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Trustee gross negligence and trust assets: Guernsey Court of Appeal considers the scope of gross negligence for a trustee and whether a chose in action is trust property

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The Trusts (Guernsey) Law, 2007 (**Trusts Law**) confirms that the terms of a trust may not relieve a trustee of liability for a breach of trust arising from its own gross negligence. Trustee gross negligence therefore sits at the sharp end of fiduciary responsibility, marking the point where mere mistakes give way to a serious dereliction of duty and loss of the ability to rely on protections such as exoneration clauses.

For trustees, understanding what constitutes gross negligence – and how courts assess it – is essential, not only to manage liability but to uphold the standards expected of modern trust administration.

Pilatus (PTC) Limited v RBC Trustees (Jersey) Limited [2025]GCA091

On 23 December 2025 the Guernsey Court of Appeal delivered its judgment in *Pilatus (PTC) Limited v RBC Trustees (Jersey) Limited [2025] GCA091* focussing on two key points:

i. the classification of contractual options (or a chose in action) as trust property; and
ii. consideration of the scope of trustee gross negligence.

Facts

RBC Trustees (Jersey) Limited (**RBC**) was trustee of the Shallan Trust (**Trust**), which indirectly owned Shallan Overseas Limited (**SOL**). At the heart of the case lay a 2011 restructuring of a joint venture arrangement in which the Trust had an interest.

At the time of the restructuring, to protect the Trust's position, the trustee arranged a Put and Call Option Agreement (**Option**) in favour of SOL and retained its in house corporate officers on the boards of Trust related entities, Primefuels Investments Limited (**PIL**) and Primefuels Holdings Limited (**PFHL**).

The entities involved in the joint venture arrangement, including PIL and PFHL, ceased to be directly or indirectly owned by the Trust or its subsidiaries, leaving only the interest in the Option as a Trust asset and a level of control by way of the directorships of PIL and PFHL.

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RBC retired as trustee of the Trust on 30 October 2015. When RBC resigned, RBC's corporate officers concurrently resigned their appointments from the boards of PIL and PFHL. The intended replacements on the boards of PIL and PFHL failed due to a consent impasse and an inquorate board meeting.

The Claimant/Appellant, Pilatus (PTC) Limited (**Pilatus**), is the current trustee of the Trust. Pilatus argued that RBC was grossly negligent in instructing its related group entities to resign from directorships and other roles in the structure without ensuring that the intended new directors (and others) were validly appointed. This allowed the other joint venture party to seize control of the interests in the Option, which led to the Trust's interests diminishing in value.

The Royal Court dismissed Pilatus's claim for gross negligence at first instance because the relevant companies, including PIL and PFHL, were not held in the Trust when RBC retired.

The Royal Court considered that the overarching trustee duty to act *en bon père de famille* runs only in respect of trust property, it does not extend to managing non-trust assets simply because their fortunes may affect the value of trust assets. Since the companies were not held as part of the Trust fund at the relevant time, no fiduciary duty in respect of them (or their boards) applied to RBC as trustee. Pilatus's claim therefore failed.

Is a chose in action trust property?

Pilatus appealed the Royal Court's decision on the basis that the rights under the Option, being a chose in action, mean that the related company should be regarded as 'trust property'. Had the Bailiff found this at first instance, he would have found in favour of Pilatus's claim of gross negligence.

The Court of Appeal ultimately found that 'property' expressly includes any 'thing in action,' and that pursuant to section 7 of the Trusts Law 'any property may be held on trust.' From this premise, the Option was deemed to be a chose in action and Trust property.

What are a trustee's duties in respect of an asset such as the Option?

The Court of Appeal concluded that the duty of a trustee is not purely 'do not dissipate the chose' – it is 'take all prudent steps to safeguard the chose'.

The Court of Appeal cited *Elder's Trustees v Higgins (1963) 113 CLR* that trustees owe duties in respect of options and if trustees can be liable for failing to exercise an option then may also be liable for allowing grossly negligent conduct that foreseeably undermines an option's value.

The Court of Appeal stressed that trustees are not insurers of value and that a trustee's positive duty to act to protect the value of a chose in action arises only if:

1. the trustee's power or influence can realistically affect outcomes;
2. the steps required to protect the value is proportionate; and

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3. there are no legal or practical barriers rendering any action futile or disproportionate.

Commentary on test for gross negligence

It is worth noting that at first instance, the Bailiff considered that the test for gross negligence to be applied in Guernsey should follow that in the Red Sea Tankers [1] case, being:

'a serious or flagrant degree of negligence, more fundamental than failure to exercise proper skill and / or care constituting negligence, and capable of embracing not only conduct undertaken with actual appreciation of the risks involved, but also serious disregard of or indifference to an obvious risk.'

The Court of Appeal concluded [2]:

'*The duty to take prudent steps is not absolute or open-ended.* ***Trustees are not insurers of the value of trust assets and are not required to take extraordinary or unreasonable steps*** *— including embarking on contested litigation or indefinite delay of resignation — especially where legal, practical, or third-party barriers exist.* ***What is required is to act reasonably****, including making diligent attempts to secure replacements, to inform affected parties of the need for prompt action, and (importantly) not to create a vacuum by precipitous resignation when foreseeable harm is likely.* ***Failure to take these precautionary steps may amount to gross negligence depending on the facts, but this must be assessed in light of the options realistically available to the trustee. The answer will be intensely fact-dependent.***'

The Court of Appeal also addressed that, although the trust instrument in question excluded the trustee's statutory duty to preserve or enhance the value of trust assets, it did not restrict the trustee's duty to act *en bon père de famille* and any failure to act *en bon père de famille* would have been grossly negligent, which is actionable. Therefore, excluding a duty to preserve value cannot be used to exclude liability for gross negligence.

On the premise that the Option was trust property and that the trustee retained practical means to protect its value, the Court upheld the Bailiff's evaluative finding that the trustee's coordinated resignations without ensuring effective replacement directors at PIL and PFHL amounted to gross negligence. The Court held that the trustee's duty regarding the Option also included taking reasonable steps to secure replacements.

Accordingly, Pilatus's appeal was allowed and the case was remitted to the Royal Court for a trial on causation and quantum.

Key takeaways for trustees

For trustees, the takeaways are practical and immediate:

- First, a contractual option (or a chose in action) held within a trust is trust property which requires prudent management to protect its value. Trustees should therefore consider interests, such as options, to be trust

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property and deal accordingly.

- Second, where group structures are designed to preserve influence over downstream companies, trustees should not resign or permit coordinated corporate officer resignations without ensuring replacements (particularly when a trust asset's value depends on maintaining balance at board level).
- Third, while certain statutory duties can be expressly disapplied in trust instruments, the limitations do not excuse gross negligence in discharging trustee's overarching duty to act *en bon père de famille*.

[1] Red Sea Tankers Ltd v Papachristidis (The Hellespont Ardent) [1997] 2 Lloyd's Report 547

[2] Paragraph 75

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