



Guide to
Disputed Wills and Probate



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Introduction

What is a will?

To begin with, let's look at what a will is. A Last Will and Testament is a document that details what should happen to a person's possessions, property and money when they pass away. To be legally valid, the will must be signed by the person making it along with two witnesses.

While the Last Will and Testament is usually considered a final reflection of an individual's wishes, there are occasions when a will is either not a true reflection of the deceased's intentions or treats certain individuals unfairly. In these instances, a will may be challenged.

Who can challenge a will?

Not just anyone has the legal right to challenge a will, but the below groups will generally have the right to do so:

- A direct family member (including children and grandchildren)
- A husband or wife
- A person who financially relied on the deceased
- A person named in the will (or a previous will), who has been disappointed by its contents
- An individual who was promised something by the deceased, but was not included in the final will.

On what grounds can a will be challenged?

There are five main ways that a will can be challenged:

1. Inheritance (Provision for Family and Dependants) Act 1975 claims
2. Lack of mental capacity
3. Undue influence
4. Fraud
5. Promissory Estoppel.



Grounds for challenging a will

Inheritance (Provision for Family and Dependants) Act 1975 claims

Inheritance Act claims are made when reasonable financial provision hasn't been made for the claimant and essentially allows the court to alter the distribution of an estate to provide for such family members.

The Inheritance Act allows claims by a spouse, civil partner, former spouse, former civil partner, child, or someone treated as if they were a child of the deceased. Additionally, someone who was living as if they were a spouse in the two years prior to death or someone who was financially dependant on the deceased can make a claim.

The court will assess whether there is 'reasonable financial provision' in the will. This often involves comparing the financial position of the various beneficiaries of an estate.

The court assesses the following factors:

- The financial resources and needs of the applicant, other possible applicants and the beneficiaries
- Any obligations the deceased had to the applicant or other beneficiaries
- The size and nature of the estate
- Any physical or mental disability of the applicant or other beneficiaries
- And then the catch all: any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

Additional factors apply for spouses, civil partners or children of the deceased.

The court has wide powers in making these awards – including payments of lump sums or periodical payments, the transfer of property, alteration of trusts and varying post and ante-nuptial settlements.

Time limits for making claims under the Inheritance Act are within six months of the grant of probate.

 We would again like to thank you so much for your guidance and brilliant advice which has been truly inspiring to us. The outcome has literally changed our lives.



Mental Capacity

Someone making a will must understand what they are doing, and the extent of their estate. This is known as 'testamentary capacity' and, in brief, means they must:

- Have full, unimpaired cognition when they make and sign their will
- Fully understand the extent of the possessions, property and money they are listing in their will
- Completely comprehend who they are naming in their will, and who is being left out.

Conditions such as Alzheimer's disease or dementia are common factors in these claims, and can be difficult due to the changing nature and progression of the conditions - with an individual being of sound mind one day and less so the next.

Medical evidence is often required to prove that someone did not have capacity to make a will.

Undue Influence

This is where someone is forced or coerced into changing their will. Disappointed beneficiaries may allege that another person has ensured the will has been altered to change the way an estate is to be distributed.

You have to prove that the deceased person would not have made the will in that way without being pressured. There can be signs that this has happened, such as:

- Someone who initially received a small gift under the will, suddenly receives a large portion of the estate
- Someone is unexpectedly included in the will as a beneficiary
- The deceased had changed from their usual pattern, such as cutting out a close relative suddenly.

There is a high bar to making these claims – expert evidence is often required.

Fraud

Cases of fraud are unfortunately becoming increasingly common, with DIY wills and wills being made in hospital particularly at risk of fraud.

Fraud covers a number of situations, including:

- An original will is destroyed or hidden by someone who didn't like its contents
- The signature on the will is forged
- The will was not signed when both witnesses were present
- The deceased was tricked into signing a will.

It is difficult to prove these cases as concrete proof is required. In a lot of cases, professionals such as handwriting experts must be brought in for specific evidence.

Promissory Estoppel

This is an unusual claim, but does happen. Such claims are made by individuals who were promised something by the deceased that was not fulfilled in the will.

This relies on the following:

- The deceased making a clear promise to someone. For example, 'if you work in the business, I will leave it to you' (a lot of these cases often refer to farms)
- There is reliance on the promise by the disappointed beneficiary
- The beneficiary has acted to their detriment, putting themselves in a worse position, such as working for a business for low or no wages for a long period of time - on the understanding they will inherit the business
- The court must conclude it is unfair (inequitable or unconscionable) to allow the promise to be broken. This is a high barrier, as there is no general rule that a non-contractual promise must be kept.

The court has a wide discretion as to the remedy that is applied in these cases. In the examples above sometimes the disappointed beneficiary is awarded the entire business, while sometimes they will receive a sum of money to represent their financial loss.



Your disputed will specialists

Life can bring happy times, testing times, and some surprises along the way. If you're looking to dispute or defend a will, Verisona Law are here to help – and have been doing just that for the people of Hampshire.

Verisona Law is focused on providing the best possible service to our clients, keeping you informed at every stage of the legal process. Disputed wills and probate is a complex area of law, and we understand how difficult this time can be. Our specialist team have extensive experience in handling such matters, and will handle your case with the upmost sensitivity and compassion.

Our team of Contentious Probate specialists has extensive experience and an impressive track record in both pursuing and defending disputes involving Wills, Estates, Trusts and professional negligence.

We are experts in:

- Claims under the Inheritance (Provision for Family and Dependants) Act 1975
- Challenging the validity of a Will
- Investigating financial Abuse, Theft & Fraud
- Considering and making claims against executors and trustee



We found Nicola to be helpful, efficient and knowledgeable.
We are grateful for her expertise and would definitely recommend her to others in the same position as us.



Free 20 minute consultation

We offer a free initial telephone consultation to anyone who wishes to discuss disputing a will. We can advise on your legal position and discuss your claim.

Get your free consultation today.

Contact us on

023 9298 1000 or email connect@verisonalaw.com



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