



Broadhead v Spread Trustee Company Limited et al
Royal Court
10th March, 2015

JUDGMENT
10/2015

Supplementary Judgment on costs following written submissions. See judgment No. 46 of 26th November 2014.

Approved Text
10.03.2015

**IN THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION**

Civil No 1796

BETWEEN: RAYMOND ANTHONY DOBSON BROADHEAD Plaintiff

and

(1) SPREAD TRUSTEE COMPANY LIMITED First Defendant

(2) ANDREW POLLOCK Second Defendant

(3) GEOFFREY WILLIAM ALLEZ Third Defendant

Supplementary Judgment handed down: 10th March 2015

Before: Her Hon Hazel Marshall QC, Lieutenant Bailiff

Counsel for the Plaintiff: Advocate Christian Hay
Counsel for the First and Second Defendants: Advocate Simon Davies
Counsel for the Third Defendant: Advocate Jeremy Wessels

**Judgment on costs
following written submissions
(Supplementary to judgment handed down on 26th November 2014)**

Cases, texts and legislation referred to:

(a) Guernsey:
The Royal Court (Costs and Fees) (Guernsey) Law 1969, s 1(1)

The Trusts (Guernsey) Law 2007, s 76
Royal Court Civil Rules 2007, rr 82 and 83
Royal Court (Costs and Fees) Rules 2012, r 2(2)
Hulme v Matheson Securities (Channel Islands) Limited (No 2) (1997) 24 GLJ 80
Ladbroke v Galaxy International Limited (Royal Court 11/2009, 24th November 2008)
Buckley v Ronez Limited [2009-10] GLR 120
Barclay v Latrobe-Bateman [2009-10] GLR Note 1
Credit Suisse Trust Ltd v Nemni (Royal Court 6 March 2012, unreported)
In re a Guernsey Company (Royal Court 30 April 2013, unreported)
Jackson v Dear & Ors (Royal Court 8 July 2013, unreported)

(b) England
Civil Procedure Rules 2014, Part 44
Excelsior Commercial & Industrial Holdings Limited v Salisbury Hamer Aspden & Johnson [2002] EWCA Civ 879
Wates Construction v HGP Greentree Allchurch [2005] EWHC 2174
Three Rivers DC v Bank of England [2006] EWHC 816

JUDGMENT

Introduction

1. By the judgment of this court (L-B Marshall QC and Jurats Jones and Le Pelley) handed down on 26th November 2014 following a four day hearing, the Plaintiff's claims for breach of trust made in this action against the First Defendant as Trustee of the Medina 97 Trust and the Second and Third Defendants as Trustees of the Legitime Trust (as defined in the action) were struck out for having been made outside the time limit laid down by s. 76(2) of *The Trusts (Guernsey) Law 2007* ("the Trusts Law").

Procedural

2. In the final paragraph of that judgment I indicated that I would order the Plaintiff to pay the Defendants' costs of the action and preliminary issue Application in respect of these claims on the usual basis unless any party made submissions requesting some other order within 7 days of receipt of the judgment. Submissions were made by both the Plaintiff and the Defendants jointly, and I determined that I would decide the issue of costs on paper. I therefore gave directions regarding responsive submissions and further information which I required. This judgment follows from that process.
3. I record that, whilst the Defendants have at all times been content for the issue of costs to be decided on paper, the Plaintiff argued for an oral hearing and renewed this request in his Reply Submissions. He did so on the grounds that
 - i. with the sums involved being significant, he wished to have the comfort of knowing that he had had the opportunity to have all submissions made on his behalf as might properly be made, and
 - ii. that as the parties' submissions drew extensively on the conduct of the opposing party(s), the decision on costs would call for fine value judgments which were better addressed at an oral hearing.

I have considered this request, but reject it. As regards (i) the Plaintiff's Advocate has been given every opportunity to make all submissions that can properly be made on behalf of the Plaintiff, in writing, and was specifically allowed the opportunity of having the 'last word' in the directed sequence of submissions, precisely to enable this. I do not accept the argument at (ii), and in any event do not find it of sufficient weight to justify postponing a

determination on costs for a period of some four months, and with an inevitable increase in costs.

The parties' respective positions

4. The Defendants jointly submit that, pursuant to its discretion, its inherent jurisdiction and the rules and Laws mentioned below, the court should order that:
 - (i) (pursuant to rules 82 and 83 of the *Royal Court Civil Rules 2007* - "*the RCCR 2007*"), the Plaintiff do pay the Defendants' respective costs of the Action and the preliminary issue Application
 - a. from 6th July 2013 (the date of commencement of the action) until 17th October 2014 on the recoverable basis but
 - b. from 18th October 2014 to date on the full indemnity basissuch costs to be taxed if not agreed;
 - (ii) (pursuant to s 1(1) of *The Royal Court (Costs and Fees) (Guernsey) Law 1969* – "*the Costs Law 1969*") the said costs should include the costs of the First and Second Defendants' instructing English counsel, Mr Graham Chapman QC, in relation to the Action and the Application during the same periods and on the same bases;
 - (iii) (pursuant to rule 2 (2) of *The Royal Court (Costs and Fees) Rules 2012* – "*the Costs Rules 2012*") there be an uplift on the Defendants' Advocates and other lawyers' permitted recoverable rates of fees, as set out in a table included in the Defendants' submissions, the maximum uplift being, in respect of their most senior Advocates, to £315 per hour (from the prescribed rate of £234 per hour); and
 - (iv) (pursuant to rule 82(1)(a) of the *RCCR 2007*) the Plaintiff do make an interim payment on account of such costs of £400,000 to the First and Second Defendants and £150,000 to the Third Defendants, within 14 days of the order made.

The Defendants' combined invoiced costs in relation to the proceedings as a whole, up to and including delivery of the judgment, were in excess of £975,000. They have recalculated their claimed costs simply applying the recoverable basis rate at about £660,000.

5. For the Plaintiff, Advocate Hay's primary submission is that there should be no order as to the costs of the proceedings. His secondary submission is that if costs are ordered against his client, that should be only on the recoverable basis, and the court should also order a reduction because it was not necessary, and was unreasonable, for the Defendants to be separately represented. He further submits that the Defendants' costs of instructing non-Guernsey lawyers should be disallowed, and that they should not be awarded any uplift on the normal recoverable rate(s) of fees. He submits that there should be no order for interim payment, or only a very modest one of, say £30,000.
6. Advocate Hay further argues that the Defendants should not be entitled to indemnify themselves out of the trust assets in respect of any part of their costs as may not be recovered from Plaintiff.
7. Finally, he submits that the costs order should be confined to the costs of the breach of trust claims and exclude the costs of the other claims made in the action for an account and associated relief.

8. This last point is plainly correct and is in fact conceded. The claims in respect of an account and alleged excessive fees or expenses have been dealt with separately and are the subject of a recently concluded Consent Order between the parties, which deals with the costs of that part of the case on the basis of no order as to costs. The remainder of this judgment therefore deals only with the costs of the breach of trust claims (including those of the recently heard preliminary issue). However, the term “costs of the action” is in places used as a convenient shorthand for these.

(1) Basis of costs order

9. It is trite law that the award of costs is within the discretion of the court, that the starting point is that costs “follow the event” in the sense of being awarded to the winning party against the losing party, and that the usual order is that such costs are to be taxed and paid on the “recoverable” basis if not agreed. Departure from this basic principle is far from uncommon, but requires some reason. The result is that the award of costs will then be what the court considers appropriate in all the circumstances of the case, with the court’s discretion being wide and unfettered apart from the obvious requirement that it must be exercised judicially.
10. The Defendants have plainly “won” in this instance. Therefore the starting point is an order that the Plaintiff pay their costs of the action, including the preliminary issue, on the recoverable basis. However, both sides argue for a departure from this.
11. Whilst claiming their costs from the date of commencement of the action, (6th July 2013) the Defendants argue that they should receive these on the indemnity basis after 17th October 2014, relying on the jurisdiction of the court under Rule 83(2) (a) of the RCCR 2007 to award indemnity costs in “special circumstances”. The special circumstances relied on are that 17th October 2014 was the date of a letter, which the Defendants jointly sent to the Plaintiff on a “without prejudice save as to costs” basis, relying on their confidence of success in the preliminary issue, and inviting the Plaintiff to agree to his action being dismissed by consent with each party bearing its own costs, in which case the Defendants would agree not to seek recoupment of any part of their costs from the assets of the Trusts. This offer was rejected on 21st October. No counter-offer was ever made. The Defendants repeated such an offer on 11th November during Mr Broadhead’s evidence, expressly reserving their right to seek indemnity costs if it was not accepted. They received no response.
12. The Defendants submit that, as was confirmed by Southwell L-B in *Hulme v Matheson Securities (Channel Islands) Limited (No 2)* (1997) 24 GLJ 80), useful guidance as to the appropriate exercise of the court’s discretion to award indemnity costs can be gained from Part 44 of the English Civil Procedure Rules and the many English authorities on the topic. The basic point is that made by Lord Woolf MR in *Excelsior Commercial & Industrial Holdings Limited v Salisbury Hamer Aspden & Johnson* [2002] EWCA Civ 879, and is that there must be some element of conduct by the paying party which takes the case “out of the norm” (obviously in a respect which might then logically lead to a more extreme penalty in costs than the norm). This was endorsed in Guernsey by L-B Talbot QC in *Credit Suisse Trust Ltd v Nemni* (Royal Court 6 March 2012, unreported).
13. They cite the decision in *Wates Construction v HGP Greentree Allchurch* [2005] EWHC 2174, as being to the effect that proceeding with a claim which the Plaintiff knows, or ought to know, is doomed to fail on the facts and on the law will justify an award of indemnity costs. (Perhaps more accurately this should be “may” rather than “will”.) They say that this takes a case “out of the norm”, and the present case was just such a case from the time when they raised their argument that the action for breach of trust was time-barred under s 76(2) of the *Trusts Law*, their letter of 17th October making this knowledge quite inescapable to the Plaintiff.

14. They also rely on examples of unreasonable conduct given by Tomlinson J in *Three Rivers DC v Bank of England* [2006] EWHC 816 at paragraph [25]. He laid down there that it is the unreasonableness of the conduct of the unsuccessful claimant which is the issue, that this does not necessarily have to amount to conduct attracting moral indignation (this latter only being an *a fortiori* point), that the issue is whether it was reasonable for the claimant to raise and/or pursue particular allegations, and that where a claim is speculative, weak, opportunistic or thin, a claimant who chooses to pursue it faces a high risk of having to pay indemnity costs if he fails. Again, they say that the Plaintiff's pursuit of his claim fell into this last category, and they point to the strength of the factual findings made by the Jurats as demonstrating this.
15. Added to this background, they submit that the Plaintiff quite obviously failed to improve on the offer which was made to him in the 17th October letter by pursuing his case thereafter. They cite the decision of Collas DB in *Buckley v Ronez Limited* [2009-10]GLR 120 for the proposition that not obtaining an overall judgment "more advantageous" than a rejected offer made "without prejudice save as to costs" may (although it is not an automatic rule) make it just to penalise the plaintiff in costs.
16. For the Plaintiff, Advocate Hay argues for a departure from the norm in the other direction, and that there should be no order as to costs. He submits that this is appropriate because
 - i. the Defendants have succeeded only on the "technical basis" that the claim was out of time, rather than having successfully defended or resisted the claim on its merits,
 - ii. the evidence showed a sufficient *prima facie* case of inadequate professional conduct by the Defendants to justify depriving them of costs, and
 - iii. the plea of prescription was only raised late, and unreasonably late, in the course of the proceedings, could have been raised much earlier, and was not mentioned in response to the letter before claim sent to the Defendants in November 2012, even though the case later made, that the prescription period had already expired, was made on the basis of evidence already then known to them. .
17. If this is not accepted, Advocate Hay argues that there is still no justification for ordering indemnity costs against the Plaintiff. There is no rule that a Plaintiff who does not accept an offer of settlement but then fails in the action will be penalised with indemnity costs; the touchstone is the reasonableness (or not) of declining the offer in all the circumstances, and there is a significant difference between failure to accept a financial offer where the issue is damages and the offer imports some admission of liability, and refusing to give in and give up a reasonably arguable claim entirely. He submits that the lack of Guernsey authority on the true construction and test under s 76(2) of the *Trusts Law* justified the Plaintiff in requiring to have his case on prescription decided by the court, rather than abandon his claim. His case on prescription was reasonably arguable even though it eventually failed.
18. He goes on to submit that if reasonableness of conduct is being considered, the court should also take into account the Defendants' own conduct, including that they brought the action on themselves by both their poor standards of professional conduct which provoked the claim, and by their unreasonable failure to provide information and documents which was so heavily disapproved of by L-B Southwell in the disclosure application in November 2012. As I understand his submission, he also invites the court to infer that, regardless of the lack of significance which the Jurats found in the eventual further information supplied, this unreasonable refusal caused either a delay or a distraction to the Plaintiff which was what effectively resulted in the prescription point ever becoming arguable at all.

19. Having considered all the arguments, I find no sufficient reason to depart from the usual principle of awarding costs according to the event on the recoverable basis.
20. There was, in my judgment, undoubtedly a case on the merits for the Defendants to answer, and the Plaintiff's claim was well arguable, particularly in relation to the Medina Trust. The Defendants' claim to indemnity costs is founded on the Plaintiff's failure to accept their offer of 17th October 2014. They do not - and in my judgment quite rightly - argue that they should be entitled to indemnity costs from the start of the case on the grounds that the claim should never have been launched at all. Both the *Wates* and the *Three Rivers* cases were extreme, in that the Plaintiff in each case launched a claim without proper substance, and was later compelled to accept this, by discontinuing.
21. Whilst the prescription point was asserted in the Defences, I note that in both cases this was on the incorrect basis that any breach of trust *committed* more than three years before the commencement of the proceedings was barred by s 76(2) of the *Trusts Law*. In fact, the correct formulation of the prescription point was not articulated and explained until much later in the day, when the Defendants served Voluntary Particulars. With no direct Guernsey authority on the application of s 76(2) of the *Trusts Law*, the Plaintiff's case for resisting limitation was not unarguable, and certainly not so fanciful or flimsy that it was unreasonable for him to require the point to be authoritatively determined by the court, rather than give in and concede it, even in the context of a "drop hands" offer such as was made. I accept the Plaintiff's argument that the situation was different from the refusal of a financial offer, where the only matter to be weighed up is a financial assessment. Even in that case a refusal which turns out to be a miscalculation will not always be penalised in indemnity costs.
22. In short I do not find the circumstances of this case to be "out of the norm" for the reasonable conduct of litigation on the Plaintiff's part, and certainly not to the high degree of unreasonableness (and the Defendants expressly disavow any suggestion that the Plaintiff's conduct deserves moral censure) which would justify an award of indemnity costs against the Plaintiff, even after refusal of the offer contained in the 17th October letter.
23. For the sake of completeness, I would add that if I had been minded to award indemnity costs on this basis, then I would have awarded them only from 22nd October and not from 18th October as the Defendants claim. This is because the effects of an unreasonable refusal could only properly be held against the Plaintiff from the time of such a refusal. The relevant date would be either the expiration a reasonable time to consider the offer, or, as here, the actual time.
24. As regards the opposing argument of the Plaintiff, namely that there should be no order as to costs, in my judgment, that falls to be decided on a similar basis to the Defendants' application for indemnity costs, but in the other direction. I therefore ask myself whether there are special circumstances with regard to the Defendants' conduct taking the case "out of the norm", so as to justify a departure from the normal order. The appropriate test seems to me to be, similarly, whether there was a sufficiently high degree of unreasonableness in the Defendants' conduct to justify such a departure, whether in their conduct of the litigation or otherwise associated with its subject matter. The substance of the Plaintiff's argument that there has been rests on the propositions that the Defendants brought the case on themselves, that they have escaped liability by a side wind rather than by being vindicated, and that it was only their unreasonable refusal of information which brought about the delay in the Plaintiff's progress towards launching his action which resulted in the prescription argument becoming available at all.
25. I have considered these propositions carefully, but in the end I have concluded that they are insufficient to justify depriving the Defendants of costs to which they would otherwise be entitled, or to any part of them.

26. First, there has been no investigation of the merits of the Plaintiff's case. As pleaded it is not without substance, even after consideration of the responsive pleadings, in particular as regards the Median Trust. However, those are simply first impressions, and they do not justify a conclusion that the claim was necessarily going to succeed after a detailed examination the Defendants' conduct, in all the circumstances of the relevant times, and also bearing in mind the arguments with regard to "gross" negligence. I am not satisfied, therefore, that the Defendants' conduct of the trusts themselves can, from this vantage point, be characterised as "having brought the litigation on themselves". Neither, in the light of the Jurats' findings as to the evidence of Mr Le Hegarat and the sufficiency of the information initially supplied to the Plaintiff, albeit under pressure, can it be said that the Defendants' reactions to challenge to their conduct were of such a high degree of unreasonableness as to take the case out of the norm.
27. This leaves the unreasonableness of their refusing to produce the further requested information, of which much is made by the Plaintiff because of the heavy criticism of L-B Southwell in that regard, in November 2012. However, that was dealt with and remedied at the time, and I do not consider that it will then bear the further weight of being grounds for penalising the Defendants in the context of the subsequent action and its outcome. As regards the argument that, in effect, it caused a diversion to the Plaintiff which has enabled the Defendants to take advantage of the limitation provisions of s 76 (2) of the *Trusts Law*, I reject that argument, not least because of the Jurats' emphatic findings of fact as to the state of the Plaintiff's knowledge of the alleged matters of breach of trust at a much earlier time. It was not the Defendants' failure to provide the (relatively unimportant on the Jurats' findings) further information which brought about the over-late commencement of an action, but the Plaintiff's own judgment of the detail of knowledge and information which he should insist on extracting before doing so.
28. Had I been satisfied either that the Plaintiff's case was virtually unassailable, or that the Defendants had been obstructing the Plaintiff in a cynical attempt to run out the prescription period, I might have taken a different view about awarding them costs, but neither is the case. Whilst it may not be an attractive thought that the Defendants may have escaped making some proper reparation to these Trusts by the fortuitous advantage of being able to invoke s. 76(2) of the *Trusts Law*, that is the law and the Defendants are entitled to the benefit of it. Merely invoking their legal rights is not unreasonable, and is no grounds for depriving them of costs.
29. Accordingly, the basic order which I will make is as sought by the Defendants, namely that the Plaintiff do pay the Defendants' costs of and occasioned by the Action and the Application for the period 6th July 2013 to date on the recoverable basis, such costs to be taxed if not agreed. I turn now to the particular further points raised.

(2) Costs of external lawyers

30. It is common ground that the court has jurisdiction to order that the costs of instructing "foreign" lawyers to assist in the case should be recoverable by a party in appropriate cases. (This is not, of course, concerned with instructing them as expert witnesses.) The issue is whether doing so is justified in this case.
31. L-B Southwell in *Ladbroke's v Galaxy International Limited* Royal Court 11/2009 24th November 2008, elaborated on this jurisdiction. He laid down that it could be exercised by the court in "*appropriate and exceptional cases*", and where such costs had been reasonably incurred and were reasonable in amount, although always limited to the rate prescribed in the current *Costs Rules*. Importantly, to my mind (and as the Plaintiff, but not the Defendants, pointed out), he added that such appropriate and exceptional cases would be "*relatively few*". He gave five non-exhaustive example situations, In concise paraphrase, these are

- (i) Guernsey being a small jurisdiction, where a case involves some highly specialist field of law which rarely arises for decision in Guernsey and Guernsey Advocates do not have the necessary specialist expertise;
 - (ii) Where litigants from outside Guernsey may have pre-existing ties with foreign lawyers, justifying their being instructed in order to ensure the conveying and continuity of knowledge (a situation which he considered would be rare);
 - (iii) Where Guernsey law requires consideration of principles of English law, or laws of other jurisdictions, and research into that law cannot be readily carried out by the Guernsey Advocate's firm.
 - (iv) Where getting to the heart of a problem involving complex facts and law is most efficiently done by going to a specialist lawyer in another jurisdiction, as "the best lawyer available";
 - (v) Where a case involves such a large amount of documentation that management of it may reasonably be beyond the capabilities or resources of the Guernsey firm.
32. In Paragraph [18] of his judgment he explained the justification for being sparing in permitting such costs to be recovered, and treating this as exceptional. This is the public interest, namely the importance to Guernsey of having its own sufficient pool of well-qualified, trained and experienced Advocates, capable of handling the great majority of legal proceedings in Guernsey "*effectively, efficiently, in a reasonable time and at reasonable cost*". In addition, he referred to the reasonable expectation of the public that they should be able to litigate in Guernsey without the costs, which in litigation are never insignificant, being increased by resort to external lawyers, unless that was quite plainly justified.
33. In *In re a Guernsey Company* (Royal Court (unreported) 30th April 2013), L-B Talbot QC endorsed the above principles. Following them, he refused to allow costs claimed by Guernsey Advocates in using an English lawyer to assist them in "performing their Advocacy tasks", including preparing skeleton arguments and chronologies and carrying out legal research into comparative jurisdictions.
34. Ogier, on behalf of the First and Second Defendants instructed Mr Graham Chapman QC to assist them in this case. Indeed, it is apparent from his fee notes that he was instructed, *passim*, from the time of the service of the proceedings through to the hearing of the preliminary issue, for which he appears to have charged a four day fee. His total fees, for which I have seen the fee notes, came to some £31,217.60 in respect of the breach of trust claims. Ogier argue that their instruction of Mr Graham Chapman QC was justified because the action was factually complex as it related to the management of the Trusts' investable assets going back to 2001, because the material was lengthy with the Plaintiff's case running to 69 pages including schedules and the First and Second Defendants have disclosed over 2,400 items in 40 lever arch files, and because, this being a case requiring interpretation of s 76(2) of the *Trusts Law* for the first time, knowledge and understanding of the English law on similar concepts was central, and Ogier did not possess all the relevant specialist experience. They cite Mr Chapman QC as a highly respected practitioner and author on professional negligence (which I do not doubt), and say that his work was done at his previous junior rates, and that care was taken to avoid duplication of work. They also point out that the Plaintiff has sought the assistance of English counsel and also English solicitors. They therefore seek Mr Chapman QC's costs from 6 July 2013 to date.
35. I reject this application. This was a totally Guernsey case. It was litigated between Guernsey residents, about two Guernsey Trusts with Guernsey trustees, and applying Guernsey trust law and Guernsey legislation. It had no connection with English law or circumstances. It involved no esoteric or particularly specialist legal points; the principles of the law of trusts,

the law of negligence (including professional negligence), the law of prescription of actions and the construction of legislation are all matters which are, or should be, within the general competence and experience of many, if not most, of the reasonably senior Advocates of Guernsey, and undoubtedly of firms such as those concerned in this case.

36. The only point of any novelty was the application of s 76(2) of the *Trusts Law*. However, not only was this a purely Guernsey point (being interpretation of a Guernsey statute) but it fell to be interpreted in the context of the Guernsey law of prescription, which is actually different from the English law of limitation. English law could assist only by careful and critically applied analogy, and in no different way from, say, Australian law. The appropriate research into English law, or that of any other helpful jurisdiction, was well within the capabilities of a competent Guernsey lawyer. Quite apart from the availability of internet search tools, most Guernsey Advocate's firms now have employees who have qualified or practised in other jurisdictions, and are at ease with researching other jurisdiction's laws, and English law in particular. Indeed, these days, most senior Guernsey lawyers have themselves had some training or experience in the UK, are therefore familiar with English law concepts, research tools and methods, and are well able to carry out such research themselves.
37. Neither was this a particularly complicated case, factually. The material may have been voluminous, but that reflected the timescale under consideration, and not any exceptional factual intricacy. The only esoteric specialist knowledge which would have been relevant was in the field of financial investment, and not law, and would therefore have been the subject of expert evidence. Handling expert evidence in specialist non-legal subjects is part of the general skills of an Advocate.
38. Considering the five example situations given by L-B Southwell (and no other category has been suggested) and which he himself stresses will be "*rare*", only the first (lack of relevant expertise in the subject) and the third (need for foreign law research) appear to be impliedly invoked. I have dealt with the third. As to the first, I am perfectly satisfied that Ogier, particularly in the shape of Advocate Davies, a senior, experienced and eminently competent Advocate, possessed, individually or through in-house access, all the necessary knowledge, skill and expertise required to conduct this case competently. Ogier are being either unduly modest or unnecessarily lacking in confidence in suggesting otherwise.
39. I also note that Mr Chapman QC's work included "advocacy tasks" which L-B Talbot QC expressly regarded as being inappropriate as recoverable costs. Indeed, he appears to have been involved on a step by step basis at just about every juncture of the case. L-B Southwell's judgment stresses the importance of Guernsey Advocates not being encouraged to assume that it is appropriate automatically to seek advice or litigation assistance from English lawyers, whether barristers or solicitors, just because the case involves a significant sum of money, or the client may be able to afford it.
40. I will not, therefore, allow the costs of instructing Mr Chapman QC in this case – and I add that, within the "costs" of Mr Chapman QC, I include not only his fees, but also the additional costs of preparing and sending instructions to him and receiving advice. The test for allowing any such costs is not whether his work contributed to the ideas, cogency or elegance of the arguments put forward by the Defendants, but whether it was necessary for them to instruct lawyers outside Guernsey for the purpose of conducting this case with proper professional competence, having regard to its nature, its content and all the circumstances. I am satisfied that it was not. Doing so was a luxury.
41. Of course it may be that a client wants, or is even advised to seek, the perceived advantage of input, reassuring confirmation, or even drafting assistance, from an external lawyer, and he may well be prepared to pay for the perceived advantage of doing so. However, the issue is whether the other party should later be obliged to pay for this service if that client wins the

case, and such a client should therefore be aware that this will only happen if he not only wins, but also demonstrates a very cogent reason of for having incurred such costs.

42. Lastly on this point, I have not overlooked the fact that the Plaintiff himself engaged English solicitors and has admittedly had advice and assistance in some respects from two English counsel. I regard that as of little relevance. This is not a question of “equality of arms”, but whether the instruction of English lawyers *by the Defendants* was a justifiably recoverable cost, in the circumstances of the case. It may well be that if the Plaintiff had won, he would have been refused the costs of instructing English lawyers, and it may be that he was prepared to pay the additional costs of doing so in any event. The fact that he did so is not evidence that the Defendants were justified in doing so, nor that the Plaintiff ought to pay those costs in whole or part.

(3) Uplift on fee rates

43. The current maximum recoverable fee rate payable for a Guernsey Advocate is laid down by the *Costs Rules* and is £234 per hour, “unless the court otherwise orders” (Rule 2(2) of the *Costs Rules*).
44. In *Barclay v Latrobe-Bateman* [2009-10] GLR Note 1, the jurisdiction to order otherwise was held to be exercisable in favour of Defendants in a case where

“the clear importance of the case, and the difficulty and novelty of the Plaintiff’s arguments justify increasing the hourly recoverable rates”.

This was a case on Sark regarding alleged mal-administration of a charity, the Sark School and Community Centre Trust, in which Lieutenant-Seneschal Talbot QC applied the principles of costs awards in litigation in Guernsey. He noted, as material circumstances, that costs were of little financial importance to the Plaintiffs, who had (but he held not unreasonably) employed two senior Guernsey Advocates, but were of high financial importance to the Defendants, who had felt compelled to employ similarly expensive lawyers, and also that the case was of high non-financial importance to each side, having regard to their declared interests in the well-being of Sark and the future running of the charity. He increased the recoverable hourly rate of the fees of the Advocate instructed by the Defendants from £210 to £300. In *In re a Guernsey Company* (*supra*) L-B Talbot QC also allowed an uplift in fee rates, on the basis of the high degree of commitment of legal resources, the size of the case and the relative novelty of the legal arguments.

45. The Defendants therefore submit that, on similar grounds, there should be an uplift in permitted fee rates of roughly the same magnitude as that awarded in the *Barclay* case, namely from a maximum of £234 to £315 per hour. This is in respect of Partner/Advocates whose charging rates are between £450 and £500 per hour. They invite me also to specify recoverable rates for all the less senior personnel who have worked on this case, most of whose hourly rates charged to clients appear to exceed the statutory recoverable rate in the *Costs Rules*, and to do so on a similar basis. Without going into full detail, the proposed result is their recoverable rates being approximately 80% of their actual charge out rates (except for paralegals, whose charge out rates are only £75 per hour in any event).
46. The Plaintiff resists this, citing a further decision of L-B Talbot QC, in *Jackson v Dear & Ors* (Royal Court, unreported 8 July 2013), where they suggest that he identified the key criterion for awarding uplifted rates as being that of “*large scale commercial litigation*”, the rationale being at [22] that

“paying parties under orders for costs in such large scale litigation would reasonably expect to pay costs at a rate which more directly reflects the rates prevalent in the legal market-place for such cases, which are relatively uncommon within the Bailiwick”

They submit that on no basis was this “large scale commercial litigation”, which description refers to the nature of the case, and not to the sums involved. They submit that this was a comparatively simple claim in principle. They submit that no uplift is therefore appropriate.

47. I do not think that L-B Talbot QC can have considered this to be the only category of case in which it might be appropriate to permit some uplift in the statutory maximum rate for Advocates’ recoverable costs, not least because the *Barclay* case can scarcely be categorised as “commercial” litigation in nature, whether or not the manner in which it was conducted gave it the feel of being “large scale”. Nonetheless, it does seem to me that this is the most likely relevant characteristic of the rare situations in which any uplift will be appropriate. It also seems to me that the L-B Talbot’s comments suggest that “such cases” are likely to have an international context, or flavour.
48. However, I do accept the Plaintiff’s general points. As will be apparent, I disagree with the Defendants’ assumption that “the difficulty and novelty of these proceedings are ... without question”. I have already observed that, in my view, this was not a complex case, either legally or factually, and that the issues were well within the normal diet and capability of lawyers in Guernsey. I am not impressed by the argument from a “high degree of commitment of legal resources. If reasonable, that is compensated on a time basis. The relevant rate is a different matter. I entirely agree with the Plaintiff that this was not “large scale commercial litigation” on any view, even if the sums involved were relatively large. The dispute was of an entirely domestic kind, and the fact that professional trustees – and probably their insurers – were involved does not make it commercial, let alone large-scale, litigation.
49. The statutory limit on Advocate’s recoverable fees is a salutary constraint on the costs of litigation in a small jurisdiction such as Guernsey. It encourages economy by those with strong cases and realism by those with weak cases. It acts as a brake on the tendency of litigation costs to spiral out of control, such that a paying party may face the possibility of an unpredictable bill of a huge, possibly even ruinous, amount, so that the costs themselves become such a large aspect of the litigation that they prevent a sensible settlement of the case on its merits from being achieved. In my judgment, these salutary effects were intended to be, and should be, carefully upheld. It should only be in the most clear and rare of cases that an uplift in the prescribed maximum should be ordered. In my judgment this is not such a case.
50. I will not therefore allow any uplift in the Defendants’ Advocates’ fees over the statutory maximum. For completeness, I make two further comments.
51. The first is that I am conscious of having disallowed the fees and costs of instructing Mr Graham Chapman QC, who appears to have taken an overall monitoring and supervisory role with regard to the First and Second Defendants’ Defences. It therefore seems quite likely that this will, in practice, have resulted in some modest reduction in work which would otherwise have been done by the Guernsey Advocate leading the conduct of those Defendants’ Defences. I have therefore asked myself whether it would be appropriate to recognise this likely factor, in which case this might possibly be done by allowing some modest uplift in the recoverable fee rate of such Advocate, whom I would take to be Advocate Davies.
52. However, I have come to the conclusion that it would not be appropriate. First, although it might seem superficially fair, it is illogical, as the value of Advocate Davies’ time has not been increased in the context of the case, and it is illogical to compensate as if it had. Second, it would, to my mind, create a very dangerous and suspect precedent, in context, giving the impression that if external lawyers are found to have been instructed inappropriately, a contribution to their costs will still be awarded by the backdoor, in the shape of a fee uplift, even though the case itself has been held not to justify this. Third, my

consideration of this possibility was brought about by a concern that the Advocates in this case may not have been sufficiently aware of the strict parameters (as I find them to be) limiting the recoverability of either the costs of external lawyers or an uplifted fee for internal lawyers, owing to these arguments being novel. On consideration, however, I conclude that this concern was misplaced. The *Barclay* case is five years old, and both *In re a Company* and *Dear v Jackson* were decided last year, and, I have no doubt, in circumstances where they would have been well noted around the Guernsey Bar. In all the circumstances, I have therefore concluded that the desirability of maintaining a strict policy, that the principle of a limit on recoverable fees be relaxed only in truly exceptional and rare cases, should prevail.

53. I would add, however, that if I had been minded to allow such an uplift, then for all the reasons given above, it would have been no more than a very modest one. I would in fact have simply authorised an uplift in the recoverable rate for the proper work of Advocate Davies (only) of approximately 10%, which I would have implemented by directing an increase in his recoverable rate from £234 to £260 per hour.
54. Lastly, for the avoidance of doubt, I make no order with regard to the appropriate recoverable rate for any lawyers of lesser seniority than the senior Advocates for whom the Defendants proposed the specific uplift on the statutory figure. The recoverable rates for such personnel will be the rates which I understand are recognised by the Taxing Officer, upon a Guernsey taxation, as being the appropriate rates for qualified Advocates or lawyers of their respective seniorities, and those rates will be a matter for the Taxing Officer if disputed.

(4) Costs of separate representation

55. As to the above, the First Defendant and Second Defendants, Spread Trustee Company Limited and Mr Pollock, have throughout been represented by Ogier, ie Advocate Davies and his team, including Advocate Newman. The Third Defendant, Mr Allez, has been represented by Mourant Ozannes, in particular Advocate Wessels and his team.
56. The Plaintiff objects that there were no good grounds for the separate representation of the Defendants. There was no conflict of interest between them requiring separate representation and indeed on the preliminary issue, they were taking precisely the same point and making the selfsame case. He therefore argues that they should not be allowed the costs of separate representation and that only one set of Defendants' costs should be allowed.
57. In answer to a query from the Court, the Defendants have stated that separate representation was required and was reasonable, first, because the First and Second Defendants were linked through Mr Pollock's being a trustee of the Legitimate Trust in his capacity as an employee or consultant to companies within the Spread group, and second, because of the way in which the Plaintiff had presented his case, in particular making allegations of personal wrongdoing against Mr Pollock, such that it would not have been proper for a single firm to take instructions from both Mr Pollock and Mr Allez. They also say that they have been careful to try to avoid duplication of work, or effort. They make the final point that the Plaintiff has never raised this objection before now.
58. I have to say that I do not find the reasons given as the justification for separate representation to be very convincing. I can well see a reasonable divide for separate representation purposes between the trustees of the Medina Trust – the First Defendant – and the Trustees of the Legitimate Trust – the Second and Third Defendants – because these were different trusts, with different trustees and different circumstances; however that is not what has happened, and the joining of Mr Pollock with the First Defendant shows that no difficulty about joint representation of the two sets of trustees was in fact perceived. The alleged conflict of interest between Mr Allez and Mr Pollock, arising from the way in which the Plaintiff made allegations against Mr Pollock, has not been explained, and does not seem to have crept into the action itself. It would in any event, I would have thought, produce a conflict of interest

only to the extent that the two trustees involved wished to run truly inconsistent Defences of a “cut throat” nature.

59. However, these are merely initial impressions, and I note that in practice the general and detailed defence of the Medina Trustees was undertaken by Ogiers, and that of the Legitime Trustees by Mourant Ozannes, such that there may well have been no significant duplication of work or effort in practice. The general aspect of separate representation is not a point on which I can properly make a decision on the evidence before me at this juncture, and I therefore leave it as a matter for the attention of the Taxing Officer, if necessary.
60. However, where I am satisfied that there has been unjustified duplication of representation is in the conduct of the Preliminary Issue Application itself, and specifically the hearing. This was confined to the issue of prescription/limitation and applied in exactly the same way to both Trusts and all Trustees. There was no separate argument as to any facts pertaining to either Trust individually. In those circumstances, I find that it was not reasonable for the Defendants each to deploy a senior Advocate and team, operating entirely in parallel, with regard to not just the preparation of the point, but to the actual conduct and attendance at the four day hearing, as to which the arguments presented, albeit very eloquently and competently by both senior Advocates, could have all been presented by one. This is not to suggest that the costs of preparation of all relevant arguments have necessarily been unreasonably increased or duplicated, nor that insofar as separate representation of the Defendants was in fact justifiable, either on the basis on which it occurred or at all, it would have been unreasonable for a subsidiary assisting or watching attendance brief to have been undertaken on behalf of the Advocacy firm which took an appropriate secondary role in relation to the preliminary issue. I am satisfied, however, that it is not reasonable for the Plaintiff to have to pay the full costs of two firm’s advocacy teams for the entire four day hearing before the court.
61. In my judgment this aspect of the costs of the case is properly and simply dealt with by my ordering that the Defendants should be entitled to receive 70% (seventy per cent) of their combined total costs of attendance at the hearings, such aggregate sum to be divided between them in proportion to their actual attendance costs or as they may otherwise agree. I emphasise that this order relates only to the costs of lawyers attending the hearing, and does not apply to the preparation costs, where the question of whether there has indeed been unreasonable duplication of work or costs consistently with separate representation insofar as properly and reasonably undertaken, will be a matter for the Taxing Officer.
62. Lastly, I make it clear that I find nothing of any weight in the argument that the Plaintiff has taken no point about the unreasonableness of separate representation by the Defendants before now. I cannot see that the Plaintiff was under any duty to take this point before it became material, which it only does when the possible effect of this having caused unreasonable and excessive liability in costs, to him, arises. I cannot see that his failure to raise the point earlier could reasonably have been (or was) relied on by the Defendants as a representation that he would never do so. Even if it might have been I cannot see that they relied on it in such a way that the Plaintiff should not be permitted to take the point now, or on a subsequent taxation.

(5) Interim payment

63. The court’s jurisdiction to order an interim payment of costs is undoubted and has been accepted by both sides. It is either inherent, or contained within the extremely wide terms of RCCR Rule 82.
64. The Defendants argue that they should receive an interim payment in respect of their costs. They emphasise that the vulnerability of the claim to a defence of prescription should always have been apparent to the Plaintiff. They argue that the ordering of an interim payment is

nowadays commonplace. They ask for orders for the payment of £400,000 to the First and Second Defendants and £150,000 to the Third Defendants.

65. They submit that these are approximately the sums which they could achieve on a detailed taxation of their costs, based on ordinary recoverable rates with no uplift, after deducting that part of their fees which they attribute to the claims for an account. As already mentioned, they have previously indicated that their combined costs on an indemnity basis are in excess of £975,000. Recalculated on the recoverable basis, as set out in Schedule B to the Defendants' initial joint written submissions, these costs amount to £409,300.44 for Ogier, and £258,019.85 for Mourant Ozannes. (The former figure does, however, include £31,217.76 in respect of Mr Chapman QC's fees, which I have already disallowed.) The figures which have been deducted as representing the costs of the claims for an account are £31,685.07 for Ogier (ignoring Mr Chapman's fees) and £12,966.55 for Mourant Ozannes.
66. Advocate Hay for the Plaintiff resists any order for interim payment at all, on the grounds that ordering an interim payment is more fact dependent than the Defendants imply, that the principle has been indorsed as the norm only in "modern *commercial* litigation" (which this case was not), and that the Defendants are all insured parties, and, in the case of the First Defendant, a corporate entity with considerable resources, and therefore are not suffering hardship through not being reimbursed their payment of fees. Advocate Hay relies further, and heavily, on the fact that the Plaintiff is seeking to appeal the substantive decision which may therefore be reversed. He submits that this would mean that the Plaintiff would have been put to hugely burdensome expense, (as to which he would even have to make significant changes in his position, such as selling or mortgaging his home), and if the appeal were successful, he could well have difficulty recovering his money.
67. With regard to figures, he challenges the Defendants' figures, on the grounds that they include the costs of Mr Chapman QC (which I have already dealt with), and that the allocation of monies to the account claim is wholly inadequate and unrealistic, when looked at in context and bearing in mind that having regard to the amounts, the claimed costs must include considerable sums spent on disclosure which would relate to the account claims. The disclosure exercise had also, he suggests, largely been done previously, outside this action, in response to the disclosure application before L-B Southwell.
68. With regard to approach, he submits that the English practice is commonly to treat a party's recoverable costs as being likely to be around two thirds of their actual costs, and then to award half of that anticipated figure as an interim payment. However, he then notes that in *In re a Guernsey Company (supra)* the interim payment was apparently based on 25% of the receiving party's actual costs (ie, one half of one half) after deducting disallowable and other "obviously controversial" costs. Advocate Hay then submits that if I am minded to make an order for interim payment, I should regard the Defendants' likely recoverable costs of the breach of trust claims as being of the order of £300,000 in total, on the grounds that the costs of the account could be found to amount to as much as 50% of their claimed figures for recoverable costs (ie rather than about 8% on my estimate), and that I should then make an order based on 10% of that sum, ie around £30,000, as all that can be justified for such an order on an appropriately conservative basis.
69. The principle of awarding an interim payment towards costs has, I am satisfied, become the norm in modern litigation, commercial or otherwise. It is a principle of common fairness, based on the proposition that it is not fair for a successful party to be too much delayed in receiving money which he will have already expended, and which he will undoubtedly be entitled to receive from the unsuccessful party, merely because determination of the precise total amount payable is pending. He should therefore receive an amount on account, so long as the court can be satisfied that he will certainly be entitled to no less than the sum ordered. In my judgment, there is now a presumption in favour of applying this principle in all

litigation, and ordering an interim payment on account of costs which have been awarded as part of a final order. This being a principle of general application based on fairness, it is part of the law of Guernsey. As it applies presumptively, it will be for the paying party to demonstrate good reason why it should not be applied in any particular case. However, it is to be emphasised that the principle is to be applied conservatively, as it is an inroad into the general principle that a party is entitled to have costs which he is obliged to pay taxed, so as to establish his liability.

70. In the present case, I do not find the Plaintiff's arguments against the making of any order for interim payment to be persuasive. The argument that "they [the receiving parties] can afford to wait" is not material on its own, and is really only a consideration in support of an argument that there will be significant hardship to a paying party to have to pay anything now, even though he is plainly going to have to pay, later. Those considerations go, though, more to an argument about time to pay than to whether or not any interim payment should be ordered at all. Therefore, apart from the question of the effects of a possibly successful appeal, I cannot see that there would be any argument for not ordering an appropriate interim payment in this case. Considering my views of the likelihood of a successful appeal, I see no reason to change this approach.
71. The appropriate sum is, however, a different matter. The First and Second Defendants calculate their total costs, on the recoverable basis with no uplift, at £409,000 odd. However, within this, they have included £31,217.76 for Mr Chapman's fees, which I have disallowed and which alone brings their figure down to about £378,000. I have also reduced their costs of attendance at the hearing. That is all before I consider the prospect of reduction for any other aspects of disputed costs, yet to be determined. As to this, I think there may be substance in the dispute as to the proper and permissible allocation of costs to the breach of trust claims and the account claims. Possibly in connection with this, it certainly struck me that the number of hours of recorded work seemed extremely high, in some instances. Of course, these hours may be shown to be justifiable when considered against the work which was being done, and it is not appropriate for me to make any judgment on that from this vantage point. It will again be a matter for the Taxing Officer. However, it is a concern which it is only right for me to take into account in exercising my discretion as to the quantum of an appropriate interim payment. The First and Second Defendants' claimed figure of £400,000 is therefore I am satisfied, far too high. Even at the outset, it was unrealistic for being virtually equivalent to their own assessment of their costs on the "recoverable" basis.
72. The Third Defendants have been more realistic, in that they have sought only £150,000 as against their own calculation of their costs on a purely recoverable basis of £258,019.85, ie just over 60%. They were not involved in instructing Mr Chapman, but there are still unresolved disputes and other matters which may well result in a reduction from their present full calculation.
73. On the other hand, the Plaintiff's submission that I should halve the Defendants' calculation of their costs on a recoverable basis and then apply only a 10% factor to this is, in my judgment, taking conservatism to the point of unreality.
74. Although the principle behind an interim costs order is that of relieving the successful party, to some extent, from the effects of delay in repaying him costs to which he is entitled, the interim payment is a payment on account of costs, and is not a summary taxation. Conservatism is therefore appropriate, as the extent to which actual costs may fall to be reduced on taxation cannot be known. This means, in my judgment, that it is not appropriate for the court to aim to assess the *minimum* which the receiving party could be awarded on taxation and then award that sum, but rather to assess broadly the amount *likely* to be awarded and then build in a significant safety margin by awarding a conservative fraction of that sum, as a payment on account. What that fraction will be is a matter for the court's discretion and

according to its instinct as to what is fair and right in all the circumstances of the case. It is very much a broad brush approach. Examples from previous decisions will be very fact specific and provide only examples of method rather than quantum.

75. In this case, there is not merely the likelihood that the taxation process will reduce some of the costs *prima facie* claimed, but also the unresolved dispute as to the attribution of costs between breach of trust and account claims. Having carefully weighed all the points made to me, including the Plaintiff's financial arguments, and taking into account my own impressions of the position, I have concluded that the appropriate amounts which the Plaintiff should pay to the Defendants by way of interim payment on account of their costs is £200,000 in total, which I will divide as £120,000 to the First and Second Defendants, and £80,000 to the Third Defendants. In their argument, the Defendants propose a 21 day time for such payment, rather than 14 days, and that appears to me to be reasonable.

(6) Further matters

(a) Orders for costs reserved.

76. I have been told that there are three previous orders, those of 29 August, 18 October and 1 November 2013, in which the costs were reserved. The Defendants submit that these should be dealt with as costs in the cause, stating that this has been the position with all other costs orders made. The Plaintiff has not commented.

77. The two latter orders were consent orders regarding case management directions. The 29 August Order was an application by the Defendants for an extension of time to table Defences. *Prima facie* I consider that the Defendants' approach is correct in relation to the two latter orders, and will make that order. However, the first order was an application for an indulgence by the Defendants, and I do not see that the Plaintiff should pay costs in relation to this. I therefore propose to make no order in respect of those costs. However, in case there is more to either of these matters, I will give liberty to apply.

(b) Indemnity in respect of unrecovered costs out of the Trust Funds

78. In his initial costs submissions the Plaintiff flagged this matter, as to which he said there could be issues. He reserved his position generally depending on the costs orders made by the court and the Defendants' representations on the matter. In the event, there are likely to be unrecovered costs incurred by the Defendants, but no representations in regard to indemnity have been made.

79. It appears to me that there may well be issues about the Trustees' rights in respect of unrecovered costs, not least because the Trustees have succeeded on the basis of prescription, rather than vindication of their conduct. In this respect, it seems to me that they were, at first sight at any rate, defending their own position rather than defending the Trusts themselves. I therefore consider that in order to ensure that the interests of the Trusts and the body of beneficiaries are guarded, I should direct that the Trustees may not indemnify themselves in respect of any unrecovered costs of this action without either the consent of all the beneficiaries (Tilly being represented by her Guardians) or an order of the court, and I propose so to order. If there are reasons why the Defendants consider this to be inappropriate or unnecessary, then I give liberty to apply.

(c) Costs of this costs application

80. As regards these costs, I consider that the result has been that the Plaintiff has been the overall winner. Although he lost on the principle of whether costs should be awarded or an interim payment made at all, he has won on the issue of indemnity costs, external lawyers' fees, fee rate uplift and to a modest extent on the issue of joint representation. There was effectively

a draw on the quantum of an interim payment. In those circumstances, I consider that the appropriate order for costs is that the Defendants should pay 60% of the Plaintiff's costs of this application (on the recoverable basis), and these should be allocated as to 35% to the First and Second Defendants and as to 25% to the Third Defendants.

81. In principle it also seems to me that the Plaintiff should be entitled to set these costs off against the order for interim payment, If his relevant costs can be agreed – and they should not be complicated – then a direct set off can be made. If there is any issue as to these costs then I will order that the Plaintiff be entitled to set off 80% of his actual claim to such recoverable costs (or any higher figure which is accepted) in any event, pending resolution of such dispute. There can again be liberty to apply in this regard.

Summary

82. In summary, therefore, and for the reasons given above, I will make the following order in respect of the costs of this case:

- (1) Subject as provided below, the Plaintiff shall pay the Defendants' costs of the Action and of the preliminary issue Application (here meaning the costs of the Plaintiff's claims against the Defendants in this action for breach of trust, but not those of the Plaintiff's claims for an inquiry, account and associated relief, these being the subject of a separate Consent Order made between the parties and dated 19th December 2013) from 6th July 2013 to the date of handing down of the main judgment, on the recoverable basis, such costs to be taxed if not agreed. PROVIDED THAT
 - a. such costs shall include the Defendants' costs reserved by the orders of 18th October 2013 and 1st November 2013;
 - b. such costs shall not include the Defendants' costs of instructing, remunerating and receiving advice from Mr Graham Chapman QC, which are hereby disallowed;
 - c. in respect of the Defendants' respective legal representatives' attendance at the Hearing of the Preliminary Issue Application on 10th – 13th November 2014, such costs shall be limited to 70% of the Defendants' combined such costs, to be divided between them as to 70% each or as they shall agree. For the avoidance of doubt this sub-paragraph does not apply to the Defendants' costs of preparation for such hearing, but that is without prejudice to any decision of the Taxing Officer as to the proper recoverability of such costs from the Plaintiff on the recoverable basis.
- (2) The Plaintiff shall, within 21 days of the date of perfection of this order and subject to Paragraph (3), make interim payments to the Defendants on account of their respective costs above in the sum of £120,000 to the First and Second Defendants and £80,000 to the Third Defendants.
- (3) The Defendants shall pay 60% of the Plaintiff's costs of and incidental to this costs application on the recoverable basis, such costs to be taxed if not agreed and to be paid as to 35% by the First and Second Defendants and as to 25% by the Third Defendants. The Plaintiff shall be entitled to set off the amount of such costs against the interim payment ordered to be made under Paragraph (2) above. If and insofar as such costs cannot be agreed the Plaintiff shall be entitled, in the first instance, to set off 80% of his claim to 60% of his costs of this application on the recoverable basis.

(4) The Defendants shall not indemnify themselves against any of their unrecovered costs of this action from the funds of either the Medina Trust or the Legitime Trust without either the prior written consent of all the beneficiaries of the relevant Trust or an order of the court. In the case of the beneficiary Tilly Broadhead, such consent shall mean the consent of her Guardian(s).

(5) Liberty to any party to apply.

Hazel Marshall QC

Lieutenant Bailiff

10th March 2015