

Split Trust - Settlor as trustee with optional survivorship clause

Your questions answered



Your questions answered

Important

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 a future date when the contents of the trust will be 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, you may want to wait until 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.

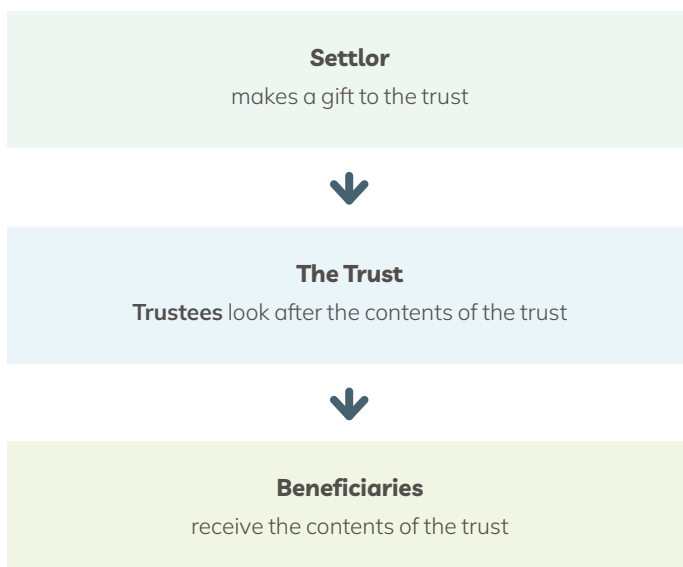
To set up a trust, **three groups of people** are needed:

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.

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.

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 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 Split Trust?

A split trust does exactly what it says – it splits different types of cover within a single policy. Any payments from the policy which are due while you're alive will still be paid to you. But any payments that are due when you die will be held in trust.

How does the Split Trust work?

This split trust is designed for use with a combined life and critical illness policy within the LV= Flexible Protection Plan.

The trust allows:

- payments made if you're diagnosed with a critical illness covered by the policy, or you become permanently and totally disabled to be paid directly to you, and
- payments made if you die to be paid to the trust.

This trust should only be used if the amount of life cover included in the policy is less than or the same as the amount of critical illness cover. If the amount of life cover is higher than the critical illness cover then the trust won't be effective for inheritance tax purposes.

Our split trust can also be used if you have a Life Protection policy and you want the terminal illness payment to be paid to you, by the trustees, in the event you are diagnosed with a terminal illness. However if you are considering this, we'd recommend you discuss this with a financial adviser or a solicitor.

Is the Split Trust flexible?

A split 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 may wish 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 are called the '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. The trustees can also add new potential beneficiaries as long as the settlor is still alive, and the settlor has agreed to this in writing. We've explained this in more detail in "What changes can trustees make?" later on.

When can I use a Split Trust?

You could use a split trust if you:

- want to make sure that any payments made from your combined life and critical illness policy while you're alive go straight to you, and any payments made from it when you die go into trust
- know all the people that you might 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, the split 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 a Split Trust?

This split trust should normally be used with a combined life and critical illness policy within the LV= Flexible Protection Plan. The amount of life cover included must be the same as or less than the amount of critical illness cover.

As long as you're the plan owner, you can place a new combined life and critical illness policy into trust when it starts. Or you can put an existing one into trust. This trust is suitable for both single life and joint Flexible Protection Plans.

Our split trust can also be used if you have a Life Protection policy and you want the terminal illness payment to be paid to you, by the trustees, in the event you are diagnosed with a terminal illness. However if you are considering this, we'd recommend you discuss this with a financial adviser or a solicitor.

What shouldn't be put into trust?

You shouldn't usually put separate life cover and critical illness cover policies into the split trust. You shouldn't put any other type of life protection or investment into it either.

Whilst it is possible to use the split trust if you have a Life Protection policy and you want the terminal illness payment to be paid to you, by the trustees, in the event you are diagnosed with a terminal illness, we'd recommend you discuss this with a financial adviser or a solicitor.

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

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

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 (whilst the settlor is still alive) can 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). The trustees may not add the settlor, the settlor's wife/husband or the settlor's civil partner. The trustees also 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 beneficiaries.

The advantage of giving trustees these powers is that if circumstances change, the trust can be altered to ensure that it is still effective.

Example

Rachel and James live together and have two children. They aren't married. Rachel takes out a combined life and critical illness policy for £100,000. She wants to receive the money if she becomes critically ill. But if she dies, she wants James to get it.

Rachel uses a split trust, and names James and their children as potential beneficiaries. James is the default beneficiary. But if he dies before Rachel, the trustees can change the default beneficiaries so that the money will be held for the children instead.

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.

When can the trustees make changes to the trust?

The trustees can only make changes to the beneficiaries while the settlor is alive, and within 24 months of their death. If the trust asset is a life assurance plan then it is the death of the person insured that determines how long the trustees have to make changes to the beneficiaries. (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 cannot be changed.

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 sent to us, to update our records.

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.

Example

Harry and Anna are married with two children. They have taken out a joint life first event combined life and critical illness policy to give them some financial security, should either of them become seriously ill or 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, Harry and Anna 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 Split 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. If you add this in error, you won't be able to change it later on.

How does the survivorship clause affect a critical illness claim?

Your policy pays out on what we call the 'first event'. This means that it will pay out a lump sum when one of you is diagnosed with a critical illness that's covered by the policy, or when one of you dies. The policy will usually end once a claim has been made.

Any critical illness benefit paid out under the policy is considered as 'retained property'. It is not trust property. This is the case even if you've included the survivorship clause in your trust.

If my policy includes a buy-back option how does the survivorship clause affect this?

Our buy back option is no longer available on new policies, however some of our older policies had it included. It was only available for single life policies.

The survivorship clause isn't intended for use with single life policies so it's unlikely that this will be an issue. However, if you have a jointly owned Flexible Protection Plan which includes a single life policy, you could use your buy back life cover option after you've made a critical illness claim. If this happens, your life cover will be set up as a new policy. It will not automatically be included in this trust (unless you've put the whole plan into trust, which is unusual).

Will inheritance tax apply?

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

Premiums you pay for a pure protection policy held in trust will usually be exempt, because the premiums are normally treated as part of your everyday spending. Exempt gifts aren't subject to inheritance tax (IHT).

If you put an existing policy into trust, it may not be exempt, but the value of the policy will be minimal (unless you're critically ill or terminally ill at the time).

To make sure you understand how IHT will apply to your gift, you should seek legal advice before you set up a split 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?

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

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.

- 1 **If one settlor survives the other by 30 days** the amount of cover is paid to 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.
- 1 **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 lump sum paid out isn't included either of the settlor's estates for inheritance tax purposes.

Will income tax apply?

It's unlikely. The split trust can only be used with life insurance which is not normally subject to income tax. But you should seek legal advice to find out if income tax could apply.

Who makes the claim?

The trustees should make a claim on the policy as soon as they can after the person insured dies or is diagnosed with a critical illness.

We'll usually pay the amount of cover to the trustees. For a critical illness or terminal illness claim, the trustees will pay the money out to the settlors. However, the trustees can if they wish direct us to pay the proceeds to the beneficiaries directly.

For a death claim (where the survivorship clause doesn't apply), the trustees will hold the money according to the trust rules and provisions.

For a death 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 Split 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.

Important:

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 and Customs practice, this information is correct at the time of writing for tax years (up to and including) 2030/31. Please remember that this could change and taxation always depends on your personal circumstances.

Does the trust form need to be signed in the presence of a witness?

Yes. Every person must sign in the presence of a witness, who also signs and adds his/her full name and address.

Your witness must be physically present in the same place as you at the time you sign. This applies even if you are completing this document using our online service.

I am planning to use the draft Split Trust Deed to place a Protection Plan into trust. Is it necessary to register the resulting Trust with the HM Revenue & Customs (HMRC) Trust Registration Service (TRS)?

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 they 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 the 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 the trustees, the trustees have to register the trust with the TRS within 90 days of the claim being paid. However if the 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.

How to complete this Split Trust

Important

This Split Trust should normally only be used with the LV= Combined Life and Critical Illness Policy. 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.

Find out how we use your personal information, and what rights you have by visiting LV.com/dataprotectionlife. Please ensure that you advise anyone else whose personal details are related to your plan where they can find this information. Please let us know if you'd like us to send you a copy, or have any questions. This includes who we are, how long we hold your information, what we do with it and who we share it with.

Page 1

The date, settlor and trustee details

- 1 **Date** - If the policy 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 policy into trust, you should date the trust deed on the date the deed is signed.
- 1 **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 address.
- 1 **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 include at least one additional trustee. This is because for some of the trust provisions to be used you need at least two trustees, one of whom should not be 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, date of birth and address of each additional trustee you've chosen.

Page 2 - Trust background

This details the background to the trust, and how the trust property is to be held within the trust.

Name of Trust

The Settlor(s) needs to add the trust name here. This is important as this will be the name you need to use if you ever need to register the trust with the Trust Registration Service. A suitable name might be to add the Settlor(s) names so it reads for example 'This trust shall be called the Andrew Jones and Maria Jones Split Trust.

Survivorship clause

If you want the survivorship clause to apply to the trust, please tick the box below 4.

Name of Trust

Please insert the name of the trust.

Survivorship clause

Tick here to apply this clause to your trust.

Page 3 - Details of beneficiaries

Schedule I - Potential beneficiaries

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

- the full name of each potential beneficiary (including any previous surnames they were known by, if they've changed their name), for example 'James Smith', or
- the relationship between you and the beneficiaries, for example 'all my children'

Schedule II - Default beneficiaries

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 in Schedule I. They can also change the proportion of the trust property that each person gets.

If there's more than one beneficiary you'll need to be clear about the proportion of the trust property 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.

Page 3 - Assets

Schedule III - Plans

Details of the policy that will be owned by the trust must be added here. The details that should be added are:

- the policy number
- the name of the company that provides this policy, and
- the date the policy starts

If the policy 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.

Potential Beneficiaries
Confirm who will benefit.

Default Beneficiaries
Confirm who will benefit.

8. The trustee may sign a deed with a willer (Clause 6.4) not include all the trustees they will consent to that instrument will not be a deed unless it is signed by all the trustees. If it is signed by all the trustees it will be a deed unless it is signed by all the trustees.

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Schedule I - Potential beneficiaries
Persons who are potential beneficiaries from the trust property:

- Any individual or trustee of the settlor (but not a trustee of the settlor) who is a settlor of the trust.
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- Any individual or trustee of the settlor who is a settlor of the trust.
- Any other person (not a trustee).

Add the full names of any person that you may want to benefit from trust property now or in the future who is not included in 1. to 7. in A above.

Together call these **potential beneficiaries**

Schedule II - Default beneficiaries
Add the full names of the people you want to benefit from the trust property when the trust property becomes payable immediately. These default beneficiaries have an entitlement to the trust property if the trust property becomes payable immediately. If you do not add any names to this section, the trustees will assume that the trust property is to be divided equally between all the default beneficiaries. The trustees may also power to change the default beneficiaries to anyone who is not included in the default beneficiaries in Schedule I. They can also use their powers to change the share entitlement of the default beneficiaries.

Full name	Share entitlement	Share entitlement

Together call these **default beneficiaries**

Schedule III - Plans
Add details of each policy which will be held in trust.
For more with details of each policy, see full name: **Legalpad Wills Financial Services Limited** (otherwise see instructions to the document)

Policy number(s)	With name of company	Start date (DD/MM/YYYY)

Together call these **plans**

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Plans (trust property)

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

8. The trustee may sign a deed with a willer (Clause 6.4) not include all the trustees they will consent to that instrument will not be a deed unless it is signed by all the trustees. If it is signed by all the trustees it will be a deed unless it is signed by all the trustees.

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- Any other person (not a trustee).

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Full name	Share entitlement	Share entitlement

Together call these **default beneficiaries**

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Split Trust - Settlor as trustee with optional survivorship clause 3

