

Mencap's guide to writing your letter of wishes



Notes about this guide

This guide is intended as an outline guide only. It is not intended to be exhaustive and reliance should not be placed on it without seeking more detailed advice from a professional advisor or solicitor in light of your own circumstances. This guide is based on English law and practice in force at the date it was prepared.

The wills and trusts team can provide you with the following guides:

- **Leaving money in trust** - a guide to leaving money to someone with a learning disability. This is a starting point for parents, families and carers to think about their options
- **Mencap's guide to making wills** – a factsheet about making your will, answering common questions and giving tips
- **Mencap's guide to being a trustee** – information about the duties and responsibilities of being a trustee
- **Mencap's guide to guardianship** - information about appointing a guardian for your child who is under 18 years old
- **Mencap's guide to Lasting Powers of Attorney and the Court of Protection** - information about making a power of attorney and/or a deputy application to the Court of Protection (not applicable in Northern Ireland).
- **Mencap's guide to the Mental Capacity Act** – an introductory guide to the Mental Capacity Act 2005
- **Mencap Trust Company** - information about the Mencap Trust Company (a trust company which administers discretionary trust funds for people with a learning disability)
- **A list of specialist legal professionals in your area** - an essential part of drawing up a will or trust is finding a legal professional who has the knowledge and experience to help you provide for a person with a learning disability. We can give you a list of legal professionals in your area who are specialists in preparing wills and trusts
- **Giving times magazine** – the latest edition of the wills and trusts team's annual magazine, with tips, advice and stories
- **An easy-to-read guide to wills** - information for people with a learning disability about writing their will
- **A gift for the future** - information about leaving a gift in your will to Mencap

To order any of the booklets or guides, please contact the wills and trusts team:

Address: 123 Golden Lane, London EC1Y 0RT

Telephone: 020 7696 6925

Email: willsandtrusts@mencap.org.uk

Visit: www.mencap.org.uk/willsandtrusts

Guide to writing your letter of wishes to trustees

If you have set up a trust for your child or family member with a learning disability, either in your lifetime or under the terms of your will, it is common practice to give the trustees guidance as to how you would like them to exercise their powers. A letter of wishes is not intended to be legally binding, but to offer such guidance. It is a separate document from the will, which provides more confidentiality and more flexibility as it can be changed or replaced as your circumstances or those of your family change.

There is no reason why there should not be several different letters, addressed to different individuals, and possibly kept in different locations, although it is helpful for the solicitor who drafts the will to be made aware of the existence of such letters, and where they are located, or who already holds copies.

This guide includes *an example letter of wishes* which you can use as guidance for writing your own personal letter of wishes. It may be helpful to bear in mind the following points when writing or updating your letter:

- Is there a particular routine activity that your child is used to, which you facilitate or pay for that you would like the trustees to continue, such as weekly trips to a day centre or attending certain classes?
- What type of activities does your child currently like to do and you would like the trustees to continue to pay for, such as going to the cinema, a football season ticket, trips to see musical shows, dance lessons etc?
- How many holidays does your child usually go on each year (either with yourself or other family members or friends) and how many holidays would you like the trust to pay for? Are there any relatives overseas that your child would like to visit regularly?
- Are there any big-ticket-items that you would like the trust to pay for, such as a TV and DVD player, a car or bedroom furniture?
- Does your child have particularly expensive equipment needs that the trust should fund, such as a mobility apparatus or a certain type of bed?
- Do you want your trustees to make any income payments or advances of capital from the trust to your child directly, or do you want them only to purchase items for their benefit?
- Would you want the trustees to pay for any medical operations or needs that your child may have in the future?
- Do you want the trust to pay for any additional care costs that may be necessary, or to top-up what is being provided by the Local Authorities?
- Is there anyone in your child's life who may exert an influence over them or take advantage of them financially that the trustees should be aware of?
- Would you want your trustees to pay for your child's funeral from the trust fund?
- Do you have other possible candidates as potential trustees, just in case one of your trustees wishes to retire or should die?

It is important to remember that you should give your trustees as much information as possible about how you wish them to run the trust, so as to put them in the best position to do this.

It is also very important that you regularly review your letter of wishes and update it as your circumstances, or those of your child, change.

Example letter of wishes to the executors and trustees of your will

This letter should be used for guidance purposes only. Please seek more detailed advice from your solicitor in light of your own circumstances.

Please complete wording in italics and include/remove wording in brackets:

By clause [*insert number of clause*] of my will, I have given to you [a share of] my residuary estate to hold it on discretionary trusts. This means you get to decide which of the potential beneficiaries should benefit and how much income/capital they get. In the hope that this letter may be of help to you in exercising your powers, but without trying to impose any binding obligation or to deter you from acting as you think best in the light of changing circumstances, I express the following wishes:

It is my current wish that you exercise your powers to benefit my son/daughter [*insert name of beneficiary with a learning disability, X*]. This is because X will not be able to look after money and property him/herself. I am conscious that by reason of his/her limited mental capacity [and physical disabilities] he/she may throughout his/her life be dependent upon State benefits and Local Authority provision and may also be supported or assisted by one or more charitable organisations. I do not have the means to enable X to be independent for the rest of his/her life, but I am anxious to make the best long term provision that I can for him/her.

It is my wish that you use your discretionary powers to promote the support that X needs from time to time and to supplement the provision that is otherwise available to him/her. In so far as other persons provide personal care for X I would wish them to receive practical financial support from you so far as possible, and I hope that you will also be able to give financial assistance to any charitable organisations that provide services for him/her. You may also be able to improve his/her environment and the standards of amenity that he/she enjoys such as [*to complete with details of the things you know your son/daughter would like to have such as holidays and outings, clothing, music and visual equipment etc.*].

For these reasons I have made the trust as flexible as I can and in seeking to fulfil my objectives I encourage you to be imaginative in the use of your powers. Subject to these main objectives, you may benefit [*insert names of further named beneficiaries in the trust e.g. other children/wider family/charities such as Mencap*].

After the death of X I wish you to pay for his/her funeral expenses, then any monies remaining are to pass to [*insert names of further named beneficiaries in the trust e.g. other children/wider family/charities such as Mencap*] as stipulated in my Will.

Finally, please note that this letter is intended to be confidential to you and is not to be treated as part of the general trust paperwork.

Dated this _____ day of _____ 200[].

Signed
[Print full name]