FINANCIAL PROTECTION FOR THOSE WITH A DISABILITY

Using trusts to manage the finances of people with a disability

Caring for any person with a disability brings many challenges and, aside from the day-to-day concerns, many carers worry about what will happen to the person for whom they are caring when they are no longer around.

So how can financial provision be made for a disabled person whilst at the same time providing a level of protection to ensure that the disabled person's finances are managed well in the future? The solution may be to consider the use of a trust.

What is a trust?

A trust is a legal structure where the ownership of defined assets is placed with trustees. The trustees manage the assets for a specified person or class of persons who, under the terms of the document creating the trust, are either entitled to, or can hope to benefit, from the trust. A trust can be created by Will or by drawing up a trust deed during lifetime.

There are several different types of trust. These include discretionary trusts, where there is a specified class of beneficiaries and the trustees have discretion over payment of income and/or capital, and interest in possession ("IPDI" or "IiP") trusts which give the stated beneficiary the right to receive the income from the trust assets and sometimes the possibility of receiving capital.

Trusts are sometimes used to reduce tax liabilities but are also frequently used as a form of protection as the trustees manage the trust assets on behalf of the beneficiary, whose entitlement to the asset is limited. As such trusts can be an ideal way of benefiting a disabled person who perhaps lacks the capability to manage assets or who may be vulnerable to financial exploitation.

What are the advantages of using a trust?

If a disabled person is unable to work, they may be reliant on means tested benefits. Many benefits are not payable if the claimant has savings of £16,000 or over. Most carers of a disabled person would be reluctant for a gift of capital, whether given on death or during lifetime, to result in the beneficiary's entitlement to state assistance being reduced or removed. If, however, the financial provision is placed in a trust then the trust assets will not be taken into account in assessing the beneficiary's entitlement to benefits and the capital is preserved.

A trust can also ensure that the money is protected from dissipation, perhaps because of the disabled person's own behaviour, or because they are vulnerable to exploitation from others. The trustees retain control over the capital and are under a duty to ensure that it is invested wisely.

The issue of control of the money is a vital one and where a trust can be very helpful. For example, the trust could ensure that there is always a fund available for "extras" such as holidays or other large items of expenditure which the beneficiary could not otherwise afford. Such a fund can also be useful for a beneficiary who is generally able to work, but who might have gaps in their earning capacity due to their disability, to maintain their usual standard of living during the non-working periods.

Which type of trust might be best?

This will be dependent on a particular family's circumstances and what it is wished to achieve by using a trust. A discretionary trust has the advantage of inherent flexibility and may also help to maximise entitlements to welfare benefits, whilst an IiP trust may, in some circumstances, be easier to run and can be more tax efficient but any income entitlement would be subject to financial assessment.

The type of trust structure will also be determined by the amount of money that is likely to be put into the trust. For example, a lifetime gift to most forms of trust which is greater than the inheritance tax ("IHT") nil rate band (i.e. the amount that can be given without any liability to IHT) will trigger an immediate charge to IHT%. Similarly, if a standard discretionary trust is incorporated into a Will, and the amount in the trust exceeds the value of the nil rate band at the ten yearly anniversaries of the trust's creation, then a charge to IHT will arise.

A way around this problem may be to use a recognised disabled person's trust qualifying for special tax treatment. This will also need careful consideration as to qualify as a disabled person's trust the trust has to meet a number of technical requirements, as does the beneficiary benefiting under it.

If you are interested in using a trust to make financial provision for a disabled person, we can guide you through the process, and ensure that the most appropriate type of trust is chosen, considering both tax and all other relevant factors.

Some of the issues are set out below.

	Discretionary Trust	Vulnerable Beneficiary Trust
Who qualifies	No special requirements	A disabled person who is eligible for any of the following benefits: • Attendance Allowance (either the care component at the middle or highest rate, or the mobility component at the highest rate) • Personal Independence Allowance • an increased disablement pension • Constant Attendance Allowance A vulnerable beneficiary can also be someone who is unable to manage their own affairs because of a mental health condition - check with a medical professional that it's covered by the Mental Health Act 1983
Beneficiary conditions	Wide class as defined in the deed	The trust must benefit the disabled person – with the power to pay £3,000 to another beneficiary
IHT charge on entry	Yes, anything above £325,000 will be subject to life-time charge (20%)	No IHT charge if the person who set the trust survives 7 years from the date they set it up

Powers	Trustees have a wide range of powers in terms of payments and managing assets	Generally, trustees have a wide range of powers in terms of managing the assets only
Income Tax	Income is taxed at the trustee rate (higher rate)	Trustees are entitled to a deduction of income tax
Capital Gains Tax	Trust is entitled to half of the usual CGT allowance	Potentially full allowance
10-year IHT charge	Subject to 10 yearly charge	IHT exempt
Exit charge (IHT)	Subject to an exit charge	IHT exempt
Death of beneficiary	Does not form part of their estate	Trust assets do form part of their estate
Telling HMRC	No special requirements	Must make an election advising it is a vulnerable beneficiary trust by completing election form
Benefits	Not taken into account when assessed for means-tested benefits	If at the trustees' discretion, then not taken into account when assessed for means-tested benefits

How can GL Law help you?

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

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