

Witnessing wills in a COVID-19 world

February 2021

An increasing number of people have sought to make Wills during the COVID-19 pandemic. Given restrictions on social interaction and physical distancing, especially for those shielding or self-isolating, normal rules on executing Wills – which rely on the physical presence of witnesses – pose particular challenges.

Generally across Guernsey, Jersey, England and Wales a Will must be:

- in writing;
- signed, or the signature acknowledged, by the individual whose Will it is (the **Testator**);
- signed by the Testator in the presence of two or more witnesses who are present at the same time; and
- signed by the witnesses in the presence of the Testator.

In normal times, with no restrictions on social gathering nor physical distancing rules, these requirements would not cause too much of a problem but, in the context of COVID-19, jurisdictions have had to adopt their guidance to allow for the safe witnessing of Wills in accordance with those restrictions and in particular, facilitating remote witnessing by video link (**video witnessing**).

England and Wales

In England and Wales, Wills have been witnessed from a distance in a number of ways to accommodate pandemic-related restrictions, for example:

- through a window or open door of a house or a vehicle;
- from a corridor or adjacent room into a room with the door open; or
- outdoors, for example in a garden.

However, important legislation came into effect on 28 September 2020 in England and Wales to allow for video witnessing of Wills. This change was backdated to 31 January 2020 and will be in place until January 2022 at the earliest, meaning that any Will executed by video witnessing during this period will be validly witnessed.

By way of example, consider the following scenarios:

- The Testator is alone in one location and the two witnesses are physically present with each other in another location, with a two-way live action video link with the Testator where each witness can see the Testator sign the Will; or

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- As above, save that the Testator and each witness are in different locations, using a three-way live-action video-conferencing link.

In both scenarios:

- The Will should be signed by the Testator in front of the video link camera so that each witness can see the Will being signed **live** – note, witnessing pre-recorded videos of a Will being signed is not permissible;
- The Will must then be delivered to each witness for them to sign in front of the Testator via video link, ideally within 24 hours;
- Once the Testator and both witnesses have all signed and dated the Will, it is regarded as being fully executed;
- If possible, it is recommended that the whole video-signing and witnessing process should be recorded and the recording retained.

Jersey

The States of Jersey have adopted a broadly similar approach to England and Wales by enacting the COVID-19 (Signing of Instruments) (Jersey) Regulations 2020 (the **Regulations**), which came into force on 23 April 2020 and has recently been extended up to the end of 30 April 2021.

The Regulations require that:

- at the time the Will is signed, the Testator and the witnesses must be able to see one another, either in person or over an audio-visual link;
- any witness who appears by audio-visual link must;
 - positively identify the Testator (e.g. be sure the Testator is the individual whose Will is being signed);
 - see the Testator sign the Will;
 - satisfy himself or herself, by whatever means he or she considers practical, that the document signed by the testator is the Will; and
 - in the case of a Will of immoveable estate (eg property and land), one of the witnesses must be a “qualifying witness”, (where the Will is signed in Jersey this means a Jurat of the Royal Court, a member of the States, an advocate, a solicitor or a notary public) each witness and the Testator must hear, at the same time, the Will read aloud in its entirety.

Every witness must be independent of the Testator, be of sound mind and have reached the age of majority.

A witness who appears by audio-visual link must, as soon as is reasonably practicable after witnessing the signing of the Will, provide the Testator (or the Testator’s advocate or solicitor, who were retained to draft the Will in question) with a written declaration confirming that the witness adhered to the points outlined above.

Guernsey

Under current Guernsey legislation, in contrast to England and Wales and Jersey, there are **no** provisions in place to allow for the witnessing of a Will by any means of video link and therefore a Will must still be executed in the physical presence of two witnesses.

As a result, witnessing of Wills must comply with both current Guernsey legislation and the applicable COVID-19 laws and guidance in place in Guernsey.

Advocates and their staff however are classed as “Essential Workers” under current lockdown measures (as at the date of this article) and so are able to travel to ensure that Wills are properly executed.

Physical distancing and good hygiene measures must be adhered to at all times.

Practices will vary, however the Testator and the witnesses should keep at least two metres apart and, in current circumstances, should wear face coverings unless there is a good reason not to do so (eg a Testator needs to be able to lip read). All individuals should use their own pens in order to sign the document and, wherever possible, gloves should be worn when handling the Will or at the very least hand sanitiser used at appropriate points.

In most cases, a Testator will be visited at their home. However wherever possible the witnesses will not enter the Testator's property. Instead, by way of example;

- The Testator should stay inside their house near a window and the witnesses should remain outside the window, standing two metres back from the window and apart from one another;
- The Testator could then open their window and step back;
- The Will can then be placed on the window sill (if the Testator has not already printed it and has it to hand);
- Once in the hands of the Testator, the Testator can sign the Will in full sight of the witnesses and then placed back on the window sill;
- the Testator can then step back and one of the witnesses will move forward to take this from the window sill, sign the document and then place this down so it can be retrieved by the second witness before stepping away;
- the second witness will then sign and date the Will and then keep hold of this for it to be returned to the Advocates' office for safe storage.

Observations

In summary, we can see that each jurisdiction is using a variety of methods to ensure that individuals can continue to execute safely their Wills should they wish to do so.

The two methods (eg physical, in-person witnessing with added safety measures in place or Video Witnessing [only available in England and Wales, together with Jersey]) have benefits and drawbacks, which can be briefly summarised as follows;

Benefits

Drawbacks

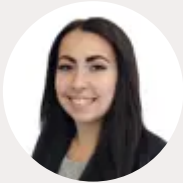
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Video-link	No risk of physical contact with anyone	Potentially more open to undue influence/fraud
	Enables a Will to be signed when leaving the house/having visitors is not an option	Requires additional technology which may not be available to all
		More time-consuming as the Will needs to be sent to the witnesses for them to sign after being signed by Testator
		The Will may get lost in transit between Testator and witnesses
In person	Accessible for all (ie no additional technology required)	Increased health risk with being in physical presence of another individual (however this risk is minimised by the measures which should be put in place)
	Quicker signing process (ie no need to send the Will to the witnesses after signing by Testator)	
	Less chance of undue influence	

Collas Crill remains on hand to advise with any issues relating to Wills, probate and powers of attorney which may arise at this difficult time. Please do not hesitate to contact any member of our Wills and Estates team listed on this page. You can also learn more about our Wills, Probate & Estate Planning services and team [here](#).

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