

A Guide to Rethink Trusts



Introduction

Many carers of people with mental illness worry that when they die, the person they care for might struggle financially. Rethink Trust Corporation understands the needs of people with mental health illness and can help to ensure that any money you give to your loved one will be used in the best possible way for their benefit.

As a charity, Rethink Mental Illness supports thousands of families affected by mental illness with their day to day lives. However, one of the biggest concerns for many families is how will their loved one be financially supported after they have gone?

- How will they cope inheriting wealth and financial responsibility?
- How will those funds be protected to support their future?
- How will any state funded support they receive be preserved?

Rethink Trust Corporation Limited (RTC) is a company created by Rethink Mental Illness. It is made up of a voluntary board of directors from a variety of backgrounds with experience of mental health issues. We provide a service that lets you set up a trust now where RTC acts as a trustee, to receive assets on behalf of a vulnerable person, either during your lifetime or after you have died.

A Rethink trust is set up today which lies dormant, until activated upon the receipt of funds, either from a lifetime gift or directly from your will.

The assets held in the trust will be protected for your vulnerable loved one. Two RTC directors are allocated to each trust to act as the decision-makers, alongside any additional trustees you choose to appoint. All directors retain overall responsibility. The trustees will manage the fund to provide your loved one with financial support, in a controlled manner, guided by your wishes and their lifetime needs.

Unlike many providers, RTC directors understand the needs and vulnerabilities of people living with mental illness. Your wishes, and providing lifelong financial support to your loved one, is at the heart of everything we do. Complex trust issues are regularly discussed at director meetings and their shared expertise is shared amongst all trusts.

Our trusts protect the vulnerable from unwanted outside pressures and relieve them from the burden and anxiety of managing money alone. Whether it is by setting up direct debits to pay for their household bills, paying them a regular or ad hoc cash payment or delivering goods direct to their door – a Rethink Trust can be used to support the daily life of your loved one and give you invaluable peace of mind.

Section 1 - Rethink Trusts

What are they?

In the simplest of terms, a trust is created when you (the Settlor) give assets to someone to look after (the Trustees), for the benefit of someone else (the Beneficiary).

Rethink Trusts are discretionary trusts. This means that a beneficiary does not have an absolute right to receive the assets (the Trust Fund). The trustees have discretion to decide who should benefit from the trust fund, when they should benefit, how much they should receive and whether any payments are made from trust income or capital.

Trust capital and trust income together make up the assets held in the trust fund.

- **Trust capital** is made up of the assets first placed in trust (possibly cash/investments/property) and any further assets that might be added later.
- **Trust income** is generated from the capital. It might include rent received on a property, interest paid on a bank account or dividends paid on investments.

Each Rethink Trust has a group of potential beneficiaries who can benefit from the trust fund. No one beneficiary has an entitlement to the trust fund. A principal beneficiary can be identified, but by naming other family members, individuals or charities, it must always be theoretically possible for more than one individual or organisation to become entitled to the trust fund.

All payments out of the trust fund are made at the discretion of the trustees. The trustees can prioritise the welfare of the primary beneficiary you identify during their lifetime and the trust fund can be brought to an end and distributed (guided by any wishes you leave), after they have died.

RTC will act as a professional trustee. You can choose to appoint others to act alongside RTC – perhaps a friend or family member.

How do they help?

There are two key ways that Rethink trusts particularly help vulnerable beneficiaries:

1. They provide financial support

Your loved one may struggle to manage money and look after their own financial affairs. They may not have the skills or experience to be able to look after the funds that you would like to leave them to support them for the rest of their lives.

With a Rethink Trust, the trust fund is under the control of experienced directors who seek professional investment advice where required. The directors and any family members you choose to appoint will look after the trust fund to ensure it is protected and preserved as far as possible, to support and provide for the principal beneficiary, for as long as it might be needed.

The trustees will:

- consider the likely needs of the principal beneficiary and length of time the trust fund might need to last.
- seek to preserve the fund so that it lasts as long as possible, if appropriate by taking investment advice to generate capital and income growth.
- only release assets from the trust sensibly and responsibly.
- seek to ensure payments are only made in the best interests of your loved one, guided by your wishes and for the benefit of the principal beneficiary.

2. They can protect means-tested benefits

To receive means-tested benefits, an individual must have assets below a capped amount.

Where someone receives means-tested benefits, if they become entitled to further money/other assets they may exceed this capped amount and their entitlement to those benefits will be lost.

If a will leaves money to someone or they receive an outright gift – the bottom line is that they are entitled to it. It is not possible to try and preserve their benefits through any retrospective attempt to divert the assets away.

If they give assets to someone else or divert them into a trust, such actions will fall foul of the Intentional Deprivation of Capital rules set out by the Department for Works and Pensions (DWP). These rules state that if an individual tries to give money or other assets away to remain below the capped amount – that individual will be treated as if they still own them. They will lose any resulting benefit entitlements and possibly face penalties.

The assets you as the Settlor direct into a Rethink Trust do not belong to an individual. The primary beneficiary is just one of a group of beneficiaries in whose favour the trustees may choose to exercise their discretionary powers to release assets. Each beneficiary might 'hope' to receive something from the trust fund, but they do not have a 'right' to do so.

- Assets held in the trust fund are not taken in to consideration when assessing an individual's entitlement to means-tested benefits.
- The trustees will also always try and ensure that the level and structure of any payments made out of the trust preserve any entitlement to means-tested benefits your loved one might have.

How is the trust created?

The Trust Deed

The trust is created by a deed which is signed by you as the Settlor, RTC and any additional trustees you choose to appoint. The deed sets out the list of the potential beneficiaries, the discretionary powers available to the trustees to administer the trust and who should benefit from the trust when it comes to an end.

A Letter of Wishes

Sitting alongside the trust deed, you can leave a letter of wishes for the trustees. This letter is very important. It is not legally binding, but it is a bespoke letter from you to the trustees, which can help guide them how to use their discretionary powers.

The letter (which can be updated by you at a later date) can:

- Explain why the trust has been created.
- Identify who (if anyone) you would like to be the primary beneficiary and provide information about them and their needs – their vulnerabilities/ likes/ dislikes/hobbies/interests.
- Explain how you would wish the fund to be used – the sort of payments that the trustees might or might not make and any investment preferences you might have.
- Outline when the trust might end and who should benefit from any funds still held in the trust, at that time.

How does the process work?

The process of creating and then using a Rethink Trust is simple:

1 Create the trust

The trust deed is signed and dated by you and the trustees and you pay the nominal £5 to hold on trust. The trust now exists. You sign the letter of wishes. The trust is registered on your behalf on the trust database held with H M Revenue and Customs.

2 The trust lies dormant

3 The trust is activated

The trust needs to be administered when it receives substantive assets, either from a lifetime gift or assets left by a will – this could be from you or from anyone else.

4 The trust is administered

The trust must be managed and the trustees must fulfil their duties. RTC charge for the ongoing administration, taxation and accounting requirements in accordance with our Scale of Charges (see our separate leaflet enclosed with this pack).



Quick Questions

Can I create a trust for one person?

Yes, but it must always be theoretically possible for one or more other people or organisations to become entitled to the trust fund. A group of potential beneficiaries should be identified even if this includes just your loved one and other charities.

What assets can be held in the trust?

On creation, by cheque or bank transfer we need the nominal sum of £5 to add to the trust to ensure it legally exists.

Thereafter, all sorts of assets can be added and included – investments, cash and/or property.

The trust fund will normally be invested with appropriate advice to produce income. Payments might be paid out to the principal beneficiary or retained and reinvested to pay out at a later date.

The trust could also own a property for the principal beneficiary to live in. Sometimes it may not be practical to keep an asset (for example a car) due to the costs of maintaining and running the asset over time. The trustees have the power to sell assets. They might replace the asset or increase the value of investments held by the trust.

RTC will not take a trust that only holds property assets and no cash.

How else can a Rethink Trust help?

- The trust fund can be managed for someone who is unable to manage their own finances
- Provision can be made for different people at different times
- Trust assets are ring-fenced from eligibility for means-tested benefits
- Trust assets are ring-fenced from assessments to contribute to care home fees
- Lifetime gifts made to a trust can mitigate tax, particularly inheritance tax

Can others add to the trust?

Yes. If there are other relatives or individuals who might want to give or leave anything to the principal beneficiary, they can instead make a gift or leave a legacy, to the trust. A suitable clause in a will would need to refer to the name of the trust instead of just the principal beneficiary. The wording of such clauses is important and should be agreed with us.

How long can the trust exist?

A trust can legally exist for 125 years. In reality the trust might come to an end following the death of your loved one, but it could be wound up earlier or allowed to continue - for example if one of the final intended recipients are themselves vulnerable or struggling with debt or divorce.



Section 2 – The Trustees

What is the role of a trustee?

The trustees decide how to use the money in the trust to help the beneficiary. In fulfilling this role, the trustees must apply a high standard of care. Trustees must:-

- Manage and distribute the trust fund in line with the terms of the trust.
- Gather information on the needs of the principal beneficiary and keep in contact with those involved with their welfare.
- Consult one another and reach unanimous decisions, including whether to release funds.
- Consider exercising their powers to manage the trust and keep the trust administration under review.
- Ensure that trust assets (for example, a property) are correctly placed in the name of the trustees on behalf of the trust.
- Make sure the assets in the trust are dealt with sensibly and responsibly.
- Take appropriate advice when investing in stocks and shares.
- Review and update any instructions given to outside professional advisers.
- Keep a clear and accurate set of annual Trust Accounts for the funds held by the trust and submit any necessary tax returns to H M Revenue & Customs.

It is not the job of the trustees to:

- Allow their personal opinions to compromise the management of the trust.
- Look after the beneficiaries or act as a carer.

Information to ensure your loved one is cared for after you pass away can be found in the Rethink Mental Illness factsheet '[Planning for the future: Your relative's care and support.](#)'

How is RTC involved?

We act as a 'professional trustee'. RTC is a company created by Rethink Mental Illness. It is made up of a board of directors from a variety of backgrounds with lived experience of mental health issues. The trust appoints RTC as a company to be a trustee and two directors are allocated to each individual trust to make decisions on RTC's behalf. All the directors retain overall responsibility.

You can find out more about each director in the [Directors' Profiles](#) leaflet that comes with this pack.

An RTC dedicated team (employed by Arcadia Trust Group Limited) deals with the day-to-day requirements of the trust. The team pass information and requests for funds to the directors for their consideration. They are familiar with how mental health problems can sometimes affect people. They are able to identify issues relating to welfare benefits, social care and housing and can signpost beneficiaries and their family members to other support systems.

As a professional trustee, we will:

- Manage the trust fund to meet the long-term needs of the primary beneficiary
- Ensure that the trustees discharge their duties and the trust is properly administered
- Invest the trust fund with advice and assistance from investment managers where appropriate
- Exercise discretion and make decisions about requests for funds
- Keep in contact with the beneficiary or those involved with their care
- Produce the annual set of Trust Accounts and
- Meet all trust compliance and taxation requirements.

RTC will only act as a professional trustee of trusts created using our standard forms.

Can I appoint other trustees?

You can choose to appoint other trustees to act alongside RTC. They would be classed as 'lay trustees'. The maximum number of trustees that can be appointed is four. Three additional lay trustees could, therefore be appointed. However, appointing too many trustees can make the trust hard to manage, as each trustee must be consulted, reach unanimous decisions and sign all documents.

The lay trustees will need to:

- Act in the best interests of the principal beneficiary and put their personal opinions aside.
- Consider each request for funds made by the principal beneficiary.
- Approve decisions relating to the management of the trust, such as the investment of funds.
- Review and approve the annual set of Trust Accounts prepared by RTC.
- Sign all trust documents to enact trustee decisions and protect trust assets.

You may wish to include yourself as a trustee in the event that the trust is to be activated during your lifetime to maintain a degree of control. You may wish to include friends and family and not include yourself, perhaps if funds are only to be added after you have died.

It can be very helpful to appoint someone who knows the principal beneficiary and is of a similar age. They are more likely to have regular contact with the principal beneficiary and can provide valuable information about their needs and how they are, to help the trustees collectively reach informed decisions.

However, when appointing a sibling or close family member, the impact on their relationship with the principal beneficiary should be considered. Some principal beneficiaries might be unhappy knowing their sibling has control over their finances or if requests for funds are not approved. As trustees make unanimous decisions, to some extent the involvement of RTC can help to shield lay trustees. Each family will be different and it is important that you consider the impact on the relationships of all those you propose to involve.

It can be onerous to act as a trustee. Whilst we will ensure that the trust meets all compliance requirements, acting as a lay trustee is still a position of great responsibility.

It is very important that you consult any proposed trustee in advance and that they have full information about the trust before they take on the role. Our Trustee Guide can be made available to them to help them understand their role and responsibilities.

Individuals are not paid to act as a lay trustee and act on a voluntary basis. They can, however with prior agreement from all the trustees, seek to be reimbursed by the trust for out of pocket expenses they incur fulfilling their role - for example, reasonable travel expenses for attending trustee meetings.

Quick Questions

What happens if trustees disagree?

When a beneficiary requests funds from the trust, all the trustees must agree to the request or it cannot go ahead. In most cases problems can be resolved with further communication. If all trustees cannot reach unanimous important decisions, these would need to be decided by a court and a judge.

Can lay trustees act in secret?

We can be discreet about the involvement of lay trustees, but if a beneficiary asks, they have a right to know who the trustees are.

Must lay trustees attend meetings?

A face to face meeting can be really useful for all parties involved, and especially for the beneficiary. We encourage these meetings on a regular basis – usually annually. Lay trustees are not compelled to attend, but we would encourage them to do so. Since the Covid pandemic we have found that zoom meetings are an effective (and often a more mutually convenient) means of staying in touch.

Can the trustees be altered?

Trustees can retire and new trustees can be added, by signing a deed. Depending on the wording of the original trust, the appointment of new trustees may need your express agreement or the agreement of all the existing trustees.

Why does RTC charge fees?

RTC directors are not paid for acting as trustees and act on a voluntary basis.

RTC is not a charity itself and charges are levied for the costs of the day-to-day trust administration, taxation and accounting requirements in accordance with our Scale of Charges. We generate a surplus from our activities which is passed to the charity, Rethink Mental Illness.

Additional charges may be incurred for services from third parties such as letting agents, investment providers or surveyors.

Section 3 – Beneficiary Support

Do they know about the trust?

It is up to you if you want to inform the principal beneficiary that you have created a Rethink Trust.

We recommend telling them where possible and explaining how the trust can be accessed after you pass away. You can explain why you have created the trust to financially support them long after you have gone. Talking about money can be difficult and can sometimes cause arguments. However, we find that trusts often work best where everyone is fully aware of why they were set up and how they work.

When assets pass into the trust from your estate, we will contact the principal beneficiary and any family members you identify to:

- Introduce ourselves and provide our contact information.
- Explain the nature of the trust.
- Explain how the principal beneficiary can access the trust fund.
- Provide our factsheet of '**Frequently Asked Questions**'.

You may request in your letter of wishes that we do not contact the principal beneficiary directly and we will consider your guidance.

What is the request process?

1. The principal beneficiary asks for funds from the trust

Our team will deal with the day-to-day trust administration. The beneficiary will be provided with their contact information. Using a dedicated telephone number, address or email, the beneficiary (or possibly a family member or social worker on their behalf) can contact our team to request money from the trust.

We will find out:

- What they would like?
- What they need it for?
- What are their current income and savings?
- When they need it by?

The team will also try and find out how they are generally. We may try and get more information about their current circumstances by speaking to other people close to the principal beneficiary, such as other relatives, friends, health and social care professionals or other support workers. We can then assess whether we can agree a distribution strategy.

The team cannot get involved with the beneficiaries' practical day-to-day issues. They can listen to the beneficiaries concerns and may direct them to other services for appropriate help and support.

Rethink Mental Illness Advice and Information Service (0808 801 0525) can provide practical advice and information on a wide range of areas, such as welfare benefits, community care, treatment options and the Mental Health Act.

2. The request is relayed to the trustees

The team will relay the beneficiaries request to the allocated RTC directors and any other trustees appointed.

To decide whether to approve a request, the trustees will then consider; the nature of the request made, whether approval is in the best interests of the beneficiary and what guidance was provided by your letter of wishes. The trustees may go back and ask for more information, before they are satisfied.

The trustees are not obliged to approve payments. They can say no and must reach a unanimous decision.

3. The team action the trustees' decision

The team will relay the trustees' decision to the beneficiary. If the request is approved, they will make the necessary arrangements. This might be the transfer of funds to the beneficiary directly (BACS is usually the quickest payment method) or it could be the purchase of items on their behalf (for example, a washing machine or computer) delivered direct to their door.

Identification Requirements

In order to comply with The Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020, we require identification for all Settlers and Trustees involved in the trust arrangement.

You will not be able to create a Rethink Trust until we have successfully verified your identity.

Settlers and Trustees

Each Settlor and Trustee must supply the information set out by 1 of the 3 options below to enable their identity to cross-checked against an anti-money laundering database.

OPTION 1

- Tick the appropriate box on the [Confirmation of Instructions Form](#) to consent to electronic identification checks using dates of births and addresses

OPTION 2

- Provide a [certified](#) copy passport or photocard driving license (not a provisional license)
- Provide a recent utility bill dated within the last 3 months (not mobile phone or credit card bills)

Who can certify a document?

Bank or Building Society official, Councilor, Minister of Religion, Dentist, Chartered Accountant, Solicitor or Notary, Teacher or Lecturer

OPTION 3

- Provide a [scanned](#) copy passport or photocard driving license (not a provisional license) -This will need to be followed up with a Zoom call to cross-check likeness
- Provide a recent utility bill dated within the last 3 months (not mobile phone or credit card bills)

Beneficiaries

The identity of trust beneficiaries will need to be verified using the options outlined above when the trust becomes active and holds substantive assets/funds.

I would like a Rethink Trust - How can I set one up?

You can create a Rethink Trust in 3 easy steps:

1. Confirm you would like to go ahead

To initiate the process to create a Rethink Trust, please send us:

- The completed **Confirmation of Instructions Form** and **Questionnaire** included within this pack
- Our fee (as set out in our **Scale of Charges** leaflet) plus the initial **£5 trust fund** by either:
 - a cheque made payable to 'Rethink Trust Corporation Limited'
 - or contact us directly to pay by bank transfer
- **Identification** – satisfying option 1, 2 or 3

2. Return the signed deed

We will send you a pack of documents to complete and return to us containing:

- The **Trust Deed** for you to complete following explanatory notes provided
- A **Letter of Wishes** for you to personalise following explanatory notes provided

The Trust Deed needs to be signed by yourself and the trustees, each with a witness. If you have chosen other people to act as a trustee alongside RTC, make sure you speak to them about the role and what is expected of them. We can send them a **Trustee Guide** to help them understand their role.

Once you return the documents and have paid the fee, we will arrange for them to be signed by RTC. The date will be added and the Rethink Trust is finalised.

3. Deposit £5 or more in the trust fund

Just £5 is needed to provide the nominal sum a trust must legally hold when it is created.

You can put more funds into the trust at any time, but most people wait until they pass away and use a carefully worded clause in their will to ensure the money from their estate goes into the trust. You must make sure the structure and clauses in your will work correctly, if you want this to happen. You should review your will arrangements regularly and upon request, we can help in this regard.

This note has been prepared for general guidance and you should always seek specific advice on your individual circumstances before taking any action.