

Dated _____

Last will and testament

of

Paul Henry Simpson

SAMPLE

Last will and testament

This is the last will and testament of me Paul Henry Simpson of Red Brick Cottage, Guildford, Surrey, GU2 6GF married to June Mary Simpson also of Red Brick Cottage, Guildford, Surrey, GU2 6GF.

1. Revocation

I hereby revoke all former wills and testamentary dispositions made by me relating to my real and personal estate in England and Wales.

2. Cremation

I wish my body to be cremated.

3. Appointment of executors

I appoint as the Executors and Trustees of this my will ("my Trustees" which expression shall include the personal representatives of my estate):

- 3.1. My wife June Mary Simpson of Red Brick Cottage, Guildford, Surrey, GU2 6GF; and
- 3.2. Either:
 - 3.2.1. the partners (which expression includes directors of an incorporated practice and members of a limited liability partnership) at the date of my death in the firm of Smalling, Butcher and Johnson, Solicitors, of 54 High Street, Guildford, Surrey, GU1 6TF and I express the wish that not more than two of the said partners shall prove this will and act initially in its trusts; or
 - 3.2.2. if, at the date of my death, another organisation has succeeded to and carries on the practice of Smalling, Butcher and Johnson, I appoint that organisation as my Executor and Trustee PROVIDED THAT:
 - 3.2.2.1. the organisation is entitled under the Legal Services Act 2007 to provide probate activities; and
 - 3.2.2.2. no owner or manager of that organisation, or other person employed or engaged by it, who is not a solicitor or a person authorised under the Legal Services Act 2007 to undertake probate activities shall prove this will,
 - 3.2.2.3. and I express the wish that not more than two of the persons permitted by this appointment to prove this will, shall do so and act initially in its trusts.
- 3.3. Should any Executor and Trustee appointed above either die in my lifetime or be otherwise unable or unwilling to act as my Executor and Trustee, I appoint the following to fill any vacancy arising:
 - 3.3.1. Christopher Symington of 19 Stone Terrace, Aldershot, Hampshire, GU32 6YG.

4. Definition of my estate

In this will, where the context so admits, 'my estate' shall mean:

- 4.1. all my property of every kind in England and Wales;
- 4.2. all my property of every kind in England and Wales over which I have a general power of appointment; and
- 4.3. the money, investments and property from time to time representing all such property.

5. Administration of my estate

- 5.1. My Trustees shall:

- 5.1.1. pay my debts, funeral and testamentary expenses and Inheritance Tax on all property which vests in them;
 - 5.1.2. satisfy all gifts of specified property referred to in this will;
 - 5.1.3. pay all the gifts of money referred to in this will; and
 - 5.1.4. deal with the remainder of my estate ("my Residuary Estate") as set out below.
- 5.2. Debts, funeral and testamentary expenses, legacies and Inheritance Tax shall be payable out of the capital of my estate (subject to the Trustees' administrative powers relating to capital and income).

6. Pecuniary legacies

- 6.1. I give the following pecuniary legacies:
 - 6.1.1. Twenty Thousand Pounds only (£20,000.00), free of tax, to my daughter, Jennifer Sarah Simpson of 15 Hollybush Road, Ealing, London, W13 6TF, provided that Jennifer Sarah Simpson survives me, payable as soon as convenient after my death but without interest thereon to date of payment. If Jennifer Sarah Simpson dies in my lifetime, leaving any child or children who survive me, such child or children shall take by substitution and, if more than one, in equal shares, the pecuniary legacy which Jennifer Sarah Simpson would have taken had he or she survived me and attained a vested interest, and
 - 6.1.2. Twenty Thousand Pounds only (£20,000.00), free of tax, to my son, Martin Paul Simpson of 6 Kenilworth Avenue, Coventry, Warwickshire, CV7 6SD, provided that Martin Paul Simpson survives me, payable as soon as convenient after my death but without interest thereon to date of payment. If Martin Paul Simpson dies in my lifetime, leaving any child or children who survive me, such child or children shall take by substitution and, if more than one, in equal shares, the pecuniary legacy which Martin Paul Simpson would have taken had he or she survived me and attained a vested interest.
- 6.2. I declare that this clause shall be construed as if Section 33 of the Wills Act 1837 had not been enacted.
- 6.3. I direct the Trustees that unless otherwise provided, all pecuniary legacies bequeathed in this will or any codicil or other subsequent testamentary writing to this will shall be increased by the proportionate amount required to reflect the proportionate rise in the general index of retail prices (for all items) published by the Office for National Statistics, known as the Retail Prices Index (or other equivalent measure of inflation, as to which the Trustees shall be the sole judges and the decision of the Trustees thereon shall be final and binding on all beneficiaries under this will and under any codicil or other subsequent testamentary writing to this will) during the period between the date of this will (or the date of the other relevant testamentary writing as the case may be) and the date of my death; but shall not be decreased in the event of a fall in the Retail Prices Index over such period.

7. Specific legacies

- 7.1. I give the following specific legacies:
 - 7.1.1. Antique Welsh dresser, free of tax, to my daughter, Jennifer Sarah Simpson of 15 Hollybush Road, Ealing, London, W13 6TF, provided that Jennifer Sarah Simpson survives me. If Jennifer Sarah Simpson dies in my lifetime, leaving any child or children who survive me, such child or children shall take by substitution and, if more than one, in equal shares, the specific legacy which Jennifer Sarah Simpson would have taken had he or she survived me and attained a vested interest, and
 - 7.1.2. 1972 Triumph Stag car, free of tax, to my son, Martin Paul Simpson of 6 Kenilworth Avenue, Coventry, Warwickshire, CV7, provided that Martin Paul Simpson survives me. If Martin Paul Simpson dies in my lifetime, leaving any child or children who survive me, such child or children shall take by substitution and, if more than one, in equal shares, the specific legacy which Martin Paul Simpson would have taken had he or she survived me and attained a vested interest.

- 7.2. I declare that this clause shall be construed as if Section 33 of the Wills Act 1837 had not been enacted.
- 7.3. In implementing the foregoing provisions, the Trustees shall be the sole judges as to the identity of any asset specifically bequeathed and as to the nature and extent of the bequests in this clause; and the decision of the Trustees on all such matters shall be final and binding on all beneficiaries under this will and under any codicils to this will.

8. Pets

- 8.1. I request that my wife take charge of each pet that I own at my death.
- 8.2. If my wife shall decline to take charge of such pet or pets, I request that my Trustees find suitable new owners for each pet that I own at my death, and if it is not possible to find a suitable owner for any pet of mine, I request that my Trustees place that pet with a suitable animal welfare charity to be re-homed.

9. Residuary estate

- 9.1. If my wife June Mary Simpson survives me for 28 days, I give my Residuary Estate to her absolutely.
- 9.2. If my wife does not survive me as aforesaid, subject to the immediately succeeding subclause hereof, I give my Residuary Estate to such of my children as are living at my death and, if more than one, in equal shares absolutely.
- 9.3. Notwithstanding the foregoing, if any of my children dies before me, leaving any children that have already attained at my death the age of 18 years or shall thereafter attain the said age, such children shall take on my death or on respectively attaining the said age by substitution and, if more than one, in equal shares, the share of my Residuary Estate which his, her or their parent would have taken had he or she survived me.
- 9.4. If there are no surviving beneficiaries as aforesaid, then my Residuary Estate shall be given to any UK company, body or trust established for charitable purposes only as my Trustees shall nominate.

10. Standard provisions

The provisions set out in the Schedule below shall have effect.

The schedule

1. Interpretation

- 1.1. In this Schedule, unless the context otherwise requires:
 - 1.1.1. Income Beneficiary, in relation to Trust Property, means a Person to whom income of the Trust Property is payable (as of right or at the discretion of the Trustees).
 - 1.1.2. Person includes a person anywhere in the world and includes a Trustee.
 - 1.1.3. The Principal Document means the document in which these Provisions are incorporated.
 - 1.1.4. The Settlement means any settlement created by the Principal Document and an estate of a deceased Person to which the Principal Document relates.
 - 1.1.5. The Trustees means the personal representatives or trustees of the Settlement for the time being.
 - 1.1.6. The Trust Fund means the property comprised in the Settlement for the time being.
 - 1.1.7. Trust Property means any property comprised in the Trust Fund.
 - 1.1.8. A Professional Trustee means a Trustee who is or has been carrying on a business which consists of or includes the management of trusts or the administration of estates.
- 1.2. These Provisions have effect subject to the provisions of the Principal Document.

2. Additional powers

The Trustees have the following additional powers:

2.1. *Investment*

- 2.1.1. The Trustees may make any kind of investment that they could make if they were absolutely entitled to the Trust Fund. In particular the Trustees may invest in land in any part of the world and unsecured loans.
- 2.1.2. The Trustees are under no obligation to diversify the Trust Fund.
- 2.1.3. The Trustees may invest in speculative or hazardous investments but this power may only be exercised at the time when there are at least two Trustees, or the Trustee is a company carrying on a business which consists of or includes the management of trusts.

2.2. *Joint property*

The Trustees may acquire property jointly with any Person and may blend Trust Property with other property.

2.3. *General power of management and disposition*

The Trustees may effect any transaction relating to the management or disposition of Trust Property as if they were absolutely entitled to it.

2.4. *Improvement*

The Trustees may develop or improve Trust Property in any way. Capital expenses need not be repaid out of income under section 84(2) of the Settled Land Act 1925, if the Trustees think fit.

2.5. *Income and capital*

- 2.5.1. The Trustees may acquire, for investment or any other purpose:
 - 2.5.1.1. wasting assets and

- 2.5.1.2. assets which yield little or no income
- 2.5.2. The Trustees are under no duty to procure distributions from a company in which they are interested.
- 2.5.3. The Trustees may pay taxes and other expenses out of income, although they would otherwise be paid out of capital.
- 2.5.4. Generally, the Trustees are under no duty to hold a balance between conflicting interests of beneficiaries.
- 2.5.5. Income may be set aside and invested to answer any liabilities which in the opinion of the Trustees ought to be borne out of income or to meet depreciation of the capital value of any Trust Property. In particular, income may be applied for a leasehold sinking fund policy.
- 2.6. *Application of trust capital as income*
- The Trustees may apply Trust Property as if it were income arising in the current year. In particular, the Trustees may pay such income to an Income Beneficiary as his income, for the purpose of augmenting his income.
- 2.7. *Use of trust property*
- 2.7.1. The Trustees may acquire any interest in property anywhere in the world for occupation or use by an Income Beneficiary.
- 2.7.2. The Trustees may permit an Income Beneficiary to occupy or enjoy the use of Trust Property on such terms as they think fit.
- 2.7.3. The Trustees may lend trust money to an Income Beneficiary. The loan may be interest free and unsecured, or on such terms as the Trustees think fit. The Trustees may charge Trust Property as security for any debts or obligations of an Income Beneficiary.
- 2.7.4. This paragraph does not restrict any right of Beneficiaries to occupy land under the Trusts of Land and Appointment of Trustees Act 1996.
- 2.8. *Trade*
- The Trustees may carry on a trade, in any part of the world, alone or in partnership.
- 2.9. *Borrowing*
- The Trustees may borrow money for investment or any other purpose. Money borrowed shall be treated as Trust Property.
- 2.10. *Delegation*
- A Trustee or the Trustees jointly (or other Person in a fiduciary position) may authorise any Person to exercise all or any functions on such terms as to remuneration and other matters as they think fit. A Trustee (or other Person in a fiduciary capacity) shall not be responsible for the default of that Person (even if the delegation was not strictly necessary or convenient) provided he took reasonable care in his selection and supervision. None of the restrictions on delegation in sections 12 to 15 Trustee Act 2000 shall apply.
- 2.11. *Place of administration*
- The Trustees may carry on the administration of any Settlement made by this will anywhere they think fit.
- 2.12. *Indemnities*
- The Trustees may indemnify any Person for any liability relating to this will or any Settlement made by this will.
- 2.13. *Security*

The Trustees may mortgage or charge Trust Property as security for any liability incurred by them as Trustees (and may grant a floating charge so far as the law allows)

2.14. *Supervision of company*

The Trustees are under no duty to enquire into the conduct of a company in which they are interested, unless they have knowledge of circumstances which call for inquiry.

2.15. *Appropriation*

The Trustees may appropriate Trust Property to any Person or class of Persons in or towards the satisfaction of their interest in the Trust Fund.

2.16. *Receipt by charities*

Where Trust Property is to be paid or transferred to a charity, the receipt of the treasurer or appropriate officer of the charity shall be a complete discharge to the Trustees.

2.17. *Release of powers*

The Trustees (or other Person in a fiduciary position) may by deed release wholly or in part any of their rights or functions and (if applicable) so as to bind their successors.

2.18. *Ancillary powers*

The Trustees may do anything which is incidental or conducive to the exercise of their functions.

3. Powers of maintenance and advancement

Sections 31 and 32 Trustee Act 1925 shall apply.

4. Minors

4.1. Income that may be applied for the benefit of a minor may be paid to the minor if he has attained the age of 16.

4.2. Where the Trustees may apply income for the benefit of a minor, they may do so by paying the income to the minor's parent or guardian, or to a person with parental responsibility for the minor, on behalf of the minor. The Trustees are under no duty to inquire into the use of the income unless they have knowledge of circumstances which call for inquiry.

4.3. Where the Trustees may apply income for the benefit of a minor, they may do so by resolving that they hold that income on trust for the minor absolutely and:

4.3.1. The Trustees may apply that income for the benefit of the minor during his minority.

4.3.2. The Trustees shall transfer the residue of that income to the minor on attaining the age of 18.

4.3.3. For investment and other administrative purposes that income shall be treated as Trust Property.

5. Beneficiary without mental capacity

Where income or capital is payable to a beneficiary who does not have the mental capacity to appoint an attorney under a lasting power of attorney which relates to his property and affairs, the Trustees may (subject to the directions of the Court or a deputy appointed under the Mental Capacity Act whose powers include receiving such income or capital) apply that income or capital for his or her benefit.

6. Disclaimer

A Person may disclaim his interest in this will or any Settlement made by this will wholly or in part.

7. Conflicts of interest

- 7.1. In this paragraph:
- 7.1.1. "A Fiduciary" means a Person subject to fiduciary duties under this will or any Settlement made by this will.
 - 7.1.2. "An Independent Trustee", in relation to a Person, means a Trustee who is not:
 - 7.1.2.1. a brother, sister, ancestor, descendant or dependant of the Person;
 - 7.1.2.2. a spouse or civil partner of a person falling within paragraph 7.1.2.1 above, or a spouse or civil partner of the Person;
 - 7.1.2.3. a company controlled by one or more of any of the above.
 - 7.1.3. References to a "spouse" include a party to a same-sex marriage.
- 7.2. Subject to subparagraph 7.3 below a Fiduciary may, even though his fiduciary duty under this will or any Settlement made by this will conflicts with other duties or with his personal interest:
- 7.2.1. enter into a transaction with the Trustees, or
 - 7.2.2. be interested in an arrangement in which the Trustees are or might have been interested, or
 - 7.2.3. act (or not act) in any other circumstances;
- 7.3. Subparagraph 7.2 above only has effect if:
- 7.3.1. the Fiduciary first discloses to the Trustees the nature and extent of any material interest conflicting with his fiduciary duties, and
 - 7.3.2. there is an Independent Trustee in respect of whom there is no conflict of interest, and he considers that the transaction arrangement or action is not contrary to the general interest of this will or any Settlement made by this will.
- 7.4. The powers of the Trustees may be used to benefit a Trustee (to the same extent as if he were not a Trustee) provided that there is an Independent Trustee in respect of whom there is no conflict of interest.

8. Absolute discretion clause

- 8.1. The powers of the Trustees may be exercised:
- 8.1.1. at their absolute discretion; and
 - 8.1.2. from time to time as occasion requires.
- 8.2. The Trustees are not under any duty to consult with any Beneficiaries or to give effect to the wishes of any Beneficiaries.

9. Trustee remuneration

- 9.1. A Trustee acting in a professional capacity is entitled to receive reasonable remuneration out of the Trust Fund for any services that he provides in connection with this will or to or on behalf of a Settlement made by this will.
- 9.2. For this purpose, a Trustee acts in a professional capacity if he acts in the course of a profession or business which consists of or includes the provision of services in connection with:
- 9.2.1. the management or administration of trusts or estates generally or a particular kind of trust or estate, or
 - 9.2.2. any particular aspect of the management or administration of trusts or estates generally or a particular kind of trust or estate.
- 9.3. The Trustees may make arrangements to remunerate themselves for work done for a company connected with the Trust Fund.

10. Commissions and bank charges

- 10.1. A Person may retain any reasonable commission or profit in respect of any transaction relating to this will or any Settlement made by this will even though that commission or profit was procured by an exercise of fiduciary powers (by that Person or some other Person) provided that:
 - 10.1.1. The Person would in the normal course of business receive and retain the commission or profit on such transaction.
 - 10.1.2. The receipt of the commission or profit shall be disclosed to the Trustees.
- 10.2. A bank may make loans to the Trustees and generally provide banking services upon its usual terms and shall not be liable to account for any profit so made even though the receipt of such profit was procured by an exercise of fiduciary powers (by the bank or some other Person).

11. Liability of trustees

- 11.1. The duty of reasonable care (set out in s.1, Trustee Act 2000) applies to all the functions of the Trustees.
- 11.2. A professional Trustee shall not be liable for a loss to the Trust Fund unless that loss was caused by his own fraud or negligence. A non-professional Trustee shall not be liable for a loss to the trust Fund unless that loss was caused by his own fraud.
- 11.3. A Trustee shall not be liable for acting in accordance with the advice of Counsel, of at least ten years' standing, with respect to this will or any Settlement made by this will. The Trustees may in particular conduct legal proceedings in accordance with such advice without obtaining a Court Order. A Trustee may recover from the Trust Fund any expenses where he has acted in accordance with such advice.
- 11.4. The above sub-paragraph does not apply:
 - 11.4.1. if the Trustee knows or has reasonable cause to suspect that the advice was given in ignorance of material facts;
 - 11.4.2. if proceedings are pending to obtain the decision of the court on the matter;
 - 11.4.3. in relation to a Trustee who has a personal interest in the subject matter of the advice; or
 - 11.4.4. in relation to a Trustee who has committed a breach of trust relating to the subject matter of the advice.
- 11.5. The Trustees may distribute Trust Property or income in accordance with this will or any Settlement made by this will but without having ascertained that there is no Person who is or may be entitled to any interest therein by virtue of any relationship unknown to the Trustees. The Trustees shall not be liable to such a Person unless they have notice of his claim at the time of the distribution.
- 11.6. This paragraph does not prejudice any right of any Person to follow property or income into the hands of any Person, other than a purchaser, who may have received it.

12. Appointment and retirement of trustees

- 12.1. A Person may be appointed Trustee of any Settlement made by this will even though he has no connection with the United Kingdom.
- 12.2. A Trustee may be discharged even though there is neither a trust corporation nor two Persons to act as trustees provided that there remains at least one trustee.

13. Change of governing law

The Trustees may during the Trust Period by deed with the consent of two Beneficiaries declare that from the date of such declaration:

- 13.1. The law of any Qualifying Jurisdiction governs the validity of any Settlement made by this will, and its construction, effects and administration, or any severable aspect of that Settlement; and

13.2. The courts of any Qualifying Jurisdiction have exclusive jurisdiction in any proceedings involving rights or obligations under that Settlement.

In this paragraph a "Qualifying Jurisdiction" is one which recognises trusts (as defined in the Hague Convention on the Law Applicable to Trusts and on their Recognition).

14. Interest in possession protection clause

The provisions of this schedule shall not have effect so as to prevent a Person from being entitled to an interest in possession in Trust Property (within the meaning of the Inheritance Tax Act 1984).

SAMPLE

Testimonium and attestation

Dated _____

Signed by the above named Paul Henry Simpson as and for his last will in our presence and then by us in his.

Paul Henry Simpson

First witness

Second witness

Name _____

Name _____

Address _____

Address _____

Occupation _____

Occupation _____

Signature _____

Signature _____

A clause-by-clause commentary on your will

To help you understand your will, this document explains in simple terms what the clauses of your will mean and do. This clause-by-clause commentary is not part of your will and you should separate it from the previous pages.

1. Revocation

This cancels all previous wills relating to property in England and Wales.

2. Cremation

This is a simple instruction on how you wish your body to be disposed of after your death. If you have any special instructions, we recommend these are put in a letter of wishes. You may wish to tell your executors too, in case your will is not opened straight after you pass away. Note, however, that any instruction you give does not have any legal effect, although it will have moral effect. This means that your executors will not have a legal obligation to follow your wishes, but it is useful to include this in your will to let your executors know what your wishes are, so that they can follow your instructions, wherever possible.

3. Appointment of executors

This appoints the people who will have responsibility of ensuring that gifts in your will are made in accordance with your instructions. In the process, they will manage your assets and property (called your 'estate') until it has all been distributed. Note that in your will, your executors are referred to as your trustees (see the Guidance for further information on executors and trustees).

4. Definition of my estate

This sets out what is included in your estate.

5. Administration of my estate

This directs your executors to pay your debts, then to deal with any gifts of money or specific items that you have made and then, finally, to distribute your residuary estate as you have provided in your will.

6. Pecuniary legacies

This details to whom you have left gifts of money and how much you have left them, as well as whether the gift will have Inheritance Tax (where applicable) deducted from it or not.

7. Specific legacies

This details to whom you have left specific items and what you have left them, as well as whether Inheritance Tax (where applicable) will be deducted or not.

8. Pets

This requests that your wife take care of your pets when you die and, if this is not possible, that your executors and trustees re-home your pets.

9. Residuary estate

Your residuary estate is the remainder of your estate not otherwise given away in your will. This clause states all those to whom you have left your residuary estate.

10. Standard provisions

The administrative provisions in your will provide your executors with a number of technical and routine provisions they need to administer your estate properly.

The schedule

1. Interpretation

This sets out some definitions that are used in the provisions that follow.

2. Additional powers

This section gives your trustees additional powers, such as:

Power of investment

The will contains a wide power of investment. Although the power is wide, the way in which it may be exercised is restricted by law in the following ways:

- Trustees must aim to seek the best return for the beneficiaries, judged in relation to the risks of the investments in question
- Trustees must in principle be prudent in their choice of investments
- Trustees must have regard to the suitability of the investment to the trust
- Trustees must obtain and consider proper investment advice so far as necessary and appropriate

Improvement

The trustees have power to make improvements. Improvements will normally be paid out of capital.

Use of trust property

This clause extends the powers trustees have under the general law to acquire land or property for a beneficiary's occupation or use.

Trustees are also authorised to make loans to beneficiaries on favourable terms. Alternatively, trustees are permitted to provide security so that a beneficiary can borrow more easily elsewhere.

Borrowing

This clause gives trustees unrestricted powers to borrow money, especially since loans made to trustees offer tax advantages.

Delegation

This clause gives trustees the power of delegation.

Nominees and custodians

It is often convenient to use a nominee or custodian. This can save time, paperwork and expense, especially on a change of trustees or on the sale of securities dealt with on the stock exchange. It also reduces the cost of investment management.

Security

As trustees have a duty to preserve trust property, they need express authority to mortgage it. The general law allows trustees to mortgage trust property for certain purposes only, but as the ability to mortgage trust property as security for trustees' liabilities is useful, this clause confers an unrestricted power.

Receipt by charities

This solves a possible administrative difficulty where trust property is payable to a charitable trust or an unincorporated charitable association. In such cases, without this clause, the trustees would strictly need to investigate who could give them a valid receipt.

Release of powers

This clause gives trustees power to release their powers.

3. Powers of maintenance and advancement

Section 31 applies to gifts to beneficiaries who have to reach a certain age in order to receive the gift. Unless a contrary intention is expressed, the law says that a child who reaches the age of 18 is entitled to receive the income from any asset held in trust for him or her, but they will not be entitled to the capital until they reach the age specified by you. Before the child reaches the age of 18, the trustees have the power to apply the whole or part of the income for the child's maintenance, education or benefit, and to accumulate any surplus income.

Section 32 provides a power of advancement. The term 'power of advancement' is used to describe a power to transfer trust property to a person, or apply it for his 'advancement or benefit'. The law provides that trustees have a power of advancement, but this is subject to three restrictions:

- Trustees may only apply a power of advancement in favour of a beneficiary that has some interest in trust capital
- The trustees can only exercise the power with the consent of any beneficiary with a prior interest

4. Minors

If you have given a gift of property to a person under the age of 18, then under the general law your trustees can give the property to their parent/guardian.

This creates a risk that the parent/guardian will not apply the property properly for the benefit of the minor or that they will misappropriate the property for their own benefit. To protect against this risk, the law imposes a duty upon trustees to take reasonable care to ensure that any property they give to a parent/guardian on behalf of a minor is properly applied for the minor's benefit and not misappropriated by the parent/guardian.

This duty is commonly excluded in practice, and is excluded in this will, so that the trustees are relieved of the duty to monitor the parent's use of the money. This eases the burden on your trustees, reduces administrative costs and simplifies trust administration.

It might occasionally be convenient to allow an older child to receive funds directly, and this is authorised if the child is 16.

Trustees may also retain trust income on behalf of a minor. Instead, the income will be paid to the child once that child is 18.

5. **Beneficiary without mental capacity**

Where the terms of a trust require trustees to pay funds to a beneficiary who lacks mental capacity, they should pay the funds to the beneficiary's attorney under a property and affairs lasting power of attorney or to a deputy appointed by the court under the Mental Capacity Act 2005 whose powers include taking possession or control of this property. Where it is not desired to appoint a deputy because of the expense and the beneficiary cannot appoint an attorney because of a lack of mental capacity, this clause confirms that the trustees may retain the funds and invest them as nominee for the beneficiary, or apply the funds for the direct benefit of the beneficiary.

6. **Disclaimer**

This clause authorises partial disclaimer (which the general law would not allow). A disclaimer is where a person with a right to trust property gives up that right. A partial disclaimer is where the person gives up their right to part, but not all, of the trust property. This is usually done to obtain tax relief.

7. **Conflicts of interest**

The general rule is that trustees may not enter into any transaction which gives rise to a conflict of interest. This clause relaxes the general rule, but with a safeguard: there must be at least one independent person to watch over the interests of the trust.

8. **Absolute discretion clause**

This clause contains two general provisions relating to trustees' powers:

- Trustees' powers may be exercised at their absolute discretion
- Trustees' powers may be exercised from time to time as occasion requires

This will apply to the powers conferred in the will as well as to the powers in the Schedule.

These general provisions make it unnecessary to specify whenever trustees are given powers that they may exercise the powers

- 'at their absolute discretion'
- 'as they shall think fit'
- 'as they shall in their absolute discretion think fit'
- 'at any time or times', or
- 'from time to time'

This means that a certain amount of verbiage can be avoided in the rest of the will.

The clause does not, though, allow trustees to exercise their powers improperly.

9. **Trustee remuneration**

This clause allows your trustee when acting in a professional capacity to be paid a reasonable amount from the trust fund to perform work in relation to your will.

10. **Commissions and bank charges**

It is a fundamental rule that a trustee is not entitled to use trust funds to make a profit for himself/herself without specific permission. This clause provides that permission, limited to reasonable amounts that would ordinarily have been earned by the trustee in the course of its business, and it requires all such profits/commissions to be disclosed.

11. Liability of trustees

Trustees are not liable for breach of trust when they have acted honestly and reasonably and ought fairly to be excused: Trustee Act 1925 s.61. This clause relieves trustees from liability for breach of trust in two further circumstances:

- Where the trustee is not a professional trustee and is not guilty of negligence
- Where the trustees are acting on the Opinion of Counsel

12. Appointment and retirement of trustees

This clause authorises the appointment of foreign trustees. It also authorises the discharge of any trustee as long as there will remain in office at least one trustee.

13. Change of governing law

Trustees may, with the consent of two beneficiaries, choose which country's law is to apply to the trust, or to a part of the trust.

14. Interest in possession protection clause

This clause ensures (for the avoidance of doubt only) that none of the provisions in the Schedule will have undesirable tax effects.

SAMPLE

What to do with your will

This document explains how to prepare and sign your will. It also gives some advice on what to do with your will in the future. This section is not part of your will and you should separate it from the previous pages.

Preparing your will

Once your will is complete, you should print it on durable paper. You **must** securely fasten the pages together, to protect against the risk that your will may be fraudulently altered (and to satisfy the Probate Registry that this has not happened). Ideally you should have it bound using a binding machine (these can be found in copy shops or in some libraries), but using staples would be acceptable. Note however that problems can arise at the Probate Registry if it appears that the staples have been tampered with, since this can raise doubts as to whether part of the will has been removed or substituted. For the same reason, it is not sensible to use paperclips.

Signing your will

You must be present throughout the process. Two witnesses must be present when you sign your will. The witnesses must be over 18 and of sound mind.

The following may not act as a witness:

- Someone who is blind or partially sighted
- Someone who lacks mental capacity

Also, you should not ask any of the following to act as a witness:

- Someone receiving a gift (a beneficiary) in your will
- Someone who is married to (including a party to a same-sex marriage) or a civil partner of a beneficiary in your will
- Remoter family members who might otherwise benefit under a partial intestacy

This is because if a beneficiary or the spouse/civil partner of a beneficiary acts as a witness, they will automatically lose their right to the gift made to them by your will or their entitlement under an intestacy.

Procedure

Read through your will carefully to make sure it reflects your wishes.

You must sign your will in ink on the last page where indicated in the presence of your two witnesses, who must then also sign and complete their names, addresses and occupations in the spaces provided. You could also initial the bottom of each page in the presence of the two witnesses, who would then do the same

- this is not essential, but could help to avoid problems later if there any issues with the way in which the pages have been fastened together.

If a correction has been made on a page, you **must** initial alongside it in pen in the margin, in the joint presence of the two witnesses. Each witness must then similarly initial it in turn, in your presence.

Date the will on the cover page and on the last page in the spaces provided.

Once signed, do not make any alterations or additions to your will. Do not pin, staple, paperclip or in any other way attach anything to your will.

Storing your will

You should keep your will somewhere safe and tell a close friend or relative (preferably an executor) where you have put it.

Alternatively, the Probate Registry can store your will for a fee. Information about this service can be found online at <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/pa007-eng.pdf>

Changes to your will

If, once the will has been signed, your address changes or an address or name of a person you have referred to in your will changes, it is not usually necessary, for that reason alone, to change your will. It is recommended, however, that you place a separate note of any changes of this nature with your will.