

Claiming an interest in someone else's property—common intention (family home) constructive trusts (*Sandford v Oliver*)

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Private Client analysis: Matthew Mills, barrister at Radcliffe Chambers, considers the lessons we can still learn from a recent family home constructive trust decision.

Sandford v Oliver [\[2019\] UKFTT 451](#) (PC)

What are the practical implications of this case?

Family home constructive trusts have been discussed ad nauseam. Nevertheless, there are still points to learn from new judgments. *Sandford* is no exception—four practical points can be gleaned from just six pages of judgment.

First, *Sandford* reminds us always to look at the intentions underlying parties' relevant actions and not simply to take those actions at face value. For example, even though the claimant undertook 'significant works to the property over the years' this was still not enough to acquire a beneficial interest in it (compare *Stack v Dowden* [\[2007\] 2 AC 432](#), [\[2007\] All ER \(D\) 208 \(Apr\)](#) at paras [36], [70], and *Aspden v Elvy* [\[2012\] EWHC 1387 \(Ch\)](#), [\[2012\] All ER \(D\) 192 \(May\)](#)). The judge's key reason was that the claimant was not undertaking these works 'with any eye to increasing the home as a capital asset, which he would ultimately share in, but because it would enhance his and his family's living standards'. It is therefore crucial when preparing a family home constructive trust claim not just to look for relevant conduct (eg discussions, improvements, payments) but really to consider why the party acted in that way.

Second, as always, plead the scope of any purported agreements carefully. In *Sandford*, the claimant contended that the parties had an agreement to share the income derived from all of their properties, regardless of how they were owned. However, this claim failed. As the family home was never rented out, and therefore never generated an income, it could not fall within the scope of the pleaded agreement.

Third, it is perfectly possible to ask a tribunal judge solely to decide whether the claimant has a beneficial interest and refrain from quantifying that interest. Suggesting this to the other side can shorten the length of the hearing, allow parties to try to negotiate a solution once the main issue is determined, and avoid the risk that any tribunal decision on quantification might be ultra vires (see Law Commission Report No 380, Updating the [Land Registration Act 2002](#) (2018), para [21.47]).

Finally, do not underestimate the importance of the tribunal referral process under [section 73\(7\)](#) of the Land Registration Act 2002 ([LRA 2002](#)). In *Sandford*, the judge formally decided the underlying substantive dispute, even though both parties asked him only to deal with the issues on a summary basis (applying *Jayasinghe v Liyanage* [\[2010\] EWHC 265 \(Ch\)](#), [\[2010\] All ER \(D\) 251 \(Feb\)](#) and *Silkstone v Tatnall*, [\[2011\] All ER \(D\) 130 \(Jul\)](#), at [37]). Tribunal referral hearings must therefore be approached with the seriousness of a full court trial.

What was the background?

In 1988, Mr Sandford and Ms Oliver started a relationship. They both owned properties in their sole names. In 1993, Ms Oliver purchased a new property, again in her sole name, in Erith (the property). The parties moved into it in 1994.

Over the next two decades, Mr Sandford, a builder by trade, spent a substantial amount of time renovating the property. His works included extending the garage, fitting a new kitchen and installing a swimming pool.

At some point, the parties purchased two investment properties in Lanzarote in joint names. The rental income went into a joint account, which was used to maintain both the Lanzarote properties and the property.

In 2017, the parties' relationship broke down and Mr Sandford moved out. Mr Sandford claimed he had a beneficial interest in the property via a common intention (or family home) constructive trust. Therefore, in August 2018, he

applied for a restriction on the title to the property. Ms Oliver objected to the registration and the matter was referred to the tribunal under [LRA 2002, s 73\(7\)](#).

What did the court decide?

Mr Sandford admitted that the parties had never expressly discussed his beneficial interest in the property, so he had to rely on inferences from the parties' conduct. Doherty J rejected these inferences and directed the Land Registrar to cancel Mr Sandford's application for a restriction.

First, Mr Sandford argued that there was an implied agreement that the rental income from all of the parties' properties would be shared equally. Doherty J doubted that there was such an agreement but held that even if Mr Sandford was correct the property would not be covered by it. Mr Sandford had only contended that the agreement related to rental income. Therefore, as the property was never rented out (unlike the Lanzarote properties) Doherty J held that it would not be covered by any agreement as to sharing rental income.

Second, Mr Sandford relied on his contributions to the property and family life, in particular—the works he undertook to the property, the household bills he paid and the fact that he gave up work to care for the parties' children. Doherty J rejected each of these arguments and held:

- that Mr Sandford did not undertake the works to the property to increase its capital value, but with a view to enhancing his family's and his own living standards—therefore, the works were not done to Mr Sandford's detriment and could not create a beneficial interest in the property
- that Mr Sandford only paid for Sky TV and, temporarily, water. This, Doherty J held, was insufficient to give rise to a constructive trust. In any event, it appeared that the Sky TV subscription was used solely by Mr Sandford
- in cross-examination, Mr Sandford admitted that his increase in caring hours coincided with a down-turn in his work and that the family had in fact employed a nanny from 8 am to 6 pm. In any event, the Doherty J held that looking after one's own children cannot amount to a detriment to give rise to a constructive trust.

Interviewed by Alex Heshmaty.

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