

Clarity on the scope of a trust protector's responsibilities

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[ARTICLE](#)

The scope of the duties of trust protectors, and the grounds on which they may be removed from office, were not, until publication of the Royal Court of Jersey's judgment in *In the Matter of the A Trust*, [2012] JRC 169A, areas on which the Courts had given much guidance. The case, which concerned removal of a protector who saw himself as *'the living guardian and enforcer of the settlors' wishes'*, confirmed that a protector's *'paramount' duty* is to the beneficiaries of the trust and that his duty to a settlor can be *'no higher'* than to ensure that the trustees have due regard to the settlor's wishes in administering the trust.

In this instance, the Protector cast himself in a role which went well beyond what was proper and led him to play an overactive part in the management of the trusts in some respects and to neglect his duties in others. This misunderstanding of his role put the trust assets at risk and founded several instances of serious misconduct, persuading the Court to order the immediate suspension of his powers and his subsequent removal from office.

One particularly significant example of his misconduct highlights a point of general application for the trust industry, and one which trustees too would do well to heed. The decision criticises the Protector's *'readiness to allow the entirety of the proceeds of liquidation of a substantial portfolio of investments to remain on deposit with a bank that was part of the same group as [the trustees]'*. It is suggested that placing significant trust assets with a sister bank may be inappropriate and, as in this case, may put the trust assets at unnecessary risk. Cause to think twice, perhaps, about engaging in this common but potentially conflicted practice.

As with the removal of trustees, the Court found that the correct test for the removal of a protector arises from the case of *Letterstedt v. Broers* 1884 9 App. Cas. 371 and is, simply put, *'whether the continuance of the trustee [or protector] would be detrimental to the execution of the trusts'*. In this case, as is common, the Protector had fiduciary powers, and it was from the fiduciary nature of his office that the jurisdiction to remove him arose. It is *'not a jurisdiction to be exercised lightly'* though, and it is important to note that the Court did so not just because the relationship between the Protector and the beneficiaries had broken down but also because that breakdown in relations (for which the Court found that the Protector bore much of the responsibility) was having, and was likely to continue to have, a seriously detrimental effect on the execution of the trusts.

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