Neutral Citation Number: [2024] EWCA Civ 1247

Case Nos: CA-2023-002321
CA-2023-002440

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)
His Honour Judge Cadwallader (sitting as a Judge of the High Court)
[2023] EWHC 2761 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/10/2024

Before:

LORD JUSTICE NEWEY
LORD JUSTICE ARNOLD
and
LORD JUSTICE ZACAROLI

- -

Between:

(1) SOLAD SAKANDER MOHAMMED **(2) IBRAHIM AHMED SHAIKH** **(3) MOLVI NOORUL HAQUE**	**Claimants/ Respondents**
- and -	
(2) SABIR AHMED EBRAHIM DAJI **(10) MOHAMMED ISHAQ CHAUDHRY** **(13) AWLAD ALI** **(16) MUSHTAQ MOHAMMED** **(17) HISHAM HASSAN MOHAMED SHAR LALA** **(18) MUHAMMAD ANISUZ ZAMAN CHOWDHURY** **(20) MOHAMMED HAYAT KHAN** **(21) SUHEL ABDUL SAMAD BHOLAT** **(22) YUSUF MOHAMED SEEDAT** **(23) ABDUL MALIK** **(24) USMAN ABDULLAH MUNSHI**	**Defendants/ Appellants**

- -
- -

David Holland KC and Ted Loveday (instructed by **Herbert Smith Freeehills LLP**) for the **Appellants**
Mark Sefton KC and Jonathan Fowles (instructed by **Mishcon de Reya LLP**) for the **Respondents**

Hearing dates: 2 and 3 October 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 21 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Lord Justice Newey:

1. This is an appeal from a decision of His Honour Judge Cadwallader, sitting as a Judge of the High Court ("the Judge"). It concerns the ownership of a site known as Abbey Mills in West Ham, London ("Abbey Mills") which was bought in the mid-1990s with a view to use as a mosque and community centre. The appellants (who were defendants below) contend that Abbey Mills is held on the trusts governing a charity registered under the name "The Anjuman-E-Islah-Al-Muslimeen (Madrasa Taleem ul Islam)" ("the Dewsbury Trust"). In contrast, the respondents (who were the claimants below) maintain that Abbey Mills is held on the trusts declared in a declaration of trust bearing the date 5 November 1996 in respect of "Anjuman-e-Islahul-Muslimeen of (London) UK" ("the London Trust"). The Judge agreed with the respondents in a judgment dated 3 November 2023 ("the Judgment").

2. The parties are all followers of "Tablighi Jamaat", one of the largest Islamic missionary movements in the world. It was founded in about 1926 in Nizamuddin, New Delhi, and a group of adherents was established in London in 1944. By 1975, there was a significant number of followers in Dewsbury, West Yorkshire, and land was bought there as the site of a mosque and "Madrasa Taleem-ul-Islam", the Islamic educational madrasa which came to be attached to the mosque. A declaration of trust dated 25 June 1975 provided for both that land and such property as might be acquired in the future to be used for worship, teaching and other religious purposes. It was the trusts established by this deed ("the Dewsbury Trust Deed") which became the Dewsbury Trust, registered with the Charity Commission on 15 November 1976 under number 505732. The Judge said in paragraph 56 of the Judgment:

> "What must have been contemplated (because that is what was provided for) was a local Society which might be capable of expanding nationally and even internationally, controlled by a democratically elected leadership, formed for purposes associated with Tablighi Jamaat, and for the purposes of which Society property was to be held under the Dewsbury Trust by trustees appointed by the committee of the Society, including but not necessarily limited to the Dewsbury mosque and madrasa, but for which purposes property might equally be held upon separate but similar trusts as convenient."

3. In 1980, the Dewsbury Trust "markaz" (or centre) acquired premises at 9/11 Christian Street, Stepney in London on the terms of the trusts governing the Dewsbury Trust. The Judge recorded in paragraph 64 of the Judgment that the premises were acquired "largely, if not entirely, through the generosity of a single individual". Aside from this property and Abbey Mills, the Judge considered that the evidence before him did "not support the proposition that the Dewsbury Trust owns any property save in Dewsbury": see paragraph 66. After referring to Tablighi Jamaat centres (or "markazi") elsewhere in England, the Judge said this in paragraph 70 about the context at the time funds were raised for the acquisition of Abbey Mills:

> "(1) There was no consistent pattern of the Dewsbury Trust's owning [Tablighi Jamaat] properties elsewhere, and on the contrary the indications are that

> local properties were locally owned, with the exception of Christian Street.
>
> (2) There was no consistent knowledge or understanding among potential donors for the acquisition of the Abbey Mills site as to by whom and upon what trusts [Tablighi Jamaat] properties were or generally were held. It does seem to have been understood that funds for the acquisition of such properties would typically be raised locally and the markaz would be used primarily for the benefit of the local community.
>
> (3) There was no financial or legal connection between the Dewsbury Trust and the other UK markazi, though some persons might be trustees of more than one trust, and donations might of course be made from one to another.
>
> (4) The Dewsbury elders had a leadership role in the UK [Tablighi Jamaat] movement, and, as with its relationship with Nizamuddin, I find that the obligation owed to the Dewsbury elders by regional markazi at the relevant time extended to practical, moral and religious matters, and its nature was moral and spiritual (and social), but was not legal."

4. The Judge went on in paragraph 71 of the Judgment:

> "I find that there would have been an expectation at the relevant time on the part of both the fundraisers for and the potential donors to the acquisition of property for a markaz in the UK that it could not be held on terms which might allow it to be devoted to purposes which excluded primary use, and at least a high degree of control, by local members of [Tablighi Jamaat], unless the contrary had been spelt out: the expectation would be that if bought by locals it would be used for and controlled by locals. That is not necessarily the same as an expectation about ownership, but it tends to point towards an intention that there should be local ownership on local terms."

5. Recognising that the Christian Street premises were no longer adequate, the London Tablighi Jamaat community looked for another site and in 1994 they found Abbey Mills. The community's "Shura" (or elders) went to Dewsbury to ask for permission to buy it. Permission was granted, but the Dewsbury elders "made it clear that the money should be raised only from within the London [Tablighi Jamaat] Community, not elsewhere, and that they should 'stand on their own two feet'": see paragraph 73 of the Judgment.

6. In November 1994, a meeting took place in Christian Street at which the potential acquisition of Abbey Mills was discussed. Various witnesses referred to this meeting in their evidence, but much the most detailed account came from the first claimant,

Mr Solad Sakander Mohammed ("Mr Mohammed"). He testified that the people who attended the meeting were all active members of the London community and that it was explained at the meeting that money needed to be raised for the purchase of Abbey Mills as the site of a bigger mosque for the London community. The Judge commented in paragraph 81 of the Judgment:

> "Although it was suggested on behalf of the LBMW Defendants [i.e. the appellants] that [Mr Mohammed] was not a reliable witness as to the meeting, or generally, and in particular that his evidence as to various November 1994 meetings was implausibly detailed (and although for reasons I mention later in this judgment I approach his evidence in general with some caution), I accept his evidence of this as plausible in context, and consistent with that of others, including Mr Rahman."

7. According to Mr Mohammed, it was decided at this meeting that "proper trustees to be responsible for the project on behalf of the London Community" should be appointed and that he, Mr Ibrahim Ahmed Shaikh ("Mr Shaikh", the second claimant) and Mr Zulfiqar Ali ("Mr Ali", the fourteenth defendant) should be those trustees. The Judge said this about Mr Mohammed's evidence in paragraph 83 of the Judgment:

> "[Mr Mohammed's] evidence was that in the mid-1980s when a large sum, of the order of £100,000, had been saved up from London donations and kept in cash in a safe at Christian Street, D3 (Mohammed Aqbul Muqit, now deceased) had given the money to Dewsbury without consultation, on the basis, simply, that Dewsbury needed it. The London community was very upset and suspicious about the fact that that their money had been used in this way without their consent. His evidence was that this caused some initial hesitancy about making contributions for the purchase of Abbey Mills on the footing that it might be diverted to Dewsbury. He said that in the November 1994 meeting people were saying to the organisers, 'Whenever now we give you money, please don't give anything to anybody except only for this Land'. The organisers, including Mr Mohammed, offered reassurance. Mr Mohammed referred to this again in his oral evidence and he was not cross-examined about it. Although it is not mentioned elsewhere in the evidence, it is plausible, given the way in which [Tablighi Jamaat] has worked in the UK. I accept this evidence. It means that the distinction between Dewsbury and London did matter in London; that it was expressly mentioned in the November 1994 meeting; that potential donors did not want their money or property to go to Dewsbury without their consent; and that reassurance was given."

8. In paragraph 85 of the Judgment, the Judge said:

> "It is an important feature of the case, when identifying the intention as to the trust upon which the funds were to be held, when the charitable purposes were so similar, who the trustees were to be. They were not to be the Dewsbury Trustees (though [Mr Ali] was one). That is a powerful indication, in my judgment, that the intention which was communicated to contributors was that while of course the purposes were [Tablighi Jamaat] purposes, the trust was not the Dewsbury Trust. Moreover, the trustees had not been chosen by the Dewsbury Trust, as might have been expected (as a minimum) if they were to be mere agents or sub-trustees of Dewsbury: they were chosen by the London Shura or mashwar."

9. The purchase price of Abbey Mills was £1.4 million. The money was provided by the London community through loans and, to a lesser extent, donations. A loan book records the first loan as having been made on 28 November 1994 and that, in total, just over £1 million was lent. The Judge noted in paragraph 98 of the Judgment that "[t]here was no dispute between the parties that in principle lenders might be settlors just as much as donors" and that "[t]hat seems to be right".

10. A number of witnesses mentioned in their evidence that lenders were given receipts. In the course of disclosure, the appellants produced four receipts from later years (2010, 2012, 2017 and 2018) but these were not included in the trial bundles. On the ninth day of the trial, however, the appellants were given permission to admit a witness statement from a Mr Shafi Uddin Ahmed to which photographs of certain receipts were attached. The Judge said this about these in paragraph 93 of the Judgment:

> "One of the receipts is dated 2 July 1997 and acknowledges the sum of £104,433.55. It is on headed paper in the name of Anjuman-e-Islahul Muslimeen of U.K., with Charity Commission registration number 505732, and the address of South Street, Dewsbury. The form contemplates that the sum received may be either qarde-hasanah (a 'goodly loan') or lillah (which I understand to refer to a gift). In this case, the entry for a goodly loan is circled. It is numbered in manuscript, in a way which makes it possible to identify the payment in the loan book; and there is a copy of the cheque by which it was made. The payee is also Anjuman-e-Islahul Muslimeen of U.K. The receipt records the lender as Mr Ahmed's father, though the cheque is paid from a law firm. The receipt is signed by Mr Mohammed (C1). The bank statement showing receipt of those funds relates to the National Westminster Bank account opened in the name of the Dewsbury trust in 1995 by [Mr Ali], to which I will refer below. There are 4 other receipts. There is a receipt dated 12 January 2012 for £20,000 for a goodly loan, signed by one I Patel. The next is dated 12 January 2011 for £40,000 from a Mr Joshimuddin. The next is dated 28 April 2014 for £10,000 signed by Mr Mohammed. Finally there is a receipt dated 2013 or 2015 (it is unclear) for £5000 signed by

> Mr Mohammed. All of them can be traced into the loan book, and all of them are headed in the same way. The printed form states that the loans were 'for London New Markaz.' The Claimants accept that they are genuine documents."

11. The Judge found as follows as regards the receipts in paragraph 96 of the Judgment:

> "I find that the original receipt book did indeed come from Christian Street and had been printed in the 1980s. I find that the reference to the London New Markaz was a not a reference to the Christian Street markaz and its general expenses (even though it was new in the early 1980s), but specifically to the project of finding premises to replace it (because there are no receipts before me relating to such expenses, as opposed to loans in the loan book for that project, and because although the book pre-dates the Abbey Mills project, Mr Mohammed gave evidence that about £100,000 had been raised in the mid-1980s for larger premises – this was the money that went to Dewsbury and caused upset). I find it is more likely than not that receipts in this form were used before the dates of the earliest receipt before me, and that they were used before the acquisition of the Abbey Mills site. I do not accept that Mr Mohammed never noticed that the receipts were being issued in the name of the Dewsbury Trust: his evidence on this was not credible. I do accept (and both sides relied upon this as a fact) that none of the recipients of those receipts ever raised a query about them. Moreover, against the background which I have already found, that the difference between the Dewsbury Trust and the London Shura mattered to the London Shura and its community, and that reassurance was given that the money raised by London would not be passed on this occasion, as it had been before, to Dewsbury, I reject Mr Mohammed's evidence in his last session of cross examination that the difference between the two did not matter (which would have been in conflict with his earlier evidence on this point). I accept, however, that, given that it did matter, neither he nor anyone else can have regarded the reference to the Dewsbury Trust on the receipts as being of any significance in relation to the funds raised for the purpose of acquiring the Abbey Mills site. If they had done so, at the very least further reassurance would have been sought (in the way that it was at the November 1994 meeting), or there would have been controversy (in the way that there was controversy when the Dewsbury trustees attempted to get the property transferred to them). Neither of those things occurred. For that reason, I do not consider the headings on the receipt to be evidence either that the London trustees or fundraisers regarded themselves as agents for Dewsbury, or as evidence that the part of the donors or lenders intended the money for the Dewsbury Trust. It is not insignificant that the defendants placed next to no reliance on the terms of any receipts for this purpose until

> day 9 of the trial, despite the fact that other receipts, said to have been in similar terms, had been disclosed by the defendants but left out of the trial bundle; while the Claimants' witnesses had referred to them (though not to their terms) without embarrassment…. For the avoidance of doubt, I consider the untruths which I have found Mr Mohammed to have uttered in this context to be attributable to a desire to avoid the possibility of adverse findings as the result of the evidence of the receipts, which in the event I have not made anyway. It is another reason, however, why I must approach his evidence with caution."

12. In mid-November 1994, Mr Mohammed contacted a solicitor, Mr Edward Isaacs of Forsythes, about the acquisition of Abbey Mills. Writing on 23 February 1995 to Grimley JR Eve, who were acting as agents for the vendors of Abbey Mills, Mr Isaacs explained that the purchase was to proceed in the name of "Anjuman-E-Islahul-Muslimeen of U.K. of 9/11 Christian Street", "the largest of the Muslem Charities", and that, to the extent that funds were not already available in the United Kingdom, they would be "transferred here when needed". As the Judge observed in paragraph 103 of the Judgment, "[p]lainly that was a reference to the Dewsbury Trust". The Judge added this in paragraph 104:

> "The reference to the availability of funds from elsewhere, and to the size of the charity was, I take it, intended to reassure Grimley JR Eve that the prospective purchaser had substantial funds available, although at that point it did not. I do not regard that, therefore, as good evidence of the understanding at the time of [Mr Mohammed], [Mr Shaikh] and [Mr Ali] as to the trust on behalf of which they regarded themselves as acting. I do regard it as evidence of a willingness to mislead third parties so far as might be convenient in pursuit of their objects. That impression was wholly borne out by the evidence, in particular, of [Mr Mohammed] as he gave it before me."

13. In a letter dated 16 May 1995, Mr Isaacs asked Mr Mohammed to confirm that the purchasers were properly described as "Anjuman-E. Islahul Muslimean". Mr Mohammed's response is missing, but in the months that followed Mr Mohammed wrote to Mr Isaacs on a number of occasions on paper headed with the name "Anjuman-E-Islahul-Muslimeen of U.K." and the Dewsbury Trust's charity number. Further, in correspondence from December 1995 Mr Isaacs referred to his clients not being liable for VAT as a "Registered Charity".

14. By now, a bank account had for some time been used in connection with the fundraising for the purchase of Abbey Mills. This had been opened in the name "Anjuman-E-Islahul-Muslimeen of UK", the bank having been supplied with a certificate dated 2 February 1995 which purported to record that the committee of management of "Anjuman-E-Islahul-Muslimeen of UK" had resolved that the bank be authorised to accept instructions from Mr Ali as "chairman" and Mr Shaikh as "treasurer". The certificate was signed by Mr Ali as "chairman" and Mr Mohammed as "secretary". While, however, Mr Ali was a trustee of the Dewsbury Trust, he was

not its chairman, and Mr Mohammed and Mr Shaikh were not even trustees of the Dewsbury Trust.

15. The Judge explained that "[t]he moneys raised for the Land were paid into that account" and that "[c]heques were drawn on that account … for the purchase and other expenditure": see paragraphs 108 and 109 of the Judgment. He commented as follows in paragraph 109:

> "I accept that those who collected the money passed it on to the leadership in London who then paid it in. Many contributors will not have been aware of or cared about the name on the account. Moreover, set against the background, and in particular the knowledge of who the trustees were, I do not consider that any of the contributors who were aware of the bank account name would have been likely to believe that they were paying into the Dewsbury Trust or, if they had so believed, that they would have made the payment."

The Judge continued in paragraph 110:

> "When in 2014 [Mr Mohammed] identified the trust to the bank for money-laundering purposes, he identified it as the Dewsbury Trust, but I am not persuaded that this shows that the then trustees regarded themselves as acting on behalf of the Dewsbury Trust. It is more likely, in my view, that they were using a similar name for convenience and, perhaps, to reassure those with whom they dealt."

16. Contracts for the purchase of Abbey Mills were exchanged on 7 October 1996. The signed version has not survived, but a draft dated 7 August 1996 was in evidence. This may initially have named the purchaser as "Anjuman-E-Islahul Muslimean" (corrected by Mr Ali to "Anjuman-E-Islahul Muslimeen"), but in its final form the contract seems to have given the purchaser as "Anjuman-E-Islahul Muslimeen of (London) U.K." and (as the Judge said in paragraph 106 of the Judgment) a draft transfer "identified the purchasers as [Mr Mohammed], [Mr Shaikh], and [Mr Ali] as trustees of Anjuman-E-Islahul Muslimeen of (London) U.K." and was "signed by all three".

17. Once contracts had been exchanged, Mr Isaacs pointed out in a letter to Mr Mohammed that Abbey Mills would "need to be purchased in the names of Trustees for the Society" and asked for the full names and addresses of those trustees. The Judge said in paragraph 106 of the Judgment that there was "no such society at the time", but "evidently a reference to the London Shura or trustees was intended and a distinction was being drawn from the Dewsbury Trust".

18. On 2 November 1996, Mr Hafiz Patel ("Mr Patel") wrote on behalf of the Dewsbury Trust requesting Mr Ali "to go to the lawyer … and enter all the names listed below in the new deed which is about to be made for the new place". The names were those of the trustees of the Dewsbury Trust, but Mr Patel asked Mr Ali to "[k]eep these names to yourself". The Judge accepted evidence given by Mr Mohammed to the effect that the matter was raised with the London Shura and Mr Ali in effect said that it should

be ignored. Evidence given by Mr Mohamed Hafeji ("Mr Hafeji") and Mr Sabir Daji (the second defendant and one of the appellants), both of whom were at the time trustees of the Dewsbury Trust, indicated that those trustees had "decided it would be best if London transferred the Land to the Dewsbury Trust", and the Judge considered that the natural inference from "the injunction to keep the names secret" was that "the Dewsbury Trustees realised that there might be anger in the London community at this late and abrupt takeover": see paragraph 113 of the Judgment.

19. Completion took place on 5 November 1996. The transfers provided for Abbey Mills to be transferred to Mr Mohammed, Mr Shaikh and Mr Ali as "Trustees for Anjuman-E-Islahul-Muslimeen of (London) U.K.".

20. Ten days later, Chadwick Lawrence, solicitors, wrote to Mr Isaacs on behalf of the Dewsbury Trust (which was said to have "provided the purchase money") asking that an amended transfer be prepared in favour of four persons nominated by the Dewsbury Trust. The Judge said this in the Judgment about this request and the response to it:

> "120. The affidavit evidence of Mr Hafeji, which Mr Daji accepted was accurate on this, was that members of the London community had raised objections that Dewsbury were trying to steal the Land from the London brothers, to whom it belonged, and had not contributed any funds for its purchase; and the London brothers had refused a transfer. I accept this. The letter of 13 November 1996 therefore represented a more aggressive approach proposed by Mr Daji, and approved (in some cases reluctantly) by Dewsbury. I accept this also.
>
> 121. Mr Isaacs checked with [Mr Mohammed], and did not respond until 17 December 1996, saying that he had wanted to check the whole situation with [Mr Mohammed], from whom his instructions had come from the outset, as secretary of the London Shura. That reinforces the conclusion that Mr Isaacs had not hitherto been instructed on the basis that Dewsbury was beneficially entitled to the property.
>
> 122. The evidence of [Mr Mohammed] was that at the regular meeting in November 1996 at Dewsbury, in the context of excitement over the acquisition, Mr Patel had proposed, among other things, that the trusts be merged, Dewsbury would arrange for the mosque to be built, pay off the loans and make the London trustees trustees of the Dewsbury Trust. [Mr Mohammed] understood this would mean transferring the Land to Dewsbury. Mr Hafeji describes this as a process of pacifying the London brothers. I accept this evidence.

> 123. Evidently Mr Isaacs' instructions had changed so as to require him to co-operate with the Dewsbury demands. I take it that this was the result of the process of pacification just described. His letter dated 17 December 1996, said that fresh transfers would be needed, which he would put in hand once he heard back from Chadwick Lawrence."

21. From early 1997, relief from rates in respect of Abbey Mills was sought on the basis that it was owned by the Dewsbury Trust. The Judge commented in paragraph 111 of the Judgment:

> "I regard that as likely to have been another example of the blithe but deliberate use of the Dewsbury Trust details for the purposes of a different trust altogether. I do not regard it as reliable evidence of the understanding of the trustees at the time the trust was originally constituted. In saying so, I do not disregard the seriousness of the dishonesty which that finding, and similar ones above, seems to imply; though when giving his evidence [Mr Mohammed], for his part, did not appear to understand it to be dishonest."

22. At some point, Mr Patel sought a ruling as to whether, consistently with Islamic law, Abbey Mills might be sold. As the Judge explained in paragraph 128 of the Judgment, "[t]he question arose out of concern for liabilities arising out of ownership of the Land, and its condition, and the fact those liabilities might have to be met in satisfying planning conditions". The Judge accepted evidence given by Mr Mohammed to the effect that "in October 1997 there had been a breakdown in the willingness of the two sides to work together precisely because the Dewsbury Trustees had sought permission to sell the Land": see paragraph 129. The Judge found that "Dewsbury had got cold feet" and "this caused great discord": see paragraph 129.

23. The Judge considered that it was for this reason that "on 30 June 1998 Mr Isaacs wrote again to [Mr Mohammed] mentioning having had a telephone call from Chadwick Lawrence a week or so previously, and telling them my instructions were to proceed now to register the title without alteration to any of the transfers, so the people in the North do now know what we are doing down here'": see paragraph 130 of the Judgment. It was at about the same time that an application was made to the Land Registry for title to be registered. As the Judge noted in paragraph 131, this proceeded "on the footing that, as appeared from the transfers, the transferees were trustees of Anjuman-e-Islahul-Muslimeen of (London) U.K., that is, of the London trust".

24. Shortly before the application for registration was made, the declaration of trust bearing the date 5 November 1996 ("the London Trust Deed") came into existence. The Judge noted in paragraphs 116 and 117 of the Judgment that this was "a home-made document, not professionally prepared", and that its terms "are evidently borrowed (not always appropriately) from the 1975 Dewsbury Declaration of Trust". "The effect," the Judge said in paragraph 117, "is that it is to provide for a general Muslim charity, not explicitly tied to [Tablighi Jamaat]". The London Trust has, however, never been registered with the Charity Commission.

25. Mr Mohammed gave evidence that the London Trust Deed was executed between contract and completion, just before the date it bears. However, the Judge concluded in paragraph 150 of the Judgment that it "did not come into existence until substantially after November 1996", though Mr Isaacs had seen it by the time the application for registration was made on 2 July 1998.

26. On 16 October 1998, Chadwick Lawrence asked Mr Ali to confirm that Abbey Mills was held on trust for the Dewsbury Trust and that a transfer in favour of the Dewsbury Trust would be executed. Later that month, at a "mashwara" (or consultative meeting) at the Dewsbury mosque, Mr Mohammed and Mr Shaikh were presented with, and signed, typed forms acknowledging that Abbey Mills was held on trust for the Dewsbury Trust and providing for the property's transfer to it. Comparable forms were presented to, and signed by, Mr Mohammed, Mr Shaikh and Mr Ali at a further mashwara in Dewsbury in January 1999.

27. The Judge remarked that the very existence of the forms signed in October 1998 provides "powerful evidence that pressure was applied" and that the documents "would not have been necessary if the signatories had been wholly willing": see paragraph 135 of the Judgment.

28. On 4 May 1999, however, Mr Mohammed instructed Mr Isaacs to tell Dedat & Co, the Dewsbury Trust's accountants, that title to Abbey Mills would be in the names of himself, Mr Shaikh and Mr Ali as "trustees of London", and Mr Isaacs passed the message on that same day. On 22 July 1999, Mr Mohammed suggested to Mr Isaacs "forget[ting] friends at North". Chadwick Lawrence having asked Mr Isaacs about the current position, Mr Mohammed said that he left it to Mr Isaacs to "either ignore friends at North or let them know that … no chance for friends at North to have transfer in their names". In the same letter, Mr Mohammed said:

> "Very much disturbing, where the community already threaten us that they will take legal action if transfer are made to any one except the people in London."

29. Title was eventually registered at the Land Registry. On 9 April 2001, Mr Isaacs wrote to Mr Mohammed that "[a]t last all is well and I am able to send you the enclosed Land Certificate". This showed Mr Mohammed, Mr Shaikh and Mr Ali as the proprietors as trustees of "Anjuman-E-Islahul-Muslimeen of (London) U.K.".

30. The Dewsbury Trust's 1996 accounts were prepared on the basis that Abbey Mills was an asset. However, Abbey Mills was removed from the balance sheet in the 1997 accounts and it did not appear subsequently. The Judge said in paragraph 67 of the Judgment that the "overwhelming inference is that the trustees and their accountants had concluded that Abbey Mills was not then an asset of the Dewsbury Trust".

31. There was evidently litigation relating to the planning position in respect of Abbey Mills in the course of which, on 29 May 2013, an injunction was obtained. On 11 July 2017, Newham Borough Council asked for the names of the current trustees of the Dewsbury Trust with a view to the joinder of additional parties. Kingswell Watts, solicitors, replied on behalf of trustees of the Dewsbury Trust on 14 July 2017 asserting that "[t]he London Trust and the Dewsbury Trust are separate entities" and

that their clients "have no involvement with the London Trust and as such they do not consent to being added as parties to the Injunction".

32. By this period, divisions had appeared within Tablighi Jamaat. It is common ground that since 2017 two distinct groups of followers have had support in the United Kingdom. The respondents refer to a schism in the movement. The appellants, as I understand it, have been more inclined to speak of a minority faction. At all events, it appears that at least part of the London community follows the leadership of one element (the World Shura), while the Dewsbury Trust follows the leadership of the other element, led by Muhammad Saad Kandhlawi.

33. The Judge concluded as follows:

> "144. … I conclude that the objective intention on the part of the donors and lenders was that the £1.4 million contributed for the purchase of the Land should be held for the purpose of [Mr Mohammed], [Mr Shaikh] and [Mr Ali] acquiring the Land to fund the building of a mosque and community centre of which they would be the trustees, and to maintain and support the said mosque and community centre, in each case for the use and benefit of the Tablighi Jamaat community in the London region. I reject the proposition that their intention was that it should be held for the religious and other charitable purposes stated in the 1975 trust deed for the Dewsbury Trust/Charity 505732, or that it had been collected on behalf of that charity or was held on trust for it.
>
> 145. In summary (and without derogating from the fuller discussion above), the mosque was intended primarily to meet the needs of the London community. The fundraising was to be organised and carried out by and from the London community. The money came from the London community. There would have been an expectation at the relevant time on the part of both the fundraisers for and the potential donors to the acquisition of property for a markaz in the UK that it could not be held on terms which might allow it to be devoted to purposes which excluded primary use and at least a high degree of control by local members of [Tablighi Jamaat], unless the contrary had been spelt out: the expectation would be that if bought by locals it would be used for and controlled by locals. When London property had been treated as Dewsbury's without a 'by your leave' there had been upset in the past. This was an issue in the November 1994 meeting, at which reassurance to the contrary had been given. Separate London Shura trustees were chosen. The natural inference is that the intention expressed at the November 1994 meeting represented the basis upon

> which donations and loans were solicited thereafter, and the basis upon which contributions were made. The name given to the bank account does not change that. Nor do the terms of the receipts given for loans.
>
> 146. The Dewsbury community were not to be a focus of the fundraising activity. The Dewsbury Trust had declined to contribute to the purchase, or to undertake financial responsibility or risk in connection with the acquisition. The fundraisers were not acting on its behalf. There was (as I have found) no default practice that the Dewsbury Trust should hold all [Tablighi Jamaat] properties or assets. The Dewsbury Trust would retain ownership of Christian Street. The Dewsbury Trustees knew the Land would be transferred to [Mr Mohammed], [Mr Shaikh] and [Mr Ali]. This was not on the basis that they should later transfer it to the Dewsbury Trust. The November 1994 meeting had not agreed to that. The acquisition proceeded on the footing that it was for a separate London trust. The late change of mind by the Dewsbury Trust, and its last minute attempts to get the Land transferred to itself, point to an understanding on their part too that the property was not otherwise held upon the Dewsbury trusts, as does its treatment of the Land in its accounts ….
>
> 147. The purchase monies in NatWest bank account no. 34522794 were therefore held for the purpose of [Mr Mohammed], [Mr Shaikh] and [Mr Ali] acquiring the Land to fund the building of a mosque and community centre of which they would be the trustees, and to maintain and support the said mosque and community centre, in each case for the use and benefit of the Tablighi Jamaat community in the London region. They were not held for the religious and other charitable purposes stated in the 1975 trust deed for the Dewsbury Trust/Charity 505732."

34. With regard to the London Trust Deed, the Judge said this in paragraph 151 of the Judgment:

> "What is to be made of this? In the first place it throws considerable additional doubt on the credibility of [Mr Mohammed] in giving evidence. Accordingly, I have been careful not to rely on his evidence save where it is corroborated or inherently plausible. Secondly, it reduces the value of the [London Trust Deed] as evidence of the objective intention of the settlors. Accordingly, I have been careful to place little reliance upon it for that purpose. Thirdly, however, it does not mean that a trust had not already been constituted before it was

> executed: such a trust had been constituted on completion although it was, in effect, an executory rather than an executed trust. Fourthly, it does not mean that the [London Trust Deed] was or is invalid, or declared without the proper authority of the settlors: that authority will have continued after acquisition until a valid formal declaration of trust was declared. The question is whether it was within the terms of that authority. In my judgment, it was. As intended, it was a trust of Abbey Mills for the purpose of worship, preaching and teaching in the Muslim faith. It is true that it did not specify control from London, but the trustees were London trustees of London property, and it was those trustees (and their successors) who had power to appoint additional trustees, as long as they were of the Sunni Muslim faith. It is true that it did not specify use for the purposes of Tablighi Jamaat, but that, I think, was adequately covered given the identity of the trustees appointed; and in any case, the intention was never that its use should be exclusively for Tablighi Jamaat purposes."

35. On that basis, the Judge held in paragraph 153 of the Judgment that Abbey Mills is held on the trusts of the London Trust Deed.

The appeal

36. Mr David Holland KC, who appeared for the appellants with Mr Ted Loveday (neither Mr Holland nor his instructing solicitors having been involved at first instance), submitted that the Judge's conclusions do not withstand scrutiny. He recognised that the appeal involves challenges to findings of fact, but he argued that the Judge's decision can be seen to be wrong by reference to three strands of evidence in particular. In the first place, Mr Holland said, the Judge's treatment of the receipts given to lenders was not supported by the evidence and flawed. Secondly, key parts of the Judge's analysis on "holding out" were illogical, inconsistent or lacking in proper reasoning. Thirdly, the Judge's findings as to the November 1994 meeting were unsustainable since they depended on implausibly detailed evidence which a committed and unrepentant liar (viz. Mr Mohammed) had given about events many years earlier of which he could have little or no reliable recollection. Mr Holland further stressed that the trusts declared in the London Trust Deed do not differ significantly from those of the Dewsbury Trust. The dispute was thus about leadership rather than the substance of the trusts affecting Abbey Mills, but the Judge took too little account of that.

37. I find it convenient to address the issues to which the appeal gives rise under the following headings:

    i) The November 1994 meeting;

    ii) The receipts;

    iii) "Holding out";

    iv) The similarity between the trusts; and

v) Conclusion.

38. Before, however, turning to these matters, I shall say something about the relevant legal principles.

Some legal principles

Classes of gift

39. As the Judge noted, *Tudor on Charities*, 11th ed., says this about charity appeals at paragraph 18-049:

> "At one level the law is clear: a donation will be held for the purposes intended by the donor. That intention will be ascertained objectively by reference to the terms on which the donor made his gift to the recipient; construed against the factual background known to the donor. Broadly there are three classes of gift to a charity:
>
> (1) A gift to the charity which can be used for the general purposes of the charity.
>
> (2) A gift for a specific purpose which is different from, and typically narrower than the general purposes of the charity, and which the charity can properly accept. Such a gift will be held on trust for the specified purpose. Trusts of this nature are frequently called 'special trusts' and the funds held on them are called 'restricted funds'.
>
> (3) A gift to an individual or committee for indefinite charitable purposes which gives the individual or the committee entrusted with the money implied authority for and on behalf of the donor to declare the trusts to which the sums contributed are to be subject."

40. The third class was recognised in *Attorney-General v Mathieson* [1907] 2 Ch 383 ("*Mathieson*"). In that case, Cozens-Hardy MR said at 394:

> "When money is given by charitable persons for somewhat indefinite purposes, a time comes when it is desirable, and indeed necessary, to prescribe accurately the terms of the charitable trust, and to prepare a scheme for that purpose. In the absence of evidence to the contrary, the individual or the committee entrusted with the money must be deemed to have implied authority for and on behalf of the donors to declare the trusts to which the sums contributed are to be subject. If the individual or the committee depart from the general objects of the original donors, any deed of trust thus transgressing reasonable limits might be set aside by proper proceedings instituted by the Attorney-General, or possibly by one of the

> donors. But unless and until set aside or rectified, such a deed must be treated as in all respects decisive of the trusts which, by the authority of the donors, are to regulate the charity."

41. In *Shergill v Khaira* [2014] UKSC 33, [2015] AC 359, Lords Neuberger, Sumption and Hodge noted at paragraph 27 that there "does not appear to have been much discussion or development of the principles laid down in the *Mathieson* case, either in the textbooks or in the cases". There is no reason to doubt that *Mathieson* represents the law, however.

42. In the present case, the choice was between the first and third of the *Tudor* classes. The appellants contended that Abbey Mills was subject to the trusts governing the Dewsbury Trust, not a specific purpose different from those trusts. The respondents submitted, and the Judge found, that Mr Mohammed, Mr Shaikh and Mr Ali had had implied authority to declare the trusts in respect of Abbey Mills.

The relevant materials

43. Where a contract has been made in writing, "[t]he court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement" (*Wood v Capita Insurance Services Ltd* [2017] AC 1173, at paragraph 10, per Lord Hodge): the parties' subjective intentions are immaterial. The same principle applies in relation to deeds establishing trusts: "Lifetime settlements are no different from other documents in that the subjective intentions of their authors are irrelevant" (*Lewin on Trusts*, 20th ed., at paragraph 7-004).

44. The position is different, however, where the terms of an agreement or gift have not been reduced to writing. In *Carmichael v National Power plc* [1999] 1 WLR 2042, Lord Hoffmann observed at 2050 that "[i]n the case of a contract which is based partly upon oral exchanges and conduct, a party may have a clear understanding of what was agreed without necessarily being able to remember the precise conversation or action which gave rise to that belief". Lord Hoffmann went on at 2050-2051:

> "The evidence of a party as to what terms he understood to have been agreed is some evidence tending to show that those terms, in an objective sense, were agreed. Of course the tribunal may reject such evidence and conclude that the party misunderstood the effect of what was being said and done. But when both parties are agreed about what they understood their mutual obligations (or lack of them) to be, it is a strong thing to exclude their evidence from consideration. Evidence of subsequent conduct, which would be inadmissible to construe a purely written contract (see *Whitworth Street Estates (Manchester) Ltd. v. James Miller and Partners Ltd.* [1970] A.C. 583) may be relevant on similar grounds, namely that it shows what the parties thought they had agreed."

The significance of evidence as to recollection

45. Judges have for many years remarked on the vulnerabilities of evidence as to what witnesses remember. Popplewell LJ recently discussed human memory and how

witnesses can come to give mistaken evidence in his 2023 COMBAR lecture, *Judging Truth from Memory: The Science*. In *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), [2020] 1 CLC, at paragraph 22, Leggatt J went so far as to suggest that "the best approach for a judge to adopt in the trial of a commercial case is … to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts". However, Popplewell LJ explained in his lecture that he did not himself wholly agree with this remark and in *Natwest Markets plc v Bilta (UK) Ltd* [2021] EWCA Civ 680 the Court of Appeal pointed out at paragraph 50 that "it is important to bear in mind that there may be situations in which the approach advocated in *Gestmin* will not be open to a judge, or, even if it is, will be of limited assistance". In *Kogan v Martin* [2019] EWCA Civ 1645, [2020] FSR 3, the Court of Appeal said at paragraph 88 that "a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon *all* of the evidence".

Appeals against findings of fact

46. There are, of course, only limited circumstances in which an appellate Court is justified in interfering with a finding of fact made by a trial judge. Thus, in *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, [2014] 1 WLR 2600, Lord Reed (with whom Lords Kerr, Sumption, Carnwath and Toulson agreed) said at paragraph 67:

> "in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."

47. In *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48, at paragraph 2, Lewison LJ (with whom Males and Snowden LJJ agreed), took the following principles to be "well-settled":

> "i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb 'plainly' does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that

> a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

48. In an earlier case, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] ETMR 26, Lewison LJ had noted at paragraph 114 that "[i]n making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping" and that "[t]he atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence)".

The November 1994 meeting

49. When discussing the November 1994 meeting, the Judge said that he approached Mr Mohammed's evidence "with some caution": see paragraph 81 of the Judgment. Later in the Judgment, at paragraph 151, the Judge observed that his conclusions as regards the London Trust Deed threw "considerable additional doubt on the credibility of [Mr Mohammed] in giving evidence" so that he had been "careful not to rely on [Mr Mohammed's] evidence save where it is corroborated or inherently plausible". The Judge considered Mr Mohammed to have shown "a willingness to mislead third parties so far as might be convenient in pursuit of [his] objects" and that findings he made in relation to applying for rates relief and other matters seemed to imply serious dishonesty: see paragraphs 104 and 111.

50. On the other hand, the Judge expressly said that he thought that Mr Mohammed's evidence about the November 1994 meeting was "plausible in context, and consistent with that of others, including Mr Rahman". The appellants challenge that assessment, but it seems to me that there was a sufficient foundation for the Judge's findings as regards the meeting and that we would not be justified in interfering with them.

51. In the first place, the Judge had the advantage of seeing Mr Mohammed, Mr Muhammad Abdur Rahman ("Mr Rahman") and other witnesses give evidence in the course of a nine-day trial.

52. Secondly, the Judge had already found that there was "no consistent pattern of the Dewsbury Trust's owning [Tablighi Jamaat] properties elsewhere" and that "the expectation would be that if bought by locals [a property] would be used for and controlled by locals": see paragraphs 70 and 71 of the Judgment.

53. Thirdly, the Judge had also found that the Dewsbury elders had made it clear that the London community should "stand on their own two feet": see paragraph 73 of the Judgment.

54. Fourthly, Mr Mohammed's account received some, albeit limited, support from Mr Rahman's evidence. Mr Rahman said in a witness statement that he attended the November 1994 meeting, that he recalled that "the elders of London Shura appointed three trustees to purchase the land" and that he "would have objected to Abbey Mills being transferred to Dewsbury". In cross-examination, he accepted that, contrary to what he had appeared to say in his witness statement, Mr Patel had not been at the November 1994 meeting. However, he can, I think, be seen to have continued to maintain that the "main point" at the meeting was a decision that there would be "three trust brothers and London Trust, supporting our London brothers at that time".

55. Fifthly, Mr Mohammed's evidence to the effect that members of the London community were upset about what had happened to £100,000 derived from London donations in previous years was not the subject of challenge. No evidence was led to contradict Mr Mohammed on this point, he was not cross-examined on the issue and the existence of the controversy was not disputed in closing submissions at trial.

56. Sixthly, Mr Mohammed's account explains how it was that Abbey Mills came to be acquired in the names of himself, Mr Shaikh and Mr Ali, not in those of either a group of trustees of the Dewsbury Trust or individuals chosen by the Dewsbury Trust trustees. In contrast, the appellants' defence referred to the reasons for Mr Mohammed, Mr Shaikh and Mr Ali becoming the registered proprietors being "presently unknown". Nor did evidence given on behalf of the appellants provide a compelling explanation for the purchase being effected by Mr Mohammed, Mr Shaikh and Mr Ali. Mr Khalisur Rahman attributed this to Mr Patel being "too elderly to travel to London regularly", but Mr Patel could have been one of the buyers without coming to London at all and, anyway, other Dewsbury trustees could have been nominated. For his part, Mr Mohammed Chaudhry, who is one of the appellants, said that the intention had been that Abbey Mills "would be transferred into the name of the trustees of the Dewsbury Trust" after the purchase, but it is not obvious why, if trustees of the Dewsbury Trust were meant to be the proprietors, they were not designated as such from the start. Mr Chaudhry referred in cross-examination to the Dewsbury trustees not being able to "come from Dewsbury all the time", but that is not obviously convincing.

57. Seventhly, Mr Mohammed's version of events chimes with the evidence given by Mr Hafeji to which I have referred in paragraph 18 above. In an affidavit which was admitted at the trial as hearsay evidence, Mr Hafeji, who was a trustee of the Dewsbury Trust during the relevant period, said that after receiving news around the end of 1996 that "London brothers had successfully closed the purchase of the land":

> "12. … we decided that it would be best if the London brothers transferred the land to our charity, the Dewsbury Trust.
>
> 13. We were aware that this may upset some of the London brothers but decided that we should relay this to [Mr Ali] and ask him to not announce this to the community as he was their leader. Unfortunately news of the same got out and there were objections made that we were trying to steal the land and that we had not contributed any funds for the purchase and the site belonged to the London brothers.
>
> 14. After the London brothers initial refusal, Dewsbury Trusts secretary, Shabbir Daji came up with a more aggressive approach which was approved. He instructed the Dewsbury Trust's retained solicitors to write a letter stating that the monies for the purchase price were given by the Dewsbury Trust to apply pressure on the London brothers …. This further angered the London brothers as the Dewsbury Trust had in fact not contributed any funds and they had gone through great difficulty to raise the funds themselves for the purchase."

58. Eighthly, the November 1994 meeting is likely to have been a very significant one from Mr Mohammed's point of view. After all, on his version of events he was being entrusted with a major fundraising exercise in pursuit of goals which were important to him as a devout Muslim. That increases the likelihood of his remembering what happened at the meeting.

59. Ninthly, Mr Mohammed's account of the November 1994 meeting was not the subject of real challenge in cross-examination.

60. Tenthly, the Judge can be seen from the Judgment to have had in mind the need to exercise caution in relation to Mr Mohammed's evidence.

The receipts

61. The receipts which were given to lenders were plainly helpful to the appellants' case. They were headed "Anjuman-E-Islahul Muslimeen of U.K.", not "Anjuman-E-Islahul-Muslimeen of (London) U.K." (for which Mr Mohammed, Mr Shaikh and Mr Ali were stated to be trustees in the transfers of Abbey Mills), and gave the Dewsbury Trust's charity number and address. Moreover, the Judge found that receipts in this form were in use not only from 1997 (the date of the earliest receipt in evidence) but before the acquisition of Abbey Mills. The Judge further rejected aspects of the evidence which Mr Mohammed gave about the receipts.

62. The Judge nonetheless concluded that "neither [Mr Mohammed] nor anyone else can have regarded the reference to the Dewsbury Trust on the receipts as being of any significance in relation to the funds raised for the purpose of acquiring the Abbey

Mills site": see paragraph 96 of the Judgment. If, the Judge explained, the receipts' heading had been thought to matter, reassurance would have been sought or there would have been controversy because "the difference between the Dewsbury Trust and the London Shura mattered to the London Shura and its community, and … reassurance was given that the money raised by London would not be passed on this occasion, as it had been before, to Dewsbury": paragraph 96. The Judge also considered it "not insignificant that the defendants placed next to no reliance" on the receipts as evidence that donors or lenders intended the money for the Dewsbury Trust until the ninth day of the trial: paragraph 96.

63. Mr Holland argued that the Judge had been wrong to "sidestep" the receipts. He stressed that the purposes for which money has been given fall to be ascertained objectively and submitted that, approaching matters on that basis, the receipts represent the key evidence as to the intentions of those who contributed for the purchase of Abbey Mills. The receipts, it was suggested, provide the only direct documentary evidence as to what contributors were told. Whatever they may have thought subjectively, an objective observer would have inferred that contributions were being made to the organisation identified in the receipts, namely, the Dewsbury Trust.

64. In my view, however, the Judge's conclusions in respect of the receipts were open to him. As was pointed out by Mr Mark Sefton KC, who appeared for the respondents with Mr Jonathan Fowles, the receipts were significant only if and so far as they cast light on what contributors were to be taken to have intended. That depended on the context in which the receipts were used as well as on their terms. On the Judge's findings, members of the London community had previously been reassured that their money would not go to Dewsbury and the receipts will have been printed in the 1980s, before the acquisition of Abbey Mills was in prospect. It is true that, as Mr Holland pointed out, many contributors will not have been at the November 1994 meeting, but it can readily be supposed that the upshot of that meeting became known more widely among the London community and (as the Judge said in paragraph 145 of the Judgment) that "the intention expressed at the November 1994 meeting represented the basis upon which donations and loans were solicited thereafter, and the basis upon which contributions were made". On top of that, there was evidence indicating that the point of a receipt (which would be issued to a lender, not to a donor) was to acknowledge the indebtedness rather than to identify the borrower, and a receipt will, of course, normally be given only *after* a payment has been made. The Judge was, moreover, entitled to have regard to the fact that witnesses had recalled the provision of receipts without suggesting that their terms were of any importance. To the contrary, Mr Yakub Ali Mohamed, for example, was insistent that he donated on the basis that Abbey Mills would be "totally independent" of Dewsbury notwithstanding the fact that he remembered being given a receipt. In all the circumstances, there was good reason to conclude that pre-existing receipts were being used for convenience and that, even looking at matters objectively, their terms did not establish contributors' intentions. An extra reason for taking that view is perhaps to be found in the fact that receipts with the same heading were still in use many years later, in respect of payments which cannot possibly have been intended for the Dewsbury Trust and of which its trustees are likely to have had no knowledge.

"Holding out"

65. The appellants pointed out that Mr Mohammed, Mr Shaikh and Mr Ali represented the purchase of Abbey Mills as being for the Dewsbury Trust on a number of occasions and argued that the Judge's analysis of that "holding out" was illogical, inconsistent and lacking in proper reasoning.

66. The appellants referred in particular to matters relating to Forsythes, the bank account and rates relief. With regard to the first of these, on 23 February 1995 Mr Isaacs told Grimley JR Eve, doubtless on instructions, that the purchaser would be "Anjuman-E-Islahul-Muslimeen of U.K. of 9/11 Christian Street", "the largest of the Muslem Charities", and in December of that year he referred to his clients being a "Registered Charity". So far as the second is concerned, a bank account was opened in the name "Anjuman-E-Islahul-Muslimeen of UK". As for rates relief, this was sought from early 1997 on the basis that Abbey Mills was owned by the Dewsbury Trust.

67. The Judge addressed each of these matters. The first he took as "evidence of a willingness to mislead third parties so far as might be convenient in pursuit of their objects" rather than "good evidence of the understanding at the time of [Mr Mohammed], [Mr Shaikh] and [Mr Ali] as to the trust on behalf of which they regarded themselves as acting": see paragraph 104 of the Judgment. In relation to the second, the Judge thought it likely that "they were using a similar name for convenience and, perhaps, to reassure those with whom they dealt": see paragraph 110. With rates relief, the Judge regarded this as "likely to have been another example of the blithe but deliberate use of the Dewsbury Trust details for the purposes of a different trust altogether" and not as "reliable evidence of the understanding of the trustees at the time the trust was originally constituted": see paragraph 111.

68. In my view, there is no question of the Judge's treatment of these matters undermining his decision. In the first place, while it is of course true that the bank account was opened in the name "Anjuman-E-Islahul-Muslimeen of UK", the certificate with which the bank was provided referred to Mr Ali as "chairman", Mr Shaikh as "treasurer" and Mr Mohammed as "secretary" notwithstanding the fact that they did not hold such offices with the Dewsbury Trust and two of the three were not even trustees of that trust. Secondly, there are other documents pointing in a different direction. The purchaser appears to have been given as "Anjuman-E-Islahul Muslimeen of (London) U.K." in the contract and the transfers were all to Mr Mohammed, Mr Shaikh and Mr Ali as "trustees of Anjuman-E-Islahul Muslimeen of (London) U.K.". Further, in 2017 solicitors acting for the trustees of the Dewsbury Trust asserted that "[t]he London Trust and the Dewsbury Trust are separate entities" and denied involvement with the London Trust. Thirdly, it was anyway the Judge's task to evaluate the evidence in the round rather than to focus exclusively on the incidents of "holding out" on which the appellants relied. He could not, therefore, assess these incidents in isolation from, for example, the evidence bearing on the November 1994 meeting. The fact that the Judge was ultimately concerned with *contributors'* intentions might also be said to reduce the significance of the "holding out" incidents.

The similarity between the trusts

69. Mr Holland argued that the Judge was not justified in concluding that there was a separate trust. The fact that contributors wanted their money to be spent on premises for a mosque and madrasa to be used by the London community was, Mr Holland said, consistent with an intention to benefit the Dewsbury Trust. In this connection, Mr Holland pointed out that the trusts declared in the London Trust Deed do not differ significantly from those declared in the Dewsbury Trust Deed. If, it was contended, the London Trust Deed was consistent with contributors' intentions, so must those of the Dewsbury Trust Deed have been.

70. In my view, however, the Judge's findings amply justified him in concluding that a separate trust was intended. It is true that, in the event, the London Trust Deed closely resembles the Dewsbury Trust Deed, but that was not inevitable. On the Judge's analysis, Mr Mohammed, Mr Shaikh and Mr Ali were entrusted with authority to declare the trusts in respect of Abbey Mills and it would have been open to them to declare different, and potentially narrower, trusts. More importantly, the identity of the trustees was crucial. There had been concern that money had previously been diverted to Dewsbury and about the possibility of that happening again. It was in the light of that that it was decided that Mr Mohammed, Mr Shaikh and Mr Ali, and not a group of Dewsbury Trust trustees or individuals chosen by those trustees, should be responsible for the project. As the Judge said in paragraph 85 of the Judgment, the fact that the trustees were not to be Dewsbury Trust trustees provided "a powerful indication … that the intention which was communicated to contributors was that while of course the purposes were [Tablighi Jamaat] purposes, the trust was not the Dewsbury Trust", and in due course the acquisition of Abbey Mills was carried out on this basis, with Mr Mohammed, Mr Shaikh and Mr Ali purchasing as trustees of "Anjuman-E-Islahul Muslimeen of (London) U.K.". There was anyway, on the Judge's findings, "no default practice that the Dewsbury Trust should hold all [Tablighi Jamaat] properties or assets" and the expectation where property was being acquired for a markaz would have been that "if bought by locals it would be used for and controlled by locals": see paragraphs 145 and 146 of the Judgment.

Conclusion

71. The Judge summarised his reasons for finding that the money raised for the purchase of Abbey Mills was not held on the trusts of the Dewsbury Trust in paragraphs 144 to 147 of the Judgment. In my view, the matters to which he referred, as amplified elsewhere in the Judgment, provided an entirely adequate basis for his conclusion. There is no question of his decision being one that "cannot reasonably be explained or justified" (to quote from Lord Reed in *Henderson v Foxworth Investments Ltd*) or "rationally insupportable" (to quote from Lewison LJ in *Volpi v Volpi*).

72. I would dismiss the appeal.

Lord Justice Arnold:

73. I agree.

Lord Justice Zacaroli:

74. I also agree.