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&G

LESSON 1 -  
Trusts unpacked:  
Understanding  
trust  
fundamentals



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# Learning Objectives

By the end of this session, you will be able to:

Describe what a trust is  
and why trusts exist

Distinguish between the  
roles and responsibilities  
of settlors, trustees and  
beneficiaries

Explain the core fiduciary  
duties of trustees and  
how these shape  
decision making

Identify the difference  
between beneficial  
interests across trust  
structures

## What is a trust?

A trust is the legal means by which one person gives property to another person to look after on behalf of another individual or a set of individuals.



# Why use a trust?

Control

Tax planning

Administration

Protection

A&M trust

Constructive trust

Excluded Property trust

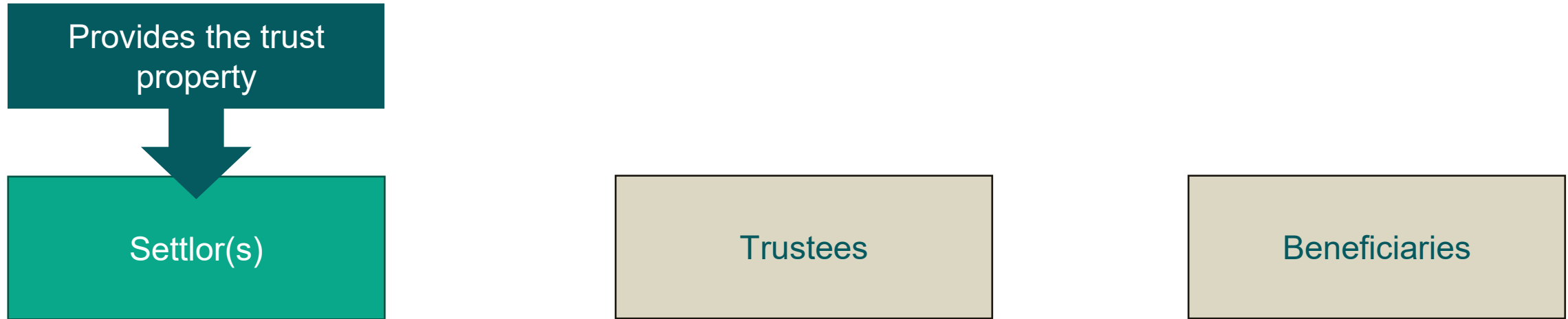
# The "who's who" of trusts

Settlor(s)

Trustees

Beneficiaries

# The "who's who" of trusts



Must be legally capable i.e. adult of sound mind



Settlor can be direct or indirect

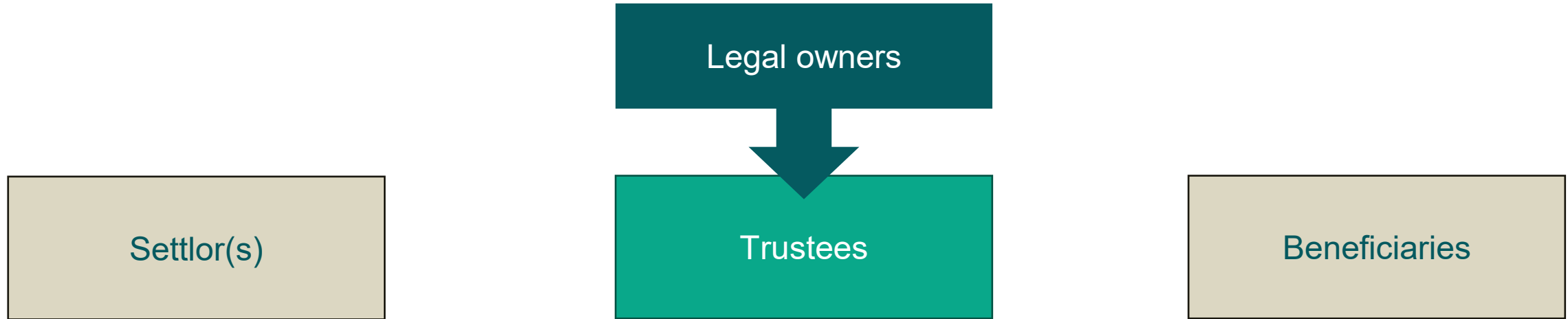


Called a "Granter" or "Truster" in Scotland



There can be multiple settlors of a trust

# The "who's who" of trusts



Individuals must be at least age 18 and have mental capacity to act as a trustee



Professional/corporate trustee can also be used

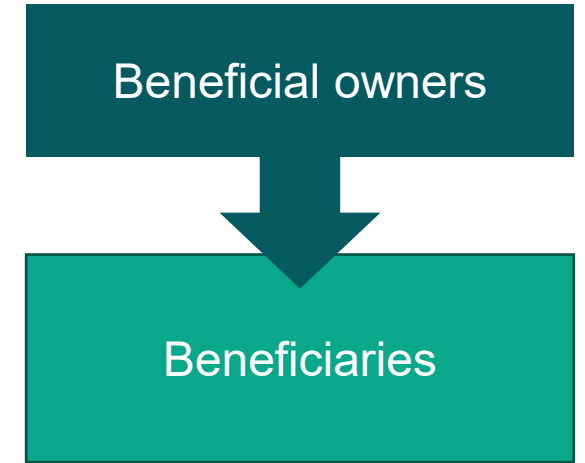
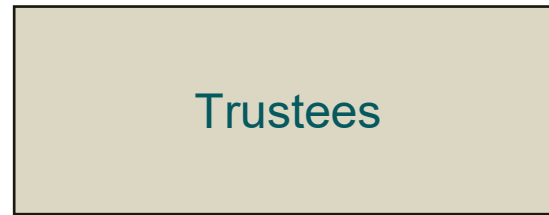
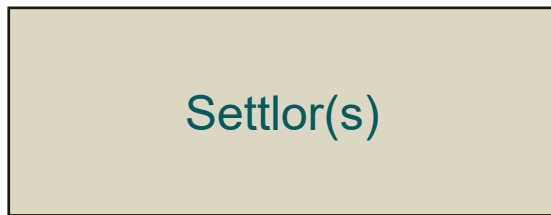


Generally no minimum number of trustees but depends on the terms of the trust (trust of land – min of 2 unless corp trustee/max of 4 can be registered legal owners)



Trustees must act unanimously unless trust deed states otherwise (Scotland by "quorum")

# The "who's who" of trusts



Can be an individual or an entity e.g. charity



Beneficiaries can be specifically named or described by class



It is possible to have future beneficiaries who are not born yet



Different types of beneficial interest can exist in the trust property

## Can the settlor of a trust also be a beneficiary?

Yes, but in order to be effective for IHT planning the settlor should be excluded from being a beneficiary.

## Can the settlor of a trust also be a trustee?

Yes, its very common for a settlor to act as trustee so they can control how the trust fund is administered

## Can a trustee also be a beneficiary?

Yes, but you need to be careful to avoid conflicts of interest.





# Creating a trust

# How are trusts created?

By Deed

By Will

By Conduct

By Law

Not always easy to establish!

Designated accounts – is there a trust?

# The three certainties



## Certainty of Intention

It must be clear that the settlor wishes to create a trust (unless the trust is created by law)



## Certainty of Subject Matter

It must be clear what property is held in trust



## Certainty of Objects

It must be clear who the beneficiaries are



# The Exeter Settlement 2010



- A discretionary trust was created in 1983
- The trust gave the trustees the power to add beneficiaries but was initially created “blank”
- The intention was to include a named charity as the default beneficiary to satisfy the certainty of objects test but the solicitor forgot...
- Beneficiaries were added in 1984 using the trustee power
- The trustees later sought a declaration from the court that the trust was valid

Was the trust  
valid?

No! The trust was void from outset because there were no beneficiaries.  
The Court rectified the trust by retrospectively adding the default beneficiary.

# Completing trust deeds



Check beneficiaries and trust terms match settlor's wishes

Dated (start date for TRS and constituted may be different)

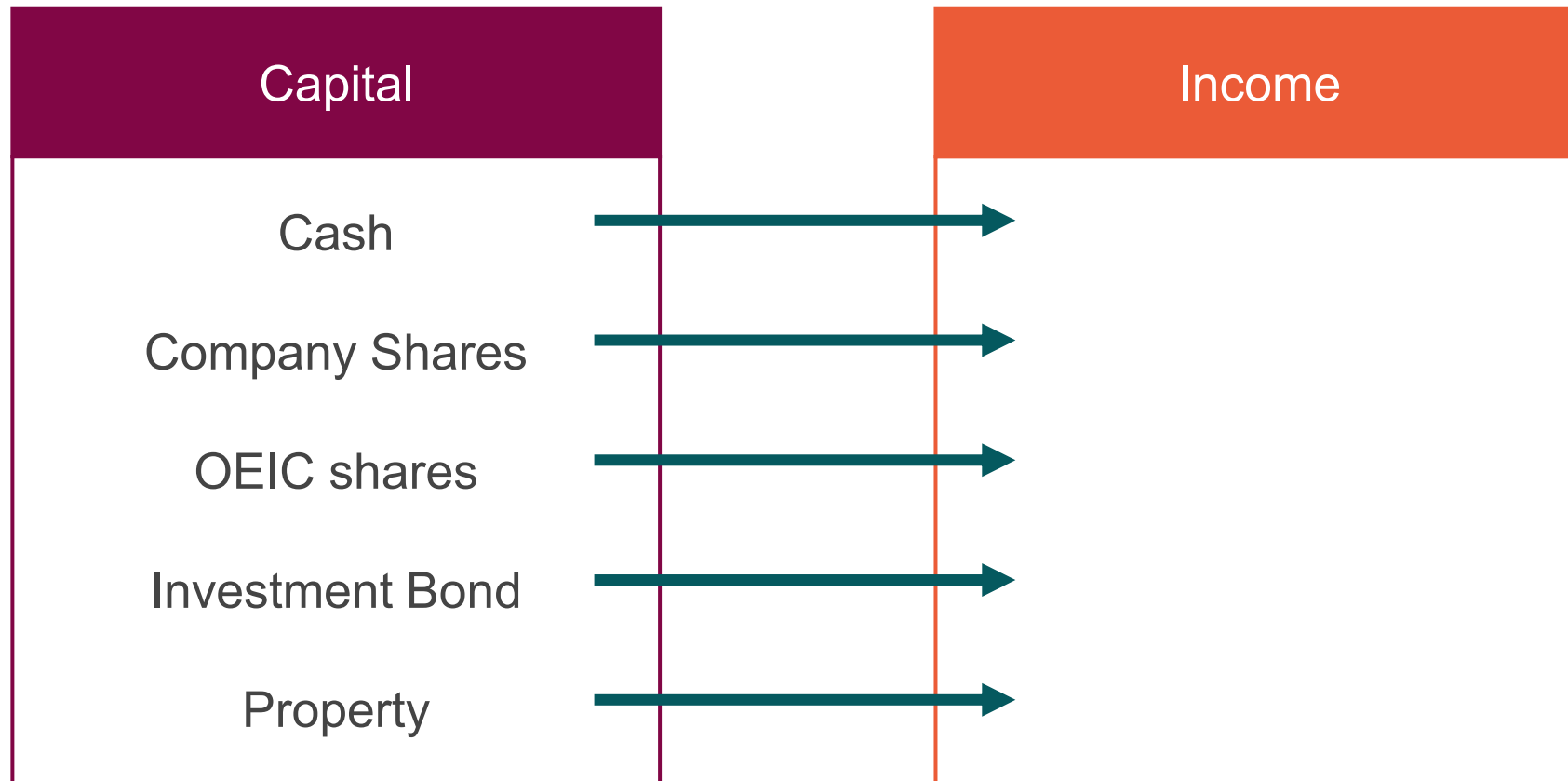
Signed by settlor, trustees and independent witness

Read guidance notes!

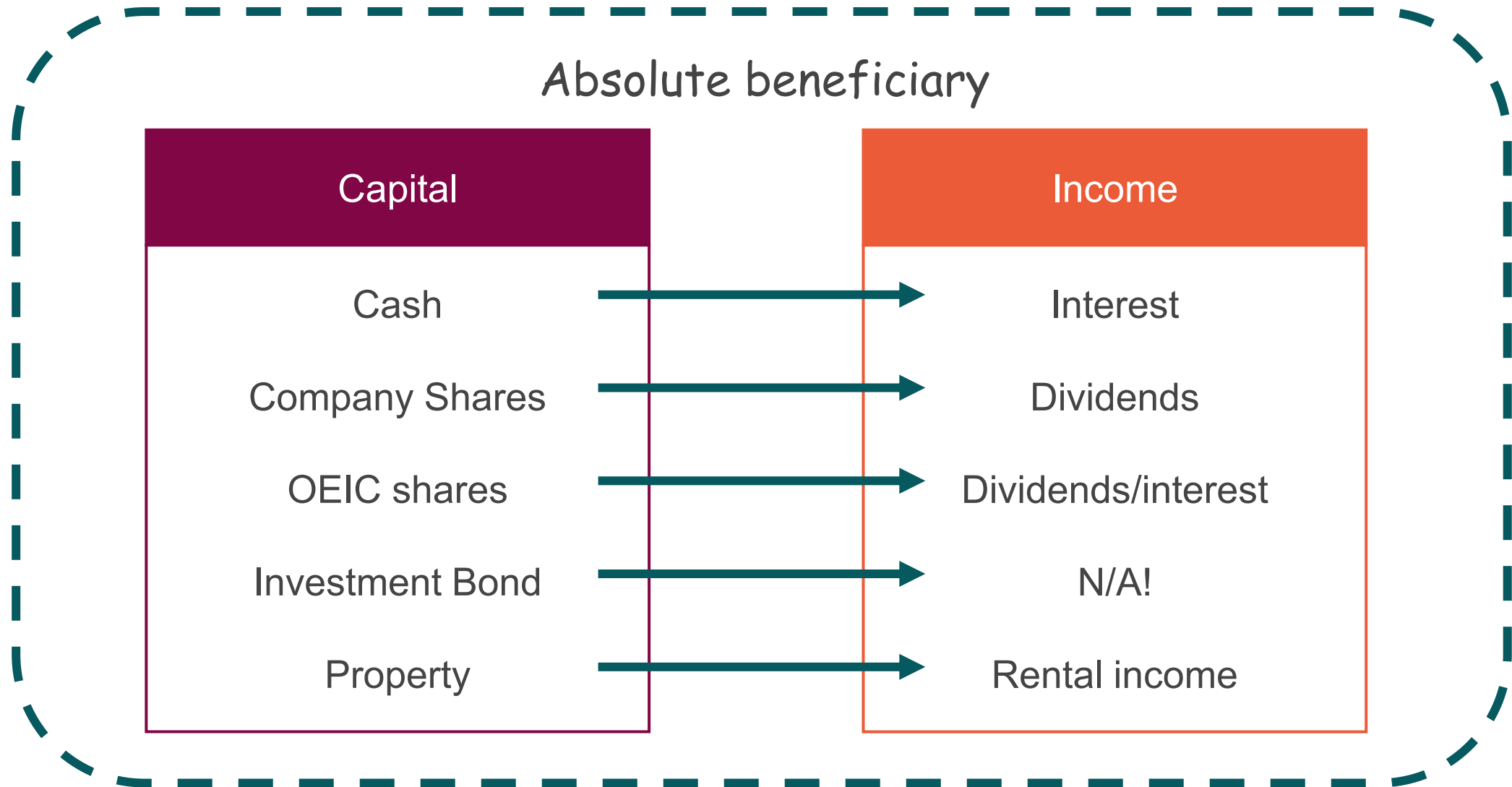


# Beneficial interests

# Capital or income?



# Absolute/Bare beneficiary



# Absolute/Bare trusts



## Gift Trust – Absolute Trust Declaration Form

### How to fill out this form

Please use black ink and CAPITAL LETTERS or tick  as necessary.

Any mistakes must be

### Some information before you start

The Prudential Assurance Company Limited, Prudential International Assurance plc and Prudential International Assurance plc, UK Branch, can't

12) I bequeath the following pecuniary legacies, free of expenses and of government taxes on death namely:-

- a) To my grandchildren alive at the date of my death the sum of FIFTY THOUSAND POUNDS STERLING each
- b) I bequeath the sum of TWENTY THOUSAND POUNDS STERLING to each of my children Jekyll and Hyde absolutely

# When Bare isn't Bare!

HMRC internal manual

## Trusts, Settlements and Estates Manual

### Example 1 - bare trust

Mrs A left the residue of her estate to such of her grandchildren as were alive at the date of her death.

She directed that the funds should not be paid to the grandchildren until they respectively attain age 21 years.

### Example 3 - not a bare trust

Mr B left the residue of his estate to 'such of my grandchildren as survive me and attain age 21 years'. If any grandchild dies before age 21, his/her prospective share goes to the other grandchildren who do attain that age.



# Discretionary beneficiary

Capital
Cash
Company Shares
OEIC shares
Investment Bond
Property

Discretionary  
Beneficiary  
entitled to  
nothing\*!!

Income
Interest
Dividends
Dividends/interest
N/A!
Rental income

Challenge trustees decision making powers? Is it a “piggy bank”?

# Discretionary



## Gift Trust – Discretionary Trust Declaration form

How to fill out this form  
Please use black ink  
and write in CAPITAL

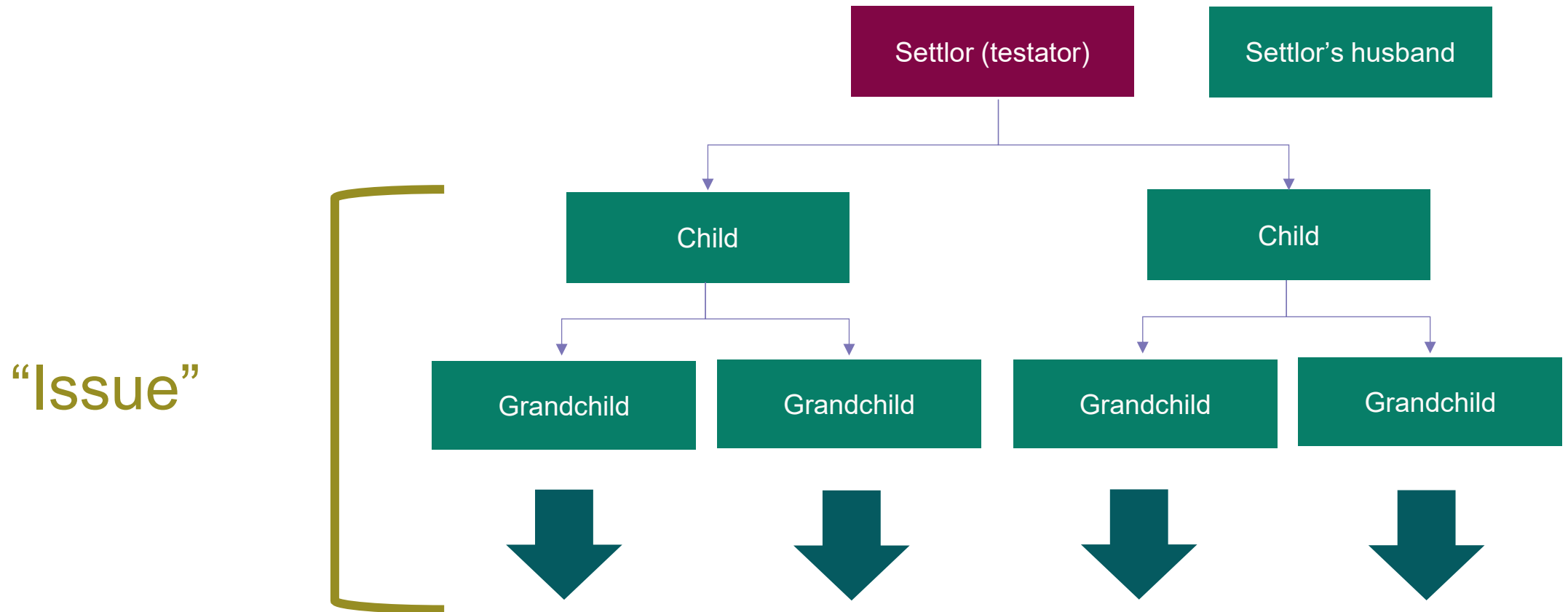
### Some information

The Prudential Assurance plc, UK  
upon each investor

- 12) I give the sum of £250,000 to my Trustees upon trust (hereinafter called the “Trust Fund”) to hold subject to the powers and provisions hereinafter declared.
  - a) My Trustees shall hold the capital and income upon such trusts in such shares with and to such powers and provisions as the Trustees shall at any time or times appoint by deed or deeds revocable or irrevocable.

# Classes of beneficiary

(i) “The beneficiaries” means and includes my husband, my children and remoter issue



# Power to add/remove beneficiaries

Settlor alive  
then fine



## (3) Power to add or exclude Beneficiaries

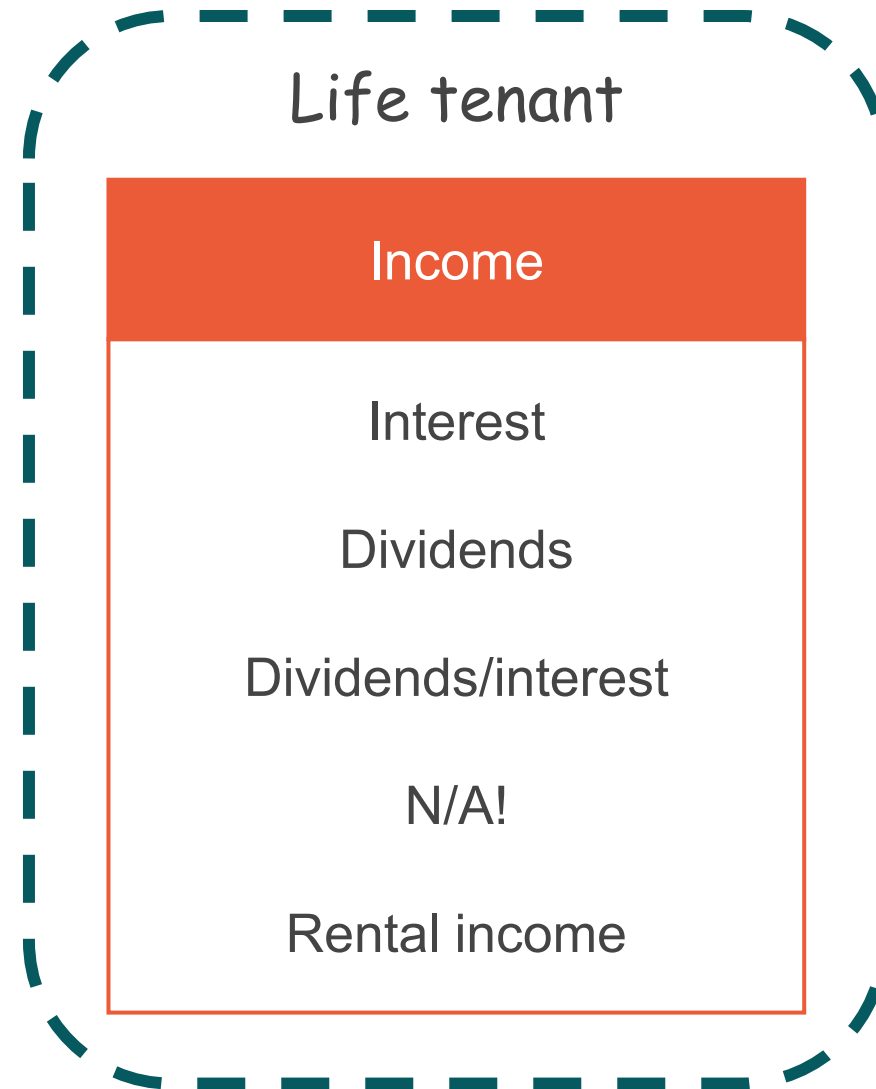
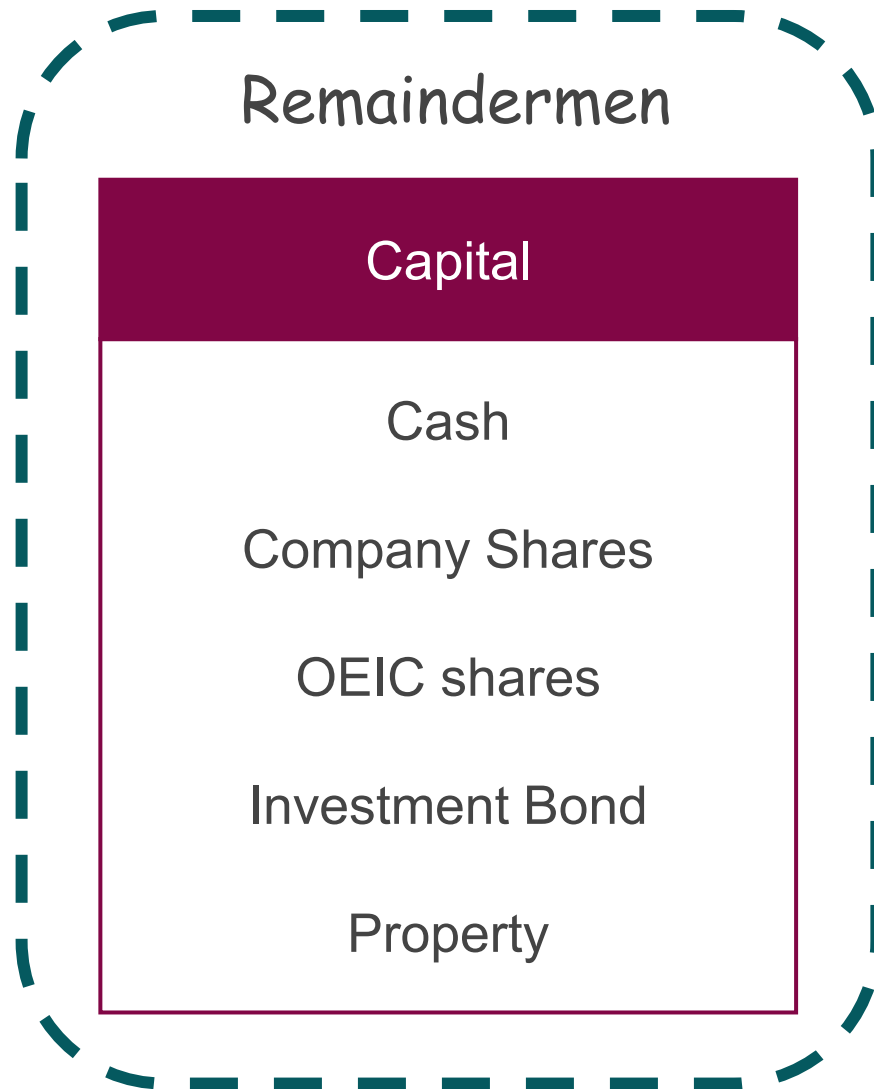
- (a) The trustees may add a person or a class of persons (other than the Settlor(s) to the Beneficiary class provided the addition is requested or agreed to in writing by the Settlor (or one of the Settlers if there are two Settlers) or if no Settlor is living by at least two persons who are already Beneficiaries and at least 18 years old.

Settlor  
deceased  
Problem?



A “letter of wishes” does NOT add a beneficiary to a trust!

# Interest in possession trust beneficiary



# Interest in possession trusts – Will

5) My Trustees shall hold the Trust Fund ON TRUST

- a) To pay the income to my Wife for her life and
- b) Absolutely for such of my children as are alive at my death and if none then to my children one in equal shares PROVIDED that if any child of mine dies before attaining the age of 25 leaving a child or children who reach the age of 25 then such child or children shall take and if more than one in equal shares so much of the Trust Fund as that child of mine would have taken on attaining a vested interest



Life tenant

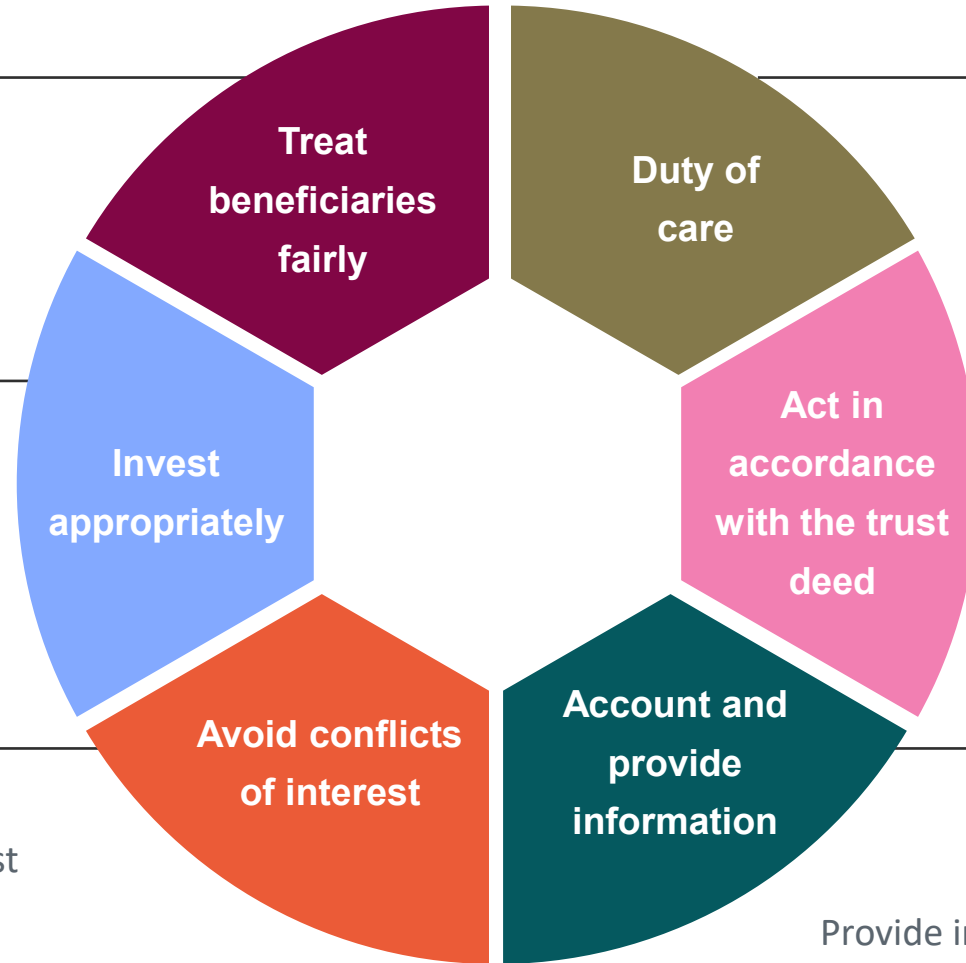


Remaindermen



# Trustee duties and responsibilities

# Trustee duties and responsibilities



## Key Points

Nestle v NatWest (1993) – trustees must treat beneficiaries “fairly”

## Key Points

S1 Trustee Act 2000  
Higher standard for professional trustees

## Key Points

Cowan v Scargill (1984) – trustee’s views should not affect the investment of the trust  
Midland Bank v FPS – failing to act may result in breach of trust

## Key Points

Exercise powers only as permitted  
Comply with any restrictions or conditions

## Key Points

Duty to avoid potential conflicts of interest  
Independent trustee – self dealing

## Key Points

Maintain trust accounts  
Record decisions at trustee meetings  
Provide information to beneficiaries when requested

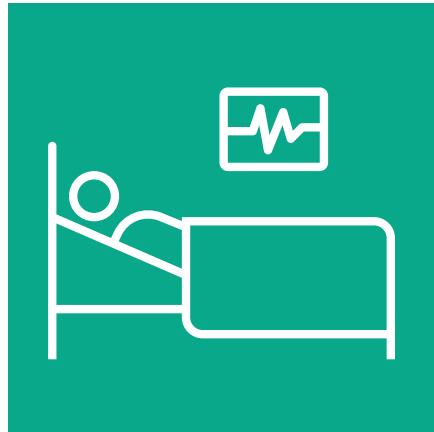
# Delegation of trustee duties and powers

Situation	Delegation allowed?	
Routine administrative tasks (accounts, paperwork)	Yes	Can be delegated provided trustees retain oversight
Investment management	Yes	Permitted under Trustee Act 2000 subject to formal agreement and ongoing review
Professional advice (tax, legal)	Yes	Trustees can and should seek expert advice
Custody/nominee arrangements	Yes	Statutory powers allow use of custodians and nominees for holding assets
Discretionary distribution decisions	No	Core fiduciary judgements must be exercised personally by trustees
Delegating all trustee functions	No	Wholesale abdication of responsibility is a breach of trust
Delegation prohibited by trust deed	No	The terms of the trust override statutory delegation powers

# Changing trustees



Death



Incapacity



Retirement



Unfit/unwilling  
to act

## Section 36 Trustee Act 1925

The person(s) nominated by the trust instrument



If none - the surviving or continuing trustees



If none - the personal representatives of the last surviving trustee

*may, by writing, appoint one or more other persons (whether or not being the persons exercising the power) to be a trustee or trustees **in place of** the trustee so deceased, remaining out of the UK, desiring to be discharged, refusing, or being unfit or being incapable....*

Read the trust  
deed!

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**Les Cameron** **Manager**

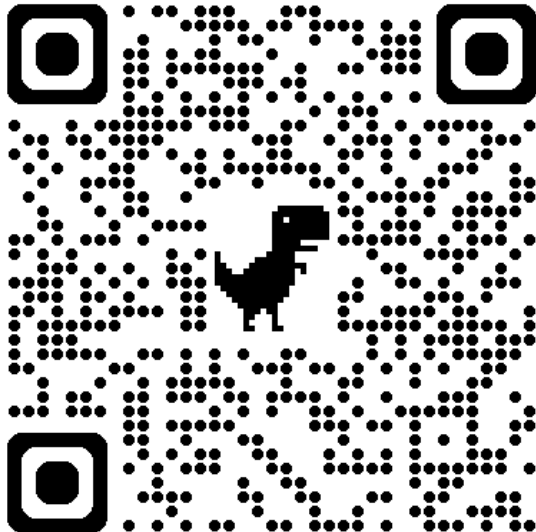
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Any  
questions?



Thank  
you

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