COLLAS CRILL

Trusts: When protectors fail

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Protectors of discretionary trusts sometimes find themselves in the unfortunate position of being asked by a beneficiary, or class of beneficiaries, to resign for reasons that are not always justified.

However, a stark example of when it was indeed time to step down was addressed in the judgment of the Royal Court of Guernsey (**the Court**) in *Bernheim v Krummenacher & Ors*, dated 8 August 2025. [1]

The Court did not hesitate to grant the sole beneficiary's application for the removal of the first and second respondents as the Class A Protectors of the Billevese Trust (**the Trust**) and the appointment of a highly experienced fiduciary as the replacement Class A Protector. Following judgment on the substantive relief sought, the parties agreed that the usual indemnity afforded to protectors should be disapplied and that the Class A Protectors should pay the applicant's costs on an indemnity basis. [2]

This article explores this key judgment, encompassing the fiduciary duties of protectors, how conflicts of interest interact with a fiduciary role, the concept of loss of trust and confidence in a fiduciary officeholder, and the unique circumstances that led the Court to accept that the facts differed from the more conventional application for removal of protectors, which often involve competing views among beneficiaries.

Removing trust protectors following conflicts of interest and a breakdown of trust and confidence - the facts

The applicant was the sole discretionary beneficiary and life tenant of the Trust, which was governed by Guernsey law.

The settlor was the late grandmother of the applicant, who was the original life tenant of the Trust until her death. The Trust was established following extensive negotiations between the applicant and her late grandmother. The Class A Protectors, each of whom were former business associates of the applicant's late grandfather, assisted in the negotiations on behalf of the late grandmother, together with a third individual.

The Class A Protectors and two other protectors (Class B Protectors) comprised the Board of Protectors of the Trust (Board of Protectors). The difference between the two classes of protectors was that the Trust deed only gave the applicant the power to appoint and remove the Class B Protectors, but not the Class A Protectors. The Class A Protectors (who initially comprised three individuals) were also members of the Trust's investment supervisory committee (**ISC**), and resolved to be paid 0.1% of the trust fund.

A supplementary letter of wishes executed by the applicant's grandmother only months before her death in 2021 directed that the ISC fulfil a supervisory role in advising the trustee and confirmed the amount identified above as suitable

compensation. Such compensation was significant; according to the 2023 accounts, the assets of the Trust were approximately USD325 million.

Following the grandmother's death, New Street Trust Limited, which was appointed as trustee in approximately 2016, determined that a restructuring of the Trust to best suit the needs of the applicant was appropriate and would also represent a significant saving in annual trust administration costs (**the Proposed Changes**).

The Proposed Changes involved replacing the then investment managers of the Trust's invested assets, in whom one of the Class A Protectors had a personal financial interest. The applicant and the Class B Protectors all supported the Proposed Changes, but the Class A Protectors did not.

The applicant, supported by the trustee and the Class B Protectors, contended that the Class A Protectors:

- had unreasonably obstructed the Proposed Changes;
- had misunderstood their role as protectors;
- had a strained relationship with the Class B Protectors; and
- were impeding the proper administration of the Trust.

All of the above had led to a complete loss of trust and confidence by the applicant.

This was rejected by the Class A Protectors on the grounds that it was meritless and unjustified. They opposed the relief sought in the application, but expressed a willingness to step down some months before the trial, subject to a replacement of their choosing being found.

The applicable legal principles to the removal of protectors

The judgment restated the well-known principles that apply to the removal of protectors, which are akin to those applicable to the removal of trustees. The welfare of the beneficiaries and the competent administration of the Trust were paramount considerations for the Court. Exceptional circumstances, positive misconduct of a fiduciary or adverse findings of fact did not need to be identified; rather, the key question for the Court was whether the continuance of the Class A Protectors in that role 'will prevent the Trust from being properly executed, having regard to the fact that a trust exists for the benefit of the beneficiaries.'[3] The jurisdiction was not to be exercised lightly and required caution.

The Court cited with approval the well-known guidance from the judgment in *Letterstedt v Broers*,[4] which had been relied upon by the Court in *In the matter of the K Trust*,[5] which held that such principles 'show that it is the welfare of the beneficiaries and the competent administration of the trust in their favour that found the jurisdiction for the removal of a trustee and so, by analogy, a protector'.

The Court also cited with approval the comments of Chief Master Marsh in *Schumacher v Clarke*,[6] who noted: 'The core issue is whether the continuation in office of one or more of the parties is detrimental to the interests of the beneficiaries'.

The Court's findings in Bernheim v Krummenacher

Having determined that the powers of the Board of Protectors were extensive, the Court held that if there had been a breakdown in relations, the impact upon the administration of the Trust and the beneficiaries was potentially significant. The fact that the Trust deed expressly provided for the applicant's interests to be considered over those of any other discretionary beneficiary was also an important factor. It meant there was an onus on the applicant's 'own voice needing to be heard and taken into account'.[7]

The Court held that there was substantive misconduct by the Class A Protectors, which included the following:

- there were conflicts of interest in respect of their financial ties to the investment managers. Their continued attempts to prioritise the interests of the investment managers over the applicant were demonstrated by their refusal to attend a proposed meeting of the Board of Protectors without first receiving a guarantee from the trustee that at least some of the assets of the Trust structure would remain with the existing investment managers:
  - this demonstrated a 'good arguable case' that their failure to recognise a conflict between interest and duty 'at the very least shows a failure to understand the fiduciary role of protector'; and
  - their failure to attend a meeting 'obstructed the administration of the Trust';[8]
- there was an arguable case that they had breached the duty of loyalty by not being transparent about the nature of their involvement with other members of the family from which the applicant was estranged, which resulted in it being necessary for the Court to draw the inference that they were acting without the applicant's consent:
  - they took little, if any, responsibility for causing the applicant distress. As the Court noted: 'what pervades the evidence is the Class A Protectors being deaf or dismissive of the concerns ... and there are good grounds to show that the duty of trust and confidence has been breached by the Class A Protectors' conduct';[9]
  - their actions demonstrated a failure to recognise that the Trust was for the benefit of the applicant; and
  - their insistence on imposing on the Trust a successor protector in whom the applicant was not confident made further litigation likely.

Conclusion

As the principles from the relevant authorities illustrate, where there is disharmony that might have a detrimental effect on the proper administration of a trust, it is prudent for a fiduciary to resign, even if it does not consider such a step to be justified or any wrongdoing to be present.

Where a fiduciary's conduct is the antithesis of that expected of a fiduciary, resigning on request is self-evidently the more sensible option.

In its judgment, the Court noted that the Class A Protectors 'could have heeded the advice in *Letterstedt v Broers* and stepped down. They could have done so without accepting the allegations but instead have caused significant cost and

further distress'.[10] The Court accepted that their failure to resign voluntarily had meant there was no alternative for the applicant but to commence proceedings. The unfortunate consequence for the Class A Protectors was that the usual indemnity for protectors was disapplied, and they were required to pay the applicant's costs on an indemnity basis.

The judgment demonstrates that a failure to understand and uphold fiduciary duties, and to manage a clear conflict of interest, can have consequences, both financial and reputational.

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[1] Unreported judgment of Deputy Bailiff Roland, 8 August 2025
[2] Christian Hay, Cerisse Fisher and Andrew Peedom at Collas Crill acted for the successful applicant
[3] At para.22
[4] (1884) 9 App Cas 371, pp.386–387, 389
[5] 31/2015 per (then) Deputy Bailiff McMahon
[6] [2019] EWHC 1031 (Ch)
[7] At para.26
[8] At para.53
[9] At para.68
[10] At para.75

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