

Dependents with Special Needs

This information sheet is provided as part of our service and outlines the additional areas that people with dependents with special needs have to be aware of.

The relevant points are detailed below; and whilst all the sections may not apply to you, please allow some time to read this Information sheet carefully.

It is recommended that you keep this Information sheet with your financial papers for future reference.

TRUSTEES

This appointment is essential to enable the beneficiary's inheritance to be properly looked after and made available, whenever necessary, for their entire lifetime. Otherwise, the next of kin would need to apply to the Court of Protection to appoint a Receiver to deal with the legal and day to day requirements. A common solution is to appoint two (or more) trusted friends and/or relations, who can reasonably be expected to outlive the beneficiary. The Trustees always have the option of seeking help from family, friends and professional advisers on an informal basis or even appointing further Trustees, should this be appropriate.

NATIONAL TRUSTEES FOR THE MENTALLY HANDICAPPED LIMITED

This scheme is organised by Mencap and offers an alternative should you not have any trusted friends or relations to act as Trustees. Basically, you execute a simple, pre-printed Trust Deed now and place a specific clause in your Will so that upon your death the funds are bequeathed to them direct. This is a form of Discretionary Trust that enables the funds to be professionally managed for the primary benefit of your dependent. You can also specify what is to happen to the remaining funds upon the death of your child. Apparently this scheme has been successfully running since the late 1970's and has some 1500 members. For further details, please contact Mencap directly.

VISITORS SCHEME

This is a separate facility, also administered by Mencap and provides for a Visitor to make regular visits and become a friend to your child, when you are no longer around. It entails the payment of a lump sum either during your lifetime or upon death via your Will. For further details, please contact Mencap direct.

STATE AND LOCAL BENEFITS

The other main factor to be aware of is the effect of an inheritance upon existing benefits (particularly Income Support, which is means tested). Large capital payments would end entitlement to Income Support and income payments would reduce the benefit. This would result in an inheritance simply replacing State and/or Local provision, which would otherwise have continued.

However, it is very difficult to overcome this problem and, indeed, if there were a simple solution; then everyone would be aware of it and be advised to do it. You must also bear in mind that the Social Security benefit schemes are extremely complex and liable to change (probably not for the better) at any time.

DISCRETIONARY TRUSTS

Since 1993 when the regulations changed; it is generally considered that a Discretionary trust (which allows capital/income to be paid to and on behalf of the beneficiaries on an irregular basis at the Trustees discretion) would mean that the capital would not form part of the individual estates. This would then mean that the capital would not be taken into account for means-tested benefits. However, you should be aware that if such an arrangement was created artificially simply to avoid losing certain benefits; then it may be disallowed and it is quite likely that the regulations could change again. Notwithstanding this possibility, we are now using a Discretionary Trust in our Wills.

INDIRECT PROVISION

It should also be pointed out that, if money is left to a Third Party with an informal agreement that this money would be for the benefit of someone else; then English Law considers that a Secret Trust has been created. This means that the true beneficiary is treated as owning the funds and is penalised because they do not enjoy the safeguards of a proper legal trust.

INHERITANCE (PROVISION FOR FAMILY AND DEPENDENTS) ACT 1975

This act was basically intended to allow people who are dependent on someone else, to be able to claim a portion of their estate to protect their standard of living; for example, a common-law wife with young children. However, a Local Authority could also make use of it, if no provision or very little provision was made for a person with special needs, to claim for a reasonable financial settlement on their behalf. Therefore, it cannot be safely assumed that you can direct your estate totally away from your dependents.

This brief resume is only intended for general guidance and it is strongly recommended that you also contact Mencap for further help and advice.

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