



Trust Administration – a short guide

Section 1 – Trusts and Trustees

What is a trust?

'A trust' is a relationship that is recognised and enforceable in the courts. It can be created by a person's Will or set up during their lifetime. Named trustees will be directed to look after the assets placed in the trust, and use those for the benefit of the trust beneficiaries. It is a way of protecting assets while still allowing others to benefit from them.

What must the trustees do?

The trustees must look after the money and assets transferred to them by the settlor (which becomes the 'trust fund') for the benefit of other persons (the beneficiaries). In some cases there may be just one trustee and one beneficiary but the sole trustee cannot be the sole beneficiary or else there is no trust relationship.

How must the trustees act?

When the trustees are appointed they agree to act in the interests of the beneficiaries and not themselves. This is why it is called a 'trust'. They are entrusted to look after the trust fund for the beneficiaries.

The beneficiaries can benefit in the ways set out in a document (the trust deed or Will). Some trusts are imposed by law and do not need a trust deed but most deliberately created trusts should have a trust deed to make sure all the terms are clear.

The trustees may be required to give special consideration to one main beneficiary and give their interests priority even if there are other beneficiaries.

Who should not be a trustee?

- Any person under 18. It may also be too much responsibility for younger people over 18.
- Undischarged bankrupts and those with voluntary arrangements with creditors.

- People with current money troubles or with a history of money troubles.
- People in prison or who have or may soon be convicted of offences involving dishonesty.
- People with a conflict of interest with the beneficiaries in the trust.
- People with serious health problems who may be unable to fulfil their duties at any time.
- People who live outside the UK or may do so.
- People who are in any way concerned they might be unable or unwilling to fulfil their duties as trustee.
- Ideally the beneficiaries and settlors should not be trustees.

It is usually considered wise to have a combination of family and experienced professionals as trustees.

What are the powers of the trustees?

The trustees have certain powers over the handling of the trust fund. These are set out in the trust deed. Trustees do not have any power to go beyond the terms of the trust deed unless they are included within the general law.

Most things a person would want to do with their own money can be done by the trustees for the benefit of the beneficiaries. For example they can, upon taking appropriate advice, open and operate a bank account, invest money, buy and insure property and purchase help and assistance for the beneficiaries.

Trustees may sometimes need to take legal advice. That is funded by the trust fund and not from their own pockets unless the trustees do something wrong. That is called committing a 'breach of trust'. Trustees are liable for losses due to 'breach of trust' out of their own pockets, so taking legal advice is important. Trustees can also obtain help from accountants, for example in filling in tax returns, and from other professionals as required. Again, that is at the expense of the trust fund so far as it is necessary to the smooth running of the trust.

What are the duties of the trustees?

A trustee must:

- Disclose any circumstances where they might have a conflict of interest with a beneficiary. For example if a beneficiary owes a trustee money this should be disclosed.
- Not act in conflict with the interest of the beneficiaries or profit from their role as trustee.
- Ensure they know what the terms of the trust are and that they are carried out.
- Ensure that they do not act beyond the terms of the trust and its powers.
- Ensure that good trust records and accounts are kept and pay tax due on time.
- Take independent financial advice. This does not preclude the use of common sense. The trustees must also ensure that the advice taken is in accord with the Trustees Act 2000. The ultimate decision over what to invest in is the trustees' decision. It cannot be delegated.
- Act impartially and fairly between any multiple beneficiaries and those who are beneficiaries now and those who will be in the future. This is the general rule but in some trusts one person will be expected to be the main beneficiary for life. This will be clear in the trust document and allowed for under the powers of the trustees.
- Take reasonable care. Professional trustees must take more care than others.
- Act jointly. Trustees should not normally delegate functions to each other. Trustees are jointly liable for mistakes and should therefore act together.
- Not charge. Only professional trustees can claim more than out of pocket expenses.
- Ensure the beneficiaries are kept fully informed. This avoids disputes.

Section two: Common Questions about Trust Administration

What about tax?

Most trusts will be subject to tax while they hold assets. The tax treatment of trusts varies according to the type of trust, and how it is set up.

The person creating the trust (the settlor) may have to pay inheritance tax or capital gains tax when transferring money or assets into the trust.

The trust itself may have to pay inheritance tax, capital gains tax or income tax, and in the case of property purchases, stamp duty land tax.

Beneficiaries receiving trust income may also be liable for tax on this.

The trustees are responsible for making sure that all tax due is declared and paid. We can advise on this, or refer trustees to accountants if the tax is complex. Trustees can be held personally liable if they do not submit tax returns on time.

What about investment of the money while it is in the trust?

Trustees have statutory investment powers under the Trustee Act 2000 but often these are extended by the trust document. Often they will have power to invest the money as they see fit but the trustees must take independent financial advice which we can arrange through a special authorised party arrangement with an independent financial adviser. We do not accept commission for the introduction.

We cannot and do not advise on investments ourselves. We are happy to work with the financial adviser to ensure the tax and administration issues are dealt with properly. This joint work is important.

Can the government change the rules?

The government can change tax rules and trust laws at any time.

Many changes can be accommodated within a professionally drawn up trust but the trustees should obtain legal advice if they are unsure of the implications of changes.

What happens if a trustee dies, or doesn't want to be a trustee any more?

The trust can continue to be administered by one surviving trustee, but we would recommend that a replacement trustee be appointed so that there is always a minimum of two trustees.

If a trustee wants to retire from the trust, they may need to find a replacement so that there are still two trustees. We can prepare the relevant documents needed to deal with changes of trustees.

Our continued help.

We have a specialist trust department and can provide advice on trust creation, implementation and administration. You can contact us at 52 Broad Street, Bristol, BS1 2EP or on 0117 929 2811.