

Guide to what a trustee is and does

► Introduction

A trust enables a testator to give a gift to beneficiaries without giving up control of it. The beneficiaries only receive the gift according to the testator's wishes. The testator sets up the trust, provides the property (called the "trust fund") to be held in it, and appoints trustees to manage the trust for the beneficiaries; a duty that includes making claims against the trust and investing money paid out as a result, if appropriate. Thus, it is evident that the role of trustee is the most important one in a trust, with both powers and responsibilities that you must understand.

► Duties of a trustee

As a trustee, your job is to manage the trust fund for the beneficiaries and, in general, in their best interests. It is important that you read the trust form to understand both the powers and duties you have been given. Your actions are constrained by the terms of the trust and the law governing trusts. If the beneficiaries do not believe that you are acting in their best interests or within the terms of the trust, they can take legal action against you.



You have wide powers, as if you were the absolute owner, to invest the trust fund. There is a statutory care of duty, however, to ensure that you do so responsibly. For example, if one beneficiary is to receive the income from the trust, while another is to receive the capital, you must invest impartially. If you invested in such a way as to produce no income, the first beneficiary could take legal action to force you to invest differently.

You must get proper investing advice, unless it is unnecessary or inappropriate. This would be the case if the cost were greater than the benefit, or if you were yourself already qualified to provide such advice.

You must see to it that any debt owed to the trust is recovered. For example, if a beneficiary was given a loan from the trust, but you took no steps to ensure it was repaid, you might be in breach of trust, and another beneficiary could take legal action against you to recover the resulting loss from the trust.

You must keep records of your decisions and actions to be able to prove you are managing the trust properly. Records must be kept of investment changes affecting the trust fund, payments or loans to a beneficiary, and proof of professional advice for investments or the like. Trust accounts should also be prepared.

You must not personally profit from the trust. For example, if you are a solicitor, you cannot arrange it so your firm receives extra work.

Questions and answers

▶ Who can be a trustee?

A trustee must be at least 18 years old (16 in Scotland) and be mentally capable of managing other people's money. They should also have a prior record of sound financial decisions. The testator is automatically a trustee in many trusts in order to help manage it, if desired, while alive.

▶ Can a trustee be a beneficiary as well?

This is possible, but can lead to a conflict of interest. There is a danger that the trustee/beneficiary may try to influence the other trustees to act for their unfair advantage.

▶ What is the optimum number of trustees?

It is strongly recommended that there be at least one in addition to the testator (mandatory in Scotland), otherwise there will be a delay for probate if the testator dies. While there is no official upper limit, more than three or four is likely to be cumbersome, as you must obtain the signatures of all trustees before taking any action.

▶ Can I cease being a trustee?

If you are the sole trustee, the testator must first select a replacement for you. If there are multiple trustees, in England and Wales, the other trustees must agree with your decision; this is not required in Scotland. You can still be responsible, even after you retire, for your actions as a trustee.

▶ Do all trustees have to agree to an action?

In England and Wales, the general answer is yes, while in Scotland, only a majority is necessary. However, a trust may stipulate otherwise.

▶ Can I be removed as a trustee?

In the following circumstances, you can be removed against your will:

- If you are not deemed suitable (e.g. if you neglect your duties, resulting in a loss to the trust)
- If you are unable to act (e.g. due to physical or mental incapacitation)
- If you are unwilling to carry out your duties
- If you leave the UK for more than 12 months (6 months for a Scottish trust)

Some trusts allow a testator to remove a trustee. Usually, however, this is only permitted if there is another trustee (other than the testator). Anyone seeking to remove a trustee should first obtain legal advice.



Trust