

Emmanuel leaves two trusts in his will, in order to provide for his family after his death. The first trust is known as 'The Family Trust' and its terms are: 'To my wife Sheila for life, remainder to my children, if they reach the age of 25 and qualify as a barrister'. The second trust is called 'The Children's Trust' and its terms are that the children have life interests and the trust property is to be accumulated and paid to the children when they reach 21. There is an express term excluding the statutory power of maintenance in section 31 of the Trustee Act 1925.

The children have various financial problems and ask the trustees, Tim and Tom, for financial assistance. Alfred is 24 and has just qualified as a solicitor. He wants £100,000 from 'The Family Trust' to establish himself in practice as a solicitor. Belinda is 11 and wants to go to a school where she can train for an acting career. She seeks payment of her school fees from 'The Children's Trust'. Cyril is 19 and wants money from both trusts to pay for his 'playboy' lifestyle. Their mother is not content with the income from her life interest and wants the trustees to grant her money to help pay for the living expenses of her children, all of whom still live at home. Advise Tim and Tom.

### Suggested Answer

Alfred seems to be asking for an advance under the Family Trust. Starting a business falls squarely within 'advancement or benefit': *Re Williams*. The fact that Alfred's interest is subject to a double contingency and that he might not become both 25 and a barrister does not rule out an advancement under section 32: *Re Garrett*. The written consent of his mother, Sheila, would be needed, but the trustees could give him all of his eventual share. The £100,000 could be given to him or used to pay others for services etc. *Re Pilkington*. The trustees do have discretion and can refuse Alfred's request: *X v A*, although the wishes of the testator do not seem particularly relevant in this class of case: *Pilkington* again. The trustees have a duty to check that the money is used for its proper purpose: *Re Pauling's*.

Belinda wants her school fees. This is a classic purpose of maintenance under section 31. Even if the wording of the Children's Trust is intended to exclude section 31 using section 69(2), under cases such as *Re Peel* and *Fuller v Evans*, education would still be thought of as desirable. Whether the mother can pay for it or not is no longer a relevant factor for the trustees. Following the amendment of section 31 by the Inheritance and Trustees Powers Act 2015, they have the discretion to do as they see fit. *Fuller v Evans* makes clear that the trustees should do what they consider to be in the best interests of Belinda. There is no previous life interest to rule out maintenance and there would be intermediate income available, as these are not contingent interests. Payment would probably be made by the trustees directly to the school. Advancements could also be made to pay school fees under the Family Trust: *Re Garrett*.

Cyril is 19 and therefore entitled to his share of the income from the Children's' Trust at 18, according to section 31(1) (ii). That is unless Emmanuel succeeded in excluding maintenance until 21, as in *Re Turner*. This does not seem likely from the wording. The trustees have a discretion in giving him an advance, but should refuse. It is not just his money to do with as he likes, but must be paid for a particular purpose, relating to starting his career or improving his material situation: *Re Pauling's*.

The mother, Sheila, is not a beneficiary to whom advances can be made, as she does not have an interest in the capital of the Family Trust: section 32(1). She is not a beneficiary at all of the Children's Trust, so maintenance is not possible. Money should not be diverted from children to the mother to solve her financial problems, even if two of the children are of full age and might consent: *Re Pauling's*.