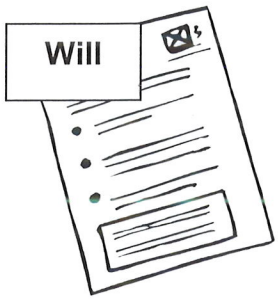
Making a Will



What is a Will?

A Will lets you choose who you want to have your money and the things you own after you die – when you don't need them any more.

A Will is written on paper with the help of a Solicitor. It is a legal document and means that people must carry out the choices you make in your Will. You must sign the document in front of two witnesses who must also sign the document.

What kind of things can you leave in a Will?

You can leave anything you own in your Will.

For example, you can say who you want to have your:

- money
- property – for example, if you own a house
- jewellery
- furniture
- books
- car
- bicycle

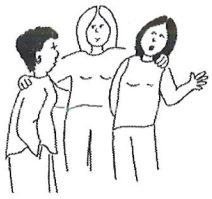
Why should you make a Will?

If you don't make a Will the government will decide who in your family gets your money and your things. There are rules that the government uses to decide who gets your money and your things after you die. This means that friends, supporters, or carers may not get the things you want them to.

For example:
If you have a boyfriend or girlfriend they will not get anything. Neither will your friends.

Think about what you have before you make a will. If you have a lot of money or things then it is sensible for you to make a will; if you do not, it may not be necessary for you to leave a will. Instead everything will go to your family.

Who can you include in your Will?
You can choose to leave some money or any of your things to any named person.



For example you could include:

- Family
- Friends
- Charities

To make a Will

- You must be 18 years old or over
- You must know what things belong to you
- You must understand what a Will is
- You must choose who should get the things you own after you die

Solicitor

When you have decided who you want to leave things to after you die you should ask a solicitor to make a Will for you.

It is also important that if you make a will, you review it from time to time, say every 5 years.

To find a suitable solicitor, you can use the following:

- The Law Society has a Find A Solicitor Helpline on 020 7320 5650 or online at www.lawsociety.org.uk/find-a-solicitor
- The Society of Trust and Estate Practitioners 020 7340 0500 or www.step.org is an organisation for Wills and Trusts specialists, (although not all members are solicitors).

Will-making for people with a learning disability – guidance notes.

This fact sheet is intended as a basic guide to assist the family, friends and carers of a person/people with a learning disability if they wish to make a Will.

A Will is a testamentary document which directs who should receive the assets after a person dies.

In order to make a Will the person wishing to do so must be age 18 or over and have the necessary **mental capacity** to make a Will.

There are legal tests which must be satisfied for a person to have mental capacity to make a Will. They must be able to:

- Understand the nature and effect of what they are doing – they are directing what happens after they die.

- Understand the nature and effect of the property they are disposing of under their Will. They need not necessarily understand the value of what they are disposing of but must have some idea of the type of assets and a rough estimation of value.

- Understand the effect of making a Will in the form they propose – who gets what.

- The person must be able to appreciate the claims of all the people to whom they ought to have regard. This involves a person distinguishing between individuals, such as their family and close friends, to reach some sort of moral judgement. For example, they may choose one person over another because they may be more deserving, less well provided for, in greater need off financial assistance or have greater family responsibilities.

A solicitor is the most appropriate person to decide whether or not a person has the mental capacity to make a Will. If they feel it is necessary, they are able to consult a medical practitioner for their opinion on a person's mental capacity.

If a person with a learning disability wishes to make a Will, their first step should be to go and see a solicitor who has experience in this area. A solicitor should be able to talk through with them the choices of how a person may leave their assets and suggest the best way of doing so.

It is possible that a person may be unable to manage their property and affairs (and perhaps has a Receiver or Deputy appointed by the Court of Protection to deal with their financial affairs), but they may still have capacity to make a Will (known as testamentary capacity). The test is different. In those circumstances a medical statement would need to be obtained and the Court of Protection notified.

Whilst the test for testamentary capacity is ultimately a legal one, not a medical one, the Court will look at the evidence of medical experts. A solicitor should be able to meet with the individual and make an assessment of their capacity and in many cases

it will be obvious that they do or do not have capacity. If in doubt a statement should be obtained from a medical practitioner.

Even if a person has a disability that prevents them from signing, such as they cannot read or write, or they are blind, they can have the Will read over to them and as long as they understand the Will they can either sign by their mark, or someone else can sign for them.

If it becomes apparent that the person does not have the necessary capacity to make a Will there is a procedure for drawing up a Will on their behalf through the Court of Protection if the person has sufficient assets. An application can be made to the Court of Protection for what is known as a 'Statutory Will' for them. The Statutory Will can be made in any form and the person's wishes may be taken into account. Information about this should be obtained directly from the Office of the Public Guardian on 0300 456 0300.

Some common reasons for making a Will (or an application for a Statutory Will), are:

- If they do not make a Will they will die 'intestate'. This means that the law states who receives what from the person's estate. For example, if a couple are unmarried, then one person's estate will not pass to the survivor of them but will instead pass to the deceased's children if they have any, or if none, their parents or extended family. This is often not what the person would want.

- Depending on the value of the person's estate it is also preferable to prepare a Will for tax reasons. It is possible to reduce inheritance tax payable on a person's estate through simple tax planning through a Will.

- The person may wish to leave their assets to someone who is in receipt of means tested benefits or who is unable, by way of their own disabilities, to manage the assets. In these circumstances it is possible to leave the assets in a certain type of trust. Money held in this way does not automatically belong to the individual, and therefore cannot be taken into account when calculating any benefits. It also means that that the funds are managed by persons who are capable of doing so, and who will be able to make voluntary payments to the beneficiary for extras.

For further information about Wills, especially specific to individual needs and requirements, you should consult a solicitor specialising in this area of law.

To find a suitable solicitor, you can use the following:

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