In the context of professional negligence, when do equitable solutions provide your clients with a different, and potentially, advantageous outcome? How do you frame them?

1. A claim against a professional person can often be framed in several different ways, even though the different causes of action may all arise from the same facts or incident. Thus a claim against a solicitor for paying away money to the wrong person can, depending on the circumstances, be cast as a common law claim for breach of contract (assuming that there was a contractual relationship), or negligence; or it might be formulated in equity as a breach of trust, or breach of fiduciary duty. This use of alternative formulations received a great deal of attention initially in the 1990s because the numerous lender claims that came before the courts at that time highlighted the point that, depending on the circumstances, it was sometimes easier to establish liability in equity, and that equitable remedies could be more, and sometimes much more, generous than common law remedies.

2. Whilst some appellate decisions[1] have established firm boundaries, limiting possibilities for recovering what were perceived to be more bountiful awards in equity, others[2] have very clearly demonstrated that an equitable claim may succeed, and offer a full remedy, where no claim at common law is even sustainable. In other cases[3], an identical remedy (at least in money terms, if not nomenclature[4]) may be achieved, however the case is framed or analysed. The differences, or similarities, in outcome will depend upon the nature of the duty owed, and the type of conduct which gives rise to the breach.

3. The types of equitable duty which tend to be of most relevance in the sphere of professional liability, are (1) the duty to account in respect of property entrusted to the professional (for example, a solicitor in a conveyancing or lending transaction[5]), and (2) the fiduciary duty of undivided loyalty to a principal[6].

4. Certain classes of professional are much more fully represented in the case law concerning equitable duties that others. They tend to be those who handle client monies (such as solicitors,

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[1] *Target Holdings Ltd v Redferns* [1996] AC 421, HL; *Bristol & West BS v Mothew* [1998] Ch 1, CA; *AIB Group (UK) plc v Redler* [2015] AC 1503, SC.
[2] *Dreamvar (UK) Ltd v Mishcon de Reya and another* [2016] EWHC 3316 (Ch)
[3] *Hilton v Barker Booth & Eastwood* [2005] 1 WLR 567, HL.
[4] Damages at common law, but equitable compensation in equity. They may, however, be available, or assessed, on significantly differing bases depending upon the factual context.
[5] *Lloyds TSB v Markandan & Uddin* [2012] 2 All ER 884.
[6] *Johnson v EBS Pensioner Trustees Ltd* [2002] Lloyd's Rep PN 309.

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or investment managers), or those who will often serve more than one client (again solicitors, and perhaps estate agents). Other classes of professional, such as medical practitioners, or valuers, rarely figure in claims framed in equity, because they will not normally handle client monies, or be acting where there may be a conflict of interests.

5. A word of caution needs to be sounded, however. Critical to any analysis in relation to equitable obligations, where the relevant parties are also in a contractual relationship, are the terms of the contract; it will shape any equitable obligations, and may limit the remedies. As Mason J, as he then was, explained in *Hospital Products Ltd. v. United States Surgical Corporation* (1984) 156 C.L.R. 41, 97, in the High Court of Australia:

> "That contractual and fiduciary relationships may co-exist between the same parties has never been doubted. Indeed, the existence of a basic contractual relationship has in many situations provided a foundation for the erection of a fiduciary relationship. In these situations it is the contractual foundation which is all important because it is the contract that regulates the basic rights and liabilities of the parties. The fiduciary relationship, if it is to exist at all, must accommodate itself to the terms of the contract so that it is consistent with, and conforms to, them. The fiduciary relationship cannot be superimposed upon the contract in such a way as to alter the operation which the contract was intended to have according to its true construction."

6. Thus, an equitable duty against serving only one master may be incompatible with an implied term that an estate agent, or stockbroker can promote the sale of "competing" properties, or shares, belonging to other principals in the same market, and at the same time keep confidential from one principal information obtained from another[7].

[7] *Kelly v Cooper* [1993] AC 205, PC. *Per* Lord Browne-Wilkinson, delivering the judgment of the Board at page 214: "In a case where a principal instructs as selling agent for his property or goods a person who to his knowledge acts and intends to act for other principals selling property or goods of the same description, the terms to be implied into such agency contract must differ from those to be implied where an agent is not carrying on such general agency business. In the case of estate agents, it is their business to act for numerous principals: where properties are of a similar description, there will be a conflict of interest between the principals each of whom will be concerned to attract potential purchasers to their property rather than that of another. Yet, despite this conflict of interest, estate agents must be free to act for several competing principals otherwise they will be unable to perform their function. Yet it is normally said that it is a breach of an agent's duty to act for competing principals. In the course of acting for each of their principals, estate agents will acquire information confidential to that principal. It cannot be sensibly suggested that an estate agent is contractually bound to disclose to any one of his principal's information which is confidential to another of his principals. The position as to confidentiality is even clearer in the case of stockbrokers who cannot be contractually bound to disclose to their private clients inside information disclosed to the brokers in confidence by a company for which they also act. Accordingly in such cases there must be an implied term of the contract with such an agent that he is entitled to act for other principals selling competing properties and to keep confidential the information obtained from each of his principals."

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Transactional liabilities

7. A solicitor handling client monies for the purposes of a commercial, investment, or conveyancing transaction is undoubtedly a trustee of the funds that are entrusted to him; see *per* Lord Browne-Wilkinson in *Target* at page 436C-D[8]. If the solicitor pays away monies which he was instructed to use for a particular purpose, uses those monies for another purpose, including paying them away mistakenly, but honestly, to a person other than the party to whom he is authorised to make payment, or in circumstances outside the scope of his authority, perhaps because the conditions in which payment was authorised had not arisen, the solicitor's liability can be analysed on several different bases:

(i) Negligence, at common law.

(ii) Breach of retainer, which could be based upon an implied term to exercise reasonable care, or in the case of a mortgage lending transaction subject to Council of Mortgage Lenders' terms, release of monies other than upon completion.

(iii) Breach of trust.

(iv) Breach of the Solicitors' Accounts Rules.

8. The liability of solicitors for making unauthorised payments has been the subject of consideration in several recent decisions of the Court of Appeal; *Lloyds TSB Bank plc v Markandan & Uddin* [2012] 2 All ER 884, *Nationwide BS v Davisons* [2012] EWCA Civ 1626, and *Santander v RA Legal Solicitors* [2014] PNLR. In *Markandan* (para 50), applied in all the later cases, it was held that the authority of a purchaser's or lender's solicitor in a purchase or lending transaction depended upon there being completion of a genuine contract by way of an exchange of real money for real documents that would give the purchaser the means to register title. Anything which involved payment of money for worthless forgeries would not amount to completion. Thus, at least on the current state of authorities, a purchaser's solicitor is entitled to part with purchase monies only if he has received genuine title documents enabling registration, or if he has received an undertaking to provide them from the registered proprietor's solicitors; in those circumstances, the purchaser is able to compel completion of his acquisition of title[9]

[8] "I do not intend to cast any doubt on the fact that moneys held by solicitors on client account are trust moneys or that the basic equitable principles apply to any breach of such trust by solicitors. But the basic equitable principle applicable to breach of trust is that the beneficiary is entitled to be compensated for any loss he would not have suffered but for the breach. I have no doubt that, until the underlying commercial transaction has been completed, the solicitor can be required to restore to client account moneys wrongly paid away."

[9]Note that at first instance, the deputy judge, Mr Roger Wyand QC had held that authority to pay away monies arose upon receipt of the "requisite documents" or the vendor's solicitor's undertaking to provide them. However, in *Santander* (*per* Briggs LJ at para 16) it was expressly held that any such undertaking must be given by a solicitor for the genuine vendor, so that an undertaking by a solicitor who had been duped by a rogue would not suffice.

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9. The very recent decision of Mr David Railton QC, sitting as a deputy judge of the Chancery Division, in *Dreamvar (UK) Ltd v Mishcon de Reya and another* [2016] EWHC 3316 (Ch) highlights the stark difference in result that may be achieved when the claim is framed in equity rather than on a common law basis. In that case a rogue posed as the genuine vendor of property; he had probably been a tenant of the true owner. The rogue hoodwinked his own solicitors ("MMS") into believing that he was the registered proprietor. The purchaser of the property retained solicitors ("MDR"). The transaction proceeded apparently normally, with both MMS and MDR adopting the Law Society's Code for Completion by post ("the Code"), 2011 edition. MDR forwarded purchase monies to MMS, who released them to the direction of the rogue. Shortly afterwards the fraud was discovered.

10. MMS accepted that it had failed to carry out anti-money-laundering checks competently; but the judge held that MMS was not liable in negligence to the purchase because it was not MMS's client. Following the reasoning of Mr Robin Dicker QC, sitting as a deputy judge of the Chancery Division in *P&P Property Ltd v Owen White & Catlin* [2017] PNLR 3, he also held that the effect of the 2011 edition of Code was that MMS had not held the monies as a trustee, and that no undertaking given pursuant to the Code rendered MMS liable[10].

Section 61 of the Trustee Act 1925

11. Relief may be available to a trustee under this section, so that the rigours of strict obligation can be mitigated. However, the burden is very much on the trustee to persuade the court to grant relief, and the court's approach will be rigorous – "mercy lies not in the free gift of the court. It comes at a price", as Briggs LJ put it in *RA Legal* (see more below).

12. Applying *Markandan*, the judge in *Dreamvar* held that MDR had, although they were not negligent, acted in breach of trust in paying away the purchase monies, so that they could escape liability to the purchaser only if they could persuade the court to grant relief to MDR under s61 of the Trustee Act 1925[11], on the basis that they had acted honestly, reasonably and ought fairly to

[10] Note that in *Purrunsing v A'Court* [2016] 4 WLR 81 (H H Judge Pelling QC, sitting as a High Court Judge) it was held that a vendor's solicitor was just as much a trustee of purchase monies as the purchaser's solicitor. That case was decided against the background of the 1998 edition of the Code; *Dreamvar* and *P&P* were decided on the 2011 edition. Both *Dreamvar* and *P&P* are listed for hearing together in the Court of Appeal in February 2018.

[11] The section provides as follows: "If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly

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be excused from liability. Mr Railton QC, found that MDR was better able to stand the loss that had been suffered than the purchaser, and declined s61 relief to MDR.

13. Thus, a solicitor who had acted honestly and reasonably and not negligently was found liable on the basis of strict liability for breach of trust. Had the claim been brought in negligence, or breach of retainer, it would have failed. (On the judge's findings, if MMS had been liable, he would have exercised his s61 discretion in favour of MDR; but this does not affect the strictness of the principle of liability arising from the decision in *Markandan.* The exercise of discretion against MDR is also subject to appeal, as is the whole issue of MMS' liability.)

14. The risk that an honest and reasonable, decidedly non-negligent solicitor or other trustee, might fail to obtain s61 relief for an innocent yet strictly non-compliant misapplication of funds was highlighted in the judgment of Briggs LJ in *RA Legal* in an analytical dissection of the provisions of the section at paras 19-34, and particularly at para 33[12], with the warning that "even if the trustee ought fairly to be excused, the court still retains the discretionary power to grant relief from liability, in whole or in part, or to refuse it". However, until *Dreamvar* there had been no case where a solicitor who had acted honestly and reasonably had not been excused; in the cases where relief had been refused, it had been held that the trustee had not acted reasonably. *RA Legal* itself was such a case; contrast *Davisons* where relief had been given where a solicitor had acted reasonably, and a lender was left to nurse the loss.

15. Whatever may be the final outcome in *Dreamvar*, following appeal, where a person has custodial duties as a trustee, equity is always likely to offer a claimant a better prospect of recovery because on any view the liability for unauthorised release of funds is strict, and the burden is very

to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same."

[12] "33 The second main stage of the s.61 analysis, usually described as discretionary, consists of deciding whether the trustee ought fairly to be excused for the breach of trust. This requires that regard be had to the effect of the grant of relief not only upon the trustee, but also upon the beneficiaries: see *Marsden v Regan* [1954] 1 W.L.R. 423 , per Evershed MR at 434; and *Bartlett v Barclays Trust Co. (No.1)* [1980] Ch. 515 , *per* Brightman J. at 538A. Furthermore, s.61 makes it clear that even if the trustee ought fairly to be excused, the court still retains the discretionary power to grant relief from liability, in whole or in part, or to refuse it. In the context of relief sought by solicitor trustees from liability for breach of trust in connection with mortgage fraud, much may depend at this discretionary stage upon the consequences for the beneficiary. An institutional lender may well be insured (or effectively self-insured) for the consequences of third party fraud. But an innocent purchaser may have contributed his life's savings to the purchase and have no recourse at all other than against his insured solicitor, where for example the fraudster is a pure interloper, rather than a dishonest solicitor in respect of whose fraud the losers may have recourse against the Solicitors' Compensation Fund.
34 Relief under s.61 is often described as an exercise of mercy by the court. In my judgment the requirement to balance fairness to the trustee with a proper appreciation of the consequences of the exercise of the discretion for the beneficiaries means that this old-fashioned description of the nature of the s.61 jurisdiction should be abandoned. In this context mercy lies not in the free gift of the court. It comes at a price."

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much on the trustee to establish entitlement to s61 relief; the burden of proof is effectively reversed.

16. For cases of this kind, where it is alleged that a trustee has dealt with assets in an unauthorised fashion, the simplest and most effective relief to claim is an account in common form. This can be coupled with claims for restitution, restoration to the trust fund, and equitable compensation, as well, of course, with claims for damages at common law.

Breach of fiduciary duty

17. Proving a breach of fiduciary duty is often more difficult than proving a breach of trust, because it will usually, but not always, involve showing that the solicitor consciously did something that was wrong. The principles were set out in the judgment of the Court of Appeal in *Bristol & West Building Society v Mothew* [1998] Ch 1. In that case Lord Justice Millett (both other members of the court delivered judgments concurring with his) said at pages 18-20:

> "A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary. As Dr. Finn pointed out in his classic work Fiduciary Obligations (1977), p. 2, he is not subject to fiduciary obligations because he is a fiduciary; it is because he is subject to them that he is a fiduciary.
>
> (*In this survey I have left out of account the situation where the fiduciary deals with his principal. In such a case he must prove affirmatively that the transaction is fair and that in the course of the negotiations he made full disclosure of all facts material to the transaction. Even inadvertent failure to disclose will entitle the principal to rescind the transaction.* The rule is the same whether the fiduciary is acting on his own behalf or on behalf of another. The principle need not be further considered because it does not arise in the present case. The mortgage advance was negotiated directly between the society and the purchasers. The defendant had nothing to do with the negotiations. He was instructed by the society to carry out on its behalf a transaction which had already been agreed.)
>
> The nature of the obligation determines the nature of the breach. The various obligations of a fiduciary merely reflect different aspects of his core duties of loyalty and fidelity. *Breach of fiduciary obligation, therefore, connotes disloyalty or infidelity. Mere incompetence is not enough.* A servant who loyally does his incompetent best for his master is not unfaithful and is not guilty of a breach of fiduciary duty.

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Conduct which is in breach of this duty need not be dishonest but it must be intentional. An unconscious omission which happens to benefit one principal at the expense of the other does not constitute a breach of fiduciary duty, though it may constitute a breach of the duty of skill and care. This is because the principle which is in play is that the fiduciary must not be inhibited by the existence of his other employment from serving the interests of his principal as faithfully and effectively as if he were the only employer. I shall call this "the no inhibition principle." Unless the fiduciary is inhibited or believes (whether rightly or wrongly) that he is inhibited in the performance of his duties to one principal by reason of his employment by the other his failure to act is not attributable to the double employment.
Finally, the fiduciary must take care not to find himself in a position where there is an *actual* conflict of duty so that he cannot fulfil his obligations to one principal without failing in his obligations to the other: see *Moody v. Cox and Hatt* [1917] 2 Ch. 71; *Commonwealth Bank of Australia v. Smith* (1991) 102 A.L.R. 453 . If he does, he may have no alternative but to cease to act for at least one and preferably both. The fact that he cannot fulfil his obligations to one principal without being in breach of his obligations to the other will not absolve him from liability. ... "

(Emphases added)

Note, in the passage emphasised in the second paragraph just cited, how in the case of self-dealing with a principal (for example, an IFA recommending an investment in a business in which he has a personal interest), conscious disloyalty is not required; inadvertent non-disclosure gives rise to a liability. In such circumstances, even though the investment might be competently advised, and there is no issue of disloyalty, liability will still be made out, unless full disclosure is made, and the transaction is proved to have been fair. Therefore, in a case of self-dealing (by the fiduciary on his own account or on behalf of another principal), absent necessary disclosure, the fiduciary will expose himself to the full restorative equitable remedies, considered more fully below. These are likely to lead to a far more beneficial result for the injured party than a common law claim framed, say, as negligent advice concerning a property deal.

Account of profits

18. Where in breach of fiduciary duty an agent makes a secret commission (for example on a bribe), not only will he be fully accountable for the amount concerned, but the principal will have a proprietary claim extending to profits made with that commission, and the principal will also be able to invoke a tracing remedy; see *FHR European Ventures LLP v Cedar Capital Partners LLC* [2015] AC 250, SC. Contrast this with the position at common law where there would be no claim at all on such a basis, though damages would be recoverable if the bribe had caused the principal to lose a better commercial opportunity.

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Contributory negligence

19. Very frequently in lender claims it is argued by defendants that there was a failure to follow the lender's own criteria, or a failure to follow up an adverse comment by a surveyor, or solicitor's comment about title, or to make proper enquiry as to the borrower's means, or the ability of a guarantor to pay. Contributory negligence is not available as a defence in breach of trust or fiduciary duty cases.

20. Mr Justice Blackburne held in *Nationwide BS v Balmer Radmore* [1999] PNLR 606[13] and *Nationwide BS v Thimbleby* [1999] PNLR 733 that as with the case of intentional torts such as deceit, contributory negligence could not be relied upon as a defence to deliberate breach of fiduciary duty, such as lying to a lender, or suppressing suspicious circumstances concerning a transaction. In *Markandan* the deputy judge held that a contributory negligence defence was not available in respect of a breach of trust.

Failure to mitigate

21. Failure to mitigate is not in itself an answer to breach of trust or breach of fiduciary duty.

> "When the plaintiff, after due notice and opportunity, fails to take the most obvious steps to alleviate his or her losses, then we may rightly say that the plaintiff has been 'the author of his own misfortune'. At this point the plaintiff's failure to mitigate may become so egregious that it is no longer sensible to say that the losses which followed were caused by the fiduciary's breach. But until that point, mitigation will not be required."

Per McLachlin J, as she then was, in *Canson Enterprises Ltd v Broughton & Co* (1991) 85 DLR (4th) 129 (Supreme Court of Canada), whose judgment was referred to with express approval by Lord Browne-Wilkinson in *Target* at p.438D.

Causation

22. In typical damages claims for negligence, causation points are frequently raised. For example, in a lender's claim, or a claim against a trustee making unauthorised investments, it will be said that the loss would have been sustained anyway because of a fall in the market. Subject to one

[13] Having referred to much authority and much learned commentary in leading texts, Blackburne J said at p676: "I therefore take the view that where, in order to establish a breach of fiduciary duty, it is necessary to find that the fiduciary was consciously disloyal to the person to whom his duty was owed, the fiduciary is disabled from asserting that the other contributed, by his own want of care for his own interests, to the loss which he suffered flowing from the breach. To do otherwise, as Gummow J. pointed out in his article in *Equity, Fiduciaries and Trusts* , risks subverting the fundamental principle of undivided and unremitting loyalty which is at the core of the fiduciary's obligations. In his article he pointed to the "unwisdom of entangling the already complex law as to fiduciary duties with notions of contributory negligence" …."

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significant qualification, these common law defences are not traditionally available in respect of breach of trust, or breach of fiduciary duty. In *Target Holdings Ltd Redferns* [1996] 1 AC 421, Lord Browne-Wilkinson said at 434F:

> "… the common law rules of remoteness of damage and causation do not apply. However there does have to be some causal connection between the breach of trust and the loss to the trust estate for which compensation is recoverable, viz. the fact that the loss would not have occurred but for the breach …"

23. In cases of breach of fiduciary duty, where, by definition, there has to have been conscious disloyalty, these observations probably are still fully applicable. As Millett LJ explained in *Bristol & West Building Society v Mothew* [1998] Ch 1 at 17H:

> "Equitable compensation for *breach of the duty of skill and care* resembles common law damages in that it is awarded by way of compensation to the plaintiff for his loss. There is no reason in principle why the common law rules of causation, remoteness of damage and measure of damages should not be applied by analogy in such a case. *It should not be confused with equitable compensation for breach of fiduciary duty; which may be awarded in lieu of rescission or specific restitution."* (Emphasis added)

24. Even if rescission is not available, equitable compensation will be available in its place so as to place the parties, as nearly as money is able to do, in the position they would have occupied had the transaction been rescinded; *Snell's Equity* 33rd ed. At paragraph 7-053. A striking example of this *Britannia BS v Druitts*[14]*,* a decision of His Honour Judge Malcolm Lee QC, sitting as a High Court Judge (Birmingham Mercantile Court) 21st March 1997. In that case, a solicitor's clerk deliberately misled a lender as to title to a strip of land giving access to a development site. It was held that full restorative compensation of £391,992.51 was payable, against an express finding that only £68,129.26 would have been payable upon a common law claim; the difference largely being accounted for by a dramatic decline in the value of Cornish development land following the late 1980s property crash. See also *Mahoney v Purnell* [1996] 3 All ER 61 (May J, as he then was).

25. **NB:** The important qualification of the principle of full restoration, however, is that in cases not concerned with (i) breaches of fiduciary duty (in the sense explained by Millett LJ in *Mothew*) or

[14] I can provide an electronic copy of this decision to anyone who would like to obtain it.

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(ii) traditional trusts, but where the trust concerned arises out of a contract rather than from a gift, and where the trustee is acting simply in furtherance of a commercial transaction (for example a solicitor in a conveyancing transaction), the extent of any compensation afforded in equity is likely to resemble that at common law; see *AIB (UK) plc v Redler* [2015] AC 1503, SC, unless completion has not, from a commercial perspective, taken place. In that case the Supreme Court held that the liability of a solicitor to a mortgage lender for unauthorised release of funds was confined to the sum equating to the amount by which the solicitor had failed to pay to redeem an outstanding charge, and did not extend to other consequential losses arising from the transaction. This result was achieved by holding that completion of the transaction concerned had been achieved when the relationship of lender and borrower between bank and borrower came into existence, so that "commercial completion" had been achieved. Such reasoning in relation to completion would not affect cases such as *Markandan* where no title was acquired at all, and no completion on any view took place.

Limitation

26. A claim to recover trust property is not bared by a six-year limitation period; section 21(1)(b) of the Limitation Act 1980. Generally, limitation periods do not, as such apply to equitable claims, but only "in so far as any such time limit may be applied by the court by analogy in like manner as the corresponding time limit under any enactment repealed by the Limitation Act 1939 was applied before 1st July 1940"; s36 of the 1980 Act. The approach to this intriguing provision that commended itself to the Court of Appeal in *Cia de Seguros Imperio v Heath (REBX) Ltd* [2001] 1 WLR 112, was formulated by Waller LJ, namely, "the court is not looking to see whether a limitation period *was actually* applied to a dishonest breach of fiduciary duty by analogy before 1 July 1940, but looking to see whether it *would have been* applied. … What the court must do is act "in like manner" to a court sitting prior to 1 July 1940."[15]

27. Where a fiduciary acts dishonestly the limitation period does not apply: *Gwembe Valley Development Co v Koshy* [2003] EWCA Civ 1478; see Mummery LJ's careful analysis at paras 71-112. Limitation does not run where the fiduciary has deliberately suppressed facts relevant to the principal's cause of action; *Newgate Stud Co v Penfold* [2004] EWHC 2993 (Richards J).

[15] Clarke LJ, as he then was, expressed the view that "it should not be necessary in the year 2000 to decide whether a claim is time-barred by reference to what a court of equity either did or would have done more than 60 years ago." Sir Christopher Staughton was of the same view, but they both adopted the course described by Waller LJ.

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Interest

28. Compound interest can be awarded on any sum ordered to be paid in respect of a breach of fiduciary duty. *Primlake Ltd (in Liquidation) v Matthews Associates* [2006] EWHC 1227 (per Mr Justice Lawrence Collins, as he then was).

Jeremy Cousins QC is a practising barrister, and also sits as a deputy High Court judge in the Chancery Division. He is the consultant editor of Third Party Litigation Funding *by Nick Rowles-Davies (OUP, 2014). Nothing in these notes or the related seminar constitutes legal advice, and it is not anticipated that it will be relied upon as such.*

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