

**first direct**

# **Using trusts with life policies**

**A customer guide to our Flexible Trust**

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# The purpose of this guide

At **first direct**, we believe that a trust can provide a valuable way of getting much-needed money into the right hands, quickly and simply.

The purpose of this guide is to give the facts, in a plain and straightforward way, to help you make a decision. It deals only with our Flexible Trust. We have designed this for use with our life policies if placed in trust on or after 22 March 2006. It does not cover other types of trust, or other policies you may have.

## So, what is a trust?

A trust is a legally binding arrangement. Like all legal documents it can look bewildering with its rules, regulations and strange language.

**Basically a trust is a device by which one or more people give property (such as a life assurance policy) to another person or people who then look after it for the benefit of someone else**

**The person or people giving the property are called the settlors.**

**The people who look after the property are called the trustees.**

**The person or people who may benefit from the property are called the beneficiaries.**

**Read that bit again. It's important.**

### Remember:

1. The most important practical reason for using a flexible trust is that you can retain some control and decide who should benefit from your policy. By using the trust, your wishes should be taken account of after your death.
2. Trusts can also have important tax benefits. **Once a policy is in a trust, you can no longer benefit from it and it is no longer part of your estate.**  
This means any death benefit under the policy can usually be paid free of inheritance tax, a potential saving of 40%, based on the current rate.  
However, under certain circumstances the trust can give rise to entry, periodic and exit charges. These normally only affect life assurance policies with significant investment values. This is explained in the special section on tax in part 4 of this guide.
3. If the trust is set up correctly, the proceeds can be paid to the right beneficiaries very quickly.
4. **You will be giving ownership of the policy to the trustees.** So, when you die, as long as there is at least one trustee alive to manage the trust, there will be no need for the trustees to wait for your executors to obtain probate before claiming the policy proceeds.

### How to use this guide

This guide will help you to understand how our Flexible Trust might help you achieve your financial objectives.

Part 1 explains the benefits of a trust.

Part 2 tells you how to set up your trust.

Part 3 helps you and your trustees run the trust.

Part 4 is a special section on tax.

**Parts 3 and 4 will be found in a separate guide called 'Running your trust'.**

Each part outlines general issues, followed by answers to typical questions that often arise with life policies held in trust.

**Note:** Throughout this guide we use the expression '**you**', meaning the reader, as the proposer of a life policy.

Lastly, please remember that trusts are useful - but they do have limits, and should only be used in the right circumstances. This guide explains what you need to know to help you make an informed decision about the trust for your policy. It cannot be a substitute for good guidance from an expert. So if you are in any doubt, please talk to your financial adviser.

# Part 1 - Do I need a trust?

People take out life cover for many reasons. Depending on your particular reasons, there may be benefits in ensuring that your policy is held subject to a trust.

## Family protection

When you use a flexible trust alongside your policy to provide funds on your death, the current benefits are:

- Payment of the sum assured to the trustees without having to wait for probate
- Freedom from Inheritance Tax for the death benefit
- Proceeds go to the right beneficiaries
- Freedom from creditors as trust assets are not usually included in bankruptcy arrangements. This is as long as you are solvent and have no intention to defraud when the policy is transferred into a trust.

## Providing for Inheritance Tax

When your reason for taking out a policy is to provide for a potential inheritance tax liability, a trust is normally an absolute must.

- The policy can provide cash required to pay inheritance tax
- The policy will not itself form part of your estate
- The inheritance tax liability can be paid promptly so the estate can be distributed quickly.

## Inheritance Tax Planning

Inheritance Tax (IHT) planning usually involves making gifts during your lifetime. Such gifts can be made by using a life policy or bond in a trust.

- If you choose a regular premium policy, the gifts themselves (the premiums) will usually be small, but the sum available to the beneficiaries on your death could be considerably greater. It should also not form part of your taxable estate
- If a substantial gift can be made, you can invest this in an investment bond, subject to trust. The investment will be a Chargeable Lifetime Transfer (CLT). If the initial investment is less than the IHT nil rate band, and no other CLT's have been made in the preceding 7 years, then no initial tax charge will arise. Further detail is provided in the special section on tax in part 4 of the guide (available separately).

# The legal aspects

## Legal effect of a trust

Most importantly, when you place your policy in trust, you are giving the legal ownership of the policy to the trustees although you would normally remain a trustee.

This means that we will deal with the trustees on any matters relating to the policy. This includes not only making a claim but also its surrender or exercising any options.

Of course, you will usually pay any premiums (as the original owner). The trustees will have no responsibility for payment and keeping the policy in force.

If there is a claim under a policy, the trustees will have to produce the policy and trust documents to prove their ownership of the policy.

Once set up, the trust governs how the policy is dealt with.

## Parties to a trust

There are three parties to a trust:

### The settlor(s)

This is the person who creates the trust – that means you. (For a life policy trust, the proposer is called the settlor).

### The trustees

These are the legal owners of the policy, chosen by you. You will be one of the trustees.

## The beneficiaries

These are the people who can benefit from the trust. Their rights are described in the trust document. You cannot be a beneficiary as this would make the Flexible Trust ineffective for inheritance tax purposes.

# first direct's Flexible Trust

## Key Features

The term 'flexible trust' describes the type of trust used by many life companies in the UK.

The flexible trust is a trust under which named beneficiaries will be entitled to any income. The technical term for this is "an interest in possession". The flexible trust contains wide powers to give benefits (capital and future income) to any of the potential beneficiaries shown in Schedule A of the trust document (see completion guide on page 10).

If this power is not exercised then the benefits will go to the people shown in Schedule B (see completion guide on page 10). These are called the named beneficiaries.

**Don't worry about the references to income. Your policy does not produce any income and therefore this is not relevant. It is, however, important for tax reasons to identify who would be entitled to income if there were any.**

## Decision Tree - So do I need a trust?

If you can say yes to any of the following questions, a trust might help you.

- Do you wish to ensure that any payment on death is made promptly and without the need to obtain probate?  
or
- Do you wish to make funds available to your chosen beneficiary(ies) after your death, free from inheritance tax?  
or
- Do you wish to make a gift to reduce the impact of inheritance tax?  
or
- Do you wish to make funds available to your chosen beneficiaries after your death, free from inheritance tax and/or without the need to obtain probate but retain any terminal illness benefits for yourself.

Also consider

- Do you need to keep flexibility over the choice of your eventual beneficiaries?
- Are you sure that you do not need to keep access to the policy for your own benefit in the future?

## Typical reasons for using a trust

- To provide immediate funds for a spouse or civil partner and children
- To provide for children of a previous marriage
- To provide for a 'common law' spouse
- To put aside money as a gift for minor children.

## Remember

**The Flexible Trust will not be appropriate if the policy is life cover only with Terminal Illness Benefit and you wish to reserve the Terminal Illness Benefit for yourself.**

# Part 2 – Setting up a trust

## How to complete the forms

A trust is usually set up by a written statement of what you are doing. This written statement creating the trust, together with the general principles of trust law, governs who will look after the trust assets (eg, the policy), how they will do it, and for whose benefit they will hold them.

**All trust forms and Deeds of Appointment should be completed in capitals to ensure clarity.**

In this next section we show you how to complete the trust documents.

## The Flexible Trust (Declaration)

This Declaration of Trust is made by the person[s] named below (“the Settlor[s]”)

Title  Mr  Mrs  Miss  Ms  
Other (please specify)

**The settlor is the person applying for the policy. Their details need to be input in this section**

### Explanatory Notes

Please insert full name(s) and address(es) of the Settlor(s). **DO NOT USE INITIALS.**

These should be the owners as Shown on the Policy Schedule or the person(s) applying for the new Policy. So if there are joint owners of the policy there will be two Settlers.

Surname   
All Forenames   
House name and/or number   
Street or road name   
District (if any)   
Village, town or city   
County   
Postcode

**Please use full names (no abbreviations)**

**If there is only one settlor, complete this section and draw a line through the unused box as shown in this example**

Title  Mr  Mrs  Miss  Ms  
Other (please specify)   
Surname   
All Forenames   
House name and/or number   
Street or road name   
District (if any)   
Village, town or city   
County   
Postcode

**Put a line through these boxes if there is only one Settlor.**

**If there are two settlor(s) please complete both sections.**

**Schedule A – Potential Beneficiaries**

1. The Spouse/Civil Partner, Widow/Widower or Surviving Civil Partner of (either of) the Settlor(s) but excluding any Settlor.
2. The Children and remoter issue of the Settlor(s).
3. Any person (other than the Settlor(s)) nominated by the Settlor(s) (or the survivor of them) in writing to the Trustees.
4. Any person named in Schedule B.
5. Any person(s) entitled under the will or intestacy of the Settlor(s).

Schedule A contains those people who are automatically able to benefit from the trust. So the spouse of the settlor is already a potential beneficiary.

Try to think beyond your immediate family, in order to introduce additional potential beneficiaries such as godchildren, brothers, and sisters etc. to ensure that there will be someone to whom the Trust Fund can be paid.

| 6. First Name(s) | Surname | Date of Birth (dd/mm/yyyy) |
|------------------|---------|----------------------------|
|                  |         |                            |

**Schedule B – Named Beneficiaries**

**Note: This Schedule MUST be completed.**

**The percentages allocated MUST total 100%**

| First Name(s) | Surname | Date of Birth (dd/mm/yyyy) | % |
|---------------|---------|----------------------------|---|
|               |         | D D M M Y Y Y Y            |   |
|               |         | D D M M Y Y Y Y            |   |
|               |         | D D M M Y Y Y Y            |   |
|               |         | D D M M Y Y Y Y            |   |
|               |         | D D M M Y Y Y Y            |   |
|               |         | D D M M Y Y Y Y            |   |

Schedule B will contain the names of the people that you as settlor(s) wish to benefit. It is essential that you state the FULL name(s).

If you specify the share it is vital that they total 100% eg, 60% + 40%, this must be whole figures with no decimal places. If you want all the beneficiaries to receive an equal share then there is no need to state any percentages.

These details must be completed for each of the policies that are to be transferred into this trust.

**Schedule C – Identification of the Original Policy(ies)**

1. Date of proposal (if policy applied for)   
 Policy Number (if existing policy)   
 Type of Policy   
 Life/Lives Assured   
 Insurer

2. Date of proposal (if policy applied for)   
 Policy Number (if existing policy)   
 Type of Policy   
 Life/Lives Assured   
 Insurer

This box(es) MUST be signed by each settlor. If there is only one settlor, then only the first box needs to be signed.

**D J BARTON**

SIGNED  
by the Settlor (1)

SIGNED  
by the Settlor (2)

The trust MUST be dated before or on the date of the commencement of the policy. If you are putting an existing policy into trust it must be dated at the same time it is signed by the settlor(s).

Date 

|   |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|---|
| D | D | M | M | Y | Y | Y | Y |
|---|---|---|---|---|---|---|---|

Date 

|   |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|---|
| D | D | M | M | Y | Y | Y | Y |
|---|---|---|---|---|---|---|---|

I/we have read the trust powers, provisions and notes in this document

## Choosing your trustees

Having set up your trust, the first thing you need to do is to appoint new trustees to act alongside you, and to take over if you die.

To do this you will use the Deed of Appointment of Additional Trustees, shown over the next three pages. As the name suggests, your trustees should be people you trust to do what you believe is right. The Flexible Trust sets out your instructions to them, but also gives them power to use their judgement if circumstances change.

For example: imagine you have to put money into a trust to benefit your two children in equal shares. Years later, one of your children wins the lottery. Would you still want them to benefit in equal shares?

Your trustees may have to make this choice for you after your death.

## Deed of appointment of additional Trustee(s)

|   |   |     |
|---|---|-----|
| Date  | <input type="text" value="day of"/> <input type="text" value="20"/>                                     |     |
| <b>Parties</b>                              |   |     |
| Settlor (1) full name                       | <input type="text" value="DAVID JOHN BARTON"/>  | of  |
| Full Home Address                           | <input type="text" value="1 ANOTHER STREET&lt;br/&gt;ANY TOWN&lt;br/&gt;ANY COUNTY&lt;br/&gt;AB1 2CD"/> | and |
| Settlor (2) full name                       | <input type="text"/>  | of  |
| Full Home Address                           | <input type="text"/>  |     |
| ("the Settlor(s)") of the first part and... |   |     |
| Trustee (1) full name                       | <input type="text" value="SARAH LOUISE BARTON"/>  | of  |
| Trustee (1) date of birth                   | <input type="text" value="D D M M Y Y Y Y"/>  |     |
| Full Home Address                           | <input type="text" value="1 ANOTHER STREET&lt;br/&gt;ANY TOWN&lt;br/&gt;ANY COUNTY&lt;br/&gt;AB1 2CD"/> | and |
| Trustee (2) full name                       | <input type="text" value="HENRY CARR"/>   | of  |
| Trustee (2) date of birth                   | <input type="text" value="D D M M Y Y Y Y"/>  |     |
| Full Home Address                           | <input type="text" value="10 BRIDGE STREET&lt;br/&gt;ANY TOWN&lt;br/&gt;ANY COUNTY&lt;br/&gt;WX2 3YZ"/> | and |
| Trustee (3) full name                       | <input type="text" value="DIANE CARR"/>   | of  |
| Trustee (3) date of birth                   | <input type="text" value="D D M M Y Y Y Y"/>  |     |
| Full Home Address                           | <input type="text" value="10 BRIDGE STREET&lt;br/&gt;ANY TOWN&lt;br/&gt;ANY COUNTY&lt;br/&gt;WX2 3YZ"/> |     |

The details of the person(s) who applied for the policy will need to be inserted into these boxes. Please show the full name. Initials such as D J Barton or abbreviations such as Dave John Barton are not to be used.

The settlor is automatically a trustee. The settlor's details do not need to be repeated.

Please make sure that you use full names and addresses in these boxes.

At least one of the additional trustees should not be a beneficiary of the trust.

("the Additional Trustee(s)") of the second part.

**Schedule 1**

Date the Trust was signed

This should be the date the flexible trust is signed by the settlor.

Made in respect of the following policy of assurance:

Life (lives) assured

  
  

Type of Policy

- 1)
- 2)
- 3)

  
  

Insurance Company

HSBC Life (UK) Limited

Policy Number(s)

- 1)
- 2)
- 3)

  
  

If you wish you can leave these boxes blank for completion by HSBC Life (UK) Limited.

**Schedule 2**

Insurance Company

HSBC Life (UK) Limited

Policy Number(s)

- 1)
- 2)
- 3)

**In witness whereof** the parties to this deed have set their hands the day and year written above.

Signed as a Deed and Delivered by the Settlor (1)

Signature D J BARTON

in the presence of

Signature M WITNESS

NAME MARK WITNESS

Address

5 WITTS COURT  
ANY TOWN  
ANY COUNTY  
A04 4XL

Please note that the settlor is already a trustee. The settlor should not sign in this box as they are not being appointed as an additional trustee.

Signed as a Deed and Delivered by the Settlor (2)

in the presence of

Address

Remember that ALL signatures of the settlor(s) and trustee(s) MUST be witnessed.

Signed as a Deed and Delivered by the New Trustee (1)

Signature S L BARTON

in the presence of

Signature M WITNESS

Name Mark WITNESS

Address

5 WITTS COURT  
ANY TOWN  
ANY COUNTY  
A04 4XL

Signed as a Deed and Delivered by the New Trustee (2)

Signature H CARR

in the presence of

Signature M WITNESS

Name Mark WITNESS

Address

5 BRIDGE STREET  
ANY TOWN  
ANY COUNTY  
A04 4XL

Signed as a Deed and Delivered by the New Trustee (3)

Signature D CARR

in the presence of

Signature M WITNESS

Name Mark WITNESS

Address

5 BRIDGE STREET  
ANY TOWN  
ANY COUNTY  
A04 4XL

The same person can be a witness to all signatures if you wish. However, the witness MUST sign against all signatures he is witnessing. Don't forget that the witness CAN'T be a trustee, settlor or beneficiary.

Please return this deed to your local branch or direct to Customer Services Centre, HSBC Life (UK) Limited, PO Box 6176, Coventry CV3 9HN. After recording the details the original deed will be returned to you and should be kept by the Trustees.

# Some typical questions

## **Q: Can I continue to benefit under the trust?**

A: No not normally. If your policy is for Life cover only and includes Terminal Illness Benefit then the trustees will distribute the proceeds of the policy to your chosen beneficiaries.

## **Q: How much will it cost to set up the trust?**

A: We make no charge for providing the Flexible Trust. If you decide to consult a solicitor or other professional adviser before completing the trust form, they may charge you a fee. They should be able to tell you what this is in advance. Similarly, if you appoint a professional trustee or trust company as trustee they may charge for their services.

## **Q: Can I unravel the trust and get access to the policy?**

A: No. Once you have set up the trust you cannot have access to the policy benefits.

## **Q: Is running a trust difficult?**

A: No. Our Flexible Trust is designed to hold a life policy until you die (or until earlier payment of terminal illness benefit), and to allow the trustees to distribute the proceeds to your chosen beneficiaries quickly after you die.

## **Q: Which trust forms do I need?**

A: You can use our Flexible Trust with your policies.

In addition, you will need to use the Deed of Appointment of Additional Trustees.

## **Q: Do I need to see a Solicitor or other professional adviser?**

A: Whilst we have taken great care to ensure the Flexible Trust can achieve its objectives if you have individual circumstances or concerns on which you require advice you should consult your own advisers.

## **Q: What if I were to be declared bankrupt?**

A: Generally speaking, any assets held in trust (under which you cannot benefit) are safe from creditors. The exception is where the assets were transferred when you were already insolvent or made with the specific intent to defraud creditors. In such circumstances the court may set aside the trust and pay the asset over to the trustee in bankruptcy for the benefit of creditors.

## **Q: What if I get divorced or dissolve a civil partnership?**

A: A life policy held in trust is owned by the trustees and does not belong to you legally.

It will not usually be taken into account in any settlement. However, if you and your spouse/ civil partner owned the policy jointly or you both pay premiums under the policy, it is important that you make arrangements in any divorce or other settlement to ensure that no future disputes will arise.

## **Q: Can I change trust terms?**

A: Yes, but it is rarely needed. Your trust already gives the opportunity to choose between potential beneficiaries and whether to pay income or capital sums, or to make administrative changes.

## **Q: Can I use the policy in trust to secure a mortgage?**

A: No, you may not. In theory the trustees could use the policy as security for borrowing by the trust, but in practice this is unlikely.

## **Q: Do I need to refer to the trust or the policy in my Will?**

A: No. A policy held subject to trust is no longer yours to dispose of on your death.

## **Q: Can I add other beneficiaries?**

A: Yes. The Flexible Trust includes a wide class of potential beneficiaries. However, there is also a provision that allows you to add new names to the list of potential beneficiaries later. You would simply need to write to your trustees to let them know.

**Q: Can I change the beneficiaries?**

A: Yes, you as the settlor, retain the power, during your lifetime to change the beneficiaries. On your death, this power passes to the trustees. However, it is a requirement of the trust that you inform the trustees of any changes to the beneficiary position.

**Q: Will I be a trustee?**

A: Yes, under our Flexible Trust you are automatically a trustee. The trustees have to act unanimously so you, and all the other trustees that you appoint, have to agree on what to do. There is another advantage too. With you as a trustee, we will continue to write to you on the progress of your policy. We will expect you to share this information with your fellow trustees.

**Q: Should there be other trustees as well as me?**

A: Although this is not legally essential, it is strongly recommended. This is because the trustees need to do little until after you die. If you are the sole trustee and you die, then your executors or administrators will have to step into your shoes as trustees. Therefore probate will be required before the policy can pay out.

**Q: How many trustees should there be?**

A: The maximum is four. In practice you need no more than this, particularly as the trustees have to act unanimously. It may be impractical if there are too many.

**Q: Can a beneficiary also be a trustee?**

A: Yes, however a trustee cannot appoint benefits to themselves without there being at least one other trustee acting who will not benefit.

**Q: Can I appoint further trustees later?**

A: Yes, under the terms of the trust you can appoint further trustees later. You will need a special Deed, which you can obtain from us on request.

**Q: Should I appoint my solicitor or other professional adviser as a trustee?**

A: It is up to you who you appoint as a trustee. There is usually no need to appoint professional trustees such as solicitors or accountants, as running the trust in most family circumstances is not complicated. They may lack the personal knowledge of family circumstances. You should also remember that if you appoint a professional trustee they will charge fees for dealing with the trust.

**Q: Can I remove trustees?**

A: Yes, as settlor, you have the power to remove a trustee if necessary. However it is advisable when removing a trustee to appoint a new trustee in their place.

Parts 3 and 4 of this guide are designed to help you and your chosen trustees. They provide information on how to administer your trust once it is up and running, and some important information on the tax implications. These can be found in our separate guide 'Running your trust'.

**Legal Disclaimer**

The contents of this Guide are based on our understanding of current Law and Inland Revenue practice. As both are subject to change, the accuracy of the guide cannot be guaranteed, particularly over the longer term. Neither HSBC Bank plc nor HSBC Life (UK) Limited can be held responsible for the actions of yourself and your trustees based on the contents of this guide.

If you are in any doubt, please contact us or seek professional advice.