

wealth preservation trusts for children with disabilities

Wills for Families with Children with Disabilities

None of us particularly wants to contemplate what happens after we are gone, but this can be even more worrying and daunting if you have a disabled child.

This guide explains some of the issues faced by parents and aims to reassure you that with planning, you can provide the best possible future for your child.

The Issues

Parents face two main issues in terms of a child's future inheritance. Firstly, if the child receives money outright, it will affect both their state benefit position and their Local Authority funded placement or support, with the possible result that all such assistance is completely lost.

Secondly, a child may never have the mental capacity to be able to manage money. If, therefore, money is left to the child outright, because the child cannot manage their own finances, their carer may have to make a Deputyship application to Court, in order to be legally recognised as having the standing to manage money on the child's behalf.

The difficulty is that even if parents consider these possible pitfalls, grandparents may well inadvertently leave money to their grandchildren, with of course the same unfortunate results.

Common Misconceptions

Very little information is provided to parents through the community infrastructure, so parents, desperately trying to secure their child's financial future, tend to either:

- Exclude the child from their Will absolutely or;
- Leave the child's share to a relative in

the hope that relative will look after the child.

There are problems with both of those courses of action:

- The Local Authority can independently bring a claim against the deceased parent's estate on the grounds the parent has failed to provide for the child when they should have been expected to do so
- If money is left to a relative outright, it will be classed as the relative's own money. If the relative then encounters financial or matrimonial difficulties, the money will be treated by a divorce Court or Trustee in bankruptcy as belonging to the relative
- The relative may simply not carry out the parent's wishes.

The Solution

There is a far, far better solution that ensures a parent can still have peace of mind. Parents can have the reassurance of knowing that they have provided specifically and securely for their child, while at the same time still preserving their child's entitlement to benefits and Local Authority assistance.

Instead of leaving the share of the estate to the child outright, it is left to the child in a very specialised type of Trust. Trusts simply provide a means so that one person can hold money or property for another. The Trustees can then use money for the benefit of the child, but money is not paid to the child outright. The funds can be used for clothes, holidays, equipment – anything the child needs. Crucially, however, the money does not belong to the child and cannot be taken into account by the Department for Work and Pensions or the Local Authority.

Secondly, as the money does not belong to the child, there is no need for a Deputyship Order, thereby saving both a considerable amount of money and administrative difficulties.

In order to provide the best possible planning structure, both parents and grandparents should make sure their Wills incorporate these Trusts.

What Do I Need to Consider?

The two vital roles are those of guardians and executors/Trustees. Guardians will fill the role of physically caring for the child and ensuring their welfare. Trustees will ensure the child's financial needs are met throughout the child's life. Both will have an ongoing responsibility throughout the child's life, so the choice is vital. Ideally, the same people should not fill both roles, so as

to avoid any possible future conflict of interest and ensure complete independence.

The Wills will also specify that the guardians are not to be financially disadvantaged in looking after the child but that instead the Trustees will be able to ensure that provision is made to the guardians for the child's care. This could be, for example, monthly maintenance payments, holiday contributions and additional housing costs or adaptations.

In summary, a Trust can provide parents and grandparents with peace of mind and the knowledge that they have secured their child's financial future.

For further information, please contact Sarah Westwood at Buckles Solicitors LLP on 01780 484530.

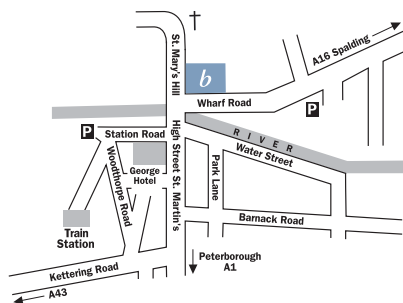
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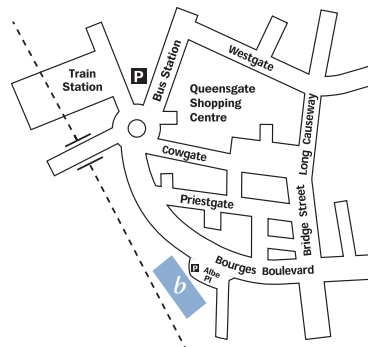
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