Guide to being a trustee
I’ve been asked to be a trustee, what now?

This guide should help you to understand what you will need to do now that you have been asked to be a trustee. It explains what a trust is, what benefits it offers, and what your duties as a trustee will be.

Trust background

WHAT IS A TRUST?

A trust is a legal arrangement which allows the owner of a life policy (settlor) to give his or her policy to a trusted group of people (trustees) who look after it. At some time in the future the trustees will pass it on to people that the donor has decided upon (the beneficiaries).

When a life policy is looked after in this way, it is said to be ‘in trust’. The life policy which is in trust, and any payment received from the life policy are called the trust fund. This guide assumes that a life policy is the only property in the trust fund at the start, and that the life policy includes terminal and critical illness cover.

WHAT ARE THE MAIN BENEFITS OF USING A TRUST?

Using a trust for a life policy has lots of practical and financial benefits. For example:

- **Quicker payout** – It should help to ensure that the money paid out from the life policy can be paid to the right people quickly, without the need for lengthy legal processes.

- **Inheritance tax** – It should help to ensure that any money paid out from the life policy would not be part of the estate of the person covered, helping to minimise inheritance tax.

- **Control of funds** – A trust can control when the money from the life policy will be paid out. This can ensure that children receive some financial support from the money, but do not have full access to it.
WHO’S INVOLVED IN A TRUST?
There are three important roles:

- **The settlor** – The person giving away their life policy is called the settlor. Once the settlor has put their life policy into trust they no longer personally own it and have limited rights to say how it’s dealt with. However, the settlor is still responsible for paying the policy premiums, and is a trustee. The settlor chooses the trustees and the beneficiaries, and can give the trustees guidance on how he/she would like the trust fund to be used via a letter of wishes.

- **The beneficiaries** – The people who can receive payment from the trust fund are called the beneficiaries. This means that it would be the beneficiaries who benefit from any payout from the life policy. The people who may be a beneficiary are listed in the trust document.

- **The trustees** – The trustees take ownership of the trust fund from the settlor. They then look after the trust fund, and, following a claim on the policy, will make arrangements for payments to the beneficiaries. They must act in the best interests of the beneficiaries at all times and can only do what is allowed in the trust document.

WHAT ARE THE IMPORTANT DOCUMENTS?
There are two key documents:

- **The trust document** – This is the legal document that creates the trust. It names the parties involved, says what roles they have, and gives details of the life policy which is being put into trust. The provisions in the trust document are the basis of the trust arrangement. The trustees must act according to the trust document, and cannot do things that the trust document doesn’t allow.

- **The letter of wishes** – As the trustees will have lots of decisions to make, the settlor can provide a letter of wishes, to help explain what they would like to happen to the trust fund. Unlike the trust document, the trustee do not have to follow the letter of wishes. However, trustees usually find it to be a helpful guide on how best to manage and distribute the trust fund to the beneficiaries. A draft is available from Legal & General at legalandgeneral.com

- **The policy documents** – This includes the policy documentation which contain all the important information about the life policy which forms the trust fund.

The trustees should have all of these documents from the start. This will mean that they have all of the information they need to make claiming on the policy, and administering the trust, straightforward.
Trustee responsibilities

WHY HAVE I BEEN ASKED TO BE A TRUSTEE?
When thinking about who to select as a trustee, people usually choose from their closest friends and family. These are often the people that they trust most and whose judgement they can rely on. As an alternative, they might choose a professional trustee, such as a solicitor.

Choosing somebody that they know and trust gives peace of mind. If something happened, they know that their wishes will be respected, and that the trust fund will be used to help the people they care about.

WHAT DO THE TRUSTEES HAVE TO DO AT THE START?
Once the trustees have been appointed, and the trust has been created, they will usually not have much to do until the time comes to make a claim.

This is because the life policy will be the only property in the trust fund, and usually won’t have any value before a claim is due. There is therefore unlikely to be any tax to consider, and little else to manage, as it is the settlor, and not the trustees, who will usually be responsible for paying the policy premiums.

The trustees should make sure that they have the important documents, and that they are familiar with the terms of the trust, including their powers and duties.

WHAT ARE THE MAIN TRUSTEE DUTIES I NEED TO BE AWARE OF?
As a trustee, you are in a position of responsibility, and it is important that you understand the following key responsibilities:

- You must make sure that you understand the terms of the trust, and that you don’t do anything which is not allowed by the trust or by the law.
- You must act in the best interests of the beneficiaries, and exercise a high degree of care and honesty. If you act dishonestly, you may have to pay for any loss to the trust fund.
- You must make sure that you carry out your role as trustee personally, meaning that you cannot usually get someone else to undertake the role for you. However, this is possible in certain circumstances, such as using an investment professional to help invest the policy proceeds.
- You must agree with all of the other trustees when making trust decisions.
- You are not allowed to profit personally from your role as a trustee, and, unless you are a professional trustee, you cannot be paid for your time. However, you may be able to claim back expenses in certain circumstances.
- You must make sure that you understand the terms of the trust, and that you don’t do anything which is not allowed by the trust or by the law.
- After the life policy has paid out, you must regularly consider whether to make payments to the beneficiaries from the trust fund, and you should keep the assets held under review – taking investment advice from a professional adviser where appropriate. You must also keep clear and accurate records and accounts of trust property and ensure that all tax which the trust is liable for is reported and paid to HMRC. Before the life policy pays out, these are unlikely to be significant considerations. However, after a claim, they may become increasingly important, and you might wish to seek professional advice to help with this.

Being a trustee is an important responsibility, however it is unlikely that you will need specific or detailed knowledge of trust law to enable you to act effectively – the key thing is that you act honestly and in the best interests of the beneficiaries.

Remember, you can always seek professional advice later if the need arises.
WHAT DO THE TRUSTEES HAVE TO DO WHEN MAKING A CLAIM?

Following the death of the settlor, or on diagnosis of a terminal or specified critical illness, it is the trustees who will need to make a claim and arrange payment from Legal & General. The number to call to make a life or terminal illness claim on a Legal & General policy is 0800 137 101; for critical illness claims the number is 0800 068 0789. Once the trustees have arranged payment from the life policy, they must ensure that this is distributed properly.

- If the settlor has chosen to keep some or all of the benefit of terminal illness cover, which will be clear from the trust document, then the trustees must ensure that any payment made under the terminal illness cover goes to the settlor in the percentage stated in the trust. If the settlor has chosen not to keep 100% of the terminal illness cover, the trustees must distribute the rest of the money from the claim to the beneficiaries. If the settlor has chosen to keep the benefit of critical illness cover, which again will be clear from the trust document, then the trustees must ensure that any payment made under critical illness cover goes to the settlor. These are the only circumstances in which the settlor should receive payment from the policy.

- If the claim is due to the death of the settlor, or if the settlor hasn’t chosen to keep the benefit of critical illness cover or any of the benefit of terminal illness cover, then the trustees will need to distribute the money from the claim to the beneficiaries. The trustees must do this according to the trust document, but also while taking account of the letter of wishes.

This usually means that either:

1. The trustees arrange for the trust fund to be paid to the beneficiaries immediately; or,

2. The trustees arrange for the trust fund to be invested, and, if required, for maintenance payments to be made to the beneficiaries from the trust fund, until it is appropriate to distribute the entire trust fund.

Where the proceeds of a claim will not be paid out of the trust fund immediately, it is often helpful to seek further professional advice, particularly to help the trustees to manage the investment, accounting and taxation of the trust fund.

IMPORTANT NOTES

We have written this guide to give you general information about the responsibilities and duties a trustee will have to undertake, once a Legal & General protection policy has been placed into a Discretionary, Survivor’s or Flexible Trust. It is not intended to replace legal advice, and if you require legal advice or further information, you should talk to your legal and your financial advisers.

We have based the information in this guide on our understanding of the laws relating to trusts in England and Wales and inheritance tax as at 1 January 2020. Although we have made every effort to make sure that 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, which can change.

In preparing this guide we have assumed that only Legal & General’s Discretionary, Survivor’s or Flexible Trust is to be used in conjunction with Legal & General’s protection policies. We can also provide an Absolute Trust. The information in this guide does not necessarily apply to business protection and Relevant Life Plans. Legal & General have separate literature for business protection and Relevant Life Plans.