37 of the Senior Courts Act 1981

> Powers of High Court with respect to injunctions and receivers.
>
> (1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.
>
> (2) Any such order may be made either unconditionally or on such terms and conditions as the court thinks just.

(2) Section 39 of the Senior Courts Act 1981

> Execution of instrument by person nominated by High Court.
>
> (1) Where the High Court … has given or made a judgment or order directing a person to execute any conveyance, contract or other document, or to indorse any negotiable instrument, then, if that person —
>
> (a) neglects or refuses to comply with the judgment or order; or

(b) cannot after reasonable inquiry be found,

that court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document shall be executed, or that the negotiable instrument shall be indorsed, by such person as the court may nominate for that purpose.

(2) A conveyance, contract, document or instrument executed or indorsed in pursuance of an order under this section shall operate, and be for all purposes available, as if it had been executed or indorsed by the person originally directed to execute or indorse it.

(3) Section 91 of the Pensions Act 1995

(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.

(5) In the case of a person (‘the person in question’) who is entitled to a pension under an occupational pension scheme, or has a right to a future pension under such a scheme, subsection (1) does not apply to any of the following, or any agreement to effect any of the following —

…

(d) subject to subsection (6), a charge or lien on, or set-off against, the person in question's entitlement, or right, (except to the extent that it includes transfer credits other than prescribed transfer credits) for the purpose of enabling the employer to obtain the discharge by him of some

> monetary obligation due to the employer and arising out of a criminal, negligent or fraudulent act or omission by him …

VI: Relevant case law

22. There have been a number of cases in this area of the law in recent years. I agree with Mr Asquith that because of the way in which the cases have referred to, and built upon, each other, it is helpful to consider them in chronological order. Before doing so however, it is appropriate to refer to the opinion of the Privy Council, delivered by Lord Collins of Mapesbury, in *Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank and Trust Co (Cayman) Ltd* [2011] UKPC 17, [2012] 1 WLR 1721. The case concerned the jurisdiction of the court to appoint receivers by way of equitable execution over a judgment debtor's powers of revocation of discretionary trusts established by him in the Cayman Islands under Cayman law so that they might exercise them in order to enforce a judgment debt. The power of revocation could not be regarded in any sense as a fiduciary power and so it was *"tantamount to ownership"*. Mr Asquith referred me to the statement at paragraph 52 that: *"A power of appointment is capable of being delegated where the holder of the power owes no duty of trust or confidence to another person"* in support of the proposition that the respondent cannot be ordered to delegate any power to which he might be entitled as a trustee of the Scheme. I do not consider that this statement assists the respondent's submissions. The *Tasarruf* case concerned a discretionary trust, rather than a pension scheme, and the appointment of receivers by way of equitable execution rather than the grant of an injunction; and, as will be seen, the law has developed since that case was decided. Here the applicant is not seeking relief against the respondent in his capacity as the managing trustee of the Scheme but rather as its only beneficiary. I therefore move on to consider the pension cases.

23. The starting point is the decision of Mr Gabriel Moss QC in *Blight v Brewster* [2012] EWHC 165 (Ch), [2012] 1 WLR 2841. The claimants, who had been the victims of a fraud perpetrated by the defendant, obtained summary judgment against him. Among the defendant's assets was a fund in a pension scheme, 25% of which he could elect to draw down as a lump sum. The claimants, in proceedings to enforce the judgment debt, sought an order requiring the defendant to make that election. The sum which the pension trustees would be bound to pay to the defendant would constitute a debt to which a third party debt order could then attach. An order was made in the terms sought but it was subsequently set aside by a district judge on the ground that the court had lacked the necessary jurisdiction to grant an injunction under s. 37 (1) ordering the defendant to make the election sought. The deputy High Court Judge allowed an appeal from that decision, holding that there was a strong principle and policy of justice that debtors should not be allowed to hide assets away in a pension fund which they had a right to withdraw, and which were needed to pay creditors; that the demands of justice were the overriding consideration in determining the scope of the jurisdiction under s. 37 (1); that the powers in that sub-section could therefore be used in aid of a third party debt order when justice so required; that a judgment debtor who had chosen not to become bankrupt should not be able to enjoy the benefits of bankruptcy without its significant burdens, and so public policy did not require that the special protection for pensions under bankruptcy law should extend to the execution of judgments; and that, accordingly, the defendant would be ordered to delegate to the claimants' solicitor the power to elect to receive 25% of his pension as

a lump sum, up to the amount needed to pay the balance of the judgment debt. Mr Curl emphasises (in reliance on paragraph 62 of the judgment) that the essence of the decision is that the injunction and receivership powers in s. 37 (1) are being used in aid of the court's money judgment in order to render it effective. One should not focus on the form, but rather on the substance, of the relief, and upon the justice of the case.

24. At paragraphs 70 to 76, Mr Gabriel Moss QC said this:

> [70] The present situation seems to me to be analogous to the situation faced by the Privy Council [in the ***Tasarruf*** case]. 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 monies needed to pay their creditors. …
>
> [75] In my judgment, it is not necessary to go to the disproportionate trouble and expense in a case of this kind to appoint a receiver by way of equitable execution and then force the defendant to delegate his power of withdrawal to the Receiver, as was done in the Privy Council case. The defendant in this case can simply be ordered to delegate the power of election to the claimants' solicitor and for the court to authorise the solicitor to make the election in his name. Upon the election being made, the sum payable by Canada Life will then become due to the defendant and can be made the subject of the third party debt order.
>
> [76] I propose therefore to order that the defendant sign such letter as may be presented to him by the claimants' solicitors to delegate to the claimants' solicitor the power to make in the defendant's name the election to receive his tax free 25% payment, up to the amount needed to repay the balance of the judgment debt. I also propose to order that if the defendant does not comply with this order, the claimants be authorised by the court to write in the defendant's name to Canada Life making the election on his behalf and in his name. 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. A copy [of] the order of the court together with the claimants' solicitor's letter should be sufficient authority for Canada Life to act on the election.

25. Mr Curl points out that later judges have found the reasoning in ***Blight v Brewster*** to be compelling; and Mr Asquith rightly did not seek to challenge the decision. However, it should be noted that in that case the claimants had been the victims of a fraud perpetrated upon them by the defendant; that the right of election related only to the defendant's 25% tax-free lump sum; and that the relevant pension scheme was not an occupational pension.

26. The next case in point of time is my decision in ***Office of the Bankruptcy Adjudicator v Shaw*** [2021] EWHC 3140 (Ch), [2022] BPIR 807, in which I applied the logic of ***Blight v Brewster*** to the question of whether a person who had applied for his own bankruptcy order had shown that he was unable to pay his debts within the meaning of the Insolvency Act 1986. In summary, I held that when considering the question of cash-flow insolvency (on which the debtor relied in that case), the bankruptcy adjudicator had been entitled to have regard to pension assets, which would be

susceptible to enforcement on ***Blight v Brewster*** grounds, and whether such assets could be realised (i.e. drawn down) within an appropriate timescale so as to pay the debtor's debts. As the debtor had failed to produce sufficient evidence as to how long it would take him to realise his pension assets, he had therefore failed to meet the evidential burden of proving his (cash-flow) insolvency. Beyond recognising that, pre-bankruptcy, a judgment creditor can compel a judgment debtor to make an election to draw down his pension pot, I derive no particular assistance from this decision, which arose in a very different context from the present case.

27. I move then to ***Bacci v Green*** [2022] EWHC 486 (Ch), [2022] BPIR 641 at first instance. This was a decision of Mr Andrew Hochhauser QC. There a judgment creditor sought a ***Blight v Brewster*** order in respect of the beneficial entitlement (of roughly 20%) of the judgment debtor (Mr Green) in an occupational pension scheme which owned a valuable, central London property. The judgment debt was founded upon the debtor's dishonesty and fraud. The judgment creditor sought injunctions requiring Mr Green to delegate various powers: (1) to notify HMRC that he was revoking his enhanced protection tax status; (2) to call for a pension lump sum; and (3) to call for a pension. An order was sought that the proceeds of drawdown be paid to a bank account nominated by the judgment creditor, against which it would seek to enforce (presumably by way of a third party debt order). Mr Green was represented by Mr Fenner Moeran QC. As the relevant pension was an occupational pension scheme, reference was made to s. 91 of the Pensions Act. At paragraph 40 Mr Hochhauser explained why this section was no bar to the order sought:

> Section 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.

28. Mr Green accepted (as he had to) that, following ***Blight v Brewster***, the court could require a debtor to exercise, or delegate the exercise of, his power to call for payment of a pension. However, it was argued that: (1) the power to terminate enhanced protection was not *"property"* in respect of which the court could make an order pursuant to s. 37; and (2) it was not *"just and convenient"* to make the order sought. The deputy judge rejected these arguments at paragraph 56. Revocation of the enhanced protection was not an impermissible extension of ***Blight v Brewster***. The power was not to be viewed *"in isolation, as opposed to being an integral part of the means of obtaining immediate access to Mr Green's property"*. The public policy arguments in fact pointed in favour of making the order because *"fraudsters should not prosper"*; and it was therefore *"just, equitable and convenient"* to make the orders sought by the claimants: *"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."* Mr Curl directed me to paragraph 53 of the judgment, where Mr Hochhauser had been expressly referred to Professor Goode's Report (relied on by Mr Asquith) which had recommended that pensions should not fall into bankruptcy. Mr Curl relies on this case as an incremental development of the law, involving the grant of injunctive relief as a personal remedy operating to require a judgment debtor to behave equitably as regards his creditor.

29. Like *Blight v Brewster*, *Bacci v Green* was a case where the judgment was founded on fraud. The real significance of the case is twofold: First, the court's holding that the making of an order which affects that part of the judgment debtor's pension which cannot be withdrawn without incurring a liability to tax is not *"an impermissible extension of Blight v Brewster"*. Second, that s.91 of the Pensions Act is no obstacle to the court ordering a judgment debtor to access their pension pot. As Mr Asquith emphasises, that second development was the product of a concession by counsel appearing for the judgment debtor; but as Mr Curl points out, the concession was made by experienced leading counsel specialising in pensions law, and was one which commended itself to the experienced Deputy High Court Judge.

30. *Bacci v Green* was shortly followed by *Brake v Guy* [2022] EWHC 1746 (Ch), a decision of HHJ Paul Matthews sitting as a Judge of the High Court. Unlike the two earlier cases, the liability in Brake v Guy did not arise out of any fraud. The £70,000 judgment debt was a payment on account in respect of a costs order made by the Court of Appeal. The judgment debtor (Mr Brake) had already utilised his 25% tax-free lump sum, and the 75% balance (approximately £89,000) had moved to *"flexi-access drawdown"*. It was likely that, after Mr Brake was taxed at his marginal tax rate, there would be insufficient sums to pay the £70,000 judgment debt in full.

31. At paragraph 66, HHJ Paul Matthews rejected Mr Brake's attempts to distinguish *Blight v Brewster*:

> 66 In the skeleton argument prepared for Mr Brake by counsel, Mr Brake drew the court's attention to what were submitted to be *'the limits of Blight v Brewster'*. In particular, that case was concerned with the judgment debtor's right to draw down 25% of his pension fund tax free. However, in the present case, Mr Brake had already drawn down the 25% tax-free lump sum, so that any further drawing would involve incurring a tax liability. It was therefore argued that it would not be just and convenient to require Mr Brake to draw down his pension in a tax-inefficient way.

The judge also rejected, at paragraphs 67-69, any suggestion that the nature of the judgment debt was of any real relevance to the exercise of the court's discretion:

> 67 … I do not accept … that it is only where fraud causes the liability that an injunction can be granted to require the judgment debtor to do something to crystallise a debt, nor the conclusion that therefore it cannot be done here.
>
> 68 As counsel for the Guy Parties pointed out, the statement of principle set out by the deputy judge in *Blight v Brewster* at paragraph 70 (which was cited earlier in this judgment), does not distinguish between different sources of liability of the judgment debtor. He does not say that 'fraudulent debtors should not be allowed to hide their assets in pension funds'. He simply says that 'debtors should not be allowed to hide their assets in pension funds'. And, for my part, I can see no principled distinction to draw here between different kinds of liability.

> 69 Of course, I accept that fraud is, in a general sense, regarded as more serious than, say, ordinary breach of contract or negligence. But the relevant conduct in considering whether to grant the injunction is not what causes the liability. It is instead the use of pension funds to prevent creditors being paid.

32. HHJ Paul Matthews also rejected various other arguments advanced against making the order sought by the judgment creditors. It was *"of minor importance"* that any drawdown would be subject to tax: see paragraph 72. It was also no answer to the application that the third party scheme trustee stood in a fiduciary position towards Mr Brake, and was therefore obliged to act in his best interests and should not be forced to pay any of his pension to the applicants. Once Mr Brake (or his agent) had given an effective instruction to the third party trustee to liquidate the pension fund and to pay it out, the trustee had no discretion not to implement it, even if it thought that this was not in Mr Brake's best interests. It was the same as if the sole beneficiary of a trust, of full age and sound mind, had directed the trustee to pay the trust fund over to him, under the so-called rule in ***Saunders v Vautier***, and the trustee declined to do so, saying that it was not in the beneficiary's best interests to do so. So, once the trustee had money in its hands which it was its duty to pay to Mr Brake, it could be made subject to a third party debt order: see paragraph 74.

33. The judge made the order sought, and he required Mr Brake to execute all the documentation that the judgment creditor required to draw down all of the funds remaining in his pension scheme. At paragraphs 90 and 91, HHJ Paul Matthews said this:

> 90 In my judgment, it is indeed just and convenient for the court to make an injunction ordering Mr Brake to exercise his right to draw down his remaining pension entitlement from the third party. Mr Brake has been ordered to pay to the successful respondents their costs of his unsuccessful appeal. He has an asset which can be realised for their benefit. The authorities make clear that it does not matter that the asset concerned is a pension entitlement. The old paternal policy of preventing pension scheme members realising more than a proportion in cash and requiring the remainder to be used in the purchase of an annuity has gone. It is not clear how much will become payable to Mr Brake, because the tax and administration costs deductible have not been calculated. Nevertheless, as I say, I am satisfied that a significant proportion of the costs liability of £70,000 will be satisfied by the making of a final TPDO in relation to the debt that will become due from the third party upon the exercise by Mr Brake of his right. I am quite satisfied that the third party has no relevant discretion to exercise, although I accept that it is entitled to be satisfied that the right has been properly exercised, and that all relevant information and documentation has been supplied and completed.
>
> 91 I will accordingly direct that (i) the [judgment creditors] consult the third party as to the form of documentation and information which the third party requires for Mr Brake to exercise his right, (ii) Mr Brake provide to the [judgment creditors] all such information as may be reasonably required by the third party which it is in his power to provide,

> (iii) the [judgment creditors] then draft the relevant documentation, submitting it to Mr Brake for any comments he may have, (iv) the [judgment creditors] then consider any such comments and settle the documentation. I will order that Mr Brake then execute the documentation forthwith and return it to the [judgment creditors] for onward transmission to the third party. If he should fail to execute the documentation forthwith, or to transmit it to the [judgment creditors], then Mr Gatt QC, or failing him another of the partners in the solicitors for the [judgment creditors], shall be authorised under s.39 of the Senior Courts Act 1991 to execute it on his behalf. Upon the implementation of the exercise of the right by Mr Brake, the third party shall, after deduction of any required tax and fees, pay to the [judgment creditors] the lesser of (i) the sum of £70,569 or (ii) all remaining sums in Mr Brake's pension fund.

34. Mr Asquith points to the fact that HHJ Paul Matthews had earlier (at paragraph 52) refused to make a third party debt order because although Mr Brake had unrestricted access to his pension fund (subject only to administration costs and tax liabilities), it was held in the form of investments, and not in cash. Mr Brake therefore did not have a debt owed to him, but a beneficial interest in those investments (subject to tax and costs). I note that, without formally abandoning this aspect of his case, Mr Curl has not pursued his application for a third party debt order, in the face of Mr Asquith's submission that the court simply has no power to make a contingent third party debt order, to becomes effective at some later date when Mr White (or his agent) should elect to draw down his pension pot. In the course of his oral submissions, Mr Curl referred me to paragraph 51 of HHJ Paul Matthews's judgment, where it is recorded that the judgment creditors had conceded that *"there was no debt due until an election was made by or on behalf of Mr Brake to draw down all or part of the remaining funds"*, emphasising that this was by way of concession. However, the judge was clear that in his judgment, *"this concession was correctly made"*.

35. Only three days after the judgment in ***Brake v Guy***, Mr Simon Birt QC handed down his judgment in ***Lindsay v O'Loughnane*** [2022] EWHC 1829 (QB), [2022] Pens LR 13. Consistently with the earlier authorities, the Deputy High Court judge made a ***Blight v Brewster*** order. Mr Curl emphasises the following *"key points"* of the case:

(1) The *"starting presumption is often said to be that the court should assist the judgment creditor to recover the debt due to him"*: paragraph 41.

(2) There was no *"point of principle that prevents the Court making an order in the terms sought that what is sought here is ultimately payment of the entirety of Mr O'Loughnane's pension funds, rather than the tax free 25% as was the case in Blight"*: paragraph 35 (1).

(3) For the reasons given by the judge in ***Bacci v Green***, s. 91 of the Pensions Act was no bar to making an order in respect of an occupational pension: paragraph 35 (3).

(4) Even if the judgment debtor were impecunious, *"it is difficult to see how that fact would itself be decisive of the outcome of this application"*: paragraph 54.

(5) It was just, equitable and convenient to make the order: paragraph 55.

36. Mr Asquith notes that there was discussion (at paragraph 35 (3)) about the fact that one of the pension policies was a successor policy to an occupational pension policy (which, had it remained in its original form, would have been subject to s. 91 of the Pensions Act). Master Dagnall, who had initially heard the application before referring it to the judge, had entertained some concerns about that fact. The deputy judge said that that was not an issue in light of: (1) the fact it was no longer an occupational pension policy, but was a personal pension scheme, and therefore no longer fell under s. 91; and (2) *"even if that is wrong, the judgment and reasoning of Mr Andrew Hochhauser QC in Bacci (which was not available when Master Dagnall made his order) explain why in any event s. 91 does not prevent the court from making the type of order now sought"*.

37. Mr Asquith also notes that the court refused to make an order under s. 39 of the Senior Courts Act 1981, authorising a named individual to take various steps if Mr O'Loughnane failed to do so. That was because Mr O'Loughnane had not yet failed to take the steps in question. The court concluded (at paragraph 64) that:

> There is of a course a temptation to make the order now including the default provision, if only in order to save time and cost that would be associated with a further hearing if Mr O'Loughnane did not comply with it. That, however, would overlook the jurisdictional provision.

Mr Asquith took me to the following passage at paragraph 60 of the judgment:

> The *White Book 2022* at note 9A-138 records that an order under s. 39 (1) should not be made in anticipation of a failure to execute unless the defendant has already shown by his conduct that he refuses and will refuse to execute … That has been accepted in a number of cases … It does not appear that this point was raised with the Deputy Judge in the *Blight* case, which does not record express consideration of it.

38. In the course of his oral submissions, Mr Curl invited me to take a different view from Mr Birt QC on the operation of s. 39 (1) of the Senior Courts Act 1981, but he provided no cogent reasons for me to do so. Mr Birt's conclusion seems to me to accord with the language of the sub-section (which requires a prior neglect or refusal to comply with the court's judgment or order, and also to apply *"such terms and conditions, if any, as may be just"*) and with the commentary at Volume 2 of the *White Book*, and the cases cited therein. If I make any order in relation to the respondent's pension pot, I propose to follow the approach of Mr Birt QC as to the terms of the resulting order, as set out at paragraphs 67 to 70 of his judgment.

39. Finally there is *Bacci v Green* [2022] EWCA Civ 1393, [2023] Pens LR 2 in the Court of Appeal (Newey, Males and Arnold LJJ). Mr Green sought to challenge various aspects of the decision of the first instance decision. The primary challenge was in respect of Mr Green's power to revoke enhanced protection; but there was a secondary challenge on the basis of the deputy judge's exercise of his discretion, by reference to alleged public policy considerations and the adverse tax consequences imposed on Mr Green by the order. The scope of the appeal was explained at paragraph 12 of the leading judgment of Newey LJ thus:

> Mr Green challenges the Judge's decision on three grounds. In the first place, Mr Green contends that his power to revoke his 'enhanced protection' is neither 'property' nor 'tantamount to ownership' and, hence, that it cannot properly be the subject of an order under s. 37 (1) of the Senior Courts Act 1981 ('the 1981 Act'). Secondly, Mr Green maintains that the Judge failed to recognise that it is contrary to public policy to exercise s. 37 (1) of the 1981 Act in such a way as to deprive a person who has become bankrupt of pension rights. Thirdly, Mr Green argues that the fact that revocation of 'enhanced protection' would occasion large tax liabilities made it inappropriate to make an order providing for such revocation.

Unsurprisingly, in view of Mr Moeran's concession before the Deputy Judge, there was no attempt to argue that s. 91 of the Pensions Act prevented the court from granting the relief sought by the judgment creditor.

40. Mr Green's various challenges were all rejected. S. 37 (1) was held to embody a broad power, acting in personam, and Mr Green's legal right to revoke enhanced protection did not have to be *'property'* or *'tantamount to ownership'* for an order to be made. ***Blight v Brewster*** held that a judgment debtor who was not bankrupt could be compelled to take his pension lump sum so that it could be claimed by his creditors. In the instant case, the appellant would be entitled to access his pension from the age of 55; and the court could require the scheme member to delegate to the claimants' solicitor, first, his power to notify HMRC that he wished to revoke enhanced protection from the lifetime allowance charge, and, secondly, his right to call for a pension commencement lump sum, a lifetime allowance excess lump sum, and a pension from any remaining pension funds. Although Parliament had decided that pension rights deserved special protections, including their usual exclusion from the estate in bankruptcy, this was without prejudice to the wider powers of the court to grant any injunctive order that was just and convenient to make in the interests of justice. Allowing redress for the fraud perpetrated by Mr Green was a compelling reason to make the order in the present case. The fact that making an order under s. 37 (1) would occasion a tax charge was no bar to making it. Moreover, the court had already noted its power to direct the debtor to revoke his enhanced protection, or to delegate his power to do so, as ancillary to the order under s.37 (1).

41. At paragraphs 28 and 29 Newey LJ expressly rejected the contention that an order requiring Mr Green to delegate his power to revoke his enhanced protection was not one that could be made under s. 37 (1). To the contrary, it was open to the court to make such an order, if it thought fit, either as ancillary to an appointment of receivers, or as part of free-standing injunctive relief. In short, the power to revoke enhanced protection *could* be the subject of an order under s. 37 (1). Mr Curl invites the court to note that at paragraph 31 of Newey LJ's judgment, Mr Moeran appears to have advanced similar arguments to those of Mr Asquith, submitting *"that the public policy underlying the 1990s legislation was a relevant consideration for the Judge to take into account when deciding whether to accede to the Creditors' application and, in fact, a sufficiently important one that the Judge should not have made any order in the Creditors' favour"*.

42. The Court of Appeal in ***Bacci v Green*** did not expressly decide that s. 91 of the Pensions Act does not operate to prevent the court from granting a ***Blight v Brewster***

order in relation to an occupational pension scheme (although the section was mentioned by Newey J at paragraph 30). Further, although the Court of Appeal expressly considered (at paragraph 30) the public policy underlying the 1990s legislation, giving enhanced protection to pension rights, and referencing Professor Goode's Report, it is clear from paragraph 33 of Newey LJ's judgment that the Court of Appeal in that case attached considerable importance to the fact that the judgment debt was founded on fraud when considering whether considerations of public policy should prevent the exercise of the jurisdiction under s. 37 (1).

43. At paragraph 45 of his written skeleton argument, Mr Curl provides an overview of the applicable legal principles. He points out that the existence of the *Blight v Brewster* jurisdiction has now been confirmed by the Court of Appeal; and that there is not a single reported case in which the court has declined to assist the judgment creditor in making the order sought. He submits that the key principles which emerge from the authorities are as follows:

(1) The court's power to make an order derives from s. 37 (1). However, it is not necessary to show the existence of *"property"* against which a receiver can be appointed. The court has the power to *"assist creditors"* by granting *"free-standing injunctive relief"*: *Bacci v Green* in the Court of Appeal.

(2) The *"starting presumption"* is that the court should *"assist"* the judgment creditor to recover the judgment debt: *Lindsay v O'Loughnane* and *Bacci v Green* in the Court of Appeal.

(3) The payment of tax on the realisation of a judgment debtor's assets is an ordinary part of the process of execution, and is no bar to the making of an order: *Bacci v Green* (at first instance and in the Court of Appeal), *Guy v Brake*, and *Lindsay v O'Loughnane*.

(4) There is no bar to making an order in respect of an occupational pension, whether under s. 91 of the Pensions Act or otherwise: *Bacci v Green* (at first instance) and *Lindsay v O'Loughnane*.

(5) There is no "*principled distinction…between different kinds of liability"* (i.e. between fraud and non-fraud cases). The principle is that *"debtors should not be allowed to hide their assets in pension funds"*: *Brake v Guy*.

(6) It is very unlikely that impecuniosity is likely to be *"decisive of the outcome"*: *Lindsay v O'Loughnane*.

44. With the potential exception of proposition (4), which is vigorously disputed by Mr Asquith, I accept that Mr Curl has made out all of those propositions. I therefore turn to the parties' submissions.

VII: The applicant's submissions

45. Mr Curl emphasises that this is a case in which the applicant is a substantial judgment creditor of the respondent, which is owed over £1m. The respondent was found by this court to have acted in breach of the fiduciary duties he owed to the company in paying substantial sums for his own financial benefit. The applicant now seeks to recover by causing the respondent to realise a pension asset which was itself purchased with

company money. If the applicant is able to recover the judgment debt, significant sums will be paid back to the company in liquidation, with the prospect of a substantial benefit to its creditors.

46. There are said to be no difficulties with the respondent drawing down the remaining funds in the Scheme. He plainly has the power to do so, which is unsurprising given that he is the Scheme's sole beneficiary. Mr Curl objects that the respondent has opted not to explain in his evidence, by reference to the Scheme Rules, the basis on which the balance of the pension fund (after payment of his 25% tax-free lump sum) is held. However, it has self-evidently not been annuitised (for the fund remains represented by the property) and, accordingly, it is tolerably clear that the balance must be held as a *"Drawdown Pension Fund"* pursuant to rule 6A (6) of the Scheme Rules. This is the same kind of right to draw down as concerned the court in ***Brake v Guy***.

47. As the respondent has a Drawdown Pension Fund, rule 6C (1) of the Scheme Rules applies:

> Where a Member has a Drawdown Pension Fund, the Member shall agree with the Trustees the income to be withdrawn from the Drawdown Pension Fund in each Drawdown Pension Year (subject to section (2) of this Rule) and the number of instalments in which that income is to be paid. The Trustees may delay the payment of any income to allow sufficient time to sell any illiquid investments.

In short, Mr White has the right to *"agree"* with the trustees (i.e. to *"agree"* with himself, as the managing trustee, and his son, as the professional trustee) to draw down the full outstanding amount of the pension, albeit payment will likely be delayed *"to allow sufficient time to sell any illiquid investments"* (i.e., in this case, the property).

48. In any event, even if the Scheme Rules prevent such a payment (which Mr Curl says they do not), such payment could be made as a result of section 273B of the Finance Act 2004 (as amended). In Practical Trust Precedents at [D2-002], that provision is described as follows:

> In simple terms, with effect from 6 April 2015, the 2015 rules have allowed individuals to draw funds accrued under money purchase schemes however and whenever they wish (subject to meeting the minimum pension age requirements). A 'statutory override' in FA 2004 s.273B confers on the trustees or managers of money purchase schemes a power (but not an obligation) to make any of the payments permitted by the 2015 rules, despite any provision of the scheme rules to the contrary.

49. Mr Curl submits that the position as regards the Scheme can therefore be summarised as follows:

(1) The Scheme has two trustees (the respondent as managing trustee and his son as professional trustee) and one beneficiary (the respondent). The property is an asset of the scheme – plus any money in the bank account from the £60,000 annual licence fee.

(2) The respondent has already taken his 25% tax-free lump sum. However, the remaining assets within the Scheme (i.e. the property, and the money derived from the licence fee) have not yet been utilised.

(3) The respondent has the power to access the remaining assets within the Scheme in the manner described above, both under the Scheme Rules and under the general law. In drawing down the respondent's pension, the property will inevitably have to be sold.

Mr Asquith vigorously disputes proposition (3) above.

50. Despite what the respondent says in his witness statement, Mr Curl submits that, on the authorities, s. 91 of the Pensions Act is no bar to the relief the applicant seeks. The court should follow *Bacci v Green* and *Lindsay v O'Loughnane* and hold that the grant of an injunction, operating in personam, does not offend s. 91. The respondent will receive his pension funds; he is merely compelled to apply them in a particular way, receiving the benefit of a partial discharge from his judgment debt.

51. Thus, Mr Curl submits that the court simply has to decide whether, in light of the authorities, the respondent should retain the benefit of an £800,000 property, generating an annual income of £60,000, at the expense of his creditors. He submits that the answer is, and obviously is, no. The court should assist the applicant in recovering the substantial judgment debt it is owed by granting injunctive relief. It is clearly *"just and convenient"* for the respondent to be compelled to use his pension pot to discharge his judgment debt.

52. In light of the authorities set out above, Mr Curl submits that the respondent's alleged impecuniosity is of limited relevance to the exercise of the court's discretion. He has opted not to make any bankruptcy application, and he must therefore face the legal consequences of that decision. Further, this application does not concern (for example) a small pension income; rather, it concerns a commercial property worth at least £800,000.

53. However, Mr Curl submits that the respondent's evidence of his impecuniosity is clearly incomplete. It raises a number of questions, which Mr Curl identifies at paragraph 54 of his written skeleton argument, and which are said to be obvious on a superficial review of the evidence. I note that, with the single exception of the request for updated Scheme bank statements after 9 June 2022, none of these are matters which were raised in Ms O'Callaghan's second witness statement. However, Mr Curl submits that these are all issues which, had Mr White elected to become bankrupt, any trustee in bankruptcy would have wished to address. The applicant accepts that these questions cannot be answered by the court at this hearing. Mr Curl's short submission is that, even if it were material to the court's decision (which it is not), the court should view the evidence of the respondent's alleged impecuniosity with a critical eye.

54. In the course of his oral submissions, Mr Curl invited the court to focus on the substance of the relief sought on this application, which was to require the respondent to draw down his pension to pay off his judgment debt, rather than the mechanics by which this was to be achieved. The form of order was not an end in itself, but merely a means of gaining access to the respondent's pension pot. He invited the court to craft a pragmatic order, going no further than the relief granted in previous cases,

approaching the matter, if necessary, in stages, but involving the minimum necessary costs. Mr Curl submitted that the statutory objective of s. 91 was to prevent pensioners from *"liberating"* their pensions, and not to enable them to enjoy an enhanced standard of living during retirement at the expense of their judgment creditors. It was the company, and not the respondent, who had paid for his pension fund. The respondent now seeks to retain that pension, but without reimbursing the company for the expensive benefits which he has misappropriated at its expense. That should weigh with the court in the balance when exercising its discretion. It was difficult to understand why the respondent should be so opposed to a conditional or contingent order, which would only serve to save the costs of any further applications to the court.

55. For all of these reasons, Mr Curl invites the court to make the order sought by the applicant.

VIII: The respondent's submissions

56. Mr Asquith submits that the court cannot authorise Ms O'Callaghan to exercise the rights which the applicant seeks to exercise, primarily because the pension is an occupational pension scheme. S. 91 (1) (a) of the Pensions Act prohibits the assignment, commutation or surrender of an occupational pension scheme to another, subject to exceptions in s. 91 (5), none of which apply in the present case. Further, s. 91 (2) (again subject to s. 91 (5)) prohibits a court from making any order "*the effect of which would be that he* [the person entitled to the pension] *would be restrained from receiving that pension.*" Mr Asquith contends that the order sought by the applicant would be in breach of s.91 (2) of the Pensions Act.

57. First, Mr Asquith submits that the case law suggesting otherwise should not be followed, for the following reasons:

(1) In *Bacci*, the point was discussed by Andrew Hochhauser QC, but it had not been argued by Mr Moeran QC, who had appeared for Mr Green. It was therefore not subject to any argument in that case.

(2) The point was also not argued in *Lindsay*, despite the fact that Master Dagnall had apparently entertained concerns about it. In that case, the judge relied upon the reasoning in *Bacci*, and also the fact that the occupational pension scheme had been transferred to a personal one which therefore no longer fell under s. 91.

(3) Accordingly, this court is not only not bound to follow the decisions in *Bacci* or *Lindsay* (since the High Court is not bound to follow decisions at its own level), but is entirely free to consider the issue afresh. The principle of judicial comity should not apply where a court has not considered a point after debate between the parties.

(4) Mr Asquith recognises that the court will be interested in the reasoning provided on this point in *Bacci*. The rationale given is that because the court was directing Mr Green to receive the pension moneys before paying them over to the judgment creditor, then Mr Green was receiving his pension, and not having its receipt restrained.

(5) That reasoning is misconceived. The fact that Mr Green would not receive his pension was the whole point of the order. The point was that the judgment creditor, and not Mr Green, would be paid. The essence of the order was that Mr Green would be restrained from receiving his pension, and another party would receive it. That is plainly in breach of s. 91 of the Pensions Act. It would undoubtedly be a breach of the spirit, if not the letter, of s.91 (1) (a), which prohibits assignment of a pension fund, to try to circumvent the prohibition by routing the funds via the person for whom they were originally intended, before the court intervened. But it would also be a breach of the letter of s. 91 (2) because the language in that section is broader: it prohibits a court ordering steps which have the effect of restraining the receipt of a pension. For the court to direct that the respondent should indeed receive his pension, but only momentarily before being directed to pass it on to the applicant, would indeed have the effect of restraining his receipt of that pension. It cannot be the case that s. 91 is to be construed so that receipt of a pension can be satisfied by a temporary receipt by the pensioner before the funds are passed on to another. Any reasonable reader of the order which the applicant is inviting the court to make would say that its effect is to restrain the respondent from receiving his pension. It is no answer for Mr Curl to say that the order operates in personam because that is precisely what s. 91 is directed to: *"no order can be made by any court the effect of which would be that [the pensioner] would be restrained from receiving that pension"*. That is the whole object, intent and effect of the order sought. It is plainly entirely artificial to route the pension through the respondent when the ultimate recipient would be the applicant.

(6) Indeed, the order originally sought by the applicant appeared to go even further than the order sought in ***Bacci*** because it sought an order that the trustee should pay the proceeds of sale of the property directly to it. That would plainly be restraining the respondent's receipt of his pension because he would never receive it at all.

(7) The rationale for protecting a pension can be seen in the *Pension Law Reform: Report* chaired by Professor Roy Goode in 1993 (shortly before the Pensions Act). That states (at paragraphs 4.14.33 and 4.14.34 of Volume 1 (entitled *"Attachment of Pension Rights"*) that:

> 4.14.33 …. Accordingly the same factor that precludes assignment renders the asset represented by future pension entitlements immune from the claims of a member's creditors. The position is otherwise, of course, when the pension has come into payment, as regards sums that have been paid over by the trustees to the beneficiary or have become due for payment. These are income in the hands of the scheme member and do not enjoy any greater protection from creditors than other income of the scheme member.
>
> 4.14.34 It may be thought unfair to creditors that the asset represented by future pension rights should not be attachable. But it has to be remembered that employers do not establish schemes in order to benefit creditors of scheme members, nor is substantial tax relief given for that purpose. To allow future pension entitlements to be attached by execution creditors or made a bankruptcy asset would be to frustrate that fundamental purpose. The evidence submitted to us shows a broad consensus in favour of exempting future pension entitlements from the claims of creditors.

Should the court grant the applicant the order it seeks, it would be circumventing the recommendation proposed in this report.

58. Secondly, in terms of the relief sought, the applicant had originally asked for authorisation to exercise rights to ask for the property to be sold, and then the proceeds drawn down, and paid by the trustee to applicant. It had not explained how this was possible under the Scheme Rules, or what the alleged relevant rights were. Ms O'Callaghan says in her reply evidence that the "*basis of the application is clear – to draw down the pension to pay the judgment debt.*" But she has not articulated a case as to how that can actually be achieved pursuant to the Scheme Rules, even in her second witness statement, produced after sight of those rules. That is an additional reason why this issue should be answered in the respondent's favour.

59. Mr Asquith submits that the provisions of rule 6C (1) of the Scheme Rules are only engaged where a member has a Drawdown Pension Fund. This takes one back to rule 6A (6), which only applies where the member *"... asks for all of the amount available under this Rule (or a specific proportion of that amount) to be applied as an Uncrystallised Funds Pension Lump Sum or to be designated as a Drawdown Pension Fund and the Trustees agree ..."*. There is no evidence that the respondent has asked for this; and it is a matter of speculation whether the Scheme trustees would agree to it. Likewise, the *"statutory override"* merely confers on the Scheme trustees a power (but not an obligation) to make any of the payments permitted by the 2015 rules, despite any provision of the Scheme Rules to the contrary. Merely because the respondent asks the trustees to pay his pension pot to him, there can be no assurance that the scheme trustees will agree. They may take the view that it would not be an appropriate time to sell the property, given the expenditure that has been incurred on it by the licence holder.

60. Thirdly, it would be wrong to authorise Ms O'Callaghan to take various steps when the respondent has not been found to be in breach of any obligation to take those steps himself. As ***Lindsay*** makes clear, the authorisation power in s.39 of the Senior Courts Act 1981 is only triggered when a respondent has already failed to take a certain step. That is not this case. Indeed, in her second statement, Ms O'Callaghan disavows any reliance on s. 39, saying it was an obvious typographical error for s. 37. But even if that were the case, the jurisdictional basis for her authorisation application is not understood. The application notice refers to reliance on the principles in ***Blight v Brewster*** but in that case the court proposed (at paragraph 76) *"to order that if the defendant does not comply with this order, the claimants be authorised by the court to write in the defendant's name to Canada Life making the election on his behalf and in his name.*" In other words, *Blight* is no authority for the proposition that authorisation can be granted to an applicant's solicitor even where the respondent has not yet failed to comply with any order. Indeed, the point does not seem to have been properly ventilated in *Blight*.

61. Mr Asquith submits that here there is no evidence that the respondent has already shown by his conduct that he refuses, and will refuse, to execute any document that he is ordered to execute. When I inquired of Mr Asquith whether the respondent (who was sitting behind him in court) would comply with any court order, his answer was that he had no instructions that he would not comply.

62. For all of these reasons, Mr Asquith submits that the court cannot authorise Ms O'Callaghan to instruct and direct the Scheme trustees to pay pension moneys to the applicant. Further, the trustees are not respondents to the application. Mr Asquith submits that they should be made parties before any order is made which might involve them taking certain steps.

63. Mr Asquith also relies upon the respondent's poor financial position. The company was his life's work and it is now in liquidation. He is now in a position where the Scheme, and the property within it, are *"all I have*". He owes money on credit cards and to lawyers

64. Even if the court considers that it can take steps against the respondent's remaining pension fund, it should not do so. It would be contrary to the spirit of s. 91 of the Pensions Act (even if the court finds that it would not contravene the letter) for the respondent to be forced to pay over the funds in this final pension scheme. Further, the property is occupied, and it would be disruptive if a sale were to be forced. A distressed sale would assist no-one.

65. For all of these reasons, Mr Asquith invites the court to dismiss the application, and to direct that the applicant should pay the respondent's costs of resisting it.

66. At the end of his submissions I inquired of Mr Asquith whether, as the property had been purchased using company funds, it was only just and convenient that it should be applied to satisfy and discharge, at least in part, the respondent's liabilities to the company. Mr Asquith relied upon the temporal separation of more than ten years between the purchase of the property and the respondent's established misfeasance, and the lack of any causal connection between the two events. The company's contribution to the respondent's pension fund was in no way tainted at the time it was made.

IX: Analysis and conclusions

67. Since the Scheme trustees are the respondent and his son, Ryan, there is no reason why they could not have applied to be joined to these proceedings had they wished to participate in them as trustees. Had they been joined, I would have expected them to take a neutral position on the merits of the application. Their involvement would have been limited to safeguarding the interests of the Scheme as a whole, and ensuring that whatever order was made was one which the trustees could carry into effect without undue difficulty.

68. Since the trustees are not parties to the application, I acknowledge that the court should not make any order which requires them to take any particular steps. Any order the court may make should be limited to requiring the **respondent** to take particular action under the Scheme Rules; and should make it clear that any rights conferred on the applicant are limited to those rights which the respondent already has, or is entitled to exercise, under the Rules, and does not purport to confer any right to receive any lump sum or pension to which the respondent would not otherwise be entitled under the Rules.

69. I am satisfied that the applicant has established that the respondent has sufficient power to exercise the drawdown rights under rule 6C (1) of the Scheme Rules. If this

requires the respondent to take the prior step of asking for his fund to be designated as a Drawdown Pension Fund under rule 6A (6), then I am satisfied that the court has the necessary power under s. 37 (1) to require him to take this prior step. Whilst rule 6C (1) requires the trustees to agree with the respondent the income to be withdrawn from the Drawdown Pension Fund in each Drawdown Pension Year, and the number of instalments in which that income is to be paid, I note the constraints on the exercise of the trustees' powers identified by HHJ Paul Matthews at paragraphs 73 to 76 of his first instance judgment in ***Brake v Guy***.

70. At one point in the course of his oral submissions, I understood Mr Asquith to suggest that relief of the kind sought by the applicant was in some way inconsistent with the approach of the Privy Council in the ***Tasarruf*** case. I fear that I could not follow that submission. I agree with Mr Curl that paragraphs 23 and 25 of Newey LJ's judgment in ***Bacci v Green*** could not be clearer:

> 23 There is, however, another way in which it could have been proper for the Court to assist Creditors: simply by granting injunctive relief, without the appointment of a receiver. The Privy Council addressed the question of whether a power to revoke a trust was property or 'tantamount to ownership' when deciding whether it had been appropriate to appoint *receivers*. Section 37(1) of the 1981 Act also empowers the Court to grant *injunctions*, and I do not think the question of whether a power is property or 'tantamount to ownership' can have the same significance when the question is not whether a receiver should be appointed over a power, but whether an injunction should be granted in relation to it. …
>
> 25 In the present case, the Creditors have the benefit of an unsatisfied judgment against Mr Green, whose only material asset is his interest in the Pension Scheme. The Creditors thus have a clear interest in obtaining recovery through Mr Green's pension rights, and facilitating that would be in line with 'the policy of English law that judgments of the English court … should be complied with and, if necessary, enforced' and so, potentially, the 'demands of justice'. That there may be no precise precedent for an injunction requiring a person with pension rights to exercise both them and a right to revoke 'enhanced protection' need not, moreover, be a bar to such an order: ***Masri*** shows that 'the court has power to grant injunctions … in circumstances where no injunction would have been granted or receiver appointed before 1873', and it is plain from ***Broad Idea*** that the power to grant injunctions, like that to appoint receivers, can be developed incrementally.

71. In my judgment, subject to the potential bar presented by s. 91 of the Pensions Act, the court clearly has the necessary jurisdiction to grant an injunction requiring the respondent to exercise such rights as he may have under the Scheme Rules to draw down his pension pot to enable him to satisfy his judgment debt to the applicant. I therefore turn to consider the potential relevance of that section.

72. I accept Mr Asquith's submission that because the observations on the inapplicability of s. 91 in present circumstances in ***Bacci v Green***, and their adoption in ***Lindsay v O'Loughnane***, were founded upon a concession by counsel, and were not in issue on

the appeal in the former case, they are not strictly binding upon me, and it is open to me to depart from the reasoning in those cases. Nevertheless, they are of persuasive authority; although, since they are relatively recent pronouncements, upon which few parties are likely to have placed material reliance, the court may be more ready to depart from them than if they were more firmly embedded in the legal consciousness.

73. Mr Asquith relies upon Mr Curl's acceptance, in the course of his oral submissions, that if an order were to be made as sought by the applicant, the respondent would no longer have access to his pension pot; although Mr Curl immediately qualified this by this by making it clear that what he meant by that was that the respondent would no longer have the ability to spend his pension on himself, but would have to use it to pay his creditors, consistently with the law's policy of ensuring the due discharge of judgment debts. Paraphrasing the Deputy Judge at first instance (at paragraph 56 (1)) and Newey LJ on appeal (at paragraph 28) in ***Bacci v Green***, Mr Asquith submits that it is wrong to regard any injunction compelling the respondent to take steps to draw down his pension pot in isolation, rather than as being an integral part of the means of enabling the applicant to obtaining access to that pension pot in order to satisfy the respondent's liability under his judgment debt.

74. I have set out the rival submissions on this aspect of the case earlier in this judgment. Like many issues of construction, contractual or statutory, the point is ultimately a short one. Having carefully weighed the competing submissions, and recognising that I am free to come to a different conclusion, ultimately I have decided that the analysis and reasoning of Mr Hochhauser in ***Bacci v Green*** is to be preferred. Provided I direct that payment of the respondent's pension pot is to be made to a nominated UK bank account in the name of the respondent, I do not consider that there will be any contravention of the statutory prohibition in s. 91 of the Pensions Act because, as explained by the Deputy Judge in that case, the order will not have the effect of restraining the respondent from receiving that pension pot but rather the opposite: it will ensure that the payment of that pension pot is made to the respondent, rather than remaining within the Scheme wrapper. In my judgment, it makes no difference that the order is motivated by the objective of enabling that pension pot to be applied in satisfaction of a pre-existing judgment debt owed to the applicant by the respondent. As Professor Goode's Report (previously cited) makes clear, whilst the asset represented by future pension entitlements is immune from the claims of a member's creditors,

> The position is otherwise, of course, when the pension has come into payment, as regards sums that have been paid over by the trustees to the beneficiary or have become due for payment. These are income in the hands of the scheme member and do not enjoy any greater protection from creditors than other income of the scheme member.

75. I therefore hold that, notwithstanding s. 91, I have the necessary jurisdiction to order the respondent to exercise such rights as he may enjoy under the Scheme Rules to draw down his pension pot. I therefore turn to the exercise of the court's discretion.

76. I am entirely satisfied that, notwithstanding the matters so eloquently advanced by Mr Asquith, it is just, equitable and convenient to order the respondent to draw down on his pension pot so as to enable him to satisfy, at least in substantial part, his liability under the judgment that has been entered against him in favour of the applicant, as the

company's assignee, and which will enure, at least in part, to the benefit of the company's creditors in its insolvent liquidation.

77. In my judgment, a highly important consideration in the present case, which serves to distinguish it from many other cases where enforcement of a judgment debt is sought against the judgment debtor's pension pot, is the fact that the principal asset comprised with the respondent's pension fund was derived entirely from funds provided by the company. The judgment debt was the result of the respondent's misfeasance and breaches of fiduciary duty whilst acting as the company's controlling director and shareholder. It is neither just, nor convenient, nor equitable that the respondent should be entitled to retain his pension, derived entirely from moneys provided by the company, whilst the judgment debt entered against him in favour of that company's assignee remains wholly unsatisfied. I acknowledge the interval of time between the creation of the pension fund and the respondent's misfeasance, and the lack of any direct causal connection between the two; but had the respondent not committed beaches of the fiduciary duties he owed to the company, he would have been able to retain his pension pot.

78. I approach the exercise of the court's discretion on the basis that the respondent's financial and personal circumstances are as he has set out in his witness statement. I reject Mr Curl's invitation to cast a critical eye over the respondent's evidence of his impecuniosity, or his financial position in general. Apart from the lack of up-to-date Scheme bank statements, Ms O'Callaghan's second witness statement does not take issue with any of these matters, which were first expressly articulated in Mr Curl's skeleton argument; the respondent has had no opportunity to address them; and there has been no application for the respondent to be cross-examined on these matters.

79. I derive no assistance, either way, from the exception in s. 91 (5) (d) of the Pensions Act. That sub-section is directed to charges, liens, and set-offs, and not to the grant or withholding of injunctive relief. It also relates to criminal, negligent, or fraudulent acts or omissions, and not to misfeasance as a company director, in breach of the strict fiduciary duties he owed to the company.

80. I have already indicated (at paragraphs 37 and 38 above) that if I should determine to make any order in relation to the respondent's pension pot (as I have), I would propose to follow the approach of Mr Birt QC in *Lindsay v O'Loughnane* as to the terms of the resulting order, as set out at paragraphs 67 to 70 of his judgment in that case. In the first instance, I therefore propose to make an order that does no more than to require the respondent to give written notice to the Scheme trustees asking (so far as necessary) for all of his remaining pension fund to be designated as a Drawdown Pension Fund, exercising such rights as he may have to draw down the entire fund, and directing payment to a nominated UK bank account (denominated in sterling) in the name of the respondent, and previously notified in writing to the applicant. Clearly further consideration will need to be given to the mechanics of effecting drawdown, and the payment of any resulting tax liabilities. There will also need to be provision for the most expeditious, and cost effective, means of addressing any default on the part of the respondent in complying with the terms of the order. I would invite the parties to seek to agree the terms of the draft order in light of this judgment; and if they cannot do so, I will rule on the final wording.

81. That concludes this written judgment.