



Neutral Citation Number: [2019] EWHC 726(Ch)

Case No: PT-2018-000769

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (Ch)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 25 March 2019

Before :

MASTER TEVERSON

Between :

**THE MOST NOBLE JOHN MICHAEL EDWARD,
DUKE OF SOMERSET DL**

Claimant

- and -

**(1)PETER ROBIN FITZGERALD
(2)JOHN SAMUEL CHRISTOPHER EIDINOW
(3)THE MOST NOBLE JUDITH-ROSE DUCHESS
OF SOMERSET
(4) SEBASTIAN EDWARD LORD SEYMOUR
(5) LORD CHARLES THOMAS GEORGE
SEYMOUR
(6) LADY SOPHIA ROSE SEYMOUR
(7) LADY HENRIETTA CHARLOTTE SEYMOUR
(8) FRANCIS CHARLES EDWARD LORD
FRANCIS SEYMOUR
(9)PATRICIA LADY FRANCIS SEYMOUR
(10) WEBB EDWARD PERCY SEYMOUR
(11) POPPY HERMIONE ALEXANDRA
SEYMOUR
(12) LEONORA HERMIONE JANE SEYMOUR
(13) HERMIONE ANNE TARA SEYMOUR
(14) ANNE FRANCIS MARY LADY ANNE
SEYMOUR**

Defendants

Hearing date: 30 November 2018

Judgment Approved

MASTER TEVERSON :

1. This is an application under the Variation of Trusts Act 1958 (“the 1958 Act”) for the approval of an arrangement to vary the trusts of a settlement made by the Claimant by a Trust Instrument dated 30 September 1971 (“the Settlement”). The Claimant is the 19th Duke of Somerset. The Settlement was made by him shortly after he came of age.
2. At the hearing of the application on 20 November 2018 I expressed myself as being satisfied that the arrangement taken as a whole was for the benefit of the unborn and unascertained beneficiaries on whose behalf the approval of the Court was sought under s.1(1) of the 1958 Act. I did however raise with counsel whether a further supplemental order was needed either under s.64 of the Settled Land Act 1925 or under s.57 of the Trustee Act 1925 in relation to those parts of the arrangement which concerned enlarging the administrative powers of the trustees of the Settlement and providing that the Settled Land Act 1925 was no longer to apply to the Settlement.
3. I was provided with a Joint Supplemental Submission by William Massey QC Counsel for the Claimant and James Rivett Counsel for the Defendant Trustees on 8 January 2019. I am grateful to both counsel for their written and oral submissions.
4. The Settlement, as created, was in the form of a Settled Land Act 1925 settlement with a tenant for life and Settled Land Act trustees. The Claimant is the tenant for life and a trustee. The First and Second Defendants are the other trustees. They are independent professional trustees both with great knowledge and experience of trust law and its application to landed estates. The First Defendant has filed evidence on their behalf for two purposes. The first is to explain why they are satisfied, with the benefit of a detailed opinion provided by James Rivett of counsel, that the arrangement taken as a whole is for the benefit of the unborn and unascertained beneficiaries. The second is to comment specifically on the desirability of certain aspects of the proposed arrangement from the perspective of the Trustees.
5. The Third to Fourteenth Defendants inclusive are the adult beneficiaries interested under the trusts of the Settlement. They are all fully supportive of the application. They have formally given their consent to it by a letter to the Court through their solicitor Tim Fullerlove, a partner in Wilsons LLP Solicitors. There are no minor beneficiaries and no other beneficiaries in being lacking capacity on whose behalf the Court is asked to approve the arrangement.
6. For the purposes of this Judgment, I need only provide a short summary of the current trusts under the Settlement. The property settled comprised property defined as “the Trust Property” and “the Reversionary Property”. The latter was the Claimant’s reversionary interest under a settlement (“the Existing Settlement”) created by the will of the 15th Duke of Somerset who died in 1922. At the date of the Settlement, the Claimant’s father, the 18th Duke, had become the tenant for life in possession under the Existing Settlement, and the Claimant was the tenant in tail in remainder.
7. Clause 4 of the Settlement directed that the Trust Property and the Reversionary Property be held on a series of successive entailed interests. It was declared at the end

of clause 4 that the Claimant's primary purpose in declaring the trusts contained in clause 4 and the powers thereafter contained was to enable at least a substantial part of the Trust Property and the Reversionary Property and the income thereof to be available for the benefit of his father's descendants who were from time to time Dukes of Somerset or in line of succession to the Dukedom and in the order of their succession or prospective succession to the Dukedom. This makes clear the dynastic nature of the Settlement.

8. The successive trusts set out under Clause 4 took effect subject to wide overriding powers of appointment conferred under Clause 6 over the Trust Property and under Clause 7 over the Reversionary Property in favour of a class of beneficiaries defined as "the Discretionary Beneficiaries". The Discretionary Beneficiaries currently in being are all parties to the application and include the Claimant's wife, the Third Defendant and Lord Francis Seymour's wife, Patricia, Lady Francis Seymour, the Ninth Defendant. The powers under Clauses 6 and 7 are exercisable by the tenant for life. The Claimant covenanted by deed in 1976 not to further exercise those powers during the remainder of his life without the consent of the trustees.
9. By a series of deeds, revocable and non-exhaustive, sub-funds have been created held on trusts appointed by the Claimant from time to time with the consent of the trustees. A sub-fund known as "the Discretionary Fund" is held on discretionary trusts of income as declared in a deed of revocation and appointment dated 15 November 1984 and subject thereto on the trusts and subject to the powers contained in the Settlement. The Discretionary Fund is regarded as being "relevant property" within Chapter III of the Inheritance Tax Act 1984. It is conditionally exempt from the ten yearly periodic charge that would otherwise apply under s.79(1) of the 1984 Act.
10. The remainder of the property subject to the Settlement is known as "the Retained Fund". The Retained Fund was divided in 2008 into two sub-funds known as "the Retained Fund 'A' Fund" and "the Retained Fund 'B' Fund". The A Fund is the larger in value. It is an interest in possession fund whose income is held 95% for the Claimant and 5% for the Claimant's wife. Subject to the income trusts, the A Fund is held on the trusts of the Settlement. The B Fund is also an interest in possession fund. The income of the B Fund is held 99% for the Fourth Defendant, Lord Seymour and the remaining 1% for the Claimant for life and his wife for life. Subject thereto, the whole of the capital and income of the B Fund is held on the trusts of the Discretionary Fund.¹
11. 'The Trust Period' is defined in the Settlement as the period of 80 years beginning on 30th September 1971. It is expressed to be the applicable perpetuity period. That period will expire on 29th September 2051.
12. Under the terms of the proposed arrangement, it is proposed:-
 - (1) to extend the period during which the powers of appointment under Clauses 6 and 7 of the Settlement and the powers of revocation can be exercised;
 - (2) to add a power to allow the accumulation of income;

¹ A short point of construction was raised before me concerning Clause 4 of a Deed of Revocation and New Appointment dated 5 April 2008. I am fully satisfied that by implication Clause 4.1 can and should be construed in the manner set out in the First Schedule to the Arrangement without the need for rectification.

- (3) to extend powers so as to allow the creation of an heritage maintenance fund;
 - (4) to vary the terms of the Settlement to make clear that it is no longer to be governed by the Settled Land Act 1925;
 - (5) to add further administrative powers to limit the self-dealing rule and to add power for the trustees to revoke and amend administrative powers subject to obtaining specialist advice from counsel before doing so;
 - (6) to widen the beneficial class to include same-sex spouses and civil partners;
 - (7) to require the trustees' consent to the exercise of the life tenant's power of appointment;
 - (8) to confer on the trustees a flexible overriding power of appointment.
13. It is well established² that there is power under the 1958 Act to extend a trust and perpetuity period to take advantage of s.5 of the Perpetuities and Accumulations Act 2009. This will not of itself give rise to a resettlement. The Court must in the circumstances of each application under the 1958 Act consider whether such extension looked at in the context of the arrangement as a whole is for the benefit of each beneficiary or group on whose behalf approval is sought. In the present case there is clearly a general family benefit in the extension of the perpetuity period. The additional benefits provided by the arrangement to the unborn and unascertained beneficiaries far outweigh any theoretical disadvantage caused by future generations being brought into the class of potential beneficiaries. The proposal will avoid a substantial charge to IHT in around 32 years' time at the end of the existing trust period. This is particularly significant in the context of the conditionally exempt status of the Discretionary Fund. It will also prevent a deemed disposal for Capital Gains Tax purposes arising on the termination of the Settlement. It will widen the class of unborn and unascertained beneficiaries to those born after the end of the existing perpetuity period but in my view that is far outweighed by the wider benefits provided by arrangement as a whole for the unborn and unascertained beneficiaries. The restrictions on the powers of the tenant for life and the enlargement of the trustees' powers in particular are potentially of real benefit to the unborn and unascertained beneficiaries whose interests will otherwise be subject to powers of the tenant for life for the time being.
14. Likewise, it is not in doubt that the 1958 Act may be used to confer a power of accumulation taking advantage s.13 of the Perpetuities and Accumulations Act 2009 which removed the statutory restrictions on accumulations applying to settlements made before 6th April 2010.³ In the present case, this power is being added in a way that will not terminate any subsisting interests in possession in either part of the Retained Fund. The addition of the power of accumulation, subject to that restriction, will enable income to be accumulated in the Discretionary Fund to create funding for capital improvements and other expenditure. I am satisfied that the introduction of the power to accumulate will create practical benefits.

² See *Wyndham v Egremont* [2009] EWHC 2076 (Ch); *Allfrey v Allfrey* [2015] EWHC 1717 (Ch) in which very long extensions to the perpetuity period have been approved under the 1958 Act.

³ See: *Allfrey v Allfrey* [2015] EWHC 1717 (Ch) power to accumulate incorporated to meet future periodic inheritance tax charges; *DC and AC and others* [2016] EWHC 477 (Ch).

15. The proposal to extend powers so as to allow the creation of a heritage maintenance fund is one which could be approved by the Court either under s. 64 of the Settled Land Act 1925 or under the 1958 Act. The creation of a heritage maintenance fund was approved under s.64 in *Raikes v Lygon* [1988] 1 W.L.R. 281 by Peter Gibson J. (as he then was). He held that the inclusion of potential new beneficiaries under Schedule 4 was a necessary and small price to pay for fiscal relief under the 1984 Act.
16. This is one of the parts of the proposed arrangement where it is natural for the trustees to be in the forefront. The fact that the application is made under the 1958 Act and is supported by the adult beneficiaries does not in my view remove the need for the Court to be satisfied that the proposal looked at from the trustees' perspective will be of practical benefit. The court has been provided with such evidence in this case by the First Defendant on behalf of the trustees.
17. The purpose of the power is explained by the First Defendant as being to support the costs of the property held in the Discretionary Fund. At present the Trustees have limited income with which to fund the costs of the conditionally exempt property held in the Discretionary Fund and without this power may be forced to use the capital of the Discretionary Fund to fund such property or to sell property within the Discretionary Fund thereby generating significant charges to Inheritance Tax.
18. It is proposed to vary the terms of the Settlement to make clear that it is no longer governed by the Settled Land Act 1925. The first issue is whether this of itself gives rise to a resettlement.
19. In *Wyndham v Egremont* [2009] EWHC 2076 (Ch), Blackburne J. considered whether a term extending the trust period, and doing so for potentially so lengthy a period, when coupled with the other amendments and insertions in the proposed arrangement before him, were to be regarded as a resettlement of the fund. He said there was no bright-line test for determining whether an arrangement was a variation or a resettlement. He referred to what was stated by Megarry J in *Re Ball's Settlement Trusts* [1968] 1 WLR 899 at 905:-

"If an arrangement changes the whole substratum of the trust, then it may well be that it cannot be regarded merely as varying that trust. But if an arrangement, while leaving the substratum effectuates the purpose of the original trust by other means, it may still be possible to regard that arrangement as merely varying the original trusts, even though the form is completely changed."
20. Blackburne J. commented that this did rather beg the question what was meant by "the substratum" of the trust and "the purpose of the original trust". He said that useful guidance was to be found in *Roome v Edwards* [1982] AC 279. With that guidance, he concluded that the alterations contained in the arrangement before him were a variation of the pre-arrangement trusts and not a resettlement. He said at [24]:-

"The trustees remain the same, the subsisting trusts remain largely unaltered and the administrative provisions affecting them are wholly unchanged. The only significant changes are (1) to the trusts in remainder, although the ultimate trust in favour of George and his personal representatives remains the same (2) the introduction of a new and extended perpetuity period."

21. In my view, the substratum of the trust refers to its beneficial core. In *Re Ball's Settlement Trusts* at 905F Megarry J stated:-

"In this case, it seems to me that the substratum of the original trusts remains. True, the settlor's life interest disappears; but the remaining trusts are still in essence trusts of half of the fund for each of the two named sons and their children in place of provisions for a power of appointment among the sons and their children and grandchildren and for the sons to take absolutely in default of appointment."
22. Megarry J stated, in the passage quoted in paragraph 19 above, that it was possible for a trust to retain its substratum *"even though its form is completely changed"*. This lends support to the view that an arrangement which provides for a settlement to cease to be governed by the Settled Land Act 1925 and which instead takes effect as a trust of land is not for that reason alone to be regarded as amounting to a resettlement.
23. The substratum of the Settlement is not lost as a result of the provisions of the Settled Land Act 1925 ceasing to apply to it. The core of the beneficial interests is not altered by that change. In my view, the Claimant, supported by the trustees and the adult beneficiaries, is to be seen as seeking to effectuate the original purpose of the Settlement, by putting the trust framework into a more modern form.
24. The arrangement may be regarded in this respect as an instrument which provides that the settlement is no longer a settlement for the purposes of the Settled Land Act 1925: see by analogy s. 2(3) of the Trusts of Land and Appointment of Trustees Act 1996. It is a provision opting out of one statutory framework and into another.
25. In *Pemberton v Pemberton* [2016] EWHC 2345, His Honour Judge Hodge QC, sitting as a Judge of the High Court, was satisfied that the arrangement before him relating to the Pemberton Settlement which included ensuring that the Settled Land Act 1925 ceased to apply did not effect a resettlement. The arrangement in that case also proposed to extend the perpetuity period, to confer on the trustees additional administrative powers and to create interests in favour of civil partners or same-sex spouses.
26. I am satisfied looking at the arrangement as a whole that it takes effect as a variation rather than a resettlement. The substratum of the Settlement remains in place. The dynastic nature of the Settlement under clause 4 remains unchanged. The trustees remain unchanged. The beneficial interests are varied only to a very limited extent. Wilsons wrote a full letter relating to the application to HMRC on 8 August 2018 asking HMRC to confirm that the arrangements should not be regarded as giving rise to a resettlement. HMRC replied by email on 17 September 2018 saying that they did not wish to be joined in the proceedings and in the event that the Court approved the proposed variation of the Settlement under the 1958 Act would not seek to argue that there was a resettlement for the purposes of Section 71 TCGA 1992.
27. I am also satisfied that varying the Settlement to make clear that it is no longer governed by the Settled Land Act 1925 is of benefit to the unborn and unascertained beneficiaries. Here again, it is helpful to have had evidence from the trustees explaining why from their perspective this alteration is considered beneficial for the settlement as a whole. It is explained that the elimination of the Settled Land Act will remove the complexities that the trustees would otherwise encounter in entering into commercial arrangements with third parties with limited understanding of the Settled Land Act 1925. The Trustees

have encountered difficulties in the past when entering into lending arrangements with banking institutions who have found it difficult to understand readily the respective powers and obligations of the Trustees and the tenant for life in entering into lending arrangements.

28. One aspect of this part of the arrangement which I raised with counsel was whether there was power under the 1958 Act to restrict the powers of the trustees. The 1958 Act contains no definition of “trustees” and does not incorporate the definitions in s.68 of the Trustee Act 1925. Although s.107 of the Settled Land Act 1925, provides that a tenant for life in exercising any powers under that Act is “to have regard to the interests of all parties entitled under the settlement”, it is perhaps more natural to regard the reference to “*the powers of the trustees of managing and administering any of the property subject to the trusts*” in s.1(1) of the 1958 Act as referring to the trustees of the settlement. Counsel on that footing submitted that the powers of the trustees were being increased not reduced under the terms of the arrangement.
29. Counsel went one stage further. They submitted that even if the arrangement had the effect of restricting or removing any of the powers of the trustees, the Court would still have jurisdiction to approve the variation under the 1958 Act without the need for any supplemental application under s.64 of the Settled Land Act 1925.
30. They drew to my attention that since the hearing of the application, the 4th Cumulative Supplement to the 19th edition of Lewin on Trusts had been published and that paragraph 45-064 to which I had drawn Counsels’ attention at the hearing had been amended to add the following sentence:-

“Sometimes alterations to the administrative or management provisions of a trust are made under the 1958 Act which could not have been made under section 57 of the Trustee Act 1925 because they involve a restriction rather than enlargement of the trustees’ powers such as a transfer of the power of appointment of new trustees from the trustees to the beneficiaries”.

The footnote at the end of this passage cites *Bathurst v Bathurst* [2016] EWHC 3033 (Ch). In *Bathurst v Bathurst* one feature of the variation approved by Master Matthews, as he then was, on an application under the 1958 Act was the removal of the trustees’ statutory power of appointment of new trustees and its substitution by a power vested in the principal beneficiary for the time being and subject to the trustees’ consent. It is fair to say, as Counsel point out, the reasoned decision is confined to the reasons for preferring the claimants’ proposal rather than a variant proposed by one of the trustees (maintaining the power in the trustees’ hands but making it subject to the consent of the principal beneficiary); but the Court did not doubt it had jurisdiction under the 1958 Act to approve a variation removing or restricting the trustees’ powers as part of a wider variation of the trusts.

31. On this point I am persuaded by the following additional submissions of Counsel:-
 - (1) There is no obvious policy reason, having regard to the background to the 1958 Act, why a variation which varies the trusts of a settlement by, for example, revoking any of the trusts should be permitted, but not where such a variation involves the removal or restriction of a power;

- (2) A revocation of trusts, which is expressly contemplated in s.1(1) of the 1958 Act (“any arrangement varying or revoking all or any of the trusts”) is quite likely to involve a removal of trustee powers at the same time as the revocation of the trusts;
- (3) The most likely reason for the express reference in s.1(1) of the 1958 Act to a variation which *enlarges* the powers of the trustees of managing or administering any of the property subject to the trusts (but not one which removes or restricts them) is to make it clear that if a variation is proposed under the 1958 Act whereby powers of management or administration are to be enlarged, there is no need to invoke the Court’s jurisdiction under s.57 of the Trustee Act 1925.
32. The third submission chimes in with the fact that before the 1958 Act came into force, there was some doubt as to whether there was power to enlarge investment powers under s.57 of the Trustee Act 1925. Shortly after the 1958 Act came into force the question arose as to whether such an application should be brought by trustees under s.57 or s.1 of the 1958 Act: see *In re Coates’ Trusts* [1959] 1 WLR 375 at 378 and *In re Byng’s Will Trusts* [1959] 1 WLR 375 at 381. The view was expressed by Vaisey J. in the latter case that it was safer to proceed under the 1958 Act.
33. I respectfully agree with the editors of Lewin that where the sole purpose of the application is to alter the powers of the trustees of managing or administering trust property and where the application does not involve any variation of the beneficial interests, the better practice is now to apply under s.57 of the Trustee Act 1925. It is more natural for the application to be brought by the trustees as Claimants. There is no need to obtain the approval of the court on behalf of minor or unborn beneficiaries. S1(6) of the 1958 Act provides that nothing in s.1 of that Act is to be taken to limit the powers conferred by s. 64 of the Settled Land Act 1925 or s.57 of the Trustee Act 1925.
34. Where however, it is desired at the same time to vary the beneficial trusts and to enlarge the powers of the trustees of managing and administering the trust property, the application has to be made under the 1958 Act. It would be procedurally cumbersome to require the application in those circumstances also to be made under s.57 of the Trustee Act or s.64 of the Settled Land Act 1925. Applications under the 1958 Act are not usually brought by the trustees.
35. It is natural for the part of the application that relates to matters of management or administration to be the principal concern and province of the trustees. Although under the 1958 Act the court is concerned with giving approval on behalf of beneficiaries not capable of consenting for themselves, the court may need also to have regard to the proposal in the light of the purposes of the trust: *In re Steed’s Will Trusts* [1960] Ch 407 at 421 per Lord Evershed M.R. It is extremely helpful, as has happened in the present case, for the Court to be provided with evidence from the trustees’ perspective as to why the enlargement or alteration of the powers of the trustees of management and administration is sought. In that way, the Court is far better informed as to why these parts of the arrangement (including in the present case the creation of the heritage maintenance fund and ensuring that the Settled Land Act no longer applies to the Settlement) are perceived as being beneficial.
36. I am satisfied that it is in both the interests of the unborn and unascertained beneficiaries and expedient for the self-dealing rule to be modified as proposed.

37. I am asked to approve the insertion of a provision giving the trustees power by deed to revoke or vary any of the administrative provisions of the Settlement or to add any further administrative provisions as the Trustees consider expedient. The proposal is that I should give that power subject to a restriction that the power should only be exercisable if the Trustees shall have been advised in writing by a lawyer of at least ten years' standing that it would be expedient for the administrative provisions to be revoked, varied or extended.
38. In *Re Portman Estate* [2015] EWHC 536 (Ch) Birss J. on an application under s.57 of the Trustee Act 1925 was not persuaded in the circumstances of that case that such a power should be conferred. He stated that the effect of conferring this power would be to put the court's power under s.57 of the Trustee Act 1925 into the hands of the trustees, subject to the safeguard of counsel's opinion. He took the view that there was no present expediency in conferring a power designed to accommodate future changes in circumstances presently unforeseen. He did not think it was enough for the trustees to say in support of such a general power that the power has the advantage of avoiding the need for and expense of possible future applications to the Court under s.57 of the Trustee Act 1925.
39. The decision of Birss J. on this point was obiter because that part of the application was withdrawn by the trustees having heard the concerns of the Judge. Birss J. did however in his judgment set out the reasons why he had not been persuaded to confer such a power. My initial view was that I should follow this decision.
40. After handing down this judgment in draft, I was told by Mr Massey QC that in *ET v JP* [2018] EWHC 685 (Ch), in which both counsel before me appeared, an arrangement was approved by Morgan J. which included the introduction of a power to revoke, vary or add administrative provisions in identical form to the clause before me. It was submitted that the test under the 1958 Act is materially different to that under s.57 of the Trustee Act 1925. I accept that under s.57 the test is one of expediency whereas under the 1958 Act the test is whether the proposed arrangement is "*for the benefit of*" those who cannot consent for themselves, in this case the unborn and unascertained beneficiaries. In the context of an administrative power of this kind, I would not however expect the court's approach to diverge depending on which jurisdiction was invoked. In either case, the effect of conferring the power is the same.
41. I am, however, persuaded that in the circumstances of the present case, it is in the interests of the unborn and unascertained beneficiaries as well as the trust as a whole for this power to be conferred. My reasons are as follows:-
- (1) the Settlement was created some forty seven years ago and the powers conferred on the trustees reflect that;
 - (2) under the arrangement, the Settled Land Act 1925 is to cease to apply to the Settlement. This makes it foreseeable that as part of the transition from Settled Land Act settlement to trust of land there will be a need to add to, vary or even restrict the existing administrative powers;
 - (3) there is in any event an important distinction between the conferral of a power and its exercise. There will still be a need for the trustees in an appropriate case to obtain the blessing of the court as to whether a proposed course of action is a proper exercise

of their powers. This will certainly be the case where the decision is particularly momentous: see *The Public Trustee and another v Paul Cooper and others* [2001] WTLR 901 at 923;

(4) it is very likely that the Settlement will in the future continue to have the benefit of highly experienced independent professional trustees and professional advisers.

42. For those reasons, and in the circumstances relating to this Settlement, I have come to the conclusion that I can and should approve the conferral of a power to enlarge administrative powers including a power to release or restrict them.
43. I was told by Mr Massey QC that *Re Portman's Estate* was not cited to Morgan J. in *ET v JP*. Nor was it cited to me. I am sure this was not deliberate in either case and reflects the large number of points raised on applications of this type under the 1958 Act and the number of relevant authorities. I did receive a full and carefully prepared bundle of authorities. I would however wish to send out a clear message that on applications under the 1958 Act whether heard by Masters or Judges particular care is taken to ensure that all relevant authorities are cited even if in the view of counsel there are proper grounds for arguing that they should be distinguished.
44. It is proposed to widen the beneficial class to include same-sex spouses and civil partners (including surviving spouses and civil partners) of the Claimant's children and remoter issue and also to include the issue of civil partnerships and same-sex marriages. The Claimant says in his evidence in support of the application that whilst there are no specific family reasons at present to do so, he and his co-trustees feel it right to modernise the beneficial class given the 125 year extension of the trust period. A provision of this type was approved in *Pemberton v Pemberton*. This proposal is agreed to by all the adult beneficiaries. It may be of benefit to the family as a whole. It may directly benefit the unborn and unascertained beneficiaries who may themselves enter into same-sex marriages or civil partnerships and may wish their children or partners to benefit from the Settlement.
45. The proposal to restrict the exercise of the non-fiduciary powers of appointment of the tenant for life under the Settlement so as to require the written consent of the trustees removes the risk that a person unsuitable to exercise such wide powers does so in a manner that it not for the long term benefit of the Settlement. It recognises that the expertise of the trustees may be important and that on occasions two or three minds are better than one. The proposal is in line with the personal covenant given by the Claimant and has been agreed to by those next in line to the Dukedom. This part of the arrangement is in my view of great potential benefit to the unborn and unascertained beneficiaries.
46. It is also of benefit to those beneficiaries for the trustees to be given a flexible overriding power of appointment, exercisable by a majority of the trustees, to sit alongside the existing powers of appointment of the tenant for life which will be exercisable subject to the trustee consent. It is envisaged that this power might be used if a tenant for life were otherwise not willing to act.
47. For those reasons I will approve the arrangement before me and without the need for any supplemental application to be made under s.64 of the Settled Land Act 1925.