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Litigation Update

Supreme Court Clarifies Directors' Duties: Good Faith Is More Than a State of Mind

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On 14 July 2026, the UK Supreme Court handed down its judgment in *Saxon Woods Investments Limited and others v Francesco Costa* [2026] UKSC 21.

For the first time, the Supreme Court considered the proper interpretation of a director's duty under section 172(1) of the Companies Act 2006 (CA 2006) to "act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole".

The Supreme Court confirmed that the assessment of whether a director has complied with section 172(1) involves both subjective and objective elements and held that the requirement to act in good faith applies not only to the director's thought process, but also to the director's conduct.

The courts will generally respect the business judgment of directors regarding how best to promote the success of the company. However, directors do not have an unfettered discretion to pursue any course of action they wish (for example, covert acts of deception or disloyalty), even if they genuinely believe such conduct is in the company's best interests.

Background to the Litigation

Francesco Costa was a director of Spring Media Investments Limited (Spring Media). At certain times, Mr Costa was also chairman of Spring Media's board of directors.

Pursuant to a shareholders' agreement (SHA), Spring Media and its investors had agreed to work together in good faith towards an exit (being the sale of all or substantially all of Spring Media's share capital, business or assets) by no later than 31 December 2019. The board entrusted Mr Costa with exclusive conduct of the sale process.

Mr Costa believed that completing a sale later than the target date would likely achieve a more favourable financial return for Spring Media and its shareholders. He therefore sought to delay the sale beyond the timetable contemplated by the SHA.

In order to effect a delayed sale, Mr Costa used "covert" tactics: he concealed information from and prevented the involvement of other directors and shareholders to exclude them from the sale process; he misled the board by giving the impression that Spring Media was complying with its exit obligations regarding the sale under the SHA; and he failed to disclose to the board that his instructions to Spring Media's advisers did not contemplate a sale before the end of 2019.

The COVID-19 pandemic subsequently had a severe impact on Spring Media's business, extinguishing any prospect of a profitable exit.

Saxon Woods Investments Limited (Saxon Woods), a minority shareholder in Spring Media, brought an unfair prejudice petition against Mr Costa under section 994 CA 2006. Saxon Woods alleged that the affairs of Spring Media had been conducted in a manner that was unfairly prejudicial to it, and that Mr Costa's conduct constituted a breach of the SHA and of section 172(1) CA 2006. Saxon Woods sought an order that Mr Costa buy out its shares in Spring Media at the value they would have had if the agreed exit strategy had been followed.

Decisions of the Lower Courts

The High Court

At first instance, the High Court held that Saxon Woods had been unfairly prejudiced, but that Mr Costa had not breached his duties under section 172(1) CA 2006 on the basis that "Mr Costa did sincerely believe that he was acting in the best interests of [Spring Media] and its investors". The trial judge summarised Mr Costa's state of mind as "they wouldn't like it now if they knew, but they will thank me in the long run". The judge therefore made a conditional buy-out order. Mr Costa was required to purchase Saxon Woods' shares if it were later established that Spring Media would have been sold for more than US$75 million net of debt by the end of 2019.

Both Saxon Woods and Mr Costa appealed the decision.

The Court of Appeal

The Court of Appeal dismissed Mr Costa's appeal and allowed Saxon Woods' appeal, concluding that Mr Costa had breached his fiduciary duty under section 172(1) CA 2006. The Court of Appeal found that the trial judge had ascertained the actual state of Mr Costa's knowledge or belief as to the facts but had not assessed whether Mr Costa's conduct in reliance on his belief was objectively honest by the standards of ordinary decent people.

Applying the test for dishonesty set out in *Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)* [2017] UKSC 67; [2018] AC 391, the Court held that Mr Costa's conduct in deceiving the board and frustrating the agreed exit strategy under the SHA was dishonest and not in good faith. Additionally, the court held that Mr Costa could not formulate or act upon his own judgement about a strategy for the success of Spring Media, which had already been prescribed by the SHA. The Court of Appeal ordered an unconditional buy-out by Mr Costa of Saxon Woods' shares at their pro rata undiscounted value on 31 December 2019.

Mr Costa appealed to the Supreme Court.

The Decision of the Supreme Court

Mr Costa advanced two grounds of appeal:

1. It has never been permissible to apply an objective test to determine whether a director has committed a breach of the section 172 duty.

2. A director does not necessarily breach the section 172 duty merely by causing the company to act in breach of contract. The relevant question is whether the director genuinely believed that doing so was in the interests of the company and its shareholders.

The Supreme Court unanimously dismissed Mr Costa's appeal, describing his conduct "manifestly disloyal" to and "in bad faith towards" Spring Media. It agreed that Mr Costa had breached section 172(1), but it departed from the reasoning of the Court of Appeal. The Supreme Court determined that the good faith requirement in section 172(1) extends to a director's conduct, and not only to their thought process.

Lord Briggs gave three reasons for this conclusion:

1. **Consistency with the common law.** Prior to the codification of the general duties of directors in sections 170 to 181 CA 2006, the common law recognised objective standards in

determining whether a fiduciary's conduct breached the duty of loyalty. As a starting point, the court will accept a director's business judgment, provided that their belief is genuine. However, the director is not granted carte blanche to implement a dissenting view to that of the board by covert or disloyal means.

2. **Consistency with the context and purpose.** Chapter 2 of Part 10 CA 2006 (sections 170 to 181) is intended to codify a set of general duties in a way that will operate in harmony with the governance of a company in accordance with its constitution. That objective is inconsistent with a construction of section 172 in a way that permits (or even requires) an individual director to pursue their own dissenting opinion about the best way to secure the company's success by covert and disloyal tactics despite the board's preferred business strategy for the company. Such disloyalty would undermine good governance and would likely infringe the duty in section 171 CA 2006 for a director to act within their powers. Moreover, section 170(4) CA 2006, which requires the general duties to be interpreted and applied having regard to the corresponding common law rules and equitable principles, supports applying the section 172 good faith requirement to a director's conduct.

3. **Straining credulity.** It is highly unlikely that the legislative intent was that directors would be required merely to think, rather than to act, in good faith: "Far from promoting corporate success in the modern world, it would be a recipe for chaos and paralysis in corporate governance, and destructive of the collegiality of the board of directors as a whole which all stakeholders in limited companies are entitled to expect".

Lord Briggs' analysis proceeded on a broader basis than the Court of Appeal's application of the objective test. He focused on the fiduciary requirement of good faith rather than treating dishonesty as the governing test, although dishonesty may be evidence of a breach of that requirement. Lord Briggs stated that "where the defendant owes a fiduciary duty of loyalty, the question is whether that duty has been breached, and while dishonesty may be evidence of that, the duty itself supplies the relevant analytical framework; it is unnecessary to elaborate it by reference to the Ivey case".

Practical Considerations for Directors and Companies

A number of key considerations arise out of the Supreme Court's decision for companies, their boards and directors:

Companies and Boards

1. **Scope of authority.** The objectives and parameters of authority delegated to an individual director should be clearly and carefully defined by the board.
2. **Reporting.** Regular reporting to the board should be required in circumstances where significant authority has been delegated to an individual director.
3. **Approval.** Decisions about significant changes to an agreed strategy should be reserved for collective board approval.
4. **Protocols.** Robust governance protocols should be implemented for key transactions. These protocols should include documented approval requirements and procedures for escalating concerns or disagreements from director level to board level.
5. **Review.** Constitutional documents and governance policies should be kept under review to ensure they facilitate collective decision-making and effective board oversight.
6. **Training.** Directors should be provided with regular training on their statutory and fiduciary duties.
7. **Advice.** Boards should obtain legal advice to inform their decision-making, including prior to departing from any existing shareholders' agreement or other contractual obligations.

Directors

1. **Transparency.** Directors should act openly, honestly and collaboratively with the rest of the board. They should not pursue secret strategies, mislead the board or withhold information that is relevant to matters under board consideration.

2. **Record-keeping.** Directors should appropriately document and maintain records of their decision-making process to help demonstrate transparency and good faith.
3. **Scope of power.** Directors must only exercise powers delegated to them by the board for their specific intended purpose and do so consistent with the instructions under which the authority was delegated. If the scope of the power is uncertain, directors should seek clarification.
4. **Reporting.** Directors should take care to see that company and board reporting protocols are followed to ensure that the board remains apprised of all relevant information relating to matters that have been delegated to an individual director, thereby ensuring that ultimate control remains with the board as a whole.
5. **Escalation.** Directors should comply with the company's escalation procedures for challenging board decisions and raise any disagreements at board level for discussion.
6. **Consistency.** Directors should ensure that communications with the company's external stakeholders accurately reflect the board's agreed position and should not be used to advance a different strategic objective.

Advice. Directors should obtain legal advice on their potential personal exposure if their actions have been inconsistent with the board's agreed strategy, or if they are concerned that the board's strategy is inappropriate.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings London lawyers:

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