



## Beddoe Applications in Guernsey

Service area / [Trusts and Private Wealth, Trust Litigation](#)

Location / [Guernsey](#)

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The Royal Court of Guernsey has handed down judgment in the matter of P Limited which outlines the approach to be adopted when considering applications by trustees of Guernsey law trusts for permission to participate in proceedings before foreign courts, in particular, matrimonial proceedings in the English family court.

### Hearing in Private

The Deputy Bailiff confirmed that the application fell within two recognised exceptions to the principle of open justice, namely, hearing of applications for ancillary relief in matrimonial proceedings and proceedings invoking the supervisory jurisdiction of the court in trusts cases. The fact that the proceedings are the result of matrimonial proceedings in London did not, in the Deputy Bailiff's view, affect the outcome. The Deputy Bailiff noted that it is important that a trustee in the position of the Applicant is able to come before the Royal Court in private so as to give full and frank disclosure of the pros and cons of a particular course of action in order to seek the Court's guidance. He recognised if what the trustee wished to explain was capable of being used by others for different purposes, that would probably inhibit the willingness of the trustee to be open with the Court. It was accordingly ordered that the Application be heard in private and the court file sealed.

### The background to the application

The application was brought by a private trust company which is the trustee of a Guernsey law discretionary trust, referred to as the No.1 Trust. The trustee had previously also been the trustee of a second trust, referred to as the No.2 Trust, but had retired from this position.

By the application, the trustee sought the Royal Court's approval for it to participate in, and be joined as a party to, matrimonial proceedings which were in progress in the Central Family Court in London.

The parties to those matrimonial proceedings were a husband, a beneficiary of the No.1 Trust, and a wife, a beneficiary of the No.2 Trust. The settlor of the No.1 Trust is the husband's father, and the settlor of the No.2 Trust is the wife's mother. The husband's siblings make up the remaining beneficiaries of the No.1 Trust.

The husband and wife married before either trust was settled. Shortly after both trusts were settled, the trustee (then of both trusts) acquired a beneficial interest in a residential property in London. The beneficial interest in the property was held on trust by the trustee of the No.1 and No.2 Trusts in equal shares. The property became the matrimonial home for the couple, which they occupied with the permission of the trustee.

The trustee entered into loan agreements with two companies in order to fund the acquisition of the property, with that funding being provided to those companies by the husband's father and by the wife's mother respectively. Approximately one year after the purchase of the property, the loan arrangements were restructured, and the loans assigned to a company acting as a consolidated lender. A legal charge against the title of the property was subsequently registered in favour of the consolidated lender.

The relationship between the husband and wife subsequently broke down and the wife instigated the matrimonial proceedings in the English family court. The wife sought orders

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under section 23 of the Matrimonial Causes Act 1973 (the "MCA") that the No.1 Trust constituted a nuptial settlement which was capable of variation. Section 23 of the MCA gives the English family court wide-ranging powers including to make orders that the ownership of the property be varied, that it be sold or to vary the terms under which the wife occupied the property. However, the nature of the relief sought by the wife went further than previous reported cases, with the potential to broaden the scope of relief currently granted under section 23 applications. Additionally, the wife also sought to advance arguments that the trust arrangements were a sham.

The trustee was served with the matrimonial proceedings and, after obtaining legal advice from English solicitors and an English QC, decided to bring its application before the Royal Court.

The application was made in reliance on the Beddoe jurisdiction of the Royal Court. Specifically, it was brought pursuant to sections 68 and 69 of the Trusts (Guernsey) Law, 2007, the former of which enables a trustee to apply to the court "for directions as to how he should or might act in any of the affairs of the trust, and the court may make such order as it thinks fit".

### Legal analysis

The Deputy Bailiff referred to his earlier judgment in *T Limited*. In that earlier judgment, the Deputy Bailiff adopted the explanation of the Royal Court of Jersey in *In the matter of the H Trust* [2006] JRC 057 as to the relevant considerations on a question such as that raised by the Application. He also cited with approval two further decisions of the Royal Court of Jersey, *In re IMK Family Trust* 2008 JLR 250 and *In the matter of the Poon Family Trust* [2011] JRC 167, and two decisions of the Grand Court of the Cayman Islands: *In the matter of the B Trust* 2010 (2) CILR 348 and *In the matter of the A Trust* (unreported, 1 December 2016).

From these cases, the Deputy Bailiff concluded that:

- a. The usual position is that it will not be appropriate for a trustee to submit to the jurisdiction of a foreign court because it will not be in the interests of the beneficiaries of the trust for which they are responsible to do so.
- b. The Deputy Bailiff concurred with the earlier authorities that there are exceptions to that general rule. One key exception is where trust assets are located within the jurisdiction of the foreign court, as was the case for the No.1 Trust where the property was located in London.
- c. However, the Deputy Bailiff held that it does not follow automatically that in such a case (where the assets are located within the jurisdiction of the foreign court) a trustee will be permitted by the Royal Court to submit to the jurisdiction of the foreign court. The focus will always be on whether it is regarded by the Royal Court as being in the interests of the beneficiaries of the trust as a whole for that to happen. This may involve looking at where the trustee's input can most appropriately be of assistance, either in the

foreign matrimonial proceedings or subsequently in the Royal Court.

- d. The Deputy Bailiff referred to Section 14(4) of The Trusts (Guernsey) Law, 2007 which relates to recognition or enforcement of judgments or orders of other jurisdictions, which is in similar terms to Article 9(4) of The Trusts (Jersey) Law 1984, as amended.
- e. The Deputy Bailiff noted that the rationale of the decisions of the Jersey court, in particular, has been that it is generally preferable for a trustee not to submit to the jurisdiction of a foreign court because of the limiting effect it then has on the ability of the trustee to approach the issues surrounding whether, and if so how, to give effect to the foreign court's order. The Deputy Bailiff took the view that that was an appropriate starting point.
- f. The Deputy Bailiff held that consideration will have to be given how those matrimonial proceedings might be conducted with or without the trustee participating and, in particular, whether the interests of the beneficiaries as a whole are likely to be presented by other participants adequately. It is a balancing exercise that looks beyond the position of any party to those proceedings which has an interest in the trust property concerned.

### The court's decision

The trustee was seeking an order that was an exception to the general rule that trustees should not submit to the jurisdiction of a foreign court. The Court took into account that the Trustee had clearly demonstrated that it wished to engage in the proceedings and that the entire beneficial class supported that step.

It would be in the interests of the wider class of beneficiaries of the trust (i.e. not just the husband) for the trustee to produce evidence and bring arguments in the English matrimonial proceedings against the relief sought by the wife. This was particularly crucial in view of the wide powers of the English court to make an order detrimental to the interests of all the beneficiaries of the No.1 Trust, which it could make irrespective of the trustee participating in the proceedings. It was a further important factor that the English court could easily enforce an order against the trust property due to its location in the jurisdiction.

The Deputy Bailiff considered it particularly significant that there were unusual features of what the wife was seeking that really needed to be addressed by the trustee. It had potential adverse ramifications for the trustee and the trust outside of the normal orders sought in English matrimonial finance proceedings generally. Notably, if the wife sought to argue that the trust and loan arrangements put in place to finance the purchase of the property were a sham, it would be appropriate for the trustee, as opposed to other parties in the trust structure, to defend such serious allegations and this pointed towards the matter being an exceptional case.

As a result of the trustee no longer being the trustee of the No.2 Trust, and the new trustee of the No.2 Trust being in the wife's

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camp, there was unlikely to be a common approach to the English matrimonial proceedings between the two trustees. Therefore, there was no practical alternative to the trustee participating in the matrimonial proceedings if the arguments and evidence that could be deployed by it are to be of assistance to the English court.

Finally, the English judge hearing the matrimonial proceedings had given “judicial encouragement” that the trustee’s participation in the English proceedings would be potentially useful in helping the parties to reach a negotiated settlement of their dispute at a forthcoming financial dispute resolution (FDR) hearing. The Deputy Bailiff referred to his involvement in determining similar matrimonial finance cases and of his knowledge of FDR hearings. He therefore recognised that the trustee’s input could potentially be helpful. He further noted that the Royal Court should respect the apparent judicial encouragement coming from the English judge who had been dealing with the matrimonial proceedings.

The Deputy Bailiff was persuaded that it was in these circumstances a proper exercise of the Court’s supervisory jurisdiction to accede to the Application and to also order the costs to be payable on an indemnity basis from the Trust.

Advocate Natasha Kapp, partner in Carey Olsen’s Guernsey Trusts & Private Wealth Team, appeared for the Applicant assisted by Senior Associate, Advocate Tim Bamford.



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