

The value of trustee indemnity insurance



Trusts are designed to protect family assets, but common disputes can leave trustees, beneficiaries and the trust itself in a financially vulnerable position

By Paul Rose

Trustee indemnity insurance is a relatively new offering from the insurance market and operates in a very similar way to professional indemnity insurance.

A policy will protect all lay trustees within a trust against a wrongful act or omission and will cover:

- current trustees and their estates after death;
- past trustees where a claim is made against them in the policy period;
- the trust, where it is allowed to reimburse the trustee under the trust deed; and
- future trustees if added during the policy period.

Policies will pay out for legal expenses incurred defending the trustee's position and, if the claim is upheld, damages and settlements.

In an increasingly complex and contentious field, these policies protect the trust and the beneficiaries themselves because the financial and legal risks of a dispute are dealt with via insurance rather than through the trust's assets.

Last year, an interesting case emerged where a trustee, found liable for accounts mismanagement, was awarded legal costs from the trust she

was managing. The initial verdict by the court had the potential to diminish the trust and negatively impact on the beneficiary who had brought the case.

Price v Saundry & Anor (2019)

The beneficiary of a trust, Mrs Price, took a trustee, Mrs Saundry, to court over the trust's accounts, in particular a lack of transparency with regards to receipts, payments and allocation of property to the trust. The judge found in favour of the beneficiary and claimant, Mrs Price, and ordered the trustee, Mrs Saundry, to repay nearly GBP53,000, plus any interest earned, to the trust, but there was a sting in the tail for the beneficiary.

The judge stated that despite finding in Mrs Price's favour it was not proven that poor management of the accounts was in fact breach of trust by the trustee. He could not be certain that the trustee, Mrs Saundry, had been acting in her own interests (a case of serious misconduct) rather than the interests of the trust; as a result, the defendant was still entitled to an indemnity from the trust, meaning that both the trustee, Mrs Saundry, and the

beneficiary, Mrs Price, could reclaim all their costs from the trust. Although the beneficiary had won her case against the trustee, the court's decision to award costs to both sides, directly from the trust itself, had a detrimental impact on the trust assets and on Mrs Price, the beneficiary. Significant legal costs had been incurred on both sides, and had there been trustee indemnity insurance in place the costs of both parties and the repayment would have been reimbursed by insurers rather than through the trust. If Mrs Price accepted the initial court judgment, without insurance cover in place, the trust would be significantly diminished even though she had won her case.

Mrs Price decided to appeal the judgment as there seemed reasonable proof that the trustee had been partially guided by self-interest and that this could amount to serious misconduct. Luckily for Mrs Price, the Court of Appeal agreed and reversed the original decision. The trustee, Mrs Saundry, was deprived of her indemnity and was ordered to pay both her own costs and the claimant's (Mrs Price's) costs, from her personal account.

If the Court of Appeal had upheld the original judgment, costs would have risen substantially and would have been reimbursed via the trust

with a serious impact on trust assets and the beneficiary. If trustee indemnity insurance had been in place at the outset, the trust, trustee and beneficiary would have been protected.



Paul Rose is Appointed Representative, Trust and Trustee Insurance, at Castleacre Insurance. He has more than 30 years' experience in insurance and has worked for a number of key Lloyd's brokers, starting his career with *CT Bowring* in 1984. He has increasingly specialised in professional indemnity insurance, travelling widely across the UK and US to advise solicitors, accountants, architects and financial institutions on risk and protection management. He is well acquainted with the particular risks that lay trustees are exposed to when managing a private or charitable trust, liabilities that are both unlimited and personal. He provides advice on how to manage these potential risks and arranges tailored insurance to protect not only trustees, but also the assets of the trust.

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Book review: *Trusts in Prime Jurisdictions,* fifth edition

By Alon Kaplan TEP and
Barbara R Hauser
Reviewed by Richard Pease TEP

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Which jurisdictions have statutory provisions concerning trust protectors? Are trusts vulnerable to attack in divorce proceedings? Which jurisdictions offer private foundations as alternatives to trusts? How will trusts be dealt with under beneficial ownership register rules? The answers to all these questions (and many more) can be found in the fifth edition of *Trusts in Prime Jurisdictions*.

This work, edited by Alon Kaplan TEP and

Barbara Hauser, now comes in two volumes, totalling 880 pages. The first volume contains two preliminary chapters dealing with the Hague (*Trust Convention on the Law Applicable to Trusts and their Recognition* and the *US Uniform Trust Code*), while the remaining 24 chapters contain an overview of the principal trust jurisdictions and certain other jurisdictions, such as Germany, Italy, Luxembourg and Switzerland, that do not (as yet) have a domestic law of trusts but where trusts are fully recognised or where analogous legal institutions exist.

Each jurisdictional chapter contains a summary of the current law on trusts and highlights the essential features of the legislation that will be of interest to advisors and their clients. Where the local legislation has provision for protectors, asset protection and private trust companies, these features are briefly examined. One noticeable omission among the traditional offshore trust jurisdictions is the Bahamas, which must surely rank as a prime trust jurisdiction. The Bahamas featured in earlier editions of this work, and it is hoped that it will appear again in future editions.

In their introduction, the editors explain that, although they believe that the universal use of trusts will continue, it is appropriate to cite certain jurisdictions that allow the creation of civil-law-style private foundations. The principal example is Liechtenstein, but it is interesting to note that the Crown Dependencies have embraced the foundation concept with enthusiasm. The Guernsey chapter devotes seven of its 18 pages to foundations created under the *Foundations (Guernsey) Law, 2012*. The second volume contains 18 chapters covering topics relating to trusts and their use in estate and tax planning as structures for the governance and transmission of the family business, as well as timely topics such as beneficial ownership registers. It is invidious to commend specific articles, but this reviewer found Maggie Gonzalez's chapter on the complex UK tax treatment of trusts particularly comprehensive and lucid, and Alexander Bove TEP's chapter on trust protectors was highly instructive.

In summary, this edition will continue to offer an unequalled source of information on trusts as an instrument for international estate planning. The editors express their appreciation of the support given by STEP to this publication, and it is noteworthy that more than half of the contributors are STEP members.

At a time when many clients and their advisors are taking time to review, update and, in some cases, consolidate their estate planning, this title will be of particular assistance as a major source of reference.

#TRUSTS #FOUNDATIONS #LEGISLATION



Richard Pease TEP
is a Solicitor and Independent
Consultant in Geneva



People moves

Clare Jeffries TEP has joined Russell-Cooke as a Partner.

Álvaro Aznar Azcárate TEP has joined Buckles Solicitors as a Senior Associate.

Karen Perugini TEP has joined Things as a Senior Associate.

STEP JOURNAL+

We have published several new articles on our online-only sister publication *STEP Journal+*. These include a look at how COVID-19 has raised the profile of holograph wills; an analysis of the future of anonymity in variation of trust applications in England and Wales; the impact of China's tech boom on trustees in Hong Kong and Singapore; what advisors need to know about unexplained wealth orders and account freezing orders in the UK *Criminal Finances Act 2017*; and clarity on the operation and reach of the UK forfeiture rule.

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