

## Guernsey Royal Court sanctions trust distributions to terminate a group of eight trusts

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### Introduction

Mourant Ozannes has recently assisted the trustees of eight Guernsey law settlements in their successful joint application for the Court's blessing of their decisions to appoint the entire capital and income of each of the trusts to the Settlor. In the matter of the A, B, C and D Trusts and the W, X, Y and Z Trusts 24 February 2016 (unreported), six of the eight trusts were discretionary trusts, and the remaining two were interest in possession trusts under which the Settlor's children had a life interest. The trusts, taken together (the **Trusts**), held assets of very significant value. The application was brought under section 69 of the Trusts (Guernsey) Law, 2007 (the **Trusts Law**) and under the second category of cases in *Public Trustee v Cooper* [2001] WTLR 901 (the **Sanction Application**).

### Background

Prior to bringing the Sanction Application, and due to the then restrictions on who could benefit from certain of the Trusts, an application was made to the Royal Court to vary those trusts to reintroduce the Settlor (who had been previously excluded) within the class of beneficiaries pursuant to section 57 of the Trusts Law (the **Variation Application**). The Variation Application involved the revocation of an irrevocable deed of exclusion of beneficiary, which required the Court to be satisfied that the removal of this restriction was for the benefit of the minor and unborn beneficiaries of the relevant Trusts. The Court's approval of the revocation of an irrevocable deed of exclusion was the first of its kind in Guernsey and illustrates the flexibility of the Guernsey courts.

In addition, and in order to alleviate the need to convene, or seek approval from, a wider class of beneficiaries, deeds of exclusion were executed by the trustees which narrowed the class of beneficiaries to the Settlor, his spouse, children and his children's issue.

### The Sanction Application

Having brought the Settlor back into the class of beneficiaries and thereafter limiting the class, the trustees sought a declaration that the trustees' proposed exercise of their discretionary powers (to appoint the assets of the Trusts to the Settlor) was lawful. As is normal in *Public Trustee v Cooper* applications, the Court was not asked to rule on whether it would have made the same decision, but whether the trustees had acted honestly, had taken into account all relevant matters and no irrelevant matters, and had not reached a decision that no reasonable body of trustees could have reached.

The Court considered affidavits of representatives of both trustees, to each of which was annexed a 'dossier' of relevant documents to which the trustees had had regard in making their decisions. The dossiers included legal advice summarising the terms of each trust instrument and the duties of the trustees, legal advice setting out the UK tax implications of the proposed decisions, letters of wishes of the Settlor, notes of meetings between representatives of the trustees and the adult beneficiaries and (separately) the Settlor, cashflow forecasts for the other adult beneficiaries, submissions on behalf of the advocate for the minor and unborn beneficiaries, and financial statements of each of the trusts.

The Court heard that the family in question was a close-knit family who supported each other, and that the trustees considered that the Settlor's issue (both adult, minor, and unborn) were likely to continue being supported by the Settlor. The Court also heard that there would be substantial tax advantages of the proposed decisions, in washing out liability for income tax, capital gains tax and the potential to mitigate inheritance tax, and agreed that each of the eight decisions was in itself a momentous decision, noting that "*there arguably can be no more momentous decision than to wind up a trust*".

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## BRIEFING

The Court took into consideration the comprehensive dossiers of materials that had been prepared to assist the trustees and found that there was no suggestion that the trustees were not acting in good faith, and indeed that each had "*approached the decision-making process carefully and cautiously.*" Similarly, there was no suggestion of a conflict of interest, particularly since the proposed decisions would deprive the trustees of significant fees.

The Court accepted that the two trustees had coordinated their responses to the Settlor's request, and to have worked and obtained advice together, and found that there was nothing improper in that approach (particularly since the Settlor's family viewed the series of appointments as a single exercise).

In respect of the rights of the other beneficiaries, the Court found that the trustees had properly considered their interests, and that they had been advised that preserving a larger proportion of the assets for future generations (through the minimisation of taxes) represented the best chance of unborn beneficiaries obtaining benefit in the future. Logically, the Court considered that the support of the Settlor's children could be extrapolated to amount to strong support for each appointment on behalf of the minor and unborn beneficiaries in respect of the appointments.

Having reviewed the evidence considered by the trustees, the particular facts of each of the eight trusts, and the decision-making process undertaken by both trustees, the Court held that in respect of each decision the trustees had not reached a decision which no reasonable trustee could have reached. In this regard, the Court noted that the income tax and capital gains tax advantages justified the distribution of the entirety of the Trusts' funds. The court accordingly granted the relief sought.

Although not requiring Court intervention, as part of their preparation for the Sanction

Application, the trustees, aided by Mourant Ozannes (and English Counsel), successfully negotiated appropriate security arrangements with the Settlor to protect against the remote but potentially disastrous tax consequences that may have been levied against the trustees personally at a time where, due to the Sanction Application and consequent distributions, they would have been without assets to meet the taxes due.

### Privacy

Both the Variation Application and the Sanction Application were heard in private following successful interlocutory privacy applications, illustrating, once again, the potential to have "*non-contentious trust matters*" heard in private by the Guernsey Court.

### Conclusion

The decision once again illustrates Mourant Ozannes' expertise in guiding trustees through complex situations and demonstrates the Guernsey courts' willingness to take a pragmatic approach when dealing with non-contentious trust applications.

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