

How should I provide for a child with Special Needs?



- ❗ **If a child with Special Needs inherits – this could result in losing entitlement to State Benefits.**
- ❗ **If no provision is made for a Special Needs child – this could result in a legal challenge by the Local Authorities.**
- ❗ **Unless you make full and careful provision for a Special Needs child, their standard of living may be compromised.**
- ✅ **A Family Trust can protect the inheritance and benefits of a Special Needs child.**

In Detail

If you have child or beneficiary (**of any age**) with a disability who is receiving state benefits, and who you wish to benefit in your Will, then an effective way to deal with their inheritance would be to leave it to a Family Trust. You can pass money, property, shares or any other assets into the trust.

The Family Trust (which is a lifetime discretionary trust) is established by the parents or other relatives, as a way of making long term financial provision for a child or beneficiary with a disability.

It is worth bearing in mind that, to not make any provision at all for a disabled son or daughter on the grounds that another member of the family will look after them or that the state will provide for them, may not be a wise course of action. This is because under the **Inheritance Act (1975)**, if insufficient provision is made, it is possible for Social Services and the Department of Social Security to challenge the Will. In turn this can result in an unpleasant, unhelpful and costly legal dispute.

The reason a trust is useful is that assets, once populated into the trust do not belong to the “beneficiary” of the trust (ie the disabled son,

daughter, grandchild or other beneficiary who is intended to benefit). This means that the capital or assets held in the trust are not taken into account when assessing entitlement to state benefits such as income support or local authority obligations to fund care.

The trust assets will be looked after by a minimum of two trustees (maximum four) and by setting up the trust, the settlor is saying who they wish to look after their assets on behalf of the beneficiary. In the absence of a trust where the disabled beneficiary is unable to manage their money, the Court of Protection may have to get involved and appoint a receiver. This receiver may not be the person the settlor wished to look after their beneficiary’s assets.

A defining characteristic of a properly drawn up lifetime discretionary trust is that the intended beneficiary e.g. son or daughter, belongs to what is termed a “class” of people and is not the sole beneficiary of the trust. Therefore additional beneficiaries need to be appointed who may also inherit from the trust or on the death of the disabled child or beneficiary. It is usually envisaged that on the death of the disabled child or beneficiary the trust will be divided between remaining beneficiaries.

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