

TOLATA Round Up

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For any TOLATA or Private Children or Finance practitioners who want to keep up to date with key decisions made in cases involving trusts and/or Schedule 1 claims, this is for you.

1. [Nilsson and Anor v Cynberg \[2024\] EWHC 2164 \(Ch\)](#)

In this highly divisive High Court case, featuring our very own [Oliver Ingham](#), as Counsel for the First Respondent, Judge Pickering KC found that an express declaration of trust was conclusive unless varied by "*subsequent agreement*" or affected by proprietary estoppel. The term "subsequent agreement" did not mean only a formal agreement which complied with the requirements of the Law of Property (Miscellaneous Provisions) Act 1989, but could include an informal common intention constructive trust – such as an oral agreement.

This case also discussed detrimental reliance with the judge finding that the wife's actions in taking over the mortgage repayments, paying for the home improvements, and not bringing ancillary relief proceedings, amounted to a detriment that was sufficiently great to establish either a constructive trust or proprietary estoppel.

Comment: this judgment potentially has wide reaching effects as practitioners will likely seek to rely on this precedent, to persuade a court that subsequent understandings/agreements have been agreed between parties to displace an express agreement. However, Nilsson's effects are not yet binding precedent, given as though it is simply a High Court judgment and is seemingly at odds with the conclusions reached in Court of Appeal cases *Goodman v Gallant* [1986] 2 W.L.R. 236 and *Pankhania v Chandegra* [2012] EWCA Civ 1438

2. [Savage v Savage \[2024\] EWCA Civ 49](#)

In this recent Court of Appeal case, the justices allowed an appeal by the appellant in relation to a question of interpretation of s 15(3) of the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA 1996). The justices found that the court was *obliged* to have regard to the circumstances and wishes of the *majority* beneficiaries by value.

However, although there was *no obligation* for the circumstances and wishes of the *minority* to be considered, the court was *not prevented* from doing so if it thought fit.

This was a case involving a TOLATA order made in financial remedy proceedings between the appellant (H) and his ex-wife (W) concerning 3 parcels of land held on trust for H and his 4 nieces/nephews. The beneficiaries of the land could not agree between themselves how a sale should take place.

Comment: This case reinforces the discretionary nature of TOLATA claims and ultimately the court can make whatever order it "thinks fit". However *Savage* makes clear that where there are multiple beneficiaries, who may not agree on how to deal with land e.g to sell or not, the court will be guided by the majority, but can consider the minorities views and wishes.

****PERMISSION TO APPEAL**** was refused by the Supreme Court on 11 September 2024.

3. [TK v LK \[2024\] EWFC 71](#)

This Schedule 1 application was brought by the father against the mother on exceptional facts, involving mother who was serving a long-term prison sentence for offences against the child, with father caring for the child.

Owing to the traumatising of the child, father was hindered in his ability to work and thus obtain a mortgage. The mother had inherited a sum of money from her late father's estate and the father sought a housing fund and capital lump sum order. Father was granted £309,750 plus costs totalling the entirety of the estate, by Judge Chandler KC.

This case analyses the concept of conduct in Schedule 1 claims, stating particularly egregious conduct can be taken into account, stating that this case had passed the criteria set out in *Tsvetkov v Khayrova* [2023] EWFC 130 of (1) meeting the high conduct threshold and (2) having a causative link to finances. It was concluded that the conduct had created long-term dependency and need for the child in these special circumstances.

Comment: this case is a highly useful breakdown of Schedule 1 principles and the impact that conduct may have in extreme circumstances – whilst not generally considered as a factor in most Schedule 1 claims.

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