

# Court refuses to approve tainted fiduciary decision making (Schumacher v Clarke)

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**Private Client analysis: The court was faced with a category 2 and 3 Public Trustee v Cooper application principally for the approval of a momentous decision. The court was initially asked to approve the entirety of a settlement reached between four trustees split into two camps but later asked to approve only the dispositive elements of the settlement. The settlement unusually resolved disputes between the trustees rather than between trustees and beneficiaries or third parties. The court was concerned with mutual allegations of inappropriate action as fiduciaries and the failure of both sides to manage conflicts of interest in arriving at a settlement. After stressing that such factors could impair the decision reached and which the court was asked to approve, the court refused its approval of part of the settlement. Written by James Saunders, barrister, at New Square Chambers.**

*Schumacher and another v Clarke and others* [\[2020\] EWHC 3381 \(Ch\)](#)

## What are the practical implications of this case?

This decision provides a pointed, if unusual, example of a scenario in which a failure of decision-making processes and conflict of interest management can taint a decision so as to lead a court to refuse to approve it. Fiduciaries should remain mindful of the need to have carried out a proper decision-making process in arriving at a shared and settled decision which the court is later asked to approve. The court may, and likely will, refuse to approve a decision where it is impaired by conflicts of interest or the improper discharge of fiduciary office.

There may be a difference of approach by the court depending upon the nature, degree and length of hostility between trustees with the court more willing to approve decisions where disputes exist between fiduciaries but which do not go to their status or actions as fiduciaries or which do not 'taint' the decision the court is asked to approve.

Fiduciaries should also be wary of inviting the court to approve part only of a larger decision. Parties in such cases can, at least, expect an inquiry into why only certain aspects require the courts approval whereas others remain outside of an application. The context for any given application will determine whether partial approval is appropriate and the court's power will remain broadly discretionary but this will be a point to consider for future applications.

The court also determined that where there is a conflict of interest in a decision-making process it would not necessarily 'destroy' or 'set aside' the outcome of that process but may impair it such that it was inappropriate for the court to approve it. This is particularly so given the protection which comes with the court approval of a momentous decision from future action by the beneficiaries impeaching that action.

## What was the background?

The deceased, Dame Hadid, died age 65 in March 2016 leaving a Will dated 2 April 2015 and letter of wishes. The first to third defendants were the trustees of a charitable foundation established by the deceased and, along with the claimant, her executors and Will trustees. The claimant commenced an application under [section 50](#) of the Administration of Justice Act 1985 ([AJA 1985](#)) for the removal of the trustee defendants and their replacement with independent professionals. By defence and counterclaim the trustees denied that relations had broken down and accused the claimant of failing to act appropriately in a fiduciary capacity.

The position developed following the successful negotiation of a compromise agreement between the trustees including the claimant for the final distribution of the estate. Whereupon the defendant trustees applied to court under categories 2 and 3 of *Public Trustee v Cooper* [2001] WTLR 901 for the surrender of their discretion and the approval of a momentous decision. The application was said to be made on behalf of all four trustees. By the time the matter was heard the court was no longer

asked to approve the entire settlement and its costs provisions but merely the dispositive provisions thereof.

The court noted in its decision that an approval application pursued where the collective of trustees were each alleging failings of their co-trustees in their duties and appeared to have failed to act with a proper decision-making process would face difficulties. The court ultimately refused both applications, notwithstanding the broad support of the beneficiaries for the distribution proposed in the settlement.

### What did the court decide?

The court highlighted that this was an unusual case where the court was asked to approve a settlement reached where the dispute was between the trustees themselves. The court considered that the process for decision making and the management of conflicts of interest were each called into question so as to impair the validity of the decision ultimately reached and embodied in the settlement. In those circumstances the court was not willing to approve the settlement or its dispositive provisions.

To the date of the hearing the trustees mutually accused each other of acting in a non-fiduciary manner and it was inconsistent for them to pursue these allegations and ask the court to approve dispositions they wished to make on the basis they have acted properly as fiduciaries.

The court also expressed the view that it was not open to the trustees to withdraw part of the settlement agreement from the scope of approval or, at least, if that were pursued the trustees could not expect the court to be willing to approve only the elements put before it.

Finally, and in the court's view most importantly, the trustees did not require the court's approval for the disposition they wished to make. The trustees held the relevant powers of compromise and were free to exercise them.

### Case details

- Court: Business and Property Courts of England and Wales, Property and Trust & Probate list, High Court of Justice
- Judge: Chief Master Marsh
- Date of judgment: 25 November 2020

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