

# A v C [2026] UKPC 11: Privy Council clarifies protector consent powers

**Briefing Summary:** The Privy Council, on appeal from the Court of Appeal of Bermuda, has authoritatively determined that where a trust instrument confers consent or "veto" powers on a protector and is silent as to the manner of their exercise, the protector will ordinarily have a wide, independent discretion. The Board rejected the approach of the Bermudian courts below, which confined protectors to a narrow supervisory function. The judgment emphasises orthodox principles of construction, settlor autonomy, and the commercial reality of offshore trusts, while recognising a practical middle road that avoids unnecessary duplication of trustee decision-making. Although much has already been written about the decision, when viewed from a Guernsey perspective it can be said that relatively little has changed. The decision is consistent with existing Guernsey statutory provisions and, more broadly, with the direction in which Guernsey customary law was already likely developing.

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## Background and issues

The X Trusts were discretionary trusts governed by English, Bermudian, and Jersey law. The trustees were prohibited from exercising certain powers without the "*prior written consent*" of the protectors. The trust instruments did not specify how that consent was to be exercised.

It was common ground that the protectors were acting in a fiduciary capacity.

Two competing interpretations emerged:

- the "*Narrow Role*", under which the protector merely checks whether the trustees' decision falls within the range of decisions open to a reasonable body of properly informed trustees; and
- the "*Wider Role*", under which the protector may exercise an independent discretion and may withhold consent even if the trustees' decision falls within that reasonable range.

The Bermuda Supreme Court and Court of Appeal favoured the Narrow Role, largely on pragmatic grounds. The appellants appealed to the Privy Council.

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## The Privy Council's reasoning

### Construction of the trust instrument

Rather than treating the issue as a binary choice between the Narrow Role and Wider Role, the Board considered the real question to be: *"what if any constraints did the trust instrument actually impose, construed in its context and with regard to any constraints imported by the general law?"*

The Board concluded that, where a trust instrument confers a veto or consent power without qualification, the starting point is that the holder is free to decide whether to consent, subject only to a possible requirement of good faith, and is generally under no duty to consent merely because the trustees' decision is rational.

The Board noted that *"Protector"* is not a term of art, and that the duties applicable to the protectors – given their fiduciary position and status as paid professionals – were not inconsistent with a Wider Role.

In reaching its decision, the Board applied an iterative approach to construction in line with established authority, interpreting the trust instrument in its specific context and with regard to *"business efficacy and common sense"*. It identified a number of features of the trust instrument that were inconsistent with the Narrow Role. For example, the protectors had the power to release their consent powers permanently, which would be odd if their function were limited to preventing trustee wrongdoing.

The Board also observed that, if the Narrow Role had been intended, one would have expected the consent requirement to apply more broadly across trustee decisions, rather than being limited to particularly significant ones.

Further, the Board noted that protectors are commonly appointed because settlors wish to retain a trusted check on offshore trustees in relation to major decisions. If the role were confined to a Narrow Role, it might be more naturally performed by technical experts rather than trusted advisers.

The Board rejected the argument that adopting the Wider Role would lead to unacceptable cost and delay through duplication. While acknowledging that costs could increase, it considered such increases likely to be insignificant relative to the value of the trusts in this case. It also doubted that substantial delays would arise in practice, provided that trustees keep protectors informed and seek their views as proposals develop.

Similarly, the Board rejected the argument that the Narrow Role was necessary to avoid deadlock. It noted that trustees and protectors should generally be able to reach agreement, but emphasised that *"the possibility of deadlock is deliberately built into the structure,"* and that both parties have a duty to seek common ground.

On this basis, the Board concluded that there were no relevant constraints arising from the trust instrument itself and that the absence of a defined role reflected a deliberate allocation of power.

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## Implied terms

The Board also rejected the argument that the Narrow Role should be imposed by way of terms implied by law. It held that such an implication was unnecessary to make the trusts workable in practice, and that the “*officious bystander*” test (i.e. was the existence of a constraint on the protectors' powers so obvious that it did not need to be set out in the trust instrument) was clearly not satisfied.

## Guernsey law perspective and practical considerations

### Consistency with settlor expectations

The Privy Council’s approach closely aligns with how lay settlors typically understand protector provisions to operate. Few settlors would expect a nominated protector – often a trusted adviser or confidant – to be forced to consent to a proposal simply because the trustees acted reasonably. The pragmatic approach of co-operation between trustees and protectors is also consistent with practical expectations.

### Alignment with existing Guernsey common law position

The decision does not depart from the existing common law position in Guernsey concerning a fiduciary protector exercising veto powers over trustee decisions. In *In the Matter of the Billevese Trust* [2025] GRC 060, the Royal Court expressly declined to determine the issue definitively, leaving the position in Guernsey unsettled.

Whilst it is necessarily speculative, it is reasonable to assume that, had the Guernsey courts been required to reach a determination, they may have aligned with the Jersey approach, given the persuasive weight typically afforded to Jersey authority in this jurisdiction. In this regard, the Jersey Royal Court’s decision in *In the Matter of the Piedmont Trust & Riviera Trust* [2021] JRC 248 (cited by the Board) held that, in the absence of express limitations, a general veto power is capable of conferring a “Wider Role” on a protector.

Accordingly, the Privy Council’s judgment can be seen as consistent with, rather than contrary to, the likely direction of Guernsey law.

### Statutory framework in Guernsey

Section 15(2)(a) of the Trusts (Guernsey) Law, 2007 expressly provides that the reservation or grant of powers (including powers requiring trustee action to be subject to the consent of another person) does not render the holder of that power a trustee. Furthermore, section 32(3)(a) provides that a person giving consent to a trustee in accordance with the terms of the trust instrument is not to be regarded as a trustee.

Guernsey law therefore expressly recognises that protectors and other consent providers are not trustees and do not, by virtue of holding such powers, automatically assume trustee or quasi-trustee status.

## Drafting and amendments

Where a narrower supervisory function is genuinely intended, this should be made explicit in drafting. Conversely, existing trusts with ambiguous protector provisions may be amended (where powers permit) to reduce uncertainty.

## Other practical considerations

Although the judgment is likely to have limited effect as a matter of Guernsey law, trustees of Guernsey trusts with a connection to another jurisdiction should seek advice to determine whether any consequences arise from it, including jurisdiction-specific tax considerations.

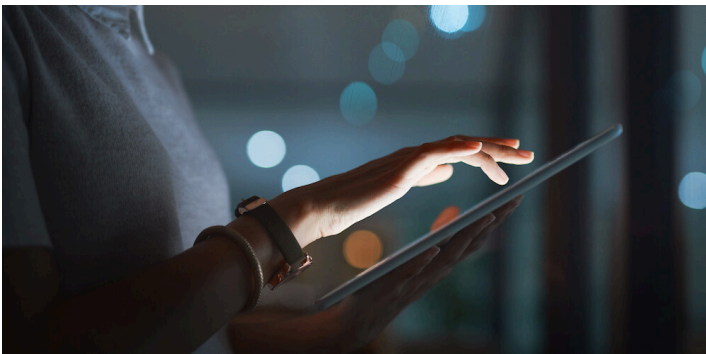
## Operation in practice

The decision does not impose a trustee-like decision-making burden on protectors. In practice, Guernsey trustees should:

- engage protectors early in relation to major decisions;
- circulate draft proposals, supporting information, and minutes;
- invite protector input before positions become fixed; and
- seek to realign proposals where possible if concerns are raised.

This cooperative approach reflects the collaborative model endorsed by both the Jersey Royal Court and the Privy Council, and is consistent with sound trust administration rather than unnecessary legal over-engineering.

*Please note that this briefing is intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen (Guernsey) LLP 2026*



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