Guernsey Financial
Services Commission

Fiduciary Decision Making in Respect of Assets Under Trust

Thematic Review 2015

Foreword

We are pleased to present the findings of our 2015 thematic review ***"Fiduciary decision making in respect of assets under trust"***. This topic was chosen as it represents a key responsibility of trustees and is also a common theme in complaints notified to the Fiduciary Supervision Policy and Innovations Division ("the Division"). Such complaints often focus on the decisions made by trustees in respect of trust assets, including the selection and performance of investments, the management of property and the valuation and disposal of private company shares.

Our objectives in selecting this theme for review were:

1. *To understand how trustees approach management of trust assets; and*
2. *To assess the type of asset management risks to which the fiduciary sector in Guernsey is most exposed.*

The review highlighted both the diversity of the fiduciary sector in Guernsey and the efforts made by many fiduciaries to design effective and proportionate procedures. Perhaps unsurprisingly, we found that trustees were most comfortable with their obligations in relation to liquid or market-valued investments and how to demonstrate that they have discharged these. Demonstrating a cohesive strategy which embraces other asset types, such as real estate, private company shares and fine art, is more challenging – although we saw examples where trustees had done so effectively. We would encourage trustees to identify the long term strategy for assets including the risk appetite, appropriate methods of periodic valuation, monitoring of the external environment, consideration of how trigger events will be managed and proactive consideration of asset disposal strategies.

Trustees are expected to 'manage the investment and custody of trust assets professionally and responsibly'[1]. Common sense and good intentions are not sufficient to demonstrate that a trustee has appropriately discharged their duties in relation to trust assets. Furthermore, good corporate governance dictates that comprehensive documentation should be maintained, which in turn can reduce the risk of future litigation.

Retrocessions, although anecdotally on the decline, remain common with around a fifth of firms reporting that they have received them. The Commission would like to remind trustees that to avoid conflicts of interest or the appearance thereof, they should advise clients of any retrocessions received in relation to their accounts in a fully transparent manner. It is also important to note that the trust deed must permit trustees to receive retrocessions otherwise they may be acting in breach of trust[2].

Within the questionnaire, we gave licensees the opportunity to outline aspects of the Codes of Practice which may benefit from revision. A number of common themes emerged from this which will be considered when the Commission reviews the Codes as part of the ongoing Revision of Laws project.

We would like to thank the licensees who have taken the time to contribute to this review, especially those who have hosted site visits. We would encourage all licensees to read the findings of the review and satisfy themselves that their own arrangements reflect good practice for the trusts and structures they administer.

Gillian Browning
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[1] Principle 4, Code of Practice – Trust Service Providers
[2] Section 24 (c)(iii) Trusts (Guernsey) Law 2007

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I. Scope

Fiduciary decision making in respect of assets under trust was selected as the topic for thematic review as it is a key part of a trustees' responsibilities and is a common source of complaints notified to the Commission in respect of fiduciary licensees. Following feedback from industry during the planning stage, it was decided to broaden the scope of the review to all asset classes, as it was felt that this was more reflective of the decision-making required of many trustees.

Our review sought to understand how trustees discharge the following responsibilities under Principle 4 of the Code of Practice - Trust Service Providers ("the Code"):

TSPs [Trust Service Providers] should treat the interests of beneficiaries as paramount subject to their legal obligations to other persons or bodies. In particular, TSPs should:

> ***Invest, distribute or otherwise manage each trust's assets in accordance with the law and trust deed***
>
> ***Manage the investment and custody of trust assets professionally and responsibly***
>
> ***Provide promptly to clients information to which they are entitled about a trust***
>
> ***Agree a clear fee structure in advance of taking an appointment and charge fees in accordance with that and in a fair and transparent manner***

The guidance note to this Principle goes on to set out the Commission's expectations of the approach taken by trustees to the investment and custody of trust assets.

Approach

The thematic review consisted of two stages:

- A questionnaire was sent to 156 full fiduciary licensees, asking for an overview of the management of the trust assets for the firm's three largest clients.
- One day on-site visits to eight firms in order to gain a practical understanding of their arrangements.

The questionnaire was divided into the following sections, which collectively reflect the requirements of the Code.

Fiduciary Area	*Component parts*
Governance structures	Portfolio strategy, risk profiling, measurable objectives
Conflicts of interest	Self-investment, notifications of conflicts, retrocessions and making full use of independent third party reporting
Investment oversight	The review of overall activity in investment portfolios, investment management selection, involvement of directors, value for money
Governance triggers	Protection of beneficiaries' interests in light of changing economic conditions
Performance reporting	Reporting channels and reporting frequency
Charging transparency	Letting settlors and beneficiaries "know where they stand" in terms of fees, and the transparency and frequency of fee reporting

The questionnaire responses provided a useful benchmark on how fiduciaries are currently overseeing assets under trust. In aggregate, the questionnaire responses are useful for assessing the sector as a whole.

Eight firms were selected and agreed to participate further with the review through one day on-site visits. Firms were selected to represent the diversity of the sector and included a cross section of PRISM impact rating, ownership structure, size of firm and types of asset managed. Visits consisted of a discussion with management to gain an overview of the systems and processes relating to the management of trust assets, and a review of a small sample of client files to understand how these arrangements operate in practice.

Our objective in carrying out on-site visits was to allow us to identify a spread of good practice relevant to the fiduciary sector as a whole and to validate suspected areas of poor practice. We are grateful to the firms that participated for their time and cooperation.

We would also like to thank Mr Martyn Dorey of Dorey Financial Modelling for his assistance with the thematic review.

The following sections will consider each of the fiduciary areas shown above to highlight how local fiduciary firms are discharging their responsibilities in each area.

Please note that all graphs contained within this report are based on the questionnaire responses received and reflect responses solely in respect of each firm's top three clients, unless otherwise stated.

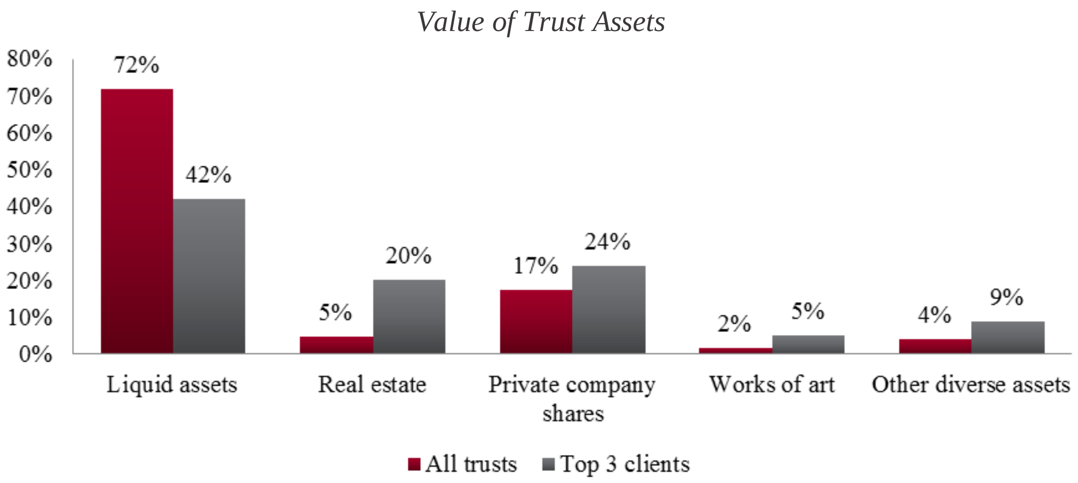
The Bailiwick's Fiduciary Sector

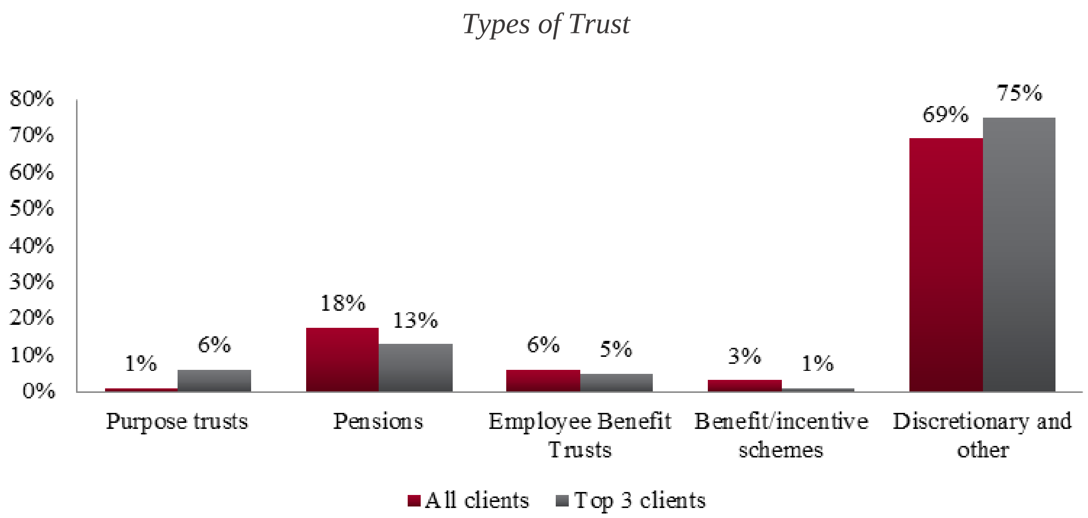
Our intention in conducting this thematic review was to understand and share good practice across the local fiduciary sector. As such, we asked firms to tell us about their arrangements for their largest clients on the basis that this was likely to provide examples of both the most complex cases and the highest levels of customer service provided.

To contextualise our findings, we have compared the information provided to us by firms in respect of their three largest clients to data received in the annual returns. This allowed us to identify how typical the firms' largest clients were of the sector as a whole.

We found that the proportion of assets under trust for the firms' larger trust structures contained a higher proportion of real estate, private company shares and physical assets than for the sector taken as a whole, as shown in the following table. This reflects the fact that trust structures for larger clients were more likely to be discretionary trusts. Although liquid investments made up only 42% of the value of assets for the firms' top 3 relationships, liquid investments were settled in the majority of trust structures set up for clients. However, these larger structures were more likely to hold premium real estate, high-value private company shares and items such as art and vessels.

Guernsey Law allows trustees to reserve powers for settlors within the trust deed. We found that 35% of the top three trusts had reserved powers. This figure was higher than expected and is probably reflective of the unusual nature of assets held in a licensee's top 3 clients.





II. How do Fiduciaries Identify Asset Strategy?

On appointment trustees should identify a strategy for managing settled assets and review this periodically or if there is a material change of circumstances, for example the settlement of additional assets. Trustees should establish and maintain an appropriate performance benchmark, for example for the investment to keep pace with or outperform inflation. Key elements to effectively determine a strategy for managing assets are:

- understanding the wishes of the settlor;
- understanding the attitude to risk;
- identifying the needs of the beneficiaries; and
- anticipating reasonably foreseeable issues or trigger events.

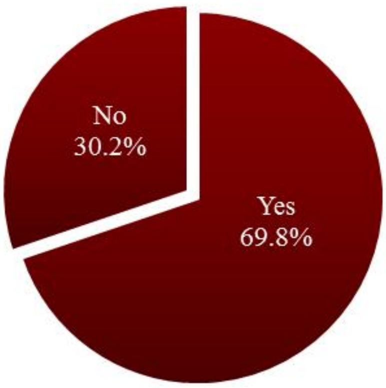
Trustees should be able to explicitly demonstrate:

- what actions they have taken to determine the trust strategy;
- how it reflects the trust objectives, including the needs of different classes of beneficiaries;
- the internal and external events that would prompt a review of the strategy: for example, death of a beneficiary, change in tax legislation, a significant fall in the value of an asset, a class of beneficiary becomes entitled to distributions; and
- how they will measure whether the strategy is being implemented effectively.

Policies and Procedures

The majority of fiduciaries reported that they have high level policies and procedures in place for determining the portfolio strategies for their top 3 clients.

> Do you have policies and procedures setting out how to identify the portfolio strategy for settled assets when determining the portfolio strategy for these clients?

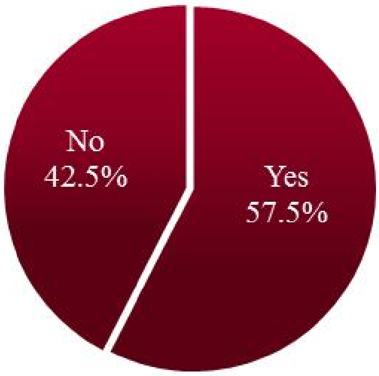


Following a defined process helps to ensure rigour and consistency and enables trustees to demonstrate how they have established the portfolio strategy. For those fiduciaries that do not have policies and procedures in place, it would be good practice to review whether these may be useful guidelines for managers to follow.

Objective Setting

The setting of measurable objectives is regarded as an essential means of ensuring that trust assets are preserved and enhanced in accordance with the duties of the trustee. It is difficult for a trustee to demonstrate that assets have been managed appropriately where trustees cannot show that an asset is performing acceptably and in-line with the selected strategy.

> Do your policies and procedures include a requirement for measurable objectives for investments of assets under trust?



Just under 60% of fiduciaries required measureable objectives relating to investments of assets under trust. Our findings suggest that firms were more likely to set objectives for liquid investments than for other asset types. We would encourage trustees to set measurable benchmarks for all assets under trust, in line with the wider trust objectives.

CASE STUDY: *Entity Profile Notes*

An example of good practice that we observed was the preparation of an annual entity profile note for each trust structure. The note includes a structure diagram and sets out key information including:

- Commercial rationale and entity purpose;
- Detailed profiles of the settlor, beneficiaries and other related parties;
- Assets placed in trust, including valuations, locations and asset managers;
- Tax issues and a summary of any tax advice received;
- The settlor's wishes;
- Preferred level of contact between trustee, settlor and other parties;
- Summary of key activities including distributions, death of key parties, revisions to letters of wishes, etc.

As well as reducing risks to client service continuity if a key staff member is unavailable, such notes provide an excellent tool to assist trustees in setting out and reviewing the strategy for trust assets.

Attitude to Risk Questionnaires ("ATR")

Across respondents only 22.6% used a risk profiling questionnaire for determining investment strategy, despite the fact that liquid investments represent such a high proportion of settled assets. Well-designed questionnaires go further than simply demonstrating that the trustee has sought to identify the risk appetite of the trust structure. They can also serve to explore the sophistication of the settlor, provide education on investment risk and validate settlor's assertions regarding their risk tolerance.

'ATR' questionnaires are being increasingly used by the sector to identify the types of investments to be held in a trust structure.

We saw a number of examples of good practice in the ATR questionnaires returned by respondents. These included:

> The purpose of investment – e.g. income, capital preservation, capital growth;
>
> Age and future requirements of beneficiaries;
>
> The sophistication of the investor – i.e. the settlor;
>
> An established investment time horizon;
>
> The exploration of the settlor's tolerance of upside and downside risk;
>
> The flexibility of the proposed investment structure to meet future liability events.

Furthermore, the Commission encourages the following to be included in order to improve the effectiveness of the questionnaire:

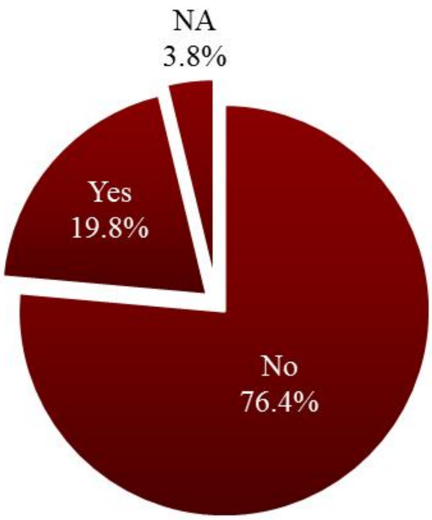
> Cross-validation incorporated into the design of the questionnaire;
>
> Questions and answers are quantitative, specific and short;
>
> Answers are a closed form, typically a tick box or multiple choice;
>
> Answers are sufficiently distinct to prevent ‘answering in the middle’;
>
> The language and terms used should be appropriate for the broad class of people expected to use the questionnaire;
>
> Answers translate into an investment objective or strategy for the trust. The answers should therefore connect to the range of investments being offered.

III. Investment of Assets

In-House vs External Investments

The majority of responses indicated that fiduciaries offer independent products, with just under 20% offering in-house or group products in which their trust structures invest. In the latter case, it is important that the reasons for using in-house rather than external products are fully documented and are reviewed on a regular basis.

"Does any part of your group offer products in which any of your trust structures invest (answer in respect of all clients)?"

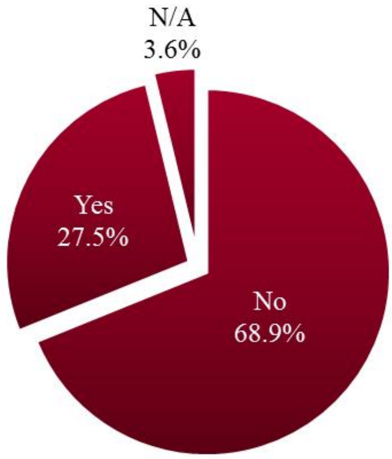


Our on-site visits identified examples of where the rationale for setting up a trust with a fiduciary was to have access to a group fund: for instance bank owned trust companies which set up trusts to enable current clients to own investments in in-house funds. However, more commonly in-house investments are one of a range of investments open to trustees. Wherever trust assets are invested in in-house products or services, the Commission expects the trustee to demonstrate why the in-house solution was appropriate for the particular trust, how the inherent conflict of interest has been managed and how the trustee has satisfied itself that it has obtained value for money on behalf of the beneficiaries.

Selection of Investment Managers

Just under 30% of fiduciaries maintain a list of approved investment managers. We were surprised that this figure was so low, as approved supplier processes are a common control which speed up the appointment of advisors, enable firms to negotiate competitive fee levels on behalf of their clients and ensure that satisfactory due diligence has been carried out. However, using an approved investment manager list does not discharge the trustee from reviewing the performance of each individual manager. In addition, where an asset is more diverse/unusual, using a standard investment manager might not work for the asset. Choosing an investment manager should be done on a case by case basis, matching the asset with the appropriate management arrangements. It is also important to note that where an approved list is in place, the board should maintain oversight of it and review it periodically. We expect that trustees who do not have pre-approved investment advisors and managers will have a clearly defined process for vetting proposed candidates in advance of appointments.

"Do you have a list of approved investment managers?"



CASE STUDY: *Responsibilities for Different Classes of Assets*

Trustees are expected to manage all trust assets under their care professionally and responsibly. The questionnaire results and on-site visits confirmed the diversity in the types of assets that are held in trust and the varied objectives which trustees are seeking to achieve in holding them. An example of good management we observed included:

> Trust A has a significant portfolio of rental properties. The trustee visits and revalues the properties over a five year period to review their condition. Property management and insurance contracts are periodically put out to competitive tender.
>
> The trustee uses property maintenance schedules and information on the rental markets to create long term income and expenditure forecasts for the properties and this is used as a basis for decisions about the acquisitions/disposals as part of an annual portfolio review meeting.

KEY ISSUES for Trust Administrators to consider in respect of fine art, antiques and collectibles.

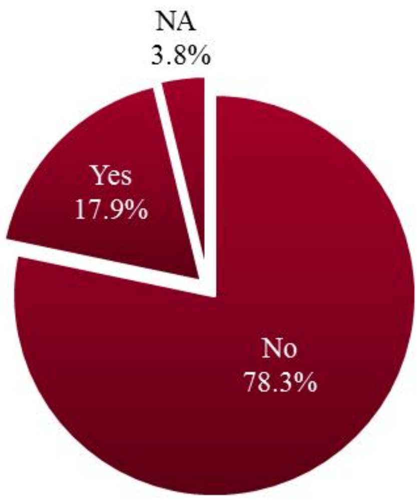
Examples of good practice identified during the review include the following:

- Proactively consult professional advisers regarding the way in which the whole portfolio/collection is or is to be managed;
- Undertake regular valuations, especially for the key items and ensure increases and decreases in value are reflected in insurance policies;
- Take professional advice to determine a long term strategy for the collection that takes into account likely acquisition/disposal events;
- Ensure your adviser is truly independent and manage actual and potential conflicts of interest where auction houses, dealers, brokers and on-line sales channel providers are involved;
- Professionalise the management/acquisition/disposal process to ensure there is an audit trail of regular collection value analysis, collection strategy options, sale advice and fee negotiations.

Retrocessions

Just under 80% of fiduciaries do not receive any retrocessions for investment services provided to clients. Anecdotally, firms tell us that retrocessions are increasingly uncommon. Furthermore, a number of local firms have policies of not accepting retrocessions in order to avoid actual or perceived conflicts of interest.

"Do you receive remuneration or retrocessions for investment services provided to any of your clients (answer in respect of all clients)?"



Where firms do accept retrocessions, there must be clear disclosure to clients. The Commission was concerned to see examples of firms advising in their terms and conditions that the trustee may receive retrocessions but failing to disclose actual amounts received in subsequent communications. It is the Commission's view that clients should be advised whenever a retrocession has been received in relation to that client's assets. This should include disclosure of the source of the retrocession, the amount received and the basis of the retrocession – e.g. introduction fee, trailer fee. There should also be a clearly documented rationale for selecting an investment service that pays retrocessions over one that does not.

IV. Performance Review

Responsibilities of Trustees

The Guidance Note included in Principle 4 of the TSP Code states that:

> *If investment managers are appointed, [the obligation to manage the investment and custody of trust assets professionally requires the TSP] to record the agreement, instructions, investment parameters and investment benchmarks and to require and review regular reports (at least quarterly unless that is inappropriate having regard to the nature of the trust assets) on performance, including a valuation and a schedule of assets bought and sold.*

Use of Outsourced vs In-house Data to review Investment Performance

In respect of investments, two thirds of fiduciaries use third parties to provide performance reports and/or advice. Where used effectively, these provide an important source of information to the trustee when reviewing the performance of investments and making decisions regarding changes in asset allocation.

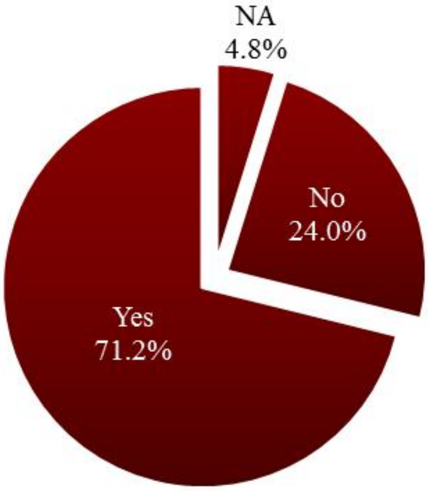
In order to make use of third party investment reports, trustees must ensure that:

- Appropriate benchmarks and peer groups have been identified for individual investments;
- Performance reviews take into account actual performance and performance relative to benchmark and inclusive of management fees;
- Investments are monitored over a time frame that is consistent with the investment objectives;
- The impact of individual investments is considered both individually and in the context of the entire portfolio;
- They are clear which function has been outsourced for example, preparation of monitoring reports – and which function remains with the trustee for example, reviewing and acting on monitoring reports;
- The cost of outsourcing is proportionate to the service received and represents value for money for the individual trust structures involved;
- As with any form of outsourcing, the ultimate responsibility remains with the trustee.

Where trustees have chosen not to use third party performance reporting to assist them in monitoring investment performance, they must ensure that they have appropriate alternative arrangements in place. Our on-site visits included several firms who had developed their own in house investment monitoring processes. The most effective examples incorporated some of the following features:

- The initial review is conducted independently of the relationship manager. This ensures that the trustee's familiarity with the trust and/or the investments does not affect their assessment of whether further action is required;
- The process reviewed both the performance of individual investments, and the collective performance of the investments in a trust;
- The processes included a review of changes in value and income streams from all classes of assets, including real estate, yachts and antiques;
- The performance of investment managers across a number of client portfolios was reviewed in order to identify trends in investment manager performance;
- Placing performance into a context of general market movements and a peer group of similar comparable investments.

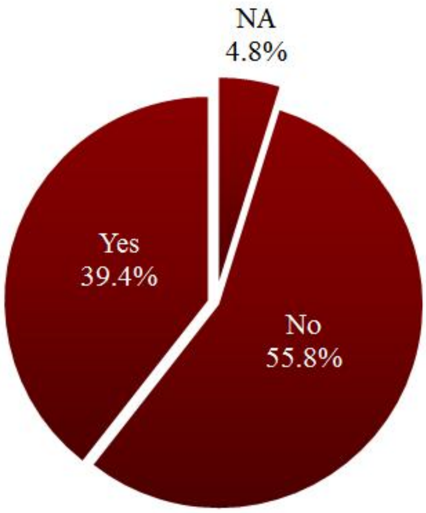
"Does your firm use investment performance reports and/or advice provided by third parties?"



Governance and Oversight

Trustees face a number of challenges when reviewing the performance of investments, including interpreting the performance data/reporting, identifying and executing appropriate remedial actions where required and identifying aggregate/thematic issues that affect a number of clients. Incorporating the review of investment performance into the firm's wider governance framework can help address these challenges.

"Do you have an oversight committee that reviews the performance of assets under trust?"



Around 40% of fiduciaries have a committee that reviews the performance of assets under trust. Most firms reported that the scope of this committee was to discuss the performance of investments, although we saw a few examples of firms where review committees oversee the performance of other assets as well. From our site visits we identified examples of firms that did not have an investment review committee, but used management meetings to review aspects of investment performance, e.g. trends in investment performance, performance of asset managers, review of top ten clients' investments or review of red flag cases. Such an approach may be more proportionate for many licensees than establishing a dedicated committee. It is important that discussions and decisions are fully documented, whether they are generated from a management meeting or from a specific committee meeting.

When putting in place governance arrangements for review of investment performance, firms should consider the following:

- where investment performance has been reviewed, it is important that trustees are able to provide appropriate documentary evidence of their rationale (for example, meeting minutes or a file note), whether or not the review results in action being taken. Particularly where the review results in no action being taken, as such evidence will demonstrate that this was as a result of a conscious and reasoned decision rather than neglect or inertia.

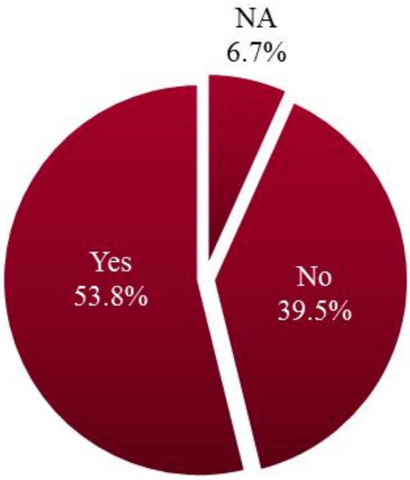
- where there is a third party receiving regular reporting on the performance of investments, trustees should nevertheless be able to demonstrate an appropriate level of internal oversight.

Factoring in the Performance of Asset Managers

In relation to each fiduciary's top three clients, 54% of the questionnaire respondents conducted a review of investment performance and assessed the value for money of the portfolio managers. Regular performance reviews are an essential component of high quality governance of portfolio managers.

We noted that reviewing the performance of managers of non-portfolio assets can be harder to demonstrate. Trustees should set out in the minutes of trustee meetings or ancillary documentation what factors have been discussed and where appropriate, on what basis their determination regarding the performance of the asset manager of non-portfolio assets has been reached. In respect of service providers such as property managers, trustees should consider either putting the contract out to competitive tender periodically to ensure that the scope of the service and the level of fees remain competitive or document why this is not considered necessary.

"At the most recent performance review for your top 3 clients, did your policies and procedures include a requirement for a review of performance by and value for money of the asset managers?"



V. Responding to Trigger Events

Investment industry research suggests that, in general, up to 90% of an investment portfolio's performance is derived from asset allocation; the remaining 10% of a fund's performance is derived from a manager's stock selection. This would imply that trustees holding portfolios of assets should regard the most significant driver of investment return as being the asset classes they are invested in.

Clearly trust structures are generally designed to be long lived and therefore may well straddle several economic cycles. However, monitoring of asset performance is critically dependent on the precise points in an economic cycle over which the performance is being measured. The performance of an asset class is heavily dependent on where the market is positioned in the economic cycle. It is also subject to the effects of unpredictable market shocks. When the economic environment is dynamically changing, the prevailing investment risk for beneficiaries is also dynamically changing. Triggers for reviewing investment decisions at key 'inflection points' are therefore critical to securing good outcomes for beneficiaries.

REVIEWING PERFORMANCE in the context of the Economic Cycle

Research has shown that asset allocation is a more significant factor in determining investment returns than investment manager stock selection. The relative performance of different asset classes is dependent on the stage of the economic cycle. Trustees should demonstrate an awareness of this cycle when reviewing investment advice and investment performance and when taking decisions to dispose of assets.

Stages of the Economic Cycle

Growth: During stable growth, consumer consumption increases and more labour is employed to meet demand for goods and services. Interest rates increase as central banks attempt to control inflation.

Overheat: Business confidence and high levels of employment lead to wage inflation as firms compete for workers. Low default rates on lending lead to high levels of debt. Central banks further increase interest rates to curb inflation. Market volatility tends to increase during these periods.

Contraction: Interest rates have risen to a point where they cause pain to borrowers. Economic shocks lead to loss in confidence, with resulting falls in consumption. Shocks can trigger debt defaults, persistent stock market falls and increases in unemployment.

Recovery: Central banks seek to stimulate growth by loosening monetary policy with lower interest rates. As consumption increases, stock markets rise as confidence returns to the market. Typically there are low levels of volatility in investment markets at this stage of the economic cycle.

Trustees should consider how they can:

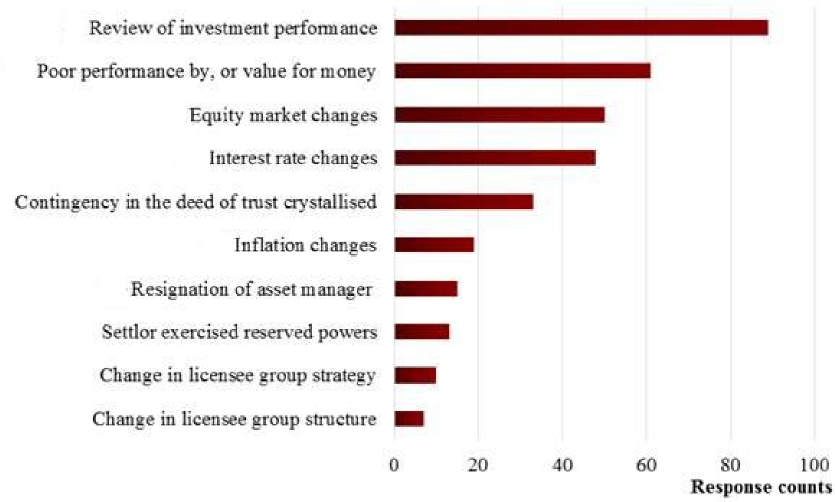
- Actively monitor external events;
- Find unbiased sources of information;
- Understand the impact of the economic cycle;
- Maintain good relationships and communications with the settlors/ beneficiaries.

Trigger Events

There was evidence from the questionnaire that trustees are acting on key investment trigger events. For example, during the preceding 24 months 58% of respondents reviewed and subsequently revised at least one trust investment strategy as a result of fluctuations in equity markets or interest rates.

Respondents indicated that the key events triggering changes in investment strategy or management were investment performance and an investment manager's poor performance/value for money. Equity market changes and interest rate changes were the next largest factors in triggering changes in investments, receiving 98 responses. Given the importance of asset allocation in generating investment performance, it is important to have policies in place to review asset allocation strategies on a regular basis.

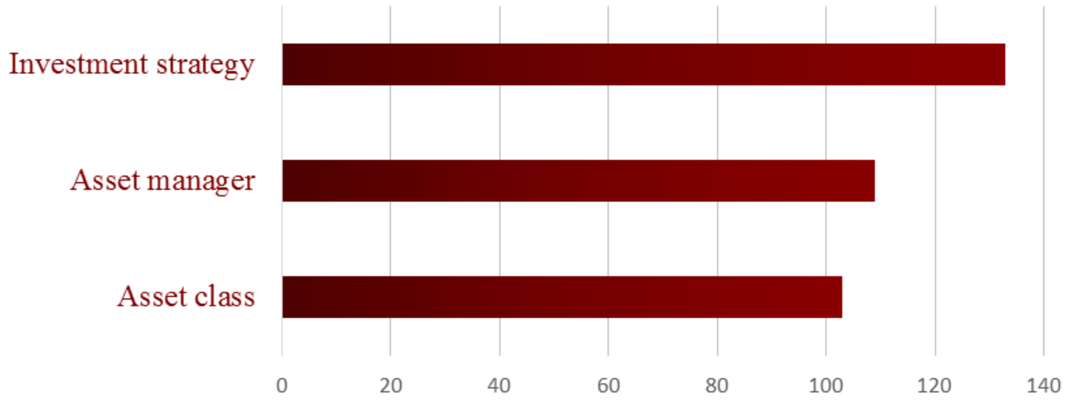
> Have any of the following trigger events led to a change in investment strategy, asset managers/agents, or assets classes in the last 24 months?



Trigger Event Responses

We asked respondents what changes they had made as a result of trigger events over the previous 24 months. Investment strategy was the most common item for change, followed by a change of asset managers. This suggests that trustees will seek to avoid exit fees and termination of established working relationships where performance can be improved by adjusting investment strategy. Fiduciaries were marginally less likely to change asset classes.

Changes in response to trigger events



VI. Reporting to Clients

Both the type of information to report on asset performance and to whom reporting should be provided can be challenging for trustees to identify. While, for instance, pension trustees are likely to have clear obligations and processes, the trustee of a third generation trust may have no living settlor and diverse classes of beneficiaries with very different entitlements. In our questionnaire we asked fiduciaries who they send performance reporting to and how frequently. During our on-site visits we also considered what this reporting consisted of.

Type of Reporting

We observed a wide variety of performance reporting, with the content and format usually reflecting the nature of assets settled in the trust, the governance structure in place and the relation of the recipient to the trust. The following examples observed during our on-site visits were typical of good practice by trustees:

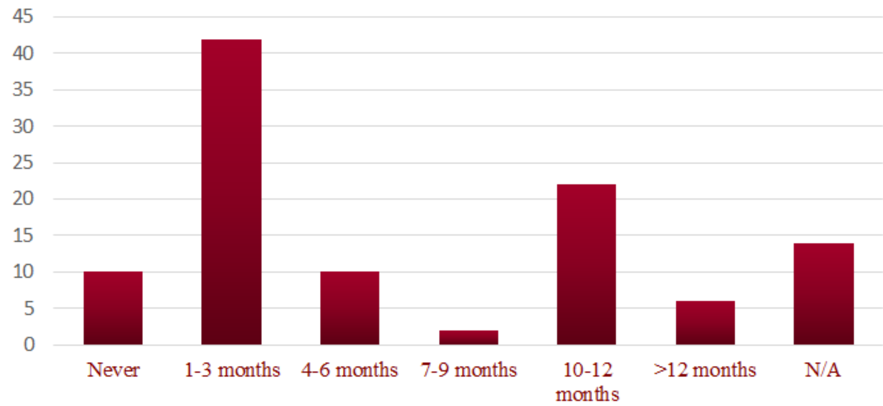
- For a trust containing investment property, financial statements are sent to the sole beneficiary annually under cover of a report providing the trustee's commentary on the property portfolio including additions, disposals, significant management decisions and the funds available for distribution.
- It appears to be common for trustees to send quarterly investment monitoring reports, whether prepared internally or externally, to the settlor/beneficiary. These are usually sent under cover of a brief commentary from the trustee outlining changes in the composition of the trust portfolio, any trends of concern and the actions the trustee proposes to take in the next quarter.
- A trust contained a property held for the lifetime enjoyment of a class A beneficiary and funds to be used initially to pay the property expenses and subsequently, for distributions to class B beneficiaries. An annual report is sent to the trust protector. In respect of the property, this report includes an overview of the running costs of the property, its condition and the planned maintenance and running costs for the next twelve months. In respect of the investments, the trustee provided an overview of their performance over the past twelve months and a commentary on the level of investment income that had remained for re-investment after the payment of property expenditure.
- Several fiduciaries provided settlors, beneficiaries and/or investment advisors with access to live data feeds so that they could review investment performance through an online portal. This real time access can provide a useful supplement to periodic reporting from the trustee but care needs to be expressed to avoid potential adverse consequences arising from this level of access to information.

Trustees should carefully consider the type of reporting that is appropriate for assets such as art, aircraft, ships and property. These items are likely to be valued less frequently than liquid investments. Nevertheless, it is important that the values of these assets are regularly ascertained and that the income and expenditure associated with these assets is understood, particularly where other funds within the trust are used to fund the maintenance and running costs of these assets.

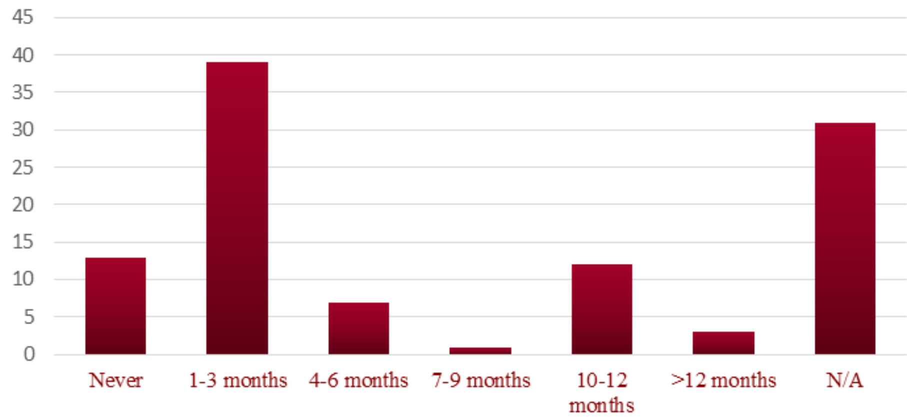
Frequency of Reporting

Our questionnaire and on-site visits identified a wide range of practice in terms of reporting to clients on the performance of assets with quarterly and annual reporting being the most common. This generally aligns with the receipt of performance reporting from investment managers and the annual tax and accounting cycle.

"In respect of your top 3 clients, how frequently do you provide written information to beneficiaries on performance of assets under Trust?"



"In respect of your top 3 clients, how frequently do you provide written information to settlors on performance of assets under Trust?"



Assets Against Liabilities

In reviewing performance, fiduciaries should explore the value and movement of assets. However liabilities also fall due on trusts and careful thought may need to be given towards the extent to which assets and liabilities are moving together or out of step, and whether this could present a liquidity risk.

For trusts managing personal affairs, we would expect to see the trustee compiling an overview of seasonal patterns of expenditure, and then to plan for both unexpected drawdowns and volatile cash flows against the trust.

Economic Events

Culturally, the timings for performance reviews are linked to the calendar clock, i.e. monthly, quarterly, triennially or annually. In reality, it is often not the calendar clock but the economic clock that determines key drivers of performance and investment risks. As a result, trustees should consider if there are any economic events which should be considered a trigger event for a performance report (and therefore potentially be a trigger for a governance meeting). This is particularly important for actuarial valuations of pension monies held in trust, where the liabilities can shift quite rapidly.

VII. Fees

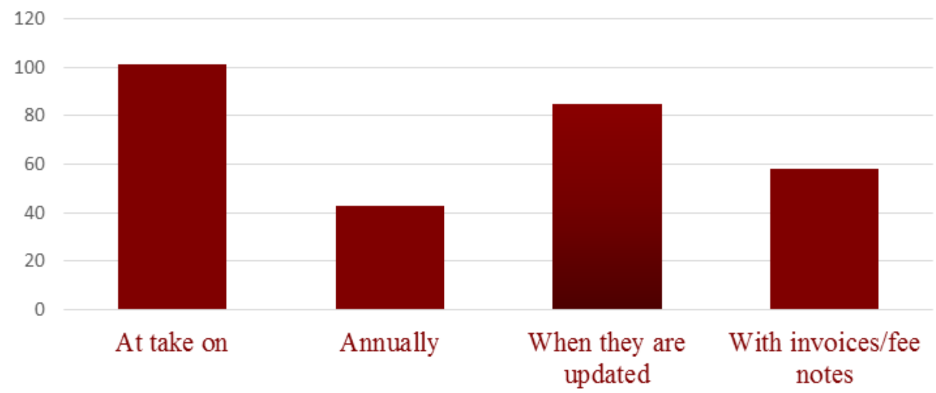
We sought to understand the basis on which the fiduciary industry charges its clients for services. Responses to the questionnaire outlined a wide choice of engagement models available to potential clients. Whilst fiduciaries will want to match liabilities through time/cost models, the end users of fiduciary services want to "know where they stand" and have clear, transparent charges (as far as possible). The most common model in respect of firms' largest clients was a mixed charging model, whereby a combination of fixed and time charges were levied on a trust by the fiduciaries administering the assets. Anecdotally, firms told us that fixed fees are increasingly in demand for more 'vanilla' services.

One area that was not investigated was the use of performance related fees in relation to managing fiduciary monies. This depth of analysis would have required detailed surveys of both risk levels taken, active management levels being run and benchmarks being used.

When is Charging Detail Provided?

The majority of fiduciaries provide some fee and charging structure information at take-on, and thereafter when charges are updated.

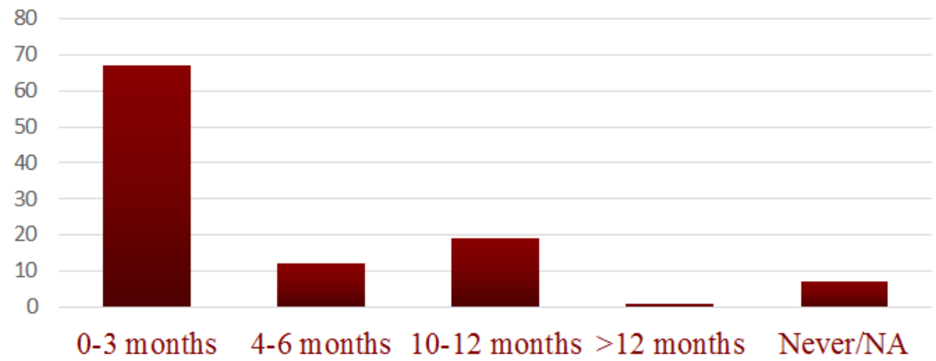
When do you provide your top 3 clients with information on your fee and charging structure?



Frequency of Invoices

Invoices and fees for fiduciaries' three largest clients are most often provided every one to three months.

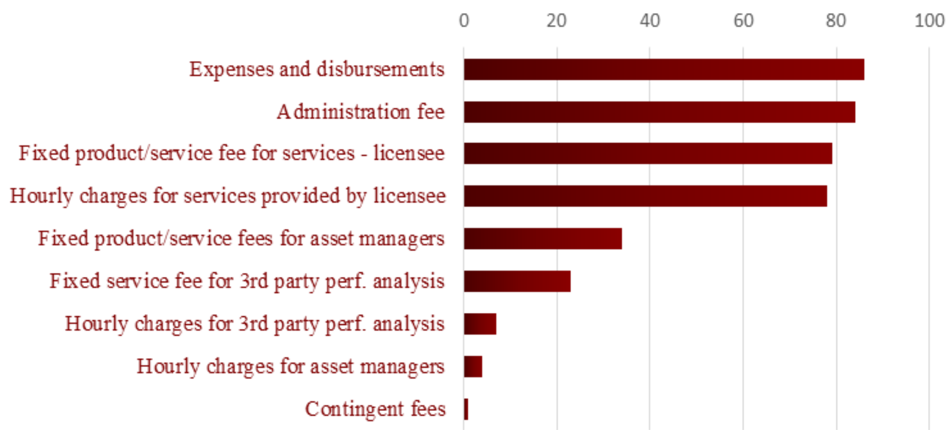
In respect of your top 3 clients, how frequently do you provide the client with written notices/invoice of fees and charges made?



Charging Models

Expenses and disbursements was one of the largest fee models in use amongst fiduciaries, reflecting higher levels of tailored activity. Administration/fixed fees for services were the next most common charging models.

Please indicate which of the following types of fees and charges have applied to your top 3 clients in the last 12 months.



VIII. Conclusion

Our overall findings from the thematic review highlight that the sector demonstrates much good practice. However, there are clearly areas for improvement.

Governance Structures

Trustees should be able to demonstrate that, in determining their investment strategy, decisions have been well-thought through and appropriately challenged. In line with Principle 4 of the Code, trust assets must be managed professionally and responsibly in accordance with the trust deed. An attitude to risk questionnaire can be a useful tool in determining investment strategy, particularly as part of taking into account the client's risk appetite.

Conflicts of Interest

Where assets are invested in-house, it is important for trustees to evidence the rationale behind the decision and document why an alternative provider was not selected. Approved investment manager lists can aid the process of selecting a manager, however, a trustee must be able to demonstrate that the performance of each manager is carefully considered and reviewed on an ongoing basis.

Retrocessions

Although most fiduciaries noted that they do not accept retrocessions, there are still instances where they are accepted. Where this is the case, fiduciaries should fully disclose this to clients in order to avoid actual and perceived conflicts of interest.

Investment Oversight

A significant number of fiduciaries have a formal investment review committee and we see this as good practice, however, for some this may not be appropriate or proportionate. Where there is no specific committee, it is important to maintain records of decisions and document discussions. Such records can be made available in order to avoid potential disputes.

Governance Triggers

An important part of the trustee's role is responding appropriately to events outside of the trustee's control. Acting in the best interest of the trust structure in response to a trigger event is crucial. Where it is not already considered, trustees might find it beneficial to consider the position of the economic cycle and what effect it might have on the performance and future management of trust assets.

Charging Transparency

In line with Principle 4 of the Code, in acting in the beneficiary's best interest a trustee should agree a clear fee structure in advance of taking on an appointment. Fees charged should be fair and transparent. Trustees should agree the frequency of invoicing fee notes with clients at the earliest opportunity.