

## **Statement of Duties of Trustees**

### **Knowledge of the Terms of the Trust**

The first duty of a trustee is to acquaint himself with the terms of the trust under which he/she acts. This means that a trustee must familiarise himself/herself with the meaning of the trust and must ascertain the beneficiaries to whom the funds belong. A trustee must ensure that he/she understands the meaning of the trust. A trustee must strictly conform to and carry out the terms of the trust. A trustee must familiarise themselves with the interests of the beneficiaries and with powers entrusted to the trustee. A trustee can be liable for a breach of trust if they fail to observe the terms of the trust.

### **Trustee's duty to take possession of trust property and preserve it**

A trustee must take all reasonable and proper measures to obtain possession of the trust property and to preserve it and secure it from loss. A trustee must keep trustee property separate from his/her private property.

### **Bringing and defending proceedings to protect the trust property**

If necessary, a trustee must institute legal proceedings to recover trust property. A trustee is not however bound to take proceedings to recover trust property which, due to the financial position of the person liable to restore it, would be clearly useless but, where, by taking proceedings, he/she could have recovered part of the fund, he/she is liable to that extent.

### **Duty to use diligence and prudence**

A trustee must act with reasonable diligence as an ordinary prudent man of business in all matters relating to the trust e.g. investments, investment advice, acquiring/managing land and insurance. In cases of doubt or difficulty, a trustee may take legal advice and other expert advice.

### **Duty to give information to beneficiary**

A trustee must provide to a beneficiary on demand, information as to the way in which the trust money has been invested or dealt with and where it is.

## **Accounts**

A trustee must keep an accurate account of the money in the trust and must provide beneficiaries with those accounts upon demand. There are however limitations upon this duty depending upon the nature of the interest which the beneficiary has in the trust.

## **Investment**

A trustee must invest all capital trust money in his possession and all income which cannot be immediately applied for the purposes of the trust and a trustee is liable for any loss which may result from its being improperly invested or being left un-invested for an unreasonable length of time.

The law specifies in particular the duties of trustees when making investments. A trustee must from time to time review the investments of the trust and consider whether they should be varied taking into account the following criteria:

- (a) Suitability of investments
- (b) The need for diversification of investments

Further, before exercising any power of investment, a trustee should normally obtain and consider proper advice about whether or not the investments should be varied. However, a trustee need not obtain such advice if he reasonably concludes that in all the circumstances, it is unnecessary or inappropriate to do so. Clearly, in the case of a very small trust fund, the costs of obtaining professional advice may outweigh the benefits. However, as a matter of prudence, it would be recommended that the trustees initially seek the advice of a financial adviser as to the suggested type of investment taking into account the sum of money involved.

## **Duty to act without reward**

Trustees (other than trustees acting in a professional capacity) are not entitled to be paid for work carried out in their capacity as trustees although they can reimburse themselves for all expenses which they incur as trustees. This means that the trustees cannot pay themselves for acting as trustees.

### **Trustees must not make any profit from the trust**

If a person is a trustee, he/she is prohibited from obtaining any personal benefit by availing himself/herself of his/her position as a trustee in the absence of authorisation from the beneficiaries of the trust. If the trustee does obtain an advantage, then he/she holds any benefits so obtained for the beneficiaries of the trust.

### **A trustee must not purchase trust property**

If a trustee purchases trust property, the purchase is voidable at the instance of a beneficiary, even if the market price was paid for the property. However there are various exceptions to this rule. First, the settlement or Will may expressly permit a trustee to purchase trust property. Secondly, if all the beneficiaries are of full age and capacity they can agree that a trustee should be permitted to purchase the trust property.

### **Duty to ensure that the assets are distributed to the correct beneficiaries**

Trustees are under a duty to ensure that the assets of the trust are distributed or the income paid to the correct beneficiaries.

### **Duty to act jointly**

Trustees must be unanimous in the action they take. This means that all the trustees must agree on a particular course of action. There are exceptions to this rule. The trust instrument may empower trustees to act by majority decision. Further, trustees have a power of delegation, which they may choose to exercise.

### **Duty to act impartially**

Trustees must act impartially between the beneficiaries and must not act unreasonably.

**CARTER BELLS LLP**