Book Review
A Practical Guide to the Transfer of Trusteeships
Edward Buckland

I shall start this review with what some might seem to be a remarkable assertion. In my view, *A Practical Guide to the Transfer of Trusteeships* is the most relevant and, therefore, important work in the whole area of trusts and trusteeships.

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So, how can I possibly make such a bold assertion? Put quite simply, the area of law and practice concerning the transfer of trusteeships is one that is hugely important to all professional trustees and those that advise them. The reality of life for a professional trustee is that the vast majority of ‘new’ business they receive these days, actually comes in the form of what might euphemistically be described as ‘previously enjoyed’ trusts.

It used to be the case that a trustee was for life, now it is quite often the case that the trustee does not even make it to Christmas. It is far from unusual to see trusts that are yet to celebrate their 10-year anniversary but are already on their third set of trustees. Add into this mix the fact that trust companies are still being bought and sold freely, obviously, when the trust company itself is sold this is not a case of a change of trustee but if there is a sale of the business (not the company) and trusts are transferred on an individual case by case basis, then of course another change of trusteeships occurs.

Finally, there are more and more cases of distressed trust companies which, for one reason or another, can no longer continue in business and, given the lack of a public trustee in most offshore jurisdictions, again this can give rise to a transfer of a trusteeship.

All in all, therefore, the subject of the transfer of trusteeship is one that is extremely close to the hearts of all those who practice in the world of trusts.

And it is fair to say that it is also an area that causes settlors and beneficiaries and those that advise them a huge amount of angst. As all of the above will be aware, you can generally rely on the transfer taking months not weeks and that is with a fair following wind.

It was, therefore, extremely welcome when in 2007 STEP launched the first edition of a Practical Guide to the Transfer of Trusteeships, so that order might be brought where chaos reigned.

Some 10 years later, we now welcome the third edition of this must have tome.

Back in 2007 one of the avowed wishes of the esteemed editors of this guide was that the precedents and, in particular, those clauses relating to indemnification, might be widely adopted in the various jurisdictions the book covers. So has this been successful?

In this reviewer’s opinion, the answer is a clear unequivocal ‘yes’. Time and time again, one sees correspondence along the lines of ‘this indemnity is based...’
on the STEP precedent and, therefore, will be entirely acceptable to you’. It is true to say, therefore, that the precedents in this volume are being extremely widely used.

Have they entirely removed the tedious negotiation and arguments over such provisions? No, but they were never going to. They have, I would suggest, however, shortened those processes and made that element of the transfer more time efficient. So, from a macro point of view this work has already achieved a great deal in a relatively short time.

But let us turn to the volume itself. As those who have seen previous editions will be familiar, the book starts with a general introduction and coverage of various issues under English Law Trusts. These include discussions of the statutory and express powers of removal and appointment, contentious issues and indemnity insurance. All very practical and clearly set out. The trustees lien is also addressed with admirable brevity, although historically the existence of the equitable lien in some jurisdictions has been the subject of debate/discussion.

There are then a series of jurisdictional chapters where the same issues are addressed. This consistency of approach is admirable and only diverted from where absolutely necessary (the USA). Finally, we have the precedents which are perhaps the jewels in the crown of this particular tome. As mentioned above, they have begun to become the standard form precedents for the profession. That is a testament to their quality.

So what is new? I thought it would be interesting to compare the third edition with the first edition which was, of course, published 10 years ago. As one might expect, the format remains the same because, after all, if it ‘ain’t broke don’t fix it’ and this is particularly true of the section which sets the agenda, Section 2—the chapters on English Law Trusts.

What we can see, however, is that the core jurisdictions from the first edition remain but have been added to by the inclusion of both New Zealand and the USA. Both, in their own way, are extremely interesting additions. New Zealand has become increasingly relevant to the International Trust Practitioner, as has been seen in a number of recent leading cases where the use of New Zealand Trusts by foreigners to New Zealand has been highlighted.

The inclusion of the USA chapter is fascinating not least because the entire process of retirement and appointment, there is so dramatically different from the other jurisdictions in the book that there is no call even for a precedent given the nature of the process they follow. The whole USA chapter, therefore, stands in dramatic juxtaposition to the 12 that precede.

The only other change that I would comment on is that in spite of the fact, there would appear to be only two additional chapters for the USA and New Zealand and, therefore, one additional precedent, it is also interesting that the original first edition ran to some 366 pages while this version comes in at a whopping 447 pages just showing how much more there is to be said on these issues 10 years down the line.

Is there anything that could be added? This reviewer would like to see more coverage of the issues involved in the inspection and transfer of trust documents but most specifically what can and should be studied before one takes on the trusteeship and not necessarily just what one receives once one has become trustee.

This is still an extremely difficult and cumbersome process between most trustees. Whilst there is general acceptance of what one will get once one is in the seat, that of course is all rather ex post facto. There are still many cases where the trusteeship is being considered and the outgoing trustee is extremely reluctant to provide documentation that the incoming trustee really needs to assess the risk, or otherwise of assuming the trusteeship. In some cases, the settlor or some of the beneficiaries may have this documentation but where it rests only with the trustee, then this author has seen many cases where that trustee has been extremely reluctant to cooperate. Given the importance of this area in the practical administration of trusts, some extended commentary upon that would be useful.

Another point that would be worthy of exposition is how far an outgoing trustee needs to investigate the ‘suitability’ of the replacement. This can include matters such as regulation, fit and proper purposes test,
insurance or otherwise deep pockets, track record, and experience in trust matters. This is an increasingly interesting subject.

In conclusion, it was indeed a propitious day when the first edition of a Practical Guide to the Transfer of Trusteeship was published 10 years ago. Ten years on, the third edition is equally welcome and the consulting editors are to be commended for the truly transformative work they have done in this area which every day is of assistance to a trustee or their advisers somewhere in the world of trusts.

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