

Duties of disclosure by outgoing trustees to their successors

Questions can sometimes arise as to the rights of a successor trustee to delivery up of the files and other documents held by the outgoing trustee in relation to the trust where there is a transfer of the trusteeship. The general principle is clear enough: all the files and documents in the hands of the outgoing trustee should be handed over to the successor trustee without question. However, where the handover takes place against the backdrop of the trustee being forcibly removed from office and/or in the context of threatened breach of trust proceedings, the outgoing trustee is likely to be particularly sensitive as to the documents that are transferred.

The guiding authority in relation to this issue is that of *Tiger v Barclays Bank Ltd* [1952] 1 All ER 85, a decision of the Court of Appeal of England and Wales. That case involved executors, but the principles established apply also to trustees. In *Tiger*, bank executors were removed from office upon revocation of a grant. Beneficiaries took out a grant in place of the bank and sought all the bank's files and papers relating to the estate. An order was made in favour of the beneficiaries and questions arose as to the scope of the order. The Court of Appeal held as follows:

- The general rule is that all files and documents held by the outgoing trustee and which relate to the administration of the trust must be handed over by the outgoing trustee to his successor.
- The application of that general rule does not depend on whether the outgoing trustee owned such files and documents himself or held them as trustee on behalf of the beneficiaries. To the extent therefore that any distinction may be drawn as to "trust documents" and other documents in the possession of the trustee in the context of disclosure to beneficiaries (as to which see our related briefing on Beneficiary Information Rights), such distinction is irrelevant in the present context.
- As a general rule the internal memoranda and correspondence of an outgoing corporate trustee must be handed over to the successor. So too must all correspondence and memoranda between individual trustees.
- The outgoing trustee cannot claim to retain documents on the ground that their production would not assist the successor trustee in the administration of the trust. The successor trustee is the best judge of what will assist him.

As to the Londonderry exemption for documents concerning reasons for exercise of discretion, there is no good reason to apply that exemption since it is founded on the principle that trustees need not disclose their reasons to beneficiaries. However, it may well be relevant for the new trustee to be aware of the reasons for exercise by its predecessors of powers vested in the trustee.

The principles of Tiger have been considered in Jersey in the case of *In re Ogier Trustee (Jersey) Ltd* (2006) JLR Note 35. In that case, the Royal Court considered the position where there is delay on the part of the retiring trustee to provide the usual information and documents sought by the successor trustee, concerning the ownership of certain trust assets, in particular a company alleged to be 100% owned by the trust.

The Royal Court held that when the trusteeship was transferred, the retiring trustee had a duty to cooperate fully and actively, by making all relevant documents and correspondence available promptly to its successor, and by giving explanations to its reasonable questions. The obligation to disclose trust information undoubtedly extended to providing full information about an underlying company which was 100% owned by the trust. The successor trustee's requests for documents and information were reasonable and should have been met, especially in circumstances where the new trustee had a positive duty to establish for itself what assets were owned and to obtain the necessary evidence to prove that ownership, as well as gain control of the assets. Furthermore, the outgoing trustee's failure to provide the information and documents when requested was a breach of its fiduciary duty and it was therefore ordered to pay the new trustee's costs of the proceedings on an indemnity basis. The Court held that indemnity costs would normally be ordered in such circumstances as it would be unjust and unfair for the costs incurred as a result of a breach to fall on beneficiaries.

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