



TRUSTEES NEED TO KNOW: PROVISION OF INFORMATION BY TRUSTEES TO BENEFICIARIES

Published on 2 August 2017

Does a beneficiary of a trust have a right to access trust documents or information?

Trustees have a duty to inform a beneficiary of the existence and terms of the trust and of the general nature of their interest. Beyond these duties, establishing what information and documents a beneficiary is entitled to see is not always clear cut and it is a common issue that arises when dealing with trusts.

What is the Londonderry principle?

The so-called “Londonderry principle” arises from the case of *Re Londonderry’s Settlement* [1965] and provides authority for the premise that Trustees are not required to disclose the rationale and processes involved in their decisions relating to discretionary matters.

The court indicated that a beneficiary’s right to disclosure of information and documents should be treated as a proprietary right. On this basis, only those beneficiaries with a proprietary interest in the trust property would have a right to disclosure.

What was the impact of *Schmidt v Rosewood Trust Limited* [2003]?

In *Schmidt v Rosewood Trust Limited* [2003] the Privy Council held that whether a beneficiary has a right or claim to a proprietary interest in the trust property has no bearing on the court’s inherent jurisdiction to order disclosure. The court has discretion to order disclosure irrespective of whether the claimant has a fixed interest or is an object of a discretionary trust or power of appointment.

What is the effect of the decision in *Dawson-Damer v Taylor Wessing LLP* [2015]?

The case of *Dawson-Damer v Taylor Wessing LLP* concerned a subject access request made pursuant to the Data Protection Act 1998.

Taylor Wessing, who was acting for the trustees of several Bahamian trusts, had refused to provide the requested data on the following grounds:

- (i) the information was privileged;
 - (ii) the effort that would be involved in dealing with the request would be disproportionate;
- and
- (iii) the motive behind the subject access request was to obtain information that could then be used in legal proceedings.



The Court of Appeal found:

- (i) the legal professional privilege exemption under the Data Protection Act 1998 should be construed narrowly and does not extend to documents not disclosable to a beneficiary of a trust under trust law principles;
- (ii) there was insufficient evidence to demonstrate that the search would be disproportionate; and
- (iii) the intention to use information obtained from a subject access request in legal proceedings was not a reason to avoid compliance with a request.

The decision is likely to give rise to beneficiaries seeking to use subject access requests to circumvent the established principles addressed above concerning a beneficiary's rights of access to trust documents and information.

What about offshore jurisdictions?

Offshore jurisdictions, including Jersey, Guernsey, the British Virgin Islands and the Cayman Islands, have their own disclosure rules but they are closely aligned with the general position in England and Wales.

How can we help?

We act for trustees, executors, personal representatives and for individuals claiming against estates, trustees or other parties. We also often advise on complex and cross-jurisdictional issues, and regularly work alongside other intermediaries based offshore. Our team is recognised for our expertise in this field by the legal directories: The Legal 500 and Chambers & Partners.

If you have any questions arising from this 'Need to Know' please do not hesitate to contact our Wills, Trusts and Inheritance Disputes Team:

contentioustrustsandprobate@kingsleynapley.co.uk

This **Need to Know** provides general guidance of the law in this area at the date of publication. Specialist advice should also be sought.