What constitutes a breach of trust?

A breach of trust occurs when a trustee contravenes the terms of the trust or the duties of a trustee.

Trustees are jointly and severally liable for breach of trust to their beneficiaries where the breach has given rise to a loss.

Common allegations of breach of trust include (i) distributing assets to a beneficiary not entitled to them under the trust deed; (ii) investing trust assets in a way not permitted; (iii) breach of fiduciary duty; and (iv) breach of the common law or statutory duty of care.

What are a trustee’s duties?

- to exercise reasonable care and skill
- to comply with the terms of the trust document
- to act impartially between beneficiaries
- to invest in authorised investments
- to act in the best interests of the beneficiaries
- to avoid conflicts of interest
- to act personally (with the exception of some limited permitted delegation)
- to act in good faith and with honesty and integrity
- to take control of trust property
- to inform beneficiaries of their position and provide such information concerning the trust as they are entitled to
- to keep proper records and accounts
- to not profit from the trust

What is the required standard of care?

The statutory duty of care is found at Section 1 of the Trustee Act 2000. A trustee must exercise such care and skill as is reasonable in the circumstances, having regard in particular:

- to any special knowledge or experience that he has or holds himself out as having, and
- if he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

The common law duty of care is to take such care as an ordinary prudent man would take if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide. This duty is derived from Learoyd v Whiteley (1887).
What are the possible defences to a breach of trust claim?

**Exemption clause:**
An express clause in the trust deed may exempt a trustee from loss or damage.

**Statutory relief under Section 61 of the Trustee Act 1925:** The court may relieve a trustee wholly or partly from personal liability for a breach of trust if the trustee is found to have acted honestly, reasonably and ought fairly to be excused for the breach and for failing to obtain court directions.

**Beneficiary consent:**
It is a defence for a breach of trust if a beneficiary of full age and capacity and not subjected to undue influence has assented to or concurred with the breach. It is not necessary for the beneficiary to have benefited from the breach.

**Limitation:**
The limitation period, which is the prescribed statutory time period allowed for making any claim for breach of trust, is 6 years. No such period is applicable in the instance of fraud and/or recovery proceedings.

The limitation period for claims in a deceased person’s estate is 12 years.

**Delay:**
If there is an unreasonable delay on the part of the claimant in pursuing a breach of trust claim and that delay has given rise to prejudice to the trustee’s position, then the court may use its discretion to not permit the claim to proceed.

What is the extent of the liability faced by a trustee for breach of trust?

If a trustee is found to have acted in breach of trust they are required to restore the trust fund to the position it would have been in had the breach not occurred.

How can we help?

We act for trustees, executors, personal representatives and for individuals claiming against estates, trustees or other parties. We also often advise on complex and cross-jurisdictional issues, and regularly work alongside other intermediaries based offshore. Our team is recognised for its expertise in this field by the legal directories: The Legal 500 and Chambers & Partners.

If you have any questions arising from this ‘Need to Know’ please do not hesitate to contact our Wills, Trusts and Inheritance Disputes Team: contentioustrustsandprobate@kingsleynapley.co.uk

This Need to Know provides general guidance about the law in this area at the date of publication. Specialist advice should also be sought.