ARTEMIS TRUSTEES LTD AND ARTEMIS CORPORATE SERVICES LIMITED v SANDLE AND DENTON
Royal Court
29th June 2016

JUDGMENT 28/2016

Judgment with reasons on the "Fee Claim" and other issues reserved at hearing 25th May 2016, in the matter of the C Trust

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

IN THE MATTER OF THE C TRUST

BETWEEN:

(1) ARTEMIS TRUSTEES LIMITED

(2) ARTEMIS CORPORATE SERVICES LIMITED

Applicants

(1) MARTIN JOHN SANDLE

(2) RODNEY GRAY DENTON

Respondents

Before: Lieutenant Bailiff Her Hon Hazel Marshall QC

JUDGMENT with reasons on issues reserved at hearing: 25th May 2016

JUDGMENT handed down: 29th June 2016

Representation:

Counsel for the Applicants: Advocate M Adkins

The First Respondent was in person and (by previous permission of the court) on behalf of the Second Respondent.

Legislation, Cases and Texts referred to:

(a) Legislation:

The Trusts (Guernsey) Law 2007

(b) Cases:

Guernsey

Re *Tchenguiz Discretionary Trust* (Royal Court, 27 November 2015 and 18 December 2015);
Thommessen v Butterfield Trust (Guernsey) Ltd 2009-10 GLR 102;
*Virani v Guernsey International Trustees Ltd (No 2) (*Guernsey Judgment No 36 of 2003).

(c) Cases:

England & Wales

Re Londonderry's Settlement [1965] Ch 918

(d) Texts:

Lewin on Trusts 19th Ed para 29-068 – 29-070
Underhill on Trusts and Trustees 19th Ed Art. 56

Introduction

1. This judgment concerns two particular issues raised in the present proceedings between the Applicants and the Respondents regarding the affairs of the above mentioned trust ("the Trust"), in what has been termed the "Fee Claim" of the Respondents, as outgoing Trustees, on which I reserved judgment at the close of the most recent hearing, on 25th May 2016.

2. Very greatly simplified, and recited only so far as necessary to give sufficient context to the present decisions, the background is as follows. The Trust was created in 1990 as a Guernsey discretionary trust. It was settled by the Settlor, for the benefit of himself and his family; he had three children. He appears to have been resident in France at the time.

3. The Respondents were the Original Trustees. The Second Respondent ("Mr Denton") is a relative of the Settlor, and the First Defendant, ("Mr Sandle") was, I understand, a friend or acquaintance of his and brought in because he was and is an accountant and an experienced trust professional. He operated in those respective capacities through his firms, MS & Co (accountants) and Old Crown Trust Limited (provision of trustee services). Mr Sandle was therefore the effective and active manager of the Trust (and also other trusts for the Settlor's family) and he did this at least to some extent, as he was entitled to do, through his companies. The Trust Deed contains a charging clause which states that

> "*13. Any Trustee being a person engaged in any profession or business shall be entitled to … charge and be paid all usual professional and other charges for business transacted time spent and acts done by him or his firm in connection with the administration of the trusts hereof including acts which a trustee not being in any profession or business could have done personally ……..*"

4. Under the Trust Deed, the Trustees have wide ranging transactional and administrative powers particularly in Clause 9. These include express powers to take legal opinion at the expense of the Trust

> *"on any question arising under this Trust or on any matter in any way relating to the Trust Fund or the duties of the Trustees in connection with this Trust…"* (Clause 9 (16)).

They also give power to employ agents, including professional agents, at the expense of the Trust, to carry out any transactional or administrative task required in the execution or administration of the trust (Clause 9 (17)). Clause 9 (19) authorises any Trustee to act in any matter relating to the Trust despite having a conflict of personal interest, alternatively permits him to abstain from acting on any such matter.

5. By Clause 17 of the Trust Deed, the Settlor retained the power both to appoint further or other Trustees and to remove Trustees. He also retained the power to change the proper law of the Trust (Clause 20).

6. In 2001, the Settlor moved to the United Kingdom. In 2004, Mr Denton was replaced as Trustee by his son Geoffrey ("Mr Denton Jr"). In August 2008 Mr Denton Jr retired as Trustee, and Mr Denton, who is a Guernsey resident, was reappointed a Trustee. In September 2008 the Settlor changed the proper law of the Trust to English law.

7. The Trust was apparently engaged in property development or transactions, including some commercial properties in France held by a hierarchy of companies in the Netherlands and Luxembourg, and English interests held through an Isle of Man company. Although it is a trust for the Settlor's family, it is clear from the way that its affairs have been conducted that it has been treated as the vehicle for the Settlor's business or property development activities, with him exercising, and expecting to exercise, considerable influence over its affairs and the disposition of its assets, and it seems, even, receiving distributions of the proceeds of realisations himself.

8. Apparently the Trust was unsuccessful in its initial dealings in the 1990s owing to its exposure to the struggling Paris office market. Though notifying some fee rates in early years Mr Sandle had held off making fee charges, to at least some extent. I am not here concerned with deciding the validity or quantum of the general fee position, whether for the years prior to 2011 or the period from 2011 until 2015 – or later - which remains to be examined and determined. For present purposes I simply note that in April 2008, the Trust had received a large sum of money (£1.8M) from the sale of a property, and prompted by this receipt of substantial funds, from about then, Mr Sandle intimated fee claims for his work going back over many years.

9. I do not need to go into the course of events over the following eighteen months or so, during which Mr Sandle submitted fee schedules to the Settlor for work in this Trust, and the other trusts. But it is to be noted that in the course of this the Respondents, as Trustees, resolved (on 5th January 2010) to approve a payment of £350,000 "on account" of such fees to Mr Sandle and expressly that he could draw down on that sum as he wished. The resolution did, however, recognise that such fees were "subject to on-going discussion with the Settlor" at the time.

10. Further discussions, in which by now I think lawyers (Macfarlanes) had become involved on behalf of the Settlor, did not bear fruit. By 2010, the Settlor had intimated a wish to replace the Respondents as Trustees. Issues of the potential tax liability of the Trusts thus began to assume importance, possibly because a change of trustees holding French property would trigger a tax charge in French law.

11. In 2011 there were two important events in the history. The first, an external event, was that the French Government, introduced new tax legislation, which was targeted in particular at trusts, inevitably "off shore" as trusts are not part of French law, which the French Government saw as being perniciously used for outright tax evasion, or unacceptable tax

avoidance. The legislation included reporting requirements, in specified circumstances, with regard to the identity of beneficiaries and beneficial interests and also as to assets held. I am not sure if the well known 3% annual wealth tax was introduced at this point or if it had been introduced earlier, but that too was a tax, the impact of which became a cause for concern. The provisions affected persons who were French tax residents and trusts whose assets included French property. They began to come into force in 2011, but particular requirements, including an asset reporting requirement, were scheduled to take effect on 1st January 2012.

12. The second event is that, for whatever reasons, the Settlor exercised his power to remove the Respondents as Trustees of the Trust (on 16th June 2011), and to appoint the Applicants as their replacements. In response to this, Mr Sandle, through Old Crown Trust, issued a formal invoice for £592,759.00 for outstanding fees for administration, bookkeeping and accounting from 1 January 1997 to 31 December 2010.

13. However, by Clause 17 (3) (b) of the Trust Deed, it was expressly provided that the removal of a Trustee should take effect only after

> *"reasonable security having been provided for indemnifying such Trustee against liability or potential liability to any person for which the outgoing Trustee may be answerable as a Trustee or former Trustee of this Trust."*

14. Thus, the first important point for this case is that Messrs Sandle and Denton would not cease to be Trustees unless and until such security had been provided. The second point is that, because their position was expressly governed by the Trust Deed, they were not necessarily reliant on the common law or the statutory position of an outgoing trustee subsequent to retirement/removal, namely that of being entitled to an indemnity in respect of liabilities which they might have incurred personally through being a trustee supported by a mere non-possessory lien over the trust assets, from time to time, following their departure. The Respondents' right to security and the scope of their protection after departure are to be found in the terms of the Trust, if wider.

15. The general position regarding potential French tax, however, caused an understandable degree of consternation amongst all parties. On one level, of course, the interests of everyone in avoiding or minimising any tax liability were aligned; it was their broader interests, and their respective attitudes to the risk of being vulnerable to potential enforcement procedures, which might differ. Steps were taken to try to insulate the Trust from the new taxation regime. The easier step, taken on 22nd December 2011, was to exclude the Settlor's two children who were tax resident in France from the class of beneficiaries of the Trust. The less straightforward step was to seek to remove qualifying assets (ie French *situs* assets) from the Trust's direct or indirect ownership prior to the operative reporting date and the commencement of the tax charges.

16. The difficulty with this latter step, though, was its potential impact on the effectiveness of the lien which would be available to the Respondents. By this time, they had been given French tax advice to the effect that, through being or having been Trustees, they could potentially be exposed to a French tax liability of up to €27M. I have not investigated the basis of that advice, the correctness of which I believe the Settlor disputes.

17. With the need to act before 1st January 2012 as a date which would or might trigger liabilities, or crystalise reporting requirements which could do the same, negotiations took place between those involved – the Respondents and Mr Denton Jr, the Applicants and the Settlor -

under considerable time pressure. Lawyers were acting on both sides by this time, the Respondents having consulted Mourant Ozannes, in Guernsey. This was because the late Advocate St John Robilliard at that firm was Mr Sandle's long-time favoured counsel, and so I am told that consulting him was natural, even though at this time the proper law of the Trust was English law.

18. To avoid the prospective incurring of tax, it became increasingly urgent to implement a transaction ("the Transaction") already contemplated by the Settlor, at least in principle, since mid-2010 by which the Trust's assets would be restructured, so that they would not include French property. I do not need to go into the detail of this, which is of some complexity, but broadly, it involved transferring the Luxembourg companies ("E" and "R") which owned the French companies which owned the French real estate out of the Trust and into "M", a Luxembourg company incorporated and to be owned by the Settlor personally (except for two shares: see below), and then amalgamating E and R with M so as to make M the direct owner of the French real estate owning companies. This would leave the Trust owning, indirectly, and I think as the principal Trust assets, only the benefit of loans to the Settlor and to M, the latter arising, effectively, out of leaving the relevant purchase monies for the Luxembourg companies outstanding as debts due to the Dutch former intermediate holding company ("T") within the Trust structure.

19. Naturally Messrs Sandle and Denton were concerned about the effect this would have on the strength or value of their lien over the Trust's assets, as this would now only be as good as the value of the outstanding loans, and this would be dependent on the covenant strength of, principally, M (but also the Settlor). The underlying ability to repay those debts, therefore, would no longer be controlled by the Trust, whose powers would lie simply in the direct or indirect effects of its ability to call in the loan(s). The Respondents were not comfortable with such a position, not least, I think, because they saw the Settlor as having considerable influence over the Trust and its activities which they feared would be inimical to their interests. To meet such concerns and to enable the Transaction to be implemented sufficiently before the 1st January 2012 deadline, the parties to these proceedings and the Settlor all entered into an agreement of 16th December 2011, termed the "Overarching Agreement", for the purpose of at least preserving the position sufficiently for the time being.

20. This agreement recited the history giving rise to its creation, stating expressly that these recitals were part of the agreement (Clause 1.2.7). Its dispositive provisions included that (a) the Respondents were each granted a single share in M, (b) M was constituted with a "Supervisory Board" as well as an ordinary Management Board, on which the Respondents and Mr Denton Jr each had a place, and which had the right to regular financial information from the Board of M and a right to veto certain significant potential transactions, and (c) the Settlor's shares in M were to be "pledged" to the Respondents, such pledge to be "exercised" (whatever that might mean) if any of the French tax liabilities (unspecified, but plainly as contemplated at the time of the agreement) should be imposed on the Respondents or Mr Denton Jr, or if M made a significant disposition without the consent of the Supervisory Board. However, this arrangement was intended as a temporising measure only. It was expressed to operate only during the "Security Period" which was defined as the period until either the threat of contingent liability for French Tax had ceased (it is apparent from Recital [H] that the parties believed that such contingent liabilities would be diminished over time by limitation) or until an independent arbitrator had determined the level of "reasonable security" which should be provided to the Respondents to satisfy their rights to indemnity and protect their position.

21. This ingenious solution did not, unfortunately, resolve matters. This was first because the parties could not agree on an appropriate independent arbitrator to determine the amount of reasonable security, and, second, I understand, because of difficulties in formulating acceptable terms regarding the pledge of the Settlor's shares. None of the detail of this

matters for today's purposes, however. The important point is that all this history demonstrates and explains the degree of mistrust and frustration which had arisen between, in particular, the Settlor and Mr Sandle (and no doubt also Mr Denton), with regard to the continuing operation of the Trust, and what each saw as being his/their own rights and interests.

22. In this context, it is plain that Mr Sandle perceived the Applicants to be, in effect, the Settlor's puppets. I see no reason to take this view; they are an experienced and reputable licensed trust/corporate services provider. They would naturally, however, refer to the Settlor as the Settlor and indeed the principal beneficiary of the Trust, the only other, now, being one of his sons.

23. By this stage, therefore, the two main bones of contention were the issue of the provision of "reasonable security" for the Respondents, and their claim to "Trustee fees and costs". Negotiations generally focused on the former, and took place during the following two years. It seems that during this time Mr Sandle regarded the Respondents as being entitled to remain in full control of the Trust and its assets, and apparently he did. This led him to adopt an unco-operative attitude to Artemis, though they were now his and Mr Denton's co-Trustees. I am satisfied that he took this view and approach because of the fact of the unresolved French tax position and the exposure of the Respondents as a result, their express right to "reasonable security" and their general right, as Trustees, to a lien over the trust assets, which he mistakenly believed was a possessory lien, in support of their indemnity in respect of liabilities.

24. Impasse resulted until eventually two things then happened. First on 4th February 2015, the Settlor changed the proper law of the Trust back to that of Guernsey, and second, these proceedings were instituted by the Applicants as incoming Trustees (the Settlor is not a party) on 27th April 2015. The proceedings claim the removal of the Respondents as Trustees, and the delivery up of all Trust property papers and information.

25. The Respondents (Mr Sandle by now living in Switzerland) sought to have the proceedings stayed on the grounds that under the Overarching Agreement, the matter of reasonable security, at any rate, had to be determined by arbitration in London. The Court (myself) rejected that argument, and the matter has proceeded on the basis that in all the circumstance the application was in essence a claim for the administration of a Guernsey Trust, and this Court would now exercise supervision of the administration of the Trust in order to effect the removal/retirement of the Respondents as Trustees, which by then was plainly the only way forward, on appropriate terms. This really meant deciding what constituted "reasonable security" in the terms of the Trust Document, for their uncompleted (but plainly necessary, in the interests of the Trust) retirement, and also adjudicating on the issue of the Respondents' – or probably more accurately, the First Respondent's – counterclaim for their claimed fees and expenses.

26. The issue of "reasonable security" was eventually concluded on 24th May 2016, after the taking of tax advice from an independent French Tax Expert. This was to the effect that the Trust was under no current French tax liability with regard to the 3% wealth tax, that any such contingent liability was diminishing as years of account fell out of time, and that the Trust (and entities in the trust structure) were entitled to exemption provided they claimed it, and that, importantly, they would be able to do so in response to any enquiry from the French Tax authorities, and did not need to be pro-active. In response to further concerns expressed by the Respondents with regard to other, perhaps as yet unknown, potential tax liabilities, the Tax Expert advised further that the only such liability which was worthy of consideration on the evidence given to her arose from the inclusion in the relevant French tax legislation of an "abuse of law" provision. This is an anti-avoidance provision, which appears to provide that

it is an "an abuse of law" to rely on the literal meaning of a French enactment in order to avoid tax, and it imposes consequences or liabilities for doing so. It was therefore at least theoretically possible that the French authorities could try to apply this to the main Transaction itself, although as this had duly been reported in 2012 and nothing had happened yet, one might infer that this was not likely. It was impossible to predict how the authorities might act because there was as yet no example of their doing so. It was impossible to predict the amount of possible liability, mainly because this would depend on valuation evidence and argument with regard to any property involved, but also because it might depend on the authorities' attitude, which was as yet unknown.

27. In the light of this evidence, the Applicants formulated proposed undertakings to the Court to provide protection to the Respondents. Based on all this evidence and history, the probabilities, some further evidence from the Settlor and his accountant with regard to the Settlor's own wealth and the potential quantum of tax in this context, the involvement of both the Settlor personally and M itself in offering indemnity to the Respondents, and the assurances of the Applicants, given through Advocate Adkins, that they were thoroughly conscious of their obligations as Trustees of the Trust to have appropriate regard, when administering the Trust, to the fact that the Respondents were contingent creditors of the Trust in respect of their indemnity, the court was satisfied that the Applicants had now been able to offer or procure security to the Respondents which qualified as "reasonable" in all the circumstances. The Court therefore made an order on terms disposing of the "Reasonable Security" aspect of the proceedings on 25th May 2016.

28. The hearing then proceeded to consider certain particular items and issues of principle regarding the counterclaim, which was by now termed the Respondents' "Fee Claim" as identified in Paragraph 3 the Court's order of 15th April 2016. This was in order to attempt to narrow the issues.

29. Under Paragraph 3 (d), the Applicants' contention that certain items specified in the Respondents' Fee Claim should be struck out for disclosing no reasonable cause of action was dealt with first and disposed of in various ways; these points are to be dealt with in an order of the Court. The matter at Paragraph 3 (c) (an assertion by the Respondents that their fee claim from 2011, and/or the rates there being charged had been acquiesced in so as to render them now unchallengeable) was adjourned for further argument to be provided to the Court on paper. The Court heard argument in relating to the matters identified in Paragraphs 3 (a) and 3 (b) of the 15th April Order, and stated that it would consider its decision in relation to those matters.

30. This judgment therefore now deals with those issues, against the background mentioned above. The objective is to identify some of the legal principles upon which subsequent assessment or the Respondents' fee and expense claim should take place.

Issue (a)

What is the extent to which the Respondents are entitled to be paid from the Trust's Assets

(i) remuneration and
(ii) indemnity for expenses

claimed in respect of work done or services performed in connection with their claimed lien over the assets of the Trust?

31. This issue was deliberately drafted widely, so as to encompass whatever formulation of the appropriate principle should appear to be correct, upon hearing the parties' respective positions and contentions. Basically, Advocate Adkins (appearing for the Applicants) submits that in principle, no such work or expenses should be recoverable from the Trust, upon proper analysis of the underlying rationale for a trustee's right to remuneration and expenses, at all. Mr Sandle, on the other hand, submits that all such work should be remunerated and expenses recovered because it has all been occasioned by the fact that the Respondents have been Trustees of the Trust and the position in which this has subsequently put them.

32. I think it is important, first, to clarify the scope of this issue. Advocate Adkins accepts that the Respondents (in practice this really means Mr Sandle, although I think Mr Denton may have had an entitlement to a relatively modest annual fee) are entitled to be paid *proper* remuneration for their services in carrying out the management and administration of the Trust. A basic principle and attribute of trusts is that the office of trustee is gratuitous. This basic principle is there to prevent a trustee having a conflict of interest as regards his own remuneration, so as to protect the beneficiaries. Thus any right to remuneration can be conferred only by (i) the terms of the trust deed, (ii) the consent of all beneficiaries, or (iii) an order of the Court: see s 35(1) of the Trusts (Guernsey) Law 2007. (I think the position would be no different in English law, although that is to be assumed in the present situation anyway.)

33. As neither of the latter two applies here, the Respondents' entitlement to remuneration in the present case has to be found in the Trust Deed. (There has clearly been no agreement of all the beneficiaries, and although Advocate Adkins accepts that the Court has power to authorise appropriate remuneration for a trustee after the event, as part of its supervisory jurisdiction over trusts, it has not done so as yet - and it is of course his submission that the circumstances are not such as to justify any such course. I am not dealing with this argument as a general point.)

34. Mr Sandle must therefore rely on Clause 13, cited above.

35. Advocate Adkins submits further that

    (a) this clause can only authorise reasonable, proper and proportionate fees or remuneration, for work shown to have been done, and charged in accordance with either an actual fee/remuneration agreement, or with usual practice, dependent on evidence, and

    (b) the burden of proving entitlement to any such fees or remuneration is on Mr Sandle, rather than the reverse burden being on the Applicants.

36. I accept these principles, but make it clear that I am not here making any decision, on the true construction of Clause 13 at any detailed level, merely as a matter of general approach. Nor am I concerned with the proper quantification of any fee claim by Mr Sandle, if otherwise justified. I am only concerned with the applicability of the point of principle formulated above.

37. As regards expenses incurred, Advocate Adkins accepts that the Respondents are entitled to be reimbursed for any expenditure reasonably and properly incurred by them acting in their position as Trustees. This is because, whilst a trustee may not be allowed to make a profit from his trust (and remuneration is a form of profit), equally, he should not be personally out of pocket because of having accepted to be a trustee, as this would deter people from accepting trusteeships. In consequence, Advocate Adkins further accepts that the test for circumstances in which a trustee should be indemnified against expenditure incurred by him will be a more generous (to him) test than might be the case in as to circumstances justifying remuneration. This is because the award is relieving him of loss, rather than conferring a gain.

38. Advocate Adkins accordingly submitted that where a trustee does work or incurs expense for his own personal purposes or in his own personal interest, such work or expense obviously cannot be charged to the trust. His further submission was that either from the time when an intimation of a change of Trustee was made or, at least, from the time when the Applicants were appointed as Trustees, the work done and expenses incurred by the Respondents and for which claim is made, were by and large, the obtaining of legal or taxation advice, and that it is plain that, in substance, this was really all done with the objective of protecting Mr Sandle and Mr Denton. It was thus all concerned with protecting their own personal position, by justifying, establishing, preserving or strengthening their claimed lien over the Trust assets to support their claim to an indemnity; it was not work carried out, nor expense incurred, for the benefit of the Trust. In fact, even any maximisation or preservation of the assets of the Trust was itself being furthered rather for the purpose of supporting the Respondents' lien, than for the purpose of implementing or administering the Trust itself.

39. Enlarging on his submission, he said that a strict approach to a trustee's right to remuneration or reimbursement was a consequence of the fundamental rule that a trustee should not allow himself to get into a position of conflict of interest and duty. If this did arise, duty had to be preferred to interest. Such a conflict disabled a trustee from acting, because acting in its own interest would be a "fraud on a power" regarding the matter in question (he took me to textbooks and authority on this topic). The trustee was incapacitated from making a decision which favoured his interest as against the trust, however reasonable the end decision might objectively appear to be. I understood Advocate Adkins to submit that, consequently, any such decision purportedly made by a trustee was void; it would certainly be set aside. Thus a trustee could not authorise its own remuneration - a situation which, he said, was usually and properly dealt with by a trustee entering into a prior contract as to the basis and rates of charge to be applied, upon taking up office.

40. Therefore Advocate Adkins submitted that no part of this work or expenditure should be permitted to give rise to a claim - certainly for remuneration, ie to receipt of payment for time spent. As regards expenditure – primarily expenditure on the fees of Mourant Ozannes, in Guernsey, for advising, and of certain tax advisers in France, - his submission was, once again, that this should be disallowed in principle, although here, because he accepted that the test as regards expenditure was more generous than as regards entitlement to remuneration, his submission was based more on the fact that (he said) the Respondents had refused to disclose such advice to the Applicants, as co-Trustees of the Trust. It followed, he argued, that the Respondents themselves must regard that advice - and with it, any work done in obtaining it - as being personal to the Respondents; if it was for the Trust, there could be no justification in withholding the advice from properly appointed fellow Trustees. The obligation to pay for the advice (and for the work in obtaining it) must stand or fall together with the right to receive the advice.

41. Advocate Adkins did accept two propositions, however, which I record because I consider them to be correct. The first was that even if a Trustee had done work or incurred expenditure which was not properly authorised in terms of the Trust Deed, or paid himself remuneration without proper authority, the court has power to authorise either of these, after the event, in appropriate circumstances. I accept this proposition, whilst recording that this decision is not concerned with any exercise of determining such proper circumstances.

42. The second was that an exclusion for payment of work done or expense incurred in connection with the Respondents' lien would not, whatever the formulation of the test, be intended to operate to take out of recovery, remuneration for time spent, or expense incurred, on acts of *proper* Trust administration, otherwise justified from some other respect. This might cover, for example, work involved in the implementation of the Transaction, even though this was, in a broad sense "in connection with" the claimed lien. In other words the formulation of principle on this issue was not intended to *remove* an entitlement to reasonable remuneration which was justified by other circumstances.

43. Advocate Adkins referred me to two cases concerning the rights of outgoing trustees to remuneration and expenses, namely two decisions of LB Talbot QC in the case of Re

Tchenguiz Discretionary Trust (Royal Court, 27 November 2015 and 18 December 2015). As regards the distinction between work done and expenses incurred for the benefit of the trust and for the benefit of the trustee personally and the effects of this, he referred me to *Thommessen v Butterfield Trust (Guernsey) Ltd* 2009-10 GLR 102; *Virani v Guernsey International Trustees Ltd (No 2) (*Guernsey Judgment No 36 of 2003), and the English case of *Re Londonderry's Settlement* [1965] Ch 918. I do not find it necessary to cite quotations from these cases.

44. Mr Sandle did not accept Advocate Adkins' basic proposition with regard to conflict of interest, or the effects of it. His submission was that all his actions had been in the interests of the Trust, because they were all aimed at preserving the Trust assets, which a responsible Trustee would have been bound to do in any event. There was therefore no conflict. Alternatively, insofar as his work was done (or expenditure incurred) in the context of resolving the issue about "reason able security", which the lien was a part of, it was all to be viewed as being done on behalf of the Trust because providing or preserving such lien was part of the administration of the Trust.

45. In those circumstances, Mr Sandle's submission was, in effect, that all the work done, and the expenses claimed, were to be treated as trust expenses, and it should be acknowledged that he was entitled to remuneration and reimbursement in respect of all of it.

Discussion

46. The matter of the lien, which is the subject of this issue, is, of course, all tied up with the matter of "reasonable security". The question of the Respondents' "lien" was seen by them – and in my judgment quite reasonably – as being part of, and the pivotal basis for, the "reasonable security" to which they were entitled both during their office and potentially – and obviously of even greater importance in the context of the tax advice which had been received - after their retirement. The "lien" might or might not be replaced by some other form of security as "reasonable security" as provided by the Trust Deed, but that would depend on an assessment of what, in the particular circumstances of the case, could or would constitute such "reasonable" security.

47. My decision here is therefore to be regarded as seeking to help draw the line, or at least define the proper approach to drawing such line, between work or expenditure which is properly regarded as having been done for the purposes of the Trust, and work or expenditure which is correctly regarded as having been done for the personal benefit of the Respondents, with reference to their "lien", encompassing also their claimed indemnity, and/or claimed "reasonable security". In principle the Respondents are entitled to remuneration and indemnity as regards the former (subject, of course, to all other aspects of establishing that any particular amount claimed is properly chargeable and a proper charge) but not the latter.

48. I did not understand Mr Sandle to dissent from this; he simply draws the line much more in his favour than does Advocate Adkins. I also observe that the distinction may not always be clear cut, and it may be that some items are properly viewed as being for the benefit of both the Trust *and* of the Respondents. The formulation of principle will need to deal with this possibility as well.

49. Although this cannot affect my decision about the proper principles applying, I have at times had some sympathy with Mr Sandle, in the position in which he and Mr Denton found themselves with regard to potential liability for French taxes, and their view that they should receive financial recompense and reimbursement for all consequential trouble and expenditure. However, evaluating Mr Sandle's submissions on this topic is made very difficult by the fact that he seems to me to have proceeded on the basis of several assumptions which are effectively assumptions of law, and which are incorrect, and my sympathy has diminished as it has begun to appear that to a large extent he has been the author of his own problems.

50. His general perception, I think he accepted, is that he and Mr Denton were entitled to be reimbursed for everything that they had spent and which they would not have spent "but for" having become Trustees. This is potentially too wide a description of a trustee's entitlement to indemnity, as the principle of indemnity still has limits of reasonableness, even if generous ones. In addition, it seems to me that Mr Sandle feels that a similar approach ought to apply to remuneration as, in effect, reimbursement for time spent. However, for reasons already referred to, the test is not so generous, because remuneration is awarded as an exception to the general proposition that the office of trustee is a gratuitous one.

51. Mr Sandle also expressed the view, which had obviously coloured his whole conduct, that, as incoming Trustees, the Applicants' had no right to seek information about, or to query, what had previously happened in relation to the Trust (such as the basis for fees claimed, or proof of work being done) unless they had "good reason" to believe that there had been something untoward. (Quite who would be the arbiter of this is unclear.) Once again, this is not the case. An incoming trustee plainly has a basic right, and even obligation, to check that the affairs of the trust are in order and have been properly conducted, so far as they can see.

52. Mr Sandle had further, it appears, assumed that he and Mr Denton were entitled to a possessory lien over the trust assets, and were in principle entitled to "retain" control of the Trust property because of such a lien, possibly even after their departure as Trustees, in support of their right of indemnity. In general law, a trustee's lien as such is non-possessory, (cf s 44 of the Trusts Law 2007) and the entitlement to "reasonable security" in the Trust Deed does not affect this. A non-possessory lien simply entitles its beneficiary to a call upon relevant assets to have them realised, from the hands of others, to meet any liability in point.

53. The combination of these latter assumptions appears to me to have led to Mr Sandle's stance that, even though the Applicants were duly appointed Trustees under the terms of the Trust Deed, there was no need to consult them about steps taken to preserve the assets of the Trust as he and Mr Denton saw fit to pursue, and including seeking legal advice, etc. This further twist was presumably because of his perception that the Respondents' lien and right to indemnity and to reasonable security had some sort of primacy. However, it was an unfortunate stance to take in the context of an analysis of what fees remuneration and expenses will then be properly regarded as trust liabilities, as opposed to matters falling on the trustee personally.

54. Lastly, and for whatever reason (as to which I make no comment) he and Mr Denton did not see fit to approach the court – it would then have been the English court - for either sanction to their position, or directions as to what they should do, when faced (apparently) with objections from the Settlor. It seems that they simply went ahead on their own, and in the context, therefore, of an extremely difficult problem as to how to reconcile the continued operation of the Trust after their departure, with the best lawful measures to seek to minimise the prospects of French liability, and the requirement to provide the Respondents with *reasonable* security against possible future liability.

55. The drawing of the line of principle, in any particular set of circumstances, between work done and expenses incurred for the purposes of the Trust (chargeable/recoverable) and work done and expenses incurred in the personal interests of an outgoing, or prospectively outgoing trustee (not chargeable/recoverable) can be a difficult matter even in an ordinary case, whether as a matter of concept or fact. I have already remarked that this may be because that the expenditure/work is for the benefit of both of them in some respects, and to a differing degree. Each instant claim may well, therefore, need to be considered individually in the particular circumstances, to decide if and why it falls on the right or wrong side of the line. In this case, the effects of both the rancour and suspicion between the Respondents and the Settlor and the Applicants, and the approach taken by Mr Sandle as explained above, makes drawing the appropriate line even more difficult. I am not suggesting that that is a reason to penalise the Respondents, simply a fact and circumstance to be taken into account in coming to a decision.

56. Turning to the relevant authorities, this case is different from the *Tschenguiz* case in one very important respect. In this case, the Respondents have remained in office as Trustees during the whole of the period with which I am concerned. This is because the Trust Deed provides expressly that an outgoing Trustee who retires or is removed does *not* actually cease to hold office until such time as "reasonable security" has been provided for him. It follows from this that he is entitled to receive remuneration (whatever that may appropriately be) as a present "Trustee" under Clause 13 of the Trust Deed during all the relevant period, which, in this case, has lasted at least up to the date of the latest hearing. The position of the Respondents is therefore different from the position in *Tchenguiz* where a former trustee was apparently seeking, but was refused, *remuneration* (as contrasted with an indemnity for expenses) in respect of a period after he had been removed as trustee, in accordance with the terms of the relevant trust.

57. In my judgment, the Respondents' entitlement to remuneration under the Trust Deed therefore continued, and continues, right up to the completion of the process of their retirement, with their entitlement to remuneration being on the basis that applies to Trustees in office, as that is what they were. Quantification will therefore be decided according to general principles relating to trustees' proper remuneration, and not former trustees. The same principle obviously operates in relation to expenditure incurred. In other words, the line to be drawn between "Trust" remuneration and expenses and "personal" work and expenses is to be drawn on the basis that the Respondents are continuing, and not former, Trustees.

58. However, does it make any difference that they were inevitably, on this analysis, co-Trustees at the time? Yes, it does. Advocate Adkins points to Section 28 of the Trusts (Guernsey) Law 2007 (previously s 24 of the 1989 Law). This states that

> *"(1) All trustees of a trust shall, subject to the terms of the trust, join in the execution of the trust;*
>
> *(2) Subject to subsection (3) no function conferred on trustees shall be exercised unless all the trustees agree to its exercise;*
>
> *(3) The terms of a trust may empower the trustees to act by a majority.."*

The position is the same in English law, although there arising from common law: see Lewin on Trusts 19th Ed para 29-068 – 29-070 and Underhill on Trusts and Trustees 19th Ed Art. 56. (The statutory availability in English law of powers of delegation is of no application to the issues under discussion.)

59. Prior to the appointment of the Applicants as Trustees on 16th June 2011, Mr Sandle and Mr Denton were the totality of the Trustees. However, from that date onwards, there were, in fact four Trustees. I can find no provision in the Trust Deed empowering trustees to act by a majority, but even if there were, Mr Sandle and Mr Denton did not comprise a majority.

60. It follows, in my judgment, that after that date, the Respondents are not able to claim any fees or remuneration based on work done allegedly for the Trust, except where they can show that such work was undertaken with the authorisation, approval or consent of the Applicants, as well. Insofar as anything was done on their own initiative in such circumstances, it is not possible to argue that this was done as a "function conferred on trustees" in accordance with the requirements for recognition of this as a matter of trust law, and on that basis, remuneration for it cannot be chargeable to the Trust. There is, of course, the exception that the court has inherent jurisdiction to authorise *ex post facto* remuneration to a trustee who has carried out work completely beyond the call of duty, or which has benefited the trust in a wholly exceptional way, such that the beneficiaries would be unduly enriched if the trustee were not remunerated. However, neither this case generally, nor this particular category of claim, falls in this class, or anywhere near it.

61. The position may be different with regard to expenses or disbursements. Here, the Respondents would not be claiming the gain of remuneration, but would be seeking to be

indemnified against a liability, and it is a liability which they apparently, even if misguidedly, believed they had incurred as Trustees and/or were legitimately able to charge to the Trust. Given the difficult situation which had arisen, it may be that they incurred expenditure (I am thinking here of professional advice) which was actually of benefit to the Trust, and in that context it seems to me that notwithstanding their lack of proper authority, it might be proper for the costs of such matters to be paid by the Trust. A trustee's indemnity can legitimately arise on a wider basis than would his entitlement to remuneration. In my judgment, therefore, there *may* be matters of expenditure incurred subsequent to the appointment of the Applicants which the Respondents ought to be able to recover as a trust expense notwithstanding that they were incurred without the approval or authority of their co-Trustees at the time, provided this is justified as reasonable on an objective assessment. I will deal the formulation of that requirement later.

62. Returning to the general question of identifying where the line between work which is properly remunerable and work which is not should be drawn, the first question is whether this should be at the point in the administration of trust affairs where the work done or expense incurred first starts being about the prospective lien of an outgoing trustee. However, in my judgment, and as I raised in argument, such a test, though easy to administer, would be too rigid and would not be right. Advice or consideration of the position as to an outgoing trustee's prospective indemnity or lien is a matter of as much importance to the trust as to the outgoing trustee himself. Both parties need to know their respective positions, which mirror each other, and those in control of the trust need to know its, and therefore their, potential liabilities and responsibilities. Their first and foremost responsibilities are, of course, to administer the trust properly in the interests of the beneficiaries but where external liabilities arise, trustees are obliged to have appropriate regard for these, both actual or contingent. This is illustrated by recent authority emphasizing that where a trust becomes "insolvent" on the general cash flow test, the trustees would then owe a duty to conduct its affairs primarily in the interests of creditors: see *Representations of Z Trusts* [2015 JRC] 196C

63. It follows, therefore that it is in the interests of a trust properly to consider and investigate the existence of any outgoing trustee's right to a lien and indemnity and to clarify the requirements attaching to it. It also could, and in my judgment would, be potentially in the interests of the trust to investigate and identify the nature and extent of any dispute about the position which then emerged, for similar reasons. (It is conceivable that trustees might even reasonably see it as being in the interests of the trust to pay for advice being given to the outgoing trustee, but such a possibility would, in my view, be highly unusual and dependent on particular facts. I am not suggesting that it could apply in this case, as am satisfied that it does not.)

64. What the above demonstrates, though, is that it would be wrong to exclude all remuneration or indemnity claims by an outgoing trustee, simply on the basis that they related to his claim to a trustee's lien and were *therefore* personal and not recoverable. In my judgment, as regards a potential outgoing trustee's lien, or right from a trust deed to have "reasonable security", it would be correct that work done or expense incurred (a) to ascertain the position with regard to whether an outgoing trustee was in law and fact, entitled to such benefits and, once it was ascertained that he was, (b) to identify the nature or extent of any dispute as to such entitlement, would properly be regarded as a trust administration expense in principle. This is because the acceptance of a lien, or, where it is expressly provided in the trust deed, the provision of reasonable security for liabilities, is an obligation of the trust, which would have to be performed in the course of the due and proper administration of the trust. However, once matters progress further and such work or expense becomes identifiable as being for the objective of fighting the trustee's own corner either against the trust, or separately from the interests of the trust, that work or expense would clearly fall on the "wrong" side of the line.

65. Turning to the application of these principles in this particular case, as the right to remuneration in particular is dependent on the terms of the Trust Deed, and is a matter of gleaning the intention of the parties to this Deed, it is appropriate to consider that context.

The Trust Deed appears to have been drawn quite generously to its Trustees. There is not only a charging clause, but it is drawn in quite wide terms (Clause 13), quoted above. The right to take advice at the expense of the Trust (Clause 9 (12)) is very widely drawn. A Trustee has the right to retain for himself commissions etc earned by him in respect of brokerage and insurance and suchlike transactions on behalf of the Trust (Clause 13 (2)). A Trustee has the right to retain for himself any fees or remuneration earned by him as director, officer, manager or employee etc of any company (or its associated company) owned by the Trust (Clause 11). A Trustee is not to be liable except in case of bad faith (Clause 16; whilst this purported exclusion of gross negligence will be ineffective under Guernsey law, it adds to the overall impression that the Trust Deed is intended to be generous to Trustees); and lastly a Trustee has express power to act in any matter in the Trust notwithstanding that he has a personal interest in the matter (Clause 9 (19)). The Trustee also remains entitled to these powers and benefits despite the fact that he has been given notice of removal, until that removal is finally completed by the provision of reasonable security (Clause 17 (3)).

66. I have indicated that I accept that Advocate Adkins' general proposition, stated in broad brush terms, that a trustee is not entitled to recover an indemnity for expenditure and *a fortiori* not fees or remuneration for his work where such expenditure or work is incurred or performed, for the benefit of the trustee personally. In argument Advocate Adkins qualified that description by adding "rather than the trust". This illustrates that the issue between the parties may well, therefore, in effect be where that line is perceived to lie. It focuses attention on how far the existence of *any* benefit to the Respondents from the work or expenses incurred should operate to make that a matter entirely at their expense.

67. In my judgment, given the general scheme of the Trust Deed, referred to above, the correct approach to be applied here is that

> **the Respondents are entitled to be paid from the Trust's Assets**
>
> **(i) remuneration and**
>
> **(ii) indemnity for expenses**
>
> **claimed in respect of work done or services performed in connection with their claimed lien over the assets of the Trust (here including also in connection with their claim to indemnity and to reasonable security therefor) if and to the extent that an independent Trustee of the Trust expecting to continue in office as such could have reasonably thought it appropriate to perform such work or services and/or incur such expenditure on behalf of the Trust, paying no regard to whether or not this conferred any personal benefit on the Respondents <u>Provided always</u> that the Respondents are not entitled to be paid remuneration as regards any work carried out by either of them after 16th June 2011 save where such work was carried out with the consent, approval or authority of the Applicants.**

68. I choose this formulation because, as indicated, it seems to me that the existence of some interest or benefit to the Respondents in such matter is not a reason for excluding such work or expenditure from charge to the Trust. The Trust Deed contemplates that Trustees may validly act notwithstanding that they have a conflict of interest. Items are to be excluded, therefore, not because they are of a benefit to the Trustee, but because they are of no sufficient benefit to the Trust. I include "sufficient" to exclude any unduly strained argument as to what is of benefit to the Trust. I have used the word "could" in this formulation deliberately, as the test, in my view, is plainly lower than the certainty of "would" but the alternative word "might" appears to me to provide scope for more argument than I think appropriate about the degree of likelihood that such a decision could have been made. Whilst I have observed that the Trust Deed is generous to Trustees that does not, in my view justify being overly astute, after the event, to find justification for any action which would only very doubtfully have been within the ambit of "reasonableness" on the part of an independent

trustee. In addition, the proviso expresses the qualification necessarily imposed on remuneration by the effects of s 28 of the Trusts (Guernsey) Law 2007, although the question of expenditure after that date falls to be considered under the main principle.

69. Thus, the test in essence is whether an independent trustee could have authorized the cost (work or expenditure) in question, ie whether doing so would have been within the range of such an independent trustee's proper exercise of his discretion, in all the circumstance, but not giving any account, one way or the other, to any possible benefit to the Respondents. I make the following further specific points.

70. First, in applying this formula it may, of course, be appropriate to look at particular aspects of the matter. For example, the level of charge may enter into the matter, in that, if a piece of work or expense were to be performed at low cost, it could be reasonable for this to be incurred when the same piece of work or expense at high cost would not be. This is a matter for consideration at the level on an item by item basis. .

71. Second, in my judgment and in line with authority such as of *Re Londonderry's Settlement, (*above), the withholding from co-trustees of any advice taken must prevent the outgoing trustee arguing that the advice was taken, to any extent, for the benefit of the trust.

72. Third although the above formula may render any particular fee claim sustainable in principle against the Trust, the actual fee will still require to be justified as appropriate, ie reasonable and proportionate, on usual principles. Nothing in this formulation changes that requirement.

Issue (b)

What is the extent to which the Respondents are entitled to be paid from the Trust's Assets

(i) remuneration and
(iii) indemnity for expenses

claimed in connection with their positions as (i) shareholders, (ii) pledgees of shares and (iii) members of the Supervisory Board of M?

73. The reference to "pledgees" has been included because Mr Sandle raised the issue of fees/expenses claimed in relation to this status at the hearing. He had previously wished to include it in the original form of the order, but as "pledgees" had not been mentioned at all at the previous hearing when the scope of the order was discussed, I had disallowed it. At the latest hearing, and as a matter of pragmatism to which Advocate Adkins did not dissent, I decided that I ought to deal with the reference to "pledgees" as well for practicality and completeness.

74. This issue is really a sub-category of the previous issue. However, as it is focussed on the question of interaction with M, it appeared to be possible, even at this stage, to narrow the issues in this particular regard.

75. It will be observed that this sub-set or remuneration and expense claims all rise out of the position regarding M, which was set up by the Overarching Agreement, executed in December 2011. It follows that it all took place at a time when the Respondents were co-Trustees with the Applicants. The effects of s 28 of the Trusts Law mentioned above therefore apply, although to more subtle effect, because the Applicants were parties to the Overarching Agreement. They plainly, therefore, consented to or acquiesced in the Respondents' taking up the positions of shareholders, pledgees of shares and Members of the Supervisory Board of M, but that does not mean that they authorised them to do so on behalf of the Trust, rather than simply accepting that they would do so for in their own personal interests.

76. Mr Sandle has argued that the positions occupied by himself and Mr Denton were taken up to preserve the assets of the Trust (which were going to become the rather fragile matter of the benefit of loans to M and to the Settlor) in the context of the Transaction being implemented, that this was a benefit to the Trust and that the benefit to the Respondents was incidental, or that the benefit to the Trust was sufficient to make it right that the Trust should remunerate himself and Mr Denton in respect of time spent in their capacity of shareholders, pledgees and Supervisory Board Members, and indemnify them for expenditure incurred as such.

77. I am entirely unpersuaded by this proposition, whether as a matter of fact, of inference or of law. First, the general history of the matter, and the tenor of the Overarching Agreement has all the flavour of these matters being in place for the benefit and protection of the Respondents personally, and not of the Trust. Indeed, recital [P] to the Overarching Agreement, which is stated to be an operative and not merely a descriptive provision (see Clause 1.2.7), effectively says so in terms. The Security Period terminates when the Tax Liabilities which might affect the Respondents and Mr Denton Jr (defined as contingent exposure to French tax liabilities incurred through having acted as Trustees of the Trust: recital [H]) have been shown not to exist, or when they have been given alternative reasonable security. Whilst it is recited at [N] that the parties agree that it is to their mutual benefit that the assets of M be preserved or enhanced, they then acknowledge that the matter which requires resolution arises from their disagreement about the extent of the "reasonable security" which the Respondents are entitled to have once they are Former Trustees (recital [O]). Thus, the benefit to the Trust propounded by Mr Sandle is not the central point of the Overarching Agreement, but is incidental; the obvious central point of the Overarching Agreement is protection for the Respondents, in their personal capacities, whilst still enabling the desired transactions for the Trust to be implemented.

78. At one stage it appeared to me that one strong feature pointing against Mr Sandle's argument that the purpose of the Agreement was to confer the benefit of asset protection on the Trust just as much as the Respondents was the fact that the Agreement did not confer any similar status or rights with respect to M on either of the Applicants, as the current and intended continuing Trustees and even as parties to the Overarching Agreement, in contrast with the position of the Respondents. If the Overarching Agreement had had the positive objective of benefitting the Trust, then this was somewhat bizarre. However, this might have happened out of concerns about prejudicing the French Tax position, as to which I heard no evidence or argument, and so I place no weight on this. My overall view remains, nonetheless, that the whole tenor of the Overarching Agreement is that of benefiting and protecting the Respondents, and additionally Mr Geoffrey Denton, as to their personal exposure to liability. The rights in question, (ie those of shareholders, pledgees and Members of the Supervisory Board of M, but limited to the duration of the Security Period) have that flavour. I am satisfied that they were demanded by the Respondents, and were conferred and intended to operate, for the purpose of the Respondents' personal benefit. In consequence, any work done or expense incurred in operating, supporting or defending those rights was done for their personal benefit only, and not for the benefit of the Trust, and it is entirely for their account.

79. I should say that considering the position in respect of each of the three relevant statuses of the Respondents does not change my impression. Little if any work or expense would be incurred simply through the office of shareholder, but such as there was does not seem to me to be of such a nature as to suggest that the shareholdings were held other than for the purely personal benefit and protection of the Respondents. As regards their position as pledgees of the Settlor's remaining shares, the position seems to me to be no different, and this is reinforced by the fact that I am informed that one reason the Overarching Agreement was never fully implemented was continuing disagreement about the appropriate terms for the pledge document. I infer that much of the claimed fees and charges is likely to relate to this aspect, which does not seem to me to be capable of conferring a benefit on the Trust, let alone to have done so. With regard to the position of Member of the Supervisory Board of M, (which would perhaps be the most likely post in which a benefit to the Trust could be perceived) I remain of the clear impression that this was simply to give Mr Sandle and Mr

Denton the comfort of some ultimate residual control over Marlborough's acts, and that their interest in extracting this was purely personal.

80. Advocate Adkins points out that, in relation to this latter, the remuneration of Members of the Supervisory Board is, by M's Articles of Association, to be determined by the shareholders in any event, which he submits, must preclude any claim against the Trust. It is also the case that the Overarching Agreement itself provided that the Independent Expert there intended to determine "reasonable security" was also to have power to determine whether the members of the Supervisory Board should be entitled to reimbursement of their reasonable costs and expenses (not remuneration) incurred as such: Clause 3.1. Neither of these features causes me to feel other than that the Respondents held their positions as Members of the Supervisory Board in their own personal interests, to help protect their personal position as potentially liable to French tax charges from being undermined by erosion of the value in M which would, or might be required to support it.

81. I have considered the fact that, through the Court's intervention, there now will be no such Independent Expert under the Agreement capable of considering and possibly making a decision in favour of the Respondents in relation to their costs and expenses (if any, I must add) incurred as members of the Supervisory Board of M, and whether this makes it appropriate for the Court to exercise that function, but I conclude not. The Court is not enforcing or implementing the Overarching Agreement but administering the Trust, and the fact that the Agreement may thereby become incapable of being operated in this particular respect seems to me to be neither here nor there with regard to the principles of trust administration. It is, in any event, difficult to see, from the scheme of the Overarching Agreement itself, who this payment obligation might be intended to fall upon, and it is difficult to see how it could be the Trust. The Applicants joined in the Agreement, but there are no obligations expressly imposed on them.

82. In summary, therefore, I am satisfied that any work done or expense incurred by the Respondents in their capacities as shareholders, pledgees of shares or Members of the Supervisory Board of M SA was work done and expense incurred entirely in the interests and for the benefit of the Respondents (and Mr G Denton) personally. My ultimate decision on this issue is therefore that

the Respondents are not entitled to be paid from the Trust's Assets either

(i) remuneration or
(iv) indemnity for expenses

claimed in connection with their positions as (i) shareholders, (ii) pledgees of shares and (iii) members of the Supervisory Board of M.

83. This judgment therefore deals with the two issues upon which I reserved judgment on 25th May 2016.

Lt Bailiff Hazel Marshall QC

29th June 2016