Claim for disclosure of trust information by non-beneficiaries. Costs payable by unsuccessful Applicants. Principles, in particular as to costs of external lawyers, discussed.

[2024]GRC066

IN THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION
Civil Matters 2514 and 2525

Before: **HER HONOUR HAZEL ELEANOR MARSHALL KC**
LIEUTENANT BAILIFF
(Sitting alone)

Civil 2514

Between: **BX** **Applicant**

-and-

T LIMITED
(2) AX
(3) JX
(1) CX
(2) OX
(3) PX
(4) QX

Respondents

Advocate for the Applicant: **Advocate A C Lyne**
Advocate for the First Respondent: **Advocate C H Edwards**
Advocate for the Second and Third Respondents: **Advocate A B Cole**
Advocate for the Fourth, Fifth, Sixth and Seventh Respondents: **Advocate B S Havard**

Civil 2525

Between: **(1) CX** **Applicants**
(2) PX
(3) OX
(4) QX

-and-

(1) T LIMITED
(2) AX
(3) JX **Respondents**

Advocate for the Applicants: **Advocate B S Havard**
Advocate for the First Respondent: **Advocate C H Edwards**
Advocate for the Second and Third Respondents: **Advocate A R Cole**

Judgement (anonymised) handed down: 27th September, 2024

Legislation and cases referred to:

Guernsey

Legislation
Trusts (Guernsey) Law 2007 ss 26
Royal Court Civil Rules (2007)
Royal Court (Costs and Fees) Rules 2012 as amended, (the Rules).

Cases

Ladbrokes plc v Galaxy International Ltd (Guernsey Judgment 11/2009)
Investec Trust (Guernsey) Ltd v Glenalla Properties Ltd. (Guernsey Judgment 4/2015)
Broadhead v Spread Trustee Co Ltd (Guernsey Judgment 10/2015)
Pirouet and Batiste v States of Guernsey (Guernsey Judgment 25/2017)
CRGF GP Ltd v Fonds Rusnano Capital SA [2023] GCA064
Re the M Trusts [2023] GCA085
Re the L Trusts [2024] GCA061

England and Wales

Legislation
Civil Procedure Rules, Rule 44.2 (6) and (7).

Supplementary

JUDGMENT ON COSTS

Introduction

1. This judgment is supplementary to my main judgment handed down in anonymised form on 21st May 2024, in which I dismissed two Applications for disclosure of documents made respectively by BX ("B") and by CX ("C") and her three adult children (OX, PX, and QX) ("O", "P" and "Q") against T Limited ("T") as trustee of the W Trust and in which AX and JX ("A" and "J") were joined as the beneficiaries of that Trust. It deals with the issue of costs. With the agreement of the parties it has been dealt with on the papers.

2. I shall not lengthen this judgment by repeating the facts of the case in any detail. Reference should be had to my main judgment, which is Guernsey Royal Court Judgment [2024] GRC036 for this background.

3. In broad terms, Mr X (deceased) was the original settlor of two Bahamian family trusts in which all of B, C, O, P, Q, A, J (and ZZ who took no part in the proceedings) are beneficiaries, and one Guernsey trust (the W Trust) of which only A and J are beneficiaries. B and C (C, together with O, P and Q being "the US Family") made separate Applications for disclosure of documents relating to the W Trust, relying on evidence argued to suggest that, shortly before his death, Mr X had formed certain wishes as to how the totality of his estate (which he reckoned to include assets in fact held in the three trusts) should be dealt with and distributed

amongst his entire family. They argued that this situation gave them grounds for requiring disclosure of information, in the form of documents pertaining to the W Trust, in the context that they each had, respectively, extremely strong cases to be added as beneficiaries of the W Trust pursuant to T's power as trustee to make such additions.

4. I dismissed both Applications, on the grounds that, whilst the Court had potential jurisdiction to make such an order, it was not appropriate to do so because neither applicant made out a case which justified it. In summary:

    (i) Neither applicant was an actual beneficiary of the W Trust;

    (ii) Their claims to be added as beneficiaries came nowhere near a test of being so obviously justified that it could be assumed that they would be so added (ie, in effect, that it would be perverse for T not to do so), so that their Applications could even arguably be considered on that basis;

    (iii) The purposes for which they wished to acquire such information were their own purposes and not purposes for the benefit of the W Trust or its beneficiaries - indeed they were even contrary to the interests of the latter;

    (iv) The proper exercise of the Court's jurisdiction, even if an inherent power, was implicitly limited by the requirement that it should be "*necessary or expedient for the proper administration or enforcement of the trust*" (s 26 (3) of the *Trusts (Guernsey) Law 2007*); it simply was not because there was no problem with the due administration of the W Trust;

    and, in any event

    (v) T itself was not seeking the Court's assistance and had expressed itself perfectly capable and willing to exercise its powers of administration of the W Trust in accordance with its duties as trustee, as it saw them.

The Costs Issues

5. The Court's jurisdiction to award costs is to be found in rr 82 and 83 of the Royal Court Civil Rules (2007) as elaborated by the Royal Court (Costs and Fees) Rules 2012 as amended, ("the Rules"). Against the background above, T and A and J now apply for their costs of these two Applications.

6. In summary, A and J submit that

    (i) they should have their costs of these Applications against B and the US Family between them on the grounds that the costs follow the event, and they have been successful;

    (ii) their total awarded costs of the Applications (but not including expenditure on US tax advice) should be apportioned with 60% being payable by the US Family and 40% by B. This was to reflect the fact that an estimated 20% of their total legal costs (preparation and hearing time) had been spent on submissions with regard to the US tax position of C (which the Court had held was not of any relevance to the substance of the Spplications, but only as grounds for seeking expedition) with which B was therefore not concerned;

    (iii) the costs orders should be made on the indemnity basis;

(iv) the costs orders should expressly include "*the costs of specialist solicitors and counsel*" instructed by them, as well as those of their Guernsey Advocates;

(v) the costs orders should expressly include, additionally, the actual costs (as disbursements) of A and J in obtaining and adducing US tax advice;

(vi) an interim payment should be ordered on the above basis at a rate of 60% of their costs incurred, as notified (in submissions) by A and J to B and the US Family, and being £304,000 from B, £432,000 from the US Family and a further $258,000 from the US Family as the costs of the US tax advice, all to be payable within 14 days of the costs orders.

7. T also applies for its costs against B and the US Family. Whilst this does not affect the question of an appropriate party-and-party costs order, this claim is made against the background that it is entitled to take its actual costs as trustee (reasonably incurred and reasonable in amount) out of the assets of the W Trust under its trustee indemnity, and will therefore be able to recover any difference between such party-and-party order and its actual reasonable expenditure by this means (subject, of course, to any contrary direction which the Court might come to make.)

8. In summary, T claims

(i) that it should have its costs against B and the US Family on the grounds that costs follow the event and they have been successful; the Applications were hostile litigation and cannot be categorised as "administration", and insofar as T does not get its costs paid by B and the US Family, they will fall (in effect) on A and J as the beneficiaries, which is not equitable;

(ii) that if A and J establish a case for indemnity costs, then T should also have an order for indemnity costs for the same reasons;

(iii) that the apportionment suggested by A and J is reasonable and does substantial justice;

(iv) that T's costs should likewise include its English lawyers' costs;

(v) that T's costs should likewise include its costs of obtaining US tax advice;

(vi) that T should likewise receive an interim payment of 60% of its presumptive costs.

9. The US Family resists the above. On its behalf, C accepts that costs should follow the event and accepts that the apportionment suggested by A and J is reasonable, but C submits that

(i) no order for costs should be made against the US Family in respect of any matter prior to 20th December 2023 at the earliest, on the grounds that T unreasonably failed to engage at all, before that time, with the US Family's request to be made beneficiaries of the W Trust (or with the wishes of Mr X conveyed to them some 2 ½ years previously), thus necessitating the launching of the US Family's application on 13th October 2023;

(ii) the suggested apportionment between B and the US Family is reasonable;

(iii) there is no justification for ordering costs on the indemnity rather than the recoverable basis;

(iv) T should personally bear the US Family's costs of T's application of 7th November 2023 to adjourn the US Family's Application until after the hearing of B's Application,

because that application to adjourn was completely misguided and was then abandoned on 16th November 2023;.

(v) any costs order should take account of unnecessary and unreasonable duplication of costs between T on the one hand and A and J on the other, and in particular the unnecessary duplication of US tax advice;

(vi) costs of English lawyers (in particular A and J's such costs, which are "over-lawyered") should be disallowed;

(vii) no order for interim payment should be made in all the circumstances;

(viii) A and J should pay the US Family's costs of dealing with their inappropriate interventions post my original ex tempore judgment (see the Postscript to my final judgment).

10. B also resists the above. B submits that

(i) there is no justification for ordering costs on the indemnity rather than the recoverable basis;

(ii) the suggested apportionment is a reasonable working figure but is likely to be low (disadvantaging B as against the US Family) and the suggestion that it can be left to B and the US Family to agree any different apportionment between themselves is unrealistic;

(iii) (agreeing with the US Family) any costs order should take account of unnecessary and unreasonable duplication of costs between T on the one hand and A and J on the other;

(iv) costs of English lawyers (in particular A and J's) should be disallowed;

(v) no order for interim payment should be made in all the circumstances, and certainly not without the submission of a proper bill of costs (which has not been done);

(ix) A and J should pay B's costs of dealing with their inappropriate interventions post my original ex tempore judgment, as mentioned above.

11. A final important point at this stage, however, is to note that not only have there as yet been no actual bills of costs produced by either A and J or T, but there has been only a global figure given by A and J and no figure at all by T. This means that, at present, I can only make orders based on general principle, and any orders as to actual payments would have to take into account the dearth of supporting evidence with regard to any figures advanced.

Discussion

12. Effectively, there are four costs orders being sought, as each of T and A and J seek orders for their costs against B and against the US Family. Some points of principle are common to them all.

13. First, it is perfectly plain that these Applications are appropriately treated as hostile litigation. They were each an Application made by a stranger to the W Trust for orders which cut across the ordinary administration of the trust. C's suggestion that it was "intended" that her Application would be administrative, which is why only T was initially joined in the application, and that the matter only became combative later because of the reaction of T and

A and J was, at best, naïve. Such an Application was always, quite obviously likely to be or become contentious and costs orders are appropriately made on that basis.

14. Furthermore, whilst the principal respondent in each case was plainly T as the trustee and person with control of the information, I am satisfied that it was certainly to be expected, and was in any event reasonable that A and J should be joined as parties to each application. They plainly had a very significant personal interest in the matter. That does not necessarily mean that they should receive all their costs independently, however, because being properly joined as a party to a matter is not the same thing as being properly represented separately. However, that is a point for later consideration in more specific circumstances.

15. The starting point is indeed, therefore, that costs should "follow the event" and in broad principle, that both A and J and T should be entitled to their costs, such costs to be taxed on the recoverable basis if not agreed. B has conceded this principle expressly. Whilst the US Family may not have said as much in terms, I do not understand them to dissent. The question is then whether, and if so how far, any order I make should depart from that basis.

(1) **Basis of assessment**

16. A and J claim that their costs should be payable by both B and the US Family on the indemnity basis, pursuant to RCCR rule 83 (2). I need not set this out as it is well known.

17. It is understood and accepted that the reason for a court to order indemnity costs, whether in full or as to any part or aspect of any matter, is that this will be, in all the circumstances, a fairer result for the receiving party than if costs are awarded only on the recoverable basis. The justification for such an award lies principally, therefore, in some aspect of unreasonableness in or about the conduct of the paying party. (It is possible that there might be some other kind of exceptional circumstance, but this is difficult to conceive and I do not see any such arising in this case.) Any such qualifying (un)reasonableness factor is always a matter of impression, with the fundamental test as to the degree of exceptionality which is needed to justify an award of indemnity costs, being that there must be something which

> "*takes the case <u>out of the norm</u> in a way which justifies an order for indemnity costs…"* (emphasis added)

but bearing in mind that in normal litigation, there will

> "*usually be some degree of unreasonableness*"

see the Court of Appeal in *Investec Trust (Guernsey) Ltd v Glenalla Properties Ltd. Guernsey Judgment 4/2015* at [15 (d)].

A and J cite two grounds for claiming that this threshold is met.

18. First, they say that the Applications themselves were so weak that they were really "*doomed to failure*", and it was, in effect, an abuse of process to bring such a hopeless claim at all. Second, they say that these Applications were brought by strangers to the W Trust and against the W Trust's interests and it would therefore be deeply unjust to excuse those who have pursued them from making good costs they have caused to be incurred, in particular forcing the successful beneficiaries of the W Trust to bear these costs which were forced upon them. They cite remarks of my own, at the time of giving my *ex tempore* judgment, indicating sympathy with the notion that beneficiaries of a trust should not suffer because of having had to incur the costs of defending unsuccessful hostile litigation.

19. T does not make any independent submission as to indemnity costs, but argues that if it is appropriate to order indemnity costs in favour of A and J then the same applies to it, by parity of reasoning.

20. I reject the above arguments. On proper consideration, I do not see that there is any sufficient reason to order indemnity costs in this case.

21. The Applications were certainly weak, even very weak, but they were not unarguable. The test whether bringing a weak case justifies an award of indemnity costs is very high. In effect, it is that the case is so obviously doomed to failure, or without foundation, that it is an abuse of the process even to launch it. That is a high hurdle, for obvious reasons. Whilst, as I have said, I regard the Applications themselves as weak, I do not consider that it was an abuse to launch them at all, nor even that there was some point in the progress of the Applications at which it could and should have become appreciated that they were so inevitably doomed to failure that it became an abuse of process to continue them.

22. I say this even having regard to the general landscape of strife between certain factions in the family. Whilst the making of an application may be "tactical" within an overall such conflict, that does not add or detract from its legitimacy in law, and does not make a legitimate legal procedure abusive. These Applications may have been pushing at the boundaries of legal or equitable principles and in that they have failed, but, they were within the bounds of what could reasonably be brought before the Court for a definitive decision.

23. I also reject the further argument that indemnity costs are justified to save the beneficiaries from, in effect, having to pay their own costs and T's costs, insofar as these are not recovered. That prospect arises out of the general incidents of a trust and how its expenses are to be met, the way these interrelate with the rules of court as to "costs shifting" in legal proceedings, and the fact that under these rules, a party probably never recovers a total indemnity for his or her costs even if totally successful. This last fact is simply a product of the misfortune of becoming caught up in a dispute with some third party which requires a court's involvement. Having to incur expense is an inevitable consequence of that situation and is a misfortune which applies to litigants in general. It does not justify an award of indemnity costs where that is otherwise unjustified on the principles which underly such an award. The fact that it may be a trust case where a trustee directly, and beneficiaries at least indirectly, all incur expense is not relevant to the principle of awarding costs, which is the narrow point with which I am here concerned.

24. In fact, A and J's argument here would apply in every case of an unsuccessful action brought against a trust, where the costs of defence fall on the trust assets. This shows that it proves too much.

25. As to my own remarks, whilst they may have been expressions of sympathy, they were certainly not judicial dicta in any sense. They were also not related to the distinction between indemnity and recoverable costs but only to broad principles as to recoverability of costs in general. They are not relevant to my considered decision above.

(2) **Apportionment of costs**

26. T and C have agreed with A and J's submission that a reasonable estimate of the costs attributable to each of B and C's Applications (excluding US tax advice) would be 40% to B and 60% to C, ie, treating 20% of the Respondents' total costs as being attributable to the US tax issues, with which B was not concerned. B has not unequivocally done so, believing that 20% probably underestimates the costs attributable to the US tax advice aspect. Since there has, as yet, been no information given to him even in general terms as to the detail on which this apportionment has been put forward by A and J, this does not appear to be unreasonable.

27. A and J (with T concurring) submit that if B and C do not agree this apportionment, then they should be left to agree it amongst themselves, and that my costs order should follow their suggested apportionment and be made on that basis.

28. Whilst this may appear pragmatic, I do not think it is satisfactory. I will therefore make a provisional order on the above basis, but will require that, if B does not agree such apportionment he should apply to the Court, within 28 days to vary it and seek directions appropriate to the situation.

(3) **Timing of costs liabilities**

29. The US Family argue that they should not have to pay any costs to either T or A and J in respect of any period before 20th December 2023 being the date on which T first proposed, to both them and B, a process by which T would determine whether it should and would exercise its power to add either of them to the class of beneficiaries of the W Trust. They argue that this is only reasonable because of T' reprehensible failure to engage with them in any meaningful way following their request to T to do so in April 2021, in order to implement Mr X's apparent final wishes, which ceased after December 2021, thereby unreasonably bringing about the Applications which had to be made to this Court by B (on 20th September 2023) and themselves (on 13th October 2023).

30. I reject this argument, mainly for the simple reason that the applications which were made were not applications requiring T to consider the applicants' requests to be added as beneficiaries of the W Trust (the subject of the complaint about inaction), but were requests for disclosure of private W Trust information. I cannot see that there was anything unreasonable in the action, or lack of action, of either T itself, or of A and J, in this regard prior to the issue of these actual Applications. The fact that they were unsuccessful in the event reinforces this.

31. The appropriate time for launching the particular Applications which were chosen to be made was entirely in the hands of B and C. The response of T (and what must be regarded as the inevitable response of A and J) then ensued in a totally normal and reasonably expeditious way, especially having regard to the complications created by the contemporaneous proceedings in other jurisdictions, and the contested privacy orders affecting these.

32. Furthermore, even the delay complained of, ie that about engaging with the suggestion that the US Family must (it was pretty well framed like this) be added as beneficiaries of the W Trust, cannot be looked at in a vacuum. There were heavily contested Bahamian and possibly also US proceedings taking place at that time, and it is also quite plain that T was (reasonably) exercised by concerns about US tax implications and the reactions of the Bahamian trustees, with which it perceived the need to co-operate, all of which could reasonably need consideration and affect T's response.

33. I conclude that there is nothing in this submission which should entitle the US Family (or B) to be relieved of any obligation to pay the proper legal costs of T or of A and J, incurred in relation to these Applications before 20th December 2023.

34. I should also add that I do not regard the complaint of the US Family that T had subsequently failed to engage "meaningfully" with their offer, made on 5th April 2024, to take up T's proposal from December 2021 to be anything to the point as it has nothing to do with these Applications and is all after the event.

(4) **Costs of the Trustee's abortive application to adjourn**

35. The US Family applies for T to pay their costs incurred in relation to its application of 7th November 2023 to adjourn the US Family's Application pending the outcome of B's

application, on the grounds that this was entirely misconceived and was abandoned just before a later hearing.

36. I reject this submission for several reasons. The central one is that with the overall state of these two Applications, seeking much the same relief but being advanced by different people, being very confusing owing to (a) the somewhat aggressive (though not improper) manner in which they were being conducted, (b) the interrelationship and effects of contested privacy orders made in the Bahamas and (c) T's own overarching duty to try to find a practical way forward in the interests of progressing the due administration of the W Trust, I cannot see that the making of that application was in any way an abuse of process, or so obviously misconceived and unreasonable as to merit a costs sanction.

37. My second reason is that as the abandoning of the application took place only a matter of 9 days later, even if "at the door" of a further hearing for which skeleton arguments had been prepared, I cannot see that costs incurred by the US Family could be significant, in the great scheme of things. I therefore regard it as disproportionate to make any special order in respect of them. I regard such costs as being part of the rough and tumble of strenuously fought litigation, and I do not see them as being so outside the norm of what one might expect to incur that they ought to be given special treatment.

(5) **Foreign (English) lawyers' costs (excluding US tax advice)**

38. Both the US Family and B object that the costs of English lawyers which are (in the case of A and J) or which may well be (in the case of T) included in the costs claimed against them should be disallowed across the board by the costs order made at this stage, as a matter of principle.

39. A and J rely on the well-known judgments of the Courts in *Ladbrokes plc v Galaxy International Ltd (Guernsey Judgment 11/2009)* and in *Investec Trust (Guernsey) Ltd v Glenalla Properties Ltd* (above), and in particular, the principle for which five examples are given by LB Southwell in the former case, as to when it could be reasonable for a costs order to include, as proper disbursements, recovery of a party's costs incurred in instructing foreign counsel or solicitors (almost inevitably English) to assist or advise Guernsey Advocates in a matter being litigated in Guernsey.

40. I do not need to cite these at length. Whilst starting from the point that litigation in Guernsey ought, in the public interest to be, and to be capable of being, conducted by members of the general body of Guernsey Advocates alone, and whilst emphasising that exceptions to this would be "*relatively few*", LB Southwell indicated (at [22]) possible examples which might justify exception on a case by case basis. These were (this is my own summary)

    (i) a need for specialist expertise not available in Guernsey,

    (ii) continuity of material knowledge, from external lawyers already well immersed in and acquainted with the detail of material facts,

    (iii) a need for research into foreign law not readily able to be carried out in Guernsey, for substantive purposes,

    (iv) efficiency by obtaining the "very best" legal advice in a complex case and

    (v) obtaining practical resources (in particular voluminous document management) unavailable in Guernsey.

    A and J cite the *Investec* case (above) as an example of justified instruction of English lawyers, in a case of novelty, difficulty and complexity.

41. A and J claim that they, and T, were justified in instructing foreign lawyers for several reasons. First, they assert that this was complex litigation of the type where it is "*entirely standard and acceptable*" to incur costs in the instruction of specialist non-Guernsey lawyers. They submit that complex issues, many of which were novel in Guernsey, were being advanced by B and the US Family.

42. Furthermore, such issues were interconnected with litigation in other jurisdictions. It was therefore essential for A and J to maintain the involvement of their English solicitors (Macfarlanes) and their English counsel, who were cognisant of relevant cross-border issues, and the state of play in those other proceedings, without which A and J would not have been in a position to assist the Royal Court properly.

43. They also appear to urge that the very speed with which the Applications were dealt with required that English lawyers played an even more direct and necessary role in defending the beneficiaries' interests.

44. They therefore submit that the involvement of English solicitors and counsel was thus helpful, appropriate, reasonable, and proportionate to the importance of the matter - and in any event B and the US Family had also instructed English counsel and solicitors.

45. The US Family and B dispute the above and argue that the fees of English lawyers should be ruled irrecoverable, at this point, as a matter of principle.

46. They first point out that the recoverability of foreign (it is almost invariably English) lawyers' costs has been reconsidered very much more recently, and with limiting effect, by the Court of Appeal *in CRGF GP Ltd v Fonds Rusnano Capital SA* [2023] GCA064*,* and in *Re the M Trusts* [2023]GCA085.

47. They submit that this was not a case of complexity itself, and was certainly not a case involving complex English law questions, observing that the only purely English cases cited in my judgment were mentioned only to say that they were of no assistance. They point out that this was a purely Guernsey case, with no principles of English law involved and no English connections, and in *Rusnano* the Court of Appeal stated that Guernsey Advocates are, or should be, capable of conducting research into English law insofar as it might be of assistance in ascertaining what Guernsey law is or ought to be in a case governed by Guernsey law and principles; they submit that that is exactly this case. They point out that in *Re The M Trusts* the Court of Appeal held that the mere fact that a point was a novel one in Guernsey law did not justify resort to English counsel and solicitors for advice, and emphasised that it would only be in a very exceptional case that it might reasonably be thought that a Guernsey Advocate might be regarded as insufficiently qualified to be able to advise.

48. They submit, therefore, that the test for the recoverability of foreign (English) lawyers' fees has thus now been modified and reduced to one of "exceptionality" rather than merely novelty or complexity, and that such a test is simply not met here.

49. They also submit that the argument that one's opponent has instructed English lawyers and that this shows that this is therefore reasonable has been emphatically rejected in *Rusnano* at [45] where it was said that

> *"The fact that your opponent does so too will not turn employment of external counsel which is not a properly recoverable cost into employment that is."*

50. First, I accept this last point. The only matter I have to consider is the extent to which it was reasonable for A and J, and for T, to instruct English counsel or solicitors in order to be able to deal, properly, with the Applications being made against them or their interests in this

jurisdiction. That is the test for whether any such costs should be recoverable from their opponents at all (on whatever basis may be allowed by the court). A and J and T are, of course, entitled to instruct whomsoever they wish, external lawyer or otherwise, to assist them in their conduct of their cases and their affairs, but if this goes beyond adequate legal representation and advice obtainable locally, then it is a luxury, for which their opponents cannot reasonably be required to indemnify them.

51. As to the application of this general principle, it needs to be borne in mind (as the Court of Appeal did in *Rusnano*, describing them as "examples of their time" at [40]) that the examples given in the *Ladbrokes* case by LB Southwell were given in 2008. Since that time, the development of the internet has hugely increased the availability of research tools and the accessibility of materials in other jurisdictions, and this reduces any need to consult persons actually practicing in the relevant jurisdiction, as a means of access to such materials. LB Southwell's examples therefore need to be applied with this in mind. The Court of Appeal's comments in *Rusnano* and *Re M* seem to me to stem from and to underline this. However, I also take from *Rusnano* a general approach of keeping the bounds of recoverability of the costs of "foreign" (almost invariably English) lawyers firmly constrained and under control.

52. Thus, resort to foreign lawyers for "specialist expertise" (example (i)) is likely to be justified only rarely, except (naturally) where a material issue is an issue of the relevant "foreign" law itself (example (iii)). Even then the Court of Appeal apparently considered that the appropriate course was to limit the recovery of such fees to the maximum which would be the available recoverable rate in Guernsey: see *Rusnano* at [47], regarding advice as to service in the foreign jurisdiction. Where the foreign law is relevant only to assist as to what Guernsey law might be, Guernsey advocates should be well able to carry out the necessary research. Similarly, arguments of continuity and efficiency in conducting the clients' affairs (LB Southwell's example (ii)) justify only the fees for effecting such actual continuity, and again, on such limited basis as to rates (see (*Rusnano* at [48]).

53. Against the above background, I first reject the submission of A and J that this is the kind of litigation where the involvement of "foreign" (usually English) lawyers is standard and reasonable. That might well apply to "large scale commercial litigation" (as seems to have become the accepted shorthand in such cases) but the present Applications are not large scale commercial litigation. Even the litigation elsewhere with which they are associated is not large scale commercial litigation. I am concerned only with these particular Applications, which are actually collateral and peripheral, even, to the proceedings in other jurisdictions, and are themselves on only a fairly narrow point.

54. Next, I agree, with B and the US Family that the actual issues in these Applications were entirely matters of Guernsey law, and were not complex. The fact that they were novel in Guernsey law did not make them complex; it just meant that they had to be argued from first principles. The research into other jurisdictions which might be required for assistance in order to assess or to argue what Guernsey law must be was not difficult, and certainly demanded no esoteric experience or expertise in English law. It should have been well within the competence of Guernsey Advocates, and in particular any advocate claiming to specialise in trust law. I would not allow the costs of any English counsel or solicitors in relation to such research or advice.

55. Before moving to the particular points relied upon by A and J, I consider a point which I find less easy. That is whether any foreign lawyers' fees for work which is allowable should be limited, as to recovery, to the rates laid down as the recoverable rates in Guernsey. I have some reservations about this.

56. The actual costs of engaging foreign lawyers to do anything is governed by the local market. If it is reasonable to engage foreign legal assistance at all, then its reasonable cost would surely

depend on the local rate for such work, as to which the Guernsey recoverable rates would not be relevant. This seems all the more obviously so if the relevant work is advice which is engaged by the Guernsey Advocates and becomes chargeable to the client as a disbursement. Yet such limitation was endorsed by the Court of Appeal in *Rusnano* both as to the costs of English counsel in helping to enable the smooth transfer of instructions from one firm of Guernsey Advocates to another, and also as to the costs of foreign lawyers advising on the procedures for service of documents in their jurisdiction. Looking at the facts of the latter, though, I consider this could well have been, and I suspect was, influenced by the fact that the foreign legal advisers who were engaged were in fact a different branch of the same firm of Guernsey Advocates who were acting in the case.

57. The logic of imposing such limitation on foreign lawyers' fees would seem to lie in the general policy of Guernsey (namely keeping the recoverable rate of costs down to a reasonable rate) on the grounds that

> "…*Litigants in Guernsey are in the great majority of cases, entitled to anticipate that if they lose and are ordered to pay costs on the recoverable basis, they will not have to pay costs relating to the use of external lawyers well in excess of those appropriate for Guernsey Advocates and their employees*
>
> see *Ladbrokes v Galaxy* at [22] endorsed by the Court of Appeal in *Rusnano* at [41],

although it is to be noted that an element of reasonable subjective expectation is also invoked. The difficulty about this is that it would tend to provide support for the argument that anyone who themselves instructs external lawyers could only reasonably anticipate that their opposition would do the same, and that justification for allowing external lawyers' costs has been very firmly rejected by the Court of Appeal.

58. The general argument of anticipation of reasonable costs would certainly hold true in relation to work which is routine legal work of a type which one might expect could be done by a Guernsey Advocate in principle. Helping transfer instructions between successive firms could fall within that category, and so that consideration might well, as a matter of policy, be thought fit to override the fact that it was actually being done by a lawyer in another jurisdiction where fees could be higher than Guernsey's recoverable rates, but for convenience. Limited recovery in such a case (ie where no particular expertise in the external jurisdiction is in issue) could well seem reasonably justified as a matter of Guernsey's own policy. However, that argument cannot be applied so justifiably to work which could not be done by a Guernsey Advocate at all, such as advising on US tax law - or advising on the local requirements for good service of documents, at any rate if required from an unconnected firm of lawyers.

59. It seems, therefore, that this limitation, to a maximum of Guernsey's own recoverable rates for the relevant work, is somewhat of an arbitrary limitation of policy, although this has not, so far as I can see, been expressly recognised or laid down. I do not see how this limitation can itself be universally justified in terms of the reasonable expectations of litigants (see the quotation above at [57]) because it ought to be obvious to any litigant that insofar as intrinsically "foreign" work is required, the costs of incurring it will be at the relevant foreign rates. I have noted, of course, the example in *Rusnano* but in view of the fact that the advice obtained was from an associate firm, it seems to me that the limitation there imposed can be regarded as the particular court's discretionary impression of what would be a fair and reasonable result on the particular facts.

60. Turning back to this case itself, the further matters relied upon in support of the alleged reasonableness of instructing English lawyers by, in particular A and J, appear to rest on the wider background and context that there are other associated proceedings in (several) other jurisdictions. This alone would not be a sufficient factor, but they then pray in aid a reasonable

need for them to have continuity and harmony in dealing with their legal affairs globally. This is a variant of LB Southwell's example (ii) in *Ladbrokes*.

61. These affairs, though, have no intrinsic connection with England at all; they concern proceedings in Jamaica, where Mr X's will is being administered, in the Bahamas, where the other family trusts are being administered and possibly in the USA, where commercial disputes instigated by the company co-founded by C appear to be being dealt with, although these may have concluded. The connection with English lawyers is suggested to be that A and J's legal affairs are organised on a "hub and spoke" basis with English lawyers being central and that English "team" being common to, and having knowledge and involvement in, all the relevant jurisdictions, such that their involvement in these Applications was "unavoidable", and its costs therefore ought to be recoverable.

62. The first thing that strikes me is that although the application was advanced in the first place as one for the costs of instructing "*specialist*" English lawyers (see A and J's skeleton argument) there does not appear to be any element of specialism about the above situation at all. It appears to be, rather, a particular firm of solicitors and their choice of counsel having been instructed in a general co-ordinating or supervisory role with regard to litigation in other jurisdictions. That, on its own, does not, in my judgment, justify allowing the costs of such external lawyers to be recovered in hostile litigation, concerning only one minor and pretty discrete aspect of it all. A and J's choice of how they structure their "global team" having lawyers conducting or overseeing affairs globally from a completely unrelated jurisdiction, is entirely a matter for them if they wish, and can afford, to do so. The question for me is how far Guernsey's policy on recoverable litigation costs should require an opponent faced with such a situation to contribute to the opposing parties' legal expenses incurred in, or because of, operating such a system. The authorities seem to me to indicate that the policy operates restrictively, and really only on a "reasonable necessity" basis, and that this also must be applied according to the facts of the particular case, rather than being susceptible to the formulation of general rules.

63. I would not, therefore, accept any argument that I should make a costs order which simply allows at all generally for the recovery (even on the recoverable basis) of A and J's English lawyers' costs incurred, in their estimation, in relation to their taking any part in these proceedings, or somehow "co-ordinating" them generally, and I will not make any which tends to allow that. Any such order as I might be prepared to make will have to be more specific.

64. As to this, I can see only two aspects of this matter (which I remind myself is solely the conduct of defence to a claim that the information about the W Trust should be forcibly disclosed to non-beneficiaries) which would seem reasonably to require the involvement of non-Guernsey lawyers. They are (i) the effects and scope of privacy orders in the Bahamian proceedings impacting on procedural matters in these Guernsey proceedings and (ii) the possible effects of any aspects of the conduct of these proceedings on the application of the "no-contest" provisions in Mr X's will.

65. One appears to be a matter of Bahamian law and the other of Jamaican law. How far any English lawyers' fees could be seen to be reasonably incurred in Guernsey proceedings in relation to either aspect is not at all clear to me and may even, indeed, depend on the relationship between such English lawyers and Bahamian or Jamaican lawyers. That, though, is beginning to stray into the realms of the theoretical, and far away from the obvious facts of this case and the making of appropriate costs orders in general principle.

66. The upshot, however, is that my costs order will allow the costs of English lawyers confined to the effects of the two issues above, but still to be examined on the principles of taxation of costs on the recoverable basis. I will not, however, limit such costs to the level of recoverable costs in Guernsey, for the reasons I have explained above, as to my reservations as to whether such a limit is actually fair, once the reasonableness of incurring any such costs at all is accepted.

I do not think that that can be decided on the basis of the broad general evidence available here, but only with more regard to the nature of any actual items claimed. I therefore consider that this is a matter which should be left to be raised on taxation, if advised.

67. In addition, since I am making this order on the basis of my own assessment of how it appears to me that the relevant principles should apply to the issues in this case, I will give liberty to apply, in case A and J (or T) consider that my view that there are only two such identifiable issues has missed something which ought also to be included.

68. Lastly, I emphasise that I have taken this view - which those habitually engaged in large scale or complex commercial and/or cross-border disputes might regard as unreasonably constrained - principally because of my judgment that the particular piece of litigation here is of very narrow compass, is peripheral to the deep-seated disputes between the parties, and is free-standing, coupled with the sense, which I have referred to above, that Guernsey's policy towards the recoverability of external lawyers' fees in hostile litigation conducted in Guernsey is restrictive rather than expansive.

69. I should also make it clear that the above relates to A and J. As regards T, I cannot, at the moment, see any reason why either of the above, or any other, consideration arises which might justify its incurring on its own account, and then recovering under Guernsey's costs rules, the fees of external lawyers. T had no direct involvement in either of the above two issues, and should have been able to obtain proper and comprehensive advice on its own position from Guernsey lawyers. Insofar as the above-mentioned issues were of any relevance, it could reasonably, it seems to me, expect to obtain all the information it might need from A and J.

70. I am not, therefore, prepared to make any order authorising T to recover any costs of external (English) lawyers. However, as I am uneasy as to whether I really have sufficient information to enable me to be quite sure about this, I will again, therefore give a liberty to T to apply in this respect.

(6) **Costs of U S tax advice**

71. This point applies only as between A and J, T and the US Family. I am aware from the evidence that both of T and A and J took advice on US tax.

72. The US Family brought the operation of the US tax system into their application. Although I found in the end that this was of relevance only as a ground for urgency, and not as a matter of substantive relevance to my decision, it was introduced as a matter which was supposedly also relevant. In any event, in the circumstances of the US Family's Application as it was disclosed and progressed, it was obviously appropriate that the respondents to the Application - A and J and T - should have the opportunity to adduce evidence in response.

73. I therefore conclude that the costs of A and J and T in obtaining US tax advice relevant to the arguments advanced on behalf of the US Family within their Application should be recoverable in principle. Bearing in mind my comments at [55]-[59] above, I also consider that they should be recoverable as a disbursement cost, at the rates actually incurred, even if that is higher than any Guernsey recoverable rate. It is not unreasonable to go to the US, where you would have to pay US rates, for a US lawyer's advice on a subject as arcane as the attribution rules of US income tax.

74. However, there was no conflict of interest between A and J on the one hand and T on the other hand, and I do not see that there was any need, therefore, for separate advice to be obtained. In my judgment, it is therefore appropriate to limit the recovery of the costs of US tax advice to one set of such fees, only.

75. I would normally think it appropriate for the trustee to be taking such advice on behalf of the trust, rather than the beneficiaries. It was T who was the primary respondent to the Application, with the responsibility of considering *en bon père de famille*, all relevant aspects on behalf of its beneficiaries. A trustee might, of course, reasonably delegate this aspect, or discrete parts of it, to its primary adult beneficiaries. This would not justify duplication of costs, however. I cannot, at this distance in time, make any judgment about any such duplication, or whose evidence was the more valuable, and I actually think that it would be invidious in any event. It would also not be a reasonable or proportionate use of my time or even that of a Taxing Officer.

76. If I left a choice of "one set of fees only" to the parties, they would plainly simply opt for the greater such bill.

77. I therefore conclude that the right order is simply to order that each of T and of A and J shall be entitled to an order for the recovery of 50% of their respective costs of obtaining US tax advice in relation to the US Family's Application and these hearings. That provides a rough equivalence to "one set of fees only" which I regard as doing substantial justice.

(7) Costs of "post judgment" matters

78. I have already mentioned in the Postscript to my main judgment, the "post judgment" matters which took place after the giving of my ex tempore judgment but before I had prepared an approved version (see [160]-[161] of my main judgment), and then also in relation to proposed amendments of that final approved version (see [166] – [169]).

79. B submits that I should make an order disallowing A and J's costs of "*failed attempts inappropriately to influence the Court's judgment and any related correspondence and attendances referred to in the Postscript*", pointing out that A and J's costs on this topic would seem, by calculation from costs increases revealed by the figures used in their submissions, to have been significant. He submits that A and J should also be ordered to pay his (and all other parties') costs incurred in that regard, and on the indemnity basis.

80. T and the US Family have made no specific submissions in that regard

81. A and J dismiss the inferences which B seeks to draw from the figures they have given and argues that their overall success justifies obtaining a general costs order against B (just as against the US Family), that their actions in relation to my judgment were justified by a fear that B and the US Family would seek to deploy elements of their failed disclosure Applications as advantages in the "hostilities" in other jurisdictions (in particular, with regard to the operation of the "no contest" clause in Mr X's Jamaican will, which is clearly brewing behind the scenes), that the Court's accepted criticisms of A and J's procedural conduct in Guernsey does not disentitle them from recovering, from B, the substantial costs of "dealing with the Judgment" and that divorcing any such small amount from the total "costs of the claims" in which they have been successful is salami-slicing of matters which should be treated as insignificant in the overall picture.

82. A and J's submission seems to me, though, to be somewhat exaggerated. B is not claiming the whole of his costs of all post-judgment matters, but only those attributable to the elements of A and J's conduct in dealing with the eventual approved written form of my judgment, which I have reprimanded. This may create difficulties with regard to wording a costs order with appropriate precision (Advocate Lyne's formulation quoted above at [79] rather shows the difficulties in this regard) but in principle, I agree with her. In my judgment A and J's conduct was sufficiently egregious, and to be discouraged, that it merits a costs sanction.

83. Where a court proposes to make a costs order other than a fully general one, then in order to try to avoid making the process of taxation too intricate, it is urged, if practicable, to make an order

by reference to a proportion of the other party's costs, or by reference to a specified time period, rather than an order "*related only to a distinct part of the proceedings*" (an "issue based" order) - see the English CPR Rule 44.2 (6) and (7). An order "*relating to particular steps in the proceedings*" (CPR Rule 44.2 (6)(e)) is not given any place in such a hierarchy of preferences and is presumably therefore not quite such a cause for concern as would be an "issue based" order.

84. A and J's inappropriate conduct related to

    (1) the sequence of communication with the Court and other parties comprising

        a. Walkers' letter of 26th March 2024 to the Court

        b. Ogier's letter to the Court of 4th April 2024

        c. Collas Crill's letter to the Court of 5th April 2024, and

        d. Walker's letter to the Court of 9th April 2024;

    and

    (2) Correspondence between Walkers, the Court and no doubt all other parties, from 22nd April 2024 when my final approved version of the written judgment was sent out to the parties, until 21st May 2024, when the absolutely final version of this, and the anonymised version, was finally sent out, being the correspondence in which A and J sought to suggest the inappropriately extensive amendments to my judgment which I stated in paras [167] – [169] were entirely unacceptable.

85. I regard the first section of such conduct as less serious than the second. I regard the second as very serious.

86. As regards the first part of such conduct, I shall order that A and J are not to be entitled to their costs of or incidental to the letters mentioned in [85] (1) (a) and (d), and they are to pay B's and the US Family's costs of dealing with those letters and of their own respective letters mentioned in [85](1) (b) and (c), such costs to be paid on the recoverable basis.

87. As regards the second part of such conduct, and having regard to the guidance of the English CPR, I consider that the correct order is to order that A and J are not entitled to recover any of their costs incurred between 22nd April 2024 and 21st May 2024 of receiving, considering, acting on, corresponding with other parties regarding, responding to or otherwise dealing with my final judgment and anonymised judgment as issued on 22 April 2024 and as definitively handed down on 21st May 2024, and that they shall pay B's and the US Family's costs of so receiving, considering, acting on, corresponding with other parties regarding, responding to or otherwise dealingwith such judgments incurred between such dates, such costs to be paid on the indemnity basis.

88. In making the order described at 87, I am aware that such costs as described will inevitably also embrace the costs incurred by such parties in making textual and minor amendments which I did not regard as unjustified, but I consider these to be *de minimis*, not proportionate to differentiate, and in any event, to provide a fair and reasonable order in conjunction with the effect of my order at [86]. In other words, I regard my overall order as doing substantial justice.

89. I do not think it appropriate to make any order in respect of T's such costs. I regard these as likely to have been *de minimis*, and they will in any event be likely to be covered by T's trustee indemnity.

(8) **Interim payment**

90. Lastly I come to the matter of an interim payment.

91. A and J apply for an interim payment on account of the costs which they will obviously be entitled to receive in respect of these Applications. They base this very much on comments of mine made in *Broadhead v Spread Trustee Co Ltd* (Guernsey Judgment 10/2015), to the effect that the principle of awarding an interim payment is to provide a measure of relief to a party who is clearly going to be entitled to an enforceable costs order at the end of the day, as to being kept out of his money for a considerable period whilst the precise sum to be paid is ascertained, by awarding him in effect, a payment on account. I there said that the principle should be that the Court should assess what approximate amount was likely to be awarded, on whatever principles for costs recovery applied, and then order an interim payment of a "conservative fraction" of that amount, so as to minimise the likelihood of making any over-award in the event.

92. My comments have since received approval in other cases, - certainly as regards final orders. In *Pirouet and Batiste v States of Guernsey,* Guernsey Judgment 25/2017, LB McNeill considered that this did not apply to interlocutory costs orders with the same force, as subsequent orders in the proceedings could make unpredictable changes to the ultimate right of recovery. However, this case is, in effect, a final order.

93. As mentioned above, in A and J's submissions of 21st June 2024, they claim an interim payment of £304,000 from B and £432,000 from the US Family. Taking each of these to be 60% of the total of costs claimed against each of them, as previously mentioned, that would make the total costs bills claimed by A and J in respect of these two Applications, and on which these claims are based, (which would seem to be up to 21 June 2024) to amount to £1,226,666 (ie £506.666 + £720,000).

94. A and J's claim for interim payment is founded on the proposition that it is not fair to keep a person with an obvious entitlement to some reimbursement for expenditure he has incurred out of all of his money simply whilst a precise final figure is calculated (and probably argued about), and that this applies just as much to beneficiaries, and even to trust funds, as it does to individual litigants.

95. I accept that argument. However, the question is whether it is appropriate to try to apply that principle on the evidence in this case. I have concluded that it is not.

96. The first important point to be made is that A and J – with T being rather carried along in their slipstream – have produced only an entirely global figure for their claimed costs. It is not suggested that any actual bills of such costs have been submitted. No such are disclosed, even on an informal basis, and there is no breakdown. Furthermore, in their submissions, A and J have been proceeding on the basis that they should be entitled to indemnity costs, but I have already decided that such an award is not appropriate. They have also proceeded on the basis that they should be entitled to their costs of instructing external (English) counsel and solicitors. How much of their claim is attributed to that, which I have also largely disallowed, is not disclosed.

97. No evidence has been put before me of A and J's actual claimed costs, (nor, for that matter, of T's) which enables me to analyse any such claim sufficiently. I simply have a global figure claimed, without any breakdown to assess its reasonableness in general terms, at all, and it has far too many major imponderables, in the light of my earlier decisions, to be regarded as at all reliable as a basis for making any calculation of an appropriate "conservative fraction".

98. This is even illustrated by a point made by Advocate Lyne, on behalf of B. She points out that, in a letter from Walkers on behalf of A and J dated 10th April 2024 it was stated that A and J's total costs and disbursements claimed from both B and C together (excluding US tax advice) was £799,762.62. She contrasted this with the figure which was now revealed by a calculation from the claim in the skeleton argument itself (£1,226,666) and pointed out that in respect of B, this produced an increase of a rather remarkable £106,000. Even allowing for Walkers' response that the April figure had been only up to the date of the hearing (21st February) the increase is large, and the question what such expenditure might have been incurred on in that time illustrates the potential unreliability in simply taking A and J's own figures as claimed, without any supporting evidence.

99. I am not prepared to make an order for an interim payment on such basis. I do accept that the point of making an interim payment is very often to enable costs to be recovered without having to produce a detailed bill of costs, but that does not extend to asking the Court to make an order for an interim payment on the basis of a "finger in the air" approach to an unexplained global bill.

100. I will therefore dismiss the applications for interim payments, but with liberty to apply in the future, with appropriate supporting evidence.

101. For completeness, I should add the following. Both B and the US Family argue that an interim payment is inappropriate (or the principle which justifies it is of less real force) because they have the benefit of costs orders against A and J made in the Bahamian proceedings which remain unsatisfied. I would not regard this as a factor militating against the making of an interim payment order in principle. Interim payment orders are about the enforcement of costs orders in litigation in this jurisdiction. What goes on in other jurisdictions and whether and how any costs orders there are or can be enforced is, in my judgment, entirely irrelevant to the appropriateness of this Sourt's making any interim payment order in relation to costs in this jurisdiction. At its highest, such a point might (but I am far from saying it would) give sufficient grounds for imposing a stay on the enforcement of any such order, but I am far from saying that that would be likely.

102. The US Family argues that the objective of relieving a successful party from delay in recoupment of its money is not a consideration in relation to T, because T is able, in any event, to reimburse itself from the funds of the W Trust under its trustee indemnity. Again, I do not find that point particularly compelling, because it simply transfers the disadvantage being remedied to other innocent persons. The effect to keep the W Trust out of funds which ought reasonably to be within its assets and being applied for the benefit of its beneficiaries. In my judgment, a trustee should generally be in no significantly different position from that of any other private litigant with regard to the reasonableness of being awarded an interim payment.

103. B argues that no interim payment in respect of him is appropriate having regard to the fact that he has appealed against my substantive decision, with that appeal due to be heard by the Court of Appeal in December 2024 (this may have now been moved to 2025). Again, I would not regard that as a reason for not making an order for interim payment if it were otherwise appropriate to do so. The ground for ordering an interim payment is that it is a proper consequence of the judgment which I gave and orders consequent upon that, and that is the governing situation at present. Once again, in my judgment, this is a matter which might, at best, give grounds for a stay, and would have to be canvassed on that basis. In the circumstances that situation does not arise.

Further miscellaneous points

104. I need to make it clear that none of my comments above affects the application of general principles of taxation on particular matters which I have not specifically considered and ruled

upon. In particular, I have not considered any question of suggested unnecessary or unreasonable duplication of costs between T and A and J. That will require, first, considering costs in a level of detail which is neither appropriate in this determination as to principle, nor, indeed, possible at the present skeletal level of evidence with regard to claimed costs. It will also require consideration of the procedural effects of the two Applications having originated, perfectly reasonably, as separate Applications. Such matters can be appropriately dealt with by the Taxing Officer.

105. I have also made no mention of complaints of "over-lawyering" made by B and the US Family, for two reasons. The first is that, as was indeed acknowledged by the US Family, that kind of complaint is really a matter to be dealt with on taxation. The second is that those complaints were made mainly with regard to the large number of English lawyers apparently involved in attending the hearings in February 2024 on behalf of A and J, either in Guernsey or remotely. As I have broadly disallowed the costs of English lawyers, this will probably not arise.

106. Lastly, I make it clear in relation to T that the points which I have made above are as to my judgment with regard to an appropriate party-and-party order for T's costs in this litigation. None of them is intended to cut down T's independent right to an indemnity for its proper costs as trustee of the W Trust out of that trust's assets.

Anonymisation

107. Finally, as to anonymisation. I have given this judgment with the same anonymised references (except with regard to countries, as these are simply too cumbersome) as in my public judgment of 21st May 2024 because the privacy order with regard to the parties, previously granted in these proceedings, has not been formally lifted. However, I note that the privacy orders which were in place in the family trust proceedings in the Bahamas, involving most if not all of the same individuals as in this case and also regarding trust affairs, were lifted, in fact in December 2023, following an unsuccessful application to the Privy Council for leave to appeal against the Bahamian Courts' refusal to grant privacy orders in respect of those proceedings, rejecting arguments similar (it appears) to those made for privacy in this case, and which orders were themselves an important reason for my acceding to an application for privacy in this case in the first place. (In the event, the privacy aspect was not subsequently revisited but I make no complaint about that.)

108. However, in those circumstances, if and when any aspect of this matter may return to court, it will be treated as ordinary hostile litigation conducted in public under the usual principles of open justice, unless and until any renewed application for privacy is made and granted. I also draw attention to the guidance of the Court of Appeal in the recent case of *Re L Trusts* ([2024] GCA 061) to the effect that a privacy order in relation to litigation at first instance is not automatically extended to any appeal there from.

Her Hon Hazel Marshall KC

Lieutenant Bailiff

27th September 2024.