

Protector's removal: Guidance from the Jersey Courts

October 2015

Settlors establishing discretionary trusts often appoint a protector as a safeguard against errant trustees.

But who guards the guard if, after the settlor's death and disregarding evolving circumstances of the trust, a protector rigidly adheres to a (misconceived) view of his role as living enforcer of the settlor's wishes, leading to an irretrievable breakdown in relations with the beneficiaries?

Those were just the circumstances Jersey's Royal Court found existed with two discretionary trusts the subject of a recent beneficiary application (*In the Matter of the A Trust* [2012] RC).

The Judgment addresses (1) principles the Jersey courts will apply in deciding whether to remove a protector; (2) a protector's duty as regards the settlor's expression of wishes for the trust.

Protector removal

The Court held that its inherent jurisdiction to remove a protector was akin to that it had to remove trustees, and flowed from the fiduciary nature of the protector's office.

The Court emphasised that it would not exercise that jurisdiction lightly. However, it would if necessary for the welfare of the beneficiaries and ensuring competent administration of the trust.

The existence of friction/hostility between protector and beneficiaries of itself was not enough to justify removing a protector. However, removal was justified if the hostility is grounded on the mode in which the trust has been administered, and if the protector continuing in office would be detrimental to the execution of the trusts.

The Court acknowledged that removal of protectors by the Jersey courts on previous occasions had arisen from exceptional circumstances, but did not accept that such circumstances defined the limits within which the Court's jurisdiction could properly be exercised.

In explaining its decision to remove the protector, the Court identified that he had been much of the cause of the breakdown of relations and resulting hostility, which was likely to continue into the foreseeable future. The court also identified the Protector's reluctance to recognise the potential jeopardy to the trusts created by his over-zealous involvement, as well as his lack of proper oversight of the trust's administration (citing failure to question the bank-owned trustee's decision to leave substantial proceeds of liquidated asset on deposit within its own group).

Settlor's wishes

WE ARE OFFSHORE LAW

BVI | Cayman | Guernsey | Jersey | London

The Court ruled that, as with a trustee, a protector's over-arching duty is to the beneficiaries. A protector's duty as regards a settlor's letter of wishes can be no more than the trustee's, that is, to have due regard to such matters without any obligation to follow them. It followed then that a protector's duty can be no higher than to do his best to see that trustees have due regard to the settlor's wishes.

Protectors often play an integral part of a trust's administration, so this judgment provides useful guidance as to the grounds for removal if relations with a protector turn sour. Also in relation to the protector's role as proponent of the settlor's wishes, re-emphasising the primacy of the protector's duty to the beneficiaries.