

Hoping for the best, preparing for the worst

Covid-19 – A brief look from a probate practitioner's perspective

By [Lydia Pemberton](#)

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We are living in worrying times. The UK is not formally in lock-down but the writing is on the wall. Only history will show whether we acted too quickly, too slowly, too tentatively, too robustly.

The sad reality of the *present* situation is that a lot of people will become ill, the hospitals will not have enough beds and a not insignificant number of people will die. The sad reality of the *future* situation is that some of those people who die, will not have made a will. They will not have communicated their wishes, nor will they have anticipated that the family members surviving them may have to grieve their loss, whilst embroiled in an embittered family wrangling about who *actually* inherited vs. who, it is perceived, *should* have inherited.

Points to consider

In the UK we can leave our estates to whomsoever we choose and we can make that decision from a position of love or from a position of malice, from loyalty or capriciousness. That decision will only be impugned in certain situations e.g. where the person making the will lacked the necessary capacity, or where an eligible party applies for reasonable financial provision to the Court.

Now is the time to consider whether you or a family member needs to make a will or update an existing will. Consideration will have to be given to a number of things, including the following:

- What assets are owned and debts due?
- Is the family home owned in one or both of your names?

- Does the money in joint bank accounts really belong to you both equally?
- Are there children from a first marriage or relationship to consider?
- Is there an adult child you would like to provide for or exclude entirely?
- Is there a better way to arrange your affairs for tax purposes?
- Do you want to make charitable gifts?
- Do you want to include a provision that any beneficiary who challenges your will forfeits their gift?
- Are you sufficiently capacitated to make a will?

You may also need to consider whether a Lasting Power of Attorney is necessary for you or a family member/friend for if, and when, we end up in a situation where our ability to move freely about with our business is curtailed.

Costs

A home-made will is valid as long as it complies with the formalities as required by section 9 of the Wills Act 1837 (the legislation is available at www.legislation.gov.uk). In some cases the gifts will be simple and the need for legal advice not necessary. In other cases, not.

Legal advice invariably comes with a cost but leaving these matters to be sorted by your survivors will also come with a cost, and not just a monetary one. If matters become contentious and the lawyers get involved, then however valuable your estate is the costs will quickly escalate and the estate deplete.

Whilst it is impossible to legislate against post-death challenges being made to a will (or where there is not a will to the provisions which apply on an intestacy), taking good legal advice now can mitigate the time, costs and stress involved.

Post-death

Some basic considerations to be applied in immediate weeks and months:

- Is there a will or does the estate fall to be distributed in accordance with the rules of intestacy?
- Is the original will available? Has a copy been filed with the [National Will Register](#)?

- Who is the executor? Can they access necessary bank accounts without a Grant of Probate?
- Does the executor want to act? Do you want the appointed executor to act?
- How will any Inheritance Tax be paid?
- Do you accept that the will made was valid? If not, do you need to enter a caveat at the Principal Probate Registry or a District Probate Registry (the forms and information are available at www.gov.uk)?
- Has the will excluded or do the rules of intestacy exclude you or somebody who should have been provided for?

There is no “*one size fits all*” solution to how you or a loved one should put their affairs in order or how the financial matters after death should be dealt with. This intention of this article is to encourage fruitful consideration and discussion to try and alleviate what is likely to be a turbulent time for most of the population.



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