

## Re Channel House Trustees

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Deputy Bailiff
<b>Judgment Date:</b>	18 June 2003
<b>Neutral Citation:</b>	[2003] JRC 98
<b>Reported In:</b>	[2003] JRC 98
<b>Court:</b>	Royal Court
<b>Date:</b>	18 June 2003

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### Text

[2003] JRC 98

ROYAL COURT

(Samedi Division)

Before:

M.C. St. J. Birt, Deputy Bailiff, **and** Jurats de Veulle, **and** Tibbo.

In the Matter of

The Bluebird Settlement;  
The Condor Settlement;  
The Falcon Settlement;

The Practica Settlement; and The Tring Settlement  
and

Representation of Channel House Trustees (Jersey) Ltd  
Representor

Advocate C.J. Scholefield, as guardian ad litem of the minor and unborn beneficiaries of

Five Trusts  
First Party Convened  
The Attorney General  
Second Party Convened

**Advocate M.H.D. Taylor for the Representor.**

**The First Party Convened in person.**

**Advocate D.J. Benest on behalf of the Second Party Convened**

**No Authorities**

Application to rectify wording of Trust Deeds.

Deputy Bailiff

**THE**

- 1 The Court has before it applications by Channel House Trustees Limited to rectify five almost identical settlements, of which they are the current trustee. The settlements are all governed by Jersey Law. The background in relation to each settlement is very similar. The original trustee in each case was a company called Anburn Trustees Limited which was a subsidiary or affiliated company of PBO Financial Services Limited. The nominal settlor in each case was a Mr Rene Fredo Randon of Malta. We have received affidavit evidence from Mr Geoffrey Pirouet, a director of Anburn, that it was the practice of Anburn and PBO to arrange for Mr Randon to execute a number of discretionary settlements in identical form. Mr Randon, as the nominal settlor, contributed £25 as initial funds. There were, in each case, only two named beneficiaries: UNICEF and the International Red Cross.
- 2 The deeds apparently were then kept, so to speak, in Anburn's drawer as a form of pre-packaged settlement. When a client came along who wished to create a settlement, one of the deeds was extracted from the drawer and was activated by means of the client introducing funds to be held upon the trusts of the particular settlement. The persons whom that client wished to benefit were added to the class of beneficiaries, pursuant to the power to add conferred by the trust deed and the charities were excluded from benefit.
- 3 This was, in effect, a form of shelf trust with what can best be described as a dummy settlor. We have to say that we deprecate such a practice and had Anburn and PBO remained in business in this Island we would have referred the matter to the Jersey Financial Services Commission for investigation. Be that as it may, the five settlements were each created and then activated in the way that we have described.

- 4 In each case the real settlor, in other words the client as we have described it earlier, has been convened to this application by the trustee together with any adult beneficiaries. Furthermore, Mr Scholefield has been appointed to represent the interests of minor and unborn beneficiaries in those settlements where such are in existence.
- 5 In relation to each of the settlements Anborn retired as trustee in favour of Channel House in about the beginning of 2002. As we have already stated, the trust deed used by Anborn was a standard trust deed which was used in each case without reference to lawyers in relation to the specific case.
- 6 The problem, which has led to this application, relates to the trustee remuneration provision. Clauses 15 and 16 of each deed provide as follows:

*“15. (1) Any of the Trustees (other than an Excluded Person) who shall be an individual engaged in any profession or business....shall be entitled to charge and be paid and to retain all professional or other proper charges for any business done or time spent or services rendered by him or his firm....in connection with the trusts powers and provisions hereof..”*

*(2) Any of the Trustees (other than any Excluded Person) who shall be a company authorised to undertake trust business shall be entitled (in addition to the reimbursement of its proper expenses) to remuneration for its services in accordance with such company's published terms and conditions for trust business in force from time to time.”*

*(3) Subject to sub-clause (4) hereof none of the Trustees holding any directorship or other offices or employment or retainer in relation to any company, all or any of whose shares stock or securities shall be at any time subject to any of the trusts hereof shall be accountable for any remuneration received in connection with such directorship office employment or retainer.*

*(4) Notwithstanding anything in this clause contained no Excluded Person who may be for the time being a Trustee hereof shall be entitled to charge or be paid or retain any or any share of any remuneration or professional or other charges by reason of this clause or be relieved thereby from any liability to account as a trustee for any money or assets.*

*16. Any bank or any other company (other than any Excluded Person) which is a Trustee hereof or of which any of the Trustees (other than any Excluded Person) is for the time being a director shall be entitled to charge and be paid all proper charges for any banking or any other business done or time spent or services rendered by such bank or company in connection with the trusts powers and provisions hereof or of any such assurance as aforesaid and shall also be entitled to retain any share of brokerage or commissions paid to such bank or company by any broker agent or insurance office aforesaid.”*

- 7 The effect of these provisions is to prevent a trustee which is an excluded person from charging remuneration for its services and obliges such a trustee to account for sums falling within Clause 15(3) and Clause 16. The difficulty arises because the Fourth Schedule of each settlement includes as excluded persons:

*“Any person who is for the time being a Trustee or the Protector hereof but only during the period of such trusteeship or Protectorship as the case may be....”*

- 8 The effect is that no trustee can charge remuneration because all trustees are excluded persons. This is quite clearly inconsistent with Clause 24, the relevant part of which reads:

*“Notwithstanding anything in this Settlement expressed or implied other than the provisions for the remuneration of Trustees and the Protector no Excluded Person shall be capable of taking any benefit of any kind by virtue or in consequence of this Settlement...”*

- 9 The Court has received affidavit evidence in relation to each settlement from Mr Pirouet (as we have said), from the nominal settlor, Mr Randon, and from the client or real settlor in relation to each trust. All of these persons are clear that this was a genuine error and that the intention of all those executing the trust deed was that the trustee should be able to charge remuneration. The error arose because of the mistaken inclusion of references to an excluded person in Clauses 15(1) and (2) and 16 and the mistaken inclusion of Clause 16(4). The error has only recently come to light following the change in trustee from Anburn to Channel House.

- 10 The Court has to be satisfied as to three matters when considering the discretionary remedy of rectification. Firstly, we are quite satisfied that this error is a genuine mistake which means that the trust deed does not reflect the true intentions of the parties. Secondly we are satisfied that there has been full and frank disclosure. Thirdly we are satisfied that there is no alternative practical remedy. The requirements for rectification are therefore met and in our discretion we are willing to order rectification as set out in the prayer of the Representation in each case by removing the words *“(other than any Excluded Person)”* within Clauses 15(1), 15(2) and 16 of the trust deed and by the removal of the whole of Clause 15(4) and the words *“subject to sub-Clause 4 hereof”* in Clause 15(3) of the trust deed.

- 11 In relation to the Bluebird Trust there is an additional minor matter where there is a clear typographical error and we order further rectification by removing the figure ‘9’ at Clause 1(1)(e)(ii) and inserting the figure ‘7’ in its place.

- 12 Channel House, although not responsible in any way for the error in this case, has quite properly come to the view that it would not be right for its costs to come out of the trust fund and accordingly makes no application. Clearly the fault lies with the former trustees.

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- 13 As to the costs of Mr Scholefield and Mr Benest on behalf of the Attorney General, who was convened to represent the general charitable interest in each case, we order that their costs come out of the trust fund on an indemnity basis.