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Definitions of “Benefit” - Jersey’s Royal Court offers Useful Guidance on Trusts and Non-Financial Benefits

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The Royal Court of Jersey has recently provided helpful guidance in relation to what it means to provide a beneficiary with a “benefit”.

Background

In the matter of the May Trust [2021] JRC 137 concerned an application by the Jersey Trustee of the May Trust (“the Trust”) to the Royal Court of Jersey, seeking its approval and/or sanction of the Trustee’s in principle decision to make a proposed distribution of a large percentage of the value of the Trust Fund of the Trust to a beneficiary, for onward transmission to a charitable foundation (“the Foundation”), which was also a beneficiary of the Trust (“the Distribution”).

The Trust was established in 2000. The class of beneficiaries comprised the principal beneficiary, his wife and family (“the Family”) and their future issue, in addition to the Foundation. The grant-making Foundation had been established by the principal beneficiary and his wife.

The Trustee canvassed the views of the Family, who all supported the Distribution. It was the Family’s wish for a significant sum from the Trust to be applied to charitable and philanthropic aims, particularly those of the Foundation. The Family also believed it to be appropriate for tax to be paid on the Distribution thereby generating revenue for the government to provide broader social benefit. The Family also confirmed that they were unlikely to require distributions from the Trust in the future; historically distributions had been predominantly for charitable and philanthropic purposes.

The Trustee therefore considered that the Distribution, being in line with the Family’s wishes while representing a large proportion of the Trust Fund, was a proper exercise of its discretion, noting that there were still sufficient assets to meet the assumed needs of the Family and its future generations. It being clearly a momentous decision, the Trustee sought the Royal Court’s blessing. Having regard to the Family’s values, the representative on behalf of the minor beneficiaries and unborn remoter issue was also supportive.

“Benefit”

The Court noted that it was unusual for it to be invited to approve an arrangement for which the purpose was to pay tax in the UK, particularly so where the quantum of the tax paid would be significantly under the principal beneficiary’s control (the amount of tax depending on income and the extent to which gift aid relief would be claimed).

However, the Court noted that it should approach the question in strict trust law terms – construing the relevant provisions of the Trust deed and applying the usual principles as to what might be thought to be a proper appointment for the benefit of a beneficiary.



The relevant clause provided as follows:

“Subject to any such appointment as aforesaid and until the Vesting Day the Trustees shall have power in their absolute and unfettered discretion to pay or apply the whole or any part of the capital of the Trust Fund to or for the benefit of such one or more of the beneficiaries for the time being living in such shares if more than one and in such manner as the Trustees shall in their absolute discretion think fit.”

It has long been established that benefit constitutes more than mere financial benefit and that it should not be narrowly interpreted. As set out in the Court’s reasoning by reference to various Jersey and English law cases, “benefit”, as a matter of principle, may include:

- Educational and social benefit (including seeking to achieve family harmony);
- The payment of debts to HMRC;
- Avoiding a beneficiary’s parents from incurring a detrimental tax bill created as a result of a transfer into the trust that they have made; and
- Discharging a moral obligation, most likely in the form of charitable giving (the obligation being one the beneficiary has recognised needs discharging).

The Court confirmed in this regard that the interpretation of “benefit” applies equally to an application to vary a trust as it does to an appointment of income or capital.

The Court also determined that in this case, a payment to the principal beneficiary which he intended to pass on to the Foundation was not a fraud on the power, as the Foundation was itself a beneficiary.

However, even if it were not, the Court noted it would be a question of judgment as to whether a payment to a beneficiary for onward transmission to a non-beneficiary was for the beneficiary’s benefit.

There was some discussion about whether a fractional approach should be adopted when considering what the appropriate sum is to discharge one’s moral obligation (which was the approach adopted in the English cases of *Re Clore’s* and *X v A*) – i.e. only a certain percentage of the trust fund, as measured against a beneficiary’s own resources and wealth outside the trust, should be distributed.

However, having regard to how the trust industry has developed over the last several decades in Jersey, the Court noted that the trust has become the modern vehicle into which the very wealthy will often place a substantial proportion of their family assets, for what can be a variety of reasons. The Court’s approach was to not measure moral benefit by way of a forensic analysis against a particular beneficiary’s personal assets, which would effectively put the issue of benefit back into a purely financial assessment.

The Court therefore found that benefit should be looked at both from an objective and subjective standard (the latter being the views of the beneficiary to whom the appointment is being made).

Application to the case

The main question was therefore whether making the proposed Distribution was a decision which a reasonable trustee properly instructed could have formed. Given the Family’s philanthropic donations to date and the close connection the Foundation had to the Family, the Court held that there was no doubt that the provisional decision was one at which the Trustee could properly have arrived.

As regards the arrangements to pay tax on the Distribution, the Court found that it did not detract from the purpose of making the payment, as it also fitted in with the Family’s social justice aspirations and could therefore properly be said to be for the benefit of the principal beneficiary.



Comment

It is refreshing to see the Royal Court adopt such a broad and holistic interpretation of “benefit” – whilst paying the taxman may not align with everyone’s definition of their social and moral obligations, taking account the subjective views of a beneficiary (or the beneficial class as a whole) and what they consider to be of benefit personally is a welcome and progressive position.

Nigel Sanders acted for the Trustee in this case.

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