

FOCUS

SWW

“THE SUCCESSION LAW EMAG”

IN THIS ISSUE:

WRITING YOUR WILL

WHY WRITE A LETTER OF WISHES?

POLYGAMOUS MARRAIGES & SUCCESSION

AND MORE...

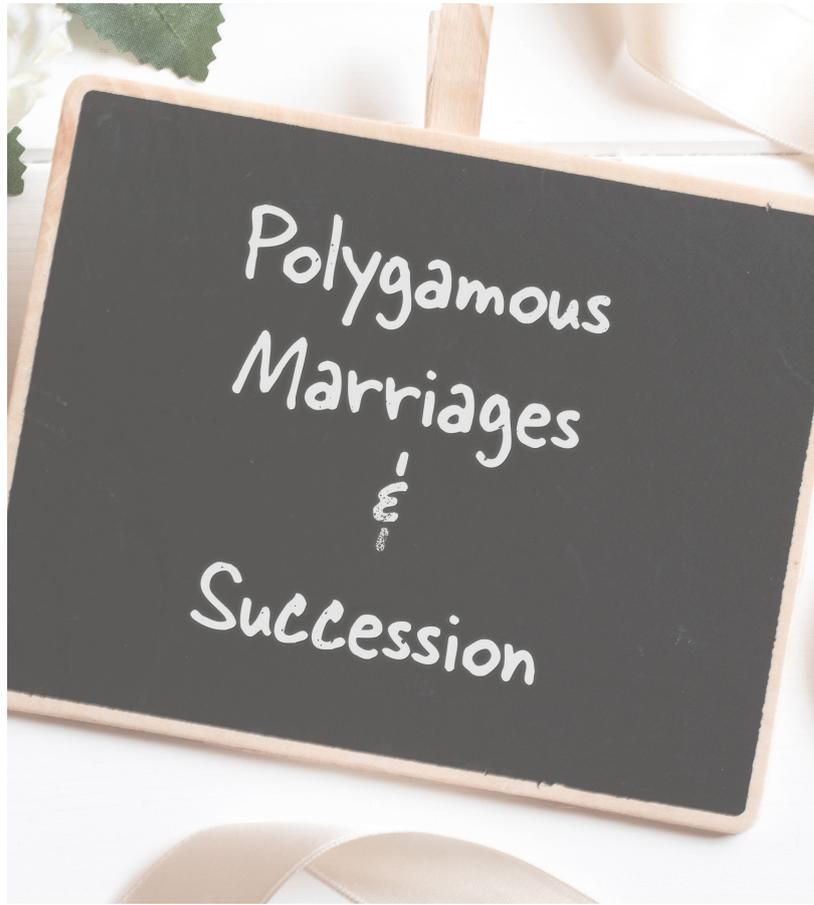


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A letter from the Director General

Dear reader,

Welcome to the Spring issue of Focus SWW. Now approaching 3 years in publication it remains the only Estate Planning emagazine catering to both the public and the professional covering Wills, Lasting Power of Attorney, Trusts as well as Funeral Planning and much more.

Spring is for many the best time of year, not just because the weather begins to warm, but also for all the new life and new beginnings which the season brings.

Life as we know is becoming all the more complex. As families grow, the need for writing a Will is all the more important. A Will ensures peace of mind for you and your loved ones knowing that in the event of your death everything has been taken care of. Writing a Will does not need to be difficult or stressful.

It used to be considered that Solicitors were your only choice, however for over 25 years now there has been an alternative. Get your Will written by a professional Will Writer who is a member of the Society.

This year the Society celebrates its 25th anniversary which means since 1994 we've enforced a code of practice, as well as other mandatory requirements such as insurance and annual training requirements. Over this time we have



become the leading body representing Will Writers and no longer just in England and Wales.

Through our training facility The College of Will Writing we have now introduced all new online courses which has elevated the Society of a truly global status with members in Europe, Asia and the Middle East.

If you're looking to locate a member in your local area, either visit our website or call the Society head office and a member of the team will be more than happy to help and assist in any way possible.

A handwritten signature in black ink, appearing to read 'Brian W Mcmillan', written in a cursive style.

Brian W Mcmillan
Director General
The Society of Will Writers and Estate Planning Practitioners

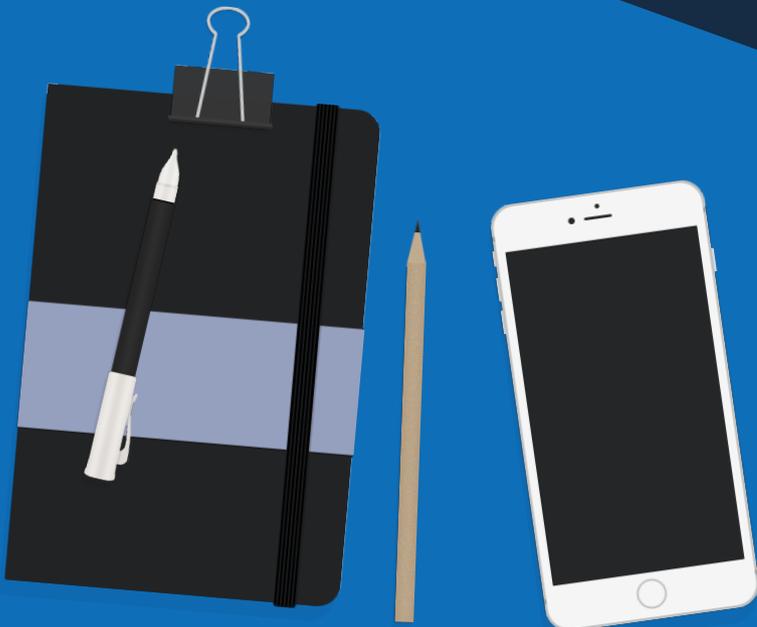


WANT TO MARKET YOUR BUSINESS WITH THE SWW?

The SWW is pleased to offer a variety of advertising opportunities within Focus SWW as well as across our other platforms.

To find out more information, or to see our media pack and rate card, please contact either thomas.s@willwriters.com or anthony@willwriters.com or call 01522 68 78 88

Quarter, half and full page adverts are available within Focus SWW.
All advertisement sizes and specifications are detailed in our media pack.





WRI G

A close-up photograph of a person's hands holding a pen over an open book. The image is overlaid with the word "WRITING" in large, semi-transparent, light-colored letters. The background is a soft, out-of-focus blue and purple hue.

WRITING

WRITING

WHAT IS A WILL AND WHY SHOULD YOU WRITE ONE?

A Will is an important legal document in which the Will maker (also known as a testator) can state how they would like their belongings (assets, chattels and property) to be distributed when they are no longer around. The document also gives specified people (called executors) the power to handle the estate after the Will Maker's death.

A Will is ordinarily revoked by any new Will or by marriage. It can be used to appoint guardians for minor children and prevents someones estate passing in accordance with the laws of intestacy. These laws or rules govern what will happen to someones 'things' if they died without a Will. More information on Intestacy can be found [here](#).

There are a number of reasons why you may wish to write a Will. Here are some of the most common reasons:

- You've got divorced and no longer wish for your ex-spouse to inherit on your death
- You've had a child or become a grandparent and would like to make provision for the child. In the case of a child, you may wish to appoint guardians for the infant
- If you've inherited money yourself, you might want to consider a Will to mitigate any tax you might be liable for or to ensure it passes to your intended beneficiaries
- Marriage revokes a Will. You may have written a Will before you got married but this could be revoked if there is no provision for a new Will
- To make provision for your favourite charity
- To provide you with peace of mind
- Being able to make plans for your funeral

If you have lots of lower value items that you would like to leave in your Will you might be advised to list these in a letter of wishes. A letter of wishes is not binding on your trustees but is easier to make changes to than having to change your Will every time you want to change a gift. Your letter of wishes should be kept with your Will.

WHO CAN WRITE A WILL?

The truth is, anyone can write a Will. You could get a Will kit from a stationery store and write your Will but you would be missing out on expert advice specific to your circumstances and if something went wrong your would have no course to redress. Practically, you ought to consider getting a professional to write your Will. By professional, we are referring to someone

who is a member of the Society Will Writers and has signed up to our body. You may also wish to choose a solicitor. Solicitors are regulated by the Solicitors Regulation Authority. Not all Will Writing firms are regulated. We only regulate individuals and only those with up to date certificates of compliance and ID cards are members of the SWW. If in doubt, contact us for clarification before proceeding.

HOW MUCH WILL IT COST?

That's the million dollar question. The truth it is depends on who you use and where you're based. Often you're not just paying for the Will. You're also paying for advice. Don't think that a £25 Will is any better than a £100 Will just because it's cheaper. Take into consideration the advice you've been provided with, the literature from the company and read through their

terms of business before proceeding. This will set out what is expected of you as a customer but also, what you can expect from your Will Writer. Ask as many questions as you need to in order to fully understand the service and only when you're happy should you proceed.

HOW LONG DOES IT TAKE TO WRITE?

This can depend entirely on the complexity of the estate and the advice needed but for the sake of argument lets suggest the average Will is often completed and returned ready to sign in 28 days. Where your circumstances dictate, it may be done a lot quicker. Your Will Writer will need to take your instructions, consider your estate plan, provide advice, provide a draft Will (if their terms and conditions state this), get this checked by you, make any amendments and then provide the final bound copy ready for signing.

HOW OFTEN SHOULD YOU REVIEW IT?

This can depend entirely on the complexity of the estate and the advice needed but for the sake of argument lets suggest the average Will is often completed and returned ready to sign in 28 days. Where your circumstances dictate, it may be done a lot quicker. Your Will Writer will need to take your instructions, consider your estate plan, provide advice, provide a draft Will (if their terms and conditions state this), get this checked by you, make any amendments and then provide the final bound copy ready for signing.

WHERE SHOULD YOU KEEP IT?

This is entirely up to you. You are not obliged to store your Will with your Will Writer but often, if they use a facility like The National Will Archive, then this can be a good idea. If you store your Will at home make sure that your executors will know where to look when you're not around. Make sure it's not in a place where it can be easily lost or damaged.

Someone with an ulterior motive (perhaps wanting to destroy the Will) shouldn't be able to access the Will from a professional store.

HOW DO YOU CHANGE A WILL?

If you have a letter of wishes (for low value gifts) this can be rewritten and stored with the Will. Changes to the Will however, are a little more complicated. Minor changes can be made by way of a codicil. Your Will Writer can advise you of this. Often you might be better completely rewriting your Will. Remember – a new Will shall supersede/revoke a old Will.

IMPORTANT NOTE

Remember that if you meet with your Will Writer in your home or place of work you will be entitled to a statutory cooling off period of 14 days. That means you have 14 days within which you can cancel and are entitled to a full refund. Please note that this might be slightly different if you give your authority for the work to begin straight away – see their terms and conditions.

Your Will is made valid by the attestation/signing process. Certain legal formalities must be met and they are listed under S.9 Wills Act 1837. When signing any new Will it will need to meet this criteria. If your Will Writer is an SWW member then they will help you with this or provide signing instructions.

**FOR HELP LOCATING A WILL WRITER IN YOUR LOCAL AREA VISIT:
WWW.WILLWRITERS.COM OR CALL 01522 687 888**



POLYGAMOUS MARRIAGES

SUCCESSION

Spouses and civil partners are afforded certain benefits when it comes to succession law; benefiting from favourable inheritance rights on intestacy and quite generous inheritance tax exemptions. But what if someone practiced polygamy and dies leaving behind multiple spouses?

This is a point of law that our courts have been asked to consider in a few areas concerning succession law. Below we cover the treatment of polygamous marriages in related to intestacy, IHT, and Inheritance (Provision for Family and Dependants) Act 1975 claims.

When a person dies intestate their estate will be distributed according to the rules of intestacy. The hierarchy of who will inherit the estate is set out in s46 of the Administration of Estates Act 1925. If the intestate died leaving a spouse and no children then their spouse will receive the entire giftable estate. If they died leaving a spouse and children then the spouse will receive the statutory legacy of £250,000, all personal chattels, and half of the residue. The children will receive the remaining half. But what if there are multiple people who fit the definition of "surviving spouse"?

In the case of *Official Solicitor to the Senior Courts v Yemoh and others* [2010] EWCH 3727 (Ch) the court was asked to consider this exact scenario. In this case the deceased died intestate and domiciled in Ghana. He owned various assets, including real property, in England. He was party to a number of polygamous marriages which were valid under Ghanaian customary law and was survived by 8 wives as well as children. It was held that spouses from a polygamous marriage that was valid according to the law of the intestate's domicile are to be recognised as the surviving spouse for the purposes of s46 AEA 1925.

All surviving spouses together are recognised as "the surviving spouse" and entitled to the statutory legacy to be shared equally between them. As the surviving spouse they would also collectively be entitled to the half of the residue in equal shares. In the Yemoh case the surviving spouses

were collectively entitled to a life interest in half of the residue as the intestacy rules at the time did not give the spouse an absolutely entitlement to this part of the estate.

Under s1(1)(a) of the Inheritance (Provision for Family and Dependants) Act 1975 a surviving spouse may bring a claim against a deceased's estate if their will or intestacy failed to make reasonable financial provision for them. It was decided in the case of *Re Sehota (deceased)* [1978] All ER 385 that the wife of a polygamous marriage was to be treated as the deceased's wife for the purposes of the 1975 Act.

Transfers to spouses on death pass free of IHT due to the s18 Inheritance Tax Act 1984 spouse exemption. This exemption applies to transfers between people who are lawfully married to each other at the time of the transfer. This means that transfers to multiple spouses of a valid polygamous marriage benefit from the exemption. If the surviving spouses are domiciled abroad then the total exemption cannot exceed the NRB at the time of the transfer.

Spouses may benefit from a transferable NRB. If the spouse died before them their PRs may transfer any unused NRB on their death. A person who was a party to a valid polygamous marriage may transfer the unused NRB's of all of their predeceased spouse's but only up to the statutory limit. The result is that the maximum that can be transferred is the value of 100% of one NRB.

For a polygamous marriage to be considered 'valid' in England & Wales it must have been conducted abroad and meet the requirements of a valid marriage according to the law of the country where the marriages took place.

PLANNING AHEAD?

CONSIDER A FUNERAL PLAN

The death of a loved can be a difficult time for those left behind, and it's at this time that the grieving family will often be expected to arrange a funeral.

Unfortunately, it is often at this point that the family discover the cost of dying, with funerals being much more expensive than they may have anticipated. There have been concerns in recent years that the cost of funerals has risen so sharply that they are becoming unaffordable for many people.

The Competition and Markets Authority (CMA) carried out a study into the funerals market last year and published their interim report at the end of last November. The cost of a funeral can be split into two main elements. The essential elements, such as the funeral director fees, the cost of the cremation or burial, certificates, and celebrant fees, and the optional elements such as flowers, grave markets, and venue. The study found that over the last 14 years the cost of the essential elements has grown by 6% per annum. That's double the rate of inflation over the same period!

The CMA reported that the average price of a funeral in 2018 was £4,271. There was a 68% increase in funeral director prices over the last 10 years. A family can save around £1,000 by shopping around for a funeral provider, but in reality many people planning a funeral do not think to shop around during such a difficult and emotional time.

So, who pays these costs?

A funeral is a 'testamentary expense' that is payable from the deceased's own estate. In practice it is often the deceased's family who first foot the bill for the funeral and then reclaim this from the estate as they may not immediately have access to the deceased's funds. This was also reported

on by the CMA, who found that in 2017 there were 607,000 deaths in the UK with 513,000 funerals having to be paid by the deceased's family.

With the costs of funerals rising so rapidly, now is a good time to consider taking out a pre-paid funeral plan. By taking out a funeral plan with a reputable provider today you can ensure that the cost of your funeral is fixed at today's prices. This takes away any uncertainty and can alleviate a lot of the financial burden on your family.

What to look out for?

There is currently no statutory regulator for funeral plan providers. The Funeral Planning Authority (FPA) is a voluntary regulator, so we recommend purchasing from a provider who is registered with the FPA.

With some plan providers you have to use one of their funeral directors. If you have a preferred funeral director you want to use make sure you check that the provider you want to purchase a plan from will allow this.

Confirm how the plan needs to be paid and whether you have to pay interest. Make sure you also confirm how your contributions are protected and how the balance will be paid if you die before you finish paying the instalments.

There are many different types of plan out there, so do your research and pick one that best suits your budget! For further advice speak to an Estate Planner regulated by the Society of Will Writers: www.willwriters.com/members



WHY WRITE A LETTER OF WISHES?

A LETTER OF WISHES IS A VERY
USEFUL DOCUMENT THAT YOU CAN
PREPARE ADDITIONALLY TO YOUR
WILL TO PROVIDE EXTRA GUIDANCE.

When writing a will it's important that you get your wishes down for who should be appointed as executors, trustees or guardians and how your estate should be distributed in a binding fashion. But what about your more general wishes for your estate, or for your children?

There are so many uses for a letter of wishes that we can't list them all in one article, so we'll focus on the most common uses for them:

1. GIVE YOUR GUARDIANS SOME GUIDANCE

You've probably considered who you would want to care for your children if you died while they were still minors, and you've probably appointed these people as guardians in your will. In your letter of wishes you can express exactly how you would prefer your children to be raised and how you wish the guardians to support them.

2. MAKE YOUR FUNERAL WISHES CLEAR

A letter of wishes could include your preferences for burial or cremation, for what kind of ceremony you want. You could even include everything down to what music should be played, what readings should be read, and what kind of flowers displayed.

It is important that you make your funeral wishes known to your family as well as including them in a letter of wishes though. This avoids the funeral being carried out before your wishes are found.

3. GIVE INSTRUCTIONS TO TRUSTEES

If you have included any trusts in your will that give your trustees wide powers over how the trust is distributed, known as 'discretionary trusts', a letter of wishes is recommended. Under these types of trust it is totally up to the trustees how they manage the funds and which of the named potential beneficiaries they benefit. In a letter of wishes you can include your wishes for how you want the trustees to use their powers, for example if the trust could benefit your spouse and children you could request that the trustees treat your spouse as

the main beneficiary for the rest of their life. What you write in a letter of wishes isn't legally binding, it is just guidance. The trustees should consider it when managing the trust though, and professional trustees will certainly try to stick to your wishes wherever possible.

4. DISTRIBUTE SMALL PERSONAL ITEMS

You likely have lots of personal chattels. These are defined as 'tangible movable property' except money, and items held as an investment or mainly for business purposes. It's quite a broad definition that could include your household ornaments, jewellery, furniture and cars. If you have a lot of personal items that you want to gift to specific people the easiest way to do this can be by including a clause in your will that gifts all items fitting that definition to your executors with a wish that they distribute them following your letter of wishes.

Once this clause is included you can then write a separate letter of wishes to list the items you want to gift and who you want to gift them to. This is a very flexible way of dealing with your personal items as if you change your mind you can simply write a new letter without having to make a new will.

5. EXCLUDE SOMEONE

If you have chosen to exclude someone from benefitting from your will your will writer will have advised you on what to include in your will and what the consequences the exclusion could have for your estate. They should also advise you to write a letter of wishes to detail your reasons for the exclusion, as this may be considered by the court if the excluded person did try to bring a claim against your estate. In these circumstances the letter is sometimes referred to as an 'exclusion letter' instead.

Letters of wishes aren't legally binding, but they're useful for making sure you have got your less formal wishes for your estate across. If you need further advice on how a letter of wishes can support your will contact your will writer or find a member through our Find a Member page.



SWW Trust Corporation provides friendly, efficient and professional executorship, trustee and attorney services, with competitive, transparent pricing.

Probate Services

Executorship can involve a great deal of time, effort, stress and even financial costs, all of which can be overwhelming at a time of emotional distress.

Our business is built exclusively on providing Trustee and Executor services, you'll get the very best service and advice available. Unlike solicitors or banks we are specialists not generalists.

Because this is all we do you can be assured you are receiving the highest level of service available from professionals who want to provide you with peace of mind.

We offer a Grant assist service or a full estate administration service to help you navigate the maze of probate. This will all be done in a transparent and inexpensive way.

Trustee Services

Choosing a close friend or family member as an Executor or Trustee runs the risk of subjectivity and opinion creeping in.

By appointing an impartial body like SWW Trust Corporation you can avoid any possible conflict of interests and avoid the heavy burdens that the law places on trustees.

We have over 10 years' experience of managing trusts to ensure that the wishes of the settlor are carried out and to ensure the trusts are managed professionally.

Professional Attorney Services

A lot of the work we do means we are dealing with vulnerable clients or someone experiencing emotional distress.

We take an empathetic approach to the way we work.

Our personal service means we can act as a professional attorney making sure the decisions we make for you are made in your best interests.

We use our expertise to encourage you to make any decisions for yourself but will be on hand to help when it is required.

Collating financial information when someone dies

Did you know?

The Financial Times reports that currently £77 billion of assets remains unclaimed in the UK

It is the executor's responsibility to collate all information relating to the deceased's person's asset and liabilities. If the deceased left property, a large amount of cash or investments then the executor will need to apply for a Grant of Probate. This will provide them with the legal authority to deal with the deceased's assets and, if relevant, sale of the property.

Before the Grant of Probate can be applied for the executor will need to complete a financial inventory of all the deceased's assets and liabilities to include:

- Property – was this owned jointly with another person? It may be that the deceased owned a share of the property (tenants in common). The value of the property/share must be established by way of an estate agent's valuation
- Bank accounts – obtain a statement that shows the balance at the date of death
- Shareholdings – obtain the share price for the date of death and multiply this by the number of shares held. If you are unsure how to do this you can speak to a stockbroker
- Investments – write to the organisation holding the investment and request a valuation for the date death
- Chattels (personal items) of a high value – arrange a written valuation
- Vehicles – a local garage may value the vehicle or you can use an online valuations website
- Cash found – if cash is found it must be recorded and held safely by the executor
- If any utilities have been overpaid by the deceased you will need to record these in the financial inventory as a credit at the date of death

Liabilities

When collating financial information, you will need to ensure that you are aware of all liabilities for example:

- Utility bills – gas, electric, water, telephone and Council Tax
- Credit Cards, Store Cards
- Loans and finance
- Mortgages
- Overpayment of pensions and benefits

Once you have ascertained all assets and liabilities you are now able to complete either the IHT 205 or IHT 400 form.

For more information please contact us:

admin@swwtrust.co.uk, 01522 581570,

www.swwstrust.co.uk



HOW DO YOU HOLD YOUR PROPERTY?

If you own your property jointly with another person or people there are two ways that you might hold the property. You could be either ***joint tenants*** or ***tenants in common***.



But what are the differences between these two types of property ownership and why do they matter to you?

In the context of joint tenancy and tenants in common 'tenancy' means ownership and has nothing to do with renting!

JOINT TENANCY

If you hold your property as joint tenants with another person this means that both owners own 100% of the property, not a divided share. You have equal rights to the whole property, and if the property is sold you will each be entitled to an equal share of the proceeds.

A joint tenancy creates rights of survivorship. The result is

that when one owner dies the remaining owners will automatically own the whole property; remember, they've all always owned 100% of it. This means that a joint tenant cannot gift their interest in the property to anyone by their Will.

TENANCY IN COMMON

If you hold your property as tenants in common you will each have a divided share in the property. This is often an equal share, but it is also possible to hold the property in unequal shares. This is an attractive option for people purchasing a property together and contributing different amounts towards the deposit.

Under a tenancy in common each owner can deal with their share in the property separately,

allowing them to gift their share to their own beneficiaries by their Will. This also opens up more opportunities for planning to protect their share of the property by using trusts in their Will.

WHAT DO I DO NOW?

If you aren't sure how you hold your property and you know that your property is registered your Will Writer can carry out a check of your title deeds to confirm this for you. If you currently hold as joint tenants and would like to change to tenants in common the process is relatively straight forward. This is done by completing a notice of severance and sending a form for the Land Registry to add a notice to your title deeds.



If you have any questions about Wills, or any of the content in this magazine, please contact
The Society of Will Writers:

Chancery House, Whisby Way, Lincoln, LN6 3LQ

Telephone: 01522 68 78 88

Email: info@willwriters.com

Web: www.willwriters.com

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Funeralcare

More than 1 million people in the UK have already planned their funeral*

It can be difficult to think about the future, but buying a funeral plan protects your family against unexpected costs and uncertainty about your final wishes.

We've been speaking to Co-op customers who've put their plans in place, to find out their reasons for doing so.

“Both my parents and my mother in law had Co-op funeral plans and this made it easier for us. So to help our children we have made our funeral plans with Co-op.” - Angela

When you choose a Co-op funeral plan you get peace of mind that everything's paid for and arranged in advance. So whatever happens, you can be sure your loved ones are left with happy memories and not heavy debts.

Our plans are fully guaranteed so no matter how much prices rise your loved ones will have nothing more to pay for the services you've chosen in your funeral plan.

We offer a range of four set plans which are available for both burial or cremation. Plus we offer flexible payment options. You can choose to pay in full with one single payment, in instalments over 6-12 months (at no extra cost) or in instalments over 2-25 years (instalment charges apply).



“My mum had dementia and wouldn’t have been able to take part in any decision making if my dad passed away first. I knew it would come down to myself to arrange everything and that having to organise a funeral whilst still trying to care for the other parent would be too much for me to cope with alone, so I thought it would help to be prepared ahead of time.” - Philippa

Why choose a Co-op Funeral Plan?

- ✓ It’s simple and straightforward
- ✓ All our funeral plans are fully guaranteed meaning we cover all third party fees (such as cremation fees and the cost of a minister)†
- ✓ We have flexible payment options to suit you
- ✓ If you choose to pay in instalments, our unique Co-op Commitment means we’ll cover any shortfall should you die before you’ve paid in full*

Contact the Society of Will Writers for further details

Tel: 01522 68 78 88

Email: info@willwriters.com

† Co-op burial plans do not include the cost of buying a grave.

* The Co-op Commitment applies if you are paying in instalments over 2-25 years and 1 year has passed since the plan start date, instalments must be paid up to date and your funeral must be arranged and carried out by one of our Funeral Directors.