

Self-directed support

Wills and trusts: leaving money to someone with a disability

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

This fact sheet has been written to give parents, family members and carers helpful information about writing a will and setting up a trust, and includes links to further information.



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The basic facts

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.

Setting up a trust means you can leave money for a family member or friend 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.

More information

Why make a will?

If you want to provide for the financial future of a family member or a friend with a 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 disability in your family in 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.

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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. Assets are everything that you own like your home, car, jewellery, savings accounts, investments or anything else of value. Liabilities are everything that you owe like your mortgage, loans and debts.

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.

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 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 fact sheet.

For more information you can order Mencap's 'Guide to making your will' at www.mencap.org.uk/willsandtrustspublications

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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 disability.

You can 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.

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

What happens if I don't make a will?

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 and have children, on your death your husband or wife would get all the personal items, a gift of £250,000 and a life interest in 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.

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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 (or their children) and your aunts and uncles (or 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 family member'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 provide support their brother or sister with a 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 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, 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.

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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 drawing up a short document, which is known as a codicil. A codicil must be drawn up and witnessed in the correct way in order to be valid.

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.

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

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Why should I set up a trust?

- Setting up a trust means you can leave money for a family member or friend 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 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 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.

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What duties and responsibilities does a trustee have?

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. A beneficiary is a person or organisation to whom you leave a gift.
- 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 some tasks for them.

You can order Mencap's 'Guide to being a trustee' for more information at www.mencap.org.uk/willsandtrustspublications

Who can I appoint as trustees?

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.

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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 support or protect your family member with a disability.
- How the remaining trust fund should be distributed after your family member'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.

You can read an example of a letter of wishes by ordering Mencap's 'Guide to making your will' at www.mencap.org.uk/willsandtrustsguide

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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 disability after your death, based on their needs and their life expectancy.

Things to consider include money for their day to day expenses, 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 family member and how much to pay. They can also choose to buy things for his or her benefit. This way, the payments can reflect your family member'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.

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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 family member with a 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. If capital is paid out of the trust, as a minimum at least 50% of what is paid out has to be used for, or given to, the primary beneficiary. There are certain tax advantages to this type of trust whilst it is running but, when your family member with a disability dies, the trust will be taken into account for inheritance tax purposes.

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.

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

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Here is a selection of things that tell you more

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

- Call them on 020 7696 6925
- 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

There is a lot more information on the In Control website:
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About the **In Control and Me** project

A three-year project to produce accessible information for everyone who wants to direct their own support, funded by the National Lottery through the BIG Lottery Fund. You can find out more at www.mencap.org.uk/incontrol or www.in-control.org.uk/icandme