



Inside this issue:

- [Challenging a Will](#)
- [Lack of testamentary capacity](#)
- [Coercion](#)
- [Invalidity](#)

Contacts

For further information, please contact your usual Leeds Day contact or

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For a full list of our offices and people please visit

www.leedsday.co.uk

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If you feel that you have any grounds to challenge a Will of someone who has died in your family, it is important that you contact us as soon as possible as there are strict time limits and prompt action is necessary.

GROUNDS FOR CLAIM

Lack of testamentary capacity

• If a Will or Codicil appears on the face of it to be in order and rationally made then unless there are particular circumstances which cast a doubt on its validity, testamentary capacity will be assumed. However, if there is evidence of confusion on the part of the person making the Will or a history of memory loss or other mental problem then it may be possible to try to challenge the validity of the Will on the basis that the testator did not have sufficient mental capability at the time of signing the Will. The person who makes a Will is known as the testator and he must understand the nature and consequences of making a Will i.e. that it can be revoked at any time and operates only on death. He must also understand the purpose of appointing executors, trustees and/or guardians and what happens if any of the beneficiaries die before him.

• The Testator must also have an idea of the extent of his assets and what he owns in general terms and also understand the effect of making gifts in his lifetime and how this changes his estate. In the absence of medical opinion obtained when the Will was made, this may be difficult to assess especially if the testator was suffering from increasing memory loss.

• The testator must understand the extent of his family so that he can consider the people for whom he ought to make provision. There may of course be particular reasons why a testator has left a larger part of his estate to some people rather than others and these may be important to the testator even though others would consider them to be irrational or eccentric.

• He must not be affected by any insane delusion or any other mental disorder to effect his judgement. Just because somebody has been diagnosed with Alzheimer's or dementia before signing their Will does not always mean that the Will is invalid as the testator might have lucid intervals or sufficient mental understanding to understand what they were signing despite their condition.

If you feel that you may have grounds to challenge a Will on the basis that there was a lack of testamentary capacity, it is important to try to gather as much evidence together as possible, such as details of any medical opinions or other written evidence at the time of signing the Will or before and details of any medical history.

If the Will was prepared by the testator's solicitor then there should be notes with the solicitor's file about the person's mental understanding at the time when the Will was prepared.

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CHALLENGING A WILL

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If the witnesses can be contacted, are they able to give any evidence of the testator's condition at the time of signing? How well did they know the testator?

Also the testator's signature on the Will itself might be different to his normal signature on any letters. Are there any striking differences? If the signature on the Will looks particularly shaky or incomplete, this may indicate a problem.

Coercion

Coercion means when somebody is forced to sign a testamentary document against their own wishes. The elderly or infirm testator may be easily intimidated or someone may have set out to gain the testator's trust in the hope of benefitting from the estate.

This is often difficult to prove

Incorrect signing of the Will

A Will must always be signed by the testator in the presence of two witnesses who must also sign the document in his or her presence. It is important that the beneficiaries or their spouses do not witness the Will as they would then lose the benefit due to them under the Will.

Knowledge and approval of contents

There must be clear proof that the testator knew and approved the Will they have signed. Anyone who is a capable testator will be presumed to have had full knowledge and understanding of its contents.

How We can help

If you feel that you wish to challenge somebody's Will, please make an appointment to see us as soon as possible as it is important that prompt action is taken.



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