



“I Only Need A Simple Will”

These words are often spoken by potential clients when enquiring about making a Will and they are often repeated when we go to see them and ask about their circumstances so that we can give them appropriate advice. Although a simple Will is often a huge improvement on not having a Will, it rarely deals with the real-life situations that affect many, if not the majority of people.

The following example tries to give an insight into what can go wrong with a simple Will. While the tragedies that conspire in the story below are all unlikely to happen to a single family, in our experience, many of them affect a huge number of clients and rarely is a simple Will the best Will for a client.

Our story starts when Janet and John are in their 50s. They met at school and have been together ever since. They are totally committed to each other, but although they often thought about it, they never got married. They have four children: Ian, Vicky, Kate (who are all now grown up) and Chloe, a later addition, who is 8. John doesn't have much of a career, but Janet is a successful businesswoman and has substantial assets. They are sensible people and went to their local solicitor to make Wills. They told him what they wanted and he listened carefully, noting their instructions. He created their Wills, which most people would refer to as standard Mirror Wills, matching exactly what they asked for (everything to each other and then to the children absolutely in equal shares) and they were very happy with the service, feeling that they had done the right thing to protect each other and their family. However the solicitor did not ask any questions about their circumstances or give them any advice, or explain the different ways of structuring their Wills.

After a short illness, Janet died. Her Will passed everything to John, but then what happened? Although John did very well financially when Janet died, so did HMRC, receiving 40% of everything over Janet's IHT-free allowance (as they were not married) and John had to downsize to pay the tax.

John was terribly grief-stricken and lonely. His mother died shortly afterwards, leaving her sizeable estate (after IHT) to him. He was now a good catch and not long afterwards was befriended by Edwina, who was known for her charms. She was a firm believer in marriage and John was happy to oblige, but they didn't create new Wills. After a few years of wedded bliss and following a spell in care, John died and Edwina was the main beneficiary of the bulk of his estate (free of IHT after a large chunk of it was used to pay for his care fees), with John's children receiving the rest (subject to 40% IHT on the amount over the Nil Rate Band).

By this time, Ian had made his fortune and the amount was chicken-feed, but added further to his IHT position. Vicky

was a drug-dependent bankrupt and her inheritance went straight to her creditors, but she called her dealer anyway to tell him the good news. Kate was getting divorced and her soon-to-be ex-husband rubbed his hands together. Chloe was at a private girls' boarding school (Edwina thought this the best) and found out that she would get her share when she was 18, but was worried that there would not be much left after it had been used to pay her school fees.

Had Janet and John been given (and taken) proper advice they would have been able to include a number of measures to protect their assets and mitigate IHT:

Janet could have included a **Life Interest** in her Will, giving John the use of the house in his lifetime, but ensuring it passed to the children when he died, even if he remarried or didn't write another Will. This could also protect the property if he needed long term care.

They could have included **Discretionary Trusts** in their Wills, with children and grandchildren being named as potential beneficiaries. This means that Ian could have passed his share directly to his children and saved IHT on his estate. The trustees could have held Vicky's share until her bankruptcy was discharged and then used it for her treatment. Kate's share could have stayed in the trust or gone directly to her children to stop her 'ex' getting his hands on some of it. Chloe could have been given more than a quarter as her needs were greater and any funds not needed for her maintenance and education could have been held on trust until she was a bit more sensible than she could have been at 18.

John's mother could have considered a **Family Trust**. Although it wouldn't have affected the tax payable on her death, this could have avoided a second tier of tax on John's death (and a third tier on Ian's death) as well as keeping assets within her family and avoiding them having to be used to pay for his care.

The moral of the story: creating a Will is one of the most important pieces of advice you can give to your clients. If they get it wrong it can cause all sorts of problems; if they get it right they stand the best chance of making life as easy as possible for their loved ones at difficult times and protecting their assets from the very real threats that life can throw at them. So, do your clients only need a simple Will?

Please recommend that your clients use a specialist company like **Estate Planning Matters**. We will find out about all of the relevant aspects of their circumstances, establish what they want to achieve and give them comprehensive advice using plain English.

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