



A fiduciary's duty to disclose: a shield, not a sword?

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1. The Court of Appeal's recent judgment in *G.I. Globinvest Ltd and anor v XY ERS UK Limited* [2026] EWCA

Civ 1248 looks at the popular and interesting question of the scope of fiduciary duties, and whether those duties are proscriptive (namely what not to do) or prescriptive (what to do) in the context of the duty to disclose. For now, the Court of Appeal has maintained the position that there is no freestanding obligation on a fiduciary to disclose matters to their

principal. However, disclosure is relevant to informed consent to defend claims that a fiduciary has breached the 'no profit' and 'no conflict' rules.

What is a Fiduciary?

2. This well-known passage in *Bristol and West Building Society v Mothew* [1998] Ch at [18] per Millett LJ 1 is the best encapsulation defining fiduciaries and their duties:

"A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The

distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary.”

The Facts

3. The First Claimant was an investment vehicle for two high-net-worth individuals, one of whom was the Second Claimant. The Claimants alleged that they had retained XY ERS UK Limited (**‘XY’**) to provide them with financial advice on their investment portfolio. XY recommended that the Claimants invest in a fund set up through two entities owned by XY’s director (**‘M’**). Whilst M informed the Claimants that he was the entrepreneur behind the fund, he did not disclose the role of the other entity which acted as an investment advisor and received substantial fees.
4. In February 2020, the Covid-19 pandemic caused significant market volatility and the Claimants’ investments were catastrophically impacted. The Claimants brought claims against XY and other

defendants in fraud, conspiracy, for breach of fiduciary duty, dishonest assistance and breaches of contractual, tortious and regulatory duties. These were heard over the course of a 28-day trial.

The First Instance Judgment

5. The Judge dismissed all of the claims brought against the various defendants and granted XY’s counterclaim for outstanding fees.
6. Of importance here are the Judge’s conclusions on fiduciary duties, namely:
 - 6.1 There was a fiduciary relationship between XY and the Claimants;
 - 6.2 There was no real dispute as to the consequence, therefore, that XY owed the Claimants duties not to place itself in a position of conflict or to profit from its position (the so-called ‘no conflict’ and ‘no profit’ rules that will be well familiar);
 - 6.3 A fiduciary’s duty of loyalty does *not* include “a duty to disclose to [the Claimants] all information relevant to their affairs” [1247].

The Court of Appeal Decision

7. The Claimants appealed on a narrow basis, namely the scope of the fiduciary duty owed by XY and in particular that XY had a positive duty to disclose M’s financial interests in, and connection to, the fund.
8. The Court of Appeal held that a fiduciary does not have an independent duty of disclosure. Instead, as set out in *Hopcraft and anor v Close Brothers Ltd* [2025] UKSC,

disclosure is required to negative what would otherwise be a breach of fiduciary duty. Accordingly, informed consent (based on disclosure by the fiduciary) may preclude liability under the 'no conflict' and 'no profit' rules.

9. The Court of Appeal also dismissed an appeal against the Judge's finding that the Claimants had informed consent.

Key takeaways

10. So the position is this: while disclosure may avert liability by facilitating informed consent, a principal cannot make a freestanding claim for non-disclosure by a fiduciary. Newey LJ concluded that this position accords with policy as well as authority because otherwise *'the principal could still make a claim if the fiduciary had not himself disclosed a fact which a Court held to be material. It would make no difference that the fiduciary had striven to make full disclosure, that the fiduciary had*

believed the fact in question to be immaterial or that the principal had known the fact anyway' [49].

11. In legal terms, this makes sense when viewing fiduciary duties through a proscriptive lens: the law criticises fiduciaries for doing that which they ought not to do, but does not prescribe that which they must. In practical terms, however, these nice distinctions are very fine which makes them difficult to predict and therefore, potentially, tricky to follow. Whilst there is, apparently, no freestanding duty to disclose, disclosure *'will play a crucial role'* in the context of the 'no conflict' or 'no profit' rules [48].
12. For commercial litigators, it seems likely that this will continue to be a fertile battleground, particularly in light of Newey LJ's intriguing refusal to say that all fiduciary duties are invariably proscriptive rather than prescriptive at [47].

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