

Snapshot: Jersey's impounder restrictions in relation to discretionary trusts

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In the recent decision of the Master of the Royal Court in *Patel & Ors v JTC Trust Company Limited* [2022] JRC089, the Court confirmed that it does not possess the power under Article 46 of the Trusts (Jersey) Law 1984 (the **Trusts Law**) to impound the interest of a beneficiary of a discretionary trust. In this Snapshot, partner Damian Evans, senior associate Matthew Davies, and trainee solicitor Paola Sequeira consider the arguments for and against.

Ogier appeared for eight out of 12 of the third parties to the claim and were successful in striking out the trustee's claim for impounder under the Trusts Law.

Argument in favour of impounding under the Trusts Law

The defendant argued that the Court could impound all or part of the interests of the beneficiaries by way of indemnity to the trustee in respect of a breach of trust where the beneficiary had instigated, requested or consented to the breach of trust (the **Article 46 Claim**).

The defendant argued that the overwhelming majority of Jersey law trusts are discretionary in nature, and so to argue that Article 46 did not apply to them would render Article 46 meaningless.

Argument against the Article 46 Claim

The third parties argued the Article 46 Claim should be struck out, on the basis that recent decisions of the Royal Court had made it clear that a beneficiary of discretionary trust did not have an interest in the trust beyond a right to be considered for distributions. Recent cases had shown that it was not possible, for example, to obtain an injunction over a beneficiary's

discretionary interest. If that was right, then it was argued that it similarly cannot be possible to impound a discretionary interest.

The Court's findings

In this case, all of the beneficiaries were discretionary beneficiaries. In applying recent decisions of the Royal Court in *Kea Investments v Watson* [2021] JRC 009 and *Re the Realisable Property of R Tantular* [2014] (2) JLR 25, amongst others, the Master of the Royal Court held that Article 46 can only be applied to a beneficiary holding a fixed or vested interest. This is because a discretionary interest is only that, discretionary – it is purely at the discretion of the trustee to determine whether a distribution would be made to a discretionary beneficiary.

The Master also held that the lack of the impounder remedy in relation to discretionary trusts does not leave a trustee without protection – the trustee can protect itself:

1. in relation to momentous decisions – the trustee can seek the blessing of the Court (Article 51 of the Trusts Law); and
2. by seeking to be excused from a breach of trust, if it can satisfy the Court that it has acted honestly and reasonably and ought fairly to be excused for the breach of trust or for failing to obtain directions (Article 45 of the Trusts Law)

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Meet the Author



Damian Evans

Partner

Jersey

E: damian.evans@ogier.com

T: [+44 1534 514378](tel:+441534514378)

Key Contacts



Matthew Davies

Senior Associate

Jersey

E: matthew.davies@ogier.com

T: [+44 1534 514132](tel:+441534514132)

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