In or out?

Decision time for professional trust service providers

Future-proofing commercial value and lowering risk in professional trust services

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By Lindsay Pope
Trustee Support Ltd
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Lindsay Pope
Purposeful Planning & Trusts

The fine print

Disclaimer

We care but you're responsible

So please be sure to take specific advice before taking on any of the strategies, ideas or concepts in this paper. This whitepaper is general in nature and not meant to replace any specific advice.

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"Responsibility is being held accountable for your actions.

It might involve figuring out how to get paid for your work or having others count on you."

Seth Godin

The trust world has changed and so has the risk

The New Zealand trustscape changed in late July 2019 when the Trusts Act 2019 was passed. The Act, effective from 30 January 2021, leaves a short 18-month window for professional firms to decide how to position their trust services and implement the required changes.

Three new changes that will increase trustee responsibility are:

- Clearly articulated mandatory duties and default duties for trustees
- Requirements to hold and retain core records for the trust
- Disclosure obligations to beneficiaries and responding to information requests

This increased transparency is not intended just for trustees. A key focus of the new Act is to ensure beneficiaries have information to enforce trusts in which they have an interest. New expectations will need to be set – with settlors, co-trustees and particularly, beneficiaries.

For professional trustees who get held to a higher standard of care, there will be nowhere to hide.

When professional firms provide a trust service, they take on **responsibility** for performing the service and accept the associated **commercial risk**. It follows, that if trustees perform below the required standard of care, new beneficiary rights and access to information, are likely to increase professional risk.

For professional trustees who get held to a higher standard of care, there will be nowhere to hide.

In addition to new legislation, internal factors can also increase the potential for risk. These include:

- the terms of the governing documents,
- the nature of the trust property (assets and liabilities) to be managed, and
- the complexity of beneficiary and other stakeholder relationships.

Figure 1 highlights external factors that may increase the risk profile associated with a trustee appointment.

Figure 1.

How should professional firms providing trust services respond to a changing environment with increased responsibility, transparency and risk? **Do you get good or do you get out?**

For many firms, 18-months isn't much time to get your trust service in order or to arrange an exit from your existing trustee appointments. This white paper provides information to help firms navigate and implement their decision.

Reflection: What factors increase your professional trustee risk?

Challenges with professional trust services

Let's consider six common commercial challenges for firms offering trust services.

Challenge 1: Commercial and conduct risk

The professional marketplace is full of noise about trustee risk. There are two broad types.

Firstly, ***commercial risk*** (or good risk). Commercial risk arises within any service provided to the market. For trust services, it arises in the course of managing fiduciary obligations, challenging assets, trust liabilities and taxes, legislative and regulatory compliance.

Commercial risk must always be balanced against the commercial return. While risk cannot be fully mitigated, it can be managed by policy and procedural guidelines, take-on processes, systems, tools, training and management oversight controls.

The second area of risk is ***conduct risk*** (or bad risk). The biggest risk for many professionals is not being actively diligent in the role or taking on the responsibility of professional trusteeship for little or no commercial reward.

Trustees who accept conduct risk are vulnerable – essentially, they take on sizable downside risk in the hope nothing comes back to bite them. There's no half-way standard for trustees – you're either a trustee with full responsibility (and the associated risk), or you're not.

Challenge 2: No clear terms of engagement

Professional trust services must be commercially viable. Firms who undervalue their professional trust service, not only increase their risk, they leave money on the table.

Professional fees must be commensurate with the responsibility and risk associated with being a trustee. While it is common for firms to have terms of engagement for their advisory services, few firms have terms of engagement for trust services. Proper terms of engagement are essential for setting expectations with stakeholders on the terms of trustee and trust administration services.

The biggest risk for many professionals is not being actively diligent in the role or taking on the responsibility of professional trusteeship for little or no commercial reward.

Challenge 3: Time pressure

Trust work does not always have the same pressures and deadlines as other transactional advisory services. For some practitioners, trust work is seen as low value or isn't an area of professional interest. This often results in a reactive approach to managing trust work. When services are delivered poorly, risk increases, and trust stakeholders are underserved.

Challenge 4: No clarity on the state of the trust book

A significant challenge for many firms is getting clarity on the state of their trust book. Many professionals feel disconnected with what may be going on in some of the trusts in which they serve. Getting clarity involves a SWOT analysis of the trust book.

It includes understanding both the commercial value and the risk profile of a trust portfolio. When you are clear on the value, risks, gaps and opportunities, it's much easier to find the time and resources to invest into the design of a profitable trust service.

Challenge 5: Conflict between advisory vs fiduciary roles

The line between professional advisory roles and professional fiduciary roles is blurred. A trustee in a fiduciary relationship is not the same as an advisory relationship. Inherent conflicts mean it's not always possible to undertake both roles.

In an advisory relationship, the responsibility is to the client. It is always for clients to decide if they will accept or act upon the advice which has been provided.

Trustees are in a fiduciary relationship and have responsibilities to beneficiaries. They have decision-maki ng roles and all trustees are equal at the decision table.

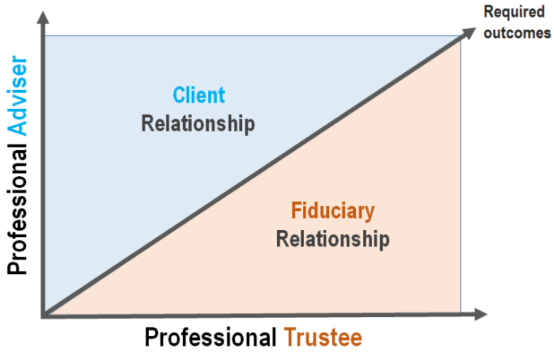
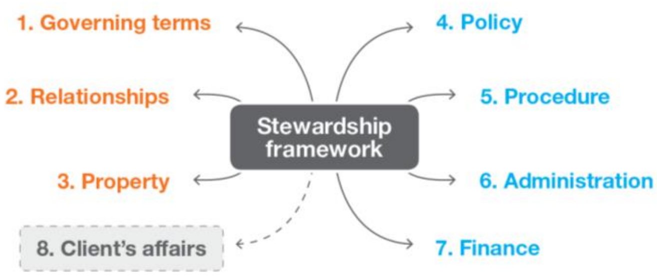


Figure 2.

Challenge 6: Lack of defined standards of practice

Few professional firms have clearly defined policies and procedures for managing trusts.

Documented standards provide a benchmark for managing service delivery and quality. When standards are defined, it is easier to set expectations for managing performance with:



- management and staff, and
- trust stakeholders

When standards of practice are defined and measured, performance improves, risk reduces, and services are delivered more consistently.

Reflection: How will you choose to respond to these challenges?

Other considerations

The clock is ticking

As mentioned earlier, the new Trusts Act 2019 will increase transparency of trustee duties, responsibilities and obligations. As of August 2019, firms have a short 18-month window before the new Act takes effect on 31 January 2021. That's not much time to reposition a trust practice or exit unprofitable, high-risk or unrewarding trusts.

Are you serious?

Getting serious means being professional. That's critical because professional trustees get held to a higher standard of care. Firms must have the time, desire, resources, systems and practices if they wish to provide a profitable professional trust service. At a trust level, being serious means being actively engaged in the affairs of a trust that is properly managed.

Are professional trust services for you?

Professional trust services aren't for everyone.

The trust proposition must be able to be clearly articulated. Creating value as a professional trustee requires a mix of qualitative (relationship) and quantitative (technical) skills and expertise.

Firms providing trust services must be both willing and able to articulate and then deliver on that proposition (see Figure 3.).

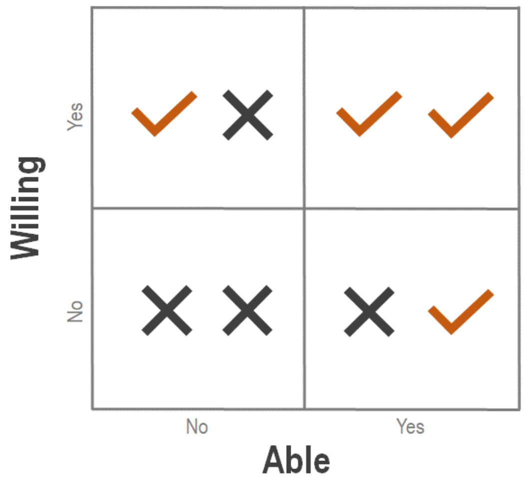


Figure 3.

Recognise the opportunity!

Quantify the potential revenue value of a firm's trust book – **balance risk with opportunity**.

If trust services have never been engaged on commercial terms, it's common to find minimal fees (or no fees) being charged. Professional trustees provide significant value and can be paid handsomely for their services. Never undervalue the potential in a firm's client base or the new business pipeline that can be generated through purposeful conversations.

Building value in professional trust services is a bit like mining for gold – the trick is knowing where to dig and having the right tools and process to get the gold out.

***Reflection*: What is the potential value of your trust service?**

Where are you now? Where do you need to be?

The first step in any journey starts from where you are now, towards where you need to be. All significant journeys need a starting point, destination, plan and reference points.

Move from good intention to good practice

The model in Figure 4 is a diagnostic tool to help firms identify their current vs desired positioning. With the right trust practices and engagement strategy in place, there will be a corresponding uplift in commercial and stakeholder value and reduced professional risk.

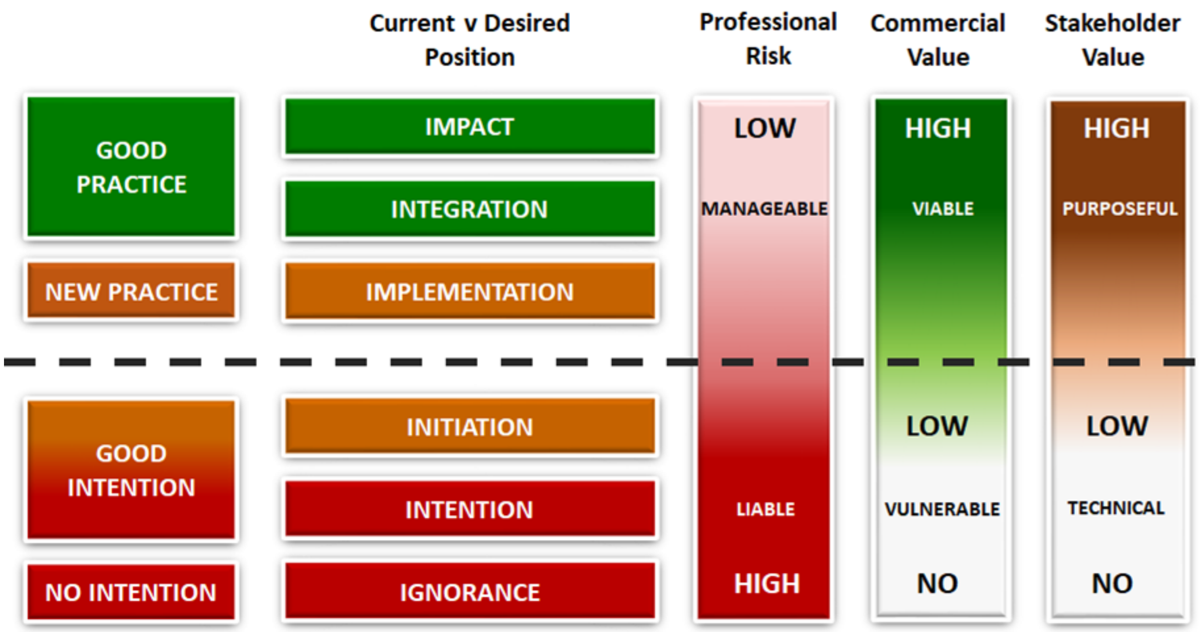


Figure 4.

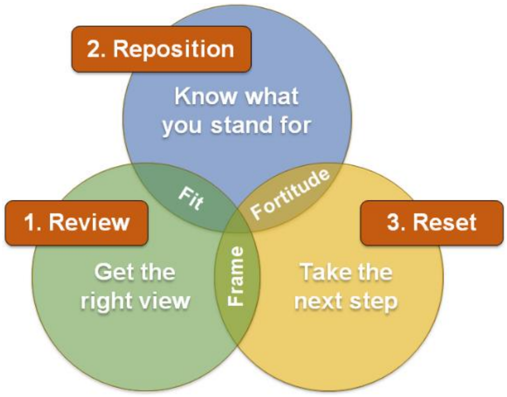
When you know things haven't been run as well as they could have been, it can be a little daunting figuring out and taking the first steps. It is not uncommon to find firms stuck in "good intention" and unable to make progress. Other firms initiate change but then struggle to implement. Knowing where you are and where you want to be is an important step.

3 steps for extracting value

When you know where you want to be, three steps to unlocking commercial value are:

1. ***Review*** *– get the right view*
2. ***Reposition*** *– know what you stand for*
3. ***Reset*** *– take the next step*

1. Get the right view



Good decisions require good information. Without good information, it's hard to make an informed decision. **A comprehensive assessment is strongly recommended before deciding to continue offering trust services or deciding to exit.**

Your assessment should consider the state and risk profile of your trust book and identify opportunities, gaps or risks that may not have been historically considered. This will quantify the potential revenue of the trust service which can then be balanced against the time, energy and resourcing required to make the change. It's not uncommon for firms to be pleasantly surprised when they understand the potential value of a profitable trust service.

DECISION POINT: Are you in or out of trust services?

If you're **IN**, go to Step 2 below for further considerations for repositioning your trust services. If you're **OUT**, implementing the exit strategy will be a project of its own. While **both decisions are good ones**, it's the implementation of the decision made that's essential!

2. If you've decided to be IN, what do you stand for?

Having gathered the facts, your positioning will include decisions and documentation for:

- **Services offered** (e.g. professional trustee, trust administration, trust advisory, etc)
- **Resourcing** (e.g. staffing, roles, responsibilities, task identification, skills audit, etc)
- **Policy** (e.g. delegations, fees, terms of engagement, risk, client profile, etc)
- **Professional practices and processes** (e.g. best practices, supporting systems, etc).
- **Management controls and reporting** (e.g. control quality, measure progress, etc)

Knowing what you stand for provides fortitude to lead out the crucial conversations to reset the terms of engagement for each trust. It puts a stake in the ground to help determine the fit for existing and new clients against the new policies and standards of practice.

3. Take the next step

Decisions need to be implemented. A project approach is recommended, fully supported by top management commitment. This includes designing a review and engagement plan to reset the terms of engagement with stakeholders. Smart firms do this in a way where they can be paid for trust reviews. It is highly recommended you start before you feel ready.

Get above the line - a roadmap to good practice

There can be up to five phases to navigate depending on how a firm wants to deliver its trust services. Strategies and actions for each phase are set out below (read from bottom to top):

Phase	Strategy	Notes
5. Impact	***Purposefulness***	The highest performing firms have a purposeful and positive impact on the private clients they serve. The ***impact phase*** incorporates a strategy of **purposefulness**. In this phase firms adopt a generative ethos to foster productive relationships with trust creators, beneficiaries and co-trustees. Generative trustee's mentor: ▪ Trust creators to capture and record their intent, purpose and hopes behind a gift (**give well)**, ▪ Beneficiaries to be the best they can be, so their lives are enhanced by the trust (**receive well)** ▪ Co-trustees to govern purposefully (**steward well)**
4. Integration	***Prudence***	Following implementation, the ***integration phase*** begins. The strategy for integration is **prudence** (i.e. embedding policies and practices into the fabric and culture of the firm). It takes time and support to improve diligence and deliver/capture value. Integrated firms enjoy profitable trust revenue streams from their trust services.
3. Implementation	***Performance***	In the ***implementation phase*** the strategy moves to ongoing **performance**. To stay above the line, the focus is on delivery and performance to embed the new policies and practices. This requires both leadership commitment and trustee fortitude to engage with stakeholders knowing either of you may need to say "no thanks" if mutual terms cannot be agreed.
2. Initiation	***Positioning***	Following planning, the focus moves to the ***initiation phase***. The strategy here is on **positioning** your trust services for future success. In this phase a firm gets clarity on policy, practices and how to initiate conversations to reengage stakeholders. When the value proposition for trust services is clear, it's much easier to reset the terms of engagement with trust stakeholders and get above the line.
1. Intention	***Planning***	Firms caught in the "good intention" trap manage trust work reactively. The strategy for moving from the ***intention phase*** is **planning** – knowing where you are and where you need to be. A comprehensive assessment allows a range of options to be considered on which an informed decision (risk <u>and</u> opportunity) can be based.

Closing thoughts

No silver bullets

Trusteeship is a long-term game. As such it is unlike many transactional advisory services. Repositioning professional trust services takes time and requires discipline, energy and commitment from the top. Momentum builds confidence.

Stay between the flags

If professional firms know they have historically been taking unnecessary risk, the Trusts Act 2019 provides the long-needed leverage to reset expectations with trust clients.

Review and balance the options

Professional firms have several options. These include:

1. Close down trusts that are no longer needed
2. Exit unprofitable or high-risk trustee appointments
3. Provide professional trustee and administration services on a commercial basis
4. Cease providing professional trustee and administration services
5. Act as an Advisory Trustee / Special Trust Adviser (i.e. advisory services only)
6. Partner with another trust provider

The reality is that most firms will use a combination of these options.

Whether you're in or out, there isn't a downside!

The good news is there's no downside to starting the journey to reset expectations!

When you reset the terms of engagement or exit non-profitable, high-risk or unrewarding trusteeships, it frees time for profitable trusteeships, advisory services only, or both. Either way, that's got to be good for advisory firms, beneficiaries and trust creators. Win, win, win.

Lindsay.

Lindsay Pope
August 2019

Introducing Lindsay Pope

A champion for your cause

If you're a professional trustee grappling with:

- how to unlock commercial value or reduce risk
- assembling data to make an informed decision
- implementing the decision you've made

get in touch with Lindsay to set up a conversation to discuss ways to get momentum in the right direction.

From his Auckland base, Lindsay helps professional advisers and trustees improve value and be more purposeful in their trust and legacy related services.

As a long-time champion for improving trustee standards, Lindsay trains, mentors, writes and speaks on good governance and legacy planning practices. With 40 years' experience professionally managing family and charitable trusts and estates at all levels, he's well placed to guide professional advisory firms and trustees.

Lindsay serves as President of the Estate & Taxation Planning Council of New Zealand and was appointed by the Minister of Veteran Affairs to chair the Viet Nam Veterans and their Families Trust in 2017.

He maintains professional memberships with the Society of Trust & Estate Practitioners, Purposeful Planning Institute, Chartered Accountants ANZ Trust Special Interest Group and the Independent Trustee Alliance where he serves on the Advisory Board.

Check out further services and resources at www.lindsaypope.com

What Lindsay's clients have said:

Lindsay's process has given our firm a platform to have meaningful discussions with clients about their affairs, the impact of the new trust legislation, and their succession plans in general. I've seen the real benefits clients receive by identifying and addressing potential deficiencies in a methodical way. *(DH, Accounting firm Partner)*

I've always found that it's useful to have outside input on how you are performing, regardless of your own level of expertise. Lindsay's program was delivered with our priorities and issues in mind in a way which involved everyone in the firm. We now have achievable practical steps to improve our trust services to clients. *(AS, Legal firm Partner)*

Lindsay's comprehensive review of our trusts has provided a mechanism for us to proactively meet with clients to discuss their forward plans. Our clients have seen real value in the issues raised and have been happy to pay for this work. *(HB, Accounting firm Partner)*