## Will Writing Information Pack Scotland





### Why making a Will is important

#### A Will is important if:

#### 1. You are married or in a civil partnership

Many married people believe that on their death, all their assets will automatically pass to their spouse or civil partner. However, when there is no Will, and depending on the size of the estate (which includes the value of property), this may not always be the case and the following rules apply:

#### Prior Rights

The surviving spouse or registered civil partner has Prior Rights to the dwelling house, its furnishings and to cash, each up to a defined value which changes from time to time.

#### Legal Rights

The spouse or registered civil partner, and any children are entitled to Legal Rights to a share of the moveable estate (being all assets excluding the value of any land and buildings). If only a spouse/civil partner or children survive, the Legal Rights fund is a one-half share of the moveable estate, or a one-third share where both a spouse/civil partner and children survive.

#### Free estate

The free estate is what remains after Prior Rights and Legal Rights have been satisfied. The order of succession to the free estate is governed by the Succession (Scotland) Act 1964, which contains a statutory scheme of beneficiaries.

#### 2. You live with a partner

Contrary to popular belief, an unmarried partner has no automatic right of inheritance. A Will is the only means to guarantee that those individuals you wish to benefit will inherit under your Will.

#### 3. You have children under 16

A Will enables you to nominate individuals to act as guardians to any children under the age of 16.

#### 4. You are single

With no Will in place and no children, a statutory scheme of beneficiaries will apply which may not necessarily reflect how you would wish your estate to be divided on death.

#### When does your Will need updating?

If your circumstances have changed, you may need to update your existing Will. Marriage, divorce, entering a civil partnership or having children are examples of events which may lead to it being necessary to update your Will. If you receive an inheritance, enter a business partnership or buy property, you may wish to take advice as to whether it is necessary to update your Will.

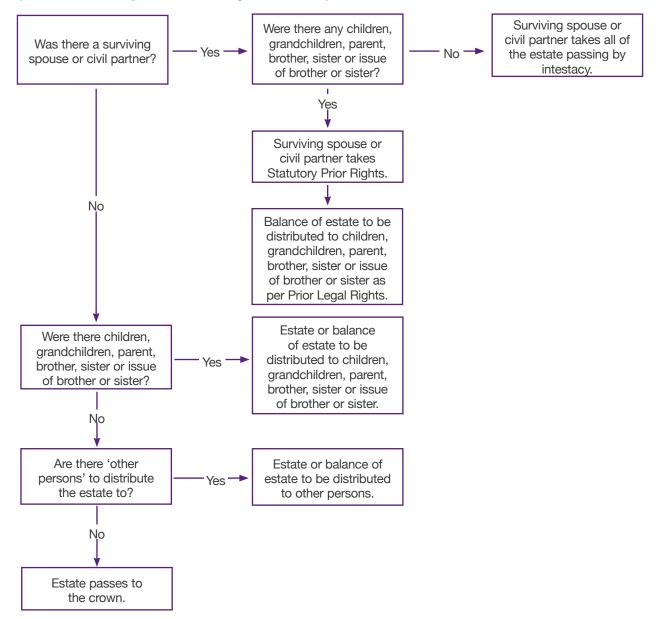
Even if there has been no apparent change in your circumstances we would recommend a review of your Will every five years in case of changes in tax rules or other legislation.

## By having a Will, you could:

- · decide how much of your free estate is left to each of your family members and other loved ones
- pass your estate to an unmarried partner
- · specify who will become the guardians of your children, if necessary
- · choose who you want to be the executor of your Will
- · leave something to charity
- · give a memento (like a piece of jewellery) to a treasured friend.

# Do you really know what happens if you die without a Will?

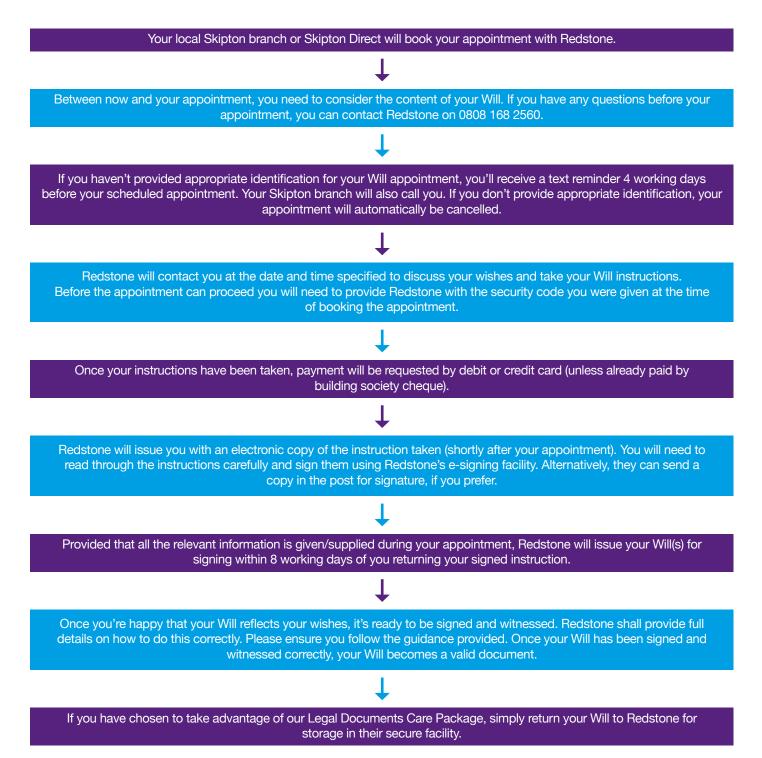
This chart explains the basic rules for what happens when someone dies without a Will in Scotland (the rules for intestacy are different in England and Wales).



#### Notes:

- 1. This flow-chart applies only to people living in Scotland at the time of death. It is intended as a brief guide, not a definitive summary of Intestacy law.
- 2. Prior Rights comprise of the family home up to a value of £473,000, furniture and house contents to a value of £29,000 and cash of £50,000 if the deceased left children, or £89,000 if there are no children. These figures are based on the law as at October 2021.
- 3. Spouse or civil partner Legal Rights comprise of a one-third of the moveable estate if the deceased left children or remoter descendants, or to a one-half if the deceased left no surviving children or remoter descendants.
- 4. Children's (or descendants of children) Legal Rights comprise of a one-third of the moveable estate if the deceased left a surviving spouse or civil partner, or to a one-half if the deceased left no such spouse or civil partners.
- 5. Members of younger generations are entitled to inherit their parent's share (in equal shares) if the parent predeceased.
- 6. The term 'children' includes illegitimate and adopted children but not step-children (unless legally adopted).
- 7. Jointly owned property may pass to the surviving co-owner, independently of the intestacy rules, depending on how title is held.

## The Will writing process explained



## Will Guidance Notes

Whether you are completing your Will instructions by post, video link or telephone, it is useful to have some guidance to help you answer some of the questions and understand some of the terms used in Will Writing. Please read through these guidance notes before completing your Will application or attending your telephone appointment with Redstone.

#### **Full Names**

You will need to provide all names in full, including middle names, not just initials, as this information will be used in your Will. You should also provide the relationship and address of anyone who will be included in your Will.

#### **Country of Domicile**

'Domicile' means the country you treat as your permanent home, even though you may spend extended periods of time in another country or jurisdiction. If your domicile is not Scotland, you can continue to make a Will here but it will cover your UK assets only. If you own property or have assets in a foreign country we will advise you to seek legal advice in the relevant country.

#### Marriage and Civil Partnership

Please confirm your marital status, including whether you are married or in a civil partnership, but separated. A spouse or civil partner would be entitled to make a legal rights claim (see exclusions section). The details of any children would also be relevant for Scottish Will Instructions (including children from previous relationships). Children would also be entitled to make a legal rights claim. Legal rights claims can be made irrespective of the terms of your Will.

#### Executors (the people who will carry out the instructions in your Will and administer your estate)

See the 'Skipton Trustees Limited Independent Executor and Professional Attorney Services' guide to find out some of the duties of an Executor.

#### **Funeral Instructions**

You may have already thought about your funeral instructions and planned for them. Please ensure the instructions you put in the Will are the same as those you have in any pre-paid funeral plan (if you have one).

#### Guardians

If you have children under the age of 16, you can state in your Will who you would like to look after your children if you were to pass away before they reach the age of 16. As this is a really important role, please discuss this with your proposed guardian(s) before naming them in your Will. The appointment of guardians must be made in writing, so a Will is an ideal place to formalise these appointments.

If you have children with someone you're not married to and the father is not named on the birth certificate, you may wish to appoint the father as first choice of guardian as, under existing law, he may not have any parental rights to the children if the mother were to pass away first.

Please be aware that in some circumstances, if you are no longer partnered with the other biological parent of your child(ren), then in the event of your death, it is possible that the other parent may have the right to be their guardian, even if you have documented an alternative guardian in your Will.

#### Gifts

You may have some specific items that you would like to leave to particular family members, friends or charities and these will need to be listed out in your Will. For instance, you may have a specific piece of jewellery you wish to leave to a favourite niece or a toy car collection you wish to leave to your grandson. You will need to specify the gift to avoid any misunderstanding. If you are making a gift to a charity, you should obtain full details of the charity (including the registered charity number) to avoid any confusion.

Please note, all of the gifts specified will be inherited free of inheritance tax (IHT) for the beneficiary unless you specify otherwise. If IHT is due on these gifts, it will come from the remainder of your estate, i.e. the residue, and therefore will decrease the amount available to pass to your residuary beneficiaries.

A gift of a property will be subject to the mortgage or any other secured debts, unless specified otherwise.

If you have a large number of specified items (not money) that you wish to leave to friends and family, it is possible to put together a Letter of Wishes/chattels which can be kept with your Will. This is then easier to alter should circumstances change, such as an item being broken or lost. Please note that this letter is not legally binding.

#### Liferent Trust

A Liferent Trust, for example, can allow someone of your choosing (known as a Liferenter) to remain living in your property and enjoy the benefits of the property without actually inheriting it. The Liferenter is responsible for upkeep of the property unless you state otherwise and on the death of the Liferenter, your nominated beneficiaries would then inherit the property. The end of the Trust can be triggered earlier by such things as remarriage, a certain age or time limit.

A Liferent Trust can therefore be used to ensure your intended beneficiaries receive your property, whilst allowing someone to continue to live in and enjoy the benefit of the property while he/she is alive.

#### **Discretionary Will Trust**

A Discretionary Will Trust allows you to leave an inheritance to provide for the potential benefit of a number of people you select (there must be more than one beneficiary), giving the flexibility to allow the income and capital to be distributed by your Trustee(s) in the manner they see fit.

This may be useful if you are unsure who, from your chosen beneficiaries, should receive all, or any, of your estate. Your Trustee(s) will have the discretion to determine how long the Trust should remain in force and which of the potential beneficiaries will receive funds from the Trust and when. You may leave a Letter of Wishes to assist your Trustee(s) with making decisions regarding the time and manner of distribution, although this is not legally binding.

You can put your whole estate into this Trust, however, depending on the amount involved, this may incur adverse tax consequences. If you limit the value of the Trust to the available IHT nil rate band allowance, this will generally simplify the taxation of the Trust. Your Trustee(s) may require specialist tax advice.

#### **Disabled Discretionary Will Trust**

A Disabled Discretionary Will Trust allows you to pass assets to a Trust and the Trustee(s) manage the funds for the benefit of a disabled person, such as making sure bills are paid and spending money from the Trust for food, clothes, etc. As the assets in Trust will not be assessed as forming part of the disabled beneficiary's own estate, the Discretionary Trust arrangement has the advantage that the Trust funds should not affect the beneficiary's entitlement to benefits.

#### **Trustees**

If you are considering creating a Trust, you will need to appoint at least one Trustee in your Will. A Trustee is an appointed person or persons who are legal owners of the Trust and therefore responsible for looking after the particular assets on behalf of the beneficiaries. Their role is to deal with the assets in the Trust, according to your requirements as set out in the Will (unless it is a Discretionary Trust where the Trustees may consider, but are not obliged, to follow a letter of wishes) and manage the Trust on a day-to-day basis and pay any tax due to HMRC. They may also have to decide how to invest or use the Trust's assets.

#### **Other Trust Information**

We can set up a Trust for a vulnerable person, if they are incapable of looking after their own affairs, or you would not want their state benefits to be affected. In order to be eligible, the principal beneficiary must qualify for disability benefits, personal independence allowance or registered as mentally disabled. Please contact us for further information.

#### **Residuary Estate (everything else)**

After you have made decisions regarding the above matters, you should decide who you wish to inherit the balance of your estate. These people will receive what is left after all your debts and any tax owed have been paid, Prior and Legal Rights claims have been satisfied and any gifts have been made over (ie specific bequests of possessions and/or money). If you are dividing the estate into percentages, please ensure these add up to 100%.

One of the last questions we will ask you, is to name alternative people or charities to receive the remainder of your estate, if any of the people you wanted to receive the remainder of your estate pass away before you and you were unable to make another Will.

#### **Gifts to minors**

Minors cannot inherit absolutely until they attain the age of 16, although it is common practice to stipulate that beneficiaries do not inherit until they attain the age of 18. Other common ages are 21 or 25. Assets will be held in Trust for a beneficiary prior to the selected age. The Trustees would manage the funds for a minor beneficiary until he or she attains the stipulated age. The Trust provisions are flexible and funds can be remitted to a beneficiary's parent or guardian, or the Trustees can apply the funds for his or her benefit (education or maintenance) prior to the selected age.

#### Jointly owned assets

Only assets owned in your sole name, or your share of jointly owned assets, will form part of your estate. However, with jointly owned assets (such as property or a bank account), you may not be able to gift it in your Will, as it may be subject to survivorship provisions, which ensure that it automatically passes to the surviving owner following the first death. Therefore, if you wish to gift your main residence, it is necessary to determine how it is owned. If it is owned in equal shares with no survivorship provision, your share of the property can be included in your Will and made over to your intended beneficiaries. However, if it is owned with a survivorship provision, your share will automatically be made over to the surviving owner outwith the provisions of your Will. If you intend to gift property in your Will, it is essential that your title deeds are reviewed. We can do this on your behalf.

Continued overleaf

#### **Exclusions**

It is possible to make a Will that makes no, or very limited, provision for spouses and children. However, they have the right, under Scottish law, to make a legal rights claim. This right cannot be overridden by a Will. Depending upon the family circumstances at the date of death, both a spouse and children (as a group) can claim up to 50% of the 'moveable estate', (all assets excluding land and buildings). Whilst you can leave your free estate to whomever you wish, to help provide further evidence should a challenge occur, any exclusions or unequal distributions should be explained. This can be noted in the instruction form, but you should write a letter of explanation to accompany your Will.

#### Inheritance Tax (IHT)

IHT is charged at 40% of the value of the estate above the 'Nil Rate Band' (NRB) which is currently £325,000. Every individual has an NRB allowance.

Inheritance between married couples and civil partners is not subject to IHT. So if the first partner dies and leaves everything to the surviving partner, then no IHT is due. It also means that his or her NRB is unused (if no gifts were made in the seven years prior to death). Unused NRB can be transferred between the spouse. This means on the second death, the value of the NRB can be up to £650,000. Any gifts that were made in the seven years prior to death would also be taken into account in calculating the available NRB.

Note: An individual is only able to benefit from a maximum of the value of two NRB, i.e. up to £650,000, based on current rates.

The Main Residence Relief was introduced in 2017 and may further reduce IHT liability where the main home is passed to children or grandchildren on second death. The relief is set at £175,000 per person if they fall within the qualifying criteria. Legacies to charity are also exempt from IHT. In addition, if more than 10% of the estate is left to charity, it could also reduce the rate of IHT from 40% to 36%.

For IHT purposes, the estate is:

- the value of all assets held (cash, investments, property, jewellery, cars, life interests in a Trust etc.) less
- any liabilities (mortgage, personal loans and credit card balances etc.). Unfortunately most debt remains payable even in death.

#### Children

We need a list of all of your children, including any estranged or step-children, or those not benefiting from your estate.

#### Notes

There is a space on the instruction form to enter any information that you feel is relevant to your Will, but may not have been covered by the questions raised. For example, if any of your relatives have specific needs or if you have any specific requirements regarding gifts.

Your share of the property can be included in your Will and made over to your intended beneficiaries. However, if it is owned with a survivorship provision, your share will automatically be made over to the surviving owner outwith the provisions of your Will. If you intend to gift property in your Will, it is essential that your title deeds are reviewed. We can do this on your behalf.

Hopefully this guide will answer any questions you have, however please contact our Legal Team on 0808 168 2560 if you require any further explanation and we will be more than happy to help you.

## Things to think about before your Will appointment

During your appointment you will be asked a number of questions which will assist Redstone in producing your Will. On those grounds, Redstone ask that you consider the below questions before your appointment.

You can use this page to make notes to help you answer these questions. This form is for your own use only; you won't need to send it to Redstone.

#### People

Who will you appoint as Executor to carry out the instructions in your Will?

Friend(s) and/or family member(s)

Independent Executor (e.g. Skipton Trustees Limited)

If you're creating a Trust in your Will, who do you want to appoint as Trustee(s)?

Same as above

Someone else

Redstone will need a list of all your children, including any stepchildren and any children you are estranged from. You will need to provide this information even if you intend to exclude them from your Will.

If you have children under 18 (16 in Scotland), you should appoint guardians in your Will

Will you appoint any reserve guardians?

#### Funeral

Please note below any funeral instructions. Make sure the instructions you include in your Will are the same as those you have in any pre-paid funeral plan. Make a note of your funeral plan provider's name and plan number, as you will need this during your appointment.

#### Your estate

Are there any specific gifts, including cherished items, you want to leave to any individuals?

Do you want to leave any charitable donations in your Will? If so, you will need the full details of the charity, including the full charity name and number.

Will you be leaving any gifts to anybody who you want to inherit at a certain age?

Are any of the people you want to leave your assets to vulnerable, or are you concerned about protecting your assets for your family?

How would you like your remaining estate to be divided?

Continued overleaf

You'll need full names and addresses of anyone mentioned in your Will. You can make a note of this information below.

#### Anything else

If you have any other information you feel is relevant to your Will, make a note of it here.

#### **Appointment information**

Will appointment date:

Time:

Security code:

#### Terms and Conditions of Skipton Building Society's Will & Power of Attorney (POA) Referral Service

#### 1) Definitions

- a. "We", "Our" and "Us" mean Skipton Building Society
- "You" means the person who We refer to Redstone Wills Limited (Redstone) for the provision of Will and/ or POAs.

#### 2) The Services

 The Will & POA Referral Service is provided by STL and administrated by Redstone whose address is: Redstone Wills Limited

Windmill Road St Leonards-on-Sea East Sussex

- b. The Will Referral Service means that We will refer customers to Redstone for the following Services:
  - · Wills (Single)
  - · Wills (Mirror)
  - · Discretionary Will Trusts
  - · Life Interest Will Trust
  - · Severance of Joint Tenancies
  - · Transfers of Registered and Unregistered property
  - · Codicils/Amendments.
- c. The POA Referral Service means that We will refer customers to Redstone for the following Services:
  - Health and Welfare Lasting Powers of Attorney (England & Wales)
  - Property and Financial Affairs Lasting Powers of Attorney (England & Wales)
  - · Continuing Powers of Attorney (Scotland)
  - · Welfare Powers of Attorney (Scotland)
  - · General Powers of Attorney.

#### You will contract directly with Redstone for these Services, which will be governed by the Redstone Wills Limited's Terms of Business for the Will & POA Writing Service.

d. The Independent Executor & Trustee Services are provided by Skipton Trustees Limited whose address is:

Skipton Trustees Limited The Bailey Skipton North Yorkshire BD23 1DN

- e. Skipton Trustees Limited is incorporated as a Trust Corporation and is entitled to provide the Independent Attorney Services.
- 3) Who will be providing the service?
- a. Our role in the Will & POA Referral Service is to refer You directly to Redstone, who will take your instructions and prepare your Will, Will Amendment and/or POA(s).
- b. No information relating to any assets You hold with Us or any information You have discussed with or mentioned to Us will be provided to Redstone for inclusion in your Will. You are responsible for declaring your assets and providing full information to Redstone.
- c. You are responsible for providing the full information to Redstone in relation to the preparing of your POA(s).

d. Anything You tell Redstone will be kept confidential and not disclosed to Us except for the uses referred to in section 4 below.

#### 4) Use of your information

- Redstone is using the information You provide for this Service to administer the Service and to prepare your Will and/or POA(s).
- b. You agree to any information currently held by Us being provided to Redstone and STL for the purpose of arranging your Will, Will Amend and/or POA(s) referral and administering and reviewing the Services.
- c. You agree to any information currently held by Redstone being provided to Us for the purposes of administering and reviewing the Service and carrying out file reviews.
- d. You agree to information You give to Redstone whilst using this Service being provided to Us for the purposes of Us providing You with other legacy services.

#### 5) Place of permanent residence

a. If You are not currently living in England or Wales or Scotland or You intend to live permanently abroad, We will be unable to refer You to Redstone for the provision of a Will and/or POA.

#### 6) Charges

- Please read the Legal Documents & Estate Administration Tariff of Charges for details of the fees and charges associated with the Services.
- Additional charges may apply for some elements of the Will & POA Referral Service; you will be advised by Redstone of the estimated additional charge before any work is undertaken.
- c. An additional charge may also arise if, after your Will or POA has been prepared, You alter your wishes. This includes re-drafting your Will or POA. Therefore, please check carefully that your instructions do reflect your wishes and that nothing is left out.
- d. Skipton Trustees Limited will charge for its services for acting as Executor of your Will and/or for acting as a Trustee in accordance with its scale of fees applicable at that time, if this has been requested. Copies of the updated fee scale are available from Skipton Trustees Limited on request.
- 7) Payments
- abrdn administer the payments for the Estate Administration Services, on behalf of Skipton Trustees Limited. Any concerns with these payments should be addressed to abrdn Financial Planning & Advice Limited in the first instance. Their address and telephone number are:

abrdn, Minerva House, 29 East Parade, Leeds LS1 5PS Tel. 0800 464 3567 b. Redstone administers the payment for all other elements of the Service. Any concerns with these payments should be addressed to Redstone in the first instance.

#### 8) Cancellations & Refunds

- a. For instructions for a Will and/or a POA, You have a right to cancel within 14 calendar days of providing confirmation of your instructions (the cooling off period).
- b. Work on your Will and/or POA will be carried out within the cooling off period, however, if You have provided Redstone with a waiver to authorise work to begin within this period then no charge will apply for cancellations within the cooling off period. Where instructions are not taken face-to-face (e.g. telephone) then the waiver should be provided in writing.
- c. If You do not provide a waiver, You still have the right to cancel at any time but a charge may apply for work already undertaken.
- d. Please see Redstone's Terms of Business for details of their Cancellation and Refunds Policy.

#### 9) Rights of Redress

a. Both Redstone and Skipton Building Society are members of the Society of Will Writers and Estate Planning Practitioners (SoWW) and they abide by the Society's Code of Practice, copies of which can be found on The Society of Will Writers website or by writing to them at:

The Society of Will Writers Chancery House Whisby Way Lincoln LN6 3LQ

The SoWW is an independent body representing the interests of professional Will Writers and consumers.

The Code of Practice is available in Braille, audio or large print – for your copy please contact the SoWW on 0800 838270.

#### 10) How to complain

- a. There may be occasions when the Service falls short of your expectations.
- b. If your complaint relates to the Service You have received from Us, your concerns should be addressed to:

Customer Relations Team Skipton Building Society The Bailey Skipton North Yorkshire BD23 1DN

- c. If You prefer You may telephone Our Customer Service team on 0345 850 1722, or visit your nearest branch. Alternatively, you may forward details of your complaint via Our website at skipton.co.uk
  - we'll try to resolve your complaint within three working days of receiving it
  - if We're able to resolve it in this time, we'll send You a written summary of the resolution. This will confirm your complaint has been resolved
  - the summary will also remind You of your right to take your complaint to the Financial Ombudsman Service (FOS) if You subsequently feel dissatisfied with the outcome

- d. Sometimes We need more time to look into your complaint.
  - if We can't resolve it within three working days, We'll send You a written acknowledgement letter. This will be no later than five working days after receiving notification of your complaint
  - a Customer Relations Consultant will get in touch with You so we can investigate your complaint fully. We'll try and resolve your complaint within four weeks. If its going to take longer, We'll let You know
  - we'll send a final response letter within eight weeks of the initial receipt of your complaint. We'll also remind You that You have a right to take your complaint to the FOS if you're not satisfied with the outcome
  - in the unlikely event that We can't give You a response within the eight-week period, you can refer your complaint to the FOS.

Whilst You can refer your complaint to the FOS at any time, they'll need our consent to investigate complaints where:

- we haven't had the chance to put things right.
- we haven't exceeded the eight-week timescale and haven't yet issued Our final response letter.
- e. Where your complaint relates to the service You have received from Redstone, your concerns should be addressed to:

The Manager Redstone Wills Limited Windmill Road St Leonards-on-Sea East Sussex TN38 9BY

Redstone must advise Us of all complaints made directly to them relating to the Service.

- f. Following the completion of a review into your complaint by Us or Redstone, should You remain dissatisfied:
  - You can inform Redstone and/or Us, who shall advise the Society of Will Writers (SoWW) of the complaint and provide You with details of the SoWW complaint handling procedure;
  - if You ask the SoWW to review your complaint, this must be done in writing, to:

The Society of Will Writers Chancery House Whisby Way Lincoln

LN6 3LQ

The SoWW will review your complaint and decide what action should be taken.

Details of either Our or Redstone's full complaints process are available on request.

#### 11) Governing Law

These Terms and Conditions for Our Will & POA Referral Service are governed by and will be construed in accordance with English law.







Skipton Building Society is a member of the Building Societies Association. Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority, under registration number 153706, for accepting deposits, advising on and arranging mortgages and providing Restricted financial advice. Principal Office, The Bailey, Skipton, North Yorkshire, BD23 1DN. Skipton Will & POA Referral Service and Legal Documents Care Package is provided by Skipton Trustees Limited, registered office: The Bailey, Skipton, North Yorkshire, BD23 1DN, registered in England no. 6258324 and administered by Redstone Wills Limited, Windmill Road, St Leonards-on-Sea, East Sussex, TN38 9BY. Company no. 3673190. Skipton Building Society and Redstone Wills Limited are both members of The Society Of Will Writers and they both abide by their Code of Practice, copies of which can be found on the Society of Will Writers website or by writing to them at Chancery House, Whisby Way, Lincoln, LN6 3LQ. Skipton Estate & Trust Administration Service is provided by Skipton Trustees Limited and administered by abrdn Financial Planning and Advice Ltd is registered in England (01447544) at Bow Bells House, 1 Bread Street. London, EC4M 9HH and is authorised and regulated by the Financial Conduct Authority. © 2021 abrdn, All rights reserved. Please note that Wills, POA, Legal Documents Care Package & Estate & Trust Administration are not regulated by the Financial Conduct Authority.