OUTER HOUSE, COURT OF SESSION

[2019] CSOH 66

A281/17

OPINION OF LORD ARMSTRONG

In the cause

CLUB LOS CLAVELES, ALBERT FLETCHER, ROGER LINDSAY, TERRY SMITH and WALTER FARQUHAR

Pursuers

against

FIRST NATIONAL TRUSTEE COMPANY LIMITED

Defender

Pursuers: Anderson; BTO Solicitors LLP
Defender: Thomson QC; Turcan Connell

29 August 2019

Introduction

[1] The pursuers are Club Los Claveles ("the Club"), and the chairman and three members of the Committee of the Club. The Club is an unincorporated association, the object of which is to secure for its members the ownership of exclusive rights of occupation of certain apartments at the Los Claveles Resort in Los Cristianos, Tenerife. It was established by its Constitution, dated 5 April 1990, subsequently amended in July 2014.

[2] The Constitution of the Club provides that an independent trustee must be appointed to hold certain property, including the whole issued capital of "the Owning

Companies". "The Owning Companies" are: (1) Los Claveles (One) Limited (Company No SC120346); (2) Los Claveles (Two) Limited (Company No SC120452); (3) Los Claveles (Three) Limited (Company No SC120638); (4) Los Claveles (Four) Limited (Company No SC120618); and (5) Los Claveles (Five) Limited (Company No SC121089). By a Deed of Trust, dated 5 April 1990, Royal Bank of Scotland Limited was appointed as the Club's first trustee. That Deed of Trust forms part of the document, of which the Constitution also forms part, bearing to have been amended in July 2014.

[3] The defender is a company incorporated on the Isle of Man. By Deed of Retirement and Appointment between Royal Bank of Scotland Limited and the defender, dated 21 May 1991, the defender assumed office as trustee.

[4] In about 2012, the Club wished to appoint a new trustee in place of the defender. To that end, a letter dated 23 May 2012 was sent on behalf of the Club to the defender, indicating the intention of the Club to terminate the defender's appointment as trustee, with effect from 1 December 2012. The defender instructed the drafting of a Deed of Retirement, Appointment and Conveyance, one object of which was to effect the appointment of Hutchinson & Co Trust Company Limited as the Club's then proposed new trustee. That deed was never executed. The pursuer has called on the defender to transfer relevant property, held in trust, to Hutchinson & Co Trust Company Limited. No Deed of Retirement, Appointment and Conveyance has yet been executed.

[5] For these purposes, on the basis that nothing was indicated to the contrary, I have proceeded on the basis that, notwithstanding any amendment of the Constitution and Deed of Trust, in July 2014, those of their terms which provide for regulation of the position between the parties are those which were operative as at 23 May 2012. That approach is consistent with the references made to them in the pleadings and in argument.

[6] At the procedure roll discussion before me, arguments were submitted for the defender in support of its third, fourth and fifth pleas-in-law, on grounds of relevancy and lack of specification, in relation to certain of the pursuers' conclusions and averments, including, in particular, the fourth conclusion for decree of specific implement in respect of the execution of the Deed of Retirement, Assumption and Conveyance necessary to transfer the trust property to the proposed successor trustee. The pursuers, in reliance on their first plea-in-law, argued that in certain respects the defender's arguments were irrelevant and lacking in specification.

[7] It was agreed between the parties that, for the purposes of the procedure roll discussion, it was appropriate for the pursuers to lead and for the defender to reply. Both counsel adopted their written notes of argument, the terms of which, together with the oral submissions presented at the bar, are reflected in what follows.

The issues

(i) - The effect of the letter of 23 May 2012

[8] Clause 15.1 of the Deed of Trust, forming part of the Constitution of the Club, and to which the Deed of Retirement and Appointment, dated 21 May 1991 was supplemental, provides:

> "15.1 This Deed shall continue until (a) terminated either by the Club giving not less than not 6 months' notice in writing to the Trustee; or (b) by the Trustee giving the Club not less than 6 months' notice in writing; whichever shall first occur. Any notice under this Clause shall expire on the last day of any calendar month and such notice shall not be given in any event before the expiry of one year from the date hereof.
>
> 15.2 Upon termination or expiration of this Deed the Club Members (or failing which the Club) shall pay to the Trustee all remuneration then owing to the Trustee together with any outstanding out-of-pocket expenses and all expenses incurred by the Trustee in conveying or assigning or otherwise

> disposing of the title to the Property in manner hereinafter provided. The Trustee shall in the event of this Deed being terminated convey or assign the Property or procure the same to be conveyed or transferred (at the expense of the Club or failing which at the expense of the Founder Members) to any exceeding trustee of otherwise as the Committee of the Club in writing may direct.
>
> Upon the termination or expiration of this Deed pursuant to the foregoing provisions or as soon thereafter as is reasonably practicable the Trustee shall as directed by the Committee either:
>
> (a) Transfer the Property to the alternative trustee of this or any new trust constituted in accordance with Constitution or
> (b) Retain the Property upon the terms of any new trust constituted in accordance with the Constitution or
> (c) Sell the Apartments (or in its sole discretion, the Shares) in such manner as it may choose …"

[9] The letter of 23 May 2012 sent by the president of the Club to the defender, was in the following terms:

> "Club Los Claveles
>
> For reasons of economy the elected Club committee have decided to seek an alternative trustee in respect of the above Club.
>
> Pursuant to Clause 15.1 of the Deed of Trust, I hereby give you notice of Club Los Claveles' intention to terminate your trusteeship with effect from 1 December 2012.
>
> The new trustee will be Hutchinson & Co Trust Company Ltd and I would be pleased to know your programme for transferring all of the relevant information to enable them to act as trustees with effect from 1 December."

[10] For the defender, it was argued that the first conclusion sought by the pursuer, for declarator that the appointment of the defender as trustee was terminated with effect from 1 December 2012, was not a correct reflection of the consequences that flowed from the letter of 23 May 2012. It was submitted that the defender could not cease to hold office as trustee until a new trustee was appointed, and that the pursuers' first conclusion was inconsistent with the concept that the defender could not take the steps contemplated in Clause 15.2 if it

had already ceased to be a trustee. Accordingly, the pursuers' averments in support of their first conclusion were irrelevant.

[11] Further, if it was correct that the defender's appointment as trustee was terminated by the letter of 23 May 2012, that was inconsistent with the pursuers' fourth conclusion by which specific implement was sought requiring the defender to "retire" in terms of the proposed Deed of Retirement, Assumption and Conveyance. If the pursuers were seeking to require the defender to retire by executing that deed, that was inconsistent with the concept that their appointment had already been terminated.

[12] For the pursuers, it was submitted that the express language of the letter of 23 May 2012, which referred to the Club's intention to "terminate your trusteeship" was consistent with the decision in *The Moness Country Club and Others* v *First National Trustee Company Limited* [2013] CSOH 188 (paras [21] and [22]). In that case, which concerned provisions almost identical to those under consideration, applicable in similar circumstances, it was decided that, affording the words used their ordinary meaning, a provision framed in the terms of Clause 15.1 empowered the pursuer to terminate the defender's appointment as trustee. On that basis, it was submitted for the pursuer in this action that the letter of 23 May 2012 was a valid notice of termination. The result was that the defender's appointment as trustee had ended, but that the trust continued pending the appointment of a successor trustee. Such a situation did not preclude post-termination action on the part of a trustee. Reliance was placed on the example of section 20 of the Trusts (Scotland) Act 1921, which specifically provides that a former trustee may still be required to execute deeds in order to give practical effect to removal from office.

[13] For the reasons advanced on behalf of the pursuers, I am satisfied that the letter of 23 May 2012 was a valid notice of termination of the defender's appointment as trustee, that

the pursuers' first conclusion is a correct reflection of the consequences which flow from it, and that the averments supporting it are relevant. The effect of the termination of the defender's appointment as trustee is not such as to preclude the obligation upon it to execute a deed necessary to give practical effect to the trust purposes following that termination.

[14] For completeness, I would add that the use of the term "Trustee" in Clause 15.2 does not affect my view. Read in context, and having regard to the intention of the relevant parties, the use of that term must be read simply as a reference to the party holding the appointment of trustee prior to any event arising under Clause 15.1.

[15] Neither do I consider that the references to retiral in the proposed Deed of Retirement, Appointment and Conveyance, under the heading "Agreed Terms", have any impact on the determination of the issue. Whatever the reason for the particular terms of that proposed subsequent deed, its terminology is not relevant to the construction of the earlier document comprising the letter of 23 May 2012.

(ii) - The extent of the meaning of "Property" as defined by the Deed of Trust

[16] The Club's Constitution provides:

> "11.6 The Committee shall maintain or cause to be maintained a register of names and current addresses of Members indicating when they became members, and when, if appropriate, they ceased to be Members."

[17] The Deed of Trust provides:

> "1.(f) 'the Property' means the Shares together with all other property (real or personal) which may from time to time be transferred to or otherwise vested in the Trustee to be held for the benefit of the Members of the Club from time to time upon the trusts of this Deed."

[18] It was common ground that a copy of the register was given to the defender for the purpose of maintaining the list of the beneficiaries of the trust of which it was trustee, those being the current owners of timeshare weeks at the resort. The pursuers maintain that since the defender's status as trustee has been terminated, it has no legal right to keep the register or to process the personal data in it. They seek as their fifth conclusion:

> "Declarator that all copies of the Register of Members, or lists of members and their contact addresses, held or processed by the Defender in the course of its acting or purporting to act as trustee under the Deed of Trust is 'Property' in terms of clause 1(f) of the Trust Deed."

[19] For the defender, it was submitted that, on the basis that the register is to be considered to be information, that information is not itself trust property for the reason that the only relevant rights to the information are those of the individual data subjects over their own data, in terms of EU Regulation 2016/679 (the GDPR). Since, in terms of Article 4(1) of the GDPR, "personal data" was referable to a "data subject", defined as a natural person, and in terms of Article 79 the right to an effectual judicial remedy against a data processor was vested in the "data subject", the pursuers, as an unincorporated association and its office bearers, had no entitlement to sue in relation to such a personal right. There was nothing in the Constitution of the Club which conferred on them such a right.

[20] Secondly, it was submitted that, in any event, the register was not property as defined in the Deed of Trust. It was properly to be regarded as comprising records generated in the course of administering the trust, rather than being part of the trust property, and that, while there might be a duty to make such records, in whole or in part, available to a successor trustee, a former trustee was entitled to keep records of what it had done in its capacity as trustee.

[21] For the pursuers, it was submitted that the defender's averment, in Answer 11, to the effect that copies of the records kept by a trustee in connection with the operation and administration of a trust are not in themselves trust property, either under that definition or under the general law, was irrelevant by reason of the terms of Clause 7 of Schedule 1 to the Deed of Trust, which was in the following terms:

> "All monies securities title deeds and documents belonging to or relating to the Property or this Trust shall be under the exclusive custody and control of the Trustee, any other person having all reasonable facilities for verification or inspection and the name of the Trustee or the name of its nominees shall be placed first in the Register of all stock, shares, securities or property."

[22] The value of the register was the information in it. It was accepted that its content was personal data, but, on retiral, the defender would have no legal right to continue to process it (GDPR, Article 6(1)(b)).

[23] In any event, *per Sharp* v *Thomson* 1997 SC(HL) 66, at 80E, the word "property" was not a technical term in Scots law, and could take its meaning from the context in which it occurs.

[24] Viewed against that background, I consider that the terms of the Deed of Trust, as set out in Clause 1(f) and Clause 7 of Schedule 1, are sufficiently broad to support the right to the transfer of the content of the registers of members, as "all other property real or personal" in the context of "documents belonging to or relating to the Property or Trust". I consider that a list of the beneficiaries of a trust would necessarily fall within that latter category. I am fortified in that view by what must be taken to have been the intention of the relevant parties in order to give meaningful practical effect to implementation of Clause 15.2 of the Deed of Trust. On that basis, I find the pursuers' fifth conclusion and the averments supporting it to be relevant.

[25] Before me the defender also submitted that the pursuers were not entitled to specific implement in terms of their fourth conclusion on the basis that the register of members was not trust property. In light of my decision in that respect, it follows that I am not persuaded by that argument.

[26] Given the terms of Clause 11.5.8 of the Constitution of the Club, I am satisfied that the pursuers, *qua* representatives of the Committee of the Club have title to sue in respect of the data contained in the register of members. That clause confers on the Committee of the Club general powers to:

> "bring …. settle or compromise any proceedings or claims of any kind in relation to the affairs of the Club …. and in the event of any such claims or proceedings relating to some only of the Members to bring …. settle or compromise the same on behalf of such Members …."

I am not persuaded, therefore, by the defender's argument that the pursuers are not entitled to specific implement in this respect by reason of lack of title to sue.

(iii) - Are the pursuers entitled to count and reckoning by the defender?

[27] The pursuers' second and third conclusions are in the following terms:

> "2. For count and reckoning by the Defender, for the period 1st December 2012 until the date of decree to follow hereon, for its whole acts and intromissions with the Property and funds of Club Los Claveles held or intermitted with by the Defender in trust the pursuant to the Deed of Trust between Wimpey Homes Holdings Limited, Time Ownership Los Claveles (Management) Limited and the Royal Bank of Scotland Plc ('RBS') dated 5 April 1990, to which Trust First National Trustee Company Limited ('FNTC') was appointed as Trustee pursuant to Deed of Retirement and Appointment between RBS and FNTC dated 21 May 1991.
>
> 3. Failing count and reckoning as foresaid, for payment by the Defender to the Pursuers of the sums of (a) €33482; (b) €9300; (c) €31944; (d) €22420; (d) *(sic)* €24920; (e) €21730; (f) €21278, with interest at the rate of 4% a year upon the said sums from the date of decree to follow hereon until payment."

[28] For the defenders, it was submitted that these conclusions were irrelevant in the absence of averments to support them. Count, reckoning and payment was not a competent remedy in the absence of any averments of intromissions (*Hutcheson & Co's Administrator* v *Taylor's Executrix* 1931 SC 484, at 492; *Coxall* v *Stewart* 1976 SLT 275, at 277; *Huewind Ltd* v *Clydesdale Bank Plc* 1996 SLT 369, at 373 F-K). The pursuers' averments described the property of the trust as the shares in the Owning Companies, and other property held by the defender for the benefit of the members of the Club. The pursuers did not aver any intromissions in respect of the shares in the Owning Companies. Payments made to the defender by way of fees were not trust property but rather payments of remuneration to the defender in its own right. The pursuers did not aver any other basis on which the relevant fees were paid. Since the fees, when paid, belonged to the trustee absolutely, count, reckoning and payment was not a competent remedy. In such circumstances, the second conclusion was irrelevant. The pursuers did not aver any other basis on which fees paid might be repayable. That being so, the third conclusion was irrelevant.

[29] For the pursuers, it was submitted that a beneficiary who granted a discharge would not be bound by it in the absence of an accounting by the trustee, since otherwise the extent of the resulting liability could not be known. Reliance was placed on certain passages in Mackenzie Stuart, *The Law of Trusts* (1932), at pages 345, 369 and 370, to the effect that, first, the obligation to account attaches, in a question with beneficiaries, to the existing trustee (*Mackenzie's Executor* v *Thomson's Trustees* 1965 SC 154, at 156), and, secondly, trustees are bound to account for the trust estate and their intromissions with it in order that the beneficiaries may ascertain whether they are receiving the amounts due to them.

[30] Be that as it may, viewing the issue strictly, as a matter of pleading, I find for the defender in this regard. I am not persuaded that the extent to which the decision in

Hutcheson & Co's Administrator can be distinguished, impacts on the statement of general principle made in that case in relation to the requirements of a competent action of count, reckoning and payment. That being so, I find the pursuers' second and third conclusions, and the averments supporting them, to be irrelevant. These averments are in Article 11 of condescendence: from the words "Since 1 December 2012 the Defender ….", to the words "decree of count and reckoning as second concluded for"; and from the words: "Failing count and reckoning … ", to the words "as third concluded for.".

(iv) - Is the defender entitled to a further indemnity in terms of any Deed of Retirement, Assumption and Conveyance?

[31] The pursuers' fourth conclusion is for specific implements in terms of Clause 15.2 of Deed of Trust in relation to execution of a Deed of Retirement, Assumption and Conveyance transferring all shares in the Owning Companies and all other Property held for the benefit of the members of the Club, and for the delivery by the defender to the pursuers of all lists of the members and their contact addresses, held by the defender in whatever medium.

[32] The Deed of Trust provides as follows:

> "12. In connection with the Property and/or the Apartments the Founder Members on behalf of the Club and (as a separate covenant) for themselves covenant with the Trustee:
>
> 12.(C) to indemnify and keep fully and effectually indemnified the Trustee from and against all actions claims demands losses damages costs and expenses made against or suffered or incurred by the Trustee arising from any breach non-observance or non-performance of any of the agreements and/or conveyance contained in this Trust Deed and/or the Constitution and/or the Management Agreement;
>
> 13. The Founder Members on behalf of the Club and as a separate covenant for themselves the Founder Members hereby agree jointly and severally to indemnify and hold harmless the Trustee against all claims actions proceedings charges (including without prejudice to the generality of the

foregoing charges to tax and breaches of Spanish and /or United Kingdom legislation or regulations) fees costs liabilities and expenses to which it may be entitled or which may result from or be incurred in connection with the performance by the Trustee of its duties hereunder and the Trustee shall be kept fully indemnified jointly and severally by the Founder Members and the Club against all losses claims demands taxes actions damages costs and expenses made or incurred in connection with the Property or the Owning Companies in connection with the sale of Membership Certificates by the manner against all claims actions proceedings charges fees liabilities demands expenses or taxes arising in connection with the property or the Owning Companies in connection with the sale of membership Certificates by the Company. The Trustee shall have a right if at any time it considers it desirable so to do to require that the Founder Members of the Club shall deposit with the Trustee such sums as the Trustee shall reasonably consider to be necessary in support of the indemnities contained in this Deed.

22. If a Trustee retires from the trusts hereof or becomes by reason of residence or place of incorporation incapable of acting as a Trustee hereof such Trustee shall be released from all claims demands actions proceedings and accounts of any kind on the part of any beneficiary (whether in existence or not) actually or prospectively interested under this Deed for or in respect of the Property or in the income thereof or the trusts of this Deed or any act or thing done or omitted in execution or purported execution of such trusts other than and except only actions:
    (a) arising from any fraud or fraudulent breach of trust to which such trustee or (in the case of a corporate trustee) any of its officers was a party or privy;
    (b) to recover from such trustee trust property or the proceeds of trust property in the possession of such trustee or previously received by such trustee (or in the case of a corporate trustee) any of its officers and converted to his use."

[33] For the defender it was submitted that, properly construed, these provisions together require that an indemnity be granted by the Founder Members, or their successors, to the retiring trustee on its retirement.

[34] The defender avers that in terms of the Deed of Retirement and Appointment, dated 21 May 1991, by which it was appointed, the Founder Member, on behalf of the Club, and on its own behalf, gave discharges and indemnities to the outgoing trustee, and that, *mutatis mutandis*, the defender too, in such circumstances, is entitled to such discharges and indemnities from the Founder Members or their successors. These averments are not

admitted, and I was not referred to the terms of that deed in the course of the argument. Even taking these averments of fact as being *pro veritate* (*Jamieson* v *Jamieson* 1952 SC (HL) 44, at 50, 63), it does not necessarily follow that the manner in which the change of trustee was effected in 1991 is relevant to the application of the terms of the Constitution and the Deed of Trust in their current form, as amended in July 2014.

[35] The pursuers' position is that the defender already holds an indemnity in terms of Clause 12(C) and Clause 13 of the Deed of Trust, and that, following the termination of the defender's appointment as trustee on 1 December 2012, no right to a re-grant of such an indemnity exists. Any difficulties which the defender might experience were not relevant to the issue, which was a question of entitlement. In any event, the right conferred by Clause 22 was to a "release" which, properly construed, meant a "discharge". There was no common law right to an indemnity. The referable right was to a discharge in respect of the trustee's own intromissions (Trusts (Scotland) Act 1921, section 3(d); *Mackenzie's Executrix* v *Thomson's Trustees* (1965) SC 154, at 156).

[36] I accept the defender's argument that although the latter part of Clause 13 of the Deed of Trust provides for an indemnity specifically "in connection with the sale of Membership Certificates by the Company", the earlier part of that clause provides for an indemnity in general terms. That said, I can find no basis in the terms of the Deed of Trust for the right to indemnity, on retiral, claimed by the defender. I consider it significant that although there is express reference to indemnification in the earlier parts of the Deed of Trust, that is not the case in relation the provisions which relate to termination or retiral. In those contexts, what the Deed of Trust confers is a right to a release or discharge.

[37] On that basis, I find that the defender's averments, in Answer 1: from the words "The current position ….", to the words "…. live practical concerns."; and, in Answer 9: the

words: "The terms set out in the defender's Deed are necessary"; and from the words "Taken as a whole …", to the end of that Answer, to be irrelevant.

(v) - The relevance of internal disruption within the Club

[38] The closed record includes significant and lengthy averments, on the part of both parties, in relation to internal disputes within the Club which have led to arbitration and have involved differences between variously the Club and the management company acting for it, and the Founder Members.

[39] For the pursuers, it was argued specifically that certain of the defender's averments in that regard, in Answer 9, were irrelevant to the issues in contestation. The tenor of these averments is to the effect that the extent and continuing nature of these disputes adds support to the defender's claim for indemnities from both the Club and the Founder Members, on its retiral.

[40] While such a position might be pertinent to any negotiation between the parties, I accept that such averments of events subsequent to 1 December 2012 are not relevant to an issue which must be decided on the basis of entitlement, and determined only by the terms of the deeds which regulated the relationship between the parties to this action as they stood at that time.

[41] On that basis, and consistent with my decision in relation to the defender's asserted right to indemnities, I find that the defender's averments in Answer 1: extending from the words "The current position …", to the words … "live practical concerns.", to be irrelevant.

(vi) - The pursuers' averments in Article 9 of Condescendence

[42] For the defender, it was submitted that the pursuers' averments, to the effect that their decision to appoint a new trustee has been frustrated by the refusal of the defender to execute the Deed of Retirement, Assumption and Conveyance necessary to give effect to that decision, were lacking in specification.

[43] As I understood the argument, it was based on the premise that if it was correct that the effect of the letter of 23 May 2012 was to render the defender no longer a trustee, specification was required as to how, in such a position, it could have failed in some regard in respect of the appointment of a successor trustee.

[44] Standing my decision in relation to the effect of the letter of 23 May 2012, I consider that the pursuers' pleadings in Article 9 are relevant in that they specify the cause of the frustration as the defender's refusal to execute the Deed of Retirement, Assumption and Conveyance necessary in consequence of the effect of that letter as I have decided it. Further specification is provided by the pursuers' reference, in answer, to the defender's claimed entitlement to indemnity referable to a proposed deed which reflects the defender's current position. I note, in passing, that the reference in Article 9 to Hutchinson & Co Trust Company Limited is now historical. It is apparent that "Hutchinson" is not the entity which is now the pursuers' preferred successor trustee, and although the issue was not pressed, the defender's position in Answer 9 is to the effect that the successor trustee is yet to be nominated. As I understand it, however, those positions have been superseded, and the parties now proceed, and did before me, on the basis that the deed which the pursuers' seek to have executed in terms of their fourth conclusion in implement of Clause 15.2(a) of the Deed of Trust is that lodged as 6/25 of Process, in which the proposed successor trustee is designed as Hutchinson Trustees Limited. On that basis, I understand the issue of lack of an

appropriate nomination no longer to be live, and have addressed the competing arguments on that basis.

(vii) - The relevance of prejudice

[45] At Articles 12 and 13 of Condescendence, the pursuers make averments relating to certain circumstances which have occurred since the letter of 23 May 2012, resulting, it is said, from the defender's position, and which caused prejudice.

[46] For the defender, it was argued that such comments are irrelevant to any question of the availability of any of the remedies sought. I agree. The issues of whether the remedies sought in terms of the Conclusions are justified do not turn on questions of prejudice but rather, as I have stated, *supra*, on determinations based on the terms of the deeds regulating the relationship between the parties, as they stood at 1 December 2012. On that basis, I find the pursuers averments in Article 12 of Condescendence; and in Article 13 of condescendence: the words "The defender's continued refusal to do so will result in loss, damage and prejudice to the Pursuers and Club members."; and from the words "Members of the Club ….", to the words "…. for these two weeks.", to be irrelevant.

Disposal

[47] In the normal event, my determinations in respect of the various submissions would have the effect of excluding the following averments from probation

a) the pursuer's second and third conclusions;

b) the pursuer's averments in Article 11 of Condescendence: from the words "Since 1 December 2012 the Defender ….", to the words "decree of count and reckoning

as second concluded for"; and from the words: "Failing count and reckoning … ", to the words "as third concluded for.";

c) the pursuers' whole averments comprising Article 12 of Condescendence;

d) the pursuer's averments in Article 13 of Condescendence, comprising: the words "The defender's continued refusal to do so will result in loss, damage and prejudice to the Pursuers and Club members."; and from the words "Members of the Club ….", to the end of that Article.;

e) the defender's averments, in Answer 1: from the words "The current position ….", to the words "… live practical concerns."; and,

f) the defender's averments in Answer 9, comprising: the words: "The terms set out in the defender's Deed are necessary"; and from the words "Taken as a whole ….", to the end of that answer.

[48] In accordance with the parties' wishes, however, I shall put the case out By Order, to allow for consideration as to how they wish to proceed in relation to further procedure, the appropriate interlocutor to reflect that, and any motions in relation to expenses.