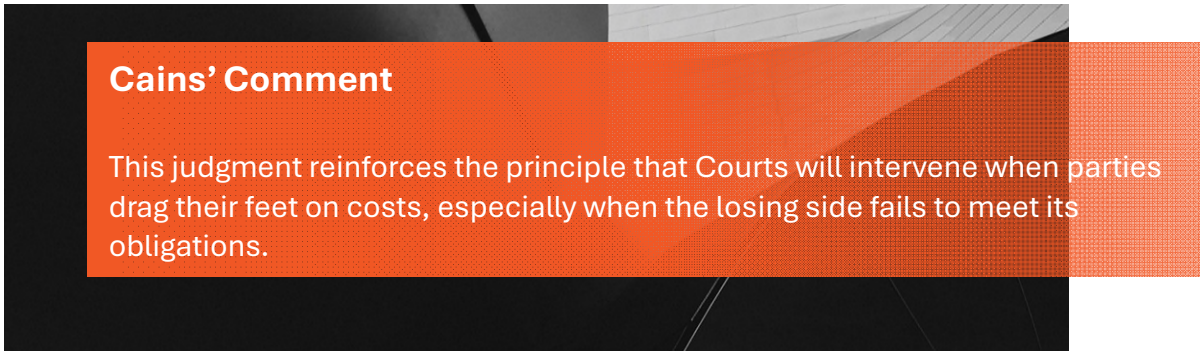
Cains' Judgment Journal: *Comment from Cains on Isle of Man Judgments*

Costs – Joint and Several Liability – Interim Payment



Cains' Comment

This judgment reinforces the principle that Courts will intervene when parties drag their feet on costs, especially when the losing side fails to meet its obligations.

Montpelier (Trust and Corporate Services) v Gittins & Gittins – Civil - Ordinary Procedure, 4 August 2025

In this case, Deemster[i] Khamisa KC ruled in favour of the Claimant, Montpelier (Trust and Corporate) Services Limited, in a long-running costs dispute against the Defendants, Edward and Maura Gittins. The judgment centred on the Claimant's request for an interim costs payment following years of litigation and non-payment.

The original trial was in 2021, but the parties failed to agree on costs. Since then, the case saw extended proceedings in the Staff of Government Division, including unsuccessful applications by the Defendants for the Deemster's recusal in 2024 and an appeal dismissed in June 2025. The First Defendant was barred from responding to further applications due to repeated non-payment of costs.

Under Rule 11.3 of the Isle of Man's Rules of Court 2009 ("the Rules"), the Court must bear in mind all the circumstances of the case including the conduct of the parties and may order an amount to be paid on account before assessment of the costs.

The Defendants acknowledged they were the losing party and therefore liable to pay costs but opposed any interim payment.

The Claimant sought an interim payment of 50% of the total claimed costs, citing the extensive work done and the Defendants' history of delay. The Court agreed, finding the request both reasonable and proportionate. Acting Deemster Khamisa KC emphasised that the Claimant's fees were "long overdue" and that immediate payment was justified.

As a result, the Court ordered:

- The Defendants to pay 50% of the claimed costs within 14 days.
- The payment to be made on a joint and several liability basis.
- Costs to be subject to detailed assessment on the standard basis if not agreed.

The joint and several order means either Defendant can be held responsible for the full amount if the other doesn't pay.

The full judgment can be found here: https://www.judgments.im/content/J3364.htm

Civil Restraint Order

Cains' Comment

This judgment highlights the Court's power under Rules **2.54 and 2.57** to manage abusive litigation and protect judicial resources.

Megson v King William's College & Otrs, Civil – Chancery Procedure, 6 August 2025

In this judgment, a two-year General Civil Restraint Order (CRO) was imposed on the Claimant, Mrs Megson, following a pattern of meritless and disruptive legal filings.

Mrs Megson had submitted a letter requesting an adjournment of the hearing, which included vague intentions to transfer the matter to an "International Court of Human Rights." The Court found the letter lacked legal substance and noted that no qualified legal representative had been identified to support her claims. As such, the hearing proceeded in her absence.

This followed an earlier order on 5 June 2025, where the Court had already determined that a CRO was appropriate due to a series of applications by Mrs Megson that were found to be "wholly without merit." Her continued filings in May and June 2025 further demonstrated what the Court described as a "scattergun approach" to litigation.

The Court referred to:

- *Wildman & Others v Fletcher* [2011] MLR 601, where Deemster Roberts addressed similar misuse of Court processes.
- *Howell v Evans* [2020] EWHC 2729 (QB), which clarified when a limited CRO is inadequate.

Given the scale and persistence of Mrs Megson's filings, Deemster Corlett concluded that neither a limited nor extended CRO would suffice. Instead, a General CRO was necessary to prevent further misuse of the Court system.

Under the General CRO:

- Mrs Megson is barred from issuing any claim or making any application to the Court for two years.
- She may still bring forward claims, but only if they have a "decent legal and factual basis" and she obtains permission from the First Deemster (or Second Deemster if the First is unavailable).
- No costs were awarded in the judgment.

The full judgment can be found at: https://www.judgments.im/content/J3371.htm

Costs – Summary Assessment

Cains' Comment

This judgment showed that Courts value efficiency and proportionality and therefore estimating the costs fairly and moving on was the sensible call.

Fouad Kazem Shaker Al-Zubaidi v Cevat Alzubeydi, Faysal Alzubeydi, Nur Alzubeydi & BCI Limited, Staff of Government (Appeal Division), 6 August 2025[ii]

In this case, the Court resolved a dispute over legal costs following short hearings in October and December 2024. The case involved applications for permission to appeal that lasted less than a day each, prompting the Judge of Appeal Cross KC to reject a detailed costs assessment in favour of a more efficient summary approach.

After the appeal applications were resolved, the Court had to decide how much the losing party should pay in legal costs. Normally, Courts might conduct a detailed review costs incurred. But in this case, such scrutiny would be disproportionate given the short duration of the hearings and the relatively modest amount of costs claimed.

The Court took a "broad-brush" approach, avoiding the time and expense of a full breakdown.

The Judge noted:

- The legal issues were not complex.
- The Respondents had engaged four fee earners, which was deemed excessive.
- The Applicant had been inflexible, but that didn't justify the scale of legal resources used.

Recognising that not all costs were likely "necessarily and reasonably incurred," the costs were summarily assessed at £16,000 inclusive of VAT.

The judgment can be found here: https://www.judgments.im/content/J3368.htm

Costs – Trusts Disputes – Trustee's Right to Costs from the Trust Fund

Cains' Comment

This case demonstrates that trustees are entitled to recover their reasonable legal costs from a trust fund on an indemnity basis, even when beneficiaries oppose their applications, so long as the opposition isn't shown to be unreasonable.

Westwinds Grantees Limited v Righi & Otrs, Civil – Chancery Procedure, 7 August 2025

This judgment ruled on a trustee's entitlement to recover legal costs from a trust fund. Deemster Needham applied Rules 11.3 and 11.43, which give the Court broad discretion over costs and confirm that trustees may recover their legal expenses from the trust fund, provided those costs are reasonable.

The Claimant, Westwinds Grantees Limited, acting as trustee, sought indemnity costs of £72,815.19, to be deducted from the trust fund before any distribution. The trustee argued that Filippo Righi, one of the beneficiaries, had acted unreasonably, citing difficulties with service and procedural delays.

Mr Righi disputed this, maintaining that his opposition was based on his mother's wishes regarding the distribution and that his conduct was not out of the ordinary. He argued that beneficiaries should not be penalised for opposing a trustee's application, especially when done in good faith.

The Court referred to:

- *Re Buckton* [1907] 2 Ch 406, which categorises trust disputes. This case fell into Category 1, where trustees seek Court guidance and costs are typically covered by the trust.
- Driscoll v Evans [2024] MLR 528, which reaffirmed Buckton's framework.

- Lewin on Trusts (20th ed.), particularly paragraphs 48-035 to 48-054, which stress that beneficiaries should not be penalised merely for opposing a trustee's application.

- *National Westminster Bank plc v Lucas* [2014] EWCA Civ 1632, where Patten LJ confirmed that both trustees and affected beneficiaries may have their costs met from the trust fund.

Deemster Needham found that Mr Righi's failure to engage an advocate was not unreasonable in the context of an international trust dispute. He noted that had he instructed an advocate, those costs would likely have been charged to the trust anyway, calling it a case of "swings and roundabouts."

The Court rejected any personal costs liability for Mr Righi, finding his conduct largely within the bounds of a typical trust dispute. However, it did dismiss the merit of his adjournment application and late legal representation.

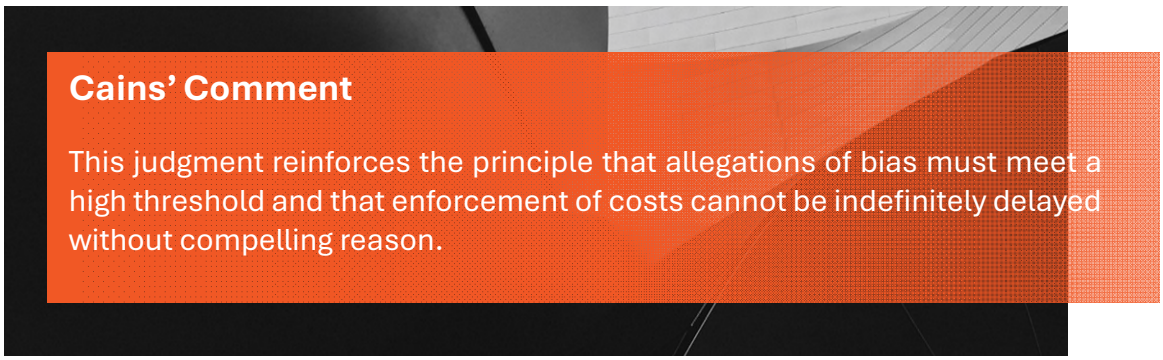
Ultimately, the Court ordered:

- The trustee's costs of £72,815.19
- The Second Defendant's costs of £45,860.35

Both amounts are to be paid from the trust fund on an indemnity basis, before any distribution to beneficiaries.

You can read the full judgment here: https://www.judgments.im/content/J3369.htm

Application for an Interim Stay of Costs Orders - Recusal



Cains' Comment

This judgment reinforces the principle that allegations of bias must meet a high threshold and that enforcement of costs cannot be indefinitely delayed without compelling reason.

Broadsheet in Liquidation, Civil - Chancery Procedure, 27 August 2025

This judgment dismissed two applications brought by Mr Kaveh Moussavi in the long-running liquidation proceedings of *Broadsheet LLC*. The case involved Mr Moussavi's attempt to delay enforcement of costs orders and to challenge the impartiality of the judge.

The dispute stems from earlier judgments, including a costs order made on 24 December 2024, which Mr Moussavi had unsuccessfully sought to stay. Although a "de facto stay" had operated while the Appeal Division considered his application to recuse all three appeal judges, that application was rejected on 4 June 2025. A further attempt to appeal to the Judicial Committee of the Privy Council also failed.

Mr Moussavi then applied to have Deemster Corlett recused from hearing his renewed request for a stay of the costs order.

Mr Moussavi alleged apparent bias on several grounds, including:

- Conflict of interest in procedural rule-making;
- Improper delegation of judicial authority;
- Prejudgment and discriminatory remarks; and
- Lack of disclosure about Mr Wild's dual role as counsel and Acting Deemster.

The Court applied the legal test for recusal as set out in the Appeal Division's 4 June 2025 judgment (paras 19 - 20), which asks whether a fair-minded and informed observer would see a real possibility of bias. This test was previously considered in *Alder & Ors v Kelly & King* [2020] 2DS 2020/002.

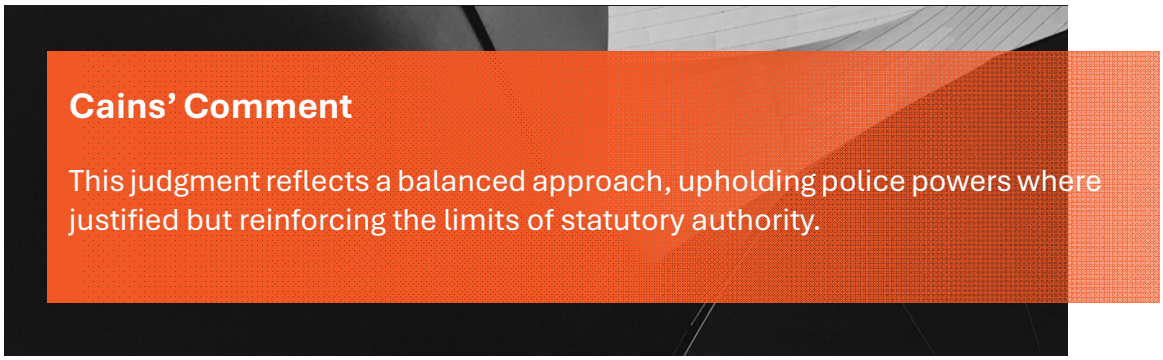
Deemster Corlett, citing the practical constraints of a small jurisdiction and the reasoning of the Appeal Division, found no basis for recusal. He emphasised that the proceedings, taken as a whole, did not deprive Mr Moussavi of a fair trial.

On the question of staying the costs order, the Court stated that an appeal does not automatically halt enforcement. With all appeal avenues exhausted, Deemster Corlett concluded that Mr Moussavi was not a special case and that the successful parties were entitled to pursue cost recovery through execution.

Both applications - for recusal and for a stay - were dismissed.

The full judgment can be found here: https://www.judgments.im/content/J3374.htm

Doleance – Reasonable Cause to Believe – Statutory Interpretation



REG Wilson v Isle of Man Constabulary, Civil - Chancery Procedure, 29 August 2025

This case addressed the legality of the police seizure and retention of a dog named Bronson under the Dogs Act 1990. The case revolved around a doleance claim (a legal challenge to an administrative decision) filed by Bronson's owner, Claimant Mr Wilson.

A doleance claim is not an appeal but a judicial review of whether a public authority acted lawfully. As explained in *Quine v DEFA* [2020] MLR 59, the Court examined whether the authority had "reasonable cause to believe" it was acting within its legal powers. This is an objective test with a low threshold, meaning the Court does not usually re-examine disputed facts unless the decision was irrational or baseless.

The key legal issue was whether the police had "reasonable cause to believe" Bronson was dangerous and "at large" under section 19(8)(b) of the Dogs Act. Deemster Needham clarified that this phrase requires firmer justification than mere suspicion, citing *AG v E* [2020] MLR 517 and *Assets Recovery Agency (Ex-parte) (Jamaica)* [2015] UKPC 1.

There was disagreement over whether Bronson was muzzled, dangerous, or roaming freely. The Deemster emphasised that the term "at large" must be interpreted strictly, as it appears in a penal statute. He rejected the police's broader interpretation, noting that if Tynwald had intended a looser definition, it would have said so.

The Court found that the police did have reasonable cause to believe Bronson was dangerous at the time of seizure, making the initial retention lawful and in the public interest. However, after 19 September 2024, when the original charge under section

19(1)(d) was dropped, the continued retention became unlawful. The remaining complaint under section 19(1)(a) did not justify further detention.

Deemster Needham described the case as a "score draw," suggesting that both parties may bear their own legal costs.

The full judgment can be found here: https://www.judgments.im/content/J3375.htm

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.

[ii] Charles Williams, Cains Advocates, represented the Respondents.

Jorden Rafferty-Gough, Associate