

# Flexible Trust - Settlor as trustee with optional survivorship clause

Your questions answered



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### 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?

This 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.

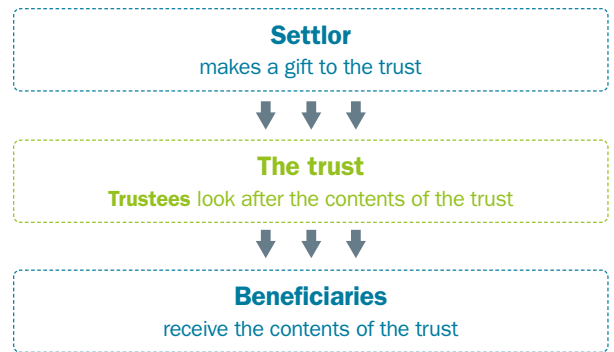
A trust owns whatever is put in it and looks after the contents until they are due to be given out.

So you might set up a trust to give a gift to someone in the future, for example, after you die. Or maybe your gift is to a child and you want to make sure they're 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 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.

#### Structure of a trust



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

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

- are paid to the right person
- can be paid out quickly, and
- are paid tax efficiently (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 Flexible Trust?

A flexible trust gives the trustees some flexibility to choose who will benefit from the trust assets, and how much they'll get.

When you set up the trust, you name all of the people that you want to benefit from it in the future. This can be groups of people, for example, children or grandchildren. Or you can name specific individuals. This wide group of beneficiaries is called 'potential beneficiaries'.

From these potential beneficiaries, you name the person or people that you would want to benefit from the trust assets if they were to be paid out straight away. This person or people are called the 'default beneficiaries'.

You must also decide how you want the trust assets to be split between the default beneficiaries. For example, the default beneficiaries could be three children in equal shares.

The trustees have the power to change the default beneficiaries to any of the people named as potential beneficiaries. They also have the power to change how the trust assets are split between them. We've explained this in more detail in "What changes can trustees make?" on page 3.

## When can I use a Flexible Trust?

You could use a flexible trust if you:

- know all the people you want to receive the contents of the trust when you set it up (for example, your widow or widower, children, grandchildren, mother, father, brothers or sisters)
- know who you want to benefit from the trust unless circumstances change, and
- want the option to change who will actually benefit from the trust if things do change in the future.

But remember, you can't add new potential beneficiaries once the trust has been set up. And you must select trustees that you can trust to make fair and reasonable decisions about who should benefit from the trust. For these reasons, a flexible 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 flexible 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, such as 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 flexible trust is suitable for both single life and joint plans.

## 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 from the plan to replace 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 any more - the trustees do. So if you want to keep some control over what happens to the contents of the trust, you should appoint yourself as 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 flexible 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 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 changes can trustees make to the trust?

The trustees have the power to change the default beneficiaries if they wish. They can choose any of the potential beneficiaries to become the default beneficiary and benefit from the trust assets.

They also have the power to change how the trust assets are split between default beneficiaries.

The advantage of giving trustees these powers is that if circumstances change, the trust can be changed to make sure it's still effective.

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## Example

Ian and Jayne live together and have a son, Simon, who is eight years old. Ian takes out life cover to help protect his family financially if he dies. He wants to leave the money to Jayne.

But if she dies before he does, he'd like it to be kept for Simon until he's old enough to receive it. Ian uses a flexible trust, and names both Jayne and Simon as potential beneficiaries. Jayne is the default beneficiary. But if she dies before Ian, the trustees can change the default beneficiary to Simon. The money will then be held in trust for Simon until the trustees pay it out to him.

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**Important:** if the trustees wish to make changes to the trust they should contact us so we can supply the correct forms. Please don't make changes by altering the original trust deed as this could invalidate your trust deed.

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### When can the trustees make changes to the trust?

The trustees can only make changes to the trust while the settlor is alive, or within 24 months of their death. If the trust asset is a life assurance plan then the death of the person insured determines how long the trustees have to make changes to the trust. (The person insured and the settlor aren't always the same person).

After this, the default beneficiaries will become the legal owners of the trust property and the way that assets are split between them can't be changed.

### 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.

For 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.

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 Flexible 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 apply?

Maybe, it depends on whether your gift is exempt or not.

Premiums you pay for a life insurance plan held in trust will usually be exempt, because the premiums are paid from your normal income. Exempt gifts aren't subject to inheritance tax (IHT).

But, if you put something of value, like an investment bond, into trust it's unlikely to be exempt. This means that IHT could apply when you make the gift, on every tenth anniversary of the trust, and when anything is paid out from the trust. The amount of IHT payable will depend on the value of this gift and any other similar gifts you've made (to trusts or individuals) in the last seven years.

Also, if you die within seven years of making the gift, the amount you gave away will be considered when calculating IHT on your estate.

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

### Is there any inheritance tax to pay when trustees change the default beneficiary?

No, there isn't.

### Is there any inheritance tax to pay if a beneficiary dies?

No, as the trust assets aren't legally owned by any of the beneficiaries. So if money hasn't been paid out from the trust, it won't be included in any beneficiary's estate when they die.

### Who's responsible for paying the inheritance tax?

Normally, the trustees are responsible. They can use the trust contents to pay it.

In some circumstances the settlor can pay any IHT due. This usually works out to be more expensive though.

### Do I need to tell anyone about my gift?

You might have to tell HM Revenue & Customs (HMRC). This will normally only be necessary if the gift you make to a flexible trust, together with any other similar gifts, is more than 80% of the nil rate band.

For example, if you gifted £150,000 into a flexible trust in May 2015, and then gifted another £150,000 into a separate flexible trust in May 2014, you'd have to report the second gift. This is because the total amount you've given away in the last seven years (£300,000) is more than 80% of your nil rate band (which is £325,000 for 2016/17 to 2017/18).

If this is the case, you must tell HMRC within 12 months of making the gift. You can get all the forms you need, and more information about when you need to report your gifts, from the HMRC website.

If you do have to report your gift, then the trustees will need to complete returns at every tenth anniversary, and when money is paid out from the trust. They'll have to do this even if no IHT is payable.

### 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 settlors estates for inheritance tax purposes.

### Will income tax apply?

This depends on what you put into trust. For 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. You should get legal advice to find out if income tax could apply.

### Who's responsible for paying the income tax?

Normally, the trustees are. 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 Flexible 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 quite 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 Flexible Trust

This Flexible Trust can be used only with life insurance plans and investment 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 your legal adviser to help you.

## 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 & 3 - Details of beneficiaries and trust assets

### Survivorship clause (page 2)

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

### Schedule I - Potential beneficiaries (page 3)

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

- the full name of each potential beneficiary (including their maiden name for married women), for example 'James Smith', or
- the relationship between you and the beneficiaries, for example 'all my children'

**Survivorship clause**  
Tick here to apply this clause to your trust

**Beneficiaries**  
Confirm who will benefit.



**Schedule II - Default beneficiaries (page 3)**

You should say who you want to benefit from the trust if the money from it becomes payable immediately. Don't forget, the trustees have the power to appoint away from the default beneficiaries you name here, to anyone else listed as a potential beneficiary. They can also change the proportion of the trust assets that each person gets.

If there's more than one beneficiary you'll 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'. If you don't give a share entitlement here, the trustees will assume that the assets are to be split between the default beneficiaries in equal shares.

**Beneficiaries**  
Confirm who will benefit.

Page 3 - Assets and provisions

**Schedule III – Plans**

Details of the life insurance plan or investment bond that will be owned by the trust must be specified 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 bond to be held in trust hasn't started yet you can leave this section blank, and we'll fill it in once the details are known.

**Trust assets**  
Add the plan number and start date (if you know it) of the plan you're giving away.

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

**Trust provisions**

**Schedule IV – Trust provisions**

This page sets out the 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 settlor as a trustee, unless another agent is given in section nine.



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 or a potential beneficiary should not be asked to witness signatures.

The form is titled 'Settlor(s)' and contains several sections for signing. Each section includes a line for 'Name', a line for 'Signature', and a line for 'Address'. There is a 'Witnessed' checkbox next to each signature line. The sections are: 'Signed as a deed by the first settlor and trustee', 'Signed as a deed by the second settlor and trustee', 'Additional trustees', 'Signed as a deed by the first additional trustee', 'Signed as a deed by the second additional trustee', 'Signed as a deed by the third additional trustee', and 'Signed as a deed by the fourth additional trustee'. At the bottom, there is a note: 'You can get this and other documents from us in Braille or large print by contacting us.' and a small icon of a person.

### 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 to prove that they're entitled to do this. So it's important you keep in touch with your trustees, and let them know where the original trust deed is kept

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