

Momentous decisions: LKM Discretionary Trust

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Trust administration can sometimes involve making what can be best described as 'momentous' decisions. In these circumstances the trustee will often seek the blessing of the court where the decision is one which, if made, will have a significant impact on the trust fund and beneficiaries of the trust in question.

In the recent case of *In the matter of the LKM Discretionary Trust* the Guernsey Royal Court was asked by the trustee to bless a proposed distribution which would enable a beneficiary to satisfy the terms of a deferred prosecution agreement and a settlement agreement relating to certain civil and criminal proceedings and investigations.

The trustee had the requisite powers to make the distribution and it was of the view that a benefit would accrue not only to the beneficiary in question but also to the remaining beneficiaries as settlement of the litigation and investigations would enable the family to return to a settled home life. The proposed distribution would, however, represent a significant proportion of the liquid assets of the trust fund.

The Court outlined the test to be satisfied when a trustee is seeking the Court's approval to a 'momentous' decision:

- Does the trustee have the power under the trust instrument and the relevant law to make the 'momentous' decision, in this case to make the distribution?
- Has the trustee formed the opinion to do so in good faith and is it desirable and proper to do so?
- Is the opinion formed by the trustee one that a reasonable trustee in its position properly instructed could have arrived at?
- Is the Court certain that the decision hasn't been vitiated by any actual or potential conflicts of interest?

The Court was satisfied that the questions could be answered in the affirmative and approved the trustee's in-principle decision to make the distribution.

It is worth noting that the fact that the trustee had prepared detailed minutes, outlining its thought process and all the factors which it had taken into consideration, assisted the Court in making its decision. The decision also gives guidance to the factors which the Court will take into account when a trustee is seeking its blessing to a 'momentous' decision.

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