

# A Simple Guide to Trusts

## What is a trust?

In its most basic form, a trust exists when an individual (the Trustee) holds an item that belongs to another person (the Settlor), for the benefit of someone else (the Beneficiary).

An example of a very simple trust would be if Peter gave Paul £10 and asked Paul to give it to Mary that evening. Paul does not own the £10 and is simply holding it on trust for Mary. However, trusts can be a lot more complicated than this example.

## Types of Trusts

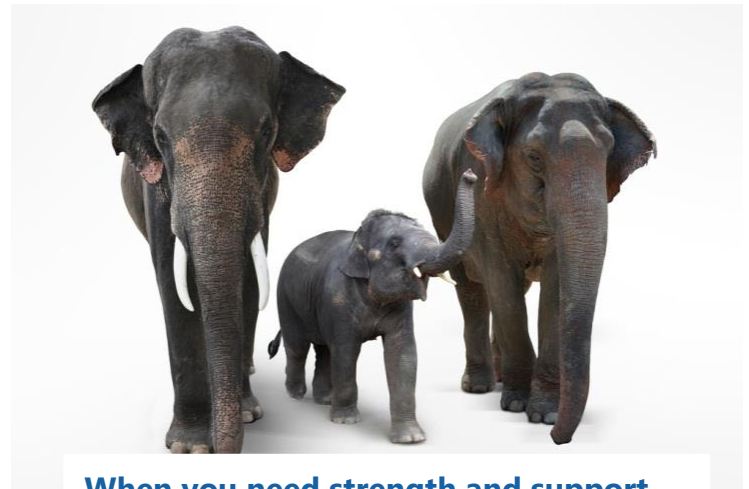
Some of the common forms of trust that we advise on include:

- **Life interest trusts** also known as an “**interest in possession trust**”) This sort of trust involves an individual being given the right to the income from an asset or group of assets, with the capital of the asset(s) belonging to someone else. This might take the form of that individual being allowed to occupy a property, or to receive the dividends from a shareholding.

**Example:** Romesh sets up a trust to allow his wife Cynthia to occupy his property for the rest of her lifetime. When Cynthia dies the property is to be given to his child, Robert.

- **Discretionary trusts**  
A discretionary trust involves trustees being provided with assets to hold for a class of beneficiaries. The trustees can then decide which beneficiaries they are going to give the assets to and whether they will give them income or capital, or a combination of both. The trustees can choose to divide the assets between the beneficiaries or give them all to one beneficiary. The important point to note with this kind of trust is that none of the beneficiaries have a right to anything from the trust, until the trustees have decided to give them something.

**Example:** Alexandra creates a discretionary trust for her grandchildren. She appoints her two sons Peter and Paul as trustees and gives to them £100,000. Peter and Paul must consider all their mother’s grandchildren and decide what to do with the money, taking account of the needs of each of the grandchildren.



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This is not an exhaustive list, we can advise you regarding most trusts including bare trusts, “bloodline trusts”, “property protection trusts”, pilot trusts, trusts per autre vie, vulnerable persons / trusts for disabled persons.

## How is a trust created?

A trust may be created by:

- An individual (the settlor) during their lifetime - in which case the trust might be referred to as a “settlement”. The trust will be created once the deed has been correctly signed and dated and assets have been transferred into the trust.
- On death via a will, in this case the settlor will be the person who has died. When a trust is created via a will, the will is effectively the “trust deed”. A trust created by will comes in to being when the person dies as the will “speaks from” the date of death.
- After death via a deed of variation. That deed of variation might include the terms of the trust itself (often within its schedule(s)) or it might refer to a separate trust deed. A trust created via a deed of variation is more complicated, in terms of who its settlor is and when it is deemed to have come into effect (as this may change for different types of taxes).

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## What legal responsibilities and duties do trustees have?

Once a trust has been created it becomes a "legal entity" and its trustees will have legal duties that they must comply with. A trustee owes duties of honesty and integrity to the beneficiaries of the trust. They must act exclusively in the best interests of the beneficiaries and be actively involved in any decisions. They must set aside any personal interest they might have in the trust when acting in their capacity as trustee.

The duties of trustees include:

- to observe the terms of the trust - trustees must understand the terms of the trust and comply strictly with the duties and directions set out in the trust deed
- to act impartially between beneficiaries - trustees must not allow one beneficiary to suffer at the expense of another. They must balance potentially competing interests for income and capital
- to provide information - trustees must keep clear and accurate accounts for the trust and provide beneficiaries with information or documents relating to the trust that they are entitled to:
  - confidentiality - any information obtained in confidence whilst acting as a trustee must be kept confidential and only used for the benefit of the beneficiaries
  - to act unanimously - trustees must act and make decisions unanimously unless the trust deed says otherwise
  - to invest the trust assets suitably (taking account of the terms of the trust and the needs of its beneficiaries) and regularly

review the investments to make sure that they remain suitable

- to act carefully and distribute assets correctly –trust assets must not be given to anyone who is not a beneficiary of the trust
- regularly review the trust to make sure that its investments remain suitable, that the needs of the beneficiaries are being met and that there is no further action they need to take.

Trustees also have duties to comply with legal obligations which include:

- ensuring that tax returns (if required) are filed and any tax due is paid on time
- making sure that the trust has been registered with HMRC's Trust Registration Service (TRS) within the required timescale (unless an exemption applies). Depending on the type of trust this could be from as little as 90 days after creation of the trust
- if there are any changes to the trust, the trustees will also need to make sure that the TRS is updated within the strict deadlines imposed.

## What happens if trustees do not comply with their duties?

Trustees can be held personally responsible for any loss caused by their failure to comply with their duties. Ultimately, if a trustee doesn't comply with their duties and responsibilities, the trust beneficiaries can apply to court to have them removed. The court can also direct the trustees on how to correctly administer the trust.

## Can I get help with my duties as a trustee?

If you would like advice or assistance regarding a trust please contact Lorna Payne on 0121 746 3300 or a member of the private client team.



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Lorna is an Associate in the Private Client Team.

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Shelley advises clients with the preparation of Wills, Lasting Powers of Attorney and assists with administering estates and making applications to the Court of Protection.

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