

REVIEW



Should trustee applications for directions be in open or private court?



[back](#) [home](#) [forward](#)



[contact us](#)

March 2014

Manx case reviews whether trustee applications for directions should be in open or private court

In a recent Manx case the Isle of Man's First Deemster David Doyle conducted a comprehensive review of the offshore law and practice relating to whether applications by trustees for directions should be dealt with in open court or in private.

The case of *re Delphi Trust Limited* (4 February 2014) involved an application by a trustee for assistance under the court's inherent jurisdiction and/or under section 61 of the Trustee Act 1961 of Tynwald which is a statute enabling a trustee to make an application to court for directions in certain circumstances. Deemster Doyle conducted a review of the various distinctions including that between a hearing in chambers, in private and in open court. Section 61 of the Trustee Act refers to a trustee making an application "to the court at chambers for the opinion, advice or direction of the court on any question respecting the management or administration of the trust property...".

After reviewing case law in the Isle of Man the Deemster then reviewed case law on similar issues in Jersey, Guernsey, Bermuda, the British Virgin Islands and the Cayman Islands in respect of whether trust proceedings are heard in private or in open court. The Isle of Man High Court concluded in accordance with the Jersey case, *Jersey Evening Post Limited v Al Thani and Four Others* [2002] JLR 542, that the important distinction to be drawn

is between cases heard in open court and cases heard privately and it would be best if the expressions "in chambers" and "in camera" were dropped. Deemster Doyle felt that using terms such as "at chambers" or "in chambers" can lead to confusion as to whether the court is sitting in public or in private and the term "in camera" was not easily understood by all court users. The Deemster felt that unless otherwise clearly stated it should be taken that a court sits in open court and that the modern distinction should be between those proceedings held in open court and those held in private which would only be a small minority.

In the particular circumstances of the case, Deemster Doyle ruled that he would sit in open court but certain references to the identity of some of the parties and some of the facts would not be made in open court. The Deemster commented that the phrase "the court at chambers" in section 61 of the Trustee Act 1961 needed to be read in the light of the European Convention on Human Rights and developing Manx common law on the fundamental principle of open justice. He stated: "In some cases it may, exceptionally, be necessary for the court to sit in private. Moreover this court also has jurisdiction to make orders protecting the anonymity of the beneficiaries, the settlor, the trust and if necessary the amounts involved and any other confidential information where there is a reasonable expectation of privacy which requires protection and which overrides the fundamental principle of open justice".

Manx case reviews whether trustee applications for directions should be in open or private court

Deemster Doyle went on, however: *“I agree with the Jersey Royal Court that it is unwise to be too dogmatic as to when the court should sit in public and when it should sit in private to hear applications by trustees for directions. If during the course of the substantive hearing in March there are developments which lead the applicant to think that the matter should be dealt with in private the applicant may restore its application that the court should sit in private. The court should adopt a principled, pragmatic and flexible approach. The open/private nature of proceedings can remain under review during the conduct of such proceedings. If a court is sitting in open court and it becomes necessary to sit in private then the necessary application can be made and the appropriate steps can be taken.”*

“In the Isle of Man we accord great importance to the fundamental principle of open justice. We also accord great importance to our vibrant trust industry and the need to respect the confidentiality of private trusts and the privacy concerns of settlors and beneficiaries in non-contentious matters, as indeed they do in Jersey and Guernsey. In that respect and indeed in many other respects the Isle of Man and the Channel Islands have much in common.”

Deemster Doyle accepted that normally the court would sit in private to hear a Beddoe application whereby a trustee is seeking directions from the court in respect of existing legal proceedings or proposed proceedings, in particular as to what action or stance a trustee should adopt. The Deemster accepted that disclosure of full and frank information including weaknesses of the case of the trustee may adversely impact on the best interests of the beneficiaries. He contrasted that however with applications by trustees for rectification or hostile applications to remove trustees or protectors being examples of cases normally being dealt with in open court. The Deemster was at pains to point out however that his judgment contains general guidance in respect of when applications by trustees for directions should be in open court and exceptionally in private court and each claim for directions and each application to sit in private would be considered on its own circumstances and merits. There is a presumption that such matters are not heard in private unless the court otherwise orders.

Manx case reviews whether trustee applications for directions should be in open or private court

This case therefore represents something of a departure from the previously considered custom and practice of a section 61 Trustee Act application in the Isle of Man where the statute's use of the phrase "at chambers" was often construed as indicating a private hearing. Future such applications will be assessed on a case by case basis bearing in mind the comprehensive review of the Manx law and practice set out in this new judgment. Trustees and their advisers will need to consider this point carefully when preparing to make any such applications.

Advocate John Aycock is Head of the Litigation Department at M&P Legal Advocates, Solicitors and Attorneys in the Isle of Man and is also admitted as a Solicitor/Advocate in England and Wales.



LEGAL

REVIEW



[back](#) [home](#) [forward](#)

 [contact us](#)

Profiles

Click on a profile to be taken to our web site for full details



Christopher J Murphy
Joint Managing Director
cjm@mplegal.im



John T Aycock
Joint Managing Director
jta@mplegal.im



Christopher M Brooks
Counsel
cmb@mplegal.im



Damian P Molyneux
Counsel
dpm@mplegal.im



Consuelo Suay
Counsel
csc@mplegal.im



Nadine V Roberts
Associate
nvr@mplegal.im



Ilsa L Reeves
Associate
ilr@mplegal.im



Victoria C Murphy
Associate
vcm@mplegal.im



Carly L Wilson
Trainee Advocate
clw@mplegal.im



Carol A Young
Conveyancing Manager
cay@mplegal.im