

# Beneficiaries denied information about their own trust

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**CATEGORY:**  
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## Summary

The High Court has clarified the essence of a beneficiary's right to information about a trust. In surprising circumstances, trustees had denied that the Court could intervene and even that those requesting information were beneficiaries.

## Facts

Ernest and Gladys Tamplin had bought Panteg Farm in Glamorgan in 1951. They had six children.

Gladys became sole owner on Ernest's death in 1985.

A year later she entered into two deeds, which created a trust of the farm for her (50%) and her six children (50%). The deeds named certain of her children as the trustees.

One of the deeds provided that the beneficiaries of the trust should hold their interest in the farm 'for their own use and benefit absolutely and for them to devise bequeath or appoint during their lifetime or in their will as they individually shall decide.'

Gladys died in 1988 leaving her 50% share in the farm to the couple's six children. Four of the siblings have since died without leaving wills. This leaves Edward and Jane who, together with Edward's son Mark, are the trustees.

Hugh and Rhys Lewis, and Sadie Lougher, children of deceased siblings asked the trustees for details of their late parent's trust interests, which passed to them (they assumed) under the rules of intestacy. The trust information they requested included any legal advice given to the trustees, correspondence with professional advisers, agreements made with potential developers and trust accounts.

Surprisingly, the trustees argued that Hugh, Rhys and Sadie were not beneficiaries. They argued that the effect of wording in one of the deeds (quoted above) is that interests in this trust could only be transferred actively, ie by lifetime transfer or by will, not under the rules of intestacy. Therefore, the interests of the deceased siblings fell back into the trust, for their surviving siblings and not their children.

Eventually, the trustees conceded that their interpretation of the deeds was wrong and the children had inherited their parent's trust interests. However, they only provided limited information about the trust so Hugh, Rhys and Sadie applied to the Court.

## The proceedings

In February 2017 they issued an application under the Civil Procedure Rules for pre-action disclosure of the trust information they had requested (ie disclosure between potential litigants before any proceedings are started).

In November 2017 they also issued a claim on the basis of their rights as beneficiaries in trust law for an order compelling the trustees to disclose the information.

## The trustees' arguments

The trustees' defended the proceedings on three grounds:

1. the claimants already had received sufficient information;
2. disclosing further information would entail disclosing the reasons for the ways in which the trustees exercised their management discretions, which they are not obliged to disclose; and
3. beneficiaries can guarantee full disclosure by achieving the agreement of all the beneficiaries, but no court can intrude on the trustees' discretion unless there are grounds for suspicion that something had gone wrong with the trustees' decision-making process.

### Decision on the claim

Judge Matthews explained that trust documents are not property of the beneficiaries. Their right to information about the trust is based on the Court's responsibility to supervise trustees – beneficiaries will need to know what is going on with their trusts in order to bring issues to the Court's attention.

Judge Matthews considered the leading authorities and held that where there are no special circumstances, beneficiaries (like Hugh, Rhys and Sadie) with the highest likelihood of benefitting under the trust (ie with fixed not discretionary interests) can normally expect the Court's assistance in getting information.

He duly dismissed each of the trustees' arguments in turn.

The Court will make up its own mind about whether or not the information sought should be disclosed. It is not merely analysing the trustees' decision-making process.

The right to information does not require a consensus of the beneficiaries. The power granted to beneficiaries by reaching consensus does not permit them to control trustees, only to accelerate benefit by ending the trust completely.

Interestingly, Judge Matthews held that the long-standing *Re Londonderry* principle (that trustees are not obliged to disclose the reasons behind their decisions) applied only to decisions about who gets what benefit, not about general management of the trust property.

In ordering the trustees to make the requested disclosure, Judge Matthews also made the following important points about the scope of a beneficiary's right to trust information:

- the documents must be trust documents, eg not working documents belonging to professionals;
- documents protected by legal professional privilege are to be disclosed if obtained for the benefit, or at the expense of, the trust and its beneficiaries;
- beneficiaries are not entitled to have information put into documentary form at the expense of the trust, but the trustees must provide relevant information where there are no documents or where documents are not within their control;
- whilst trustees are not entitled to withhold documents that happen to disclose reasons for management decisions, beneficiaries are not entitled to ask the trustees to actively provide reasons.

### Decision on the application

Because the Court upheld the claim for disclosure based on the trustee-beneficiary relationship, it did not need to decide the outcome of the application for pre-action disclosure. For completeness, however, it held that

- pre-action disclosure under the Civil Procedure Rules has a narrower application; applying only to documents, not information, and only to documents that fall within the scope of 'standard disclosure' between litigants; and
- the Court must be persuaded that the applicant has a prima facie case, but not that proceedings are likely to follow or that the applicant is more likely than not to win.

### Commentary

This case will be welcomed by trust beneficiaries who may have thought that recent case law had shifted the presumption in favour of non-disclosure. Trustees will be wise to disclose trust information unless there really are good reasons in the particular circumstances to show this would not be in the best interest of all the beneficiaries.

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

# Authors

Paul Hewitt

PARTNER | LONDON

Trust and succession disputes

 +44 20 7597 6197

 [paul.hewitt@withersworldwide.com](mailto:paul.hewitt@withersworldwide.com)

Richard Walker

ASSOCIATE | LONDON

Trust and succession disputes

 +44 20 7597 6024

 [richard.walker@withersworldwide.com](mailto:richard.walker@withersworldwide.com)