



If you would like to discuss anything featured in this brochure, please do get in touch.

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Planning for your future



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Introduction

We see ourselves as more than just solicitors. We want to work with you and your family as your needs and circumstances change, to ensure that everything you have worked hard to build up is protected – for you and for your family's future. We believe that by working closely with other professionals, such as accountants and financial advisers, with care providers and social services, as well as with our colleagues in other departments at Banner Jones, we can make sure that we have thought of everything. Leaving you able to relax and enjoy life.

Our experienced, highly qualified and well respected team of solicitors includes members of the Solicitors for the Elderly, the Law Society Probate Section and the Society of Trust and Estate Practitioners (STEP).

Your peace of mind is very important to us. We pride ourselves on our friendly and straightforward approach. We will explain things in plain English, guide you through your options, and give you practical and personalised advice.

We provide our services from various offices throughout North Derbyshire and South Yorkshire. We can also visit you at your home, office, care home or anywhere else you choose and can offer out-of-hours appointments by arrangement.

This brochure is intended to provide you with details of the legal services we can offer, however, if you have any questions or would like to discuss your particular circumstances please don't hesitate to get in touch. You can find our contact details on the back cover.

We look forward to helping you plan for your future.

**Regional
Law Firm
of the Year**

**ACQCOUNTRY
AWARDS2009**

**Team of
the Year**



Wills

It is both amazing and worrying to think that around 2/3 of adults in England and Wales do not have a Will. Making a Will need not be complicated or expensive. Although you can make a Will yourself, using a pack bought from the high street, we would strongly suggest you see a solicitor to have it drawn up professionally. We like to compare it to do-it-yourself dentistry – whilst it may be possible it is probably not a good idea for most people!

If you don't make a Will, the "Intestacy Rules" will govern how your estate is divided up when you die. They determine which of your relatives receives what and this can lead to some nasty surprises. They don't provide at all for your friends or even for a partner who you may have lived with for years – they will inherit nothing. Under the Intestacy Rules, your step-children are not counted as your children if you have not formally adopted them and will inherit nothing – even if their other parents have already died. Likewise, the Intestacy Rules make no provision for charities.

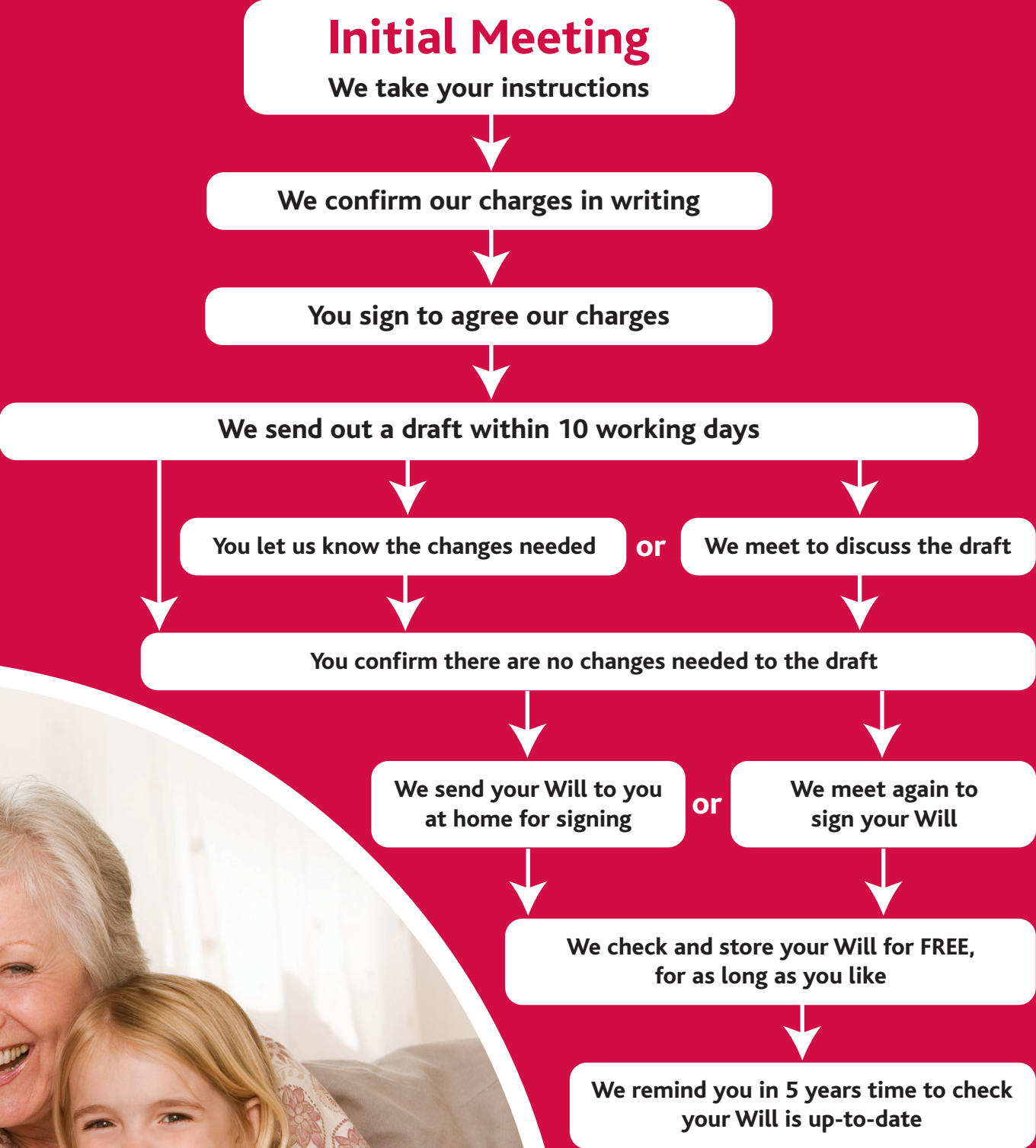
In your Will you can name guardians to look after your children if anything were to happen to you. The choice of guardians is up to you, but a solicitor can advise you on the factors to consider when making this important decision.

Even if you have already made a Will, it is important to keep it up-to-date. Family circumstances, your assets and the law can all change as the years go by. If you bring your existing Will to us, we can offer you a fixed-fee initial meeting to discuss whether it still carries out your wishes or not. If not, we would be happy to update it or to make a new Will. It does not matter who wrote your Will originally.

Leaving a Will means you can be sure that everything would be dealt with in the way you would wish following your death. It's a great feeling to know that you won't be leaving your loved ones with a mess to sort out.



Making a Will - The Process



Probate

If you have any asset worth over £5,000, any stocks and shares or a property then your executors will usually need to apply for probate. If you don't make a Will, they need to apply for Letters of Administration instead, which is very similar. Unless your assets are all owned jointly with someone else and pass to them automatically, you will need a Grant of Probate before your estate can be paid out. We can provide detailed advice about this if you need it.

If you have been appointed as someone's executor, it is often difficult at this distressing time to know what to do first. Briefly, the steps you need to take initially are:-

- 1. Find the Will**
- 2. Register the death**
- 3. Arrange the funeral**
- 4. Secure the deceased's property**
- 5. Collect together all the paperwork you can find**

We can offer help with each of these stages, depending on what you need us to do. We understand that people who are recently bereaved often need practical help. Our specialist team can offer advice and a sympathetic ear.

1. Find the Will

Look through the deceased's papers, contact their solicitor and their bank to see if the deceased left a Will. If so, it will tell you who is appointed the executor and who should therefore arrange the funeral and deal with the estate. It may also contain funeral wishes.

2. Register the death

Anyone can register the death, although it is usually done by the next of kin. It must usually be done within 5

days of the death, at the Registry of Births, Marriages and Deaths nearest to where the deceased died. We can offer help on what you need to take with you, and what will happen at the registration.

3. Arrange the Funeral

You can contact the undertaker as soon as you like, but the funeral arrangements cannot be finalised until the Registrar has given you the Burial/Cremation slip. It is very unusual for the Will to be read at or after the funeral. However, sometimes it is done to make clear who is to receive legacies under the Will and in order to avoid arguments amongst the family. Some families actually like to have the formality of a Will reading after the funeral.

Generally, banks or building societies will enable you to pay the funeral account without obtaining a Grant of Probate. However, they prefer generally to deal with Solicitors in this respect and they do need to see the funeral bill and the death certificate before releasing monies from the deceased's accounts.



4. Secure the deceased's property

If the house is empty, you should tell the insurance company and the police. If you know the neighbours, ask them to keep an eye on it for you. If the deceased had a car, the car insurers must be told and of course the car must not be driven until the insurance has been updated. If there are any valuable items in the house, these should be taken somewhere else for safekeeping. You should also make arrangements for re-homing any pets.

If there is a Will, you should inform the Executors of the death as soon as possible, so that they can begin to administer the estate. If there is no Will then an Administrator will be needed to deal with the estate. There are Rules as to who can be appointed and also as to who will inherit the estate where there is no Will, and we would be happy to advise on this if needed.

5. Collect together all the paperwork you can find

The Executor(s) or Administrator(s) will then need to collect together all the deceased's papers and notify all the various

companies and organisations of the death. Solicitors can do this on your behalf. An Inheritance Tax return will need to be submitted if you are applying for probate. Inheritance tax is generally only payable if the estate totals £325,000* or more. However, this is a complex issue and you should speak to a solicitor if you are concerned.

If the estate is very small, you may just need us to apply for a Grant of Probate for you. However, we are happy to do as much or as little to help as you need. If you wish, we can deal with the whole process from start to finish. We understand that it is hard enough for you to deal with the loss of a loved one. Why not let us worry about the rest?



* Factually correct at the time of printing.

Looking after someone else's affairs

There may be a variety of reasons why you might need to look after someone else's affairs and there are several ways of ensuring that you are acting properly. At Banner Jones we are always keen to find the best solution possible for your particular circumstances, and we know that no two families are the same. Whatever your circumstances you can make an appointment to discuss your situation with us in more detail. We will then be able to advise you as to the best way forward.

This might be for example:-

- Naming you as a third party on a loved one's bank account. This will allow you to withdraw funds and sign cheques on their behalf.
- Naming you as "appointee" through the Department of Work and Pensions, enabling you to receive someone's state pension and benefits on their behalf.
- As long as your loved one has mental capacity they could give you general "power of attorney" which would allow you to look after things for up to a year for them. If they later lose mental capacity, however, then the power of attorney would come to an end.
- Alternatively, your friend or relative could give you Lasting Power of Attorney (LPA). This would not come to an end if they were to lose mental capacity later on, and would last indefinitely, not just for one year. We would need to see your loved one personally so we can explain the LPA to them and make sure this is what they want. We would then be able to prepare

a document for them to sign, which would give you power to deal with their finances on their behalf. It cannot be used until it is registered with the Office of the Public Guardian, and we would be happy to deal with this too.

- If your loved one is not able to make a decision as to who they wish to look after their affairs for them, perhaps because they have advanced dementia, and you are willing to take on this role, then we can apply to the Court for you to be appointed their "Deputy" (see over). This would mean you could pay their bills, provide for their day-to-day needs and take care of any problems that arise. You must keep careful records of everything you do on behalf of your loved one and we can help you prepare the annual accounts required by the Court.
- It is also possible for a Lasting Power of Attorney or a Deputy to be appointed to deal with healthcare and welfare decisions.



The Court of Protection

If your loved one no longer has the mental understanding to look after their own property and affairs, or to create a Lasting Power of Attorney then we can apply to the Court of Protection for a Deputy to be appointed. The Court of Protection is a specialist court dealing with issues relating to people who lack capacity to make specific decisions.

We will guide you through the whole process including giving the Court details of your loved one's financial situation. As the Court requires, we will also notify other members of the family of the application.

Once the Court has all of the information they will consider the application and if they believe that you are suitable to manage your relative's affairs then they will appoint you as the Deputy. As a Deputy you are legally responsible for acting and making decisions on behalf of a person who lacks capacity to make those decisions for

themselves. You will then be responsible for dealing with all of that person's finances, under the guidance of the Court.

The Deputy order you receive when you are appointed sets out your specific powers in relation to the person who lacks capacity. They will depend on the needs of the person and ultimately the Court's decision. Your powers may apply to any aspect of the person's life, including their finances, personal welfare and consenting to medical treatment and social care interventions.

In some cases there is no family member or friend who is willing or able to take up the role of Deputy. We can assume that role if you wish, provided that you can give us all the information about the person who now lacks capacity. We can also help existing Deputies to apply to Court for more powers if they are needed in future, perhaps to sell a house.



Inheritance tax

Inheritance Tax (IHT) is payable on death at the rate of 40%* on the value of your net assets over £325,000*. The first £325,000* is called the "Nil Rate Band" because although it is taxable to Inheritance Tax, it is currently taxed at 0%.

If you are married or in a registered civil partnership, if the first of you to die has not used up all their Nil Rate Band either during their lifetime or through their Will, then the second of you to die can also deduct the unused portion of that first Nil Rate Band. That means that a married couple or civil partnership can potentially leave £650,000* free of IHT on the second death. To ensure that you make the best use of this allowance, and do not inadvertently lose all or part of it, please contact us for more information.

If you give away valuable assets (including cash) whilst you are alive, you must survive this gift for 7 years otherwise HM Revenue will tax you as if you still owned them when you die. This is the case whether you

make the gift to an individual or put it into some types of trust. If you put your money or assets into certain types of trust or give them to a company, however, there is an immediate charge to inheritance tax – even though you are still alive.

There are certain gifts you can make which are not subject to this 7 year rule. Everyone has an "annual exemption" for inheritance tax of £3,000* each every tax year. That means you can give away £3,000* in total every tax year and it immediately falls out of your estate for inheritance tax purposes. If you die within 7 years, that gift will not be brought back into account. If you haven't used your annual exemption one year, you can roll it forward for 1 tax year, so you can give away £6,000* the next year. You can only do this once, however.

There are other gifts which are exempt from inheritance tax – please arrange an appointment if you would like to discuss this further.



Trusts

Whenever ownership of assets is transferred from one person to someone else to look after and use to benefit a third person, that is a trust. Trusts are very common and play a key role in many aspects of everyday life. For example, most company pension schemes are structured as trusts. Or think about the National Trust.

For private individuals, trusts offer a way of holding and managing money for people who may not be ready or able to manage it themselves. Some of the most common family situations where trusts are used (often in conjunction with a Will) are:

- **To provide for a husband or wife after death while protecting the interests of any children**
- **To protect the inheritance of young children until they are old enough to take responsibility for their own efforts**
- **To provide for vulnerable relatives who are unlikely to be able to look after their own affairs**
- **To help succession planning in family businesses**

Trusts are particularly useful when planning how money and assets should pass from one generation to another, especially when family structures are complicated by divorces and second marriages.

Sometimes trusts are accused as being merely devices to avoid tax. In reality, there are virtually no circumstances in which anyone would be well-advised to set up a trust just to gain tax advantages.

Whether you want to set up a new trust – either through your Will or during your lifetime – or you need help or advice in dealing with an existing trust, we can help. We can advise on the choice of trustees, or give advice to those trustees about the powers and duties that come with that role. We can help to prepare accounts, tax returns or investment policy statements for your trust. We can also ensure that you are fully aware of all the consequences of setting up a new trust, both for you and the beneficiaries.



Care planning

As people live longer, more and more of us face the possibility of going into residential care accommodation. This costs around £450 per week which means that the money you've worked so hard for can soon be eaten away. There are ways to preserve your assets and that's where we can help.

If your total assets (usually including the value of your home) exceed £23,250* then you will have to pay the care fees yourself, until your assets fall below that level (when the local authority will step in and contribute some of the cost). Certain assets are disregarded but the best way to prevent all your assets being used up by long term care fees is to come and see us at an early stage.

We specialise in Lifetime Planning – that is, we help people of all ages plan their future. We work closely with other professionals and the local authority to help people achieve their goals and to make sure there are no nasty surprises along the way.

Some types of assets are disregarded by the local authority when assessing your capital. This includes the value of your home if your partner, a relative over 60 or a relative under 60 who is mentally or physically disabled still lives there when you go into care. It also includes personal belongings, such as jewellery or cars. If you wish to rely on any property being disregarded it is vital that you talk to us first, to make sure that it complies with the rules.

BEWARE: you cannot just give away an asset for these purposes. If you give something away and one of your reasons for doing so is to avoid care fees, the “notional capital” rules mean that you will be assessed as still owning that asset even

after you give it away. You **MUST** see a solicitor before giving any assets away – however large or small. We can also tell you if there are any unforeseen tax or other implications of giving things away.

We recommend that you come to us as soon as you retire – or even earlier. We can then discuss giving assets away in the context of a long term plan. We can advise on types of trust available to you or alternatives to giving away the asset.

We also work closely with independent financial advisers who specialise in long term care fees planning. There are many different products available, from bonds to insurance policies, which can help to preserve your assets. We would be happy to introduce you to a financial adviser and arrange a 3-way meeting with you, them and us. That way you know that your panel of experts are all working together in your best interests.



Going into care

The decision to go into care can be a difficult one. Leaving your home can be traumatic and people often feel rushed or pressured into making a quick decision. That decision will affect the rest of your life, and at Banner Jones we believe in offering you the help and guidance you need to make sure the decision is right for you.

The standard of care homes differs greatly and they will all offer slightly different levels of care and service. We can give you a simple checklist to help you compare different care homes. If your family do not live nearby, or if you would like some extra help, a member of our team would be happy to visit the different care homes with you to make the comparison.

Banner Jones can guide you through the options for funding your care and can negotiate with the local authority on your behalf when they are assessing your assets. As previously stated we also work closely with independent financial advisers who specialise in long term care fees planning and will happily put you in touch with an expert who can explain the many financial products available to pay for your care.

When you have chosen your care home, they will ask you to sign a contract. It is essential that you fully understand what you are signing. We can check the contract for you before you sign, to make sure it is fair and will provide all the services you need and expect. We will guide you through it and make sure that you don't sign until you are comfortable.

Moving into a care home is a great upheaval – but it is also a great opportunity. We can help in all the following ways:-

- Make sure your Will is up-to-date and reflects your new circumstances
- Make sure your health and personal care needs have been properly assessed by the local authority and/or NHS
- Make a Lasting Power of Attorney, authorising someone else to look after your finances for you if needed
- Make a Living Will to refuse or request medical treatments
- Advise on tax – both during your lifetime and on your death
- Our property department can help you to sell your home if you need to
- Advise on the state benefits you are entitled to and help you apply for any you are not currently receiving

.... and if there is anything else you would like us to help with, just ask! We will be delighted to help in any way we can, or to put you in touch with someone else who can help. We are happy to visit you in the care home if that is easier.



Home care

Whether you are a carer for a loved one, or the person being cared for, we can help. We understand that no-one wants to leave their home and move into special accommodation unless they have to. We at Banner Jones work closely with the elderly and disabled and their carers. Our team of advisers can help make sure you stay in your own home for as long as possible and receive all the support you need and are entitled to.

We work closely with Social Services on your behalf, to make sure your needs are properly assessed. Your carer's needs can also be assessed to make sure they are also supported, and we would be delighted to advise on this further.

We would be happy to talk to you about the state benefits you are entitled to and to help you claim any you are not currently receiving. These might include Carer's Allowance, Pension Credit, Disability Living Allowance or Attendance Allowance.

We can put you in touch with charities who can offer special equipment or services for people being cared for at home. There are many organisations who offer respite care to give you and your carer a break. Because we specialise in matters concerning the elderly, we have good contacts with these organisations and can find you the help you need.

Your carer might need to access your bank accounts to pay your bills. We would be happy to discuss Powers of Attorney or Court of Protection applications with you and your carer.

If your circumstances change and you need to consider moving into sheltered or residential care accommodation, talk to us first. The care system can be bewildering and we can explain your options. We have a useful checklist of things to look for in a care home and we will make sure the contract you sign is fair.

We know that the world can seem a lonely place for carers and people confined to their home.

At Banner Jones we offer a friendly face and sound legal advice.



Challenging care home costs

If a person's health and nursing care needs are more than "incidental" or "ancillary" to the provision of accommodation that a Local Authority has a duty to provide – in other words, if their primary need is for health care, not just personal care - then the law states that he or she should be entitled to full NHS funding of their care.

Each regional Primary Care Trust produces criteria to determine whether a person is eligible for this full NHS funding. Sometimes, however, the criteria are not applied correctly or they are excessively restrictive. In those cases, a person can be wrongly asked to pay for their own care when it should be funded by the NHS. We can challenge the decision and the way the criteria are applied.

No one should move into a nursing home without checking that they qualify, as many people are not told that they might

be eligible or the procedure for reviewing the decision. With care fees costing anything between £450- £1,500 each week, it is vital that residents, their families and carers get advice. The financial loss to them is huge if they just ignore it.

We can advise you on the rules that should have been applied and can help you to appeal against a decision. We can represent you at panel meetings or can liaise with the Primary Care Trust or the Local Authority on your behalf. Don't feel that once the decision has been made it can't be changed. Many solicitors (Banner Jones included) can do this sort of work on a "no win, no fee" basis. Expert solicitors can steer you through what can seem like minefields of complaints and appeals procedures to make sure that you and your family don't lose out.

Even if your loved one has sadly died whilst in care, it might be worth discussing their case with us, as it is sometimes possible to review decisions which were made some time ago and re-claim thousands of pounds of care fees which should never have been paid out.

Regardless of where you are along this journey, why not ask us whether you are able to make a claim?

