

Trustee's duty of care when accepting trust and when retaining trust assets. Limitation of actions in trust claims (s 76 of Trusts (Guernsey) Law 2007). Required elements to prove fraud against a corporation. Nature of claim by creditors of "insolvent" trust against trustees. Status and admissibility of judgment, pleadings and evidence in previous proceedings in another jurisdiction - issue estoppel, *Henderson v Henderson* abuse of process, admissibility as hearsay; rule in *Hollington v Hewthorn* ([1943] KB 58) not part of Guernsey law. Facts, not evidence, to be pleaded in Guernsey pleadings.

[2023]GRC049

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

B E T W E E N:

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

Plaintiffs

-and-

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

Defendants

**Before: Her Honour Hazel Marshall KC
Lieutenant Bailiff, and Stephen Jones OBE, Steven
Morris and James Toynton Esquires (Jurats)**

Hearing Dates: 11th -14th, 17th, 19th, 20th and 24th April 2023

Judgment handed down: 22nd September 2023

**Counsel for the Plaintiffs: Advocate John Greenfield
Counsel for the Respondent: Advocate Anthony Williams**

Cases, legislation and textbooks referred to:

Legislation

Guernsey:

Laws

Law Reform (Tort) Guernsey Law 1979 s. 4

Torts Judgments (Interest) Bailiwick of Guernsey Law 1985

Trusts (Guernsey) Law 2007 ss 22, 23, 47, 76

Royal Court Reform Law 2008 s 14, 16

Evidence in Civil Proceedings (Guernsey and Alderney) Law 2009

Statutory Instruments

Royal Court Civil Rules 2007 r 10 (2).

England and Wales

Civil Evidence Act 1968

Civil Evidence Act 1972

Civil Evidence Act 1995

Cases

Guernsey:

Spread Trustee Co Ltd v Hutcheson [2011] UKPC 13

Jefcoate v Spread Trustee Company (2103) Judgment 11/2013 (Royal Court)

Rawlinson & Hunter Trustees SA v Investec Trust (Guernsey) Ltd and another (2016) Judgment 14/2016 (CA).

Broadhead v Spread Trustee Co Ltd and others (2016) Judgment 14/2014 (Royal Court)

Khuller v FNB International Trustees Ltd [2020] GCA 051

Jersey:

Re ZII Trust [2015] JLR 109

England and Wales:

Duchess of Kingston's case (1766) 2 Smith LC (13th Ed) 644,

Henderson v Henderson (1843) 3 Hare 100.

Davy v Garrett 7 Ch D 473

Hollington v Hewthorn & Co Ltd [1943] KB 58

Rhesa Shipping Co v Edmunds (The Popi M) [1985] 1WLR 948

Co-operative Group (CWS) v International Computers plc [2003] EWCA Civ 1955

Vogon International Ltd v Serious Fraud Office [2004] EWCA Civ 104 at [29]

Re H (Minors) [1996] AC 563
Three Rivers DC v Bank of England [2001] UKHL 16
Colin Gwyer Associates v London Wharf (Limehouse) Ltd [2002] EWHC 2748
Haward v Fawetts (Firm) [2006] 1 WLR 682
Re Doherty [2008] UKHL 35
Virgin Atlantic Airways Ltd v Zodiac Seats UK [2014] AC 160
MRH Solicitors v The County Court sitting at Manchester [2015] EWHC 1795 (Admin)
Stanford International Bank Ltd v HSBC Bank plc [2021] 1 WLR 3507
BTI 2014 LLC v Sequana SA [2022] UKSC 25.

Texts:

Halsbury's Laws of England, 5th Ed, Vol 12A para 1599

J U D G M E N T

INDEX

	Paragraph No
Introduction – the Parties and the claims	1
About this judgment	16
Factual background	21
The Singapore Action	71
These proceedings	80
The trial	97
Plaintiffs' evidence	98
Defendants' evidence	105
General	109
Preliminary procedural point - the effect of the Singapore Proceedings:	
Issue estoppel; abuse of process; rule in <i>Hollington v Hewthorn</i>	111
Defendants' submissions	111
Plaintiffs' submissions	118
Discussion and decision	124
The principal claims – Claims 1 and 3.	154

Claim 1: SAHLK Trust:

(1) Claims regarding the inception of the Universal Life Insurance

Policy (“the Inception Complaints”)	157
General - Points of law re allegation of fraud against SCTG	159
(i) Nature of the amendments	160
(ii) Abuse of process	162
(iii) No sufficient evidence of fraud of natural person	172
(iv) The mental element of the required dishonesty	186
The findings of the Jurats	194
(a) The Suitability Complaint	217
(b) The False Information Complaint	234
(c) The Fraudulent Conflict of Interest Complaint	238
Summary as regards the inception of the ULIP	244
Consequential matters:	
(i) Limitation	245
(ii) Gross negligence	261
(2) Claims regarding the retention of the ULIP	
(“The retention complaints”)	265
The findings of the Jurats	267
Conclusions and consequential points	298
<u>Claim 2: SAHLK Trust:</u>	
Claims of 1st and 5th Plaintiffs as Creditors.	302
Relation to Claim 1 and conclusion	307
Questionable nature of claim	309
<u>Claims 3 and 4: ASK Trust:</u>	324
Claim 3: ASK beneficiaries’ claims against SCTG as Trustee	328
Claim 4: ASK One Ltd’s claim against own Director	332
The Defences	339
Discussion	339
The findings of the Jurats	342
Consequential points	349
Effect of the position of the Sixth and Seventh Plaintiffs	351
Conclusions on Claim 3	356
Conclusions on Claim 4	358
Final Determination	361
Introduction – the Parties and the claims	

1. The claims in this action concern the affairs of two trusts, the SAHLK Insurance Trust (“**the SAHLK Trust**”) and the Ask Trust. The First to Fourth Plaintiffs were the beneficiaries of each Trust.
2. The First Defendant, Standard Chartered Trust (Guernsey) Limited (“**SCTG**”), is now in liquidation and has been since 19 May 2020. It was a wholly-owned subsidiary of Standard Chartered Bank Private Bank (“**SCPB**”) which, in the Defences, is acknowledged to be “*a multinational bank incorporated and headquartered in the United Kingdom with branch offices in, amongst others, the Dubai International Finance Centre and Singapore*”. Elsewhere SCPB has been described as a “Division” of the Standard Chartered Bank Group. Whilst it is not perfectly clear, therefore, what the international corporate structure of the Standard Chartered Bank Group actually is or was, nothing turns on this. We will refer generally to Standard Chartered Bank entities generally, other than clearly SCPB itself, as “**the Bank**” for convenience.
3. SCTG was the original Trustee of each Trust, but the Sixth and Seventh Plaintiffs replaced SCTG as Trustee of the Ask Trust in 2018. The Fifth Plaintiff (“**Ask One**”) is a company which became an asset of the Ask Trust in September 2013, and which holds certain business and financial assets of the First Plaintiff. The Second Defendant, Songbird Limited (“**Songbird**”), also now in liquidation, was a wholly owned subsidiary of SCTG, having been incorporated for the purpose of acting as the Director of Ask One from September 2013 onwards.
4. These two Trusts (the SAHLK Trust and the Ask Trust) and the company Ask One were set up in 2010 and 2011, as part of arrangements then being made for the beneficial (it was intended) management and administration of the wealth of the Kazzaz family.
5. The First Plaintiff (“**Mr Kazzaz**”) is a businessman. He became head of the Kazzaz family in 2007, upon the death of his father, Sarchil Kazzaz. The Second Plaintiff (whom we refer to, with no disrespect intended, as “**Sheila**”) is his elderly mother, Sarchil’s widow. She is now 82 years old. The Third and Fourth Plaintiffs (“**Hannah**” and “**Lana**”) are Mr Kazzaz’ daughters, born in April 1993 and September 1994, respectively.
6. Mr Kazzaz had a pre-existing banking relationship with the Bank as a business customer in Dubai, where the family lived from 2004 onwards, having taken this relationship over from his father. In 2010, Mr Kazzaz was expecting to receive the proceeds of sale of a property in England. It had been the backbone of the family’s assets there, and the proceeds were going to be significant – about £5.2 million. Officers of the Bank in its Dubai Branch made suggestions as to how good investment outcomes might be achieved for the family with these proceeds and other assets. These proposals involved creating a suite of companies and trusts.
7. One such investment was to be an insurance trust, the SAHLK Trust, of which SCTG would be the Trustee. The Ask Trust of which SCTG was also to be Trustee, was to hold other business assets of Mr Kazzaz, through owning the company Ask One. There were other companies to be formed, to hold the Kazzaz family properties in France, Iraq and the United Kingdom, although only the last is directly

material to this action. It is out of these proposed arrangements, and the way they eventually worked out (or did not do so), that the claims in this action arise.

8. Four broad claims are made in this action:
 - a. The First to Fourth Plaintiffs, as beneficiaries of the SALHK Trust, claim against SCTG as Trustee of that Trust, compensation for various asserted breaches of trust (some alleged to be fraudulent) taking place from in or around November 2010 through to December 2016, in respect of SCTG's implementing and subsequently operating the SAHLK Trust ("**Claim 1**");
 - b. The First and Fifth Plaintiffs, as creditors of the SAHLK Trust, claim compensation for breach of trust against SCTG arising out of the same matters ("**Claim 2**");
 - c. The First to Fourth Plaintiffs, as beneficiaries of the Ask Trust, and the Sixth and Seventh Plaintiffs, as the current trustees of the Ask Trust (since 2018) claim compensation for breach of trust against SCTG in respect of their operation of the Ask Trust over the period from 5 September 2013 to 8 December 2016 ("**Claim 3**"); and
 - d. The Fifth Plaintiff claims, against the Second Defendant, compensation for breach of the Second Defendant's duty of skill and care owed to the Fifth Plaintiff as its Director during such period ("**Claim 4**").
9. The Defendants deny the claimed breaches of trust or duty, in all the circumstances of the case, and they deny, in any event, that any of their actions caused the Plaintiffs any properly recoverable losses.
10. They first assert, as an overarching point, that the action is not maintainable, or should be struck out, because it effectively seeks to re-litigate issues raised in proceedings previously pursued in Singapore by the First and Second Plaintiffs against Standard Chartered Bank, the parent, or ultimate parent, company of SCTG, ("**the Singapore Action**") which alleged (*inter alia*) misrepresentations and breaches of a common law duty of care by their officers with regard to the original setting up of the trust arrangements, and which actions failed both at first instance and on appeal. They argue that the issues raised in this action could and should have been raised in the Singapore Action (but were not), and/or that this action involves a collateral attack on the judgment in the Singapore Action.
11. In relation to the specific claims made, SCTG emphatically denies fraud, and objects that the allegations of fraud are not only belated but are unsustainable in fact. It also counters that in any event, the Second Plaintiff was herself implicated in the matters now suggested to have constituted fraud, such that this allegation cannot be maintained by the Plaintiffs.
12. As regards the allegations of negligent breach of trust, SCTG denies negligence but alleges that, in any event, the Plaintiffs' claims in respect of both Trusts are wholly or partly time-barred under s 76 (2) of the *Trusts (Guernsey) Law 2007*, (the "**Trusts Law**") because the First to Fourth Plaintiffs had sufficient knowledge of the matters now relied on as constituting such negligence more than three years

before the commencement of this action (after taking into account the operation of a “standstill” agreement), and the introduction of the Sixth and Seventh Plaintiffs cannot retrieve or improve that position.

13. Lastly, they say that insofar as any of their actions might be held to be negligent, they did not amount to *gross* negligence and they are consequently entitled to rely on exoneration clauses contained in the Trust Instruments, and/or indemnities given to them in documents executed by the First Plaintiff, as to which they counterclaim appropriate declarations.
14. The Second Defendant, likewise denies any negligence, alternatively any gross negligence, as Director of Ask One.
15. The Defendants also make counterclaims against the First, Sixth and Seventh Plaintiffs, for indemnity under the provisions of several documents executed in the matter. These are, in respect of SCTG, the Ask Trust Deed, the Removal Instrument by which it was removed as Trustee of the Ask Trust in 2018 and in respect of both Defendants, two Nominee and Indemnity Agreements signed on 7th February 2011 and made between (i) Mr Kazzaz and SCTG and (ii) Mr Kazzaz and Standard Chartered Trust (Cayman) Ltd . It is claimed that these indemnities would apply to any liability which the Defendants were found to incur under the four claims above. This aspect of the case did not take up argument at the trial and will be considered later if and insofar as appropriate.

About this judgment

16. This is a decision of the Court and this written judgment has been prepared in accordance with Section 16 (5) of the Royal Court (Reform) (Guernsey) Law 2008.
17. Pursuant to Section 14 (2) of the 2008 Law, the Lt-Bailiff did not sum up to the Jurats in open court but instead retired with the Jurats. The Lt-Bailiff gave both general and specific directions to the Jurats. Her general directions were, first, to remind them of her and their respective roles, namely that the Lt-Bailiff is the sole judge of matters of law and procedure and the Jurats must follow her directions on such matters, but that the Jurats are the sole judges of questions of fact. In making their factual judgments, the Jurats were directed to take account of all the evidence presented to the Court, written, oral and documentary, on behalf of both Plaintiffs and Defendants. Whilst the Lt-Bailiff would decide whether any disputed evidence was intrinsically admissible, it was for the Jurats, and not the Lt-Bailiff, then to decide what evidence they accepted, what evidence they rejected, what evidence they were unsure of, and what weight they gave to such evidence as they did accept. They should take into account the arguments which they had heard from the Advocates as to the evidence, but they were not bound to accept them. They were entitled to draw inferences, (that is: to come to common-sense conclusions based on the evidence that they accepted) but they must not speculate about what other evidence there might have been, or allow themselves to be drawn into pure conjecture.

18. The Lt-Bailiff directed the Jurats that insofar as she might herself appear to express any views on the facts when guiding their deliberations, the Jurats should ignore these and form their own independent judgment. The Lt-Bailiff further directed the Jurats that the burden of proof with regard to the decisions that they would be required to make was the ordinary civil standard of proof, namely proof “on balance of probability”, and that this meant simply that they must be satisfied that the particular fact in issue was more likely to be so, than not to be so.
19. The Lt-Bailiff’s more specific directions are mentioned elsewhere in this judgment where they are material.
20. Where this judgment sets out holdings of law and reasons therefor, they are the holdings and reasons of the Lt-Bailiff. Where it sets out findings of fact and reasons therefor, they are the unanimous findings and reasons of the Jurats.

Factual background

21. The following account of the matters giving rise to this action recounts facts which are largely common ground, identifying matters of dispute where material. Insofar as it recounts as fact any matter which is not common ground, it can be taken to record the findings of the Jurats.
22. Mr Kazzaz is a wealthy and successful businessman. His father, Sarchil, was born in Iraq but came to England in the 1960s where he met and married Sheila Crouch, now Sheila Kazzaz. From 1971, they lived in Manchester, building together various small businesses, including hairdressing, for which Sheila had trained, and a grocery business, but culminating in the acquisition of a former school, Ducie Court, which they converted to provide accommodation which could be let to the local council, to house homeless persons. They lived in the caretaker’s cottage on the premises themselves, as their home. This venture was apparently very successful, and from the age of 17, Mr Kazzaz also worked in this business.
23. In the 1990s, Sarchil’s business activities had extended to Turkey, France and Iraq, and Mr Kazzaz himself entered into these businesses and continued this course, acquiring, through companies, commercial properties in Iraq and also the valuable franchise to run duty free shops in Iraqi airports. From 2004, the family moved to Dubai as their main home, this being convenient for supervising Iraqi businesses, but the family also had properties in several other countries including France.
24. When Sarchil Kazzaz died in 2007, Mr Kazzaz took over his business empire and assets. He also continued the existing banking relationship with the Bank in Dubai. The Bank had for several years been the ordinary “retail” bankers to Kazzaz family members and to its small businesses.
25. Mr Kazzaz decided that Ducie Court should be sold, as Sarchil had wished, and in 2009, this was being implemented. Ducie Court was held by two companies through a Jersey trust, for tax efficient reasons. The proceeds were likely to be about £5.2 million. At that time, Mr Kazzaz was unhappy with the fees being charged by the Jersey trustee, and he wanted to disengage the Jersey trust from

them. He also wanted to use part of the proceeds of Ducie Court to purchase a flat in London for his daughters to live in whilst they were studying there, which was likely to be from 2011 onwards. On any basis he wanted to deposit the proceeds of Ducie Court in a bank in the short term.

26. He spoke with his relationship manager at the Bank in Dubai about this. This led to his being introduced, in April 2010, to officers of SCPB. SCPB was the Bank's Division, or subsidiary, which handled the affairs of high net worth clients. The purpose was to acquaint Mr Kazzaz with the Bank's range of banking and wealth management services. He was accordingly introduced, first, to Harish Phoolwani, one of SCPB's directors, and then, in August 2010, to Mr Laurence Black, as Head of Fiduciary Services Middle East and North Africa.
27. On 28 August 2010, Mr Kazzaz requested information about the Bank's trust related services in an email to Mr Phoolwani. Mr Kazzaz had himself envisaged a relatively simple scheme of purchasing the London flat out of the proceeds of Ducie Court and investing the remainder in the family businesses. The SCPB officers suggested more elaborate arrangements as a useful and efficient scheme for holding the Kazzaz' family wealth, and also, by means of trusts, to deal with concerns about forced inheritance rules in French and Iraqi law, which might prejudice Mr Kazzaz' two daughters in relation to the family's real property in those countries. These more elaborate arrangements involved the taking out of a Universal Life Insurance Policy ("ULIP"), in a large sum, on Mr Kazzaz' life, to be placed in a trust, with other assets and properties also being held in off-shore companies and trusts. SCPB recommended that their own subsidiary trust companies, including SCTG in Guernsey, should be the trustees of such trusts.
28. SCTG is a subsidiary within the Standard Chartered Group. Its clients are confined to persons who are referred to it through being customers of other Bank Group companies, and in particular referred by its holding company, SCPB.
29. A ULIP is not simply term life assurance. Whilst policies vary in their detail, they broadly involve the premium being invested and providing a return which enures for the benefit of the policyholder so long as the policy is in existence and paid up. The beneficiary (the life-insured whilst the policy is in force) can draw out and use any excess income elsewhere. Such policies are generally seen as being appropriate only for high-net-worth individuals because their potential tax advantages only become worthwhile at high levels. The sum insured needs to be very high to make the scheme worthwhile, but also, the amount of death benefit has to bear 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.
30. In this instance, a single premium was proposed and SCPB also proposed to loan the greater part of that premium to Mr Kazzaz. The earnings on the premium were guaranteed at a basic rate, but were expected to exceed that, and thereby to meet the interest payable on the premium funding loan, with some excess accruing to the value of the policy and being available to be used by Mr Kazzaz in the family businesses, if wanted.

31. Mr Kazzaz was immediately attracted to this possibility, which seemed to offer investment money almost for nothing, as well as the prospect of the life insurance monies themselves as future security. There was, however, a problem, because his frequent travels to Iraq meant that he himself was not insurable. The suggestion therefore, very quickly, became that the ULIP should be taken out, instead, on the life of Sheila - and this structure was what was then pursued.
32. As to setting up the ULIP itself, the actual taking out of such a policy would have to await receipt of the Ducie Court proceeds, which had not yet happened in the autumn of 2010, but policy illustrations were being obtained in anticipation of this from September 2010. Because the Bank could not itself sell life insurance, this had to be arranged through a broker, IPG Financial Services Pte Ltd, (“IPG”) who were based in Singapore.
33. On about 23 September 2010, after an initial meeting, the IPG representative, Jyotsna Panday, provided the necessary paperwork to make applications for a ULIP on Sheila’s life, to Mr Phoolwani, to get relevant information completed and the authorisation documents signed.
34. Amongst the paperwork required was an Information Disclosure and Authorisation Form (the “**Disclosure Booklet**”) which had to be completed by giving not only general personal details for Sheila as the insurance proposer, but also details of her personal wealth and circumstances, and her medical conditions and lifestyle habits (such as smoking and alcohol consumption), all being the kind of information which an insurer would wish to elicit and take into account in setting the premium for, and issuing, a life insurance policy.
35. The contents of the Disclosure Booklet as regards Sheila’s wealth have been the subject of much dispute in this case, as is explained later. The date on the face of this Disclosure Booklet is 25 September 2010, but the evidence shows that it could not have been fully completed, in fact, until some days later. It bears Sheila’s signature in several places, but the question, who actually filled in the relevant information or, if such information was completed (as it apparently was) by bank officials, where those officials had derived their information from, has been a matter of great contention.
36. Also, on 25 September 2010 both Mr Kazzaz and Sheila attended medical appointments, arranged by IPG. On 28 September, Mr Kazzaz signed SCPB’s Client Investment Questionnaire, a document detailing, mainly, the client’s objectives and preferences.
37. With Mr Kazzaz travelling a great deal for business purposes, and with much paperwork requiring completion and signatures, first, to “onboard” Mr Kazzaz and Sheila as clients of SCPB, second, to enable the obtaining of the ULIP, third, to “onboard” Mr Kazzaz and Sheila as clients of SCTG and fourth to set up the proposed trusts and the proposed associated company structures, Mr Phoolwani was the point of co-ordination and contact between the Bank companies and the insurance broker on the one hand and Mr Kazzaz and Sheila on the other. Much of this contact had to be conducted by email and through Mr Kazzaz’ office, whilst he was abroad.

38. Forms containing some information for the purpose of taking out the ULIP were sent to Mr Kazzaz by Mr Phoolwani on 30 September 2010 and returned by Mr Kazzaz who also, on 10 October 2010, signed a Client Agreement, declarations, undertakings and authorisations with SCPB, and a Memorandum of Charge to secure SCPB's proposed credit facilities, addressed to SCTG as trustee of the then proposed Trust.
39. On 18 October 2010, Sheila similarly (having been requested to do so by Mr Kazzaz) signed a Client Agreement, declarations, undertakings and authorisations with SCPB and also the Client Investment Questionnaire. She also signed the documentation necessary for the setting up of the SAHLK Trust with SCTG, namely a fee agreement, a client instruction letter, and a trust agreement, and she authorised SCTG to complete any account documentation required by the Bank or any of its subsidiaries.
40. On 20 October 2010 Sheila was "introduced" to SCTG by SCPB, through a letter from Mr Phoolwani in his capacity of relationship manager. This introduction was made in anticipation of the taking out of the ULIP, because it referred to the relevant fiduciary structure being an "insurance trust". It contained an assurance by Mr Phoolwani, on page 2 that:

"I confirm that the settlor is aware that a "referral fee" is being paid by an insurance broker directly to [SCTG], specifically related to the issuance of this policy to [SCTG] and that he/she provides his/her permission for this transaction to take place."

The introduction also included a "Source of Wealth Memorandum" ("SOWM") relating to Sheila. Much of the dispute in this case centres on discrepancies between the information contained in this SOWM and the information contained in the Disclosure Booklet pertaining to the ULIP.

41. The SOWM was an internal document prepared by SCPB (Mr Phoolwani) in support of a recommendation that Sheila should be accepted as a client of the "Private Bank - Jersey" and dated 20 October 2010. It explained that Sheila had no independent wealth of her own, being financially dependent on her son (Mr Kazzaz) and previously on her husband, and now living a retired life in Dubai. The wealth profiling then set out in the SOWM was therefore (it was explained) that of her son, Mr Kazzaz, but was regarded as sufficient support for her to be accepted as a client. It gave the wealth of Mr Kazzaz as about \$35 Mn in financial products and \$52 Mn in real property (consisting of property in Iraq, France and the UK, of which the latter two, valued at \$39.2 Mn, were held in a trust of which Sheila was named as co-settlor) and Mr Kazzaz's income, estimated at \$8 Mn per annum, comprising the income from the Ask group of companies' profits and £300,000 from property in Manchester (ie Ducie Court).
42. The Disclosure Booklet on the other hand (and which, as mentioned, bears Sheila's signature in several places and a date of 25 September 2010) gave Sheila's occupation as "managerial duties" and her individual income as a "salary" of £500,000, with individual assets of £85 Mn in real estate and \$15 Mn in "Net Business Interests", with no liabilities, thus asserting an individual capital wealth of \$100 Mn. Such sums are clearly more in line with Mr Kazzaz' own apparent

wealth, although he has objected that they were inaccurate even as to that. Whilst Sheila accepts that she signed such paperwork – she was accustomed to sign documents without query, if requested to do so by Mr Kazzaz, as she had been, by a message from him, in this case – she denied that she completed this information herself, and has asserted (in the Singapore action referred to below) that the form was blank when she signed it.

43. Moving back to the history, whilst more than one life insurance company may have been approached with regard to the proposed ULIP, the illustration which was eventually followed up was from the Manufacturers Life Insurance Company, Bermuda Branch (“**Manulife**”), and was formally provided on 27 October 2010. The proposal was to insure against Sheila’s death before the age of 100, in the sum of \$21.5 million, for which the single premium payable would be \$14,219,474. It had also been discussed and arranged that SCPB would lend all or most of this amount, effectively to Mr Kazzaz but in practice to the Trustees of the SAHLK Trust, and would take security for the loan over the Policy itself (in effect, its current surrender value) and also over other assets of Mr Kazzaz, being, in the event, the assets comprised in Ask One, as well as a personal guarantee from him.
44. The SAHLK Trust itself was initiated on 1 November 2010 with the SAHLK Trust Agreement being executed by SCTG and Sheila and with Sheila as Settlor providing a nominal initial fund of \$100.
45. SCTG executed its internal Insurance Trust Proposal Form, which was dated that same day. This noted that Sheila was financially dependent on Mr Kazzaz, recording that further details were to be found in the SOWM. At the same time SCTG completed an Application Form for Life Insurance addressed to Manulife, which was sent on to IPG the following day, and also applications to SCPB for the necessary premium funding loan, with the required Memorandum of Charge also being completed.
46. However, because the Ducie Court proceeds were not yet available, the policy could not be taken out at that time. Over the next few months, replacement illustrations for the 27 October 2010 illustration were provided by Manulife, as circumstances, and Manulife’s terms, changed.
47. The eventual Facility Letter for the Premium Funding Loan (“**the Premium Loan**”) was issued by SCPB to SCTG on 26 November 2010. It provided for a loan, for 12 months but renewable, limited to \$16.5 Mn or 90% of the Day One CSV (“Current Surrender Value”) of the policy to be purchased. As the ULIP was now not going to be acquired imminently, it was not completed by SCTG on behalf of the SAHLK Trust at that time.
48. On 17 January 2011, Mr Kazzaz signed the required personal guarantee, and the following day, SCTG signed the documentation necessary to set up the Premium Loan with SCPB. This included a Deed of Collateral Assignment of the life insurance policy then expected (as it was based on the current illustration) to be issued by Manulife to the SAHLK Trustees, and an Irrevocable Beneficiary Designation in favour of SCPB. This was a purported absolute assignment, which would prospectively give SCPB security by way of total control over the policy, once issued, with all the rights of the beneficial owner of it. However, that

expected policy was never issued. It is not clear whether the Assignment was ever varied or replaced when the eventual ULIP, on different terms, was later issued in March 2011, but the parties appear to have proceeded on the basis that the operative ULIP itself was, or should have been, assigned in the same way.

49. By February 2011, the ULIP still had not been purchased. At this time, Mr Kazzaz consulted a friend, a Mr Walid Fattah, for advice and reassurance. Mr Kazzaz respected Mr Fattah's experience in financial matters, because Mr Fattah had worked for Credit Suisse, albeit in the currency exchange section. Mr Fattah personally met with the officers of SCPB on 6 February 2011. He promptly wrote to Mr Kazzaz, in glowing terms, both commending the SCPB officers and extolling the benefits of the proposed "product".
50. At this time, 7 February 2011, Mr Phoolwani also introduced Mr Kazzaz himself to SCTG itself as a new client, and the necessary documentation to set up the Ask Trust with SCTG as its Trustee, and also the company Ask Three Ltd (intended to hold the flat to be purchased in London) was put in place, with Mr Kazzaz executing the client instruction letter and the fee agreements relating to these.
51. More ULI policy illustrations followed in February, but it was at the end of February 2011 that (apparently) the sale of Ducie Court became sufficiently certain to enable the scheme to go ahead. It did so on the basis of an illustration from Manulife submitted on 22 February 2011. With the decision to go ahead made, on 2 March 2011, Sheila requested changes to the beneficiaries of the SAHLK Trust to include Hannah and Lana specifically. She signed the insurance arrangement letter, and she countersigned the most recent Manulife illustration on 7 March 2011, returning these to SCTG. SCTG, therefore, then formally applied for the policy (with the necessary Loan having been issued to it by SCPB) and the ULIP itself was issued on 10 March 2011.
52. By this time, though, the terms available for the desired insurance had changed. The ULIP could only be taken to insure Sheila's life until she reached the age of 86, (not 100), and even this had only been obtained by special pleading with Manulife whose standard terms had by then reduced the cut-off age to 80. The death benefit remained at \$21,500,000, but the premium was reduced to \$13,863,738. Whilst the premium appears at one time to have been intended to be paid as to \$2,500,000 by Mr Kazzaz out of the sale proceeds of Ducie Court, with the rest being financed by a loan from SCPB, the loan in fact made by SCPB was for the entire amount of the premium, ie \$13,863,738. This was, in fact, 106.7% of the Day One CSV of the ULIP itself, thus, apparently, putting the SAHLK Trustees *prima facie* immediately into breach of the Facility Letter. However, as this would have been perfectly apparent to SCPB in making the loan, it would appear that they were not proposing to enforce this provision.
53. On 25th March 2011, the beneficiaries of the SAHLK Trust were amended to make Mr Kazzaz the Secondary Beneficiary of the Trust, and Hannah and Lana (together with their lineal descendants) the Ultimate Beneficiaries behind him.
54. During late 2010 and early 2011, other Ask companies, and an Ask Cayman Star Trust were also set up as part of the arrangements for holding the wealth of the Kazzaz family. This generated a great deal of further paperwork between SCPB,

Mr Kazzaz and entities in the structure to the extent that, in June 2011, Mr Kazzaz complained to Mr Phoolwani about being asked to sign so many “unexplained” documents. Most of these entities and the arrangements made with or through them are not material to these proceedings, except perhaps to note the background fact that their existence generated fees for their management in the various other jurisdictions. Only the following material particulars require mention.

55. Ask One Ltd was incorporated in the BVI, on 10th March 2011, just the day before the issue of the ULIP. This was the company intended to hold the business and financial assets of Mr Kazzaz.
56. Ask Three Ltd, another BVI company, was incorporated on 9th March 2011. This was the company intended to hold the London flat, which was to provide accommodation for Hannah, Lana, and Sheila when they were in London. A flat at 7 Westchester House, Seymour St, London W2 was identified shortly afterwards, and was eventually purchased by Ask Three on 31st August 2011 at a price of £1,750,000, with the benefit of a further loan from SCPB to whom a First Legal Charge over the property was granted.
57. The Ask Trust itself was declared in Guernsey on 19th August 2011 by Mr Kazzaz, with an initial fund of \$100. SCTG was Trustee, and Mr Kazzaz, Sheila, Hannah and Lana were the beneficiaries. At about this time, the Facility letter of November 2010 was superseded by a letter in identical terms dated 24th August 2011, the only change being that the upper limit of the loan was expressed to be \$14Mn only. This was signed by Sheila. Also on 24th August, Ask One executed a Third-Party Pledge Confirmation in favour of SCPB, by which it pledged its assets as security for the Premium Loan.
58. The friction between Mr Kazzaz and Mr Phoolwani in June 2011, when Mr Kazzaz complained (email of 26 June 2011) at the number of unexplained documents with which he was being bombarded by SCPB with requests for signature, and which he did not understand, was apparently ironed out at that time. Matters really began to sour between Mr Kazzaz and SCPB, however, at the beginning of 2012, when, on 11 January 2012, Mr Phoolwani sent a memo requesting an injection of \$200,000 from Mr Kazzaz to prevent the sale of investments, or authority to pay off some of the substantial loans made by SCPB, no doubt to reduce required interest payments. Mr Kazzaz was highly dismayed and did not understand the need for this, having regard to his understanding that the arrangements which had been put in place were, in effect, self-financing from earnings made. He demanded a meeting, but, with some reassurance from Mr Fattah, who attended the meeting with him, he agreed to make this top up payment. However, matters then got no better, with further requests for payments being made shortly afterwards.
59. With hindsight, what had apparently happened - and was to continue happening - was threefold. First, investments which had been made were not performing as well as anticipated and were therefore not generating enough income to cover the interest on the Premium Loan which was intended to finance (also) their acquisition. Second, for the same reason, the surrender value of the ULIP, which was pledged to SCPB as security for the Premium Loan, was falling, and was triggering margin calls in order to keep up the loan to value ratio which SCPB required. The third reason (as subsequently explained very clearly in an email of Mr Rohit Sharma of

SCPB in Dubai to Mr Kazzaz on 23 July 2012) was that, in exacerbation of all this, Mr Kazzaz had himself drawn substantial sums out of the investments held, (and which SCPB had envisaged would return fixed income sufficient to meet the interest payments) to invest in his own businesses, and this had reduced the capital on which income was being earned so that, again, it did not cover the Premium Loan interest.

60. Mr Kazzaz complained then, starting with an email in forthright terms on 2 February 2012, and he reiterates even now, that in agreeing to the scheme to take out the ULIP he was never informed about the possibility that interest payments on the premium Loan might ever have to be made from outside the structure, and still less of the possibility of margin being called, and he also believed that there was no impediment to his withdrawing funds for the purpose of expanding or investing in the family businesses, having made clear to SCPB that this was his wish and intention.
61. With disagreement brewing, the matter was further complicated when Mr Kazzaz went to the United States in February 2012 and was promptly arrested on charges of bribery in relation to one of his business ventures in Iraq. He was released on bail in mid-April 2012, but he had to remain in the USA pending trial. Whilst he denied wrongdoing, he was offered a plea bargain with the risks which he would run by not accepting it being emphatically presented to him. As a result, he elected to plead guilty in order to keep his sentence to a minimum, but the upshot was that he was imprisoned in the USA from October 2012 until October 2013.
62. During this time, the conduct of the family businesses had to be carried out by a trusted employee, Mr Pradeep Singh. The situation with regard to the poor performance of the portfolio, and the need for payments of interest and margin calls to be made continued, with Mr Kazzaz being understandably hampered, by his situation, as to what, if anything, he could do about this, but beginning to feel, more and more that he had been misled by the Bank into agreeing to the scheme to take out the ULIP in the first place, because the potential downsides had not been made clear to him.
63. He found, to his anger and dismay, that he was being asked to make or authorise payments of interest of about US\$22,000 a month, to fund the Premium Loan, and also to remit funds irregularly for payment of margin, which he had never anticipated, and which inhibited the expansion of his businesses in Iraq. He said that he would never have entered into these arrangements if he had understood this, or it had been explained to him. Having lost all confidence in Mr Phoolwani, Mr Kazzaz requested a change in his relationship manager at SCPB, and in August 2013 this was changed to a Mr Marlon Sawaya, whom he had previously known.
64. After being released from prison in the United States in October 2013, Mr Kazzaz returned to Dubai and sought to re-start his life. He wanted to try to revise the premium financing arrangement. However, on 14 November 2013, SCPB informed him that it was terminating its banking relationship with him, personally, and his account was eventually closed on 4 January 2014. That did not affect the Trust Accounts, a matter which Mr Kazzaz found “hypocritical”, since the Bank knew perfectly well that all the family assets came from him. In March 2014, however,

Mr Kazzaz was informed by Mr Sawaya that SCTG, also, was not able to continue any relationship with him because of compliance issues arising from his conviction.

65. Against this background, during 2014, and after further explanations, Mr Kazzaz says that he then understood that there was nothing to be done about the ULIP and the arrangements associated with it, and that he and Sheila were therefore “*stuck*” with it and must just keep on maintaining it. Subsequently, though, he formed the view that this was incorrect and there were better options than simply continuing with it. He blames SCTG as Trustee of the SAHLK Trust, for not having reviewed and investigated such possibilities, which (he believes) would have been in the best interests of the Trust.
66. During 2014 and into 2015 Mr Kazzaz complained to SCPB and tried to get them to reduce the charges and liabilities being incurred on the various loans and mortgages, and consolidate the company structures (which had still, apparently, not been deployed into property holding portfolios) continually trying to save money. There were some gestures made by SCPB, although Mr Kazzaz did not regard them as sufficient. He regarded a reduction in interest rates, for example, as being yet further evidence that he and Sheila had been overcharged in the first place.
67. On 11 March 2015 Mr Kazzaz was informed by SCTG that it had received two letters from SCPB, directed to the SAHLK Trust and to Ask Three, demanding payment of outstanding interest on the Premium Loan and on the mortgage loan on the London flat, and threatening legal proceedings if these were not paid off.
68. Relations continued to deteriorate. SCPB terminated Sheila’s banking relationship as a customer in Dubai in September/November 2015. They later required Sheila to take steps to close her banking facilities in Jersey, in October 2016.
69. SCPB withdrew the credit facilities provided to Ask One, Ask Three and the SAHLK Trust in May 2016. SCTG informed Mr Kazzaz of this, and said that they could do no more than request extensions of time, to enable Mr Kazzaz to find an alternative financier. Requests for funds for interest payments and margin calls persisted in the meantime, with SCPB insisting that financial facilities were being withdrawn and that accounts must be closed, despite Mr Kazzaz arranging on-going payments. This was much to Mr Kazzaz’ confusion (he said) and disgust.
70. Mr Kazzaz tried, but was not able, to find alternative finance by the various deadlines imposed, even though these were extended from September to November 2016. SCPB therefore then exercised their power as secured creditor to effectively require surrender of the ULIP. SCTG effected this at the beginning of December 2016, at its then surrender value of \$12,801,778.89. This left a shortfall of \$1,225,267.80 owed to SCPB, which SCPB then recovered by enforcement of its pledge over the assets of Ask One, with the shortfall being paid from Ask One funds. This enforcement is the foundation of the claims of Ask One against STCG and the Second Defendant, as its director, apparently blaming them for this liability ever having been incurred.

The Singapore Action

71. On 14 October 2016, Mr Kazzaz and Sheila commenced proceedings in Singapore against the Bank and personally against three officers of the Bank, Mr Phoolwani, Mr Black and a Mr Mithani, as referred to above. The action was no doubt pursued in Singapore as the location of the head office of the Standard Chartered Banking Group, even though the seat of the matters complained of seems to have been Dubai, but nothing turns on this.
72. The eventual Statement of Claim (Amendment No 3), the Plaintiffs' opening statement, the first instance judgment, the trial affidavit evidence and the trial transcripts from the Singapore Action have been put into evidence in this case. The basis for this admission of evidence is explained in more detail later, but it is convenient to note the contents of the Singapore claim at this point.
73. The Statement of Claim alleges, at some considerable length, that the defendants to it made misrepresentations to, and/or exercised undue influence over, Mr Kazzaz and Sheila between April 2010 and February 2011, prior to the taking out of the ULIP, to induce them to enter into that suite of financial arrangements, which were for the benefit of the Bank in terms of interest, fees and commission. The claimed misrepresentations were to the effect (summarised) that:
- (i) the proposed arrangements would be "self-funding" in that the income generated by investments made with the sale proceeds of Ducie Court would generate enough income to pay the interest payments on the loans taken out for financing the life insurance premium and the flat mortgage, and Mr Kazzaz would not have to provide any further funds;
 - (ii) the defendants would ensure that the documents entered into were in the best interests of the Kazzaz family, so that Mr Kazzaz need not be concerned, even, to take external advice and
 - (iii) the arrangements were suitable for the Kazzaz family needs.

These representations were initially pleaded as being either fraudulent (the motive being the obtaining of income for the Bank) or negligent in the alternative, but the allegations of fraud and of undue influence, were withdrawn at the time of closing written submissions in the case.

74. There were further claims in negligence, alleging that the Defendants owed Mr Kazzaz and Sheila a duty of care when giving them the advice which they had done, owing to the foreseeability of Mr Kazzaz and Sheila suffering financial loss if such advice were given negligently, and that the Defendants had breached this duty in seven alleged respects, many of them overlapping. They were, in summary, failing to explain sufficiently or properly about the rationale for and the nature of the arrangements, failing to ensure that Mr Kazzaz understood them and the risks involved, culpably treating Mr Kazzaz and Sheila as "professional clients" when, owing to their lack of experience and understanding of financial matters, they should not have been so treated, and failing to advise properly and carefully about

the suitability of the arrangements for the Kazzaz family circumstances. There were also claims for damages based on alleged breaches of local finance industry regulatory law, arising from the same matters.

75. The Singapore proceedings were eventually tried between February and April 2019, and judgment at first instance was given on 14 October 2019. The claims made were all dismissed.
76. As regards the misrepresentations, the judge found that those claims failed on the facts. Almost entirely, he preferred the bank officials' evidence and recollections of what had taken place between them and Mr Kazzaz and Sheila, to those of Mr Kazzaz and Sheila, and he held that the suggested misrepresentations had simply not been made on the facts as he found them:
- i. As regards the alleged duty of care, even assuming (without deciding) that such a duty was owed, he held that six of the seven alleged matters of breach simply failed on the facts as he found them (five being consequent on his findings as to the absence of misrepresentation).
 - ii. He also found that there had been no breach of duty of care in the seventh respect, namely in treating Mr Kazzaz and Sheila as "professional" clients, since doing so was reasonable on the facts: he found that Mr Kazzaz in particular, but even Sheila, were not as naïve and unsophisticated about financial affairs as they were now claiming to be, but that in any event it had been reasonable for the bank officials to judge that they were not. He also found that Mr Kazzaz had in all probability assented to this treatment, as it would have been explained to him that their having this status was necessary if SCPB were to provide him with the trust services which he was wanting.
 - iii. The judge also found that, in any event, the Bank was entitled to take advantage of disclaimers of liability contained in the agreements which Mr Kazzaz and Sheila had signed with SCPB, because, being adults of sound mind, they were to be taken to be bound by what they had signed, even if (as they claimed) they had not read or understood the terms. The claims based on breaches of regulatory conduct therefore also failed on the facts, even assuming (which he did not decide) they could give grounds for a private claim in damages.
77. In making his findings with regard to Sheila, the judge accepted and relied on her evidence that if she understood that Mr Kazzaz wanted her to sign a document she would do so, whether or not it was explained to her.
78. In rejecting submissions that the Bank negligently failed to ensure the accuracy of the alleged grossly inaccurate statements of Mr Kazzaz' and Sheila's supposed wealth in the Bank's records and the IPG insurance documents, (which were alleged to have been, effectively, "made up" by the bank officials), the judge declared himself satisfied, having reviewed all the evidence, that in all probability, the source of the information in the SCPB and IPG documents, accurate or not, was ultimately the Kazzaz family itself. He found that the contents of the forms were consistent with the way Mr Kazzaz and Sheila had appeared to treat their wealth as being

“family” wealth rather than distinguishing between themselves, that Mr Kazzaz would have supplied information but without apparently having any accurate idea of his own wealth, and also again, that, in any event Mr Kazzaz and Sheila were bound by what they signed, and could not “*shunt responsibility*” for inaccuracies on to the Bank, especially when the evidence suggested that the information had originated with them.

79. Mr Kazzaz and Sheila appealed, this decision, but the appeal was dismissed.

These proceedings.

80. This action was commenced on 5 June 2020. By the time of the Defences on 4 September 2020, the unsuccessful appeal mentioned above had already taken place.

81. In this action, the Defendants are not, of course, the same persons as the Defendants in the Singapore Action, but because of the obvious connections with the subject matter of the Singapore action, and the submissions made by the Defendants as to the legal effects of this, it is important to note the complaints actually made in this action.

82. The pleadings in this action are unnecessarily and regrettably prolix. This the fault of the Plaintiffs rather than of the Defendants, who are, inevitably, responsive to an over-prolix pleading and cannot be blamed for pleading to material which is served upon them. The Cause in particular, states many matters repetitively and in a degree of detail which descends into evidence. Indeed, one section of the Cause is actually pleaded on the express basis that it is not alleged to support any finding of loss and damage caused to the Plaintiffs, but is inserted to demonstrate an alleged pattern of general culpable behaviour by the Defendants, which supports the claims previously described.

83. This is a description of evidence. Evidence should not be pleaded in a cause in Guernsey: see *Royal Court Civil Rules 2007 r 10 (2)*. The rules are different from those in England for procedural reasons arising out of other provisions of the Civil Procedure Rules in England which do not apply in Guernsey. Guernsey pleadings should not be modeled on English pleadings, and those who resort to the assistance of English counsel to help in the preparation of pleadings, whether on their own initiative or on the insistence of clients, have a duty to inform those who assist them of the Guernsey rules of pleading, and also, themselves, to take responsibility for ensuring that any pleading filed in a Guernsey case complies with the RCCR.

84. The following is a condensed account of the complaints made in the Cause.

85. As regards the SAHLK Trust, the duties of SCTG as Trustees contained in the Trusts Law are pleaded in the Cause with special reference to s 22 (duty of trustee to act with utmost good faith and *en bon père de famille*, and to administer the trust in accordance with the Law, and according to the terms of the trust and in the interests of the beneficiaries) and s 23, (duty of trustee, subject to the terms of the trust and the Law, reasonably to preserve and enhance the trust property.) In the event s 24 (duty of trustee not to profit or permit others to derive profit from his

trusteeship except as permitted by the Court, the Law or the terms of the trust) has also become potentially material.

86. By para 27 of the Cause, it is pleaded that such duties extended to the Trust's Creditors, because the Trust was always insolvent from the point of taking out the ULIP.
87. By para 28 of the Cause it is pleaded that, with the knowledge which SCTG "*had, or should have obtained*" in relation to the ULIP, the Beneficiaries and the Creditors, SCTG should have considered whether it was in the interests of the Beneficiaries or Creditors to take out the ULIP policy as it did at all, and should have reviewed the position "*regularly*" thereafter to consider whether it remained in their best interests to maintain the ULIP "*rather than surrendering it at the earliest opportunity*".
88. It is then pleaded at para 29, in summary, that a trustee acting with the knowledge which SCTG had or should have had, and in accordance with its duties, would have concluded that neither taking out the ULIP, nor maintaining it thereafter was in the best interests of the Beneficiaries. In particular it ought to have concluded that there was no good reason to insure Sheila's life at all, or certainly not in so great a sum, or with the premium being at a 150% risk rate (as it was because of Sheila's medical history and being a smoker), or with the need for costly premium financing arrangements, and that, if any life insurance were required, this could be far more cheaply obtained by an ordinary term life assurance policy, with no premium funding required (albeit generating no commission for SCTG).
89. It is then pleaded (at para 30) that SCTG "*became party to or privy to*" a fraud upon the Beneficiaries, the Creditors and indeed upon Manulife - which is pleaded to equate to wilful default or fraudulent breach of trust - by taking out the ULIP without (in effect) conducting appropriate due diligence and giving appropriate consideration to whether doing so was in the best interests of the Beneficiaries, but knowing, from the contents of the SOWM in its possession, that Sheila's wealth had been misrepresented to Manulife in the Disclosure Booklet within the insurance application form on which the proposal which was being accepted had been based, but with the benefits to itself or SCPB amounting to some US\$2.54 million (calculated as being the \$1,312,342 earned in commission, and \$1,231,477 paid to it in interest and charges on the Premium Loan whilst it was extant).
90. This conveys, sufficiently, the flavour of the pleaded Cause for present purposes. The ensuing three paragraphs plead, at length, specific aspects of the above as further "*particulars of breach*", asserting what SCTG ought to have done or concluded. This is really argument as to aspects of the breaches of duty already alleged and it is unnecessary to set them out here. The only additional factor is at para 34, where it is pleaded that by borrowing (as it did) 106% of the Day One surrender value of the policy at the outset, SCTG was further negligent, because this not only breached SCPB's usual lending policy parameters of 90% Loan to Value, but also breached the terms of the loan facility letter itself, thereby exposing the Trust and the Beneficiaries to high risk, for no sufficient benefit, and without considering, with due care, how such borrowing costs could reliably be financed.

91. Paragraph 35 pleads, with similar detailed elaboration, further aspects of SCTG's alleged negligence in regard to failing to review and remedy the position earlier than it did, in particular alleging that SCTG was wrongfully influenced, in so doing, by the desire to preserve for the Bank the benefit of the commission which would be earned on the policy as long as it subsisted for five years. Various methods of calculating the claimed loss, amounting to something over £7 Mn (or alternatively \$1.3 Mn, together with interest) are pleaded at para 36.
92. Paragraphs 37 – 61 plead claims against SCTG as Trustee of the Ask Trust and against Songbird as Director of Ask One Limited with respect to their conduct in respect of the same matters after 5 September 2013, when Ask One became an asset of the Ask Trust. Broadly, the pleading asserts breaches of duty by SCTG in failing, on behalf of the Ask Trust, to consider whether continuing to maintain the ULIP and the relevant loan premium funding agreements was in the best interests of the beneficiaries of the Ask Trust (when it was allegedly not), and failing to consider, or take action against the Second Defendant for itself failing to consider, whether such action was in the best interests of Ask One (when it was allegedly not). There is also a claim for alleged breach of duty in failing to appoint a protector of the Ask Trust and failing to maintain contact with the Ask Trust beneficiaries so as to take account of their wishes or circumstances, although it is not clear what loss is alleged to be attributable to this. It is not necessary to describe these allegations further here; they are examined later.
93. The nature of the Defences has been indicated at the start of the judgment (see [9] – [14]) and again do not need to be elaborated here; they will be dealt with when they arise for consideration.
94. Given the points made in the Defences, and with SCTG also having made a counterclaim that it was entitled to rely on a contractual indemnity clause, in effect to extinguish any claim in damages for negligence if one should be found to be made out, the pleadings naturally extended to a Réplique and a consequent Duplique, but the terms of these do not require noting.
95. The action then proceeded, under appropriate case management directions, to trial. It was originally listed for hearing in November 2022, but on the first day of that hearing, certain preliminary points were taken on each side as regards the admissibility of evidence and, in particular, whether the Defendants had actually pleaded their case on prescription/limitation sufficiently adequately to entitle them to raise and rely upon it, which the Plaintiffs disputed. Upon the Lt Bailiff's holding that the Defendants had pleaded the point, and that if the Plaintiffs considered the case inadequately pleaded their remedy had been to seek more information by way of *exceptions de forme*, and that their not having done so did not prevent the Defendants from seeking to make out their pleaded case at trial on whatever evidence was admitted, the Plaintiffs requested an adjournment, to adduce further evidence which they therefore regarded as necessary, and to make amendments to their own pleadings. The trial was therefore adjourned, at the Plaintiffs' expense, to April 2023.
96. This adjournment produced a Re-amended Cause served in January 2023, which contained the hitherto unheralded allegations of actual dishonesty against SCTG made in para 30 of the Cause, (see above) namely, in particular, that in taking out

the ULIP, SCTG knew that the information as to Sheila's wealth and income being transmitted to Manulife was false, owing to the fact that it had in its possession the SOWM document which was inconsistent with this. There is, of course, no prescription or limitation in cases of fraud and dishonesty, whereas there is in cases of mere negligent breach of trust. The implications and the legal analysis of this allegation are complicated, and are dealt with later, but it should be mentioned that the consequently amended Defences denied such knowledge, outright.

The trial

97. At the trial, the Plaintiffs were represented by Advocate John Greenfield and the Defendants by Advocate Anthony Williams.

Plaintiffs' evidence

98. Apart from evidence contained in contemporaneous documents, which Advocate Greenfield took the Court through, oral evidence was given for the Plaintiffs, first, by both Mr Kazzaz and Miss Lana Kazzaz according to their respective witness statements. Mr Kazzaz was, naturally, the primary witness, with Miss Kazzaz being confirmatory, in effect, of the fact that she and her sister had not known what was going on at the time, but that a point came when their father had explained his concerns about the situation to them. Mr Kazzaz' own lengthy witness statement dealt with the whole history of the case, and much of it appeared to be based on and to repeat his affidavit evidence in the Singapore Action. They were each cross-examined by Advocate Williams.

99. Sheila, had not provided a witness statement and the Plaintiffs stated that it was not proposed that she would give oral evidence at the trial. Instead, they produced, and sought to rely on, passages in the judgment of the court in the Singapore Action, and passages in the transcript of Sheila's evidence given in that action.

100. Medical evidence was produced to this Court by way of reports from Sheila's doctor in Dubai, to the effect that she was very frail and in poor health, unfit to travel to give evidence and, indeed, potentially unable to give evidence usefully at all owing to such frailty and failing memory. The Defendants, however, disputed this. Having had their own medical practitioner interview Sheila by internet video-link, they produced his report, which was to the effect that, if treated as a vulnerable witness with reasonable adjustments made, Sheila appeared capable of giving evidence at the trial by video-link.

101. However, Sheila was not tendered to give oral evidence on this basis. Advocate Williams therefore argued that the Court should draw adverse inferences from this fact, in particular pointing out that Sheila had never even produced a witness statement in these proceedings, which suggested (he submitted) that it had never been intended that she would give evidence at all. He therefore submitted that the Court should infer from this that any evidence which Sheila would have given would be adverse to her (or the Plaintiffs') case, rather than supporting it. Advocate Williams did not submit that the hearsay reports or records of Sheila's evidence in the Singapore case should be ruled inadmissible in her absence, but

this was no doubt because the Defendants considered that they were actually helpful to their own case.

102. As to the question of adverse inference, the Lt-Bailiff directed the Jurats that it was a matter for them to assess all the evidence which had been produced or was relevant to Sheila's medical condition and likely ability to give evidence, and to assess the reasonableness (or otherwise) of her not being tendered to give evidence; they were not obliged to draw adverse inferences unless they felt that doing so was justified in the light of all the facts. They should otherwise simply assess all the evidence admitted in the case, (in the event, for reasons explained later, including that provided by the Singapore Judgment, and the transcripts of Sheila's evidence and any other such materials) for what they regarded it as worth, in the usual way. The Jurats confirm that this is the approach which they then adopted.
103. The Sixth and Seventh Plaintiffs gave evidence in person by video-link from different locations in Iraq. It was accepted that this was not unreasonable in the circumstances, they not being able to obtain visas to travel to Guernsey. Neither of them spoke English and they each gave evidence through an interpreter from Arabic, the interpreter being present in Guernsey. Their evidence was of limited value, each professing no knowledge of the matters in actual issue in the case. Indeed, whilst each was apparently aware that he had accepted to be, and was, a Trustee of the relevant Trust, and had been asked to provide a witness statement as tendered, neither of them appeared to be aware, at all, that he was named as an actual Plaintiff in the action.
104. The Plaintiffs also relied on the expert evidence of Mr Richard Baker. Mr Baker is an American expert in the life insurance sector, currently licensed in California and other US States, with 20 years' experience in practice in the life insurance, life settlement and insurance premium financing business, specialising in the insurance needs and wishes of high net worth individuals, both American and international. He has founded American professional associations in the sector, and has been frequently published. He was engaged by the Plaintiffs to give evidence as to market practice and values with regard to universal life insurance policies. His evidence also contained, at the Plaintiffs' request, his views about what features of a ULIP it was important to discuss with prospective customers, to ensure that the product was suitable for them. With his expertise being in the field of insurance and not trust practice, it was directed principally at issues of the causation of loss and possible quantum. In preparing his evidence, he explained that he had discussed certain aspects with a Mr Timothy Demars, a Fellow of the Society of Actuaries and had relied on facts and analyses supplied by his firm.

Defendants' evidence

105. As to factual evidence, the Defendants called two officials of the Bank/SCTG, neither of whom had been directly involved in the original taking on of either Sheila as a banking client or the setting up of the SAHLK Trust and taking out the ULIP, or any other aspect of the suite of arrangements made in 2011. Their witness statements had already been the subject of objection from the Plaintiffs, on the grounds that they purported to express opinions as to what had happened which they were not qualified or entitled to express, since they had not been

involved. Their statements had therefore been re-cast to deal only with evidence based on their own knowledge and experience, and which each was thus entitled to give.

106. Mr Mahesh Shadadphuri was the successor to Mr Laurence Black (mentioned above), holding the position of Head of Wealth Planning – Europe Middle East and Africa at the Bank in Dubai, having previously held office as a fiduciary specialist in Dubai between June 2010 and October 2010. He gave indirect evidence as to the relationship between SCPB and SCTG. Ms Maria-Antonietta Beebe is currently employed by the liquidator of SCTG to assist with the smooth winding up of SCTG's business, but had been employed by SCTG as a Senior Trust Officer and Team Leader from 2011, with later promotions including to the post of Associate Director – Project Manager Universal Life Policies in July 2017. Although not involved with the inception of the SAHLK Trust or the Ask Trust themselves, she had subsequently been in charge of supervising structures in which ULIPs were incorporated and had been a member of internal SCTG committees in which the affairs of the SAHLK and Ask Trusts were reviewed and discussed. Each was cross-examined by Advocate Greenfield.
107. It was noted that some of the transactions as to which complaint was now being made had been signed off or authorised by a Mr Andrew Carré, who it appeared might possibly have been available to give evidence, but who was not called. Once again, the Lt-Bailiff directed the Jurats that it was entirely a matter for them whether they placed any, and if so what, weight or significance on this fact, in making any material decisions as to the facts of the case.
108. As to expert evidence, the Defendants called Mr Martin Laframboise, FSA FCIA, a French-Canadian qualified actuary, with degrees from the University of Quebec. His experience of over 20 years in the sector has been specialising in the affairs of high net worth insurance clients in an international and cross-border context, principally in the reinsurance arms of Munich Re (Canada/the Caribbean) and Sunlife International Hubs (in Bermuda). Latterly he has been involved in heading up Bermuda International Long-Term Insurers and Reinsurers, an industry association, and also NFI Inc, of which he is the founder, a Canadian consultancy to the international life assurance and reinsurance industry. He was instructed by the Defendants to explain the typical features of a universal life insurance policy and give his views on the arrangements which were made in this case, and in particular to consider the options available to SCTG when faced with the withdrawal of banking facilities by SCPB in mid-2016.

General

109. Apart from the pleadings the parties provided the Court with an agreed chronology, which has been extremely helpful. They also provided, at the request of the Court, an agreed list of the issues in the case. However, these number 68 and, on examination, the Lt-Bailiff concludes that not all are necessary for the purpose of deciding this case, although they will certainly have helped concentrate the mind as to matters which might be material. In the circumstances, that list has been treated as an aide memoire rather than any attempt being made to use it as a template for this judgment.

110. As mentioned above, the various claims by the several Plaintiffs are pleaded elaborately. The principal claim, however, and that on which the other claims largely hang, is that of the First to Fourth Plaintiffs against SCTG in relation to the setting up and maintenance of the SAHLK Trust. This latter aspect in particular also gives rise to the claims made against both Defendants in relation to the Ask Trust. It is both convenient and simpler, therefore, to proceed to determine the merits of these claims first, and then subsequently to consider any other claims revealed on the pleadings as appropriate. However, one major preliminary point requires to be dealt with on any basis, at the outset.

Preliminary procedural point - the effect of the Singapore Proceedings.

Defendants' submissions

111. It appeared to the Court that Advocate Williams' first submission was to the effect that the Plaintiffs' claims could and should simply be dismissed *in limine* on the grounds that this whole action is an abuse of process, based on the principle of *Henderson v Henderson* 3 Hare 100. That principle is, in essence, that, whilst it is simply impermissible to seek to litigate for a second time an issue which has already been finally determined between the same parties in previous proceedings (because that determination is *res judicata* and creates what is termed an "issue estoppel" between the parties), a party is also estopped from raising, in subsequent proceedings an issue which "could and should" have been litigated in previous proceedings, but was not. Whilst this principle was initially seen as an extended form of *res judicata* issue estoppel properly so-called, the modern analysis is that it is more correctly regarded as resting on the doctrine of abuse of process, albeit on the basis of a factual situation which overlaps with the principles of *res judicata*: see *Virgin Atlantic Airways Ltd v Zodiac Seats UK* [2014] AC 160 at [24] and [25]. At its heart is the question whether the second set of proceedings is unacceptably vexatious.
112. Thus, the argument in this case appeared to be that since both the Singapore case and the present case arose out of the whole set of circumstances, namely the investment arrangements, including the trust structures, which were set up, thus including the participation of SCTG and Songbird, and into which Mr Kazzaz and Sheila entered, the claims now made against SCTG and Songbird were claims which could and should have been made in the Singapore proceedings, so as to have the whole of the issues between Mr Kazzaz (and Sheila) and the Bank and its subsidiaries determined at one time, and with due efficiency – but they were not. It was, therefore, now, an abuse to seek to litigate the present issues, in effect seeking a second opportunity to bring about a different result, in these proceedings. The fact that the earlier proceedings were in a different jurisdiction was not relevant (this had been the case in *Henderson v Henderson* itself) and there would have been no difficulty about joining SCTG into the Singapore proceedings as it was an obviously necessary party to properly comprehensive proceedings in Singapore. These current proceedings were therefore abusive and should be dismissed.
113. Advocate Williams appeared to herald this argument in his opening skeleton argument, but he did not elaborate on it at that point. Taking his proposition generally, the Court then questioned whether, given that this was an argument

which would, if successful, render the whole trial unnecessary, that point should have been taken beforehand, or at least at the start of the trial. However, Advocate Williams pointed out that the directions in the case did not import any such requirement. In the end the Court decided to await its elaboration subsequently, being of the view that any unreasonable consequences of such an argument's not being taken earlier were capable of being remedied in costs, if necessary.

114. In his closing submissions, however, Advocate Williams did not pursue this argument as a general point, but on the rather narrower basis that the Plaintiffs' case only became abusive in the *Henderson* sense at the point where they amended their Cause to plead fraud on the part of SCTG (in January 2023) - seemingly in order to surmount defences of prescription or limitation which had been pleaded against them. The allegations of fraud were now expressly pleaded as being that, by entering into the transactions, SCTG "*became party to or privy to a fraud upon the Beneficiaries and the Creditors and upon Manulife*". With the transactions being the various arrangements for setting up and financing the ULIP and taking it into the Trust, this was, he submitted, effectively an allegation that SCTG were party or privy to the very fraud which had been alleged by Mr Kazzaz and Sheila against the Bank in the Singapore proceedings, but was then expressly abandoned by them; there was no allegation of any independent action by SCTG. The present Plaintiffs could not, therefore, now allege this fraud against SCTG without going behind the Singapore Court's decision and in effect mounting a collateral attack upon it, because the absence of any such fraud had effectively been determined in those proceedings by their concession in abandoning it.
115. Advocate Williams's second submission about the status of the Singapore proceedings was that the Plaintiffs were, or should be treated as, bound by the findings of the Singapore Court with regard, in particular, to what happened as a matter of fact between SCPB and Sheila. However, he approached this on the basis that this submission would require establishing that the situation was an exception to the rule in *Hollington v Hewthorn & Co Ltd* [1943] KB 587, which held that a criminal conviction (and by parity of reasoning a judgment in a civil action) could not be relied on in subsequent proceedings as evidence of the facts which had been found to justify such verdict in the first set of proceedings.
116. Advocate Williams submitted that such an exception did arise for two reasons. First he submitted that where A sued B, judgment in that action could not be relied on in a subsequent action by A against C, a stranger to that action, who had therefore not been able to contest, the judgment or the findings: see the *Duchess of Kingston's case* (1766) 2 Smith LC (13th Ed) 644. In this case, however, he submitted, the relevant parties were not "strangers", but, were, essentially, the same parties - or so closely connected that they could and should be treated as such.
117. Second, whilst the *Hollington v Hewthorn* principle protects people against whom subsequent proceedings are brought from being bound by findings made against other persons which they had had no opportunity to contest, in the present case it was the Plaintiffs themselves who had opened up the door of the Singapore proceedings, for their own benefit, (because they wished, and needed, to rely on

Sheila's evidence in that matter, because she has not provided evidence in this case and was not intended to do so) and they had had the opportunity to contest the relevant findings in Singapore. He submitted that the Plaintiffs could not have the supposed benefit of relying on Sheila's hearsay evidence without also accepting the admissibility of other actors relevant to the weight to be attached to it, such as whether the Singapore Court actually did, or did not, accept it. He submitted as a fall-back position that if the Court were not minded to hold that the Plaintiffs in this action were bound by the factual findings of the Singapore Court, then those findings could and should be fairly regarded as going to the weight of Sheila's evidence, and therefore as matters which the Jurats could and should take into account.

Plaintiffs' submissions

118. Advocate Greenfield argued, in effect, that nothing in the Singapore proceedings or decision affected, or should affect, the findings which the current Plaintiffs were entitled to ask this Court to make in these proceedings.
119. When questioned about the inconsistency of this submission with his looking to introduce Sheila's evidence from the Singapore proceedings as her evidence in these proceedings, he said that this stance had been taken initially because the question of SCTG's knowledge of Sheila's wealth was in issue in these proceedings and Sheila's previous evidence had gone to that fact - but that, in the event, it was unnecessary for him to rely on this evidence. He would be submitting that the Plaintiffs' case in that regard (SCTG's knowledge) had been proved by the documents themselves. They showed (he would be submitting) that SCTG had, in fact, had knowledge of the relevant source of wealth documents, when applying for, and subsequently maintaining, the unsuitable ULIP and its supporting financial arrangements.
120. In submitting that nothing in the Singapore case should be entertained as being conclusive in the present proceedings, Advocate Greenfield relied on the combined facts that the parties to this action were different from the parties in the Singapore action so that there could be no issue estoppel properly so-called, and that in any event the actual issues in this action were themselves different from the issues in the Singapore action, being allegations of breach of trust and fiduciary duty, and not claims of misrepresentation of any description. He agreed that, in essence, his submission was that this Court should ignore the Singapore proceedings because this case was a "fresh start", and that whilst he had, initially (he agreed) asked the Court to take account of Sheila's evidence in the Singapore case, in the event, he did not need to.
121. With the Court having requested information as to exactly what were the allegations of fraud which had been made but abandoned in the Singapore proceedings, Advocate Greenfield produced, after the trial, the operative Statement of Case in those proceedings, as mentioned. This showed that the allegations of fraud had been made in the alternative to allegations of mere negligence with regard to the misrepresentations asserted before the Singapore Court.

122. This Statement of Case was accompanied by a somewhat Delphic note in which Advocate Greenfield invited the Court to examine the allegations of fraudulent breach of trust now made by the Plaintiffs against SCTG in these proceedings (which were claimed to be an abuse of process) and the allegations of fraud made against Sheila and Mr Kazzaz by SCTG relating to their conduct in the obtaining of the ULIP (and not said to be an abuse of process) which had been made in these proceedings before the Plaintiffs amended to make their allegations of fraud. Against that background his submission was that there was no connection between the allegations of fraud made by the Plaintiffs against the Bank and withdrawn in the Singapore proceedings and the allegations of fraudulent breach of trust made by the Plaintiffs against SCTG in the present proceedings, and that issues as to the Bank's conduct now argued to be a collateral attack on the decision of the Singapore Court were raised in these proceedings only as a defence to the allegations of fraud made by SCTG against Sheila and Mr Kazzaz in these proceedings. These latter allegations had not been made in the Singapore proceedings and the Plaintiffs must be entitled to defend themselves against such allegations.
123. Thus, he submitted, any re-examination of the conduct of the Bank did not arise out of the claims now said to be an abuse of process, but out of allegations only made in these proceedings. The findings of the Singapore Court are not (he submitted, presumably following the principle of *Hollington v Hewthorn*) binding on the present actual parties; they amount only to an expression of opinion by a third party (the judge), which is not admissible evidence. The conclusion must be that it is not an abuse of process for the Plaintiffs now to raise the allegations in dispute.

Discussion and decision

124. This has been an argument in the case which the Lt-Bailiff has found particularly troubling because of its intricacy, both as to the interrelationship of points of law and on the facts of the case. Moreover, in the end, it is not a decisive point, as will appear.
125. There are three principles being invoked in this argument, and it is simplest to consider each, generally, in turn. The first is that of *res judicata* issue estoppel. This is a fundamental principle of judicial process, and plainly applies in Guernsey law. The second is that of *Henderson* abuse of process, which has been held to be applicable in Guernsey law as in English law: see *Rawlinson & Hunter Trustees SA v Investec Trust (Guernsey) Ltd and another* (2016) Judgment 14/2016 (CA), eg at [67]. The third is the rule in *Hollington v Hewthorn* which is an evidential argument of logic. That is examined later.
126. Looking at the facts of this case, there is, in the Lt-Bailiff's judgment, no question of true issue estoppel arising as between the Plaintiffs and the Defendants in this case, because issue estoppel arises only from a judicial determination as to the same issue, between the same parties or their privies. Here, (apart from Advocate Williams' argument as to the true effects of the Plaintiffs' amended pleading of fraud, considered subsequently) the issues are different, and are logically unconnected. The issues pleaded against the Defendants are breaches of duty in their respective functions in administering the relevant trust or company. The

issues in the Singapore proceedings were as to the basis upon which Mr Kazzaz and Sheila were induced to set up those arrangements in the first place. This impression can be tested by asking whether the complaints now made could have been made, whichever way the Singapore proceedings were decided, ie whether or not Mr Kazzaz and Sheila had entered into the arrangements in reliance on misrepresentations made by the Bank. Obviously, they could. The content of the present complaint is entirely discrete.

127. Not only are the issues different, but the parties are different. The extension of issue estoppel to “privies” to the original judicial determination refers to persons whose relationship with both the original party *and the particular issue* means that the law recognises that it is appropriate to bind them. In English law (see Halsbury’s Laws of England, 5th Ed, Vol 12A para 1599), this is confined to privity of blood (principally ancestor and heir), privity “in law”, created by particular legal relationships (such as testator and executor, bankrupt and trustee in bankruptcy), and privity of estate or interest (such as testator and devisee, vendor and purchaser, landlord and tenant, assignor and assignee). They thus involve the “privity” and the actual party deriving title, one from the other. The focus, therefore, is on succession to a particular right, rather than the nature of the relationship. The status of company and subsidiary is not one of these recognised “privity” relationships nor is it even analogous. This extension therefore cannot be invoked to support Advocate Williams’ argument to rule out any plea of fraud, ingenious though it is.
128. Second, the Lt-Bailiff also rejects any submission that the bringing of these proceedings, or indeed, the making of any particular allegation, can or should be struck out or dismissed on the basis of *Henderson* abuse of process. That principle depends on the court’s concluding that to bring the second action (or raise the issue in a subsequent second action) is an abuse because such matters both “*could and should*” have been raised in the earlier proceedings.
129. Advocate Williams’ first difficulty is the “*could*”. No allegations were being made by or against the present Defendants in the Singapore proceedings, and the issues which were raised did not make it necessary to examine their conduct. Advocate Williams submits that the “*could*” is satisfied by the possibility of joining SCTG into the Singapore proceedings as a proper or necessary party. However (and quite apart from any procedural requirements local to Singapore, which were not investigated but simply assumed) SCTG would only become such a proper or necessary party if the subject matter of the proceedings had been significantly expanded. Any such proposition therefore comes to depend on the argument that those proceedings *should* have been so expanded – but that begs the question. As a party is entitled to be master of the scope of its own proceedings this assertion cannot be sustained, and is in any event getting very far removed from any notion of abuse of process.
130. The Lt-Bailiff also notes that in the *Rawlinson & Hunter* case, (above) the Court of Appeal emphasised that the finding of abuse/not abuse is a binary determination, even if an evaluative one, and is not a discretionary one: see [10] principle 13. Proceedings are either an abuse and the defendant is entitled to have them struck out (whilst not ruling out that in an exceptional case proceedings held

to constitute an abuse might not be struck out: see [95]), or they are not an abuse, and the defendant is not entitled to have them struck out.

131. It thus appears that it is not open to the court to impose conditions for the pursuit of any claim which is challenged for such alleged abuse on the basis that such conditions could be said to redress any prejudice at which the defendant might complain. One might think that the right result in this case, was that, if the Plaintiffs are to be entitled to bring these proceedings and make the claims in this action, they should only do so on the basis that they do not seek to contradict or go behind the findings of the Singapore Court, at any rate on matters which were the basis of that court's ultimate decision, but if the decision as to abuse is simply binary, that is not an available option.
132. The *Rawlinson and Hunter* decision shows, also, that the sequence of the argument is undoubtedly, firstly *could* the claim or issue raised in the second action have been brought up in the first action? and only if it *could*, does one then proceed to consider the question whether it *should* have been. There is no need to consider that second matter in any detail in this case, because this case certainly fails on the first test, and *prima facie* on the second as well. Sheila and Mr Kazzaz were quite entitled to pursue their supposed claim against the Bank first. Success would have rendered any alternative claim against the present Defendants unnecessary.
133. In summary, therefore, whilst it may well be thought that there is something unattractive in the main Plaintiffs here, having failed in Singapore, seeking now to achieve the same result by a different route attacking a different member of the Standard Chartered Bank Group, this claim is a separate and independent cause of action, and they are perfectly entitled to do so, so long as that is achieved by procedurally legitimate steps.
134. The last issue, therefore, regarding the effect or status of the Singapore proceedings is that raised by reference to the rule in *Hollington v Hewthorn*. Being an evidential rather than a purely procedural point, this goes both to the admissibility of evidence of what happened in the Singapore proceedings and their result, and also to the question of the admissibility in these proceedings of Sheila's evidence adduced in those proceedings.
135. In *Hollington v Hewthorn*, the Plaintiff had been injured in a motor accident in which the defendant company's vehicle had been involved. The driver of the vehicle had been convicted of careless driving at the time and place of the accident. He had since died. The plaintiff sued the company for damages for negligence and wished to introduce the driver's conviction in evidence, though not contending that it should be any more than *prima facie* evidence of fault. The Court of Appeal held that the conviction was simply not admissible as any evidence of the driver's negligence, and it disapproved several earlier cases in which the court had admitted previous court decisions as evidence of the underlying facts upon which they were based (see 1943 KB at 600 – 601). It was stressed (see 1943 KB at 596) that it was "*relevancy that lies at the root of the objection to the admissibility of the evidence*", although other reasons could, of course, be given, such as that the conviction was "*res inter alios acta*" or that "*a judgment obtained by A against B ought not to be evidence against C*" (*ibid* -

although it will be observed that in this case it is a judgment obtained by B against A being sought to be used as evidence for C against A, which is not quite the same thing.) In essence, the judgment in the previous proceedings was analysed as being the mere opinion of a third party, based on evidence currently unknown to and not before the court, which was therefore inadmissible as being simply irrelevant.

136. Advocate Greenfield appears to rely on this decision as the basis for his Note referred to above, and Advocate Williams appears to recognise it as a decision which he needs to distinguish. However, in the Lt-Bailiff's judgment, the case needs to be analysed far more carefully to see what it actually did decide, and to determine its impact, in context. Even if the rule in *Hollington v Hewthorn* were ever part of Guernsey law at all, which she doubts, its actual effect in the present day would be very narrow.
137. *Hollington v Hewthorn* decided only that the fact of a criminal conviction could not be used against a third party as any evidence of a fact which "must have been" found in order to support the conviction. It was also expressly said (although this was technically, therefore, *obiter dictum*) that the same reasoning applied to civil judgments. Such a verdict or judgment is evidence of nothing but itself.
138. However, first, and generally, the decision in *Hollington* is counter-intuitive. Whilst it might not be suggested that (provided the link was proven) a conviction would or should be conclusive evidence in subsequent civil proceedings relating to the same subject matter it seems absurd, even as a matter of strict logic, to conclude that the fact of the connected conviction is totally "irrelevant" to civil proceedings based on the underlying conduct which was considered. If the point were to be considered afresh without authority today, it would seem unlikely in the extreme that the same decision would be made.
139. Second, the decision was not an "obvious" one. It overruled several previous decisions where a contrary view had been taken. This may have given certainty to the law of England, but it shows that the reasonableness of the approach which prevailed was not judicially instinctive, and that there were conflicting views, even then.
140. Third, the decision itself was not the subject of welcome or approval, even at the time. It was "questioned" even "doubted", in at least three subsequent cases before 1968, when it was actually reversed in England and Wales by statute (Civil Evidence Act 1968 s 11).
141. Fourth, the case was decided in 1943, at a time when legal proceedings, both criminal and civil, were conducted in a far more rudimentary fashion than nowadays. This was before the days of universal recording of proceedings, transcripts of evidence, witness statements, or closely reasoned judgments at all levels. Records were largely manual and were simply not kept to the same degree as they are now, such that submissions about the underlying facts of a verdict or judgment would have been more matters of inference and submission than of turning up factual records.

142. Fifth, this decision was made in the days of strict and rigid historically based rules of evidence, such as the rule against the admission of hearsay evidence. The relaxation of such rigid rules has been very much the trend in the last 80 years. Nowadays, very much more attention is paid to the appropriateness of considerations of “weight” and “proportion”, these (apart obviously from relevance), being key considerations of the modern approach to admissibility of evidence, rather than reliance on rigid rules defining “relevance” or other issues of admissibility.
143. This last is a very important point, in practice, because it means that at the time of *Hollington* itself, any materials which had been used for, or generated in, the earlier proceedings would have been quite inadmissible, in themselves, as evidence in any proceedings, because they are hearsay. Hearsay was then simply inadmissible, unless any individual aspect could be brought within one of the common law exceptions to the hearsay rule. This is not the case today. Whilst, in 1943, therefore, the inadmissibility of the verdict or judgment in the former proceedings effectively precluded any reference to them or their content as such, that is not the case today. Thus, the practical effect of the rule is nowadays, therefore, very narrow, whereas in 1943 it was broad and decisive.
144. Against this background, the Lt-Bailiff considers that the decision in *Hollington v Hewthorn* is effectively discredited, and even its having any residual effect in English law is questionable. Her decisions are therefore as follows.
145. First, *Hollington v Hewthorn* is a decision of the English Court. No authority was cited which suggests that it has ever been adopted into Guernsey law, and given the obvious divisions of opinion even in England with regard to its principle, both at the time and subsequently, and its counter-intuitive effect, the Lt-Bailiff holds that the principle of *Hollington* is not a binding principle of Guernsey law, and there is no good reason why it should be. She considers also that its persuasive force from English law is negligible, in the light of the considerations above.
146. She concludes therefore, that she is free to decide, on the facts of this case, what the correct attitude to the decision of the Singapore Court in this Court should be. She holds that the actual decision of the Singapore Court and its reasons are matters which are admissible in evidence in this case, and that it is a matter for the Jurats to decide what weight to give them in reaching their own independent findings of fact in this case. This weighing exercise should, of course, bear in mind the criticism behind the rationale of *Hollington*, namely that the judgment and findings are only a third party’s opinion, and therefore there must logically be at least a theoretical concern as to its reliability, given that one will inevitably not have been able to investigate and examine all the evidence before the Singapore Court. This consideration does not though, in the Lt-Bailiff’s opinion, produce the conclusion that placing any reliance at all on the Singapore findings is so dangerous that it should simply be excluded, which is what the rule in *Hollington* in fact does. The matter should be left to the good sense of the Jurats.
147. However, in case the above view should be wrong, the Lt-Bailiff gave the Jurats directions that whilst they might take into account the result and findings of the Singapore proceedings to the extent that they considered these relevant to their

decisions, they should do so with the caution mentioned above, and they should also indicate what their findings would have been independently of the Singapore Court's findings, if these would have been in any way different.

148. That, however, is not an end to the matter, because it deals only with the judicial decision itself, and not the evidence in the case or of the trial of the proceedings. As mentioned, *Hollington* was decided at a time when the rule of evidence was that hearsay was not admissible at all, (subject to certain narrow common law exceptions of which the principal one was a previous relevant admission). That general rule was significantly abrogated in England and Wales by the Civil Evidence Act 1968, which made hearsay evidence admissible in circumstances where it was not proposed to call the witness for good reasons (death, infirmity, being abroad, etc) with due notice being given, and with the possibility preserved of argument as to whether the evidence should be admitted, also recognising that the weight which should be accorded to such evidence if it were admitted was a matter for the court to assess. But even these restrictions in English law and procedure were subsequently relaxed, both as to substance and as to the rigidity of the notice requirements, until, by the Civil Evidence Act 1995, it could safely be said that the rule against hearsay evidence had effectively been abolished.
149. In Guernsey, the *Evidence in Civil Proceedings (Guernsey and Alderney) Law 2009* (“**the Evidence Law**”) effectively adopted the provisions of the English Civil Evidence Acts 1995, 1972 and 1968 in force at that time.
150. It follows that, whether or not the rule in *Hollington v Hewthorn* ever was, or still remained, applicable in Guernsey law, all the written materials which were used in or generated by the Singapore proceedings, including affidavits, transcripts, judgments and court orders are potentially admissible as evidence of the facts stated or opinions expressed therein – for what they may be evaluated by the Court (the Jurats) to be worth.
151. Those materials have been generally referred to in this case. There may have been technical requirements for the giving of notice (see s 2 (1) of the Evidence Law) which have not been fully observed in respect of particular matters, but the Court has power at any stage of the proceedings to relieve any party from those requirements. In this case, the circumstances are complicated but each side is fully aware of the content of the materials in question, and the Lt-Bailiff would therefore feel it appropriate, to treat such relief as having been granted, if necessary.
152. It follows, therefore, that even if the evidence given, and the findings made, in the Singapore proceedings would be inadmissible under the rule in *Hollington v Hewthorn*, it is all admissible under the Evidence Law. This applies both to Sheila's evidence as sought to be introduced by Advocate Greenfield, and to any materials to which Advocate Williams wishes to draw to the Court's attention as bearing on the weight which should be given to this. For the avoidance of doubt, in the Lt-Bailiff's judgment, it is not open to Advocate Greenfield to object to this on the grounds that he now does not seek to rely on Sheila's evidence at all; once evidence is adduced in the case, it is part of the case materials and it is open to the opposing party to adduce whatever other admissible evidence it wishes, in opposition.

153. Having dealt with these points of evidence, this judgment now turns to consider the claims.

The principal claims – Claims 1 and 3.

154. The claims made in these proceedings have been summarised above: see in particular [8] and [85]- [92]. They are purportedly made under “s 39 (a) and/or 39 (b) of the Trusts Law”, although this should read “39 (1) (a) and/or 39 (1) (b)” and, in fact, s 39 (1) (b) is disapplied to the SAHLK Trust by Clause 10 (a) of the Insurance Trust Agreement. Nothing in fact turns on that.

155. The key assertions founding those claims are contained in paras 28 – 30 of the Re-Amended Cause with regard to the SAHLK Trust, (Claim 1) and they are in part repeated later, in substance, (see paras 52-53 and 58 of the Re-Amended Cause) with respect to the Ask Trust (Claim 3).

156. These principal claims themselves fall into two distinct parts, namely,

(1) Complaints with regard to the setting up of the SAHLK Trust and the taking out of the ULIP and its associated financing arrangements as part of the wealth management scheme for the Kazzaz family in the first place, at all. This is a claim against SCTG as Trustee of the SAHLK Trust.

(2) Complaints with regard to the retention and maintenance of the ULIP and its associated financing arrangements thereafter, until the eventual forced surrender of the ULIP in December 2016. This is a second complaint against SCTG as Trustee of the SAHLK Trust, and also, effectively, as Trustee of the Ask Trust based on the same facts, and it underlies the final claim against Songbird as a Director of Ask One, as well.

Claim 1

(1) SAHLK Trust: Claims regarding the inception of the ULIP (“the Inception Complaints”)

157. As regards this heading, the complaints sub-divide further, into three different heads:

(a) A general complaint (although particularised in several different aspects) that SCTG did not, when applying for and taking on the ULIP, sufficiently investigate, and properly and responsibly consider, whether doing so at all, and/or in the context of the associated funding arrangements, was in the interests of the beneficiaries of the Trust. That is a complaint of breach of

a duty of care owed to the beneficiaries of the SAHLK Trust (the “**Suitability Complaint**”);

(b) A specifically targeted complaint that SCTG applied for, or accepted, the ULIP in the knowledge that the information as to Sheila’s purported wealth supplied to the broker and to the insurer (Manulife) was false, it being inconsistent with information as to Sheila’s true (lack of) wealth contained in the SOWM in its own records. This is pleaded as both a breach of a trustee’s duty of care to Sheila/the SAHLK Trust beneficiaries, but also, by the amendments made in January 2023, as a fraud or fraudulent breach of trust perpetrated against the beneficiaries and/or the creditors of the SAHLK Trust and/or on Manulife (the “**False Information Complaint**”);

(c) A second such specific complaint, that in participating in the SAHLK Trust arrangements and applying for the ULIP, SCTG was participating in a scheme, for the benefit of the Bank Group (and at the expense of the SAHLK beneficiaries), to obtain the benefit of the large amount of commission payable in respect of the ULIP and also of the large amount of interest to be earned on the Premium Loan. This allegation is likewise pleaded as being a breach of a trustee’s fiduciary duty or duty of care, and also as being a fraud or fraudulent breach of trust on the beneficiaries, and/or the creditors of the SAHLK Trust (the “**Fraudulent Conflict of Interest Complaint**”).

158. Before turning to determinations of fact in relation to the above, it is convenient to deal with certain points of law, and in particular those arising from the allegations of fraud/fraudulent breach of trust by SCTG.

General - Points of law regarding allegation of fraud against SCTG

159. The allegations of fraud/fraudulent breach of trust made against SCTG have appeared very late in the day, only by a re-amendment of the Plaintiffs’ cause. Advocate Williams emphasises this point, and the fact that making any such claim was apparently not thought to be sustainable by the Plaintiffs until the action had been in progress for over two and a half years, and a limitation point was being allowed to be taken against them.

(i) Nature of the amendments

160. He first invites attention to one particular aspect of the recent amendments. It was previously alleged, in several places, in the Cause that the Defendants “*knew or should have known*” (emphasis added), from the information pleaded to be available to them and in particular the contents of the SOWM, that the information as to Sheila’s wealth set out in the Disclosure Booklet was false, that the taking out of a ULIP was neither necessary nor appropriate for someone in Sheila’s position and that it was consequently not in the best interests of the beneficiaries of the SAHLK trust to do so. The words “*or should have known*”, have been deleted by amendment, leaving solely the allegation that SCTG

actually knew the relevant fact(s). This was, of course, to support the assertion of fraud because an assertion merely that SCTG “should have known” such facts could amount to no more than an accusation of negligence, and would be insufficient to support a case of fraud: *Armitage v Nurse* [1998] Ch 241. He pointed out that the Plaintiffs’ case now no longer asserted that the Defendants “should have” known of the falsity, thus removing one aspect, even, of any associated complaint of negligence.

161. Since the word “knew” was always there in the pleaded cause, however, the Lt-Bailiff regards this amendment as being of no great moment as a pleading point, and Advocate Williams’ point is really only comment. The significant amendment is that whereas previously paras 30 – 35 (inclusive) each contained merely allegations of breach of duty and gross negligence against SCTG, but no allegation of deceitful intent, paras 30 – 32 and 35 (but not paras 33 and 34) are now amended to add an express allegation that SCTG

“became [“remained” in para 35] party or privy to a fraud upon the Beneficiaries and the Creditors and upon Manulife and so as to constitute [in paras 30 and 35 only] wilful default and [in all four paragraphs] a fraudulent breach of trust”.

Thus the claims have now been amended to allege fraud, unambiguously.

(ii) Abuse of process

162. Advocate Williams’ second point is a submission that the claim made by these amendments, that SCTG “*became party or privy to a fraud [etc]*” should be struck out as abusive (a) because it is a *Henderson* abuse of process (previously discussed generally) and (b) because it necessarily involves making serious allegations of misconduct against persons, in particular Mr Phoolwani, who are not parties to these proceedings and who have not had the opportunity, therefore, to defend themselves.
163. This invocation of the *Henderson* principle is not quite the same argument as the Lt-Bailiff considered above and rejected as a reason for generally dismissing the whole proceedings; it depends on Advocate Williams’ submission as to the effect of the amendment in practical terms (see [126] above). He submits that a plea that SCTG “*became party or privy to a fraud on the beneficiaries [etc]*” necessarily postulates some “*fraud*” with an independent existence for SCTG to become “*party or privy*” to, and this can only be an alleged fraud being perpetrated by SCPB and its officers. That, however, is the very fraud which was pleaded but then specifically abandoned in the Singapore action, and its basis is the self-same complaints of misrepresentation and of disgraceful intention on the part of the SCPB officers to defraud Mr Kazzaz and Sheila (and by extension, therefore all the beneficiaries of the SAHLK Trust) in order to obtain commission payments and interest, which complaints were either abandoned, or examined and rejected insofar as persisted in, in that action.

164. Therefore, Advocate Williams submits, this pleading necessarily entails assertions which are contrary to the determinations made in the Singapore Action between Mr Kazzaz and Sheila (the lead Plaintiffs here) on the one hand, and SCPB and its officials on the other, that there was no such fraud on the part of the SCPB officials. For the Plaintiffs to proceed on the basis of a case which requires a contradictory position to be implicitly advanced in order to sustain it is therefore an abuse.
165. Insofar as the allegations may not be between the identical parties, Advocate Williams relies on the case of *Johnson v Gore-Wood & Co (No 1)* [2002] 2 AC 1, which applied the principle in order to strike out a claim by a holding company, on the grounds that it could and should have been made in earlier proceedings brought by its subsidiary against the same party. He points out that SCPB and SCTG are in a similar closely connected position. However, in the Lt-Bailiff's judgment that case does not assist because there it was the plaintiffs against whom the *Henderson* plea was being made which were the different, but linked, corporate entities, whereas in this case it is the defendants by whom such a plea is attempted to be made who are the linked entities.
166. As the Lt-Bailiff understood his arguments, Advocate Greenfield made two points in opposition to Advocate Williams' submission. The first was that the Plaintiffs allegation that SCTG "*was party to a fraud*" did not require there to be, nor to be alleged, that there was any other party to that fraud. The second was simply to rely again on his general assertion that with the actual parties in these proceedings, being different from the parties in the Singapore action, these proceedings were a "fresh start" and could be pursued without regard to the position as judicially determined in the Singapore actions.
167. The second point has already been rejected by the Lt-Bailiff. As to the first point, this seems to the Lt-Bailiff to imply an acceptance that it is necessary to identify the "fraud" which is being alleged, and whether this is alleged to be one committed solely by SCTG or by SCTG in complicity or concert with others. The pleading that SCTG "*became party to or privy to a fraud.*" would seem to suggest the latter; one does not become "party" to a fraud committed solely by oneself; one simply commits it.
168. In the Lt-Bailiff's judgment, this argument cannot enable the Plaintiffs to circumvent the fact that it has been admitted, (in effect) by Mr Kazzaz and Sheila in the Singapore action, that SCPB and its officers did not commit any fraud against them. The Lt-Bailiff accepts Advocate Williams' submission that it is not open to the Plaintiffs in this action (because it is not open to Mr Kazzaz and Sheila, who are the substantive Plaintiffs in this regard, all the others being their privies in respect of the cause of action here being considered) to assert a case which is contrary to the position established in the Singapore action between Mr Kazzaz and Sheila on the one hand, and SCPB and the personal defendants on the other. As noted above, the pleading of the facts alleged to constitute a case that SCTG became "*party to or privy to a fraud on the Beneficiaries...*" appears to entail just such a contrary and inconsistent case.

169. It follows, in the Lt-Bailiff's judgment, that whilst the Plaintiffs are able to raise independent complaints against SCTG and Songbird in this action, they cannot do so in a way which is incompatible with the principle that, as between Mr Kazzaz/Sheila on the one hand, and SCPB/its officers on the other, the facts and rights necessarily determined by the Singapore Court apply. 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 determinations 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.
170. As regards the alternative basis of Advocate Williams' "abuse" argument, ie that it is abusive because it is unfair, (and therefore the Court should not allow it) for the Plaintiffs to invite the court to make such serious findings as fraud and dishonesty against persons who are not represented in these proceedings, and have not been given an opportunity to defend themselves, Advocate Williams cites *MRH Solicitors v The County Court sitting at Manchester* [2015] EWHC 1795 (Admin) at [34] – [35], *Co-operative Group (CWS) v International Computers plc* [2003] EWCA Civ 1955 and *Vogon International Ltd v Serious Fraud Office* [2004] EWCA Civ 104 at [29]. However, these were all cases in which the complaint was that the judge or tribunal had made such serious findings against a non-party to the proceedings gratuitously, by going outside the cases which had actually been advanced by the parties themselves.
171. They therefore do not seem to the Lt-Bailiff to be directly in point. Moreover, they do not appear to lay down that a court or tribunal cannot, in law, make any such findings "against" third parties (it is accepted that they could not bind such parties) if they are a legitimate part of a litigating party's case, but only that the court should lean against doing so, should avoid it if possible, should only do so on the clearest of evidence bearing in mind the absence of the relevant person, and, where such person has not been represented, should explain the finding clearly and with any appropriate caveats and qualifications. The Lt-Bailiff would not, therefore, accede to Advocate Williams' submission that the Plaintiffs' claims should be dismissed or struck out as an abuse on this alternative ground, but in any event she considers that the effect of the Singapore proceedings which she has already held to apply deals properly and adequately with this situation.

(iii) No sufficient evidence of fraud of natural person

172. Advocate Williams' third challenge to the allegations of fraud/fraudulent breach of trust goes to the essential sustainability of the allegations themselves. His point is that the Plaintiffs have simply failed to provide any evidence of a necessary ingredient for a claim of fraud against a company.
173. Fraud necessarily requires proof of dishonesty on the part of the perpetrator. In the case of a company, Advocate Williams cites authority to the effect that an allegation of fraud must be proved by evidence of the dishonesty of some natural

person with whose acts the company is fixed. He cites *Stanford International Bank Ltd v HSBC Bank plc*: [2021] 1 WLR 3507 where Sir Geoffrey Vos MR said, at [47],

“if dishonesty and blind-eye knowledge is to be alleged against corporations, large or small, it has to be evidenced by the dishonesty of one or more natural persons. Of course, the court must look at all the facts and all the actual and constructive knowledge of those involved in representing [the relevant corporation] but one cannot avoid the subjective dishonesty stage of the test in order to proceed directly to the objectively dishonest stage. The subjective dishonesty that needs to be established after consideration of all the facts, must either be the dishonesty of a person within the corporation or the blind-eye knowledge of such a person.”

174. The Lt-Bailiff observes that this was a claim for dishonest assistance in breach of trust, in which blind-eye knowledge – knowledge which consists in the harbouring of a strong and actively targeted suspicion that “X” is the case, and a deliberate decision not to investigate for fear that such suspicion might be confirmed to be true – is a permissible state of mind for establishing such a claim. This is not what is alleged in this case; the pleaded case is, now, one of actual knowledge of facts which rendered the actions of the company dishonest. The references to blind-eye knowledge in the above citation are therefore not relevant.
175. Advocate Greenfield’s response to this submission was, first, to assert indignantly that it had not been pleaded and had only been raised in closing submissions.
176. Advocate Williams’ riposte in oral argument that it had been pleaded. Whilst the Lt-Bailiff was not able to locate such a pleading, she regards it as unnecessary to do so. As she put to Advocate Greenfield in argument, it is up to the person asserting the particular fact (here, fraudulent conduct) to identify the elements which need to be proved in order to make out such a case, and identify the evidence necessary to do so. It is not up to a defendant to make a plaintiff’s case for him, or to assist the plaintiff to avoid any gaps in his evidence or to fill them, by identifying such gaps to the plaintiff. The defendant can, of course, take the route of applying to strike out the plaintiff’s case on the grounds that the plaintiff stands no real prospect of proving his case at a trial, but he then has to weigh the balance of advantage or disadvantage in doing so. The advantage is the possibility of getting the case struck out at an early stage, but the disadvantage is that of possibly alerting the plaintiff to a weakness in his case which he has not focused on, and thus enabling him to take steps to eliminate it. It is, however, perfectly fair and proper for a defendant simply to deny an allegation of fraud, and wait to see whether the plaintiff does fail to establish his case according to the requirements of the law.
177. Although the authority cited by Advocate Williams above (*Stanford*) is English, the Lt-Bailiff considers that it states a correct general proposition of law with regard to companies, and what it is therefore necessary to prove to bring home an allegation against a company of misconduct involving a state of mind. Since Guernsey draws its company law from English law, this principle is therefore applicable in Guernsey law.

178. She therefore accepts Advocate Williams' submission that, to establish fraudulent conduct by SCTG it will be necessary to establish the elements of such conduct committed by a natural person acting as officer or agent of SCTG. She rejects Advocate Greenfield's submission that it should not be open to the Defendants to raise this point because they had not mentioned it (ie drawn it to the attention of the Plaintiffs) in pleadings, early skeleton arguments or the list of issues. It is a general point of law.
179. Faced with this as a point to surmount, Advocate Greenfield sought, in his closing speech, to argue that the evidence could be taken to show the necessary state of knowledge, belief and consequently potentially dishonest conduct, by staff of SCTG, by sufficiently clear inferences from the documents. He submitted that various documents showed perfectly well that "*the Trustee knew*" the contents of the SOWM at "*all material times*" (as pleaded) with the SOWM being referred to in the Trust Proposal Form when Sheila was accepted as a trust client of SCTG (knowledge of its contents being obviously necessary for this acceptance), and in a Trust Review document prepared in 2012 but showing the position on 30 November 2011, and in later emails in 2015. It was also, he submitted, effectively accepted on her own account by Ms Beebe in her oral evidence.
180. Advocate Greenfield named five persons on the staff of SCTG apart from Ms Beebe herself, who could be seen from the documents to have dealt with the ULIP at various times, but who could also be seen, or inferred (he submitted), to have known of the contents of the SOWM. He submitted that therefore such persons would equally have known that Sheila did not need, and would not qualify, for the ULIP policy on financial grounds. He pointed out that the Defences had specifically pleaded that SCTG "*did not know*" that Sheila had no income or assets of her own (see para 50.1B), but the evidence had clearly shown this to be untrue. In context the relevant persons would equally have known, not just that a ULIP such as the present was not suitable for Sheila, but also that no application for such a ULIP was "*properly possible*", and that therefore the financial information which was contained in the Disclosure Booklet was false, but must have been produced to Manulife. They would have known this, at the latest, upon receipt of the formal policy document which contained it and therefore (he also appeared to submit) during the 10 day "cooling off" period within which the policy could have been returned and the premium recovered. As regards identifiable persons, he submitted that from her own evidence, Ms Beebe had been aware of both the contents of the SOWM and of the Disclosure Booklet and that the documents showed that at least Mr Andrew Carré, whose signature appeared on certain documents and who was the SCTG officer in charge of oversight of the SAHLK Trust, had also been aware of both these documents.
181. This submission in turn elicited equally indignant protests from Advocate Williams, that purporting to make the necessary identification of a culpable natural person only in a plaintiff's closing speech in reply, after his case had been closed and responded to by the defendant, was just too late, and should not be permitted. He argued that Advocate Greenfield could not be allowed to submit that answers to questions he had failed to ask – particularly of Ms Beebe – could then be inferred against her and SCTG, and certainly not that such inferences

could be made against any other natural person simply because his name appeared in the documents.

182. Advocate Williams made further points. The first was as to the uncertainty of the evidence as to what had actually happened with regard to persons at SCTG receiving and reviewing either the SOWM, or the Disclosure Booklet. He submitted that to find a fraud committed by a natural person on behalf of a defendant company, fraud must be the only reasonably possible finding available on the evidence. If the evidence were consistent with several scenarios, (ie as to who might have seen which documents, and when, and what notice he or she might have taken of them) with some such scenarios being innocent, and another or others involving dishonesty, then a case of fraud or dishonesty could not be upheld: see *Three Rivers DC v Bank of England* [2001] UKHL 16 per Lord Millett at [186] citing *Davy v Garrett* 7 Ch D 473 at 489. He reminded the Court that where dishonesty is alleged, whilst the standard of proof of such fact remains that of the balance of probability, because dishonesty is not the normal tenet of behaviour, especially amongst professional persons, the evidence which is required to establish dishonesty on balance of probability requires to be that much more strong and convincing: see *Re H (Minors)* [1996] AC 563 and *Re Doherty* [2008] UKHL 35.
183. Second, and moreover, he submitted, the authorities were clear that, with regard to a company, it was not possible to aggregate two innocent states of mind on the part of different employees and find that, together they constituted a “fraudulent” state of mind on the part of the company: see *Stanford* (above) at [42]. This was with particular reference to possible scenarios as to which members of SCTG staff might have seen the inconsistent documents which came into SCTG’s hands, but with their inconsistency never being apparent to (and culpably acted upon by) any individual such person. In other words, he submitted that before an allegation of fraud could be sustained, the Plaintiffs would have to show that some particular employee or officer of SCTG not only read the Disclosure Booklet at the material time, but also knew the information in it to be false because he was also consciously aware of the contents of the SOWM, and then acted fraudulently in relation to that knowledge. It would not be sufficient to show that one such officer or employee read the Disclosure Booklet and another had read the SOWM, nor even that one such officer had read both but had forgotten the content of the SOWM, or even read the SOWM but just not read the Disclosure Booklet.
184. His third point was that if the evidence on this topic was not sufficiently clear, the cases have held that, with the burden of proof being on the plaintiff, it is open to the court to find as a fact, simply, that the plaintiff does not satisfy the court of the necessary fraudulent conduct by some relevant officer or member of staff; the court does not have to make any positive findings as to what actually had happened, if it did not feel able to do so: see *Rhesa Shipping Co v Edmunds (The Popi M)*[1985] 1WLR 948.
185. In the Lt-Bailiff’s judgment, this is a matter which now becomes a matter for the Jurats. She directed them that Advocate Williams’ submission as to natural persons was correct and that it was necessary, in order to fix a company with fraudulent conduct, to be satisfied that a natural person on behalf of the company

had acted in a fraudulent manner. It was not permissible to attribute fraud to the company in the abstract. It would be for the Plaintiffs to convince the Jurats, on the balance of probability, that such individual fraudulent conduct had occurred. The Jurats should weigh up, before coming to any such finding, whether and to what extent the evidence was consistent with innocent behaviour on the part of those concerned, and only if satisfied that the facts were consistent only with fraudulent conduct should they make such a finding. They should be particularly cautious in making any such finding in respect of a person who had not given evidence so as to be able to defend his or her conduct. Moreover, it was open to them to find, simply, that the Plaintiffs had not satisfied them that fraud on the part of persons at SCTG had occurred, even if they did not feel able to make express detailed findings as to what had actually happened, because the evidence was too uncertain. That was, however, entirely a matter for them.

(iv) The mental element of the required dishonesty

186. Finally, there is a general point about the meaning of “dishonesty” as required to prove fraud.

187. Advocate Greenfield submitted that the test for dishonesty is “objective”, citing *Ivey v Genting Casinos plc* [2018] AC 391 at [62] per Lord Hughes. He submitted, therefore, that the questions to be asked are:

- i. did those dealing with the ULIP at SCTG have the knowledge [ie. of Sheila’s true financial position] which the Plaintiffs allege? and
- ii. if so, were their actions in applying for and then maintaining the ULIP consistent, objectively speaking, with the actions to be expected of an honest person who had that knowledge, or did they act contrary to the interests of the beneficiaries or with reckless disregard to the interests of the beneficiaries?

and that it is not relevant to ask whether the relevant persons knew that they were acting dishonestly or why subjectively, they acted in the way that they did.

188. Advocate Williams, in a fourth general point in opposition to the new allegations of fraud, submitted that they amounted to an illegitimate attempt to “talk up” what were, in reality, allegations of negligence, albeit alleged to be gross negligence, and to characterise them as fraud. This, he submitted was impermissible, because negligent behaviour, however careless, simply did not cross the line into dishonesty without more, however egregious such negligence might be. The difference was the additional ingredient of dishonest or deceitful intent.

189. Both these submissions relate to the necessary mental element in relation to a finding of fraud or dishonesty, and it is therefore convenient to deal with them together.
190. The Lt-Bailiff holds, and she so directed the Jurats, that the test for dishonesty is a two-stage test. Whilst the citation from *Ivey* at [62] is accurate in referring to the test as being “objective” (rather than “subjective”), it can be seen, in its immediate context, that that statement is referring only to the second stage of the test. The more comprehensive and helpful citation from Lord Hughes is at [74]:

“...When dishonesty is in question 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.”

191. Insofar as Advocate Greenfield’s two questions might represent the above two stage test, therefore, they would be correct, but the Lt-Bailiff points out that the first stage refers to “knowledge or belief”, and is thus indicating an inquiry as to the subjective state of mind of the actor, envisaging some element of mental processing of the knowledge held. It is the second stage which is to be determined “objectively” and in which the actor’s own belief that his actions are honest is irrelevant, if that would not be the belief of the ordinary decent person – thus, an objective assessment. The subjective state of mind of the actor is not, however, totally irrelevant, as it bears on the first stage of the assessment.
192. This leads on to Advocate Williams’ point that mere gross negligence cannot be elevated into dishonesty without more. The Lt-Bailiff accepts this submission. A state of mind which is merely uncaring or irresponsible does not amount to fraud in itself. This point is not got round by seeking to characterise the actor’s conduct as “reckless indifference”, because that is also not the same thing as negligence. Reckless indifference still involves an actual conscious and deliberate (and therefore culpable) disregard of the interests of the person complaining, when one ought to have had such regard. On appropriate facts, such deliberate disregard can amount to fraud. However, negligence, even gross negligence, does not entail a calculated and deliberate disregard of another’s rights, but merely an unthinking, careless or feckless disregard. The point at which the line is crossed is, of course, a matter of fact for the Jurats.
193. The Lt-Bailiff therefore made such points to the Jurats as a general direction, but also directed that if they felt that they required any further elaboration or guidance they should seek it.

The findings of the Jurats

194. It is now convenient to record the Jurats' findings of fact with regard to this point, namely the inception of the ULIP. Some material directions of the Lt-Bailiff have been mentioned above, in particular at [102], [107], [147], [185], [190], and [193]. Others appear below.
195. The Lt-Bailiff reminded the Jurats that they were concerned with complaints as to the part which SCTG (its staff and officers) had played in the inception of the arrangements for the SAHLK Trust and in particular the application for and obtaining of the ULIP on the life of Sheila which was to be the subject of the SAHLK insurance Trust and the loan arrangements for funding its premium. They were not concerned with the part played by SCPB except as context and background, and they must treat the findings of the Singapore Court as to what had happened in that regard between SCPB, and Mr Kazzaz and Sheila, as being established facts (although she would invite them to indicate whether, and if so in what respects, this direction might have affected or inhibited their own findings).
196. She reminded them that the SAHLK Trust had been established in November 2010, with the transaction which was here under examination, ie the inception of the ULIP on Sheila's life, having taken place subsequently, in March 2011. With regard to the law as to findings of fraud and fraudulent conduct, she advised the Jurats in the terms mentioned above. With regard to the law as to a trustee's duty of care, she advised the Jurats that they could and should proceed on the basis that SCTG did owe duties of care to the Beneficiaries of the Trust in deciding whether it was appropriate in their interests, in all the circumstances, to proceed to apply for the ULIP on Sheila's life, with its associated financial arrangements, as they in fact did.
197. She reminded the Jurats that the standard of the duty of care imposed upon a trustee by s 22 of the Trusts Law was to act in the utmost good faith and "*en bon père de famille*", and that this latter describes a duty to act as a "prudent man of business" in conducting the affairs of the trust in the best interests of its beneficiaries: *Spread Trustee Co Ltd v Hutcheson* [2011] UKPC 13 at [20].
198. She requested the Jurats to make their findings as to what happened at the time of the setting up of the SAHLK Trust and the application for the ULIP, having regard to such facts as they thought would be material in considering the three areas of complaint mentioned above at [157], namely:
- (i) whether and what investigation or consideration had been given by SCTG personnel to the suitability for Sheila and the beneficiaries of the SAHLK Trust of taking out a (or the) ULIP, and the arrangements for funding its premium;
 - (ii) whether SCTG (more specifically, its personnel) had made the application for the ULIP (a) in the knowledge that Sheila had no independent income or

capital and/or (b) in the knowledge that the information as to this fact contained in the Disclosure Booklet was untrue; and

- (iii) whether SCTG personnel had made the application for the ULIP for the purpose of enabling SCPB to obtain the commission on the ULIP and/or the interest payable on the Premium Loan, in priority to, or disregard of, the interests of Sheila and the beneficiaries of the SAHLK Trust.

She would then determine the position in law, or would ask them to make further findings of fact if necessary.

199. The Jurats therefore record the following material findings of fact, in addition to those recorded under the “Factual Background” section of this judgment (paras [21] – [69]) above.
200. The financial scheme for holding and management of the Kazzaz family wealth, including the setting up the SAHLK Trust with, effectively, its sole asset being and intended to be the ULIP on the life of Sheila, was devised and implemented in 2010, as a result of discussions and agreement between the officers of SCPB in Dubai (principally Mr Phoolwani) and Mr Kazzaz, as the head of the Kazzaz household with responsibility for that family’s wealth. The Jurats find that Mr Kazzaz and Sheila regarded the wealth generated by Mr Kazzaz’ business interests and property holdings as, indeed, family wealth, rather than distinguishing ownership amongst family members.
201. The Jurats are satisfied from the evidence that Mr Kazzaz, a wealthy and successful businessman, entrepreneur and property owner in several jurisdictions, was not commercially naïve, and understood the general principles of commerce, investment, loans, and insurance, even if not to expert standards. He understood such matters sufficiently to be able to understand the thrust of the scheme which was being proposed by SCPB officers, and the implications of its component parts, such as that taking out a loan would entail the payment of interest. They are quite satisfied, however, that in finally pursuing the scheme involving the ULIP on Sheila’s life, and its financing, Mr Kazzaz placed determinative reliance on the advice, assurance and recommendation of his friend, Mr Walid Fattah given in February 2011, and thus shortly before the ULIP and the associated financial arrangements were finally put into effect by his authority.
202. The Jurats are also satisfied that, at the relevant time (now 13 years ago), Sheila herself, though not an entrepreneur, was not entirely commercially naïve either, having done her part working in the family businesses over previous years. However, and according to her own evidence as recorded elsewhere, she had come to rely entirely on her son as regards financial matters and she was willing to, and did, sign whatever financial documents he might advise or request her to do, without question. This included signing documents in blank. She adhered to that approach in this case.
203. The Jurats have noted the findings and determinations of the Singapore Court, discussed above, which rejected the complaints of Mr Kazzaz and Sheila with

regard to their dealings with SCPB, and that the Court there found that there had been no material misrepresentations, breach of duty of care, or (by the acceptance of Mr Kazzaz and Sheila) fraud on the part of SCPB officials, in setting up the wealth management scheme. Whilst the Singapore Court appears to have taken the view that Sheila had completed the information in the Disclosure Booklet herself, the Jurats would have inclined to the view that she had signed these in blank and that the information had been completed by bank officials subsequently. However, this would make no material difference to the Jurats' overall views regarding the facts material to this case since they note, and agree, that Sheila would nonetheless, as an adult of sound mind, be bound as regards third parties by her signature on a document, even if she had left it to others to complete the relevant information on her behalf. The Jurats would also incline to agree with the finding of the Singapore Court that information relating to the Kazzaz family wealth found in the documents, would have originated, in some form, from Mr Kazzaz and Sheila themselves.

204. The Jurats accept, and therefore find, that 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. The Jurats are satisfied that this was usual procedure within the Standard Chartered Group and is what happened in this case. 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.
205. The Jurats note that SCTG's own internal Trust Insurance Proposal Form in this case was approved by its Business Review Committee (Mr Robert Lenfestey and Mr André Carré) as "new business" on 1 November 2010. The form recorded Mr Carré as the SCTG Trust Administrator for the SAHLK Trust, the Trust Deed of which was executed that same day. The proposal form gave details of the Trust, noting its purpose as being "estate planning" and specifically "to purchase a Universal Life Insurance Policy".
206. The form also contained a question as to whether any part of the relationship was "*considered a PEP* ["politically exposed person"] *or has EDD* ("enhanced due diligence") *status*". These are terms relating to anti-money laundering requirements of the Guernsey financial services regulator, and denote that additional account monitoring and/or investigations as to verifying any source of funds are required to be made. The section answered

“Yes. Settlor is dependent on beneficiary Ahmed Kazzaz whose business dealings include property ownership and trade in Iraq including US and Iraqi government agencies. Further details are specified in the SOWM”.

207. The Jurats find that this is a reference to the SOWM which related to the “onboarding” of Sheila as a client of SCPB. The “details” are therefore the information mentioned in that SOWM and recorded in [41] above. They find, therefore, that Mr Carré must be taken to have been aware of the contents of that. They note, however, that this information was not being put forward as a record of Sheila’s own wealth, but as part of the context for explaining why an enhanced standard of regulatory monitoring was going to be required, and this was simply because of her connection with Mr Kazzaz and because of the nature of his business.
208. A formal Trustee Minute approving the making of the application to Manulife for the then intended ULIP was executed that same day. The Application Form itself was also executed that same day (1st November 2010) by Mr Carré and another person on behalf of SCTG, and that Application Form is recorded as having been sent back to IPG the following day. The Application Form contains, at the top of the page on which the SCTG personnel signed on behalf of SCTG, the declaration that:

“I/We declare that the statements and answers in this Application and any form that is made part of this Application are complete and true to the best of my/our knowledge and believe that they are completely and correctly recorded.....

“In addition, I/we understand and agree that:

1. *The statements and Answers in this Application, which include any supplemental form relating to the health, aviation, travel or residency or lifestyle of the Proposed Life Insured will become part of any life insurance policy issued as a result of this Application...*
2. *...*
3. *Any person who knowingly and with intent to defraud any insurer (a) files an application for insurance ... containing any materially false information ... may be committing a fraudulent insurance act”.*

209. Notwithstanding the above declaration, however, the Jurats are not satisfied, that the Disclosure Booklet itself was in the hands of SCTG at this time. In fact, on the evidence, they find that it was not. From the note of attachments sent with the email from Mr Carré to IPG on 2 November 2010, and consistently with the evidence of Ms Beebe as to what usually happened with regard to the issuing of such policies, they find that it was only the four page Application Form itself, the part which required completion by SCTG, which was then completed on behalf of SCTG and sent back to IPG. The completed Disclosure Booklet itself had been conveyed to the broker, IPG, separately and through SCPB in Dubai. It was held by the broker pending actually making the application for the policy.
210. The above declaration was made by SCTG to Manulife. Whatever its effect might be between SCTG and Manulife, as between SCTG and the Plaintiffs the Jurats do not find this declaration to be determinative evidence that SCTG personnel had actual knowledge of the content of the Disclosure Booklet as regards Sheila's wealth, or knowledge (therefore) that this content was inconsistent with the information contained in the SOWM in SCTG's possession, at the time when SCTG personnel played their part in making the formal application for the ULIP to be issued and placed in the SAHLK Trust. The Jurats find it most likely that SCTG personnel did not turn their minds to this, and relied on the fact that officials from SCPB in Dubai (as the branch introducing the business to them) and the broker who was supervising the actual application, were seeing to the appropriate and accurate completion of any "supplemental forms" etc in question.
211. In the event, the ULIP was not issued at that time (November 2010). Apart from the completion, in January 2011 of the required formal documentation for the loan and the security relating to the Premium Loan, in anticipation of the eventual issue of the ULIP, there was no further activity in the SAHLK Trust from the point of view of SCTG until March when the way was cleared for the ULIP actually to be taken up. An Insurance Arrangement Letter signed by Sheila, together with a signed copy of the relevant current Manulife illustration, were then sent to SCTG, to bring matters up to date and ensure that SCTG's records were complete. SCTG then authorised the necessary application to be made for the ULIP on the terms currently on offer, but this was actually done through IPG with (the Jurats find) the original Application Form from 1st November 2010 being used; there does not appear to have been any other Form.
212. It is apparent from the documents that the ULI Policy document itself was bound up and issued by Manulife. The policy document incorporated the terms of the policy (16 pages,) the Application Form (4 pages) the various sections of the Disclosure Booklet (21 pages) and finished with a single page "declaration of insurability", bearing Sheila's signature and itself dated 18 January 2011, apparently to declare the previous information unchanged since it was originally given. The ULIP was issued with an effective date of 11 March 2011. It bears on its face a notice to the owner of the policy - this being SCTG, but against the background that SCTG had by then assigned the benefit of the policy to SCPB absolutely, pursuant to the terms of the Premium Loan (see [47] above) - that the "owner" has 10 days during which it might cancel the policy by returning it, and obtain a full refund of the premium.

213. However, from the fact that there is only a certified copy of the Policy, dated 28th March 2011, in the disclosed papers, and consistently with the evidence of Ms Beebe, the Jurats find that the original of the Policy was not sent to SCTG upon execution, but was sent to SCPB, who had given notice to Manulife of their security assignment (without which the Premium Loan would not have been made: see [47] above). It was only a certified copy, apparently made on 28 March 2011, which was subsequently sent to SCTG, as the “owner” of the ULIP.
214. Receipt of this copy was therefore (the Jurats find) the first occasion upon which SCTG personnel had access to the information contained in the Disclosure Booklet. Ms Beebe agreed, in cross-examination, that the ULIP itself would have been looked at by someone, (but not her, at the time, since she “*wasn’t the one taking on the trust*”) when it came in to SCTG, “*to make sure that all the details are correct and what we have agreed is in there*”. However, she would not agree, in her oral evidence, that the details of Sheila’s wealth on the Financial Information page “*do[es] not naturally....with what we saw... in that source of wealth memorandum*” (as Advocate Greenfield’s question put it) without reading it carefully. She continued:

“... All I can say is that by the time the policy, this document, is received, all the checks, everything on the source of wealth, of whether the policy could be paid, whether the client is eligible to have the policy, it’s already been done by the broker, and this is the final document that just gives us all the terms of how the policy’s been issued.”

and when later pressed, she added

“What there was on top of that is the fact that there is a collateral cover from the son’s account with his assets, and the premium was always to be – the loan interest payments were to be paid by Sheila’s son’s personal account. When she couldn’t, the son would cover for it”.

215. The Jurats find that the evidence is simply unclear as to what, if any, attention was paid by SCTG personnel to the financial information about Sheila included in the Disclosure Booklet, at the time of receipt of the certified copy of the ULIP, some few days after 28 March 2011. However, in the circumstances, they find that it is likely to have been little, if any, because of SCTG personnel being under the impression that the merits of taking out the policy and the client’s eligibility for it, had been the subject of debate and ascertainment amongst others (the client, SCPB and the Broker). Their own concern was as to whether, as trustees, they were in a position to operate the ULIP according to its agreed terms and therefore, in particular, whether and from what source the COI (“Costs Of Insurance”) could and would be met. Their focus was therefore on details relevant to this aspect. Specifically, whilst Ms Beebe’s evidence was that she had seen the SOWM, the Jurats find no evidence to suggest that any person at SCTG made any comparison or connection between the information as to Sheila’s wealth contained in the Disclosure Booklet, and that contained in the SOWM, collated for a different purpose and received several months previously.

216. Having made the above primary findings of fact, the Jurats turn to their consequential findings relevant to the Plaintiffs' complaints regarding SCTG's handling of the inception of the ULIP.

(a) The Suitability Complaint

217. As regards the "Suitability Complaint", the Jurats find that SCTG personnel gave no actual consideration to the question whether the taking out the particular Insurance Policy 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 off-shore trust, was a transaction which was in the best interests of the beneficiaries of the SAHLK Trust. Neither did they consider whether the terms of the policy, such as the 150% premium rating imposed because of Sheila's being a smoker, could be bettered if any such policy were appropriate for the situation in principle. However, and having considered the various matters raised by Advocate Greenfield in criticism of SCTG's attitude, the Jurats also find that this is somewhat understandable in the context of (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.
218. For the avoidance of doubt, as it was a significant issue in Advocate Greenfield's cross-examination of Mr Shadadphuri, the Jurats have noted the doubts about the financial value of the ULIP to the client queried by a Mr Roger Green of SCPB's credit department, in an email to Mr Phoolwani dated 15 August 2011, although by this time the policy had already been taken up. It would appear, from the evidence of Ms Beebe that Mr Green had been required to approve another transaction relating to the Kazzaz family wealth, and had raised this question with Mr Phoolwani, as an incidental enquiry. However, this was a matter internal to SCPB, and of more relevance, therefore, to the disputes which were litigated in Singapore. There is no evidence that the reservation raised by Mr Green was made known to SCTG.
219. Given the Lt-Bailiff's direction that in Guernsey trust law, a trustee does owe a duty to beneficiaries to consider whether a proposed transaction is in their best interests before entering into it, the Jurats find that failing to consider this point at all was a breach of such duty by SCTG. However, first, they consider that

this was no more than negligence, in the circumstances. It was not fraudulent, it was not wanton, and it was not a “wilful default”. Second, it had no practical consequences.

220. The Jurats find (and the Lt-Bailiff endorses this insofar as it would be a question of law) that the duty of a trustee in this situation would not require it 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 benefits or disadvantages (absolute or relative to other possible courses of action) for the beneficiaries of doing so. Such specialist knowledge would be beyond the expertise reasonably to be expected of even a professional trustee entity of normal skill and experience.
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 advisers 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 Jurats note the extensive criticisms made by Mr Baker, the Plaintiffs’ expert witness, of the factors apparently not taken into account in consideration of whether or not to take out the ULIP at all, which, in his evidence, are leveled at the Trustees. However, they are not persuaded by this, for the reasons given above, and also because Mr Baker’s criticisms assume that the primary purpose of the arrangement would have been to obtain life insurance for Sheila, at cover of \$7,500,000, whereas they find that this was not the primary motive, which 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.
225. However, they also find that, if SCTG had sought confirmation from Sheila, that assurance would have been forthcoming. In March 2011, when the ULIP was actually put in place, this was what Mr Kazzaz and Sheila wanted to do. At that time Mr Kazzaz believed, primarily in reliance on the enthusiastic report of his trusted friend and advisor, Mr Walid Fattah, but also on the representations of SCPB, that the ULIP was a very good investment product for the Kazzaz family’s benefit. As noted in [220] above, SCTG would not have a duty to make itself an expert and therefore (on the evidence) any such request for final assurance would not be on the basis of any known concern, but merely to ensure a direct confirmation of what had already been signed and requested. There is no evidence to suggest, therefore, that even if SCTG had sought any final confirmation that Mr Kazzaz and Sheila were comfortable that this transaction was for their benefit and should proceed, this confirmation would not have been given.
226. For completeness, two specific points should be recorded. First, Advocate Greenfield drew attention to the fact that the documentation is framed in terms that Sheila requested SCTG to “*consider*” the acquisition of the ULIP, rather than there being an “*instruction*” from her to make such an acquisition. The Lt-Bailiff and the Jurats do not regard this as having any material bearing on the fundamental question of the extent of SCTG’s duties when considering whether or not to make the acquisition in all the circumstances of the case, as set out above. Second Advocate Williams submitted that the acquisition was made upon the instruction of Mr Kazzaz himself. Whilst the Jurats see no evidence of any such direct instruction, they do find that, in all the circumstances of this case as imparted to SCTG, it was reasonable to infer that Mr Kazzaz had evinced a clear desire, tantamount to an instruction, that the ULIP should be acquired. Again, in all the circumstances, this has no material bearing on the Jurats’ findings as to SCTG’s duty.
227. The above findings deal with the complaint about the suitability of investing in a ULIP in principle at all, but in addition SCTG is criticised for having accepted the arrangements for the Premium Loan taken out with SCPB and covering the whole of the single premium for the ULIP. A particular complaint is based on

the fact that the Premium Loan equated to 106.% of the CSV of the ULIP at Day One: see para 34 of the Re-Amended Cause.

228. As regards the general complaint, the Jurats find the position to be the same as that already set out; 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. The Facility Letter of 26 November 2011 was just that (a facility letter) and as such was hardly something to take exception to. The Jurats of course recognise that SCTG were obliged, once they were trustees, to act in an independent manner in the interests of its beneficiaries, and regardless of the relationship with SCPB, but once again, the Jurats find that in the circumstances of this case, this duty would be discharged by properly assuring themselves that the means of keeping up the agreed loan necessary to maintain the ULIP premium were provided for. It is possible that an independent trustee might have suggested investigating whether better borrowing terms for the Premium Loan could be obtained from another financier, but 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.
229. The most targeted complaint is that SCTG were at fault in accepting to take the Premium Loan for the entire value of the single premium, because this was therefore 106% of the CSV of the ULIP immediately it was taken out and this was contrary to the policy of the Bank as evidenced in the Facility Letter of 26 November 2010, which specified that the loan granted would be a maximum of \$16,500,000 or 90% of the Cash Surrender Value at Day One of the pledged insurance policy if lower: see Clause 2.1. This, it is asserted, exposed the beneficiaries to an unreasonably high level of risk, because it was outside the Bank's usual lending parameters and placed the loan immediately in breach of the terms of the Facility Letter, thereby exposing the beneficiaries to the risk that SCPB would immediately enforce its security. It is said that it was thus grossly negligent of SCTG to take up the Premium Loan on those terms.
230. The Jurats find that, just as SCTG did not evaluate the commercial merits or demerits of taking the Premium Loan for the whole of the premium sum, upon the terms stated, they did not pay any attention to any implications of the Premium Loan being apparently, in breach of the terms of the Policy letter as regards Loan to Value ratio, or the policy of SCPB in this regard. Moreover, since SCTG appear to have erroneously treated the CSV of the Policy as being, from the outset, the value of the premium, whereas it was in fact lower, the true magnitude of this difference was possibly not appreciated. On the other hand, it was always open to SCPB to waive or relax its stated requirement, and the Jurats do not think that it was incumbent on SCTG itself to consider whether its doing so was questionable or might have hidden detrimental consequences. They consider that the apparent breach of the loan to value requirement can hardly have been

unappreciated by SCPB when it made the loan, and that this would suggest that it would not be treating it as a default.

231. Moreover, it was Mr Shadadphuri's evidence that "cross-pledging" of other security 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 the Bank's security. The Jurats accept that SCTG would have believed and understood that SCPB would not have lent without being satisfied as to its security (and it obtained more security with the supporting guarantees of Mr Kazzaz signed on 17 January 2011, and eventually also of Ask One in August 2011). They find that the apparent discrepancy between the terms of the facility letter as to "loan to value" and the eventual loan made was not, in all the circumstances, a matter which could fairly be regarded as a "red flag" to SCTG which ought to have caused it to question whether the policy was disadvantageous to the beneficiaries and should consequently not be applied for, so as to render it a clearly negligent breach of duty for them not to have done so.
232. In short, the Jurats accept and find that SCTG did not exhibit the degree of alertness and attention to checking out details and their implications, as would be expected from a comparable but independent trustee, but were unduly inclined to accept passively what SCPB invited them to approve. Whilst, if SCTG had raised queries, this might theoretically have resulted in an opportunity to have second thoughts about taking out the policy, or how it was being funded, they consider this to be speculative. The Jurats also find and note that SCTG were not aware, and had no reason to be aware, that Mr Kazzaz was (as he apparently was) under the impression that he could withdraw capital funds which were in fact required to provide the income for such financing, for use in his businesses, without detrimental financial effect.
233. In the circumstances, therefore, the Jurats find that SCTG was guilty of a degree of negligence in this respect, also, but they are not satisfied that there was any identifiable detrimental consequence as a result. In particular they are not satisfied that if any such further queries had been raised by SCTG, the result would have been that the ULIP would not have been taken out because its acquisition would not have been funded.

(b) The False Information complaint

234. As regards the "False Information" complaint, as already stated, the Jurats can see no evidence of any person at SCTG, let alone any identifiable person, being actually aware, or even being likely to have become aware, of any discrepancy between the SOWM information and the information in the Disclosure Booklet. In those circumstances, and particularly bearing in mind the Lt-Bailiff's directions as to the necessary ingredients of fraud in law, the Jurats are quite satisfied that there was no fraudulent conduct by any personnel of SCTG in respect of making the application for the ULIP. They make the same finding if the relevant time is regarded as extended to the time of receipt of the certified copy of the Policy by SCTG, ie a day or two after 28th March 2011.
235. In fact, and noting the evidence of Ms Beebe and Mr Shadadphuri as to their experiences of circumstances in which persons had been accepted as the subject

of such policies, and the recognition that Kazzaz wealth was viewed as “family wealth”, the Jurats do not find it clear beyond doubt that the information as disclosed in the Disclosure booklet would necessarily have been regarded as false and fraudulent viz-à-viz Manulife itself. This fact has simply been assumed during the case, but whilst it might appear to be *prima facie* a reasonable assumption, such a finding would depend on the practice, and flexibility, of the industry (brokers and insurers) in this specialist area, as to which the Jurats do not feel they have received any sufficient evidence. They emphasise, however, that this possible doubt is not decisive to their finding that there was no fraudulent conduct by SCTG personnel in connection with the obtaining of the ULIP. That finding is itself based only on the evidence before them as to what SCTG personnel actually did.

236. They also take the view that in the light of Sheila’s express declaration in the Disclosure Booklet that the information contained in it was true and accurate (see Part 5 Section VI) she, as Settlor, cannot complain that SCTG relied on this apparent endorsement of such information and took it at face value. The Lt-Bailiff holds that by extension therefore, neither can the other Beneficiaries, as their title depends on that of Sheila as Settlor of the Trust.
237. The Jurats find that if the discrepancy between the Disclosure Booklet and the SOWM had been noted by SCTG personnel, then this would properly have prompted a query by them as to the reason for this, and this would have led to further questions as to consequent effects upon the (apparently desired) ULIP and its validity. However, they consider that what would then have happened is a matter of speculation, on which they do not embark.

(c) The Fraudulent Conflict of Interest complaint

238. As regards the “Fraudulent Conflict of Interest” complaint, the Jurats can see no evidence that any person at SCTG entertained any intention to induce or permit Sheila to enter into the ULIP against her own best interests (or those of the Beneficiaries of the SAHLK Trust) for the purpose of gaining, either the benefit of the commission payment for SCPB, or the benefit to SCPB of earning interest on the Premium Loan. (As regards the commission, although SCTG was the formal “introducer” of the business to Manulife, and therefore entitled to the commission under Manulife’s terms of business, by internal policy in the Bank Group, such commission was transferred and credited to SCPB, as the Branch which had obtained it in practical terms.)
239. SCTG played no part in procuring the Premium Loan or negotiating its terms, although, since SCTG was the vehicle for setting up such loan, its personnel were obviously potentially aware of such terms. Once again, however, they were reasonably under the impression that those terms had been the subject of arm’s length negotiation between others, and that the ultimate outcome of such negotiations was agreed by Sheila, she having signed the necessary documents of authorisation.

240. The Jurats find that the actual intentions of SCTG personnel were solely the normal, and perfectly proper, commercial intentions of business, namely to provide or participate in arrangements for the provision of services (here, fiduciary and administrative services) sought by a potential client, in return for an acceptable, agreed financial reward (fees and commercial charges).
241. The Jurats find that the potential payment of commission was not concealed. They note in particular, that by Clause 8 (b) of the Insurance Trust Agreement of 1st November 2010, signed by Sheila and constituting the SAHLK Trust, SCTG was authorised

“ to retain (without being liable to account for) any commission or referral fee received by it notwithstanding such commission or referral fee results from its acting as trustee of the Trust... ”.

242. Furthermore and as already noted (at [40]) SCTG received an express assurance from SCPB (Mr Phoolwani), in October 2010, that Sheila understood and had given permission for commission upon the actual insurance transaction in contemplation to be paid to SCTG. Whilst this was not an assurance directly to SCTG from Sheila herself, it justifiably assured SCTG personnel that this transaction was authorised and was proper.
243. It is of course fair to say that the actual amount of the commission - which is indeed notably great – does not appear to have been disclosed either to Sheila or to Mr Kazzaz at the time. However, there was no regulatory nor contractual requirement that it should be. It is not relevant to the fact that the situation, as reasonably seen by SCTG personnel, was that the principle of commission being received by SCTG was known to, and specifically approved in this instance by, the Settlor and was not, therefore, any form of illegitimate “secret” commission.

Summary as regards the inception of the ULIP

244. In summary, therefore, with regard to the complaints made against SCTG about the inception of the ULIP, the Plaintiffs do not convince the Jurats that there was any fraud by SCTG personnel. The highest the Jurats put their findings is that, given the duty of a trustee indicated by the Lt-Bailiff, to consider whether any transaction undertaken by it on behalf of the trust was in the interests of the beneficiaries of the trust, there was a careless breach of such duty in the apparent total failure of SCTG personnel to turn their attention to this point. This appears to have arisen more from SCTG’s following Standard Chartered Bank Group policy as regards division of corporate functions than any careless conduct with any direct regard to the particular matter, but this situation also induced SCTG to be 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 or policy could not excuse proper performance of a trustee’s duty under Guernsey trust law, and the Jurats find that the conduct of SCTG did display a degree of negligence.

Consequential matters: (i) Limitation

245. The Jurats having excluded any finding of fraud but found a degree of negligence, then having regard to the time of the matters constituting such breach of duty of care, the Lt-Bailiff considered that a determination regarding the Defendants' plea of limitation must be made.

246. The Lt-Bailiff explained to the Jurats that s 76 (2) of the Trusts Law provides that

“... 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...–

(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..., whichever first occurs”.

247. This action was commenced only on 2 June 2020. However there had been a previous “standstill” agreement between the parties, which was agreed to stop time running on 6 February 2019. It had operated for 13.5 months, ceasing to have effect from 25 March 2020. The result was agreed by the parties to be that if the relevant Plaintiffs “*first had knowledge*” before 13 April 2016 of the negligent breaches of trust found by the Jurats in relation to the inception of the ULIP in March 2011, then any action by them based on such breach is barred by limitation.

248. Insofar as Mr Kazzaz and Sheila are concerned it is his or her own knowledge which is material. Hannah attained her majority at age 18, on 19 April 2011 (this is according to Guernsey law; it has not been suggested that any different law would govern this point), and it is therefore her own knowledge which would be relevant unless the Jurats concluded that Mr Kazzaz, as her guardian had had the necessary knowledge before that date – which was objectively unlikely as the ULIP was only taken up on 11 March 2011. As regards Lana, she attained majority only on 24 September 2012. Her own knowledge was therefore relevant, unless the Jurats found that Mr Kazzaz, as her guardian, had had the necessary knowledge before that date.
249. As regards what was meant by “*knowledge of the breach*” the Lt-Bailiff directed the Jurats on the basis of the principles set out in *Broadhead v Spread Trustee Co Ltd* (2014) (Royal Court Judgment 14/2014), at [86] and in particular the principles at [86] (4) and (5). She directed them that the test is when the relevant plaintiff had sufficient knowledge of facts which would make it reasonable for him or her to begin to investigate seriously whether there had been a breach of trust such as that now pleaded, so as to decide whether or not to institute an action within the following three years. That knowledge is of the facts that (1) damage has apparently been suffered, and (2) it is possible that the relevant defendant could be responsible for it. It is knowledge of the basic facts, and not knowledge of their legal consequences which is in question.
250. 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 (since that is only what needs to be achieved before the end of the following three year period envisaged); it is somewhere in between those extremes. It has sometimes been described as knowledge of the “gist”, “substance”, “essence” or “thrust” of the claim or complaint in question: see *Haward v Fawetts (a Firm)* [2006 1 WLR 682 at [20] and [90]. 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”. The point is that limitation starts to run at the time when the plaintiff knows enough to make it objectively reasonable that s/he should get on with the steps necessary to bring a claim, if a claim is going to be brought at all, within another three years. The question in this case is, therefore, whether the relevant Plaintiffs had such degree of knowledge before 13 April 2016.
251. Furthermore, it is for the relevant Plaintiff to prove that he or she did not have the requisite knowledge to start time running until a date within the relevant limitation period before the actual commencement of the action: see per Lord Nichols in *Haward (above)* at [23]. The Lt-Bailiff also confirmed that the fact that Mr Kazzaz and Sheila chose, in the event, to pursue SCPB, alone, in Singapore, for misrepresentations etc, does not affect the question whether the threshold knowledge to start time running against SCTG in respect of any associated but independent complaints had been gained at any particular time.
252. The Jurats first consider the knowledge of Mr Kazzaz, as he is plainly the centrally material figure in the matter, since he effectively acted on behalf of all the Kazzaz plaintiffs. As regards Mr Kazzaz’ knowledge, it is plain from the

documents that he was unhappy with the financial situation which had resulted from entering into the ULIP and its associated funding arrangements, by as early as February 2012. He felt that he had not had their effects properly explained so that he understood them. In an email to Mr Phoolwani of 2 February 2012 he was already complaining of having been induced to make the investment through trusting the bank, but

“[having] no clue about what I was entering into due to sheer lack of explanations”.

253. The Jurats note that Mr Kazzaz’ further and increasing unhappiness is demonstrated in his emails of 15 July 2012, 27 July 2012 and 6 July 2014 to SCPB. In the 27 July 2012 email, he complains expressly that he was not made fully aware about the circumstance of having to fund the interest on the Premium Loan before agreeing to go ahead with the ULIP-based scheme, and that he would probably not have done so if he had been aware. In a further email to the Bank and to Sheila of 19 January 2014, apparently copied to Lana and Hannah (though in giving oral evidence, Lana said that the email address for her sister was not correct) Mr Kazzaz referred expressly to the

“problems as we are now [facing] with the life assurance policy that Harish sold us without fully and completely explaining the matter to us in terms of it’s [sic] ramifications and negative drawbacks. We were misled into entering into this life assurance policy as it was Harish’s primary goal to sell the policy to us so he could reach his internal targets and make his commission on us....”

254. In oral evidence, Mr Kazzaz agreed with Advocate Williams that he thought from soon after the trustee acquired the policy that the trustee had “*made a mistake*” in doing so. He also agreed that he had a meeting with SCPB and a representative of SCTG (he could not remember whom) in Dubai on 28 November 2013 where he expressed concerns about various things and accepted this would have included his grievances about the ULIP, which he thought should not have been acquired at all. He did not accept that he then thought that SCTG was responsible for the position, because up until then he had always “*interfaced*” with the Bank.
255. The Lt-Bailiff directed the Jurats that having regard to the fact that it is an objective test to be applied, it is not necessary that Mr Kazzaz should actively have considered whether there might be any claim such as the present which could be made against SCTG. The question is rather whether the facts he knew did sufficiently reveal such a possibility as more than a mere suspicion.
256. The Jurats do not place weight on Mr Kazzaz’ agreement that he thought it had been a mistake “*from the outset*” which they see as loose speech coupled with a degree of bravado in giving evidence. However, they find that the email of 19 January 2014 shows quite clearly that Mr Kazzaz subjectively had sufficient relevant knowledge at that time. They are satisfied that by the time of the meeting of 28 November 2013, Mr Kazzaz’ knowledge of the facts which he saw as founding complaints against SCPB, coupled with his knowledge that SCTG was engaged in implementing the scheme as a trustee and that acquiring the ULIP

had been part of this and a “mistake” by them, clearly revealed the possibility that the Kazzaz family could have a claim for breach of the SAHLK trust etc against SCTG, such as the negligence aspect of the present claim. This was sufficient to start time running under s 76 (2) of the Trusts Law. On balance, the Jurats also find that such level of knowledge had been gained, on an objective assessment, by the time of the email of 27 July 2012.

257. As regards the other relevant Plaintiffs, the Jurats find that Sheila’s relationship with Mr Kazzaz, and the fact that she was accustomed to act as guided by him in all matters relating to the family’s financial affairs, and that he apparently generally kept her in the picture as to what was going on, means that as a practical matter, his knowledge was also her knowledge at all times. Mr Kazzaz accepted as much during his oral evidence.
258. As regards the daughters, Lana’s evidence, proffered in effect on behalf of herself and her sister, was that she had not known at all about the unsatisfactory nature and financial implications of the ULIP until August 2016, when Mr Kazzaz was visibly depressed because SCPB was seeking to terminate the banking relationship, and he then explained the whole situation to his daughters. However, and even taking into account the evidence that Mr Kazzaz was protective of his daughters, the Jurats are not satisfied that the daughters did not have sufficient knowledge of the relevant facts before 13 April 2016, in particular having regard to the terms of the email of 19 January 2014, which imply that Mr Kazzaz believed his daughters already knew what he was talking about. Lana accepted that she received this email. In the absence of any actual evidence from Hannah, the Jurats are not satisfied that she did not receive it, either then or in some form not long thereafter, as well. They find it unlikely that Mr Kazzaz would have sent an email to a “wrong” email address for his daughter, and this assertion was not investigated. In addition, as regards Lana herself, if, as the Jurats are inclined to find, Mr Kazzaz had sufficient knowledge of the potential for a cause of action against SCTG in July 2012, that knowledge itself binds Lana, as a minor, under the Trusts Law.
259. Moreover, even though the Jurats have found that any negligence by SCTG would not have occasioned loss, in the circumstances (see [225] and [233] above) Mr Kazzaz, and by extension his family members believed that the damage being suffered was all the losses incurred and apparently being incurred in connection with taking on and maintaining the SAHLK Trust and its loan funding. This is an obvious and significant matter, and this belief would have been the relevant state of mind for considering whether a claim for breach of trust could be made. The Jurats are not satisfied that the daughters would not have known of this in sufficient terms to mean that time started to run.
260. The conclusion, therefore, is that any claim by the First to Fourth Plaintiffs against SCTG as trustees of the SAHLK Trust for negligence in taking on the ULIP with its associated funding arrangements is barred by limitation.

Consequential questions: (ii) gross negligence

261. In case this is wrong, however, and in view of the Jurats’ finding of some degree of negligence on the part of SCTG, the Lt-Bailiff further asked the Jurats for their

finding as to whether that negligence was “gross” negligence of merely “some” negligence.

262. The Lt-Bailiff advised the Jurats that for negligence to be “gross” it must strike them, as a matter of impression, as being

“a serious or flagrant degree of negligence, more fundamental than failure to exercise proper skill and/or care constituting negligence, and capable of embracing not only conduct undertaken with actual appreciation of the risks involved, but also serious disregard of or indifference to an obvious risk”

see: *Khuller v FNB International Trustees Ltd* [2020] GCA 051.

263. The Jurats confirmed that the degree of negligence which they considered SCTG had exhibited in regard to its part in the inception of the ULIP and the financing arrangements put in place to support it was relatively minor and certainly did not amount to gross negligence.

264. The Lt-Bailiff noted that the SAHLK Trust Deed contains an express provision at Clause 8 (c) that

“SCTGL will not be liable for any loss damages, costs or expenses save from acts or omissions undertaken with its own wilful misconduct, fraud or gross negligence”.

Such a clause is valid in Guernsey law and, since the Jurats find that the conduct of SCTG did not constitute matters amounting to wilful misconduct, fraud or gross negligence, Clause 8 (c) applies. Consequently, even if the Jurats had been wrong to find that no damage or loss was caused to the Plaintiffs by any negligence of SCTG which they found, or it was wrong to hold that claims in this respect were time-barred, SCTG is entitled to the benefit of this clause and incurs no liability on this part of the Claim.

(2) SAHLK Trust: Claims regarding the retention of the ULIP (“The retention complaints”)

265. The first part of Claim 1 makes complaints as to SCTG’s ever taking up the ULIP on behalf of the Kazzaz family in the first place; the second part complains that, having done so, SCTG was in breach of trust for not taking steps to divest the SAHLK Trust of the burdensome situation thus created, at some time before it ultimately did surrender the ULIP in December 2016 (though effectively being compelled to do so by SCPB’s enforcing its security, having earlier terminated banking relationships with Mr Kazzaz and Sheila and withdrawn credit facilities as regards all the Kazzaz structures). In effect, it is an allegation that it was a breach of the Trustee’s duty to the beneficiaries of the SAHLK Trust to keep the policy on foot. This is because, it is said, doing so increased the financial losses

being suffered, as compared to possible alternatives, which were simply not considered but would have been more beneficial. It is accepted that the policy could apparently have been surrendered with no surrender charge (as least) during its first year; there was a diminishing surrender charge over the next 19 years.

266. The Retention Complaints are those contained in para 35 of the Re-Amended cause. The broad thrust is that SCTG ought to have been regularly reviewing the operation of the SAHLK Trust and the financing of the annual Loan and, rather than continually renewing the latter with SCPB, should have taken steps to cut ongoing losses by surrendering the policy, or at least looking for alternative finance on better terms but it did not do so (paras 35.1-6). There are then three further specific allegations, namely that:
- a. in keeping the ULIP and the Premium Loan on foot, SCTG was culpably motivated by the wish to retain, for SCPB, the benefit of the whole of the \$1,312,342 commission which had been obtained through the taking out of the ULIP, but which would be clawed back, in reducing amounts (20% for each year), if the policy were not maintained for five full years. This period expired in March 2016 (para 35.7);
 - b. SCTG could have sold the benefit of the policy in the global market on profitable terms, but did not consider doing so (para 35.8); and
 - c. SCTG should have disclosed the inaccuracy of the financial information regarding Sheila to Manulife, (Para 35.9) which, it is argued, based on the evidence of Mr Baker, would have resulted in Manulife's simply voiding the policy and paying back the premium in full.

The general thrust of the complaints is therefore that of negligence, but para 35.7 contains a discrete and distinct allegation of, in effect, fraud by SCTG in acting, or failing to act, out of an improper motive.

The findings of the Jurats

267. The Jurats make the following findings as relevant context. First, the very *raison d'être* of the SAHLK Trust was that of obtaining and holding a life insurance policy which the Settlor and those who were interested had apparently decided was for their benefit. The very terms of the Trust instrument underline this. It was entitled "Insurance Trust Agreement" and the provisions as to beneficiaries are appropriate to the distribution of the benefits of an insurance policy. Clause 5(a) of the Agreement provided that the acquisition of any such policy considered to be for the benefit of one or more of the beneficiaries of the Trust was to be an authorised investment despite the fact that it was not income producing. Clause 5(c) excused SCTG from any duty to diversify the trust investments and absolved it from any consequences of keeping the trust fund invested in such a single

investment; the Trust Deed specifically disapplied s 23(b) of the Trusts Law, which would otherwise have imported such a duty. Clause 5 (d) expressly authorised SCTG to apply any property comprised in the Trust Fund in “*effecting acquiring or maintaining*” any policy of life assurance of any type. Thus the agreement envisages that its whole purpose is for SCTG to take up and then hold the relevant insurance policy, so long as this was viable, and unless and until instructed otherwise; the agreement was revocable by the settlor, Sheila and after her death, its proceeds would simply be paid out. SCTG’s conduct in retaining and maintaining the ULIP must be evaluated in this context.

268. Ms Beebe accepted in her evidence, that there were no reviews of the practical operation of the Insurance Policy, or its suitability. This was Standard Chartered Bank Group policy, at least until 2015. As Trustee, SCTG merely received (and filed) the annual statement issued by the Insurer, and took no steps to discuss this with the settlor or beneficiaries; any such discussion would be a matter between the client, the bank Relationship Manager and the insurance broker, and SCTG would not be involved.
269. In the documents, there are two “Trust Reviews” for the SAHLK Trust, one dated “as at” 30 November 2011 but recording information from 31 March 2012, and another dated “as at 30 November 2013 but expressly completed on 22 April 2014. However, they appear to be for the purpose of recording matters for regulatory compliance, and record no information with regard to the satisfactoriness (or otherwise) of the ULIP or the Trust. Ms Beebe did recall an internal SCTG meeting in April 2015 at which there were discussions about surrendering the Policy or terminating the SAHLK Trust, and which, she said were in the context of a discussion of all ULIPs being administered by SCTG, although she did not elaborate.
270. In summary, the picture which emerges is that SCTG regarded themselves as being engaged simply to obtain the ULIP and keep it in good standing, generally, as part of a relatively long term banking and wealth management relationship between the relevant client and the Bank, but not to have any active role in advising the client, or considering or reviewing the ongoing benefits (or otherwise) of maintaining the ULIP under the previously agreed arrangements.
271. The Jurats are mindful that a trustee’s duty is to exercise the care to be expected of a “*bon père de famille*” or a “*prudent man of business*” in conducting their trusteeship. Whilst the above detached attitude of SCTG may well have been imposed upon them by the general policy of the Bank, in which they were but a subsidiary company, the Jurats conclude (and the Lt-Bailiff endorses this insofar as it is a matter of law) that this cannot justify total inaction. The actual circumstances of the case, and the relationships which existed, would, however, be material in considering what action, or involvement would have been required to fulfil such duty. SCTG understood, and again not unreasonably, that the continued operation of the ULIP, under the terms of an on-going wider client relationship with the Bank, was a matter being discussed and reviewed if necessary between the client on behalf of the beneficiaries and the relationship manager. In those circumstances, the Jurats conclude that the duty of SCTG would have been little more if anything than to confirm, directly with the settlor or interested beneficiary, that this 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 adviser, ought to be considered.

272. The above just did not happen and the Jurats find that this inaction did amount to a breach of duty, and thus a breach of trust by SCTG. However, in all the circumstances they again consider that this was no more than negligence, and was not fraudulent, or wanton, or a “wilful default”. They also consider that the negligence was not so extreme as to be “gross negligence”. In addition, they are not persuaded that such breach(es) were the cause of any loss to the Trust, in practice.
273. Considering the breaches alleged and noted at [252] above in sequence: As to the allegation that the Trustees ought to have considered surrendering the policy, almost (it appears to be alleged) from the outset, the Jurats find that any such suggestion raised by them would have been dismissed at the time. They are quite satisfied that Mr Kazzaz wanted to maintain the policy and would not have concurred in surrendering it even if this had been suggested, and that he maintained that attitude right up until at least 2015, his complaints being solely about the (to him unexpected) charges which this was occasioning.
274. First, during the first year, when it is agreed the ULIP could have been surrendered without surrender charge, Mr Kazzaz was not expressing concerns about its operation, and certainly was not doing so to SCTG. It was only in early 2012 that Mr Kazzaz began to raise queries or complaints about the payment of interest on the Premium Loan, but he did so by “interfacing” with SCPB, and not with SCTG. There is no evidence that SCTG were ever aware of his expressed dissatisfaction, or had any reason to suggest that the arrangements, only made recently, ought to be critically reviewed. Even if they had been the Jurats find that this would not have resulted in the surrender of the policy.
275. Second, during the period from Mr Kazzaz’ arrest and detention in the USA, in February 2012, and his eventual imprisonment from October 2012 until October 2013, consideration of the affairs of the Trust was necessarily constrained. In the circumstances it was reasonable simply to ensure that the *status quo* was protected and the policy was kept up, and the Jurats are again satisfied that if surrendering it had been suggested. There is no evidence to indicate that such a suggestion would have been consented to.
276. After Mr Kazzaz’ release, it appears that a general consensus developed within the Banking Group (SCPB in Dubai, the Bank’s head office in Singapore, and indeed SCTG in Guernsey) that they wished to “exit” the Bank’s relationship with Mr Kazzaz and by extension, his family, although there was some disagreement as to how quickly, and to what extent, from amongst the various banking and trust elements. The Jurats are satisfied that this was primarily because of his conviction (although the missing of interest payments later provided support for this position).
277. SCTG itself wished to exit the relationship on its own account, although its position hardened over time (up to 2015) because (it would appear: see a notes of

internal minutes, and intra-group emails in 2015) of apprehensions over the fact that the receipt of funds necessary to maintain the Trust came, in one way or another, from Mr Kazzaz and his Iraqi business. The SCTG attitude therefore appears to have been driven by concerns arising from local regulatory attitudes. However having regard to its duty as Trustee, which it did appreciate, to consider the interests of the beneficiaries of the Trust, SCTG saw its duty as being to seek to enable the a smooth transition of the Trust and the family's affairs to another financial/fiduciary service provider, and to endeavour to persuade SCPB/the Bank to agree to extend financial facilities for long enough to enable that to happen - although the relationship between SCTG and SCPB/the Bank was such that SCTG itself had no power to compel this.

278. In this context, again, any duty which there might generally have been on SCTG to review the practical operation of the ULIP and its associated financing would, understandably if not justifiably, have taken a secondary place, but in any event the Jurats are satisfied, as they have said, that Mr Kazzaz would not have wished the policy to be surrendered. In his closing submissions Advocate Greenfield said (Day 8 p175:9)

“The evidence we have heard from him and we’ve seen from the documents, is that he was, even in 2015 and 2016 thinking: I mustn’t let this policy slip. I mustn’t let it go, what are the alternatives?”

The Jurats are satisfied that this was, indeed, Mr Kazzaz’ state of mind and that, whatever its cause, this was not brought about by SCTG, but was an attitude which influenced Mr Kazzaz’ thinking almost up to the eventual forced surrender of the policy in 2016 by the Bank’s actions. Mr Kazzaz’ attitude only changed after he received the account and facility closure letters issued by SCPB to the companies and to SCTG as trustee of the Trusts in May 2016, and it was first expressed in an email of 9th June 2016, to Mr Michael Fish at SCTG. Mr Kazzaz’ stated thinking in evidence that he would have been *“best off out if this and getting rid of it”* was subsequent, and was the product of hindsight.

279. As to the general allegation that SCTG ought to have suggested trying to obtain cheaper finance, this was plainly not practical in view of the Trustee’s relationship with the lending bank (SCPB). With this being so obvious, it must be questionable whether the parties could ever have contemplated that the Trustee would, or even could, obtain finance otherwise than from the Bank. Any such duty would thus, in context, be reduced to attempting, perhaps, to obtain more beneficial financial terms from the Bank itself.
280. Insofar as any such duty might nonetheless have attached to SCTG simply from its position in law as a trustee which had made borrowings for a trust, the Jurats have seen no evidence that better financing terms could have been obtained from either SCPB itself (any sooner, at least, than some slight concession as to interest rates was, in fact, granted by SCPB) or comparably from any alternative financier, in all the circumstances. These circumstances, of course, include – from 2012

– Mr Kazzaz’ unfortunate position with regard to corruption proceedings in the USA. The Jurats are not satisfied, therefore, that any breach of duty to consider and suggest seeking such a course caused any loss to the Trust in practice.

281. As to the allegation that SCTG committed a fraudulent breach of trust in delaying the surrender of the ULIP until after 11th March 2016, to enable SCPB to retain the benefit of the whole of the commission which it had received for the referral of the business comprising the ULIP business, the Jurats reject this assertion. They can see no evidence that SCTG’s conduct was motivated by any such consideration, certainly prior to the memorandum mentioned below at [282]. It was denied to have been any consideration by Ms Beebe, an open and frank witness whom the Jurats find to have been honest and credible. The Jurats accept this. In general, SCTG would have had no reason to think about this point whilst administering the Trust, given that it perceived its purpose as being to hold the policy for the benefit of the settlor and the beneficiaries.
282. In November 2015 however, there is an email exchange, internal to SCPB, between Anushka Durrer (successor to Marlon Sawaya as Mr Kazzaz’ relationship manager), Mr Shadadphuri, and Mark Hirst, Global Head of Trust and Fiduciary Services in SCPB in Switzerland, in which Ms Dukker sets out, at Mr Hirst’s request, the four option scenarios, apparently available to SCPB, to “exit” its relationships with Mr Kazzaz and his family. These differentiate exiting the relationship before and after 31st March 2016. For the former, they show a loss for the Bank of a clawback of \$262,468 of commission and a loss for the Client of \$1,791,783 (comprising the sums required to pay off the loan, after receiving the CSV of the ULIP plus the interest payments made on the Premium Loan since its inception). For the latter they show no loss for the Bank, but a loss for the Client of \$1,808,030 – a further \$76,000. The other two options are stated to be gradually exiting over a 12 month period to enable the client to find another bank, or waiting until the death of Sheila and then distributing the proceeds of the ULIP. These are both assessed at no loss to the Bank or for the client.
283. In the event, the relationships were not terminated, and the ULIP was not surrendered before 11th March 2016, but notice of intention to terminate both the banking relationships and, effectively (because the Trust relied on the Premium Loan from the Bank) the Trust relationship, was given in May/June 2016.
284. The Plaintiffs submit that this, and the close and controlling relationship of SCPB over SCTG, show that SCPB and SCTG decided firmly to “exit” the relationships at about this time - and indeed SCTG had apparently wished to do so from even the middle of 2015 - but SCTG deliberately delayed doing so until after 11th March 2016 so as to keep the last tranche of commission for SCPB, thereby fraudulently prioritising SCPB’s interest over that of the beneficiaries of the SAHLK Trust and apparently causing greater loss to the Trust.
285. The Jurats reject this submission. Whilst the memorandum of 16 November 2016 certainly shows that comparison of a surrender before 11 March 2016 would benefit the Bank but cause less loss to the client/the beneficiaries than one effected after 11 March 2016, they find that this memorandum, which was an SCPB document, shows only the various options which could be predicted at the time by SCPB, as a tool for management to decide how to proceed. They do not

find that it shows any fraudulent intent on the part of any personnel at SCTG, and there is in fact no apparent evidence that this memorandum was shared with anyone at SCTG at the time. From exchanges between SCTG (Mr Kelham) and Mr Hirst and other personnel in the Trust and Fiduciary Services section of the Bank itself, they find that SCTG were consulted and informed only on the trust duty perspectives of “exiting” the relationships.

286. From the contemporaneous documents they have noted that SCTG were reluctant, in the light of their trustee duties, to terminate the Trust hastily and precipitate losses for the client, but were willing to and did seek to delay closure of accounts, etc, sufficiently long to enable Mr Kazzaz to find an alternative financier. In the event, Mr Kazzaz rejected an introduction to such an alternative financier from SCPB itself, and preferred to enlist assistance from elsewhere. However, that source did not prove fruitful and with the Bank having withdrawn the Premium Loan facility, and declining to agree further extensions from its original deadline to close the accounts given in May/June 2016, there was default on a payment required under the Facility Letter terms. This entitled the Bank to call in the Premium Loan, and therefore triggered the inevitable surrender of the ULIP, in December 2016.
287. The Jurats conclude that SCTG’s own reaction and preference was consistent with the third option outlined in the November 2015 memorandum. This did, of course, entail the consequence that SCPB would retain the ULIP commission, but the motivation for their delay was to enable the opportunity for the Kazzaz family to transfer their assets smoothly away from the Bank. SCTG itself had no real power in that regard, since its ability to provide the relevant Trustee services depended on SCPB’s being willing to provide finance facilities. The Jurats find, however, that SCTG were conscious of what they perceived to be their trustee duties in this regard (albeit constrained by their concerns regarding regulatory compliance) and were correctly focused on performing that duty. They did not prioritise the retention by SCPB of the commission payments.
288. As to the allegation that SCTG should have considered selling “*the benefit of the ULI Policy on the well-developed global market for the same*” for a profit, against the background that Mr Kazzaz was at all times apparently keen to retain the benefit of the ULIP until after SCPB notified the withdrawal of company and Trust banking facilities in May 2016, the Jurats reject any contention that SCTG owed a duty to consider any such option before that date. It could only be advanced at all in relation to the period between May 2016 and December 2016.
289. The Jurats are not entirely persuaded that the duty of a trustee in the position of SCTG, facing the attitude and contentions of Mr Kazzaz, would extend to giving consideration to a sale of the relevant policy in all the present circumstances, but assuming that it could, the Jurats are not persuaded, by the evidence, that any such possibility (ie the sale to a third party of the benefit of this ULIP, for a sum exceeding the actual current CSV of the policy in all the circumstances) was, in practice available at all, let alone that it could have been achieved within the time constraints imposed by SCPB’s withdrawal of facilities.

290. The Plaintiffs' contention in this regard rests entirely on the expert evidence of the Plaintiffs' witness, Mr Baker. Mr Baker contended that in 2016 there was a "long standing well established and accepted market for the sale of life policies" upon which the ULIP could easily have been sold at (in his opinion) a profitable price. He said that the market was "very large and diverseand has many different purchasers" at any time, with different criteria for purchase, but largely (and unsurprisingly) based on apparent life expectancy. Initially, having discussed the features affecting the price which might be obtained in that market, he appeared to suggest \$15,768,946 as a price for the present ULIP. However, this was in fact only "by way of illustration" of the way in which the tables might be used, and took an arbitrary life expectancy figure for Sheila of 60 months. In a second report he provided an actual figure based on a life expectancy for Sheila of 8.3 years at 2016, as the Plaintiffs had had calculated, by an actuary. This figure was \$13,881,881, notably considerably closer than before to the current CSV of the ULIP at the time, at around \$12.7 million. This postulated sale price is the figure relied on in the Re-amended Cause to found a claim for \$1,161,044 as the alleged basic loss to the SAHLK Trust under this head of claim.
291. Mr Laframboise disputed Mr Baker's fundamental contention that there was such a market at all. Whilst such a market certainly existed in onshore policies, ("onshore" here meaning "domestic" and being relative therefore to Bermuda or at least to the USA, given the currency denomination of the ULIP) there was, in his opinion, no offshore global life settlement market, such as the well-regulated onshore life settlement markets, at all and Mr Baker's evidence and experience related to onshore markets. In fact, Mr Baker did admit, in cross examination, that he had never, at least prior to 2016, advised in relation to, or sold, a high value offshore (from a US perspective) ULI policy such as the present, as contrasted with onshore policies written by US insurers under US law. Mr Laframboise went on to explain why there was no such offshore market, by reference to the differences between onshore and offshore policies, and their attraction as investments, and other factors which would affect the thinking of a potential purchaser, and consequently the value of any such offshore policy. He listed about a dozen points which in his opinion inhibited even the development of any such market. His conclusion, in the end, was therefore that selling the ULIP in mid-2016 was not a feasible option for SCTG, and that, in effect, the option of surrender was the only alternative, if it was not possible to continue the necessary financing arrangements for the premium Loan.
292. The Jurats prefer the evidence of Mr Laframboise to that of Mr Baker. Although it could be said that Mr Baker was "in the market" whereas Mr Laframboise had more of a "back office" role and function forming his experience, the Jurats agreed with Mr Laframboise that Mr Baker's evidence appeared to rest on the assumption that one could simply assume that the way in which the onshore life settlement market behaved and had developed would also apply to the market in "offshore" policies, such as this undoubtedly was. They found Mr Laframboise' evidence and explanation as to why this could not be assumed, and was indeed not the case, to be cogent and persuasive.
293. The Jurats acknowledge the truism of Mr Baker's comment that "*All you need is one buyer*" to effect a sale. However, they consider this to be redolent with the

optimism of the salesman, and it ignores the question of price. The question in this case would be whether market conditions suggested that there would be a hypothetical purchaser willing, in 2016, to pay a price *in excess of the CSV of the ULIP* in order to gain the benefit of the gamble that the policy sum would become payable, not just a purchaser willing to pay “something”. The Jurats find that to be intuitively unlikely, and the evidence of Mr Laframboise, as to the further attendant costs, difficulties and uncertainties, which would be relevant considerations in the acquisition of such a policy in the eyes of a potential purchaser, they find to amply support and reinforce that basic impression.

294. They conclude, therefore, that even if the possible course of action of selling the ULIP to a third party had been considered by SCTG, it would have quickly (and correctly) been discovered to be impractical and not a feasible alternative course of action at all, especially given the time constraints imposed by the SCPB. Any possible fault of SCTG, as a trustee, in failing to consider such an option therefore, they find, caused no loss to the Trust, because there was no benefit to be had.
295. For completeness, in relation to the expert evidence, the Jurats also record that they prefer Mr Laframboise’s evidence as to the likely reaction of Manulife to any discovery of an apparent fraudulent misrepresentation of SK’s personal wealth in the application for the ULIP. Mr Baker opined that if this had been disclosed to Manulife at any time after the inception of the ULIP, then Manulife would have simply canceled the policy and returned the premium, together, quite likely, with a supplemental payment of a small amount in respect of the income earned on the investment of the funds comprised in the premium. Mr Laframboise’s opinion was that whilst Manulife would have certainly canceled the policy, it would have operated the contractual provisions of the policy. It would not have returned the premium in full if not obliged to do so, and would have sought to deduct available contractual deductions such as fees and costs. Its attitude would have been harder in the case of fraud vitiating the policy as opposed to a recognisable innocent mistake.
296. The Jurats find Mr Laframboise’ opinion to accord with the natural expectation of common sense; they cannot see any reason why an insurer should behave leniently or benevolently to an insured who has been revealed to have procured the policy by fraud. In the event, however, they do not think that this finding has any effect on the outcome of the case.
297. The final contention, that it was a breach of duty for SCTG to “*make disclosure to Manulife of the SK Financial Information [sc in the SOWM] or what [sic] the likely consequences would be if Manulife discovered that the SK Financial Information [sic; presumably here meaning the Disclosure Booklet] was false...*” was not left to the Jurats by the Lt-Bailiff. On the Jurats’ findings of fact, she considered it unarguable that SCTG could owe any duty to make any such disclosure, they not being conscious of the discrepancy nor negligent in not being so conscious. In any event, as a matter of law the Lt-Bailiff rules that SCTG could not be liable to Sheila as the settlor of the SAHLK Trust (the other relevant beneficiaries thereby being her privies in this regard) for not disclosing to a third party the falsity of a misrepresentation made by Sheila herself to that third party, and for which she herself was responsible.

Conclusions and consequential points

298. In view of the Jurats' findings that, even to the extent that they find any of the retention complaints might have arguable foundation, no damage had resulted from this, it is not strictly necessary to consider either the question of limitation, or the operation of the exoneration clauses contained in the Insurance Trust Agreement. They are mentioned simply for completeness.
299. First, as the Jurats find that any relevant negligence on SCTG's part was "mere" negligence and not "gross" negligence, the Lt-Bailiff holds that SCTG is entitled to the benefit of Clause 8 (b) of the Insurance Trust Agreement, and incurs no liability in respect of those acts or omissions, in any event.
300. Second as regards limitation, the Jurats have previously found that, Mr Kazzaz and consequently the other relevant Plaintiffs here, had sufficient knowledge of facts which would or might found a complaint of breach of trust against SCTG in respect of taking up the ULIP at the latest by July 2014. They find that the extent of that knowledge was also sufficient to constitute "*sufficient knowledge*" that complaints arising from the continued retention of the ULIP could possibly be mounted. It follows that after at least July 2014, time began to run in respect of such breaches at the moment they must be deemed to have been committed. It follows from this that only retention complaints made in regard to the period after 16 April 2016 (being the "knowledge date" fixed by reference to the Standstill Agreement) can be advanced in these proceedings. Whilst therefore the latter matters of complaint (ie those arising between 16 April 2016 and December 2016), would not be time-barred, the such complaints are nonetheless defeated by the operation of Clause 8(c) and/or the Jurats factual findings that they caused no loss to the Trust in practice.
301. The Claim 1 claims therefore fail for the various reasons given.

Claim 2

Claims of 1st and 5th Plaintiffs as Creditors of the SAHLK Trust.

302. This is a novel point. The claim made by these Plaintiffs is a claim for "*compensation for breach of trust pursuant to section 39(a) and/or 39 (b) [sic]*" of the Trusts Law, ie a claim in identical terms to the claim made by the four Beneficiaries of the SAHLK Trust under Claim 1. It is alleged (para 27 of the Reamended Cause) that the First Defendant's duties as Trustee owed to the Beneficiaries under ss 22 and 23 (etc) of the Trusts Law were "also" owed to these Plaintiffs as Creditors.
303. This is pleaded to arise from the facts that these Plaintiffs gave security to SCPB for the Premium Loan, and that if (as it did) SCPB were to enforce such security against them, they would thereby have become entitled, by operation of law, to an indemnity from SCTG for these payments, such that they were creditors or contingent creditors of the Trust (para 14 of the Reamended Cause: they would have been contingent creditors until payment but actual creditors thereafter). Since the Trust was in fact insolvent from the outset when the ULIP was taken up (its assets then and at all times thereafter being solely the ULIP and its liabilities

being at least the amount of the Premium Loan which was greater than the CSV of the ULIP), it is asserted that the duties of SCTG as Trustee were consequently owed to the First and Fifth Plaintiffs as such Creditors, apparently in addition to the duties owed to the Beneficiaries.

304. The Defences do not admit the allegation of any such duty but otherwise simply repeat the various matters of defence relied on as to Claim 1.
305. In his skeleton argument, and again in his oral closing submissions, Advocate Greenfield submitted that the duties to the Beneficiaries and to Creditors were “aligned” and agreed that this was because they both wanted the same outcome. That appears simply to be a recognition that they, naturally, both wanted the Trust to be administered to the best possible financial result.
306. One might wonder, in that case, what the point of pleading and raising any such alleged additional duty to creditors might be. However, neither the legal basis for, nor the scope or effect of, any such duty, nor the purpose of pleading it as a separate cause of action was investigated at all in the trial; argument was concentrated almost entirely on Claim 1. It is conceivable that Claim 2 might have been perceived as having some separate effect in relation to defences to Claim 1 based on the exoneration clauses in the SAHLK Trust instrument, with an argument that even if SCTG could claim the benefit of these viz à viz the Beneficiaries, it could not do so as against the Creditors, but no such argument was made in practice, perhaps because the Plaintiffs’ claims had been, emphatically, founded in fraud or “gross” negligence.

Relation to Claim 1

307. From the Plaintiffs’ acceptance that any such duty to the Creditors was “aligned” with that owed to the Beneficiaries, it appears that the Plaintiffs accept that Claim 2 rests on the same principles, and quantification, as would govern the claim made in Claim 1 on behalf of the Beneficiaries, and the two claims stand or fall together. The difference in the nominal Plaintiffs would simply be a matter of formulating any relief so as to avoid double recovery.
308. With the Jurats having found no liability to have been incurred by SCTG on consideration of the facts pertaining to Claim 1, and ultimately having done so on the basis that it was not proved that any negligence which was or might have been imputed to SCTG actually caused any loss to the SAHLK Trust, the same result must therefore apply to Claim 2.

Questionable nature of claim as made

309. However, the Lt-Bailiff wishes to record that this should not be interpreted as a finding that the cause of action pleaded on behalf of the First and Fifth Plaintiffs as “Creditors” of the SAHLK Trust is accepted to have been a claim giving rise to a viable and properly pleaded cause. That point has simply been assumed. The Lt-Bailiff is concerned that there appears to be a more fundamental objection to Claim 2 than that it is simply, at least in this case, otiose.

310. The claim is expressly pleaded as a breach of trust claim, made under s 39 (1) (a) and (b) of the Trusts Law. It thus necessarily encompasses an assertion that SCTG owed the duty of a trustee to Mr Kazzaz and to Ask One, in respect of SCTG’s administration of the SAHLK Trust, because of their vulnerability as (effectively) guarantors of the obligation to repay the Premium Loan and associated costs. In time terms, this is alleged, presumably, to have applied from the moment Mr Kazzaz or Ask One became subject to the contingent liability.
311. However, this concept seems to bristle with difficulties. Does it allege that the Creditors thereby became beneficiaries of the SAHLK Trust? This seems bizarre, but if not, what exactly does it mean in trust terms? And how does the Trustee’s duty as Trustee thereafter fall to be performed? It would normally imply a duty of impartiality between beneficiaries, although, in this case, s 29 (1) of the Trusts Law is expressly excluded from the SAHLK Trust.
312. In argument, the basis of the legal submission that such a duty was owed was stated to be a parallel argument to the proposition of company law, that the duties of directors of a company which is insolvent, or on the brink of insolvency, extend to be owed, also, to creditors of the company. Advocate Greenfield relied on the dictum of Commissioner Clyde-Smith in *Re ZII Trust* [2015] JLR 109 at [30] where he said:
- “.....in relation to estates, insolvency brings about a shift towards the interests of the creditors analogous to that seen in company law and a trust that becomes insolvent should thereafter be administered on the basis that it is insolvent, treating the creditors, rather than the beneficiaries as the persons with the economic interest in the trust...”*
313. However, the analogy can, at best, only be loose and high level, since the legal regime with regard to companies is very different from that regarding trusts.
314. As regards the company law position, it is to be emphasised that the duty of directors to have regard to creditors’ interests (to an appropriate extent) is part of the fiduciary duties of a director towards the company. It is not a duty owed to any individual creditor, and does not found a cause of action as such; an individual creditor’s cause of action is to sue for his debt or other liability before liquidation; after that he is relegated to his right to prove for his debt or other liability. The duty to have regard to the interests of creditors is usually, therefore, invoked by the company’s liquidator, by an application made in an insolvent liquidation, claiming breach of the directors’ duties and consequent recompense for the benefit (then) of the unpaid creditors in general. Such a right of action may then be extended to “any creditor” of the company, but that is the product of statute law concerning the insolvency process, and is, again not an individual right.
315. The complications in the company law context arise out of having to interpret any such duty retrospectively, to a time when the company itself was not necessarily insolvent, because any such duty in company law (ie to have appropriate regard to creditors’ interests) arises before actual insolvency ensues. The exact scope and effect of any such duty therefore exercised lawyers for many years, raising questions such as: At what point did such duty arise? Were the interests of the creditors “paramount”? If not, what was the relative weight to be attached to

them? etc. Recently, the proposition was therefore examined by the Supreme Court in the case of *BTI 2014 LLC v Sequana SA* [2022] UKSC 25. The report is long, and does not require analysis here.

316. However, the duties of trustees are not owed to “the trust” as the trust has no separate legal existence: those duties are owed to the beneficiaries. Trusts do not get wound up under an insolvency Law. There is in fact no such thing as an “insolvent trust”; that is simply a convenient shorthand for the situation where a trustee may invoke s 42 (1) of the Trusts Law.
317. Third parties with claims arising out of a trust’s affairs pursue the trustee for redress, but they do so as a matter of their relations created *inter se* by the transaction or matter in issue. In Guernsey Law (but not in English Law) they can be met with a defence that the trustees are liable only to the extent of the trust property: see s 42 (1) of the Trusts Law, which reads

“(1). Subject to subsection (3) where, in a transaction or matter affecting a trust, a trustee informs a third party that he is acting as trustee or a third party is otherwise aware of that fact the trustee does not incur any personal liability and a claim by the third party in respect of the transaction or matter extends only to the trust property.” (emphasis added, because that is the present case).

318. Subs (3) reads

“(3) Nothing in this section prejudices a trustee’s liability for breach of trust or any claim for breach of warranty of authority.”

Subs (3) thus makes it clear that the “limited to trust assets” defence does not affect the trustee’s legal liability for a breach of trust, simply the extent of relief available. Subs (3) does not mean that a claim which is not for a breach of trust is converted into one.

319. A third party’s claim against a trustee in respect of a matter arising from the conduct of the trust’s affairs is not a claim for breach of trust; it is an ordinary claim between arm’s length parties. Moreover, the third party has no direct claim against the trust property. If his legitimate claim is not paid by the trustee, his right is to be subrogated to the trustee’s lien over the trust property by which the trustee is entitled to be indemnified from the trust assets for the personal liability to the third party which he has incurred. This is not a claim for breach of trust, either, and it would seem to be potentially amenable to a s 42 (1) defence.
320. That would seem to be the position here, in relation, at least, to the claim made by Ask One, which is a third party. Its claim does not appear to be a claim for breach of trust, as pleaded or at all. As guarantor of the Premium Loan, Mr Kazzaz’ claim is the same in principle, but since he is also a Beneficiary, his claim may be different, but that has an air of unreality.

321. In short, the Lt-Bailiff has grave reservations as to whether the Claim 2 claims of Mr Kazzaz and Ask One, can be advanced as claims “for breach of trust”, as they have been pleaded. This is not to say that persons in the position of Ask One and Mr Kazzaz, who claim an indemnity from trustees through having been obliged as guarantors to meet financial obligations incurred by the trustees, cannot have any claim against the trustees as regards their conduct of the trust’s affairs in appropriate circumstances, but simply that it is highly questionable whether any such claim can be brought as a claim for breach of trust. Whether it could be brought at all might well be dependent on the particular circumstances of a case, and in any event the possible effect and implications of a s 42 (1) defence upon any such claim would appear to be potentially complex, and would also have to be worked out.
322. However, the above is not a matter for decision in this case. This is because, first, the action has proceeded on the basis that the Claim 2 claims could and should be treated as standing or falling on the same principles as the Claim 1 claims, but second, and decisively, because of the Jurats’ findings that, to the extent that SCTG might have been at fault in its conduct of the SAHLK Trust, that did not itself give rise to any loss to the trust assets. If it did not, it equally was not causative of any loss to guarantors.
323. Claim 2 therefore fails for the reasons given.

Claims 3 and 4

Ask Trust: Claims against SCTG as Trustee in respect of the conduct of Ask One’s affairs

Ask One: Claims against Director in respect of conduct of Ask One’s affairs.

324. These claims can be taken together as they effectively rest on the same allegations. In Claim 3 they are brought as claims made by the Sixth and Seventh Plaintiffs as the current trustees of the Ask Trust, and the First to Fourth Plaintiffs as its beneficiaries, and are formulated as breaches of SCTG’s duties as Trustee of the Ask Trust, with regard to its oversight of the affairs of Ask One, being a company which was an asset of the Ask Trust. Songbird was a wholly owned subsidiary of SCTG and was incorporated for the purpose of being the formal Director of Ask One. In Claim 4 the same complaints are made by Ask One itself (the Fifth Plaintiff) against Songbird, for alleged breach of Songbird’s duties to Ask One as its Director, in the same respects as alleged under Claim 3 against SCTG.
325. Reiterating the background facts, the Ask Trust was declared in a Trust Deed of 19th August 2011 by Mr Kazzaz as Settlor, with an initial settled fund of \$100, with SCTG appointed as sole Trustee, and with the First to Fourth Plaintiffs as Beneficiaries. The shares in Ask Three, the company incorporated for the purpose of holding the family’s intended London flat, were immediately transferred to it, together with funds of around \$900,000 provided to it by Mr Kazzaz as a loan. Subsequently, on 5 September 2013, the shares in Ask One, the company incorporated to hold assets on behalf of Mr Kazzaz’ business and financial interests, previously held in a Cayman Islands Star Trust, were also

transferred into the Ask Trust. It was at this time that Songbird was appointed Director of Ask One, in place of the original Cayman corporate director, Vesey Ltd.

326. The Re-amended Cause recites, at paragraphs 39 – 50, a number of facts and transactions regarding the assets of the Ask Trust, in particular relating to Ask One. These are broadly admitted in the Defences. They have no materiality to the claims made other than as background.
327. At para 52 of the Re-amended Cause, the facts relating to the taking up of the ULIP in the SAHLK Trust, and the Premium Loan funding of the ULIP, pleaded in relation to Claim 1, are repeated, including also the fact that on 27 August 2011 the Ask Trust Trustee (SCTG) executed a Third Party Pledge Confirmation to SCPB, as required by SCPB, in respect of the Premium Loan made to SCTG.

Ask Beneficiaries claims against SCTG

328. The claims then pleaded are that between 5 September 2013 (ie upon taking control of the affairs of Ask One) and 8 December 2016 (when the ULIP was surrendered), the two Defendants owed duties to consider whether Ask One should continue to fund the Premium Loan or to provide the “Loan Security” (ie the Pledge), and that they should each have concluded that Ask One should not do so (paras 53 – 56).
329. (There is a further claim at para 57 against SCTG, that it made distributions out of the Ask Trust without the consent of a Protector - none having been appointed - which is alleged to be contrary to the power conferred by para 1 (b) of Schedule 1 of the Ask Trust Deed, so that those distributions were made without proper authority and in breach of trust. At para 59.1 it is further claimed that SCTG was grossly negligent in failing to appoint a Protector of the Trust. The Defences plead that since (i) the power to appoint a Protector lay with Mr Kazzaz as Settlor under the Trust Deed, (which appears to be correct) and (ii) any distributions had been at the request of Mr Kazzaz as a beneficiary and/or settlor and/or in his capacity as the appointed Investment Advisor to the Ask Trust, any breach of trust is denied. This claim - which does not appear to be strong – was not pursued in skeleton arguments or submissions at the trial, and is therefore presumed to have been abandoned.)
330. The claims then made against SCTG as trustee of the Ask Trust (Claim 3) are characterised (para 58) as being “*gross negligence, wilful default or fraudulent breach of trust by acting deliberately in breach of trust or with reckless disregard for the interests of the Beneficiaries or so as to become party or privy to a fraud*”, and as to which all the allegations previously made with respect to SCTG’s conduct of the SAHLK Trust, including those regarding its inception, are repeated. The breaches of duty in respect of the Ask Trust are then pleaded to consist in (in summary)

- (i) failing to consider (after 5 September 2013) whether the Ask Trust or Ask One should continue to fund the Premium Loan and continue to provide the loan security, or
- (ii) failing to consider whether Songbird was acting in breach of its own duty as Director of Ask One in so continuing, and
- (iii) failing to cause Ask One to remove Songbird as its Director and to bring proceedings against Songbird for acting in breach of such duty, and, lastly
- (iv) failing to consider the consequences of Manulife's discovering that the financial information supplied regarding Sheila had been false.

SCTG's suggested failures to appoint a Protector, and to maintain regular or any contact with the Beneficiaries (thus, it is suggested, failing to take into account the wishes or circumstances of the Beneficiaries at any material time) (para 59) are then further cited in support of the allegation of gross negligence.

331. The losses claimed (at para 77) against SCTG by the Beneficiaries and the current Trustees of the Ask Trust are the aggregate amount of all the payments made by Ask One into the Premium Loan Account from September 2013, plus the amount of the shortfall payment made on the calling in of the Premium Loan in January 2017 (\$1,225 267.80), together with compound interest sufficient to compensate the Beneficiaries for loss to the trust fund, and legal costs and other expenses (not particularised)

Ask One Ltd's claims against own Director

332. The claims made by Ask One against Songbird as Director of Ask One (Claim 4) make the complaint (para 60) that, exercising due skill, care and diligence Songbird should (as it is alleged any competent director would have done) have considered, upon its appointment and thereafter generally by keeping under review, whether ASK One should continue to fund the Premium Loan or provide the loan security, and should have concluded that it should not and/or that Ask One should take all steps available to terminate the loan security whether or not that would have caused the ULIP to be surrendered by SCTG.
333. (There is a further plea of particulars of an unrelated alleged breach of duty by Songbird at para 61, being that it is alleged that within the books and records transferred by it to its replacement director, in about May 2018, there were no records relating to the Premium Loan and its funding or security prior to March 2017, when Ask One paid the shortfall on the Premium Loan (of \$1,225,267.80) after that had been called in and the ULIP surrendered. This is not admitted by Songbird but in any event, no loss or damage is alleged to have been caused to Ask One by this. It is thus apparently invoked merely as evidence.)

334. The losses claimed by Ask One itself against Songbird (para 78) claim the same basic sums as are claimed by the Beneficiaries/Trustees of the Ask Trust against SCTG as former Trustee of the Ask Trust, with an alternative claim of the difference between what Ask One's liability to SCPB actually was (\$1,225,267.80), and what it would have been if the loan security had been terminated and the ULIP surrendered earlier (when it is claimed it should have been), but together, also, with interest on the value lost, sufficient to compensate Ask One for its loss until date of payment, or alternatively interest at 8% under the *Judgments (Interest) Bailiwick of Guernsey Law 1985*, and also, again, legal costs and other expenses (not particularised).

The Defences

335. The Defences, on behalf of both SCTG and Songbird make largely the same pleas, in paras 97 – 98A:
- a. In broad terms, they simply deny the allegations of breach of duty and assert that these allegations fail to take into account the contractual arrangements made between Mr Kazzaz and SCTG as regards the management of the Ask Trust, and the extent of his involvement and control. For example, the Trust Deed constituted Mr Kazzaz the first "Investment Adviser" (Schedule X), as he confirmed in a Letter of Wishes, undated, but plainly given when the Ask Trust was set up. They also invoke the representations and acknowledgements from Mr Kazzaz contained in various documents relating to the establishment of the entities in the trust structure: for example,
 - i. the "Full Trust Client Instruction Letter" of Mr Kazzaz to SCTG dated 7 February 2011, which confirmed that Mr Kazzaz had consulted with independent counsel (Mr Michael Evans of Burges Salmon, in Bristol UK) with regard to the proposed offshore arrangements, instructed the setting up of Ask Three, and contained an indemnity to SCTG in respect of any losses and expenses arising from such instructions;
 - ii. the terms of the Ask Trust Deed of 19 August 2011 itself, which contained exoneration clauses in favour of SCTG in paragraphs 4 and 5 of Schedule IV; and
 - iii. the indemnities given to SCTG in the Instrument of Removal when they were replaced as Trustees in 2018.
 - b. They assert that the transactions by which the ULIP was taken out and financed were entered into at the request or instruction of Sheila, following discussions between her and Mr Kazzaz and SCPB and IPG (as to which the Defences rely on the various documents) and assert that Mr Kazzaz did or ought to have satisfied himself as to the suitability of the intended method of financing the Premium Loan, in accordance with discussions between the above and also his advisors, before establishing the Ask Trust.
 - c. They point out that terminating the ULIP by ceasing to fund the Premium Loan would have lost the death benefit within the ULIP and would have exposed

further assets of Mr Kazzaz and Ask One to action by SCPB to enforce its collateral security.

- d. As regards the allegation against SCTG of failing to consider the consequences of Manulife's discovering the falsity of Sheila's financial information, they admit that this was not considered, because SCTG proceeded on the basis that it was true.
- e. The Defences generally dispute the causation of the claimed losses, asserting that they were caused (i) by the decisions taken by Mr Kazzaz and Sheila and/or their advisors that the ULIP and its funding arrangements were suitable, (ii) by Mr Kazzaz' withdrawals of capital from the funds which were meant to fund the costs of insurance, by Mr Kazzaz' conviction and its consequences, and (iii) in particular by the withdrawal of banking and credit facilities by SCPB – whatever was the reason for this.
- f. They further allege that the claimed losses fail to take into account the benefit of the ULIP cover which was enjoyed from 11 March 2011 to 8 December 2016.
- g. In relation to SCTG the Defences raise the issue of limitation under s 76 (2) of the Trusts Law against the First to fourth Defendants, and aver that claims of the Sixth and Seventh Plaintiffs as the successor Trustees of the Ask Trust are also time-barred because they are fixed with the knowledge of the First to Fourth Defendants.
- h. There is also, then, a general allegation that in the light of various facts pleaded throughout the Defences, the First to Fourth Defendants must be taken to have acquiesced in or consented to the various transactions which are alleged to constitute a breach of duty by SCTG.

336. In his opening Skeleton Argument, Advocate Williams referred to other terms of the Ask Trust Deed, illustrating the defences referred to above. In particular he pointed to Paragraph (a) of Schedule II (General Powers of Trustee) which gave the Trustee power

“to retain any property forming part of the Trust Fund in the actual state or condition in which the same is received by the Trustee for so long as the Trustee shall think fit”.

He submitted that as SCTG had received Ask One into the Trust at a time when Ask One had already granted the loan security to SCPB, and it was therefore in a state of being encumbered with this obligation, that was a complete answer to any claim that SCTG's not taking steps to terminate such security was a breach of duty.

337. He also referred to Paragraph (x) of Schedule II, which, in summary, obliged the Trustee to *“invest the Trust Fund as instructed by the Investment Advisor”* without question, and that doing so should not be a breach of trust, and to Paragraph (y) which obliged the Trustee, if so directed by the Investment Adviser, to secure or grant security over any part of the trust assets *“to secure or guarantee any*

obligation of the Settlor or of a beneficiary or any affiliated entity of those parties” and exonerated and indemnified the Trustee against any “loss sustained by the Trust Fund as a result of such arrangement...”

338. He referred again to the exoneration clauses in Schedule IV already mentioned, (at [335 a. ii]), and to the fact that at Paragraph 6 (b) of Schedule V of the Trust Deed it was expressly provided that Sections 23(b) (duty to preserve and enhance value of trust property), 26 (1) (b) (duty to provide information), 29 (1) (duty of impartiality between beneficiaries) and 39 (1) (b) (liability to compensate for loss of profit, not merely loss, caused by breach of trust) of the Trusts Law should not apply to the Ask Trust.

Discussion

339. It has been appropriate to set out the basis of these claims from the pleadings in this matter because they 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, although they remain on foot on the pleadings.
340. It will be observed, first, that they are expressly confined to the period after 5 September 2013. They thus do not relate to the inception of the ULIP and its associated financing arrangements, but rather to criticisms of the maintenance of the financing arrangements after that time, until this was overtaken by events on 8 December 2016. They are therefore complaints of the same nature as those in Part (2) of Claim 1, although based on different alleged failings.
341. They have two slightly different aspects; the first being (apparently) complaint at the continued fulfilment of requests for payment of charges (loan interest, margin calls and possibly trustee fees, etc) in relation to maintaining the ULIP and thus the SAHLK Trust itself, and the second being the continued acquiescence in the provision of the loan security for this by way of the Pledge of Ask One’s assets.

The findings of the Jurats

342. The Jurats make the following findings. First, as relevant context, they are satisfied that the tenor of the Ask Trust Deed was, indeed, to place a considerable degree of influence over, or even control of, the activities of the Ask Trust, in the hands of Mr Kazzaz. This is apparent from the powers reserved to or conferred upon him. They find this to give the clear impression that, under the regime desired and set up by the Ask Trust, the wishes and decisions of the Settlor, being also the Investment Advisor, were to be taken to be the best interests of the Ask Trust’s beneficiaries.
343. They note that Ask One would appear to have been the main, if not the only, company within the Ask group of companies and the trust structure with income, and thus with resources available to make payments required to maintain the ULIP, which was an integral part of the general wealth management structure which had been put in place at the apparent wish and consent of Mr Kazzaz and Sheila. They also note that this had already been in operation for more than two years when the shares in Ask One were transferred into the Ask Trust itself. They find it significant that Ask One was transferred with the burden of the loan

security, which it is now complained should have been exited, already in place, and apparently having been operated for a considerable period in accordance with the wish and intention of the Settlor and Investment Advisor of the Trust.

344. They note further that the effect of SCTG as Trustee of the Ask Trust, or Songbird as Director of Ask One, doing what it is claimed in the Cause they should have done would be likely, in all the circumstances, to have brought down the SAHLK Trust by entitling and causing SCPB to demand repayment of the Premium Loan, precipitating the loss of the ULIP benefit, and costs and charges similar to those which were incurred, in the end, in December 2016.
345. In assessing what a party obligated to act *en bon père de famille* ought to have done in such circumstances, they consider, once again, that in the actual circumstances which applied to SCTG's performance of its duties under the terms of the Ask Trust, this would be discharged by seeking confirmation, from time to time, from the Settlor (given the circumstances of his role in the operation of the Ask Trust) that the continued implementation or performance of these matters (the payment of the COI and the continued provision of the loan security) was in accordance with his wishes as being in the best interests of the Beneficiaries of the Trust, drawing attention to any points which reasonably sprang to mind for consideration.
346. As the decision to withhold payment of any costs, or to withdraw the Pledge would have been a "momentous" one, given that it would be likely to bring down the SAHLK Trust, the Jurats find that it was not a decision which the Trustee of the Ask Trust could or would be expected reasonably to take totally for itself. It follows that giving the Settlor the opportunity to consider such action would be the highest that the Trustee could be expected to do, and, given that the arrangements had been in place for two years, and apparently operated without demur whilst Ask One was held in the Cayman Star Trust, it might even be a reasonable view that it would only be if there appeared to have been some material change of circumstance that such a duty would arise.
347. The Jurats agree and find that no such consideration, or query from SCTG to the Settlor, as regards the desirability of the continuation of the matters complained of, took place. But assuming, however, that such inaction was a breach of duty, the Jurats find that it in all the circumstances, it amounted to only a very minor negligence. It was certainly not fraudulent, or wanton, or a wilful default or gross negligence and, once again the Jurats take the view that such negligence did not cause any loss to the Trust in practice.
348. This is because at all times prior to the actual calling in of the Premium Loan in December 2016, the Jurats find that if the point had been raised, based on the evidence, it is entirely reasonable to expect that Mr Kazzaz' instructions would have been to continue funding the ULIP, as in fact happened. That is because he still wanted to maintain it, and even after May 2016, when he said that the family would have been "*best off out of it and getting rid of it*", he was still wanting to keep it up, even if for the purpose of possible disposal; he was not thinking of cutting losses by abandoning or withdrawing the necessary finance; Mr Kazzaz' complaints at that time were never that the benefit of the policy was not desirable, but always with regard to the unpalatable costs of maintaining it. He accepted,

even if under protest, that these had to be paid and the Premium Loan maintained and he was never of a mindset to jeopardise the Premium by instigating a default.

Consequential points

349. The Jurats' finding that any breach of duty within the ambit of Claim 3 caused the Ask Trust no loss is sufficient to dispose of Claim 3. However, for completeness, the Lt-Bailiff holds that, as the Jurats have found that any negligence on SCTG's part was not gross negligence, SCTG is entitled to invoke the benefit of the exoneration provisions contained in Paragraph 4 (a) and possibly 5(a) of Schedule IV or the Ask Trust Deed, and incurs no liability in respect of those acts or omissions, in any event.
350. Second and again for completeness, as regards limitation, the Lt-Bailiff asked the Jurats whether they regarded their findings that the knowledge of Mr Kazzaz (and consequently the Second, Third and Fourth Plaintiffs as discussed above at [248]) was sufficient "knowledge" within the meaning of s 76 (2) of the Trusts Law to start time running against such Plaintiffs in respect of Claim 1, was also sufficient "knowledge" to start time running against such Plaintiffs in respect of this Claim 3. The Jurats so confirmed. This finding would therefore apply to Claim 3 insofar as any acts complained of predated 16 April 2016.

Effect of the position of the Sixth and Seventh Plaintiffs

351. The Plaintiffs argued, though, that as the Sixth and Seventh Plaintiffs had no relevant knowledge before the date of their appointment as successor Trustees of the Ask Trust in May 2018, (indeed, their evidence suggested that, even now, they had little knowledge of anything and were not even aware that they were named as Plaintiffs rather than merely being witnesses, in this action), the Claim 3 claims are not time-barred, because those Plaintiffs are within time to advance them, having only been acquired less than three years before the commencement of the proceedings.
352. Advocate Williams disputed this. He relied on *Jefcoate v Spread Trustee Company (2103)* Royal Court Judgment 11/2013 where, at [85] Collas B said

"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 s 76 (2) 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".

He submitted that this supported the proposition that, in this case, the time period relevant to Claim 3 must be the date of knowledge of the First four Plaintiffs.

353. Whilst the sentiment is in harmony with the proposition that a succession of trustees cannot affect the running of time, it is notable that the *Jefcoate dictum*

still refers to the “claimant” whose cause of action is under consideration. However, the trust structures, their participants, and the part played by each of them in the *Jefcoate* proceedings is difficult to discern from the report.

354. Nonetheless, the Lt-Bailiff prefers Advocate Williams’ submissions. It cannot be right, as she said to Advocate Greenfield during the hearing, that a beneficiary whose own claim for breach of trust against a trustee is time-barred can escape that impediment and obtain the benefit of the period of time being re-set by procuring the removal of that trustee and the appointment of a successor trustee with no such existing knowledge.
355. Whilst the proposition cited above from *Jefcoate* is not sufficiently clearly on all fours with the present case to justify relying on it with certainty, Advocate Williams’ submission does seem to be intuitively correct. It would be bizarre and unfair if a claim for breach of trust which had become time-barred and extinguished in the hands of the beneficiaries of the trust were resuscitated by the appointment of a replacement trustee, which is what has occurred here. The true analysis, in the judgment of the Lt-Bailiff, 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.

Conclusions on Claim 3

356. The Lt-Bailiff holds, therefore, that only Claim 3 matters of complaint occurring after 16th April 2016 can be advanced in these proceedings, but whilst there are some such matters, which would accordingly not be time-barred, those claims are nonetheless defeated by the operation of Paragraphs 4 (a) or 5 (a) of Schedule IV of the Trust Deed, and/or the Jurats factual findings that they caused no loss to the Ask Trust in practice.
357. The separate complaint regarding failure to inform Manulife of the falsity of the financial information regarding Sheila is dismissed by the Lt-Bailiff for the same reasons as given in regard to Claim 1 (see [297]).

Conclusions on Claim 4

358. The above deals with Claim 3. As regards Claim 4, there is no practical distinction between the complaints made in Claim 3 and those made in Claim 4. Songbird was incorporated as a wholly-owned subsidiary of SCTG, in effect to carry out SCTG’s functions in the management of Ask One. The self-same facts and complaints are relied on as in Claim 3, and Claim 4 simply formulates a claim (against Songbird) focused on the mechanism which would have had to be used by SCTG to perform the duty to the Ask Trust of which breach is alleged in Claim 3.

359. Considerations of the duties of Songbird on the facts are therefore materially identical to those applying to SCTG in Claim 3. The duties of a Director to act in the best interests of the company (insolvency considerations do not apply to Ask One), would be similar, and certainly no higher than, the duty of a trustee to act in the best interests of its beneficiaries. The Jurats findings therefore do not differ. Whilst the limitation period in respect of Claim 4 would *prima facie* be six years under the *Law Reform (Tort) Guernsey Law 1979* s. 4 rather than three years under the *Trusts Law* s 76, Claim 4 fails, in any event upon the Jurats findings that the alleged breaches of Songbird's duties as a Director caused no loss to Ask One in any event.
360. Claims 3 and 4 therefore fail for the reasons given above.
361. In the circumstances it is unnecessary to consider the further defence of the Defendants alleging acquiescence.

Final Determination

362. In the event, therefore, all the Plaintiffs' claims in this action fail. There is therefore no need to consider the Defendants' Counterclaim and the Claims are dismissed.
363. The parties should attempt to agree an appropriate order, including any order relating to costs. If they are unable to do so, then they should make written submissions on costs to the Lt-Bailiff, to be served and filed within 14 days of the handing down of this judgment. The Lt-Bailiff would propose to deal with the issue of costs on paper unless either party requests a hearing.

22nd September 2023