



In Re the Tchenguiz Discretionary Trust
Royal Court
1st December 2016

JUDGMENT
12/2017

Judgment on Remuneration

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

Civil No. 1505/2010

IN RE THE TCHENGUIZ DISCRETIONARY TRUST (“the TDT”)

J U D G M E N T O N R E M U N E R A T I O N

Before Patrick John Talbot, Esq., QC, Lieutenant Bailiff – sitting alone

Oral hearings 30 June and 1 and 7 July 2016

Judgment handed down: 1 December 2016

Advocate Nick Robison for the Current Trustee of the TDT, Rawlinson & Hunter Trustees S.A.
Advocate Elaine Gray for the Joint Liquidators of four BVI companies, creditors of the Former Trustees of the TDT

Advocate Paul Richardson for the Protector, Robert Tchenguiz, who is also joined as a party as an adult member of the class of Beneficiaries under the TDT
(Advocate Christian Hay is the appointed representative of the minor, unascertained and unborn Beneficiaries under the TDT, including the two minor children of Robert Tchenguiz)

1. The background to this judgment is mostly to be found in the judgments of the Court of Appeal in the appeal in Guernsey 1 delivered on 27 June 2014, 29 October 2014 and 10 August 2015, and in my judgment on remuneration in these proceedings (“**Guernsey 2**”), which I delivered on 18 December 2015 (“**the first judgment**”). In this judgment I shall use the same abbreviations as I used in the first judgment, except that I shall refer to Mr Robert Tchenguiz as “**the present Protector**”.
2. The starting-point in this judgment is the Trust Deed, the proper law of which is, by Clause 3.1, the law of Jersey. Although I did so in the first judgment, I shall, for convenience, set out, in relation to the claims of both the Current Trustee and the present Protector respectively, the provisions of the Trust Deed, (which established the TDT on 26 March 2007,) which are material for present purposes.

The Current Trustee’s claim for remuneration

3. I begin with Clause 12 of the Trust Deed, which is part of the foundation of the claim of the Current Trustee for remuneration:

“12 TRUSTEES’ FEES AND PROVISION OF OTHER SERVICES

12.1 Any Trustee for the time being hereof who shall be a company empowered to undertake trust business shall be entitled, in addition to reimbursement of its proper expenses, to remuneration for its services in accordance with:

- (i) such terms as are agreed from time to time in writing between the Trustees and the Protector; and*
- (ii) in the absence of such agreement, such company's published terms and conditions for trust business in force from time to time or in the absence of such published terms and conditions in accordance with such rates as it shall from time to time reasonably determine.”*

4. In paragraph 37 of the first judgment, I mentioned some matters which I suggested might assist me at this stage of the application of the Current Trustee for remuneration and I invited the Current Trustee to consider adding to its evidence. Accordingly, Mr Andrew McCallum, a director of the Current Trustee, who had sworn a first affidavit on 2 March 2015 (“**McCallum 1**”), swore a second affidavit on 18 February 2016 (“**McCallum 2**”). The Current Trustee also relies upon the 7th affidavit of Mr Richard Hillier, a director of the Current Trustee, sworn on 2 May 2014, (“**Hillier 7**”), to which I referred in the first judgment, and an affidavit of Mr David Wallace Wilson sworn on 11 February 2016 (“**Wilson 1**”). In **Wilson 1**, Mr Wilson, who is an attorney at law admitted in Geneva and New York, a partner in Schellenberg Wittmer lawyers of Geneva, a non-executive director of a Swiss trust company and a joint protector of a number of Swiss trusts, set out his experience in trust administration and in relation to the remuneration of Swiss-based trustees. On 1 July 2016, during the oral hearings, I permitted the Current Trustee to rely upon Mr Wilson’s affidavit as the evidence of an expert in the field of trust administration, particularly such administration in Switzerland, where Mr Wilson practises law. Nevertheless, although the Current Trustee is a Swiss company, the TDT is governed by Jersey law and the Current Trustee does not rely upon any evidence from a witness experienced in the administration of trusts in either Jersey or Guernsey.
5. The present Protector raised no submissions against the claim of the Current Trustee for remuneration. However, the Joint Liquidators argued that either the Current Trustee’s application for remuneration should be dismissed or that the claim for remuneration should be substantially reduced.
6. The Joint Liquidators argued that whilst Mr Wilson might have experience in Swiss trust matters, his evidence should be given little or no weight. But the Current Trustee contended that I should pay due heed to that evidence since the evidence had not been rebutted by any evidence on behalf of the Joint Liquidators, and that, in the absence of rebuttal evidence from the Joint Liquidators, the only evidence on this issue before the court was that in **Wilson 1**, **Hillier 7** and **McCallum 1** and **2**. In light of what I said in paragraph 37 of the first judgment, it is understandable, in my judgment, why the Current Trustee sought evidence from Mr Wilson. I therefore confirm my ruling of 1 July 2016 that the Current Trustee is permitted to rely upon **Wilson 1** as evidence of Mr Wilson’s experience and, to some extent, of his views.
7. In paragraph 18 of **Wilson 1**, Mr Wilson stated that the remuneration structure for the Current Trustee, based on time spent plus CHF 4,000 *per annum*, was reasonable. He also said that the total amount of time spent by the Current Trustee working on TDT-related matters between 2010 and 2015 was reasonable. Both these statements, which amounted to expressions of opinion, were based on Mr Wilson’s experience and they are relied upon by Advocate Robison as being material to the quantum of the Current Trustee’s remuneration.
8. But it is, of course, for the court to decide this issue on the basis of *all* the material before the court, taking into account the relatively few authorities on the issue of quantum of a trustee’s

remuneration and the argument of the parties relating to the reasonableness of the Current Trustee's claim, which is a claim arising for decision either under the last part of Clause 12.1 of the Trust Deed, *i.e.* "in accordance with such rates as it shall from time to time reasonably determine", or under the inherent jurisdiction of the Royal Court to award remuneration to trustees of a Guernsey trust.

9. Whereas this inherent jurisdiction is not challenged by Advocate Gray on behalf of the Joint Liquidators, she did contend, as I have already mentioned, that, on the facts in this application, I should award the Current Trustee no remuneration at all and should dismiss its application. The issue here is, therefore, what sum, if any, I should award the Current Trustee as remuneration during its period of office as sole corporate trustee of the TDT, whether under the closing words of Clause 12.1(ii) of the Trust Deed or under the inherent jurisdiction of this court.
10. As I shall explain more fully later in this judgment, it is not, in my judgment, seriously arguable that the Current Trustee should not be awarded any remuneration at all. In the light of what I decided in the first judgment, and, in particular, what is also said in McCallum 2, the Joint Liquidators appear to me to be putting their case far too highly in submitting that I should reject the Current Trustee's claim in full. Advocate Gray submitted, in effect, that the evidence filed on behalf of the Current Trustee to support its claim for remuneration was so flimsy that the application for remuneration should be dismissed, with no remuneration being awarded to the Current Trustee at all. I disagree with this submission.
11. Mr Wilson exhibited to Wilson 1 as exhibit 'DWW1' a schedule dated 11 February 2016, described in the index to the exhibit as "*TDT – Breakdown of Timesheet Charge-Out Rates and Hours 2010-2015*", which set out the total number of hours apparently worked on the TDT's affairs by the Current Trustee's directors and staff between June 2010 and December 2015 under the rubric, (which was explained in paragraphs 17 to 19 of McCallum 2, especially in paragraph 19,) "*Total Hours (note: incl. SFO time)*". A schedule included within exhibit "AMC1" to McCallum 2 mentioned that 90% of the professional time spent by the Current Trustee between 2010 and 2015 related to "*Administration of the [TDT]*" and that the balance of 10% related to "*Accounting*". The administration services were divided into two columns, "*Legal*" and "*Non Legal*". The "*Legal*" column summarised work performed by the Current Trustee's personnel in its Geneva office in relation to court proceedings, including Guernsey 2, and the "*Non Legal*" column summarised work performed by the Current Trustee's personnel in its Geneva office in the day-to-day administration of the TDT and its assets, including maintaining trust accounts, dealing with tax matters, and liaising and dealing with the Former Trustees and the Joint Liquidators. The Current Trustee's case is that the work summarised in both columns was necessary and that the fees charged by it for performing the works were reasonable and should therefore be allowed.
12. I accept the evidence given in paragraph 4 of McCallum 1 and paragraphs 14 to 16 and 31 a) to g) of McCallum 2 as a balanced summary of the tasks which the Current Trustee had to perform during the years in question, although I have also borne in mind the fact that during that period the assets of the TDT were retained by the Former Trustees until, at least, the handing down of the main judgment in Guernsey 1 in December 2013, and were, with the important exception of Iver's long lease of the RCO, under the control of the Joint Receivers after their appointment by the Court in Guernsey 1 on about 23 December 2013. In doing so, at least in relation to the period between the appointment of the Current Trustee as trustee of the TDT on 2 July 2010 and the appointment of the Joint Receivers on about 23 December 2013, I reject the contention, made on behalf of the Joint Liquidators, that the role of the Current Trustee was substantially limited in scope and that any remuneration granted to them should be similarly limited in amount so as to reflect that factor. In my judgment, once the Current Trustee was appointed the sole trustee of the TDT in place of the Former Trustees, it had to perform its obligations under the Trust Deed and under the Trusts (Jersey) Law, 1984, ("**the Jersey Law**"), to the best of its ability, even though the assets of the TDT remained vested in the Former Trustees, (which were claiming to be indemnified out of the assets in circumstances which I need not set out here,) and were, later, under the control of the Joint Receivers.

13. In paragraphs 7 to 9 of McCallum 2, Mr McCallum explained that the Current Trustee, as was common practice for Swiss trustees, charges a nominal annual fee for each trust of which it is appointed trustee, which fee is intended to meet expenses that arise in the administration of such a trust, including rent and insurance, and what he called “*some key staff*”. He also said that such an annual fee only made a small contribution towards meeting the cost of such overheads; in the circumstances of this case, I readily accept this evidence with regard to the TDT. Mr McCallum therefore contended that the annual fee of CHF 4,000 charged by the Current Trustee for the administration of the TDT was very reasonable. In paragraph 18 of Wilson 1, Mr Wilson agreed with Mr McCallum, but, in my view, Mr Wilson can only give admissible evidence of his experience of the practice of Swiss-based trustees charging on the basis of a fixed annual fee, and not the reasonableness of the annual fee charged by the Current Trustee as trustee of the TDT.
14. It seems to me that when assessing the reasonableness of the fees to which the Current Trustee claims it is entitled as its remuneration, the court must look at the aggregate of both the annual fee and the very much larger fees charged by the Current Trustee under the charging rates used by it from time to time. Those rates were dealt with in paragraphs 10 and 16 of McCallum 2, where, *inter alia*, Mr McCallum deposed that the Current Trustee had “*at all times sought to minimise costs incurred*” including, in part, using “*more junior trust officers and accountants to carry out the less complex administrative functions and avoided incurring the higher directors’ fee where possible*”. It was also stated by Mr McCallum that the Current Trustee had only increased its charging rates to a very limited degree during the years in question. In paragraph 19 of Wilson 1, Mr Wilson stated that the charging rates used by the Current Trustee’s staff were “*within Swiss market range and reasonable*”. Again, I consider that Mr Wilson can give admissible evidence of Swiss market ranges of charging rates, but he cannot, as it were, take upon himself the roles of the court in determining (i) whether the sums charged by the Current Trustee were, in all the circumstances, reasonable and (ii) whether, carrying out an overall assessment of the position, it is or is not reasonable to allow the Current Trustee’s claim in full.
15. Although I have decided that Wilson 1 is, in part, admissible as evidence in support of the Current Trustee’s claim, it is still necessary for me to decide how far the affidavit actually assists the Current Trustee. To my mind, with the possible exception of some of the analysis of the Current Trustee’s personnel’s charging rates at page 19 of exhibit DWW1, Wilson 1 does not really add much to what Mr McCallum has himself said in McCallum 2, which was sworn 7 days later. In particular, the statement of Mr Wilson in paragraph 22 of Wilson 1 that the amount of time spent by the Current Trustee’s staff between 2010 and 2015 on the administration of the TDT appeared reasonable to him does not, in my judgment, take the matter much further, if at all. For it seems to me, with respect to Mr Wilson, that it is for me to decide that issue in this judgment. At most, all that Mr Wilson might have been able to state was an opinion that he was not surprised by the amount of time charged. It is also important for me to remind myself that Mr Wilson was not employed by the Current Trustee during that period and has only therefore been able to assess the reasonableness of the time spent on an *ex post facto* basis. Furthermore, in paragraph 19 of McCallum 2 Mr McCallum explained that the schedule of hours worked cannot be relied upon as an accurate analysis of the hours of work performed by the Current Trustee’s directors and staff on the administration of the TDT since the analysis also includes hours of work performed in relation to proceedings in England brought by the present Protector against the Serious Fraud Office.
16. In the alternative to Advocate Gray’s primary submission that I should dismiss the application, she argued on behalf of the Joint Liquidators, for instance in paragraphs 5 to 9 of her submissions of May 2016, that because the TDT was now insolvent, or very likely to be insolvent, this factor should be taken into account by me so as to reduce the Current Trustee’s remuneration in a material way for the entire period during which the Current Trustee has been trustee of the TDT. Advocate Gray submitted that the possibility, or even, as she contended, the strong possibility, of the TDT assets being insufficient to meet the obligations of the Former Trustees, as trustees of the TDT, was known, or should have been known, by both the Current Trustee and the present

Protector from the dates of their taking up their respective offices as sole Trustee and Protector on about 2 July 2010 and 28 June 2010. On behalf of the Current Trustee, Advocate Robison argued that this submission was without substance and without support from authority.

17. Advocate Gray submitted that if a trust either is or might well be an insolvent trust, it follows that there should be a fundamental shift in the way in which such a trust is, or should be, administered and that any claim by a trustee of such a trust for remuneration should be substantially reduced to take account of the insolvency, or likely insolvency, of the trust in question. In the Royal Court of Jersey in *In re The Representation of the Z Trusts* [2015] JRC 196C, where the principal issue did not relate to remuneration of trustees of the trusts, Commissioner Clyde-Smith, at paragraphs 30 and 33, said as follows:

“30. [I]nsolvency brings about a shift towards the interests of the creditors analogous to that seen in company law and a trust that becomes insolvent should thereafter be administered on the basis that it is insolvent, treating the creditors, rather than the beneficiaries, as the persons with the economic interest in the trust. As a matter of logic and principle, it is difficult to see how else an insolvent trust should be administered by the trustee and supervised by the Court.

33. A trust being administered on the basis that it is insolvent, is administered for the creditors as a class and not for the majority of them....in the same way that a liquidator of a company in a creditors’ winding up owes his or her duties to the creditors of the company as a class...”

18. Does it, therefore, follow that, where a trust possibly is insolvent, a professional corporate trustee seeking to establish that its claim for remuneration is reasonable must expect to receive a lower level of remuneration than would have been reasonable in the case of a clearly solvent trust? In my judgment, it is necessary in a case like the present case, where there was from the date of appointment of the Current Trustee as sole trustee of the TDT a possibility, but not, in my view, a certainty, that the trust was insolvent, for the court to take that possibility into account as part of the material facts and circumstances when assessing whether the level of remuneration claimed by the Current Trustee for its administration of the trust during a period of possible insolvency is reasonable. Furthermore, I consider that this factor might come into play even where, as I accept with regard to the Current Trustee’s work as trustee of the TDT, the professional trustee has carried out its multiple tasks in administering the trust in question with the application, caution and prudence expected of a professional corporate trustee.
19. In my judgment, it is fundamental that I should also take into account the financial and commercial reality of the situation. It appears to me that it is likely that it would, at the least, be difficult to find a professional trustee which would be willing to take up an appointment as trustee of a trust which was possibly insolvent unless any claims to remuneration in the future, whether under the trust deed in question or under the inherent jurisdiction of the court, were likely to be met at a reasonable level. In the present case, though, it is also to be noted that the Current Trustee did not ask the Royal Court either in Guernsey 2 or in a separate application to determine its level of remuneration immediately after its appointment, but waited until very much later to seek such a determination within Guernsey 2 after it had performed a very considerable amount of its work as trustee of the TDT.
20. The Current Trustee argues, in effect, that it was entitled to be remunerated at the expense of the Beneficiaries until it can be shown that the TDT was an insolvent trust and at the expense of the creditors of the TDT thereafter, perhaps after the handing down of the judgment in Guernsey 1 on about 22 December 2013; *i.e.* the Current Trustee’s contention is that whatever may have been the solvency position of the TDT during the term of its trusteeship, it remained entitled to reasonable remuneration. Advocate Robison contends that the decision in *Z Trusts* did not include a finding by the learned Commissioner that the insolvency of a Jersey trust allowed the creditors, in effect, to veto remuneration for the trustee or to limit the amount of remuneration of such a trustee to a level which would, or might well, not have been a reasonable level in the case of a solvent trust. Mr Robison also argued that the ratio in *Z Trusts* did not relate to the question

of remuneration at all, but, even though that is correct, the point does not, in my judgment, really assist the Current Trustee. At most, all that can be said is, I think, that there is nothing in *Z Trusts* which adversely affects the right of the Current Trustee to claim remuneration.

21. Mr Robison further argues, in my judgment persuasively, that if the Court were to apply *Z Trusts* in the manner argued by Advocate Gray on behalf of the Joint Liquidators and dismiss the Current Trustee's Application or very substantially reduce the amount of remuneration claimed, the type of windfall benefit to the TDT, *i.e.* to its beneficiaries, or, in the case of an insolvent trust, to its creditors, which was disallowed by the Royal Court of Jersey (Birt DB, and two jurors) in *Landau v Anburn Trustees Limited* [2007] JLR 250, would occur.
22. In my judgment, it is clear from the terms of Clause 12 of the Trust Deed that it was not envisaged at any time before the Joint Liquidators first raised the point that the TDT would be administered by its corporate trustee free of charge or that the time might come in the future that such a trustee would be required, or indeed prepared, to provide its services free of charge thereby providing such a windfall – see also *The Regent Trust Company Limited* [2009] JRC 117. On the contrary, it seems to me that it was envisaged that any corporate trustee of the TDT would be expected to charge its professional fees as remuneration, *i.e.* by way of a profit for performing its duties as trustee, during its incumbency and that it would be expected of such a trustee, in particular, that it would do its best to preserve the net asset value of the TDT trust fund whether it were held on discretionary trust for the Beneficiaries as a class or for the creditors of the Former Trustees in their capacity as the trustees who had been succeeded on about 2 July 2010 by the present trustee, *i.e.* the Current Trustee. Furthermore, the original trustee was a professional trustee and the original trustee and its co-professional trustee, *i.e.* the Former Trustees, were both professional trustees and were themselves succeeded by another professional trustee, *i.e.* the Current Trustee. In my judgment, at least in the context of this application, it cannot truly have mattered to either the Beneficiaries or the creditors which professional, corporate trustee or trustees was or were the present trustee or trustees of the TDT; for, in light of the terms of Clause 12.1 of the Trust Deed, they would clearly have expected that any such trustee or trustees would be paid for its or their services.
23. Furthermore, a refusal of the Current Trustee's claim would, in my judgment, be inequitable since the Beneficiaries, and, since about 22 December 2013, the creditors as a class which has since that date, at the latest, included the Joint Liquidators, have already received the services for which the Current Trustee now seeks to be paid. As I see it, equity should not, and would not, permit the Beneficiaries or the creditors of the TDT to assert their claims without making fair allowance for reasonable remuneration for the Current Trustee's services. The refusal of remuneration would, in my view, be equivalent to unjustly enriching the Beneficiaries and the creditors at the expense of the Current Trustee – see *per* HH Judge Paul Baker QC in *Foster v Spencer* [1996] 2 All ER 672, at p.680, and the judgment of the Royal Court of Jersey in *Landau v Anburn Trustees Limited (supra)*. I expressly and respectfully approve of the approach taken in the Royal Court of Jersey which I have, therefore, followed in reaching my decision. As was said in the Royal Court of Jersey's judgment:

“It follows that charges raised by a professional trust company based upon the provision of [a trustee's] time is exactly what the settlor and beneficiaries must have expected to pay and that is what they are now being asked to pay. We do not see that equity requires that they should receive a windfall benefit of the Trust being administered free of charge when that was not what anyone at any stage envisaged.”

24. The remaining, and central, issue is, therefore, the amount to be allowed for the Current Trustee's remuneration, an issue on which there is, understandably, relatively little assistance to be found in the reports of other cases either in Jersey or in England or, indeed, elsewhere. For the terms of trust instruments and the facts of such cases will largely have influenced how the quantum of claims for remuneration should be decided and the terms of the Trust Deed and the facts of his case will largely influence how I shall deal with the amount to be allowed as remuneration to the Current Trustee.

25. As I have mentioned above, the Current Trustee's claim for remuneration is put on two alternative bases. First, it argues that it has reasonably determined rates for its remuneration within the meaning of the last phrase of Clause 12.1(ii) of the Trust Deed and that the evidence in Hillier 7, McCallum 1 and McCallum 2, including exhibit "AMC1", and Wilson 1, including exhibit "DWW 1", establishes the quantum of its claim under that phrase. In the alternative, it argues that the court should determine that fees amounting to the same total as can be calculated under that provision of the Trust Deed are reasonable to award it as its remuneration pursuant to the inherent jurisdiction of the Royal Court. The Current Trustee, therefore, relies upon Article 26(1)(a) and (c) of the Jersey Law, as founding its claim for remuneration, since the governing law of the TDT is Jersey law.
26. In my judgment, the most that the evidence adduced on behalf of the Current Trustee establishes is that it proves that during the period of the Current Trustee's trusteeship it has used various, identified charging rates and has performed its tasks as sole trustee of the TDT for a large number of hours. It does not, however, in my judgment, establish to my satisfaction that at any particular time or times the Current Trustee's officers or senior managers involved in the administration of the TDT had, as it were, sat back and conscientiously determined that the rates it proposed to use as charging rates for its directors and staff members in the future when involved in such administration were, or would be, reasonable rates for it to charge. I have no difficulty in accepting that the Current Trustee now considers that its charging rates are, and at all material times, have been reasonable rates of charging, but that it is not the same thing as it having reasonably so determined within the meaning of the last phrase in Clause 12.1(ii) of the Trust Deed. I therefore conclude that the Current Trustee's claim under that sub-Clause is not made out and its claim can only be considered as a claim for reasonable remuneration under the inherent jurisdiction of either the Royal Court of Jersey or of this court. As will be seen, I consider that there is no difference between the nature and scope of the inherent jurisdiction of either court to supervise the administration of trusts, and, in suitable cases, to allow a reasonable sum for the remuneration of trustees.
27. Before I decide what sum is reasonable to fix and determine as the quantum of the Current Trustee's remuneration, I turn to examine the nature and extent of the inherent jurisdiction of the Royal Court of Jersey and of this court. It is well established, indeed, it is trite law, that courts of equity have an inherent jurisdiction to supervise the administration of trusts established under, or otherwise governed by, the laws applicable within their respective jurisdictions. Such an inherent jurisdiction exists in both the Royal Court of Guernsey and the Royal Court of Jersey – see, e.g. as decided in Guernsey in *In re H. Sossen 1969 Settlement* [2003-2004] GLR Note [18], per Deputy Bailiff Rowland, and in Jersey in *Landau v Anburn Trustees Limited (supra)*.
28. Instances of the use of this inherent jurisdiction elsewhere include the provision or increase of remuneration for professional or lay trustees either where the trust deed in question did not contain a trustee charging clause at all or where circumstances were found to exist which justified an increase in the quantum of such remuneration. The leading English case on the inherent jurisdiction is *In re Duke of Norfolk's Settlement Trusts* [1982] Ch. 61, where the Court of Appeal permitted an increase in remuneration so as to allow trustees, whose work was very considerable, to charge enhanced fees in line with their usual scales. The Court followed a long-standing, inherent jurisdiction of the High Court to allow a prospective or existing trustee to be remunerated where no such payment was provided for in the trust deed and held further that such jurisdiction also extended to increasing or varying the remuneration provided for in the trust deed in respect of past or future services of a trustee. In that case, the trustees had been called upon to provide services beyond those envisaged at the time of the creation of the settlement.
29. The basis of the Court's jurisdiction was explained by Lord Justice Fox, at p.78:

"When the court authorises payment of remuneration to a trustee under its inherent jurisdiction it is, I think, exercising its ancient jurisdiction to secure the competent administration of the trust property just as it has done when it appoints or removes a trustee under its inherent jurisdiction."

30. Other parts of Lord Justice Fox's judgment are both instructive and persuasive:

"There is, in my judgment, no doubt that the court has an inherent jurisdiction to authorise payment of remuneration to trustees. Mr. Justice Danckwerts in Re Masters and Mr. Justice Upjohn in Re Worthington accept that. The older authorities lead me to the same conclusion. In Marshall v. Holloway Lord Eldon himself authorised remuneration for both past and future services. The existence of the jurisdiction is also supported by Morison v; Morison, Bainbridge v. Blair, Forster v. Ridley, and Re Freeman's Settlement.

The question is the extent of that jurisdiction. There can, in my view, be no doubt that there is an inherent jurisdiction, upon the appointment of a trustee, to direct that he be remunerated; that is accepted by Vice Chancellor Leach in Brocksopp v. Barnes and must be inherent in what is said in Re Masters and Re Worthington. Indeed, it is not really in dispute at all. In the present case, however, what is sought is the increase of remuneration authorised by the trust instrument. The judge said that there had never been a case in which that was done, unless it was where the matter was not argued. I feel much doubt whether that proposition is in fact correct. Most cases relating to trustees' remuneration are dealt with in chambers and are not reported. My own impression and, I understand that of Lord Justice Brightman also, is that since the early 1950's orders have been made in chambers, under the inherent jurisdiction, authorising increases in remuneration given by the trust instrument. But I do not rely upon that. I will approach the matter as one of principle and on the reported cases. If it be the law, as I think it clearly is, that the court has inherent jurisdiction on the appointment of a trustee to authorise payment of remuneration to him, is there any reason why the court should not have jurisdiction to increase the remuneration already allowed by the trust instrument?

...

The position, it seems to me, is this. Trust property is held by the trustees upon the trusts and subject to the powers conferred by the trust instrument and by law. One of those powers is the power to the trustee to charge remuneration. That gives the trustee certain rights which equity will enforce in administering the trust. How far those rights can properly be regarded as beneficial interests I will consider later. But it seems to me to be quite unreal to regard them as contractual. So far as they derive from any order of the court they simply arise from the court's jurisdiction and so far as they derive from the trust instrument itself they derive from the settlor's power to direct how this property should be dealt with.

I appreciate that in Re Salmen Mr. Justice Eve, whose decision was upheld by the Court of Appeal, said in the course of his judgment that the jurisdiction must be founded upon some such proposition as that the circumstances of the case raise an implied contract on the part of the persons against whom the claim for remuneration is made, to pay such remuneration. I observe that Mr. Justice Upjohn in Re Worthington disagreed with that altogether. He said that the true rule was that the court had an inherent jurisdiction to authorise remuneration, even against creditors. He pointed out that the Court of Appeal did not consider the question of inherent jurisdiction; in the Court of Appeal the case was treated as governed by Re White, [1898] 1 Ch 297. I agree with that; Re White says nothing about contract. Further, I think it necessary to bear in mind that Re Salmen was a case of an insolvent estate (as was Re White). In such a case, the court might, whatever the jurisdiction, be unwilling to impose upon the creditors a liability to remunerate in the absence of some circumstances that made it equitable that the creditors should bear the remuneration. A provision in a will authorising trustees to charge does not bind the creditors. As Lord Justice Chitty said in Re White, "the declaration made by the testator is bounty on his part. No one can claim the bounty until the creditors are satisfied.

...

There remains the question whether, upon principle and authority, we can properly infer that the jurisdiction does exist.

*As to principle, it seems to me that if the court has jurisdiction, as it has, upon the appointment of a trustee to authorise remuneration though no such power exists in the trust instrument, there is no logical reason why the court should not have power to increase the remuneration given by the instrument. In many cases the latter may involve a smaller interference with the provisions of the trust instrument than the former. Further, the law has not stopped short at authorising remuneration to a trustee only if he seeks the authority at the time when he accepts the trusts. That, in my view, appears from the observations of Lord Langdale in *Bainbridge v. Blair*, and from *Re Masters*, in which it is clear that Mr. Justice Danckwerts would have been prepared to make the order which he did (and which authorised payment of remuneration to an administrator who had taken a grant some years previously) under the inherent jurisdiction.*

I appreciate that the ambit of the court's inherent jurisdiction in any sphere may, for historical reasons, be irrational and that logical extensions are not necessarily permissible. But I think that it is the basis of the jurisdiction that one has to consider. The basis, in my view, in relation to a trustee's remuneration is the good administration of trusts. The fact that in earlier times, with more stable currencies and with a plenitude of persons with the leisure and resources to take on unremunerated trusteeships, the particular problem of increasing remuneration may not have arisen, does not, in my view, prevent us from concluding that a logical extension of admitted law and which is wholly consistent with the apparent purpose of the jurisdiction is permissible. If the increase of remuneration be beneficial to the trust administration, I do not see any objection to that in principle.

*As to authority, I do not find in the authorities any decision which positively excludes any inherent jurisdiction to increase remuneration, unless it be *Robinson v. Pett*. But that was a case of a renouncing executor who was expressly given a legacy for his trouble if he did renounce. The Lord Chancellor said that he was unable to give him any more. I do not think *Robinson v. Pett* really touches the present case. On the other hand, Lord Eldon's order in *Marshall v. Holloway* seems to have increased the benefit given by the will, and in *Re Barbour* Mr. Justice Megarry did not really doubt that, upon an application in proper form and supported by appropriate evidence, the court would have had jurisdiction to increase the remuneration of the corporate trustee.*

I conclude that the court has an inherent jurisdiction to authorise the payment of remuneration of trustees and that that jurisdiction extends to increasing the remuneration authorised by the trust instrument. In exercising that jurisdiction the court has to balance two influences which are to some extent in conflict. The first is that the office of trustee is, as such, gratuitous; the court will accordingly be careful to protect the interests of the beneficiaries against claims by the trustees. The second is that it is of great importance to the beneficiaries that the trust should be well administered. It is therefore open to the court to conclude, having regard to the nature of the trust, the experience and skill of a particular trustee and to the amounts which he seeks to charge when compared with what other trustees might require to be paid for their services and to all the other circumstances of the case, that it would be in the interests of the beneficiaries to increase the remuneration, and the court may properly do so.”

31. In my judgment, the explanation of the inherent jurisdiction of courts of equity in England given by Lord Justice Fox, at p. 75 & ff. in *In re Duke of Norfolk's Settlement Trusts* applies to the application of the inherent jurisdiction of the Royal Court of Jersey and of the Royal Court of Guernsey when enforcing or otherwise supervising the good, competent or efficient administration of a Jersey trust or a Guernsey trust like the TDT. In concluding that the Royal

Court has such an inherent jurisdiction, I respectfully follow the approach taken by Deputy Bailiff Rowland in *Sossen*. I also specifically endorse, in respect of this court, what was said in the Royal Court of Jersey in *Landau v Anburn (supra)* in relation to the inherent jurisdiction of that court:

“There is no reason to consider the supervisory jurisdiction of this Court to be any narrower than that possessed by the Chancery Division of the English High Court.”

32. For the sake of completeness, I add that in a recent case in the Chancery Division of the English High Court, *In re The Portman Estate* [2015] WTLR 871, Mr Justice Birss explained at paragraphs 51 and 52 of his judgment the inherent jurisdiction of a court acting in its supervisory role in relation to trusts:

“51. Under its inherent jurisdiction, the Court can modify trustee remuneration to ensure that the trust is properly administered for the benefit of the beneficiaries: re Duke of Norfolk’s Settlement Trust [1982] Ch. 61. This can either be done by varying existing powers of remuneration or by conferring a new power of remuneration where there was none previously.

52. ... I accept that the overriding principle which will guide the court when considering whether to alter the provision for the remuneration of trustees is the efficient administration of the trust. The beneficiaries are interested in the trust being efficiently administered, even if this comes at some increased cost to them: (cf Duke of Norfolk’s Settlement Trusts, above). The court will ensure that the interests of the beneficiaries are protected.”

33. It is sometimes suggested or stated that the power of the Court to authorise or vary the remuneration of a trustee is a power to be exercised sparingly – e.g. in *Landau v Anburn Trustees Limited* and by Mr Justice Upjohn in the English High Court in *In re Worthington, decd.* [1954] 1 WLR 526, at p. 528 – but I consider a better view was implicitly made clear by Lord Justice Fox in the English Court of Appeal in *In re Duke of Norfolk’s Settlement Trusts* at p. 79 F/H; I conclude from that passage that there is no such restriction or fetter on the exercise of the inherent jurisdiction, but that the court should be “... careful to protect the interests of the beneficiaries against claims by the trustees.” Nevertheless, it is clear, in my view, that I should consider the Current Trustee’s claim against the background that I have disallowed a claim under the express terms of Clause 12.1(ii) of the Trust Deed and that it is in somewhat unusual circumstances, where the carefully-drafted express provisions of the Trust Deed have been found by me not to encompass the claim, that the court is being asked to allow the claim under its inherent jurisdiction.
34. In reaching my decision, I have carefully taken into account the nature of the TDT and its assets, the probable net value of those assets during the period or periods in respect of which the Current Trustee is seeking remuneration and all the other circumstances of the case, on the basis of the evidence relied upon in support of the claim for remuneration, and in light of Counsel’s helpful and wide-ranging submissions when deciding both whether or not to award remuneration to the Current Trustee under the inherent jurisdiction of the Royal Court, *inter alia*, to allow such remuneration and, if I decide to allow such remuneration, what sum would be reasonable to allow.
35. As I have already indicated, I have decided that I should allow such remuneration, but that I should do so at a reduced rate or rates below what might otherwise have been permitted by the express provisions of the last part of Clause 12.1(ii). I should add that I was wrong to have stated in the first sentence of paragraph 35 of the first judgment that the Current Trustee’s claim stood or fell under those provisions alone; the argument at that stage had been largely limited to the position of the Former Trustees, but at this stage of the application much fuller argument has been presented on the point. As I have already mentioned above, on behalf of the Joint Liquidators Advocate Gray accepts that, even if the terms of Clause 12.1(ii) of the Trust Deed do not on the evidence adduced on its behalf, cover the Current Trustee’s claim for remuneration, there is an

inherent jurisdiction of this court, and also of the Royal Court of Jersey as is, in my view, implicitly recognised in Article 26(1) (c) of the Jersey Law.

36. I turn then to the specific sums claimed as its remuneration by the Current Trustee. As a starting point, I am now satisfied that there is sufficient, reliable evidence and other material upon which I can, subject to paragraph 42 below, determine the issue. In this case, in my judgment, there is a balance to be struck between the scales of fees in use within the Current Trustee's Geneva offices from time to time during the periods (i) between the appointment of the Current Trustee as trustee of the TDT on 2 July 2010 and the appointment of the Joint Receivers on about 23 December 2013 and (ii) after 22 December 2013, and what may properly be regarded as reasonable remuneration for the Current Trustee during both periods. In striking such a balance, I exercise the Royal Court's inherent jurisdiction over the TDT and in doing so I have taken into account most carefully, so far as the evidence allows, the financial state of the TDT over each of these two periods.
37. The Current Trustee seeks payment by reference to the prevailing, but internally-fixed, charging rates used by it during the two periods and to the amount of hours spent by its officers and staff on the administration of the TDT, excluding from this calculation any costs or expenses claimed by it in the other part of this application relating to reimbursement of, or claims for, its costs and expenses. Whilst in trust account matters a trustee would usually be required to document each item claimed, and there may be presumptions raised against the trustee if it fails to do so, these proceedings were not proceedings for a trust account and, subject to what I shall later direct, it was not, in my judgment, necessary for the Current Trustee to vouch for its claimed remuneration by very much more detailed analysis than is evident from its evidence.
38. In general terms, subject to what is stated in paragraph 19 of McCallum 2, I accept the evidence of the Current Trustee as to the amount of hours of work carried out by its officers and staff and the evidence of the charging rates used by them during the periods. But this would, in my judgment, probably lead to a total sum claimed for remuneration which would equate to a very substantial proportion of the funds of the TDT; for it appears from Hillier 7 that in the period up to 28 February 2014 the sums claimed amounted to CHF 1,376,710.95, which, using a conversion rate of 1.25 Swiss francs to one pound, (a rate available, it seems, on about 21 November 2016,) would amount to about £1,101,368.76. If there were no doubt about the solvency of the TDT, then, always remembering the nature of the supervisory jurisdiction of the Royal Court as a court of equity over Guernsey trusts, (which includes what HH Judge Hodge QC described at paragraph 55 in *Pullan v Wilson* as "... effective control over a trustee's remuneration" in the manner described in paragraph 57, *ibid.*.) and also taking into account the judgment of the Royal Court of Jersey in *Landau v Anburn Trustees Limited (supra)*, I might have been satisfied that I should award the Current Trustee remuneration on such a basis.
39. But I am not satisfied, on the evidence within Hillier 7, McCallum 1, McCallum 2 and Wilson 1, that any adjustment was made by the Current Trustee to its charging rates of fees to take into account what can, in my view, best be described as the precarious state of the TDT and of its assets during the period from the Current Trustee's appointment on 2 July 2010, by which date Guernsey 1 had been commenced. Whilst I consider that it was reasonable for the Current Trustee to charge at (different) hourly rates for various of its officers and staff, I am of the view that it is nonetheless appropriate for me to reduce the total of the fees claimed by the Current Trustee by a percentage, which I assess at 35%, both so as to take the precarious state of the TDT and of its assets properly into account, and also to import elements of proportionality into the matter when considering the number of hours of work charged and the rates charged – see also *Pullan v Wilson* at paragraph 60. My decision here involves an exercise of evaluative judgment. Subject to what I direct in paragraph 42 below, I therefore allow the Current Trustee 65% of the sums claimed by it as remuneration in the period ending on the appointment of the Joint Receivers.
40. I consider it is also necessary and appropriate for me to reduce very substantially the fees claimed by the Current Trustee for the period commencing on 23 December 2013, when the Joint

Receivers were appointed, so as to take account of the likely reduction in work which was strictly necessary for the Current Trustee to carry out thereafter and also to take into account the likely insolvency of the TDT during that period. Doing the best I can, on the relatively limited evidence which the Current Trustee has chosen to present in support of its application, I determine that the total of the sums claimed as remuneration by the Current Trustee for this period, (which is, I believe, still current,) should be reduced by 80% so as to come to a sum for reasonable remuneration for that period. In doing so, subject to what I direct in paragraph 42 below, I therefore allow the Current Trustee 20% of the sums claimed by it as remuneration in the period commencing on the day after the appointment of the Joint Receivers.

41. Any question of priority of the total of the sums which I have allowed the Current Trustee as its remuneration in each of those two periods over any other sums claimed by creditors, including the Joint Liquidators, or by the Former Trustees or by the present Protector, from the TDT's assets is not for me to decide in these proceedings.
42. I have carefully considered what was said in paragraphs 17 and 18 of McCallum 2 and accept that it may well be difficult for the Current Trustee to calculate the precise amount which it claims as its remuneration. But it is, in my judgment, necessary for the court to be able to declare with clarity how much the Current Trustee is entitled to claim as its remuneration during the two periods mentioned by me earlier in this judgment. I therefore direct the Current Trustee to lodge in the Greffe within 42 days of the handing down of this judgment a statement verified by an affidavit from one of its current directors of the precise sums which the Current Trustee claims pursuant to this judgment for each of these periods. I also direct that any such evidence should (i) carefully distinguish between such claims and any claims made by the Current Trustee as costs and expenses in the other part of this application and (ii) identify how many of the hours set out in exhibit "DWW 1" at p. 20 are referable to the claims made for remuneration in this application and how many are, therefore, referable to the SFO proceedings referred to in paragraph 19 of McCallum 2, for which, properly, no such claims are made. For it is essential, in my judgment, for two reasons that the Current Trustee should precisely calculate its claim for remuneration under this judgment. First, the court, the Former Trustees, the present Protector, the Joint Liquidators and the Joint Receivers and Advocate Hay should be made aware of the total claimed and how, in more than general terms, such total sum has been calculated. Secondly, it will be important for any judge of the Royal Court, whether in Guernsey 1 or in other proceedings, who is considering priorities of debts and other claims within the TDT, to have reliable evidence of the sums so claimed by the Current Trustee.
43. After this judgment has been handed down, I will hear any submissions which the Current Trustee, the present Protector and the Joint Liquidators may wish to present on the matters raised in the previous paragraph, on the issue of equitable interest and on the costs of the Current Trustee's application for remuneration.

The present Protector's claim for remuneration

44. Mr Uri Moellem joined in the Trust Deed to confirm his agreement to act as the first Protector of the TDT. By the time these proceedings were commenced, Mr Richard Hillier was the Protector of the TDT and on 28 June 2010 the present Protector became the protector under the Trust Deed. It was in that capacity that, with effect from about 2 July 2010, he removed the Former Trustees as trustees of the TDT and appointed the Current Trustee as sole trustee of the TDT.
45. In order for me to decide the issue of the present Protector's claim for remuneration, I shall first set out, in some detail, the terms of the Trust Deed which relate to the role and duties of the Protector.
46. By Clause 1.1(iii)(a) and (b), it is provided that in the TDT unless the context otherwise requires "Beneficiaries" means the present Protector and his children and remoter issue.
47. By Clause 1.1(iv), "The Protector" is defined as meaning the person or persons for the time being appointed as Protector under Clause 14.

48. By Clause 1.1(x), “A Protector Nomination” is defined as a notice in writing served by a Protector specifying his successor or successors as Protector within the terms of the Trust Deed.
49. As mentioned above and in the first judgment, by Clause 3.1, the proper law of the TDT is declared to be the laws of the Island of Jersey.
50. Clause 4 contains provisions for the addition and exclusion of Beneficiaries. Under sub-Clauses 4.1 and 4.3, the Trustees are given powers exercisable with the consent of the Protector to exclude any person from being or becoming a Beneficiary and to add any person as a Beneficiary.
51. Clause 5.2(ii)(a) contains a power for the Trustees to permit any of the Beneficiaries to occupy any property which forms part of the Trust Fund, which would seem to me to include, indirectly, a power to allow the present Protector and his minor children to occupy the RCO, a prestigious residential property in Kensington, London, which is owned by Iver on long leasehold, as their home.
52. By Clause 7.2, it is provided:
- “Subject to any requirement hereunder for the consent of the Protector, every discretion or power hereby conferred on the Trustees shall be an absolute and uncontrolled discretion or power.”*
53. Clause 9.2 provides as follows:
- “The Trustees are not required to enquire into or to interfere in the management or affairs or business of any company (or of any company which is directly or indirectly the subsidiary of such company) in which the Trustees hold shares, whatever proportion of the issued share capital they hold and the Trustees shall leave the management of such company’s affairs or business wholly to the directors thereof.”*
54. Clause 10 relates to the retirement and removal of Trustees. By Clause 10.2(1) to (3), the Protector has power to remove any Trustee from office by giving written notice to such Trustee, *i.e.* the power which the present Protector exercised to remove the Former Trustees as the trustees of the TDT on about 2 July 2010.
55. Clause 11 relates to the appointment of new or additional Trustees. Clause 11.1 gives power to the Protector by written instrument to appoint one or more persons as successor Trustee or Trustees in the place of, *inter alios*, a removed Trustee. It was, therefore, under that sub-Clause that the Former Trustees were replaced by the Current Trustee on about 2 July 2010. Clause 11.3 gives a power to the Protector to appoint, by written instrument, one or more additional Trustees.
56. As is set out above and in the first judgment, Clause 12 relates to Trustees’ fees and the provision of other services. The Protector is permitted to agree terms for the remuneration of a trust corporation trustee from time to time in writing. I found as a fact in the first judgment that no such terms were at any time agreed either between Mr Hillier and the Former Trustees or between the present Protector and the Current Trustee.
57. Clause 12.3 provides as follows:
- “Any Trustee may exercise or refrain from exercising its powers as a Trustee ... without prejudice to the foregoing:*
- ...
- (ii) Any Trustee may hold office in any company, shares or securities in which comprise or form part of the Trust Fund, without being liable to account for emoluments received as such office holder.”*

But, importantly, in my view, there is no such equivalent provision within either Clause 14 of the Trust Deed or elsewhere within the Trust Deed relating to a Protector.

58. Clause 14 provides in various ways for the appointment of a Protector or a successor Protector or Protectors, provides a power for a Protector to resign by written notice, (Clause 14.2), and, in Clause 14.7, provides for the reimbursement of costs and expenses expended or incurred by the

Protector and, most importantly for present purposes, provides for the remuneration of the Protector, in the following terms:

“14.7 Every Protector shall be entitled (both during and after the time he is in office) to reimbursement of his reasonable expenses (including the costs of any legal advisor, accountant or other professional person retained by him either in connection with the Protector’s personal position as Protector or in connection with any matter relating to this Trust) and where the Protector is a person engaged in a business to be paid his usual professional or other charges for all work done, time spent and services rendered by him (or if an individual by his firm) in connection with this Trust.”

59. Clause 14.8 contains an exemption clause restricting the liability of a Protector to claims and liabilities arising by virtue of or in consequence of being appointed a Protector under the Trust Deed to claims for fraud, wilful misconduct or gross negligence.

60. Clause 14.10 gives a power to a Protector by written instrument, either revocably or irrevocably, to extinguish any or all of the powers vested in him or the requirement of his consent so as to bind his successors. Clause 14.11 provides expressly that the powers conferred on the Protector by the Trust Deed.

“...(without prejudice to the generality of the foregoing) shall not be capable of exercise so as to confer upon him directly or indirectly any benefit of any nature whatsoever other than expressly provided herein.”

61. Clause 14.12 provides that any requirement for the consent of the Protector to the exercise by the Trustees of any power under the TDT shall be suspended if there is no Protector in office or no Protector capable of so acting or willing to do so. Finally, by Clause 14.13, it is provided that any consent of the Protector required under the TDT to the exercise of any power shall be in writing.

62. By the Schedule to the Trust Deed, the Trustees are given a range of additional powers, but none of these powers requires the consent of the Protector before the power may be exercised by the Trustees.

63. The present Protector’s claim for remuneration is supported by the 1st affidavit of Miss Mariko Mackintosh, who was a paralegal working at R20 Limited (R20 Advisory), sworn on 27 February 2015, and by his own 7th and 8th affidavits sworn respectively on 2 May 2014 and 8 March 2016. In his 7th affidavit, the present Protector stated that he

“... had to devote literally, hundreds of hours to working on matters pertaining to [Guernsey 2], considering applications by the parties, liaising with the [Current Trustees] and, where necessary, preparing evidence of [his] own.”

64. In her 1st affidavit, Miss Mackintosh explained that the present Protector did not time record either his hours of work as Protector, or, as I understood the position, at all. Accordingly, Miss Mackintosh deposed that she had tried to put together an estimate of what she described as:

“... the minimum amount of time required of him in his capacity of the Protector of the TDT in relation to the Applications.”

Miss Mackintosh primarily addressed the present Protector’s claim to be reimbursed his costs of Guernsey 2. She explained that she had used the time spent by Babbé, as Guernsey Advocates for the Protector, between 12 August 2010 and 13 December 2013 as an aid to help her put her estimate together.

65. In paragraph 13, Miss Mackintosh prepared a summary of the work which she claimed the present Protector had done as Protector of the TDT, including reading all the material filed on each application within Guernsey 2, conducting his own enquiries and obtaining advice in relation to those applications where necessary, conferring with Babbé on responses to be filed on his behalf, including participating in the preparation of responsive evidence, conferring with the Current Trustee in relation to Guernsey 2 and providing instructions to Babbé and conferring with them

on the outcome of applications within Guernsey 2 “... and any implications for the TDT.” Miss Mackintosh used what appears to me to have been a rough and ready system to estimate the present Protector’s time spent in these activities and calculated the present Protector’s claim as at the time of her first affidavit at about £142,800; in paragraph 15 she said that she used the time spent by Babbé: “... as a baseline.” It is also helpful, in my view, to set out paragraph 16 of Miss Mackintosh’s first affidavit:

“16. The base rate claimed by Mr Tchenguiz for his time as Protector is £350.00 per hour (see paragraph 13 of his Seventh Affidavit). Mr Tchenguiz established R20 Ltd in 2002 which is a private investment firm specializing in a range of alternative strategies including private equity, public equity and structured finance and real estate. Mr Tchenguiz and R20 are involved in deals with numerous financial institutions, private equity firms and hedge funds.”

66. But Miss Mackintosh did not give any further detail about the work of the present Protector and R20 relating to any such deals. The evidence is, therefore, only generalised; for instance, no financial institutions, private equity firms or hedge funds with whom the present Protector or R20 have been involved in such deals were specifically mentioned and no specific transactions with any such institution or transaction fees charged by R20 for work carried out for any such institution were referred to either. I formed the clear impression that R20’s work had largely been carried out for other companies within the TDT corporate empire and not often, if at all, for any outside clients. It is, in my view, fair for me to conclude that the present Protector and Miss Mackintosh must have chosen not to give any such details in support of his claim for remuneration.

67. In paragraphs 10-13 of his 7th Affidavit, the present Protector summarised his claim for remuneration as Protector as follows:

“10. I believe that I have fulfilled my obligations as Protector. My role, like that of [the Current Trustee], has been to assist in ensuring the proper administration of the TDT....

...

These steps that I have taken ... are an incident of my duties as Protector ...

12. *As stated above, ... I believe that I am entitled to remuneration for the services I personally have provided to the TDT as Protector.*

13. *I am a person engaged in business and I have had to devote literally, hundreds of hours to working on matters pertaining to these proceedings, considering applications by the parties, liaising with [the Current Trustee] and, when necessary, preparing evidence of my own. My charge for this work is £350 an hour; the precise hourly rate which is appropriate is a matter for subsequent determination. I ask that the Court make an order confirming that I may be remunerated for my time.”*

68. In his 8th affidavit, the present Protector added substantially to the evidence given in his 7th affidavit. He sought to explain the nature of his business and the manner in which he claimed to have supplied services to the TDT in the course of his business, the nature and extent of all such services which he claimed had been provided by him from time to time since his appointment as Protector of the TDT on about 28 June 2010, the number of hours during which he had provided such services and other facts and matters relied upon to justify his claimed charging rate of £350.00 per hour. It is clear, in my view, from paragraph 9 that the present Protector is seeking remuneration both for the work he carried out on Guernsey 2 and also for what he described as:

“... in relation to the general, everyday work that I carried out on behalf of the TDT, as its Protector.”

69. The present Protector stated in paragraph 10 of his 8th affidavit that he takes his role as Protector of the TDT “*extremely seriously*”; he added that in this role he owed:

“... a duty to the other beneficiaries of the trust, who are my children, to ensure that it is run in an efficient and correct manner.”

70. In paragraphs 11 to 18 of his 8th affidavit, the present Protector explained the nature of his business and the manner in which he claimed to have supplied services to the TDT in the course of that business:

“11. As a director of R20 Limited, I have provided investment advice and services to the TDT since its inception in 2007. As such, I have first-hand knowledge of the assets of the TDT and its investments [sic] strategies. I am also a director of many other on-shore TDT assets. Since the removal of the Former Trustees in July 2010, I have provided information to [the Current Trustee] in respect of the TDT assets and also worked with them in relation to many of the decisions that have needed to be taken in relation to matters such as, by way of example, the Farnborough Companies’ income tax liabilities to HMRC and the liquidation of dormant companies.

12. I consider therefore that the scope of my services provided in the course of my business falls within three categories: (1) day-to-day director’s services; (2) additional duties arising out of the TDT’s administration; and (3) in relation to the Guernsey 2 applications.

*13. First, I have been appointed as a director to a number of companies owned by the TDT, and have carried out in respect of those companies, the work of a director.
...”*

In a schedule exhibited as “RT8” the present Protector listed twenty-three companies under the heading *Historic Active Directorships* and a further eleven dissolved companies. In respect of the claimed active directorships, the present Protector claims, as at 1 July 2016, a total of approximately £1,255,000 as director’s fees, at the rate of £10,000 per company per annum, as part of his remuneration for acting as Protector of the TDT.

71. In paragraph 14 of his 8th affidavit, the Protector further explained his claim for remuneration, and his view that the remuneration which he was claiming was reasonable, as follows:

“14. In considering the reasonableness of the remuneration I am claiming, and to ensure that I do not charge the trust a higher rate that it would have to pay someone else in this capacity, I have considered among other things, fees charged by Saffery Champness, the Joint Receivers, for similar professional directorship services and the fees charged by the Former Trustees’ nominee directors. For example, the professional fees charged by Saffery Champness range from £2,500 per annum for the director responsibility fees in respect of Sheriwell Limited to an annual fee of £10,000 per annum for director responsibility fee for Leconfield House Limited, a company of which I am also a director.”

72. In paragraph 15 of his 8th affidavit, the present Protector stated that he believed it would be unjust for him not to be allowed remuneration for acting as a director of companies within the TDT on the ground that he and any director who was receiving remuneration for acting in that capacity had the same responsibilities and the same obligations *“in respect of the companies of which they hold directorships.”*

73. In paragraph 16, the present Protector deposed that he had assisted the Current Trustee in its administration of the TDT and its assets, and had provided information to the Former Trustees. He further stated that this part of his tasks had been

“... particularly time consuming, especially where complicated issues had arisen associated with the administration of the TDT ...”

and claimed that this was in part due to the Former Trustees having exercised a lien over the TDT's assets. The present Protector claimed that what he described as the "*complex administrative structure*" and the need to make important and significant decisions regarding the TDT assets had resulted in him having spent much more time on these tasks than would otherwise have been the case. In summary, under this heading, he claimed that he had had to be involved substantially in such tasks and that in performing his functions as Protector he had overseen the Former Trustees and the Current Trustee.

74. In paragraphs 18-22 of his 8th affidavit, the present Protector further explained the nature and extent of the services, which he claimed he had provided from time to time since his appointment as Protector of the TDT.

"18. As a director of the various TDT companies, I have continued to carry out all the normal duties of a director: statutory, fiduciary and contractual, since my appointment as Protector. This has included reviewing resolutions and minutes and considering what actions would be in the best interests of the various TDT companies when decisions have had to be made. For example, I had to consider and make decisions in relation to R20 Limited's staff when the company ceased being paid in accordance with the consultancy agreement that it entered into with the Former Trustees.

19. I have also been heavily involved in other commercial matters in my role as Protector. For example, I had to consider whether the trustees' decision to use tax losses to offset tax liabilities incurred by the Farnborough Companies was prudent in light of the position adopted by the BVI Companies regarding the sale of the Farnborough Companies and the recommendation of the Farnborough Companies' director Tim Smalley, and also, the refinancing of an ABN Amro mortgage by [Iver]. This required me to consider and analyse complex financial and commercial documentation, and having done so, [I] recommended what I considered the best course of action to be.

20. As Protector, I have also had to consider all of the applications brought by the Former Trustees and the Joint Liquidators within Guernsey 2 in order to provide the Court with my opinion on the proposals put forward by those parties and/or [the Current Trustee]. Equally, I have also had to become involved with the applications brought by [the Current Trustee] itself in order to ensure that the assets of the TDT were dealt with properly, as the TDT beneficiaries still retain an interest in the trust assets.

21. My participation in the Guernsey 2 proceedings involved reviewing and considering large amounts of evidence, both in the form of affidavits and supporting documentation from all parties, so that I could inform the Court of my position in relation to the proposals. As stated above, I am acutely aware of my position as Protector of the TDT, not only on my own account, but also on behalf of the minor beneficiaries and I also therefore have to take into account the position being adopted by Christian Hay as their representative in many of the applications.

22. In addition, I have spent a significant amount of time preparing my own evidence (either supporting or opposing the various applications in Guernsey 2), which has involved my reading all of the evidence filed in the applications, and dealing with my internal legal team as well as external lawyers."

75. In paragraphs 23-27 of his 8th affidavit, the present Protector addressed the number of hours which he said he had spent in providing his services for the TDT. He accepted that he did not formally time record, but believed that he had spent a lot more time providing such services than the 408 hours estimated by Miss Mackintosh in paragraph 18 of her 1st affidavit and the schedule attached to that affidavit at pages 6 and 7 of exhibit "MM1".

76. It is important, in my judgment, for me to have maintained a 'bright line' distinction between, on the one hand, the present Protector's claim for reimbursement of his costs and other expenses and, on the other hand, his claim for remuneration in the form of profit from the TDT assets and, in so far as the evidence adduced on behalf of the present Protector has permitted, I believe that I have done so in reaching my conclusion on his application for remuneration.
77. I was also concerned for some time when considering the application whether a substantial part of the sum claimed by the present Protector in his 7th and 8th affidavits as remuneration might better have been described as a payment for reading evidence and preparing his own evidence in these proceedings, Guernsey 2. It is to be recalled that he had been joined first as a Beneficiary and that soon thereafter his joinder was, as it were, extended to cover his position as the Protector of the TDT. In my judgment, a person in the position of Protector of the TDT, who is a party to trust proceedings, may in some circumstances not be able reasonably to mount a claim for remuneration either for reading such evidence or for preparing his own evidence. But, in the present application, I do not so conclude. I accept that the present Protector's responsibilities can well have included performing such tasks.
78. In paragraph 26 of his 8th Affidavit, the present Protector distinguished between the time that he spent on the various applications on Guernsey 2 and the time that he spent on matters such as acting as director of various TDT companies, and discussions with the Current Trustee, on decisions being taken by them in the ordinary course of business. Finally, in this part of his affidavit, the present Protector sought to distinguish his claim for annual fees for his many directorships of TDT companies from the position taken by Saffery Champness, who apparently charge an annual fee for their services for each company in which directorships are held by the nominees of the Joint Receivers and a separate fee for each company in relation to which the Joint Receivers exercise control, as well as an additional fee each month on a time-spent basis. The present Protector claimed that, in seeking to charge an annual fee per company, he had taken into account the financial liabilities of the TDT's trustee and his own beneficial interest in the TDT as a discretionary beneficiary; but no further detail was given by him of the financial liabilities which he claimed he had taken into account and so I can only assess this evidence in a general way.
79. In paragraphs 30-33 of his 8th Affidavit, the present Protector further sought to justify the claimed charging rate of £350 per hour, which forms the charging basis of his claim for remuneration. First, he said that his rate was the same as the rate of £350 per hour which Mr Hillier charged for his services as Protector of the TDT until his removal on 28 June 2010. But, whilst it is useful for the court to know the hourly rate which Mr Hillier, who was a director of a professional trust administration corporation, seems to have used whilst Protector of the TDT, there is no application before the court relating to his remuneration and it does not appear to me from the evidence of the present Protector or of Miss Mackintosh that it is suggested that the experience and skills of Mr Hillier and the present Protector are comparable.
80. Next, the present Protector compared his charging rate of £350 per hour with that of the Former Trustees, who he said charged an hourly rate on a time-spent basis for their administration of the TDT. He claimed that his rate is both reasonable and proportionate when so compared, taking into account as well what he claimed to be the complexity of the matters with which he is dealing as Protector. The rates used by the Former Trustees ranged in April 2009 to January 2010 from £220 per hour for a junior trust manager up to £350 per hour for an in-house lawyer and £400 per hour for a senior staff member. Nevertheless, it is important, in my view, for me to remember that the Former Trustees were professional trustees.
81. Finally, in paragraph 33 of his 8th Affidavit, the present Protector sought to compare his claimed rate of £350 per hour with what he had been told by his legal advisors were rates for management teams in legal proceedings of up to £500 per hour. But the legal advisors have not given any evidence in support of this claim and no comparative evidence is exhibited to the present Protector's 8th Affidavit. I regard this part of the comparison used by the Present Protector as of little, if any, assistance. His claim is one for remuneration by way of profit out of the TDT for his

services to the TDT as Protector and, in my judgment, there is a material difference between his role and both that of a professional trust corporation acting as trustee of the TDT and that of members of such a management team in legal proceedings involving their employer or company.

82. I think it may be helpful at this stage to make a few comments about the nature of protectors of trusts. Whilst the term ‘Protector’ may not be a term of art and its historic origin may be a matter of academic debate, and perhaps of little importance in the context of this application, the use of protectors in off-shore trusts is, as is well-known, common. The learned editors of *Lewin on Trusts*, 19th edition (2015) helpfully summarise the role of protectors at paragraph 29-044:

“sometimes the only power invested in a person called a protector is that of appointing, or of appointing and removing, trustees.... Protectors are common in offshore trusts ...”

83. In paragraph 7.47, and footnote 84, of *Holden, Trust Protectors* (2011) the learned author, consistently with long-established principle, referred to the right of remuneration of a protector as a right to profit from the trust and the footnote reads:

“Although, with the overheads of a professional protector, the remuneration from acting as such may not result in a net profit.”

84. The remuneration of protectors is dealt with in some detail in *Hubbard, Protectors of Trusts*, (2013), at paragraphs 7.30 & ff. At paragraph 7.51, the learned author suggests that in drafting trust deeds there may need to be mechanisms to control the remuneration of the Protector.

85. In *Rawcliffe v Steele* (1993-95) MLR 426, where a central issue was whether the powers of a protector were personal or fiduciary, both Acting Deemster Hegarty and Acting Deemster Smith considered the position of the protector in that case in a manner which I have found helped as a general introduction to the use of protectors in off-shore trusts. At p. 510, Acting Deemster Hegarty did not think it desirable to make general observations on the use of protectors or any fiscal implications from such a use, but he did, nonetheless, express these views:

“It seems to me that it would be wrong entirely to neglect the terminology involved. The word ‘protector’ seems to me to connote a role for the person holding that position even before one considers the detailed provisions relating to it. The ‘protector’ is, presumably, someone who ‘protects’. But what is he to protect? He is not a protector of any specific individual or interest. At recital (b), he is referred to as ‘Protector of the trusts created by this declaration of trust’; and at (c)(1)(b) he is referred to as ‘Protector of the settlement’. It is, therefore, the settlement that he is obliged to protect. I interpret this as indicating that his essential role is to ensure that both the letter and the spirit of the settlement are complied with. ...

... the position of protector is not merely an office which may be held by a number of persons in succession, but one in respect of which such persons may be entitled to charge for their professional services rendered in that capacity. Such a clause is presumably only necessary if, in its absence, the Protector could not have raised such charges. Once again, that strongly suggests that the powers of the Protector must be fiduciary powers from which he would not be entitled to profit. ...”

86. In his judgment, Acting Deemster Smith considered the arguments relating to the Protector under the relevant trust deed at pp. 528 & ff:

“Both [Leading Counsel] described the Protector as being a vital part of the machinery of the trust. I agree with that analysis. As appears from the various powers that are subject to the Protector’s consent, his role is clearly vital. Nevertheless, his role, in my opinion, is that of assisting in the administration of the trust. He is there to express to the trustees the settlor’s wishes as to how the trust is operated. He can do no more, however, than express his wishes. It is clear as regards his powers that he would owe a fiduciary duty to the beneficiaries (and not

*the settlor) as to how those powers would be exercised. Thus, it was accepted by all parties that the Protector could not refuse to exercise a power because the settlor wished that to happen. The Protector must **bona fide** consider the exercise of his powers from the point of view of the beneficiaries under the trust. ...”*

87. In a later Isle of Man case, *IFG International Trust Company Limited v French* [2012] MLR 637, Deemster Corlett considered a request by trustees for guidance about giving an indemnity to a trust protector for costs and expenses relating to third party fraud proceedings. The defendant, Mr French, was a protector under trust deeds and in his evidence he explained that his work as protector involved providing information to the trustees and conveying the wishes of the settlors and the family to the trustees about proposed trust transactions, including recommendations of the family regarding such transactions. There were also, it seems, face-to-face meetings conducted in the US and the Isle of Man with family members. Mr French’s evidence was that he and his fellow protector, Ms Robertson, had devoted a substantial amount of time to their duties as protectors, including at least two trips abroad each year, including to the Isle of Man, and what he described as “... a steady stream of communications between the [family] and the ... trustees and their predecessors about trust transactions.”

88. The issue before the court in *IFG v French* was primarily whether, with regard to Mr French, as co-protector, (who was, apparently, the only trust officer willing or able to mount an effective defence to an attack on the trusts in proceedings brought by the SEC,) it was appropriate for the court to support him financially in defending such proceedings. In considering that claim, the Deemster helpfully included a general discussion about trust protectors at paragraphs [51] to [56] and [63]. He concluded, relying upon the decision in *Rawcliffe v Steele*, that the general role and purpose of a trust protector might include assisting the trustees of a trust in the proper administration of the trust by providing relevant information relating both to the assets of the trust and to the wishes of the family of whom the beneficiaries in question formed part. The learned Deemster was satisfied that, depending, of course, on the terms of the particular trust deed in question:

“A trust protector’s functions will often extend beyond the ambit of those specific powers set [out in the trust deed] and either will or might encompass a general supervisory or advisory role.”

89. I now turn to decide the claim of the present Protector to be allowed remuneration for his services. I start with some general points.

90. In this case, the mechanism chosen in the Trust Deed to make express provision of remuneration of a Protector is Clause 14.7. The material parts of the sub-Clause are not the same as the material parts of the trustee remuneration clause, Clause 12.2, and it is important to note that the remuneration provision for protectors in Clause 14.7 only allows a Protector who is engaged in a business covered by the terms of the sub-Clause to be paid remuneration. Further, it is generally to be expected, in my judgment, that a person engaged in such a business would be only prepared to accept appointment as Protector under the TDT on terms that included remuneration, whereas a person not engaged in such a business, who might, I think, usually be a lay person, would generally be expected to accept appointment knowing that there was no express provision allowing him to receive remuneration.

91. None of the assets of the TDT is vested, or, so far as I am aware, has ever since the inception of the TDT been vested, in the present Protector. It is, of course, trite law that the assets of a trust are vested in the trustees of the trust. Accordingly, since the Protector under the Trust Deed merely has powers vested in him, the present Protector is not a trustee and his powers are distinct from those of the trustee or trustees for the time being of the TDT, *i.e.* during the entire period material to this application, the Current Trustee. It is to be expected, in my view, that the exercise of the powers of the Protector under the Trust Deed would occupy him very substantially less in the affairs of the TDT than the time required for the trustee or trustees to perform its or their duties.

92. Nevertheless, the powers conferred on a Protector by the Trust Deed relating to the addition or exclusion of a Beneficiary, the appointment and/or removal of trustees and the nomination of successor Protectors are, as I have already mentioned, expressly stated by the terms of Clause 14.11 to be fiduciary powers, suggesting why a Protector who comes within the terms of Clause 14.7 would be entitled to reasonable remuneration for his services. There is, however, no further helpful guidance upon the role of the Protector of the TDT which I have been able to find in any other provisions of the Trust Deed than those which I set out earlier in this judgment.
93. Accordingly, as will have been seen from those provisions, the duties of the Protector under the Trust Deed establishing the TDT are important, but limited. The powers to remove and to appoint trustees of the TDT and the requirement of the consent of the Protector to the exclusion or addition of a Beneficiary are, in my judgment, especially important powers; they are fiduciary powers conferred upon the Protector for the benefit of the Beneficiaries, who include the present Protector himself and his minor children. But the exercise of such fiduciary powers is, in my view, likely to occupy the time of a Protector of the TDT, including the present Protector during his period in office from 28 June 2010 onwards, relatively rarely; indeed, the present Protector's evidence does not suggest otherwise. Whereas it is set out in paragraph 1.78 of *Underhill and Hayton, Law of Trusts and Trustees*, 19th edition (2016), that

“he must independently consciously consider from time to time whether or not to exercise [such powers] in fully informed fashion (taking account of relevant factors while ignoring irrelevant factors) and he must exercise [them] fairly and responsibly according to the purpose for which [they were] conferred on him and not perversely to any sensible expectation of the settlor”,

his duties as Protector of the TDT, which are coincidental to the exercise of his powers, even when aggregated to time spent on keeping the Current Trustee properly informed on the myriad of matters which have arisen for consideration and, sometimes for decision during that period, have remained limited, especially when compared with the time and attention required of the Current Trustee as trustee of the TDT. It is important to mention, in my view, that the role of the present Protector as Protector under the Trust Deed during that period did not, in my judgment, require him to mirror the role of the Current Trustee. I accept without hesitation the evidence of the present Protector that he assisted the Current Trustee in the proper administration of the TDT by providing relevant information relating both to the assets of the TDT, including information about the companies indirectly within the TDT assets, and to the wishes of himself as a member, perhaps the primary member, of the class of Beneficiaries of the TDT. But his services under the Trust Deed should have been much more limited in extent than those of the Current Trustee as trustee of the TDT.

94. Nor does the Trust Deed contain any of the wider powers sometimes found in off-shore trust instruments, for instance, a power to conduct a periodic review of the administration of the trust or a power to approve self-dealing by the trustees or a power to give or withhold consent to a payment by the trustees to any of the Beneficiaries who are the objects of the discretionary trust under the trust, or a power to direct that named investments be made or disposed of by the trustees. Furthermore, there is no evidence of either a general or a specific letter of wishes or any other memorandum from the original trustee or from any benefactor whose assets were placed into the TDT asking for certain views to be taken into account by the Protector for the time being when exercising any of his powers.
95. It is also material to his claim for remuneration for the services performed by him as Protector that neither when appointing the Current Trustee on 2 July 2010 nor later did the present Protector exercise the power in Clause 12.1(ii) of the Trust Deed to agree the fees of the Current Trustee, which he had appointed as successor to the Former Trustees.
96. I am also satisfied that it is quite likely that the present Protector had not considered the question of seeking remuneration for himself in his capacity as Protector much, if at all, in the first three years of his holding office, suggesting to me that he may not have been expecting to receive remuneration. But, whatever may have been the reason for him deciding to make this application,

which was made on about 11 April 2014, he is entitled to make the application and entitled to have it determined fairly on its merits without in any way being penalised for only claiming remuneration at a comparatively late date.

97. Before I turn to the remainder of the claim for remuneration of the present Protector, I shall now deal with his claim for payment for performing his duties as a director of a large number of active TDT companies. The very great majority of the total sum of remuneration sought by him comprises the total of the sums set out as director's fees in paragraph 13 of, and the schedule exhibited to, his 8th affidavit, as updated to 1 February 2016.
98. In my judgment, there is a flaw in this part of the argument of the present Protector. For, whereas if a trustee of the TDT holds office in a TDT company, *i.e.* a company, shares or securities in which comprise or form part of the trust fund, he or it would be entitled to retain any emoluments received as such office holder under the right conferred by Clause 12.3(ii) of the Trust Deed, there is no such right conferred on a Protector in either Clause 14 or any other part of the Trust Deed. It, therefore, follows, in my judgment, that, if the present Protector were to receive emoluments from any TDT trust company in which he is a director, such emoluments would amount to a profit received by him whilst holding the fiduciary office of Protector of the TDT. He would, therefore, as a general rule be obliged to account for any such emoluments to the TDT, *i.e.* to the Current Trustee, since a Protector under the Trust Deed with fiduciary, rather than personal, powers, is not entitled to retain profits received by him by reason of his appointment as a director of a company in which the TDT holds shares, subject to any prospective or retrospective allowance which might be made by the Royal Court, under its inherent jurisdiction, permitting such retention to any Protector under the TDT who may have made a specific application for such an allowance, supported by detailed evidence. It is provided in *Lewin on Trusts*, 19th edition, at paragraph 20-074, in relation to a claim by trustees of such a nature as follows:

“The court has an inherent jurisdiction to authorise a trustee to become a director of a company when shares in it form part of the trust fund, or to obtain other employment with a third party, on such terms, including terms as to remuneration, as may be approved by the court; and this jurisdiction may be exercised so as to authorise the retention of past fees, as well as retention of fees paid after the order is made.”

In my judgment, the point made there would apply as well to any application by a protector, including any application by the present Protector with regard to his services as a director of many of the TDT companies; but no such claim has been made in the current application.

99. In my judgment, it is essential to differentiate between the position of the present Protector as a director of many TDT companies, in respect of which appointment he might be entitled, whether contractually or otherwise, to receive emoluments from such companies, and his position as Protector of the TDT *simpliciter*.
100. On the facts of the current case, it would be neither surprising nor exceptional, in my view, if the Current Trustee, and doubtless the Former Trustees before it, had asked for, and received, information and advice from the present Protector about the investment of parts of the TDT funds in shares and other securities in both UK and off-shore companies and about other assets of the TDT. Indeed, I am prepared to assume that this has occurred, and perhaps quite often. Equally, in my view, it would be neither surprising nor exceptional if the Current Trustee, and the Former Trustees before it, had relied upon the special knowledge of the present Protector about such companies, and also about the RCO, the family home of the present Protector and his children. Again, I am prepared to make the same assumption. For the present Protector is likely to be the person who has most information about the RCO and he is also likely to have first-hand knowledge and experience of, for instance, the Farnborough Companies and their fiscal liabilities, and of many others of the TDT companies. He would, as I see it, have often been the obvious person who the Current Trustee would have asked for such information.

101. But, in my judgment, on the present Protector's own evidence, it seems likely that any *advice* or other assistance which the Current Trustee may have received from him about such matters, was provided to it by him in his capacity as director of R20 Limited, (R20 Advisory). In so finding, I rely upon the evidence which both he and Miss Mackintosh have given about the business and role of R20 Limited vis-à-vis the Current Trustee, as trustee of the TDT. Although there has been no formal investment management agreement or other document of a similar nature adduced in evidence, which might otherwise have assisted on this question, it is likely, I think, that the advice and assistance provided to the Current Trustee were provided by R20 Limited, a company of which the present Protector has, at all material times, been a director. It is possible, although the evidence does not assist here, that the present Protector may either already receive remuneration from R20 Limited, or may be entitled to seek remuneration from that company for the work, which I accept is likely to have been very substantial work, carried out by him in that role, *i.e.* the role of director of R20 Limited. I conclude that a very large part of the work carried out by the present Protector to ensure that the trustee for the time being of the TDT, *i.e.* the Current Trustee, had properly and reasonably carried out its role as trustee of the TDT was largely done by him for, and as a director of, R20 Limited, and not in his capacity as Protector under the Trust Deed. It may be difficult for there to be a clear dividing line; but, taking into account the express powers of the Protector under the Trust Deed, I am satisfied that the substantial part of the work done by the present Protector, which I accept on the evidence he has done, has been done by him otherwise than as Protector of the TDT, *i.e.* as a director of R20 Limited, but with the clear and appropriate purpose of ensuring that the administration of the TDT by its trustee, the Current Trustee, and its predecessors, the Former Trustees, has been carried out well and effectively.
102. The primary claim of the present Protector for remuneration is for remuneration under the express terms of clause 14.7 of the Trust Deed. Dealing with the issues relating to the proper construction of that provision, I first conclude, on the basis of his 8th affidavit and, to a lesser extent on the 1st affidavit of Miss Mackintosh, that during the entire period of his protectorship the present Protector has been engaged indirectly in the business, albeit a rather restricted form of business, of advising, primarily through the means of R20 Limited, on the investment and preservation of the assets within both the TDT and other family trusts and family companies. But I have also concluded that the business is, when strictly analysed, that of R20 Limited, which is a separate legal person from the present Protector himself, and not that of the present Protector as an individual.
103. It therefore follows that the present Protector does not, in my judgment, carry on a business within the meaning of Clause 14.7. But, if I were wrong in having reached this conclusion, I would also be of the view that the evidence relied upon on his behalf, *i.e.* the evidence in his own 7th and 8th affidavits and the 1st affidavit of Miss Mackintosh, does not establish that the present Protector had any "*usual professional or other charges*" in use during any part of the period when he has been the Protector under the Trust Deed. Indeed, I am satisfied on the basis of that evidence that the present Protector did not actually charge any professional or other charges for his services during that period, whether at a rate of £350 per hour or any other rate. Although no such contracts of employment are in evidence, and my conclusion must, therefore, be a little tentative, I also consider that he may well have looked to fees or salaries under contracts of employment with the TDT or other family companies or to other similar payments from such companies for his compensation for what were, I find, the substantial services provided by him, largely as a director of R20 Limited, during that period. I therefore conclude that the present Protector's claim under Clause 14.7 of the Trust Deed fails.
104. I now turn to his alternative case pursuant to the inherent jurisdiction of the Royal Court to ensure the good and efficient administration of Guernsey trusts. I repeat that such jurisdiction is supervisory and that, when an application is made under it, the Royal Court is primarily concerned to ensure that Guernsey or other trusts within its jurisdiction are well and efficiently administered by their trustee or trustees and, if appropriate, that the protector or protectors of such trusts are properly performing their duties.

105. Contrary to the decision which I reached in paragraph 46 of my first judgment, where I concluded that the claim of the present Protector was limited to his claim under Clause 14.7 of the Trust Deed and that the Royal Court did not retain an inherent jurisdiction under which reasonable remuneration could be allowed to a protector of a trust, it is accepted at the Bar that the Royal Court does retain a discretionary power, as does the Royal Court of Jersey, under its inherent jurisdiction in relation to the administration and supervision of trusts to grant relief, including the grant of remuneration from the trust assets to the Protector appointed under the relevant Trust Deed – see, *e.g.*, on the width of the inherent jurisdiction, *In Re Bird Charitable Trust* [2008] JRC 013, a decision of Deputy Bailiff Birt and two Jurats in the Royal Court of Jersey, the decision of the Staff of Government Division of the High Court of the Isle of Man in *Rawcliffe v Steele* (*supra*), and *Hubbard, Protectors of Trusts*, at paragraphs 7.33 & ff. Accordingly, I agree that the Royal Court of Jersey and this court each have such an inherent jurisdiction. It is also possible, as is suggested in *Hubbard* at paragraphs 7.34 to 7.37, and 7.40 to 7.41 and in *Holden* (*supra*) at paragraphs 7.52 to 7.56, that there is further support for the exercise of such inherent jurisdiction in favour of a protector to be found by analogy both in the English High Court case of *In re Berkeley Applegate (Investment Consultants) Limited* [1989] Ch 32, *per* Deputy Judge Edward Nugee QC, at p. 50, and elsewhere.
106. I now turn to decide what sum, if any, would be a reasonable sum, for the present Protector to receive for carrying out the responsible role of the Protector of the TDT under the Trust Deed since his appointment as the Protector on about 28 June 2010. In the circumstances which I have set out in this judgment, and upon the evidence of Miss Mackintosh and of the present Protector himself to which I have referred, I consider there to be sufficient evidence upon which I can now determine the issue under the inherent jurisdiction of the court. I am satisfied that it is necessary, and appropriate, in order to ensure good and efficient administration of the TDT, for the present Protector to receive a reasonable sum by way of compensatory payment for having carried out that role and for continuing to do so. I consider that the size of this payment should reasonably reflect both the fact that the present Protector’s services as Protector were provided by him over a difficult period for the TDT during which the experience and special knowledge of the present Protector has been valuable to the Current Trustee, and the fact that he can only be compensated for those parts of his services which were provided by him as an individual, (who is also a member of the class of Beneficiaries under the Trust Deed), *i.e.* as a lay person, and not as a professionally-qualified Protector, and not for the work which he has performed for many of the TDT companies, including R20 Limited, in which he has held directorships.
107. What, therefore, would be such a reasonable sum? Again, my decision is a question of evaluative judgment, taking into account the nature of the TDT, the specific terms of the Trust Deed relating to the Protector appointed under it, the complex nature and extent of the TDT assets and the evidence of the present Protector and Miss Mackintosh. Although I have also carefully taken into consideration the submission of Advocate Gray on behalf of the Joint Liquidators that the court should be very slow to accede to any attempt by the present Protector “*to re-write*” the terms of Clause 14.7 of the Trust Deed “*through the back door*”, especially when the present Protector made no claim for remuneration until making his application in these proceedings, *i.e.* after the appointment of the Joint Receivers, I was not persuaded by this submission that I should further reduce the sums which I shall allow the present Protector as his remuneration.
108. In my judgment, under the inherent jurisdiction of the court, it is reasonable to allow the present Protector by way of remuneration for his services both (i) an annual sum of £30,000 for his services as Protector under the Trust Deed for the period from his appointment on about 28 June 2010 until the appointment of the Joint Receivers on about 22 December 2013 and (ii) an annual sum of £3,000 for the period commencing on 23 December 2013. In doing so, I have very substantially reduced the annual sum applicable during the second, *i.e.* current, period, so as to take account of the likely reduction in work which has been, and will be, necessary for the present Protector to carry out in his capacity as Protector under the Trust Deed and also to take into account the likely insolvency of the TDT during that period. Again, any question of priority of those sums over any other sum claimed by creditors, including the Joint Liquidators, or by the

Current Trustee or by the Former Trustees from the TDT's assets is not for me to decide in these proceedings.

109. In my judgment, the provision of annual sums, rather than sums calculated by reference to any hourly charging rates and hours of work performed, is the reasonable and appropriate way for me to determine the present Protector's application. In doing so, I record that I have excluded from any remuneration awarded to him any director's fees which have been claimed by him in respect of TDT companies, shares or other securities in which are contained within the TDT assets. As I have mentioned earlier in this judgment, if it were the case that he has received, or is entitled to receive, emoluments or other remuneration from any of the TDT companies in which he is a director, then he would, in my judgment, still be entitled to apply to the Royal Court under its inherent jurisdiction for both a retrospective and a prospective approval of him retaining all or part of such director's remuneration. But I repeat that it is not, in my judgment, appropriate to reflect any part of his services as such a director in an annual sum allowed to him in his capacity of Protector under the Royal Court's inherent jurisdiction in respect of trusts.
110. After this judgment has been handed down, I will hear any submissions which either the present Protector or the Joint Liquidators may wish to present on the issue of equitable interest and on the costs of the present Protector's application for remuneration.

PATRICK JOHN TALBOT QC

Lieutenant Bailiff

1 December 2016