

ABOUT TRUSTEES

# Our guide to being a trustee



## **Contents**

**Our guide to being a trustee**  
**The key roles involved in a trust**  
**Your duties as a trustee**  
**Your main duties**  
**Additional powers**  
**Your questions answered**

A trust is a legal means of allowing a **gift** to be made to someone without giving them any control over the gifted 'property'.

**The trustee is the most important role within a trust and carries with it several responsibilities.**

The purpose of this guide is to give you the information you need to fully understand your role. It should answer any questions you have about your role as trustee, including the powers that this role gives you and what is expected of you.

## The **key roles** involved in a trust

**There are three key roles involved in a trust – the settlor, the trustees and the beneficiaries.**

The **settlor** is the person who sets up the trust. They will appoint trustees and decide who the beneficiaries will be. They will also provide the 'property' that will be held by the trust. This 'property' is known as the 'trust fund'.

On a First Complete trust if the plan is owned jointly both plan owners will be **settlers** and must complete the trust form. The property will initially be a protection plan. And in the event of a claim, any money that is paid out will then become part of the trust fund.

The **trustees** will manage the trust fund for the beneficiaries. This includes making any claim under the protection plan and if appropriate, investing any money paid out from that claim.

The **beneficiaries** will receive the trust fund in line with the settlor's wishes.

## **Your duties** as a trustee

**Your job as a trustee is to manage the trust fund for the beneficiaries. This will involve carrying out certain duties.**

**These duties are detailed over the following pages.**

The trust form also sets out the powers you will have which allow you to carry out these duties and the settlor's wishes.

So, as well as understanding the duties below, it is important that you also read the trust form and understand the powers you have been given.

In general, you must do whatever is in the best interest of the beneficiaries. Any actions you carry out must be authorised by the terms of the trust and the law that governs trusts. The beneficiaries of the trust can challenge whether you are acting in their best interests, and can take legal action against you if you act outside the terms of the trust.

## Your **main** duties

**Here are some of the duties you are expected to perform as a trustee.**

**You have a duty to invest the trust fund.**

As trustee you can invest the trust fund as if you were the absolute owner, and you have wide powers of investment. A statutory duty of care is in place to ensure that you, as the trustee, exercise this authority responsibly.

**If you have to provide different benefits to each beneficiary, you must act impartially.**

For example, if the trust says that one beneficiary is to receive income from the trust but another beneficiary will receive the capital, you need to invest the fund appropriately to produce both income and capital growth. If you invested the fund in such a way that no income was produced, you would not be acting impartially. The beneficiary entitled to the income could then take legal action against you to make you change the investments.

**You have a duty to secure the trust property.**

You would be breaking the terms of the trust if you did not recover a debt owed to the fund. For example, if you make a loan to a beneficiary but do not take steps to make sure that loan will be repaid, you may be in breach of trust. Any other beneficiary could take legal action against you to recover any loss to the trust fund because of this.

**You must keep records of your decisions and actions as you may need to prove that you are managing the trust fund properly.**

For example, you must keep records of any changes you make to the investments in the trust fund, and of any money paid or loaned to a beneficiary. You should also keep proof of any professional advice you receive on investments and the like. The trustees should also prepare trust accounts,

### **You may delegate your powers of investment and management to someone else.**

This means that you can ask someone else to act on your behalf to invest the trust property. However, you cannot allow anyone else to make decisions or distribute any income or capital to beneficiaries

### **You must obtain and consider proper advice before exercising your powers of investment.**

This requirement does not apply if it is considered unnecessary or inappropriate to do so. This would be the case if the trust fund was small and the cost of advice outweighed the benefit of it, or if you are already suitably qualified to give such advice

### **You must not use the trust to benefit yourself.**

This means that you must not make a profit from the trust. For example, if you are a solicitor, you must not manage the trust in such a way that your firm will benefit from extra work.

If you are acting in a professional capacity as a trustee in England and Wales and there are two or more trustees, you may charge a reasonable fee for your services. In Scotland and Northern Ireland there must be a specific clause in the Trust deed to allow this. All First Complete Trusts have this clause (C14).

## **Additional powers**

### **Here are some of the other powers you may have as a trustee.**

#### **The law also gives you the power to:**

- use income from the trust for the education or maintenance of a beneficiary who is under the age of 18 (or under the age of 16 in Scotland)
- give capital to a beneficiary before they become entitled to demand it
- sell trust property
- give receipts
- insure trust property.

Additional powers may be set out in the trust form. The powers in each trust can be different depending on the aims of the trust. To make sure you do not carry out an action which is outside of your powers, you must read the trust and make sure you understand the powers you have.

Most commonly, a protection plan trust will give you the power to:

- exercise any options within the plan
- pay benefits to the parent or guardian of a beneficiary who is not yet 18 (or under the age of 16 in Scotland)
- lend money to any of the beneficiaries
- borrow using the trust fund as security
- release or restrict any of the powers given to you by the trust.

Some trusts will also give you the power to change the beneficiaries. This can be very useful if there is a change in circumstances making it no longer appropriate for the original beneficiaries to still benefit. Some powers may be given only to the settlor while he or she is alive, and then will be passed to the trustees; for example, the power to appoint or remove trustees.

## Your **questions** answered

### **Can anyone be a trustee?**

No. All trustees must be 18 or over (16 or over in Scotland) and be mentally able to look after other people's money. They should also have a sound financial history. With many trusts, including ours, the settlor is automatically a trustee as it is likely they will want to help manage the trust fund whilst they are alive.

### **Can a beneficiary also be a trustee?**

It is possible for a beneficiary to be a trustee, but this can create a conflict of interest. For example, where there are two children and only one of them is appointed to act as trustee, he or she may try to take advantage of this position and try to influence the other trustees into agreeing to appoint all the benefits to them and not to their brother or sister.

### **How many trustees should there be?**

It is strongly recommended that at least one trustee is appointed in addition to the settlor (this is mandatory in Scotland). This will avoid having to wait for probate if the settlor dies and there is no other trustee. Generally, there is no official limit to the number of trustees a trust can have, however having more than three or four could be impractical because signatures of all trustees are needed whenever any action is taken.

### **Can I retire from being a trustee?**

Yes, but only if there is someone else able to continue as a trustee. In England and Wales the other trustees must agree to this, but this is not necessary in Scotland.

You cannot retire if you are the only trustee, unless the settlor appoints someone else to act as trustee instead of you. You should also remember that even after you retire you can still be held responsible for actions you carried out when you were a trustee.

### **Is agreement of the trustees necessary?**

In England and Wales all trustees usually have to agree on an action for it to be carried out. However, if the trust allows it, agreement for an action can be given by a majority. The First Complete trusts need all the trustees to agree on any action to be taken. They also need signatures from all the trustees before any action on the plan can be taken, for example a cancellation or a death claim.

In Scotland the situation is different. The majority of the trustees can authorize an action unless the trust says that there must be an agreement from all trustees. The First Complete Scottish trusts do allow the majority of the trustees to authorize an action.

### **Can I be removed as a trustee against my will?**

In some circumstances, you can be removed as a trustee. These are:

- If you are no longer deemed suitable to be a trustee, for example if you disregard your duties and this causes a loss to the trust
- If you are unable to act, for example if you become physically or mentally disabled
- If you are unwilling to act, for example if you refuse to carry out your duties as trustee
- If you remain outside of the United Kingdom for more than 12 months (in a Scottish trust, this period is 6 months).

Some trusts, including the First Complete trusts, contain a power for the settlor to remove you. This power can usually only be used if there will be at least one trustee remaining on the trust after you are removed (in addition to the settlor). Anyone who feels a trustee should be removed from a trust should seek legal advice before doing so

### **What happens when the trust fund is paid to the beneficiaries?**

The trustees are responsible for paying the trust fund to the beneficiaries, but must complete the 'Deed of appointment to benefit (absolute)' form before distributing any benefits. Depending on the circumstances this may give rise to a tax liability, so specialist tax advice should be sought before the trustees make such an appointment.

You may also wish to take independent advice on preparing trust accounts and obtaining a receipt and discharge from the beneficiaries once payment has been made.

We trust you now have the information you need to **understand** and carry out the main duties required of you as a trustee.

**Remember that the position of trustee carries with it a high level of responsibility, so it is not something that you should enter into without serious consideration.**

If you are still unsure about any aspect of the role, we suggest that you seek advice from a legal adviser.