

Guide to Trusts and Trusteeship



Important note

This guide is intended to be an introduction to this extraordinarily complex area of financial planning and should not be relied upon without personalised legal and tax advice.

Introduction

I am a Registered Trust & Estate Practitioner and have been advising on Wills, Trusts, Probate, Investment and Estate Planning since 1971. As a qualified member of the Society of Trust & Estate Practitioners (STEP), I comply with their Code of Professional Conduct. I am a former Chair of STEP Yorkshire.

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Important note

The information in this guide is based on the author's understanding and interpretation of current England & Wales law as at the date of publication.

References throughout this guide to “spouse”, includes Civil Partners.



Background

Trusts have been known for centuries; it was commonplace for the Knights in the 11th and 12th centuries to put their land and assets into Trust whilst they were off fighting the Crusades. There was a lot of Common Law and a few Statutes governing Trusts, which were consolidated into the Trustee Act 1925, and which remains the core of Trust law. Very restrictive investment powers contained in the 1925 Act were partially relaxed in 1961 and brought up to date by the Trustee Act 2000.

There are three broad categories of Trusts – Lifetime, Will, and Statutory - which are self-explanatory. A Lifetime Trust is set up by someone during their lifetime who wants to benefit another individual or charity but for one or more reasons, doesn't want to or can't make an outright gift. A Will Trust is integral to a Will and is like a Lifetime Trust but, obviously dealing with assets after death. The most usual form of Statutory Trust is one for a minor beneficiary of an Intestacy – death of someone without a Will.

All Trusts have three common components – Settlor(s), Trustee(s), and Beneficiary(ies). The Settlor is the individual setting up the Trust, the Trustee is the person appointed to look after the Trust assets and fulfil the Settlor's wishes, and the Beneficiary is the ultimate recipient. A Trust may also have someone called a Protector (or Advisory Trustee) to whom the Trustees must refer prior to making any major decisions.



Reasons for establishing a trust

- ✓ Wealth protection and control: To protect assets and maintain control over their distribution.
- ✓ Tax planning: To mitigate inheritance tax and other tax burdens.
- ✓ Estate management: For the long-term management of family assets.
- ✓ Privacy: To avoid the public probate process after death.
- ✓ Vulnerable beneficiaries: To safeguard assets for minors or disabled individuals.

My Service

Either personally, or in conjunction with trusted third-parties, I can help establish and manage Trusts, including, but not limited to:

- ✓ Advising on the type of Trust required
- ✓ Drafting Deeds, Letter of Wishes, and Investment Policy Statements
- ✓ Transferring assets
- ✓ Establishing a Trust banking account
- ✓ Trust administration and accounting
- ✓ Tax formalities
- ✓ Distribution and winding up

There are companion guides on [Wills](#), [Inheritance Tax](#), and the [HMRC Trust Registration Service](#).

Common Types of Trust

Most Trusts fall into, or are a variation of, three broad categories

Bare (or Absolute) Trust

A bare trust is a simple arrangement where a trustee holds assets on behalf of a beneficiary, who has an immediate and absolute right to both the capital and income of the trust. The trustee manages the assets but cannot deal with them without the beneficiary's permission. Typically, the trustee holds assets until the beneficiary reaches a certain age, such as 18 in England and Wales.

Key features

Simplicity:

It is one of the simplest types of trust, often used to hold assets for a minor until they are old enough to take ownership.

Tax implications:

The income and capital gains from the trust are treated as the beneficiary's for tax purposes, and they are responsible for reporting them on their own tax return. If the Trust has been set up by a parent for a minor child, then the income and capital gains are assessed on the parent until the child attains 18, unless the £100 per annum de minimis applies.

Interest in Possession

An Interest in Possession trust is a legal arrangement where a named beneficiary, called the "life tenant," has the immediate right to receive the income from the trust's assets, or to use and enjoy them during their lifetime (live in a Trust property rent-free, for example). While the life tenant benefits from the assets, they do not own the capital, which is held by trustees for the ultimate beneficiaries (remaindermen) who inherit the assets after the life tenant's interest ends. These trusts are often used in a Will to provide for a surviving spouse while ensuring the capital ultimately passes to children, particularly those from a previous marriage. This is known as an Immediate Post Death Interest Trust (IPDI).

Key feature

Succession:

It ensures assets pass to the intended beneficiaries and not to a subsequent spouse and/or stepchildren.

Taxation implications

Inheritance Tax (IHT):

For trusts created before March 22, 2006, they are generally treated as if the life tenant owns the assets for IHT purposes. Trusts created on or after this date have different rules and are only treated this way if they are an IPDI or a disabled person's interest.

Capital Gains Tax (CGT):

The trust is responsible for paying CGT on any gains it makes, not the life tenant, at the highest rate with a restricted annual allowance.

Income Tax:

The income beneficiary is liable for tax on the trust income, though the trustees may have already paid some tax, and the beneficiary can use their personal allowances against it.

Discretionary Trust

A discretionary trust is a legal arrangement where designated trustees have the power to decide who among a group of potential beneficiaries will receive funds, how much they get, and when they receive it. The trustees have full discretion, and no beneficiary has a guaranteed entitlement to the trust's assets. This flexibility makes it useful for protecting assets, planning for future beneficiaries, or for managing funds for individuals who may not be able to manage their own finances. It can also protect against beneficiaries losing means-tested benefits.

The settlor should provide a non-binding "Letter of Wishes" to guide the trustees on how they would like the trust to be managed.

Key features

Flexibility:

Trustees can decide to distribute income or capital, accumulate income, or create new trusts for beneficiaries, making the trust very adaptable.

Asset protection:

Assets in a discretionary trust are protected from a beneficiary's creditors or a spouse in the event of divorce, and their own beneficiaries, as the assets do not legally belong to them.

Tax implications:

Trusts can be subject to IHT - Entry, Ten-year, and Exit charges. Income Tax, and CGT are taxed at higher rates with no or reduced annual allowances. Once income is distributed, the Beneficiary may be able to reclaim some of the Income Tax paid, depending upon their own marginal rate.

When should I use a Trust?

As implied above, it's whenever you want to pass assets on to your intended beneficiaries but, for whatever reason, you don't want them to have those assets immediately.

My own family situation is a great example of how a Discretionary Trust in a Will works (and could apply equally to a Lifetime Trust). I'm an only child, I have a son and daughter, and three grandsons. My father's Will contained a Discretionary Trust naming all of us as potential beneficiaries without saying who had what and when. In the event, we've skipped two generations with most of his estate and the three boys have had a substantial deposit to help them get on the property ladder.

Another key reason is to avoid Probate delays following your death. For example, if you have a Life Assurance policy payable on your death, without a Trust, the claim cannot be made until Probate of your Will has been granted. Conversely, with a Trust, all that is needed to make a claim is your Death Certificate, meaning funds can be in the hands of your intended beneficiaries shortly after your death. This can be particularly important if there's IHT to pay.

If you have a policy not in Trust, talk to me.

When shouldn't I use a Trust?

Many Will Writers, and some Solicitors, advocate putting your property (sometimes most of your savings and investments as well) into something they call an "Asset Protection Trust". You need to continue to live in the property and to have access to your savings, so you, along with the subsequent generations, are beneficiaries of the Trust.

At best it's neutral from an IHT point of view, because the assets still form part of your taxable estate. At worst it has a negative impact on IHT, disqualifying your estate from the additional Residence Nil Rate Band, which could increase your beneficiaries' IHT bill by as much as £140,000!

These Trusts aren't cheap. Most providers quote a chunky four figure fee (plus VAT), and I recall one of the broadsheet newspapers doing an exposé on this a few years ago and found one fee of £10,000!

The sales pitch is that it avoids Probate costs and delays. My fees for helping with online Probate applications in England & Wales only get into four figures when there's IHT and other complexities. As to delays, most of those are down to gathering information, as the Probate application process is now only 4 – 8 weeks.

The real pitch, done with "nods and winks", is that you can claim you gave your assets away when it comes to means-tested benefits, particularly long-term care. If this were put in writing, it would be deemed to be deliberate deprivation. To be frank, some people have successfully prosecuted such a claim but, increasingly, Local Authorities are treating such arrangements as a sham and looking through the Trust and deeming you still own the assets.

As I say in my Care Fees Guide, "However, with less than 11% of the UK population aged over 85 (in 2021) being in institutional care, according to the Office for National Statistics, should this be a priority?"

Also, do you want to be in the care home your local authority is prepared to fund, or something more upmarket?"

My advice is don't do it. If you've already done it, talk to me about unwinding it.

Who should I appoint as a Trustee?

Whilst Trusts can be complex, in operation, they can be straightforward to manage. Consequently, there is no prerequisite to being a Trustee, as they can buy-in all the technical help they may need. Having said that, not being daunted by paperwork, and having a basic understanding of the Internet, email, etc. is desirable.

If you're setting up a lifetime Trust, you can be a Trustee, but you need at least one other Trustee (apart from your spouse, who may also be a settlor), and preferably from a younger generation. A beneficiary can also be a Trustee, for example. The maximum is four. Particularly, if assets could remain in the Trust after your death, the absence of an additional Trustee means delays in distributing the funds, which may defeat the object of the exercise.

Don't add family members as Trustees if they tend to disagree with each other, as decisions need to be unanimous.

If you're really struggling to identify a suitable Trustee, then you can appoint a professional, but this increases the costs exponentially. As I've said, lay Trustees can buy-in all the technical expertise they need with fees on the provider's normal terms. As a named Trustee, a professional will not only charge their normal advice fees but there will also be a "responsibility" element as the "buck stops here" sign is on their desk. Ask me for a recommendation.



What are the duties of a Trustee?

A trustee's duties include following the terms of the trust, acting in the best interests of the beneficiaries, managing assets prudently, and maintaining accurate records. They must also comply with the law, including tax compliance, avoid conflicts of interest, act with reasonable care and skill, and ensure the trust is accountable. The specific duties can vary depending on the Trust Deed and the type of assets involved, such as property or investments.

I've already talked about Trustees taking professional advice, paid for by the Trust, which can help avoid an inadvertent breach of their fiduciary duties. It must be remembered that a trustee can be held personally liable for any breach of Trust, which can occur by failing to act in the beneficiaries' best interests or by profiting from the trust. Unless you are a professional, and your fees are authorised by the Trust Deed, you cannot be paid for acting as a Trustee.

Trust Investment

Most Trusts have money to invest, and this is one area where more mistakes are made than any other, making professional advice essential. Hence, it's the longest section of this guide.

Unlike investing money for yourself, where caveat emptor – "let the buyer beware" – applies, investing as a Trustee is governed by a whole series of rules and regulations, which you ignore at your peril. This is intended as a "beginners guide" to those rules and regulations as they apply in England & Wales (broadly similar rules apply in Scotland & Northern Ireland).

What are the investment powers?

When acting as a Trustee and considering investing money within that Trust, your first port of call is the Trust Deed, to see what powers of investment you are given.

Most Trust Deeds contain a series of clauses giving the Trustees various administrative powers and, generally, one of these will be in relation to investment.

Some Wills that give rise to a Trust will have reference to the STEP (Society of Trust & Estate Practitioners) Standard Provisions, which is just a shortcut to save clogging-up the Will with several pages of technical prose. Most Trust Deeds containing an investment clause, and certainly those referring to the STEP Standard Provisions, provide Trustees with wide powers of investment.

Where the Trust Deed is silent on investment, or where there is no Trust Deed – a Statutory Trust for example – then the law steps-in and says what you can and can't do. In this case, the "law" in England & Wales is the Trustee Act 2000. Even when Trustees have the widest possible powers of investment, they are obliged to follow the key principals espoused by this Act.

So, what are the key principals of the Trustee Act 2000?

They can be summarised as follows:

- ✓ Taking proper advice.
- ✓ Ensuring suitability.
- ✓ Maintaining diversification.
- ✓ Reviewing.

What does this mean in reality?

Taking proper advice

Proper advice, in this context, is from someone authorised and regulated by the Financial Conduct Authority (FCA) under the terms of the Financial Services & Markets Act 2000 (Regulated Activities) Order 2001 (as amended).

The FCA categorises regulated financial advisers in one of two ways, as follows:

Independent advisers

An adviser or firm that provides independent advice can consider and recommend all types of retail investment products that could meet your needs and objectives.

Independent advisers will also consider products from all firms across the market and must give unbiased and unrestricted advice.

An independent adviser may also be called an “Independent Financial Adviser” or “IFA”.

Restricted advisers

A restricted adviser or firm can only recommend certain products, product providers, or both.

The adviser or firm must clearly explain the nature of the restriction. If you are not sure you should ask for further information, but some examples of restricted advice are where:

- The adviser works with one product provider and only considers products that company offers.
- The adviser considers products from several – but not all – product providers.
- The adviser can recommend one or some types of products, but not all retail investment products.
- The adviser has chosen to focus on a particular market, such as pensions, and considers products from all providers within that market.

Restricted advisers and firms cannot describe the advice they offer as ‘independent’.

Many Restricted Advisers only offer investment services, so can’t offer financial planning advice which may reduce the tax and administrative burden.

Due Diligence

As a Trustee could well be asked to justify their choice of adviser at some point in the future, it stands to reason that selecting an independent adviser is much easier to justify than selecting a restricted adviser.

There is a plethora of restricted advisers throughout the UK, so “due diligence” – why choose one restricted adviser over any of the others – is difficult, if not impossible to do. Having said that, it is still necessary to undertake robust due diligence on independent advisers, as not all IFAs have the experience and/or qualifications to advise on Trust investments, which is a highly specialist field.

The FCA recommends a series of [questions](#) you should ask a prospective adviser and, in a Trust situation, question 2 should be expanded to include reference to the adviser’s experience and qualifications specifically in relation to Trust investment matters.

Ensuring suitability

Legislators are fond of using words like “reasonable” and “suitable”, but with little or no further guidance as to what they mean in a particular context. In the context of trust investment, we can turn to case law for a definition going as far back as 1883 (*Speight v Gaunt*), the principal of what a “prudent man of business” would do was established and which remains valid today. In other words, it is a “common sense” approach – was it a sensible thing to do in all the circumstances.

This is now enshrined in statute, as the underlying principle of the Trustee Act 2000 is an overall duty of care.

What is “suitable” in practice?

The matters a Trustee should consider when investing money include:

What are the terms of the Trust?

Whose interests do I need to consider? Do I have to balance out the interests of a beneficiary given the income with those of another who eventually receives the capital? How long is the money going to be invested? Will I need to access the invested funds for administration expenses and/or distributions in the shorter term?

What type of investment is most suitable?

- ✓ Is it cash? Is it fixed interest? Is it shares? Is it property? Is it some form of alternative investment? Is it a combination of all of these?
- ✓ Is an “active” or a “passive” approach to investment appropriate?
- ✓ Is an ESG or more traditional strategy appropriate?

An ESG (Environment, Social and Governance), previously “Socially Responsible” or “Ethical”, strategy employs all the usual research tools available to the investment professional but also applies some additional filters.

Negative, or “Responsible”, filters to screen-out sectors, industries, or individual companies that do harm to the planet, or fail to respect their staff and/or customers. Positive or “Sustainable” filters to screen-in sectors, industries, or individual companies that are making, or seeking to make, a positive impact to the planet or its people.

Remember, however, that when acting in a fiduciary capacity the Trustee has a duty of care to the beneficiaries and cannot bring their personal biases to bear, unless they are commensurate with that overriding duty.

My go-to text on Trust investment is, “Coldrick on Modern Trustee Investment: Law, Theory and Practice”, in which David Coldrick argues convincingly that Trustees should only invest passively. The basis of his argument is that Trustees only have a power to invest, not to speculate, and active investment is speculation not investing.

What is the tax treatment?

Does taxation impact the choice of investment?

Many Trusts are subject to Income Tax at the highest rate (45% in 2026/27) on all income (unless it's less than £500 per annum). CGT is levied at the higher rate (24% in 2026/27) with only half the annual Allowance (£3,000 in 2026/27).

What costs will be incurred in reporting income and gains to HMRC? Is there a “tax-wrapper” available to minimise tax and tax administration?

What are the costs of investing?

Advice, management, and custody charges can mount up. Can you get the same, or similar return, at a much lower cost? This adds credence to the passive investing argument as, generally, passive portfolios are less expensive to arrange and manage than active portfolios.

Maintaining diversification

This requires the least explanation, as Granny taught us about eggs and baskets, making it one of the oldest and best understood principals of investment.

By spreading an investment portfolio across different asset classes – cash, fixed interest, shares, property, and alternatives, for example, and by country, sector, industry, etc. - reduces risk and improves the prospects for positive returns.

What about when shares of one company are settled under Trust?

Special considerations arise when Trustees have a large holding of shares in one company, especially if they are shares in a family business, as diversification may be difficult at best or impossible at worst. However, Trustees cannot abrogate their responsibilities to review the investment they have, if anything the responsibilities are greater. Retention needs to be a positive decision, not a “passive” decision.

Reviewing

Whilst Trustees can delegate the day-to-day activities of investing to a suitably qualified professional, they cannot delegate their accountability. Consequently, Trustees must actively review what is being done in their name. The sign that says, “The buck stops here” remains firmly on the Trustee’s desk.

The review process should incorporate the above key principals, particularly the appointment of the adviser or manager, suitability, and diversification. It should also cover a more detailed analysis of performance, risk profile, and progress towards achieving the long-term goals of the Trust. If it is an annual review, remember that beneficiaries are a year older. Will an interest terminate soon? Will a beneficiary inherit soon? Does the risk profile, strategy, etc., need adjusting with that in mind?

Recordkeeping

One of the oldest legal principals is the one that says, “If it isn’t written down it never happened”. Consequently, it is essential that everything a Trustee does, especially in relation to investment matters, is documented.

For Trusts governed by English & Welsh Law, the Trustee Act 2000 (Part IV Section 15, under 2a) states:

“The Trustee may not authorise a person to exercise any of their asset management functions as their agent unless –

a) They have prepared a statement that gives guidance as to how the functions should be exercised (a policy statement) and

b) The agreement under which the agent is to act includes a term to the effect that they will secure compliance with –

i) The policy statement, or

ii) If the policy statement is revised or replaced, the revised or replaced statement”

There are similar requirements in most other jurisdictions, so having an effective Investment Policy Statement (IPS) is considered best practice.



Are you an investment expert?

Remember, if one of the Trustees is a professional – Solicitor, Accountant, or Financial Adviser, for example – there is a presumption at law that the professional, and, by association, all the Trustees are possessed of a higher level of knowledge and expertise pertaining to investment matters.

What if something goes wrong?

Legal reference books are littered with cases of Trustees being sued by disgruntled beneficiaries and make no mistake; this could happen to you. If it does and you are found to have been negligent, it is a personal liability, not something you can take out of the funds in the Trust. However, if you have followed all the guidance here, particularly in terms of logical due diligence, taking advice, and documenting every stage of the process, a case against you will have much less of a chance of success.

Interestingly, there are as many cases regarding Trustees that have been overly cautious as there are regarding Trustees who have been reckless in their investment approach. Trustees must leave their own prejudices and preferences, in relation to investing their own money, out of their considerations for investments they make as Trustees.

As a minimum, Trustees should seek to maintain the buying power of the capital.

Don’t fall into the trap of thinking, “It’s all in the family”, so my children and/or grandchildren would never sue me. It is well known that families fall out more over money more than anything else. The plethora of cases I’ve already mentioned includes numerous family fallouts.

Indemnity Insurance

If you are acting as a Trustee and you are concerned about the prospect of future litigation, then it is possible to insure against this and one such policy is available from [Castleacre Insurance](#).

I'm not recommending this policy, merely using it as an example of the type of cover available; Trustees should undertake their own due diligence before arranging such a policy. Naturally, it is a prerequisite that Trustees applying for this cover must certify that they are fully complying with the Trustee Act 2000.



The risk warning

The market value of investments and the income from them can go down as well as up. Shares may be subject to sudden and large falls in value, and you may get back less than the amount invested.

Past performance is not a guide to the future.

What other services are available?

Personally, and in conjunction with trusted third-parties, there are several legal and other matters I can help with, including:

- ✓ Wills
- ✓ Deeds of Variation
- ✓ Applications for Probate
- ✓ Lasting Powers of Attorney (LPAs)
- ✓ Advance Directives
- ✓ Mitigating Inheritance Tax
- ✓ Care Fees
- ✓ Financial Planning

The above list isn't exhaustive, so if you have a question on any matter raised in this guide, or any other financial matter, please just ask. Remember, the only dumb questions are the ones you don't ask when you have the chance!

Contact me for help and advice on any of these and other related services. Any initial consultation is without obligation, at my expense and your convenience.

There are links to some of my guides earlier in this publication; the others are [Probate](#), [Care Fees](#), and [Financial Planning](#).

