

ENGLAND AND WALES / JUDGMENT

Ashraf Mengrani v Ilyas Mohamed & Anor

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Neutral Citation Number: [2025] EWHC 1131 (Ch) IN THE HIGH COURT OF JUSTICE CHANCERY DIVISION BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES PROPERTY, TRUSTS AND PROBATE LIST Case No: PT-2023-000852 Royal Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL Date: 09/05/2025 Before : Chief Master Shuman

- ----- Between : ASHRAF MENGRANI

- and -

(1) ILYAS MOHAMED

(2) NASIMA MOHAMED (in their capacity as Trustees)

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- ----- Claimant/Respondent Defendants/Applicants Elizabeth Grace (instructed by Squire Patton Boggs (UK) LLP) for the Applicant Crispin Hayhoe (instructed by Starck Uberoi Solicitors) for the Respondent

- ----- Approved Judgment This judgment was handed down remotely at 3pm on 9 May 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. CHIEF MASTER SHUMAN CHIEF MASTER SHUMAN Approved Judgment CHIEF MASTER SHUMAN: Mengrani v Mohamed 1. 2. 3. 4. 5. 6. The defendants have made two applications. The first brought by application notice dated 8 November 2023 challenges jurisdiction asserting that the purported service of the claim form on the defendants on 11 October 2023 was invalid (“the jurisdiction application”). The defendants rely on the first witness statement of Mariyam Harunah, solicitor, dated 8 November 2023. The claimant opposes the application and relies on the witness statement of Olegas Petrikas, solicitor, dated 20 November 2023. The defendants also originally sought to argue that the claim should be struck out as an abuse of process or that there should be a stay pending determination of cross complaints by the parties to the Pension Ombudsman. By the time of the hearing the Pension Ombudsman had declined jurisdiction and this was no longer an issue. The second, brought by application notice dated 31 May 2024, which is in the alternative, seeks a stay of the proceedings in order for the parties to take certain steps that it is said are necessary for there to be effective non-court based dispute resolution, (“the stay application”). The claimant opposes the application for an immediate stay. It relies on the witness statement of James Incledon, solicitor, dated 24 July 2024. The defendants rely on the second witness statement of Mariyam Harunah,

solicitor, dated 7 August 2024. Notwithstanding that it was the defendants who made these applications it was the claimant writing to the court that led to the applications being listed for hearing. Following the hearing of the applications I had a note sent out to the parties asking them to consider whether section 1140 of the Companies Act 2006 ("section 1140") was relevant to the first application. I also referred them to the decision of Chief Master Marsh in *Key Homes Bradford Ltd & Ors v Rafik Patel* [14] 1 WLUK 79. There was a further hearing where the parties' made submissions on section 1140. The Background 7. 8. 9. 10. The claimant is the brother of the first defendant. The second defendant is the wife of the first defendant and therefore the sister-in-law of the claimant. On 6 May 1980 the family company, now known as S & I Electronics Limited, company number 01495378 ("the Company") was incorporated. It carries on business as a wholesaler. The claimant and the first defendant were directors of the Company. In 1998 the Company set up the Jamal Retirement and Death Benefit scheme, a defined contribution occupational scheme. It is a small and self-administered scheme. It is governed by a trust deed dated 4 December 1998 and a deed of amendment dated 5 April 2006 ("the Scheme"). All beneficiaries are also trustees of the Scheme. The purpose of the Scheme is to provide benefits to the claimant and the defendants on termination of service, retirement or upon death. The claimant and the defendants are the only members and beneficiaries of the Scheme. They are also the three trustees responsible for managing the Scheme. CHIEF MASTER SHUMAN Approved Judgment *Mengrani v Mohamed* 11. 12. 13. 14. 15. 16. 17. The Scheme's assets have a value of approximately £3.5 million. They are held in three ways: real property, shares and cash. In 2013 the parties' relationship broke down and they have been estranged since that date. The claimant and the first defendant were directors of the Company until the claimant resigned his directorship on 23 December 2014. Since that time the first defendant has been the sole director of the Company. In 2015 the Scheme's former professional trustee, Edward Kingsley of Bespoke Corporate Pensions Ltd, resigned. Since then the defendants have had day to day management of the Scheme. An independent financial adviser, Stephen Evans of Evans Hart Ltd continues to manage the Scheme's share portfolio. According to the defendants' solicitors he also helped with the preparation of the Scheme's annual accounts until 2018. Thereafter the defendants have prepared the annual accounts, and an accountant was appointed in 2022. The claimant's case is that, before he issued the claim, the last annual accounts that he received for the Scheme were for the financial year ending 5 April 2018. Between 2020 and 2021 there was extensive correspondence between the parties' solicitors concerning issues about the Scheme and the use of its assets. For example, one allegation is that the freehold property known as Jamal House, 14 to 16 Stanhope Road, London N12 9DT ("Jamal House"), which is an asset acquired by the Scheme in 2003, has been occupied by the Company rent free or at a nominal rent for over 10 years. There is an issue between the parties as to whether the claimant had agreed to this position. There are also issues as to whether Jamal House is encumbered, it being suggested at one stage that the brothers' father may have a proprietary interest. The defendants say that any information that was requested has been provided¹. So, with that 'snapshot of the background' and allegations by the claimant, that he has been provided with limited information and an incomplete

picture, he seeks an account of the Scheme. This is with a view presumably, when the Scheme is valued, for the claimant to exercise his statutory transfer right or to take a pension commencement lump sum from the Scheme. It is noted that in his complaint to the Pension Ombudsman the claimant said that he had attained 55 years, his normal retirement date, in 2019 and since then he has been trying to draw down a lump sum and transfer his benefits out of the Scheme. The claim was issued on 5 October 2023. His solicitors are recorded on the claim form as Starck Uberoi. He is said to be suing in his capacities as trustee and beneficiary. The defendants' position is that this claim was unnecessary. Had the claimant taken steps to ensure that his letter before claim was received by the defendants they would have "confirm[ed] their willingness to respond to reasonable requests for further information/documents by way of an account"². All of this makes the claim before the court perplexing. Both parties are saying that they are trying to resolve this matter, this would appear to be a paradigm case for using non-court based dispute resolution, or at the very least narrowing the issues. The jurisdiction application 1 Mariyam Harunah's witness statement dated 8 November 2023, paragraph 5.5. 2 Mariyam Harunah's witness statement dated 8 November 2023, paragraph 5.7. CHIEF MASTER SHUMAN Approved Judgment Mengrani v Mohamed 18. 19. 20. 21. The address given in the claim form for both defendants is 17 Haslemere Gardens, London N3 3EA ("17 Haslemere Gardens"). They are both sued in their capacity as trustee. The certificate of service in form N215 is dated 11 October 2023 and says that the claim form and associated documents were served on the defendants personally, "delivered by hand to the usual residence of the first and second defendants at 6.49pm on 9 October 2023". Under the second column it is recorded that this is the usual residence of the defendants. The certificate is signed by Olegas Petrikas, solicitor. In addition, the claimant's solicitors forwarded the claim form and documents including the response pack to the defendants' solicitors that they had corresponded with 2 years previously. Further the documents were also sent to the first defendant by email. It is not suggested by the claimant's solicitors that either of the last two steps constitute valid service. Although it is submitted that, contrary to the defendants' position, the claim certainly came to the attention of the defendants. In the defendants' application the reason given is, "Purported service of the claim form on the defendants within the jurisdiction is invalid. The defendants are not domiciled within the jurisdiction and the address at which service purportedly took place is not their usual residence". Legal test 22. The relevant parts of the Civil Procedure Rules 1998 are as follows, CPR rule 6.3— Methods of service "r 6.3(1) A claim form may be served by any of the following methods—

- (a) personal service in accordance with rule 6.5;
- (b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with Practice Direction 6A;
- (c) leaving it at a place specified in rule 6.7, 6.8, 6.9 or 6.10;

- (d) fax or other means of electronic communication in accordance with Practice Direction 6A;
or
- (e) any method authorised by the court under rule 6.15.” CPR rule 6.5 – personal service “r 6.5(3)) A claim form is served personally on—
 - (a) an individual by leaving it with that individual;” CPR rule 6.9 –Service of the claim form where the defendant does not give an address at which the defendant may be served. CHIEF MASTER SHUMAN Approved Judgment Mengrani v Mohamed “r 6.9(1) This rule applies where—
 - (a) rule 6.5(1) (personal service); ... do not apply and the claimant does not wish to effect personal service under rule 6.5(2).
- (2) Subject to paragraphs (3) to (6), the claim form must be served on the defendant at the place shown in the following table. NATURE OF DEFENDANT TO BE SERVED
 - 1. Individual
 - 2. Individual being sued in the name of a business
 - 3. Individual being sued in the business name of a partnership
 - 4. Limited liability partnership
 - 5. Corporation (other than a company) incorporated in England and Wales
 - 6. Company registered in England and Wales
 - 7. Any other company or corporation PLACE OF SERVICE Usual or last known residence. Usual or last known residence of the individual; or principal or last known place of business. Usual or last known residence of the individual; or principal or last known place of business of the partnership. Principal office of the partnership; or any place of business of the partnership within the jurisdiction which has a real connection with the claim. Principal office of the corporation; or any place within the jurisdiction where the corporation carries on its activities and which has a real connection with the claim. Principal office of the company; or any place of business of the company within the jurisdiction which has a real connection with the claim. Any place within the jurisdiction where the corporation carries on its activities; or any place of business of the company within the jurisdiction.
- (3) Where a claimant has reason to believe that the address of the defendant referred to in entries 1, 2 or 3 in the table in paragraph (2) is an address at which the defendant no longer resides or carries on business, the claimant must take reasonable steps to ascertain the address of the defendant’s current residence or place of business (“current address”).
- (4) Where, having taken the reasonable steps required by paragraph (3), the claimant—

- (a) ascertains the defendant's current address, the claim form must be served at that address; or CHIEF MASTER SHUMAN Approved Judgment Mengrani v Mohamed
- (b) is unable to ascertain the defendant's current address, the claimant must consider whether there is—
 - (i) an alternative place where; or (ii) an alternative method by which, service may be effected.
- (5) If, under paragraph (4)(b), there is such a place where or a method by which service may be effected, the claimant must make an application under rule 6.15.
- (6) Where paragraph (3) applies, the claimant may serve on the defendant's usual or last known address in accordance with the table in paragraph (2) where the claimant—
 - (a) cannot ascertain the defendant's current residence or place of business; and
 - (b) cannot ascertain an alternative place or an alternative method under paragraph (4)(b). 23. 24. The claimant elected to serve the defendants at their, "usual or last known residence", so CPR rule 6.9 is the crucial rule. There is a very helpful analysis of the law concerning usual or last known residence in the notes to rule 6.9 in the White Book 2024, the claimant's knowledge of that residence and the duty on the claimant to take reasonable steps to ascertain the current address. There is little disagreement between counsel on this. 25. Paragraph 6.9.3.1, "The rule contains no guidance in relation to such concepts as "usual or last known residence" presumably because they are fact specific. Guidance as to the proper approach can be gained from *Relfo Ltd (In Liquidation) v Varsani* [2009] EWHC 2297 (Ch). The claim form was not served personally on the defendant but on his father at an address in London which was owned by the defendant and his wife and occupied by his wife and family. One of the grounds on which the defendant challenge the validity of service was that notwithstanding the ownership and occupation of the property, he worked and resided in Kenya and spent no more than a small fraction of his time at the property. On the evidence, the family were united but the defendant had to work in Kenya and spent a month of the year in the property on holiday. The deputy High Court judge held the service valid and found that the quality of his use of the property was as a home and the fact that his immediate and wider family lived there was also a factor of relevance." 26. Further on, under the same note, CHIEF MASTER SHUMAN Approved Judgment Mengrani v Mohamed "The term "usual residence" meant that which was in ordinary use. ... A person who had more than one residence could have more than one "last known residence". On appeal ([2010] EWCA Civ 560) the first instance Judge's decision that the test was whether the party serving the claim was able to satisfy the court that there was a "good arguable case" that the premises served at were the addressees usual or last known residence, was not challenged. The Court of Appeal rejected the contention that in determining whether a residence is a "usual" residence within r.6.9, the test to be applied is merely one of comparing periods of occupation, taking little account of the nature or quality of occupation and the occupation of the premises as a family home. They found that the critical test is of the addressee's pattern of life ..." 27. Under note 6.9.4, "the question of whether the claim form was served at the

defendant's "usual", or "last known" residence or the "principal" or "last known" place of their business, is separate from the question of whether the claim form came to the notice (actually or constructively). ... Paragraph (3) of r.6.9 seeks to deal with a particular difficulty that may arise, that is to say, with the situation where the claimant has "reason to believe" that the defendant no longer resides at, or carries on business at, "the address of the defendant referred to in entries 1, 2 or 3 in the table in paragraph (2)". ... what is meant is that para.(3) is engaged where (a) the claimant knows or believes that the defendant's last known residence or their last known place of business is (say) X, but (b) the claimant has reason to believe that X is not the place at which the defendant now resides or carries on business. In these circumstances para. (3) requires the claimant "to take reasonable steps" to discover the address of the defendant's "current residence or place of business" and, having taken such steps, that para.(6) allows that, if the process outlined in paras

- (3) to (5) proves unfruitful, service at the defendant's usual or last known address in accordance with the table in para.(2) will be good service, despite the fact that the claimant had "reason to believe" that the defendant no longer resides or carries on business there. Before the provisions in paras (3) to (6) of r.6.9 came into effect, there was some authority for the proposition that (at least in certain circumstances) a claimant was required to make reasonable enquiries as to the defendant's "current" place of residence or of business, before purporting to effect service at the defendant's "last known" residence or place of business. ... CHIEF MASTER SHUMAN Approved Judgment Mengrani v Mohamed The new provisions make it clear that that duty arises only where the claimant has "reason to believe" the matters referred to in para.(3). ... [In the context of last known residence] this means that, on the evidence available, the claimant has the better of the argument on this issue than the defendant, (2) the defendant's last known residence need not be the defendant's usual residence, (3) the defendant may have more than one last known residence, (4) the defendant's last known residence may be a residence at which the defendant is residing or no longer resides (having once resided there) at the time of the purported service of process. It cannot be an address at which the defendant never resided, (5) Knowledge of the defendant's residence in this context refers to the claimant's actual knowledge or constructive knowledge, i.e. knowledge which the claimant could have acquired exercising reasonable diligence. ... (6) the claimant's state of knowledge is to be assessed as at the date on which the proceedings were served at the address in question." 28. 29. The burden is on the claimant to satisfy the court that he has a good arguable case that the address at which the claim form was served was the usual or last known residence of the defendants, or to put it another way that he has the better argument on the available material per paragraph 20 in *Relfo Ltd v Varsani* (above). Similarly in terms of the duty to take "reasonable steps" under CPR rule 6.9(3), there is no guidance provided within the rule. The notes to the White Book, paragraph 6.9.5, refer to *MB Garden Buildings Ltd v Mark Burton Construction Ltd* [2014] EWHC 431(IPEC). In that case HHJ Hacon considered the question of when the claimant was to carry out the inquiries about the defendant's whereabouts. It was, in effect, argued before him that those were to be carried out on the day the relevant documents were posted or

delivered. At paragraph 35 he said, “I take the view that if a claimant has carried out inquiries with reasonable diligence as to the defendant’s last known residence before that date and on that date it was objectively reasonable for the claimant to believe that the defendant’s residence remained unchanged, then on that date it is still the defendant’s last known residence for the purposes of service by that claimant. Of course the longer the delay between the inquiries and the date of the step required for service the harder it will be for a claimant to establish that there was good service.” CHIEF MASTER SHUMAN Approved Judgment Application Mengrani v Mohamed 30. 31. 32. 33. 34. It is submitted on behalf of the claimant that he is aware that the defendants do spend a considerable amount of their time in Pakistan but that they split their time, largely, between Pakistan and the UK. That it is submitted was the position prior to the parties’ estrangement. It is inferred that there has been no change to this pattern. When the defendants are in the United Kingdom, as they were for the entirety of the summer 2023, they reside at 17 Haslemere Gardens. The defendants have significant business and financial interests in the United Kingdom. The first defendant is the sole director of the Company, which, according to its last published accounts for the 12 months to 31 December 2023 (which were approved on 9 October 2023), has five employees and continues to trade as a going concern. The first defendant’s correspondence address in relation to his appointment as a director of the Company is 17 Haslemere Road, Finchley, N3 3EA. That appears to be a mistake and should be 17 Haslemere Gardens: the post codes are the same and there is no evidence before the court that Haslemere Road is a relevant address for the defendants. The first defendant is also the sole director of Jiffy Developments Ltd (“Jiffy”) which, according to its last published accounts for the 12 months to 31 December 2023 (which were approved on 27 September 2023), has two employees. The company has negative net assets. The first defendant’s correspondence address in relation to his appointment as a director of Jiffy is 14-16, Stanhope Road, London, N12 9DT. This address is Jamal House, one of the major assets held by the Scheme, and is the registered office of the Company. The claimant and defendants’ are the registered proprietors of Jamal House, title number MX388332. The official copies issued on 1 March 2022, give the defendants address as 17 Haslemere Gardens. 17 Haslemere Gardens is registered at the Land Registry under title number MX36120. The official copies, issued on 31 October 2023, record the second defendant as the registered proprietor and that she paid the price of £1,170,000 on 2 May 2002. There is no suggestion in the evidence before the court that this given address was different prior to the issue of the claim.

35. Whilst the burden of proof is on the claimant, the defendants have elected not to file direct evidence but to rely on the witness statement of their solicitor. In Mariyam Harunah’s witness statement dated 8 November 2023, paragraph 3.7, she says, “I am advised by the defendants in this case that they moved to Pakistan from England over 15 years ago, where they have since lived and spend most of their time. They have set up home in Pakistan and their personal possession are based in Pakistan. Therefore, the London address is not their usual or last known residence.” 36. She then goes on in paragraph 3.8(a) to (e) of the same paragraph to make the following statements or assertions: CHIEF MASTER SHUMAN

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- (1) Prior to 2013 the claimant and his family would stay with the defendants in Pakistan. They also worked together prior to 2013. “The Claimant and the First Defendant have had many encounters with each other in Pakistan over the last 15 years.”
 - (2) They are family and the claimant, from visits to his parents in Pakistan, was aware that the defendants lived in Pakistan.
 - (3) The defendants were the primary carers for the claimant and first defendant’s parents.
 - (4) There was no “physical contact in England” between the claimant and the first defendant, which would indicate that the latter no longer lived in England.
 - (5) The claimant’s letter before claim was sent to the defendants’ previous solicitors and to the defendants at their London address. The lack of any response from the defendants means that it was incumbent on the claimant to take reasonable steps to determine where the defendants’ residence was prior to the service of the claim. The defendants also rely on two documents which it is said demonstrate that the defendants did not reside in the United Kingdom. At the hearing counsel for the defendants’ handed up a redacted letter dated 16 February 2024 from Barnet Electoral Services to the occupiers of 17 Haslemere Gardens. There were three rows of names in the letter, albeit the names were redacted save for the initial letter, “S, T and U”. These do not correspond with the initial letters of the defendants. I required the unredacted copy of the letter to be provided which revealed the names of the defendants’ two children, and their daughter-in-law. From this letter it can be inferred that someone completed a form stating that the three adults were the only adults entitled to vote at 17 Haslemere Gardens. What I do not know is whether the defendants have ever been registered to vote from that address. In addition the defendants’ counsel relied on an electricity bill for an address in Pakistan, “PLOT NO: 23/ 1, KHAYABAN-E-SHEHBAZ, PHASE-VI, DHA”, addressed to the first defendant. It records energy consumption for June 2024, the previous month and last year. These are said to be 2,788, 2,900 and 3597 units respectively. There is no evidence before the court as to how many people are living at the address, whether the consumption is consistent with a couple living at that address, or even direct evidence that links the first defendant to personally living at this address. In the absence of any reference points it is difficult to see how the court can evaluate this evidence. 37. 38.
39. Whilst I remind myself that the burden falls on the claimant, it would have been relatively easy for the defendants to demonstrate that they lived in Pakistan. It is therefore surprising that the documentary evidence relied on by the defendants is that set out above and that neither defendant has filed a witness statement. 40. It is submitted on behalf of the defendants the family background was such that there was more than enough evidence to trigger the enhanced duty on the claimant to take reasonable steps to ascertain the defendants’ current residence. CHIEF MASTER SHUMAN Approved Judgment Mengrani v Mohamed 41. 42. Turning back to the evidence, the claimant relies on the witness statement of his solicitor, Olegas Petrikas, dated 20 November 2023. He candidly says that the claimant

was aware that the defendants split their time between Pakistan and the United Kingdom but that they treated 17 Haslemere Gardens as one of their homes. The fact that the defendants have two homes does not preclude one of them being their address for the purposes of service under CPR rule 6. Mr Petrikas says that in light of his knowledge about the defendants living in Pakistan and the United Kingdom he checked the Land Registry for 17 Haslemere Gardens. In *Oldham Metropolitan Borough Council v Tanna* [2017] 1 WLR 1970 the Court of Appeal considered the issue of service for the purposes of section 215 of the Town and Country Planning Act 1990. The local planning authority wished to serve a notice on the registered proprietor of an unoccupied nursing home by hand delivering it to the address of the proprietor, as given in the proprietorship register. At paragraph 24 Lewison LJ said, “The 1925 rules provided that a person's address for service would be the address given in the register, unless he directed otherwise. The rule is very generally expressed, and is not on its face confined to service of notices and documents under the Land Registration Act itself. The 2003 rules state in terms that the address stated in the proprietorship register is an “address for service”. It is no doubt the case that the primary purpose of the requirement (in both sets of rules) that a registered proprietor must give an address for service is to enable notices and other documents to be served under the Land Registration Act itself. However, the fact that the address thus given appears in a public part of the register indicates that its use is not necessarily confined to internal administrative purposes.”

43. Mr Hayhoe for the claimant submits there is an obligation on a registered proprietor to keep their address up to date : a point reiterated by Lewison LJ at paragraph 28 of the judgment. Given the public use of the register it is incumbent on a registered proprietor to do that. 44. I do not accept, however, the bald submission that Mr Hayhoe made in his skeleton argument that the requirement to make reasonable enquiries goes no further than to search the proprietorship register³, which he diluted during the course of his oral submissions. It is fact sensitive. I also note that the second defendant was the only registered proprietor of 17 Haslemere Gardens, although she is married to the first defendant and there is no suggestion that at the material time they were living apart. It is, though, evidence that supports the claimant's case. 45. Olegas Petrikas also referred in his evidence to the first defendant's directorship of the Company, which in turn is the employer of the Scheme. It is to be inferred that this was something that he considered prior to the claim form being served⁴. 3 Paragraph 26. 4 This forms part of his analysis of the steps he had taken to be certain that 17 Haslemere Gardens was the correct address for service: paragraphs 8 to 11. CHIEF MASTER SHUMAN Approved Judgment Mengrani v Mohamed 46. 47. 48. Companies House is the registry for all United Kingdom limited companies and is a public register. A director is obliged to supply a correspondence address and their home or usual residential address. It is the correspondence address which will appear on the public part of the register. The same address can be given for both and then the public register, albeit described as the home address will appear on the correspondence address. A similar point about the importance of keeping the address at Companies House up to date can be made. The address for the first defendant in respect of the Company was given as 17 Haslemere

Gardens and that of Jiffy, Jamal House, also owned by the first defendant which also relates back to 17 Haslemere Gardens. The steps taken by Mr Petrikas can be viewed in two ways. Firstly, they can be taken as those of a diligent solicitor, checking the current address of the defendants for the purposes of service. This was a proper step to take given that he had instructions that the defendants lived in Pakistan and the United Kingdom. He does not suggest that these enquiries were undertaken because he had reason to believe that the address of the defendants had changed. Indeed the claimant's position is that there had been no change in the defendants' residence. Secondly and in the alternative, if CPR Rule 6.9(3) was engaged, then the steps taken were reasonable steps to ascertain the current address of the defendants. . On the evidence before the court I am satisfied that it was open to the claimant's solicitors to conclude that 17 Haslemere Gardens was the current address for the defendants for the purposes of CPR Rule 6.3. If I am wrong on that and CPR Rule 6.9(3) was engaged then I am satisfied that the solicitor took reasonable steps prior to the service of the claim form to ascertain the defendants' current address. From those enquiries the address for service was 17 Haslemere Gardens. 49. I also raised with the parties the issue of section 1140; I had wondered if it could apply in this case. It provides that, "(1) A document may be served on a person to whom this section applies by leaving it at, or sending it by post to, the person's registered address."

(2) This section applies to–

(a) a director or secretary of a company; ...

(3) This section applies whatever the purpose of the document in question. It is not restricted to service for purposes arising out of or in connection with the appointment or position mentioned in subsection (2) or in connection with the company concerned.

(4) For the purposes of this section a person's "registered address" means any address for the time being shown as a current address in relation to that person in the part of the register available for public inspection. CHIEF MASTER SHUMAN Approved Judgment Mengrani v Mohamed

(5) If notice of a change of that address is given to the registrar, a person may validly serve a document at the address previously registered until the end of the period of 14 days beginning with the date on which notice of the change is registered.

(6) Service may not be effected by virtue of this section at an address–

(a) if notice has been registered of the termination of the appointment in relation to which the address was registered and the address is not a registered address of the person concerned in relation to any other appointment;

(b) in the case of a person holding any such position as is mentioned in subsection (2)(b), if the overseas company has ceased to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 1046.

- (7) Further provision as to service and other matters is made in the company communications provisions (see section 1143).
- (8) Nothing in this section shall be read as affecting any enactment or rule of law under which permission is required for service out of the jurisdiction.” 50. In *Key Homes Bradford Ltd & ors v Patel* [2014] 1 WLUK 79 the claimants were special purpose vehicles set up with the aim of attracting investment for particular building projects. The defendant was the sole director of the claimants. The claim form was served at residential and business addresses for the defendant, the addresses were recorded as an address for service of 10 companies of which the defendant was a director. Unbeknown to the claimant the defendant had moved to the United Arab Emirates two years before service. He had not updated his address at Companies House. The defendant had applied to set aside the purposed service on him, but this was dismissed. Chief Master Marsh considered that section 1140(3) provided a parallel code for service, outside of the provisions of the Civil Procedural Rules. The effect of section 1140(8) was only to prevent service on a director who had given an address outside of the United Kingdom. It was open to the director to give an address outside of the United Kingdom but he did not and therefore held himself out as someone who was willing to be served at those addresses.
51. Mr Hayhoe on behalf of the claimant wishes to rely on this section. Ms Grace on behalf of the defendant argues that its ambit has been questioned in recent authorities and in any even the defendants have been sued in their trustee capacity, not as directors. 52. The Scheme is a trust-based scheme governed by the trust deed and rules. It is not run via a corporate trust vehicle. In *Key Homes Bradford Ltd v Patel* the claim alleged that the defendant, the sole director, had diverted at least £20 million of the investments under the special investment vehicles for his own benefit. Whilst the CHIEF MASTER SHUMAN Approved Judgment *Mengrani v Mohamed* current claim is in respect of a small, self-administered Scheme which was established to provide benefits for the directors of the Company the claimant has elected to sue the defendants as trustees of the Scheme, not additionally as directors of the Company. Indeed the claim is for an account of the administration of the Scheme. I therefore do not consider that section 1140 applies.
53. Mr Hayhoe also sought to pursue an argument on waiver. He submitted that by the defendants bringing a separate application to stay the proceedings they had waived their right to contest jurisdiction. By the time of the hearing the Pension Ombudsman complaints had been concluded, in that the Pension Ombudsman refused to accept jurisdiction. That part of the application was no longer pursued. Mr Hayhoe nevertheless sought to maintain his waiver argument in respect of the argument that purported service of the claim form was invalid. I was referred to the notes to the White Book at paragraph 11.1.10 and the summary of *Deutsche Bank AG London Branch v Petromena ASA* [2015] EWCA Civ 226, “the Court of Appeal explained that that there are two different ways in which a defendant might submit to the jurisdiction. The first, categorised as “common law waiver”, requires the doing of an act inconsistent with maintaining a challenge to the jurisdiction. Such a waiver must

clearly convey an unequivocal renunciation by the defendant of his right to challenge the jurisdiction. The second, categorised as a “statutory form of submission”, is where the national procedural rules provide that a particular act shall be treated as a submission (at [32] and [33] per Floyd LJ). In that case the Court held that a defendant wishing to appeal against a decision rejecting a challenge to jurisdiction should ask for an extension of time for filing a second acknowledgment of service sufficient for an application for permission to appeal or an appeal to be determined, and should not file a second acknowledgment of service as the latter will be treated as a submission to the jurisdiction.” An “unequivocal renunciation” is a high bar. What the defendants are seeking to do is, if they are not successful in their jurisdiction application, to stay the claim to enable non-court based dispute resolution to hopefully bring finality to the dispute. That position is reflected in the witness statement of Mariyam Harunah dated 7 August

2024. That is a proposed case management step. I note that in *PJSC Bank Finance and Credit v Zhevago* [2021] EWHC 2522 (Ch) it was held that an English defendant had not submitted to the jurisdiction by applying to strike out parts of the claim whilst at the same time applying for a stay on forum non conveniens grounds. I am not satisfied that the defendants’ application for a stay is inconsistent with its application challenging jurisdiction. Further the manner in which it has presented its arguments is not consistent with an unequivocal renunciation on the part of the defendants of their right to challenge jurisdiction. The defendants’ acknowledgment of service clearly states that it is disputing the court’s jurisdiction and 14 days later they made the jurisdiction application. 54. 55. STAY CHIEF MASTER SHUMAN Approved Judgment Mengrani v Mohamed 56. 57. The court has wide powers to stay claims, which are now enshrined in the Civil Procedure Rules. Civil Procedure Rules 1.4(1) places a positive duty on the court to “further the overriding objective by actively managing cases” and specifically rule 1.4(2)(e) provides that active case management includes “encouraging the parties to sue alternative dispute resolution procedure if the court consider that appropriate and facilitating the use of such procedure”. In *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416 the Master of the Rolls reiterated that the court has the power to compel parties to use non-court based dispute resolution. At paragraph 65 he stated, “The court should only stay proceedings for, or order, the parties to engage in a non-court-based dispute resolution process provided that the order made does not impair the very essence of the claimant’s right to proceed to a judicial hearing, and is proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost.” 58. As to the factors for the court to take into account the Master of the Rolls preferred not to set out fixed principles saying at paragraph 66, “[Judges] will be well qualified to decide whether a particular process is or is not likely or appropriate for the purpose of achieving the important objective of bringing about a fair, speedy and cost-effective solution to the dispute and the proceedings, in accordance with the overriding objective.” 59. 60. 61. 62. Ironically in this case both parties are telling the court that this case is suitable for non-court based dispute resolution. Mr Hayhoe submitted that the claim was “crying out for ADR”, albeit that the

claimant's position was that the parties must first have equal access to information. He said that the claimant set out proposals for mediation, which it is suggested were rejected by the defendants. I note that the issue is before the court because the defendants made an application for a stay for ADR purposes. The defendants take issue with the description of the background and where the fault lies with this claim not being resolved before issue. It will not help these parties to wade through the disputed evidence about which, if any, party is to blame for this case not being resolved away from court. What they do agree is that there should be mediation. It does appear that the claim being issued has triggered further financial information being provided to the claimant, such as the accounts from 2018 onwards. The defendants' position is that the claimant has already been provided with significant information, before issue and beyond that which could be ordered by the court. This is a case that is suitable for a stay to be imposed to enable and indeed facilitate the parties in resolving the issues. However there is a dispute between the parties about the quality of the information provided. I consider it would assist the parties if a directions hearing were listed when the court can adjudicate on what issues remain outstanding between the parties and what evidence will be necessary. After that stage the parties should be in the best possible position to resolve this case without further CHIEF MASTER SHUMAN Approved Judgment Mengrani v Mohamed involvement of the court and a stay should be imposed then. If they are unable to settle the claim then at the very least they should have narrowed the issues and reduced the legal costs to achieve resolution.

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Prepared on 26 October 2026 · Esheria