

Court Rules on Trustee Disclosure

April 4, 2001

A recent decision of the Staff of Government Division of the High Court of the Isle of Man (the Manx Court of Appeal) raised an important point on disclosure of information and documentation by trustees to parties potentially beneficially interested under a trust. The point at issue was whether the mere object of a discretionary power has any right to trust accounts or other information from the trustees. At first instance this point had not been argued, but it was raised as a new point (among other points) on appeal: the court found in favour of the appellant and refused disclosure.

For some years there had been decisions in a number of jurisdictions supporting the idea that the right of beneficiaries under a trust to accounts and other information stemmed from the proprietary interest of those beneficiaries in the trust funds. More recently, following on from an Irish decision (*Chaine-Nickson v Bank of Ireland* [1976] IR 393), there had been decisions in various jurisdictions supporting the idea that even a discretionary beneficiary should be entitled to accounts and other information, if only as a means of making trustees accountable (which they might otherwise not be under some discretionary settlements).

This Isle of Man decision not only affirms that a mere object of a discretionary power is to be treated differently from a person in a class of discretionary beneficiaries, but goes on to accept that this may well mean in some cases that there is no one able to hold a trustee to account. The court specifically stated that it should be open to a settlor to achieve such a result if he/she so wishes.

The case was argued at some length and involved a close examination of a number of earlier decisions in various jurisdictions. Counsel presenting the case were both from chambers in London but were specially licensed to appear before the Isle of Man High Court because of the complexity of the case.

The other party is now seeking leave to appeal the matter onward to the Privy Council.

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