



# Wills & Vulnerable Family Members

Making provision for a disabled child.  
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## Is it appropriate to leave part of one's estate outright to such a family member if that person is not able to look after his own affairs?

In some cases the disabled child will not be able to look after his own finances if money is left outright to him. A deputy may not have been appointed by the Court to manage that child's finances. The better way to make provision for that child is to include a discretionary trust in the parents' wills, to come into operation when the second spouse dies.

## What provision should be made for a disabled family member and what is the best way to ensure that it is put to best use?

Our advice is often sought by clients who have family members suffering from a disability, mental or physical. Such questions can cause particular heartache to parents of a disabled child.

The parents should take care to appoint in the wills appropriate, independent trustees to administer the trust fund. Flexible and appropriate powers give the trustees wide powers to use income and capital of the trust fund for the benefit of the child, if and when needed. Thus the trustees would normally have powers to use the trust fund to purchase living accommodation where appropriate, to pay for carers and to provide for other 'extras' that would not otherwise be available to the child.

By leaving the estate in a discretionary trust, the disabled child is not entitled to any part of it 'as of right' and the funds are not within his control. This should not only ensure that the child's benefits are unaffected, but means that the funds are protected for the child's benefit from, for example, those that might take advantage of their vulnerability.

## What about provision for the child's physical needs?

We also recommend that a separate memorandum (or letter) of wishes is prepared at the same time as the wills are made, setting out the parents' wishes and providing guidelines for how the trust should be run. Whilst they are not legally binding on the trustees, the trustees will no doubt appreciate the guidance and knowing what the parents have in mind. For their part, the parents appreciate the opportunity to make those wishes known.

## What about any other able children?

Where the disabled child has siblings, the discretionary trust can be set up for the benefit of all of the children and their offspring. The memorandum of wishes should give guidance to the trustees on how much of the trust fund should be made available for the non-disabled children and at what stage(s) those children should receive their inheritance.

If appropriate, grandparents and other relatives who might be minded to leave an outright gift in a will to the disabled child should be alerted to the other options.

## Wouldn't it be easier to leave the cash to the able children to look after their disabled brother or sister?

Parents with a disabled child should not be tempted to make no (or very little) provision for that child in their wills on the basis that the government grant will provide for some of their needs, or that other siblings will 'do the decent thing'. It hardly needs pointing out that this is a risky approach! (Even if the other children do ensure that their disabled sibling is looked after financially, this approach can be fatal if one of the other children becomes bankrupt, dies prematurely or gets divorced). 🗑️



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