Trust School Lesson 5 - Investing as a Trustee: Powers, Duties and Risk

This content is based on our understanding of current taxation, legislation and HM Revenue & Customs practice all of which are liable to change without notice. The impact of any taxation (and any tax reliefs) depends on individual circumstances.

Where content includes case studies or examples these are for illustration purposes and are not recommending a specific course of action.

Past performance is not a reliable indicator of future performance. The value of an investment can go down as well as up and your client may get back less than they’ve paid in.

Learning Objectives

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

- Describe the statutory and fiduciary investment duties of trustees
- Explain the investment powers available under the Trustee Act 2000
- Apply trustee investment principles to match investments to different trust types

Trustee investment duties and responsibilies

Trustee investment duties and responsibilities

Trustees must invest	Be extra prudent	Take tax into account	Ignore personal views	Treat beneficiaries fairly

Statutory duties

Trustee Act 2000

Section 1

The duty of care

Section 3

General power of investment

Investment powers

7. **Powers**

7.1 My executor shall have the fullest powers of retention, realisation, investment, appropriation, transfer of property without realisation, and management of my estate as if they were absolute owner and not executor.

15 **Power of investment**

15.1 Any money to be invested may be applied in the purchase or acquisition (either alone or jointly with other persons) of such shares, stock, funds, securities, land, buildings, chattels or other property of whatever nature and wherever situate, and whether involving liabilities or producing income or not, or in making such loans, with or without security, as the Trustees think fit.

b. My Trustees shall be empowered to invest and change investments freely as if they were beneficially entitled

6. ADMINISTRATIVE PROVISIONS

The Standard Provisions and all of the Special Provisions of the Society of Trust and Estate Practitioners (2nd Edition) shall apply

Look for restrictions on investment powers

Trustee Act 2000

Section 1

The duty of care

Section 3

General power of investment

Section 4

Standard investment criteria

Section 5

Advice

Section 15

Asset management: special restrictions

Absolute trusts

Bare trust - case study

- Shona contacts a financial adviser as she has been appointed as the trustee of a Will trust that was created when her father passed away.
- Shona hasn't acted as a trustee before and wants to discuss what she needs to do with the trust fund e.g. should she set up a bank account for the children?
- She says there were various legacies left in the Will but ultimately the £150,000 is for the benefit of her two children Sam and Isla who are aged 6 and 8.
- Shona is expecting that it will be used to fund things like university costs, house deposit or buying a car etc

Read the Will, make sure its bare!

Bare trust - case study

The financial adviser reads the Will to establish the beneficiaries and find out if there are any contingencies or restrictions on investment powers.

6. My residuary estate should be divided into one hundred equal shares and held in the following proportions:

(a) ~~As to one quarter for my daughter Shona Stevenson~~

(b) ~~As to one quarter for my son Derek Allen~~

(c) As to one eighth for my grandson Sam Stevenson

(d) As to one eighth for my granddaughter Isla Stevenson

Money will be distributed once the beneficiaries attain the age of 18

Bare trusts - tax

Income, capital gains and chargeable event gains assessed on the beneficiary*

*Special rules for parental settlements

Bond or OEIC?

Planning Assumptions

Invested Amount	£75,000.00
Proposed Term (5 to 10 only)	10

Savings Income	0.00%
Dividend Retur	
Capital Gai	

6/7 years' worth of AEAs

2/3 year's worth of tax free allowances (£18,570)

Projected Values

	Collectives	Onshore	Offshore
End of term values			
Surrender	£122,167	£117,188	£122,167
Gain	£18,867	£42,188	£47,167
Taxation			
Internal Taxation	£0	£4,038	£0
Income Tax over term	£0	£0	£0
CGT Over Term	£0	£0	£0
Tax on Surrender	£3,396	£0	£6,291
Net Proceeds	**Collectives**	**Onshore**	**Offshore**
On Surrender	£118,771	£117,188	£115,876
ISA Value	£0	£0	£0
Gross Withdrawals	£0	£0	£0
Personal Taxes Paid Over Term	£0	£0	£0
Overall Outcome	£118,771	£117,188	£115,876

Based on encashment in one tax year

How much of this tax can be eliminated?

Considerations

- Who are you investing for? (often minor children)
- What is the investment term (or terms)?
- What tax free allowances are available?
- Parental settlement?
- You’re effectively advising an individual!

Interest in possession trusts

IPDI trust – case study

- The trustees of a Will trust seek investment advice from a financial adviser on investing the £250,000 trust fund.
- The beneficiaries are the testator's spouse Lisa (the life tenant) and testator's three children from a previous marriage (the remaindermen).
- Lisa has pension income of £48k p.a. and doesn't require additional income but may need some money from time to time to cover expenditure in future e.g. holidays, care costs
- Remaindermen are all basic rate taxpayers
- The two trustees are two of the testator's three children

Read the Will!

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(b) SUBJECT to (c) below

(i) my Trustees shall hold the Trust Fund ON TRUST to pay its income to my Wife for her life

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(ii) my Trustees may at any time or times during the Trust Period as to the whole or any part of the Trust Fund to the income of which my Wife is for the time being entitled transfer or raise and pay the same to or for the absolute use or benefit of my Wife or raise and pay or apply the same for the advancement or otherwise for the benefit of my Wife in such manner as my Trustees shall in their absolute discretion think fit

Power to advance capital?

(b) To pay any income from the Property Fund to my said wife during her lifetime

(g) Provided my Trustees are at least two in number they shall have power to raise capital (irrespective of whether or not in so doing they exhaust the Property Fund) and to pay or lend the same to my wife (or apply it for her benefit) in such manner and upon such terms as my Trustees think fit

b) My trustees may at any time during LISAs lifetime pay transfer or apply the whole or any part of the capital in which LISA has an interest in possession to or for the benefit of her in such a manner as they think fit

OEICS - IIP trusts

OEIC

Capital
distributions
No tax credit

Income
distributions
Credit for tax paid

Dividend and
savings income at
marginal rate

Capital
gains
24%
(over AEA)

Dividend
income
10.75%

Savings
income
20%*

Trustee tax return

Beneficiary – ongoing tax admin
(reclaim or pay more tax)

*22% from 6th April 2027

Bonds - IIP trusts

Bond

Withdrawals within TDA = no gain

Assignment/ appointment segments before encashment

No trustee tax return (assuming trustee rate avoided)

Gains taxed as savings income 0%, 20%*, 40%*, 45%* (top-slicing available)

UK Bond gains come with 20% tax credit

Beneficiary may have tax admin

*22%, 42%, 47% from 6th April 2027

Bond or OEIC?

OEIC

Income required (and no power to advance capital)	Low rates of tax on income	Savings and dividend allowances available	No need for tax deferral	Low capital gains or erased on death
No income required (or power to advance capital)	High rates of tax on income	Savings and dividend allowances unavailable	Tax deferral preferable	High capital gains subject to higher rates of CGT within trust

BOND

What about Lisa?

OEIC

Low capital
gai ed
deat

No income required (or power to advance capital)

High rates of tax on income

Savings and dividend allowances unavailable

Tax deferral preferable

High capital gains subject to higher rates of CGT within trust

BOND

Considerations

- Treat beneficiaries fairly (unless trust says otherwise)
- Does the life tenant require "income"?
- Do trustees have power to advance capital to the income beneficiary?
- How large is the trust fund?
- What is the tax position of all the beneficiaries?

Discretionary trusts

Discretionary trust – case study

- Mr and Mrs Smith set up a discretionary trust several years ago into which they placed a whole of life policy.
- Both Mr and Mrs Smith have now passed away and the proceeds of £500,000 have been paid out to the trustees.
- The current trustees are the settlors' children, Anne and David.
- The trustees do not wish to distribute the funds at the current time. They are both retired and independently wealthy.
- They anticipate the funds will be used for the benefit of their adult children and young grandchildren at some point in the future.

Read the deed!

Discretionary trust – case study

The financial adviser reads the trust deed to establish the beneficiaries and find out if there are any "quirky bits" or restrictions on investment powers.

F13 The Discretionary Beneficiaries

The Discretionary Beneficiaries means:

F13 i The children and remoter issue of the Donor (whenever born) including children and remoter issue by adoption.

F13 ii Any spouse or civil partner or former spouse or civil partner of anyone within (i) above.

F13 iii Any person at any time the spouse or civil partner of the Donor or the widow or widower or surviving civil partner of the Donor.

F13 iv Any person nominated in writing to the Trustees by the Donor provided that the Donor may not be the subject of any such nomination.

F13 v ______________________________

F13 vi ______________________________

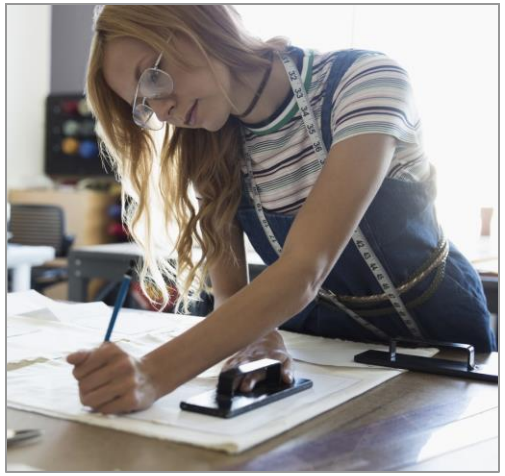
PROVIDED THAT the Excluded Person (whether or not comprised in any of the categories (i) to (vi) above) shall not be a Discretionary Beneficiary.

OEICs – Discretionary trusts

OEIC

Capital distributions
No tax credit

Income distributions
45% tax credit



Capital gains
24%
(over AEA)

Dividend income
39.35%

Savings income
45%*

Trustee tax return
Income and capital account
Tax pool management

Trust income
0%, 20%, 40%, 45%
(E&W)

Beneficiary – ongoing tax admin
(reclaim some/all tax credit

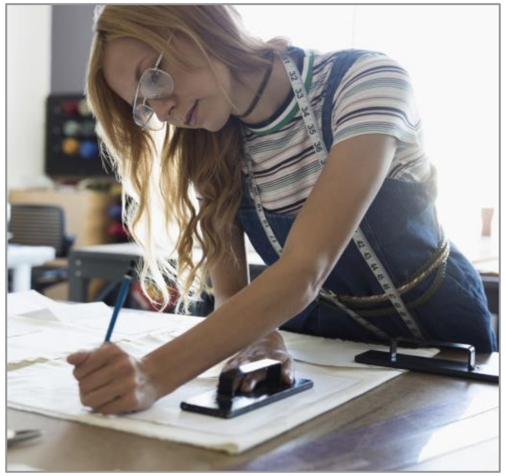
*47% from 6th April 2027

Bonds – Discretionary trusts

Bond

Withdrawals within TDA = no gain

Assignment/ appointment segments before encashment



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0%, 20%*, 40%*, 45%*
(top-slicing available)

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Beneficiary may have tax admin

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Bond or OEIC?

Beneficiaries' tax position can (ultimately) be accessed by use of OEIC or a bond

But with an OEIC…….

- Trustee tax on income causes drag on returns (for all taxpayers)
- CGT AEA £1,500* CGT rate 24%
- Annual tax admin by trustees
- Extra costs if employ adviser to deal with tax admin
- Tax admin by beneficiary when income distributed

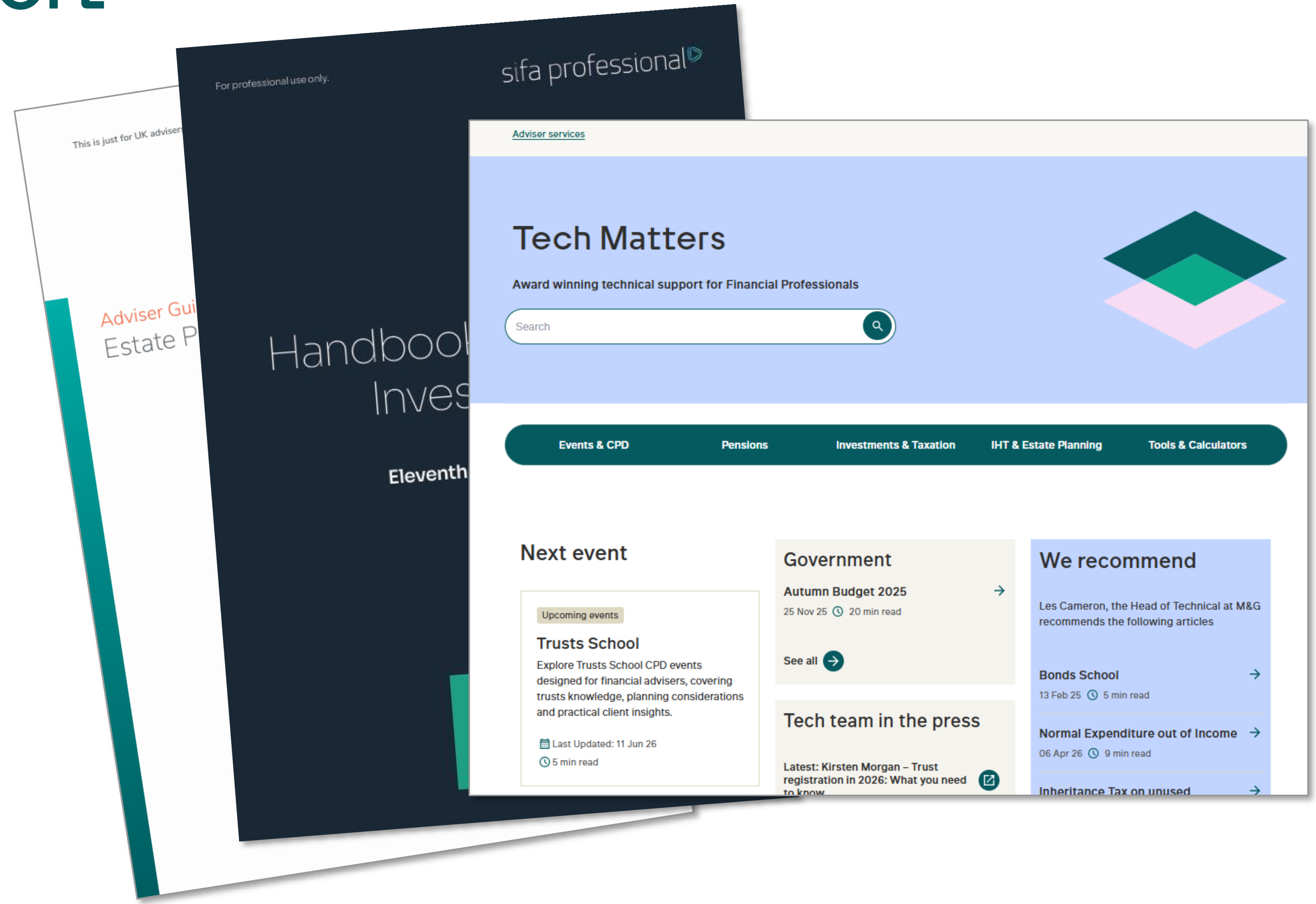
BOND

* Divided by number of trusts set up by settlor subject to a min of £300 per trust

Considerations

- How is the trust fund intended to be distributed?
- When are distributions likely to occur?
- What is the tax position of the beneficiaries?
- Will trustees outsource tax admin?
- Is the settlor alive and UK resident?

Support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Upcoming events
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Les Cameron, the Head of Technical at M&G recommends the following articles
Bonds School
13 Feb 25
5 min read
Normal Expenditure out of Income
06 Apr 26
9 min read
Inheritance Tax on unused

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Any questions?

Thank you