



## Who will look after your children?

**When Rebecca was just two, both her parents were killed in a road traffic accident. Her parents Paul and Maggie had made homemade Wills before she was born, but since then they had married and had not updated them. Unfortunately they had never appointed anyone to be her guardian in the event of their death, nor had they made any financial provision for her.**

Maggie's sister and her husband thought that they should care for Rebecca, but so did Paul's brother and his partner and Paul's parents, Jack and Maureen. No agreement could be reached between them over who should have care and eventually the courts had to step in. The result was an expensive and lengthy fight that caused great stress and upset to the already devastated families of Paul and Maggie. The arguments divided the once close couples for good, leaving Rebecca without a supportive family network or a mum and dad – and none of it needed to have happened.

You don't even have to make a Will to nominate a Guardian, all you have to do is complete and sign a simple document, but without nominated Guardians, the courts will decide who will look after your children.

### Who to pick?

You need to think about who would be the best person to look after your child if you were to die and they were still under 18. If grandparents are relatively young and live nearby, they may be the obvious choice, but you need to be sure that they will physically be able to cope with young children. Brothers and sisters may be the right choice, but as close as you may be to them, could their lifestyle accommodate another child and would they bring them up in a way you would approve of? Friends may also be an option if you have no family close by and they may know your children as well as your extended family do. Although not blood relatives, they may be best placed to offer your children the love and continuity they need.

A further important consideration for unmarried fathers without parental responsibility, is that they cannot name Guardians and will not necessarily become Guardians should the mother die. As such, they should consider either a formal agreement with the mother or failing that, make an application through the courts for Parental Responsibility.

### Discuss it with them

Once you have made your choice, ideally a couple, discuss it with them and find out whether they feel they could take on the responsibility. They need to be clear about what you are asking them to do – to love and care for your children in your place. You need to honestly and openly talk through all the aspects, including money, education and

healthcare, as you won't be in a position to make your wishes known if the worst happens.

### **The role of the guardian**

A properly appointed Guardian has parental responsibility for the child concerned up to the age of 18. They have the same decision-making powers in respect of the child's upbringing and physical care that parents have, as they are in effect complete replacements. Their key role is to provide a stable environment in which your children can develop and move on, from what will have been a very difficult start to their lives.

### **How is a Guardian nominated?**

The nomination will not be effective unless it is made in a written document, signed and dated. Although the nomination can be made in any written document, there is an advantage in using a document such as a Will or Codicil, as these are likely to be safely stored, easily identifiable and to be considered by those dealing with the estate of the deceased on death.

### **Finances**

Where the child is under 18 and is to benefit from your estate, your Will should set up a Trust fund to provide for their needs, such as education and holidays. You should consider whether you wish the Guardians to manage this fund, or whether you would prefer separate trustees? This is on balance a sensible approach, in that there will be someone checking and controlling the money the Guardians are drawing on behalf of your child.

One further consideration is what happens when the child reaches 18 and moves out from under the wing of the Guardian? Money held in trust for them will be theirs absolutely. They will for example be able to sell any property purchased for them. You should consider taking advice on ensuring your legacy continues to protect and support them not only up to the age of 18, but also in their early adulthood.

This article is by no means exhaustive and before acting you should take expert advice, but it serves to point out the importance of the issue of carefully selecting and then appointing guardians. It is extremely unlikely that both parents of a child will be killed, but a little forward planning now can leave you with peace of mind about your child's future and avoid further heartbreak for those left behind.

### **If you are both killed tomorrow – who will be looking after your children?**

*Nicola Dudley is the Head of the Private Client Department at Howell-Jones Partnership solicitors. To contact her to discuss your Guardianship plans, please call 01372 860650 or email on [nicola.dudley@hjplaw.co.uk](mailto:nicola.dudley@hjplaw.co.uk)*