

Call Stoke-on-Trent (01782) 639716

## Guardian Choice - A Guide for Parents

*A Guide provided by Rod Jones of Convenient Wills*

### 1 Welcome

Thank you for requesting this guide. I hope you find it helpful and informative.

This guide must be regarded as a source of information to supplement your own knowledge. The guide's purpose is to equip you with information to help you choose a guardian for your minor children

This guide is provided on that basis. We regret we cannot accept any responsibility or liability for any adverse outcomes for you or your family, no matter how caused. In addition, we do not accept any liability for any mistake, error, or omission from this guide.

This guide is one of a number of guides and reports available from our web site [www.convenient-wills.co.uk](http://www.convenient-wills.co.uk); they cover a wide range of aspects dealing with estate planning in general, and making your Last Will & Testament and Lasting Powers of Attorney in particular.

All our downloadable guides and reports use hyperlink technology. This allows you, if you are reading the document direct from a computer with access to the Internet, to click on a hyperlink (indicated with blue, underlined text) and you will be taken through to the appropriate article. Please note that the guide is not designed to be printed off; if you wish to print off the guide please [contact us](#) and we will send you an amended version.

If you require further information or clarification on any aspect of this guide then please do not hesitate to contact me. I will be only too pleased to help.

And finally, as you read this guide you may realise that it would be a lot easier, quicker, and simpler for a professional to just get on with making your Will for you. We would like to help. Please [click here](#) to read the full features and benefits of our home visit service, or [click here](#) to register your interest (without obligation) in our services.

*Rod Jones*

Rod Jones A.C.I.B.  
Proprietor of **Convenient Wills**

### 2 Introduction

Although no parent likes to consider the possibility of dying before their children, a forward-thinking parent will do so by including a guardian appointment clause in their will. [Amongst other actions.]

For a young parent deciding who is to be appointed the guardian of their minor child or children is often one of the most difficult decisions they have to make when making their will.

This guide aims to help parents decide who is the best person to appoint as a guardian.

### 3 Background

Thankfully it is rare for a child to be orphaned -- but it does happen, and could happen to your children. Every parent of a minor child should therefore make a will, and appoint a guardian of their choice. The reason for this statement is simple...

Every minor child by law must have a guardian. Where a parent has appointed a guardian in their Will the process of formal appointment is [generally] simple and straightforward.

Where a parent has failed to make any provision the process is far more complex. And where there are a number of possible guardians each wishing to be appointed the process is then often lengthy, time consuming, and usually distressing for all those involved. (We have come across families who have been torn apart by the attempts of two or more persons within the same family wishing to become the guardian of a child.) And **anyone can apply** to be considered for the role of the child's guardian in these circumstances.

In England there is an independent body who assist in family proceedings. CAFCASS (Children and Family Court Advisory and Support Service) have the role of advising the Courts so that the decisions they make regarding the appointment of guardians are in the best interest of the child.

Where there is a conflict a Children's Guardian is appointed who will be a CAFCASS officer and a more in depth investigation will then be necessary. Throughout this investigation the child may be allowed to live with one of the applicants or, where it is deemed necessary, the child may be looked after by Social Services until the Courts can make a decision based on the report provided by the Children's Guardian.

In the worst case scenario the child can ultimately be placed into Local Authority care.

The appointment of a guardian, and their rights, are governed by the Children Act 1989 s.5.

### 4 Terminology used in the guide

From hereon in this guide:

- ♦ **'Child'** refers to the orphaned minor child or orphaned minor children, or [where a single parent family] to the child/dren of the deceased single parent.
- ♦ **'Guardian'** refers to the person or persons you may be considering appointing as the child's guardian, or to the person actually appointed as guardian within a Will.
- ♦ **'Parent'** is the parent or parents of the child/dren -- unless the context specifically refers to one of two parents.

### 5 How to choose a guardian

When choosing a guardian there are a number of aspects that, ideally, should be factored into the decision making process. How a parent weights these factors in terms of importance is up to the parent to decide.

A guardian can be anyone over the age of 18.

In legal terms a guardian is a person who has the legal authority, and the duty, to care for the personal and property interests of another person. The status is acquired over someone who is incapable of looking after their own affairs due to infancy, incapacity, or disability. In the UK the parent can decide who is to be the child's legal guardian in the event of their own death.

Common choices of guardian are the child's grandparents, a child's aunt and/or uncle, or an older brother or sister. Trusted family and friends can also be chosen.

Remember that this appointment is not fixed for eternity once made. As with a Will -- which should be reviewed every four or so years and updated accordingly -- so too should the choice of guardian be reviewed and amended as necessary, reflecting the changing circumstances of the family.

Where the child is old enough to understand the concept of death and the need for a guardian it can be enlightening to obtain the child's viewpoint. CAFCASS do so, so why not you.

Care is needed when appointing a couple as guardians: what would happen if the relationship between them failed e.g. They divorced. It is sometimes better to just name one person rather than two jointly.

You should also consider making a reserve appointment, just in case your first choice is unable or unwilling to act at the time. And where you have appointed two people jointly as the first choice consider under what

circumstances the reserve should act i.e. Should the reserve act if either one of them is unable or unwilling to act, or if both of them are unable or unwilling to act.

## 6 Factors to consider

The following are some of the more common aspects a parent is recommended to consider when choosing a guardian for their child. (Users of our will-writing service will be offered an enhanced version of the guide that gives more aspects to consider and includes an analytical solution to making the choice -- which can be used to support their decision if the family need to know how the decision was arrived at.)

Note: It is very rare that any one person will meet all the criteria listed below. It is therefore recommended that you do not rule out any potential guardian initially, but assume they are all eligible until 'proven' otherwise.

- ◆ **Love of the child:** This is [perhaps] the most important of all the factors. And certainly where a guardian [who meets all the remaining criteria] shows no love to the child prior to the parent's death but undertakes the role of guardian by virtue of an implied duty to the parent then the appointment may be unwise. The placement of a child with a person who shows no love and affection towards the child before the parent's death may find it difficult to show affection after the parent's death.
- ◆ **Financial resources:** In most cases there are financial costs to the guardian as the child's trust fund is insufficient. Costs can be incurred for education (e.g. school uniforms, trips out, even private education costs), maintenance of the child (e.g. feeding, clothing), and general living (e.g. birthday / Christmas presents, holidays) Do the guardians have the financial resources necessary?
- ◆ **Family dynamics:** What effect would a 'new' child have on the guardian's own family and lifestyle.
- ◆ **Accommodation:** Will the child be forced to share a bedroom with their siblings? Or even with the guardian's own children? Or will they have their own 'space'? Will the guardian be forced to 'up-size' their property to accommodate the child, or build an extension? And if so, who will fund this purchase?
- ◆ **Age:** Choosing the child's grandparents as guardian is common -- especially where the child is aged say under 5; which may be OK when the child is young, and the grandparents are fit and healthy. But what happens when the child enters their teenage years? The grandparents will be another 10 years older. Will the grandparents then have the energy to entertain, and control, a teenager full of energy? And will they want to? Will being appointed a guardian in retirement destroy the grandparent's long term plans of enjoying life in their latter years? (Of course, conversely, they may find being a 'parent' again a most fulfilling experience.)
- ◆ **Location:** Ideally the child should be able to stay in their own home, with their existing community of friends, and at the same school. But the ideal is rarely possible. Sometimes a child will have to learn a new culture (if they were say moved abroad). Which potential guardian offers the least change and greatest stability?
- ◆ **Experience:** Does the guardian have experience of looking after children? A child who has been orphaned (or lost the love of a single parent) will have a number of psychological barriers to overcome. They will demonstrate mood swings, insecurity, and a host of other emotions -- potentially making them a challenge for even the most experienced guardian. Does your proposed guardian possess the skills to 'manage' the position? Do they have experience of handling children already?
- ◆ **Access:** Will the guardian be able to continue providing regular access for the child to existing family members? For the child to be placed with a guardian probably means that a grandparent is grieving the loss of their own son or daughter (who was the parent of the child). If access to the child was not possible the grandparent would suffer a double loss. The same loss can apply to the parent's siblings too. Is this continued 'access' to the surviving family important? If yes, who can best provide it?
- ◆ **Religion, Ethics and Education:** For some parents the bringing up of a child with a specific faith is important. Will your guardian continue to bring the child up in the required faith? For some parent's it is the ethics and style of upbringing that are important e.g. Strict or relaxed; traditional or modern. And what is the guardian's attitude to 'education'?

## 7 The decision

As you can see there are number of significant factors that need to be considered when choosing a guardian. For some parents the decision is straightforward as only one person or couple meets the ideal criteria. For other parents the decision is more difficult because there are a number of potential people who all fit the criteria and who all want to act as the child or children's guardian.

The decision is even harder where both parents are making their wills and they have different rankings for the criteria, or different perceptions of the potential guardian's capabilities and skills. Ideally, both parents should agree on the choice of guardian. But where agreement is not possible -- for whatever reason -- then the parents should 'agree to disagree' and appoint the guardian of their choice in their respective wills.

Though this may result in the child not being placed with the 'guardian of 1st choice' for one parent it is still likely to be a better choice than not appointing a guardian at all, with all the afore mentioned risks that that course of action has. And remember .... You can always change the appointment at a later date by remaking your will.

And one more fact. You can make the guardian appointment conditional. E.g. If X is still married to Y then you appoint X as the guardian. Or... If X is still living in a specific area then you appoint X as your child's guardian.

## 8 Parental responsibility

A guardian can only be appointed in accordance with s5 Children Act 1989.

Only a parent with parental responsibility may appoint a guardian.

A mother automatically has parental responsibility.

A father may, or may not, have parental responsibility depending upon a number of circumstances.

The person appointed as guardian will become the child's guardian provided that, at the death of the testator:

- A. no parent with parental responsibility survived the testator; or
- B. there was a residence order in the appointed person's sole favour relating to the child.

If neither of these conditions is fulfilled, the appointed person will not automatically become the child's guardian. However, as he/she now has parental responsibility (by virtue of being appointed guardian in the deceased parent's will), he/she will be entitled to apply to the court to be the appointed guardian.

If you are a single parent you can see that the the implications of the above can have unwanted consequences. For example it is possible for a father [who gained parental responsibility by virtue of being married to the child's mother at the time of the child's birth], but who has subsequently made no financial contribution to bringing up his child and has shown no interest in his child since the child's birth, to be appointed guardian of the child on the child's mother's death -- by virtue of being a surviving parent. This outcome would be almost certainly against the wishes of the now-deceased mother and her family.

To overcome this problem the mother needs to appoint a guardian of her choosing, and then take additional action -- that a professional will-writer will help her with -- to defend her choice. In short, the mother should seek professional help in drafting her will to reduce this risk.

## 9 Seek your guardian's approval

Having assessed the potential guardians, and identified your preferred choice we recommend you speak to your proposed guardian. Doing so will:

- ♦ Enable you to obtain their approval and commitment for the appointment. After all the last thing you want to happen is for you to die, only to find your nominated guardian will not take up the appointment.
- ♦ Discuss the important points regarding your child's upbringing e.g. Accommodation, schooling, location, religion, funding.
- ♦ Financial needs: identify what resources may be required e.g. Life policy to provide for a new bedroom or bigger property.
- ♦ How is the child trust fund best controlled e.g. The guardian, or specific trustees?

## 10 Make your will

And the final action is to make your Will that includes your final choice of guardian and reserve.

**Convenient Wills** would like to help you.

Choosing a guardian is rarely easy. Indeed it can add significantly to the stress of making your Will, a task which can also be time consuming. The more you research into what should be included in a Will the more you realise there is yet more to learn. And even when the task is done you may have nagging doubts about its legality and validity if you have not used the services of a professional.

Using a professional will-writer can be quicker and more cost effective in the longer run.

**Convenient Wills** is the only home visit, specialist Lasting Powers of Attorney & will-writing business located in Newcastle-under-Lyme that covers North Staffordshire, South Cheshire and North Shropshire.

**Convenient Wills**, as a specialist home-visit will-writing service, offers you:

- ♦ **convenience:** we come to your home, thereby saving you travel costs, and time;
- ♦ **flexibility:** our appointments are held at times convenient for you, including daytime, evening, and at the weekend. There is no need for you to take time out from work;
- ♦ **a relaxed atmosphere:** the discussions are held in the comfort and relaxed atmosphere of your own home -- and not in an 'oppressive' office in your local (or not so 'local' in some cases) town;
- ♦ **time saving:** our experienced and friendly consultant will advise and guide you through all the options you should consider -- thus eliminating the need for you to undertake any prior research, such as searching the Internet or library to see what you should include. Where appropriate additional guides are supplied to make the decision making process and understanding easier;
- ♦ **a bespoke will:** your Will will be legal and personalised to match your exact wishes. This means, for example, that the names of your children will be included in your will rather than just referring to them as your 'children'; and we will draft your will to match your wishes rather than making your wishes fit into one of our pre-formatted template wills.
- ♦ **a fixed fee:** We do not charge extra for the inclusion of, say, a trust in your will (Unlike some of our competitors). Nor do we do increase our fees if we feel you can 'afford' to pay more; and
- ♦ **protection:** our processes (which includes visiting you twice) ensure your Will can be defended from claims of lack of capacity, undue influence, and fraud.

The full features and benefits of our home visit will-writing service is available on our [web site](#). To register your initial interest (without obligation) in our services just [click here](#).

Not all will writing services are the same.

No one likes to consider their demise, especially when they are parents of minor children; we though make the task relatively simple. If you would like to join our existing and growing group of satisfied customers please call Rod on:

(Stoke) **01782 639716** or click on

[www.convenient-wills.co.uk](http://www.convenient-wills.co.uk)

We hope you have found this guide informative. If so then please feel free to share it with others.

More information and helpful, informative guides are available from our web site, or by calling us direct.

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01782 639716 or 0800 072 5510.