



# TRUSTEES: PAUSE – CHECK THAT CLAUSE!

**Trusts in 2 Minutes**  
**27 April 2020**

## I've got the power – I think?

Specific terms of each trust deed are important – always check what does the deed actually say?

Has the trust been varied, or the proper law changed?

The title of a supplemental deed can be misleading – check that no changes to the trust have been made alongside, e.g. an addition of beneficiary.

# How do I exercise my power?

Example formal requirements:

- **By deed** – i.e. a written resolution is not enough
- **Consent** – e.g. prior written consent of a Protector needed
- **Whose power is it?** – the Trustees, a Protector, some other named third party?
- **Unanimous decision or by majority** where more than one trustee?
- **Proper law** – what is the governing law of the trust and how does that impact upon the powers and liabilities of the Trustees?

## Restrictions?

**Beneficiaries** – can you benefit the proposed person or are they excluded by name or by description, e.g. by being resident in a certain jurisdiction?

**Investments** – are there restrictions on the type of permitted investments? Is the consent of a named person needed?

**Variations** – permitted under the trust deed? E.g. a pension scheme may not be amended in certain circumstances if it has a stated main purpose.

## Why does it matter?

Risk to Trustees of claim for breach of trust, negligence or an action being held a fraud on a power.

Actions taken incorrectly may be invalid with potential tax consequences.

Finally – even if a trustee has a power it needs to consider all relevant and disregard all irrelevant considerations before exercising that power.

Nobody said that being a trustee was an easy job!

As ever record keeping is key – and check the trust deed again!



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