

Removal of Protector – fiduciary duties – Loss of trust and confidence in class of protectors appointed by settlor – Affirming the Court’s jurisdiction to remove fiduciaries where their continuation impedes proper execution of a trust – Appointment of replacement protector by the Court.

[2025]GRC060

Civil No. 2603

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

IN THE MATTER OF THE BILLEVESE TRUST

AND IN THE MATTER OF THE TRUSTS (GUERNSEY) LAW, 2007 (AS AMENDED)

Between:

CYNTHIA JOSÉFINA FRANCINE BERNHEIM

Applicant

-and-

(1) PETER KRUMMENACHER

(2) AGOSTINO FERRAZZINI

(3) NEW STREET TRUST LIMITED

Respondents

Date of Judgment: 8th August 2025

Before: Jessica E Roland, Deputy Bailiff

Counsel for the Applicant: Advocate C J Hay

Counsel for the First and Second Respondents: Advocate S B Duerden

Counsel for the Third Respondent: Advocate A A Horsbrugh-Porter & Advocate M J Guthrie

Legislation, cases and texts referred to:

The Trusts (Guernsey) Law, 2007 (as amended)

In the matter of the K Trust 31/2015

In the matter of the A Trust [2012] JRC 169A

In the matter of the Piedmont Trust & Riviera Trust [2021] JRC 248:

Schumacher v Clarke [2019] EWHC 1031 (Ch)

Letterstedt v Broers (1884) 9 App. Cas 371

Hunter v Hunter [1938] N.Z.L.R. 520, NZ CA

Introduction

1. In an application dated 18 September 2024, Ms Cynthia Joséfina Francine Bernheim (“Cynthia”) seeks the removal of the First Respondent, Peter Krummenacher (“Peter”) and Second Respondent, Agostino Ferrazzini (“Agostino”) as the Class A Protectors of the Trust (“the Class A Protectors”). Further, she applies for Advocate Russell Clark to be appointed as the replacement Class A Protector of the Trust in place of the First and Second Respondents; she further seeks an order that the First and Second Respondents do such things as may be necessary to transfer all books and records relating to their role as Class A Protectors of the Trust to Advocate Russell Clark; and also that the First and Second Respondents shall pay the Applicant’s costs of and incidental to the application on an indemnity basis and bear their own costs of and incidental to the application and should not be entitled for an indemnity from the assets of the Trust in relation to such costs. The Application also seeks for provision of the costs of the Third Respondent (“the Trustee” or “NSTL”) (“the Application”).
2. The evidence before the Court is two affidavits of Cynthia dated 18 September 2024 (“Cynthia #1”) and 22 November 2024 (“Cynthia #2”), respectively. On behalf of the Trustee there were three affidavits of Nicola McGall dated 7 November 2024 (McGall #1), 21 November 2024 (“McGall #2”) and 7 January 2025 (“McGall #3”). Two affidavits of Agostino dated 8 November 2024 (“Agostino #1”) and 21 November 2024 (“Agostino #2”) and one affidavit of Peter (“Peter #1”) dated 8 November 2024 were filed on behalf of the Class A Protectors. All of the parties filed skeleton arguments and responsive skeleton arguments. The original position of the Trustee was one of neutrality in relation to the Application, however, at the hearing Advocate Horsbrugh-Porter confirmed that the Trustee positively supported the Application. Also contained within the bundles were letters from the Class B Protectors who were not convened to the Application but, nevertheless, support the Application. All parties augmented their respective positions orally at the hearings. I have carefully considered all of the submissions and the evidence in coming to my conclusions in this matter.

Background

3. Cynthia is the sole discretionary beneficiary and life tenant of The Billevese Trust (“The Billevese Trust” or the “Trust”) which was established on 4 February 2015. Cynthia is a US citizen and a citizen of France. She has been tax resident in the United Kingdom for many years and has been taxed on a worldwide basis since 6 April 2017. The terms of the Trust Deed of The Billevese Trust (“the Trust Deed”) provide that the distribution of capital to her is on a discretionary basis. Cynthia is the sole discretionary beneficiary as she does not have children or remoter issue. Upon Cynthia’s death, unless Cynthia has children, The Billevese Trust will pass in accordance with a power of appointment which has been exercised by Cynthia.
4. NSTL was appointed as Trustee pursuant to an Instrument of Confirmation of Removal and Appointment of Trustee and Indemnity dated 17 June 2016 made between the Trust Corporation of the Channel Islands Limited, who were the original Trustee and NSTL. There was a Deed of Ratification of Confirmation of Removal and Appointment of Trustee dated 25 March 2021 (“Deed of Appointment”). The Deed of Appointment was executed due to concerns that the 2016 removal and appointment was ineffective.
5. The Settlor was Francine Bernheim (“Francine” or the “Settlor”) who was Cynthia’s grandmother. She was the original life tenant until her death on 13 December 2021. The wealth that forms the basis of the Trust derived from Cynthia’s grandfather, Antoine Bernheim (“Antoine”) who died in 2012. Their son, Cynthia’s father, Pierre Antoine had died prior to Antoine in 2011. After Antoine’s death, the Trust was set up after extensive negotiations

between Cynthia and Francine. The Class A Protectors along with Martino Pinelli (“Martino”) assisted in the negotiations on behalf of Francine.

6. The Class A Protectors and the Class B Protectors comprise the Board of Protectors of the Billevese Trust. As set out more particularly below, the difference between the Class A Protectors and the Class B Protectors is the manner in which they are appointed and removed. Relevantly, Cynthia does not have the power to remove a Class A Protector.
7. In addition to their roles as Class A Protectors, the original three Class A Protectors were members of the Investment Supervisory Committee (“ISC”). All three of the Class A Protectors have extensive experience in investment and asset management and had worked for many years with Antoine.
8. The ISC was formed after Francine executed a Letter of Wishes addressed to the original trustee (although it predates the execution of the Trust) dated 29 December 2014 which said after the introductory paragraph:

“I would like the Trust Fund will be invested (sic) according to a conservative investment policy, with the aim to generate a regular income for the benefit of myself through my lifetime and after this period for the benefit of the discretionary beneficiaries.

Given that Mr Voss, Mr Krummenacher and Mr Ferrazzini acting as my reference persons for taking care of my investment management (as previously for my husband Antoine) and they contribute in an important manner to increase the investments value, I would appreciate that you would consider to give an Asset Management Mandate to the Investment Management companies that refer to them, as well as their suggestions regarding the Depositary Institutions.

I understand I cannot restrict your discretion or determine the way in which you exercise your powers.”

9. There is a second letter dated 25 March 2015 which is addressed to the original three Class A Protectors which says as follows:

“First of all I am very pleased to know that all of you accepted to act as Protectors of the Billevese Trust.

In my letter dated 29 December 2014 I gave a general indication to the trustees about the management of the Trust Fund. Now I would like to outline to you the specific tasks that you have to perform as investment supervisory committee.

I wish that the management of the assets consider the strategy and philosophy followed by Antoine during his lifetime, philosophy that you implemented in the best manner. Antoine considered the investments in “real values” (especially stocks with high dividend and large capitalization) and gave only a marginal importance to the “nominal values” (fixed income products like bonds and alike).

In this manner my husband preserved in the long run, with your help all these years long, our family’s wealth.

In order to allow that all the trust’s discretionary beneficiaries can benefit of this investment strategy, I would appreciate that all of you will act as investment supervisors, eventually forming a dedicated technical supervisor committee.

Given your professional expertise, the Trustees should ask you to consider the evaluation of the asset allocation in line of the above mentioned the choice of depositary institutions and the choice of asset managers.

Finally it is important that the trust's assets should be consolidated in a professional manner and a risk management report should be generated on a quarterly basis to be submitted to the Trustees and Board of Protectors.

I would be very grateful if you can contact the trustees with a structure's proposal."

This was copied to the original trustee.

10. On 25 March 2015, the Class A Protectors wrote to the original trustee the following letter:

"We refer to the letter we received from Mrs Francie Bernheim, requesting (sic) us to act as members of a technical "investment supervisor committee" (the Committee).

On this regard, in order to perform this function, we have thought to set up a technical committee composed by all of us that should support the trustees and the board of protectors, as financial supervisors of the depositary institutions and of the asset managers by verifying their investment choices as well as the asset allocation decisions. In order to reach this result, the global risk management report is required, which allows us to verify the portfolio allocation.

We are of the opinion that the aim of this Committee, considering also the importance in terms of value of the trust fund, should be to give a good comfort level regarding the suitability of the investments' decisions to the trustees, to the Board of Protectors and, at the end to the trust's beneficiaries. For this reason it is important that the Committee will report on a regular base (we estimate on a quarterly base) its results to the Trustees as well as to the Board of Protectors, so that they can take the opportune decisions supported by the Committee's evaluation.

Considering the above mentioned, we think we should set up this Committee starting from now.

In order to perform this task that, as explained, has the aim to support the Trustees and the Board of Protectors we think that a right level of compensation should be 0.1% of the trust fund."

11. The ISC was put into place and in the Board of Protectors' minutes from a meeting dated 20 May 2015, compensation for the ISC members payable at 0.1% of the value of the Trust was acknowledged. Formal terms of reference were signed on 14 April 2021 between the Class A and Class B Protectors and the Trustee (the "TOR").
12. In April 2021, Francine executed a Letter of Wishes addressed to NSTL who by this point was the Trustee. She said:

"This Letter of Wishes relating to the Billevese Trust (the "Trust") is supplemental to my original Letter of Wishes dated 29th December 2014 and further letter to Mr Francois Voss, Mr Peter Krummenacher and Mr Agostino Ferrazzini dated 25th March 2015. In this letter I would like to outline in more detail my wishes for the continuity of the Investment Supervisory Committee (the "ISC") which currently consists of; Mr Francois Voss, Mr Peter Krummenacher and Mr Agostino Ferrazzini.

My wish is for the ISC to fulfil a supervisory role of advising the trustees and appointed managers on the investment strategy for the Trust including; regular reviews of the investment strategy, regular reviews of the asset allocation and performance of the investment managers, investment related recommendations related to the Trustees and quarterly risk management reports submitted to the trustees in order to deliver the agreed objectives.

In the event that new or replacement members of the ISC are required my wish is for the current ISC members, at any time to make recommendations to the trustees in selecting their successor members or any new members, ensuring that the composition of the ISC is well-balanced and resourced with appropriate knowledge and expertise.

In performing their roles as the ISC, I am happy for the ISC members to be compensated for their work with an annual fee of 0.1% of the value of the Trust fund plus VAT where applicable.”

13. On 30 June 2023, due to his lack of capacity Mr Voss was removed as one of the Class A Protectors by NSTL. On 6 July 2023, Martino wrote to the Trustee suggesting that Protectorship Company SA be appointed as an additional Class A Protector and thereafter the remaining Class A Protectors would retire. The Trustee indicated that neither they nor Cynthia considered that this would be in Cynthia’s best interests.
14. The assets of the Trust are a 100% shareholding in B Settlement SICAV-SIF (the “SICAV”), a Luxembourg Law SICAV; a 100% shareholding in B Settlement GP Limited, a Guernsey Law Limited Company (“GP”) which is the general partner in B Settlement LP (the “Partnership”) and the limited partnership interest in the Partnership. The Partnership and the SICAV, in turn, have investments in a broad range of financial instruments (in the 2023 accounts) at around \$325,000,000.
15. Copernicus Wealth Management and Services SA (“Copernicus”) and Dreyfus Sons & Co Limited Banquiers (“Dreyfus”) were each appointed as the investment managers to manage the assets of the SICAV and the Partnership. Dreyfus providing services for the SICAV subcontracted through Copernicus. Dreyfus were also appointed as custodian and banker for the Trustee and the Partnership.
16. Following Francine’s death, and in recognition of the different profile of Cynthia as the life tenant, the Trustee commenced an in depth review of the Trust and the investment strategy. The review of the investments was undertaken by Asset Risk Consultants Limited (“ARC”). Thereafter, ARC assisted with the preparation of a detailed restructuring process in conjunction with Deloitte, setting out the practical steps needed for the portfolios presently managed by Copernicus and Dreyfus to be transferred to the new custodian and under the management of the new managers (the “Proposed Changes”). Detailed UK and US tax advice has been taken by the Trustee from Deloitte and Withers, in relation to the tax consequences of the Proposed Changes and the Trustee has also worked closely with the Applicant and the Applicant’s personal UK and US legal and tax advisers.
17. One of the steps taken following the review was that the Trustee terminated the ISC on 27 July 2023. Then, in August 2023, the Partnership wrote to Copernicus and Dreyfus to put them on notice that it intended to terminate its relationship with them. However, Copernicus and Dreyfus remain in place and dispute the validity of their termination.
18. A detailed letter before action was sent by Cynthia to the Class A Protectors on 6 June 2024 requesting that Peter and Agostino step down and that they appoint a replacement Class A Protector selected by Cynthia and NSTL. The Class A Protectors responded to the letter before

action on the 20 June 2024 disputing the basis of their removal culminating in the following paragraph:

“Having considered the points raised by Cynthia, the Class A Protectors have concluded that it would not, at this time, be in the best interests of the Discretionary Beneficiaries of the Trust or of the administration of the Trust for them to retire. It seems to them that your client's dissatisfaction with their recent conduct stems from a misguided view that the Class A Protectors should simply do what they are told. They do not consider that their approach to the Proposed Changes (ie asking to understand and discuss those changes with the Trustee and Class B Protectors) is paralysing the administration of the Trust. The Class A Protectors remains intent on continuing to act in the interests of the Discretionary Beneficiaries as they consider they have done throughout their appointment.”

19. Cynthia and the Trustee say that the Class A Protectors have unreasonably obstructed the changes proposed by the Trustee; the Class A Protectors have a vested interest in maintaining the status quo; the Class A Protectors have abused their position to protect the investment management companies in which they have a personal financial interest; the Class A Protectors have demonstrated a misunderstanding of their role as protectors; the Class A Protectors have insisted on communicating with the Trustee through an intermediary; the Class A Protectors have a strained relationship with the Class B Protectors to the extent that the Board of Protectors is not functioning; and that there has been a complete breakdown of trust and confidence between Cynthia and the Class A Protectors.
20. The Class A Protectors say that there is no proper basis to argue that they have impeded the competent administration of the Trust and the criticisms of them are meritless. Further, that they have always acted in Cynthia's best interests and for her welfare and they will continue to do so. They have made a number of adjustments to ensure the proper functioning of the Trust and to give Cynthia further reassurance in the light of the concerning but unjustified criticisms that have been made against them. They highlight that their financial expertise is vital more than ever given the changes instituted by the Trustee. Although the Class A Protectors say that they had been willing to discuss alternative Class A Protectors this has not been possible to do by agreement, therefore, they have not resigned. Their position is that the Application would be dismissed and that they will then, in due course, step down once the appointment of appropriate replacements had been finalised.

The Trust Deed

21. The relevant terms of the Trust Deed are as follows:

“1.2 The “Board of Protectors” shall mean the original Protectors together or the Protectors or Protector holding office as such in accordance with the terms of clause 19 (Board of Protectors) clause 19.20 (Removal of Protectors) and sub-clause 20.1 (Proceedings of Board of Protectors) for the time being.

“Class A” shall mean the Class comprising (i) such of the persons who together are the original Protectors as hold office as such from time to time if any together with (if any) (ii) each person who is appointed under sub-clause 19.1 to be or who under sub-clause 19.4 becomes a Protector and who holds office as such from time to time.

1.5 “Class B” shall mean each person appointed by Cynthia under sub-clause 19.5 together with (if any) each person who is appointed under sub-clauses 19.6 and 19.9 and paragraph 19.14.2 to be, or who under sub-clause 19.13 becomes, a Protector and who holds office as such from time to time.

1.13 “Protector” shall mean each of the original Protectors whilst holding such office and each person appointed in accordance with the terms of clause 19 (Board of Protectors) or clause 19.20 (Removal of Protectors) to be a Protector.

1.14 “Protector Consent” shall mean the prior unanimous written consent of the Board of Protectors.

Clause 6. Initial Trusts and Capital and Income

6.1 During the Original Settlor’s lifetime the Trustee shall:

6.1.1 pay the income of the Trust Fund to the Original Settlor; and

6.1.2 have the power with Protector Consent at any time or times during the Trust Period to pay the whole or any part of the capital of the trust Fund to the Original Settlor absolutely freed and discharged from the trusts powers and provisions of the Trust.

6.2 If Cynthia shall predecease the Original Settlor without leaving issue, the Trustees shall pay the Trust Fund to the Original Settlor freed and discharged from the trusts powers and provisions of the Trust.

6.3 Notwithstanding any provision contained in this Deed, no power or provision hereby or by law conferred upon the Trustees shall be exercisable during the lifetime of the Original Settlor in such a way as to cause the capital or income of the Trust Fund to become distributable during the lifetime of the Original Settlor to any person other than the Original Settlor.

Clause 7 Trusts Following Death of Original Settlor

7.1 Subject to the foregoing and to the powers and provisions of clause 8 (overriding Power of Appointment) after the death of the Original Settlor and during the Trust Period the Trustees shall pay the income of the Trust Fund to Cynthia during her life provided that distributions of income shall be made to Cynthia at least once a year and all income net of expenses properly deductible therefrom arising in any year of account shall be distributed within 65 days following the year end.

7.2 The Trustees with Protector Consent may from time to time during the Trust Period transfer or apply the whole of any part of the capital of the Trust Fund to the income of which Cynthia is then entitled to her or for her benefit at such times or times and in such manner as the Trustees shall think fit.

7.3 In administering the Trust Fund, and in the exercise of their discretions, powers and authority hereby or by law conferred on them, during Cynthia’s lifetime the Trustees and Protectors shall primarily consider the interests of Cynthia and in the event of a conflict between the best interests of Cynthia and the best interests of any other Discretionary Beneficiary or any other future, remainder or contingent Beneficiary the best interests of Cynthia shall prevail.

Clause 19 Board of Protectors

19.1 Class A shall have power by deed to appoint one or more new Protector as an addition to their number provided that the total number of Protectors of Class A shall not exceed three and any appointment which would bring the number of Protectors of Class A above three shall be wholly void and of no effect. Each Protector duly appointed under this

sub-clause shall become a Protector of Class A upon the appointee delivering to the Trustees and to each Protector of Class B a copy of the deed by which he was appointed.

- 19.2 *Class A shall have power by deed to appoint a person to succeed a Protector of Class A (a "Class A Successor"). The appointment of a Class A Successor shall become effective as such only when the Trustees and each Protector of Class B if any are given a copy of the deed of appointment and for the avoidance of doubt a Class A Successor may become a Protector of Class A only in accordance with sub-clause 19.4.*
- 19.3 *Class A may by deed revoke any appointment of a Class A Successor. The revocation shall become effective only when the Trustees and each Protector of Class B are given a copy of the deed of revocation.*
- 19.4 *If at any time a Protector of Class A ceases to act as a Protector of Class A:*
- 19.4.1 *if Class A shall have appointed a Class A Successor and not revoked the appointment, the person appointed as Class A Successor shall take office as a Protector of Class A upon the Class A Successor delivering to the Trustees and to each Protector of Class B written confirmation that the Class A Successor consents to act as a Protector of Class A; and*
- 19.4.2 *if Class A shall have made more than one appointment of a Class A Successor and more than one appointment remains unrevoked, the person appointed under the earlier or earliest deed of appointment (or if such person is unable or unwilling to act, the senior willing Class A Successor counting seniority by reference to the respective dates of Class A upon such person delivering to the Trustees and to each Protector of Class B written confirmation that he consents to act as a Protector of Class A.*
- 19.5 *Cynthia shall have power to appoint one or more persons not exceeding three to be a Protector and such appointee or appointees shall, on his appointment becoming effective in accordance with sub-clause 19.10, comprise the original Class B provided that notwithstanding anything in this Deed Cynthia may not appoint either herself or any person who is a related or subordinate party to her, determined as if she were the grantor of this Trust as such terms are defined by section 672 of the Code.*
- 19.6 *Cynthia shall have power by deed to appoint one or more new Protectors as an addition to the number of Protectors of Class B provided that the total number of Protectors of Class B shall not exceed three and any appointment which would bring the number of Protectors of Class B above three shall be wholly void and of no effect and provided further that notwithstanding anything in this Deed Cynthia may not appoint either herself or any person who is a related or subordinate party to her, determined as if she were a grantor of this Trust as such terms are defined by section 672 of the Code. Each Protector duly appointed under this sub-clause shall, on his appointment becoming effective in accordance with sub-clause 19.10, become a Protector of Class B.*
- 19.7 *Cynthia shall have power by deed to appoint a person to succeed a Protector of Class B (a "Class B Successor"). The appointment of a Class B successor shall become effective as such only when the Trustees, each Protector of Class A and each Protector of Class B are given a copy of the deed of appointment and for the avoidance of doubt a Class B Successor may become a Protector of Class B only in accordance with sub-clause 19.13.*
- 19.8 *Cynthia may by deed revoke any appointment of a Class B Successor made by her under sub-clause 19.7 or by Class B under sub-clause 19.11. The Class A and each Protector of Class B are given a copy of the deed of revocation.*

- 19.9 *Class B shall have power (with the written consent of Cynthia) to appoint one or more new Protector as an addition to the number of Protectors of Class B provided that the total number of Protectors of B shall not exceed three and any appointment which would bring the number of Protectors of Class B above three shall be wholly void and of no effect. Each Protector duly appointed under this sub-clause shall, on his appointment becoming effective in accordance with sub-clause 19.10, become a Protector of Class B.*
- 19.10 *An appointment under sub-clauses 19.5, 19.6 and 19.9 shall become effective upon the appointee delivering to the Trustees and to each Protector of Class A, a copy of the deed by which he was so appointed and such delivery shall not affect the rights of Cynthia under sub-clause 19.22.*
- 19.11 *Class B shall have power (with the written consent of Cynthia) by deed to appoint a Class B Successor. The appointment of a Class B Successor shall become effective as such only when the Trustees and each Protector of Class A are given a copy of the deed of appointment and for the avoidance of doubt a Class B Successor may become a Protector of Class B only in accordance with sub-clause 19.13.*
- 19.12 *Class B may (with the written consent of Cynthia) by deed revoke any appointment of a Class B Successor made by Class B under sub-clause 19.11. The revocation shall become effective only when the Trustees and each Protector of Class A are given a copy of the deed of revocation.*
- 19.13 *If at any time a Protector of Class B ceases to act as a Protector of Class B:*
- 19.13.1 *if a Class B Successor shall have been appointed and the appointment has not been revoked, the person appointed as Class B Successor shall take office as a Protector of Class B upon the Class B Successor delivering to the Trustees and to each Protector of Class A written confirmation that the Class B Successor consents to act as a Protector of Class B; and*
- 19.13.2 *if more than one Class B Successor shall have been appointed and more than one appointment remains unrevoked, the person appointed under the earlier or earliest deed of appointment (or if such person is unable or unwilling to act, the senior willing Class B Successor counting seniority by reference to the respective dates of appointment of a Class Successor) shall take office as a Protector of Class B upon such person delivering to the Trustees and to each Protector of Class A written confirmation that he consents to act as a Protector of Class B.*
- 19.14 *Upon Cynthia's death or incapacity and thereafter:*
- 19.14.1 *the requirement for consent for Cynthia under sub-clause 19.9, 19.11 and 19.12 shall be treated as a requirement for the joint and unanimous consent of each and every member of the class of Discretionary Beneficiaries for the time being and consent hereby required of the class of Discretionary Beneficiaries for the time being is in this Deed referred to as a "Paragraph 19.14.1 Consent"; and*
- 19.14.2 *the powers exercisable by Cynthia under sub-clause 19.5, 19.6, 19.7 and 19.8 above and sub-clause 19.22 below shall be exercisable jointly and unanimously by each and every member of the class of Discretionary Beneficiaries living at the time any of the said powers fall to be exercised and the power hereby conferred on the class of Discretionary Beneficiaries living at the time any of the said powers fall to be exercised is in this Deed referred to as a "Paragraph 19.4.2 Power".*

- 19.15 Notwithstanding sub-clause 19.14, to the extent that a Paragraph 19.14.1 Consent is required of, or a Paragraph 19.14.2 Power falls to be exercised by, a minor such consent shall be deemed to be given, or such power shall be deemed to be exercised, by such minor if a person appointed in accordance with the applicable law in relation to such minor for the purposes of consenting to the actions of Class B and appointing and removing any Protector of Class B and Class B Successor gives his written consent or executes a deed exercising the said Paragraph 19.14.2 Power. Where such person is required to be appointed by the justice authorities of any relevant jurisdiction the Board of Protectors shall after taking appropriate legal advice at the expense of the Trust, if permitted under the applicable law, apply to such authorities for the appointment of such person and for the vesting in him of the requisite authority.
- 19.16 Class A is requested to make sufficient appointments to ensure that Class A is not reduced below one Protector.
- 19.17 If despite the foregoing at any time there shall be no members of Class A the Trustees shall, during such time (but not further or otherwise), have power by deed to appoint a Protector of Class A. The appointment shall become effective only when the Trustees have given a copy of the deed of appointment to each Protector of Class B or if there are is no Class B to Cynthia during her lifetime and upon her death or incapacity and thereafter to each member of the class of Discretionary Beneficiaries to any person appointed in accordance with the applicable law in relation to such minor as set out in sub-clause 19.15.
- 19.18 Class B and the Discretionary Beneficiaries are requested to make sufficient appointments to ensure that Class B is not reduced below one Protector.
- 19.19 If despite the foregoing at any time there shall be neither a member of Class B nor any living member of the class of Discretionary Beneficiaries the Trustees shall, during such time (but not further or otherwise), have power by deed to appoint a Protector of Class B. The appointment shall become effective only when the Trustees have given a copy of the deed of appointment to each Protector of Class A.
- 19.20 Notwithstanding anything in this Deed neither the Original Settlor nor any descendant of hers nor the spouse, widow, widower or civil partner of hers or of a descendant of hers ("Family Member"), nor any person who is a related or subordinate party to a Family Member, determined as if the Family Member was a grantor of this Trust as such terms are defined by section 672 of the Code, may take office as a Protector. Removal of Protectors.
- 19.21 A Protector may at any time and for any reason by deed resign from office. A Protector's resignation shall become effective only when a copy of the deed of resignation is given to the Trustees.
- 19.22 Cynthia may at any time and for any reason by deed remove a Protector of Class B from office and by the same deed appoint any other person to be a Protector of Class B in place of the Protector so removed provided that the restrictions in sub-clause 19.5 shall apply. The removal of a Protector shall become effective only when a copy of the deed of removal is given to the Trustees and to that Protector.
- 19.23 A Protector shall be removed from office immediately:
- 19.23.1 in the case of an individual:
- (a) upon the death of that Protector;

- (b) upon the Trustees by deed declaring that that Protector lacks sufficient mental capacity to make decisions relating to the exercise of any of his powers under this Trust; or
- (c) upon the making of a bankruptcy or like insolvency order against that Protector; and

19.23.2 in the case of a legal person:

- (a) upon the making of a liquidation or administration order against that Protector;
- (b) upon the making of a receivership order against that Protector; or
- (c) upon the dissolution of that Protector.

Clause 20. Proceedings of Board of Protectors

20.1 The Board of Protectors shall act unanimously by written resolution signed by all the members thereof.

20.2 Notwithstanding any other provision of this Deed, the Trustees shall not exercise any of the following powers or such of them as may subsist from time to time without first obtaining Protector Consent:

- 20.2.1 clause 6.1.2 (Initial Trusts of Capital and Income);
- 20.2.2 sub-clause 7.2 (Trusts Following Death of Original Settlor);
- 20.2.3 clause 8 (Overriding Power of Appointment);
- 20.2.4 clause 14 (Power to Shorten Trust Period);
- 20.2.5 sub-clauses 23.1, 23.2 and 23.4 (Proper Law, Forum and Place of Administration);
- 20.2.6 clause 23 (Variation of Terms of this Trust);
- 20.2.7 clause 30 (Power of Lend);
- 20.2.8 clause 31 (Power to Borrow);
- 20.2.9 clause 32 (Power to Give Guarantees);
- 20.2.10 clause 48 (Powers to Delegate); and
- 20.2.11 clause 62 (Release of Powers).

20.3 The powers hereby conferred on the Protectors are fiduciary in nature and in exercising such powers the Protectors shall have regards to the best interests of the Discretionary Beneficiaries subject to sub-clause 7.3.

Relevant Legal Principles

22. The application is made under section 69 of The Trusts (Guernsey) Law, 2007 (as amended). The principles which govern the scope of the court's power to remove a Protector being those set out *In the matter of the K Trust 31/2015*. The general principle guiding the court in the exercise of its inherent jurisdiction is the welfare of the beneficiaries and the competent administration of the Trust in their favour. As was accepted by all the parties, it is not necessary for there to be positive misconduct by a fiduciary nor will every mistake or neglect of duty or inaccuracy of conduct mean that a fiduciary will be removed. Nor is it dependant on me making adverse findings of fact or for the Applicant to prove wrongdoing but it is for the Applicant to make a good arguable case about the issues that are raised (see *Schumacher v Clarke [2019] EWHC 1031 (Ch)* paragraph 18). The key question is whether continuance of the relevant fiduciaries in their role, in this case the Class A Protectors, will prevent the Trust from being properly executed, having regard to the fact that a trust exists for the benefit of the beneficiaries. The threshold to remove a fiduciary is not exceptional circumstances but rather a jurisdiction not to be exercised lightly and with required caution.

23. *In the Matter of the K Trust (ibid)*, Deputy Bailiff McMahon (as he was then), accepted that the guiding principles for removal of a protector are akin to those applicable to a trustee because the jurisdiction flows from the fiduciary nature of a protector’s office, and I gratefully adopt this approach. In accordance with that principle, the judgment of Lord Blackburn in *Letterstedt v Broers (1884) 9 app. Cas 371* at pages 386, 387 and 389) provides useful guidance of the considerations that I should have when deciding whether Cynthia’s application should be granted:

“... if it appears clear that the continuance of the trustee would be detrimental to the execution of the trusts, even if for no other reason than that human infirmity would prevent those beneficially interested, or those who act for them, from working in harmony with the trustee, and if there is no reason to the contrary from the intentions of the framer of the trust to give this trustee a benefit or otherwise, the trustee is always advised by his own counsel to resign, and does so. If, without any reasonable ground, he refused to do so, it seems to their Lordships that the Court might think it proper to remove him; but cases involving the necessity of deciding this, if they ever arise, do so without getting reported. ...

In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle above enunciated, that their main guide must be the welfare of the beneficiaries. Probably it is not possible to lay down any more definite rule in a matter so essentially dependent on details often of great nicety. But they proceed to look carefully into the circumstances of the case. ...

It is quite true that friction or hostility between trustees and the immediate possessor of the trust estate is not of itself a reason for the removal of the trustees. But where the hostility is grounded on the mode in which the trust has been administered, where it has been caused wholly or partially by substantial overcharges against the trust estate, it is certainly not to be disregarded.”

24. As Deputy Bailiff McMahon said, after citing this extract at paragraph 37:

“These principles show that it is the welfare of the beneficiaries and the competent administration of the trust in their favour that found the jurisdiction for the removal of a trustee and so, by analogy, a protector. I am satisfied that it is appropriate for the Court to adopt the same approach as a matter of Guernsey law.”

25. *In the matter of the A Trust [2012] JRC 169A* Commissioner Page, in a protector removal case before the Jersey Royal Court said:

“In the present case, mutual hostility and distrust between the Representor Beneficiaries and the protector had led to a breakdown of relations that was quite plainly having a seriously detrimental effect on the execution of the trusts and was likely to continue to do so. This alone would have been a sufficient basis for the exercise of the Court’s jurisdiction had that been the only way in which the situation could have been redressed. But add to this the fact, as we found, that S [the protector] bore much of the responsibility for this state of affairs and we were left in no doubt whatever that this was a case in which it was right for a protector who was reluctant to retire to be removed from office.”

Discussion

26. The extent of the Class A Protector's powers are a matter of construction of the Trust Deed. The powers of the Board of Protectors as a whole are quite extensive and one of the consequences of extensive powers such as these means that if there has been a breakdown in relations, the impact upon the administration of a trust and the beneficiaries has the potential to be significant. It is also a feature of this case that "hard-wired" into the Trust Deed (in clause 7) is an obligation on all the fiduciaries to consider the interests of Cynthia and to prefer her interests over any other discretionary beneficiary. This obligation to give preference to Cynthia is also specifically referred to in the exercise of the protectors' powers at clause 20.3. As Cynthia does not have any children, there are currently no other discretionary beneficiaries. This means that Cynthia's wishes are very relevant not just in my decision but also in the running of the Trust. In a trust where there are no competing interests, when considering what is in her best interests, it places a particular onus on Cynthia's own voice needing to be heard and taken into account.
27. In coming to the conclusions that I have I am mindful of the comments of Chief Master Marsh in *Schumacher v Clarke* (*ibid*) where he said at paragraph 21 (iii): *"It is essential for the court to avoid as far as possible providing a forum for the parties merely to vent their complaints about each other. The core issue is whether the continuation in office of one or more of the parties is detrimental to the interests of the beneficiaries."*
28. Due to the history of this matter, the seeds of discord between Cynthia and the Class A Protectors were present even before the Trust was declared, however, it would appear that the summer of 2023 was the turning point for relations between the parties, particularly between the Trustee and the Class A Protectors. I have set out below under the sub-headings the explanations and discussion of the themes that were identified by the parties although inevitably these issues are, to a large extent, entwined and overlap one another.

Termination of Relationship with Copernicus and Dreyfus

29. The original investment arrangements had been designed with the view to Francine's needs as the beneficiary. She was a Swiss resident with French nationality. Her age profile and tax profile are very different from Cynthia's. She had a close relationship with the Class A Protectors and clearly from the Letters of Wishes respected and was guided by their views. She appointed them as members of the ISC which provided an investment oversight service separately from their roles as protectors. Nevertheless, it is evident from the minutes of the first Board of Protectors on 20 May 2015 that there was an acknowledgment from the beginning that there would need to be a different investment strategy when Cynthia became the principal beneficiary on Francine's death. Although after Francine's death, the Trustee and Cynthia, with their respective advisers and with the assistance of ARC, had extensive discussions about the potential changes, it would appear that the Class A Protectors were not part of these discussions. ARC's recommendations following the review involved a substantial change in the way The Billevese Trust is managed.
30. Following the review the Trustee came to the conclusion that the role of ISC was no longer necessary. The notification of the termination of Agostino, Peter and Mr Voss as members of the ISC on 27 July 2023 was not expected by them.
31. The Trustee also commissioned Counsel's advice in July 2023 on whether the Trustee could: transfer the units in the SICAV to the Partnership; request the GP to liquidate the SICAV (so that the underlying investments currently held by the SICAV would become held directly by the Partnership); remove the existing investment managers and appoint new investment managers to manage the underlying investments, all without having to obtain the consent of the Protectors and whether there was any restriction on the ability of the GP to change the present investment managers at the instigation of the Trustee. Richard Wilson KC concluded that none of these steps required the consent of the Board of Protectors.

32. The GP initially notified Copernicus and Dreyfus of the intention to terminate the arrangements in August 2023 and then gave them notice of termination in September. Copernicus provided a copy of its letter from the GP to the Class A Protectors, Mourant Ozannes wrote to the Trustee asking it not to implement the changes. Copernicus and Dreyfus responded to the attempt to terminate their arrangements by questioning whether NSTL had obtained the consent of the Class A Protectors both to the termination and appointment of the new investment adviser. Cynthia and NSTL say that in various ways the Class A Protectors have since then obstructed or at the very least failed to cooperate with the termination of the relationship with Copernicus and Dreyfus and the appointment of new investment advisers (which they contrast with the change from one of the original asset managers Patrimony SA 1873 (“Patrimony”) to Copernicus where the Class A Protectors did not require an equivalent consent process). The Class A Protectors’ position is that they have not obstructed the transfer of the investment adviser but have been undertaking their proper role as protectors in ensuring that they have considered all the appropriate and relevant information. The actions of Copernicus and Dreyfus have given rise to concerns that the terms of the Trust Deed had been provided to Copernicus and/or Dreyfus by the Class A Protectors. Agostino and Peter both vehemently deny that they were responsible. The Trustee has accepted in evidence that they cannot be sure the original trustee did not provide the Trust Deed when the take-on process was undertaken.
33. The Class A Protectors commissioned their own KC’s opinion in April 2024 (provided to the Trustee in June 2024) on whether their consent was necessary for the appointment of any new investment manager which he found that it did (there is no reference in the advice to whether it is required for the termination of Copernicus and Dreyfus’s services).
34. As a consequence of the issues raised by Copernicus and Dreyfus, the Trustee took the view that it should apply for a ruling by the Royal Court to determine whether or not the consent of the Board of Protectors was needed to terminate the investment management relationship (the “Construction Application”). The Class A Protectors were not parties to the Construction Application, although it is apparent that they knew that it was being made. The Court confirmed in January 2025 that there was no requirement for their consent to terminate the investment management relationship.
35. Attempts to break the deadlock with Copernicus and Dreyfus by the Trustee have included asking for confirmation from the Board of Protectors that they would not seek to assert any liability on the part of Copernicus and Dreyfus. The evidence before me is that this suggestion to move matters forward was not acknowledged by the Class A Protectors. Another attempt by the Trustee was to request that the Class A Protectors confirm that there is no requirement for their consent for the termination of the appointments with Copernicus and Dreyfus and to agree that the Trust Deed imposes no restrictions on the Trustee's ability to terminate the appointment of custodians in connection with the Trust Fund. The Class A Protectors response is typified in Agostino #2 where he says:
- “The correspondence which has developed over the last year on this issue has been caused by the Trustee’s contradictory approach: despite saying that it does not need our consent to terminate the mandates of Copernicus WM and Dreyfus, it has belatedly sought our views after the decision was taken. However and as I repeat, the difficulty is that we have been asked by the Trustee to provide our considered opinion on the Proposed Changes but have not been given sufficient or adequate material to fully review them. For this reason, the Trustee’s criticism that we have “failed to respond substantively to the Proposed Changes “is wholly unfair.”*
36. The Trustee says it was only on 26 March 2025 after the decision of the Construction Application that the ability to terminate the mandates of Copernicus and Dreyfus without the Class A Protectors’ consent has been openly acknowledged by the Class A Protectors,

nevertheless, despite requests they remained unwilling to confirm the validity of the termination to Copernicus and Dreyfus or their legal counsel in concert with the Trustee.

37. The Trustee is clear that the Class A Protectors have received the necessary information for them to undertake their role (and this is substantially different from the information they received when they were members of the ISC). The Trustee says that as a consequence of the actions of the Class A Protectors, the Trust does not have a functioning Board of Protectors, such that it is severely detrimental to the proper administration of the Trust. The Trustee did consider whether it should bring an application for the removal of the Class A Protectors but did not because of the Application being brought by Cynthia.
38. The Class A Protectors reject the notion that they contributed towards the need for the Construction Application, arguing that this conflates the position of the Class A Protectors with that of Copernicus and Dreyfus. The Class A Protectors say that they have distanced themselves from the discussions with Copernicus and Dreyfus from at least November 2023 and that they have no operational involvement with either entity. Further, they say that they have not had sufficient information to perform their role as protectors and what they have been attempting to do is to become informed in order that they can undertake their role properly. They consider that their role has been crucial to the successful performance of the assets of the Trust, thus far, and there is no evidence that capital distributions have not be made nor that they will not be made in the future (to be contrasted with the situation *In the matter of the K Trust (ibid)*).
39. The Class A Protectors argue that in order to decide this case it is necessary for me to resolve the question of whether Guernsey adopts the narrower or wider view of the role of a protector. They say they are only doing what is required in the proper exercise of their fiduciary duty as set out at paragraph 91 of *In the matter of the Piedmont Trust & Riviera Trust [2021] JRC 248*:

“These considerations do not apply to a protector. The settlor has decided that a protector (often himself or a longstanding friend or adviser whose judgment he trusts) should be appointed pursuant to the trust deed and has specified those matters where the protector’s consent is required. The settlor must be taken in those circumstances to have intended that the protector should exercise his own judgment in exercising those powers; otherwise why bother to go to the trouble of appointed(sic) a trusted friend or adviser (or himself) as protector rather than someone with a legal qualification to judge issues of rationality. Furthermore, if the role of a protector was simply to review the trustee’s decision in the same way that the Court would do, his role would be almost redundant; he would bring nothing to the table that the Court itself would not bring on a blessing application. It follows that, depending on the circumstances, a protector may well be entitled to veto a decision of a trustee which is rational, in the sense that the Court would bless it.”

40. And as further summarised at paragraph 112 of that judgment:

“The question therefore was whether, in exercising their powers to consent to the exercise of powers vested in the trustees, the protectors were to exercise an independent discretion as to whether or not to give consent, taking into account relevant considerations and disregarding irrelevant considerations so that the protectors might withhold their consent to a proposed exercise of power by the trustees even if the proposed exercise of power was one which a reasonable body of properly informed trustees was entitled to decide upon (“the Wider View”).”

41. The Class A Protectors say that they should not be criticised for undertaking their role properly. This should not be the basis of their removal, and any replacement protector will need to be able to perform the function with this level of diligence.

42. The Trustee says even if I conclude that it is the wider view of the role that should be adopted in this jurisdiction, I should take into account what is said at paragraphs 92 and 93 of *In the matter of the Piedmont Trust & Riviera Trust* (*ibid*):

“92. However, in the context of a power to consent, as in this case, a protector’s discretion lies within a narrower compass than that of a trustee. He is not the trustee. It is for the trustee to make a decision in the first place as to distributions or in relation to the exercise of any other discretionary power conferred on the trustee. It is emphatically not the duty of the protector to take that decision himself or to force the trustee into making the decision which the protector would make if he were the trustee by stating that he will only consent to a particular decision. That would be to exceed his proper role and to use the power given to him otherwise than for its intended purpose. Such conduct would also almost certainly not be in the interests of the beneficiaries and would be likely to lead to deadlock requiring the intervention of the Court. A protector may often find that he should consent to a discretionary decision of a trustee on the basis that it is for the benefit of one or more of the beneficiaries even though, if he had been the trustee, he might have made a different decision which he thought to be even more beneficial.

93. In this connection, it is to be expected and indeed encouraged for there to be full and open discussion between trustee and protector, with a view to finding something upon which they can both agree. We see nothing wrong with the sort of discussions which took place between the Protector and the Trustees in this case. A protector is not confined to a simple yes or no to a request for consent. A protector and a trustee should work together in the interests of the beneficiaries. It is therefore perfectly reasonable for a protector to explain his concerns about a particular proposal by a trustee and the trustee may often be willing to modify his proposal to take account of these concerns or the protector may be satisfied after the trustee has explained his thinking.”

43. The Trustee says whilst a protector can challenge, once a trustee has taken into account those challenges and shown that it has made a properly considered decision in the interests of the beneficiaries, the protector should, in those circumstances, consent. In this case, to the extent that the Class A Protectors’ consent is required at all, they have gone beyond their role creating deadlock with the Trustee.
44. After considering this carefully, I have come to the conclusion that it is not necessary or appropriate for me to resolve the question of which route the Guernsey courts should take on a protector’s role to decide this case. Although I recognise that the Class A Protectors wish to characterise many of their actions as attempts to properly exercise their own judgement in accordance with the wider view of the role, it seems to me that this fails to recognise what is at the heart of this application which is whether there has been a breakdown in relations which is having a detrimental effect on the execution of the Trust (or is capable of doing so) and whether as a consequence the Class A Protectors should be removed.
45. Both the Trustee and Cynthia allege that the actions of the Class A Protectors, to the detriment of the Trust, have been as a consequence of their conflicting interests with Copernicus and Dreyfus. These conflicts have meant that they have a vested interest in maintaining Copernicus and Dreyfus as the investment managers for the Trust. The fees for Copernicus (not including the fees for Copernicus Wealth before termination of the services) have amounted to \$1 million per year. In their evidence, the Class A Protectors deny that they have a conflict of interest and Agostino sets out in Agostino #1 why, in his view, there is no conflict of interest and repeats this in Agostino #2. Peter in Peter #1 expressly aligns himself with Agostino’s comments. Agostino also relies on the fact that on 27 November 2023 and 18 December 2023 Mourant Ozannes sent a letter on behalf of the Class A Protectors making clear that they were distancing

themselves from the Trustee's and the GP's discussion with Copernicus and Dreyfus. In the hearing, Advocate Duerden took a more nuanced position. To some extent she accepted that in the past, due to their relationships with Copernicus and Dreyfus, there had been a conflict but that this was acknowledged and managed (including by Copernicus's own conflicts' policy). She said Peter has had no conflict since he retired from Dreyfus in 2016 and that from October 2023 when Agostino stepped down from the Board of Copernicus Wealth, Agostino's conflict is only a perceived conflict which has been managed.

46. It does appear that although Peter had a 50 year relationship with Dreyfus and was a director at the time Dreyfus was appointed as one of the investment managers of the Trust, he does not have a current operative or financial role with the company. Therefore, I do consider that it is a fair comment by the Class A Protectors that the other parties have, to some extent, "lumped" Peter and Agostino together and also at times treated Peter, Agostino, Martino, Dreyfus and Copernicus as though they were all the same. Although with regard to Peter and Agostino, this acknowledgment of the other parties "lumping" them together is somewhat tempered by Peter's complete alignment with Agostino that there is no conflict as a consequence of Agostino's relationship with Copernicus. Along with Martino, Agostino is a co-founder of Copernicus. Whilst he was on the board of Copernicus Wealth until he stepped down in 2023, nevertheless he remains chairman and a shareholder of Copernicus Holding SA (who in turn wholly own all the subsidiaries of Copernicus). Advocate Duerden said in oral submissions that he has not received a dividend. Whilst he does not have a controlling stake, Advocate Duerden confirmed the sizable stake (which I shall not set out here) which Agostino holds in Copernicus Holding SA as one of six shareholders.
47. It is evident that the relationship between the Class A Protectors and the investments managers has always been known about. As indeed was Agostino's connection with Patrimony, one of the Trust's original asset managers (along with Dreyfus), of which Agostino was again a founder. Agostino says in Agostino #1 that it was through Patrimony that he became involved in Antoine's succession planning and ultimately the matters which form the background of the formation of the Trust. More recently, although admittedly in their roles of members of the ISC, there is an acknowledgment by the Trustee and by the GP at paragraph 5 of the TOR that *"in accordance with the recommendations of the Settlor, the members of the ISC are hereby authorised to utilise the investment management companies that relate to members of the ISC as well as their suggestions regarding depository institutions and to further verify the choices of the asset allocation decisions."*
48. Given the nature of Agostino's shareholding in Copernicus, his position in his affidavits that there is no conflict of interest is unsustainable nor am I persuaded that Agostino does not have a financial interest in the success of Copernicus. However, conflicts can be managed. Whilst I consider that the conduct of the Class A Protectors in dealing with the termination of the Copernicus and Dreyfus mandates overall has shown a failure to recognise the duties they owe to Cynthia, nevertheless, the example which exemplifies to me that there are serious grounds for saying that the Class A Protectors have not engaged with an effort to find a resolution and have not properly managed Agostino's conflict, despite the fiduciary obligations and duties owed to Cynthia, was their refusal to attend a proposed meeting between the Board of Protectors (after many months of stagnation on the removal of Copernicus and Dreyfus) and the Trustee (both in person and, subsequently in response to a proposed virtual meeting in its place) as a result of the Trustee's refusal to guarantee to the Class A Protectors in advance of the meeting that at least some of the assets of the Trust structure would remain with Copernicus and Dreyfus.
49. It is worth setting out the correspondence in relation to this in some detail. In a letter dated 14 August 2024 from Maurant Ozannes to Ogier sent in anticipation of a meeting proposed on 22 August 2024, it said:

“Prior to the meeting on the 22nd of August, it is important to our clients that the Trustee has confirmed in writing that it is willing to agree that the current investment managers will be part of a split between investment managers of the trust assets if this is unanimously agreed by the Board of Protectors. Without this assurance, our clients feel the meeting is unlikely to be productive.”

50. After receiving this letter Ogier wrote back on 15 August 2024, saying:

“Our clients will not give the assurance required by your clients that they will "agree that the current investment managers will be part of a split between investment managers of the trust assets if this is unanimously agreed by the Board of Protectors.....

.....

....Notwithstanding the above, as we confirmed in our meeting with you on 7 August 2024, our clients will be willing to hear representations from your clients in respect of a re-engagement with Copernicus and Dreyfus. However, as we made clear during that meeting, in circumstances where our clients are on the brink of litigation with both Copernicus and Dreyfus, they consider there to be very little prospect of persuading our clients that such a future role requires consideration.”

51. On 19 August 2024, Ogier sent a chasing email to Mourant Ozannes asking them to let them know, as a matter of urgency, what the Class A Protectors' position was on the meeting on 22 August as to both venue and expectations of who would be in attendance. Following this, the following email was sent on behalf of the Class A Protectors on 20 August 2024 timed at 1.05pm:

“Our clients require confirmation that their proposal, that is to say, confirmation that not 100% of the trust assets will be transferred to the new investment managers, with some of the assets remaining with Copernicus and Dreyfus, is approved ahead of the meeting on the 22nd of August before they are to travel to London. Our clients understand that the trustees are not willing to agree this in principle.

For this reason, our clients do not think the meeting on Thursday will be effective and conclusive on this very important issue. Our clients are concerned with the apparent lack of willingness to come to an agreement on this point.

Instead, they are available for a video conference to discuss urgent administrative matters regarding the Trust as set out in the agenda instead, on a date to be agreed.

Having now received the information from ARC, they request time to review this. They will be in touch with times they are available for a video call on this specific topic.”

52. Advocate Duerden in her submissions distinguished this email from the letter on 14 August 2024. She says the 14 August 2024 letter sets out the proper position of her clients i.e. the retention of Copernicus and Dreyfus subject to the agreement of the Board of Protectors agreement rather than the unequivocal version set out in the email where the Class A Protectors (with no mention of the Board) seek a pre-guarantee of Copernicus and Dreyfus retaining some of the assets before they attend the meeting. However, I note that at the time there was not an attempt to amend what it says nor any attempt to address the Trustee's position that they remained open to representations about Copernicus and Dreyfus. A further email from Ogier for the Trustee, timed at 6.06pm the same day (20 August 2024) requested that the meeting go ahead by video conference given the parties' availability. However, it was confirmed on the morning of 22 August 2024 by Mourant Ozannes that one of the Class A Protectors had since scheduled other appointments and therefore, they were not available for the meeting.

53. It is not necessary for me to find a direct financial interest for there to be a conflict, although as I have said in Agostino's case there does appear to be one. However, I am satisfied that this conduct is grounds for a good arguable case for either a failure by the Class A Protectors to recognise a conflict between interest and duty and shows "*a disregard of duty*" (see page 2073 *Hunter v Hunter* [1938] N.Z.L.R. 520, NZ CA) by them and/or at the very least shows a failure to understand the fiduciary role of protector. Further, the contradiction in the conduct of the Class A Protectors maintaining that they are acting in Cynthia's best interests but, nevertheless, refusing to attend a meeting unless the Trustee agreed in advance that Copernicus and Dreyfus will be part of the split should have been obvious to them. There was no evidence before me as to why this refusal by the Class A Protectors even to meet would be in the best interests of Cynthia. I have also been left with little doubt that if the Class A Protectors had been focused on Cynthia's interests that progress could have been made in restructuring the Trust for her benefit and their failure to do so has obstructed the administration of the Trust.

Martino and access to the Class A Protectors

54. The Trustee says contact with the Class A Protectors has been difficult and one that has involved Martino being interposed as a liaison between the Trustee and the Class A Protectors. His role has been described in a number of ways by the Class A Protectors but, nevertheless, the Trustee routinely engaged with Martino in Trust administration matters that concerned the Board of Protectors rather than the Class A Protectors themselves. Cynthia agrees that Martino appeared to be acting as a protector rather than the Class A Protectors despite his obvious conflict with his role at Copernicus Wealth. The concern expressed by Cynthia and the Trustee that Martino has, in reality, been acting as the Class A Protector is demonstrated in the correspondence and in meetings where they say Martino largely spoke for the Class A Protectors, with the latter contributing very little and the insistence on him being present at meetings.

55. It is not in question that Martino was a key player in the setting up the Trust (assisting with negotiating on behalf of Francine) and the running of the Trust. In 2016, after he left Patrimony to set up Copernicus Wealth along with Agostino, Francine wrote to the Class A Protectors to ensure that Copernicus Wealth was appointed in place of Patrimony and that Martino was retained to be the point of contact for tax matters. Interestingly, Francine wrote to the Class A Protectors and asked them to liaise with the Trustee about this rather than the other way round.

56. When the role of Copernicus Wealth as the family office for the Trust was ended by the Trustee in October 2022, any justification for Martino's role as an intermediary became less understandable. There seems to have been a reluctance by the Class A Protectors to acknowledge his conflict of interest. However, as a consequence of the complaints about his direct access to information provided to the Class A Protectors by the Trustee, a generic email address was made available to the Trustee following a meeting on 6 November 2023 between the Trustee and Board of Protectors. Martino originally had access to this email address, but in March 2024 the Class A Protectors confirmed that this access by him had ceased (although Advocate Duerden had previously confirmed this by telephone on 29 February 2024) and that the email account was confidential. Such is the level of distrust between Cynthia and the Class A Protectors that she does not feel confident that this is not accessible by others, including Martino. Following Martino ceasing to be involved, Cynthia remained concerned about the refusal of the Class A Protectors to attend a meeting in the absence of their Guernsey Advocate even if the lawyer's role in the meeting was described as a facilitator. At the very least, Cynthia's view is that it demonstrated that the Class A Protectors were incapable of carrying out the role without external assistance.

57. The Trustee also says that this inability to contact the Class A Protectors directly (in direct contrast to their experience with the Class B Protectors) has caused delays in securing the Class

A Protector's consent to distributions to Cynthia. They say it is unusual that the Trustee does not have the email addresses of the individual Class A Protectors nor their telephone numbers. Although the Class A Protectors have said that they have provided consent to capital distributions, Cynthia's view is that consent followed only after requests for information which were personal, unnecessary and intrusive. For example, on 29 March 2023, the Class A Protectors originally intimated to the Trustee, through Martino, that they would not approve a capital distribution (which would need to be completed before the end of the UK tax year on 5 April 2023) unless Cynthia called Agostino first. Moreover, in December 2023, the Class A Protectors said that they required evidence that the distribution had in fact been used by Cynthia to pay for her taxes. Cynthia said she found the request intimidating, offensive and highly inappropriate, particularly, as the Class A Protectors had no basis to think that she would not use those capital distributions to meet those specific tax liabilities. However, the email dated 13 December 2023 although written by Martino appears to show that it is both the Class A and the Class B Protectors who are asking for the evidence from the Trustee. It is perhaps an indicator of the depth of feeling that Cynthia has towards the Class A Protectors that this has been (wrongly) presented as something that was being sought purely by the Class A Protectors. Recent correspondence also shows that discussions around distributions and how these should be dealt with are becoming increasingly fractious as between the Trustee and the Class A Protectors.

58. My sense of these complaints is that when relations were better, neither turnaround time nor Martino's role (for the Trustee) were significant issues, but as relations have deteriorated, this has become more of an issue including, latterly, a factor in the Trustee's decision making by the impracticability of obtaining consent from the Class A Protectors in time. Also, I have come to the conclusion that these issues demonstrate that the Class A Protectors have been deaf to the concerns of Cynthia. This has been apparent in their attitude towards keeping Martino involved without proper justification despite knowing her concerns about him. This is also demonstrated by their intolerance for her expressed unwillingness to speak with them, referring to this (when they knew that she did not want any direct contact with the Class A Protectors) to discuss a capital distribution as being "*unprofessional*". This is also demonstrated by their repeated failure to physically meet with the Trustee and Cynthia in London and not to meet with the Class B Protectors without either Martino or Advocate Duerden being present. Although they say that they would be prepared to do this, their attendance at meetings, the extent there have been meetings, has been either via telephone or video-link. The last meeting of the Trustee and the Board of Protectors without lawyers present was November 2023. The most recent meeting on 2 April 2025 was in the presence of lawyers. It seems to me this also provides grounds for a good arguable case that these protectors have a misunderstanding of their duties as protectors and/or that the Board of Protectors is not functioning as a consequence of their conduct. Their insistence of first Martino and then Advocate Duerden (whatever her role was described for this purpose) certainly raises questions about their ability or willingness to exercise their personal fiduciary obligations without an intermediary and importantly why this was in Cynthia's best interests.

The Appointment of a Corporate Class A Protector

59. In July 2023 after Mr Voss could no longer be a Class A Protector due to his capacity, Martino wrote to the Trustee suggesting that the individual protector should be replaced by a corporate protector. The company proposed, Protectorship Company SA, which is a Swiss company held in equal shares by Peter, Agostino and at that point Mr Voss (who has since deceased). The directors were the same individuals (albeit that Agostino's shareholding and directorship is conducted through another company). The intertwined nature of Copernicus and the Class A Protectors is demonstrated as the voting rights were held 90% by the three individuals and 10% by Copernicus. The change was put forward by Martino on the basis that it would provide a degree of continuity in light of the recent experience of having to remove Mr Voss as a result

of his incapacity. In 2017 when Francine was alive the Class A Protectors' proposed to set up a Protector Company in replacement of individual Class A Protectors. By April 2018, the proposal had changed to establishing a new entity to replace the Board of Directors as a whole, which the Trustee had originally not objected to, however, it then reconsidered and rejected the idea after receiving legal advice which did not support the appointment of a corporate protector being of benefit to the beneficiaries. As such the Trustee had never accepted the replacement of just the Class A Protectors as had originally been proposed. Correspondence on this issue continued for some time, with Martino setting out why the Class A Protectors considered it to be the right step. It was in this correspondence that Martino expressed on behalf of the Class A Protectors' view that they held an elevated status to that of the Class B Protectors. Again, the Trustee expressed to the Class A Protectors, both directly and through Mourant Ozannes, that this proposal was causing Cynthia distress but, nevertheless, over the subsequent months, this subject was periodically raised. The Trustee says that the Class A Protectors have never articulated why it is in Cynthia's best interest for this change. However, by the time of the hearing, the proposal of a corporate protector had been dropped.

60. On its own it would not be a significant issue, however, in my view, this represents another example, (along with how other issues identified have been dealt with) without regurgitating the voluminous correspondence between the lawyers for NSTL and the Class A Protectors, where it would appear, that since the summer of 2023, that nearly every issue or contact between the fiduciaries has led to extensive (and expensive) parrying backwards and forwards by their respective legal teams. Misunderstandings and frustrations which have reached the level where the parties cannot even agree where and when meetings should be held or whether a meeting time has been agreed. It is obvious from the correspondence that the relationship between the Class A Protectors and the other parties has become increasingly more difficult. When the actions of one party (whatever their underlying motivation) means an effective stasis in progress and is preventing the administration of a trust from being carried out properly then it raises the core concern of what is in the best interests of the beneficiaries. The Trustee, the Class B Protectors and Cynthia are united in the view and from the evidence before me it does appear this is with good grounds that it has become nigh on impossible for the administration of the Trust to be carried out.

Familial Conflict of Interest

61. Cynthia's concerns about conflict of interest and confidentiality do not just involve the relationship of the Class A Protectors with Copernicus and Dreyfus but also their respective relationships with the remainder of her family with whom she does not have good relations. She considers there may have been an improper flow of information because of the long-term acquaintance and has concerns about the close connections with the Class A Protectors, Martino, Martine (Cynthia's aunt) and her cousins. In Agostino #1, Agostino responded to this (at paragraph 118) by saying:

"Finally I also understand that Cynthia has suggested that Peter and I are conflicted because we have advised the wider family and her aunt with whom she has a dispute about the taking possession of certain chattels. Again, I do not see how this has impeded or could impact the proper exercise of our fiduciary duties under the Trust but once again and for good measure, we can confirm that we are not advising and are not involved in those discussions which are between Cynthia's lawyers and her aunt."

62. Cynthia says that the first time she was aware that Francine had settled other family trusts and that the Class A Protectors were protectors of those trusts was from the exhibits to Agostino #1. In a letter dated 28 November 2018 from Francine to the Class A Protectors, reference is made to 6 trusts, in addition to The Billevese Trust, of which they are protectors although the names of the trusts have been redacted. In Cynthia #2, Cynthia says

“I find this to be another example of the inequality of information that the Class A Protectors have perpetuated over the years. Ferrazzini-1 does not address his close relationship with my aunt or the fact the Class A Protectors are acting in a fiduciary capacity for members of the same family who are estranged from each other and whose interests are not aligned. If the Class A Protectors are also protectors of other family trusts, I am concerned that this potentially presents a further conflict of interest in addition to the clear conflicts of interest Mr Ferrazzini, Mr Kruppenacher and Mr Pinelli have in relation to Copernicus and Dreyfus.”

63. The evidence filed by the Trustee included a translation of the letter dated 28 November 2018 which had been provided to the Trustee, which included in the heading the names of those 6 trusts (although the translation of the letter is slightly different, but the meaning is essentially the same).
64. Perhaps it was inevitable given the family history and the Class A Protectors’ role in the disputes and negotiations that proceeded from Antoine’s death, where they effectively acted “for the other side”, taking what Cynthia saw as the dominant role in that process (rather than Francine herself) that relations were going to break down. However, as the scope of Peter and Agostino’s involvement in other family trusts was not clear from their evidence, I asked Advocate Duerden for information about the Class A Protectors’ involvement in other trusts of this family and how this potential conflict was being managed. The only open source information I have been presented with is a page from a website which shows that Martine and Agostino are on a foundation board whose registered address is the address of Copernicus. Advocate Duerden was instructed not to provide this information to the Court due to confidentiality concerns (in the absence of legal advice from other jurisdictions) although Advocate Duerden offered, after taking further instructions, that Agostino (who was in Court) was prepared to swear an affidavit which would set out whether there are ongoing relationships although not the nature of the relationships and confirming that they had not breached confidentiality. I rejected this late in the day offer. The Class A Protectors have not been transparent about the nature of their involvement with the other members of the family even in the course of these proceedings despite this being specifically raised by Cynthia, as set out above. This means that the compatibility or not of the Class A Protectors’ fiduciary obligations to other family trusts cannot be assessed. In those circumstances, as I warned Advocate Duerden, in the absence of information about the nature of the relationships they have with the other family members, I consider that I must draw inferences.
65. The distinguishing obligation of a fiduciary is the obligation of loyalty. A fiduciary who acts for two principals with potentially conflicting interests without the informed consent of both is in breach of the obligation of undivided loyalty; he puts himself in a position where his duty to one principal may conflict with his duty to the other. Thus, the inference I draw from the Class A Protectors’ unwillingness to be open about their involvement with the other family members and that they are thus acting without the informed consent of Cynthia, is that there is an arguable case that they have breached the duty of undivided loyalty. I cannot say whether Cynthia’s concerns about a flow of confidential information have grounds, however, the decision by the Class A Protectors to place the obligations they say they owe to other family members above the duties they owe to Cynthia gives me little doubt that there are good grounds for their removal on this basis.

Treatment of Cynthia

66. The importance of the relationship with the other family trusts as set out above developed during the course of the hearing, however, in both Cynthia’s affidavits she sets out how the Class A Protectors have made her feel. In Cynthia #1, she talks about the impact on her mental health and feeling “*completely disregarded, disrespected and undermined in favour of the Class A Protectors’ interests and others who have no real connection to the Trust*” and yet there is an

almost complete failure by the Class A Protectors to reflect on whether it is their conduct which has caused this. Whilst they now have the generic email address and Martino is no longer the conduit that he had been, Cynthia says that the relationship has deteriorated even further since the Application. In Cynthia #2, Cynthia says:

“Finally, I consider it to be telling that the Class A Protectors have not addressed – nor do they appear to have sympathised with - the distress and anxiety they have caused me as a result of their conduct, it is highly unfortunate that they appear to be more focussed on preserving their reputations and retaining their role as Class A Protectors rather than acknowledging the hurt they have caused me and the additional costs they have inflicted on the Trust. It only further demonstrates to me their complete inability to ensure the proper administration of the Trust or to act in my best interests.”

67. In Agostino #1, Agostino says:

“119. I am aware that Cynthia also criticises us for the manner in which we have communicated with the Trustee and herself and that this has caused a loss of trust and confidence in us, since there has been an apparent inability for the Trustee to contact us directly.

120. This is deeply unfortunate and I regret that Cynthia feels this way.

121. However, we have at all times sought to not only act in her best interests but maintain an open and transparent dialogue with both the Trustee and the Class B Protectors. I have set out evidence for that above and one example is in terms of our proposals to establish a corporate protector in 2017 – 2018 (where we worked closely with the Trustee and Class B Protectors).”

68. Whatever the motivation for the stance by the Class A Protectors, it is significant that they take little, if any, of the responsibility for causing Cynthia the distress that she says their conduct has caused her. Further, rather than dealing properly in his evidence with the distress and impact on her mental health which Cynthia says that their conduct has caused her, as set out above Agostino cites, as an example of acting in her best interests, open dialogue with the Class B Protectors and the Trustee, at the time when Francine (not Cynthia) was the life tenant and the first time a corporate protector was proposed. Not only does this fail to recognise that the advice at the time was that this was not in the beneficiaries’ best interests, Agostino only references the communication with the Class B Protectors and the Trustee not with Cynthia. Further, given the Class A Protectors are the directors of this company it fails to address that by this appointment that they would still be the human interface with Cynthia, as well as failing to deal with Cynthia’s other concerns. Peter in his affidavit other than a general comment that he aligns himself with Agostino #1 makes no attempt at all to deal with the impact of their conduct on Cynthia. I found it particularly surprising that given the personal impact on Cynthia is central to her Application, an application which they are defending and asking the Court to dismiss, that they have failed to reflect on their own conduct. Moreover, it is non-plussing that in defending this action and thus apparently seeking to preserve the relationship, the language they use to refer to Cynthia and her Application is so dismissive, using words in response to her concerns such as *“laughable and absurd”*. Although in submissions, Advocate Duerden said on the Class A Protectors’ behalf that they had no intention to cause any hurt to Cynthia, this is not borne out by the manner in which they have approached her concerns. I have been left in little doubt that what pervades the evidence is the Class A Protectors being deaf or dismissive of the concerns of Cynthia and that there are good grounds to show that the duty of trust and confidence has been breached by the Class A Protectors’ conduct.

Conclusion

69. I do have some sympathy with the Class A Protectors' position, as they are no longer in the position that they were, of being favoured counsellors or "the Triumvirate" (i.e. Peter, Agostino and Mr Voss) as they were referred to by Martino in correspondence before the Trust was set up. I also acknowledge that whilst Francine was alive, their relationships with the investment managers was accepted. My impression is that Francine treated the Class A Protectors as being in charge of the Trust. It would appear that this was the Class A Protectors' view too from a letter dated 21 February 2017 exhibited to Agostino's affidavit in a letter to Me Martine Blanck-Dap who was at the time a Class B Protector which says:

"We hereby confirm that in recent weeks we have received a letter from the settlor requesting that Copernicus Asset Management SA, Lugano and Copernicus Wealth Management and Services SA, Lugano, - companies to which Nadia Casciano, Martino Pinelli, Alen Vukic and Marco Boldrin belong - ("Copernicus") may act as reference structures for asset management as well as for tax and family office matters.

These two new structures, created in cooperation with Patrimony 1873 SA, will be entirely dedicated to institutional clients and certain families with complex assets.

The involvement of these two new structures will not entail any additional costs for the trust.

Given that Copernicus is linked to the people who have been in charge of this trust to date, we are in favour of the client's request."

70. This indicator of the perception of their role along with the comments of Martino that there were two levels of protector in the Trust does perhaps explain why the Class A Protectors have struggled with the changes since Francine's death. I also acknowledge some recent attempts to move matters along with regard to the termination of the relationship with Copernicus and Dreyfus, such as further confidentiality undertakings with regard to the information about the Proposed Changes (in correspondence dated 7 May 2025). However I am clear that this is too little too late. Also, it should be noted that despite the complaints, the value of the Trust has continued to increase although quite clearly a considerable amount of costs will have been expended due to the amount of lawyers involved in dealing with the administration of the Trust since relations have deteriorated, as well as the costs dealing with this Application in addition to the dispute with Copernicus and Dreyfus.

71. As I have set out above, I have come to the conclusion that there are grounds to show a clear and irretrievable breakdown in the relationship between the Class A Protectors and Cynthia. This would be enough to justify an order for removal on its own but all the more so when coupled with the other issues set out above. This is a trust for the benefit of Cynthia and whilst both Peter and Agostino have said that they recognise and understand this, their actions have shown a failure to demonstrate this despite the adverse impact that their conduct has had on the welfare of Cynthia. Lewin sets out at paragraph 14-078 "*in assessing the significance of any such hostility, it is relevant to consider the fact that the protector was chosen by the settlor and the evidence as to the reasons for that choice*". Whilst I have taken the choice of the Class A Protectors by Francine into account in the exercise of my discretion, I am clear that the continuation in office of the Class A Protectors is detrimental to the interests of Cynthia and the execution of the Trust for her benefit, therefore although I do not do so lightly, I have concluded that they should be removed from office.

72. Unlike the protector in *In the matter of the K Trust (ibid)*, the Class A Protectors were not prepared to retire without controlling the appointment of their successor. In the affidavit of Agostino at paragraph 10 he says:

10. However, we wish to stress that we do not wish to remain in office for the sake of it and if it would be inappropriate to do so. If the Court does not think that, going forward, it would be in the best interests of Cynthia as the only current beneficiary of the Trust for us to remain in office then of course we would have no objection to being replaced for a suitable person. Indeed, and as I describe below, we have in the past actively considered who an appropriate successor to us as Class A Protectors could be and have engaged with the Trustee in order to consider potential options in this regard.

73. He says something similar at paragraph 133:

133. Whilst we disagree with the reasons offered by Cynthia and her characterisation of our conduct (which is the basis for our opposition to the application), we of course would not object if the Court deemed it appropriate that there should be a different Class A Protector going forward notwithstanding that Cynthia's concerns are not justified.

74. Advocate Duerden submitted that what was meant by these paragraphs was that in the light of clause 19.16 of the Trust Deed that they considered they should not step down without appointing someone else.

75. In this case all the stakeholders, other than the Class A Protectors, support the removal of the Class A Protectors and this has been made very clear to the Class A Protectors for some time. They could have heeded the advice in *Letterstedt v Broers (ibid)* and stepped down. They could have done so without accepting the allegations but instead have caused significant cost and further distress. I agree with Advocate Hay that this is a rather different scenario to the more common defended removal where the beneficiaries are battling one another over the removal of a fiduciary. Although I understand that there was some discussions between the parties shortly before court (and I gave the parties more time to discuss this at the beginning of the hearing), the requirement by the Class A Protectors to have their own appointee alongside a candidate which the parties all agreed upon meant that there was no agreement. They remained insistent that the appointees should have a background in finance and asset management to mirror their own backgrounds. The other parties say this belies the continued failure by the Class A Protectors of a proper understanding of the role of protector in this Trust and in particular that there is no requirement for the expertise in finance and asset management as the terms of the Trust Deed do not require this. It also demonstrated the failure of the Class A Protectors to recognise that as Cynthia, in particular, has no remaining trust in their role as fiduciaries of this trust, Cynthia could not contemplate a protector who had been selected by them.

76. It seems to me that rather like *In the matter of the K Trust (ibid)* scenario “*for the Protector to seek to impose on the K Trust a successor as protector in whom the beneficiaries were not necessarily confident would have been a recipe for further litigation. It would not appear to be an act in the best interests of the beneficiaries.*” (at paragraph 47).

77. The Trust Deed contains no requirement for any of the protectors to have a particular financial expertise. In recognition of their expertise, the Class A Protectors were appointed as members of the ISC. Given the role that the three individuals has performed for Antoine and then Francine this was not surprising. In her letter dated 25 March 2015, she refers to “*the specific tasks that you have to perform as Investment Supervisory Committee.*” As set out above, she then sets out that she wants the three Class A Protectors to form “*a dedicated technical supervisor committee.*” She concludes the letter by saying “*the trust's assets should be*

consolidated in a professional manner and a risk management report should be generated on a quarterly basis to be submitted to the Trustees and Board of Protectors.”. The Class A Protectors’ letter of the same date to the Trustees is on similar terms with the members of the ISC being financial supervisors reporting to the Board of Protectors and the Trustee (which also justified their additional compensation). Thus, the two roles that the individuals performed were distinct. The Trust benefitted from the financial expertise of the individuals in their roles as members of the ISC, but it is not a requirement of the role of the Class A Protector of the Trust for this to be replicated.

78. With regard to the appointment of Advocate Clark, all the remaining parties support his appointment. He is a personal fiduciary licensee regulated by the Guernsey Financial Services Commission and is an experienced Guernsey trust law practitioner of nearly 30 years, all the parties have confidence that Advocate Clark is amply qualified to carry out the functions of the Class A Protector in accordance with the duties incumbent on that role as do I. I also understand that he is ready and willing to take up the role. Although Peter and Agostino do not support his appointment, all the parties agreed that on being removed by the Court, they do not have a role in deciding who should be appointed in their stead.

Summary

79. The decision I have come to is that the interests of Cynthia and the competent administration of The Billevese Trust in her favour is best served by granting paragraphs 3 and 4 of the Application removing Peter and Agostino as Class A Protectors and appointing Advocate Russell Clark in their stead. Paragraph 5 is that the First and Second Respondents shall do all such things as may be necessary to transfer all books and records relating to their role as Class A Protectors of the Trust to Advocate Russell Clark. No timeframe has been placed on this in the Application although there is no doubt that it needs to happen. If the parties cannot deal with this by agreement, an application should be made in the first instance to an interlocutory court by any of the parties. Likewise, with regard to costs, I invite the parties to try to agree the orders for costs but in the absence of agreement an application should be made to an interlocutory court.