

# Fixed Trust - Settlor as trustee with optional survivorship clause

Your questions answered



## Fixed Trust - Settlor as trustee with optional survivorship clause

### Your questions answered

Understanding trusts and their implications can be pretty complicated. You should always get advice from your legal adviser before setting up a Trust.

#### What is a Trust?

A trust is a legal arrangement set up by a person or group of people to look after something (such as a life insurance plan, a property or an investment) until the time when the contents of the trust are given to someone else.

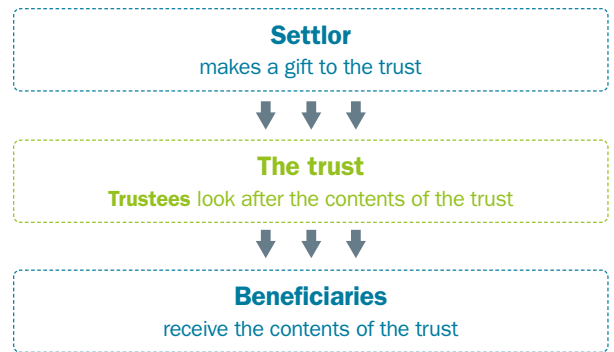
A trust owns whatever is put in it and looks after the contents until they are due to be given out.

So you might set up a trust to give a gift to someone in the future, for example, after your death. Or maybe your gift is to a child and you want to make sure they will be old enough to use it wisely.

To set up a trust, **three groups of people** are needed:

- 1 The **'settlor'** is the person who sets up the trust and puts their gift into it. Once a gift is put into trust the settlor no longer owns it. There can be more than one settlor if the gift being given away is owned jointly.
- 2 The **'trustees'** are the people that are responsible for looking after the contents of the trust for the person or people who will eventually get them. The trustees ensure that the contents are given out as the settlor wanted them to be. The settlor will be a trustee, and normally choose at least one other person too. This allows the settlor to keep some control of the contents of the trust, even though they don't own them any more.
- 3 The **'beneficiary'** will receive the contents of the trust. One or more beneficiaries can be chosen. It may be possible for the trustees to change the beneficiary, but this depends on the type of trust. The settlor can never be a beneficiary, but trustees can be.

#### Structure of a trust



#### Why would I set up a trust?

Normally, someone sets up a trust to make sure that the trust assets:

- get paid to the right person
- can be paid out quickly, and
- are paid tax efficiently (as the contents of the trust aren't normally included in the settlor's estate, which means that inheritance tax won't apply on their death).

#### What is a Fixed Trust?

A fixed trust is a very simple type of trust. It is sometimes called a bare trust. All the contents of the trust are given to the beneficiaries.

When you set up the trust, you name the beneficiaries of the trust. You also decide how the contents will be split between them (for example, 50:50). **The beneficiaries you name and their share of the assets can't be changed later on.**

Once a beneficiary reaches the age of legal capacity (18 in England & Wales, 16 in Scotland)\*, they are legally entitled to own the contents of the trust. This means they can force the trustees to transfer ownership of the contents to them if they want to.

\*The trust will be deemed to be written under Scottish Law if the settlor (or both of them if there are two) live in Scotland at the time the trust is set up.

#### When can I use a Fixed Trust?

You could use the fixed trust if you:

- know who you want to receive the contents of the trust, and
- won't need to change this person in the future.

But remember, a fixed trust doesn't offer you any flexibility. You can't change the person or people you want to benefit at a later date and you'll never be able to benefit from it. For this reason, a fixed trust isn't right for everyone. You should always get advice from your legal adviser before setting up a trust.

### What can I place into trust?

Normally a fixed trust is used for life protection, which will pay out a lump sum when the settlor dies. But you can use it for other things too, for example an investment bond.

As long as you're the plan owner, you can place a new life protection plan or bond into trust when it starts. Or you can put an existing one into trust. A fixed trust is suitable for both single life and joint policies.

### What shouldn't be put into trust?

You shouldn't put anything into trust that you want to use or benefit from in the future. For example, an income protection plan will pay an income if you can't work because you've had an accident or are ill, so you would want to have the income to replace the lost income from your job. If you put the plan into a trust, the income would be paid to the beneficiaries instead.

Also, if you put an investment bond into trust you won't be able to take any money out of it at a later date. You won't be able to receive an income from it either. Any income or withdrawals will be paid to the beneficiaries.

### Can I keep control of my assets?

Once you put something into trust you don't own it anymore - the trustees do. So if you want to keep some control over what happens to the contents of the trust, you'll need to be a trustee.

For example, if you put a life protection policy into trust, and you want to increase the cover later on, we'll only be able to do this with agreement from the trustees, and we'll send details of the changes straight to them.

Our draft fixed trust deed automatically makes you a trustee, so that you still have some say over what happens.

And don't forget, once you've gifted something to a trust, you'll no longer be able to benefit from it.

### Why should I appoint more than one trustee?

If all the trustees die before the trust contents are paid out, there could be a delay in getting the money quickly to the people who need it. So it makes sense to appoint at least two trustees. As the settlor, you will be a trustee, and you should appoint at least one other person who you trust too.

### Can I change trustees in the future?

Yes you can. If a trustee no longer wishes to be a trustee, or they die, and you want to appoint a new trustee, the settlor of the trust can do this. If the settlor has died, this power passes to the trustees. If you'd like to change trustees please let us know, so we can arrange for the correct forms to be sent to you to do this. It's really important you don't simply cross names out on your trust deed and add new ones, as this could invalidate your trust.

### What is a survivorship clause?

A survivorship clause allows a surviving settlor to benefit from the proceeds of a trust if they survive 30 days from the death of the first settlor to die. If both settlors die within 30 days of each other, then the trust property reverts to the beneficiaries as detailed in the trust.

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#### Example

Darren and Holly are married with two children. They have taken out a joint life first death life insurance policy to give them some financial security, should either of them die. But they're concerned about the potential inheritance tax liability on their joint estate, if they died at the same time (for example, in a car accident).

By including the survivorship clause within the trust, Darren and Holly can ensure that if they both die together, the lump sum paid out will be held in trust for the benefit of their children, and not form part of their estate for inheritance tax planning. But if one of them survives the other by 30 days, they'll receive the money to help support their family.

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If you're unsure whether the survivorship clause is right for you, please speak to your financial or legal adviser.

### When can I use a survivorship clause?

The survivorship clause is intended for use only in specific circumstances.

- Two plan owners (we call this joint settlors when we're talking about the trust) and either
  - a joint life first death life insurance policy, or
  - a single life insurance policy (under our Flexible Protection Plan only).

You shouldn't include a survivorship clause for any of the following:

- Single settlor trusts (whether the cover is single life or joint life).
- Savings plans.
- Investment bonds.

Please note that you can use this trust with or without the optional survivorship clause.

### How do I add the survivorship clause to my trust?

The survivorship clause is an 'opt in' option. This means that you actively need to select this if you want it to apply. We've explained how to do this in 'How to complete this Fixed Trust' later on.

Please note that you can only choose to include the survivorship clause when you set up your trust. You cannot add this at a later date. And if you add the survivorship clause by mistake, you won't be able to change it later on.

### Will inheritance tax (IHT) apply?

Maybe, it depends on the situation. We've explained the key events that affect when IHT is paid below.

- **When you make the gift** - No. Whether your gift is a one off lump sum or something more regular (such as a monthly premium paid for life insurance) you won't have to pay any IHT when you make the gift.
- **When you die** - Maybe, it depends on whether your gift is exempt or potentially exempt.  
For an exempt gift there will be no IHT to pay when you die.  
For a potentially exempt gift, IHT could apply if you die within seven years of making it. The amount due depends on:
  - the value of the gift when you made it
  - any other similar gifts you've made (to trusts or individuals) in the last seven years, and
  - when you die.

The trustees are usually responsible for paying any IHT due. They can pay this from the trust assets.

- **If the beneficiary dies** - Maybe. The beneficiary is the actual owner of the contents of the trust. So if the beneficiary dies, the value of the trust at that time will be included in their estate and inheritance tax may be due. The beneficiary's personal representatives will be responsible for paying this

To make sure you understand how IHT will apply to your gift, you should get advice before you set up a fixed trust.

### How does the survivorship clause affect inheritance tax on a life insurance policy?

The survivorship clause is considered in legal terms as a 'reversionary interest'. This means that you retain an interest in the trust property.

- **If one settlor survives the other by 30 days** the amount of cover is paid to the trustees for the benefit of the survivor. The amount paid out is not included in the deceased's estate for inheritance tax purposes. However, it will form part of the surviving settlor's estate on their death.
- **If both settlors die within 30 days** of each other the amount of cover is paid to the trustees for the benefit of the beneficiaries. The amount paid out isn't included in either of the settlor's estates for inheritance tax purposes.

### Will income tax apply?

Maybe. This depends on what you put into trust. For most gifts, such as life protection that only pays out on death, income tax won't apply. But it could apply to some other types of gift, such as an investment bond.

The trustees will normally be responsible for paying any income tax due. They can use the trust contents to pay it.

### Who makes the claim?

The trustees should make a claim on the policy as soon as they can after a settlor dies (or both for joint life second death policies).

We'll always pay the amount of cover to the trustees.

- **For a life insurance claim (where the survivorship clause doesn't apply)** - the trustees will hold the money according to the trust rules and provisions.
- **For a life insurance claim (where the survivorship clause applies)** - the trustees should keep the money in trust until the 30 day period has passed. If the surviving settlor is still alive, the trustees should then pay the amount of cover to him or her. If not, the money will become trust property and the trustees must follow trust rules and provisions to make sure that the beneficiaries benefit.

### I live in Scotland, can I use this draft Fixed Trust?

Yes, you can. Scots law will apply to this trust if the address of each settlor is in Scotland when the trust is created.

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Understanding trusts and how they're taxed can be very complicated. We've only outlined the basics here. You should always get advice from your legal adviser before setting up a trust.

This explanation of trusts and taxation is based on our current understanding of legislation and HM Revenue & Customs practice (as at April 2016). Please remember that this could change and taxation always depends on your personal circumstances.

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# How to complete this Fixed Trust

This Fixed Trust can be used only with life insurance policies and life assurance bonds.

It's very important that you fill in this trust deed correctly. The next few pages explain how to do this step by step. If you're not sure how to complete the deed please ask for legal advice.

## Page 1

### The date, settlor and trustee details

- Date** - If the plan you're putting into trust hasn't started yet you don't need to date the trust deed - we'll do this for you. If you're putting an existing plan into trust, you should date the trust deed on the date it's signed.
- Settlor** - The plan owner details must be added. The plan owner will be the settlor. If the plan is held in joint names, you'll both be plan owners and settlors. You must add your full names and current addresses.
- Trustees** - The settlor (or settlors) will automatically become trustees. We'll always send correspondence to the settlor as a trustee. If you want to add additional trustees, you should name them here. You should have at least two trustees, including the settlor.

- Do not date** - If you're using the trust for a new plan leave this blank. If it's for an existing plan, add the date you and the trustees sign the trust deed.
- Settlor** - Add your name and address here.
- Additional trustees** - Add the name and address of each additional trustee you've chosen.

## Page 2 - Details of beneficiaries and trust assets

### Survivorship clause

If you want the survivorship clause to apply to the trust, please tick the box above 3.

### Schedule I - Beneficiaries

Make it clear who you want to benefit from the trust in this section. You can do this by either adding

- the full name of each beneficiary (including their maiden name for married women), for example 'upon trust for James Smith absolutely', or
- the relationship between you and the beneficiaries, for example 'upon trust for my son absolutely'.

If there is more than one beneficiary, you'll also need to be clear about the proportion of the trust assets each is entitled to - for example 'upon trust for all of my children in equal shares absolutely'. If you don't give a share entitlement here, the trustees will assume that the assets are to be split between the beneficiaries in equal shares.

- Survivorship clause** - Tick here to apply this clause to your trust
- Beneficiaries** - Confirm who will benefit.

## Page 2 - Details of beneficiaries and trust assets (continued)

### Schedule II - Plans

Details of the life insurance plan or life assurance bond that will be owned by the trust must be added here. The details that should be added are

- the plan number (for policies in our Flexible Protection Plan please add the policy number instead)
- the name of the company that provides this plan, and
- the date the plan starts

If the plan (or plans) to be held in trust haven't started yet you can leave this section blank, and we'll fill it in once the details are known.

### Trust assets

Add the policy or plan number and start date (if you know it) of the policy or plan you're giving away.

**Note:** If you hold a Flexible Protection Plan with you **please make sure you add the policy number for the individual policy you're placing in trust** - not the overall plan number

**Background**  
The settlor owns the plans listed in schedule 6. The settlor declares that these plans will be held in trust for the benefit of the persons listed in schedule 1 in the way set out in this deed.

**This deed witnesses:**

- to this deed the settlor (trustees) assigns the settlor and additional trustees (or any future trustees if these are changed). The settlor (trustees) assigns any one of them.
- The settlor declares that the plans listed in schedule 6 will be held in trust. The settlor transfers these plans and any money payable from them to the trustees to hold in trust in the way set out in this deed.

**Please tick here if you want the survivorship clause detailed in (3) and (4) to apply to this trust**

**3** The trustees declare that they will hold the trust property on trust for the surviving settlor absolutely, if he or she is alive 30 days after the death of the first settlor to die.

**4** If the surviving settlor is not alive 30 days after the date of death of the first settlor to die the trustees declare that they will hold the plans listed in schedule 6 and any money payable from them, and any investments and other assets brought using plan money (trust property) on trust for the settlor or none of the persons listed in schedule 1.

**5** We confirm that this deed is within category 14 of the Schedule to the Stamp Duty (Amendment) Regulations 1987.

**In witness of this the settlor and the additional trustees have signed this deed in front of the witnesses on the date which appears on the first page of this deed. Details of these witnesses are set out on page 4 of this deed.**

**Schedule 1 - Beneficiaries**  
Add the full names of the persons you wish to benefit from the trust property below. Please clearly record each beneficiary's share entitlement as either a percentage or a fraction of the trust property, making sure that all the share entitlements add up to the whole of the trust property. If share entitlement not contained here, the trustees will assume equal shares for each default beneficiary.

Full names	Share entitlement
_____	_____
_____	_____
_____	_____
_____	_____

Together called the **beneficiaries**

**Schedule II - Plans**  
Add details of each plan which will be held on trust.

Plan or policy number(s)	With (name of company)	Start date (DD/MM/YYYY)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Together called the **plans**

**Foot Note: Settlor or trustee without survivorship clause**

## Page 3 - Trust provisions

This page sets out details of how the trust will work, including the powers held by the settlor and the trustees. You don't need to add any details to this page.

Scots law will apply to this trust if the address of each settlor is in Scotland. We'll send details of the plans in the trust to the first trustee, unless another agent is given in section 8.

**Schedule III - Trust provisions**

**1** This trust will carry any income generated by the trust property. The trustees can pay or apply the income for the benefit of the persons who would be entitled to the trust property.

**2** The settlor reserves under the age of legal capacity (which is 18 in England and Wales, and 16 in Scotland), the trustees can:
 

- pay or apply a suitable amount of the income to the person;
- use the income to pay for their maintenance, education or benefit; and
- make any suitable provision in the trust for them until that person reaches the age of legal capacity.

 Section 31(1)(c) of the Trustee Act 1925 will not apply to this deed. The words 'in trust' in section 31(1)(c) will be deleted.

**3** The settlor power of appointing or removing trustees is hereby:
 

- deleted;
- the settlor has the power to appoint one or further trustees; and
- can remove existing trustees without giving a reason, if there are two trustees and one has died, the surviving trustee has three powers, or all the trustees have died the trustees have three powers.

**4** The trustees may not use their discretions or powers under this deed in any other person they have by law, to benefit:
 

- the settlor;
- the settlor's wife or husband;
- the settlor's civil partner;
- in any way.

**5** The trustees have the powers set out below in addition to all powers given to them by law:
 

- (a) to invest all or part of the trust property in any kind of investment. These investments may generate income, but don't have to. The trustees should make investment decisions taking the same care as if the trust property was their own;
- (b) to borrow money using the trust property as security for any loan, including loans to themselves;
- (c) to use their absolute discretions to:
  - pay all or part of the trust property towards the education, maintenance, education or benefit of any person who has the right to have the trust income paid to them, including the payment of inheritance tax. When a person is given a guarantee amount on behalf of any person under the age of legal capacity it means that the trustees have no more liability to that person;
  - receive or give such receipts for all money due to them under any of the above. And once they receive payments due in full, to discharge the company that provided the above. Once discharged, the company will have no obligation to make back the trustees' trust property with the trust property;

**6** Discharge some or all of those powers to any person, but not to those listed in clause 3, to deal with any of the trust property that is not the powers to discharge in this clause (6).

**7** To enable any person to act as an agent for them that not those listed in clause 3. Any fees payable to the agent can be paid out of the trust property. If that is the case, the name of the trustee will be liable for any fees which may be payable as a result of the need or negligence of any agent appointed in good faith by them. The trustee agrees where the trustee could have acted for themselves without needing an agent.

**8** Where a beneficiary is under the age of legal capacity or legally limited capacity (meaning for tax or for benefit, for sale or transfer any capital or income which is for that person's benefit to their parent, guardian or any other person they decide is suitable. When a parent, guardian or other suitable person accepts money on behalf of any person it means that the trustees have no more liability to that person).

**9** The trustees will not have to keep the plans in force or to 'hold' them if they end because premiums have not been paid. They will have to replace them with new plans either.

**10** Any trustee who is a solicitor or other person providing professional or advisory services may charge:
 

- costs incurred;
- business expenses;
- time spent; and
- any other

 as the trustees of the trust. Charges can be paid for out of the trust property. This does not apply if the trustee is also the settlor, the settlor's wife or husband, or the settlor's civil partner.

**11** This declaration of trust is subject to the laws of England and Wales where the address or both addresses for the settlor is in Scotland, when this trust shall be subject to Scots law.

**12** By signing this deed the trustees accept that appointment as trustees. Where Scots law applies, the trustees required that the plans be delivered to them at the address for the settlor set out in this deed, unless they want them delivered to their appointed agent, whose details are set out below.

Name of agent
_____
Address
_____
Postcode
_____

**Foot Note: Settlor or trustee without survivorship clause**



The settlor (or settlors) and additional trustees must all sign and date the trust deed. Each signature must be witnessed by an independent third party (someone who isn't a trustee, the settlor, or a beneficiary). The witness must sign, and give their full name and address too.

**Settlor**  
You should sign here, and have your signature witnessed.

**Trustees**  
Each additional trustee should sign here, and their signatures should be witnessed.

**Note:** the person you ask to witness signatures should be independent and not involved in the trust. So you can't witness each others signatures, and anyone who is a beneficiary should not be asked to witness signatures

The image shows a sample trust deed signature page. It is divided into several sections for signing and witnessing. The first section is for the Settlor(s), followed by sections for Additional trustees (numbered 1 through 4). Each section includes a line for the signatory's name, a line for their signature, and a line for their address. Below each signatory section, there are two lines for a witness's name and signature, and a line for the witness's address. At the bottom of the page, there is a note: "You can get this and other documents from us in 30 days or longer paid by post/online on." and a small footer: "Fixed Trust: Settlor as trustee without survivorship clause".

### What happens next?

Once you've completed the trust deed please send it to us so that we can update our records. We'll return the original document to you, and you should keep it in a safe place with the other documents you have which relate to the policy or plan.

If you want to cash in, cancel or make changes to the policy or plan after you've put it in trust, we'll only be able to take instructions to do this from the trustees (as they're the legal owners of the trust assets).

The trustees may need the original trust deed when they make a claim, as evidence that they are entitled to do so. So it's important you keep in touch with your trustees, and let them know where the original trust deed is kept.

**You can get this and other documents from us in Braille or large print by contacting us.**



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