



## TRUSTEES NEED TO KNOW: FIDUCIARY DUTY CLAIMS

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### What is a fiduciary?

*“A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets: A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal”.*

*Bristol and West Building Society v Mothew [1998]*

All trustees have fiduciary duties which demand loyalty and good faith to the beneficiary.

### Why have fiduciary duties?

Fiduciary duties are required in order to prevent unwanted conduct on the part of the fiduciary. Fiduciary duties are separate to and additional to a trustee's duties. All trustees are fiduciaries but not all fiduciaries are trustees. There is no overlap.

### Can breach of a fiduciary duty be avoided?

A fiduciary may be able to avoid liability for breach of fiduciary duty by seeking the informed consent of his principal.

### What are the ramifications for a fiduciary acting in breach of duty?

Any action taken in breach of a fiduciary duty can be set aside even if there has been no resulting loss. A proprietary remedy enabling the claimant to assert rights against property in the defendant's possession may also be available.

### 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 our 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](mailto:contentioustrustsandprobate@kingsleynapley.co.uk)

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