

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

Between:

DAVID MICHAEL CLARK

HELEN FOSTER GREEN

MICHAEL JAMES WALL

(in their capacity as Trustees of “THE SCHEME”)

Applicants

-and-

MEMBER A

**(in his capacity as a representative party for TRANSFERRING
DEFERRED MEMBERS of THE SCHEME)**

Respondent

Hearing and decision date: 22nd January 2019

Reasons handed down: 11th December 2019

Before: Richard James McMahon, Esq., Deputy Bailiff

Counsel for Applicants: Advocate A Lyall
Counsel for Respondent: Advocate M C Newman

Cases, texts & legislation referred to:

The Royal Court Civil Rules, 2007

The Trusts (Guernsey) Law, 2007

Public Trustee v Cooper [2001] WTLR 901

Re F [2013] GLR 388

Cotton v Brudenell-Bruce [2014] EWCA Civ 1312

Re the AAA Children’s Trust (unreported, 8 January 2014)

Butterfield Trust (Guernsey) Limited v Thommessen (unreported, 18 March 2010)

Lewin on Trusts (19th ed.)

The Income Tax (Guernsey) Law, 1975

Introduction

1. By an Application dated 5 November 2018, the Applicants, David Clark, Helen Green and Michael Wall, who are the trustees of the St John Ambulance & Rescue Service Pension Scheme (to which I will refer as “the Scheme”), sought the blessing of a momentous decision taken by them at meetings culminating with the meeting on 2 August 2018 in accordance with

the well-known *Public Trustee v Cooper* jurisdiction. The matter was first before the Court on 9 November 2018, at which time directions were given for any responsive material from a Member of the scheme appointed in a representative capacity under rule 34 of the Royal Court Civil Rules, 2007 to be served before the final hearing and for anyone else from the group of persons to be notified about the Application to indicate if they wished to be heard. The orders also included the sealing on the Court file of any Affidavit evidence and that any written judgment should be redacted of information which could identify any individual Member.

2. At the adjourned hearing on 22 January 2019, I announced that I was satisfied that it was appropriate to grant the substantive relief sought by the Application, approving the decision of the Applicants to give effect to the restructuring of the Scheme, to make the necessary changes to the Rules of the Scheme and to enter into a Funding Agreement. Because I was told by both Advocate Abel Lyall on behalf of the Applicants and Advocate Newman on behalf of the Respondent, to whom I will refer as Member A, that there was some urgency to progress matters, I simply outlined my reasons for doing so and reserved the giving of detailed reasons. This judgment now contains those reasons and I apologise for the delay that has occurred in preparing them.

Preliminary comments and background

3. The ambulance service in Guernsey is operated by St John. The entity now responsible for it is The St John Ambulance and Rescue Service LBG. It had replaced the original Employer (and that is the description I will use for this company) under the terms of the Scheme just before the millennium. In the summer of 2012, the Employer became a subsidiary of The Commandery of the Bailiwick of Guernsey of the Most Venerable Order of the Hospital of St John of Jerusalem LBG (to which I will refer as “the Commandery LBG”). This arose because St John in Guernsey ceased to be part of the Priory of England and became self-governing.
4. The main source of income of the Employer derives from payments made by the States of Guernsey under a contract that had, at the time of the Application, recently been extended for a ten-year period. The financial problems associated with the entity responsible for the ambulance service have been widely publicised. The fact that the Scheme is in deficit was also rehearsed in the media. An action had been commenced seeking to have the Scheme’s funds supplemented so that it would not be in deficit. The difficult financial position was the backdrop against which the Applicants, negotiating with the Employer, were faced when deciding what to do. It should also be borne in mind that any failure of the Employer as a consequence of its financial position would inevitably have an impact on the States of Guernsey because it is a necessary part of the provision required in any place that there be an adequate ambulance service. An ambulance service in this Island is almost inevitably a public authority as defined in various pieces of legislation. If it were no longer to be provided by the Employer as agent, the States would either have to provide it directly or would have to find another agency to do so without any delay.
5. The number of people affected by the decisions that are the subject of the Application may appear comparatively few. As explained in the Affidavit of the First Applicant, David Clark, in support of the Application, sworn on 26 October 2018, the Scheme had 25 members, of whom 19 were classed as deferred pensioners. Through Member A, the number of those represented by Advocate Newman was 15, although this reduced to 14 as a result of exchanges during the hearing about one Member, to whom I will refer as Member X. Although those 14 Members were not enthusiastic about what had happened, a dose of pragmatism meant that they recognised that what was being proposed was the best outcome for them. This is apparent from the Affidavit of Member A, sworn on 20 December 2018.

Member X had been the only Member who voted against what was proposed. Member X also swore an Affidavit on 20 December 2018, in which Member X explained why this opposition to the changes the Applicants wished to make arose. The final piece of evidence came in an Affidavit of Jamie Bookless, sworn on 18 January 2019, which related to compliance with the direction that the Members of the Scheme be written to with notice of the hearing and confirming that, subsequent to being notified, no Member had sent any notice of any wish to be heard. These four Affidavits formed the totality of the evidence before the Court on the Application. In addition, I had the benefit of a Skeleton Argument from Advocate Lyall dated 9 November 2018, which he developed orally, and brief oral submissions from Advocate Newman, who indicated that the Respondent supported the Application.

The law

6. I will deal first with the legal principles before setting out the facts and how those principles apply. There was no disagreement about these principles.
7. The Application is made pursuant to section 69(1) of the Trusts (Guernsey) Law, 2007, which provides that:

“On the application of any person mentioned in subsection (2), the Royal Court may

–

(a) *make an order in respect of –*

(i) *the execution, administration or enforcement of a trust, ...*

(ii) *any trust property, including an order as to the vesting, preservation, application, distribution, surrender or recovery thereof, ...”.*

Subsection (2)(b) gives standing to make such an application to a trustee.

8. The jurisdiction invoked by the Applicants is the well-established second category of cases set out in *Public Trustee v Cooper* [2001] WTLR 901. This has been dealt with by the Court of Appeal in *Re F* [2013] GLR 388 as follows (at para. 11):

“In the second type of application, however, the court is not exercising a discretion. What it is doing is in effect making a declaration that the trustees’ proposed exercise of the power is lawful; in other words, that the proposed exercise is within the proper ambit of the power, that the trustees are acting honestly, and that in reaching their decision the trustees have taken into account all relevant matters, have taken into account no irrelevant matters, and have not reached a decision that no reasonable body of trustees could have reached. The effect is to protect the trustees from any challenge to their decision by persons interested in the trust, and to make clear that the trustees are entitled to indemnity from the trust assets in respect of the costs or other financial consequences of their decision. It is immaterial that the court, had it been exercising a discretion of its own, would have exercised it in a different way from that proposed by the trustees. To the extent that the court has any discretion, it is in whether or not to admit the application: if, for example, the court considers that the trustees’ decision is of insufficient moment, it may refuse to entertain the application at all. Once it has decided to deal with the application, however, it has no more discretion than in the making of any other declaration, and will make it once satisfied of the propriety of the proposed exercise of the power. It may nevertheless be that the court will sometimes engage in a dialogue with the trustees as a result of which the trustees’ decision is modified; but, properly analysed, that is not more than

a process by which the court identifies the circumstances in which it will be satisfied that the proposed exercise of the power is within the proper range of such exercises. It is not indicative that the court is exercising a discretion, and any attempt by a court to do so in circumstances where the trustees had not surrendered their discretion would infringe the general principles that a court will not enforce the exercise of a power against the wish of the trustees.”

9. Advocate Lyall referred to the comparable approach in England and Wales set out in Cotton v Brudenell-Bruce [2014] EWCA Civ 1312, in which Vos LJ (as he then was) summarised the position as being that, “*after a scrupulous consideration of the evidence*”, the court had to be satisfied of three matters (see para. 12):

- “i) *That the trustees had in fact formed the opinion that they should act in the particular way relevant to that case;*
- ii) *That the opinion of the trustees was one which a reasonable body of trustees properly instructed as to the meaning of the relevant clause could properly have arrived at;*
- iii) *That the opinion was not vitiated by any conflict of interest under which any of the trustees was labouring.”*

He further referred to the guidance later in that judgment (at para. 86) that:

“The court is not a rubber stamp and must be cautious to ensure that it is satisfied that the trustees are indeed justified in proceeding in accordance with their decision. But the court should not place insurmountable hurdles in the way of trustees in the position of those before this court. The court has a supervisory jurisdiction that needs to be exercised in appropriate circumstances. Caution cuts both ways.”

In the following paragraph, this was explained as meaning that the Court should not withhold its approval just in case something better might in the future turn up.

10. Although it really ought to have been given more prominence over a decision from a foreign jurisdiction, Advocate Lyall also drew attention to the test set out in Re the AAA Children’s Trust (unreported, 8 January 2014, especially at para. 51) as identifying the questions the Court should consider on a category 2 application, which in turn repeated what had been set out in Butterfield Trust (Guernsey) Limited v Thommessen (unreported, 18 March 2010). In the more recent case (at para. 58), the Court stated:

“... the real issue is whether the Trustees have taken into account all relevant matters, that they have taken into account no irrelevant matters and that they have not reached a decision no reasonable body of trustees could have reached.”

11. I have also reminded myself of the summary given in Lewin on Trusts (19th ed., para. 27-079), as previously cited with approval in this Court, even though it was not raised by either Advocate, because it neatly sets out the considerations to take into account:

“The court’s function where there is no surrender of discretion is a limited one. It is concerned to see that the proposed exercise of the trustees’ powers is lawful and within the power and that it does not infringe the trustees’ duty to act as ordinary, reasonable and prudent trustees might act, ignoring irrelevant, improper or irrational factors; but it requires only to be satisfied that the trustees can properly form the view that the proposed transaction is for the benefit of beneficiaries or the trust estate, that the proposed exercise of their powers is untainted by any collateral purpose such as might amount to a fraud on the power, and that they have in fact

formed that view. In other words, once it appears that the proposed exercise is within the terms of the power, the court is concerned with limits of rationality and honesty; it does not withhold approval merely because it would not itself have exercised the power in the way proposed.”

Facts

12. The Scheme was established by a declaration of trust dated 10 January 1975. The original Employer was The St John Ambulance Association and Brigade. The trust instrument recites that *“The object of the Scheme is to provide retirement and other benefits for such persons as are admitted to membership thereof secured by contribution of the Employer and where the Employer has so determined by contributions of such persons”*. The Scheme commenced from the start of 1974. Clause 4 provides:

“Subject to adequate prior notice being given to all Members of the Scheme the Trustees may with the consent of the Employer alter or modify any of the trusts or provisions of this Declaration but not so as to reduce the benefits already accrued without the prior consent of the majority of Members affected by such alternation or modification”.

13. There have been various supplemental Deeds since the original declaration of trust, which effect changes to the identity of the Employer and also the trustees. As matters stood at the time of the Application, the Employer had been substituted with effect from 1999 and the three Applicants had been appointed as trustees. The Applicants do not receive remuneration for undertaking their offices of trustee.

14. There are accompanying Rules of the Scheme. They were initially promulgated in 1979. They have been re-stated on a number of occasions, most recently with effect from 1 January 2005 in a revised document executed on 16 May 2006. Some changes were made effective from 31 December 2005, the most important of which was that, with effect from 2 January 2007, the Scheme closed to new entrants. Those changes were made pursuant to Rule 19, which permits alterations:

“The Trustees may with the consent of the Founder from time to time alter or modify all or any of the provisions of these Rules provided that no such alteration or modification shall be made which reduces the benefits of a Member already accrued at the date of such alteration or modification without the prior consent of the majority of Members affected by such alteration or modification and written notice thereof is given to the Trustees.”

The reference to the Founder equates to the Employer, because that is the way that term is defined.

15. The Rules were further amended by an Instrument of Amendment dated 21 June 2016. The catalyst for these changes was the discontinuance by the Employer (or Founder) of making contributions with effect from 1 March 2015. Rule 13 deals with discontinuance as follows:

“(i) The Employer may discontinue his Contributions to the Scheme at any time. If he does so the Members shall thereupon discontinue their Contributions and pension benefits shall be calculated in accordance with Rule 11(i) (a) as if the Members had left service at the date of discontinuance. Any benefit

under Rule 10 in respect of the death of a Member before the Normal Pension Age while in the service of the Employer shall cease. Subject to the foregoing modifications the Scheme shall remain in full force. If a Member subsequently ceases to be in the service of the Employer before the Normal Pension Age he shall be entitled to benefits in accordance with Rule 11 as if he had left service at the date contributions were discontinued except that paragraph (ii)(d) of that Rule shall not apply.

- (ii) *The Trustees may, if they deem it desirable to do so, arrange for Contributions by and in respect of all Members to cease and proceed to wind up the Scheme from such date thereafter as the Trustees shall decide. In this event the benefits secured to the date of discontinuance shall be dealt with in accordance with Rules 12 and 15.”*

The assets of the Scheme were no longer invested in an insurance policy, which had been cashed in on 13 January 2012. This led to a number of the changes made in 2016, with the remainder arising from the closure date of 1 March 2015, including the insertion of a new Rule 22 relating to closure to future accrual.

16. The Rules with which the Application was concerned were those having effect from 2005, as amended, and it is to those Rules that I will refer when considering the substance of the Application.
17. The Scheme is a defined benefit scheme. It is governed by Guernsey law and is approved under section 150 of the Income Tax (Guernsey) Law, 1975, as amended. As I have already indicated, it was closed to new entrants in 2007, before any of the Applicants were appointed as trustees. At around the same time, a new scheme was introduced for employees of the Employer, but this scheme was of a defined contribution type. The Scheme was then closed to further accruals in 2015. In effect, the positions of the Members crystallised at this point and the discussions that have taken place since, leading to the Application, result from how best to handle the small group of Members of the Scheme in that situation.
18. In the second half of 2016, the proposals being made by the Employer as they were at that time were put to the group of Members. The Members were split into four groups. Any Member who was already retired would not be affected. Any Member who had less than five years until retirement, or who had 25 or more years of service (as it was put by Mr Clark in his Affidavit, although the presentation given to the Members referred to 25+ years in the Scheme), were to be given a full defined benefit pension on retirement. However, for younger or newer Members, it was proposed to transfer them into a defined contribution scheme, but with an enhanced transfer value than the strict operation of the Rules would achieve. The Members were informed that it was envisaged that the Court would be asked to approve whatever was to be agreed. The Members who were not yet in receipt of a pension were in favour of this proposal, with approximately 75% of them supporting it in principle.
19. By early 2017, the proposals were being reviewed by two unions on behalf of Members. Both unions had been provided with draft heads of terms as to what would be required of the Applicants, the Employer and the Commandery LBG. Prospect recognised that the solution was likely to be the best achievable to protect Members given the deficit and the financial position of the Employer. Clarification was sought about why the Employer had identified five years until retirement or 25 or more years in the Scheme as being the cut-off points between remaining in the Scheme and being transferred out. The response was to highlight the composition of the membership, where those who would be due to retire after the five-year protection period had no more than 12 years of service, whereas one Member had 29 years of service, with the next longest being just 14 years. The aim was set out by the

chairman of the Employer as being “to support those close to retirement who have had no time in which to make other arrangements and those who have devoted a lot of their life to the Service”. The other union, Unite, indicated that its members were not supportive. Legal proceedings had already been initiated against the Applicants with that union’s support to ensure that a pension as required under the Rules would be paid and the deficit within the Scheme made up.

20. The Applicants met as trustees of the Scheme on 5 July 2017 to consider the proposed solution. The Third Applicant attended by telephone. The Applicants had the benefit of a detailed letter of advice prepared by Advocate John Lewis, together with a pack of documents referred to therein. This included an actuarial valuation report prepared by BWCI Consulting Limited (“BWCI”) as at 1 January 2013 and an update to 1 January 2017 provided by way of a letter dated 10 February 2017, as well as a further letter dated 19 June 2017. The minutes of that meeting set out in detail the issues considered and the way in which the heads of terms identified that there were 15 Members who would be compulsorily transferred out of the Scheme if the proposed re-structuring were approved and that each would be provided with a transfer value of approximately 50% of what ought to have been transferred as at 31 December 2016, as opposed to what would be 38% of the current transfer value. There would be five Members who would remain in the Scheme with their pensions becoming payable in accordance with the Rules, but the indexation of their pensions when paid would be the lower of 3% or RPI, whereas those Members already in receipt of a pension would continue to enjoy the preferential indexation stated in the Rules. The arrangements for funding included ongoing discretionary monthly payments by the Employer and, with the support of the Commandery LBG, further annual payments in 2016 and 2017, plus covenanting to ensure that the Scheme could make pension payments to Members for 10 years post-retirement. The advice from BWCI is summarised, as is the consultation exercise.
21. The minutes also set out the way in which the re-structuring proposal was considered. The extent of the funding deficit at £4.6 million and the way in which the Applicants had sought to work with the Employer to improve contributions were noted. They had been informed that the funding arrangements offered by the Employer were the best the Employer could achieve. They noted that they could not compel the Employer to make any specific level of contribution. The meeting considered the way in which the advice from BWCI set out the benefits and the potential disadvantages of the proposal. They were conscious of the risks of the Employer becoming insolvent, which was particularly acute given the proceedings commenced by some Members of the Scheme, which could impact on the approach the States of Guernsey might take to the negotiations to continue the arrangement for paying the Employer to provide an ambulance service if not resolved. The option of doing nothing was unattractive. The option of winding up the Scheme was an option the Employer had indicated it did not welcome. Having balanced the competing arguments, those present concluded that they should decide to implement the proposal.
22. The obtaining of consent of the Members pursuant to Rule 19 was recognised as being necessary to give effect to the proposed amendments to the Rules of the Scheme. In advice given by their Advocates, the proposed amendments were split into those that were required and those that were desirable. Of those identified as being required, the establishing of a separate funding account to which recourse could be had only after using existing funds would not reduce any Member’s benefits and so did not require Member consent. However, reducing indexation to the lower of 3% or RPI would reduce benefits and so required consent of a majority of Deferred Members remaining in the Scheme as did the power to transfer out of the Scheme as Deferred Members at a reduced transfer value. Those amendments regarded as desirable would not reduce benefits and so none required Member consent. (I was helpfully shown a copy of the Rules as they existed and as they would become if the

amendments proposed were to be made.) There was, however, an intention on the part of the trustees to consult all Members about the proposed changes.

23. As a result of this meeting, the Applicants resolved in principle to agree to the proposal as set out in the heads of terms and related e-mails; instruct their Advocates to draft and negotiate the funding agreement; instruct them to draft an instrument of amendment to the Rules; consult with the Members; appoint Member A, alternatively another Member, to represent those Members who would be leaving the Scheme and formalise that arrangement with the Court; and apply to the Court for the blessing of its decisions.
24. On 28 September 2017, the Advocate acting for the Employer indicated by e-mail that the Employer's review of the draft documents supplied to it would be deferred until the litigation had been brought to an acceptable end expeditiously. Without that step being taken, the Employer did not feel it was in a position to enter into the funding arrangement or agree any further changes to the Scheme.
25. The Applicants met again on 2 October 2017 to consider how best to proceed in the light of that communication. They noted that the Employer continued to make ad hoc contributions to the Scheme and that a planned retirement would improve the overall position relating to the deficit by a little. However, in light of the indication from the Employer, the Applicants decided that it was not the right time to change the Scheme by continuing with the restructuring plans but rather to put them on hold and ask the Employer to inform Members about this development.
26. Discussions resumed in early 2018. On 20 May 2018, the Employer approved the terms of the draft funding agreement. It requires the Employer to make a payment of £404,000 within five days of the funding agreement being executed to the trustees of the scheme to which the transferring members would be transferring. It further requires the Employer to contribute at least £150,000 to the Scheme for each financial year from 2018, but in any event to contribute £90,000 plus 21% of the salaries of those Members still in the Scheme and still in service and to use reasonable efforts to pay a greater amount, if possible, in which case, if it subsequently became unable to meet its commitments due to circumstances outside its control, that overpayment could be used to reduce the Employer's obligations. On 4 June 2018, BWCI updated its advice. The Applicants' Advocates confirmed that their advice remained unchanged.
27. The Applicants met on 7 June 2018. The Third Applicant again attended by telephone. In addition to having all the documents that they had before them in July 2017, the Applicants had copies of the minutes of that meeting on 5 July 2017, the draft funding agreement, as approved by the Employer, the draft of what would be sent to Members and the updated material from BWCI. The Applicants discussed the developments over the preceding 11 months and noted that the terms of the funding agreement were improved from what had been considered before and they agreed that these terms were likely to be the best that could be achieved. As a result of their deliberations, as previously, they resolved in principle to consult with Members, appoint Member A as a representative and proceed to seek the Court's blessing and, if given, enter into the arrangements as soon as possible thereafter.
28. On 22 June 2018, the Applicants' Advocates sent a communication to all 25 Members of the Scheme. It sought responses from those Members who were not already in receipt of a pension. It asked the Members who would in due course receive a pension if they agreed to the proposal that those with long membership or above the age of 55 at the end of 2016 remain in the Scheme with the others being transferred out at approximately two-thirds of the transfer value calculated at the start of 2016. It also asked for a vote as to whether the applicable Rule changes for each group were agreed. All those who replied voted in favour of

the proposal and also to the amendments to the Rules. As explained in Member A's Affidavit, a meeting was held for those concerned at the Ambulance Station on 17 July 2018. It was attended by Advocate Newman, who had been instructed to represent that group. Bearing in mind that the Scheme had closed to new entrants in 2007 and the Members in the Scheme had been given advice before that time that it was preferable for them to remain in the Scheme then, with no issues about it being raised, the Members felt that they had little option but to vote in favour of the proposed re-structuring. A vote against would, they felt, have risked recovering little or nothing. Views were also expressed that the funds of the Scheme were being held in forms that did not maximise returns. There was a general feeling of having been let down and dissatisfaction with how the Scheme had been run. Accordingly, a vote in favour of the proposals was believed to be the least worst option available to the Members who had been asked to vote. The one Member who did not vote in favour was Member X. Member X has explained that there was no positive vote against but that the communication to Members had indicated that no response would be treated as if it were a vote against.

29. Following the responses received, the Applicants again met on 2 August 2018. They noted that all but one Member had voted in favour of the proposed re-structuring and the amendment to the Rules, which meant, where applicable, that the trustees had received the Member consent required by Rule 19. Accordingly, they confirmed their decision to proceed to seek the approval of this Court of the decisions they had taken.

Member X

30. It is against that background that I turn briefly to the position of Member X because it was the issue that really dominated the hearing. Member X had been employed within the ambulance service from January 1989 to August 2002 and thereafter continued to be a Member of the Scheme although, under the Rules, Member X was not yet entitled to receive a pension and so could opt whether to transfer out or remain in the Scheme. By the date used by the Applicants to calculate the years of being a Member of the Scheme, being the end of 2016, Member X had been a Member of the Scheme for almost 28 years. The Applicants had approached issues relating to Member X as if Member X did not satisfy their requirements for inclusion as a Member who would remain in the Scheme. As set out in a number of places, but most clearly and recently in the communication sent to Members on 22 June 2018, the group of Members who were categorised as "Remaining Deferred Members" covered those who were not yet in receipt of a pension but were either at or over the age of 55 on 31 December 2016 or, by that date, had at least 25 years' membership of the Scheme. Anyone who was not a "Remaining Deferred Member" and was not yet in receipt of a pension has been termed a "Transferring Deferred Member".
31. Although it was not entirely clear to me how old Member X is, from the evidence adduced before me, I think the Applicants may have considered that Member X had only been employed for less than 14 years and had somehow equated membership of the Scheme with years of service. This was how the Affidavit in support of the Application had addressed the way the categories had been formed in 2016. This issue was not, though, something that had been identified by Advocate Newman, who represented the class of those viewed as Transferring Deferred Members, and the Affidavit of Member X did not itself assert that Member X had been wrongly categorised. As is readily apparent, the way in which the negotiations had proceeded consistently referred to the length of membership of the Scheme as distinct from the number of years of service.
32. I was concerned, therefore, that the treatment being afforded to Member X as a Transferring Deferred Member potentially showed that the Applicants had acted irrationally in categorising Member X in that way. Within a group of Members of the Scheme numbering just 25, of

whom 15 (and so 60%) were effectively being forced to forego the benefits they would otherwise have been entitled to, I did not consider that it was particularly attractive to regard Member X as being a person who could be ignored in deciding whether to approve the decision taken. In other words, if the approach taken showed that the Applicants had incorrectly categorised Member X and Member X was, on the evidence before the Court, the person opposing the relief sought by the Applicants, this was, in my view, a particularly relevant factor to take into account.

33. Having put this issue to Advocate Lyall, the outcome was that an undertaking was offered on the part of the Applicants to re-categorise Member X as a Remaining Deferred Member on the basis that Member X had been a Member of the Scheme for more than 25 years in the same way as other Members who had that minimum length of membership. It would mean that Member X would in due course receive a pension in accordance with the defined benefit form of the Scheme in the same way as others who would remain in the Scheme under the decision that the Applicants had taken. As a result, Advocate Newman acknowledged it meant that Member A was left representing 13 others, rather than 14 other Members. I had been made aware that Member X was in attendance at the hearing. Advocate Newman indicated that Member X had no desire to address the Court but I understood that the consequences of what was under discussion had been explained to Member X and Advocate Newman further indicated that Member X was satisfied with the outcome. One effect of this outcome is that the opposition expressed in Member X's Affidavit fell away. The position relayed by Member A was, therefore, that all of the 14 Transferring Deferred Members had voted in favour of the re-structuring and the amendments to the Rules, albeit reluctantly.

Discussion

34. The Applicants had already surmounted the hurdle of demonstrating that the decisions they had taken, in respect of which the Court's blessing was being sought, amounted to a momentous decision. If the Court had not been satisfied on that point, it would not have permitted the Application to proceed. In any event, the major changes being made to the positions of the majority of the Members covered by the Scheme, which involve a reduction in benefits, are self-evidently momentous. On approval, the majority of Members would be transferred out of the Scheme, which would then also operate in a less beneficial way for approximately half of those handful of Members remaining in it. Accordingly, the first question to resolve was whether the Applicants had the power to do what they proposed.
35. Rule 19 enables the alteration or modification of any provision of the Rules if there is Employer consent and, if a majority of the Members affected by any change resulting in a reduction of benefits already accrued also give consent and such consent is provided in writing. This reflects what is contained in Clause 4 of the declaration of trust. It was clear that the Employer had given its consent. I did consider whether that consent was possibly affected by the changed categorisation of Member X, but felt that that could not reasonably be the case. The principles to apply to the way to resolve the Scheme's funding deficit had developed in such a way that this factual mis-categorisation could not affect the agreement that had already been given to the principles underpinning the proposals. In my view, that was what mattered rather than the calculations that would follow as to what needed to be contributed. Any difference in calculation would, I believed, be minimal and could be dealt with under what had been agreed without any modification or by way of some supplementary decision as to how to vary the funding arrangements to follow. On the facts, the majority of those Members who would suffer a reduction in benefits already accrued had provided written consent to the Applicants for the changes to be effected. I was, therefore, satisfied that the Applicants were acting within the powers conferred upon them in reaching the decision for which they sought the Court's approval.

36. It was apparent from the lengthy discussions that had taken place to reach the position of having resolved to make the changes to which I have referred that there was no question of the Applicants acting otherwise than in good faith and honestly. I was satisfied that there had been a careful and measured approach taken to identifying and progressing a solution that would be better for the various categories of Members of the Scheme than might otherwise have been achieved. There had been regular communication with the Members of the Scheme. The Members most affected by the decisions taken by the Applicants were represented through Member A by Advocate Newman and he had not raised any concerns about the overall process.
37. This lengthy process also, in my view, demonstrated how the Applicants had, subject to what I have just said about Member X, approached this exercise with care and having regard to the desirability of explaining each stage to the Members affected. The closure of the Scheme to new Members many years ago meant that the Applicants were always going to have to address a finite number of Members' positions. Although the way they chose to categorise the full membership as they did might have been open to question and arguably could have been resolved differently, the decision taken to separate out the small number of Members already in receipt of a pension from those who had not yet qualified to receive any pension could not be treated as anything other than an appropriate decision because the relationship with actual pensioners as distinct from those who were Deferred Members could not be questioned. The entitlement of those Members had already crystallised and the Applicants were able to distinguish them in the way they have as actual pensioners, not just pensioners in waiting, ie, Deferred Members. The decision to treat those Deferred Members close to retirement or with lengthy membership has resulted in what might appear to be arbitrary lines being drawn. The approach taken by the Applicants is, though, in line with the approach that has been taken by other operators of pension schemes who choose to recognise that those nearing pension age have less opportunity to consider how best to meet their needs in retirement than those who are younger. In the circumstances of this Scheme, Advocate Newman did not attempt to argue that the Applicants' decision to distinguish between the group of Deferred Members classed as remaining in the Scheme and those in respect of whom a transfer out would follow was flawed, and so I was satisfied that it could not be said that these additional two categories of Members amounted to an irrational decision.
38. At each stage of the decision-making process, I was satisfied that the Applicants had had before them the dossier of documentation that they needed to consider to be able to reach their decisions. Where the decision-making process was delayed from time to time, that dossier was supplemented in an appropriate way with further or updated advice and information. I was, therefore, satisfied that the Applicants had properly taken into consideration the information relevant to their decisions and that the materials before them were comprehensive.
39. I reflected on the comments from Member A about the way in which the Scheme had been operated and whether that was something that affected whether the overall decision reached was one that a reasonable trustee, properly informed, would not have taken. In broad terms, membership of an employer's pension scheme can be regarded as a form of deferred remuneration. It is a form of promise to pay the person who is a member of the scheme ongoing remuneration in retirement. There may be a requirement to join the employer's scheme or the opportunity to join may exist but, in the absence of such a scheme, an employee would need to consider what pension provision to make for eventual retirement and the remuneration package offered may reflect that no pension is attached. Accordingly, where someone joins a pension scheme on the terms then in existence and is subsequently told that they will not necessarily receive what they expected to receive in retirement, it will inevitably come as a blow and, depending on the circumstances, one that may be regarded as having some real impact on future financial choices. In the context of this Application, it is apparent

that the poor financial position of the Scheme resulted first in it being closed to new Members and then further accrual of benefits under it being ended. The Application deals with the denouement of how to resolve the position of the 25 Members affected. Apart from current pensioners, even those remaining in the Scheme would be suffering a reduction in the benefits that they had, through their membership, expected to receive. Those Members being forced to transfer out at this stage would not get the full transfer value that the Rules, prior to the amendment proposed, would have produced, but they would probably be getting more than would be the case if the Scheme were simply wound up. This better outcome resulted from the terms agreed with the Employer. I took into account the way that the Applicants had considered what the alternatives were before reaching their decisions and how, as Mr Clark explained in detail, they concluded that doing nothing was deeply unattractive because it would not address a significant funding deficit and how, even though it was an option following discontinuance under Rule 13, the Employer did not wish the Scheme simply to be wound up, no doubt because of the impact it would have for the ambulance service. I think that the way what has happened over the years as described by Member A recognises that these Applicants have done what they feel they can sensibly achieve for the benefit of Members but at the same time the membership is entitled to feel let down by how their pension positions are likely to be worse than they would have been, which they feel is not entirely satisfactory and reflects poorly on those who were involved historically.

40. That said, the 14 Members who will be forced to transfer out of the Scheme under the terms of inserted Rule 23 with a transfer value of approximately two-thirds of the transfer value as calculated at the start of 2016 had all voted in favour of this proposal and, in my view, that was a significant factor to be taken into account. This was not a situation where the Court was being invited to approve a decision taken contrary to anyone's position. The Applicants had, subject to modifying their position on Member X, been in a fortunate position of not having to reach a decision in the face of any opposition. In those circumstances, I was satisfied that the Applicants as trustees of the Scheme had reached a decision they were entitled to reach and without taking into account anything they should not have or by failing to take into account something they should have considered.
41. The issue of whether the decision was vitiated by any conflict was not raised by Advocate Newman on behalf of those whom Member A represented. Each of the minutes to which I have referred sets out that the Third Applicant is a Member of the Scheme. The impression I formed was that it had been the practice for a serving employee who was also a Member of the Scheme to be one of the trustees and that was why the Third Applicant was fulfilling that role. I further noted that, even if he had not participated in the decision-making process, the other Applicants would have reached the same decision. I did not regard the Third Applicant's position as creating any conflict of interest vitiating the decision.
42. Similarly, it was noted that the First Applicant is a director of the Commandery LBG, but that he had absented himself from any part of the meetings of that company when the issues surrounding the Scheme were discussed. Further, the First and Second Applicants had previously been on the board of the Employer. I was satisfied that none of those roles created a conflict of interest vitiating the Applicants' decision.

Conclusion

43. For all the reasons that I have now set out in more detail than when I announced the decision, the Application was granted. In summary, I was satisfied that the decision to enter into the funding arrangement with the Employer and make the amendments to the Rules of the Scheme that would deal with the three groups of Members as proposed was something the Applicants were empowered to do (particularly where Employer consent and the required Member consent had been given). The Applicants had reached decisions culminating in the

resolutions made on 2 August 2018 that it was appropriate to do these things, subject to approval from the Court, to re-structure the Scheme in this way and in doing so had, in my view, reached a decision that reasonable trustees, properly instructed, could reach. I was satisfied that they had taken into account all relevant matters and had not taken into account any irrelevant matter. Finally, I was also satisfied that the decisions reached were not vitiated by any conflict of interest under which any of the trustees was labouring.