

Who can decide what to do with someone's ashes?



Disputes often arise following someone's death and resolving problems is increasingly complex as family structures become less formulaic. Concerns about where someone should be buried or what should happen to their ashes can become an issue.

Ashes (and bodies) are not property and cannot pass under a Will; a Will can contain an individual's wishes regarding their burial, and what will happen to their ashes if they are cremated, but these are only their wishes and are not enforceable by law.

The obligation for arranging funeral directions lies with the individual(s) with custody of and responsibility for disposal of the body. These individual(s) may dispose of the body and ashes as they deem appropriate. They are under no obligation to take other relatives' wishes into account.

The custodian of the body and ashes is the executor of the Will, or if there is no executor then residuary beneficiaries. If there is no Will, then Rule 22 of The Non-Contentious Probate Rules 1987 lists the hierarchy of individuals who may apply for probate (and would be the custodian of the body and ashes); the first four, in order of priority are below:

1. Surviving spouse; if none, then
2. Children or grandchildren; if none, then
3. Parents; if none, then
4. Siblings (if none then see full list [here](#)).

A problem can arise when executors, residuary beneficiaries or family members in the same category, such as a mother and father, disagree about what to do with someone's ashes. In these cases arguments occasionally



come to court to be resolved. One example is the case of Re JS which was brought to the court in 2016 in anticipation of these issues arising; there was extensive coverage of this case, which involved a minor's decision to be cryopreserved after her death, which was something her estranged parents disagreed about (in Re JS ([Re JS link](#)), the court ordered JS's mother would be responsible for dealing with her body after death and prevented JS's father from intervening).

If you are concerned an executor is not appropriately carrying out their duties please contact Philip Youdan at philip.youdan@cripps.co.uk.

How we can help

For further information about Will disputes and disputes involving trusts and estates, please contact the [inheritance disputes team](#). We can also discuss the possible options for funding your claim and may, in appropriate cases, be able to offer a "no win, no fee" arrangement or a fixed fee.

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