



Ogier's team of expert lawyers has a pedigree in local and cross-border trust dispute resolution, and we count as our clients a large number of the leading institutional and independent trustees, or fiduciary businesses.

## **Claims for breach of trust**

### **Duties of trustees under Guernsey law**

Though the general duties of trustees are set out in the Trusts (Guernsey) Law 2007 (**2007 Law**), this is not a codification of Guernsey trust law, such that trustees may have other duties in addition.

Trustees have an obligation to act with utmost good faith and "et bon pere de famille". This term derives from French customary law and has been held to be a duty to act as a reasonable and prudent trustee would act, that is with reasonable care and skill.

The Royal Court of Guernsey has dealt with numerous claims for breach of trust and a successful claim would require a trustee to personally reimburse any loss to the trust fund caused by the breach.

### **How long does a beneficiary have to bring a claim?**

Three years from the date of knowledge of the breach, unless for fraud, recovery of property/conversion, or if the beneficiary is a minor/under a disability. This is set down by statute. However, depending on the circumstances of the case, there may be exceptions to the three-year rule, particularly due to Guernsey customary law. This can be a complex area in respect of which legal advice should be sought.

## **What if I have issues with the way a trustee is administering the trust/exercising their powers?**

Disputes about the proper interpretation of the trust documents

Sometimes, disputes arise about the meaning of a trust document and it may be necessary to involve the Court. In this regard, Guernsey law follows English law, with the aim being for the Court to establish the presumed intention of the maker of the document from the words used, but construed against the background of the surrounding facts. The Royal Court of Guernsey can rectify or vary the trust in particular circumstances.

## Can a beneficiary request disclosure of information or documents from the trustee?

In short, yes. Beneficiaries sometimes wish to obtain certain information and documents from their trustee regarding the administration of the trust. Often, this can be for the purposes of investigating whether there are grounds to bring legal proceedings against the trustee for breach of trust, or to query a decision of a trustee. This can be an area where disputes arise.

If a trustee resists providing information or documentation, the beneficiaries can apply to the Guernsey Court for an order compelling them to do so. This may or may not be granted, depending on what is requested and the facts of the case.

## Hastings-Bass and Mistake Applications

Sometimes, it is possible and necessary for beneficiaries to revisit or challenge the exercise of a power by the trustee. Administering a trust is not always straightforward. For example, in certain circumstances, an exercise of the trustee's powers in a particular way may have tax consequences in more than one jurisdiction.

On application, the Guernsey Court has power to set aside decisions of a trustee and such power is often used to prevent adverse or unexpected tax consequences.

## Trustee applications to court

### "Blessing" of a momentous decision

Trustees often make applications to Court to "bless" decisions they have made which are of a certain magnitude – for example, if there are disputes between beneficiaries. A momentous decision has been held to be one that is of "real importance to the trust". As regards the test to be applied by the Court in approval, Guernsey law follows English law.

The effect of the Court blessing is to protect trustees from challenges to their decision and entitle them to an indemnity from the trust assets in respect of any costs or financial consequences of their decision. It doesn't matter that the Court, if in the shoes of the trustee, would have exercised its discretion a different way.

## Seeking Directions from the Royal Court of Guernsey

Under the 2007 Law, a trustee can apply to the Court for directions as to how they should or might act in any of the affairs of the trust. The Royal Court of Guernsey also has power under its inherent jurisdiction to grant declaratory relief.

There is also scope under the 2007 Law for various other parties, including beneficiaries, to apply to the Court in respect of various matters, including the execution, administration or enforcement of a trust, an order as to the exercise by a trustee of its functions, , the vesting, preservation or distribution of any trust property and the exercise by an enforcer of its functions. The Court's jurisdiction in this regard applies to foreign trusts as well as Guernsey trusts.

## **Removal and substitution of trustees**

It is sadly sometimes the case that there is a breakdown in the relationship between the beneficiaries and the trustee that can only be resolved by appointing a replacement trustee. There may be circumstances where a trustee is unwilling to resign voluntarily and it would then be necessary to seek the court's intervention.

Unlike in England, there are no specified statutory grounds for removing a trustee. However, the Guernsey Court has a wide statutory power to make orders in respect of trustees generally which includes the removal and appointment of trustees. It also retains such power under its inherent jurisdiction.

The main guide for exercising jurisdiction to remove a trustee is the welfare of the beneficiaries and the competent administration of the trust in their favour.

## **Enforcement of foreign judgments against Guernsey trustees and trust assets**

Certain judgments are enforceable in Guernsey on a reciprocal basis by virtue of statute. Outside of those, common law rules apply. The issue of whether a non-money foreign judgment is enforceable in Guernsey at common law has not yet been determined, and therefore an in-personam non-money judgment will usually be recognised and relied on in proceedings in Guernsey. However, the Court retains the power to decide whether to order a remedy and the form of such remedy.

## **Asset tracing and constructive trust claims**

A person who is not a trustee can be held liable as if they were so in certain circumstances – such as where they make or receive a gain, profit or advantage from a breach of trust.

In contrast to Jersey, the 2007 Law recognises that a constructive trust of Guernsey situated real property can arise. It is therefore likely, in appropriate factual circumstances, that the Guernsey court would find that a constructive trust over Guernsey immoveable property would arise.

## How Ogier can help

Our Dispute Resolution attorneys have a particularly strong track record, having successfully acted in many of the complex, high value headline international trust disputes and private client litigation matters in recent years British Virgin Islands, Cayman, Guernsey and Jersey trust law.

Our trusts disputes specialists work seamlessly with our non-contentious private client lawyers, and form part of Ogier's Trusts Advisory Group alongside corporate lawyers to offer support from all three disciplines.

To learn more about our services and about the key features of other jurisdictions, visit our [Trust Disputes page](#).