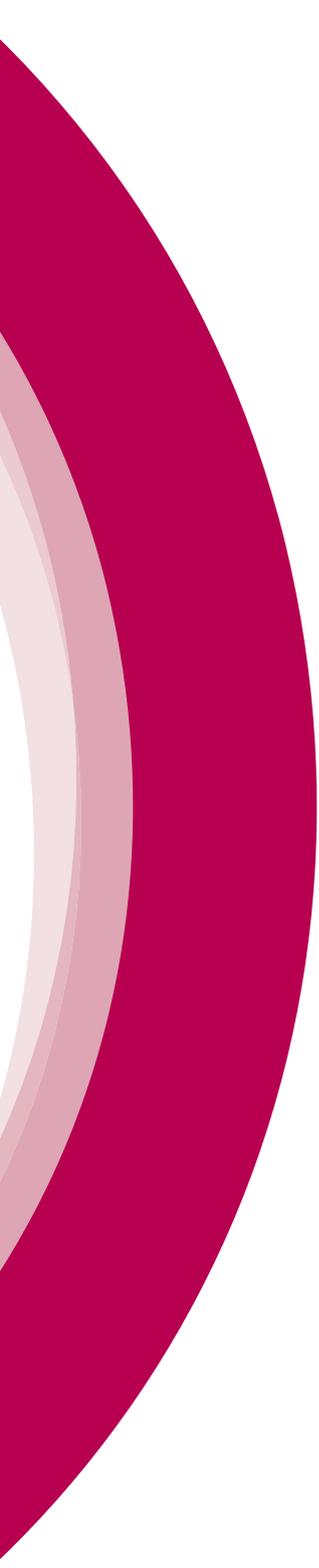


Your guide to

Wills and trusts: leaving money to someone with a learning disability



About this guide

This guide has been written to give parents, family members and carers helpful information about writing a will and setting up a trust. Throughout this guide you will find links to further information, as well as stories from parents who have been through the process.

Look for the **What next**  sign for things you can do.

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Wills and trusts: leaving money to someone with a learning disability

By writing a will and setting up a trust, you can make sure that a family member or friend with a learning disability will get the financial support and protection they need after your death.

Many parents have told Mencap that writing a will has given them extra peace of mind for the future, especially if their son or daughter is unable to look after their finances themselves.

When you are thinking about making a will, or updating an existing will, there are many things to consider, and it is always a good idea to seek professional advice at this time. You may also want to talk to other members of your family and keep them informed about your decisions.

“I have written my will, and arranged for a discretionary trust. I hope that in the future my son will be able to stay in the family home – ideally he would like to live here independently with a support package.”



Why make a will?

If you want to provide for the financial future of a family member or a friend with a learning disability, it is important that you make a will.

If you don't, you will have no control over how your money and possessions (called your estate) will be shared out after your death. This might affect someone with a learning disability in your family the following ways:

- they may not get the things that you want them to have – or they may get too much money
- the money you leave may be paid to them directly even if they are unable to manage it
- it may affect their means-tested state benefits
- it may place them in a vulnerable position as others may try to take advantage of them because of their money.

By writing a will, you can make sure the people you care about will get the right financial support and protection when you die.

What do I need to consider before writing or updating my will?

There are a number of things you need to think about before making your will:

1. Make a rough list of everything you own

This includes all your assets and liabilities and their value in money.

2. Think about who you would like to benefit from your will and what you would like to give them

The people who will benefit from your will are called beneficiaries. You may want to think about family members, friends and charities – any gift to charity is tax-free. You can make specific gifts such as your house, jewellery or a favourite painting, or you can make a gift of a sum of money. You can also give some or all of your estate away.

“Since sorting out my will, I have absolute peace of mind for my daughter’s future.”

3. Think about who you would like to be the executor of your will

An executor is the person you officially appoint to make sure that the wishes in your will are carried out.

4. If your child or children are under 18, think about whether you would like to appoint a guardian for them

A guardian is a person you officially choose to look after your children if they are under the age of 18.

5. Think about whether you need to set up a trust for a family member or friend with a learning disability

A trust is a legal arrangement that allows a person or an organisation to look after someone else’s money. If you decide to set up a trust, you will need to decide who you would like to manage the trust – these people are called trustees. We will talk about trusts in more detail later in this guide.

What next

- For more information order Mencap’s ‘Guide to making your will’ at www.mencap.org.uk/willsandtrustspublications

How to find a solicitor

When you are thinking about writing or updating your will, it is important that you talk to a solicitor who not only knows about wills and trusts but is also aware of the concerns that you need to address in relation to your family member or friend with a learning disability.

What next

- Order Mencap's list of specialist legal professionals at www.mencap.org.uk/willsandtrustspublications who have experience in wills and trusts and advising the parents of a person with a learning disability.
- Contact Mencap's wills and trusts solicitor Aarti Gupta on 0207 696 5533 or email askaarti@mencap.org.uk to discuss any queries you may have. Aarti cannot write your will or set up your trust for you but she is happy to give you advice.
- Order Mencap's 'Guide to making your will' at www.mencap.org.uk/willsandtrustspublications

You can also contact the following organisations for assistance in finding an experienced local solicitor:

- The Law Society of England and Wales – visit their website at www.solicitors-online.com
- The Society of Trust and Estate Practitioners – visit their website at www.step.org
- Community Legal Advice – visit their website at www.communitylegaladvice.org.uk
- Lawyers for People with Learning Disabilities – visit their website at www.lpld.org

Frequently asked questions about wills

Do I need to make a will? What happens if I don't?

If you do not make a will, the law will decide which members of your family will benefit from the money and possessions you leave behind, and how much they will get. These are known as the intestacy rules.

If you are married, on your death your husband or wife would get all the personal items, a gift of £450,000 and half of everything else. The other half would go to your children (if any) when they reach 18, whether they are able to manage their finances or not, even if it would affect their state benefits.

If you are not married, or are the last remaining parent, on your death all of your money and possessions would be shared between your family in the following order – your children, your parents, your siblings (and their children) and your aunts and uncles (and their children).

If there is no one in the family who can benefit, your entire estate passes to the Crown. To avoid this, you should consider making a very simple will and leaving everything to a friend or charity.

I don't want my child's benefits to be affected by an inheritance, why don't I just leave all of my estate to one of my other children and tell them to look after their brother or sister with a learning disability?

If you do this, you will be relying on your other children to be willing and able to carry out your wishes – and this may not always be possible. For example, they may suffer financial difficulties or go through a divorce. This could mean that part or all of the money intended for the person with a learning disability could be 'lost', for example, in a divorce settlement or through bankruptcy.

If you do not make proper provision for someone who is a dependant on you, such as your child with a learning disability, the courts can alter your will after your death to make sure that an inheritance is provided to help support them. Local authorities may apply to the courts on behalf of your child with a learning disability if you have left them out of your will.

If you are planning to leave someone out of your will that would expect to benefit, you should include the reasons for doing this in your will or in a separate letter. The courts will not have to act on your decision, but they will consider your reasons.

“I decided to set up a discretionary trust for my sister, and chose a charity to benefit after her death.”

How do I balance the interests of my children?

You will need to decide how much money, or how much of your estate, you would like to allocate to your child with a learning disability.

You may decide that the fairest thing to do is to divide your estate into as many shares as you have children. Then you can make special arrangements for your child with a learning disability by setting up a trust for their share, and provide for your other children in your will.

Alternatively, you may decide that the needs of your child with a learning disability are greater than those of your other children, particularly if your other children are grown up and no longer financially dependent on you.

One possibility is to create a discretionary trust to deal with the whole of your estate and to rely on the trustees of your will to divide this between all your children after your death, depending on their circumstances and needs at the time, but leaving money in the trust to look after the needs of your child with a learning disability.

Do I have enough money to leave a gift to Mencap?

We need people’s continued support to provide services, advice and support to meet people with a learning disability’s needs throughout their lives. Any gift – whatever the size – has enormous value to Mencap. Whether you leave us a sum of money, your house, a share of your estate or even all of your estate – we thank you. Gifts like these are vital to the future of Mencap and our work. Your legacy can help us improve the lives of thousands of people.

What next

- Find out more about leaving a legacy to Mencap at www.mencap.org.uk/legacies

What happens next?

Once you have made your will, it is important to review it regularly. Changes in your life such as marriage, divorce and changes in financial circumstances can all affect your will – if your wishes change, it should too. You can make small alterations to an existing will by adding an additional written instruction, which is known as a codicil.

You need to keep your will somewhere safe and let your executors know where it is. If your will cannot be found at the time of your death, then it may be treated as if it does not exist. It's a good idea to keep the original will at your solicitor's office or at your bank, and to have an extra copy at home.

What is a trust?

A trust is a binding arrangement under which a person gives money or property 'upon trust' to another person or persons, who are known as 'trustees'.

The trustees use the trust fund for the benefit of an individual or group of individuals, who are known as 'beneficiaries'. The trustees then have to look after the trust fund for the beneficiaries. These arrangements are usually set out in a trust deed that you make before you die, or in your will, which means the trust will start on your death.

What next

- Order the Mencap booklet 'Leaving money in trust' which has more information about setting up a trust at www.mencap.org.uk/willsandtrustspublications

Why should I set up a trust?

“Setting up the trust has given me peace of mind about my daughter’s finances after my death.”

- Setting up a trust means you can leave money for a family member or friend with a learning disability without them having to worry about the responsibility of looking after it in their lifetime. It is also a way of avoiding applications to the Court of Protection for a deputy to be appointed to deal with their finances if they are not able to manage looking after the money themselves.
- A trust offers more protection, as the trustees have control over the trust fund, not the person with a learning disability.
- If an adult with a learning disability is, or is likely to be, entitled to means-tested state funding in the future, they can be a beneficiary of a discretionary or a disabled person’s trust. This means the money that they get from the trust fund will not be included when they are being assessed. This is not true for all trusts – so it is very important that you discuss with your solicitor the type of trust you want and how it might affect someone’s right to state funding.
- By putting money into a trust for a person with a learning disability, you can make the money available for them in their lifetime should they need it, for example for holidays, equipment or healthcare. You can also dictate where the money should go on their death, for example to your other children or family members, or to charity.

What

What next

- Order Mencap’s list of specialist legal professionals who have experience in writing wills and setting up trusts at www.mencap.org.uk/willsandtrustspublications
- Order the Mencap booklet ‘Leaving money in trust’ at www.mencap.org.uk/willsandtrustspublications

duties and responsibilities does a trustee have?

“The trust funds the cost of living in my care home, visits to my family and my annual season ticket for my favourite football club.”

As a trustee, your role is:

- to manage the assets of the trust, by investing the money or maintaining a property
- to make payments to beneficiaries
- to prepare accounts for the money and property you look after
- to pay any tax that is due.

Trustees sometimes do much more than this and may be closely involved in the day-to-day welfare of a beneficiary. Trustees also have the power to ask others to carry out tasks for them.

What next

- Order Mencap’s ‘Guide to being a trustee’ for more information at www.mencap.org.uk/willsandtrustspublications

Who can I appoint as trustees?

“In terms of trustees, we chose our older children and the firm of solicitors who made our wills.”

You should take great care over your choice of trustees.

Always appoint people who are capable of coping with the responsibility and work involved. It is always best to ask the person whom you would like to appoint whether they are willing to act in this role before making your decision.

You may wish to appoint:

- family members
- friends
- professionals (such as your solicitor or accountant)
- institutions (such as a bank’s trustee service).

Only professional trustees can charge for their services. You can appoint someone as a trustee who is also a potential beneficiary of the trust.

What next

- Find out more about the Mencap Trust Company Limited at www.mencap.org.uk/mencaptrustcompany



How many trustees can I appoint?

You can appoint between one and four trustees, but it is normally a good idea to appoint at least two.

It is also recommended to have at least one trustee who is not a family member or a beneficiary of the trust, to ensure there is an independent person helping to make the decisions.

How can I tell my trustees how to manage the trust?

If you decide to set up a trust, it is a good idea to leave the trustees a ‘letter of wishes’ saying what you would like to happen.

The letter of wishes should explain:

- the reason for setting up the trust
- guidance on how the trust fund should be used to help or protect your child with a learning disability
- how the remaining trust fund should be distributed after your child’s death, for example to other family members or to your favourite charities

While such a letter will not be legally binding on your trustees, it can be referred to for guidance from time to time.

“Our letter of wishes has guided the trustees to consider our granddaughter with a learning disability as the main beneficiary of the trust.”

What next

- Read an example of a letter of wishes by ordering Mencap’s ‘Guide to making your will’ at www.mencap.org.uk/willwillsandtrustsguide

What can I put in a trust and how much?

You can put money, shares and/or property into a trust.

Generally it is not worth setting up a trust for under £10,000. If you are thinking about setting up a trust, you need to think about what will be required to look after the person with a learning disability after your death, based on their needs and their life expectancy.

Things to consider include pocket money for them, money to pay for trips and holidays, clothes and equipment, healthcare, extra support and even a house for them to live in.

What type of trust should I set up?

There are several types of trusts.

You will need to discuss your situation and circumstances with a solicitor, who will advise you on all the options available to you.

The most common types of trust are:

1. Discretionary trusts

With a discretionary trust, the trustees can decide which beneficiaries will benefit from the trust. None of the beneficiaries have an absolute right to all the money in the trust, nor the income that comes from it – they only have a potential right. The trustees may, at any time, grant them a sum of money from the trust, if they think that it is appropriate. Throughout the year, the trustees can choose whether or not to make payments to your child with a learning disability and how much to pay. They can also choose to buy things for his or her benefit. This way, the payments can reflect your child's needs at the time.

With a discretionary trust, your child is not technically ‘entitled’ to money from the trust. This means that the money or any other assets in the trust will not be taken into account when assessing whether they can receive means-tested state funding. The only thing taken into account will be the value of the payments actually made to them. In addition, because it is a discretionary trust, the assets will not be treated as part of their estate on their death for the purposes of inheritance tax.

“I live on my own in my own flat. I chose it and the money in the trust fund paid for it.”

2. Disabled person’s trusts

This is a special type of discretionary trust that can be created for a person who is incapable of looking after their affairs or is entitled to disability living allowance at the highest or middle rate.

Under the terms of this trust, your child with a learning disability would be named as the ‘primary beneficiary’ of the trust, and other beneficiaries, such as your other children, would be named in a separate class of beneficiaries. The primary beneficiary will then be entitled to the income of the trust, although this should not affect their entitlement to state benefits. However, if the trustees decide to make a payment from the capital of the trust to any one of the beneficiaries of the trust, they must make the same payment to the primary beneficiary.

There are certain tax advantages to this type of trust whilst it is running but, when your child dies, the trust will be taken into account for inheritance tax purposes.

What next

- Order the Mencap booklet ‘Leaving money in trust’ at www.mencap.org.uk/willsandtrustspublications
- Find out more about the Mencap Trust Company Ltd at www.mencap.org.uk/mencaptrustcompany



Mencap Trust Company Limited

Mencap Trust Company Limited is a company that manages special discretionary trusts set up for people with a learning disability. It is run from Mencap’s National Centre.

Some people choose to appoint a company rather than an individual to act as the trustee of their trust. This may be because they do not know anyone who can act as trustee, or because they do not want to place this responsibility on them. In addition, a trust company has knowledge and experience in running trusts.

If you are thinking of doing this, Mencap Trust Company Limited can act as the trustee of an individual trust that you set up with the company. They will work with the beneficiary’s family and carers to ensure that they make the best financial decisions for them throughout their lives.

“I was worried about how to find trustees because of all the responsibilities they carry. I didn’t know any solicitors with that expertise, and I didn’t want to ask any of our extended family to take it on.”

To set up a trust you need to do the following:

- Set up a standard trust with Mencap Trust Company Limited with an initial amount of £5. The charges for setting up the trust are £305 (£250 plus VAT and initial amount of £5). The company will send you all the paperwork you need to complete.
- You then leave the trust a further sum of money under the terms of your will. You will need to see a practising solicitor to make a new will.
- On your death, the money will be paid to the trustees and the trust will be activated.

Mencap Trust Company Limited is a not-for-profit organisation and the company will generally only act where there is at least £10,000 in the trust fund.

What next ?

- Find out more about the Mencap Trust Company Limited on the Mencap website at www.mencap.org.uk/mencaptrustcompany
- Order an information pack about the Mencap Trust Company Limited at www.mencap.org.uk/willsandtrustspublications or contact them on 020 7696 6932.

Further help

The Mencap wills and trusts team offer information and advice on setting up wills and trusts. For more information and support you can:

- call us on 020 7696 6925 if you would like someone to visit you at home to discuss matters further.
- order any of the guides or booklets provided by the wills and trusts team at www.mencap.org.uk/willsandtrustspublications
- visit the wills and trusts section of the Mencap website at www.mencap.org.uk/willsandtrusts

You can also find out about Mencap's free seminars about wills and trusts for the benefit of someone with a learning disability. To find an event in your area see the wills and trusts seminar calendar at www.mencap.org.uk/planningforthefuture

Key words

Assets

Assets are everything that you own like your home, car, jewellery, savings accounts, investments or anything else of value.

Beneficiary

A beneficiary is a person or organisation to whom you leave a gift.

Binding

Binding means an agreement or promise that is recognised by law and cannot be broken or changed.

Capital

Capital includes cash, money held in banks and building societies, premium bonds, unit trusts, investments, property, and includes charitable or voluntary payments made to an individual.

Codicil

A codicil is an additional legal document to your will which makes minor amendments to your will.

The Crown

The Crown is Her Majesty's Government.

Dependant

A dependant is a person who depends on you for financial support because they are a child or because they have particular needs.

Disabled person's trust

A disabled person's trust is a special type of discretionary trust where a 'primary beneficiary' is named - this would be a person who falls within the definition of disabled.

Discretionary trust

A discretionary trust is a trust where all decisions about payments of income and capital are made by the trustees, to a class of beneficiaries (more than one).

Estate

Your estate is everything you own at the time of your death, after all the money you owe has been paid.

Executor

An executor is the person you officially choose to make sure that the wishes in your will are carried out.

Guardian

A guardian is a person you officially choose to physically look after your children who are under the age of 18.

Inheritance tax

Inheritance tax is a tax that is charged at 40% on the value of your estate after your death. From April 2012 if you leave 10% of your estate to charity the inheritance tax charge on your estate will fall to 36%. Not everyone pays inheritance tax on death. If the value of your estate is more than £325,000 (this increases each year) this tax is payable on your death by your executors.

Intestacy

Intestacy is when a person dies without making a will and the law determines who gets the estate property.

Legacy

A legacy is a gift left in your will to a person or an organisation.

Liabilities

Liabilities are everything that you owe like your mortgage, loans and debts.

Means-tested state benefits

Means-tested state benefits are benefits awarded to you depending on the income and capital that you already have.

Probate

Probate is the official proof that executors apply for in court to show that a will is valid.

Residue

Residue is what is left of your estate after all your debts have been paid and any gifts in your will have been made.

Sibling

A sibling is a brother or sister of a person.

Testator

A testator or testatrix is a person who has made a will.

Trust

A trust is a legal arrangement that allows a person or an organisation to look after someone else's money. A trust deed is a written legal document recording the terms of the trust and officially chooses the trustees. There are many different types of trusts.

Trustee

A trustee is someone who is appointed to manage the trust.

Will

A will is a legal document that gives instructions about what should happen to your money and possessions after you die. It must be signed, dated and witnessed by two people.

Contacts

England

If you live in England and would like more information on learning disability, you can contact:

The Learning Disability Helpline

Telephone: 0808 800 1111

Typetalk: 18001 0808 808 1111

Email: help@mencap.org.uk

If English is not your first language and you would like access to a translation service, please contact the Mencap helpline and ask for Language Line.

Northern Ireland

If you live in Northern Ireland and would like more information on learning disability, please contact:

Mencap's Information Service

Telephone: 0808 800 1111

Email: mencapni@mencap.org.uk

Wales

If you live in Wales and would like more information on learning disability, please contact:

Wales Learning Disability Helpline

Telephone: 0808 800 1111

Email: information.wales@mencap.org.uk

Scotland

If you live in Scotland, and would like more information on learning disability, please contact:

ENABLE Scotland

Telephone: 0141 226 4541

Email: info@enable.org.uk

Website: www.enable.org.uk



123 Golden Lane
London EC1Y 0RT
T: 020 7454 0454
F: 020 7608 3254
www.mencap.org.uk
help@mencap.org.uk
Learning Disability
Helpline 0808 808 1111