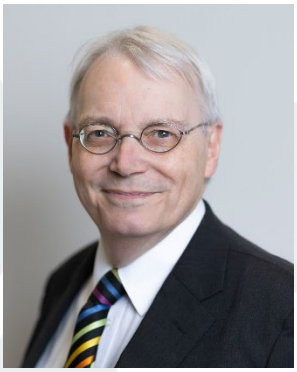
Private Client eBriefing

Dawson-Damer v Grampian Trust Company: Another challenge to trustee distribution decision in a family trust

In Dawson-Damer v Grampian Trust Company the Privy Council reviews the law on settlor intentions and rejects a claim to set aside a trustee decision based on a Pitt v Holt/Hastings-Bass inadequate deliberation challenge.

Article by David Pollard, 29th August 2025



On 7 July 2025 the Privy Council gave a unanimous judgment in *Dawson-Damer v Grampian Trust Company Ltd* [2025] UKPC 32 dismissing an appeal by the claimant beneficiary, Mrs Dawson-Damer, from a decision of the Court of Appeal of The Bahamas (which had itself dismissed an appeal from Winder J at first instance). The Privy Council judgment was given by Lord Burrows and Lady Rose.

This is the latest in a line of decisions where a beneficiary has sought to challenge and set aside a distribution decision of a trustee. The decision of the Privy Council gives some further clarity (although not strictly binding on UK courts[1]). The decision in *Dawson-Damer* focuses on two issues:

(1) Working out the relevant wishes and intentions of a corporate settlor; and
(2) Whether there was inadequate deliberation by the trustee so that there was a breach of a "fiduciary duty" and if so, whether a set aside remedy should be granted.

---

1 See further discussion at the end of this note.

Broadly the Privy Council decided that:

(1) **Settlor intention:** When working out the intention of a corporate settlor, the usual attribution rules under the Privy Council decision in *Meridian Global Funds*[2] should be applied, meaning that the intention of the settlor's board of directors (or a majority) was relevant – [38] and [53].

Such intention did not need to be formally documented in a board resolution but could be found from a later agreement of the directors ([42]) or inferred from other documents and circumstances, including in relation to a discretion to distribute, the settlor's wishes expressed after the trust was set up – [37] and [53].

(2) **Inadequate deliberation:** Following *Pitt v Holt* [2013] UKSC26, in order to set aside a voluntary disposition decision by a trustee, there must be shown to have been a breach of a "fiduciary duty" by the trustee ([56]). In this context, the term "fiduciary duty" is being used in a wide sense and not limited to the core duty of loyalty – [56]. If inadequate deliberation was found, then the trustee decision would be voidable not void. Actually setting aside would depend on the court exercising a discretion to do so – [59].

The Privy Council held that there was a breach of fiduciary duty by the trustee (disagreeing on this point with Winder J and the Court of Appeal of The Bahamas) – [72], but that as a matter of the court's discretion the decisions were valid and not voidable – [75].

The Privy Council reached this decision without having to decide whether the relevant test for avoidance was whether the Trustee 'would" or "might" have made a different decision had it had better information, stating at [74]:

> *"Once one accepts (as the Board has on Issue 1) that the wishes and intentions of Spey [the settlor] were that this trust was primarily for the benefit of the next generation, it is clear that Ashley [Mrs Dawson-Damer] cannot show that the decision would have been, or even might have been, different had there been no breach of fiduciary duty."*

The case

Mrs Dawson-Damer is an express beneficiary of a discretionary private trust set up in 1992. This trust had been set up by a corporate settlor, in effect replacing some previous trusts. The Trustee considered that the trust was primarily for the benefit for the "next

---

[2] *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 (Privy Council on appeal from New Zealand).

generation" of the family, excluding Mrs Dawson-Damer, relying on a memorandum prepared by a "family adviser", but not seen by all the directors of the Settlor –[15].

In 2006 and 2009 the Trustee decided to make appointments of most of the trust funds (98%) to two separate trusts, with the other family members as beneficiaries. 2% was reserved in the existing trust and would be available as a "safety net" should Mrs Dawson-Damer's circumstances change and the Trustee decide to apply funds to her – [24]. This was a substantial trust. The 2% retained was worth about US$6.6m and by May 2025 had grown to US$14m – [22].

In 2015, Mrs Dawson-Damer[3] started proceedings challenging the appointment decisions of the Trustee. She argued that:

- the intentions of the (corporate) settlor had been wrongly identified; and
- the Trustee had not complied with its due consideration duty in relation to the appointments. In particular it had not properly considered Mrs Dawson-Damer's circumstances.

Accordingly, Mrs Dawson-Damer argued that the appointments should be set aside. It was common ground that reversing the appointments would not cause any difficulties – [35]. It was also common ground that any decision of the Trustee for inadequate deliberation was not void, but voidable – [59]. This meant that the court had a discretion as to whether or not to set aside the decision.

Relevant wishes and intentions of the corporate settlor

The Privy Council agreed that a memorandum prepared by the "family advisers" shortly after the trust had been set up could be relied on as evidence of the intentions of the corporate settlor. This memorandum indicated that the intention was that the trust was not primarily for the benefit of Mrs Dawson-Damer, but instead the next generation of family members (although Mrs Dawson-Damer qualified as an express beneficiary under the terms of the trust).

The Privy Council made some clarificatory statements about working out and applying the wishes and intentions of a corporate settlor:

- It was common ground that the wishes and intentions of the settlor are a relevant factor that the trustee must take into account when making appointments (applying *Pitt v Holt* at [66]) – [36].

---

[3] Mrs Dawson-Damer also made various subject access requests to the trustees' UK solicitors under the Data Protection Act 1998. Disputes on this resulted in two Court of Appeal decisions: *Dawson-Damer v Taylor Wessing LLP* [2020] EWCA Civ 352, [2020] Ch 746 and *Dawson-Damer v Taylor Wessing LLP* [2017] EWCA Civ 74, [2017] 1 WLR 3255.

- In the case of a corporate settlor the intentions of the board of directors of the settlor were the key - applying *Meridian Global Funds*[4] - [38] and [53].
- Such intentions could be found from the material available, even if these were not formal resolutions of the board itself (citing *Runciman*[5] – [42]) or statements from the members of the board.
- Later indications of the settlor's wishes given after the trust was set up could also be relevant as to how the trustee should exercise dispositive powers[6] – [37]. By contrast only documents "*contemporaneous with the trust instrument were admissible in determining the purpose of the power*" – [37]
- The purpose and intentions of the settlor can be relevant when (a) interpreting the trust instrument; (b) in deciding whether the Trustee had acted for proper purposes; and (c) in looking the relevant factors to be considered by the trustee as part of its due consideration duty.

The Privy Council agreed with Winder J at first instance and the Court of Appeal of the Bahamas that:

- the memorandum could not be considered a document of the settlor (it had been prepared by a family adviser and only shown to one of the three directors of the corporate settlor); but
- it was still part of the background material that could be considered by the Trustee and the courts and supported the decision as to the settlor's intentions.

Inadequate Deliberation

Winder J at first instance had criticised the decision making of the Trustee when agreeing the appointments. The Trustee board did not seem to have considered the circumstances of Mrs Dawson-Damer in much detail, nor consulted with her. This was despite the family adviser having obtained an opinion from counsel that her circumstances should be considered by the Trustee before making the substantial appointments (it seems that this opinion was not shown to the Trustee board). Winder J considered that failure to consider was not sufficiently serious to constitute a breach of fiduciary duty by the Trustee and so the decision should not be set aside.

The Court of Appeal of the Bahamas agreed with Winder J on this point. Both courts had followed the decision of the Supreme Court in *Pitt v Holt* [2013] UKSC 26 that decision making by trustees does not need to be perfect, voluntary dispositions by trustees

---

4 *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500 (Privy Council on appeal from New Zealand).

5 *Runciman v Walter Runciman plc* [1993] BCC 223, [1992] BCLC 1084 (Simon Brown J).

6 Following the decision of the Privy Council in *Grand View Private Trust Co Ltd v Wong* [2022] UKPC 47, [2023] WTLR 149 at [63], but noting that this point had been common ground in *Grand View* – "in the Board's view correctly".

should only be set aside if there had been a breach of a "fiduciary duty". Both Winder J and the Bahamas Court of Appeal decided that there had not been such a breach here[7] and accordingly held that the appointments should not be set aside.
The Privy Council upheld this result (ie refused to set aside), but decided that a different route should have been followed. The Privy Council held that *Pitt v Holt*, dealing with a voluntary transaction by a fiduciary, allowed a decision by a fiduciary (such as a trustee) to be set aside only if:

(a) there had been a breach of a fiduciary duty; and
(b) the court considered it appropriate that the decision should be set aside.
(c) The Privy Council held at [72] that "*there were sufficiently serious failings by [the trustee] to amount to a breach of fiduciary duty*".

Comments on points of interest

Fiduciary duty: There is a helpful clarification by the Privy Council that in this context, the need for a breach of fiduciary duty means that the term "fiduciary duty" is being used in a wide sense and not limited to the core duty of loyalty – [56]. It does highlight the different meanings of the term in different contexts. Legally this is a source of confusion.

Dawson-Damer does not deal with a claim against a non-fiduciary, for example an employer under a pension trust or (potentially) a protector or beneficiary under a private trust. The review parameters in the Supreme Court decision in *Braganza v BP Shipping Ltd*[8] may then be more applicable (this is not a decision mentioned by the Privy Council).

Inadequate deliberation: The Privy Council decision does not give much guidance as to why the Trustee was considered to have been in breach of duty by not considering Mrs Dawson-Damer's position. It followed Winder J's decision that the Trustee "*did not have the relevant information as to her wishes and needs, because in particular [the Trustee] had no updated information as to her financial needs*" – [68] and [72].

The Privy Council expressly did not consider the extent to which a proper consideration duty differs if at all from a fiduciary's duty of care and skill. It did refer (at [57]) to "an illuminating discussion" of this in Michael Ashdown's '*Trustee decision making: the Rule in Re Hastings-Bass*' (2015), chapter 4.

---

7 Privy Council at [69], referring to Winder J at [116] and the Court of Appeal at [201 to [240].

8 *Braganza v BP Shipping Ltd* [2015] UKSC 17, {2015] 4 All ER 639. See Pollard '*Pensions, Contracts and Trusts: Legal Issues on decision making*' (Bloomsbury Professional, 2020)

The extent of any deliberation duty must be fact specific to a large degree. Pension trusts may require a "more intense" scrutiny[9], but perhaps where this is a factual determination, rather than exercise of a full discretion[10].

The dividing line can be tricky to draw. Relying on apparently competent professional advice (even if it turned out to be wrong) is no breach: *Pitt v Holt*. Conversely, not adequately considering the financial position of a beneficiary is a breach: *Dawson-Damer.*

Consultation: There had been no consultation by the Trustee with Mrs Dawson-Damer before the distributions were made. The Privy Council noted that "*it was common ground that a trustee is not in breach of duty by failing to consult with a potential beneficiary*", citing *Re Y Trust* [2011] JRC 135 at [63], *Lewin on Trusts* at 28-116 and Winder J at first instance at [95].

Breach of duty by the Trustee: Although the Privy Council found that the Trustee's breach of duty did not support a setting aside of the decisions (the remedy being claimed), other cases may involve different claims where the breach of trust may be relevant. For example, for a reclaim of fees payable to a professional trustee or a claim that the trustee is not entitled to rely on an indemnity may be relevant in future cases.

Context: What does the Privy Council decision deal with?

It is important to keep in mind the relevant context of the Privy Council decision in *Dawson-Damer*. It relates to:

- A distribution decision by a trustee of a discretionary private trust; and
- A voluntary disposition by a trustee[11]; and
- A decision under the law of The Bahamas, but the relevant law was treated as the same as English law – [2]; and
- A challenge based on a claim of inadequate deliberation and not based on improper purpose or being outside the scope of the relevant power – [54].

Given this context, it is not clear that the decision will be binding as a matter of strict precedent in relation to:

> (a) non-voluntary decisions (such as investment decisions or factual determinations); or

---

9 See eg the Australian High Court in *Finch v Telstra* [2010] HCA 36, (2010) 242 CLR 254, dealing with an ill-health factual determination. See Pollard '*Pensions, Contracts and Trusts: Legal Issues on decision making*' (Bloomsbury Professional, 2020) at chapter 45 (intensity of review).

10 See eg *Williams v Robba* [2025] QSC 203 (Hindman J).

11 *Dawson-Damer* [2025] UKPC 32 at [55] commenting on *Pitt v Holt* [2013] UKSC 26.

(b) commercial trusts (such as pension or unit trusts), where decisions may not be considered voluntary; or
(c) challenges based on the scope of a relevant provision or proper purpose; or
(d) decisions by non-fiduciaries[12].

Who is the decision a binding precedent for?

Dawson-Damer is a decision of the Privy Council on appeal from The Bahamas and therefore not strictly binding in other jurisdictions (for example England and Wales). No certificate as to it being binding in UK courts was given by the Privy Council as part of its judgment[13].

However, in practice a court in England and Wales is "normally" expected to follow a decision of the Privy Council dealing with English and Welsh law, unless there is a decision of a superior court to contrary effect. This is however not a question of a Privy Council decision being a binding precedent.[14]

In the current context, the relevant precedent decision in England and Wales (for challenging voluntary dispositions by a fiduciary) is *Pitt v Holt* [2013] UKSC 26, [2013] 1 AC 108 which remains binding on domestic courts. In practice the Privy Council decision in *Dawson-Damer* does not seek to depart from *Pitt v Holt*, but instead to apply it – [67] to [76].

---

12 For decisions by employers in relation to death benefits, see *Braganza v BP Shipping Ltd* [2015] UKSC 17, [2015] 4 ER 639.

13 As envisaged in *Willers v Joyce (No 2)* [2016] UKSC 44, [2018] AC 843 where the Privy Council stated that it could direct that domestic courts could treat a Privy Council decision as representing the law of England and Wales, thus over-ruling an otherwise binding decision of a domestic court. There is a recent discussion of this in the shareholder privilege case, *Jardine Strategic Limited v Oasis Investment II Master Fund Ltd No 2* [2025] UKPC 34 at [108] to [113], where such a direction was given.

14 *Willers v Joyce* [2016] UKSC 44 at [16].

For more information:

- Our Trusts, probate and estates: contentious expertise.
- Our Trusts, probate and estates: non-contentious expertise.

If you are viewing this document on LinkedIn, you can download it by clicking on the  *icon in the top-right-hand corner when in full screen view.*