In the name of
His Highness Sheikh Mohamed bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

COURT OF FIRST INSTANCE
COMMERCIAL AND CIVIL DIVISION
BETWEEN

NX (AS TRUSTEE OF THE EYZ TRUST)
Claimant

and

AA (BENEFICIARY 1)
First Defendant

BB (BENEFICIARY 2)
Second Defendant

CC (MINOR BENEFICIARY 1)
Third Defendant

DD (MINOR BENEFICIARY 2)
Fourth Defendant

JUDGMENT OF JUSTICE SIR ANDREW SMITH

Neutral Citation:	[2025] ADGMCFI 0030
Before:	Justice Sir Andrew Smith
Decision Date:	28 November 2025
Decision:	1. The requirement of ADGM CPR r. 64(4) and Practice Direction 7.3(c) is varied such that NX shall file any Directions Application by **16 January 2026**. 2. CC and DD shall be represented by Mr Anthony Paul Hewitt of Withers LLP. 3. The reasonable costs incurred in relation to the Directions Application by Withers LLP shall be paid out of the assets owned or held by NX as Trustee of the EYZ Trust. 4. Unless otherwise ordered: a. The Directions Application shall be conducted in private. b. The names of the parties to these proceedings shall be anonymised. c. Only the parties to these proceedings shall be permitted to obtain a copy of any document from the Court's records.
Hearing Date:	7 October 2025
Date of Order:	To be drafted by the Claimant's Counsel
Catchwords:	Family trust. Application by a trustee for Court directions. Variation of ADGM CPR r. 64(4) and ADGM Practice Direction 7.3(c). Appointment of legal representation for minor beneficiaries. Confidential nature of a trust. Hearings in private. Open justice principle. Financial privacy in the ADGM.
Legislation Cited:	Abu Dhabi Law No. 4 of 2013, as amended by Abu Dhabi Law No. 12 of 2020 – articles 1(1), 3, 6, 13(7) and 13(8) ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 – sections 16(2) and 98 ADGM Court Procedure Rules 2016 – Rules 2, 14(2), 57(2), 64(3), 64(4) and 173(1) ADGM Practice Direction 7 – Paragraph 7.3(c) ADGM Application of English Law Regulations 2015 – section 1(1) English Civil Procedure Rules 1998 – Rule 39.2 English Civil Procedure (Amendment) Rules 2019 Variation of Trusts Act 1958 (UK) European Convention on Human Rights – article 6.1 UAE Federal Law no 14 of 2018

	Banks and Trust Companies Regulation (Amendment) (No 2) Act 2025 (Bahamas) – section 77A Children Act 1998 (Bermuda) Federal Law No. (14) of 2018 Concerning the Central Bank and the Regulation of Financial Institutions and Activities
Cases Cited:	Schmidt v Rosewood Trust Ltd [2003] UKPC 26 X v Dartford and Gravesham NHS Trust [2015] EWCA Civ 96 AMM v HXW [2010] EWHC 2457 (QB) Deripaska v Cherney [2012] EWCA Civ 1235 Scott v Scott [1913] AC 417 Bank Mellat v Her Majesty's Treasury (No 2) [2013] UKSC 38 Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38 MN v OP and ors [2019] EWCA Civ 679 Re The Trusts of X Charity [2003] EWHC 1462 (Ch) Re Delphi Trust Limited [2014] 2 WLUK 73 Marley v Mutual Security Merchant Bank and Trust Co Ltd [1991] 3 All ER 198 Hammersmith-Stewart v Cromwell Trust Company Limited and ors, SCCiv App Nos 108 and 132 of 2022 Jersey Evening Post v Al Thani and ors [2002] JLR 542 Public Trustee v Cooper [2001] 1 WTLR 901 Re G Trusts [2017] SC (Bda) 98 Civ Re A Trusts, AA v BB and ors [2025] CIGC (FSD) 16
Case Number:	ADGMCFI-PCA-2025-006
Parties and Representation:	***Claimant*** Mr David Brownbill KC and Ms Nicole Langlois of XXIV Old Buildings (Instructed by Gresham Legal) ***First Defendant*** No appearance ***Second Defendant*** No appearance ***Third and Fourth Defendants*** No appearance ***Amicus Curiae*** Mr Robert Ham KC

JUDGMENT

Introduction

1. NX intends to make an application (the "**Directions Application**") in her capacity as the Trustee of the EYZ Trust for declarations, guidance or similar relief about her position, the terms of the trust and other matters. By an Application Notice of 28 August 2025 (the "**Preliminary Application**"), supported by a Witness Statement of Mr Peter Stewart of Gresham Legal, NX sought these orders relating to the proposed Directions Application:

    a. an order extending the time for filing the Directions Application;

    b. orders about the representation of two minors and about provision for the costs of their representation; and

    c. an order that hearings in the Directions Application be conducted in private, and related orders about the names of the parties being anonymised and Court documents being kept private from non-parties.

2. I heard the Preliminary Application at a hearing on 7 October 2025. NX was represented by Mr David Brownbill KC and Ms Nicole Langlois. Mr Robert Ham KC appeared as an *amicus curiae*, to assist in the exercise of what is a new jurisdiction for the Courts of the Abu Dhabi Global Market ("**ADGM**").

3. It is said that there are four beneficiaries of the EYZ Trust, two adults (referred to as AA and BB) and two minors (referred to as CC and DD). NX intends that they should be served with the Directions Application, but it appears that none plans to take an active part in the proceedings, and nothing suggests that the proceedings will be contentious.

Jurisdiction

4. I should first say something about the Court's jurisdiction to hear the Directions Application and the Preliminary Application. The EYZ Trust was created by a declaration of trust recorded in a deed dated 20 September 2010 (the "**2010 Deed**"), which stated that: "*The seat of the* [EYZ] *Trust shall be in Limassol, Cyprus*"; that, subject to certain provisions which are not relevant for present purposes, the "*Settlement is established under the International Trusts Law of the Republic of Cyprus, and the construction and effect of the Settlement shall be subject to the jurisdiction of and construed in accordance with the Laws of Cyprus*"; and that "*the Courts of the Republic of Cyprus shall be the forum for the administration of this Settlement*". A deed dated 9 May 2022 provided, *inter alia*, that the 2010 Deed be amended to provide that: the "*seat of the Settlement shall be in* [ADGM]*, United Arab Emirates*"; that, subject to irrelevant provisions, the "*construction and effect of the Settlement shall be subject to the jurisdiction of and construed in accordance with the Law of the* [ADGM]"; and that, again subject to irrelevant provisions, "[ADGM] *Courts shall be the forum for the administration of this Settlement*".

5. In his Witness Statement in support of the Preliminary Application, Mr Stewart contended that the "*ADGM Courts in principle have jurisdiction to hear proceedings, whether contentious or not, relating to the administration of trusts, where (as here) the seat and forum of the administration of the trust is the ADGM*". In support of this, Mr Stewart observes that, as a matter of English common law, the Court has inherent jurisdiction to supervise and, where necessary, intervene in the administration of trusts. This is, of course, well established if a trust is subject to the Court's jurisdiction: see *Schmidt v Rosewood Trust Ltd* [2003] UKPC 26 at para. 51 per Lord Walker. This leads to the question whether the ADGM Court has jurisdiction over the EYZ Trust.

6. This Court's jurisdiction is statutory, and is defined in Abu Dhabi Law No. 4 of 2013, as amended by Abu Dhabi Law No. 12 of 2020 (the "**Founding Law**"). Articles 13(7) and 13(8) of the Founding Law provide as follows:

> "*(7) The Court of First Instance ... shall have exclusive jurisdiction to consider and decide on matters according to the following:*
>
> *a) Civil or commercial claims and disputes involving the Global Market or any of the Global Market Authorities or any of the Global Market Establishments;*
>
> *b) Civil or commercial claims and disputes arising out of or relating to a contract entered into, executed or performed in whole or in part in the Global Market, or a transaction entered into or performed in whole or in part in the Global Market, or to an incident that occurred in whole or in part in the Global Market;*
>
> *c) Any appeal against a decision or a procedure issued by any of the Global Market Authorities according to the Global Market Regulations;*
>
> *d) Any request, claim or dispute which the Global Market's Courts has the jurisdiction to consider under the Global Market Regulations;* [and]
>
> *e) Any issues concerning the interpretation of any articles of the Global Market Regulations*.
>
> *(8) The Global Market's Courts may hear and adjudicate any civil or commercial claim or dispute where the parties agree in writing to file such claim or dispute with them whether before or after the claim or dispute arises*".

7. The term "*Global Market Regulations*" is defined to mean "[a]*ny regulations or resolutions related to the Global market and issued by the Board of Directors"* (article 1(1) of the Founding Law), and therefore, when used in article 13(7)(d), it covers the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 (the "**Courts etc Regulations**"). The Courts etc Regulations provide at section 16(2) that:

> "*... , there shall be exercisable by the Court of First Instance all such jurisdiction as is conferred on it by —*

(a) Articles 13(7) and (8) of the ADGM Founding Law;

(b) an Applicable Abu Dhabi Law;

(c) these Regulations;

(d) any other ADGM enactment; or

(e) any request, in writing, by the parties to have the Court of First Instance determine the claim or dispute".

8. The terminology of articles 13(7) and 13(8) of the Founding Law is more obviously directed to contentious litigation than to an uncontentious application such as the Directions Application is likely to be and indeed the Preliminary Application was. That said, where, as here, the ADGM Courts are expressly stated to be the forum for the administration of a trust, the Court has jurisdiction to give a trustee directions or guidance about its administration: such jurisdiction falls within both article 13(8) of the Founding Law and section 16(2)(e) of the Courts etc Regulations. There is no "*dispute*", but the trustee can readily be said to be making a "*claim*"; and on such applications the only "*party*" to the claim (or application) for the purposes of article 13(8) and section 16(2) is the trustee: although it is intended that the beneficiaries are often joined in the proceedings, I do not regard them as "*parties*" to the claim for the purposes of these provisions.

9. If this be a generous interpretation of the literal wording of article 13(8) and section 16(2), it is justified not only because otherwise there would be an extraordinary gap in the Court's powers, but section 98(3)(f) of the Courts etc Regulations confirms that the Court's jurisdiction extends to dealing with "*uncontentious matters arising in the administration of trusts*": see para. 15 below.

10. What of the Court's jurisdiction to entertain a preliminary application of this kind? The ADGM Court Procedure Rules 2016 ("**ADGM CPR**") provide at Rule 64(3) that: "*An application for an interim remedy may be made by a person who intends to file a claim only if the matter is urgent*". ADGM CPR r.64(4) provides that, unless the Court orders otherwise, such an applicant must undertake to file a claim within two days after the application notice is filed, and ADGM Practice Direction 7.3(c) is to similar effect. Generally, perhaps invariably in contentious matters, this means that an application under ADGM CPR r.64(3) must be for relief that is required immediately. This is not such a case, but ADGM CPR r.64 is to be interpreted flexibly and "*with a view to securing that the Court is accessible, fair and efficient*": see ADGM CPR r. 2(3). There is a real and compelling case that NX should have the Preliminary Application decided before she brings the Directions Application, and I consider that this pressing need is sufficient to bring the Preliminary Application within ADGM CPR r.64(3).

The Preliminary Application

11. I therefore come to the orders sought in the Preliminary Application. First, NX seeks an order varying the requirement of ADGM CPR r.64(4) and Practice Direction 7.3(c) that NX undertake

to file the Directions Application within two days of issuing the Preliminary Application. Mr Stewart's evidence fully justifies this relief, and I shall make the order sought. Mr Stewart states that NX will make all reasonable endeavours to file any Directions Application within three months of the Court's order on the Directions Application. For case management reasons, I shall direct, in place of the ordinary undertaking, that NX file any Directions Application by **16 January 2026**. If necessary, she can apply for more time to do so.

12. Next, the directions that NX seeks about the representation on the Directions Application of CC and DD. ADGM CPR r.57(2) provides that the Court may appoint a person to represent persons who are minors. NX seeks an order that they be represented by Mr Anthony Paul Hewitt, a partner in Withers LLP ("**Withers**"), and an order that the reasonable costs incurred in the Directions Application by Withers be paid out of the assets owned or held by NX as Trustee of the EYZ Trust. As Mr Ham confirmed, Mr Hewitt is an entirely appropriate representative of the minors, and pre-emptive costs order of the kind sought in respect of the associated costs is entirely conventional. I grant these applications.

13. The application that hearings in the Directions Application be heard in private, unless otherwise ordered, is less straightforward. As Mr Brownbill made clear, NX does not seek to prevent the publication of an anonymised version of this judgment. I am inclined to think that future judgments in the proceedings should be published, if necessary in a redacted form and subject to considerations of privacy and confidentiality, but I cannot take a firm view about that in this judgment.

14. *Prima facie*, hearings in the ADGM Courts are held in public: section 98(1) of the Courts etc Regulations provides that, subject to other provisions of section 98 and any other ADGM enactment, "*all hearings, including trials, shall be held in public*". Similarly, ADGM CPR r.173(1) provides that: "*Save as provided in section 98 of the* [Courts etc] *Regulations … , the general rule is that a hearing is to be held in public*".

15. Section 98 of the Courts etc Regulations continues as follows:

> "*(2) The Court may make special arrangements for accommodating members of the public, if it considers it appropriate to do so.*
>
> *(3) The Court may direct that a hearing, or any part of it, be held in private if —*
>
> *(a) publicity would defeat the object of the hearing;*
>
> *(b) it involves matters relating to national security;*
>
> *(c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;*
>
> *(d) a private hearing is necessary to protect the interests of a party or witness;*

(e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;

(f) it involves uncontentious matters arising in the administration of trusts; or

(g) the Court considers this to be necessary, in the interests of justice.

(4) The Court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary —

(a) in order to protect the interests of that party or witness; or

(b) in the interests of justice".

16. As things stand, the evidence is that the Directions Application will involve uncontentious matters arising in the administration of trusts and so will be covered by section 98(3)(f) of the Courts etc Regulations. I shall consider on this basis whether it is proper to order that the hearing(s) of the Directions Application be held in private. In the unlikely event that the Directions Application proves to be contentious, the position will have to be revisited.

17. Mr Brownbill submitted that the Directions Application will also come under sections 98(3)(c) and 98(3)(d) of the Courts etc Regulations. The 2010 Deed provides that the Trustee undertook and was under an obligation to keep "*the existence, contents and substance of this Deed, the Settlement represented hereby, the arrangements contemplated hereby and the transactions entered into pursuant hereto, including (without limitation) the nature and identity of the Trust Property, and Trustee(s), the Witnesses, the Protector(s) and the Beneficiaries hereto and the nature, ongoing business and affairs of the Settlement and the Trust, strictly confidential, and not (otherwise than with the prior, express written consent of the Protector(s) for the time being and subject to the duly entered order of a court of competent jurisdiction) to disclose such confidential information to any third parties*".

18. Mr Stewart argues that publicity about confidential family and financial matters would "*create a substantial risk that the integrity of the proceedings would be compromised and that the interests of the Trust, the Trustee, the adult beneficiaries and, in particular, the Minors would be prejudiced*". The minors are a teenager and a child approaching teenage years. As Mr Brownbill acknowledged, they will be aware that their parents are very wealthy, but that is not the same as them having detailed knowledge about their parents' wealth or their own standing as beneficiaries of the EYZ Trust. Mr Stewart explains that steps have apparently been taken by their parents to have their privacy protected, and that there is a real risk that public proceedings would place them in the media spotlight, not least because NX intends to seek directions about their interest in the EYZ Trust.

19. As for NX, she is not a public figure, and her connection with the EYZ Trust and the beneficiaries is not in the public domain. She agreed to become trustee in 2022 in urgent circumstances.

20. On the basis of this evidence, I accept Mr Brownbill's argument that the Directions Application is covered by section 98(3)(c) of the Courts etc Regulations. It will involve the affairs of a family trust, the confidential nature of which is expressly reflected in the 2010 Deed, and personal and financial matters of an inherently confidential nature, which publicity would damage.

21. I am also persuaded that the Directions Application is covered by section 98(3)(d) of the Courts etc Regulations in that a private hearing is necessary to protect the interests of the minor beneficiaries. In this context, it is worth mentioning the observation of Moore-Bick LJ in *X v Dartford and Gravesham NHS Trust* [2015] EWCA Civ 96, to which judgment I shall refer further, that it might be difficult "*to put into words the effect that an invasion of privacy is likely to have on the family's life and whatever fears are expressed may not in the end be realised. For that reason statements which attempt to deal with such matters may well appear to be formulaic, but we do not think that the importance of maintaining the family's privacy should be underestimated as a result*".

English law

22. The position in England about public hearings is governed by Rule 39.2 of the English Civil Procedure Rules 1998 (the "**English CPR**"). It reflects the importance that the English Courts have long attached to public administration of justice, and the heavy burden upon anyone contending that a hearing should be held in private or that the public nature of the proceedings should otherwise be qualified. It provides as follows:

> "*(1) The general rule is that a hearing is to be in public. A hearing may not be held in private, irrespective of the parties' consent, unless and to the extent that the court decides that it must be held in private, applying the provisions of paragraph (3).*
>
> *(2) In deciding whether to hold a hearing in private, the court must consider any duty to protect or have regard to a right to freedom of expression which may be affected.*
>
> *(2A) The court shall take reasonable steps to ensure that all hearings are of an open and public character, save when a hearing is held in private.*
>
> *(3) A hearing, or any part of it, must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in sub-paragraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice –*
>
> *(a) publicity would defeat the object of the hearing;*
>
> *(b) it involves matters relating to national security;*
>
> *(c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;*

(d) a private hearing is necessary to protect the interests of any child or protected party;

(e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;

(f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or

(g) the court for any other reason considers this to be necessary to secure the proper administration of justice.

(4) The court must order that the identity of any person shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that person.

(5) Unless and to the extent that the court otherwise directs, where the court acts under paragraph (3) or (4), a copy of the court's order shall be published on the website of the Judiciary of England and Wales (which may be found at www.judiciary.uk). Any person who is not a party to the proceedings may apply to attend the hearing and make submissions, or apply to set aside or vary the order".

23. This version of the rule was introduced by an amendment made in the English Civil Procedure (Amendment) Rules 2019. Before the amendment, the English CPR was worded similarly to section 98 of the Courts etc Regulations, and in particular section 98(3), and it provided as follows:

"*(1) The general rule is that a hearing is to be in public.*

(2) The requirement for a hearing to be in public does not require the court to make special arrangements for accommodating members of the public.

(3) A hearing, or any part of it, may be in private if—

(a) publicity would defeat the object of the hearing;

(b) it involves matters relating to national security;

(c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;

(d) a private hearing is necessary to protect the interests of any child or patient;

(e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;

(f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or

(g) the court considers this to be necessary, in the interests of justice.

(4) The court may order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness".

24. English law does not consider that, when deciding whether to hold a hearing wholly or partly in private or order that a person's identity should not be disclosed, the Judge is exercising a discretion. As Tugendhat J said in *AMM v HXW* [2010] EWHC 2457 (QB) of decisions whether to make an order under the English CPR r. 39.2, they are not "*a matter of the court's discretion*" but "*a matter of obligation*", in that, having applied the proper test, "*the judge will either have a duty to make an … order, or a duty not to make one*" (paras 34 and 35). That said, when making the decision, "*the judge must weigh different factors; and the ultimate conclusion on a question like that is one on which different people may come to different conclusions on the same facts, without any of them being wrong*": *Deripaska v Cherney* [2012] EWCA Civ 1235 at para. 15 per Lewison LJ. I need not engage with how this decision-making differs from the exercise of a discretion in England. What matters for present purposes is that, the question being one of law, in this jurisdiction it is governed by the ADGM Application of English Law Regulations 2015 (the "**ADGM English Law Regulations**").

25. Section 1(1) of the ADGM English Law Regulations provides that:

"*The common law of England (including the principles and rules of equity), as it stands from time to time, shall apply and have legal force in, and form part of the law of, the* [ADGM] –

(a) so far as it is applicable to the circumstances of the [ADGM]*;*

(b) subject to such modifications as those circumstances require;

(c) subject to any amendment thereof (whenever made) pursuant to any [ADGM] *enactment; and*

(d) notwithstanding any amendment thereof as part of the law of England made pursuant to an Act or any legislative instrument adopted thereunder at any time after the date of enactment of these Regulations, which amendment shall not apply and have legal force in, or form part of the law of, the [ADGM]*, unless and until an* [ADGM] *enactment expressly provides that it applies and has legal force in, and forms part of the law of, the* [ADGM]".

26. Accordingly, notwithstanding the different wording of the English CPR now in force, the English common law and its application to the earlier English CPR govern the approach of this Court to the exercise of the discretion under section 98(3) of the Courts etc Regulations, except in so far

as section 1(1) of the ADGM English Law Regulations permits departure to adopt a modified approach. I must therefore consider these questions:

a. Applying the approach of English law (and disregarding the amended version of English CPR r.39.2), would it be appropriate to make an order under section 98 of the Courts etc Regulations for hearings in private?

b. Is a modified approach warranted by the "*circumstances of the* [ADGM]*"*, and if so, would it be appropriate to order hearings in private?

27. The course of English law was set by the speeches in the House of Lords in *Scott v Scott* [1913] AC 417. Visc Haldane LC said that "*the broad principle is that the Courts of this country must, as between parties, administer justice in public*", but he recognised that the principle is qualified in that it is subject to "*a yet more fundamental principle that the chief object of the Courts of justice must be to secure that justice is done*" (at page 437). Earl Loreburn said (at page 446) that, while it "*would be impossible to enumerate or anticipate all possible contingencies*" where the public might be excluded, "*the underlying principle … is that the administration of justice would be rendered impracticable by their presence, whether because the case could not be effectively tried, or the parties entitled to justice would be reasonably deterred from seeking it at the hands of the Court"*.

28. More recently, the principle of open justice continues to be emphasised at the highest level. In *Bank Mellat v Her Majesty's Treasury (No 2)* [2013] UKSC 38, Lord Neuberger described the principle as "*fundamental to the dispensation of justice in a modern, democratic society"*, and said that the courts' inherent power to receive evidence and argument at a private hearing is available only "*(i) if it is strictly necessary to have a private hearing in order to achieve justice between the parties, and, (ii) if the degree of privacy is kept to an absolute minimum*" (at para. 2). In *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38, Lady Hale said that the principal purposes of the principle are "*to enable public scrutiny of the way in which courts decide cases – to hold judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly*" and "*to enable the public to understand how the justice system works and why decisions are taken*" (at paras. 42 and 43).

29. As is illustrated by the citations from Visc Haldane LC and Lord Neuberger, the principle is often expressed in terms of proper administration of justice "*between parties*", but the decision of the English Court of Appeal in *MN v OP and ors* [2019] EWCA Civ 679 shows that it is robustly applied where the proceedings do not involve a dispute. The case was about an application for approval of an arrangement varying a trust under the Variation of Trusts Act 1958 (UK) (the "**1958 Act**"). The English Court of Appeal upheld the decision of the first instance Judge dismissing an application to restrict publicity of information, including the names of the parties. The leading judgment was given by Sharp LJ, and she identified as the central issues in the appeal "*whether anonymity should be the norm in applications made under the 1958 Act, as it is for approval hearings, following the guidance given by the Court of Appeal in relation to such hearings in X v Dartford and Gravesham NHS Trust [2015] EWCA Civ* 96".

30. The Claimant in the *Gravesham* case was a child who had suffered personal injuries, and the decision of the English Court of Appeal was about whether the identity of the Claimant should be subject to an anonymity order. The Court said that "*although each application will have to be considered individually, a limited derogation from the principle of open justice will normally be necessary in relation to approval hearings to enable the court to do justice to the claimant and his or her family by ensuring respect for their family and private lives. In some cases it may be possible to identify specific risks against which the claimant needs to be protected and if so, that will provide an additional reason for derogating from the principle of open justice, but we do not think that it is necessary to identify specific risks in order to establish a need for protection*" (at para. 31). It considered that the usual practice in such cases should be that, while the hearing should be listed for hearing in public, the press and public might be present and the proceedings might be reported, nevertheless "*unless satisfied after hearing argument that it is not necessary to do so, the judge should make an anonymity order for the protection of the claimant and his or her family*" (at para. 35).

31. In the *MN v OP and ors* case, Sharp LJ identified that the issue of principle to be decided was the question whether anonymising proceedings under the 1958 Act "*should be the norm, or default position … or whether anonymity should be decided on a case-by-case basis"* (loc. cit. at para. 61). She declined to stipulate that it should be the norm by analogy with the decision in the *Gravesham* case, saying this: "*It is true that information about people's personal financial position is usually regarded as a private matter. However, information about the individual shares of minor beneficiaries in the Settlement, and their connection with the Settlement, is of a different order of sensitivity to the highly personal medical and other information which the parties to approval hearings are required to put before the court. Further, though harm is not a condition of establishing either that privacy rights are engaged or of infringement, when considering questions of the kind that have arisen here, the court is bound to consider the real life implications of making an order or not – and hence the different vulnerabilities of the individuals concerned in approval hearings on the one hand and variation of trust hearings on the other"* (at para. 69).

32. Mr Brownbill cited no English authority, and I am aware of no English authority, which considers directly and specifically whether applications by trustees for directions should be heard in public or when it is appropriate for the Court to sit in private or take other measures to protect those involved from publicity. However, in *Re The Trusts of X Charity* [2003] EWHC 1462 (Ch), a question arose, in the course of the hearing in private of an application by the trustees of a charity for directions about pending proceedings, whether the Judge, Sir Andrew Morritt V-C, was obliged by article 6.1 of the European Convention on Human Rights to pronounce his judgment in public. He decided that he was not so obliged because: (i) the judgment did not determine the civil rights of anyone and so did not fall under article 6.1, and (ii) "*in the circumstances of a hearing in private, justified by the restriction in relation to the interests of justice, the practical possibility of producing an anonymised or abridged version"* and the relevant provisions of the English CPR about making copies of judgments available, it was permissible to pronounce judgment in private. Thus, the judgment implicitly recognised that the interests of justice might require that hearings for directions of this kind be heard in private.

This is reflected in the commentary in Civil Procedure (the "White Book") at 64.2.1 which states that "*Where the court is being asked to give directions of this type to trustees, this may justify the whole or part of the hearing being held in private"*, and in practice, I understand, it is not unusual for such hearings to be in private.

33. In *Re Delphi Trust Limited* [2014] 2 WLUK 73, Deemster Doyle, sitting in the High Court of Justice of the Isle of Man, suggested that this decision is *"very much against the incoming tide of open justice"*, and to my mind, the *MN v OP and ors* case confirms this. Sharp LJ's judgment made clear that, even before the amendment of English CPR r.39.2, an English Court would not be justified in sitting in private simply because the matter was uncontentious and a public hearing would involve the disclosure of personal financial information, whether about an adult or about a minor: something more would be required to displace the open justice principle. Further, while the actual decision in the *MN v OP and ors* case concerned a proposed variation of a trust, the reasoning seems to me to apply equally to an application by a trustee for directions. It is not displaced by the fact that directions do not themselves alter the parties' rights, and it does not seem to me to be displaced simply because the English CPR r.39.2 (both before and after its amendment) makes express reference to "*uncontentious matters arising in the administration of trusts*".

34. I have some difficulty in identifying in the circumstances of this Directions Application any specific features which would have justified a hearing in private if the question were to be decided by reference to the present English statutory regime or the regime as considered in the *MN v OP and ors* case. However, I do not need to decide this because I consider that there are material "*circumstances of the* [ADGM]" (within the meaning of section 1(1) of the ADGM English Law Regulations) that bear upon the question. There are three points to consider.

Respect in the United Arab Emirates for the confidentiality of personal finances

35. First, I have already cited paragraph 69 of the judgment of Sharp LJ in the *MN v OP and ors* case, in which she describes personal financial information as being of a different (and, implicitly, lesser) order of sensitivity from not only medical but also "*other information which parties to approval hearings are required to put before the court*". In my judgment, the tone of this paragraph does not reflect the position in Abu Dhabi and the other United Arab Emirates (and elsewhere in the region).

36. It can safely be said that here respect for privacy in financial and other personal matters is not only a cultural and moral duty that provides dignity, trust and respect in social relations, but is founded in the ethical and legal framework of Islamic teaching. Confidence and secrecy in banking and financial affairs are fundamental principles that protect customer information, maintain trust between financial entities and those dealing with them, and uphold moral standards prescribed by Islamic Shari'a. Based on the teaching of the Qur'an to fulfil trusts and obligations and of the Sunnah, Islamic jurisprudence (or *fiqh*) has established principles that safeguard private information, including financial information, consistent with the concepts of *amanah* (roughly trust and fiduciary duty), *hifz al'lrd* (protection of honour), and *sitr* (concealment). The protection of privacy may also be required by the Shari'a maxim of *la darar*

wa la darar (no harm and no foul). (I emphasise that the explanations for the concepts that I have put in parenthesis are intended only to indicate their flavour and not to suggest a close equivalence between the English explanation and the Islamic concept).

37. The general recognition of these principles can readily be illustrated. It is reflected in the strict rules about the disclosure of banking information in UAE Federal Legislation (in particular, Federal Law No. (14) of 2018 Concerning the Central Bank and the Regulation of Financial Institutions and Activities, with which this Court has had to engage in previous cases, and the Rulebook of the Central Bank of the UAE. It is also reflected in Code of Ethics and Standards of the well-respected Accounting and Auditing Organisation for Islamic Financial Institutions, which has been based in Bahrain since 1991 and whose purpose is to maintain and promote Sharia standards for Islamic financial institutions and the banking and financial services industry: see, for example, the Code of Ethics, Part B, Amanah, Resources: Information. The Guiding Principles on Corporate Governance of Islamic Financial Services Board, established by a consortium of Central Banks and the Islamic Development Bank, state that a Sharia Supervisory Board shall be responsible for (*inter alia*) compliance with confidentiality obligations. No doubt English regulations and guidance likewise require financial professionals to respect their clients' confidentiality, but not on the basis of religious and ethical requirements.

38. The Trustee has put before me advice from Habib Al Mulla and Partners, that: "*In the United Arab Emirates, in the local (or 'onshore') courts, family financial matters – such as those relating to the estates of dead persons – are typically heard in the inheritance court, which conducts hearings in private with no external person allowed*", although in disputed cases, which fall under the jurisdiction of the onshore Commercial Court, hearings are held in public. This accords with my own understanding that Judges may conduct proceedings privately to safeguard the parties' privacy, not least if public proceedings would cause harm (*darar*) greater than the benefit of transparency or confidential information (including financial information) is to be discussed.

39. These principles are not absolute: they may be overridden by legal requirements (including where a witness giving evidence on oath is required to give information that would otherwise be confidential), or by the demands of the public interest. But they are fundamental principles which this Court is entitled to take into account, and in my judgment should take into account on an application under section 98 of the Courts etc Regulations for a hearing in private.

The overriding objective of the ADGM CPR

40. Secondly, the Preliminary Application is made under the ADGM CPR, and the Directions Application will also be made under them. ADGM CPR r.2(2) provides that the "*overriding objective of* [the ADGM CPR] *is to secure that the system of civil justice in the ADGM Courts is accessible, fair and efficient*", and ADGM CPR r.2(3) requires that the Court must apply the ADGM CPR "*with a view to securing that the Court is accessible, fair and efficient*". In its express requirement for accessibility, the regime in the ADGM differs from that in England.

41. In conducting the Directions Application, the Court will therefore be required to take proper steps to ensure that the Court is accessible to NX. This requires it to ensure that she is legally entitled to apply for directions, but that realistically she will be in a position to do so. In his evidence, Mr Stewart expresses concern that the risk of publicity "*could prejudice her ability to progress these proceedings and, potentially, deprive her of the right to seek the Court's guidance on important issues*". I have no reason to doubt that evidence: NX is under duties of confidentiality, and she will have to consider these before and when making any application, bearing in mind that she would be bound candidly to put before the Court sensitive and confidential information. As Lord Oliver said in *Marley v Mutual Security Merchant Bank and Trust Co Ltd* [1991] 3 All ER 198: "[When a trustee applies to the Court for directions] *it is of the highest importance that the court should be put into possession of all the material necessary to enable that discretion to be exercised. ...The court ought not to be asked to act upon incomplete information and, if it is so asked, the proper course is either to dismiss the application or to adjourn it until full and proper information is provided*". Any directions or guidance that the Court gave on the basis of misleading or incomplete information from NX would likely not provide her with the protection to which she is entitled.

The objectives of the ADGM

42. Thirdly, the Courts etc Regulations were made by the Board of Directors under article 6 of the Founding Law, which provides that the Board shall "*lay down the general strategies and policies for the Global Market and follow up on their implementation to achieve the objectives of the Global Market*", and in particular shall (*inter alia*) "[i]*ssue the Global Market Regulations relating to the organisation of its work and the achievement of its objectives*". The objectives are set out in article 3 of the Founding Law: "*The objectives of the Global Market are to promote the* [Emirate of Abu Dhabi] *as a global financial center, to develop the economy of the Emirate and make it an attractive environment for financial investments and an effective contributor to the international financial services industry*". Mr Brownbill submits that these objectives are of particular significance to the Court's approach to decisions under section 98(3) of the Courts etc Regulations.

43. Mr Ham, whose experience in these matters is widely recognised, endorsed this point, observing that "*there is great force in the point made by the Trustee about the general objectives of the ADGM, namely, to promote the Emirate as a global financial centre. This has been an important factor in other offshore financial centres, and it is notable that a decision applying the principle of open justice in the Bahamas was promptly reversed by legislation. Settlors and beneficiaries set great store by confidentiality and application of the open justice principle would be likely to restrict the growth of the ADGM as a centre for offshore trusts*".

The Bahamas

44. With regard to The Bahamas, Mr Ham was referring to the *Banks and Trust Companies Regulation (Amendment) (No 2) Act 2025*, which concerns civil proceedings in respect of a trust or trust instrument. It provides that: (i) in the absence of objection, such proceedings shall be held in private, and (ii) if there is objection, the proceedings will be held in private only if the

Court is satisfied that the interests of justice so require, and in deciding this, the Court "*must consider the following matters as are relevant in the particular circumstances – (i) the open justice principle; (ii) the interests of public morality, the welfare of minors and the protection of private lives and property of persons affected by proceedings; (iii) the public interest, including defence, public safety or public order; (iv) the importance of confidentiality in the conduct of banking and trust matters in The Bahamas; (v) the reasons given for the objection to the proceedings being continued in private"* (section 77A).

45. This legislation was introduced in the wake of the decision of the Court of Appeal of The Bahamas in *Hammersmith-Stewart v Cromwell Trust Company Limited and ors*, SCCiv App Nos 108 and 132 of 2022, in which the Court of Appeal refused leave to appeal from the refusal of the Judge of first instance of an application for a private hearing. She had adopted the rigorous approach of the English Courts that a private hearing should be directed only when it is necessary in the interests of justice, and that view of the law was endorsed by the Court of Appeal. The leading judgment was given by The Hon. Sir Michael Barnett P, who said (at para. 63) that "*Departure from public hearings should only be made where it is necessary in the interest of justice that it be made"*; and who went on to explain (at para. 64) that, while he was "*aware of the importance of the financial services industry in The Bahamas and the importance of confidentiality in the financial services*", this did not "*lessen the importance of the open justice principle which exist at common law and is enshrined in our Constitution*". The *Hammersmith-Stewart* proceedings were hostile and contested, and in itself the decision to conduct them in public was perhaps unremarkable. However that might be, it seems clear that the reasoning of the judgments caused concern that led to legislative amendment.

Other common law jurisdictions

46. The question whether application for directions by trustees should be heard in open court or in private has been considered in other common law courts in jurisdictions in which financial services are encouraged. Mr Brownbill submitted that other courts take a distinctly more generous view than England about what justifies a hearing in private, citing authority from Jersey, Bermuda, the Cayman Islands and The Bahamas. This jurisprudence does not seem to me directly relevant to deciding the proper approach in this jurisdiction, in that the ADGM English Law Regulations require the Courts here to adopt the English common law unless the Regulations themselves permit a different or modified approach. However, I find some comfort for my decision in judgments from these other jurisdictions.

47. The leading authority in Jersey is the decision in *Jersey Evening Post v Al Thani and ors* [2002] JLR 542. The Court's starting point was that the principle of open justice, as expounded in the speeches in the *Scott* case, form part of the law of Jersey. It then considered whether the Court was entitled to adopt a different approach when dealing with a trustee's application for directions. It adopted the broad (and sometimes overlapping) categorisation of such applications (originally formulated by Robert Walker J in an unreported decision, and cited by Hart J in *Public Trustee v Cooper* [2001] 1 WTLR 901): (a) applications where the issue is whether some proposed course of action is within the trustee's powers, and which is ultimately a question of construction of the trust instrument or a statute or both; (b) applications where the

issue is whether a proposed course of action would be a proper exercise of the trustee's powers, where the powers are not in doubt but the momentous nature of the decision leads the trustee to seek the Court's blessing; (c) applications in which the trustee's power is surrendered to the Court; and (d) applications where the trustee's actions are attacked as being outside, or an improper exercise of, his powers. Having identified these categories, and having observed that the statutory power to seek directions had "*been employed to the great advantage of settlors, trustees and beneficiaries since the Trusts Law came into force*", the Jersey Court said (at para. 28):

> "[W]e *think it can be said that the courts of this jurisdiction have accorded greater importance to the need to respect the confidentiality of private trusts than has been the case elsewhere. It has certainly been the practice in Jersey to sit in private to hear applications falling within categories (b) and (c); but it has been the practice occasionally to sit in private to hear cases falling within category* [(a)]. *The underlying rationale is a desire not to undermine the confidence which lies at the root of the relationship between a trustee and the beneficiaries, particularly of a discretionary trust. In striking the balance between the principle of open justice and the rights of individuals to respect for the confidentiality of their private business arrangements, the Court must have regard to the purpose of the Article 47 jurisdiction* [under which the Court might give trustees directions about the administration of a trust]. *Its broad purpose is to assist those concerned with the administration of trusts to resolve their differences and to seek judicial guidance or direction in an orderly context but in a relatively informal and flexible manner. When hostile litigation is being conducted, it must naturally be conducted in public in the ordinary course of events. But where the Court is sitting administratively, or is exercising a quasi-parental jurisdiction to protect the interests of all the beneficiaries of a trust, the court should generally sit in private"*.

48. The approach of the Courts in Bermuda is illustrated by the decision in *Re G Trusts* [2017] SC (Bda) 98 Civ. The proceedings were brought by trustees who sought: (i) guidance about whether the Children Act 1998 (Bermuda) would apply to trusts in specified circumstances, (ii) an order disapplying the rule against perpetuities and (iii) an order authorising the trustees to execute an appointment. The Court said this: "*The present proceedings concern the internal administration of a private trust into which the general public have no right to pry. Persons administering, interested in or settling Bermuda trusts should rest assured that this Court's firmly established practice of making confidentiality orders in appropriate cases, which is merely designed to enable law-abiding citizens to peaceably enjoy their actual and contingent property rights, has a venerable legal basis. The existing practice will continue to be applied in appropriate cases such as the present"* (para. 11).

49. Thirdly, I mention the similar approach taken in the Cayman Islands only because in a trenchant judgment in *Re A Trusts, AA v BB and ors* [2025] CIGC (FSD) 16, Hon. Justice David Doyle contrasted what he called the "*English tide (some may describe it as a potential tsunami) of open justice"* with the position in *"jurisdictions … which encourage individuals to set up private trusts on the expectation that their privacy expectations will be respected*" and where "*it is …*

important, so far as the law and circumstances permit, to protect that privacy" (at paras. 49, and 60).

50. I should balance these authorities cited by Mr Brownbill with a brief reference to the decision of the Isle of Man High Court in the *Re Delphi Trust Limited* case, to which Mr Ham drew my attention and to which I have already referred. In this case, a major charitable beneficiary had expressed concerns that publicity might have adverse consequences both internally, in that it might lead to competition about the allocation of funds, and externally in that it might discourage donations. Deemster Doyle (who later sat in the Cayman Islands in the *Re A Trusts, AA v BB and ors* case) comprehensively reviewed case law in other offshore common law jurisdictions, and he decided that hearing should be in open court: in the particular case, the interests of the applicant could be sufficiently protected by using definitions in a confidential key in the hearing, redacting judgments and restricting access to the court file.

51. Overall, however, the picture is that these offshore jurisdictions with recognised financial services industries are sympathetic to protecting confidential financial information and to enabling trustees to seek the Court's directions without compromising it.

General conclusions

52. I do not accept the contention in Mr Brownbill's Skeleton Argument that, where an application falls clearly "*within* [the] *scope of the court's discretion, … it should be exercised in favour of the applicant in the absence of any reason not to do so*"; nor his oral submission that section 98 of the Courts etc Regulations has displaced "*the common law open justice principle"* and that "*it has been essentially replaced by a discretion in the Court exercisable in any one of the seven cases"* in section 98(3). Certainly, where one (or more) of the seven conditions is satisfied, the Court may be entitled in a proper case to conduct a private hearing, but the principle of open justice and the purposes of it that Lady Hale identified are important considerations in its exercise. I add that, although Lord Neuberger spoke of the importance of open justice in a democratic society, I do not consider the principle to be an attribute of a particular form of governance. In any case, I heard submissions only about the proper approach to uncontentious applications by trustees for directions, and I say nothing about the other cases where section 98(3) of the Courts etc Regulations applies.

53. Coming then to hearings involving uncontentious matters arising from trustees' applications about the administration of trusts, I consider that the three points that I have discussed at paragraphs 35 to 43 above, taken together, justify this Court in adopting a less restrictive approach to hearing such matters in private than that which appears to prevail in England after the *MN v OP and ors* decision.

54. The difference must not be over-stated: the question whether a hearing should be conducted in public or in private will always be specific to the facts of the particular case, and the starting point remains that cases are heard in open court, even if they fall into one of the categories of cases set out in section 98(3) of the Courts etc Regulations. There must be something more to warrant a private hearing. However, where the matter is uncontentious and a trustee, a settlor,

a beneficiary or another properly interested person objects to a public hearing on the basis of a reasonable expectation and wish that personal financial information should be protected, in my judgment the Court should generally give directions for the conduct of the proceedings which will protect their confidentiality; and if this requires that the matter be held in private, a direction for this will generally be justified.

55. This is so particularly in cases that fall within the second and third of Robert Walker J's categories: applications where the issue is whether a proposed course of action would be a proper exercise of the trustee's powers (the powers being clear but the decision being especially important); and applications in which the Court is asked to exercise the trustee's powers. It will often be the case in his first category: applications where the issue is whether a proposed course of action would be within the trustee's powers, and which would essentially turn on the proper interpretation of a trust instrument or legislation or both.

Specific conclusions

56. As it appears to me from Mr Stewart's evidence, it is difficult to fit the Directions Application neatly into any of Robert Walker J's categories. It will involve questions of the kind described in the second category, but it is also likely to have characteristics of the first category. However, categorisation is less important than the evidence about the particular case. As Moore-Bick LJ observed (see para. 21 above), it can be difficult to articulate precisely the likely impact of an invasion of privacy, not least upon minors, but I can safely conclude that: (i) a proper presentation of the Directions Application will involve disclosure about the personal affairs of and the relationship between AA and BB, and matters relating to CC and DD, as well as the circumstances in which the EYZ Trust was created; (ii) given the profile of the beneficiaries, public proceedings will likely attract media attention; (iii) NX's and the beneficiaries' privacy will likely be considerably compromised by media interest unless protected; (iv) if their privacy is not protected, the purpose of the proceedings might be compromised in that the Trustee will likely face difficulty deciding what information she must disclose in order to fulfil her obligations to the Court without making unnecessary disclosure of confidential matters; and, in these circumstances, (v) the integrity of the proceedings might be compromised.

57. I see no evidence of a particular countervailing reason for hearing the Directions Application in public. I have considered whether the Directions Application should be heard in public on the basis that the interests of the settlor, NX and the beneficiaries can be sufficiently protected by using codes and formulae at the hearing to disguise sensitive information. I do not consider that a realistic solution: it would be extremely difficult, if not practically impossible, to engage in the useful exchanges necessary to conduct an effective hearing of this kind without disclosing matters sufficient to identify the beneficiaries by what Mr Brownbill termed "*reverse engineering*".

58. I therefore conclude that, as things stand and unless the position changes materially, the Directions Application should be conducted in private; that the names of the Claimant and Defendants should be anonymised; and that, notwithstanding ADGM CPR r.14(2), only the

Claimant and the Defendants should be permitted to obtain a copy of any document from the Court's records.

59. I should be grateful if NX's Counsel would draft an Order giving effect to this Judgment, seek Mr Ham's agreement to it, and submit it to the Court.

Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
28 November 2025