

finding the will

a report on will-writing behaviour in England and Wales

by Steve Brooker

Summary

The problems

Changing living patterns and the rise of personal wealth mean increasing numbers of people will fall through the safety net provided by our inheritance laws should they die without making a will.

27.5 million adults in England and Wales (64 per cent) do not have a will. Of these, very few have made an active choice that they don't need one. Most simply haven't got around to it, have never thought about it or don't want to think about dying.

Whether or not you have a will depends on your life circumstances: people from social groups CDE and ethnic minorities are three times less likely to have a will than the rest of the population. Our research lays bare a stark social divide.

NCC has discovered a further 'wills gap': those whose life circumstances leave them particularly vulnerable to dying without a will – cohabitants,

separated couples, parents with dependent children – are, in fact, the least likely to have a will.

The consequences of dying without a will fall hardest on those left behind to pick up the pieces. One quarter of 55 to 64-year-olds have personal experience of the human and economic costs associated with intestacy or know someone who has. One million people know of examples when at least part of the estate went to the wrong person. It is timely to review whether the inheritance laws are fit for purpose.

The solutions

We call on industry and government to find effective ways of getting more people to make a will.

Those without a will represent at least £250 million of untapped business. Despite this, most high-street solicitors tend not to actively market their will-writing services. Experience in Scotland suggests there

is scope to provide incentives, such as offering will-writing as part of a bundled conveyancing package. Increased competition enabled by reforms in the Legal Services Bill should spur innovation.

Consumers are increasingly turning to sources other than solicitors to make their will. Statutory regulation of these providers, ostensibly to increase consumer protection, could in fact narrow the choices available to consumers and discourage them from making a will. Instead, a credible co-regulatory scheme will help ensure acceptable standards and build consumer confidence.

There is a need to try creative approaches, such as prompting people to make a will following important life events – such as having children, buying a home, suffering bereavement – when the consequences of dying without a will become more serious.

We call on the government to adopt social marketing techniques to plan interventions targeted at parts of the population who, due to their age or life circumstances, are in most urgent need of making a will.

Recommendations

- ▶ The Ministry of Justice should adopt a social marketing approach to increasing will ownership, working in collaboration with the National Social Marketing Centre.
- ▶ The Ministry of Justice should review whether the inheritance laws remain fit for purpose.
- ▶ The Ministry of Justice should investigate Internet will-writing services and, if necessary, put in place appropriate consumer protection safeguards.
- ▶ Industry should adopt more innovative approaches to will-writing services.
- ▶ The will-writing trade bodies should apply to the Office of Fair Trading Consumer Code Approvals Scheme

Introduction

Why make a will

The changing face of society means that more people than ever before would benefit from having a will. Today's family structures are more complicated than our inheritance laws - written in 1925 - could possibly have foreseen. There are more unmarried couples and single households. More than five million Britons live abroad. Personal wealth is rising rapidly and people now own a wide range of assets.

Making a will offers us peace of mind that our estate will be distributed according to our wishes when we die. However, the consequences of dying without a will (intestacy) fall hardest on those left behind to pick up the pieces.

Dealing with an estate in the absence of a will can be a time-consuming, expensive and stressful process that can cause irreparable damage to relationships. In the most extreme cases the family home might have to

be sold, intended beneficiaries might get nothing or children might be looked after by someone other than the will writer might have chosen. Many of these changes in society are relatively recent and they are likely to have a significant impact, with greater numbers of people falling through the safety net provided by the intestacy system. It is important to act now to prevent these serious problems becoming commonplace in future.

NCC's research

Our nationally representative survey of 2,673 consumers in England and Wales is, as far as we know, the most comprehensive quantitative research available on consumer attitudes and behaviour around will-writing.

This study follows a similar survey conducted by our colleagues at the Scottish Consumer Council in 2006 on wills and awareness of inheritance rights in Scotland (1).

NCC's research:

- ▶ builds a detailed socio-economic picture of will ownership;
- ▶ identifies the reasons why people do or don't make a will;
- ▶ explores consumers' readiness to use someone other than a solicitor to help them make a will - providing a test of proposals in the Legal Services Bill to facilitate alternative business structures; and
- ▶ provides the first data on the extent and type of problems consumers face due to intestacy.

In the remaining sections of this report, we present the survey results and discuss the policy implications.

Potential intestacy pitfalls

- ▶ Cohabitants have no automatic right to inheritance unless the partnership has been registered under the Civil Partnership Act, although it might be possible for them to claim a share of the estate.
- ▶ If a marriage has broken down but a divorce has not been finalised, the surviving spouse might inherit the whole or part of the estate.
- ▶ If the family home is worth more than £125,000, it might have to be sold in order to pay out surviving relatives.
- ▶ The courts may appoint guardians of children under the age of 18, if a guardian is not identified in a will.
- ▶ Trusts might have to be set up; while these may provide important safeguards, the terms may be restrictive and the legal costs of setting them up could be expensive.
- ▶ When the transfer of property exceeds £300,000 in value, the amount over this sum may attract inheritance tax of 40 per cent; wills can be used to pass on an estate tax-efficiently.

Research findings

Who has a will?

Just over one-third of respondents (36 per cent) in our survey had a will, which suggests that around 27.5 million adults in England and Wales do not have a will.

Levels of will ownership in Wales were about the same (37 per cent) as in England. The small Welsh sample size means we cannot make statistically valid findings on the detailed survey questions.

Our research provides rich data on which parts of the population have a will and which do not. Some parts of the population have a more pressing need to make a will due to their age or life circumstances. We pay particular attention to these 'at risk' groups in our analysis.

We found considerable variation according to age, socio-economic grouping, ethnicity and relationship status. However, whether or not someone has a will should not be

taken to imply a causal relationship with these demographic characteristics, although these factors may be relevant. Where our survey data suggests there might be a causal link, we draw this out below.

Age

As might be expected, will ownership is progressively more common as people get older (see Chart 1) and it is very likely that this reflects the importance of life stage, as well as age, in triggering the decision to make a will. Only three per cent of respondents aged 16-24 had a will compared to 70 per cent of those aged 65 and older, and the likelihood of will ownership rose steadily with age. Despite this, it is a cause for concern that nearly a third of those aged 65 and older – nearly two million people – have not yet made a will.

Chart 1: Will ownership by age

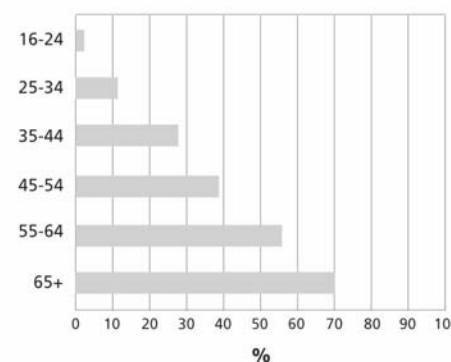


Chart 2: Will ownership by social class



Social class

Social class was a clear indicator of will ownership (see Chart 2). Only 27 per cent of people in socio-economic category DE had a will compared to 70 per cent of those in category AB. There was also a significant difference in will ownership between those in non-manual and skilled manual occupations (categories C1 and C2).

Ethnicity

While 39 per cent of White respondents had a will, just 12 per cent of Black and Minority Ethnic (BME) respondents had one. This finding is consistent with previous research (2). Unfortunately our sample was not large enough to provide a breakdown of respondents within the BME population.

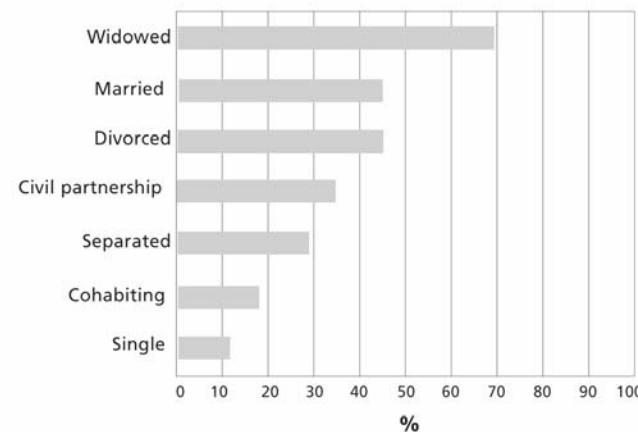
Relationship status

The importance of age and life stage, highlighted earlier, is also notable with regard to relationship status (see Chart 3). Widows were most likely to have a will (68 per cent). Married couples were equally likely to have a will as those who had divorced (45 per cent). Separated couples (28 per cent), cohabitants (17 per cent) and single people (12 per cent) were the least likely to have a will.

Cohabitors are likely to be younger and so less likely to have a will.

However, the consequences of dying without a will are potentially more serious for cohabitants, since the partner has no automatic entitlement to the estate. Research shows that cohabitants are no more knowledgeable than the rest of the population about inheritance law, even though its impact on them is potentially the greatest (3).

Chart 3: Will ownership by relationship status



Children

Respondents who had children living with them were half as likely to have a will as those without children in the household (21 versus 42 per cent). At the same time, data from our question on life triggers suggests that having children is an event which prompts some people to make a will.

Again, age is most likely to account for these apparently contradictory findings. Children are likely to have left the nest by the time most parents get around to making a will – but custody disputes could ensue if the parents of dependent children die intestate, so there is a strong imperative for them to make a will.

Estate value

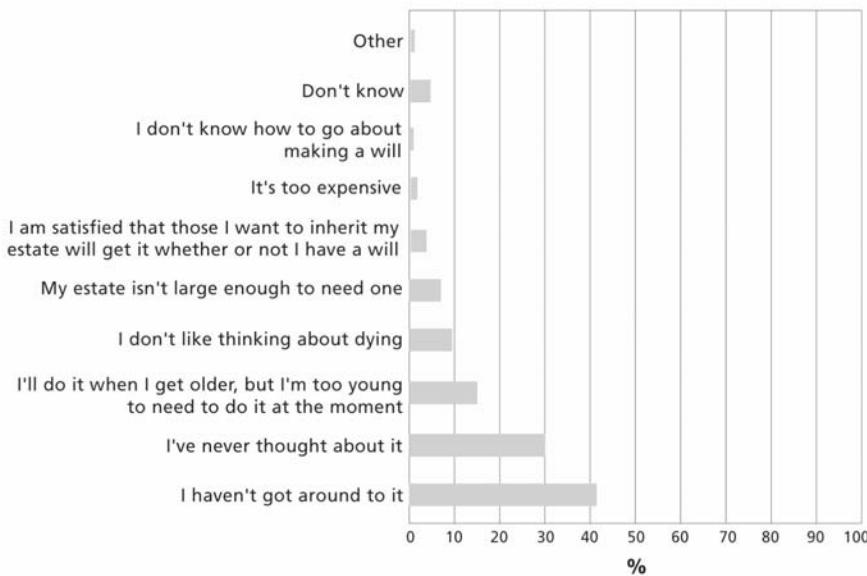
A will can help ensure that a person's affairs are dealt with tax-efficiently. 69 per cent of people who valued their estate at more than £285,000 – the inheritance tax threshold at the time of our survey – had a will. One-

fifth of our sample (21 per cent) did not know the approximate value of their estate.

Data on housing tenure reveals that 68 per cent of people who own their property outright have a will, while 32 per cent with a mortgage have a will. Age is a relevant factor here, since older people are more likely to own their homes, but it is still concerning that two-thirds of people are not fully protecting this asset. Previous research indicates weak knowledge about inheritance tax and law, although knowledge was higher among those in the professional classes (4).

Only six per cent of estates actually attract inheritance tax (5). Despite this, rising property values mean more estates are now potentially liable to pay out. Therefore, more people are likely to be captured by inheritance tax in future.

Chart 4: Reasons for not having a will



Reasons for not having a will

Respondents were allowed to give multiple reasons why they did not have a will (see Chart 4).

It is striking that a small proportion of consumers positively decide not to make a will since they believe they don't need one, either because the right people would get their estate anyway or they have little to pass on. In fact, of the 27.5 million adults who don't have a will, the equivalent of just three million gives either of these reasons. Overall, few people are prevented from making a will by barriers (real or psychological); inactivity among those without a will is due predominantly to apathy.

The most common reason was that people simply hadn't got around to it (42 per cent). Consumers in socio-economic category AB and people aged 35–64 were most likely to provide this reason. Fifteen per cent of people said they were too young to need to make a will, but intended

to do so later, including 37 per cent of 16-24 year olds.

A significant proportion admitted they had never thought about making a will (30 per cent). This reason was more common among younger respondents, although nearly one-fifth (18 per cent) of people aged 65 and older said this. There was also a correlation with socio-economic status: 34 per cent of people in group DE gave this reason compared to 23 per cent of people in group AB.

Nearly one in ten consumers (9 per cent), including 8 per cent of those aged 65 and older, said they had not made a will because they didn't want to think about dying. This may underestimate the true figure since some respondents might have been embarrassed to admit this.

Seven per cent of those without a will said their estate wasn't large enough to need one. Those in lower socio-economic groups were more

likely to give this reason (11 per cent) but, even so, the difference is relatively marginal suggesting non-economic factors are more relevant. Further, 14 per cent of those aged 65 and older said they didn't have a will because they had little to leave.

Just a small number of consumers (four per cent) said they were confident that those who they wanted to inherit their estate would get it regardless of whether or not they had a will. Older age groups were more likely to give this reason.

Potential disincentives, such as lack of knowledge or cost, or indecision about who to give the estate to, received a tiny response. However, it is possible that cost might become more relevant once people start to actively think about and research making a will.

Social class

Our survey data provides some evidence of a causal link between socio-economic status and will ownership: cost and lack of assets were not significant factors behind the decisions of people in lower socio-economic groups not to make a will. Instead, the same top reasons were given across all socio-economic ranges, suggesting the degree of economic activity is not a dominant factor.

We also note the findings of research by the Financial Services Authority, which found that people on lower incomes, often for very rational reasons, are less likely to plan ahead for their financial futures (6). Research suggests that low income groups prefer to manage their finances on a day-to-day basis.

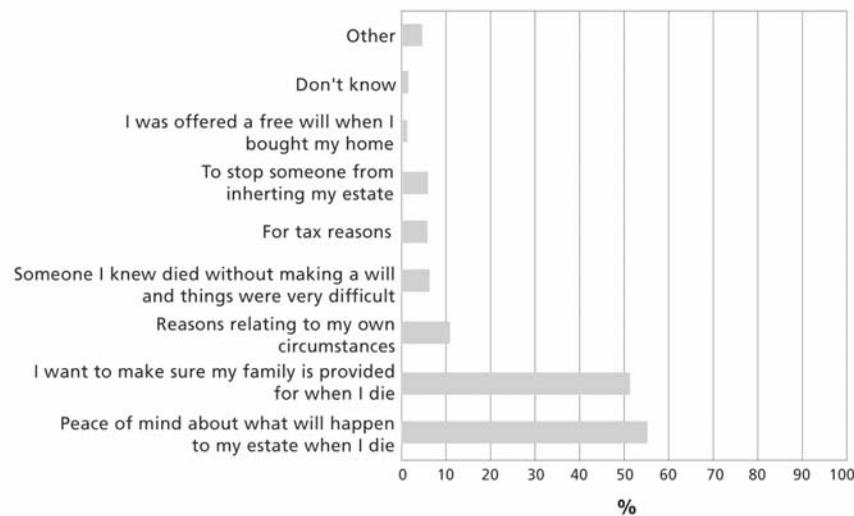
Ethnicity

The lower level of will ownership among BME respondents compared to White respondents may partly be due to the BME population experiencing a greater degree of socio-economic disadvantage – where will ownership is lower generally – compared to the rest of the population.

The reasons provided by BME respondents as to why they made a will or not did not differ widely from White respondents, although a larger proportion of BME respondents who had not made a will said they hadn't thought about it or didn't give a reason.

Cultural factors might also be relevant. For example, joint ownership of assets is more common among Asian families; and standard wills might not be compliant with Sharia law. Research by the Ministry of Justice on BME attitudes towards the civil justice system found

Chart 5: Reasons for having a will



participants preferred to resolve problems within the family or community and avoid outsiders ‘knowing my business’. Further, it showed language barriers compound a lack of basic awareness about sources of help and advice (7).

Reasons for having a will

Again, respondents were permitted to give multiple reasons why they had made a will (see Chart 5). The sample size in this section was smaller than the previous one but, although the findings should be treated with caution, they have useful qualitative value. Further, since older people are more likely to have a will, circumstances relevant to age should be taken into account when interpreting the data.

The most common reason given was: ‘peace of mind about what would happen to my estate when I die’ (55 per cent). This reason was given more often among older people,

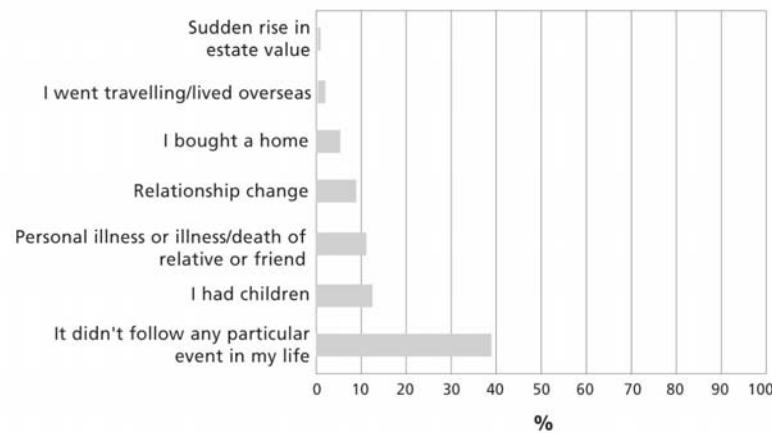
widowers and those in higher socio-economic groups.

A close second was making sure that the family was provided for. Older people, those in lower socio-economic groups and people with children in the household were more likely to provide this reason.

Twelve per cent of respondents said that reasons relating to their personal circumstances, such as an illness, change in personal relationships or having children prompted them to make a will. We explore this further below (see Life triggers). A further seven per cent of respondents said they decided to make a will after experiencing intestacy problems first-hand. Age may be a relevant hidden factor in all these answers.

Just two per cent of respondents said they made a will after being offered this service for free when buying a home. This compares with 12 per cent of respondents in a

Chart 6: Life event triggers



similar survey conducted by the Scottish Consumer Council (8). This suggests there is scope to develop market incentives in England and Wales, although we recognise that the buying process is different in Scotland. There, solicitors have traditionally had a more central role in the house-buying and selling process overall, partly because they do estate agency work.

Life triggers

Half of our sample said they decided to make a will following a life event (see Chart 6). The significance of the findings is uncertain, however, since the survey data did not allow us to compare those who experienced the life event and made a will with those who experienced the same life event but didn't make a will as a result.

Further, these life events do not occur with the same frequency. For example, more people have children than get separated. Therefore, it is not statistically valid to say that

having children is a more likely trigger to making a will than marriage breakdown.

Despite these caveats, the responses provide useful indicative material about the sorts of circumstances that lead people to make a will.

Birth and death were the most common stated triggers of will ownership: 30 per cent of 25–34 year-olds and 26 per cent of 35–44 year-olds made a will after having children. Twenty-eight per cent of widowers made a will following personal illness or the death of a relative or friend. As expected, older respondents were more likely to give this reason.

Eight per cent of people made a will following a change in their personal relationships. Separated and divorced couples were more likely to give this reason, although the sample size here was small.

Economic events – such as buying a home or receiving an inheritance – were least likely to be given as reasons, even though these are events in most people's lives.

Drawing up a will

We probed various aspects of will-writing behaviour, including: the methods consumers use to make a will now and those they would be prepared to use in future; the extent to which consumers keep their will up-to-date; and the accuracy of people's assumptions about the cost of making a will.

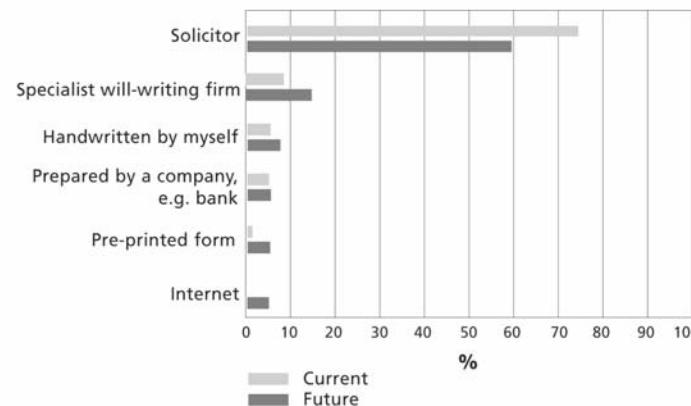
Will preparation method

Consumers face a range of options when preparing a will. Will-writing is not an activity reserved to the legal professions. While employing a solicitor is the traditional route, a variety of other options exist.

Anyone can already legally offer will-writing services. Provisions in the Legal Services Bill allowing non-law firms to become licensed to provide reserved legal activities will, in all likelihood, mean consumers turn to a wider range of market providers for their legal needs in future.

Of those respondents in our survey who had already made a will, nearly three-quarters (74 per cent) used the services of a solicitor (see Chart 7). This compares to 94 per cent in Scotland where market alternatives are less developed (9).

Chart 7: Will preparation method



Fifteen per cent of consumers who already had a will, equivalent to 2.3 million people, used an alternative market provider. The number of respondents who had used a specialist will-writing firm was higher than anticipated (8 per cent), even allowing for some confusion over terms.

When we asked all respondents which methods of preparing a will they would be willing to use in future, just 59 per cent said they would consider using a solicitor. This indicates a willingness among consumers of all types, but especially the younger generation, to take advantage of the wider choice of providers that should result from the current legislative reforms.

It is a cause for concern that 14 per cent of respondents would consider hand-writing their own will. This is generally inadvisable, since the document will be invalid unless the intentions are clear and it has been

properly signed and witnessed. Younger respondents, who are least likely to be aware of this since they have not yet contemplated making a will, were most likely to say this.

Finally, while none of our sample had made a will on the internet, six per cent of respondents said they would consider doing so in future.

Currency of wills

Life circumstances change – marriage, divorce, having children – so it is important that consumers keep their will up-to-date.

We were pleased to find that 87 per cent of respondents said their will reflected their current wishes about how they wanted their estate to be disposed of when they died. However, this was only the case for 68 per cent of BME respondents, although the sample size is small so it is difficult to draw firm conclusions. Of course, these figures assume that

Chart 8: Time since current will was prepared

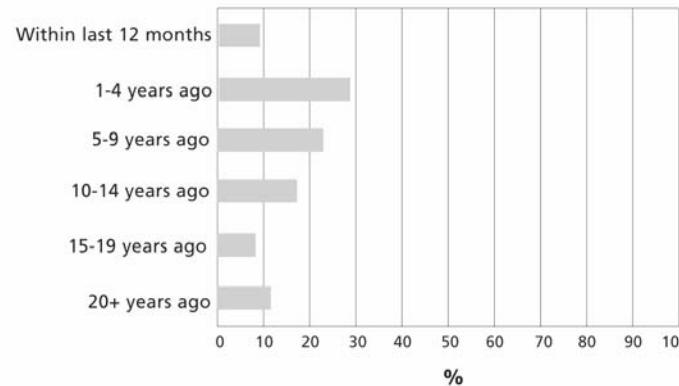
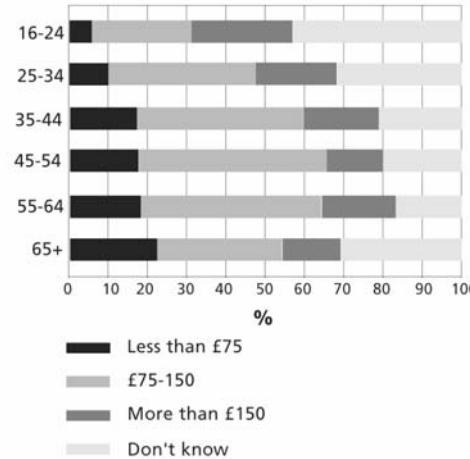


Chart 9: Cost



the will has been correctly drafted and can be declared valid. Related to this, we asked about the length of time since the will was prepared (see Chart 8). Nine per cent of respondents, or about three million adults in England and Wales, either made a new will or updated their existing will during the last twelve months. A total of 37 per cent of consumers made or updated their will in the last five years. In the only real gender difference throughout our survey, 40 per cent of men had done so compared to 35 per cent of women.

There were also a large number of old wills – 20 per cent of wills were made or updated at least 15 years ago. However, the most important statistic is that the large majority of consumers who have a will are confident it is up-to-date.

Perceived cost of making a will
All respondents were asked to estimate the cost of drawing up a straightforward will by a solicitor (see Chart 9). Based on advice from the Law Society of England and Wales and random phone calls to twenty solicitor firms, the most accurate answer is £75-150.

Thirty-eight per cent of respondents gave the correct answer. Respondents in the 45–64 age range were most likely to answer correctly. Those who had a will were more likely to identify the right answer (45 per cent compared to 35 per cent).

Almost the same number of respondents in the survey got the answer right as got it wrong. Further, of those who guessed wrongly, older respondents were more likely to under-estimate the cost of making a will while younger respondents were more likely to over-estimate. People without a will were more likely to over-estimate the cost, while those

with a will were more likely to under-estimate.

In addition, more than a quarter of the sample (27 per cent) said they didn't know how much making a will would cost. A higher number of BME and social group DE respondents gave this answer. Almost twice as many people without a will said they didn't know when compared to those who did have a will.

Problems linked to intestacy

As far as we know, this is the first quantitative survey to explore the extent and type of problems linked to intestacy (see Chart 10).

Fifteen per cent of respondents, equivalent to 5.1 million adults in England and Wales, either had personal experience of intestacy problems or knew someone who had. This applied to nearly a quarter (23 per cent) of 55–64 year olds – an

age when people often lose family or friends.

Of the 15 per cent who reported problems, for almost half our sample (48 per cent), things were simply a hassle to sort out. A third (33 per cent) said intestacy was stressful to deal with, while 14 per cent said it proved expensive to resolve.

Intestacy can have a devastating human cost. A third of those reporting problems (33 per cent) said the experience put personal relationships under strain. Over a fifth (21 per cent), equivalent to one million people, said that – in their opinion – at least part of the estate went to the wrong person. In other words, there was a discrepancy between what the law required and what the person involved either considered fair; or the outcome was contrary to what the person writing the will would have wanted. Fortunately, just seven per cent said there were problems about who was

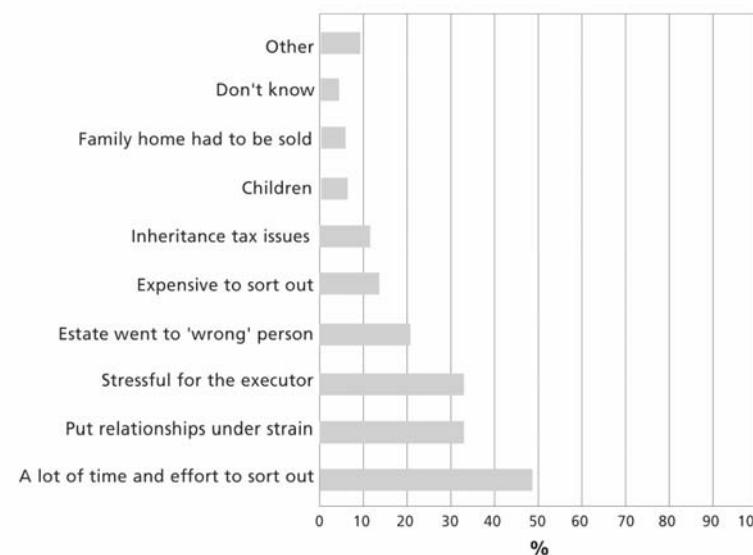
responsible for looking after the children, which represents a tiny fraction of the overall population.

Intestacy can also have serious economic consequences. Apart from the cost of dealing with the estate, 12 per cent reported inheritance tax problems. A small number (six per cent) knew of circumstances when the family home had to be sold to pay off relatives.

Clearly, these figures only scratch the surface about understanding the issues people face when dealing with intestacy. Some of the problems can also occur when there is a will.

However, especially in relation to family disputes, there is a need to ensure the intestacy system remains fit for purpose and that the process works humanely and effectively.

Chart 10: Type of intestacy problems



Intestacy rules

When a person dies without having made a valid will, their estate is divided between certain people according to prescribed rules.

For example, if there is no surviving spouse and no surviving children, then the estate goes to the following people in order of priority:

- ▶ Grandchildren (or remoter issue)
- ▶ Parents
- ▶ Brothers and sisters (and the children of any who have died)
- ▶ Grandparents
- ▶ Uncles and Aunts (and the children of any who have died)

About the research

NCC commissioned TNS to conduct research into will ownership in England and Wales.

A sample of 2,673 was interviewed over the period 21 March – 27 March 2007.

Issues for policy-makers

Cause for alarm

NCC's findings cause alarm on a number of fronts:

- ▶ The low level of will ownership among the population as a whole. Further, nearly a third of 65s and older do not have a will
- ▶ Wide differences in will ownership depending on socio-economic status and ethnicity
- ▶ Some of those most vulnerable to intestacy laws – eg. cohabitants and separated couples – are less likely to have a will and tend to be ignorant of the consequences
- ▶ Few people make a positive choice not to have a will; rather most people hadn't got round to it, had never thought about it or didn't want to think about dying
- ▶ Intestacy causes serious problems. Nearly a quarter of 55–64 year-olds reports difficulties. One million people know of cases when at least part of the estate went to the 'wrong person'.

One positive finding to emerge from our research is that most people who have a will are satisfied it is current.

Is low will ownership a problem?

The most important statistic – one which nobody can know for certain – is the number of people who die without making a will (10). Even if large numbers of people do die intestate, some argue this doesn't matter because there is a system to resolve this situation which is suitable for most people.

However, we find this argument unconvincing. Few people make a positive decision not to make a will on the basis of informed choice. It also fails to deal satisfactorily with the social divide uncovered by this research: the likelihood of someone having a will seems closely related to their life circumstances. And, as our findings on intestacy demonstrate vividly, the consequences of not making a will are often serious and distressing for those left behind to

sort things out. These problems become a burden on the state if the family courts become tied up resolving disputes.

Who needs a will the most?

Nearly everyone would benefit from making a will, not least because it makes the job of administering the estate easier. However, choosing not to make a will could be a rational decision for some, including people with very small estates or those satisfied that the intestacy laws will ensure their estate is disposed as they would have intended. While everyone should carefully consider making a will, there are some groups of consumers for whom making a will is more urgent due to their age or more pressing because of their life circumstances. This is where policy makers should concentrate their efforts.

It is understandable that younger people tend not to have a will. The risk of dying young is low but, for

those with responsibilities, such as caring for dependent children, the consequences of dying intestate are potentially the most severe. The relatively small cost of making a will represents a worthwhile insurance policy against unexpected events.

Similarly, during recent years fewer people have married, while cohabitation – including on a long-term or permanent basis – is increasingly commonplace. Surviving partners may have to resort to litigation to resolve disputes.

Our research highlighted wide social inequalities in will ownership. Some argue that making a will is less important for people on low incomes since they have little to pass on. However, the reasons given by lower-income respondents about why they don't have wills are less to do with their economic circumstances, although these are relevant, than with other factors. These are shared with higher-income

groups, and include not getting around to making a will or not thinking about it. Moreover, people may under-estimate their estate by failing to take account of potentially valuable assets such as pension death benefits or life insurance policies.

Further, this is an unsatisfactory argument in social justice terms: the importance of a person's assets is an individual matter regardless of financial value. Everyone is equally entitled to the opportunity to dispose of their estate according to their wishes on the basis of an informed choice.

The role of industry

Despite relaxation of restrictions on advertising, most solicitors do not actively market their services, relying instead on consumers to make the first move. This passive approach sits uneasily with consumers' apparent reluctance to make their will.

Solicitors generally regard will-writing as a loss leader. However, if each of the 27.5 million people without a will spent just £100 on a simple will, it would result in a quarter of a billion pounds' worth of business. Further, the relationship established with a solicitor by writing a will can lead to more profitable business, not just in estate administration.

There is scope for the market to provide consumers with positive incentives to make a will. After all, with its commercial power and understanding of customers, industry is often better placed than government to make a difference to people's behaviour.

There are some signs of change. In anticipation of the Legal Services Bill, some providers now offer will-writing as part of a paid-for annual package of legal services. The creation of one-stop-shops enabled by this legislation, where lawyers

might work in the same organisation as estate agents, insurers and so on, should also spark new approaches.

These developments should make high-street solicitors, in particular, sit up and take notice; unless they innovate and promote their services more actively, then they are likely to lose out to new entrants, such as financial services firms. The Scottish experience suggests one under-exploited opportunity is offering will-writing as part of a bundled conveyancing package.

The role of charities

Charities – who receive £1.6 billion in legacies annually (11) – would clearly benefit from more people making wills. Legacies are particularly attractive to charities because they represent mostly unrestricted funding, which is otherwise hard to find. It is estimated that each additional one per cent of wills that contain a charitable gift will result in

an additional £100 million income across the third sector (12).

Research shows that 62 per cent of people would leave a donation to charity in their will if writing one tomorrow, but only one in seven wills do this (13). Matching people's intentions with their actions could clearly make a huge difference to those vulnerable members of society who are supported by charities.

Clearly charities should not strong-arm consumers into making wills. However, initiatives such as Remember A Charity and Will Aid apart, charities currently do not invest heavily in legacy marketing compared to their other activities. Apart from resource constraints, the time lag between someone making a will and their death makes it difficult for charities to quantify the return from their investment. Further, many charities do not enjoy the security to take a long-term view.

As with other forms of charitable giving, legacies enjoy tax relief (they are exempt from inheritance tax). However, the level of government investment in promoting awareness of this benefit is minimal compared to that made in promoting other forms of tax-effective giving, such as payroll giving. Given the mismatch between people's intentions to leave a charitable gift in their will and their actions, a modest government investment in promoting legacies could help provide a sustainable funding solution for the third sector.

The role of government

Citizens clearly should take responsibility to plan properly for the future. Indeed, there has been a recent shift in government approach to transfer more responsibility to individuals to make decisions.

We consider that government has three principle responsibilities in relation to wills:

- ▶ To ensure that the substantive law remains fit for purpose.
- ▶ To ensure an appropriate balance between competitive markets and consumer protection.
- ▶ To ensure everyone has an equal opportunity to prepare a will on the basis of informed choice.

We consider briefly each of these responsibilities below.

Substantive law

The inheritance laws need to keep pace with societal change so that intestacy problems are minimised. The certainty provided by creating a hierarchy of beneficiaries means that the intestacy rules can never suit every situation. However, as far as possible, there should be a simple and fair system that deals adequately with the most common scenarios.

The Law Commission last reviewed distribution of intestacy in 1989, but its principal recommendation – the surviving spouse should receive the

whole estate – wasn't implemented (14). A recent review of the laws on cohabitation has recommended that the intestacy rules should be left unchanged, relying on the discretion of the courts to resolve disputes. It concluded that, although reform would likely win public support, the imposition of automatic rights would be too complex given the variety of possible cohabiting relationships (15).

Many of the changes in society which have left more people vulnerable to dying without a will, ie. more people with multiple and high-value assets, cohabitation and living abroad, are relatively recent. Problems linked to intestacy for these people will not be apparent now but will be felt in the future as they grow older and die. It is surely better to act now than to deal with the fallout later.

In particular, the relatively high number of respondents in our survey who reported intestacy leading to the

estate going to the wrong people suggests that a new review of the distribution chain would be timely.

Markets and regulation

Will-writing is not an activity which is reserved to the legal professions. This has enabled an alternative market to develop and compete with solicitors. Our survey highlights that consumers are already using these options and are increasingly likely to do so in future.

Removing these options could actually discourage consumers from making a will. This might happen if will-writing is made a reserved legal activity through the Legal Services Bill, ostensibly as a precautionary measure to improve consumer protection, since the cost of regulation would likely drive many small specialist will-writing firms out of the market. Further, mass market providers, such as banks, would be unable to offer will-writing services

until 2011, when it becomes possible to obtain a special licence.

Nevertheless, the wide gap in knowledge – or ‘information asymmetries’ – between consumers and lawyers, and the growth of DIY wills and other services in the unregulated sector, means policy-makers should keep the level of consumer protection under review.

Consumers would likely have greater confidence in these newer market providers if their services were underpinned by a credible system of self-regulation. We encourage trade associations in this sector to press ahead with their efforts to achieve recognition from the Office of Fair Trading Consumer Code Approvals Scheme.

Although none of our sample had made a will on the Internet, a small number indicated their willingness to do so in future. A quick online search revealed a number of sites

offering these services, but the consumer protection safeguards seemed few and far between. Policy-makers should monitor this emerging area.

Enabling informed choice
The government provides information to citizens in many aspects of life, including those – such as in financial services – where people may lose out unless they take advantage of what the market has to offer. In some areas, the government provides incentives to encourage behaviour change.

Preparing a will is an important aspect of making adequate plans for the future. The consequences of failing to do so can be serious. We believe the government, in partnership with others, has a responsibility to encourage citizens – particularly those for whom the intestacy system does not provide a safety net – to make a will.

The government is committed to reducing social exclusion. The stark social inequalities in will ownership exposed by our research provide another justification to intervene. Other research has also highlighted the limited capacity of some vulnerable groups of consumers to make plans for the future (16).

Currently, the Ministry of Justice does not run awareness campaigns about wills, although it funds initiatives – such as the LivingTogether campaign targeted at cohabitants – which do. There is scope to do more. The Education, Information and Advice strategy offers a home for such initiatives. Further, ministers are considering proposals made by an independent task force – of which NCC is a member – to create a Public Legal Education Centre (17). Increasing levels of will ownership is one example of the sorts of activity where the Centre would be well placed to provide leadership.

Getting creative
The impact of a standard short-term blanket awareness campaign is likely to be limited. There is a need for more creative approaches.

We know that many people decide to make a will following important life events – or moments of truth – when the importance of making a will hits home. These events – getting married or divorced, having children, buying a home, retiring, experiencing bereavement – are occasions when information and advice about these specific matters is already provided by various organisations, including government initiatives like Directgov. These resources could provide timely opportunities to prompt consumers to make a will, or even provide free standard forms which people could download to prepare simple wills.

However, while new technologies should be utilised, policy-makers should remember that some

consumers – such as those on low incomes or in BME groups – can be hard to reach. The market needs to be sensitive to the needs of vulnerable consumers and provide them with tailored information. Further, messages about wills are likely to be more effectively delivered through community-based advice services which are seen as a trusted source of help and support.

While responsibility for wills rests with the Ministry of Justice, there is scope to explore partnerships with relevant initiatives in other parts of government. Potential linkages include the financial capability agenda, with its emphasis on planning for the future, or the Child Trust Fund, where the government already intervenes in the form of financial incentives to encourage change in behaviour around savings.

Given many people prefer to put off making a will until later or never think about it, opt-in approaches –

related to events where the consequences of dying intestate become more serious – are more likely to succeed than relying on consumers to make the first move.

Changing consumer behaviour through social marketing

This report recommends that the government explore a social marketing approach to encourage more people to make a will. Social marketing applies marketing and other techniques in a systematic fashion to change behaviour in ways that benefit society.

The National Social Marketing Centre (18), based at NCC, has pioneered the development of social marketing theory and techniques in the UK. The initial activities of the Centre have focused on the health arena, but this area of practice has the potential for wide application.

Social marketing should not be confused with social ‘advertising’

which is simply the provision of messages to a particular audience. The core central feature of social marketing is its focus on understanding the consumer first. By developing a deep insight into people’s lives, social marketing enables the selection of the intervention methods most likely to impact on people’s actual behaviour in a sustained way.

The driving concern of social marketing is to find the most effective mix of interventions that will remove barriers and provide incentives for the target audience to adopt or maintain specific behaviours. For example, a social marketing intervention to increase rates of recycling could include better recycling services for householders together with stronger incentives for businesses to use recyclable materials.

The citizen insight driven approach of social marketing can help to ensure that policy options are based

on a sound and robust understanding about the audience being helped. It also encourages a stronger focus on turning policy aims into specific measurable behavioural goals which can help focus and drive subsequent strategy development and implementation.

The insights provided by the social marketing approach are particularly relevant to will writing, where answers such as ‘I haven’t got around to it’ and ‘I’ve never thought about it’ may mask other barriers. Unless these barriers are understood there is little prospect they will be removed. The segmented approach and customer insight focus used by social marketing identifies these barriers and informs strategies to tackle them.

By ensuring that interventions are correctly positioned and targeted at segments of the population which have most motivation to change behaviour, social marketing enables finite resources to be maximised.

Conclusions and recommendations

Wills: a social divide

Sadly, consumers who suffer from social and economic disadvantage in their lifetimes are the least well prepared for their deaths.

NCC's research on will ownership in England and Wales exposes a stark social divide: people from social groups CDE and ethnic minorities are far less likely to have a will than the rest of the population.

Dealing with intestacy proves to be a problematic experience for many consumers at a time when they are feeling most vulnerable. Apart from the unwanted hassle and expense, it often puts personal relationships under strain or, worse, leads to the estate going to the wrong people.

Those whose personal circumstances do not fit easily with the intestacy rules, such as cohabitants, are the least likely to have a will – and they are no more knowledgeable about the

possible legal consequences than anyone else.

For the two-thirds of people who have not made a will, very few make a positive decision that they do not need to. Many consumers have simply never thought about making a will. Others say they will get around to it in future but the cold statistics suggest that a large number actually never do.

Moving forward

There is scope for market providers – who are unfettered by regulatory hurdles – to offer consumers better incentives to make a will. The 27.5 million people without a will represent hundreds of millions of pounds of untapped business. The far greater number of Scottish consumers who make a will when buying their home shows the sort of methods that can succeed.

The limited impact of standard awareness-raising campaigns points to the need to try creative approaches. There is scope to take advantage of life events when messages about making a will are more likely to hit home.

The emerging field of social marketing – with its core focus on understanding the consumer to achieve change in actual behaviour – is ideally suited to this challenge since it enables policy-makers to plan effective and targeted interventions.

The low level of will ownership is becoming a more urgent problem. The changing face of society means fewer individuals will be protected by the intestacy safety net in future. We call on government, industry and others to act now by grasping the challenge and working together to find more effective ways to encourage people to make a will.

Recommendations

- ▶ The Ministry of Justice should adopt a social marketing approach to increasing will ownership, working in collaboration with the National Social Marketing Centre.
- ▶ The Ministry of Justice should review whether the inheritance laws remain fit for purpose.
- ▶ The Ministry of Justice should investigate Internet will-writing services and, if necessary, put in place appropriate consumer protection safeguards.
- ▶ Industry should adopt more innovative approaches to will-writing services.
- ▶ The will-writing trade bodies should apply to the Office of Fair Trading Consumer Code Approvals Scheme.

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Appendix: survey questions

We would now like to ask you some questions about wills. A will is a legal document declaring a person's wishes regarding the disposal of their estate when they die.

It is very important to us that you answer these questions truthfully. Please be assured that your answers are strictly confidential.

Q.1 Do you have a will?

- 01: Yes
- 02: No
- (DK)

(route: ask Q.2 if 02 coded at Q.1; if 01 coded go to Q.3; if DK coded go to Q.8)

SHOW SCREEN – MULTICHOICE

Q.2 Why don't you have a will? Please mention as many reasons as apply from this list. Please note that by estate, we mean the total value of your home, your home contents and other items of value that you may hold such as money, shares, premium bonds, etc.

- 01: My estate (ie: home, possessions, money, etc) isn't large enough to need one
- 02: I am satisfied that those I want to inherit my estate (ie: home, possessions, money, etc) will get it whether or not I have a will
- 03: It's too expensive
- 04: I've never thought about it
- 05: I don't know how to go about making a will
- 06: I haven't got around to it
- 07: I'll do it when I get older, but I'm too young to need to do it at the moment

08: I can't decide how to divide up my estate
09: I don't like thinking about dying
10: Other (please specify)
(DK)
(route: ask Q.3 if 01 coded at Q.1; others go to Q.8)

SHOW SCREEN – MULTICHOICE

Q.3 Why did you decide to make a will? Please mention as many reasons as apply from this list. Please note that by estate, we mean the total value of your home, your home contents, and other items of value that you may hold such as money, shares, premium bonds, etc.

- 01: Peace of mind about what will happen to my estate (ie: home, possessions, money, etc) when I die
- 02: I want to make sure that my family is provided for when I die
- 03: I was offered a free will when I bought my home
- 04: Someone I knew died without a will and things were very difficult
- 05: To stop someone from inheriting my estate
- 06: For tax reasons
- 07: Reasons relating to my own circumstances, for example an illness, a change in my personal relationships, having children, etc
- 08: Other (please specify)
(DK)

SHOW SCREEN

Q.4 Did your decision to make a will follow any particular event in your life? Please pick the single main event from this list.

- 01: It didn't follow any particular event in my life
- 02: I settled into a long-term relationship with a partner (but I was not married or in a civil partnership)
- 03: I got married\remarried or entered into a civil partnership
- 04: I had children
- 05: I got divorced or separated from my partner
- 06: I bought a home
- 07: I became seriously ill, or a relative or friend became seriously ill or died
- 08: The value of my estate (ie: home, possessions, money, etc) increased suddenly, eg. due to an inheritance
- 09: I went travelling overseas or went to live overseas
- 10: Other (please specify)
(DK)

SHOW SCREEN

Q.5 How was your will prepared?

- 01: Prepared by a solicitor
- 02: Prepared by an organisation which is not a solicitor's, eg. a bank or building society
- 03: Prepared by a specialist will-writing company
- 04: Handwritten by myself
- 05: Written by me on a pre-printed form purchased from a company
- 06: Completed by myself on the internet
- 07: Other (please specify)
(DK)

SHOW SCREEN

Q.6 How long ago was your current will prepared?

- 01: Within the last twelve months
- 02: 1-4 years ago
- 03: 5-9 years ago
- 04: 10-14 years ago
- 05: 15-19 years ago
- 06: 20+ years ago
- (DK)

Q.7 Are you satisfied that your will reflects your current wishes about how your estate will be disposed of when you die?

- 01: Yes
- 02: No
- (DK)

SHOW SCREEN – MULTICHOICE

Q.8 Imagine that you want to make a brand new will in the near future. Which of the following ways of making a will would you be prepared to use? Please mention as many options as apply from this list.

- 01: Prepared by a solicitor
- 02: Prepared by an organisation which is not a solicitor's, eg. a bank or building society
- 03: Prepared by a specialist will-writing company
- 04: Handwritten by myself
- 05: Written by me on a pre-printed form purchased from a company
- 06: Completed by myself on the internet
- 07: Other (please specify)
(DK)

SHOW SCREEN

Q.9 How much do you think it would cost now to have a straightforward will drawn up by a solicitor?

- 01: Less than £75
- 02: £75-£150
- 03: More than £150
- (DK)

Q.10 Have you, or has someone you know, experienced problems sorting out the affairs of someone who died without a will?

- 01: Yes
- 02: No
- (DK)

(route: ask Q.11 if 01 coded at Q.10; others go to Q12)

SHOW SCREEN –

MULTICHOICE

Q.11 What sort of problems were they? Please mention as many options as apply from this list. Please note that by estate, we mean the total value of your home, your home contents, and other items of value that you may hold such as money, shares, premium bonds, etc.

- 01: Things took a lot of time and effort to sort out
- 02: Expensive to sort things out
- 03: It was stressful for the person responsible for distributing the estate
- 04: It put relationships with family or friends under strain
- 05: The family home had to be sold to pay off relatives
- 06: It caused problems about who was responsible for looking after the children
- 07: The estate, or part of the estate, went to someone who the deceased wouldn't have wanted it to go to
- 08: There were inheritance tax issues
- 09: Other (please specify)

(DK)

SHOW SCREEN –

MULTICHOICE

Q.12 Please can you tell me which of the following categories best describes your marital status?

- 01: Married
- 02: Cohabiting with partner
- 03: In a civil partnership
- 04: Single
- 05: Widowed
- 06: Separated
- 07: Divorced
- 08: Other (please specify)

SHOW SCREEN

Q.13 And finally in this section, when you die, currently if the value of your estate is worth £285,000 or more, it may attract inheritance tax. Do you think the total value of your estate is currently worth less or more than £285,000? Remember that, by estate, we mean the total value of your home, your home contents, and other items of value that you may hold such as money, shares, premium bonds, etc.

- 01: Less than £285,000
- 02: More than £285,000
- 03: About £285,000
- (DK)