



Beneficiaries' right to information

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Ogier is sponsoring the current lecture series by STEP Guernsey for the local fiduciary industry. In the recent 'Disclose or be damned' lecture Penningtons explained the UK's position on how a trustee should react when beneficiaries ask a trustee for documents or information relating to the trust. The lecture analysed the recent judgement laid down in *Lewis v Tamplin* [2018] EWHC 777 (ch) where it was decided that whether or not a certain document was disclosable depended on whether the document contained advice taken by the trustee which is not paid for out of the trust fund and which only benefits the trustees or whether the document relates instead to advice obtained for the benefit of the trust and is paid for out of the trust fund. The key point to note from the decision is that the person who is paying for the advice, and the person who benefits from the advice, dictates who may be granted access to those documents at a later date.

In Guernsey, the statutory framework that governs this area is the Trusts (Guernsey) Law 2007 (the Law).

Section 26 of the Law creates a duty for trustees to keep accurate accounts and records of their trusteeship and provides that a trustee shall, at all reasonable times, at the written request of any beneficiary, provide full and accurate information as to "the state and amount of the trust property".

Subsection 26(2) addresses situations where the terms of the trust prohibit or restrict the trustees from giving any information relating to the state and amount of the trust property, providing that a trustee, beneficiary, trust official, or settlor may apply to the Royal Court for an order authorising or requiring the provision of information. For the court to make the order, it must be satisfied that doing so would be "necessary or expedient" for either:

- (a) the proper disposal of any matter before court
- (b) for the protection of the interests of the beneficiary
- (c) for the proper administration or enforcement of the trust

In the case of *Bathurst v Kleinwort Benson (Channel Islands) Trustees Ltd* 2003-04 GLR N [32] the judge stated that a beneficiary has the right to ask trustees to disclose information and documents about trust assets and administration, and that this right does not simply arise from the trustees' duty to keep accounts, but arises as a matter of principle. The Court went further to say that if it were to exercise its discretion to order disclosure of certain documents, it could do so even in favour of an excluded beneficiary, so long as the documents related to periods when the excluded person was a named beneficiary and a potential object of disclosure by the trustees.

Although the Court's interpretation of the Law (and its predecessor, the Trusts (Guernsey) Law, 1989) has favoured beneficiaries in their requests for information from trustees in the past, the Royal Court noted in *H.W. Trust Co. Ltd. V Cunningham* 2005-06 GLR 349 that information pertaining to the destination of assets (eg following the transfer of the trust's main assets into a sub-trust) would normally fall outside the ambit of the legislative provisions. Despite this, it was decided in *H.W. Trust Co.* that the information as to the destination should be disclosed as it "was required in order to ensure that the assets had been properly administered in accordance with the trust's terms". Therefore, in these circumstances, and in situations where the applicant has a sufficient connection to the documents with respect to which disclosure is requested, the court may favour disclosure even if the information in question falls outside of the ambit of the legislative provisions.

Section 38 of the Law states that there are certain documents, such as letters of wishes and documents that reveal the deliberations of trustees in exercise of their powers, which the trustee is not obliged to disclose. However, again this is subject to any court order which may be made if the court is satisfied that disclosure of such documents would be "necessary or expedient" for the purposes mentioned above at points (a), (b) and (c).

To conclude, a beneficiary of a Guernsey trust always has the right to ask for information pertaining to the trust, and the trustees always have the duty to keep accounts. However the trustee does not always have to give out information if it does not pertain to the state and amount of the trust property. The Court has the power to step in in contentious situations so as to supervise, and where necessary, intervene.

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