

Your Legal Questions

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Q My son, Robert, is married to Susan and they have 3 grown up children – the youngest is Julie who is 25 years old and has a learning disability. Julie is incapable of looking after herself and lives at home with her parents. Julie receives state benefits and assistance from the state in relation to her care package. I would like to make provision for Julie upon my death but Robert is anxious to ensure that Julie does not lose her benefits. Is there any way in which I can do as I wish that would not cause problems with the state funding and care package?

A This is not an uncommon situation and, I'm pleased to say, there are a number of options that can help you achieve your wishes. The most important step is to take proper advice from someone suitably qualified to give it such as a Solicitor who specialises in Wills and trusts. For help in finding a suitable specialist in your area you can contact the Society of Trust and Estate Practitioners (STEP), the Law Society or, in the case of persons with a learning disability, the charity Mencap who also produce some very helpful guides and literature which explain in straightforward terms the factors to consider and take into account.

It will be necessary to consider what Julie's capabilities are and the specific family circumstances, but I would imagine that your wishes could be catered for by setting up in your Will a Discretionary or a Disabled Trust with a separate Letter of Wishes explaining how you wish the trust to operate and the trust monies to be spent e.g. on luxuries in Julie's life, such as holidays with a carer, new clothes and trips out etc. If drafted properly the trust will provide the flexibility to provide Julie with the extras that her benefits will not cover whilst not jeopardising her state funding or care package.

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