

I am worried that a trustee has mismanaged my trust fund. What can I do?

Insights - 15/08/2019

This article first appeared on the STEP website.

Trustees are appointed to safeguard funds in a trust, and are duty-bound to act in the best interests of the beneficiaries. While most trustees will carry out their duties conscientiously, occasionally there is mismanagement.

There are a number of ways in which a trustee can mismanage a trust fund. This can include:

- Using trust funds to make investments that are not permitted by the trustee's powers of investment, or which are outside the investment or risk profile for the trust, such as hazardous or speculative investments
- Failing to exercise reasonable skill and care when making investments
- Distributing trust assets to non-beneficiaries, or to a beneficiary who is not entitled to them under the terms of the trust document
- Using trust funds for the trustee's own personal advantage – even if he or she only 'borrows' the money
- Reaping financial benefits from trust funds without permission
- Making decisions based upon personal interests, instead of those of the beneficiaries.
- Failing to take reasonable steps to protect the trust fund.

How can I find out if a trust fund is being mismanaged?

Trustees have a duty to account to beneficiaries for their administration of the trust.

Beneficiaries are entitled to demand financial information showing how the trust fund has been managed. If the trustee refuses to provide this, the beneficiary can apply to the court for an

order compelling the trustee to produce it.

Once the beneficiary has the information, they should then be able to assess whether there has been any mismanagement.

If the affairs of the trust are complicated and/or it is unclear whether full information has been provided, it may be advisable to use a forensic accountant to discover whether there has been mismanagement, and whether complete information has been provided.

I've established that the trust fund has been mismanaged – what are my options?

There are a number of different types of remedy available, depending on the nature of the mismanagement:

- If trust funds have been misappropriated, or wrongly distributed to non-beneficiaries, you can bring a court action for their recovery.
- If the trustee has failed to exercise care and skill, or has made unauthorised investments, you can bring an action against him or her to make good the losses.
- If the trustee has, without authorisation, profited from their position as trustee, you can bring an action against him or her.

As well as proceeding against the trustee, beneficiaries may also be able to proceed against third parties who dishonestly assisted the trustee in his or her breach of fiduciary duty – for example, anyone else who may have profited from their misconduct.

You can make an application to remove the trustee from office, if you do not have the power to do so under the trust deed, or if the trustee will not step down voluntarily.

Before bringing any such action, however, it's best to take legal advice. If the legal action is unsuccessful, you may run the risk of having to pay the trustee's costs. Your advisor may suggest alternatives to court action, such as direct negotiation or mediation, in the first instance.

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