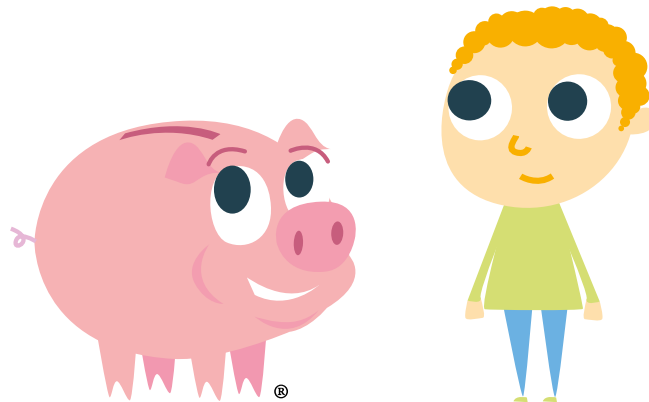


Wills and Trusts

All you need to know

Financial planning for a child with a learning disability



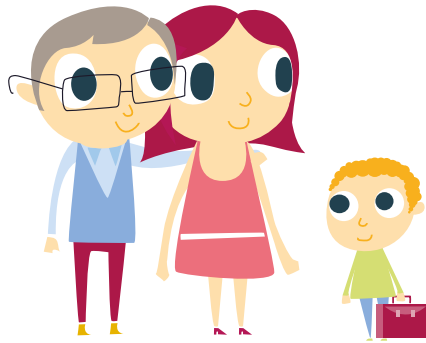
Our vision

Our vision is a world where people with a learning disability are **valued equally, listened to** and **included**. Our challenge, alongside people with a learning disability and their families, is to make this world a reality.

Learn how we're working to improve the lives of people with a learning disability – discover our services, projects and campaigns at:

www.mencap.org.uk





“Mencap’s Wills and Trusts service is very clear and easy to follow. I gained so much information that was both practical and reassuring.” **AP, parent**

Protecting your loved one's future

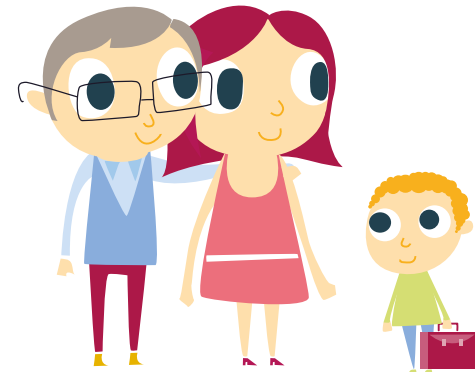
Everyone has fears about the future. As a parent or carer of someone with a learning disability, yours might be how they will cope when you're no longer around.

How will they manage financially? Will they still receive benefits? How can I minimise change in their life?

Financial planning can protect their future and give you peace of mind. It might seem like a complicated process, but rest assured, our straightforward guide explains everything you need to know, including:

- How you can financially protect your child with a learning disability.
- The difference between a Will and a Trust.
- What can happen if you don't plan for the future.
- The importance of writing a Will.
- How to choose the right qualified lawyer.

- The role of Executors, Trustees and Guardians.
- What a Trust is and how it can be used to protect your child.
- How you can attend one of our Planning For The Future seminars.



How you can financially protect your child with a learning disability

Everything you have done for your child since day one would have been to give them a fulfilling, happy life. With the right action now, this doesn't need to change.

Make a Will and set up a Trust

This could be one of the most important things you ever do for your child's future. Taking these steps will safeguard their finances, minimise change in their life and enable them to continue doing the things they love.

Wills and Trusts: what is the difference?

A Will sets out your wishes for dealing with everything you own after your death. A Trust looks after savings, property, investments and other possessions – a bit like a piggy bank and it can be used straight away.

What can happen if you don't plan for the future

Did you know that a lump-sum inheritance – even as little as £6,000 – can affect your child's benefit entitlements?

Without the right arrangements in place, there is a greater risk of your child's future being negatively impacted. Leaving a lump-sum inheritance is simply not an option, and here's why:

Your child may not have sufficient mental capacity to manage an inheritance

This can result in the need for an application to the Court of Protection for a Deputy to be appointed to manage their inheritance – and they may make decisions that don't reflect your wishes.

Loss of benefits

Means-tested benefits and support packages funded by the local authorities may be cut, leading to any inheritance funds being used to pay for services and activities until that money runs out. This scenario, as you can imagine, could turn your child's world upside down; impacting everything from vital care and education through to accommodation, transport use and social activities.

Financial abuse

Difficulty with managing finances is common for people with a learning disability. The emotional distress of losing a parent or carer will likely compound this, making it particularly hard to deal with their new-found wealth, leaving them susceptible to financial abuse from others who wish to take advantage.

The importance of writing a Will

What is a Will?

A Will is a legal document which sets out your wishes for everything you own after your death.

Who can make a Will?

To make a Will, you must be over 18 years of age and legally capable of understanding what a Will is and what assets you own. If there is doubt about your capacity to make a Will, an assessment will be made, and if the conclusion is that you do not have the required mental capacity, an application can be made to the Court of Protection to put in place a Statutory Will on your behalf.

What happens if you don't make a Will?

If you don't make a Will, the laws of intestacy will apply. These are the rules which determine the order in which your assets are distributed between your family, without considering their circumstances and what you may wish to happen.

Intestacy rules: how do they work?

The husband, wife or civil partner keeps all the assets – including property – up to the value of £250,000, and all the personal possessions, whatever their value.

If assets exceed £250,000, the husband, wife or civil partner gets half of the remainder of the estate, and the other half is divided equally between the surviving children.

What if my child lacks capacity to receive an inheritance under these circumstances?

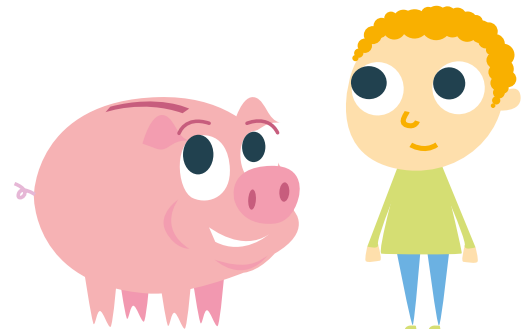
Intestacy rules offer no protection for your child. If they lack capacity to receive an inheritance through the intestacy rules, an application would have to be made to the Court of Protection to appoint a Deputy to manage their inheritance. This would lead to a substantial delay in them receiving any funds and additional expense from their inheritance.

This situation could put your child in an extremely vulnerable position, without you there to protect them. If your child is under 18, you will need

to appoint Guardians for them. The Court can determine who has legal responsibility if there are no Guardians available.

Keeping your Will up to date

Once you have made your Will, it is important to review it every three to five years. Changes in your life, or your child's, can affect your Will, make parts of it invalid and cause hardship to those you care about the most. These include marriage, civil partnership, divorce or changes to your financial circumstances.



How to choose the right qualified lawyer to write your Will

We do not recommend writing your own Will. It's very important that it is written up by a qualified lawyer who has experience and/or a qualification in this particular area of law.

Mencap can provide you with a list of legally specialised, experienced qualified lawyers that are local to you. Alternatively we recommend the following:

The Law Society

020 7320 5650

www.lawsociety.org

The Society of Trust and Estate Practitioners (STEP)

020 3752 3700

www.step.org

Chartered Institute of Legal Executives (CILEx)

012 3484 1000

www.cilex.org.uk

Finding the best qualified lawyer for your needs: what questions to ask

We strongly recommend that you arrange a brief meeting or conversation on the telephone with the lawyer before formally instructing them, for which they may make a small charge. Take this opportunity to ask them the following questions before moving forward:

- What qualifications do you have in Wills and Trusts?
- What experience do you have in this area?
- What experience do you have in acting for parents of a child with a learning disability?
- What experience do you have in setting up a Trust for the benefit of a person with a learning disability?
- How much will you charge for the initial call?
- How much will you charge for drafting a Will and a Trust?

It is important that you find the right person to help you with this potentially complex, personal matter. Choose someone who you feel most comfortable with and who you believe can best support you. We suggest talking to two or three lawyers and cover the points above before you make a final decision.

Executors, Trustees and Guardians: why do you need them and who can they be?

Before making arrangements for your Will, it's a good idea to think about how it is set up and who you want to have key roles – and asking these people if they are happy to take on the responsibilities involved. Here we explain what these roles are:

Executors

Executors of your Will are responsible for organising your estate after your death, and ensuring that the

terms of your Will are followed. We would advise you to appoint at least two Executors. They can be friends, family or a professional advisor, such as a qualified lawyer, or a combination of these people.

Trustees

If you are setting up a Trust in your Will, the Trustees will usually be the same people as described above, although there are circumstances where it might be appropriate to choose different people. The role of a Trustee is ongoing and can run into many years, depending on the age of the beneficiary. It is important to choose someone you trust, and to ask them in advance if they are willing to take on the role. Please contact the Wills and Trusts Service for a copy of our Guide to being a Trustee.

Guardians

If you have children under the age of 18, you should also appoint Guardians of your children in your Will. Guardians will take over the welfare of your children on the death of the last parent.

Mencap Trust Company

If you do not wish, or are not able, to appoint family or friends as Trustees, then Mencap Trust Company might be an option to consider.

Mencap Trust Company is a not-for-profit company, subsidiary of Mencap, which acts as sole Trustee of Trust funds for people with a learning disability.

They work closely with each beneficiary and the important people in their lives, so that each Trust is used to make life better.

For more information about Mencap Trust Company, please call **020 7696 6932** or email **mtc@mencap.org.uk**

What is a Trust?

A Trust is a formal transfer of assets (for example property, shares, cash) to another person or persons, who are known as 'Trustees' to hold on the terms that are set out by the person making the Trust.

Why set up a Trust?

A Trust offers more protection than only writing a Will, because Trustees have control over the Trust fund, not the person with a learning disability.

Setting up a Trust is highly specialised and should only be handled by a qualified lawyer or legal professional with experience in this area.

How does a Trust work?

The lawyer you choose will discuss your needs and wishes for your child, and from this they will advise which type of Trust is most suitable.

The Trustees use the Trust fund for the benefit of an individual (your child) or a group of individuals who are known as beneficiaries. These arrangements can be created in your lifetime to take immediate effect, and will be set out in a Trust deed. Your Will then leaves a sum of money or share of your estate to the Trust. If the Trust is to be created after your death then the Trust arrangements will be set out in your Will.

How much money can I put in a Trust?

There is no minimum or maximum amount of money that you can place in a Trust, but the amount will need to be enough to ensure that the running of the Trust is financially manageable – your lawyer can advise you on this.

Letter of wishes

A letter of wishes sits alongside the Trust and provides helpful guidance for Trustees. It outlines exactly how you would like the money in the Trust to be paid out. This can include:

- costs of ongoing care and activities
- information about your child’s likes and dislikes
- specific requests that your child would enjoy or benefit from – such as a trip to their favourite holiday destination, or a life-changing adaption to their home.

This letter is not a legally binding document but is your guidance to the chosen Trustee/s – it is extremely useful for when you are no longer around. Please contact the Wills and Trusts Service for a copy of our Guide to writing your Letter of Wishes.



How will a Trust protect your child with a learning disability?

Safe, secure and no impact on benefits

Setting up a Trust means you can safely and securely leave money for your child without them having to worry about the responsibility of looking after it in their lifetime. Importantly, using the right type of Trust does not affect means-tested benefits or local authority funding. It also means avoiding applications to the Court of Protection for a Deputy to be appointed to deal with their finances if they are not able to look after the money themselves.

Access to funds as soon as they're needed

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. You can also instruct where the money should go on their death, for example to your other children or family members, or to charity.

Mencap's Planning For The Future seminars

Mencap's Wills and Trust team run free Planning For The Future seminars around the UK. Come along for an opportunity to:

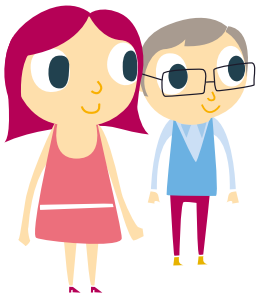
- get valuable face-to-face advice and information about Wills and Trusts
- hear from a legal professional speaker with experience in Trust and Estate law
- get answers to your questions
- meet with other families who are in your situation.

Above all else, get peace of mind.

For further information and to book a place, please contact Gina on **020 7696 6925** or **willsandtrusts@mencap.org.uk**

www.mencap.org.uk/willsandtrusts

“Once I’d gone to the seminar, it was a real watershed moment for me. It wasn’t complicated, it was quite simple. I cannot emphasise enough the relief I feel.” **Jane, James’ mother**



Further information

Remember, what you do today can make a world of difference tomorrow. Write your Will and set up a Trust to protect your loved one’s future.

If you have any questions, or would like further information about Wills and Trusts, please contact Gina:

willsandtrusts@mencap.org.uk

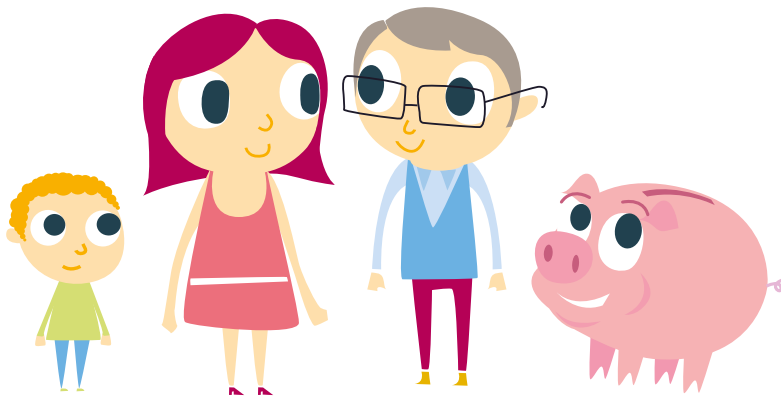
020 7696 6925

www.mencap.org.uk/willsandtrusts

Royal Mencap Society
123 Golden Lane
London
EC1Y 0RT

I feel privileged to support families and carers of people with a learning disability. It's crucial that they understand all of their options when planning for the future.

**Philip, Mencap
recommended lawyer**



“The Trust gives James security”

“James needs two-to-one care for all waking hours, and one-to-one care at night because of his multiple disabilities. We can’t provide that at home, so James attends a specialist residential school. I still oversee all aspects of his life, from when he goes to the dentist to how much fruit he is eating. One day though, I won’t be here any more.

The thought terrifies me, because James is so totally dependent on others. At least my husband and I have made our Wills and set up a Discretionary Trust, so that James will have financial security when he is no longer in education and we’re gone.”

Jane, James’ mother



Royal Mencap Society

Call Mencap's Helpline

on **0808 808 1111**

Email **helpline@mencap.org.uk**

Mencap Northern Ireland

Call the Northern Ireland

Learning Disability Helpline

on **0808 808 1111**

Email **helpline.ni@mencap.org.uk**

www.mencap.org.uk

Mencap Cymru

Call the Wales Learning Disability

Helpline on **0808 808 1111**

Email **helpline.wales@mencap.org.uk**

Mencap Wills and Trusts team

Call Gina on **020 7696 6925**

willsandtrusts@mencap.org.uk



facebook.com/Mencap



[@mencap_charity](https://twitter.com/mencap_charity)

We will always keep your data safe and never share your details. For full information, please refer to our privacy policy online at www.mencap.org.uk/privacy-and-cookie-policy

Registered charity number 222377 (England and Wales); SC041079 (Scotland) 2017.120