

Family news - winter: Breakspear v Ackland [2008] EWHC 220 (Ch)

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The claimants in this case were beneficiaries under a trust. They were applying for an Order that the trustees of the settlement should disclose a letter of wishes written by the settlor. An issue arose as to whether the claimants had an entitlement to see the letter of wishes.

The existing case law confirms that beneficiaries are generally entitled to see copies of trust documentation. This general principle is, however, subject to the exception that trustees are not accountable to beneficiaries for the logic underpinning the exercise of their discretionary powers. This is the principle set out in *Re Londonderry's Settlement* [1965] 918, CA.

In *Breakspear* the court decided that in principle, letters of wishes are covered by the exception and a trustee may therefore refuse a request for the disclosure of a letter of wishes without giving reasons. If a beneficiary applies to the court for disclosure of such documents, they must demonstrate that an injustice would be done by the documents not being disclosed. The trustee is entitled to refuse without giving reasons. Where a trustee gives reasons for refusal to disclose a letter of wishes, the court may investigate whether those reasons are proportionate, which may involve the production of the very document the trustees were trying to withhold.

In summary, unless there is a compelling reason to the contrary, on an application by a beneficiary the court will not order the trustees to disclose a letter of wishes. This principle can be relied upon in financial proceedings on divorce.