

What Can Possibly Go Wrong? Trust Developments in England and Beyond

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TRUSTS, WILLS AND ESTATES

DATE: Wednesday 22nd April 2026

TIME: 11:00 am – 12:00 pm

LOCATION: Online via Zoom

Trust property: crypto

- Property (Digital Assets etc) Act 2025, s. 1:
 - A thing (including a thing that is digital or electronic in nature) is not prevented from being the object of personal property rights merely because it is neither—
 - (a) a thing in possession, nor
 - (b) a thing in action.
- *D'Alia v. Persons Unknown* [2024] EWHC 2342 (Ch) (Eng. H.C.):
 - Difficulties of following and tracing
- Conflict of laws?

Protectors

- *A v. C* [2026] UKPC 11 (Bermuda)
 - Long-running debate about scope of protector's veto – merely supervisory or wider
 - PC says that absent indication to contrary, protectors can use veto if they disagree with trustees' decision
- Can protectors veto repeatedly to get their own way?

Administration: settlor's wishes

- *Grand View Private Trust Co. Ltd v. Wong* [2022] UKPC 47 (Ber.)
 - Only documents *contemporaneous with trust instrument* admissible in determining the purpose of the power
 - Trustees could legitimately have regard to wishes expressed by the settlor *after the trust was created* as to how they should exercise dispositive powers
- *Dawson-Damer v. Grampian Trust Co. Ltd* [2025] UKPC 32 (Bah.)
 - Where corporate settlor, ordinary rules of corporate attribution apply to identify wishes: *Meridian Global Funds &c v. Securities Commission* [1995] 2 A.C. 500 – so directors or those authorised by board
 - Note: trust settled 1992; litigation begun 2015; all directors dead by time of trial in 2020-2021
 - Also deals with inadequate deliberation; no decision made between *would* and *might* have made a difference

Administration: settlor's wishes

- *Representation of Zedra Trust Company (Suisse) SA, re C and D Trusts* [2023] JRC 213 (Jers. R.C.)
 - Trusts, settled in 1974, for settlor's son and male issue
 - Limited power of addition of beneficiaries; also power of variation
 - Letter of wishes against adding female beneficiaries
 - Trustee understood other trusts existed for females but had no details
 - Trustee wished to extend limit on power of addition and vary by adding son's wife and female issue
 - Court granted approval
 - Query application of *Wong* – whether scope of powers narrowed by letter of wishes
 - Query whether general power of variation restricted by limit on specific power of addition

Change of proper law and jurisdiction

- *Sullivan v Hill Capital Pte Ltd* [2024] SGHC 157 (Sing. H.C.) (and [2024] SGHC 198)
 - Successive changes of proper law and ‘forum of administration’ – *i.e.* (in this case) exclusive jurisdiction clause
 - Change of proper law does not retrospectively apply new proper law to duties and responsibilities of trustee before change took place
 - Query whether exclusive jurisdiction clause refers issues arising before change to courts of previous jurisdiction
- Problems with perpetuities and accumulations
 - E.g. pre-1964 English trust cannot shed English rule merely by change to Jersey law
 - Note transfer to another trust may be similar to change of proper law

Insolvency: duties to beneficiaries vs creditors

- “Insolvent trust” as convenient shorthand – *Equity Trust (Jersey) Ltd v. Halabi* [2022] UKPC 36 at [61].
- *BTI 2014 LLC v. Sequana SA* [2022] UKSC 25.
 - There is a duty to have regard to the interests of creditors; not freestanding but forms part of directors’ fiduciary duties to act in good faith for the benefit of the company.
 - So-called “creditor duty” is triggered when the company is insolvent or bordering on insolvency.
- *Kazzazz v Standard Chartered Trust Ltd* [2023] GRC 049 - Guernsey court doubted that a trustee owe a duty of a trustee to creditors.
 - Concept of a parallel to the proposition of company law said to “*bristle with difficulties*”.

- *cf Adams v. FS Capital* [2023] 1649 (Ch)
 - Position “*not as absolute*” as stated in *Z Trusts*.
 - In a situation of insolvency or probable insolvency a trustee should “*primarily*” exercise their fiduciary powers and duties in the interests of creditors.
 - Illustrates significant effect that *Sequana* has, at least as held by an English court, already had on the law of Jersey in relation to trusts and company/insolvency law.
- More litigation on the horizon!

Transaction avoidance

- Section 423 Insolvency Act 1986; broadly similar to a Pauline action.
- *El-Husseiny v. Invest Bank PSC* [2025] UKSC 4
 - Confirmed wide meaning of “transaction”; not confined to dealings with assets beneficially owned by debtor.
 - Emphasised that the section was not intended to be circumvented by use of complex company structures.
 - Principle ought to apply to the use of complex trust structures.
- *Khawaja v. Stefanova* [2025] EWHC 1745 (Ch)
 - Sham transactions and transactions defrauding creditors are not mutually exclusive.

- *National Iranian Oil Co v. Crescent Gas Corp Ltd* [2025] EWCA Civ 1211
 - Attempt to use a trust of real property to avoid a liability failed under trusts law at first instance and on appeal as the purported trust declaration was not effective; signed by transferor company's agent rather than by company itself.
 - Transaction therefore within scope of s.423.
 - Pending appeal to Supreme Court.

Interpretation of ‘children’, ‘issue’ etc.

- Meaning governed by proper law: Hague Convention, art. 8 and RTA 1987
- *Marcus v. Marcus* [2025] EWHC 1695 (Ch) (Eng. H.C.):
 - ‘Children’ of settlor in settlement
 - Settlor, unknown to him, not biological father of one out of two children
 - Natural meaning excludes person not someone’s biological child but can be displaced by context
 - Settlor’s intention to benefit both, so natural meaning displaced by context and both were ‘children’
 - Possibly same would apply to adopted children

Interpretation of ‘children’, ‘issue’ etc.

- Adoption:
 - Proper law may include adopted children *and* recognise foreign adoption
 - Adoption may be intended to qualify child as beneficiary: *Andrew v Beatrice* [2023] EWFC 114 (B) (Eng. H.C.)
- English law on foreign adoptions:
 - Adoption and Children Act 2002 – British Isles, Western Europe, Commonwealth, USA
 - Common-law test:
 - Parents’ domicile, compliance with foreign requirements, similar to English adoption, public policy
 - European Convention on Human Rights, art. 8 can top up common-law test
 - Decisions: *Re G* [2024] EWHC 2769 (Fam); *Re A* [2024] EWHC 2888 (Fam); *Re C* [2025] EWHC 204 (Fam); *DE v. TE* [2025] EWHC 687 (Fam)

Interpretation of ‘children’, ‘issue’ etc.

- Surrogacy arrangements and trusts
- English law: Human Fertilisation and Embryology Acts 1990 and 2008
- Foreign arrangements:
 - Decisions: *O Trustee v. Q, R, S, T and U*, unrep., 10 June 2021 (B.V.I. H.C.); *Re B* [2024] EWHC 586 (Fam) *Re Z* [2024] EWFC 304; *W v. S* [2025] EWFC 85; *C v. E* [2025] EWFC 68 (last three all Eng. H.C.)

No-contest clauses

- Common-law case-law uncertain
- *Stewart v. Cromwell Trust Co. Ltd*, unrep., 22 June 2023 (Bah. S.C.):
 - Unusual clause in trust:
 - Did not provide for automatic forfeiture but for trustee to have a discretion to exclude claimant from benefit if making prohibited claim
 - Approves procedure by which claimant can ask (i) for declaration that substantive relief does not engage clause and (ii) – only if declaration granted – for substantive relief
 - Note Bahamian Trustee Act 1998, s. 87A:
 - No-contest clause valid even if claim brought ‘in good faith or with reasonable cause’

No-contest clauses

- *Sim v. Pimlott* [2023] EWHC 2296 (Ch) (Eng. H.C.):
 - Pre-condition in will for release by legatee of any claim for family provision – reasonable
- Guernsey litigation:
 - No-contest clause in letter of wishes

Trusteeship: change of trustee

- *Re Collins Estate* 2024 ABKB 721
 - Predecessor trustee owes duty to successor to hand over records and provide relevant information
- *Naaman v Jaken Properties Australia Pty Ltd* [2025] HCA 1:
 - Predecessor trustee has right of indemnity for trust liabilities
 - Successor trustee owes fiduciary duty not to prejudice predecessor's entitlement

Removal of trustee or protector

■ Trustee – obvious cases

- *E.g. Cardaci v. Cardaci* [2023] WASCA 158 (W. Aus. C.A.):
 - Controller of corporate trustee told beneficiary he would never make distribution to her
 - Offered to buy out her interest
 - Used trust money to fund defence

■ Trustee – less obvious cases

- *E.g. Lord Yarmouth v. Ragley Trust Co. Ltd* [2025] EWHC 1099 (Ch) (Eng. H.C.):
 - breakdown of trust and confidence between beneficiary and trustees not enough
 - removal ordered only where necessary for welfare of beneficiaries generally or for protection of trust
 - Removal refused

Removal of trustee or protector

- Protector (if fiduciary) – jurisdiction as for trustee
 - *Re L Trust* [2025] SC (Bda) 20 Civ (Bda S.C.):
 - Protector (and trustee) rendered incapable by stroke
 - *Re Billevese Trust* [2025] GRC 060 (Gsy R.C.):
 - Protectors failed to recognise main beneficiary had lost confidence in them
 - Also failed to acknowledge conflict of interest
- Note approach of court:
 - *Smith v. Campbell* [2025] EWHC 3011 (Ch) (Eng. H.C.)
 - Court will not resolve disputed issues of fact without cross-examination; but
 - may remove trustees where good arguable case of misconduct without proof on balance of probabilities – test is simply interests of beneficiaries

Retiring to facilitate breach of trust

- Trustee retiring to facilitate breach of trust is liable for loss
 - *FS Capital v. Adams* [2025] EWCA Civ 53 (Eng. C.A.)
 - English court applying Jersey law – sale at undervalue
 - Enough if former trustee *contemplated* the breach of trust of its successor
 - Legitimate reasons for wanting to retire no excuse – seek directions instead
 - Also held sale for improper purpose void, not voidable

Thank you for joining

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