Dell injunctions were to be treated similarly. But the principle should be called by its proper name.

Arguably, therefore, the "contractual" genus of anti-suit injunctions actually involves two species arising in three different factual paradigms: (1) where the respondent is uncontroversially bound by the exclusive jurisdiction clause; (2) where the respondent is precluded from pleading that it is not bound by the clause; and (3) where the respondent is not bound by the clause but its "equitable equivalent". Both (2) and (3) are "quasi-contractual" in conceptually different senses. The label obscures these distinctions.[46]

Myron Phua*
Serena Seo Yeon Lee†

WHAT'S "UNJUST" ABOUT UNJUST ENRICHMENT: AN ANSWER AT LAST?

SFM v Christ the King College

The law of unjust enrichment has been dogged by a persistent question: what explains the claimant's entitlement to restitution from the defendant? For Professor Birks, the answer lay in appeal to the simple intuition that the payor of a mistaken payment was entitled to its return;[1] but this view of the law, which principally focuses on the combination of some enrichment of the defendant and some vitiation of the claimant's will, is not short of modern-day detractors.[2] However, the leading alternatives fare little better, leaving us with a still-open question. In *School Facility Management Ltd v Governing Body of Christ the King College*[3] we find the seeds of an answer: the express or implied conditions on which we act.

The facts

Christ the King College ("the College") was a voluntary aided school maintained by the Isle of Wight Council ("the Council"). In February 2009, the Council agreed to

46. *Cf Clearlak*e, [25], deeming it "terminology ... unfortunate".

* The Queen's College, Oxford.
† Lucy Cavendish College, Cambridge.

1. P Birks, *An Introduction to the Law of Restitution*, rev'd edn (Clarendon, Oxford, 1989), 16.

2. There are doubts about the truth of the moral principles said to underpin explanations of this kind, as well as the extent to which the positive law in fact coheres with such explanations. See eg F Wilmot-Smith, "Should the payee pay?" (2017) 37 OJLS 844; R Stevens, "The unjust enrichment disaster" (2018) 134 LQR 574; and L Smith, "Restitution: a new start?", in P Devonshire and R Havelock (eds), *The Impact of Equity and Restitution in Commerce* (Hart, Oxford, 2018). *Cf* A Burrows, "In defence of unjust enrichment" (2019) 78 CLJ 521.

3. [2020] EWHC 1118 (Comm) (hereinafter "*SFM*").

© Informa UK plc. No unauthorised copying or sharing of this document is permitted

permit the College to expand so as to include a sixth form. A search ensued for the means by which to accommodate the new sixth form students. Near the end of 2011, the College approached Built Offsite Ltd ("BOS"), a specialist in modular construction. It was agreed in principle that BOS would construct the accommodation block, and then sell its title to the building to BOSHire Ltd ("BOSHire"), a joint venture company formed by BOS and Summit Asset Management Ltd; BOSHire would then lease the site to the College. Detailed negotiations ensued, during which one of the key concerns was that the lease be properly construed, by accounting standards, as an "operating lease" rather than a "finance lease" (as the College had no power to enter into a contract of the latter sort). A contract was ultimately concluded on 30 April 2013 between the College and BOSHire ("the Contract"). On the same day, the latter assigned its rights to payment under the Contract to School Facility Management Ltd ('SFM'), a subsidiary of BOSHire which was incorporated on 22 April 2013 for the purpose of raising finance for the Contract. At the same time, or shortly thereafter, title to the accommodation block was also conveyed to SFM. Finally, on 4 July 2013, SFM in turn assigned its rights to payment under the Contract to GCP Asset Finance 1 Ltd ("GCP").

The College took possession of the accommodation block on 5 September 2013, but soon found itself in financial difficulties. On 5 September 2017, the College was unable to make the annual payment due under the Contract, which, on 8 November 2018, ultimately led to the commencement of proceedings by SFM against the College (to which BOSHire and GCP were eventually joined as co-claimants). Collectively, the claimants sought to recover the unpaid sums due under the Contract from the College, as well as damages for consequential losses occasioned by the failure to make timely payment. In its defence, the College pleaded that the Contract was *ultra vires*, in response to which the claimants sought alternative relief on the grounds of misrepresentations and/or negligent misstatements by the College that the Contract was *intra vires*, as well as restitution for unjust enrichment in respect of the grant of the lease. The College also brought a counterclaim in unjust enrichment for restitution of the sums paid under the Contract.

The decision

Foxton J held that the Contract was, in reality, a finance lease, and therefore *ultra vires*.[4] However, the misrepresentation/misstatement claims failed at almost every hurdle. Insofar as based on negligent misstatement, it was held that no duty of care was owed.[5] Moreover, no alternative claim under the Misrepresentation Act 1967 could succeed, given that no valid contract was ever formed.[6] Moreover, the only relevant representations were statements of the College's *opinion* that the Contract was *intra vires*, and this opinion was genuinely held (and so the representations were not false).[7] In any case, there was no reliance upon the relevant

4. *SFM*, [163–255].
5. *SFM*, [394].
6. *SFM*, [368].
7. *SFM*, [387].

© Informa UK plc. No unauthorised copying or sharing of this document is permitted

representations,[8] nor was any loss proved to have been suffered as a consequence of the representations.[9] Finally, any claim would have been barred on the basis that the relief sought aimed at indirectly enforcing an *ultra vires* contract.[10]

As regards the unjust enrichment claims, it is helpful to begin with the College's counterclaim. It was held that, *prima facie*, the College had a good claim against SFM for approximately £2.5 million.[11] However, SFM had a defence of change of position in respect of approximately £5.8 million, such sums being money SFM had paid to BOS in anticipation of the receipt of rent under the Contract, the effect of which was to bar the claim in its entirety.[12] Foxton J held that there was no rule against anticipatory changes of position in respect of money paid under an *ultra vires* contract.[13]

The most complicated issues were raised by the various unjust enrichment claims brought against the College. Foxton J held, following *Investment Trust Companies v HMRC*,[14] that the proper claimant was SFM, as SFM was the person at whose direct expense was the grant of the lease to the College. Although BOSHire was the original contracting party, and held title to the accommodation block at that time, BOSHire's title had been conveyed to SFM before the College took possession.[15]

SFM's claim was not barred on the basis that it "took the risk" that the Contract was *ultra vires*. First, SFM did not, on the facts, run any such risk.[16] However, even if it had, the grant of the lease was subject to two conditions (the validity of the Contract, as well as the anticipated counter-performance by the College)—SFM's "risk-taking" was relevant only to the former, and SFM had only to establish failure of a single condition for its claim to succeed.[17]

Accordingly, SFM was *prima facie* entitled to recover the market value of the lease[18] (which was considerably lower than the contract price),[19] from the period from when the College took possession until the date of judgment (but not after).[20] However, SFM's claim for part of this period—from the taking of possession (September 2013) until the discontinuation of payments under the Contract (September 2017)—was ultimately barred as a result of the College's payments. Foxton J suggested three possible reasons for this conclusion: first, that the College's enrichment during this period was not at SFM's expense, as SFM was being paid; second, that there was no unjust factor during this period; or, third, that the College's payments, which were irrecoverable by the College due to SFM's change of position, grounded a defence of change of position.[21] The net effect was that SFM was entitled to claim only from September 2017 until the date of

8. *SFM*, [373]
9. *SFM*, [400].
10. *SFM*, [363].
11. *SFM*, [453].
12. *SFM*, [482].
13. *SFM*, [475–478].
14. [2017] UKSC 29; [2018] AC 275.
15. *SFM*, [405–408].
16. *SFM*, [424].
17. *SFM*, [419–423].
18. *SFM*, [425].
19. *SFM*, [426–428].
20. *SFM*, [433–439].
21. *SFM*, [502].

© Informa UK plc. No unauthorised copying or sharing of this document is permitted

judgment, it being no obstacle to this claim that the College had previously been paying a sum considerably greater than the market value of the lease.[22]

Enrichment

Enrichment-based models of unjust enrichment have recently come under heavy fire. The criticisms thereof have been developed elsewhere at considerably greater length than would be possible here, and so will not be repeated.[23] However, the decision in *SFM* adds two further reasons to doubt their soundness as justifications of the law as it stands.[24]

The first of these is the fact that SFM's restitutionary counterclaim was quantified at the market value of a lease of the block, rather than by reference to the extent to which the College was genuinely better off due to that which it received. In reaching this conclusion, Foxton J was merely applying the earlier decision of the Supreme Court in *Benedetti v Sawiris*;[25] nonetheless, the case remains a useful illustration of the explanatory shortcomings of enrichment-based models.

There are two senses in which we may say that a person has been "enriched" by a given set of circumstances.[26] In the first sense, we might point to their enjoying a better overall state of being after the occurrence of the relevant circumstances than they would have, had those circumstances not occurred (ie, they have been "counterfactually enriched"); in the second, we might point to their enjoying a better overall state of being after the occurrence of the relevant circumstances than they did immediately prior to the occurrence of the relevant circumstances (there is no common compendious term for this concept, but I shall call it "chronological enrichment").

Quantification of the College's "enrichment" as the market value of the lease does not fit either sense of enrichment. Starting with "counterfactual enrichment", an obvious problem is that quantification based on the market value looks only to what the College has *received*; in drawing the relevant counterfactual comparison, it cannot be ignored that the College also *paid for* the lease. Although Foxton J did hold that

22. *SFM*, [503–504].

23. See *supra*, fn.2. Interesting discussion may also be found in (amongst others): S Smith, "Justifying the law of unjust enrichment" (2001) 79 Texas L Rev 2177; P Saprai, "Restitution without corrective justice" [2006] RLR 41; K Barker, "Responsibility for gain: unjust factors or absence of legal ground?", in C Rickett and R Grantham (eds), *Structure and Justification in Private Law* (Hart, Oxford, 2008); D Klimchuk, "The normative foundations of unjust enrichment", in R Chambers, C Mitchell, and J Penner (eds), *Philosophical Foundations of the Law of Unjust Enrichment* (OUP, Oxford, 2009); C Webb, "Property, unjust enrichment, and defective transfers", in R Chambers, C Mitchell, and J Penner (eds), *Philosophical Foundations of the Law of Unjust Enrichment* (OUP, Oxford, 2009); T Cutts, "Modern money had and received" (2018) 38 OJLS 1; and J Penner, "We all make mistakes: a 'duty of virtue' theory of restitutionary liability for mistaken payments" (2018) 81 MLR 222.

24. Much confusion is generated by a failure to be clear about whether one intends a criticism of the soundness of a moral principle said to justify the law, or a criticism of whether the rules we find in the positive law in fact follow from such a justificatory principle. For the avoidance of doubt, and at the risk of pointing out the obvious, I rely here on *SFM* for criticisms in the latter vein, not the former.

25. [2013] UKSC 50; [2014] AC 938.

26. These two senses are the obverse of two possible approaches to 'harm' outlined in J Feinberg, "Wrongful life and the counterfactual element in harming" (1986) *Social Philosophy and Policy* 145, building upon a model first articulated in J Feinberg, *Harm to Others* (OUP, Oxford, 1984).

© Informa UK plc. No unauthorised copying or sharing of this document is permitted

these payments barred SFM's claim for the period during which they were being made, he did not reach this conclusion on the basis that the College was not enriched during this period.[27] Moreover, even if one disregards outgoings, there was no consideration of what the College would actually have done but for the Contract, and it is impossible to identify the extent of any counterfactual enrichment without first identifying the correct counterfactual.[28] It is certainly not obvious that, but for the Contract, the College would have received "the market value of the lease" less in value than what it in fact did receive. Indeed, this seems to postulate that, counterfactually, the College would not have received any lease, which seems unlikely; it is far more likely that the College would have entered into a different contract, on substantially the same terms (and at a similar price) save that the contract was modified so as to be an operating lease. The first of these problems—the focus purely on what the College received, rather than its *net* enrichment—applies equally to the proposition that the College was "chronologically enriched".

One might object that there is a further sense of "enrichment", which focuses precisely on the "receipt" side of what I have called chronological enrichment, which would identify the College as having been enriched by the extent of the market value of the lease (in virtue of having received the lease itself). It is certainly true that many cases of "unjust enrichment" have looked at enrichment in terms of this concept.[29] For instance, in *Vodafone*, Sir Geoffrey Vos C stated that "there is no need in this case to look beyond Ofcom's receipt of monies without lawful entitlement"[30] (although this statement was primarily concerned with hypothetical counterfactual gains, rather than corresponding expenses). However, the idea that this concept is properly called "enrichment", or (more importantly) properly invokes the supposed normativity of gain, is implausible. On this definition, both my friend and I would be "enriched" if we were to exchange identical £20 banknotes with one another. That some cases have described mere receipts as "enrichments" is a reason to doubt whether the law is truly concerned with enrichment *per se*, rather than a reason to hypothesise a new meaning of that word.

The second aspect of the judgment in *SFM* which sits uneasily with enrichment-based conceptions of the law is Foxton J's conclusion that SFM was entitled to recover in respect of the period between when the College discontinued payment under the Contract and the date of judgment despite the fact that the College had previously been paying considerably above market rate. Enrichment-based models postulate that there is some "peculiar normativity of extant gain" which justifies restitution;[31] if that is so, it follows that the law must focus on the extent to which the defendant has been enriched

27. *SFM*, [502].

28. *Cf Vodafone Ltd v Office of Communications* [2020] EWCA Civ 183 and the cases discussed therein at [59–88]. It is clear from [92–93] that an essential part of the Court of Appeal's judgment in *Vodafone* was that counterfactual reasoning *in the context of ultra vires levies* was inappropriate because it was in violation of the constitutional principle that money cannot be levied without the authority of Parliament—therefore, *Vodafone* is of little relevance for present purposes.

29. But *cf Kleinwort Benson Ltd v Sandwell BC* [1994] 4 All ER 890, 941 (Hobhouse J) and *Goss v Chilcott* [1996] AC 799, 798. These cases were discussed in the report of the permission to appeal hearing: *School Facility Management v Governing Body of Christ the King College* [2020] EWHC 1477 (Comm) ("*SFM* (PTA)"), [9–27].

30. *Vodafone* [2020] EWCA Civ 183, [97].

31. P Birks, *Unjust Enrichment*, 2nd edn (OUP, Oxford, 2005), 208.

© Informa UK plc. No unauthorised copying or sharing of this document is permitted

(counterfactually or chronologically) *overall*. The total outgoings of the defendant, up to the date of trial, must be set off against the totality of that which they have received;[32] this process cannot be sub-divided into chronological chunks. Therefore, if recovery was truly justified by the extent to which the College had made an "extant gain", it ought to have been necessary to take into account the fact that the College had made a substantial net loss in the transaction during the period for which it had been making payments under the Contract.[33]

Absence of basis

However, the primary modern alternative to the various "enrichment" models—Stevens' claim that at least some of the law of unjust enrichment is concerned with performances without justifying bases—is also not without difficulty.[34] Stevens writes:[35]

> "A defendant who receives a performance from a claimant does so either on the basis that it is made for some justified reason, or that it is not. If the recipient knows from the outset that there is no justifying reason for the performance … [or] initially believes that there is a good reason for the performance, or does not care, and the claimant can now show that there was not … the defendant must make restitution."

The difficulty lies in the role of a "justifying" reason. It is clear, in context, that a justifying reason is supposed to justify "retention" of the performance; in other words, it is a reason against awarding restitution in respect of that performance. But the absence of such a reason, therefore, indicates only that there is no objection to an award of restitution—it does not provide a positive reason in favour of restitution.[36] Something more is necessary in order to bridge the gap, and Stevens does not suggest what this might be.

Or failure of condition?

The judgment in *SFM* appears to identify one promising answer: conditionality. Foxton J began his consideration of whether SFM's claim was barred for "risk-taking" by identifying the two ways in which unjust enrichment claims in respect of ultra vires contracts have been conceived—first, as cases of "mistake", the relevant mistake being a mistaken belief in the validity of the contract; and, second, as cases of failure of basis or condition, the

32. Although, obviously, the law need only look to those outgoings which are causally connected to the enrichment in question.

33. Again, this point received some discussion in the report of the permission to appeal hearing: *SFM* (PTA), [21–24].

34. This involves something of a simplification. The two dominant models are "enrichment coupled with an unjust factor" and "performance without basis"; however, in principle there can be distinct debates about "enrichment" versus "performance", and "unjust factors" versus "absence of basis". Nevertheless, for present purposes, nothing is obscured by acting as if there were a dichotomy between the two dominant views.

35. Stevens (2018) 134 LQR 574, 581.

36. See further Barker, *supra*, fn.23.

© Informa UK plc. No unauthorised copying or sharing of this document is permitted

relevant condition being the anticipated counter-performance.[37] Interestingly, however, Foxton J proceeded to state that: "In those cases where the claimant is aware of and can be taken to have assumed the risk that there is no binding contract, that may have the effect that the claimant cannot allege that the payment was conditional on the existence of a binding contract."[38] This appears to treat the supposed unjust factor of "mistake" as merely one way in which it can be shown that some precondition of the claimant's actions has failed. This reading is supported by Foxton J's application of his analysis to the facts, which reads:[39]

> "[T]he provision of the Building to the College was clearly conditional in the sense that it was the joint understanding of SFM and the College that it was to be paid for … That condition having failed in respect of the period after September 2017, SFM is entitled to a remedy in unjust enrichment. I do not believe that it would be an answer to that claim if it was not open to SFM to contend *the transfer of benefit was also conditional in a second respect (namely that the Contract was binding)* because SFM had taken the risk that the Contract was void."

Yet further support for the proposition that Foxton J treated the supposed "unjust factor" of mistake as relevant to the conditionality of the transfer can be found in his explanation of why SFM's claim failed in respect of the period between September 2013 and September 2017 (during which time the College was tendering payments under the Contract). One of his suggested reasons for this conclusion was that there had been no failure of condition during this period.[40] Given that Foxton J concluded that SFM did not run the risk that the Contract was *ultra vires*, and so was not on the facts barred from relying upon this mistake,[41] it must follow that "mistake" is not a reason for restitution distinct from "failure of condition". Otherwise, Foxton J's conclusion that there was no failure of condition could not be a complete reason for denying SFM's claim for this period (as it does not rule out the possibility of SFM relying upon the supposedly distinct unjust factor of mistake).

The implicit suggestion in *SFM* that "mistaken payments" are, in fact, recoverable because they are payments rendered on a failed condition bridges the justificatory gap presented by "absence of basis" theories of unjust enrichment. A "basis", on this view, is not merely a justifying reason *against* restitution, it is also something on which the claimant's performance was conditional. Once the condition has failed, it is the ordinary normativity of conditionality which justifies restitution. Indeed, this also explains the centrality of "agreement" to Stevens' notion of performance, which has been criticised for lacking normative significance.[42] If the reason for restitution is that some condition has failed, it must follow that the condition is one to which the defendant has agreed; it is only the defendant's agreement to the condition which enables it to later bind them.

37. *SFM*, [420].
38. *SFM*, [422].
39. *SFM*, [423] (emphasis added).
40. *SFM*, [502].
41. *SFM*, [424].
42. See Burrows (2019) 78 CLJ 521, 533–534.

© Informa UK plc. No unauthorised copying or sharing of this document is permitted

In defence of conditions

The idea of implied conditions should not strike anyone as a particularly novel concept; they are, in fact, an entirely commonplace feature of our daily interactions with the world. Nevertheless, many will find the idea of implied conditions—and agreements thereto—startling. It may be helpful to say some brief words in their defence, although a full explanation is a task for a longer paper.[43]

When we act, or make statements about our intentions to act, much is left unsaid. If I promise to meet a friend at the cinema, I need not say that my obligation to show up on time is conditional upon there being no intervening natural disasters. Similarly, if, once we arrive, we purchase popcorn from the cinema cashier, we need not explain to the sales assistant that we only intend so to purchase if we can take the popcorn into the movie theatre itself. If we were stopped at the door to the theatre, we would be perfectly entitled to demand our money back from the cashier. All of these conditions are, without second thought, implied into our communicative acts.[44] In other words, there are two ways in which we can attach conditions to our actions. Obviously, we can spell them out expressly, and secure the express assent of the person we intend to bind. But, equally, the circumstances may be such that the condition would be obvious to a reasonable person, which makes express communication of the condition unnecessary.[45]

This naturally raises the question why, in cases of the second kind, the defendant has "accepted" the claimant's condition; for this, we must return to Stevens idea of "performance" and the requirement that performances be accepted. To say that the claimant has sought to attach a condition to some performance is, essentially, to say that the claimant has offered to perform subject to that condition. As we know, an acceptance is, in turn, necessarily an acceptance of the offer which was made[46] (whether or not that offer amounted to a contract).[47] It follows, therefore, that a defendant who has accepted the claimant's performance must also have accepted the condition attached thereto.[48]

Conclusion

The intuition that the recipient of a mistaken payment should return the payment comes easily; an explanation for that intuition is far less simple. A generalised failure of

43. Helpful analyses of implied conditions, and their ubiquity, can also be found in: R Scheer, "Conditional intentions" (1989) 12 *Philosophical Investigations* 52; L Ferrero, "Conditional intentions" (2009) 43 *Noûs* 700; G Klaas, "A conditional intention to perform" (2009) 15 *Legal Theory* 107; and J Gillessen, "Reasoning with unconditional intention" (2017) 42 J of Philosophical Research 177.

44. This, of course, raises interesting questions—from which I must sadly prescind—about the relationship between implied conditions and other aspects of private law, such as the law on mistake, frustration, and termination for breach of contract. See, eg, the justifications (which have, admittedly, now fallen out of favour) given in *Taylor v Caldwell* (1863) 3 B & S 826, 833–834; 122 ER 309, 312 and *Bell v Lever Brothers Ltd* [1932] AC 161, 224–227.

45. The parallels between this formulation and the test for remoteness in *Hadley v Baxendale* (1854) 156 ER 45 are not coincidental.

46. *Hyde v Wrench* (1840) 3 Beav 334.

47. *Hill v Wilson* (1873) LR 8 Ch App 888, 896.

48. It must remain a matter for another time to show that defendants generally do, in fact, accept performances (rather than make counter-offers which are mistakenly acted upon as if they were acceptances). The issue of bases other than those which the claimant had in mind must also remain a matter for another time.

© Informa UK plc. No unauthorised copying or sharing of this document is permitted

condition model, the early hints of which can be seen in *SFM*, may bring us closer towards a solution. However, some substantial loose ends remain.

The most significant of these concerns the scope of any condition-based model. *SFM* concerned a transaction which could either have been, traditionally, said to have been made by "mistake" or for which the condition had totally failed. Yet the law conventionally thought to fall into the category of "unjust enrichment" extends far beyond these two categories, including transactions induced by duress, payments of *ultra vires* levies, and discharges of the obligations of others. It is possible that only some, not all, of these areas of law can be brought within a condition-based understanding of unjust enrichment.

Moreover, the decision in *SFM* still leaves some difficult questions. For instance, Foxton J accepted that a defence of change of position lies in response to a claim based on failure of an (express) condition; however, this position has been robustly criticised for rewriting the bargain between the parties.[49] Unfortunately, Foxton J's judgment had little to say about these concerns. Some resolution of this issue may be called for, particularly if there is merit in a generalised condition-based model (as is some consideration of the differences, if any, between express and implied conditions for the purposes of change of position).

Moreover, greater clarity over why SFM's claim in respect of the period between September 2013 and September 2017 was barred would do much to assist our understanding of the theoretical underpinnings of the law of unjust enrichment. Foxton J's suggestion that the condition in respect of this period did not fail (as the College was making payments)[50] is, at best, underdeveloped: Foxton J also held that the validity of the Contract was a condition, and that only one condition need fail in order to ground recovery.[51] Foxton J's suggestion that the lease was not, during this period, at SFM's expense treats the "at the expense of" requirement as one concerned with establishing a factual detriment, rather than establishing a direct correlative link between the claimant and defendant.[52] Finally Foxton J's suggestion that the College had, in respect of this period, a change of position defence only invites the questions about change of position raised above.

Nonetheless, there is much to commend about the decision in *SFM*. It is increasingly clear that the modern law of unjust enrichment is at an important theoretical crossroads; it can only be hoped that the valuable insights to be gleaned from Foxton J's judgment inform the road down which the law eventually chooses to travel.

Alexander YS Georgiou*

49. See Stevens (2018) 134 LQR 574, 587.

50. *SFM*, [502].

51. *SFM*, [421]. It may be possible that a more nuanced conception of the relevant conditions involved might explain how no conditions failed during the September 2013 to 2017 period. In particular, a reimagining of the "spent condition" analysis in P Birks, "No consideration: restitution after void contracts" (1993) 23 UWALR 195, 230 may be tenable.

52. See *Investment Trust Companies v HMRC* [2017] UKSC 29; [2018] AC 275, [42]; although *cf* the ambiguous language of loss at [43].

* All Souls College, University of Oxford. My thanks to Jordan English, Matthew Hoyle, Emma Rawkins and William Swadling, whose comments on this piece in draft were invaluable.

© Informa UK plc. No unauthorised copying or sharing of this document is permitted