



## TRUSTEES NEED TO KNOW: COST PROTECTION AND SEEKING COURT APPROVAL OF TRUSTEES ACTIONS

Published on 2 August 2017

### **How should a trustee fund legal expenses in ‘friendly’ trust disputes?**

A friendly dispute arises in circumstances where all parties agree that a solution needs to be found to a particular problem, typically in relation to the constriction or administration of the trust fund. Trustees are likely to have an active role in any such dispute and costs are met by the trust fund. The trustees will generally adopt a neutral stance between the interests of the beneficiaries.

### **How should a trustee fund legal expenses in third party disputes?**

Third party claims are those brought by or against third parties. If a trustee becomes involved in litigation with a third party they will be liable to pay their own costs and may risk liability to pay the costs of a third party in the event of an adverse cost order. In certain circumstances, the trustee may be entitled to an indemnity against the trust fund or a third party. In a hostile dispute, whether a trustee has such an entitlement should be dealt with separately to the main proceedings.

### **What is a Beddoe Order?**

It is common practice for trustees to apply to court for directions as to whether to bring, continue or defend proceedings in order to ensure that they are indemnified by the trust fund for their own costs and any adverse costs, in the event that the proceedings are unsuccessful.

### **When is a Beddoe Order not appropriate?**

If all of the beneficiaries consent, are of full capacity and have vested interests, there is no need to apply to the court. It would also not be appropriate to make such an application in circumstances whereby the trustees already have cost protection such as insurance.

Seeking a Beddoe Order in relation to friendly trust disputes would not be appropriate. In these cases, the court will instead determine whether the trustees are entitled to meet the cost of the proceedings from the trust fund when the matter reaches its conclusion.

Trustees are not able to make a Beddoe Order application in claims affecting the interests of beneficiaries between themselves or a claim by a beneficiary against a trustee.

## How do you make a Beddoe Order application?

An application for a Beddoe Order is made by way of a Part 8 claim. The application should be dealt with separately to the main proceedings.

A Beddoe Order application should be made as soon as possible and ideally before taking any steps in instigating or defending the third party litigation.

## Does a Beddoe Order afford a trustee absolute protection?

The protection afforded by a Beddoe Order is not absolute. For example, should the basis on which the court made the order be found to be misleading and not factually accurate, the entitlement to the indemnity may cease to exist.

## What is a prospective cost order?

A prospective cost order is an order that the court will depart from the usual rule that costs follow the event and determine the cost position before trial that one side will pay the other side's costs before the end outcome is known.

## Can the beneficiaries give an indemnity?

In certain circumstances, the beneficiaries may be willing to agree that any litigation costs be met by the trust fund. It is important to ensure that there is a valid written agreement.

## What about insurance?

Trustees should consider whether 'after the event' insurance protecting them in the event they are unsuccessful in pursuing or defending a third party claim would be appropriate.

## How can we help?

We act for trustees, executors, personal representatives and for individuals claiming against estates, trustees or other parties. We also often advise on complex and cross-jurisdictional issues, and regularly work alongside other intermediaries based offshore. Our team is recognised for our expertise in this field by the legal directories: The Legal 500 and Chambers & Partners.

If you have any questions arising from this 'Need to Know' please do not hesitate to contact our Wills, Trusts and Inheritance Disputes Team:

[contentioustrustsandprobate@kingsleynapley.co.uk](mailto:contentioustrustsandprobate@kingsleynapley.co.uk)

This **Need to Know** provides general guidance of the law in this area at the date of publication. Specialist advice should also be sought.