

UPDATE

Top takeaways from the Mourant Jersey Trusts and Private Wealth Forum 2024

Update prepared by Stephen Alexander (Jersey)

Mourant held its annual Private Wealth Forum for 2024 in Jersey on 2 July. The all-day event welcomed expert speakers from the Channel Islands, the UK and the Middle East to debate some of the key issues facing private wealth practitioners today and Jersey's place as one of the top international finance centres.

This article recounts the key themes and top takeaways from the event. You can also now [access the top takeaways](#) from the Mourant Guernsey Trusts and Private Wealth Forum 2024, which took place the same week.

How trustees and advisors can mitigate the risks of a loss of mental capacity

The subject of mental capacity has enjoyed heightened discussion recently due to the ageing population and the large transfer of wealth expected to take place over the next 20 years, estimated to be in the region of \$60-100 trillion.

Diminished capacity is viewed by professionals as both a potential risk to the validity of a trust and a means of attack. In a panel led by Mourant's Stephen Alexander, there was discussion around the role to be played by trustees in spotting potential warning signs and it was agreed that the following actions would help mitigate potential risks:

- Consider the topic when drafting the trust instrument, particularly how the provisions account for any change in capacity.
- Build up a detailed knowledge of the settlor and their wider family to increase the chances of noticing any changes in capacity.
- Have a clear set of policies and processes in place to protect the trust from the consequences of diminished capacity and run 'fire drills' to test they are effective and robust.
- Mental health training among trustee professionals is recommended and can only help with detecting the warning signs.
- Clearly stipulating how capacity should be assessed for each different decision-making process provides clarity to all.
- Whilst there is never a one-size-fits-all approach, an annual or specific assessment undertaken by an appropriately qualified person can be very useful providing the matter is handled sensitively.

In the front line: Jersey trust cases

Mourant's Justin Harvey-Hills and James Price from Stewarts Law then took the audience through some interesting cases from both Jersey and overseas courts.

In the case of blessings, they compared the classical non-interventionist approach in *Vistra Corporate Services Ltd v Ennismore Fund Management Ltd* [2023] JRC 222 with a more interventionist approach in *Re SG Kleinwort Hambros* [2023] (1) JLR 167 and [2023] JCA 088 where the Jersey court gave 'non-binding guidance' to a trustee seeking a blessing.

In *Re SG Kleinwort Hambros*, although the Court of Appeal did not overturn the Royal Court's decision on case management grounds, it gave a clear indication that this approach was to be discouraged. Ennismore also demonstrated the importance of a full, complete and contemporaneous trustee minute when a court is considering a contentious blessing application.

The speakers also compared the approach of the Cayman court in *Re X and Y Trusts* with that of the Jersey courts (*Re Hawksford (Jersey) Limited* and *Re the V, W, X and Y Trusts* [2021] JRC 208) where a trustee has a conflict of interest on a blessing application as it wished to sell the sole trust asset to settle fees. The Jersey court tended to take a more stringent approach to the conflict and place greater emphasis on the duty of the trustee to consider all possible options.

On Beddoe applications, Justin and James considered the narrower approach of the English Court of Appeal in *Denaxe Ltd v Cooper*, which related to the sale of the footballing assets of the insolvent Blackpool FC. The court found that there was no separate doctrine of 'immunity' and that the blessing only conferred protection on a *res judicata* basis, thus making it extremely important for all relevant facts, arguments and parties to be before the Beddoe court.

They then considered the decision in *Re Zedra Trust Company (Suisse) SA re the C and D Trusts* whereby the Jersey court blessed a decision to amend the trust to enable female members of the family to be added as beneficiaries of certain trusts, contrary to the letter of wishes. The settlor had died and all beneficiaries supported the application. The court considered the interests of the beneficiaries and the public policy of the Island, including human rights considerations.

Following on from that, Justin and James discussed the two recent Jersey decisions in *Re Accuro Trust (Switzerland) SA re The Colling and Palmyra Trusts* [2023] JRC 215 and *Re Paicolex Trust Management AG* [2023] JRC 127 and [2024] JRC 041. In both cases, the Jersey court gave consent on behalf of the minor and unborn beneficiaries under Article 47 of the Trusts (Jersey) Law 1984 to the reinstatement of excluded beneficiaries to afford the opportunity for improved tax planning for the beneficial class.

On costs, in *Re VG Trustees Limited* [2024] JRC 013, it was determined that the costs of a beneficiary convened to a Beddoe application in respect of proceedings brought against him by the trustee was entitled to his costs out of the trust fund. This was not dependent on whether the underlying claim was ultimately found to be justified or not.

The case of *Re Alpha, Beta and Delta Trusts* [2023] JRC 138 covered both anti-Bartlett clauses and whether disclosure by trustees to beneficiaries was subject to the non-intervention principle. The court held that where a trustee was on notice of potential wrongdoing in a trust-owned company, the trustee was under a duty to take steps. The question of trustee disclosure was ultimately a matter for the court under its overall supervisory jurisdiction.

Turning to tax information exchange, Justin and James discussed the judgment of the Court of Appeal in *Imperium Trustees (Jersey) Limited v Jersey Competent Authority* [2024] JCA 014, in which the Court of Appeal made the first ever declaration of incompatibility under the Human Rights (Jersey) Law 2000 in respect of the costs regime for judicial review challenges to TIEA notices.

Proper purpose in its proper place: Grand View vs Wong

Katie Hooper from Mourant, along with Charlotte Beynon from Serle Court and Ian Crosby from Stonehage Fleming, considered how to find the proper purpose of a power for the *Grand View vs Wong* case, as well as best practice for trustees dealing with these trust structures.

This case involved substantial assets in the region of \$500 million that were settled into two Bermudan trusts, known as the Global Resource Trust (GR Trust) and the Wang Family Trust (WF Trust).

The GR Trust was for the children and remoter issue of the Settlor and the WF Trust was a purpose trust which did not benefit any family member. The trusts had little involvement with the family and no Letter of Wishes or anything to determine original purpose.

The trustee, after consulting with the family, wished to wind up the GR Trust having made alternative arrangements for beneficiaries' inheritance, using their powers to vary and exclude the beneficial class and replace with the trustee of the WF Trust. The decision was challenged by a number of family members and

the Judicial Committee of the Privy Council held that the exercise of a power by a trustee to add and exclude beneficiaries was void on the basis that it was inconsistent with the proper purpose of the trust.

In reaching this decision the Council went through the Pitt vs Holt checklist, considering all factors, relevant and irrelevant to meet proper purpose and whether this would further the interests of the beneficiaries. The ruling is a clear example of why fiduciaries need to ensure true purpose is conveyed within the drafting of a trust deed and that Letter of Wishes should be formalised, bringing proper purpose into sharper focus.

The panel discussed why, ideally, the trustee wants room to pivot and change as time goes by, but never to change fundamental objectives. It is highly likely that restructuring will take place during the life of a trust, but in this extraordinary case, the trustee was trying to merge two very different trusts into one vehicle.

Wealth planning for Middle Eastern clients

The panel comprising Fred Milner (Mourant), Hannah Wailoo (Withers LLP), Carly Thorpe (Vistra) and Ian Edge (3PB Barristers) reviewed the approach required when discussing wealth structuring for Middle East families, both for structures within and outside the region.

Many Western-educated children are now returning home to the Middle East, influencing conversations and bringing new ideas to the table on the involvement they would like in family wealth. There are also more women taking the lead in conversations demonstrating a more progressive approach in certain states. Assets will continue to be held in both local and international vehicles due to situs and legal restrictions, but the general trend is that wealth planning is moving more towards diversification and investment on a global scale, with vehicles sometimes giving the next generation a platform to demonstrate their management abilities in measured steps.

It was noted that Jersey offers key advantages with its popular foundation and trust vehicles. Developments in Sharia law and in non-Muslim courts now facilitate a more blended approach to governance, creating an environment where local vehicles can run in parallel with international ones, their terms often mirroring each other. Whilst the Middle East is becoming generally less restrictive, confidentiality and gradual development of trust remains key to building long-lasting relationships.

Innovative use of foundations

The Jersey foundation remains a key offering in wealth structuring. They do not rival the more traditional trust structure in terms of numbers but have been great for giving the next generation a seat at the table within a controlled framework. They have also been used extensively for philanthropic purposes. Will Burnell (Mourant) noted the firm has also seen the foundation used to act as trustee, protector and enforcer of trusts, and for various other bespoke purposes.

Whilst the vehicle has different tax treatment in various jurisdictions, this challenge can often be outweighed by the advantages, which also include the ability to control the disclosure of information to, and limit the exposure to attack from, any beneficiaries. Those benefits can be particularly helpful where the beneficial class includes young, vulnerable, or litigious individuals.

More analysis by the courts would offer greater certainty for those considering using a foundation, but they nevertheless remain an important part of the Jersey wealth and succession planning toolkit, and can often be a suitable alternative where a trust cannot be used.

How Jersey can stay competitive in a world of increased regulation

It is accepted that regulation is a necessity in all business practices to create a level playing field, comply with legal obligations and balance stakeholder needs. A recent focus on the MONEYVAL mutual evaluation turned Jersey's attention to anti-financial crime compliance matters, with the expectation being that the regulator will now adjust its focus to once again look at the wider picture tackling conduct and prudential regulation as well as financial crime compliance. Regulation will always be a key ingredient in Jersey delivering a good and competitive service, but it can often feel overwhelming in periods of great change. Jersey's regulator will be looking at how it can jointly contribute to the Government's agenda, create partnerships with firms and encourage micro-conversations between parties to facilitate change.

Smart and measured regulation will allow Jersey to improve its culture, and investment in technology and service levels. Jersey will be looking at how we it can achieve a high standard of regulation with greater ease, aligning with other jurisdictions and setting a forum where we are guided by industry feedback and

suggested solutions. A new balance in business needs to be accepted, one where people are taken along on the journey given that there is a common goal of making Jersey a place of excellence for finance and wealth management.

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