

The Paternalistic Trustee – when is it appropriate to keep a young adult beneficiary in the dark?

UPDATE

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In the recently-published judgment of *In the Matter of the C Settlement [2017] JRC 035A*, the Jersey Royal Court considered whether a 19-year-old beneficiary could be 'kept in the dark' as to the size of his family's £75 million trust fund, on the basis that he was too young to know.

Although the legal age of capacity is 18, in this recent judgment the court took the view that a beneficiary who has legal capacity may not in fact have sufficient maturity to be burdened with matters of trust administration. The court found that the young adult beneficiary should be kept in the dark as to the size of his beneficial entitlement, in order that he should be encouraged to continue his higher education and to obtain employment.

The Trustee's Application

The judgment concerns a Beddoe application made by the trustee. A Beddoe application is made under Article 51 of the Trust (Jersey) Law 1984 where a trustee seeks the court's approval to initiate, defend or continue litigation proceedings which concern the trust.

In the current case, a claim for approximately £2 million had been brought against a company wholly owned by the trust. The trustee proposed that the claim should be settled by a payment of £350,000 from the trust to the Plaintiff in full and final settlement.

As is common with Beddoe applications, the trustee made submissions relating to (i) the likely costs which would be incurred if the proceedings continued to trial, and (ii) the merits of the claim and the likelihood of success. The trustee anticipated that it would incur approximately £1 million in costs, and the likelihood that the claim would succeed was around 30%. The trustee asked that the court should bless the proposed settlement.

The Role of the Beneficiaries

It is usual practice that the adult beneficiaries should be convened to a Beddoe hearing. In the present case, the trustee convened two of the three principal beneficiaries, but did not convene the third, "K", who was 19 years old.

The trustee, together with K's mother (who was herself a beneficiary) had decided that K should, for his own benefit, not learn the value of the trust fund until he was at least 21 years old. This was on the basis that it would be a 'harmful and damaging burden' for K to understand the size of the trust at his age. He could therefore not be convened to the Beddoe application and could not be involved in any other matters of trust administration.

The Court's Predicament

The law confers capacity on individuals when they attain the age of 18.

The court needed to satisfy itself that the trustee was correct in deciding not to involve K in the proceedings. In normal circumstances, K should be entitled to express a view as to whether or not the claim

should be settled. K might have had a greater appetite for litigation, such that he opposed the proposed settlement of the claim. By not convening him, the trustee and the court would be denying him the opportunity to have his voice heard.

In reaching its decision, the court noted its obligations under the Human Rights (Jersey) Law 2000. The court reached the conclusion that the rights were not strictly engaged, but even if they were, the trustee's actions were justified on grounds of proportionality and overall fairness.

The Court's Conclusion

The court in this case expressed a strong concern that a beneficiary learning of a significant entitlement at a young age could have catastrophic effects. The young beneficiary may lose enthusiasm for school or university, and may never develop any inclination to seek employment. Instead, he or she may decide on a "life of party-going and riotous living" and might become reliant upon alcohol or toxic substances.

The court decided that in this case the trustee's paternalistic approach was justified. With good reason, discretionary trusts will commonly confer benefit on an individual beneficiary at the age of 21, 25 or even 30, in spite of the fact that the age of capacity is 18.

Accordingly, the court granted Beddoe relief and approved the proposed settlement, and upheld the trustee's decision not to convene K.

Comment

The situation of K in this case is not novel. Many parents, guardians, and trustees will frequently find themselves similarly concerned not to 'spoil' a young beneficiary and risk pushing them towards poor life decisions.

It is not clear from the judgment in this case how deeply the court delved into the particular circumstance or character of K. The judgment does state that the justification of a paternalistic approach will depend on the facts of the particular case but the judgment (unsurprisingly perhaps) says very little about K.

Whether the court might adopt a similarly paternalistic approach in future cases will, therefore, vary from case to case. If it can be established that it is genuinely in the best interest of those beneficiaries that they be kept in the dark then no doubt the court will be willing to take a similar approach. However, the mere fact of a substantial trust fund and a young adult beneficiary will not necessarily be sufficient to warrant that beneficiary's exclusion from expressing his or her views on relevant matters. It may well depend on the particular maturity and character of the individual concerned. Trustees who wish to take such an approach must be prepared to justify their position in some detail.

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