



Dickins Hopgood Chidley

SOLICITORS

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Providing for someone with a learning disability

If you leave money to a relative or friend with a learning disability, or die without making a will, it could have unintended consequences.

- If your relative or friend cannot manage their own money, the Court of Protection may need to become involved to assist in looking after the legacy. This can be complex and time-consuming, and there are fees involved.
- The person with a learning disability may have impaired understanding of the value of money and may be vulnerable to other people taking advantage of their new found wealth.
- If the person concerned is receiving state benefits, the receipt of a legacy is likely to affect the amount to which they are entitled. Most benefits are subject to the person holding less than a statutory maximum of capital.

You may think of leaving your estate to your other children to use to help your child with a learning disability, but that may not be an appropriate solution,

as there is no legal obligation on them to use it in that way, and the money might be treated as their money if they were to divorce, or go bankrupt, or die, or if they needed to claim benefits themselves.

Discretionary Trusts

The solution is to set up a Discretionary Trust within your will. You will appoint trustees who will support the person concerned to manage money and to make decisions as to how it should be used. The trust fund can be used to provide luxuries and additions to the person's day to day needs, as well as having the flexibility to benefit other members of the family if needed.

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A Will like this should be made by a solicitor who has experience of these types of wills. A Will is vitally important, particularly in these circumstances, and you should consider all the options with your solicitor who will write a will to suit you.

Typical Example

Mr and Mrs Smith have three children, Adam, Ben (who is autistic) and Charlotte.

Mr Smith dies first and leaves everything to his wife.

Mrs Smith dies later and leaves 1/3 of her estate to Adam, and 1/3 of her estate to Charlotte.

The other 1/3 of her estate is to go into a Discretionary Trust to benefit Ben. The Trustees will be people Mrs Smith trusts completely. This could be Adam, Charlotte, and/or brothers, sisters or family friends, or a professional. The trustees can use the money to help Ben in any way they think fit, and it will not necessarily affect his benefits. When Ben dies (if all the money has not been used up) it can go to Adam, Charlotte or the grandchildren.

The money can be used to pay for luxuries and extras to improve Ben's life, e.g. holidays, outings, music and visual or computer equipment, anything which he would not otherwise have.

