

What is a trust?

A trust is a legal relationship where an individual, the settlor, transfers assets to the trustees, who hold and manage these assets for the benefit of others, the beneficiaries, named by the settlor.

In simple terms it is a way of gifting assets, while retaining an element of control over who will benefit and when the benefits are paid.

In order for individuals to establish a valid trust they must be of sound mind. There are also three conditions which must be satisfied. These conditions are known as the three certainties;

- **Certainty of intention** - it is clear that the settlor intended to create a trust.
- **Certainty of subject** - the asset that is to be transferred into the trust is clearly identified.
- **Certainty of objects** - the beneficiaries of the trust can be clearly identified either by name or classification.

Where the trust is to be created by an individual's will it must also meet specific legal requirements. The will needs to be:

- Made in writing;
- Signed by the testator;
- Signed and witnessed by two individuals.

As well as express trusts where the settlor expresses his intention to create a trust, it is also possible for a trust to be created by the operation of law, for example, where money is left under the law of intestacy to a minor child.

What are the benefits of a trust? An individual may set up a trust for a number of reasons:

Inheritance tax - An individual can reduce the size of their estate liable to IHT on death by gifting assets into a trust.

Transfers will normally be outside the estate after seven years. It should be borne in mind that the settlor has effectively gifted their property away. It cannot be used for their own benefit otherwise it may be a gift with reservation.

Control over property - The settlor may wish to prevent control of the property from passing outright to the intended beneficiary, for example if the beneficiary is a child.

Speed of payment - If a life policy is placed under trust the benefits on death can be paid out immediately on production of a death certificate. There is no need to wait for grant of probate as the trustees are the legal owners.