

Trusts for Vulnerable Beneficiaries or those with Learning Disabilities

It is often difficult for parents to know how to provide financially for a child (whether or not adult) who may have difficulties managing their own finances or whose disabilities mean that they are likely to be dependent upon means tested benefits after their parents or carers have died.

There are several options, some more reliable than others, but the worst option is usually to do nothing! By making a Will or a lifetime trust with suitable provision you are doing the best you can for your child or children.

1. Leaving assets to your child with a disability

If you, or anyone else, leave money or assets to your child with a learning disability, then it belongs to him or her. This can mean:

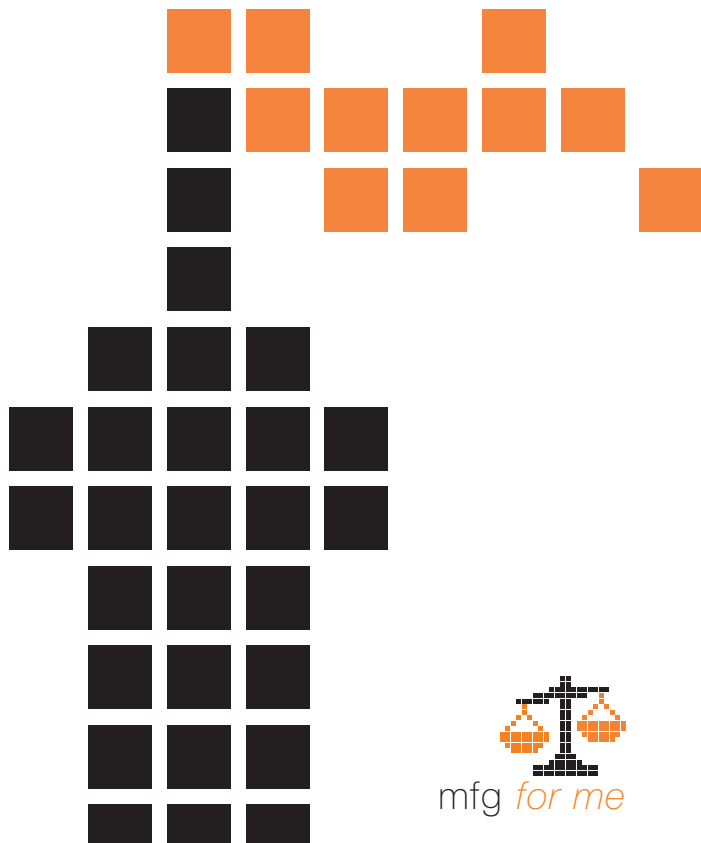
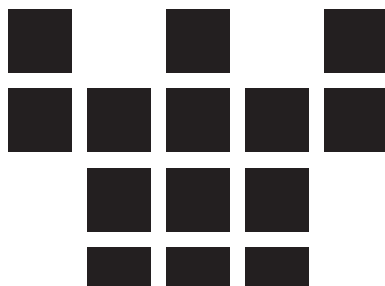
- Loss of entitlement to means tested benefits
- The appointment through the Courts (with the expense of this) of someone not necessarily your choice as “Deputy” to manage your child’s finances
- Your child may not make sensible decisions or may be influenced by others to give away or spend his or her inheritance unwisely
- Lack of flexibility -you might prefer that funds be available if required for other beneficiaries even though they are otherwise earmarked for your child
- On your child’s subsequent death, the assets which you left to him or her will pass according to his/her Will or (if none) following the Intestacy Rules.

If you do not make a Will, the Intestacy Rules say that your nearest relatives inherit - including relatives with a disability and so the above points may apply.

2. Providing a home

Sometimes parents think that they will simply give their house to their child with a learning disability (or equally between that child and other beneficiaries) in the expectation that the child will be able to continue living there without this affecting means tested benefits.

- Your child may not be able to continue living in the home. If the house is sold, then your child will become entitled to a share in the proceeds which takes us back to the problems previously set out
- Additional funds need to be set aside for bills to be paid and maintenance to the property to be carried out – how much do you leave and who will manage these funds and pay the bills?



3. Leaving assets to other relatives in hope

Many parents consider leaving their Estate to other beneficiaries (perhaps other children) in the expectation that those other beneficiaries will look after their child with a learning disability. However, this can sometimes cause unexpected problems:

- Divorce, bankruptcy, death or financial difficulties of the beneficiary may mean that funds meant for your learning-disabled child may no longer be there for them
- Inheritance tax and income tax implications for the beneficiary
- The beneficiary may lose or not be able to claim means tested benefits themselves
- The beneficiary may not be clear about what you expect of them
- Social Services or someone else may challenge the Will
- Social services provision may in the future reduce, leaving your child poorly cared for

4. Leaving funds in trust

By using a Trust, either by your Will or by setting up a Lifetime Settlement, you can resolve at least to some extent most of the issues set out above.

- By setting up a Trust, you decide who the best people are to look after funds on behalf of your child
- You can set out the terms of the Trust – the “rulebook”
- You can include other beneficiaries if you wish
- The local authority is less likely to be able to challenge the Will
- Capital in the Trust will not be taken into account for means tested benefits

- You will be able to set out who receives the Trust assets after the death of your child
- You can set up the most appropriate form of Trust for income, capital gains and inheritance tax concerns
- Other family members can add to the trust, such as grandparents, uncles or aunts

Of course, setting up a Will or a Lifetime Settlement along these lines is not an easy matter and there are many issues to consider. We recommend that you take advice from a suitably qualified Lawyer with experience in this field. There will, of course, be additional charges for setting up this kind of Will or Lifetime Settlement, but taking into account the peace of mind that making appropriate provision for a vulnerable or learning disabled child will bring, surely it is worth it?

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