Flexible Trust for use with Pension Term Assurances

Your questions answered

Flexible Trust for use with Pension Term Assurances

It is recommended that you consult your legal or financial adviser before completing this trust deed.

Trusts Explained

A trust is a legal arrangement under which property (such as a life assurance policy) is held for the benefit of others (the "beneficiaries"). The person or people who create the trust and gift assets to it are known as the "settlor" or "settlors". The people appointed by the settlor to look after the "trust funds" in accordance with the trust document are called the "trustees". By also being a trustee, a settlor can retain some control over how the gift is used.

Usually the settlor will appoint themselves as trustee and ask other people to act with them as additional trustees. They will administer the trust and follow the terms of the trust deed in distributing the assets between the beneficiaries.

Reasons for assigning death benefits into a trust

The main reasons for assigning the death benefits of a pension policy into trust are:

- Paying the death benefits to the 'right' people - The trustees will pay the benefits arising on the death of the life assured to beneficiaries chosen by the settlor. This can provide more certainty than available under a nomination.
- Paying the death benefits at the 'right' time - As pension scheme administrators, we will pay the death benefits to the trustees within days of receiving the various title documents and death certificate. The trustees can then, if applicable, distribute the proceeds to the beneficiaries. There are no months of waiting for Grant of Probate or Letters of Administration, providing there is a surviving trustee.
- Paying the death benefits Inheritance - The trust funds are outside the settlor's estate and should be payable free from Inheritance Tax (please refer to the 'Tax implications' section of these notes).

Trusts are not for everyone

If the settlor may need to use the policy for personal reasons in the future, for example, as security for a loan, then use of a trust is not advisable.

There will be no possibility to make use of the flexible pension death benefits available from 6 April 2015. Any pension death benefits must be paid out as a lump sum to the trust.

The Flexible Trust for use with Pension Term Assurance

This type of trust is suitable for use with pension term assurance where the death benefits are to be assigned. Terminal illness benefit cannot be assigned and will be paid out in accordance with the registered pension scheme rules.

When the trust is created the settlor selects a wide group of people who they might wish to receive the death benefits (the trust property) at any time in the future. The range of potential beneficiaries can be very extensive, giving great flexibility in the distribution of the benefits (Schedule I).

The settlor then specifically appoints one or more members of this group as "default" beneficiaries for the time being and specifies how the benefits are to be shared out between them (Schedule II). These beneficiaries will benefit unless the trustees use their powers to reappoint elsewhere as outlined below.

All settlors are expressly excluded from benefiting from the trust.

The trustees can subsequently execute a deed to reappoint the trust benefits between the range of potential beneficiaries. They may want to do this, for example, if one of the default beneficiaries should die or if there is some other change in circumstances.

This trust deed may be used for existing single or joint life, pension term assurance policies. It cannot be used to assign pension terminal illness benefits into trust.

This trust deed is not suitable for business protection purposes.

Joint life policies

This trust deed is not suitable for joint life policies where the settlors wish to benefit the survivor of them in the first instance and other beneficiaries (such as their children) should the settlors die together. As this is a specialist area it is recommended that legal advice is taken.

Appointing trustees

The settlors are not automatically trustees. They should seriously consider appointing themselves and at least one additional trustee. The trust declaration provides for this.

The selection of the trustees should be carefully considered as they have complete discretion over who will eventually benefit from the trust. This discretionary power extends for 24 months following the death of the settlor(s).

The appointment of a trustee living overseas may affect the taxation of the trust funds.

Why appoint additional trustees?

The advantage of paying the benefits at the 'right' time will be lost if there is no surviving trustee to receive payment of the policy proceeds. If the settlor dies as sole trustee, their personal representatives would then have to wait until Probate or Letters of Administration have been granted before appointing new trustees.

Appointing an additional trustee, therefore, increases the chance of having a surviving trustee at the time of a death claim and, where required, allows the policy death benefits to be redirected between the beneficiaries.

Inheritance Tax (IHT)implications

If Terminal Illness benefits are payable

Payment of terminal illness benefits will form part of the settlor's estate, which may become subject to Inheritance Tax.

If the life assured is diagnosed with a terminal illness but no claim is made, for deaths of pension scheme members that occur on or after 6th April 2011 this is not treated as a chargeable lifetime transfer for Inheritance Tax purposes.

Death of the settlor

The death benefits are outside the settlor's estate for IHT purposes. However, any immediately chargeable transfers (and Potentially Exempt Transfers that become chargeable) made in the 7 years before death will be taken into account in chronological order for calculating IHT on the estate.

Generally speaking, the premiums paid are exempt from Inheritance Tax (see below).

The trust

This type of trust is affected by the changes in the IHT treatment of trusts introduced by the Finance Act 2006 and will be taxed in the same way as a discretionary trust. A summary of the current position follows.

All gifts to a flexible trust created on or after 22nd March 2006 are treated as immediately chargeable transfers. There may be possible charges to IHT when making gifts to the trust, on every 10th anniversary of the trust and whenever capital leaves the trust. In certain circumstances, returns will have to be made to HMRC even though no IHT is payable.

In reality, an IHT liability is unlikely to arise on death since the only asset of the trust is the death benefit.

- Although the premiums are gifts, they will usually be covered by either the normal expenditure out of income or the annual allowance exemption, and therefore not give rise to an immediate IHT charge.
- If an existing pension term assurance policy is transferred into the trust, the gifted value of the policy will be minimal for IHT unless the life assured is in serious ill health at the time.
- Again, for calculating any charge to IHT on each 10th anniversary of the start of the policy (the periodic charge), the policy should have little or no value if the life assured remains in good health.
- Since the pension scheme administrators are obliged to pay out death benefits to the trust, the trustees have two years from the date of death in which they can distribute the proceeds without incurring an IHT charge.
- However, a charge could arise if the death benefits are still held by the trustees at a 10th anniversary. An additional tax liability (the exit charge) could then become payable when the proceeds are eventually distributed to the beneficiaries.

The assignment of death benefits is not normally treated as an unauthorised payment under S172 Finance Act 2004.

Change or death of a beneficiary

There are no implications on death of a beneficiary or if the trustees decide to use their power of appointment to change the default beneficiaries or their respective shares.

Income Tax implications

Because of the specific nature of the policies used in conjunction with this trust, no Income Tax issues are likely to arise.

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.

Any references we make to taxation in these guidance notes are based on our understanding of current legislation and HM Revenue & Customs practice, which can change.
Correct as at April 2019.
These notes are provided for general guidance only.
Please contact your financial adviser or solicitor if you need advice on trusts which are specific to your circumstances.

A guide to completing the Flexible Trust

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. This includes who we are, how long we hold your information, what we do with it and who we share it with. 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.

Page 1 - Policyholder and trustee details

The date, settlor and trustee details

- The date of completing the Trust Declaration.
- Insert the name(s) and address(es) of the policyholder(s). Where there are two policyholders, both must complete the Trust Declaration.
- Insert the full name(s) and address(es) of the policyholder(s) if they are to be trustee(s) and each individual who is to act as an additional trustee.

The date you complete this Declaration.

Policyholders
Give details of the policyholder(s).

Original trustees
Enter the names of the policyholder(s) unless they are not to be included as trustee(s). Give details for each individual who is to act as an original trustee.


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Page 2

Schedules I & II - beneficiary details (page 2)

- **Schedule I** is the place for listing the full range of potential beneficiaries. It already includes the close family members most likely to be considered. There is space, on line 5, to add other potential beneficiaries to the list – for example, nieces, nephews, brothers, sisters or named individuals. Full names, including the maiden names of married women, should be stated.
- Enter in **Schedule II** the full names of the beneficiary or beneficiaries, who are appointed at the start, (these are the people who will benefit from the trust in the absence of any later redirection of benefits) together with the proportions of the policy proceeds which are to go to them. Please note that our draft trust deed has been designed and the legal advice received based on the assumption that details of at least one beneficiary will always be inserted in Schedule II.

All potential beneficiaries
Insert details of anyone you may ever wish to benefit, who is not already included in the list.

Default beneficiaries
Insert full names of all the people you want to benefit if you were to die now, indicating the proportion of the proceeds they should receive.

Page 2

Schedule III - Life policies (page 2)

- In **Schedule III** enter the policy number(s), company name and start date.

Policy details
Enter the policy number(s), company name and start date(s) of the policy(s).

Page 3

Schedule IV - Trust provisions (page 3)

- This sets out the operation of the trust.

Page 4

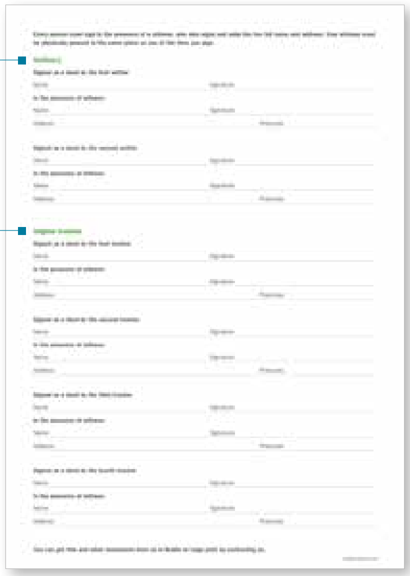
Executing the Flexible Trust for use with Pension Term Assurance

The policyholder(s) and the newly appointed trustees must sign the Declaration. Their signatures have to be independently witnessed, with the witnesses including their names and addresses as well as their signatures.

Your witness must be physically present in the same place as you at the time you sign.

Settlor(s)
Policyholder(s) sign here, together with witnesses.

Original trustees
People acting as original trustees (including settlors where appropriate) sign here, together with witnesses.



What happens next?

Send the completed deed to LV= for registration. We will return it to you afterwards, for safe keeping with the policy document(s).

In future we will deal with the trustees as owners of the policy(s) and may need the Trust Declaration as proof of title whenever a claim is made.

The address of the first named trustee will be used for future correspondence.

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

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