



Planning for the Future

Version 1.0

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Introduction

This resource has been put together to help you to plan for your child's future. I have used the term 'child' throughout the guide for consistency, but the information in this guide is often more relevant to those over the age of 18.

Many of these sections make reference to 'mental capacity'. This relates to the Mental Capacity Act 2005 which determines how capable someone is of making their own decisions. The term is not intended to cause offence, but rather to be consistent with the guides and websites used to inform this guide. For more information, click here: <https://www.mind.org.uk/information-support/legal-rights/mental-capacity-act-2005/>

If you have any feedback or suggested improvement for this guide, please let me know through the feedback link here: <https://forms.gle/uzTkj1d2k1ZWw3NM9>

Mental Capacity

As mental capacity is an important consideration in many of the subsequent sections of this guide, it may be useful to consider mental capacity assessments upfront.

Mental capacity should be assessed on a decision-by-decision basis, often by the relevant professional (such as a doctor or social worker).

If a separate mental capacity assessment is required, there are a few companies which offer these. The following companies have received good reviews online; however they are not endorsed by SOFT UK, and it is important that you read through the reviews yourself before deciding whether to use one.

- Mental Capacity Consult: <https://mentalcapacityconsult.co.uk/mental-capacity-assessment/>
- Nellie Supports: <https://www.nelliesupports.com/>
- OFH: <https://www.ofhcare.co.uk/mental-capacity/> (no reviews found, but CQC rated OFH as 'good')
- Simply Social Work: <https://www.simplysocialwork.co.uk/>
- Thornton & Lee: <https://www.thorntonlee.co.uk/>

If you know of any other independent mental capacity assessment providers, please let me know through the following link: <https://forms.gle/uzTkj1d2k1ZWw3NM9>

Managing Your Child's Finances

Bank and Building Society Accounts

If your child is under 18, you should be able to monitor their account if the bank can verify your identity (Scope, 2023a).

If your child is over 18 and able to do so, they can complete a form called a third-party mandate which should be available from the bank. This will allow you to manage certain aspects of their account(s) on a short-term basis, but not to make decisions on their behalf (Citizens Advice, 2023a; Scope, 2023a). This is only available to those who have mental capacity (i.e., the ability to understand, weigh up and communicate a decision for themselves).

If your child is over 18 and you need to manage their finances on a longer-term basis, you could consider gaining [Power of Attorney](#) if they have the capacity to put this in place, or becoming their [Deputy](#).

For Scotland only: If someone does not have capacity to manage their finances, you may be able to access certain funds on their behalf to pay bills and meet regular expenses under the 'Access to Funds Scheme'. For more information, click here: <https://www.publicguardian-scotland.gov.uk/access-to-funds/acf1/what-is-meant-by-access-to-funds>

Welfare Benefits and Tax Credits

If you need to collect your child's benefits or tax credits, and your child has mental capacity to, they can fill in a third-party mandate form, which should be available from the bank. If welfare benefits are paid into your child's post office account, your child will need to contact the post office to arrange for you to collect them (Citizens Advice, 2023a).

Your child is entitled to reasonable adjustments when communicating with the Department for Work and Pensions (DWP) under the Equality Act 2010. With your child's permission, you can contact the relevant benefits service to ask for reasonable adjustments for your child (Scope 2023b).

In England and Wales: If the reasonable adjustments are not enough and you need to manage your child's benefits on their behalf, you can contact the relevant benefits helpline and ask to become an appointee (UK Government, 2023a). The DWP will then visit you and your child and fill in the relevant application form. For more information, please visit: <https://www.gov.uk/become-appointee-for-someone-claiming-benefits>

You can choose which bank account you would like the benefits to be paid into: a dedicated appointee account, your child's bank account, a joint account, or your own bank account (Scope, 2023b). Each has advantages and disadvantages. For more information, visit: <https://www.scope.org.uk/advice-and-support/becoming-an-appointee/>

If you need to manage your child's tax credits on their behalf, you can request a tax credit claim form from the HMRC and complete this (UK Government, 2023b). For more information, please visit: <https://www.gov.uk/getting-help-with-your-tax-credits-claim/appointees>

In Scotland: You can apply to become an appointee for someone who is unable to make or communicate decisions by contacting the benefits administrator. This may be the DWP or Social Security Scotland (Citizens Advice Scotland, 2023). For more information, please visit: <https://www.mygov.scot/acting-on-behalf-of-someone-applying-for-benefits>

In Northern Ireland: You can become an appointee by contacting the relevant administrator. The Department for Communities (DfC) will then arrange an interview with you and a visit with your child. For more information about who to contact, click here: <https://www.nidirect.gov.uk/articles/becoming-appointee-social-security-benefits>

The tax credits process is separate (as described above).

For England, Northern Ireland, Scotland and Wales: Alternatively, you could gain [Power of Attorney](#) or [Deputyship](#) (or equivalent).

Direct Payments

In Wales: If your child receives direct payments, your local authority may allow a 'suitable person' to manage these payments if your child does not have mental capacity. This may be an [attorney](#), [deputy](#), appointee or other person (British Bankers' Association). For more information, please visit: <https://www.citizensadvice.org.uk/wales/family/looking-after-people/direct-payments-w/direct-payments-who-can-have-them-w/>

Making Decisions for Your Child

Intervener

In Scotland: An Intervener can be appointed to give someone authority to make a one-off decision. For more information, please click here: <https://www.publicguardian-scotland.gov.uk/intervention-orders>

Power of Attorney

If your child has mental capacity and is over 18, they can grant someone else Power of Attorney. There are different types of Power of Attorney, which grant you different rights and responsibilities:

Ordinary Power of Attorney

- This allows you to manage their financial affairs either completely, or for certain matters only (called a 'limited power of attorney') for a temporary period (Citizens Advice, 2023a).
- **In Northern Ireland and Scotland:** This is called 'General Power of Attorney'

Lasting Power of Attorney (LPA)

- **In England and Wales:** This allows you to manage their affairs ('health and welfare' decisions or 'property and financial affairs' or both) for a long period. These types must be registered before they can be used. Property and financial LPAs can be used from registration, or only when the donor does not have the capacity to make a decision. However, health and welfare LPAs can only be used if the donor does not have the capacity to make a particular decision themselves (Citizens Advice, 2023a).
- Each type of LPA costs £82 to set up. If your child receives certain benefits, there may be an exemption for these costs (MoneyHelper, 2023a).
- **In Scotland:** The names of these Powers of Attorney are different, although the process and responsibilities are similar. They are: Continuing (for financial decision), Welfare (for personal welfare) and Combined Welfare and Continuing Powers (for both; Citizens Advice Scotland, 2023). The cost is £81 for each type, although exemptions may be available (MoneyHelper, 2023c).
- **In Northern Ireland:** There is no Lasting Power of Attorney.

Enduring Power of Attorney

- **In England and Wales:** It is no longer possible to make a new Enduring Power of Attorney, although existing ones can continue to be registered (Citizens Advice, 2023a).
- **In Northern Ireland:** Enduring Powers of Attorney are still used to grant someone the power to make property and financial decisions only – either generally or specifically. You cannot be granted Power of Attorney to make decisions about someone's health and welfare (MoneyHelper 2023b). There is no cost to set up the Enduring Power of Attorney if you do not use a solicitor, however there is a registration fee which will be indicated by the Office of

Care and Protection. The cost of this fee may be reduced in certain instances (MoneyHelper, 2023b).

In Scotland: Powers of Attorney need to be registered with the Office of the Public Guardian.

You do not need a solicitor to set up a Power of Attorney, although you may find this helpful if you are finding the process difficult. To apply for Power of Attorney, please visit the relevant website:

- **England and Wales:** <https://www.gov.uk/power-of-attorney>
- **Scotland:** <https://www.mygov.scot/power-of-attorney/setting-up-a-power-of-attorney>
- **Northern Ireland:** you will need to complete a particular form available from your solicitor or stationer specialising in legal documents. For more information, click here: <https://www.moneyhelper.org.uk/en/family-and-care/long-term-care/setting-up-a-power-of-attorney>

Deputyship/Guardianship/Controller

In England and Wales: If someone does not have mental capacity, they cannot grant someone Power of Attorney. Instead, you can apply to the Court of Protection to become a deputy. This allows you to make decisions about their personal welfare, property or financial affairs on their behalf. Deputies for personal welfare decision are only required if actions cannot be carried out without the court's authority or when there is no other way of settling the matter, and are therefore uncommon (Contact, 2023). There is a £371 application fee for each type of deputyship, with further costs if a court hearing is needed. There is also an annual supervision cost which depends on the assets you are managing (UK Government, 2023c). For more information and to apply, visit:

<https://www.gov.uk/become-deputy>

The **Scottish equivalent** is called a Guardian; and the application needs to be submitted to the appropriate sheriff court. The cost varies, and it is recommended that you involve a solicitor in the application. For more information, please visit: <https://www.mygov.scot/guardianship>.

In Northern Ireland: If someone has not granted someone else Power of Attorney, and no longer has the capacity to do so, you can apply to become a controller to manage their finances. You will then need permission from the Office of Care and Protection to make decisions on their behalf (MoneyHelper, 2023b). There is a cost associated with this which will be specified by the Office of Care and Protection. For more information or to apply, please click here: <https://www.justice-ni.gov.uk/articles/how-apply-become-controller>

Planning For Your Child's Future After Your Death

Wills and Trusts

Planning for your child's future after your death may feel like a difficult topic, but it is important to ensure that plans are in place to support them. If you do not leave a will, the rules of intestacy will apply, which means that your estate will be divided between your partner and children according to the intestacy rules in your region. To find out how this might affect your family, click here:

<https://www.gov.uk/inherits-someone-dies-without-will>

These intestacy rules might be harmful to your child for a number of reasons:

- According to Mencap, a lump-sum inheritance of £6,000 or more can affect your child's benefit entitlements, resulting in inheritance funds being used to pay for necessary services and activities (Mencap Wills and Trusts Guide).
- If your child does not have the capacity to manage their inheritance or give a valid receipt for this, they will require a Deputyship order, which can be a costly and time-consuming process (Mencap Wills and Trusts Guide).
- Large lump-sum inheritances can make people vulnerable to financial abuse (Mencap Wills and Trusts Guide).

For these reasons, it is really important to consider leaving a will.

If you write a will, it may be tempting to leave more money to one child with the expectation that they will look after their sibling(s), however, this is not recommended. This is because, if that child has financial difficulties, gets divorced, falls out with their sibling(s) or dies, that money will no longer be available to their sibling(s). Instead, **you may wish to consider setting up a trust fund, which offers your children more protection** (Mencap Wills and Trusts Guide).

Trusts can be set up during your lifetime, or instructions can be left in your will to set up a trust after your death. There are a number of benefits to setting up a lifetime trust:

- You can start using it immediately (Mencap, 2023).
- Other family members can leave money into this trust if you tell them the trust name* (Mencap, 2023).
- You can buy property for your child(ren) during your lifetime (Mencap, 2023).
- It can be used for their savings (as long as the money is not already in their name e.g., in a bank account) and for lump sums from life policies (Mencap, 2023).

*It is really **important to tell any relatives who may leave money to your child that this money should be paid into their trust, rather than left as a gift** (to avoid the potential difficulties listed above).

There are two types of trusts: discretionary trusts and disabled person's trusts (also called vulnerable person's trusts). See the table below for more information:

| Discretionary Trusts | Disabled Person's Trusts |
|---|---|
| <ul style="list-style-type: none"> • Future proof – money can be transferred to different trust if tax regime changes (Mencap, 2023). • Efficient if £325,000 or less. If the trust value is more than this, it will need to be converted to a disabled person's trust (relatively easy process; Mencap, 2023). | <ul style="list-style-type: none"> • Tax advantages if the main beneficiary is a disabled person (i.e., in receipt of certain benefits including Disability Living Allowance (DLA) or Personal Independence Payments (PIP); Scope, 2023c). • No more than £3,000 or 3% of the trust value (whichever is lower) can be given to anyone other than the disabled person per year (Low Incomes Tax Reform Group, 2023). |

It is important to choose trustees to manage the trust funds. These trustees should understand the beneficiary's best interests and be reliable (Scope, 2023c). You may choose a friend or relative, a paid professional or a trust company such as Mencap. You need 2-4 trustees, although a trust company can be a sole trustee (Scope, 2023c).

Your trust should also be accompanied by a letter of wishes. This specifies your preferences for distribution of trust funds. You may wish to include a second letter of wishes detailing the care and support needs of your child. This will help the trustees to distribute the funds as appropriate (Mencap, 2023).

Please ensure that you seek legal advice before writing a will and/or setting up a trust. Mencap recommend the following societies (Mencap Wills and Trusts Guide):

- 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

For families in Scotland and Northern Ireland, the following societies may be helpful:

- The Law Society of Scotland: 0131 226 7411; <https://www.lawscot.org.uk/>
- The Law Society of Northern Ireland: <https://www.lawsoc-ni.org/>

Guardianship

If you are thinking about writing or updating a will, you may wish to think about appointing someone to act as a 'testamentary guardian'. A guardian is someone who will look after your child if you die before they turn 18 and there are no other adults with parental responsibility for them.

Grandparents and siblings do not automatically become guardians of their grandchildren or siblings in the event of parental death. Similarly, step-parents do not automatically have parental responsibility for step-children, although they can apply for this. If you do not specify a guardian for your child, the court will determine who will look after your child (Legal and General, 2023).

For more information, you may wish to visit: <https://childlawadvice.org.uk/information-pages/testamentary-guardianship/>

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