

Your guide to being a trustee

Your role and responsibilities

Introduction

You've been asked to be a trustee. If you haven't done this before, you're probably wondering what this means, and what you'll need to do.

This short guide aims to help you better understand your role and responsibilities as a trustee, and will hopefully help answer some of the questions you may have.

This guide assumes that the contents of the trust (what we call the 'trust property') will be a life insurance or a critical illness policy.

But, before we explain what being a trustee is all about, you need to know what a trust is.

What's a trust?

It's a legal arrangement set up by the owner of something (such as a life insurance policy, a property or an investment) to be looked after until the time comes when it can be given to someone else.

There are three groups of people needed to set up a trust:

- 1 The **settlor** – this is the person who sets up the trust, and puts their property into it. They choose the trustees, and decide who they would like the beneficiaries to be.
- 1 The **trustees** – these are the people responsible for looking after the contents of the trust, for the person or people who will eventually get them – the beneficiaries.
- 1 The **beneficiaries** – these are the people who will receive the contents of the trust.

A trust holds whatever is put into it and the trustees look after the contents until they are due to be paid to the beneficiaries.

Your roles and responsibilities as a trustee

Your role as a trustee is an important one. However it will usually be relatively straightforward, and shouldn't take up too much of your time. Your main duty as a trustee is to manage the contents of the trust for the beneficiaries.

For a life insurance or critical illness policy, the contents of the trust will only normally have a value when a claim is paid out for the policy held in trust.

As a trustee, you effectively own the policy held in trust. This means that you, along with the other trustees, are the only people that can cancel it or make any changes to it before it pays out or ends. You'll also be responsible for making any claim on the policy.

The trust deed sets out the powers that you have as a trustee, and you should take the time to read the trust provisions so you understand fully what powers you have, and what you're responsible for.

As a trustee any actions you take must be in the best interest of the beneficiaries, and must be allowed under the provisions of the trust, and the law that governs trusts.

The beneficiaries can take legal action against you if they feel that you're not acting in their interests, or if you do something which isn't allowed under the trust provisions.

Your powers as a trustee

The powers that you have are detailed in the trust deed. In our trust deeds these are detailed in Schedule III for a Fixed Trust and Schedule IV for a Flexible Trust and Split Trust.

These include powers to invest any trust monies on behalf of the beneficiaries, and to pay any income to them.

If the beneficiary is under the age of legal capacity (18 in England and Wales, 16 in Scotland)*, or cannot legally receive the money for any other reason, you have the power to pay capital or income to their parent or guardian, or any other person you feel is suitable. However this money must only be used only for the benefit of the beneficiary.

Under our Flexible and Split Trusts you also have the discretionary power to decide who will benefit from the contents of the trust. You can do this at any time, but it must be within two years of the date of death of the person insured by the policy held in trust. The settlor will have indicated who they wish to benefit by completing details of the default beneficiaries in Schedule II of the trust deed.

However this isn't legally binding and you'll still need to consider the interests of all potential beneficiaries listed in Schedule I of the trust deed before making your decision. Once the two years is up, if you haven't paid out the contents of the trust it will automatically become the legal property of the default beneficiaries named in the trust deed.

* if the Settlor (or both of them if there are two), lives in Scotland when the trust is first set up, then the trust will be treated as being under Scots Law.

Also under our Flexible and Split trusts you can as trustees (whilst the settlor is still alive) also add to the potential beneficiaries any other persons or classes of persons. However this must be done by completing a deed, and this requires the written agreement of the settlor (or settlors if there are two of them). You cannot add the settlor, the settlor's wife/husband or the settlor's civil partner as a potential beneficiary though.

Your duties as a trustee

As well as the powers and responsibilities already mentioned, there are some duties that are required of you as a trustee under law. Some of the main ones are detailed below.

This is only a brief summary, and you should make sure that you read the trust provisions carefully. If you're unsure about any of your powers you should seek independent legal advice.



To invest the trust fund

You can invest the trust fund in any kind of investment that you would be allowed to invest in as though you actually owned the trust fund. However when making or reviewing investments you should obtain proper advice, unless it would not be appropriate to do so. This would be for example if the trust fund is very small, and the costs for advice outweigh the benefit, or if you're already suitably qualified to give such advice and you're acting in your professional capacity as a financial adviser.

To keep full records of your decisions and actions

You must be prepared to provide details of all of the decisions and actions that you've taken to the beneficiary if they ask for it. So you should keep records of any changes you make to the trust property, and proof of any professional advice you've received. You may wish to take independent advice when preparing trust accounts.

To act fairly and impartially

You must act fairly in any decisions that you take, and not to take a decision which benefits one single beneficiary, at the expense of any of the other beneficiaries. For example if one beneficiary needs to receive income, but the other capital growth, you would need to invest in such a way that achieves both of these objectives.

To not profit personally from the trust fund

You should not personally profit from the trust fund. For example if you're a solicitor you shouldn't manage the trust in such a way that your firm would get extra work as a result.

Other things you should do

There are also some other things that whilst aren't strictly part of your roles and responsibilities they do need to be considered.

- 1 **Make sure you keep in contact with both us here at LV= and also the settlor.** This is because you have a duty to act in the interests of the beneficiaries under the trust, which will in most cases include members of the settlor's family. It's also important to keep in touch with us so we know how to contact you. So remember to tell both the settlor's family and also us here at LV= if you change your address or other contact details such as your phone number or e-mail address. If the settlor dies their family will need to get in touch with you, to let you know. This is especially important if the trust property is a life insurance policy, as you as a trustee will need to make any claim on behalf of the beneficiaries.
- 1 **You might need to set up a trustee bank account –** If the trust property is an investment, you have probably already done this. But of course if the trust property is a life insurance policy, you might not have thought about this. It's important because in the event of a claim the proceeds will usually need to be paid to you as trustees – and you will normally need a separate bank account to deal with this. Not all banks and building societies offer trustee accounts – so bear this in mind. It makes sense to set one up as soon as you know you're going to have to make a claim – so that it's ready to receive any proceeds. Without one it may lead to delays in the payment of a claim.

Frequently asked questions

Who can be a trustee?

Anyone can be a trustee as long as they are at least 18 years old, and are of sound mind (in other words mentally capable of looking after someone else's money)*.

You can be a trustee if you are also the settlor, and by doing this you retain some control over your policy. This is because once it's placed in trust the ownership of the policy passes to the trustees, so if you aren't a trustee you won't be able to make changes to your policy once it's placed in trust.

You can be a trustee and a beneficiary as well. But this can create a conflict of interest, especially if only one of the beneficiaries is a trustee and the others aren't.

* if the Settlor (or both of them if there are two), lives in Scotland when the trust is first set up, a trustee can be appointed if they are over 16 years of age)

Can I be a trustee if I don't live in the UK?

Yes, although it can present difficulties. This is because once the policy is placed in trust if any action needs to be taken it will need to be agreed by all trustees. If you aren't living in the UK, this will delay any action needed as the other trustees will need to correspond with you before they take any action. Also depending on the type of trust involved there may be tax issues, and you should take specialist advice on this issue.

How many trustees does a trust need to have?

Usually there should be at least two trustees, but our trust forms allow for up to four to be included. You can have more than this, although having more than four can present difficulties, as if any action is needed on the policy in trust we will need the agreement of all the trustees involved.

It's normal for the settlor to include themselves as a trustee, and also to appoint at least one other, so that if the settlor dies, the contents of the trust can continue to be looked after by the remaining trustee. This is important for life insurance policies because if you were the only settlor and trustee and you died this would cause delays before a claim can be paid on the policy. So you would lose the chance of a speedy payment which is one of the key advantages of holding the policy in trust.

Also for some of the trust provisions under our trusts to be used you will need at least two trustees in place, one of whom is not one of the settlors.

What happens if I don't want to be a trustee anymore?

You can retire from being a trustee, but only if there is at least one other person able to continue as a trustee. In addition the other trustees will need to agree to this. You can't retire if you're the only trustee, unless the settlor appoints someone else to act as a trustee instead of you. If you wish to retire as a trustee, talk to the other trustees, and then contact us, so we can arrange for the necessary forms to be sent to you all. Please don't simply make the changes by crossing out sections on your trust deed, as this could invalidate your trust.

Can I be removed as a trustee without my permission?

Yes, under our trusts the settlor of the trust (whilst they are still alive) not only has the power to appoint new trustees, but can also remove existing trustees, and doesn't have to give a reason. If the settlor has died these powers are passed to the trustees.

Anyone who feels that a trustee should be removed from a trust without that trustee's permission should seek legal advice before deciding to do this.

What happens if the settlor(s) or one of the trustees lacks mental capacity to exercise their powers under the trust?

Under our trusts the settlor (or the settlors together if there are two of them) has the power to remove trustees and doesn't have to give a reason, provided there are at least two trustees remaining. So in this case the settlor could remove a trustee who lacks mental capacity and is unable to act.

However if the settlor lacks mental capacity, then their powers to add and remove trustees pass to the remaining trustees. In this case the trustees can remove a trustee who lacks mental capacity; so long as after that trustee has been removed there are at least two trustees in place at all times (so this may mean the trustees have to appoint a new trustee to replace the trustee who has been removed).

Under our trusts a person "lacks mental capacity" if they lack capacity (within the meaning of the Mental Capacity Act 2005) to exercise the powers which that person would otherwise be able to exercise under the provisions of this trust. The lack of capacity must have been confirmed to the trustees in writing by a registered medical practitioner who is experienced in mental capacity assessments. It is for the trustees to obtain the evidence of this to support the removal of the trustee, or to take over the settlor's powers.

Please do not send this medical evidence to us.

Instead should a trustee need to be removed without their consent (including removing someone who lacks mental capacity), or to take over the settlor's powers, the trustees will need to seek their own legal advice to arrange for the appropriate documentation to be completed and send to us, to update our records.

Will I be paid for acting as a trustee?

No, not as a non-professional trustee. Only people providing professional or advisory services may charge for their role as a trustee. If you are acting as a professional trustee the trust provisions in the trust deed explain what services and costs you can charge for.

Do I need to register my trust with the Trust Registration Service (TRS) if it only contains protection policies (for example a life insurance or critical illness policy)?

Where a trust only holds protection policies they do not need to be registered with the TRS, when the trust is set up. However when a claim is paid the trust may then need to be registered. This depends on the type of claim. If the claim being paid is a death claim, the trustees have 2 years in which to pay the proceeds to the beneficiaries before the trust needs to be registered. Once it needs to be registered you as trustees will have 90 days to do this.

If the claim is a critical illness or terminal illness claim, and the proceeds are paid to you as trustees, you as trustees have to register the trust with the TRS within 90 days of the claim being paid. However if you as trustees direct us to pay the proceeds of a terminal illness or critical illness claim directly to the beneficiaries, then the trust would not need to be registered for that claim. This is because, if benefits are paid direct to a beneficiary at no point has the trust held any asset other than the insurance policy and so it remains exempt from registration.

What happens if I need to make a claim on the policy held in trust?

You should contact us as soon as possible to let us know that you'll be making a claim. You can contact us in writing, or by phone or fax. For details of how best to contact us, visit our website www.LV.com.

We'll let you know what documents we'll need from you at the time. However we'll always ask you for a copy of the original trust deed, so it's really important that you keep this in a safe place. More details about how to claim and what documents we'll need can be found in the policy conditions for the policy that's held in trust.

Once we agree to pay the claim, we'll usually pay the claim to you as trustees. It's then your responsibility for ensuring that these funds are either paid to the beneficiaries (or managed on their behalf).

Where can I find the original trust deed and policy documents?

When a policy is placed in trust we'll keep a copy of the completed trust deed and usually send the original back to the first named trustee, so it's important you know who this is. It's quite likely that this person will also be the settlor, and so they are also likely to have the policy documents as well.

We hope that this has given you a better understanding of what's required of you as a trustee.

Important

This information is correct at the time of writing for tax years (up to and including) 2030/31 which can change in the future. If you're unsure about your role and responsibilities, you should seek independent legal advice.

If you'd like us to send you this document or any future correspondence in another format, such as Braille or large print, please just let us know.

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