



# Probate Trust from Aviva



# The Probate Trust key points – at a glance

- Designed to avoid probate delays – helping to ensure a quicker payout for your loved ones.
- Suitable for people who are simply trying to avoid probate delays in paying out the value of their investment bond on death.
- The Probate Trust doesn't give any tax benefits. It is a gift with reservation of benefit (GWR) for inheritance tax (IHT) purposes. In some circumstances use of the Probate Trust could result in a higher IHT liability than would otherwise be the case.
- Access to your bond in your lifetime – take withdrawals when you wish.
- Use with a new or existing bond.
- Suitable for single and joint bondholders.
- Choose your beneficiaries – and change them at any time.

## About this guide

We appreciate that some trusts and tax terminology can be complex, so we've included a useful glossary at the back of this guide. You'll notice that any words in our glossary are highlighted. There's also a helpful 'Questions and Answers' section which looks at some of the common queries our customers have. Of course, you'll still need to speak to your financial adviser, who'll be able to look at your personal position and answer any further questions you have.

This document is purely a guide on the features of a Probate Trust and shouldn't be relied on as professional or legal advice. We recommend customers take their own professional advice.

# The Probate Trust – designed to help avoid probate delays

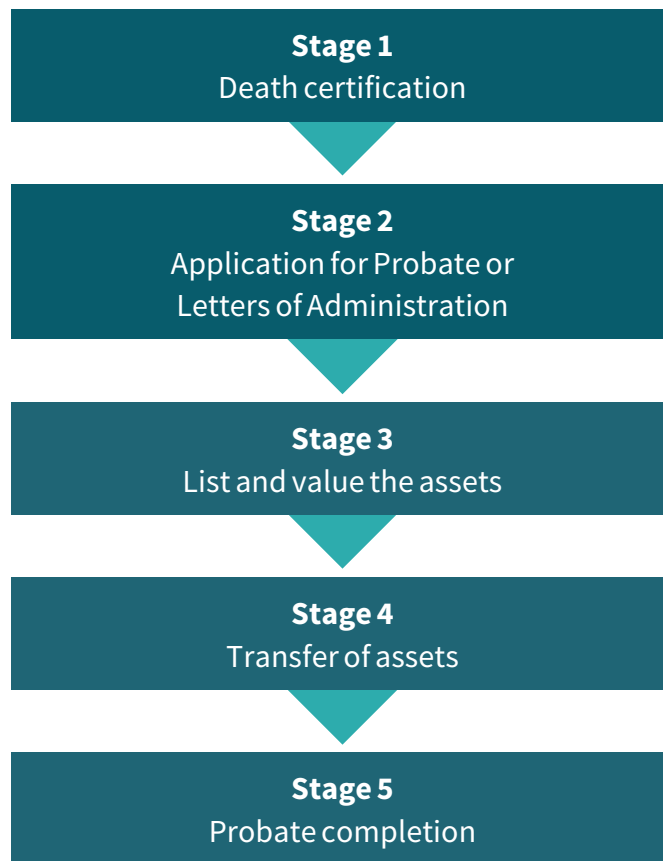
Aviva's Probate Trust is specially designed to avoid lengthy probate delays – allowing the proceeds from your investment bond to reach your loved ones quicker after your death.

## Who might choose to set up a Probate Trust?

The Probate Trust could be suitable if you want to ensure a quicker claim value payout from your Aviva bond when you die.

## What are the stages of probate?

When a person dies, the daunting task of administering the estate is often taken on by relatives or friends of the deceased, although a solicitor can be engaged particularly when the estate is large or complex. Probate can take a long time to complete, often stretching into months rather than weeks. There are a number of stages that must be completed.



You can find more details at:

<http://www.netprobate.co.uk/questions-answers.html>

and

<https://www.gov.uk/when-someone-dies->

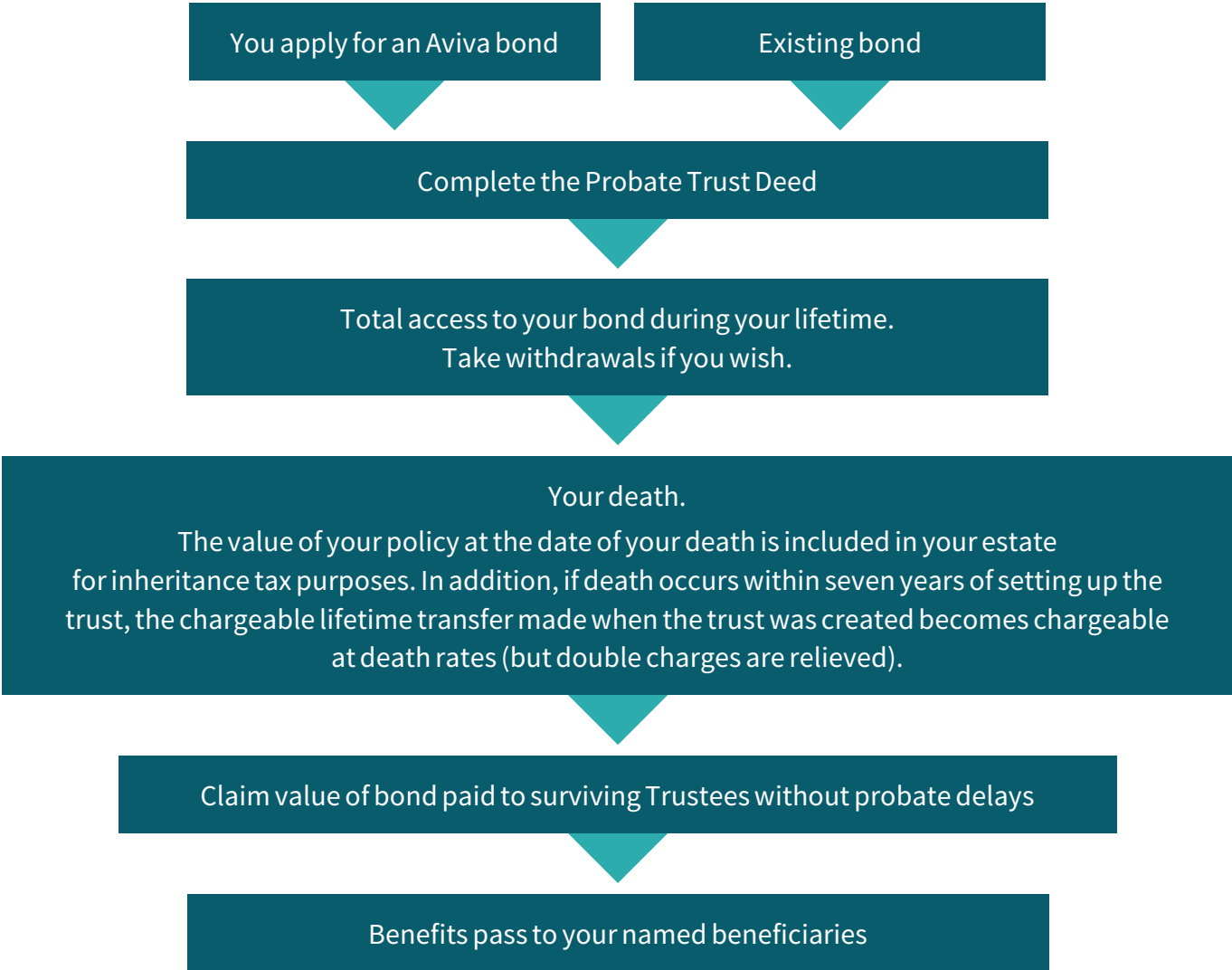
Neither of these two websites are affiliated to Aviva.

# How does the Probate Trust work?

- You apply for any Aviva bond and complete the Probate Trust Deed ('the Trust Deed').
- If you have an existing investment bond, on the other hand, you simply complete the Trust Deed including details of that bond.
- You are the creator (settlor) of the Trust.
- The Trust is suitable for both single and joint bondholders.
- Unless you change the Trust, you have total access to your bond during your lifetime. That means you can take withdrawals for yourself.

- After your death the benefits pass to the beneficiaries you have named in the Trust Deed. You have the power to change these beneficiaries at any time.
- Provided there is at least one surviving Trustee, we can normally pay the claim value of the bond without the need for probate or other grant of representation.

The flowchart below shows, in basic stages, how the Probate Trust works:



# How does it affect my inheritance tax position?

If you are domiciled in the UK, you should only set up a Probate Trust if you simply want to avoid delay in the payment of the death benefit whilst application is made for probate or other grant of representation. **The Probate Trust doesn't give any inheritance tax ("IHT") advantage, and in some circumstances its use could result in a higher IHT liability than would otherwise be the case.**

There are several reasons why:

- The value of the Trust property counts as part of your estate for IHT. As we have said, the Probate Trust doesn't give an IHT benefit.
- The transfer of your bond into the Trust is a chargeable lifetime transfer (CLT). If the value of the CLT exceeds your available [nil rate band](#) there is an immediate IHT liability. The current charge is 20% of the excess. The [annual exemption](#), if available, may be used to reduce the chargeable value. Your financial adviser can explain more about this to you.
- There will also be an IHT charge at each 10 year anniversary of the Trust if its value (the value of the bond at that time) exceeds the available [nil rate band](#). That charge would currently be 6% of the excess amount. There might also be exit charges when money is distributed from the Trust to beneficiaries.
- If you die within seven years of setting up the trust, IHT death rates will apply to the CLT. At the same time, the full value of the Trust (the bond, in other words) will be included in your estate for IHT, as a gift with reservation (GWR). However, there will be no double charge to IHT as the event producing the lower IHT charge will be relieved.
- If you die seven years or more after setting up the trust, no IHT charges will arise on the CLT due to your death. The IHT will be calculated on the GWR value which is the full value of the Trust (the bond, in other words).

The IHT treatment of trusts is complex and this is just a brief summary. You can find further information on the HMRC website at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

The examples below are purely an illustration as to how you could use the Probate Trust. They are not intended to be used as advice. You should seek your own financial and/or legal advice.

These are points for you to consider and is not intended as advice. Individual circumstances will vary. You should seek your own financial advice via your advisor or you can find an advisor at [unbiased.co.uk](http://unbiased.co.uk)

## Example 1

Rachel wants to take out an Aviva bond. When she dies, she wants the death benefit to be paid to her chosen beneficiaries without delay. However, she wants to benefit from the bond herself during her lifetime.

The Probate Trust meets Rachel's requirements. It will let her retain access to the bond during her lifetime but, in the event of her death, the proceeds can be paid to her chosen beneficiaries without the delays often associated with applying for a grant of representation.

Rachel has an estate valued at £200,000, including £20,000 in liquid assets for investment. She discusses bonds as a possible option with her financial adviser. Rachel understands that the value of a bond can fall, but is happy to take this risk. So she decides to invest in an Aviva investment bond and put this under the Probate Trust, naming her children as the default beneficiaries.

## Rachel's IHT position when the Probate Trust is created:

Rachel's [annual exemption](#) for this year and the last is unavailable, so setting up the bond subject to the Probate Trust creates a chargeable lifetime transfer of the full value of £20,000. As she has made no previous chargeable transfers, there is no IHT to pay.

## IHT position on Rachel's death:

If she dies within seven years of making the chargeable lifetime transfer, two calculations will be performed. The first will ignore the £20,000 CLT but will include the value of the Aviva bond as at the date of her death in her estate as a GWR. The second will include the £20,000 CLT in the calculation, but will ignore the value of the bond at the date of death. HMRC will assess the higher amount of IHT calculated.

In both calculations here, there is no tax to pay.

Providing Rachel survives for seven years, the £20,000 chargeable lifetime transfer will no longer count in the calculation of her estate. However, the value of the Probate Trust will continue to form part of her taxable estate for IHT purposes as it is a gift with reservation.

In Rachel's case, the Probate Trust provided exactly the outcome she was looking for. It did not have any adverse effect on her IHT position.

These are points for you to consider and is not intended as advice. Individual circumstances will vary. You should seek your own financial advice via your advisor or you can find an advisor at [unbiased.co.uk](http://unbiased.co.uk)

## Example 2

### We have included this example to show you why the Probate Trust is not suitable for everybody:

In July 2007, George assigns a £300,000 investment bond to a Probate Trust. He has no available IHT exemptions and has not made any previous chargeable transfers. There is no lifetime IHT charge as the transfer is within the available **nil rate band**.

George dies in August 2012, at which time the **nil-rate band** is £325,000.

On George's death, the chargeable lifetime transfer becomes chargeable at death rates of IHT. The value of the Probate Trust (£250,000 at the date of death) is still subject to a gift with reservation (GWR) and is included in the value of his IHT estate. The value of the rest of his estate is £500,000. However, The IHT (Double Charges Relief) Regulations 1987 will apply to give relief from any double charge. On his death, everything passes to his children.

Two calculations are performed to establish the IHT charge:

- As though there had been no gift, ie including only the GWR.
- As though there is no GWR, ie including only the gift.

The IHT payable is the higher amount produced by these calculations.

#### Calculation (1) ignoring the lifetime gift made, but including the value of the GWR.

Value of the Probate Trust at date of death	£250,000
Estate at death	500,000
	<hr/>
	750,000
Nil rate Band	(325,000)
	<hr/>
	425,000

IHT at 40% = **£170,000**

#### Calculation (2) ignoring the GWR, but including the lifetime gift.

Gift becomes chargeable	£300,000
Estate at death	500,000
	<hr/>
	800,000
Nil rate band	(325,000)
	<hr/>
	475,000

IHT at 40% = **£190,000**

Calculation (2) produces the higher charge so the IHT liability is £190,000.

Had the Probate Trust not been set up the IHT would have been £170,000, as in Calculation (1).

**N.B.** A claim for fall in the value of the lifetime transfer is not allowable as the reduction is due to capital payments made to George.

## UK income tax

As the **settlor** of the trust, you will be liable to income tax on any gain that arises under the policy whilst you are living (or in the tax year of your death) provided you are resident in the UK (See **'What is a chargeable gain under an investment bond?'** in the **'Questions & Answers'** section).

If a gain arises after the tax year of your death or when you are not UK resident, then the **trustees** (if they are UK resident) are liable to income tax at the rate applicable to trusts (currently 45%). If the **trustees** are not UK resident then any beneficiary ordinarily resident in the UK may be liable to income tax at their marginal rate on any money received from the trust, with no credit for corporation tax payable in the UK on policyholder funds.

You should note that a **chargeable gain** might affect your eligibility for income-related benefits and allowances such as child tax credit and child benefit.

### Onshore policies and income tax

Any gain arising under an onshore policy won't be subject to basic or lower rates of tax. This is because the life company pays corporation tax on its policyholder funds. You will only pay tax on the gain if you already pay income tax at higher rates, or if the gain takes you into the higher rate band. You may be able to claim **top slicing relief** to reduce the tax payable. Where tax is payable, the rate is currently 20% of the chargeable gain for higher rate taxpayers or 25% for those paying tax at the 45% rate. Your financial adviser can explain more about this to you.

### Offshore policies and income tax

For UK residents, any gain arising under an offshore policy may be subject to income tax at the marginal rate of the person liable. This is because typically no direct tax is paid on offshore policyholder funds i.e. where the life company is established in a tax favoured jurisdiction. The only tax on income and capital gains that offshore life assurance funds may suffer is some unrecoverable **withholding tax** that most countries deduct from dividend and interest payments. If the person liable for tax only becomes liable to income tax at the higher rates after any gain has been added to their other income, they can claim **top slicing relief** to reduce the tax payable. Your financial adviser will be able to let you know if this applies to you.

Please note that Aviva UK no longer provides offshore insurance policies.

### Capital gains tax

Your bond will generally be exempt from capital gains tax in the hands of the **trustees**.

## What you should do now

First of all, you should speak to your financial adviser – trusts and tax laws are complex and your adviser will look at your personal circumstances to see whether the Probate Trust is the best option for you.

Once you have spoken to your adviser and are happy to go ahead, you will need to complete:

- the application form for your Aviva bond (if you don't have an existing bond)
- the Probate Trust Deed.

You should then send these to Aviva, along with your cheque (if you are applying for a new bond).

# Questions and answers

## 1. Who is the settlor?

The person(s) who set(s) up the trust. You as the policyholder are the settlor of your trust. A settlor must be aged 18 or over and be of full mental capacity.

## 2. Who can be a trustee?

You can appoint any adult who is of sound mind as a trustee. You can also appoint a trust company. There are a number of things to bear in mind when choosing trustees and you should speak to your own professional advisers about this.

In the Probate Trust, you are automatically a trustee. You should appoint at least one additional trustee to act with you.

## 3. Who has power to change the beneficiaries under the Probate Trust?

When you set up the Probate Trust, you choose who you want to benefit after your death. However, you can change those beneficiaries if you wish. Also, the trustees can change the beneficiaries, within the class of potential beneficiaries, after your death or when you are not capable of acting yourself.

## 4. Can a spouses (or civil partners) each take out their own Probate Trust?

Yes.

## 5. Can a spouses (or civil partners) establish a joint Probate Trust?

Yes.

## 6. Can I use the Probate Trust with an existing bond?

Yes.

## 7. What is a chargeable gain under an investment bond?

When a chargeable event occurs, we do a calculation to see if there is a chargeable gain. This is basically the difference between the proceeds of cashing in your investment and the amount you paid for it. A chargeable gain is subject to income tax, and we will send you a chargeable event certificate giving you the details you'll need to complete your tax return.

The following are chargeable events under an investment bond:

- a) death resulting in a payment under the bond i.e. when the last or only life insured dies,
- b) fully cashing in the bond, or a whole individual policy within the bond,
- c) assigning the bond for money or some other consideration,
- d) taking a partial surrender in excess of the 5% allowance.

You make a partial surrender by taking some cash from every individual policy within the bond, but without fully cashing in those policies.

Before making a cash withdrawal, the trustees should consult their professional advisers, as the different methods of withdrawing cash have significantly different income tax consequences.



# Glossary

## Annual exemption

The amount you can give away each tax year that will be exempt from IHT. This is currently £3,000 and applies to one gift or a number of gifts up to that amount.

## Chargeable event

A chargeable event happens when a gain is made on a life insurance policy. A chargeable gain is usually triggered by a chargeable event such as the full surrender of your policy. Generally on full surrender, the gain is the amount by which the value of a policy exceeds the amount paid into it. Chargeable gains can also arise when the amount withdrawn by partial withdrawal exceeds the accumulated 5% p.a. allowance.

## Gift with reservation

This is where you make a gift 'with strings attached' - for example, if you gave your house to your children, but carried on living there without paying them a full commercial rent. The value of the gift (your house in our example) would still be liable for IHT.

## Inheritance tax

Inheritance tax (often called IHT) is the tax paid on your estate. Your estate is everything you own at the time of your death, less what you owe. Inheritance Tax may also be payable on assets you have given away during your lifetime. Assets include things like property, possessions, money and investments.

## Nil rate band

The amount of an estate that is charged to inheritance tax at 0%.

## Settlor

A person who puts property into a trust. For inheritance tax purposes, a settlor is the person who makes a settlement or who directly or indirectly provides the assets for a settlement.

## Top slicing relief

Top slicing relief is a way of reducing the tax paid on any gains your investment makes. You could benefit from this if you are currently a basic rate taxpayer, but the gains from your investment (when added to your usual income) take you into the higher rate taxpayer bracket.

## Trustee

A person who is the legal owner of the Trust property and is obliged to deal with it, subject to the terms of the trust, for the benefit of the beneficiaries.

## Withholding tax

When a dividend or interest payment is made, tax may be deducted. This is known as withholding tax.

# Important notes

Please bear in mind this guide is not intended to give advice. If you are considering the Probate Trust from Aviva, or doing anything under the provisions of the Trust, you must get advice from your legal and/or financial advisers. This is important because:

- creating a trust has both legal and taxation consequences
- once the Trust has been created it cannot be revoked
- the trustees have a special duty to the beneficiaries. If they misuse their power under the trust, trustees can be held personally liable if the beneficiary loses out as a result.

Where we have talked about tax issues in this guide, it is based on Aviva's understanding of current tax laws and HM Revenue & Customs' practice. Remember that tax laws can change in the future. This could mean you become liable for tax under the arrangement you take out, even if you aren't now. We've taken great care to ensure the content of this guide is accurate. However Aviva and its representatives can take no responsibility for any loss suffered by any person as a result of acting or not acting on the material contained in this guide. This also applies to any associated material.

In this guide, where we say "spouse", this includes both "civil partner" and where we say "widow" or "widower", this includes "deceased's civil partner".






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