Private Client
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Teixeira v Moaven and the new landscape at the private client/fraud border

Article by John Grocott-Barrett, 4th August 2026

1. When property is fought over, it is not unusual for a document to surface which purports to answer the question of beneficial ownership conclusively. In such a situation, a disappointed party's instinct to allege that it is all a sham is understandable, but the doctrine itself is not commonly invoked successfully. That is because what must be proved is (in substance) dishonesty, and dishonesty is a serious allegation which engages special professional obligations, and must be pleaded and proved properly.

2. Two recent judgments of Master Bowles (sitting in retirement) in *Teixeira v Moaven* merit careful reading by anyone who practises where contentious trusts and civil fraud meet: the judgment on the merits at [2026] EWHC 1215 (Ch) (the "**Main Judgment**") and the judgment on costs at [2026] EWHC 1542 (Ch) (the "**Consequentials**").

3. Five aspects of the decisions deserve attention beyond the headline finding of sham:
   a. the application of the doctrine to 'confirmatory' declarations of trust, being documents which purport not to create trusts but to record trusts said already to exist;
   b. the manner in which the claimants went about proving their case;
   c. the use of section 423 of the Insolvency Act 1986 ("**IA 1986**") and section 10 of the Inheritance (Provision for Family and Dependants) Act 1975 (the "**1975 Act**") to meet the alternative scenario where the allegation of sham is unsuccessful;
   d. the consequences of the Supreme Court's decision in *Zedra Trust Co (Jersey) Ltd v THG plc* [2026] UKSC 6, for claims under section 423—on the Master's analysis, section 423 claims are now subject to no limitation period at all; and
   e. the position of personal representatives caught between rival claims to estate assets, and Master Bowles' firm rejection of the submission that they were obliged to remain neutral.

The facts

4. Amir Abbas Moaven ("**Abbas**") died in May 2012, aged 44, leaving a widow, Gabriela, and two young children. Between 1996 and 2004 he had purchased four London properties in his sole name. By his will, made in hospital on 20 April 2012, he left his estate to his widow and children in equal shares, appointing as executors his brother Amir Ahmad Moaven ("**Amir**"), his accountant Mr Faiz and his conveyancing solicitor Mr Pittalis.

5. Fourteen years later the estate remained largely unadministered. The reason was a dispute over four declarations of trust executed by Abbas on 19 April 2012, a month or so before his death and the day before his will. Each recited "*long-standing arrangements*" under which the properties, though held in Abbas' sole name, had supposedly always been owned in equal one third shares by Abbas, Amir and their mother, reflecting the brothers' pooled efforts and their mother's financial support. Each declared that Abbas "*has held and holds and will continue to hold*" the relevant property on trust for the three of them accordingly. If the recited arrangements were true, two thirds of the value of the properties fell outside the estate, which on that footing might well have been insolvent (Main Judgment, [17]).

6. The provenance of the declarations emerged from Mr Pittalis' own attendance notes, disclosed only in August 2025 (Main Judgment, [44], [145]–[170]). In August 2011, with Abbas about to begin chemotherapy, Amir consulted Mr Pittalis and Mr Faiz about how Gabriela could be prevented from having access to funds from the properties if Abbas died. In April 2012, with Abbas in hospital, Mr Pittalis prepared a batch of *alternative* draft declarations, each reciting a different and mutually inconsistent history of ownership: sole beneficial ownership in the mother; ownership by the two brothers; and ownership by Amir and the mother. Abbas executed all of them. The discussion between Amir, Mr Faiz and Mr Pittalis on 18 April 2012 was not about which version was true, but about which would be "*sustainable*" if challenged; the object of the exercise, as Amir explained at that meeting, was to prevent assets coming into Gabriela's hands (Main Judgment, [157]). The version executed on 19 April, containing the tri-partite arrangement, was a fourth formulation requested the following day. Master Bowles described the exercise as one of "*shuffl[ing] the pack*" of possible declarations to find the one that worked best (Main Judgment, [156]).

7. Nor was this the first outing of "sustainable" document drafting. In November 2002, on the eve of his wedding, Abbas had instructed Mr Pittalis to prepare declarations of trust of his "*assets*" in favour of his mother, for the express purpose of precluding future claims by his wife-to-be (Main Judgment, [175]–[178]). Nobody thereafter behaved as though those declarations meant anything. They were, in the judge's phrase, "*pieces of paper, which could be used, should need arise*" (Main Judgment, [179]).

8. The independent administrators appointed in 2020 in place of the original executors brought the validity of the 2012 declarations before the court, and the widow and children, who had claims on foot under the 1975 Act, were directed to act as claimants on the issue. After a five day trial, Master Bowles held that the recited arrangements had never existed, that the declarations were shams within Diplock LJ's classic description in *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786 at 802, and that the entire beneficial interest in the properties fell into the estate (Main Judgment, [187]–[190]). By the Consequentials, Amir, Mr Faiz and Mr Pittalis were ordered to pay the costs of the trial on the indemnity basis, jointly and severally.

Confirming trusts that never were

9. This article does not attempt a comprehensive overview of the sham doctrine and the related case law, which would merit much longer treatment. The interest of *Teixeira* lies in a factual scenario which previous caselaw has not tended to address: the false declaration which purports to *confirm* a pre-existing informal trust, rather than to create anything new.

10. A confirmatory declaration whose recitals are true adds nothing other than evidentiary value, since any such trust exists independently (Main Judgment, [66]). Obviously, evidentiary value can be significant, noting in particular that *express* declarations of trusts in land or interests therein must be manifested and proved in signed writing pursuant to section 53(1)(b) Law of Property Act 1925—although other forms of proprietary interests (resulting, implied or constructive trusts, proprietary estoppels, etc) may arise, and had the alleged *"long-standing arrangements"* reflecting the brothers' pooled efforts and their mother's financial support been true in this case, it seems at the very least arguable that one of these other proprietary interests would have arisen. Those seeking to uphold the facts recited in the declarations of trust in this case did not identify section 53(1)(b) as a factor rebutting the inferences of dishonesty sought to be drawn by the claimants, presumably because neither Abbas nor those involved in the drafting of the declarations had in fact turned their minds to whether any such issue arose when they gathered around Abbas' hospital bed.

11. A confirmatory declaration whose recitals are false is trickier. In *Slocom Trading Ltd v Tatik Inc* [2014] EWCA Civ 831 at [61], Briggs LJ observed that an agreement "*is not a sham … merely because it deliberately misdescribes history*". Master Bowles did not doubt that proposition but confined it to its context. An agreement may misdescribe history but still be intended by the parties to the agreement to create rights going forwards.

12. However:
    a. Where the entire force of the document depends upon the truth of the recited history, deliberately false recitals are "*very strong evidence*" that the document exists to give third parties, or the court, a false picture of the parties' rights, and hence that it is a sham (Main Judgment, [67]–[70]). In any event, the parties in this case proceeded on the common basis that the "*battleground*" was as to the truth, or falsehood, of the recitals to the declarations and as to the facts and circumstances which had given rise to them: Main Judgment [71].
    b. Sham, or no sham, as a matter of construction, Master Bowles was not completely persuaded that the declarations were intended to have independent prospective effect: Main Judgment at [191]–[194]. Objectively construed, a declaration which acknowledges and confirms pre-existing trusts does not create new ones—and is not intended to do so. As it seemed to him, it followed that if the recited trusts never existed, the declarations were empty documents having no legal (or other) effect.
13. One might query (in light of the second strand of analysis) whether this was a case of a 'sham' properly so called or not since even if the documents were truthful and accurate, they did not purport to create any new legal rights. In the appropriate case, the construction-based analysis might be particularly attractive to a claimant because it *potentially* dispenses with the need to prove any intention to deceive (as is required for shams in the true sense). In that case, all one would need to prove is that the alleged facts recited were incorrect (such that no trust had existed previously) and that on a proper construction the declarations were not intended to alter or create new legal rights. On the facts of this case, however, it did all turn on the dishonest intention to deceive third parties (it was the entire purpose of the declarations and the recitals therein) and, of course, the limit of the construction route is that everything turns on whether the drafting is genuinely confirmatory or could operate as a disposition. Where the drafting is ambiguous, it would probably remain necessary to allege a sham and failing to do so could be a high-risk strategy.
14. Finally, it is worth observing that the requirement discussed in *Re Esteem* [2003] JLR 188 and *Shalson v Russo* [2005] Ch 281 that settlor and trustee share the shamming intention has no separate work to do where, as here, the declarant is himself the purported trustee. Only Abbas' intention mattered in law. The involvement of Amir, Mr Faiz and Mr Pittalis went to evidence rather than to the legal test (although, as the Consequentials show, their involvement was far from irrelevant to the outcome for them personally).

Proving it: tilting the balance

14. Fraud practitioners will be familiar with the principles identified by Lord Millett in _*Three Rivers DC v Bank of England (No 3)*_ [2003] 2 AC 1 at [183]–[186]: fraud or dishonesty must be distinctly alleged and distinctly proved; it may be inferred from primary facts, but only from pleaded facts which are inconsistent with innocence; and "*there must be some fact which tilts the balance and justifies an inference of dishonesty*". An allegation of sham is, in substance, an allegation of dishonesty, and it attracts the same discipline. What _*Teixeira*_ usefully illustrates is the kind of primary fact that tilted the balance. Five stand out:
    a. Attendance notes. The attendance notes of 17 to 19 April 2012, recording the preparation of alternative and mutually inconsistent declarations, their wholesale execution, and a discussion directed at "*sustainability*" rather than truth, were the foundation of the entire case.
    b. The historic pattern of papering over. The earlier declarations in favour of the mother, prepared to defeat matrimonial claims and never treated by anyone as real, established a practice of creating paper ownership as the need arose (Main Judgment, [179]–[182]). Amir's elaborate and disbelieved explanation of the 2002 declaration did him particular damage: the concocted lie was itself "*powerful evidence*" of what the documents really were (Main Judgment, [179]).
    c. Retrospective "*contemporaneous*" documents. Tax returns for the years 2005 to 2012, advanced in Amir's written evidence as historic support for the one third arrangement, turned out to have been prepared after Abbas' death and in conformity with the very declarations they were supposed to corroborate (Main Judgment, [115]–[117]).
    d. Inconsistent evidence given elsewhere. In 2014 Amir had told the Immigration Tribunal that his mother was of very limited means and dependent upon him, which was irreconcilable with her supposed one third ownership of a London property portfolio. In separate county court proceedings he had given evidence that his main residence was a property other than the one he told this court he had occupied since 2007 (Main Judgment, [135]–[140]).
    e. Perhaps most interestingly, the presumption of advancement. The recitals depended on the mother's payments having been contributions under a pooling arrangement. The documented payments were payments by a mother to her son, and the presumption that such payments are gifts quietly dismantled the recital, particularly when set against Mr Pittalis' note recording Amir describing them as his mother "*helping out her sons*" (Main Judgment, [107]–[109]). Although one might think this weak presumption to be of limited utility, this was fraud litigation, where the true facts had been deliberately obscured, and accordingly it acted as a tie-breaker—something which matters more than practitioners sometimes allow.

Sham, section 423 and section 10: alternatives pointing in opposite directions

15. Gabriela and the children did not rest their case on shamming alone. In the alternative, if and to the extent that the declarations did operate as effective dispositions of one third interests to Amir and the mother, they claimed under section 423 of the Insolvency Act 1986 ("**section 423**"). Further, pursuant to claims for financial provision, they also sought an order under section 10 of the 1975 Act ("**section 10**") requiring the restoration of Abbas' estate on the grounds that the purported dispositions had been made with the intention of defeating the claims for financial provision. Orders under section 423 and section 10 of course rest on the opposite premise to an allegation of sham , which involves contending that the disposition never happened. These alternative claims assume an effective disposition and ask the court to unwind it. Obviously, both premises cannot be true, but pleading each in the alternative leaves nowhere for a defendant to hide.

16. It makes obvious sense in the scenario faced by the claimants to plead section 423 and section 10 in the alternative. Sham requires the court to be satisfied of an intention to deceive, with all that *Three Rivers*, other related caselaw, and rules of practice, procedure and conduct entail. Section 423 and section 10 require no dishonesty: section 423 requires that the transaction was at an undervalue and that *a* purpose (it need not be the only one) was to put assets beyond the reach of an actual or potential claimant; the conditions of section 10 are of the same character and are considered below. On the judge's findings the "*entire purpose*" of the purported dispositions was to put assets out of the reach of Gabriela and her children (Main Judgment, [199]). As it turned out at trial, section 423 and section 10 were not necessary, but in other cases they will be useful fallbacks in circumstances where it is never entirely certain how the facts will pan out at trial.

17. Section 10 deserves more attention than it commonly receives. Where an application for financial provision is made, the court may order the recipient of a disposition made by the deceased less than six years before death, for less than full valuable consideration and with the intention of defeating an application for financial provision, to provide such money or other property as may be specified, where the exercise of the power would facilitate the making of financial provision (Main Judgment, [225]). The intention condition is softened by section 12(1) of the 1975 Act: it is satisfied if, on the balance of probabilities, the deceased's intention (though not necessarily his sole intention) was to prevent an order being made or to reduce the provision which might otherwise be made (Main Judgment, [226]).

18. There is a wider point about the toolkit available. The jurisdictions for unwinding lifetime dispositions are not limited to those found in a single practitioner's manual. Section 10 is familiar to estate practitioners but little known outside that field. Section 423, a creature of insolvency legislation, is often overlooked by those who do not regularly litigate fraud or insolvency claims, notwithstanding that it is

available to any victim of a qualifying transaction and requires no insolvency at all. A disappointed claimant's advisers should canvass both, alongside the antecedent question of whether any effective disposition was ever made. (Indeed, the toolkit expands further in the divorce context, where relevant parties may be able to rely upon section 37 of the Matrimonial Causes Act 1973, although it was of course not applicable here.)

19. For estate practitioners, it is also worth contrasting the limitation position between section 10 of the 1975 Act and section 423 of the Insolvency Act 1986. Section 10 reaches only dispositions made within six years before death with the intention of defeating claims for financial provision, and the court will not order restoration until it can gauge what provision the substantive 1975 Act claim requires. Section 423 may have no temporal boundary at all.

Limitation of section 423 claims: after *Zedra*, apparently none

20. The judgment in *Teixeira* follows the recent decision of the Supreme Court in *Zedra*, and provides support for what many fraud and insolvency practitioners had been thinking aloud.

21. *Zedra* concerned an unfair prejudice petition under section 994 of the Companies Act 2006, amended some six and a half years after the event to add a claim for equitable compensation. The Court of Appeal had held the new claim time-barred, on the footing that a petition was an action upon a "*specialty*" within section 8 of the Limitation Act 1980 (twelve years) and, where only money was sought, an action to recover a sum recoverable by statute within section 9 (six years). The Supreme Court, by a majority, allowed the appeal on both limbs. It is "*of the essence of an action upon a specialty that it is an action to enforce an obligation created by a deed or statute*" (*Zedra* [114]–[115]). Sections 994 to 996 create no obligations, but provide discretionary relief in respect of a state of affairs (*Zedra* [116]). Nor does section 9 catch "*claims under statutory provisions which confer a wide discretion as to remedy*", even where money is claimed (*Zedra* [155]). The result is that no limitation period applies to unfair prejudice petitions at all. The wider reading of *Collin v Duke of Westminster* [1985] QB 581 on which the contrary view rested was held to be a misreading, and *Hill v Spread Trustee Co Ltd* [2007] 1 WLR 2404, *Re Priory Garage (Walthamstow) Ltd* [2001] BPIR 144 and *Rahman v Sterling Credit Ltd* [2001] 1 WLR 496 were disapproved. In *Hill v Spread Trustee*, the Court of Appeal had applied the twelve-year specialty period to section 423 claims, and it was the foundation of Master Bowles' own recent decision to the same effect in *Riley v Aidiniantz* [2025] EWHC 3222 (Ch).

22. Faced in *Teixeira* with a limitation defence built on precisely those authorities, the Master held that the specialty analysis of *Hill* (and his earlier decision in *Aidiniantz*) "*cannot, as it seems to me, survive*" *Zedra* (Main Judgment, [213]). Section 423 is

structurally indistinguishable from sections 994 to 996: it imposes no obligation, but confers a wide discretionary power to grant relief in respect of a state of affairs, namely a transaction at an undervalue entered into for the proscribed purpose (Main Judgment, [214]). No alternative period was available, section 9 being excluded by *Zedra* itself (Main Judgment, [220]–[221]). Accordingly, Master Bowles concluded that "*a claim under section 423 is not subject to any statutory limitation period*" (Main Judgment, [222]).

23. The point was strictly obiter, because the declarations of trust, being shams, effected no dispositions capable of being set aside. But it was fully argued and fully reasoned, and it is the first considered application of *Zedra* to section 423.

24. Even if correct, however, it does not mean that complainants have an unfettered licence to delay in bringing claims. Relief under section 423 is discretionary, and *Zedra* itself contemplates that the consequences of delay will be managed through the court's discretion rather than through a statutory time bar (*Zedra*, [153]–[154]). Defendants to stale claims will no doubt also reach for laches.

25. Notwithstanding the fourteen year period between Abbas' death and the judgment in this case, the claimants in *Teixeira* could not be criticised for delay. The estate had sat for years in the hands of an executor with a manifest conflict between his duty to get in the estate and his personal claim to two thirds of its principal assets (Main Judgment, [19]), and the material which revealed the truth emerged only piecemeal, and late, from the removed executors (Main Judgment, [26], [114]). The administrators had, in addition, reasonably held back while Amir was promising a validity claim of his own (Consequentials, [30]–[31]). A defendant whose own conduct and conflict of interest have produced the delay can expect little sympathy when he invites the court to hold that delay against the claimant. In practical terms, the clock stopped while the estate remained in the hands of Amir and his fellow executors: delay for which the defendants' own positions and behaviour are responsible will weigh little, if at all, in the exercise of the discretion.

Must personal representatives stay neutral?

25. The point most likely to make office-holders and their advisers sit up is not the sham finding at all. The independent administrators had originally asserted neutrality on the beneficial ownership issue, seeking only the clarity needed to administer the estate. By the close of trial, the independent administrators of Abbas' estate were actively supporting the case advanced by the widow and children. Counsel for Amir objected, drawing attention to the authorities on the usual neutrality of personal representatives where there are rival claimants to an asset (the position familiar from *Alsop Wilkinson v Neary* [1996] 1 WLR 1220), and also advanced the proposition that, as personal representatives of Abbas, the

independent administrators were estopped by deed from challenging the recitals in Abbas' own declarations of trust (Main Judgment, [59]).

26. Master Bowles rejected both submissions (Main Judgment, [58], [60]–[63]):
    a. the court "*was [not] empowered to preclude the personal representatives from taking an active position in respect of the beneficial ownership of the properties*";
    b. the degree of the personal representatives' involvement "*is, ultimately, a question for their own resolution and not a question for the court*", subject always to the risk that an unnecessary intervention "*could sound in costs*"; and
    c. on these facts, where the beneficial ownership of the properties was "*the fundamental question, in determining the value, even the solvency*" of the estate, it would "*very arguably be wrong for the personal representatives not to take and advance a view*". Their stance was not merely their right but, "*very arguably*", their duty.

27. The estoppel argument failed because personal representatives cannot be estopped by recitals in a deed whose very validity is the question before the court (Main Judgment, [60]).

28. None of this overturns the orthodox starting point. Where an estate is a mere stakeholder between rival claimants, neutrality probably remains the default. But <u>*Teixeira*</u> identifies one category of case in which the starting position is departed from: (i) where the dispute determines not who takes the estate but what the estate is; (ii) where the office-holder holds evidence bearing on that question which the beneficiaries cannot obtain for themselves; and (iii) where the challenge, if well founded, exposes documents as dishonest devices. In such a case the fundamental duty to get in and protect the estate points towards entering the fray rather than remaining above it. At the stage of Consequentials, the administrators' active stance attracted no criticism, and their costs were recovered from the "wrongdoers" (i.e., those who facilitated the shamming scheme) on the indemnity basis (Consequentials, [22]–[24], [63]).

29. Of course, the "wrongdoers" ordered to pay on an indemnity basis in <u>*Teixeira*</u> included the professional former office-holders: Mr Faiz (who took no active part at trial and adopted a neutral position on the merits) and Mr Pittalis (who, having initially defended the declarations, retreated by the end of trial to a similar position): Main Judgment, [64]. Neutrality was not good enough. Where a party "*is both aware of the truth and … at the source of the conduct whereby, to his … knowledge an untrue case is being advanced before the court*", standing by and abiding events is itself conduct outside the norm, warranting indemnity costs (Consequentials, [56]). The judgment closes with a rebuke of the two professional men in whom the judge found no "*loyalty to the truth, or even any interest in the*

truth" (Consequentials, [61]–[62]). Whereas this may be an extreme example of misconduct by professional office-holders, *Teixeira* is a salutary lesson that opting for unthinking neutrality may result in very uncomfortable outcomes.

Drawing the threads together

30. For those seeking to attack purported dispositions and the structures said to have been created, *Teixeira* is worth close study on at least three fronts.

31. First, it demonstrates the range of declaratory relief and remedies available: proving that no disposition took place, whether on the basis of sham or of proper construction; and, if it did, claims under section 423 (and, in estates, section 10) in the alternative.

32. Second, it is a useful illustration of how to conduct litigation which straddles contentious private client and fraud work. In that context, there are unique elements to how one can go about pleading and proving dishonesty, with the presumptions of equity being available to tilt the balance where the primary evidence has been deliberately obscured.

33. Third, for personal representatives and trustees, the lesson lies in the importance of not adopting a neutral position unthinkingly. Whereas it probably remains the default position, it may become a dereliction of duty to maintain neutrality where the dispute goes to what the estate contains and the office-holder holds critical evidence themselves. Deciding what position to adopt may not be an easy one, and may well require regular review.

34. The costs hearing on 3 June 2026 was reported to have been Master Bowles' final sitting. Many years earlier, he had appeared as junior counsel for Mrs Rosset in *Lloyds Bank plc v Rosset* [1991] 1 AC 107, contending for a beneficial interest arising informally from the parties' common intention. It is a neat coda to a long judicial career that his last judgments were devoted to the converse exercise, guided by the same philosophy: pieces of paper may be the start of the enquiry, but they are not necessarily the end of it.

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