Trustees’ duties

The role of a trustee

The role of a trustee is to hold the trust property and administer it for the benefit of the beneficiaries. The full extent of their duties is governed by the terms of the trust instrument and the principles of common law, equity and statute.

Trustees should always make sure that there is no conflict of interest between their own personal interest and that of the beneficiaries.

General duties of a trustee

- **To comply with the terms of the trust**
  Trustees should ensure that they fully understand the terms of the trust and comply strictly with the duties and directions as set out in the trust instrument.
- **To take control of the trust property**
  A trustee should ascertain the extent of the trust property, make sure that it is vested in them and any co-trustees, and take steps to ensure it is maintained.
- **To act impartially between the beneficiaries**
  Trustees are under a general duty to act in the best interests of the beneficiaries, but in exercising this duty they must not allow one beneficiary to suffer at the expense of a benefit to another beneficiary.
- **To take reasonable care**
  The standard of care and skill expected of a trustee varies according to whether the trustee is unpaid or professional. Following the Trustee Act 2000 (TA 2000), trustees now owe a statutory duty of care in addition to their common law duty of care.
- **Common law duty of care**
  The trustee must show such skill and care, as is reasonable in the circumstances, making allowances for their special knowledge, experience or professional status. Therefore, a higher duty of care will be imposed on a trustee if they have expertise in a particular area.
- **Statutory duty of care**
  There are two further statutory duties under the TA 2000 which are designed to balance the risk the trust funds could be exposed to and to make sure trustees act prudently in looking after the beneficiaries’ interests.
- **Duty to have regard to the need for diversification and suitability of investments**
  This duty originally included in the Trustee Investment Act 1961 and has been retained in the TA 2000. This places emphasis on balancing risk and return across a portfolio of investments rather than looking at each investment in isolation. When considering whether investments are ‘suitable’, the size of the investment must be considered as well as an appropriate balance between income and capital.

  Trustees must also consider whether investments should be varied from time to time in light of changing circumstances. Trustees must consider beneficiaries’ requirements.
- **Duty to obtain and consider proper advice**
  Before exercising their powers of investment or reviewing the investments within the trust, trustees must obtain and consider proper advice as to how investments should be made or varied.

  The exception to this is where the proposed investment is so small the cost of obtaining professional advice would be disproportionate or unnecessary. Alternatively the trustees may be suitably qualified or have expertise in a particular area to make these decisions without taking advice.

  Although there is no requirement to obtain advice in writing, in practice it will no doubt be regarded as best practice to have any advice confirmed in writing to show compliance with the general duty of care.
- **Investment**
  Apart from the investment powers in the TA 2000, there is also a range of powers aimed at making the administration of trusts easier including the power to appoint agents, nominees and custodians, to insure property and to pay professional trustees.
- **Duty to keep accounts**
  A trustee is under a duty to keep and produce clear and accurate accounts of the trust as well as providing them to the beneficiaries upon request, as long as the beneficiaries are prepared to pay for the cost of the trustees doing this.

- **Duty to provide information**
  A trustee must produce, on request, information and documents relating to the trust when required by the beneficiaries.
- **Duty to act unanimously**
  Trustees must normally act unanimously in any decisions they make, though the actual discharge of the duty itself may be carried out by less than all of the trustees.
- **Duty to consult**
  In general, trustees should consult beneficiaries whenever possible and give effect to their wishes. The duty to consult can be excluded by the trust instrument and only applies to settlements made after 1 January 1997.
- **Delegation of duties**
  The position of a trustee is a personal one and should not normally be delegated. Nevertheless, delegation for up to a year may be permitted under the Trustee Delegation Act 1999.
- **Duty to distribute**
  The trustees are responsible for making sure that the trust assets are distributed to the correct beneficiary and in the correct amounts. Failure to discharge this duty can result in personal liability for the trustees.

This document is based on Canada Life's understanding of applicable UK tax legislation and current HM Revenue & Custom's practice, as at August 2019 and could be subject to change in the future. It is provided for professional advisers only. Any recommendations are the adviser's sole responsibility.

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