



ST. JAMES'S PLACE  
WEALTH MANAGEMENT

PROTECTING YOU AND YOUR ESTATE

# Trusts and the role of a trustee

## What is a trust?

Trusts are not a new concept. They have been with us in one form or another since the Middle Ages when used by the Crusaders to protect their property while fighting in the Holy Land. It is therefore surprising that the law has yet to come up with a satisfactory definition.

A trust is simply an agreement, usually in writing, which defines the relationship between individuals and assets. For example, a property is often held in trust for the benefit of specific individuals, known as beneficiaries.

The person who provides the assets is called the settlor and he/she expresses his/her wishes in the trust document. Trustees are usually appointed (in addition to the settlor) and administer the trust in accordance with those wishes and relevant trust law. Generally, the assets transferred into the trust, and any benefits arising from it, will have to be applied for the benefit of the beneficiaries. Most types of assets can be placed in trust and these include life assurance.

## Why place a life assurance plan in trust?

Although life assurance is taken out for a variety of reasons, it is primarily designed to provide the right money at the right time. Writing the life assurance plan in trust provides the means by which this may be achieved. The right money, at the right time, in the right hands. There are a number of reasons why a life assurance plan should be written in trust and these include, but are not limited to, the following:

### **To avoid delays**

Under normal circumstances if the life assured dies and the plan is not held under a trust, it will not be possible to make payment of the sum assured until a Grant of Representation is obtained.

Unfortunately, long delays can occur in obtaining a Grant. Delays of over a year may arise and delays of six months are common. During this time the life assured's dependants will be unable to receive any monies from the deceased's estate and may not only suffer undue financial hardship, but the personal representatives may need to borrow to pay any Inheritance Tax (IHT) liabilities.

### **To mitigate Inheritance Tax**

If the life assured owns the plan when it pays out, the sum assured will fall into their estate and will be taxable for the purposes of IHT. However, if the plan is placed in trust, the proceeds should be outside the deceased's estate for IHT purposes and, therefore, will not be taxable. By placing a plan in trust in this way, proceeds are 'outside the estate' and can be used to pay any tax due on the estate itself.



## Making a gift of a plan

A life plan written in trust may provide a suitable method of making gifts. For example, if cash is gifted to a child the donor has no control over how the money is spent and it may be frittered away. As an alternative to an outright gift, the donor could arrange for a life assurance plan to be placed under an appropriate trust such as a Variable Discretionary Trust. In this way, they not only retain some control, but also the flexibility to add or change beneficiaries.

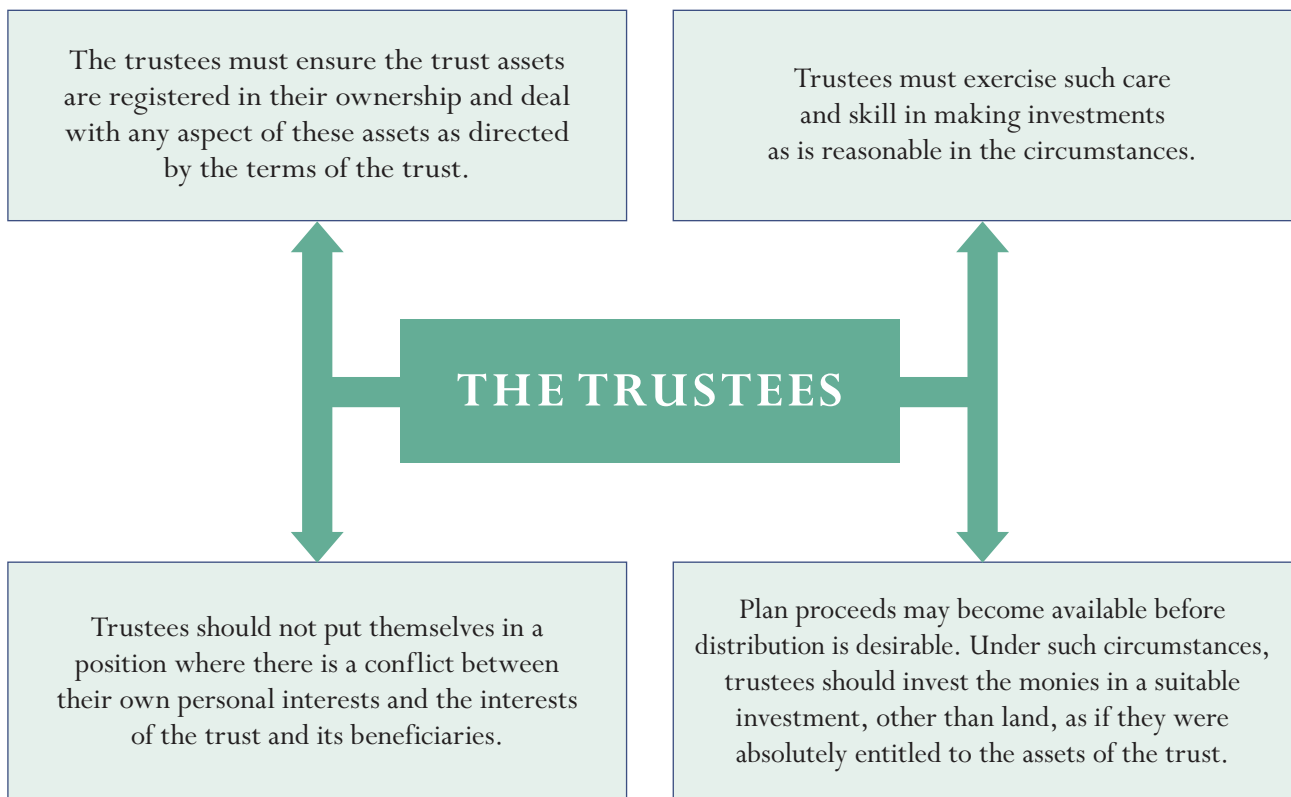
## Selecting trustees

Trustees are individuals who legally own the assets of the trust, but are not permitted to benefit themselves (unless they are also beneficiaries) from the assets. They are there to manage and look after the assets for other people; beneficiaries. For the most part, selecting your trustees will be a matter of practicality:

- No more than four, including the settlor(s).
- Someone you trust and has knowledge of your family circumstances and intentions.
- Perhaps someone who is a professional, but certainly capable of working with other trustees.
- Should ideally live reasonably close to the other trustees.

## The role and responsibilities of a trustee

The role and responsibilities of a trustee should not be undertaken lightly. If you have been chosen as a trustee, the settlor feels you can be trusted to act in accordance with their intentions and in the best interests of the beneficiaries, and are suited to dealing with this important element of their affairs.



Every effort has been made to ensure that the information in this document is correct. However, there are some differences between English, Scottish and Northern Irish trust law and the information is, therefore, in summary form. In addition, law and practice in this area may change from time to time.

## Trustees duties

Trustees general duties, established largely through case law, are:

- To exercise their powers in the best interests of the beneficiaries.
- To invest the trust funds without profiting from their office and without causing loss to the trust.
- To act impartially and treat all classes of beneficiaries fairly.

The Trustee Act 2000 introduced a statutory duty of care whereby trustees must exercise such care and skill as is reasonable in the circumstances, having regard to any special knowledge or experience they have or hold themselves out to have.

## St. James's Place Trusts

We offer a range of trusts for use by our clients. A brief outline of each is set out below.

### Absolute Trust

An Absolute Trust provides for the benefits of either a life assurance plan or a unit trust investment to be held unconditionally for one or more individuals named by the settlor when the trust is set up. There is no power to change beneficiaries or their shares at a future date.

### Asset Preservation Trust

The Asset Preservation Trust is designed to receive any proceeds payable under a pension scheme and hold them for a range of the scheme member's beneficiaries. The principal advantage of such an arrangement is that, while benefits can be paid to the member's surviving spouse or registered civil partner, the value of the trust is not aggregated with the survivor's estate for IHT purposes.

### Business Trust

The Business Trust is designed to ensure that the life assured's co-proprietors receive the plan proceeds from the trust in the stated shares. This will provide them with funds to buy the share or shares from the deceased's beneficiaries.

The trustees have the power to appoint benefits to any existing or future partner or shareholder of the firm or limited company as appropriate, including the settlor.

### Variable Discretionary Trust

A Variable Discretionary Trust has classes of potential beneficiaries and the trustees have discretion to distribute the funds to the beneficiaries during the trust period. However, in order to guide the trustees in this, the settlor will need to complete the 'Default Beneficiaries' section of the trust form.

Where a life assurance plan held in trust provides benefits in the event of the diagnosis of a critical illness, the trustees are able to make the payment to the settlor. In addition, where there is a claim under any Terminal Illness Benefit, the trustees will have the power to pay a predetermined proportion of the plan proceeds to the settlor before distributing the balance to the other beneficiaries.



## The problems of probate

### Life assurance plan not in trust

Under normal circumstances, your beneficiaries cannot benefit from your estate until Grant of Representation is issued, which is required to establish ownership. However, this process commonly takes six months and may take over a year. The following provides some indication of what is involved in England and Wales:

#### DEATH OF PLANHOLDER

Collect details of all assets and liabilities in the estate including life assurance plans

Complete and return all Probate Registry forms

Arrange funds or loan to pay Probate Registry fee and IHT (if any)

Attend interview at Probate Registry to swear forms and pay probate fee and IHT (if any), when requested

Obtain Grant of Representation

Place statutory advertisement for creditors and other claimants against the estate

Deal with any claims against the estate arising from the advertisement

Present grant to all appropriate bodies

Collect all assets

Deal with all Capital Gains Tax and Income Tax matters as at date of death and in the estate

Apply for Form 30 and get IHT discharge certificate

Realise sufficient cash to pay all debts and legacies

Prepare estate accounts, tax returns and tax deduction certificates

Obtain approval of estate accounts and receipts for inheritance from beneficiaries

Distribute assets to beneficiaries

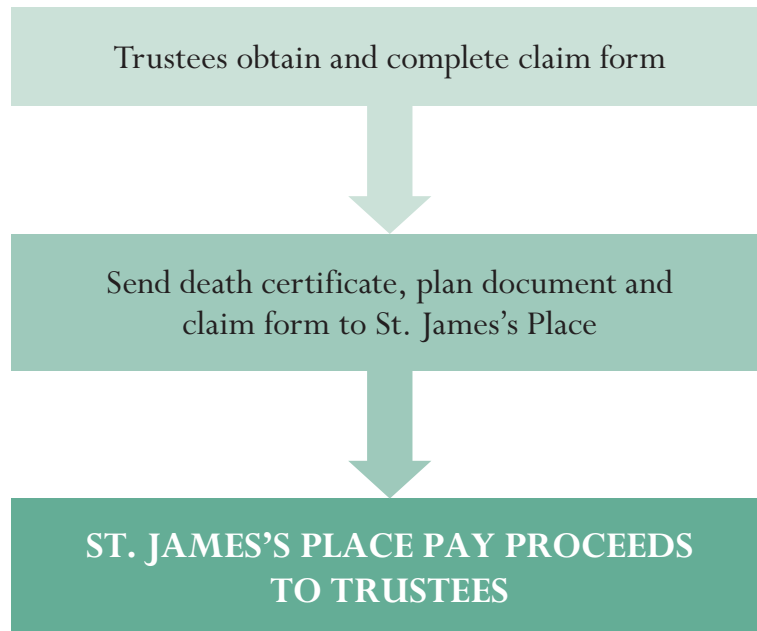
Working with selected law firms, the St. James's Place Probate Service offers assistance with estate administration, ensuring necessary guidance and understanding is received not only at a difficult time but also when the need for financial advice is of paramount importance.

The St. James Place Probate Service consists of carefully selected law firms covering England and Wales, Northern Ireland and Scotland. This is a separate and distinct service to those offered by St. James's Place.



## The benefits of using a trust

### Life assurance plan in trust



Under these circumstances plan proceeds can be, and often are, paid out within weeks.

### Professional trustees?

In many cases, the settlor of a trust can, and is happy to, appoint family members or friends to act as trustees. This is possible where he/she is confident that those individuals can take control of the day-to-day administration of the trust and understand, and are sympathetic to, his or her wishes. It is also essential that the trustees understand the tax position of the trust and its legal implications.

If the settlor does not wish to burden family members or friends with the responsibility of administering a trust, particularly in the case of more complex arrangements, it may be appropriate to appoint and pay professional trustees. Professional trustees may also be appointed where:

- The settlor does not feel any of his friends or family are willing, or capable, of acting as a trustee
- The settlor does not want his or her family to be aware of the trust
- Appointing family or friends may present a conflict of interest.

Professional trustee services are available from St. James's Place Trust Company Jersey Limited ("the trust company"). The trust company's directors and senior staff are all qualified lawyers and trust professionals with many years of experience and a background in advising private clients.

It may also be appropriate to use the trust company where there is a need for non resident trustees.

The trust company offers a range of solutions on a fixed fee basis where the fees are agreed and payable at the outset. They can also offer more bespoke solutions where more specialist trusts are required or a more complex range of assets will be held. Generally, the use of the trust company will only be appropriate if the trust has assets of at least £300,000, or a sum assured of £1 million where life cover is placed in the trust, due to the cost of professional trustee services.



Your St. James's Place Partner can provide further information regarding the trust company or refer you to a specialist in this area, if appropriate.

## Our guarantee

St. James's Place guarantees the suitability of the advice given by members of the St. James's Place Partnership when recommending any of the wealth management products and services available from companies in the Group, more details of which are set out on the Group's website at [www.sjp.co.uk/products](http://www.sjp.co.uk/products).

## Replacing trustees

As a trust can be a long term structure, it is often necessary to change the trustees during the life of the trust. This could be where:

- Trustees die, lose mental capacity or become bankrupt.
- Trustees move abroad or lose touch with the settlor.
- The existing trustees are no longer willing to act.
- The settlor, or in some cases, the beneficiary, has become dissatisfied with the existing trustees, including professional trustees.

If you wish to replace the trustee on an existing St. James's Place Trust, please refer to your St. James's Place Partner as he or she can provide the necessary advice and standard documentation (free of charge) to achieve this.

If you wish to replace the trustee on any other type of trust, your St. James's Place Partner can refer you to a member of the St. James's Place Legal Services Panel. The law firms on the panel have been chosen for the high calibre of the advice they offer and can provide the appropriate advice and bespoke documentation required to change the trustees on a non St. James's Place Trust. Their advice is a separate and distinct service to that offered by St. James's Place.

In the case of replacing professional trustees, the law firm will fully review the trust to confirm whether it remains appropriate and then advise the new trustees regarding the responsibilities they are accepting.

The members of the St. James's Place Legal Services Panel are all regulated by the Law Society of either England and Wales, Scotland or Northern Ireland. If you have the need for professional legal services, whether in connection with replacing trustees, or for another reason, please speak to your St. James's Place Partner.

*Please note that trusts are not regulated by the Financial Conduct Authority or the Prudential Regulation Authority.*

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