



**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CAUSE NOS. ATT 30, 31, 32 and 33 of 2022 (DDJ)**

**IN THE MATTER OF THE LEGAL PRACTITIONERS ACT (2022 REVISION)**

**AND IN THE MATTER OF APPLICATIONS FOR THE LIMITED ADMISSION OF DAVID STEWART MUMFORD QC AS AN ATTORNEY-AT-LAW OF THE CAYMAN ISLANDS IN GRAND COURT FINANCIAL SERVICES DIVISION CAUSE NOS: FSD 262, 268, 269 AND 270 OF 2021 (DDJ)**

**Appearances:** Mr David Lewis-Hall of Appleby (Cayman) Limited for the Applicant David Stewart Mumford QC

**Before:** The Hon. Justice David Doyle

**Heard:** 9 March 2022

**Ex tempore**

**Judgment delivered:** 9 March 2022

**Draft transcript**

**of ex tempore Judgment**

**circulated:** 9 March 2022

**Transcript of ex tempore**

**Judgment approved:** 14 March 2022

**HEADNOTE**

*Determination of Limited Admission Applications – relevant law and procedure – importance of strong and independent local Bar*



## **JUDGMENT**

### **Introduction**

1. I shall now deliver a judgment in respect of ATT Nos. 30, 31, 32 and 33 of 2022. I have considered the hearing bundle including the affidavits in support of the applications for limited admission of David Stewart Mumford QC in respect of FSD Cause Nos. 262, 268, 269 and 270 of 2021 (DDJ) (the “Applications”). Applications for limited admission are not mere formalities or rubber-stamping exercises. Proper respect must be given to the local jurisdiction and the strict requirements that must be satisfied before such an application can be considered and, if appropriate, granted.

### **Summary**

2. For the reasons stated in this judgment I have decided to grant the Applications.

### **The relevant law and procedure**

3. Of late I have had to deal with an increasing number of applications for limited admission in respect of the high quality complex financial services litigation which has been entered into my docket of cases to be determined. The applications I have dealt with today were in good order. Some of the other applications have not always been in perfect order prior to being submitted to me for consideration. I hope it will help future applicants and their attorneys if, as a reminder, I take this opportunity to set out the relevant law and procedure within which such applications are to be presented and determined.
4. The law and procedure which follows is set out from my perspective of dealing with applications for limited admission by leading counsel in respect of proceedings within the Financial Services Division. In respect of applications for the limited admission of junior counsel, reference should be made to Segal J’s judgments in *Application of Mr Ciaran Keller for Limited Admission as an Attorney* (unreported 1 April 2021) and



*Application of Luka Krsljanin for Limited Admission as an Attorney* (unreported 1 March 2022). Limited admission of junior counsel will normally only be granted in “unusual and special circumstances”. Segal J concluded in *Krsljanin* at paragraph 23 that “*the limited capacity of the local law firm concerned is not of itself sufficient to justify the limited admission of junior counsel.*” Moreover, as Segal J made clear the size and complexity of the proceedings will not automatically result in limited admission applications for junior counsel being granted (see paragraph 24 of the judgment).

5. In respect of the relevant law and procedure, I have considered section 4 of the Legal Practitioners Act (2022 Revision) (“Section 4”), Practice Direction 4 of 2012 (“Practice Direction”), the judgment of Acting Justice Foster (as he then was) in *In re Limited Admission* [2009 CILR 41], the judgment of Chief Justice Smellie in *In re Limited Admission* [2015 (2) CILR 338] and Segal J’s judgment in *Palladyne International Asset Management BV v Upper Brook* (unreported 26 September 2016) and my judgment (transcript approved 29 September 2021) in ATT 114, 115 and 116 of 2021 *Limited Admission of Mr John Wardell QC*. In that judgment I referred to the various procedural requirements and added:

“11. *I again underline that applications for limited admission, even for eminent QCs, should not be regarded as simple, straightforward rubber-stamping operations and will not be granted as night follows day.*”

#### *Section 4*

6. Section 4, insofar as it is material, provides that a judge shall have the power to admit to practise as an attorney-at-law, for the purpose of any specified suit or matter in regard to which the person so admitted has been instructed by an attorney-at-law in the Islands, any person who possesses the prescribed qualification, if such person has come or intends to come to the Islands for the purpose of appearing, acting or advising in that suit or matter, and an application for such admission is made in such manner as the judge may think fit.



7. The prescribed qualification includes any person who:
- (a) (i) is entitled to practise at the Bar of England and Wales or the Bar of Northern Ireland; and
    - (ii) having received a certificate of call from either of those Bars, has either –
      - (A) served twelve months pupillage in England, Wales or Northern Ireland; or
      - (B) served the term of articles in the Islands required by Schedule 3 of the *Legal Practitioners (Students) Regulations (2018 Revision)*;
    - (iii) is a member of the Faculty of Advocates of Scotland or a solicitor of the Supreme Court of Judicature of England, Scotland or Northern Ireland;
    - (iv) is an attorney-at-law of the Supreme Court of Jamaica; or
    - (v) is a Writer to the Signet of Scotland or a solicitor admitted to practise in Scotland; or
  - (b) satisfies a judge that that person is entitled to practise in any court of any of the Commonwealth and possesses a qualification comparable as to standard law, practice and procedure with those specified in paragraph (a); or
  - (c) is qualified to practice as an attorney-at-law under regulations made under section 20.

#### *The Practice Direction*

8. The Practice Direction was made in light of expressed stated concerns that applications for limited admission had “*become simply a formality and that the Judge concerned is not usually being provided with the information necessary to enable a proper exercise of discretion as the Law requires...*”
9. The Practice Direction imposes, amongst others, the following requirements:
- (1) The application and supporting affidavits must be filed and delivered to the judge who is to hear the application not less than three (3) business days before the hearing of the application. If necessary the affidavit of the applicant may, for the purposes of the hearing of the application, be in unsworn final draft form if the applicant is not present in the Islands



at the time provided an undertaking is given to the Court at the hearing that the affidavit will be sworn as soon as possible after the applicant's arrival in the Islands;

- (2) The application will not be listed to be heard less than one business day prior to the hearing of the specified suit or matter in which it is proposed that the applicant should appear if that is the purpose for which the applicant's admission is sought;
- (3) The applicant's affidavit should contain and exhibit:
  - (a) details of the qualifications and copies;
  - (b) confirmation that the applicant is not and has not been the subject of criminal convictions or proceedings other than in respect of minor traffic offences;
  - (c) confirmation that the applicant is not and has not been the subject of proceedings relating to professional misconduct and exhibit appropriately certified certificate of good standing or equivalent;
  - (d) confirmation that the applicant has been instructed by an identified Cayman Islands attorney-at-law to come to the Islands for the purpose of appearing, acting or advising in the specified suit or matter, and that the applicant has come or intends to come to the Islands for one or more of these purposes;
- (4) The attorney's affidavit should contain and exhibit:
  - (a) confirmation that it is the wish of the relevant client that the applicant should be instructed on the client's behalf to come to the Islands for the relevant purposes;



- (b) confirmation that the applicant has been so instructed;
  - (c) confirmation that the applicant has been granted the necessary work permit or other immigration authorisation which should be exhibited;
  - (d) unless the judge hearing the application is already very familiar with the specified suit or matter concerned, a sufficiently detailed summary thereof to enable the judge to exercise his discretion in all the circumstances as to whether or not to admit the applicant for the relevant purposes. For future reference and from my perspective the concise grounds of the application for limited admission should ideally be set out in the application itself and the detail can be provided in the supporting affidavits and, depending on the circumstances of the case, the relevant pleadings exhibited or at least a summary of them provided. It would also be useful if in the evidence reference was made to forthcoming hearing dates, whether other parties to the proceedings have been given notice of the application, whether other parties have attorneys who benefit from limited admission and any other facts relevant to the exercise of the judge's discretion. The applicant should not assume that a busy judge with a heavy docket and multiple hearings in the calendar will always have at his fingertips detailed knowledge of all of the cases in his docket;
  - (e) if the applicant is not leading counsel or the equivalent but is junior counsel or a solicitor or the equivalent, sufficient explanation as to why it is necessary and appropriate for the applicant to come to the Islands for the relevant purpose;
- (5) Subject to (6) below, the limited admission of junior counsel, solicitors or the equivalent will not normally be granted except in unusual and special circumstances which must be fully set out in the attorney's



affidavit. Smellie CJ in *In re Limited Admission* 2015 (2) CILR 338 at paragraph 5 stated:

*“This is for the well-recognized policy and practical reasons that the services of attorneys-at-law of equivalent experience will be readily available from amongst the local profession”;*

- (6) The judge may, in his discretion in the particular circumstances, himself direct that a person qualified shall apply for limited admission for the relevant purposes. In that case, with the exception of certain requirements (including the need for the applicant’s affidavit and attorney’s affidavit to include certain information especially as to qualification, lack of criminal convictions and proceedings relating to professional misconduct and the existence of a work permit or other immigration authorisation; the signing of the Register and compliance with duties and obligations) the judge may dispense with compliance with certain other provisions of the Practice Direction as he may think fit;
- (7) If granted limited admission the applicant is required to sign the Register of Admitted Attorneys either at the time of the application or if the application has been heard prior to the applicant having come to the Islands, as soon as practicable after his arrival in the Islands and in any event before any appearance in the specified suit or matter in which it is proposed the applicant should appear. In certain cases especially where travel is impracticable undertakings may be given to be bound to professional duties and obligations and professional discipline requirements from the date of admission and to sign the Register upon arrival in the Cayman Islands;
- (8) By signing the Register of Admitted Attorneys the applicant is deemed to have accepted and agreed to act in accordance and to comply with all of the professional duties and obligations and to be subject to the



professional discipline of a generally admitted attorney-at-law and an officer of the court.

*The authorities in respect of Section 4*

10. The authorities (in particular Smellie CJ's leading judgment in *In re Limited Admission* 2015 (2) CILR 338) indicate that Section 4 is to be construed so as to protect the legal profession of the Cayman Islands from undue overseas competition (not only for the sake of the local profession but also in the public interest) and in determining whether to grant limited admission the judge should consider all the circumstances of the case, including the following factors:

- (1) the availability of local lawyers;
- (2) the importance of protecting and promoting the growth and development of the local Bar and to prevent outsourcing of legal work (save in exceptional cases) that could be done on Island;
- (3) the need for the parties to have adequate legal representation, taking into account the nature and complexity of the case;
- (4) the expertise and experience of counsel seeking admission;
- (5) whether the work was to be conducted in and from the Cayman Islands. Section 4 anticipates that an attorney seeking limited admission will "*come to the Islands*";
- (6) the applicant's involvement in the conduct of the litigation;
- (7) the public interest in a strong and viable body of local legal practitioners available to meet the public's need for legal advice and representation. This is to promote the rule of law and to ensure effective access to justice. As Lord Neurberger stated in *The Future of the Bar* (lecture 20 June 2014) at paragraph

5 “... laws are valueless unless they are also a practical reality, and therefore the rule of law also requires that all citizens have access to justice, and by that I mean effective access to competent legal advice and effective access to competent legal representation.”

Lady Arden powerfully reinforced those extra-judicial observations when in *Layne v Attorney General of Grenada* [2019] UKPC 11 at paragraph 44 she stated:

“...Attorneys play an important role in the modern democratic state in upholding the rule of law ... In any society, the rule of law represents a fundamental value. And there must be no gap between the theory and the reality of the rule of law. This is achieved in no small part by the work of an independent Bar, who will fight fearlessly before the courts for the rights of even the most unpopular persons.”; and

- (8) taking into account Order 62 rule 18 of the Grand Court Rules, that it would be inappropriate for suitably qualified foreign lawyers to be granted limited admission as Cayman attorneys-at-law simply so that any work in relation to the matter which they will or propose to carry out in their own country may be recoverable on a taxation of costs in litigation in this jurisdiction.

The court must be properly satisfied that any application for limited admission complies with Section 4 and the Direction and that it is appropriate in all the circumstances to grant such limited admission.

11. Acting Justice Foster in *In re Limited Admission* [2009 CILR 41] at paragraph 7 referred to the exercise of the court’s discretion whether to grant limited admission and stated:

“While not in any way intending to suggest an exhaustive list, such circumstances may include the difficulty or complexity of the matter (whether on its facts or in the legal issues involved), the amount at stake in the matter ...”.



12. At paragraph 8 Acting Justice Foster added:

*“It would all depend on the particular circumstances.”*

13. Acting Justice Foster at paragraph 12 stated:

*“The proper approach in respect of limited admissions of qualified foreign lawyers, in my opinion, is for the court to consider any applications for limited admission in light of the express provisions of s.4, then assuming they are complied with, to exercise its discretion on all the relevant circumstances in the matter ...”.*

14. Chief Justice Smellie in *In re Limited Admission* 2015 (2) CILR 338 at paragraph 25 referred to the Legal Practitioners Act and the Practice Direction and added that the jurisdiction would *“regard more liberally a litigant’s wish to instruct leading counsel from overseas [but] a different view must be taken of a desire to bring in junior counsel and solicitors from overseas”*.

15. Segal J in the *Krsljanin* case at paragraph 21 stated:

*“...in some cases, there will be a genuine issue as to whether, in view of the complexities and challenges of a particular piece of litigation and the resources and skill set of the available Cayman Islands attorneys, the local Bar can be said to provide, or have readily available, a sufficient number of suitably qualified and experienced attorneys to meet the party’s reasonable needs for legal advice and advocacy. In the case of silks, the Court will readily accept that there is a justified need to look to and instruct Leading Counsel in London because of their specialist skills in advocacy and expertise in particular areas of the law and the limited number of similarly senior and specialised advocates based in the Islands.”*

16. Segal J’s judgment in *Palladyne International Asset Management BV v Upper Brook* (unreported 26 September 2016) concerned three issues. Firstly whether the court had



jurisdiction to determine limited admission applications when the judge is located outside the Cayman Islands (the “Jurisdiction Issue”). Secondly, certain arguments concerning the application being premature since they should only be made in advance of a hearing at which the attendance of Queen’s Counsel can properly be justified (the “Limited Admission Issue”). Thirdly, the need for the applicant QC to sign the Register of Admitted Attorneys before appearing (the “Signing Requirement Point”). Segal J at paragraph 7 (b) of his judgment stated:

*“as regards the Jurisdiction Issue, the better view is that applications for limited admissions cannot be determined by a Judge sitting outside Cayman (although there is some room for argument as to whether on a purposive construction of the applicable rules this is or should be the result and there have been a number of examples in practice of such applications being dealt with by a Judge sitting outside Cayman where there has been no objections raised by other parties to the proceedings).”*

17. Segal J at paragraph 7(c) stated:

*“as regards the Signing Requirement Point, while Practice Direction No.4 of 2012 does on its face stipulate that a foreign lawyer who is granted limited admission is unable to participate in any hearing without signing and until after they have signed the Register, it seems to me that it could be sufficient and acceptable (depending on the circumstances) for the foreign lawyer to participate in a hearing before having signed the Register provided that they had given an undertaking to travel to Cayman and sign the Register within a defined and relatively short period of time and agreed immediately to be subject to paragraph 10 of the Practice Direction and be bound by the relevant professional duties and obligations and be subject to professional discipline as set out therein.”*



18. Segal J had not seen the limited admission application and could not therefore express a view on their merits or decide the Limited Admission Issue.

#### *Notice of applications*

19. In *Palladyne* there was a complaint of lack of notice. It is clear from paragraph 3 of the judgment that Segal J had “*assumed that notice of the application had been or would be given to the Defendant’s attorneys.*” It appeared that the Defendant’s attorney wished time to make their own application. Segal J at paragraph 11(c) stated:

*“...I do consider that it is important that both firms [Walkers and Appleby] notify each other of and where possible co-ordinate the procedural timetable for the making of such applications so as to allow the efficient conduct of the main proceedings.”*

It would normally be good practice for notice of the limited admission application to be given to the other parties to the relevant proceedings. Although not expressly provided for in Section 4 or the Practice Direction fairness and natural justice are best served, and the risk of unnecessary adjournments or subsequent challenges reduced, if the applicant gives notice of the application for limited admission to the other parties engaged in the proceedings.

#### *Proceedings to be conducted mainly in and from the Cayman Islands*

20. Moreover the chances of a successful outcome of an application for limited admission should be significantly enhanced if the work in respect of the proceedings continues to be conducted mainly in and from the Cayman Islands and that local attorneys who are generally admitted remain intimately involved in the case. In such way the experience and expertise of the local Bar in high quality complex financial services litigation may be further increased and enhanced.



## **The importance of a strong and independent local Bar**

21. One of the major competitive advantages of the Cayman Islands within the offshore world is the strength of the independent local Bar (supported where appropriate and desirable by leading silks who benefit from limited admission) and a strong local court of appeal that is second to none in the offshore world. The Cayman Islands also benefit from section 107 of the Constitution which provides that:

*“The Legislature and the Cabinet shall uphold the rule of law and judicial independence, and shall ensure that adequate funds are provided to support the judicial administration in the Cayman Islands.”*

22. Wise and forward looking politicians understand the need to continue to invest in the rule of law, which is the strong and resilient backbone of the vibrant economy of the Cayman Islands and long may that continue. High quality complex financial services litigation conducted in the Cayman Islands with (where appropriate and desirable) the support of those leading counsel who benefit from limited admission working closely alongside local attorneys will assist to further strengthen the local independent Bar and contribute to the local economy, all of which is in the best interests of those living and working in the compact and close community of these wonderful Islands.

## **Determination of the Applications**

23. Having set out the relevant law and procedure and having emphasised the importance of a strong and independent local Bar, I now turn to the determination of the Applications presently before me.
24. I am satisfied in the circumstances of the Applications presently before me that the requirements of Section 4 and the Practice Direction have been duly complied with. The Applications have been filed on a timely basis and the affidavits in support contain all the necessary evidence.



25. The grounds of the Applications are briefly touched upon at paragraph 8 of the attorney's affidavits in support. It is stated as follows:

*“In short, the Winding Up Proceedings involve three interrelated winding up petitions in respect of three Cayman investment funds. The Proceedings involve substantial sums of money, running to may (sic) hundreds of millions of dollars, and complex issues of both fact and law. There are multi-jurisdictional elements to both the factual and legal issues in these proceedings.”*

26. I am familiar with the nature and complexity and the apparent amounts at stake in the proceedings before the court in FSD 262, 268, 269 and 270 of 2021 (DDJ) and recall that limited admission has been granted to other Queen's Counsel for other parties involved in these proceedings. In preparation for this hearing today I refreshed my mind by reading my judgment delivered on 8 September 2021 in respect of FSD 262 of 2021 (DDJ) which determined the ex parte application for the appointment of receivers of shares in the Cayman Islands registered funds and also my judgment delivered on 17 September 2021 in respect of FSD 268, 269 and 270 of 2021 (DDJ) which determined the ex parte application for the appointment of provisional liquidators over the three related Cayman Island registered funds. I also note that the applications to discharge the appointment of the provisional liquidators are due to be heard later this month, with the hearing scheduled to start on 23 March 2022.
27. I have considered the various relevant factors including the nature and complexity of the case and the amounts of money involved.
28. There can be no doubt in respect of the applicant QC's qualifications, good character, professional conduct, expertise and experience. Mr Mumford has also been involved in the connected proceedings in the British Virgin Islands. Mr Mumford has obtained the necessary temporary work permits. The local attorneys will remain involved and the case will be primarily conducted from the Cayman Islands. I note that the client wishes to be advised and represented by the applicant QC alongside local attorneys.



29. I had previously granted John Wardell QC limited admission but it transpires that Mr Wardell now has insufficient availability and it is intended that Mr Mumford should act when Mr Wardell is unavailable. It is not intended that there be any duplication. For example I would not expect to see Mr Wardell and Mr Mumford appearing together in respect of these proceedings. Mr Mumford will in effect act as substitute now that it transpires that Mr Wardell has insufficient availability.
30. The attorney's affidavits in support (at paragraph 9 (b)) make the point that in view of Mr Wardell's unavailability and given Mr Mumford QC's "*particular expertise and combined with his intimate working knowledge of the facts and issues in these Proceedings, his instruction is more proportionate and suitable than attempting to involve new local leading counsel in these Proceedings. The Plaintiff/Petitioners do not therefore consider that suitable representation is available to them from the local Bar.*"
31. I am satisfied that it is appropriate in the circumstances of this case to exercise my discretion in favour of granting the Applications and I grant them for the reasons stated in this judgment.
32. The applicant is to sign the register of admitted attorneys as soon as is practicable and is of course required to comply with all the professional duties and obligations and be subject to the professional discipline of a generally admitted attorney at law and an officer of this court and I note the applicant's undertakings in that respect.
33. I note also that the applicant will come to the Islands in due course in respect of these proceedings and when he manages to do that he will, of course, be made very welcome as indeed will the other overseas counsel engaged in these proceedings.
34. That completes my judgment on the Applications.

35. I will now sign the register to formally record that the Applications have been duly granted.

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**THE HON. JUSTICE DAVID DOYLE**  
**JUDGE OF THE GRAND COURT**