

Offshore trust disputes 2024: The year that was

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2024 was another lively year for offshore and onshore contentious trust practitioners.

Supervisory jurisdiction

In Cayman the Grand Court in **AA v JTC (FSD 12/2024 (IKJ))** has, for the first time, set down the principles applicable to an application by an enforcer under Cayman's STAR trust regime for the Court's approval of a 'momentous' decision in relation to the proposed exercise of the enforcer's fiduciary powers. The Court will consider whether:

- the trustee and enforcer have the power to enter into the proposed transaction;
- the trustee and enforcer have genuinely concluded that the proposed transaction is in the interests of the trust and the objects of the trust;
- a reasonable trustee or enforcer would arrive at the relevant conclusion; and
- the trustee and enforcer have any operative conflict of interest in the proposed transaction.

The Cayman Grand Court **G Trust (270/2023)** has also pronounced upon the role of beneficiaries of a Cayman STAR trust in an application to rectify a trust instrument. On the basis that beneficiaries of a STAR trust do not have standing to enforce the trust (that role falling to the enforcer), the court concluded that it was not necessary to convene beneficiaries to the rectification action to advance counter arguments to the trustee's position.

The Guernsey decision in **BX v T [2024] GRC 036** involved testing the principles established by the Privy Council in *Schmidt v Rosewood* concerning the rights of non-beneficiaries (who are so proximate to the beneficial class as to effectively make them beneficiaries in all but name) to invoke the supervisory jurisdiction of the court to require a trustee to make disclosure of certain documents.

- Ultimately, the Guernsey Royal Court dismissed the applications on the basis that:
the applicant non-beneficiaries' prospects of success to require disclosure had to be 'overwhelmingly strong', and were judged not to be; and
- in any event, the purpose for which the disclosure was sought was not sufficiently connected with the administration of the Trust to justify disclosure to 'outsiders'.

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The **BX v T** decision also includes some interesting commentary on the approach of the Guernsey Royal Court to the recoverability of the costs of foreign lawyers in Guernsey proceedings. If that approach is replicated elsewhere, we may see costs having a greater prominence in the offshore jurisprudence.

This case was followed by a decision in Jersey, **Judge v CSC [2024] JRC233** concerning whether objects of a discretionary power to add to a class of beneficiaries could bring proceedings against a trustee for its failure to add them, with leave being granted to pursue the claim. Both cases explore the latitude and limits of the supervisory jurisdiction following the Privy Council in *Schmidt*.

Family provision

In a rare intervention, the Jersey Court of Appeal in **Mauger v Mauger [2024] JCA 197** has set out the principles applicable to the defence of *rester sur ses avances* in respect of a claim for *rapport à la masse* to uphold Jersey's forced heirship regime.

Jersey's succession law operates a forced heirship regime known as *légitime* in respect of a testator's moveable estate, under which there is only testamentary freedom to dispose of 1/3 of the moveable estate, the remaining 2/3 being reserved for the testator's heirs at law. The Court of Appeal has resolved an ambiguity in the law, confirming that where lifetime gifts to the heirs exceed the 2/3s – that excess to be accounted for to the other heirs.

Unlike in England, where the court can resolve disputes about whether a will makes reasonable provision under the Inheritance (Provision for Family and Dependents) Act 1975 after death, Jersey's approach is to fix the entitlement in advance of death and uses the principles of *rapport à la masse* to allow the heirs to police the distribution of the estate to protect their *légitime* rights.

The major development in respect of 1975 Act claims for 2024 was the long-awaited UK Supreme Court's decision in *Hirachand* [2024] UKSC 43, confirming that uplifts and success fees charged under CFAs are not an expense that the court should have regard to when making reasonable provision under the Act.

Mauger has direct application only in Jersey but is potentially also relevant to Guernsey inheritance disputes which, for wills that pre-date 2012, are subject to similar Norman customary law principles. Having since moved to a regime similar to England's 1975 Act arrangements, Guernsey's Royal Court has yet to rule on a contested application for reasonable provision.

Forfeiture and assisted dying

A lively area of public policy and law reform in the coming years is likely to include the impact of assisted dying on estate planning and inheritance disputes – particularly around issues of forfeiture. Legislation to bring about assisted dying is making its way through the UK Parliament and Jersey's government has indicated it will likely propose a legislative framework towards the end of 2025 following extensive consultation.

Privacy

Many types of trust proceedings conducted offshore are heard in private which is widely regarded as a positive for many clients involved in private wealth disputes. A number of offshore cases have touched on the issue of privacy:

In Guernsey, the Court of Appeal in **Salem v Sequent [2024] GCA064** (an appeal from private trust proceedings concerning recusal) has made clear that while first instance proceedings may be in private, there is no guarantee privacy will be extended to the appeal and

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material which the party might prefer remain behind that veil of privacy (like failing to obtain a blessing as a professional trustee) might be made public.

In Jersey, a decision of the Royal Court arising from conjoined variation and blessing application has made clear that where the effect of the variation (and in this case blessing) was to deprive HMRC of tax that would otherwise fall due in the future (even if no tax was due at the point of the application), HMRC should nevertheless be put on notice of the proceedings. While HMRC rarely intervenes, this represents an extension of the well established principle that HMRC is notified in Mistake/Hastings Bass-type applications where the mistake sought to be reversed has in fact generated a tax charge or tax consequence.

Perpetuities

2024 has seen the somewhat dry topic of perpetuity in the spotlight; Cayman having abolished its rule against perpetuities and Jersey having discovered what its rules of perpetuity were before 1984.

The groundbreaking decision of the Jersey Royal Court in **Mattas [2024]JRC068** has revealed that before the enactment of Jersey's modern trust legislation, Jersey law trusts were subject to the old common law rule against perpetuities (unamended by the UK's 1964 legislation).

This is a decision likely limited to its unusual facts but the applicability of an unreformed and highly technical 'rule against the remoteness of vesting' will remain a potential trap for the unwary for those dealing with old Jersey structures.

Looking ahead to 2025

As well as legislative developments on assisted dying in both the UK and Jersey, Jersey is also likely to amend the Trust (Jersey) Law for a ninth time following a 2024 consultation to address, among other things, the impact in Jersey of the 2020 Guernsey decisions in Rusnano concerning the 'rule in Saunders v Vautier'.

Onshore there appears to be no let-up in the frequency of Inheritance Act 1975 challenges before the English courts which have been enjoying a renaissance in recent years.

Issues concerning capacity and its impact upon the administration of trusts (both onshore and offshore) are expected only increase in number and frequency. The impact of the Privy Council's decision in *Wong v Grand View* (concerning challenges to the exercise of trustee powers on the basis of improper purpose) continue to be felt as such challenges appear with greater frequency in litigation brought against trustees.

Lastly, we look forward to a hearing (and decision) from the Privy Council in the long running X Trust litigation from Bermuda on the 'wide vs narrow view' concerning the role and powers of protectors, which is expected this year.

In summary 2025 promises to be no less busy for private wealth litigators.

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