

What support can a trustee expect from the Royal Court?

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When a trustee is faced with a difficult decision and a potential dispute, it's important for them to be aware of the support they can expect from the Royal Court.

A recent judgment, 25/2016 of the Royal Court, demonstrated this when it backed a trustee's decision to uphold the wishes of the settlor, despite being challenged by one of the beneficiaries.

In this instance, the trustee asked the Royal Court to bless its decision to distribute the assets of the trust between the beneficiaries as set out in the settlors' letter of wishes - that being: 23.5% for the settlors' daughter, 4.5% for the settlors' son and 72% for the settlors' grandchildren split between them in various proportions.

With his significantly lower share the settlors' son asked the court to refuse to bless the trustees' decision as this action would severely limit his ability to challenge the trustee's decision in due course.

The son felt that his lower share was unfair but he did not present any particular reason to support that view.

It is well established advice that trustees must not blindly follow a settlor's letter of wishes on the basis that *"If trustees slavishly follow a letter of wishes, their decision can be quashed on the grounds that it is not, in truth, the decision of the trustees."* (In the matter of the Rabaïotti 1980 Settlement [2000] JLR 173 (F14))

Despite this, the trustees chose to follow the proportions for distribution set out in the letter of wishes and the Royal Court blessed the decision to do so. The court identified in its judgment the following important factors:

- The trustee did not rush to its decision
- The trustee sought meetings with the settlors' son (with opportunities for him to make representations)
- The trustee obtained legal advice and was thoroughly aware of the need to exercise discretion

The Royal Court found that there had been a rational decision-making process by the trustee and a documented explanation for the decision was made.

The trustee was found to have acted responsibly and rationally, with decisions properly recorded and reasoned.

As this case demonstrates, trustees can and should give effect to the provisions in a letter of wishes (despite being against the wishes of some) if the decision to do so is something they have applied their mind independently to.

However, if the trustees wish to seek the blessing of their decision by the court (and the associated protections that come with that), they must be able to present documentation showing that they consciously exercised an independent discretion when making the

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decision, taking serious account of the settlor's wishes while demonstrating an appreciation that, ultimately, the decision is theirs.

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