

Wills and Trusts

a guide for carers

VOCAL - Voice of Carers Across Lothian ● August 2018

Planning for the future is particularly important if a member of your family has a disability, physical or mental health problem, addiction or long term condition. You may want to make provision for them in your will, and they may **need support** to manage any money that you leave them.

You also need to consider the impact of making a will or trust. Any money that you leave to the person you care for may affect their **welfare benefit entitlement** and any financial contributions that they make to **pay for their care**.

This guide outlines some of the general issues that you should consider when making a will or trust however everyone's situation is different. It is important to get expert legal advice, and to have a discussion with other family members who may be affected.

Trusts

A trust is a way of looking after assets (money, investments, land or buildings) for people. It is a legal arrangement where one or more 'trustees' are made legally responsible for holding these assets, managing the trust and carrying out the wishes of the person who has put the assets into trust. A trust can be set up in your lifetime or in your will and is one of the best ways to make financial provision for a person whose main income is state benefits.

There are several types of UK family trusts, and the one generally recommended is called a '**discretionary trust**'. The money is handed over to trustees who have 'discretion' about how to use the income of the trust, and sometimes the capital.

As the trustees are legal owners of any assets held in the trust and the beneficiary has no absolute right to call on the money

● Free legal surgeries

VOCAL runs free 30 minute surgery consultations where carers can discuss these issues in more detail with a solicitor. To book an appointment contact VOCAL on **0131 622 6666** or email **centre@vocal.org.uk**

● Trusts: laws and tax

Trustees have to pay tax on trust income, and any income the beneficiary receives from the trust will also be liable to tax depending on their circumstances.

● Appointing Trustees

Trustees should be people you trust who are happy to undertake the role.

Trustees can be:

- Professionals eg. solicitors, banks, trustee services (they will charge a fee).
- Family members or friends (you may want them to have access to professional advice).
- A combination of family members and a professional.

it is not regarded as their capital for welfare benefit purposes. The terms of the trust also outline how it will be wound up. For example the trust can provide that the money will go to other members of the family or to the children of the beneficiary.

How are welfare benefits affected?

Payments of income or capital from a discretionary trust may have an effect on means-tested benefits. If someone on means tested benefits receives a regular income of more than £20 a week from a trust, any amounts over £20 will be taken off the benefits.

If a large amount is needed (e.g. to buy a flat) the trustees should buy the item themselves. They can then make it over to the trust beneficiary. With the many changes taking place in the benefits system it is important that trustees regularly check that these rules have remained unchanged.

Wills

It is important to write a will if you have a family member with reduced capacity or some other type of disability. You will need to consider what provision you want to make for the person you care for, in addition to other people you may wish to provide for.

If you do not make a will the law requires that your estate is dealt with in a particular way - which may be contrary to your wishes.

You may decide not to include the person you care for in your will and rely on other beneficiaries to support them but this can also be problematic. You can avoid these pitfalls by setting up a Discretionary Trust in your will.

Options for dealing with property

There are a number of options available if you wish to leave your home to the person you care for. A person's home is not taken into account when calculating their capital for welfare benefits.

You may wish to leave the home to the person directly or ask trustees to sell it and buy somewhere smaller or more suitable. If you have concerns about their ability to manage the burdens of owning a property, the house can be put in the names of the

Trust payments which may be **disregarded**:

- Irregular lump sum payments (unless they bring the person's total capital above the threshold for the particular benefit).
- Payments of income intended to pay for items not normally covered by welfare benefits (eg. phone bills, TV rental, CDs).
- This does not include rent, rates, fuel, clothing or food as welfare benefits are intended to cover these items.

trustees who can allow the person you care for to live there. Alternatively you may specify in your will that the person you care for can live in the property for life, after which it is given to someone else.

Does the person you care for have capacity to make decisions?

An inability to make decisions in our lives can occur for a range of reasons. Disabilities such as dementia, brain injury or severe mental illness may limit our capacity to understand what is involved in decision-making.

People with a physical condition, such as stroke or severe hearing impairment, may lack the capacity to communicate their decisions and need someone else to act for them. Being born with a learning disability may limit a person's ability to act or make some or all decisions for themselves, depending on the severity of the condition.

The **Adults with Incapacity (Scotland) Act 2000** provides a legal framework for family members and friends to assist the person they care for with decision making - it enables carers or others to have legal powers to make welfare, health care and financial decisions.

For more details see the '*Legal Matters*' factsheet.

Before writing your will:

- List what you own including assets and liabilities and their value in money.
- Think about who you would like to benefit from your will and what you would like to give them.
- Who would you like to be the executors of your will? An executor is the person you officially appoint to make sure that the wishes in your will are carried out.
- If your child or children are under 18, think about whether you would like to appoint a guardian for them.
- Think about whether you need to set up a trust for the person you care for.

Sources of support:

Free legal surgeries

VOCAL runs free legal surgeries and Power of Attorney surgeries for carers. To book call **0131 622 6666** or email **centre@vocal.org.uk**

Solicitors

The Law Society of Scotland can help in finding a solicitor. They can also advise on how fees are set, solicitors' standards and how to make a complaint. Call **0131 226 7411** or visit: **www.lawscot.org.uk**

Trustee service

Contact Enable Scotland by email: **enabledirect@enable.org.uk** or on **0300 0200 101**.