

## INVESTMENT

**PENNY WRIGHT**, a solicitor at **Thomas Eggar**, and **JAMES GRAYSON**, an investment manager at **Thesis Asset Management**, look at legal aspects for trustees of charity investments and how trustees can secure and protect investments, with special reference to retail structured products.

# THE INVESTMENT DUTIES AND LIABILITIES OF CHARITY TRUSTEES

### Trustees' investment duties and liabilities

by Penny Wright of Thomas Eggar

In the current economic climate of low interest rates, volatile markets and reduced donations charity trustees need to be particularly careful to ensure that they comply with their legal duties regarding investments. This article is intended to provide a brief overview of those duties.

**POWERS OF INVESTMENT.** Many charities have wide investment powers set out in their governing documents. Others rely on the statutory powers of investment, which may be restricted by the charity's governing document.

The statutory powers of investment for unincorporated charities are contained in sections 3 and 8 of the Trustee Act:

- Section 3 authorises trustees to invest in any kind of investment, excluding land, in which they could invest if they were absolute beneficial owners.
- Section 8 permits investment in freehold or leasehold land in the United Kingdom.

**WHAT DOES "INVEST" MEAN?** There is no definition of "investment" in the Trustee Act, but broadly it covers methods of generating

resources without trading, gambling and fundraising.

The distinction is important because the tax treatment of trading assets is less favourable than the tax treatment of investment assets.

An investment has a monetary value and is normally expected to produce income.

Non-income producing assets such as vintage wines, antiques, premium bonds and unsecured loans are not usually regarded as coming within the power of investment.

*"The duty of care applies to the exercise of various trustee powers, including the power of investment."*

Further guidance is available on the Charity Commission's website.

**LAND.** Purchase of land for development and re-sale is not normally considered to be an investment for these purposes, whereas purchase of land to produce a rental income would be within the statutory investment power.

**RISKY INVESTMENTS.** Certain types of



Thomas Eggar's Penny Wright – trustees may delegate their power of investment, but the terms of agreement must be in writing and performance should be regularly reviewed.

investments are considered to be too risky for trustees, such as derivatives (unless additional to the main investment), which would not come within the statutory power of investment.

### personally

If trustees invest in assets outside their power of investment, they will be personally liable for any losses.

**GENERAL DUTY OF CARE.** The trustees' duty of care is set out in the Trustee Act. The duty may be modified by the charity's governing document, but only to a limited extent.

The duty of care applies to the exercise of

