

# FOCUS

## SWW

"THE SUCCESSION LAW EMAG"



IN THIS ISSUE:  
WHY USE A PROFESSIONAL TO PREPARE YOUR WILL?

MEET THE TEAM

DID YOU KNOW THIS CAN AFFECT YOUR WILL?

AND MORE...



ISSUE 22 | SPRING 2023

## 2) Letter From the Editor

Hello and thank you for taking the time to open the latest edition of Focus SWW! This is the first edition of the new year so on behalf of everyone here at The Society I'd like to say Happy New Year!

## 4) Meet The Team

The Who's Who of Chancery House

## 8) How to Protect Your Estate in the New Year

Have you thought about making one of those new year's resolutions to put documentation in place to protect your estate and your loved ones?

## 10) Why Use a Professional to Prepare Your Will

You've decided now is the time to put documentation in place to protect your estate. What next?

## 12) The Will of Lisa Marie Presley

You may have heard recently on the news that Lisa Marie Presley, daughter of Elvis and Priscilla Presley, passed away on 12th January 2023 at the age of 54.

## 14) In CASE You Missed it...

In this instalment of 'In CASE you missed it...' we take a look at the recent case of F v R [EWCOP 49 2022].

## 16) Did you know this can affect your will?

2023 could be the year of change for you, whether it be a new home, new job, marriage, divorce, or a new member of the family. Whatever it might be, are you aware of some of the different ways in which your Will could be affected?



# A LETTER FROM THE EDITOR

## Ruby Nott

Dear Reader,

Hello and thank you for taking the time to open the latest edition of Focus SWW! This is the first edition of the new year so on behalf of everyone here at The Society I'd like to say Happy New Year!

Since 2023 began we have had a few changes, and Spring seems like an apt time to welcome a new member of the team! Natalie joined us shortly before Christmas as part of our technical team and has settled in extremely well. We would also like to congratulate and welcome back Manisha, who has returned to the technical team after her maternity leave. We wish them all the best for 2023!

As 2023 begins, we would remind everyone in this changeable economy that now more than ever, writing a will is the best way to keep your estate safe once you've passed away. Getting your estate plan in order is one of the most important things you will ever do, and it will make it that much easier for your family and friends when the time comes. We hope that making your estate plan will be your priority this Spring. A reminder that we would recommend you to revise your will every 3-5 years or if there's a major change in your life such as a marriage, divorce or birth of a child.

If you have any questions or queries about the content of this issue please feel free to contact our office by emailing us at [info@willwriters.com](mailto:info@willwriters.com) or phoning us on 01522 687 888 and we would be more than happy to assist.

Thank you for reading and I hope you enjoy this season's Focus SWW! I look forward to writing to you in the next issue!

R. Nott

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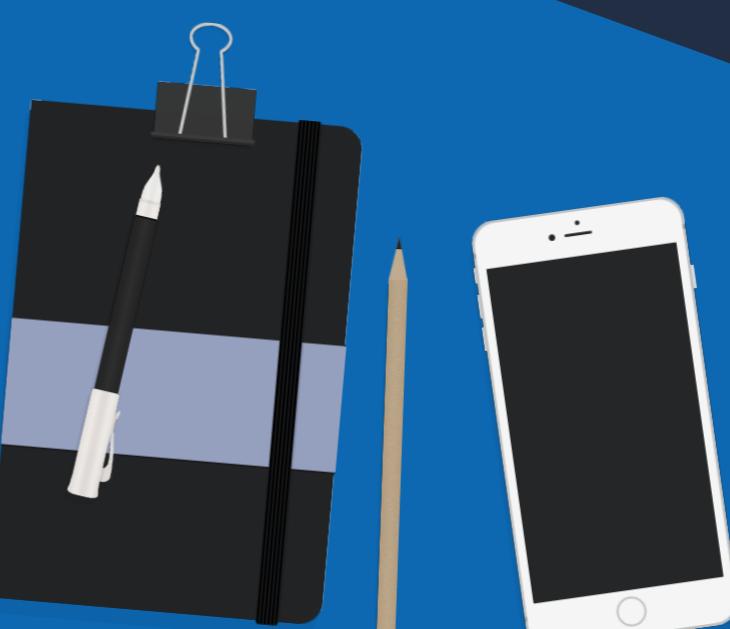
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# MEET THE TEAM

The who's who of Chancery House



## ANTHONY BELCHER DIRECTOR

Anthony graduated from the University of Lincoln with a first in Audio Production in 2016. Deciding to pursue an alternative career, he started as the Society's graphic designer that same year. His appointment to the board of directors came later in 2019. Outside of the Society he is still a keen musician and has been collecting vinyl records for over 10 years.



## SIOBHAN RATTIGAN-SMITH TECHNICAL DIRECTOR

After graduating from the University of Lincoln with a 2:1 in Law in 2014 Siobhan has dedicated herself to will writing as the head of the Society's technical team. Siobhan is also the lead tutor for The College of Will Writing, teaching our 4-day introductory course.

## SAM SMITH HEAD OF MEMBERSHIP

Sam manages the membership team. He is responsible largely for member recruitment dealing with members, third parties, and looks after our 20 regional chairs. Sam is always on hand at Society events meeting and greeting. In Sam's down time he enjoys going to the gym, restoring his camper van, and playing golf.



## LIBBY ROBINSON HEAD OF MEMBERSHIP

Libby joined the team in 2018 after completing A-Levels at Sixth Form. Libby is responsible for issuing and checking annual audits that our members are subject to as well as processing applications, membership renewals and resignations, and handling enquiries from the membership and public. When she is not working, she enjoys watching crime dramas and attending spin classes.



## DIANE MANDEVILLE COLLEGE ADMINISTRATOR

Diane has worked for the Society since 2011 and ensures not only that things in the office run smoothly, but is also responsible for the organisation and day-to-day running of The College of Will Writing. This includes making sure all training courses are well attended whether they are held at the College or online. She is also responsible for organising the SWW Annual Conference each year.



## SHARON NORRIS COMPLAINTS ADMINISTRATOR

Sharon started working for the Society in 2013 and in that time has worked in the membership department and is now complaints administrator as well as being responsible for catering at the College.

## NATALIE TURNER TECHNICAL ADVISOR

Natalie joined the Technical Advice Team in November 2022 having previously worked in the Estate Planning field as a Paralegal. Natalie provides technical advice to our members, provides support on Sure Will Writer and also assists the Technical Director in the teaching of our 4-day introductory course at the College of Will Writing.



## MANISHA CHAUHAN TECHNICAL ADVISOR

Manisha joined the Society's Technical Advice Team in July 2019 having previously worked as an Employment Solicitor in Warwickshire before relocating to Lincolnshire. Manisha provides advice on technical queries daily and ongoing support on Sure Will Writer.



## RUBY NOTT GRAPHIC DESIGN

Ruby has been with the Society since 2021, after graduating from the University of Lincoln with a first in Illustration, she is now responsible for the Graphic Design and Marketing within the Society as well as assisting the members with their creative needs and editing the Society's quarterly E-Mag, Focus SWW.



## MONIKA VALAUSKIENE ACCOUNTS

Monika is a Qualified AAT Accountant and joined the Society in 2016. Since then she has been monitoring our accounts, carrying out financial analysis, tax preparation and other daily bookkeeping duties.

# OUR MISSION

The Society of Will Writers is a non-profit making self regulatory organisation which seeks to protect the public and serve the interests of those men and women who are active professionals in our field.

The Society of Will Writers was founded in 1994 by former Director General, Brian McMillan and 4 other business owners. The Society has since grown to become not only the largest but also the leading self-regulatory body governing Will Writers and Estate Planners alike. We have over 1,700 members across the UK, Central Europe and further afield in places such as Asia and Africa.

### The Society has set itself two main tasks:

To promote to the public at large the real need and sense in having a valid Will;  
To act as a self-regulatory body by vetting practitioners through stringent membership requirements, proficiency standards and ongoing training.

# HOW TO PROTECT YOUR ESTATE THIS YEAR

With the year well underway, many of us have new year's resolutions or a list of things we want to achieve in the coming year or even a list of countries we want to visit now that we have been out of lockdown for some time. Have you thought about making one of those new year's resolutions to put documentation in place to protect your estate and your loved ones?

Let's take a look at what documentation you can put in place to protect your estate.

## Will

A Will is an important legal document which enables the person making the Will (otherwise known as the testator), to specify how they would like their belongings (assets, chattels and property) to be distributed on their death.

A Will enables you to do the following:-

- Appoint executors to handle your estate and distribute assets on your death
- Appoint guardians to look after any minor children you may have (children under the age of 18)
- Make money gifts to family members, friends or even charities
- Specify for certain items to be gifted to a beneficiary i.e. a family heirloom or even a piece of jewellery
- Specify funeral arrangements
- Gift properties
- Exclude people from benefiting under your Will i.e. estranged children
- Make provisions for any pets you may have
- Include various trusts
- Specify how your estate should be distributed and who to
- Do IHT planning.

If you have any questions or need any guidance with the preparation of your Will or LPAs, please contact us and a member of the team will be more than happy to help.

We will be issuing articles over the next few weeks which will specifically look at who should write your Will and other things you might not know that can affect your Will so watch this space.

Lastly, on behalf of the Technical Advice Team, we'd like to once again wish you a very Happy New Year.

## Lasting Powers of Attorney

A Lasting Power of Attorney (LPA) is a legal document which allows a person (called the donor) to appoint someone they know and trust to make decisions on their behalf should they become unable to do so in the future. This person is called an attorney and they must always act in the best interest of the donor. An LPA can only be created if you have mental capacity.

There are 2 types of LPA: -

- Health and Welfare
- Property and Financial Affairs

What decisions can be made with either LPA?

### Health and Welfare

- Day-to-day decisions such as exercise and dietary requirements
- Medical care
- Life-sustaining treatment
- Relocation into a care home or sheltered accommodation

A Health and Welfare LPA can only be used once it has been registered with the Office of Public Guardian (OPG) and when the donor loses mental capacity.

### Property and Financial Affairs

- Managing bank accounts
- Paying bills
- Collecting income and benefits
- Making decisions with regard to the home
- Selling the home
- Managing investments

If you don't put provisions in place during your lifetime and die without making a Will, the laws of intestacy will govern how your estate will be distributed which means your estate could go to someone you would not have chosen to distribute it to. Aside from this, inheritance tax may be payable too.

There is also a common misconception that those who are unmarried and have been in a relationship for a long time will benefit from their partner's estate on death. Unfortunately, this is not the case and we have seen this happen all too often.

Once you have made your Will, it's important that you review it at least every 3-5 years or when there is a change in your personal circumstances i.e. marriage or the birth of any children. Did you know marriage can revoke a Will?

It is important to note that Property and Financial Affairs LPA can be used as soon as it has been registered with the OPG. The LPA may state that it can only be used when the donor has lost mental capacity so the attorneys will need to check and may also be required to provide evidence of the donor's loss of capacity before using the LPA.

## Appointing an Attorney

You would need to think about who you would appoint as your attorney(s). It needs to be someone who you fully trust to look after your affairs and act in your best interest. Normally 1-4 attorneys can be appointed. Attorneys can act either: -

Jointly – attorneys must agree unanimously on every decision;  
Jointly and severally – attorneys can make decisions on their own or together; or  
Jointly for some and jointly and severally for other decisions – attorneys must agree unanimously on some decisions but can make others on their own.

# WHY USE A PROFESSIONAL TO PREPARE YOUR WILL

You've decided now is the time to put documentation in place to protect your estate. What next?



There are different options available to you when it comes to making a Will:-

## See a professional; or Write a Will yourself

Many have the misconception that it's "easy enough" to prepare a Will as it simply is a case of naming their beneficiaries and listing who should get what and there are even places on the high street where consumers have the option to purchase a DIY kit. However, issues can arise if you write your own Will.

### DIY Wills

1. Your estate may be complex and without specific planning, inheritance tax could be payable on your death which could have been avoided
2. Certain gifts could fail – did you know that if a beneficiary witnesses your Will, any gift to them will be void?
3. Your estate could be challenged – by excluding a loved one from your estate it could give rise to a challenge of your Will on your death
4. You may not appoint a guardian to care for your minor children in the event of your death which would force them into care

Using a professional can save you a lot of stress and give you and your family peace of mind. They will consider everything and offer tailored advice to ensure your wishes are met after your death.

Make sure to choose someone who is trained in succession law and insured for their work, as all members of The Society Will Writers (SWW) are. You may also consider a Solicitor who is regulated by the Solicitors Regulation Authority (SRA), some of whom are also members of the SWW.



By using a professional Will Writer who is a member of the SWW, you are safe in the knowledge that the person who is attending to you will know and understand your needs and have the necessary expertise to advise you properly on how your Will should look and how it will work, especially if your estate is complex. SWW members adhere to a form of self-regulation, which whilst voluntary, imposes minimum standards and requirements on them. All SWW members are bound by the SWW Code of Practice and must also keep their knowledge up to date through ongoing training and CPD as well as carry a minimum of £2 million Professional Indemnity Insurance. Only those who do are permitted to be members and will be issued a certificate of compliance and ID card confirming their SWW membership.

You should ask to see the SWW member's ID card on which you will see their membership number and expiry date. You can also confirm if anyone claiming to be a member is a member by looking for them on our Find a Member page. Not all SWW members have a web presence though, so if you can't find an SWW member online, please contact us directly and we will check our database for you.



If you've not yet written your Will, or it's time your existing Will is due for a review, ring 01522 687 888 or visit [www.willwriters.com/listing](http://www.willwriters.com/listing) get in touch with one of our members today.

# THE WILL OF LISA MARIE PRESLEY

You may have heard recently on the news that Lisa Marie Presley, daughter of Elvis and Priscilla Presley, passed away on 12th January 2023 at the age of 54.

She was the only child of Elvis and the sole heir to his estate.

It now appears that her mother, Priscilla, is contesting the validity of Lisa Marie Presley's Will.

The court petition disputes an amendment to Lisa's Will made in 2016 that effectively removed Priscilla as the estate trustee meaning she would no longer oversee her daughter's assets. It is argued that this document misspelt Priscilla's name and the signature on the document appeared unusual and not in line with Lisa's usual signature. The signature was also not witnessed. Priscilla was only made aware of this after Lisa had passed away even though the terms of the trust required that she be notified of this change, which she wasn't. A further amendment also removed Lisa's former business manager Barry Siegel from the

trust and replaced him with her children Benjamin and Riley Keough.

Priscilla is currently contesting the Will, arguing that the 2016 Will be declared invalid which would mean the 2010 Will naming her and Riley as co-trustees of her daughter's estate would take effect.

Whilst this is a case from across the Atlantic, it demonstrates a real-world example of the possible implications of not making sure your affairs are in order. Our recommendation is to always speak with a professional who can provide you with advice tailored to your circumstances, certainly for UK-based clients, a Member of The Society of Will Writers. To find a will writer nearby, visit our Find a Member page or contact our office to speak to us.



# In CASE you missed it...

## Inheriting outright and the effect on means-tested benefits

Where a client wants to provide for a beneficiary who is disabled, they may want to leave assets in a disabled person's trust. This could be because they do not think the beneficiary will be able to manage a large sum of money depending on the type of disability the beneficiary has.

However, to qualify, the primary beneficiary must meet the definition of 'disabled' as defined in section 89 of the Inheritance Tax Act as a person who is:

- by reason of mental disorder within the meaning of the Mental Health Act 1983, incapable of administering their property or managing their affairs;
- in receipt of attendance allowance;
- in receipt of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate;
- in receipt of personal independence payment by virtue of entitlement to the daily living component;
- in receipt of an increased disablement pension;
- in receipt of constant attendance allowance; or
- in receipt of armed forces independence payment

A disabled person's trust is a type of discretionary trust meaning there must be more than one beneficiary of the trust.

Can anything be done to reverse this somehow? This is an issue that the Court of Protection considered in the recent case of F v R [EWCOP 49 2022].

This type of trust is also subject to certain tax exemptions which makes it appealing but did you know another benefit of leaving assets in this type of trust means the primary beneficiary's means-tested benefits will not be affected in any way?

As an example, an uncle passes away and leaves a large inheritance to his niece. At the time of writing his Will, his advisor recommended placing his niece's share in a disabled person's trust as his niece met the conditions set out above. This was done, the niece benefited from the inheritance via the trust and it made no impact on her means-tested benefits.

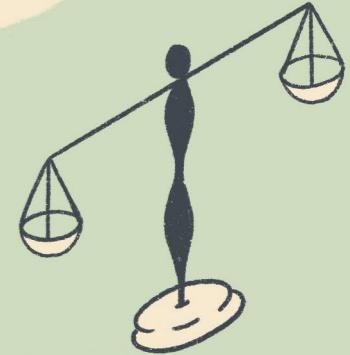
Contrast this with the uncle writing his own Will (unaware of any trusts out there) and leaving the same inheritance to his niece outright instead of via this trust. In this case, the Local Authority will look to re-assess any benefits the niece is currently receiving and review these which will likely be to her detriment.

## The Claim

R is in his 30's and has a lifelong disability. His estate mainly consists of monies which have come from state benefits, namely employment support allowance and disability living allowance – both of which are means-tested. Of the total of £60,293.48 he receives per year from state benefits, approximately £52,381.60 of this is means tested.

R's mother's cousin (T) had left one third of his residuary estate in his Will to R absolutely. It is anticipated that the value of this share of the estate is between £400k-£600k. This outright gift would lose his entitlement to means-tested benefits.

The application put before the Court of Protection was for the authority to sign a deed of variation (R has capacity) so that the inheritance could be redirected into a disabled person's trust, therefore not affecting his means-tested benefits.



## The Verdict

The Court took the view that redirecting the inheritance into a disabled person's trust would be seen by the authorities as a deliberate deprivation of assets. The Judge in the case stated, "frankly, I cannot see how any other interpretation can be sustained." The Judge furthermore went on to add "The Court cannot endorse a proposal whose purpose is to preserve an eligibility for benefits which Parliament has decided does not exist. At this point, it is the Court's purpose that matters, and the only purpose of the application is to preserve R's means-tested benefits, whether that is directly or indirectly by giving effect to a supposed intention of T."



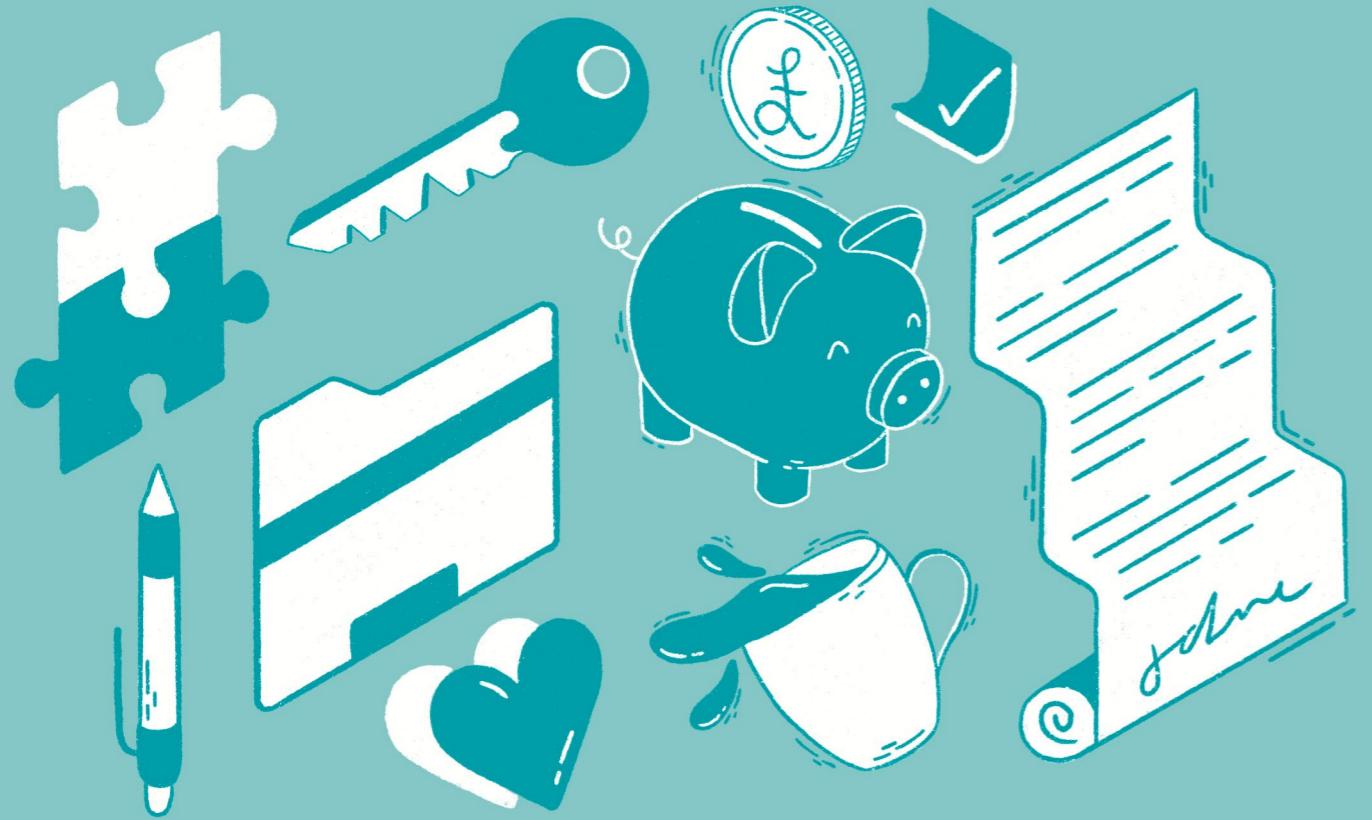
## Points to Consider

This is a helpful insight into how Courts deal with the protection of assets v deliberate deprivation.

It is also a useful reminder that inheritance left in a disabled person's trust does not affect any means-tested benefits as it is seen as belonging to the trust and not the beneficiary.

When putting a Will in place, see a professional who can tailor their advice and recommend any trusts to you providing the information is disclosed to them.

Lastly, it should also serve as a reminder to will writers of the importance of keeping accurate records when it comes to taking instructions.



## DID YOU KNOW THIS CAN AFFECT YOUR WILL?

2023 could be the year of change for you, whether it be a new home, new job, marriage, divorce, or a new member of the family. Whatever it might be, are you aware of some of the different ways in which your Will could be affected?

### New Home

If you have bought a new home, congratulations! Does your current Will include your previous home address? If so, please get in touch with your will writer to have your Will updated to ensure your new property is covered in your Will.

What if this is not done? If for example your current Will gifts a property to your son and this property does not exist at the date of your death, the gift will fail.

### Property Abroad

If you own a property abroad i.e. Dubai? We would advise you to have a Will in place in the country where the property is held. It is important to ensure the Will is restricted to assets in that country only.

Why is this? If you write a Will in 2019 and then see a will writer in Dubai in 2022 and this specific Will is not restricted to assets in Dubai only, your 2019 will be revoked.

If you wish to make amendments to your Will, have a new Will written or any supporting documentation, simply contact your Will Writer who will be able to assist with putting these changes in place or draft any new documentation for you. Remember, if you have a new Will written, it will revoke any previous Wills.

### Children

Your current Will may state "children" or alternatively specifically name your children.

If your Will states "children" this provides for any children that are living at the date of your death. However, if your current Will specifically names your children and you have had more children since, you will need to update your Will to include them also.

With marriage could come step-children so let's take a look at this now. Apart from legislation relating to the residence nil rate band, did you know step-children are not included in the automatic definition of "children, issue or descendants" when it comes to your Will?

You may class them as your own children as you have looked after them for many years but even if this is the case, they will not benefit if your Will gives your estate to your children. Of course, they can challenge the Will on your death but to prevent costly and time-consuming litigation, if you wish for them to benefit under the terms of the Will, either specifically name them or have "children and step-children" written in the Will. Your estate planner will advise on this during your meeting.

### Marriage

Did you know that marriage automatically revokes a Will? If your intention is for all your assets to go to your new spouse this is fine but at times, if you have children from a past relationship that you want to provide for, they can be disinherited. This would have the effect that on your death, your children receive nothing, everything passes to your new spouse and then to their loved ones.

Of course, your children could challenge the will under the 1975 Inheritance (Provision for Family and Dependants) Act, but this is costly and time-consuming.

To prevent the above, it is best to review your existing Will before you get married and either re-write it or include a contemplation of marriage clause in it. This is where you express a contrary intention to the 'automatic revocation' of your Will upon getting married. Specifically, this clause is a declaration within your Will that your intended marriage to your potential future spouse shall not have the effect of revoking your Will.

### Divorce

Whilst divorce does not automatically revoke your Will, the reality is that you probably will not want your ex-spouse to benefit from your Will or any part of your estate.

The good news is that the ex-spouse is treated as if they died when the divorce was finalised (decree absolute) and therefore cannot inherit from you. If there are any gifts to them in your Will, they will fail. However, if you did want your ex-spouse to benefit from your estate or receive something in your Will, you would need to have a provision in your will to state Section 18a Wills Act 1837 will not apply.

Did you know an ex-spouse can try and claim from your estate on your death if they feel as if they should "have been given a piece of the pie" and had reasonable financial provision made for them? The best way to get around this is to exclude them from your Will and have the letter of wishes set out the reasons for this exclusion so if it ever is challenged, the Courts can look at what you have stated and consider it when reaching their verdict.



If you have any questions about Wills, or any of the content in this magazine, please contact

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## Who is your Will Writer?



- All SWW Members will provide up to date advice in line with current legislation.
- All SWW Members adhere to our Code of Practice.
- All SWW Members complete compulsory annual CPD.
- All SWW Members carry at least £2m of insurance cover.

If you have doubts about an SWW member give us a call on 01522 687888.  
If you would like to join the SWW then please email [info@willwriters.com](mailto:info@willwriters.com) for our information pack or application forms.