

Removal of Protectors - In the Matter of the A Trust [2012] JRC 169A

Insights - 25/04/2013

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Introduction

This case concerned the application by certain beneficiaries of two Jersey trusts for orders removing the protector of both trusts from office.

Although the case was heard *in camera*, because of the scarcity of reported judgments concerning the role of trust protectors and in particular concerning the exercise of the Court's jurisdiction to remove protectors from office the Court authorised publication of edited extracts from its judgment.

Concerns about the protector's conduct

Due to the need to preserve anonymity, the published judgment contains relatively little discussion of the factual background.

However, it is clear that the Court considered that relations between the protector and the applicant beneficiaries had irretrievably broken down and that the majority of the other adult beneficiaries also wanted the protector to go.

The Court found that the protector had himself contributed to this state of affairs, as a result of his view of himself as the living guardian and enforcer of the settlors' wishes. The Court considered such a view of the role of a protector to be misconceived, in particular stating that:

"It can be no part of the function of a protector with limited powers of the kind conferred

in this case to ensure that a settlor's wishes are carried out any more than it is open to a settlor himself to insist on them being carried out. A trustee's duty as regards a letter of wishes is no more than to have due regard to such matters without any obligation to follow them. And a protector's duty can, correspondingly, be no higher than to do his best to see that trustees have due regard to the settlor's wishes (in whatever form they may have been imparted): from the moment of his acceptance of the office of protector his paramount duty is to the beneficiaries of the trust".

(Although the judgment is only an extract, we note that in both parts of the protector's evidence the court reproduced in coming to its "*living guardian and enforcer*" conclusion the protector had not actually claimed that the safeguarding the execution of the settlor's wishes was his only role and his evidence does expressly state that he had a duty to safeguard the beneficiaries' interests).

Decision

The Court accepted that it has jurisdiction to remove a protector. This jurisdiction flows from the fiduciary nature of a protector's office, the guiding principles being akin to those applicable to the removal of trustees. In that regard, the Court confirmed the oft-stated principle that due the variety of different factual scenarios that can arise, it is not possible to lay down any more definite rule than that the Court's main guide must be the welfare of the beneficiaries. In doing so, the Court affirmed the previous authorities that friction or hostility is not itself a reason for removal, but if it appears that continuance in office would be detrimental to the execution of the trusts, even if for no other reason than the human failings of the parties whose relationship has broken down, then the Court might think it proper to remove the trustee (or in this case protector) if he or she refuses to resign. The Court stated, however, that this was not a jurisdiction to be exercised lightly.

In this case, the Court considered that the role in which the protector had cast himself (as discussed above) led him to insist on playing an overactive part in the management of the trusts in a way which was incompatible with his position. It also criticised his reluctance to recognise the potential jeopardy to the trusts created by his over-zealous involvement and his acquiescence of the trustee investing the cash proceeds of a substantial investment portfolio in a bank which was part of the same group as the trustee.

The Court also found that relations had irretrievably broken down between the protector and most of the adult beneficiaries. The concluded that this state of affairs was seriously inimical to the proper administration of the trusts, and that although he had been acting *bona fides* at all times, the only viable solution was for the protector to cease to hold office.

Comment

This case highlights the complex relationships commonly arising in trusts - particularly where an

office holder of the trust has strong ties of loyalty to a settlor. The Court confirmed that, as with trustees, the paramount duty of a protector is to the beneficiaries of the trust, although it did concede that a protector may be under a duty to do his best to ensure the trustees have due regard to the settlor's wishes.

Of potentially more concern to institutional trustees is the inference that the trustee was automatically wrong to place assets on deposit within its own banking group.

The Court also confirmed its jurisdiction to remove a protector from office where appropriate, and provided helpful guidance on the principles to be considered in this regard.

Edward Mackereth

Partner

Oliver Passmore

Senior Associate

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Meet the Author



Edward Mackereth

Global Managing Partner

Jersey

E: edward.mackereth@ogier.com

T: [+44 1534 514320](tel:+441534514320)

Key Contacts



Steve Meiklejohn

Partner

Jersey

E: steve.meiklejohn@ogier.com

T: [+44 1534 514462](tel:+441534514462)



Nick Williams

Partner

Jersey

E: nick.williams@ogier.com

T: [+44 1534 514318](tel:+441534514318)

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