

## J v 1. Kathryn Tully

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	Bailiff
<b>Judgment Date:</b>	27 June 2016
<b>Neutral Citation:</b>	[2016] JRC 110
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<b>Court:</b>	Royal Court
<b>Date:</b>	27 June 2016

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### Text

[2016] JRC 110

ROYAL COURT

(Samedi)

Before:

W. J. Bailhache, Esq., Bailiff, and Jurats Olsen and Ramsden

Between

J

Plaintiff/Respondent  
and

1. Kathryn Tully  
2. Louise Dods  
3. Rawlinson & Hunter  
4. R & H Trust Co (Jersey) Limited  
5. R & H Fund Services (Jersey) Limited  
Defendants/Appellants

**Advocate J. M. P. Gleeson for the Plaintiff/Respondent.**

**Advocate A. Kistler for the Appellant Trustee.**

## **Authorities**

Service of Process and Taking of Evidence (Jersey) Law 1960, as amended.

*AD v The C Trust and PW* [\[2010\] JRC 001](#).

Service of Process (Jersey) Rules 1994.

Royal Court Rules 2004.

Human Rights (Jersey) Law 2000.

European Convention of Human Rights 2000.

*Downes v Marshall* [\[2010\] JLR 265](#).

*Wadman and another v Dick* [\[1993\] JLR 52](#).

Trusts (Jersey) Law 1984.

*Mubarik v Mubarak and others* [\[2008\] JLR 430](#).

*Rio Tinto Zinc Corp v Westinghouse Elec. Corp* [\[1978\] A.C. 547](#), [\[1978\] 1 All ER 434](#).

Trust/matrimonial — taking of evidence — appeal against the Greffier's order of 22 January 2016 allowed to limited extent.

Bailliff

## **THE**

- 1 The Respondent and her husband are in the course of divorce proceedings in the circuit court of the County of St Louis, Missouri (“the St Louis court”) in the United States. The St Louis Court issued a letter of request on 31<sup>st</sup> December, 2015, seeking assistance to enable the Appellants, or some of them, to be examined on oath and produce various documents as set out in the letter of request. On 19<sup>th</sup> January, 2016, the Respondent's Missouri attorneys sent the letter of request directly to the Law Officers' Department, who transmitted it to the Judicial Greffe on 21<sup>st</sup> January, 2016. On 22<sup>nd</sup> January, 2016, the Greffier made an order, by virtue of the Service of Process and Taking of Evidence (Jersey) Law 1960, as amended, that the first and second named Appellants should attend before

the Viscount on a date to be fixed to answer on oath the questions set out in paragraph 10 of the letter of request and to produce the documents set out in paragraph 11 of the letter of request. The present proceedings arise by way of an appeal against the Greffier's order. The appeal was heard on 25<sup>th</sup> May and dismissed with reasons to be furnished later. This judgment contains those reasons.

## Jurisdiction

- 2 Although it is listed as the second ground of appeal against the Greffier's order, we take it first because the assertion is that the Greffier had no jurisdiction to make the order of 22<sup>nd</sup> January, no application having been made to him pursuant to Article 3 of the Service of Process and Taking of Evidence (Jersey) Law 1960 ("the Law"). It is a point which the Appellants say they raise without enthusiasm. In a nutshell, it is that no application has been made to the Royal Court for the order to be made, and Article 3 contemplates such an order only on application. The Appellants refer to a comment by this Court in the case of *AD v The C Trust and PW* [2010] JRC 001 where a different procedural objection was taken, namely that the letter of request was not transmitted to the Royal Court by Her Majesty's Secretary of State for the Home Department, as envisaged by the Service of Process (Jersey) Rules 1994 ("the Rules"). The Court said at paragraph 12 of its judgment in that case:-

***"... the Royal Court makes Rules for a purpose and it is to be expected that the Rules therefore will be complied with and there should be at least some explanation given to the Court as to why the Rules have not been complied with.*** In this instance if it is the case that the request has been made by the Family Division of the High Court simply upon the basis of the application by AD, and AD's lawyers have not seen fit to make proper enquiry as to how the request to the Royal Court of Jersey should be formulated, then there is proper criticism to be made, not of the Family Division of the High Court, but of the lawyers who made that application to that Court and that would be a factor which this Court, in any subsequent case, would be entitled to take into account."

- 3 It is to be noted that the letter of request in that case did not contain any of the usual courtesies which one might have expected from a requesting court and we have no doubt that the comment of the Royal Court at paragraph 12 of its judgment reflects its regret that the letter of request had been issued in that form. In the present case, where once again the letter of request was not transmitted through the Secretary of State for the Home Department, we take the view that this non-compliance with the Rules is a procedural matter rather than one of substance. As the Royal Court indicated in *Re the C Trust* (*supra*), the Home Office is no longer the official channel of communication between the United Kingdom and Jersey, although that was the position in 1994 when the Rules were made. It appears that the amendment of the Rules to reflect the current position has regrettably not yet occurred.

- 4 In the present case the letter of request does not display any of the lack of courtesies to which the Court made reference in the case on which the Appellants rely. It is clear from the letter of request that the request was issued by Judge Douglas Beach of the Circuit Court of the County of St Louis, State of Missouri and the request was addressed to “*the United Kingdom – Jersey*”. It was to be sent to the Central Authority of the United Kingdom, the Senior Master, for the attention of the Foreign Process Section, Room E16, Royal Courts of Justice, Strand, London. Such a process would seem to be consistent with Article 3 of the Convention which we think is currently a reference to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil Law Commercial Matters, a multi-lateral treaty adopted on 15<sup>th</sup> November, 1965, Article 3 of which is in these terms:-

***“The authority or judicial officer competent under the Law of the State in which the documents originate shall forward to the Central Authority of the state addressed a request confirming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality .***

***The document to be served or a copy thereof shall be annexed to the request.*** The request and the document shall both be furnished in duplicate.”

No doubt it was this provision which led to Rule 2 of the Rules being drafted as it was.

- 5 The repository of the Convention is the Foreign Office of the Hague, and the request is properly transmitted to the Senior Master as the Central Authority. It would appear that as far as United States law is concerned, no objection can be taken to the procedure which has been adopted in the St Louis Court, and certainly no such objection has been notified to us. In fact in this case, the request of the St Louis court was not transmitted to us in the way Article 3 of the Convention anticipates, as set out below.
- 6 Although reference was made to the Hague Convention, no document was produced to us to show that the United Kingdom's ratification of that Convention has been extended to Jersey. It is settled constitutional practice that where the United Kingdom ratifies a treaty or convention, it does so on behalf of the United Kingdom of Great Britain and Northern Ireland and such, if any, of the Crown Dependencies and its overseas territories as wish the treaty or the convention to apply to them. This practice has been acquiesced in by other States and is regarded by the Secretary General of the United Nations as establishing “*a different intention*” for the purposes of Article 29 of the Vienna Convention. Where reliance is being placed on a convention or treaty which is said to have application to Jersey, counsel should provide to the Court a copy of the United Kingdom's instrument of ratification which confirms that the convention or treaty does have application to the Island. Whether the Hague Convention relevant to this case has or has not been ratified on the Island's behalf by the United Kingdom, however, we think there is no doubt that this Court has a settled practice of acting in comity with the requesting court of other states, unless there is some particular reason not to do so. The procedural formalities which a multi-lateral convention often requires may well be useful guidance – the Court will for example want to be satisfied that the request genuinely does emanate from a foreign court with jurisdiction to

deal with the matters before it, and the receipt of a request through the official diplomatic channel does provide some comfort in that respect. That does not arise in the instant case because there appears to be no doubt that there are divorce proceedings currently on hand in the St Louis court, that the St Louis court has jurisdiction to deal with them and has made the request a copy of which is in our papers. No one before us has contended otherwise, and it is clear that there have been some communications between the Appellants and the husband such that we can be reasonably satisfied that if there were an issue, it would have been taken.

- 7 It appears that although addressed to the UK Central Authority, the request was transmitted by the Respondent's US lawyers to Her Majesty's Attorney General, who subsequently transmitted it to the Judicial Greffier. This is not procedurally in accordance with the Rules, which, as we have indicated need attention. Nonetheless, it cannot be said that no "*application*" has been made for the purposes of Article 3 of the Law. The request has been issued by the requesting court, and the Respondent's lawyers have procured that it be transmitted to the Attorney General. Whether one concludes that the application has been made by the Respondent or by the Attorney General seems to us for present purposes to be beside the point. There has been an application, and the Judicial Greffier has made an order. Advocate Gleeson, on behalf of the Respondent indicated that he had a representation ready to present to the Court if it were really necessary, but he contended that it was not. The Court considered that no such representation was necessary because it had already received an application for the purposes of Article 3.
- 8 We add that Advocate Kistler had submitted that in the absence of rules prescribing precisely how the application fell to be made, the Respondent was the applicant in this case and she should have made her application ex parte with full and frank disclosure in an appropriate affidavit. He asserted that the Court needed to be told of the factors relevant to the application and it was essential that the Court knew what the questions were and could make a judgment assessing those questions against any prospective issues of confidentiality. We think it would be desirable that the Rules be amended to make plain what procedure is appropriate, although we do not think, as at present advised, that an affidavit from the applicant is necessary. The request essentially is being made to the Royal Court by the requesting court and the onus really lies on the requesting court to satisfy itself that the jurisdiction of the foreign court is not being engaged purposelessly or inappropriately. One can assume in the Royal Court that the St Louis Court was satisfied that these questions ought to be delivered and the documents ought to be requested. That does not mean that the Royal Court cannot of itself review, against issues of trustee confidentiality or indeed on any other basis, the request for assistance, but it does mean that the threshold for making the order in the first place has been passed.
- 9 It appears to us that the fact that the procedure envisaged under the Law and the Rules has not been precisely followed does not prevent the matter being taken forward and that the following principles apply. The Greffier, having received the application from the foreign court has a procedural discretion to exercise as to whether to order enrolment of the application in the Rolls of the Court and make such consequential orders as are apposite to

give effect to it. Essentially, this is what the Greffier achieved by his order of 22<sup>nd</sup> January, 2016, in the instant case. Having ordered the registration of the application in the Rolls of the Court, the Greffier then is able to make such administrative orders as are requisite to give effect to the application. The appeal which has been brought in the present case is the appropriate way of dealing with a challenge to the Greffier's order, whether that is a challenge to the substance of ordering enrolment of the application in the Rolls of the Royal Court, or a challenge to the detail of the extent to which the letter of request should be given effect.

- 10 While the procedure adopted in transmitting the request of the St Louis court to the Royal Court was unsatisfactory, it does not in our judgment deprive this Court of jurisdiction to deal with it. Procedural rules are the Court's servant not its master. That is why Rules 10/6 and 10/7 of the Royal Court Rules 2004 provide as they do in cases of non-compliance. If the result of the procedure adopted were to cause unfairness, that would be a different matter because the Court has an obligation to deliver a fair trial or hearing in any civil or criminal cause both as a matter of our own longstanding domestic law and practice and of course under the Human Rights (Jersey) Law 2000 and Article 6 of the European Convention of Human Rights 2000. Having said that, we think that the Service of Process Rules do need attention so as to bring clarity to the process.

## Discretion

- 11 We now turn to the exercise of discretion to give effect to the incoming letter of request in the instant case. We note that the Royal Court itself has a free discretion to exercise on an appeal of this nature, giving such weight to the decision of the Greffier as it thinks fit. This is not an appeal that falls within the appellate rules of *Downes v Marshall* [\[2010\] JLR 265](#).
- 12 It is on that basis that we turn to the detailed letter of request in this case.
- 13 Advocate Kistler accepted that R & H Trust Co (Jersey) Limited was the trustee of the Atlantic Trust. In the St Louis Court, the husband has apparently accepted that he is a beneficiary of this trust. Advocate Kistler submitted that there was therefore no reason for the trustee to be called to give evidence, because the husband could give evidence about the trust and there was no basis for thinking that it would not be given truthfully. He reminded the Court that Article 51 applications can be distinguished from matrimonial or family cases because the Court was looking at the matter from a trust perspective and had to determine what was in the best interests of the beneficiaries. This was not quite that sort of case, because a letter of request had been received and it was not strictly speaking an Article 51 application – but nonetheless he submitted the Court could not form a view on the best interests of the trust, or the best interests of the beneficiaries because it did not have all the information necessary to do so. The submission which Advocate Kistler made was that although this was not an Article 51 application, and the test could not logically be the question of what was in the best interests of the trust, nonetheless the Court should not disregard the fact that this application by letter of request concerns a trust and the Court had



to balance the interests of confidentiality between the trustee and its beneficiaries on the one hand against the obligations of comity on the other. The case of *The C Trust* [supra] shows that the principle of confidentiality goes wider than the Article 51 application itself. In that case the Court had said at paragraph 7:-

***“We would also like to add that we have seen that the affidavits contain a number of exhibits; we assume that the letter of request extends to the exhibits as well as to the affidavits themselves although it does not in terms say so. The exhibits contain material which is legally privileged and also contain material which is confidential. These are claims to privilege and confidence which we would expect an English court to uphold.”***

- 14 In the case of *Wadman and another v Dick* [1993] JLR 52 at page 74/75, there appears the following passage in the judgment of the Court of Appeal, delivered by Frossard JA:-

***“Confidentiality***

***It has been urged upon us that for reasons of confidentiality we ought not to give effect to the letters of request, even though they appear to be directed to relevant and admissible matters.*** Advocate Le Quesne submitted that it would be impossible for any representative of La Hougue to give evidence about the matters covered by the letters of request without violating the duty of confidentiality owed by La Hougue to its clients. Advocate ***Bailhache submitted that Messrs Heinrichs Pauls and Seabrook were all clients of La Hougue and feared that if La Hougue were to give evidence about the matters covered by the letters of request, confidential information about their affairs might be revealed .***

***The evidence (as we have indicated above) shows that La Hougue is a small trust company handling trust and investment business for about 150 clients.*** The relationship between such a company and its clients is one which the law now recognises as giving rise to a state of confidentiality. Information subject to such confidence is not absolutely privileged from disclosure but the Court has a discretion whether to compel a witness to disclose. The position is thus explained by Lord Wilberforce in *British Steel Corp v Granada TV (2)* [1981] A.C. at 1168:

***‘...[A]s to information obtained in confidence, and the legal duty, which may arise, to disclose it to a court of justice, the position is clear. Courts have an inherent wish to respect this confidence, whether it arises between doctor and patient, priest and penitent, banker and customer, between persons giving testimonials to employees, or in other relationships. A relationship with confidence between a journalist and his source is in no different category; nothing in this case involves or will involve any principle that such confidence is not something to be respected. But in all these cases the Court may have to decide, in particular circumstances, that the interest in preserving this confidence is***

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***outweighed by other interests to which the law attaches importance.”***

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15 Thus it is that the Court of Appeal has clearly laid down that there is a balancing exercise to be undertaken, and the issue of confidentiality is one to be considered.

16 Frossard JA however added some further comments later in the judgment at page 76:-

***“We make two observations about this balancing exercise before considering its application in this case.*** First, every claim to confidentiality to exclude evidence which would or might be relevant is an attempt to limit the Court's ability to get as nearly as possible to the truth. One factor to be weighed in the balance therefore, the public interest in the power of the Courts to investigate fully matters brought before them. The Court carrying out the balancing exercise must bear in mind the possibility that respect for a witness's duty of confidentiality may result in disabling the Court from protecting the rights of other parties. We do not believe that the English Courts ***meant to exclude so important and so obvious a factor.*** It was presumably because of the peculiar features of the State of Norway case that the judges whose words we have quoted did not mention it expressly .

***Secondly, it is important to appreciate the part played by public policy in the exercise.*** It has been submitted to us that we ought to pay particular regard to confidentiality between banker and customer because of the great importance to Jersey of its role as an offshore finance centre. In our view, this is not the right approach. The public significance and benefit of the finance industry depend upon considerations (economic, social and even moral) lying right outside the province of a court of law. The basis of the protection of confidentiality between banker and customer is not the public benefit of banking in this sense. It is the law's recognition that the relationship between banker and customer is important for the persons involved on both sides, whose purpose cannot be achieved without confidential communication between them. It is the individual relationship, in which trust is reposed by the one party in the other, which is material. The argument before us transcends that relationship and seeks to import a generalised statement about public policy. The former, not the latter, is the Court's concern.”

17 Advocate Kistler submitted that if the wife had come to the Court under Article 51 of the Trusts (Jersey) Law 1984 and, as a non-beneficiary, sought disclosure of the trust assets, her prospects of success would be very slim indeed. He asserted it should be no different because she had made an application to a foreign court, which had issued letters of request.

18 While it is true that the wife's prospects under Article 51 might well be slim in the circumstances put to us, we reject the conclusion drawn. In our view it is necessary to distinguish between an Article 51 application and a request for assistance from a foreign



court. The tests to be applied by the Royal Court will not be the same because the application to the Court is conceptually quite different. In the case of an Article 51 application, the applicant — often the trustee — puts all its material before the Court and seeks the Court's guidance in accordance with the established rules. The customary law jurisdiction for what is now a statutory jurisdiction was based on the rationale that the Court must be able to administer the trust in the absence of a trustee, and in the presence of the trustee had the jurisdiction to give directions in relation to the various trust powers which existed. That is the explanation for many of the Royal Court's decisions on trust matters prior to the enactment of the Trusts (Jersey) Law 1984 ("the Trusts Law"). In the case of letters of request received from a foreign court, the exercise which the Royal Court is tackling is quite different. In such a case, the statutory jurisdiction is based upon acting in comity with a foreign court and indeed upon the principles contained in the Hague Convention (whether or not that has been formally ratified for the Island). It is the balancing of that obligation to act in comity with the foreign court with the need to protect confidentiality or privilege in the context of our domestic law that occasionally presents challenges for this Court — but the approach which is not followed is to apply the equivalent of an Article 51 jurisdiction.

- 19 It was then submitted that the Court should have regard to public policy because of the firewall provisions provided by Article 9 of the Trusts Law and in particular the provisions by reference to relationships introduced by the 2012 amendment to that legislation. Article 9(1) of that law includes, for example, the following provision:-

***“Subject to paragraph (3), any question concerning –***

***...***

***(d) the administration of the trust ,***

***... or***

***(g) the nature and extent of any beneficial rights or interests in the property ,***

***shall be determined in accordance with the law of Jersey and no rule of foreign law shall affect such question.”***

- 20 Article 9(2) provides so far as material, without prejudice to the generality of paragraph (1), that:-

***“any question mentioned in [paragraph 1] shall be determined without consideration of whether or not ... the trust ... avoids or defeats rights, claims, or interests conferred by any foreign law upon any person by reason of a personal relationship or by way of heirship rights or contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interests.”***

- 21 By Article 9(6) the definition of “**personal relationship**” includes any relationship between a person and the settlor or a beneficiary by blood, marriage, civil partnership or adoption. Although the relevant amendment was only introduced in 2012, it is clear that this legislation as amended applies to trusts whenever constituted or created.
- 22 Thus it is said by Advocate Kistler that Jersey trusts are protected against the orders of a foreign matrimonial court and the effect of the statutory provisions is that such orders will not be enforced. It is against that context that it was submitted that public policy would affect the decision on whether or not to act in comity with a foreign court.
- 23 We do not think this submission is consistent with the earlier decisions of this Court such as *Mubarik v Mubarak and others* [2008] JLR 430; nor do we think that there is a different rule in terms of comity when one is dealing with a trust than where one is not. *Wadman v Dick* (supra) would seem to support that. In any event the issue is more nuanced in relation to the present appeal. We agree that where a trust is governed by Jersey law it is the Royal Court of Jersey which will exercise jurisdiction over any variations of such a trust or over whether directions should be given to the trustee in relation to the exercise of the trustee's powers under the trust and the creation of what we would regard as an exorbitant jurisdiction by legislation effected outside the Island, which might suggest that a foreign court could exercise any such power, would not be effective here. Nonetheless, that is not the issue which arises in this case, at least at present. The courts of this Island do respect letters of request made to them by a foreign court and do act in comity with that court. Indeed it is for just that reason that one would expect the foreign court to respect the trust jurisdiction which we exercise. In any event, it is clear, in the context of a dispute about matrimonial assets in a foreign court, that the existence or otherwise of a beneficial interest in a Jersey trust may be relevant to how the other matrimonial assets should be allocated, even if the foreign court recognises that its order cannot extend to whatever interests it may consider are established by the Jersey trust.
- 24 Advocate Kistler suggested that there should be some exercise of the blue pencil test in accordance with *Rio Tinto Zinc Corp v Westinghouse Elec. Corp* [1978] A.C. 547, [1978] 1 All ER 434 in order to ensure that confidential trust documents were not disclosed. This submission did not seem wholly consistent with the submission made earlier that because the husband was a beneficiary of the Atlantic Trust, he could give evidence about it – one would have thought that if the information was truly confidential, it would not matter much who provided the evidence, whether it was the trustee or the beneficiary. Nonetheless, we accept the principle that *Westinghouse* applies and we have made some changes to the questions to be put, as described later in this judgment.
- 25 In his submissions Advocate Gleeson contended that there were a number of reasons why the Court's discretion should be exercised in favour of his client, but as a matter of principle he contended that it was preposterous to suggest that the Court could not go behind a trustee's conclusion that disclosure was not in the best interests of the beneficiaries. We

agree with that contention, and we have no doubt that the Court can examine where the best interests of the beneficiaries lie and indeed these best interests then need to be balanced with the obligation of comity to the foreign court.

- 26 The Court has considered the various contentions and looked at the letter of request with care. We consider that the public interest in giving comity to the foreign letter of request outweighs the public interest in maintaining confidentiality of trust documents. If the matrimonial proceedings were taking place within this jurisdiction, there would be no question about where the public interest lay – information about the trust documents would be provided. The purpose of ensuring that such information was provided in such a case is to ensure that the matrimonial court can do justice to the parties before it. If the husband were the only beneficiary of the trust, it is in the interests of justice that the matrimonial court knows that to be the position; and similarly if the husband has only a limited beneficial interest in the trust. As a matter of trust law, this Court may not permit a foreign court to make orders varying the terms of the trust, but that is not to say that we should not assist in ensuring that the matrimonial court has all the relevant information available to it to make such order as the matrimonial court, whether in this jurisdiction or not, thinks is relevant for the issues which it has to determine.
- 27 Having looked at the scheduled questions in the letter of request, we consider that it is permissible that all these be put to the Jersey witnesses, subject to the following changes. In paragraph 10, question 4 should be framed in this way – “Is the husband the beneficiary, guardian, protector, trustee or director of the trustee of any trust located in Jersey and managed by the Rawlinson & Hunter Partnership or any company owned by that partnership?” In the context of divorce proceedings, the St Louis court may well wish to consider whether it should proceed within its jurisdiction upon the basis that the husband will benefit from or has control over a trust located in Jersey, and hence questions aimed at establishing if he is the beneficiary, guardian, protector, trustee or director of the trustee of any such trust are likely to be relevant to the issues it has to decide.
- 28 The question in paragraph 10(5) should be framed as follows – “Are A and B beneficiaries of any trust managed by the Rawlinson & Hunter Partnership in Jersey or any company owned by that partnership as a trustee?” This question is equally likely to be relevant to the matrimonial proceedings in the St Louis court, as we see them. Whether the children of the marriage are beneficiaries of any trust managed by the Appellants in Jersey and have an expectation of benefit may well be relevant to issues of alimony or maintenance in the St Louis court.
- 29 The question in paragraph 10(9) should be framed as follows – “Is the Respondent a beneficiary or has she been a beneficiary of any trust managed by the Rawlinson & Hunter Partnership in Jersey or any company belonging to that partnership?” In similar fashion to the question in paragraph 10(5), questions in relation to whether the Respondent, wife of K, has any expectation of benefit from a Jersey trust may well be relevant to the assessment of an equitable outcome to the divorce proceedings in the St Louis court.

- 30 The question in paragraph 10(10) is to be deleted, applying the blue pencil test, not least because it does not seem to make much sense.
- 31 The question in paragraph 10(12) should be framed as follows – “Do you know who is/are the settlor/s of any trust referred to in question 4 – 9 of which the husband, the Respondent or their children are beneficiaries?” We think this question is also likely to be relevant to any matrimonial proceedings. The providers of the funds into trust may well have an impact on the extent to which a matrimonial court would treat those sums as (a) being available or (b) being funds which in equity ought to be treated as those of one party or another. Whether that assessment will be given effect by the Royal Court of Jersey on an application by the trustees for directions under Article 51 is, as a matter of our trust law, a different issue, but we do not see any reason why the information should be kept from the foreign matrimonial court.
- 32 The question on paragraph 10(14) should be framed as follows – “Is the husband a beneficiary of any trust which you manage?” The reasons this question should be so framed are straightforward. If the husband is a beneficiary of any trust managed by the Appellants, then the extent of his expectation of benefit is something to be established.
- 33 In relation to question 11 of the letters of request, the documents or other property to be inspected should be as listed in that question but should include any deed of appointment. We referred earlier to the balancing of the interests of the beneficiaries. The reason that these documents ought to be provided is that such provision will enable the St Louis court to form a better judgment as to other interests which may affect the assets in trust. This may work both to the benefit of the husband and indeed to the benefit of the other potential beneficiaries because it is capable of casting a doubt on whether the husband really does have an expectation of benefit, or it may show that there is a limit on the benefit which he might expect. All of that will naturally be relevant to a matrimonial court.
- 34 In our judgment the provision of this information, or the absence of it, as the case may be, will enable the foreign court, using the language of the Court of Appeal in *Wadman* “**to get as nearly as possible to the truth**”. On the assumption that the St Louis court will have full information, it will be able to apply that information in reaching its judgment properly on the matters which lie before it in accordance with its own jurisdiction. The extent to which the results of the exercise of its judgment are enforceable in Jersey at a later date will of course depend upon the application of Jersey law to whatever issue is put before this Court at that time.
- 35 The appeal is therefore allowed to the limited extent of the changes to the listed questions in the letter of request and is otherwise dismissed.