



How can I set aside money for someone with a learning disability without affecting their benefits?

It is possible to put money into a discretionary trust for someone. This is simply a legal arrangement where money is held by trustees for someone's benefit. It is up to the trustees how and when the money is spent – ie it is at the “discretion” of the trustees. This is why it is called a discretionary trust. The person who benefits from the trust does not have any control over the money. He or she would need to apply to the trustees when he or she wanted money for something.

The DWP (Department of Work & Pensions) usually disregards money held in discretionary trusts (though this cannot be guaranteed). The key thing is that the money placed in the trust fund must come from someone else and not be (or have been) the beneficiary's money. If the person already “owns” or possesses the money, then the DWP will generally regard it as the person's money even where trustees are controlling it.

This means that discretionary trusts should be set up **in advance** of any bequest in order to avoid affecting a person's benefits. A trust can be opened with a modest amount of money. Afterwards, relatives and friends can add money to the trust –

either as gifts or by leaving money in a will.

Sometimes a person is left money by a relative who dies without leaving a will. This means the relative who died was intestate (ie without a will). In intestacy cases there are laws governing the distribution of money and certain relatives will have legal rights to a share of the money. If the person you are supporting is getting money from a deceased relative because he or she has a legal right to a share of the estate, then even if that money is now placed in a discretionary trust, the DWP are likely to regard the money as belonging to him or her. In this case the DWP will take it into account in any benefit calculations.

If, however, the person with a learning disability does not have a legal right to a share of the estate, then those who do have a right to the money can gift it to the person via a discretionary trust. In this instance, because the money never legally belonged to the person with a learning disability in the first place, then it would be disregarded by the DWP.

What should be disclosed to the DWP?

All savings, accounts and funds – including any trust funds – should be disclosed to the DWP when making any benefit claim. It will be up to the DWP to decide what to take into account.

Who are the trustees?

The trustees are chosen by the person setting up the trust. They can be anyone whom the person feels they can rely on to carry out the terms of the trust. It is best to have at least 2 trustees. It is useful to have at least one trustee who knows the person benefiting from the trust well and also to have one trustee (such as an accountant, banker or lawyer) who can deal with accounts and investments – but this may depend on the amount of funds in the trust.

Who can set up the trust?

The trust can be set up by anyone who wishes to set aside funds to be used for someone's benefit. It is also possible for someone to set up a trust fund for her or himself. This can be useful if they want assistance to manage the money. Again, in this instance, the money in the trust will be regarded as belonging to the beneficiary. Trust deeds are legal documents and anyone setting up a trust should seek legal advice from a lawyer experienced in this area.

More information

Your local lawyer should be able to set up a discretionary trust for you. The ENABLE Trustee Service also specialises in setting up discretionary trusts for children and adults with a learning disability.

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This information is given as guidance only and is not an authoritative guide to the law. Individual circumstances can vary and people are advised to seek advice if they have a specific concern or query.

For further information about learning disability and related topics visit the ENABLE Scotland website www.enable.org.uk or contact our Enquiry Line: 0141 226 4541 Monday – Friday 1:00 pm – 4:00 pm