

Trust briefing: Protectors in a Jersey trust

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Jersey trusts are a popular and flexible vehicle for asset protection, estate planning, and wealth management for ultra-high-net-worth (UHNW) families across the world. One of the features of a Jersey trust is the option to include a 'Protector' to exercise certain important powers and work alongside the trustee.

For UHNW families thinking about establishing a Jersey trust, the appointment of a Protector can be a powerful means to ensure that a trust is administered in line with their long-term objectives. With proper structuring, a Protector can offer an additional layer of long-term control and oversight, ultimately helping to safeguard both the trust's assets and the interests of the beneficiaries.

This article explores the role and powers of a Protector, its duties and the key benefits of appointing one. It also outlines some key things to consider when seeking to appoint a Protector.

What is a Protector in a Jersey trust?

A Protector is a person, a group of people or an institution nominated to oversee the actions of the trustee and ensure the proper administration of the trust in accordance with its terms and the intentions of the settlor. The Protector does not have the same status or role as the trustee but can hold significant influence over how the trust is managed.

Protectors are used in many Jersey private trusts, family trusts and charitable trusts where the settlor wants to provide for an ongoing element of control or oversight over how the trust is managed where they are not personally involved.

The Protector's role can be an advisory one, but in some cases they may have specific decision-making powers or veto rights over the powers of the trustee.

Who can be a Protector?

The identity of the Protector and any successor is very important. Protectors typically have a very large degree of influence over structures and as a result great care must be exercised in their selection .

The role and powers of the Protector in a trust

A Protector's role and powers are typically outlined in the trust deed, which can be adapted as needed to reflect the intentions of the settlor and the specific circumstances of the trust structure. The following are the most common roles and powers of a Protector in a Jersey trust:

- **Supervisory role:** The Protector's primary role is to monitor the actions of the trustee and ensure that the trustee is complying with the terms of the trust deed and the law. This role may include the right to receive reports and other relevant information and documents from the trustee, ensuring the trustee is acting in the best interests of the beneficiaries.

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- **Appointment and removal of trustees:** A Protector can be given the power to appoint or remove trustees. This can mean a Protector has a 'watchdog' role.
- **Veto and consent powers:** A Protector may be granted powers of veto or consent over certain decisions of the trustee, particularly those that relate to the distribution of trust assets or the exercise of other discretionary powers. The Protector here is acting as a safeguard against potential trustee decisions that the Protector does not think are in the interests of the beneficiaries or in line with the settlor's intentions.
- **Power to amend the trust:** A Protector may be given powers to amend or vary certain terms of the trust deed, for example the power to add or remove beneficiaries, change the trust's investment strategy for the assets, or change the rights of beneficiaries.
- **Mediation and dispute resolution:** A Protector can act as a mediator in case of disputes between trustees and beneficiaries, or between beneficiaries themselves. The Protector's neutral position can help resolve conflicts in a way that is aligned with the settlor's wishes and avoids litigation.

Benefits of appointing a Protector of a trust

The appointment of a Protector can have significant benefits, including:

- **Control:** A Protector can provide an additional layer of control over how the trust operates. Alongside a letter of wishes, by appointing a Protector the settlor can nominate a Protector (who may be a trusted advisor or family friend) to ensure that the trust is managed in a manner consistent with their wishes, long into the future. The role of the Protector can be specifically defined to allow the Protector to take decisions, often alongside the trustee, that align with the settlor's intentions.
- **Protection of beneficiaries' interests:** The fundamental role of a Protector is to ensure that the trust is managed in a way that protects the long-term interests of the beneficiaries. This may be particularly important in situations where the beneficiaries are young, inexperienced, or subject to external pressures that the trustee may not be fully aware of.
- **A 'watchdog' on the trustee:** Nominating a Protector provides an additional safeguard against potential mismanagement of the trust assets. The Protector can act as an independent 'check and balance' on the trustee and intervene if the trustee acts outside their powers or does something not anticipated by the terms of the trust.
- **Mediation and conflict resolution:** A Protector (particularly one who understands the settlor and beneficiaries well) can be very useful to help mediate and resolve conflicts between beneficiaries and the trustee in a way that is aligned with the settlor's wishes and avoids litigation.

Duties of the Protector in a trust

The fundamental role of the Protector is to protect the interests of the beneficiaries as a whole. The following are the core duties of protectors in Jersey trusts:

- **Duty to act in good faith:** The Protector must act honestly, with integrity, and in the best interests of the beneficiaries. A Protector is usually a fiduciary for the beneficiaries. This includes ensuring that any action or decision taken by the Protector is aligned with the settlor's intentions and the trust's objectives.

- **Duty to exercise powers reasonably and responsibly:** The Protector is required to exercise their powers prudently and in accordance with the trust deed. This includes not acting arbitrarily or in a way that could harm the trust or its beneficiaries.
- **Duty of confidentiality:** The Protector must maintain confidentiality about the affairs of the trust, particularly regarding sensitive financial and personal information concerning the trust and its beneficiaries.
- **Duty to avoid conflicts of interest:** The Protector must not allow any personal interests to conflict with their responsibilities. They must ensure that decisions made are solely for the benefit of the beneficiaries and in accordance with the trust's terms.

Where there is a concern about whether a Protector is performing their role properly, there are often ways to resolve those issues by drafting into the trust itself. Ultimately the court has power to supervise a Protector that does not act properly. If there is a concern of this nature, it is important you take legal advice on the potential options.

Things to think about

The following questions serve as a useful checklist when considering the appointment of a Protector.

- Who should be the Protector?
- What is their relationship with the settlor and the beneficiaries?
- Is the role of the Protector reportable?
- Will the Protector need a successor?
- Can a Protector retire or be removed?
- What powers should the Protector have?
- What checks and balances are needed on the powers of the Protector?
- Will the Protector be paid?
- If a Protector is given a power of veto/co-decision with a trustee, how will any deadlock be resolved if the Protector and the trustee cannot agree?

How can Collas Crill help?

Collas Crill has decades of experience advising UHNW families about structuring their assets offshore using trusts and companies, including the use of Protectors in Jersey trusts.

If you need any guidance or advice about Protectors, please do not hesitate to contact us. Our experienced team of lawyers and planning professionals are ready to assist with any questions or concerns you may have regarding this important aspect of trust management.

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