

Wills and trusts

This factsheet may help you if you care for someone who has a mental illness. You might have thought about how your money and things you own (your assets) can pass to them when you die. This factsheet looks at how you can plan this by writing a will and setting up a trust. In this factsheet, we call the person you want to leave your money and assets to 'your relative'.

 KEY POINTS

- Planning ahead can help make sure your relative gets the most out of their inheritance.
- An inheritance could affect your relative's entitlement to benefits. And could lead to them being charged for social care services. A 'discretionary trust' may help to avoid these problems.
- A discretionary trust means that your money and assets pass to 'trustees' instead of your relative. The trustees will hold your money and assets in trust for your relative. They will make decisions about when your relative can have money.
- It is possible to write your will yourself. However, if the issues are complicated or if you plan to set up a trust, it is important to speak to a solicitor.

This factsheet covers:

1. [Why should I make a will?](#)
2. [What if my relative inherits a lump sum?](#)
3. [What are discretionary trusts?](#)
4. [What is Rethink Trust Corporation \(RTC\)?](#)
5. [How can I find a solicitor?](#)

1. Why should I make a will?

A will allows you to decide who will get your money and assets when you die.¹ Your assets are all the things you own. They can include things like your house or shares. Making a will means that you can:

- avoid disputes about inheritance,
- make arrangements for your funeral,²
- make specific gifts, for example, if some of your belongings have sentimental value,
- plan tax payments,³
- set up trusts,⁴ and
- appoint a trusted person or people to deal with your money and assets after you die. These are known as 'executors'.⁵

How do I make a will?

You can make a will yourself. You can buy a 'will pack' where you can fill in a will yourself. But these are only suitable if your will is going to be very simple.

You should see a solicitor about your will if:⁶

- your will is not simple. This will depend on what your money and assets you have, and who you want to leave them to,
- if your money and assets are very valuable and worth a lot of money,
- you have any questions about your will or need advice,
- you share a property with someone who isn't your husband, wife or civil partner,
- you want to leave money or property to a dependant who can't care for themselves. This includes children under 18 years old,
- you have several family members who may make a claim on your will such as a second spouse or children from another marriage,
- your permanent home is outside the UK,
- you have property overseas, or
- you have a business.

For information on how to find a solicitor see section 5 of this factsheet.

Some banks and other financial institutions have will writing services. You have to pay to use these. You can ask your bank or search on the internet to find these services.

The Law Society has produced a booklet called 'Your guide to making a will'. You can download it at: www.lawsociety.org.uk/for-the-public/common-legal-issues/making-a-will/.

Where should I keep my will?⁷

You need to keep your will safe so it can be found when it is needed. You should tell your executors where your will is.

You can keep your will somewhere safe at home. Or you could store it in the following places. They may charge a fee to store it.

- At your bank
- At your solicitors
- At a company that offers the storage of wills - you can search for these online
- at the London Probate Service

The London Probate Service

Telephone: 0207 421 8509

Address: Principal Registry of the Family Division, 7th Floor, 42-49 High Holborn, First Avenue House, Holborn, London WC1V 6NP.

Website: <https://courtribunalfinder.service.gov.uk/courts/london-probate-department>.

What happens if I don't make a will?⁸

If you don't have a will when you die, this is called 'dying intestate'.

If you die without a will:

- some things might not happen the way you'd like them to,
- your money and assets might not be shared out in the way you think is fair,
- things can be more complicated,
- a relative might need to apply to court to get what is known as Letters of Administration, and
- your money and assets will go to your relatives in a set order of priority.

If you want to find out who will inherit your money and assets if you die without a will you can use the following government website:

www.gov.uk/inherits-someone-dies-without-will.

If you have questions about intestacy you can get advice from a solicitor. For information on how to find a solicitor see section 5 of this factsheet.

You can find out more about wills and dying without a will on this government website: www.gov.uk/wills-probate-inheritance/overview

2. What if my relative inherits a lump sum?

You may be worried about your relative's ability to handle a lump sum of money. You might wonder whether:

- they would spend the money quickly rather than making it last,
- they would not spend it wisely,
- they would give the money away or be too vulnerable to look after the money properly,
- it would affect their benefits, and
- it would make them have to pay for social care or a care home.

Benefits

Your relative might be claiming benefits because of a low income. These are called 'means-tested benefits', and they include.

- Income-Related Employment and Support Allowance
- Income-Based Jobseeker's Allowance
- Universal Credit
- Income Support
- Council Tax Support
- Housing Benefit

These benefits are affected by any income, savings or other assets that your relative gets. If they have over:⁹

- £6,000 in savings, their benefits will be affected, and
- £16,000 it will mean that they cannot get means-tested benefits.

An inheritance paid as a lump sum would become part of your relative's savings. This means a lump sum might lead their benefits to be reduced.

Other benefits are not affected by income, savings or other assets under the current benefits rules. These are called 'non means-tested'. They include.

- Disability Living Allowance
- Personal Independence Payment
- Contribution-Based Employment and Support Allowance (CB ESA)

CB ESA only lasts for 12 months if you are in the work related activity group. There is no time limit if you are in the support group.

You can find more about '**Employment and Support Allowance (ESA)**' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

If you want further advice on welfare benefits you can contact our Advice Service on:

- email at advice@rethink.org providing details of the situation and your questions, or
- call us on 0300 5000 927 (Monday to Friday, 9.30am-4pm, excluding bank holidays).

You can also get advice from Citizens Advice. If you want face-to-face advice their website will tell you your local office. Or you can call them and ask.

Citizens Advice

Give free, independent, about your rights and responsibilities.

Telephone: 03444 111 444

Website: www.citizensadvice.org.uk

Care homes and social care services

Having savings could mean that your relative would have to pay costs if they live in a care home or get social care services.

You can find more about '**Charging for Residential Care**' and '**Charging for Social Care**' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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3. What are discretionary trusts?

There are different types of trusts. A discretionary trust is one type of trust you might find useful for your relative.

A discretionary trust means that:

- your relative does not get their inheritance paid directly to them when you die,
- your money and assets will pass to other people, called 'trustees', and
- the trustees hold the money and assets on trust for your relative.

You can choose who you would like to be a trustee. It is important to choose someone you think is reliable.

The trustees will decide whether or not to give your relative money. You can give the trustees instructions setting out when you expect them to give your relative money. But they can decide not to. This is why the trust is called 'discretionary'.¹⁰

What are the benefits of a discretionary trust?

The potential benefits of a discretionary trust include the following.

- Your relative will not own the money in the trust. So they will not be able to spend it quickly or unwisely.
- The money in the trust will not reduce their entitlement to benefits or increase the amount they have to pay towards social care.
- You can tell the trustees what you would like the money to be used for.¹¹

What are the negatives of a discretionary trust?

The potential negatives of a discretionary trust include the following.

- The trustees do not have to pay your relative.¹²
- Your relative might not get all the money in the trust.¹³
- There may be some tax disadvantages, which you would need to check with your solicitor.

How do I set up a discretionary trust?

You can set up a trust by signing a trust deed. The trust deed should be drawn up by someone qualified to do so, like a solicitor.¹⁴

It is important to speak to a solicitor who is experienced in dealing with wills and trusts issues. They can make sure that the discretionary trust is set up in a way that:

- maximises the benefits, and
- reduces the negatives.

It is important to note that laws change. So there is no guarantee that money held in a discretionary trust will always be treated the same way in the future.

You can find out more about trusts on this government website:

www.gov.uk/trusts-taxes/overview.

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4. What is Rethink Trust Corporation (RTC)?

Rethink Mental Illness has set up Rethink Trust Corporation (RTC).

RTC can be a trustee if you set up a trust. RTC has expertise in managing trusts as well as an understanding of mental illness. So RTC understands the circumstances and needs of people who are affected by mental illness. This means that it can make well thought out decisions if your relative asks for money from the trust.

It is not a charity and it has to charge fees in order to cover expenses.

If you would like more information about Rethink Trust Corporation and how to set up a trust with them please contact them directly.

Rethink Trust Corporation

Telephone: 0300 222 5702

Address: Rethink Trust Corporation Enquiries, FREEPOST RSYC-ZCJT-RSRC, First Floor Castlemill, Burnt Tree, Tipton, DY4 7UF

Email: RTC@rethink.org

Web: www.rethink.org/carers-family-friends/set-up-a-trust-fund;

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5. How can I find a solicitor?

The Society of Trust and Estate Practitioners (STEP) keeps records of solicitors that specialise in wills and trusts.

You can search for solicitors in your area on their website or you can call them. They can send you a list in the post.

Society of Trust and Estate Practitioners (STEP)

Telephone: 020 3752 3700

Email: step@step.org

Website: www.step.org/member-directory; (you can search for solicitors using this link).

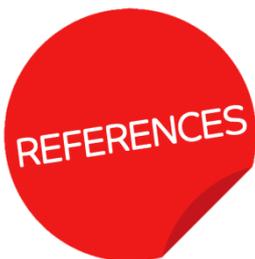
You can also search the **Law Society** website for a list of solicitors who can help with wills and trusts. Or you can call them.

The Law Society

Telephone: 020 7320 5650

Website: www.lawsociety.org.uk/find-a-solicitor; (solicitor search page)

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- ¹ Government Digital Service. *Making a will – Overview*. www.gov.uk/make-will/writing-your-will (accessed 31.01.2017).
- ² The Money Advice Service. *Why you should make a will*. www.moneyadviceservice.org.uk/en/articles/why-you-should-make-a-will (accessed 31.01.17).
- ³ As note 2.
- ⁴ The Law Society. *Your guide to making a will*. Booklet. 2016
Downloaded from www.lawsociety.org.uk/for-the-public/common-legal-issues/making-a-will/; (accessed 31.07.17).
- ⁵ The Law Society. *Common legal issues – Probate – If the person who has died leaves a will*. www.lawsociety.org.uk/for-the-public/common-legal-issues/probate/ (accessed 31.01.17).
- ⁶ Government Digital Service. *Making a will – Write your will – When you need legal advice*. www.gov.uk/make-will/writing-your-will (accessed 31.01.2017).
- ⁷ Government Digital Service. *Making a will – Write your will – Keep your will safe*. www.gov.uk/make-will/writing-your-will (accessed 31.01.2017).
- ⁸ The Law Society. *Common Legal Issues – Probate – If there is no will*. www.lawsociety.org.uk/for-the-public/common-legal-issues/probate/ (accessed 31.01.17)
- ⁹ Ian Greaves. *Disability rights handbook* 41st Edition. London: Disability Rights UK; 2016. Page 152, chapter 22, para 24.
- ¹⁰ Government Digital Service. *Trusts and taxes – Types of trust – Discretionary trusts*. www.gov.uk/trusts-taxes/types-of-trust/; (accessed 31.01.17).
- ¹¹ The Society of Trust and Estate Practitioners. *Why make a trust? – Discretionary trusts*. Booklet. 2015.
[\[www.step.org/sites/default/files/Comms/leaflets/2015/why-make-a-trust-2015.pdf\]](http://www.step.org/sites/default/files/Comms/leaflets/2015/why-make-a-trust-2015.pdf); (accessed 31.01.17).
- ¹² As note 10.
- ¹³ As note 10.
- ¹⁴ As note 10.

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This factsheet is available
in large print.

Rethink Mental Illness Advice Service

Phone 0300 5000 927
Monday to Friday, 9:30am to 4pm
(excluding bank holidays)

Email advice@rethink.org

Did this help?

We'd love to know if this information helped you.

Drop us a line at: feedback@rethink.org

or write to us at Rethink Mental Illness:

RAIS
PO Box 17106
Birmingham B9 9LL

or call us on 0300 5000 927.

We're open 9:30am to 4pm
Monday to Friday (excluding bank holidays)



**Leading the way to a better
quality of life for everyone
affected by severe mental illness.**

For further information
on Rethink Mental Illness
Phone 0121 522 7007
Email info@rethink.org



[facebook.com/rethinkcharity](https://www.facebook.com/rethinkcharity)



twitter.com/rethink_



www.rethink.org

Need more help?

Go to **www.rethink.org** for information on symptoms, treatments, money and benefits and your rights.

Don't have access to the web?

Call us on 0121 522 7007. We are open Monday to Friday, 9am to 5pm, and we will send you the information you need in the post.

Need to talk to an adviser?

If you need practical advice, call us on 0300 5000 927 between 9:30am to 4pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

Can you help us to keep going?

We can only help people because of donations from people like you. If you can donate please go to **www.rethink.org/donate** or call 0121 522 7007 to make a gift. We are very grateful for all our donors' generous support.



Rethink Mental Illness is a partner in:

