



# REMOVING TRUSTEES

**Trusts in 2 Minutes**  
**September 2021**

# Why remove a Trustee?

Examples include:

- Dishonesty;
- Conflict of interests;
- Loss of trust and confidence;
- Continuation detrimental to execution of trust;
- Breach of Trust; and
- Breach of Trustee duties.



## How do I remove a Trustee?

There are three key ways to remove a Trustee:

- The Trust Deed;
- Statute & Legislation; or
- Court.

## The Trust Deed

- The Trust Deed should set out the Trustees' powers and duties as well as the person(s) who have power to appoint, substitute and remove them.
- It may set out the basis on which they can do so.
- If the terms of the Deed are followed, there will be little the Trustee can do to object .

# Statute & Legislation

## Section 34 Trustee Act 1961

- Trustees can be removed if they are dead, remain out of the British Isles for more than a year, want to be removed, refuse to act, are unfit to act, are incapable of acting or where they are minors.
- However, the only people who can remove a Trustee under section 34 are:
  - Anyone named as having power to appoint new Trustees in the trust instrument; or
  - If there is no such person, or no such person willing or able to act, then the remaining Trustees or, if all other Trustees have died, the personal representatives of the last Trustee to die.
- Section 34 is not automatically available to beneficiaries unless they are also Trustees



# Statute & Legislation

## **Section 43A Trustee Act 1961**

If no person is designated for appointing new Trustees in the Trust Deed and the beneficiaries are of full age and capacity, they may give a written direction to a Trustee(s) requiring them to retire and, if they wish, appoint a new Trustee



## Court

- Section 41 Trustee Act 1961 – The Court has an overriding power to appoint Trustee(s) in substitution or addition to existing Trustees.
- Anyone, with permission, may apply to the Court.
- The power is discretionary, but the Court is not often called to exercise such as a Trustee will normally resign.
- Substantial justification is required.

# Contact Details

**Alexander Armstrong**  
Associate

alexander.armstrong@dq.im  
+44 1624 626999



**For further information, please get in touch**

**www.dq.im • +44 1624 626999 •  **

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