

A guide to trusts.

TRUSTS



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Setting up a trust is often in the best interests of your client. This guide aims to help you understand the purpose and benefits of putting your client's plan in trust.

You will find a glossary of terms at the back of the Guide.

Note: We accept no responsibility that a trust is suitable for your client's individual requirements. If you are unsure about its suitability, we strongly advise that you seek specialist legal or tax advice. This is particularly true if you become aware of any unusual tax circumstances when discussing this with your client.

The value of a trust.

A trust is a legal arrangement that allows you to make a gift to someone without giving them control over the property you give away. This is true of anything you put into trust, be it money, investments, property or a life insurance policy. The terms of a trust are usually set out in a document known as a "Trust Deed".

When a personal insurance policy, such as the PruProtect Plan is put in trust, the main advantages are:

- A death claim will usually be paid quicker than if the policy was not put in trust.

If your client dies and their plan is not written in trust, the person responsible for administering their estate has to obtain the appropriate authority before they can deal with their assets, including any proceeds due from an insurance policy. This process is known as 'Probate' in England and Wales, and is called 'Confirmation' in Scotland. It can take several months and until it happens, your client's dependants could be suffering financial hardship while they wait for funds to be released. And this is likely to be at what is already a very stressful time for them.

When you put your client's insurance policy in trust, you can avoid the need for Probate or Confirmation to deal with the policy on their death (although, of course, it may be needed for other assets in your client's estate). Trustees, appointed by your client will be the legal owners of the policy and so they can make sure the funds are distributed immediately, so long as there is at least one surviving trustee after your client's death.

- The plan proceeds are usually free of Inheritance Tax.

Inheritance Tax in the UK is currently payable at a rate of 40% on any part of an estate valued over £325,000 (in the tax year 2009/2010). If the insurance policy is not written in trust then when your client dies any money paid out is added to their estate. So even if their estate is worth less than £325,000, a payment from their PruProtect Plan may take them over the limit giving rise to a 40% tax charge on the excess. Setting up a trust means that your client has made a gift of some, or all, of the PruProtect Plan benefits before they die, so removing that part of the policy from their estate altogether.

Note: There are some unusual circumstances where Inheritance Tax would still apply which usually revolve around your client's tax status and domicile or the scale of the premiums paid. Also please note that if the trustees were to keep the payments from any insurance policy in the trust for more than 10 years then there may be an Inheritance Tax charge at the 10 year anniversary. If you become aware of any unusual tax circumstances when discussing this with your client you are strongly advised to seek specialist legal advice.

There are also some complicated tax rules that effectively mean that if your client can take a payment from a gifted policy which reduces the remaining sum assured left in trust then a later Inheritance Tax liability can arise. This means that a PruProtect Plan with Serious Illness Cover and Life Cover should not be put in trust so that serious illness payments go to your client rather than the beneficiaries unless the plan automatically reinstates the full Life Cover (either with a 100% Minimum Protected Account option or with the Protected Life Cover option). You could, however put the whole plan into trust for the beneficiaries, i.e. including the Serious Illness Cover payments.

The people involved in a trust.

There are three groups of people involved in any trust.

The Settlor(s)

The settlor is the person who sets up the trust. With the PruProtect Plan it will be the planholder as they are providing the property (i.e. the insurance policy) that is going into the trust. The settlor will appoint 'trustees' to administer the trust and they will decide which of the beneficiaries will benefit.

This means that if the plan has been taken out on a life of another basis then the applicant, and not the person covered, will be the settlor and if two people jointly own the plan, then they will have to set up the trust jointly.

Anyone that is over the age of 18 and who is mentally able can be a settlor.

The Trustees

Once appointed, the trustees become the legal owners of any property in the trust. The trustees hold and administer the trust property for the sole benefit of the beneficiaries.

Under the terms of our trust wording, your client(s), as the settlor(s), will automatically be trustees until they die. It is therefore strongly advisable to appoint someone to act with them as additional trustees. This is mandatory in Scotland.

Again, a trustee must be aged 18 or over (16 in Scotland) and be mentally able.

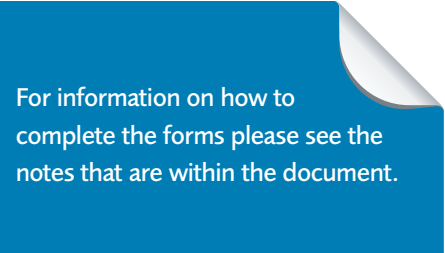
A trustee can be a family member, friend, professional adviser or they could appoint a Trust Corporation. However your client should take care to avoid the risk of any conflicts of interest (e.g. to appoint a trustee who is a beneficiary) and to avoid appointing trustees who have a poor personal financial history.

Trustees must understand their legal duties in relation to the trust, so your client should appoint people that they feel they can trust to take the responsibilities seriously.

The Beneficiaries

The beneficiaries are the people your client wants to receive the benefits they are giving away.

Our trust wording creates a discretionary trust and we have included a list of the most common beneficiaries you would see in this type of trust. This is the list of people to whom the trustees could make a payment at some point in the future. Your client can add someone else to this list by adding them in the space provided. Equally if they want to add someone else at a later date, they can do this by writing to the trustees.



For information on how to complete the forms please see the notes that are within the document.

How can my client set up a trust?

Our discretionary trust wording is suitable for plans with more than one cover because they can deal with the different covers separately. So your client can use them if they want to keep some of their covers for themselves but give the rest away to their beneficiaries. Our trust forms would establish a discretionary trust. This means they are very flexible and that the chosen beneficiaries should benefit in a tax-efficient manner.

In the trust form your client chooses:

- the person or people who are going to administer the trust (the trustees)
- the people they want the trustees to choose from to receive the gifted benefits (the discretionary beneficiaries).
- Which benefits under the PruProtect Plan are to be either;
 - a) the retained benefits – those that your client wants to benefit from during their lifetime;
 - b) the gifted benefits – those that your client would want someone else to receive.

Your client can't take a payment from a gifted policy which reduces the remaining sum assured left in trust without risking a later Inheritance Tax liability. This means that a PruProtect Plan with Serious Illness Cover and Life Cover should not be put in trust unless the plan automatically reinstates the full life cover (either by using a 100% Minimum Protected Account option or by using the Protected Life Cover option). You could, however put all of the benefits into trust for the beneficiaries, ie including the Serious Illness Cover payments.

Serious Illness Cover and Income Protection are usually retained benefits whereas Life Cover and Terminal Illness Cover are usually gifted benefits. If the plan owner suffers an illness it means the money would be paid to them. However, there may be reasons why your client wants to gift away more than just the Life Cover, or any Terminal Illness Cover and our trust wording will allow this to happen.

Example

Mr Jones is taking out a PruProtect plan with the following covers:

- £150,000 increasing Life Cover
- £100,000 increasing Serious Illness Cover
- £24,000pa Income Protection.

He is married, with two children.

£150,000 increasing Life Cover is made a gifted benefit.

The two children and his wife become discretionary beneficiaries so any of them can benefit in the future depending on the circumstances at the time. For example, this money could be used to pay school fees for the children.

£100,000 Serious Illness Cover is made a retained benefit.

If Mr Jones suffers a serious illness the benefit would become a retained benefit and be paid to the settlor.

£24,000pa Income Protection is made a retained benefit.

Any claims proceeds would be paid to the settlor.

Other frequently asked questions.

Can my client change the trustees once the trust has been set up?

Yes existing trustees can be removed or new trustees can be appointed. The settlor has the power to remove a trustee by giving him or her at least 30 days' written notice. This is known as a Notice of Removal. They can do this as long as at least two trustees remain, one of which is not the settlor. To request the retirement of trustees, the settlor must serve a Notice of Removal.

What are the main duties of a trustee?

The trustees' main duties are as follows:

- To invest the trust fund until paid out to beneficiaries
- To act impartially
- To obtain and consider proper advice before exercising powers of investment (trustees may delegate their powers of investment and management to someone else)
- To keep records of any decisions and actions as they may need to prove they are managing the trust fund properly
- Not to use the trust to benefit themselves. If the trustee is also a beneficiary, then they must not use their powers as a trustee to gain any benefits over the other beneficiaries.

Can my client's spouse/civil partner be a beneficiary?

Your client's spouse/civil partner is automatically included as a discretionary beneficiary in our trust wording. This can allow a great deal of flexibility for future planning, particularly where each of a married couple is taking out their own plans. Should the couple die at the same time, both plans would already be held outside their estates and will be free of Inheritance Tax. But if only one of them dies, the trustees have the ability to make an appointment to the survivor allowing them to repay, say, the mortgage.

On a jointly owned plan can my clients specify that, if either of them dies, a specified gifted benefit automatically goes to their beneficiaries but any other gifted benefit goes back to the survivor after 30 days?

No, HM Revenue and Customs rules would mean that this is likely to create a tax charge. In this situation your clients must take out two separate plans:

- One for the covers they do not want to have any access to, and to set up in a trust (where they will not be able to benefit from any benefits paid if either of them dies); and
- A second plan for the covers they do want access to.

What happens if my client adds more covers to his plan?

Any new cover added to a plan is automatically subject to the existing trust arrangements. It will therefore automatically become either a gifted benefit or a retained benefit depending on what kind of cover it is and what was specified in the trust documentation.

What happens if my client gifts the life cover and retains the serious illness cover and they do not have either the Protected Life Cover or Minimum Protected Account options?

They risk a liability to Inheritance Tax on the eventual proceeds on their death.

Can my client change a gifted benefit to a retained benefit?

No. For Inheritance Tax purposes a gift is irrevocable, it cannot be claimed back. Tax would be charged if this was attempted.

Can my client change a retained benefit to a gifted benefit?

No. The trust form sets out which of the covers are gifted and which are retained and this cannot be changed once the trust is completed.

How are the funds from a trust distributed?

Any gifted monies from the PruProtect Plan will always be paid to the trustees. The trustees are then responsible for paying the money to the beneficiaries.

Will any Inheritance Tax be payable in the event of a claim?

Although the plan is in trust, Inheritance Tax could still be payable in some circumstances.

- If the claim is for Income Protection no Inheritance Tax is payable as this has no value in your client's estate when they die.
- If the claim is on diagnosis of a Serious Illness or Total Permanent Disability, Inheritance Tax would only be payable if they then die and have not spent the money from the plan. Any remaining amount will be treated as part of their estate for Inheritance Tax and could be subject to tax at 40%.
- If the claim is on any gifted benefits there will be no immediate liability to Inheritance Tax when your client dies as this will not be part of their estate. But, if the proceeds of the plan remain in trust past the next 10-year anniversary of the date the trust was created, a liability can arise.

The taxation information set out in this guide is based on our understanding of current taxation legislation and practice as at April 2009. We cannot accept any responsibility for its interpretation or any subsequent changes.

Glossary of terms.

Confirmation.

The legal process in Scotland of confirming who can deal with an estate after someone dies. This has to happen before the assets of the estate can be distributed according to the terms of the will, or if there is no will, the rules of intestacy.

Deed of appointment of trustee.

A deed used to appoint a new additional trustee.

Deed of appointment to benefit.

A deed used to change the named beneficiaries or the shares they are to receive. The deed may be 'absolute' or 'irrevocable', both meaning that no further changes can be made, or 'revocable' meaning that the appointment can be changed in the future.

Deed of retirement.

A deed used to allow someone who no longer wants to be a trustee to retire.

Discretionary beneficiaries.

The list of people to whom the trustees may distribute some or all of the trust fund.

Discretionary trust.

A trust under which the trustees can decide when, how much and to which beneficiaries a payment of the trust fund will be made.

Gifted benefits.

The benefits from the plan that the settlor wants to give to someone else.

Grant of representation.

The legal document granted by the Court that gives authority to named individuals to deal with the estate of someone who has died.

Intestacy.

When someone dies without leaving a valid will. It is also possible for a partial intestacy to occur if someone's will is not worded properly and does not cover all of their estate. Where someone dies intestate, the law sets out who will receive their estate.

Glossary of terms.

Minimum Protected Account.

An option available in the PruProtect Plan where the Life Cover and Serious Illness sum assured is reinstated to a chosen level after any Serious Illness claim.

Personal representatives.

The people who deal with your client's estate after his death. These are either the executors of his will or if he has not left a will, the people appointed as administrators under the intestacy rules.

Probate.

The legal process in England, Wales and Northern Ireland of confirming who can deal with an estate after someone dies. This has to happen before the assets of the estate can be distributed according to the terms of the will, or if there is no will, the rules of intestacy.

Protected Life Cover.

An option available in the PruProtect Plan where the Life Cover sum assured only is not reduced by any Serious Illness claim.

Retained benefits.

The benefits from the plan the settlor wants to keep for himself.

Trust fund.

The property subject to the trust. This could be the PruProtect plan, or after a claim the money paid or any investments made with it.



The Prudential Assurance Company Limited provides and manufactures benefits under the plan. Prudential Health Services Limited distributes and services the product and issues the documentation. PruProtect is a trading name of Prudential Health Services Limited and Prudential is a trading name of The Prudential Assurance Company Limited. Both companies are registered in England and Wales and have their registered offices at Laurence Pountney Hill, London EC4R 0HH. Prudential Health Services Limited is registered number 5933141 and The Prudential Assurance Company Limited is registered number 15454. Prudential Health Services Limited and The Prudential Assurance Company Limited are authorised and regulated by the Financial Services Authority.