

Most start-up or small business owners will have heard of fiduciary duties. They may be aware that they are subject to them. Less frequently will they know what these duties actually involve and when they arise. This short article aims to provide an overview of how this topic applies under English law, showing that fiduciary duties can have a more wide-ranging impact on the conduct of those involved in the running of a business within this jurisdiction than might be realised.

Fiduciary duties are owed when someone “has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence.”¹ Generally, Person A must be reliant on Person B to exercise powers or act for the benefit of A, in circumstances where A can expect B to put A’s interests first.² At the heart of the concept, therefore, is an expectation of loyalty.

English law automatically recognises certain types of legal relationship as giving rise to fiduciary duties. Examples are between a director and his company,³ a solicitor and client or between a trustee and a beneficiary of a trust.

What do fiduciary duties consist of? The precise content will depend on the factual context, but they are defined by the core expectation of loyalty. Common fiduciary duties are to act honestly, not to make any unauthorised profits from one’s position as a fiduciary and not to place oneself in a situation where one’s own interests may conflict with those of the person to whom the duty is owed.⁴

As a result, a potentially wide range of conduct can amount to a breach of fiduciary duty. Examples include secretly providing copyrighted software to a competitor⁵ or taking steps to divert a business opportunity for oneself.⁶

As well as the fixed categories of fiduciary relationship described above, fiduciary duties may exceptionally arise in a bespoke or *ad hoc* context, where the parties’ relationship is such that B has assumed a measure of control of the affairs of A in circumstances giving rise to a legitimate expectation of loyalty. The exact extent of the duties owed will always depend on the nature and facts of the relationship.⁷

This may be particularly relevant to start-ups or joint ventures, especially where the management of a business is defined by personal relationships based on trust and confidence, rather than arm’s-length or contractual ones. In *Murad v Al Saraj*, two claimants entrusted a businessman in connection with a joint venture for the acquisition of a hotel. He was held to have owed the claimants fiduciary duties, which he breached by misrepresenting to them the purchase price he had negotiated.⁸

There are limits to when fiduciary obligations will arise. Subjectively trusting another party is not sufficient by itself: a claimant must show the relationship was such that the claimant was entitled to trust that the other party would put the claimant’s interests above their own.⁹

Separately, the law permits commercial parties to put their own legitimate business interests first, which is why ordinary commercial contracts do not tend to give rise to obligations of a fiduciary nature (rather, the obligations created here are under the contract itself). These types of ordinary business relationship cannot be said to create the requisite expectation of loyalty referred to above.

Limitations aside, however, fiduciary duties undoubtedly play an important role in regulating the conduct of those running a business, and it is for this reason that cases of corporate wrongdoing frequently involve some form of allegation of breach of fiduciary duty. Founder-directors or investors may benefit from an increased awareness of when fiduciary obligations exist or, in more unfortunate situations, when they might have been broken.

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1 *Bristol & West Building Society v Mothew* [1998] Ch 1, 18.

2 *Glenn v Watson* [2018] EWHC 2016 (Ch) [131].

3 These duties are now codified in ss171-177 of the Companies Act 2006.

4 *Bristol & West Building Society v Mothew* [1998] Ch 1, 18.

5 *IT Human Resources Plc v Land* [2014] EWHC 3812 (Ch).

6 *Davies v Ford* [2020] EWHC 686 (Ch).

7 *Coomber v Coomber* [1911] 1 Ch 723.

8 *Murad v Al Saraj* [2004] EWHC 1235 (Ch) [328]-[334]. This case was appealed to the Court of Appeal but not on the finding of a fiduciary relationship.

9 *Al Nehayan v Kent* [2018] EWHC 333 (Comm) [163].