

## C v Fenlight Trustees Ltd

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	J. A. Clyde-Smith OBE., Jurats Thomas, Dulake
<b>Judgment Date:</b>	06 August 2021
<b>Neutral Citation:</b>	[2021] JRC 205
<b>Court:</b>	Royal Court

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### Text

[2021] JRC 205

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith OBE., **Commissioner, and** Jurats Thomas **and** Dulake

In the Matter of the Representation of C

and

In the Matter of the P Trust

and

In the Matter of Article 51 of the Trusts (Jersey) Law 1984 (As Amended)

Between

C

Representor

and  
Fenlight Trustees Limited  
First Respondent

and

D  
Second Respondent

and

G  
Third Respondent

and

Advocate Craig Swart in his capacity as guardian *ad litem* for the minor and unborn  
beneficiaries of the P Trust descending from D

**Advocate J. P. Speck for the Representor.**

**Advocate J. M. G. Renouf for the First Respondent.**

**Advocate F. B. Robertson for the Second Respondent.**

**Advocate G. C. Staal for the Fourth Respondent.**

## **Authorities**

Trusts (Jersey) Law 1984.

*In the Matter of the Internine and Azali Trusts* [\[2006\] JLR 195](#).

*Church of Scientology v DHSS* [\[1979\] WLR 723](#).

*In the matter of the M and Other Trusts* [\[2012\] JRC 127](#).

Trusts — First Respondent applies for restrictions.

## **THE COMMISSIONER:**

- 1 The First Respondent (“Fenlight”) applies for restrictions to be placed upon the use of documents and information shortly to be discovered in this case.

## **Background**

- 2 The general background is not in dispute. By her Representation dated 13<sup>th</sup> October 2020, the Representor seeks the removal of Fenlight as trustee of the P Trust, a Jersey proper law discretionary trust, of which she is a beneficiary and a settlor.
- 3 The P Trust owns 50% of a Jersey holding company that through a wholly owned Country 1 company ultimately owns a successful Country 2 trading company called ("Company 1"). The other half of the Jersey holding company is owned by another Jersey proper law discretionary trust known as the N Trust of which ("Company 2") is trustee.
- 4 The Representor has two sons, ("F") and the Second Respondent, ("D"). For many years, the Representor's two sons and her former husband ("B") were involved in Company 1. The Representor says she was also involved in Company 1 retiring in 1998. In 2006 B was bought out of the business. D and F continued working together until 2012, when F reduced his involvement to the point where he is no longer now involved in the day-to-day business of Company 1. D is chairman of Company 1 and remains closely involved in its operation.
- 5 The P and N Trusts were established in January 2006, funded from an earlier trust. The Representor was the only named beneficiary of each (but with each trust being a beneficiary of the other), and it was the intention that D and his family would ultimately benefit from the P Trust and F and his family from the N Trust. It is not in dispute that the Representor is a settlor of both trusts, but in its answer to the Representation, Fenlight asserts that whilst the Representor is a settlor of the P and N trusts, the economic settlor is in fact her former husband, B.
- 6 In April 2012 Baccata Trustees Limited became trustee of the N Trust and Fenlight (part of the Baccata group of companies) became trustee of the P Trust. The same individuals, and in particular Baccata's chief executive officer Mr Nicholas Falla ("Mr Falla"), were involved in the administration of both trusts.
- 7 In June 2019, Company 2 became trustee of the N Trust at the request of the Representor and F. Following the appointment of Company 2, Mr Falla remained heavily involved in the administration of the P Trust and of the underlying companies in Jersey and Country 1, of which he is a director.
- 8 In June 2019 the trustee of the N Trust was removed as a beneficiary of the P Trust and it is understood that the trustee of the P Trust was removed as a beneficiary of the N Trust.
- 9 In November 2019, Fenlight appointed D and his issue as beneficiaries of the P Trust. He has one adult child, the Third Respondent ("G"), and one minor child represented by Advocate Swart. As far as the Court is aware, F has not been appointed a beneficiary of the N Trust. The beneficiaries of the P Trust therefore now comprise the Representor and D and his issue.

- 10 The First Respondent and the Second Respondent assert that at the heart of this matter is a breakdown in the relationship between D and F. Furthermore:
- (i) The Representor claims a complete breakdown in the relationship between her on the one hand and Fenlight and Mr Falla on the other, something the latter do not accept.
  - (ii) The working relationship between Fenlight and Company 2 has been strained.
  - (iii) The relationship between D and the Representor is also strained, in that he is opposing the Representor's application for the removal of Fenlight.
- 11 The Representor lives in Country 3, with her second husband. She is in her mid-seventies and not in good health. She says she has a modest lifestyle and has limited expectation of personal benefit out of the P Trust.

## The law

- 12 It is not in dispute that the Court has the power to place restrictions and conditions on discovery and inspection. In *Disclosure* 5th ed. by Matthews and Malek (2017) it states at paragraph 26:
- “The court's discretion to order inspection is not exercisable merely in an ‘all or nothing’ fashion, but includes power to order such inspection subject to conditions or restrictions.*** These might include specific undertakings to be given in relation to the documents produced, or restrictions on where any copy ***documents may be kept or read, on who in the other party's camp may inspect them, and on the making of further copies or extracts.*** The court will not order such additional protection lightly, but only where the risk of damage or loss to the producing party (or exceptionally, to others) is so significant that some additional restriction on the usual position can be justified. Such cases are usually cases of trade secrets which, if disclosed at all, may be irretrievably lost and they usually arise in intellectual property litigation. But the question can also arise in other types of action, such as breach of confidence or concerning a contested takeover bid (para 15–26).”
- 13 In *In the Matter of the Internine and Azali Trusts* [\[2006\] JLR 195](#), JA McNeill delivering the judgment of the Court of Appeal of Jersey said:
- “When ordering or approving discovery and making documents available either to an opposing party or to an unconnected third party, the court is able to attach such conditions as are necessary to protect confidentiality so far as that can be achieved without frustrating the ends of justice.”***  
(para 30)

- 14 Various methods can be applied as appropriate, for example the use of independent experts or court officers, redaction, the giving of specific undertakings going beyond the implied undertaking or the use of a confidentiality club which Malek states at paragraph 15.28 is increasingly common.
- 15 As Templeton LJ said in *Church of Scientology v DHSS* [1979] WLR 723 at page 746, a strong case must be made out for the court to impose restrictions and the court will endeavour to ensure that the litigants are not prejudiced by the restrictions in the reasonable prosecution of their claim.
- 16 These principles are of general application, but the Representation is brought under Article 51 of the Trusts (Jersey) Law 1984. The Court has previously sat in private, and for consistency, this Court continued to do so, on the basis that this is an administrative application concerning the confidential affairs of this trust.
- 17 Being proceedings held in private, that places a duty of confidentiality upon all of the parties over and above the usual implied undertaking, rendering it a contempt of Court for any of the parties to disclose without the leave of the Court any documents that they have received in the proceedings, save to the extent that they are in possession of such documents independently of the proceedings—see *In the matter of the M and Other trusts* [2012] JRC 127. That duty is placed upon the parties and the position of advisers to the parties does not appear to have been addressed in any of the authorities.
- 18 It is not uncommon for parties in trust administrative proceedings held in private to seek advice in relation to the proceedings from lawyers, accountants, valuers or other professional persons whether within or without the jurisdiction who will owe a duty of confidentiality to the party instructing them, but there is no definition of the term “adviser”, and it is capable, therefore, of wide interpretation and potential abuse.
- 19 In this case, the Representer has already instructed an Country 3 firm to advise her in relation to these proceedings, in addition to her Jersey lawyers and electronic discover experts, and says she may wish to appoint advisers in other jurisdictions, such as Country 1 and Country 2.
- 20 For confidentiality to be preserved, it must follow that if a party wishes to disclose such documents to an adviser, then that party must be responsible for ensuring that the confidential nature of the documents in the hands of the adviser is preserved.

### **The Representer's case for removal**

- 21 It is helpful to consider the Representor's case as set out in her representation in order to appreciate the nature of the issues she raises and the ambit of the resulting discovery.
- 22 She explains in paragraph 18 that the structure was put in place in 2006, deliberately omitting D and F as beneficiaries and naming the Representor as the only beneficiary of both trusts, to ensure "that there was a unity of ultimate beneficial ownership of both the trusts and the assets, allowing both sides to be administered without conflict for a common benefit (and beneficiary), with a single voice of ultimate authority and guidance." For this to function properly, she says the relationship between the Representor as settlor and principal beneficiary of both trusts and the trustee of each trust and the relationship between the trustees of the two trusts was key.
- 23 In dealing with the breakdown of her relationship with Fenlight (and Baccata) she refers to a number of issues, including Fenlight questioning her capacity, the appointment of D and his issue as beneficiaries against her stated wishes, poor and discourteous treatment, her marginalisation in relation to the administration of the P Trust and its underlying companies and the withholding of information in relation to those companies unless Fenlight was given a written undertaking by the Representor not to disclose information to any other person, including her advisers-(paragraph 20).
- 24 The Representor expresses concern over the motivation of Fenlight's administration of the P Trust for a number of reasons, including entrenching Fenlight's officers in positions at all levels of the structure, obstructing and delaying mirror appointments of Company 2's officers, shareholder decisions being taken by Fenlight without the involvement or knowledge of Company 2, its approach to negotiations of a shareholders' agreement between the two trusts, the obstruction by Fenlight of the flow of information up and within the structure, the '*tactical*' appointment of D and his issue as beneficiaries in order to preserve Fenlight's involvement in the structure, the taking of material decisions in relation to the administration of P without consulting with the Representor and failing to establish any kind of cooperative and effective relationship with Company 2-(paragraph 25). She makes serious complaints about the manner in which Fenlight has conducted itself in respect of the wider structure which ought, in the interests of the beneficiaries of both trusts, to be determined cooperatively and collaboratively-(paragraph 26).
- 25 At paragraph 27, she refers to concerns expressed by Company 2 about the way Fenlight is administering the P Trust, focusing on the interests of D and withholding information from Company 2. She says it is Company 2's belief that Fenlight's removal is necessary in order for the wider structure to operate efficiently for the benefit of the beneficiaries of both trusts.
- 26 It would seem from this that the Representor is concerned at least in part with the interests of the N Trust and the alleged failure of Fenlight to act in the wider interests of both trusts. The allegations entail extensive inquiry into the internal affairs of the P Trust and its interest in the underlying companies going back 3 years to 16th March 2018, the timeframe ordered by the Court on 16th March 2021. The Court ordered that discovery as to the status of the

Representor and the nature of her role as settlor or as principal beneficiary should go back to 2006, when the P Trust was established.

### **Fenlight's case for restriction**

- 27 Fenlight points to the very wide ambit of the discovery it is required to make about the internal workings of the P Trust and is concerned that documents discovered will find their way to certain of the Representor's advisers (particularly persons outside the jurisdiction against whom it says there could be little effective recourse or sanction after the event) and would then find their way into the hands of other parties with whom those advisers are in regular contact to the commercial advantage of those other parties and consequential disadvantage of the P Trust, and accordingly its beneficiaries.
- 28 Fenlight makes the point that it cannot assert legal advice privilege against the Representor, or indeed the other Respondents, in respect of many of the documents concerned, since she is a beneficiary, and the issue is not the exercise of Fenlight's internal discretion. Similarly, many of the documents fall outside litigation privilege, but are obviously confidential documents and commercially sensitive, as against other parties in the wider context, most obviously Company 2 as trustee of the N Trust and F, because they include Fenlight's own internal communications and communications with its advisers, concerning its relations with those others. Fenlight asserts that there are multifarious ongoing issues between the two trusts, and also discussions as to a potential sale of one side's interest to the other.
- 29 Of particular concern to Fenlight is the role of Mr E of Company 3, a Country 3 firm that provides tax advisory and consultancy services. Advocate Speck, for the Representor, described Mr E as a trusted adviser for the Representor. However, Mr E also acts for Company 2 and F.
- 30 Fenlight's case is supported by the affidavit of Mr Falla of 30<sup>th</sup> June 2021, and we would summarise his evidence in this way:
- (i) Fenlight's concerns centre upon certain third parties who are said to represent or are associated with the N Trust, namely Company 2 and F, the long-term intended beneficiary of the N Trust and its guiding hand, in the way that D is for the P Trust.
  - (ii) Relationships between Fenlight and Company 2 have been strained since the start of their co-ownership, in his view due to the unnecessary and aggressive stance taken by F and Mr E against D and Fenlight. Such have been the difficulties caused by these strains that Fenlight has concluded that the assets of the P Trust may be best safeguarded by a separation of interests from Company 2 and the N Trust. D has expressed the view that he no longer countenanced working with or being concerned in any assets alongside F.



(iii) Whereas previously there may have been a natural accord between the trustees of the two trusts, the relationship with Company 2 is now much more commercial and at arm's length and there is the additional challenge of the underlying dispute between D and F. Such dealings between the trustees include by now long running discussions aimed at finding resolution, which have included the negotiation of an agreement between the shareholders of a sale or purchase of the business from one to the other, or to a third party. There is no agreement in respect of any of these options as yet. The point is that Fenlight is involved in highly charged commercial arguments and negotiations with its co-owner of shares pertaining to a structure believed to be worth around €200 million or more. Furthermore, Company 2 has threatened legal proceedings against Fenlight for which Fenlight has naturally taken legal and professional advice. It is possible that Fenlight may need to rely on this advice in order to consider taking action against Company 2 to safeguard its own position.

(iv) Whilst the Representor is entitled to receive Fenlight's disclosures as party to these proceedings, Fenlight's concern is to whom she might provide those documents and the risk that they may directly or indirectly end up in the hands of either Company 2 or F, perhaps by one of her advisers. Neither Fenlight nor its directors can see any reason why information provided should be reviewed by advisers or other persons who also act for Company 2 and F.

(v) The Representor's representation is drafted in such a way that the core issues raised are not easily identifiable, and the resulting discovery obligation is made to be potentially as wide as possible, subject only to the limits of proportionality.

(vi) In its correspondence Mourant, acting for the Representor, has sought to maximise the width of disclosure to be provided, with particular reference to disclosing legal advice and to recovering documents and information held by third parties, which would include legal and other advisers to Fenlight as trustee.

(vii) The freedom of the Representor to appoint such advisers as she should see fit is plainly open to abuse, but Mr Falla strongly sensed the heavy influence of F in the steps being taken by the Representor. He considered that much or all of the actions being conducted on behalf of the N Trust against or in relation to the P Trust has its origins in F, who he believed coordinates the steps being taken by the Representor and Company 2.

(viii) Mourant has suggested that the concerns of Fenlight were misplaced, in that neither the Representor nor F would wish to visit any damage upon a structure in which they themselves had an interest, but Mr Falla did not accept that such a scenario was as unthinkable as it might first appear, and from his knowledge of the character of F, there was a genuine risk of a willingness on the part of F in particular to inflict "*self-harm*" in order to achieve his aims.

(ix) Mr Falla's primary concern, however, was that documents disclosed on discovery and the information contained within them may be used to provide Company 2 with an illegitimate advantage, commercial or otherwise, in its dealings with Fenlight, for



example, by giving Company 2 sight of the legal advice which Fenlight has taken in relation to the dealings between trustees. The trustees would not ordinarily be entitled to sight of one another's confidential advice, particularly not when they were trying to negotiate hugely valuable commercial deals or arrangements, but in his view, that is potentially what is being sought.

- 31 Accordingly, Fenlight sought the following restrictions to be imposed upon the Representor:

*"Absent consent of the parties, or further order of the Court, the Representor shall not be permitted to disclose to persons other than her appointed Jersey advocates in these proceedings (Mourant Ozannes (Jersey) LLP) and her appointed electronic discovery experts (Deloitte) documents or copies of documents or other information disclosed by the other parties hereto by way of discovery."*

### **The Representor's response**

- 32 The Representor had sworn an affidavit on 4<sup>th</sup> December 2020 setting out in detail her reasons for seeking the removal of Fenlight as trustee which we have summarised above, but she had not filed, or had not the opportunity to file, an affidavit in response to Mr Falla. Through Advocate Speck she opposed the application in the strongest terms.
- 33 While accepting that the restrictions sought by Fenlight were imposable as a matter of principle, Advocate Speck submitted that they were wholly unwarranted and inappropriate in all the circumstances of this particular case, in that the effect of these measures, if imposed, would be to fetter the Representor's ability to take effective advice on matters relevant to these proceedings. Fenlight had offered to consider widening the confidentiality club it seeks to impose by consent and on request. If granted, that would in effect oblige the Representor to notify Fenlight of any advice she might seek to obtain and give Fenlight power of veto over any such advice. That was completely unacceptable in proceedings where Fenlight's position is adverse to the Representor.
- 34 These unwarranted attempts to control by whom the Representor was advised were symptomatic of Fenlight's conduct towards her and her very firm view is that Fenlight must be removed. Her primary position, therefore, was that no restriction at all on her ability to seek advice on issues arising out of these proceedings should be imposed. Fenlight's views on the advice the Representor should or should not seek are completely irrelevant. How she approaches the proceedings are a matter for her and cannot be dictated by the very party she is seeking to remove from office. A cursory consideration of the proceedings and the territory they cover confirmed that restricting her ability to seek advice would be wholly unjust:

(i) The structure includes a Jersey company, a Country 1 company and a Country 2 company with Fenlight's pervasive influence extending down through the structure through directorships held by Fenlight's employees, in particular Mr Falla, and to the extent that issues of Country 1 or Country 2 law are engaged in relation to Fenlight's conduct the Representor is entitled to seek legal advice on it should she wish. She may also need advice on her own tax arrangements in the Country 3, and the role those tax arrangements played in the structuring of the administration of the P and N Trusts. She is entitled to seek appropriate advice on those matters.

(ii) In addition, she is seeking an order that an account be taken of Fenlight's trusteeship by suitably qualified specialists, because of her very significant concerns about the opaque manner in which Fenlight has recently administered the P Trust, and the information vacuum it has created. In this respect, she is entitled to seek advice from appropriate experts, such as, for example, forensic accountants, once she has access to Fenlight's records. Whilst not exhaustive, these are immediate examples of the sort of advice Fenlight is trying to prevent the Representor from procuring.

(iii) Whilst Company 3 is a firm of tax advisers, the support it has provided to the Representor has broadened over the course of its instruction, and it currently provides general assistance to the Representor in coordinating and managing these proceedings and her interactions with her other advisers. Whilst she is a capable and fiercely determined individual, she is also a lay person in her seventies, who has suffered ill health over recent months and with the challenging conditions caused by the pandemic, the on-ground assistance of Company 3 has been critical to her. Whilst it was accepted that Company 3 was also instructed by Company 2 and F, Advocate Speck said those instructions did not conflict with Company 3 providing critical support to the Representor. Unlike Fenlight, Company 2 recognised and respected the Representor's role as beneficiary and a settlor of the N Trust, and she had a very good relationship with the team at Company 2 tasked with administering the N Trust. The common instruction of Company 2 with Company 3 is therefore a convenient and mutually acceptable arrangement. If there was any concern about wider dissemination through Company 3 then a written undertaking would be more than sufficient.

35 The unparticularised commercial sensitivities that Fenlight principally relies on in seeking the restrictions it does are in reality no such thing. There can be no sensitivity in relation to any information concerning Company 1, in which the trusts have an equal interest. The prospects of a sale between the two trusts are remote and there are no sale negotiations taking place. Even if there were commercial interests exclusive to the P Trust that warranted the sort of protection sought or delicately poised sale negotiations between two arm's length parties ongoing and the Representor was minded to deliberately obtain and share information relating to those interests and negotiations to parties adverse to the P Trust, Fenlight does not seek to apply the restrictions it seeks only to material relevant to those issues, but to the entirety of its discovery documents and there is no justification for that at all.

- 36 For example, a key element of the territory of this dispute is the genesis of the P and N trusts and the Representor's role in the structuring and administration since their establishment. Nothing in the documents amongst Fenlight's discovery relevant to that issue could be said to be affected by any kind of purported commercial sensitivity or confidence. The measures Fenlight seeks are severe, and they are exceptional, and yet Fenlight seeks to apply them indiscriminately to the entirety of its discovery documents.
- 37 Furthermore, the restriction it seeks extends to the discovery made by D, on a basis that is not explained. The burden falls upon Fenlight to justify the same by compelling evidence and the evidence of Mr Falla does not come close to proving the concerns Fenlight purportedly harbours, warranting the sort of restrictions it is seeking the Court to impose. Its concern seems to be based principally on Mr Falla's own suspicion and assumptions, and his low regard for F, against whom he makes an offensive personal attack. The fear that F might compromise his own interests simply to cause damage to the P Trust and therefore also to the Representor and that the Representor might assist in any such self-destruction, is entirely based on Mr Falla's vague and wholly unparticularised recollections of undocumented throwaway comments F may or may not have made at some unspecified time in the past. Fenlight relies, therefore, on entirely circumstantial evidence to try to fetter the Representor's ability to obtain effective advice on its own failings.
- 38 Wanting the proceedings to move forward, should the Court harbour any concerns about how Fenlight's documents might be handled by those advising the Representor, she proposes as follows:

- (i) Fenlight will identify amongst its class of documents those that it considers to be confidential and will provide a list of those documents to the Representor;
- (ii) Any adviser (other than Maurant or Deloitte) already instructed by the Representor (including Company 3) or instructed by the Representor in the future, will be required to provide to Maurant (for production to the Court by Maurant upon request) a written undertaking to the Court in the following terms prior to any access being given to any confidential document:

*"We, [ADVISOR] are formally instructed by [C]. We undertake to keep confidential and not to disclose to any third party any documents provided to us by [C] or those acting on her behalf identified to us as having been disclosed to [C] by a party to the proceedings before the Royal Court of Jersey under file no. 2020/162 by reason of that party's obligations in those proceedings (each a Confidential Document).*

*We understand that any disclosure of any Confidential Document by us in breach of this undertaking may constitute contempt of the Royal Court of Jersey, and be punishable as such."*

### **Position of other convened parties**

- 39 D supports the application of Fenlight for the reasons put forward on its behalf. He is particularly concerned about documents relating to the running and operation of Company 1. Advocate Robertson produced a copy e-mail of 12<sup>th</sup> November 2019 from J, the managing director of Company 1, expressing concern about the dissemination of information provided to both D and to F, and their trustees, being passed on to non-addressed recipients. He also gave us a copy of an e-mail from D to Mr Falla, expressing "*the very genuine concerns*" of the board of Company 1 that information may already have been passed and may in the future be passed to individuals who could use the information for their own purposes, rather than the interests of Company 1, and as a result, cause harm to Company 1. Until there was a shareholders' agreement in place, or other agreement for the dissemination and use of any information relating to the Company 1 business, then the information that would be provided to Company 1's shareholders, and ultimately to the trustees, would be restricted to such information which Company 1 is legally obliged to provide, which we understand means the annual accounts of the company. Assuming this is the current position then on the face of it the two trusts are being treated equally by the board of Company 1, although no doubt Company 2 would not see it that way in that D, a beneficiary of the P Trust, is chairman of Company 1 and therefore intimately involved in its affairs.
- 40 D is also concerned that disclosure would contain various documents relating to advice he had received concerning his private and confidential tax affairs, which should only be disclosed to the parties to the proceedings and their legal advisers. This raises a wider point in our view. It is well established that the trustees are under a duty of confidence in relation to communications with individual beneficiaries and at the moment we can see no reason why the Representor, as a beneficiary, should be in receipt of information about the personal affairs of another beneficiary, D, against whom no remedy is sought in these proceedings, or indeed why such personal information concerning D is relevant to the relief being sought by the Representor. The issue has not been argued before the Court as far as we can see, and we propose therefore to preserve the confidentiality of that information until such time as the matter can be argued, should the Representor press for such disclosure.
- 41 D's daughter, G, supported the imposition of restrictions, as did Advocate Staal for the minor beneficiary and unborns.

## Decision

- 42 The Court is concerned about the confidentiality and commercial sensitivity of Fenlight's documents, and the information contained within them. We find that a strong case has been made out for imposing restrictions upon the dissemination by the Representor of the documents disclosed by the respondents on discovery. As owners of half of the shares in the same holding company, Fenlight's dealings with those shares and with Company 2, as the owner of the remaining shares, are self-evidently confidential and commercially sensitive, as would be any legal or other advice they may have obtained in relation to those

shares and their dealings with Company 2. It cannot be right that those involved in the internal management of the N Trust should gain access to information concerning the internal management of the P Trust in these circumstances.

43 That concern is justified by the following:

(i) The underlying hostility between D and F and, no doubt wholly or partly as a consequence of that hostility, the conflict between the two trusts.

(ii) Whatever the original intention of the Representor for unity between the two trusts, they are, as a matter of fact, separate trusts with different beneficiaries. The duty of Fenlight, as trustee of the P Trust, is to act in the interests of its beneficiaries as a whole and not in the interests of the beneficiaries of the N Trust, and vice versa. Although they are each shareholders in the same Jersey holding company, Fenlight is required to deal with the shares it owns in the interests of the beneficiaries as a whole of the P Trust and not the beneficiaries of the N Trust, and vice versa.

(iii) The Representor bestrides both trusts as a beneficiary and settlor, if not the economic settlor. Whatever her original intentions, the interests of the two trusts are not now aligned and it would seem from her Representation and affidavit that in seeking to intervene in the internal affairs of the P Trust, she is concerned at least in part with the interests of the N Trust. She therefore has a conflict between her interests in the two trusts.

(iv) The Representor will have been advised as to her duties of confidentiality in respect of the P Trust, but in view of her status within the N Trust and her very good relationship with Company 2 and with F, how easy will it be for her to distinguish between the interests of the two trusts and to ensure that documents and information she receives about the P Trust will not be disseminated to Company 2 or those advising it?

(v) The Representor's key adviser is Mr E, who also acts for Company 2 and F. His conflict is, in our view, obvious and fundamental. It cannot be right for confidential or commercially sensitive documentation pertaining to the P Trust to be disclosed to an adviser to Company 2 and F. It is not as if different partners within Company 3 are acting for them with a firewall established to maintain confidentiality. Mr E personally acts for all three. It is of concern to the Court that an adviser to Company 2 and F should be playing such a key role in these proceedings.

44 The issue for the Court is how those concerns can be addressed without the Representor being prejudiced by restrictions in the reasonable prosecution of her representation. It needs to be remembered that these are administrative proceedings concerned with who should be trustee of the P Trust, in which the Court will be concerned with the welfare of the beneficiaries as a whole and the good administration of the trust. It seems to the Court that all those parties involved in the trust should have the same consideration foremost in their minds and should have no difficulty in accepting restrictions that are aimed at preserving

the confidentiality of the affairs of the trust in the interests of the beneficiaries as a whole.

45 We conclude that the issue can be addressed in the following way:

(i) Until further order, the obligation upon Fenlight and D to make discovery shall not extend to the personal and financial affairs of D.

(ii) We cannot countenance any circumstances in which documents or information disclosed in these proceedings should be disclosed by the Representor to Company 3, irrespective of whatever undertaking may be offered, save to the extent that the Representor is in possession of such documents and information independently of these proceedings.

(iii) Absent the consent of the parties, or further order of the Court, the Representor should not be permitted to disclose to persons other than her appointed Jersey advocates in these proceedings (Mourant Ozannes (Jersey) LLP) and her appointed electronic discovery experts (Deloitte) documents or copies of documents or other information disclosed by the other parties by way of discovery, save to the extent that the Representor is in possession of such documents and information independently of these proceedings.

(iv) In considering any application by the Representor for leave to disclose documents or information to other advisers she may wish to appoint, the Court will be concerned to ensure firstly that the proposed adviser has never acted for Company 2 or F and is not in any other way in a position of conflict, secondly that the proposed adviser is to be retained for the purposes of these proceedings and thirdly that an undertaking to the Court by the proposed adviser in the terms suggested by Advocate Speck above is provided, save that it will extend to all of the documents discovered by the respondents and disclosed to that adviser.

46 We gave consideration to the suggestion that Fenlight should list those documents that are considered confidential or commercially sensitive and that the restrictions should be limited to those documents, which implies that the duty of confidentiality applies to some but not all of the documents discovered in the proceedings. As Advocate Staal pointed out, any adviser appointed by the Representor should give an undertaking in respect of all of the documents the adviser receives from the respondents in these proceedings, not just those that may be designated confidential. There would seem to be no point, therefore, in making Fenlight go to the expense of undertaking such an exercise.

47 In view of the Representor's position, we do not regard the imposition of such restrictions as disproportionate or unfair to her in the context of these administrative proceedings. Subject thereto she can appoint advisers in Country 3 or elsewhere and the respondents will not get access to the actual advice given save to the extent that such advice is brought by her into the proceedings.

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48 There will be liberty to apply.