

High Court Rules on Appointment of Trustees

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In a recent case the High Court of the Isle of Man had to consider an appointment of new trustees by the protector of a settlement in circumstances where the protector was also one of the beneficiaries and was in dispute with another of the beneficiaries. One of the main issues before the court was whether the protector was properly motivated in exercising her power of appointment under the settlement.

The case eventually turned on its own facts, but along the way the court had to consider a number of legal propositions of more general application.

The case actually came before the court as a result of the protector being forced to issue proceedings following on from the refusal of the original trustees to accept the validity of her appointment of new trustees (to hold office jointly with the original trustees). It subsequently turned out that such refusal by the original trustees was at the instance of one particular aggrieved beneficiary alleging that the protector was abusing her position for personal reasons connected with a dispute between herself and the aggrieved beneficiary.

The aggrieved beneficiary and both sets of trustees then became noticed parties to the protector's petition for a declaration upholding her appointment of the new trustees.

The aggrieved beneficiary then entered an answer and cross-petition seeking a declaration that the appointment of new trustees was invalid and going on to seek the removal of the protector. Both sets of trustees therefore applied for Beddoe relief in separate proceedings to a different deemster (the term for a judge of the High Court in the Isle of Man).

The aggrieved beneficiary changed his position on several occasions before and at trial, as a result of which there were a number of interlocutory applications. During the course of the interlocutory applications and at trial the court had to consider a variety of points, including:

- ~ security for costs;
- ~ lump-sum payments on account of costs;
- ~ indemnity/standard basis costs; and
- ~ admissibility of evidence by way of statement/affidavit.

At trial, the deemster had to consider the legal status of a protector and also had to carry out some analysis of the concept of fraud on a power.

This case was something of a cautionary tale, as it highlighted the need for trustees to remain even-handed. It also highlighted some of the difficulties which can arise in the relationships

between different parties where a discretionary settlement is involved. Some of the background to the case also emphasized the need for anyone setting up a discretionary settlement to be very clear as to the identity of the client on whose instructions the settlement is being established, and the identity and wishes of any person from whom the trustees are to accept guidance.

The judgment was delivered on September 18 2002 on the *Petition of Despina Papadimitriou* (Case CP2001/47). The Beddoe applications have yet to be finally resolved, and the court may yet be asked to determine the extent to which (on these particular facts) the trustees should be entitled to recover any shortfall in costs from the trust assets

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