

Fixed 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 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.

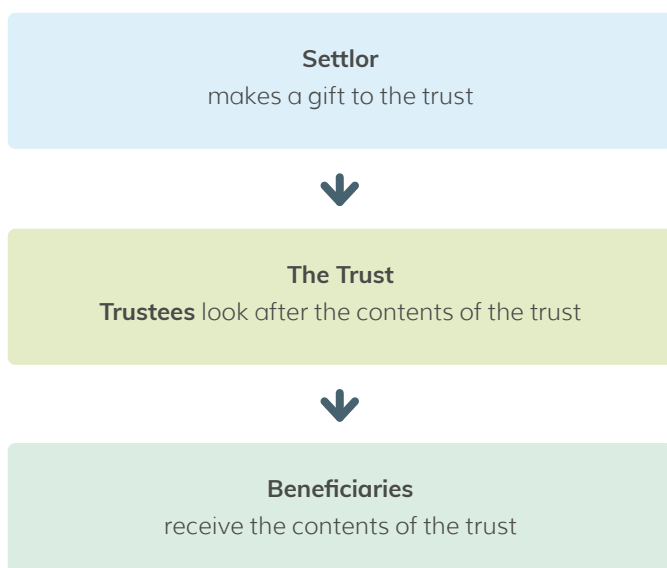
To set up a trust, **three groups of people** are needed:

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 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.

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 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.

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 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.

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

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 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 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 lump sum paid out isn't included 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 critical illness claim, the trustees will pay the money out to the settlors.

- **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.

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 & Customs practice (as at April 2021). 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 Fixed 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)?

No, where a trust only holds protection policies they are not required to be registered with the TRS. The position would only change if we paid out a claim on the protection policy and the moneys needed to remain in the trust for some time. For example, the main beneficiaries under the trust were young children.

I am planning to use the draft Fixed Trust Deed to place an LV= investment bond into trust. Is it necessary to register the resulting Trust with the HMRC TRS?

Yes, the Trustees will be responsible for registering the trust under HMRC TRS.

Since 2017 it has been necessary to register a trust with HMRC using the TRS, where the trustees have a liability to tax in any given tax year. This does not apply for a Protection Plan.

As a result of the EU Fifth Anti-Money Laundering Directive, implemented into UK law has extended the requirements of the TRS to include all express trusts (a trust that was deliberately created by a settlor who expressly transfers property to a trustee – this covers most trusts), regardless of whether a tax liability has arisen or not with effect from 06 October 2020. This would include any trust that you set up using either our draft Fixed or Flexible Trust Deed.

Registration deadlines with HMRC TRS are detailed below in the table:

As we have explained above, normally any tax liability will be on the settlor(s) not the trustees and so it wouldn't be a taxable trust. For taxable trusts (i.e. one with a relevant UK tax liability) it depends on when the trust was established and when the first relevant tax liability arises:

Trust established	When the first relevant tax liability arises	Registration deadline
Before 6 April 2021	At any time	5 October following the end of the tax year in which the first (new) relevant tax liability arises if it is income tax or CGT (Capital Gains Tax) 31 January following the end of the tax year in which the first relevant tax liability arises in other cases
After 6 April 2021	Before 4 June 2022	Within 90 days of the first relevant tax liability arising or by 1 September 2022 (whichever is later) For non-taxable trusts: Trust established or in existence

For non-taxable trusts:

Trust established or in existence	Non-taxable trust (No tax liability)	Registration deadline
Before 6 October 2020	No tax liability	On or before 1 September 2022
After 6 October 2020	No tax liability	Within 90 days of being created or by 1 September 2022 , (which ever is the later)

From 1 September 2022, or shortly after, it is possible that we would need sight of evidence that the trust has been registered before we can set up a new LV= investment bond for a trust. The legislation requires that we check that a trust is registered before starting a "business relationship" with a trust. We are still waiting on further HM Revenue & Customs guidance on what checks they would expect us to make.

In addition, the Trust Register must also be updated within 90 days of any changes to the trust details or beneficial ownership. Where the trust is taxable, the trustees must also declare on their annual Self-Assessment tax return that the Trust Register is up-to-date.

For more information please visit the HMRC Trusts and Taxes website [gov.uk/trusts-taxes](https://www.gov.uk/trusts-taxes) or for a full Trust Registration Service (TRS) Manual [gov.uk/hmrc-internal-manuals/trust-registration-service-manual](https://www.gov.uk/hmrc-internal-manuals/trust-registration-service-manual)

The contents of this publication are based on our current understanding of legislation and HM Revenue & Customs practice.

How to complete this Fixed Trust

Important

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.

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 policy or 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

- **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 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 - 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. If you are using this trust with a life assurance bond, please do not tick this box.

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 5 - Consent to membership

Schedule IV - Consent to LV= membership

This section outlines when trustees may be eligible for membership and that by signing the deed they agree to become a member if they are eligible.



Page 6 - Signatures

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.

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.

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

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.

Settlor(s)

Signed as a deed by the first settlor and trustee

Name: _____ Signature: _____

In the presence of witness

Name: _____ Signature: _____

Address: _____ Postcode: _____

Signed as a deed by the second settlor and trustee

Name: _____ Signature: _____

In the presence of witness

Name: _____ Signature: _____

Address: _____ Postcode: _____

Additional trustees

Signed as a deed by the first additional trustee

Name: _____ Signature: _____

In the presence of witness

Name: _____ Signature: _____

Address: _____ Postcode: _____

Signed as a deed by the second additional trustee

Name: _____ Signature: _____

In the presence of witness

Name: _____ Signature: _____

Address: _____ Postcode: _____

Signed as a deed by the third additional trustee

Name: _____ Signature: _____

In the presence of witness

Name: _____ Signature: _____

Address: _____ Postcode: _____

Signed as a deed by the fourth additional trustee

Name: _____ Signature: _____

In the presence of witness

Name: _____ Signature: _____

Address: _____ Postcode: _____

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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.

It's also important that you and your trustees keep in touch with us, and let us know about any changes in your address or other contact details.

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



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