

A Guide to the OneFamily Flexible Trust Deed

OneFamily

The trust deed has been designed for use only with a OneFamily Over 50s Life Cover Policy with Serious and Terminal Illness Benefit.

The information contained in this guide is intended solely as an aid to completing a OneFamily Flexible Trust deed.

We do not provide advice. Trust law is complicated and you should take professional independent legal **and** taxation advice before setting up a trust.

What is a trust?

A trust is a legal arrangement where you (the Proposer) give an asset (such as a life insurance policy) to someone else (the trustees) to hold for the benefit of another person or group of people (the beneficiaries) until some time in the future.

Why might you choose to put your life insurance policy in trust?

The main reasons that you might put a life insurance policy into trust are:

- To ensure that the funds paid out from the policy go to the right people at the right time.
- A policy written in trust will not usually form part of your estate for Inheritance Tax purposes (although we recommend that you obtain independent taxation advice prior to establishing a trust).

What is a “flexible trust”?

The OneFamily trust is a flexible trust. A flexible trust allows you, the Proposer, to retain some control and decide who should benefit from your assets. In this type of trust you, the ‘Proposer’, are also a trustee.

OneFamily’s Flexible Trust deed is a split trust. It has been designed for use with OneFamily over 50s policies with Serious and Terminal Illness Benefit. It enables the benefits of the policy held in the trust to be split. The death benefit (the lump sum paid on death) is held by the trustees for the beneficiaries and is known as the ‘Gifted Benefits’. The policy benefits paid in the event of a Serious Illness or Terminal Illness claim are held for the absolute benefit of the Proposer. These benefits are known as the ‘Retained Benefits’.

Some Proposers may want to make a gift of both the lump sum death benefit **and** both any Serious and Terminal Illness Benefit. The Trust is drafted in such a way as to allow this.

What are the implications of putting a life policy in a flexible trust?

- The trustees will become legal owners of the policy.
- Once a policy has been put into trust it cannot easily be reversed and the Proposer **cannot** directly benefit from the Gifted Benefits of the policy or the proceeds thereof.
- The policy death benefits must be used by the trustees for the benefit of the beneficiaries alone.

Three groups of people are needed to set up a trust

- **The Proposer** is the person who sets up the trust and puts their gift into it (i.e. the life insurance policy). Once they have gifted an asset to the trust the Proposer no longer owns it. The Proposer specifies how they would like the trust assets to be used.
- **The trustees** are the people who legally own the assets in the trust - it’s their job to manage the trust responsibly.
- **The beneficiaries** are the people who the trust is set up for and they will get the benefit of the money, property or investments put into trust. One or more beneficiaries can be named. A continuation sheet is available if you require space to list further beneficiaries.

In the OneFamily trust deed there are two types of beneficiary:

- **Discretionary Beneficiaries** – These are already set out in the trust deed and are groups of people who could, at the trustees' discretion, benefit from the trust. The Proposer is able, at the time of creating the trust, to delete groups from the list and to add to the list (by naming individuals or describing further groups of people on a continuation sheet) at a point in the future to add further Discretionary Beneficiaries.
- **Default Beneficiaries** – These are to be specifically named (for individuals) or described (for groups of people) by the Proposer. The Proposer states who will benefit from the trust and in what proportions unless the trustees chose to benefit other beneficiaries from the list of Discretionary Beneficiaries.

You should note that there is no “guarantee” that the Default Beneficiaries will take the trust assets (i.e. the proceeds of the policy) in the shares that you state. That is because the trustees have total discretion to benefit any of the Discretionary Beneficiaries.

You should, therefore, ensure that you select trustees whom you trust to administer the trust in accordance with your wishes.

Who can be a trustee?

Under the OneFamily trust deed the Proposer is automatically a trustee. Additional trustees must be over 18 and of sound mind.

Can trustees be changed?

The Proposer can appoint additional trustees. Trustees can (at their own request) choose to retire. However, the OneFamily trust deed requires that there are still two remaining trustees following the retirement.

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Flexible Trust

It is important that you have sought professional advice before completing this form.

Date and Declaration of Trust

This Declaration of Trust is made on between

Whereas:

(A) This Declaration of Trust is supplemental to

Policy Number

underwritten by Family Assurance Friendly Society Limited t/a OneFamily (the Society) for the life of the Proposer

(B) The Proposer wishes to declare that the Policy shall be assigned to the Trustees and held in trust by the Trustees subject to the trust's powers and provisions contained herein

(C) The Trustees have agreed to act as trustees of the Policy and to hold the Policy in trust subject to the provisions contained herein

(D) The Proposer wishes to declare that they have not received advice from OneFamily or any other person to obtain independent legal and taxation advice as to the nature and effect of this Declaration of Trust or have advised or freely declined to do so.

It is agreed

1 Assignment and Declaration of Trust

The Proposer hereby irrevocably:

(a) declares that the Policy is hereby assigned to the Trustees to be held in trust subject to the provisions contained herein; and

(b) disclaims any lien or charge which has arisen or may arise over the Policy by virtue of the assignment thereon

2 Proper law forum and place of administration

2.1 The proper law of this Declaration of Trust shall be that of England and Wales and all rights under this Declaration of Trust and its construction and effect shall be subject to the jurisdiction of and construed according to the laws of England and Wales

2.2 The courts of England and Wales shall be the forum for the administration of the trusts set out in the Trust Provisions hereto

3 Clause headings

The clause headings are included for reference only and do not affect the interpretation of this Declaration of Trust

Executed as a deed by the parties or their duly authorised representatives on the date

Definitions The following definitions and rules of construction shall apply

1. The Proposer

'The Proposer' is the person who is creating this declaration of Trust and whose details are set out below

If you are putting your policy in trust at the point of application then the date of application should be inserted here.

If you are putting your policy in trust after the date of application the date entered here should be the date of the most recent signature on the signature page (page 5).

Insert the policy number of the OneFamily Over 50s Life Cover policy that you would like to put in trust here. This can be found on your policy schedule.

Insert your name and address details here.

Title

First name(s)

Surname

Address

Postcode

2. The Trustees

'The Trustees' shall mean the Proposer and the people set out in the box below and the Proposer is automatically to be a Trustee. It is important that at least one additional

You are automatically a Trustee and do not need to repeat your details here. You do need to add at least one Additional Trustee. You need to provide the names and addresses of all additional trustees who must then sign on page 5.

Additional Trustee

Address

Additional Trustee

Address

Additional Trustee

Address

Additional Trustee

Address

Additional Trustee

Address

You should delete from (a) to (f) those you would not like to benefit, and add in a continuation sheet, as per (g), any additional people or groups of people you would like to benefit.

3. The Discretionary Beneficiaries

'The Discretionary Beneficiaries' shall mean those objects and persons (or class of persons) who are now in existence or come into existence during the Trust Period).

- a) Any widow or widower of the Proposer
- b) The Default Beneficiaries
- c) Any child or grandchild of the Proposer whenever born
- d) Anyone descended from the father or mother of the Proposer
- e) After the death of the Proposer anyone who may benefit from his or her residuary estate
- f) Any objects or persons or class of objects or persons added to the class of Discretionary Beneficiaries by the Provisions below
- g) Any additional Discretionary Beneficiaries specified on a continuation sheet hereto

Insert the names of individuals or descriptions of groups of people you want to benefit in default of a decision of the trustees to the contrary. You should also state the share you want each to receive adding up to 100%.

4. The Default Beneficiaries

'The Default Beneficiaries' shall mean those objects or class of objects

Beneficiary 1

Percentage

%

Beneficiary 2

Percentage

%

Beneficiary 3

Percentage

%

Beneficiary 4

Percentage

%

Beneficiary 5

Percentage

%

5. Accidental Death Benefit, Serious Illness Benefit and Terminal Illness Benefit have the meanings given to them in the Policy

6. Gifted Benefits shall mean all of the benefits payable under the Policy including any Accidental Death Benefit, Serious Illness Benefit and Terminal Illness Benefit save for (if any) the Retained Benefits

7. Retained Benefits shall mean both Serious Illness Benefit and Terminal Illness Benefit payable as defined in the policy. If the Proposer signs this box they also give the Retained Benefits to the trustees to hold on trust and the Gifted Benefits shall include the Retained Benefits

Signed

Only sign this box if you, as proposer, **do not** want to retain any payment payable on a Serious Illness or Terminal Illness.

8. Trust Fund shall mean:

- a) the Gifted Benefits and the full benefit thereof;
- b) all monies arising from and payable under the Policy in respect of the Gifted Benefits;
- c) all accumulations (if any) of income directed to be held as an accretion to capital; and
- d) all assets from time to time representing the same

9. Trust Period shall mean the period ending on the earlier of:

- a) the last day of the period of 24 months from the date of the Proposer's death; and
- b) such date as the Trustees shall at any time specify by deed not being a date earlier than the date of execution of such deed or later than a date previously specified.

Trust Provisions

1. Power to add to the Discretionary Beneficiaries

- 1.1. The Proposer may by deed at any time or times during the Trust Period add to the Discretionary Beneficiaries such one or more objects or persons as the Proposer shall (subject to the application (if any) of the rule against perpetuities) determine
- 1.2. Any such addition shall name or describe the objects or persons to be added and specify the date or the happening of the event (not being earlier than the date of execution of the deed but before the end of the Trust Period) upon which the addition shall take effect
- 1.3. This power shall not be exercised so as to add the Proposer or any person or persons who shall previously have added property to the Trust Fund or the spouse for the time being of the Proposer or any such person or persons to the Discretionary Beneficiaries.

2. Substantive Trusts

- 2.1. The Trustees shall hold the Retained Benefits (if any) upon trust for the Proposer absolutely
- 2.2. The Trustees shall hold the capital and income of the Trust Fund upon such trusts in favour or for the benefit of all or such one or more of the Discretionary Beneficiaries exclusive of the other or others of them in such shares or proportions if more than one and with and subject to such powers and provisions for their respective maintenance education or other benefit or for the accumulation of income (including administrative powers and provisions and discretionary or protective trusts and powers to be executed or exercised by any persons or person whether or not being or including the Trustees or any of them) and so that the exercise of this power of appointment may be delegated to any extent and in such manner generally as the Trustees (subject to the application (if any) of the rule against perpetuities) by any deed or deeds revocable during the Trust Period or irrevocable and executed during the Trust Period shall appoint provided always that no exercise of this power shall invalidate any prior payment or application of all or any part or parts of the capital or income of the Trust Fund made under any other power or powers conferred by this Declaration of Trust or by law
- 2.3. Until and subject to and in default of any appointment under clause 2.2 the Trustees shall pay or apply the income of the Trust Fund to or for the benefit of all or such one or more of the Discretionary Beneficiaries exclusive of the other or others of them as shall for the time being be in existence and in such shares if more than one and in such manner generally as the Trustees shall in their absolute discretion from time to time think fit
- 2.4. Notwithstanding the trusts powers and provisions declared and contained in this clause the Trustees may at any time or times during the Trust Period pay or apply the whole or any part or parts of the capital of the Trust Fund to or for the benefit of all or such one or more of the Discretionary Beneficiaries exclusive of the other or others of them in such shares if more than one and in such manner generally as the Trustees shall in their absolute discretion think fit.

3. Ultimate default trusts

- 3.1. Subject as above and if and so far as not wholly disposed of for any reason whatever by the above provisions the capital and income of the Trust Fund shall be held in trust for the Default Beneficiaries absolutely and in the shares set out in clause 4 of the Definitions section above.

4. Administrative powers

- 4.1. The Trustees shall in addition and without prejudice to all statutory powers have the powers and immunities set out below provided that the Trustees shall not exercise any of their powers so as to conflict with the beneficial provisions of this Declaration of Trust:
 - a) power to borrow money on the security of the whole or any part of the Trust Fund for any of the purposes hereof including the purpose of paying premiums on the Policy and the expenses incurred in such borrowing;
 - b) power to invest any monies requiring investment hereunder in any manner or form of investment (whether income producing or not) or upon such personal credit with or without security as the Trustees shall in their absolute discretion think fit as though they were absolute beneficial owners thereof;
 - c) power to delegate to any person at any time and for any period in any manner and upon any terms all or any of the powers duties and discretions conferred upon the Trustees hereby or by law and the Trustees shall not be liable for the acts or defaults of any delegate;
 - d) where a beneficiary is under the age of legal capacity or legally cannot receive money for his or her benefit, power to pay or transfer any capital or income which is held for that person's benefit to their parent, guardian or any other person as the Trustees decide is suitable, and when a parent, guardian or other suitable person accepts money on behalf of any such person, the Trustees shall have no more liability to that person;
 - e) power by deed to change, remove or add to the terms of this trust at any time to allow them to carry out their duties and exercise their powers under the trust;
 - f) power to lend all or part of the Trust Fund to any one or more of the Discretionary Beneficiaries upon such terms and with or without charging interest and/or taking security as the Trustees think fit;
 - g) power to employ any person to act as an agent for the Trustees and settle any fees payable to the agent from the Trustees;

- h) power by deed or deeds (and so as to bind their successors as trustees of this Declaration of Trust) to release or restrict the future exercise of all or any of the powers granted by this Declaration of Trust or by law conferred on them (including any power of appointment) either wholly or to the extent specified in any such deed or deeds notwithstanding the fiduciary nature of any such powers; and
- i) power to exercise any power, discretion or authority to benefit a person who is a Trustee provided that at least one other Trustee who takes no benefit is also a party to such exercise.

5. Exclusion of Proposer and spouse

- 5.1. No discretion or power by this Declaration of Trust or by law conferred on the Trustees or any other person shall be exercised and no provision of this Declaration of Trust shall operate directly or indirectly so as to cause or permit any part of the capital or income of the Trust Fund to become in any way payable to or applicable for the benefit of the Proposer or any person or persons who shall previously have added property to the Trust Fund or the spouse or civil partner for the time being of the Proposer or any such person or persons
- 5.2. The prohibition in this clause shall apply notwithstanding anything else contained or implied in this Declaration of Trust.

6. Trustee charging clause

- 6.1. Any Trustee (other than the Proposer or any person or persons who shall previously have added property to the Trust Fund or the spouse or civil partner for the time being of the Proposer or any such person or persons) whether acting as a solicitor or other person engaged in a profession or business or in a personal capacity shall be entitled to charge and be paid all normal professional or other charges for business done services rendered or time spent by such Trustee personally or by such Trustee's firm or company in the administration of these trusts including acts which a Trustee not engaged in any profession or business could have done personally.

7. Protection of the Trustees generally

- 7.1. No Trustee shall be liable for any loss to the Trust Fund arising by reason of:
 - a) any unauthorised investment made in good faith;
 - b) the negligence or fraud of any agent employed by such Trustee or by any of the Trustees even if the employment of such agent was not strictly necessary or expedient;
 - c) any mistake or omission made in good faith by such trustee or by any of the Trustees; or
 - d) any other matter or thing except fraud or dishonesty of such Trustee and in particular (without prejudice to the generality of this clause) no Trustee shall be bound to take any proceedings against a co-Trustee or former Trustee or his personal representatives for any breach or alleged breach of trust committed or suffered by such co-Trustee or former Trustee.
- 7.2. Every power authority or discretion conferred on the Trustees by this Declaration of Trust or by law shall be an absolute and uncontrolled power authority or discretion and no trustee shall be liable for any loss or damage occurring as a result of his agreement or refusal or failure to agree to any exercise of such power authority or discretion
- 7.3. The Trustees shall not be required to diversify the investment of the Trust Fund nor be liable for the consequences of investing or keeping the Trust Fund invested in or in the shares or obligations of a single business, company or firm or in one asset or one type of asset.

8. Miscellaneous

- 8.1. The Trustees shall not be obliged to keep the Policy in force or to restart it if it comes to an end because premiums have not been paid
- 8.2. The receipt by the Trustees of any monies payable under the Policy shall be a full and sufficient discharge to the Society who shall not be concerned to see to the application of any such monies.

Signatures

	Proposer	Additional Trustee 1
1. Signed and delivered as a deed by the said (full name)	<input type="text"/>	<input type="text"/>
2. Signature	<input type="text" value="X"/>	<input type="text" value="X"/>
3. In the presence of witness (full name of witness)	<input type="text"/>	<input type="text"/>
4. Signature of witness	<input type="text" value="X"/>	<input type="text"/>
5. Address of witness	<input type="text"/>	<input type="text"/>
6. Date	<input type="text" value="D D M M Y Y Y Y"/>	<input type="text"/>

You and each of the Additional Trustees that you have appointed must sign here and each signature must be witnessed. A witness should be someone over 18 and not a party to this Trust.

	Additional Trustee 2	Additional Trustee 3
1. Signed and delivered as a deed by the said (full name)	<input type="text"/>	<input type="text"/>
2. Signature	<input type="text" value="X"/>	<input type="text" value="X"/>
3. In the presence of witness (full name of witness)	<input type="text"/>	<input type="text"/>
4. Signature of witness	<input type="text" value="X"/>	<input type="text" value="X"/>
5. Address of witness	<input type="text"/>	<input type="text"/>
6. Date	<input type="text" value="D D M M Y Y Y Y"/>	<input type="text" value="D D M M Y Y Y Y"/>

	Additional Trustee 4	Additional Trustee 5
1. Signed and delivered as a deed by the said (full name)	<input type="text"/>	<input type="text"/>
2. Signature	<input type="text" value="X"/>	<input type="text" value="X"/>
3. In the presence of witness (full name of witness)	<input type="text"/>	<input type="text"/>
4. Signature of witness	<input type="text" value="X"/>	<input type="text" value="X"/>
5. Address of witness	<input type="text"/>	<input type="text"/>
6. Date	<input type="text" value="D D M M Y Y Y Y"/>	<input type="text" value="D D M M Y Y Y Y"/>