The Alpha Beta and Delta Trusts

Jurisdiction:	Jersey
Judge:	Sir Michael Birt, Jurats Austin-Vautier, Hughes
Judgment Date:	02 August 2023
Neutral Citation:	[2023] JRC 138
Court:	Royal Court

Text

In the Matter of the Alpha, Beta and Delta Trusts

Between
A
Representor
and
AB Limited (in its capacity as Trustee of the Alpha Trust and the Delta Trust)
First Respondent
XY Limited (in its capacity as Trustee of the Beta Trust)
Second Respondent
B
Third Respondent
Advocate Nigel Sanders (as Guardian ad Litem for minor and unborn beneficiaries of the Alpha Trust, the Delta Trust and the Beta Trust)
Fourth Respondent

[2023]JRC138

Before:

Sir Michael Birt, Commissioner, and Jurats Austin-Vautier and Hughes

ROYAL COURT

(Samedi)

Trust — reasons for declining to make the orders sought.

Authorities

Re Lucking's Will Trusts [1968] 1 WLR 866.

Bartlett v Barclays Bank Plc [1980] Ch 515.

Children's Investment Fund (UK) v Attorney General [2020] 3 WLR 461.

S v Bedell Cristin Trustees Limited [2005] JRC 109.

B v Erinvale PTC Limited [2020] JRC 213.

Schmidt v Rosewood [2003] 2 AC 709.

Re Rabaiotti (1989) Settlement [2000] JLR 173.

Trusts (Jersey) Law 1984.

Re Y Trust [2014] JRC 027.

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

Advocate N. A. K. Williams **for the First and Second Respondents**.

Advocate J. M. Dann **for the Third Respondent**.

Advocate N. M. Sanders in person.

THE COMMISSIONER:

1 In these proceedings, the Representor applies for the Court to give certain directions in relation to three trusts. In particular, he seeks orders that:

> (i) the First Respondent, as trustee of the Delta Trust, take certain steps in relation to a company in which the Delta Trust has an indirect minority shareholding; and
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> (ii) the First and Second Respondents, as trustees of the Alpha Trust and the Beta Trust respectively, disclose certain documents to the Representor.

2 After the two day hearing of the matter on 9–10 March, the Court announced its decision on

14 March to the effect that it declined to make either of the orders sought. What follows constitutes the reasons for that decision.

3 The two issues raise different considerations. Accordingly, we shall describe the relevant factual background separately in relation to each issue. In this respect, we have received a number of affidavits which describe in very considerable detail some of the differences and difficulties which have arisen between different members of the family for whose benefit these three trusts are held. We have read all of the affidavits but much of the material is irrelevant to the issues which we have to resolve. We therefore propose to confine our summary of facts to describing only those matters which we feel are essential to explaining our decision.

4 However, before turning to the two matters which we have to resolve, we think it helpful to describe the general background.

General background

5 The Representor's father (“the father”) established a business some time ago of which the principal company is a company incorporated in England and Wales (“the Company”). It is now a very substantial business. There are many other companies involved in the business around the world and we shall refer to the Company and the other companies involved in the business as “the Group”.

6 The Company is wholly owned by an offshore company (“the Shareholder”) which in turn is wholly owned by another offshore company which in turn is owned as to 50% by the Alpha Trust and 50% by the Beta Trust. The First Respondent (“the Jersey Trustee”) is the sole trustee of the Alpha Trust and the Second Respondent (“the Guernsey Trustee”) is the sole trustee of the Beta Trust. We shall refer to the Alpha Trust and the Beta Trust as “the Company Trusts”. As can be seen therefore the Company Trusts between them ultimately own 100% of the Company.

7 One of the members of the Group is a company incorporated in another country (“the Member Company”). It is partly owned by an offshore company (“ZL”) which is wholly owned by the Delta Trust, of which the Jersey Trustee is the sole trustee. When referring to the Jersey Trustee solely in its capacity as trustee of the Delta Trust, we shall refer to it as ‘the Delta Trustee’. Furthermore, where it is not important to distinguish between the different trustee companies or the particular capacity in which they are being referred to, we shall refer simply to ‘the Trustees’.

8 The evidence before us describes the origins and establishment of the three trusts (“the Trusts”) but it is sufficient for present purposes to state simply that, in the events which have happened, the Trusts are all governed by Jersey law and the beneficiaries of each of them comprise the Representor, the Third Respondent (who is the older half-brother of the

Representor and whom we shall describe as “the brother”) and their respective descendants. The Representor has two minor children and the brother has no children. Advocate Sanders has been appointed to represent the interests of the minor and unborn beneficiaries of the Trusts. Letters of wishes in respect of the Trusts have been written by the father, although he is not the settlor of any of them. He is excluded from benefitting under any of the Trusts. The protector of each of the Trusts is an English barrister, (“the Protector”). The Protector has the power to remove and appoint trustees of the Trusts.

9 The Representor has worked full time for the Company for over 25 years and has been CEO for over 6 years. He also sits on the boards of some of the other companies of the Group around the world. The brother has been a non-executive director of the Company for many years. In the past he has been less involved in the day to day running of the business, having a distinguished academic career of his own. More recently, however, he has become more directly involved.

10 The Representor asserts that the success of the Company, particularly in recent years, has been due substantially to his leadership. Conversely, the brother in his second affidavit asserts that the father has remained the principal decision-maker and driving-force in the Company and its success is also due to the competent and experienced professionals who are responsible for the day-to-day operation of the business.

11 Recently, differences have arisen within the family. According to the Representor, one of the main causes of this is the influence which another director of the Company (“M”) has acquired over the father. The upshot, according to the Representor, is that there has been a breakdown in the relationship between the Representor on the one hand and the father and the brother on the other and this is having an impact on the Representor's ability to manage the Company. The brother sees it somewhat differently. He considers that the Representor proceeds on the assumption that whatever he thinks is right must be objectively right and wishes to have control over the Company to the exclusion of other views. This is one of the reasons why the brother considers that the Representor should not remain in his role as CEO of the Company.

12 The affidavits of the Representor and the brother go into considerable detail about some of the events which have given rise to these difficulties, but we do not think it is necessary to refer to them. Suffice it to say that some of the events which have given rise to tension are that the father indicated that he would wish the brother to succeed him as chairman; that the father has amended his letter of wishes to reduce the amount intended for the Representor (and therefore his family) and that there has been strong disagreement following proposed amendments to the articles of association of the Company.

13 Against that general background, we turn to consider the two specific matters upon which the Representor seeks directions from the Court.

The Member Company

(i) Factual background

14 As already mentioned, ZL (which is wholly owned by the Delta Trust) owns a minority of the shares in the Member Company. The Representor and the brother each own an equal number of shares and the father owns a smaller number of shares, with the balance being owned by local shareholders. The board of directors consists of four local residents, although M was director for a while from 2015 to 2017. According to Mr H, a chartered accountant who has worked as an auditor of and consultant to the Member Company as well as other companies in the Group, M sent him a message some time after he had ceased to be a director stating that he oversaw " *80% of the high and low level work [of the Member Company] including recruitment"*. It is said therefore that M still exercises considerable influence in relation to the Member Company.

15 On 14 March 2022, Mr U (the officer at the Jersey Trustee who has had principal responsibility for contact with the family in relation to the Trusts for many years) received two unsolicited documents from Mr H. The first ("the H Report") set out a number of concerns which Mr H had in relation to the operation of the Member Company's business. These are set out in detail at para 39 of Mr U's first affidavit ("U 1") and we have also seen the H Report itself. In summary, Mr H alleged (amongst other things) that:

(i) The Member Company had embarked on a programme of currency arbitrage which had caused it to lose just under US$2 million by 2022.

(ii) The Member Company agreed a consultancy arrangement with the romantic partner (and by March 2022, the wife) of M ("M's wife"). M's wife was paid US$36,000 per annum for services which, according to Mr H, could have been performed much more cheaply by a local consultant or local employee. The arrangement also subjected the Member Company to withholding tax of US$4,000. Furthermore, M's wife was supposed to have full time responsibilities as managing director of the Group's business in another country.

(iii) The Member Company had made unexplained payments to M's family by way of consultancy arrangements and there were transactions between the Member Company and M's brother which warranted investigation.

(iv) The Member Company bought investment properties in high-value districts of South Mumbai, which M's parents lived in rent-free.

(v) Over the five or six years up to 2022, the Member Company made donations of more than US$800,000 to a charity established by M; M's personal donations were publicised but not those of the Member Company.

(vi) During the Covid-19 pandemic, M arranged for the Company to start buying the bulk of its products from the Member Company rather than local suppliers as

previously. This (a) disguised the Member Company's otherwise declining sales, instead portraying an image of growth, (b) may have resulted in the Company over-paying for products, and (c) was inefficient from a tax point of view.

(vii) Contrary to the advice of Mr H's firm, the Member Company failed to pay full advance tax for 2020/21 which led to the incurring of interest charges of US$217,000.

(viii) The Member Company invested large sums in a film distribution company to buy international distribution rights for films (the Film Distribution Company"). The Film Distribution's business was overseen by M who was allocated a 20% share in the Film Distribution Company despite not investing substantial capital. The Member Company lost about US$1.5m on this investment.

(ix) The Member Company also invested about US$17m in a film production company ("the Film Production Company"). The Film Production Company's sole project was a film overseen by M, who was allocated 20% of the Film Production Company's equity despite not putting in substantial capital. The film was not a success and, as at March 2022, the Member Company had only recovered about US$5m of its original investment of US$17m.

(x) A further US$1.5m was withdrawn from the Film Production Company and used to buy a flat in M's name. When Mr H's firm queried the withdrawal in their capacity as the Member Company's auditors, they were told that it was in expectation of future profits.

(xi) M subsequently exercised undue influence over the father to agree an arrangement by which the US$1.5m would be repaid to the Film Production Company by the Member Company rather than M personally. The arrangement took the form of a consultancy agreement. The Film Production Company was to act as marketing consultant to the Member Company and charge a commission of 10% on all sales above those made in the financial year 2020/21 (when sales had been depressed by reason of the pandemic).

16 On 21 April 2022, the Representor forwarded Mr U's two emails from whistleblowers making allegations of other wrongdoing in the Member Company.

17 At the time the Jersey Trustee received the H Report, Deloitte LLP ("Deloitte") had already been instructed by the Shareholder and ZL to review existing intra-group tax arrangements including intra-group transfer pricing as well as compliance and risk, including an investigation of any whistleblowing allegations received in respect of any part of the Group's business. On receipt of the H Report, Mr U passed it to Deloitte for investigation and he also passed on the emails subsequently sent to him by the Representor, referred to in the preceding paragraph.

18 On 31 July 2022, Deloitte produced a draft report on transfer pricing in respect of the Member Company and the Company ("the 31 July Report"). The detailed findings are set

out at paragraph 50 of U 1 but in essence, the 31 July Report supported Mr H's contention that the Member Company's increased sales figures were almost entirely because of the sales to the Company, which had been introduced during the pandemic, but it did not support Mr H's further contention that the Member Company had been charging the Company an unusually high mark-up.

19 On 15 September 2022, the Trustees' English solicitors, Macfarlanes, wrote to the English solicitors for the Representor, the brother and the father, dealing with a number of issues including the Member Company. The letter relayed the allegations made in the H Report and by the whistleblowers and explained that Deloitte were investigating these allegations. It also summarised the findings of the 31 July Report from Deloitte and noted that this had substantiated some, but not all, of Mr H's analysis of transfer pricing as between the Member Company and the Company.

20 The above letter dated 15 September on behalf of the Trustees requested the recipients to engage with the Trustees' concerns and to set out their own views on the various issues the Trustees had raised. The Representor's lawyers (Clifford Chance) had responded on 16 September 2022 giving a detailed account of the Representor's own concerns concerning M's role in the businesses including several related to the Member Company. These concerns broadly corresponded to those raised in the H Report but included some additional ones. The solicitors for the father responded on 26 October. The details of that response are set out at paragraphs 59–62 of U 1 but, in broad outline, the father took responsibility for a number of the matters concerning M which had been raised in the H Report.

21 On 16 September 2022, Deloitte produced a draft report (“the September Report”) dealing with the Member Company's involvement with the film businesses (the Film Distribution Company and the Film Production Company) and with some of the consultancy arrangements discussed in the H Report. A detailed summary of the September Report is contained at paragraph 53 of U 1 and the report itself is exhibited to that affidavit. For present purposes the key provisional findings of the September Report were as follows:

> (i) In 2015, the Member Company began investing in film distribution companies, including the Film Distribution Company, and a film production business, the Film Production Company, was established in 2018. Film production and distribution were outside the normal run of the Member Company's business. The evidence available to Deloitte was divided as to whether the driving force for the decision to invest in this new field was the father or M.
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> (ii) In relation to the Film Distribution Company, although the Member Company was a minority shareholder along with the father and M, it put up the vast majority of the funding. Its losses in relation to film production stood at about US$1.7m.
>
> (iii) The Film Production Company had loaned M some US$1.4m to buy a property. It was unclear whether any governance steps were taken before the loan was made.

(iv) In relation to the Film Production Company, the Member Company was allocated 80% of the equity and M the other 20%. The Member Company's losses from its investment in the Film Production Company stood at some US$5.1m.

(v) In early 2021, the profit share of the Film Production Company was amended. From then on, it did not reflect the 80/20 division of equity between the Member Company and M but was instead split 90/10 in M's favour.

(vi) At about the same time, the Film Production Company shifted its focus from film production to the marketing of the Member Company's products. It entered into a consultancy agreement with the Member Company whereby it would provide marketing services to the Member Company in return for a 10% commission on sales of certain products above a specified annual level. In the financial year 2022, the Film Production Company's profit under this agreement was some US$720,000.

(vii) The commercial rationale, from the Member Company's perspective, for the change in profit shares and the consultancy agreement with the Film Production Company was unclear. There was an unresolved issue as to whether the Film Production Company employed any staff of its own who were qualified to provide the services agreed under the consultancy arrangement.

(viii) The upshot of the change in profit share and the consultancy agreement appeared to be that the Film Production Company became a profit-making business, having been a loss making one, at broadly the same time at which M became exposed to 90% of its profits/losses rather than 20%. Deloitte expressed the concern that the consultancy agreement " *could be viewed as a construct that enables [the Film Production Company] to generate a profit that is primarily for the benefit of [M]… In such a circumstance, [the Member Company] would in essence fund [M's] repayment of his share of the [the Film Production Company] losses and the loan provision"*.

(ix) Deloitte confirmed that the Member Company had entered into a consultancy agreement with M's wife and that she would be paid US$36,000 per annum for social media marketing services. The fee subsequently increased in January 2022 to US$50,400. Even before the increase, her annual fee was higher than the annual salary of any of the Member Company's directors and was markedly higher than the fee agreed, in June 2022, with another consultancy for developing the Member Company's social media platforms. This agreement, and another agreement with M himself, potentially presented conflicts of interest for M.

(x) Mr U concluded at para 53.16 of U 1 that Deloitte's provisional findings in the September Report gave considerable credence to the allegations in the H Report, but also indicated that further investigation was necessary.

22 Although, according to U 1, the board of the Member Company had failed to respond to Deloitte's request for information since 30 August 2022, the Deloitte investigation came to a complete halt on 21 October 2022 when the Trustees received a letter from ABC Legal LLP

("ABC"), a firm of lawyers instructed by the Member Company. The letter demanded the cessation of the Deloitte investigation into matters relating to the Member Company. It said that Deloitte had been conducting an " *unauthorised, illegal and invasive fishing exercise*". Among other wrongdoing, the letter alleged fraud, criminality and breach of confidence and indicated that, unless Deloitte's investigation was stopped, the Member Company would bring proceedings. Deloitte received a similar letter on the same day.

23 The Trustees immediately informed (through their solicitors) the Representor, the brother and the Protector that an issue had arisen which prevented the Delta Trustee from sharing the draft Deloitte reports for the time being. The Delta Trustee sought urgent advice from lawyers, XYZ and Partners ("XYZ"). That firm advised that the allegations of wrongdoing in ABC's letter appeared to be tenuous and without merit. Accordingly on 4 November, Macfarlanes wrote to the solicitors for the other parties summarising in some detail the contents of the September Report. That report, together with the report of 31 July, were supplied to all the parties between 17 and 23 November, depending upon when the hold-harmless letter required to be signed by Deloitte was provided.

(ii) Events since institution of the proceedings

24 The Representor presented his Representation on 25 October 2022. In relation to the Member Company, the primary relief sought was an order that the Delta Trustee should procure that ZL use its voting power in conjunction with the Representor to appoint the Representor as a director of the Member Company. As an alternative, the Representation sought an order that the Delta Trustee be directed to set out in writing within fourteen days the steps which it proposed to take to protect and preserve the Delta Trust's investment in the Member Company and to take all necessary consequential action on those proposed steps under the direction of the Court. The Representation was served on all the parties and notice was also given to the father and the Protector who were given the opportunity of applying to join the proceedings, but neither of them has done so.

25 At that stage – and indeed on 2 December 2022 when U 1 was sworn – the Delta Trustee had not yet taken a decision on what, if any, changes should be made to the management of the Member Company or the composition of its board. The Delta Trustee's immediate intention was to coordinate a joint letter of support to the Member Company for the Deloitte investigation from the Representor, the brother and the father. It was also continuing to seek the appointment of a respected local professional as an additional director.

26 Since the filing of the Representation, the parties have continued, in their affidavits and in skeleton arguments, to develop their positions. For example, the brother has made it clear that he does not agree to the Representor being appointed as a director as requested in the Representation, and the Representor has suggested that Mr H should be appointed as director. However, this suggestion has also not been acceptable to the brother and the father. Conversely, they have suggested the appointment of a Mr R as a director but this was not acceptable to the Representor.

27 We do not think it would assist to describe every twist and turn in the parties' positions over the course of these proceedings. During the course of the hearing, the parties' current positions were clarified and we propose to concentrate on those positions.

28 There are however three events which have occurred during the course of proceedings which are worth mentioning. First, the terms of a letter to the Member Company requesting the board to resume cooperation with the Deloitte investigation and provide Deloitte with appropriate assistance, information and documentation have eventually been agreed and the letter (signed by ZL, the Representor, the brother and the father) was sent to the Member Company on 24 February 2023. Accordingly, as at the date of the hearing on 9/10 March 2023, the Deloitte investigation was expected to resume imminently.

29 Secondly, four days after the above letter was sent, the Delta Trustee was informed that a new firm of lawyers had been appointed by the Member Company in place of ABC, who had adopted an erroneous and unhelpful approach.

30 Thirdly, the Trustees have appointed Travers Smith, a firm of English solicitors in London, to investigate the allegations made against M (both in relation to the Member Company and the Company's business generally).

(iii) The parties' current positions

31 In the third affidavit of Mr N (director of the Private Wealth Division of the Jersey Trustee) sworn on 6 March 2023, some three days before the first day of the hearing (“N 3”), the Delta Trustee set out for the first time the decision which it had reached in respect of the Member Company. The decision is described in some detail in that affidavit, which also refers back to some of the considerations in his second affidavit (“N 2”). For present purposes the decision can be summarised briefly as follows:

> (i) The Delta Trustee had been unable to find a suitable person willing to act as a director. Those suggested by the Representor (himself and Mr H) were not acceptable to the brother and the father, and the person suggested by the brother and the father (Mr R) was not acceptable to the Representor. The Delta Trustee had itself made efforts to find a suitable independent local resident professional for appointment as a director, but its efforts had been unsuccessful. It was informed that professionals in the local jurisdiction were reluctant to take on the additional risk of being appointed as a director in circumstances where there were allegations of related party transactions and other potential financial misdemeanours. Furthermore, Mr N was not willing to be appointed a director.
>
> (ii) The Delta Trustee did not consider it appropriate at this stage to appoint a director who was opposed by other members of the family, not least because this would

increase the difficulty of the Delta Trustee keeping informed of the true position of the Member Company because its source of information would not be seen as independent by some of the family.

(iii) Accordingly, the Delta Trustee had decided to proceed by way of appointment of an independent observer who would attend both board and management meetings of the Member Company and would have access to all papers supplied to the directors for such meetings. Advice had been received that the appointment of an observer could be achieved either by board resolution establishing the rights, etc. of such a position or by an amendment to the articles of association of the Member Company establishing the position and its rights. Amendment to the articles of association would require a 75% shareholder vote in favour.

(iv) The Delta Trustee would prefer to proceed by way of board resolution following a letter from the shareholders requesting the board to pass the necessary resolution in order to establish the position of an observer. Having managed to obtain agreement to a letter concerning the continuation of the Deloitte investigation, the Delta Trustee believed it would be able to obtain a similar letter from the shareholders in respect of the appointment of an observer. If it could be achieved, this was preferable to proceeding by way of an amendment of the articles of association, which in any event would require both the Representor and the brother to support the necessary resolution.

(v) If, despite any such letter, the board of the Member Company were to refuse to pass the necessary resolution, the Delta Trustee would seek an amendment to the articles if that were practicably possible (i.e. if it could obtain a 75% vote).

(vi) The Delta Trustee had decided to nominate Mr N as observer and additionally would continue to look for a suitable independent local resident professional as an additional observer.

32 Although the brother did not accept that the appointment of an observer was strictly necessary, he was willing to support the appointment of Mr N as an observer. Although he initially indicated that he would only agree to such an appointment for the duration of the Deloitte investigation, it was confirmed on his behalf on the second day of the hearing that, if the Delta Trustee considered that the appointment should be open-ended, the brother would support this. The brother also confirmed that, in the event of the board of the Member Company refusing to pass the necessary resolution to appoint Mr N as an observer on suitable terms despite receipt of a letter of request from the shareholders, he would vote his shares in support of an appropriate amendment to the articles of association.

33 As to the information rights of an observer, the brother did not agree to an observer specifically being given the same rights of access to documents and information as a director, but he did agree that an observer should be entitled to the same documents and information as a director in relation to any board meeting or management meeting and be entitled to attend such meetings as observer. It transpired on questioning of Advocate Dann on the second day of the hearing that the reason the brother would not agree to an observer

having exactly the same rights to documents and information as a director was that he felt an observer's rights should be confined to matters which were covered by a board or management meeting whereas, he said, a director could demand information and documents about any matter, whether historical or not, regardless of whether it was being considered at a board or management meeting. He did not agree to an observer having this open ended right to demand documents and information.

34 The Representor did not consider that the Delta Trustee's decision to appoint an observer was reasonable. His position, as articulated in a letter and draft Act dated 7 March 2023 and further explained in oral submission, was that the only reasonable decision for the Delta Trustee was to appoint two additional directors of the Member Company at this stage, one to be nominated by the Representor and one by the brother.

(iv) Applicable legal principles

(a) The Bartlett principle

35 Advocate Speck submitted that, in the circumstances which had arisen in this case, the Delta Trustee was under a duty to take steps to ensure that it had an adequate information flow about the affairs of the Member Company. He referred to two cases in particular, namely *Re Lucking's Will Trusts* [1968] 1 WLR 866 and *Bartlett v Barclays Bank Plc* [1980] Ch 515.

36 In *Lucking*, the trustees held a majority shareholding in a company where one of the directors withdrew money for his own benefit. A beneficiary sued the trustees for breach of trust. Cross J explained the duty of trustees in relation to a company where they held a majority interest as follows at 874–875:

> ***"The conduct of the defendant trustee is, I think, to be judged by the standard applied in*** *Speight v Gaunt*, ***namely, that a trustee is only bound to conduct the business of the trust in such a way as an ordinary prudent man would conduct a business of his own***.
>
> ***Now what steps, if any, does a reasonably prudent man who finds himself a majority shareholder in a private company take with regard to the management of the company's affairs?*** He does not, I think, content himself with such information as to the management of the company's affairs as he is entitled to as shareholder, but ensures that he is represented on the board. He may be prepared to run the business himself as managing director or, at least, to become a non-executive director while having the business managed by someone else. Alternatively, he may find someone who will act as his nominee on the board and report to him from time to time as to the company's affairs. In the same way, as it seems to me, trustees holding a controlling interest ought to ensure so far as they can that they have such information as to the progress of the company's affairs as directors would have. If they sit back and allow the

company to be run by the minority shareholder and receive no more information than shareholders are entitled to, they do so at their risk if things go wrong…." [Emphasis added]

37 In *Bartlett*, the trust owned 99.8% of the shares in a property holding company. The directors of the company changed the activities from property holding to speculative property development. The trustee was not represented on the board of the company and certain speculative activities were undertaken without its knowledge, which led to substantial losses. The Court held the trustee liable for such losses and in passing Brightman J said at 532–534:

> ***"The bank, as trustee, was bound to act in relation to the shares and to the controlling position which they conferred, in the same manner as a prudent man of business.*** The prudent man of business will act in such manner as is necessary to safeguard his investment. He will do this in two ways. If facts come to his knowledge which tell him that the company's affairs are not being conducted as they should be, or which put him on inquiry, he will take appropriate action. Appropriate action will no doubt consist in the first instance of inquiry of and consultation with the directors, and in the last but most unlikely resort, the convening of a general meeting to replace one or more directors. What the prudent man of business will not do is to content himself with the receipt of such information on the affairs of the company as a shareholder ordinarily receives at annual general meetings. Since he has the power to do so, he will go further and see that he has sufficient information to enable him to make a responsible decision from time to time either to let matters proceed as they are proceeding, or to intervene if he is dissatisfied." [Original emphasis]

Having then quoted the passage from the judgment of Cross J in *Lucking* to which we have already referred, Brightman J went on to say at 533:

> ***"I do not understand Cross J to have been saying that in every case where trustees have a controlling interest in a company it is their duty to ensure that one of their number is a director or that they have a nominee on the board who will report from time to time on the affairs on the company.*** He was merely outlining convenient methods by which a prudent man of business (as also a trustee) with a controlling interest in a private company, can place himself in the position to make an informed decision whether any action is appropriate to be taken for the protection of his asset. Other methods may be equally satisfactory and convenient, depending upon the circumstances of the individual case. Alternatives which spring to mind are the receipt of copies of the agenda and minutes of board meetings if regularly held, the receipt of monthly management accounts in the case of a trading concern, or quarterly reports. Every case will depend on its own facts. The possibilities are endless. It would be useless, indeed misleading, to seek to lay down a general rule. The purpose to be achieved is not that of monitoring every move of the directors, but of making it reasonably probable, so far as circumstances permit, that the trustee or (as in the *Lucking* ***case) one of them will receive an adequate flow***

> ***of information in time to enable the trustees to make use of their controlling interest should this be necessary for the protection of their trust asset, namely the shareholding.*** The obtaining of information is not an end in itself, but merely a means of enabling the trustees to safeguard the interests of their beneficiaries."

38 In both of these cases, the trust had a controlling interest and the dicta of both Cross J and Brightman J were directed towards such a situation. That is not so in the present case as the Delta Trust, through ZL, only has a minority interest in the Member Company. However, following receipt of the H Report and the September Report from Deloitte, the Delta Trustee is on notice that there may well have been misconduct and misappropriations in the Member Company. It follows that in these circumstances there is a duty on the Delta Trustee to see if it can ensure a proper flow of information about the Member Company's affairs by liaising with one or more of the other shareholders. If ZL combines its voting power with that of either the Representor or the brother, the combined voting power exceeds 50%, which would enable it to appoint or remove directors.

39 In summary, in the circumstances which have arisen following receipt of the two reports referred to in the preceding paragraph, the Delta Trustee is under a duty to take all reasonable steps not only to investigate what has occurred but also to ensure that it has an adequate flow of information about the Member Company going forward.

40 We would add that the duty on a trustee to keep itself adequately informed as described in *Lucking* and *Bartlett* may of course be amended or limited by the terms of the trust deed. Such provisions are known colloquially as anti-Bartlett clauses. There is such a provision in clause 20 of the trust deed of the Delta Trust. However, it has not been argued before us that, in the events which have happened (namely the Delta Trustee having actual notice of possible misconduct and misappropriation), this relieves the Delta Trustee from its duty to take reasonable steps to ensure that it can investigate what has occurred and ensure an adequate information flow in future; on the contrary, awareness of its duty is why the Delta Trustee has taken the decisions which it has, namely to appoint Deloitte to investigate and to seek the appointment of an observer. Accordingly, we do not need to consider this aspect further.

(b) The non-intervention principle

41 This was an unusual Representation. At the time it was issued, the Delta Trustee had not taken any decision in relation to the Member Company but the Representation nevertheless invited the Court to intervene and direct the Delta Trustee as to how it should proceed and what decision it should take.

42 By the time of the hearing, the position had changed. The Delta Trustee had by then taken its decision (i.e. to proceed by appointing an observer following a letter from the

shareholders to the board of the Member Company). The Representor submitted that the Court should override that decision and direct the Delta Trustee to appoint up to two directors, one nominated by the Representor and one by the brother.

43 The question then arises as to the approach which the Court should adopt in these circumstances.

44 It is well established that, where a discretion is conferred on trustees, the Court may not intervene merely because it disagrees with the trustee's decision and would have reached a different decision if it had been trustee; it may only intervene if the decision is one which no reasonable trustee could arrive at or is in breach of the trustee's duty for some other reason such as a conflict of interest. In *Children's Investment Fund (UK) v Attorney General* [2020] 3 WLR 461, Lord Briggs (with the agreement of Lord Kitchin and Lord Wilson) said at [216]:

> ***"The second, and main, ground is what is loosely described as the 'non-intervention principle', namely that the court will not generally interfere with the performance by fiduciaries of their duties unless they are acting, or threatening to act, in breach of duty, or have surrendered their discretion, and that the court's special jurisdiction over charities gives rise to no exception."***

To like effect, see Lady Arden at [120].

45 The position is the same in Jersey law. In *S v Bedell Cristin Trustees Limited* [2005] JRC 109, the Court said this at [23]:

> ***"…The Court cannot overturn a decision of a trustee which has not surrendered its discretion to the Court, merely because the Court would have reached a different decision.*** It may only intervene where the decision is one which no reasonable trustee could arrive at. All of this is consistent with the fundamental concept of trust law which is that the discretion of a trustee is conferred upon that trustee and the beneficiaries have to live with the decision ***of that trustee unless it is vitiated by one or more of the sort of circumstances set out in Lewin."***

46 *S v Bedell Cristin* has been followed in a number of cases; see for example the discussion in *B v Erinvale PTC Limited* [2020] JRC 213 at [44]–[60] per Commissioner Clyde-Smith.

47 Advocate Speck argued that the non-intervention principle did not apply in this case. That was because, in the events which had happened, the Delta Trustee was under a duty (in accordance with *Lucking* and *Bartlett*) to act to ensure a proper information flow and the Court was entitled to decide whether what was proposed would satisfy that duty and to intervene if it did not.

48 We were not entirely sure that we followed the distinction which Advocate Speck was seeking to make and he accepted that it was a ‘nuance’ of the general non-intervention principle. In any event, we do not accept that the Court could intervene merely because it would not have taken the same decision as the Delta Trustee. A trustee has a general duty to preserve and protect the trust assets but there are many different ways of doing so and it is for the trustee in the first place to decide how it should do so. Different trustees might adopt different solutions, none of which could be categorised as one which no reasonable trustee could decide upon and therefore a breach of trust. As the non-intervention principle makes clear, a Court may not intervene simply because it would not have reached the same decision as a trustee; it may only do so where the decision is one which no reasonable trustee could reach. That principle is as applicable to decisions about how best to preserve and protect trust assets as to decisions about how to invest or the appointment of assets to beneficiaries. Trustees have a discretion as to how they choose to fulfil their duties. In this case, the Delta Trustee has a discretion as to how it chooses to fulfil its duty of seeking to achieve an adequate information flow about the affairs of the Member Company. Accordingly, in our judgment, this Court may only override the decision which the Delta Trustee has reached if we conclude that that decision is one which no reasonable trustee could have reached and would therefore amount to a breach of trust.

Discussion

49 Advocate Speck submitted that until the decision of the Delta Trustee set out in N 3 on 6 March 2023, no real progress had been made despite the Delta Trustee having been on notice since the September Report that there was good reason to believe that a number of the serious allegations in the H Report were well founded. The Delta Trustee still did not have anyone on the ground to keep itself informed as to what was going on in the Member Company. The delay, he submitted, had been because the Delta Trustee had been obsessed (i) with investigating the past (through the Deloitte investigation) and had ignored the need to have current information and (ii) with the need to achieve consensus. This inaction was in circumstances where not only had the board of the Member Company ceased to cooperate with the Deloitte investigation in August but, since 21 October, the Member Company had made it clear that it considered the investigation to be illegal. Given the fact that, with the assistance of the Representor, the Delta Trustee held just over 50% of the voting power, it should have acted more decisively to appoint the Representor and/or Mr H as a director in order to ensure that it knew what was happening in the Member Company.

50 Advocate Williams disputed that the Delta Trustee had been slow to act. In the circumstances of a family trust, it was proper and reasonable to try and achieve consensus so far as possible. Although it had taken a while, this had proved successful in respect of obtaining a joint letter to the Member Company about cooperating with the Deloitte investigation. Having consulted widely, the Delta Trustee had now reached a decision, as set out in N 3, which it believed commanded sufficient family support, albeit that the father appeared not to be in favour of the appointment of an observer.

51 It is not relevant for our purposes to determine whether the Delta Trustee could or should have acted more quickly or decisively as alleged by the Representor. Our task is to consider the current proposal against the factual background and whether that decision is one which no reasonable trustee could reach.

52 Advocate Speck submitted that it is such a decision. In his reply submissions, he helpfully summarised his key grounds for so submitting under three headings.

53 First, because the Delta Trustee was proceeding by way of board resolution (rather than an amendment to the articles of association) in order to introduce the position of an observer, Mr N would only be successfully appointed if: (i) the shareholders agreed the terms of any letter to the board; and (ii) the board, who were the very people under suspicion, agreed to comply with the letter and to cooperate in keeping the observer fully informed. It would be preferable, he submitted, to proceed by way of amending the articles of association if the observer route was to be followed, but it would also be much better to appoint two directors as suggested by the Representor.

54 Secondly, as discussed at para 33 above, the Delta Trustee would not be able to achieve its declared objective of the rights of an observer to have access to documents and information being the same as those of a director. The brother had made it clear that he did not think the rights should be identical.

55 Thirdly, the Delta Trustee had not stated in clear terms (so as to encourage the board of the Member Company to cooperate) that, if the board did not do so, the Delta Trustee would use its voting power, in conjunction with the Representor, to appoint (or remove) one or more directors. The board needed to be provided with a stick (in the form of such a statement) as well as a carrot.

56 Advocate Williams submitted that the Delta Trustee's decision was a perfectly reasonable one in the circumstances and Advocate Sanders, on behalf of the minor and unborn beneficiaries, also submitted that the decision could not be said to be one which no reasonable trustee could reach.

57 We have carefully considered the submissions of Advocate Speck summarised above, as well as the other submissions put forward by him both in writing and orally. However, whilst not every trustee would have proceeded exactly as the Delta Trustee did in this case, we are of the clear opinion that its decision cannot possibly be categorised as one which no reasonable trustee could have arrived at.

58 In our judgment, it was not unreasonable for the Delta Trustee to seek for the moment to achieve consensus and ultimately to decide to proceed at this stage by way of the appointment of an observer rather than one or more directors.

59 Turning to the three specific points mentioned above, it seems to us the position is as follows.

60 As to the first submission, the Delta Trustee has explained that it does not think it would be in the interests of the Delta Trust as a whole to force through the appointment of either the Representor or Mr H against the wishes of the brother and the father. In relation to Mr H, although otherwise very well qualified, the Delta Trustee has taken into account the fact that he is the whistleblower and also that he had signed off some of the accounts in respect of which questions are now raised. As to the suggestion of two directors being appointed, one nominated by the Representor and one by the brother, the Delta Trustee has emphasised the desirability of obtaining information about the Member Company through one independent source. If there are competing sources, the information received is likely to be disputed and/or inconsistent, depending on which director has reported it. As to the suggestion that the appointment of an observer should be achieved by way of amendment of the articles of association rather than by board resolution, that can only be achieved with the voting power of both the Representor and the brother (because of the need for 75% shareholder approval) and the brother has made it clear that, although he will if necessary vote in favour of an amendment to the articles, this would only be in the context of the board having failed to comply with a letter from the shareholders. Taken in the round, we do not see that the decision of the Delta Trustee to proceed by way of appointment of an observer, and for such appointment to be by way of board resolution following a letter from the shareholders, can be categorised as unreasonable.

61 As to Advocate Speck's second submission, this is clearly a matter which will need to be resolved before the letter can be written. Having said that, as clarified with Advocate Dann on the second day of the hearing, the brother has made it clear that he will be supporting the right of an observer not only to receive all the papers produced for any board or management meeting but also to demand further information in respect of matters to be considered at any such meeting. We do not think that a decision by the Delta Trustee to accept this for the time being can be categorised as unreasonable.

62 As to the third submission, it seems to us to be a matter for the Delta Trustee as to how it decides to approach the board and whether its objective is best achieved by specifically making clear the potential consequences of a lack of cooperation or by leaving it to be implied.

63 As already stated, we do not consider that this is a case where the Court can properly intervene. In effect, the Representor considers that there is a better way of proceeding and is asking the Court to direct the Delta Trustee to proceed in this better way. But that is not the function of the Court unless the course proposed by the Delta Trustee would amount to a course which no reasonable trustee would pursue. We are not of the opinion that that is the case.

64 However, as the Court made clear during the course of the hearing and when announcing its decision, the Delta Trustee does have notice (from the H Report and the September Report) of alleged misconduct at the Member Company and needs to take steps very promptly to secure an independent information flow about the affairs of the company. If the Delta Trustee's preferred method of achieving the appointment of an observer is not achieved in the near future (by reference to the date of the hearing rather than the present date) or if the appointment of an observer does not result in the information flow which is anticipated, the Delta Trustee will need to take alternative measures promptly. Such measures could of course include the appointment and/or the removal of one or more directors, assuming that they can obtain support for such resolution from another shareholder so as to achieve over 50% of the vote.

Disclosure

65 The second aspect of the Representation is the Representor's request for an order that the Trustees disclose to him all relevant documents in connection with an investigation of allegations which have been made against him in his capacity as CEO of the Company.

(i) Factual background

66 The affidavits filed by the Representor and the brother explain, from their very different perspectives, how relations between the Representor on the one hand and the brother and the father on the other, deteriorated during the course of 2022. We do not think it necessary to describe these differences.

67 However, on 26 September 2022, the father's English solicitors (BCLP) wrote to the English solicitors for the other parties (including Macfarlanes for the Trustees) asserting that " *Despite being CEO in name, [the Representor] has not been the primary decision maker for the Company and the Trustees should not assume (or without broad inquiry, presume to know) that [the Representor] is the correct individual to take the Company forward"*. According to the Representor this came as a shock to him because, prior to this letter, although the father and the brother were becoming increasingly challenging and difficult in meetings, he thought that they still supported him as CEO of the Company.

68 On 11 October 2022, Macfarlanes wrote to the English solicitors for the other parties to explain that, following BCLP's letter of 26 September, there was doubt as to whether the Representor was the right person to take the Company forward as CEO and that it had been suggested that the Trustees should " *undertake a broad inquiry before reaching a conclusion as to whether that is indeed the case*".

69 At this point, the Trustees had reserved 8/9 November 2022 in the Court diary for a possible application for directions. However, on 21 October, Ogier, on behalf of the Trustees, wrote to the Judicial Secretary to vacate the reserved dates stating, amongst

other reasons, that they needed to conclude investigations into Company directors.

70 The suggestion that he was being investigated in circumstances where he considered that his contribution was vital to the Company, and where he was not aware of any details about the investigation, led the Representor to present his Representation on 25 October, in which he sought an order that the Trustees should produce to him all documents in their control relating to the inquiry into his continuing as CEO of the Company, alternatively an order that they within seven days set out the nature of the allegations against him which had led them to commence the inquiry sufficiently fully to enable him to respond to those allegations, so that the inquiry might be progressed as expeditiously as possible.

(ii) Events since the Representation

71 At the time Mr N's first affidavit ("N 1") was sworn on 2 December, the Trustees did not feel able to provide any further information about the investigation other than to confirm that it went to the question of whether the Representor was a suitable person to continue as CEO of the Company. This was on the ground that those who had provided the material which had prompted the investigation had insisted that the nature of the allegations remain confidential for the time being. However, the Trustees accepted that, at an appropriate juncture during the course of the investigation, the Representor should be given further details of the allegations against him and have the opportunity to respond to them. The Trustees would ensure that this happened.

72 On 7 February 2023, Deloitte provided the Representor with a document which set out fourteen allegations in summary form. There was no supporting evidence or any indication of who had made the relevant allegation.

73 The Representor filed his skeleton argument on 24 February. At para 76, the skeleton set out each of the fourteen allegations as summarised in the communication from Deloitte on 7 February and listed the type of information and documents which the Representor sought in relation to each allegation.

74 In their skeleton dated 3 March (supplemented by N 3 on 6 March), the Trustees agreed that they should disclose a number of the documents listed by the Representor but maintained that they could not at this stage disclose three categories of material, namely:

(i) the identity of the complainants;

(ii) the original letter(s) of complaint by the complainant(s); and

(iii) certain other contemporaneous documents.

75 The grounds for not agreeing at that stage to release these three categories of material

related to issues of confidentiality and whether the Trustees would be acting in breach of an equitable duty of confidentiality if the material were to be disclosed without the consent of the complainant(s). The Trustees went on to explain that Deloitte would be holding a second fuller interview with the Representor and that would be the juncture at which the question of disclosing these three categories of material would be considered. The Trustees accepted that any investigation must be carried out in a fair manner so that the Representor had a proper opportunity to respond to the allegations made against him. If confidentiality issues prevented the Trustees from disclosing any of the categories of material, consideration would have to be given at that stage as to whether the investigation could proceed in relation to the relevant allegation.

76 Accordingly, at the commencement of the hearing, the battle lines were drawn as described above. In essence, the Trustees were indicating only that consideration would be given to further disclosure of the three categories of material prior to the second interview, although making clear that the Trustees were aware of their duty to carry out a fair investigation. Conversely, the Representor was seeking an order for immediate disclosure of all the material listed in his skeleton argument.

(iii) The applicable legal principles

77 It was common ground between the parties that the Court was being invited to exercise its supervisory jurisdiction over trusts in relation to the disclosure of documents to a beneficiary; see the leading authorities of *Schmidt v Rosewood* [2003] 2 AC 709 and *Re Rabaiotti (1989) Settlement* [2000] JLR 173. It was not suggested that the recent amendments to Article 29 of the Trusts (Jersey) Law 1984 had altered the position for the purposes of this case.

78 There has in the past been some uncertainty as to whether, when considering an application for disclosure by a beneficiary when the trustee has refused to give such disclosure, the Court is simply reviewing the rationality of the trustee's decision (as in a blessing application) or is exercising its own discretion as to whether the best interests of the beneficiaries would be served by disclosure.

79 In *Re Y Trust* [2014] JRC 027, although the point was obiter in that the Court would have made the same decision whatever the correct approach, Commissioner Clyde-Smith reviewed the position in some detail and, whilst not reaching a final conclusion, indicated a clear preference for the latter approach, namely that the Court should exercise its own discretion.

80 All the parties in the present case accepted that we should approach the matter in that manner. Accordingly, we do not have to determine this issue. However, we would wish to say that, as at present advised, we would respectfully agree with the reasoning of Commissioner Clyde-Smith in *Re Y Trust*. The power of the Court to order disclosure is an

essential element of the Court's supervisory jurisdiction because it enables the Court to ensure that beneficiaries can find out what the trustees have been doing with assets which are held beneficially for the beneficiaries. The effectiveness of the Court's ability to protect the interests of the beneficiaries through the supervisory jurisdiction would be significantly weakened if the Court could only order disclosure if it could categorise the trustee's decision to refuse disclosure as being one which no reasonable trustee could have arrived at. The Court will of course pay close attention and have due regard to the reasons which a trustee has given for refusing disclosure. There can often be good reason to refuse disclosure, as discussed in both *Schmidt* and *Rabaiotti*. Nevertheless, as at present advised, we would be of the opinion that the Court should make up its own mind as to whether the interests of the beneficiaries as a whole (not just the applying beneficiary) would best be served by ordering disclosure despite a trustee's refusal.

81 This is of course not a conventional request for disclosure. Often, the request is made in order to find out what the trustees have been doing with the trust assets, how they have been invested, what they plan to do etc. The Representor's application is not made for that purpose; it is made in relation to an investigation being carried out by the Trustees in respect of the Representor, who is also one of the two adult beneficiaries.

82 However, as agreed by all the parties, the Court is still exercising its supervisory jurisdiction to order disclosure. The Company is by far the major asset of the Company Trusts. The Company's success is crucial to these Trusts and indirectly to the Delta Trust. In circumstances where an investigation is being carried out into allegations that the Representor is not suitable to be CEO of the Company, it is vital that the investigation is carried out properly and in a procedurally fair manner so that it can withstand subsequent scrutiny whichever way it finds. It is vital for the interests of the beneficiaries as a whole that the ‘right’ result is reached. In other words, if the Representor is not the right person to take the Company forward and the investigation so finds, it is vital that that decision is reached in a manner which cannot be challenged. Conversely, if the Representor is in fact a talented leader who has been and will continue to be responsible for the success of the Company and the corresponding increase in value of the interests of the beneficiaries, it is vital that any finding to that effect will also withstand subsequent scrutiny.

83 It follows that, in our judgment, the interests of the beneficiaries will be best protected by ensuring that adequate disclosure to the Representor is made so that the investigation can be seen to be carried out in a proper and procedurally fair manner so as to withstand subsequent scrutiny. Thus the Representor must be given disclosure of all such information and evidence as is necessary for him to know the case which he has to meet so that he can respond accordingly.

(iv) Discussion

84 As would be expected, the hearing was essentially conducted in the presence of all the parties. However, the Trustees had indicated in advance that they wished to conduct part of

the hearing confidentially in the absence of the other parties and the Court had agreed to this request. This was so that the Trustees could provide to the Court the documents which they had and which fell within the categories listed in the Representor's skeleton, but which they were not willing to disclose at present on the ground of confidentiality. The fact that this part of the hearing was in the absence of the other parties was not of course to protect or for the benefit of the Trustees. It was simply to protect the confidentiality of the material, which at that stage remained confidential. Accordingly, whilst we do not propose to say anything in this judgment about the content of such material, we shall be referring to assertions or concessions made on behalf of the Trustees during that private hearing to the extent that we think relevant. Indeed, the Commissioner gave a very brief summary to the parties of key points which had been asserted on behalf of the Trustees when the general hearing resumed after the private hearing.

85 During the two days of the hearing, the gap between the parties narrowed in two key respects. First, during his oral submissions, Advocate Williams informed the Court and the parties that Deloitte had now come up with a proposed timetable for the investigation. The first interview having been carried out on 3 March, it was proposed that Deloitte should send minutes of that meeting to the Representor for comment, hopefully by the end of the week of the hearing. They then planned to hold the second fuller interview with the Representor in April, preferably in the earlier part of the month. The aim was to conclude the investigation by the end of May although Deloitte would wish to conclude it earlier if possible.

86 Secondly, partly in the open hearing and partly in the private hearing, Advocate Williams confirmed that, in respect of any allegation which was to be pursued, Deloitte would disclose in good time before the second interview all the documents disclosed confidentially to the Court (subject only to possible minor redactions in respect of personal or irrelevant information of the type instanced to the Court during the private hearing), so that the Representor knew the case he had to meet.

87 When pressed as to why this disclosure could not be made immediately, it was explained that the issues of confidentiality had to be addressed with the complainants and this had not yet been done. If a complainant was not willing to give consent to disclosure, a decision would have to be taken by Deloitte (and the Trustees) as to whether to disclose nevertheless (on the basis that there was only an equitable obligation of confidence which could be overridden on various grounds) or to drop the investigation into the allegation in question.

88 It became clear therefore that the difference between the parties had narrowed to one of timing. The Representor wished for an order that disclosure should be made immediately, whereas the Trustees wished to have time to raise issues of confidentiality with the complainants before any disclosure was made. Given the proposed date of the second interview in April (and early April if possible) and the view expressed by the Court that the Representor should receive disclosure at least fifteen days before the second interview, the difference between the parties appeared to be a matter of a few weeks.

89 In the circumstances, the Court considered that it should not make an order for immediate disclosure. It was satisfied that the Trustees had accepted the obligation to disclose all the relevant information and documents and, although it was arguable that the process had not been conducted with all necessary sense of urgency before 3 March, it was perfectly understandable that the Trustees/Deloitte wished to have time to raise issues of confidentiality with the complainants before disclosure was made. The Trustees' acceptance that it would disclose all relevant material in good time before the second interview should lead to a fair process and it was not necessary therefore for the Court to intervene.

90 Although, for these reasons, the Court decided not to make an order for disclosure, it emphasised the importance of certain matters to the Trustees (both during the hearing and when announcing its decision) and we propose to repeat those points so that they are on the record (albeit that, if all has gone according to plan, the investigation will have been concluded by the time this judgment is released to the parties):

(i) There is a need for an early conclusion to the investigation into the Representor given his vital role as CEO of the Company and the importance of the wellbeing of the Company to the Trusts.

(ii) Accordingly, the timetable set by Deloitte needs to be adhered to in the absence of some very compelling reason for delay.

(iii) As already stated, it is in the interests of the beneficiaries as a whole that the investigation is carried out fairly and effectively (so as to withstand any subsequent scrutiny whichever way it is decided) given that it is into the alleged conduct of the CEO (who is also beneficiary) of the main asset of the Trusts.

(iv) As the Trustees accepted, this means that the Representor must be supplied with all documents and information relevant to the investigation in good time before the second interview so as to enable him to know the case he has to meet and be in a position to defend himself properly in respect of those allegations which are pursued. In particular, this means that the documents and information in categories (i), (ii) and (iii) described in paragraph 74 must be supplied subject only to any minor redactions on the basis of the protection of personal information which is not relevant to the inquiry.

Summary

91 For the reasons explained, on the basis of the situation as it was at the date of the hearing, the Court did not make either of the orders sought by the Representor.