



This appeal was heard in private. **THE COURT ORDERED THAT** nobody shall publish or reveal the name or address of any of the persons (including any companies) who are the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of those persons or any member of their family in connection with these proceedings.

Press Summary

19 March 2026

A and 6 others (Appellants) v C and 13 others (Respondents)

[2026] UKPC 11

On appeal from the Court of Appeal of Bermuda

Justices: Lord Reed, Lord Briggs, Lord Stephens, Lady Rose and Lord Richards

Background to the Appeal

This appeal concerns the default role of a fiduciary protector in the administration of a trust.

Since the mid to late 1980s, it has become common practice for trust deeds created in offshore jurisdictions to include provisions enabling the appointment of a person known as a “protector”. A protector is a natural or legal person (eg a company) upon whom the person creating the trust (“the settlor”) has conferred powers in relation to the exercise of powers by the trustees. Local trustees in offshore trusts, which are often professional trust companies, are unlikely to have any close connection with or personal knowledge of the settlor’s family. Accordingly, settlors may wish to appoint a protector to monitor the trustees’ actions and/or serve as a form of communications bridge between the family and the offshore trustees. To this end, the protector may be given any powers which the settlor chooses to confer on them, but typically they include powers of veto over some or all of the trustees’ more important decisions.

However, the trust deed is usually silent about how the protector should decide whether to approve or veto a trustee proposal, a subject which has generated much academic debate. On one view, referred to as “the Narrow Role”, the protector’s task is strictly limited to reviewing the legality of the trustees’ proposal. By contrast, according to what has been termed “the Wider Role”, the protector is entitled to form his or her own view of the merits of the trustees’ proposal and may legitimately veto the proposal even if it is one within the range of decisions which the trustees could lawfully make.

The present case concerns a series of discretionary trusts, some governed by English law, some by the law of Bermuda and one by Jersey law (“the X Trusts”), which were originally established by a wealthy businessman (“Mr X”) and his relatives. The X Trusts are now held for the principal benefit of A and B and their families. All except one of the X Trusts now broadly have identical provisions governing the appointment of one or more protectors. Those provisions conferred two main powers on the protectors: (1) the power to approve or refuse any appointment of capital to the beneficiaries proposed by the trustees and (2) the power to approve or disapprove any dealing with, or exercise by the trustees of voting powers derived from certain “Specified Securities”, the most important of which were shares in a company (“OpCo”).

In 2017, the trustees of the X Trusts produced proposals, the essential feature of which was the exercise of the trustees’ wide discretionary powers of appointment by a division of the property of the X Trusts upon A and A’s family (“the A branch”) and B and B’s family (“the B branch”) in unequal proportions. However, aspects of this scheme required the written approval of the protectors. After consultation, the protectors determined that they were unlikely to approve the proposals. Crucially, the protectors approached the question whether they should approve the scheme on the assumption that they had the Wider Role.

The proceedings in the courts below focused on the question whether the protectors of the X Trusts had the Narrow Role or the Wider Role. The A branch argued in favour of the Narrow Role and the B branch in favour of the Wider Role. Both the Bermuda Supreme Court at first instance and the Court of Appeal of Bermuda unanimously concluded that these trust deeds conferred the Narrow Role upon their protectors. The B branch now appeals to the Board.

Judgment

The Board unanimously disagrees with the courts below and will therefore humbly advise His Majesty to allow the appeal. Lord Briggs and Lord Richards give the judgment, with which Lord Reed, Lord Stephens and Lady Rose agree.

Reasons for the Judgment

In the Board’s judgment, the X Trusts confer the Wider Role upon the protectors for the following reasons.

The common understanding that the role of the protector is a matter for the settlor to prescribe in the trust deed is correct. The court must interpret the trust deed to determine what role has been prescribed for the protector in any given case. In undertaking this task, the court will apply the principles authoritatively enunciated most recently by Lord Hodge in *Buckinghamshire v Barnardo’s* [2018] UKSC 55; [2019] ICR 495 in the context of interpreting pension schemes [65]-[66]. Against that background, the Board considers that if the scope of the language used in a provision is to be restricted by a process of construction, the restriction must be based on a consideration of the express terms set in their relevant context [69]-[72].

The law on implied terms is similarly uncontentious. The search for an implied term usually follows a perception that there is some “gap” in the written instrument where the parties have omitted to make express provision to deal with a problem which has arisen in the practical application of the written instrument. However, before a term will be implied, the anterior question is whether the apparent gap is deliberate [74]. It is a principle of considerable antiquity that when a written instrument does not expressly provide for what is to happen when some event occurs, the most usual inference is that nothing is to happen. Indeed, several statements in the case law (and academic textbooks) warn against the over-ready implication of terms on the basis that an apparent gap in a written instrument may have been left deliberately by the parties [74]-[81]. This logic applies equally to trust deeds. Hence, an apparent gap may be

deliberately left in a trust deed where the settlor decides to leave a trustee or other fiduciary free to act without constraint [81].

On the facts, the issue was presented to the Board as a binary choice between two different roles for protectors appointed under the provisions of a trust instrument which did not spell out their role in express words. Reflecting the discussion in academic commentaries, the issue has been presented as if the Board has to assume the settlor must have had in mind either the Narrow Role or the Wider Role, the task for the Board being to decide which the settlor intended to confer on the protectors of the X Trusts [82]. However, the Board does not consider this to be the correct approach. Where (as here) the settlor has provided for one or more protectors to exercise precisely defined powers but remained silent about how those powers should be exercised, the question is rather: what if any constraints did the trust instrument actually impose, construed in its context and with regard to any constraints imported by the general law? [83]. This is the correct question because, in principle, where a legal document gives to one person a power to veto a proposed action by another, the starting point is that the recipient of the power is under no constraint as to how that power of veto is exercised, save perhaps a requirement of good faith [84]. If any further constraint is to be identified, it must be derived from some provision, express or implied, in the document conferring the power of veto.

Applying these principles to the present case, the Board finds that the relevant settlements did not by any express language impose any constraints upon the protectors in the exercise of the powers of veto over the trustees' proposals for appointments or dealings with the Specified Securities. There is nothing in the use of the words "protector", "protectorate" or the verb "protect" which may assist in identifying the proper role of the protectors [85]-[86]. Likewise, the unusual fact that the protectors in this case were introduced by the trustees of the settlements rather than the settlors is immaterial to the issue of construction [87]. However, one important feature of the protector provisions in all the X Trusts is that the powers conferred on the protectors were to be exercised by those persons as fiduciaries [88]. The protectors' powers thus came attached with all the constraints that the law imposes on someone who has assumed, accepted or arrogated to themselves a fiduciary role. Accordingly, as fiduciaries, the protectors are prohibited from profiting from the exercise of their powers, are duty-bound not to permit a conflict of interest affect the exercise of those powers, and must only exercise their powers for proper purposes [89]. However, these fiduciary constraints come nowhere near to confining the protectors to the Narrow Role and they are fully consistent with the Wider Role [94].

The protectors are not constrained from considering proposed appointments in favour of particular beneficiaries on their merits by a general duty to act in the interests of the beneficiaries as a whole [92]-[93]; [100(ii)]. Similarly, even though the protectors appointed under the settlements in this case are paid professionals, meaning that they are likely subject to a professional duty of care requiring them to act with reasonable care and skill, this constraint again does not come close to confining them to the Narrow Role [95]; [100(iii)]. Therefore, as a matter of construction, the constraints identified - while substantial - do not confine the protectors to the Narrow Role [100(v)].

The Board proceeds to check the construction appearing from the natural meaning of the words of the protector provisions (including the absence of words) against the wider consideration of the contextual background and common sense [101]-[115]. In the Board's view, while there are no terms of the trust deeds which support the Narrow Role, there are terms which provide significant support for the Wider Role [102]. For instance, the trust deeds provide for the release or waiver of the protectors' powers. The Board considers that if it was intended that the protectors should fulfil the Narrow Role and so have a fiduciary duty to check the legality of relevant trustee decisions, it is difficult to understand why they should have been given the power to abdicate that role and abandon their function permanently [103]-[104]. Likewise, the Board considers that a provision enabling trustees to proceed with a proposed decision even

where the unanimous consent of joint protectors has not been obtained, provided that the trustees take into account the views expressed before taking a final decision, and the fact that the protectors' consent is only required for a limited range of trustee acts, both indicate that the Wider Role was intended [105]-[107].

Additionally, several broader contextual factors support the Wider Role and point away from the Narrow Role. For instance, if the Narrow Role were intended, one might expect that the terms of the trust deeds would restrict the eligibility to be appointed as a protector to those most obviously qualified to assess the legality of the trustees' proposed action, such as lawyers [109]. Moreover, it is difficult to understand why a settlor should think it necessary to appoint a protector to ensure lawful conduct by a professional trust corporation, which would be expected to take, and comply with, its own legal advice. The Board also finds that the submission made on behalf of the A branch that the Wider Role would necessarily involve additional cost and delay is not based on any evidence of the way in which structures providing for protectors to fulfil the Narrow Role work in practice [112]. The prospect of deadlock is also not a reason for rejecting the Wider Role [113]. While the Board was referred to several articles which discuss the issue of the Narrow as against the Wider Role, all except one prefers the Wider Role. Accordingly, in the Board's view, the balance of these factors overwhelmingly favours the Wider Role for the protectors of these trusts [64].

Finally, the Board considers that any attempt to imply a constraint limiting the protectors to the Narrow Role must also fail. Although it might be less likely (than the Wider Role) to lead to deadlock, such a constraint is not necessary to make the X Trusts workable in practice, nor would it satisfy the "officious bystander" test for implying a term. Moreover, even if (contrary to the Board's view) the absence of an express provision detailing the protectors' role indicated the need for a term to be implied to fill that gap, it could not be said what term would have been agreed [118]. In the final analysis, insofar as the absence of a more precisely specified role for the protectors may be viewed by some as a gap in the protector provisions, it must be taken to have been a deliberate gap and is not one which needs to be, or can be, filled by any implied term [119].

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Cases - JCPC](#)