Key Considerations When Establishing or Managing a Trust

What Do You Want the Trust to Achieve?

Consider the underlying reason for creating a trust. You may want to provide for children, protect assets for future generations, support a vulnerable relative or give trustees flexibility over when beneficiaries should receive money.

The purpose of the arrangement will help determine whether a trust is appropriate and, if so, which structure should be considered.

Who Should Benefit?

Think about the individuals or groups you want the trust to benefit.

Some trusts give a named beneficiary an immediate or defined entitlement, while discretionary trusts can give trustees flexibility to decide how and when funds are distributed between a wider group of potential beneficiaries.

Which Assets Will Be Placed Into the Trust?

Prepare an outline of any cash, investments, shares, land or property you are considering transferring.

The nature and value of the assets can affect the legal, tax and administrative implications of establishing and running the trust.

Who Should Act as Trustee?

Trustees take legal ownership of trust assets and are responsible for administering them in accordance with the trust terms. They may need to make investment decisions, authorise payments and deal with tax and administration.

Consider appointing people who understand the responsibility involved and who are likely to be able to work together effectively over the lifetime of the arrangement.

How Much Flexibility Should the Trustees Have?

Consider whether beneficiaries should have clearly defined entitlements or whether trustees should have discretion over distributions.

A discretionary trust can allow trustees to respond to changing circumstances, whereas other structures may provide greater certainty about who receives income or capital.

The Tax Consequences

Trusts can have their own Inheritance Tax, Capital Gains Tax and Income Tax consequences.

For example, Inheritance Tax can potentially arise when assets are transferred into certain trusts, on ten-year anniversaries and when assets leave the trust. Capital Gains Tax can also arise when assets are transferred into or out of a trust, although reliefs may sometimes be available.

Tax should therefore be considered before assets are transferred rather than after the trust has already been created.

Trust Registration

Many UK trusts need to be registered with HMRC through the Trust Registration Service, including many trusts which do not themselves have a tax liability. There are exemptions for certain categories of trust, so the registration position should be checked when the arrangement is established.

Existing Wills and Estate Planning

Consider how the proposed trust fits alongside your Will and any other succession arrangements already in place.

If a trust forms part of wider family wealth or estate planning, these arrangements should support the same objectives rather than operating independently.

The Needs of Vulnerable Beneficiaries

If the trust is intended to provide for someone with a disability or other vulnerability, tell your solicitor about their circumstances and the support they may require.
Special tax treatment can apply to some qualifying trusts for disabled or vulnerable beneficiaries, so the appropriate structure should be considered carefully.

Existing Trust Documentation

If you are seeking advice about a trust that already exists, bring a copy of the trust deed, any deeds of appointment or retirement, letters of wishes and relevant financial or tax records.
These documents will help establish what powers the trustees currently have and whether changes can be made.

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