

# Top takeaways from the Mourant Guernsey Trusts and Private Wealth Forum 2024

UPDATE

Update prepared by Gilly Kennedy-Smith (Guernsey)

On 4 July 2024, Mourant held its annual Guernsey Trusts and Private Wealth Forum at St Pierre Park Hotel. The conference, sponsored by BDO Guernsey, covered a variety of topical issues in the trust and private wealth worlds, diving into the often-challenging issue of capacity, the latest developments in trust cases, as well as examinations of region-specific considerations.

Throughout, effective communications with clients including meetings in-person wherever possible, careful drafting, and forward planning to allow for proper resilience were consistent themes.

## **'I know it when I see it': unscrambling the murky issue of mental capacity**

The first session focused on mental capacity and the problematic positions it can place lawyers and Trustees in without carefully considered drafting and a tactful approach. Mourant Counsel Ben Manchak hosted the session, highlighting that although incidents of ailing capacity are rare, they are on the rise since 1971 as people are living longer, but in poorer health.

The panel started by highlighting historic cases that have sought to define capacity, leading to the implementation of tests, with varied results. Citing one well-regarded psychologist's opinion who, on defining failing mental capacity, said: 'I know it when I see it'.

It was noted how the family offices of extremely private UHNW clients can be troublesome when capacity is concerned, acting as gatekeepers that keep Trustees out. Developing a rapport with the Protector and their family is not only helpful when deeply personal conversations must be had, but it can aid in spotting signs of failing capacity.

The panel emphasised that discretion and sensitivity are vital when dealing with issues of capacity. Taking a 'helicopter view' of mental capacity and ensuring that drafting is done both sensitively and vaguely were highlighted as key considerations.

## **Exploring the latest trust cases from the front line**

Attendees then heard from Jeremy Wessels and Gordon Dawes, Partners in the Mourant Guernsey Litigation practice, as well as James Price from Stewarts Law LLP. After an introduction from Gordon, Jeremy and James cited a recent and controversial Blessing case in Jersey of which the autonomy of the Trustee was called into question. The case involved the breach of the non-intervention principle by a local judge, leading to a strong warning from the Court of Appeal.

It was noted that the ruling effectively had the potential to turn court into a 'dress rehearsal', wherein beneficiaries could run to the court and 'raise the temperature' of the dispute with a Blessing, effectively turning it into an 'un-blessing'. Panellists concluded with the notion that there is a fine line between a proper stepped approach to seeking a Blessing and an unacceptable breach.

Other cases discussed highlighted key themes such as the need to involve the right people in the initial stages of a Blessing and the need for Trustees to understand the exact scope of each specific Blessing.

## **Guernsey and its place in the world: tax, beneficial ownership, and anti-money laundering**

Following a brief recess, Mourant Partner Helen Wyatt led a session closer to home. Sally Rochester from Mourant Consulting stated how Guernsey may at times feel isolated, but all businesses are impacted by UK, European, and global events. She urged businesses to horizon scan and future proof to ensure longevity as external events inform how they and their clients operate.

Rebecca Millar from the Channel Islands Brussels Office and Jo Reeve from the States of Guernsey then provided insight into the island's relationships offshore. Jo noted that where we once kept 'our head beneath the parapet', the UK is now more aware of Guernsey and the States actively engage with figures, such as MP Margaret Hodge, who push for beneficial ownership registers.

The discussion was particularly timely as panellists delved into the Labour Party's manifesto (at the time, pre-election victory) and how it mentioned working with the Crown Dependencies to fight financial crime: a positive message.

The discussion continued onto the importance of representing the islands in Brussels, noting that while awareness of the Channel Islands is low, a desire to find out more is high. Making the distinction between Guernsey and faraway British Overseas Territories such as the British Virgin Islands is also key to Guernsey's relations with EU member states especially.

In conclusion, the panellists advised local businesses to ringfence strategic thinking time to consider global issues. While Guernsey won't rush ahead, the island should be following the direction laid out by the UK and EU and bringing in experts is vital to ensure business resilience.

### **A tax world tour with BDO Guernsey**

From Guernsey to everywhere but, the Forum then turned to Mark Savage, who represented sponsor BDO Guernsey and gave a 'tax world tour'. Mark outlined the precarious position much of the world finds itself in in 2024, as 49 per cent of the population will vote in a government election this year.

He then gave insights into regional tax considerations in South Africa, the USA, and Spain, highlighting how elections may impact these popular countries to do business in. Mark's focus then turned slightly closer to home, as he (correctly) asserted the likelihood of a Labour victory in the UK election.

Honing in on Labour's manifesto, he outlined the probability that the new government, for better or worse, will likely try to close a variety of tax loopholes created by the previous Conservative government. He noted that Labour have highlighted no intention to increase inheritance or capital gains tax, but that could change should there be strong demands on the public purse.

### **Sharia Law and other Middle Eastern considerations**

We then heard from Gilly Kennedy-Smith, joined by Hannah Wailoo from Withers LLP and Jon Shankland from Weightmans, in a discussion around the complexities and cultural nuances of Middle Eastern clients, particularly where Sharia Law is concerned.

The panel discussed how the region is undergoing significant social changes which are in turn impacting wealth management, specifically because new wealth and succession planning are frequently being properly considered substantively for the first time.

The discussion opened by highlighting that Sharia means different things to different people and that the movement of Middle Eastern money to the West has resulted in a new idea of what Sharia means. This movement also represents a significant opportunity for offshore jurisdictions far from Sharia culture, including Guernsey.

The speakers concluded by recommending a close, personal approach to dealing with clients in the region; one marked by patience and trust. Noting that the process won't be quick, they advised the audience to take the time to get to know their clients, source a family tree for the avoidance of doubt, and to visit them in-person wherever prudent. Remaining discreet in an environment where personal and business affairs are intertwined was also highlighted as important.

## Lost in translation? A Swiss approach to trusts

The final panel before the keynote speaker, former NATO Deputy Supreme Allied Commander, Sir Richard Sherriff, was hosted by Mourant Partner Sandra Duerden and concerned the perception and recognition of trusts in civil law countries, using Switzerland as a case study.

Sandra was joined by Certified Tax Expert Alexander Greter of Lenz & Staehelin, who opened by asking the question of how trusts are recognised in Switzerland. While the country does not have a trust law, the effects of trusts have been recognised by courts for decades. However, there is always the risk that issues may become 'lost in translation' and the need to check that interested parties understand the concept of a trust is key.

Reaching a similar conclusion to both the previous panel and many of the Forum's speakers, Sandra and Alexander reinforced that meeting clients in-person and forward thinking are essential when dealing with Swiss parties and can aid in breaking cultural and legal traditions and barriers.

They concluded with a simple message: effective communications are key to limiting conflict, or, as Sandra reiterated with an international mindset: *'une communication efficace est essentielle pour limiter les conflits'*.

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