# THOUGHTS ON HOW TRUSTEES AND EXECUTORS CAN DEAL WITH DISGRUNTLED BENEFICIARIES AND POSSIBLE COURT PROCEDURES AVAILABLE TO THEM

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## Introduction

Every trustee and executor's nightmare is dealing with disgruntled beneficiaries who constantly threaten claims against them. This not only poses a risk to them personally, but it can also hamper the efficient and proper administration of the trust or estate to the detriment of other faultless beneficiaries. This can include delayed distributions, a failure to sell assets for the best price, and a precipitous and disproportionate escalation of legal costs.

However, given the onerous fiduciary duties imposed on trustees and executors, they cannot ignore the demands of their beneficiaries or treat them as they would a normal opposing party to litigation. Therefore this article will examine the best ways of managing this careful balancing act so that trustees can best avoid becoming ensnarled in endless and costly disputes. In doing so, it will briefly examine what can be done pre-action before looking at the various forms of relief which the Court can offer including when and how to apply for a 'put up and shut order', where a *Public Trustee v Cooper application may be appropriate and if there is a possibility of obtaining a Benjamin type order to protect against future claims. It will also touch on the recent cases of Brown v New Quadrant Trust Company & Anor [2021] EWHC 1731 (Ch) and Parsons & Another v Reid & Another [2022] EWHC 755 (Ch), which provide helpful guidance.*

## Pre-Action

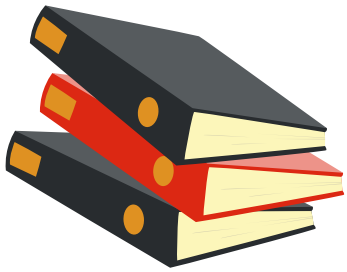
In situations where disgruntled beneficiaries intimate claims without bringing them, they usually seek further disclosure. This battle for information can be a tiring process and trustees and executors are advised to consider the following steps:

Firstly, they should seek to engage with the disgruntled beneficiary to see if they can resolve matters amicably. All too often hasty hostility can entrench positions and make litigation or costly correspondence more likely. This approach can also show the Court that trustees or executors have acted reasonably.

Failing this, they are advised to promptly establish if the disgruntled beneficiary has any viable claims that they are willing to pursue. Whilst this can be a delicate balancing act, failing to flush out claims at an appropriate stage often leads to escalating costs. To do this they should consider refusing to correspond further regarding the purported claims until they have been properly particularised. In relation to requests for disclosure it can be helpful to require disgruntled beneficiaries to set out if they are seeking information by way of the principles established in Re Londonderry and Schmidt v Rosewood or via a pre-action disclosure application pursuant to CPR 31.16. They should also require them to set out how they meet the tests under the applicable jurisdiction. Responding to such a request will require proper legal advice and upfront cost; it can cause many a disgruntled beneficiary to abandon their claims.

Alternatively, if the required response is provided, trustees and executors can better assess the merits of the purported claims against them.

## Court Procedures



However, if matters cannot be resolved by pre-action correspondence and negotiation, especially where threatened claims mean further distributions cannot be made in order to protect a trustee or executor's lien, then they may have to consider Court action.

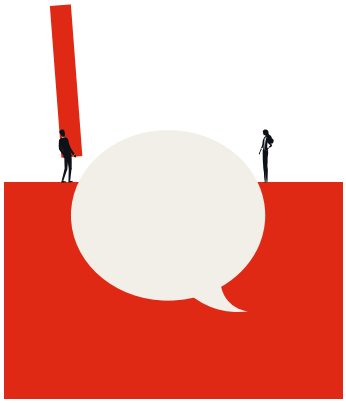
**The first order trustees and executors should consider is a 'put up or shut up' order. The Court confirmed in Cobden-Ramsay v Sutton [2009] WTLR 1303 that it has the jurisdiction to order a time limit for a potential claimant to bring a claim after which trustees and executors will be protected from liability. Parsons v Reid has given recent guidance on how to obtain these orders.**

The conclusion is, unsurprisingly, that they will not be granted lightly, with Master Clark stating that "[f]ull disclosure is the price to be paid by the claimants for the exoneration they seek". This means that any application will need to provide a detailed witness statement setting out the reasons for seeking the order along with full disclosure justifying them in much the same way as in a Public Trustee v Cooper blessing application. This is so that the Court can assess whether it and the respondent have everything in front of them before the Court effectively exercises its discretion to extinguish a potential claimant's rights. Therefore not only are applications for 'put up or shut' orders likely to be relatively costly, trustees and executors must have a strong view on the merits as if they fail they would have potentially disclosed information regarding their reasoning which could be used against them to advance the very claim or claims that they had hoped to extinguish.

Another application to consider is a Public Trustee v Cooper blessing application. Generally these are thought of as consensual applications, but the recent case of Brown v New Quadrant shows that the Court may grant the requested blessing in the face of opposition. In this case, a beneficiary applied for an injunction as part of a removal application to prevent a share sale; the trustees counter-claimed for a blessing of their decision to make the same share sale. The Court refused the injunction and instead granted the blessing of the share sale. It noted that as long as the four limb test set out in Cotton v Earl of Cardigan [2014] EWCA Civ 1312 is met, then there is no reason why an ongoing and unresolved removal application or specific beneficiary objections to the proposed "momentous decision" should by itself prevent the Court's blessing. Whilst a blessing application is likely to be similar in detail to one for a 'put up or shut up order', it has the practical benefit of protecting trustees from liability immediately. However, the use of such an application to progress trust administration is likely to be limited and applicable only where a disgruntled beneficiary has already brought proceedings.

Finally, it is unclear whether Parsons v Reid leaves open the possibility of obtaining a Benjamin type order in the face of intimated claims by a disgruntled beneficiary. Paragraph 28 of the judgement quotes Lewin, On Trusts, which in turn states that such an order may be applicable where there is an adverse claim to trust assets by a third party and the claim is "insubstantial". There is no reason to believe such an order cannot be extended to a claim by a disgruntled beneficiary. The advantage of obtaining such an order is that it does not require the detailed evidence that the other two orders necessitate. It was also what the will trustees in Parsons v Reid applied for, although it was refused on the basis that the Court did not have before it sufficient information to decide whether the claimant's case was insubstantial. Therefore. in a case where the claim is manifestly without merit and this can be shown to the Court, this type of order may be something that trustees and executors could still consider.

## Conclusion



Whilst litigation is always best avoided in situations where a disgruntled beneficiary is preventing the proper administration of a trust or estate and causing legal costs to escalate, trustees are advised to try and flush out any viable claims as quickly as possible. Failing this, they should consider if any of the Court remedies available to them are justified in the circumstances.