The recent judgment of the Royal Court in the case of Re RBC Trustees (Guernsey) Limited [2017] JRC 135 will be of interest to trust company businesses, insofar as it contains a helpful reminder that a trustee may not be able to relinquish its position as a trustee, even though it wishes to retire.

The case involved an employee benefit trust established under the law of England and Wales. The Trustee was incorporated in Guernsey but, as the trust had been administered in Jersey since 2008, the Royal Court had jurisdiction to entertain the application brought by the Trustee.

The Trustee sought an order of the Court that it be re-appointed as the trustee of the trust. The reasons for this application were somewhat unusual.

In essence, the Trustee wished to retire from its position. It was permitted under the terms of the trust instrument to do so if it gave not less than 30 days' notice in writing to the company for which the employee benefit trust had been established. The company had the power to appoint new or additional trustees.

The Trustee was advised that, if no new trustee had been appointed after the expiry of the 30 day period, the trustee would continue to hold the assets on the same trusts, save that it could not take any action as an active trustee.

The Trustee therefore resigned, but the company did not appoint any replacement trustee and was subsequently dissolved, leaving no entity who could exercise the power to appoint a new trustee.

The Trustee accordingly found itself in the position of holding the trust assets subject to the custodial obligations of a trustee, but without the powers and discretions conferred by the trust instrument. The Trustee therefore applied to the Court seeking an order that it be re-appointed as trustee of the trust.

The Court was sympathetic to the Trustee's situation and granted the order sought, noting that with some 180 beneficiaries, it was of "first importance" that a trustee be appointed. It is apparent that the Court considered that the Trustee was acting as a responsible trustee by taking steps to ensure that the trust could be properly administered (notwithstanding that it had already retired). The Court awarded the Trustee its costs for the application on the usual trustee basis, which is the highest level of recovery that may be made.

This case highlights that a sole trustee's duties may not conclude upon the trustee's retirement from office. If a sole trustee wishes to retire then, even though its ability to retire may not be fettered under the trust instrument or otherwise, it should still consider whether the person with the power to appoint a new trustee has made arrangements to exercise that power. Otherwise the retiring trustee risks being left in the limbo of (i) holding the trust assets in a fiduciary capacity; (ii) being unable to exercise the powers and discretions of the trust; (iii) remaining accountable for the trust property and income; and (iv) remaining the person to whom notices concerning the trust can be validly served.

Even if a trustee has the power to retire, it will ultimately be a rare case where it would be advisable to assume it is reasonable to leave the issue of the appointment of a successor trustee open at the time of retirement, given the potential for disorder and possible allegations, at the suit of beneficiaries, that the

administration of the trust has been left to run aground.