

Private Client eBriefing

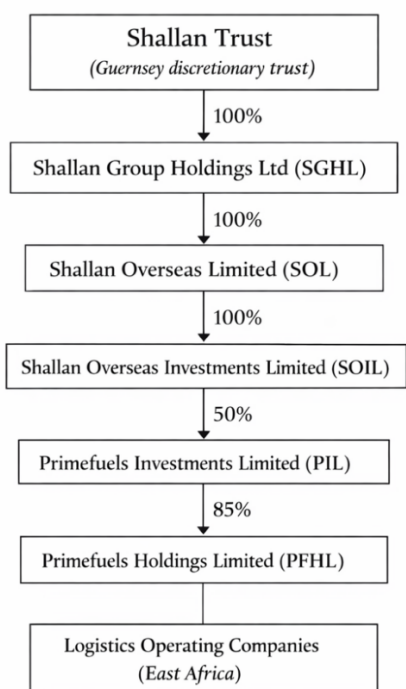


When do trustees have a duty to act in relation to non-trust properties?

Article by [Zihang Liu](#), 2nd February 2026

1. It is well known that in *Bartlett v Barclays Bank Trust Co Ltd* [1980] Ch 515, Brightman J held that where a trust holds a controlling shareholding in a company, a trustee cannot stand idly by, but should take such steps as are necessary to safeguard the trust's investment, including by intervening in the company's affairs (and subject to any express contrary provision in the trust instrument). In *Pilatus (PTC) Limited v RBC Trustees (Jersey) Limited* [2025] GCA 091, the Guernsey Court of Appeal has recently had the opportunity to consider a related, albeit distinct, question: to what extent is a trustee required to take action in relation to a company not itself owned by the trust, but whose affairs may materially affect the value of trust assets?
2. RBC Trustees (Jersey) Limited ("RBC"), the Defendant, was the trustee of a Guernsey discretionary trust known as the Shallan Trust. The Trust held shares in Shallan Group Holdings Ltd ("SGHL"), which wholly owned Shallan Overseas Limited ("SOL"). SOL in turn wholly owned Shallan Overseas Investments Limited ("SOIL"), which held a 50% interest in Primefuels Investments Limited ("PIL"). PIL owned 85% of Primefuels Holdings Limited ("PFHL"), which operated logistics businesses across East Africa.
3. RBC's wholly owned in-house service companies (RBC Directorship and RBC Corporate Services) acted as board members for both PIL and PFHL.





4. In February 2011, SOL sold SOIL to a Mr Hanif Somji, a beneficiary of the Shallan Trust. The sale was effected to enable Primefuels Kenya Ltd (a wholly owned subsidiary of PFHL) to obtain commercial funding without the need to provide due diligence in respect of trust beneficiaries. The transaction expressly contemplated a right of reacquisition: in July 2011, SOL and Mr Somji entered into a put and call option agreement under which SOL had a right to repurchase SOIL within a specified window. As a result of the sale, SOIL, PIL and PFHL ceased to be directly or indirectly owned by the Trust or its subsidiaries.
5. Around October 2015, RBC resigned as trustee of the Shallan Trust. At the same time, RBC coordinated the resignation of its subsidiaries from their directorships and secretary roles at PIL and PFHL. However, the proposed replacement appointments failed, either for lack of the requisite consents or because the appointing meeting was inquorate. The Shallan Trust therefore lost control of PIL and PFHL.
6. Pilatus (PTC) Limited, the current trustee, alleged that RBC was grossly negligent.
7. At first instance, the Bailiff held that the complaints of gross negligence failed because SOIL, PIL, and PFHL were no longer trust property following the sale of SOIL, and RBC owed no trustee duty to act *en bon père de famille* (pursuant to section 22(1) of the Trusts (Guernsey) Law 2007) as regards board appointments for those companies. Nevertheless, the Bailiff opined that if he were wrong in that conclusion,

RBC would have been grossly negligent, in convening an inquorate meeting at PFHL and resigning without safeguarding the Trust's interests.

8. The Court of Appeal unanimously overturned the Bailiff's decision and provided welcome clarification of a trustee's duty to act in relation to assets not directly owned by the trust but which are sufficiently connected to it as to be capable of affecting the value of trust properties.
9. The Court of Appeal first held that the put and call option was a chose in action and therefore property capable of being held on trust ([33]). On that basis, any act by the trustee which imperilled the value of the option would cause loss to the trust, and this was a risk which the trustee in this case recognised ([33]-[37]).
10. The more difficult question was whether the trustee was required to take positive steps to safeguard assets to which the chose in action related, but which were not themselves trust property, including downstream actions to prevent erosion of the value of the option's underlying companies.
11. The Court of Appeal took a purposive approach and held at [48] and [51] that a trustee's duties will in certain circumstances extend to taking actions in respect of non-trust properties to safeguard the value of trust assets:

"If the trustee knows, as here, that the value of the trust's chose in action is integrally bound up with board control of downstream entities, and that only a prudent handover will prevent that value vanishing or being diluted, then to do nothing (and actively permit a known risk to materialize) seems at odds with the irreducible core obligation of prudent stewardship of all trust property – even non-physical, contractual assets.

[...]

the trustee's duty regarding trust property includes rational, necessary steps to safeguard its value – even if those steps require action affecting property no longer directly held, when the connection is clear, foreseeable, and wholly or substantially within the trustee's practical control"

12. The Court of Appeal however was also anxious to caution that *"in many cases, imposing duties with regard to non-trust assets would be unprincipled and unworkable."* ([52]). The linchpin is whether the trustee was in fact able to take steps to safeguard the value of trust assets by acting in relation to non-trust property. The Court of Appeal said at [55] and [56] that:

"A trustee considering an Option to purchase assets over whose value he has no control or influence whatsoever, or where he could not reasonably foresee that action or inaction on his part would have an adverse effect, is highly unlikely to be vulnerable to a charge of negligence of any sort

[...]

A key factor is thus that of control or influence [...] A trustee's positive duty to act in relation to non-trust property to preserve the value of trust assets (such as the Option) only arises where: (a) the trustee's powers or influence are sufficient to realistically affect the outcome, (b) it is reasonable and practical for the trustee to take such steps, and (c) there is no legal or third-party obstacle that would render prudence or action futile or disproportionate."

13. On the facts of the case, the Court of Appeal held that the Bailiff was entitled to find that RBC acted with gross negligence. The Court of Appeal concurred that *"the manner, urgency and lack of care in the handover, particularly the inquorate PFHL board meeting and the unconditional/precipitous resignations from both companies, without replacements, can easily be described as gross negligence in the professional context"* ([65]).
14. The trustee's duty to act *en bon père de famille* was therefore not discharged by just holding the option, in circumstances where it had practical means to safeguard the Trust's economic interest in the option by taking actions in relation to the downstream companies notwithstanding that they were not trust assets.
15. Finally, the Court of Appeal was careful to emphasise that whether a trustee is required to take action in relation to non-trust assets is an intensely fact-sensitive question, turning on the circumstances of each case ([75]).
16. *Pilatus (PTC) Limited v RBC Trustees (Jersey) Limited* consequently provides welcome clarification on the scope of a trustee's duties in relation to trust assets whose value depends on property not itself held on trust. A trustee may be required to act in relation to non-trust properties where the connection to trust value is clear, and those properties are within the trustee's practical control.
17. For professional trustees, the case is an important warning that precipitous resignations, poorly managed handovers, or failure to address obvious risks to the value of trust assets may expose them to liability, even where the risks arise from assets that are no longer owned by the trust.

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