



# Malcolm & Co Solicitors

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## Duties and Responsibilities of Trustees

The common law and statute place many obligations on a person acting as a trustee and make them personally liable to make good from their own funds any losses a beneficiary suffers because of any breach of duty. This information sheet has been prepared to assist clients who are considering appointing, or who have been appointed trustees to understand the role and duties of a trustee. This statement of duties and obligations on a trustee is not comprehensive and is not intended as a full statement of the law as the duties will vary depending on the nature of the trust. Specific guidance should always be sought from a lawyer experienced in trust law. Additional requirements especially apply to trustees of pension schemes and charities. Act in accordance with trust deed The trustee must act in accordance with the terms of the trustee deed and general law. The trustee must ensure that all funds and property due to the trust is obtained and is held always in the names of the trustees, properly insured and only used to benefit the persons named in the deed as entitled to benefit. Act prudently, honestly and responsibly.

The duty of a trustee is to use, in relation to management of the trust, the reasonable care a prudent person would exercise in relation to their own finances, including obtaining appropriate professional advice on matters outside their personal experience or knowledge.

The trustee is expected to bring to bear any skills and expertise he may have and hence a higher duty is placed on a professional as opposed to a lay trustee. Trustees should record the decisions they take and reasons behind them as these could be challenged in court by a beneficiary years later. Also for certain types of discretionary trusts the trustees may be called upon by the Inland Revenue to produce records showing that they have been reviewing annually the way in which the trust funds are being used between the potential beneficiaries. The trustee must always act in the best interests of the beneficiaries as a whole and this overrides any personal, family, business, religious or ethical interests or beliefs they may hold. If a conflict of interest arises then the trustee should excuse himself from voting on the decision

or follow the independent professional advice sought. This can be very difficult for the non-professional trustee if there are internal family conflicts or pressures. The trustee must not be seen to be obtaining any personal profit.

Trustees other than trustees acting in a professional capacity are unable to charge for their services. Similarly trustees must not be seen to profit by them or their family or associates, buying or selling assets to or from the trust. Where the trustees are given discretion by the trust deed they must fully acquaint themselves as to the terms of that discretion and any limitation placed by statute or the trust deed. The trustees must record their decision and reasons for the decision. Any decisions reached must be fair to both the interests of the current and future beneficiaries. Trustees must keep themselves up to date with any changes in the Law and taxation of trusts, as ignorance of any changes is not normally a defence to a future claim for loss suffered by a beneficiary due to trustees being unaware of a change. Where a member of Malcolm & Co. is not acting as a trustee to the trust the trustees may wish to subscribe to our update service whereby we will advise them of any changes in law or taxation which affect the trust. Duty to invest The Trustee Act 2000 imposed specific duties in relation to the management of investments including the right (unless expressly prohibited by the trust deed) to invest in any asset a reasonable prudent man would consider for his own investments.

The Act placed a duty on the trustees to take proper professional advice appropriate with the nature and value of the trust fund. Failure to obtain appropriate advice or follow it can leave trustees liable for reimbursing the beneficiaries from their own finances years later any shortfall or loss between the value of the fund and the value the fund would have been if advice had been sought or followed. To account Trustees must inform beneficiaries and, if they are under 18 or disabled, their parents or carers, as to the existence of the trust and their entitlement, unless the Settler has indicated to the contrary. The trustees are required to provide annual accounts to all beneficiaries as to the value of the trust; detailing transactions during the previous year. The trustees must notify the Inland Revenue of the existence of the trust and ensure tax returns are made and the tax paid during the duration of the trust.

The trustees must ensure any income received and which is due to a beneficiary is paid promptly. We offer trusts an update service whereby we will prepare the annual statements and tax returns. Conclusion The law therefore imposes responsibilities on a trustee which can be complex and time consuming and for which only a person carrying out his normal professional duties can normally be paid for. Should you be considering appointing a trustee, or have been appointed as a trustee and are unsure how to act in a specific situation, you should seek professional advice or make an enquiry.

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