

A brief guide to our 'Flexible Trust'

A Trust is a legal document and Trust Laws are complex, often with a lot of confusing legal jargon.

At Smart Insurance® we pride ourselves on doing the right thing by our customers and that includes helping to keep things straightforward and simple.

That's why we've created this brief guide to help you complete your Trust document.

By signing and submitting your Trust deed you are accepting full responsibility for the accuracy and validity of all the details and are fully aware that legal advice should be sought for clarity.

Smart Insurance are unable to provide advice and do not accept responsibility for any omissions or errors in the completion of your Trust document or the effectiveness of it at the time a claim is made.



Introduction

This brief guide gives you some information to help you decide whether you want to put your life insurance policy into our 'Flexible Trust'. You'll find out what a Trust is, how it works, and some of the advantages and disadvantages of putting your life insurance policy into Trust.

■ **It's important to be aware that this is only a guide and doesn't give you advice. It's up to you to decide if putting your life insurance policy into our 'Flexible Trust' is right for you. If you have any doubts you should speak to a financial adviser or a solicitor.**

This guide is based on our understanding of current legislation and HM Revenue & Customs practice as at March 2016. Whilst many different things can be put in Trust, this guide assumes that the contents of the Trust will be a life insurance policy.

Trusts – the basics

What is a Trust?

Put simply, it's a legal arrangement that lets the owner of something, 'gift' it to someone else so they can look after it for the benefit of a third person. This could be shares, your home, cash, or a life insurance policy. As explained above the rest of this guide assumes that you are 'gifting' a life insurance policy. This is usually done by creating a Trust deed. The deed sets out the terms and conditions that the Trust can operate under – these are known as the 'Trust Provisions'. Once the Trust has started it can only be operated in line with the 'Trust Provisions'.

■ **So it's really important that you think carefully about whether putting a policy in Trust is right for you**

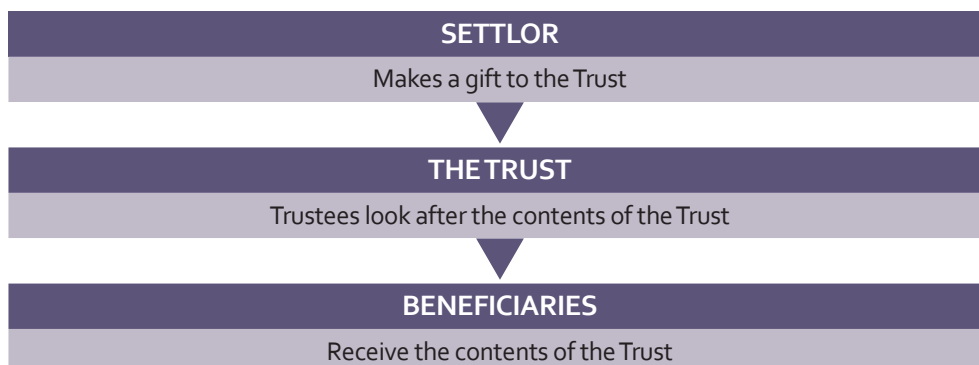
Who is needed to set up a Trust?

There are three groups of people needed to set up a Trust. These are the Settlor, the Trustees, and the Beneficiaries. These are commonly used terms referred to in your Trust deed, and throughout this guide.

- 1) **The Policyholder (Settlor)** – This is the person who sets up the Trust, and puts their life policy into it. So the person who sets up the Trust will be the current owner of the life insurance policy. The Settlor chooses the Trustees, and decides who they would like the Beneficiaries to be.
- 2) **The Trustees** – These are the people responsible for looking after the life policy put into Trust, for the person or people who will get the money when the life policy pays out – the Beneficiaries.
- 3) **The Beneficiaries** – These are the people who will get the money from the Trust.

If your policy has Critical Illness Benefit, Accidental Serious Injury or Terminal Illness benefit these are 'Retained Benefits' and do not fall into the Trust unless you select this option specifically within the Trust form.

Structure of a Trust



So the Trust holds the life insurance policy, and the Trustees look after it, until it is due to be paid to the Beneficiaries.

Why might I want to put my life insurance policy in Trust?

There are a number of reasons why you might want to put your life insurance policy in Trust. The main reasons are:

To make sure that the policy proceeds get paid to the right person or people – By writing a policy in Trust you can indicate who you want the proceeds from your life insurance policy to be paid to. These people or groups of people are named on the Trust deed, and are called the Beneficiaries. If you've made a will then you may have left specific instructions about who should get what. But if you haven't left a will, you will be deemed to have died 'intestate'. If this happens then there are strict rules around who will get what from your assets when you die (called the intestacy rules). This may mean that the people who eventually get the money from your life insurance policy may not have been the people you wanted to get it.

To make sure that the policy proceeds get paid out quickly – One of the main advantages of putting your policy in Trust is that payment of the policy proceeds can be made quickly to the Trustees. All the Trustees need to do is send us the original death certificate. We won't need to wait for Probate to be granted (or confirmation in Scotland), which can be a lengthy and complicated process, taking up to several months in some cases.

To help avoid inheritance tax – Once you've put your life insurance policy in Trust, the proceeds that are paid out won't normally be included in your estate for inheritance tax purposes, and can usually pass tax-free to whoever you have chosen as Beneficiaries.

What are some of the disadvantages of placing my life insurance policy in Trust?

You can't change your mind later on – Placing a life insurance policy in Trust is what's known as an 'irrevocable' act. This means that once you've done it, you can't change your mind later on and take it back out of the Trust.

You're giving up control over your policy – When you put your policy in Trust you have effectively given it away to the Trustees to look after. This means that you no longer own it, or have absolute control over it. So if you want to make changes to it you can't – only the Trustees can do this. Our Trust deed automatically makes the Settlor a Trustee as well, so you can still have an element of control over your policy. But your role as a Trustee is different – as a Trustee you are looking after the policy for the Beneficiaries, and so any actions you take must be in the interests of the Beneficiaries. The Money Advice Service (MAS) have produced Trust information on their website <https://www.moneyadvice.service.org.uk/en/articles/being-a-trustee>. It explains the roles and responsibilities of a Trustee amongst other useful information.

Our Trust deed might not be suitable for you – We have produced only one type of Trust deed, a Flexible Trust. We explain how this works later on. If you need any other type of Trust you should seek advice from a financial adviser or a solicitor.

■ **It's really important that you think carefully about the advantages and disadvantages of putting your policy in Trust.**

When can I put my policy in Trust?

You can put it in Trust as soon as your policy has started, or you may decide to do this at a later date. However, it's important to understand that you can only put your policy in Trust if you are the policy owner at the time. For example, if you took your policy out and then charged or assigned it to your bank or building society for security against a loan, you no longer own the policy, which means you can't put it in Trust. If you do not put the policy in Trust at or around the time of the policy start date this could affect the tax position of the life insurance proceeds and you should seek the advice of a financial adviser or solicitor before doing so in this event.

The type of Trust we offer

We've produced only one type of Trust deed, a 'Flexible Trust'. There are different types of Trust available which work in different ways, so it's important that you understand how this one works so you can decide if it's right for you.

If your estate is complicated or your requirements are unique, there are other 'Trusts' available which could be more suited to your needs. Here we describe the Trust form we provide. If you're unsure you should speak to a financial adviser or a solicitor.

What types of life policy can I put into your Trust?

Our Trust is used for life insurance policies, and policies with 'Retained Benefits'. In other words these are policies that pay out if you die or if you have additional benefits such as Critical Illness cover, Terminal Illness benefit, Accidental Serious Injury cover or Children's cover. Your 'Retained Benefits' can be excluded from the Trust if you choose. If you have one of the following policies then it can be put into our Trust:

- Smart Family Life Insurance
- Smart Guaranteed Life Insurance with the Lifetime Payback Guarantee™
- Smart 50 Plus with the Lifetime Payback Guarantee™

As long as you are the policy owner of one of these types of policy then you can put it into Trust.

Flexible Trust

What is a Flexible Trust?

A Flexible Trust is also sometimes called a 'Power of appointment Trust'. The Trustees have the power to choose who will benefit from the proceeds of the life insurance policy that you put into Trust. This is different from a Fixed Trust where all the proceeds are paid to the Beneficiaries, who once chosen can't be changed. When you set up the Trust, you name all of the people that you might want to benefit from the policy you put into Trust. This can be groups of people, for example children or grandchildren, or you can name individuals.

This wide group of people are called the 'Potential Beneficiaries'. **From these 'Potential Beneficiaries', you must name the person or people that you would want to benefit from the proceeds of your policy if you were to die now. This person or people are called the 'Default Beneficiaries'.** You must also decide how you want the proceeds of your life policy to be split between the 'Default Beneficiaries'.

For example, the Default Beneficiaries may be two children and you want them to have equal shares. The Trustees will usually pay the Trust benefits to the Default Beneficiaries, The Trustees also have the power to change how the proceeds are split between the Beneficiaries. The advantage of giving the Trustees these powers is that if circumstances change, the Trust can be changed to make sure it's still effective.

When can I use a Flexible Trust?

You could consider using a flexible Trust if you:

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

You can't change 'Potential Beneficiaries' once you've set the Trust up.

Also it's important to choose people to act as 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.

■ **Choosing to put a policy in Trust is an important decision that has serious implications, so you should think very carefully before doing it.**

What do I need to do once the Trust form has been received by me?

Once you've received the Trust form, you'll need to:

- fully complete all relevant sections
- sign the deed, and get your signature witnessed
- get the Trustees you've chosen to sign the deed, and get their signatures witnessed
- return the deed to us at:
Smart Insurance
Freepost RSZJ-AXSS-CRXS
Customer Services (Trusts)
PO Box 4555, Slough, SL1 0TT.

The people you ask to witness the signatures must be independent (in other words not involved with the Trust). So for example you couldn't get the Trustees to act as a witness for your signature, and also you shouldn't get your relatives to act either. Instead it would be wise to get someone else who you trust to witness your signature for example a friend.

If a Trustee isn't living in the UK this will delay any action needed as all Trustees will need to correspond with each other before any action is taken. Also there may be tax issues if one of the Trustees doesn't live in the UK. So if you're thinking of choosing a Trustee who doesn't live in the UK you should seek advice.

What happens to the information I give you?

Any information that you enter into our Trust document is only used to create your Trust deed, and will not be used for marketing purposes. We'll only record the information on our systems once you've sent the signed deed back to us. So it's important for you to tell anyone whose details you've entered and named in the Trust deed that this will be happening.

Frequently asked questions

Here are some frequently asked questions about Trusts, and our Trust document that we haven't already covered.

■ **It's important to be aware that this information shouldn't be considered as advice.**

Who can be a Trustee?

You can choose anyone to be a Trustee as long as they are at least 18 years old (16 if the Trust is established under Scottish Law), and are of sound mind (in other words mentally capable of looking after someone else's money).

Although as a Settlor you are also a Trustee, you can't also be a Beneficiary. But it is possible for any other people you've chosen as Trustees to also be Beneficiaries if you like.

Do Trustees have to live in the UK?

No, but it can present difficulties if they don't. This is because once the policy is put in Trust, if any action needs to be taken, it will need to be agreed by all of the Trustees.

How many Trustees are needed?

It's normal for the Settlor to appoint at least one other Trustee, so that if they die, the contents of the Trust can continue to be looked after by the remaining Trustee. This is really important for life insurance policies because if you were the Settlor and only Trustee and you died, this would cause delays before a claim could be paid on the policy. So you would lose the chance of speedy payment which is one of the key advantages of placing a policy in Trust. Our Trust deed automatically makes the Settlor a Trustee, and allows for up to four additional Trustees. You can have more Trustees, but if you want more Trustees speak to a financial adviser or a solicitor. Because any decisions about your policy need to be agreed by all of your Trustees it's worth bearing in mind that the more Trustees you have the longer it might take to reach an agreement.

■ **It's really important you don't make changes to your original Trust by simply crossing details through and adding new details as this could invalidate your Trust. If you'd like to make a change, please contact your financial adviser or solicitor.**

Also 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 them and doesn't have to give a reason. If the Settlor has died these powers pass to the Trustees. Anyone who feels that a Trustee should be removed without their permission should seek legal advice before doing so.

Can I change the Beneficiaries at a later date?

The Trustees can choose any 'Potential Beneficiaries' but you must document at least one of these in the 'Default Beneficiaries' section. If you know now, who you would like to benefit and their share, as if you were able to give them the proceeds right now, list them all as 'Default Beneficiaries'.

The Trustees will usually pay the Trust benefits to the Default Beneficiaries, but do have the power to pay the benefits to any of the other Potential Beneficiaries, such as when the Default Beneficiaries have already died, or in some other exceptional circumstance.

If you change your mind and would prefer the Trustees to pay someone different to the Default Beneficiaries already selected, or if you wish the Trustees to choose to pay different Potential Beneficiaries under different circumstances in the future, you can provide the Trustees with a Letter of Wishes setting out your wishes and intentions. The letter is only a guide for the Trustees, and not legally binding on them, but normally Trustees will follow this guidance unless they have a good reason not to do so.

You cannot change the Potential Beneficiaries once you've set up the trust, so be careful to ensure you list anyone not already included in the definition that you feel you might want to benefit from the Trust.

If I live in Scotland can I still use your Trusts?

Yes, you can. Scottish law will apply to the Trust if the address of the Settlor is in Scotland when the policy is put into Trust. If the Trust is established under Scots Law, then the age of legal capacity for a Beneficiary is 16, and also the minimum age for a Trustee is 16.

Will income tax apply to the policy proceeds if they're held in Trust?

For life insurance policies that only pay out on death, income tax won't apply.

Will inheritance tax apply?

One of the main benefits of placing a life policy in Trust is that it won't normally be included in your estate for inheritance tax purposes.

■ **If you're concerned about Inheritance Tax you should speak to a financial adviser or a solicitor before you put your policy in Trust.**

I've put my policy in Trust, but I no longer want it in Trust, can I remove the Trust?

No, not usually. This is because placing a policy in Trust is an 'irrevocable' act. In other words, once you've done it, you can't go back on this decision. There may be circumstances when a Trust can be removed, but these are quite complex, and if you wish to remove a Trust you'll need to take independent legal advice. If the policy is cancelled the Trust is also cancelled.

We've got a joint policy can we put it in Trust?

No. Only our Single policies can be written in Trust, if you have a joint or a Family policy our Trust form cannot be used.

Can we name ourselves as Beneficiaries?

No. Our Trust deed excludes any Settlor from being named as a Beneficiary of the Trust.

If I put my policy in Trust, do I still own it?

No – once you put something into Trust (such as a life insurance policy) you don't own it any more – the Trustees do. However, our Trust deed automatically includes the Settlor as a Trustee so you can keep some control over what happens to the contents of the Trust. However, as a Trustee your responsibility is to act in the interest of the Beneficiaries.

What happens if the Trustees need to make a claim on the policy that's in Trust?

The Trustees should contact us as soon as possible to let us know that they will be making a claim. They can contact us in writing, or by phone or email. For details of how best to contact us, visit our website www.smartinsurance.co.uk. We'll let the Trustees know what documents we'll need from them at the time.

More details about how to claim and what documents we'll need can be found in the policy conditions for the policy that's in Trust. Once we agree to pay the claim, we'll usually pay the claim to the Trustees. It's then their responsibility to make sure that the money is paid to the Beneficiaries (or managed on their behalf).

Glossary

In this section we explain some commonly used terms associated with Trusts, and what they mean.

Beneficiaries – The people who can receive payment from the Trust fund are called the Beneficiaries. The people who may be a Beneficiary are listed in the Trust deed. A Flexible Trust has two types of Beneficiaries. The Default Beneficiaries are entitled to the proceeds in the future. The Potential Beneficiaries are a group of people who may benefit from the Trust, but only if the Trustees choose to make an appointment to them.

Default Beneficiaries – If no Potential Beneficiaries are appointed by the end of the Trust period, the Default Beneficiaries will receive all of the benefits. Default Beneficiaries are the individual(s) that you would like the Trustees to pay the Trust benefits to, although the Trustees can legally choose to pay one of the other Potential Beneficiaries if the Default Beneficiaries have already died, or if you've provided them with a Letter of Wishes giving further guidance on who you'd like to benefit from the Trust, or if the Trustees have some other good reason for deciding to do so.

Inheritance Tax – This is tax payable after you've died, if everything you own is worth more than a certain amount.

Letter of Wishes – The Letter of Wishes sets out your intentions and wishes to the Trustees of your Trust about how they administer the Trust and, in particular, how they exercise the discretionary powers you have conferred on them. The Letter is a guide to the Trustees and it will not be legally binding on the Trustees. You should be aware that Beneficiaries may have a right to see this Letter, but this will depend on the particular circumstances. The Letter should not be signed before the Trust Deed has been completed. Your Letter of Wishes should be signed dated and witnessed.

Potential Beneficiaries – Under a Flexible Trust these are the groups of people who you might want to benefit from the Trust in the future. The Trustee/s would usually distribute the policy proceeds to the Default Beneficiaries, but they do have the power to distribute the policy proceeds to any of the 'Potential Beneficiaries' listed in the Trust form. This allows the Trust to continue even if the Default Beneficiaries have died, or for the Trustees to respond appropriately to changes in circumstances. A Letter of Wishes may be a helpful guide for the Trustees.

Probate (or confirmation in Scotland) – When a person dies somebody has to deal with their estate (money property and possessions left) by collecting in all the money, paying any debts and distributing what is left to those people entitled to it. Probate is the court's authority, given to a person or persons to administer a deceased person's estate. There is no requirement for Probate for the Trustee to distribute the proceeds of a policy held in Trust.

Settlor – This is the person who creates the Trust. This is the owner or owners of the policy before it's put into Trust.

Trust – In simple terms it's a legal arrangement that allows the owner of something to 'gift' it to someone else.

Trust deed – This is the document which establishes the Trust and records the policy being put in Trust, and the terms and conditions that the Trust can operate under.

Trustees – These are the people responsible for looking after the contents of the Trust, and are the owners of the policy once it's put in Trust.

Your Personal Checklist

Before sending the Trust Deed to Smart Insurance, please ask yourself these questions:

Have I...

- dated the Trust Deed?
- completed 'Part III – Plans or Policies (already in force)' with your Policy details?
- completed the 'Default Beneficiaries' section with the names of at least one of the 'Potential Beneficiaries' and their share?
- signed the 'Settlor Details' section and had this signature independently witnessed by someone not associated with this Trust?
- ensured that the additional Trustee/s have signed the 'Additional Trustee' section and had the signature/s independently witnessed by someone not associated with this Trust?
- crossed through any errors and had all parties initial any corrections (do not use correction fluid)?

**We hope that this guide has given you
an understanding of our Trust.**