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Friends Life

# Life Insurance

# Guide to Trusts

*Every little helps*

## Introduction

This is a general guide designed to explain the basic features of our trusts and to assist you in deciding whether or not to create a trust for the benefits within your policy. It explains what is meant by a trust and some of the potential advantages and disadvantages of creating a trust.

We are not able to advise you on your individual circumstances and should you have any questions or be uncertain about placing your policy under trust, you should seek appropriate professional advice.

This guide is based on our understanding of current law and HM Revenue & Customs practice as at December 2009.

## What is a trust?

In broad terms, a trust is simply a way of gifting property. Any type of property such as shares, buildings and cash can be the subject of a trust. You can also use a trust to make a gift of a life policy on the terms set out in the trust document.

The person who creates a trust (the settlor) chooses the people who can benefit (the beneficiaries) and defines how and when they are able to enjoy the gifted property although this is sometimes left to be decided later on. Once the trust is up and running, it can only be dealt with according to those terms. The settlor also appoints individuals to administer the trust (the trustees) on behalf of the beneficiaries.

You can contrast the fixed nature of a trust with your will, where you can change the terms as many times as you like during your lifetime. On the other hand, gifting a life policy (or the proceeds of a life policy) under a will may not secure the same wide range of benefits that can be obtained by writing the policy under an appropriate trust while you are alive.

You should satisfy yourself that the proposed trust wording is capable of meeting your requirements over the long term, accommodating as far as possible any foreseeable changes to your personal circumstances.

## What are the potential advantages of writing a policy under a trust?

There are several advantages in writing a life policy under trust. These can be summarised under the following headings.

### Avoidance of probate

Immediate payment of the policy proceeds can be made on production of a death certificate, without awaiting probate (confirmation in Scotland). This means that the policy proceeds should be paid promptly on death, rather than the frustrating alternative of your dependants being unable to obtain the proceeds for what may be many months.

## Inheritance tax

Any policy benefits paid out on death are outside of your estate for inheritance tax purposes and pass tax-free to your chosen beneficiaries at the appropriate time. Premiums paid under trust policies are gifts for inheritance tax purposes but are usually covered by one of the available exemptions. There is unlikely to be a tax charge if a protection life insurance policy is the only asset of the trust.

## Flexibility and a degree of control

A 'discretionary' trust is a versatile personal and financial planning vehicle. You will need to act in unison with the other trustees when making decisions. As one of the trustees, during your lifetime you will have a leading say in the administration of the trust.

## What are the potential disadvantages of writing a policy under a trust?

There are some disadvantages that you should consider before creating a trust and these include:

- once created a trust cannot be cancelled. It will of course come to an end if the policy stops without a benefit being paid out.
- the creation of a trust may affect your other circumstances, particularly your tax position and professional advice should be sought before creating a trust.

## What trusts do you offer?

**We offer two different types of trust:**

### The discretionary trust for existing policies

This trust is suitable for Tesco Life Insurance and Tesco Over 50s Plan policies. It allows you to ensure that all death benefits are paid to your trustees for the benefit of your chosen beneficiaries.

### The discretionary trust disability benefits reserved for existing policies

This trust is suitable for Tesco Life Insurance with Critical Illness Cover policies. All death benefits are paid to your trustees for the benefit of your chosen beneficiaries. Critical illness and disability benefit would be paid to you.

## Who is the settlor?

When you place your life policy under trust you will be the settlor.

## Who can be a beneficiary?

Any individual or charity can be a beneficiary. The beneficiary only has what is known as an equitable interest, rather than a legal interest in the policy. For this reason we do not act on the instructions of the beneficiary but on those of the legal owners – the trustees.

The discretionary trusts that we offer allow the trustees to choose who eventually receives the policy proceeds from the following categories of 'potential beneficiaries':

- your children, grandchildren and other direct descendants;
- your parents;
- your brothers and sisters and their children and other direct descendants;
- your spouse, civil partner, widow, widower or surviving civil partner (or their children or other direct descendants, parents, brothers or sisters and their children and other direct descendants);
- any person who can benefit from your will or from your estate under the laws of intestacy;
- any other person(s) or charity that you nominate. You must make such nominations in writing to the trustees.

Our trust forms include a letter of wishes that you can use to tell your co-trustees who you would like to benefit from your trust. If your wish is for the trust fund to be shared by more than one person, you can also indicate how much, as a percentage share, you would like each beneficiary to receive. The letter is not legally binding, as the trustees have full discretion over who benefits, and it simply gives an indication of your wishes.

## Can beneficiaries be changed?

You may nominate preferred beneficiaries using a letter of wishes (or other written form) at any time. Such nominations would override any that you had made previously.

## Who can be a trustee?

Any individual except minors and those of unsound mind may act as a trustee. It is advisable to have trustees who are resident in the UK to ensure there are no foreign tax implications. Also, from a practical viewpoint it makes sense to have trustees who are easy to contact, likely to keep in touch and willing to take on such a role.

When you place a policy in one of our trusts, you are automatically appointed as a trustee. A beneficiary can also act as a trustee, if you wish.

It is possible to choose a professional trustee, such as a solicitor or corporate trustee, but they will charge for their services.

As settlor you will have the responsibility of selecting trustees. You should choose trustees who are likely to act in broad accordance with your wishes, although of course they will have to comply with the terms of the trust. The choice is particularly important as the trustees have total discretion over who eventually receives the policy proceeds. It should be appreciated that by its very nature, trusteeship can be a long-term commitment.

## What are the trustees' duties?

We will require the written authority of all the trustees before paying out the policy proceeds. Trustees will need to act together in exercising their powers under the trust.

Where the only trust asset is a life policy, your trustees may do little more than sign the trust form at outset, and eventually receive any policy proceeds for onward transmission to the beneficiary or beneficiaries. However, it should be appreciated that the end of the life policy does not necessarily mean the end of the trust. For example, if the intended beneficiaries are young children, the policy proceeds may need to be reinvested. At that stage the trusteeship may become more demanding.

## How many trustees are needed?

Normally at least two trustees are appointed at outset. For ease of administration the number of trustees is usually limited to three or four. As the trustees are effectively joint legal owners, we will require agreement from each of them, even for seemingly trivial changes to the policy. For this reason too many trustees can be more of a hindrance than a help.

If there is only one remaining trustee and they died then the administration of the trust would pass to the personal representatives of their estate. This would inevitably delay the payment of the policy proceeds and it is therefore advisable to ensure that you always have at least two trustees.

## Can trustees be changed?

You are given the power to appoint trustees during your lifetime. This may be necessary, say, when a trustee dies or wishes to retire. You can also remove trustees without their consent.

If at any time, you are the only remaining trustee, you should appoint a new trustee to act with you.

We can supply the special deed wordings needed to make such changes.

## What about terminal illness benefit?

You must choose at outset whether you wish to gift any terminal illness benefit, under a Tesco Life Insurance or Tesco Life Insurance with Critical Illness Cover policy, for the benefit of the trust beneficiaries or to retain it for yourself.

## What about Critical Illness Cover policies?

As the main objective of this type of cover is to provide you with a lump sum when you suffer a critical illness, the use of a trust would rarely be appropriate. If you are considering gifting your Critical Illness Cover policy, we recommend that you firstly obtain specialist advice.

## Single life policies

If you are the sole policyholder and life assured any death benefits can be paid to the trustees. They have the discretion to pay amounts to any of the trust's potential beneficiaries.

## Joint life policies

If your policy has joint policyholders and lives assured (not relevant to the Tesco Over 50s Plan), the normal requirement is for any death benefits to pass to the surviving policyholder. This will happen automatically without the need for a trust and the survivor would not have to wait for probate (confirmation in Scotland). For this reason, our trusts are designed only for use with policies with one policyholder.

## What if the policy is to be used for mortgage cover?

It is not appropriate to place a policy taken out to repay a mortgage under trust. This is because a trust gifts any death benefits to your chosen beneficiaries so these proceeds would not be available to pay off your mortgage debt.

If a lender requires you to assign your policy to them, as collateral security for your mortgage, then a trust would also be inappropriate.

## What should I do next?

If you have decided that you do not wish to place your policy into trust then you need not take any further action. You can change your mind and use a trust, at any time in the future.

If you have decided that you would like to use a trust then please contact us on our Customer Helpline **0800 917 9566**. We will send you a trust form, for you and your co-trustees to complete and sign. You will need to make sure that it meets your needs and you may wish to consider taking professional advice if you have any doubts about this. The completed trust form should be returned to us.

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