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# A guide to trusts Protecting your family



## Introduction

Life assurance should be an important part of everyone's financial planning. Taking out life assurance is the first step towards providing security for your dependants when you die.

You'll want to make sure that the full benefits of your policy reach your dependants quickly. The emotional trauma of a death in the family could be made much worse by legal delays or by tax or debts having to be paid out of the money your beneficiaries would get.

Placing your life assurance in trust is one way of helping make sure that the full value of your life assurance policy is given to those you want it to go to, without unnecessary delays.

## General information

#### What is a trust?

A trust is a way of giving away something of value (the asset) for the benefit of others (the beneficiaries) but without giving them full access to and control over the asset. The asset can include property, shares and money, as well as life assurance policies.

When placing the asset in trust you specify who you want to be a beneficiary and who you want to look after or control the trust asset (the trustees).

#### Setting up a trust with a Legal & General policy

The 'grantee' is the person who sets up the trust by placing the policy into the trust. The grantee can be more than one person, for example a couple can jointly create a trust for their children.

#### Why should I use a trust?

- When you die, the Probate Registry must give permission for the assets in your estate to be given to your beneficiaries. In England they normally do this by issuing a document called a 'grant of probate'. This takes time and if you die without making a will it takes even longer. However, trustees do not have to wait for the probate so your life assurance can be paid out much more quickly.
- When you die, if your estate is worth more than a certain amount, inheritance tax
  may be due. If you do not place your life assurance under trust, it will become
  part of your estate which could increase the chance of inheritance tax being due
  or increase the amount of tax payable. Placing your policy under trust may mean
  that the beneficiaries will not have to pay inheritance tax on the proceeds.
- By placing your policy under trust, you can ensure that the proceeds are used as
  you intend. So, for example, if you owed any money to creditors when you died,
  any benefit from a life assurance policy placed in trust would usually go to your
  beneficiaries and not your creditors.
- If you and any partner of yours were to die leaving children under 18, the
  trustees could use the trust to support your children without giving them full
  access to the money. Once your children become adults they could, subject to the
  terms of the trust, have access to the money in the trust.

#### The types of trust discussed in this guide are:

- Legal & General's flexible trust under which a beneficiary or beneficiaries are named but can be changed.
- Legal & General's split trust under which critical illness benefits can be paid to the grantee and any death benefits held in trust for the beneficiary(ies) on terms similar to that of the flexible trust.

#### Can any policy be put in a trust?

Generally, any policy can be written in trust. However, some policies should not ordinarily be put in a trust. For example, life assurance that you arrange to cover your mortgage. This type of policy is not designed to provide money for your dependants but to repay the mortgage. Other examples are savings plans or endowments where you would want the benefit of the policy to be paid to you.

#### What if I change my mind?

Once a trust has been set up, it cannot usually be brought to an end before it has served its purpose. It is possible, if all the beneficiaries agree, to cancel a trust – but it is difficult. Although the trustees can change the beneficiaries later on, you should be sure that a trust is right for you before you set it up.

#### Do I need a solicitor?

If you want to, you can ask a solicitor to draw up a trust deed for you. We have already produced a flexible trust document that should be suitable for most life assurance policies and your financial adviser will normally guide you. If you feel you need more guidance, we recommend you get legal advice.

### Trustees

#### What is a trustee?

A trustee is someone you appoint to look after the asset(s) you are putting in trust (for example, your Legal & General life assurance policy). The trustees are the legal owners of the trust assets. They must keep to the conditions of the trust, and act for the benefit of the people you choose as beneficiaries. Where the trust asset is a life assurance policy, in the event of your death, the trustees will need to make a claim for the proceeds and ensure that these proceeds are passed on to the beneficiaries under the trust.

#### Who can I appoint as a trustee?

You should appoint someone you believe will act in the best interests of the people you want to receive the benefit. You must also make sure that any person you want to be a trustee is willing to do so.

Generally, any individual over 18 and of sound mind can be a trustee. It does not matter whether or not they will benefit from the trust. It is normally sensible to choose people who live in the United Kingdom.

Companies such as banks, trust corporations and solicitors can act as trustees but they usually charge for their services. A trust corporation is a company specifically set up to provide trustee services.

#### Can I be a trustee?

Yes, and our trusts automatically make you a trustee.

#### Can I change the trustees later?

Under our trusts, you can change the trustees at any time. You can appoint new ones or remove existing ones. Under our trusts, you can remove trustees with or without their permission.

#### How many trustees should I choose?

You should aim to make sure that there will always be at least two trustees who can deal with the assets of the trust. For this reason, it is normally sensible to appoint at least two trustees as well as yourself.

#### What happens if a trustee dies?

If a trustee dies, the remaining trustees can still carry on but a replacement should be appointed. If the trustee was the last surviving trustee, their legal representatives will have the power to appoint new trustees or take over as trustees themselves.

## What can the trustees do if I don't pay the policy premiums?

As legal owners of the policy, the trustees can arrange for the premiums to be paid but they are not obliged to make sure this happens or pay the premiums themselves. If no premiums are paid, the policy will eventually end without any value, and if the only asset of the trust is the life assurance policy, the trust would cease.

## What happens if a trustee no longer wants to be a trustee?

A trustee can "retire" at any time. They will need to make all the other trustees aware of their decision and sign new documentation retiring them as a trustee and/or appointing a new trustee to take their place.

#### How do the trustees make a claim?

In the event of your death the trustees will need to send the following items to Legal & General's Life Claims Department:

- 1. Deed of assignment/trust form
- 2. The policy document
- 3. The death certificate

The address to send these items to is:

Legal & General Life Claims Department City Park The Droveway Hove BN3 7PY

Once the claim is accepted, the trustees will be offered a choice of payment. This could be by cheque or into a trustees' bank account.

If all correct documents are available then the claim could be paid in as little as 10 days.

## What if the children are the only beneficiaries but are not yet 18 years old when the sum assured is paid out?

The trustees will have the discretion to use the funds to provide for their immediate benefit. Once a child reaches 18 they are then legally entitled to their share of the trust money.

## Beneficiaries

#### Who is a beneficiary?

A beneficiary is someone you choose to benefit, or potentially benefit, from the assets in the trust.

#### Who can I choose as a beneficiary?

When you set up our flexible trust or our split trust, you can name the specific people who you currently want to benefit from the trust. You can enter their names in Section B in our split trust form and our flexible trust form. At the same time, if you want to, you can describe a group of people who could potentially benefit from the proceeds of the policy in the future. For example, you may say my wife and our children. It doesn't matter whether or not you have any children yet. You can describe this group in Section A in our split trust form and on our flexible trust forms.

Later on you can change your mind about the specific beneficiaries. You can ask the trustees to add new people or remove any of the people you originally chose. However, anybody the trustees appoint as a beneficiary must be named or belong to the group you describe in the "Potential Future Beneficiaries" box (Section A in our split trust form and our flexible trust form).

#### Can I be a beneficiary?

Yes, you can be a beneficiary. However, if you are, you will lose many of the inheritance tax benefits you get from putting a policy in trust and so the amount your beneficiaries would receive could be reduced. This is why we normally suggest you are not a beneficiary.

If you put a policy with critical illness cover as well as life assurance in a split trust, you can keep the life assurance under trust for your beneficiaries and you can receive the benefit for critical illness cover without losing the inheritance tax advantage.

## What share of the proceeds does each beneficiary receive?

When you set up a flexible trust you can choose specific people who you want to benefit from the trust (the current beneficiaries). These are the people named in Section B on our flexible trust forms. If there is more than one beneficiary you can also indicate how much you want each person to receive. This is normally written as a percentage of the amount of the policy proceeds. If you don't specify how the proceeds should be split then the trustees will normally ensure that the policy proceeds are split equally. However if you also describe a group of potential beneficiaries on the trust form (in Section A), then the trustees have the power to decide whether any of the potential beneficiaries can benefit from the trust, and if so, what share of the proceeds they will receive. This can mean that the share of the proceeds allocated to the current beneficiaries will be affected. (Our standard forms specify that there have to be three trustees in total to make an appointment of benefit).

#### What rights do the beneficiaries have?

Beneficiaries can take legal action against the trustees if they act outside the terms of the trust or against the beneficiaries' best interests.

### Tax

There may be a few rare instances when a tax charge could apply to protection life assurance policies placed in trust.

#### Will I have to pay tax on my premiums?

Under current law, premiums paid into a policy held in trust can be exempt from any tax charge under the 'normal expenditure out of income rules'. To claim the exemption, you must show that paying the premiums comes out of your income and does not reduce your standard of living.

In addition, you can gift up to £3,000 per year into a trust without incurring a tax charge (assuming you are not already using the annual exemption).

#### Will I have to pay tax on the proceeds of the policy?

When a policy is held in trust you have no entitlement to the sum assured and so your beneficiaries will not normally have to pay inheritance tax (IHT) on the proceeds of the policy. Only the premiums paid are gifts and these will usually be exempt – see above.

If you place or gift an existing policy under a flexible trust this will be a chargeable lifetime transfer, unless it is exempt as described above. If you die within seven years of placing the policy under trust (assuming the transfer is not exempt), inheritance tax may be due depending on the value of the policy. The value will normally be based on the premiums already paid or the value of the policy if it had been cashed in at the time – whichever is higher. An even higher value may be possible if the life assured is in serious ill health. If the value exceeds the current nil rate band available to the policyholder (taking account of chargeable transfers made in the immediately preceding seven years), then inheritance tax is payable on the excess amount over the nil rate band at half the death rate (currently 20%). The nil rate band for 2007/2008 is \$300,000 rising to \$312,000 for 2008/2009.

**Note:** from 9 October 2007, the Government changed IHT rules. This change allows a surviving spouse's or civil partner's nil rate band allowance to be increased by the proportion of any unused nil rate band allowance of the first to die. The maximum increase would be 100%.

#### What other inheritance tax charges could apply?

There are other charges that may very occasionally apply to a flexible trust. These would probably only occur if the trust assets had significant value and include:

#### **Entry Charge**

This is an immediate tax charge on the gift or asset placed in trust and is calculated on the value of the gift placed in trust. However, this charge would not normally apply to life assurance policies from outset, as the 'gift' is only the premiums paid into the policy and as explained previously, these will normally come under the \$3,000 per annum limit or the normal expenditure rules, or would fall within the nil rate band – currently \$300,000 (2007/2008) rising to \$312,000 (2008/2009).

#### **Periodic Charge**

There is a possible charge made periodically (every 10 years) of up to 6% of the value of the assets over the nil rate band, less any chargeable transfers made by the grantee in the seven years preceding the establishment of the trust. Again, it is unlikely the policy will have a market value over the available nil rate band, unless for example there has been a death and the trustees are still holding the sum assured on a ten year anniversary, having not yet paid it to the beneficiaries or the life/lives assured are in serious ill health. Retaining policy proceeds inside the trust could happen if the trustees are holding the policy proceeds for the benefit of children later on in life or if the benefits are paid over a period of time – for example Family Income Benefit.

#### **Exit Charge**

A possible exit charge of up to 5.85% will be payable where capital leaves the trust. For example, where the trustees pay the policy proceeds to a beneficiary/ies after a claim. There will rarely be an exit charge before the first 10 year anniversary and only between anniversaries if there was a periodic charge at the last 10 year anniversary.

#### What is a Gift with Reservation?

If you make a gift but still get some use or benefit from it, HM Revenue and Customs will treat this as being part of your estate, and so your family may have to pay inheritance tax. For example, if you place a policy in trust and include yourself as a potential or actual beneficiary, any death benefit from such a policy will be treated as part of your estate for inheritance tax.

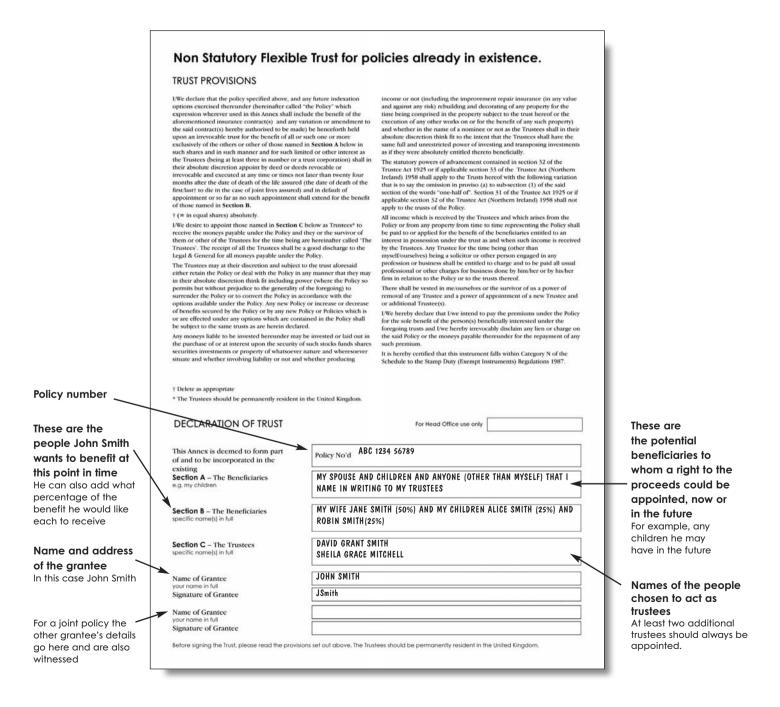
If you put a policy combining life assurance and critical illness cover into a split trust and do not include yourself as a potential beneficiary for the death benefit, you can still receive the critical illness benefit and such an arrangement is not treated as a gift with reservation for inheritance tax purposes.

## Completing the trust forms for existing policies

#### The flexible trust

Trust forms are fairly straightforward to complete despite some of the legal terms and language used.

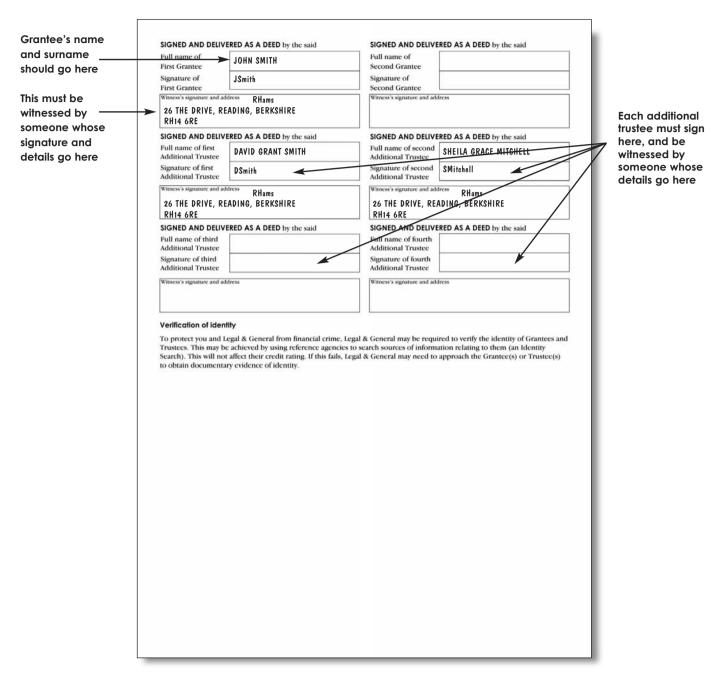
Below, we have shown an example for John Smith who, in the event of his death, would like the proceeds from the policy to be made to his wife and children. He also wants to be sure that he can add others to the trust in the future, for example, if he has any more children.



The second part of the form requires the grantees' and trustees' signatures.

	DEED OF ASSIGNMENT/ASSIGNATION  This Assignment/Assignation is made on the 12 day of JANUARY 2008 (year)		2008 (year)	Fill in the date you  are completing the
	Between (name of first Grantee)	JOHN SMITH		trust form here
		20/09/71		
	Date of Birth			
	of (address)	13 GOODWILL STREET, READING, BERKSHIRE, RH11 4SR		
For a joint policy the other grantee's details go here and are also witnessed  Details of the people chosen to act as trustees At least two additional trustees should always be appointed	and (name of second Grantee)			
	Date of Birth			
	of (address)			
	hereinafter called 'the Grantee(s)' of the one part and the Grantee(s)			
	and (name of first Additional Trustee)	DAVID SMITH		
	Date of Birth	27/05/67		
	of (address)	112 PRIMROSE DRIVE, SUNNING, BERKSHIRE RH11 9BR		
	and (name of second Additional Trustee)	SHEILA G MITCHELL		
	Date of Birth	05/11/75		
	of (address)	94 ORCHARD CLOSE, CARDIFF CF4 7RF		
	and (name of third Additional Trustee)			
	Date of Birth			
	of (address)			
	and (name of fourth Additional Trustee)			
	Date of Birth			
	of (address)			
	hereinafter called 'the Trustees' of the other	part		
	Whereas the Grantec(s) is/are the Grantec(s) of the Policy(ics) of Assurance (hereinafter called 'the Policy(ics)') specified in the Schedule hereto and hold the Policy(ics) upon the trusts and with and subject to the powers and provisions therein set out and whereas the Grantec(s) hashive appointed the Trusteces as Trustecs to receive the moneys payable under the Policy(ics) and is/are desirous of assigning the Policy(ics) to the Trusteces.  Now this deed withnesseth that the Grantec(s) as Trustec(s) hereby assign the Policy(ics) unto the Trustecs to hold the same unto the Trustecs upon the Trusts and with and subject to the powers and provisions upon which and subject to which the Grantec(s) hold the same and the Trustecs bereby accept such trusts it is hereby certified that this instrument falls within Category A of the Schedule to the Stamp Dury (Exempt Instruments) Regulations 1987.  In wilness whereof the said parties to these presents have hereunto set their hands the day and year first above written  The Schedule herein before referred to  Office: Legal & General Assurance Society Limited  Date 11/11/07 Policy No. ABC123465789			Fill in the date the – policy went live and the policy number

The third part of the form requires the grantees', trustees' and witnesses' signatures.



#### Note

#### Please ensure

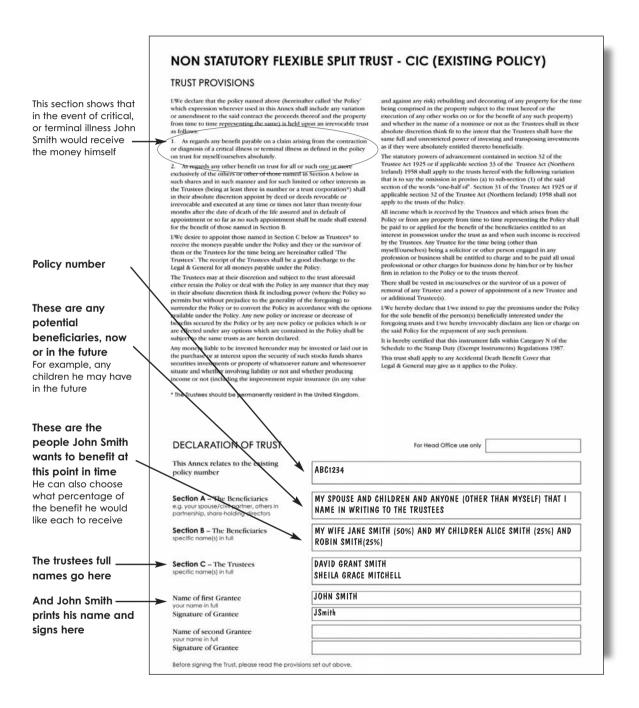
- You initial any amendments or corrections you make on the trust form
- You complete the sections relevant to yourself and have someone witness your signature
- Your trustees complete their details and sign the form, again with a witness.

#### The split trust

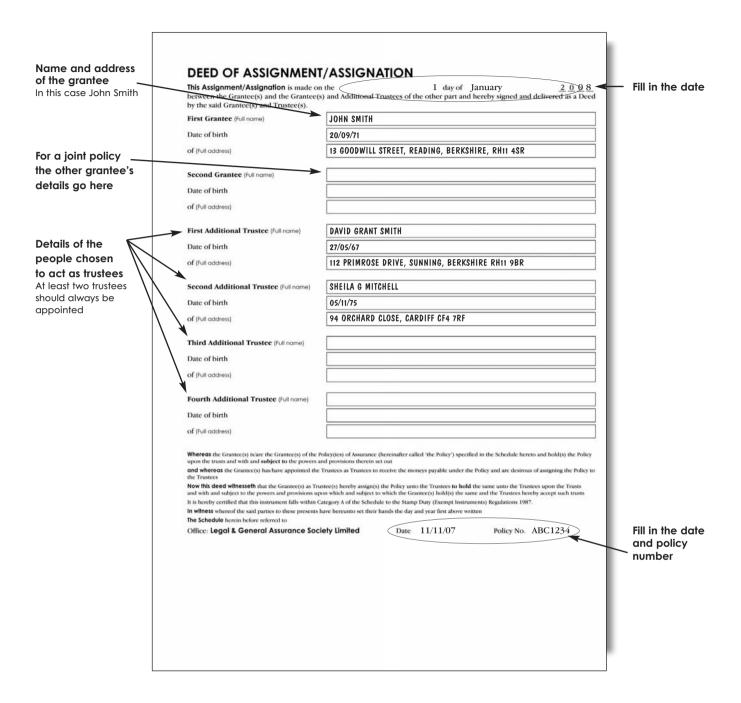
A split trust is often used if your policy has two distinct benefits, for example your policy pays out in the event of your death, or if you suffer a critical illness and are eligible to claim.

In the event of death, the money would be paid to your chosen beneficiaries. However, were you to contract a critical or terminal illness, you may want the money to be paid to yourself, perhaps to help with treatment.

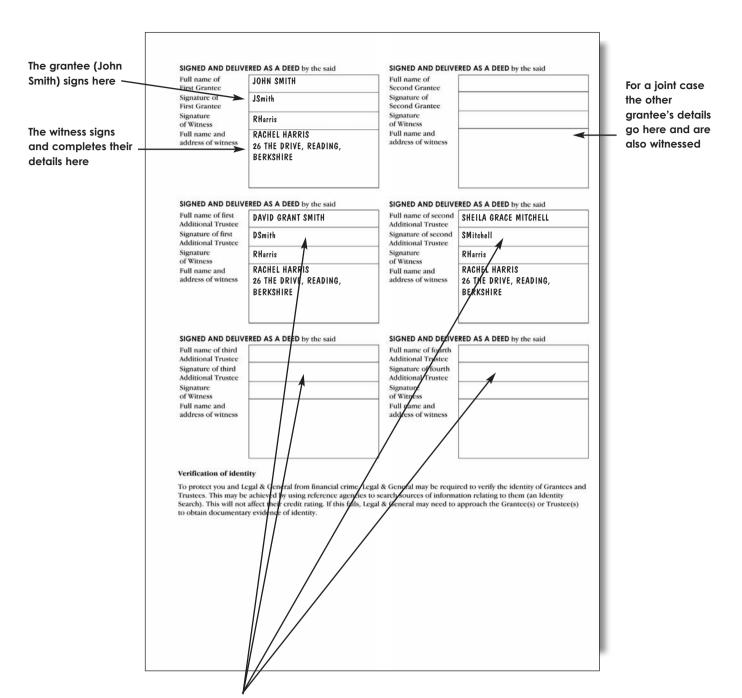
The following example for John Smith demonstrates how to complete the split trust form.



The second part of the form requires the grantees' and trustees' signatures.



The third part of the form requires the grantees', trustees' and witnesses' signatures.



#### Your chosen trustees need to sign here

At least two trustees should always be appointed. Each signature must be witnessed – but it does not have to be the same person witnessing them all.

## Important notes

On the previous pages we have provided examples of how to complete our trust forms. Each example is for guidance only. Your financial adviser will have provided you with the appropriate form for your needs and circumstances. If you are unsure in any way, please seek further advice before placing your policy in trust.

We have written this guide to give you general information about trusts. It is not intended to replace legal advice. If our trust form does not meet your needs then you should talk to your financial adviser or contact your legal adviser.

We can also provide Absolute Trust forms if you ask us to.

We have based the information in this guide on our understanding of the laws relating to trusts and inheritance tax at the time of publication. Although we have made every effort to make sure the information is accurate, we cannot take legal responsibility for any particular statements.

This guide is based on our understanding of current law and HMRC practice.

In preparing this guide we have assumed that only Legal & General's own trust documentation for non-substantive protection policies is to be used. Life interest, revertor to Settlor, discretionary, and accumulation and maintenance trusts are not covered, nor are trusts used in relation to investment policies. The assumption made in the guide is that the grantee is the legal and beneficial owner of the policy.