

Get your WILL your way

Could your will end up penalising your loved ones unnecessarily? We investigate the uncertain world of will-writing services

WHAT YOU'LL LEARN

- Where to find the best type of company to help you write your will
- How to avoid making your loved ones pay unnecessary fees to administer your estate
- What you need to consider when making your will.

Making a will is vital if you want to ensure that your assets go to the right people when you die. But your loved ones may find some of their inheritance swallowed up by fees if a firm, such as a solicitor, will writer or bank, is named as your executor.

Executors administer your will when you die to make sure any debts are paid and the remaining assets are distributed correctly. First, they usually have to apply for probate – a document that authorises them to administer the estate. While firms charge for this work, family members or friends can do it for free.

According to a new *Which? Money* survey, 80% of *Which?* members have made a will but in a quarter of these the will provider is named as an executor.

HIGH COSTS

A professional executor is rarely needed if your affairs are straightforward. Furthermore, some firms charge as much as 4.5% of the estate plus VAT for doing the work, so opting for a professional can be incredibly expensive.

Even if there is no professional executor named in the will, a non-professional executor can still employ a professional when you die if they wish.

We were concerned that some will providers were recommending that they are named as an executor without properly explaining the cost implications, so we decided to investigate the three main types of will provider.

The most popular is solicitors, which 74% of *Which?* members said they used to make their will, followed by specialist

will writers (12%) and banks (2%), which use firms of solicitors to draw up customers' wills. Will services can be postal or online as well as face to face.

We found that while most solicitors offered a clear and transparent service, will writers were a less reliable group. Two of the banks offering a will-writing service – HSBC and NatWest – make naming them as an executor or back-up executor a condition of using the service.

OUR RESEARCH

We sent eight undercover researchers to make 42 visits or calls to solicitors, specialist will writers and banks around the UK to help them make a will. This included visits to 18 firms of solicitors and 12 specialist will-writing firms.

We looked at the three banks that offer will-writing services to non-customers – Barclays, HSBC and NatWest/Royal Bank of Scotland (RBS). Four visits were made to branches of HSBC in England and Wales where the service is offered. The Barclays and NatWest/RBS services are postal-only so we made four calls to the helplines of the solicitors used by each bank to ask for advice about who to choose as executors.

Our researchers used a simple scenario so that the process would be straightforward. They posed as divorcees with two children over 18, who they wanted to leave everything to 50/50, and had assets below the individual inheritance tax threshold of £325,000.

ONLINE

Visit www.which.co.uk/wills for more on writing a will and www.which.co.uk/inheritancetax-explained for information on inheritance tax.

The *Which?* Will service allows you to make your will online for £89 for a single will and £129 for mirror wills, with anyone you wish as your executors. Visit www.whichlegalservice.co.uk to find out more.

OUR RESEARCH

We made a total of 42 visits or calls to solicitors, specialist will writers and banks around the UK to make a will in March and April 2010. We also surveyed 1,327 members of the *Which?* online community in February/March 2010 about making a will.



Barclays, Natwest and HSBC all offer will-writing services

OUR FINDINGS

Our research allowed us to compare the services offered by the three groups of will providers.

SOLICITORS

Solicitors in England and Wales are regulated by the Solicitors Regulation Authority (SRA) and must abide by the Solicitors’ Code of Conduct. There are no specific rules relating to will writing but general principles apply, including that solicitors must act with integrity and in the best interests of each client. The rules in Scotland and Northern Ireland are similar.

We think that, when drawing up your will, a solicitor should not automatically recommend that they are named as an executor and, if they do, should clearly explain the cost implications of this for your beneficiaries (the people who will inherit under your will).

A GOOD SERVICE

None of the solicitors our researchers visited recommended naming their firm as an executor. They all suggested that the children – the beneficiaries of the will – or other family members, would be the best people to choose.

Beneficiaries can be executors if they are over 18. Unless you have a partner who is the sole beneficiary, it’s usual to have at least two executors in case one dies or can’t act but you can have up to four.

Whether a firm is named as sole executor, or joint executor with a non-professional, the firm’s fees will be payable unless they ‘renounce’ (give up) their executor duties. Non-professional executors can also renounce if they don’t want to act.

Will providers do not have to renounce if they are asked to by the beneficiaries and may say that they have been appointed according to the wishes of the testator (the person who made the will). However, the banks have said they will renounce if asked.

One solicitor suggested naming our researcher’s brother as a back-up executor in case the children can’t act, but then appointed his firm as a back up in case the brother can’t either. This was not discussed in the visit and, though it’s unlikely that all three non-professional executors will be unable to act, it could

WILL AND ADMINISTRATION COSTS COMPARED

The table below shows the costs of having a single will drawn up and of having an estate of £270,000 administered by a bank, solicitor or will writer based on the firms we visited

WILL-WRITING COSTS			
FIRM	COST OF SINGLE WILL (£) ^a	WILL ADMINISTRATION FEES ^b	ESTIMATED MINIMUM COST OF ADMINISTERING A £270,000 ESTATE (£) ^b
HSBC	75	1.5% of estate plus extra charges depending on the assets and number of beneficiaries involved. Minimum charge of £2,000.	6,874
BARCLAYS	80	4.5% of first £100,000 of estate; 3.5% of next £400,000; 1.5% of remainder plus £400 for each beneficiary and £75 for each asset.	13,395
NATWEST/RBS	100	4% of first £250,000 of estate; 2% of next £750,000; 1% of excess over £1m. Other expenses also payable. Minimum charge of £1,500.	12,220
BANKS’ AVERAGE	85	3% of estate.	10,830 ^d
WILL WRITERS’ AVERAGE	107	1% to 2% of estate or £100 per hour. Fixed quotes available in some cases.	4,759 ^e
SOLICITORS’ AVERAGE	133	£144 to £210 per hour or 0.5% to 3% of estate. Fixed quotes available in some cases.	5,199 ^f
PROBATE BROKER ^g	199	Fixed quotes.	1,522

^a Including VAT ^b Percentages charged on gross value of estate. Fees all subject to VAT ^c Based on an estate including one property, one savings account and two beneficiaries. Other charges may also apply. Figures include VAT ^d Average of the three banks’ figures. Fees may be reduced where the estate is thought to be exceptionally straightforward. ^e Based on 1.5% of estate ^f Based on an estimated 25 hours of work at £177 an hour ^g Quotes provided by Final Duties

result in the beneficiaries having to pay fees unnecessarily.

WILL WRITERS

There is currently no compulsory regulation for specialist will writers but they are likely to become regulated in Scotland following a consultation. There are three professional bodies that most are part of – the Society of Will Writers (SWW), the Institute of Professional Will Writers (IPW) and the Society of Trust and Estate Practitioners (Step).

All the firms that we visited were members of the SWW or the IPW or had practitioners who were members of Step.

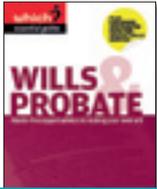
“A PROFESSIONAL EXECUTOR IS RARELY NEEDED IF AFFAIRS ARE STRAIGHTFORWARD”

The services of four of the 12 will writers we visited concerned us. One recommended that it was named as a joint executor. The firm, in Northern Ireland, also recommended a complex package of services for £1,763 including VAT.

Among its recommendations were what it called a ‘family trust’ to stop any divorced spouses or creditors that the researcher’s children might have in future, from getting hold of the money. It also recommended that a ‘probate trust’ be set up for half the property to stop its value being taken into account to assess long-term care costs.

A solicitor would not normally recommend tying up your money in this way and the family trust is an expensive way to deal with things that might never happen. Your home would also still be taken into account for care costs if it was found that you had set up a trust with the intention of avoiding care fees.





WHICH? BOOKS

WILLS & PROBATE

For more information on wills, the Which? essential guide to Wills and Probate (ISBN 978-1-84490-070-1) by David Bunn tells you all need to know. To order a copy at the special price of £8.99 (RRP £10.99), with free p&g, phone 01992 822800 and quote WILLWM07. Offer ends 30 July 2010.

Further concerns

A will writer, in Scotland, recommended including an affiliate firm that provides probate services as an executor in the will and named it as joint executor with our researcher's brother without mentioning the fees that would apply.

Two will writers also named affiliate companies as a back-up executor to the children in case they die before the testator or are unable to act. Only one of these mentioned the 1.5% in fees this company would charge.

"GET INDEPENDENT ADVICE BEFORE TAKING OUT EXTRA PRODUCTS"

A number of will-writing firms offered extra products along with a will, such as powers of attorney, funeral plans, equity release schemes and trusts, but you should shop around and get independent advice from a solicitor or financial adviser before taking out these products with a will writer as you may not have considered them before.

BANKS

Banks are regulated by the Financial Services Authority but all use firms of solicitors for their will services. HSBC and Barclays use a firm called Irwin Mitchell, which also offers will services through the charity Age UK, Skipton Building Society and others. NatWest/Royal Bank of Scotland uses Hugh James in England, Wales and Northern Ireland and Brodies in Scotland.



If you are making a single will through HSBC your only options are to appoint HSBC as sole or joint executor. Our researchers were not told this upfront when they phoned HSBC to make an appointment to see a financial planning manager (FPM) about their will in branch.

In three of the four visits, the FPM mentioned that there would be fees for

administering the will. None of them suggested that a professional executor might not be necessary for our researchers' simple circumstances. In fact, in one visit the FPM said he would always recommend appointing a professional executor.



Our researchers initially phoned up for a will pack and then called the helpline of the solicitors for advice about executors.

As with HSBC, the only options are to make the bank sole or joint executor or to name your partner and put the bank as back up. This was only explained in one of the four initial calls that we made.

When our researchers in England, Wales and Northern Ireland phoned Hugh James, they were wrongly told

that they didn't have to appoint the bank as an executor. Brodies pointed out that our Scottish researcher could name friends or children as joint executors with the bank.

In most cases the fees for administering the will weren't explained in detail but they are explained in a leaflet sent with the will pack. Again, there was no question of whether it was necessary for our researchers to have a professional executor.



Barclays' will pack can be downloaded from its website. It is not compulsory to name Barclays as an executor, although the will form recommends appointing a professional executor such as Barclays. The form doesn't mention that your beneficiaries would have to pay fees but there are details of them elsewhere in the will pack.



In three of the four calls our researchers made to the Irwin Mitchell helpline, the advisers did not recommend putting Barclays as an executor. In the fourth call, the adviser initially recommended it and pointed out the fees but then said the researcher didn't have to put the bank as executor.

OUR VIEW

It is not necessary to name a professional executor in your will as it can be done by family or friends. If they choose to employ a professional when you die they can then shop around for a service and price they are happy with.

Another problem is that will administration fees are often not transparent. Solicitors who charge on an hourly basis may only give you an estimate for the work at the outset and fees charged as a percentage of the estate may not reflect the level of work involved.

One alternative is to go through a probate broker, such as Final Duties. The company sends you the best fixed-price quote from its panel of probate solicitors and if you choose to go ahead you also pay Final Duties a one-off fee of £295. It says it can save you 50% or more on the normal cost of administering a will.

The Office of Fair Trading (OFT) is also concerned about the advice being given by will providers about the appointment of professional executors, the transparency of will administration fees and the difficulties beneficiaries face getting them to stand down.

It has already taken action by working with the IPW and recently approved the trade body's code of practice under the Consumer Codes Approval Scheme.

The OFT has also provided guidance through the Consumer Direct website (www.consumerdirect.gov.uk) and has worked with the SRA. The SRA is in the process of issuing more guidance to solicitors on how to comply with conduct rules, particularly when they provide will-writing services online or through the post.

YOUR RIGHTS

A professional executor is under no legal obligation to renounce its duties but some will providers have committed to doing this, so check. Your beneficiaries may not even realise they can ask for this and at a time of bereavement may not feel like fighting if it refuses.

Adam Walker, founder and managing director of Final Duties, says: 'If you persist, the company will usually back down but if not, your only option is court.'

He says that companies often refuse when initially asked to stand down by an individual but Final Duties can do this on your behalf and says it is usually successful. However, it is currently in the process of court action against a will-writing firm in the South East that is refusing.

The best course of action is not to name a professional executor in your will (and to avoid banks that require this) or, if you have, get a solicitor or other legal firm to prepare a codicil (an addition) to your will – usually cheaper than getting a new will drawn up – to remove it.

Our research shows that, as a group, solicitors provide the most reliable will-writing services and their charges for this are only £48 more on average than the cheapest group – the banks.



For your family's sake, take time to get your will right

TOP 10 TIPS FOR WILL WRITING

- 1** Assess the value of your estate before you make your will to work out whether you should take steps to reduce potential inheritance tax liability.
- 2** Unless there's a chance of conflict, appoint your beneficiaries (if they are over 18), partner or other family members or friends as executors in your will rather than a firm.
- 3** 'Future-proof' your will by thinking about developments you may be able to plan for – e.g the arrival of grandchildren.
- 4** Make sure your will is properly signed by you and witnessed by two people who are not beneficiaries of your will or their spouses.
- 5** Consider including funeral wishes in your will but make sure loved ones are aware of your wishes in case your will isn't read until afterwards.
- 6** Appoint guardians for your children in your will if they are under 18 and trustees, usually the same as the executors, to look after their inheritance until they are old enough.
- 7** If you are worried that your children will be too young to handle an inheritance at the usual age of 18, consider stipulating that they can't inherit until 21 or 25.
- 8** Consider where you want your assets to go if your beneficiaries die before you and whether you want to make gifts to charity.
- 9** Review your will regularly to take account of any changes in circumstances. If you marry, for example, your will becomes invalid.
- 10** Store your will in a safe place at home or with a solicitor, will writer, bank or other will-storage provider. Firms will usually charge for this service. Make sure you tell your beneficiaries where your will is kept.

'THE FEES WOULD BE WORTH PAYING'

Simon Walton, 63, an accountant from London, last amended his will when he moved house in 2007. His solicitor, who he has known for 20 years, is joint executor along with his partner, Nigel, who is the beneficiary, and another old friend.

Although he is unsure what the fees would be for administering the will, he thinks they would be

worth paying as he feels that a solicitor is likely to do the job more efficiently than a non-professional.

He said: 'I think there are advantages to having a solicitor written into the will in advance as the beneficiaries would benefit from their advice and they wouldn't have to look for one when the time comes.'

Although Simon's estate

is fairly straightforward, he has a number of different assets. He also inherited a portfolio of shares from his mother jointly with his brother, which they subsequently split.

If the solicitor charged fees of 2% of the estate, Simon's beneficiaries could end up paying £11,750 (including VAT) of his £500,000 estate to the firm.