

## Road wars: Roadchef case provides lessons for EBT trustees

by Stephen Chater, Postlethwaite  
Solicitors Limited

17 Apr 2015

[Comments](#)

[More from this author](#)



FOR the last 17 years staff at Roadchef, the motorway services operator, have been fighting a legal battle over the fate of a large shareholding in the company which had been held in trust and which they had expected might end up being distributed to them. The case has now been [settled out of court](#), but the sorry tale is highly instructive for those involved in creating and operating trust arrangements.

The story began with a buy-out of the company in 1983 led by Patrick Gee, who decided to allocate about 20% of the shares to employees. The arrangements had not been completed before Gee died suddenly at the age of 43, but his successor, Tim Ingram-Hill, was charged with finalising the proposals. By 1991, about 34% of the shares were allocated to the staff and Ingram-Hill owned about 21%. However, when the company was sold only a few years later in 1998, the staff's allocation had fallen to less than 5% while Ingram-Hill's had increased to more than 60%. How had this happened, and could the staff do anything to rectify their position? It has taken 17 years to arrive at answers to these [questions](#).

### The schemes

In summary, two employee benefit trusts had been established, EBT1 and EBT2, each of which had a separate corporate trustee. The beneficiaries of EBT1 were the staff generally, while those of EBT2 were senior management.

Ingram-Hill was the sole director of the trustee of EBT2 and he was also a director of the trustee of EBT1. In 1994, he secured an amendment to the EBT2 trust deed to add himself as a beneficiary. Years later he - through a trust - he bought a large number of Roadchef shares from the employee share scheme. In 1998 Mr Ingram Hill exercised this option shortly before Roadchef was sold. Ingram Hill made a profit of £26.8m on the Roadchef shares he acquired through the option.

The judge who heard the case concluded that the transfer from EBT1 to EBT2 was not valid because the directors of the trustee of EBT1 did not properly consider the criteria necessary to exercise the power to transfer. In particular, they did not consider the terms of EBT2, the identity of the beneficiaries of EBT2 or the proposed ultimate destination of the shares to be transferred. In order to be valid, the transfer had to be made for the purpose of benefitting the beneficiaries of EBT1, but that was not the case here.

The judge concluded that Ingram Hill was in breach of a fiduciary [duty](#) to inform his fellow directors of the trustee of EBT1 of his intention to grant options over the shares to himself. There was no suggestion that he had acted illegally.

#### **Lessons for EBT trustees**

There are various [lessons](#) to be learned from this case which are relevant for those who find themselves in the role of EBT trustees, and directors of corporate trustees of EBTs.

1. Trustees should take care not to "rubber stamp" recommendations from the sponsoring company. The role of trustee confers a degree of power, but, to paraphrase Voltaire, in exercising that power, the person exercising it needs to apply a degree of responsibility. The role of trustee is a serious one and not to be taken on lightly.
2. Trustees should consider fully the nature of their powers, and any limitations on them. In particular, they need to consider at all times the interests of the beneficiaries of their own particular trust when reviewing proposed uses for trust funds.
3. They should also carefully record the reasons for decisions which they make, including the factors which they considered in reaching those decisions.
4. Where employees are either trustees individually, or are directors of a trustee company, a potential [conflict](#) of interest arises at the outset, and there is an even greater need to document very carefully the reasoning at each stage of the process. The Roadchef case provides an extreme example of a conflict of interest where a single individual chaired the sponsoring company and sat on the boards of both trustees.
5. Perhaps the most difficult [lesson](#) to apply in practice is that trustees should not allow themselves to be swayed into making particular decisions by dominant individuals. Where necessary, a trustee should seek independent advice.

*Stephen Chater, Postlethwaite Solicitors Limited - specialists in employee share plans and employee ownership.*

<http://www.accountancyage.com/aa/opinion/2404544/road-wars-roadchef-case-provides-lessons-for-ebt-trustees>