



## Guidance

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#### Drafting and preparation of wills

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### Status

This guidance is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

### Who is this guidance for?

All authorised firms and their employees responsible for the drafting or preparation of wills.

### Purpose of this guidance

To highlight different areas of concern associated with will writing and the professional obligations of those responsible for the preparation and drafting of wills.

### Quality

Previous [research \[https://upgrade.sra.org.uk/globalassets/documents/consumer-reports/lsb-will-writing-reports.pdf\]](https://upgrade.sra.org.uk/globalassets/documents/consumer-reports/lsb-will-writing-reports.pdf) by us and our partner organisations have identified a number of will writing quality failures.

The most common quality failures identified in the preparation of wills include:

- **Inadequacy** where wills fail to fully account for an estate or take certain outcomes into consideration, potentially leading to an invalid will;
- **Legality** where actions specified in a will are potentially illegal;
- **Inconsistency** where the language and logic used in a will is contradictory;
- **Detail** where items, people and requests are missed out of a will or described in insufficient detail.



You have an obligation to take account of your client's personal circumstances (paragraph 3.5 of the [Code of Conduct for solicitors, RELs and RFLs](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/1) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/1]). Furthermore, paragraph 3.3 of the Code of Conduct for solicitors, RELs and RFLs requires you to maintain your competence to carry your role and keep your skills up to date while paragraph 3.6 extends this requirement to those you manage.

As a firm, you have a duty to ensure your employees are competent in their role and you should have an effective system for supervising staff (paragraph 4.3 and 4.4 of the [Code of Conduct for firms](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/1) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/1]). As a solicitor or REL if you supervise someone you are accountable for their work.)

In the context of will writing the failings identified above indicate areas you might focus on to ensure you satisfy your obligations.

### **The appointment of executors**

Your client might decide to appoint you, your business or other people in your business as executors in the will you are drafting for them.

However, you must not exploit a client's lack of knowledge by leading them to believe that appointing a solicitor as an executor is essential or that it is the default position for someone making a will.

Principle 7 of the Principles requires you to act in the best interests of each client. In this context this means not encouraging clients to appoint you or the business you work for as their executor unless it is clearly in their best interests to do so.

In some cases it might be beneficial for a client to appoint a solicitor to act as an executor - for example, if their affairs are complex, or there are potential disputes in the family. However, in other cases there may be little or no advantage to the client - for example, if their estate is small or straightforward. A professional executor is likely to be more expensive than a lay person and the client should be advised about this.

Before drafting a will which appoints you or your business (or someone else in the business) as the executor(s), you should be satisfied that the client has made their decision on a fully informed basis. This includes:

- explaining the options available to the client regarding their choice of executor;
- ensuring the client understands that an executor does not have to be a professional person or a business, that they could instead be a family member or a beneficiary under the will, and that lay executors can subsequently instruct a solicitor to act for them if this



proves necessary (and can be indemnified out of the estate for the solicitors' fees);

- recording advice that is given concerning the appointment of executors and the client's decision.

### **Delivering will writing services**

In addition, as a firm you should also make sure that suitable quality controls are in place, and so this may include systems for sampling and checking will writing work. Issues that you might need to manage include:

- making sure that clients have the necessary testamentary capacity and, where appropriate, that a doctor's opinion is obtained to evidence this;
- situations where you are concerned about someone's undue influence on your client;
- monitoring for frauds and scams (particularly if you provide online will writing services);
- ensuring that full information regarding the client's assets and immediate family is obtained and retained;
- recording processes to make sure there are records of any reasons for excluding family members who might otherwise be expected to benefit, and that the implications of this are explained to the client;
- making sure wills are drafted in a timely manner, having regard to any particular circumstances (eg if the client is in hospital);
- situations where clients do not return the signed version of their will within a reasonable time.

### **Gifts to you or someone in your business**

If you draft a will where the client wishes to make a gift of significant value to you or a member of your family, or an employee of your business or their family, you should satisfy yourself that the client has first taken independent legal advice with regard to making the gift.

This includes situations where the intended gift is of significant value in relation to the size of the client's overall estate, but also where the gift is of significant value in itself. Paragraph 6.1 of each of the Codes requires you not to act if there is an own interest conflict or a significant risk of an own interest conflict. In a situation like this, you will usually need to cease acting if the client does not agree to taking independent legal advice.

There may be some exceptions where you can continue to draft the will even if the client has not received independent legal advice for example, if you draft wills for your parents and the surviving parent wishes to leave the residuary estate to you and your siblings in equal shares.

However, whether it is appropriate to do so will depend upon the specific circumstances of each situation, and in each case you should consider whether your ability to advise, and be seen to advise, impartially is undermined by any financial interest or personal relationship which you have.

## **Storage of wills**

The Probate Service offers a [low cost wills storage service](https://www.gov.uk/government/publications/how-to-deposit-a-will-with-the-probate-service-a-guide-for-people-who-want-to-deposit-a-will-for-safekeeping-pa7) [https://www.gov.uk/government/publications/how-to-deposit-a-will-with-the-probate-service-a-guide-for-people-who-want-to-deposit-a-will-for-safekeeping-pa7]. It may be in a client's best interests to use this service rather than pay your business or a bank for storage services. Even if your business does not charge clients to store the original copy of their will, it may be more convenient for some executors if a will is stored by a central official service.

Some clients may prefer you or your business to store the original copy of their will, particularly where it can be retrieved easily and quickly by their executors or if they wish to make an alteration. You should advise your client about storage options that are available. The most important thing is to make sure your client understands the importance of their executor(s) knowing where to locate the original copy of the will following the client's death.

- make sure that all their executors know where to find the original version of the will;
- keep a copy of the will at their home with the relevant details;
- keep you informed of any changes to their address or contact details, and
- review their will regularly to make sure it still reflects their wishes and circumstances.

## **Further help**

If you require further assistance, please contact the [Professional Ethics helpline](https://upgrade.sra.org.uk/contactus) [https://upgrade.sra.org.uk/contactus].

You can find best-practice guidance for will writing work in the [Law Society Wills and Inheritance Protocol](https://www.lawsociety.org.uk/support-services/accreditation/documents/wigs-wills-and-inheritance-protocol/) [https://www.lawsociety.org.uk/support-services/accreditation/documents/wigs-wills-and-inheritance-protocol/].

There is also a [Code for Will Preparation](https://www.step.org/public/step-will-code) [https://www.step.org/public/step-will-code], published by the Society of Trust and Estates Practitioners.