



## DISCRETIONARY TRUSTS FOR DISABLED BENEFICIARIES

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A Will is one of the most important documents you will ever write and allows you to decide what happens to your money, property and possessions after your death. It is important to consider the impact your Will may have upon your beneficiaries (the people who inherit). In some circumstances benefiting under someone's Will has no effect on beneficiaries circumstances. However, for disabled beneficiaries it may have an impact on the benefits they receive, they may become susceptible to being taken advantage of and they be unable to manage their inheritance.

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### WHY HAVE A TRUST FOR A DISABLED BENEFICIARY?

If you have a disabled child or beneficiary who currently receives means tested benefits, then you need to ensure that any inheritance you leave to them is safeguarded. If you leave money to a disabled person directly, in the form of a gift in your Will, it can affect any means tested benefits they may be entitled to.

The main means tested benefits are:

- Income Support
- Income-based jobseeker's allowance
- Pension credit
- Housing benefit; and
- Council tax benefit.

By incorporating a discretionary trust into your Will, protects the means tested benefits of your disabled child or beneficiary under current rules and overcomes these barriers. The trust is a formal legal arrangement whereby trustees hold money on behalf of the beneficiaries, in accordance with the terms of your will. The money is protected and if the right kind of trust is used, it will not affect any means-tested benefits.

Where advice isn't given to people making a Will they may choose to leave money to a third party, such as a sibling, on the understanding that they will look after the disabled beneficiary. However, if the third party gets divorced or has large debts, they may lose control of the money they were informally holding. Furthermore when the money is gifted to a third party, there is no obligation on that party to use the funds for the disabled beneficiary. All of this can be avoided by forward planning and including a trust in your will.

The current rules state that, usually, if you have more than £6,000 in capital this will affect your entitlement to means tested benefits including Income Support, Housing Benefit and Council Tax Benefit. These benefits and Tax Credits are also affected by any income received. If there is more than £16,000 in capital, your beneficiary will not be entitled to means tested benefits at all.

Setting up the discretionary trust enables your trustees to manage any inheritance on behalf of your disabled beneficiary, which in turn avoids the need to appoint a Deputy. (A Deputy is

someone appointed by the Court of Protection to deal with the financial affairs of someone who lacks the capacity to deal with their own finances).

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## HOW THE TRUST WORKS

A trust is a means by which assets are held and managed by one or more persons (called 'Trustees') for the benefit of others (called 'Beneficiaries').

A discretionary trust allows income and capital to be paid to one or more of a class of beneficiaries, as the trustees think fit. A discretionary trust is, on the whole, the best way to protect your beneficiaries financial future. Any assets could go into a discretionary trust, e.g. a house, savings or investments. How much is put in a trust depends on each family's circumstances. The assets of the trust, whilst available to be used for the disabled beneficiaries benefit, do not legally belong to the beneficiary, so are not assessed as their capital for means testing purposes. This is why these funds can exist whilst the disabled person receives their means tested benefits.

Trustees are chosen by you and named in your Will. They look after the money and other assets which go into the trust. Your trustees have a wide range of powers and therefore it is important that you choose someone who you trust to act in the best interests of the beneficiaries of the trust, and most importantly, the disabled beneficiary. Ideally this should be someone independent, such as a friend, although you could appoint other family members if you would prefer. You can choose your solicitor as a trustee, but you should be aware that there will be an ongoing cost for this service.

A beneficiary is a person with an interest in the trust, that is a person that could potentially receive something from the trust. It is usual to describe the class of beneficiaries widely to include all your children (not just disabled children) and further descendants (e.g. grandchildren) and even provide for a charity. In this way, there should always be someone to benefit from the trust.

No beneficiary has the right to take either income or capital from the trust and therefore the trust should not be included within any beneficiary's estate upon their death for inheritance tax purposes, and should not be brought into account when calculating any beneficiary's means tested benefits entitlements.

A Letter of Wishes is a document which acts alongside your Will stipulating particular wishes. The purpose of the Letter of Wishes is to give guidance to your trustees as to the way in which you would wish them to exercise their discretionary powers. Although they are not legally bound to follow your wishes, it is likely that the trustees will do so in practice. This is an important document in terms of explaining to your trustees how you would like the trust to work. Your letter of Wishes is the document where you can state the main purpose of the trust and that you want your trustees to put your disabled beneficiaries needs first and benefit the other beneficiaries later, should the disabled beneficiary die or no longer require the benefit of the trust fund.

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## WHAT DO THE TRUSTEES DO?

Once your estate has been distributed, your executors transfer over the cash or assets due to the trust to your trustees. The cash assets due to the trust is called the 'Trust Fund'. The trustees will look after the trust fund and invest it as appropriate. They also decide if and when to pay out money and for whose benefit. For discretionary trust for disabled beneficiaries your trustees should be aware of your instructions in accordance with your letter of wishes.

Details are given below of payments the trustees can and can't make without affecting the disabled beneficiary's means tested benefits. In addition, trustees have a duty to act in the best interests of the beneficiaries.

In general the trust should not pay for:

- Ordinary food;
- Ordinary clothes and footwear;
- Basic utility bills;
- Rent if the claimant receives housing benefit unless the trust is topping up to pay a more expensive rent;
- Council tax if the claimant receives council tax benefit; and

The trust can pay for:

- Holidays;
- Care;
- Cars and their running cost;
- Eating out;
- Property improvements;
- Hobbies and pets; and
- Extra heating etc required by the claimant but not covered by means tested benefits, for example if they need the house very warm to ease their condition

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## WHAT NEXT?

As a Will is such an important part in planning for your future it is important that you seek professional guidance and legal advice from a solicitor when doing so, particularly when dealing with trusts. Our team of experts are able to take you through the process to guarantee you the service is tailored specifically to your needs and advise on all suitable areas. Please contact us on the details below to discuss further.

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