



Artemis Trustees Limited and anr v M Sandle and anr
Royal Court
2nd June 2017

JUDGMENT
7/2018

Re Remuneration and Expenses

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Civil No. 1923

IN THE MATTER OF THE C TRUST

BETWEEN:

(1) ARTEMIS TRUSTEES LIMITED

(2) ARTEMIS CORPORATE SERVICES LIMITED

Applicants

And

(1) MARTIN JOHN SANDLE

(2) RODNEY GRAY DENTON (DECEASED)

Respondents

Before: Lieutenant Bailiff Master Peter Haworth

JUDGMENT handed down: 2nd June 2017

Representation:

Counsel for the Applicants: Advocate J A Tee

The First Respondent appeared in person

Introduction

1. This judgment relates to the Respondents' application for remuneration and expenses pursuant to their claim for costs and fees from the assets of the Trust dated the 24th December 2015 (the Fee Claim).
2. On the 16th June 2016, Lieutenant Bailiff, Her Hon. Hazel Marshall QC made an order transferring the Fee Claim for me to determine and assess in accordance with the terms of the Trust deed and the principles adjudged by the court as set out in the Schedule annexed to the Order of the 16th June 2016 and Schedule 2 of the Order dated the 15th April 2016.
3. The Fee Claim took the form of a Scott Schedule, the final version of which is 421 pages long (the Schedule). The Schedule only discloses claims which were disputed and not claims which have previously been agreed. Consequently, the Schedule reflects the Orders of Lieutenant Bailiff Marshall dated the 19th April 2016 and 16th June 2016 showing items specifically disallowed by those Orders.

Specific Items

4. A number of items in the Schedule were disputed by the Applicants on the following basis:

“Disallowed - this item is excluded pursuant to paragraph 3 of schedule 1 of LB Marshall QC's order dated 16th June 2016”

In my judgment this is a useful starting point to work through the Schedule on an item by item basis reminding myself of the provisions referred to in the Order dated 16th June 2016 which state as follows:

“3. *The Respondents are not entitled to be paid from the trust assets either:*

(i) Remuneration; or

(ii) Indemnity for expense claimed

In connection with their positions as (i) shareholders, and (ii) pledgees of shares and (iii) members of the supervisory board of M SA.”

5. My findings in relation to each item are as follows:

- Item 73 page 170
- MNKS
- Invoice 2013 – 08-079
- (31813) – €1,000 Euros
- Luxemburg legal advice

Mr Sandle submitted that this was necessary work by Luxemburg lawyers in order to achieve security. MNKS were involved in other advice associated with obtaining reasonable security which was fundamentally necessary based on the overarching agreement. At the stage this advice was sought the pledge had never been completed. Without the pledge the settlor would have been able to carry out all manner of activities with regard to the shares.

6. For the Applicants, Advocate Tee relied on the response in the Schedule, namely that the invoice was disputed in its entirety due to the fact that the work undertaken relates to

expenses incurred in relation to the Respondents' position as either shareholders, pledgees or members of the supervisory board of M SA and therefore not properly chargeable to the Trust.

7. Save for the bill itself, to be found in volume 2 of the consolidated bundle at page 1174, the first Respondent was able to provide little by way of documentary evidence in support.
8. This item is disallowed. My reasons for disallowance are that it fell squarely within paragraph 3 of Schedule 1 to the Order of the 16th June 2016, reminding myself as I do, of the provisions of paragraphs 76 to 78 of the judgment of Lieutenant Bailiff Marshall dated the 29th June 2016.

Item 75 - MNKS at £26,528.64

9. These invoices are to be found in volume 2, pages 1178 – 1187. After hearing submissions from both the Applicant and Respondent, the First Respondent withdrew this item.

Item 76 - Bank Charges - withdrawn for the same reason

Item 77-78 – MNKS £28,538.56 Bank Charges - £20

10. These invoices appear in volume 2 pages 1188 – 1196. It was submitted on behalf of the first Respondent that some of these items, for example, on page 1189 relating to a summons, concern the possibility of litigation relating to a Dutch company and required detailed consideration by him as trustee to preserve the assets of the Trust. The advice was for the specific interests of the Trust and to meet its obligations. He also submitted that on page 1190 the note of work carried out related to French tax affairs which he was required, as trustee, to consider. The limited documentary evidence that the Respondents provided to support these invoices appeared to relate to the work of the supervisory board of M SA. For the Applicant, Advocate Tee relied on the response contained in the Schedule.
11. These items are disallowed on the basis that they fall squarely within the exception in paragraph 3 of the Order of 16th June 2016.

Items 83, 84, 85, 86, 39/40, 51, 52, 57, 58, 63, 64

12. The first Respondent had interpreted paragraph 4 of the Order of the 16th June 2016 giving him the ability to recover expenses incurred in relation to the Trust in the necessary course of obtaining “Reasonable Security” in his capacity as trustee which included all the claims made on his behalf in respect of the invoices and expenses of MNKS.
13. Advocate Tee submitted that the definition of “Reasonable Security” contained in the Order dated the 11th February 2016, made clear that paragraph 4 of the 16th June 2016 Order referred to the costs of the Reasonable Security claim and not to individual items claimed thereunder. Consequently to accede to the submission of the first Respondent would in effect render paragraph 3 to Schedule 1 to the 16th June 2016 Order, otiose.
14. Having heard the submissions of the Applicant, the first Respondent withdrew all the remaining MNKS claims for expenses in items 83, 84, 85, 86, 39, 40, 51, 52, 57, 58, 63 and 64.

Rita Sandle claim for expenses 2011 to 2015 - £62,500

15. The Respondent conceded that this item had been struck out by Lieutenant Bailiff Marshall in paragraph 4 of her Order of the 16th June 2016. The claim was withdrawn.

Schedule 1 – Old Crown Trust Fees detailed in invoice dated 30th December 2011

2(b) £27,995 for book keeping and accounting for P

16. After submissions by the first Respondent, this item was withdrawn.

(c) £30,000 for administering the C Trust

17. The first Respondent submitted that this item related to staff time during the period 1997 – 2010 totalling £124,164. From this, the Global Fees Schedule showed a reduction of £72,394 being an adjustment for double-counting which left a figure of approximately £50,101. The first Respondent's estimate of the staff time spent in relation to the administration of C Trust was the figure of £30,000 sought.

18. The Applicant contended that there was no real evidence to support the staff costs or the first Respondent's contention that £30,000 should be allocated to C Trust during the period in question which was an estimate only. There were no letters of engagement or basis of charge between the first Respondent's various businesses and it was clear from the witness evidence of Louise Reeves, David Naylor and Simon Fox for example, that they had worked during the period in question for different businesses, namely Old Crown Trust Limited, MS & Co and Whitehats Limited. It was submitted that no accounts had been produced. Furthermore, there was no evidence of any work product or any evidence of what input the staff had provided to the Trust over the years in question.

19. In my judgment, the first Respondent has provided little evidence to support this claim. He has failed to provide any evidence as to the rates of charge or terms of engagement of staff in relation to this matter and has merely arrived at a subjective assessment as to the cost of staff time over the years in question. It is clear from the Global Fee Schedule that the staff costs of administration of all the trusts during the years 1997 through to 2005 are relatively modest, averaging £3,000 to £4,000 per annum. Substantial costs appear to have been incurred during the period 2007/2008 when a total of £60,000 appears in terms of staff costs. The first Respondent gave no explanation for this substantial increase and indeed no real explanation how he had arrived at the figure of £30,000 which he claimed.

20. Accepting the general principle that the charging provisions of the Trust allow for remuneration of the trustee, any such remuneration has to be reasonable and it is for the first Respondent to establish the reasonableness of what is claimed. I was far from satisfied, on the evidence before me that this claim was in any way reasonable. Doing the best I can on the limited evidence put forward by the first Respondent, I can do no better than assess these costs on a quantum merit basis and note that in any event, the Applicants have offered the sum of £500 per annum, a total of £10,000 in all. To my mind, based on the lack of evidence from the first Respondent, that is a reasonable sum and is the sum I am prepared to award.

(d) £300,000 – time for Mr Sandle to 2010 on C Trust

21. The first Respondent submitted that his rates of charge had been accepted in accordance with the fee proposal he put to the settlor in writing and referred to a fax of the 24th July 2008, showing that he anticipated a charge of £1,675 per day for three weeks work a year. That fee proposal had not been objected to by the beneficiaries. Furthermore, in order to cross-check the reasonableness of his fees, he had for the years 2007 to 2008, calculated the number of units spent in relation to e-mails relating to the Trust to arrive at figures for 2007 of £47,272.29 and for 2008 - £74,655.29. For the years from 2001 through to 2005 he submitted that a reasonable figure for his time was the sum of £33,333. This was a complex Trust involving multi-jurisdictional work in relation to a Trust of substantial value with difficult and complex tax affairs.

22. For the Applicant Advocate Tee argued that the rate of charge was not agreed and the basis of charge had to be proved. There were no accurate time records and there was no evidence of what the first Respondent had achieved for the fees he was claiming. A guesstimate by the first Respondent as to the time spent in relation to the trust work was simply inadequate.
23. In my judgment, little evidence has been produced to substantiate the claim for time spent by the first Respondent during the period of 2000 to 2010 of anything approaching £300,000. The claim by the first Respondent that his rates were agreed with the beneficiary is a matter which was dealt with by Lt Bailiff Marshall in her judgment in relation to the claim that the beneficiary had acquiesced to the first Respondent's rate of charge. It has been left to me to determine. I have been provided with no expert evidence from the first Respondent as to the appropriate rate of charge for a trustee of his seniority taking into account the work he was carrying out for the Trust. The first Respondent appears to have based his rate of charge on a daily rate and has kept no time records. I place little store on his cross-referencing of the unit cost of an e-mail which he has determined was of value to the Trust. His approach is self-serving and unhelpful. It is an entirely subjective analysis on his part.
24. It is of course for the first Respondent to prove his claim and I am far from satisfied from the evidence that I have heard that he has done so. I accept that the Trust deed provides as follows:

“13 – Any trustee being a person engaged in any professional business shall be entitled to (1) charge and be paid all usual professional and other charges for business transaction time spent and acts done by him or his firm in connection with the administration of the trust hereof including acts which a trustee not being in any profession or business could have done personally.”

25. Nonetheless, charges by a professional trustee have to be reasonable and proper. Where they are disputed they have to be proved. It is clear from the evidence that no accounts were prepared by the Trust for many years. I do accept that the first Respondent and his firm carried out the book keeping and administration of the Trust. The Applicants for their part, as an alternative case, submit that the only time allowable to the first Respondent should be 37 hours during the period in question, at a rate to be determined by the Court.
26. Although the first Respondent claims £33,333 for the 6 years commencing in 2001, no documentary evidence was provided to support these charges whatsoever. There were neither time records nor files to show what work had been achieved during the relevant periods of charge. Records were available for the period commencing 1st January 2007 through to December 2010 where a claim for remuneration for 2007, totalling £47,272.00 had been made and for the following years: 2008 - £74,655.00, for 2009 - £30,000, for 2010 - £60,000. In relation to those years the first Respondent was unable to provide any evidence to show what work had been achieved during the period of charge. In my judgment, the calculation by the first Respondent of fifteen days' work per annum in relation to the Trust at a cost of £1,675 per day was unreasonable and excessive. On reviewing the schedules provided by the first Respondent for the years 2007 – 2010, I formed the view that a more accurate assessment of time, based on the approach taken by the first Respondent of one week or 35 hours per annum would be more appropriate. Insofar as the rate was concerned, the calculation by the Respondent of £1,675 per week broke down to approximately £240 per hour. In my judgment a realistic hourly rate for a trustee performing the functions of the first Respondent is in the region of £265 per hour. Taking all matters into account, I formed the view that in the latter stages of 2009 and 2010, the first Respondent was performing substantially more work than in earlier years. Applying a broad-brush to the years in question, I came to the conclusion that in the absence of any evidence to support the charges for 2001 through to 2006, there should be no recovery and that for the years 2007 to 2010, the reasonable and proper remuneration for the first Respondent was £50,000.

(e) £113,095 for Mr Sandle's time from 17th June – 31st December 2010

27. The significance of the date was the receipt by the first Respondent of the first letter from Macfarlane's relating to the retirement of the Respondents. The first Respondent's submission in relation to these fees was that it was the most significant period of activity and I was referred to the schedule of e-mails during this period which the first Respondent confirmed he had reconstituted from the documents themselves. He confirmed that the records were not a contemporaneous time record, but were his assessment of the time taken to respond to or to consider the relevant e-mails. It was, as the first Respondent put it, a document "contrived" since 2010, and he was unable to provide the Court with the product of his efforts during that time. The Applicant submitted that the first Respondent had failed to evidence the work included within the claim was carried out for the benefit of the Trust. In my judgment the claim should be disallowed on the basis that the only evidence to support the claim was the self-serving schedule of e-mails prepared by the first Respondent from his records long after the work had been carried out.

(f) £2,000 expenses incurred by Mr Sandle up to 2009

(h) £500 expenses incurred by Mr Sandle in 2010

28. No evidence was produced to substantiate either of these expenses and as such they were disallowed.

Schedule 2 – Fee claim by the Respondents for Old Crown Trust expenses from 2011 to 2015

1 Staff time 2011 – 2015, £39,701.25

29. The first Respondent submitted that this related to work carried out after 2011 which was fundamental to the work of the Trust. Approval had been obtained from Artemis to deal with the cancellation and realization of shares and the first Respondent was expected to maintain the book-keeping for the Trust. Furthermore, on the 30th November 2011, the Applicants had agreed to restructuring the over-arching agreement and the merger of three Luxembourg companies. The first Respondent provided time-sheets for four members of staff detailing the work they had carried out during this period which the first Respondent submitted was both reasonable and proper. For the Applicants, Advocate Tee contended that the proviso in paragraph 3 of the Order of LB Marshall dated 16th June 2016 made it clear that as from the 11th June 2011, the trustees were unable to be paid remuneration save where the Applicants had consented. The Applicants took the view that the staff of the first Respondents fell within the provisions of the proviso and therefore no costs could be recovered.

30. Clause 13 of the trust deed makes it clear that a professional trustee is entitled to:

"Charge and be paid all the usual professional and other charges for business transaction time spent in acts done by him *or his firm* [my emphasis]."

In my judgment, on any reading of the Trust deed and the proviso contained in paragraph 2 of the first Schedule to the Order of the 16th June 2016, save where the Applicants have consented to the work, there can be no recovery. I was provided with no evidence to the effect that the Applicants had in fact consented or sanctioned the work and accordingly this claim is disallowed.

Schedule 1 - Old Crown Trust Limited Fees detailed in invoice dated 30.12.11

2 1990 – 2010 Directorship Fees £81,101

31. The first Respondent submitted that the question of directors' fees was first raised in a letter in 1996 wherein he wrote to the beneficiary as follows:

"To this should be added compensation for my acting as director of various companies 1990 – 1996 plus expenses."

These expenses related to directors' fees for a French company ICCH which was the holding or operating company. Further reference was made to directors' fees in a fax dated the 24th July 2008 wherein the first Respondent stated:

"Also to be added is compensation in respect of services supplied as director of ICCH and to the French group in general which was a subject of a letter from MJS to CGH some years ago."

In 2003 the first Respondent wrote to the beneficiary seeking fees in respect of his acting as director of various companies which he set out in the following terms:

"I should propose the following calculations as appropriate and would be grateful if you and your partners give it due and favourable consideration:

1990 – 2003 (inclusive) Fees 13 x £2,500 = £32,500

Expenses £6,000

Total £38,500 or say €55,000 Euros

I realise this approach may not be anticipated by you but in the circumstances trust that you will be able to agree it is reasonable and acceptable. Should you wish to establish new criteria for the future please advise accordingly."

The balance of the fees claimed was charged by the first Respondent at £5,000 per annum during the years 2004 – 2010.

32. For the Applicant, it was contended there was no evidence of any agreement to these directors' fees. No figures had been agreed and indeed there had been no response to any of the correspondence addressed by the first Respondent to the beneficiary. Furthermore there was no evidence of any benefit to the Trust in connection with these fees.
33. During the course of discussion concerning these fees, the first Respondent confirmed that the directors' fees had not been included in the company accounts for ICCH during the period they were being claimed. The first Respondent was involved in the company as sole director and was, in his own words, carrying out sole responsibility for the Company. He had on occasions to check the inter-company relationship with another Dutch company which formed part of the Trust assets. I came to the conclusion that these directors' fees were properly chargeable to the company concerned, namely ICCH and that the trust deed did not provide for the payment of directors' fees in these circumstances, despite the submission by the Respondent that clause 9 gave the trustee power to claim directors' fees. However, the Applicants had offered the first Respondent the sum of £20,000 in connection with this claim which, in the circumstances, the first Respondent chose to accept.

Schedule 2 – Fee Claim by the Respondents for Old Crown Trust Expenses from 2011 - 2016

3 Item 3 Mr Sandle Trustee and Directors' fee 2011 - £236,250 for 750 hours at £315 per hour.

34. The first Respondent explained his new methodology in relation to the calculation of his remuneration during the period 2011 – 2015 in the following way. He had maintained an e-

mail record of work carried out on behalf of the Trust for the years in question. He confirmed that for the period 2011 to 2015, he had made the following assumptions:

2011 - 750 hours spent

2012 – 500 hours spent

2013 – 500 hours spent

2014 – 500 hours spent

2015 - 750 hours spent

Total = 3000 hours.

He confirmed that this was a guestimate and nothing more. He had then prepared, on the basis of his e-mail records, separate accounts for each year. For 2011, which was the basis of this claim, he had 1,174 emails which totalled 2,162 hours. He had then divided that total by 2 to achieve a total of 1,081 hours on the basis that each e-mail had a unit time spent of 30 minutes. To his 1,081 hours, he then applied an hourly rate of £315 per hour. The first Respondent submitted that this compared favourably with the £750 hours which he had limited his claim to.

35. For the Applicants, 2011 marked the cut-off year in relation to the Order of LB Marshall where, from the 16th June 2011, consent or authorisation of the Applicants was required before remuneration could be claimed. On their analysis of the documents provided by the first Respondent, during 2011, they had concluded that a reasonable sum for the first Respondent to claim would be 36.5 hours up to the cut-off date in June with a further 60 hours thereafter.
36. From 2011 through to 2015, the records of the trust were available. In the light of the very substantial claims in Schedule 2 which total just short of £1,000,000 a sensible and proportionate way of dealing with the claim for remuneration during that period would be to sample individual months in each year and to carry out an item by item assessment of the work carried out by the first Respondent and then extrapolate the figures for the relevant period of charge. In other words, sample two months in every year and multiply the result of each month by 6.
37. I therefore invited Advocate Tee for the Applicant and the first Respondent to choose the months they wished me to review in relation to each year and it was agreed that I would carry out an assessment of the first Respondent's remuneration in respect of the following months:

- 2011 - April and October
- 2012 - April and December
- 2013 - September and November
- 2014 - December and March
- 2015 - May and July

ICCH 2011 – 2012, £5,000 per year total £12,000

38. In relation to this item, the Applicants offered the first Respondent the sum of £1,000 for his directorship of ICCH for the year 2011 only, on the basis that ICCH was not part of the trust structure in 2012. The first Respondent accepted the offer.

Meetings

39. The first Respondent advanced a claim for attending a number of meetings over the period of his trusteeship at £400 per meeting making a total of £20,000 of total. He submitted that this was not a remuneration but was a recovery of an expense. However, he was unable to provide any documentary evidence to support this claim and accordingly I disallowed this item.

MJS Visits and Telephone Conversations, updating his co-trustees RD and GD on events to date 2011 - 2015

40. The claim was £6,000 for 30 hours' work at £200 per hour. The first Respondent contended that this was keeping in touch with his co-trustee, Mr Rodney Denton the second Respondent, who was in his 80s and in poor health. It was a claim for visiting the second Respondent and his son to advise them and update them as to issues relating to the trust.
41. The Applicants submitted that this claim was double-counting given that the evidence provided by the first Respondent showed that there were items of correspondence within the remuneration claim that related to the same matter.
42. In my judgment I prefer the submissions of the Applicant to those of the first Respondent. There was clear evidence in the e-mail schedules which I was provided to demonstrate that there was e-mail traffic between the trustees and accordingly this item was disallowed.

Item 3 – Mr Sandle Trustee – Director's Fee 2011 revisited

43. On the 17th May, I directed that the issues of the first Respondent's trustee and director's fees for the years 2011 – 2015, at item 3 of the second Schedule of the Schedule be determined by sampling. The parties having chosen their months for sampling and starting with April 2011, I went through each item in the files produced by the first Respondent and allotted an appropriate unit of time. The documents produced by the first Respondent consisted of e-mail trails of work done during the month in question to which the first Respondent had allotted the time taken in respect of each item. At the conclusion of the sampling exercise I had allowed 78 units, namely 7.8 hours charged at a rate of £265 per hour. In accordance with the Order of 16th June 2011, it was necessary to apportion the charge to that date and then consider the charges thereafter. Accordingly, based on a monthly total of 7.8 hours over the period 1st January 2011 to 16th June 2011, the sum allowed by way of remuneration to the first Respondent totalled £11,437.40.

October 2011

44. Prior to carrying out the sampling exercise for October 2011, the first Respondent submitted that his work as directors of companies owned by the trust was distinct from his work as a trustee. Time was claimed in October 2011 in relation to his obligations as a director and in respect of the 'transaction' which took place later that year and during the early part of 2012.
45. For the Applicants, Advocate Tee submitted that the proviso in paragraph 2 of the Order of 16th June 2016 made it abundantly clear that the Respondents could not charge for *any work [my emphasis]* after the 16th June 2011 and as such that must include work done as a director of a company which was owned by the Trust. To my mind that must be the correct position. The Trust owns the various companies of which the Respondents were directors. Their

directorships of these companies derived entirely from their position as trustees and consequently they were not, save with the consent of the Applicants, permitted to charge for their work as directors, from 16th June 2011.

46. The sampling exercise was carried out in relation to the October 2011 with the first Respondent providing copies of e-mail chains. I concluded that the only chargeable work to the Trust occurred during the period 27 – 30 October when there were requests by Macfarlane and Co for assistance in connection with the Trust. It was conceded by Advocate Tee that consent was not therefore necessary in respect of those items. The units allotted to this work amounted to five and that being the case, the maximum fee recoverable by the first Respondent during the period 16th June 2011 and 31st December 2011, totaled 32 units, in other words 3.2 hours, chargeable at £265 per hour, totaling £848.
47. The Applicants in their response to the Schedule had agreed to 60 hours for this period at a rate to be determined by the court. This concession had not been withdrawn. Accordingly the claim for trustee and directors' fees from the 17th June 2011 to 31st December 2011 was allowed in the sum of £15,900.00.

2012, 2013, 2014, 2015

48. After the short adjournment, the first Respondent conceded in the light of my rulings in relation to his remuneration for 2011, he was prepared to agree to the offer put forward by the Applicants for both 2012 and 2013, such offers not having been withdrawn of 50 hours in respect of each year totaling £13,500 for 2012 and 2013 respectively.
49. In relation to his remuneration for 2014 and 2015, he withdrew these items.

Expenses paid out

Item 29 - Mourant Ozannes (MO) invoices totalling £3,606.

50. The first Respondent submitted that in relation to a number of these invoices, MO had charged in relation to four distinct trusts on the basis that the C Trust held cash and settled the expenses of the beneficiary by way of a loan account to him. This was the case in respect of all trusts and the first Respondent contended that I should take this into account in my assessment. He also submitted that in his view the accounts from MO should not be assessed by me on the basis that I was being asked to carry out an audit of the trusteeship.
51. To my mind it is entirely appropriate and in accordance with paragraph 69-72 of the judgment of LB Marshall dated 29th June 2016, that I carry out an assessment of the accounts of MO to ascertain what (if any) proportion of those accounts was properly chargeable to the Trust and/or other parties.
52. I noted that in relation to these accounts there was substantial documentation in support of the accounts contained in the bundles lodged by the first Respondent and allowed the sum of £2,600.00.
53. Advocate Tee on behalf of the Applicants did not object to the rate of charge which had been agreed by the trustee with MO of £400 per hour rising to £410 per hour.

Item 31 – invoice MO £4,600 for 11.5 hours claimed.

54. The first Respondent contended that all the time in relation to this bill was recoverable. For the Applicant Advocate Tee responded that in accordance with schedule 2 to the Order of 15th April 2016, the Respondents were not entitled to charge:

“(2) *The respondents are not entitled to charge the trust for remuneration for work done at cost and expenses incurred in relation to other trusts or other structures not owned by the trust.*

(3) *The respondents are not entitled to charge the trust for remuneration for work done and costs or expenses incurred in relation to work carried out for the personal benefit of the respondents (this contrasts with work done or costs and expenses incurred in their officers trustees of the trust). ”*

55. Having considered the available documentation, I allowed £1,800.

Item 33 – MO invoice £6,400

56. This equates to 16 hours work which after consideration of the documents I allowed £2,750.

Item 35 – MO invoices totalling £11,406.88 comprising three invoices of £1,648, £3,936 and £5,822.88.

57. These invoices equate to 4.1, 9.84 and 16.55 hours in total. After consideration of all relevant documents contained in the bundle, I allowed a figure of £7,500.

Item 39 – MO invoices totaling £7,071 made up of two invoices of £2,520 and £4,551 respectively.

58. So far as the invoice for £2,520 was concerned, an offer of £2,240 had been made by the Applicants which I allowed. In relation to the second invoice for £4,551 equating to 11.36 hours work, after considering all relevant documents, I allowed a figure of £3,200.

59. The first Respondent provided evidence to substantiate the payment of bank charges in connection with MO invoices assessed earlier in the proceedings. Accordingly, the bank charges at items 30, 32, 34, 36 and 40 are allowed in the sum of £45 per item.

Item 41 – MO invoice 28.04.2011 - £3,198.

60. This invoice was reviewed against the documentation provided by the first Respondent in the bundle of documents. The hourly charge out rate of MO had been increased to £410 per hour. In relation to this item I allowed the sum of £3,200.

Item 42 – Bank charges £45 - allowed.

Item 48 – Old Crown Trust Limited fees.

61. The first Respondent contended that this sum arose from the minutes of the trustees dated January 2010 and in view of the fact that the Respondents were increasingly concerned with regard to the willingness of the beneficiary/settlor to meet their fees, they had made a payment on account to the first Respondent of £350,000 in “recognition of services”. The first Respondent argued that this sum represented a reasonable sum to be advanced in connection with work already done concerning the Trust.

62. For the Applicants, Advocate Tee argued that this was a self-serving document and in any event was merely a payment on account in respect of fees which had already been assessed, pursuant to Schedules 1 and 2 of the Schedule.

63. I concluded that this was not an item requiring assessment. It was merely a payment on account and nothing more against fees which I had already assessed in the course of these proceedings.

Item 49 – MO invoice - £29,569.60

64. In relation to this invoice, the first Respondent submitted that this was a time when the Trust was concerned with the tax position of the Trust with a possible contingent liability of €27,000,000 Euros which was greater than the assets of the Trust. That matter had a serious impact on the issue of reasonable security.
65. Advocate Tee argued that the documentation in relation to this invoice clearly demonstrated issues relating to the fees which were personal to the Respondents, other trusts, personal benefits and advancing the trustees' personal position.
66. Taking into account all factors, I concluded that the appropriate allowance for this item was £18,000.

Item 50 – bank charges - £45 allowed.

Item 59 – Lacoste Feyout and associate - £5,939.94

67. The first Respondent submitted that these were the fees of French lawyers based in Paris for obtaining advice concerning reasonable security. It equated to 16 hours at €450 Euros per hour. Some of the advice provided by Lacoste was forwarded to Macfarlanes acting for the Applicants.
68. Advocate Tee argued that there was no evidence or documentation to support this item. In any event, the advice received from the French lawyers had not been provided to the Applicants and therefore in light of paragraph 71 of LB Marshall's judgment of 29th June 2016, these costs should be disallowed.
69. The first Respondent sought permission to provide additional documents in support of this item.
70. It was agreed by the parties that I would consider these documents and decide what, if any, fee I would allow.

Item 65 – MO fees totalling £16,360.53

71. This item was claimed in the sum of £20,437.16 which included a carried-forward figure of £5,492.97. It represented 39 hours work. Against this sum the Applicants had offered £7,890. On reviewing the documentation and in support of this account I allowed a figure of £10,000.

Item 66 – Bank charges - allowed at £45

Item 67 – Dixon and Wilson - £1,749.66

72. This item related to tax advice provided by English lawyers in Paris in connection with the position regarding tax returns of the trust, which under French law had to be made by the Trustees. In this regard the first Respondent confirmed that the advice received from these lawyers was not disclosed to the new trustees until 2016. On that basis the Applicants submitted that it should be disallowed pursuant to paragraph 71 of LB Marshall's judgment of 29th June 2016.
73. I concluded that as with the invoice for Lacoste at Item 59, I would review the documentation submitted by the first Respondent and decide whether costs should be allowed.

Item 71 – Simon Taube QC - £2,500

74. I disallowed this item in its entirety on the basis that the advice to which it related had not been disclosed to the Applicant until 2016.

Item 72 – MO fees- £30,000 claimed

75. The total of £30,000 consisted of the following:

- Invoice 03405 - £9,937
- Invoice 03554 - £3,385
- Invoice 04280 - £3,498
- Invoice 04780 - £3,177
- Invoice 05264 - £10,864

Neither invoice 03554 in the sum of £3,385 nor 03405 in the sum of £9,937 had been disclosed by the first Respondent. As such, the Applicants submitted that there was no evidence to determine whether these charges were properly payable by the trust.

76. The first Respondent was able to provide copies of both invoices and sought to provide backing documentation in support. I refused permission to adduce any further documents save for the invoices themselves. It was agreed that the consideration of these invoices be held over to the adjourned hearing to allow time for the Applicants to analyse the invoices against the documents already disclosed and to consider whether any or what fee could be agreed. In relation to the invoice for £9,937, I noted that £7,600 of this related to a disbursement for the fees of Simon Taube QC which appear to have been accepted and dealt with earlier in this assessment. Consequently, it remains merely to assess the balance of that fee.

77. In relation to the invoice for £3,177, having reviewed the documents in support, noting an offer of £433 from the Applicants, I came to the view that the figure of £820 was appropriate for services to the Trust.

78. The invoices for £10,864 amounted to 30.3 hours work. The first Respondent argued that this work was carried out in the latter part of 2011 and related to the provision of reasonable security. The Applicants had been provided with copies of the invoices relating to this work and not sought to dispute the accounts. The first Respondent argued that in relation to the cost of the “transaction” up to December 2011, Lt Bailiff Marshall had indicated that the Respondents would be able to recover their costs. Furthermore, the provisions of the Order of 16th June 2016 at paragraph 3 of Schedule 1 did not bite in relation to these costs because at the time the Respondents were not pledgees, shareholders, or members of the supervisory board of M SA which had not been created.

79. For the Applicants it was argued that the provision in paragraph 3 did bite and that if it was being suggested by the first Respondent that Lieutenant Bailiff Marshall had opined to the contrary, it was for the Respondents to produce a copy of the transcript.

80. In the light of the submissions and the fact that substantial costs had been incurred in connection with this point, I agreed to hold over the assessment of this item to the adjourned hearing.

Schedule 1 Item (g) – Staff Costs 2010 - £1,669

81. This was a matter held over from a previous day for the first Respondent to provide documentation to support this item. He referred me to the Global Fee Schedule and in particular the staff column for 2010 which provided a figure of £16,513. To that figure, was added the sum of £1,669 totalling £18,182 which is the figure comprised in the schedule of total staff costs which had been provided to support paragraph (c) of Schedule 1, namely the costs for administering the trust over a number of years.

82. I concluded that in the light of my allowance of £10,000 in respect of this item that the figure of £1,669 had been subsumed in that item and consequently I disallowed Item (g).

83. The Court convened on the 30th May 2017 to continue the account and inquiry into the Respondent's Fee Claim. The first Respondent was not present, having provided the Court with a statement of 'Fitness For Work' from his doctor at The Bosmere Medical Practice in Havant Hampshire which showed that the first Respondent was suffering from the following condition:

"Stress reaction – PT has been under severe stress and is exhausted. I have recommended complete rest for a month."

The statement was dated the 24th May 2017.

84. I was referred to e-mail correspondence between the Applicants and the first Respondent, wherein Advocate Tee, for the Applicants, suggested the following:

"Accordingly in order to progress the assessment hearing in a fair and proportionate manner having regard to our clients interests in having the matter determined whilst making due allowance for your health condition we make the following proposal (subject to the Court's approval);

- (1) LB Haworth conducts a preliminary assessment of the remaining third party expenses on the papers (as he is currently doing in respect of the Dixon Wilson invoices);*
- (2) The parties have two weeks from the dates upon which LB Haworth hands down his preliminary assessment to challenge all or part of the assessment;*
- (3) The issue of costs will be determined at a date to be set by the Court after the preliminary assessment has been handed down."*

85. In reply to those proposals, the first Respondent stated:

- "(1) I do not agree that it would be just or fair to continue with Collas Crill in attendance and without my presence and input if that is what you envision.*
- (2) The parties should need to wait until the doctor reports that my condition has improved sufficiently for me to progress the matter. If two weeks is sufficient for your legal team I would suggest a longer period is required for a litigant in person and this would best have to start at least after a month from now.*
- (3) The issue of costs will doubtless be decided by LB Haworth in accordance with his judgments at an appropriate time thereafter.*

Whilst this is your opinion not all the fee claimed concerned "my fees".

In the circumstances I would request you and the court that I should not be called upon to submit further particulars or comment upon the preliminary assessment until at least the end of June and preferably following a reasonable time and after I have been "signed off" as fit to continue."

86. Based on this exchange of e-mail and the tacit approval of the first Respondent to the suggestion of a provisional assessment of the remaining items by the Applicants I considered that it would be a proportionate and reasonable approach to take. Consequently, I propose to provisionally assess the remaining items in the Schedule on the basis of the Schedule, including the Applicants and Respondents' responses together with the available documentation contained in the folders and documents lodged by the first Respondent and permitted by the Court.

87. My provisional conclusions in relation to the outstanding items are as follows:

Item 72 – M O invoices

88. Two invoices from MO remain to be assessed following the adjournment on the 19th May 2017. They are:

- Invoice dated 8th September 2011 in the sum of £9,937
- Invoice dated 19th September 2011 in the sum of £3,385

89. The Applicants' response to both these invoices is that as they had not been provided with copies of the invoices by the first Respondent and the sums claimed were not properly chargeable to the Trust. In the light of my decision to provisionally assess all outstanding invoices, I have heard no further submissions from the Applicants in regard to these invoices. Advocate Tee consented to me dealing with the matter on the basis of the documents lodged at Court.

90. The first Respondent's response to these accounts is to refer me to point A in the Schedule which states:

"It should not be sufficient for the Incoming Trustees to say DISPUTED and then rely upon the Court/its Commissioner to identify any issues.

In general the Mourant Ozannes records are incomplete because the files of that firm have been withheld because of a dispute with the Outgoing Trustees who as a consequence have been unable to match the records it is believed there are additional records both internally and with third parties of which the Outgoing Trustees remain unaware.

It becomes apparent during 2010 that it will not be possible for the Trustees to resign without achieving "reasonable security"."

The first Respondent's response then goes on to detail the work carried out by MO in relation to the two accounts in dispute.

91. The 8th September 2011 account contains a disbursement of £7,600 in respect of counsel's fees for Simon Taube QC. This item has previously been dealt with in the assessment and leaves a balance for MOs own fees of £2,337. On reviewing the documents in support of this invoice I have concluded that a number of the items related to the Respondent's position as either shareholders or pledgees or members of the Supervisory board of M SA and are

therefore not properly chargeable to the Trust. Accordingly, in relation to the 8th September 2011 invoice, I am prepared to allow the sum of £1,250.

92. In relation to the 19th September 2011 invoice, I found upon analyzing the documentation in support, that a number of the items were not properly chargeable to the Trust, pursuant to Schedule 2 of the Order of 15th April 2016 and Schedule 1 of the Order of the 16th June 2016. In relation to that invoice, I am prepared to allow the sum of £1,550.

Item 59 – Lacoste Feyout and Associates

93. An invoice in the sum of €7,160 Euros (£5,939.94) was in respect of French legal advice. At the adjourned hearing on the 19th May 2017, the first Respondent provided me with a bundle of documents to support this invoice which the Applicants were content I should peruse. The Applicants' response to this claim was that as no time breakdown had been provided, it was impossible to interrogate how the invoice was made up and as Mr Sandle has failed to disclose a copy of the advice received, this item was not properly chargeable to the Trust.
94. The first Respondent's response was that Advocate Barbizet had provided advice and assistance re re-structuring ICCH Group including advising on French law, corporate issues including 'matters of reasonable security' and the first Respondent's resignation from ICCH and its sale to M SA.
95. Having considered the documentation provided by the first Respondent to support this claim for fees, my finding is that these fees were reasonable and proper fees for the Respondent's to incur in relation to their claim for "reasonable security" and are therefore allowed in the sum of £5,939.94.

Item 60 – Bank Charges

96. Claimed at £20 – allowed.

Item 67 – Dixon Wilson

97. An invoice dated the 18th January 2013 for €1,950 Euros (£1,749.66) for French tax advice. This was a matter held over from the adjourned hearing on the 19th May 2017 for me to consider on the basis of documents supplied by the first Respondent and not objected to by the Applicants. The invoice is disputed in its entirety by the Applicants as no time-breakdown had been provided and as the first Respondent had failed to disclose a copy of the advice received, the first Respondent's response was to refer me to point A which I have referred to in paragraph 90 to explain this advice was for French tax advice and compliance support.
98. It is clear upon reviewing the documentation provided by the first Respondent that this advice related not only to the C Trust but to other trusts. I accept that some of the advice received and for which Dixon Wilson charged, was for tax advice which was of benefit to the Trust and accordingly I am prepared to allow the sum of £1,000 in respect of this item.

Item 68 – Bank Charges.

99. Allowed in the sum of £20.

Item 74 – Dixon Wilson

100. Invoice dated the 12th March 2014 in the sum of €1,120 Euros for French tax advice. This invoice is disputed by the Applicants for the same reason as Item 67. The response of the first

Respondent is similar. On a review of the documentation my conclusions are the same as they were for Item 67 and accordingly I am prepared to allow the sum of €550 Euros for this item.

Item 81 – MO invoice

101. Invoice dated the 9th January 2012 in the sum of £12,072 for work carried out during the period 29th December 2011 through to the 3rd January 2012 comprising 2.1 hours of time spent by Luke Gregg, 9.5 hours spent by StJohn Robilliard and 28.9 hours spent by Tim Crook. A total of 40.5 hours over a two week period.
102. The Applicants' submission was that the majority of this work related to the Respondents' positions as shareholders, pledgees or members of the supervisory board of M SA and it was therefore not chargeable to the Trust. In his response, the first Respondent referred me to point A, referred to in paragraph 90 and recited the work done by MO on his behalf.
103. Having carried out a thorough review of the documentation in support of this invoice, I formed the conclusion that the majority of work carried out during this period did relate to the Respondents' position as either shareholders, pledgees or members of the supervisory board of M SA and was therefore not properly chargeable to the Trust. I also bear in mind the proviso in paragraph 2 of Schedule 1 to the Order of 16th June 2016, permitting paid remuneration only with the consent, approval or authority of the Applicants. Consequently for this item I am prepared to allow the sum of 8 hours at £410 per hour, a total of £3,280.

Item 82 – MO invoices

104. Two invoices for work carried out by MO, namely the 26th January 2012 in the sum of £3,967 and the 24th February 2012, in the sum of £4,182. In relation to the first invoice, StJohn Robilliard spent 3.5 hours and Tim Crook 8.3 hours, a total of 11.8 hours during the period 6th January 2012 to the 24th January 2012. In relation to the second invoice, StJohn Robilliard spent 10.6 hours during the period 26th January 2012 through to the 23rd February 2012.
105. The response of the Applicants to these items is that they were vague and non-descript so as to be not properly chargeable to the Trust. Alternatively, they related to the Respondents' positions as shareholders, pledgees or members of the supervisory board of M SA SA and were therefore not recoverable from the Trust. There was no offer in relation to these invoices from them. The first Respondent's response was again to refer me to point A referred to in paragraph 90 and provided me with detail of the e-mail trails contained in the documentation.
106. Having reviewed the documentation to support these two invoices, bearing in mind the provisions of the Order of 16th June 2016, I have concluded that some work is recoverable in relation to both invoices, but that the majority of work referred to the Respondents' position as pledgees, shareholders or their involvement with M SA and is therefore irrecoverable from the Trust. The amount I am prepared to allow in relation to the invoice dated the 26th January 2012 is a total of 3 hours at £410 per hour - namely £1,230 in relation to the invoice dated the 24th February 2012 – a total of 4 hours at £410 per hour, a total of £1,640.

Expenses Unpaid

Item 4 – 34 – MO invoices

107. This item comprises 29 separate accounts spanning the period from the 26th March 2012 to the 28th August 2014. The total sum claimed in respect of these invoices is £132,793.87. All the invoices show that the Respondents were billed on a monthly basis by MO. Each invoice (save for one), discloses a timecard narrative showing fee owner involved, the work carried out, the hours spent in relation to the task and the amount claimed. In the main, the invoices demonstrate that the majority of the work was carried out by StJohn Robilliard who was charging at a rate of £410 per hour with assistance from Tim Crook who was charged out at £310 per hour. There is occasional assistance from other fee owners in the firm.
108. The Applicants dispute these accounts in their entirety and make no offer in relation to these items. The main thrust of their objection is that the items are either vague or relate to the Respondents position as either shareholder, pledgee or members of the supervisory board of M SA. The Applicants also submit that a large number of the items claimed relate to the Respondents own fee claim arising from their resignation as trustees and as such, these costs are irrecoverable from the Trust.
109. In his submissions, the first Respondent again refers to point A referred to in paragraph 90. The first Respondent also argues that by virtue of English law and the provisions of the Trust Instrument, the Respondents are entitled to recover their costs of instructing MO from the Trust. The first Respondent goes on to set out in detail the e-mail chain of correspondence in relation to each of the 29 invoices in this item.
110. I have reviewed the documents relating to this period in the numerous bundles provided to the Court and I find that in the main, during this period of charge, MO were providing:
- (1) Personal advice to the Respondent.
 - (2) Advice concerning their fee-claim as trustees.
 - (3) Advice in relation to the Respondents position as either shareholders, pledgees or members of the supervisory board of M SA.
 - (4) Advice which is either vague or for which there is no supporting documentation save for the time charge contained on the invoice.
111. I have borne in mind the provisions of Schedule 1 and in particular that during this period of charge spanning March 2012 to August 2014, the proviso in paragraph 2 of Schedule 1 to the Order of 16th June 2016, does not provide for the Respondents to be paid remuneration as regards any work carried out by them, save where such work was carried out with the consent, approval or authority of the Applicants. To my mind, that proviso severely limits the ability of the Respondents to recover the extensive costs of MO during this period.
112. I have applied a broad-brush approach to this period, rather than to deal with each individual invoice. Doing the best that I can on the documentation provided by the first Respondent in support of these accounts I am prepared to allow 20 hours of Advocate StJohn Robilliard's time at £410 per hour, which totals £8,200.

Item 37 – 38 – MO invoices

113. This item relates to two invoices from MO - the first dated 28th January 2015 in the sum of £564, related to the period 28th August 2014 to the 2nd January 2015 and refers to 2.8 hours of StJohn Robilliard's time. The second invoice is dated the 15th May 2015 and totals £32,035.20. It relates to the period 28th January 2015 through to the 29th April 2015. That invoice shows that work was carried out by a number of fee owners at MO, namely StJohn

Robilliard, Tim Crook, Robert Shepherd, Rhuaridh Watt, Sandra Duerden. The total time expended in relation to that invoice amounts to 130.8 hours.

114. The Applicants have made no offers in relation to either of these invoices. Their objections to payment by the Trust to these items is the same as their basis for non-payment for items 4-34.
115. In his response, contained in the Schedule, the first Respondent refers to point A set out above in paragraph 90. In relation to the invoice dated the 28th January 2015, the first Respondent submits that the fees were incurred at a time when MO tried to correct their failure to pass on third party invoices which had been outstanding since January 2013, when in the view of the first Respondent, StJohn Robilliard had become distracted and appeared unable to cope. The first Respondent also contended that this cast doubt upon the advice he had received from MO and the ability of that firm to fulfil its obligations.
116. Having reviewed the documentation in support of this invoice, I have no doubt that none of these charges are recoverable from the Trust on the basis that they either related to the first Respondent's fee claim or the Respondents positions as shareholders, pledgees or members of the Supervisory board of M SA.
117. So far as the invoice of the 15th May is concerned, the first Respondent has provided no response in the Schedule. My conclusions in relation to the recovery of these fees from the Trust are based on the same conclusions I reached in relation to items 4 – 34. That being the case, I am prepared to allow 8 hours at £410 per hour, making a total of £3,280 for this item.
118. In relation to the items considered by me during the hearing on the 16th – 19th May 2017, this judgment is final (subject to any appeal). In relation to the items that I have determined on a provisional basis, I give permission for either party to advise the Court by 4.00 pm on the 10th July 2017 if my provisional determination is not accepted. In that eventuality I will direct that a further hearing take place in relation to the disputed issues.
119. Pursuant to paragraph 5 of the Order of 16th June 2016, I give either party permission to apply in relation to the costs of the Fee Claim.