

# A guide to trusts and being a trustee

The benefits and uses of a trust



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## **Important:**

The information in this guide is based on our understanding of the law as it applies in the United Kingdom and HM Revenue & Customs practice, which is subject to change. We can't accept responsibility for any liability that may arise as a result of any action taken or not taken as a result of this information. This guide doesn't constitute legal or tax advice. In addition, tax benefits depend on individual circumstances.

You should note that trusts create binding legal commitments which in most cases result in a permanent change in ownership of your plan. To be fully aware of the implications of a trust, please seek advice from a qualified financial adviser. Our trusts are available from financial advisers or solicitors.

We strongly recommend you get independent advice before you take any action. You should also speak with a financial adviser for full details of all the products mentioned in this document.

# Fast facts about trusts

Putting your plan in trust doesn't need to cost you anything, can avoid a delay in benefits being paid out and may help with inheritance tax planning. Or to put it another way, a trust makes sure the right money goes to the right hands at the right time.

Throughout this guide you'll learn more about trusts as well as the important role of being a trustee. But to start, here are some quick facts about trusts.



## Trusts can

- Allow your family to benefit from your protection plan instead of the taxman.
- Allow you to choose who you want to benefit.
- Allow you to change who should benefit.
- Give your family access to benefits without delay.



## But they don't

- Mean you give up control of your assets.
- Have to cost you anything, or be difficult to set up - you can get help from your adviser.

# Could you use a trust?

A trust is a way of choosing who will receive the benefit of certain assets, without giving your beneficiaries full and immediate control over them. In this case, the asset of the trust will be your plan with us.

A trust is usually created by a document – the trust form – which names the people involved and sets out the terms of the trust. A trust can also be created by your will. The trusts we offer are for setting up during your lifetime and we list them later in this guide.

## Who is involved in setting up a trust?

You, as the person creating the trust, are known as the settlor or donor. If you take out a jointly owned plan, then both of you will be donors. The people who manage the trust are known as the trustees. With the trusts we offer, the donors are automatically trustees.

Our trusts need at least two individual trustees in place all the time and you must therefore choose additional trustees to administer the trust with you. These people may need to deal with the trust if you die so you need to choose them carefully.

The beneficiaries are the people who you want to benefit from the trust. If the trustees break the terms of the trust, the beneficiaries may take legal action against them. The beneficiaries are identified in the trust form which can be completed online using our new online trust service.



# What are the benefits?

Setting up a trust can be easier than you think and can provide you with real financial benefits.

## Can I benefit from the trust?

Some trusts do allow you to benefit but others won't. You may only benefit from the trust if it's specifically provided for within the trust. Your adviser can tell you whether you can benefit from the trust suitable for your circumstances.

## Can I change my beneficiaries?

The Finance Act 2006 introduced significant changes affecting the way in which trusts are treated for inheritance tax (IHT) purposes. Trusts that allow flexibility to change beneficiaries, for example discretionary trusts, are taxed differently to those that don't. Most of the trusts we offer are discretionary trusts. This means the trustees have the power to choose which of the discretionary beneficiaries to pay the trust fund to and in what shares.

With a discretionary trust, the trustees can appoint benefits to anyone included as a discretionary beneficiary. The trustees have a power of appointment which means they can appoint funds to anyone who falls within the definition of discretionary beneficiaries in the trust. There is a pre-printed class of discretionary beneficiaries in the trusts for personal protection plans that includes children, grandchildren and so on.

The donor can add to this class when setting up the trust, or at a later date if they prefer, by nominating additional discretionary beneficiaries to the trustees in writing.

The donor can also prepare a letter of wishes to guide the trustees as to which discretionary beneficiaries they'd like to receive the benefits. The letter of wishes isn't binding on the trustees, so it's important that trustees are chosen carefully. In the business trust, the discretionary beneficiaries are the co-owners in the business and the planholder.

Some of our trusts are available as bare trusts, where the beneficiaries are fixed and cannot be changed in the future.

Your adviser can tell you which option may be most suited to your needs and can tell you about any possible tax implications.

**Who do I appoint as additional trustee(s)?**

As the word suggests, a trustee should be someone you trust. For example, your partner, spouse, civil partner, another family member, a close friend, or your family solicitor. Trustees must be over 18 (16 in Scotland), mentally able and mustn't be bankrupt.

If required by the trust document, trustees should sign the trust form to acknowledge their appointment. In accepting their appointment, trustees must carry out certain obligations and duties. The position shouldn't be taken lightly. Other than our business trust, we strongly recommend that one of the trustees is independent, for example, someone who isn't a beneficiary or donor of the trust.

### What are the duties of trustees?

Typically, trustees' main duties start if and when the plan inside the trust pays out. The trustees will then need to decide whether it's appropriate to pay those proceeds to beneficiaries of the trust, or whether to keep funds inside the trust for the moment.

If proceeds are kept inside the trust, then our trust forms provide the trustees with wide powers of investment. If the trust is flexible, there's the added responsibility of deciding which individuals should benefit.

Trustees may delegate powers of investment and management to someone else. This means they can ask someone else to act on their behalf to invest the trust property. However, they can't allow anyone else to make decisions or distribute income or capital to beneficiaries.

Trustees should obtain and consider proper advice before exercising powers of investment. This requirement doesn't apply if it's deemed unnecessary or inappropriate to do so. For example, if the trust fund were small and the cost of advice outweighed the benefits, or if the trustee was already suitably qualified.

### Trustees' responsibilities

Trustees must keep records, including trust accounts, as they may need to prove they're managing the trust fund properly. For example, records must be kept of any changes made to the investments in the trust fund and any money paid or loaned to a beneficiary. We also recommend that proof is kept of any professional advice received on investments etc.

The trustees also have a responsibility to register the trust with HMRC in certain circumstances and keep those details up to date. For most protection plans the trust only needs to be registered following a claim. If the claim is following your death the trust must be registered no more than 2 years later. For all other claims such as on diagnosis of a critical illness the trust must be registered within 90 days of the claim being paid.

For more information on when and how to register a trust go to <https://www.gov.uk/guidance/register-a-trust-as-a-trustee> or speak to your financial adviser.



### What other powers do trustees have?

The law gives trustees some powers. These include:

- The power to use income from the trust for the education or maintenance of a beneficiary who is under the age of 18.
- The power to give capital to a beneficiary before they become entitled to demand it.
- The power to sell trust property.
- The power to give receipts.
- The power to insure trust property.

Other more specific powers may be set out in the trust form. The range of powers in each trust can vary depending on the aims of the trust. Trustees should make themselves familiar with the powers they have.

Our standard trust range gives the following powers:

- The power to exercise any options within any plan for life assurance.
- The power to pay benefits to the parent or guardian of a beneficiary who is not yet 18.
- The power to lend money to any of the beneficiaries.
- The power to borrow using the trust fund as security.
- The power to release or restrict any of the powers given to you by the trust.

### Is agreement of the trustees necessary?

With most of the trusts we currently offer, the trustees may act by majority. This therefore decides which trustees need to sign whenever any action is taken in relation to the plan, for example, if a plan is to be cancelled or if there's a claim because the life assured has died.

### Can I change my trustees?

The power of appointing or removing trustees belongs to the donor(s) while alive. We provide standard paperwork to help with this. If the donor wishes to remove a trustee and that person is unwilling to sign the form, then the donor can remove that person by sending a notice of removal in writing to the trustee at their last known or usual address.

In all cases, the donor must remember that our trusts require at least two individual trustees. So if a trustee retires or is replaced, a new trustee may need to be appointed.

### Getting the money when it's needed most

If an asset isn't under trust, your personal representatives (the people you have asked to deal with your estate after you die) will need to get the appropriate 'grant of representation' before they can deal with that asset. This process is known as 'probate' in England, Wales and Northern Ireland or 'confirmation' in Scotland.

Probate is the legal process of confirming who can deal with the estate of a person who has died before the assets of the estate can be distributed according to the terms of their will. If someone dies without leaving a will, they're said to have died 'intestate'. Their estate will be divided according to rules known as the 'laws of intestacy'. This can be a long process and can take several months. In the meantime, your family could be dealing with financial difficulties following your death.

By placing your plan under trust, the need for probate will be avoided as long as there's at least one surviving trustee when you die. This is because the trustees are the legal owners of the plan, and can deal with the trust property immediately, making sure your chosen beneficiaries don't suffer financially after you die.

One of the most common reasons for taking out a protection plan is to provide for your family after you die. By writing the plan in trust, you can make sure that the proceeds of the plan are paid to them without delay.

### Tax planning

Inheritance tax (IHT) can be managed using an appropriate trust. Currently, IHT is payable at a rate of 40% on estates valued over £325,000, although gifts to your spouse or civil partner aren't included. This means estates, when they have the value of any life assurance plan added, that takes them over the £325,000 limit, may have to pay IHT.

A married couple or civil partners can combine their IHT thresholds when the second person dies if the first person to die didn't take full advantage of their own threshold. For example, if the estate was left to their surviving spouse. Any unused allowance can be transferred to a surviving spouse.

As well as managing IHT, you can use a trust and protection plan to make sure your family has funds available to pay any liability that can't be avoided. This will stop them having to take an expensive loan or even sell the family home to pay any owed tax after you die.

Your adviser can tell you more about the types of trust available and the tax effects each of them will have.

### **What sort of protection plans can be put under trust?**

Generally, all our plans can be put in trust although it may not always be appropriate to do so. For example, a plan written purely to repay a mortgage wouldn't be written in trust if it was to be assigned to the lender.

The right trust to use will depend on the type of plan, why you were taking it out and who you want to benefit from it. Your adviser can explain what trust to use in different circumstances.

### **Do I have to take out a new plan to put it under trust or can I use an existing one?**

You can put both new and existing personal protection plans under trust. Business protection and relevant life plans must be written in trust from the start. However, you may want to review your plans to make sure they're still right for you. Your adviser can carry out a review of your plans and recommend appropriate trusts for them. Your adviser can also look at the tax implications of putting your plan into trust.

### **How do I put a plan under trust?**

Once you and your adviser have decided the most suitable plan for you, you can consider if a trust is the right solution for you, and if so, which one. If you're writing your policy in trust from the outset, then your adviser can complete this for you as part of your online application. All you need to do is give them the names and addresses of the people you wish to be trustees. For personal protection policies that have already started, your adviser can help you complete a paper or PDF trust form. Our trust wording is provided free of charge and has been drafted for use specifically with our plans. Each trust is designed to do different things.

Alternatively, you can arrange for your own trust to be drafted to meet your own specific needs. For this you'll need to contact a solicitor who'll charge for this service. In any case, if you're not sure whether the trust is suitable to your particular circumstances, we strongly recommend you get professional legal advice.

# What trusts do we offer?

## 1 THE SPLIT TRUST

The split trust is designed for use with Royal London Personal Menu Plans, Scottish Provident Self Assurance Plans and Bright Grey Personal Protection Menu Plans (please note Bright Grey rebranded to Royal London in November 2015 and Scottish Provident rebranded to Royal London in December 2015) where you want to place any life cover in trust for your chosen beneficiaries but retain access to certain benefits. For example, critical illness benefit or income protection (where you survive diagnosis by 30 days). This trust is available as a discretionary trust which means the trustees have flexibility to make payment to any of the discretionary beneficiaries. It's also available in a bare trust version, with fixed beneficiaries.

This trust can also be used with Scottish Provident Pegasus plans, provided they do not have critical illness cover which includes the cover buyback option. Please refer to your plan schedule to confirm if your Pegasus plan includes the cover buyback option.

## 2 THE GIFT TRUST

This is the basic type of trust for family protection or IHT planning. As the holder of the plan, you can't be the beneficiary. At the start you must choose the beneficiaries, and again the trust is available as a discretionary or bare trust.

## 3 TRUSTS FOR JOINT LIFE PLANS

Both the split trust and the gift trust are designed for IHT planning purposes on the death of the plan holder. However, where a plan is jointly owned and will pay out on first event, neither of you can benefit from the plan proceeds as you are both plan holders and therefore specifically excluded from benefiting from the trust. These trusts are therefore not generally suitable for use with joint life plans payable on first event unless the surviving plan holder doesn't need access to the funds.

Where access is required, we offer two trusts that do specifically allow the survivor to receive the proceeds on first death while still being suitable for IHT planning. The gift trust (jointly owned - survivor to benefit) is similar to the gift trust as detailed above and is used for basic IHT planning.

continued overleaf

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**TRUSTS FOR  
JOINT LIFE  
PLANS (cont.)**

The difference however, is that this trust allows the surviving plan holder to receive the proceeds if they are still alive 30 days after first death. If both plan holders die at the same time or within 30 days of each other, the proceeds will pass to the beneficiaries of the trust and will not be part of either of your estates for IHT purposes.

Placing your plan into this trust ensures that the proceeds will only pass to your beneficiaries if you and your spouse/partner die around the same time. If critical illness or any other benefits you may wish to retain are included on the plan, the split trust (jointly owned - survivor to benefit) may be suitable. Your adviser should be able to confirm which trust is most appropriate for you.

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**THE BUSINESS  
TRUST**

The business trust is specifically designed for business protection plans (partner, member and shareholder protection). The partner's, member's or shareholder's plan can be written under trust, with the beneficiaries being the other partners, members or shareholders in the business. This makes sure surviving co-owners have the funds to buy a deceased or ill person's share in the business and don't end up with an unsuitable partner, member or shareholder. This could be the surviving spouse, children, or unwelcome third party. In other cases, they may reintroduce the funds back into the business. This trust can be completed online by your adviser as part of your application with no need for signatures. Alternatively it can be completed as a paper form. In either case we recommend the trust is completed before your plan starts to avoid any adverse tax consequences.

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**THE RELEVANT  
LIFE PLAN  
(RLP) TRUST**

The RLP trust is specifically designed for those plans being set up to provide death in service benefit for employees. The plan is applied for by the business and must be written under trust from the start, with the beneficiaries being the employee covered and their family. This ensures that the benefit is paid to an individual as required by the legislation governing RLP. The employee is a beneficiary so that if they cease to be employed by the business the plan can be assigned to them as a personal plan. This is a discretionary trust. This trust can be completed online by your adviser as part of your application with no need for signatures. Alternatively it can be completed as a paper form. In either case we recommend the trust is completed before your plan starts to avoid any adverse tax consequences.

**SPEAK TO YOUR FINANCIAL ADVISER  
TO FIND OUT MORE**



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