



Frequently Asked Questions

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FAQs

Questions about legal obligations to communicate or involve other relatives, especially if family dynamics are complex, are common. We have outlined and answered below some of the common questions to help you with your conversations.

What documents do I need to gather?

It is helpful to gather documents relating to the individual's assets and liabilities in order to assist the executors as they will need this information. If the debts are joint or someone has acted as guarantor, then the surviving person or guarantor will be liable for the debts. However, if the debts are in the deceased person's sole name, the debts become a liability of the estate. If the individual had a valid will, it is the executor's responsibility to settle their debts and liabilities from the assets in the deceased's estate.

How do I manage my spouse's debts and liabilities?

Understanding whether and how debts will be settled, and if they are personally responsible, is often an urgent concern.

Do I have any immediate legal responsibilities when someone has passed away?

We are often asked what they should prioritise legally right after a spouse's or child's death, such as handling a will, notifying specific agencies, or arranging payments.

The first thing that should be done once someone has passed away is to register their death and notify their GP. Registering the death must be done within five days of the medical examiner or coroner providing the cause of death. A death certificate will subsequently be provided.

Following the registration of the death, the government will need to be informed of the individual's death which can often be done by using the 'Tell Us Once' service online if this is offered by the local council where the individual lived. This informs all of the relevant government departments, such as the Department for Work & Pensions, HMRC, council tax services, etc, when an individual has passed away.

If you know that the individual had a will in place and where it is held, you can inform the law firm who holds the will (if applicable) of the individual's death. They will then release the will to the executors who are legally responsible for handling the individual's estate and carrying out the instructions in the person's will.

The funeral should also be arranged soon after they have passed away and often the individual's will may contain their funeral wishes. Alternatively, the individual may have taken out a pre-paid funeral plan.

What is probate, and do I need it?

Probate is the legal right to deal with someone's estate when they die. Only certain people can apply for probate and this depends on whether the deceased had a will. If there is a will, the executors named in the will can apply for a 'Grant of Probate'.

Whether a Grant of Probate is needed depends on the assets in the individual's estate and the value. Each bank and financial institution has their own limit and approach to Probate. It is therefore recommend that you confirm with the organisations holding any of the individual's assets if they require a Grant of Probate. Whether or not Probate is needed for a property will depend on how it's owned.

How long does it take to settle the estate?

This depends on the size and complexity of the estate and if the individual left a will. If straightforward, the Grant of Probate can be obtained and estate can be administered within approximately a year of the death. However, every estate is different and the time taken to administer each estate can vary.

Will I need to pay inheritance or estate taxes?

Questions about potential tax obligations or exemptions on inherited assets are common concerns. This again depends on the assets in the individual's estate and their value.

Inheritance tax is a tax on the estate of somebody who has died. Broadly speaking, the first £325,000 of an estate (known as the 'nil rate band') passes free of inheritance tax. Gifts made within seven years of death are taken into account and may reduce this allowance. However, assets passing to a surviving spouse or civil partner, or to charity, are exempt and pass free from inheritance tax. There is also an additional relief (known as the 'residence nil rate band') which may apply if the individual's home is left to their children (including adopted and stepchildren) or grandchildren. This increases the allowance available for inheritance tax by up to a maximum of £175,000, depending on a number of factors including the value of the property and the value of the estate. The balance of the estate is taxed at 40%.

What happens to shared assets, like our home or bank accounts? What actions are required?

It depends on how the assets are owned. If bank accounts are owned in joint names, the money held in the account will automatically pass to the surviving joint owner. A death certificate can be sent to the bank for them to update their records. However, if the deceased had bank accounts in their sole name, the balance of the account will pass in accordance with their will (if they had one).



If property is owned jointly, there are two ways this can be held. If it is owned as beneficial joint tenants, the individual's share of the property will automatically pass to the surviving joint owner. However, if it is owned as beneficial tenants in common, their share of the property will not automatically pass to the surviving joint owner and will pass in accordance with their will (again, if they had one).

How can I ensure that the children's inheritance is protected until they reach adulthood?

Children are not entitled to receive their inheritance under a will until they reach the age of 18. This is because they are not deemed to have the required capacity to accept a gift until they reach this age. If an individual with a will in place passes away before their children reach the age of 18, their children's inheritance will be held in a bare trust until they reach this age. However, it is possible to specify an alternative age on the will, such as 21 or 25, if this is preferable. The trustees appointed under the will are responsible for holding and managing the funds for the child until they reach the age specified in the will.

How can I safeguard assets for my children or dependents?

A trust can be set up for children or dependents, either through an individual's will or during their lifetime. A trust can be used to manage assets and there are many types of trust which are taxed differently. The assets in the trust are held by a group of people (known as the trustees) for the benefit of an individual or individuals (known as the beneficiaries). The trustees are therefore in control of the assets in the trust and, depending on the type of trust, may be able to decide who can benefit. It is recommended to seek advice from a professional if you are considering putting a trust in place.

What happens if I pass away without a will in place?

If an individual passes away without a valid will in place, the intestacy rules will apply. In addition, if a person leaves a valid will but it does not distribute all of their estate, this is known as a partial intestacy and the intestacy rules will apply to the assets not distributed in the will. The intestacy rules are set out in legislation and specify a list of individuals who can inherit in order of priority. The individuals entitled to administer the individual's estate is also set out in order of priority if the individual passed away without a valid will or did not validly appoint executors.

What legal steps do I need to take to formalise a guardianship?

We are often asked about if a court order or official paperwork is required to legally establish guardianship, even if it was stated in the sibling's will.

If someone with Parental Responsibility (PR) is still living, they will continue to have the benefit of that PR. A guardian appointed in a Will does not automatically acquire PR at the time of the death. The guardian will need to apply to the court for a Child Arrangements Order to formalise their role and also, obtain PR.



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What are my legal rights and responsibilities as the children's guardian? For example, can I make medical, educational, and financial decisions on behalf of the children?

Once a Child Arrangements Order/PR Order has been granted, then the guardian will have the benefit of PR meaning that besides the day to day decisions the guardian is also able to make important decisions about the child and have a say in the important decisions in relation to that child, such as education, accessing medical information and consenting or refusing medical treatment,

What financial support am I entitled to as a guardian?

A guardian may be entitled to claim child benefit to help with the costs of raising the child. A Guardian's Allowance may be a payment that the guardian could qualify for, if certain criteria is met. Dependent on their circumstances, the guardian may also be entitled to additional benefits, such as Universal Credit, Housing Benefit, or other means-tested benefits to help with living costs. It is important for the guardian to notify HMRC or the relevant authority about the change in care arrangements to ensure they received the correct benefit entitlements.

Can I receive child support or access my sibling's estate for the children's needs?

A guardian may be entitled to receive child maintenance if one of the child's biological parents are still alive and are a non-resident parent. The guardian can contact the Child Maintenance Service (CMS) to arrange payments and for them to carry out assessments. However, if neither parent is alive, then child maintenance does not apply.

If the children have inherited money or property, then these assets will usually be held in trust until the child reaches adulthood (age 18 in England and Wales, unless otherwise specified in the will). The guardian may be able to access funds from the estate to support the child's upbringing, but this would usually require the involvement of the trustees who manage the estate. It is strongly recommended that guardians seek advice from a private client solicitor to understand their legal responsibilities and the processes involved.

Are there legal requirements for changing the children's address, schooling, or healthcare providers?

Once the guardian has Parental Responsibility, only then are they able to make these decisions. In relation to education and healthcare, any major decisions need to be consulted with anyone who may continue to have the benefit of PR.

Will I need to adopt the children to secure my guardianship?

No, you do not need to adopt the children to secure your guardianship. A Child Arrangements Order is often sufficient to establish your legal responsibilities and rights. However, adoption may be an option in certain situations and can provide a permanent legal relationship. It is recommended that you consult a specialist family law solicitor to discuss the process and explore the best option for your circumstances and ensure the children's needs are fully protected.



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What happens if I'm unable to continue guardianship in the future?

If you are unable to continue as a guardian, it is important to consider whether another family member or the child's other parent is able to. However, there may be reasons why the other parent was not considered suitable initially and this would need to be reviewed carefully. If there is no one who is suitable or willing to take on guardianship, then it is recommended that you seek legal advice.

My child/partner passed away a few years ago as a result of an accident can I make a claim? Are there any deadlines I need to be aware of?

Yes, you may be able to bring a claim and a personal injury solicitor will be able to help you determine this based on the circumstances involved. In terms of deadlines, you normally have to make your claim (on your own behalf or on behalf of your loved one) within three years of the date of the accident or the date of diagnosis of illness.

What type of accident can you make a claim for?

You can make a claim as a result of many types of accidents. For instance, this could be a road traffic accident, workplace accident, or an accident that occurs in public or private setting (e.g. occupiers liability).

How long will a claim take?

The length of a claim varies and will widely depend on factors such as:

- The complexity of the case
- Whether the circumstances of the claim are disputed
- The evidence that needs to be obtained
- Whether the claim proceeds to a court trial.

How much compensation will I get?

The amount of compensation that could be awarded will depend on the losses that have been/will be incurred. This can include bereavement damages, loss of love and affection, loss of services (e.g. DIY and household maintenance), loss of financial dependency and funeral expenses.

A Personal Representative (the individual(s) legally responsible for your loved ones assets/estate) may also be entitled to bring a claim for compensation in relation to the suffering your loved one endured, loss of earnings and miscellaneous expenses which would not have otherwise been incurred (like travel, costs of medical equipment purchased, and childcare costs).

What is the difference between a criminal case and the civil case?

A criminal case comes to court after a decision has been made, usually by the Crown Prosecution Service, to prosecute someone for an offence. The case will determine whether the individual is guilty of that offence, as well as the appropriate punishment.

A civil case aims to seek justice and obtain compensation for the injured party, or their loved ones, following the negligent act of a third party. In some instances, civil cases can be settled without having to go to court.

My partner/child passed away a few years ago, and I believe their death was due to a fault or negligence in their medical care. What steps should I take to investigate this? Is there still time to make a claim, or have I missed the deadline?

If you believe the death of a loved one was due to a fault of medical negligence, you should contact a legal representative who will be able to investigate this.

There is a time limit for bringing a claim for clinical negligence. A claim must be brought within three years from either:

- The date the negligence happened or
- The date on which you became aware you suffered the significant injury or
- From the date your loved one passed away as a result of the negligence (unless your loved one was already aware of negligence before they passed away)

A claim can be brought on behalf of a child who was injured as a result of medical negligence at any point before they turn 18. When they turn 18 and if they have mental capacity, they must then bring a claim before their 21st birthday. There is no time limit for adults who lack mental capacity, so a claim can be brought on their behalf by their litigation friend at any point.

Why is an inquest being held?

Any person whose death is of a violent or unnatural cause, or of an unknown cause, or occurred whilst the deceased was in custody or otherwise state detention – even if the cause is known to be a natural one must be reported to the appointed coroner for the jurisdiction in which the death occurred. In practice, this is usually by a police officer, medical professional, or a relative who has concerns about the circumstances in which the death occurred.

A coroner will carry out an investigation and if they reach a point where they have identified evidence that leads them to reasonably suspect the cause of the death is unnatural, it is likely that an inquest will be held.

What are my rights and obligations during the inquest?

An inquest is not an adversarial process - there are no “parties”, there are interested persons. An interested person includes family members and personal representatives of the deceased. An interested person can also be someone involved with the death (e.g. a hospital if the person who died received treatment there); a person who may have caused or contributed to the death; a person appointed by a Government department, or anyone else who the coroner thinks has a sufficient interest. If you are an interested person, you have the right to question the witnesses, after the coroner has asked their questions. You also have the right for full disclosure of any documents which are a part of the investigation.

Do I need legal representation for the inquest?

You do not require a solicitor to attend the inquest. However, if you believe the death of a loved one was due to a fault of negligence, you should contact a legal representative for advice. A solicitor can liaise with the Coroner obtain relevant documents and information prior to the hearing and they can represent a family at any pre inquest review hearing, as well as, the final hearing or arrange for a barrister to be instructed.

What is the process of an inquest, and how long will it take?

The inquest process involves four key steps: opening the inquest, gathering the evidence, holding pre-inquest hearings (if considered necessary) and conducting the inquest itself:

- The Coroner must establish by way of an Inquest (inquiry)
- The identity of the deceased
- The date of death
- The place of death
- How the deceased has died.

The coroner will reach a conclusion about the death, complete a record of inquest and in some cases where they believe there has been a systemic failing, they will make a prevention of future deaths report.

The length of an inquest varies from case to case and can take longer due to the complexity of the case or other factors, such as the number of witnesses.

Who will be present at the inquest, and can I bring support?

Inquests are held in a public court, and any member of the public can attend.

What types of evidence will be examined during the inquest?

The coroner decides who to call as a witness. As part of the investigation, the coroner will request a statement from family members and anyone who may have relevant information, like a doctor, social worker or police officer. The coroner may also call that person as a witness at the inquest.

Can I ask questions of witnesses?

The coroner asks their questions first of each witness and after that, any interested person can ask more questions.

Will the inquest determine who is to blame or if someone was negligent?

The coroner's role is not to apportion blame, it is to make findings of fact based upon the evidence to establish the inquest is to find out who the deceased was, how, when and where they died. However, a coroner can make a finding of neglect if he or she finds that there has been a gross failure to provide basic medical treatment and that this has more than minimally contributed to the death.

If you believe the death of a loved one was due to a fault of negligence, you should contact a legal representative for advice.

How much information will I receive before the inquest begins?

You will receive the date and time of the inquest. Also a list of witnesses, their statements and any medical evidence should be sent to you ahead of the inquest.

The coroner may ask you to provide a witness statement or a pen portrait (a way to commemorate a loved one who has died).

Will I have access to any documents or medical records used in the inquest?

As a family member you have the right to full disclosure of any documentation which will be used in the inquest.

Can I make a statement or give testimony about my loved one's situation?

The coroner will want to know if the family have concerns about how their loved one has died. You can send concerns to the coroner's office in writing, email or call the office.



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Will the inquest report be public, and who can access it?

At the end of an inquest a coroner will complete a Record of Inquest. In most cases, the Record of Inquest is to be treated as a public document, it will be read out in open court, and will normally be made available for inspection by the public at a Coroner's office.

If the coroner has heard evidence which gives rise to concern that there is a risk of deaths occurring in the future, they will complete a 'Prevent Future Deaths' report. The report will be sent to the authority that has the power to take the appropriate steps to reduce the risk. A response must be submitted to the coroner within 56 days. The report and response are public documents.

If new evidence arises, can the inquest be reopened or reviewed?

The only way to appeal an inquest conclusion is by judicial review which typically must be done within three months. If this is something you wish to do you should seek legal advice.

What support (financial) or resources are available to help me through the inquest process?

- Funding available
- Possible legal aid
- Privately
- CFA if there is a civil claim
- Pro bono

Inquests can be very difficult and emotional, there are various charities to help and support bereaved families.



**Find out more about the team
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