IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2025] CIGC (FSD) 59

FSD 270 OF 2023 (IKJ)

IN THE MATTER OF THE G TRUST

AND IN THE MATTER OF SECTION 48 OF THE TRUSTS ACT (2021 REVISION)

AND ORDER 85 OF THE GRAND COURT RULES (2023 REVISION)

Before:	The Hon. Justice Kawaley
Appearances:	Ms Rachael Reynolds KC, Ms Deborah Barker Roye and Mr Chris Vincent of Ogier for the Trustee and ICTI (the "Trustees")
	Mr Robert Lindley and Ms Clare Bradin of Conyers, for the Enforcer
	Ms Clare Stanley KC of counsel with Ms Bernadette Carey and Ms Katie Turney of Carey Olsen for the A Beneficiaries
	Ms Elspeth Talbot Rice KC of counsel with Mr Nicholas Fox and Mr Charles Henderson of Mourant Ozannes (Cayman) LLP for the B Beneficiaries
Heard:	On the papers
Draft Ruling Circulated:	17 June 2025
Ruling Delivered:	24 June 2025

Beddoe application-costs of costs hearing-effect of without prejudice as to costs correspondence-STAR Trust-relevance of views of Enforcer- Trusts Act (2021 Revision), section Grand Court Rules (2023 Revision), Order 22 rule 14, Order 62 rules 4 (2), 4 (7) (h), (10)

RULING ON COSTS OF THE COSTS HEARING

Introductory

1. With the cumulative costs of the two day costs hearing in relation to the *Beddoe* Proceedings breaking the US$1 million barrier, it was mercifully agreed that the costs of that hearing should be determined on paper without an oral hearing. In my 24 December 2024 Judgment (the "Costs Judgment"), I concluded:

> "*67. In summary, I find that the B Beneficiaries' costs of the reserved 2024 costs Orders should be disallowed because they are all attributable to their unreasonable conduct in making the Second HK Receivership Application. My provisional view is that their costs of the present costs application should also be disallowed and that all other parties' costs should be paid out of the disputed assets on the usual basis.*"

2. The Costs Order filed on 18 March 2025, so far as is material, provided as follows:

> "*11. The Trustees' costs of the Costs Hearing shall be paid from funds deriving from the Claimed Companies on the indemnity basis.*
>
> *12. Save as aforesaid, the costs of the Costs Hearing shall be determined by the Court on paper and without a hearing. Written submissions from any parties in relation to the costs of the Costs Hearing shall be filed and served by 4pm on 2 April 2025.*"

3. The Trustees (whose costs have already been determined), the Enforcer and the A Beneficiaries invite me to confirm my provisional views. The B Beneficiaries contend that, having regard to "without prejudice save as to costs" ("WPSATC") correspondence, they achieved a better result than their pre-hearing offers which ought fairly to be reflected in the costs award.

Governing principles

4. The Grand Court Rules (2023 Revision) ("GCR) provides:

"***Written offers 'without prejudice save as to costs' (O.22, r.14) 14.***

(1) A party to proceedings may at any time make a written offer to any other party to those proceedings which is expressed to be 'without prejudice save as to costs' and which relates to any issue in the proceedings.

(2) Where an offer is made under paragraph (1), the fact that such an offer has been made shall not be communicated to the Court until the question of costs falls to be decided and the Court shall take into account any offer which has been brought to its attention when making an order for costs.

Provided that the Court shall not take such offer into account if, at the time it is made, the party making it could have protected that party's position as to costs by means of a payment into Court under Order 22."

5. GCR Order 22 rule 14 obliges the Court in mandatory terms to "*take such offer into account*" when making a costs order without specifying what account should be taken of it. The general principles under GCR Order 62 rule 4 therefore apply, notably the overriding objective in rule 4 (2). GCR Order 62 rule 10 provides:

"*The Court in exercising its discretion to make an order for costs shall take into account –*

...

(d) any written offer made under O.22, r.14."

6. The Trustees' economical submissions imply that the relevant question is whether an offer was made which represented a better outcome for the parties than they achieved from the Costs Ruling, but did not address the principles governing the application of GCR Order 22 rule 14. The Enforcer merely acknowledged that in his 24 June 2024 response to the B Beneficiaries' 18 June 2024 WPSATC offer, the reasonableness of that offer had been accepted. Ms Stanley KC on behalf of the A Beneficiaries defined the principles by reference to the question of "*whether it was reasonable for such offers to have been rejected in the circumstances of the particular case*". The main authorities aptly relied upon for the governing principles were *Butcher -v- Wolfe and Wolfe* [1999] 1 FLR 334 at page 340, and my own judgments in *eHi Car Services Limited* FSD 115 of 2019 (RPJ), Judgment dated 31 March 2020 (unreported) at

paragraph 29 and *Uzzell v Wong* FSD 86/2020 (IKJ). Judgment dated 14 September 2020 (unreported) at paragraph 13.

7. The critical question on how the Court approaches GCR Order 22 rule 14 is essentially common ground. Mrs Talbot Rice KC submitted:

> "*37. …this Court's policy is firmly in favour of encouraging parties reasonably to settle their disputes by negotiation, and to avoid troubling the Court with unnecessary disputes where possible. In this connection, the means by which the Court enforces that policy – to ensure that parties do behave reasonably – is to mark unreasonable conduct in the face of reasonable offers to settle by making adverse costs orders against the parties who have unreasonably refused reasonable offers of settlement.*"

8. The central issue is whether an offer was reasonably refused, because when costs are being awarded on the usual adversarial results-focussed basis, the overriding objective of GCR Order 62 is that "*a successful party to any proceeding should recover from the opposing party the reasonable costs incurred by* [the] *successful party in conducting that proceeding in an economical, expeditious and proper manner*" (GCR Order 62 rule 4 (2)). Conducting proceedings in an "*economical, expeditious and proper manner*" implicitly requires a litigant to accept "reasonable" settlement offers. What is reasonable, however, is obviously a very context-sensitive inquiry.

The B Beneficiaries' WPSATC offers

9. The Costs Order dated 24 December 2024 and filed on 18 March 2025 provided:

(a) the B Beneficiaries should pay all parties' costs of the First Anti-Suit Injunction on the indemnity basis;

(b) the B Beneficiaries' application for their costs to be paid out of the assets of the Claimed Companies was refused;

(c) the Enforcer's and the A Beneficiaries' application for the B Beneficiaries to pay all their costs from 28 November 2024 and the costs of the Remaining Applications was refused;

(d) no order was made as to the B Beneficiaries' costs of the Remaining Applications.

10. There were in broad terms two material Mourant offers on behalf of the B Beneficiaries, the second of which was pivotal. Firstly, on 20 March 2024:

> "*If agreement on costs reserved cannot be reached, our clients are prepared to agree to bear their own Cayman costs since (and including) 14 December 2023 and not to oppose orders that all other parties have their costs paid out of Trust assets for that same time period if that means that the costs of the forthcoming hearing can be saved.*"

11. This offer fell clearly short of the Costs Order which was made in that the B Beneficiaries agreed during the costs hearing to pay all other parties' costs of the First Anti-Suit Injunction on the indemnity basis. Carey Olsen in a 3 May 2024 letter on behalf of the A Beneficiaries made the following proposal:

> "*10. In light of the significant costs already incurred in this jurisdiction alone, the A Beneficiaries can see that it would be prudent for the question of liability for the Cayman Costs to be resolved without the need for further lengthy submissions and hearings in Cayman. Our clients therefore propose the following way of dealing with the costs, and invite all parties to confirm their agreement:*
>
> *(a) The B Beneficiaries to personally meet their own costs incurred in respect of the HK Receivership Application both here and in Hong Kong.*
>
> *(b) The B Beneficiaries to personally meet the costs incurred by all opposing Hong Kong counsel in respect of the HK Receivership Application in full;*
>
> *(c) The B Beneficiaries to personally pay 90% of the legal fees incurred by the Trustee and the Enforcer, totalling US$911,443.50, directly to the Trustee and the Enforcer.*
>
> *(d) The B Beneficiaries to personally pay 100% of the legal fees incurred by the A Beneficiaries ($371,610.00) directly to this firm.*

(e) The balance of the legal fees incurred by the Trustee and the Enforcer (US$101,271.50) and the Fiduciary Fees incurred by the Trustee and the Enforcer (US$50,875.00) totalling US$152,146.50 are paid from the trust fund of the Augustus Trust."

12. Mourant responded in a 27 May 2024 letter with a second proposal as follows:

"*7. In relation to the Cayman Costs, our clients offer to bear **US$361,308** of the other parties' costs, to be deduced as a set-off against any distribution agreed to be made to our clients following a successful mediated global settlement.*

8. This offer is calculated, using the analysis that the Cayman costs fell within the following three phases of the Cayman litigation:

a. Stage One: The costs incurred as a result of the first Hong Kong Receivership Application being filed and the order obtained by the Trustee on 14 December 2023.

b. Stage Two: The costs incurred as a result of the second Hong Kong Receivership Application being filed and arising further to the Trustee's summons dated 22 December 2023 and the 17 January Orders granted by the Cayman Court.

c. Stage Three: The costs arising from the Second Hong Kong Receivership Application, the B Beneficiaries' Summons dated 25 January 2024, the interim stay orders of 27 and 29 January, and incurred until 23 March 2024 when the Consent Order and Deed of Undertaking were agreed between the parties." [Emphasis added]

13. The letter went to explain that the amount offered was based on the premise that:

(a) there was a 90% chance of the B Beneficiaries being required to pay the Enforcer's and A Beneficiaries' Stage 1 costs on the indemnity basis;

(b) there was a 50% chance of the B Beneficiaries being required to pay Stage 2 costs; and

(c) no offer was made in respect of Stage 3 costs.

14. Conyers' 28 May 2024 letter on behalf of the Enforcer stated:

> "*…While we wish to avoid the costs of another contentious and costly application, the Enforcer does not consider the Counterproposal provides a sufficient basis to dispose of the Consent Order's long-stop date of 31 May 2024 for the filing of costs submissions…*"

15. Carey Olsen on 29 May 2024 responded as follows:

> "*2. In any event, and as you are aware, the Cayman Costs (that is, the costs incurred by the Trustee, the Enforcer, and our clients since 28 November 2023 through to 23 March 2024) have been estimated to amount to the astonishing figure of US$1,435,199.98. Your clients' offer to contribute just US$361,308.00 towards the Cayman Costs - leaving a balance of over US$1 million to be met from the Trust Fund – is disappointing, and quite obviously unacceptable. The offer, and the conditions to which it is subject, are rejected by our clients…*
>
> *6. We acknowledge the further letter received in from the Enforcer overnight and in particular the Enforcer's views as to what is could be a reasonable offer to avoid a hearing on costs. We have taken instructions and in a final attempt to resolve this matter without the assistance of the Court next month and without further negotiations at all, we propose the following revised offer of settlement (noting that in any event your clients must bear their own costs in full):*
>
> *A. The B Beneficiaries to personally bear 80% of the Cayman Costs, being the sum of US$1,148,159.98, which should be applied first to reimburse the A Beneficiaries' legal fees in full within 14 days of settlement, with the balance divided between the Enforcer and the Trustee in payment of their legal fees to be paid at a time agreed with the Enforcer and the Trustee.*
>
> *B. The balance of the Cayman Costs, which is the sum of $287,040.00, to be paid from the Trust.*"

16. By a 31 May 2024 letter, Mourant made the following "final offer" which improved the second offer in purely quantum terms:

"*2. In order to remove the apparent roadblock to the discussions all parties agreed should take place to see whether a global settlement of all disputes could be found, our clients are willing to make one final, revised offer in an endeavour to save the costs of a contested hearing over costs. That revised offer is (a) to bear their own costs and (b) to bear US$1m of the other parties' Cayman Costs. This is a final offer. It also remains subject to the following conditions (identified in paragraphs 22(a) and 22(c) of section E of our 27 May 2024 letter):*

a. that the US$1m to be paid in respect of other parties' Cayman costs is not paid immediately (or at all if there is no global settlement), but only as a set-off against any agreed distribution to be made to our clients on a global settlement of all disputes; and

b. that the Court's consideration of the question of all Cayman costs be stayed…

3. This offer has not only involved significant movement from our clients (amounting, as it does to 85.3% ($1.45m) of all parties' costs ($1.7m)), it is also in excess of anything your clients are likely to achieve if the costs are fought and determined by the Court. Our clients do not believe that they will be ordered to pay all other parties' costs on the standard basis, let alone on the indemnity basis, and furthermore believe that even if such an order was made, your clients will not achieve the amount our clients are offering on a taxation of their costs." [Emphasis added]

17. Condition a. was clearly a significant qualification to the improved quantum element of the B Beneficiaries' second offer. It provoked the following response from Carey Olsen in a letter dated 4 June 2024:

"*2. Your clients' offer to contribute US$1,000,000 to the outstanding legal fees incurred by the Trustee, the Enforcer, and the A Beneficiaries of US$1,435,199.98 is, on its face at least, a welcome offer. We are instructed that our clients consider a payment of US$1,000,000 by the B Beneficiaries would be sufficient to dispense with the need for a contested hearing in respect of the Cayman Costs before the Court and to satisfactorily resolve this aspect of the*

ongoing litigation between the parties. This is a positive step forward for all involved.

3. *As you know, our clients are concerned to ensure that the parties agree to a full and final resolution of the question of liability for the Cayman Costs. However, your letter states that liability for the US$1,000,000 offered by the B Beneficiaries is entirely contingent on the B Beneficiaries receiving a distribution from the Trust following 'a global settlement'. As you might anticipate, a promise to settle the Cayman Costs that evaporates completely if the B Beneficiaries do not achieve the result they desire in a mediation and defaults to take us back in time to resume these very same negotiations with a clean slate, or worse, to repeat our preparations for a contested costs hearing to argue the point, is no good offer and will ultimately only increase the costs incurred by us all.*" [Emphasis added]

18. In a 17 June 2024 letter, Mourant clarified that their clients' offer was joint and several and could be accepted by each or all the parties. Conyers on behalf of the Enforcer in a letter dated 18 June 2024 expressed sympathy with the A Beneficiaries' position, but nonetheless stated as follows:

"*However, in the Enforcer's view, the B Beneficiaries' offer towards Cayman Costs as proposed on 31 May 2024 nonetheless remains a reasonable one if the parties are genuinely committed to proceed to mediation. Based on recent correspondence from Mourant and Carey Olsen, such commitment appears to be the case. The A and B Beneficiaries' agreement to proceed to mediation should be part of any agreement on Cayman Costs as proposed at sub-paragraphs 5.1(a) and 5.1(b) of the draft Deed of Settlement & Release as drafted by Carey Olsen…*

The offer, although conditional, lays down the marker in quantifying the B Beneficiaries' liability. It provides certainty in proceeding with mediation and in the unfortunate event of mediation failing, the parties would be able to recommence the process to determine Cayman Costs and, in our view, the liability of the B Beneficiaries would remain as it is. If the B Beneficiaries sought to present (or argue for) a lesser amount, we expect this would be unacceptable to the other parties, including the Enforcer…" [Emphasis added]

19. By a 19 June 2024 letter, Ogier on behalf of the Trustees opined that any costs settlement should involve all parties. On 20 June 2024, Carey Olsen confirmed that their objections to the conditional nature of the B Beneficiaries' offer remained unchanged.

20. Putting aside the conditionality of the offer, the result of the costs hearing achieved by the B Beneficiaries seems clearly to have been better than what they offered. The critical questions accordingly are:

    (a) whether the A Beneficiaries ought reasonably to have accepted the conditional offer in the interests of pursuing a global mediated settlement for the reasons articulated by the Enforcer; or

    (b) was it reasonable for the A Beneficiaries to decline to accept the conditional "final offer".

Findings: should account be taken of the B Beneficiaries' WPSATC offer?

21. The main dispute which was settled by the Costs Order was whether, as regards all costs of the Enforcer and the A Beneficiaries - other than those relating to the First Anti-Suit Injunction ("Anti-Suit 1") - should be paid by the B Beneficiaries as opposed to out of the assets of the Claimed Companies. That issue was resolved in favour of the B Beneficiaries whose own costs were disallowed.

22. The B Beneficiaries' WPSATC offer made before the costs of the costs hearing were incurred[1] was in essence that they would pay a not insignificant portion of all other parties' costs (primarily allocated in respect of Anti-Suit 1 costs), but only on the condition that:

    (a) those costs were set-off against whatever sums became payable to the B Beneficiaries as a result of a proposed mediation to achieve a global settlement; and

    (b) no costs would be payable at all if the mediation did not result in a settlement.

23. In ordinary adversarial litigation where the parties are (or are presumed to be) litigating at their own expense, costs justice entitles the receiving party to be compensated as soon as possible.

[1] The A Beneficiaries properly pointed out this was factually incorrect in that some costs had in fact been incurred before the offer was made. This error has no material impact on the outcome of the present application.

This is why the Court is empowered to make interim payments on account of costs on a summary basis (GCR Order 62 rule 4 (7) (h)). If these standard principles apply, Ms Stanley KC is clearly correct to contend that the B Beneficiaries' conditional offer was not for Order 22 rule 14 purposes much of an offer at all. It only crystallized if the parties pursued a mediation which resulted in sums becoming payable to the B Beneficiaries against which the offered sum could be set-off. If that contingency did not occur, the offer would fall away.

24. Ordinarily, the approach to such offers is far more clearly and simply defined. In *Re eHi Car Services Limited*, FSD 115/2019 (IKJ), Judgment dated 31 March 2020 (unreported), I described this jurisdiction as follows:

> "*33. Under Cayman Islands law, the reasonableness of the refusal comes into play at the preliminary stage of deciding whether or not costs consequences should flow from refusing an offer that the paying party was subsequently able to 'beat'. And in making such an assessment, the starting point is that the receiving party is at risk of paying the paying party's costs after an offer has been made and reasonable time afforded to consider it. To 'give teeth' to GCR Order 22, rule 14, the Court should generally adopt a simple approach which leans heavily towards making it unreasonable to refuse an offer which is not bettered at trial. This approach should not ordinarily be complicated by an analysis of the legal arguments used to buttress a W/P offer, unless the commercial merits of the offer and the legal basis for it are inextricably intertwined.*"

25. Those observations acknowledge that a simple approach may not always be possible, but the overarching points being made are that:

(a) the effect of GCR Order 22 rule 14 should not be diluted or nullified by an overly technical approach; and

(b) this will generally require the Court to adopt a practical approach focussed on whether the offer was beaten or not.

26. The offer in this case was not a classically simple '*Calderbank*' offer in that it was conditional. In addition this litigation is not ordinary litigation where the parties are presumed to be litigating at their own expense. The presumption is that the beneficiaries' costs will be recovered out of the trust assets. As recorded in the Costs Judgment which formed the basis of the Costs Order:

> "*55. …While there is presumption that all participants in the present proceedings should have their costs payable out of the Fund, such presumption may be displaced having regard to a party's conduct and the character of the relevant proceedings. If unreasonable conduct results in a disallowance of costs, extremely unreasonable conduct will be required for making an adverse costs order. It is clear from Lewin, 20th Ed. (paragraph 48-041), that in a proceeding such as this, beneficiaries are normally entitled to their costs by analogy with the position of a trustee…*"

27. I also expressed the provisional view that the STAR Trust regime was relevant although, in effect, it was not material to the main costs hearing:

> "*60. Does the STAR Trust regime impose more onerous burdens upon beneficiaries whose interests are legally protected by an Enforcer to exercise restraint when invited to participate in a directions proceeding? I would answer affirmatively if required to resolve this question. However, Mrs Talbot Rice KC was right to submit the point does not properly arise in this case. Firstly, whether or not the disputed assets are validly held on the terms of the G Trust is in question. Secondly, the conduct in issue on the present application turns more on issues of legal probity than questions of proportionality.*"

28. The present costs of the costs hearing application, unlike the main costs hearing, turns almost entirely on questions of proportionality. Was it reasonable for the A Beneficiaries to reject an offer which might have either (a) at best, avoided the costs of the costs hearing altogether, or (b) at worst, postponed those costs being incurred for the 'greater good' of pursuing a global settlement? Moreover, this question arises in circumstances where the Enforcer expressly opined (in the course of the WPSATC correspondence) that he considered the offer to be reasonable because, in effect, the potential benefits of pursuing a global settlement outweighed the risk that a settlement might not be achieved, because the 'downside' risk merely involved a deferral of the costs hearing. In these circumstances, this Court cannot properly fail to have regard to the fact that:

(a) the Enforcer is only involved in these proceedings on the hypothesis that the G Trust, a STAR trust, is validly constituted;

(b) in the context of a partisan dispute between beneficiary factions in which the Trustees are obliged to adopt a position of neutrality, the Enforcer's non-partisan views of where the best interests of the beneficiaries lie potentially carry considerable weight; and

(c) absent wholly unreasonable conduct on their part, the A Beneficiaries were participating in the costs application in circumstances where they were likely not to have to directly fund their own costs in any event.

29. The Costs Judgment itself sheds light on the risk to trust assets which can result from beneficiary disputes and the legal policy reasons why the Enforcer's call for restraint cannot be simply brushed aside:

> "*1. The present Costs Ruling follows a costs hearing which occupied two full days, with enough intellectual horsepower at the Bar table to sustain a full trial on the merits…*
>
> *10. The battleground covers familiar terrain. A family business is the repository of the wider family's wealth. A prudent settlor, hoping to preserve that wealth and prevent its dissipation through profligacy or internecine struggles, has transferred ultimate control over the corporate structure to professional trustees. Here the Cayman trust vehicle of choice is a STAR trust where an Enforcer is legally empowered to enforce beneficiary rights…*"

30. Six months before that Judgment was delivered, on 18 June 2024, Conyers on behalf of the Enforcer wrote: "*in the Enforcer's view, the B Beneficiaries' offer towards Cayman Costs as proposed on 31 May 2024 nonetheless remains a reasonable one if the parties are genuinely committed to proceed to mediation. Based on recent correspondence from Mourant and Carey Olsen, such commitment appears to be the case.*" This was the Enforcer doing what he was appointed to do, seeking to prevent the Trust's assets from being depleted through unnecessary litigation. He did not need to go on to point out explicitly that the hoped for global settlement would also potentially save not just the costs of the costs hearing, but other potentially more expensive future litigation about the substance of the dispute as well. What right did the A Beneficiaries have to privilege their assessment of the reasonableness of the offer over that of a neutral party who had made common cause with them in seeking to restrain the B Beneficiaries from undermining the *Beddoe* Order? While they were entitled to form their own views, they were not in my judgment entitled to simply brush the Enforcer's views aside.

31. Nevertheless, it is important to acknowledge that in seeking to extract as large a contribution to the litigation costs of all parties from the B Beneficiaries, the A Beneficiaries were seeking to achieve the same broad goal of preventing the Trust assets from being dissipated by obtaining orders for the B Beneficiaries to pay the disputed costs. However, unreasonable litigation does not necessarily involve taking steps for improper collateral motives. That is the terrain of abuse of process. Overly zealous litigation conduct can also be unreasonable or improper if it results in costs being incurred which could with a more reasonable approach have been avoided. Litigation is more commonly conducted in a disproportionate manner not when improperly motivated steps are taken, but rather when properly motivated steps are pursued with excessive enthusiasm. By analogy with the football field, fouls involving excessive force or clumsiness are more commonplace than fouls which are truly premeditated or reckless.

32. The B Beneficiaries' counsel submitted:

> "*29. The costs of and occasioned by the Costs Hearing (on which the Court's determination is now sought) are not insubstantial. The A Beneficiaries and B Beneficiaries have each incurred around $400,000 in costs in relation to the Costs Hearing, and the Enforcer has incurred approximately $250,000.*"

33. It was submitted that it was reasonable to assume that the Trustees' costs were comparable to the Enforcer's as they too took a neutral stance (in the absence of information about their costs). The imbalance between the costs of the A Beneficiaries and the Enforcer in respect of the hearing the Enforcer sought to avoid altogether or postpone reflect the fact that the A Beneficiaries played a leading role in the hearing. But the scale of costs in my judgment lends further credence to the Enforcer's view that the B Beneficiaries' offer was reasonable in the circumstances, subject to any contrary countervailing rationale advanced by the A Beneficiaries. In the heat of the WPSATC battle, the A Beneficiaries' rationale for rejecting both the offer and the Enforcer's assessment of it was fairly summarised by Mrs Talbot Rice KC as follows:

> "*23. Carey Olsen's 20 June 2024 letter confirmed that the A Beneficiaries' position 'remains unchanged' and that the B Beneficiaries' offers 'are unreasonable and unacceptable' and 'cannot seriously be considered for acceptance'. For good measure, the A Beneficiaries also asserted that 'the Trustee and/or Enforcer… are not in a position to accept an offer to settle their own costs separately when the offer has been rejected by the A Beneficiaries'*".

34. Rather than engaging with the Enforcer's views on principled or even pragmatic grounds, the A Beneficiaries (doubtless convinced of the justness of their cause) were not merely content to say to the Enforcer: "You turn, if you want to. The A's are not for turning." They sought to discourage the Enforcer and the Trustee from making their own compromises as well. Bearing in mind the fact that the A Beneficiaries have a general entitlement to paid out of the Trust assets and are not funding their participation in this litigation in the usual sense, in my judgment the failure to meaningfully engage with the offer clearly crossed the reasonableness line. The A Beneficiaries' submissions could not, against this documentary background, advance a more substantive merits-based rationale for failing to engage. Instead, the culmination of Ms Stanley KC's submissions had a purely rhetorical ring to them:

> "*5.9 The WPSATC letters sent by the B Beneficiaries do not show a good faith attempt to resolve the question of costs in any reasonable and practical sense, or any real offer to pay. The WPSATC correspondence evidences little more than a concerted attempt on the part of the B Beneficiaries to avoid making any real-time payment to the parties from their own funds; instead, they sought to construct a contingent scheme providing for payment of the parties' costs from the Trust fund but only if the B Beneficiaries succeeded at some unidentifiable point in the future in negotiating for a sizeable distribution to themselves from the Trust. These are the same magician-like attempts to distract from the realities of the case that the Court has seen before from the B Beneficiaries in these proceedings.*"

35. In this context I place no weight on the fact that the Trustees and the Enforcer have both merely supported my provisional views as to costs. Not only are they properly neutral in general terms. In big picture terms, they can fairly form the view that the A Beneficiaries are "*more sinned against than sinning*". Nonetheless, Mr Lindley for the Enforcer somewhat diplomatically submitted:

> "*15. However, this position is subject to the Court's consideration of any submissions made by the B Beneficiaries and/or the A Beneficiaries as to the relevance of the correspondence contained in the Without Prejudice Save as to Costs (WPSATC) Correspondence Bundle… Although this question does not directly impact the recovery of the Enforcer's costs, which should be paid out of the trust fund on the indemnity basis, it is important to note that the Enforcer made its position clear on the B Beneficiaries' 12 June 2024 settlement offer. Specifically, the Enforcer communicated to the parties on 18 June 2024… that*

he considered the B Beneficiaries' costs offer made by letter dated 31 May 2024…and on the conditions as proposed by letter dated 12 June 2024…to be acceptable."

36. In all the circumstances that was a very appropriate submission to make. Because if this Court did not carefully evaluate the reasonableness of the A Beneficiaries all but thumbing their nose at a rational encouragement by the Enforcer to compromise litigation, the Court itself would be guilty of thumbing its nose at the role conferred on enforcers by the STAR trust regime (Trusts Act (2021 Revision), Part VIII). It is also important to remember that in the wider dispute as to the validity of the impugned share transfers to the G Trust, the A Beneficiaries are fighting under the validity flag. It does not lie in their mouths to contend that the final outcome will be that the Enforcer's function will become redundant. In these circumstances, section 100 of the Trusts Act (which was not referred to in any of the submissions) cannot be ignored:

> "*(1) A beneficiary of a special trust does not, as such, have standing to enforce the trust, or an enforceable right against a trustee or an enforcer, or an enforceable right to the trust property*…."

37. Mrs Talbot Rice KC relied more directly on the overarching policy of the GCR Order 22 rule 14 regime:

> "*37. Standing back, more generally this Court's policy is firmly in favour of encouraging parties reasonably to settle their disputes by negotiation, and to avoid troubling the Court with unnecessary disputes where possible. In this connection, the means by which the Court enforces that policy – to ensure that parties do behave reasonably – is to mark unreasonable conduct in the face of reasonable offers to settle by making adverse costs orders against the parties who have unreasonably refused reasonable offers of settlement. Were the Court not to do this a signal would be sent to litigants that they can behave as unreasonably as they like, and can unnecessarily force matters to a contested hearing and run up huge amounts of avoidable costs in the process with impunity.*
>
> *38. Such an approach would not only be unfair, it would also drive a coach and horses through the overriding objective, expressed in the Preamble to the GCR30, of dealing with every cause or matter in a just and expeditious and economical way (para 1.1).*"

38. No case cited has comparable facts and so the present application is an unusually challenging one. As ever, I recall the apocryphal advice of the wizened appellate judge to the fresh-faced trial judge: 'the trial judge's duty is to be sure, not to be right'. I find it to be clear that the discretionary jurisdiction under GCR Order 22 rule 14 is sufficiently flexible to be engaged in the peculiar circumstances of this case. I find that the B Beneficiaries' WPSATC offer which the Enforcer found to be reasonable should be considered in determining the costs of the costs hearing as between the A and B Beneficiaries. How the offer should be taken into account is another conundrum.

Disposition of costs application

39. The B Beneficiaries submitted as regards outcome:

> "*40.2. in the light of the offers made by the B Beneficiaries, it is respectfully submitted that it would be thoroughly unjust for the B Beneficiaries not to recover their costs of and occasioned by the Costs Hearing and for the A Beneficiaries and the Enforcer to recover their costs of and occasioned by the Costs Hearing from either the B Beneficiaries or the Trust fund: they caused these costs to be incurred when they should not have been incurred at all.*
>
> *...*
>
> *41. For the reasons set out above, the Court is invited to order that:*
>
> *41.1. the B Beneficiaries costs of and occasioned by the Costs Hearing be paid by the A Beneficiaries and the Enforcer, alternatively by the A Beneficiaries, alternatively from the Trust fund, to be taxed on the standard basis if not agreed; and*
>
> *41.2. the A Beneficiaries and the Enforcer, alternatively the A Beneficiaries, bear their own costs.*"

40. No arguable basis was advanced for making any adverse costs orders against the Enforcer. The only matter that remains to be decided is what effect should be given to the WPSATC

correspondence. It was essentially common ground[2] that, in a straightforward case, if the financial outcome for the offering party was better than the offer, that party would expect to recover their costs of the relevant proceeding or part thereof. In the present case the complicating factors which fall to be addressed are the following:

(a) the impact of the conditional nature of the B Beneficiaries' offer; and

(b) the impact of the A Beneficiaries' unreasonable failure to accept and/or engage with the offer on their entitlement to recover their own costs from the (disputed) Trust assets.

41. Both of these factors appear to be unique to the present case and to require evaluation through applying principles of general application. Firstly, it seems obvious with little analysis that the conditional nature of the offer must be relevant to the appropriate costs outcome. GCR Order 22 rule 14 must be applied in a way which produces predictable costs outcomes which the parties may fairly be assumed to have been able to anticipate when making and receiving the offers in question. The jurisdiction is intended to enable hard-edged financial judgments to be made about the likely outcomes and implications in costs terms of proceeding with an adjudication, rather than reaching a compromise. This is why the B Beneficiaries crafted their offers in terms of proportions of the parties' costs based on estimates of the prospects of success expressed in percentage terms.

42. In evaluating the costs impact of the refusal of a conditional or contingent offer, the financial impact of the contingency must surely be accounted for. As the Enforcer's clear-headed response to the offer demonstrated, accepting the offer did not guarantee that the costs of the hearing would be avoided altogether. It merely created a reasonable possibility that the costs would be avoided altogether. Accordingly, it is impossible to fairly assess the prospects that the costs hearing would not have proceeded at all at higher than 50%.

43. In deciding how the unreasonable offer rejection impacts on the costs hearing, the ultimately simple question is whether an adverse costs order should be made against the A Beneficiaries in favour of the B Beneficiaries. In my judgment it should, applying the policy embedded in GCR Order 22 rule 14 in a straightforward way and subject to considering whether or not the rules which would ordinarily apply are displaced by the trusts context. I would provisionally

[2] The A Beneficiaries' attorneys contend this point was not common ground and is inconsistent with Sections 4 and 5 of their Submissions. Having reconsidered the Submissions, I am unable to (1) discern any express challenge to the general principles applicable to WPSATC correspondence nor (2) see how any inaccuracy undermines the basis for the conclusions reached in the present Ruling.

find that the A Beneficiaries should pay 50% of the B Beneficiaries' costs of the costs application to be taxed if not agreed on the standard basis.

44. It remains to consider, again subject to considering the impact of usual rules applicable to the costs of *Beddoe* proceedings on the application of GCR Order 22 rule 14, the impact of the A Beneficiaries' unreasonable rejection of the settlement offer on their entitlement to recover their costs from the Trust assets. There are two obvious alternative outcomes:

(a) the A Beneficiaries receive 100% of their costs from the Trust (but will effectively receive 50% only because of their obligation to meet 50% of the B Beneficiaries' costs; or

(b) the A Beneficiaries receive only 50% of their costs from the Trust (and will in net terms effectively have to bear all of their own costs in relation to the costs hearing in light of the adverse costs order made in favour of the B Beneficiaries). A discount of more than 50% is in my judgment impossible to justify having regard to the contingent character of the settlement offer.

45. It is important to remind myself that I am not here considering whether or not to accede to an application by the Trustees and/or the Enforcer for the A Beneficiaries to bear all or some of their own costs on the grounds of unreasonable conduct via-a-vis the Trustees. I am considering whether, of the Court's own motion an additional punitive costs order should be imposed because, in my view, such an order is required. The default position is that the A Beneficiaries' should receive their costs from the disputed Trust assets, and a punitive costs order being made of the Court's own motion would in my judgment only be appropriate in the face of serious litigation misconduct indeed.

46. The present case comes nowhere near the sort of situation where the Court should, of its own motion, deprive the A Beneficiaries of the usual costs order of its own motion. The unreasonableness of the offer refusal is properly understood (and should be dealt with) as part of an adversarial conflict between beneficiaries, not as a conflict between the A Beneficiaries and the Trustees. The only just outcome is to make the usual costs order in relation to the A Beneficiaries' own costs, all of which should be payable out of the disputed Trust assets.

47. Ms Stanley KC contended that an adverse costs order could not be made against the A Beneficiaries because of the high standard acknowledged by this Court in the following passage in the Costs Judgment:

> "*55. I adopt the above principles, especially the importance of focusing on the applicable factual and legal matrix, in the present case. While there is presumption that all participants in the present proceedings should have their costs payable out of the Fund, such presumption may be displaced having regard to a party's conduct and the character of the relevant proceedings conduct will be required for making an adverse costs order. If unreasonable conduct results in a disallowance of costs, extremely unreasonable conduct will be required for making an adverse costs order. entitled to their costs by analogy with the position of a trustee. However, in the same passage Lewin also opines:*
>
> *'The requirement of reasonableness may…apply differently to a claim for costs by a beneficiary who is not a fiduciary or in a neutral position, and different considerations may also apply to the question whether a beneficiary has behaved reasonably both in bringing proceedings and in the conduct of proceedings once they have started. Beneficiaries who have used construction proceedings as a vehicle for raising issues not germane to the proceedings have been not only deprived of costs but also ordered to pay the costs of the trustees in reading and responding to their evidence, the costs being assessed on the indemnity basis in view of those beneficiaries' disgraceful conduct…*"
> [Emphasis added]

48. The cited passage makes it clear that the usual approach to costs in *Beddoe* applications both (a) is subject to context-specific modification and (b) is expressed in the context of considering whether the beneficiary should recover its costs out of the trust or, exceptionally, should be ordered to pay the trustee's costs. The question of whether one beneficiary who has refused a WPSATC offer which the offering beneficiary has bettered is far more akin to the general costs scenario than the standard *Beddoe* costs context. On this broad ground of principle, I find that the approach I adopted in the Costs Judgment to the question of adversarial proceedings between the B Beneficiaries and the Trustees do not apply in the present GCR Order 22 rule 14 context. Those usual *Beddoe* principles do apply to the question of whether or not the A Beneficiaries should recover their costs out of the disputed Trust assets, which is why I consider there is no basis for overriding the consensus between the Trustees and the Enforcer that the usual rule should apply.

49. As regards the position as between the warring beneficiary factions, the A Beneficiaries in their Written Submissions in Reply argued, that in addition to the principles set out at paragraph 55 of the Costs Judgment, a costs order in favour of the B Beneficiaries was inappropriate for the following reasons:

(a) as the Court had previously expressed the preliminary view that the B Beneficiaries should be visited with an adverse costs order, it was not unreasonable for the A Beneficiaries to refuse their offer;

(b) the B Beneficiaries only belatedly agreed to pay all parties costs of Anti-Suit 1 at the Costs hearing. Their offer was not a proper offer, but an alternative proposal for dealing with the costs application;

(c) "*5. The B Beneficiaries' own unreasonable conduct continues beyond the Costs Hearing and the feeling of déjà vu is reignited. Yet again, the B Beneficiaries march to the beat of their own drum in an effort to bolster a strategic argument: while the figures do not assist the Court, it was nonetheless improper for the B Beneficiaries to disclose the costs referred to at paragraph 29 of their written submissions (being figures exchanged on a without prejudice basis and disclosed to the Court without the consent of the Enforcer and the A Beneficiaries). Yet again, the parties must deal with an application by the B Beneficiaries, filed just two days ago, seeking to purge what is alleged to be a new breach of the Confidentiality Order*…"

50. The points summarised at (a) and (b) above are not responsive to the main gravamen of the unreasonableness complaint. Namely, that despite its conditional nature, it was reasonable having regard to (1) the outcome of the costs hearing and (2) (in my judgment pivotally) that the Enforcer at the time viewed it as reasonable[3]. However, the A Beneficiaries seek to land a fatal blow on their opponents by accusing the B Beneficiaries of breaching the Confidentiality Order by improperly deploying confidential material in support of the present application. This is, with respect, inviting the Court to focus even further afield from the relevant forensic territory.

[3] The A Beneficiaries' counsel has requested further reasons be given for the Court's implicit rejection of the points made in their Main Submissions (at paragraphs 5.8.1 and paragraph 5.8.4) and Reply Submissions (at paragraph 3). Why these points have been implicitly rejected is adequately explained on a fair reading of the Ruling as a whole, but in particular paragraphs 33-36, 42, 50 and 54.

51. For the purposes of the present Costs Ruling, I ought properly to assume against the B Beneficiaries that their use of the actual fee estimates without permission breached the Confidentiality Order. I have yet to adjudicate the issue[4]. However, the ultimate legal position cannot possibly be that the GCR Order 22 rule 14 jurisdiction does not apply at all to *Beddoe* or other proceedings where confidentiality orders have been made. It can only be that where without prejudice correspondence as to costs refers to confidential information, direct reference to such information without consent should not occur. Taking the breach complaint at its highest, the general effect of the fee estimates on the reasonableness of the offer should have been referred to, but not the actual figures.

52. The most plausible position though is that the Confidentiality Order was not breached at all in disclosing the figures to the Court because:

(a) the purpose of the Confidentiality Order was to enable this Court to adjudicate the *Beddoe* proceedings while preventing confidential information entering the public domain;

(b) the present costs application could not properly have been adjudicated without the fee estimates being deployed;

(c) the fee estimates do not on their face fall into the category of confidential information the Confidentiality Order was primarily designed to protect; and

(d) the references to the fee estimates could always (if necessary) have been redacted in the final version of the present Costs Ruling.

53. Whatever the technical position on breach of the Confidentiality Order may be, I firmly reject the implication that the B Beneficiaries were not permitted to deploy the fee estimates in their application before this Court. The fee estimates were referred to in the body of various items of WPSATC exchanged by both Carey Olsen and Mourant on behalf of the A and B Beneficiaries and there was no express qualification contained in the correspondence of the usual understanding that such correspondence could be placed before the Court for costs purposes at an appropriate stage. That the point was first raised in response to a cogent costs application after it was filed by the B Beneficiaries speaks volumes.

[4] The A Beneficiaries' attorneys clarified that the complaint made in their Reply submissions about the misuse of without prejudice material in fact was not a complaint about the conduct of the present costs application but an extraneous matter which was not yet before the Court. The point ought not to have been made.

54. In the final analysis this Court has a duty under GCR Order 22 rule 14 in the context of *Beddoe* proceedings, particularly involving a STAR trust where the Enforcer's views as to the reasonableness of an offer has been ignored, to deter the A Beneficiaries from adopting a "*heads I win tails you lose*" approach to these proceedings. They should accordingly pay 50% of the B Beneficiaries' costs of the costs hearing.

Summary

55. The disputed costs of the costs application are awarded as follows:

(a) the A Beneficiaries shall pay 50% of the costs[5] of the B Beneficiaries to be taxed if not agreed on the standard basis; and

(b) the Enforcer's and the A Beneficiaries' costs shall be payable out of the disputed assets on the indemnity basis.

56. In the interests of economy, I summarily find that the costs of the present application should be dealt with on the same basis, unless the parties agree otherwise.

THE HONOURABLE JUSTICE IAN RC KAWALEY
JUDGE OF THE GRAND COURT

[5] On 15 May 2025, I granted leave to the A Beneficiaries to file responsive submissions on the express basis that upon receipt I would "*consider whether or not the B Beneficiaries should be afforded an opportunity to reply*". Without being invited to file reply submissions, and after I had completed a draft of this Ruling, the B Beneficiaries filed reply submissions which I did not consider. The costs of those submissions are disallowed.