Making a Trust and a Will to benefit your autistic child

What you need to know to help you financially plan

Sign up for our free online seminar for Autism at Kingwood families:
SupporterCare@kingwood.org.uk

Embracing Autism

AUTISM AT KINGWOOD

Protecting your loved one's future

As a parent or grandparent of an autistic adult, you might be worried about how they will cope when you're no longer around.

How will they manage financially? Will they still receive benefits? How can I minimise change in their life?

Financial planning can protect your loved one's future and give you peace of mind. This guide explains:

- How to financially protect your autistic child
- The difference between a Trust and a Will
- What can happen if you don't make a Trust or a Will
- What is a Trust and how can you set one up to protect your child
- The importance of writing a Will
- The role of Executors and Trustees

How you can financially protect your autistic child

Everything you have done for your child since day one would have been to give them a fulfilling, happy life. With the right action now, this doesn't need to change.

Set up a Trust and make a Will

This could be one of the most important things you ever do for your child's future. Taking these steps will safeguard their finances, minimise change in their life and enable them to continue doing the things they love.

Trusts and Wills

A **Trust** can be set up at any time to benefit your loved one. It is a fund made up of your assets – savings, property, investments etc.

A **Will** sets out your wishes for dealing with everything you own after your death.

What can happen if you don’t plan for the future

Did you know that a lump-sum inheritance from your will – even as little as £6,000 – can affect your child’s benefit entitlements?

Without the right arrangements in place, there is a greater risk of your child’s future being negatively impacted.

Leaving a lump-sum inheritance is simply not a good option, and here’s why:

Your child may not have sufficient mental capacity to manage an inheritance

This can result in the need for an application to the Court of Protection for a Deputy to be appointed to manage their inheritance – and they may make decisions that don’t reflect your wishes.

Loss of benefits

Means-tested benefits and support packages funded by the local authorities may be cut, leading to any inheritance funds being used to pay for services and activities until that money runs out.

This scenario, as you can imagine, could turn your child’s world upside down; impacting everything from vital care through to accommodation, transport use and social activities.

Financial abuse

Difficulty with managing finances is common for autistic people. They may be susceptible to financial abuse from people in the community who may wish to take advantage of their new found wealth.

What is a Trust?

A Trust is a legal transfer of your assets which are used to benefit your child. The funds are transferred to people you choose; these are the 'Trustees'. The Trustees will use the Trust fund for the benefit of your loved one who is known as the beneficiary.

These arrangements can be created in your lifetime to take immediate effect, and will be set out in a Trust deed. Your Will then leaves a sum of money or share of your estate to the Trust. If the Trust is to be created after your death then the Trust arrangements will be set out in your Will.

Getting legal advice

Setting up a Trust is highly specialised and should only be handled by an estate planning professional or lawyer with experience in this area.

The professional you choose will discuss your needs and wishes for your child, and from this they will advise which type of Trust is most suitable.

How much money can I put in a Trust?

There is no minimum or maximum amount of money that you can place in a Trust, but the amount will need to be enough to ensure that the running of the Trust is financially manageable.

Letter of wishes

A letter of wishes sits alongside the Trust and provides helpful guidance for Trustees. It outlines exactly how you would like the money in the Trust to be paid out. This can include:

- Costs of ongoing care and activities
- Information about your child's likes and dislikes
- Specific requests that your child would enjoy or benefit from – such as a trip to their favourite holiday destination, or a life-changing adaptation to their home

This letter is not a legally binding document but is your guidance to the chosen Trustee/s – it is extremely useful for when you are no longer around.

How does a Trust protect your autistic loved one?

Safe, secure and no impact on benefits

Setting up a Trust means you can safely and securely leave money for your child without them having to worry about the responsibility of looking after it in their lifetime. Importantly, using the right type of Trust does not affect means-tested benefits or local authority funding.

It also means avoiding applications to the Court of Protection for a Deputy to be appointed to deal with their finances if they are not able to look after the money themselves.

Access to funds as soon as they're needed

By putting money into a Trust for your loved one with autism, you can make the money available for them in their lifetime as they need it. You can also instruct where the money should go on their death, for example to your other children or family members, or to **charity**.

"We had set up provision for our son in our Will, but hadn't appreciated how important it is to set up a Trust to protect his funding in the future."
Tracie and Art

The importance of writing a Will

What is a Will?
A Will is a legal document which sets out your wishes for everything you own after your death.

What happens if you don’t make a Will?
If you don’t make a Will, the laws of intestacy will apply. These are the rules which determine the order in which your assets are distributed between your family, without considering their circumstances and what you may wish to happen.

Intestacy rules: how do they work?
The husband, wife or civil partner keeps all the assets – including property – up to the value of £250,000, and all the personal possessions, whatever their value.

If assets exceed £250,000, the husband, wife or civil partner gets half of the remainder of the estate, and the other half is divided equally between the surviving children.

What if my child lacks capacity to receive an inheritance under these circumstances?
Intestacy rules offer no protection for your child.

If they lack capacity to receive an inheritance through the intestacy rules, an application would have to be made to the Court of Protection to appoint a Deputy to manage their inheritance. This would lead to a substantial delay in them receiving any funds from their inheritance and potentially incur additional expense for them.

This situation could put your child in an extremely vulnerable position, without you there to protect them.

Keeping your Will up to date
Once you have made your Will, it is important to review it every three to five years. Changes in your life, or your child’s, can affect your Will, and even make parts of it invalid. Such changes include marriage, civil partnership, divorce or changes to your financial circumstances.

Getting legal advice

With an autistic child to consider, we recommend you get both your Will and Trust written up by a professional Willwriting service or lawyer.

Autism at Kingwood is supported by a local professional estate planner with expertise in Will making, Trusts and Power of Attorney.

Ally Ilot, of **Heritage Estate Planning**, feels passionately about this provision and offers a 20% discount to those with loved ones supported by Autism at Kingwood.

Ally is running an online seminar for Autism at Kingwood families. Get in touch for more information: **SupporterCare@kingwood.org.uk**

Contact Ally on **01635 292356** or email **ally@heritageestateplanning.co.uk**

Alternatively, we recommend you visit The Law Society at **www.lawsociety.org**

What questions to ask your legal professional?

We strongly recommend that you arrange a brief meeting with your estate planner or lawyer before formally instructing them.

It is important that you find the right person to help you with this potentially complex, personal matter. Choose someone who you feel most comfortable with and who you believe can best support you.

Take this opportunity to ask them the following questions before moving forward:

- What qualifications do you have in Wills and Trusts?
- What experience do you have in this area?
- What experience do you have in acting for parents of an autistic child?
- What experience do you have in setting up a Trust for the benefit of vulnerable people?
- How much will you charge for drafting a Will and a Trust?

Executors and Trustees: who can they be?

Before making arrangements for your Will, it's a good idea to think about how it is set up and who you want to have key roles – and asking these people if they are happy to take on the responsibilities involved. Here we explain what these roles are:

Executors

Executors of your Will are responsible for organising your estate after your death, and ensuring that the terms of your Will are followed. We would advise you to appoint at least two Executors. They can be friends, family or a professional adviser, such as a lawyer, or a combination of these people.

Trustees

If you are setting up a Trust in your Will, the Trustees will usually be the same people as described above, although there are circumstances where it might be appropriate to choose different people. The role of a Trustee is ongoing and can run into many years, depending on the age of the beneficiary. It is important to choose someone you trust, and to ask them in advance if they are willing to take on the role.

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