Appeal from the decision of the Royal Court where action for damages for breach of duty brought by the seven Appellants against the two Respondents was dismissed.

[2024]GCA058

IN THE COURT OF APPEAL OF GUERNSEY
(CIVIL DIVISION)
ON APPEAL FROM THE ROYAL COURT (ORDINARY DIVISION)
Court of Appeal Case No. 578

21 August 2024

Before:

Lord Anderson of Ipswich KBE, KC, President
Jeremy Storey, KC
Helen Mountfield, KC

Between:

(1) AHMED KAZZAZ
(2) SHEILA KAZZAZ
(3) HANNAH KAZZAZ
(4) LANA KAZZAZ
(5) ASK ONE LIMITED
(6) HAIDER ABDUL RIDHA KAREEM AL-KAWAZ (as Trustee of the Ask Trust)
(7) ARI FAROOQ ABDUL WALID (as Trustee of the Ask Trust)

Appellants

- and -

(1) STANDARD CHARTERED TRUST (GUERNSEY) LIMITED (in liquidation)
(2) SONGBIRD LIMITED (in liquidation)

Respondents

Advocate E R Gray for the Appellants
Advocate A C Williams for the Respondents

Storey JA:

Introduction

1. This is an appeal from the decision of the Royal Court (Her Honour Hazel Marshall KC, LB, with Jurats Stephen Jones OBE, Steven Morris and James Toynton) given on 22 September 2023: [2023] GRC 049. The Royal Court dismissed the action for damages for breach of duty brought by the seven Appellants against the two Respondents.

2. The dispute concerned two family trusts declared in Guernsey: the SAHLK Insurance Trust (the "SAHLK Trust") and the Ask Trust. The First Appellant, Ahmed Kazzaz ("Ahmed") - the settlor of the Ask Trust – is the son of the Second Appellant, Sheila Kazzaz ("Sheila") - the settlor of the SAHLK Trust – and the father of the Third and Fourth Appellants, Hannah and Lana Kazzaz ("Hannah" and "Lana" respectively). Hannah was born on 19 April 1993 and Lana on 24 September 1994. Ahmed, Sheila, Hannah and Lana (together "the beneficiaries")

are beneficiaries of each trust. The Fifth Appellant, Ask One Limited ("AOL"), is a company incorporated in the BVI on 10 March 2011. AOL became an asset of the Ask Trust on 5 September 2013. The Sixth and Seventh Appellants (together "the new trustees") have been trustees of the Ask Trust since 3 May 2018.

3. The First Respondent, Standard Chartered Trust (Guernsey) Limited (in voluntary liquidation) ("SCTG"), a wholly owned subsidiary of Standard Chartered Private Bank ("SCPB"), is the original trustee of the two trusts. The Second Respondent, Songbird Limited (in voluntary liquidation) ("Songbird"), a wholly-owned subsidiary of SCTG, has been a director of AOL since 5 September 2013.

4. The dispute involved the following claims:

   Claim 1(1)

   Ahmed, Sheila, Hannah and Lana claimed as beneficiaries of the SAHLK Trust against SCTG as trustee of the SAHLK Trust for breaches of trust (some fraudulent – the claims of dishonesty having been added by re-amendment, perhaps to circumvent the pleaded prescription defence) from about November 2010 to March 2011 in relation to (a) the acquisition of a universal life insurance policy (the "ULIP") against Sheila's life before the age of 86 for US$21.5m from Manufacturers Life Insurance Company Bermuda ("Manulife"), issued on 11 March 2011 and (b) the associated financing arrangements as part of the wealth management scheme for the Kazzaz family.

   Claim 1(2)

   Ahmed, Sheila, Hannah and Lana claimed as above against SCTG as trustee of the SAHLK Trust for breaches of trust (some fraudulent) from about March 2011 to 8 December 2016 in relation to the operation of the SAHLK Trust, in particular the retention and maintenance of the ULIP and its associated financing.

   Claim 2

   Ahmed and AOL claimed as creditors of the SAHLK Trust (for whose liabilities they had given security to SCPB) against SCTG as trustee of the SAHLK Trust for breaches of trust arising out of the same matters as in Claims 1(1) and (2) above.

   Claim 3

   The beneficiaries and the new trustees claimed against SCTG as trustee of the Ask Trust for breaches of trust between 5 September 2013 and 8 December 2016 in relation to the operation of the Ask Trust, in similar respects to Claim 1(2).

   Claim 4

   AOL claimed against Songbird for breaches of duty as director between 5 September 2013 and 8 December 2016 in relation to the conduct of AOL's affairs, in similar respects to Claim 1(2) above.

5. The Respondents invited the Lieutenant Bailiff to strike out the entire action as an abuse of process because the same issues had been (or could and should have been) litigated in an action commenced in the Singapore International Commercial Court (the “Singapore Court”) by Ahmed and Sheila against Standard Chartered Bank, UK, the ultimate parent of SCTG, for negligence – which action was dismissed at first instance on 14 October 2019 (the "Singapore

Judgment") and on appeal on 13 July 2020. The Lieutenant Bailiff refused the strikeout application, and the Respondents do not challenge that.

6. The eight-day trial before the Royal Court took place in April 2023. The Plaintiffs were then represented by Advocate John Greenfield and the Defendants by Advocate Williams. Only Ahmed, Lana and the two new trustees gave evidence for the Appellants. The Appellants did not adduce evidence from Sheila (who had given evidence in the Singapore proceedings). The Respondents called Mahesh Shadadphuri of Standard Chartered Bank and Maria-Antonietta Beebe of SCTG. Both parties led expert evidence.

7. The Royal Court's decisions on the various claims were as follows:

   Claim 1(1):

   SCTG had been negligent (but not fraudulent or grossly negligent). However, no loss had resulted (because, if SCTG had not been negligent, Ahmed and Sheila would still have instructed SCPB to acquire the ULIP, in line with the advice of Ahmed's trusted friend and business adviser Walid Fattah and the recommendation of SCPB). In any event, the separate claims of Ahmed, Sheila, Hannah and Lana were (a) all time-barred and (b) exonerated by clause 8(c) of the SAHLK Trust Deed.

   Claim 1(2):

   SCTG had been negligent (but not fraudulent or grossly negligent). Again, no loss had resulted (because Ahmed would have insisted on the ULIP being maintained until late 2016 absent any negligence) and, in any event, the claims would have failed because of (a) and (b) above. Although claims arising between 16 April 2016 and 8 December 2016 would not have been time-barred they were still exonerated.

   Claim 2(1)(2):

   Claim 2 stood to succeed or fail alongside Claim 1 and so failed. But even if Claim 1 had succeeded the Lieutenant Bailiff would have dismissed Claim 2 as bad in law as creditors cannot claim for breach of trust. In any event, any fault by SCTG in its conduct of the SAHLK Trust did not give rise to any loss to trust assets or to the guarantors.

   Claim 3:

   SCTG had been negligent (but not fraudulent or grossly negligent). No loss would have resulted (again because Ahmed would have insisted on the ULIP being maintained until late 2016 absent any negligence). In any event, the separate claims of Ahmed, Sheila, Hannah, Lana and the new trustees were all time-barred. Further, the claims of the beneficiaries were exonerated by the Ask Trust Deed. Although claims arising between 16 April 2016 and 8 December 2016 would not have been time-barred they were still exonerated.

   Claim 4:

   Claim 4 stood to succeed or fail alongside Claim 3 and so failed. In any event, no loss was caused to AOL by any breaches of Songbird's duties as a director. Although this claim would not be time-barred, because of a six-year limitation period, and although there were no relevant exoneration provisions, Songbird maintained a counterclaim against Ahmed and the new trustees for an indemnity.

8. The ULIP is at the heart of this appeal. It was the sole asset of the SAHLK Trust. It was not a standard life insurance policy. The single premium (about $13.8m) was to be invested so as to provide a guaranteed return which was to enure for the benefit of the policyholder. The actual return was expected to exceed the guaranteed rate. This 'excess' would meet the interest payable on the premium funding loan to be provided by SCPB to SCTG and also provide investment capital to Ahmed and his family. The security for the loan was the current surrender value ("CSV") of the ULIP (and other assets of Ahmed in AOL and Ahmed's personal guarantee). The ULIP was procured through a Singapore broker, IPG Financial Services Pty Limited (the "broker").

9. Problems emerged when the investments did not perform as well as anticipated and so were not generating enough income to cover the interest on the premium loan which had been intended to finance their acquisition. This meant that the CSV of the ULIP, which had been assigned by SCTG to SCPB as security for the premium loan, was falling and consequently triggering margin calls in order to keep up the loan to value ("LTV") ratio which SCPB required. Further, Ahmed had himself drawn substantial sums out of the investments held, which SCPB had envisaged would return a fixed income sufficient to meet the interest payments, to invest in his own businesses, thereby reducing the capital on which income was being earned. In summary, the premium loan interest was not being covered.

10. SCPB gave notice that it intended to terminate its banking relationship with Ahmed (following his plea of guilty to a charge of bribery in the USA and a sentence of imprisonment). SCTG also gave notice to Ahmed that because of compliance issues it would be unable to continue its relationship with him. Credit facilities to the SAHLK Trust and AOL were withdrawn in May/June 2016. The ULIP had to be surrendered on 8 December 2016 for $12.8m. The shortfall of $1,225,267.80 owed to SCPB was recovered from AOL. This represents the claims of AOL against SCTG and Songbird. The claims of the other Appellants total over $7m.

11. The Royal Court found no fault by SCTG or Songbird post April 2016: [277]-[278] and [286]-[287]. In any event, the Appellants had failed to prove any loss resulting from any breaches committed during those eight months: [272], [278], [298], [308], [322], [347 - 349] and [359].

The grounds of appeal

12. Ground 1: Duties of the trustee on the acquisition of the ULIP (Claim 1(1) by the beneficiaries).

    The Appellants accept that the Lieutenant Bailiff correctly directed the Jurats as to the law with respect to SCTG's duties as trustee pursuant to section 22 of the Trusts (Guernsey) Law, 2007 (the "Trusts Law"). However, the duties of SCTG as trustee of the SAHLK Trust in relation to the acquisition of the ULIP were interpreted too narrowly by the Jurats. Because the trustee was a bank-owned trust company the Jurats confined SCTG's duties to those of a "mere service provider", acting on instructions from its client, under no duty to take any responsibility for its own actions. This was too low a standard and so the Jurats asked themselves the wrong questions. SCTG ought to have formed its own view of the merits of the proposed acquisition of the ULIP and the terms of the premium loan. As to causation, the Royal Court ought to have found that no ULIP would have been acquired had SCTG fulfilled its duty.

    Ground 2: Fraudulent breach of trust in the acquisition of the ULIP (Claim 1(1) by the beneficiaries).

    The Royal Court was wrong not to find fraud (within the meaning of section 76(1) of the Trusts Law), namely a deliberate and culpable disregard by SCTG for the interests of the beneficiaries of the SAHLK Trust when it proceeded with the acquisition of the ULIP and the borrowing of $13.9m on the terms of the SCPB Facility Letter of 26 November 2010 (the “Facility Letter”).

The Jurats were obliged and required to have inferred that Sheila did not need or qualify for the ULIP on financial grounds.

Ground 3: Gross negligence in the acquisition of the ULIP (Claim 1(1) by the beneficiaries).

The Jurats were wrong not to have found gross negligence (because they misunderstood SCTG's duties and so asked themselves the wrong questions). Although the Lieutenant Bailiff correctly defined 'gross negligence', SCTG's failures (a) to evaluate the commercial merits of taking the loan or of its terms, particularly concerning the LTV ratio and (b) not to review the Disclosure and Authorisation Form (the "Disclosure Booklet") against other documents it held, specifically a Source of Wealth Memorandum ("SOWM") prepared by SCPB, were consistent only with gross negligence: the beneficiaries of the SAHLK Trust had been exposed to an immediate and continuing elevated risk of loss if the ULIP had to be surrendered while worth less than the loan.

Ground 4: Breach of duty and causation with regard to the retention and disposal of the ULIP (Claim 1(2) by the beneficiaries).

SCTG ought to have formed its own view of the benefits of retaining the ULIP. The Royal Court was wrong to find that SCTG's proved negligence was not causative of any loss (again because they misunderstood SCTG's duties and so asked themselves the wrong questions). The ULIP (as the sole investment of the SAHLK Trust) ought not to have been retained. Had SCTG explained to the adult beneficiaries that the ULIP could have been cancelled because the application had proceeded on the basis of the incorrect Disclosure Booklet with a full return of premium (less contractual deductions), alternatively could have been surrendered at the then net CSV, potentially avoiding any surrender charge, they would not have wished SCTG to retain the ULIP.

Ground 5: Gross negligence with respect to retention and disposal of the ULIP (Claim 1(2) by the beneficiaries).

The Royal Court was wrong not to find gross negligence (because they misunderstood SCTG's duties and so asked themselves the wrong questions).

Ground 6: Claims by the beneficiaries in respect to the Disclosure Booklet.

The Lieutenant Bailiff was wrong to admit the Singapore Judgment as admissible evidence of the truth of its contents and the Jurats were wrong to give any weight to that court's factual findings. Such judgment was a mere statement of opinion as to questions of fact. Alternatively, the Lieutenant Bailiff was wrong to direct the Jurats that they should regard what was said in the Singapore Judgment as "established facts". In the further alternative, the Jurats were wrong to agree with the Singapore Court that information relating to the Kazzaz family wealth would have originated from Ahmed and Sheila when such was against the weight of the evidence before the Royal Court. In the yet further alternative, the Royal Court was wrong to conclude that in signing the Disclosure Booklet in blank (for completion by others), Sheila took responsibility as against SCTG for any consequences adverse to her which flowed from any inaccuracy. The Lieutenant Bailiff was therefore wrong in law to direct the Jurats that the beneficiaries were unable to advance a claim to have suffered loss from SCTG because of the clear inconsistency between the Disclosure Booklet and the SOWM which the trustee ought to have discovered. Such would have led to cancellation of the ULIP with a refund of premium.

Ground 7: Creditors' claim (Claim 2 by Ahmed and AOL).

The Royal Court ought not to have rejected this claim (for the same reasons as in Grounds 1-6).

Ground 8: Claims re Ask Trust and retention of the ULIP (Claim 3 by the beneficiaries and the new trustees).

The Royal Court was wrong to find that the duties of SCTG as trustee of the Ask Trust were equivalent to those which it wrongly held were owed by SCTG as trustee of the SAHLK Trust. It ought to have found SCTG to be grossly negligent and that such caused loss. As with Ground 4, SCTG ought to have formed its own view of the benefits of retaining the ULIP and this failure caused loss. As with Ground 6, the Lieutenant Bailiff was wrong in law to direct the Jurats that the beneficiaries were unable to advance a claim to have suffered loss from SCTG because of the clear inconsistency between the Disclosure Booklet and the SOWM.

Ground 9: Claim vs Songbird (Claim 4 by AOL).

The Royal Court was wrong to dismiss Claim 4 which ought to have been successful along with Claim 3. Grounds 4-6 are repeated. The Royal Court ought to have found SCTG to be negligent and that such caused loss to AOL.

Ground 10: Limitation as against Hannah and Lana (Claims 1 and 2).

The Jurats were wrong to find that Hannah and Lana had direct knowledge, for the purposes of section 76(2) of the Trusts Law, before 13 April 2016. This was not supported by or was against the weight of the evidence or involved drawing unreasonable inferences. In particular, Lana's evidence regarding an email from Ahmed dated 19 January 2014 ought not to have been rejected.

Ground 11: Limitation as against the new trustees (Claim 3).

The Lieutenant Bailiff was wrong in law to hold that, for the purposes of section 76(2) of the Trusts Law, knowledge of the beneficiaries could be attributed to the new trustees. The claims of these two particular claimants ought not to have been time-barred just because those of the beneficiaries were, there being no privity of estate or interest as between trustees and beneficiaries of a trust.

13. The Appellants invite us to allow the appeal and to set aside the judgment and to order judgment in their favour for such sum as the Court of Appeal finds due to them, including compound interest.

Procedural history of the appeal

14. The Appellants served their Notice of Appeal within the prescribed time, on 20 October 2023. The appeal was set down on 25 October 2023. The Appellants' Case and other documents were therefore due to be filed by 26 February 2024 pursuant to Rule 8(1)(g) of the Court of Appeal (Civil Division) (Guernsey) Rules 1964 ("the Rules"). The Appellants' advocates failed to meet this deadline, only filing the relevant documents on 29 February 2024.

15. The Appellants therefore made an application to the Court of Appeal on 29 February 2024 for a retrospective extension of time pursuant to Rule 17(1) of the Rules.

16. Following the exchange of written submissions and a day of oral argument, Sir Richard McMahon B, sitting as a single judge of the Court of Appeal, granted the Appellants an extension of time in respect of Grounds 1, 4-6, 8, 9 and 11 on 12 April 2024.

17. On 26 April 2024 the Appellants renewed their application for an extension of time in respect of Grounds 2, 3, 7 and 10 for hearing by the plenary court. It is common ground that this court can only grant such extension if the grounds are sufficiently arguable (*Gaudion v Weardale*

Limited (1997) 24 GLJ 83 per Gloster JA at 84). In our judgment "sufficiently arguable" means that the ground has a real prospect of success: *Sherborne Corporate Services Limited v The Public Trustee* [2021] GCA 50 per Crow JA at [10], [14], [16] and [28]. This is the same threshold as for permission to appeal, a test with which we are all familiar.

Discussion

18. Many of the grounds of appeal seek to undermine the factual findings of the Jurats, including their evaluations and inferences. We therefore bear in mind the approach advocated by President Le Quesne QC in *Guille v Mackay* (unreported, 14 June 1967, Guernsey Court of Appeal judgments 1964 – 1989, 25) which prevents this court from interfering with such findings unless there was no evidence before the Jurats upon which they could reasonably have arrived at those findings or for any other reason the findings of fact of the Jurats were perverse. It is also relevant to record the observations of McNeill JA in *Carlyle Capital Corporation Limited v Conway* [2019 GLR 159]:

> "[75] As this court has stated recently, it is well recognised that, in general, an appellate court will not interfere with a finding in fact by a court of first instance where there has been an evidential basis which, if accepted, could have founded the determination of that fact: *Investec Trust (Guernsey) Limited v Glenalla Properties Limited* [2015 GLR 300] at para.108. Separately, even when an appellant is able to point to a finding in fact unsupported by relevant evidence, if the overall factual determination which leads to the court's findings in law is able to be supported by the evidence led, a failure in respect of one or more findings in fact will not necessarily result in the appellate court interfering with the determination…
>
> [80] The present case, therefore, is one of those in which, given the nature of the points raised on appeal, it is important for the appellate court to bear in mind, first, that a trial judge, after a lengthy and complex trial, will, in general, be in a much better position than an appellate court to understand where, as a matter of the logic which appeared to her or him applicable to the case, each piece of evidence fits together with the others and supports the ultimate determination. In the second place, the appellate court should recollect that a lengthy and complex trial might conceivably allow an occasional matter either to be overlooked by the trial judge or its proper relationships with the remainder of the evidence to be misunderstood. The test for such an appellant is a high one…"

The court is very familiar with the judgments of Lewison LJ in *Fage UK Limited v Chobani UK Limited* [2014] EWCA Civ 5, [2014] FSR 29 at [114] – [115] and in *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2] – [4].

19. In *Khuller v First International Trustees Limited* [2020] GCA 051, this court was also faced with an attack on the Jurats' findings as to whether the defendant trustee was guilty of negligence / gross negligence. Bompas JA put the test thus:

> "[29] For the Appellant to succeed on this appeal, she needs to satisfy this Court that the Royal Court's findings were not open to it on the evidence before it. The appeal is based quite simply on a contention that the Jurats, who were alone to decide the facts guided by the Bailiff as to the applicable law, had arrived at a conclusion – namely that there was no relevant breach of duty on the part of the Respondent – which could not be supported on the basis of the primary facts. The fact that the conclusion involves an assessment to be drawn from primary facts, does not change the case. We have to be satisfied that there was a material mistake as to the primary facts so that the conclusion cannot be supported, or that the conclusion is outside the range open to the Royal Court.

…

> [31] …The established principle on an appeal such as the present is that "*We may only interfere if we conclude that the Jurats could not reasonably have come to the decision which they did on the basis of the evidence before them*" (See *Simon v Committee for Health and Social Care, States of Guernsey)* (unreported, 8 June 2020) Court of Appeal case no.534, at [124] in the judgment of the Court given by Birt JA). This statement of principle was given after careful consideration of earlier decisions of this Court on the point, starting with *Guille v Mackay* 14 June 1967 and including *Islands Development Committee v Laine* 15 December 2003 (appeal 53/2003) and *Cyma Petroleum (CI) Limited v States of Guernsey* 4 February 2015 (appeal 05/2015). In the light of this a finding, say, that the Respondent was not negligent, or was not grossly negligent, will not be disturbed by this Court even where there is ample evidence sufficient to base a finding of negligence (or gross negligence, if relevant), if the Jurats could reasonably have reached the finding actually made. But if it is apparent that the finding in relation to negligence (or gross negligence) rests on a mistaken appreciation of the facts, that is that the finding depends on a basis of primary fact as to which there is no sufficient evidence, then it is open to this Court to set aside the finding."

Advocate Gray did not suggest to us that the Royal Court had made any 'material mistake as to the primary facts'; instead, she submitted that there were findings against the weight of the evidence and evidential inferences that were made on a mistaken legal or factual basis or were outside the range of reasonable inferences that could legitimately be drawn from the known facts.

20. In considering whether the findings of the Jurats (a professional tribunal of fact under Guernsey's legal system) were "plainly wrong" we also have in mind the following observations of Lord Hoffmann in *Biogen Inc. v Medeva plc* [1997] RPC 1 at 45 lines 31 – 45:

> "The need for appellate caution in reversing the judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (as Renan said, *la vérité est dans une nuance),* of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation. It would in my view be wrong to treat *Benmax* as authorising or requiring an appellate court to undertake a *de novo* evaluation of the facts in all cases in which no question of the credibility of witnesses is involved. Where the application of a legal standard such as negligence or obviousness involves no question of principle but is simply a matter of degree, an appellate court should be very cautious in differing from the judge's evaluation."

21. We are persuaded by Advocate Williams' submission that it makes sense to consider Ground 2 (fraud) and Ground 10 (prescription) first. If these have no real prospect of success the claims of the beneficiaries that predate 16 April 2016 fall away - ie Claims 1(1) and (2) and indeed Claim 3 except for that of the new trustees. Grounds 1 and 3-5 would then become otiose, leaving only Grounds 6-9 and 11 - ie Claim 2 by Ahmed and AOL, Claim 3 by the new trustees and Claim 4 by AOL.

Ground 2

22. Advocate Gray acknowledged to the Bailiff and to us that there was no issue with the direction on the law given by the Lieutenant Bailiff to the Jurats. The Notice of Appeal also makes no

challenge to the finding that no one at SCTG had intended to induce Sheila to acquire the ULIP for any improper purpose, such as gaining commission. Furthermore, there is no challenge to the finding of fact that SCTG was not fraudulent in relation to the retention of the ULIP (ie Claim 1(2)).

23. It was therefore necessary for the beneficiaries to establish that a natural person at SCTG had acted dishonestly: [173], [177] – [178] and [185]. The pleaded case was one of actual knowledge not 'blind-eye' knowledge: [174]. It was common ground that the relevant test for dishonesty was that set out by Lord Hughes JSC in *Ivey v Genting Casinos plc* [2017] UKSC 67, [2018] AC 391 at [74], comprising a two-stage test:

> "…the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

As Sir Geoffrey Vos MR observed in *Stanford International Bank Limited v HSBC Bank plc* [2021] EWCA Civ 535, [2021] 1 WLR 3507 at [41] and [47] the defendant's actual state of knowledge and belief as to relevant facts forms part of the first stage of the test of dishonesty, as so clearly explained in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2AC 378, PC, by Lord Nicholls at 390F – 391B.

24. A finding of fraud must be the only reasonably possible finding available on the evidence, so if the evidence is consistent with several scenarios (some innocent, others dishonest) then a finding of fraud could not be upheld: *Three Rivers DC v Bank of England* [2001] UKHL 16, [2003] 2 AC 1 per Lord Millett at [186]. This is because dishonesty is not a normal tenet of behaviour, especially amongst professional persons.

25. The Lieutenant Bailiff held at [192] that negligence (including gross negligence) cannot be elevated into dishonesty without more:

> "A state of mind which is merely uncaring or irresponsible does not amount to fraud in itself … negligence, even gross negligence, does not entail a calculated and deliberate disregard of another's rights, but merely an unthinking, careless or feckless disregard".

26. It was only in his closing speech in reply at trial that Advocate Greenfield identified six natural persons at SCTG (Ms Beebe – who the Jurats found to be an honest and credible witness – and five others not called by SCTG) who allegedly had the necessary state of mind, that is actual knowledge that Sheila did not qualify for the ULIP on financial grounds, that the ULIP was not suitable for Sheila and that the Disclosure Booklet sent to Manulife was false (because each was also aware of the truthful and inconsistent SOWM). It had not been put in cross-examination to Ms Beebe that she had such knowledge (as conceded by Advocate Gray at paragraph 34 of her skeleton argument for the Court of Appeal dated 8 May 2024). This may have been because Ms Beebe had no relevant personal involvement in the purchase of the ULIP. The Lieutenant Bailiff therefore warned the Jurats at [185] to be particularly cautious in making a finding of knowledge on the part of a person who had not given evidence so as to be able to defend his or her conduct. We endorse this approach.

27. The Jurats expressly found at [219] and [244] that SCTG's negligent failure to consider whether the ULIP was in the best interests of the beneficiaries before entering into it was not fraudulent.

Although no SCTG personnel gave consideration to the actual terms of the ULIP (eg the 150% premium rating imposed on Sheila for being a smoker) SCTG's failures were "understandable" and "not unreasonable" because of the respective spheres of operations of SCPB and SCTG, where the latter believed that the former had already completed all necessary investigations in conjunction with the broker, Sheila and Ahmed and chosen the ULIP as being in the best interests of the beneficiaries: [217] and [244]. Further, SCTG was not required to make itself an expert on the effects or implications of taking out a ULIP, or even the particular ULIP with its concomitant funding arrangements, so as to form its own independent assessment of the advantages or disadvantages (absolute or relative to other possible courses of actions) for the beneficiaries of doing so, because such specialist knowledge would be beyond the expertise reasonably to be expected of even a professional trustee entity of normal skill and experience: [220].

28. Further, no person at SCTG, let alone any identifiable person, was ever aware of any discrepancy between the SOWM and the Disclosure Booklet: [210] and [234]. The Jurats found no evidence that anyone at SCTG made any comparison or connection between the Disclosure Booklet and the SOWM which had been collected for a different purpose (the "onboarding" of Sheila when enhanced due diligence and regulatory monitoring were required). The findings at [207], [210] and [215] were described at [216] as "primary findings of fact." The beneficiaries do not seek to challenge these findings as to SCTG's lack of knowledge of the contents of the Disclosure Booklet or of the obvious discrepancies between the SOWM and the Disclosure Booklet (paragraph 14 of Advocate Gray's skeleton argument of 10 April 2024). Even if SCTG had been aware of the discrepancy:

    (a) the Jurats were not convinced that the information in the Disclosure Booklet would necessarily have been regarded as false and fraudulent vis-à-vis Manulife itself – such would depend upon the practice and flexibility of the life insurance industry (brokers and insurers), as to which the Jurats did not feel they had received sufficient evidence: [235];

    (b) the discrepancy would have prompted a query as to the reason therefor – and this would have led to further questions as to the consequent effects upon the (apparently desired) ULIP and its validity – but what would have happened thereafter is a matter of speculation: [237].

29. The Jurats also dismissed the suggestion that the ULIP had been acquired for the purpose of gaining commission (which had not been concealed) or premium loan interest for SCPB: [238] and [241]. As we stated at paragraph 22 above, this is not challenged. SCTG had played no part in procuring the loan or negotiating its terms – because it was reasonably under the impression that those terms had been the subject of arm's length negotiation between others and that Sheila had agreed the ultimate outcome of those negotiations, including the payment of commission: [239] and [242] – [243].

30. In summary, the actual intentions of SCTG personnel were solely the normal, and perfectly proper, commercial intentions of business (the provision of fiduciary and administrative services) sought by a potential client, in return for an acceptable, agreed financial reward: [240].

31. Advocate Gray's full-frontal attack on these detailed and careful findings of fact was based upon the agreed position that SCTG (including Mr Carré, the SCTG Trust Administrator for the SAHLK Trust) was aware from the SOWM that Sheila had no assets or income of her own and was financially dependent upon her son Ahmed. Advocate Gray submitted that the only possible inference, based on the documents and other evidence before the Royal Court and on inherent probabilities (there being no direct evidence from those who acted for SCTG in the acquisition of the ULIP), which could have been drawn from this, is that personnel within SCTG knew Sheila did not and could not qualify for a ULIP (the sole intended investment of the SAHLK

Trust). A ULIP was appropriate only for high-net-worth individuals where the sum insured is very high and where the amount of death benefit bears a reasonable relation to the actual loss which the death of the life-insured person might cause to those taking the benefit, in order to demonstrate an insurable interest: [29].

32. Advocate Gray urged us to adopt an objective test and cited Lewin on Trusts, 20th ed., at 43-038:

> "there is no need for the defendant to realise that his conduct was dishonest by the normally accepted standards of honest conduct, nor does he need to be conscious that he is transgressing those standards."

33. Advocate Gray urged us to conclude that if only SCTG had questioned the rationale for acquiring the ULIP and Sheila's qualification for a ULIP with the broker or SCPB the inconsistency between the SOWM prepared by SCPB and the Disclose Booklet prepared by the broker would have emerged immediately and the acquisition would not have proceeded.

34. Advocate Gray described SCTG's failures to understand the serious risks of the proposed acquisition, to take advice or to make enquiries as "conscious recklessness as to the interests of the beneficiaries". Despite the need for enhanced regulatory monitoring SCTG took a deliberate policy decision not to enquire, which on the facts amounted to a conscious indifference to the interests of the beneficiaries.

35. She further claims that the Jurats ducked the question posed by the Lieutenant Bailiff at [198(ii)(a)]: whether SCTG personnel had made the application for the ULIP in the knowledge that Sheila had no independent income or capital. Advocate Gray submitted that the only proper answer to this question was in the affirmative.

36. We think that it is instructive to examine what admissions, if any, are made in SCTG's Re-Amended Defence as to its knowledge in connection with Sheila's eligibility for a ULIP. Advocate Gray placed great store upon SCTG's Defence in her responsive submissions to us. The Re-Amended Cause had alleged at paragraphs 6B and 30.4 that SCTG knew from the SOWM that:

    (1) Sheila did not have the income or assets of her own to support an application for a ULIP with a substantial death benefit;

    (2) Shelia did not have any apparent need for a ULIP with a substantial death benefit; and

    (3) no policy on terms similar to the ULP could have been offered by Manulife or by any similar insurer.

    The Defence denies all these assertions at paragraphs 27 – 27D, 50.1B, 50.1K and 50.2.

37. We agree with the Bailiff that there is no real prospect of success on Ground 2. We are required to presume (absent evidence to the contrary) that the Jurats had regard to all of the relevant evidence even where it is not expressly discussed in the judgment. The attack made upon the inferences that the Jurats ought to have but did not make ignores [185] of the judgment that it was open to the Jurats not to make express detailed findings if the evidence was too uncertain. It also ignores the first limb (subjective dishonesty of a natural person) of the two-stage test in *Ivey* which required an identified person to have the necessary knowledge or belief as to Sheila's ineligibility for a ULIP. Mr Carré was certainly aware of the SOWM in November 2010 but he did not regard this as a record of Sheila's own wealth but as part of the context for explaining why an enhanced standard of regulatory monitoring was required. Nor was he aware in March

2011 of any discrepancy between the SOWM and the Disclosure Booklet (which may not itself have even been false vis-à-vis Manulife: see paragraph 28 above). We would also agree with the Lieutenant Bailiff at [236] that it follows from Sheila's express declaration as to truth in the Disclosure Booklet that she (and the other three beneficiaries) cannot now complain that SCTG took such information at face value.

38. Advocate Williams relied upon the observations of Calver J in *ED & F Man Capital Markets Limited v Come Harvest Holdings Limited* [2022] EWHC 229 (Comm) at [71]:

> "I also bear in mind that as to inferring fraud or dishonest conduct generally:
>
> i) It is not open to the Court to infer dishonesty from facts which are consistent with honesty or negligence, there must be *some* fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved…
>
> ii) The requirement for a claimant in proving fraud is that the primary facts proved give rise to an inference of dishonesty or fraud which is more probable than one of innocence or negligence…
>
> iii) Although not strictly a requirement for such a claim, motive "*is a vital ingredient of any rational assessment*" of dishonesty… By and large dishonest people are dishonest for a reason; while establishing a motive for conspiracy is not a legal requirement, the less likely the motive, the less likely the intention to conspire unlawfully…
>
> iv) Assessing a party's motive to participate in a fraud also requires taking into account the *disincentives* to participation in the fraud; this includes the disinclination to behave immorally or dishonestly, but also the damage to reputation (both for the individual and, where applicable, the business) and the potential risk to the "*liberty of the individuals involved*" in case they are found out…"

39. As to "inherent probabilities", no motive has been suggested to us as to why an employee of a corporate trustee (a subsidiary of a multinational, heavily regulated bank) would knowingly approve an application for a ULIP which he or she knew to be fraudulent and capable of immediate avoidance when (as it inevitably would) the truth emerged. The personal consequences to that employee would be severe and long lasting.

40. We therefore decline to grant the beneficiaries an extension of time in respect of Ground 2. But even if we are wrong about that, we would have dismissed Ground 2 in any event. Yet further, even if we are entirely wrong about Ground 2, the claim in fraud would have failed on causation grounds: [225] and [232] – [233]. We address this issue at paragraph 67 below.

Ground 10:

41. Section 76 of the Trusts Law provides as follows:

> "(2) Subject to subsections (1) and (3), the period within which an action founded on breach of trust may be brought against a trustee is –
>
> (a) three years from the date on which the claimant first has knowledge of the breach, or

(b) where the claimant was at the time of the breach of trust a minor or a person under legal disability –

(i) three years from the date on which his guardian first has knowledge of the breach, or

(ii) three years from the date on which the claimant ceased to be a minor or a person under legal disability,

whichever first occurs.

(3) Subject to subsection (1) no action founded on breach of trust may be brought against a trustee after the expiration of 18 years immediately following the date of the breach".

42. The parties had agreed that the relevant date of knowledge was 13 April 2016 so each beneficiary's individual claim was time-barred if he or she first had the relevant knowledge of the negligent breaches of trust in relation to the acquisition of the ULIP prior to that date. There is no appeal against the findings that Sheila and Ahmed had that knowledge, making their claims time-barred.

43. As neither Hannah or Lana had attained their majority by the date the ULIP was acquired on 11 March 2011, the Royal Court had to determine the dates of their own knowledge subject only, in the case of Lana, to Ahmed (as her guardian until 24 September 2012) having the relevant knowledge prior to that date.

44. There is no challenge to the Lieutenant Bailiff's directions to the Jurats as to the meaning of "knowledge of the breach" at [249] – [250], ie when did the plaintiff have sufficient knowledge of facts which would make it reasonable for her to begin to investigate seriously whether there had been a breach of trust such as that pleaded? That knowledge (of the basic facts, not the legal consequences) is of the facts that: (1) damage has apparently been suffered and (2) it is possible that SCTG could be responsible for it. The degree of knowledge required is more than a mere suspicion that such a breach of trust might have occurred, but is not as high as the knowledge required to enable a fully pleaded Cause to be drafted, sometimes described as knowledge of the "gist", "substance", "essence" or "thrust" of the claim or complaint in question. It is an objective test. There is no requirement that the plaintiff should have made, or been able to make, any assessment of whether such a cause of action was "viable" or "worthwhile."

45. The burden was on Hannah and Lana to prove that they did not have the requisite knowledge by 13 April 2016, and this is not challenged.

46. The finding in relation to Ahmed was that he had first gained the necessary knowledge regarding acquisition of the ULIP by 26 July 2012: [256]. This would make Lana's Claim 1(1) statute-barred by 26 July 2015 as Ahmed was still her guardian at that first date: [258] (see paragraph 43 above). This conclusion is not challenged, so Ground 10 is confined to Hannah's Claim 1(1) and both daughters' Claims 1(2) and 3.

47. In any event, the Jurats went on to determine both Hannah's and Lana's dates of knowledge and determined it to be 19 January 2014 in each case. That was the date of an email from Ahmed to Sheila, Hannah, Lana and Marlon Sawaya (the SCPB relationship manager at the time). Lana admitted receipt. Hannah did not give evidence, but it was submitted by Advocate Greenfield that it was sent to the "wrong" email address for Hannah. Although this assertion was not investigated, the Jurats were not satisfied that Hannah did not receive the email, either on 19 January 2014 or in some form not long thereafter: [258]. The knowledge thereby gained by Hannah and Lana was a belief that the damage being suffered was all the financial losses

incurred by Ahmed in connection with taking on and maintaining and SAHLK Trust and its loan funding, an "obvious and significant matter": [259]. The Jurats therefore rejected Lana's evidence that she and Hannah first gained the relevant knowledge only in August 2016 and so were not satisfied that the daughters did not have sufficient knowledge of the relevant facts by 13 April 2016.

48. In relation to retention of the ULIP, Claim 1(2), all beneficiaries had sufficient knowledge of facts which would or might found a complaint of breach of trust against SCTG by July 2014 (or the time of the actual breaches, if later): [300]. This finding time-barred not only Claim 1(2) but also Claim 3 by Hannah and Lana: [350].

49. The Bailiff denied any extension of time in respect of Ground 10 because there was no real prospect of any successful appeal. We agree.

50. Advocate Gray submitted that the findings based on the email of 19 January 2014 were "perverse" or "untenable" because they were not supported by or were against the weight of the evidence or involved the drawing of unreasonable inferences.

51. The email was sent at a time when Hannah was 21 and Lana 20. They were both university students and obviously knew they were beneficiaries of the SAHLK Trust and the Ask Trust. The Jurats had to ask themselves why Ahmed chose to copy in his daughters to a business email to Sheila and SCPB. We think that they were entitled to conclude on the basis of numerous contemporaneous documents and the evidence of Ahmed and Lana that this was because Hannah and Lana knew the relevant background circumstances: [259]. We have read the email with care and are quite satisfied that it was open to the Jurats to conclude that it referred to a possible claim by all the beneficiaries. Ahmed had accepted in his evidence that in the email of 19 January 2014 he was, "referring to 'we' as a family". Even Advocate Gray accepted at paragraph 28(a) of her skeleton argument of 8 May 2024 that the email constituted a piece of supportive evidence.

52. We therefore decline to grant Hannah and Lana an extension of time in respect of Ground 10. But even if we are wrong about that, we would have dismissed Ground 10 in any event.

53. As we made clear at paragraph 21 above, the above conclusions on Ground 2 and 10 are sufficient to dispose of most of this appeal. Although Grounds 1 and 3 – 5 are now otiose, we will address them in relatively brief terms in deference to the detailed arguments made by the advocates.

Ground 1:

54. Section 22 of the Trusts Law provides as follows:

> "(1) A trustee shall, in the exercise of his functions, observe the utmost good faith and act *en bon père de famille*.
>
> (2) A trustee shall execute and administer the trust and shall exercise his functions under it –
>
> (a) in accordance with the provisions of this Law, and
>
> (b) subject to those provisions –
>
> (i) in accordance with terms of the trust, and
>
> (ii) only in the interests of the beneficiaries…"

It is common ground that the Lieutenant Bailiff was correct in interpreting this duty as one to act as a "prudent man of business" in conducting the affairs of the trust in the best interests of the beneficiaries. The Appellants argue that the Jurats failed to apply section 22 and ignored the Lieutenant Bailiff's directions of law.

55. The Lieutenant Bailiff clearly directed the Jurats that a Guernsey trustee owes a duty to beneficiaries to consider whether a proposed transaction is in their best interests before entering into it: [197] and [219]. Further, SCTG was obliged to act in an independent manner in the interests of the beneficiaries and regardless of the relationship with SCPB: [228]. There is no challenge to these directions.

56. The Jurats found that SCTG was in breach of the above duty by its total failure to consider whether the acquisition of the ULIP was in the best interests of the beneficiaries, in particular whether the acquisition of the ULIP upon its actual terms or an insurance policy of that type, rather than possibly an ordinary term life assurance policy to be placed into an offshore trust, was a transaction in the best interests of the beneficiaries of the SAHLK Trust. Nor did it consider whether the terms of the ULIP could be bettered. SCTG was, "less than alert as to the matters it should have considered and checked, to ensure that the transactions upon which it was invited to embark were in the interests of the beneficiaries of the trust. Such Group connection [with SCPB] or policy could not excuse proper performance of a trustee's duty under Guernsey trust law": [217], [219] and [244]. Specifically, SCTG did not exhibit the degree of alertness and attention to be expected from a comparable but independent trustee to checking out details and their implications, but was unduly inclined to accept passively what SCPB invited it to approve: [232].

57. In particular, the Jurats found that SCTG should have sought, at the time, direct independent confirmation of Sheila's wish and intention to proceed with the ULIP according to the terms and arrangements contemplated. However, the duty did not, on the facts, extend to an independent review of the merits and terms of the proposed transaction, such independent assessment being beyond the expertise reasonably to be expected of even a professional trustee entity of normal skill and experience: [220] and [224]. It is this conclusion that Advocate Gray challenges.

58. The Appellants accept as correct the following finding as to SCTG's purpose and function:

> "[204]…the purpose and function of SCTG within the Standard Chartered Group of companies, was to be a vehicle for providing trustee, fiduciary and administrative wealth management services to clients of Group companies, where such services were required for the benefit of their financial affairs and where Guernsey was seen as a suitable jurisdiction for this. The Jurats find that this was the function which SCTG was called upon by SCPB to perform in this case. They are satisfied that SCTG was habitually approached by SCPB to organise and provide such services in order to implement arrangements which had been previously devised and agreed elsewhere, between SCPB and its customers…"

59. Criticism is made of the passage immediately following:

> "SCTG played no part in advising on, or devising, the Kazzaz family wealth management scheme themselves. SCTG was seen by SCPB, but also reasonably by themselves, as carrying out a fiduciary asset holding and management function, in accordance, in the individual case, with objectives determined and instructions given to them by others, to be carried out under the local law".

This conclusion was justified by the Royal Court in the light of:

"[217]…(a) the policy of Standard Chartered Group regarding the sphere of operation and the functions of the various companies (including SCTG itself) within the Group, and (b) the particular circumstances of this case, and the stage at which SCTG was being brought in to provide trustee services. SCTG personnel understood – and not unreasonably – that:

(i) such consideration and investigation had already been carried out by other responsible persons, experienced in the operation and implications of such transactions, in conjunction with the settlor of the Trust (Sheila), and with any beneficiaries insofar as was deemed appropriate, and that

(ii) SCTG's function was to act as trustee of a policy already chosen by those others, including the settlor, to be of such benefit to the beneficiaries that it was in their best interests to implement it."

It is necessary to set out the Jurats' reasoning in detail:

"[221] Neither is a trustee obliged to make its own calculations, or critically review the commercial justification or assumptions implicit in a conclusion that a particular investment is of benefit to the Trust when the Trustee is not acting in a totally discretionary capacity. SCTG was not engaged to assess the transaction, or advise Sheila or the beneficiaries, but simply to act in a capacity which those persons had already decided was required or appropriate. A trustee in this situation would be quite justified in taking into account the fact of previous discussions between the Settlor and any interested beneficiaries and their financial advisors with regard to the merits of a proposed transaction, as evidence that it was regarded as being in their best interest. The trustee would not be obliged to second guess or query this, at any rate in the absence of some factor which would be readily apparent to the ordinary and reasonably competent provider of fiduciary services suggesting that that impression could not be right. The Jurats find that that is not this case; the allegedly disadvantageous factors suggested in the pleaded case (eg throughout paras 29 – 33 of the Re-Amended Cause) were too specialist and esoteric to be factors which an ordinarily competent provider of trustee services (as contrasted with insurance advice) could be expected readily to appreciate or even consider.

[222] … the primary motive, … was to provide a financially beneficial investment strategy for Mr Kazzaz and the Kazzaz family in the far wider context of his business objectives because of the "investment or savings" portion of the ULIP which Mr Baker acknowledges to exist, with the life assurance cover being an attractive "bonus". The key point, however, is that SCTG were effectively presented with a *fait accompli* in terms of the decision to take out this particular ULIP.

[223] SCTG was also entitled to take into account the "Insurance Trust Client Instruction Letter" signed by Sheila on 18 October 2010 in which she confirmed that it had been recommended that she take legal advice regarding the relevant proposed offshore arrangement but confirmed that

"*I appreciate the recommendation in this respect. However, I have made the decision to proceed without using independent counsel*".

[224] For the above reasons, the Jurats reject the submission of Advocate Greenfield that taking out a ULIP such as this one was so obviously unsuited to the needs of the Kazzaz family that doing so should have been rejected by SCTG as guardians of their interests, as not being in the best interests of the beneficiaries of the Trust. They consider that the highest any such duty might entail is that SCTG should have sought direct independent confirmation, at the time, of Sheila's wish and intention to proceed with this investment according to the terms and arrangements contemplated.

…

> [228] …SCTG did not participate in, and was not engaged to advise Sheila or Mr Kazzaz as to suitable financial arrangements, but was presented with a commercial transaction which had been negotiated and agreed upon by others (the interested clients and the Bank) and which was *prima facie* being implemented because it was in accordance with the considered wishes of the proposed Settlor… SCTG were in possession of the Insurance Arrangement Letter signed by Sheila, dated 22 February 2011 and expressly requesting SCTG to arrange to take out the particular Loan, as they did. The Jurats do not find that SCTG's duty of care extended, though, to questioning or going behind this express instruction."

60. Advocate Gray argued that it was not permissible for the Royal Court to cut down the trustee's duties under section 22, which cannot be varied or overridden by such internal arrangements made between a bank and its trust company subsidiary (or by the terms of the SAHLK Trust). She said that this error infects the whole judgment.

61. Advocate Gray placed considerable reliance upon this court's decision in *Khuller* where, on the facts, the Court of Appeal held, at [90], that there could well have been a breach of section 22 of the Trusts Law where the trustee, who was not an execution-only intermediary for a client, went ahead with an investment for a non-professional client without any further investigation to satisfy itself that the investment was reasonably suitable, merely giving effect to an instruction or request to invest. However, the trustee's duty there was to consider advice from a third party and to exercise its own judgment as to the suitability of the investment and then make an investment decision (responsibility for which had not been delegated by the trustee to that third party) itself; so going ahead simply because the trustee had no other adverse reports was not a proper exercise of a fiduciary power of investment in such circumstances, especially in the face of a warning raised by an employee of the trustee as to the risks involved and contrary to the specific direction in the relevant application form: [91], [120] and [130] of *Khuller*. Being a decision on specific facts ([72-74] and [107]) we do not think that *Khuller* establishes any point of principle to assist the Appellants here.

62. Advocate Gray also relied upon Lewin 29-049 to 050:

> "Trustees … must form their own view when exercising their dispositive powers and must not unthinkingly act as ciphers for the settlor, whether alive or dead; to do so is a breach of trust and leaves their decision open to challenge… In general terms, a power of investment is to be exercised with a single eye to the benefit of the beneficiaries, the trustees owing a duty of care and other duties concerning suitability and diversification".

However, the Jurats had expressly stated that notwithstanding Ahmed evincing a clear desire, tantamount to an instruction, to acquire the ULIP, this had no material bearing on their findings as to SCTG's duty: [226].

63. Advocate Gray's attack on the limited duty found by the Jurats might have had force if they had concluded that there had been no breach of duty by SCTG, but they did not.

64. Advocate Williams was correct when he submitted that at no stage did the Royal Court equate the trustee's duty to that of a nominee, bare trustee or custodian trustee, only required to follow instructions with no responsibility for its own actions.

65. A trustee's duty is, in our judgment, fact-sensitive. There is no inflexible or overarching duty to consider afresh for itself every prior decision made by others. Like the Bailiff, we are not persuaded there has been any fundamental misconception by the Jurats as to SCTG's duty,

especially in the light of the concession recorded at paragraph 58 above. In our judgment, it was open to the Jurats to conclude that, on the facts they found, they were entitled to take into account that the Settlor's instructions had been devised with the benefit of professional expert advice from SCPB, the broker and insurers with the beneficiaries' best interests in mind (and after consultation with Ahmed, a professional client, who himself had placed determinative reliance upon Mr Fattah shortly before acquisition of the ULIP), such that SCTG did not need to itself re-assess the merits of the proposal.

66. Even if we are wrong in this conclusion, the Appellants would have to overcome the finding of fact that any negligence by SCTG did not in fact result in any loss: [201], [219], [225], [232] and [237].

67. Advocate Gray submitted that had SCTG discharged its duties, no ULIP would have been acquired, because there was no rationale for insuring Sheila's life for a significant sum, as she had no assets or independent income. However, this ignores the possibility that Manulife might still have been willing to issue the ULIP because the Disclosure Booklet would not necessarily have been regarded as false (see [235] and paragraph 28 above at (a)). In any event, the fact remained that Ahmed's and Sheila's primary motive for the ULIP was not the life insurance but because it seemed such a good investment product for the Kazzaz family's benefit (and SCTG was unaware that Ahmed was under the impression that he could withdraw capital funds, required to provide the income to finance the premium loan, for use in his businesses without detrimental financial effect: [31], [49], [222], [225] – [226] and [232]).

68. For all these reasons, we reject Ground 1.

Ground 3

69. The Appellants take no issue with the Lieutenant Bailiff's direction on the meaning of 'gross negligence' at [262], taken from *Khuller* at [33]. As a result, the Bailiff refused any extension of time on Ground 3 given his conclusion on Ground 10.

70. Advocate Gray argued that the Jurats' incorrect understanding of the trustee's duties meant that their conclusion on a lack of gross negligence must be revisited. As we have dismissed Ground 1 it follows that the arguments on Ground 3 fall away.

71. The Appellants' primary attack under Ground 3 is against the finding that entering into a premium loan of $13.8m was not grossly negligent, when it was 106.7% of the Day One CSV of the ULIP, therefore in clear breach of SCPB's Facility Letter (which limited any loss to 90% of the Day One CSV). Advocate Gray claimed this exposed the beneficiaries to an unreasonably high level of risk because the security might be enforced at any time, causing the ULIP to be surrendered for less than the outstanding loan. The Jurats found that SCTG did not evaluate the commercial merits or demerits of taking the premium loan for the whole of the premium sum and did not pay any attention to the implications of the premium loan being in breach of the terms of the Facility Letter as regards LTV ratio or the policy of SCPB in this regard.

72. The Jurats' reason for disregarding this clear non-compliance by SCTG was because it must have been perfectly apparent to the trustee that SCPB was willing not to enforce this restriction: [52] and [230]. The Jurats also accepted:

    (a) the evidence of Mr Shadadphuri (Standard Chartered Head of Wealth and Planning – Europe, Middle East and Africa) that the "cross-pledging" of other security (eg Ahmed's and AOL's guarantees) could have been regarded as fulfilling the shortfall and that the credit department of SCPB would never have approved a loan which exceeded the required threshold for SCPB's security; and

(b) that SCTG would have believed and understood that SCPB would not have lent without being satisfied as to its security. The failure to question the apparent discrepancy between the terms of the Facility Letter as to LTV and the eventual loan could not in the circumstances fairly be regarded as a "red flag" so as to render it a clearly negligent breach of duty: [231]; in any event, a review of the terms of the facility would not have avoided the loss: [233].

73. The Appellants' secondary attack under Ground 3 is against the finding that a failure to review the Disclosure Booklet, and so discover the discrepancy between the Disclosure Booklet and the SOWM in late March / early April 2011 (when the ULIP could have been cancelled without penalty) was not grossly negligent. Advocate Williams relies upon [41], [207] and [215] of the judgment in response – see paragraph 28 above.

74. We agree that it is not the role of this court to re-evaluate the seriousness of SCTG's negligence – this was justified in *Khuller* only because the Court of Appeal had first reversed the finding that there had been no negligence: [34] of *Khuller*. In our judgment, there is no real prospect of the Appellants establishing that the decision on a lack of gross negligence in connection with the acquisition of the ULIP was plainly wrong or perverse.

75. We therefore decline to grant the beneficiaries an extension of time in respect of Ground 3. But even if we are wrong about that, we would have dismissed Ground 3 in any event.

Ground 4

76. This ground is premised on the basis that the Jurats interpreted SCTG's duty as trustee too narrowly (Ground 1) – see Notice of Appeal paragraph 4.6. As we have dismissed Ground 1 it follows that the arguments on Ground 4 fall away.

77. There is no appeal against the finding of a lack of fraud in relation to the retention and disposal of the ULIP, that is a failure to surrender the ULIP being motivated by a desire to retain the benefit of the whole of the commission.

78. The Appellants do not challenge the Lieutenant Bailiff's legal direction at [271] on the scope of the trustee's duty. They no longer pursue the allegations that SCTG ought to have:

(a) sought alternative finance on better terms, and/or

(b) sold the benefit of the policy in the global market on profitable terms.

That leaves only the failures to:

(i) inform Manulife of inaccurate disclosure and request a cancellation with full return of premium (less fees and expenses); and/or

(ii) surrender at the then current CSV prior to December 2016.

79. The Jurats had found that the *raison d'etre* of the SAHLK Trust had been obtaining and maintaining a life insurance policy (see clauses 5(a), (c) and (d) of the Trust Deed), so long as this was viable and unless instructed otherwise. Upon Sheila's death (if before 13 March 2027) the $21.5m would be paid out: [267].

80. The Jurats found that SCTG's "inaction" (ie a failure to conduct reviews of the continuing suitability of the ULIP, or of its operation under the previously agreed arrangements, or to discuss such matters with the beneficiaries) was a breach of duty. However, the breach had to be viewed in the context that SCTG understood, not unreasonably, that the continued operation of the ULIP was being discussed and reviewed between the client, on behalf of the beneficiaries,

and the relationship manager at SCPB. This would have required a prudent man of business to do "little more if anything than to confirm, directly with the settlor or interested beneficiary, that [the continued operation of the ULIP] had been reviewed and considered by them, and they were indeed satisfied that the arrangements continued to be for their benefit, perhaps drawing attention to any points which it might be readily seen by an intelligent businessman, but not an expert financial advisor, ought to be considered": [271].

81. It was also relevant that:

    (1) the Jurats had concluded that SCTG never became aware of any discrepancy between the SOWM and the Disclosure Booklet (see paragraph 28 above): [234] – [236] and [297];

    (2) Sheila was found by the Lieutenant Bailiff to be responsible, in law, for any falsity in the Disclosure Booklet: [203] and [297] – correctly in our view (see paragraph 37 above); and

    (3) in any event, the information contained in the Disclosure Booklet may well not have been false (see paragraph 28 above at (a)): [235].

82. As with Ground 1, we view the Appellants' Ground 4 as nothing more than an attempt to challenge findings of fact. Given that the Jurats did find negligence in relation to Claim 1(2) the real complaint is as to the Jurats' findings on causation. At paragraph 4.8 of the Notice of Appeal, the Appellants assert that had it been explained to the adult beneficiaries of the SAHLK Trust that the ULIP was void / voidable, at a time when the adverse financial consequences of continuing to hold the ULIP were only too apparent, the beneficiaries would have instructed SCTG to surrender or seek cancellation.

83. The problem facing the Appellants is that the Jurats were entitled to conclude, on the basis of Ahmed's evidence (whose written and oral evidence we have reviewed), the contemporaneous documents and Advocate Greenfield's submissions, that Ahmed would not have countenanced surrender or cancellation prior to (at least) May 2016, despite the financial burdens of servicing the premium loan, because he did not want to lose the valuable contingent benefit of Sheila's life being insured for $21.5m until 2027 (she was now in her 70s, and only "special pleading" had persuaded Manulife to extend cover beyond 2021), nor did he want to lose the ready availability of investment money "almost for nothing": [31], [52], [59], [232] [273] – [278], [288] and [348]. We accept Advocate Williams' submission that Ahmed was to a material degree the author of the beneficiaries' misfortune because he was constantly reducing the sum first invested in 2012, so hampering the structure's ability to be self-financing, especially when everyone could see that these investments were underperforming.

84. Ahmed's only concern during the period 2012-2016 was as to the unpalatable costs of maintaining the ULIP and "he was never of the mindset to jeopardise" the ULIP. Finally, it must not be ignored that the Jurats found that if the ULIP had been cancelled because of false information, Manulife would not have returned the premium in full, but would have sought to make all available contractual deductions: "its attitude would have been harder in the case of fraud": [295] – [296]. This would have been another disincentive to cancelling the policy.

85. For the above reasons we reject Ground 4.

Ground 5

86. Ground 5 is obviously closely related to Ground 3 (and therefore Ground 1) and we repeat paragraphs 69 – 70 and 74 above.

87. The Appellants' attack is, quite simply, that a failure by SCTG to carry out any review as to the suitability of the ULIP or its practical operation between April 2011 and (at least) April 2015 must amount to gross negligence, because it amounted to a "general abdication of responsibility by the Trustee for the consequences of its actions" and so a "complete failure to act in the interests of the beneficiaries" of the SAHLK and Ask Trusts (Notice of Appeal paragraph 5.3).

88. In our judgment, the Jurats were entitled to evaluate SCTG's negligence as falling short of 'gross negligence', given the unassailable facts referred to at [267] and that SCTG believed, not unreasonably, that regular reviews were being performed by SCPB in consultation with Sheila and Ahmed on behalf of the beneficiaries. In other words, SCTG's negligence was in assuming that the operation of the ULIP remained in the interests of the beneficiaries, rather than consulting with the Settlor or relevant beneficiaries to confirm that position.

89. For these reasons, we reject Ground 5.

Ground 6

90. Ground 6 is the final ground relevant to Claim 1.

91. The Appellants' appeal is based partly on errors of law and partly on factual conclusions being against the weight of the evidence.

92. As to the former, the Appellants allege three separate errors. First, the Lieutenant Bailiff was wrong to direct that the Singapore Judgment was admissible as evidence of the truth of its contents so that the Jurats could, if they chose, give weight to the factual findings of the Singapore Court. The Appellants submitted that, being a mere statement of opinion as to questions of fact, the Singapore Judgment ought not to have influenced the Jurats in any way (Notice of Appeal paragraphs 6.1 and 6.2).

93. Secondly, the Lieutenant Bailiff was wrong to direct that the Jurats should regard the Singapore Judgment as "established facts" (Notice of Appeal paragraph 6.3).

94. Thirdly, the Lieutenant Bailiff was wrong to determine that by signing the Disclosure Booklet in blank (at the request of the broker nominated by SCPB) Sheila took responsibility as against third parties, including SCTG, for any consequences adverse to her which flowed from the contents of the Disclosure Booklet being inaccurate in any respect, especially when SCTG had certified in the Application Form executed on 1 November 2010 that the SOWM was complete and true (Notice of Appeal paragraph 6.5).

95. It follows that the Lieutenant Bailiff was wrong to direct that the Appellants were unable to advance a claim based on the theory that SCTG ought, after 28 March 2011, to have discussed and considered the discrepancy between the financial information in the SOWM and the Disclosure Booklet, and then made appropriate enquiries and disclosures to Manulife, with a view to cancelling the ULIP and obtaining a refund of premium (Notice of Appeal paragraph 6.6).

96. The factual conclusion that is challenged is that the information in the Disclosure Booklet, as to Sheila's income ($500,000 per annum) and assets ($100m) - with no liabilities, would have originated in some form from Ahmed and Sheila: [203] (Notice of Appeal paragraph 6.4).

97. We begin by addressing the challenge to the finding of fact, as summarised in our previous paragraph. Although the Jurats' conclusions were in conformity with the same finding of the Singapore Court, there is no reason to think that the Jurats reached their conclusion other than independently. In the same paragraph of the Lieutenant Bailiff's judgment, [203], the Jurats were willing to take a different view to the Singapore Court, so it is only fair to conclude that

they were exercising independent minds as to the origin of the information in the Disclosure Booklet, based on the contemporaneous documents, the written and oral evidence of Ahmed and inherent probabilities – not slavishly adopting the findings of the Singapore Court. Advocate Williams took us to a passage in his cross-examination of Ahmed, where it was put to Ahmed that he had supplied the information which appeared in the Disclosure Booklet. The Lieutenant Bailiff had directed the Jurats at [146] to reach their own independent findings of fact, and, to the extent that they considered the findings of the Singapore Court to be relevant to their decisions, they should do so with caution and then indicate what their findings would have been independently of those findings of the Singapore Court, if these would have been in any way different: [147], [195] and [235]. In any event, it seems to us that the finding as to the origin of the financial information within the Disclosure Booklet was not likely to be decisive as the Jurats were merely 'inclined' to that view.

98. We therefore conclude that it was open to the Jurats to find that the information in the Disclosure Booklet originated in some form from Ahmed and / or Sheila. This was not tantamount to a finding of fraud on the part of Ahmed or Sheila, as Advocate Gray had submitted, because the information in the Disclosure Booklet may well not have been false vis-à-vis Manulife. In any event, it follows that SCTG was not responsible for populating the Disclosure Booklet with financial information.

99. Turning now to the third alleged error of law, there can be no legitimate complaint as to the Lieutenant Bailiff's direction that Sheila must take responsibility as against SCTG for the consequences of the information in the Disclosure Booklet being inaccurate (if they were – see paragraphs 28 and 37 above). When Sheila signed the Disclosure Booklet in blank it recorded that "any … trust company may rely upon the information contained herein as if this questionnaire was prepared directly for use by any of them".

100. Further, Advocate Gray criticised the Lieutenant Bailiff's direction that the Third to Seventh Appellants were also unable to advance a claim based on a false Disclosure Booklet because their title depended upon that of Sheila as Settlor of the SAHLK Trust (the other relevant beneficiaries being her privies) and/or Ahmed. In our judgement the Lieutenant Bailiff's direction was correct. Ahmed was Hannah's and Lana's guardian at the relevant time. AOL and the new trustees all claim through Ahmed – none are beneficiaries.

101. In any event, the challenge to the Lieutenant Bailiff's direction gets the Appellants nowhere, given the Jurats' finding, considered earlier, that SCTG never became aware of the discrepancy with the SOWM and that such was not negligent. When SCTG signed the Application Form, the Disclosure Booklet was not in its possession: [209] – [215]. The declaration in the Application Form [208] had been made by SCTG to Manulife, relying on the fact that SCPB in Dubai and the broker (Sheila's "attorney in fact … her representative and agent") were supervising the application, responsible for the appropriate and accurate completion of any "supplemental forms": [210]. None of these findings were influenced by the Singapore Judgment.

102. As to the second alleged error of law, that the Jurats should regard the Singapore Judgment as "established facts", this would indeed be an error if the Jurats had merely adopted the Singapore Judgment and not sought to make their own findings. However, we do not believe this is what they did. We have already touched on this at paragraph 97 above. It must be remembered that the Singapore Judgment was concerned with SCPB's conduct, not SCTG's.

103. The Lieutenant Bailiff had first directed the Jurats to assess all the evidence in the case before them, including the Singapore Judgment and the evidence before the Singapore Court "in the usual way", "for what they regarded it as worth," and the Jurats confirmed that they followed this direction: [102] and [150].

104. The Lieutenant Bailiff then directed the Jurats at [146] – [147] and [150] that it was for them to decide relevance and what, if any, weight to give to the decision of the Singapore Court and its reasons "in reaching their own independent findings of fact in the case," but that they should exercise caution because the judgments and findings were no more than a third party's opinion and therefore possibly unreliable. In case her direction was erroneous, the Lieutenant Bailiff further directed the Jurats to indicate what their findings would have been independently of the Singapore Court's findings, if different in any way.

105. The Lieutenant Bailiff's direction at [195] that the findings of the Singapore Court as to what had happened between SCPB, Ahmed and Sheila should be treated as "established facts", must be read against the background discussed earlier at [168] – [169] that none of the Plaintiffs could assert a case which is contrary to the position established in the Singapore Judgment in which Ahmed and Sheila had admitted that SCPB and its officers did not commit any fraud against them. Therefore the Plaintiffs cannot run a case in Guernsey which is incompatible with the principle that, as between Ahmed / Sheila on the one hand and SCPB / its officers on the other, the facts and rights necessarily determined by the Singapore Court apply: as the Lieutenant Bailiff stated in [169], "Any cause of action which the Plaintiffs successfully establish in these proceedings will have to be established on the basis of findings which are either compatible with the Singapore Judgment or (which may amount to the same thing) have a basis in facts which are entirely separate from and independent of those findings and determinations". We agree with the approach taken by the Lieutenant Bailiff which required the Jurats to approach the question of SCTG's conduct with a clean slate.

106. The direction at [195] also requested the Jurats to indicate whether, and if so in what respects, the direction might have affected or inhibited their own findings.

107. The key finding of the Jurats that SCTG never became aware of any discrepancy between the financial information contained in the SOWM and the Disclosure Booklet, and so there was no fraudulent conduct by SCTG personnel in connection with the obtaining of the ULIP, was "based only on the evidence before them": [235].

108. We conclude, therefore, that even if the Lieutenant Bailiff erroneously directed the Jurats to treat all the findings of the Singapore Court as in some way binding on them, which is not how we interpret [195] – see [131] and [133], the Jurats did not follow such direction. At all material times they made their own independent findings based on the evidence before them – some coincided with the findings of the Singapore Court, some did not.

109. It follows that there is no substance to the second challenge to the Lieutenant Bailiff's directions.

110. We turn now to the first of those challenges, that the Singapore Judgment was inadmissible and ought not to have influenced the Jurats in any way.

111. At trial, Advocate Greenfield had sought to rely upon passages in the Singapore Judgment and in Sheila's (hearsay) evidence given in the Singapore proceedings: [99]. Advocate Williams had not opposed this so there appeared to be unanimity on them all being admissible. However, Advocate Greenfield had later taken a different position, that nothing in the Singapore Judgment or proceedings should affect the Jurats' findings: [118] – [120]. In particular, his final submission was that Sheila's evidence to the Singapore Court (which the Plaintiffs had permission to deploy in Guernsey as hearsay evidence by Act of Court dated 7 March 2023) should be ignored because it was inadmissible: [123].

112. The Lieutenant Bailiff held that all the written materials used in evidence generated by the Singapore proceedings, including affidavits, transcripts – this would include Sheila's evidence – judgments and court orders are potentially admissible as evidence of the facts stated or

opinions expressed therein by virtue of the Evidence in Civil Proceedings (Guernsey and Alderney) Law 2009 ("the 2009 Law"). There was no challenge to this.

113. The Singapore Judgment was found by the Lieutenant Bailiff to be admissible because she had decided that *Hollington v F Hewthorn & Co Ltd* [1943] KB 587, CA, was not a binding principle of Guernsey law. However, at [147], she went on to consider the position should she be wrong about *Hollington* (see paragraph 104 above).

114. Both Advocate Greenfield and Advocate Williams had argued before the Royal Court that *Hollington* did apply in Guernsey, but the Lieutenant Bailiff's decision was that it did not. It is not necessary for us to express our own view as to its applicability in 2024 in Guernsey, in a judgment that is already lengthy, when the admissibility of the Singapore Judgment can be decided on other grounds. In other words, our conclusion below would be the same whether or not *Hollington* applied.

115. The Lieutenant Bailiff's fallback approach at [147] was to take relevance as the appropriate touchstone (see paragraph 104 above). This is in keeping with the modern approach to evidence summarised by Leggatt J (as he then was) in *Rogers v Hoyle* [2013] EWHC 1409 (QB), [2015] QB 265:

> "[27] … In the modern law of evidence relevance is the paramount consideration. The primary rule is that evidence is admissible only if it is relevant – that is, if it tends to prove or disprove, in the sense of making more or less probable, any fact in issue in the proceedings… Conversely, evidence that is relevant (or of more than minimal relevance) is generally admissible. In former days when facts in civil as well as criminal cases were found by juries and there was fear that more weight would be given to certain kinds of evidence than they deserved, rules were developed to exclude reliance on evidence notwithstanding its relevance. The rule against hearsay is the classic example. The tendency of the law has been and continues to be towards the abolition of such rules. The modern approach is that judges (and, increasingly, juries) can be trusted to evaluate evidence in a rational manner, and that the ability of tribunals to find the true facts will be hindered and not helped if they are prevented from taking relevant evidence into account by exclusionary rules…
>
> [103] … the opinion of a civil court on a question of fact is not as a matter of principle entitled to be treated as authoritative other than as between the parties to the proceedings…
>
> [104] As in the case of the rule which excludes opinion evidence generally, therefore, the true justification for the rule in *Hollington v F Hewthorn & Co Ltd*, as I see it, is not that the opinion of an earlier court is irrelevant but lies in the requirements for a fair trial. The responsibility of a judge to make his or her own independent assessment of the evidence entails that weight ought not to be attached to conclusions reached by another judge – all the more so where the party to whose interests the conclusions are adverse was not a party to the earlier proceedings …"

This approach was endorsed in the Court of Appeal [2014] EWCA Civ 257 per Christopher Clarke LJ at [40] and has been followed by Eder J in *Otkritie International Investment Management Limited v Gersamia* [2015] EWHC 821 (Comm) at [23]:

> "the court is entitled to have regard to matters of primary fact recorded in that [previous] Judgment, and if those matters of fact justify the conclusions reached in that Judgment the court is entitled to reach the same conclusion".

116. Here Ahmed and Sheila were parties to the Singapore proceedings and the remaining Plaintiffs in the Guernsey proceedings are their privies "claiming under them". SCTG and Songbird are subsidiaries of Standard Chartered Bank.

117. In our view, the Singapore Judgment was admissible as potentially relevant by virtue of section 15 of the 2009 Law, just as the decisions of Walker J and the Upper Tribunal in England had been admitted by McMahon DB in *SPL Guernsey ICC Limited v Addison* [2018] GLR 555 at [45]. This is particularly so when Sheila's evidence (written and oral) before the Singapore Court was the only evidence from her available to the Jurats.

118. The admissibility (or otherwise) of the Singapore Judgment is, in any event, academic, because, as we have already set out, there was no relevant finding based on the Singapore Judgment. We can detect no instance where the Jurats were influenced decisively by the contents of the Singapore Judgment.

119. For all the above reasons, we dismiss Ground 6. It follows from our determination of Grounds 1 – 6 and 10 that Claim 1 cannot succeed. We turn now to Claim 2. However, at the outset, we record Advocate Gray's concession, rightly made in our view, that Claim 2 cannot succeed in the event of Claim 1 failing: [307] – [308] and [322].

Ground 7

120. This ground of appeal relates only to Claim 2, brought by Ahmed and AOL as creditors of the SAHLK Trust against SCTG and is simply a repetition of Grounds 1 – 6, all of which we have rejected.

121. The Lieutenant Bailiff (and indeed the Bailiff) had grave reservations whether SCTG owed the duty of trustee to SAHLK's creditors, in respect of SCTG's administration of the SAHLK Trust, because of their vulnerability as guarantors of the obligation to repay the premium loan and associated costs.

122. Given that Claim 2 failed on negligence and causation ([308] and [322]) it is unnecessary for us to address questions of duty and breach of trust which the Lieutenant Bailiff described as a "novel point".

123. We therefore decline to grant Ahmed or AOL an extension of time in respect of Ground 7.

Ground 8

124. Ground 8 relates to Claim 3, brought by the beneficiaries and the new trustees against SCTG as trustee of the Ask Trust. According to [339] Claims 3 and 4 "were not explored or even really investigated at the trial and nor were they discussed or mentioned in any detail in written or oral arguments". Claims 3 and 4 make complaints of the same nature as those in Claim 1(2), although based on different alleged failings. Given our conclusions on Ground 10, Claim 3 is only viable for the claims of the new trustees.

125. The beneficiaries and the new trustees argue that the Royal Court held that the duties of SCTG, as trustee of the Ask Trust with oversight over the affairs of AOL (an asset of the Ask Trust), were defined too narrowly because SCTG ought to have formed its own view of the benefits of retaining the ULIP after 5 September 2013, continuing to fund the premium loan and to provide the loan security and that its total failure to do so (or to take action against Songbird for its identical failure) amounted to gross negligence which caused loss.

126. Ahmed was the Settlor and Investment Advisor of the Ask Trust. The Ask Trust Deed of 19 August 2011 (in particular paragraph (x) of Schedule II and a Letter of Wishes) placed a

considerable degree of influence over, or even control of, the activities of the Ask Trust in Ahmed's hands: [342]. Sections 23(b), 26(1)(b), 29(1) and 39(1)(b) of the Trusts Law were disapplied by the Trust Deed. This meant that the wishes and decisions of Ahmed were to be taken to be in the best interests of the Ask Trust's beneficiaries: [342]. There is no challenge to this conclusion, which was confirmed by Ahmed in his oral evidence. AOL was the only company within the Ask Group of companies and the trust structure with resources to maintain the ULIP.

127. AOL had executed a Third Party Pledge Confirmation to SCPB in respect of the premium loan made to SCTG on 24 August 2011 (whilst still held in a Cayman trust). When SCTG received AOL into the Ask Trust the loan security to SCPB had already been in place for over two years, operating in accordance with Ahmed's wishes.

128. SCTG's duty was found to be limited to seeking confirmation from time to time from Ahmed that the continued payment of the costs of the ULIP and provision of loan security were in accordance with his wishes, drawing attention to any points which reasonably sprang to mind for consideration. SCTG's failure to seek such confirmation amounted to "only a very minor negligence". In any event, such negligence caused no loss because Ahmed would have instructed SCTG to maintain the status quo even after May 2016. This finding of fact on causation was clearly one open to the Jurats (see, for example, Ahmed's emails to SCTG dated 30 May and 9 June 2016, the note of his telephone call with Paul Rogers of SCTG on 25 August 2016 and the email from SCTG to Ahmed dated 2 September 2016). Had SCTG acted as alleged SCPB would have demanded repayment of the premium loan, precipitating the loss of the ULIP death benefit and costs / charges similar to those which were incurred in December 2016.

129. We have already addressed, at paragraphs 28, 67, 81 and 99 above, SCTG's failure to inform Manulife of the allegedly false information in the Disclosure Booklet. Furthermore, our conclusions on scope of duty (Grounds 1 and 4) and gross negligence (Grounds 3 and 5) apply equally to Ground 8.

130. For the above reasons we dismiss Ground 8.

Ground 11

131. Ground 11 is only of relevance if we are wrong about Ground 8.

132. The new trustees appeal on an alleged error of law that Claim 3 was time-barred. Advocate Gray argued that the fact that the beneficiaries' claims were time-barred did not mean that the separate claims of the new trustees were also time-barred by section 76(2) of the Trusts Law – set out at paragraph 41 above. The knowledge of each particular claimant has to be assessed separately and the relevant knowledge of the new trustees could not pre-date their appointment on 3 May 2018.

133. The Lieutenant Bailiff's reasoning was set out at [355]:

> "The true analysis … is that the knowledge of the beneficiaries is deemed to be the knowledge of the new trustee because of their privity of estate or interest. A successor trustee takes action upon a breach of trust committed by a former trustee for the benefit of the trust estate. The persons entitled to that benefit are the beneficiaries of the trust. If they would be unable to pursue the former trustee because their cause of action is extinct, then that cause of action cannot exist in the hands of the successor trustee".

134. Advocate Gray disputes that there is any relevant principle of privity of estate or interest as between trustees and beneficiaries of a trust that would or could displace the natural and clear meaning of section 76(2).

135. Although section 76 Trusts Law is headed 'Limitation and prescription' it seems to us that the relevant law of Guernsey is one of limitation ("*la prescription à fin d'acquérir")*, a view shared by Hilary Pullum in her article 'The Meaning of Extinctive Prescription in Guernsey' (Jersey and Guernsey Law Review, 2016, page 173), the same as in England and Wales. A plaintiff's claim is not extinguished at the expiry of the relevant period, so it remains valid unless a defendant seeks to rely on a time-bar. Even after 18 years, a claim for breach of trust is not extinguished, but there is a procedural bar: section 76(3).

136. We accept that on a strict construction of section 76(2) it is the knowledge of "the claimant" that is relevant, and so this would encompass the Sixth and Seventh Plaintiffs. However, we agree with the Lieutenant Bailiff that a purposive construction is required so as to avoid the absurdity and unfairness of a time-barred beneficiary, resurrecting his claim 17 years after a breach of trust by the appointment of a new trustee with no personal knowledge of the trustee's breach. There is a privity of estate or interest between beneficiary and new trustee, or between original trustee and successor trustee, such as to bind a trustee to a decision in relation to trust property binding on a beneficiary: Lewin at 41-068 and *Gleeson v J Wippell & Co Ltd* [1977] 1WLR 510 per Megarry V-C at 515 G-H. As it was put graphically by the Supreme Court of Victoria in *Young v Murphy* [1996] 1 VR 279 per Brooking J at 285 – 287 where a new trustee makes a claim "the trustee's judgment swallows up the beneficiary's claim." The new trustees here are not in any sense claiming in their own right, but on behalf of the beneficiaries (see the relief claimed at Section IV of the Re-Amended Cause). They have no personal interest in the outcome; the real litigants are the beneficiaries upon whose behalf the new trustees bring their action.

137. In *Jefcoate v Spread Trustee Co Ltd* (Guernsey Royal Court, unreported judgment 11/2013 of 17 April 2013) Collas B had to answer the question: 'if trust assets are transferred to another trustee who thereby steps into the shoes of the Plaintiffs, is the relevant date under section 76(2) Trusts Law (a) the date on which the successor trustees had knowledge or (b) the date on which the Plaintiffs had knowledge'? The Bailiff's answer was (b):

> "[85] I cannot accept that a plaintiff's date of knowledge is deemed to be the date on which a successor trustee acquired sufficient knowledge. The phrase used in section 76(2)(a) is "the date on which the claimant first had knowledge of the breach". The natural meaning of the section is that it applies to the claimant's knowledge of a breach of trust. If the trust property is transferred to another trustee who acquires knowledge of the breach of trust at a later date, the claimant cannot be allowed to say that he was entitled to delay bringing an action for breach of trust because of the successor trustee's later knowledge. In my view, time must run from the earliest date at which the claimant had knowledge of the breach".

138. In our judgment, this decision is supportive of our construction of section 76(2).

139. For the above reasons, we dismiss Ground 11.

Ground 9

140. Ground 9 relates to Claim 4, brought by AOL against Songbird for breaches of duty as director. We repeat paragraph 124 above. We also record Advocate Gray's concession that Claim 4 cannot succeed in the event of Claim 3 failing because the same factual complaints are made in each claim: [324] and [358] – [359].

141. In summary, it is said that Songbird, in exercising due skill, care and diligence, should have considered (upon its appointment in September 2013 and thereafter generally) whether AOL ought to continue funding the premium loan and providing the loan security. Had it done so it would have answered in the negative and the loan security would have ceased.

142. The Lieutenant Bailiff ruled at [359] that Songbird's duties as director were no higher than SCTG's duty as trustee of the Ask Trust to act in the best interests of the beneficiaries.

143. The Jurats found there to be "only a very minor negligence". In any event, such negligence caused no loss: [347] and [359].

144. Our conclusions on the scope of duty (Grounds 1 and 4) and causation as a matter of fact (see paragraph 128 above) apply equally to Ground 9. We accept Advocate Williams' submission that Songbird's duty, as a nominee director appointed by SCTG and wholly owned by SCTG, cannot be more culpable than SCTG itself. Ahmed had control not just of the Ask Trust and AOL but also of Songbird as director of AOL. Songbird at all times acted in accordance with the wishes of AOL's sole shareholder, SCTG.

145. Further, AOL could not suffer actionable loss as a consequence of its director's conduct. Lewin at 41-042 puts the position as follows:

> " … in a case where the company is wholly owned by the trust, and the trustees as its sole shareholders authorise the company to enter into a transaction which prejudices the company and which, apart from such authority would have generated a claim by the company against the directors or others, the beneficiaries may, in our view, maintain a claim against the trustees. In such a case the company has never suffered any actionable loss at all": *Re Gee & Co (Woolwich) Limited* [1975] Ch 52 per Brightman J at 71D.

We therefore accept Advocate Williams' further submission that AOL's director could not be in breach of its fiduciary duty to AOL, even if it acted under a direct conflict of interest, where every member of AOL (ie SCTG) had sanctioned all Songbird's actions.

146. In the circumstances it is unnecessary for us to grapple with Songbird's (or SCTG's) counterclaims for an indemnity against Ahmed and the new trustees under the Ask Trust Deed of 19 August 2011, the Removal Instrument of 3 May 2018 or the two Nominee and Indemnity Agreements of 7 August 2011. They were not argued at the trial or considered in the judgment (see [13] – [15], [94] and [362], the Order of 22 November 2023 and [1] of the Lieutenant Bailiff's judgment of 22 November 2023).

147. For the above reasons, we dismiss Ground 9.

Conclusion

148. The appeal is dismissed on all grounds.

Costs

149. The Lieutenants Bailiff's order as to the costs below included a stay of an interim payment until disposal of this appeal. Such stay should be lifted upon the handing down of this judgment.

150. We are minded to order that the Appellants jointly and severally pay the Respondents their reasonable costs of the appeal on the standard basis, but invite short submissions, to be provided within seven days of the handing down of this judgment, should either party seek to persuade us to take a different course.

Anderson JA:

151. I agree.

Mountfield JA:

152. I agree.