

UPDATE

Court Relief for Trustees: Practical Help to a Trustee in Difficulty

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The Jersey Representation of VG Trustee Limited re M Trust is a neat case in which the Royal Court of Jersey delivered practical help to a trustee facing a novel set of facts.

The Facts

The matter concerned a trust facing difficulties opening a bank account due to the settlor's past convictions for fraud (see [here](#) for the judgment). This placed the trustee in difficulties discharging its obligations to gather in the trust property. That property included sums due under an uncashed cheque for \$200k from the Madoff Victim Fund, which was compensation for losses sustained by the trust in the well-known Madoff fraud.

The Application

Due to its predicament the trustee sought the court's assistance. The court noted that the question was not one of seeking the court's approval for some momentous decision, but rather a question of seeking practical help to get a bank account opened.

The court was limited in the remedy which it could grant. The only order which the Bailiff, Sir William Bailhache, considered was open to him to make was to direct that the trustee open an account with a bank in Jersey in the name of the trust in order that the cheque could be presented for crediting to that account.

As a remedy this may seem incomplete. But it reflects the court's acceptance that banks are free to contract, or not contract, with whomever they see fit. It was not open to the court to grant an order that a specified bank provide services.

Nevertheless the court sought to go further and provide a practical solution both in terms of the order given and in making obiter findings which may provide some comfort to any bank subsequently approached by the trustee. The court found that the account holder would be the trustee, which was a regulated entity and for all intents and purposes fit and proper. The bank would have no dealings with the settlor. The pay out from the Madoff Victim Fund did not appear to be tainted funds in any way and were remitted following approval of the US Department of Justice.

All of this may appear obvious (and in a sense it is) but it appears to reflect the court offering comfort and guidance to any would be bank that it could open an account without fear of personal exposure. If that was the intention then the guidance is novel and to be applauded.

Implications

The case demonstrates that the Royal Court of Jersey will seek to offer what practical help it can, where appropriate, to assist a trustee in difficulty. While the settlor had a criminal conviction this ought not to preclude the trust from accessing banking services. Past criminal conduct of itself should not act as a bar to the provision of financial services. The court considered that it would be surprising if no bank were willing to assist a victim in the recovery of monies due to it.

In this respect the Royal Courts of Guernsey and Jersey have equivalent powers. A similarly practical approach may therefore be expected from the Guernsey court. However having regard to the 2018 Guernsey judgment in *Liang v RBC Trustees (Guernsey) Limited* (see [here](#) for our briefing) the Guernsey court may consider it more appropriate for the trustee to demonstrate the provenance of the funds to be deposited to the satisfaction of the bank and only to seek assistance from the court where it is unable to show good provenance.

The decision also shows the procedural challenges created by local AML legislation, as well as what can be achieved by creative thinking and a cooperative and considerate court.

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