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# Executing Wills – From a Distance



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The lockdown has provided a period of reflection for many people and an increased desire to place their affairs in order. Throughout the world, there will be an increasing demand to assist with preparing and executing Wills.

Although parts of the world are emerging from a strict lockdown, it appears that social distancing will be with us for some time to come. When a country imposes strict rules on executing Wills, this can present a challenge when social distancing is a necessity.

In England & Wales, we are still following execution formalities that were prescribed by statute back in 1837. Broadly speaking, the rules require the testator (person signing the Will) to sign in the presence of two independent adult witnesses. The witnesses should not be a beneficiary or the beneficiary's spouse or civil partner.

## How have Wills been executed whilst in lockdown or during times of social distancing?

It has been particularly tricky for many people – particularly for vulnerable people who are isolating or patients suffering from COVID-19, who are being treated in intensive care units.

Adapting to this unique time has been a necessity and we have seen or heard of the following innovative ways to execute Wills:

- The Will is placed on a garden table with the testator and two neighbours acting as witnesses, all spaced appropriately in the garden, and all with gloves and their own pens. Each person has then stepped forward in turn to sign whilst the signing is observed. Fortunately, the good weather this spring has made this possible!
- As above, but replace the garden table with a car bonnet and you have a similar solution.
- For those without a garden table or car bonnet, we have heard of testators signing on their dining table whilst neighbours peer in through a window. The document is then passed through the window for the witnesses to sign whilst the testator peers through the window to watch the witnesses sign!

- It is not usually very glamorous to hang around in car parks, but a number of law firms have invited clients to their car park where a pre-prepared table is standing and the testator and witnesses can all step forward in turn to sign.
- In the Netherlands, some notaries have created a drive-through style facility where the client arrives in their car, signs the Will, passes the Will to a notary through a window, the Will is then notarised. Similar to ordering a burger at a fast food outlet.

I am sure that there have been numerous innovative ways that Wills have been executed during this unusual time. If you are reading this article and wish to share any interesting social distance style execution methods, please do so in the comments section below.

## Can a Will be validly executed by using a video call?

One of the provisions in England & Wales is that the signature of the testator is made or acknowledged by the testator in the presence of two or more witnesses present at the same time.

So what does the legislation mean by “in the presence”? Would a video call be acceptable? The consensus from practitioners appears to be that a video call would not satisfy the requirement for witnesses to be in the “presence” of the testator.

It is likely that a test case may follow on this point, but we anticipate that “presence” will mean physical presence and not presence on a video call.

## Should the rules be relaxed in England & Wales?

A delicate balance has to be struck between dealing with the restrictions imposed by social distancing and protecting elderly and vulnerable people from undue influence and fraud.

Looking outside of our shores, it is notable that many countries already have more flexible rules on executing Wills or have relaxed existing rules. For example, in Queensland, Australia, they are already now allowing the electronic signing of Wills.

There is an emergency order allowing Wills to be executed electronically in New Zealand. In Ontario, Canada, they are permitting virtual witnessing of documents during the COVID-19 outbreak.

Examples of the relaxations that have been called for during this tricky time are as follows:

- Only one witness being required – instead of two;

- Giving judges the powers to dispense with legal formalities if they have evidence, such as a recording on a phone, to demonstrate a testator's wishes;
- In certain situations, members of the armed forces can make Wills without witnesses, which are known as "privileged Wills". Some have called for these rules to be extended to everyone during this time.

No such relaxation of the rules have yet been agreed here in the UK. In the meantime, here are some questions that we are being frequently asked by our clients:

## **Should I delay executing a Will until the COVID-19 crisis is over?**

In short, no. We do not yet know when social distancing rules will be completely removed.

A Will that has been executed, even if it has been witnessed in an unusual way, is more likely to be held as valid by a court than an unsigned draft. If you are at all concerned about how the Will has been executed, arrange to complete a new copy once the restrictions have been eased further.

## **Can my Will cover foreign assets?**

This depends on the type of asset and the country in which the foreign asset is situated. In some circumstances, a Will prepared in the UK can adequately cover foreign assets. In other cases, it will be preferable to have a separate Will prepared in the country where the asset is situated.

For an introduction to International Wills, please click [here](#) see our separate guidance note on this topic.

The lockdown and social distancing has made preparing separate Wills more challenging. In the current circumstances, your chosen practitioner may be more willing to prepare a worldwide Will to cover your foreign assets.

## **Can someone witness a Will through a window?**

This is an approach which many seem to be adopting. It is important to note that it is believed that the virus can live on papers for some time, so it is very important to consider how papers are handled.

Whether a court would allow for witnessing in this manner to be valid, remains to be seen. At present, the only case law in this area is very old or relates to deeds instead of Wills. However, it is hoped that the court would take a pragmatic approach.

## Can a solicitor still provide me with advice on how to complete my Will?

It is often the case that a solicitor will draft a Will and invite their client to the office to go through the document before it is executed. At the moment, with face to face meetings being very hard to carry out safely, having a video call with your solicitor is a good way to get the advice you require, so that you feel more comfortable about the execution when this is posted to you.

Those preparing Wills are also providing detailed notes to accompany any Wills that are posted out, to assist their clients further.

## How do you know if the testator is being pressured into making the Will?

Without face to face meetings, it is hard to know how much influence others may be having over a client and whether the Will really reflects the wishes of the testator. It will also be harder to determine the testator's mental capacity.

Anyone assisting with the preparation should take detailed attendance notes of any discussions with the client about their wishes and should, in particular, note anything they are concerned about, such as a family member always insisting on being in the background of a video call.

If there is any doubt, once the restrictions ease, it may be worth asking a client to reconfirm their instructions or to execute a new version of the Will.

## Lester Aldridge is here to help

Whatever aspect of estate planning you require assistance with, or any [estate administration](#) that you are trying to tackle, please get in touch with us at Lester Aldridge by emailing [online.enquiries@LA-law.com](mailto:online.enquiries@LA-law.com) or by calling 01202 786351 so that we can provide you with the most up to date advice on how the crisis may impact on your plans.