W Trust – The Guernsey Court of Appeal dismissed an appeal by BX seeking disclosure of trust documents from the W Trust. BX, the object of a power to add beneficiaries, argued for standing under the court's inherent jurisdiction and section 69 of the Trusts (Guernsey) Law 2007. The Court held that such an object does not qualify as a "beneficiary" under the statutory disclosure regime and must demonstrate a strong expectation of being added to the class of beneficiaries to justify relief. BX failed to meet this threshold, and the Court found that disclosure would not facilitate proper trust administration nor override the privacy interests of existing beneficiaries.

[2025]GCA063

IN THE GUERNSEY COURT OF APPEAL
(CIVIL DIVISION)
Court of Appeal Case No: 584

20 August 2025

ON APPEAL FROM THE ROYAL COURT SITTING AS AN ORDINARY COURT

Before:

MOUNTFIELD JA
MATTHEWS JA
FURNESS JA

Between:

BX

Appellant

-and-

(1) T Ltd (trustee of the W Trust)
(2) AX
(3) JX
(4) CX
(5) OX
(6) PX
(7) QX

Respondents

MATTHEWS JA

Introduction

1. This is the judgment of the court on an appeal against a decision of Lieutenant Bailiff Hazel Marshall KC ("the Judge"), given first *ex tempore* on 21st February 2024, and then in writing

on 21st May 2024: see [2024] GRC036, 2024 GLR 162. Although the appeal was heard in public, following an order made on 31st December 2024 to protect the privacy of the parties, they are referred to in this judgment by letters rather than names.

2. The decision of the Judge under appeal was given on an originating application dated 20 September 2023 (Civil Action 2514) by the applicant (BX). This sought an order that the first respondent (T Ltd), as trustee of the W Trust, disclose certain documents relating to the trust and its assets to him. The application was refused. We record that, although the trustee of the W Trust is a party to the application, and now is a party to this appeal, the protector of the trust (referred to hereafter) was not a party to the application and is not a party to this appeal.

3. In addition to the substantive appeal, however, the second and third respondents (AX and JX) have made an application (dated 11 November 2024) under rule 12(2) of the Court of Appeal (Civil Division) (Guernsey) Rules 1964, to adduce further evidence on the appeal, under the rule usually known as the rule in *Ladd v Marshall*. AX and JX are currently the only members of the class of discretionary objects of the W Trust.

The W Trust, the Y Trust and the Z Trust

4. The W Trust was created on 4th May 2005 by a declaration made by T Ltd, at the instance of X. He was a wealthy businessman, now deceased, who had built up a business empire, particularly in the hospitality industry. X was a native of country H, and was based there, although much of his business was carried on in the United States. The W Trust is an irrevocable discretionary trust, expressed to be governed by the law of Guernsey. The initial trust fund consisted of a nominal sum, to which further assets were subsequently added by X. He has been treated by everyone as the settlor of the W Trust.

5. The further funds were then used to purchase an insurance policy, and the insurance company used them to purchase part of X's hospitality business empire. The W trust is therefore a so-called "insurance wrapper" trust, which (we are told) is "tax efficient". It also means that it is the insurance company, and not the trustee, that owns the underlying assets. There was no contemporaneous letter of wishes from X to the trustee of the W Trust. From the outset, the only two members of the class of beneficiaries have been AX and JX.

6. Other parts of X's business empire had already been settled in two earlier trusts, the Y Trust and the Z Trust, in 2001. Both trusts were revocable by X. T Ltd has never been the trustee of these trusts, which are not governed by Guernsey law, or by that of country H, but by the law of a third country (M), where the trustee of both those trusts is based. The class of objects of the Y Trust and the Z Trust include the fourth to seventh respondents, but also AX and JX.

7. The three parts of the business empire, eventually belonging to the three trusts respectively, focused on (1) (the "U Group", in the W Trust) organising and providing booking services for customers of the second and third parts of the empire, (2) (the "S Group", in the Y Trust) operating the hospitality establishments, and (3) (the "H Group", in the Z Trust) providing services to the S Group.

The settlor's "families", and estate planning

8. X had seven children. The first, by an early relationship, is ZZ. He is not a party to the litigation and plays little or no part in this story. The second, by his first wife, is BX, the appellant. The third and fourth, by his second wife, are AX and JX, the second and third respondents. The second to fourth children are known as X's country H Family. The other three children, OX, PX, and QX, were born from his long-term relationship to CX, who was still his partner at the time of his death in 2021. CX and the other three children (the fourth to seventh respondents) are collectively known as X's US Family.

9. X began to consider his estate planning in about 2017. A scheme of reorganisation of his business interests was devised by X in conjunction with Y, his personal lawyer in country H. It is clear that the existing three trusts would have to be dealt with in some way, if the assets contained in them were to be made available for the purposes of this reorganisation. Two of them were revocable, but the W Trust was not.

10. X made a "holding" will in 2018, but went on to make a more considered will in 2020. This made provision (via a revocable trust made in 2018) for certain pecuniary legacies and made gifts of residential properties and valuable chattels to various beneficiaries, principally members of his families. These included significant gifts to BX.

11. His will expressly acknowledged that the S Group, the U Group and the H Group fell outside his estate (having already been settled). However, it provided for any resulting trust interest relating to any of those assets to be dealt with as part of the Y Trust. In addition, it contained a "no-contest" clause, by virtue of which a will beneficiary would lose all benefit under the will by contesting any provision in the will, or in any trust instrument, letter or memorandum of wishes, gift or certain other transactions.

12. When X was suddenly taken ill in 2021, Y prepared a general memorandum of what he understood X's intended scheme as at that date to be. X signed this. Unfortunately, he died the next day. His will remained unchanged. At its foot, the memorandum says:

> "I, [X] confirm my agreement with the forgoing [sic] approach and confirm that it is my wish that the above be implemented and followed in the event of my death."

13. It is clear from the drafting of the memorandum that, apart from the words quoted above, it was drafted by other hands and then submitted to X for approval. It includes the following paragraphs:

> "4. Documents <u>have been drafted</u> for five (5) subsidiary trusts – one for the entire US family and four (4) for the [country H] family sub-branches. These five trusts will operate like empty vessels waiting to be filled. They are not yet established.
>
> 5. A Will which is already signed, dictates how much of the three existing trust [sic] should flow into each of the five subsidiary family trusts.
>
> 6. Rather than have that done after the Trigger Event [*ie* X's death or incapacity] what I recommend to be done now which was a matter under discussion is that on the

occurrence of the Trigger Event the assets in the three trusts should flow automatically into the five family trusts according to the proportion [sic] set out in the Will.

[…]

9. Once the Trigger Event occurs and the shares pour into each trust, the original three trusts will be empty."

14. With regard to the terms of paragraphs 5 and 6 of the memorandum, we note that X's will does not in fact say how much of the three existing trusts should flow into the proposed five new trusts, or in what proportions. Nor does it say how this could happen, consistently with the existing trust arrangements. On the contrary, the will acknowledges that the trust assets are entirely outside the estate, unless there is a resulting trust for the settlor. (The W Trust was irrevocable. The Y and Z Trusts were revocable by X during his lifetime, but there is no evidence that they were so revoked. Accordingly, they are now irrevocable.)

15. However, as well as the memorandum signed by X on the day before he died, his country H lawyer, Y, drafted a further document, headed "SUMMARY OF TRUST ARRANGEMENTS". This is undated and unsigned. But it includes this paragraph:

"The five family trusts and the percentage of assets from each of the three trusts which will pour into them are as follows:

(a) US Family Trust (for CX and three children)	42.00%
(b) [BX] Trust	16.67%
(c) [AX] Trust	16.67%
(d) [JX] Trust	16.66%
(e) [ZZ] Trust	8.00%
	100.0%"

It is not clear how this document can be said to represent the wishes of X.

Litigation

16. Regrettably, relations between the component parts of X's families have broken down. There has been litigation concerning the Y Trust and Z Trust in country M, and also in the United States. In Guernsey, both BX and the US Family made separate applications to the Royal Court for orders for disclosure of documents and other information relating to the W Trust. The applications were heard together by the Judge. Although both applications were dismissed, only BX has sought to appeal to this court.

17. The Judge's decision runs to 171 paragraphs, dealing of course with both applications. It is structured as follows. After a short introduction ([1]-[7]) and setting out the factual background ([8]-[28]), the Judge describes the applications ([29]-[30]) and sets out the issues ([31]-[34]). The Judge then summarises the applicants' cases ([35]-[71]) the beneficiaries' case ([72]-[90]), and the trustee's position ([91]-[96]) which is stated to be neutral, although it made some legal submissions.

18. The Judge then considers the law ([97]-[116]) and discusses it ([117]-[127]). She then applies the law to the facts of the two applications ([128]-[156]) and dismisses both applications ([157]). Lastly, there is a postscript ([158]-[171]), which deals with the limited nature of the fact-finding by the Judge, and with an invitation from the advocate for the second and third respondents to deal with further matters in the written judgment (which the Judge declines). It is a detailed and thorough judgment.

This appeal

19. BX's notice of appeal is dated 10th June 2024. It sets out three main grounds of appeal, each of which is subdivided into particular complaints. We can summarise those three grounds as follows:

> 1. The Judge was wrong in law as to the nature of the court's inherent jurisdiction to order a trustee to disclose trust information and documents to a person who, although not a fixed interest beneficiary of the trust, nor the object of a power of disposition of trust assets or income, is nevertheless the object of a power to add further beneficiaries to the trust.
>
> 2. The Judge was wrong in law as to the regard which the trustee ought to have to the appellant, as such a person as is mentioned under ground 1, in exercising dispositive powers.
>
> 3. The Judge was wrong not to decide, in all the circumstances, that the trustee should be directed to disclose the information sought by the appellant, and in particular was wrong to hold that granting the application would not facilitate the proper administration of the trust.

20. On 27th September 2024, T Ltd, as trustee of the W Trust, applied for a full privacy order, which would involve a hearing in private, the sealing of the court file and the anonymisation of any written judgment. On 31st December 2024, the Bailiff, sitting as a single judge of this court, dismissed the application for a full privacy order. However, he directed that the same naming convention would be used on the appeal as had been used at first instance.

21. Thereafter, directions were given by a single judge of this court, principally in relation to an application by the second and third respondents on 11th November 2024, for further evidence to be admitted on the appeal under the rule in *Ladd v Marshall*. Ultimately, on 24th June 2025 the full court directed on paper that the *Ladd v Marshall* application should be heard at the same time as the substantive appeal and the new evidence would be looked at by the court *de bene esse*.

The terms of the W Trust

22. The relevant terms of the W Trust are as follows:

> "**(1) Interpretation**
>
> In this deed and the schedules hereto wherever the context permits the following words shall have the following meanings:
>
> > a) 'Beneficiaries' means any of the persons specified in the Third Schedule or any person appointed as a Beneficiary by the Trustee under the provisions of clause 11 …
> >
> > […]
> >
> > c) 'deed' means any instruments in writing which is signed by the person making it and is dated and witnessed
> >
> > […]
> >
> > e) 'Excluded Person' means any person constituted an Excluded Person pursuant to clause 9 hereof
> >
> > […]
> >
> > g) 'Proper Law' means the jurisdiction to law and courts of which this trust may be subject at any time
> >
> > […]
>
> **(2) Proper Law and forum of administration**
>
> This trust is established under and is subject to the law of Guernsey and the courts of Guernsey shall be the forum for the administration thereof
>
> […]
>
> **(5) Trusts of income and capital**
>
> The Trustee shall hold the Trust Fund as follows:
>
> > a) Upon trust during the Trust Period to pay appropriate or reply the whole or such part of the Trust Fund as the Trustee may at any time think fit to or for the maintenance or otherwise for the benefit of all or such one or more of the Beneficiaries in such shares and proportions if more than one and generally in such manner as the Trustee shall think fit and subject thereto to accumulate the income of the Trust Fund

b) At the expiration of the trust. Upon trust as to both capital and income for all or such one or more of the Beneficiaries in such shares and proportions if more than one and generally in such manner as the Trustee May river quickly prior to or irrevocably on the date of such expiration determine and in default of it subject to such determination upon trust for such of the beneficiaries as shall then be in existence and if more than one in equal shares absolutely …

c) subject to and in default of the foregoing as to both capital and income for such charity or charitable purposes as the Trustee shall determine

(6) Appointment and advancement

Notwithstanding the foregoing the Trustee may at any time:

a) by any deed or deeds revocable during the Trust Period or irrevocable appoint such other trusts powers and provisions governed by the law of any jurisdiction concerning the Trust Fund or any part thereof for the benefit of the Beneficiaries or any one or more of them in such as and proportions and with such powers of appointment vested in any person and such provisions for maintenance education or advancement or for accumulation of income or the raising of portions or forfeiture in the event bankruptcy and with such discretionary trusts and powers exercisable by any persons and generally in such manner as the Trustee may think fit for the benefit of the Beneficiaries or any one or more of them …

b) pay or transfer the whole or any part of the Trust Fund to the Trustee of any other trust whether or not governed by the Proper Law under which any one or more of the Beneficiaries are interested …

[…]

(9) Powers of exclusion

The Trustee may at any time by deed revocable during the Trust Period if so expressed but not otherwise declare that the person or member of a class named or described in such deed who is would or might but for this clause be or become a Beneficiary shall:

a) be wholly or partially excluded from future benefit hereunder or

b) cease to be a Beneficiary or

c) be an Excluded Person …

[…]

(11) Power to add Beneficiaries

The Trustee may at any time:

a) Add to the class of Beneficiaries such persons (not being an excluded person) as the Trustee shall determine. Any such addition shall be made by deed …

b) if there is at least one person (not being a charitable purpose) who is a Beneficiary by irrevocable deed release any future exercise of such power

[…]

(22) The Protector

a) The Protector of the trust is the person named in the Fourth Schedule

b) The terms in relation to the appointment powers rights and immunities of the Protector are set out in the Fourth Schedule

[…]

(26) Excluded Trusts Law provisions

Section 19(b) and 34(1)(b) and any order made under section 57(1) of the Trusts (Guernsey) Law 1989 as at any time amended shall not apply to this Trust and all or any of the obligations imposed on the Trustee by all or any of the provisions or chief order or by section 22(1) or 25(1) of such law are negated and excluded and shall have no application to the Trustee or this Trust

[…]

THE THIRD SCHEDULE

[The Beneficiaries]

[AX] of [address]

[JX] of [address]

THE FOURTH SCHEDULE

[The Protector]

(1) Interpretation

The word 'Protector' shall mean the Protector of the trust hereby appointed and shall include all other Protectors appointed pursuant to this Fourth Schedule"

[…]

(3) Protector's powers

a) The Trustee shall not exercise the powers or discretions vested in it pursuant to the provisions of clauses 3 5 6 7(c) 9 11 18 19(a) 25 … without the prior written consent of the Protector

b) The Protector for the time being shall have the power to remove any Trustee or Trustees by written notice to the Trustee to be removed …

c) The powers of the Protector shall not be held in a fiduciary capacity.

[…]".

23. The requirement of (non-fiduciary) protector consent to the trustee's exercise of the power to add further objects in clause 11 is clear. Yet, we have already noted, the protector was not joined to the application, nor to this appeal. The protector's attitude to the possibility of adding BX to the class of objects is not known.

24. It will be also seen that clause 26 of the trust refers to the Trusts (Guernsey) Law 1989. This was the relevant law in force in Guernsey at the date when the trust was created. It has since been repealed, and replaced, by the Trusts (Guernsey) Law 2007. The 1989 Law made, and the 2007 Law makes, provision for trusts which in certain cases were and are expressed to be "subject to the terms of the trust". These provisions were and are therefore capable of being excluded by the settlor of a given trust.

25. Unfortunately, both the numbering of the sections and at least some of the substance of the provisions made by the latter law are not identical to those in the former. That may make it important to be clear how far provisions of the current Law have been excluded from operation in relation to a trust which, like this one, dates from the time when the 1989 Law was in force. Clause 26 of the present trust refers to "the Trusts (Guernsey) Law 1989 as at any time *amended*" (emphasis supplied). It does not say "as at any time amended *or replaced*".

26. Of the provisions of the 1989 Law referred to in clause 26 of the trust, only section 22(1) is at all relevant to this appeal. The whole section read as follows:

"(1) Subject to the terms of the trust, a trustee shall, at all reasonable times, at the written request of any beneficiary (including any charity named in the trust) or of the settlor, provide full and accurate information as to the state and amount of the trust property.

(2) In its application to a trust arising from a document or disposition executed or taking effect before the commencement of this Law, subsection (1) shall only operate for the benefit of a beneficiary whose interest in the trust property becomes vested before the commencement of this Law, but this subsection shall not prejudice any rights that the beneficiary may have under the terms of the trust."

27. In the 2007 Law, the comparable provision is section 26, but there are significant differences between the two sections. The relevant provisions of section 26 are as follows:

> "(1) A trustee shall, at all reasonable times, at the written request of -
>
> (a) any enforcer, or
>
> (b) subject to the terms of the trust -
>
> (i) any beneficiary (including any charity named in the trust),
>
> (ii) the settlor, or
>
> (iii) any trust official,
>
> provide full and accurate information as to the state and amount of the trust property.
>
> (2) Where the terms of the trust prohibit or restrict the provision of any information described in subsection (1), a trustee, beneficiary, trust official or settlor may apply to the Royal Court for an order authorising or requiring the provision of the information.
>
> (3) The person applying to the Royal Court for an order under subsection (2) must show that the provision of the information is necessary or expedient -
>
> (a) for the proper disposal of any matter before the court,
>
> (b) for the protection of the interests of any beneficiary, or
>
> (c)for the proper administration or enforcement of the trust. "

28. In both the 1989 Law and the 2007 Law, the term "beneficiary" is defined (1989 Law, section 73; 2007 Law, section 80). In each case, "unless the context otherwise requires", the term means "a person entitled to benefit under a trust, or in whose favour a power to distribute trust property may be exercised". Thus, a person with a life or other fixed interest would be within the definition, as a person *entitled* to benefit. The object of a dipositive power would also be within it, as someone in whose favour a power to distribute trust property might be exercised. But the object of a power to appoint further members of the class of objects or beneficiaries (lawful under section 8(2) of the Trusts (Guernsey) Law 2007) would not, unless and until that object were in fact added to the class: see *eg Re Exeter Settlement* 2010 JLR 169, [29]-[30], approved for Guernsey by this court in *Rusnano Capital AG v Molard International (PTC) Ltd* [2019]GCA077, [44].

29. Section 26 of the 2007 Law retains the excludable duty of section 22 of the 1989 Law to "provide full and accurate information as to the state and amount of the trust property" to beneficiaries, the settlor and "trust officials". (That term is defined to mean "a person having a function or holding an office in respect of the trust other than a settlor, trustee, enforcer or beneficiary".) But it now also imposes a *non*-excludable duty to do the same for an enforcer. A further innovation is that it provides a mechanism for any beneficiaries, the settlor and trust officials who have been excluded from the duty to apply to the court for an order for the same information.

30. However, in the present case, it is not necessary for us to decide whether clause 26 of the trust has the effect of excluding the provisions now contained in section 26 of the 2007 Law. This is because the appellant, as the object of a power to add further beneficiaries, does not have the benefit of either provision. His application to the Royal Court was made under section 69 of the 2007 Law.

31. Before we turn to that section, we briefly mention also section 38. This provides, again subject to the terms of the trust, that trustees have no obligation to disclose any trust documents which reveal their deliberations as to how to exercise their functions, their reasons for decisions made in such exercise, or the material on which such decisions might have been based, or any letters of wishes. This section is not relevant to the present case, and we do not consider it further.

32. Section 69 relevantly provides:

> "69.(1) On the application of any person mentioned in subsection (2), the Royal Court may -
>
> (a) make an order in respect of -
>
> (i) the execution, administration or enforcement of a trust,
>
> (ii) a trustee, including an order as to the exercise by a trustee of his functions, the removal of a trustee (if, for example, he refuses or is unfit to act, or he is incapable of acting or is bankrupt, or his property becomes liable to arrest, saisie, or similar process of law), the appointment, remuneration or conduct of a trustee, the keeping and submission of accounts, and the making of payments, whether into court or otherwise,
>
> (iii) a beneficiary, or any person connected with a trust,
>
> (iv) any trust property, including an order as to the vesting, preservation, application, distribution, surrender or recovery thereof,
>
> (v) an enforcer, in relation to any non-charitable purpose of a trust, including an order as to the exercise by an enforcer of his functions, the removal of an enforcer (if, for example, he refuses or is unfit to act, or he is incapable of acting or is bankrupt, or his property becomes liable to arrest, saisie, or similar process of law), and the appointment, remuneration or conduct of an enforcer,
>
> (b) make a declaration as to the validity or enforceability of a trust,
>
> (c) rescind or vary an order or declaration under this Law or make a new or further order or declaration.
>
> (2) An application under subsection (1) may be made by -
>
> (a) Her Majesty's Procureur,
>
> (b) a trustee,
>
> (c) a settlor,
>
> (d) a beneficiary,
>
> (e) a person described in section 32(2),
>
> (f) in relation to a non-charitable purpose, the enforcer,
>
> (g) with leave of the Royal Court, any other person."

(Section 32(2) refers to a trust requirement for a trustee to consult or obtain the consent of another person before exercising any function. This is not relevant here.)

33. It will be seen that BX does not fall within of (2)(a)-(ff), but only within (2)(g), and hence he required the leave of the Royal Court to make the application which he did. We understand that

the judge agreed to deal with this, not as a preliminary matter, but instead "rolled-up" in the substantive application (see the judgment at [34]).

The first ground of appeal

34. The first ground of appeal concerns the nature of the court's inherent jurisdiction to order a trustee to disclose trust information and documents to a person who is not presently the object of any dispositive power but is the object of a power to add further objects to the trust. We shall begin with a review of the relevant caselaw, before turning to the particular complaints made by BX of the judgment under appeal.

Re Manisty's Settlement

35. The first decision is that of Templeman J (as he then was) in *Re Manisty's Settlement* [1974] Ch 17. This was the first English case to decide that a power to add further objects to a class (which he called an "intermediate" power) in a discretionary trust or power was valid under English law. Templeman J held that such a power was not void for uncertainty, or under the doctrine of non-delegation of powers.

36. He also compared the position of the object of an intermediate power with that of a special power (at 26D-G):

> "The conduct and duties of trustees of an intermediate power, and the rights and remedies of any person who wishes the power to be exercised in his favour, are precisely similar to the conduct and duties of trustees of special powers and the rights and remedies of any person who wishes a special power to be exercised in his favour. In practice, the considerations which weigh with the trustees will be no different from the considerations which will weigh with the trustees of a wide special power. In both cases reasonable trustees will endeavour, no doubt, to give effect to the intention of the settlor in making the settlement and will derive that intention not from the terms of the power necessarily or exclusively, but from all the terms of the settlement, the surrounding circumstances and their individual knowledge acquired or inherited. In both cases the trustees have an absolute discretion and cannot be obliged to take any form of action, save to consider the exercise of the power and a request from a person who is within the ambit of the power. In practice, requests to trustees armed with an intermediate power are unlikely to come from anyone who has no claim on the bounty of the settlor."

Stuart-Hutcheson v Spread Trustee Co Ltd

37. The next decision is that of this court in *Stuart-Hutcheson v Spread Trustee Co Ltd* 2000-02 GLR 388, [2002] WTLR 1213, handed down on 15 July 2002. The appellant was one of the objects of a discretionary trust created under Guernsey law in 1977, *ie* before the coming into force of the Trusts (Guernsey) Law 1989. The trust assets included a half share in a private company. (Another family trust owned the other half). The appellant sought disclosure of trust and company information from the trustee.

38. The problem for the appellant was the scope and impact of section 22 of the 1989 Law (set out earlier). Section 22(1) of that Law conferred statutory rights to disclosure on trust beneficiaries. But the effect of section 22(2) was to prevent section 22(1) from operating to give the appellant

that statutory right, because, being merely the object of the discretionary trust, he did not have a *vested* interest in the trust property.

39. It was therefore necessary to consider (i) what were the rights of such an object prior to the enactment of the 1989 Law, and (ii) what was the effect on such rights of the 1989 Law. In the Royal Court, Rowland DB decided that, whatever the position before 1989, after that date the object of a discretionary trust created before 1989 had no right to disclosure, because he had no vested interest, and section 22 replaced the pre-existing scheme. The appellant appealed.

40. In the Court of Appeal, Clarke JA (with whom Sumption and Tugendhat JJA agreed) considered English law, and concluded:

> "18. … A discretionary beneficiary, at any rate if he belongs to a limited class, as in most family trusts, has an interest in having the trusts observed by virtue of being a permissible object of the Trustee's discretion. This gives him a similar interest in receiving an account of the unappointed assets as any other kind of beneficiary. It may be highly material for a discretionary beneficiary to know what has happened to the trust fund, not least because the size and nature of the assets of the trust may be relevant to whether any share in them should be appointed to him."

41. Clarke JA then examined Guernsey law, and concluded:

> "25. … in my judgement, prior to the enactment of the Trusts Law, non-vested discretionary beneficiaries of a Guernsey trust had, under Guernsey customary law, a right to see documents of the trust and to receive information about the trust and its assets commensurate with that enjoyed by such beneficiaries under English law."

42. Finally, he considered the effect of the 1989 Law on the pre-existing rights to disclosure. He concluded that:

> "34. … contrary to what the Deputy Bailiff found; Section 22(2) did not take away what I hold to have been the pre-existing rights of the Appellant under Guernsey customary law.
>
> 35. I am, however, in respectful agreement with the Deputy Bailiff that the reference in section 22 (1) to information embraces information in documentary form, including information in existence in. written form prior to the making of any request. In enacting section 22(1) the Legislature was, to my mind, seeking to set out a principle of disclosure in terms which broadly reflected existing English law."

Schmidt v Rosewood Trust Ltd

43. Next in time, and potentially most important, is a non-Guernsey case. It is the decision of the Judicial Committee of the Privy Council in *Schmidt v Rosewood Trust Ltd* [2003] 2 AC 709, on appeal from the Staff of Government Division of the High Court (effectively the Court of Appeal) of the Isle of Man. Vadim Schmidt's father, Vitali, had been a senior executive director of Lukoil, a big Russian oil company. He had also in substance been co-settlor of two Isle of Man trusts, the Angora Trust and the Everest Trust. The Angora Trust was created in 1992 and the Everest Trust in 1995.

44. Shortly after each trust was created, Vitali wrote a letter of wishes to the then trustee of each trust, to the effect that, if he died before the trust in question terminated, he wished his interest under that trust to pass to Vadim. In May 1997, the original trustee retired from the trusteeship of both settlements, and Rosewood Trust Ltd was appointed as sole trustee instead. It appeared that over US$105m was received by the two settlements between their creation and 1998.

45. The two trusts were similar, but not identical. Both trusts contained wide powers of appointment of income and capital amongst a class of objects, as well as powers of accumulation. The objects of the dispositive powers were the Royal National Lifeboat Institution and a number of Lukoil senior executives, including Vitali Schmidt. But one important difference was that the Everest Trust contained a power for the trustees to add anyone in the world (except the trustees and any Isle of Man resident) to the class of beneficiaries.

46. Vitali Schmidt died intestate, unexpectedly and alone, in Moscow in August 1997. Letters of administration to his estate in the Isle of Man were granted to Vadim in August 1998. In June 1998 Vadim began proceedings against Rosewood Trust Ltd and others for breach of trust and breach of fiduciary duty, obtaining some disclosure of information in the process. Sums totalling about US$14.6m were paid to him (as administrator of his father's estate) by Rosewood Trust Ltd between August and October 1998.

47. Vadim sought further information from Rosewood about the trusts, and in June 1999 began a second set of proceedings by petition in the Isle of Man for disclosure to him of trust information on the basis of his father's, but also his own, interests under the trusts. At first instance he obtained an order for disclosure of some trust information. This was overturned on appeal, largely on the basis that neither he nor his father was a "beneficiary" of the trusts, although his father (unlike him) had been the object of a dispositive power. Vadim appealed to the Privy Council.

48. Lord Walker gave the opinion of the board. The opening paragraph of this opinion, usually skipped over by readers, is of some importance, not only in understanding the rest of the opinion and the conclusions to which it came, but also in resolving the kind of question which arises in the present case. Slightly abbreviated, it read as follows:

> "1. It has become common for wealthy individuals in many parts of the world … to place funds at their disposition into trusts … regulated by the law of, and managed by trustee's resident in, territories with which the settlor … has no substantial connection. These territories … are chosen not for their geographical convenience … but because they are supposed to offer special advantages in terms of confidentiality and protection from fiscal demands (and, sometimes from problems under the insolvency laws, or laws restricting freedom of testamentary disposition, in the country of the settlor's domicile). The trusts and powers contained in a settlement established in such circumstances may give no reliable indication of who will in the event benefit from the settlement. Typically, it will contain very wide discretions exercisable by the trustees (sometimes only with the consent of a so-called protector) in favour of a widely defined class of beneficiaries. The exercise of those discretions may depend on the settlor's wishes as confidentially imparted to the trustees and the protector. As a further cloak against

transparency, the identity of the true settlor or settlors may be concealed behind some corporate figurehead."

49. It is well known that, when at the Bar, Lord Walker had enjoyed a stellar reputation amongst offshore trust lawyers. (An example of his work is recorded in the recent opinion of the board in *Dawson-Damer v Grampian Trust Co Ltd* [2025] UKPC 32, [8]-[9].) So, if any judge had the practical experience to make such observations as these, Lord Walker certainly did. And, so far as Guernsey is concerned, the Royal Court subsequently endorsed the comments of Lord Walker in relation to Guernsey trusts in *Bathurst v Kleinwort Benson (Channel Islands) Trustees Limited* 2003–04 GLR N-32, [89].

50. The rest of the opinion set out the background facts, reviewed the authorities, stated certain matters of principle, and then remitted the matter to the first instance judge to decide the disclosure application afresh, on the basis of those principles. The appeal itself was allowed. During the course of his discussion of the authorities, Lord Walker referred (at [48]) with approval to authorities showing that even an admitted beneficiary was not entitled as of right to trust information, for there might be circumstances in which it was not in the interests of the trust as a whole to disclose particular information to a beneficiary.

51. Lord Walker went on to say that it was not helpful to describe the right of a beneficiary to seek and obtain trust documents and information as having "the proprietary basis of a transmissible interest in trust property" (at [50]). He added:

> "51. Their Lordships consider that the more principled and correct approach is to regard the right to seek disclosure of trust documents as one aspect of the court's inherent jurisdiction to supervise, and if necessary to intervene in, the administration of trusts. The right to seek the court's intervention does not depend on entitlement to a fixed and transmissible beneficial interest. The object of a discretion (including a mere power) may also be entitled to protection from a court of equity, although the circumstances in which he may seek protection, and the nature of the protection he may expect to obtain, will depend on the court's discretion …"

52. The substantive advice of the Board concluded as follows:

> "66. Their Lordships have already indicated their view that a beneficiary's right to seek disclosure of trust documents, although sometimes not inappropriately described as a proprietary right, is best approached as one aspect of the court's inherent jurisdiction to supervise (and where appropriate intervene in) the administration of trusts. There is therefore in their Lordships' view no reason to draw any bright dividing-line either between transmissible and non-transmissible (that is, discretionary) interests, or between the rights of an object of a discretionary trust and those of the object of a mere power (of a fiduciary character). The differences in this context between trusts and powers are (as Lord Wilberforce demonstrated in *McPhail v Doulton*) a good deal less significant than the similarities. The tide of Commonwealth authority, although not entirely uniform, appears to be flowing in that direction.

67. However, the recent cases also confirm (as had been stated as long ago as *In re Cowin* in 1886) that no beneficiary (and least of all a discretionary object) has any entitlement as of right to disclosure of anything which can plausibly be described as a trust document. Especially when there are issues as to personal or commercial confidentiality, the court may have to balance the competing interests of different beneficiaries, the trustees themselves, and third parties. Disclosure may have to be limited, and safeguards may have to be put in place. Evaluation of the claims of a beneficiary (and especially of a discretionary object) may be an important part of the balancing exercise which the court has to perform on the materials placed before it. In many cases the court may have no difficulty in concluding that an applicant with no more than a theoretical possibility of benefit ought not to be granted any relief.

68. It would be inappropriate for the Board to go much further in attempting to give the High Court of the Isle of Man guidance as to the future conduct of this troublesome matter. But their Lordships can, without trespassing on the High Court's discretion, summarise their views on the different components of the appellant's claims:

(1) It seems to be common ground that during Mr [Vitali] Schmidt's lifetime substantial distributions were made for his benefit, all or most by allocation of funds to the two companies (Gingernut and Petragonis) which were regarded as being (in some sense) Mr Schmidt's. The appellant as Mr Schmidt's personal representative does not accept that these funds have been fully accounted for. His contention is that in respect of allocated funds Mr Schmidt ceased to be a mere discretionary object and became absolute owner. On the face of it the appellant (as personal representative) seems to have a powerful case for the fullest disclosure in respect of these funds.

(2) The appellant as personal representative would also, on the face of it, have a strong claim to disclosure of documents or information relevant to the issue whether, but for breaches of fiduciary duty (such as for instance overcharging) more funds would have been available for distribution to Mr Schmidt, and would or might have been allocated to him in practice. The Board express no view whatever as to whether the appellant has a case for overcharging or any other breach of fiduciary duty. But claims of that sort have been put forward in the 1998 proceedings, and the possibility must be noted in order to make the position clear.

(3) As regards the appellant's personal claims under the Angora Trust since his father's death, his status as beneficiary of any sort depends on the issue of construction discussed at paras 28-32 above.

(4) As regards the Everest Trust, the appellant is (see para 33 above) a possible object of the very wide power in clause 3.3, but an object who may be regarded (especially in view of the Everest letter) as having exceptionally strong claims to be considered."

53. At this stage, four points are worthy of note. The first is that Vadim Schmidt had standing to apply to the court in his own right. Whether he would obtain relief of course was a different matter.

54. The second point is the board did *not* decide that the appellant should be granted any or all of the disclosure he sought. It left that for the first instance court in the Isle of Man to deal with. In so doing, that court would need to apply the legal principles which the board had laid down, and bear in mind the factual considerations arising from the facts of the case which it set out.

55. The third point is that this was a decision on two trusts governed by the law of the Isle of Man. Trust law in that jurisdiction is based heavily on that of England and Wales, whose substantive principles are largely judge-made. However, substantive trust law in Guernsey is now *statutory*, pursuant to the Trusts (Guernsey) Law 2007, as amended (and before that the 1989 Law). Although the trust *concept* is the same as in England, some of the substantive rules are different. We will return to this.

56. Fourthly, and following on from the previous point, and as already noted, *Schmidt* is not *binding* on the courts in this jurisdiction: *Morton v Paint* (1996) 21 GLJ 36, 55E-G, GCA. But the Guernsey courts have consistently held that, so far as not inconsistent with the relevant Guernsey trusts legislation, the principles laid down in that case are applicable to Guernsey trusts: see *eg A Ltd v HM Procureur* 2003-05 GLR 593, [38]; *HW Trust Co Ltd v Cunningham* 2005-07 GLR 349, [17]; *Patel v Patel*, RCt 36/2016, 30 August 2016, [62].

57. The same point was made, more generally, by this court in *Stuart-Hutcheson v Spread Trustee Co Ltd*, cited above, [20], where Clarke JA said:

> "In thus importing, as it were, the English concept of a trust and trustees those concerned must be regarded as having intended to introduce the trust concept with its usual incidents, unless they were inconsistent with some provision of Guernsey customary or statute law or otherwise inapposite or inapplicable."

The point was made subsequently by the Privy Council in *Investec Trust (Guernsey) Ltd v Glenalla Properties Ltd* 2018 GLR 97, [57] and again by this court in *Rusnano Capital AG v Molard International (PTC) Ltd* [2019] GCA077, [39].

Bathurst v Kleinwort Benson (Channel Islands) Trustees Limited

58. The next case is *Bathurst v Kleinwort Benson (Channel Islands) Trustees Limited* 2003–04 GLR N [32], decided about 18 months after *Schmidt*. The sister of the settlor of two trusts applied, both under the 1989 Law and under the inherent jurisdiction, for disclosure of trust documents, including letters of wishes, and documents relating to underlying companies, and also trust information.

59. One of the two trusts was governed by Bermudian law (albeit with a Guernsey trustee) and the other by Guernsey law. But both trusts had in fact been terminated, the first in October 1999, when the entire trust fund was transferred to the second trust, and the second in November 2001, when all the then trust assets were irrevocably appointed to a corporate beneficiary which had been added to the class of objects the previous month. However, the latter fact was not communicated to anyone (including the applicant and the Royal Court) by the trustee until the end of the first day of the oral hearing of the application, when, understandably, it caused some surprise.

60. The applicant was appointed to the class of beneficiaries of the first trust just three days before it terminated in October 1999. This appears to have been done so that a power to transfer the first trust's assets could be exercised in favour of the second trust. The applicant had been a member of the class of beneficiaries of the second trust from its inception. However, in October 2001 she was excluded from it, pursuant to a power in that behalf, executed very shortly after the corporate beneficiary referred to above had been added.

61. Despite learning that the second trust had terminated, the applicant pursued her application. Talbot LB followed and applied the principles in *Schmidt*. It was argued that the court had no jurisdiction to order disclosure when the trust concerned had come to an end, and especially not where the applicant was no longer a beneficiary, having been excluded. The judge rejected this argument:

> "115. It was argued on behalf of the Second Respondent and Mr Clark, as their primary argument and consistently with the approach taken by them in the correspondence between Advocates, that Lady Bathurst"s application failed at the outset since the Royal Court had no jurisdiction to order disclosure, in relation to the Second Wheatland Trust, in the case of an excluded beneficiary like her. I disagree. There is, in my judgment, no principle which leads, or indeed should lead, to such a conclusion. Nor does any authority require me so to hold. To my mind, the jurisdiction of the Royal Court to supervise, and where appropriate intervene in, the administration of trusts either under Section 4 of the Trusts Law or under the inherent jurisdiction of the court in trusts matters extends to trusts which have come to an end and includes jurisdiction to decide applications for disclosure brought by ex-beneficiaries, including former beneficiaries who had been excluded from a specified class of beneficiaries under a discretionary trust before the termination of the trust … "

62. In the exercise of the court's discretion, the judge made an order requiring the trustee to disclose the documents and information sought by the applicant. (This included letters of wishes, now specifically covered by section 38(1)(b) of the 2007 Act.) Since the applicant was on any view a member of the class of objects of a dispositive power, rather than merely the object of a power of addition, this decision is of limited assistance to us in the present case.

Lewin on Trusts, and *Roussev and others v Leman Nominee Co Ltd*

63. Next, we were referred to a passage in *Lewin on Trusts*, 20th edition 2020, which reads as follows:

> "33-063. The object of a power of addition [to the class of objects] has standing to invoke the court's jurisdiction to order disclosure of documents and other information about the trust. Such an object also has standing to challenge the appointment of a new trustee or a change of proper law, to apply for the appointment of a new trustee and generally to seek relief in connexion with the administration of the trust. Whether any relief is granted is a matter for the discretion of the court."

64. The first sentence is supported by the decision in *Schmidt*. For the proposition in the second sentence, the editors of *Lewin* cite *Roussev and others v (1) Leman Nominee Co Ltd, (2) Tenebat Ltd*, unreported, 24 April 2018. This was a decision of Smith J in the Eastern Caribbean Supreme Court, sitting in Nevis. We asked for a copy of this decision. It was obtained for us, and we have considered it.

65. The underlying claim related to a valuable property located on the island of Mustique (part of St Vincent and the Grenadines) owned by a company, DWL. According to BVI law (though not the law of St Vincent and the Grenadines), this company was owned by the trustee of a trust (the "GB Trust"). That trust was originally settled under Jersey law in 2001, but since December 2005 had been governed by the law of St Kitts and Nevis.

66. Also, from that time on, the first respondent company (incorporated in St Kitts and Nevis) had been trustee of the trust. However, it alleged that, in July 2017, it had appointed the second respondent (incorporated in Belize) as an additional trustee, and then subsequently retired. It also alleged that the second respondent had changed the governing law of the trust to that of the BVI.

67. The first respondent alleged that, while it was trustee of the trust, it had lent large sums to DWL. Apparently as a result of this alleged indebtedness, DWL was put into liquidation in December 2017. The validity of these loans was denied by the applicants. Their names did not appear anywhere in the trust instrument, but they nevertheless claimed to be the objects of dispositive powers under the trust. They wished to ensure that DWL came out of liquidation, and that the Mustique property was not subject to a forced sale.

68. The liquidator of DWL applied to the St Vincent and the Grenadines court for recognition, necessary before it could take steps in relation to the Mustique property. A day or so before the hearing, the applicants sought interlocutory relief to "hold the ring" pending the trial of their allegations against the respondents. This relief included the temporary removal and substitution of the respondents as trustees of the trust by another trustee.

69. The judge emphasised the interlocutory nature of the application before him:

> "4. … the main issue is the interim appointment of a trustee to replace Leman/Tenebat, and since, given the interlocutory nature of the application, I need only be satisfied that the Applicants have an arguable case, there is no need for the kind of deep and detailed examination of the facts that would be required at the hearing of the substantive claim."

70. The respondents argued that the applicants had no standing to bring the claim, because they were not named in the trust instruments, and, although there was power by clause 6 of the trust to add further persons as beneficiaries, as well as to exclude existing beneficiaries, this power had not been exercised. They further argued that the local procedure rules conferred jurisdiction only where the claim was for the execution of a trust, which this was not.

71. On the other side, the applicants said that there was inherent jurisdiction in the court, following *Schmidt v Rosewood Trust Ltd*. But they also said that the trust provided that the beneficiaries should be those persons named as such in writing by the trustee, and that in written correspondence with various banks the trustee had referred to them as beneficiaries. The applicants were also named in the letter of wishes for the trust. In addition, the trustee had paid substantial sums to them for their benefit.

72. The judge considered that the local procedure rules were wide enough to cover the present case, especially considering that

> "21. … to succeed on his interim application [counsel for the applicants] need only to establish that there is a dispute, not to prove any aspect of the dispute …"

On the other hand, although he discussed the matter, the judge did not reach any conclusion on the argument that naming the applicants in correspondence with banks amounted to appointing them beneficiaries.

73. Nevertheless, he *was* satisfied that there was inherent jurisdiction in the court:

> "29. It seems to me that although, **Schmidt** was a case involving disclosure of trust documents, that the finding – that the right to seek the court's intervention does not depend on entitlement to a fixed or transmissible beneficial interest and that the object of a mere power may also be entitled to protection from a court of equity – is a principle of broad application and is not limited to cases where disclosure of trust documents is sought. It is saying that the mere object of a power who has no proprietary right or any fixed or transmissible beneficial interest may nevertheless invoke the court's inherent and fundamental jurisdiction to supervise and, if appropriate, intervene in the administration of a trust, including a discretionary trust. It is clear that such a person may seek the protection of a court of equity. What relief he might get, if any, is a matter for the discretion of the court based on the circumstances of the case."

74. A further point taken on standing was that it appeared that, by a resolution dated 19 October 2016, made in accordance with the first respondent's powers in clause 6 of the trust, the applicants had been *excluded* as beneficiaries. The judge reached no concluded view on this point, though he was doubtful that in all the circumstances it was open to the respondents to take this point at all. However, as we say, he *was* satisfied that there was inherent jurisdiction.

75. The judge said:

> "40. It is accepted by counsel for both parties that if this court is satisfied that an arguable case is made out that Leman is in a conflict of interest then the court may remove Leman and appoint an interim trustee pending the determination of the substantive claim and without delving into the facts surrounding the disputed loans."

76. And he concluded:

> "51. Applying the legal principles to the facts of this case, I find that there is an arguable case that Leman is in a conflict of interest and should be replaced by another trustee, on an interim basis, until the final determination of this matter."

77. So that was a case where persons who were objects of a power to add further beneficiaries were held to have standing to apply for and obtain an *interlocutory* order temporarily removing and replacing a trustee pending the substantive resolution at trial of the applicants' claims of breach of fiduciary duty by the trustee. But that is the obvious interim remedy in a case where the object of a power to add complains of a failure to exercise the power. Disclosure was not being sought. And, of course, as an interlocutory remedy, it was necessary only to show an arguable case. We do not find the decision of much assistance to us in this appeal against a final decision at first instance on disclosure, where the matter was fully argued both below and before us.

78. There are also older English authorities dealing with the standing for the purposes of litigation of the object of a fiduciary power of disposition. Some of them were referred to recently in *Harvey v Van Hoorn* [2023] Ch 500, in the High Court, Chancery Division. As it happens, I was the judge in that case. It was one under the Variation of Trusts Act 1958. A question arose as to whether the minor objects of a (mere, though fiduciary) power of appointment fell within the scope of section 1(1)(a) of that Act. In particular, the question was whether such an object had an "interest … under the trusts".

79. I summarised the relevant trust law authorities as follows:

> "22. It is clear that objects of a power, whether a trust power or a mere power, have standing to apply to the court to remove a trustee: *Re Manisty's Settlement* [1974] Ch 17, 25; and see also *Mettoy Pensions Trustees Ltd v Evans* [1990] 1 WLR1587, 1617-18. In addition to that, the object of a trust power certainly has standing to seek proprietary remedies to secure his or her rights: *Joel v Mills* (1857) 4 K & J 458, 473-76. For myself, I see no reason in principle why the object of a (fiduciary) mere power should not have the same standing. In this regard, I note that in the *Schmidt* case, Lord Walker said:
>
> > '51. … The right to seek the court's intervention does not depend on entitlement to a fixed and transmissible beneficial interest. The object of a discretion (including a mere power) may also be entitled to protection from a court of equity, although the circumstances in which he may seek protection, and the nature of the protection he may expect to obtain, will depend on the court's discretion … '
>
> 23. And, again for myself, I see no reason why the protection that may be sought by the object of a power (trust or mere) should not extend to protection after the event of a breach of trust. Thus, such an object should be able to complain of a breach of trust by the trustee, and to seek and obtain a reconstitution of the trust fund in an appropriate case. But I am fortified in my opinion by the fact that the editors of *Lewin on Trusts* take the same view (20th ed 2020, [42-073]) …
>
> 24. Thus, the object of a mere (fiduciary) power, being someone who may benefit by the exercise of discretion in future, is identified using the same test as the object of a trust power, has the same opportunity to seek disclosure from the trustee, and has a 'blocking' right in the same way. These are valuable rights. By way of vindication of those rights, such an object has also the ability to seek remedies to prevent a breach of trust and to seek redress in case such a breach occurs. I conclude that, in pure trust law terms, the object of a mere power has a bundle of rights which may properly be designated an 'interest' (as unquantifiable as that of the object of a trust power) in the trust assets, even though (as with the object of the trust power) that interest does not confer the vested right, present or future, to possession or enjoyment of any part of those assets."

80. The decision in *Harvey v Van Hoorn*, and the cases referred to in the judgment, concerned the object of a dispositive power, and not the object of a power of addition to the class of objects

of a dispositive power. The question is how far the position in the latter case is similar to that in the former. The critical point of difference is that the trustee has no power to exercise its dispositive power in favour of someone who is simply the object of a power to add further beneficiaries, and therefore the trustee can owe such an object no duty to consider doing so.

81. On the other hand, such an object has at least the right to apply to the trustee for the power to add to be exercised in his or her favour, and certainly in that event the trustee would at least have to consider it: *Re Manisty's Settlement* [1974] Ch 17, 25F). The object of such a power must be able to apply to the court to vindicate that right if necessary. But the more limited right of the object of a power to add further beneficiaries does not require the same degree of protection as the greater right of the object of a dispositive power. It is even less so in a case such as the present, where the exercise of the power to add requires the consent of the protector, acting in a non-fiduciary capacity, and there is no indication that such consent has been granted.

82. That said, in some cases, and especially in the context of offshore trusts, the reality of the situation may not be apparent from the terms of the trust itself. As Lord Walker pointed out in *Schmidt v Rosewood Trust Ltd*, in a passage already cited,

> "The trusts and powers contained in a settlement established in such circumstances may give no reliable indication of who will in the event benefit from the settlement."

Re TR Technology Investment Trust plc

83. This view is reinforced by the earlier decision in *Re TR Technology Investment Trust plc* (1988) 4 BCC 244. This was a case where a significant shareholding in a London listed company (TR Technology) had been acquired by a Jersey company, Firmandale Ltd. TR Technology had formally required the Jersey company, under the relevant companies' legislation, to inform it who else was interested in the shares. The reply was that Firmandale was owned by a Hong Kong company, Reserve Assets Ltd.

84. TR Technology then made the same requisition of Reserve Assets. The reply to that was that Reserve Assets held the shares in Firmandale as nominee for another Hong Kong company, Volunteer Investments Ltd, as trustee of an offshore trust. The reply also gave the name of the settlor of the trust (Sherman Chong) and two beneficiaries (Francis Mullins and James Hinchcliffe). TR Technology obtained an order *ex parte* freezing the shareholding, on the basis that the company did not know who was the true owner of the shareholding. The various companies applied to discharge the freezing order.

85. It appeared that Frank Mullins and Robert Hinchcliffe (the fathers of Francis Mullins and James Hinchcliffe respectively, who were both minors) were Australian accountants practising in Hong Kong, who provided "corporate, management and advisory services". They incorporated the two Hong Kong companies. Sherman Chong was a chartered secretary graduate working for them. Hoffmann J said that he would have dismissed the application to discharge the order, had the respondents not given undertakings over until trial, which would sufficiently hold the ring in the meantime.

86. In the course of his judgment, Hoffmann J gave a detailed description of the characteristics of an offshore trust of the time. He said (at 251, slightly abbreviated):

> "It was a typical offshore trust and since a number of these trusts feature in these proceedings, it may be useful to describe their general characteristics. The named settlor is usually a stranger to the transaction who has been requested to lend his name to a document which records (in many cases truthfully) that he has provided a nominal sum as the initial trust fund. … The name of the person providing the assets subsequently added to the fund, whom I may call 'the real settlor', does not appear … The trustees are given a wide discretion to pay income and capital to the beneficiaries, but the persons actually contemplated as beneficiaries are not necessarily named in the document. Instead, a local charity or some other person will be named and the trustee given a discretionary power to add to the list of beneficiaries … Sometimes the trustee will be given a 'letter of wishes' by the real settlor, saying whom he wishes to benefit. Sometimes the real beneficiary (who may be the real settlor himself) will remain a matter of oral understanding between him and the trustee. These trusts therefore reveal very little and depend upon trust and confidence reposed in the trustee to give effect to expectations and understandings which may not be legally enforceable. The business of providing offshore financial services requires a reputation for probity and efficiency in executing such trusts in accordance with the confidential wishes of clients."

Conclusion from the authorities

87. Our conclusion from the authorities is that it is necessary to look closely at the trust instruments and the surrounding circumstances in order to be able to ascertain, if possible, whether any particular object of a power to add beneficiaries was intended by the settlor to be treated in reality as the object of a dispositive power, on the basis that he or she was always intended to be added to the class of beneficiaries in due course.

88. This is what the Privy Council did in *Schmidt v Rosewood Trust Ltd*. Two of the four specific considerations set out in paragraph 68 of the board's opinion were concerned with Vadim Schmidt's status as personal representative of his father's estate. We may put those on one side. The other two were concerned with Vadim Schmidt's own personal position, one in connection with the Angora Trust and one in connection with the Everest Trust. His position under the former was ultimately a matter of construction of the trust instrument, which the board could not resolve there and then. We can put that on one side too.

89. That leaves the fourth point, about his position as an object of the power to add further beneficiaries in the Everest Trust. As already noted, the board considered that he was "an object who may be regarded (especially in view of the Everest letter [of wishes]) as having exceptionally strong claims to be considered." The board did not itself decide the point, but remitted it to be decided at first instance by the High Court of the Isle of Man.

90. In considering the strength of Vadim Schmidt's claims, not only was he an object of the power to add further beneficiaries in the Everest Trust, but he was also (in each trust) specifically named in a letter of wishes by the co-settlor. He was the son of the named beneficiary, and it did not appear that there was anyone else to hold the trustee to account for the stewardship of whatever share or other rights in the trust fund Vitali Schmidt might have been entitled to.

The effect of the Trusts (Guernsey) Law 2007

91. The Trusts (Guernsey) Law 2007 does not contain any expressed test by which the court can decide whether and in what circumstances the object of a power to add further beneficiaries should be treated as in a similar position to that of the object of a dispositive power, so that the court may on application award similar relief (whether it be disclosure of information, an injunction to restrain a threatened breach of trust, the removal and replacement of a trustee, or anything else). Such powers are expressly stated (by section 8(2)) to be valid, but that is all.

92. But there are nonetheless some important points that can be drawn from the terms of the Law. The existence of a statutory scheme of trust disclosure is one. Because the object of a power to add further beneficiaries is not a "beneficiary" within the meaning of the 2007 Law (see [28] above), the statutory scheme for the provision of trust documents and information set out in section 26 does not apply. The legislature evidently considered it appropriate to distinguish for this purpose between fixed interest beneficiaries and objects of a dispositive power on the one hand, and objects of non-dispositive powers (such as to add further beneficiaries) on the other. This is not a consideration under English or Manx law.

93. Second, and as already noted, the object of a power to add further beneficiaries will require the leave of the court for an application to be made under section 69(1) of the Law: see section 69(2)(g), set out above. (For present purposes, we can ignore the unlikely, though theoretical, possibility that the object applying might also be one of the persons referred to in section 69(2)(a)-(ff).) This reinforces the critical distinction drawn above between such an object and the object of a dispositive power. The application is not as of right. Standing is not a given: see *eg X Trustees v Y Trustee Co* 2019 GLR 237, [16]-[19]. This too is not a consideration under English or Manx law.

94. Section 49 of the 2007 Law provides as follows:

> "The terms of a trust may confer on the settlor, trustees or any other person power to appoint or assign all or any of the trust property or any interest in it to, or for the benefit of, any person (whether or not a beneficiary of the trust immediately prior to the appointment or assignment)."

This section allows for the conferment by a trust of a power to appoint trust property to a person who was previously not a beneficiary within the meaning of the 2007 Law. There is no such power in the present trust, and hence we need not consider it further.

The applicable principles

95. Summing up the legal position, we conclude that there is no bright line statutory test that we can apply, except that the object of a power to add further beneficiaries under a Guernsey law trust has no *statutory* right to disclosure and needs leave to apply for relief outside that scheme. So, what we say here is not in any way a form of words subject to the rules of statutory interpretation. Instead, it is a formulation designed to convey a normative idea, which will be subject to consideration and reconsideration in the light of future cases.

96. In *Schmidt v Rosewood Trust Ltd*, Lord Walker observed that "an applicant with no more than a theoretical possibility of benefit ought not to be granted any relief". We would respectfully agree but go further. Instead, we are clear that, in order for such an object to be granted relief

of the kind sought in the present case (that is, disclosure of trust documents and information), that person must show that it is right to treat him or her in as great a need of the protection of the court as the object of a dispositive power. Otherwise, the legislature would have included such an object within the definition of beneficiary. In ordinary circumstances, that will mean showing, as a minimum, that the object has a strong, if not a very strong, expectation (objectively speaking) of being appointed in due course to the class of objects of the dispositive power.

97. In considering that question, it will be necessary to take into account all the relevant circumstances. These may include, for example, the width of the power of addition, the relationship between the object and the settlor, the existence of other provision by the settlor for the object, whether there is anyone else to hold the trustee to account, and so on. The strength of the expectation of the object may also change over time. For example, if there are existing beneficiaries of the trust (other than, say, a charity with which the settlor had no particular connection), the expectation of another person of addition to the class of beneficiaries will generally be less than it would if those existing beneficiaries later die unexpectedly.

The appellant's complaints

98. With these points in mind, we turn to consider the complaints which the appellant makes about the Judge's decision, and which constitute the first ground of appeal. They are eight in number. We can summarise them for present purposes as follows:

(1) The Judge held that exceptional circumstances or an extreme case was required for the appellant to obtain disclosure ([116] and [117]);

(2) The Judge held that the inherent jurisdiction was "more readily exercised" in favour of beneficiaries, compared to objects of a power of addition, and that it was separate from that exercisable in favour of the latter ([119]);

(3) The Judge held that an object of a power of addition must establish that he or she is "bound to succeed" in being added, or "so exceptionally strong as to be treated as having an equal right to the information" ([132] and [133]);

(4) The Judge held that an object of a power of addition has no right to hold the trustee to account before being added ([96], [98]);

(5) The Judge held that disclosure to the appellant would override the privacy of the trust and information confidential to the trustee ([153], [139]);

(6) The Judge held that the actual beneficiaries had a right to the information sought by the appellant and that the information sought was confidential to the actual beneficiaries as against the appellant ([139]);

(7) The Judge held that the "non-intervention" principle was engaged when the court considered whether to order to disclose information to the appellant ([122] and [123]);

(8) The Judge held that the hostility between family members meant that a "particularly strong case" was required for disclosure to the appellant ([153]).

99. In carrying out this exercise, as indeed in relation to all the grounds of appeal, we bear in mind that the reasons given in the judgment were originally delivered *ex tempore*, and only subsequently reduced to writing (see paragraphs [5]-[6] of the judgment). It appears that the judge and the parties agreed that she would give oral *ex tempore* judgment, which she would later perfect in writing. This was a long judgment, and it must have taken some time to correct and elaborate the transcript, although the Judge was away for a considerable part of the time between the delivery of the oral and of the written judgments.

100. In this connection, we bear in mind the words of Lewison LJ (with whom Males and Snowden LJJ agreed) in the English Court of Appeal in *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48:

> "2. … (vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

This passage was referred to with approval, though not expressly set out, by this court in *Kazzaz v Standard Chartered Trust (Guernsey) Ltd* [2024] GCA058, [18].

101. **Sub-ground (1)** relates to paragraphs [116] and [117] of the judgment, where the Judge says, by reference to *Schmidt*:

> "116. … what *Schmidt* decides is merely that the court has an inherent jurisdiction which may be invoked to make orders in favour of parties who are not current or former beneficiaries or objects of a trust. It does not assist very much, if at all, as to when and whether it is appropriate to make such an order except to indicate, by inference, that it requires exceptional circumstances …
>
> 117. … It also certainly seems to me that the Board is not actually encouraging the notion that these sorts of applications are reasonable. Rather, the Board is looking at the case before it and saying, (I have read between the lines here) that this is an extreme case (the circumstances are fairly clearly well-described as 'exceptional') …"

102. Lord Walker did not in fact use the word "extreme" to describe Vadim Schmidt's case. That was the Judge's own choice of language. But we do not think that, in using the word "extreme", the Judge was laying down a test by which to decide the present case. She was saying simply that the board in *Schmidt* saw that case as an extreme one. She was not saying that only an extreme case would do.

103. Lord Walker did however use the word "exceptionally", in speaking of Vadim Schmidt "as having exceptionally strong claims to be considered". We do not think it was wrong for the Judge to use the words "exceptional circumstances". That merely means "out of the norm". An object of a power to add further beneficiaries is not within the scope of an ordinary dispositive power, and must obtain leave to make an application to the court under section 69. Such an

object will have to show something more, to take the case out of the norm. In our judgment, there is nothing in this complaint.

104. The appellant also says that the Judge was wrong to say that the inherent jurisdiction in favour of beneficiaries was separate from that in favour of objects of a power of addition. In fact, the Judge never said that it was separate. At [106] and [108] of her judgment, for example, she made clear that she regarded it as a single inherent jurisdiction.

105. **Sub-ground (2)** relates to paragraph [119] of the judgment, where the Judge says

> "119. … The jurisdiction which I am asked to exercise by the Applicants is extension of a more recognisable and readily exercised jurisdiction, to order information to be given to beneficiaries …"

106. The appellant says it was wrong to say that the jurisdiction was "more recognisable and more readily exercised" in favour of beneficiaries, compared to objects of a power of addition. We do not agree. For the reasons already given, the position of an object of a power of addition is significantly weaker than that of the object of a dispositive power, and especially so in Guernsey, given the express terms of the 2007 Law. Accordingly, the former will have to show more than simply being such an object in order to persuade the court to grant relief. There is nothing in this complaint.

107. **Sub-ground (3)** relates to paragraphs [132] and [133] of the judgment, where the Judge says

> "132. … All I need to decide (and I do decide) is that any impact which the Mr Y evidence may have, even ignoring that it is untested hearsay, is not sufficient to show, or even suggest, that any application by B or the United States Family to be added as beneficiaries of the W Trust has overwhelming prima facie strength, such that the Court could fairly assume that it is bound to succeed on any rational basis, or that these Applications can fairly be determined as if the Applicants were 'as good as' beneficiaries.
>
> 133. … I do not consider that this Court can possibly treat any of the Applicants as having a claim to be added as a beneficiary of the W Trust which is so exceptionally strong that they ought to be treated as having an equal (or, in practical terms, greater) right than the actual beneficiaries to disclosure of information which is confidential to the Trustee and actual beneficiaries."

108. The appellant complains that the Judge stated the test wrongly, as that the applicant must show a case of such strength that the court "could fairly assume that it is bound to succeed", and such that the applicant "ought to be treated as having an equal … right than the actual beneficiaries to disclosure of information". We do not agree.

109. Given that the object of a power of addition has a lesser right to protect compared to the object of a dispositive power, and needs leave to apply, there can be no objection to a form of words that makes clear that, if the former is to obtain the same relief as the latter, there must be some (sufficient) further reason in the particular case to treat the former *as if* he or she were the latter.

110. As to the other point, when the judge used the phrase "bound to succeed" of an application to be added as a beneficiary, we do not think that she meant to say that, objectively speaking, the applicant had to be bound to succeed. The phrase was preceded by the words "strength, such that the Court could fairly assume that it is bound to succeed". The court is simply making an assumption about the strength of the case. In the context, the Judge meant no more than a very strong case, so as to put the object of a power of addition on a par with the object of a dispositive power. which is what we said above.

111. **Sub-ground (4)** relates to paragraphs [96] and [98] of the judgment, where the Judge says

> "96. … B, as a non-beneficiary, is outside the scope of the Trustee's duties …"
>
> "98. … It is apparent from that, that the Applicants in this case just do not qualify on that general ground. They are not beneficiaries and have no right to hold the trustee to account, in their present position and status."

112. The appellant complains that the object of a power of addition is *not* beyond the scope of the trustee's duties and does have a right to hold the trustee to account. If by the words she used at [96] (set out above) the Judge meant to refer to the duties in section 26 of the 2007 Law, then of course she was right. The appellant is not a beneficiary as defined for the purposes of that section. Hence, he is outside the scope of the duty imposed by that section.

113. But it may be that she meant simply that, unless the object of a power of addition shows a sufficient reason for being treated in the same way as the object of a dispositive power, the trustee does not owe to the former the duties which would be owed to the latter. That too would be right. It would also be right that the former cannot hold the trustee to account to the extent that the latter can. The rights of the former are much more limited. There is accordingly nothing in this complaint.

114. **Sub-ground (5)** relates to paragraphs [153] and [139] of the judgment, where the Judge says

> "139. … Such an assertion at this early stage does not, in my judgment, justify the court intervening, now, to override the general principle that the trust information is confidential to the trustee and (possibly) the actual beneficiaries. I do not think that it would be a proper exercise of the inherent jurisdiction for the court to jump ahead and pre-empt the position."
>
> "153. … It seems to me that in the context of these family relations, I should, on any basis, require a particularly strong case as to any justification for overriding the privacy of the W Trust, whether at the behest of B or at the behest of C …"

115. The appellant's complaint is that disclosure to the appellant would not override the privacy of the trust, and that the information sought was not confidential to the trustee. We do not agree. The information about the trust and its assets relates to matters in the private domain, having the necessary quality of confidentiality (both personal financial information and sensitive

commercial information), and has not been released into the public domain. It is therefore confidential to the trust.

116. The trustee holds that information for the benefit of the objects of the trust. Unless and until the object of a power of addition is actually added to the class, such object is not an object of the trust, and the information is not held for that object's benefit. Disclosure to the appellant would therefore reveal confidential information to a person not authorised to benefit from it. This sub-ground cannot succeed.

117. **Sub-ground (6)** relates to paragraph [133] of the judgment, where the Judge says:

> "133. … In this situation, I do not consider that this Court can possibly treat any of the Applicants as having a claim to be added as a beneficiary of the W Trust which is so exceptionally strong that they ought to be treated as having an equal (or, in practical terms, greater) right than the actual beneficiaries to disclosure of information which is confidential to the Trustee and actual beneficiaries."

118. The appellant says that "actual beneficiaries" (meaning objects of a dispositive power) do not have a *right* to the trust information, and it is not confidential to them as against the appellant. In the context of English or Manx law, that would be right, as Lord Walker made clear in *Schmidt* at [67]. Here in Guernsey, however, "beneficiaries" within section 26 of the 2007 Law do in fact have a right. So, the Judge was not wrong. Even if the section 26(1) right were excluded by the terms of the trust, the objects would still have a *right* to apply under section 26(2), whereas the objects of the power to add do not. They need leave. As for the confidentiality of the information, we repeat what we have said under sub-ground (5) above.

119. **Sub-ground (7)** relates to paragraphs [122] and [123] of the judgment, where the Judge says:

> "122. … The non-intervention principle still subsists as part of the basic approach."

> "123. … Thus the court will intervene if necessary, but the object is always to achieve the proper administration of the particular trust with which it is concerned, and it operates in the context of the principle of non-intervention which says that it is the trustee who has been charged with the duty to administer the trust, and the court should not intervene unless the trustee's powers are inadequate, or are being operated improperly or (improperly) not at all."

120. Here the appellant says that the Judge was wrong that the non-intervention principle was engaged when the court considered whether to exercise its jurisdiction to order disclosure to be given to the appellant. He says that, in ordering disclosure to be given, the court is exercising an original jurisdiction of its own, and the non-intervention principle is irrelevant.

121. Again, we do not agree. As the Judge herself said,

> "the court should not intervene unless the trustee's powers are inadequate, or are being operated improperly or (improperly) not at all."

The appellant's English solicitors first sought disclosure of trust documents and information from the trustee in July 2022, though the correspondence continued into 2023. The disclosure sought was refused, on the basis that he was not entitled to it. The application was issued in September 2023.

122. BX's affidavit in support of his application said

> "39.2 I made a specific request for the documents and information that I now request by way of this application."

The complaint in substance was that the trustee was not complying with its duties, or that its power was (improperly) not being operated, and that the court should intervene. The Judge did not misunderstand the nature of her jurisdiction. There is nothing in this point.

123. **Sub-ground (8)** relates to paragraph [153] of the judgment, where the Judge says:

> "153. … It seems to me that in the context of these family relations, I should, on any basis, require a particularly strong case as to any justification for overriding the privacy of the W Trust, whether at the behest of B or at the behest of C …"

124. The "context of these family relations" is explained in paragraph [151], where the Judge says:

> "a further factor which inclines me to be extremely cautious about ordering the disclosure of such information is the context of hostility which there plainly is, between the factions of the family …"

125. In the following paragraph ([152]), she refers to the commercial sensitivity of the trust information and the legal proceedings between "factional interests". Then she says:

> "There is therefore the prospect that ordering disclosure of information may have the consequence of altering the balance of advantage and disadvantage in these family relationships. In such a situation the Court should, in my judgment be very careful that its orders do not have unintended or 'knock-on' consequences …"

126. The appellant complains that the Judge was wrong to say that the hostility between family members meant that "a particularly strong case" was required before disclosure should be given to the appellant. For our part, we consider that the Judge, in considering the exercise of the court's discretion, was well entitled to take account of these considerations. They are comparable to those referred to by Lord Walker in *Schmidt* (at [48] and [67]) as bearing on the question whether the court should exercise its discretion in favour of granting relief.

The second ground of appeal

127. The second ground is that the Judge was wrong in law as to the regard which the trustee ought to have to the appellant, as the object of a power of addition, in exercising dispositive powers. This second ground is subdivided into four distinct complaints, which can summarise as follows:

(1) The Judge was wrong to hold that there was insufficient evidence that the proper purposes of the trust included benefiting persons other than AX and JX ([149]), and that the settlor's pre-death wishes were at odds with the trust ([121]);

(2) The Judge was wrong to hold that Y's evidence, taken at its highest, did not provide at least prima facie evidence of the strength of BX's claim to be considered as an object of the power of addition ([129]);

(3) The Judge was wrong to hold that the settlor X had no right to influence the trustee's decisions by expressing his wishes as to the exercise of the trustee's powers, and gave no sufficient weight to the regard which the trustee was required to have to the settlor's wishes ([131]);

(4) The Judge was wrong to hold that the appellant was required to apply to the trustee for a decision as to whether he should be added as a beneficiary, before the trustee would come under a duty to have regard to him ([132]).

Grand View Private Trust Co Ltd v Wong

128. Before we deal with the specific complaints, we should address the authority, cited to us on behalf of BX, of *Grand View Private Trust Co Ltd v Wong* (2022) 25 ITELR 630, PC, dealing with the so-called proper purpose doctrine relating to powers. This was an appeal from Bermuda to the Privy Council. Like *Schmidt*, it is not binding on us, but, so far as drawn from principles of English law, and so far as not inconsistent with the relevant Guernsey trusts legislation, the principles laid down in that case will prima facie be applicable to Guernsey trusts.

129. In 2001, two brothers (in economic effect) settled a valuable trust (the "GRT") governed by Bermudian law. Under this trust, the trustee had power to apply capital and income for the benefit of the settlors' children and remoter issue, but with a power to add and remove anyone from the class of beneficiaries. At the expiry of the trust period, whatever remained was to be held on trust for the settlors' children and remoter issue then living. The brothers were successful businessmen, and the trust fund consisted largely of shares in a group of successful companies ("FPG").

130. On the same day, the brothers established a second trust (the "WFT"), which was a charitable and non-charitable purpose trust also governed by Bermudian law. This conferred no benefit on any member of the settlors' families, nor indeed on any other person. The purposes included acquiring and holding shares in the FPG companies. This appears to have been a lawful purpose for a non-charitable purpose trust under Bermudian law. It is not necessary for us to consider whether that would be so under Guernsey law.

131. In 2005, the trustee of the GRT resolved (but at that stage took no action) to add the trustee of the WFT to the class of beneficiaries, to exclude the remainder of the beneficiaries, and to appoint all the assets of the trust to the trustee of the WFT. It appeared on the evidence that the founders wished the vast bulk of their wealth to pass to society rather than to their descendants, and that this was to be a means of achieving this.

132. There was then some internal debate as to how best to achieve the founders' wish. The choices were (1) a distribution to the WFT as an object of the GRT under powers in clauses 3 and 4 of the trust deed, or (2) a transfer from the GRT to the WFT under an inter-trust transfer power under power in clause 9. In the end, the former route was adopted. The GRT trustee did not apply to the court as to whether to exercise the power before doing so.

133. The eldest son of one of the founders of the GRT brought proceedings against the trustee. Over time, various other descendants of the founders joined in these proceedings, some on one side, and some on the other. The claim as issued was that the challenged decision was a breach of trust on four grounds: (i) the trustee took irrelevant considerations into account and did not act for the benefit of the beneficiaries of the GRT, (ii) it acted in excess of its powers, (iii) it failed to exercise its powers for the purposes for which they were conferred, and (iv) it acted in breach of the rule against remoteness of vesting in transferring trust assets to the WFT as a purpose trust.

134. The first plaintiff made an application for summary judgment. The judge on that application decided to deal with the questions of law raised, and there was full legal argument upon them. He gave judgment for the plaintiff. On appeal, the Bermuda Court of Appeal reversed his decision. There was a further appeal to the Privy Council, which reversed the Court of Appeal, and restored the decision of the judge.

135. The issues raised on the appeal to the Privy Council were twofold. First, whether the way in which the power had been exercised was not within, or contrary to, the express or implied terms of the power. Second, if it was within the scope of that power, whether the use of the power by the trustee was nonetheless for an improper purpose, *ie* a purpose other than the one for which it was conferred. The "proper purpose" rule was formerly better known as the rule against "fraud on a power", and some textbooks still use that phraseology.

136. Giving the advice of the Board, Lord Richards said this about the proper purpose rule:

> "61. It is common ground on this appeal that the proper purpose, or purposes, of a fiduciary power is to be determined as at the date of the instrument conferring the power and is to be objectively determined. In the case of a settlement such as the GRT trust, it is a question of determining objectively the intention of the settlor (or in this case the Founders) …
>
> 62. The identification of the purpose of a power will also be informed by the rest of the instrument containing the power …
>
> 63. … It was common ground, and in the Board's view correct, that documents which objectively inform the context of the instrument in question, such as in this case the WFT trust deed, are admissible, as are substantially contemporaneous documents which are intended to be read with the trust deed, such as a letter of wishes provided by the settlor or economic settlor (although there was no letter of wishes in this case). It was common ground that, while trustees could legitimately have regard to wishes later expressed by the settlor, or in this case the Founders, as to how the trustees should exercise their dispositive powers, such wishes were not admissible in determining the

purpose of those powers. There is a need for certainty, given that the terms and purpose of a trust instrument and the powers it confers create rights for beneficiaries and impose duties on trustees. … [T]he view of the Board is that the intention of the settlor in conferring a power is to be ascertained by applying ordinary rules of construction to the trust deed and in the light of the admissible factual matrix.

[…]

80. In the Board's view, the natural reading of the GRT trust deed as a whole demonstrates that it established a family trust, for the benefit of the direct descendants of the Founders. This family character is emphasised by the terms of the trust deed, to a degree which may be unusual in the world of discretionary trusts. The only specified objects of the discretionary dispositive powers are the children and remoter issue of the Founders, as provided in schedule 2. Likewise, the ultimate beneficiaries who have fixed but defeasible interests are the same as those within the class of specified objects who are living at the expiry of the trust period: see schedule 3.

[…]

94. It is the view of the Board, in the light of the focus of the GRT trust deed on the children and remoter issue of the Founders and the circumstances in which the GRT was established referred to above, that the purpose of the powers of addition and exclusion was to further the interests of the Beneficiaries, or one or more of them.

[…]

120. In the Board's view, it is generally the case that fiduciary powers conferred on a trustee of a trust with identified beneficiaries must be exercised to further the interests of the beneficiaries. This is clearly the case with essentially administrative powers, such as the powers of investment …

121. The power to add or to exclude beneficiaries is, however, a power of a potentially different character. It has the capacity to effect significant, even fundamental, changes to a trust. The question is whether, in the case of such a power contained in any particular trust deed, it is intended to have that capacity, or indeed to have any purpose that goes wider than simply furthering the interests of the identified beneficiaries. In the view of the Board, the question of the purpose of such a power is not to be answered by applying, as an overriding principle, a rule that all powers must be exercised in the interests of some or all of the beneficiaries, unless express provision to the contrary is made. The task is to discern the intended purpose of the particular power of addition and exclusion in the context of the particular trust. This requires the approach of considering the power in the context of the trust instrument, and of the circumstances surrounding it, which the Board has earlier set out and applied …

122. For the reasons given above, the Board concludes that the challenged decision was taken by the GRT trustee for an improper purpose but does not do so by the application of the rigid approaches which formed a major part of the cases for the appellants. As

> regards the consequence in law of this conclusion, there has been debate as to whether the exercise of a fiduciary power for an improper purpose renders the exercise void or voidable … but the parties are agreed that in the present case the consequence is that the challenged decision was void."

As we have said, the appeal was allowed.

The four sub-grounds

137. We now turn to consider the four sub-grounds under this ground of appeal. **Sub-ground (1)** asserts an error in holding that there was insufficient evidence that the proper purposes of the trust included benefiting persons other than AX and JX, and that the settlor's pre-death wishes were at odds with the trust. It is not entirely clear whether this is primarily a complaint about construction of the trust instrument, or one about fact-finding.

138. However, it relates to paragraphs [149] (continuing to [150]) and [121] of the judgment below, where the Judge says this:

> "149. I cannot simply look at the situation as if, yes, there are three separate trusts (the two M Trusts and the Guernsey Trust) but since they were all dealing with Mr X's family assets, they were all intended to have the same sort of interlinked overall effect. There is a very large question mark about whether that assumption is even the case. I am struck by the fact that the W Trust was an entirely different scheme, and on very different terms, from the M Trusts, which quite obviously were 'family' trusts, in the sense of trusts which were being used as vehicles for benefitting a family in general terms. Any argument about the proper purpose of the W Trust impliedly encompassing the purpose of adding, even, other members of the family who had not been named or might even not have been born, seems to me, therefore, to encounter very different inferences from those that might be drawn in the case of the M Trusts. One cannot take the same approach to both.
>
> 150. Even assuming that I took Mr Y's evidence at face value, despite the objections that are made to it, the fact that he was not prepared to turn up to be cross-examined about it I cannot find any sufficiently strong support from this that the proper purpose of the W Trust should be taken to have been to include other members of the wider X family, and therefore that there is a good case for arguing that it would now be proper to bring B or the US Family within its benefit … "
>
> "121. … The background to this whole case seems to me to be that the settlor is said to have changed his mind latterly about what he would like the structure of the trusts concerning his family members to be, but this imports a scheme which is at odds with what he originally did, with some members of his family and entourage believing that this scheme should be implemented (with the original scheme being overridden) and some not necessarily accepting this, (they say, because they do not accept the scheme relied on as having represented Mr X's true and complete wishes) … "

139. The judge that reached the conclusion on the true construction of the trust instrument in the light of the surrounding circumstances that the proper purpose of the W Trust did not include the benefit of BX. We take the same view. The trust is different from the M trusts, which are separately administered by a separate trustee in a different country. The objects are deliberately

restricted to AX and JX. They are not only the sole objects of the dispositive powers (unless the power of addition is exercised). They are also the default beneficiaries, if the dispositive powers are not exercised. *Wong*, being concerned with the doctrine of the proper purpose of a fiduciary *power*, is of little assistance.

140. There was evidence before the judge that the trustees' understanding at the time of the settlement was that AX's and JX's issue might be added in future. The evidence of BX that he was temporarily excluded from this settlement only because of his divorce was not accepted by the Judge.

141. To the extent that this is not simply a matter of construction, but one of insufficiency of evidence to support particular fact-finding, the answer is that an appellate court does not lightly interfere with findings of fact by a judge at first instance.

142. Thus, in a decision of this court, *Carlyle Capital Corporation Ltd v Conway* 2019 GLR 159, McNeill JA (with whom Martin and Birt JJA agreed) said:

> "75. As this court has stated recently, it is well recognised that, in general, an appellate court will not interfere with a finding in fact by a court of first instance where there has been an evidential basis which, if accepted, could have founded the determination of that fact: *Investec Trust (Guernsey) Limited and Others v Glenalla Properties Limited and Others* 2015 GLR 300, at paragraph 108. Separately, even when an appellant is able to point to a finding in fact unsupported by relevant evidence, if the overall factual determination which leads to the court's findings in law is able to be supported by the evidence led, a failure in respect of one or more findings in fact will not necessarily result in the appellate court interfering with the determination."

143. And, more recently, in another decision of this court, *Kazzaz v Standard Chartered Trust (Guernsey) Ltd* [2024] GCA058, to which we have already referred, Storey JA (with whom Anderson and Mountfield JJA agreed) said:

> "18. Many of the grounds of appeal seek to undermine the factual findings of the Jurats, including their evaluations and inferences. We therefore bear in mind the approach advocated by President Le Quesne QC in *Guille v Mackay* (unreported, 14 June 1967, Guernsey Court of Appeal judgments 1964 – 1989, 25) which prevents this court from interfering with such findings unless there was no evidence before the Jurats upon which they could reasonably have arrived at those findings or for any other reason the findings of fact of the Jurats were perverse … "

144. It cannot be said that there was no evidence upon which the Judge could have reached the factual conclusions that she did. And we see no basis for saying that her conclusions were perverse. The fact that there may have been some evidence pointing in the other direction is not enough. In the Guernsey system, as elsewhere, the weighing up of evidence and the finding of facts are matters primarily for the factfinder (here the Judge) at first instance, and not for this court. In our judgment, this complaint goes nowhere.

145. In passing, we record that AX and JX argued that the effect of *Wong* was that the power to add further objects to the class could be exercised only for their own benefit. We do not agree. *Wong* does not compel that conclusion as a matter of law. Paragraph [94] of the Board's opinion shows

that the view that the purpose of the trust was to benefit the existing objects was the result of the construction exercise carried out. But that trust is not the W Trust, which would have to be construed on its own terms.

146. **Sub-ground (2)** asserts an error in holding that Y's evidence, taken at its highest, did not provide at least prima facie evidence of the strength of BX's claim to be considered as an object of the power of addition. It relates to paragraph [129] of the judgment, where the Judge says this:

> "I have not found it necessary to make a decision on the disputed issue of whether Mr Y's evidence should be ruled admissible, because, even taken at face value, I find that it does not provide grounds for considering that the claims of B and the US Family to be added as beneficiaries of the W Trust have anything like the overwhelming strength which is argued for … "

147. Again, this sub-ground asserts that the Judge should have found that the evidence of Y had greater strength than the Judge accorded it. But that was precisely the judge's function, to weigh the strength of the evidence. And that in fact was what she did. It is not the function of this court to repeat that exercise from scratch. This court is entitled to interfere with her decision only in limited circumstances, none of which is present here.

148. **Sub-ground (3)** asserts an error in holding that the settlor X had no right to influence the trustee's decisions by expressing his wishes as to the exercise of the trustee's powers and gave no sufficient weight to the regard which the trustee was required to have to the settlor's wishes. It relates to paragraph [131] of the judgment, where the Judge says this:

> "The material upon which it is now sought to place such substantial reliance is therefore, put at its highest, evidence of the wishes of a settlor (now deceased) with no call or right to influence the trust. I am not, of course, saying that these wishes, if substantiated, are a circumstance with the Trustee would be obliged to ignore totally upon any consideration of any application by B or the US Family to be favourably considered for addition to the class of beneficiaries of the Trust, insofar as they are a fact … "

149. The complaint is that the Judge was wrong to hold that the settlor X had "no … right" to influence the trustee's decisions by expressing his wishes as to the exercise of the trustee's powers. Yet, in the very next sentence, the Judge made clear that the trustee was *not* entitled to ignore the settlor's wishes. In context, therefore, what the Judge meant was that the trustee had no *duty* to follow the settlor's wishes, and concomitantly, as the Judge in fact said, the settlor had "no … *right*" to expect that. Moreover, there is no indication that the trustee was unwilling to take X's wishes into account.

150. **Sub-ground (4)** asserts an error in holding that the appellant was required to apply to the trustee for a decision as to whether he should be added as a beneficiary, before the trustee would come under a duty to have regard to him. It relates to several paragraphs of the judgment, where the Judge refers to the possibility of the appellant's making an application to the trustee to be added as a member of the class of beneficiaries. For example, paragraph [87] says this:

> "Advocate Cole also submits that the fact that B and the US Family have declined to apply for consideration to be added as beneficiaries at this stage, makes their application

somewhat hollow, because they are actually declining to apply for a decision as to the very matter which would make clear their status to require the information. Whilst the excuse for this is that they say they need the information sought in order to make those very applications, Advocate Cole submits that this is disingenuous, and what is really happening is that they have decided that they will be in a better position by trying to by-pass any such qualification and attempt to gain advantage by invoking this supposed inherent jurisdiction … "

151. However, a problem for the appellant is that nowhere does the Judge say "that the appellant was required to apply to the trustee for a decision as to whether he should be added as a beneficiary, before the trustee would come under a duty". She simply refers to the *possibility* of making an application to the trustee to be added. That is not the same thing at all. Indeed, the trustee invited BX to make such an application, and he declined to do so.

152. The closest we can find to the appellant's complaint is one sentence in paragraph [96], where the Judge says:

> "However, B, as a non-beneficiary, is outside the scope of the Trustee's duties."

Yet, in context, that does not refer to an application to be added as a beneficiary. It refers instead to the application for trust disclosure, and, as we have pointed out, in terms of the scheme for disclosure set out in section 26, the Judge was right: the appellant as a non-beneficiary is outside the scope of the statutory duty.

153. In the case of a power conferred on a trustee, we consider that the trustee has some, albeit limited, obligations which are owed to objects of the power. We have already referred to *Re Manisty's Settlement* [1974] Ch 17. In *Re Hay's ST* [1982] 1 WLR 202, for example, Sir Robert Megarry V-C said (at 210D-E):

> "Apart from the obvious duty of obeying the trust instrument, and in particular of making no appointment that is not authorised by it, the trustee must, first, consider periodically whether or not he should exercise the power; second, consider the range of objects of the power; and third, consider the appropriateness of individual appointments."

154. We are not aware of any authority for saying that the object of a power to add further objects of a dispositive power has the right to be *individually* considered from time to time for appointment into the class. Such powers are frequently cast (as they are in the present case) in worldwide, or almost worldwide, terms. And, as Lord Walker said in *Schmidt v Rosewood Trust Ltd*, [41],

> "if the discretion is exercisable in favour of a very wide class, the trustees need not survey mankind from China to Peru (as Harman J, echoing Dr Johnson, said in *In re Gestetner Settlement* [1953] Ch 672, 688-9) if it is clear who are the prime candidates for the exercise of the trustees' discretion."

155. In such cases, it is impossible to suppose that the creator of the power intended the holder to have a duty to consider each of the objects specifically without some further prompt. An

application by the object would generally amount to such a prompt: *Re Manisty's Settlement* [1974] Ch 17, 25F.

156. In our judgment, absent some specific provision in the trust instrument to the contrary, in Guernsey law there is no duty on a trustee to consider the claim of any individual member of the class of objects to be added to the class of beneficiaries of the trust without some additional factor over and above simply being a member of the class. In our view, the Judge made no error of law here.

The third ground of appeal

157. The third ground of appeal in summary is that the Judge was wrong in all the circumstances to decide that the trustee should not be directed to disclose the information sought by the appellant. In particular, she was wrong to say that granting the application would not facilitate the proper administration of the trust. And, in so doing, she failed to have any proper regard to the matters set out in two sub-grounds, set out below.

158. **Sub-ground (1)** is that

> "The Judge failed to have any, or any proper, regard to the Applicant's evidence that the Second Respondent was choking funds in the company underlying the Trust's asset, and of the risk that the Second Respondent had diverted those funds from the company (and the Second Respondent's failure to deny those allegations), such that the disclosure sought by the Applicant was required in order to ensure that the Trust property was appropriately safeguarded. The Judge was, in particular, wrong that in the circumstances of the allegations made by the Applicant the appropriate approach was to preserve the 'natural balance of advantage between hostile parties'."

159. This sub-ground relates to paragraph [151] of the judgment, where the Judge says this:

> "I can neither adjudicate upon the rights or wrongs of this at this stage, nor has it any real relevance to the narrow question before me. It would be entirely disproportionate for me to consider the merits of any accusations of bad behaviour or suchlike which have been made, or to consider who is in the wrong, or more in the wrong …"

160. The complaint is effectively about the Judge's *evaluation* of the facts. We have already pointed out above that it is difficult for this court to overturn an evaluative judgment at first instance: see at [148] above. In the English Court of Appeal case of *FAGE UK Ltd v Chobani UK Ltd* [2014] EWCA 5, Lewison LJ (with whom Longmore LJ agreed) said:

> "114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them … "

We respectfully agree and see no basis for interfering with the Judge's judgment here.

161. The Judge clearly had BX's allegations in mind, because they are recorded in the judgment. But, in fact, there was no actual evidence of any unauthorised application or diversion of assets;

the best that could be said (as BX did) was that there was a *risk* of such an application or diversion. Moreover, leaving on one side the point that the proper person to complain of a diversion of assets would be the company whose funds were diverted, the trustee was the trustee of the W Trust, but not of the Y or Z Trust. The trustee of the W Trust owed no relevant duty to the beneficiaries of *those* trusts. The disclosure sought by BX was not required in order to ensure that the trust property was properly safeguarded, since AX and JX were and are themselves beneficiaries of this trust, and therefore have access to all the necessary information. It is not like *Schmidt*, where there was no-one else.

162. **Sub-ground (2)** relates to paragraph [138] of the judgment, where the Judge says this:

> "B claims that he needs all this information in order to make his application to the Trustee. But the merits of his case must, it seems to me, be based on circumstances entirely extraneous to the Trust itself and its operations, and the nature of the information sought. I do not see how his gaining information as to what assets are in the Trust, or how it is being or has been operated, can provide anything material for B, to the question whether there is any case for the Trustee to add him as a beneficiary of the W Trust, or would enable him to make a better case to do so …"

163. Here the complaint is that, although the trustee invited BX and others to "make representations about whether B and/ or the US Family should be added as beneficiaries of the W Trust", without the disclosure sought, BX "cannot adequately or fairly engage" in the process. He says that his representations must be based on information about the assets of the trust, and their connection to the M country trusts. He also says that he is handicapped compared to AX and JX, since they already have access to this information.

164. This reads like a fishing expedition, in order to obtain information for collateral purposes. That would be an illegitimate purpose for which to order the disclosure sought. But, even if it were not a fishing expedition, BX's evidence does not advance the argument. The disclosure is not needed to prevent a breach of trust, because there are others better placed to do that. It is not needed to implement the settlor's wishes, because the important question is what those wishes *were*, and there are others who can then implement them. Nor is it needed in order to make an application *for addition to the class of objects*, for that is a step short of making an application for an appointment in your favour. Addition to the class is about *you*, not about the assets of the trust. There is nothing in this sub-ground either.

Retaking the decision

165. We hold that the Judge was right, and that this appeal should be dismissed. However, if we were wrong in our understanding of what the Judge meant by the expressions she used, such that she erred in law, then we would be entitled to retake the decision afresh for ourselves: Court of Appeal (Guernsey) Law 1961, s 14(2). On the material before us, we are satisfied that, applying the test which we explained earlier in this judgment (at [95]), we would have reached the same decision.

166. This is for the following reasons. The settlor had seven children. He was a rich man, and made a number of settlements, and a will, all benefiting members of his family. The W Trust was made some years after the earlier trusts, and, from the outset, two of his seven children, AX and JX, were the sole named beneficiaries of that trust. There was no nominal charity, for example.

There was a power to add or remove beneficiaries, but this could well have been inserted for dynastic reasons, to benefit the issue of AX and JX. Moreover, that power, fiduciary *as against the trustee*, could be exercised only with the consent of the protector, the power to give which was held in a *non-fiduciary* capacity.

167. So, this is not like *Schmidt*, where there was no need for (non-fiduciary) protector's consent to the exercise of the power. And, in *Schmidt*, unlike here, there was no-one else to hold the trustees to account. Moreover, there is no letter of wishes showing the settlor's desire that BX be appointed into the class of beneficiaries of the W Trust. The 2020 will does not do so, and neither does the memorandum signed by X just before he died. The Summary prepared by Y shows only what would fall into the five family trusts from the three existing trusts. It is not signed by the settlor and does not deal with other assets.

168. On the material before us, BX has not a strong, let alone a very strong, expectation of being appointed a beneficiary. We are simply unable to say that the interest of BX under the W Trust, as the object of a power of addition, is in need of the same protection as interests of AX and JX, as objects of dispositive powers. Furthermore, the disclosure sought does not appear to be sought for the purpose of vindicating BX's limited rights, nor will it make it more likely that he is added as a beneficiary.

169. On top of that, the parties are in a state of hostility, and indeed litigation. Disclosing confidential trust information to someone who is not a beneficiary, but who is also hostile to the existing beneficiaries, is likely simply to exacerbate the situation, and would be contrary to the interest of the beneficiaries themselves. Accordingly, if it were a matter for us, we would not grant the relief sought.

Conclusion

170. Accordingly, all the grounds and sub-grounds of this appeal fail, and it must be dismissed. In these circumstances, the *Ladd v Marshall* application does not need to be resolved, and we therefore do not deal with it.