

Trusts – Preliminary Issue – Declaration of Trust – The Three Certainties – Written declaration of Trust by settlor – Construction of the Declaration of Trust – Construing Declaratory Relief.  
Declaration granted.

**[2025]GRC057**

**IN THE ROYAL COURT OF GUERNSEY  
(ORDINARY DIVISION)  
Civil Ref: 2556**

**Between:**

**(1) JANE DEBORAH FRASER**

**(2) APIC TRUSTEES LIMITED**

**(in its capacity as the sole trustee of The Victor Ashdown Guernsey Settlement)**

**Applicants**

**-and-**

**MARK VICTOR ASHDOWN**

**(personally and in his capacity as executor of Victor William Ashdown deceased)**

**Respondent**

**Before: Jessica E Roland, Deputy Bailiff**

**Judgment handed down: 18 July 2025**

**Counsel for the Applicants: Advocate A C Lyne**

**Counsel for the Respondent: Advocate G K Bell**

**Cases, texts, legislation referred to:**

Woodhead v Bougourd (Judgment 30/2010)

In the matter of the C Trust [2013] GLR 105

Patel v Patel (36/2016)

In the matter of K Trust [2020] GLR 312

Jones v Maynard [1951] Ch. 572

Re Gulbenkian's Settlements [1970] AC 508 at page 552

Hunter v Moss [1994] 1 W.L.R. 452

Investors Compensation Scheme Ltd. v. West Bromwich Bldg. Socy. [1998] 1 W.L.R. 896

Dhingra v Dhingra (1999) 2 ITEL 262

T Choithram International SA and others v Pagarini and others [2001] 1 W.L.R. 1

OT Computers Limited (in administration) v First National Tricity Finance Limited (2003) 6 ITEL 117

Re Lehman Brothers International (Europe) [2010] EWHC 2914 (Ch)

Ong v Ping [2015] EWHC 1742 (Ch)

Gill v Thind [2023] EWCA Civ 1276

Lewin 20<sup>th</sup> Edition

## Introduction

1. This is the first part of an application by Jane Deborah Fraser (“Jane”) and APIC Trustees Limited (“APIC”) and ( together “the Applicants”) pursuant to Section 69 of The Trusts (Guernsey) Law, 2007 (“the Trusts Law”) and/or the inherent jurisdiction of the court for a declaration that pursuant to a declaration of trust made by Victor William Ashdown on 9 August 1994, 50% of the shares in Sylvan Holdings Ltd (“Sylvan”) are held on the terms of the Victor Ashdown Guernsey Settlement (“Jane’s Trust”).

## Brief Factual Background

2. Jane and the Respondent, Mark Victor Ashdown (“Mark”), are the surviving children of Victor Ashdown (“Victor”) who died at the age of 94 on 25 July 2022 and his wife, Betty who died on 29 November 2008. Mark is the executor of Victor’s estate and is joined in both his personal capacity and in his capacity as executor of Victor’s estate.
3. Victor was a successful businessman. He was born 3 May 1928 and built up his business, primarily in the hospitality and leisure industries in England, in partnership with his late brother, Ivor Edwin Ashdown. Victor and Betty moved from the UK to Guernsey in 1989, primarily for tax efficiency reasons.
4. Victor and Betty set up the following five trusts:-
  1. The Victor Ashdown Discretionary Settlement established on 18 December 1984 for the benefit of Mark and his children (terminated in 2016 with assets transferred to what is now the Granite Trust);
  2. The Victor Ashdown Grandchildren Settlement established on 19 December 1984 for the benefit of Mark’s son, Nicholas (“Nick”) (terminated in 2016);
  3. The Victor Ashdown Trust for Mark (known as “Mark’s Trust”) established on 14 December 1989 for the benefit of Mark and after his life, Nick (terminated in 2016 with assets transferred to what is now the Granite Trust);
  4. The Victor Ashdown Guernsey Settlement (known as “Jane’s Trust”) established on 30 March 1994 for the benefit of Jane and her children; and
  5. The Victor Ashdown Property Trust established on 23 June 2003 for the benefit of Mark, Victor, Betty, Ruth (Mark’s wife) and Nick. This trust changed its name on 25 October 2016 to the Granite Trust.
5. Jane’s Trust is a discretionary trust made by an Instrument of Settlement dated 30 March 1994 made between Victor as settlor and Victor and Betty as trustees. Victor and Betty were replaced by Fort Trustees, pursuant to an Instrument of Appointment, Retirement and Indemnity dated 30 August 2015. Fort Trustees were subsequently replaced by APIC who are the current trustees pursuant to an Instrument of Appointment, Retirement and Indemnity of Trustees dated 6 November 2018. The proper law of Jane’s Trust was changed from Guernsey law to Jersey law on the 23 May 2019.
6. Mark’s Trust was also a discretionary trust. The original trustees were Pannell Kerr Forster Trustee Company Limited, the trust company of the firm of accountants Victor had sought

advice from on his move to Guernsey. Victor and Betty subsequently became trustees of Mark's Trust (possibly on the 16 December 1996) but were not at the relevant time.

7. On 27 April 2022, by which time Victor was living in a care home in Jersey, Paul Fraser ("Paul"), Jane's husband, visited Victor's house and found various items at Victor's house in Guernsey. In his first affidavit he describes Victor's office as being in a disorganised and messy state with no discernible filing system. Relevantly, in a drawer in Victor's desk he found a booklet containing 9 pages of Victor's handwritten notes and a blue file with a post-it note fixed to it with the handwritten words "*Jane's Trust*" containing a number of documents. Contained in the blue file was a document which appears to be the minutes of a trustees' meeting. The minutes are dated 9 August 1994, in handwriting which appears to be Victor's (the "9 August 1994 Minutes"). The heading of this document is a mixture of what appear to be pro forma typed minutes with handwritten additions by Victor.
8. The 9 August 1994 Minutes say: "MINUTES OF A MEETING OF THE TRUSTEES OF THE VICTOR ASHDOWN JANE TRUST HELD AT BEINFAIT (sic) RUE DU PUTRON ON THE DAY OF AUGUST 9 1994 AND TRUSTEES OF THE VICTOR ASHDON (sic) TRUST FOR MARK." The underlined words have been handwritten by Victor. In the pro forma typed standard agenda items, it notes that Victor and Betty are present, appoints Victor as Chairman and notes the minutes of the previous meeting were read and approved. In an item "ADDITIONAL FUNDS" it has a pro forma response: "IT WAS RESOLVED to accept the sum of £.... Mr V Ashdown as an additional sum to be added to the Trust Fund". There is a further typewritten item "ANY OTHER BUSINESS: There being no further business the Chairman declared the Meeting closed." There is then a handwritten note 'COPIES OF MEETING ATTACHED' and it is signed as Chairman with a signature which both parties accept is Victor's.
9. On headed notepaper, which Paul says was the next document in the blue file, headed "*Victor & Betty Ashdown*" with Victor and Betty's address and telephone number, there is a handwritten date "AUST 9 1994". It then sets out in handwritten text: "TO WHOM IT MAY CONCERN THE SHARES IN SYLVAN HOLDINGS LTD ARE NOW TO BE HELD IN MARKS AND JANES TRUST (sic). Then it lists: "FRIENDLY INNS LTD ASHDOWN CATERS (sic) LTD OLDE WORLD INNS LTD SEVEN WONDER WORLD TOURS (sic)". It is signed by Victor and dated "AUGUST 9 1994". I will refer to this as "the Document" in the remainder of this judgment. When Paul showed the Document to Jane on his return to Jersey, she says it was the first time she had seen it. Mark says the first he knew of the Document was in October 2022 when it was sent to him under cover of a letter dated 4 October 2022 from Ogier (who act for Jane).
10. Sylvan is a Guernsey registered non-cellular company registration number 25943 with its registered address being of its registered agent, The Fort Group at Bordage House, St Peter Port, Guernsey. Sylvan was first incorporated and registered on 2 October 1992 under the name Chateaux des Tielles Ltd. The name of the company was changed on 23 March 1994 to Sylvan. Sylvan owned 50% of the shares in Friendly Inns, the other 50% being owned by Victor's brother. As evidenced by a board minute dated 23 March 1994, Victor and Betty became directors of Chateaux des Tielles on that date and the previous directors resigned. At the same time, Victor was appointed as company secretary, Bienfait (Victor and Betty's home address) became the registered office and five shares of £1 were transferred to Betty and 95 shares of £1 were transferred to Victor. This was all the issued share capital in Sylvan. On the same day, Betty declared that she held the five shares as nominee and trustee for Victor. Only limited information is known by either Mark or Jane about Ashdown Caterers Ltd, Olde World Inns Ltd, Seven Wonders (World Tours) Ltd which appear to be the other companies listed in the Document beneath Friendly Inns Ltd.
11. On 1 July 2010, after Betty's death, the 5 shares in her name were transferred into Victor's name. The stock transfer form was executed by Victor as executor of the Betty Ashdown Estate.

On 1 January 2015, Victor executed a stock transfer form transferring the shares into Mark's name. On 25 October 2016, Victor tendered his resignation as director and company secretary of Sylvan. There is a board minute of the same date which records that the registered office would change from Bienfait to Bordage House with the registered agent as Fort Management Services Ltd rather than Victor. Mark was appointed as director and company secretary. On 2 February 2018, Fort Ltd and Elton Limited were appointed as directors.

12. The parties agree that Victor did not administer any of the trusts associated with his family with the diligence and attention to proper record keeping that would have been found if there had been a professional trustee.
13. As I have set out above, the parties agreed that the declaration sought by the Applicants should be dealt with as a preliminary issue. The parties cooperated to provide a combined list of facts indicating what was agreed and what was not agreed. Also before the Court were two affidavits of Jane dated 14 March 2024 and 14 October 2024; two affidavits of Paul dated 14 March 2024 and 14 October 2024; an affidavit of Sarah McBrearty dated 15 March 2024, all on behalf of the Applicants. On behalf of the Respondent, there was an affidavit of Mark dated 30 May 2024; an affidavit of Nick dated 29 May 2024; an affidavit of Anthony Bird dated 30 May 2024; an affidavit of Joseph Ensink dated 30 May 2024; an affidavit of Marianne Ashdown (Mark's wife) dated 29 May 2024 and an affidavit of David Jeffery dated 11 October 2024.

## The Law

14. Section 6 of the Trusts (Guernsey) Law, 2007 provides that:

*“6. (1) Subject to subsections (2), (3) and (4), a trust may be created-*

- (a) by oral declaration,*
- (b) by an instrument in writing,*
- (c) by conduct, or*
- (d) in any other manner whatsoever.*

*(2) A unit trust may be created only by an instrument in writing.*

*(3) A trust of real property situated in Guernsey may be created only by an instrument in writing.*

*(4) Nothing in subsection (3) –*

*(a) applies in relation to a trust of real property created before the commencement of this Law, or*

*(b) affects the creation or operation of resulting, implied or constructive trusts.*

*(5) No technical expressions are needed for the creation of a trust.”*

15. The parties agree that the leading authority in Guernsey on the principle of construction of Trust Instruments is the Court of Appeal decision *In the matter of K Trust* [2020] GLR 312 and in particular, the following paragraphs at paragraph 30:

*“30. As to the applicable principles on the construction of trust instruments, the clarity and precision of the guidance given by Page, Commr. In In re Internine Trust remains entirely apposite. As set out in that judgment, the learned Commissioner stated (2005 JLR 236, at paras. 62-63):*

62. *The correct approach to the task before the court is to a large extent the same as it is for any instrument the meaning of which is in contention:*

*(i) the aim is to establish the presumed intention of the maker(s) of the document from the words used: in the present case, there being no settlor signatory, the maker must be taken in each case to be the trustee-or possibly the trustee and Sheikh Abdullah as the parties to the letters of instruction which conferred authority on the trustees to execute the declarations of trust (it makes little difference which in the present case);*

*(ii) words must, however, be construed against the background of the surrounding circumstances or “matrix” of facts existing at the time when the document was executed – a principle that has been a bedrock of English law since the judgment of Lord Wilberforce in *Prenn v. Simmonds* ([1971] 1 WLR 1381) and appears now to have been accepted as also properly reflecting the approach that this court should adopt in relation to such matters;*

*(iii) the circumstances relevant and admissible for this purpose are those that must be taken to have been known to the maker at the time or, where there are more than one, known to the makers of or the parties to the document, and include (to use the language of Lord Hoffmann in *Investors Compensation Scheme Ltd. v. West Bromwich Bldg. Socy.* ([1998] 1 W.L.R. 896, at 913), from whose speech only Lord Lloyd of Berwick dissented) – “. . . absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man”;*

*(iv) evidence of subjective intention, drafts and negotiations and other matters extrinsic to the document in question is inadmissible, as is evidence of events subsequent to the making of the instrument (evidence of this kind being relevant where an estoppel is said to arise but not in this jurisdiction, unlike some others, as an aid to construing the original meaning of the document);*

*(v) the critical provisions, cll. 2(b), 6(c) and 6(f), as with all words and phrases, have to be read in the context of the document as a whole;*

*(vi) words should as far as possible be given their ordinary meaning: “Loyalty to the text of a commercial contract, instrument, or document read in its contextual setting is the paramount principle of interpretation”: per Lord Steyn in *Society of Lloyd’s v. Robinson* ([1999] 1 W.L.R. 756, at 763); and*

*(vii) this last precept may, however, have to give way if consideration of the document as a whole, having regard to the principles set out above or common sense, points to a different conclusion: “common sense” in this context being best reflected by the passage from the speech of Lord Reid in *Schuler (L.) A.G. v. Wickman Machine Tool Sales Ltd.* ([1974] A.C. 235, at 251) in which he observed:*

*“The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result the more unlikely it is that the parties can have intended it, and if they do intend it the more necessary it is that they shall make that intention abundantly clear.”*

*(See also Lord Steyn, again in *Society of Lloyd’s v. Robinson* ([1999] 1 W.L.R. at 763), and Lord Hoffmann’s observations in the *Investors Compensation Scheme* case (2) concerning the need, on occasion, for a court to accept that the parties must have used the wrong words or syntax.)*

## **Parties’ Submissions**

16. Both parties accepted that a Guernsey trust may be created orally, or by an instrument in writing, or by conduct. Equally, the principle of the three certainties as to the creation of trust apply under Guernsey law (see *Bougourd and Woodhead* 30/2010 at paragraphs 114 to 118) i.e. there must be certainty of words, certainty of subject matter and certainty of objects<sup>1</sup>.
17. The Applicants say that the Document amounts to a declaration of trust over the shares by Victor or Victor and Betty. They rely on the paragraph 3-004 of *Lewin 20<sup>th</sup> Edition* where it says:

*"The first method of creating a trust is for the settlor to declare himself to be a trustee of property belonging to him. If the property is in his own name, he simply makes a declaration. The settlor is presumed to intend the consequences of his or her words and actions (Ong v Ping [2015] EWHC 1742 (Ch) at [63] (affd [2017] EWCA Civ 2069; [2018] W.T.L.R. 1365), applying Swiss Bank Corp. v Lloyds Bank Ltd [1982] A.C. 584 at 595–596, CA). If the intended trust property is held by nominees or other trustees for the settlor, he directs the nominees or trustees to hold it on the intended trusts. In either case the settlor must identify the property to be settled."*

18. In the matter of *Patel v Patel* (36/2016), Sir Richard Collas set out (at paragraph 93) the legal position regarding the transfer of assets into trust:

*"The legal position on the transfer of assets into trust is clear; so long as the trustee "has under his control everything necessary to constitute his title completely without any assistance from the donee or settlor, the donee or trustee needs no assistance from equity either, and the gift is complete, or the trust is properly constituted" Lewin 3-037. A trustee cannot be bound to accept a gift. Acceptance by the trustee may be either express or implied and where there is ambiguity, the doubt is resolved in favour of the trust."*

19. The Applicants say that Victor and Betty were the legal owners of the Sylvan shares and Victor was the beneficial owner of all of the shares, therefore it was not necessary to transfer the shares into the trust. The Applicants' position is that the Document is a declaration by Victor as settlor of the shares he owned in Sylvan and those held by Betty as his nominee, to himself and Betty as trustees of Jane's Trust with respect to 50% of the Sylvan shares. They submit that there can be no doubt that this includes Betty's 5% shareholding. They say this is the case because she was present at the meeting and thus, was a declaration by both Betty and Victor but, in any event, as Betty had already declared a trust over these shares for the benefit of Victor, Victor was able to make the declaration and direct Betty, as his nominee, to transfer the shares. The fact that they were not the trustees of Mark's Trust and purported to have a trustees' meeting of his trust does not undermine the Document. As Victor and Betty were not trustees of Mark's Trust at the time, as a consequence of the declaration of trust, they held Mark's shares as bare trustees for Mark's Trust. The 9 August Meeting Minutes provides context and background.
20. Victor knew he and Betty were not the trustees of a trust called the Mark and Jane Trust. He knew that such a trust did not exist on 9 August 1994 nor is there any evidence that it was ever intended that there should be a trust of which Mark and Jane were to be beneficiaries. At the time of the execution of the Document, he was settlor of Mark's Trust and Jane's Trust. Further, the declaration of trust made in the Document is in the context of the meeting of 9 August 1994, as recorded in the 9 August 1994 Minutes which purports to be a trustees' meeting of these two trusts. The Applicants say that there is no other interpretation on an objective basis other than the shares were to be held in Mark's and Jane's Trusts (both of which are fully

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<sup>1</sup> See *OT Computers Limited (in administration) v First National Tricity Finance Limited* (2003) 6 ITELR 117, 124-25.

declared by trust instrument). They say this makes sense and satisfies the certainty of object. The use of the word “now” means that it was clearly intended that the declaration was immediate. There is no basis for saying that it was a statement of intent or any other sensible construction of what Victor meant by the word “now”. There is nothing in the Respondent’s argument that “to whom it may concern” might undermine the effectiveness of the declaration of trust in the Document. It shows that it would be relied on by third parties in the future and supports the Applicants’ position that the intention in the Document that it is a declaration of trust.

21. Read together, the Applicants submit that the correct interpretation to the words of the Document is an unambiguous and immediate declaration of trust. Applying the principles set out in the *K Trust*, the words used articulate a clear statement that the shares are to be held in Jane’s Trust and in Mark’s Trust immediately. There are no words connoting that it was to happen in the future, nor any words expressing uncertainty, conditionality or contingency.
22. The Applicants say that the relevant matrix of fact supports this construction and there is no evidence to contradict this interpretation, including Victor’s layman’s style of record keeping. Jane says at paragraphs 49 and 50:

*“49. Although I have only recently come to know more about the administration of Jane’s Trust, the manner in which my parents administered the trust (and particularly my father) is not at all surprising to me. Although my father was a successful businessman, his strength and acumen was in developing and operating businesses in the property, hotels and leisure sectors. He was less concerned about the keeping of records.*

*50. It is important to note that my father also had a tendency from an administrative perspective to keep or record assets and accounts in his personal name rather than to expressly note that he was holding such in his capacity as trustee.”*

23. Exhibited to Mark’s evidence, there is a letter from PKF (who both parties acknowledge were professional advisers to Victor) dated 8 June 2001 to Mr E Evans (who appears to be a Bristol based accountant) about correspondence between the Administrator of Income Tax and Mr Evans about Victor’s tax affairs, where under a heading “Trust of Jane” it says:

*1.1 I note the queries a) - e) on the Administrator’s letter concerning the trust for Jane. It appears that the Administrator is not pursuing the earlier line that this trust was also revocable. However, the Administrator clearly wants to be a complete nuisance and is obviously looking to undermine the trust accounts and perhaps show that the interest income still belongs to Mr Ashdown in his personal capacity*

*1.2 The work we performed in preparing the accounts involved reviewing and copying all the various bank statements and so we have on file the necessary copies of bank statements in support of the accounts and we have prepared summary schedules which support the numbers in the accounts. In identifying accounts belonging to the trust for Jane we relied very heavily on our interviews with Mr Ashdown.*

*1.3 The opening mandates requested in b) may therefore not make it clear that the accounts were for the trust for Jane. Also, it is unlikely that there is complete documentation (see d)) demonstrating that the title was transferred by Mr Ashdown in his personal capacity to himself in his capacity as a trustee.*

*1.4 Perhaps you have already discussed the letter with Mr Ashdown and I will be happy to provide any assistance you require. One approach might be to arrange a meeting with the Tax Office to discuss these issues. For example, they may accept the reasonable argument that now that the trust accounts have been prepared, Mr Ashdown is going to better formalise the capacity in which he is holding the trust assets and that he will set about doing this as soon as possible and then provide the relevant*

*evidence. It would be reasonable for the Tax Office to accept that in the intervening years the assets were held on trust albeit the supporting documentation was lacking.*

24. This evidence of Jane and the PKF letter are part of the matrix of fact of how Victor treated the trust assets and dealt with the trusts administration. This contrasts with evidence of subjective intention, drafts, negotiations and other matters extrinsic to the Document which are inadmissible, as is evidence of events subsequent to the making of the Instrument. This means despite Victor's apparent treatment of the shares as his own including the purported transfer of the shares to Mark, this is all inadmissible as evidence of how the Document should be interpreted. The Applicants also rely on Gill v Thind [2023] EWCA Civ 1276 where Lord Justice Arnold at paragraph 66 says:

*“The judge was right to say it is not entirely clear what Mr Gill meant by “for the moment” but it may have been a threat to act inconsistently with the trust. Even if it was, a threat to act inconsistently with a trust is not a denial of the existence of the trust.”*

Once the trust is constituted, the settlor cannot unilaterally change his mind and “undo” the trust but, in any event, they say there is no evidence of any revocation or renegeing on the declaration of trust over the shares in Sylvan made on 9 August 1994 contained in the Document.

25. The Applicants say the subject matter over which the declaration of trust was made is not in doubt i.e. it is the 100 shares in Sylvan. There is no issue with regard to the identification of which shares the Document is referring to. There is, thus, certainty of subject. They submit that apportionment of the value of the shares between the two trusts is straightforward. The principles set out in Jones v Maynard [1951] Ch. 572: “[i]f you cannot find any other [justice], equality is the proper basis”, are relevant here. They say on simple construction of the words used and the only one which makes sense, one half of the value of the shares should be applied to the benefit of Mark's Trust and the other half to Jane's Trust. They also rely on the maxim “equality is equity” (see Snell's 34<sup>th</sup> edition 5-012). The Respondent's argument that the shares in Sylvan cannot be apportioned is misconceived.
26. Further, they say Mr Justice Briggs (as he was then) in Re Lehman Brothers International (Europe) [2010] EWHC 2914 (Ch) which is a case relied on by the Respondent supports the Applicants' arguments that the Court should not allow this declaration of trust in the Document to fail for uncertainty where he says at paragraph 245:

*[245] The law does not lightly allow contracting parties' purposes and intentions to be defeated by supposed uncertainty, and there is in my judgment no reason why the law should do so any more readily than normal merely because the issue is as to the validity of an intended trust. On the contrary, the law commonly recognises the creation of a trust as a necessary consequence of an intention that parties should share property beneficially, in circumstances where the parties themselves have given no thought at all to the terms of the consequential trust, if indeed they even recognised its existence. In all such cases the law fills the consequential gaps by implication, and by importation of generally applicable principles.*

27. Further, relying on the Privy Council decision of T Choithram International SA and others v Pagarini and others [2001] 1 W.L.R. 1, the wording of the Document is a gift, and equity should not strive to defeat it. Even though subsequently, he did not treat the shares of Sylvan as trust assets, Victor having made the declaration that he did in the Document, made a declaration of trust over 50% of the shares in Sylvan for the benefit of Jane's Trust and having done so could not unilaterally undo it.

28. The Applicants say if they are successful in obtaining the declaratory relief that they seek, immediate orders should be made in the terms set out in paragraphs 2 and 3 of their application dated 13 March 2024 i.e. that Mark is ordered to transfer the shares to APIC within fourteen days of the declaration being made and that APIC is authorised and directed to take all necessary and reasonable steps to follow and recover the shares so as to give effect to the terms of any orders.
29. In response to the application, the Respondent says that the Document does not create a trust over 50% of the Sylvan shares for Jane. Whilst he agrees that a trust can be created by transfer of the property to trustees or by declaration of a trust by the owner of property in respect of that property, the Respondent says there was no transfer in this case and the terms of the Document cannot be construed as a declaration of a trust by Mr and Mrs Ashdown.
30. The Respondent says that the Applicants' case fails on a number of bases. He argues that the Document cannot be construed as a declaration of trust by Victor and Betty because it is addressed "*to whom it may concern*" i.e. to an unidentified third party rather than for example, "*I/we declare that I/we hold...*". Also, the words "*are now to be held*" take the form of a direction to a third party rather than the declaration by the maker of the statement nor does it make clear by whom the shares are to be held. The words indicate an action to be taken rather than a declaration that it is presently effective and show a lack of certainty of intention. This can be compared, unfavourably, to Betty's declaration of trust over the 5 shares only a few months before.
31. Betty was not a signatory to the Document nor does the Document indicate that she was a party to it. Neither Victor nor Betty were trustees of Mark's Trust at the time, nor is it directed to the actual trustees. In addition to section 7 of the Trusts Law, he relies on clause 2.21 of the Jane's Trust settlement deed which says under the definition of "the trust fund" that it means:
- 2.2.1 the Sum and all money investments and property paid or transferred to or into the control of the Trustees and accepted by the Trustees as additions to the Trust Fund whether by way of further settlement or accumulation of income or capital accretion or otherwise and*
- 2.2.2 the investments and property from time to time representing the same.*
32. The Respondent also says that there is no evidence that the trustees of Jane's Trust (who were Victor and Betty) have accepted the shares as trust assets and that this serves as evidence of a lack of intention to create a trust. Further, there is no evidence of acceptance of any Sylvan shares by the trustees of Mark's Trust (who were not Victor and Betty).
33. He also argues that the purported declaration of trust in the Document does not refer to a trust that exists. The actual words are "*Marks and Janes Trust*". There has never been a trust with this name, nor has there ever been a trust of which Mark and Jane were both beneficiaries. It raises a question of whether it is supposed to connote the creation of a new trust for the both of them. In any event, it will require the words in the Document to be substantially rewritten to achieve the declaratory relief sought by the Applicants and, therefore, fails as a matter of construction, as well as for lack of certainty. These failures cannot be resolved by reliance on equitable maxims. On the agreed facts, Victor took no action at all connected with or attributed to the purported declaration of trust in the Document, but treated them as his own until he transferred the shares to Mark absolutely. He argues that the Sylvan shares were only ever treated as being owned by Victor and Betty and then Victor solely after Betty's death.
34. Nothing was done in relation to the Document nor was it known about until it was discovered in April 2022. The Respondent says he is not relying on subjective evidence of what Victor

said or thought about the shares. Rather, he relies, properly, on the objective evidence of what Victor did with the shares. These actions demonstrate a lack of certainty of intention to create a trust and, as such, are admissible evidence. No-one, including Victor, treated them as trust assets (of either Mark's Trust or Jane's Trust), including when he transferred the shares to Mark in 2015. This includes no mention of the shares in the accounts for 1999 signed off by Victor and Betty for the Jane's Trust nor are the shares referred to in any of the other accounts for Jane's Trust or in the Schedule of Assets prepared for Income Tax which lists the Sylvan shares as being owned directly by Victor and Betty. The Respondent also relies on the affidavit executed by Victor on the day he signed his will, dated 12 May 2015 and a lawyer's attendance note dated 28 November 2014 following a meeting between Victor and his lawyer in anticipation of his will and his affidavit being executed. This attendance note specifically refers to Victor telling his lawyer that he intended to transfer the Sylvan shares to Mark prior to his death which he did approximately 5 weeks after this meeting later. The Respondent also relies on the affidavit of Mr Ensink who confirms that there was no mention by Victor of the shares ever forming part of Jane's Trust (or Mark's Trust) and the facilitation by Fort of the transfer of the shares to Mark (the corporate directors of Fort being corporate director of Sylvan). He says Victor presented himself as the sole legal and beneficial owner of the Sylvan shares. The Respondent argues that this is all admissible evidence that Victor did not intend to make a declaration of trust and supports the argument that the terms of the Document fail as a declaration of trust for the first of the three certainties.

35. The Respondent submits that *Ong v Ping [2015] EWHC 1742 (Ch)* is a useful authority for this case because it demonstrates that the court's investigation and objective enquiry into the existence of the trust was not limited to the words used in the trust instrument. Similarly in this case, there is a question of whether the trust exists in the first place, whereas the parole evidence rule applies only to the meaning and interpretation of a trust document. The Respondent says, in any event, the Applicants in the evidence before the Court rely on matters that post-date the Document, including the state of Victor's record keeping.
36. The Document does not say how many shares are to be held on which trust. As well as failing to pass the test of certainty of subject matter, this is also relevant to the construction of the Document. The failure to specify how many shares are to be held for each of Mark's Trust and Jane's Trust or the proportions in which they were to be held, or indeed, whether they were to be held jointly, strongly suggests, that the Document was not intended to be a declaration of trust and is fatal to the arguments of the Applicants on construction. The maxim "*equality is equity*" does not permit the court to supply wording to save a trust which fails for a lack of certainty. The Respondent relies on *Lehman Brothers International (Europe) (ibid)* at paragraph 225 under the heading "*The Principles*", where it says:

*iii) A trust of part of a fungible mass without the appropriation of any specific part of it for the beneficiary does not fail for uncertainty of subject matter, provided that the mass itself is sufficiently identified and provided also that the beneficiary's proportionate share of it is not itself uncertain.*

37. Thus, he says at a bare minimum there must be a declaration of each beneficiary's proportion of the shares - see paragraph 243 of *Lehman Brothers International (Europe) (ibid)* where Briggs J says:

*"Subject matter certainty requires not only that the identity of the shared fund is certain, but also that the proportionate amount of each alleged beneficiary's share is also certain. Thus, an uncertainty as to the terms upon which LBIE and its affiliates were to bear any shortfall would be destructive of the necessary certainty of each affiliate's beneficial share in the securities remaining in LBIE's depot account. In truth,*

*uncertainty as to terms in this context means, or inevitably leads to, uncertainty as to beneficial subject matter.*

38. In this case, Victor's declaration is not sufficiently certain. It does not specify how the shares are to apportioned between the two trusts and there is no common intention, therefore it is not sufficiently certain and must fail. Further, to say, as the Applicants are doing, that this means one half of the value of the shares go to Jane's Trust and one half to Mark's Trust, requires reading words into the Document which are not there. The Document must be read as a whole and the interpretation which the Applicants require means the court rewriting Victor's words and therefore, the court should decline to grant the declaratory relief.
39. The Respondent also submits that the Applicant faces a further problem where the Document does not just refer to Friendly Inns, which was a subsidiary of Sylvan, but also refers to the three other companies. The Applicants speculate in Jane's affidavit that any proceeds from the sales of closures of these companies "*in all probability flowed into Friendly Inns*" (at paragraph 78 of Jane's first affidavit). However, there is no evidence of this nor of their relevance to the purported declaration of trust. The Respondent says the application fails on the basis of the three certainties, as well as on the arguments put forward on construction by the Applicants.
40. The Respondent says if, contrary to his arguments, the Applicants are successful in obtaining the declaratory relief sought in paragraph 1 of the application, the relief in paragraphs 2 and 3 is not automatically consequential and has been adjourned sine die. There needs to be a further case management conference to deal with the relief sought in these paragraphs.

## Discussion

41. As the parties accepted, much of the evidence before the Court was irrelevant to the preliminary issue, however, the agreed facts provided the evidential basis for the preliminary issue to be decided.
42. Although this hearing was foreshadowed as a hearing about the construction of the Document, it was as much a hearing on the three certainties. I was referred to *Woodhead v Bougourd 30/2010* which confirmed, if it was ever in doubt, that the three certainties exist in Guernsey law. It is notable that in *Woodhead v Bougourd*, where an express trust was not one of the arguments put forward by counsel in that case, Deputy Bailiff Collas (as he was then) invited submissions on whether an express trust had been created when the sum of £75,000 was paid to Mr and Mrs Woodhead (the divorcing defendants) by Mr and Mrs Bougourd, the parents of Mrs Woodhead for the purchase of a property. The Jurats were satisfied that although the parties did not employ terms such as "trust", "trustee", "settlor" or "beneficiary", the common intention shared by the parties was sufficient to satisfy the first of the three certainties required of an express trust. As the Jurats were also satisfied that the other two certainties required were present, the court found there was an express trust.
43. As *Woodhead v Bougourd (supra)* demonstrated, no particular form of expression is necessary for the creation of a trust if it can be gathered that a trust was intended. However, it is not enough that the settlor describes the transaction as a trust if on its proper construction the transaction was not intended to operate as a trust. It is also the case that the settlor is presumed to intend the consequences of his words and actions. The declaration of trust must make it sufficiently clear who are the beneficiaries or what is the object to which the trust property is to be applied (*Lewin* 5-045) and a living settlor who wishes to create a trust must, with sufficient clarity, identify the property to be subject to it (*Lewin* 3-005). Lindsay J at page 265 in *Dhingra v Dhingra (1999) 2 ITELR 262* sets out five propositions which are useful to remember here (although the references to *Snell's Equity* are to a previous edition):

*“There are five brief propositions that one ought to have in mind as stemming from that work. First of all, as far as concerns personalty, which is what we are here concerned with, a declaration of trust may be by word of mouth or even inferred from conduct, (Snells Equity page 123); secondly, no particular form of words is necessary, (Snells Equity page 124); thirdly, where the property in relation to which the trust is declared is already in the name of the declarer of the trust, the trust is, as it is put, “Completely constituted the moment that the trust is declared”, (Snells Equity page 121); fourthly, once the trust is completely constituted it can be enforced by a beneficiary even if he or she is a mere volunteer (Snells Equity page 120). The notion that equity will not assist a volunteer therefore has no application in this case because this is a case where a trust was declared and therefore was completely constituted from its first moment of existence; fifthly and lastly, in general a completely constituted trust cannot be revoked by the settlor unless the settlor has reserved a power of revocation in the settlement itself, (Snells Equity page 127). Those are elementary propositions which need to be borne in mind as the story unfolds.”*

44. This case is not a situation where either party alleges that the trust was a ‘sham’ but rather whether it was Victor’s intention to declare a trust. The recent English Court of Appeal case of *Gill v Thind* (*ibid*) is very helpful in this context of this case. Lord Justice Arnold held:

*55. What must be proved is an intention to create a trust. If A asserts that a declaration of trust has been made by B in a document, the claim might be analysed in two stages. First, A would have to prove, on the balance of probabilities, that B had signed the document. Secondly, A would have to persuade the court that the document, properly interpreted, constituted a declaration of trust. In principle, a similar two-stage analysis applies if A asserts an oral declaration of trust by B. First, A has to prove, on the balance of probabilities, what B said. Secondly, A has to persuade the court that this demonstrated an intention to declare a trust.*

*56. The principal difference between these scenarios is that, in the case of a documentary declaration, the first stage of the analysis involves a question of fact whereas the second stage is a question of law, and evidence as to B’s subjective intentions and subsequent conduct is not admissible at that stage; whereas, in the case of an oral declaration, the questions of what was said and what was intended by it are both questions of fact, and evidence as to B’s subjective intentions and subsequent conduct are admissible: compare the position concerning oral agreements (and agreements made partly in writing, partly orally and partly by conduct) as explained by Lord Hoffmann in *Carmichael v National Power plc* [1999] 1 WLR 2042 at 2049A-D and 2050H–2051C.*

45. Here, there is no oral declaration, nor is there a question over whether the Document was executed by Victor, therefore it is necessary to move straight to what Lord Arnold called “*the second stage*”, and ask the question does the Document, properly interpreted, constitute a declaration of trust? This is a question of law where the evidence of Victor’s subjective intentions and subsequent conduct is not admissible. The critical question is to determine the intention of Victor, by reference to the words used, in accordance with the principles of construction. The question must be determined as at the date of the document declaring the donor's intention and as the authorities set out, if the court is satisfied that the alleged declarant had the requisite intention it will strive to validate it. The words in the Document must be construed against the background of the surrounding circumstances or matrix of fact.

46. In addition to the principles set out in *Re K*, in considering this matter I remind myself of some of the principles identified in *Investors Compensation Scheme Ltd. v. West Bromwich Bldg. Socy.* [1998] 1 W.L.R. 896 at 912 which Deputy Bailiff McMahon (as he was then) set out in *In the matter of the C Trust* [2013] GLR 105:

(2) *The background was famously referred to by Lord Wilberforce [in Prenn v. Simmonds ([1971] 1 W.L.R. 1381)] as the ‘matrix of fact,’ but the phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.*

.....

(4) *The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see Mannai Investment Co Ltd v. Eagle Star Life Assurance Co Ltd [1997] 3 All E.R. 352, [1997] 2 W.L.R. 945.*

(5) *The ‘rule’ that words should be given their ‘natural and ordinary meaning’ reflects the commonsense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had.”*

47. At paragraph 23 of In the matter of the C Trust (*ibid*) Deputy Bailiff McMahon sets out:

*“Further general guidance is found at the end of the judgment of Bingham, M.R. in Arbuthnott v. Lagan (1) ([1995] CLC at 1400):*

*“Courts will never construe words in a vacuum. To a greater or lesser extent, depending on the subject matter, they will wish to be informed of what may variously be described as the context, the background, the factual matrix or the mischief. To seek to construe any instrument in ignorance or disregard of the circumstances which gave rise to it or the situation in which it is expected to take effect is in my view pedantic, sterile and productive of error. But that is not to say that an initial judgment of what an instrument was or should reasonably have been intended to achieve should be permitted to override the clear language of the instrument, since what an author says is usually the surest guide to what he means. To my mind construction is a composite exercise, neither uncompromisingly literal nor unswervingly purposive: the instrument must speak for itself, but it must do so in situ and not be transported to the laboratory for microscopic analysis.”*

48. *Lewin* at paragraph 7-011 is also helpful where it says:

*“The surrounding circumstances of matrix of fact can and must be taken into consideration in interpreting the settlement. This is not to contradict vary or alter its terms but to apply them particularly to identify persons and things referred to. Moreover the circumstances or facts admissible for this purpose are objective external facts; they do not include direct evidence of the subjective intention of the settlor except in a case of latent ambiguity.”*

49. Part of the surrounding matrix of fact in this case, is Victor’s administration of his affairs, including the trusts of which he was settlor. Although a successful businessman, Victor and

Betty were lay people in terms of dealing with trusts. Victor used professional advisers for setting up Mark's Trust and Jane's Trust but undertook the administration of Jane's Trust from the outset and he and Betty took over the administration from PKF of Mark's Trust (although had not at the time of the Document). The parties broadly agree Victor's administration of the trusts were in a state of disarray and that how and when trust assets were transferred into the trusts remains somewhat opaque. This included Victor maintaining trust assets in his own name. Fort Ltd and Elton Ltd became trustees of both trusts in 2015. Mr Ensink's affidavit says that at the time of handover to Fort "*The trust and company records and documents presented to me were very messy, incomplete, and had missing or outdated statutory documents and accounting records.*"

50. The Document is handwritten, and both parties accept it is in Victor's hand. Although it was the document following the 9 August 1994 Minutes, the Document does not refer to a meeting. The minutes state "*copies of meeting attached*" which seem to refer to the Document, although it was not attached. The 9 August 1994 Minutes purport to be a meeting of Mark's Trust, however, as I have said neither Victor nor Betty were trustees of Mark's Trust at the time. There was no trust of which Mark and Jane were both beneficiaries. Jane is the beneficiary of only one trust i.e. Jane's Trust.

51. In considering the construction of the Document, the matrix of fact also includes the way Victor expressed himself. For example, in the three documents which are said to be minutes of trustees meeting, Victor has misspelled the name of his and Betty's home. The two relevant trusts are normally referred to as Mark's Trust and Jane's Trust, as they are the principal beneficiaries of these two trusts, although the proper names of the trusts are the Victor Ashdown Trust for Mark and the Victor Ashdown Guernsey Settlement, respectively.

52. In the minutes of 3 March 1994 (the "3 March 1994 Minutes") the heading is:

"MINUTES OF A MEETING OF THE TRUSTEES OF THE VICTOR ASHDOWN GUERNSEY SETTLEMENT HELD AT *BEINFAIT (SIC) RUE DU PUTRON* ON THE *MAR 3 DAY OF 1994 & VICTOR ASHDOWN TRUST GUERNSEY*".

53. Again, I have underlined the handwritten additions. Other than the pro forma items to which has been added, at the bottom of the minutes beneath the pro forma: "*there being no further business the Chairman declared the meeting closed*", it says in Victor's handwriting: "COPIES OF MEETING ATTACHED MONIES FROM THE SELL(sic) OF GREENHALL BONDS". It is then signed by Victor as Chairman.

54. The next document appears to be on the same Victor and Betty headed notepaper as the Document. It is dated "MAR 3 1994". It then says, "*THE MONIES RECEIVED FROM THE INTENDED SELL (sic) OF GREENHALL 7% BONDS BETTY AND I HAVE DECEIDED (sic) TO PUT INTO MARKS & JANES TRUST V W ASHDOWN B.D.ASHDOWN*" and then it appears to be signed by both Victor and Betty. There is a series of figures which appear to be the calculations for the prices received from the sale of the Bonds from February 25 – June 2 (although it does not say the year). Jane's Trust was not declared until 30 March 1994.

55. In the 20 August 1997 minutes (the "20 August 1997 Minutes") Victor has hand amended the pro forma, such that it reads:

"MINUTES OF MEETING TRUSTEES OF THE VICTOR ASHDOWN TRUST & FOR *MARK ASHDOWN TRUST*  
MINUTES OF A MEETING OF THE TRUSTEES OF THE VICTOR ASHDOWN *JANE*  
GUERNSEY SETTLEMENT HELD AT *BEINFAIT (sic) RUE DE PUTRON ST P P*  
*GUERNSEY ON THE 20 DAY OF AUGUST 1997*".

Again, nothing has been added to the pro forma items until after the pre-drafted text “*There being no further business the Chairman declared the meeting closed*” where it says in Victor’s handwriting:

*“IT WAS DECIDED TO TRANSFER SHARES THAT I OWN IN (RYAN HOTELS IRELAND) INTO THE TRUSTS OF MARK & JANE”.*

It is signed by Victor as Chairman

56. I have set out in detail these minutes, in addition to the 9 August 1994 Minutes and the Document itself, not as extrinsic evidence of what was meant in the Document, but as part of the factual matrix of Victor’s use of language, spelling, grammar and references to the trusts. When the language used in an instrument gives rise to difficulties of construction, the job of the court is to decide what a reasonable person in the circumstances of the parties, would have understood the parties to have meant by using the language which they did. This is a document written by a lay person without the benefit of legal advice or other professional assistance. Despite the lack of grammar and misspelling, it is my duty to give a reasonable meaning to the language Victor has used “*without doing complete violence to it*” (see Upjohn LJ in *Re Gulbenkian's Settlements* [1970] AC 508 at page 552). It seems to me that properly construed, Victor and Betty in August 1994 intended to make a declaration of trust over the shares for the benefit of Mark and Jane. Further, having set up separate trusts for their benefit, that it was their intention that these shares would form part of their respective trusts. I consider, taking into account the matrix of fact and what Victor (and Betty) knew at the time of the execution of the Document, objectively what I understand the reference to “Marks and Janes Trust” to have meant by Victor, is the trusts that have been historically referred to as Mark’s Trust and Jane’s Trust but which in turn, are the Victor Ashdown Guernsey Settlement established on 30 March 1994 (for the benefit of Jane and her children) and the Victor Ashdown Trust for Mark established on 14 December 1989 (for the benefit of Mark and after his life, Nick).
57. The Document starts “*To Whom it may concern*” which suggests that Victor wanted to write a formal letter or notice but did not know exactly to whom it should be addressed. Contrary to the submissions of the Respondent, I do not consider that this introduction undermines the effect of the Document.
58. A settlor who wishes to create a trust must, with sufficient clarity, identify the property to be subject to it. The Document refers to “*the shares in Sylvan Holdings Ltd*”. Victor was the legal and beneficial owner of 95 shares in Sylvan, Betty was the legal owner of 5 shares but had executed a declaration of trust over her shares for the benefit of Victor so that she held them as trustee and nominee for Victor in March 1994. I consider there is no difficulty in identifying the shares over which Victor had control and had power to direct. They were all shares of the same company and of the same class of share, equally interchangeable. Further, as a matter of construction at the time of the execution, I consider that given its ordinary meaning this means that “*the shares in Sylvan Holdings Ltd*” were the 100 shares in Sylvan.
59. Although the Document also includes references to other companies (although with apparent spelling errors) which may or may not have been subsidiaries of Sylvan, the full picture is not known by either of the Applicants or the Respondent. I do not consider that this undermines my conclusions. The Document is focused on the Sylvan shares and not the other companies. Further, the interpretation is at the date of the Document and is not based on the ignorance of the parties in 2025 of the other companies referred to and their relationship with Sylvan.
60. The more difficult question is the issue of the proportions of the shares to go to each of the beneficiaries and whether or not this should cause the declaration of trust to fail for uncertainty

on this basis. I agree with the Respondent that cases about husbands and wives or co-habitees are of limited assistance here. The complexity following the insolvency of Lehman Brothers is also very different from the scenario in this case, nevertheless, the general principles identified in the *Lehman Brothers International (Europe)(ibid)* by Briggs J, as well as those set out in *Hunter v Moss [1994] 1 W.L.R. 452* are a useful starting point. Taking into account that Victor and Betty have deliberately set up the trusts (Jane's Trust only months beforehand) so that their two children and their respective families were treated separately, in the absence of any express unequal division and in the absence of any evidence to the contrary, a reasonable person would infer that Victor's intention and motive at the time of the Document was that his two children would benefit and that this was to be on an equal basis i.e. 50 shares each and not as joint owners of the 100 shares. Therefore, I do not consider that the Document fails for uncertainty of subject matter. Further, as a matter of construction "*THE SHARES IN SYLVAN HOLDINGS LTD ARE NOW TO BE HELD IN MARKS AND JANES TRUST*" taken in the context of the Document as a whole and in the context and background that it was made and the other principles of construction, I am satisfied that the objective intention of Victor at the time, was for the Sylvan shares to be held separately in the two trusts which he had settled for his children with each of his children's trusts having half of the shares each.

61. The Document states that the shares "*are now to be held*". The Respondent accepted at the hearing that arguing that this was anything other than a direction which was to take place immediately was difficult. In my view, it is clear that by the use of the word "*now*", it was intended to take place forthwith even though the Document was not provided to the then trustees of Mark's trust nor the shares transferred to them.
62. I recognise that Victor did not treat the Sylvan shares in accordance with the declaration of trust in the Document, however, I have come to the conclusion that at the time of the Document, he intended to create a trust over the shares for the benefit of Jane's Trust and Mark's Trust. In relation to Jane's Trust of which he and Betty were trustees, once declared, it was properly constituted. It would be unconscionable and contrary to the principles of equity to allow him to resile from his gift. As Lord Browne-Wilkinson said, at page 11 paragraph H of *T Choithram International SA v Pagarini [2001] 1 W.L.R. 1*: "*Although equity will not aid a volunteer, it will not strive officiously to defeat a gift.*" I also acknowledge that by coming to this conclusion it will mean that things will need to be undone which had been done in reliance on Victor's treatment of the shares as his own, and although the relief is limited to the declaration sought by Jane, it will have implications for the gift to Mark's Trust (which is no longer in existence) too. Although Advocate Lyne opined what would be the effect on the gift to Mark's Trust as Victor and Betty were not, at that time, the trustees of his trust, as the application was for a declaration in relation to shares and Jane's Trust and I did not hear full argument on this, I will not come to a conclusion on this issue here.

## Conclusion

63. For the reasons I have set out above, I have come to the conclusion that pursuant to a declaration of trust made by Victor William Ashdown on 9 August 1994 in the Document, 50% of the shares in Sylvan Holdings Ltd ("Sylvan") are held on the terms of the Victor Ashdown Guernsey Settlement ("Jane's Trust"). Having come to that conclusion and considering the applicable law on declaratory relief, I consider that it is an appropriate exercise of my discretion to grant the first part of the application i.e. a declaration in the form sought by the Applicants.
64. By Consent Orders dated 9 August 2024 and 13 September 2024, the parties agreed that the declaration should be dealt with as a preliminary issue and the remaining relief would be adjourned sine die, therefore it was surprising that Advocate Lyne sought for me to deal with these as being "automatic" without further notice to the Respondent. I will leave it to one of

the parties to return the remaining parts of the application to an Interlocutory Court on appropriate notice to the other side.

### **Costs**

65. With regard to the costs, if the parties can agree an appropriate order, they are invited to do so. If agreement cannot be reached, either party can list the matter before a suitable Interlocutory Court, with a view to making an application in respect of the costs of this application.