



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE NO: FSD 213 OF 2022 (NSJ)**

**IN THE MATTER OF THE A TRUST**

**AND IN THE MATTER OF THE B TRUST**

**AND IN THE MATTER OF THE C TRUST**

**AND IN THE MATTER OF SECTION 48 OF THE TRUSTS ACT (2021 REVISION) AND  
ORDER 85 OF THE GRAND COURT RULES (2022 CONSOLIDATION)**

**HEADNOTE**

*Application by a trustee for approval of proposed exercise of its powers – the Court’s inherent jurisdiction and jurisdiction under section 48 of the Trusts Act (read with GCR O.85) – a category 2 Public Trustee v Cooper application – basis on which the Court should exercise its common law and statutory jurisdictions – relevance of non-financial benefits for beneficiaries – form of order to be made*

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**JUDGMENT**

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**Before:** The Hon. Mr Justice Segal

**Appearances:** Ms Rachael Reynolds KC, Mr Christopher Levers and Mr Chris Vincent of Ogier for the Trustee

Mr Hector Robinson KC and Mr James Anson-Holland of Mourant for Mr Robinson as representative of the minor and unborn beneficiaries

Mr Carlos de Serpa Pimentel and Esmond Brown of Appleby (Cayman) Limited for Mr F, the representative of the adult beneficiaries

**Heard:** 14 December 2022

**Draft judgment  
circulated:** 16 December 2022

**Judgment delivered:** 20 December 2022  
**Introduction**

1. The Trustee is the sole trustee of three Cayman Islands law governed discretionary trusts known as the A Trust, the B Trust and the C Trust (the *Cayman Trusts*). By its *ex parte* originating summons (the *OS*) dated 6 October 2022 the Trustee as trustee of each of the three Cayman Trusts seeks the Court's approval or sanction of various decisions (the *Proposals*).

### **The Proposals**

2. The Proposals involve the following steps:
  - (a). as regards the A Trust:
    - (i). a distribution of assets with a very substantial value to be made from the assets of the A Trust to one of the current beneficiaries (Z) of the A Trust (the *A Proposed Distribution*).
    - (ii). a philanthropic entity known as H Limited, a former beneficiary of the A Trust, will be added back into the class of beneficiaries of the A Trust (the *A Proposed Addition*).
    - (iii). the terms of the A Trust will be amended such that the balance of the trust fund remaining on the first quarter end date following the one year anniversary of the death of the survivor of the two main beneficiaries (Z and Y) would be held absolutely for H Limited from that date (the *A Proposed Amendment*) provided that:
      - (A). the A Proposed Distribution has been approved and/or sanctioned by the Court and thereafter made to Z.
      - (B). a proposed distribution to Y of assets with a similar value to the amount of the A Proposed Distribution from an affiliated Jersey law trust (the *D Trust*

*and the D Proposed Distribution*) has been approved or sanctioned by the Royal Court of the Island of Jersey (which approval has now been obtained) and thereafter made to Y.

- (C). the Trustee has satisfied itself that Z and Y have made appropriate provision for their descendants and, in this context, the Trustee has resolved, in principle, that it would consider appropriate provision to have been made if Z and Y have transferred the assets they receive from the A Proposed Distribution and the D Proposed Distribution (or assets deriving from those assets) to the trustees of a newly established Jersey law governed trust and a newly established Cayman law governed trust for the benefit of their descendants (the *Reserve Trusts*).
- (D). there has been no material change in the needs of the beneficiaries in the time between the A Proposed Distribution being made and the point at which the Trustee comes to implement the A Proposed Amendment.

(b). as regards the B Trust:

- (i). a distribution of the balance of the trust fund to H Limited, a current beneficiary of the B Trust (the *B Proposed Distribution*), provided that:
- (ii). the A Proposed Distribution has been approved and/or sanctioned by the Court and thereafter made to Z.
- (iii). the D Proposed Distribution has been approved and/or sanctioned by the Royal Court (such approval has now been obtained) and thereafter made to Y.
- (iv). the Trustee has satisfied itself that Z and Y have made appropriate provision for their descendants and the Trustee has resolved, in principle, that it would consider appropriate provision to have been made if Z and Y have transferred the assets they receive from the A Proposed Distribution and the D Proposed Distribution (or assets deriving from those assets) to the trustees the Reserve Trusts.
- (v). there has been no material change in the needs of the beneficiaries in the time between the A Proposed Distribution being made, and the point at which the Trustee comes to implement the B Proposed Distribution.

- (c). as regards the C Trust:
- (i). a distribution or distributions from the trust fund of the C Trust to be made to a further philanthropic entity known as I Limited, a current beneficiary of the C Trust (the *C Proposed Distribution*), provided that:
  - (ii). the A Proposed Distribution has been approved and/or sanctioned by the Court and thereafter made to Z.
  - (iii). the D Proposed Distribution has been approved and/or sanctioned by the Royal Court (such approval has now been obtained) and thereafter made to Y.
  - (iv). the Trustee has satisfied itself that Z and Y have made appropriate provision for their descendants and the Trustee has resolved, in principle, that it would consider appropriate provision to have been made if Z and Y have transferred the assets they receive from the A Proposed Distribution and the D Proposed Distribution (or assets deriving from those assets) to the trustees the Reserve Trusts.
  - (v). there has been no material change in the needs of the beneficiaries in the time between the A Proposed Distribution being made, and the point at which the Trustee comes to implement the C Proposed Distribution.
3. As can be seen, in summary, the Proposals involve (assuming that the Court grants the Trustee's application):
- (a). an immediate distribution of substantial assets from the A Trust to Z. The evidence shows that the balance of the trust fund after this distribution will be approximately US\$650 million. This distribution is to be matched by a distribution of the same value to Y from the D Trust.
  - (b). an immediate amendment to the class of beneficiaries of the A Trust to add H Limited.
  - (c). provided that Z and Y have made (to the satisfaction of the Trustee) "*appropriate provision*" for their descendants (which the Trustee has determined will be the case if Z and Y settle the assets they receive from the A Proposed Distribution and the D Proposed Distribution on the Reserve Trusts) and the Trustee is satisfied that there has been no material change in the needs of the beneficiaries, the Trustee will amend the terms of the

A Trust, such that on the first quarter end date following the one year anniversary of the death of the survivor of Z and Y, the balance of the trust fund in the A Trust will be held for and in effect transferred to H Limited (and thereafter will be applied for the benefit of the philanthropic causes that H Limited promotes).

- (d). in the meantime, and before the later of (i) the satisfaction of the conditions set out in (c) above and (ii) the first quarter end date following the one year anniversary of the death of the survivor of Z and Y, the Trustee's powers will be unfettered and it will be at liberty to make appointments and distributions to beneficiaries and take steps to protect their interests and meet their needs.
  - (e). provided the two conditions set out in (c) above (as to "appropriate provision" for descendants and no material change in the needs of the beneficiaries) are satisfied with respect to the beneficiaries of the B Trust and the C Trust, the full balance of the trust funds in those trusts will be held for (and in effect transferred to) H Limited (in the case of the B Trust) and I Limited in the case of the C Trust (and thereafter will be applied for the benefit of the philanthropic causes that H Limited and I Limited promote).
  - (f). in the meantime, and before the satisfaction of the conditions set out in (e) above, the Trustee's powers at trustee of the B Trust and the C Trust will be unfettered and it will be at liberty to make appointments and distributions to beneficiaries and take steps to protect their interests and meet their needs.
4. Accordingly, if the Proposals are ultimately put into effect, each of the Cayman Trusts would ultimately have no remaining assets and would accordingly terminate. For this reason, together with the fact that the Proposals involve the distribution of significant sums out of the Cayman Trusts to only three beneficiaries to the exclusion of other members of the class of beneficiaries, the Trustee considers that its decisions to effect the Proposals to be particularly momentous and that an application to the Court was necessary and justified for the purpose of obtaining a direction from or opinion of the Court that in giving effect to and implementing the Proposals, the Trustee would be exercising its powers properly and lawfully.
5. The Proposals are part of and intended to implement the estate planning of Z and Y and arrangements to reorganise the trusts established for the benefit of their family. The Cayman Trusts are part of a wider group of related trusts established in various jurisdictions with the same protector. These trusts were originally established in the mid-1960s and have always included provision for the support of philanthropic causes. This is an important part of Z and Y's legacy.

Z and Y have recently established testamentary trusts which on their deaths will receive the bulk of their personal estates and they expect that these trusts will fund their family up to and including their great grandchildren. The intention is that the distributions to Z and Y will also be available for their family and will (A and B have expressed a “*firm intention*” to do so) be settled on the Reserve Trusts (which will be for the benefit of the children and descendants of Z and Y and therefore include all those family members who are members of the class of beneficiaries of the Cayman Trusts). Upon the Reserve Trusts being settled (or other appropriate provision being made for Z and Y’s children and remoter descendants), the remaining balances in the Cayman Trusts (and the D Trust) will ultimately be dedicated to charitable entities in which Z and Y and their family actively participate. The Proposals have the support of all the ascertained beneficiaries. They also have support of the representative of the minor and unborn beneficiaries who has confirmed that he considers the Trustee’s decision and the implementation of the Proposals to be in the interests of the beneficiaries as a whole including the minor and unborn beneficiaries.

### **Representatives**

6. By an order dated 4 November 2022 I directed that Mr F be appointed as representative for the adult beneficiaries of each of the Cayman Trusts and that Mr Hector Robinson KC be appointed as representative for the minor and unborn beneficiaries of the Cayman Trusts. The OS and the evidence in support has been served on Mr F, Mr Robinson, the corporate beneficiaries of the Cayman Trusts, the protector of the Cayman Trusts and His Majesty’s Attorney General of the Cayman Islands (in his capacity as *parens patriae* for charities).

### **The hearing and the evidence**

7. The OS was heard on 14 December 2022. At the hearing, Ms Rachael Reynolds KC of Ogier appeared on behalf of the Trustee; Mr Carlos de Serpa Pimentel of Appleby appeared on behalf of Mr F and Mr Robinson KC appeared on behalf of the minor and unborn beneficiaries. The Attorney General did not appear and had not responded to service of the OS. Detailed written submissions were filed on behalf of these parties, with Ms Reynolds and Mr Robinson filing lengthy and substantial submissions covering both the facts and the law, which I found very helpful (Mr Pimentel’s written submission were, entirely understandably and properly, shorter but also very helpful).

8. Evidence was filed in support of the OS by Ms R and Mr F. Ms R is a director of the Trustee. An affidavit was also filed by a partner in the London firm of solicitors advising the protector and an associate in Ogier.
  
9. Ms R filed a detailed affidavit (**R1**) setting out the relevant background, details of the history of the Cayman Trusts including an explanation of when and why they were established; details of the beneficiaries and assets and the terms of the Cayman Trusts noting that the class of beneficiaries of the A Trust included ascertained adult beneficiaries and minor beneficiaries as well as unborn beneficiaries, that the B Trust had adult, minor and corporate ascertained beneficiaries as well as unborn beneficiaries and the C Trust also had adult, minor and corporate ascertained beneficiaries as well as unborn beneficiaries; details of other related trusts including the testamentary trusts which had been established by Z and Y to receive all of the assets comprising Z and Y's personal estates on their death (the **Testamentary Trusts**); details of the establishment of the entities and the substantial organisation created by Z and Y to promote philanthropy and the involvement of Z and Y and their family in those entities and their philanthropic and charitable enterprise; the letter from Z and Y to the Trustee (the **Family Request Letter**) requesting that the Trustee consider giving effect to the Proposals and explaining the reasons for and purpose of the Proposals; the letters from (or on behalf of) H Limited and I Limited requesting that the Trustees consider making the B Proposed Distribution and the C Proposed Distribution respectively; the process by which the Trustee had consulted with the adult beneficiaries and each of the corporate beneficiaries of the Cayman Trusts to canvass their views in respect of the Proposals; the responses provided by the adult beneficiaries (including their confirmation that they supported the Proposals and endorsed the views set out in the Family Request Letter, and agreed that Mr F act as their representative); the responses from the corporate beneficiaries confirming that they had no objection to the Proposals and the Trustee's OS but that they did not wish to participate in these proceedings; the Trustee's consultations with the protector and the protector's response, including the protector's confirmation that it was supportive of the Proposals and that it did not wish to participate in these proceedings but did want its views conveyed to the Court; the Trustee's deliberations on and review of the Proposals including the matters considered by the Trustee (see in particular section K of R1) and the Trustee's conclusions and decision.
  
10. The Trustee signed written resolutions on 6 October 2022 (the **Resolutions**) setting out the Proposals and confirming and recording the Trustee's decision in the exercise of the powers conferred by the Cayman Trusts and any other relevant power, and subject to obtaining this Court's approval or sanction, to implement and effect the Proposals (subject to the various

conditions set out in the Proposals being satisfied). The Trustee's reasoning and the factors which the Trustee took into account in reaching this decision are set out in detail in R1.

### Mr F's views

11. Mr F is a grandchild of Z and Y and a beneficiary of the Cayman Trusts. He confirmed his commitment to and active involvement in the family's philanthropic activities. He also confirmed his familiarity with the financial position of the Cayman Trusts and the Proposals. His evidence was that neither he nor his family's needs were reliant on the assets of the Cayman Trusts and that he had never received and did not anticipate ever needing to receive a distribution from the Cayman Trusts. He confirmed that he and each of the adult beneficiaries were strongly supportive of the aims of the Proposals and of the Trustee's decision to effect the Proposals.

### Mr Robinson's views

12. Mr Robinson summarised his conclusions as follows:

*"8. Accordingly, having regard particularly to:*

- (a) the terms of the Family Request Letter...;*
- (b) the express conditions on which the Trustee's decision is subject, in particular, the Trustee's satisfaction regarding the provisions made for the descendants of [Z and Y];*
- (c) the advice received by the Trustee as to the absence of Swiss tax consequences to the Trustee arising from the distributions to [Z and Y]..;*
- (d) the advice received by the Trustee providing a broad overview of the tax consequences of the various distributions to [Z and Y] and the various philanthropic entities;*
- (e) the unanimous support for the proposals among the current adult beneficiaries of the [Cayman Trusts and the related trusts], with particular emphasis on the views of the grandchildren who are members of the same generation as the current minor beneficiaries;*
- (f) the level of the benefits which have been indirectly conferred on the beneficiaries, including (indirectly) the current minor beneficiaries, during the lifetimes of [Z and Y] from their personal assets, leading to these beneficiaries all enjoying an enviable lifestyle both in material terms and in terms of their heightened sense of psychological wellbeing and sense of purpose by virtue of their current and intended ability to participate in the administration and management of the philanthropic entities;*
- (g) the provisions (in absolute terms) intended to be made for the benefit of the descendants of [Z and Y] based on the proposals set out in [a confidential*



*document prepared by the protector], which the current trustee's representatives (as well as the representative of the minor and unborn beneficiaries) have seen, and to which the current and every future trustee is expected to have regard in their administration of the trusts;*

- (h). *the terms of the proposed Reserve Trusts;*
- (i). *the fact that this court in 2014 considered and gave its blessing to the Trustee's decision to make a significant distribution from the D Trust to one of the family's philanthropic entities, to further some of the same objectives which underlie the trustee's decision now under consideration;*
- (j). *the fact that the Jersey court in 2020 gave its blessing to the trustee of the D Trust to make a distribution of 50 per cent of the assets of that trust to one of the family's philanthropic entities, to further some of the same objectives which underlie the Trustee's decision now under consideration; and*
- (k). *the fact that the Jersey Court has already given its blessing to the distribution from the D Trust which is an essential element of the proposed reorganisation of the trust structure of which the Trustee's current decision forms a part*

*the representative of the minor and unborn beneficiaries of the[ Cayman Trusts] is of the view that the Trustee's decision is of benefit to the minor and unborn beneficiaries and should be blessed by the court.”*

### **The decision of the Jersey court**

13. Ms Reynolds and Mr Robinson drew my attention to the judgment dated 2 December 2022 of Sir Michael Birt in the Jersey Royal Court dealing with the application made by the Trustee in connection with the D Proposed Distribution, a copy of which was provided to me shortly before the hearing. Sir Michael, whose decisions are always to be given great weight, concluded that he was satisfied that the Trustee had made an entirely reasonable decision and accordingly gave it the court's blessing. I must, of course, form my own view on the Trustee's application but find it reassuring to see that Sir Michael has reached a similar conclusion to my own.

### **The Law**

14. The Trustee applies in the OS for relief pursuant to the Court's inherent jurisdiction and section 48 of the Trusts Act (read with GCR O.85). The Court's common law and statutory jurisdictions have been described as supervisory.
15. The Court's inherent jurisdiction was, as is well known, explained in *Public Trustee v Cooper* [2001] WTLR 901 (Hart J). That case and its reasoning has been applied in this jurisdiction. In particular, see *AA v BB* (unreported, 14 February 2020, Smellie CJ) (*Re AA*), *In the Matter of A Trust* [2019(1) CILR 130] (Kawaley J) and recently *Standard Chartered Trust (Singapore)*

*Limited as trustee of the Emerging Markets Diversified Trust* (unreported, 18 May 2022, Doyle J) (*Standard Chartered*).

16. Under section 48 of the Trusts Act (2021 Revision) any trustee shall be at liberty to apply to the Court for an opinion, advice or direction on any question respecting the management or administration of the trust money and such application should be served upon, or the hearing attended by, all persons interested in such application or such of them as the Court shall think expedient. The trustee acting upon the opinion, advice or direction given by the Court shall be deemed so far as regards that person's own responsibility, to have discharged that person's duty as such trustee in the subject matter of the application (subject to the fraud proviso in section 48).
17. The approach to be taken by the Court to applications by trustees for the sanction of momentous decisions was clearly and authoritatively summarised by Smellie CJ in AA as follows:

"4. .... *It was common ground that on an application of this kind, in what is described as a "category 2" Public Trustee v Cooper application (meaning that the trustee is not surrendering its discretion to the Court but seeks the sanction of the Court for a "particularly momentous" decision), the questions for the Court will normally be as follows:*

- (1). *Does the trustee have power to enter into the proposed transactions?*
- (2). *Is the Court satisfied that the trustee has genuinely formed the view that the proposed transactions are in the interests of the trust and its beneficiaries?*
- (3). *Is the Court satisfied that this is a view that a reasonable trustee could properly have arrived at?*
- (4). *Has the trustee any conflict of interest, and if so, does the Court consider that the conflict prevents it from approving the trustee's decision?*

.....

6. *There was also no issue that in considering criterion (3), the Court's function is to apply what is referred to as the 'rationality standard', described as follows in Lewin on Trusts (19th ed.) at section 27-079 – 27-080:*

*"The court's function where there is no surrender of discretion is a limited one. It is concerned to see that the proposed exercise of the trustee's powers is lawful and within the power and that it does not infringe the trustees' duty to act as ordinary, reasonable and prudent trustees might act, ignoring irrelevant, improper or irrational factors; but it requires only to be satisfied that the trustees can properly form the view that the proposed transaction is for the benefit of beneficiaries or the trust estates, that the proposed exercise of their powers is untainted by collateral purpose such as might amount to a fraud on the power. In other words, once it appears that the proposed exercise is within the terms of the power, the court is concerned with the limits of*

*rationality and honesty; it does not withhold approval merely because it would not itself have exercised the power in the way proposed.*

*The court, however, acts with caution, because the result of giving approval is that the beneficiaries will be unable thereafter to complain that the exercise is a breach of trust or even to set it aside as flawed; they are unlikely to have the same advantages of cross-examination or disclosure of the trustees' deliberations as they would have in such proceedings. If the Court is left in doubt on the evidence as to the propriety of the trustees' proposal it will without its approval (though doing so will not be the same things as prohibiting the exercise proposed)."*

18. In *In the Matter of A Trust* the question was whether a proposed distribution plan was one which a reasonable trustee might decide to implement. Kawaley J (at [3]) commented that those opposing the plan “*assumed a heavy burden in seeking to persuade the court that the final distribution proposal was in whole or in part an irrational one.*” Kawaley J confirmed that the critical legal question is in effect whether the proposed decision was one which a reasonable body of trustees properly instructed could properly have arrived at. But the Court is not a rubber stamp and will not approve the trustee’s decision without a proper evidential basis for doing so. He also noted the importance of trustees who seek the blessing of the Court making full and frank disclosure to the Court (at [9]) and that the exercise of the trustee's discretion be untainted by any collateral purpose (at [10]).
19. The current edition of *Lewin on Trusts* (Twentieth Edition, 2020), which was cited to me by the Trustee, notes (at [39-095]) that the third question in Smellie CJ’s list (is the opinion of the trustee one which a reasonable body of trustees correctly instructed as to the meaning of the relevant provisions in the trust instrument have properly arrived at) involves two aspects. First process: has the trustee properly taken into account relevant matters and not taken into account irrelevant matters (was a proper decision making process followed)? Second, outcome: is the decision one which a rational trustee could have come to?
20. The authorities also make it clear that the Court acts with caution because the result of granting the application is that the beneficiaries will be unable thereafter to complain that the exercise of the trustee’s powers is a breach of trust or to set it aside as flawed. Those challenging the Trustee’s decision will probably not have the benefit of cross-examination or disclosure as they would have in adversarial proceedings alleging such a breach or flaw. If the Court is left in any doubt on the evidence as to the propriety of the trustee’s decision and exercise of its powers it will withhold its approval although doing so will not constitute a prohibition on the trustee exercising its powers as proposed (see *Lewin* at [39-096]).

21. Mr Robinson, in his written submissions, cited the following passage from the judgment (at [11]) of the Guernsey Court of Appeal in *Re F* (unreported, 10 September 2013):

*"In the second type of application, however, the court is not exercising a discretion. What it is doing is in effect making a declaration that the trustee [‘s] proposed exercise of the power is lawful; in other words, that the proposed exercise is within the proper ambit of the power, that the trustees are acting honestly, and that in reaching their decision the trustees have taken into account all relevant matters, have taken into account no irrelevant matters, and have not reached a decision that no reasonable body of trustees could have reached".*

22. As I explained during the hearing, this seems to me to be a helpful and accurate summary of the relief that is being sought and granted on a category 2 “*blessing*” application. The proposition as so formulated seems to me to be good law.

## Decision and discussion

### *The four issues*

23. It seems to me that it is convenient to consider each of Smellie CJ’s four questions and how they are to be answered in this case by reference to the evidence adduced. I would note, however, in doing so that the exercise to be undertaken by the Court is not a mechanical one. It involves a broad review of the basis for the Trustee’s proposed exercise of its powers in the circumstances of the case.

### *Does the Trustee have power to enter into the proposed transactions?*

24. Ms Reynolds set out in the Trustee’s written submissions the various terms of and powers set out in the trust instruments for the Cayman Trusts upon which the Trustee relied and there was no dispute, and I am satisfied, that the Trustee has the requisite powers to give effect to and implement the Proposals. In some cases, the exercise of such powers requires the consent of the protector, however the protector has confirmed its support for and consent to the implementation of the Proposals (albeit that such consent will need in due course to be formalised in a suitable document).

### *Is the Court satisfied that the Trustee has genuinely formed the view that implementing the Proposals is and will be in the interests of each of the relevant Cayman Trusts and their respective beneficiaries?*

25. The evidence clearly establishes, as I have explained, that the Trustee has conducted a thorough, detailed and careful review of the Proposals, has consulted all relevant parties, has taken into

account the responses of those parties, has taken comprehensive legal, accounting and tax advice and formed its own view on the effect and merits of the Proposals. The Trustee has also taken a clear decision to implement the Proposals as is documented in the Resolutions.

*Is the Court satisfied that this is a view that a reasonable trustee could properly have arrived at?*

26. As noted above, in answering the third question the Court has to consider both process and outcome.
27. As regards process, I am satisfied on the evidence that the Trustee has conducted a proper and thorough process for considering and deciding whether to accede to the requests made in the Family Request Letter and give effect to the Proposals. R1 makes it clear that all relevant parties have been consulted and their views taken into account and that the Trustee has properly taken into account relevant matters and not taken into account irrelevant matters.
28. As regards outcome, the issue is, as I noted, whether the Trustee's decision to implement the Proposals (subject to the conditions set out in the Resolutions) is one which a rational trustee could have come to. Has the Trustee arrived at an objectively rational determination (see Smellie CJ in *Re AA* at [34])? In my view, the answer is clearly yes. The evidence demonstrates that the Trustee has carefully considered and weighed a wide range of relevant factors which support its decision. All of the factors referred to in R1 and relied on by the Trustee seem to me to be relevant and material. The Trustee's decision is well-reasoned and supported by cogent, well-documented evidence. It has arrived, in my view, at an objectively rational determination. Implementing and giving effect to the Proposals will involve the proper exercise of the Trustee's powers.
29. The Proposals, as I have explained, involve an immediate and unconditional substantial reduction in the value of the trust fund in the A Trust. This gives rise to two main questions. First, is the balance of the trust funds likely to be sufficient for the needs of members of the class of beneficiaries? Secondly, what are the funds paid or assets transferred to Z to be used for. The Trustee has carefully considered, assessed and checked with the ascertained beneficiaries what the needs of the beneficiaries over a relevant period are likely to be and it appears that there is no immediate, short or medium term need for the beneficiaries to access the assets of the A Trust. The Trustee has satisfied itself that the balance of the trust funds in the A Trust after the A Proposed Distribution will be very substantial (in absolute terms) and in light of its assessment of the likely needs of the beneficiaries more than sufficient for the foreseeable future. As regards the use to which the funds paid or assets transferred to Z will be put, Z has confirmed a "*firm intention*" to settle the funds on the Reserve Trusts and therefore the funds and assets will

ultimately be available for the benefit of the family and those who are (of course only contingent) beneficiaries of the A Trust.

30. The Proposals will also subsequently result in the balance of the trust funds in the A Trust, and the balance of the funds in the B Trust and the C Trust, being transferred to H Limited and I Limited and available to be applied to the charitable and philanthropic purposes in accordance with the corporate objects and constitutions of those companies (the Trustee has been given a confirmation that there is no intention to amend the corporate objects or constitutions). But this can only happen in the short to medium term, if the Trustee is satisfied that suitable provision has been made for the beneficiaries and there has been no material change in their needs and, in the case of the A Trust, on the first quarter end date following the one year anniversary of the death of the survivor of Z and Y. In the meantime and until these conditions are satisfied, the substantial balance of the trust fund in the A Trust and the full amount of the assets in the B Trust and C Trust are available to be used by the Trustee for the benefit of the beneficiaries. During the hearing, Ms Reynolds confirmed that the Trustee accepted that in deciding whether the conditions set out in the Resolutions were satisfied, the Trustee was subject to the same fiduciary and other duties as applied to the exercise of any trust power and that its decision making as to what was “*appropriate provision*” was subject to the rationality standard, and that the Trustee’s powers would remain unfettered and unaffected by the grant to H Limited and I Limited of prospective rights to the balance of the trust funds. As I explained during the hearing, it could be said that H Limited and I Limited had rights subject to satisfaction of a condition subsequent which absent a clear statement to the contrary might arguably affect or be said to qualify the exercise by the Trustee of its powers in the period after the A Proposed Distribution. Ms Reynolds, while of course not giving evidence, confirmed that the intention of the Proposals was that the Trustee would be able to exercise all its powers for the benefit of the full class of beneficiaries without regard to or being affected by H Limited’s and I Limited’s prospective entitlement (in the case of the A Trust, until such time that the A Proposed Amendment is implemented and subject to the conditions referred to above in implementing the A Proposed Amendment).
31. If adequate provision is never made or the beneficiaries needs materially change, the A Trust, the B Trust and the C Trust will retain substantial funds which should be sufficient for the needs of the beneficiaries.
32. Of course, the intention is that the Reserve Trusts will be fully funded by Z and Y and the Trustee has confirmed that they will treat the adequate provision condition as having been satisfied if Z and Y settle on the Reserve Trusts the assets they receive from the A Proposed Distribution and the D Proposed Distribution (or assets deriving from those assets). The Trustee has carefully

considered the funds available to the full class of beneficiaries of the Cayman Trusts from the Reserve Trusts and the other trusts which have been or are likely to be established and funded, including the Testamentary Trusts, and satisfied itself that based on actuarial and other calculations and assessments, and the likely needs of the beneficiaries, the funds will be more than sufficient (and certainly that the beneficiaries will not be prejudiced or not benefit from or receive an inadequate benefit from the implementation of the Proposals. The Trustee has also reviewed, as has Mr Robinson, the terms of the instruments creating the Reserve Trusts and is satisfied that members of the family (including remoter descendants) who are currently within the class of beneficiaries in respect of the A Trust, the B Trust and the C Trust will be beneficiaries with similar rights under the Reserve Trusts and that the terms of the Reserve Trusts are in all material respects satisfactory.

33. The Trustee has also considered and taken into account the non-financial benefits to be derived by the members of the class of beneficiaries (including the minor and unborn beneficiaries) from the promotion and support of the philanthropic and charitable causes undertaken by H Limited and I Limited which will result from implementing the Proposals. The Trustee noted that philanthropy has always been a key element and substantial purpose of the Cayman Trusts and that Z and Y but importantly many of the younger family members and beneficiaries have been actively involved in the management of H Limited and I Limited. Indeed, they are strongly encouraged to be actively involved and in some cases to have a career as part of the management of the charitable operations. The Proposals will ensure that a substantial part of the family's wealth will be devoted to charity, as always envisaged, and that current and future members of the family will be able to participate.
34. Ms Reynolds and Mr Robinson submitted that the Trustee was entitled to take into account the benefit in a broad sense to be derived by the different types of beneficiary under or as a result of the implementation of the Proposals. I agree.
35. Mr Robinson submitted that in the context of a blessing application, such as this, when the Court was considering the exercise of a trustees powers and the extent to which it was reasonable to conclude that affected beneficiaries would receive a benefit from (or would benefit by) the trustee's proposed action, "*benefit*" was to be understood widely and was not confined to financial benefit. Mr Robinson referred me to a number of authorities in Jersey and New Zealand and relied in particular on the following passage in the judgment of Deputy Bailiff Birt (as he then was) in *Re Esteem Settlement* [2001] JLR 7 (underlining added):

*“[48] Taking account of the authorities referred to above ... we agree that the word ‘benefit’ is to be construed widely and goes beyond mere financial benefit. It encompasses all sorts of ways in which a beneficiary’s position can be made better. Nevertheless, it is not open-ended. There is an objective test, namely, that the way in which the trustee proposes to deal with the capital can fairly be regarded as being for the benefit of the beneficiary. There is also a subjective test, in that the trustee must genuinely believe that the appointment of capital will in fact be for the benefit of the beneficiary. A court is of course bound by exactly the same principles when, as here, the trustee has surrendered its discretion to the court. Most importantly, the question of benefit is to be considered in a realistic and commonsense manner rather than in a theoretical or academic way.”*

36. Earlier in his judgment (at[44]) Bailiff Birt had referred to a Jersey decision (*Re N*) relating to an application to vary the terms of a settlement pursuant to a statutory jurisdiction which gave the court the power to approve a variation which appeared to be for the benefit of the beneficiaries. There the court had held that “benefit” included educational and social benefit.
37. In *Re Esteem* Sheikh Fahad owed GT a substantial sum. He had established two discretionary trusts in Jersey (with various other individuals as objects of the discretionary trusts and therefore possible beneficiaries). The question for the court was whether, the trustee of the trusts having surrendered its discretion, the court to order a distribution of all or most of the trust funds for the benefit of Sheikh Fahad by paying the sums to GT in reduction of the debt. Deputy Bailiff Birt declined to permit any such distribution to be made. He noted that the court was required to put itself in the position of the trustee and consider whether the trustee’s power of advancement should be exercised. It was accepted by all parties that the distribution of capital proposed could only lawfully be made if it was made for the benefit of Sheikh Fahad.
38. The question arising in *Re Esteem* was therefore different from and narrower than the issues that arise in the present case. The Proposals involve a number of linked elements and the consideration of a wide range of factors. Nonetheless, I accept that the Trustee was entitled to take into account and have regard to the benefits to be derived by Z and Y by consolidating and enhancing through further distributions of capital their commitment to charitable and philanthropic causes, which was clearly one of the purposes of the Cayman Trusts, and by all the other adult beneficiaries who also clearly regarded it as a goal of theirs and benefit to them to be able actively to participate in the work and management of H Limited, I Limited and their related charitable causes. It was also clear that the charitable work done by the family’s philanthropic entities was substantial and would continue to be so.
39. In this connection, Mr Robinson submitted that when considering the position of minor and unborn beneficiaries the Court should ask itself whether the person concerned would have given



his/her approval if that person were alive, of full capacity and properly advised. (Mr Robinson cited in support of these propositions the New Zealand case of *McKnight v Craig* HC Dunedin [2010] NZLR 860 (HC) at [8]). This proposition seems to me to be right and to be supported by authority in this jurisdiction. As the headnote to the report of Smellie J's judgment in *Barclays Private Bank and Trust (Cayman) Limited v C, K and Attorney General* [2014 (1) CILR 144 states, which was a related case involving a distribution to a charitable organisation (O Limited) where the representative of the minor and unborn beneficiaries had not consented to the proposed distribution from the trust: "*One of the purposes of the [relevant trust] was to fulfil what the adult beneficiaries regarded as their moral obligation to make charitable donations. The disposition to O Limited would be a significant step to discharging that obligation and so would benefit the beneficiaries. There was no reason to think that the minor or unborn beneficiaries would take a different view of this. Further, the remaining trust assets (as well as the assets contained in other trusts) were more than sufficient to meet the adult, minor and future beneficiaries' financial needs...*" In my view the same reasoning applies here, and indeed is *a fortiori*.

40. The adult beneficiaries consented to the Proposals, as did Mr Robinson as the representative of the minor and unborn beneficiaries. But the Trustee has also taken into account the interests of those beneficiaries and satisfied itself that they will also benefit from the Proposals. In my view, it is clear that the Trustee has given adequate deliberation to the circumstances and interests of the entire class of beneficiaries.
41. The Trustee also took into account the benefits for Z and Y and their family flowing from the reorganisation and the streamlining of their family's trusts, from having the family trusts separated from the charitable trusts and organisations and from having Z and Y as the settlors.

*Has the trustee any conflict of interest, and if so, does the Court consider that the conflict prevents it from approving the Trustee's decision?*

42. None of the parties drew to the Court's attention, nor was there any evidence of, any conflict of interest affecting the Trustee's decision to implement the Proposals.

#### *Conclusion*

43. For all these reasons and in all the circumstances of this case, I am satisfied that the Trustee's application is brought properly within the supervisory jurisdiction of the Court and, acting with the caution with the authorities exhort the Court to adopt, am satisfied that the Court should grant the Trustee's application.

44. In [17] of his 2 December judgment Sir Michael Birt said this:

*“We cannot leave this judgment without mentioning two other matters briefly. The first is to commend [Z and Y] for the approach to philanthropy which they are encouraging in their children and grandchildren. As each beneficiary attains the age of 25, he or she is invited to join the board of trustees of the [charitable foundation] with a view to participating in its philanthropic activities. Furthermore, it is the view of [Z and Y] that it can be damaging for individuals to have access to too much wealth, particularly at an early stage and distributions have therefore been extremely limited. The assets in the Family Trusts are intended to provide for future generations.”*

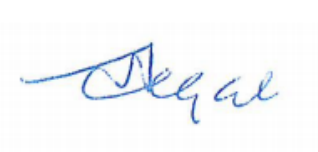
45. I would endorse that commendation. The commitment of Z and Y and their family, and their dedication of a substantial proportion of their family wealth, to philanthropic causes, and their encouragement of future generations to play their part in their project, is hugely impressive. It is inspiring to see such concern for the wellbeing of others and for good causes.

#### **The form of order**

46. The Trustee filed a draft order which invited the Court to order that the Trustee’s various decisions to implement the Proposals “*be approved.*”
47. At the hearing, I noted that this form of order did not make it clear that this was a category 2 case rather than one where the Court was exercising its own discretion following a surrender by trustees of their discretion and referred to the concern expressed by Hart J in *Public Trustee v Cooper* at page 922A at the reference in the evidence filed by the Public Trust Office in that case to the application being for “*the approval of the Court.*” Furthermore, it seemed to me that the order should focus on and refer to the proposed (prospective) exercise of the Trustee’s powers (rather than the decision it had taken) since this fitted with the structure and formulation of section 48 of the Trusts Act, which addressed the prospective exercise of a trustee’s powers such that, if they were exercised in accordance with the Court’s order, opinion and direction they would be treated as having been properly exercised (so that the Trustee will “*be deemed, so far as regards [its] own responsibility, to have discharged [its] duty as ... trustee .. in the subject matter of the [OS].*”

48. It seemed to me, therefore, and following the approach set out in the Guernsey Court of Appeal in *Re F* (above), that a preferable form of order (for each of the steps which the Trustee needs to take to implement the Proposals) is as follows:

*“If the Trustee implements and gives effect to [the A Proposed Distribution], it shall be acting and exercising its powers lawfully and properly and shall be deemed to have discharged its duty as trustee in relation and with respect to [the A Proposed Distribution].”*



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**The Hon. Mr Justice Segal**  
**Judge of the Grand Court, Cayman Islands**  
**20 December 2022**