

TRUST POLICY FOR MANAGING PATIENT REQUESTS FOR ASSISTANCE WITH THE PREPARATION OF A WILL

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To be read in conjunction with:				
<ul style="list-style-type: none"> Consent - Including the Mental Capacity Act (Lawful Authority for Providing Examination, Care or Treatment) - Trust Policy and Procedures 				
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1. **Introduction**

University Hospitals of Derby and Burton NHS Foundation Trust (the Trust) recognises that staff may, on occasion, be faced with difficult and emotive circumstances where patients request assistance with the preparation of their Will.

This must only be done in hospital in an emergency i.e. if it is **essential** to do so because of the likely death, peace of mind or general welfare of the patient.

2. **Purpose**

The purpose of this Policy is to provide guidance to staff who are asked by a patient to assist with his/her Will.

This Policy deals only with the situation in which patients are requesting assistance from members of staff to make a Will.

Patients who express a wish to make a Codicil (an addition, amendment or supplement) to a Will should be advised to contact their own Solicitor. If a patient is expressing a wish to make a Codicil and it is an emergency, staff should contact Legal Services for advice.

3. **Definitions Used**

Testamentary Capacity:	<p>A person who has reached the age of majority at 18 years and has capacity to understand the nature of the document, the nature and value of the property which he/she is disposing and the people who will and will not benefit under the Will.</p> <p>If there is any doubt that the patient has capacity, the responsible Consultant should complete a formal Testamentary Capacity Assessment. This must be completed by speaking to the patient.</p> <p>The Trust's Mental Capacity Assessment Form can be used as a general guide but please note that testamentary capacity and mental capacity are subtly different - please consider as per the test above.</p>
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4. **Key Responsibilities**

Legal Services

Legal Services will advise Trust staff on issues relating to patient Wills where relevant.

Trust Staff

Trust staff may only give a patient assistance in the preparation of a Will in an emergency and as specified within this Policy. In all circumstances where staff receive requests to assist with a Will they should report this to the Senior person on duty in their area (or at weekends / out of hours the Patient Flow Team via switchboard).

5. Managing Requests from Patients for Assistance in the Preparation of a Will

5.1 Patient Requests to Make a Will

Patients who express a wish to make a Will should be advised to consult their / a Solicitor.

5.2 Support for the Patient

If the patient is incapable of visiting their Solicitor, assistance should be given and facilities provided for the patient's Solicitor to visit, subject to the medical needs of the patient. It should be made clear to the patient that any such visit by their Solicitor is entirely at the patient's expense and that the Trust can incur no liability for this visit.

If the patient does not have a Solicitor, staff should, with the patient's agreement, contact the family or Social Services or provide the patient with a telephone at no charge and telephone directory.

Consideration should also be given as to whether pastoral support for the patient is obtained from the hospital chaplains.

5.3 Criteria for Trust Staff Assistance with the Preparation of a Will

In an **emergency only**, staff may witness a patient's Will, subject to the following:

- Staff should not assist the patient if the **individual member of staff** stands to benefit from the Will (the staff member should explain tactfully that if this is the case the Will could be invalid)
- Staff should not assist a patient **if the Trust** stands to benefit from the Will, **except** when a patient's Solicitor has taken instructions and prepared the Will and one of the witnesses is independent of the Trust
- Assistance should be limited to witnessing the Will and staff should not assist the patient with the content of the Will
- An "emergency" can be described as where a patient is likely to pass away within hours and it is practically impossible for the patient and/or relatives to arrange for a Solicitor or other independent witnesses to attend the hospital

If there are any concerns, advice should be sought from Legal Services/ Safeguarding.

A sample Last Will and Testament is included at Appendix 1. Please note that this Will template is not designed for complex estates or arrangements.

5.4 Witnessing the Signing of a Will

To be valid a Will must be in writing and must be signed by the patient in the presence of two witnesses who both sign their signatures in the presence of each other. Both witnesses must be present during the whole time that the patient is signing their name. The witness is only witnessing the patient's signature not the content of the Will itself, and should have no input into the content of the Will.

Staff should only witness the Will if they are satisfied the patient has Testamentary Capacity (as defined in paragraph 3 above), understands what he/she is doing and is exercising his/her own free will. If there is any doubt that the patient has capacity, the responsible Consultant should complete a formal mental capacity assessment using the Mental Capacity Assessment Form in accordance with the Trust's Mental Capacity Act Policy.

There is no obligation on Trust staff to witness a patient's Will.

A witness cannot benefit from a Will.

If there are concerns regarding a patient being coerced into signing a Will or a patient is being asked to sign a Will when they do not have Testamentary Capacity, **please discuss with the Safeguarding Team in usual working hours 8-5 Mon-Fri (01332 787547) or out of hours contact adult social care in the local authority where the patient is usually resident.**

5.5 Confidentiality

Staff should treat as confidential:

- The fact that the patient has made a Will unless the patient consents to the disclosure of this fact to family or friends.
- The contents of the Will unless the patient consents to the disclosure of its content.

5.6 Safekeeping of the Will

Once completed the Will must be placed in a sealed envelope clearly marked "The Last Will and Testament of (Patient Name)" and handed to the patient or dealt with in accordance with their directions.

5.7 Record Keeping

Staff must document clearly within the patient's medical records any requests by a patient to make a Will and the measures instituted, especially where any doubt exists as to the patient's testamentary capacity.

6. **Monitoring Compliance and Effectiveness**

This Policy will be subject to regular audit in conjunction with the Trust's standards.

Appendix 1

Last Will and Testament

This is the last will and testament of [insert full name and DOB] -----

Of [address] -----

Made on

[insert date]

I hereby revoke all former wills and testamentary depositions made by me.

Marital Status

[insert]

Children

[insert]

Appointment

[I appoint [name] of [insert] as the Executor of this Will.

Disposition of Estate [patient to include details of how they wish their Estate to be dealt with - can be extended as necessary. Think about assets and debts to be paid off]

Signed:

Date:

Signed by ----- in the presence of us, who in

----- presence and in the presence of each other have signed our name as witnesses.

Witness 1

Signature:

Full Name:

Occupation:

Address:

Witness 2

Signature:

Full Name:

Occupation:

Address:

Appendix 2

MANAGING PATIENT REQUESTS FOR ASSISTANCE IN THE PREPARATION OF A WILL

