

CLIENT GUIDE TO THE VITALITYLIFE ABSOLUTE TRUST

FOR USE WITH A VITALITYLIFE PLAN,
VITALITYLIFE ESSENTIALS PLAN OR
MORTGAGE PLUS PLAN ("the Plan")

About this document

At VitalityLife, we recognise that trusts can seem complicated and the laws around them daunting. This guide is to help you understand the benefits of putting your Plan into an Absolute Trust and to explain the key issues as simply as possible.

What is the Absolute Trust?

An individual will sometimes want to give an asset (such as a life insurance plan) to other people without giving them total control and/or legal ownership of the asset. With a trust, the legal ownership of an asset can be given to someone you can trust (the Trustee(s) - which can include yourself, to look after for the person(s) you want to benefit from the Trust (the Beneficiary(ies)).

There are three parties to a trust: the Donor, the Trustees and the Beneficiaries. A more detailed description of these people is as follows:

Donor

The donor is the legal name given to the person who sets up the trust and transfers the trust property into it.

Trustees

The trustees are the legal owners of the trust property. They are legally bound to look after the property in line with the terms and conditions of the trust. It's their duty to hold and look after the trust property on behalf of the people who will ultimately benefit from it.

If you put your Plan into the bare trust, you will be the Donor. You'll also automatically become a trustee. We recommend that you appoint at least one other trustee to help you look after the trust.

Beneficiaries

The beneficiaries are the people who will receive any benefits from the trust. In this case, that means any payment made from the Plan. The beneficiaries would not deal directly with VitalityLife because they do not legally own the Plan that forms the trust property. However, the trustees will deal with the Plan on the beneficiaries' behalf, as detailed in the terms of the Trust deed.

Under the VitalityLife Absolute Trust, the asset being gifted, and so made subject to trust, is a VitalityLife Plan, VitalityLife Essentials Plan or Mortgage Plus Plan (the **Plan**). Legally, the

asset in question is the life assurance plan and therefore the whole plan must be transferred to the Trustees, ie. it is not possible to simply gift your life cover and keep other benefits outside the trust. You, as the proposer (or the original Planholder), will be called the **Donor** when you create the trust.

When a Plan is made subject to an Absolute Trust, the ownership of the Plan is effectively split. The legal owners of the Plan will be the Trustees. The Trustees collectively control all dealings with the Plan on behalf of the Beneficiaries. The Beneficiaries under the Trust will be entitled to enjoy the trust asset which, in the case of a Plan, is the benefits paid under the Plan.

The VitalityLife Absolute Trust is a special type of trust where the person who receives the benefit depends on the type of benefit paid. The death benefit payable under the Life Cover of your Plan will be held for your chosen Beneficiaries under the Trust (the **Gifted Fund**). Any serious illness and disability benefits will be held for your benefit (the **Retained Fund**). You will be able to choose whether to keep any Terminal Illness benefit for your own use or give it away to your Beneficiaries.

It is not possible to change the Beneficiary(ies) under the Absolute Trust or their shares and so the person(s) named will receive the payment of the death benefit under the Plan. If you require the flexibility to change the Beneficiary in the future you should use the Discretionary Trust.

The Absolute Trust will also be suitable if you are a couple with a joint Plan which pays benefits on either the death of the first or second of you. With the "joint life first death" version of the Plan, there is an option at outset to choose that any Life Cover or Mortgage Life Cover benefits are paid to the spouse that survives by at least 30 days after the first death but with the death benefit being payable to your Beneficiaries in the event that you both die within 30 days of each other. This option is not appropriate where the proceeds of the Plan are paid on the second death.

The purpose of using a Trust with a life assurance Plan

Under the VitalityLife Absolute Trust the asset to be gifted is the VitalityLife Plan, VitalityLife Essentials Plan or Mortgage Plus Plan. In these circumstances, there are two main benefits from using a trust.

Avoid probate delays

When a Plan is held in trust, any death benefit can be paid by VitalityLife to the Trustees simply on production of the death certificate and proof of ownership, without the need for probate (or confirmation in Scotland), which can take several months and may lead to financial hardship for your family. This means that VitalityLife will be able to make the payment much quicker than if there were no trust.

Ensuring IHT efficiency when the Plan provides Serious Illness Cover or LifestyleCare Cover

For VitalityLife Plans or VitalityLife Essentials Plans only

Generally speaking, in order to ensure that IHT is not charged on the Plan proceeds you, the Donor, must not benefit from the asset given away (the Plan). If you do, this would amount to a "gift with reservation of benefit" (GWR) and the death benefits would be treated as forming part of your taxable estate.

However, where the Plan includes benefits that may be payable during your lifetime and which affect the amount of Life Cover that remains, (Serious Illness Cover or LifestyleCare Cover), it is possible for those benefits to be retained for your own benefit without there being a GWR.

To achieve this:

- (i) all such benefits must be held for your absolute benefit;
- (ii) the lifetime benefits kept by you must be precisely defined, and this is the case under the VitalityLife Absolute Trust;

and

For VitalityLife Plans and VitalityLife Essentials Plans without LifestyleCare Cover

- (iii) payment of any benefits during your lifetime must not reduce the value of the Life Cover i.e. the amount of the benefit payable on death (although it could completely extinguish it). To ensure that this condition

If the Plan includes Serious Illness Cover for Mortgages then the Donor should be aware that as the amount of the gifted Mortgage Life Cover may be reduced by any payment under the retained Serious Illness Cover for

Tax planning

When the Plan is held in a valid trust, it will not be subject to inheritance tax (IHT) as part of your taxable estate. If the Plan proceeds were included in your taxable estate, up to 40% could be lost to the taxman on any part of an estate valued over £325,000.

Retain own benefits

When a Plan includes benefits payable during your lifetime, these can be retained by you for your own benefit.

is satisfied, and so avoid any adverse IHT implications under the Trust, if the Plan provides Serious Illness Cover, you must include in your Plan, from outset, either Protected Life Cover or the Minimum Protected Account option at a level of 100%. Your adviser will be able to explain this in more detail.

or

For VitalityLife Plans and VitalityLife Essentials Plans with LifestyleCare Cover

- (iii) payment of any benefits during your lifetime must not reduce the value of the Life Cover i.e. the amount of the benefit payable on death (although it could completely extinguish it). To ensure that this condition is satisfied, and so avoid any adverse IHT implications under the Trust, as the Plan provides LifestyleCare Cover, you must include in your Plan, from outset, LifestyleCare Cover Protector benefit. The level required will depend on the level of LifestyleCare Cover, if it is equal to the Life Cover then Level 1 Protector is required as this will protect a Level 1 claim, on a Level 2 claim the LifestyleCare Cover will be extinguished. If the amounts are unequal then Level 2 Protector is required in addition to Level 1 to prevent a partial reduction of the amount of Life Cover. Your adviser will be able to explain this in more detail.

IHT treatment of Mortgage Plus Plans

Mortgages benefit, the "gift with reservation of benefit" provisions will apply which means that mitigation of IHT will not be secured. The potential implications should be carefully considered and independent tax advice sought.

Options if the Plan is a joint life first death Plan

If two of you are effecting a Plan with the intention that the death benefit is paid on the death of the first of you to die (for example, as mortgage protection cover), you are likely to want the survivor to receive any death benefit and so there will be no need for any trust. However, many people are concerned about the possibility of both of the lives assured dying together or within a short time of each other. Without a trust, the death benefit would then form part of the taxable estate of the second to die and be subject to IHT. In such a case, it would be preferable for the death benefit to be payable to their beneficiaries, also in an IHT efficient manner. Fortunately, such an option is possible under the Absolute Trust.

The VitalityLife Absolute Trust allows the two of you with a joint life first death Plan to select the "Reversion to the Surviving Donor" option. This provides that if the second of you survives the first by at least 30 days, the death benefit will be payable to the survivor. However, if you both die within 30 days of each other, the Trustees will hold the death benefit for the other Beneficiaries.

It is possible to arrange this without upsetting the IHT efficiency of the Trust because the right

of the surviving Donor is clearly defined and cannot be defeated. This is necessary to ensure that the gift with reservation provisions do not apply (as explained earlier). In effect, the survivor will receive the benefit on survival for 30 days, irrespective of whether, at that time, it is required or not.

If you choose the Reversion to the Surviving Donor option, then any benefit paid on Terminal Illness will have to be a benefit retained by you for use in your lifetime rather than gifted. The choice of the Reversion to the Surviving Donor provision may also mean that premium payments are treated as chargeable lifetime transfers (CLTs) rather than potentially exempt transfers (PETs) but this will only have any practical significance if premiums are substantial and exceed any available exemptions or cause the Donors to exceed their nil rate bands.

If a joint life first death plan includes Serious Illness Cover, Serious Illness Cover for Mortgages or Disability Cover, then the person who is seriously ill or disabled will be entitled to the Serious Illness or Disability benefit in the normal way.

What happens with a joint life second death Plan

Health benefits, such as Serious Illness benefit or Serious Illness Cover for Mortgages benefit, will be paid in the normal way. However, with a joint life second death Plan, the Life Cover or Mortgage Life Cover under the Plan is paid on Terminal Illness or death. For this reason the 30 day survivorship option is not appropriate.

Whilst Life Cover benefits will be paid on the second event, the two events do not have to be identical. So, for example, if a Plan is effected on the life of husband and wife and the husband suffers a Terminal Illness, then Life Cover benefit will be paid if the wife subsequently suffers a Terminal Illness or dies. Similarly, if the husband

dies and the wife then suffers a Terminal Illness, benefits will be paid on that subsequent Terminal Illness.

In a case where the second event is Terminal Illness, the Absolute Trust enables you to choose at outset whether to keep or gift this benefit. Given that the nature of second death planning is to place funds in the hands of the family on the second death, it is thought that most people would wish to gift the Terminal Illness benefit paid on the second event.

When should you consider using the Absolute Trust?

You should consider using the Absolute Trust if you have taken out or are about to take out a VitalityLife Plan or a VitalityLife Essentials Plan and have included the Protected Life Cover benefit or the 100% Minimum Protected Account option (for Plans with Serious Illness Cover) or a suitable level of LifestyleCare Cover Protector (for Plans with LifestyleCare Cover) and:

- you wish to make an IHT effective gift of your Plan;

- you do not need to retain access to the death benefit under the Plan for yourself in the future (other than in the special circumstances of a joint life first death Plan), but wish to keep the lifetime benefits, or some of them for yourself;
 - you wish to ensure that the Plan proceeds are available to your Beneficiaries without delay following your death;
- and

- you wish to make a gift to a named Beneficiary who will receive the Plan proceeds after your death and you are happy that these people cannot be changed nor can their shares.

Mortgage Plus Plans only

If the Plan includes Serious Illness Cover for Mortgages then the Donor should be aware

You should **not** use the Absolute Trust:

- if you wish to retain access to all of the Plan for your own benefit;
- if you wish to retain some flexibility or control over who receives the benefits in the future;
- if your Plan is to be assigned as security for a loan; or
- if your Plan is to be used for business protection, as a different type of trust will be more suitable. We can provide these Trusts so please speak to your adviser.

Once you have decided that the draft Absolute Trust is suitable for you, the trust is established when you complete the Absolute Trust deed. You can use the Absolute Trust with either a new or an existing Plan. In the Trust deed you declare that the Plan will be held subject to the trust provisions contained in the Trust deed.

As Donor you will automatically be the first Trustee but you should appoint at least one Trustee in addition to yourself, although two are preferable. Where there are two Donors, both will be Trustees. Without an additional Trustee there could be a delay in securing access to the Plan benefits for the Beneficiary(ies) following your death.

Additional Trustees should be appointed using

The Trust is effectively split into two sub-trusts.

(i) The Retained Fund

The following benefits, if they are included under your Plan, will be held for your absolute benefit (payment made to you and not into the Trust):

- Serious Illness Cover (including any benefits that become payable at the same time as the Serious Illness Cover),
- Serious Illness Cover for Children,
- Serious Illness Cover for Mortgages,
- Mortgage Incapacity Cover,

that as the amount of the gifted Mortgage Life Cover may be reduced by any payment under the retained Serious Illness Cover for Mortgages benefit, the "gift with reservation of benefit" provisions will apply which means that mitigation of IHT, if relevant to your estate, will not be secured.

For **Mortgage Plus Plans** with Serious Illness Cover for Mortgages, the IHT implications should be carefully considered with your adviser when considering the suitability of the Absolute Trust for your Plan.

You should seek further advice on the appropriateness of this Trust if you have an existing Plan and you (or one of you in joint cases) are currently in serious ill health. And in any case you should always seek advice that the Trust is suitable to your circumstances before deciding that your Plan should be held subject to trust.

a separate deed, a draft of which is provided by VitalityLife for the consideration of your legal advisers – see "Trustees" on page 6.

For those domiciled in Scotland it is absolutely essential that at least one additional Trustee is appointed to ensure the Trust is validly created under Scots law (even though the trust will be governed by English law).

Once the Plan is made subject to the Trust, any subsequent dealings with the Plan will be between the Trustees (as the legal owners) and VitalityLife, although certain rights under the Plan are reserved to you as the Donor. For example, you will be the person effecting any new cover or reducing cover under the Plan.

- LifestyleCare Cover,
- Disability Cover,
- Income Protection Cover,
- Family Income Cover (where the benefits become payable on the diagnosis of a serious illness; otherwise the benefits will form part of the Gifted Fund),
- all benefits arising under the healthy living part of your Plan; and
- the benefit paid on Terminal Illness (but only if you choose this to be a retained benefit by initialling the appropriate box).

When should the Absolute Trust not be used?

How do you establish the Absolute Trust?

Key provisions of the Absolute Trust

Any other benefits which are payable under the Plan during your lifetime by reason of you suffering an illness or condition as specified in the Plan will also form part of the Retained Fund.

If there are two Donors and the Plan is on a joint life first death basis, the Terminal Illness benefit is paid to the one who suffers the illness or disability. In the case of a joint life second death Plan, the Life Cover benefit will be paid on the second event to occur. For example, if a husband suffers a Terminal Illness and his wife subsequently dies, the benefit will be paid on that subsequent second event.

You cannot change your mind about these benefits forming part of the Retained Fund and you will be entitled to these benefits even if, at the time, you decide that you would rather your Beneficiaries be entitled. Of course, once you have received the benefit you can do with it as you like, but if you give it away, you will be making a gift for inheritance tax purposes.

(ii) The Gifted Fund

This Fund comprises all benefits, other than the benefits in the Retained Fund, under the Plan. In effect this will include the Life Cover or Mortgage Life Cover (i.e. the benefit paid on death and the benefit paid on terminal illness if you have chosen for this to be part of the Gifted Fund) or in default having not made an election to retain them (unless the Reversion to

the Surviving Donor provision applies) as well as any other benefits payable after your death, for example the Education Cover. If the Life Cover benefit can be paid as a regular monthly benefit under Family Income Cover, then it will form part of the Gifted Fund.

These benefits are held by the Trustees on the following terms:

- As the trust is an Absolute Trust, the Life Cover benefit (ie the Gifted Fund) will be held for the absolute benefit of the Beneficiaries. This means that, subject to what is said below, nobody else can be entitled to the proceeds.
- You (both of you in the case of a joint Plan) cannot benefit from the Gifted Fund in any circumstances except where the Plan is a joint life first death Plan and you have both chosen the Reversion to the Surviving Donor provision and the surviving Donor survives the first to die by at least 30 days (as explained on page 3).
- The Trustees have wide powers to invest and deal with trust property where the Plan proceeds are not distributed to the Beneficiaries immediately, for example, if the intended Beneficiaries are minor children at the time of your death.

The law of the Trust

The Absolute Trust is subject to the law of England although it can be used in any part of the UK as long as the Donor(s) is happy that the Trust will be governed by English law. The main

benefits of the Absolute Trust, as indicated on page 3 (including the potential mitigation of inheritance tax) will be achieved in all parts of the UK.

The Trustees

You (or both of you where there is a joint Plan) are automatically the initial Trustee(s). At least one additional Trustee should be appointed. This is done by completing a deed of appointment of additional Trustees - for new Plans as soon as the Plan is issued. A draft deed of appointment is provided for this purpose by VitalityLife.

Anyone over 18 years old and of sound mind can be a Trustee. Obviously you should appoint

people you can trust. You may wish to appoint a professional person, such as solicitor, but bear in mind that they are likely to charge fees for their services.

You can appoint other Trustees later on. You can also dismiss a Trustee provided at least one Trustee other than you remains.

The Trustees of a trust governed by English law must act unanimously.

Inheritance tax and the Absolute Trust

In what follows, it is assumed that the Donor is domiciled and resident in the UK and the Beneficiaries and Trustees are UK residents - special rules would apply in the circumstances where this is not so.

1. What are the IHT implications on the establishment of the Trust?

- For IHT purposes you make a gift when you establish the Trust. The technical term for this is a "transfer of value".
- If two of you are making a gift jointly, each of you is treated as making a gift of one half of the value transferred.
- When a new Plan is made subject to trust, the value transferred will initially be the amount of the first premium.
- Every subsequent premium paid will be a gift.
- Strictly speaking, for the purposes of calculating the transfer of value on the premiums, the amount of the premium should be reduced by the amount of the premium that would be payable for any of the retained benefits that you are not gifting away ie. the Retained Fund. In practice, regardless of this discount, because of the type of Plan involved, the total premium is, in any event, likely to fall within one of your available exemptions for IHT e.g. the annual exemption or the normal expenditure out of income exemption.

Usually, when the plan that is being made subject to trust is a regular premium protection plan, such as a VitalityLife Plan, the premiums paid will be exempt from IHT as **normal expenditure out of income**. Broadly speaking, to qualify for this exemption it is necessary for the payment of the premium to be regular, paid out of the donor's income and of such an amount that will not affect the donor's usual standard of living.

If the amount of the premium or cash transferred to the Trustees does not qualify for the normal expenditure out of income exemption **and** it exceeds the available annual exemption, currently £3,000 for each Donor, it will normally be a PET. This means that no immediate liability to IHT will arise even if the PET on the gift plus the value of all other chargeable transfers made by the Donor in the preceding 7 years exceeds the nil rate band at the time the Plan is put in trust. If the Reversion to the Surviving Donor provision is chosen, premium payments may be regarded as chargeable transfers but would normally fall within available exemptions.

In the event that the PET in respect of the premiums causes the Donor to exceed his nil rate band, a tax liability at 40% of the excess over the nil rate band could arise if the Donor dies within 7 years of making the gift. The PET would in these circumstances become a CLT. Taper relief would reduce the tax payable if the Donor survives the gift for at least 3 years. On the Donor's death within 7 years of making the gift the full value of the PET (now a CLT) when made will also be taken into account in calculating the IHT liability on the Donor's estate. **In most cases no IHT liability will arise in connection with the payment of premiums under your Plan in trust.**

- When an existing Plan is made subject to trust, the transfer of value in respect of the gift will be the market value of the Plan (or, if your Plan is on a whole of life basis, the total premiums paid to date if greater). Other than this, the tax implications will be as set out above for a new Plan.
- You should note that even though a VitalityLife Plan, VitalityLife Essentials Plan or Mortgage Plus Plan will never acquire a surrender value, if the life (lives) assured is/ are in serious ill health this could mean that it has a market value for IHT purposes.

Gifts to trusts that are PETs do not need to be reported to HM Revenue & Customs when made, irrespective of whether they exceed exemptions. If you are uncertain about whether your gift needs to be reported please ask your financial adviser to explain the position.

2. Why isn't there a gift with reservation of benefit under the Trust?

• For VitalityLife Plans and VitalityLife Essentials Plans without LifestyleCare Cover

Under the Trust you retain the Serious Illness Cover, (and, if you so choose, the Terminal Illness Cover and other lifetime benefits for yourself). However, despite this "retention" the transfer of the Plan into the Trust will not be a gift with reservation of benefit (GWR) where

- your retained benefits are clearly identified and carved out, and
- you ensured that the Life Cover amount cannot reduce as a result of any lifetime payments (ie. on serious illness claim) from your Plan account. The complete extinguishment of Life Cover by a prior Serious Illness would not, however, cause an IHT problem.

To ensure that this condition is satisfied the Plan must include, from outset, either Protected Life Cover or the Minimum Protected Account at a level of 100%. If this is not so, then the gift with reservation of benefit provisions could apply.

- **For VitalityLife Plans or VitalityLife Essentials Plans with LifestyleCare Cover**

Under the Trust you retain the LifestyleCare Cover, (and, if you so choose, the Terminal Illness Cover and other lifetime benefits for yourself). However, despite this "retention" the transfer of the Plan into the Trust will not be a gift with reservation of benefit (GWR) where

- your retained benefits are clearly identified and carved out, and
- you ensured that the Life Cover amount cannot reduce as a result of any lifetime payments (ie. on LifestyleCare claim) from your Plan account. The complete extinguishment of Life Cover by a prior LifestyleCare would not, however, cause an IHT problem.

To ensure that this condition is satisfied the Plan must include, from outset, a suitable level of LifestyleCare Cover Protector. If this is not so, then the gift with reservation of benefit provisions could apply.

3. What is the IHT position if I increase or decrease my level of cover under the Plan?

- **For VitalityLife Plans or VitalityLife Essentials Plans without LifestyleCare Cover**

Provided the amount of the Life Cover does not reduce depending on the amount payable if you suffer a serious illness, (or, if it does, the Protected Life Cover or Minimum Protected Account is in place), any increase or decrease in the amount of Life Cover will not adversely affect the IHT effectiveness of the trust.

- **For VitalityLife Plans or VitalityLife Essentials Plans with LifestyleCare Cover**

Provided the amount of the Life Cover does not reduce depending on the amount payable if you meet the LifestyleCare Cover claim criteria, (or if it does, the (appropriate level of LifestyleCare Cover Protector is in place), any increase or decrease in the amount of Life Cover will not adversely affect the IHT effectiveness of the trust.

4. What is the IHT position on the payment of subsequent premiums by the Donor?

When you continue to pay regular premiums to a Plan held in Trust you will be making further gifts but these are likely to be exempt as described in 1. above. Even if they are not exempt, they will normally be PETs - but see question 8 on the position if the Reversion to the Surviving Donor option is chosen.

5. What is the IHT position on the death of the Donor?

- On your death (or, for joint policies, the death of either or both of you) the death benefit will not be part of your taxable estate for IHT purposes. Instead, the Plan proceeds will be paid free of IHT to the Trustees.
- If the gifts in respect of the premium payments cause you to exceed the nil rate band (highly unlikely with a regular premium Plan) a further tax liability at 40% on the now CLT could arise if you were to die within 7 years of making the gift. However, this could be reduced by taper relief if you survived the gift by at least 3 years.

As well as this, if you die within 7 years of the gift, the amount of the CLT could affect the amount of IHT paid on your estate on death. This is because it has to be taken into account in working out the tax payable on your estate.

6. In the case of a joint life first death policy, what happens on the death of the first of the two joint Donors to die?

If you have elected for the Reversion to the Surviving Donor provision to apply then, on the first death, the benefit will be paid to the Trustees (free of IHT at this stage) who would have to wait and see if the survivor of you is still alive 30 days later. If so, the surviving Donor will then become absolutely entitled to the death benefit. On the other hand, if both of you die within 30 days of each other, the Trustees will hold the funds for the named Beneficiaries.

7. What about the benefit paid on Terminal Illness?

If there is:

- only one Donor; or
- there are two Donors and the Plan is a joint **life second death** Plan or
- the Plan is a joint life first death Plan and the Reversion to the Surviving Donor provision has **not** been chosen

then you have a choice - you can either keep the benefit paid on Terminal Illness for yourself or you can give it away. This is done by initialling the appropriate box in the Trust deed. Once the choice is made, you cannot later change your mind.

If the Plan is a joint life first death Plan and the Donors have chosen for the Reversion to Surviving Donor provision to apply, then the Terminal Illness benefit must be a retained benefit.

In the case of a joint life second death Plan where it is intended that benefits will be paid on the second death, it would be unusual for the Donors to want Terminal Illness benefit to be paid to them and, subject to the circumstances outlined in the above paragraph, where neither box is initialled they will be treated as gifted.

If the right to payment on Terminal Illness is retained, the benefit will be paid to you and any that is not spent will be included in your estate for IHT purposes.

If the benefit on Terminal Illness is given away under the Trust you, as the Donor, **must not receive any part of it** if it is later paid to the Trustees. To ensure that the IHT efficiency of the Trust is not compromised it will be essential that, following the payment of this benefit, none of the benefit should find its way back to you, directly or indirectly.

Particular care will be needed if the funds are paid to the spouse/children of the Donor, (for either single or joint Plans where the Donor(s) has gifted the Terminal Illness benefit) or to any member of the Donor's family living with the Donor while the Donor is still alive. If the terminally ill Donor actually benefits from the funds, even if they are used to meet joint expenses, this could operate to activate a gift with reservation of benefit (see earlier for an explanation of this).

8. What are the inheritance tax implications whilst the Trust is in existence?

Because this is an Absolute Trust and the named Beneficiary(ies) are absolutely entitled to benefits, the value of the Gifted Fund will be treated as forming part of their taxable estate(s) for IHT purposes. The trust fund is the Plan so whilst the life assured is alive the value of the Plan will have only a nominal only.

Should the named Beneficiary(ies) predecease the life assured, the person inheriting the

deceased Beneficiary's interest will be determined according to the deceased Beneficiary's Will or the intestacy provisions. The value of the deceased Beneficiary's interest in the trust fund will form part of his taxable estate. As stated above this would normally only have a nominal value.

Reversion to the Surviving Donor provision

If the Reversion to the Surviving Donor provision is chosen under a joint life first death Plan, then in the event of the death of one Donor with the other Donor surviving by at least 30 days the Plan benefits revert to the surviving Donor under the Trust. This will not be treated as transfer from the named Beneficiary(ies) because the surviving Donor's interest will have been carved out for his or her benefit from outset - it simply accrues an increased value.

Because the Donors' interest is considered to be held on bare trust for them, for IHT purposes the position on the payment of the death benefit to a Donor who survives by at least 30 days is no different from a payment to a named Beneficiary. However, the selection of this option will probably mean that any premium payments that are not exempt will be treated as CLTs rather than PETs. This is unlikely to have substantial practical impact unless the Donor has already used his nil rate band and/or premium payments are substantial and exceed available exemptions.

Payment of the Serious Illness Cover benefit, LifestyleCare Cover benefit and other lifetime benefits

Payment of these benefits will be made to you free of tax because they are held on absolute trust for you.

Remember that you become entitled to the Serious Illness Cover benefit once you are diagnosed as suffering from any condition classified as a Serious Illness under the Plan.

For Plans with LifestyleCare you become entitled when you satisfy the claim criteria under the cover.

Even if you decide not to make a claim (for example because at that time you may consider that you'd rather your Beneficiaries benefit on your death) the value of the benefit is likely to be included in your estate for IHT purposes even if you do not claim it. This is because you could have claimed the benefit had you so wished.

Other tax implications of the Absolute Trust

Income tax

Chargeable event gains

As the VitalityLife Plan, VitalityLife Essentials Plan or Mortgage Plus Plan does not acquire a surrender value there will never be a chargeable event gain.

Payments to the Donor from the Retained Fund

There will be no income tax liability on any payments of the lifetime benefits retained by the Donor.

Payments to the Beneficiaries of the Gifted Fund

- No payments will be made to any Beneficiary until the Plan pays out on the death or Terminal Illness of the Donor (if the Terminal Illness benefit is not retained by the Donor).
- Payments to Beneficiaries will be treated as advancements of capital and so there should be no income tax implications for the Trustees or the Beneficiaries.

Pre-owned assets tax (POAT)

This is an income tax charge which is levied when a person continues to benefit from

property which he or she owned in the past but has given away and the gift with reservation of benefit rules do not apply.

Under the Absolute Trust, the POAT will not apply as the Donor's rights under the Trust are specifically retained in the Retained Fund for the Donor's benefit. As the Donor has no right to any benefit under the Gifted Fund, which is the property he or she has given away, HMRC has confirmed that in such circumstances a POAT charge should not apply.

Other taxes after the benefit has been paid to the Trustees

No other UK taxes are relevant to the Absolute Trust as long as the only Trust asset is a VitalityLife Plan, VitalityLife Essentials Plan or Mortgage Plus Plan. If the Life Cover or Mortgage Life Cover benefit is paid to the Trustees and they subsequently invest the cash in other assets there may be income tax and, possibly, capital gains tax implications to consider. The Trustees should obtain suitable advice before making an investment and take the tax implications of the relevant investments into consideration at that time.

Frequently asked questions

1. Who can be a Trustee?

Any adult person of sound mind can be a Trustee. A professional person such as an accountant or solicitor may be a Trustee but they are likely to charge fees.

2. Can I change the gifted or retained benefits when the Trust has been set up?

No, once the Trust has been set up, its provisions cannot be changed.

3. What are the main duties of a Trustee?

The main duty of a Trustee is to look after the Trust assets for the benefit of the Beneficiaries. As long as the Plan is in force and there is no claim, in practice, the Trustees will not have much to do. Once the Plan benefits have been paid out after a claim, the Trustees will then have to exercise their powers in accordance with the Trust, depending on which of the benefits have been paid out.

4. If a Trustee is unable to act as a result of them losing capacity, can the remaining Trustees remove them?

Yes, providing that there are two remaining Trustees. The remaining Trustees can remove any Trustee, including the Donor, who has lost capacity as defined in the trust deed where this is confirmed by a written report from the General Practitioner of the Trustee being dismissed. Where there are only two individuals acting as Trustees, a new Trustee will need to be appointed simultaneously with the dismissal of the incapable Trustee.

5. Can my spouse/partner be a Beneficiary?

Yes, provided this is not a joint life Plan. Even if it is a joint life first death Plan, it is possible to choose an option whereby the surviving spouse will be entitled to the proceeds on death if he/she survives the first death by 30 days.

6. What happens if I add further covers to the Plan later?

These further covers will be held subject to the same Trust provisions as if they had been included in the Plan from outset.

7. How many additional Trustees do I need to appoint?

There is no limit on the number of Trustees you should appoint, although in practice it is not recommended that more than three should be appointed in addition to you. This is because the agreement of all the Trustees needs to be obtained when any Trustee functions are exercised.

In England it is not strictly legally necessary to appoint an additional Trustee as a valid Trust will exist even without an additional Trustee. However, clearly if there is no additional Trustee surviving you following your death, one of the objectives of the Trust will not be fulfilled as probate on your death will be necessary to determine who will be the Trustee to whom any benefit can be paid.

In Scotland, on the other hand, it is essential from a legal standpoint to appoint at least one additional Trustee (in addition to the Donor).

Next steps?

If you decide to make your Plan subject to the VitalityLife Absolute Trust, it is important that you follow the process below to make sure all documents are correctly completed and submitted:

Changes to tax law

The notes in this Client Guide are based on VitalityLife's understanding of the law and HM Revenue & Customs' practice as at November 2014. We have made every effort to ensure they are accurate but accept no responsibility for our interpretation of the law, future changes in the law or for any loss you or anyone else suffers if you act based on any information we've given.

You/your adviser completes a Plan application form and the Absolute Trust form. The Trust form must be dated on or after the date of the policy application.

Consider appointing at outset at least one additional trustee to act with you. See VitalityLife 'Deed of Appointment of Additional Trustees'.

We will return to you the original Trust form by special delivery once processed.

We will confirm to you by letter when your Plan has been successfully placed into Trust.

You should then:

1. Provide all additional Trustees you've appointed with copies of the Trust form.
2. Make the Trustees aware of the place of safe-keeping for the original Trust form for ease at point of claim.

FIND OUT MORE

To find out more about our Business Protection Plan or any other products, please speak to your financial adviser or take a look at visit vitality.co.uk/life