

Trustees

Duties and Powers

Becoming a Trustee can be daunting. As a Trustee you have a range of responsibilities, duties and powers to the trust and its beneficiaries. This short introductory note covers the responsibilities, duties and powers of a Trustee.

What does it mean to be a Trustee?

As a Trustee you owe a duty of honesty, integrity, loyalty and good faith to the beneficiaries of the trust. You must, at all times, act exclusively in the best interests of the beneficiaries and be actively involved in any decisions.

Before accepting the position of Trustee you should ensure that:

- There is no conflict of interest between your own personal circumstances and those of the beneficiaries
- You have read and understood the trust deed
- You understand the nature of the beneficiaries' interests in the trust fund

What are my duties as a Trustee?

You have four key duties. They are:

- 1. To observe the terms of the Trust:** You must understand the terms of the trust and comply strictly with the duties and directions set out in the trust deed.
- 2. To act impartially between the beneficiaries:** You must not allow one beneficiary to suffer at the expense of another and must balance potentially competing interests of beneficiaries for income and capital.
- 3. To provide information:** You have a duty to provide clear and accurate accounts showing your dealings with the trust assets, and to produce any information or other documents relating to the trust when asked to do so by a beneficiary
- 4. To exercise reasonable care and ensure correct distribution of assets.**

What powers do I have as a Trustee?

Your powers as a Trustee will be as set out in the trust deed and by law. Normally a Trustee will have the following powers:

- To invest the trust assets
- To deal with land
- To delegate certain matters to an agent or nominee
- To insure trust property
- To advance capital to beneficiaries
- To provide for beneficiaries who are under age
- To appoint or lend funds to beneficiaries.

How should I exercise my powers as a Trustee?

Your powers as a Trustee are “fiduciary” which means that you must exercise your powers as follows:

- in the best interests of all the beneficiaries
- only for the benefit of the beneficiaries and not for the benefit of third parties
- not for the benefit of the trustees (unless specifically authorised to do so)
- in a way that is consistent with the terms of the trust deed.

Do I need to consult with other appointed Trustees?

Yes. Trustees are obliged to act together and the trust deed will usually require decisions to be made unanimously or at least by agreement of the majority.

Throughout the course of administering the trust, the Trustees will need to make decisions about various matters, such as the investment, distribution, sale or purchase of trust property. The Trustees should engage with their co-trustees and meet at least annually to consider this duty. All decisions of the Trustees should be minuted and advice or opinions received from professional advisers such as lawyers, accountants or stockbrokers retained.

We can help

There may be times when you may need to seek professional help in exercising your powers and making decisions. We can advise you, as necessary, on the nature and extent of your powers and duties as a Trustee.

This Information Sheet is based on Scottish law. If you live in England or Wales, our English law team can help you ensure you received the correct advice for your particular circumstances.

For further information on these or any other personal law issues, please contact:

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