

REVIEW



Untraceable Beneficiaries and Payments into Court



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The Isle of Man High Court recently determined whether it is permissible to pay trust monies into court in circumstances where the beneficiaries to those trust monies cannot be located.

There is much guidance from the courts of England and Wales (persuasive in the Isle of Man in the absence of local determinations) regarding instances in which beneficiaries are unable to provide a valid discharge for the trust money due to being a minor or of unsound mind. However the issue of untraceable beneficiaries was more of a grey area for which the court has now provided some guidance.

In this case, Barclays Private Bank (Isle of Man) Limited (“Barclays”) was the sole trustee of a unit trust known as the British Convertibles Trust (“the Trust”). The Trust was terminated in 1988 and the assets were released and distributed throughout 1989, however four particular investments were at that time unrealisable. Barclays later received a lump sum from these four investments, part of which they were able to distribute to 35 unit holders, but the residual amount, payable to some 71 unit holders, was not distributed because Barclays could not locate the beneficiaries.

In an effort to locate the residual beneficiaries, Barclays sent multiple communications to their last known addresses and called where possible. However it did not advertise in the

media nor did it engage a tracing service because this was considered a costly exercise with a low probability of success. Barclays ultimately applied to the court in July 2014 for authority or a direction to pay the residual amount into court pursuant to section 62 of the Trustee Act 1961 (of Tynwald), which provides at section 62(1) that:

“Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into court; and the same shall, subject to rules of court, be dealt with according to the orders of the court.”

Section 62(2) adds that the receipt or certificate of the proper officer shall be a sufficient discharge to the trustees for the monies paid in.

Because of the similarity of section 62 to the English section 63 Trustee Act 1925 (of Parliament), counsel drew the court’s attention to various English commentary including Lewin on Trusts and Snell’s Equity, albeit none of which expressly covered the present situation. Counsel for Barclays submitted that, although it is recognised from the authorities that payments into court are discouraged and trustees who, without justification, seek to make such a payment might be penalised in costs, the exceptional circumstances of this case meant that a sufficient discharge could not be obtained

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and thus a payment into court would in this instance be justified.

The court agreed. Deemster Doyle recognised that reasonable steps had been taken to locate the beneficiaries but to no avail, meaning that Barclays could not obtain a valid receipt and discharge for the money. None of the other possible ways of proceeding (examples including taking out a missing beneficiary insurance policy) being considered appropriate, the court made an order authorising payment into court pursuant to section 62. Although generally discouraged, payments into court can therefore be made by trustees under exceptional circumstances.

The ruling provides a welcome clarification of when it might be appropriate to apply section 62 whilst at the same time reinforcing the general principle that payments into court by trustees are ordinarily expressly discouraged. What happens to the trust monies once in court? They can be paid out only on application by a beneficiary claiming entitlement.

Advocate John Aycock is Head of the Litigation Department at M&P Legal Advocates, Solicitors and Attorneys in the Isle of Man and is also admitted as a Solicitor/Advocate in England and Wales.

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