Simpler Law.

Simpler Trusts.

Protecting your assets during your lifetime and beyond

Simpler Trusts. Contents

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Simpler Law. Who Are We?

Simpler Law is part of a group of companies that specialise in end of life planning and private client services. Through acquisition and growth, it now has over 200,000 satisfied clients and has a 5-star Trustpilot rating.

Simpler Law is a nationwide company with clients throughout England, Wales, Scotland, and Northern Ireland. Whilst the head office is based in Lincoln, it has offices in Leicester, Cardiff, Birmingham, and the Northeast.

Our approach is mainly through a specialist phone-based team, but we also have a nationwide network of Advisors, to enable us to visit you in virtually every location across the UK, if required.

We have written over 200,000 bespoke Wills with many containing advanced Will trusts. In addition, we are expert drafters of living trusts having provided many thousands of these over the years to our clients. We also assist with the ongoing management of these trusts by our appointment as trustees and we currently hold over 500 million pounds of trust assets across the UK. Our clients also benefit from specialist tax advice in respect of their end-of-life planning.

Our outstanding service has earned us a 5-star Trustpilot rating and, with a fully insured service, gives peace of mind to all of our clients that choose us to help them put their affairs in order. We are also specialists in the following:

- Probate
- Court of Protection
- Conveyancing

All of these services are dealt with by our fully qualified in-house legal teams.

For more information visit our website at WWW.SIMPLERLAW.CO.UK or text TALK to 66777 or call us on 0333 600 1000 for a free no obligation chat.

Trustpilot

Simpler Law Limited (a wholly owned subsidiary of HAIG Legal Group Limited [HAIG]) may, where necessary, sub-contract to its sister company, Fidelis Legal Services Limited, also a wholly owned subsidiary of HAIG, for other legal or estate planning work to be carried out in order to fulfil your requirements and meet your estate planning needs.

What is a Trust?

A trust is a relationship created at the direction of an individual, normally by Will or Trust Deed, in which one or more persons hold the individual's property, subject to certain duties, to use and protect it for the benefit of others. Your choice of trustees is essential. We currently manage in excess of £500 million worth of trust assets for our clients.

Trusts can be used to control the distribution of property either during lifetime or after death. A trust may be created for the financial benefit of the person creating the trust (the Settlor), a surviving spouse or minor children, or for a charitable purpose.

A trustee takes legal title to the trust property which means that the trustee's interest in the property appears to be one of complete ownership and possession, but the trustee does not have the right to receive any benefits from the property.

The right to benefit from the property, known as equitable title, belongs to the beneficiary. This separation of legal and equitable ownership is unique to trusts.

The terms of the trust are conferred by the settlor on creation of the trust and confirm the duties and powers of the trustee and the rights of the beneficiary.

- Protective Property Trust
- Flexible Lifetime Interest Trust
- Residuary Discretionary Trust
- Disabled Person's Discretionary Trust
- Nil Rate Band IOU Discretionary Trust
- Right to Occupy Trust
- Business Property Relief Protection Trust
- Asset Protection Trust

These trusts are the ones which are relevant to estate planning, please read further for a brief explanation of each and how they can be a powerful benefit.

The Protective Property Trust.

- If property is held jointly as joint tenants, it will pass outside of the deceased's estate and to the surviving tenant.
- By changing joint ownership of the home to tenants in common the deceased's share of the property now passes into his estate to be distributed by his Will.
- The Will then directs that the share of property is passed into a Protective Property Trust. This trust then ensures that the following happens:
  - A life interest in the share of property is given to the surviving spouse or partner
  - The asset(s) are protected from any third-party attack, which means;
  - The ultimate beneficiaries are guaranteed to benefit and receive their share

The family home is often a major asset in most estates and continued use by a surviving spouse or family member is often balanced with a desire to pass on the property to the next generation. The protective property trust ensures that this balance is possible by giving the surviving spouse an interest that is restricted to use during their lifetime and then naming the ultimate beneficiaries.

Not only will your ultimate beneficiaries be guaranteed to receive the property after that death of the surviving spouse, but the trust will act as a protective wrapper around that share of the property should the surviving spouse be assessed for care fee funding or come under any third-party attack after your death.

Flexible Lifetime Interest Trust.

- Very simplistically a FLIT is similar to a PPT but allows the life tenant access to capital and not just income
- Married couples often make use of a FLIT where they have an IHT liability but do not want to give away assets prior to first death to reduce said liability
- Gifts can be made to reduce the size of Trust fund that will be taxable on second death – these gifts are PETs and are consequently subject to the usual seven-year rule

Commonly called a FLIT, this trust is a more flexible way of giving a spouse an interest in your property or estate. They will have use of the trust assets for life but can also receive capital if required or make gifts of capital 'early' to those who are named to inherit the fund after second death.

This means you have the protection of the trust, the security for your surviving spouse and the flexibility to carry out post death tax planning.

Residuary Discretionary Trust.

- Often used by those wishing to exercise 'control from the grave'
- This may be due to concerns over their chosen beneficiaries' personal circumstances
  - Possible divorce
  - Possible bankruptcy
  - Alcohol, drug or gambling addiction
  - Just want to be controlling!

This is a discretionary trust into which the whole estate is left apart from any assets that are specifically gifted under the terms of the Will. Putting the entire estate into a discretionary trust can be desirable for several reasons but these are mainly used to allow total flexibility on how and when your chosen beneficiaries inherit. The trustees can limit, stagger, delay or manage the beneficiaries' inheritance due to the powers given to them within the trust. This means you can be sure your estate will be used in the best way possible to suit their specific circumstances at the date of your death for their maximum benefit.

Disabled Persons Discretionary Trust.

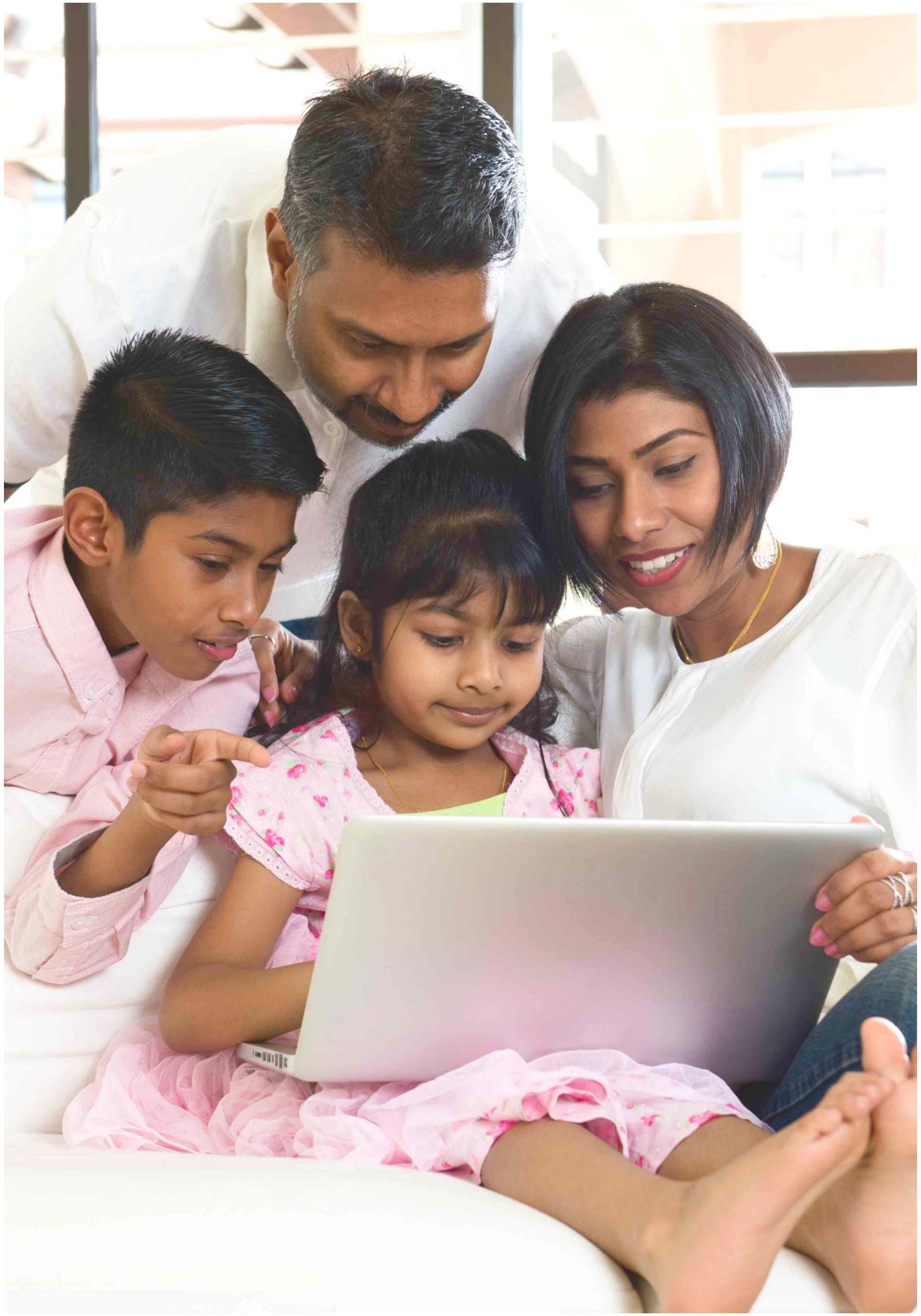
- Protects the receipt of means tested benefits.
- Trustees look after the interests of those who are incapable of managing own affairs.
- Although there can be another beneficiary named in the trust, in order for the trust to qualify for beneficial inheritance tax treatment, all payments must be made to the disabled person except for small allowable amounts.
- Any income received within the trust benefits from a reduced rate of income tax rather than the usual higher rate applied to trusts.

Like a standard discretionary trust, a disabled person's discretionary trust allows an inheritance to be managed on behalf of a vulnerable beneficiary who is unable to manage their own affairs. The difference being that, where someone falls within the definition of 'disabled', the trust will qualify for special tax treatment but only if the trust meets certain requirements. This trust is specifically drafted to ensure those requirements are met so that the inheritance for your chosen vulnerable beneficiary will have a more favourable tax treatment.

Nil Rate Band IOU Trust.

- Essentially utilised to reduce a potential IHT liability
- Can be used by unmarried partners
- Can be used by widows who have acquired a transferrable NRB
- The IOU debt can effectively benefit generations for the perpetuity period of 125 years

This type of trust is commonly used for inheritance tax planning as well as asset protection. If a couple are unmarried, they do not have the benefit of the spouse exemption and transferable allowances when leaving their estate directly to each other. If, instead, they leave their estate into a discretionary trust, specifically one that takes the exact amount that can pass free of tax, they are ensuring that the maximum tax-free allowance is being used. Likewise, a couple, married or unmarried, where one or both have a predeceased spouse will have additional tax allowances available to them. This trust ensures that these are used effectively to reduce the overall Inheritance Tax payable on their estates.



Right to Occupy Trust.

- Allows someone to live in a property for a set period of time
- This Trust must be limited to a right to occupy only without any further rights
- Typically used for children still living at the parents' home or to allow a 'new' partner time to find alternative accommodation

This is particularly useful if you need to consider giving someone a limited interest in your property without giving them a full life interest. It simply allows them to remain living in the property for a defined period of time (or until the happening of a stated event) subject to them continuing to pay the outgoings.

This allows you the comfort of knowing a child still living at home or an elderly parent will be able to continue occupying the property and will not be asked to vacate it so that the estate can be distributed.

Business Property Relief Trust.

- The Trust is written to receive qualifying assets/shares of a business
- The ultimate beneficiary of the Trust can sell the assets within the Trust essentially 'preserving' the BPR
- It is prudent to include this Will Trust where the Testator has any kind of business assets. Should the business no longer qualify for BPR or indeed has long since been sold or liquidated then the Trust would simply never come into effect.

Certain business assets and shares in an unquoted qualifying company will attract business property relief meaning that they pass via the Will free of inheritance tax.

Where these assets are likely to be sold after the death of the owner, under a cross option agreement or otherwise, a surviving spouse or partner may find themselves with cash from the sale that no longer qualifies for the relief on their own death.

This leads to a tax bill for the next generation which could be avoided by utilising a trust. The qualifying business assets (those passing free of tax) that pass into the trust on first death can be sold by the trustees meaning that the cash sits within the protective structure of the trust and does not accumulate with the surviving spouse's estate.

Asset Protection Trust.

- Created during your lifetime with an immediate transfer of assets to the trustees
- You retain rights to enjoy the trust property for the rest of your lifetime
- Assets are then passed to your chosen beneficiaries via a discretionary trust giving maximum asset protection and flexibility to suit your beneficiaries' individual circumstances

Unlike previous trusts, an asset protection trust is created during your lifetime with assets transferred immediately rather than after death. This means that you start enjoying the benefits of the trust straight away.

The asset protection trust ensures you retain an interest in the trust assets, usually your property, for the rest of your life and then your assets continue to be protected by a discretionary trust after your death.

Transferring the property from your personal ownership into the ownership of your trustees can have significant benefits, for example, it means that your trustees will not need a Grant of Probate to deal with the property after your death. It also means that the trustees can continue to manage the trust fund in your best interests if you lose capacity in the future.

Ensuring the trust fund is managed effectively and that the correct beneficiaries ultimately inherit is particularly important to people who have children from previous relationships or who are concerned a surviving spouse may be influenced to change the distribution of the combined estate.

The tax implications of making lifetime transfers can be complicated so it is important to get advice that is specific to your own circumstances before considering lifetime trust planning.

The Role of a Trustee.

What is a trustee?

A trustee is an entity or person formally appointed to manage the assets of a trust for the benefit of its beneficiaries in accordance with the terms of the trust. A trustee owes fiduciary duties to the beneficiaries. These duties are typically set out in the trust deed or provided by Statute.

Main duties of a trustee?

Duty to the terms

A trustee must know and adhere to the terms of the trust which are prescribed by the trust deed.

Duty of loyalty

Trustees have a fiduciary duty towards beneficiaries. A trustee must administer the trust solely in the interest of the trust beneficiaries and cannot place his or her interest in conflict with beneficiaries. Trustees should not profit personally from their role as trustees other than a fee which they may receive for their trusteeship if they act in a professional capacity.

Duty to manage the trust efficiently

To manage a trust efficiently, a trustee must be very familiar with the terms of the trust, the trust assets and liabilities, the circumstances of the beneficiaries and the purpose of the trust. Effective management systems should be in place to ensure that the appropriate decisions are made in a timely manner and taking into account the terms of the trust and the interests of the beneficiaries. This also includes effective communication with related parties and proper record keeping. A trustee also has a duty to invest prudently on behalf of the trust and should diversify the investment of trust assets in the interest of beneficiaries, unless the trust directs that this is not necessary.

Duty to act personally

Trustees act personally and must be involved in decision-making in respect of a trust. While trustees are typically permitted to engage advisers such as lawyers and financial advisers, the final decision on trust matters should be made by the trustee. In certain circumstances, trustees may delegate powers to third parties by power of attorney or deed of delegation. This must be permitted by the trust deed. For example, delegating powers to an agent to purchase or sell property overseas. The trustee is still obliged to properly instruct and supervise the agent. Decisions amongst trustees must be made unanimously unless otherwise permitted by the trust deed.

Duty to consider the beneficiaries

A trustee must act impartially with respect to the beneficiaries by considering all beneficiaries in their decision making. They should also not follow the instructions of the settlor but may give consideration to the wishes of the settlor which are not binding unless included in the terms of the trust.

Duty to account

Unless otherwise provided by a trust, a trustee must keep trust accounts and other records. They must also respect beneficiaries' rights with regard to requests for trust information, as generally, beneficiaries have a right to receive information about the trust but not the decisions of the trustee.

Benefits of having a professional trustee

Trustees may be held personally liable for breaches of duty and there are many factors to consider before accepting a trusteeship. Managing a trust is not always straightforward. The benefit of having a professional trustee cannot be understated as not only is this their 'day job' but it also means they take on the liability and responsibility for any decisions made.

What is the Trust Registration Service?

The Trust Registration Service (TRS) was introduced by HMRC to comply with legislation that is designed to tackle money laundering and terrorist financing. The implementation of the 5th Money Laundering Directive brought an extension of the TRS to include non-taxable trusts which means that all express trusts now have to be registered.

The responsibility and liability for registering the trust and complying with the ongoing reporting requirements to HMRC falls to the trustee. Having a professional trustee means that you can be assured that all registration and compliance matters are dealt with.

HMRC impose strict timescales in relation to both the initial registration and any ongoing updates and amendments to the registration. There is a penalty regime in place if these requirements are not adhered to that is directly and personally enforceable against a trustee.

Having a professional trustee ensures that family members are not financially penalised for any unintentional failure to adhere to HMRC requirements.

Simpler Law.
Our Services

WILLWRITING & ESTATE PLANNING
LASTING POWERS OF ATTORNEY
TRUST & TAX SPECIALISTS
PROFESSIONAL TRUSTEE SERVICES
TRUSTEE ADVISORY & AGENT SERVICES
PROBATE & ESTATE ADMINISTRATION
PROFESSIONAL EXECUTOR SERVICES
SPECIALIST CONVEYANCING
SIMPLER CARE PLAN
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