

Chapter 9

Trustees and their Broader Community: Where Duty, Morality and Ethics Converge

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In 1747 the Lord Chancellor, Lord Hardwicke, said that ‘a trust is an office necessary in the concerns between man and man, and ... if faithfully discharged, attended with no small degree of trouble and anxiety’. He added that ‘it is an act of great kindness in any one to accept it’.¹ Times change, and with them the problems confronting trustees. Every age has its own problems. Because they are new, they always seem particularly knotty.

In the present age one problem area which readily qualifies under this head concerns trustees’ powers and duties in the management of trust fund investments. In Lord Hardwicke’s time there were valuable trust funds, but these mostly took the form of landed estates. Management of settled estates no doubt gave trustees many a headache, but investment management would not have been one of them. The trust property was land, and the beneficiaries’ interests consisted of the right to live in houses, of varying degrees of grandeur, on estates of widely differing extent. The beneficiaries, comprising tenants for life and widows and younger children, also received rents from tenant farmers and tenant occupiers of cottages.

In those days trustees’ powers of investment of capital were narrowly confined. The Court of Chancery took the view that the prudent man of business invested in 3 per cent Consolidated Bank annuities. This became the rule. Trustees should invest money in investments authorised by the deed of settlement itself. In the absence of express powers trustees should invest in Consols. At one time there was doubt about mortgages of land, but the better view was that in the absence of express power a trustee should avoid even these.²

It was not until the mid-19th century that the range of permitted investment was widened. The change was brought about by statute, beginning with the *Law of Property Amendment Act 1859* (UK). The process has continued ever since by a series of statutes, gradually widening the range. As industry and business have flourished, the securities

1 *Knight v Earl of Plymouth* (1747) Dick 120, 126.

2 Maitland, *Equity* (1913), 100.

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