

Article

Court of Appeal Affirms That Confidentiality Orders Should Be Rare

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The issue of confidentiality orders, and when they will be granted, is a frequent topic particularly in the context of trust law. The approach of the Bermuda courts in granting confidentiality orders in trust matters is often contrasted with the stricter approach currently taken by the English Courts.

In *Director for Public Prosecutions -v- Cindy Clarke* [2019] CA (Bda) 8 Civ, 21 June 2019, the Bermuda Court of Appeal considered the proper approach to confidentiality orders in judicial review. There has been a concern in Bermuda that the generous approach of the Bermuda courts towards confidentiality orders in trust actions has spilled over into ordinary civil litigation. In *DPP -v- Cindy Clarke*, which concerned a judicial review of internal disciplinary proceedings within the Department of Public Prosecutions, the Bermuda Supreme Court had granted confidentiality orders because the internal proceedings had been private proceedings. The Court of Appeal strongly disagreed with this logic and ordered that the appeal should in any event be public. In doing so, the Bermuda Court of Appeal followed and endorsed English case law which emphasizes the importance of open justice.

This ruling is a timely reminder that, while different rules may and should apply in the Bermuda trust context, in ordinary litigation confidentiality orders should be rare birds.

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