Judgment 36/2003

Virani v Guernsey International Trustees Ltd and Bennett
Royal Court
(Civil Action File 495)
1st August, 2003

Trusts (Guernsey) Law, 2003 – presentation by litigants in person – trustees' claim for remuneration and/or fees under s.30 – legal expenses incurred by trustees – distinction between Beddoes type application and contentious application – requirement to keep accounts under s. 21. [See also Judgments 11/2003 and 24/2003]

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 1st day of August, 2003 before Patrick John Talbot Esquire QC., sitting alone

In the matter of

MRS PRAPHULBALA VIRANI

Applicant

and

GUERNSEY INTERNATIONAL TRUSTEES LIMITED

First Respondent

TIM BENNETT

Second Respondent

and

BETWEEN

GUERNSEY INTERNATIONAL TRUSTEES LIMITED and TIM BENNETT
(in their capacity as trustees)

Applicants

and

MRS PRAPHULBALA VIRANI

First Respondent

MR NIZARALI RAJABALI VIRANI

Second Respondent

Whereas on 24th, 25th, 26th, 27th , 28th, March the Lieutenant Bailiff considered applications relating to

(i) the claims of Guernsey International Trustees and Mr T. Bennett, as trustees of the Arrow Trust from the date of their appointment as Trustees on about 27 January 1997 until their removal on 10 October 2000; and

(ii) the claims of Guernsey International Trustees as sole trustee of the Golden Trust and the Lynwood Settlement from the inception of these two trusts in May 1997 to 10 October 2000, (when GIT was removed as Trustee,)

and heard thereon

Mrs P. N. Virani in person and, with the leave of the Court, appearing by her husband Mr Nizarali Virani in both the above proceedings;

Mr Nizarali Virani in person in the second-named above proceedings;

Guernsey International Trustees Limited, appearing, with the leave of the Court, by its directors, namely, Mr Tim Bennett and Mr Michael Nagle, in both the above proceedings and;

Mr Tim Bennett in person in both the above proceedings

The Lt Bailiff this day gave judgment in the terms attached hereto and found;

1) the former trustees' remuneration and fees are properly chargeable and payable out of the trust assets of each of the Arrow Trust, the Lynwood Settlement and the Golden Trusts during the periods of trusteeship of the former trustees as trustees of the Arrow Trust and during the periods of trusteeship of Guernsey International Trustees as former trustee of the Golden Trust and the Lynwood Settlement.
2) that no fees or charges raised by Collas Day for acting as Advocates to the former trustees after 10 October 2000 are properly reimbursable to the former trustees out of the trust assets of the 3 Trusts and;

ORDERED (unless either Mrs Virani or the former trustees make application to the Royal Court in this connection by 4 p.m. on Friday 22 August 2003 for a further hearing as to the time for, and scope of, proper trust accounts,) that the former trustees produce to Mrs Virani trust accounts in unaudited form for each of the said 3 Trusts by 4 p.m. on Friday 12 September 2003.

S. M. D. ROSS
Her Majesty's Deputy Greffier

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

BETWEEN

MRS PRAPHULBALA VIRANI

Applicant

and

GUERNSEY INTERNATIONAL TRUSTEES LIMITED

First Respondent

TIM BENNETT

Second Respondent

And

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

BETWEEN

GUERNSEY INTERNATIONAL TRUSTEES LIMITED and TIM BENNETT
(in their capacity as trustees)

Applicants

and

MRS PRAPHULBALA VIRANI

First Respondent

MR NIZARALI RAJABALI VIRANI

Second Respondent

Mrs P. N. Virani in person and, with the leave of the Court, appearing by her husband Mr Nizarali Virani in both the above proceedings

Mr Nizarali Virani in person in the second-named above proceedings

Guernsey International Trustees Limited, appearing, with the leave of the Court, by its directors, namely, Mr Tim Bennett and Mr Michael Nagle, in both the above proceedings

Mr Tim Bennett in person in both the above proceedings

JUDGMENT OF PATRICK JOHN TALBOT QC
(sitting as a Lieutenant Bailiff)

Introduction

2. In their judgment dated 4 December 2002 in the first-named proceedings ("Mrs Virani's proceedings") the Court of Appeal directed that certain applications in those proceedings should be heard by me, if at all possible, by 31 March 2003.

3. I sat in the Royal Court hearing these, and other, applications in both the above proceedings between Monday 24 and Friday 28 March 2003. Most of Monday 24 and Tuesday 25 March 2003 was taken up by the hearing of cross-applications for security for costs, both of which I dismissed on 25 March 2003, for the reasons given in my judgment delivered on Wednesday 26 March 2003.

How the time available for the hearings was spent

4. The time available for the hearing of the applications, which the Court of Appeal had directed to be heard by me, and the other applications listed before me for hearing between 24 and 28 March 2003, was, therefore, substantially reduced by the applications for security for costs.

5. In my judgment, the hearing of the other applications in the rest of the week ending 28 March 2003 was also unnecessarily extended by reason of the fact that both Guernsey International Trustees Limited ("GIT") and Mr Tim Bennett ("Mr Bennett"), (to whom I shall, where appropriate refer as "the former trustees",) were not, or, at best, were only inadequately, prepared for the hearings. Indeed, during some parts of the hearing it was only possible for me to discover what the position of the former trustees was on certain aspects of the matters which I was hearing after I had questioned Mr Bennett, (who is a solicitor,) and sometimes Mr Nagle, (who is a chartered accountant,) in some detail and after I had permitted GIT and Mr Bennett to put in further affidavit evidence from Mr Bennett and Mr Nagle seeking to substantiate some of the points of fact upon which they wished to rely.

6. When hearing litigants in person, or lay representatives of parties to whom the Court has given express permission to address the Court on their behalf, I would not normally have thought it right for me to mention the matters to which I have just referred either during the hearing or in my judgment. But Mr Bennett himself is an English solicitor, with a current

practising certificate, and therefore can be expected, in my judgment, to have appreciated the need to be as well prepared for a hearing in the Royal Court as possible.

7. It is also, I think, as well to remember that hearings in the Royal Court proceed largely on the adversarial basis, and not on the inquisitorial basis, and that it should not be the role of the presiding judge, (whether the Bailiff, the Deputy Bailiff or a Lieutenant Bailiff,) hearing a matter on the adversarial basis to discover from a party, by necessarily close questioning, quite what its position may be on the applications, including their own applications, listed for hearing before the Court.

8. There were moments during the hearings when I was especially concerned that I was forced to question Mr Bennett much more closely than I would otherwise have liked, or perhaps thought advisable, in order to discover quite what the former trustees' case was on the applications before the Court, and especially on the questions relating to their claims for remuneration and fees. Nevertheless, I decided that it was necessary for me to do so in order to do full justice as between the parties on those claims.

9. This criticism of the former trustees, which, after careful reflection, I have decided it is necessary for me to make, relates to their preparation for the hearings and their presentation of argument before me. But I should also state that no such criticism is made by me about the part played in the proceedings by Mr Virani, appearing, with my consent, for his wife in both sets of proceedings and on his own behalf in the second-named proceedings. On the contrary, Mr Virani's submissions to the Court in both sets of proceedings were, if I may say so, both well prepared and cogent and I have obtained very considerable benefit from them. This matter may, I suppose, be relevant when in mid-September 2003 I hear submissions on the costs incurred in both proceedings.

10. There still remain a number of applications before these proceedings can be put to rest. In this judgment I hope to be able to dispose of many of the remaining substantive points. But there will still remain for me to deal with, in hearings to be fixed in mid-September 2003, several issues relating to costs.

11. As Gloster J.A. said in her judgment dated 4 December 2002, (and I respectfully agree with her,) the proper disposal of these proceedings has taken an unacceptable length of time. In my judgment, the attention of the Court has been quite unnecessarily and inappropriately sidetracked by the attitude of both GIT and Mr Bennett to the proceedings. Again, I respectfully agree with what Gloster J.A. has said about this.

12. But it is to be hoped that we are now on the closing straight. I am, of course, ever mindful of the need to do justice as between the parties but I fully expect the parties to be ready to address the Court in the costs hearing on all aspects of costs, including the former trustees' applications relating to the nature and scope of Mrs Virani's various draft bills of costs. I shall say no more about costs at this stage.

The factual background

13. The issues relating to the administration of the Arrow Trust, the Golden Trust and the Lynwood Settlement Trust, with which I am now concerned, (to which I shall refer, where appropriate, as "the 3 Trusts"), must be considered largely against the factual background set out in the judgment of Gloster J.A., which I need not set out here.

14. There are, however, some further facts which it is necessary for me to record as well relating both to the express terms of the trust instruments governing the 3 Trusts and to the specific issues with which I deal in this judgment.

15. The Arrow Trust, which was established by deed dated 29 March 1996, is governed by somewhat different terms than the Golden Trust and the Lynwood Settlement, which were respectively established by deeds dated 9 May and 24 May 1997. Where necessary, I shall identify points of difference between the Arrow Trust on the one hand and the other two trusts on the other hand.

16. The applications, with which I am now concerned, relate primarily to

    (i) the claims of GIT and Mr Bennett, as trustees of the Arrow Trust from the date of their appointment as Trustees on about 27 January 1997 until their removal on 10 October 2000; and

    (ii) the claims of GIT as sole trustee of the Golden Trust and the Lynwood Settlement from the inception of these two trusts in May 1997 to 10 October 2000, (when GIT was removed as Trustee,)

    for what the Court of Appeal has summarised as trustees' remuneration and fees, and for the costs of the current proceedings, (with the exception of the hearing before the Court of Appeal which led to their judgment of 4 December 2002). All aspects of costs will be dealt with in the September 2003 hearing.

17. Both these proceedings, in my judgment, primarily relate, (or at least until the judgment of the Court of Appeal on 4 December 2002 primarily related,) to

    (1) Mrs Virani's claim that she, as protector under each of the 3 Trusts, had validly removed GIT and Mr Bennett as trustees of the Arrow Trust and GIT as trustee of the Golden Trust and the Lynwood Settlement on 10 October 2000;

    (2) the basis and extent of the former trustees' claim to be entitled to raise or charge remuneration or fees under the terms of the trust deeds governing the 3 Trusts or under any other agreement which may have been made from time to time between (i) the trustees from time to time and (ii) Mrs Virani or Mr and Mrs Virani; and

    (3) the terms and basis upon which the assets of the 3 Trusts, which principally comprise shares in private companies, should be transferred by the former trustees to the new trustee, a Guernsey trust company called Cannon Trust Company Limited ("Cannon").

18. The trust assets held under the terms of the 3 Trusts were finally transferred by the former trustees to Cannon soon after my decision given on Wednesday 29 January 2003 on the form of the charges to be given by Cannon to the former trustees so as to give account to paragraphs 60-63 of the judgment of Gloster J.A. dated 4 December 2002, where, with the agreement of the other Judges of Appeal, she gave directions so as to preserve, and provide security for, the former trustees' claims for payment of remuneration and fees, and for costs incurred by them within these proceedings, except the costs of the hearing before the Court of Appeal, where an order was made for the trustees to pay Mrs Virani's costs on the indemnity basis. I believe from what I was told during the hearing that the assets held on the terms of each of the 3 Trusts were transferred by the former trustees to Cannon on about 31 January 2003.

19. I have already mentioned that I gave written reasons for my decisions on the two security for costs applications, which I set out in my judgment on Wednesday 26 March 2003. But I have also thought it appropriate for me to repeat much of what I then said so that the proper background to this judgment can be seen in its context.

20. Mr Virani informed me during the hearing that the present value of the assets held in the 3 Trusts was more than £4 million and it is clear that the assets are primarily shares in private companies, which in turn appear either to hold real property in England or to provide financing services to other Virani family companies.

The removal of the former trustees

21. In my judgment, it was not possible, on the evidence before the Court between 10 October 2000 and 4 December 2002 in either set of proceedings or on the evidence in Mr Bennett's long affidavit sworn in November 2001, (which was in evidence before me and which I have carefully considered,) to put before the Court any cogent or even tenable argument to the effect that the former trustees had *not* been lawfully removed as trustees of the 3 Trusts on 10 October 2000. In other words, I am convinced that it was unarguable that the former trustees remained in office as trustees of any of the 3 Trusts after 10 October 2000 when in writing Mrs Virani removed them from office.

The basis of the former trustees' remuneration and/or fees

22. In my judgment, the first question for me to determine relates to the basis upon which the former trustees are entitled to claim remuneration for their services under each of the 3 Trusts. The starting place is, of course, the trust documents themselves.

23. Under the Trust Agreement dated 29 March 1996 under which the Arrow Trust was set up, (which, like the trust documents relating to the other two trusts, is expressly stated to be established under the laws of Guernsey,) clause 13 was in the following terms:

> "13. **Trustees' remuneration:**
>
> You are entitled to remuneration for your services as trustee [*sic*] on the basis on any fee agreement between us, failing which in accordance with your published scale of fees applicable from time to time, and you may charge and collect such fees from the Trust Fund … or income. …"

24. Neither GIT nor Mr Tim Bennett placed before the Court in evidence a published scale of fees for either the original trustee of the Arrow Trust, Town Mills Trust Company Limited, ("TMT"), or for the former trustees as replacement trustees, within the scope of clause 13 – the only evidence relating to any such TMT scale of fees being contained in paragraph 17 of Mr Nagle's affidavit of 28 March 2003 - and, it will, therefore, fall to me later in this judgment to decide the dispute between the parties in relation to all the 3 Trusts as to the

nature and scope of any fee agreement which may have been made between them in 1996/7, Mr Bennett then acting as a director of TMT, the first appointed trustee of the Arrow Trust. I should add that, in my opinion, GIT's document about the so-called "Scope" of its fees, a copy of which is exhibit "TB2" to Mr Bennett's second affidavit of 26 March 2003, does not really take the matter further; for it deals with the work for which GIT might be able to charge, rather than the fees it would charge for doing such work.

25. It is helpful, in my view, to note that amongst the further trust powers granted to the trustees, clause 6 of the Trust Agreement for the Arrow Trust gave full power to the trustees to administer the Trust Fund as if they were its sole beneficial owner (which is a power reflected in section 26 of the Trusts (Guernsey) Law, 1989 ("the Trusts Law") and also an express power in their discretion to employ agents and to pay all costs and fees incurred in doing so (which is reflected in section 29(2) of the Trusts Law). Such costs and fees would not usually form part of trustees' remuneration, but would be payable by trustees as proper disbursements.

26. It appears that for most of the period to which these proceedings relate the former trustees, as trustees of each of the 3 Trusts, did, indeed, employ agents, both auditors to audit the accounts of the companies, the shares in which form trust assets, and Mountfords Residential, estate agents in the South of England, to manage and, where necessary, advise upon the properties owned by the companies, the shares in which form a substantial part of the assets of the 3 Trusts. Furthermore, the employment of Guernsey Advocates to advise the former trustees on legal issues relating to the trust instruments and the administration of the 3 Trusts would seem to me to be expressly permitted, as indeed one would expect, by clause 6 of the Trust Agreement for the Arrow Trust and equivalent provisions in the other trust instruments.

27. The Golden Trust was set up under a Trust Agreement dated 9 May 1997. Like the Lynwood Settlement, there has only been one trustee of the Golden Trust, namely, GIT.

28. Clause 10 of the Trust Agreement relating to the Golden Trust was in the following terms:

> "10. **ANY** Trustee hereof being a company authorised to undertake trust business:
>
> 10.1 Shall be entitled to charge a basic fee at an annual rate of … US$1,000 … and to reimbursement of its reasonable and proper expenses. The annual rate shall be adjusted on every anniversary hereof in line with changes in Consumer Price Index of the United States.

> 10.2 Shall be entitled to charge and be paid in addition (on the basis of its usual professional charges) for actual time reasonably and properly spent and work reasonably and properly performed in relation to the trusts hereof."

29. The trustee charging clause (also clause 10) in the Trust Agreement dated 24 May 1997, under which the Lynwood Settlement was set up, was in the same terms as clause 10 of the Trust Agreement relating to the Golden Trust, with one exception only, namely, the annual basic fee was expressed to start at US$750.

30. Under section 30 of the Trusts Law, it is expressly provided that a trustee is not entitled to remuneration for his services except in limited circumstances, which include where he is authorised to do so by the terms of the trust. In each of the Trust Agreements governing each of the 3 Trusts the terms of the trust, therefore, expressly authorised the trustees to claim remuneration for their services.

31. Further, section 30(2) of the Trusts Law, as amended by section 1(e) of the Trusts (Amendment) Law 1990, allows a trustee to pay from the trust property, and to reimburse himself from the trust property for, all expenses and liabilities properly incurred in connection with the trust.

32. It is useful to note, in passing, that under section 21 of the Trusts Law a trustee is also obliged to keep accurate accounts and records of his trusteeship and that under section 22(1), subject to the terms of the trust, a trustee is also obliged,

> "…at the written request of any beneficiary…or of the settlor, [to] provide full and accurate information as to the state and amount of the trust property."

33. It is also important, in my view, to bear in mind that Mrs Virani does not claim compensation or damages for breach of trust in her application to the Court dated 11 October 2000; it must, therefore, have been her position at that time that she accepted that the former trustees, as trustees of each of the 3 Trusts, were entitled to proper remuneration for their services during the periods in which they held office. Although her application to the Court dated 17 March 2003 appears to me to raise allegations tantamount to breach of trust against the former trustees, that application has yet to be heard and the principal issues between the parties argued before me between 25 and 28 March 2003 related (i) to the amount of the remuneration, rather than the principle, and (ii) to the period during which such remuneration might properly be claimed by the former trustees.

34. Finally, section 62 of the Trusts Law allows trustees to apply to the Court for directions as to how they should or might act in any of the affairs of the trust and the Court in such circumstances may make such order as it thinks fit. This section reflects what is often called the ***Beddoe's*** jurisdiction of the English Courts. The manner in which section 62 applies to Guernsey trusts is, in my view, dealt with well in ***The Laws of Guernsey*** by Gordon Dawes (2003), at pages 150-153.

35. An application to the Court under section 62 would normally, as I understand the practice, be non-contentious in nature and might loosely be described as asking the Court to act like a judicial legal adviser to the trust for the limited purposes of the application. It follows, therefore, that when such an application is launched by trustees, a different judge from the judge who in due course presides at a trial, would necessarily have to hear it.

36. Having carefully considered the former trustees' application dated 12 October 2000, and the evidence relied upon in support of it, in particular, paragraphs 20-22 of the affidavit of Mr Bennett sworn on 12 October 2000, and having taken into account the written closing submissions of the former trustees dated 1 April 2003, I am firmly of the view that, despite the express reference within the application itself to section 62 of the Trusts Law, it was not a Beddoes type application made to the Court by the former trustees for directions under section 62, but was a contentious application made by them on the basis that they were still in office as trustees. This conclusion is also, in my judgment, powerfully confirmed by the manner in which the former trustees and their Advocates, and, before me, both Mr Bennett and Mr Nagle making submissions on behalf of GIT, have pressed on with their application and presented their arguments. It would, in my view, be hard to imagine a greater difference between a typical ***Beddoe's*** application and the application of the former trustees in the second-named proceedings before me.

The period of remuneration of the former trustees as Trustees of the 3 Trusts

37. In my judgment, since on 10 October 2000 GIT and Mr Bennett were removed as trustees of the Arrow Trust and GIT was removed as trustee of the Golden Trust and the Lynwood Settlement, the trustees of the 3 Trusts cannot be entitled to claim any remuneration or fees for *acting as* trustees during the period after that date whilst the trust assets remained vested in them, up to and including about 31 January 2003, (when the trust assets were finally vested by them in Cannon as new trustee of each of the 3 Trusts). Their only responsibilities thereafter were to produce proper closing trust accounts for their periods of trusteeship of

each of the 3 Trusts and to arrange, on proper terms, for the transfer of the trust assets to Cannon, which terms might often include the terms contemplated by section 39(1)(b) of the Trusts Law.

38. Furthermore, since the former trustees were no longer trustees of the 3 Trusts, having been lawfully removed by Mrs Virani in her capacity as Protector, they had, in my judgment, no right or status to apply for the relief claimed under section 62 of the Trusts Law in their application made on 12 October 2000, namely, relief "as to how the Trustees" (the Trustees being defined in the application as meaning GIT and Mr Bennett) "should act in the affairs of the Trust". Despite what is said in their written closing submissions dated 1 April 2003, in my judgment, the former trustees can hardly have properly asked the Court for directions, two days after they themselves had been lawfully removed from office by Mrs Virani, as to whether she should herself be removed as Protector under section 63(1)(a)(iii) of the Trusts Law or as to whether they should themselves resign in favour of new trustees; but that is exactly what they did in their application to the Royal Court dated 12 October 2000. It follows, in my judgment, that their application was, in respect of that relief, fatally flawed from the very beginning.

39. The claim for remuneration or fees must, therefore, be limited, in the case of the Arrow Trust, to the period between the appointment of the former trustees as trustees on about 27 January 1997 and 10 October 2000 and, in the cases of the Golden Trust and the Lynwood Settlement, between their respective inception dates and 10 October 2000. Any annual remuneration or fee would, of course, be chargeable rateably for each of the 3 Trusts for any period of less than a year.

The Amount of the Trustees' Remuneration or Fees

40. There is a clear dispute of fact between the Viranis and the Trustees on this matter. In paragraphs 48-58 of Mr Bennett's affidavit sworn in November 2001 in the second-named proceedings, the Trustees claim payment under the charging clauses in the three Trust Agreements. Whereas Mrs Virani relies upon an alleged agreement made, it seems, orally, between Mr Virani, acting on her behalf, and the former trustees, acting by Mr Bennett, in about 1996 or early 1997 under which the former trustees agreed to charge on what is described by the Viranis as "an envelope basis", meaning, as I understood it, a charge of £1,000 per annum for each entity, *i.e.* for each of the 3 Trusts and each of the six family companies, the shares in which formed trust assets.

41. During the hearing it became clear to me, and it also seemed in due course to dawn on Mr Bennett and Mr Nagle, that a very large part indeed of the sums claimed by the former trustees as alleged remuneration and fees, in fact, comprised legal fees of their Advocates Collas Day, mostly fees charged in 2000, both before and after 10 October 2000.

42. During oral argument before me Mr Bennett and Mr Nagle accepted that these sums could not amount to trustees' remuneration or trustees' fees and could not, therefore, be claimed as such. This led Mr Bennett, on behalf of the former trustees, to concede, or perhaps accept, for the purposes of both sets of proceedings that during the periods of trusteeship up to 31 December 1999 the envelope basis did apply to each of the 3 Trusts and each of the six family companies; and, in paragraph 10 of his second affidavit sworn on 26 March 2003, he confirmed on behalf of the former trustees that "we have no objection to proceeding on this basis". In respect of those periods, I need not, therefore, decide the question of fact: Was there an oral agreement made between Mr Virani and Mr Bennett, as agents for Mrs Virani and the former trustees respectively, in the form set out in paragraph 39 above.

43. I do, however, still need to reach a conclusion on the same question of fact, if I can, in respect of the period between 1 January 2000 and 10 October 2000 inclusive, since, as I understood the argument of Mr Bennett on behalf of the former trustees, (as confirmed in paragraph 10 of his second affidavit sworn on 26 March 2003, his concession or acceptance relating to the envelope basis did not apply to this later period or at least to such part of that later period when the former trustees claimed they had spent "additional time … in response to Mr Virani intermeddling with the trust assets."

44. I have reached the conclusion, after reviewing all the affidavit evidence, that the better view is that Mr Virani and Mr Bennett, acting as agents as mentioned in paragraph 39 above, did reach an oral agreement in 1996 or early 1997 in the form contended for by Mrs Virani, and I so find as a fact.

45. I further find, in the absence of any evidence that a further agreement was made between the parties or their agents relating to the amount or the charging basis of remuneration and fees of the former trustees under any of the 3 Trusts for the period between 1 January 2000 and 10 October 2000 inclusive or of any agreement to vary or discharge the earlier oral agreement made between Mr Virani and Mr Bennett, that the earlier agreement must have remained in force for that period as well as for the earlier periods. The former trustees are not, in my judgment, entitled to charge as their remuneration or fees for that period a different sum from a sum calculated on the envelope basis; nor are they entitled to charge on a *quantum meruit* or

reasonable remuneration basis for that period. In my judgment, the envelope basis, which *ex hypothesi* may, depending on the degree of trust activity, work better for them in some years than others, continued to apply at all times until the removal of the former trustees on 10 October 2000.

46. Accordingly, in my judgment, the former trustees' "remuneration" and "fees", (which terms may well, in connection with each of the 3 Trusts, prove to mean the same thing,) are properly chargeable and payable out of the trust assets of each of the 3 Trusts during the periods of trusteeship of the former trustees as trustees of the Arrow Trust and during the periods of trusteeship of GIT as former trustee of the Golden Trust and the Lynwood Settlement on the envelope basis, as described by me in this judgment, and not on any other basis.

47. Before turning to the next question for decision, I should mention two further matters. First, TMT is not a party to these proceedings and is not, therefore, bound by this judgment. (But, so far as I am aware, TMT does not claim arrears of remuneration under the Arrow Trust deed.) Secondly, it would, I believe, normally be the case that auditors' fees for auditing the trust companies would be payable as disbursements in addition to trustees' remuneration or fees. But the envelope basis encompassed for each trust year a fee of £1,000 per family company per annum as well as a fee of £1,000 per trust per annum and I consider that the better view is that the fee of £1,000 per company per annum must have been intended by the parties to have included the auditors' fees for each company accounting year, but not any fees payable to the companies authorities of the jurisdiction or jurisdictions where the trust companies were incorporated for annual returns and other statutory or regulatory purposes, including any registered office or registered agent fees. I, therefore, so find.

Are the former trustees entitled to be reimbursed out of the trust assets for, or to charge against the trust assets of the 3 Trusts,the fees of Collas Day as their Advocates incurred (i) up to 10 October 2000 and (ii) after 10 October 2000?

48. The former trustees retained Collas Day as their advocates on 2000 to advise them on questions which were troubling them about the administration of some of the trust assets, including some of the residential properties in England, which had been managed by Mountfords and then, for a shortish period in 2000, (probably, I think between 5 June and 1 September 2000,) by Mr Virani.

49. It is, I believe, noteworthy that there seems to have been no question of Mr Virani intermeddling in the assets of any of the 3 Trusts raised in the rather contentious

correspondence between the Viranis and the former trustees and Collas Day. Only when Mr Bennett swore an affidavit on 12 October 2000 in support of the former trustees' application of the same date was such an allegation made against Mr Virani. But there does, in my judgment, appear to have been genuine concern on the part of the former trustees about both the role of Mr Virani and the financial state and cashflow of the 3 Trusts which led them to seek legal advice from Collas Day.

50. In my judgment, the former trustees are entitled to some reimbursement for the legal fees charged against them by Collas Day in the period between the initial instruction of Collas Day in 2000 and a date some time *before* the issue of the former trustees' application dated 12 October 2000. Doing the best I can, I consider that the closing date of this period should be 10 October 2000, when Mrs Virani's letter removing the former trustees was received. Such of Collas Day's fees and other charges raised in their invoice which relate to this period should, therefore, be met out of the trust assets, but only their fees and other charges for this period. But I expressly exclude from this any fees or charges incurred during this period which related to the preparation of the former trustees' application made on 12 October 2000, including the preparation of an affidavit for Mr Bennett to swear in support; any such fees or charges are not, in my judgment, properly chargeable against, or reimbursable from, the any of the assets of the 3 Trusts.

51. Finally, as I indicated in argument when addressed in reply by Mr Virani, I am entirely unpersuaded that it was proper for the former trustees to have made their application dated 12 October 2000. As I have said earlier in this judgment, when it was issued by Collas Day on behalf of the former trustees, the application was, in my view, fatally flawed. In my judgment, it should never have been issued and, although I accept that some argument could properly be put that it was understandable for the former trustees to wish to be advised as to their options, the option of making an application to the Royal Court seeking directions as to how the former trustees should act as trustees was removed for good when the former trustees were lawfully removed on 10 October 2000. Nor can it be an excuse, in my judgment, (as was argued by Mr Bennett,) that the application and draft affidavit had been prepared before 10 October 2000 and that the application was issued without any amendment to take account of Mrs Virani's letter of 10 October 2000 removing the former trustees because the advocate at Collas Day dealing with the matter was away from the office. The right course would, as I see it, have been to wait for the return of the lawyer with control of the matter and then to take advice as to whether or not the application could still be issued.

52. I, therefore, conclude that no fees or charges raised by Collas Day for acting as Advocates to the former trustees after 10 October 2000 are properly reimbursable to the former trustees out of the trust assets of the 3 Trusts. Nor, in the event that they have yet to be paid to Collas Day by the former trustees, would such fees or charges be properly chargeable against the trust assets.

Trust Accounts

53. As I have already mentioned, section 21 of the Trusts Law provides that trustees are obliged to keep accurate accounts and records of their trusteeship. Issues arise in these proceedings about the trust accounts of each of the 3 Trusts. The former trustees have made some effort to produce trust accounts of a sort, but the periods in respect of which accounts were, somewhat hurriedly in, I think, December 2000 and January 2001, produced by Mr Nagle and his wife, Mrs Kate Nagle, (who is not qualified as an accountant,) did not end on 10 October 2000, when the former trustees were lawfully removed by Mrs Virani as Protector, but ended at about 15 December 2000. Furthermore, the accounts so produced did not proceed on the basis of the envelope basis. Accordingly, they were not, in my judgment, proper trust accounts. It follows, I believe, that the trust assets cannot properly be used to pay Mr Nagle and Mrs Nagle for their work in producing these documents, and the sum of £5,500 claimed for their production cannot be reimbursed to the Nagles for their work.

54. In my judgment, the claim for relief made in paragraph (4) of Mrs Virani's application dated 11 October 2000 would include a claim for trust accounts in the event that no such accounts had earlier been produced and, in any event, paragraph (4) of Mrs Virani's application dated 8 February 2001 specifically requested the production of accounts. Mrs Virani's claim for trust accounts from the former trustees still stands, (which was made quite clear in Mr Virani's oral submissions on 28 March 2003 and in his written submissions dated 2 April 2003,) and my preliminary view is that there can be no defence to such a claim. Full and properly drawn trust accounts, (which need not be audited by external accountants unless Mrs Virani so requires,) must be produced as soon as possible in accordance with the judgment of the Court of Appeal, *i.e.* on the basis that the periods of trusteeship ended on 10 October 2000, and in accordance with this judgment and it seems to be necessary for me to make an order to that effect without the need for further argument.

55. But I am in no position to deal with, or begin to decide, the various claims of Mrs Virani as to what sums are, and what sums are not, properly reimbursable to the former trustees out of the trust assets until full accounts are produced by the former trustees, prepared on a proper basis.

56. I, therefore, propose to make an order, (unless either Mrs Virani or the former trustees make application to the Royal Court in this connection by 4 p.m. on Friday 22 August 2003 for a further hearing as to the time for, and scope of, proper trust accounts,) that the former trustees produce to Mrs Virani trust accounts in unaudited form for each of the 3 Trusts by 4 p.m. on Friday 12 September 2003.

The status of other applications by the parties in these proceedings

57. Apart from applications relating to costs, (including a wasted costs order claimed by Mrs Virani in an application dated 22 January 2003,) and for applications associated with costs (including an application by the former trustees dated 10 March 2003,) which are all to be listed for hearing before me as nominated Lieutenant Bailiff in mid-September 2003, (16-18 September 2003,) there may still be outstanding applications in these proceedings. Without pretending to be correct, I hope it may be helpful if I list them below and at the same time invite the parties to notify H.M. Deputy Greffier, Mr Simon Ross, by 4 p.m. on Friday 15 August 2003 which, if any, of the listed applications is still live and, in any such case, giving an estimate of length of hearing. I shall thereafter be able to decide how any such application can best be dealt with in the interests of the administration of justice.

6 February 2003	Application of Mrs Virani for return of allegedly overpaid remuneration
10 March 2003	Application of the former trustees for a stay of Mrs Virani's application of 6 February 2003
17 March 2003	Application of Mrs Virani for compensation for alleged breaches of trust by the former trustees and associated claims

Patrick Talbot QC
Lieutenant Bailiff

01 August 2003

