What happens when circumstances change but the Trustee has no power to adapt?

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In the Matter of the Tomato Trusts [2025] JRC082

- Two trusts, discretionary, governed by Jersey Law.
- Trust 1 beneficiaries – one of settlor's daughters, her children and remoter issue.
- Trust 2 beneficiaries – another of settlor's daughters, her children and remoter issue.
- Value of each of the trusts is US$20m.
- Settlor and his wife are excluded from both trusts.
- Exclusion of settlor and his wife not tax driven – rather reflected lack of intention that they benefit.

In the Matter of the Tomato Trusts [2025] JRC082

- Changes to the UK taxation regime meant an appointment of assets to the settlor would be efficient.
- But he is excluded – what is the trustee to do?
- Application to the Jersey Court to:
  - approve a variation of the trust so that the settlor is no longer excluded;
  - approve the addition by the trustee of the settlor as a beneficiary; and
  - approve the distribution by the trustee of the assets of the trusts to the settlor.

In the Matter of the Tomato Trusts [2025] JRC082

Article 47 of the Trusts (Jersey) Law 1984:

"(1) Subject to Paragraph (2), the court may, if it thinks fit, by order approve on behalf of –

(a) a minor or interdict having, directly or indirectly, an interest, whether vested or contingent, under the trust;

…..

(c) any person unborn;

….

any arrangement, by whomsoever proposed and whether or not there is any other person beneficially interested who is capable of assenting thereto, varying or revoking all or any of the terms of the trust or enlarging the powers of the trustee of managing or administering any of the trust property.

(2) The court shall not approve an arrangement on behalf of any person… unless the carrying out thereof appears to be for the benefit of that person."

In the Matter of the Tomato Trusts [2025] JRC082

- Key question: was the proposed variation for the benefit of the minor and unborn beneficiaries of the trusts?
- Proposal would prevent adverse UK taxation consequences and it was supported by all the beneficiaries.
- Beneficiaries had access to other assets – beneficiaries of another substantial trust and heirs under settlor's estate.
- Court in no doubt that variation was in interests of beneficiaries.
- Court also approved distribution of trust funds to settlor.

In the Matter of the Helford Trust [2026] JRC010

- Beneficiaries of the trust – settlor's son and others.
- Settlor's son US tax resident at the time the trust was established.
- Trust was therefore established as a Foreign Grantor Trust (FGT) for US tax purposes and was revocable by the Settlor.
- Trust instrument contained a restriction which prevented the exercise of powers which would otherwise stop the trust from qualifying as a FGT.
- Settlor resident in Switzerland and aged 90.

In the Matter of the Helford Trust [2026] JRC010

- Settlor's son no longer US Tax resident.
- Upcoming Swiss referendum on introduction of federal inheritance tax of gifts and inheritance in excess of 50 million Swiss Francs at a rate of 50%.
- If proposal adopted, assets of trust would be subject to 50% tax because trust revocable.
- Settlor therefore needed to release his power of revocation for trust assets to be outside his estate.
- No power under trust for him to do so because of restrictions in trust instrument.

In the Matter of the Helford Trust [2026] JRC010

- Application to the court for assistance.
- First question: as a matter of construction of the trust instrument, could the settlor release his power to revoke? Answer: no.
- Next question: could the settlor disclaim his power to revoke the trust? Answer: no.
- Final question: if the answer to the first two questions is no, would the court approve a variation of the trust on behalf of the minor and unborn beneficiaries? Answer: yes.
- Clearly in the interest of the beneficiaries for the trust to become irrevocable.
- Also clearly in their interests not to incur a 50% tax charge

Conclusion

- A flexibly drafted trust instrument will often mean a trustee has the ability to adapt to changing circumstances.
- But sometimes, because of the particular drafting of a trust instrument, the trustee cannot do so.
- An application to the Jersey Court to vary a trust may be possible, but any variation would need to be:
  - supported by all of the adult beneficiaries of the trust; and
  - approved by the Jersey Court on behalf of minor, unborn and unascertained beneficiaries.
- Postscript: variation of trusts in Bermuda, BVI, Cayman Islands and Guernsey – the same or different?

Questions



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