P & B (Run-Off) Ltd v Woolley
QUEEN'S BENCH DIVISION (COMMERCIAL COURT)
(Transcript)
HEARING-DATES: 27 FEBRUARY 2001
27 FEBRUARY 2001

COUNSEL:
S Prevezer QC for the Claimant; N Davis QC and C Mackenzie-Smith for the Defendant

PANEL: ANDREW SMITH J

JUDGMENTBY-1: ANDREW SMITH J

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ANDREW SMITH J:

Introduction

[1] The claimants in these proceedings, P&B (Run-Off) Limited ("P&B"), manage the run-off of Lloyd's syndicates, including the Aviation Personal Accident Syndicate 103 for its 1993 year. Syndicate 103 ceased underwriting in 1993, but the 1993 year has not been reinsured to close. P&B are represented before me by Ms S Prevezer QC.

[2] The defendant, Mrs Margaret C Woolley, who is represented by Mr N Davis QC and Ms C Mackenzie-Smith, became a member of Lloyd's in 1983. Her first members' agent was Rose Thomson Young (Underwriting) Limited ("RTY"). As a condition of her membership of Lloyd's, she signed a General Undertaking dated 1 January 1987 whereby she agreed to:

"comply with the provisions of the Lloyd's Acts 1871-1982, any subordinate legislation made or to be made thereunder and any direction given or provision or requirement made or imposed by the Council [of Lloyd's] . . ."

By an agreement dated 30 September 1992 but taking effect from 10 June 1992, Mrs Woolley appointed as her members' agent Knightstone Underwriting Limited ("KUL") in place of RTY.

[3] KUL was a member of a group of companies that acquired part of the business of what had previously been known as the Poland Group. In the late 1980's there had been a restructuring of the group and two new managing agents were created, John Poland Managing Agency Limited ("JP") and a new managing agency called HGP Managing Agency Limited. The latter changed their name on 31 May 1991 to Knightstone Syndicate Management Limited ("KSM"). In September 1991 the group was acquired by Mr Trevor Bradley and the management of syndicate 103 was transferred to KSM. KUL had begun operating as a members' agent on 1 January 1992, and was the only members' agent to put Names on syndicate 103 for the 1993 year.

[4] On 17 January 1994 the Lloyd's Regulatory Board resolved and directed that the Lloyd's Members Agency Services Limited ("LMAS") be appointed in place of KUL as members' agent for Names including Mrs Woolley. The Board directed LMAS, among other things, to take possession of:

"all such information, documents or other material in the possession, custody or control of KUL relevant to the business in respect of which LMAS has been appointed to act, as have not by agreement been provided to LMAS by KUL;"

and directed KUL and their directors, among other things, "to give LMAS possession of all such information, documents or other material as aforesaid".

[5] By an agreement between LMAS, KSM and P&B, KSM appointed P&B to handle the run-off of the Syndicate underwriting business in place of KSM with effect from 20 July 1994. Mrs Woolley does not dispute that P&B were duly appointed as managing agent in place of KSM.

[6] P&B's case is that Mrs Woolley was an underwriting member of syndicate 103 for the 1993 year of account. In these proceedings they seek to enforce two cash calls made on 10 October 1996 for £5,000 payable on 29 November 1996 and on 25 March 1997 for £10,000 payable on 30 April 1997.

\[7] Mrs Woolley has not paid the cash calls. She does not dispute that if she was a member of syndicate 103 for 1993, the calls were properly made and that she is liable in respect of them. She also accepts that until late 1998 she considered herself to have been a Name on the syndicate. The issue in these proceedings is whether she was correct in her belief. Mrs Woolley contends that she was not because, unknown to her, KUL had not made proper and effective arrangements with KSM for her participation in the syndicate, having failed to comply with the requirements for her participation stipulated in Lloyd's Byelaw no 8 of 1988, the Agency Agreements Byelaw ("the Byelaw").

The Byelaw

[8] The Byelaw was made on 7 December 1988 under s.6(2) and para 15 of Sch 2 to Lloyd's Act 1982, following the Report on Regulatory Arrangements at Lloyd's made in January 1987 by the Committee of Inquiry under the chairmanship of Sir Patrick Neill QC ("the Neill Report"). An Explanatory Note to the Byelaw (which is not part of the Byelaw, but which would have been placed with it before the Council of Lloyd's) explains that it prescribes the contractual terms upon which Names would appoint their underwriting agents to carry on their underwriting business at Lloyd's for 1990 and subsequent years of account.

[9] Paragraph 2 of the Byelaw is headed "Members' agents' services", and para 2(1) provides as follows:

". . . no members' agent shall act as members' agent of an underwriting member, and no underwriting member shall appoint a members' agent to act or agree that it shall continue to act as his members' agent, otherwise than in pursuance of an agreement in writing in the form and terms of the standard members' agent's agreement." (Here and elsewhere where I set out parts of the Byelaw or its Schedules, the emphasis is added.)

Standard members' agent's agreement is defined as "the form of agreement between an underwriting member and a members' agent set out in Schedule 1 to this byelaw", and I shall refer to it as a "schedule 1 agreement".

[10] Paragraph 3 of the Byelaw is headed "Managing agents' services", and para 3(1) provides as follows:

". . .

a. no managing agent shall underwrite insurance business on behalf of an underwriting member or provide any other services as a managing agent to an underwriting member; and

b. no underwriting member shall authorise or continue to authorise a managing agent to underwrite insurance business on his behalf or agree to receive or continue to receive any other services provided by a managing agent in that capacity;

otherwise than in pursuance of an agreement in the terms of the standard managing agent's agreement entered into in the manner specified in the standard members' agent's agreement and (except where the managing agent is acting as the members' agent of the underwriting member) the standard agents' agreement."

"Standard managing agent's agreement" is defined as "the form of agreement between an underwriting member and a managing agent set out in Schedule 3 to this byelaw", and I shall refer to it as a "schedule 3 agreement". "Standard agents' agreement" is defined as "the form of agreement between a members' agent and a managing agent set out in Schedule 2 to this byelaw", and I shall refer to it as a "schedule 2 agreement"

[11] Paragraph 4 of the Byelaw is headed "Arrangements between underwriting agents", and para 4(1) provides as follows:

". . .

(a) no members' agents shall arrange for a managing agent to underwrite or continue to underwrite insurance business on behalf of an underwriting member for whom that members' agent acts as members' agent, or to provide any other services as a managing agent to such an underwriting member; and

\(b) no managing agent shall arrange or agree with a members' agent that the managing agent will underwrite insurance business on behalf of an underwriting member for whom that members' agent acts as members' agent or in pursuance of such an agreement or arrangement provide any other services as a managing agent to such an underwriting member or continue to underwrite insurance business on behalf of, or provide any other services as a managing agent, to any such underwriting member;

otherwise than in pursuance of an agreement in writing in the form and terms of the standard agents' agreement."

[12] Paragraph 5 of the Byelaw provides that:

". . . no underwriting member, managing agent or members' agent shall without the written consent of the Council vary or agree to vary any term of any agreement to which he or it is a party and which is in the form or in the terms of one of the standard agreements."

[13] I should next identify the relevant provisions of the standard agreements. First, the Sch 1 agreement, which is to be made between Name and his members' agent, and which comprises the agreement itself and an appendix to be completed with appropriate details, and signed and sealed by the parties.

(a) By clause 2, which is headed "Appointment and authority of the Agent", it is provided:

"2.1 The Name hereby appoints the Agent, and the Agent hereby agrees, to provide the services and perform the duties set out in this Agreement in respect of the Business and the Name's affairs at Lloyd's

2.2 The Name hereby authorises the Agent on behalf or the Name:

(a) to allocate the whole or part of the Name's overall premium limit in such amounts as the Name and the Agent shall from time to time agree among those syndicates in which the Name and the Agent shall agree from time to time that the Name is to participate;

(b) to enter into an agreement on the terms of the Standard Managing Agent's Agreement with the managing agent of each of the syndicates in which the Name and the Agent shall from time to time agree that the Name is to participate (other than any Direct Syndicates) and from time to time agree with each of those managing agents in accordance with the relevant Agents' Agreement its remuneration on a basis and at a level agreed between the Agent and the Name; and

(c) . . .

and the Agent undertakes with the Name to enter into an agreement in the form of the Standard Agents' Agreement with the managing agent of each of the syndicates in which the Name and the Agent shall from time to time agree that the Name is to participate (other than any Direct Syndicates).

2.3 In relation to those syndicates (if any) in respect of which the Agent is the managing agent and in which the Name and the Agent shall from time to time agree that the Name is to participate, the Name hereby agrees to appoint the Agent, and the Agent hereby agrees that it will act, as the Name's managing agent on the terms of the Standard Managing Agent's Agreement, with such allocation of the Name's overall premium limit, and for a remuneration on such basis and at such level, as shall from time to time be agreed between the Name and the Agent in accordance with clause 3."

(A "Direct Syndicate" is, of course, a syndicate the managing agent of which acts is the Name's members' agent.)

(b) By clause 3, which is headed "Syndicate List", it is provided:

"3.1 By signing a Syndicate List in respect of any year of account to which this Agreement applies:

(a) the Name and the Agent will be deemed to agree in respect of that year of account the syndicates in which the Name is to participate and in relation to which the Agent is to act as his members' agent, the allocation of the whole or part of the Name's overall premium limit among those syndicates and the basis and level of the remuneration of the managing agent of each such syndicate, in each case as specified in the Syndicate List; and

(b) if the Agent is a managing agent, the Name will be deemed to appoint the Agent as his managing agent (or, in the case of a Direct Syndicate of which the Name is already a member, to agree that the appointment of the Agent as his managing agent is to continue), and the Agent will be deemed to agree to act (or to continue to act) as the Name's managing agent, in respect of each of the Direct Syndicates (if any) on the terms of the Standard Managing Agent's Agreement and with such allocations of the Name's overall premium limit, and for a remuneration on such basis and at such level, as are specified in the Syndicate List."

(c) Clause 6.1, under the heading "Duties of the Agent", provides:"

"6.1. The Agent undertakes to the Name that it will comply with Lloyd's Acts 1871 to 1982 and with the requirements of the Council, and will have regard to the codes of practice from time to time promulgated or made by the Council, which are applicable to it as a members' agent at Lloyd's."

(d) Clause 7.1, under the heading "Powers of the Agent", provides:

"The Name hereby authorises the Agent to exercise on his behalf such powers as are necessary or expedient for the provision by the Agent of the services and the performance by the Agent of the duties set out in this Agreement including (without limitation) the power: . . .

Power of attorney

(h) to sign and execute on behalf of the Name and as the attorney of the Name, in his name or otherwise, all deeds and documents relating to the Business or the Name's affairs at Lloyd's which the Name may be required by the Council to sign or execute or which the Agent may consider it necessary or expedient for the Name to sign or execute . . .

Miscellaneous . . .

(p) generally to enter into such contracts and arrangements as are necessary or expedient for the purposes of or in connection with the Business or to discharge any of the functions of the Agent under this Agreement, . . . and for this purpose to incur and discharge or cause to be discharged such expenses as are necessary and reasonable."

(e) Clause 11.1 provides that the "Agreement shall have effect when executed . . ."

(f) Mr Davis refers to clause 12, which is headed "Waiver of confidentiality":

"12.1 In so far as is necessary for the purposes of the exercise by the Council of powers contained in Lloyd's Acts 1871 to 1982 or in byelaws or regulations made thereunder, but not further or otherwise, the Name hereby:

(a) consents to the persons listed in paragraphs (a), (b) and (c) of clause 12.2 providing to the Council any information or documents relating to the Business or the Name's affairs at Lloyd's or any part thereof, whether or not in response to a request by the Council; and

(b) authorises and directs the Agent to waive on its own behalf all duties of confidentiality owed to the Agent by either of the persons listed in paragraphs (b) and (c) of clause 12.2 in respect of such information or documents.

12.2 The persons referred to in clause 12.1 are:

(a) the Agent

(b) any managing agent with whom the Agent on behalf of the Name has entered into a Managing Agent's Agreement on relation to the Business or any part thereof; and

(c) any auditor appointed by the Agent or by any such managing agent as is referred to in paragraph (b) above."

(g) Finally, reference should be made to clause 13.1 whereby the Name appoints "the managing agent of each syndicate (other than a Direct Syndicate) of which the Name shall become a member through the agency of the [members'] Agent under this agreement as his attorney on his behalf" to act as stipulated.

[14] I turn to the Sch 2 agreement between the members' agent and the managing agent.

a) Clause 2 is headed "Appointment of the Managing Agent" and clause 2.1 provides as follows:

"The Members' Agent and the Managing Agent agree that by signing an Agents' Syndicate List in respect of any year of account to which this Agreement applies:

(a) the Members' Agent will be deemed to confirm that it has entered into a Members' Agent's Agreement and a Premium Trust Deed with each of the Names and that each such Members Agents Agreement and Premiums Trust Deed remains in full force and effect;

(b) the Members' Agent on behalf of each of the Names will be deemed to appoint the Managing Agent as the managing agent of that Name . . . , and the Managing Agent will be deemed to agree to act . . . as the managing agent of that Name in respect of the syndicate or syndicates in which that Name is shown as participating in the Agents' Syndicate List for that year on the terms of the Standard Managing Agent's Agreement, with such allocation of the Name's overall premium limit and for a remuneration on such basis and at such level, as are specified in the Agents' Syndicate List."

b) A number of terms used in Clause 2.1 are defined in the interpretation clause, clause 1. "Agents' Syndicate List " is defined as a schedule prepared in respect of a year of account listing the Names who are members of the syndicate of a managing agent and other stipulated details. "Managing Agent's Agreement" is defined as "an agreement between a Name and a managing agent of that Name in the terms of the Standard Managing Agent's Agreement". "Members' Agent's Agreement" is defined as "an agreement between a Name and a members' agent in the form of the Standard Members' Agent's Agreement".

c) At clause 5 of the Agents' Agreement, it is provided that, "This Agreement shall take effect when executed . . ."

[15] As with the Sch 1 agreement, the form of the Sch 2 agreement contemplates that it will be executed under seal by the parties.

[16] The Sch 3 agreement between the Name and the managing agent has the following terms:

(a) It stipulates that the Name appoints the agent and the agent agrees to provide specified services. It also provides that the Name authorises the agent to exercise stipulated powers, including (at clause 5.1(r)) the power:

"to exercise the power of attorney conferred by clause 13.1 of the Members' Agent's Agreement between the Name and the Name's Members' Agent . . ."

(b) Clause 7 is headed "Obligations and acknowledgements of the Name" and clause 7.1 provides that the:

"Name shall ensure that at all times there are available sufficient funds subject to the trusts of the Premiums Trust Deed [a trust deed which a Name and his Members' Agent have to sign to constitute a fund for all premiums received by or on behalf of the Name] and held by or under control of the Managing Agents' Trustees to enable them to pay all claims and all necessary and reasonable expenses and outgoings made or incurred in connection with the Underwriting and shall comply with any request by the Agent to make such funds available . . ."

It also provides for interest to accrue from day to day upon any sums not paid by the due date (as defined) "at the rate of two per cent. per annum above the base rate of such London clearing bank as the Agent may select."

(c) Clause 11 is headed "Commencement and termination" and provides at clause 11.1:

"This agreement shall take effect :

(a) if the Managed Syndicate is not a Direct Syndicate, on the date of signature of an Agents' Syndicate List under clause 2 of the Agents' Agreement between the Name's Members' Agent and the [managing] Agent . . ."

Unlike the Sch 1 agreement and the Sch 2 agreement, the form of the Sch 3 agreement does not contemplate execution of the agreement either by seal or otherwise.

[17] The Byelaw therefore (except in cases of "Direct Syndicates") provides for the following arrangements:

(a) written Sch 1 agreements between Names and Members' Agents;

(b) syndicate lists signed by Names and Members' Agents: it is accepted by both P&B and Mrs Woolley that by signing a list the Name and the Members' Agent agree that the Name is to participate on syndicates as specified in the list in the relevant year of account;

(c) written Sch 2 agreements between the Members' Agent and the Managing Agent of any syndicate in which the Name is to participate;

(d) Agents' Syndicate Lists whereby Managing Agents are deemed to be appointed to act on behalf of Names, and which are, as P&B and Mrs Woolley agree, to be signed by both the Members' Agent and the Managing Agent.

(e) Sch 3 agreements made between Names and the Managing Agents.

[18] The background to the introduction of this scheme of arrangements is explained by Coleman J in Society of Lloyd's v Jaffray and others (No 2) unreported, 26 January 2000:

"Until the introduction of the standard agency agreement, there was no mandatory standard form of agency agreement. On 11 March 1985 the Agency Agreements Byelaw No. 1 of 1985 was passed which stipulated that from 1 January 1987 insurance business could not be underwritten in the Lloyd's market unless the Name had entered into a Standard Agency Agreement. The Standard Agency Agreement governed the relationship between the Name and his/her member' agent (or a combined agent acting as member' agent). Where that members' agent or combined agent delegated some or all of the underwriting to a managing agent a Standard Sub-Agency Agreement contained the terms of that delegation.

There was no direct contractual relationship between a Name and his/her managing agent, unless the members' agent also acted as managing agent. (The position changed in 1990 with the implementation of the Agency Agreements Byelaw (No.8 of 1988) which prescribed standard form agency agreements and introduced a direct contractual relationship between the Name and his/her managing agent). However, the House of Lords in Henderson v Merrett Syndicates Ltd [1994] 3 WLR 761 [also [1995] 2 AC 145], upheld the decision of the Court of Appeal that the delegation of the conduct of underwriting business did not remove the implicit promise by the members' agent that the work of the managing agent would be carried out with reasonable care and skill. In addition, the managing agents were under a similar, non-contractual duty to Names to exercise reasonable care and skill."

The Issues

[19] The matters about which P&B and Mrs Woolley are in agreement and the issues between them are as follows:

(a) It is agreed that KUL and Mrs Woolley duly entered into a Sch 1 agreement, although only the appendix to it has been found. It is the agreement dated 30 September 1992, to which I have referred.

(b) It is agreed that a Name's Syndicate list was signed by Mrs Woolley and KUL whereby it was agreed that Mrs Woolley should participate for the 1993 year of account on various syndicates, including syndicate 103 with a £20,000 line. It was signed by Mrs Woolley on 20 January 1993 and on behalf of KUL on 14 January 1993.

(c) No Sch 2 agreement between KUL and KSM has been found. It is P&B's case that a Sch 2 agreement was duly entered into, but all copies of it have been lost. They also submit that even if no written agreement was entered into, KUL and KSM reached an agreement in the terms of a Sch 2 agreement, and the fact that they did not enter into a written agreement, though a contravention of the Byelaw, would not mean that the agreement is void or unenforceable. Mrs Woolley disputes these matters.

(d) There has not been found an agents' syndicate list in respect of Mrs Woolley's participation in syndicate 103 for the 1993 year that has been signed by KSM. There have been produced by B&P two lists signed on behalf of KUL: a list of 60 pages dated 11 February 1993 and signed by a Mr Thompson on behalf of KUL on each page against that date, and a list of 59 pages dated 10 May 1993 and signed by a Mr Gillespie on behalf of KUL on each page against the date of 19 May 1993. Both these documents provided for Mrs Woolley to participate in the syndicate with a line of £20,000, and both lists have a space on each page for a signature on behalf of KSM. It is P&B's case that copies of those lists were indeed signed by KSM, but that the countersigned copies have been lost. Further, as with the Sch 2 agreement, they also submit that even if KSM did not countersign the list, nevertheless an agreement for Mrs Woolley's participation in the syndicate was reached between KUL and KSM, and the fact that KSM did not countersign an agents' syndicate list, though a breach of the Byelaw, would not invalidate the agreement or make it unenforceable. Again, Mrs Woolley disputes these points.

(e) P&B acknowledge that there was no written Sch 3 agreement made between Mrs Woolley and KSM. They submit that the Byelaw does not require a written agreement between them. Mrs Woolley submits that the Byelaw does require it, and that without a written Sch 3 agreement there cannot be an effective agreement between KSM and herself.

[20] Accordingly, P&B's primary case is that by the agreement dated 30 September 1992, Mrs Woolley authorised KUL to act as her members' agent and to enter into Sch 3 agreements on her behalf; that under that authority KUL entered into a Sch 2 agreement with KSM (in writing, or if they fail in that contention, by conduct); and that KUL and KSM agreed that Mrs Woolley should participate in syndicate 103 for 1993 (by signing an Agents' Syndicate List, or by their conduct). Accordingly, they submit that Mrs Woolley and KSM made an agreement in the terms of a Sch 3 agreement that Mrs Woolley should participate in the syndicate.

[21] It is convenient first to consider whether under the scheme of the Byelaw a written Sch 3 agreement is mandatory; then to determine whether in fact there was a written Sch 2 agreement between KUL and KSM, and whether there was a relevant agents' syndicate list signed on behalf of both companies; and thirdly to determine the consequences if there were not.

Does the Byelaw require a written Sch 3 agreement?

[22] There is nothing in the Byelaw that stipulates that Sch 3 agreements are to be in writing. Paragraph 3 of the Byelaw refers to an agreement "in the terms of the standard managing agent's agreement". This terminology is in contrast with the terminology in para 2 about members' agents' services and para 4 about arrangements between underwriting agents, both of which refer to "an agreement in writing in the form and terms" specified.

[23] Further, the Byelaw itself stipulates how a Sch 3 agreement is to be entered into, namely in the manner specified in the Sch 1 agreement and the Sch 2 agreement. This refers to clause 2.2(b) of the Sch 1 agreement and clause 2.1(b) of the Sch 2 agreement. Accordingly the Byelaw stipulates that a Sch 3 agreement is to be entered into by the members' agent exercising the power conferred upon him by the Sch 1 agreement, and by him and the managing agent signing an Agents' Syndicate List. Thus, a Sch 3 agreement is "deemed" to be made between the Name and the managing agent.

[24] Accordingly, the Byelaw does not require a written agreement between managing agent and Name (either entered into by the Name himself or made by his members' agent on his behalf). This is confirmed by a number of other considerations:

[25] In the Sch 1 agreement the authority given to the agent is to enter into agreements in the "terms" of a Sch 3 agreement with the managing agents. This is in contrast with the undertaking of the agent to enter into agreements in the "form" of a Sch 2 agreements.

[26] By clause 2.2 of the Sch 1 agreement the members' agent undertakes to enter into Sch 2 agreements, but there is no comparable undertaking in respect of Sch 3 agreements.

[27] In the Sch 2 agreement there is a significant difference between the definition of a Sch 3 agreement, which is by reference to its terms, and the definition of a Sch 1 agreement, which is by reference to its form.

[28] Unlike Sch 1 and the Sch 2 agreements which provide that they are to come into effect when executed, the commencement provision of the Sch 3 agreement does not contemplate its execution.

[29] The form of the Sch 3 agreement set out in the Byelaw does not provide for its execution, again in contrast with the Sch 1 and the Sch 2 agreements. There is no Appendix setting out the terms agreed between the Name and the managing agent, comparable to the Appendix to the Sch 1 agreement.

[30] Nevertheless, Mr Davis submits that the execution of an agreement is required. He points out that the Byelaw contemplates that should be an agreement in the terms of the form in Sch 3. That is certainly the case. However that begs questions of the form of the agreement itself and of how it is to be made. Mr Davis also argues that the terminology of the Byelaw contemplates a degree of formality in the making of a Sch 3 agreement: accordingly, he points out that para 3 of the Byelaw refers to the Sch 3 agreement being "entered into"; so too does clause 12 of the Sch 1 agreement. It does not seem to me that this terminology is indicative of the form of the Sch 3 agreement.

[31] It is unsurprising that the Byelaw provides that if a Name gives authority for his members' agent to place him on a managing agent's syndicate and the members' agent does so, an agreement is ipso facto deemed to be made between the Name and the managing agent. This is how the Byelaw ensures that the relationship between Name and managing agent was not that of principal and sub-agent with no direct contractual nexus between them, but there is direct contract between them. It is to be observed that the Neill Report, to which both Ms Prevezer and Mr Davis asked me to have regard when considering the purpose and proper interpretation of the Byelaw, recommended (at para 6.31) that

"attention should . . . be given to drawing up a direct contract for use as between indirect Names and managing agents and to the mechanisms whereby such contract could be brought into existence without a great deal of extra paperwork" (emphasis added).

[32] I should add that the parties put before me expert reports by Mr G J White, instructed by P&B, and by Mr J Jackman, instructed by Mrs Woolley. The measure of agreement between the experts was such that it was not necessary for them to be called to give oral evidence. One matter upon which they were agreed was, "Lloyd's market practice was to proceed on the basis there was no requirement for a schedule 3 agreement document to be physically signed by both parties". The practice is therefore in accordance with my interpretation of the Byelaw, but I have not relied upon this evidence in interpreting it.

Was a Sch 2 agreement made in writing between KUL and KSM, and was an Agents' Syndicate List signed by them both?

[33] Before turning to the evidence of the witnesses about these questions of fact, it is necessary to set out something of the history of this litigation. When Mrs Woolley failed to pay the calls made in 1996 and 1997, P&B served upon her a statutory demand dated 1 May 1998. She applied to set it aside and Mr Registrar James did so on 23 December 1998. In summary, he considered that she had arguable defences to the claim because P&B were not able to produce either a written Sch 2 agreement or an agents' syndicate list signed by KSM.

[34] These proceedings were issued on 23 June 1999. In their particulars of claim P&B referred to Sch 2 agreements made between companies in the Poland Group in September 1989, and pleaded that through their novation there had

come to be a Sch 2 agreement between KUL and KSM. P&B were asked to clarify their case and by letter dated 2 August 1999 P&B wrote as follows:

"Although the Claimant's primary case is that a standard Agent's Agreement was entered into between KUL and KSM which has been mis-placed, the Claimant may rely upon the execution of novation agreements in the alternative."

[35] By an application notice dated 22 October 1999 P&B applied to amend the particulars of claim. Their notice said that the application was made because:

"new evidence has come to light which enables the claimant to confirm that it relies upon the novation of earlier agency agreements executed by the Poland companies in September 1989."

The evidence in support of the application, verified by a statement of truth signed by Ms J Plumptre, a barrister and P&B's company secretary, said this:

"The original Particulars of Claim were not sufficiently clear in that they disclosed two possible arguments. One argument was that the claim relied on an earlier agency agreement between the former Poland members' agent and the former Poland managing agent. The other argument was that the claim relies upon a new agency agreement, which was subsequently lost or misplaced, between the Knightstone members agents and the Knightstone managing agents. The Defendant properly sought clarification by a request under CPR 18 dated 28 July 1999. I therefore conducted further research of the archives inherited from the Knightstone companies. Also in August 1999 I was contacted by Mr Quentin Moore, the former manager of Knightstone Syndicate Management who told me that the Knightstone companies did not enter into new agency agreements but novated the original Poland agency agreements. In reliance upon Mr Moore's evidence and also in reliance on his explanation of the changes of company names, which had helped to obscure the history of the former Poland group of companies I wish to amend the Particulars of Claim . . . to assert a positive case that the Claimant relies upon novation of earlier agency agreements."

By an order dated 28 October 1999, P&B were given permission to amend their pleading accordingly.

[36] Until the week before the trial, the case was pursued against Mrs Woolley on this basis. P&B served a witness statement signed by Mr Moore dated 9 May 2000. He explained in it that he had joined the Poland group on 31 August 1988 as an assistant to the agency manager, and he remained employed by them after they became the Knightstone Group and until November 1993. He said that in September 1991, when Mr T Bradley took over the Group,

"there was a degree of re-structuring and a large number of novation agreements were executed around 24 September 1991 to reflect either a change of company name and/or change of managing agent."

He explained the changes in the corporate structure of the Group and said that "the management of 103 was transferred by Novation Agreements executed in September 1991 to KSM". He continued,

"Thus there is no Agents' Agreement existing between KUL and KSM because we relied upon the existing Agents' Agreement dated 7 and 8 September 1989 made by the previously named Poland managing and member's [sic] agencies."

[37] At the hearing before me P&B abandoned the case that there was a Sch 2 agreement between KSM and KUL through novation, having given notice of this intention a few days before the trial. Their argument now is that a Sch 2 agreement was entered into directly between KUL and KSM. Accordingly they have not called Mr Moore to give oral evidence and do not rely on his witness statement. Mrs Woolley, however, has put in evidence the witness statement under Civil Procedure Rules 1998 Pt 32.5(5).

[38] Mr Moore's statement also refers to agents' syndicates lists. He explained that P&B found the two lists signed on behalf of KUL which I have described. I was told by Ms Prevezer, and Mr Davis accepts, that only one copy of each of these lists has been found. Mr Moore stated that agents' syndicate lists were usually signed on behalf of

KSM by Mr Bradley or by the relevant active underwriter for the syndicate, and he expressed the belief that more syndicate lists than those dated 11 February 1993 and 19 May 1993 might have been prepared for syndicate 103's 1993 year of account, explaining that there were constant changes to the lists for syndicate 103 because Names did not provide sufficient funds at Lloyd's. He says that:

"The fact that the two Agents' Syndicate Lists dated 11 February 1993 and 19 May 1993 were not signed by any member of the managing agent may be explained because we realised that another was likely to be produced because Names were changing their minds about participation due to large losses rather later in the year than was strictly proper."

Accordingly, he apparently accepted that KSM did not countersign the lists.

[39] In support of their new case, P&B rely on the evidence of Mr Thompson, to whom I have referred, and also the evidence of Mr Casement, a solicitor employed by Messrs CMS Cameron McKenna who have acted for P&B since December 2000.

[40] Mr Thompson was first employed in the Lloyd's market in 1976. In October 1992 he became the Administration Director of KUL because he was working for a business, Spratt & White, which was acquired by KUL. He was employed by KUL until October 1993. KUL and KSM had separate offices in the same building in Philpot Lane, London EC3. Unsurprisingly there was a good deal of contact, both on a personal and professional level, between the employees of the two companies.

[41] Mr Thompson explained that on the day that he joined KUL, the Lloyd's General Review Department began a formal review of the Knightstone Group. After the General Review Department had declared in around March 1993 that, in the words of Mr Thompson, "Knightstone was not fit and proper", the business of the Group was disposed of.

[42] Mr Thompson described his primary role at KUL as "liaising" with the Corporation of Lloyd's and managing agents, other employees dealing directly with Names. His responsibilities included dealing with agents' syndicate lists. He had been familiar with the procedure for preparing lists before he joined KUL. After Names had "settled on their individual syndicate portfolios", agents' syndicate lists were prepared for each syndicate. KUL, as a members' agent, supported some 100 syndicates, including 7 syndicates managed by KSM. The standard practice was for KUL to prepare and sign two copies of agents' syndicate lists and send both to the managing agent. The managing agent would then countersign them, return one and keep the other for their records. However KUL would not check that the managing agents had signed the copies of the list that they retained.

[43] Mr Thompson gave evidence that he recalled signing the syndicate list for syndicate 103 dated 11 February 1993. He recalled this list, of the many lists that he had signed, because he first signed and took to Mr Moore a version of it that was incorrect with regard to "staff participation", by which, I assume, he means the participation in the Syndicate by employees of the Knightstone Group. When the errors were discovered, he had to sign the copies of the list on every page for a second time. The corrected lists would then have been delivered to Mr Moore. Mr Thompson acknowledged that he does not actually recall delivering them or receiving back a countersigned list, but he believes that this is what happened. KUL would next have sent electronically a list of the Names and their participation on syndicate 103 to Montrose Underwriting Services Limited ("MUS") at Lloyd's, and Lloyd's created a syndicate stamp.

[44] In fact it transpired that a further syndicate list had to be prepared, because of the death of Names and difficulties about solvency requirements. Accordingly on 11 May 1993 further syndicate lists were sent by KUL to KSM. The covering letter, headed "Syndicate 103, 1993 Syndicate Constitutions", was written in Mr Thompson's name, but was in fact signed by Ms Angela Kerr, Mr Thompson's assistant. It said that there were "discrepancies with the information we sent you earlier this year on the Syndicate List", and having explained the changes, that it "attached a further set of 1993 Syndicate Lists for your signature". I observe that, although the May version of the list was printed on 10 May 1993 and the letter was dated 11 May 1993, the list was not signed by Mr Gillespie on behalf of KUL until 19 May 1993: the apparent delay was not explained in evidence.

[45] Again, Mr Thompson believes that a copy of this version of the list was returned having been countersigned by KSM, and the information was sent electronically to MUS for Lloyd's to prepare a new stamp. Mr Moore said that KUL had:

"computer checklists to ensure that we received back the signed lists from all syndicates prior to giving the notification to Lloyd's in the electronic format."

[46] Mr Thompson also gave evidence about an agents' agreement between KUL and KSM. In his written witness statement, dated 21 January 2001, he said that because KUL were a new company on 1 January 1992 "there should be new agents' agreements in place with all the managing Agents whose syndicates KUL supported", and that he understood that these could not be found. In his oral evidence he told me that KUL did not rely upon agreements entered into by the Poland Group, but made new agents' agreements. Mr Thompson signed some of these new agents' agreements himself, but he could not say whether he signed one relating to syndicate 103 because he and other directors "would have very likely split the task up between us".

[47] The agents' agreements were kept by KUL in a filing cabinet which was on the ground floor at Philpot Lane, in the same area as KSM kept their documents. Indeed Mr Thompson could not recall whether the two companies had separate cabinets or used separate drawers in the same cabinet.

[48] Mr Thompson told me that he would have been careful to ensure that agency agreements and the signed syndicate lists were in order for two reasons: first, his "professional expertise as an administrator would have ensured that that job was completed thoroughly"; he said that he had a reputation "as a thorough administrator who paid attention to detail". Secondly, he was concerned that these documents should be in order because "as part of the Lloyd's regulatory review, one of the standard pieces of information they would have asked to look at would have been copies of the agency agreements and syndicate lists".

[49] Mr Thompson gave some evidence of what he had been told by others about documents being lost. Firstly, he said that he believed that a Mr David Scott, who was employed by KSM but spent much of his time on the Knightstone Group's affairs, had sworn an affidavit in the subsequent liquidation of KSM, stating that 50 to 60 boxes of company documents had "gone missing"; Mr Thompson had been told this by Ms Plumptre. Mr Thompson also was led to understand in a conversation which he had had in about 1994 or 1995 (after the Group had moved from the Philpot Lane offices) with a Mr David Wedderburn, a director of the holding company of the Knightstone group, that the syndicate lists and agents' agreements were among the documents which were lost, although he acknowledged that Mr Wedderburn had not specifically told him this. Thirdly, Mr Thompson confirmed that he understood that none of the Sch 2 agreements made by KUL could be found, and said that he was approached by a representative of LMAS "some years prior to 1999" to ask whether he could assist in locating documents: "they were looking specifically for syndicate lists and agreements".

[50] I consider that Mr Thompson was an honest witness. He also struck me as a man who would be a careful administrator, and I accept that he was concerned that KUL's documentation should be in order for the review by Lloyd's.

[51] The other witness called by P&B was Mr Casement. He too, as is not disputed, was entirely honest and candid in his evidence. He explained his attempts to find a Sch 2 agreement between KUL and KSM and a syndicate list signed by KSM. He had spoken to Mr Scott, who confirmed that during the liquidation of KSM it became clear that a large number of documents had been lost. In cross-examination he explained that he had asked Mr Scott whether he agreed with the passage of Mr Thompson's witness statement which stated this. He had also spoken to Mr Gillespie, the former managing director of KUL, who told him that he had no recollection of events in 1993. Mr Casement accepted that he had not spoken to others who might be able to throw light on the missing documents. He did not speak to Mr Wedderburn, to whom Mr Thompson referred. Nor did he speak to Mr Bradley, to Ms Kerr, who signed the letter of 11 May 1993, or to Mr Bird, the active underwriter on syndicate 103.

[52] Mr Davis points out that, although P&B are putting forward a case contrary to that which they were asserting until shortly before the trial and contradicted by the witness statement of Mr Moore which they themselves served, nevertheless they have not applied to cross-examine Mr Moore. Moreover, P&B have not adduced evidence from others who might have known what agreements KUL and KSM made. There was no evidence from anyone

employed by KSM. Nor was there evidence about what was examined and what was found on the Lloyd's review. However, while recognising the burden of proof on P&B, it is right to observe that Mrs Woolley called no oral evidence.

[53] P&B submit that I should accept Mr Thompson's evidence and conclude that KSM and KUL both made an agency agreement and signed a syndicate list. Mr Davis, on behalf of Mrs Woolley, submits that P&B have not discharged the burden upon them of showing this on the balance of probabilities.

[54] I accept that documents of the Knightstone Group have been lost since 1993. Indeed, I do not understand Mr Davis to suggest otherwise. It is against this background that I have to decide whether on the balance of probabilities the missing documents included an agency agreement between KUL and KSM and an agents' syndicates list countersigned by KSM.

[55] It is significant that there has been found only one copy of the syndicate list signed by Mr Thompson and only one copy of that signed by Mr Gillespie. I accept Mr Thompson's evidence that the practice was for KUL to sign two copies of each list and to send them both to KSM together. This is supported by the letter of 11 May 1993, which refers to a further "set" of lists.

[56] If two copies of each list were prepared, one copy of each has been lost, and the question is whether, on the balance of probabilities, the lost copy of at least one version of the list was signed by KSM. On the face of it, until they sent to KSM, the probability is that the two copies of the lists were kept together. Further, the letter of 11 May 1993 shows that the writer understood that an earlier list, which was, I conclude, the February list, had been sent by KUL to KSM. Again, it is likely that, when the lists arrived at KSM, the two copies would have been kept together unless and until KSM signed a list for return to KUL. In these circumstances, it would be odd that one copy was lost but not the other. It seems to me that the most likely explanation for only one copy of each version of the list being found is that the other copy was countersigned by KSM and returned to KUL.

[57] I am the more confident in my conclusion that KSM countersigned a copy of each version of the list and returned it to KUL because I accept Mr Thompson's evidence that his practice was to send to MUS at Lloyd's the information necessary for the stamp to be drawn up after he had received a countersigned list from the managing agent. I do not think it likely that Mr Thompson would have done this before receiving the countersigned list, particularly when KUL were undergoing a Lloyd's review. It was Mr Thompson's belief that these matters might be of concern to those conducting the review.

[58] In reaching my conclusion that KSM countersigned the agents' syndicate lists' of February and May 1993, I have not overlooked the fact, which was well made by Mr Davis, that there are in evidence other syndicate lists from other members' agents which were countersigned by KSM. In these cases KSM did apparently countersign the copy of the list that they retained. He argues that this indicates that it was the practice for KSM to countersign their own copy of the list as well as the copy that was returned to the members' agent. This being so, Mr Davis argues, the fact that no countersigned copies of the relevant lists have been found, supports Mrs Woolley's contention there never were such countersigned lists. However, the other lists in evidence which were countersigned were very much shorter than the sixty or so pages comprised in the KUL lists, the longest being some five pages. It is easy to suppose that KSM might neglect to countersign the long KUL lists, while adopting a more careful practice in respect of shorter lists.

[59] This leaves the more difficult question of the Sch 2 agreement. Mr Thompson's evidence about signing new agreements is important. I find it difficult to believe that he was mistaken in believing that he and others had made completed new Sch 2 agreements in the way that he described. If I reject that evidence, it would, in my view, amount to finding that he was dishonest in giving it. I decline to do this. I conclude that Mr Thompson and others did sign new Sch 2 agreements for KUL, and that those agreements have been lost. The question is whether those lost agreements included one between KUL and KSM.

[60] Mr Moore's evidence that there was no Sch 2 agreement between KUL and KSM explained why no agreement was thought necessary,

"because we relied on the existing Agents' Agreements . . . made by the . . . Poland managing and member's agencies."

Mr Thompson's evidence about this, in cross-examination, was as follows:

"Q: And your position is that there should be new agreements in place?

"A: That is correct. The reason for that, on my understanding, was that various former Poland syndicates, which were not going to carry on underwriting, were dealt with by novation, but for the Knightstone, the ongoing syndicates with Knightstone, because the intention was to leave the liability with the Poland syndicates behind, new agreements were set up by Knightstone on their formation or the commencement of their underwriting on 1st of January 1992."

It is right to mention that Mr Thompson made it clear that he was not himself involved in the decision about this, and the reasoning behind it is not fully clear from Mr Thompson's evidence. Nevertheless, this evidence is helpful to P&B, both because it makes it clear Mr Thompson's understanding that the decision was that there should be a new Sch 2 agreement between KUL and KSM, and because it explains how Mr Moore might have the impression that KUL and KSM were relying upon the novation of agreements made in 1989.

[61] I accept Mr Thompson's evidence and conclude that on the balance of probabilities a Sch 2 agreement between KUL and KSM was among the documents which were lost.

[62] I therefore find that there were (i) a written agreement in the form of Sch 2 to the Byelaw between KSM and KUL, and (ii) syndicate lists dated 11 February 1993 and 10 May 1993 in respect of participation of KUL Names including Mrs Woolley, upon syndicate 103 for the 1993 year signed by both KUL and KSM.

[63] Before I leave this question, I should mention that Mr Davis referred me to the principle about proving lost documents which is set out in Halsbury's Laws of England (4 Ed) Vol. 17 para 140 in the following terms:

"Where a document has been lost and cannot be found after due search, secondary evidence of its contents is admissible. The court must be satisfied that the document existed, that the loss or destruction has in fact taken place, and that a reasonable explanation for this has been given."

This principle is, as I understand it, concerned with proving the contents of a lost document and I do not consider it in point here. However, if necessary I would hold that P&B are not precluded from asserting their case on the grounds that their search was inadequate. After all, it would have been in their interests to have found the documents.

If there was no written agents' agreement made, and no syndicates' list countersigned by KSM, was there an enforceable agreement between Mrs Woolley and KSM?

[64] In view of my findings of fact, this question does not arise. However, I have heard full argument upon it and I should express my views about it. There are five aspects to the question:

(a) Did KUL have authority from Mrs Woolley to agree with KSM that Mrs Woolley should participate on syndicate 103 for the year 1993 otherwise than by making a Sch 2 agreement with KSM and by having a syndicate list signed by both themselves and KSM?

(b) Did KUL reach an agreement with KSM that Mrs Woolley should participate in the syndicate?

(c) If KUL did so agree with KSM, did KUL make the agreement on behalf of Mrs Woolley?

(d) If KUL did so agree with KSM, what were the terms of the agreement?

(e) If KUL did so agree with KSM, is the agreement void or unenforceable because of breach of the Byelaw?

a)Did KUL have authority from Mrs Woolley to agree with KSM that Mrs Woolley should participate on syndicate 103 for the year 1993 otherwise than by making a Sch 2 agreement with KSM and by having a syndicate list signed by both themselves and KSM?

[65] Mrs Woolley did authorise KUL to enter into an agreement in the terms of a Sch 3 agreement with the managing agents of the syndicates in which she and KUL agreed that she should participate. She did so by making the Sch 1 agreement of 30 September 1992. Further, Mrs Woolley and KUL agreed that Mrs Woolley should participate in syndicate 103 for the 1993 year of account by signing the Name's syndicate list. Accordingly, Mrs Woolley did authorise KUL to agree with KSM in the terms of a Sch 3 agreement that she should participate in the syndicate.

[66] The terms of KUL's authority did not expressly stipulate that KUL could only make Sch 3 agreements on behalf of Mrs Woolley by entering into written Sch 2 agreements and by having an agents' syndicate list signed by themselves and the managing agents. The authority is restricted only by reference to the terms that were to be agreed with managing agents. There is no reason to imply a further restriction as to the form of such agreements.. Certainly, KUL undertook to enter into an agreement with managing agents who were to act for Mrs Woolley in the form of Sch 2 agreements, but that provision took effect only as an undertaking and was not a limitation upon the authority conferred upon KUL by Mrs Woolley.

b)Did KUL reach an agreement with KSM that Mrs Woolley should participate in the syndicate?

[67] In my judgment, even if KUL neither entered into a written Sch 2 agreement with KSM nor had an agents' syndicate list countersigned by KSM whereby they agreed with KSM that Mrs Woolley should participate in syndicate 103 for the 1993 year, nevertheless KUL and KSM so agreed by their conduct. This is because KUL electronically sent to MUS at Lloyd's the list of Names participating on the syndicate, including Mrs Woolley. They did this both in February 1993 and also in May 1993 after revisions to the list. Lloyd's accordingly compiled a syndicate list, known as a "number 1 stamp"; and sent it to KSM as managing agent. It was for KSM to check the lists, and there has been produced in evidence a copy of the revised version of the list signed by Mr Bird, the active underwriter on the syndicate. I do not understand these matters to be in dispute, but in any event I find that they have been established by Mr Thompson's evidence and the documents which have been put in evidence. This conduct, it seems to me, would have given rise to an agreement between KUL and KSM that Mrs Woolley should participate in syndicate 103 for the 1993 year.

c) If KUL did so agree with KSM, did KUL make the agreement on behalf of Mrs Woolley?

[68] In entering into this agreement with KSM that Mrs Woolley should participate in the syndicate, KUL were acting as Mrs Woolley's agent and making it on her behalf. This is the clear inference from the nature of the agreement and the authority conferred by Mrs Woolley upon KUL.

d) If KUL did so agree with KSM, what were the terms of the agreement?

[69] The terms of an agreement so made between KUL as agent for Mrs Woolley and KSM were those of a Sch 3 agreement. This is to be inferred because both KUL and KSM are to be taken to know that no other terms were permitted under the terms of the Byelaw, and moreover both are to be taken to know that KUL were not authorised to enter into such an agreement on behalf of Mrs Woolley upon any other terms. Although it would be possible to consider the implication of these terms as resulting from the parties' course of dealing, it is more natural to attribute it to "the common understanding which is to be derived from the conduct of the parties": British Crane Hire Corporation v Ipswich Plant Hire, [1975] QB 303, [1974] 1 All ER 1059 at p 311B of the former report, per Lord Denning MR.

e) If KUL did so agree with KSM, is the agreement void or unenforceable because of breach of the Byelaw?

[70] There is no dispute between P&B and Mrs Woolley that it would have been a contravention of the Byelaw to make a Sch 3 agreement in this way. First, in breach of para 3 of the Byelaw, KSM would be underwriting on behalf of Mrs Woolley and Mrs Woolley (through KUL) would have authorised them to underwrite on her behalf otherwise than pursuant to the terms of a Sch 3 agreement entered into the manner specified in the Sch 1 and Sch 3 agreements. Secondly, in breach of para 4, the arrangements between KUL and KSM would have been made otherwise than in

pursuance of an agreement in writing in writing and in the form and terms of a Sch 2 agreement. Mr Davis reminds me that in Arbuthnott v Fagan and others [1996] LRLR 135 at p 137, Sir Thomas Bingham MR referred to the forms of agreement stipulated under Lloyd's Agency Byelaw No 1 of 1985 as "mandatorily prescribed", and those prescribed in the Byelaw are similar. The importance of the standard agreements are emphasised by para 5 of the Byelaw, which requires the Council's consent to any variation to them.

[71] However, it does not follow that an agreement so made is void or unenforceable. Those so contravening the Byelaw could, no doubt, face Lloyd's disciplinary action, but the Byelaw is silent as to the civil rights of parties to arrangements made in breach of its provisions. Accordingly,

"the appropriate question is to ask whether, having regard to the [Byelaw] and the evils against which it was intended to guard and the circumstances in which the contract was made and to be performed, it would in fact be against public policy to enforce it."

Chitty on Contracts (28th Ed.) para 17-144.

[72] I have come to the conclusion that it would not be in the public interest or advance the purpose of the Byelaw for arrangements made in breach of it not to be enforced. Four considerations lead me to this conclusion.

[73] First, the position of insureds under Lloyd's policies is to be considered. If arrangements whereby managing agents are appointed to underwrite are void or unenforceable, the managing agents would not have authority to bind Names to insurance underwritten by them, and policyholders would have incomplete cover. A policyholder might well in such circumstances have a claim against managing agents for breach of warranty of authority, but I find it difficult to believe that the intention of the Byelaw was to put Lloyd's policyholders in such a position.

[74] This view is supported by the Neill Report, which, at para 2.17, identified four considerations fundamental to their conclusions, and I refer to two of them:

"The regulation of Lloyd's in the interests of the Names cannot be considered in isolation from the primary need to ensure that the interests of policyholders are properly safeguarded."

And;

"The manner in which protection is provided for the interests of Names must be sensitive to the need to avoid jeopardising the efficient operation of the market."

[75] Secondly, a purpose of the Byelaw is to bring about certainty in the relationships between Names, members' agents and managing agents. It would not promote but would detract from that purpose to hold that arrangements that all the parties understand to be in place are void because, through administrative inefficiency or otherwise, the requisite documentation is not in place.

[76] Thirdly, the position of the Name is to be considered not only when a syndicate makes losses but also when it is profitable. A Name who appoints a managing agent otherwise than through the machinery of a properly signed agents' syndicates list is himself, it seems to me, in breach of Byelaw 3, although the fault would generally not be the Name's but that of his members' agent. It would be surprising if in these circumstances the Name were not able to recover any profit made by the managing agent's underwriting. This consideration seems to me to indicate that arrangements made in breach of the Byelaw are not void and unenforceable for all purposes.

[77] Finally, it is legitimate to consider whether the potential loss to agents which is liable to result from not enforcing arrangements involving a breach of the Byelaw would be proportionate to the breach: see Chitty on Contract (28th Ed.) at para 17-146. These proceedings concern only Mrs Woolley, but other Names might well be in a position comparable to her. This illustrates that, if such arrangements are unenforceable, the loss which could result from an unintentional, albeit culpable oversight might well be disproportionate to the fault.

Conclusion

[78] For these reasons I therefore conclude that the P&B are entitled to recover from Mrs Woolley £15,000 together with interest on the contractual basis claimed.

DISPOSITION:
Judgment for the Claimants.

SOLICITORS:
CMS Cameron McKenna; Hamish McMillan