Cains' Judgment Journal: *Comment from Cains on Isle of Man Judgments*

Judicial Recusal

Cains' Comment

In this judgment, the Isle of Man Court of Appeal found no bias and upheld Judicial impartiality in the Claimant's recusal bid.

Kaveh Moussavi v VR Global Partners L.P., Broadsheet LLD (in liquidation) (acting by its liquidator) & Gordon Wilson (in his capacity as liquidator), Staff of Government (Appeal Division), 4 June 2025

The appellant, Mr Kaveh Moussavi, acting as a litigant in person, submitted a Recusal Request asking the appellate judges, Judge of Appeal Cross KC, Acting Deemster[i] Sir Nigel Teare, and Acting Deemster Moran KC, to recuse themselves from further involvement in the proceedings. His request was made via three letters to the Court "individually and together" to recuse themselves and cited his concerns over supposed impartiality, particularly in relation to two prior rulings in November 2024 and March 2025.

The Court applied the two-stage test for recusal established in *Porter v Magill* [2001] UKHL 67 and adopted in Isle of Man law in *Eurotrust International Ltd v Barlow Clowes International Ltd* 2001-03 MLR 330:

1. Ascertain all relevant circumstances;

2. Determine whether a fair-minded and informed observer would conclude there was a real possibility of bias.

In applying this test, the Court must "*consider the proceedings as a whole*" as emphasised in *H (A Child) (Recusal)* [2023] EWCA Civ 860.

The Court noted that in small jurisdictions with limited judicial resources, delegation is often impractical. The judges in question had been involved in the case since 2023, and no realistic alternative was available. Furthermore, the Court addressed concerns raised in relation to overlapping judicial appointments and potential conflicts of interest by referencing historical and cultural aspects of the Isle of Man judiciary:

- The longstanding practice of Deemsters sitting with Judges of Appeal was explored in *Clarkson v Department of Infrastructure* 2011 MLR 279.
- The interrelationship between part-time and full-time judges was examined in *B v D* 2010 MLR 161 and *Meerabux v Attorney General of Belize* [2005] UKPC 12.
- Lord Woolf's observations in *Taylor v Lawrence* [2003] QB 528 were cited, noting that close professional relationships in small jurisdictions do not necessarily undermine impartiality.

The Court concluded that: "*There was no real possibility that the Court was biased against Mr Moussavi or in favour of the Respondents.*" The Court emphasised their duty to assess the case holistically and found no grounds for recusal.

The full judgment can be found here: https://www.judgments.im/content/J3344.htm

Costs

Cains' Comment

This judgment highlights the importance of efficient case management and the expectation that costs should be dealt with promptly when a decision is delivered.

Devereau v Gorman, Civil – Ordinary Procedure, 5 June 2025

In this case, Deemster Corlett addressed the issue of legal costs following a hearing where the Claimant, Ms Devereau, insisted that written submissions on the issue of costs were appropriate.

The dispute centred on how legal costs should be handled following the hearing on 24 April 2025. Deemster Corlett found the written arguments had little impact on his original view. Instead, they caused unnecessary delay and added to the overall expense.

He reminded parties that costs should usually be addressed immediately when a judgment is handed down, whether it's given on the spot (ex tempore) or reserved. He said that lawyers should always be ready to discuss costs at that point.

The Court awarded costs to Mr Gorman, to be assessed on the standard basis if the parties could not agree. The amount and any interim payment were left open for negotiation or formal assessment.

The Court took note of the parties' attempts to settle the proceedings following the hearing, with this action being commended by the Court.

This judgment reinforces the principle that costs should be handled efficiently and that written submissions, while sometimes helpful, can lead to delay and extra expense. It echoes earlier guidance from cases like *Three Rivers District Council v Bank of England* [2006] EWHC 816 (Comm), where Courts stressed the need for proportionality and clarity in costs decisions.

The full judgment can be found here: https://www.judgments.im/content/J3345.htm

Doleance – Strike Out – Civil Restraint Orders

Cains' Comment

The case concerned four claims that were struck out as being totally without merit, with the Court giving consideration in respect of restrictions being made on the Claimant's future ability to bring claims.

Megson v King William's College & Otrs, Civil – Chancery Procedure, 5 June 2025

In this case, Deemster Corlett addressed four claims, all presented as doleance petitions (the Isle of Man equivalent to judicial review), brought by Ms Megson (the Claimant) in the Isle of Man.

Currently residing at the Isle of Man Prison, Ms Megson – who has the benefit of fee remissions meaning that she can issue claims free of charge – filed four separate claims and requested directions hearings for each. None of the claims had been served on the Defendants, but this was not material to the Court's decision.

All four claims were struck out. The judgment focused on the validity of the claims under Isle of Man law, and whether further restrictions on Ms Megson's ability to file future claims were necessary.

The key issues in this case involved:

- **Merit**: The claims disclosed no reasonable grounds and were struck out under Rule 7.3 of the Rules of the High Court of Justice 2009 (the "Rules of the High Court").
- **Timeliness**: Doleance claims must be filed promptly, typically within three months of the decision being challenged. The claims in this judgment were several years out of time.
- **Procedure**: Decisions of the High Court cannot be challenged by way of doleance. They can only be challenged by way of appeal.

Given the pattern of meritless claims, the Court considered issuing a civil restraint order under Rule 2.57 (a general civil restraint order). The Court noted (citing *Gopee v Southwark Crown Court* [2023] EWCA Civ 881) that it can impose such an order on its own initiative, without a formal application or hearing. Such an order would prevent Ms Megson from filing further claims in the High Court without prior permission from a named Deemster, for up to two years.

However, Deemster Corlett invited input from the Attorney General and agreed to hear the Claimant on the type of order that should apply.

The full judgment can be found here: https://www.judgments.im/content/J3346.htm

Fraudulent Misrepresentation – Breach of Fiduciary Duty – Concealment – Limitation Act – Director's Duties – Unlawful Distribution of Company Funds

Cains' Comment

This case serves as a reminder to investors and directors alike of the legal weight carried by representations, disclosures, and the documents that form the backbone of investment relationships.

Wickers & Otrs v Humbles & Otrs, Civil – Ordinary Procedure, 25 June 2025

Background

In June 2025, Acting Deemster Gough handed down a lengthy and detailed judgment concerning claims brought by investors (the "Claimants") in a 2007 London property development, the 'Cornwall Terrace Project', promoted by Oakmayne Properties (Regeneration) Ltd ("OPR").

As described in the judgment, the principal claim (as described below) arose from matters concerning the invitation to the Claimants to invest "substantial sums of money" in the development. The Claimants also brought claims that were assigned to them by the liquidator of two Isle of Man companies, Falmouth Limited ("Falmouth") and Falmouth Developments Limited ("FDL").

The Defendants were local directors who were appointed to roles within OPR and the two Isle of Man companies, FDL and Falmouth.

- **Personal Claims:** The Claimant's personal claims (meaning claims in their personal capacity as investors) were for fraudulent representations said to be made to each of them by one of the directors, and the contents of the brochure that induced the Claimants to invest in the Cornwall Terrace Project. The representations were also framed as claims for breach of fiduciary duty and breach of trust.

- **Assigned Claims:** The Claimants also took assignment of claims against the Defendants that were vested in the liquidators of Falmouth and FDL. Of these claims, the first set concerned claims for negligence, breach of fiduciary duty and breach of trust in relation to the payment of a 'Success Fee' of just over £3.7 million to OPR in respect of the Cornwall Terrace Project. The second category of assigned claims concerned the alleged failure to reduce the Management Fee and that the Defendants facilitated the payment of a sales fee at the expense of the investors and in breach of their fiduciary duties towards Falmouth Limited and FDL. The claim against OPR was stayed as it is in liquidation.

Decision

The Brochure

A central issue was the promotional brochure given to investors. The Acting Deemster concluded that it was fraudulent, and considered it as "misleading, deliberately obscure, contradictory and totally unsatisfactory as an offering document in the circumstances of the case". The brochure:

- Contradicted the Business Plan and concealed critical information.
- Falsely claimed to contain all relevant facts an investor would need.
- Omitted mention of the £3.7 million "Success Fee" entirely.

The Court was satisfied that the Claimants would not have invested in the project if the "true position" regarding the Success Fee was disclosed. As the Defendants had warranted that the brochure did not omit anything relevant to their decision to invest, in finding that the brochure made fraudulent misrepresentations, the Acting Deemster found that these assurances given by the Defendants made them personally liable to the Claimants.

Unlawful Distribution

Furthermore, the Court found that the distribution of the £3.7 million Success Fee was an unlawful distribution. An unlawful distribution is void and the directors of a company are liable for it. The Acting Deemster found that the Success Fee was an unlawful distribution since OPR did not perform any services that would justify such a fee. There were no profits available for distribution when the Cornwall Terrace opportunity was said to have arisen, and the payment of the Success Fee was a "contrived manoeuvre" designed to extract money from the venture for the benefit of OPR and consequently the owners and those having a beneficial interest.

The Defendants, as directors of FDL, were therefore in breach of trust and the amount of the unlawful distribution was ordered to be repaid to the Claimants as assignees.

Monthly Management Fee Dispute and Board Decisions

A separate claim focused on the failure to renegotiate SCM's monthly management fees after the construction phase. The Court held that:

- The decision to maintain fees was made by the full board.
- Banks could have insisted on changes but did not.
- Courts should not second-guess rational business decisions.

Thus, this claim was dismissed as a matter of commercial judgment.

Sales Fee and Investor Misrepresentation

The 1% Sales Fee added another layer of complexity. Though investors had approved the fee – themselves being certified as experienced in corporate matters and as sophisticated investors – the Acting Deemster found:

- They may have been misled during the approval process.
- At the time, the Claimants were unaware that their investments were already effectively lost.
- There was concealment around SCM's continued role and connections.

The Court found that while the Claimants had signed amendments to the Inter-Creditor Deed agreeing to the Sales Fee, they did so under significant time pressure and without fully understanding that SCM (the entity that played a central and controlling role in the Cornwall Terrace Development) would receive commission on houses already sold. The Claimants were not informed of SCM's additional commission on dressing costs, which the Court found had not been ratified or agreed by them. This being so, the claim in respect of the four houses yet to be sold was dismissed; however, the fee attached to houses 9 and 11 which were in contract to be sold was "agreed to negligently and in breach of trust by the boards of Falmouth and FDL" and the fees paid to SCM were ordered to be repaid to the Claimants as assignees.

Denial of Section 337 Relief

The Defendants sought relief under section 337 of the Companies Act 1931, which allows relief if directors act "honestly and reasonably" in relation to any findings of "negligence, default, breach of duty or breach of trust against them". Referring to *Templeton Insurance v Corlett* (judgment dated 18 June 2013), the Acting Deemster held:

- The breaches were neither technical nor minor (in respect of both the Success Fee and Sales Fee).

- The Directors had allowed decisions to be made by others that were solely within their remit.

The Court held that in the circumstances of the case, relief could not possibly be granted under section 337.

Other Matters and Determination

It was necessary for the Deemster to review the roles that the Defendants played in their individual capacities as directors. Having considered the degree of responsibility the individual Defendants had in respect of the claims, it was found that the dominance that SCM exerted over the project was facilitated by there being a team of "largely compliant directors of the Isle of Man companies".

The Claimants were granted interest on the amounts awarded in order to "compensate them for being out of their money for a period of time."

Observations

As observed in the judgment by the Acting Deemster, this case was "very much in the mould of modern commercial litigation." In hearing the evidence, the Court had sat for six weeks, and the length of the judgment is a testament to the volume of material required to be covered. Alongside the determinations made on the issues, it is important to note several other aspects of the claim that were covered in this case:

- **Limitation Defences**: The Defendants argued all the claims were time-barred. As noted in the judgment, however, there is no limitation period for claims based on fraud. However, those claims which did not involve fraud would ordinarily be statute barred unless the Claimants could show that the wrongdoing was (among others) concealed. Under section 30 of the Limitation Act 1984, the limitation period does not begin to run until the Claimants discovered the matters concealed which had given rise to the cause of action. The Acting Deemster noted that the burden was on the Claimants to show that there was concealment, citing *Sayle v Knox Financial Services* ORD 2014/16 (20 January 2015). The Acting Deemster was satisfied that the Defendants had a continuing duty to disclose their own breaches of fiduciary duty, which they did not do; consequently, none of the claims were time barred.

- **Disclosure and Access**: With 87,000 documents disclosed during trial, the case turned heavily on written evidence. Although the Claimants argued that key information was concealed and documents remained inaccessible to them, the Acting Deemster found enough material to make clear determinations.

- **Fallibility of Memory**: When assessing verbal inducements from 2007, the Acting Deemster relied on the principles laid out in *Gestmin SGPS v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), which cautioned Courts about

relying on long-term memory recall. He could not be certain what was said but found it probable that comments from one of the directors painted the investment as a selective opportunity, an impression reinforced by downplaying the significance of the Shareholders Agreement.

The full judgment can be found at: Judgment 25.06.25.pdf

Please note that this note does not constitute legal advice but is provided as non-reliance guidance only. For more information on Isle of Man Litigation Law, please contact: Robert Colquitt or Tara Cubbon-Wood.

Reference

[i] The term used to refer to judges in the Isle of Man judiciary.

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