

# Using trusts with life policies

A customer guide to our Flexible Trust

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### **Legal Disclaimer**

The contents of this Guide are based on our understanding of Law and Inland Revenue practice as at January 2016. As both are subject to change, the accuracy of the guide cannot be guaranteed, particularly over the longer term. We cannot be held responsible for the actions of yourself and your trustees based on the contents of this guide. If you are in any doubt, please contact us or seek professional advice.

# HSBC Customer Guide:

## Flexible Trust for Life Policies

### Why use a trust?

- ◆ Quicker payment out to your family and other beneficiaries following your death;
- ◆ gives you control and flexibility over who benefits; and
- ◆ inheritance tax benefits.

In the following pages where we use a technical term you will find it explained in more detail on page 7 of the Deed of Appointment.

### What is a trust?

A trust allows the owner of a life policy (the settlor) to specify who can benefit from the policy proceeds after they die (the beneficiaries). This is in a binding legal document (the trust deed) where two or more individuals (the trustees) hold the life policy and are bound to follow the wishes of the policy owner after he or she dies.

With a Flexible Trust the idea is that who might benefit is flexible to allow for changes in your circumstances before you die. There are Potential Beneficiaries which is a wide group, for example, all your children, including stepchildren, adopted children and other dependent children (even if not yet born). You can add people to this list by name, for example, friends.

There are then Named Beneficiaries: here you specify who you would like to benefit in what proportions. If there are no changes in your circumstances before you die these will be the beneficiaries.

The legal effect of the trust is that you have given away the life policy (and its proceeds). You cannot change your mind as it is not yours any longer.

You, however, remain responsible for paying the premiums.

### Advantages of a trust for your life policy

#### Quicker payment on death

When someone dies there is a legal process of probate where all the assets are gathered in and then paid out to beneficiaries. This can take several months and sometimes even cash in a bank account cannot be paid out until the probate process is completed.

The trust is completely separate from your assets, it is not included in your Will and does not need probate. This means the cash from the life policy can be paid to your beneficiaries much more quickly.

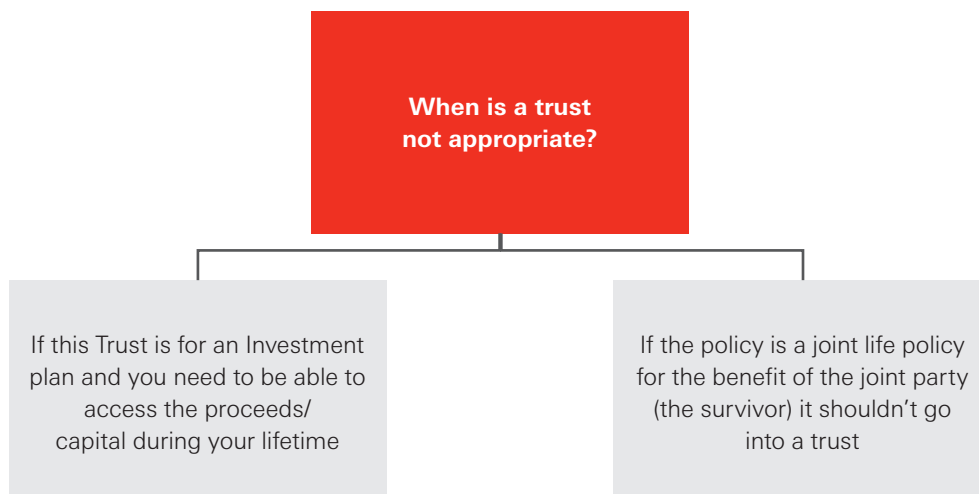
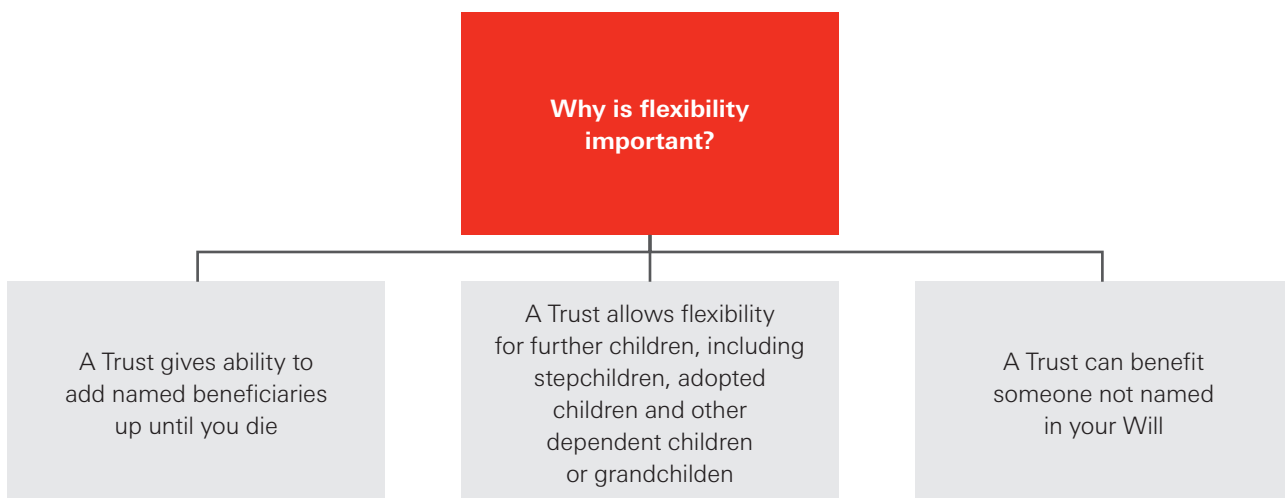
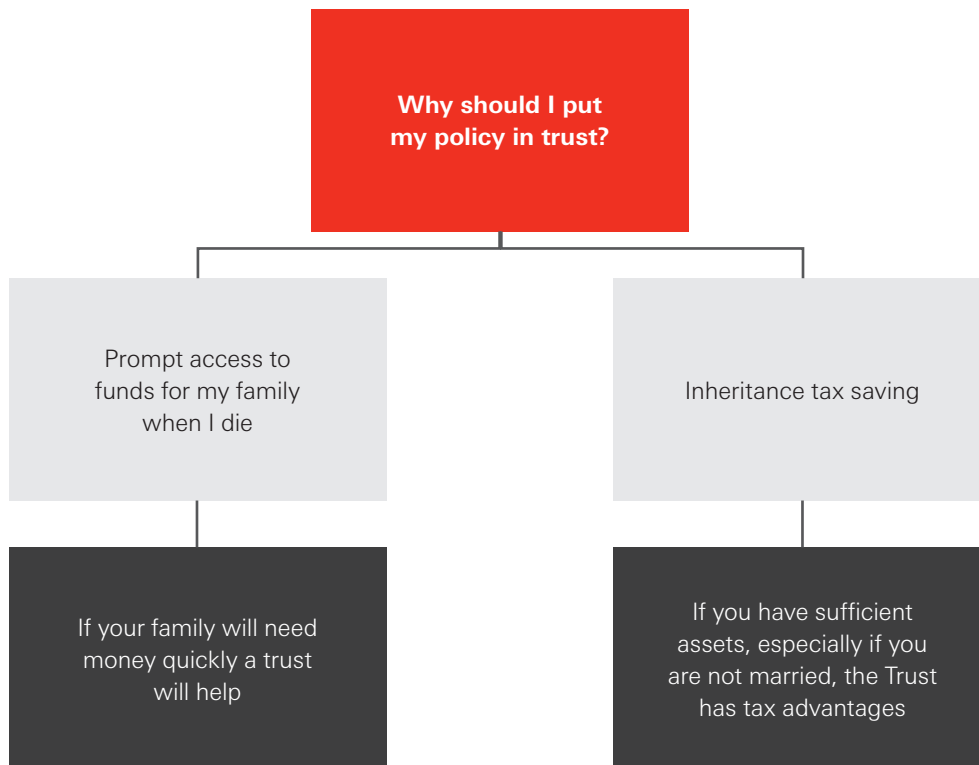
#### Flexible choice of beneficiaries

You can include anyone in the list of beneficiaries. If circumstances change you can easily add (or remove) beneficiaries. Also, on your death the trustees have flexibility in how they benefit, for example, young children or grandchildren.

#### Inheritance Tax

The cash in the trust is not included in your assets on death and so is not liable for inheritance tax on your death.

For more detail on inheritance tax see page 6.



### **The Flexible Trust is also not suitable for:**

- ◆ business protection arrangements
- ◆ policies taken out by companies
- ◆ where there is an existing trust.

Note that, if your policy includes critical illness cover, you can still get the benefit of this yourself even though the policy is in trust, because the trust is drafted so as to separate this out. So it is fine to use the trust even though you need the critical illness benefit yourself.

### **Trustee Duties**

- ◆ Trustees must act in the best interests of the beneficiaries
- ◆ They must follow the terms of the trust deed
- ◆ They must look after the trust money and keep accurate records
- ◆ Trustees are responsible for filing any tax returns required (this obligation will arise once the policy has paid out cash) and paying any tax due
- ◆ If in doubt they should take professional advice
- ◆ Trustees all need to act and take decisions together.

### **Trustee Powers**

Trustees have lots of powers both as set out in the trust deed and given by law. The powers give them flexible ways to benefit the beneficiaries and allow them to look after and invest the trust money, so they will mainly only be relevant once the life policy has paid out.

These powers include:

- ◆ power to choose from the Potential Beneficiaries who should benefit and when (depending on the circumstances)
- ◆ power to make payments out to the beneficiaries including to guardians of children
- ◆ power to make loans, including interest free, to the beneficiaries
- ◆ investment powers.

### **Who picks the Trustees?**

You pick the first trustees. Under our standard Flexible Trust Deed you are a trustee yourself when the trust is first set up and you choose who is to be appointed using our Deed of Appointment.

You can also remove a trustee and appoint a new one while you are alive.

After you die the surviving trustees can appoint any new trustees needed.

- ◆ Anyone over 18 years old can be a trustee.
- ◆ You don't need a professional (for example, a solicitor or an accountant) unless you want one: they can charge to be a trustee while all other trustees are not entitled to charge.
- ◆ For tax reasons all trustees should be resident in the United Kingdom.

The trust is drafted to last for 125 years – this being the maximum period allowed by law. However, a trust can be ended much earlier when all the money is paid out to the beneficiaries.

# Setting up a trust

## How to complete the forms

A trust is usually set up by a written statement of what you are doing. This written statement creating the trust, together with the general principles of trust law, governs who will look after the trust assets (eg, the policy), how they will do it, and for whose benefit they will hold them.

**All trust forms and Deeds of Appointment should be completed in capitals to ensure clarity.**

In this next section we show you how to complete the trust documents.

# The Flexible Trust (Declaration)

This Declaration of Trust is made by the person[s] named below ("the Settlor(s)")

Title  Mr  Mrs  Miss  Ms  
 Other (please specify)

The settlor is the person applying for the policy. Their details need to be input in this section.

### Explanatory Notes

Please insert full name(s) and address(es) of the Settlor(s). DO NOT USE INITIALS.

These should be the owners as shown on the Policy Schedule or the person(s) applying for the new Policy. So if there are joint owners of the policy there will be two Settlers.

Surname   
 All Forenames   
 House name and/or number   
 Street or road name   
 District (if any)   
 Village, town or city   
 County   
 Postcode

Please use full names (no abbreviations)

If there is only one settlor, complete this section and draw a line through the unused box as shown in this example

Put a line through these boxes if there is only one Settlor.

Title  Mr  Mrs  Miss  Ms  
 Other (please specify)   
 Surname   
 All Forenames   
 House name and/or number   
 Street or road name   
 District (if any)   
 Village, town or city   
 County   
 Postcode

If there are two settlor(s) please complete both sections.

Schedule A below is where you specify who you would like to benefit on your death. Schedule B is a wider group of potential beneficiaries to allow for changes in your circumstances which mean that it is no longer appropriate to just benefit those named in Schedule A.

**Schedule A – Named Beneficiaries**

**Note: This Schedule MUST be completed.  
The percentages allocated MUST total 100%**

First Name(s)	Surname	Date of Birth (dd/mm/yyyy)	%
		D D M M Y Y Y Y	
		D D M M Y Y Y Y	
		D D M M Y Y Y Y	
		D D M M Y Y Y Y	
		D D M M Y Y Y Y	
		D D M M Y Y Y Y	

Schedule A will contain the names of the people that you as settlor(s) wish to benefit. It is essential that you state the FULL name(s).

If you specify the share it is vital that they total 100% eg, 60% + 40%. If you want all the beneficiaries to receive an equal share then there is no need to state any percentages.

**Schedule B – Potential Beneficiaries**

1. The Spouse/Civil Partner, Widow/Widower or Surviving Civil Partner of (either of) the Settlor(s) but excluding any Settlor.
2. The Children (including stepchildren, adopted children and other dependent children) and remoter issue (eg, grandchildren) of the Settlor(s).
3. Any person (other than the Settlor(s) nominated by the Settlor(s) (or the survivor of them) in writing to the Trustees.
4. Any person named in Schedule A.
5. Any person(s) entitled under the will or intestacy of the Settlor(s).

Schedule B contains those people who are automatically able to benefit from the trust. So the spouse of the settlor is already a potential beneficiary.

Try to think beyond your immediate family, in order to introduce additional potential beneficiaries such as godchildren, brothers, and sisters etc. to ensure that there will be someone to whom the Trust Fund can be paid.

6. First Name(s)	Surname	Date of Birth (dd/mm/yyyy)



These details must be completed for each of the policies that are to be transferred into this trust.

**Schedule C – Identification of the Original Policy(ies)**

1. Date of proposal (if policy applied for)	
Policy Number (if existing policy)	
Type of Policy	
Life/Lives Assured	
Insurer	HSBC Life (UK) Limited/Midland Life Limited/Marks and Spencer Life Assurance Limited* *Delete as applicable (note if HSBC policy commenced prior to 27/09/99 then Midland Life Limited applies)
2. Date of proposal (if policy applied for)	
Policy Number (if existing policy)	
Type of Policy	
Life/Lives Assured	
Insurer	HSBC Life (UK) Limited/Midland Life Limited/Marks and Spencer Life Assurance Limited* *Delete as applicable (note if HSBC policy commenced prior to 27/09/99 then Midland Life Limited applies)

**Signatures – page 11**

The box(es) MUST be signed by each settlor, and then witnessed. If there is only one settlor, then only the first box needs to be signed.

The trust MUST be dated before or on the date of the commencement of the policy. If you are putting an existing policy into trust it must be dated at the same time it is signed by the settlor(s).

Signed as a Deed (but not delivered until dated) by the Settlor (1)

Signature of witness

Date of signature

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

Name of witness

Witness Address

Witness Occupation

Note – Each settlor must have their signature witnessed by someone who is not a settlor or a beneficiary. If there are two settlors the same person can witness signatures for both settlors.

# Choosing your trustees

Having set up your trust, the first thing you need to do is to appoint new trustees to act alongside you, and to take over if you die.

To do this you will use the Deed of Appointment of Additional Trustees, shown over the next three pages.

As the name suggests, your trustees should be people you trust to do what you believe is right. The Flexible Trust sets out your instructions to them, but also give them power to use their judgement if circumstances change.

For example: imagine you have to put money into a trust to benefit your two children in equal shares. Years later, one of your children wins the lottery. Would you still want them to benefit in equal shares?

Your trustees may have to make this choice for you after your death.

# Deed of appointment of additional Trustee(s)

Date

**Parties**

Settlor (1) full name  of

Full Home Address  and

Settlor (2) full name  of

Full Home Address

The details of the person(s) who applied for the policy will need to be inserted into these boxes. Please show the full name. Initials such as D J Barton or abbreviations such as Dave John Barton are not to be used.

("the Settlor(s)") of the first part and....

Trustee (1) full name  of

Trustee (1) date of birth

Full Home Address  and

Trustee (2) full name  of

Trustee (2) date of birth

Full Home Address  and

Trustee (3) full name  of

Trustee (3) date of birth

Full Home Address

The settlor is automatically a trustee. The settlor's details do not need to be repeated.

Please make sure that you use full names and addresses in these boxes.

At least one of the additional trustees should not be a beneficiary of the trust.

("the Additional Trustee(s)") of the second part.

**Schedule 1**

Date the Trust was signed

This should be the date the flexible trust is signed by the settlor.

Made in respect of the following policy of assurance:

Life (lives) assured

Type of Policy

- 1)
- 2)
- 3)

Insurance Company

HSBC Life (UK) Limited/Midland Life Limited/  
Marks and Spencer Life Assurance Limited\*

\*Delete as applicable (note if HSBC policy commenced prior to 27/09/99 then Midland Life Limited applies).

Policy Number(s)

- 1)
- 2)
- 3)

If you wish you can leave these boxes blank for completion by HSBC Life.

**Schedule 2**

Insurance Company

HSBC Life (UK) Limited/Midland Life Limited/  
Marks and Spencer Life Assurance Limited\*

\*Delete as applicable (note if HSBC policy commenced prior to 27/09/99 then Midland Life Limited applies).

Policy Number(s)

- 1)
- 2)
- 3)

**In witness whereof** the parties to this deed have set their hands the day and year written above.

Signed as a Deed and Delivered by the Settlor (1)

Signature D J BARTON

in the presence of

Signature M WITNESS

NAME MARK WITNESS

Address

5 WITTS COURT  
ANY TOWN  
ANY SHIRE  
A04 4XL

Please note that the settlor is already a trustee. The settlor should not sign in this box as they are not being appointed as an additional trustee.

Signed as a Deed and Delivered by the Settlor (2)

in the presence of

Address

Remember that ALL signatures of the settlor(s) and trustee(s) MUST be witnessed.

Signed as a Deed and Delivered by the New Trustee (1)

Signature S L BARTON

in the presence of

Signature M WITNESS

Name Mark WITNESS

Address

5 WITTS COURT  
ANY TOWN  
ANY SHIRE  
A04 4XL

Signed as a Deed and Delivered by the New Trustee (2)

Signature H CARR

in the presence of

Signature M WITNESS

Signature M WITNESS

Address

5 BRIDGE STREET  
ANY TOWN  
ANY SHIRE  
A04 4XL

Signed as a Deed and Delivered by the New Trustee (3)

Signature D CARR

in the presence of

Signature M WITNESS

Name Mark WITNESS

Address

5 BRIDGE STREET  
ANY TOWN  
ANY SHIRE  
A04 4XL

The same person can be a witness to all signatures if you wish. However, the witness MUST sign against all signatures he is witnessing. Don't forget that the witness CAN'T be a trustee, settlor or beneficiary.

Please return this deed to your local branch or direct to Customer Services Centre, HSBC Life (UK) Limited, PO Box 1053, St Albans AL1 9QG. After recording the details the original deed will be returned to you and should be kept by the Trustees.

# Some typical questions

## **Q: Can I continue to benefit under the Trust?**

A: No. However, if your policy has both Life and Critical Illness cover, then in the event of a pay out for a critical illness, that can be paid to you while any remaining life cover will be paid into the trust. Children's Critical Illness Benefit will also be paid to you.

(Note, however, that pay outs for terminal illness are held for the beneficiaries in the same way as the death benefit).

## **Q: Can I unravel the trust and get access to the policy?**

A: No. Once you have set up the trust you cannot have access to the policy benefits, other than the critical illness benefits payable as described above.

## **Q: Do I need to review my trust arrangements?**

A: Yes, you should regularly review your trust arrangements. In particular, the beneficiaries and trustees since these may need to change where your family circumstances have changed (for instance a new child, separation etc).

## **Q: How much will it cost to set up the trust?**

A: We make no charge for providing the Flexible Trust.

If you decide to consult a solicitor or other professional adviser before completing the trust form, they may charge you a fee. They should be able to tell you what this is in advance. Similarly, if you appoint a professional trustee or trust company as trustee they may charge for their services.

## **Q: Which trust forms do I need?**

A: You will need to complete the Flexible Trust.

In addition, you will need to use the Deed of Appointment of Additional Trustees.

## **Q: Is running a trust difficult?**

A: No. Until you die the Flexible Trust is basically dormant (unless there is critical illness or terminal illness cover). It is then straightforward for the trustees to distribute the proceeds to your chosen beneficiaries.

For more guidance on running a trust see our Trusts Guide.

## **Q: Do I need to see a solicitor or other professional adviser?**

A: Whilst we have taken great care to ensure the Flexible Trust can achieve its objectives if you have individual circumstances or concerns on which you require advice you should consult your own advisers.

## **Q: Can I put existing policies into trust?**

A: You can use the Flexible Trust to put existing HSBC life, or life and critical illness policies in trust, but not policies issued by another life company.

This trust will separate life and critical illness benefits where you wish to retain the benefit of the critical illness but give away the death benefit.

## **Q: What if I were to be declared bankrupt?**

A: Generally speaking, any assets held in trust (under which you cannot benefit) are safe from creditors. The exception is where the assets were transferred when you were already insolvent or made with the specific intent to defraud creditors. In such circumstances the court may set aside the trust and pay the asset over to the trustee in bankruptcy for the benefit of creditors.

## **Q: What if I get divorced or dissolve a civil partnership?**

A: A life policy held in trust is owned by the trustees and does not belong to you legally.

It will not usually be taken into account in any settlement. However, if you and your spouse/civil partner owned the policy jointly or you both pay premiums under the policy, it is important that you make arrangements in any divorce or other settlement to ensure that no future disputes will arise.

## **Q: Can I change trust terms?**

A: Yes, but it is rarely needed. Your trust already gives the opportunity to choose between potential beneficiaries and whether to pay income or capital sums, or to make administrative changes.

**Q: Is a trust suitable if my policy provides critical illness cover?**

A: Yes. The Flexible Trust separates out the death benefits to be held in the trust for the beneficiaries, whilst the Critical Illness Benefits (including any Children's Critical Illness Benefit) are held for you.

**Q: Do I need to refer to the trust or the policy in my Will?**

A: No. A policy held subject to trust is no longer yours to dispose of on your death.

**Q: Can I add other beneficiaries?**

A: Yes. The Flexible Trust includes a wide class of potential beneficiaries. However, there is also a provision that allows you to add new names to the list of potential beneficiaries later. You would simply need to write to your trustees to let them know.

**Q: Can I change the beneficiaries?**

A: Yes. You have this power under the trust during your lifetime. Following your death the trustees can also add new beneficiaries, and there is flexibility as to who is to benefit from the list of potential beneficiaries.

**Q: Will I be a trustee?**

A: Yes, under our Flexible Trust you are automatically a trustee. The trustees have to act unanimously so you, and all the other trustees that you appoint, have to agree on what to do. There is another advantage too. With you as trustee, we will continue to write to you on the progress of your policy. We will expect you to share this information with your fellow trustees.

**Q: Should there be other trustees as well as me?**

A: Yes, although this is not legally essential, it is strongly recommended. The trust is basically dormant until you die. If you die as the sole trustee there is no-one able to immediately act as trustee. Instead your executors or administrators will need to act as trustees which will involve a delay until probate is granted.

**Q: How many trustees should there be?**

A: The best number is between 2 and 4.

**Q: Can a beneficiary also be a trustee?**

A: Yes, however a trustee cannot appoint benefits to themselves without there being at least one other trustee acting who will not benefit.

**Q: Can I appoint further trustees later?**

A: Yes, under the terms of the trust you can appoint further trustees later. You will need a special deed, which you can obtain from us on request.

**Q: Should I appoint my solicitor or other professional adviser as a trustee?**

A: It is up to you who you appoint as a trustee.

There is usually no need to appoint professional trustees such as solicitors or accountants, as running the trust in most family circumstances is not complicated. They may lack the personal knowledge of family circumstances. You should also remember that if you appoint a professional trustee they will charge fees for dealing with the trust.

**Q: Can I remove trustees?**

A: Yes, you have this power under the trust deed. However, it is advisable when removing a trustee to appoint a new trustee in their place.

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