Appeal against an Order of the Royal Court, allowing the Public Trustee to investigate and to understand the position of the five pension schemes known as "the IXG Schemes".

[2022]GCA024

IN THE GUERNSEY COURT OF APPEAL
ON APPEAL FROM THE ROYAL COURT

CIVIL DIVISION APPEAL No. 556

10 May 2022

Before:

George Bompas QC, Presiding
Jeremy Storey QC
James Wolffe QC

Between:

SHERBORNE CORPORATE SERVICES LIMITED
(Seychelles company no.012277)

KENILWORTH CONSULTANTS INC
(Seychelles company no.012316)

Appellants

and

The Public Trustee **Respondent**

The Appellants were represented by Roger Mewis, assisted by Robert Hawkins

Advocate S. Davies for the Respondent

Bompas JA:

1. This is the judgment of the Court to which we have all contributed.

Introduction

2. This appeal is concerned with five pension schemes, known as "the IXG Schemes". They are trusts governed by Guernsey law.

3. Prior to 29 March 2017, the two Appellant companies, Sherborne Corporate Services Ltd ("Sherborne Seychelles") and Kenilworth Consultants Inc ("Kenilworth") were the trustees of the IXG Schemes. We refer to these two companies as "the Former Trustees".

4. The Respondent to the appeal is the Public Trustee. On 29 March 2017 the Royal Court removed the Former Trustees and appointed the Public Trustee as trustee of the IXG Schemes. On 22 September 2017 that appointment, which had initially been for six months, was continued until further order of the Court.

5. The appeal brought by the Former Trustees is against a judgment and order of the Royal Court (McMahon B) dated 23 December 2021. That judgment and order concerned a discrete part (which we will call "the Account Application") of an application dated 24 June 2020

("the 2020 Application") brought by the Public Trustee, seeking orders to enable him to investigate and to understand the position of the IXG Schemes.

6. The Act of Court of 23 December 2021 giving effect to the Bailiff's judgment requires the seven respondents to the Account Application (including the Former Trustees) to produce documents relating to the assets, liabilities and administration of any of the IXG Schemes along with copies of various specified documents. These are documents (a) pertaining to bank or building society accounts operated by or on behalf of the respondents in relation to the IXG Schemes, to include 21 specified accounts at seven institutions along with any accounts in which funds relating to the IXG Schemes were dealt with, or (b) held or controlled by one or other of five law or accounting firms which acted for the Former Trustees and/or in relation to the IXG Schemes. The Act of Court also requires and makes provision for the execution of mandates directing the relevant institutions or law or accounting firms to provide the same documents insofar as not otherwise provided to the Public Trustee. Later in this judgment we explain in a little further detail what is provided in the Act of Court.

7. The respondents to the 2020 Application (and hence to the Account Application) were: (i) the Former Trustees; (ii) an English registered company also called Sherborne Corporate Services Ltd (which we will call "Sherborne UK"); (iii) two Cypriot companies (namely Imperial Xeon Group Ltd and IXG Services Ltd ("Services")); and (iv) two individuals (namely Mr Roger Mewis and his brother, Mr Vaughan Mewis).

8. The only parties who have appealed the 23 December 2021 order are the Former Trustees. On the hearing of this appeal Mr Roger Mewis, assisted by a Mr Robert Hawkins, addressed oral argument to us on behalf of the Former Trustees. Mr Roger Mewis had spoken on behalf of the Former Trustees, as well as for himself, on the first day of the hearing of the Account Application.

General background

9. The IXG Schemes were formed, with names including "Interim Executives (Guernsey) Limited Occupational Pension Plan", at various dates between 2006 and 2011, when Plan 3 (the last of the Schemes) was formed. They were ostensibly occupational pension schemes whose members had contracts of employment with a principal employer called Interim Executives (Guernsey) Ltd or an employer which agreed to adhere to the terms of the IXG Schemes. For the most part, according to the Public Trustee's evidence, the contracts as they came to be effected were made with a Maltese company called Interim Executives (Malta) Ltd, while in practice the IXG Schemes received contributions in the form of transfers of assets from UK registered pension schemes of new members joining the IXG Schemes. The Public Trustee's evidence is that assets to the value of some £45 million were to have been contributed to the IXG Schemes, including some £31 million cash.

10. The Former Trustees are both incorporated in the Seychelles. Neither has a natural person as a director: in both cases the corporate director is Services. By the end of 2010, they were the only trustees of the IXG Schemes with the exception of Plan 3. By the end of 2016 they were also trustees of Plan 3. According to the evidence of the Public Trustee:

    a. As well as being a trustee, Sherborne Seychelles purported to act as the IXG Schemes' Administrator.

    b. As well as being a trustee, Kenilworth also purported to act as the IXG Schemes' Protector.

c. Imperial Xeon Group Ltd acted as trustee of Plan 3 until December 2016, when it was replaced by the Former Trustees.

d. Services was purportedly appointed as "Scheme Manager" of the IXG Schemes in 2012 and has acted as such on behalf of the Former Trustees since that date.

e. Sherborne UK is a wholly owned subsidiary of Sherborne Seychelles and has acted as agent or nominee for companies linked to the IXG Schemes.

11. According to the Public Trustee's evidence, the corporate respondents to the 2020 Application are entirely controlled and beneficially owned by Mr Roger Mewis, either alone or together with Mr Vaughan Mewis and other members of their family. Mr Roger Mewis has accepted this to be correct in a witness statement made on behalf of the respondents. In a part of the Public Trustee's evidence, which has been criticised but not contradicted in a statement made by Mr Roger Mewis, it was asserted that "*so far as I am aware none of the corporate Respondents currently maintain a physical presence or have premises or staff within their jurisdictions of incorporation (or elsewhere), nor conduct any operations other than through and from the home of Roger Mewis in Newton Abbot, Devon*".

12. In a witness statement dated 7 December 2021, referred to below, Mr Roger Mewis explained that since March 2017 "*the majority of the ex-staff of Former Trustees are located in Cyprus, Malta, Spain and Germany*", and that he is "*the only person within the UK who has sufficient knowledge to be able to support the Former Trustees*", and that "*If Mr Mewis is unavailable, then the Former Trustees do not have any representation in court*". He also said that although "*Individuals connected with the Scheme now reside in various places, including Malta, Cyprus, Germany and Spain … As the Scheme Manager, Mr Mewis is more qualified and has predominantly more insight than other entities though not 100% insight or knowledge given the number of people who were involved, being administration staff and advisers*". This witness statement explained that Mr Mewis was making it as a director of "the Former Scheme Manager", namely Services, and was duly authorised to make it by the Former Trustees and at their request. He added that he was not making the statement in any other capacity or on behalf of anyone other than the Former Trustees.

13. What comes across from Mr Roger Mewis' statement is that the Former Trustees have no individuals other than Mr Roger Mewis to do anything for them as staff or in any other capacity, and that when Mr Roger Mewis himself does something for the Former Trustees it is because he is representing Services as the Former Scheme Manager and acting as its director. Certainly, no reference appears in the materials before us on this appeal to any individual other than Mr Roger Mewis, and Mr Hawkins who assisted Mr Mewis in his oral presentation, as having done anything for any of the corporate respondents in relation to the Account Application or this appeal.

14. By the end of 2010 the IXG Schemes had no connection with Guernsey, other than that they were trusts governed by Guernsey law. A feature of the 2020 Application is that seemingly none of the respondents has given an address for service within Guernsey. On this appeal the Former Trustees have not given any such address. Communication between the Greffe and the Former Trustees concerning this appeal appears to have been exclusively by email. As to this, there are various email addresses for the respondents to the Account Application: all these appear to have the same domain name, "imperialpensions.com", the addresses being, variously, "Enquiries", "Admin" and "Office". The individual or individuals who use these addresses are not named. It would appear that the Enquiries address is that for the Former Trustees, as emails from that address have a footer with the name of one or both of the Former Trustees. There is a further email address, Roger.Mewis@imperialpensions.com, which appears to be that for Roger Mewis personally. The Public Trustee's evidence before the Royal Court was that "*Roger Mewis communicates on behalf of every other Respondent;*

neither I nor my legal advisers have ever received any communication from [the corporate respondents] that does not appear to have been authored by Roger Mewis".

15. By March 2017 the IXG Schemes were surrounded by litigation. The removal of the Former Trustees as the trustees of the IXG Schemes in March 2017 and their replacement with the Public Trustee was aimed at securing the assets of the IXG Schemes and protecting their records with a view to ensuring their proper administration. The Act of Court of 29 March 2017 required, among other things, the Former Trustees to hand over all trust property (subject to provision of security) and to co-operate with the Public Trustee and provide her with information and documentation as she might reasonably require (see paragraph 4 of the Act of Court).

16. Notwithstanding that order, the Former Trustees refused to hand over trust property to the Public Trustee, asserting that they were entitled to reasonable security for liabilities in accordance with section 43(1)(b) of the Trusts (Guernsey) Law, 2007 ("the Trusts Law"). There was a further hearing before the Bailiff (then the Deputy Bailiff) on 22 September 2017. The Public Trustee's appointment was continued until further order of the Court. An Act of Court of 27 September 2017 of the then Deputy Bailiff ordered the Former Trustees to "*immediately take all such steps as are necessary to surrender to the Public Trustee all trust property held by or vested in or otherwise under the control of the Former Trustees or any one thereof*". Security for the Former Trustees' liabilities was to be provided by the retention by the Public Trustee of £4.2 million out of the trust assets at all times prior to the resolution of the claimed liabilities. Before the Bailiff on the Account Application the Public Trustee's evidence was that "*the Former Trustees have failed to transfer any of the IXG Schemes' assets to me in breach of the Surrender Order*" although some trust property has been recovered by the Public Trustee direct from third parties. Nevertheless, for the purposes of the Account Application, the Royal Court was not being invited to decide, and did not need to decide, whether in fact the Public Trustee had been put in possession of all the assets which were or ought to have been held for the IXG Schemes.

17. According to the Public Trustee's evidence, he has not seen proper trust records and accounts such as to provide him with a clear picture of what happened to the monies and assets contributed to the IXG Schemes, what charges were applied (and the basis for them), what payments out were made (and to whom and for what) and what remains. Requests for transfer of the IXG Schemes' documents and information have led to the provision of limited documents. Requests for the delivery up of banking documents have been rejected. Although the Public Trustee has been able to obtain certain information from third parties, his position – and it is vouched by the information in his affidavit which he produced for the purposes of the Account Application – is that the information which he holds is "seriously deficient".

18. It is against that background that the Public Trustee made the 2020 Application and brought the Account Application before the Court for decision. The Account Application was directed at obtaining from the respondents documents and information, and at the same time sought sanctions which would apply if the required material was not provided. The Act of Court made on 23 December 2021 following the Account Application has been described above.

Procedural history of the Account Application

19. Before considering the grounds of appeal and the submissions, written and oral, made on behalf of the Former Trustees and the Public Trustee, we should explain that the judgment and Act of Court which are the subject of the present appeal came only after a delayed journey. The Bailiff's judgment describes this in paragraphs [9] to [12].

20. When the Account Application came on for hearing in December 2020, the respondents to the Account Application made their own application ("the Ultra Vires Application") contending among other matters that the Public Trustee had no power to seek the relief claimed in the Account Application. The Bailiff treated the Ultra Vires Application as requiring a preliminary decision affecting the continuing conduct of the Account Application, and, having considered the Ultra Vires Application, gave a judgment rejecting it on 9 December 2020 (when Mr Roger Mewis represented the Former Trustees remotely). The Bailiff then went on to hear the substance of the Account Application, reserving his judgment after a final hearing on 22 December 2020 at which there was no representation for any of the respondents to the Account Application. This part of the narrative is discussed in greater detail below in connection with Ground 10 of the grounds of appeal.

21. During the summer and early autumn of 2021 there were two further matters going forward in relation to the Account Application.

22. First, there was an application started by the Former Trustees on 17 December 2020 seeking funding for their conduct of the litigation with the Public Trustee. The basis for this application was a supposed provision of the instruments governing the IXG Schemes. It was dismissed by the Bailiff on 23 June 2021. There has been no appeal.

23. Second, in July 2021 the Former Trustees sought to appeal (out of time) from the Bailiff's rejection of the Ultra Vires Application. For an appeal they needed leave. On 14 July 2021 Sir Wyn Williams JA as single judge of the Court of Appeal refused leave ([2021] GCA 49). The Former Trustees then renewed the application for leave. This renewed application for leave was refused by the full court (Mr Jonathan Crow QC, Mr David Perry QC and Mr Jeremy Storey QC) on 1 October 2021 ([2021] GCA 50). One ground of appeal put forward on the application for leave was that the Bailiff had appeared to be biased against the Former Trustees.

24. Although the Bailiff had reserved his judgment on the substantive issues following the hearing of the Account Application in December 2020, for reasons he explained at paragraphs [3]-[4] and [13]-[14] in his judgment of 23 December 2021, that being the judgment now under appeal, he had delayed the delivery of his judgment and gave the respondents to the Account Application an opportunity to make further oral representations at a resumed hearing before him before he completed his judgment.

25. What appears from the documents before us is that in early November 2021 the respondents to the Account Application were saying that a further hearing of the Account Application was expected, on the basis that the hearing had been adjourned from 22 December 2020. This is described in paragraph [4] of the Bailiff's judgment. As explained in that paragraph, this then led to a resumed hearing of the Account Application on 8 December 2021.

26. It is relevant to describe the correspondence leading up to that hearing in some detail, as one of the matters relied on before us is the absence from the resumed hearing of anyone to speak on behalf of the Former Trustees.

    a. On 12 November 2021 an email was sent from the Admin email address, bearing at the end of the email Services' name, and addressed to the Enquiries email address with copies to the Court, the Public Trustee's advocate and others including the Office address. This explained that Services could only assist the Former Trustees in a very limited way due to staff difficulties. The email explained that Services would only be available after 17 January 2022 due to "*Court case in Cyprus; Scheduled medical and dental appointments; Attendance at military functions; Christmas and New Year holidays; Family commitments*".

b. On the same day an email in reply was sent from the Enquiries email address and stamped at the foot "Kenilworth Consultants Inc" (that is to say Kenilworth, one of the Former Trustees). This email read "*Dear colleagues, Thank you for your email and early notes of availability. We presume that the Cyprus Court case is that in which IXG are the claimants in a matter of non-payment of debt*". The response of the same day from the Admin email address was "*Dear Colleagues Yes, we are the claimants in the case against a company which thought it could take our money and then not pay us back*".

c. On 17 November 2021 the Deputy Greffier wrote an email to the parties explaining that the Bailiff had not intended there to be a further hearing of the Account Application before giving his judgment. He explained that with the agreement of the Public Trustee's advocate there could be a further hearing, or (in the absence of agreement) one might be applied for.

d. On 19 November 2021 an email came from the Enquiries address submitting that the conclusion of the hearing on 22 December 2020 was an adjournment of the Account Application part heard and not for the purpose of the Bailiff's considering and giving a reserved judgment.

e. On 23 November 2021 the Public Trustee's advocate made submissions inviting the Court to give judgment on the matters reserved for judgment on 22 December 2020 without any further hearing or submissions.

f. On the same day an email was sent from the Enquiries address repeating the submission that there should be a further hearing; and on 25 November 2021 there was a lengthy document sent as an attachment to an email from the same address, expressed as being from Kenilworth, this document expanding on the submission that there should be a further hearing.

g. On 26 November 2021 the Deputy Greffier sent an email to the various Imperial Pensions email addresses (that is, Enquiries, Office and Admin) to say "*The Bailiff has read all the latest correspondence and has decided to hear what the Respondents wish to say by way of any oral submissions supplementing what they have written. The Bailiff has very limited availability and has asked that the hearing be listed for 9.30am on 8 December 2021*". (We comment here that the last part of this last sentence was, in our judgment, making quite unambiguously the point that the Court was at the request of the Bailiff listing a hearing for the time and date specified. Although Mr Mewis on behalf of the Former Trustees has submitted that the words used made a mere request for a hearing with, as it were, a suggested date, we do not accept that the words could reasonably be given that meaning. In any case, within a space of a few days it was apparent the Former Trustees recognised that the hearing was now fixed for 8 December 2021.)

h. To this there was immediately an email from the Admin email address, expressed to be from Services, to say that while welcoming the decision to have a hearing, "*We would be available any time after 17th January 2022. To this end, we have cancelled all arrangements from 17th January 2022 onwards to accommodate the Court*". This was followed very shortly after with an email from the Enquiries email address, referring to what had been said in the previous email and adding "*The Former Trustees are reliant upon the Former Scheme Manager, on behalf of IXG Services Ltd, to represent them at the hearing, as litigants in person*".

i. On 29 November 2021 the Deputy Greffier replied to these two emails with an email explaining, materially, that the resumption of the hearing was to enable the

respondents to the Account Application to make oral submissions elaborating the written materials which had already been lodged, that this was not an occasion for the provision of new material, and that if the hearing which had been fixed for 8 December 2021 were to be vacated and re-fixed, the Bailiff would need "*something more than an e-mail request explaining precisely why that date is inconvenient, supported by evidence, which should ideally be sworn, but it could be unsworn with an undertaking to submit a sworn version when that can be achieved.*"

j. On 1 December 2021 an email from the Admin address made various observations objecting to the listing for 8 December 2021 on account of Mr Mewis' non-availability. This included the observation that "*… yesterday Mr Mewis received the distressing news that one of his ex-RAF friends of 58 years has been diagnosed with terminal cancer upon return from Germany, it is his intention of driving up to see him to spend time with his old friend and comfort him. We trust that the Bailiff will not expect a sworn statement indicating that his friend is dying of cancer.*" It also referred to Mr Mewis' sister-in-law being in hospital in Germany receiving medical treatment there. This email was echoed by one shortly after from the Enquiries email address, this time bearing at the foot the legend of both of the Former Trustees and not Kenilworth alone.

k. The Public Trustee's Advocate sent an email later that afternoon to say that the Public Trustee did not consent to the vacating of the date on the basis of the brief information so far provided.

l. An email of 2 December 2021 from the Deputy Greffier to the various Imperial Pensions addresses explained that the hearing on 8 December 2021 remained fixed. So far the respondents had nominated Mr Mewis to appear for them, and that "*Unless the Respondents now nominate someone else to appear on their behalves, as they are entitled to, then [the Bailiff's] expectation is that Mr Mewis will appear. All he needs is some internet access, or even a telephone, and the Bailiff can then listen to submissions to be made on behalf of the Respondents*".

m. Later that day there was a lengthy response from the Admin address. It made all kind of objections. Materially for present purposes it explained, so far as concerns the comment just quoted from the Deputy Greffier's email, "*on 8th December 2021, the expectation is that Mr Mewis will be either be en route to Germany or in Germany itself. Conducting a case in Guernsey while driving on the autobahn is not exactly conducive to responsible driving and, like the UK police, the German Polizie would take a dim view of such an irresponsible action.*" And it was indicated that the court should not consider the hearing date of 8th December 2021 to be so sacrosanct that it should supersede all other considerations.

n. An email of 2 December 2021, from the Public Trustee's Advocate to the Enquiries Imperial Pensions address, summarised what would be needed for the Public Trustee to consider an adjournment request. This included details of the reason why Mr Mewis needed to be travelling on 8 December 2021, why the plan for travel that day could not be changed, and supporting documents for the appropriate accommodation and travel ticket bookings (with booking dates). Equivalent information should be given, the email requested, if some other individual than Mr Mewis was capable of making submissions but not available.

o. The reply to this email on 3 December 2021 did not engage substantively with the request for the information identified by the Public Trustee's Advocate as appropriate, apart from explaining that "*As to the mode of Mr Mewis's transport,*

that has not been decided as other factors require consideration and the circumstances have only arisen in the past several days".

p. The same day an email was sent on behalf of the Public Trustee refusing to agree to an adjournment, pointing out that Mr Mewis' travel plans plainly had not yet been settled; and on 4 December 2021 a lengthy letter from Kenilworth was emailed in reply. Materially, as regards travel and the information which had been identified on 3 December 2021, the point made in the letter was that the Public Trustee's representatives had been "*recipients of the pre-emptive [Services] email, dated 12th November 2021, in which non-availability dates were given, in accordance with standard procedure for case management. ... in providing non- availability dates, these were set aside for appointments – both personal and business – that were likely to fluctuate although we were unable, at the time, to be definitive ...*", and "*Other vital and determining factors affected Mr Mewis' travel arrangements, as he needs a carer to travel with him. Dependent upon the carer, most likely to be a family member, they would need time off work. Then the travel arrangements might be either by aircraft, which then governs from with airport the flight will depart – either Exeter, Bristol or London; or travel by car which then demands whose family car is to be used, and whether by Eurotunnel from Folkestone or ferry from Dover. To book passage on either mode of transport requires vehicle registration, and involves European car insurance and breakdown service ...*" Other than that, the letter berated the Public Trustees' representatives for not agreeing to the adjournment.

q. On 6 December 2021 there was an email to the Deputy Greffier from the Enquiries address saying that an application would now be made to the Bailiff to vacate the 8 December 2021 date; and the email asked for guidance to be given so that the applicants as litigants in person would not be disadvantaged.

r. On the same day the Public Trustee's Advocate consented to any adjournment application being considered on the papers; and the Deputy Greffier replied to the Enquiries address to say that what was required was an application supported by an affidavit (which might be unsworn until there was an opportunity to have it sworn).

s. The following morning at 8.57 am an email was sent by the Deputy Greffier to the Enquiries address, copied to (among others) the other Imperial Pensions addresses, explaining that the adjournment application should be submitted with a supporting affidavit, and an indication as to whether there was consent to the application being dealt with on the papers; otherwise a hearing would be listed.

t. At 12.40 on 7 December 2021 the Public Trustee's Advocate emailed the Deputy Greffier and various Imperial Pensions addresses to say that that the Public Trustee opposed any adjournment application, and giving reasons. It submitted, that "*The Respondents have provided no actual reason why Roger Mewis is unavailable tomorrow and it is open to the Court to draw the inference that he simply does not want to attend the hearing listed by the Court.*"

u. There were further emails from Imperial Pensions addresses to the Deputy Greffier making enquiries seeking guidance as to procedure. One, at 15.08, said "*Mr Mewis is now finalising his witness statement and as soon as we receive it, we will email it to you".* The email went on to say that the Former Trustees did not agree to the application being dealt with on the papers and offered a date on or after 17 January 2022 for the hearing of the adjournment application. (As a matter of comment, at this stage there had not yet been an application to adjourn the hearing

fixed for the morning of 8 December 2021, and no witness statement or affidavit had been produced to explain why the 8 December 2021 date had been and still was impossible to accommodate. Further, it was obvious that there could not now be a hearing of an adjournment application before the date and time already fixed for the substantive hearing.)

v. At 15.29 on 7 December 2021 the Deputy Greffier sent out an email explaining that a Teams link would shortly be sent out to allow the next day's hearing (including any adjournment application) to be conducted remotely; and the link was sent at 15.32 pm to various email addresses, including the Enquiries address among other Imperial Pensions addresses.

w. At 15.51 on the same day an email was sent from the Enquires address containing a copy of an undated booking confirmation for lodgings at a Travelodge at the Chievely Service Area on the M4 near Newbury, the lodgings having a check- in time of 3pm on 8 December 2021 for one night. The email also attached a witness statement from Mr Mewis (described below). The Bailiff, in his judgment at paragraphs [17] and [18], explained that according to the statement Mr Mewis was to travel from his home in Devon to the hotel on the M4. This was linked to a family crisis in Germany, requiring him to travel there. But the Bailiff noted that there was no reason given as to why Mr Mewis needed to be travelling anywhere at 9.30am on 8 December 2021 so as to be unable to join remotely a half day hearing in Guernsey at that time.

x. Later the same day an email came from the Admin address insisting that there had to be an oral hearing of the adjournment application and that this had to be on or after 17 January 2022. This email bore the Services stamp at the bottom, along with the note: "*IXG Services will not accept service of documents sent to this email address*".

y. On 8 December 2021 the Deputy Greffier sent out an email to the parties (including to the Enquiries address), timed at 8.46 am, stating that, having read the witness statement provided the previous day, the Bailiff was not minded to adjourn the substantive hearing of the resumed Account Application but would hear orally any adjournment application, if one were made, at the time fixed for the resumed Account Application. The email also explained, so far as concerned the hearing fixed for 8 December 2021, "*... whatever is going on is something that could have been organised for some day around the hearing that has been fixed*".

z. The hearing went ahead on 8 December 2021 with no attendance by anyone to speak for the Former Trustees or any of the respondents to the Account Application. In particular, Mr Mewis did not use the internet connection which had been sent the previous day or connect by telephone. At 11.40 am a lengthy email was sent from the Enquires address to the Deputy Greffier complaining about his earlier email and the notice given in it; another email was sent at 12.42 from the same address to the Deputy Greffier complaining that the Bailiff must have proceeded with the hearing in order to accommodate a holiday planned for the Public Trustee's Advocate; and at 13.01 an email was sent from the Roger.Mewis address, the email text saying "*Gentlemen (SCS and KCI only) Unbelievable shenanigans and, reading your other email, also how convenient for Mr Davies' holiday!!! Kind regards Sent from my iPhone"*. (This was the first occasion, in the whole sequence of emails we have just described, in which the Roger.Mewis address was used.)

aa. There were further emails later on the same day, finishing with one from the Enquiries address which, among other complaints, said "*As the Court and Mr Davies were fully aware, Mr Mewis would be travelling today without any access to his computer. Indeed, [the Deputy Greffier's] email at 8.44 was not even addressed to Mr Mewis*".

27. At the hearing on 8 December 2021 the Bailiff gave a brief judgment to explain that he was not acceding to the adjournment application made by the Former Trustees to have the hearing vacated and refixed in the following year. Later that month, the Bailiff handed down the judgment which is the subject of the present appeal. The absence from the hearing on 8 December 2021 of anyone for the Former Trustees forms the basis of the eighth of the ten grounds of appeal and is discussed further below.

The Appeal

28. On 3 January 2022 a letter was sent to the Bailiff, unsigned but expressed to be on behalf of the Former Trustees. The letter contains various complaints about the Bailiff's conduct of the Account Application.

29. On 19 January 2022 the Notice of Appeal was given. The Notice is expressed as being given by the Former Trustees (described as "Plaintiff"). It carries an illegible signature over the legend "*Authorised Signatory Acting for and on behalf of the Plaintiff*". The Notice of Appeal contains ten grounds of appeal. These are explained in a written submission of the same date, which is unsigned but expressed as being a document of the Former Trustees. Four of the grounds of appeal (that is, the first and eighth to tenth) correspond with the heads of complaint in the letter of 3 January 2022. That letter has been placed before us, at the direction of the Bailiff, to consider insofar as the matters set out in it may be appropriately taken into account in support of the Former Trustees' appeal. Since the matters identified in that letter also form the subject-matter of grounds of appeal, we have treated the letter as a supplement to the written submission filed in support of the appeal.

Discussion

30. In what follows we consider in turn each of the ten grounds of appeal.

31. Ground 1 contends that the Bailiff in reaching his decision was at fault in that:

a. he was the same judge who had heard the application by the then Public Trustee on 27 September 2017 when the Royal Court ordered the Former Trustees to hand over the IXG Schemes' assets to the Public Trustee;

b. at that hearing there had been before the Royal Court an affidavit made by the then Public Trustee dated 6 September 2017 which contained false evidence; but that, in response to a request on behalf of the Former Trustees to have "*the falsified evidence rescinded*", the Bailiff said "*words to the effect, 'don't worry about it'*"; and

c. at the hearing of the Account Application this same affidavit was deployed by the Public Trustee's advocate knowing the affidavit to be false.

32. We take this ground of appeal to be advancing two contentions. First, that the decision of the Bailiff was vitiated by the presentation before him of what was said to be false evidence. And, secondly, that the Bailiff was at fault in adjudicating on the Account Application in light of his involvement in the hearing of 27 September 2017. We reject both of these contentions.

33. The written submissions made for the Former Trustees in support of this ground of appeal do not specify the evidence on behalf of the Public Trustee on the Account Application which is said to be false. They refer to an email dated 7 December 2021 sent by Services to the Public Trustee's Advocate in the course of the correspondence, described above, concerning the time when the resumed hearing of the Account Application was to take place. That email contains a general statement to the effect that the former Public Trustee's affidavit, relied on at the hearing on 27 September 2017, referred to corporate accounts as if they were pension scheme accounts. The grounds of appeal state that at the hearing on 27 September 2017, the matter of the former Public Trustee's "*falsified sleight of hand affidavit, concerning the use of corporate accounts, knowingly being passed off as pension scheme accounts*" was raised with the judge and the judge was asked to "*rescind such falsified evidence*". The grounds state that the "*judge denied the legitimate request with a dismissive remark, along the lines of: 'Don't worry about it'*."

34. At the hearing of the Account Application the affidavit sworn by the Public Trustee on 24 June 2020 in support of the 2020 Application did refer to the affidavit of 6 September 2017 as giving an explanation for the Public Trustee's continuing need to recover missing trustee records and accounts, despite there having been (according to the Public Trustee) extensive correspondence on the subject which had led to the provision of some trust documents (see paragraphs 204 and 205 of the Public Trustee's affidavit of 24 June 2020, referring to paragraphs 18 to 23 of the affidavit of 6 September 2017 and to the Public Trustee's subsequent attempts to obtain records). The response to this evidence was given on behalf of the respondents by Mr Roger Mewis in an affidavit of 1 October 2020 and was simply to assert that what was said by the Public Trustee, as described above, "*is both denied and rejected as the matter has been addressed in detail demonstrating that the [Public Trustee's] assertion is false*".

35. It is worth noticing that the point made in the email of 7 December 2021 concerning the affidavit of 6 September 2017 appears not to have been put forward as a ground of objection to the Account Application in the evidence (a witness statement of 19 August 2020 and an affidavit of 1 October 2020) given by Mr Mewis in opposition to the application, or in the Skeleton of 1 November 2020 or in the Rebuttal document provided by the Former Trustees dated 30 November 2020 before, and in opposition, to the Account Application. Insofar as the point in the email was directed at a suggestion that the Bailiff should recuse himself from, or was not appropriate to conduct, the hearing of the Account Application, this was a matter which could and should have been raised squarely at the outset (on 9 December 2020) and addressed by the Former Trustees in argument in the context of the Ultra Vires Application.

36. While evidence relied on by the Former Trustee may have been disputed (and may continue to be disputed) by the Former Trustees, that does not by itself make the evidence false.
It would appear that the allegation made in the grounds of appeal, that the affidavit of the former Public Trustee contained "*false evidence*" concerning "*the use of corporate accounts, knowingly being passed off as pension scheme accounts*" is founded on an argument, advanced by the Former Trustees, to the effect that a distinction falls to be drawn between "Scheme documentation" (which would be disclosable to the Public Trustee) and documentation owned by other parties involved in the administration of the IXG Schemes (which they say is not disclosable to the Public Trustee). It is clear from the terms of the former Public Trustee's affidavit that she recognised that this was the position being advanced by the Former Trustees. Her position was that this was an artificial distinction. That the Former Trustees disagreed (and continue to disagree) with her position in that regard does not mean that the affidavit contained "false evidence".

37. In any event, the Former Trustees' argument that the documentation sought by the Public Trustee was "company documentation" which did not fall to be disclosed to the Public Trustee was advanced on their behalf before the Bailiff when he considered the Account

Application, and he dealt with that argument on its merits. It is evident from his judgment that he clearly understood the point which the Former Trustees were making; and he rejected it for the reasons which he gave.

38. The contention before us that the Bailiff was at fault in adjudicating on the Account Application because of his involvement in the hearing of 27 September 2017 amounts to a contention of actual or apparent bias.

39. The absence of bias and fairness in the conduct of a trial are, of course, foundations for any sound system of justice. Both as a matter of customary or common law, and as a matter mandated by Article 6 of the European Convention on Human Rights, they are essential characteristics of legal proceedings before the courts in Guernsey.

40. The concept of "bias" may be expressed as involving a judge approaching a case without the impartiality and openness to the issues necessary for a fair trial. Without seeking to lay down any precise definition, it may be described as a prejudice against one party or that party's case for reasons unconnected with the legal or factual merits of the case.

41. Cases of actual bias are very rare. Judges are chosen for their experience and integrity, and can be expected to be committed to serving justice and to do so to the best of their ability. There is no basis whatsoever for any suggestion of actual bias on the part of the Bailiff. The terms of his judgment, the care with which he addressed the issues, and the fact that he did not grant orders in the terms sought by the Public Trustee, but modified them in order to protect the interests of the respondents, are all eloquent of the fair-minded approach which is to be expected of a professional judge.

42. It is more common to encounter cases alleging an appearance of bias, rather than actual bias. As to this, the law is encapsulated in Lord Hope of Craighead's statement in Porter v Magill [2001] UKHL 67, [2002] AC 357 at [103]: the test for apparent bias is whether "*the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased*".

43. The test for apparent bias is met only where the possibility of the tribunal being biased is "real", and where this is a conclusion which "would" be reached by an informed observer, and not one which could be reached or might be reached. The "real" possibility of bias required for a case of apparent bias to be made out has to be more than fanciful. The hypothetical observer is "fair-minded and informed" and should be taken to be someone of practical common sense, neither naïve or complacent nor unduly suspicious or cynical. The burden of establishing a case of apparent bias lies with the person making it.

44. The reference to the "fair-minded and informed observer" conveys that the test is an objective one. As this Court made clear when refusing the Former Trustees' leave to appeal as regards the Ultra Vires Application, the matter is not tested by reference to the subjective opinion of the litigant. In that decision, this Court observed at [35] that the Former Trustees' argument as to bias appeared to be "*founded on the basis that they are so convinced of the correctness of their own argument that any indication from the Bailiff that he did not accept that argument is, in their eyes, evidence of apparent bias on his part. That position has only to be stated for its fallacy to be evident.*"

45. In the present case the Former Trustees contend that the Bailiff was disqualified for apparent bias because he had been the judge at the hearing on 27 September 2017. We do not accept that submission. The fair-minded and informed observer would not conclude that, simply because a judge has taken an adverse view on some previous application or applications of submissions by a litigant or has made orders adverse to the litigant, the judge is biased, or appears to be biased, against the litigant. The fair-minded and informed observer would

understand that a judge is well-fitted by professional training and experience to decide each application fairly and impartially on its merits. Indeed, there is often very great advantage to parties and to the administration of justice in securing judicial continuity.

46. In the present case the point made in the 7 December 2021 email might have been taken by the respondents to the Account Application much earlier for the hearing on 9 December 2020, as an invitation to the Bailiff to recuse himself, or to found an argument that he should not proceed, or continue, to hear the Account Application. But we are satisfied that such a course would have been wholly without merit.

47. Specifically, a judge would be wrong to accede too readily to a recusal invitation: the recusal should only take place if the judge is genuinely unable to give one or other party a fair hearing, or decides that a fair-minded and informed observer would conclude that there was a real possibility of an unfair hearing. The danger of acceding too readily to a recusal request is plain: there can be at the very least loss of time, effort and cost, as there would have been in the present case. There can be occasions when the delay caused by a recusal leads to a denial of justice, when a matter has become urgent. Challenges raised on the basis of apparent bias can easily become a weapon for a litigant seeking to delay proceedings. In our judgment it would not have been appropriate for the Bailiff to recuse himself from continuing to hear the Account Application by reason of what was put forward in the 7 December 2021 email.

48. Nor, in our view, is there any substance in the allegation that the way that the Bailiff dealt at the September 2017 hearing with the Public Trustee's affidavit gives rise to apparent bias. We do not know in detail what happened at that hearing. Those currently representing the Public Trustee were unable to provide us with additional information about it. Had the issue been raised before the Bailiff (as it should have been), we would, no doubt, have had relevant information in his judgment. But, in any event, the grounds of appeal do not, in our view, disclose a case of apparent bias. The allegation is that the Bailiff was, at that hearing, invited to "rescind" what was said by the Former Trustees to be "falsified" evidence – namely, as it is put in the grounds of appeal, evidence "*concerning the use of corporate accounts, knowingly being passed off as pension scheme accounts*" – and that he rejected that application with a "dismissive" remark along the lines of "Don't worry about it". For the reasons we have set out above, we do not consider that there is any basis for characterising this as "false evidence", as opposed to a position legitimately advanced, albeit one with which the Former Trustees disagreed. An application to "rescind" that evidence was, accordingly, misconceived; and its rejection was accordingly correct. The issue between the parties about the characterisation of the accounts, or, indeed, the question of whether that issue was one which fell to be addressed or determined at the September 2017 hearing, were matters which the Bailiff was well able to address. If the Bailiff did use language along the lines alleged, that would to a fair-minded observer suggest that he was giving reassurance to the effect that the fact that he was rejecting the application to "rescind" the evidence in question would not affect his judgment on the substantive issues between the parties. For that reason, such language, in our view, would have been entirely innocuous and would not give rise to any reasonable apprehension of bias on his part when it came to the Account Application.

49. We therefore dismiss the first ground of appeal.

50. As mentioned above, through Mr Mewis the Former Trustees have claimed that the 6 September 2017 affidavit was deployed in the Account Application when known to the Public Trustee's Advocate to be false or to contain falsified evidence. In view of the way the appeal has been presented by the Former Trustees, we feel it necessary to say that there is absolutely no evidence before us to support this claim of misconduct. The same applies to the many other similar claims of deliberately improper conduct made on behalf of the Former Trustees to us concerning the Public Trustee and the Public Trustee's Advocate.

51. Ground 2 is that at the hearing of the Account Application the Royal Court was misled by the Public Trustee's Advocate in a specific respect concerning the object of the application and the evidence. The specific allegation is that the Bailiff was told that each of the accounts identified in the Schedule to the 2020 Application was "*an account of a nominee of the former trustees*". The 2020 Application was amended in the course of the Account Application's progress on 23 June 2021. Later in this judgment we say more about the Schedule (the terms of which were never amended), referring to it as "the Schedule".

52. The evidence before the Royal Court, so far as concerns the 21 identified bank accounts, was that each was either in the name of one of the Former Trustees, or that of a nominee, or was an account into which trust assets have or may have passed. Documents held by nominees on behalf of the Former Trustees are just as much documents relating to the trusts as if held directly by the Trustees themselves: see paragraphs [63]-[64] of the Bailiff's judgment. The evidence concerning the bank accounts was explained in an affidavit made by the Public Trustee in support of the 2020 Application. It was open to the Royal Court to proceed on the basis of this evidence, for the purposes of determining the Account Application.

53. Other than a blanket statement that the information provided by the Public Trustee was a "complete fabrication", the only specification given in the written submissions in support of this ground of appeal is an allegation that, contrary to a statement by the former Public Trustee that a car had been purchased using Scheme funds, the car had in fact been purchased using company funds. It is incumbent on the Former Trustees to provide a full explanation of payments out to Mr Mewis or family members (itemised at paragraph 178 of the Public Trustee's first affidavit) to support a contention that any monies in the accounts (as listed at paragraph 243 of the Public Trustee's affidavit) belonged to the companies not the Schemes.

54. It was open to the Royal Court to proceed, for the purposes of determining the Account Application, on the basis of the evidence provided by the Public Trustee. In the Account Application, the Public Trustee is simply seeking information which will assist him in identifying the location, destination, application and source of Scheme funds. If there is a relevant dispute as to whether a particular payment has or has not, in fact, been made using Scheme funds and/or was or was not legitimate, that will fall for determination at a later stage in the final determination of the 2020 Application. In any event, a single transaction offered by way of counter-example (even if it were accepted to be correct) would not undermine the general validity of the information laid before the Royal Court to the effect that each of the 21 accounts was either in the name of one of the Former Trustees, or that of a nominee, or was an account into which trust assets have or may have passed.

55. Although not relied on specifically in relation to this ground of appeal, we note that one of the accounts, an account with a branch of the Halifax, is in the name of Mr Roger Mewis as a joint account with his wife. At one of the hearings of the Account Application on 22 December 2020, as well as in his judgment now appealed from, the Bailiff noted that this was a personal account. He rejected the Public Trustee's contention that just because some monies from one or more of the Schemes has passed into the Halifax account the whole of it becomes subject to the Public trustee's scrutiny: paragraph [67]. Although this was a personal account, and was accepted by the Bailiff to be a personal account, there was information before the Bailiff, which he was entitled to accept, to the effect that funds had been paid into this account from an account with Valartis Bank, which held Scheme funds. Mr Mewis accepted that at least one such payment had been made, albeit that he provided an explanation for that payment – namely, that it was the repayment of a loan and had been authorised by the Former Trustees. Mr Mewis also accepted that a payment had been made out of this account to a Scheme member, albeit again that he stated that he had done this to meet a case of need. In our view, it would be premature to seek to adjudicate on the validity or otherwise of those explanations. At this stage, the Royal Court was entitled to proceed on the basis that the Public Trustee should be allowed, in fulfilment of his responsibilities, to obtain information

vouching the location, destination, application and source of Scheme funds, so that he can establish what has happened to those funds. Any issues which arise from that exercise as to the basis and/or propriety of particular payments will require to be addressed in due course.

56. In relation to this ground of appeal the Former Trustees draw attention to two pages (17-18) in the transcript of the hearing on the afternoon of 22 December 2020 in which the Bailiff was discussing with the Public Trustee's Advocate why the Public Trustee was unable himself simply to demand from the various banks the information he needed. The complaint is that the Public Trustee's Advocate misrepresented the nature of the 21 bank accounts, suggesting to the Bailiff, and leading the Bailiff to believe, that the accounts were all in the names of nominees for the Former Trustees and contained only funds belonging to the Schemes.

57. We have considered carefully both the passage in the transcript and the Bailiff's judgment. We are satisfied that the Bailiff correctly understood the evidence and was not misled by anything said to him in the course of oral argument and submissions. As to the passage in the transcript, the Bailiff noted that if the accounts with the banks were the Public Trustee's accounts, then the Public Trustee would simply be able to demand the information. But he noted also that the Halifax account referred to above was not a trust account. He then went on to note that each of the accounts is either an account of the Former Trustees, or of a nominee, or is an account into which trust assets have or may have passed. The evidence furnished to the Court by the Public Trustee provided support for that observation.

58. As a footnote to this ground of appeal, it is difficult to see what objection the Former Trustees (who are the only Appellants before us) might have if any of the accounts was held either by a nominee for them or by some other third party whose account had received what would appear to be trust assets. Nor is it clear what objection these Appellants can have to so much of the Act of Court as requires the production of banking documents for accounts held by or in the name of other respondents to the Account Application who have chosen not to appeal the Bailiff's decision. Further, paragraph 1(c) of the Act of Court of 23 December 2021 provided protection of the privacy attaching to transactions which are unrelated to the Schemes by means of redaction – an issue we address under Ground 4 below.

59. In short, we do not consider that the Former Trustees' second ground of appeal has any substance.

60. Ground 3 contends that the orders made in the Act of Court of 23 December 2021 were outside the provisions of section 16(1) of the Public Trustee (Bailiwick of Guernsey) Law, 2002 ("the Public Trustee Law"). That section is a provision which gives the Bailiff power, in certain circumstances, to grant a warrant to any officer of police together with anyone else named in the warrant, to enter and search premises for documents and to require anyone named in the warrant to answer questions.

61. This ground of appeal needs no prolonged consideration. Quite simply, neither the Bailiff's judgment nor the Act of Court of 23 December 2021 involved the grant of a warrant in exercise of any power in section 16 of the Public Trustee Law. The position is altogether more prosaic. Section 15(1)(b) of the Public Trustee Law gives the Public Trustee power by notice in writing to any person to provide information reasonably required for the performance of the Public Trustee's functions. Further, the appointment of the Public Trustee as trustee of the IXG Schemes in the place of the Former Trustees expressly authorised the Public Trustee to investigate the IXG Schemes. Yet further, on the Account Application the Public Trustee expressly sought to invoke the power conferred on the Royal Court by section 69 of the Trusts Law, a section which gives the Royal Court power on an application by a trustee to make orders in respect of the administration of a trust and in respect of any trust property.

62. The first paragraph of the Bailiff's judgment makes clear that the application was not presented under reference to section 16 of the Public Trustee Law, but inter alia sections 68 to 71 of the Trusts Law and the inherent powers of the Court. Also, paragraphs 55 and 56 of the judgment make clear that the Public Trustee relied specifically, for the orders sought, on sections 69 and 70 of the Trusts Law. In his judgment the Bailiff referred to the breadth of the powers conferred by section 69, as confirmed by a case decided by this Court to which he made reference (*Re R and RA Trusts* (judgment 25/2014), in which Sir Michael Birt noted at paragraph [73(ii)] that the "*wording of Section 69 is extremely wide*").

63. Further, and in any event, on the Ultra Vires Application the Bailiff made a ruling concerning the powers which the Public Trustee might seek to invoke. Out of time, this ruling was sought to be appealed, and leave was refused by this Court (as explained above). It is not now open to the Former Trustees again to challenge the Bailiff's decision about the powers of the Public Trustee to invoke the Royal Court's jurisdiction in relation to the relief sought on the Account Application.

64. Ground 4 is that the Bailiff made orders in breach of Article 8 of the European Convention of Human Rights. The Appellants' written submissions in support of this ground of appeal make clear that it is concerned specifically with the Halifax bank account in the name of Mr Roger Mewis and his wife.

65. Article 8 (which has effect in Guernsey law as provided for in the Human Rights (Bailiwick of Guernsey) Law, 2000) (" the 2000 Law") is in the following terms:

> *"(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*
>
> *(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights or freedoms of others*."

66. An order requiring the disclosure of private information which engages Article 8 is not incompatible with Article 8 if that order is justified in accordance with Article 8(2). Further, a person who claims that a public authority has acted incompatibly with Convention rights may, by virtue of Article 7 of the 2000 Law, rely on the Convention rights in legal proceedings but only if he is a victim of the unlawful act.

67. Against that background, we reject this ground of appeal for the following reasons.

68. As we have observed above, it is only the Former Trustees who are Appellants. Even if the effect of the Royal Court's order on the Halifax account were to be incompatible with the Article 8 rights of the account-holders, Mr and Mrs Mewis (and for the reasons we set out below, it is not), the Former Trustees cannot plausibly claim to be "victims" and accordingly have no locus to advance that argument.

69. In any event, the application of the Royal Court's order to the Halifax bank account is not incompatible with the Article 8 rights of the account-holders. The Public Trustee argued that, insofar as the order enables him to identify funds to which, as the current trustee of the IXG Schemes, he is entitled, no question of a breach of the account-holders' rights arises. We recognise the force of that argument. However, at least as regards the account which is recognised to be a private account, we are inclined to the view that the better approach is to

address the issue on the assumption that Article 8 applies, but to ask whether the order is justified under Article 8(2). We are clear in our view that the order is justified on that basis.

70. The order has, as we have held above, been made in accordance with legal powers which rest with the Royal Court to support the proper administration of trusts governed by Guernsey law. It pursues the legitimate aim of protecting the rights of others – namely, the rights of the Public Trustee as trustee of the IXG Schemes and the rights of the beneficiaries of the IXG Schemes. In the circumstances, the order was clearly justified and proportionate to that legitimate aim. There was, as we have explained above, information before the Bailiff to the effect that the Halifax account was the recipient of funds from Valartis Bank, where some of the Schemes' assets were held. The information that scheme funds had been paid into that account was not, as the submissions in support of this ground of appeal assert, based on "*unsubstantiated thoughts and guesswork*". Indeed, as we have noted above, Mr Mewis accepted that at least one such payment had been made into the Halifax account. The Bailiff was, further, at pains to frame the order in terms which would protect the Article 8 rights of the account-holders. He significantly narrowed the order sought by the Public Trustee, precisely for that purpose, in particular by permitting redaction of the material to be provided under the order in the terms, and on the basis, explained at paragraph [71] of the Bailiff's judgment.

71. Those parts of the Court's order which provided for the production of mandates (paragraphs 2-5) do not contain a like provision about redaction. However, in considering whether the order pronounced by the Court is compatible with Article 8, that order falls to be considered as a whole. The provisions for mandates are by way of a safeguard to ensure that the purposes of the order may be achieved even if the respondents fail to comply with the requirement which paragraph 1 of the order places on them to produce the relevant documents. If they were to produce those documents (albeit redacted as permitted by paragraph 1(c) of the order), the mandate provisions would never become operative. Further, it was pointed out to us that the banks and other third parties to whom mandates would be directed would likely not be in a position to identify reliably which transactions were unrelated to the IXG Schemes. Read as a whole, the order contains appropriate protection, in the provision for redaction, for the Article 8 rights of the account-holders. Likewise, should redacted documents be provided and should it prove necessary for the Court to make further orders to verify that the redaction process has been properly carried out (for example, orders requiring unredacted material to be provided to the Court so that it can adjudicate on the appropriateness of any particular redaction), such orders would not, in principle, be incompatible with Article 8.

72. Ground 5 is that the orders made by the Royal Court on the Account Application were not "*solely confined to, 'all documents and information which relate to the administration of the trust*'", so that the orders were, so it is said, contrary to common law.

73. The premise for this ground is that the Royal Court could properly order the Former Trustees (and indeed all the respondents to the Account Application) to provide documents and information relating to the IXG Schemes' administration. The argument advanced by the Former Trustees is that the limit to what could be ordered to be provided would be exceeded if the material did not relate exclusively to the IXG Schemes' administration. In the written submissions on behalf of the Former Trustees it is said that "*the only information*" that the Public Trustee could be entitled to, as incoming trustee, is "*information which relates solely to the administration of a pension scheme or trust*".

74. Further, the Former Trustees contend that the order made by the Royal Court would entitle the Public Trustee to demand from third parties "*all and any documents that are requested from time to time*", this being the text used in a draft form of mandate which the Public Trustee had proposed when making the Account Application. Added to this contention is a

complaint that the material which might be demanded could be subject to legal professional privilege.

75. In our judgment the Royal Court did not fall into error.

76. The foundation for Ground 5 lies in what was said in the judgment of Sir Michael Birt (Bailiff), sitting with Jurats Le Breton and Marett-Crosby, in the case of *The Bird Charitable Trust and the Bird Purpose Trust* [2012] JRC 006, [2012] (1) JLR 62, where there was discussion of the duties of an outgoing trustee to hand over documents and information to an incoming trustee.

77. At paragraph 29 of his judgment in the Bird case Sir Michael Birt stated that "*In summary, an outgoing trustee will normally be under a duty to hand over to an incoming trustee all documents and information which relate to the administration of the trust so as to enable the incoming trustee to fulfil his duties …*". Although that case was concerned with the law of Jersey, the Bailiff accepted that the principles expounded also reflect the law of Guernsey. The Former Trustees accept, and indeed rely, on this view of the law. For our part, we agree that the principle articulated by Sir Michael Birt in Bird is equally applicable in the law of Guernsey.

78. The Former Trustees' contention based on the Bird case has added a gloss to the words used by Sir Michael Birt: the word "*solely*" does not appear in the passage just cited from the judgment. There is no reason to add such a gloss to the principle articulated by Sir Michael Birt, and good reason not to do so. As Sir Michael Birt explained at paragraph 23 of Bird:

> "*One starts from the position that a successor trustee is stepping into the shoes of a retiring trustee. He is assuming the same duties as the retiring trustee towards the beneficiaries. He is therefore on the face of it entitled to be placed in the same position as the retiring trustee so far as possible. Thus, if the retiring trustee has information or documents about the administration of a trust, he must normally make these available to the incoming trustee*".

At paragraph 24 he cited from and adopted what he had said in a previous judgment (in *Ogier Trustee (Jersey) Ltd v CI Law Trustees Ltd* [2006] JRC 158), namely "*On the transfer of a trusteeship the outgoing trustee is under a duty to co-operate fully and actively in the transfer by making all relevant documents and correspondence available promptly to the incoming trustee and by providing any explanation to questions reasonably raised by the incoming trustee*". At paragraph 25 he referred to the "*the presumption that an incoming trustee should be placed in just as good a position in all respects as the outgoing trustee*".

79. We can see no principled justification for considering that an outgoing trustee's duty to co-operate with the incoming trustee is limited such that the outgoing trustee need not provide information if it relates both to the administration of the trust and to other matters: if the information is relevant to the trust or its administration, it should be provided to the incoming trustee even if it could also be said to be relevant to some other matter. We note that, where an outgoing trustee has also acted in some capacity other than as trustee, the duty to convey information to an incoming trustee may encompass documents received and held in that other capacity if they are nonetheless relevant to the administration of the trust.

80. The Bird case itself shows why there is no need for the limitation suggested by the Former Trustees to be applied to the outgoing trustee's duty. This is because the Court has power, where an incoming trustee's requests for co-operation and assistance from the outgoing trustee go beyond what is reasonable, to define or delimit what is required in an appropriate way.

81. We should add that we question whether any real issue arises in this respect in relation to the documents and information covered by the order under appeal. If the bank accounts are held by the Former Trustees and their nominees, information about those accounts will plainly be relevant to the administration of the trust: there is no suggestion that the Former Trustees had (or have) any business other than that of their involvement with the IXG Schemes. If Scheme funds have been transferred to the bank account of others of the respondents, information about the transfer and application of the funds is also relevant to the administration of the trust even if there turns out, on examination, to be a proper basis for the payment being received beneficially by the recipient.

82. Further, as we have discussed above, the Bailiff has carefully drafted the order made by the Royal Court to permit redaction of information which is unrelated to the affairs of the Scheme, where a respondent complies with the order in providing the Public Trustee with required documents.

83. In any event, in the present case the Royal Court considered the assistance which it has ordered to be given to the Public Trustee to be reasonable: this is because the assistance is required to enable the Public Trustee to obtain documents and information from the Former Trustees and others, including where necessary third parties (bankers, lawyers and accountants) who have handled assets of the Schemes or dealt with their affairs. We can identify no ground for interfering with that assessment.

84. The criticism concerning the wording of the draft form of mandate provided by the Public Trustee does not advance the Former Trustees' case, for the short reason that paragraphs 2 and 3 of the Act of Court specifies what the Former Trustees are to authorise, not the draft form of mandate.

85. The Former Trustees complain that information or documents which the Public Trustee might be able to obtain pursuant to the Act of Court may include legally privileged information. This complaint is misconceived. Sir Michael Birt's judgment in the Bird case explains why this is not in fact an objection. At paragraph 28 he pointed out that, whilst legal advice obtained at the cost of the trust is often disclosable to a beneficiary, "*it is likely to be even more relevant for an incoming trustee to see legal advice obtained by a previous trustee as it may well be relevant for the future administration of the trust*".

86. Ground 6 is that the respondents to the Account Application cannot be forced to authorise the Public Trustee to receive information to which he is not entitled.

87. We reject this ground of appeal. The Former Trustees are the only Appellants. They have been ordered to provide material to the Public Trustee in order to allow the Public Trustee to perform his duties as trustee of the IXG Schemes. There is no evidence that the Former Trustees had any other business than as trustees of the IXG Schemes. The Public Trustee is entitled to have proper help from the Former Trustees, and if the Former Trustees fail to provide it the Public Trustee is entitled to have the assistance of the Royal Court's orders to obtain it. We cannot see that the Royal Court was at fault in deciding, in exercise of the powers given by sections 69 and 70 of the Trusts Law, to make the orders it did for the provision of documents to the Public Trustee. The Bailiff, it is clear from his judgment, gave scrupulous attention to the balance between, on the one hand, the pressing need of the Public Trustee to obtain the information which will allow the Public Trustee to understand the affairs of the Scheme and, on the other, the position of the respondents, both as regards their responsibilities and as regards the burden on them of assisting the Public Trustee.

88. The starting point is that, consistent with the fiduciary nature of a trustee's responsibilities, the duty to hand over relevant documents and information is an active duty of co-operation which rests on the outgoing trustees. It is incumbent on them to provide all relevant

documents and information to the incoming trustee. As the Former Trustees concede at paragraph 8(viii) of their submissions, such documents comprise all documentation relating to the administration and management of the Schemes; this includes documents held by the Former Trustees, and nominees or representatives acting for and on behalf the Former Trustees. The unfortunate fact is that it is now five years since the Public Trustee was appointed by the Royal Court in the place of the Former Trustees. That appointment was made because there were uncertainties surrounding the Schemes, including materially as to the assets of the Schemes. The affairs of the Schemes needed, at that time, to be sorted out as quickly as possible and any remaining assets secured and distributed appropriately among those, creditors and beneficiaries, found to be entitled to them. The Public Trustee is still trying to work out the true factual position and to identify and secure assets. We have not been told, but assume, that little progress has been made towards any distributions. The Former Trustees had and have a duty to facilitate, by the proactive, prompt and full provision of relevant documents and information, the proper exercise by the Public Trustee of his responsibilities as the current trustee of the Schemes.

89. The Bailiff was alive to a concern going the other way, that the Act of Court could result in the respondents having to produce to the Public Trustee a bulk of material some part of which might be duplicated by material which the Public Trustee has already in his possession. To reduce the burden on the respondents, the Bailiff's order set out at paragraph 1(a) in the Act of Court a provision for the Public Trustee to give to the respondents to the Account Application a list (copied to the Court) of documents, this list itemising material which would be exempted from the duty of production and assistance which otherwise the Act of Court was to impose on the respondents.

90. As the oral argument developed before us it became clear that there was a disagreement between Mr Mewis on behalf of the Former Trustees on the one hand and the Public Trustee on the other as to what was expected or directed by the Act of Court concerning this list. Specifically, Mr Mewis asserted that the list which had been provided by the Public Trustee on 7 January 2022 following the Act of Court was incomplete, and that the Public Trustee was trying to conceal what he holds already. This was in response to the Public Trustee's Skeleton Argument of 28 February 2022 in opposition to the appeal in which it was said at paragraph 51 that the Public Trustee had complied with what had been ordered by the Bailiff in paragraph 1(a) of the Act of Court.

91. To explain the point in a more detail it is necessary to describe the Act of Court in a little more detail . It may be regarded as falling into three parts. The first part of the order made, in paragraph 1 of the Act of Court, directs the respondents to provide information and full and complete copies of all the documents "*set out in the Schedule to the [amendede 2020 Application] ... and any documents relating to the assets and/or liabilities and or/administration of one or more of the Schemes each Respondent holds or can obtain* ".

92. There are three provisos to this requirement. Two of these, in sub-paragraphs (b) and (c) of paragraph 1 of the Act of Court, are that the documents may be delivered in soft or had copy (at the respondents' election), and that they may be redacted as regards information "*private to the account holder".* A feature of this last requirement is that it is limited to account holder privacy, terminology appropriate for bank accounts, while (as already explained at the outset of this judgment) part of what is ordered to be produced is material of a kind likely to have involved lawyers or accountants.

93. The third of the three provisos is directed at the list, to which we have just referred. This proviso, in sub-paragraph (a) of paragraph 1 of the Act of Court, exempts from production "*those documents that the [Public Trustee] will list in a document to be served on the Respondents and lodged with the Court by no later than 4pm on January 2022 that sets out*

those materials already held by the [Public Trustee] and in respect of which no delivery will be required".

94. The disagreement between the parties to this appeal centres on this proviso and turns critically on the words at the end of the proviso and their meaning.

95. Subject to the effect of the proviso, the operative part of paragraph 1 of the Act of Court defines what is to be provided by the respondents by reference to two categories.

    a. The first category is centred on the Schedule to the amended 2020 Application. It should be noted that the Schedule is focussed principally, but by no means exclusively, on bank accounts: paragraph 1 of the Schedule lists 21 accounts specifically, while the same paragraph makes it clear that this is not exhaustive of all the accounts being referred in the paragraph, as it also refers to all bank or building society accounts operated by or on behalf of the respondents in relation to any of the IXG Schemes including those accounts in which funds relating to the schemes were or are dealt with. Other paragraphs of the Schedule refer to other types of material. It will thus be seen that the scope of what is described in the Schedule is wide, albeit in general one might say that the broad theme is material likely to evidence the source and application of cash and other assets.

    b. The second category of material in paragraph 1 of the Act of Court is broadly explained as being anything which both (i) relates to Scheme assets, liabilities or administration, and (ii) is held or obtainable by a respondent.

96. The second part of the Act of Court divides into two sections.

    a. The first of these sections is paragraph 2, which provides that "*In respect of any documents or information not provided in accordance with paragraph 1, the First to Sixth Respondents must execute mandates/instructions to require*" seven named banking institutions to deliver the Public Trustee's lawyers "*any documents missing from those listed in the Schedule …*".

    b. The second, in paragraph 3, opens in the same way as paragraph 2, but names four law firms and one accounting firm in the place of the institutions. What the mandates are to direct to be delivered up in this case are "*any documents held or controlled by that entity containing information relating to the assets and/or liabilities and/or administration of one or more of the Schemes*". In paragraph 3 there is no reference to the Schedule.

97. The mandates required from the first six respondents by paragraphs 2 and 3 were to be delivered by 28 January 2022. These paragraphs, like the third part of the Act of Court, are not directed at the seventh respondent, Mr Roger Mewis' brother.

98. The third part of the Act of Court, in paragraph 5, is to cover the case where the mandates required by paragraph 2 or paragraph 3 are not delivered. In this case from and after 31 January 2022 the Public Trustee is authorised to execute for the relevant respondent "*a like mandate*" which the respondent should have executed and delivered.

99. It is clear that the Bailiff was concerned, very fairly, to make sure that while having regard to the Public Trustee's need for material for his duties in relation to the IXG Schemes, the Act of Court was not oppressive of the respondents. This can be demonstrated by his indication in paragraph [68] of his judgment, that where the Public Trustee has a complete set of statements for a particular bank account, there should be no need for the respondents to provide a further set.

100. In this regard paragraph [70] of the judgment is important. Before us Advocate Davies on behalf of the Public Trustee drew attention to this paragraph as a guide for the Public Trustee when approaching the task of listing documents in the list provided in accordance with sub-paragraph (a) of paragraph 1 of the Act of Court. Indeed, the letter of 7 January 2022 from the Public Trustees' lawyers, being the covering letter for the list, placed explicit reliance on what the Bailiff had said in that paragraph as being determinative of what had been identified by the Public Trustees' team for inclusion in the list.

101. What the Bailiff said in paragraph 70 of his judgment was:

> "*I am also conscious that the Respondents, and particularly the Former Trustees, have been critical of the Public Trustee for not providing a simple list of the materials to which he already has access. There may be some justification on this point, although I doubt that the provision of a list outside of what is exhibited to the Public Trustee's evidence would have resulted in the Respondents agreeing to provide any of the material sought by the application voluntarily, ie, without imposing their own conditions relating thereto. In those circumstances, I will add a requirement that the Public Trustee is to provide to the Respondents (and to copy to the Court) a list of what is already held in relation to the accounts listed in the Schedules*."

102. Advocate Davies on behalf of the Public Trustee submitted, in answer to Mr Mewis' complaint concerning the adequacy of the 7 January 2022 list, that indeed the list complied with paragraph 1(a) of the Act of Court. He also submitted that as there had been no stay ordered of the orders made by the Act of Court, and as there had been no production of material at all by the respondents, contrary to the requirement of paragraph 1 of the Act of Court following service of the list, and as there had been no subsequent provision of any mandates pursuant to paragraphs 2 and 3, it was now open to the Public Trustee to make and serve the forms of mandate authorised by paragraph 5.

103. This sets the backdrop to a further point in relation to identification of documents by the Public Trustee. It is clear that the Public Trustee has already obtained from both the Former Trustees and others a bulk of documents relating to the IXG Schemes. We were told by Advocate Davies, on instructions, that the Public Trustee now holds several thousand documents, possibly in the order of 20,000 documents relating to the IXG Schemes.

104. We are also told by Mr Mewis that in July 2017 time was spent by former IXG staff based in Malta collating existing Scheme documentation held there into six boxes for sending to the Public Trustee, after scanning and sending soft copies digitally; and on behalf of the Public Trustee Advocate Davies confirmed that indeed the six boxes had been received, and further that the Public Trustee had soft copies of virtually all of the contents of the boxes.

105. Advocate Davies explained on instructions that the contents of the boxes were chiefly oriented to the position of beneficiaries of the Schemes rather than being concerned with the disposition and whereabouts of assets, and not therefore of immediate relevance. Such documents, we accept, are not the focus of the Account Application, which is targeting information concerning the management and whereabouts of scheme money and property. At the same time material of the kind which we were told had been recovered from Malta is likely to contain personal and sensitive information about the beneficiaries of the Schemes which it would not be appropriate to return to the Former Trustees or indeed to provide to the other respondents. The process of listing in detail the contents of the boxes would be time-consuming and costly, and generate a list of little assistance. To send copies of the documents themselves would impose a significant burden on the respondents who received them.

106. With the agreement of Mr Mewis, Advocate Davies provided to the Court during the course of the hearing a copy of the 7 January 2022 list and covering letter. What had happened, as the covering letter explained, was that the Public Trustee's team in compiling the list of materials already held had taken into account what the Bailiff had said in paragraphs 68 to 70 of his judgment. Thus, the list itself was described in the letter as "*a list of documents ... held by the Public Trustee in relation to the accounts listed in the schedule to [the amended 2020 Application]*". While the letter continued to explain the approach which had been taken to selecting what had been included in the list, this being material in relation to those accounts, including bank correspondence, it went on to say,

> "*To be clear, the Public Trustee does of course hold other documents which tangentially could be said to 'relate' to 'the assets and/or liabilities and/or administration of one or more of the Schemes each Respondent holds or can obtain', but which we do not believe are, or are intended, to be covered by the Order. Indeed, we are concerned that to include these would be to create a disproportionate and cumbersome list of documents which would actually materially increase the burden on the Respondents' compliance with the Order by adding a layer of checking documents against the list provided by the Public Trustee.*"

107. We were not told of any complaint having been made by any of the respondents to the Account Application concerning the content or sufficiency of the 7 January 2022 list, save for the very recent complaint made by Mr Mewis on behalf of the Former Trustees. As matters stand, compliance or otherwise by the Public Trustee with paragraph 1(a) of the Act of Court is not a ground of appeal to this Court in respect of the Bailiff's conduct of or decision on the Account Application.

108. Nevertheless, the point raised by Mr Mewis led us to consider precisely what had been ordered by paragraph 1 of the Act of Court, and in particular the meaning and effect of sub-paragraph (a). The Former Trustees' complaints about the list and the requirements of paragraph 1(a) of the Act of Court had the possibility of supporting the Former Trustees' sixth ground of appeal, if it is said that the Royal Court went beyond what reasonably might have been ordered to be provided.

109. As we pointed out in the course of Advocate Davies' submissions concerning the meaning and effect paragraph 1(a) of the Act of Court, and concerning the sufficiency of the 7 January 2022 list, as it stands paragraph 1(a) does not in terms confine the documents to be listed by the Public Trustee to documents relating to accounts. While the documents listed would necessarily be a sub-set of the widely defined material in the opening lines of paragraph 1 (that is documents in the Schedule or relating to assets, liabilities or administration of one or more of the Schemes, and held or obtainable by a respondent) potentially the documents are <u>any</u> within that set so long only as they are held already by the Public Trustee. On that basis, paragraph 1(a) is not limited by restricting the relevant documents to those relating only to bank or building society accounts.

110. However, having given careful attention to the wording of the Act of Court as a whole, as well as to paragraph 1(a) in particular, we are satisfied that what the Act of Court has done is, essentially, permissive. In effect it provides for the Public Trustee to identify those documents which he already has and which he does not require to be produced again. Sub-paragraphs (b) and (c) of the paragraph, setting out the two other provisos to the order made by paragraph 1, qualify to the advantage of the respondents what would otherwise be the effect of the paragraph: they allow the form in which documents are to be provided by the respondents to be chosen by the respondents, and they allow the respondents to make redactions in documents. Sub-paragraph (a), in a similar way, gives the respondents the benefit of a restriction of what they are to be obliged to produce: they are not to have the burden of

producing certain documents, namely those which the Public Trustee first identifies in the list as documents which he already has and which he does not require to be produced again.

111. It seems to us that the paragraph falls to be read in the context of the proactive duty of the Former Trustees to provide documents related to the trusts, which we have described above. If the Former Trustees have documents (including drafts or multi-versions) which relate to the trusts, the starting point is that they should provide those to the Public Trustee and, subject to any waiver by the Public Trustee or any order of the Court qualifying the duty, should do so regardless of whether the documents are duplicative of information which the Public Trustee already has.

112. There are three features of sub-paragraph (a) which seem to us significant, bearing in mind that the sub-paragraph excludes certain documents from the respondents' production obligation.

a. First, the final words, "*and in respect of which no delivery up will be required*" are redundant if the intended operation of sub-paragraph (a) is to remove from the respondents' production obligation everything already held by the Public Trustee, with the Public Trustee being required to identify in a list each and every document already held. This is because the first words of the sub-paragraph, "other than those documents" to be listed, already does the work of qualifying the production obligation, without any need for the final eleven words of the sub- clause. On the other hand, the phrase has operative effect if, as we read it, the sub-clause is understood as directing the Public Trustee to assist the respondents by telling them what he does not require them to deliver from among what he holds already.

b. Second, the Act of Court contains no provision upon which the respondents can rely as restricting their paragraph 1 production obligations, if the Public Trustee has failed to produce, in the time stated, a sub-paragraph (a) list of every document held. The terms of the Act of Court do not make the production obligation conditional on the provision by the Public Trustee of the list. Indeed, as the Act of Court stands, had the Public Trustee not produced any list at all, the respondents could not have pointed to sub-paragraph (a) as modifying in any respect the production obligation in the first six or so lines of paragraph 1 of the Act of Court.

c. Third, the formula used in sub-paragraph (a) "*other than those documents that the Applicant will list …"* is not one which is mandatory, requiring the Public Trustee to make a list. Rather, in this context the word "will" expresses futurity, and not obligation: it is not the same as the word "must". Certainly, in paragraph 70 of the judgment the Bailiff explained that he intended to make it a requirement for the Public Trustee to make a list; but that list was to be of what was held in relation to the listed accounts. It may therefore be argued that the Act of Court does not strictly conform to the Bailiff's judgment in these respects. But that hardly matters for present purposes, as the Public Trustee has treated himself as being bound to provide a list, albeit he has done so in a manner which is directed to the documents described in paragraph [70] of the Bailiff's judgment.

113. For these reasons we do not consider that the order made by the Act of Court suffers from a defect which would justify any interference from this Court. Further, as we see it the Public Trustee is correct in thinking that having had nothing from any of the respondents in response to, or compliance with, paragraph 1 of the Act of Court, and nothing in the way of the mandates or instructions directed by paragraphs 2 and 3 of the Act of Court, it is open to him now to take the steps authorised by paragraph 5 of the Act of Court.

114. Ground 7 is that the Act of Court of 23 December 2021 went too far by authorising the Public Trustee to sign forms of mandates on behalf of respondents to the Account Application if they fail to sign the forms as required by the Act of Court. The explanation for this ground given in the written contentions provided on behalf of the Former Trustees is that "*The Bailiff decided to force the Former Trustees and its staff to sign carte blanche Forms of Authority even though such actions would be contrary to the common law*."

115. We reject this ground of appeal. The complaint appears to be that a specimen form of mandate provided by the Public Trustee at the outset of the hearing of the Account Application was drawn in extremely broad terms, to the extent of permitting the Public Trustee to determine what he might want to have authorised or instructed for production to him. However, paragraph 5 of the Act of Court made on 23 December 2021, at the conclusion of the Account Application, authorises the Public Trustee to execute mandates and instructions only in the event that the respondents to the Account Application do not do so. If the respondents had complied with the Court's order, the part of the order granting authority to the Public Trustee would not have become operative. The contingent authority given to the Public Trustee is not to sign "carte blanche" forms of authority, but only to give instructions on the same terms as the order requires the respondents to give. If the respondents had complied with the Court's order no issue would have arisen. The Court was plainly justified, against the background of non-compliance with its orders, to provide, in the event of default, for an alternative mechanism in paragraph 5 to secure provision of the relevant documents and information. Section 70 of the Trusts Law contains a statutory power to make such provision. That alternative mechanism does not empower the Public Trustee to recover any document or material additional to those which fall to be provided by the respondents and others in compliance with paragraphs 1-4 of the Court's order.

116. Ground 8 as set out in the Notice of Appeal is that the Bailiff failed to comply with Rules 38 and 43 of The Royal Court Civil Rules, 2007, causing the Former Trustees to be denied their rights in that they were not represented by their spokesperson. As developed in the written contentions for the Former Trustees the focus is the absence of representation at the hearing of 8 December 2021.

117. Rule 38 of the Royal Court Civil Rules, 2007 directs the Court to manage cases actively. The rule, in paragraph (2), sets out illustrations of what such case management may involve. Rule 43 gives the Court power to vary dates for hearings. In the case of a date fixed for a trial the variation of the date for a hearing ordinarily requires an application to the Court.

118. As explained above, the hearing of the Account Application had concluded in December 2020 when the Bailiff reserved his judgment. In his judgment of 23 December 2021 he explained, at paragraphs [3], [4] and [9] to [21], how matters proceeded in December 2020 and thereafter.

119. The contention on behalf of the Former Trustees appears to be that Mr Roger Mewis was to speak for them at the hearing on 8 December 2021. It is argued that the Bailiff should have refixed that hearing for some other date on or after 17 January 2022 and that the failure of the Bailiff to refix the hearing was wrong.

120. The challenge which the Former Trustees seek to make is to a case management decision, a matter which lies particularly within the discretion of the Royal Court. An appeal against a case management decision is therefore an appeal against the exercise of a discretion given to the Royal Court. A successful appeal will require it to be shown that the Royal Court misdirected itself as to the applicable principles, directed itself by reference to wrong matters, or reached a decision which was plainly wrong.

121. The Court of Appeal of England & Wales has repeatedly stated that it will be slow to interfere with case management decisions. In *Mitchell v News Group Newspapers Ltd* [2013] EWCA 1537, [2104] 1 WLR 795 the Master of the Rolls, giving the judgment of the Court, said at [52]:

> "*We start by re-iterating a point that has been made before, namely that this court will not lightly interfere with a case management decision. In Mannion v Ginty [2012] EWCA Civ 1667 at [18] Lewison J said:- 'it has been said more than once in this court, it is vital for the Court of Appeal to uphold robust fair case management decisions made by first instance judges.* "

A similar approach is taken by the Court of Appeal of Jersey: see *A v Minister of Health and Social Services and B in the Matter of Nicolle* [2016] JCA 120, paragraphs 26-27. The approach – which is founded in the respective functions of a first instance court and an appellate court - in this Court is no different:

122. Rule 81 of the Royal Court Civil Rules requires a person intending to apply to the Court for an order under the Royal Court Rules to give notice with service of a document on not less than four clear days.

123. We have set out at some length most of the email traffic over the period from November 2021 to 8 December 2021. As we see it, the Bailiff was generous to a fault in giving the respondents to the Account Application an opportunity to address the Court further on the Account Application. The Bailiff already had submissions on the issues which fell to be determined. He had not himself envisaged that a further hearing would be necessary to enable him to proceed to determine the Account Application. The further hearing was fixed at the request of the respondents to the Account Application.

124. Once the hearing (which the respondents to the Account Application had sought) had been fixed for 8 December 2021 (something Mr Mewis accepts was done in his witness statement of 7 December 2021 at paragraphs 11, 15 and 16), it was incumbent on those parties to arrange for their representation at the hearing. If they wished to have the hearing further adjourned, it was incumbent on them to apply promptly and on the basis of proper evidence. An application made on the evening of 7 December 2021, in other words an application made with virtually no notice, with a demand for an oral hearing of the adjournment application at a date in January 2022, was unreasonable. It is difficult to suppose that the Former Trustees genuinely thought an adjournment of the substantive hearing fixed for 8 December 2021 could be secured by submitting an application for an adjournment with a request that there be an oral hearing of that request over five weeks later.

125. In short, until notified otherwise by the Court, the Former Trustees should have proceeded on the basis that the 8 December 2021 hearing of the substantive Account Application was to go ahead. It was incumbent on the Former Trustees to arrange representation, if they wished to be represented at that hearing. If Mr Mewis was unable to attend that hearing to speak on their behalf, it was incumbent on them to arrange alternative representation.

126. As it happens, the Bailiff did give consideration to the material provided on the afternoon of 7 December 2021 and was not satisfied that there was good reason for any adjournment of the hearing fixed for the following day. This decision cannot be faulted. The material gave no good reason. If genuinely Mr Mewis was the only person who could articulate submissions on behalf of the Former Trustees at the half day hearing on the morning of 8 December 2021, he could and should have made himself available to do just that. Perhaps more accurately, the material provided on 7 December 2021, including his hotel booking and his statement (presumably matters generated with his active involvement), did not provide a sound basis for believing that he could not reasonably be expected to make himself available, even if

remotely, if he really wished. Rather, the material conveys that there was nothing to prevent him attending at least by telephone. He was not due to fly to Germany that day (or perhaps at all – see paragraph 41 of Mr Mewis' witness statement of 7 December 2021) and had only to reach Berkshire from Devon by nightfall.

127. In setting out earlier in this judgment the narrative concerning the correspondence of November and December 2021, we made reference to some of the emails of 8 December 2021. In relation to the last of the emails we noted the objection made concerning Mr Mewis being known on 8 December 2021 to be travelling without access to his computer, and to the fact that the email of 8.44 am was "*Not addressed to Mr Mewis*".

128. However, we do not see anything in these complaints. Making the assumption that the Public Trustee is mistaken in believing that the email traffic from the @imperialpensions addresses is all from Mr Roger Mewis (see paragraph 14 above), so that he did not necessarily know immediately what was generated from those addresses other than the Roger.Mewis one and did not himself generate those of 8 December 2021 from the Enquiries address, still there is nothing in the complaints. We have explained already that by close of business on 7 December 2021 the Former Trustees had no proper reason to believe, if indeed they did, that there would be no hearing the following day. They should have arranged attendance by the link sent out that evening. Further, the Former Trustees have no ground for complaining that the email of 8.44 am the following day was not directed to the Roger.Mewis address, as none of the previous correspondence of the month leading up to the hearing had included that address, although it had included others of the @imperialpensions addresses, importantly the Enquiries one.

129. In our judgment the Bailiff's decision cannot be faulted. He explained in his judgment, in meticulous detail over several paragraphs, his reason for fixing and then deciding not to adjourn the hearing of 8 December 2021. It was open to him to reject the very late application for the adjournment and to continue with the hearing. He certainly cannot be shown to have misdirected himself or to have reached a decision which was outside the generous ambit of his discretion on a case management question.

130. Properly this ground of appeal is one which would require leave to be pursued at all, as it is an appeal against an interlocutory decision. Leave to appeal is required pursuant to section 15(e) of The Court of Appeal (Guernsey) Law, 1961: *McNamara v Gauson* [2007-10] GLR 387 at [7], Collas DB. We refuse leave, on the basis that an appeal of this decision has no realistic prospect of success. Were we to have granted leave, we would have refused this ground of appeal.

131. Ground 9 is that the Bailiff allowed the Public Trustee "*the possible means to weaponise an Act of Court against an individual*". The individual in question is Mr Roger Mewis, a party to the Account Application. Mr Mewis has chosen not to appeal albeit that he appeared before us to represent the Former Trustees. It is not apparent upon what basis the Former Trustees advance a ground of appeal apparently for the interest of another respondent to the Account Application, who has chosen not to appeal.

132. Looking at the substance of the contention as explained in the submissions in support of the appeal, the starting point is a discussion which took place at the hearing of the Account Application on 22 December 2020, when the Public Trustee's Advocate was explaining the relief sought by paragraph 6.3(a) of the 2020 Application. This relief sought to have any breach by any of the respondents of any of the orders sought treated as a breach by all of the respondents. Paragraph 6.3(b) went on to include a sanction for breaches of those orders, namely by debarring the respondents in breach from making or pursuing various claims. In the relevant discussion the Bailiff pointed out that, if the Court made the order sought in

paragraph 6.3(a), a breach of an order by any one of the individual respondents would be taken to be a breach of the order by other respondents.

133. In his judgment the Bailiff refused (for the moment) to give the relief sought in paragraph 6.3 of the amended 2020 Application. Paragraph 6 of the Act of Court adjourned paragraph 6.3 of the amended 2020 Application *sine die* with liberty to the Public Trustee to restore. It follows that the Bailiff did not allow the Public Trustee "*the possible means to weaponise*" the Act of Court as the Appellants contend. The ground of appeal has no foundation, and is rejected.

134. We should not pass over this ground of appeal without making a further comment. The Former Trustees, in their written submissions, suggest under reference to the discussion recorded in the transcript of the hearing on 22 December 2020 that "*both the Public Trustee and the Bailiff disturbingly condone unlawful and blatant misuse of legal process*". After this comment, the submission continues to develop the theme with ever increasing abuse of the Bailiff. The discussion recorded in the transcript provides no justification for complaint, much less the intemperate complaint made in the written submissions. There is no basis for the comments directed against the Bailiff. Bearing in mind that the Former Trustees, the Appellants before us, had previously had custody in a fiduciary capacity of many millions of pounds of savings of individuals, one might have expected something altogether more serious and responsible than the submissions we have just described.

135. Ground 10 appears to be aimed at suggested irregularities by the Bailiff, again in relation to Rule 38 of the Royal Court Civil Rules. The particular issue developed in the written contentions provided on behalf of the Appellants, insofar as more than a repetition of Ground 8, is that the Bailiff:

    a. rejected the submission made on behalf of the respondents to the Account Application, that the Public Trustee should have accepted and the Court should have approved a proposed Heads of Terms Agreement advanced by the Former Trustees as a solution to the present proceedings; and

    b. continued the hearing of the Account Application, which had started on 9 December 2020, on 10, 18 and then 22 December 2020 without the Former Trustees being present.

136. We reject the first of these two objections. The Public Trustee was not willing to enter into the proposed Heads of Terms Agreement. This was understandable, as doing so would have required the Public Trustee to agree that the IXG Schemes by their trustees could have no further claims against the Former Trustees or the other respondents to the Account Application. In circumstances where the Former Trustees are in apparent breach of Court orders requiring them to transfer the trust assets to the Public Trustee and the Public Trustee is still trying to ingather and assimilate information about the administration of the IXG Schemes, the Public Trustee could not responsibly have agreed such a provision. The Bailiff was fully entitled to accept that the Public Trustee could properly refuse to accept Heads of Terms rather than having the Former Trustees (and for that matter the other respondents to the Account Application) ordered to give the Public Trustees the assistance he sought.

137. The second of these two objections is also rejected. It is again either a challenge to a case management decision, or possibly a complaint that there was insufficient formality in the making and notification of the fact of the adjournment from 10 December 2020. Either way, the time for an application for leave to appeal what was an interlocutory matter has long ago expired.

138. We have referred above to the Bailiff's judgment in which he explained how the hearings of the Account Application proceeded before him. Paragraphs [9] to [12] of the Bailiff's judgment explain how matters proceeded from the first day of the hearing, on 9 December 2020, when Mr Roger Mewis sought and obtained time to go to lie down for a rest, up to 22 December 2020, and in particular how it had come about that the hearing of the Account Application had continued on 18 and 22 December 2020 in the absence of anyone to speak on behalf of the respondents to that application. The Bailiff noted, in his judgment, that on 10 December 2020 when there had been no attendance on behalf of any of the respondents, he had adjourned the hearing to 18 December 2020. This he did in court on 10 December after discussion with the Public Trustee's Advocate. On 17 December 2020 there was an application submitted by an email sent on behalf of the Former Trustees for relief in respect of a provision in the trust instruments said in the email to require funding to be made available for representation.

139. Thus far we can see no basis for any complaint to be made about the Bailiff's conduct of the proceedings.

140. In the written submissions provided on behalf of the Former Trustees it is said that, "*The reason the Former Trustees were not present in court on 18th December 2020, is that the Bailiff failed to issue a Court Directions on the 10th December 2020, after the Bailiff and [the Public Trustee's Advocate] decided on court schedule* .."; and reference is made to the discussion recorded in the transcript of the proceedings on 10 December 2020 when the Bailiff said that he would adjourn to Friday 18th December.

141. The terms of the email containing the Former Trustees' application of 17 December 2020 show that the author of the email understood that the hearing of the Account Application was to continue the following day. This is demonstrated by the Former Trustees' application to adjourn the hearing listed for 18 December: see paragraph [11] of the Bailiff's judgment under appeal. The fact of the adjournment to 18 December and the date to which the hearing had been adjourned were advised to the respondents to the Account Application by email on 11 December 2020. Again, on 17 December 2020 an email was sent to those respondents reminding them that there was to be a hearing the following day. It was not necessary for there to have been a formal order sent to the Former Trustees: it was sufficient that the information had been communicated, received and understood. They can have been under no possible confusion. It was up to them to attend, if they chose. They chose not to attend. Despite this failure the Bailiff granted the Former Trustees an indulgence by agreeing to a yet further oral hearing, on 8 December 2021.

Conclusion

142. The Former Trustees' appeal is dismissed. Insofar as it is necessary to say so, we consider that there is no merit in the four heads of complaint made against the Bailiff in the 3 January 2022 letter to which we have referred in paragraphs 28 and 29 above.