



Renaissance Legal

Helpful definitions

A quick-reference guide to legal jargon, helping you understand trusts for disabled and vulnerable people.

Trust

the formal transfer of assets from a person(s) to others to hold for the benefit of someone else.

Trustees

trustees: the people (or trust company) holding the assets.

Beneficiaries

the person(s) who will benefit from the assets held in trust.



Trusts for Disabled & Vulnerable People

Trusts

A Trust can be a useful tool to provide financial stability for a disabled or vulnerable person throughout their lifetime. The type of Trust required depends on your personal circumstances, the flexibility needed and the value and type of assets involved.

The two main options available are a Discretionary Trust and a Disabled Person's Trust.

What is a Discretionary Trust?

A Discretionary Trust is a type of Trust used where more than one person may benefit, and it's for the Trustees to decide how and when those people will benefit.

In a Discretionary Trust the Trustees have complete flexibility in deciding how they use the income and capital in the Trust fund for the beneficiaries.

Why do you need a Trust?

- To protect vulnerability;
- To protect means tested benefits and support

The beneficiaries do not have any fixed entitlement to receive money from the Trust, they only have a potential right to receive a benefit.

For the Trust to be completely 'discretionary' there has to be more than one beneficiary. Along with your disabled or vulnerable child, the beneficiaries might include other children, grandchildren and, possibly a charity.

Advantages of a Discretionary Trust

The advantage of a Discretionary Trust is that the Trustees can make decisions to meet the changing requirements of the disabled or vulnerable person during their lifetime. The Trustees can use their discretion to use any amounts of capital or income for the beneficiaries depending on their needs.

A Discretionary Trust can last for up to 125 years. What usually happens is that on the death of the disabled or vulnerable person, the Trust is 'wound up' or closed and any assets left paid to the other beneficiaries of the Trust.

Although a Discretionary Trust is very useful, the tax treatment is not favourable and needs to be carefully considered.

If the value of the Trust exceeds the Inheritance Tax threshold (currently £325,000) there will be an Inheritance Tax charge when the Trust is set up. There will also be an Inheritance Tax charge every ten years and after that, then whenever a payment is made from the Trust. Income tax is charged at 38.1% on dividend income and at 45% on all other income. Capital Gains tax will be charged at 28% for disposals of residential property and 20% for other disposals with the Trustees only being entitled to one half of the annual exemptions.

What about Government benefits?

As the beneficiaries are not 'entitled' to receive anything from the Trust, the Trust assets held by the Trustees should not be taken into account when assessing any of the beneficiary's entitlement to means-tested benefits or support.

Where a beneficiary is receiving means-tested benefits or support, the Trustees need to be careful how they use the assets. The assets should not be used in a way which endangers any future claim for means-tested benefits or support. For example, paying for a holiday for the beneficiary is fine but paying their heating bill is not.

Complementary Services

When making a Trust for Disabled and Vulnerable people it is a good opportunity to update or make a Will, review your financial circumstances, any Inheritance Tax (IHT) Planning.

As lawyers we are not permitted to provide you with financial planning advice but we work closely with local and national Independent Financial Advisors.

What is a Disabled Person's Trust (DPT)?

A DPT is a Trust set up to specifically benefit a 'disabled person' and is largely discretionary in its nature this means the Trustees are in control of how the Trust will be administered as mentioned above for Discretionary Trusts.

For the purposes of a DPT, a person is defined as disabled if one or more of the following apply:

- They are incapable of administering their own property or managing their own affairs due to mental disorder within the meaning of the Mental Health Act 1983.
- They are receiving one of the following benefits:
 - Attendance Allowance
 - Disability Living Allowance (DLA) based on entitlement to the care component at the highest or middle rate, or the mobility component of the higher rate
 - Personal Independence Payment (PIP)
- They would be entitled to receive one of the above benefits if they could satisfy prescribed conditions as to residence or presence in the UK.
- They would be entitled to receive one of the above benefits but for being in a state-funded institution, e.g. a care home or hospital.

Advantages of a DPT

The main advantage of a DPT over a Discretionary Trust is the favourable tax treatment it receives for Inheritance Tax, Income Tax and Capital Gains Tax.

In order to qualify for the favourable tax treatment, the Trust must provide that during the disabled person's life, the income and capital will be entirely used for the benefit of the disabled person. This is subject to a small exception that either £3,000 or 3% (whichever is the least) of the value of the trust fund (either income or capital) can be applied to another beneficiary of the Trust in each tax year.

If these conditions are met, the Trust will not incur any charges to Inheritance Tax when payments are made from the Trust and the ten yearly Inheritance Tax charges incurred by a Discretionary Trust will not apply.

For Income Tax and Capital Gains Tax, the Trustees have to make an election to HM Revenue & Customs for favourable tax treatment. The effect of this is to have the income and gains taxed as if the trust fund belongs to the disabled person.

How Renaissance Legal can help

We will discuss with you the two types of Trusts and how they can be set up to meet your needs. We will then create the relevant documents for you. We can also act as Trustees and Executors if you would like us to.

If you would like to discuss this further then please call us on 01273 610 611 or email us at

info@renaissancelegal.co.uk

This information sheet is intended as guidelines for clients and other readers. It is not a substitute for considered advice on specific issues. Any action taken depends upon your individual circumstances. Consequently, we cannot accept any responsibility for action which may be taken as a result of reading this information sheet or for errors or omissions contained in this information sheet.

Which type of trust is more appropriate?

There are a number of factors that need to be considered before deciding which type of Trust to use. We will usually consider the following:

- The age of the disabled or vulnerable person
- The nature and the long-term prognosis of any disability
- The value going into the Trust
- We will also consider the needs of the disabled person, for example, where they are likely to live, who will care for them, how the carers will be compensated and the needs of other family members.
- The needs of anyone else mentioned as a beneficiary

When should the trust be set up?

A Discretionary Trust and a Disabled Person Trust can be set up by any person during their lifetime by creating a Trust Deed, or on death, under the terms of their Will. This decision needs to be discussed and is often based on the type of assets held by the person setting up the Trust.

Who should the Trustees be?

The appointment of suitable Trustees is essential to ensure that the Trust can run smoothly and provide the appropriate provision for the disabled or vulnerable person.

Since the Trustees under a Discretionary Trust have wide powers it is important to give careful consideration as to who should be appointed as the Trustees. If the Trust Fund is of high value or is complex it may be sensible to appoint an independent Trustee, for example a Solicitor.

Trustees can be family members, friends or professionals, or a mixture of these. A Trustee can also be included in the Trust as one of the beneficiaries, but care needs to be taken to avoid any conflict between the personal financial interest of the beneficiary and their duties and responsibilities as a Trustee.

The Trust is supported by a Letter of Wishes?

A Letter of Wishes is your opportunity to explain to the Trustees the reasons for setting up the Trust and to give them guidance on how the Trust fund should be used. As your wishes and the needs of the disabled or vulnerable person will continually change, the Letter will need to be kept under review. We suggest that it is reviewed annually.

The Letter should also make clear how the assets should be distributed to the other beneficiaries in the event of the death of the disabled or vulnerable beneficiary of the Trust – for example to other family members or a favourite charity. Whilst this Letter is not legally binding on Trustees, it can be referred to as guidance.