



Factsheet

Guardianship

Most people do not like to think of a situation in which they would not be around to bring up their children, but it is important to plan for such an occurrence, however unlikely it might be.

The sad fact is many parents do die prematurely either through illness or accident and leave no Will. The latest published Mortality Statistics from the Office of National Statistics, records a total of 21,820 deaths from all causes in the 20-45 years age group during 2007.

It is reasonable to expect that people with young children would want them to be financially provided for if they happened to die unexpectedly. However, as important as it is to consider finances for your children's future, designating a guardian is even more critical.

What is a guardian?

A guardian is a person who has legal responsibility for your children in lieu of the parents. Under the Children Act 1989 s 5 a parent with parental responsibility may appoint a guardian by Will or by a document which he dates and signs and which provides that the appointment only takes effect on death. The most common method is to include the appointment in a Will which has the added benefit that related financial arrangements can be included within the same document.

The appointee will only become the child's guardian if at the death of the testator there is no parent with parental responsibility surviving. Section 2(1) of the Children Act 1989 provides that where a child's mother and father were married to each other at the time of the child's birth, they shall each have parental responsibility for the child. This applies also to children born as a result of AID. Where the child's parents were not married to each other at the time of the child's birth, only the mother has parental responsibility but the father may acquire it either by a court order or agreement with the mother

Importantly, the Act also states that the courts will appoint guardians if the parents have made no such appointment under their Wills. The courts do not know your children and may make a decision which is less than ideal or not what you would have wished for them. Until such time as the Court appoints a guardian, the children may be taken into care.

Careful consideration has to be given to whom you chose to be your children's guardian. This person will be parenting your child and will make decisions about your children's health, schooling, moral and social training.



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Friends fulfil vow to raise the sons of dying widow

By LIZ HULL

When Caroline Wagstaff was diagnosed with a terminal illness, she was naturally devastated. But the devoted mother of two, who lost her husband to liver disease just ten months previously, was most concerned about what would happen to her young sons when she was gone.

With no family in Britain to look after them, she was terrified that James, 11, and Aneurin, eight, would be put into care. So Mrs Wagstaff, a 44-year-old widow, turned to the two people she trusted the most - her two best friends - and asked them the biggest favour of her life.

Fortunately, Rachel McCarthy, 37, and Sarah Cowley, 32, agreed to be substitute mothers for the two youngsters and pledged to bring them up the way Mrs Wagstaff wanted.

Yesterday Mrs McCarthy and Mrs Cowley, who are sisters and live just a few streets apart in Barry, South Wales, began their new roles by comforting the boys as they tried to come to terms with losing their mother, who died last week following a two year battle with motor neurone disease.

Last night Mrs Cowley, a mother of two, said:

'When Caroline asked us if we would look after the boys we told her of course we would - no ifs or buts. She died knowing they were going to be safe. There's not a lot of money in our homes but there's a lot of love.'

Her sister, Mrs McCarthy, who has four children of her own, added: 'Caroline could die in peace without worrying about where her sons were going. It was like a load had been lifted off her shoulders.'

Some things to consider are:

- Does this person love my children?
- Is this person responsible and able to raise my children?
- Is the person a legal adult (over 18)?
- Will your children still have access to their relatives?
- Would the child have to move to another area?
- What are the person's religious and moral beliefs?
- Is the person fit and healthy?
- Is the person in a stable relationship?
- If you cannot leave enough financial assets for your children's care, is the potential guardian able to afford to care for your children?

Once you have selected someone that you would like to act as a guardian, it is imperative that you discuss the matter with them as they may be unwilling to accept the responsibility.

Financial Provision

There are many ways of organizing finances on behalf of a child and the most appropriate course of action will depend upon the age of the child and the amount of money involved. Some of the questions that can be addressed in a well drafted Will are:

- How will your child's upbringing be paid for?
- Is money to be held in trust for the child beyond the age of 18? Legacies cannot be paid directly to children under the age of 18. Any legacy will need to be held in trust for them until they reach this age. Making a Will allows you to postpone this to say 21 or 25, if you feel that 18 is too young to inherit what could be a substantial amount of money.
- Will your chosen guardians also be the trustees of your child's fund? If not, can the guardians work well with the trustees?
- Do you wish to make a direct gift to the guardian for his or her own benefit?
- If you own a property, is it to be sold after your death? If not, how is its maintenance to be paid for?
- What can the trustees spend your child's money on before he/she reaches 18?
- Will there be inheritance tax? Do you wish to take steps to minimise any such tax bill?
- What about funeral wishes? Other gifts?

There are many different ways to leave money for the benefit of a child. In addition, if your assets exceed £300,000 (the 2007/2008 Inheritance Tax threshold) then there may be inheritance tax to pay on your death. Again, there are ways in which such a tax bill can be reduced using a well drafted Will. For these reasons, we suggest that it is best to take specialist advice when making a will in any case where provision is being made for a child.

For further advice on how this affects your own circumstances, contact us for an appointment