Looking ahead, together

A guide to securing the future for your loved one

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This guide is intended as an outline guide only. We strongly recommend seeking professional advice before writing your Will or deciding on your next steps. This guide is based on English law and practice in force at the date it was prepared. It is important to note that the laws of Northern Ireland and Wales may differ from those of England. If you are based in Scotland, please contact Enable Scotland on 0300 0200 101 or email: enabledirect@enable.co.uk. You can also visit their website at: **www.enable.org.uk.**

Create the future for your loved one

As the family or carer of someone with a learning disability, it is only natural to have worries about the future and 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?

Making a Will and setting up a Trust can safeguard your loved one's finances and enable them to continue doing the things they love.

Our vision is for the UK to be the best place in the world for people with a learning disability to live happy and healthy lives.

For more than 75 years, Mencap has been advocating and delivering direct support to people with a learning disability. I have the privilege of leading an organisation that works tirelessly to provide services in the heart of communities across the UK, and to deliver expert advice and information when it's most needed.

One of the ways we are working to make that future a reality is by helping people like you to secure the future for your loved ones through writing your Will and setting up a Trust.

Together, we can create a future that people with a learning disability deserve. We are here to break down barriers and campaign for change.

If you would like to know more about protecting your loved one's future, we are here to help. We provide expert guidance and support for families and carers, to give you peace of mind and to help you create the kind of future you and your loved one both want.

Jon Sparkes

Jon Sparkes
Chief Executive, Mencap

It’s all about teamwork

Brendan and Babra’s Story

Brendan is working hard with Mencap to make a difference for people with a learning disability. What he wants more than anything is a future where everyone with a learning disability has the opportunity to achieve their goals.

Brendan has cerebral palsy and a learning disability. He’s a passionate Arsenal fan, and so is his aunt Babra. They go to most home games together. During the match, Brendan’s voice can be heard loud and clear amongst the crowd.

He also raises his voice to shout about living life with a learning disability, and speaks out on equality and discrimination issues. Through his involvement with Mencap he’s an inspiration to many other young people with a learning disability.

“I’m a passionate, positive person who wants to show the world that people with a learning disability can raise their voice and make a difference, whether we’re singing Whitney Houston at the pub, supporting our football team or protesting outside parliament.”

Babra is Brendan’s biggest fan.

“I’m so proud of Brendan because of his courage to come out every day and achieve so much for himself and other people with a learning disability. But, I fear for Brendan’s future if he didn’t have Mencap’s support.”

We are here for people with a learning disability, for life. Providing support, advice and information to help people like Brendan achieve their goals, and helping families to protect the future for their loved ones.

“People with a learning disability can achieve so much with the right opportunities.” Brendan

Wills and Trusts – what's the difference?

A Will sets out your wishes for dealing with everything you own after your death.

See page 8 for more information

A Trust looks after money, property, investments and other possessions.

See page 10 for more information

"Mencap's Wills and Trusts service is very clear and easy to follow. I gained so much information that was both practical and reassuring."
Parent of a child with a learning disability

The problem with direct inheritance

Leaving a direct inheritance may not be the best way to secure your loved one's future, and here's why:

Loss of benefits

Leaving a lump-sum inheritance – even as little as £6,000 – can affect your loved one's benefit entitlements. Means-tested benefits and support packages 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 loved one's world upside down; impacting everything from vital care and education through to accommodation, transport and social activities.

Your loved one 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 the Deputy may make decisions that don't reflect your wishes.

Financial abuse

Difficulty with managing finances is common for people with a learning disability. The emotional distress of losing a parent or carer could intensify this, making it particularly hard to deal with a lump-sum of money received in a Will, leaving them susceptible to financial abuse from others who wish to take advantage.

The importance of writing a Will

Everything you need to know

Why you need a Will

Everyone should have an up-to-date, professionally written Will. It is the best way to ensure that your wishes for family, friends and causes close to your heart will be carried out when you're no longer here.

What happens if you don't make a Will?

If you don't have a Will, you are what's known as 'intestate' when you die and the law decides who inherits your estate, which may not be what you want.

For more information visit
gov.uk/inherits-someone-dies-without-will

Keeping your Will up to date

It's important to review your Will from time to time, to ensure it reflects changes in your circumstances, or your loved one's life. These include marriage, civil partnership, divorce or changes to your financial circumstances.

The tax implications

Any gifts left to charities, including Mencap, are exempt from Inheritance Tax – so including a charitable gift can sometimes help reduce the tax on your estate. But Inheritance Tax is a complex and often-changing area of law, so we advise you visit the government website for up–to–date information.

For the latest information visit
gov.uk/inheritance-tax

Planning your Will

The first step in planning your Will is to write down your assets and think about the people and causes you'd like to include.

Taking the next step

The next step is to speak to a specialist legal professional. They will guide you through the process, whether you're creating a new Will, or updating an existing one.

Mencap's Wills and Trusts team can provide lists of specialist legal professionals in your area.
Email willsandtrusts@mencap.org.uk.

What is a Trust

Everything you need to know

A Trust is a formal transfer of assets (for example property, shares or cash) to persons who are known as 'Trustees' to hold on the terms that are set out by the person making the Trust. The Trustees use the Trust Fund for the benefit of an individual (your loved one) or a group of individuals who are known as beneficiaries.

How to create a Trust

A Trust can be created in your lifetime and can take immediate effect. Family members can also contribute to the Trust Fund if they wish to.

Alternatively, you can make arrangements for a Trust in your Will, so it can be set up when you are no longer here. In this case, you can leave a sum of money or a share of your estate in your Will to the Trust.

Use a professional

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

The legal professional you choose will discuss your needs and wishes for your loved one with a learning disability, and from this they will advise which of the two types of Trust is most suitable for you.

Contact your bank

You can, if you wish, set a Trust up in your lifetime, before writing your Will. If you plan to set the Trust up in your lifetime, you will need to contact a bank to open an account for the Trust. Your legal professional may also mention that you will need to update your Will at some point to ensure that anything you wish your loved one to receive goes into the Trust.

Got a question? Speak to Mencap's Wills and Trusts Team today. Call **0207 696 6925** or email **willsandtrusts@mencap.org.uk**

How will a Trust protect your loved one?

Safe, secure and no impact on benefits

Setting up a Trust means you can safely and securely leave money for your loved one without them having to worry about the responsibility of looking after it in their lifetime. 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

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.

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 legal professional can advise you on this.

Letter of wishes

A letter of wishes sits alongside the Trust and provides helpful guidance for Trustees. This letter is not a legally binding document, but it can outline 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**

Mencap's Wills and Trusts Team have created a guide to writing your Letter of Wishes.
If you would like more information, please email **willsandtrusts@mencap.org.uk**

Executors, Trustees and Guardians

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

An executor is someone who looks after your Will once you have died, to ensure that your wishes are followed through. We would advise you to appoint at least two Executors. They can be friends, family or a professional advisor such as a qualified lawyer (which could incur additional costs), 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 your executors although there are circumstances where it might be appropriate to choose different people. You need a minimum of two and a maximum of four Trustees, and their role is ongoing and can run into many years, depending on the age of the beneficiary. It is important to choose people you trust, and to ask them in advance if they are willing to take on the role.

For a copy of our Guide to being a Trustee, please email **willsandtrusts@mencap.org.uk**

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.

For a copy of our Guide to Guardianship, please email **willsandtrusts@mencap.org.uk**

Mencap Trust Company

One option for families is our Mencap Trust Company (MTC) who offer both Discretionary Trusts and Disabled Person's Trusts (DPT) and would act as the Trustee of the Trust.

As an independent subsidiary of Royal Mencap society, MTC manages Trusts funds for people with a learning disability, investing and protecting the money in a way that's right for each family. They really get to know families and what a happy life looks like for your loved one – making the money available for the things they want and need. A **not-for-profit**, MTC offer low fees with no hidden costs. Mencap Trust Company has been working with families for nearly 50 years. Contact Mencap Trust Company for an information pack and find out how they could support your family.

"I wanted to leave my son some security in the future without him losing his benefits. I chose Mencap Trust Company because they have experience of working with people with a learning disability." Julia

Who can write your Will or Trust?

How to choose the right qualified legal professional to write your Will and Trust

We do not recommend writing your own Will. It's very important that it is written up by a qualified legal professional who has experience and/or a qualification in this particular area of law. Mencap can provide you with a list of specialist professionals local to you who are STEP (Society of Trust & Estate Practitioners) qualified.

STEP is a global professional body, comprising lawyers, accountants, financial advisors and other practitioners that help families plan for their futures.

Full STEP members, known as TEPs (Trust and Estate Practitioners), are experts in inheritance and succession planning.

The Law Society
Call **020 7320 5650**
Website **www.lawsociety.org**

The Society of Trust and Estate Practitioners (STEP)
Call **020 3752 3700**
Website **www.step.org**

Chartered Institute of Legal Executives (CILEx)
Call **012 3484 1000**

Alternatively, we recommend the following:

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

We strongly recommend that you arrange a brief meeting or conversation on the telephone with the legal professional 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?**

Supporting our future

Your lasting legacy

Trusts need more than one beneficiary to make the Trust work. This means that alongside your loved one with a learning disability, there needs to be at least one other beneficiary named in the Trust, which can be another individual or a charity.

Some parents and carers choose to name Mencap to be the final beneficiary in the Trust, which means if there are any remaining funds in their trust after your loved one's lifetime, they would be given to Mencap as a donation to support our work.

It's no exaggeration to say the Wills and Trusts Service wouldn't be here supporting families and offering this free service without these funds.

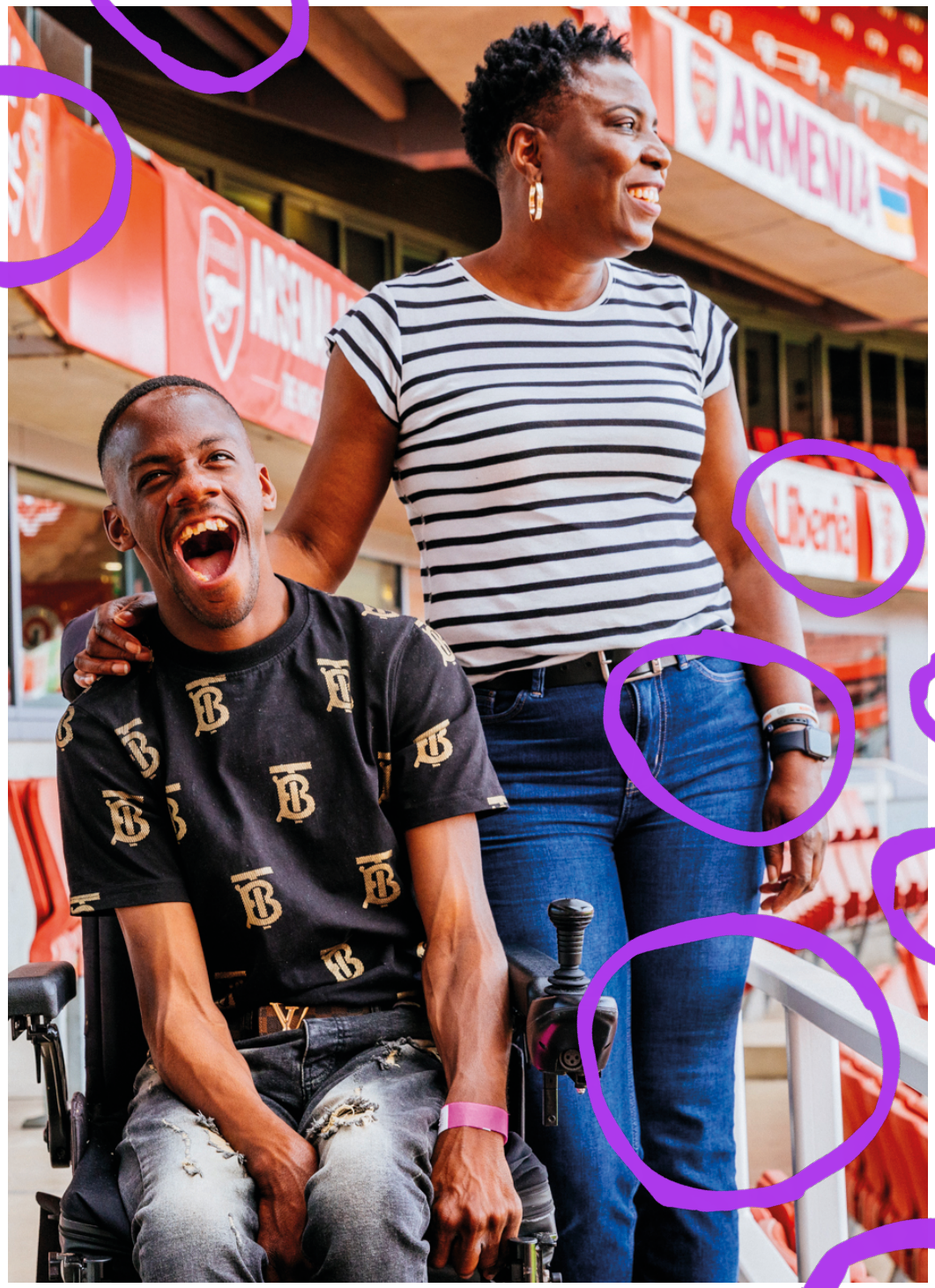
These vital gifts also help Mencap to campaign for equal rights and opportunities, and provide help and advice for people with a learning disability.

If you would like to appoint Mencap, the details you will need are:

Registered Charity Name & Address
– Royal Mencap Society, 6 Cyrus Way, Peterborough, PE7 8HP

Registered Charity Number - 222377

"Every day I speak to families and carers about the worries and fears they have for their loved ones' futures. So many people are still unaware of the importance of this information and there are still so many people we need to reach. We need this vital service to continue long into the future."
Katie Small, Mencap's Wills and Trusts Team



Got a question? Speak to Mencap's Wills and Trusts Team today. Call **0207 696 6925** or email **willsandtrusts@mencap.org.uk**

What to do next

Step 1

Contact Mencap's Wills and Trusts team.

Call: **020 7696 6925**
Email: **willsandtrusts@mencap.org.uk**

Step 2

Find out more by attending a Wills and Trusts webinar.

Visit: **mencap.org.uk/willsandtrusts**

Step 3

Request our list of specialist legal professionals using the phone number or email address above in step 1.

Step 4

Book an appointment with a legal professional to discuss writing a Will and setting up a Trust for your loved one with a learning disability.

Got a question? Speak to Mencap's Wills and Trusts Team today.

Call **0207 696 6925** or email **willsandtrusts@mencap.org.uk**

Planning For The Future

Mencap's Wills and Trusts Webinars

Attending one of Mencap's free online webinars will give you the opportunity to:

- **Get valuable advice and information about Wills and Trusts**
- **Hear from a legal professional with experience in Trust and Estate law**
- **Get answers to your questions**
- **Hear questions and views from other families in similar situations**
- **Hear from our Mencap Trust Company and learn how the Trust set up process works**

"Clear and concise presentation with an empathic approach to disability issues. It is great to feel I can protect my son's assets and support his sibling to manage this process in the future. Thank you."
A parent who attended a Wills and Trusts webinar

Further information

If you need any further help or guidance, or you would like to attend one of our free online Wills and Trusts webinars:
Call: **020 7696 6925**
Email: **willsandtrusts@mencap.org.uk**
Visit: **mencap.org.uk/willsandtrusts**

Attending a Mencap Wills and Trusts webinar enabled Sophia to understand how best to plan for the future of her two young children, both of whom have a learning disability.

"The issue of what happens when me and my husband are no longer here has been haunting me and causing severe anxiety for some time, mainly due to the vulnerability of my two children and their high needs.

I attended the webinar and gained a greater understanding of legislation, how best to safeguard assets, and what to do next to secure the best future for our little ones. Simply put, having this workshop on a virtual platform enabled us to gain knowledge and feel a comfort of collectively discussing important points which have a massive impact for us. We all owe it to our children to give them the very best, even when we are no longer here and Mencap's Wills and Trusts webinars are critical to ensuring that.

It is very clear that Mencap has the expertise to advise in this field, but I was also touched by how much the organisation cares and feels a duty to reach out to people like me."

“If you’ve got a plan it’s got to be on paper, it can’t stay in your heart.”

Sophia, a parent who attended a Mencap Wills and Trusts Webinar

Gina, Mencap Wills and Trusts Officer

To find out more about Wills and Trusts

Call:
020 7696 6925

Email:
willsandtrusts@mencap.org.uk

Visit:
mencap.org.uk/willsandtrusts

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