

# The Penguin Trustee Guide



**We Plan for Life, Death and Legacy... The Financial Journey Never Ends.**



**Helping People Live their Best Life,  
by Making Smarter Financial Decisions.**

# About this guide

It is important that all Trustees understand their duties and responsibilities whilst acting in this role.

This guide gives you an overview on your obligations as a Trustee. It covers the relevant legislation and regulations relating to Trustees. By its very nature, it will become out of date over time.

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## Your role as a Trustee

The role of a Trustee is a very important one. A Trust gives the Trustees ownership of the assets they are holding for the benefit of someone else; the Beneficiaries. As a Trustee, you are in control of the assets (or funds) in the Trust and will decide how the funds are used for desired Beneficiaries e.g. invest, make loans or absolute distributions.

You can download your FREE copy of the Penguin Trust Planning Brochure from our website.

[www.penguinwealth.com/guides/penguin-tax-planning-brochure-trusts/](http://www.penguinwealth.com/guides/penguin-tax-planning-brochure-trusts/)

A key point of contact for you regarding the Trusts is the Financial Planning Team who assisted in establishing your Trust framework, Penguin.

Penguin will be available to assist you with ongoing advice, which is important in maintaining the key benefits of the Trust planning.

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# What is a Trust?

A Trust has three parties:

## **Settlor**

The Settlor is the person who establishes or sets up the Trust. They are usually the person that has placed assets into the Trust or intends to place assets into the Trust in the future. However, other people are also able to place assets into the Trust. The Settlor will usually agree and establish the terms of the Trust, and it is these terms that the Trustee must comply with in the future.

## **Beneficiaries**

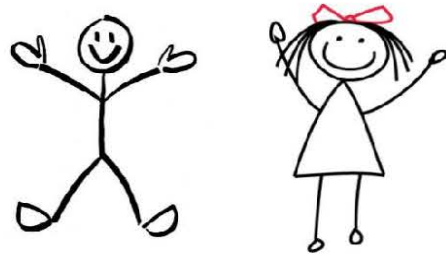
The Beneficiaries are the people who are legally entitled to benefit from the Trust. How they benefit will vary depending on the terms of the Trust. Usually Beneficiaries can benefit by receiving use of the Trust assets, income from the assets or from capital payments from the Trust. The Trust will often have additional Beneficiaries who can also benefit from the Trust.

## **Trustees**

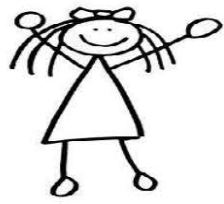
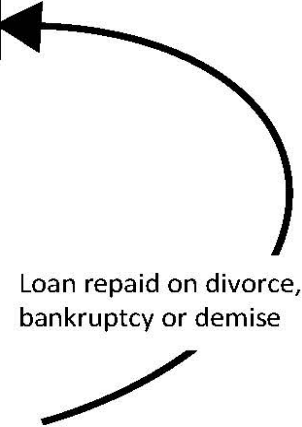
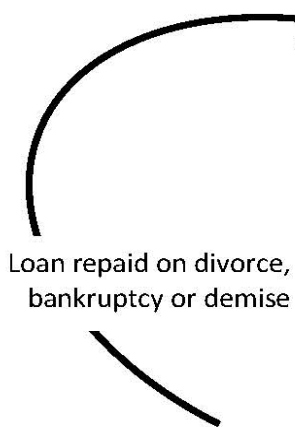
The Trustees are responsible for holding the assets owned by the Trust, for the benefit of the Beneficiaries. The Trustees must comply with the terms and instructions within the Trust deed and only take actions allowed by the Trust under law. There must always be a minimum of two Trustees and a maximum of four Trustees on any Trust in place.

The above parties are interchangeable; for example, a Trustee can be a Beneficiary or a Settlor. In a minority of discretionary Trusts, a Settlor can be a Beneficiary. This interchangeability affects how the Trust can be used under law.

# Illustration of a Beneficiary Protection Trust



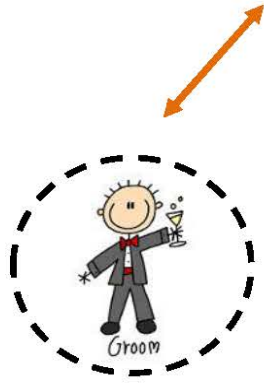
Will leaves everything to the Trusts



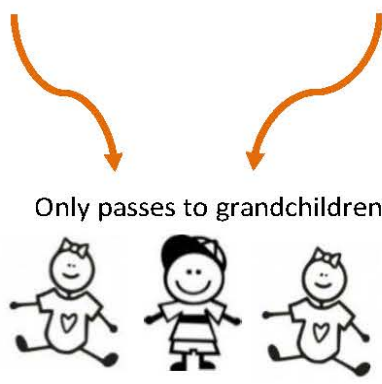
Daughter



Son



Ring Fenced Son-in-law



Only passes to grandchildren



Ring Fenced Daughter-in-law

# Your powers as a Trustee

The Trust deed sets out specific powers for you as a Trustee, in particular regarding the property within the Trust. The most important of these are:

- Where the Trust holds investments, you have the power to buy and sell investments as you see fit to enable you to take account of market conditions
- Income in the Trust may be used to support a Beneficiary who is under the age of 18 by way of "education and maintenance"
- To make payments where appropriate to the cost of relevant insurance policies for example; building insurance to cover a property owned by the Trust

As a Trustee you must act jointly with Co-Trustees. You have the power to exercise your direction. This means that you must have an active mental process in considering what action you will take. It is good practice to make a note of your thought and decision-making process when you make changes to the Trust property.

You can watch our video on the power of Beneficiary Protection Trusts:  
[tinyurl.com/tvka6fv](https://tinyurl.com/tvka6fv)

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## What details do the Trustees need to record?

The Trustees need to record the following details for each of (i) themselves (as Trustees) (ii) the Settlor (iii) the Beneficiaries (iv) and potential Beneficiaries referred to in a document (separate to the Trust deed) by the Settlor and (v) and individual who has control over the Trust:

- Full Name and Date of Birth
- National Insurance Number and any unique taxpayer reference (or, if the individual does not have these, their usual residential address – if that address is not in the United Kingdom, their passport number or ID card number, with the country of issue and expiry date)
- Description of their role in relation to the Trust

Trustees need to maintain and keep the records of this Beneficial ownership information. Trustees of discretionary Trusts whose Beneficiaries are currently only defined as a potential class (e.g. children) of Beneficiaries do not need to record the above for all those who fall within the class.

# When does this need to be provided?

The Trustees need to initially provide this information to HMRC as soon as the Trust has a value of more than £100.

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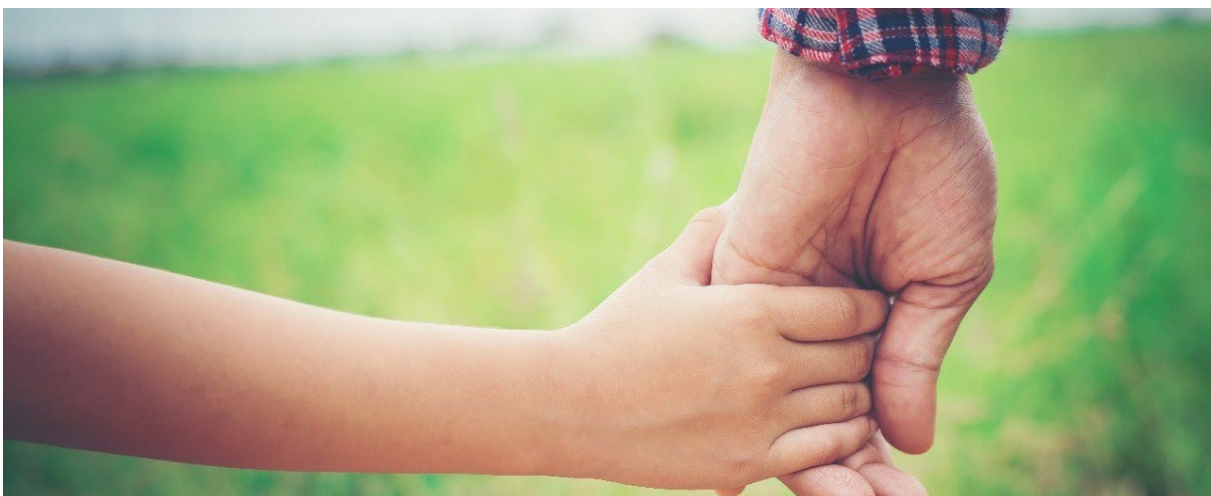
## Tax Returns

As a Trustee, you will be required to complete a tax return if the Trust generates a reportable event such as receiving income or selling an asset where Capital Gains Tax is due. If a Trust is reportable but does not have a tax event, then it is possible to request to HMRC that the annual provision of tax returns is waived until a specific tax event occurs.

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## Foreign Country Reporting

Europe, the USA and other countries are developing their own reporting requirements to reduce money laundering through Trusts and tax evasion. Generally, our advice is to avoid foreign Trustees where possible so as not to fall foul of local reporting requirements (e.g. FATCA in the USA). Certainly, when a Trustee receives death time of lifetime transfers Trustees living abroad, whether UK nationals or not, should take advice at that time.



# Top tips for acting as a Trustee

The duties and responsibilities of a Trustee might seem daunting. The following top tips will give you a better understanding of how to best act in this role:

- It is essential that you receive a copy of the Trust deed. The Trust deed will advise you who shouldn't benefit as well as what powers and/or limitation are placed on you as Trustee
- Make sure you know whether the Settlor has also drawn up a letter of wishes. Although they are not legally binding, they often provide a personal insight into the reasons behind the Trust and can give you greater perspective
- Keep up to date with all the necessary tax compliance issues relating to Trusts
- If acting as a Trustee is not for you, please tell the other Trustees that you do not wish to proceed so that the necessary documents can be put in place to remove you as a Trustee. Please be aware that if you do not act on Trust paperwork you are personally liable for neglecting it
- Hold regular meetings with the other Trustees, investments managers, Financial Advisers and, when appropriate, Beneficiaries. Take minutes of these meetings
- Check if any of the Beneficiaries are in receipt of means tested benefits to avoid a distribution having an adverse effect on that individual
- If there is a vulnerable Beneficiary, ensure no one is taking advantage in respect of the request. Receipts can be provided to verify that the distributions are being spent as intended
- Periodically check that all the Trustees and Beneficiaries in receipt of funds are not subject to bankruptcy order
- Keep accounts so that the Trust and its assets are transparent throughout, reducing the possibility of disgruntled Beneficiaries further down the line
- Maintain up to date contact details for all Beneficiaries
- Check that all assets are in the names of, or under control of, the Trustees
- Do not 'sit' on money until the end of the Trust period; be proactive in finding out what the needs of the family are, if any of the Trustees can assist
- If there is a loan subject to interest, make sure the rate remains at a level deemed reasonable. Other Beneficiaries could be unfairly disadvantaged by low or interest-free arrangements
- Consider whether investments should be actively managed
- Make the most of the Trustees' Capital Gains Tax (CGT) exemption each year and, where available, holdover relief to use the Beneficiaries' exemptions too. You will need to check whether the Settlor has any connected Trusts (thereby reducing the annual exemption)
- Diarise important dates e.g. ten-year anniversaries and agreed distributions from the Trust

- When there is a property, make sure it is insured accordingly and that the insurers are noting the Trustee's interests. Arrange for periodic visits to the property to ensure it is being maintained. If there is a life tenant, check they are upholding any duties imposed under the Trust, such as meeting the costs of repairs and insurance
- Keep an eye on benchmark movements and performance figures. If the discretionary manager is not achieving what was hoped, find out if this is reflected globally by other managers or, if the under performance continues, whether a change of manager might be appropriate
- In the event of losses in the year, make sure these are reported to HMRC accordingly. There is an expiration limit of when these can be claimed, so you could lose out of reduction against capital gains in the future
- If there is a continuously growing tax pool, see if this can be used to release income for non or basic rate taxpayers to allow a reclaim which is not due back to the Trust because of income taxed at the Trust rates
- Make sure you receive copies of tax certificates
- If the Trust is a Settlor-interested, liaise with the Settlor (and their accountant) to find out if they were in receipt of a reclaim which is not due back to the Trust because of income taxed at the Trust rates

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## Dealing with Beneficiaries

As a Trustee you must act fairly when making decisions so that one Beneficiary, or class of Beneficiary, is not advantaged or disadvantaged at the expense of another. You will need to build what may be a long relationship with the Beneficiaries as you will be acting in their best interest over the years. This is one of the reasons why you were asked to be a Trustee.

Over time you will be asked to disburse money of Trust assets to the Beneficiaries absolutely or via a loan. When doing this, it is your role to consider the requests and wishes of the Settlor and ensure these wishes are compiled with as much as possible. A letter of wishes is not legally binding, and clearly you can't take everything into account, so you need to think about the intent of the wishes so that you can take the action that the settlor would have wanted.

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## Protecting the Beneficiaries

One of the most effective ways to protect the Beneficiaries is to release money from the Trust as a loan to them. This has the advantage of ensuring that the money released does not fall into the Beneficiary's estate. This can usually protect the Trust funds from the divorce of the Beneficiary and from subsequent inheritance tax on death of the Beneficiary. It is best practice to release funds in this way rather than with a simple disbursement from the Trust.



# Trust Reporting and Tax Returns

There are two considerations for Trustees; registration of the Trust and annual tax reporting. As part of the UK's implementation of various Money Laundering Directives, new reporting requirements for Trusts have been introduced. So, the Trustees may need to register the Trust and complete tax returns as and when tax is due on the Trust assets.

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## Dealing with HMRC

If you are aware of a gain being made, or interest or income being received, you must contact HMRC to request a return. It is not HMRC's responsibility to ask you to complete a return; it is your responsibility to ensure that one is completed when it is needed.

You can employ an Accountant or other Financial Professional to complete these returns for you and any fees that they charge will be taken from the Trust.

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## What is the Trust Register?

This is an online register maintained by HMRC. Trustees are obliged to provide HMRC with:

- Information about the Trust
- The beneficial ownership information of the Trust; and a description of the class of personas who are Beneficiaries or potential Beneficiaries under the Trust

The newly introduced regulations impose obligations on Trustees to keep records of the beneficial owners of the Trust that they may administer. This covers any Trust where Trustees are all UK residents, or where at least one is a UK resident and the settlor was a UK resident and domiciled when the Trust was created, or funds added.

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## What must Trustees do for reportable Trusts?

- Trustees are required to establish, maintain and hold beneficial ownership information for their own account
- They need to file this information on the HMRC online Trust Register (with an annual confirmation requirement that any updates have been considered and completed)
- They need to provide, if requested, the beneficial ownership of the Trust to any law enforcement authority

- They must disclose that they are acting as Trustees when entering into transactions with bodies to whom the regulations apply (such as Trust providers, estate agents, financial institutions and tax/accounting professionals) and provide, upon request, the beneficial ownership information

## Your duties as a Trustee

Your role as a Trustee is to manage the Trust assets and administer them for the benefit of the Beneficiaries. How you do this is determined by the instructions within the Trust deed. The Settlor may have drafted a letter of wishes which provides you with guidance about how they would like their estate distributed. This is not legally binding and should not impact your discretionary decision making, but you would normally take it into account.

Most of your duties as a Trustee will have been set out in the Trust deed, and several are now covered in the Trustee Act 2000. The following are the most important and relevant of the Trustee Act 2000 rules:

- You must act in a way that an ordinary prudent businessperson would be expected to act
- If any cash is received by the Trust, you have a duty to invest the money, unless it is being disbursed immediately or loaned to Beneficiaries
- You must use the utmost diligence to avoid any foolish/frivolous loss and will be liable to the Beneficiaries for any breach of duty
- You must keep proper accounts of all Trust property. The Beneficiaries are entitled to see these accounts at any time and may require "reasonable" information regarding the dealings of the Trust
- The Trustees can be held personally liable to the Beneficiaries for losses caused by bad management
- The Trustees must make sure that the Trust money is properly invested and monitor the investment regularly
- You may not charge for your services as a lay Trustee
- When investing money, you must pay heed to standard investment criteria. This means that the investments selected must be suitable for the Trust and that there is appropriate diversification of the investments used
- Any investments in the Trust must be reviewed and amended as appropriate
- When making investment decisions you must obtain and consider proper advice
- You must disclose any potential conflicts of interest
- You must acquaint yourself with the terms of the Trust deed

**For further information please contact:**

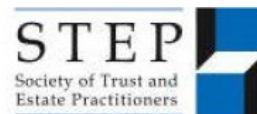


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## **Data Protection Statement**

Penguin Wealth Planners Ltd., Penguin Tax Planning, and Penguin Legal are totally committed to full compliance with the requirements of the EU General Data Protection Regulations (GDPR) and the data Protection Act 1998 collectively. Penguin follow procedures which aim to ensure that all employees and legal and professional partners who have access to any personal data held by or on behalf of Penguin are fully aware of and abide by their duties under these laws.

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