



## TRUSTEES NEED TO KNOW: VARYING TRUSTS

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### Why might it be necessary to vary a trust?

There are many reasons why a trustee might want to vary a trust. For example, it may be in the interests of more advantageous administration or perhaps, to extend the perpetuity and accumulation period applicable to the trust.

### How can a trust be varied?

The simplest ways for a trustee to depart from the express terms of the trust are, by relying on an express clause allowing variation of provisions in the trust or if all the beneficiaries consent and are of full age and capacity.

In the absence of either of the above a trustee will need to seek the assistance of the court.

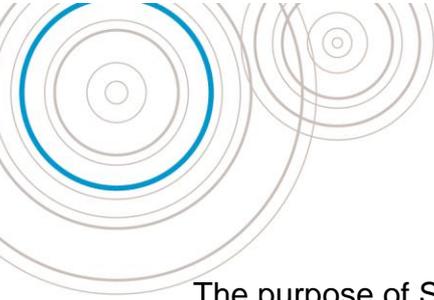
### What is the rule in *Saunders v Vautier*?

If all of the potential beneficiaries of a trust are of full age and capacity, and are absolutely entitled to the trust property, they are able to bring the trust to an end and share out the assets in whatever proportions they decide, or resettle the assets on agreed terms (*Saunders v Vautier* (1841)).

### How does Section 57 Trustee Act 1925 operate?

Section 57 of the Trustee Act 1925 deals with the court's power to authorise dealings with trust property:

*"Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income."*



The purpose of Section 57 is to ensure that the trust property is managed as efficiently as possible and authorise specific dealings with the trust property that cannot otherwise be carried out due to insufficient power to do so.

The authority sought must be in the best interest of the trust as a whole and the power is limited to the “*management or administration*” of the trust only.

## How does Section 64 Settled Land Act 1925 operate?

Section 64 of the Settled Land Act 1925 provides a general power for the tenant for life to effect any transaction under an order of the court:

*“Any transaction affecting or concerning the settled land, or any part thereof, or any other land (not being a transaction otherwise authorised by this Act, or by the settlement) which in the opinion of the court would be for the benefit of the settled land, or any part thereof, or the persons interested under the settlement, may, under an order of the court, be effected by a tenant for life, if it is one which could have been validly effected by an absolute owner.”*

This power is not limited to managerial or administrative actions.

## What is the Variation of Trusts Act 1958?

The Variation of Trust Act 1958 empowers the court “*if it thinks fit*” to approve on behalf of any minor, incapable adult, and any potential unascertained beneficiaries any arrangement varying or revoking all or any of the trusts, provided that the carrying out of the arrangement would be for the benefit of that person.

## 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:

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