

A Guide to Trustees' Duties



Being a trustee is a position of personal accountability and responsibility and therefore, before accepting this role, you should have an understanding of what can be involved. We have put together this simple guide outlining some of the key issues to be aware of.

What does a Trustee do?

A trustee is the legal owner of assets (i.e. cash, investments, property etc.) who has been appointed to administer the trust for the benefit of a third party - known as the beneficiary(ies). In some circumstances an individual may be both a trustee and a beneficiary. The trust deed will set out the terms of the trust and it is important for a trustee to familiarise himself with who can benefit and when to ensure he is acting within his powers at all times. Where there are differing interests in the trust, it is essential that the trustee acts impartially.

Who can be a trustee?

Anyone over the age of 18 can be a trustee providing they have mental capacity. A trustee has a statutory duty of care towards beneficiaries and at all times must exercise reasonable care and skill. A professional such as a solicitor or accountant acting as a trustee will have a greater duty of care by virtue of their enhanced knowledge and expertise.

It is unusual for a trustee to act alone due to complications that can arise should the appointed trustee become incapacitated or die. More commonly two or three trustees will act together.

Personal Liability

A trustee must act in the best interests of the beneficiaries at all times and it should be noted that trustees can be held personally liable for their actions. If they act outside their powers or in breach of trust they may have to make good any loss to the beneficiaries out of their own funds.

As a result of the personal liability, it is important for a trustee to demonstrate that he has complied with the trustee duties.

The main duties of a trustee include:

- To act in good faith
- Not to make a profit out of the trust
- Not to put himself in a position where there is a conflict of interest
- Not to act for his own benefit
- To be accountable to the beneficiaries
- Not to misuse confidential information
- To ensure that all legal reporting requirements are complied with

In order to be accountable to the beneficiaries at all times, it is essential for excellent records to be kept. As part of this, accurate accounts should be maintained and available for inspection upon demand by the beneficiaries.

Duty to invest

The Trustee Act 2000, ('the Act') set out new general powers of investment for trustees. A trustee is entitled to make any kind of investment as if he were absolutely entitled to the assets of the trust subject to safeguards known as the standard investment criteria.

In short, these standard investment criteria, as set out in 'the Act' are:

- To ensure the suitability of the investments proposed or retained by the trustees and
- So far as is appropriate, consider the need for diversification of the investments of the trust

According to 'the Act', trustees must obtain and consider 'proper' advice both prior to an investment being made and when reviewing the assets already held. The only exception is if the trustee can conclude that in all circumstances it is unnecessary or inappropriate to do so and it is difficult to foresee many situations where this exception would apply.

'Proper advice' as defined in 'the Act' is the advice of a person who is reasonably believed to be qualified to give it by ability and practical experience.

It would be prudent to establish an investment strategy for the trust and for both the strategy and performance to be reviewed on an annual basis, making revisions for any changes in the beneficiaries' circumstances. It would also be wise to ensure the review and actions are recorded to help demonstrate that the trustees have acted reasonably.

Documentation

It is recommended that trustees take notes of all meetings (minutes) to document **all decisions** they have made to help to prove that they have actively been involved in managing the trust and complied with their duties should any decisions be questioned at a later time by an interested party.

How can we help?

The Private Office has a wealth of experience advising trustees on their investments and working with them to ensure they are fulfilling their duties. As well as providing financial planning advice and asset management services for our trust clients, we can also provide an independent view of portfolio performance when benchmarked against market averages.

If you would like to know more about our services to trustees, please contact us on **0333 323 9060** or email enquiries@theprivateoffice.com.

This document is intended as a guide of some of the key issues of becoming a Trustee and not a comprehensive list of all the implications the Trustee position holds.

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