



Caritas Legal Limited  
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# **FACTSHEET**

## **Wills & Trusts**

Parents often worry about how best to provide financial support to their child without leaving them in a vulnerable position.

We address some very common concerns here.

### **Do I need to have a will? What happens if I don't?**

It is especially important to write a will if you have a family member with reduced capacity or some other type of disability.

If you don't write a will your estate will be distributed according to the rules set down in law. This might mean:

- They get less (or more) than you wanted
- The money is paid to them directly even if they are unable to manage it
- They lose their means-tested state benefits
- The person being put in a vulnerable position as others may try to take advantage of them because of their money

By writing a will and taking some simple extra steps you can make sure the people you care about will get the right financial support and protection when you die.

### **I don't want my child's benefits to be affected by an inheritance. Should I leave all of my estate to my other children and ask them to look after their sibling?**

Many parents consider disinheriting their child to protect their entitlement to benefits but there are many reasons why this may not be the best thing to do.

If you children's circumstances change they may find it difficult to fulfil this role. Your disabled child could be disadvantaged should your other children ever divorce, go bankrupt or die without making a will (or fail to make suitable provisions in any will they do make).

Also, as you may be aware, children have a legal right to inherit a share of their parent's estate. If you disinherit a child there is a risk that another relative or even the local authority could contest your will. This can happen regardless of how the receipt of a large amount would affect your child's benefits.

You can avoid these pitfalls by setting up a Discretionary Trust in your will.

## **What is a trust?**

In basic terms, a trust is a legal arrangement where assets are transferred to someone else (trustees') to be used for particular purposes and to benefit specific people (beneficiaries).

A trust can be set up during your life or it can be included as part of your will.

Your will or trust deed will say:

- Who are the trustees
- Who are the beneficiaries
- How the money/property is to be managed
- How the money/property can be used
- Who gets the money/property when the trust comes to an end

There are different types of trusts, for use in different circumstances, so it is important to get advice about your own family's circumstances.

What is a discretionary trust?

As the name suggests, the trustees have discretion about how assets are used, if and when payments are made and to whom.

Discretionary trusts are often suitable for beneficiaries with reduced capacity or those in receipt of means-tested benefits and/or community care. This is because money or property held in a discretionary trust does not affect means-tested benefits. It is also not included as part of the person's resources when calculating how much someone should pay towards care services. Even if the person is not receiving benefits or services just now, remember this could change in the future. It is also important to think about what a child might need when they become an adult.

## **We would like our child to continue to live in the family home after we die, can we leave our house in trust?**

Yes, but you should make sure you leave enough money in trust to maintain the property throughout your child's life. There are also other options that give your child a right to continue to live at home that you might want to consider.

## **My child has reduced capacity and his grandparents want to leave him some money in their wills. I'm worried this could affect my child's benefits – what should I do?**

You or your parents could set up a "pilot" trust for your child now. You can do this with a nominal sum, say £10, but it doesn't actually start until a larger sum of money is received. Your parents, you and other members of your family (or friends) could then also leave money to the trust in their wills.

## **I would like to make provisions for my disabled child in my will – how do I balance the interests of all my children?**

You will need to decide how much money, or what proportion of your estate, to allocate to your disabled child. You may decide to provide for all of your children equally – making special provisions for your disabled child, by putting their share into a Discretionary Trust.

Alternatively, you may decide that the needs of your disabled child are greater than those of your other children – particularly if other children are now financially independent. On the other hand, your disabled child may manage very well on their benefits and/or wages and have little need for a large inheritance.

### **Solicitors**

When you have a dependent with additional needs it is extremely important that you take specialist legal advice when writing your will and/or setting up a trust.

### **More Information**

Caritas Legal Limited are available to chat to parents and other family members about the importance of having a will and setting up a trust and can speak to groups of parents and carers of professionals.

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