

Top Ten Trustee Tips

For clarity and peace of mind

Being appointed as a trustee can bring complex but rewarding challenges. With a blended skill set provided by lawyers, tax advisers, trust estate and probate managers, we can guide you through any issues.

A trustee can make a significant difference to a beneficiary, sometimes at a critical point in their lives. Using our knowledge and experience, we have provided a list of top ten things to consider to help reduce the complexities you face and allow you to have peace of mind.

1. Familiarise yourself with the trust

- Who are the beneficiaries?
- What are their interests?
- What are the assets?
- What's the purpose of the trust?
- What are your powers in the document?
- What wishes has the settlor expressed separate to those in the document?

2. Don't be a silent trustee

- Keep in contact with your co-trustees – this helps decision making and keeps all informed
- Be involved in the decision making.

3. Be mindful of your duties at law

- Be mindful of legal duties, particularly the duty to take reasonable care
- Seek specialist legal advice on these duties if you feel you need them clarifying.

4. Consider seeking professional advice

- Specialist trust lawyers and accountants can help to ensure historic and continued compliance with administrative aspects – Self Assessment tax returns, Inheritance Tax reporting (exits/10 Year Anniversaries), trust accounts and deeds
- Check if recent compliance requirements are being dealt with each year – HMRCs Trusts Register, Foreign Account Tax Compliance Act (FATCA)/Common Reporting Standard (CRS)
- Is the best use being made of available reliefs and exemptions?
- Could a capital gain be held over?
- Consider obtaining investment advice in respect of assets
- Consider taking appropriate professional advice before making any distributions
- Don't be afraid to challenge the professional advice
- Remember a trustee is personally liable so it is always best to err on the side of caution.

5. Record and keep correspondence

- Record trustee decisions and resolutions and keep safe all trust documents, letters of wishes and all trustee correspondence.



"Very professional. Trustworthy, a good holistic understanding of all needs."

Shealtiel

6. Consider disclosure requests

- Who is requesting the documents?
- What is their interest in the trust?
- Will disclosure prejudice the interests of the other beneficiaries? Can sections be redacted?
- Do they want documents/information beyond the constitutional documents?
- Discuss the disclosure requests with your co-trustees
- Guard against disclosing minutes of trustee meetings, agendas or correspondence between the trustees.

7. Review the purpose of the trust

Regularly review the purpose of the trust, the assets, their performance and the status of the beneficiaries.

- Does the trust still serve a purpose?
- Have there been any significant changes to any of the beneficiaries (deaths, births, incapacity, serious illness, financial difficulties, divorce)?
- Consider the nature and performance of the trust’s assets – are the assets and their performance still suitable for achieving the purpose(s) of the trust.

8. Communicate with the beneficiaries

Communicate with the beneficiaries on a regular basis.

- Keep in communication with the beneficiaries if appropriate – this generates an understanding of their circumstances and any major events in their lives
- It helps to allay any suspicions about what the trustees are up to.

9. Be mindful of your roles and duties

Be mindful of your separate roles and duties as a trustee and also a director of shares in the business.

- Being a director of the business and also trustee of shares in the business brings with it potential for conflict
- Be familiar with the constitution of the business and the terms of the trust – are there powers which enable the director/trustee to manage the potential conflict?

10. Be careful not to make a profit

- What does the trust say about expenses?
- Unless specifically authorised by the trust document, trustees should not profit from the trust – trustees should not place their personal interests in conflict with their trustee duties.

The seemingly relentless increase in compliance regulations in the last three years has hit trustees hard. Now is an important time to review your trusts, to ensure they are fully compliant, being administered correctly, are meeting the real purpose of the trust and the needs of the right beneficiaries. At Irwin Mitchell Private Wealth we are uniquely positioned to offer trustees an unrivalled advice and support structure for this. Exploring your options can go a long way to allow you to have clarity, peace of mind, and focus on the important things in life. Please do call us to see if we can help.

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Andy