

Sajid Mohammed Abbas Khan

Student ID: 2229444

1. Introduction:

This report focuses on the uncertainty whether beneficiaries are entitled to receive trust documentation and when they can access it. Beneficiaries are suffering from this uncertainty regarding holding trustees accountable for their fiduciary obligations. While trustees owe fiduciary duties to their beneficiaries, the law does not define what rights beneficiaries have; rather, it is determined by various judges from prior cases through the development of common law. The case of *Schmidt v Rosewood Trust Ltd* (2003) altered the rules concerning the disclosure of information. Beneficiaries now do not have a proprietary right to access trust related documents but rather rely on the court to exercise some type of supervisory authority over how and when they are entitled to that information. While this creates flexibility for the beneficiaries, it has also created a great deal of unpredictability and inconsistency concerning how and when beneficiaries can access that trust information. Our group chose the topic after noting the challenges faced by beneficiaries when attempting to obtain any type of information about their trust without the use of the court system. Given that accountability is one of the foundations of equity, potential concerns arise concerning fairness and equity as it relates to trust law. This report provides a summary of the current legal position and evaluates the strengths and weaknesses of that position with respect to the proposed Trustee Disclosure and Beneficiary Information Act 2026 to determine if it provides an appropriate and effective change to the existing law.

2. Current Position:

Beneficiaries' right to access trust information has developed through litigation more slowly than through legislation, with the courts being historically careful about disclosing such information. In the case of *Re Londonderry's Settlement* (1965), the Court of Appeal ruled that beneficiaries did not have the right to see the trustee's deliberations or reasons for their use of discretion. The court was concerned that if the trustee were required to give a reason for every discretionary decision, this would lead to trouble with the administration of the trust.

Early cases, including *O'Rourke v Darbishire* (1920), supported the view that a beneficiary could obtain documents that related to the trust based on a "proprietary right". This view has later been revisited.

The Privy Council decided in the case of *Schmidt v Rosewood Trust Ltd* (2003) that beneficiaries of trusts do not have a legal entitlement to receive information from the trustees about the trust assets. The decision in *Tito v Waddell* (1977) reached a comparable conclusion regarding an account of the administration of the trust. This case did not create a universal right of disclosure, but it further supported the larger exposure of fiduciary obligation, that is, trustees should be able to justify their actions. The court will depend on whether the beneficiaries have sufficient grounds upon which to apply to the court for an order to compel the trustee to provide the requested information. Gibbon states that a property right does not justify the publication of sensitive documents. When trust documents are confidential, even a vested beneficial interest does not warrant access. Gibbon M. (2011)

Beyond the courts, a trust can be regulated by regulatory bodies such as the Charity Commission, the Pensions Regulator, HM Revenue and Customs (HMRC), Solicitors Regulation Authority, CILEX Regulation, Financial Conduct Authority, Public Trustee, and Companies House. They regulate trustees, especially professional trustees, depending on the type of trust and the trustee's activities.

3.Current challenges:

The discretionary power that was mandated by *Schmidt v Rosewood Trust Ltd* (2003) can be seen to include modern concepts of a trustee's responsibilities regarding disclosure; however, the discretionary approach creates many complications on a practical level.

For example, there is still a large degree of uncertainty with respect to disclosure. Since the decision to disclose is at the discretion of the courts, the outcomes are highly variable. For example, in *Lewis v Tamplin* (2018), certain documents were permitted to be disclosed while other documents were not. Likewise, in *Murphy v Murphy* (2021), the courts permitted limited access to information for the purpose of ensuring accountability. These two examples highlight the very real concern that similar cases can have different outcomes depending upon the particular facts of the case. While the discretionary nature of the power of the courts helps the court arrive at an equitable decision in each of these cases, the discretionary nature also creates uncertainty for both the trustee and the beneficiary.

Additionally, enforcing a trustee's obligation to disclose information to a beneficiary can be very expensive. If a trustee refuses to provide requested information, then the beneficiary may need to seek recourse through the courts. Litigation can be a very expensive and time-consuming process, which can cause problems and personal disputes between family members involved in family trusts. In the case of smaller trusts, the cost of litigation may exceed the value of the property that is being contested.

Trustees often dispute whether or not sharing internal discussions or documents containing letters of wishes will undermine the trust creator's original intent or make it difficult for the trustee's discretion to be exercised. In *Breakspear v Ackland* (2008), the court recognised how important it is to protect these compartments (i.e. private conversation) from public view; however, to a beneficiary, this type of confidentiality feels like secrecy. Lack of knowledge as to how decisions are being made creates a lack of trust in the process of administering the trust.

Any person with an interest in a trust is entitled to seek the court's assistance to obtain information relating to a trust of which he is a beneficiary. The court may have to balance the interests of beneficiaries, trustees themselves and third parties. If trustees fail to disclose their interests to beneficiaries, the failure could be categorised as a breach of trust. Clare M (2005)

A similar dispute regarding access to documents occurred in the matter of *Rouse v IOOF Australia Ltd* (1999). Beneficiaries wanted to access documents relating to litigation against the trust, including witness statements and legal opinions. The court ruled that while a beneficiary does not have an unrestricted right to inspect every document in possession of the trustee, the trustee is authorised to keep some documents confidential. Discretionary beneficiaries only have a potential non-proprietary interest in the trust; therefore, they must demonstrate that they have a sufficient interest to compel a trustee to disclose relevant documents. Although the conclusions of *Schmidt v Rosewood Ltd* (2003) have removed the requirement for a proprietary claim, the courts have continued to apply a test as to whether a beneficiary has a sufficient interest in the documents being requested. This requirement for discretionary disclosure lacks a definitive description and thus creates uncertainty.

The failure of legislation to distinguish between different types of documents leads to the uncertainty associated with the requirement for discretionary disclosure. For instance, some courts separate trust accounts (core administration document) from deliberative documents (trustee's discussion or reasoning). However, since there are no statutory definitions giving rise to these distinctions, trustees have discretion in determining the documents that are to be disclosed.

4. Proposals for Reform

BILL TITLE – TRUSTEE DISCLOSURE AND BENEFICIARY INFORMATION ACT 2026.

Long Title & Summary –

An Act to clarify and regulate trustees' duties to provide information to beneficiaries,

to define categories of trust documents subject to disclosure and to establish principles governing trustee discretion and for connected purposes.

Clause 1 – Statutory Right to Core Information

A trustee shall, upon reasonable request, provide a beneficiary with:

- (a) the trust instrument;
- (b) annual trust accounts
- (c) a summary of trust assets and liabilities and
- (d) details of distributions made to that beneficiary.

Disclosure under this section shall not require a court order unless disputed. A trustee may refuse disclosure where the request is vexatious, manifestly unreasonable, or contrary to the proper administration of the trust.

Clause 2 – Confidential and Deliberative Documents

Trustees shall not be required to disclose documents recording their deliberations or reasons for discretionary decisions. Letters of wishes shall be presumed confidential. The court may order disclosure where necessary to ensure proper administration and where just and equitable in the circumstances.

Clause 3 – Alternative Dispute Resolution

Before commencing court proceedings relating to disclosure under this Act, the parties shall attempt resolution through mediation or another recognised form of alternative dispute resolution. The court may consider non-compliance when determining costs.

5. Evaluation of the Reform Proposals

The Act proposes to improve a current imbalance in Trust Law where the starting point for disclosure is no longer secrecy but instead transparency. It will be worthwhile to determine if the proposed reform does strengthen accountability while not taking away any of the flexibility that is necessary in the effective administration of a Trust.

One of the positives about the proposed reform is that it will add to the certainty of the beneficiaries that there is currently very little of it, as most of the current statutes

allow for a lot of discretion by judges interpreting the current law as to whether the beneficiary would have a right to some form of disclosure. By creating a statutory form of entitlement to a core form of information for the beneficiaries, the proposed reform will give the beneficiaries a better idea of what type of information they can expect to receive and, therefore, reduce the need for them to litigate.

Also of benefit, the proposed reform does not take away from the discretionary nature of the trustee when administering a Trust. Discretionary powers in relation to Family Trusts are extremely common. Likely, the statutory requirement for disclosure of every single communication between trustees could discourage frank, open discussions between the trustees and impact the quality of the trustees' decision process. The proposed legislation attempts to maintain confidentiality where it would be inappropriate to disclose information yet still allows for the Courts to intervene where it would be fair to do so.

The beneficiaries must pay more attention to their right to see the trust information, to be able to enforce the trust properly against the trustee. The purpose of keeping letters of wish confidential is that it protects the settlor's intention and the independence of the trustee; but, letters of wish may be better served by being presumed to be disclosed (i.e., the presumption can be rebutted) in order to meet today's expectations for transparency. Clements & Abass (2015)

The reform does, however, only partially resolve the evident imbalance between the trustee and beneficiaries. The trustee will still hold most of the relevant information. Issues in relation to what is a frustration request or what constitutes inconsistent with proper administration may continue to require judicial interpretation.

Some commentators believe that increased institutional oversight, including establishing a specialised regulatory body or "Trustee Commissioner", will lead to greater accountability and consistency when it comes to resolving disclosure disputes. The current proposal represents a more conservative method of reforming by calling for incremental change rather than structural reform.

Although this proposal has some limitations, it is still a reasonable response. It creates greater transparency and ease of access to information while maintaining the flexibility required to administer trusts. The Trusts of Land and Appointment of Trustees Act 1996 (TOLATA), 1996, governs land held under trust. Section 6 gives the Trustee the same power as the Owner of the Trust Asset. However, this power is limited. The trustee must consult beneficiaries, if practicable, on the exercise of their powers under section 11. The Trustee may exclude or limit a beneficiary's rights under section 13, but the trustee must exercise such power reasonably and in accordance with the purpose of the Trust. Gary Watt (2016)

While the Trustee Act 2000, notably within its investment and care duties, includes a set of guidelines for trustee responsibilities, there is no formal written body of laws that provides trustees or beneficiaries with distinct parameters regarding what disclosures must be made related to the operation of a trust. Thus, the law's prevailing principles on trust disclosure continue to be established through court rulings rather than through statutes or regulations.

6.Conclusion:

The law regarding the access that beneficiaries must have trust information is primarily dependent on the discretion of judges, rather than clearly laid out in statutes. The *Schmidt v Rosewood Trust Ltd* (2003) decision made it clear how disclosure will be determined going forward; however, the resultant framework for determination continues to be very unclear, with many beneficiaries forced to incur heavy costs from litigation to determine if they can receive any information.

The proposed Trustee Disclosure and Beneficiary Information Act 2026 will help to address this issue. It will create a right for beneficiaries to receive core information about a trust and will promote the use of alternative dispute resolution to improve transparency and give trustees some flexibility while at the same time ensuring that the fiduciary authorities of trustees are under proper oversight.

Although the reform will not address all issues in trust law, it represents an excellent step towards a fairer and more accountable system for all involved in trusts. Trust law needs to be flexible; however, it also needs to guarantee that there is reliable oversight of the fiduciary authority of trustees.

Reference:

Breakspear v Ackland [2008] EWHC 220 (Ch)
Re Londonderry's Settlement [1965] Ch 918

Schmidt v Rosewood Trust Ltd [2003] UKPC 26, [2003] 2 AC 709

Tito v Waddell (No 2) [1977] Ch 106
Rouse v IOOF Australia Ltd [1999] 2 ITELR 289

Lewis v Tamplin [2018] EWHC 777 (Ch)

Murphy v Murphy [2021] EWHC 94 (Ch)

O'Rourke v Darbishire [1920] AC 581

Trustee Disclosure and Beneficiary Information Act 2026

Trusts of Land and Appointment of Trustees Act 1996

Trustee Act 2000. Available at:

<https://www.legislation.gov.uk/ukpga/2000/29/contents>

Clare M. (Mar 2005) Trustees' Reaction to Beneficiaries Rights to information, pp. 23-24, Vol.11, Iss.4

Clements & Abass, Equity and Trusts, (2015)

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Gibbon M. (Feb 2011). Beneficiaries' information rights p.29, Vol. 17, Iss.1, Oxford

