

# Trusts Q&A

## What is a Trust?

A trust is a way of having some control over your assets after your death. Your trustees will have legal control of your assets and will make decisions as to who receives those assets in accordance with the terms of your trust. It can give flexibility where you need to provide for different groups of people after your death. For example it can allow a surviving spouse the right to receive income from your assets with the capital passing to your children on the spouse's death.

## What are trustees?

A trustee is somebody you appoint to manage your trust after your death.

## What are the benefits of using a Trust structure?

There are both family and potentially tax benefits in using a trust structure in your will.

The main benefit for the family is control; having a trust allows you to choose who will act as trustees so your assets will be under the control of someone you trust. It also allows you to specify at what age and on what terms children or others will take their share of capital or income under the will. It allows for considerable flexibility, as (depending on the type of trust) you can give your trustees powers to make decisions after your death on issues such as when children will inherit. In this way, if you die whilst children are young, the trustees can react to changing circumstances eg by giving capital early or late if to do so will be more beneficial.

Trusts can also be a good way of providing for people with disabilities, by enabling them to benefit from the funds but keeping the control with trustees, in a situation where the beneficiary may either be unable to manage money themselves or be vulnerable to exploitation.

The tax position for trusts is complex and depends on the type of trust. In general, a trust structure for UK based families will probably not be more advantageous for tax than holding assets direct, but may offer equivalent tax treatment to direct ownership, and with the benefits of control as set out above. The reliefs and exemptions available when using a trust include the exemption from Inheritance tax for gifts to spouses; avoidance of IHT charges on death of beneficiaries in some types of trust (periodic charges are payable instead but this can be more advantageous than the charge on death) and income tax allowances in trusts for children and grandchildren.

## What is an executor?

An executor is somebody you appoint to manage your assets after your death. They have responsibility for collecting in your assets, paying your liabilities and distributing your assets in accordance with your will. The choice of executor is therefore important and should be considered carefully.

## How should I select executors to administer my will?

The choice of executors is important and often not considered carefully enough. The choice is particularly important where the will creates trusts which may continue for some time, eg where there are young children, and the executors will be the trustees as well. Even when this is not the case, but there are complex assets eg a family business, the executors' job can be a difficult one.

The executors can be family members, friends, or professionals, or a combination of these. Matters to consider are whether the people you want to choose will be able to work together to deal with your estate, or are likely to disagree; whether they are reasonably businesslike and efficient (there will be important deadlines to meet and may be tax to pay); if they are given powers as trustees eg to decide how much your children receive and when, then their ability

to assess the situation and the beneficiaries' needs fairly; their ability to work together with the children's guardians should you die whilst the children are still young; and their knowledge of the family. Professionals are not usually necessary, but in a complex situation and/or if there is a real likelihood of a dispute, they may well be the right choice.

### Do I need a letter of wishes?

A letter or wishes can be written to your trustees setting out who you would like to have your assets, when and on what terms you want them to get it, and the reasons why you might like one person to have more than another person. It is not legally binding but can be very helpful guidance for your trustees but they can choose to ignore it.

We recommend these for all the trusts and also on the appointment of guardians. They allow you to set out your views on issues that do not fit well into the structure of the will; and it is also more confidential than the will, which will be published after your death. The letter is for the guidance of the executors and trustees and will often cover matters such as your wishes for the children's schooling, your priorities for the children's upbringing generally, what should happen to particular assets eg chattels; and sometimes matters such as investment.

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