1. What are the qualifications and personal qualities that a settlor or testator should look for in a trustee?

Suggested Answer:
See 12.1, 12.2, 12.5.5, 12.8.2 and 12.11.
The required qualifications, or rather lack of them, are dealt with at the start of the chapter. There are many different kinds of trustee, both corporate and individual. The trustee could be a professional or they could be an unqualified person, usually someone like a relative or friend. The only real prohibition is that a child cannot be a trustee.
The qualities that a trustee should have can be explored by looking at the negative: things that the trustee should not do. Reasons for removing trustees can be found in section 36 Trustee Act 1925 and include absence from the UK, being unfit to act for legal reasons such as bankruptcy and being incapable of acting because of age, illness or mental disorder.
The courts much prefer to leave the appointment of trustees to those nominated in the trust deed or with the power to appoint under section 36, but, as a last resort, the courts will appoint, as seen in *Re Tempest* (1865–66) LR 1 Ch App 485. The court will consider the wishes of the settlor/testator, that the trustee must serve the interests of all the beneficiaries and will not impede the execution of the trust. A similar approach has been taken in court cases to remove trustees, such as *Letterstedt v Broers* (1883–84) LR 9 App Cas 371. A trustee must promote the welfare of all the beneficiaries. In particular, a trustee must not be appointed, who favours some beneficiaries above the others, as seen in *Carvel Foundation v Carvel* [2007] 4 All ER 81.
In contrast there is some regulation and control over trustees of public trusts i.e. charities. The difference could be explained by the fact that a settlor or testator is dealing with their own money, but a charity is concerned with what is, in a sense, public money. Under section178 of the Charities Act 2011, a person is disqualified from being a trustee of a charity if they have been convicted of an offence of dishonesty, is an undischarged bankrupt or a disqualified company director. Misconduct, mismanagement and involvement in terrorism was added under the Charities (Protection and Social Investment) Bill 2016 and the existing powers of the Charity Commission to remove charitable trustees was strengthened. There is no equivalent legislation governing the trustees of private trusts.

FURTHER READING: C Bell, ‘Some Reflections on Choosing Trustees’ (1988), Trust Law and Practice 86.

2. Should the beneficiaries have more control over the appointment and removal of the trustees?

Suggested Answer:
See 12.7 and 12.5.1.
Traditionally the beneficiaries had no control over the appointment of trustees: *Re Brockbank* [1948] Ch 206. This was changed by sections 19 and 20 of the Trusts of Land and Appointment of Trustees Act 1996, which was not liked by some commentators, on the grounds that trustees could not do their job of exercising

discretion, if they could easily be removed by the beneficiaries. The section 19 power is quite limited anyway, as all the beneficiaries must be of full age and capacity and agree. The terms of the trust can also exclude this power.
If the settlor or testator wishes, it is always possible for the trust instrument to stipulate that *individual* beneficiaries have the power to appoint trustees. This is recognised by section 36(1) Trustee Act 1925.
The interests of the beneficiaries are protected by the courts in cases such as *Re Tempest* (1865–66) LR 1 Ch App 485 and *Letterstedt v Broers* (1883–84) LR 9 App Cas 371 as explained in answer 2 above.

FURTHER READING: M Keppel-Palmer 'Discretion no more?' (1996) 146 NLJ 1779.

3. Should the courts exercise more control over the appointment and removal of trustees?

Suggested Answer:
See 12.5.1,12.5.3, 12.8 and 12.11.
Trusts are private arrangements established by settlors and testators. The courts are generally unwilling to interfere with the choices made by those with the statutory power of appointment under section 36 of the Trustee Act 1925, as shown by cases such as *Shergill v Khaira* [2015] AC 359, *Richard v The Hon AB Mackay* (1997) 11 TLI 27. In *In Re Higginbottom* [1892] 3 Ch. 132 the court would not intervene, even when the beneficiaries were opposed to the appointment of the proposed trustee.
The court will intervene and replace a trustee, only if it is necessary to protect the welfare of the beneficiaries: *Letterstedt v Broers* (1883–84) LR 9 App Cas 371. Even serious breaches of trust may be tolerated and the trustees allowed to remain in office, because replacing trustees is expensive and disruptive: *Re Wrightson* [1908] 1 Ch 789. The court can always direct the trustees to take actions and expect that the trustees will obey a court order: *Cowan v Scargill* [1985] Ch 270.