

# Flexible Trust

## Trusts explained

A trust is a way in which the owner of an asset, such as a policy, (the 'settlor') can place it with some people (the 'trustees') to hold for the benefit of others (the 'beneficiaries').

Usually the settlor or, for a policy owned jointly the settlors, will act as trustees themselves and ask other people to act with them as additional trustees in administering the trust. They will follow the terms of the trust document in distributing the assets between the beneficiaries, usually when the life assured or, for a joint life policy the first or second life assured, dies. The beneficiaries are legally entitled to the policy benefits and can sue the trustees to enforce their rights. Their entitlement is under the terms of the trust, they have no direct powers under the life assurance policy.

## Reasons for placing a policy under trust

The main reasons for placing the death benefits of a policy in 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.

- **Paying the death benefits at the 'right' time**

Liverpool Victoria will pay the benefits to the trustees within days of receiving the various title documents. The trustees will then be able to pay the beneficiaries. There are no months of waiting for Grant of Probate or Letters of Administration.

- **Paying the death benefits free from inheritance tax**

As the benefits arising on death will not form part of the deceased's estate they should be payable free from inheritance tax, (please see the 'Tax implications' section in these notes).

## Trusts are not for everyone

If the policyholder may need access to *the trust property* in the future – either in the form of income or capital – then, generally, use of a trust is not appropriate.

The features of some policies are designed to ensure that the policyholder benefits – again, a trust may not be appropriate if advantage needs to be taken of these features.

## The Flexible Trust –

### A trust that lives up to its name

At the outset the settlor selects a wide group of people who they might wish to receive the policy 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 beneficiaries for the time being. The settlor also specifies how the benefits are to be shared out between them. (Schedule II)

Settlors should **never** include themselves on the list of possible beneficiaries (*for the trust property*). To do so would mean they retain an interest in the trust property so that it would be aggregated with their estate as a 'gift with reservation' and potentially liable to inheritance tax.

At any time afterwards the settlor, acting with at least one other trustee, can 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 beneficiaries originally appointed should die or if there is some other change in circumstances.

## Appointing additional trustees

As settlors, the policyholder or, for a policy jointly owned, the policyholders, are not automatically trustees. They should seriously consider appointing themselves and at least one additional trustee. The attached trust declaration provides for this.

### Why appoint additional trustees?

Without at least one additional trustee:

- the advantage of paying the benefits at the 'right' time would be lost if a life assured/policyholder/settlor should die (as there would be no surviving trustee to distribute the policy proceeds to the beneficiaries); and
- it would be impossible to redirect benefits between the potential beneficiaries.

## Tax implications

For a policy arranged under a trust, there is both inheritance tax and personal income tax to consider:

### Inheritance tax

- Regular premium policies

When a policy is placed under a flexible trust, the settlor makes a transfer of value. If the policy is put in trust at inception, the value will usually just be the first premium. An existing policy put into trust may have acquired a higher value. Payment of regular premiums will also be transfers of value but if they are paid from income they may be exempt from inheritance tax as normal expenditure. If regular premiums are made from capital they may be wholly or partly covered by inheritance tax exemptions (eg annual exemption or small gifts exemption).

- Single premium policies

By placing a single premium policy (e.g. With Profits Bond) under a trust, a settlor makes a transfer of value. If the transfer takes place just after the start date of the policy, the value of the transfer is likely to be the single premium. This will probably exceed the various IHT exemptions (annual capital, normal expenditure, etc.). The amount by which the value of the transfer exceeds any exemptions available would be regarded as a "potentially exempt transfer" (PET). There is a potential liability to inheritance tax if the settlor dies within seven years.

If the trustees at any time afterwards reappoint the trust benefits between the range of possible beneficiaries, any individual who loses entitlement will be treated as having made a gift of the value of the share lost. Again, there is a potential IHT liability on that person's death within seven years.

### Income tax

- Qualifying policies

Provided that premiums are maintained for ten years or three-quarters of its premium paying term (whichever is less) the policy proceeds will be free of any further liability to income tax.

- Non-qualifying policies

For a non-qualifying life assurance policy (e.g. With Profits Bond), a 'chargeable event' – such as death, full or part surrender or assignment for value – may trigger a liability to higher rate income tax, or possibly give rise to a loss of age allowance. Top-slicing relief (which might limit - or avoid - liability to higher rate tax) and the facility to make 5% tax-deferred partial surrenders are normally available.

### Who pays the income tax?

The Finance Act 1998 introduced new rules:

- 1) If the settlor was alive and UK resident for tax purposes immediately before the chargeable event, any gain is treated as part of his or her income. Any tax paid can be recovered from the trustees.
- 2) If the settlor has died or was resident outside the UK immediately before the chargeable event and one or more of the trustees are resident in the UK, the trustees are chargeable on the gain. Tax is payable at the rate applicable to trusts less the basic rate credit.
- 3) If the trustees are not resident in the UK, any UK beneficiary receiving a benefit under the trust will have to pay tax on their share of the gain. Top-slicing relief will not be available.

## Membership Rights

Normally membership rights in the Society apply to the policyholder (or policyholders in the case of joint life policies).

On transferring ownership of a policy by assigning that policy to a trust, membership rights do continue, but are transferred to the first named trustee on behalf of the beneficiaries of the trust.

This trust deed may be used for single or joint, new or existing policies.

This trust deed is not suitable for pension term assurance or for business protection assurance.

# A guide to completing the Flexible Trust

## Page 1

### Policyholder and trustee details

- Where the policy is yet to start, **do not insert the date** – Liverpool Victoria will do this afterwards, when the policy commences.
- Where the policy has already started, insert 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.

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### Flexible Trust

This declaration of trust is made on the  day of  20

**Between 1**  
 Full names of 1st policyholder: \_\_\_\_\_  
 Address of 1st policyholder: \_\_\_\_\_

and  
 Full names of 2nd policyholder: \_\_\_\_\_  
 Address of 2nd policyholder: \_\_\_\_\_  
 (Use Asterisk)

**and 2**  
 Full names of 1st trustee: \_\_\_\_\_  
 Address of 1st trustee: \_\_\_\_\_

and  
 Full names of 2nd trustee: \_\_\_\_\_  
 Address of 2nd trustee: \_\_\_\_\_  
 Full names of 3rd trustee: \_\_\_\_\_  
 Address of 3rd trustee: \_\_\_\_\_  
 Full names of 4th trustee: \_\_\_\_\_  
 Address of 4th trustee: \_\_\_\_\_  
 (Use Original Trustee)

Flexible Trust

### Do not date

Leave blank unless the trust is for existing policies. If your policy has started, insert 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.

## Page 2

### Beneficiary details

- 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 4, 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.

### Policy details

- In **schedule III** enter the policy number(s) and start date if this is for an existing policy(s), and you know them. If it is for a new policy, and you don't know the details, Liverpool Victoria will do this later.

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### Flexible Trust

Now this declaration of trust witnesses as follows

- In this deed the Trustee(s) means the trustee or trustees for the time being of the settlement (each at the date of this deed as the Original Trustee(s) and Trustee(s) thereafter and any of their Trustees.
- The Settlor as beneficial owner hereby assigns the Policy and all benefits payable thereunder to the Original Trustee(s) to hold the same on the trusts described herein and subject to the Trust Provisions described in Schedule I.
- The Trustee(s) shall hold the Policy and all benefits and monies payable thereunder, and all investments and property for the time being representing the same (the Trust Property) upon trust for such one or more exclusive of the other or others of the persons named in Schedule II and in the Trustee(s) their absolute discretion shall assign to Child Trustee(s) or trustee(s) and accede to any term or terms not later than 30 months after the date of death of the first assured under the Policy, or the death of the second assured to be named in the deed under any of the Policies.
- Subject to and in fulfilment of any appointments under clause 3 above or under any appointments made in full respect of the Trust Property the Trustee(s) shall hold the Trust Property upon trust for the person or persons described in Schedule II in the shares therein stated or in the absence of any shares being stated in equal shares available.
- It is hereby certified that this instrument falls within category (i) of the schedule to the Stamp Duty (Exempt Instruments) Regulation 1987 as amended.

**It witnesses whereof** the Settlor and the Original Trustee(s) in acceptance of their appointment have heretofore set their hands to this Declaration of Trust in the presence of the attesting witnesses on the day and year first above written.

**Schedule I (Persons in favour of whom an appointment may be made)**

- Any wife or widow of the Settlor (provided such wife or widow is not also a Settlor)
- Any Child of the Settlor immediately prior to death (provided such Child of the Settlor is not also a Settlor)
- Any child or grandchild of the Settlor
- Any person named in Schedule I below
- 

(Insert details of any persons you may wish to benefit, who are not already included in the schedule)

**Schedule II (Persons entitled if no appointment is made)**

Full names	Share entitlement	Full names	Share entitlement
1. _____	_____	2. _____	_____
_____	_____	_____	_____

(Insert Full names of the current beneficiaries, in the person or persons whom you would wish to benefit if you were to die now, indicating the proportion of the proceeds they should receive)

**Schedule III (Life Policies)**

Policy number(s)	Effective with name of company	Dated
_____	_____	_____
_____	_____	_____

(Insert the details of the policies which are to form the trust assets)

Flexible Trust

### All potential beneficiaries

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

### Immediate 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.

### Policy details

Enter the policy number(s) and start date(s) of the policy(s), if you know them. If you don't, then Liverpool Victoria will do this later.

