



Ask the Expert Wills and Trusts Event 04 October 2022

Event hosted by FASD South West with Guest Speaker Amanda George LLB (Hons) STEP (Trusts and Estates)

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Notes taken during the evening & agreed by Amanda:

Welcome and introduction explaining the importance of planning and preparing for the future

Amanda's background:

Ex police officer, injured in the line of duty. Returned to learning and studied Law where she then opened her own legal practice in 2009 and is now running the free wills service to support families where she knows there is a gap in the market for honest advice.

Amanda is close family friends and godmother to children with FASD & complex needs.

Amanda supports making wills which cover funeral arrangements, estate beneficiaries and gifts. There is a section where she usually gets a feeling from the information if there is anything that needs a more in depth will where in many cases where she works more 1:1 with families who have children or young people with additional or complex needs where she might suggest they need a Trust.

Amanda's company recommends to always use a 'STEP qualified' practitioner; this is the quality standard.

Information section:

If the disabled child inherits the estate, the money and property may have to go towards any future care where they may need i.e. supported living, carers etc. The local authority can use the estate to pay for this.

The recommendation is to use a 'disabled person trust fund'.

An example would be if you had two children and one was disabled, you could leave 50% of the estate to the able child and 50% would go into a trust fund for the disabled child.

The child can then benefit from the trust but the local authority cannot use it for care needs and it will also protect their receipt of means tested benefits.

The fund wouldn't belong to the child it would belong to the trust but solely used for the benefit of the child.

You need to appoint trustees who can be people you trust to manage the fund to be spent on holidays, clothes, etc.

You can put any property into the trust as well, you do not have to sell the property to do this. The property would then be owned by the trust for sole use of the child.

If the child dies before the fund has run out you can specify to who the property and money then passes to, either any siblings or grandchildren or charity, whatever you choose.

Trustees must be over 18 but can be appointed by the parents whoever they choose.

The trustees will have to produce accounts every year. It is recommended to pay an accountant to do this, the trustee just records any expenditure and keeps receipts. The accountant would cost approx. £400 per year but this would come out of the trust fund.

Any income is taxable as any other type of income and this is easier to manage with an accountant.

There are provisions within the trust that facilitates the appointment and dissolution of any of the trustees.

You can have a company appointed trustee if you do not have anybody you know to be a trustee but this person won't know your child or their needs.

Trusts last 120 years from the date it is set up so the child will be looked after for life.

Question: Is there an age limit on the child?

No, the child can be over 18 or any age at all it is a lifelong trust.

Question: Once they reach 18 can they challenge the trust?

They could try to challenge the trust but as it does not belong to them, they won't get very far. It belongs to the trustees for the benefit of the child so no they can't challenge.

Question: would the child need a capacity assessment? No, they won't have to have any form of assessment it is your wish to set up the fund and doesn't rely on child having capacity.

Julie point: Her wish was to safeguard the property so the boys could live there supported if necessary so she paid for the trust fund to be set up in advance so that there would be no forced sale of the house to pay for it.

Question: A family stated they worry as they have no family left to care for their daughter, they stated they could find people to be trustees but who would care for their daughter?

That is where local authority would step in and have to provide care or supported living.

Amanda comment: When they are adults they will become able to claim means tested benefits, if you leave the child the estate directly this will count as income/savings and mean they won't be entitled to any means tested benefits but if you leave it in the trust fund then they cannot count it and they will be able to claim the benefits.

Thinking about who to appoint as trustees and help with the care of that child is a really big ask of family or siblings and something that really needs thinking about.

Question: can they receive a monthly allowance.

Yes, they can have a monthly allowance, Amanda believes the limit is £5000 a year before it would affect means tested benefits but would have to check that amount.

You can also write a "letter of wishes" this would not need legal jargon it's a simple letter stating what you would like the money spent on, monthly allowance, holidays, clothes etc. It is not legally binding but if you trust the trustees to honour it.

Question: can the child request money and who decides? Yes, the child can request the money at any point i.e. if they want to buy a van and set up as a plumber that is fine. It would be the trustees to decide if they grant it and listen to your wishes in the letter.

Amanda comment: the trust fund is not to be used for care. It is down to the local authority and PIP payments to pay for that. You can use it to top up if that is stated in the letter of wishes for example the local authority will give you £2500 voucher for a wheelchair. You can ask for another £2500 from the fund to buy a better wheelchair for £5000. But it is not to pay for assisted living or carers etc.

Question: How many trustees would you recommend? Minimum of 2 maximum of 4 and it helps if they are all understanding and on the same page. You don't want one strong character dictating how it is spent or constant arguing over every request. You need them to work together for the benefit of the child.

Question: are the trustees appointed by the parents?

Yes, and it doesn't have to be family it can be anyone you trust.

Question: how much contact does the trustee have to have with the child? I.e. if the child has issues with drugs and alcohol and can become violent?

The trustee doesn't have to have any contact at all and all payments and requests can be made via online to protect the trustee.

Question: Can you use companies instead of people you know as trustees. Yes, you can if you google trust corporations ensuring they are specifically good at managing disabled trust funds and speak to them to get a feel for them.

Kings court trust at Spectrum House in Bristol don't charge a fortune and will do probate and accounts for you and don't have contact with the child. The decisions won't be based on personal views it will be based on all information given to them.

Amanda comment: estates will have to be subject to inheritance tax. Each person in the married couple can give £325,000 before its taxable. If one spouse dies before the other one all of their assets transfer to the spouse including their limit so the remaining spouse, then can give £650,000 anything above that is subject to tax which is then at 40%. If a person owns a property and is passing that to a child, they are given an allowance of an extra £175,000 which means their allowance is £500,000 instead of £325,000.

Question: Our children are vulnerable what can protect them from being affected or influenced by other people what can the trustees do to protect them from exploitation or abuse?

Given that the funds are held in a trust, and the trustees have a letter of wishes explaining what the trust is to be used for, they will know if there is something not quite right with a request from a disabled child. It really is all about due diligence and above all, common sense.

Question: If you own two properties and want one sold but the child to live in the other can that happen? Yes, you can sell one house and put the proceeds into the trust the threshold is £500,000 each before inheritance tax.

Question: Can you update the trust as things develop and the child changes? You can't change the trust but you can change the trustees and you can update the statement of wishes and you can cancel the trust if it is no longer needed.