

Private Client

Wills for families with disabled children



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

The issues

Parents face two main issues in terms of a disabled child's future inheritance. First, if the child receives money outright, it will affect their state benefit position and their Local Authority care package, with the possible result that all assistance is lost.

Second, a disabled child may never be able to manage large sums of money. If money is left to the child outright, then someone (whether a family member or otherwise) may have to make a Deputyship application to the Court of Protection in order to be legally authorised to manage money on the child's behalf.

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

Common misconceptions

Often there is very little information available for parents in such situations, so in trying to secure their child's financial future, some tend to either:

- ▶ Exclude the child from their Will entirely; or
- ▶ Leave the child's share to a family member in the hope that they will look after the child

There are problems with both actions:

- ▶ The Local Authority might bring a claim against the deceased parent's estate on the basis that the parent has failed to provide for the child, when they should have been expected to do so
- ▶ If money is left to a family member outright, it will be classed as that person's own money. If that person then encounters matrimonial or financial difficulties, the money will be treated by a Divorce Court or Trustee in Bankruptcy as belonging to the family member

- ▶ The family member may not carry out the parent's wishes

The solution

There is a far better solution that ensures parents can have the reassurance of knowing that they have provided for their child, whilst at the same time preserving their child's entitlement to benefits and Local Authority assistance.

Instead of leaving the share of the estate to the child or family member outright, it is left to the child in Trust. Trusts simply provide a means so that one person can hold money or property for another. The money does not belong to the Trustees, and so if any of them were to divorce or become bankrupt, the money would not be taken into account. In short, the money can only be used for the named beneficiaries.

The Trustees can use the money for the benefit of the child, for example to pay for holidays, or buy clothes or equipment – anything the child needs. Crucially, however, the money is not paid to the child (other than perhaps some spending money depending on the child's age and ability to manage money) and so the money does not belong to the child and cannot be taken into account by the Department for Work and Pensions (DWP) or the Local Authority.

As the money does not belong to the child, there is no need for a Deputyship application to the Court of Protection to manage that money which saves a considerable amount of money and administrative difficulties.

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

What do I need to consider?

The two vital roles in the Will are those of Guardians and Executors/Trustees. The Guardians will be responsible for the

welfare and upbringing of any young children. The Will includes a provision to allow the Guardians to receive payments from the funds being held in Trust for the children, which ensures that the Guardians do not suffer any financial hardship by taking on that role. The payments to the Guardians could be, for example, a monthly maintenance payment plus the purchase of specialist equipment and contributions to holidays and additional housing costs or adaptations. The final decision on whether or not a payment is made to the Guardians, and if so how much and when, lies with the Trustees.

The Executors/Trustees need to be trustworthy people given that they will be responsible for dealing with your assets after your death (as Executors) and also any on-going Trust (as Trustees).

There may be an on-going Trust for any young children until they reach the age of inheritance, and also the Trust for any disabled child or children for their lifetime. The Executors/Trustees can be family members, a friend or professional. If you wish, here at Buckles Solicitors LLP we can act as your Executor/Trustee, either alone or in conjunction with another person of your choice.

Both Guardians and Trustees will have an on-going responsibility throughout the disabled child's life, so the choice is vital. Whilst the Guardian can also be an Executor/Trustee, our advice is to appoint separate people in these roles. This ensures that when the Guardian requests money from the Trustees, there is someone separate authorising that payment.

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

Life insurance

Aside from a Will, it is also sensible to consider taking out a life insurance policy which would pay out a sum of money in the event of your death. The life policy would provide funds to meet the on-going expenses associated with bringing up a child, and in particular a disabled child. The cost of such a life policy need not be high and we can arrange for an Independent Financial Adviser (IFA) to provide a life

insurance quote for you. To arrange a quote, we would need the following details:

- ▶ Your full name, address and contact telephone number(s)
- ▶ Your date of birth
- ▶ Whether you are (or have been) a smoker
- ▶ Your occupation
- ▶ Any particular health issues you may have

Our expert lawyers provide straightforward and clear advice tailored to your needs. For a confidential discussion, please contact a member of our private client team.

What others say about us

“They offer a practical approach with good technical advice”

Chambers & Partners, 2015

“Accessible and passionate”

Legal 500, 2013

Key contacts



Stephen Duffy
Partner

01733 888879
stephen.duffy@buckles-law.co.uk



Duncan Jackson
Chief Executive

020 3709 9462
duncan.jackson@buckles-law.co.uk



Sarah Westwood
Partner

01780 484530
sarah.westwood@buckles-law.co.uk



Karl Dembicki
Partner

020 3709 9460
karl.dembicki@buckles-law.co.uk