

Leaving a Gift in your will to Grace Eyre.

Trusts: What are my options?

Every gift in your will, will help someone we support to nurture their ability, feel more equal in their community and to grow their independence.

Because of you we can help people change and improve their lives.



A trust is a legal arrangement where one or more “trustees” are made legally responsible for holding assets in order to benefit others. The trustees are responsible for managing the trust and carrying out the wishes of the person who has put the assets into trust.

A trust is especially useful if you have a loved one with a learning disability and/or autism who is not able to look after their finances or if any inheritance may impact their means-tested benefits.

Your solicitor or legal professional will be able to help you choose the most appropriate trust to meet your loved one’s needs and will also be able to set up the trust. It’s worth bearing in mind that there is a cost involved in setting up a trust, as well as annual administrative costs. But those costs should be minimal when balanced against the needs of the person with learning disabilities and/or autism.

One of the simplest options you have is to leave your assets to a responsible person of your choice, in the hope that they will look after your loved one with a learning disability.

However, it’s worth considering the risks involved in this, for example what happens if that responsible person dies, becomes bankrupt, or for some other reason fails to follow your wishes as they promised. Setting up a trust can be a safer long-term option.

Here’s a summary of the different types of trusts to consider:

1) Discretionary trust

A discretionary trust is the most flexible type of trust. It gives the trustees full powers to decide if, and when the beneficiaries should receive either capital or income from the trust fund. This means that the money in the trust fund does not belong to any of the people who may benefit from it, and so it does not cause any loss of means-tested benefits. The amount given to the person with a learning disability can also be controlled so that it is within the limits for means-testing, allowing maximum income benefits.

This is a helpful option if the person with a learning disability is likely to be in residential care for life, dependent on substantial means-tested benefits or unable to manage their own finances. You need to bear in mind that there are taxes that apply to trusts, and the administration of trusts, so it's a good idea to discuss this with your legal adviser before making your decision.

You can extend the provision made through a discretionary trust by setting up a personal fund to pay for the needs that will not be met by means-tested benefits, such as holidays, computer equipment.

Trustees can be given a power to advance capital, so that rather than paying the funds to the person with a learning disability, they pay the funds directly to the supplier, for example the travel agent. These payments would not be considered in calculating entitlement to means-tested benefits.

If you do include a discretionary trust in your will, it is very important to keep your will up to date, taking into account any changes to means-tested benefits.

2) Disabled person's trust

This is a type of discretionary trust that can be set up for a person who is disabled, according to the definition outlined by the Government. As well as the benefits already mentioned under discretionary trusts, the main benefit of the disabled person's trust is the favourable tax treatment it receives for Inheritance Tax, Income Tax and Capital Gains Tax.

However, with a disabled person's trust, the income and capital must wholly benefit the disabled person, except for either a small percentage or value, whichever is less, that can be used for another beneficiary each year. The trustees have the discretion whether to pay out or to accumulate the income or any of the capital in the trust which is why it is not considered when the beneficiary is assessed for means-tested benefits.



Choosing trustees

If you are considering setting up a trust, you will need to consider who you would like to be the trustees. It is important to weigh up the balance between those people who are best able to understand the needs of the person with a learning disability and those people who will also be able to cope with the administration of the trust (which can involve tax and investment implications). A family member, together with professionals such as a legal adviser or accountant, may be a sensible mix. Professionals will charge a fee. It is a good idea to compare rates and check their terms and conditions before you make any decisions.

The trustees you choose must be able to co-operate with each other, as their decisions must be unanimous. As a trust may continue to exist for up to 125 years, it is important that the terms include the possibility for new trustees to be appointed and others to retire. It is recommended to have between two and four trustees.

It is important to remember that you cannot control the trustees' decisions. For the trust to be of real benefit to the person with a learning disability the trustees should be given flexible powers. This will enable them to deal with any change in the circumstances of the person with a learning disability

The best you can do is to have the terms of the trust written extremely carefully, whether in your will or a trust deed (also called a Deed of Settlement). If you want a discretionary trust to be set up, you can leave a letter of wishes.

This is a document that gives your trustees guidance on how you would like the trust to be run but it is not legally binding.

Telling other relatives

If you do create a trust, it's really important to tell other relatives. Telling your family members in good time will enable them to draft their own wills to benefit the person with a learning disability appropriately – guarding against the potential loss of means-tested benefits by leaving any assets intended for a person with learning disabilities and/or autism to the trust.

