

TOZERS

Providing for people with learning disabilities



Who will care for him? How will he manage? What should we leave him? Parents of someone with a learning disability have particular worries about providing for their child after their death.

Make a Will

Parents in this situation must make a Will.

If you die without a Will, the general law will apply and your child may automatically receive a share of your estate on reaching the age of 18. The Court of Protection would then have to appoint a Deputy to manage this money. You would have had no say in who is appointed, or how the money is to be used. The Deputy would probably have to use the money to meet the cost of care and means tested benefits may be lost.

To avoid this, it is important that your Will does not give money to the child outright.

One of the most effective ways of providing for a person with a learning disability is to make a Will which sets up a discretionary trust on your death. The aim of the trust is to provide a fund which the trustees can use, at their discretion, for the benefit of your child. The child does not receive any money outright. The discretionary trust defines a group of beneficiaries, which includes your child. The trustees can pay money to any of those beneficiaries but no-one has the right to receive payments. This ensures that the fund is not treated as belonging to your child when his means tested benefits are being assessed.

Only actual payments to him will be taken into account. It is important to include other beneficiaries in addition to your child, or the trust will not be truly discretionary.

You should leave a letter with your Will stating how you wish the discretionary trust to be dealt with. We can prepare this for you. Usually the letter states that you wish your child with a learning disability to be treated as the beneficiary with the greatest claim on the trust fund.

The trustees can use the discretionary trust to benefit your child – by paying for holidays or buying him items not covered by state benefits. They can also give him a small pocket money allowance.



In your Will you can also state your wishes about the appointment of a guardian for your child in case he is under 18 when you die.

You will need to appoint executors/trustees whom you can trust. Ideally they should include a family friend or relation who knows your child well, together with a professional trustee, such as a solicitor, who can help with legal and financial matters.

Tozers has a specialist team of advisers with considerable experience in setting up trusts for the benefit of people with learning disabilities.

The alternatives are unsatisfactory

You could leave everything to other family members with instructions to look after the special needs of your child. This carries risks: on the death, divorce or bankruptcy of the person holding the money, the fund could be lost.

You could leave your money to a charity which houses or guides your child, but you cannot impose a condition saying that it has to be used for his benefit.

If you leave your child nothing in your Will, the authority responsible for funding your child's care and accommodation could claim, under the Inheritance (Provision for Family and Dependants) Act 1975, that inadequate provision had been made for him. The authority could then contest the Will.



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