

## In the Matter of the K Trust [2020 GLR 312]

Service area / [Trusts and Private Wealth](#)

Legal jurisdiction / [Guernsey](#)

Date / [April 2022](#)

The Guernsey Court of Appeal's discussion in this case is helpful for practitioners and trustees alike as to the meaning of the commonly used word 'share' in a trust instrument.

The settlor had established two trusts, the K Trust and the A Trust, to provide for his spouse and infant twin daughters. His spouse was the principal beneficiary of the A Trust.

The K Trust instrument stated that the trustees "*will apply*", at their discretion, a "*notional split*" of the Trust Fund in line with the settlor's wish that his daughters benefitted equally as far as possible. If a daughter died without children surviving her, the trustees were to distribute her "*share...as determined*" by transferring half to the A Trust and half to the surviving daughter's 'share' of the K Trust.

One of the daughters ("C") died in infancy and two issues related to the meaning of the trust instrument arose.

Firstly, the word 'share' was not defined in the trust instrument although the settlor had indicated that he did not intend to mean a "*fixed share in the legal sense*".

Secondly, whilst there was no evidence that the trustee had intentionally made a notional split of the K Trust, it was questionable if they had in fact done so by way of distributions already made.

The questions for the Royal Court were:

- Did C have an identifiable 'share' and was the trustee obliged to make a transfer to the A Trust?
- If so, was C's 'share' the value of one-half or one-third of the K Trust, or was it at the trustee's discretion to decide?

The Royal Court decided that C did not have a 'share' of the K Trust and the trustee was not therefore required to make a transfer to the A Trust.

On appeal, the Guernsey Court of Appeal found that the proper construction was that C did have a one-half share of the K Trust. It stated that the word 'share' was "*not a term of art in trust law*" and could denote a present or future interest.

Whether there had been a 'notional split' of the K Trust Fund or if the 'share' was still to be determined, the daughters had been treated equally whilst alive and this approach should be maintained.

The trustee was therefore obliged to divide C's share in the K Trust by transferring half to the A Trust and half to the surviving daughter's share of the K Trust.

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