

QUICK GUIDE TO TRUSTS

SOME COMMON PROBLEMS ENCOUNTERED BY TRUSTEES

The default opinion for many settlors of trusts is to appoint close friends or family as their trustees. Whilst this can be a legitimate means of seeking to ensure the settlor's wishes are carried out, issues can and do arise. We have highlighted six key areas which can cause problems and looked at how appointing a professional trust company can help.

PROBLEMS					
Being a trustee is not just a title. The role carries legal obligations and expectations which need to be understood. The trustee also needs to understand the precise terms of the particular trust deed governing the trust, to ensure they act in accordance with their powers and duties.	Friends and family members could be biased towards the interest of one beneficiary to the detriment of others. Private unrelated disagreements may also affect the decisions of trustees who must always act fairly.	Complicated issues can arise when individual trustees die or lose mental capacity, especially if they also have a beneficial interest in the trust or are acting as sole trustee.	Taxation of trusts and distributions from trusts can be complex and confusing. Getting it wrong may create unnecessary tax liabilities.	Keeping accurate and up to date records of the trust, its investments and connected parties, and meeting increasingly onerous reporting obligations creates an administrative burden on trustees even before they need to start thinking about distributions to beneficiaries.	Information sharing between governments and increasing demands for transparency have created ever more reporting obligations on trustees.
ROLE AND RESPONSIBILITIES	IMPARTIALITY	DEATH/ INCAPACITY	TAXATION	ADMINISTRATION	REPORTING
The complicated role can be undertaken by a professional trust company. Professional trustee service providers will have qualified staff and specialist administrators who can manage the trust appropriately.	A professional trust company will always act impartially in the interests of the beneficiaries. Its decisions will be appropriately informed but unaffected by any personal interest or bias.	A professional trust company cannot die or become mentally impaired. It can provide continuity and stability for the duration of the trust.	A professional trust company will understand the tax treatment of a particular trust. For example the implications of appointing benefit, or making a distribution, and can guide beneficiaries through the process.	A professional trust company will handle this administration using appropriate systems and essential due diligence and be able to respond to varied requests from settlors, beneficiaries and their advisers with the benefit of their professional expertise and experience.	A professional trust company will be aware of its reporting requirements and will make the necessary returns on behalf of the trust.
HOW A PROFESSIONAL TRUST COMPANY CAN HELP					

For your clients, choosing a trustee can end up being more complex and time-consuming than establishing the trust itself. Our expertly managed professional trust company service can remove the administrative burden and potential pitfalls which can arise when appointing individuals. It's convenient, cost effective and tailored to meet the objectives of your client's trust.



For further information on our Trust company service please read **Utmost Trustee Solutions Limited A Guide to our Services.**

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BEING A TRUSTEE - SOME COMMON MISCONCEPTIONS

When someone is appointed as a trustee they are bound by law to operate within the rules of the trust, and always to act in the best interests of the beneficiaries. We have highlighted below some common misconceptions about trusts, which both settlors and potential trustees should consider before deciding whom to appoint, or whether to accept an appointment as a trustee.

A TRUST IS LIKE A COMPANY AND CAN BE SUED	BEING A TRUSTEE IS SIMPLE AND JUST A FORMALITY	A TRUSTEE CAN ALWAYS BE REPLACED
A trust is not a legal entity and in fact it is the trustees that can be personally sued by the beneficiaries.	There are many complexities involved in being a trustee. There are obligations to administer the trust, pay tax and make reports to the relevant authorities.	Depending on circumstances, replacing a trustee is not necessarily a straightforward process especially where contact may have been lost or relationships have become difficult, potentially requiring the involvement of the courts and associated legal costs.
APPOINTING FAMILY MEMBERS AS TRUSTEES IS THE BEST OPTION	THE SETTLORS ARE THE POLICYHOLDERS AND RETAIN CONTROL	CHANGES TO TRUST DRAFTS ARE EASY TO MAKE
This is not always the case. Whilst family members will often understand the needs of the settlor they can often fall out with each other. Trustees have to act unanimously, which can lead to disputes where members of the family are appointed and have a difference of opinion.	Creating a trust involves transferring ownership and control of the policy to the appointed trustees. Unless a settlor is also a trustee, or has the delegated authority from the trustee to manage/control some aspects of the bond such as making investment management decisions for example, the Settlor does not retain control. Settlers will want to be confident that their choice of trustee(s) will be able to fulfill the terms of their trust for many years to come.	A trust deed is a legally binding document. Any changes must be checked and approved by a qualified legal practitioner to ensure the proposed change is permissible, and its consequences are fully understood.



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