

# Wills for the families of vulnerable people



**Making a will can seem complex enough for most people; finding a balance between tax, financial and family matters can be tricky. Providing for the needs of a vulnerable person adds a further layer to the process, but this need not be daunting.**

People are often confused about how to avoid upsetting a stable position for a vulnerable person without disinheriting them. This can be easily achieved by the use of a trust contained within a Will (*'active from death'*) or created in your lifetime (*'active now'*).

We can help you select the best options for you and draw them together to cover circumstances where a beneficiary has:

- a learning or physical disability
- a catastrophic injury
- a life limiting or degenerative illness, or
- fluctuating capacity or mental health concerns

## Can't I just leave the assets to another person to look after?

Not really, as the assets are then at risk from a number of issues: death, divorce, bankruptcy, taxes, a falling out, or dishonesty. Without the protection that a trust offers, the

assets would be subject to anything that happened to the individual they were entrusted to, whereas a trust earmarks the money for the intended beneficiary.

For example, if you leave assets to child A for the benefit of child B and A divorces or dies, the assets intended for B are affected by A's personal tax situation and are caught by his divorce or estate.

A trust is a legal container into which assets can be placed to be held away from your other assets, often with various protections built in. You will need to pick trustees to manage it, but the assets will not be disrupted by any problems faced by an individual trustee.

## Will I have to re-write my Will?

In most cases you will completely re-write your Will, although it may be possible to make minor amendments to your existing Will, or to create a trust now in a separate document.

We generally advise people to create the trust separately from the Will so it is available to wider family and friends, but if this is not needed, it is possible to keep everything contained in your Will. Will trusts only take effect after the death of the person whose Will creates it.

## How will a trust help?

If a person requiring assistance in managing finances is in receipt of means-tested benefits, or receives State funded care, then passing assets to them outright will have two major consequences:

- Firstly they may need to have an attorney or Court of Protection deputy appointed to help manage the assets.
- Secondly, the assets will have to pay for basic care and provide income to replace the State funds previously provided, until the monies run out.

Putting a trust in place enables the assets and/or cash to be managed and benefits to be retained. Most importantly, the funds are then available to enhance the quality of life of the intended beneficiary rather than to cover the costs of basic care.

## Who will manage the trust?

Normally the executors of your Will become your trustees, and you can choose almost anyone to be an executor / trustee. We still recommend between two and four trustees, with ideally at least one independent trustee to represent the needs of the vulnerable beneficiary

## Can I have different types of trust in a Will?

Yes; the term Will trust refers to how the trust is created and not the type of trust. There is the fullest range of trusts to choose from, but some trusts can only be created by a Will.

As with trusts that are in separate documents (active now), you can tailor the powers and terms of your trust to meet your circumstances. You may want to write a "Letter of Wishes" instructing your trustees on how you would expect them to use their powers.

## Are there financial limits on the trust?

Almost any type of asset or amount can be held in a trust, although it is commonly property, cash and investments.

If you anticipate lodging more than £300,000 in a trust, we would expect to give specialist advice in respect of both the type and number of trusts that should be used; Will trusts are commonly used for smaller amounts or a specific purpose or asset, to provide a home for instance.

## Will I pay tax on the trust?

It depends. With careful planning most taxes (income, capital gains and inheritance) can be mitigated. With Will trusts this is in some respects easier as income and capital gains are less of a factor on creation of the trust. Inheritance tax is still an issue for people to plan around, but this advice goes together with making a Will in any event.

### How it works Making long term provision

William and Mary have three adult children. Their middle child, Amelia, is in permanent NHS funded care due to a high dependency condition. As such, it is not anticipated that Amelia will need very much, and William and Mary will meet any needs directly during their lifetime.

In order to ensure that this continues after their deaths, William and Mary leave a legacy of £30,000 for Amelia, with the other two children and Amelia's cousin as trustees, to be used to supplement Amelia's care during her lifetime. The balance of the estate will go to Amelia's siblings.

If Amelia could live independently, a property or funds to buy a property could be left in this trust.

If Amelia no longer required the property, the trust could be worded to terminate, or provide an income, or be fully flexible in such circumstances.

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