# PRIVACY IN THE GUERNSEY COURTS

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Stood outside many of the court buildings across the globe is a statue of Lady Justice. Often her eyes are covered so she cannot see who is before her, presenting the clear message that despite her might, justice is blind to who is before her, treating all equally.

Despite the symbolism of the blindfold, before the Guernsey Courts there is a general presumption that all aspects of a case are to be held in public. The rationale is that the justice system is part of a broader social process in which the public at large has a stake and therefore a right to participate (even if such participation is as a pure observer).

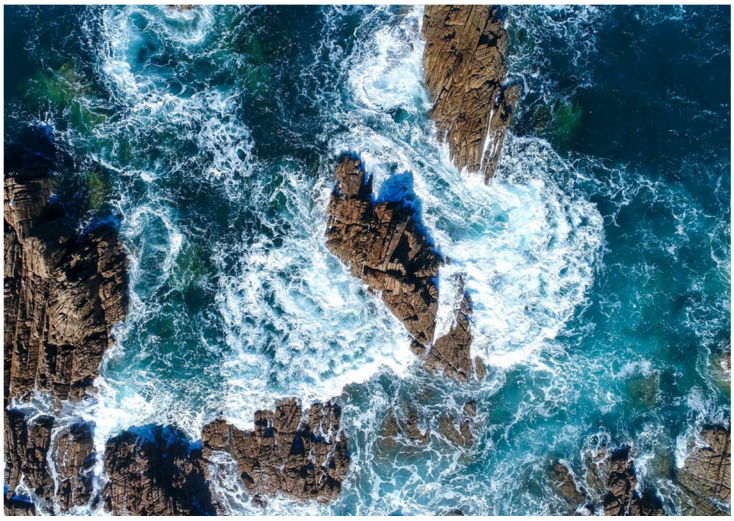
However, there is a natural tension between this default position of open justice and the human right of respect for private and family life, requiring the protection of, for example, an individual or family's financial affairs. There is also the safeguarding of vulnerable people, such as children, which must be considered by the Court when making directions about how matters before it should be dealt with. As Lieutenant Bailiff Day stated in his (much cited) judgment in IFS Investments Limited v Manor Park (Guernsey) Ltd (2003-04) GLR 77:

*'… in simple terms, legal principle required that justice must be done in public, but that where justice itself would be thus frustrated, privacy should prevail, but only to the extent necessary.'*

As such, it may be that Lady Justice must peek beneath her blindfold and consider if to achieve justice the general presumption should be overturned and court proceedings should occur in private.

The question of privacy was considered recently in the Court of Appeal of the Island of Guernsey (GCoA), in the case of M. Salem and M. Salem v Sequent (C.I.) Limited and Guernsey Global Trust Limited (2024) GCA 064 (Salem). Although that case is not revolutionary on the topic of privacy generally (primarily dealing with a different issue), it represents a useful restatement of the law in respect of privacy orders granted in one matter when connected matters come before the Guernsey Courts.

**Overview of the Law**



There is no originating statutory basis for the making of privacy orders(1), such being considered unnecessary as the ability of the Guernsey Court to make such orders has long been established as part of its inherent jurisdiction and a fundamental principle of the administration of justice.

As such, the rules governing privacy orders has been developed by the customary and case law of the Bailiwick. In his judgment in Alpha Development Limited v Barclays Wealth Trustees (Guernsey) Limited, Guernsey judgment 11/2015, (then Deputy) Bailiff McMahon, after reviewing authorities from Guernsey, England, and the Isle of Man, distilled seven principles:

(a) There is a general presumption that all aspects of a case are to be held in public;

(b) In exceptional circumstances, that presumption can be rebutted where it can be demonstrated that justice would be frustrated otherwise;

(c) The test to apply is one of strict necessity;

(d) The burden of establishing that the test applies lies on the applicant;

(e) The Court expects the applicant to adduce clear and cogent evidence in support of such an application;

(f) If that test applies, derogating from the general presumption follows as a matter of principle. Equally, if the test does not apply, the application must be refused. There is no question of exercising a discretion; and

(g) Any limitations on the ordinary rule of open justice granted by the Court will, therefore, be the minimum required to preserve the confidentiality of the information involved so as to secure the proper administration of justice.

Applying these principles and making a privacy order is not a decision which is alien to the Guernsey Courts – the prevalence of cases dealing with private family trusts means that the Guernsey Courts are well versed in the considerations at play here, as is demonstrated by the volume of anonymised judgments produced. Where there needs to be a ventilation of the financial circumstances of a beneficiary, or a discussion of the interests of minor or unborn beneficiaries, the Guernsey Court can be said to not be sitting in its jurisdiction as the public administrator of justice, and so there is no public interest in an open hearing. But otherwise, in the absence of a matter of public interest, the significant private interests of the parties ought to prevail.

**The Decision in Salem**

All of the proceedings prior to the GCoA's hearing of Salem (including the decision being appealed), were subject to privacy restrictions. The defendant trustees in Salem were essentially seeking the continuation of those restrictions in the appeal, claiming that materials from prior proceedings would be relied upon including, 'confidential information relation to Guernsey law trusts, the beneficiaries of those trusts (who include minors) and potentially sensitive commercial and financial matters' – all factors which often results in the granting of privacy.

However, as the GCoA made clear in its judgment, when a matter comes before it which has previously been subject to privacy restrictions, it is not the role of the GCoA to rubberstamp these. Rather, it is imperative that the GCoA re-evaluates the case for privacy.(2)

In applying for privacy orders, the defendant trustees said that 'lifting privacy restrictions in relation to this appeal could have an impact upon the efficacy of the privacy restrictions in relation to (earlier proceedings) and could, in turn, be to the detriment of the beneficiaries of the trusts.'

The GCoA rejected this submission for two key reasons:

1) The scope of the appeal was far more limited than the previous proceedings in which privacy orders had been made so there was no 'necessity' for privacy to prevent the publication of sensitive information (as, for example, the identity, situs, and value of trust assets were all irrelevant to the appeal so would not be mentioned); and

2) The availability of privacy in trust cases is for the protection of beneficiaries and their interests – in Salem, the plaintiff beneficiaries were neutral as to the need for privacy; it was the defendant trustees which had made the application.

**Key Takeaway**

The decision in Salem is a timely reminder for the beneficiaries of Guernsey trusts in particular that the Guernsey Courts remain willing and able to, when it is necessary, protect personal information from prying eyes. But another way, they are well able to distinguish between whether a matter before it is of public interest versus interesting to the public.

Further, Salem stands as a useful confirmation that it is the affairs of beneficiaries which is of paramount importance – not the protection of trustees who may otherwise be embarrassed by the publicity.

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1) There are, it should be noted, a limited number of statutory provisions which require certain proceedings to be held in private, for example criminal committal proceedings before the Magistrate, and Practice Direction 2/2000 also sets out some 'exceptions to that general principle' of open court hearings.

2) This point was also recently confirmed in another GCoA decision: Re the L Trusts (2024) GCA 61 at (5).