

# FOCUS

SWW

“THE SUCCESSION LAW EMAG”

IN THIS ISSUE:

CONFERENCE 2023 BOOKINGS NOW OPEN!

COMMON QUESTIONS IN OUR INBOX

WHAT HAPPENS IF A WILL IS LOST?

AND MORE...



ISSUE 23 | SUMMER  
2023

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# A LETTER FROM THE EDITOR

## Ruby Nott

Dear Reader,

Welcome to the latest issue of Focus SWW! Thank you for taking the time to open and read this edition filled with insightful articles from our knowledgeable technical team here at the society.

The biggest news of the year so far is the announcement of the 26th SWW Annual Conference will be taking place on the 9th and 10th of October 2023 at the Hilton East Midlands Airport Hotel! We're bringing together some of the brightest minds the profession has to offer, including some new faces. This year's theme centres around more modern ways of working and ensuring best practices with talks and workshops from high-quality, relevant industry speakers, each chosen to enhance your knowledge for the good of your clients. This really is an event not to be missed! In order to book your place at this years conference make sure to visit the conference page on our website to fill out a booking form.

Summer is well underway now, and as we are all looking forward to jetting off to sunny beaches and ice cream, we would remind everyone to have a look through their estate plans before they go. Summer is a great time to check through your arrangements and make sure that your wishes are still layed out the way you would like them to be. We would reccomend that a will is revised 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 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*

Ruby Nott BA (Hons)  
Graphic Design and Marketing  
The Society of Will Writers and Estate Planning Practitioners

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Connect with us:

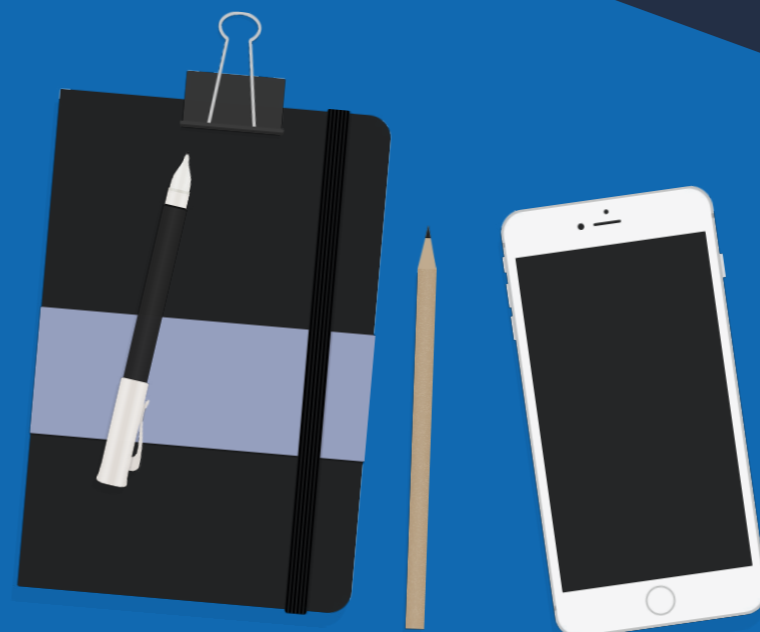


# WANT TO MARKET YOUR BUSINESS WITH THE SWW?

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 [info@willwriters.com](mailto:info@willwriters.com) or call 01522 687 888

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



Safe to do business with  
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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

MEMBERSHIP ADMINISTRATOR

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.



# CONFERENCE 2023 BOOKINGS NOW OPEN

The Society of Will Writers is excited to announce the launch of the 2023 SWW Conference, set to take place once more at the Hilton East Midlands Airport on the 9th and 10th of October.

Last year was the SWW's biggest and best conference to date, and this 26th running of our flagship event will have to go some ways to top it. To do that, we're bringing together some of the brightest minds the profession has to offer, including some new faces. This year's theme centres around more modern ways of working and ensuring best practices with talks and workshops from high-quality, relevant industry speakers, each chosen to enhance your knowledge for the good of your clients. This really is an event not to be missed!

## This year's speaker line-up includes:

- Anthony Belcher, SWW Director
- Anthony will give delegates the annual SWW conference update, including membership, training, and bigger-picture plans for the year ahead.
- Richard Orpin, Director Regulation & Policy LSB
- Matthew will be returning to the conference to give delegates an update on the LSB's projects as well as information on the wider legal sector.
- Nick Ash TEP FSWW, Will & Probate Services
- Nick will be giving a talk on governance and compliance, including some SWW PSB proposals to help will writers ensure they're delivering for the good of their clients and avoiding complaints.
- Neil Denny, Partner Chattertons
- Neil is an expert in family law and is passionate about good client outcomes. Moving up to Day 1 from last year, his talk this year titled 'How much?!' will centre around pricing and helping delegates understand the importance of charging appropriately.
- Antony Brinkman FSWW PSB Chairman, The Will Writing Partnership
- Antony will return to give delegates a roundup of the SWW PSB functions and plans for the year ahead.
- Mark Abrol, Mark Terrar and Emma-Louise Green, Meridian Private Client LLP
- This talk will be based on real-world examples from Meridian's practice covering how to minimise the risks of contentious probate by looking at the drafting mistakes which often lead there.
- Chiwi Lee and Cindy Wong, Precepts Group EPPL Asia
- Chiwi and Cindy will be joining us all the way from Singapore to deliver a workshop on succession planning for the Asian client and British ex-pats.
- Simon Dyer, Managing Director Plutus Crypto Consulting Ltd
- Simon will be running a workshop to get delegates thinking about how to deal with clients who have crypto-assets, something becoming all the more popular in today's society.
- Mike Roberts, Managing Director Making Digital Real
- Mike is no stranger to working with the SWW and will be joining us at the conference for the first time to host a marketing workshop designed to teach delegates the secrets of going digital.

In addition to the talks and workshops, this year's event will feature for the first time ever a session for delegates to get to know the SWW Regional Chairs, who are amongst the most dedicated and supportive members of the SWW. This space on the agenda is a prime opportunity to come and find out all about what the regional groups have to offer, get to know who else is in your region and how your chair can help support you.

To further enhance the conference offering, we're also opening the SWW Networking Hub, a dedicated space to help delegates forge new business connections and relationships. A huge part of the conference is the networking opportunities, and we're a big believer in collaboration and being supportive of one another, although appreciate for some it can be a little hard to know where to start. The Networking Hub will be a supportive space, designed to help make introductions to key people, fellow will writers and estate planners, as well as key industry personnel and connections well-worth having.

As ever we'll also be bringing with us a host of exhibitors all eager to help support and enhance your business and client offering and we are of course once again hosting a private delegate dinner on the Monday night, with entertainment, music, and celebrations. For many the networking opportunities extend well into the evening, but for most it serves as a great opportunity to wind down and have some fun with your fellow will writers, sponsors, and industry figures.

With an absolutely jam-packed agenda, at just £260 for a ticket for both days, the conference is excellent value and should not be missed. Accommodation is available to book through us at preferential rates with single and dual occupancy options available, so book early to avoid disappointment!

We look forward to seeing you at the Hilton in October!



# MONDAY 9<sup>th</sup> OCTOBER

Day 1 - Dales Suite, Hilton East Midlands Airport



Registration will be open from 8:30 at the Society Reception Table

<b>8.30 - 9.30</b>	<b>SWW Regional Chair Forum</b> Open Forum-Meet and get to know the SWW Regional Chairs
<b>9.45 - 10.15</b>	<b>Anthony Belcher - Director Society of Will Writers</b> SWW 2023 Update
<b>10.15 - 10.30</b>	<b>Antony Brinkman - FSWW The Will Writing Partnership</b> PSB 2023 Chairman's Update
<b>10.30 - 11.30</b>	<b>Nick Ash - TEP FSWW Will and Probate Services</b> Governance and Compliance: Preparation for Will Writers
<b>11.30 - 12.00</b>	Refreshments
<b>12.00 - 1.00</b>	<b>Richard Orpin - Director Regulation and Policy LSB</b> LSB 2023 Update
<b>1.00 - 2.15</b>	Lunch
<b>2.15 - 3.15</b>	<b>Neil Denny - Partner Chattertons</b> How Much?!
<b>3.15 - 3.45</b>	Refreshments
<b>3.45 - 4.45</b>	<b>Mark Abrol - Partner Meridian Private Client LLP</b> Dodging Deadly Drafting & Avoiding Contentious Catastrophe
<b>4.45 - 5.00</b>	<b>Anthony Belcher - Director Society of Will Writers</b> Conference Close

# TUESDAY 10<sup>th</sup> OCTOBER

Day 1 - Dales Suite, Hilton East Midlands Airport



## Workshops

**Mike Roberts - Making Digital Real**  
Ignite Your Online Presence: Unraveling LinkedIn and ChatGPT for Will Writers

**Simon Dyer - Plutus Crypto Consulting Ltd**  
Cryptocurrency, NFTs and Death – why should I care?

**Chiwi Lee & Cindy Wong**  
Estate Planning for the Asian client and British expats

GROUP 1	GROUP 2	GROUP 3
<b>9:30 - 10.30 am</b> Mike Roberts	<b>9.30 - 10.30 am</b> Simon Dyer	<b>9.30 - 10.30 am</b> Chiwi Lee & Cindy Wong
<b>10:55 - 11:55 am</b> Simon Dyer	<b>10.55 - 11.55 am</b> Chiwi Lee & Cindy Wong	<b>10.55 - 11.55 am</b> Mike Roberts
<b>11:55 - 12.55 am</b> Chiwi Lee & Cindy Wong	<b>11.55 - 12.55 am</b> Mike Roberts	<b>11.55 - 12.55 am</b> Simon Dyer

The speakers will rotate around the groups, please remain seated in your assigned group.

Lunch will be served in The Pavillion following the workshops.





# Common Questions in our Inbox: Guardians

Welcome to the first in a new series of articles from the SWW Technical Team; Common Questions in our Inbox. We thought it would be really useful to set out the queries we receive from our members in our technical inbox. For this first instalment let's talk about one of my favourite subjects – guardianship.

## Who can be a guardian?

Anyone can be a guardian as long as they are over the age of 18. Remember that anyone who is appointed as guardian will have parental responsibility for the children and therefore can make decisions on anything such as:-

choosing and providing for the child's education  
consenting to any medical treatment for the child  
providing support for the child – emotional as well as financial  
providing shelter and care for the child  
general maintenance i.e. clothes and food  
Appointing a guardian is therefore a decision that should not be made lightly.

## Can a sibling be appointed as the guardian?

As long as the sibling is over 18 then yes. However, if the guardian appointment were to come into effect when the guardian themselves are very young, consideration would need to be given as to whether they would realistically be able to take on this huge responsibility of caring for the minor child both financially and emotionally, as well as themselves. Secondly, would this be in the best interests of the minor children? This is something as a will writer you would need to raise with your client.

We would advise that a substitute guardian is also appointed. The reason for this is that if the appointed guardian for any reason was not able to act or simply did not want to take on the role, there would be someone else to step in. If a substitute was not appointed, the children could be placed in care while waiting for a family member or friend to come forward and be appointed by the Court to be the child's guardian.

## Can a guardian abroad be appointed?

The short answer is yes. However, if the children were born in the UK, the following points should be discussed with your client and taken into account when deciding whether choosing guardians abroad would be the best choice for the children:-  
Lifestyle – the children have been born and raised in the UK

so are used to a particular lifestyle, have a group of friends and are settled in school also.

Stability – it is important for the child to be in a stable environment

Personality – do the selected guardians have certain personality traits i.e. patient, caring and trustworthy?

Capacity – do the selected guardians have the mental and physical ability to raise the children.

Another point to raise with your client is whether visas would be required and secondly, who would care for the children until visas are granted. In such circumstances, it may be advisable to name a temporary guardian, as we'll look at next.

## Can a temporary guardian be appointed?

Yes, and we would advise this is included in the Will where the guardian is abroad and is either waiting to come to the country to care for the children or alternatively where the children are waiting to go over to the country where the guardian is.

## Does a father automatically have parental responsibility?

The father will have automatic parental responsibility if:

He was married to the child's mother at the time the child was born.

He married the child's mother at any point after the child was born.

They were unmarried, but he jointly registered the birth with the mother (is on the birth certificate).

They completed a PR agreement granting him parental responsibility.

## What if the mother does not want the father to have the children on her death?

If the father has parental responsibility and there is no child arrangements order in place then any appointment of guardians in the mother's Will would only take effect once both she and the child's father have died. If she died, the father would automatically take responsibility for the child.

Nothing in the Will can vary this. Any dispute over the father's appropriateness and direction that a more suitable guardian be appointed would be a matter for the Courts to decide. The client should also be encouraged to write a letter of wishes to accompany her Will and give guidance to her appointed guardians, which can include encouragement to apply to the Courts for guardianship if the appointment in the Will doesn't take effect, explaining why.

## Can a money gift be left to the guardian to be used for the children?

A money gift can be left to the appointed guardian. However, if it is to be used for the children, we would advise this sum of money be placed in trust. The risk of giving an outright money gift is that the guardian could spend it on themselves or alternatively, they accept the appointment, receive the sum of money then step down as guardian where there would be no recourse.

## Can a guardian be appointed for a disabled adult?

I'm afraid it is not possible to name guardians for adults in a Will. If a client wants to name someone for the disabled child to live with and look after, this should be set out as a non-binding expression of wish in the Will.

## Have a question of your own for the SWW Technical Team\*?

Send it to us at [technical@willwriters.com](mailto:technical@willwriters.com) and where possible, we'll advise.

\*Technical advice is available only to full members of the SWW (MSWW<sup>^</sup>) and is provided by email only. For more information about accessing our technical advice service, please see here.



# Appointing Attorneys and Deciding How They Should Act

When creating Lasting Powers of Attorney, the people you choose to act on your behalf are called your 'Attorneys'. You need to choose at least one attorney and there is no upper limit, however, too many attorneys could cause issues, especially if they are appointed jointly which we will discuss below. It is highly recommended to name at least one replacement attorney in the event that your first attorney can no longer act for you, making your LPA unusable.

## When selecting attorneys, you should think about the following questions:

- How many attorneys do you want to appoint?
- Will your attorneys be able to work together without conflict?
- Do you trust them to act in your best interests?
- How well do you know each other? And how well do they understand you?
- How well do they look after their own money?

It is important that you choose your attorneys for the right reasons. You should not feel you have to choose someone because you don't want to leave them out or offend them. Attorneys are responsible for making sometimes very important decisions and some people may not be a good fit for this role.

In addition to deciding who should act as your attorney, you also need to decide how the attorneys can act. We have compiled a quick guide below which outlines the pros and cons of each:

### Jointly and Severally

This option tends to be the most commonly used option as it offers the most flexibility for the attorneys. Attorneys can act independently of each other, so they do not all have to be in agreement on all decisions which helps if there is a dispute between them or if attorneys live in different countries. However, this can

also be a negative point as an attorney can act alone so there is less supervision from the other attorneys. If any attorneys die or become unable to act, the other attorneys can still use the LPA as normal.

### Jointly

This option offers more protection to Donors as all attorneys must agree on all decisions and they cannot act independently, therefore minimising the issue of foul play by the attorneys. However, this can also be a negative point as this option has less flexibility. As all attorneys have to agree on every decision, no matter how big or small that decision is, matters can end up going to court if the attorneys cannot agree. Another pitfall of attorneys acting jointly is that if one attorney dies or can no longer act, all of the attorneys can no longer act as they are appointed together jointly. Unless replacement attorneys have been named in the form then the LPA will cease at that point.

### Jointly for some decisions, Severally for others

This option can give the Donor the opportunity to choose what decisions must be agreed upon unanimously. This generally applies to the more important decisions such as selling the Donor's house, the Donor going into care etc. However, if one of the attorneys dies or can no longer act, the LPA will stop working for the decisions that needed to be made jointly unless at least one replacement attorney has been appointed.



## What is Mental Capacity?

The Mental Capacity Act 2005 provides a statutory framework to empower and protect vulnerable people who may not be able to make their own decisions. 'Capacity' is the ability of a person to make decisions that may have consequences for themselves and/or for others affected by the decision.

There is a common misconception that losing mental capacity only happens to older people, whereas the reality is that losing mental capacity can happen to anyone at any age. Something as common as a head injury that temporarily impairs your brain function can cause someone to lose capacity, it does not just relate to permanent degenerative conditions such as Alzheimer's disease.

Some examples of how a person's mind may be impaired include:

- mental health conditions
- conditions that cause confusion, drowsiness or a loss of consciousness
- dementia
- severe learning disabilities
- brain damage
- intoxication caused by misuse of drugs/alcohol

All these conditions can affect someone's ability to make and understand the impacts of a decision. Fortunately, there are options available for anyone that loses capacity.

# What Options Are There For Health/Medical Decisions If You Lose Mental Capacity?

## Advanced Decision

If you are concerned about your capacity to consent to any procedures and treatments in the future, you can complete a legally binding Advanced Decision, also known as an "Advanced Directive" or "Living Will". An Advanced Decision is a document that an adult makes while they have capacity to refuse the giving or continuing of specific medical treatment in specific future circumstances when they have lost capacity. The Advanced Decision ensures the incapacitated individual is in the same position as an individual who has capacity, who is entitled to refuse medical treatment against the advice of healthcare professionals.

## Lasting Powers of Attorney

If you are aged 18 or over and have mental capacity, you can choose to formally appoint someone as an Attorney to make important decisions about your health and welfare at a later stage when you may no longer have capacity. It is extremely important that you trust your attorneys to act in your best interests. It is advisable to make an LPA whilst you still have capacity so you can decide who you want to act on your behalf. Once you have lost capacity a Deputy can be assigned to make decisions for you, however you would not be able to give them any guidance or instructions like you would in an LPA. We will go into more detail about this below.

When having your LPA drafted, you can choose whether or not your attorneys can make life-sustaining treatment decisions, such as cancer treatment or an organ transplant. You can also leave preferences and instructions in the LPA to guide your attorneys in their decision making, for example, "My attorneys must not consent to any medical treatment involving blood products, as this is against my religion" or "My attorneys must not decide I am to move into residential care unless, in my doctor's opinion, I can no longer live independently".

## Personal Welfare Deputyship

This option is usually a last resort for people who have not made any preparations whilst they still have capacity. A person can make an application to the Court of Protection to become a deputy and the court will decide if that person is suitable based on their application and the information that person provides. A deputy is usually a relative or friend of the person. If a family member or friend cannot take on the role of a deputy, a professional can be appointed instead, however this can become costly. A deputy must provide annual reports to the Court of Protection. Deputyships are also more expensive than LPAs and can take a lot longer to set up.

This type of deputyship is rarer than the Property and Affairs deputyship. They are only used in situations such as a person being at high risk of abuse, situations where there is doubt as to whether decisions will be made in someone's best interests (because of family disagreements etc), or someone needs to be appointed to make decisions about a specific issue over time (e.g. where someone will live or decisions about treatment for an underlying health condition such as dementia).

Please contact a member of The Society of Will Writers if you are interested in discussing Advanced Decisions and Lasting Powers of Attorney. You can find a member in your area by visiting our [Find a Member](#) page, or calling the office on 01522 687 888.



# WHAT HAPPENS IF A WILL IS LOST?

As we know, a Will takes effect on death, so it's important to keep it safe for when it's needed. Some may choose to store their Will with their will writer, a solicitor, at their bank or with a professional storage company such as The National Will Archive. Others may simply choose to store their Will at home instead.

On rare occasions, however, a Will may not be found and you might be wondering what happens, or what to do in those circumstances.



## So what should you do if the Will cannot be found?

First and foremost, it's important that the executors/personal representatives conduct a very thorough search to try and find the original Will. Examples include:

- Speaking to family and friends
- Check with professional will writers and solicitors in the area to see if they were instructed and hold the Will
- Place an advert in the Law Society Gazette
- Contact a search organisation such as The National Will Register

## What if a copy of the Will has been found but not the original?

There may be instances where a family member finds a copy Will stored in the deceased's home but there's no sight of the original Will itself. The question then arises as to whether the original Will has been revoked and this would effectively involve tracing the Will back.

If the Will was last known to be in the testator's possession, a question would arise as to whether the Will was destroyed and therefore revoked, unless there was evidence to the contrary. If there is no such evidence, a copy of the Will could not be admitted to probate and therefore the estate would pass in accordance with the laws of intestacy.

If the original Will can still not be found and is not traced back to the testator, the executors can attempt to prove a copy of the Will in place of the lost original under Rule 54 of the Non-Contentious Probate Rules 1987. This would involve applying to the probate registrar for permission to prove the copy Will by providing a written statement of the steps taken by the executors to locate the Will, details of anyone who would benefit from the estate if the copy Will is not proved and why there is a belief that the Will has not been destroyed

with the intention to revoke it. This is to overcome the presumption that a Will has been revoked if it is missing at death and last known to be in the testator's possession.

There would also be a requirement to include in the statement who would be left worse off if the copy Will was proved. There may be instances where the probate registrar also asks for a separate affidavit of due execution from the witnesses, confirming that the original Will had been validly signed.

To prevent your personal representatives/executors from facing such a situation, it is important to inform them where your Will is kept, record details of where your Will is so that it can easily be located, or better still, have your Will stored professionally instead. There may be a fee for storage with some professionals and companies, however, more importantly, it ensures your documents are kept safe.

A Will can also be registered with The National Will Register which can make it easier to find a Will post-death in the event a Will is lost, or even where there are doubts a Will existed at all. All Members of the SWW can register their client's Wills on their behalf, so speak to your Member about this service.



If you have any questions about Wills, or any of the content in this magazine, please contact  
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Web: [www.willwriters.com](http://www.willwriters.com)



## 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.