Variations of trusts: Balancing interests

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The recent Jersey case of *In the Matter of the Representation of the Y Trust and the Z Trust [2017]JRC100* saw the Royal Court having to weigh up firmly held personal views of the settlor and public policy considerations in the context of an application to vary two trusts.

The case concerned two of a number of family trusts, all of significant value, set up by a settlor, now deceased. The principal issue before the Court concerned an application to vary the definition of "*issue*" in the trust instruments of the Y Trust and the Z Trust, and therefore the beneficial class, and to approve such change on behalf of minor, unborn and unascertained beneficiaries. The other family trusts had already been varied using powers contained in the trust instruments, but the Y Trust and Z Trust did not contain equivalent provisions.

When settling the various trusts, the settlor had provided in detail that the terms "child", "issue" and "descendant" were to be confined, broadly speaking, to legitimate or legitimated issue of heterosexual married couples and certain adopted children of childless married heterosexual couples. Such categories reflected his firmly held views in terms of familial relationships. Notwithstanding this, the Court heard evidence that issue which fell outside these categories of person had nonetheless been raised and treated as grandchildren within the family.

Although not formally constituted under the various family trusts, there was a family council which comprised certain adult beneficiaries and the settlor's widow and who had brought the application. There had been extensive discussions, deliberations and consultations within the family council and outside it as to the modernisation of the terms "issue" and "descendants", and a consensus had been reached on revised definitions. They would give equal recognition to the issue of same sex relationships, illegitimate children of the bloodline and a relaxation of an age threshold for adopted children. Whilst the other family trusts had been amended using their own provisions, this had not been possible with the Y Trust and the Z Trust.

In considering such an application, the court is required to consider whether the arrangement is for the "benefit" of the minor, unborn and unascertained beneficiaries. In deciding whether a variation is for a person's benefit, the word "benefit" is not to be narrowly interpreted or restricted to financial benefit. The court confirmed that in deciding whether or not to exercise its discretion, it will have some regard to the wishes of the settlor but will not necessarily follow them. In other words, if the proposed variation is beneficial to those on whose behalf the application is made, the fact that the variation might be contrary to the settlor's wishes is not material.

The Court also had to consider the policy aspects of potentially going against the wishes of a settlor, the sanctity of a settlor's wishes being a virtue promulgated by Jersey trust practitioners. One justification would be that in such applications, the court is concerned with those who had beneficial interests not those who settled them. In this case the settlor was no longer a beneficiary. Another justification would be the acceptance that policy follows the law as a whole, and Jersey had reflected in its laws, for example, an acceptance of same sex relationships and the equality of illegitimate children in rights of succession.

Taking into account the fact that the significant wealth of the two trusts would mean only an insignificant financial dilution if the beneficial class were widened, the desirability of maintaining family harmony and the fact that such a widening of the beneficial class would benefit minor and unborn beneficiaries, the court approved the proposed variation.