

Discretionary Survivor's Trust

What is this for and how does it work?

The aim of this Discretionary Survivor's Trust is to ensure the proceeds payable from your Life Policy on the death of one of the policyholders are outside of their estate for inheritance tax purposes.

On your death, the Death Benefits³ will be paid to your Trustees who will distribute them to your chosen Beneficiaries.

Is it suitable for me?

This Trust is intended for use where there are joint policyholders with a Beagle Street Policy (or Policies). It is not suitable for sole Policyholders.

Guidance notes...

Please be aware that these notes are intended for general guidance only and should not be relied upon in the place of specialist legal and tax advice.

Why do I need additional Trustees and who should I choose?

Both of you will be Trustees. However, because the Death Benefits are payable on your death, it is highly advisable to appoint additional Trustees who will still be living and be able to distribute the Death Benefits.

In theory you may add as many additional Trustees as you wish but we strongly recommend that you add no more than four to ensure effective decision making.

You should choose people you trust as they will be responsible for receiving the Death Benefits and distributing them to your chosen Beneficiaries.

Your additional Trustees can also be Beneficiaries. For example, a relative could be a Beneficiary and a Trustee. The minimum age for a Trustee is 18.

¹ Date on which last signatory signs this deed

² Trustees includes any Trustees appointed to act in the future

³ Definition for Death Benefit is the amount payable under a policy on the death of the first dying policyholder

Section 1

This Life Policy Trust is made on¹:

/ /

Between the Policyholders...

First Policyholder Name

Second Policyholder Name

Address and Postcode

Address and Postcode

The Trustee²...

First Trustee Name

Date of Birth

Address and Postcode

The Trustee...

Second Trustee Name

Date of Birth

Address and Postcode

The Trustee...

Third Trustee Name

Date of Birth

Address and Postcode

The Trustee...

Fourth Trustee Name

Date of Birth

Address and Postcode

Each Policyholder shall also be a Trustee

Discretionary Survivor's Trust (cont'd)

What does "Assignment of Policy" mean?

Currently your lives are insured and you own the Policy.

Assignment means that you give the Policy to your Trustees so that they legally own the Policy, but it is still your lives that are insured.

What does "Declaration of Trusts" mean?

The declaration of trusts in this section sets out what the Trustees can do with the Death Benefits when they receive them. Whilst it may not be obvious from the wording, this section allows the Trustees to decide when to pay these benefits out and the amount which each Beneficiary receives.

For example, the Trustees could decide to pay all of the benefits to one of the Beneficiaries immediately or to pay them to a number of Beneficiaries on, say, their 21st birthdays.

You should therefore ensure that your other Trustee(s) understands what your intentions are and, ideally, write a letter to the Trustee(s) giving written evidence of this.

You can call us to obtain a Letter of Wishes form to complete.

Who should I choose to benefit?

Generally people choose their children and grandchildren and more remote descendants. However you can include anyone else that you would like to benefit from your Death Benefits after your death.

If you wish to add Beneficiaries at a later date you can do this by informing your Trustees in writing. If you require a form with more Beneficiaries please contact us.

⁴ The Trust Period means the period ending on the last day of the period of 125 years from the date of this Deed

⁵ The expression "surviving spouse or civil partner" does not extend to a former spouse or civil partner or to an unmarried partner (whether or not they are cohabiting with you). If you want any person in these categories to benefit, you will need to add their details separately

⁶ References to children, grandchildren and great-grandchildren do not include step-children

Section 2 - Assignment of Policy

The Policyholder hereby assigns the following policy (the Policy) to the Trustees.

Policy Number(s)

Section 3 - Declaration of Trusts

The Trustee(s) is to hold the Death Benefits of the Policy, including the money, investments and property from time to time representing those benefits on such Trusts. The Trustee(s) shall appoint for the benefit of the surviving Policyholder (provided that they survive the other Policyholder by 30 days) and the following Beneficiaries during the Trust Period⁴:

Beneficiaries:

- The Policyholder's surviving spouse or civil partner
- The Policyholder's children, grandchildren and great-grandchildren

Additional Beneficiary

Beneficiary Name

Date of Birth

Address and Postcode

Beneficiary Name

Date of Birth

Address and Postcode

Beneficiary Name

Date of Birth

Address and Postcode

Other Beneficiaries

The Policyholders may also nominate any person (other than the Policyholder's personal representatives, in their capacity as such) by notice in writing addressed to the Trustees provided that notice is received by the Trustees not later than one month after the death of a Policyholder.

Discretionary Survivor's Trust (cont'd)

Why can't I benefit?

If the Death Benefits of the Policy are to be outside your estate for inheritance tax purposes you cannot benefit from it (apart from non Death Benefits, see note below) Likewise, your spouse can only benefit after your death.

What happens if the Policy pays out before the death of a Policyholder?

If any benefits under the Policy become payable in either of your lifetimes (such as Critical Illness or Terminal Illness benefits) they will be paid directly to the Policyholder entitled to the benefit, unless these benefits are placed in trust, in which event they will be paid to the Trustees for the Beneficiaries of the Trust.

Section 4

Policyholder not to benefit

The Trustees shall not in any circumstances use their powers under Section 3 for the benefit of the Policyholder or, during a Policyholder's lifetime, their spouse or civil partner. In addition, a Policyholder shall not benefit under Section 3 unless they survive the other Policyholder by 30 days.

Section 5

Trusts of Critical Illness or Terminal Illness benefits

The Trustees shall hold any Critical Illness or Terminal Illness benefits payable under the Policy (whether the benefits relate to the Critical Illness or Terminal Illness of a Policyholder or dependant of a Policyholder) upon Trust for the Policyholders absolutely in equal shares.

Gifted/Retained Benefits (where applicable)

Terminal Illness Benefit

We wish to gift the Terminal Illness Benefit under the Policy to this Trust, rather than retain it for ourselves.

Percentage of benefit gifted:

Critical Illness Benefit

We wish to gift the Critical Illness Benefit under the Policy to this Trust, rather than retain it for ourselves.

Percentage of benefit gifted:

Please note:

If you tick any of the boxes relating to a Benefit above, the benefits payable under your Policy **will be paid to the Trust** and not to you.

If you do **NOT** tick a box relating to a Cover above, the benefits payable under that Cover will **NOT** be gifted and **will be retained** by you.

First Policyholder signature

Second Policyholder signature

Section 6

Administrative Provisions

Beagle Street Trust Provisions as set out below shall apply to this Trust.

Discretionary Survivor's Trust (cont'd)

How do I sign/execute this document correctly?

It is vital that this document is executed correctly to be a valid Trust.

The Policyholders and the other Trustees all need to sign where indicated and each signature must be witnessed by a witness who must also sign.

The witness must be someone who is over the age of 18 and is not one of the trustees (New, Continuing or Outgoing) or the Policyholders. The same witness can witness multiple signatures but must sign for each signature witnessed.

If you are unsure about whether your witness is suitable you should check with your adviser. Beagle Street cannot be responsible for checking this.

The signatures in this Section should correspond to the names listed as Policyholder and Trustees in Section 1.

Once everyone has signed, the document should be dated at the top of page one.

You will need to inform Beagle Street that you have put the Policy into Trust and send us a copy of this form.

Post

**Beagle Street
16-17 West Street
Brighton
BN1 2RL**

Email

trusts@beaglestreet.com

You can call us on

0800 247 247

Section 7 - Execution

In the presence of a witness, this deed has been executed on the date appearing at the top of the first page.

Executed as a deed by...

First Policyholder Signature

First Policyholder Full Name

Second Policyholder Signature

Second Policyholder Full Name

Executed as a deed by...

First Trustee Signature

First Trustee Full Name

Executed as a deed by...

Second Trustee Signature

Second Trustee Full Name

Executed as a deed by...

Third Trustee Signature

Third Trustee Full Name

Executed as a deed by...

Fourth Trustee Signature

Fourth Trustee Full Name

In the presence of...

Witness Signature

Witness Name

Witness Signature

Witness Name

In the presence of...

Witness Signature

Witness Name

In the presence of...

Witness Signature

Witness Name

In the presence of...

Witness Signature

Witness Name

In the presence of...

Witness Signature

Witness Name

Discretionary Survivor's Trust (cont'd)

Trust Terms

1. Incorporation of Beagle Street Trust Provisions

These provisions may be incorporated in a document by the words:-

The Beagle Street Trust Provisions shall apply

or in any manner indicating an intention to incorporate them.

2. Interpretation

2.1. In these provisions, unless the context otherwise requires:-

2.1.1 **'Civil Partner'** has the same meaning as in section 1 Civil Partnership Act 2004.

2.1.2 **'Income Beneficiary'**, in relation to Trust Property, means a Person to whom income of the Trust Property is payable (as of right or at the discretion of the Trustees).

2.1.3 **'Lay Trustee'**, has the same meaning as in s.28 Trustee Act 2000.

2.1.4 **'Person'** includes a person anywhere in the world and includes a Trustee.

2.1.5 **'Principal Document'** means the document in which these Provisions are incorporated.

2.1.6 **'Trust'** means any trust created by the Principal Document and an estate of a deceased Person to which the Principal Document relates.

2.1.7 **'Trust Corporation'** has the same meaning as in the Trustee Act 1925.

2.1.8 **'Trustees'** means the personal representatives or trustees of the Trust for the time being.

2.1.9 **'Trust Fund'** means all the property comprised in the Trust for the time being.

2.1.10 **'Trust Property'** means any property of any nature comprised in the Trust Fund.

2.2. These provisions have effect subject to the provisions of the Principal Document.

3. Protection for interest in possession trusts

If the existence of any powers conferred by these provisions would be enough (without their exercise) to prevent a Person from being entitled to an interest in possession (within the meaning of the Inheritance Tax Act 1984) then those powers shall be restricted so far as necessary to avoid that result.

4. Additional powers

The Trustees shall have the following powers:

4.1. Investment

The Trustees may invest Trust Property in any manner as if they were absolutely entitled to it. In particular, the Trustees may invest in land in any part of the world and unsecured loans.

Discretionary Survivor's Trust (cont'd)

4.2. Management

The Trustees may effect any transaction relating to the management or disposition of Trust Property as if they were absolutely entitled to it. In particular:

4.2.1 The Trustees may repair and maintain Trust Property.

4.2.2 The Trustees may develop or improve Trust Property.

4.3. Joint property

The Trustees may acquire property jointly with any Person.

4.4. Income and capital

Income may be set aside and invested to answer any liabilities, which in the opinion of the Trustees ought to be borne out of income or to meet depreciation of the capital value of any Trust Property. In particular, income may be applied for a leasehold sinking fund policy.

4.5. Accumulated income

The Trustees may apply accumulated income as if it were income arising in the current year.

4.6. Occupation or Use of Trust Property

4.6.1 The Trustees may acquire any interest in property anywhere in the world for occupation or use by an Income Beneficiary.

4.6.2 The Trustees may permit an Income Beneficiary to occupy or use Trust Property on such terms as they think fit.

4.6.3 This clause does not restrict any right of beneficiaries to occupy land under the Trusts of Land and Appointment of Trustees Act 1996.

4.7. Application of trust capital

4.7.1 The Trustees may:

- (i) lend money from the Trust Fund to an Income Beneficiary without security, on such terms as they think fit
- (ii) guarantee the debts or obligations of an Income Beneficiary
- (iii) charge the whole or any part of the Trust Fund as security for debts or obligations of an Income Beneficiary
- (iv) pay money out of the Trust Fund to an Income Beneficiary as their income, for the purpose of augmenting their income.

4.7.2 Clause 4.7.1 applies only if:

- (i) the Trustees have power to transfer any of the Trust Fund to that Income Beneficiary absolutely, or
- (ii) the Trustees have power to do so with the consent of another Person and the Trustees act with the written consent of that Person.

4.7.3 The Trustees' power under clause 4.7.1 is limited to that part of the Trust Fund in which the Income Beneficiary's interest exists at the time that the power is exercised.

Discretionary Survivor's Trust (cont'd)

4.8. Trade

4.8.1 The Trustees may carry on a trade, in any part of the world, alone or in partnership with any Person.

4.9. Deposit of documents

The Trustees may deposit documents relating to the Trust with any Person.

4.10. Nominees

The Trustees may vest Trust Property in any Person as nominee, may authorise the use of sub-nominees, and may place Trust Property in the possession or control of any Person.

4.11. Place of administration

The Trustees may carry on the administration of the Trust anywhere they think fit.

4.12. Payment of tax

The Trustees may pay tax liabilities of the Trust (and interest on such tax) even though such liabilities are not enforceable against the Trustees.

4.13. Indemnities

The Trustees may indemnify any Person for any liability properly chargeable against Trust Property.

4.14. Security

The Trustees may charge Trust Property as security for any liability properly incurred by them as Trustees.

4.15. Appropriation

The Trustees may appropriate Trust Property to any Person or class of Persons in or towards the satisfaction of their interest in the Trust Fund.

4.16. Receipt by charities etc.

4.16.1 Where Trust Property is to be paid or transferred to a trust, association, company or other entity whether or not charitable according to the laws of England and Wales the receipt of the treasurer or appropriate officer of that entity shall be a complete discharge to the Trustees who shall not be concerned to see to its application. A Trustee shall not be liable for making a payment or transfer to any Person who appears to be the treasurer or appropriate officer unless at the time of distribution the Trustee has knowledge of circumstances which call for enquiry.

4.16.2 If any trust, association, company or other entity which is charitable according to the laws of England and Wales ceases to exist, changes its name, or enters into insolvent liquidation, before the time that a gift to that charitable entity takes effect in possession, the gift shall instead be paid to such charitable entity as the Trustees decide having regard to the objects that were intended to benefit.

4.17. Release of powers

The Trustees may by deed release any of their powers wholly or in part so as to bind future trustees.

4.18. Ancillary powers

The Trustees may do anything, which is incidental or conducive to the exercise of their functions.

Discretionary Survivor's Trust (cont'd)

5. Minors and beneficiaries without capacity: powers over income and capital

- 5.1.** Where the Trustees may apply income or capital for the benefit of a minor they may do so by paying the income or capital to the minor's parent or guardian on behalf of the minor, or to the minor if the minor has attained the age of 16. A Trustee is under no duty to enquire into the use of the income or capital unless the Trustee has knowledge of circumstances, which call for enquiry.
- 5.2.** Where the Trustees may apply income for the benefit of a minor, they may do so by resolving that they hold that income on trust for the minor absolutely and:
- 5.2.1** The Trustees may apply that income for the benefit of the minor during the minor's minority.
- 5.2.2** The Trustees shall transfer the residue of that income to the minor on attaining the age of 18.
- 5.2.3** For investment and other administrative purposes, that income shall be treated as Trust Property.
- 5.3.** Where a beneficiary lacks mental capacity to give a receipt and does not have an attorney appointed under a registered Enduring Power of Attorney or a registered Lasting Power of Attorney for Property and Financial Affairs, or a deputy appointed under the Mental Capacity Act 2005 whose powers include receiving income or capital from the Trustees, then:
- 5.3.1** Where income or capital is payable to that beneficiary the Trustees may (subject to the directions of the Court where appropriate) apply that income or capital for the benefit of the beneficiary.
- 5.3.2** Where the Trustees may pay or apply income or capital to or for the benefit of that beneficiary the Trustees may pay or apply that income or capital to the Person having or appearing to the Trustees to have the care of and financial responsibility for the beneficiary. A Trustee is under no duty to enquire into the use of the income or capital unless that Trustee has knowledge of circumstances, which call for enquiry.

6. Disclaimer

A Person may disclaim their interest under the Trust wholly or in part.

7. Apportionment

Section 1 Trusts (Capital and Income) Act 2013 shall apply and no other common law, statutory or other rule of apportionment shall apply such that all income shall be treated as arising when payable. All expenditure shall be treated as arising when payable, and not from day to day, so that no apportionment of expenditure shall take place.

8. Conflicts of interest

- 8.1.** In this clause:
- 8.1.1** **'Fiduciary'** means a Person subject to fiduciary duties under the Trust.
- 8.1.2** **'Independent Trustee'**, in relation to a Person, means a Trustee who is not:
- (i) that Person;
 - (ii) a brother, sister, ancestor, descendant or dependant of the Person;
 - (iii) a spouse or Civil Partner of (i) or (ii)
- above; or
- (iv) a company controlled by one or more Persons within (i) (ii) or (iii) above.

Discretionary Survivor's Trust (cont'd)

8.2. A Fiduciary may:

8.2.1 enter into a transaction with the Trustees,

or

8.2.2 be interested in an arrangement in which the Trustees are or might have been interested,

or

8.2.3 act (or not act) in any other circumstances even though the Fiduciary's fiduciary duty under the Trust conflicts with other duties or with the Fiduciary's personal interest.

8.3. Clause 8.2 has effect only in relation to administrative and not dispositive matters, and only applies if:

8.3.1 The Fiduciary first discloses to the Trustees the nature and extent of any material interest conflicting with the Fiduciary's fiduciary duties,

8.3.2 There is in relation to the Fiduciary an Independent Trustee in respect of whom there is no conflict of interest, and that the Independent Trustee considers that the transaction arrangement or action is not contrary to the general interest of the Trust, and

8.3.3 The Fiduciary is not the settlor acting in connection with reserved powers as settlor.

8.4. The powers of the Trustees may be used to benefit a Trustee (to the same extent as if that Person were not a Trustee) provided that:

8.4.1 There is in relation to that Trustee an Independent Trustee in respect of whom there is no conflict of interest or

8.4.2 The benefitting Trustee was originally appointed under the Principal Document.

9. Trustee remuneration

9.1. A Trustee who is acting in a professional capacity or is a Trust Corporation is entitled to reimbursement of proper expenses (including expenses incurred in relation to any services rendered by any firm or company associated to that trustee) and to receive reasonable remuneration (in accordance with that professional's normal terms of business or that Trust Corporation's standard terms and conditions for trust business from time to time) out of the Trust Fund for any services that Trustee provides to or on behalf of the Trust.

9.2. For this purpose, a Trustee acts in a professional capacity if the Trustee acts in the course of a profession or business which consists of or includes the provision of services in connection with:

9.2.1 the management or administration of trusts generally or a particular kind of trust,

or

9.2.2 any particular aspect of the management or administration of trusts generally or a particular kind of trust.

9.3. A Trustee shall be entitled to reasonable remuneration for acting as a director or an officer of any company connected with the Trust Fund and for any services rendered to such company and may retain that remuneration.

10. Professional Trustees and Trust Corporations

10.1. In addition to the right to remuneration under clause 9, a Trustee who is acting in a professional capacity as defined in clause 9.2, is a Trust Corporation acting, or appointed as Trustee may act as Trustee on the basis of that professional's or that Trust Corporation's standard terms and conditions as published from time to time.

10.2. Those standard terms and conditions shall apply subject to the provisions of the Principal Document and to these provisions.

Discretionary Survivor's Trust (cont'd)

11. Liability of Trustees

- 11.1.** A Trustee shall not be liable for a loss to the Trust Fund unless that loss was caused by that Trustee's own actual fraud or negligence.
- 11.2.** A Trustee shall not be liable for a loss to the Trust Fund unless that loss or damage was caused by that Trustee's own actual fraud, provided that:
- 11.2.1** the Trustee acts as a Lay Trustee and
 - 11.2.2** there is another trustee who does not act as a Lay Trustee.
- 11.3.** A Trustee shall not be liable for acting in accordance with the advice of counsel, of at least five years' standing, with respect to the Trust. The Trustees may in particular conduct legal proceedings in accordance with such advice without obtaining a court order. A Trustee may recover from the Trust Fund any expenses where that Trustee has acted in accordance with such advice.
- 11.4.** Clause 11.3 does not apply:
- 11.4.1** in relation to a Trustee who knows or has reasonable cause to suspect that the advice was given in ignorance of material facts
 - 11.4.2** if proceedings are pending to obtain the decision of the court on the matter
 - 11.4.3** in relation to a Trustee who has a personal interest in the subject matter of the advice provided that for the purposes of this sub-clause a Lay Trustee does not have a personal interest in the subject matter of the advice merely by reason of being a beneficiary of the Trust
 - 11.4.4** in relation to a Trustee who has committed a breach of trust relating to the subject matter of the advice.
- 11.5.** Clause 11.3 does not prejudice any right of any Person to follow property or income into the hands of any Person, other than a purchaser, who may have received it.

12. Subsequent editions of the Beagle Street Trust Provisions

- 12.1.** Subject to clause, **12.2** and **12.3** below, the Trustees may by deed declare that any subsequent edition of the the Beagle Street Trust Provisions shall apply in place of these provisions wholly or in part.
- 12.3.** The new edition of the provisions shall have effect subject to the provisions of the Principal Document.

13. Borrowing

The Trustees may borrow money for investment or any other purpose. Money borrowed shall be treated as Trust Property.

14. Delegation

A Trustee may delegate in writing any of that Trustee's functions to any Person. None of the restrictions on delegation in sections 12 to 15 Trustee Act 2000 shall apply. A Trustee shall not be responsible for the default of that Person (even if the delegation was not strictly necessary or expedient) provided that the Trustee took reasonable care in their selection and supervision of that Person.

15. Companies

- 15.1.** Power to promote companies

The Trustees may incorporate any company in any part of the world for any purpose in connection with the Principal Document.

Discretionary Survivor's Trust (cont'd)

15.2. Powers in relation to companies

15.2.1 The Trustees may enter into any compromise or arrangement in relation to any company in which Trust Property is invested.

15.2.2 The Trustees may enter into any arrangements in relation to the winding up or liquidation of any company in which Trust Property is invested.

15.3. Supervision of companies

The Trustees shall be under no duty to inquire into or be involved in the management of any company in which Trust Property is invested unless they have knowledge of circumstances, which call for inquiry.

16. Powers of Maintenance: Deferring income entitlement to 25

16.1. For the purposes of section 31 Trustee Act 1925 a Person shall be treated as attaining the age of majority at the Specified Age, and the references to the age of eighteen years in section 31 shall be treated as references to the Specified Age.

16.2. In this clause, 'the Specified Age' means the age of 25 or such earlier age (not being less than 18) as the Trustees may by deed specify.

17. Absolute discretion clause

The Trustees are not under any duty to consult with any beneficiaries or to give effect to the wishes of any beneficiaries. The powers of the Trustees may be exercised:

17.1. at their absolute discretion; and

17.2. from time to time as occasion requires.

18. Appointment and retirement of Trustees

18.1. A Person may be appointed Trustee of the Trust even though that Person has no connection with the United Kingdom.

18.2. A Trustee may be discharged even though there is neither a trust corporation nor two Persons to act as trustees provided that there remains at least one trustee.

18.3. For the purposes of s.36 Trustee Act 1925, a Person will be deemed incapable of acting as a trustee, or of exercising the power referred to in s.36(1)(b), if:

18.3.1 There is a Court of Protection deputy appointed to manage that Person's property and financial affairs

18.3.2 All the Trustees or all of the other Trustees, as the case might be, in reliance upon written advice from a suitably qualified medical practitioner, resolve that the Person is incapable of fulfilling the role in question under the Trust

18.3.3 For the avoidance of doubt, where the Person is deemed incapable of exercising the power referred to in s.36(1)(b), that power is exercisable as though that Person had died.

Discretionary Survivor's Trust (cont'd)

19. Powers relating to income and capital

19.1. The Trustees are under no duty to hold a balance between conflicting interests of Persons interested in Trust Property. In particular:

19.1.1 The Trustees may acquire

- (i) wasting assets and
- (ii) assets which yield little or no income for investment or any other purpose.

19.1.2 The Trustees are under no duty to procure distributions from a company in which they are interested.

19.2. The Trustees may pay taxes and other expenses out of income although they would otherwise be paid out of capital.

20. Relationships unknown to Trustees

20.1. The Trustees may distribute Trust Property or income in accordance with the Trust but without having ascertained that there is no Person who is or may be entitled to any interest therein by virtue of a relationship unknown to the Trustees. A Trustee shall not be liable to such a Person unless at the time of the distribution the Trustee has knowledge of circumstances, which call for enquiry.

20.2. This clause does not prejudice any right of any Person to follow property or income into the hands of any Person, other than a purchaser, who may have received it.

21. Governing Law

This Trust shall be governed by and construed in accordance with the laws of England and Wales.

Discretionary Survivor's Trust (cont'd)

Guidance Notes

Note: Capitalised expressions are as defined in Provision 2.1.

These notes are intended to assist practitioners, settlors and testators in the use of the Beagle Street Trust Provisions. They are not a substitute for seeking independent specialist advice or reading all of the provisions of the trust.

Provision 1: Incorporation of Beagle Street Trust Provisions

This clause sets out the words used to incorporate the Beagle Street Trust Provisions.

Provision 2: Interpretation

Provision 2.1: sets out definitions used in these provisions.

Provision 2.2: provides that in the event of there being any conflict between these provisions and the terms of the trust instrument incorporating these provisions, the terms of the trust instrument prevail.

Provision 3: Protection for interest in possession trusts

This provision prevents the accidental loss of certain inheritance tax advantages for interest in possession trusts, or deemed interest in possession trusts.

Provision 4: Additional powers

This provision provides Trustees with powers to assist them in managing a Trust Fund in the best way in the interests of the beneficiaries.

Provision 4.1: Investment

Trustees are given a wide power of investment, including investing in land anywhere in the world. The trustees remain under a statutory duty to:

- invest in a manner appropriate to the circumstances of the Trust
- obtain advice when investing the Trust Fund
- regularly review the trust investments and ensure they continue to be appropriate

Provision 4.2: Management

Trustees may manage Trust Property without restriction, including repairing, developing and improving that property.

Provision 4.3: Joint property

Trustees may invest in property together with others (including a beneficiary).

Provision 4.4: Income and capital

Trustees may purchase wasting assets or assets which provide only a capital return. Capital expenses may be paid out of income.

Provision 4.5: Accumulated income

Where income is accumulated under the terms of the Trust, this provision allows the Trustees to distribute that income at a future date.

Discretionary Survivor's Trust (cont'd)

Provision 4.6: Occupation or Use of Trust Property

Trustees may acquire land anywhere in the world for occupation or use by an Income Beneficiary (subject to any terms imposed by the Trustees). Provision 4.6.3 ensures that this power cannot be exercised so as not to interfere with the rights of other beneficiaries.

Provision 4.7: Application of trust capital

This is an administrative provision setting out the powers of trustees to lend money without security, guarantee the debts or obligations of a beneficiary or charge the trust fund in respect of such debts or obligations. The trustees may also pay income to a beneficiary.

Provision 4.8: Trade

The Trustees may carry on a trade either alone or on their own or together with any other person.

Provision 4.9: Deposit of documents

Trustees can lodge them with a third party (e.g. a solicitor, accountant or other professional) for safe keeping rather than keeping all the trust documents in their personal possession.

Provision 4.10: Nominees

The Trustees may arrange for Trust Property to be held for them in the name of a third party, rather than have it held in their own name(s).

Provision 4.11: Place of administration

The Trustees may administer the Trust from outside of the UK. Trustees should always take advice before transferring assets to another jurisdiction or if they decide to live outside of the UK.

Provision 4.12: Payment of tax

The payment of foreign taxes cannot normally be enforced in the UK, but this provision permits the Trustees to pay any such taxes notwithstanding that they are not legally enforceable against the Trustees.

Provision 4.13: Indemnities

Trustees may reimburse third parties out of the Trust Fund in respect of any liabilities they incur and which would normally be payable out of the Trust Fund.

Provision 4.14: Security

The Trust Property may be charged in respect of the liabilities incurred by them as Trustees.

Provision 4.15: Appropriation

Trustees may obtain the consent of a beneficiary to Trust Property being appropriated to them in satisfaction of their interest in the Trust Fund.

Provision 4.16: Receipt by charities, etc.

Provision 4.16.1 states that, when transferring Trust Property to a beneficiary which is not an individual (for example a trust, company, unincorporated association, or charitable entity), the Trustees may safely accept the receipt of the person describing themselves as the treasurer (or financial controller) of that charity, unless they know that person is not authorised to receive the Trust Property.

Provision 4.16.2 provides that where a charitable entity no longer exists then the Trustees must decide to which charitable entity it should be paid having regard to the purposes of the originally intended charitable entity.

Discretionary Survivor's Trust (cont'd)

Provision 4.17: Release of powers

Trustees may extinguish any of the powers that they have. Such release must be by deed.

Provision 4.18: Ancillary powers

Trustees may do things incidental to the terms of the Trust.

Provision 5: Minors and beneficiaries without capacity: powers over income and capital

This provision identifies how income or Trust Property to which a minor or a person lacking mental capacity may be dealt with.

Provision 5.1: identifies those persons who may validly give a receipt for any income or Trust Property due to a minor.

Provision 5.2: sets out the ways in which the Trustees can apply income on behalf of a minor.

Provision 5.3: identifies those persons who may validly give a receipt for any income or Trust Property due to a person lacking mental capacity.

Provision 6: Disclaimer

A beneficiary may refuse to accept their interest under a Trust (or a part of their interest). Legal advice should be sought in such situations.

Provision 7: Apportionment

This provision removes any residual duty on Trustees to split receipts and expenditure between income and capital.

Provision 8: Conflicts of interest

This provision sets out the procedure to be followed where there is a conflict between a person's duties to the Trust and their personal interests. Other than where the person in question was one of the Trustees originally appointed, or is the settlor exercising powers they reserved for themselves under the Trust, an Independent Trustee is required before any of the trust powers can validly be used to benefit the person in question.

Provision 8.1: excludes certain people from qualifying as an Independent Trustee.

Provision 9: Trustee remuneration

This provision provides for a professional trustee or a Trust Corporation to be paid for acting as Trustee. A professional trustee is defined in clause 9.2. Under provision 9.3, any Trustee is entitled to be paid for acting as a director or an officer of any company in which the Trust is invested.

Provision 10: Professional Trustees and Trust Corporations

This provision is supplemental to Provision 9 and authorises a professional trustee or a Trust Corporation to act as Trustee in accordance with its standard terms and conditions of service as published from time to time.

Provision 10.2 provides that in the event of there being any conflict between those terms and conditions, these provisions and the terms of the will or trust instrument incorporating these provisions, these provisions (subject to **Provision 2.2**) and the terms of the will or trust instrument prevail.

Discretionary Survivor's Trust (cont'd)

Provision 11: Liability of Trustees

Provision 11.1 provides that Trustees are not personally liable for any loss to the Trust Fund unless it can be shown that such loss arose from their own fraud or negligence.

However, **Provision 11.2** provides that where a Trustee is a Lay Trustee (i.e. not a professional trustee or a Trust Corporation) they are not liable for any loss arising from their own negligence provided there is another trustee who is not a Lay Trustee.

Provision 11.3 authorises Trustees to act in accordance with the advice of a barrister of at least 5 years standing. This includes the ability to recover from the Trust Fund any expenses incurred when acting on such advice (including the costs of litigation without the need for authority from a court).

Provision 12: Subsequent editions of the Beagle Street Trust Provisions

Trustees may adopt later versions of the Beagle Street Trust Provisions.

Provision 13: Borrowing

Trustees may borrow monies for investment or any other trust purpose.

Provision 14: Delegation

Trustees may delegate any of their trustee activities, including decision-making, to a third party (which could be another trustee). The Trustee needs to be satisfied that whoever they appoint as their delegate is reasonably competent to deal with any of the matters delegated to them.

Provision 15: Companies

The clause empowers the Trustee to create a company, and to wind up or liquidate any company in which Trust Property is invested.

Provision 15.3 relieves Trustees of a duty they would otherwise have to maintain oversight of companies in which a Trust is invested.

Provision 16: Powers of maintenance: Deferring income entitlement to age 25

This provision provides that where income due to a minor beneficiary is subject to s.31 Trustee Act 1925 (i.e. is to be accumulated or paid to them at the Trustees' discretion), that arrangement will continue until their 25th birthday rather than ending when they reach their 18th birthday. Trustees are able to change the arrangement, so that the beneficiary becomes entitled to be paid the income before age 25, so long as it cannot be paid to them before they are 18. If the beneficiary needs to reach an age of less than 25 to become entitled to capital of the Trust Fund, they will also be entitled to the income from that lesser age.

Provision 17: Absolute discretion clause

This provision allows Trustees to exercise their powers without the need to consult the beneficiaries.

Discretionary Survivor's Trust (cont'd)

Provision 18: Appointment and retirement of Trustees

- Provision 18.1** permits a person to be appointed Trustee, even though they have no connection with the UK.
- Provision 18.2** permits Trustees to retire even if such retirement leaves only one Trustee in place.
- Provision 18.3** provides for the removal of a Trustee who lacks mental capacity, or to change Trustees where a person with power to appoint new Trustees lacks mental capacity. The requirement to obtain the permission of the Court of Protection in some cases is not affected.

Provision 19: Powers relating to income and capital

Trustees may invest and manage the Trust Fund to produce a higher level of income, or greater capital growth than would be normal for a trust fund. Trustees may pay capital expenses, including tax liabilities out of income.

Provision 20: Relationships unknown to Trustees

This provision protects Trustees when making a distribution from a Trust Fund from claims by persons who purport to be beneficiaries and whose existence the Trustees have no knowledge of, or could not have become aware of despite making reasonable enquiries.

Provision 21: Governing Law

This provision confirms that the trust shall be governed by and interpreted in accordance with the law of England and Wales.