



By Miranda Marshall – Director at
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Your wish is my command, O Master?



January is the pantomime season so I hope you will allow me a little indulgence with the heading of this article? Rather like the genie in the lamp, trusts can come to the rescue and offer a sort of legal magic in times of uncertainty.

The discretionary trust is a long-established form of trust but is more useful than ever. It allows someone (known as a “Settlor”) to set up a trust with a whole list of *potential* beneficiaries. The trust can be created either by Will or during a lifetime. The trustees must be chosen most carefully (in the same way as I explained the importance of choosing the right executors in my last Legal Notes article). Under a discretionary trust the trustees are given total freedom as to how to benefit all, any or none of the beneficiaries, equally or in any proportions they see fit, as to income and/or capital. The big question for them is how to carry out the wishes of the Settlor, bearing in mind that a discretionary trust must be just that, i.e. totally discretionary. The moment the Settlor gives fixed instructions to the trustees then the discretionary nature of the trust may be compromised.

The way that this is best dealt with is by a Letter of Wishes, by which the Settlor gives non-binding guidance to the trustees. It also has advantages that it is a private document, can be written in non-legal English and can be added to or altered by the Settlor whilst they are alive and have capacity to do so. Wherever possible, I encourage the Settlor to have significant personal input into the content and style of their Letter of Wishes.

I have prepared Letters of Wishes to accompany both Will and lifetime trusts making all sorts of wonderful and unusual wishes. Such letters can prove especially helpful guidance where a potential beneficiary has drug or alcohol problems which monies paid out at the wrong time might worsen. A Letter can provide guidance so as to seek to protect assets where divorce or financial immaturity is a risk. Usually however instructions are straight-forward and state a wish to benefit children having regard to benefits already received or where there is a wide range of ages and the younger beneficiaries should receive more from the trust to achieve overall equality.

Leaving a Letter of Wishes to trustees provides the clarity and support needed to enable the trustees to do the best job possible and to make the right decisions when the Settlor is no longer around to say what they want.

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If you require advice on this matter please contact Miranda on 01328 710210. If you require advice on any other legal matter please telephone our Wells office on 01328 710210 or email law@hayes-storr.com.

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