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‘Must I be at their beck and call?’ Dealing with beneficiaries’ demands

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(1) Core principles

(2) Case studies

(3) Themes

(1) Core principles

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Core duties and disclosure

Information to be provided without demand?

good practice but no duty to notify legatees:
Re Lewis [1904] 2 Ch. 696
(contrast with trusts)

No duty of consultation
(and see s18(1) TOLATA, disapplying s11)
although sometimes prudent to do so

Inventory and account

Statutory obligation of inventory and account:
s.25(b) Administration of Estates Act 1925

Application to Principal Registry by summons:
NCPR r.61(2)

Note the right of creditors

The discretion and competing factors

Discretionary approach, subject to the court's supervisory jurisdiction (parallel with trusts):
Schmidt v Rosewood Trust Ltd [2003] UKPC 26

Persistent belief in beneficiaries' entitlement as of right

the *Londonderry* principle

(2) Case studies

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- (1) *Henchley v Thompson* [2017] EWHC 225 (Ch)
- (2) *Ball v Ball* [2020] EWHC 1020 (Ch)
- (3) *Breakspear v Ackland* [2008] EWHC 220 (Ch)
- (4) *Lewis v Tamplin* [2018] EWHC 777 (Ch)
- (5) *Blades v Isaac* [2016] EWHC 601 (Ch)

Henchley v Thompson

***Henchley v Thompson* [2017] EWHC 225 (Ch)**

Background

2 family trusts created in 1960:-
1 of real property and small share portfolio
("Henchley Trust")
1 of shares in family business
("The Childrens' Trust")

Shares liquidated at loss in early 1990s
No tax returns since 1996

***Henchley v Thompson* [2017] EWHC 225 (Ch)**

Defendant trustee robust refusal:

- Children's Trust long since wound up;
- pointlessness if claims arising out of information were time barred;
- he had already provided what he could, impossible to provide more;
- he had had little involvement at the time.

***Henchley v Thompson* [2017] EWHC 225 (Ch)**

The decision

Order for an account was discretionary, but would only be refused 'sparingly'

Vital aspect of accountability of trustees
To be seen alongside duty of record-keeping

No statutory limitation period
Laches probably added little to the discretion

***Henchley v Thompson* [2017] EWHC 225 (Ch)**

The decision (contd.)

No particular form of accounts required
- distinguish from company accounts

“must be able to show from period to period (the frequency ... is not fixed) how the trust assets have been dealt with, including what distributions and disposals have taken place...”

***Henchley v Thompson* [2017] EWHC 225 (Ch)**

The decision (contd.)

".... A beneficiary reading trust accounts must be in a position to assess whether the trust assets conform with the trust instrument, that the class of assets held is appropriate for the trust."

Style and content will necessarily vary

***Henchley v Thompson* [2017] EWHC 225 (Ch)**

The decision (contd.)

Henchley Trust – criticism that no accounts ever produced, but main asset in existence. No order for accounts.

The Childrens' Trust – 1990/1 accounts “troubling”. Claims that may arise unknown, but even if time barred, there is a benefit to the beneficiaries in knowing what happened. Order for accounts made.

Ball v Ball

***Ball v Ball* [2020] EWHC 1020 (Ch)**

- Three children of the Ball family
- Two were directors in the family business (Wroe's department stores)
- the other, Jonathan (the Claimant), was not

***Ball v Ball* [2020] EWHC 1020 (Ch)**

- Father's estate included minority shareholding in Wroe's and an interest in store premises in Bude
- Life interest to mother, residue to 3 children
- 3 children were executors and trustees
- Father died 1978. Mother died 2016 (38-year duration of life interest trust)

***Ball v Ball* [2020] EWHC 1020 (Ch)**

Lack of regard by trustees for their duties, including by claimant himself

"Jonathan's suspicions ... based on the premise that [the Defendants] have at all times favoured Wroe's over Father's Trust"

Reinvestment in the business

Mother waived entitlement to dividends:

"Money is a good servant but an evil Master."

Waiver signed by trustees

***Ball v Ball* [2020] EWHC 1020 (Ch)**

Letter from solicitors for defendants 29.3.2018

“5 closely typed pages” enclosing Will, spreadsheet of Mother’s income 1977-2004, extracts of Wroe’s accounts

Jonathan replied demanding Wroe’s statutory books, board minutes, shareholder resolutions, financial statements ... valuation of shares ... covering a period of over 40 years

***Ball v Ball* [2020] EWHC 1020 (Ch)**

The decision

- Claimant is beneficiary and a trustee: not an impediment
- No need to demonstrate a breach of trust (other than failure of provision of account itself)
- Reliance upon *Henchley v Thompson*

***Ball v Ball* [2020] EWHC 1020 (Ch)**

The decision (contd.)

What should the accounts contain?

- Distinguish from business accounts
- How trust assets dealt with over time and conformity with trust instrument:
 - (1) what the assets were
 - (2) what has been done with them
 - (3) what the assets are now
 - (4) what distributions have been made

***Ball v Ball* [2020] EWHC 1020 (Ch)**

The decision (contd.)

Narrative explanation required?

*"... no set form in which trustees are required to account ...
At heart, the obligation is to inform and where explanation
is required to explain"*

On the facts of *Ball v Ball*, the 29.3.18 letter was a
sufficient account (also, would serve no purpose to give
more where consequential claims time barred)
Claim dismissed

Breakspear v Ackland

***Breakspear v Ackland* [2008] EWHC 220 (Ch)**

Background

Family discretionary trust

Trustees refused claimants' request for Letter of Wishes on the basis that it was confidential

Claimants accused trustees of displaying a “wrong-headed and unfair tight-fistedness” in relation to disclosure

***Breakspear v Ackland* [2008] EWHC 220 (Ch)**

The decision

Londonderry principle can apply to Letters of Wishes (which exist to further an inherently confidential decision-making process)

"It seems to me that disclosure sought by a beneficiary for the purpose of evaluating his or her prospective entitlement may too easily, once obtained, be used for the purpose of challenging the subsequent exercise by the trustees of their dispositive discretion on grounds of rationality."

***Breakspear v Ackland* [2008] EWHC 220 (Ch)**

The decision (contd.)

No fixed rules, it's an exercise of discretion

Objective assessment of consequences of disclosure not of subjective purposes for seeking it

The discretion to be exercised in the best interests of the beneficiaries and the due administration of the trust

Versatile approaches if sensitivity required (redaction, undertakings, third party review) can include judge reading letter of wishes to self

***Breakspear v Ackland* [2008] EWHC 220 (Ch)**

The decision (contd.)

Trustees justified in their refusal

However, in the circumstances, where they would imminently be seeking court approval of a intended distribution, disclosure should be given

Lewis v Tamplin

***Lewis v Tamplin* [2018] EWHC 777 (Ch)**

Tamplin trust

12.3 acres of farmland near M4 in Wales

Ernest and Gladys Tamplin family trust

Option for development £10m+

***Lewis v Tamplin* [2018] EWHC 777 (Ch)**

Beneficiaries sought docs and information relating to:

Professional advice

Planning consultants, surveyors, Counsel

CFAs

Use of the land

Disclosure resisted by defendants – family tensions

***Lewis v Tamplin* [2018] EWHC 777 (Ch)**

Disclosure decision was exercise of a discretion, not as of right: *Schmidt*

Trustees argued that court should not interfere with exercise of a discretion unless prima facie case of breach / suspicion excited

***Lewis v Tamplin* [2018] EWHC 777 (Ch)**

Schmidt involved a discretionary trust

A fixed interest beneficiary in a different position to a fixed interest beneficiary

"The implication is that the beneficiary of a fixed, transmissible interest would normally obtain the assistance of the court."

***Lewis v Tamplin* [2018] EWHC 777 (Ch)**

Reason for denial of documents / information to a fixed interest beneficiary, outside *Londonderry* principle, likely needs to be exceptional

e.g. commercially sensitive information

See *Erceg v Erceg* [2017] NZSC 28

Information sought in *Lewis v Tamplin*

“for precisely the right reasons” namely “to hold the trustees to account”

***Lewis v Tamplin* [2018] EWHC 777 (Ch)**

Londonderry applies to dispositive powers not administrative powers

see *Breakspear v Ackland* [2009] Ch 32

to be preferred to *Lewin* citing

Wilson v Law Debenture Trust Corp [1995] 2 All ER 337

Query - some administrative decisions can be highly controversial

Lewis v Tamplin [2018] EWHC 777 (Ch)

A warning for beneficiaries:-

They may seek

*“information about the trust, its assets and the trustees’
stewardship of it and them”*

Not

a quest for parity with trustees

Nor

*“old fashioned interrogatories” compelling trustees “to
convict themselves out of their own mouths of breach of
trust”*

***Lewis v Tamplin* [2018] EWHC 777 (Ch)**

Outcome

Disclosure ordered

Trustees to pay costs personally on indemnity basis

Refusal of disclosure had been “indefensible”

But note extreme facts justifying the costs order

Cf. Blades v Isaac

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Blades v Isaac

***Blades v Isaac* [2016] EWHC 601 (Ch)**

Background

Claimant one of two sisters

Both beneficiaries under a discretionary will trust created by their late mother

Difficult family relations, discretion to add older sister according to letter of wishes

Defendants were professional executor trustee and trustee from the firm who had prepared the will

***Blades v Isaac* [2016] EWHC 601 (Ch)**

Background (contd.)

Claimant sought inventory of estate, will trust accounts, letter of wishes

Request refused on basis of defendant's (honest) belief that it would harm family relations

Disclosure to a third party: sought advice of counsel which endorsed that refusal

Subsequent change of counsel – disclosure given

***Blades v Isaac* [2016] EWHC 601 (Ch)**

Costs arguments

Claimant sought costs on the basis had succeeded

Defendants' refusal had been wrong

Court considered CPR rr 44.2(2) (general rule costs follow event) and 46.3 (general rule for trustee / pr indemnity), and PD to Part 46 at para 1 (indemnity only if costs "properly incurred")

***Blades v Isaac* [2016] EWHC 601 (Ch)**

Costs arguments (contd.)

Sir George Jessel MR in *Heugh v Scard* (1875) 33 LT 659
'mere neglect' or refusal insufficient in themselves to order
that an honest executor should pay costs given the "*onerous
and thankless*" task they undertake.

'Gross neglect' or 'wholly indefensible' refusal may suffice.

***Blades v Isaac* [2016] EWHC 601 (Ch)**

Costs arguments (contd.)

In this case the defendants had acted in good faith, took advice of chancery counsel and acted upon it

Claimant had been hasty in issuing, where defendants indicated they would seek directions

***Blades v Isaac* [2016] EWHC 601 (Ch)**

Costs arguments (contd.)

And a warning for beneficiaries:

“the Claimant may have lost sight of the important point that the discretionary trust was imposed on the estate of the Testatrix by the express desire of the Testatrix herself ... She did not wish either of them [her daughters] to play any part in the administration of either the estate or the trust which she created.”

***Blades v Isaac* [2016] EWHC 601 (Ch)**

Costs arguments (contd.)

Court exercised discretion to make no order for costs

Would in any event have upheld right to indemnity, even if D made to pay costs of C

By either approach the successful beneficiary pays own costs and those of unsuccessful defendant (proportionate to beneficial share)

(3) Themes

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Emphasis on discretion makes cases more difficult to predict.

A tendency to favour disclosure?

Not difficult for troublemakers to make requests seem credible

- (1) Discretion to be exercised in best interests of beneficiaries and administration, furthering accountability of PRs (and not their self-preservation)
- (2) Court will exercise own discretion, not merely review
- (3) Refusal of accounts will rarely be justified
- (4) No time limit, but excessive delay may justify refusal
- (5) Barring of any consequential claim may weigh against relief, but knowledge can be an end in itself
- (6) No particular form of accounts required provided core information provided, sometimes explanation required

- (7) Nature of beneficial interest relevant (fixed interest / discretionary, capital / income, remote interests)
- (8) Invoking *Londonderry* more difficult (unavailable?) in respect of exercise of administrative power, as opposed to dispositive one
- (9) Seeking information and documents not a means of interrogatories or involvement in decision-making
- (10) Costs regime protective of PRs acting in good faith
- (11) Cost of preparing accounts an estate expense, but beneficiary may have to pay for bespoke requests

Possible reasons for refusal?

- (1) delay, stale claims (but see *Henchley*)
- (2) pointlessness, consequential claims time barred (but sometimes knowledge an end in itself)
- (3) beneficiary with remote / contingent interest or a mere pecuniary legatee and payment tendered
- (4) protecting confidentiality of decision-making (but note administrative / dispositive distinction)
- (5) welfare of beneficiaries as a whole (e.g. family rifts, negative effects of anticipated inheritance)
- (6) commercial sensitivity
- (7) sufficient information already given, available from another source

Creative solutions: redaction, undertakings, sealed envelope to be opened only by judge (e.g. *Breakspear*), professional third party review (e.g. *Blades*)

Alternative means of obtaining documents and information

As alternatives to seeking information under Part 8 claim:-

1. Application for pre-action disclosure under CPR r.31.16
2. data subject access request

Dawson-Damer v Taylor Wessing [2017] EWCA Civ 74



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