

Neutral Citation Number: [2023] EWHC 2545 (Ch)

Case No: PT-2022-000442

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**PROPERTY, TRUSTS AND PROBATE COURT**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 17 October 2023

**Before:**

**SAIRA SALIMI**  
**(sitting as a Deputy High Court Judge)**

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**Between:**

(1) **Coutts & Co** **Claimants**

(2) **TEFG**

**- and -**

**Ludlow Trust Company Limited** **Defendant**

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**Fenner Moeran KC** (instructed by **CMS Cameron McKenna Nabarro Olswang LLP**)  
for the Claimants

**Mark Baxter** (instructed by **Addleshaw Goddard LLP**) for the Defendant

Hearing dates: 5 October 2023

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**SAIRA SALIMI :**

1. These proceedings were brought under Part 8 of the CPR, as uncontentious matters relating to the administration of a trust. The First Claimant (“Coutts”) seeks an order of the court substituting the Defendant (“Ludlow”) for itself as trustee of the TABC Trust. The Second Claimant (“TEFG”) is the co-trustee of the trust, and has filed a witness statement supporting this application.
2. The TABC Trust is a settlement established for the purposes of holding personal injury damages for the benefit of the beneficiary, TABC. It was created in November 2015 by order of the High Court, and Coutts was appointed trustee in August 2018 by order of the High Court, Bristol District Registry.
3. The reasons for Coutts seeking the substitution are set out in my judgment in *National Westminster Bank PLC & Ors v Ludlow Trust Company & Ors* [2023] EWHC 2532 (Ch). In very brief summary, Coutts is divesting itself of its trust administration business and relinquishing its trusteeships, for commercial reasons. Ludlow has been identified, through a detailed selection and scoring process, as a suitable alternative trustee. The great majority of Coutts’ trusteeships have already been transferred to Ludlow by deeds of appointment and retirement for which the court’s intervention was not required.
4. That is not possible in this case. The TABC trust documentation provides that the existing trustees have the power to appoint and remove trustees, with the consent of TABC, the beneficiary of the trust. However, while TABC is a minor,

that power may be exercised only with the consent of the court, which is the reason for these proceedings.

5. The Claimants ask the court to exercise its power under s.41(1) of the Trustee Act 1925 in order to effect the substitution of Ludlow for Coutts. That section provides as follows:

*The court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient difficult or impracticable so to do without the assistance of the court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.*

6. To exercise that power, I must be persuaded that it is “expedient” to appoint Ludlow as trustee in substitution for Coutts, and that it is “inexpedient difficult or impracticable” to do so without the assistance of the court.
7. So far as the first limb is concerned, I considered Ludlow’s general suitability in my judgment in *National Westminster Bank PLC & Ors v Ludlow Trust Company Ltd & Ors* [2023] EWHC 2532 (Ch). In brief summary, they are a new trust company, but with experienced senior officers and with a trust administration staff inherited from Coutts and two other banks in the NatWest Group. They are, as noted above, a trust corporation, and they therefore fulfil the requirement in the trust instrument for a professional trustee to be appointed during the beneficiary’s minority.
8. I also note that it is not in the interests of the beneficiary of the trust to insist on retention of an unwilling trustee, although it may technically be within my power to refuse to make an order and thereby compel Coutts to continue. This

is particularly the case as Coutts has divested itself of its whole trust business, and therefore no longer has the expertise to administer this trust.

9. As an additional point, I record that the co-trustee, TEFG, is the beneficiary's father and therefore has a close interest in decisions being made for the benefit of the beneficiary. He supports the proposed change of trustee.
10. The fees proposed to be charged by Ludlow are very little different from those currently charged by Coutts, so there is no obvious financial disadvantage resulting from the change. (The trust instrument applies the Society of Trust and Estate Practitioners' standard provisions, clause 11.2 of which permits a trust corporation to receive remuneration on the basis of its standard terms as published at the date of the appointment.)
11. The second limb of the test in s.41(1) of the Trustee Act 1925 is clearly satisfied: the trust instrument does not permit a change of trustees during TABC's minority without the consent of the court.
12. I am therefore satisfied that it is expedient for the court to make the requested order, and that it would be inexpedient difficult or impracticable to effect the change of trustees without the court's involvement. The consequential vesting provisions in the order, ensuring that property of all kinds will be transferred to the new trustee, are appropriate and reasonable.
13. By order of Master Clark dated 31 May 2022, an interim anonymity order was put in place to protect the interests of the beneficiary, TABC, who at the date of this judgment is still a minor child. The order also provided for the claim to be heard in private, and that the judge hearing the claim should review that interim

order. Having reviewed the documents in this case, I agree that an anonymity order is entirely appropriate in order to protect the beneficiary, and make the requested final anonymity order accordingly.