

Appointing a
Professional Trustee

Guidance Notes

Trustees

Trustees are originally appointed under the Will or Trust document that creates the Trust. In many cases, years can pass from the creation of the Trust to the date when the Trustees are required to take up their role. Likewise, many Trusts are designed to be able to last a long time. The maximum length of a standard Discretionary Trust is indeed 125 years. That is a long time for anyone to be a Trustee

Choosing appropriate Trustees

Choosing appropriate Trustees is often one of the most challenging decisions and it is advisable to take advice from those already experienced in Trust matters.

The role of a Trustee varies according to the nature of the Trust. For example, a trustee of a bare trust has primary duties to undertake a certain specifically designed transaction, such as holding property or assets for a particular beneficiary. The requirements of the role of a bare Trustee are somewhat different from those in a 'discretionary trust' role where there are powers to benefit beneficiaries at such times and in such a manner as the trustee(s) decide appropriate. There may be investments to manage, property to hold securely and many other duties and responsibilities which arise out the circumstance and nature of the Trust creation.

A usual approach for Will-makers is to appoint their chosen beneficiaries as executors and trustees of their Will-trusts. 'Executorship' is usually a more straightforward role for the reason that the duties are to 'execute' the terms of the Will. Therefore, subject to the Will terms being sufficiently clear, the executorship role is more understandable. We have a specific Guide for the role of executor within our ProTrust Estate Administration website. For more detail, see <https://protrustprobateservices.co.uk/executor-guidance>.

Many Wills contain discretionary trusts or interest-in-possession Trusts designed to protect the assets passing to family and to ensure a more structured 'succession' of inheritance.

The temptation is to appoint one or more of the primary beneficiaries to the role of 'Trustee'. That is to ensure that the beneficiary has a say in the operation of the Trust to which they benefit.

Often alongside the 'lay trustee', a Professional Trustee is desired. That is usually following professional advice on the matter and essentially a Professional Trustee is appointed to benefit the Trust.

Benefits particularly include:

- Independence;
- Experience & Expertise; and
- Added Responsibility

Independence

Beneficiaries of the Trust are often appointed as trustees. A Professional Trustee is usually not on the list of beneficiaries and thus cannot benefit from the actual Trust (save for his/her ability to charge the Trust their normal professional trustee fees or to delegate their role in full or in part to a firm that charges the Trust for such services).

Accordingly, as a Professional Trustee is not a beneficiary of the Trust, they have no immediate interest beneficially in the distributions that are made to beneficiaries. That helps provide the Professional Trustee with independence and objectivity.

Independence is important when considering the objectives of the Trust and ensuring that the wishes of the Settlor (the person who created the Trust) are carried out. They can ensure that steps are not taken outside of the parameters of the Trust.

Experience & Expertise

The nature of the phrase “Professional Trustee” implies that they undertake the role ‘professionally’. This means that being a Professional Trustee is part of that individual’s normal course of business. That also implies that the Trustee has undertaken the role on other occasions for other Trusts. It further implies that the Professional Trustee has experience of undertaking the role and that by virtue of specialising in this area, it will give a degree of greater expertise than otherwise would be the case for another professional such as a solicitor or accountant.

Why is experience helpful? Here are three settings where it can particularly help to have expertise:

Investment Decisions: we have found it particularly helpful to use the benefit of experience in administration of trusts in determining how to approach the matter of investing funds. There are the powers and duties under the Will or Trust document but also there is the Trustee Act 2000 to consider and any other statutory requirements. Such a requirement re investment might involve a requirement to have ‘diversification’ of trust assets. So, how would a smaller trust (say less than £100,000 in value) be best invested? Do you use an IFA to place the funds into investment (but with associated costs and charges and possibly tax consequences of certain investment types) or do you proceed with a simpler Trust cash investment? Having experience can help to ensure that the optimum position is achieved for the beneficiaries having regard to the overall circumstances.

Overseeing financial investment performance:

For Trusts that have monies to invest or property assets, experience and expertise should mean a greater knowledge of the scope of the Trust and the requirements for providing income and capital to the respective beneficiaries. For a life-interest trust, the income is usually all to be paid to a spouse or life tenant or a right of occupation of property. The underlying capital is to be preserved for the ultimate beneficiaries. A discretionary trust usually has a different set of parameters. So how is each matter approached? A knowledge of good financial advisors and what is usually undertaken financially coupled with a good knowledge of the formal legal requirements is essential.

Accounts and Formal Requirements

Even in relatively straight forward Trust situations (such as where a loan value is the only asset) a properly administered Trust should have clear, transparent Trust Accounts from the commencement of the Trust and kept up to date. Due diligence and Trust registration requirements are now a part of trust management. It is not difficult but having experience in handling such matters can help get the Trust started off on the right footing and maintained in the proper way.

Added Responsibility

A Professional Trustee takes on a greater level of responsibility than a lay trustee. The lay trustee can have the ‘pressure’ of the role eased by the appointment of the Professional Trustee. The appointment of a Professional

Trustee is primarily a help to the other (lay)trustees. Furthermore, it helps to ensure the proper operation of the Trust and thus it helps its beneficiaries. That can be by better management of assets and investments, ensuring correct and property Accounts are kept (and disclosed to beneficiaries) as well as an independent person for the beneficiary(ies) to approach with questions.

Professional Trusteeship itself is a process that is broken down and delegated to particular experts. For our clients it would be delegation of the Trust's management to this firm and then to a financial advisor for investment advice or accountant firm for tax advice and dealings with HMRC. A professional trustee is expected to be able to link those aspects and to oversee (and project manage) the performance of them. Without a professional trustee, it can be difficult for lay trustees to be able to objectively manage the performance and undertaking of those functions and they will feel (and be) more exposed to risk of criticism in the role.

Appointing ProTrust Limited as Company Trustee

Robert Cartmell continues to act for many families as individual professional trustee and shall continue to do so for existing clients and for existing Wills and trusts. For Robert's appointments, his professional trustee duties shall continue to be delegated in full to this firm (ProTrust Consulting Ltd). For other trustees, we act on the same basis in discharging their duties.

From January 2023, for our firm's clients wishing to have a Professional Trustee appointed in their new Will or Trust to act alongside lay trustees, we will recommend that our sister Trust company (ProTrust Limited) be appointed as a Company Trustee for Professional Trustee appointments. That is particularly to ensure that there is continuity of professional responsibility (for example, in the event of an individual such as Robert's future retirement or incapacity) and with the further protection that such professional appointment is also independent of a trading firm.

Accordingly with the Professional Trustee appointment, Robert Cartmell (as it stands) and ProTrust Limited (going forward) will not usually 'charge' personally for their role of Professional Trustee as their duties are fully delegated to this firm (ProTrust Consulting Ltd) which will charge for delegation duties according to the letter of engagement with the Trustees and according to its terms of business (for our guide on trust management costs, see <https://protrustmanagement.co.uk/our-costs>).

Contact Us

We hope this is informative and helpful. For more information and for a discussion or advice please contact us on:

Email: info@protrustconsulting.co.uk

Telephone: 0207 113 5760