

Global Trust Trends - Mini Series

We recently spoke to Richard Wilson KC, Barrister @Serle Court in London about the latest trends in offshore trusts disputes and what he and his team are seeing in practice in the context of their clients.

What are the major trends you have seen in Trusts disputes over the past 12 months?

There continue to be a significant number of extremely high-value trust disputes across a number of jurisdictions. These disputes involve a range of different legal issues: challenges to the transfers of assets into trust structures or claims against trustees in respect of their administration. A good example of this is the *Wong v Grand View* litigation involving trusts in Bermuda, and which raises many of these issues. I have been acting for Tony Wang, one of the successful appellants before the Privy Council in a claim to challenge appointments worth hundreds of millions of dollars from one trust to another.

Even though the issues may differ from case to case, a factor common to many is the death of a powerful patriarch, often the person responsible for the creation of the wealth in the first place and whose force of personality has kept a sometimes uneasy peace between the next generation. After their death, age-old grievances come to the fore, with the family trusts providing the family members with the opportunity for conflict.

How do you expect these trends to play out in 2023 and beyond?

The factors underlying the growth in trust disputes are unlikely to go away any time soon. Additionally, turbulence in the Global economy is

likely to see the re-emergence of claims against trustees in respect of investment performance, something we saw in the wake of the Global Financial Crisis.

Another trend is the increased geographical diversity of the wealth that is the subject matter of disputes, and the families who have created it. Disputes therefore are becoming increasingly complicated in terms of the number and range of jurisdictions relevant to the disputes and the underlying cultural issues. That increased diversity seems set to continue as transitions from first to second generation occur in families around the Globe.

What are the main issues international families are dealing with and how should their professional trustees and advisors be helping them deal with these?

There is an ever greater degree of complexity in so many aspects of private wealth, whether it be the assets themselves, international regulation and compliance with it and also the family relationships. Trustees therefore have a greater responsibility for dealing with these matters and protecting the family wealth from the various threats and challenges that this increased complexity often give rise to.

One of the most important things for professional trustees to do is ensure that they communicate effectively with families in order to help them deal with the issues that arise. All too often, the failure of trustees to communicate effectively and provide the beneficiaries with a proper understanding of the complexity of the challenges that have to be dealt with can lead to dissatisfaction and discord, and ultimately a breakdown in the relationship between trustee and beneficiaries.

What advice would you give to wealthy families when it comes to appointing a professional trustee? What do you look for when asked to recommend new or replacement trustees to your clients?

Of course, a trustee must have the necessary expertise, depth, and a strong track record of supporting families with similar assets. They should look to find an advisor for the long term, who can help the family as it grows in wealth and perhaps expands geographically.

However, in my view, the single most important thing is the personal relationship between those responsible for the administration of the trust and the beneficiaries. A strong relationship will mean that the challenges or 'bumps in the road' that will inevitably be faced by UHNW families over the lifetime of the trust can be dealt with and hopefully in a way that will prevent them from becoming a source of division and conflict. That communication has to be a two-way process: not only should trustees keep beneficiaries informed as to what they propose to do, they also need to ensure that when making their decisions they communicate with beneficiaries in order to obtain the information they need to ensure they can give the question adequate deliberation. The Dawson-Damer litigation in The Bahamas (where I act for the Plaintiff, Ashley Dawson-Damer) is a good example of how a dispute can arise where a trustee fails to do that.

Whilst cost is frequently a concern for families, it is important to understand that when choosing a trustee it can easily be a case of 'penny wise, pound foolish' and that the cheapest option does not provide the best value, particularly if the relationship breaks down and ends up in costly litigation. Spending the time and money in finding the right trustee with whom the family will have a strong, collaborative relationship is a wise investment.

What are your top tips for avoiding trust disputes?

Again, the key is communication. Not only do trustees need to communicate effectively with beneficiaries, but settlors need to ensure that they tell the next generation what their plans are, so as to avoid nasty surprises when they die and their plans are implemented. All too often, the problem at the heart of a dispute is dissatisfaction with the plan that the first generation has put in place and learning about it for the first time only when they have been set in stone. This can increase their resentment and

determination to fight. The risk of that can be minimised by the first generation engaging with their descendants and explaining what their plans are so as to manage expectations and let the next generation feel that they have had the opportunity to be heard at the stage when decisions are being made.

What is your sage advice when families have fallen out and a trust is in dispute?

When the worst happens, and a dispute does arise those involved will need to have the best professional advisory team possible. That team needs to be one which understands the nuances of trust litigation in the family context. Often, the issues will go beyond the purely financial and the key to a successful strategy will be looking beyond those financial issues and recognising that family dynamics will inevitably shape the issues and the parties' responses to them.

Whilst emotions inevitably run high in these types of dispute, it is essential that the team remain as objective as possible, being clear with the clients what the best realistically achievable result is, and to formulate a clear strategy likely to achieve it.

How does your practice in London typically interface with offshore trust companies and their clients and what kind of legal advice do you offer in this field?

One of the best aspects of practice at the Chancery Bar in London is the ability to work in a wide range of offshore jurisdictions. In recent years I have been involved in disputes in all of the principal offshore jurisdictions. In many of those cases there is also an important role for London solicitors who provide invaluable support to offshore firms, particularly where large-scale disclosure and other logistical support is required.