

Discretionary Trusts

A discretionary trust is a legal arrangement which allows you to set aside assets, such as property and money, for the benefit of people you choose as 'beneficiaries'.

If you have been diagnosed with a brain tumour, or are caring for a person with a brain tumour, a discretionary trust allows you to ensure that, whatever your circumstances, a part of what you own will go towards the future benefit of your loved ones.

This fact sheet explains what a discretionary trust is in more detail and why you might want to create one.

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What is a discretionary trust?

Similar to writing a Will, a discretionary trust is a legal arrangement which allows you to distribute what you own for the benefit of your loved ones. However, there are some important differences between a Will and a discretionary trust. A Will is a document that specifies who gets what in the event that you pass away.

In a discretionary trust, the assets you set aside (the sum of which are known as the 'trust fund') are controlled by trustees whom you appoint. In the event of your death, the trustees have the discretion (or the right) to decide when and how the trust fund will be used to benefit your chosen 'beneficiaries' (the people who you want to benefit from the trust).

The level of discretion given to trustees (i.e. the type of decisions they will have control over) will be set by you in a legal document known as the 'deed of trust' (or 'trust deed'). Trustees can be given control over:

- The amount of assets distributed, when and in what form
- Who, from the group of beneficiaries, will receive any of the assets
- OR both of the above

Once you have created a discretionary trust, it is unlikely that you would be able to cancel it or to revoke any assets placed in it. When you place assets in a discretionary trust they are effectively out of your control. These assets are instead under the management of appointed trustees whose legal responsibility is to use the trust fund for the benefit of the beneficiaries but, you can be one of the trustees.

Trustees are also responsible for keeping accurate records and accounts of trust property and ensuring that any tax, which the trust is liable for, is being paid.

While you can write a 'letter of wishes' describing how you would like the trust fund to be used, this is not a legally binding document and trustees might decide not to abide by it if they don't think it represents the beneficiaries' best interests.

Why would I want to make a discretionary trust?

- **If your beneficiaries are underage.** If you have a brain tumour and you have young children under your care, you might worry about how they will be provided for in the event of your death, or how they will use your assets once they become adults. Making your children beneficiaries of a discretionary trust ensures that trustees will be using any income from the trust fund to cater for your children's needs. Also, trustees can make sure that your children invest in their futures instead of using assets in the trust prematurely.
- **If you are caring for someone with a disability.** If you are caring for someone who can't take care of themselves due to a brain tumour, you might be worried about how they will be cared for in the event of your death. Naming that person as a beneficiary in a discretionary trust can give you some reassurance that if you die, the trust fund will be used towards their care, treatment and general wellbeing. Furthermore, compared to a Will, having money in a trust fund ensures there is quicker access to assets. This means that, in the case of your death, trustees can start paying for their care immediately.
- **To accommodate changes in circumstances.** Setting up a discretionary trust has its limitations in that you are not guaranteed that the trust fund will be used in the way you might have wished for before your death. However, a discretionary trust does also have an advantage in terms of catering for unexpected changes in circumstances. For example, you might state in your letter of wishes that you would want the trust fund to pay for your children's future education. If you pass away and one of your children becomes seriously ill, the trustees might prioritise your child's treatment and care instead of education.
- **If you want to accumulate income for your beneficiaries.** You can use a discretionary trust as an investment for the future. Money can gather interest over time and property can receive rent. If you place such income-generating assets

in a discretionary trust, over the years, the trust fund can increase in value. Apart from simply accumulating the income, trustees can also invest it in other assets which will also become part of the trust fund. If those investments prove to be successful, they could increase the value of the trust fund substantially.

Who can I choose as my trustees and beneficiaries?

If you are making a discretionary trust you are known as the 'settlor'. You are not automatically a trustee but can be appointed as one. It would be advisable to appoint at least two trustees in case one of them is unable to carry out their role in the future.

You can choose anyone you like as a trustee as long as they are over 18 and capable of making their own decisions. Given the importance of this role, you might want to appoint an independent trustee in the form of a solicitor and/or accountant although it should be noted that the trust fund would have to pay for their services.

Anyone you choose can be a beneficiary in your trust although you must choose more than one potential beneficiary. This could include:

- Your spouse or registered civil partner
- Your children, grandchildren and their spouses
- Your siblings and their spouses
- Charities

How do I make a discretionary trust?

A discretionary trust is a somewhat complex legal arrangement and you should ask your solicitor to produce it for you. If you don't have a solicitor in mind it is worth looking around for the best rates. The rates charged by different solicitors for this type of service may vary according to the complexity of the trust.

For the discretionary trust to be set up you will need to have the following documents and signatures:

The discretionary trust deed

This legal document creates the trust and contains all the details about who is involved in the trust, what their role is and which assets are being put into the trust. The trust deed will specify what kind of decisions trustees will be allowed to make. To be valid, the trust deed must be signed by you (the settlor) and the trustees.

The letter of wishes

The letter of wishes allows you, the settlor, to express how you would like the trust fund to be used by the trustees. Trustees can use the letter of wishes to guide their decisions, however, this is not a legally binding document, so trustees are not required to abide by it. This allows the trustees the flexibility to use the trust fund according to changes in the beneficiaries' circumstances after your death – changes in circumstances you might not have foreseen when expressing your wishes.

Documents relating to your assets

You will need to have any documents which prove the existence and ownership of the assets you want to include in the trust. For example, if you are putting property in the trust, you will have to provide documents which show that the property exists and belongs to you.

In your Will

If you wish to leave assets to a discretionary trust on your death, rather than during your lifetime, you can set the trust up in your Will. The Will itself will generally act as the trust deed after your death.

Further information

If you don't already have a solicitor in mind, you might find the resources below useful:

To find a solicitor in **England, Wales and Northern Ireland** visit:

[lawsociety.org.uk/findasolicitor](https://www.lawsociety.org.uk/findasolicitor) or call 020 7320 5650.

For **Scotland** visit:

[lawscot.org.uk/find-a-solicitor/](https://www.lawscot.org.uk/find-a-solicitor/)

What if I have further questions?

If you require further information, any clarification of information, or wish to discuss any concerns, please contact our Information and Support Team:

Call: 0808 800 0004

(Free from landlines and most mobiles:
3, O2, EE, Virgin and Vodafone)

Email: support@thebraintumourcharity.org

Live Chat: Available on the *Understanding brain tumours* and *Get support* pages of our website, Mon-Fri, 9am-5pm

Join one (or more) of our closed Facebook groups:
bit.ly/FBSupportGroups

About us

The Brain Tumour Charity makes every effort to ensure that we provide accurate, up-to-date and unbiased facts about brain tumours. We hope that these will add to the medical advice you have already been given. Please do continue to talk to your health team if you are worried about any medical issues.

The Brain Tumour Charity is at the forefront of the fight to defeat brain tumours, making a difference every day to the lives of people with a brain tumour and their families. We fund pioneering research to increase survival, raise awareness of the symptoms and effects of brain tumours and provide support for everyone affected to improve quality of life.

We rely 100% on charitable donations to fund our vital work. If you would like to make a donation, or want to find out about other ways to support us including fundraising, leaving a gift in your Will or giving in memory, please visit us at thebraintumourcharity.org, call us on **01252 749043** or email fundraising@thebraintumourcharity.org

About this fact sheet

This fact sheet has been written and edited by The Brain Tumour Charity's Information and Support Team. The accuracy of information has been verified by solicitors. Our fact sheets have been produced with the assistance of patient and carer representatives and up-to-date, reliable sources of evidence. If you would like a list of references for any of the fact sheets, or would like more information about how we produce them, please contact us.

This fact sheet is for general guidance purposes only. No steps should be taken relying only on it. Appropriate professional advice should be sought before any course of action is pursued. If you would like any further information, please let us know.



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Your notes

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