



A F F I N I T Y
L E G A L G R O U P

Matters of Life and Death:

Tragic Tales



The letter Liz really wanted to send **From [theguardian](#) Saturday 9 June 2012**

Dear Dad

Your passing was a shock. I suppose it shouldn't have been, but at seventy-six years of age you were still living at home, actively doing all the things you loved to do. You liked to say, 'I haven't retired, just changed jobs.' I think you were almost busier after retirement than before. You always had a list of things you were going to do.

Unsurprisingly, updating your Will was on that list, but forty years is a long time to have had that task waiting to be completed. Death isn't something we really like to talk about or dwell on, is it? I read recently that 61 per cent of Britons haven't made a Will, one in ten hasn't told anyone where to find the Will they have made, and a further 13 per cent haven't updated their Will in the past decade. You clearly weren't alone in avoiding the task.

No doubt you would be incredulous to discover that your children have had to apply for legal permission to sort out your affairs. You have been gone almost a year, but we are still waiting for that permission to be granted. We can't touch any money in your accounts, so we paid for the funeral costs by extending the mortgage. Each month we budget towards paying your council tax as well as our own.

The bedsit attached to your house continues to be rented, which helps, but we can't increase the amount to reflect market rates as it is not our property. While we wait, your property has to be maintained and we also have to pay fees for the work lawyers are doing on our behalf.

You used to say I was one of the sanest and most capable people you knew, but this last challenge you have left me is almost doing my head in. You won't have realised that because you and mum were divorced, she couldn't be one of your executors. With uncle Frank passing away before you, both the people you nominated in your Will are unavailable. Although you had told family members that it was to be my job, to count legally it must be written down.

Written agreement to pursue our application for the legal right to sort your affairs has to be given by all of those listed as receiving a gift. Thankfully, I now have contact details for three of the four you mentioned. I spent six weeks tracking down your god-daughter, Gillian, and only found her because of the family history work I had been doing. I still have absolutely no idea who Isabella May is or what connection you had with her family. Gillian is lovely, by the way, as I discovered when I met her recently. Her mother and father are doing well but were saddened by the news of your passing. They shared many hilarious family stories, including some about your 21st birthday. You would have enjoyed catching up with them again.

People say that what doesn't break you makes you stronger and maybe the past year has been one of those times. I have thought a lot about life and death and what I value, but I have yet to grieve properly. That will come when all the jobs have been resolved and I can be left alone without having to pretend, for the sake of others, that I am strong and coping.

I know my children are also capable individuals, but this isn't an experience that they need to have. I'm going to ensure I regularly review my Will so that it reflects my current circumstances. If I choose to leave a gift to anyone specifically, I will include their contact details too. I want my children to have space to grieve and move on with their lives, holding on to the good things we have experienced without the involvement of lawyers or financial difficulties. I know you would have wanted this too and updating your Will was probably the very next item on your 'to do' list. I don't blame you — I just feel exhausted from trying to cope.

Respectfully, your eldest,

Liz

If anything contained in this or any other true story concerns you or your loved ones, why not call us now on [0800 092 1669](tel:08000921669)

The lost child

Do you have small children or grandchildren? Have you thought about what would happen if they were to lose their parents?

Some time ago a woman (let's call her Ann) came into the Affinity office with a small child in tow (let's call him Joe).

Ann had one child, a daughter, and Ann's daughter had a little boy, Joe. Tragically, when she was just twenty-one years old, Joe's mum was murdered. The killer was someone she should have been able to trust implicitly: her child's father, whose own father subsequently helped to cover up the crime. Joe himself was just ten months old at the time.

Ann was devastated. Her only child had been murdered by the man she loved. It was a cruel act and a terrible betrayal of trust, but worse was to follow: having assumed that Joe would automatically come to live with her and her husband, that as his grandparents they had automatic rights of guardianship, she discovered that they had no rights whatsoever and baby Joe was taken into care. Her one remaining link with her daughter, the only grandchild she'd ever have, was living with strangers. No matter how kind they might be, they weren't family, and without his family, who would tell him about his mum? Who would show him pictures of her, of the two of them together?

Ann was determined that little Joe would grow up with his true family and would know who his mother was and how much she'd loved him. She had one goal in life: to gain custody of her grandson. She embarked on a legal battle that was to cost her dearly, in every way imaginable.

To complicate matters, Joe's other grandmother also began a fight for custody; despite her own husband and son having been convicted of the murder, she argued that she herself was blameless and was as deserving a guardian as Ann was.

The first stage of the proceedings took two years to complete. Ann was so focused on the battle that her husband left her: equally devastated by the loss of their child, he couldn't cope with his wife's obsession. The legal fees amounted to £20,000 and, as well as losing her husband, Ann lost the marital home: but she won custody of Joe.

It was at this point in time that she came into the Affinity office, because her battle was by no means over. The custody she had been granted was only temporary and at any time Social Services might take Joe away again.

There was no doubt in Ann's mind that her daughter would have wanted her parents to care for Joe in the event of anything happening to her. But she didn't record her wishes in a legal document, and so they counted for nothing.

This story comes as a shock to many people, as there is an abiding belief that an orphaned child will automatically go to live with a family member. However, the decision as to where a child lives rests in the first instance with the local Social Services Department and ultimately with the Children's Court.

If there are no clear instructions, i.e. if there is no legally drawn up Will appointing guardians, then there is no guarantee that children will be allowed to live with family. The only way to be confident children will live how and with whom you would choose should disaster strike is to make a Will and record your wishes.

Ann had a simple request of Affinity: she wanted us to share the details of her story with as many people as possible so that no one else ever had to suffer the heartache and trauma she had suffered.

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A costly contest of Wills

Knight v Edonya

When Sampson Edonya (a widower) died leaving £1.3m, less inheritance tax of £390,000 (£910,000 net), he Willed 50 per cent to his son and 50 per cent to his stepdaughter, giving them £455,000 each.

Sampson's son decided to contest the Will, saying he should get more than 50 per cent. He claimed various grounds for the action, including that he thought the stepdaughter must have been in collusion with the Will writers as she lived in Ilford and they were in Brentwood, i.e. both in Essex.

Bringing the action cost £130,000.

Defending the action cost £110,000.

The action failed and the son was forced to pay all costs. He was left with £215,000, less than half of the £455,000 his father wanted him to have.

Even where a Will does exist, more and more frequently nowadays they are being contested. Last year, such claims were up a massive 158 per cent on claims the previous year, and there is nothing to suggest that this was an anomaly.

However, the simple inclusion of a Lifetime Trust can prevent a Will from being contested under the Inheritance Act 1975. Had this been done in this case, then what happened could have been avoided.

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A breadwinner takes a fall

A failure to look ahead and to take simple actions can have long-term consequences for everyone involved, as Mary found out to her cost.

Back in 1980, she and John were happily married with two children aged five and seven. John was forty-two and the household breadwinner; he worked as a scaffolder.

One day John was working on a two-storey scaffold and lost his balance; he fell to the ground and sustained a severe brain injury. The damage was devastating and John was unable to work again.

With the loss of the main breadwinner, Mary took on four part-time jobs in an attempt to earn enough to raise the children and pay the bills. John required (and still does) 24/7 care, and Mary took that on, too.

A two year legal battle ensued, following which John's employer was held liable for the accident and compensation of £62,000 was awarded and paid.

But while that might have seemed a tidy sum in 1982, is it really all that much for a working man's life?

With the matter of compensation finally resolved, Mary heaved a sigh of relief and said, 'Thank God that's over! Now I can get on with my life.'

However, it wasn't quite as simple as that.

As the solicitor explained to her, the compensation was to be paid to John, and as John was non-compos mentis it would be paid instead into the Public Trust Fund. That's a £3 billion fund within a division of the Court of Protection, looked after by fund managers.

The next battle began.

John had not granted anyone Power of Attorney so Mary had no choice but to make an application for a Court Order, in those days known as a Receivership Order. This took almost another year and ran up **costs approaching £2,000**. Finally the Court, in their capacity as protector of the vulnerable, came to the decision that John might not have chosen Mary as his attorney when he had the chance, and so they appointed Mary together with a solicitor to 'oversee' matters.

What that meant was that Mary had to go to the solicitor to ask permission every time she wanted to buy John a winter coat or a pair of shoes. The **annual costs** (audit fees) of this receivership arrangement **exceeded £800**.

The situation affected the family in many ways: for example, Mary wanted to move house to make life easier for them all, but the Court refused permission. Without Power of Attorney she was powerless to fight their decision and they had to stay put.

Some twenty years after the accident, with the children now grown up and Mary still taking care of John (who, rather oddly, can make a sandwich and a cup of tea, yet cannot speak), the Public Trustee was still managing the compensation fund and Mary still had to ask for handouts.

Then one day her luck changed. She took a phone call out of the blue from a solicitor, who asked her, 'Are you sitting down?'

'Why?' she asked in return.

'You've been left some money,' the solicitor said.

And sure enough, Mary had been left £110,000 by someone she had cared for (in one of her part-time jobs) but who she believed had died destitute.

Now the dilemma: Mary knows if she dies without a Will her estate will disappear into the Public Trust Fund. However, if she leaves her estate directly to the children, the Will could be **contested by the State**, as John still needs round the clock care.

At that point Affinity was called in and advised her to sever the joint tenancy and draft a Will (including a Power of Attorney) with a discretionary trust for John, with a letter of wishes. Mary was advised that even this structure could be contested.

Needless to say all this could have been avoided had John drawn up a Power of Attorney before the accident.

You should think of these things as simple housekeeping matters, especially if you have dependents and/or a hazardous job or hobby. Failure to do so can have wide-ranging and long-lasting repercussions.

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Shattered dreams

Chris and his wife Maria nurtured a lifelong dream to one day sell up and move back to their beloved Cyprus, and there to see out their days. Finally, in early 2008, seventy-eight-year-old Chris decided it was time to act. For the previous two years seventy-four-year-old Maria had been suffering from Alzheimer's, which was progressively worsening he felt there was no time to lose.

Having made the decision, Chris put the house on the market. Viewers were plentiful as the housing boom was at its peak. An offer was made and accepted and the solicitor drew up the necessary paperwork.

It was then that Chris's nightmare began.

Chris and Maria owned the house jointly, which meant both needed to sign the paperwork. However, by this time the solicitor knew of Maria's condition and stated that due to her lack of capacity, she could not legally sign the sale contract. There was no Power of Attorney in place and so there was no choice but for Chris to apply to be a Court Appointed Deputy. A formality ... or so he thought!

The process of applying to the Office of the Public Guardian (OPG) began. The buyer was asked to be patient as it would take 'only a matter of weeks'. However, Chris was thwarted by unforeseen circumstances.

First the OPG insisted that as Maria had not made a Lasting Power of Attorney (LPA) the four children should be asked if they were in agreement with Chris selling the house (he had to declare this in the application) and taking both Mum and the money back to Cyprus.

All four of the children wrote to the OPG saying they were happy for Dad to do this.

However, two of the letters went on to say ... BUT... and ... PROVIDED THAT... and that's all the OPG needed to stall the process. They needed to be convinced (quite rightly) that what Chris was doing was entirely in the best interests of Maria.

The OPG then insisted that an independent deputy should act jointly with Chris in the matter of the house sale and luckily allowed him to choose his daughter-in-law.

The buyer became more and more impatient as the weeks went by, and eventually dropped out. It was difficult to re-market the property as there was no indication as to how long the OPG application would take. Weeks and months went by the OPG had a backlog of work and this was not a simple application.

The 'credit crunch' started to bite and property prices began to fall. By the beginning of October 2008 the house had dropped in value by £50,000, and there was still nothing from the OPG. Worse still, prices were continuing to fall and there was still no sign of a buyer.

And with the squeeze on lending, would a potential purchaser even be able to raise the necessary finance?

Chris's health suffered. He wasn't handling the stress well and the costs were escalating. The OPG had already charged an initial £500 and had asked for £400 more. In addition, legal fees for the application already exceeded £1100.

Needless to say all this could have been avoided had the couple drawn up a Lasting Power of Attorney before Maria's diagnosis.

Hindsight is a wonderful thing. Foresight can help save a considerable amount of money and heartache.

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A F F I N I T Y
W I L L S

About Affinity

Affinity is one of the leading firms of independent Will writers in the United Kingdom, with over 100 years of collective experience.

We specialise in Will Drafting, Trusts, Estate Planning and Probate. We have a network of advisers nationwide and over 46,000 satisfied clients.

We pride ourselves on being one of the top Will writing companies in the UK and employ a team dedicated to delivering on our own and clients expectations.

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Contact us today to discuss your requirements.

We can help you plan to make the best out of the worst that life can throw at you. No matter what might happen, we'll help you to take charge and stay in control.