

STEP Code for Will Preparation in England & Wales



Introduction

The STEP Code for Will Preparation in England & Wales is a set of ethical principles that operate for the benefit of clients and demonstrate openly the commitment of STEP members to transparency and client service. It recognises that, in providing will preparation services, STEP members should operate within an ethical environment.

The Code is a framework within which each STEP member who undertakes this area of work can determine how best to meet the needs of each individual client – while at the same time operating within appropriate standards. It does not set out a detailed and prescriptive procedure for will preparation.

Where a member of STEP undertakes will preparation, the client should be informed of the Code and a copy of it should be made available to the client in a format accessible to that client.

The STEP Code applies from 1 April 2014 to all STEP members who prepare wills in England & Wales.¹ STEP members should make the existence of this Code, and their adherence to it, part of their general information for prospective clients both in print and online.

Adherence to the Code is an obligation for all STEP members writing wills in England & Wales. For relevant STEP members this Code forms one of the supplements to the broader STEP Code of Professional Conduct. Failure to conform to these standards will leave members open to action under STEP's disciplinary processes. Many STEP members are subject to another professional code of conduct based on another professional qualification. In the event of any conflict between this Code and any other, members should seek the guidance of the Society's Professional Standards Committee.

Nothing in this Code shall detract from a STEP member's duty to their client under general law or statutory regulation.

¹See Principle 12 for clarification on application and use of this Code.

1. Open and transparent dealings with the client

Identification

- (i) The will drafter must accurately identify himself or herself, the firm represented and whether or not that firm is part of a larger group of companies. They should supply accurate contact details.
- (ii) If the will drafter is subject to statutory regulation this should be disclosed to the client. Otherwise the will drafter must disclose their membership of relevant professional bodies and their formal qualifications relevant to will preparation.

Costs

- (iii) Charges must be explained in a way that the client understands. The explanation should not merely outline how the charge is calculated but also detail its amount. It is understood that complexities of drafting, and substantial changes to the client's instructions, are factors that may be difficult to assess at the outset. Nevertheless, where the matter deviates from the basis on which the cost was estimated, the client must be made aware of cost implications at the earliest opportunity.
- (iv) Cost information given verbally must be confirmed in writing to the client and agreed with the client. Ideally the client's agreement should be in writing, but given the short period of time that the law generally allows for the preparation of a will there will be occasions where verbal agreement must be acted on.
- (v) Cost information provided to the client must include:
 - a) VAT details where applicable; and
 - b) details of any out of pocket expenses or disbursements.
- (vi) The basis of charging must be reasonable for the work being undertaken and the client's requirements. It is reasonable for charges to reflect complexity, time spent, risk and the qualification of the will drafter.

Terms and conditions

- (vii) The will drafter must not use terms and conditions of business that attempt to exclude all liability, to the client or intended beneficiaries, for loss arising out of the work, or lack of work, of the will drafter.
- (viii) Any limited exclusions of duty or liability must be clearly drawn to the attention of the client, explained and then agreed with the client. Conduct in this regard must comply with the law on unfair contracts.

Conflicts of interest

- (ix) The will drafter must not prepare a will for a client where to do so would give rise to a conflict of interest.

Ethical business practices

- (x) Engagement letters, giving details of the service provided, must be compliant with the requirements of any professional body of which the will drafter is a member. Whatever the minimum requirements of such bodies, the letter must present the information in a clear and user-friendly manner.
- (xi) The will drafter must not place any undue pressure on a client to use their services, nor must they attempt to secure business from a client by wrong, unjustifiable or misleading statements about alternative will drafters, their work or charging.
- (xii) The preparation of a will must not be conditional on the will drafter being appointed executor and/or trustee.
- (xiii) In most cases the client will be unaware of the duties of an executor or trustee and unaware that these are offices of a fiduciary nature. The will drafter must advise the client on the appropriateness of executors and trustees, but such advice may, of course, be refused by the client. In giving advice on executors and trustees, the will drafter must put the options available to the client fairly. Without such fair advice the will drafter should not prepare a will that appoints them as a remunerated executor or trustee.
- (xiv) The will that is prepared must be appropriate for the client's circumstances and the unnecessary expense of an inappropriately complex will must be avoided.
- (xv) The features of, and effect of, the will must be accurately described to the client. This is particularly so where tax saving or asset protection features of a will are claimed.
- (xvi) Client communications, advertising and other promotional material must be free from incorrect, unjustifiable or misleading statements about the will drafter's services or the services of competitors. Similarly, the need for a client to make a will must be honestly and objectively set out and the content must not misrepresent the consequences, including taxation consequences, of not making a will.
- (xvii) No will drafter shall prepare a will and require, solicit or otherwise attempt to obtain any advance payment for acting in the administration of the client's estate.

Records

- (xviii) The will drafter must take adequate notes of the client's instructions and the advice that they have given to the client and preserve these notes in the will file.
- (xix) The client should be provided with a record of the will instructions, usually by way of a copy of an attendance note, fact find or questionnaire (or failing that by letter). Where this is not possible, then the client must be provided with a draft or copy will ahead of being asked to execute the final document, with the opportunity to ask questions or seek explanations before execution of the will. Where time constraints make this impossible, a greater onus is placed on the will drafter to provide explanations and encourage questions from the client.

Exoneration and disputes

- (xx) Where the will drafter prepares a will containing a clause that confers exoneration from defaults or negligence greater than that otherwise available generally at law, the will drafter must adhere to the STEP Code of Professional Conduct (available at www.step.org/professional-standards).
- (xxi) Where the will drafter is a member of a dispute resolution scheme this should be disclosed to the client at the will instruction meeting. Where the will drafter is not a member of such a scheme (other than STEP's own disciplinary process) the client should be advised of their right, if the will drafter cannot resolve the issue to the client's satisfaction, to take a complaint through STEP's disciplinary process.

2. Client identity

- (i) The will drafter must take all reasonable steps to identify the client in order to prevent fraud by impersonation of a client. Where required by law, this identification will be to the standard required by the *Money Laundering Regulations 2007*.

3. Mental capacity

This section deals with issues pertaining to the client's mental capacity to make or alter a valid will (known as testamentary capacity).

- (i) A will drafter must not prepare a will where they know, or have reasonable grounds for concluding, that the client lacks the necessary mental capacity, unless despite their conclusion, appropriate medical advice indicates to the contrary.
- (ii) Where there is doubt as to mental capacity, the will drafter must endeavour to ascertain if, with their

assistance, the client would be capable of making a valid will. Where there is doubt as to capacity an opinion from an appropriately qualified medical practitioner is of great value and may well assist the will drafter in their decision as whether or not to proceed with the will instructions. In this regard, the will drafter must be aware of the court's encouragement to involve a medical practitioner and be prepared to comply with it, or have good reasons for concluding that this is not applicable in the circumstances.

- (iii) The will drafter is faced with great practical difficulty in that the involvement of a medical practitioner almost invariably takes time to comply with, while the duty of care to the testator requires the prompt and efficient preparation of a will. The will drafter is required to consider carefully which of the two factors must be given precedence in the circumstances of the individual client.
- (iv) It is recognised that assessment of mental capacity is an inexact science and that ultimately the court is the arbiter of capacity. The will drafter has an important role to play in the process and should always carefully record their conclusions as to capacity and their reasons for reaching those conclusions.

4. Confidentiality

- (i) The information obtained from the client, advice given to the client, and the will prepared must remain confidential and no unauthorised disclosure can be made to a third party, before or after the execution of the will.
- (ii) In order to comply with this, the will drafter must have:
 - a. suitable security for their premises and for their will-storage facility
 - b. a storage facility suitable for the preservation of documents
 - c. insurance cover for the storage of third-party documents
 - d. staff trained in the requirements of client confidentiality
 - e. provided the client with:
 - contact details for where the will is stored
 - details for the release of the will from storage
 - f. a system in place to advise the client of any change to these arrangements, particularly the contact details.
- (iii) Where the will drafter is required to deal with an intermediary, rather than the client, the will

drafter must refuse to act, unless it is possible to:

- a. verify satisfactorily with the client that the intermediary is authorised; and
 - b. establish that the client is free from coercion, undue influence and has testamentary capacity.
- (iv) When taking instructions from a client the will drafter must endeavour to ensure that no member of the testator's family, or an intended beneficiary under the will, is present during the meeting. It is understood that in some circumstances this may not be possible, and if the will drafter feels able to proceed with the interview they must:
- a. provide a careful explanation of the potential for challenge to the terms of the will; and
 - b. take careful note of the third party's participation in the meeting in order to assist with any later dispute.
- (v) Where instructions are taken jointly from more than one client in a meeting regarding more than one will, the will drafter shall advise the clients that:
- a. they have been asked to act for both or all of them;
 - b. no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned; and
 - c. if a conflict develops that cannot be resolved, the will drafter cannot continue to act for both or all of them and may have to withdraw completely (and this will include subsequent changes to either will of which the other or others would not be aware).

5. Qualified staff and commitment to qualification

- (i) Will instructions and will preparation should never be undertaken by an unqualified person (i.e. lacking relevant training and/or experience), except under the supervision of a person who is so qualified.
- (ii) Notwithstanding qualification by training, where a will drafter is called upon to take instructions or draft a will that is outside of their experience, or beyond their level of training, the work must be supervised or guided by a suitably qualified person.
- (iii) All will drafters must commit to such amounts of relevant continuing professional education as are required by any professional bodies of which they are members, but as a minimum, the continuing

professional education must meet the annual minimum standard required by STEP (see www.step.org/cpd).

6. Benefit to the will drafter

- (i) As a general principle, the will drafter, members of their immediate family or those with a close business relationship with them should not receive any benefit from the terms of a will that the will drafter prepares for a client (see next paragraph where the client is a relation of the will drafter). Where benefit under the will is to pass to a body, such as a charity, with which the will drafter has substantial involvement, best practice would be for the will drafter to decline to prepare the document and to arrange for another suitably qualified will drafter to assist the client.
- (ii) Where the will drafter is asked to prepare a will for a member of their family, it is best practice to decline to draft the document and to arrange for another suitably qualified will drafter to assist the client. Where this is not possible, it is essential that the will drafter is scrupulous in the dealings with the client and fully, and accurately, records all relevant matters, especially as regards personal benefit. Notwithstanding possible family pressures, the will drafter should not act in this way for a member of their family if the will is likely to be controversial or give rise to litigation.

7. Time

- (i) As a part of the will drafter's duty of care, they are required to deal expeditiously with:
 - a. requests for will instruction meetings
 - b. drafting new wills
 - c. queries arising from the drafting
 - d. engrossment and execution.
- (ii) The will drafter must establish any factors of urgency relating to the client's circumstances and their will and determine an appropriate timescale for the will. It is helpful to the client to explain this timescale.
- (iii) Where the will drafter is unable to accept instructions to prepare a will for the client, the client must be advised immediately that the matter cannot proceed.
- (iv) Will instructions should not be taken where the will drafter lacks the resources to deal with the matter in a timely manner.
- (v) The client's rights to cancel the contract with the will drafter under *The Cancellation of Contracts*

Made in a Consumer's Home or Place of Work etc. Regulations 2008 must be explained to the testator. Waiting for the expiry of a seven-day period is, however, difficult to reconcile with a client's interests and the will drafter's duty to prepare a will expeditiously. This should be explained to the testator who can then request in writing that work starts without delay.

8. Insurance

- (i) In order to provide adequate security for the client, the commercial preparation of wills must not be undertaken without professional indemnity insurance that is commensurate with the level of business undertaken.
- (ii) On retirement, the will drafter must have adequate arrangements for insurance cover to continue for as long as the risk of claims from testators or beneficiaries exists². Similar arrangements must be in place on the voluntary winding up of a practice or firm owned in whole or in part by a STEP member.
- (iii) The fact that the will drafter has adequate indemnity insurance must be disclosed to the client.

9. The law of wills

- (i) The law relating to wills is extensive and complex. While no will drafter can be expected to know all the law, they are expected to have a sound knowledge of the main areas.
- (ii) The will drafter, or a person under their supervision, should give advice that is compliant with the law.
- (iii) In particular, the will drafter should ensure that they:
 - a. take full instructions from the client and record these instructions in writing
 - b. record the advice given to the client
 - c. take all practicable steps to ascertain that the client has testamentary capacity
 - d. take all reasonable steps to ensure that the client is acting free from coercion or undue influence
 - e. provide a will that is compliant with the law; and
 - f. supervise the execution of will (unless the client, having first been advised of the risks, does not require this) in a proper manner.

²Usually six years.

- (iv) The completeness of these papers and their retention should assist the will drafter to comply in a timely manner with any requests for information in the event of disputes after the death of the client.
- (v) The will drafter should establish during the will instruction meeting if inheritance tax advice is required in connection with the client's estate and where the client requires advice it should be provided. Where the complexity of the advice required is outside the competence of the will drafter this should be disclosed and alternative sources of tax advice discussed with the client. STEP members will also comply with the STEP policy on 'Professional Conduct in Relation to Taxation', which can be found at www.step.org/professional-standards.
- (vi) Where the will drafter is called upon to prepare a will that is likely to be the cause of litigation, the will drafter must offer to give advice on how this risk can be reduced. Where the client declines advice, or declines to pay for advice, the will drafter has no obligation to proceed with giving the advice.

10. Deathbed wills

- (i) The provision of wills for those at the point of death has always been a significant client service. While it is recognised that the urgency may prevent full compliance with this Code, the will drafter must ensure that where they cannot comply fully, any actions, or omissions, are not to the detriment of the testator's interests or those of their intended beneficiaries.
- (ii) Where a will drafter is unable to comply with a request to attend to take instructions for a deathbed will, because of lack of available time or resources, it is essential that the intending testator is made aware of this without delay and, where feasible, given the contact information for other will drafters who may be able assist them.

11. Diversity

- (i) The will drafter must not refuse to prepare a will on the grounds of a client's race, colour, religion, nationality, gender or sexual orientation.
- (ii) The will drafter must not refuse to prepare a will on the grounds of a client's disability. This does not apply where the disability is such as to deprive the client of testamentary capacity.

12. Application and use of the Code

- (i) This Code applies to all STEP members who prepare wills in England & Wales. They may describe the work they undertake as being compliant with this Code and make use of this Code in their information material for clients. Use of the STEP England & Wales Will Writing Code logo is, however, reserved for use by Full Members (TEPs); and Associates, Affiliates and Students of STEP that have successfully completed the Advanced Certificate in Will Preparation. Use of the logo is subject to the guidelines laid out in the 'Rules for use of the STEP Will Writing Code logo'.
- (ii) A STEP member
- a. who delegates work in connection with wills to someone who is not a member of STEP, or
 - b. who manages or supervises someone, who is not a member of STEP, in work connected with wills
- is responsible for that work complying with this Code, such as if it was personally undertaken by him or her.
- (iii) An individual will drafter who is not a member of STEP, cannot make use of this Code, reproduce any part of it or claim compliance with it.
- (iv) a. A sole practitioner, partnership, LLP, limited company or public limited company where the work relating to wills is exclusively undertaken by
- those described in (i) above,
 - a delegate described in (ii)a. above or
 - those being managed or supervised in (ii)b. above,
- may describe the work they undertake as being compliant with this Code and may make use of this Code in their information material for clients.
- b. A sole practitioner, partnership, LLP, limited company or public limited company where the work relating to wills falls outside of (iv)a. above cannot make use of this Code, reproduce any part of it or claim compliance with it.
- (v) The copyright to this Code is property of STEP and reproduction by any means of the whole or any part it requires the consent of STEP. Such consent is given to any member of STEP who is compliant with the Code and any firm within the description in (iv)a. above.
- (vi) It is recognised that STEP members often practice within diverse and complex business structures. In the event of any difficulties as to how to apply this Code in the particular circumstances of their practice structure, members should seek the guidance of the Society's Professional Standards Committee.

Definitions

For the purpose of this Code:

- (i) A member of STEP means a full Member of STEP, Affiliate, Associate or Technical Associate of the Society or a Student Member, Retired Member, Restricted Member.
- (ii) Preparing wills includes taking instructions, drafting and arranging execution, unless the context makes it clear that it applies to only a part of this process.
- (iii) 'Will Preparation in England & Wales' includes wills prepared in whole or in part outside England & Wales that deal with significant real or personal property in England & Wales.
- (iv) 'Will Preparation in England & Wales' does not include wills prepared exclusively to take effect in a jurisdiction outside England & Wales.

About STEP

STEP is the worldwide professional association for practitioners dealing with family inheritance and succession planning. STEP helps to improve public understanding of the issues families face in this area and promotes education and high professional standards among its members.

For more information on STEP visit www.step.org

For more information on STEP's Professional Standards, including copies of this Code and the STEP Code of Professional Conduct, and details of how to make a formal complaint see www.step.org/professional-standards or call 020 7340 0500.

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