

Trustees - General Information

Who appoints trustees?

Trustees are initially appointed by the settlor, the person creating the trust.

Who can be a trustee?

The document creating the trust (usually known as the Trust Deed) may detail particular requirements regarding who can be a trustee. In England and Wales anyone over the age of 18 with sufficient mental capacity can act as a trustee.

In Scotland, generally an individual with sufficient mental capacity on reaching the age of 16 can be a trustee subject to certain exceptions including, for example, a bankrupt individual cannot be a trustee or those convicted of crimes involving dishonesty may be disqualified from acting for charitable trusts. It is possible for the settlor and/or beneficiaries to be trustees.

How many trustees should there be?

In Scotland there can be one or more trustees, but there are certain trusts which may have a statutory minimum or maximum. The trust deed may stipulate the number of trustees required. In England and Wales the minimum number of trustees is one, unless there is land in which case the minimum is two. Whether in Scotland or England and Wales, in order to provide continuity in the event of the death of a trustee it is recommended there are at least two trustees at all times. There is no maximum but it is recommended the number of trustees is restricted to three or four to ease the decision making process unless you appoint a Trust Corporation such as a Bank as sole trustee.

Roles and Duties of a trustee

A trustee holds trust funds not for himself but on behalf of the beneficiaries of the trust and thus the law imposes high standards, and heavy responsibilities, with personal penalties for any breach. A trustee cannot profit or take personal advantage from his position, unless the trust deed authorises him to do so.

In addition to a general statutory duty of care, a trustee must:

- Be able to understand the terms of the trust he is being asked to administer. This will include an understanding of all legislative, fiscal and administrative requirements and opportunities to enable proper, efficient and appropriate use of the trust.

- Be capable of dealing with the investment of the trust funds in accordance with statutory requirements and any powers within the trust deed.
- Act fairly between beneficiaries.
- Be able to maintain records, deal with taxation issues and produce periodic statements of account.
- Make decisions without malice or discrimination; overriding any personal, family, business, ethical, religious, racial, or other interests or beliefs.

Who should you appoint as a trustee

Being a trustee is a responsible and sometimes onerous position. A trustee should have a high degree of honesty and integrity, be reliable, dependable and trustworthy. They must be able to act impartially, confidentially and in timely fashion, and provide continuity and expertise. They must also have the strength of will not to acquiesce to requests or proposals they know or believe not to be in the best interests of the trust or beneficiaries as a whole. If there is likely to be any conflict of interest it is not appropriate for the individual to act.

For details of the trustee services offered by Lloyds Bank plc please contact your relationship manager.

Disclaimer

This general guide is not comprehensive and is not intended to provide full details of the duties and responsibilities of a trustee. There will be differing requirements depending on the type of trust involved and its legal jurisdiction. Appropriate advice should always be sought.

The information in this guide is based on our current understanding of legislation and requirements and may be subject to change.

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