

## Guide to Trusts

### What is a trust?

A trust is a legal arrangement. It allows the owner of property to transfer legal ownership of that property to another person or company. The person or company receiving the property holds onto it for the benefit of a third party, called the beneficiary. The person transferring the property is called the settlor. The person or company holding onto the property is called the trustee.

This document only explains how trusts work in England and Wales. It does not cover trust law in Scotland or Northern Ireland.

### The main reasons for putting a Life Assurance Plan into a trust

1. *It makes sure that the money paid out from the plan goes to the people the settlor wants to benefit from it.* When a trust is set up, the settlor lists all the people they want to share the money from the trust. The settlor can even indicate what proportion of the money they would like each individual to receive - for example John 25%, Jane 25% and Mark 50%.
2. *The life insurance company can usually pay a death claim more quickly than they could if it were not put in trust.* If a life assurance plan is in trust, it is no longer part of the settlor's estate. So if they die, the trustees claim on the life assurance and the death benefit money is paid directly to the trustees. If a life assurance plan is not in trust, the amount of money a person has as life assurance is added to the rest of their estate if they die during the plan term. This means that the people that are to distribute the estate would need to get a grant of probate before the insurance company could pay out any money. This can take several months.
3. *The money the plan pays out may be free of inheritance tax.* If the plan was put into trust, it isn't included in the settlor's estate when the settlor dies, so there is no immediate inheritance tax to pay. However, if the money is kept in the trust until the next 10th anniversary of the trust, some inheritance tax may be payable. To find out more about this, you need to speak to your professional adviser who can look at your specific circumstances and explain how inheritance tax might affect you.

We have written this guide to explain how trusts work for insurance policies like Real Life Cover and YourLife Plan. We cannot advise whether a Trust would be suitable in your particular circumstances. We would recommend you take professional advice before setting up a trust.

### The Key people involved in a trust

There are three roles in any trust. These are:

- settlor,
- trustee, and
- beneficiary

This section explains what these roles are; their responsibilities and rights.

#### Settlor

The settlor is the person who sets up the trust and transfers the property into it. Examples of the type of property that can be placed in trust include money, insurance policies, houses or land. The settlor will appoint the trustees to administer the trust and decide who the beneficiaries will be. The settlor can either state exactly who the beneficiary should be or they can nominate a number of people to be potential beneficiaries and leave it up to the trustees to decide who the actual beneficiaries will be when they distribute the trust assets.

If the settlor hasn't stated exactly who the beneficiaries should be, they can still indicate who they would particularly like the beneficiaries to be. They do this by lodging an 'Expression of Wishes' with the trust. This is particularly useful in the case of a discretionary trust where the trustees have discretion as to who should benefit from the list of potential beneficiaries. The Expression of Wishes will help to guide the trustees when it's time to distribute the money.

If the settlor wants to put a life assurance policy in trust, it must be a policy that they own, but it doesn't have to be one that covers them. So if the settlor owns the policy but it would pay out if someone else died, they can put that policy in trust even though they are not the person covered. For a joint plan, both owners must consent to put the plan into the trust. If this happens they are both settlors of the trust. One of them couldn't do it on their own.

In England and Wales anyone over the age of 18 who is mentally able can be a settlor.

### **Trustees**

The trustees become the legal owners of the trust property. They administer the trust for the sole benefit of the beneficiaries. There needs to be at least two trustees. They must administer the trust in accordance with the terms of the trust document and the law that governs the trust.

With any of the Fortis trusts, the settlor has to be one of the trustees. There must also be at least one trustee who isn't a settlor. For example, if a couple put their joint plan in trust, they must have at least one trustee other than themselves. This makes sure that, even if both settlors of a joint life policy die, there is still a trustee to look after the trust.

It's important to choose the right trustees. They need to have good financial knowledge and be someone the settlor can trust. It could be a friend, a member of the settlor's family or a professional adviser. The settlor can appoint a professional trustee who will usually charge for their services.

It may not be a good idea to ask a beneficiary to become a trustee as this could lead to a conflict of interests.

In England and Wales a trustee must be over the age of 18. They should be mentally able and have a sound financial history.

On page 5 we have included a guide to being a trustee.

### **Beneficiaries**

The beneficiaries are the people the settlor wants to receive the benefits they are giving away. In a trust there can be different types of beneficiary depending on the exact wording of the trust. That's why it's important that the settlor has made it clear to the trustees what they want each beneficiary to receive.

Once the settlor has put a plan into trust, the trustees will hold onto it until the settlor dies and a payment is made under the policy. The trustees then look after the money, investing it if necessary, and distribute it amongst the beneficiaries. Whilst people often use trusts to hold onto property they want to give to their children, a trust can be used to hold onto property the settlor wants to give away to anyone.

### **Three different types of trust**

Fortis offers three different types of trust. They each work slightly differently, so if you want to put a plan in trust, it's important to choose the one that's right for you.

#### *Bare trust*

This is the simplest form of trust; in fact it's sometimes called a plain or absolute trust. Once you have written a bare trust it cannot be changed. The settlor decides who the beneficiaries are and what they want each of them to receive. From then on the property in the trust and any profits from it belong to the beneficiaries listed in the trust. As the beneficiaries and their benefits are fixed in a bare trust it is not possible to add beneficiaries in the future even if the settlor were to have more children or grandchildren.

Once a plan is in a bare trust, the settlor can't benefit from it. So a bare trust isn't suitable for a plan that includes any cover that would pay a benefit to the settlor if a claim were made while they were alive. For example, a plan that includes Income Protection or Critical Illness Cover, isn't suitable for a bare trust.

With a bare trust the trustees can't make any beneficiary over the age of 18 wait before they receive property that the trust is holding for them. This can be a concern if the beneficiaries are young and the trustees think they should wait before they receive the trust property.

### *Discretionary Trust*

A discretionary trust relies on the discretion of the trustees. In a bare trust the assets must be distributed to beneficiaries who are over 18 if they ask for them; but with a discretionary trust the trustees can retain assets until they think it is the right time for them to be distributed. The trustees can choose who will benefit and how much they will receive which means that they may 'pass-over' some of those listed as 'potential beneficiaries'. It is important, therefore, that you help the trustees by indicating who you would like to benefit from your plan either by naming them in the potential beneficiaries section of the Trust or by completing an Expression of Wishes form which can be kept with Trust form. The Expression of Wishes is not a legally binding document, but it will help to guide the trustees when the time comes for them to distribute the Plan benefits to the beneficiaries.

Unlike a bare trust, new beneficiaries can be added to the trust or removed from it. This can be useful if, for example, the settlor has another child or grandchild, or if they fall out with someone they previously wanted to benefit from the trust.

It is possible for the settlor to put some of their plan into a discretionary trust and to retain other parts of their plan. However, they cannot divide an individual cover in two, retaining part of it and putting some of it into trust. For example, they can't ask for 50% of the proceeds from a terminal illness claim to be kept in the trust and the rest to be paid to them. However, they can ask for any terminal illness payments to be made to them, but any death benefits to be paid into the trust.

One of the risks of a discretionary trust is that the trustees have considerable influence over the trust, its assets and its distribution. So choosing the wrong trustees can lead to complications in the future. For example, they could refuse to allow the settlor to add another beneficiary or appoint another trustee. They could also refuse to give some of the trust fund assets to a beneficiary, even though the settlor would have wanted them to receive it.

### *Split trust*

A split trust allows the settlor to split their plan so that they retain some of the benefits and some are put into trust.

With a split trust, the benefits of the life cover would have to be paid into the trust, but the settlor could choose to retain other benefits, including the terminal illness element of their life cover. Other retained benefits are likely to be things like Income Protection, Critical Illness Cover and Optional Unemployment and Extended Carer's Cover; the sort of covers that are designed to help protect the settlor's lifestyle.

Beneficiaries can be added and trustees appointed or removed, but only with the approval of the trustees. As with a discretionary trust, one of the risks of a split trust is the power that the trustees have. This is one of the reasons why it is important to choose the right trustees.

### **Gifted and retained benefits**

Fortis has produced three types of trust that you can use if you want to put some of your Real Life Cover or YourLife Plan in trust. But not every type of cover can be written in trust. So if you have a plan that includes different types of cover it may be that you can put some of them into a trust but that you need to keep others for yourself. Those that you put into the trust are called gifted benefits. Those that you keep for yourself are called retained benefits.

If you have Real Life Cover, the retained benefits would be:

- Income Protection
- Critical Illness Cover
- Carer's Cover, and
- Optional Unemployment and Extended Carer's Cover if you have included it in your Plan

If you have a YourLife Plan the retained benefits would be any of the following that are included in your plan:

- Income Protection,
- Carer's Cover
- Critical Illness Cover and
- Children's Critical Illness Cover

Terminal Illness Cover and Critical Illness Cover can be a retained benefit or a gifted benefit.

### **Who pays the premiums when a plan is in trust?**

Even though your insurance plan is in trust, you will still need to keep paying the premiums. The insurance plan was taken out to benefit someone, usually a member of your family, and this has not changed. The only thing that has changed is that you no longer own the policy and that the benefits placed in trust will go directly to the trustees so that they can pay the beneficiaries without having to wait for grant of probate or pay inheritance tax on the proceeds of your plan.

The premiums you pay for the insurance policy are usually classified as a gift. This gift would fall into two main categories:

1. Gift out of normal expenditure, where there is no adverse affect on your standard of living or, for larger premiums
2. Gift within your 'gift allowance'. This amount can change from year to year

If you are unable to pay your premiums for reasons such as your income has fallen to a level where you can no longer afford them, then you can ask the trustees to pay the premiums on your behalf.

#### **Does a trust always need to be written by a solicitor?**

You can have a trust written by your solicitor, but many insurance companies, like us, have 'ready-made' trusts available for the life insurance policies they offer. These trusts are not usually suitable for anything other than life insurance plans. We would recommend that you take legal advice if you intend setting up a trust.

#### **Trusts aren't for everyone**

The reasons we have listed for putting all or part of a plan or cover into a trust, do not mean that a trust is right for everyone. It's a good idea to get advice from a financial or legal adviser before you make a decision.

If you want to be able to benefit from something that you're thinking of putting into a trust or if you think you might want to have access to it in the future, then a trust may not be right for you.

**WARNING: Once you have put a plan or part of a plan into trust you do not have any access to it. Even though you have a cooling off period for a plan you take out with Fortis, you don't have a cooling off period when you set up a trust. Once you have signed the trust form and the trustees have agreed to act, then you have given away the plan.**

# Being a Trustee

## The Responsibilities of a Trustee

The exact responsibilities of a trustee and the powers that they have vary slightly depending on the type of trust. So, as well as reading this guide, it's important to read the trust document to make sure you understand the responsibilities that you are taking on. However, a trustee is also expected to exercise such care and skill as is reasonable in the circumstances.

Anything a trustee does must be authorised by the terms of the trust and the law that governs trusts. If any of the beneficiaries or trustees think that you are not acting in their best interests, they can take legal action against a trustee if the trustee is acting outside the terms of the trust.

## The Main Duties and Powers of A Trustee

### *To invest the trust fund*

The property in the fund is called the trust fund. A trustee is responsible for making sure that the trust fund is invested for the beneficiaries until the money is distributed. If the only property in the trust is an insurance plan, there will be no fund to invest until after any claim on the insurance plan. The money from the insurance plan will need to be invested until such a time as it is distributed to the beneficiaries of the trust.

### *To act impartially*

If there is more than one beneficiary, the trustees must not act in a way that will benefit one of them more than another. For example, if one beneficiary is to receive income from the trust but another one will receive the capital, trustees should invest the fund to produce both an income and capital growth. If the trustee invests in a way that produces just one of those, they would not be acting impartially.

### *To take appropriate advice*

Trustees should take professional advice before investing the trust fund, unless the fund is so small that the cost of the advice would outweigh any benefit or one or more of the trustees are qualified to give advice. Trustees can ask a professional person to act on their behalf in investing the fund, but the responsibility for the investment would still lie with the trustee.

### *To distribute the trust property*

The trustees should ensure the trust property is passed to the beneficiaries at the appropriate time.

### *To keep the trust's property secure*

Trustees are responsible for making sure that the trust fund is secure. So, if the fund includes something tangible like a house, they are responsible for making sure that it is insured.

### *To keep the trust's records*

Trustees must keep a record of any decisions they make and any actions they take. This includes things like investments they make and any money they pay out to a beneficiary. Trustees should also keep records of the advice they have taken and any costs the trust has had to pay.

### *To not profit from the trust*

Trustees acting in a professional capacity can claim reasonable fees for their services, but they must not manage the trust in such a way that they or their firm will get extra work.

### *Other powers*

The trust document may set out other powers a trustee has. For example, changing the beneficiaries. This can be very useful if the settlor's circumstances change, for instance if they have another child, remarry, or fall out with one of the beneficiaries.

While the settlor is still alive they may hold some powers that other trustees don't have, for example, the power to appoint or remove trustees. These powers may be handed on to the other trustees if the settlor dies.

### **How Trustees Make Decisions**

With Fortis trusts, in England and Wales all trustees should agree on any decision the trust makes. So, if most of the trustees want to pay a beneficiary but one doesn't, the beneficiary should not be paid.

### **What happens if a trustee wants to retire?**

A trustee can only retire if there would be at least two continuing trustees following their retirement.

### **Can trustees be removed?**

The settlor can remove trustees as long as this wouldn't leave the trust with less than two continuing trustees.



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