Neutral Citation Number: [2026] EWHC 2455 (Ch)

Case No: PT-2024-000682

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST
RE: YOGI DIVINE SOCIETY (UK) (CHARITY NO 803601)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 30 September 2026

Before :

MR SIMON GLEESON

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Between :

(1) SATISH JAMNADAS CHATWANI **(2) PREMSWAROOPDASJI GURU GYANJIVANDASJI SADHU** **(3) RAJENDRAPRASAD NATVARBHAI PATEL**	**Claimants**
- and -	
CHIRAG MEHTA **(2) JATIN SHAH** **(3) REKHAV PATEL** **(4) NAYAN TANK** **(5) VINAY CHAUHAN** **(6) SURESHBHAI PATEL** **(7) JAYESH PATEL** **(8) YOGI DIVINE SOCIETY UK LIMITED** **(9) THE ATTORNEY-GENERAL**	**Defendants**

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Henry Warwick KC, Arnold Ayoo and Oliver Clement (instructed by **Banks Kelly Solicitors Limited**) for the **Claimants**
Robert Pearce KC and Elizabeth Ovey (instructed by **Devonshires LLP**) for the **Defendants**

Hearing dates: 14-17, 20-24, 27 and 29 July 2026

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Approved Judgment

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Mr Simon Gleeson:

1. His Divine Holiness Hariprasad Swamiji ("Hariprasad Swami") was a religious leader of international stature. In 1974 he founded the Yogi Divine Society, ("YDS") Haridham in Sokhada, India. YDS now has 500 centres across countries including India, the USA, Canada, Australia, the UK, and South Africa.

2. YDS is one of the four Swaminararyan organisations (the other three being BAPS, GADI and ISSO). Hariprasad Swamiji was initiated as a monk into the BAPS movement in 1965 by his guru, Yogiji Maharaj, but broke with that movement to found the YDS.

3. The founder of the Swaminarayan movement, Lord Swaminarayan, was born in 1781, and is believed by followers of the movement to have been a manifestation of God. Lord Swaminarayan is believed to have promised to manifest himself in subsequent generations through individual saints, who, according to believers, embody his spirit. All members of the Swaminarayan sect believe that there is currently a manifestation of Lord Swaminarayan on earth, but opinions differ between sects as to the identity of the individual concerned. Members of the YDS believed that Hariprasad Swami (born in 1934) was the living manifestation of Lord Swaminarayan as the fifth guru-saint in the line of Lord Swaminarayan.

4. The guru–shishya tradition, or parampara, to which the YDS subscribes, generally expects a living guru to identify the individual who will become the new manifestation of the Lord Swaminarayan on his passing at some point prior to that passing.

5. Hariprasad Swami departed his mortal life on July 26, 2021. Inconveniently, he did so without having publicly nominated a successor.

6. Since the faithful have no doubt that there is a successor, the problem for them in such a case becomes the identification of that successor. In this case, there seem to have been two primary candidates – Prem Swami (the Second Claimant) and Prabodh Swami. The dispute between followers of these two divines has split the YDS into warring factions, internationally and in the UK.

7. The thing that brings this dispute before the English courts is that YDS had a flourishing UK branch. This body has raised considerable sums of money, which it deploys in the causes of education and relief in the UK, as well as providing funding to the society in India. This branch was constituted as a charity, regulated by the Charity Commission (number 803601), and separately had a holding company Yogi Divine Society Limited (the Eighth Defendant) which owned its real estate assets. This action is in essence a fight between those trustees who are supporters of Prem against those who are supporters of Prabodh, the prize being control of the UK arm of YDS.

8. At the heart of this case is the question as to what is the current state of the constitution of YDS UK, and how is it to be administered. The constitution of YDS UK adopted in 2013 conferred (effectively) control powers on "Member A"- expressed to be the President of YDS India. The Defendant Trustees, who are supporters of Prabodh Swami, were concerned that Prem Swami might assert a claim to be Member A. They therefore sought, after Hariprasad Swami's passing, to change the constitution of YDS UK to remove the role of Member A, and convened a trustees meeting at which those

changes were said to have been approved by those present (the "Meeting"). The Defendants say that the Meeting was validly summoned, with appropriate notice being provided to all proper parties, was quorate, and proceeded properly to resolve to amend the constitution. The constitution, as amended in this way, is referred to as the "2021 Constitution". The Claimants deny all of these propositions – they say that (a) Prem Swami, as Member A, should have been given notice of the Meeting, such that the failure to do so invalidates it, (b) the notice that was provided was deliberately misleading, and that that fact invalidates the Meeting, and (c) the Meeting was not in fact quorate. The Defendants also say that they acted at all times in the best interests of the charity, and that the amendments to the constitution which were made were appropriate and necessary to ensure that the work of the charity was not "disrupted". They therefore say that, even if the changes were invalidly made, they should nonetheless be upheld as being in the best interests of the charity.

9. There are two other preliminary points that I should note. The first is that, as Sir Richard Scott VC noted in *Stanway v Attorney General* (5 April 2000, unreported),

> "Charities operate within a framework of public law, not private law. The Crown is *parens patriae* of the charity and the judges of the courts represent the Crown in supervising what the charity is doing and in giving directions".

My role here is not simply to determine the legal issues raised, but, as Mr Pearce KC correctly pointed out, to facilitate as far as possible the useful functions which the charity performs. The second is that where the members of a charity have a falling-out of sufficient vehemence that it does not seem that the charity can continue to operate, the usual remedy would be an application for a scheme to separate the parties and divide the assets. However, no such application is made here, and, as Lady Justice Gloster (speaking *per curiam*) pointed out in *Lehtimäki v The Children's Investment Fund Foundation (UK)* [2018] EWCA Civ 1605 (at [54]), I have no power to order any such scheme where no application is made for one.

1. The Hearing

10. Over the course of nine days of oral evidence, I heard from seventeen witnesses. Six of those witnesses gave evidence on behalf of the Claimants, and eleven on behalf of the Defendants. Much of the Defendants' witness evidence was repetitive – some of it so much so as to indicate a degree of co-ordination. However, the facts at issue are fairly straightforward.

11. There is an important social point which requires to be made here. There is no doubt that the YDS was a force for good in society, sponsoring education and creating a framework for social support amongst its members. My assessment of all of the witnesses that I saw was that they were sincerely engaged in trying to improve what they perceived as the moral character of the adherents of the sect, and to do good work in their community. There is therefore something tragic about the fact that their energies and resources are now being devoted to struggling with each other. However, my point in this context is that I do not believe that any of the witnesses that I heard from were engaged in anything other than an attempt to do right as they saw it for YDS UK and, indeed, for YDS worldwide. This is one of those cases where the best intentions beget the most bitter conflicts. There are some points where I have no alternative but to

conclude that some of the witnesses did not tell the truth. However, I believe that their untruths were motivated by what they believed were simply more important spiritual considerations.

12. I also note that this is a case which changed significantly in the course of the trial. The Defendants' opening submissions raised two new issues which had not been canvassed either in correspondence or in skeleton arguments. It was therefore necessary for the pleadings to be amended whilst the trial was in progress. More significantly, it was necessary for the Defendants' witnesses – including some who had already given evidence – to produce second witness statements and to return as witnesses for further examination. This is – arguably – exactly the sort of thing that trial judges are not supposed to permit. However, the matters raised were issues of real substance whose determination was potentially material to the matters in issue. I took the view that, because the matter in issue was the proper management of a substantial charity, these issues needed to be properly investigated and determined – if only in the interests of finality. The result was that pleadings were finalised the day before closing submissions were due to be made.

13. This sounds like a recipe for chaos. The fact that the trial proceeded on schedule, that pleadings and witness statements were dealt with and exchanged promptly and efficiently, and that the examination of witnesses was efficient and effective, is an extraordinary tribute to the professionalism and hard work of counsel on both sides, and their instructing solicitors. I have nothing but the highest praise for the way in which this trial was conducted.

2. The Constitution of the Charity

14. YDS UK was first registered as a charitable unincorporated association on 26 June 1990. Its administrative powers were of a conventional kind, including provision for the election of a chairman and other officers and for management to be in the hands of an Executive Committee elected at an annual general meeting.

15. The constitution of YDS UK was radically restructured in 2013 through the adoption of the "2013 Constitution". It is accepted that this constitution was validly and properly adopted. The key provision for these purposes was that relating to the membership.

2.1 The 2013 Constitution

16. The core provisions of the 2013 Constitution were that the membership should be divided into three classes – C, B and A. Members C were the faithful generally. Members B were to be the trustees – there were to be a maximum of seven of them, and they were to be appointed by Member A. Importantly, only Members B were entitled to vote at meetings. The identity of Member A was therefore key to the governance structure of the trust.

17. Clause 9 of the 2013 Constitution provided as follows: -

> "9. Membership
>
> (1) Membership shall be of the following 3 types:

> I. Permanent Member (known as Member A going forward) – the president of Yogi Divine Society (YDS), Haridham, India. He shall be the permanent member of the charity and shall never retire, resign, be removed or terminated as a member of the charity. He shall always retain a casting vote with power to veto any decision of Member B / trustees.
>
> H.D.H Hariprasad Swami is the founder and acting president of YDS, Haridham, India. Any change in Presidentship of YDS, Haridham, India shall be notified in writing by the outgoing President. Only under exceptional circumstances in absence of a written consent due to his age related vulnerability, the Board of YDS, Haridham, India shall decide and notify about his successor in writing. Upon receipt of such written communication, the named President shall become Member A.
>
> II. Voting Members (known as Member B going forward) – a maximum of 7 voting members who are appointed by Member A above on a periodic basis such that the total number of Member B never falls below 4
>
> III. Associate Members (known as Member C going forward) – all other remaining members with no voting rights who are appointed and administered by the trustees. The trustees may establish such classes of membership with such description and with such rights and obligations (including without limitation the obligation to pay a subscription) as they deem fit and may admit and remove such members in accordance with such regulations as the trustees shall make, provided that no such associate members shall be members of the charity for the purposes of the Charities Act 2011."

18. Clause 8(2) provided that these provisions

> "may be amended, provided that any such amendment is made by resolution passed by a simple majority of the members present and voting at a general meeting."

19. Clause 11 provided for special general meetings other than the annual general meeting, and provides that the trustees may call a special general meeting at any time.

20. Clause 12 provided that a general meeting requires 14 clear days' notice, but that this may be shortened if that is agreed "by all the members entitled to attend and vote" (i.e. the Members B). The quorum required for a valid meeting is 4 voting members, or 51% of the voting members present if there are fewer than 4 Members B, but a minimum of two.

21. Clause 34 provided that:

> "If a dispute arises between members of the charity about the validity or propriety of anything done by the members under this constitution, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation. In case any member goes for litigation if not

> resolved through mediation then all cost of litigation will be borne by the member concerned and not the charity."

I understand that a mediation was attempted, but did not resolve the issue.

2.2 The Construction of Charitable Constitutional Documents

22. Since the majority of the issues before me relate to the construction of this document, it is worth setting out the principles to be applied in the construction of the constitution of a charity.

23. The construction of an instrument governing or establishing a charity is "generally subject to the basic principles variously applicable to the construction of such different kinds of document in a non-charitable context" - see *Tudor on Charities* (11th ed, Sweet & Maxwell 2023) at 7–001, cited with approval in *Dewar v Sheffield City Council* [2019] CLY 267 by Mark Anderson QC at [55]. The well-known principles applicable to the construction of contracts and other instruments are generally applied accordingly, subject to distinctions (identified below) to be drawn with respect to public documents in a charities context.

24. With respect to the constitution of a religious unincorporated association, as a public document, the ordinary principle is modified such that the instrument should be read having regard to the background knowledge which any reader would be assumed to know (see *Trustees of Celestial Church of Christ, Edward Street Parish (a charity) v Lawson* [2017] EWHC 97 (Ch) per HHJ Hodge QC (sitting as a High Court Judge) at [29]).

25. The law excludes from the admissible background the negotiations of the parties to the document (here, those approving it) and their declarations of subjective intent. However, where it is clear that the parties collectively sought to attain a particular outcome, the words of the document will not be interpreted in a way which actively frustrates that outcome unless there is no other possible construction.

26. It is sometimes suggested that the construction of the constitution of a charity should be approached on a less rigorous basis than other types of contracts. This is based on the observations of Megarry V-C in *Re GKN Bolts & Nuts Ltd* [1982] 1 WLR 774, where he said:-

> "As is common in club cases, there are many obscurities and uncertainties, and some difficulty in the law. In such cases, the court usually has to take a broad sword to the problems, and eschew an unduly meticulous examination of the rules and resolutions. I am not, of course, saying that these should be ignored; but usually there is a considerable degree of informality in the conduct of the affairs of such clubs, and I think that the courts have to be ready to allow general concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules. In other words, allowance must be made for some play in the joints."

27. However, in *Speechley v Allott* [2014] EWCA Civ 230, Lewison LJ explained that there were two separate questions to be asked about such a document. The first is as to what the rules require, the second is as to what the effect of non-compliance with a rule should be. "Play in the joints" may be relied upon as to the second, but not the first. He said:

> "The answer to the first of these questions is a question of interpretation of the rules. In answering that question, the rules are to be interpreted in the same way as any other contract, making due allowance for the fact that the rules are intended to be operated by non-lawyers.".

28. Finally in this regard, it is entirely clear that the intention of all those involved in YDS UK was that it should be administered in accordance with the beliefs of the Swaminarayan sect. I have set out some of these in paragraphs 3 and 4 above. I therefore think that these should be taken into account in establishing the intention of the drafters of the 2013 Constitution.

29. It is clear that YDS UK is a separate legal entity from YDS India, and that the only formal link between them is the status of the President of YDS India as Member A. It is also clear that the formal powers of Member A were never used - in evidence, both the Claimants' and Defendants' witnesses agreed with the proposition that Hariprasad Swami's wishes were followed as a matter of course. The question of the legal relationship between the two entities is therefore a hard one to establish, since it is unlikely that any of those involved ever gave it any thought. Some of the witnesses referred to YDS India as the "parent" organisation of YDS UK, and Mr Shah described YDS India in an e-mail as YDS UK's "head office", but this perception is unlikely to have resulted from legal analysis. The Trustees of YDS UK included BV Das, the regional saint appointed by YDS India for the UK, in their meetings and e-mail and whatsapp groups, but this was an informal inclusion not mandated by the constitution.

30. The position is therefore that YDS UK and YDS India, although formally separate, were substantially aligned in their objects, constitutionally through the inclusion of Member A, and through the involvement of members of YDS India in guiding the operations of YDS UK.

3. The Facts

3.1 The resignation of Hariprasad Swami as President of YDS

31. On 5 October 2018 Hariprasad Swami wrote a letter submitting his resignation as President of YDS India, and Prem Swami wrote another indicating his agreement to assume that role. These letters were considered at a meeting of the board of trustees of YDS India held on the 18 October 2018. I have seen minutes recording this meeting. They are supported by the testimony of Mr Dave, the then secretary to the trustees, and by the testimony of Prem Swami, who was present at the meeting. This resignation was registered by the Indian Charity Commission. The Defendants say that they do not accept the authenticity of the documents evidencing this resignation or the accuracy of the testimony of Mr Dave and Prem Swami, but offer no documentary evidence to challenge it.

32. The Defendants provided evidence from the two personal secretaries of Hariprasad Swami, Mr Ashok Patel and Mr Pavitra Jani. Their evidence was, in effect, that Hariprasad Swami could not have resigned as President at this time without their knowledge and involvement. Mr Jani readily accepted that he was neither invited to, nor attended, the meeting at which Hariprasad Swami was said to have resigned. Nor was he involved in the letter being presented to the board of trustees – which was tabled at that meeting by Mr Dave, as the record shows. Nor was Mr Jani involved in or appointed by the board of trustees of YDS India. I do not regard this challenge as substantive.

33. It is clear from the documentation before me that at the time when he resigned, Hariprasad Swami was suffering from a number of medical conditions, including the onset of Alzheimer's. The evidence of Prem Swami was that the reason that Hariprasad Swami resigned as president of YDS India was "age and health". However he also said that "His health wasn't that bad. He would be okay, then it would be bad again, then it would be okay." It is undisputed that Hariprasad Swami continued to perform his role as spiritual leader to the worldwide sect, travelling and conducting ceremonies, for some years after his resignation.

34. I therefore proceed on the basis that at a meeting of the YDS India Executive Committee on 18 October 2018, Prem Swami was validly appointed by that Committee as the new President of YDS India in succession to Hariprasad Swami.

35. It is accepted that this transition was not publicised within YDS, and indeed its occurrence seems to have been treated as something of a secret. This seems to me to be entirely understandable. Any indication that Hariprasad Swami's health was failing would have been extremely unwelcome news to the faithful, and it is (I think) accepted by both sides that this information had to be kept within the narrowest possible bounds.

36. The fact that Hariprasad Swami continued in some manner to use the title 'President' (or "Founder President") is not illustrative of his legal status and is scarcely surprising in an organisation so devoted to him personally. When cross-examined, Prem Swami suggested that his appointment as Hariprasad Swami's successor was not something that he would wish to publicise. In any event, it is clear from the evidence of Prem Swami that this continued use by Hariprasad Swami of the title of President reflected his position as spiritual leader, rather than continued administrative head. I have also considered a video submitted by Pavitra Jani which he claims to have recorded in 2020 which he says confirms that Hariprasad Swami did not nominate Prem Swami as his successor, but appointed a committee of five to administer YDS India. That video seems to me to be inconclusive either way, and does not support the construction which he seeks to place on it.

37. There is an issue as to whether Prem Swami between 18 October 2018 and 5 November 2021 asserted any claim to be 'Member A' or acted as such. I think that it is clear that he did not, if only for the reasons intimated above – that it would have been highly undesirable to suggest any weakening of Hariprasad Swami's faculties. However, I do not think that this is of any relevance to the issues before me – the question of whether a person has valid rights under a constitution is not affected in any way by the question of whether he has ever sought to exercise those rights. Tens of thousands of company

shareholders across the UK have voting rights which they never use, but that fact is of no relevance at all to the question of whether they actually have those voting rights.

38. A letter has been produced (the "Disputed Letter") dated 19 November 2018. This letter is addressed to the trustees of YDS UK, is signed by Mr. Dave in his capacity as secretary of YDS, and notifies them that Hariprasad Swami resigned as President, and that Prem Swami had replaced him. The Defendants challenge the authenticity of this letter.

39. Mr Dave's evidence was that he prepared and sent this letter to Mr Chatwani. Mr Chatwani says that this letter was handed to him personally by a devotee who had travelled from India with it – a form of communication which seems to have been not uncommon within the sect. Mr Chatwani also says that a copy was sent by post to his business address. However, the other trustees of YDS UK deny any knowledge of it.

3.2 Events after Hariprasad Swami's Passing

40. Hariprasad Swami passed on July 26, 2021. Shortly after this date devotees of YDS around the world had largely separated into supporters of Prem Swami and supporters of Prabodh Swami. It seems clear that the Indian element of YDS, which was spiritually and administratively its centre, largely supported Prem Swami. However, the majority of the UK trustees seem to have supported Prabodh Swami.

41. This gave rise to a concern on the part of the UK trustees about the provisions concerning "Member A". I will consider below whether they thought that Prem Swami had been appointed as President (and therefore, potentially, as Member A) in 2021. However, they clearly regarded the point as ambiguous. I do not think that any of them (apart from Mr Thadeshwar, who was not a trustee) had sat down and thought through in detail the precise construction of the 2013 Constitution. However, they were aware that that constitution provided for YDS India to appoint someone to a position which would effectively give that person control of YDS UK. They therefore determined to resolve this problem by amending the constitution of YDS UK.

42. The Defendants felt themselves to be under extreme time pressure to make these amendments. It is clear that after Hariprasad Swami's passing things began to move quickly – in a whatsapp message of 29 September 2021 to Mr Thadeshwar, Mr Mehta describes the amendment of the constitution as being "important and urgent", and in another on the 4 October 2021 he says that the UK is "slightly late and being pushed hard", and that "any delay is going to be very bad for YDS UK". At this point Mr Mehta was clearly in contact with other YDS societies outside the UK – in particular, that in Canada. Mr Thadeshwar described a "sense of panic" that arose when it was feared Prem Swami might be able to use the Member A powers to control YDS UK.

3.3 The Legal Advice

43. The first step towards the amendment of the 2013 Constitution was taken by a sub-group of the trustees consisting of Mr Rekhav Patel, Mr Shah, Mr Tank, Mr Jayesh Patel and Mr Thadeshwar – who was not a trustee, but was the assistant treasurer of YDS UK. They decided that a law firm should be consulted on the appropriate way in which the 2013 Constitution could be amended, and Mr Thadeshwar was charged with obtaining the legal advice. He selected Penningtons as legal adviser.

44. A preliminary issue which the sub-group had to consider was as to how the obtaining of such advice might be explained to the other trustees if they became aware of it? The answer that they hit on was that there had been a legal issue hovering in the background of the trustees' discussions for some years; that being whether the existing charitable unincorporated association structure should be converted into a Charitable Incorporated Organisation ("CIO"). There would have been a number of benefits to such a restructuring (notably the individual trustees acquiring limited liability), and there seems to have been general agreement amongst the trustees that this should be done at some point. However, as is often the case, this general agreement had not yet crystallised into any actual action. What the sub-group seem to have decided is that their consultation with Penningtons could, if challenged, be described as simply their attempt diligently to advance the CIO project.

45. Mr Thadeshwar's initial written communication with Penningtons indicated that what was sought was legal advice as to changing the constitution of YDS UK to make it a CIO. However, in a subsequent telephone conversation, Mr Thadeshwar informed Penningtons that his query was in fact as to the making of amendments to the constitution of the charity, and that matters relating to the conversion to CIO could be put off to a later date. Ms Thandi of Penningtons recorded the instructions that she was given as follows:

> "I … understand that the trustees' decision to amend the constitution has been borne out of concerns of potential external involvement by the head charitable organisation in India now that the spiritual leader has passed away with no successor named. I understand from the information you have provided during the call, that the head organisation in India may have the power to appoint members to the UK charity if no successor is named. The trustees wish to protect the UK charity from this external involvement and so are keen to amend the constitution as soon as possible."

46. It is entirely clear that, as Mr Mehta accepted in evidence, at no point were the Trustees ever advised by Penningtons that the amendments to the constitution were a necessary precondition of a CIO.

47. Penningtons produced a draft set of revisions to the constitution containing revisions intended to remove Member A and vest control of YDS UK in its trustees. This draft set of revisions was circulated to members of the working group, but not to all trustees.

3.4 The Amendment Strategy

48. The process for amending the 2013 Constitution is to be found in clause 8 which, so far as material, permits amendments to be made either by a written resolution of all the trustees or by a resolution passed by a simple majority of the members present and voting at a general meeting. Clearly a written resolution was out of the question, since the Prem-supporting trustees would not support it, and unanimity was required. The challenge which the supporters of Prabodh faced was therefore as to how to get the constitution changed to remove "Member A" without alerting the Prem supporters as to what it was that they were being asked to agree to. They decided to proceed by calling

the Meeting as a general meeting at short notice to approve amendments to the constitution.

3.5 The Notice of the Meeting

49. The 2013 Constitution provided that all notices required by the constitution must be either (a) in writing or (b) given using electronic communications (Clause 32(1)). The notice of the meeting was the e-mail sent by Mr Mehta on 3 November 2021, summoning a meeting on the 5 November 2021.

50. Clause 12 of the Constitution provided for 14 clear days' notice of such a meeting, but provided for shorter notice if agreed by all of the members entitled to attend and vote. The purpose of the notice was therefore twofold – to inform those members who would attend of the matters which they would be asked to consider, and to secure the consent of those who would not attend for the meeting going ahead at all – which they could have prevented simply by withholding their consent to short notice.

51. The notice of the meeting itself read as follows:

> "As discussed with you all over phone and in person, over last couple of days, we have made good progress with our solicitors in regards to bringing some amendments to our Charity Constitution. Main amendment under consideration is changing our charity registration from unincorporated organisation to Charitable Incorporated Organisation (CIO). As advised by our solicitors, it is a two-staged process wherein we have to first adopt a new constitution and then get ourselves converted into a CIO. I am glad to inform that our solicitors have come back to us in record time with the amended constitution which we members have to discuss and pass a resolution accepting the same.
>
> With that in mind, since most of us are visiting Haridham UK on this Friday celebrating Diwali New year - Nutan Varsh. Therefore I propose that we all members meet at Haridham UK on 5 Nov 2021 @ 17:00 (5pm) to discuss the amendments and adopt them.
>
> *Please could you kindly confirm your availability for the same?
>
> If for some reason you are not available for the meeting, it would be appreciated if you can consent for the available trustees to continue with the meeting by clicking Reply All.*"

52. It was the Defendants' case that the "we" in the first sentence of this communication referred to a sub-group of the trustees rather than the trustees as a whole, since that was the way in which individual projects were usually managed. Thus, the trustees who were not members of that sub-group had no knowledge at all of the discussions between the solicitors and the members of the sub-group.

53. It is accepted that no notice of the meeting was given to Prem Swami or anyone else at YDS India, and that they were not aware of the meeting.

3.6 The Conduct of the Meeting

54. Those present at the Meeting were Mr Rajendra Patel, Mr Jayesh Patel, Mr Rekhav Patel, Mr Mehta, Mr Tank and Mr Chauhan. There is a conflict of evidence as to whether Mr Jatin Shah was present at the meeting or not. The meeting minutes record him as absent, having given his apologies, and the original testimony of the other attendees does not record his presence. His oral evidence is that he dialled in by a videocall. I regard this as unlikely. It should be remembered that on 5 November 2021 the country was emerging from Covid lockdown, and meetings of the trustees would have been online for the previous year or so. In such circumstances, I think it is highly unlikely that a person attending a meeting by video call would have been simply overlooked in the minutes.

3.7. The Events after the Meeting

55. Those present at the meeting seem to have sought, as far as possible, to conceal the changes to the constitution that had been made at that meeting. The amended constitution was not circulated, and no steps were taken to communicate the fact that it had been amended (although the Charity Commission was duly notified that the constitution had been amended). On 8 November 2021, a few days after the meeting, Mr Shah circulated to the Prabodh-supporting trustees by Whatsapp a list of reasons why the constitution had had to be modified. These did not mention the removal of Member A. A number of them (for example, "Consultants found many gaps in previous constitution and hence we had to modify") were simply untrue. It seems clear to me that the purpose of this message was to ensure that, if anyone did start asking inconvenient questions as to what had happened at the Meeting and why the constitution was being modified, a common story would be told which did not mention the removal of Member A.

56. On 22 April 2022 Mr Chatwani requested a copy of the amended constitution, and on 29 April 2022 reiterated that request through solicitors. The response – sent on the 10 May 2022 – consisted of a copy of the amended constitution accompanied by a letter to the effect that the trustees intended to remove him as a trustee, setting out a series of somewhat ephemeral grounds for this. This process continued until Mr Chatwani threatened an injunction restraining it, when it was paused. A similar process was commenced against Mr Rajendra Patel on 4 June 2023. It seems to me to be highly likely that it was only after Mr Chatwani had obtained the draft constitution and shown it to Mr Rajendra Patel that Mr Patel realised what had actually been approved at the Meeting, and it seems likely that the commencement of the process to remove him was the result of his reaction to that discovery. This would also explain why Mr Rajendra Patel "switched sides" during this litigation, starting it as a proposed Defendant and ending it as a Claimant.

57. The current position is that the YDS UK temples are entirely controlled by the Prabodh supporting faction, and the Prem supporters no longer attend it.

4. The Issues

58. The primary issue before me is as to whether the amendments to the 2013 Constitution approved at the Meeting were validly adopted. This can be broken down into a number of sub-issues:

1. Was Prem Swami Member A prior to the calling of the Meeting?

2. If Prem Swami was Member A at the time of the calling of the Meeting, should he have been given notice of it?

3. Was the notice of the Meeting given to members who did not attend but consented to short notice sufficiently misleading to vitiate that consent?

4. Was the Meeting quorate?

5. Was the conduct of the Meeting such as to vitiate its actions?

6. If the 2021 Constitution was not validly adopted, but Prem Swami is currently Member A, can he – by using the Member A veto – overturn any subsequent decision of the trustees to reinstate the amendments?

59. Before addressing any of these issues, I need to note an argument raised by the Defendants to the effect that the removal of Member A was in fact a direct request of Hariprasad Swami. The Defendants pleaded that during 2014 or 2015 Hariprasad Swami advised the trustees of YDS UK and YDS Canada as to the removal of the position of 'Member A', and that, prior to 5 November 2021, the First and Third Claimants were made aware of such a proposal.

60. The pleaded case is that Hariprasad Swami advised the trustees of YDS UK and YDS Canada, in 2014 or 2015, to remove the position of Member A; yet there is no letter, email, minute or note recording it. There is evidence of a conversation in New Zealand in March 2020, in which Mr Mehta and Mr Thadeshwar say that they told Hariprasad Swami that a CIO "would require his name and unique role, as Member A, to be removed", and that he said that he would be "happy" to agree. It may well be true that this conversation occurred, but it does not seem to me to be of any relevance in the circumstances. I think it is more likely that this testimony is the result of wishful thinking by Mr Mehta and Mr Thadeshwar – if Hariprasad Swami had actively requested this to be done (which is extremely unlikely given the evidence that administrative details of this kind do not seem to have been his concern), there would be some record of it, and if it was merely suggested to him by Mr Thadeshwar and Mr Mehta, then I do not think that the conversation is of any relevance.

4.1 Was Prem Swami Member A prior to the calling of the Meeting?

61. This point turns on the interpretation of part of Clause 9(1)I. After having created the post of Member A, and observing that it is currently occupied by Hariprasad Swami, the clause goes on: -

> "Any change in Presidentship of YDS, Haridham, India shall be notified in writing by the outgoing President. Only under exceptional circumstances in absence of a written consent due to his age related vulnerability, the Board of YDS, Haridham, India shall decide and notify about his successor in writing. Upon receipt of such written communication, the named President shall become Member A."

62. This sub-clause appears to do a number of things. One is to provide that when there is a change of president, the notification of the change must come from the outgoing

president. The second is to say that where the president does not consent to retire due to "age related vulnerability" (the term "consent" here is important), the board of YDS Haridham India may decide (again, this term is significant) who his replacement should be, and provide notification in writing of their decision.

63. I think that it is clear what these provisions were intended to achieve. Given the extreme fissiparousness of the Swaminarayan sect, it must have been entirely clear that there was a possibility that two or more candidates might emerge, both claiming to be the successor of Hariprasad Swami. The obvious way to deal with this was to provide that only a successor designated as such in writing by Hariprasad Swami (or, in the event of his disability, by the trustees of YDS India) would become Member A.

64. I think it is entirely clear the eventuality envisaged in the second limb of this clause did not happen – Hariprasad Swami did not have to be replaced by reason of age related vulnerability. The evidence that I heard confirmed that he was becoming progressively more unwell, but remained *compos mentis* and continued to provide spiritual guidance until shortly before the date of his death. He was not prevented by age related vulnerability from providing a notification.

65. The remaining question is therefore simply one as to whether the first limb of this condition has been complied with – was a change in the Presidentship of YDS, Haridham, India "notified in writing by the outgoing President"? The Claimants say that the Disputed Letter constituted such a notification, and that Prem Swami was therefore Member A from the point at which it was sent. The Defendants challenge this on two grounds – first, they dispute the authenticity of the Disputed Letter, and second, they say that the form of the Disputed Letter, even if received, would not satisfy the requirements of clause 9(1)I so as to constitute Prem Swami Member A.

4.1.1 Is the Disputed Letter Authentic?

66. This letter is dated 19 November 2018. This letter purports to be from Mr Dave, the Secretary of YDS India, and is addressed to the Trustees of YDS UK. It is a notification of the fact that Hariprasad Swami resigned as President and trustee of YDS India "due to ageing and deteriorating health conditions" with effect from 5 October 2018, and had been replaced by Prem Swami. Mr Dave's evidence was that he had prepared and sent the letter on its specified date, and that it was an accurate record of what had been decided at the meeting.

67. Mr Dave's evidence was that he prepared the Disputed Letter and arranged for it to be sent, and he testified that it was drawn up following the meeting of 18 October 2018 and in accordance with resolutions 2 and 3 passed at that meeting, recording Hariprasad Swami's wish.

68. The Defendants challenged Mr Dave's evidence on this point. Their core argument was that the letter was a forgery produced long after its purported date. Ordinarily light would be cast on this issue by referring to the metadata of the various documents. However, it appears that during the upheavals at the YDS India premises in Haridham, India (between 10 and 18 April 2022) supporters of Prabodh Swami gained access to the computerised and physical records of the YDS and attempted to destroy them (the "data wipe"). The Claimants say that it is this event which prevents them from providing metadata to confirm the validity of the documents on which they rely. The

Defendants do not dispute that there was considerable disturbance in YDS Haridham India in this period, but are unable to say anything about the truth or otherwise of this matter.

69. The question of the authenticity and validity of the letter must therefore be established by extraneous evidence. The Defendants raise four arguments to support their challenge to the letter; one relating to the letterhead used on it, the second relating to a textual reference which appears in it; the third that it was never received by the YDS UK trustees; and the fourth as to the provenance of the letter as produced in evidence.

(i) The "Letterhead" point

70. The basis of the letterhead point was that the letterhead which appears on the Disputed Letter was dissimilar to the other letterheads used at a similar time by YDS India.

71. I do not think that there is much in this point. It was demonstrated that a wide variety of different letterheads were in use around Haridham. It was not at all clear to me whether these "letterheads" were in fact permanently printed on stationery or – as seems to me to be much more likely – generated automatically by computer. This latter hypothesis provides a much better explanation for the diversity of letterheads used. It also provides another explanation. As noted above, the fact that Prem Swami had taken over the role of President was actively concealed from the faithful some time after the resignation. The letterhead which was used on the Disputed Letter had been edited to read "President: HD Premswaroop Swami". It seems to me to be entirely clear why a letterhead bearing these words would not have been promulgated within YDS Haridham India. I have no doubt that the letterhead used for the Disputed Letter was a one-off produced for the purpose. However, I do not think that that fact assists either side in this particular dispute.

(ii) The "Textual" Point

72. When Hariprasad Swami resigned as president he was presented with a letter to sign tendering that resignation. The Indian Charity Commission was then informed that Hariprasad Swami had resigned as President of YDS India. The Commission responded – undoubtedly correctly – that the question of who was the president of the charity was of no concern to them – what they needed to know was who the trustees were. A second resignation letter was then prepared and filed, setting out the fact that Hariprasad Swami had resigned both as president and as trustee.

73. The Defendants' argument is that the initial resignation letter (dated 5 October 2018) referred only to Hariprasad Swami resigning as president. However, the Disputed Letter refers to his having resigned as "President and Trustee". The Defendants say that this shows that the Disputed Letter must have been written at some point after its purported date, since on the date that it bears (and which its author, Mr Dave, testified to), Hariprasad Swami had resigned only as president and not as trustee. This, they say, casts doubt on its authenticity.

74. I do not think it does. It seems to me to be clear that the first resignation letter, although defective in its drafting, is clear in its meaning – Hariprasad Swami wished to be discharged from the burden of participating in the governance of YDS India. I think the observation that he wished to resign as president would have been taken by all those

involved as a declaration that he no longer wished to be part of the governing body in any capacity – including that of trustee. As a matter of legal construction, this can be expressed as a manifestation of the canon that the greater includes the less, but I do not think it helpful to apply this sort of legal analysis to a generally expressed and short communication. It seems to me to be entirely reasonable for Mr Dave to have read the first resignation letter as an indication that Hariprasad Swami was to cease to be a part of the board, both as president and as trustee, and to have communicated that fact as he understood it. In this regard, I think it is significant that he refers to the drafting of the original letter as a "clerical error", rather than as having had any legal significance.

(iii) The receipt point

75. Mr Dave says that he dispatched the Disputed Letter on or near the date which it bears.

76. Mr Chatwani gave first-hand evidence that he received the Disputed Letter in the temple shortly after it was written, handed to him by a visiting devotee – an approach to correspondence which seems to have been a Diwali custom. Mr Dave's evidence was that copies were also sent by post both to the temple's official address and to Mr Chatwani's business. I heard evidence that no copy of the letter was received in the ordinary mail at the temple, although Mr Chatwani's evidence was that he received it at the temple and handed it to Mr Mehta (although Mr Mehta denies this).

(iv) The provenance point

77. The essence of this challenge therefore comes down to the fourth issue. What the Defendants say here is that if Mr Chatwani had received the letter, he should have been able to produce it himself. However, the only copy that has been produced has been provided by Mr Dave. Mr Chatwani's evidence was that his inability to produce a copy of the letter was unsurprising because he did not regard the letter as anything more than formality, since Hariprasad Swami had "so many times" said that Prem Swami was to be his successor. He had not therefore preserved a copy of it since, at the time, he did not believe that its contents would be in any way contentious.

78. The Defendants say that the only copy of the letter that has actually been produced in evidence is a copy which Mr Dave claims to have found in YDS Haridham India following what he says was a comprehensive ransacking of the records and systems of YDS India by supporters of Prabodh Swami. It is further said that this ransacking (which involved a "data wipe") explains why he cannot produce electronic metadata regarding the letter. The Defendants further point out that Mr Chatwani – whose evidence was that he received the letter – was not able to produce a copy of it.

79. I accept that these facts raise questions. However, the evidence that I have is that the sender testifies that he sent it, the recipient testifies that he received it, and the facts that it recites are clearly true, and were true at the time when the letter was sent. On balance, I think I must find that the letter was sent at or shortly after the date which it bears, and at least one copy of it was conveyed to Mr Chatwani by a devotee in person and received by him.

80. I am therefore satisfied that, on the evidence before me, I must treat the letter as authentic.

4.1.2 Was the letter effective to constitute Prem Swami Member A under Clause 9(1)I

81. The Defendants argue that in order for any letter to satisfy this requirement, it must be (a) authored directly by the President himself, and (b) dispatched before the President steps down (the latter being based on the idea that "outgoing" implies "still in post"). They say that neither of these criteria are satisfied by the Disputed Letter.

82. There is no doubt that the Disputed Letter does not purport to be directly from Hariprasad Swami, and was signed after his resignation as President. The question for me is as to whether that means that it does not satisfy the requirements of the second section of Clause 9(1)I.

83. The Defendants say that it does not. Their points are that:

    (1) the clause does not say "or on behalf of";

    (2) specific provision is made for the outgoing President being unable to do so due to "age related vulnerability", but there is no evidence of complete inability caused by such vulnerability;

    (3) a person reading the 2013 Constitution with knowledge of the relevant background would expect it to require a President capable of doing so to communicate personally something as important as a decision to retire and appoint a successor, and would interpret it accordingly.

84. They further say that the fact that the clause requires the notification to be given by "the outgoing President" means that it cannot be given by a "former President". Thus, they say, once a President has resigned, the ability to write such a letter falls away, so that no subsequent notification – even by him personally – could ever trigger the clause.

85. They therefore say (in effect) that the fact that the Disputed Letter was not signed by Hariprasad Swami personally whilst he was in office as President of YDS India means that it is invalid under Clause 9 to appoint Prem Swami as Member A.

86. I think that these arguments are far-fetched. In a situation where the President announces his resignation to the board of trustees and the board of trustees then communicates that decision, through its secretary, I struggle to see how that communication is not a communication "by the outgoing president". Provided that the President is still the President at the time when he communicates to the trustees his decision to resign (which must necessarily be the case), then the subsequent communication by the trustees must be a communication initiated "by" him as president at a time when he was President.

87. I agree that the "age related vulnerability" power that the Trustees have to nominate a successor is not engaged here.

88. I do not regard it as at all plausible that an informed reader of the constitution would have considered that a communication by the President of his resignation as trustee made to the trustees, and passed on by the secretary to the trustees, would not have satisfied this requirement. Indeed, I think that that would have been the normal and expected form of communication.

89. Finally, I note that the Defendants say that it must have been the intention of the draftsman of the 2013 Constitution that the role of Member A was initially personal to Hariprasad Swami, and that it therefore ceased to exist on his passing because no valid notice was received during his lifetime. The Claimants say that the role of Member A was permanent, that it existed independently of the person who occupied it, and that Prem Swami was Member A at the relevant time.

90. I do not accept that it could have been the intention of the draftsman that the role of Member A was personal to Hariprasad Swami. Part of the reason that I am confident about this construction is that is that it is entirely in accordance with the guru–shishya succession which is one of the core beliefs of the Swaminarayan faith. As long as we assume that the draftsman of this deed was a devotee of this faith, then it must have been his expectation that at some point before his passing Hariprasad Swami would indicate to the devout the identity of his successor as the conduit to Lord Swaminarayan, and that as a result that individual would assume his status as – inter alia – Member A. This was confirmed by Mr Thadeshwar in his oral evidence, when he said:

> "My Lord, as I have mentioned earlier, nobody anticipated that Hariprasad Swami would not declare his successor, so the general thought process was whoever HDH Hariprasad Swamiji appointed as the new spiritual successor would have become the president of YDS India. So how many times would we change the constitution and hence that word "HDH Hariprasad Swamiji", i.e. president of YDS India? That was the logic."

91. I therefore think that the Disputed Letter satisfied the requirement of Clause 9(1)I to constitute Prem Swami as Member A at the time when the Disputed Letter was received.

92. As to this last point, the Claimants say that, even if I am not satisfied that the letter was received by Mr Chatwani in 2019, it is indisputable that a copy of the letter was provided to the Defendant Trustees by his solicitors on 31 May 2022. They therefore say that, if the 2021 Constitution was not validly adopted, Prem Swami must have been Member A from at least that date. The Defendants say in response to this that if the position of Member A ceased to exist on the passing of Hariprasad Swami, it cannot now be revived, and therefore (and in any event) a letter received after the death of Hariprasad Swami must be invalid. I can find no basis for this in the text of the 2013 Constitution, and I do not accept it. I think it is based on the argument that the notification must come from the outgoing president, and that therefore the outgoing president must be alive when the notification is made. However, as I have found, it is necessarily the case that an outgoing president who resigns is the president at the time when he delivers that resignation, and it is his status at the time of the delivery of the resignation that is material here. Where – for example - a president dies between tendering his resignation and having that resignation accepted by the board of trustees, it would seem very odd to conclude that the resignation was invalid, or that the ordinary succession mechanism would be invalidated.

4.2 If Prem Swami was Member A at the time of the Meeting, should he have been given notice of it?

93. The general principle for meetings of all forms is that if a notice of a meeting is not sent to all those entitled to receive one, then the meeting is invalid (see e.g. *John v Rees* [1970] Ch 345). It is accepted that no notice was given to Prem Swami as Member A. The question is therefore simply one as to whether he was entitled to receive such notice.

94. Member A is not a "voting member" within the meaning of Clause 16 (which only confers votes at a general meeting on Members B). However, he is clearly a "Member". He also has a number of powers under the 2013 Constitution – most importantly a casting vote at any trustees meeting, along with a power to veto any decision of the Member B trustees.

95. It is accepted that Hariprasad Swami, *qua* Member A, was never given notice of meetings of YDS UK. The Defendants suggested that there was no need to notify Member A of any meeting, since his powers – the casting vote and the power of veto – only arose after a meeting had been held. I do not agree. I think that the requirement to notify Member A of a meeting under Clause 12(2) is a continuing obligation, since Member A was at all material times a "Member". It is possible (although it is not pleaded) that there was an understanding between Member A and the trustees that such notice could be dispensed with for meetings in the ordinary course of business. However, I find it impossible to accept that that understanding would extend to a meeting where the very status of Member A was to be abolished.

96. I note in passing that Clause 26(3)(c) of the 2013 Constitution provides that:

> "no act of the Charity in General Meeting shall be invalidated by reason of the failure to give notice to any trustee or member… unless it is shown that the failure… has materially prejudiced a member … of the charity".

I do not think that there is any doubt that the removal of Member A's status, and the powers which went with it, would constitute a "material prejudice" to his status.

97. I therefore think that it is clear that if Prem Swami was Member A at the time of the Meeting, he should have been given notice of the meeting, and that the failure to give such notice would have vitiated that meeting.

98. The Claimants' primary position is that Prem Swami was validly appointed as Member A from the time when Mr Chatwani received the Disputed Letter. However, they have a fallback position which is that the Disputed Letter must at the latest have taken effect from 31 May 2022, when a copy was provided by Mr Chatwani's solicitors to YDS UK. In the latter case, the failure to provide notice of the Meeting to Prem Swami would not have invalidated the Meeting, since he would not have been Member A at the relevant time. It is therefore necessary to consider the notice given to the Members B.

4.3 Was the notice of Meeting given to members who did not attend but consented to short notice sufficiently misleading to vitiate that consent?

99. The Claimants' position as regards the Meeting is that the misrepresentations made by those who convened it were such as to invalidate the notice.

100. A notice of a meeting is invalid if it gives a misleading impression of the substance of the matters to be discussed at the meeting. The relevant authorities are set out in section 5-04 of *Shackleton on the Law and Practice of Meetings* (16th ed.). I think the position is correctly summarised at the end of that section as follows:

> "Whether a notice is sufficient must be decided on the facts of each case. A crucial test is whether it contains enough information to enable recipients to decide for themselves whether they should attend, or appoint a proxy on their behalf, or whether they are content to let matters take their course at the meeting: to enable them "to decide for himself whether he should do any more." (citing *Normandy v Ind Coope & Co Ltd* [1908] 1 Ch. 84 Ch D.)"

101. In *Speechley v Allott* [2014] EWCA Civ 230 the Court of Appeal pointed out (at [27]) that

> "… of all the cases that we were shown, with the exception of one of the points argued in *Re GKN Bolts & Nuts*, failure to comply with the rules had been held to invalidate decisions made."

The Court also held that failure to include proper notice of the business to be transacted at a meeting, and a failure to vote in accordance with the rules were failures of "substance, not form" rending the "the business purportedly transacted at [the meeting] ineffective".

102. The core question here is as to whether the text of the e-mail giving notice of the meeting was misleading. For this purpose, the substance of the notice is contained in two sentences: -

> "Main amendment under consideration is changing our charity registration from unincorporated organisation to Charitable Incorporated Organisation (CIO). As advised by our solicitors, it is a two-staged process wherein we have to first adopt a new constitution and then get ourselves converted into a CIO."

Neither of these statements were true, and Mr Mehta and the other Defendant Trustees knew that they were untrue.

103. The first statement, that the main amendment under consideration was changing the charity registration from unincorporated organisation to CIO is unsupportable. The most cursory inspection of the draft amendments proposed to the constitution reveals that the primary changes to be made were the abolition of the position of Member A, the removal of the powers of control previously vested in Member A, and the placing of YDS UK under the full control of the existing trustees. This statement was simply not true.

104. There was an attempt to argue that these changes were at least connected with notion of conversion to a CIO, the argument being that the position of Member A would have been unacceptable to the Charity Commission and would have required amendment before such a conversion could be made; citing *Dhasji v Bhudia* [2026] EWHC 455 (Ch). The Claimants' response to this is to point out that that case is not in

fact authority for any such proposition. In this they are correct – the case records the fact that the Charity Commission had initially indicated a view that such extensive powers vested in an overseas religious leader might be unacceptable (at [177]), but also records (at [226]) that the charity in that case was in fact registered with the Charity Commission with those powers intact. More importantly, the Claimants point out that the process of becoming a CIO would have required the adoption of an entirely new constitution (since the Charity Commission has detailed requirements for the constitution of such entities) which would in effect have required the replacement of the 2013 Constitution. Consequently, I am unable to see any connection between the amendments submitted to the meeting and the process of conversion to a CIO. Here again, the statement was simply not true.

105. The second sentence is also untrue. Mr Mehta and the sub-committee had not been advised by their solicitors that the amendments to be made at the meeting were necessary to reregister as a CIO, or that the process should be a "two-stage process".

106. An interesting question arises as to the significance of the calls which Mr Mehta says in the e-mail that he made before sending it out. It is potentially the case that if all of the recipients of a notice have been contacted prior to its being sent out, so that when they received it the text of the notice, taken alongside the earlier communication, would have given them sufficient information as to what was contemplated, then the notice could be valid. However, any such argument could only be made if there were clear evidence that the preliminary communication had been made to all persons entitled to receive the notice.

107. There is no such evidence here. The Claimants point out that Mr Mehta's initial position was that he would demonstrate the fact that he had made these calls by providing phone records, but no such records were ever provided. As regards the Prabodh-supporting trustees it is also improbable - that sub- group had discussed the changes in person on the evening of 2 November, so there would have been nothing for Mr Mehta to "explain" by telephone. The other trustees - Mr Chatwani, Mr Rajendra Patel and Mr Praful Patel – deny that they ever received any such calls from Mr Mehta.

108. It was in reliance on this notice that each of Mr Chatwani and Mr Praful Patel agreed that the Meeting could go ahead in his absence. I therefore can only conclude that the consent of Mr Chatwani and Mr Praful Patel to the meeting proceeding on short notice was invalidly obtained and therefore ineffective.

4.4 Was the Meeting quorate?

109. This is a surprisingly difficult question to answer. Clause 12 of the 2013 Constitution provides a simple answer - that the quorum required for a valid meeting is 4 voting members, or 51% of the voting members present if there are fewer than 4 Members B, but a minimum of two. The problem is identifying who is a "voting member" for this purpose.

110. Under the 1990 Constitution, the affairs of the charity were to be managed by an executive committee with a maximum of 10 members. Mr Chatwani and Mr Rajendra Patel (the First and Third Claimants), Mr Suresh Patel (the Sixth Defendant) and Mr

Praful Patel seem to have been longstanding members of that committee, as were Bhimjibhai Patel and Amritlal Gadhvi.

111. In July 2011 it became necessary to fill four vacancies on the committee caused by resignations. The Defendants say that the vacancies were filled by Hariprasad Swami at an assembly at which they and many others were present, his nominations being Mr Chirag Mehta, Mr Jatin Shah, Mr Nayan Tank and Mr Jayesh Patel. There are minutes of a committee meeting dated the 2 July 2011 which record these appointments. It therefore seems that all four of these appointments were made simultaneously. There were then ten trustees.

112. The 2013 Constitution was adopted at a meeting held on 15 June 2013. It clearly provided, at Clause 9, that there be seven Members B, and that all Members B be appointed by Member A. There appears to be no other mechanism for the appointment of Members B.

113. According to the Charity Commission record, as at December 2020 there were 11 trustees in post. One of these – YDS UK Ltd - is a mere nominee, and is not a trustee in the ordinary sense of the word by reason of Clause 18(2) of the 2013 constitution. Of the remaining ten

a. Mr. Praful Patel, Mr. Suresh Patel, Mr Rajendra Patel and Mr Chatwani – were some of the earliest trustees, so there is no date of appointment recorded. There is no doubt that these are properly Members B.

b. Of the four trustees appointed on 2 July 2011, Mr Nayan Tank and Mr Chirag Mehta are recorded on the Charity Commission website as having been appointed on the 31 January 2012, and Mr Shah and Mr Jayesh Patel on the 8 February 2012. However, the evidence that I heard made clear that these appointments were in fact made at the same time on the same day, and I do not attach any significance to the dates. None of the witnesses were able to offer any explanation as to why their appointment had not been promptly or accurately notified to the Charity Commission.

c. The remaining two, Mr Rekhav Patel and Mr Chauhan were appointed trustees on the 28 October 2013. It seems clear that, since the 2013 constitution provided that there be a maximum of seven trustees, and that Mr Rekhav Patel and Mr Chauhan were appointed after the effective date of that constitution at a time when there were already more than seven trustees, their appointment was invalid.

114. I think that by 2021 there was a general awareness of the numbers problem. I heard various explanations from the different witnesses as to how this was addressed – one suggested that the first seven people to arrive would be those entitled to vote, another that the seven oldest members were the voting members – but I do not believe that these were anything more than after-the-event rationalisations.

115. The orthodox approach here is that if trustees purport to do something which is beyond their powers to do, the action that they purport to take has no effect. Thus, if a trust has five trustees, is limited to seven, and the trustees resolve to appoint a further

three trustees, the appointment is ineffective and none of those three trustees can be said to have been validly appointed.

116. However, that is not quite what happened here. All of the four 2011 appointees were validly appointed under the constitution as it then stood. Clause 18(8) provides that "The first trustees (including officers) shall be those persons elected as trustees and officers at the meeting at which this constitution is adopted." It is clear that there were ten such officers at the time when the constitution was adopted.

117. The only way to reconcile these clauses is to start from the proposition that a document should never – except in a very extreme case – be read in such a way that one part of it directly contradicts another. Where possible, it should be interpreted in such a way that its provisions interact rather than conflict.

118. I do not think that this can be done by imposing an implied term that only seven of the ten trustees and officers in post at the time when the new constitution was adopted were validly appointed. That is because there is no mechanism, in the constitution or elsewhere, for determining which of those members were validly appointed and which not. The idea of the deliberate creation of a sort of Schrodinger's trusteeship, where seven out of ten trustees are validly appointed, but no individual knows or can know whether he is a validly appointed trustee or not, is absurd.

119. I therefore think that the effect of the constitution as regards Members B is that there were ten of them when it was adopted, but as those members resigned over time, there could be no replacements until the number got down to seven, and thereafter it should not rise above seven.

120. That means that at the time of the 2021 meeting, each of Mr Shah, Mr Mehta, Mr Tank and Mr Jayesh Patel were validly appointed trustees. A quorum for the meeting would have been four members (Clause 13(2)). Thus the meeting must have been quorate. Mr Rajendra Patel disputes that his vote was procured in good faith, but he does not dispute his presence, and that is all that is required for a quorum of voting members under Clause 13. The Meeting was therefore quorate.

4.5 Was the conduct of the Meeting such as to vitiate its actions?

121. The Meeting purported to approve the changes to the constitution. It is accepted that copies of the proposed changes were not circulated to all members in advance of the Meeting, and were not made available to those present at the Meeting.

122. Mr Rajendra Patel, who was the only Prem supporter who did attend, describes a rushed exercise on a Diwali evening: Mr Mehta met him "in the crowd" and said "let's quickly do the required" before leading him upstairs; there was "no discussion at all" of the removal of Members A, B and C; and, with the Diwali function going on downstairs, there was "no time" to read a legal document - as he put it, "the Diwali function should be at another time, or the meeting should have been at another time, for discussion to take place". The Defendants, by contrast, described an extended meeting at which amendments were identified and discussed at length, such that there was no possibility of misunderstanding. At the end of the Meeting, all those present (including Mr Rajendra Patel), signed every page of the only copy of the amended constitution.

However, at the end of the meeting that copy was retained by Mr Mehta, and no text of the amended constitution was circulated.

123. I do not regard any of these issues as being of sufficient significance to enable me to conclude that the meeting was so wrongly conducted that its decisions are per se invalid. I am inclined to believe Mr Rajendra Patel that the meeting was not expansive. All the Prabodh supporting trustees knew what was in the proposed amendments, and had discussed them recently - there would have been no reason for them to discuss them again at length in such a meeting. Conversely, it would have been important to them to have the meeting closed as soon as possible, and the fact that the meeting was held in the middle of the Diwali celebrations cannot have contributed to any desire to linger. Consequently, I accept Mr. Rajendra Patel's evidence that he was induced to sign the amended constitution without being made fully aware of its contents – particularly since the only thing he thought he knew about the document was that it was part of the process of becoming a CIO. I note in this regard he would be neither the first nor the last person to sign an apparently routine piece of legal documentation without fully appraising himself of its contents. However, as noted above, even if I assume that he had opposed the proceedings in toto and voted against the adoption and the amendments, his vote would not have affected the outcome whichever way in which it was cast. I therefore do not regard his allegation – even if made out – as being sufficient to invalidate the meeting itself.

4.6 If the amendments were validly adopted, and Prem Swami is currently Member A, can he – by using the Member A veto – overturn any subsequent decision of the trustees to reinstate the amendments?

124. This question is moot since, for the reasons that I have found, the amendments to the 2013 Constitution approved at the Meeting never took effect. Prem Swami is still Member A, and can exercise the powers that are vested in him by the 2013 Constitution in its original form. That includes the power to veto any decision of Members B. It also includes the power to appoint new Members B.

5. The Fiduciary Duty Argument

125. I should also note, since it was argued before me, that this case raises a question – which, perhaps fortunately, I am not required to decide - as to the applicability to fiduciaries generally of the Supreme Court's judgment in *Saxon Woods Investments Limited v Costa* [2026] UKSC 21, concerning the scope of a director's duty under s 172 of the Companies Act 2006, which was handed down in the course of the trial. Although the decision concerned directors' duties, rather than fiduciary duties more broadly, the Supreme Court was clear that the starting point was that s.172 Companies Act 2006 sought to codify the law relating to the fiduciary duties of Company Directors rather than to change it. It follows that the conclusions reached are as applicable to the conduct of fiduciaries more generally. The Claimants argue that the decision in *Saxon Woods* applies to fiduciaries generally, and therefore applies to the Defendant Trustees in this matter.

126. The effect of the Supreme Court's decision in *Saxon Woods* is to create what is in effect a "duty of collegiality" amongst directors. It is not enough for a director to be satisfied that he is acting in the best interest of the company. He must also be open with

his fellow director as to what he is doing and why he is doing it and, if he is not, he is in breach of his fiduciary duties.

127. There are a large number of different types of fiduciary relationships, and it is clear that this duty does not apply to all of them. However, what the Supreme Court did make clear was that this duty is not unique to company directors – it derives from the duty of good faith which every fiduciary owes. It may be objected that the position of a group of trustees of a trust is different from the position of the directors of a company in that directors of a company owe collective fiduciary duties to the company, whereas trustees of a trust owe their individual fiduciary duties to beneficiaries. However, I think that this is a distinction without a difference – in both cases, the expectation of the fiduciaries is that they will act collectively rather than individually for the benefit of the body to which they owe duties, whether that body be a single company or a group of beneficiaries collectively.

128. In this regard I also note that this duty is to the beneficiaries as a whole. In a situation where the beneficiaries of a trust are separated into warring camps, it is not enough for a trustee to say that he is acting on behalf of one camp or the other, and that therefore he is acting for the benefit of at least some of the beneficiaries. A trustee in such circumstances owes a duty to act co-operatively with other trustees for the benefit of the beneficiaries collectively. It may be objected that where the differences between beneficiaries are sufficiently extreme, this may be impossible. However, that does not affect the trustees' duty to co-operate.

129. Had it been necessary to decide this point, I would have decided that the Defendant Trustees did owe the duty of collegiality established in *Saxon Woods* to the other members of the board of trustees, that they were in breach of that duty by reason of the attempt to mislead the Prem-supporting trustees, and that their actions before, during and after the Meeting were in breach of their fiduciary duties.

Relief

130. In considering the consequences of the conduct which I have found, I must ask myself the two questions set out by Lewison LJ in *Speechley v Allott* [2014] EWCA Civ 230. He said:

> "28. There are, in my judgment, two separate questions: "
>
> i) What do the rules require?
>
> ii) What is the effect of non-compliance with those requirements?
>
> 29. The answer to the first of these questions is a question of interpretation of the rules. In answering that question, the rules are to be interpreted in the same way as any other contract, making due allowance for the fact that the rules are intended to be operated by non-lawyers. … The answer to the second question involves a rather different inquiry. The point was well-made by Sir Stanley Burnton in Newbold v The Coal Board [2013] EWCA Civ 584, which concerned the validity of notices of subsidence damage. He said at [70]:

> "In all cases, one must first construe the statutory or contractual requirement in question. It may require strict compliance with a requirement as a condition of its validity. In Mannai at 776B Lord Hoffmann gave the example of the lease requiring notice to be given on blue paper: a notice given on pink paper would be ineffective. Against that, on its true construction a statutory requirement may be satisfied by what is referred to as adequate compliance. Finally, it may be that even non-compliance with a requirement is not fatal. In all such cases, it is necessary to consider the words of that statute or contract, in the light of its subject matter, the background, the purpose of the requirement, if that is known or determined, and the actual or possible effect of non-compliance on the parties. We assume that Parliament in the case of legislation, and the parties in the case of a contractual requirement, would have intended a sensible, and in the case of a contract, commercial result."

131. In this case, it is clear that the Defendant Trustees connived in a scheme to mislead the Claimant Trustees as to the amendments which they sought to make at the Meeting. I think it is clear beyond doubt that this was not in accordance with the constitution of the charity, or indeed with the duties that they owed as trustees of a charity. As a result, for the reasons given above, I think it is entirely clear that the amendments that they purported to make to the 2013 Constitution as a result of this scheme were not validly made, and should be disregarded.

132. In principle, therefore, I think that the Claimants are entitled to the declaration that they seek.

Dishonesty

133. I have concluded that the Defendant Trustees agreed to misrepresent the purpose of the Meeting to the supporters of Prem Swami, in order to try and smuggle through an amendment to the constitution which – in their eyes – removed a threat to YDS UK. I think it is therefore incumbent on me to explain the extent to which their conduct should be regarded as dishonest. As I have said, these were not rogues – they were honest men, motivated by a high purpose. Why, then, did they do what they did?

134. This point turns on what the supporters of Prabodh Swami actually believed the position to be after the death of Hariprasad Swami. Their evidence that they believed the position of Member A to be personal to Hariprasad Swami is, I think, the result of wishful thinking on their part. I think that the true position is that they were uncertain and confused. This is illustrated by the fact that their "letter of stand" drafted by Mr Shah and worked on by Mr Thadeshwar and Mr Mehta, stated for most of its iterations that "P Prem Swami was appointed as the President in 2018". This line was excised only at the last moment. The Defendants suggested that this was the result of simple confusion, since Prem Swami had been appointed Kothari (loosely, treasurer) of YDS India in 2017. However, since the draft also separately referred to Prem Swami as Kothari elsewhere, this is implausible. It is also notable that in an exchange of family messages in the days following Hariprasad Swami's death, Mrs Karuna Patel indicated that it was her impression that Prem Swami had been appointed by Hariprasad Swami as his successor.

135. I think that the Defendants believed that the majority of YDS UK supported Prabodh Swami, and that an acceptance of Prem Swami as the de facto head of YDS UK would create considerable disruption to the affairs of the charity. This led them to conclude that if the supporters of Prem Swami could be squeezed out of the charity, it could continue its work without disruption. This was not, of itself, an ignoble aim. However, in their enthusiasm to achieve it, they overstepped the requirements of good faith and transparency which apply to trustees generally, and trustees of charities in particular. One way of looking at the outcome of their actions is that their coup has failed. However, another would be that both sides have proved their devotion to their respective Swamis.

136. However, finally on this topic, I note that the Defendants have made allegations of dishonesty against the Claimants – in particular with regard to the allegation of forgery of the Letter – which they have been unable to substantiate.

Declaration

137. Declaration is a discretionary remedy. When considering whether to make a declaration the relevant factors to be considered are those outlined by Neuberger J in *Financial Services Authority v Rourke* [2002] CP Rep 14:

> "It seems to me that, when considering whether to grant a declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration."

138. The criteria in *Rourke* are satisfied here. Declarations are sought by both parties and are necessary to resolve the dispute between them, and the utility ground and justice to the parties are clearly established.

139. The Claimants seek a declaration that the 2021 Constitution was not validly adopted and is of no effect. Given that I have found that the proceedings of the Meeting were invalidated by the misrepresentations made in the notice of meeting, such that consent to short notice was never validly obtained, then I am satisfied that this is the case.

140. As to Member A, the Claimants seek a declaration that Prem Swami was appointed Member A of YDS UK by the Disputed Letter. I note that there are two limbs to this claim. One is the limb – addressed above – that Prem Swami was Member A from the date of receipt of the Disputed Letter by Mr Chatwani. However, the Claimants have a fallback position, which is that it is not disputed that a copy of the Disputed Letter was sent to the Trustees by Mr Chatani's solicitors on 31 May 2022. Thus, even if I were not satisfied that the Disputed Letter was received by Mr Chatwani at the time and in the way that he suggests, if (as I have found) the amendments purportedly made at the Meeting were not validly made, then Prem Swami nonetheless became Member A as from that date. He is therefore Member A today.

141. In the alternative, the Claimants seek an injunction, in exercise of the Court's inherent supervisory jurisdiction over charities, reversing the adoption of the 2021 Constitution as voidable by reason of the alleged breaches of fiduciary duty of the

Defendant Trustees and restraining the Defendants from relying upon it. In the light of the above, I do not need to address this ground.

142. The Defendants have a further argument as regards relief. They say that the Court should grant no relief, even if the relevant breaches of the 2013 Constitution and fiduciary duty are made out. Their argument is, in essence, that even if I were to find that the adoption of the amendments at the Meeting was invalid under the constitution or voidable by reason of breaches of fiduciary duty (as the Claimants allege), the (current) trustees could reconvene and adopt the 2021 Constitution by what is thought to be a likely 4-2 vote in favour of that course of action. They say that since the relevant trustees genuinely believe that the taking of such a step would be in the best interests of the charity, and relying upon company law authorities by analogy, injunctive relief reversing the resolution carried at the Meeting should be refused as a matter of discretion.

143. The primary authority they cite in this regard is *MacDougall v Gardiner* (1875) 1 Ch. D. 13, 25. In that case the Court of Appeal held that there would be no utility in the court making an order to reverse a decision taken by an invalidly constituted company meeting, where the members of the company could simply call another meeting and restore the original decision. The basis of this decision was that where a clear majority desired one specific outcome, and a minority another, there would be no useful purpose served in making an order which would and could be reversed by a subsequent meeting, unless the majority are "abusing their powers, and are depriving the minority of their rights".

144. The Defendants further relied by analogy upon *Bamford v Bamford* [1970] Ch 212, 237 for the proposition that a breach of the constitution of a company could be ratified by the general body of the membership. The Defendants also now seek to invoke, in this respect, the Court's wider general supervisory jurisdiction over charities. In this regard, they say that the charity is currently functioning effectively, that the grant of the injunction confirming Prem Swami's position as Member A would significantly disrupt the operation of the charity, and that the court, considering its role as *parens patriae*, should not make an order which disrupts the running of a currently operational charity.

145. The Claimants make a number of points in response to this. First, they say that several of the cases cited relate to misguided trustees who took a decision for impeachable reasons, which could in fact have been taken for good reasons. These are not the allegations in this case. This claim involved alleged breaches of fiduciary duties which were intentional breaches, some of them (as pleaded) involving dishonesty. Second, in *MacDougall*, the Court of Appeal itself carved out an exception to the principle relied upon in circumstances where the "majority are abusing their powers, and are depriving the minority of their rights … there the minority are entitled to come before this Court to maintain their rights." The Claimants in this case rely on their contractual rights as members of the unincorporated association, of which they were deprived by the actions of the Trustee Defendants. This conduct falls squarely within the exception. Finally, they say that there is a qualitative difference between rule by the majority in the context of a private company directed at private interests, and the appropriate standards of conduct, governance, and outcomes in a contractual unincorporated association registered as a charity over which the court exercises jurisdiction for the public benefit.

146. My understanding is that the partisans of Prabodh are now in full control of YDS UK, the supporters of Prem having withdrawn from it.

147. I absolutely do not accept that, where one group within a charity have taken over that charity through breaches of the constitution of that charity, that that fact alone constitutes any sort of bar to the court making an order restoring the position as it was before the breaches. As regards the argument that a declaration in the form which I have been asked to make is otiose, since it would simply be reversed by a trustee vote, that argument fails on a number of grounds. The first, and simplest, is that Prem Swami, as Member A, has the power to veto any decision taken by the trustees. The second is that the Defendant Trustees, despite an invitation, absolutely declined to testify that, if the issue arose, they would certainly vote in the same way that they did at the Meeting. The third is that a number of the Defendant Trustees expressed the view that if Prem Swami were to be reinstated as Member A, they would resign their trusteeship and cease to attend YDS UK Haridham.

148. The position is therefore entirely different from that which arose in the company cases on which the Defendants relied. There is – and can be – no certainty as to what the position would be after the declaration which the Claimants request is made. As a result, I do not think that the argument that the declaration requested should not be granted because it is otiose has any validity.

149. I am therefore prepared to grant the declaration in the terms sought by the Claimant.

My determinations of the Issues to be Determined are therefore as follows.

1. H.D.H. Hariprasad Swami: whether and in what respects Hariprasad Swami exercised his powers as 'Member A' of YDS UK.

I have seen no evidence that Hariprasad Swami ever exercised these powers formally.

2. YDS UK and YDS India: whether as a result of the adoption of the 2013 Constitution YDS India was intended to and did in fact have control over YDS UK.

YDS India as a legal entity never had formal control of YDS UK as a legal entity.

3. Authenticity of documents: whether (which the Defendants do not admit) the documents appended to the Particulars of Claim are genuine.

These documents are regular on their face and there is no direct evidence to controvert them. I must therefore accept them as genuine.

4. Whether H.D.H Hariprasad Swami resigned as President of YDS in October 2018 or November 2019

There are formal public documents which record this resignation, and there is no direct evidence to controvert them. I must therefore accept them as genuine.

6. Whether Prem Swami was appointed as H.D.H. Hariprasad Swami's successor as pleaded in POC14(d).

There are formal public documents which record this appointment, and there is no direct evidence to controvert them. I must therefore accept them as genuine.

6. Notice of resignation and appointment

(1) Whether the Disputed Letter was written on the date it bears;

I have evidence from the author of the letter testifying to its date, and there is no direct evidence to controvert his evidence. I must therefore accept it as genuine, including its date.

(2) Whether the Disputed Letter constituted notice of a change in the Presidentship of YDS India complying with clause 9 of the 2013 Constitution;

Yes

(3) When the Disputed Letter was received by YDS UK.

The Letter was received by Mr Chatwani on behalf of the Trustees shortly after it was sent. In any event, it was received when it was sent by Mr Chatwani's solicitors to the Defendants on 31 May 2022.

7. Conduct of Prem Swami: Whether Prem Swami between 18 October 2018 and 5 November 2021 asserted a claim to be 'Member A' or acted as such.

No.

8. Alleged proposal to remove 'Member A': whether during 2014 or 2015 H.D.H Hariprasad Swami advised the Trustees of YDS UK and YDS Canada as to the removal of the position of 'Member A', and whether, prior to 5 November 2021, the First and Third Claimants were made aware of any proposal to remove 'Member A'.

It is possible that Mr Mehta and Mr Thadeshwar mentioned this to Hariprasad Swami. However, there is no record of his having given any such advice, and I cannot conclude that he did so.

9. Instruction of Penningtons Manches Cooper LLP:

(1) Whether the firm was instructed properly on behalf of YDS UK with the knowledge and authority of its Trustees,

The firm was instructed by a sub-group of trustees who represented themselves as acting on behalf of the board of trustees.

(2) Whether the basis of the instructions was false, misleading, or dishonest,

The instructions were to draft amendments to the Constitution whose primary function was to remove Member A, and Penningtons complied properly with those instructions. The instructions were never shared with the trustees as a whole.

(3) If so, the extent to which the First and Third Defendants, and Mr Thadeshwar were aware of the same.

The First to Third Defendants were aware of the instructions passed on to Penningtons by Mr Thadeshwar.

10. Notice of meeting on 5 November 2021

(1) Whether on or before 5 November 2021, the First Defendant spoke to all Trustees regarding the removal of Member A and the conversion of YDS UK into a CIO,

No.

(2) Whether the email dated 3 November 2021 contained a false representation that the purpose of the meeting was to alter the 2013 Constitution to assist the transition of YDS UK into a CIO,

Yes

(3) If so, whether the First Claimant and Mr Praful Patel gave consent to the meeting proceeding in their absence on that basis.

Yes

11. Meeting on 5 November: whether the 2021 Constitution was validly adopted having regard to the Court's findings of fact as to the circumstances relating to the holding of the meeting and the passing of the resolution for adoption.

No.

12. Improper notice and insufficient quorum; whether the meeting of 5 November 2021 was procedurally defective;

Yes.

13. Failure to convey true nature of the changes: whether the calling of a general meeting was in breach of fiduciary duty by reason of a failure to act honestly / in good faith and / or in the interests of YDS UK.

The way in which the meeting was called was the result of a breach of fiduciary duty by Mr Mehta and those who had agreed with him to present the meeting as relating to only to CIO conversion.

14. Improper procurement of signature: whether the Third Claimant's signature approving the 2021 Constitution was improperly procured.

The Third Claimant did not understand what he was signing, and would not have signed the document if he had known what it contained.

15. Improper termination of Member A's membership: whether Member A's membership was improperly terminated.

Member A's membership was not terminated because the proceedings of the Meeting were ineffective to terminate it.

16. Whether the removal of Member A was contrary to YDS UK's objectives and/or for a collateral purpose: whether the removal of Member A was in accordance with YDS UK's objectives, and whether it was in breach of fiduciary duty.

This issue does not arise, and I do not decide it, save that I consider the conduct of those involved in trying to amend the constitution to remove Member A at the Meeting to have been in breach of their fiduciary duty.