



# THE TRUSTEE'S ART

An increasing proportion of trust assets are held in the form of art. **Richard Bagnall-Smith** and **Luke Dugdale** offer some practical steps that trustees can take to navigate the challenges these assets pose

trustee on notice that independent, professional advice is necessary if the art held in trust is to be dealt with properly.

For many years, such art has sailed under the radar, with the traditionally minded trustee wondering whether it is really an investment at all, as opposed to an expression of the original buyer's personal interests. Historically, trustees have focused on more familiar, liquid investments, such as equities and bonds.

## ART IS AN INVESTMENT

The answer to the question of whether art is really an investment is very definitely 'yes'. If art is in a trust, it is an investment – as is everything in a trust – and needs to be dealt with as such, in a thorough, professional and well-informed manner.

Furthermore, many people are surprised when they learn of the growing percentage of trust assets held in art – not just paintings and sculptures but jewellery, silver, books and vintage cars. ➔

**T**he world of fiduciaries is becoming ever more professionalised, and inadequate service is increasingly unlikely to be tolerated. Put these two developments alongside the high and rising proportion of trust assets held in the form of art, and it becomes clear that the modern trust administrator faces a new set of challenges.

The landmark events that occur in the lifetime of a trust, be it the need to raise cash for beneficiaries or reorganisation after a death, bring this heightened need for professionalism into sharp focus. The increasingly important weight given to art and related assets in portfolios puts the

### ➔ KEY POINTS

#### WHAT IS THE ISSUE?

More and more trust assets are held in the form of art.

#### WHAT DOES IT MEAN FOR ME?

Art that is not managed in the same professional way as equities or bonds leaves trustees open to risk of litigation.

#### WHAT CAN I TAKE AWAY?

Practical tips to deal with art held in trust.

In discretionary trusts the proportion is thought to vary from 10 to 15 per cent and in non-discretionary trusts from 3 to 15 per cent.

What is behind this rise? First, there is the increase in the numbers of the very wealthy, an international phenomenon. Globally, we are seeing those at the highest end of the wealth scale becoming ever richer, not only in the developed world, but in emerging markets such as the Gulf.

Second, art used to be a closed world, but all that changed with the rise of modern art. Now, the fusion of art with fashion has made art universally accessible, desirable and a must-have element of the ultra-rich's identity and brand. And so the prices soar, investors pile in and the risks rise.

### STEP UP TO THE PLATE

All of this is of far more than sociological interest. Among trustees, there has been a long-held assumption that, if anything needs to be done with art in trust, then there will probably be someone else with more knowledge who can deal with it. But this has to change. Trustees need to say: 'It is my problem. If it sits in my trust, I need to get my head around it and manage it as professionally as everything else.' Failure to do so can be hazardous in a world of increasing litigiousness and regulation.

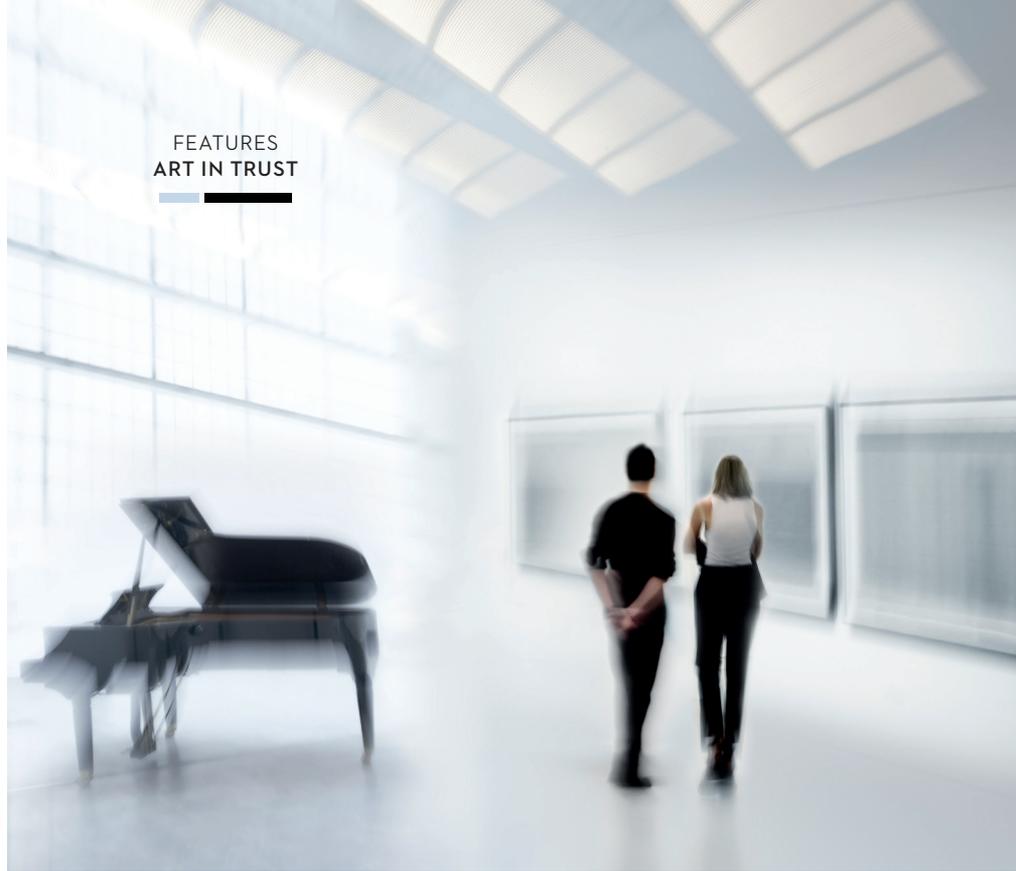
The buck, then, stops with the trustee. However, few, if any, trustees are, or believe they are, qualified to deal with art assets.

Events bring this issue into focus. Perhaps one of the most common milestones is the death of the founder of the trust. As that event nears, the trust administrator ought to say to themselves: 'I know I am going to be called on to make decisions that I can no longer leave to others. It is time to seek professional, independent advice so that I can take an active and informed role.'

This is a fiduciary matter, as all assets that sit in a trust structure have to be treated professionally.

One of the key risks is the financial impact that can occur when a portfolio is not actively managed. Currently, while some high-profile artists grab headlines with their artworks' spiralling prices, other sectors are faring less well. For example, old masters' pictures and traditional furniture have been plateauing or falling in price for years. Leaving the assets unmanaged, when you know there will be a future cash requirement, may leave the trust administrator at risk of litigation. The question trustees need to ask themselves is this: 'If it were an equity portfolio, would I leave it unmanaged in the same way?'

This poses an additional challenge for the trustee, in terms of the need for very careful sequencing of the disposal of art assets so as to achieve the best realisations, regardless of market conditions.



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### KEY STEPS

So what are the key steps that trustees should take when dealing with art?

#### BE PROACTIVE

Do not wait for events to occur, such as the death of the settlor, before coming to grips with the issues around art held in trust. Get on top of the matter well in advance.

#### UPDATE VALUATIONS REGULARLY

There are a remarkable number of trusts in which the art has either never been valued or was valued so long ago as to render the valuation meaningless. Treating equity or bond assets in this manner would be unthinkable. Knowing what is in the trust and what it is worth

is key to the trustee being able to do a decent job.

#### TAKE PROFESSIONAL ADVICE

Ensure the advisor is independent and not conflicted, which in practical terms means they should only make their fees from advising you, rather than through the consignment and sale process.

#### MAKE SURE THERE IS AN AUDIT TRAIL

Maintain a full record of the advice received when it comes to art assets and portfolio strategy, just as you would with financial securities. If there is a dispute with a beneficiary, an audit trail can protect the trustee from litigation.

#### DO NOT FEAR THE ART MARKET

With the right professional advice, it is possible to navigate the world of investment art just like the market for any other type of financial asset. Do not assume that art is an especially volatile asset class. Historically, art has been less volatile than equities.

#### IN SHORT

Some trustees remain reluctant to engage with art in trust, believing it is somehow different and need not divert trust administrators from the more serious business of handling equities, bonds and property. Yet the fact remains that art is an asset, and trustees have a fiduciary responsibility to treat it as such, or risk litigation.



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