




WRIGLEYS
— SOLICITORS —

Wills and Trusts for Vulnerable People



What you need to know about leaving money to a disabled or vulnerable person.

Frequently Asked Questions

1. Why is this important?

As a parent of a child with a disability or other vulnerability you will probably be fully occupied dealing with your child's day to day needs and, in the current climate of cuts, making sure that your child's benefits and support from the local authority meets their needs as far as possible. Maybe there is a nagging feeling in the back of your mind that you really ought to give some thought to what happens after your death and how your child would be looked after financially.

The aim of this guide is to highlight ways to arrange your affairs to make sure that the money you want to benefit your child can do that in the most effective way possible.

2. What if I do nothing?

Leaving things as they are can do more harm than good. We are often contacted by people who have inherited money from well meaning family members who did not realise that a direct gift would cause loss of benefits at best and a great deal of heartache at worst.

3. Can't I just leave it to somebody else?

People often think that it would be best to leave money to a sibling or other relative in the hope that they will look after the vulnerable person's interests. Sometimes people can have a less generous interpretation of what they are supposed to do with the money, especially if they come under financial pressure. Even if they fully intend to use all of the money for the benefit of the vulnerable person though, the decision may not be theirs to make, if they die, become bankrupt or get divorced.

4. Can't my family just change my Will once I have died?

Although it is possible to do a Deed of Variation to re-direct assets under a Will or intestacy for tax purposes, it is likely that any attempt to do this to allow somebody to continue to claim means tested benefits or care would be seen as deprivation by the Benefits Agencies or Local Authority. Even if means testing is not an issue, your vulnerable relative would have to have the capacity to make this decision and actually want to do it. You may not think they are very good with money but they may feel otherwise. If they do not have the capacity to look after their own affairs then the Court of Protection would need to agree to any variation. It is also likely that a Court of Protection Deputy would need to be appointed. This can be very time consuming and costly.

5. What are the means tested benefits rules?

The vulnerable person may be in receipt of means tested benefits and care at the moment and is probably even more likely to need those benefits if you are no longer around. If they have assets of over £6,000 their benefits will start to be affected and over £16,000, they lose those benefits entirely. Higher limits apply for care funding but the principle is the same.

6. So what should I do?

Instead of leaving funds to them outright, think about using a Discretionary Trust. You need to choose trustees you are confident in and a professional acting as trustee or 'handholding' family trustees can be very useful. A well run Discretionary Trust can save means tested funding but also give much better protection against anyone who might try to separate the vulnerable person from their money. Sadly it does happen.

7. Is this something I need to do in my Will or should I set a trust up now?

You can set up the trust under your Will or in your lifetime. A Will Trust does not take effect until your death so there are no running costs until then, and it can be changed at any time during your lifetime. A lifetime trust can be useful though if other family members might want to leave funds to the vulnerable person but without putting a full blown discretionary trust in their Will. A lifetime trust can also be useful if you want to move funds out of your estate for the benefit of your child in your lifetime, both so you can see the trust in action and there will be Inheritance Tax advantages for you too.

8. Is there any limit on the amount I can put in?

There is no limit to the amount you can contribute by Will but bear in mind that a gift by Will only takes effect on death and that your estate may be subject to Inheritance Tax at rates of up to 40%.

If you want to contribute to a trust during your lifetime, there can be an immediate Inheritance Tax charge of 20% on the excess of your available Inheritance Tax Nil Rate Band. However, if the main beneficiary of the trust qualifies as a "disabled person" under the tax legislation and the trust is carefully drafted the 20% tax charge will not apply. This is a complicated area and expert advice is definitely needed!

Case Study



Sarah – Living at home

Sarah is 27 years old and suffers from cerebral palsy. She lives with her parents in the family home. Sarah's parents, after taking advice from a specialist solicitor, set up a special form of trust for Sarah's benefit. This is known as a "Section 89 trust" and is set up during the parents' lifetime, rather than upon death. This has 2 main advantages. Firstly, they were keen to ensure that when the time came and they were no longer around that Sarah's financial needs would be met and that a large portion of their estate would not be charged inheritance tax. Secondly, a legacy from Sarah's grandmother can also be put into the trust to be kept safe and not impact on Sarah's means tested benefits. They arranged to make a gift to Sarah into the trust which assisted with their estate planning as Inheritance Tax could be reduced during Sarah's lifetime and the assets protected, being solely for Sarah's use. This also gave them reassurance that Sarah would be provided for financially for the rest of her life.

Case Study



Mark – Living in residential care

Mark, aged 38, has learning difficulties and other health problems. Mark lives in residential care in a Local Authority placement as he cannot live on his own. Mark's mother recently passed away and Mark along with a number of others was a beneficiary under the terms of the Will. A few years before, Mark's mother had seen a specialist lawyer and altered her will to establish a discretionary trust for Mark upon her death. Although his mother's estate was modest, without these arrangements, Mark would have lost his crucial means tested benefits after inheriting even just a part of his mother's estate. Without the trust, any money left outright to Mark that would take his savings to above £16,000 would have an impact on his residential care funding. Mark would have to declare his inheritance to the Local Authority which could have led to Mark funding his placement from his own assets without a contribution from the Local Authority. The trust also appointed trustees who deal with money matters on Mark's behalf. Because of his disabilities, in the absence of trustees, a Court appointed Deputy would have had to have been appointed to handle his inheritance. This is an expensive procedure and there are ongoing fees.

What our clients say:

“Your professionalism, efficiency and sensitivity have been much appreciated by me and my daughter.”

“What we thought when we walked into your office as a daunting task, with your input, has proved to be a much less complicated process.”

How will you work with me?

We aim to ensure that the same solicitor advises you from start to finish.

You will be able to contact that solicitor directly by phone, email or meet with him or her if you prefer.

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