

JERSEY / JUDGMENT

Trigwell -v- Clapp [2017] JRC 145 (11 September 2017)

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judgment

the COMMISSIONER: 1. In these proceedings instituted in November 2015, the representor ("Mr Trigwell ") seeks a declaration that he is the beneficial owner of a Jersey company called Astral Enterprises Limited ("Astral" or "the Company"). The respondent ("Mr Clapp") denies the claim and asserts that the Company is beneficially owned by him and/or his wife. 2. The Court has been provided with five files of materials and evidence. These contain inter alia the corporate records of Astral. Although, as will appear below, the records are less than perfect and the Company does not seem to have been well served by some of its earlier administrators, the documentary evidence is a good starting point. Accordingly, after describing the circumstances in which Mr Trigwell comes to bring his claim, we propose first to review the contemporaneous documentary evidence before turning to consider the affidavit and oral evidence provided to the Court.

Background to the claim 3. Astral was incorporated in Jersey on 5 th May, 1998. It was struck off the Register of Companies on 1 st October, 2008, for failing to file its annual return in January 2008. It was reinstated by order of the Court dated 19 th May, 2015, following presentation of a representation by Mr Clapp, who asserted that he was the owner of the Company. 4. Mr Trigwell and Mr Clapp have been involved in litigation over the years in England in relation to the affairs of an English company called Latham Hirst Limited ("Latham Hirst"), which was an insurance broker. There was originally litigation in the Chancery Division of the High Court in 2002/2003 involving Mr Trigwell , Mr Latham, Mr Clapp and Astral. The matter was referred to Dr Martin Osment ("Dr Osment ") as arbitrator. He held that the share capital of Latham Hirst was owned as to one thousand shares by Astral with one share being held by each of Mr Clapp and Mrs Jane Clapp ("Mrs Clapp") respectively. This decision was subsequently made the subject of a consent order of the Chancery Division dated 15 th December, 2003. 5. Mr Trigwell asserts that he was in no fit condition to agree anything at the time of the proceedings in the Chancery Division and that in various ways he has been defrauded by Mr Clapp in connection with the affairs of Latham Hirst. After the conclusion of the Chancery proceedings, he thought for some time that Astral was dormant and was not worth suing, but in due course he discovered that it held assets. He therefore instituted proceedings in the Queen's Bench Division in London ("the QBD proceedings") against Astral on 8 th August, 2014, claiming the sum of £671,200. The defendant to those proceedings was incorrectly named as Astral Enterprises (Jersey) Limited but there is no

company under that name. Its address for service was given as the Swiss Centre, 10 Wardorf Street, London. 6. Mr Trigwell understood Mr John Harrod ("Mr Harrod ") to have been a director of Astral. At his request, Mr Harrod signed a form accepting the claim of £671,200. Accordingly a judgment by consent was issued by the Queen's Bench Division on 30 th October, 2014, against Astral Enterprises (Jersey) Limited. It is to be noted that Astral did not in fact exist in law at that time, having been struck off the company register in October 2008 and not having been reinstated until 19 th May, 2015. 7. Astral owned several assets at the time of its dissolution which assets remained in its name as at the date of the judgment. These included a bond ("the CMI bond") issued by Clerical Medical Insurance in the Isle of Man. In a document dated 9 th October, 2014, Mr Harrod , purporting to act as a director of Astral Enterprises (Jersey) Limited, consented to Mr Trigwell obtaining a third party debt order in respect of the CMI bond. Mr Trigwell duly obtained a third party debt order on 29 th December, 2014, from the Queen's Bench Division in aid of enforcement of the judgment and in due course the CMI bond was realised in the sum of £166,918 and paid to him. 8. Astral also owned (and still owns) real property at Blandford Forum ("the Blandford property"). By a document dated 14 th (or 24 th

- it is difficult to read) July, 2014, Mr Harrod , purporting to act as a director of Astral Enterprises (Jersey) Limited (even though, as set out a para 46 below, he had resigned as a director of Astral on 8 th September, 2005), consented to Mr Trigwell placing a charge over the Blandford property. By the same document dated 9 th October, 2014, as is referred to in the preceding paragraph, Mr Harrod , again purporting to act as a director of Astral Enterprises (Jersey) Limited, consented to the Queen's Bench Division ordering the sale and possession of the Blandford property. It is right to say that, although the documents all refer to Astral Enterprises (Jersey) Limited, they contained the registration number in Jersey of Astral itself, namely 71635. With the assistance of these documents, Mr Trigwell duly obtained a charging order in respect of the Blandford property on 29 th December, 2014. This property is let and in due course the tenants alerted Mr Clapp to the fact that officers had attended seeking to enforce against the property. It was at this stage that Mr Clapp became aware of the proceedings in the Queen's Bench Division and of the fact that a judgment in the sum of £671,200 had been obtained by Mr Trigwell . 9. An application was then made to set the consent judgment aside on the basis, inter alia , that Astral Enterprises (Jersey) Limited did not exist, that Astral also did not exist at the material time (because it had been struck off) and that Mr Harrod could not validly accept the claim on Astral's behalf. 10. The judgment was set aside by Master Fontaine on 12 th July, 2016. It was further ordered that, unless Mr Trigwell applied by 9 th August, 2016, for permission to amend his claim and particulars of claim, his claim would be dismissed with costs. No such application was made with the result that, at present, the QBD proceedings by Mr Trigwell against Astral claiming £671,200 have been dismissed. However, Mr Trigwell is appealing that order, not least on the basis that he was not provided with a copy of the order until well after the date by which he was meant to have applied to amend his claim. We were informed by Mr Trigwell that his appeal against Master Fontaine's decision of 12 th July has been deferred pending the outcome of the present proceedings on the basis that, if Mr Trigwell is

successful in the current proceedings, he will not need to resuscitate the QBD proceedings as he will gain access to all the assets of Astral in his capacity as beneficial owner. 11. Mr Trigwell asserts that he is now the sole beneficial owner of Astral as he acquired all the issued shares from Mr Harrod for no consideration on 1st August, 2015. It is in those circumstances that, Mr Clapp having caused Astral to be reinstated to the company register in Jersey on the basis that he was the beneficial owner, Mr Trigwell now brings his representation seeking a declaration that he is the beneficial owner of the Company in succession to Mr Harrod. As he accepts, resolution of his claim therefore requires the Court to determine whether Mr Harrod was ever the beneficial owner of the Company.

Documentary Evidence 12. On 8th August, 1979, Mr Clapp purchased the Blandford property. His evidence was that he purchased it as his intended retirement home, although he has not in fact lived there and it has always been let, with the rent being paid to him. 13. It is not disputed that the professional person in Jersey who advised Mr Clapp in 1998/1999 was Mr Dermot Dimsey, who owned a company administration business called DFM Consultants Limited ("DFM"). On 26th March, 1998, acting on the advice of Mr Dimsey, Mr Clapp (albeit through a nominee settlor living in Spain) established a settlement called the OEEA Trust. The original trustee was Westminster Trust Company Limited which appears to have been a company of Mr Dimsey's as he signed the original trust deed on its behalf. The named beneficiaries of the OEEA Trust were Mrs Clapp, Matthew Clapp and Jordan Clapp, the latter two being the children of Mr and Mrs Clapp. Although we have seen three pages of the trust deed, we have not seen the remainder of the deed. We are not therefore aware of the other terms of the trust although it seems likely that it was a discretionary trust. 14. Mr Dimsey also advised that a company should be incorporated. DFM did not apparently incorporate companies and Mr Dimsey therefore instructed Mr Barry Shelton of Shelton & Co., Accountants, to carry out the incorporation. 15. In order to incorporate a company in those days, an applicant had to fill out what was known as a COBO application. This sought permission to issue shares in the proposed company. The COBO application for Astral was dated 1st May, 1998, and was signed by Mr Shelton. It contained the following information:- (i) The ultimate beneficial owner of the proposed company was stated as being Mr Clapp, a registered insurance broker whose address in Warlingham, Surrey, was given. (ii) The intended activities of the Company were said to be "to hold investments and property on behalf of the beneficial owner". (iii) It was stated that the Company would be an exempt company for Jersey income tax purposes. The Company could only be an exempt company if it was beneficially owned by someone who was not a Jersey resident. (iv) The question as to whether any additional owners would be introduced within six months of incorporation was answered in the negative; Thus the information given to what was then the Financial Services Department ("FSD") of the States of Jersey was that the ultimate beneficial owner of the Company was to be Mr Clapp. 16. The Company was incorporated on 5th May, 1998, and the subscribing shareholders were Anchor Trust Company Limited and Anchor Management Limited. These were in-house companies of the Anchor Group which was run by Mr Shelton. The two Anchor companies appointed Mr Shelton and Mr Power (of Anchor) as the first directors. The first meeting of the directors was held on 5th May, 1998. Following

the initial share issue of one share each to Anchor Trust Company Limited and Anchor Management Limited, Anchor Trust Company Limited transferred its single share to Pelegrin Nominees Limited ("Pelegrin") and Anchor Management Limited transferred its single share to Mr Dimsey. These transfers were approved by the directors who authorised the issuing of the relevant share certificates numbered 3 and 4. The meeting appointed Mr Dimsey and Mr Moignard (of DFM) as directors and Pelegrin as secretary. 17. At the conclusion of that meeting, Mr Shelton and Mr Power resigned as directors with effect from the end of the meeting and Anchor Secretaries Limited resigned as secretary. It follows that, at the conclusion of that meeting, the registered shareholders were Pelegrin (one of the companies in the DFM group run by Mr Dimsey) and Mr Dimsey (each holding one share) and the directors were Mr Dimsey and Mr Moignard. It also follows from the above board meeting that the administration of Astral appears to have passed to DFM and Mr Dimsey. 18. On 7th May, 1998, Mr Moignard sent a fax to Mr Clapp telling him that Astral had now been incorporated. 19. Pelegrin and Mr Dimsey both executed declarations of trust dated 6th May, 1998, in respect of the single share which each of them held. The declarations of trust were in similar form and that of Pelegrin was as follows:- "WE PELEGRIN NOMINEES LIMITED ... HEREBY ACKNOWLEDGE and declare that the company is the registered holder of the shares shown in the Schedule hereto as nominee of and trustee for Westminster Trust Company Limited, trustees of the OEEA Settlement (hereafter called "the Owner") and WE UNDERTAKE and agree not to transfer, deal with or dispose of the said shares or any of them save as the Owner may from time to time direct. And further to give full effect to the Trust hereby declared WE HEREBY DEPOSIT with the Owner the Certificate for the said shares together with a transfer thereof executed by the company in blank and WE HEREBY EXPRESSLY AUTHORISE and empower the Owner at any time to complete such transfer by inserting the name or names of any transferee or transferees and the date of the transfer and to complete the same in any other necessary particular. AND WE DECLARE that this authority is irrevocable to the company and WE FURTHER UNDERTAKE and agree to account to the Owner for all dividends and profits which may be paid to the company from time to time upon the said shares and for all other monies or profit which may be payable [and] to exercise the voting power as holder of the said shares in such manner and such purposes as the Owner may from time to time direct or determine. Schedule 1 share No.3 of £1.00 each in Astral Enterprises Limited." 20. On 6th July 1998, Mr Dimsey wrote to Mr Clapp as follows:- "Dear Gerald Re Astral Enterprises Limited Further to my telephone conversation I enclose copies of the documents regarding the Company which you required. I would confirm that I am holding the originals in the office. I would suggest that if necessary that (sic) the original documents are possibly put into the safety deposit box held in the name of the trustees of the OEEA Settlement and I can discuss this point with you when I next see or speak to you." 21. According to Mr Clapp, Mr Dimsey placed the originals of the documents referred to in the safe deposit box with Midland Bank, details of which we have seen and which was in the name of "Westminster Trust Company Trustees of the OEEA Trust". He subsequently handed them over to Mr Clapp in March 1999. The documents were the original share certificates numbered 3 and 4 in the name of Pelegrin and Mr Dimsey

respectively, executed share transfers in blank (i.e. with no transferee named) by Pelegrin and Mr Dimsey in respect of the share which each of them held and the two declarations of trust which we have just referred to. 22. On 1 st February, 1999, the directors of Astral purported to hold a further board meeting. The directors were shown as Mr Dimsey and Mr Shelton. The minutes record that Mr Shelton was appointed as an additional director with immediate effect and Mr Moignard's letter of resignation was tabled and accepted. 23. There is unfortunately a defect in this minute. Mr Moignard is not shown as being present and accordingly the only director present initially was Mr Dimsey . Although Article 58 of the Articles of Association of the Company provides that the number of directors shall not be subject to any maximum but shall be at least one, Article 80 provides:- "The quorum for the transaction of the business of the directors may be fixed by the directors and unless so fixed at any other number shall be two." 24. As Mr Moignard was not present, there was no quorum. Article 81 provides:- "The continuing directors or sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting." 25. If Mr Dimsey had been the only remaining director, Article 81 would have come to the rescue and he could have acted for the purpose of appointing Mr Shelton as an additional director. 26. However, at the time of the meeting, there were still two directors, namely Mr Dimsey and Mr Moignard . Accordingly Article 81 does not assist and the appointment of Mr Shelton would appear to be defective. 27. On 22 nd February, 1999, Mr Dimsey and Mr Shelton held a board meeting to record that a portfolio of shares had been gifted to the Company and should be accepted. Eight shareholdings are listed including shares in WSP Group Plc and 450 shares of Woolwich Plc. The only document we have been shown is that relating to the transfer of the 450 Woolwich shares, namely a copy of a stock transfer form showing that it was Mr Clapp who transferred these to Astral. This is consistent with the evidence of Mr Clapp that it was he who transferred the shareholdings in the various companies to Astral. 28. Although there is no reference to it in the minutes of Astral, it is clear that on 15 th October, 1999, Mr Clapp transferred ownership of the Blandford property to Astral and we have seen the executed transfer form. The Blandford property has remained in the ownership of Astral since then. However it appears that the rental has continued to be paid to Mr and Mrs Clapp. 29. The next board meeting was held on 18 th October, 1999, by Mr Shelton and Mr Dimsey . It appears that at this stage Mr Dimsey's business may have been winding down. In any event Mr Dennis Marshall and Mr Roger Barby (both of Anchor) were appointed as additional directors with immediate effect and Anchor Secretaries Limited was appointed as secretary. Mr Dimsey resigned as a director and Pelegrin resigned as secretary. As to the shareholdings, the minutes reported simply that requests had been received to make the following transfers:- (i) 1 share from Pelegrin to Anchor Trust Limited; (ii) 1 share from Mr Dimsey to Anchor Management Limited. 30. However, the minute does not specifically say that the transfer was approved or that the relevant share certificates were to be issued. It may be that this was because the original share certificates were in the possession of Mr Clapp. Indeed on 10 th December, 1999, an administrator of Anchor wrote to Mr Clapp

informing him that Mr Dimsey had resigned as a director and that Messrs Shelton, Marshall and Barby had been appointed as directors and Anchor Secretaries Limited as company secretary. The letter went on to say that, as the nominee shareholders were also changing, the administrators would at some time require the originals of share certificates 3 and 4 for cancellation, together with the relevant signed stock transfer forms and declarations of trust, all of which had to be cancelled and reissued. The administrator indicated that she understood these were presently in safe custody at the bank. 31. Despite the terms of that letter and of the minutes, Anchor seems to have proceeded on the basis that the two Anchor companies were now the registered shareholders. Thus share certificates number 5 and 6 dated 18 th October, 1999, were issued in the name of Anchor Trust Company Limited and Anchor Management Limited respectively and those two companies issued declarations of trust in favour of Westminster Trust Company Limited. On 3 rd May, 2000, the two companies issued new declarations of trust made out to Anchor Trustees Limited as trustee of the OEEA Trust, from which we infer that Anchor Trustees Limited had replaced Westminster Trust Company Limited (a company of Mr Dimsey's) as trustee of the OEEA Trust. 32. On 7 th December, 2000, there was a board meeting at which it was resolved to sell the Company's holding of 4,666 WSP Group shares and on 26 th January, 2001, there was a meeting to approve what was clearly an in-house transfer of one share in the Company from Anchor Trust Company Limited to Anchor Management Services Limited. Certificate number 7 was issued for one share to Anchor Management Services Limited which on the same date executed a declaration of trust in respect of that share in favour of Anchor Trustees Limited as trustees of the OEEA Trust. 33. At a meeting on 1 st March, 2001, John Marshall was appointed as a director of the Company in place of Dennis Marshall. At a meeting on 27 th February, 2002, John Marshall resigned as a director and Mrs M Murray was appointed as a director in his place. 34. On 26 th September, 2002, Anchor wrote to Mr Clapp in connection with Astral stating that as a result of recent amendments in legislation, they had to update their procedures and record keeping. Accordingly they were writing to clients to obtain the documentary evidence needed to comply with those regulations. The letter asked if the relevant documentation could be provided in connection with Mr and Mrs Clapp together with their two children. A similar letter was written to Mr Clapp by Anchor on 11 th November, 2003, in relation to the OEEA Trust. 35. On 4 th December, 2003, a board meeting was held consisting of Mrs Murray and Mr Shelton which resolved that the Company should lend a small sum to the OEEA Trust in order that the Trust might settle fees due to Anchor. 36. The next meeting is dated 27 th February, 2004, at which it was resolved to cancel a power of attorney dated 20 th February, (no year is specified) which had been issued in favour of Mr Clapp for the purposes of appointing professional advisors or bringing or defending any legal proceedings in the United Kingdom. There was no resolution of the board of directors in connection with the issuing of that power of attorney. However we were referred to some correspondence on that topic. Initially, Mr Shelton as a director of Astral had sent a letter dated 7 th February, 2003, to the Chancery Division confirming that Mr Clapp had the Company's authority to represent it in the Chancery Division proceedings (referred to at para 4 above) and to do all such matters as could be done by a director. That

was clearly not sufficient because there is a letter dated 20 th February, 2003, from Garcia Martin, solicitors, who were acting for Mr Clapp, to Astral in which they advised that the Registrar had required that a proper power of attorney should be signed by Astral in order to give Mr Clapp the necessary authority to act on behalf of the Company's affairs. There is then a letter dated 23 rd February from Astral sending a power of attorney in favour of Mr Clapp to Garcia Martin. 37. The next minute in the Company's books is dated 12 th January, 2004, at 2pm. Mrs Murray and Mr Shelton were present and the meeting was concerned with taking an assignment of the CMI bond from the OEEA Trust. The relevant part of the minute reads:- "The Chairman reported that notification has been received from the trustees of the OEEA Trust who wholly own the shares in this Company to inform the directors that they intend to assign the remaining asset in the Trust being a CMI Bond issued by CMI Insurance Company Limited under policy number 2312920F dated February 1999 to this Company and thereafter have asked the Trustees to terminate the Trust. IT WAS THEREFORE RESOLVED that (sic) Deed of Assignment between the Trustees and this Company be duly signed on behalf of the Company by Mr B Shelton Director and Mrs M M Murray of behalf of Anchor Secretaries Limited, Secretary with a fully signed copy to be attached to these minutes once signed by the Trustees." [Emphasis added] 38. A copy of the executed deed of assignment is indeed attached to the minutes but it is dated 12 th January, 2005. Ultimately we think nothing turns on it but, given that fact and the positioning of the minute in the minute book, we think it most likely that the date of the board meeting has been mistyped and it was in fact held on 12 th January, 2005, at 2pm rather than 2004. What is significant for present purposes is that the CMI bond was assigned by the trustees of the OEEA Trust to Astral and the minutes asserted on their face that Astral was wholly owned by the OEEA Trust. 39. On 7 th May, 2004, Anchor wrote to Mr Clapp. The letter was headed " Re Astral Enterprises Limited / OEEA Settlement ". The first paragraph read as follows:- "Further to your meeting with Barry Shelton last week and your discussions for the future of the above entities, we should be obliged if you would let us know what your intentions for the company and trust are. If we are to terminate the trust and dissolve the company we would have to make arrangements to re-register the shareholdings currently held by the company into your own name, together with the insurance premium with Clerical Medical and the property at 14 Kingston Close, Blandford Forum, Dorset would also have to be re-registered." There is no trace of any reply to that letter from Mr Clapp. 40. It is a matter of record that Anchor's ability to act as a company and trust administrator was coming to an end at this time. The judgment of the Royal Court in *Anchor Trust Company Limited v Jersey Financial Services Commission* [2005] JLR 428 records that, following the introduction of registration of trust companies by the Financial Services (Jersey) Law 1998, such companies had to apply for registration by 2 nd February, 2001. Under the transitional provisions all applicants were permitted to carry on business pending the grant or refusal of their application. Anchor's application was refused on 3 rd March, 2005, after considerable exchanges, representations etc. over the previous year or two. 41. Against that background, there is a minute of Astral dated 12 th January, 2005, at 3pm attended by Mr Shelton, Mr Barby and Mrs Murray, all of Anchor. As this is a significant meeting for the purposes of the present proceedings we quote

below some of the relevant extracts from the minutes:- "Transfer of Management The Chairman reported that the Directors had received confirmation from the Trustees that the OEEA Trust, who wholly own the shares in this Company, that the services of Anchor Trust Company Limited as its managing Agents are no longer required, and that the Management and Control of the Company is to be transferred to John Stanley Harrod of Flat 7, 6/7 St Saviour's Road, Jersey JE2 7XN. [emphasis added] Appointment of Directors IT WAS THEREFORE RESOLVED to appoint Mr John Stanley Harrod as the new director of the company with immediate effect. Resignation of Directors IT WAS ALSO RESOLVED to accept letters of resignation from Mr B Shelton, Mr R Barby and Mrs M Murray as directors of the Company to be effective from the end of this meeting. Appointment of Secretary IT WAS ALSO RESOLVED to appoint John Stanley Harrod as the new Secretary of the Company with immediate effect. ... Shareholders. IT WAS ALSO RESOLVED that the 100 issued shares held in the nominee names be transferred as follows and that signed declarations of trust be prepared and signed, together with the appropriate share certificates to be duly signed by the new director and secretary of the Company. Transferor Transferee Number of Shares Anchor Management Limited Jane Helena Clapp Anchor Management Limited Jane Helena Clapp Anchor Management Limited Matthew Benjamin Clapp Anchor Management Services Limited Jane Helena Clapp Total 42. There were additional decisions recorded in the minutes of that meeting changing the registered office to Mr Harrod's address at Flat 7, 6/7 St Saviour's Road, St Helier, agreeing notification to the Land Registry to reflect the new registered office of the Company, closing the Company's bank account which was under the Anchor umbrella, and also resolving that all loans between the Company and the OEEA Trust be written off. It was finally resolved that the Company books should be sent to the new registered office. 43. There is a complication in relation to this meeting in that, although the minutes refer to the existing directors, Mr Shelton, Mr Barby and Mrs Murray having resigned with effect from the close of the meeting, the letters of resignation in the minute book are all dated 11 th January, 2005, (i.e. the day before) and each states that such resignation is 'with effect from today's date'. Article 72 of the Company's Articles of Association provides:- "The office of a director shall be vacated if:-

- (c) he resigns his office by notice to the Company...." It would seem on the face of it therefore that Mr Shelton, Mr Barby and Mrs Murray had resigned on 11 th January, and that accordingly there were no directors of the Company on 12 th January. 44. Despite these minutes, no share certificates were ever issued to Mrs Clapp or Matthew Clapp, and the shares remained in the names of the two Anchor nominee companies. There is no explanation in the minutes as to how there were now apparently 100 shares in issue rather than only 2. 45. We should add that up to and including 1 st January, 2005, the annual returns filed with the Companies Registry were consistent with the Company's records. In other words two shares in issue were shown and these were owned by various Anchor companies as described above except in relation to 1 st January, 1999, when the shareholders of record were Mr Dimsey and Pelegrin Nominees Limited. 46. The next board meeting was purportedly held on th September, 2005. It is to be recalled that, on the face of it, there was

only one director of the Company at that time, namely Mr Harrod who had purportedly been appointed on 12 th January, 2005. He is not recorded in the heading to the minutes of 8 th September as being present, but it is recorded in the first item that he was appointed chairman of the meeting and he has signed the minutes. The minutes record the appointment of John Marshall and Philip Stott (both of Martello Management Limited) as additional directors, with Mr Harrod resigning as both director and secretary. The registered office was transferred to Martello's office and it was recorded that Mrs Clapp transferred fifty of her shares to Martello Management Limited with the remaining twenty-six being transferred to Martello Trust Co Limited. Matthew Clapp was also recorded as transferring his twenty-four shares to Martello Trust Co Limited. However there is no evidence of any share transfers signed by Mrs Clapp or Matthew Clapp. 47. There was then a further board meeting dated 9 th September, 2005, i.e. the following day. Mr Marshall and Mr Stott were present and the following entry is recorded:- "It was noted that although the Company approved the transfer of 100 shares on 12 th January 2005 from the Anchor group of companies to the Clapp family, the directors noted that the shares had never been issued and in any event there were only two shares in issue. The subsequent transfer of these 100 shares to the Martello group of companies was therefore also incorrect. IT WAS RESOLVED that the 2 shares in issue be transferred as follows:-

Transferor	Transferee	No of Shares
Anchor Management Services Ltd	Martello Management Ltd	Anchor Management Limited
Martello Trust Co Limited	The board further decided to approve the affixing of the Company seal to share certificates 8 and 9 in respect of the above shareholdings."	

The minute originally recorded the share certificates as 10 and 11 but this has been altered in manuscript to 8 and 9 to reflect the fact that certificates 8 and 9 had recorded the Martello companies as owning fifty shares following the meeting of 8 th September, whereas the position was now corrected so that each Martello company owned only one share. 48. It is clear from the records that the minute of th September referred to in the preceding paragraph was factually correct. There had never been any resolution by the directors of Astral to issue more than two shares and the references to the total of one hundred shares in the minutes of 12 th January, 2005, and 8 th September, 2005, are inexplicable. No explanation is given as to why there are suddenly one hundred shares in issue and there are no entries in any of the Company's records which show any additional shares being issued. 49. What is of note is that the Martello companies issued declarations of trust. There are two undated declarations of trust whereby each Martello company states that it is holding fifty shares upon trust for Mr Harrod . They have been crossed through and there are then similar undated declarations of trust by each company in respect of one share in favour of Mr Harrod . In other words, although until September 2005, the registered shareholders were all holding as nominees for the trustees of the OEEA Trust, from 8 th September, 2005, the registered Martello shareholders asserted that they were holding as nominees for Mr Harrod . 50. The Court has been shown a standard form produced by the Martello group. It is described as a 'company formation application' but Mr Marshall explained in evidence that it was also used by the group when it took over an existing company. That form is dated 8 th September, 2005, and is signed by Mr Harrod as purported beneficial owner. Section 4

requires insertion of the name and address of the beneficial owner and it is Mr Harrod's name and address which appears there. Apart from this document, there is no documentary evidence to explain the apparent change in beneficial ownership of the Company from the OEEA Trust to Mr Harrod . 51. Administration of the Company by Martello only lasted some nine months or so because on 31 st May, 2006, the next board meeting was held, at which time administration was transferred to the Nautilus group. Mr Stott and Mr Marshall were the directors present and four individuals from Nautilus were also present. The effect of the meeting was that the four representatives of Nautilus were appointed as the new directors with Mr Stott and Mr Marshall resigning from the end of the meeting. Nautilus Corporate Services Limited was appointed as secretary in place of Martello Secretaries Limited which resigned and the following purported transfer of shares took place, namely 51 shares from Martello Management Limited to Nautilus Nominee Services Limited and 51 shares from Martello Trust Company Limited to Nautilus Corporate Services Limited. 52. As can immediately be seen, this was a nonsensical minute. At the previous board meeting of 9 th September, 2005, the directors (provided by Martello) had agreed that there were only two shares in issue and even the erroneous earlier minutes had only ever suggested that there were 100 shares in issue. Despite this Martello was now purporting to transfer a total of 102 shares. Clearly Martello was in a state of some confusion. Despite the minute of 9 th September, 2005, which had recorded the correct position that there were only two shares in issue, the annual return filed by Martello on 1 st January, 2006, stated that there were 100 shares in issue with fifty being held by each of the two Martello nominee companies. 53. Following the meeting of 31 st May, 2006, the two Nautilus companies executed declarations of trust in respect of 51 shares in favour of Mr Harrod . 54. Mr Marshall appears to have moved to Nautilus and he clearly considered Mr Harrod to be the beneficial owner. When the Financial Services Compensation Scheme in England wrote to Astral as the parent company of Latham Hirst (which by then was in the process of being struck off) in June 2006 Mr Marshall sent the letter on to Mr Harrod for instructions although he does not appear to have received any reply. 55. On 27 th January, 2007, Mr Clapp wrote a letter to Mr Marshall at Nautilus headed ' Astral Enterprises Ltd, OEEA Trust' . In that letter he complains about having received an invoice from Nautilus and says that he knows nothing of them (i.e. Nautilus) and has not given instructions to them. The letter includes the following passages:- "As you know I have an agreement with you [i.e. Mr Marshall] to pay you an annual fee for keeping Astral and OEEA with a Jersey address and simply filing the annual non-trading return for Astral. The one director if (sic) John Harrod , whom I remunerate separately. I have given no instructions to Nautilus and neither have I been invited by them or you to do so. You told me in no uncertain terms when we met that you shared my disgust with Barry and Anchor for emptying my sterling and dollar accounts with NatWest in Guernsey (and transferring them and appointing themselves as authorised person with The Bank of Scotland within their own company bank accounts). We discussed my original agreement with Dermot, which he failed to tell me had evidently been assigned by him to Barry and Anchor and you also told me of the appalling way they acted and behaved to you. I am obviously reluctant to suddenly find that Nautilus have assumed the rights to invoice me for

work they intend or may decide or would like to do for me and I need to meet you and agree any possible alternative to the existing agreed arrangements, acceptable to us both. ... As regards the 'urgent' letter that John Harrod sent to me via Theresa (and now faxed onto me by Martin Osment), I am unaware as to why Mr Grimshaw of Nautilus is seeking information from him. As I need to visit Jersey to arrange for the two companies to have facilities, I shall hope to meet you shortly and look forward to doing so. In the meantime I assume Astral is still within the annual period of reporting and the fees already paid." The letter was copied to Mr Harrod with a covering note saying " John - thanks for sending the letter via Theresa and see you soon - Gerald ". There is also a manuscript note on the letter by John Marshall indicating he has spoken to Mr Clapp who said he would contact Mr Marshall on his next visit to Jersey. 56. On 19 th July, 2007, a manager at Nautilus wrote to Mr Clapp to inform him that John Marshall had left the employment of Nautilus in June 2007 and he had taken over responsibility for the clients previously under his administration. He said that having reviewed the files, the records provided by John Marshall indicated that John Harrod was the beneficial owner and that Nautilus had been seeking various information from him (Mr Harrod) which had not been returned. The letter emphasised that in order for Nautilus to continue to provide services, the outstanding fees and queries would need to be dealt with. 57. There then followed various letters from Nautilus to Mr Clapp seeking payment of its fees as to which there was no reply until eventually on 10 th August, 2007, Mr Clapp wrote stating that he had never authorised or invited Nautilus to act for him and sending them an invoice for £350 for "inconvenience caused by persistent demands for money for claimed client relationship". The letter said that he had had a bad experience with Anchor but he had then met Mr Marshall who came highly recommended by a mutual friend. He had discovered that Mr Marshall had apparently joined Nautilus but had now left. 58. Not surprisingly this provoked a somewhat irritated response from Nautilus dated 15 th November, 2007, in which it was asserted that they were informed by Mr Marshall that Mr Harrod was the beneficial owner of the Company and they had requested compliance information from him. The letter went on to say "If you are stating you are the beneficial owner, I will need to see proof of your entitlement to the shares.....". Mr Clapp's somewhat feisty response of 21 st August stated that Nautilus had been incorrect in stating that Astral was owned by Mr Harrod and he was not interested in what Mr Marshall may have told Nautilus. He reaffirmed that Nautilus had never received any authorisation direct from Astral and he copied the letter to Mr Harrod . 59. On 21 st December, 2007, Nautilus wrote further to Mr Clapp reminding Mr Clapp of the outstanding fee position and pointing out that Nautilus had taken over from Martello as Martello had not been able to secure an appropriate licence from the Jersey Financial Services Commission to conduct trust company business and that Nautilus understood that Mr Marshall had written to his entire client base advising them of this action in the early part of 2006. Despite further letters to Mr Clapp pointing out that the annual return could not be filed without fees, nothing further was heard from Mr Clapp. 60. Eventually on 6 th May, 2008, Nautilus wrote to Mr Clapp stating that they had closed their files and written off all outstanding fees. They confirmed that they had arranged for all directors and the company secretary to resign

from office and they would no longer be providing the registered office to the Company. The letter also sent what were described as copies of executed stock transfer forms transferring the issued shares from Nautilus into the name of Mr Harrod as he was the individual who their records indicated as being the beneficial owner. The original transfers dated 6 th May, 2008, appear to have remained with the Company books. The Company books also contain the original resignation of all the directors and Nautilus as secretary with effect from 6 th May, 2008. 61. Despite this, two of the Nautilus directors appear to have held a further board meeting on 28 th August, 2008, at which they appointed Mr Clapp as the director of the Company with all the Nautilus directors resigning as directors with effect from the date of their letters of resignation, together with Nautilus resigning as secretary. A copy of that minute was sent by Nautilus to Mr Clapp on 28 th August pointing out that he was now the director of the Company and that the Company was his responsibility. 62. Earlier, on 25 th October, 2007, a letter from Mr Harrod's address had been sent on his behalf by a Mr Christian Daley to Mr Clapp concerning Astral. It claimed a total of £10,000 for outstanding fees to Mr Harrod in respect of the Company. The relevant parts of the letter were in the following terms:- "As you are fully aware Mr John Harrod has been acting on your instruction regarding Astral Enterprises Limited and has accumulated unpaid time and expenses. It has been estimated that cost of registration and loss of earnings. 2006 Company registration £180.00 2006 unpaid company secretary fees £4,820.00 2007 Company registration £180.00 2007 unpaid company secretary fees £4,820.00 Total due to date: £10,000 I must inform you that unless these payments are meet in full to Mr Harrods address before the close of business Fri. 9 th November 2007 I will be instructing Mr Harrod to hand over all information in his possession and formal legal action will be sanctioned".(sic) We observe that this would be a very strange letter for a beneficial owner to write to someone who did not have any ownership interest in the Company. It is much more akin to a letter to the owner from someone who is providing professional services to the Company. 63. On 30 th June, 2008, the JFSC wrote to Astral at Nautilus House giving notice that the Company would be dissolved at the expiry of three months unless the annual return was filed and this was sent on to Mr Clapp by Nautilus on 1 st July, 2008. As mentioned earlier Astral was duly dissolved on 1 st October, 2008, pursuant to Article 205 of the Companies (Jersey) Law 1991 because it had not filed its annual return for January 2008. 64. In 2013 Dr Osment acted to assist Mr Clapp in reinstating Astral. He wrote to the JFSC on 8 th August, 2013, and the accompanying memo stated that the beneficial owner of Astral was the 'Clapp family trust called OEEA' and went on to say that Mr Clapp had been introduced to Mr Harrod as a suitable person to be the local director of Astral. As the effective settlor of the OEAA Trust, Mr Clapp had appointed Mr Harrod as the director of Astral. The JFSC responded on 12 th August, 2013, explaining what was necessary for a company to be reinstated. There were then various exchanges between Dr Osment and Nautilus in the course of 2013 about the possibility of reinstatement but nothing further seems to have happened at that stage. 65. Mr Clapp had instructed Dr Osment in writing by letter dated 24 th August, 2013, which was headed " Astral Enterprises (Jersey) Limited No. 71635 (the Company) and OEEA Trust ". The relevant parts of the letter read:- "As you know, I was the original settlor of the trust, and

appointed Mr Dimsey of Westminster Trust in Jersey to deal with the affairs, which were principally to set up a fund for my wife and sons. This led to the formation of the Company. The affairs are now however in a mess, and need sorting out. I am pleased to confirm my previous request to you to investigate these matters and find out how to resolve them, primarily focussed upon recovering control of the two core assets:- The Clerical Medical Bond held in the Isle of Man The property in Blandford, Dorset I enclose a letter of authority to enable you to discuss this matter with all relevant bodies and persons, and authorising the giving of information. Once you are fully appraised of the situation, I then wish to discuss with you the steps to be taken to resolve the matters." 66. In due course, as already mentioned, Mr Clapp presented a representation dated 8 th May, 2015, to reinstate the Company as a result of which it was reinstated on 19 th May, 2015. 67. Following reinstatement of the Company, the Court has seen two rival versions of corporate actions purportedly taken since then. Mr Clapp and his son purported to hold a meeting of shareholders on 27 th May, 2015, (Mr Jordan Clapp holding a form of proxy from Mrs Clapp). The meeting noted that the only two shares ever legitimately issued were the two subscriber shares and that these had been transferred to Mr Clapp and Mrs Clapp. This appears to be a reference to the transfers executed by Mr Dimsey and Pelegrin (as described at paragraphs 20 and 21 above). The meeting purported to confirm the appointment of Mr Clapp as a director and Mrs Clapp as company secretary and that Mr Harrod had resigned as a director on 8 th September, 2005. 68. By way of contrast the Court has also seen minutes of a meeting on 21 st August, 2015, attended by Mr Harrod , Mr Trigwell , Dr Osment and Ms Teresa Day. This records that, following the reinstatement of the Company, Mr Harrod is confirmed as the beneficial owner of the Company. The meeting was initially a meeting of shareholders (comprising Mr Harrod) and Mr Harrod appointed himself as director. Thereafter he held a board meeting and appointed Mr Trigwell and Dr Osment as additional directors and Ms Day as secretary. The board then noted the transfer of 102 shares to Mr Harrod from Nautilus Nominee Services Limited and Nautilus Corporate Services Limited and also noted the transfer dated 21 st August, 2015, of 102 shares by Mr Harrod to Mr Trigwell . Witness Evidence 69. Affidavits and/or witness statements have been exchanged and these have been relied upon as evidence in chief. The bundle before the Court also included affidavits and witness statements in connection with the QBD proceedings. In view of the documentary evidence, we propose to confine our description of the evidence contained in the affidavits or given orally to that which is directly relevant to resolution of Mr Trigwell's claim. (i) Mr Trigwell 70. Mr Trigwell made it clear that he had no personal knowledge of the ownership of Astral. He was relying entirely upon what he had been told and upon the documentary evidence from Martello and Nautilus showing Mr Harrod as the beneficial owner. 71. It is clear that there is a considerable history between him and Mr Clapp and indeed their mutual hostility became clear when Mr Clapp was giving evidence and being cross-examined by Mr Trigwell . As already mentioned, the background according to Mr Trigwell is that he merged his existing insurance services business with Latham Hirst, which was owned by Astral. It was understood that he would receive shares in Latham Hirst in exchange. He also agreed to give guarantees for certain liabilities of Latham Hirst. Disputes

then arose and, at a time when he was extremely ill, he was prevailed upon to consent to the order to which we have referred earlier in 2003 whereby the Chancery Division proceedings between Mr and Mrs Clapp and Astral on the one hand and Latham Hirst, Mr Trigwell and Mr Latham on the other were settled on the basis that Latham Hirst was declared to be wholly owned by Astral (apart from two shares in the names of Mr and Mrs Clapp). Thereafter he asserts that Astral sold off assets of Latham Hirst for Astral's benefit with the result eventually that Mr Trigwell's guarantees were called in and he lost his home. It was in those circumstances that, once he had discovered that Astral had some assets, he instituted the QBD proceedings on 8 th August, 2014, against Astral Enterprises (Jersey) Limited claiming £671,200. 72. Through Dr Osment , he had discovered that Astral had certain assets, namely the Blandford property and the CMI bond. He told Mr Harrod of how he (Mr Trigwell) had been defrauded by Mr Clapp and Astral and, as a result, Mr Harrod agreed in 2014 on behalf of Astral to consent to judgment in the QBD proceedings and subsequently to consent to a charging order over the Blandford property and a third party debt order in respect of the CMI bond. Mr Trigwell realised that Astral was dissolved at the time and that Mr Harrod had signed as a director but he felt that, as beneficial owner, Mr Harrod could speak for the Company. He accepted that it was clear that Mr Harrod knew nothing about the assets in Astral until he had been told about them by Mr Trigwell and/or Dr Osment . 73. He said that he and Dr Osment had met with Mr Harrod on 21 st August, 2015, at which time Mr Harrod had agreed to transfer his shares to Mr Trigwell for no consideration. 74. When Mr Harrod signed the initial acknowledgement of liability in 2014, Mr Trigwell had told him about the other assets in Astral. He said that Mr Harrod was cross because he had not been paid by Mr Clapp in respect of Astral. He was pressed by Mrs Clapp on why Mr Harrod would choose to give him a company which held assets. He responded that it was because of the way that he (Mr Trigwell) had been treated by Mr Clapp and also because he (Mr Trigwell) was owed £671,200 which was more than the value of the assets. There was therefore no equity in the Company. After being taken through the various declarations of trust by Mrs Clapp, he accepted that the shares in Astral appeared originally to have been held for the benefit of the OEEA Trust but he said that from September 2005 they were held for Mr Harrod and that was clear from the records of Martello and Nautilus. 75. He was asked about a letter dated April 2016 from Mr Harrod to Advocate Goulbourn of Nautilus which referred to a meeting held on 8 th January, 2016, with Advocate Goulbourn and Mr Chambers of Nautilus, together with Mr Trigwell and Dr Osment . The letter referred to various things which had been said at the meeting and also asserted that Mr Harrod had been at the meeting. However it is clear from the record that this was not the case and indeed Advocate Goulbourn replied on th April to Mr Harrod asserting that Mr Harrod had not been at the meeting and that only Mr Trigwell and Dr Osment had attended apart from the Nautilus representatives. Mr Trigwell was asked whether he had drafted the letter for Mr Harrod to sign but said that he had not. He did agree however that someone else had drafted it, not Mr Harrod , whose mind went up and down and had been much affected by an incident when he was attacked many years ago. 76. Mr Trigwell stated that, following the judgment in the Queen's Bench Division, he obtained a third party debt order and was in due

course able to recover the sum of £166,918 by realising the CMI bond. At the direction of the Court he was ordered earlier in the proceedings to provide an affidavit as to what had happened to that sum. That affidavit asserted that some £33,566 had gone to pay immediate debts or payments, £72,728 had been spent on the purchase of equipment for Freedom Resource Recovery Limited, a company which owns a recycling plant which aims to provide funds for a charity called Freedom Power Chairs which was established by Dr Osment and Mr Trigwell and is intended to help the disabled and assist with the provision of a bespoke wheelchair service. The balance of £60,624 was spent in direct purchases for Freedom Resource Recovery Limited. The upshot was, said Mr Trigwell, that none of the £166,918 was retained by him. He himself is a pensioner receiving benefits and has no assets of note.

(ii) Mr Harrod 77. Mr Harrod swore an affidavit for these proceedings on 23 rd September, 2016. The Court was informed at the hearing by Mr Trigwell that Mr Harrod was unfortunately not well enough to give evidence although no medical certificate was produced. His evidence has not therefore been tested by cross-examination. We have had regard to his affidavit but it follows that the weight to be given to it is adversely affected by the fact that no cross-examination has taken place. 78. We would summarise the following evidence from his affidavit which seems to us material:- (i) He says that he has been the beneficial owner of Astral since its incorporation. He has been resident in Jersey at all material times. Dr Osment, whom he had known for some time, introduced him to Mr Dimsey and Mr Moignard of DFM early in 1998. Mr Moignard and Mr Dimsey had "an idea for a new client service company to trade in property-related opportunities, and needed someone local and reliable as the head of this new venture". (ii) He went on to say that Astral was to be "...a flexible service company which would enable DFM's clients to raise funding for property transactions, such as buying and developing land, then reselling the completed development at a profit. I recall Mr Moignard and Mr Dimsey explaining that the idea was that assets would be put into the Company and traded and that I would thereby earn both the 'usual' director's fees as well as fees from the profits generated by the transactions themselves...." (iii) He said that Mr Dimsey explained that DFM did not incorporate companies and that Anchor, through Mr Shelton, would undertake this. Mr Harrod said that he had recently been shown the COBO form which showed Mr Clapp as the beneficial owner. He said he was astounded by this because he had always been the beneficial owner. He assumed that this came about because Mr Clapp happened to be around at the time the formation documents were being put together and/or because Mr Shelton misunderstood and inserted Mr Clapp's name in the application in error, perhaps because he was going to be one of the DFM clients using Astral's services. (iv) He said that as far as he could recall, he first met Mr Clapp in about 2001 and then again on one or two later occasions when Mr Clapp had bought him drinks and lunch in the Royal Yacht Hotel. Mr Clapp had explained that he would find it useful to trade property through an existing Jersey company to avoid paying UK tax on the income earned overseas. However Mr Harrod never actually agreed to Mr Clapp using the services of Astral and Mr Clapp was certainly never the beneficial owner of the Company. (v) He said that in about January 2005, when Anchor's licence was not renewed by the Jersey Financial Services Commission, it was necessary for all companies

administered by Anchor to find a new home. Mr Marshall had by then gone into partnership in Martello and, as he had been involved earlier whilst at Anchor, Mr Harrod moved Astral to Martello. He signed the form (referred to at para 50 above) on 5 th September, 2005, in his capacity as beneficial owner of Astral. (vi) He said that once Mr Dimsey had left Jersey and as Mr Marshall did not seem to be able to find any new clients, he copied occasional correspondence to Mr Clapp as Mr Clapp was the only DFM client that he (Mr Harrod) knew. (vii) At paragraph 12 of his affidavit he said that in May 2006 the management of Astral moved to Nautilus "when Mr Marshall sold Astral to Martello Limited". It has to be said that this sentence makes no sense at all. (viii) He said that Nautilus did not inform him in May 2006 of their giving up the administration of the Company. He said this was because Mr Clapp had successfully arranged that all post for Mr Harrod should go to Mr Clapp. He did not explain how this had happened. (ix) He said that when Astral was struck off he let matters drop. There appeared to be no assets in the Company and it had not benefited him in any way. (x) In about August 2013 he was contacted by Dr Osment at the behest of Mr Clapp asking him to agree to the reinstatement of Astral. He was told that Mr Clapp would meet the costs. He was therefore content for it to occur although he was outraged when he subsequently found out that Mr Clapp had managed to reinstate the Company on the premise that he, Mr Clapp, was the beneficial owner. (xi) Notably, the affidavit says nothing about the fact that Mr Harrod consented in 2014 to judgment in the QBD proceedings in favour of Mr Trigwell and to the charging order and the third party debt order. Nor does it say how he purported to speak for a company which had ceased to exist; nor does it mention the subsequent transfer of his shareholding to Mr Trigwell in August 2015. (xii) In summary therefore, Mr Harrod's evidence was to the effect that he was the beneficial owner of Astral at all times from its incorporation in 1998. (iii) Dr Osment 79. Dr Osment swore an affidavit on 23 rd September, 2016, which was admitted as his evidence in chief. He was also cross-examined by Mrs Clapp. 80. Dr Osment explained that he introduced Mr Harrod to Mr Dimsey and Mr Moignard of DFM as a potential director of a new company which they planned to incorporate. Mr Harrod was a retired jeweller who was unable to work in that capacity due to injuries sustained in an assault. Acting as a director was a new role for Mr Harrod . He understood that Mr Harrod would own the company and would earn fees and profits from it. He was therefore aware of the formation of Astral although he had no direct connection with it. At about the same time he was consulted by Mr Clapp about forming an overseas trust. He introduced Mr Clapp to Mr Moignard and Mr Dimsey and he understood that their company, Westminster Trust Limited, formed the OEEA Trust for Mr Clapp and his family. 81. He had known Mr Clapp for many years and from time to time thereafter Mr Clapp referred in passing to transactions he was planning with Astral but he never told Dr Osment any details. Dr Osment did not ask but was pleased to think that Mr Harrod was being successful. 82. He had undertaken the arbitration in 2003 in connection with the ownership of Latham Hirst. He had understood that Astral owned Latham Hirst. As Mr Clapp would more than once refer to his 'taking instructions from his principals' at Astral, he took this to mean that Mr Dimsey instructed Mr Clapp acting on behalf of Mr Harrod . 83. In 2013 Mr Clapp sought Dr Osment's assistance in getting Astral reinstated as it had been

struck off. At the time, Dr Osment believed Mr Clapp's assertion that he had 'latterly' become the real beneficial owner of Astral and he wrote to the JFSC on 8 th August, 2013, on behalf of Mr Clapp. However the letter and accompanying memorandum are not consistent with Dr Osment's statement that Mr Clapp told him that he had only 'latterly' become the owner of Astral. The second paragraph of his letter of 8 th August, refers to Mr Clapp as "...the settlor of the original 100% shareholder in the Company, his family's OEEA Trust" and also referred to Mr Harrod as the last director. The accompanying memorandum setting out the history of the Company contained these two paragraphs:- "Beneficial owners; Clapp family trust called OEEA. Mr Clapp states that OEEA was created as a trust fund for his wife and children. On the recommendation of Mr Dimsey , whilst at DFM, Astral Enterprises Limited was formed as trustee to whom assets were transferred. The shares in Astral were to be 100% owned by OEEA . Mr Clapp was separately introduced to John Harrod , a retired jeweller in Jersey, and a suitable person to be the local director of Astral Enterprises Limited. As the effective settlor of the OEEA Trust, Mr Clapp appointed Mr Harrod as the director of Astral Enterprises Limited." [Emphasis added] 84. Dr Osment was pressed on whether, when Mr Clapp asked him to reinstate Astral in 2013, he had said to Mr Clapp that he had thought it was owned by Mr Harrod and not by Mr Clapp. Dr Osment replied that he did not recall mentioning that but he was sure he would have. Nevertheless there is no mention of this in his affidavit, and his letter to the JFSC and accompanying memo are inconsistent with his having held a belief that Astral was owned by Mr Harrod from 1998. Dr Osment admitted that he was surprised to discover that, when he spoke to Mr Harrod in 2013, he (Mr Harrod) knew nothing of Latham Hirst, which Astral had owned. 85. Subsequently, Mr Trigwell approached him (Dr Osment) having come to know that there were assets in Astral. Mr Trigwell explained to Dr Osment how he and his family had lost their home whilst he was very ill as a result of Mr Clapp's behaviour in connection with Latham Hirst. Dr Osment was convinced by Mr Trigwell's account and concluded that it was therefore legally and morally right for Astral to accept its liability to Mr Trigwell in connection with the QBD proceedings brought by Mr Trigwell . Mr Harrod subsequently signed the consent in 2014 to Mr Trigwell taking judgment against Astral. 86. He was asked about the incorporation of the English company called A Astral Enterprises Limited to which dividends payable to Astral were diverted. He said that he was aware of this company being formed to receive dividends that were intended for Astral and he had allowed his address to be used as the registered office. The company was formed on the instructions of Mr Harrod in August 2012 but he was not asked to advise upon it. He did not caution against it but he agreed that, if he had put his mind to it, he would have done so. He did not consider it to be dishonest to pay money intended for Astral to A Astral Enterprises Limited because Mr Harrod was the beneficial owner of both. Furthermore the amount involved was minimal whereas the amount of the rental from the Blandford property intended for Astral which had been received over the years by Mr Clapp was substantial. 87. He was aware that, at the time Mr Harrod signed the documents on behalf of Astral in 2014 to concede Mr Trigwell's claim and to consent to the charging order and the third party debt order, Astral was dissolved. But he believed that under Jersey law, a director could still act when a company was dissolved. 88. He denied any

suggestion that Mr Trigwell had deliberately misnamed the Company in the QBD proceedings and pointed out that in the open letter of authority to him dated 14 August, 2013, Mr Clapp had signed a document which was headed 'Astral Enterprises (Jersey) Limited'. 89. Dr Osment was referred to the notes of a meeting held at the office of Nautilus on 8 January, 2016, between Mr Chambers and Mr Goulbourn of Nautilus and Dr Osment and Mr Trigwell, who were said to be representatives of Mr Harrod. The detailed notes of that meeting prepared by Mr Chambers recorded Dr Osment as saying on page three that it was Mr Clapp who had originally set up the Company through Mr Dimsey but there had come a time when Mr Clapp had refused to pay any of Anchor's fees and accordingly in 2005 had told Mr Harrod that he wanted nothing further to do with Astral. Mr Harrod could take over the ownership, settle the costs and anything else owed. Mr Osment was recorded as saying that Mr Clapp essentially washed his hands of the Company at that time. Mr Chambers was recorded in the note as commenting that this confirmed the information held in the Company's records, namely that Mr Clapp was the first beneficial owner with Mr Harrod becoming the new beneficial owner in September 2005. It was put to Dr Osment that this conflicted with what he said in his affidavit and was saying in oral evidence, namely that the Company had always been beneficially owned by Mr Harrod. Dr Osment admitted that he had no immediate explanation for this conflict. 90. He was also asked about that part of the note of the meeting where he was recorded as saying that the current assets of Astral were the Blandford property, an insurance bond (i.e. the CMI bond) and a few investments. He accepted that, by the time of that meeting, Mr Trigwell had in fact recovered the CMI bond so that it was not still in the Company. He was also referred to the letter dated April 2016, from Mr Harrod to Nautilus (referred to at para 75 above) and agreed that this could not have been drafted by Mr Harrod. It was clearly drafted by somebody else and erroneously referred to Mr Harrod as having been present at the meeting on 8 January. 91. He was also referred to a note made by Mr Chambers on an occasion when Mr Harrod had come into the office of Nautilus unannounced on 4 November, 2015. Mr Harrod was recorded saying that he had been told by Dr Osment to come to the Nautilus offices with his passport and Jersey Telecoms bills but "did not really know what it was all about". Dr Osment said that he could not answer why Mr Harrod would have said that. 92. In summary, like Mr Harrod, Dr Osment's evidence was to the effect that his understanding was that Mr Harrod had been the beneficial owner of the Company at all times from the date of incorporation in 1998. (iv) Mr John Marshall 93. Mr Marshall swore an affidavit dated 11 May, 2017, which was taken as his evidence in chief. He was also cross-examined by Mrs Clapp. 94. In his affidavit he explained his career in finance before saying he joined Mr Shelton as a director and shareholder of Anchor in 1989. He had known Mr Harrod for some time when he (Mr Harrod) had been a jeweller in St Helier. He believed that he saw him at Anchor's offices in the early part of 1998 and that Mr Harrod told him he was there to meet Mr Dimsey regarding the formation of a company for him (Mr Harrod). 95. Mr Marshall left Anchor in February 2002 and became a director and shareholder of Martello together with Mr Stott. A few years later, in 2005, Martello took over the administration of Astral. He understood that Mr Harrod instructed Anchor to transfer the books and records to Martello. Although

Martello did not receive any correspondence files from Anchor (which he said was the normal procedure in such matters) he said in his affidavit that 'the files showed' that Mr Harrod was the beneficial owner of Astral. Mr Harrod also filled in the Martello client information form which was produced to the Court stating that he was the beneficial owner. He said that Mr Harrod had told him that he was expecting various clients at Anchor to generate business but could not recall any such business appearing. In 2006 Martello sold its portfolio of clients, including Astral, to Nautilus at which time Mr Marshall's involvement ceased. 96. In cross-examination he was referred to the minutes of the board meeting of 8 th September, 2005. He accepted that although the minutes referred to Mr Harrod being the chairman of the meeting and it was Mr Harrod who subsequently signed the minutes, he was not listed as being present. He also accepted that the minutes showed 100 shares being transferred from Mrs Clapp and Matthew Clapp to the Martello companies. He did not recall being aware of the Clapp name at the time Astral was administered by Martello although he accepted that that was what the minutes said. 97. He was also referred to the minute of the meeting of the directors the next day on 9 th September, 2005, which he had chaired. This was the meeting where it was agreed that 100 shares had never been issued and that there were only two shares in issue. A transfer from Anchor to Martello of those two shares was approved. He accepted that despite this, Martello had filed the annual return for 1 st January, 2006, showing 100 shares and accepted that this was incorrect. He was also pressed on how it was that on 31 st May, 2006, Martello purported to transfer 102 shares to Nautilus. He said that he had no answer as to how that had happened. 98. He was referred to the minutes of the board meeting on 12 th January, 2005, which referred to the Company being wholly owned by the OEEA Trust but said that he had no knowledge of the OEEA Trust. He also accepted that the minutes showed that the transfer of administration from Anchor had been via Mr Harrod for a few months whereas he had thought that it came straight from Anchor. 99. He was pressed on the source of his understanding that Astral was beneficially owned by Mr Harrod . He said that he was not involved in the incorporation and had simply been told by Mr Harrod that he was the beneficial owner. Mr Harrod had signed the client information form (which was used both to incorporate companies and where Martello took over the administration of an existing company). He accepted that he could not give any evidence to support his understanding other than what he had been told by Mr Harrod . When he was referred to the fact that until September 2005 the declarations of trust had all shown the OEEA Trust as the beneficial owner, he had to accept that he had no idea why Martello had issued declarations of trust in favour of Mr Harrod although of course his understanding was that Mr Harrod owned the Company. He accepted that ultimately Martello had made out the declarations of trust on the uncorroborated assertion by Mr Harrod that he owned the Company.

- (v) Mr Matthew Chambers 100. Mr Chambers was a director of Nautilus (now renamed). He emphasised that he had not been with Nautilus at the time of these events; he had had to look into it when approached by one or other of the parties and had also liaised with the JFSC. He had inspected all the files and indeed had formally produced them to the Court on

behalf of Nautilus pursuant to a subpoena. 101. He said it was clear that, when it took over the administration of the Company, Nautilus had simply proceeded on the basis of the records of Martello and had therefore executed declarations of trust in favour of Mr Harrod and regarded him as the beneficial owner. He accepted that there was nothing in the corporate documents to explain the apparent change of beneficial ownership, in that until September 2005 the records showed the beneficial owner as being the OEEA Trust, whereas when Martello took over in September 2005, the beneficial owner was thereafter shown as being Mr Harrod . 102. He was referred to the note of the meeting on 8 th January, 2016, with Dr Osment and Mr Trigwell , both described as representatives of Mr Harrod . With reference to the passage referred to at para 89 above, he confirmed that he understood Dr Osment to say that Mr Dimsey had recommended Mr Clapp to set up Astral. He went on to say that he did not believe Dr Osment or Mr Trigwell had advised him at the meeting that Mr Trigwell had a claim for £671,200 against Astral or that Mr Trigwell had already realised the CMI bond, being one of Astral's assets. 103. He was asked about the minutes of the board meetings of Astral held on 8 th and 9 th September, 2005, and he confirmed that in order to issue shares, there had to be a board resolution or a standing authority to issue shares pursuant to a board resolution. He agreed that, on the basis of the Company records, there were only two shares in issue. 104. He said that Mr Harrod came to see Nautilus on 4 th November, 2015, at the request of Dr Osment . He was asked about the description in his note dealing with this meeting when he said that Mr Harrod 'did not really know what it was all about' . He explained that Mr Harrod was a frail old man who seemed a little bit confused. He confirmed that there was no evidence anywhere in the corporate records to support the notion that Mr Harrod had caused the Company to be incorporated. 105. He was asked why Nautilus corresponded with Mr Clapp and in particular sent Mr Clapp the executed share transfers when Nautilus resigned in 2008. He said that he thought Martello had given Mr Clapp as the point of contact and that was why Nautilus had continued writing to Mr Clapp. He accepted, as he had in his correspondence with the JFSC, that although Nautilus had executed declarations of trust in favour of Mr Harrod , there was uncertainty as to who was in fact the beneficial owner. (vi) Mr Morgan 106. Finally Mr Trigwell relied on an affidavit sworn by Mr William Morgan, who had acted as accountant to Mr Clapp and various of his companies for many years. Mr Clapp did not require him to attend at trial and accordingly he did not give oral evidence. In his affidavit he said that he had seen that Mr Clapp had claimed that he (Mr Morgan) had advised Mr Clapp to set up Astral. However he had no recollection of advising Mr Clapp to set up an offshore company. It was far more likely that it was Dr Osment who had done so as he and Mr Clapp were friends at the time and Mr Dimsey was also a contact of Dr Osment . 107. He noted that the public records at the Land Registry gave Mr Morgan's Swiss Centre address in London as the address for service on Astral in the UK but he did not recall giving Mr Clapp permission to use the Swiss Centre as an address for Astral in the UK. He said that he knew very little about Astral but from what Mr Clapp did tell him, he would never have deduced that Mr Clapp owned Astral. Mr Clapp always told him that he took instructions from the principals in Jersey but he never said who they were. Mr Morgan said that he did not know any of Mr Harrod , Mr Marshall,

Mr Dimsey or Mr Shelton but had met Mr Trigwell and Dr Osment on many occasions. (vii) Mr Shelton 108. Mr Shelton also swore an affidavit but he was unable to recollect much about the Company. He confirmed that, as the record showed, he had incorporated Astral. However he did not recall what the Company was for or who was the beneficial owner. He did not recall meeting Mr Harrod and his only recollection of Mr Clapp, from the once or twice that he had encountered him, was of a 'larger than life' character who was very assertive. He said that the original COBO forms would have been completed by Mr Dimsey even if signed off by Mr Shelton. He had no personal involvement in administering the Company as it was looked after by Mr Dimsey and then Mr Marshall. It was Mr Dimsey who appeared to have got Mr Harrod involved. (viii) Mr Clapp 109. The Court received various affidavits and witness statements from Mr Clapp whether sworn in the present proceedings or in the course of the proceedings in England. Mr Clapp also gave oral evidence and was cross-examined. We would summarise the material parts of his evidence as follows. 110. He was an insurance broker and in 1996 incorporated Latham Hirst. Subsequently Mr Trigwell became involved in that company. 111. In 1998, Mr Clapp decided to establish a trust for his wife Mrs Clapp and their two children, who at that stage were young boys. He said in evidence that this was partly because of the difference in age between himself and Mrs Clapp. Dr Osment introduced him to Mr Dimsey and the OEEA Trust was established. The CMI bond was subsequently purchased and in due course transferred to the trust. 112. Not long afterwards Mr Clapp instructed Mr Dimsey to incorporate Astral. The Company was incorporated by Mr Shelton on behalf of Mr Dimsey. Immediately following incorporation, Mr Moignard of DFM (Mr Dimsey's firm) sent him a fax dated 7 th May, 1998, confirming the incorporation. 113. On 29 th March, 1999, Mr Dimsey sent him copies of completed share transfer forms signed by Mr Dimsey and Pelegrin, declarations of trust and the original share certificates. The originals were handed to him in person and were placed in a safe deposit box. The originals were still in his possession and indeed he produced them to the Court at the hearing. 114. Having earlier transferred some investments to the Company (see para 27 above), he transferred the Blandford property to Astral on 15 th October, 1999. He had purchased the Blandford property in August 1979 for his eventual retirement. As far as he was concerned, the position was clear, namely that Astral was owned for the benefit of him and his family and he held the original share certificates with completed share transfer forms. Ownership of Latham Hirst was also transferred into Astral's name in 1998. 115. Subsequently a dispute arose between him and Mr Trigwell as to the ownership of Latham Hirst. This was settled on 15 th December, 2003, when, by consent, the Chancery Division made an order as exhibited to his affidavit of 10 th December, 2015, whereby it was held that ownership of the shares in Latham Hirst rested with Astral as to 1,000 shares and with Mr Clapp and Mrs Clapp as to one share each. 116. He was not aware of the QBD proceedings instituted by Mr Trigwell until bailiffs attended at the Blandford property and the tenants informed him of this event. He then established that a judgment had been obtained against Astral Enterprises (Jersey) Limited in October 2014 for £671,200 by Mr Trigwell. He then applied to set aside that judgment on the basis, inter alia, that Astral knew nothing of the proceedings and the wrong company had been named as defendant. 117. He had

subsequently succeeded in having that judgment in the QBD proceedings set aside on 12 th July, 2016. He had also established that dividends from some of the small portfolio of shares owned by Astral had been paid into a bank account in England on the instruction of Miss Day, who apparently is the fiancée of Dr Osment and that this appeared to be an account of a company called A Astral Enterprises Limited. It was also established that the CMI bond had been realised and paid to Mr Trigwell . 118. In August 2013, Dr Osment had offered to help Mr Clapp reinstate Astral and also to help him and his wife gain access to the CMI bond, as he knew that they were very short of money. As mentioned earlier, Dr Osment wrote to the JFSC on 8 th August, 2013, asserting that Mr Clapp was the beneficial owner of the Company. However, on 30 th August, 2013, Dr Osment wrote to Mr Clapp and suggested that he accept that Mr Harrod was the beneficial owner of record. Mr Clapp did not accept that and thereafter Mr Clapp, working without the assistance of Dr Osment , procured the reinstatement of Astral on 19 th May, 2015. 119. When giving evidence, he accepted that the rental from the Blandford property had always been paid (indirectly) to him and his wife. He had always managed the property prior to its transfer to the Company in 1999 and that continued to be the position to date. It was agreed with the directors at the time that he would continue to look after the property although he accepted that there was no written evidence to that effect. 120. As to Mr Morgan's affidavit, he said that Mr Morgan had consented to the use of his UK address for land registry purposes for Astral and that Mr Morgan also knew all about Astral and had indeed procured the transfer of the Latham Hirst shares to Astral. 121. He said that he had arranged the transfer of the CMI bond into the name of the OEEA Trust in 1998/1999 but had not been informed of the subsequent transfer into the name of Astral. He only discovered that in 2015. 122. He was pressed about the correspondence with Nautilus in 2008. He said that he was very irritated at the time as he had not agreed to the transfers of administration involving Anchor, Martello and Nautilus. He therefore objected to receiving accounts for fees from Nautilus. He had provided funds to Anchor to cover fees but they had used it themselves. He had been aware that the Company had been struck off but was not worried about it as he knew one could reinstate it. He felt confident because he had received the original share certificates and declarations of trust from Mr Dimsey and Pelegrin back in 1999 which he still had in his safe deposit box. However in 2013, he had thought it would be right to reinstate the Company as he was getting older (aged 80) and wanted to put his affairs in order. He had filled in the name of the transferees (himself and Mrs Clapp) on the share transfer forms and also dated them. Mr Dimsey and Pelegrin had originally left the names of the transferee blank and they were undated. He had relied upon Mr Dimsey and companies regulated by the Jersey authorities to look after his interests. He asked rhetorically during his evidence why he would have put his own assets into a company which he did not own. As far as he was concerned, he knew that he owned the Company. He said that Dr Osment had advised him at one stage that he needed a local director and had asked him to use Mr Harrod as he (Mr Harrod) could do with money. He only found out that Mr Harrod had resigned as a director in 2005 when he saw the statutory books of the Company recently.

Conclusion

123. Having reviewed the documents and having had the opportunity of seeing and hearing the witnesses give evidence, the Court has no hesitation in concluding that Mr Harrod has never been the beneficial owner of Astral and the declarations of trust in his favour by Martello and Nautilus were erroneous. We would summarise our reasons for so concluding as follows:- (i) It is clear that the records until September 2005 are at one to the effect that it was formed for the benefit of the Clapp family. Thus:- (a) The COBO form submitted for the incorporation of the Company on 1 st May, 1998, specifies Mr Clapp as the beneficial owner. This is not inconsistent with the fact that the shares were subsequently held for the OEEA Trust as the practice of the FSD was to require the name of an individual as the person who was really behind the Company. The form was completed by Mr Dimsey (although signed by Mr Shelton) who was organising the incorporation and advising Mr Clapp. (b) The information in that COBO form was consistent with the COBO form submitted subsequently on 5 th January, 1999, for the incorporation of another company Grosvenor Byde Services Limited where Mr Clapp was also stated as the beneficial owner. In answer to question 10 of the form as to whether the proposed beneficial owner of this new company was a beneficial owner of any other Jersey companies, the name of Astral was inserted. (c) Immediately following incorporation, Mr Moignard at DFM sent a fax to Mr Clapp informing him of the incorporation. There is no record of any communication at this time with Mr Harrod . (d) Declarations of trust were immediately issued by Mr Dimsey and Pelegrin Nominees Limited (as the registered shareholders following transfer from the subscribing shareholders of the Anchor Group) confirming that they were holding the shares on trust for the OEEA Trust. That trust was established for members of the Clapp family and Mr Harrod had nothing to do with it. The initial trustee was Westminster Trust Company Limited, an in-house company of Mr Dimsey , and it was succeeded as trustee by Anchor Trustees Limited. (e) The fact that Mr Clapp was behind the Company is confirmed by the fact that Mr Dimsey provided the original blank transfers and declarations of trust to Mr Clapp and these were put in a safety deposit box at the bank in the name of OEEA Trust. (f) When the shares were transferred from Mr Dimsey / Pelegrin to various Anchor companies, they too executed declarations of trust in favour of the OEEA Trust. (g) The minutes of the board meeting of 4 th December, 2003, record a loan from the Company to the OEEA Trust which supports the fact that it was the owner of the Company. More significantly, the minutes of 12 th January, 2004, (taking the date on the minutes themselves although this may be erroneous as stated at para 38 above) and 12 th January, 2005, each state on their face that it is the OEEA Trust which owns the shares in the Company. (h) The correspondence between Anchor and Mr Clapp is wholly consistent with the fact that he was the person they looked to for instructions in connection with the Company as well as the OEEA Trust; see the letters of 26 th September, 2002, 11 th November, 2003, and th May, 2004, referred to at paras 34 and 39 above. (i) The notes of the meeting of 8 th January, 2016, referred to earlier record Dr Osment as saying that Mr Harrod suffered considerable long-term mental effects as a result of the assault referred to at paragraph 80 above. This raises the question of how likely it was

that Mr Harrod would arrange the incorporation of a company of which he was the beneficial owner when he was a retired jeweller and had apparently not acted as a company director before. (ii) We are satisfied therefore that the evidence that the Company was beneficially owned by the OEEA Trust from incorporation until 8 th September, 2005, is overwhelming. There is not a single contemporaneous document which suggests or even implies that Mr Harrod may have been the beneficial owner up to this point. (iii) The first indication that the beneficial owner of the Company might be Mr Harrod is to be found in the undated declarations of trust by the two Martello companies which were acting as registered shareholders with effect from 8 th September, 2005. The records are somewhat shambolic in that Martello originally states that it is holding 100 shares. This is corrected the next day on 9 th September when it is minuted that only two shares have ever been issued, and then further confused when on 31 st May, 2006, without any further issue of shares, the Martello companies purport to transfer 102 shares to Nautilus. (iv) Given our finding that the Company was not owned for the benefit of Mr Harrod before 8 th September, 2005, we have considered whether there is any evidence of a transfer of ownership at that point. We have not been referred to any written document which supports such a transfer (other than the declarations of trust referred to). (v) The idea of such a transfer is also inconsistent with the evidence of the witnesses put forward on behalf of Mr Trigwell . Their evidence is all to the effect that Mr Harrod owned the Company from the start. In our judgment, that evidence is clearly wrong as it is wholly inconsistent with the documentary evidence as we have just described. Thus Mr Harrod in his affidavit does not assert that he acquired the Company in September 2005. His evidence is to the effect that he was the beneficial owner from the beginning and that the Company was incorporated on his behalf. He hypothesises in his affidavit that perhaps Mr Shelton misunderstood who was to be the beneficial owner but of course Mr Dimsey (with whom Mr Harrod says he spoke and who organised the incorporation of the Company) would have to have been under the same misapprehension because he too executed declarations of trust in favour of the OEEA Trust and he apparently completed the COBO form for Mr Shelton to sign. (vi) We have to say that we also found Mr Marshall's evidence unsatisfactory in this respect. In his affidavit he says that he first met Mr Harrod in the early part of 1988 when Mr Harrod said he was there to meet Mr Dimsey regarding the formation of a company. He said that when Martello took over the administration the file showed Mr Harrod to be the beneficial owner and he also knew Mr Harrod to be the beneficial owner. The first assertion is clearly incorrect as the file did not show this at all; on the contrary it showed the OEEA Trust to be the beneficial owner. As to the second, when asked in evidence what caused this opinion, he said that it was because he was told that by Mr Harrod . He was unable to point to any other evidence supporting his understanding that Mr Harrod was the beneficial owner. In effect he was unable to explain in evidence why Martello had issued declarations of trust in favour of Mr Harrod other than that Mr Harrod had signed the form to say that he was the beneficial owner and he thought that Mr Harrod had incorporated the Company. Martello had not done any checks and he had no knowledge of the OEEA Trust. We would observe that, as there were numerous references to the OEEA Trust in the minutes and the corporate records, it would seem that

Martello did not check any of these documents to see if Mr Harrod was indeed the beneficial owner. (vii) We are also unable to accept Dr Osment's evidence as to ownership of the Company by Mr Harrod . For example:- (a) His evidence in his affidavit and before the Court was that he believed Mr Harrod to have been the beneficial owner from the start. Yet as set out at para 89 above, in his meeting with representatives of Nautilus on 8 th January, 2016, he told them that Mr Clapp had been the first beneficial owner and Mr Harrod had only become the new beneficial owner in September 2005. When questioned, he had no explanation for this inconsistency. (b) When Dr Osment was requested to assist Mr Clapp in seeking reinstatement of the Company in 2013, Mr Clapp told him that Astral was owned by the OEEA Trust. There is no evidence that Dr Osment queried this with Mr Clapp or pointed out that he, Dr Osment , understood the Company to be owned by Mr Harrod . We regard this as being inconsistent with a belief on his part that the Company had at all times been owned by Mr Harrod . On the contrary, as set out at para 83, he wrote to the JFSC asserting that Astral was incorporated for the OEEA Trust as 100% owner and that Mr Harrod was simply a director. (c) In his affidavit, Dr Osment asserted that, when he spoke to Mr Clapp in 2013, Mr Clapp had told him that he had ' latterly ' become the beneficial owner of the company. However, as stated at para 83 above, this assertion is quite inconsistent with what Dr Osment asserted to the JFSC at the time, where he referred to the OEEA Trust as being the original 100% shareholder. (d) It is clear that Dr Osment played a part in arranging for Mr Harrod to concede the claim in the QBD proceedings and to consent to the charging order and the third party debt order in favour of Mr Trigwell . These events took place in 2014. Yet Dr Osment knew from his discussions in 2013 with Mr Clapp that Mr Clapp considered that the OEEA Trust owned the Company and wished to protect and gain access to the CMI bond and the Blandford property. Dr Osment had so represented to the JFSC. We cannot regard it as satisfactory that, knowing this, Dr Osment assisted in the conceding of the claim in the QBD proceedings by Mr Harrod without alerting Mr Clapp to the existence of those proceedings, to Mr Trigwell's claim, to the fact that Mr Harrod considered that he was the beneficial owner or to the proposed concession of the claim. (e) The establishment of A Astral Enterprises Limited and the diversion of dividend payments meant for Astral to the bank account of A Astral Enterprises Limited is unsatisfactory conduct and is inconsistent with a belief that Mr Harrod was the beneficial owner, as there would be no need to divert the dividends if they belonged to Mr Harrod . Although A Astral Enterprises Limited was apparently formed on the instructions of Mr Harrod , Dr Osment was aware of it and indeed allowed his home address to be used as the registered office. (viii) As to the declarations of trust signed by Nautilus in favour of Mr Harrod , it is clear that they simply took the records from Martello at face value and never made any further checks of their own. Even then, it is of note that, when they decided to resign in May 2006, they gave notice to that effect and sent the relevant documents to Mr Clapp. (ix) As to the declarations of trust signed by Martello in favour of Mr Harrod , there is no satisfactory explanation or evidence to support their accuracy. (x) It is clear that all the assets put into Astral came from Mr Clapp. Thus he transferred the share portfolio in February 1999, he transferred the Blandford property (which he had owned from 1979) to the Company in October 1999, he

caused Astral to be the owner of Latham Hirst (which was a company with which he had been involved) from 1998, and the CMI bond was transferred to the Company out of the OEEA Trust which was set up for his family. It is inconceivable that he would have made all these transfers to a company which was owned by Mr Harrod . (xi) Mr Harrod clearly knew nothing of any of these assets. On Mr Trigwell's own admission, Mr Harrod did not know what was in the Company until he was informed of it by Mr Trigwell . Mr Harrod had never had anything to do with Latham Hirst and indeed he had never had any interest in any of the assets referred to in the preceding sub-paragraph prior to their transfer to Astral. (xii) On 25th October, 2007, at a time when it is claimed he was the beneficial owner of the Company, Mr Harrod sent a bill to Mr Clapp for his time in 'acting on your instruction regarding Astral Enterprises Limited' . The sending of such a bill is wholly inconsistent with Mr Harrod being the beneficial owner of the Company but is consistent with his acting as a director or providing services for a company owned by the recipient of the letter. (xiii) We have had the opportunity of seeing and hearing Mr Clapp give evidence. Whilst it is undoubtedly true that he is clearly a somewhat bombastic character who feels very strongly that Mr Trigwell is seeking to defraud him of his assets, we concluded that he was essentially a truthful witness and his evidence was consistent with the documentary evidence. It is certainly true that his conduct once Nautilus was involved was somewhat strange. He refused to pay their bill and let the Company be struck off knowing that it owned assets in the form of the Blandford property, and some shares - it is not clear when Latham Hirst ceased to be a significant asset. We have considered whether that detracts from his evidence but have concluded that, in a way, it is not inconsistent with his character as it emerged from his evidence. He was clearly cross with Nautilus because he did not feel he had instructed them and was therefore not going to do anything to help sort matters out, even though that was to his detriment. (xiv) Although, contrary to Mr Clapp's belief, we do not find that the misnaming of the defendant in the QBD proceedings was a deliberate ploy by Mr Trigwell to defraud Mr Clapp (although the company name was wrong, the proper company registration number was often given on documents), we nevertheless have some concerns about the conduct of those proceedings. As already mentioned, Dr Osment had switched sides and was advising Mr Trigwell . He knew that Mr Clapp considered that the Company was owned for the benefit of his (Mr Clapp's) family and yet reliance was placed on Mr Harrod to consent to judgment and enforcement proceedings were taken against the CMI bond without Mr Clapp being made aware of the proceedings so that he could at least have the opportunity of seeking to contest the matter if he chose. (xv) Mr Trigwell placed a great weight on Mr Morgan's affidavit, particularly as Mr Clapp had agreed that Mr Morgan need not attend trial in order to be cross-examined. However, we do not think that Mr Morgan's affidavit takes the matter very far. So far as who advised Mr Clapp to set the company up, it does not seem to us very important as to whether it was Mr Morgan or Mr Dimsey and recollections of what occurred so long ago may well have faded. Similarly, Mr Morgan says simply that he does not recall giving Mr Clapp permission to use the Swiss centre as an address for Astral in relation to the Land Registry whereas Mr Clapp asserts that he did. Again we cannot place much weight on such differing recollections. Mr Trigwell emphasises in particular that Mr Morgan states that

Mr Clapp would invariably tell him (Mr Morgan) that he (Mr Clapp) 'took instructions from the principals in Jersey' such that Mr Morgan would never have deduced that Mr Clapp owned Astral. Having seen and heard Mr Clapp give evidence, we can well imagine that he was not averse to distancing himself from ownership of Astral. We heard no evidence as to the conduct of his affairs in relation to the revenue authorities in the United Kingdom. Suffice it to say that we cannot find that the fact that he may have referred to taking instructions from the principals in Jersey in relation to the affairs of Astral leads to the conclusion that he (or rather his family through the OEEA Trust) was not in truth the beneficial owner. 124. In summary, we have no hesitation in concluding that the Company was established by Mr Clapp for the benefit of his family and that Mr Harrod had nothing to do with the establishing of the Company. Mr Harrod acted as a local director for a period in 2005 but was never the beneficial owner of the Company. There was no transfer of beneficial ownership from the Clapp family (through the OEEA Trust) to Mr Harrod in 2005 and the declarations of trust to that effect by Martello (and subsequently Nautilus in reliance upon Martello's records) were incorrect and of no effect. All the assets in the Company had been contributed by Mr Clapp and he did not intend to give them to Mr Harrod. 125. For these reasons, we dismiss Mr Trigwell's claim, as his claim is based entirely on Mr Harrod having been the beneficial owner prior to the purported transfer to Mr Trigwell on 21 st August, 2015. 126. We would add that this does not necessarily mean that Mr Trigwell may never have access to the assets of Astral. He asserts that he is a creditor of Astral to the extent of £671,200. We do not know whether or not that is correct as the matter is not before us and it is a matter for the QBD proceedings. But if he succeeds in having the QBD proceedings reinstated and if he is ultimately successful in obtaining judgment in those proceedings, he will be established as a creditor of Astral and will therefore be able to take steps to enforce that judgment against the assets of Astral. That is his correct route rather than seeking to acquire ownership of the Company from a person who we find was never the beneficial owner of the Company. The future 127. It is clear from what we have said that the records of Astral are somewhat shambolic. There is inconsistency as to the shares in issue and a question as to whether any of the directors were validly appointed following the meeting of 12 th February, 1999, when no quorum of directors was present (as described at paras 23-26 above). There is therefore a question over all the actions taken since then. There is also difficulty concerning the effect of the purported meeting of 12 th January, 2005, for the reasons set out at para 43 above. We have not been addressed on these issues and are not in a position to reach a firm decision without such assistance. 128. Suffice it to say that what is clear is that there are only two shares in issue. What is not clear is who are the correct registered shareholders. Arguably, if none of the transfers since then have been valid because of the lack of directors, they remain as Mr Dimsey and Pelegrin although Mr Dimsey has died and Pelegrin probably no longer exists. As against that, both Mr Dimsey and Pelegrin have executed share transfers in blank which have been completed in favour of Mr Clapp and Mrs Clapp respectively. 129. What is also clear is that the beneficial owner is the OEEA Trust. There is no evidence that the beneficial owner was ever Mr Clapp or Mrs Clapp personally. The difficulty is that it appears that everyone thought that the OEEA Trust

had come to an end because it was thought (wrongly) no longer to have any assets (see the minute of 12 th January, 2004). The last trustee appears to have been Anchor Trustees Limited and we do not know whether that company still exists. 130. This is all a matter for Mr and Mrs Clapp. We are not in a position to advise them and they should take their own advice. We are reluctant to see them incurring further expense but it may be unavoidable and Mr Clapp has contributed to the problem by allowing the Company to be struck off and by not engaging with Nautilus to sort matters out in 2006. Technically, assuming there is no trustee of the OEEA Trust at the moment and that there is no evidence of any appointment of the shares in the Company by the OEEA Trust to Mrs Clapp or any other beneficiary of the OEEA Trust, it may be necessary for a representation to be presented to the Court seeking the appointment of a new trustee in place of Anchor Trustees Limited. The new trustee could then appoint the shares in Astral to (say) Mrs Clapp. Alternatively, if all the beneficiaries of the OEEA Trust are ascertained, are adults and are in agreement, they may be able to terminate the trust and agree to the shares in Astral being appointed to, say, Mrs Clapp in accordance with the rule in *Saunders-v-Vautier*

(1841) 4 Beav 115; [1835-42] All E R Rep 58. It would then be up to her as to whether she retained them or transferred them to Mr Clapp or anyone else. She would then need to take such steps as were necessary to rectify the share register and this also may require a Court order to sort the position out and allow her (or any transferee) to move forward in relation to this Company. 131. However, we are unable to take this matter further in these proceedings. We must content ourselves simply by saying that Mr Trigwell's claim is dismissed in its entirety. Representation 132. As appears from this judgment, Mr Clapp has been represented by his wife. The circumstances in which that arose are as follows. 133. Early in the proceedings, Mrs Clapp applied to be permitted to represent her husband on the basis that he had executed an enduring power of attorney in England in her favour and had been diagnosed as suffering from the early stages of Alzheimer's disease. The enduring power of attorney had at that stage not been registered in the Royal Court but this has subsequently taken place. 134. Mr Trigwell objected to her so acting. In these circumstances the Court directed that there be an assessment of Mr Clapp in order to determine his capacity (i) to give evidence as a witness, and (ii) to conduct the hearing as a litigant in person. 135. A report dated 1 st February, 2017, was subsequently prepared by a specialist mental capacity assessor. The assessor, Mr Tim Farmer examined Mr Clapp for the purposes of the assessment. Having done so he concluded that Mr Clapp had the capacity to be a witness but did not have the capacity to present his case. The assessor concluded in particular that Mr Clapp would find it difficult to remain focused, particularly as he tired and that he would not be able effectively to cross-examine. 136. The matter came back before the Commissioner on th March, 2017. At that hearing, Mr Trigwell very responsibly said that, in the light of the evidence, he would not maintain his objection. However, the matter remained a decision for the Court as rights of audience and the ability to speak for a litigant are very much matters for the Court itself to decide whatever the views of the parties. Accordingly the Commissioner considered whether the Court could

allow Mrs Clapp to speak for her husband and secondly whether, if so, it should do so. 137. The Commissioner concluded that as part of its inherent jurisdiction to control litigation before it, the Court has discretion to allow one person to speak for another even if not legally qualified. Nothing in the Loi (1961) sur l'exercice de la profession de droit à Jersey specifically prohibits this. Article 2 of that Law prohibits an unqualified person from instituting an action on behalf of another or presenting a contract etc. to the Court and Article 3 prohibits an unqualified person from passing himself off as a legally qualified person. Mrs Clapp was not requesting permission to do either of these things. She was simply requesting to conduct the hearing on behalf of her husband. 138. However, this is a discretion to be exercised exceedingly sparingly and only in exceptional circumstances. 139. Some assistance as to the circumstances in which the Court may choose to allow a non-lawyer to represent a party before the Court may be obtained from the position in England, where the Court has a similar power (now to be found in statutory form in the Legal Services Act) to permit this to occur. 140. The practice in England and Wales is summarised in Practice Guidance: McKenzie Friends (Civil and Family Courts) [2010] 4 All ER 272. Although the Practice Guidance deals primarily with McKenzie Friends (who cannot address the court, make oral submissions or examine witnesses), it also deals with the conduct of litigation by an unqualified person. The following passages are helpful (reference to MFs are to McKenzie Friends): "[18] MFs do not have a right of audience or a right to conduct litigation. It is a criminal offence to exercise rights of audience or to conduct litigation unless properly qualified and authorised to do so by an appropriate regulatory body or, in the case of an otherwise unqualified or unauthorised individual (i.e. a lay individual including a MF), the court grants such rights on a case-by-case basis.

- [19] Courts should be slow to grant any application from a litigant for a right of audience or a right to conduct litigation to any lay person, including a MF. This is because a person exercising such rights must ordinarily be properly trained, be under professional discipline (including an obligation to insure against liability for negligence) and be subject to an overriding duty to the court. These requirements are necessary for the protection of all parties to litigation and are essential to the proper administration of justice.
- [20] Any application for a right of audience or a right to conduct litigation to be granted to any lay person should therefore be considered very carefully. The court should only be prepared to grant such rights where there is good reason to do so taking into account all the circumstances of the case, which are likely to vary greatly. Such grants should not be extended to lay persons automatically or without due consideration. They should not be granted for mere convenience.

- [21] Examples of the type of special circumstances which have been held to justify the grant of a right of audience to a lay person, including an MF, are: (i) that person is a close relative of the litigant; (2) health problems preclude the litigant from addressing the court or conducting litigation, and the litigant cannot afford to pay for a qualified legal representative; (iii) the litigant is relatively inarticulate and prompting by that person may unnecessarily prolong the proceedings.
- [22] It is for the litigant to persuade the court that the circumstances of the case are such that it is in the interest of justice for the court to grant a lay person a right of audience or a right to conduct litigation.
- [23] The grant of a right of audience or a right to conduct litigation to lay persons who hold themselves out as professional advocates or professional MFs or who seek to exercise such rights on a regular basis, whether for reward or not, will however only be granted in exceptional circumstances. To do otherwise would tend to subvert the will of Parliament."
141. The point made at paragraph [23] in the passage quoted above is mirrored in the decision of the English Court of Appeal in the case of S-v-D
- [1996] EWCA Civ 1341 where Lord Woolf, MR, having emphasised that the discretion to give leave was only to be exercised in exceptional circumstances, went on to say this with reference to the applicant in that case, a Dr Pelling who was the chairman of a charity called 'East London Families Need Fathers' and had apparently sought regularly to appear for fathers in family matters:- "18. When you consider Dr Pelling's background, he is conducting, on behalf of those who wish him to do so, assistance in the litigation process which is totally out of accord with the spirit of the Act. I consider that, on any application which Dr Pelling makes in future, careful consideration should be given by the court as to whether it should exercise its discretion by allowing him to have advocacy rights. This is not a matter for the consent of the parties. I refer to one case where in the Family Registry he was given advocacy rights by consent. This shall not happen. It is the responsibility of the courts who have been given that responsibility by Parliament. Those who have rights of audience are subject to very stringent requirements. It cannot be right that Dr Pelling can by-pass those stringent requirements, albeit that no doubt those who he has helped are very grateful for his assistance. 19. The law must be administered fairly. If the position was otherwise than I have indicated, others can do exactly the same as Dr Pelling and that would be monstrously inappropriate having regard to the requirements that are placed upon those who have normal rights of audience. 20. I would therefore give this guidance to courts for the future when exercising their discretion. When they have applications by Dr Pelling , or others in a similar position, they should pause long before granting rights of audience. This is because otherwise by considering each case individually, the collective effect of what they are doing is allowing Dr Pelling to by-pass the provisions of the Act. That is clearly not what Parliament intended. In saying this I am very conscious that Dr Pelling's assistance could be very useful to some litigants. I also appreciate that judges up and down the country who have the difficult task of coping with litigants in person would

often be grateful for his assistance, as no doubt was the judge in the court below in this case. However, we cannot allow the fact that our personal inclination would be that we should receive help from Dr Pelling to enable him to by-pass the law in the way I have indicated." 142. The Commissioner concluded that this was one of those exceptional cases where permission should be granted for Mrs Clapp to conduct the litigation on her husband's behalf. He relied on the following matters:- (i) The medical evidence was to the effect that Mr Clapp would not be capable of conducting the litigation himself. (ii) Mrs Clapp was a close relative of Mr Clapp (his wife); this was not a case of someone who seeks to exercise such rights on a regular basis being put forward; (iii) The Court was informed that Mr Clapp could not afford to pay for a local advocate and was not eligible for legal aid as he did not reside in the Island; and (iv) It followed that, if Mrs Clapp was not allowed to represent Mr Clapp, he would be left to do so himself in circumstances where the medical evidence was to the effect that he was not capable of doing so. On the basis of those exceptional circumstances, the Commissioner exercised his discretion to allow Mrs Clapp to represent her husband. 143. We would add that the Commissioner was referred to the decision of Hamon, DB, In re CD

[1995] JLR N19b. However that case was on a different point. The proposed litigant in that case was detained in a psychiatric hospital in Dublin and the medical evidence was that he did not have the mental capacity to make any decisions regarding his business affairs. The Court held that it did not have power to appoint a guardian ad litem to act in litigation in Jersey on behalf of a mentally ill person outside the jurisdiction, who had never had a guardian or curator appointed before. In the absence of any rules to that effect, the Court could not make such an appointment in the exercise of its inherent jurisdiction, since those safeguards provided in the case of mentally ill persons within the jurisdiction would not exist. 144. That is not the position in this case. Mr Clapp clearly has mental capacity to be a litigant, to take decisions in relation to the litigation and, as the hearing showed, to give evidence. There is no question therefore of his seeking a guardian ad litem or curator or similar officer. It is simply the actual conduct of the litigation in person before the Court which would be beyond his ability. Accordingly the point raised In re CD does not arise in this case and the Commissioner therefore did not have to decide whether he should depart from that case. 145. We should add that, following the Commissioner's decision in relation to Mrs Clapp, Mr Trigwell applied for leave for Dr Osment to be allowed to speak and conduct the case on Mr Trigwell's behalf. This application was rejected. Mr Trigwell has full mental capacity. The fact that Dr Osment has a law degree and some familiarity with law and might therefore be in a position to conduct the litigation more effectively could not begin to justify taking the exceptional step of allowing someone other than a qualified Jersey advocate to represent a litigant before the Court. 146. Finally we cannot leave this case without expressing our appreciation to Mr Trigwell and Mrs Clapp. Whilst at times they struggled with some of the detail and there was often considerable difficulty in locating particular documents in the bundles because of the lack of proper indexing and numbering - this also made the task of preparing the judgment considerably slower than

normal - they both applied themselves conscientiously and courteously to the task at hand. Authorities Anchor Trust Company Limited v Jersey Financial Services Commission 2005 JLR 428 . Financial Services (Jersey) Law 1998. Companies (Jersey) Law 1991. Saunders-v-Vautier (1841) 4 Beav 115; [1835-42] All E R Rep 58. Loi (1961) sur l'exercice de la profession de droit à Jersey. Practice Guidance: McKenzie Friends (Civil and Family Courts) [2010] 4 All ER 272. S-v-D [1996] EWCA Civ 1341. In re CD

[1995] JLR N19b Legal Services Act 2007. Page Last Updated: 19 Sep 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 25 October 2026 · Esheria