

Wills, Estate Planning and Vulnerable Beneficiaries

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26th February 2026

Introduction



Sally Patterson

- Associate Solicitor at Price Slater Gawne
- Full member of the Society for Trust and Estate Practitioners (STEP).
- Supports clients in safeguarding their assets and investments for future generations.
- Expertise and specialisms:
 - Will drafting
 - Trusts including Vulnerable Persons Trusts
 - Lasting Powers of Attorney
 - Probate and Estate Administration

Introduction

Price Slater Gawne Solicitors

- Offices in Altrincham, Chester, and London
- Specialising in:
 - Clinical Negligence
 - Serious Injury
 - Wealth Protection
 - Court of Protection
 - Divorce and Family Law

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The Importance of Having a Will



- Ensures your wishes are carried out
- Minimises potential for family disputes
- Enables appointment of guardians for minor children
- Facilitates tax-efficient estate planning
- Provides clarity and reduces stress for loved ones

Let's Look at Some Statistics...

- Around 60% of adults in the UK do not hold a valid Will
- Around 55% of parents in the UK do not hold a valid Will
- Around 75% of people under 40 do not hold a valid Will
- A Will should be considered an ongoing living document – it is not something you create once. It should be reviewed at least once every 5 years.
- Circumstances change:
 - Marriage
 - Divorce
 - Birth of children/grandchildren
 - Death of appointed Executors
 - Death of beneficiaries etc.

What happens if someone dies without a valid Will?

Rules of Intestacy (Overview)

- Estate distributed according to statutory rules
- Spouse/civil partner and children take priority
- Unmarried partners receive nothing
- No flexibility for personal circumstances

Let's look at the intestacy rules in England and Wales....



Rules of Intestacy in England & Wales



- Married/civil partnered with children: spouse gets personal chattels, £322,000 statutory legacy + half of remainder
- Children inherit remaining half equally
- Married/civil partnered without children: spouse inherits entire estate
- Unmarried with children: children inherit whole estate equally
- If no spouse/children: passes to parents, then siblings, etc.
- If no relatives: estate goes to the Crown

Dangers of Relying on Intestacy Rules

- Unmarried partners inherit nothing even if cohabiting for decades – misconception re common law marriage
- Stepchildren are excluded entirely
- Lose control of who is appointed as Personal Representative of your estate
- Family disputes more likely due to unexpected distributions
- May result in minor children inheriting large sums directly
- No ability to protect vulnerable beneficiaries via trusts
- Assets may be distributed in a tax-**in**efficient manner
- Personal wishes cannot be considered by law

What to Consider When Making a Will?

1. Appointment of Executors

- Sensible to have at least TWO
- If a Trust is created, must have at least TWO
- Family members/friends/professionals
 - Price Slater Gawne Trust Corporation:
- Peace of mind
- Fee usually equates to between 1%-2% of the value of the estate. Payable by the estate, not the Executors/Beneficiaries personally.

2. Funeral

- Cremation/Burial
- This isn't mandatory – can however prove useful

What to consider when making a Will?

- **3. Guardianship of minor children**
 - Letter of wishes
- **4. Legacies**
 - Specific Gifts / Pecuniary Legacies



What to consider when making a Will?



- **5. Residuary Estate**
- Whom are my intended beneficiaries;
- Should I consider a Trust?
- Longstop beneficiary - Individuals/Charities

Vulnerable Beneficiaries

Who is considered vulnerable?

Individuals that require additional support due to disability, mental capacity issues, or being minors (under 18) who have sadly lost a parent.

Effective long-term planning for vulnerable individuals often involves legal structures to:

1. Protect them from negative third-party influence
2. Protect the funds from being wasted by the individual
3. Avoid the costs and implications of the Court of Protection
4. Prevent loss of eligibility to means-tested benefits

How Can I Protect?



Safeguards are often found in the use of trusts, either set up during lifetime or on death in someone's Will

First consideration:

VULNERABLE PERSONS TRUST

WHAT IS A VULNERABLE PERSONS TRUST?

Vulnerable Persons Trust

A **Vulnerable Persons Trust (VPT)** (also known as a Disabled Persons Trust) is a trust arrangement by which assets can be held by trustees for a disabled or vulnerable person without entering into a complex Inheritance Tax regime where Inheritance Tax Charges become payable.

INSTEAD despite being held by Trustees the fund will be taxed as if it is owned outright by the **vulnerable beneficiary** for both income and inheritance tax purposes.

In addition – assets held by VPT's are currently disregarded for the purposes of local authority means-assessments, and therefore help maximise the vulnerable person's benefits.

Who is Eligible?

Strict requirements for a trust to be given VPT status and therefore important to check the beneficiary in question qualifies.

Current guidance states individuals must qualify for one of the following:

- **Disability Living Allowance** at the middle or highest rate for personal care
- **Personal Independent Payment (PIP)** at the daily living component
- **Attendance Allowance**
- **Armed Forces Independent Payment**
- **Industrial Injuries Disablement Benefit** (with constant Attendance Allowance)
- **Incapacity Benefit or Employment and Support Allowance (ESA)** in some circumstances

Vulnerable Persons Trusts



IMPORTANT:

For VPTs to maintain their status, the **trustees are prohibited from providing, in any given year, more than the lower of £3,000 or 3% of the trust fund to a non-qualifying individual**

Relevant Property Trusts

Second Consideration: **Relevant Property Trusts**

A **Discretionary Trust** is a type of Relevant Property Trust where the trustees have the discretion over investment and distribution decisions

Assets are taxed differently to those of an individual and include the following:

- **Entry Charge:** 20% IHT on transfers into trust above the available Nil Rate Band of the Settlor. Further 20% could be payable if the Settlor dies within 7 years of creating the trust.
- **Periodic (10 year charge)** – up to 6% IHT on trust assets above the nil rate band every 10 years

Relevant Property Trusts

- **Exit Charge** – Proportional IHT charge when assets are distributed, based on the amount of time elapsed since inception or the previous 10 year anniversary
- **Income Tax** – trust income is taxed at up to 45% (the trust rate) depending on the type of income

Relevant Property Trusts

Advantages of Discretionary Trusts....

- Protecting through the use of a Discretionary Trust usually offers greater flexibility to provide for others than a VPT.
- Beneficial where the vulnerable person has siblings and other family members who may be in need during the trust period.
- Large funds held in a VPT can often be considered an overprovision – often individuals with disabilities unfortunately have narrowed horizons, and with the addition of their state funding, can have less need for additional funding from a trust

In a VPT additional funds would be ‘locked-in’ whereas with a DISCRETIONARY TRUST the surplus could be used to help other beneficiaries such as siblings.

No requirement to meet the qualification criteria

Vulnerable Persons Trust v Discretionary Trust

Main differences are the tax treatment and the extent to which non-vulnerable beneficiaries can benefit:

- VPT is taxed as if it was owned by the vulnerable beneficiary, while a Discretionary Trust is taxed in accordance with the relevant property regime;
- The trustees of a VPT are restricted in terms of distributing to a non-vulnerable beneficiary, whereas those acting as trustees of a Discretionary Trust are not.
- Not mutually exclusive - it is possible to combine both types of trust which will create a robust and tax-efficient solution.

When to Choose VPT vs Discretionary Trust

- Choose VPT if the main beneficiary meets HMRC criteria
- Choose VPT for tax efficiency and safeguarding long-term needs
- Choose Discretionary Trust for flexible family arrangements
- Ideal when beneficiaries' needs may change over time



Appointment of Trustees

- Choosing the right trustees for your trust arrangement is **vital**.
- The appointment of the right trustees can often be the determining factor between an arrangement's success or failure.
- Appoint Trustees you TRUST
- Letter of Wishes

Multi-Generational Estate Planning

- Have a conversation
- **Grandparents:** may want to help but can disrupt existing plans and undo carefully considered planning
- **Unforeseen consequences:** If the intended beneficiary predeceases, vulnerable beneficiary may benefit by default
- **Solution:** Set up a lifetime Pilot trust to manage asset distribution. A Will can direct assets into the trust, ensuring secure and planned transfer.



In Summary...

- A Will guarantees that your wishes are honoured and followed
- Trusts provide essential protection for vulnerable beneficiaries
- Choosing the right structure lays the foundation for effective long-term planning
- Legal advice ensures your estate is managed and distributed correctly.

Any Questions?

Get in touch



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