

## Change of trustees in Guernsey – What documents do outgoing trustees have to provide?

Service area / [Trusts and Private Wealth](#)

Legal jurisdiction / [Guernsey](#)

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On the back of recent advice to outgoing trustees, and based on the 2017 decision of the Royal Court of Guernsey in *Rawlinson & Hunter Trustees v ITG Limited*, set out below is a reminder of the law relating to the obligations of an outgoing trustee to hand over documents to the incoming trustee.

The starting point is that the incoming trustee must be put into the same position as the outgoing trustee and have all documents and materials that the outgoing trustee has that relate to the current and future administration of the trust.

There is no prescribed list of what an outgoing trustee must provide but, in principle, the incoming trustee is entitled to “all records, books and other papers belonging to the trust.” It may not always be clear which records in the hands of the outgoing trustee “belong to the trust” or in what circumstances an outgoing trustee can be required to provide copies of records which may not belong to the trust. However, *Lewin’s* summary suggests that, not only are instruments, minutes, financial statements and the like to be disclosed, but also “internal memoranda” of corporate trustees and correspondence files may also be required.

If the incoming and outgoing trustees disagree about what must be provided, the court must decide following an application by the new trustee for delivery up of documents. The court will expect that the outgoing trustee has cooperated “fully and actively” with the incoming trustee by providing all relevant documents within the realms of what is reasonable. The court can determine what documents are relevant and may also qualify the requests to ensure they are proportionate e.g. in some cases the outgoing trustee has not been required to provide documents that in another instance it was required

to provide; for example, where the value of the trust fund did not warrant the anticipated expenditure of making the documents available.

The court will have regard to the purpose for which the incoming trustee says it needs the documents when making its decision and, if the new trustee already has enough information to administer the trust properly including understanding decisions made previously and being able to confirm the former trustee acted properly, then the court is unlikely to require further documents to be provided. The incoming trustee must be able to demonstrate to the court why it needs the documents and why disclosure is in the best interests of the beneficiaries – mere interest will not suffice. There must be a “proper purpose” in seeking the disclosure and Jersey case law suggests that an incoming trustee trying to second guess a decision of a former trustee will not be a proper purpose. However, seeking to ensure that trust funds have been properly and reasonably spent on advice will be e.g. that the advice was obtained in the best interests of the beneficiaries.

It is noteworthy that, if an incoming trustee considers, some period of time after it is appointed, that it needs information from the former trustee it can also ask for documents to be made available. In *Rawlinson & Hunter*, the now Bailiff accepted it was appropriate in “the overall context” for the incoming trustee to have brought a second application for access to documents and for the court to grant that application even though it was nearly seven years since the change of trustee and over five years since the first application for delivery up of documents had been determined.

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An outgoing trustee is also entitled to be reimbursed its reasonable costs of providing records, books and other papers to the incoming trustee. Additionally, electronic copies may suffice and very few original documents such as trust instruments, financial statements and letters of wishes will need to be provided. Furthermore, the outgoing trustee will owe duties under the Data Protection (Bailiwick of Guernsey) Law, 2017 in respect of individuals' data.



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