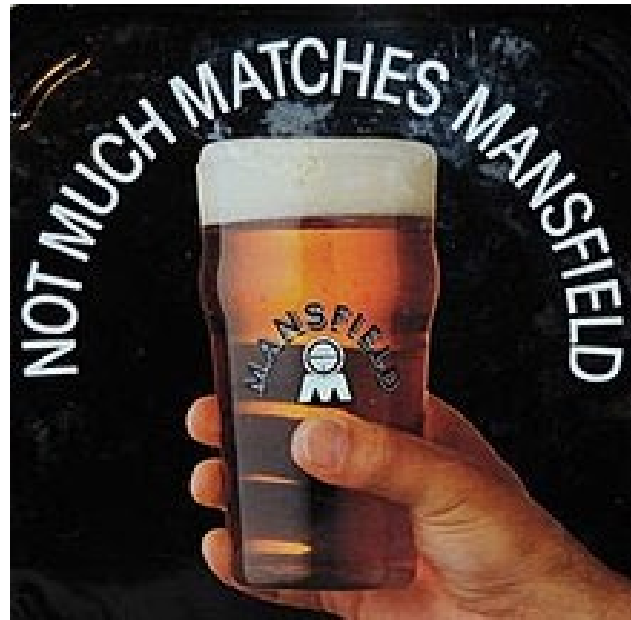




Trustees' Decisions – how to make 'em, shake 'em and break 'em
Jemma Goddard – 14 June 2021

Public Trustee v Cooper [2001] W.T.L.R. 901 (20 December 1999)



Public Trustee v Cooper

- (1) Where the issue is whether the proposed action is within the trustees' powers
- (2) Where the issue is whether the proposed course of action is a proper exercise of the trustees' powers, not because there is a doubt as to the nature of those powers, but because the decision is particularly momentous
- (3) Where the trustees are surrendering their discretion to the court
- (4) Where the trustees have actually taken an action and it is being attacked

Public Trustee v Cooper

Category (2) cases:

- (1) The trustees have in fact formed the opinion that they should act in the way for which they seek approval
- (2) It is one at which a reasonable body of trustees properly instructed as to the meaning of the relevant clause could properly have arrived
- (3) It was not vitiated by any conflict of interest under which any of the trustees was labouring

Public Trustee v Cooper



Schumacher v Clarke [2020] EWHC 3381 (Ch)



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Schumacher v Clarke [2020]

- Broadly divided the estate as to £40 million to an employee benefit trust and £32.6 million to Dame Zaha's charitable foundation
- Full and final settlement and wide release of claims between the trustees
- Trustees authorised to receive indemnity costs from the estate

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Schumacher v Clarke [2020]



Smith v Michelmores Trust Corp [2021] EWHC 1425 (Ch)



Smith v Michelmores Trust Corp [2021]

- Part 64 CPR and Practice Direction 64B

4.1

Rule 64.4(1)(c) deals with the joining of beneficiaries as defendants. Often, especially in the case of a private trust, it will be clear that some, and which, beneficiaries need to be joined as defendants. Sometimes, if there are only two views of the appropriate course, and one is advocated by one beneficiary who will be joined, it may not be necessary for other beneficiaries to be joined since the trustees may be able to present the other arguments.

- “The whole point of an application by trustees of this kind is to bring certainty to the administration of the trust by directing the trustees whether or not to do whatever it is they have proposed to do.”

Smith v Michelmores Trust Corp [2021]

Three serious questions arose from the trustees' decision:

- (1) How far the appointment would be for the benefit of the beneficiary in question
- (2) Whether the appointment would amount to a fraud on a power
- (3) How far the trustees had made their decision free of any conflict of interest

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Any final thoughts?



