

Wills and Trusts

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.

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 or Trust document, which provides more confidentiality and more flexibility. It can be changed or replaced as your circumstances or those of your family change.

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 and 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? Which would you 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)? 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 purchasing tablets, game consoles, phones, or bedroom furniture?

- Does your child need equipment 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 Authority?
- 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?
- Do you have other possible candidates as potential Trustees, just in case one of your Trustees wishes to retire or should die?
- Is there anything you want to tell your Trustees not to use the money for? There may be something you know your child will ask to do with the money, that you would worry about them doing.

It is important to 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 your Trustees

This letter should be used for guidance purposes only. Please seek detailed advice from your solicitor about your own circumstances. Please note: the example below refers to a Discretionary Trust in a Will. Some of the wishes would not be compatible with a Disabled Person's Trust. Please speak to a legal professional for more advice.

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 in a Discretionary Trust. 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.]*. You can use this Trust to pay for additional therapies for *[X]* *[complete with details such as physio, speech and language, health care or treatment]*.

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]*. In the event of a change of Trustees, I would like [] to act.

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 202[].

Signed

[Print full name]