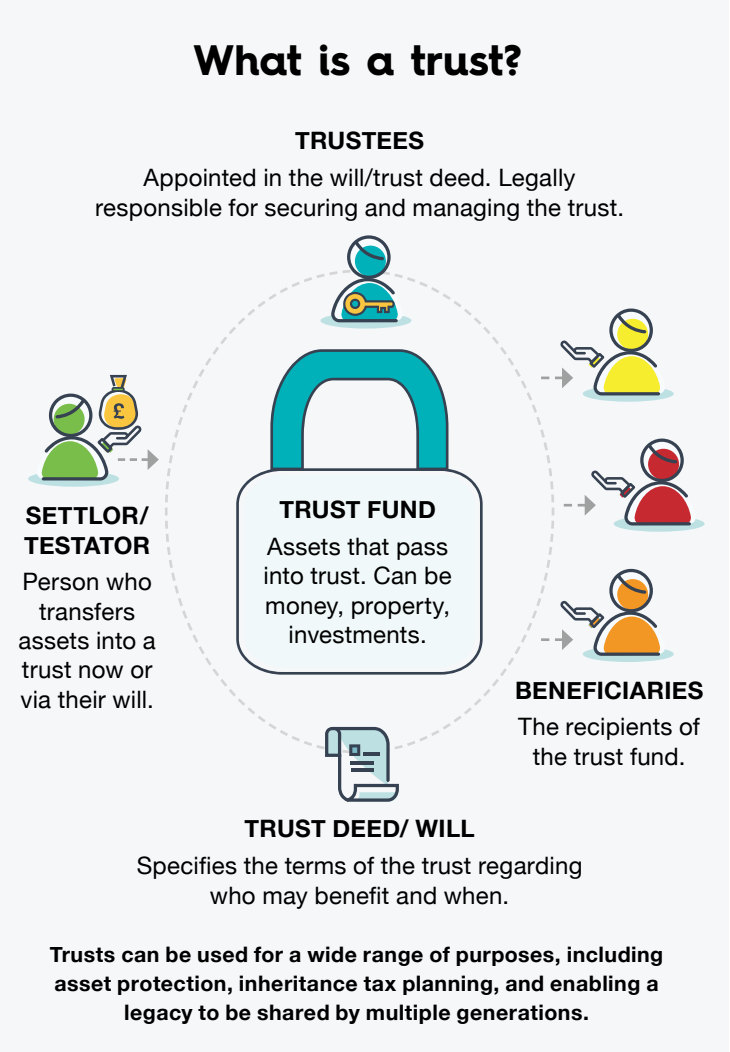
Trustees: What do they do and who should I choose?



When arranging a trust, it is important that you understand the responsibilities of a trustee so that you can choose suitable people to carry out this role.

What is a trust?
A trust is a legal arrangement set up to protect or control the use of assets.

Trusts can hold cash, property, investments, or valuable personal possessions.

Trusts can be used for a wide range of purposes, including asset protection, inheritance tax planning, and enabling a legacy to be shared by multiple generations.

You can set up a trust now if you have assets you wish to pass into trust now (a lifetime trust) or via your will to begin on your death. You will need professional advice regarding the type of trust you choose to understand the consequences of doing so.

The trust deed (or will) details the terms of the trust, who the trustees and beneficiaries are.

The trustees are legally responsible for assets held in trust – known as the trust fund.

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Who should I appoint as trustees?
Trustees must be over 18 and ideally based in the UK to avoid tax complications regarding the location of the trust. Between two and four trustees can be appointed. Trustees need to act impartially, honestly, and according to the trust deed. Being a trustee is an act of generosity and is often a long-term commitment.

A non-professional trustee cannot charge for their time and must not profit from their role as trustee. They can be held personally liable for their actions so they must take reasonable care in carrying out their role. If you have suitable friends or family to act as trustees, you should check they would be willing to do this before including them in your will or trust deed.

You may instead prefer to appoint professional trustees, particularly if the trust is high value or complex or you anticipate difficulties with beneficiaries. A professional trustee will charge for their time; however, you may consider the benefits of neutrality and expertise to outweigh the costs.

Can a beneficiary be a trustee?
Yes, a beneficiary can be a trustee; however, you must consider whether they are suitable and able to act impartially and consider the needs of all other beneficiaries.

There may be an increased potential for a conflict of interest arising where a beneficiary is a trustee instead of a neutral third party. Assessing the suitability of the trustee is vital.

What are the responsibilities of a trustee?

- Keep the trust property safe and insured
- Register the trust with HMRC (if applicable) and maintain the register
- Manage the trust property according to the trust deed – this may include making payments to beneficiaries or allowing them to use trust property
- Keep accounts of income, expenses, and payments to beneficiaries
- Complete trust tax returns where required and to pay any taxes due
- To meet regularly as trustees (at least once per year) and keep a record of meetings
- Make decisions on where funds are invested and keep investments under review
- Seek suitably qualified financial advice regarding investments
- Comply with general legal responsibilities e.g. if a trust property is rented out

It is common for lay trustees to appoint professionals to support them in the trust administration, e.g. accountants to prepare tax returns, letting agents to deal with rental properties, solicitors to draw up deeds for trustees or ad hoc legal advice. Such expenses are deductible from the trust fund and will mainly arise in discretionary trusts or trusts for vulnerable people or minors where there is a mixture of property, cash or investments.

If a trust consists of property only (such as a protective property trust where the surviving spouse continues to occupy the family home) then less administration expenses generally arise. Trustees may request these expenses are paid on behalf of the trust by the life tenant or the beneficiaries if there is no cash annexed for this purpose.

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Can a trustee retire or be replaced?
Yes, a trustee may retire if they no longer wish to act or if age or health reasons affect their ability to continue. If there are less than two trustees, the retiring trustee will usually need to be replaced. The same applies if a trustee dies, becomes bankrupt or is unfit to act, the remaining trustees may need to appoint a replacement. The retirement and appointment of new trustees should be confirmed in a trust deed drawn up by a legal professional. There are some circumstances where a trustee may need to be removed by a court (e.g. if the trustee is also the beneficiary of a trust and has lost mental capacity).

To reduce the likelihood of complications in the future, keep your will up to date and appoint new trustees if there is a change in suitability to act (e.g. age or health).

What happens if trustees disagree?
Trustees have to act unanimously and agree to the decisions made. You should appoint trustees who will act impartially and work well together. They should always refer to the trust deed and any letter of wishes you have provided. If they cannot agree, the trustees will need legal advice. In the worst-case scenario, the court may need to give directions to the trustees or remove/replace trustees to enable the trust to function.

When do trustee duties commence?
If it is a trust set up by will, trustee duties do not begin until the executor transfers assets to the the trustees. Normally this is once probate is completed. Property needs to be entered into

the names of trustees at the Land Registry, investments via a stock transfer form and a bank account will need to be set up by trustees to receive cash and manage trust funds.

Where applicable, if a trust created by will still exists two years after death, the trustees must register the trust with HMRC. The exception is that if the trust incurs a UK tax liability earlier than the second anniversary, it must be registered within 90 days of the tax liability arising.

If a trust is a lifetime trust, duties begin once the deed is signed and property is transferred to the trustees. If the trust needs to be registered, this is within 90 days of commencement.

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Trustee Checklist	
1	
Full Name	
Address	
2 (Minimum)	
Full Name	
Address	
3	
Full Name	
Address	
4 (Maximum)	
Full Name	
Address	

- Have you discussed the role with them?
- Are they willing?
- Do you have any concerns about their age, health or suitability to act?
- Is this the right combination of trustees?
- Will they be able to work together?

Remember to update your will if you change your mind about who should act as trustee or if the trustee has died or lost capacity.

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