

I Don't Trust My Trustee, What's Next?

By Angelos Paphitis, Managing Partner at AGPLAW



Trusts are one of the most resourceful legal tools for managing and protecting wealth, offering a structure that ensures assets are preserved for the benefit of beneficiaries.

Central to this arrangement is the trustee, being the person or entity entrusted with managing the trust according to its terms and for the benefit of its beneficiaries.

However, what happens when trust – the very cornerstone of this relationship – is lost? Whether you are the settlor (the person who created the trust) or a beneficiary, losing in a trustee can be stressful and legally complex. Through this article we analyze what can lead to such a breakdown, how to address it effectively, and the legal and procedural

avenues available to resolve the issue while preserving the trust's purpose.

The Role of a Trustee

Fiduciary Obligations and Responsibilities

A trustee is far more than a manager or custodian of assets; they are bound by fiduciary duties, which is the highest standard of care in equity. These duties include loyalty, prudence, impartiality, and transparency. Trustees must prioritize the beneficiaries' interests, manage assets carefully, and avoid conflicts of interest.

For example, a trustee managing a family trust must ensure investments align with the trust's objectives, maintain transparency through regular reporting, and act impartially when distributing benefits to multiple beneficiaries. Any deviation from these duties, whether through negligence, misconduct, or -worst- self-interest, can lead to a loss of trust.

A trustee's responsibilities are also expressly stated within the trust deed itself, the legal document that establishes the trust. This deed outlines the trustee's powers and duties, making it the first point of reference when disputes arise.

Causes and Consequences of a Distrust

Distrust in a trustee does not occur in isolation; it usually stems from repeated patterns of behavior or a single glaring breach. Common causes include mismanagement of assets, lack of communication, breaches of fiduciary duty, and, in rare cases, fraudulent activities.

Mismanagement of Trust Assets

One of the most frequent causes of concern is financial mismanagement. A trustee may fail to invest prudently, resulting in devaluation of the trust's assets. For example, neglecting to diversify an investment portfolio or making speculative investments contrary to the trust's objectives can significantly harm the beneficiaries' interests.

Lack of Communication

Transparency is a cornerstone of trust administration. Trustees are obligated to provide beneficiaries with regular updates, reports and economic statements, and explanations for their decisions. A trustee who is evasive, vague, or inconsistent in their communications can easily erode confidence.

Conflicts of Interest

Trustees must avoid situations where their personal interests' conflict with their duties to the trust. For instance, if a trustee invests trust assets in a business where they have a financial interest, this constitutes a conflict of interest, raising questions about their impartiality.

Fraudulent Activities

Although rare, cases of fraud, such as embezzlement or forgery, represent the most severe breaches of trust. When discovered, such activities require immediate legal intervention to protect the trust's assets.

Assessing the Situation and Steps to Take Before Acting

When trust in a trustee fails, a reasonable approach is essential. Acting hastily without sufficient evidence or understanding of the situation can complicate matters further. Here are some points for consideration:

1. **Reviewing the Trust Deed:** The trust deed is the foundational document that governs the trust. It specifies the trustee's powers, responsibilities, and, crucially, the procedures for resolving disputes or removing a trustee. Reviewing this document is the first step to understanding your legal options. For example, some trust deeds allow beneficiaries to remove a trustee through majority consent, while others require court intervention.
2. **Gathering Evidence:** Distrust should not be based on vague suspicions. Put together a detailed record of the trustee's actions or inactions that have caused concern. This could include financial statements showing poor investment performance, correspondence demonstrating lack of transparency, or specific instances of misconduct.
3. **Consulting Beneficiaries:** If you are a beneficiary, discuss your concerns with others who share an interest in the trust. Collective action is often more persuasive and can strengthen the case for trustee removal or corrective measures.

Communicating the Concerns and the Necessary First Steps

In many cases, issues with trustees arise from misunderstandings or poor communication rather than deliberate misconduct. Addressing these concerns directly with the trustee can often resolve matters without resorting to legal action.

Engaging with the Trustee

Start by arranging a formal meeting to discuss your concerns. Be specific and provide evidence to substantiate your claims. For example, if you believe the trustee has made poor investment decisions, refer to specific transactions and their negative impact on the trust's value.

During this conversation, request detailed explanations and, if necessary, additional documentation. A transparent trustee should be willing to address your concerns and provide clarity.

Involving a Third Party

If direct communication fails, consider involving a neutral third party, such as a trust protector (if one is named in the trust deed) or a lawyer / mediator. This can help facilitate a constructive dialogue and potentially resolve disputes without escalating to legal proceedings.

Legal Remedies for Removing a Trustee

If communication and mediation fail, legal remedies may be necessary. Trustee removal is a serious step, but it is often justified when the trustee's actions jeopardize the trust's purpose or the beneficiaries' interests.

Grounds for Removal

Courts typically remove trustees for misconduct, incapacity, or breach of fiduciary duty. Misconduct might include fraudulent activity or misappropriation of funds, while incapacity refers to situations where a trustee is unable to fulfil their duties due to illness or other personal limitations. Breach of fiduciary duty, such as self-dealing or negligence, is the most common basis for removal.

Legal Procedures

The process for removing a trustee varies by jurisdiction and the terms of the trust deed. Generally, it involves filing a petition in court and presenting evidence of the trustee's failings.

For example, in Cyprus, courts carefully examine whether the trustee's continued involvement undermines the trust's purpose or the beneficiaries' rights. At AGPLAW, our trustees and litigation teams can guide you through this process, ensuring that your case is presented effectively.

Alternatives to Litigation

Litigation can be costly and time-consuming. Fortunately, there are alternative methods for resolving disputes with trustees.

Mediation and Arbitration

Mediation involves a neutral third party helping the settlor, beneficiaries, and trustee reach a mutually acceptable resolution. Arbitration, if allowed by the trust deed, can provide a faster and more cost-effective alternative to court proceedings.

Voluntary Resignation

In some cases, the trustee may agree to step down voluntarily to avoid litigation. This can be negotiated directly or through legal representatives.

Appointing a New Trustee and Restoring Confidence

Once the trustee is removed, appointing a suitable successor is critical to ensuring the trust operates smoothly.

Professional trustees offer a reliable solution. With over 18 years of experience, AGPLAW trustees provide comprehensive trust administration services, ensuring transparency, compliance, and impartiality. Our team includes trustees and legal professionals, and financial experts dedicated to safeguarding the interests of settlors and beneficiaries alike.

Preventative Measures and Avoiding Future Issues

To minimize the risk of future disputes, consider the following measures:

- **Regular Review:** Conduct periodic audits of the trust's performance and the trustee's actions.
- **Clear Trust Deed Provisions:** Include specific criteria for trustee selection, removal, and dispute resolution in the trust deed.
- **Professional Trustees:** Opt for professional trustees who bring expertise and accountability to trust administration.

Conclusion

Lack of trust in a trustee can threaten the very foundation of a trust, but it is not an impossible issue. By understanding the trustee's obligations, documenting concerns, and taking measured steps, you can address the problem effectively.

At AGPLAW we specialize in trust disputes and trustee services, offering a comprehensive range of solutions to protect your interests. Whether you need assistance with trustee removal, trust administration, or dispute resolution, we will be happy to help.

Contact AGPLAW's expert team at agp@agplaw.com

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