



***MISSION CREEP:
AN EXPANDING ROLE FOR FIDUCIARY
RESPONSIBILITY?***

**Sarah Bayliss
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Once upon a time there was a snail in a bottle...



‘All participants in the equity investment chain should observe fiduciary standards in their relationships with their clients and customers’.

The 2012 Kay Review
of UK Equity Markets and Long-Term Decision Making



Joint Ventures

Implied terms

'A paradigm example of a general norm which underlies almost all contractual relationships is an expectation of honesty. That expectation is essential to commerce, which depends critically on trust'.

Yam Seng Pte Ltd v ITC Ltd [2013] EWHC 111 QB



Joint Ventures

New fiduciary relationships

'The absence of any prior relationship between Ross River and Mr Barnett seems to me of no significance as compared to the nature of the structure adopted under the JVA, where WCL owned all the relevant assets and was entirely in control of their exploitation, and Mr Barnett was entirely in control of what WCL did in this respect. It is relevant, in my judgment that Mr Barnett was not only in control of the project but was also, for a time, paid a management fee which was properly deductible in the calculation of net profits, so that affected the interests, as between them, of Ross River and WCL (ie himself).' (Lloyd LJ)

Ross River Ltd v Waveley Commercial Ltd [2013] EWCA Civ 910



Directors' duties – setting the bar higher?

Madoff Securities International Ltd (in liquidation) v Raven [2013] EWHC 3147 (England)

Weaving Macro Fixed Income Fund v Peterson [2011] 2 CILR 203 (Cayman)

Weaving Capital (UK) Ltd v Peterson [2012] EWHC (Ch) (England)

Dalemont v Senatorov [2012] JRC 061A (Jersey)

Ciban Management Co v Citco [2012] BVIHC/2007/301 (BVI)

Vivendi SA v Richards [2013] EWHC 3006 (Ch)



Investment Regulation

‘All participants in the equity investment chain should act:

In good faith;

In the best long-term interests of their clients or beneficiaries;

In line with generally prevailing standards of decent behaviour...

These obligations should be independent of the classification of the client.

They should not be contractually overridden.’

‘Ensuring Equity Markets Support Long Term Growth’

Department for Business innovation and Skills



A duty to care?



There are limits...

Good faith

Pennyfeathers Ltd v Pennyfeathers Property Co Ltd [2013] EWHC 3530

Greenclose Ltd v National Westminster Bank PLC [2014] EWHC 1156

TSG Building Services v South Anglia Housing Ltd [2013] EWHC 1151

Mid Essex Hospital Services NHS Trust v Compass Group [2013] EWCA Civ 200

Fiduciary responsibility

Forsta AP-Fonden v Bank of New York Mellon SA/NV [2013] EWHC 3127



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