



I D R Law

Contentious Clinic

Larke vs Nugus Requests

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I D R N

The objective of this month's session is to:

- share our knowledge and experience in dealing with Larke – v- Nugus requests
- Provide context and pointers on how to deal with such requests
- Highlight ways in which you can make things easier for yourselves in responding to such requests in the future

If a will you have prepared is disputed, you may be asked to disclose information about the circumstances surrounding its preparation and execution.

*If ... disputed ... may ... disclose ..
information ... circumstances ...*

Before we start - be under no illusion ...

The primary purpose of a LvN request is to obtain evidence that the will you drafted should be declared invalid.

The will file and the evidence in it is often the only contemporaneous evidence relating to the disputed will. A fellow ACTAPS committee member, Tom Dumont KC once called this evidence *“the jewel in the crown of contested probate procedure”*

No-one reacts joyfully to receiving a LvN request !



Sources to work from:

- Larke –v Nugus (1979) 123 SJ 337 (later reported in (2000) WTLR 1033)
 - Inquisitorial not adversarial role of the court
 - Privilege waived if necessary to help the court decide
- Recently updated Law Society Practice Note – Disputed wills : guidance for practitioners (5th September 2023)

Preliminary considerations

So you have received a letter from a solicitor telling you that the will you drafted is being disputed. The letter may or may not say "Larke v Nugus" in the heading or body of the letter:

Before you respond, you need to work out whether you have the **authority** to do so:

- You owe the testator/trix a duty of **confidentiality** in relation to matters you were retained to deal with that survives their death.
- In addition, **legal professional privilege** attaches to the communications between solicitor and client – again this survives their death.

Aside - Confidentiality, privilege and privacy – what's the difference?

There are different concepts that relate to the protection of private information that exists beyond the death of your client

Confidentiality is a professional's promise to reveal nothing about a client without their consent, based on professional ethics.

Privilege is a legal rule prohibiting the disclosure of private information against someone's will, usually conferred by statute.

Privacy is a broader notion that reflects social custom as well as law and ethics

Working out if you have authority to respond

You can secure that authority from:

1. The testator/trix themselves in life
2. Their PRs – remember the right to confidentiality and to privilege passes, on death, to the client's personal representatives (PRs). But also remember:
 - a. Where the PR is an executor, the will itself gives them authority from date of death
 - b. Where the PR is an Administrator then their authority starts from the date of the Grant of Letters of Administration
3. All of the beneficiaries of the estate (which will?)
4. An order of the court
5. Any other statutory authority
6. Be aware of UK GDPR regulations about "personal data"



WARNING
Disclosing the contents of a will and the instructions relating to it without the consent of the PRs is a breach of confidentiality and privilege!

So, you have authority – but do you have to respond?

Short answer is NO. There is no duty to comply with any LvN request.

BUT – you do have a duty to make every effort to void potentially costly litigation. The stakes can be high if you get this wrong ..

From *Larke –v- Nugus* itself:

"Where a serious dispute arises as to the validity of a will, beyond the mere entering of a caveat and the solicitor's knowledge makes them a material witness, then the solicitor should make available a statement of their evidence regarding the execution of the will and the circumstances surrounding it to anyone concerned in the proving or challenging of that will, whether or not the solicitor acted for those who were propounding the will."

Serious Dispute – in connection with the **validity** of the will

Statement – should cover circumstances of both the instruction taking and the execution of the will

Some practical points on receipt of the LvN

- Not always easy to decide if the will is subject of a serious dispute – if in doubt, get advice.
- If you are named as executor in the will you drafted, this is nearly always going to be your call whether or not to disclose
- When seeking authority from others to respond to the LvN, they will want your views on whether they should give you authority to respond ..
- If you decide that a response is required, do so in a timely manner and copy the material parts of the will file that will help the court understand all the circumstances of the instruction/execution of the will
- The response should be in a statement form, finished with a statement of truth
- You can raise a reasonable fee for photocopying and preparing the statement
- If in doubt, get it checked before it is sent!

Did you do anything wrong?

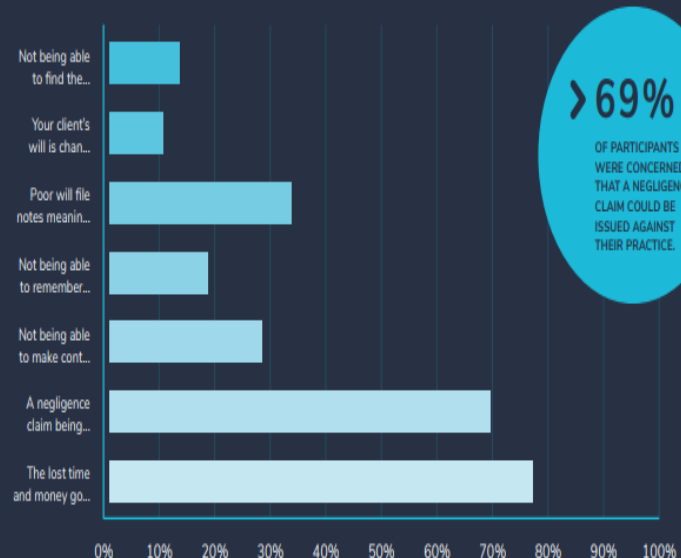
Everyone who receives a LvN letter hates it. In our survey results you can see that worries about negligence claims comes a close second to the worry about the time the response is going to take.

If there is explicit/implicit notice of a claim for negligence relating to the will preparation, then you should:

- Notify your PI insurer
- Inform any lay executors and beneficiaries of the claim and suggest that they take independent legal advice

Consider - should you act for any party concerning a disputed will which you prepared – conflict of interest between duty to deceased client and duty to court when giving evidence

Q2 Which of the following problems concern you when a Larke -v- Nugus request is received?



Don't be a rabbit in the headlights

What not to do:

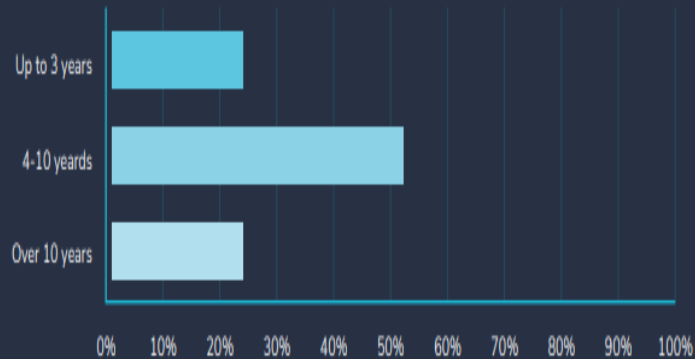
- Ignore the LvN request
- Respond without authority
- Respond if no Serious dispute
- Ignore allegations of negligence
- Be partisan and precious about your will drafting skills

What you should do:

- Take a step back
- Take advice if not sure
- Conduct a "self-interest" conflict check
- Act neutrally with all parties
- Respond in a timely manner
- Consider an interim Grant if estate assets/liabilities require it or parties agreed to administrative steps pending dispute resolution

Some final observations about file notes

Q3 On average, how old are the wills that are subject to the Larke -v- Nugus request?



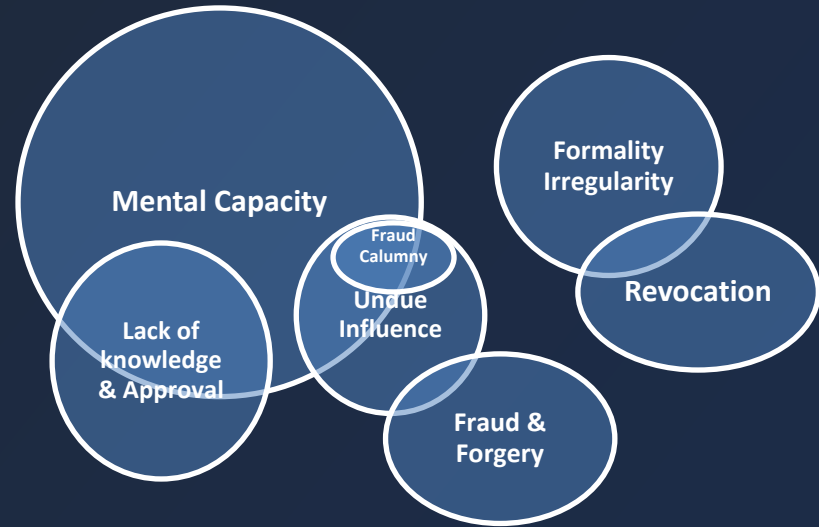
There are over 8,000 caveats lodged each year – the vast majority of these are suggesting that a will is invalid – that is approx 5% of all estates where Grants issued.

Whilst many are now aware of the rise in will disputes and keep detailed will file notes as a result, the reality (as shown by our survey responses left) is that the average time period between will and claim is 8 years with over 25% being over 10 years. How was your note keeping then?

LvN in context – the Crimewatch "sleep well"

1. LvN only deals with disputes about the validity of a will. The will file may still be relevant to other types of claim but this is a disclosure request.
2. About 8,000 + caveats issued each year against circa 150,000 Grants – that is around 5%
3. You are experienced enough to know when making a will if the family dynamics and/or will provisions are likely to cause a fight. You are on notice, so take special care with those files – blended families, inequitable gifting to children, failing testamentary capacity and so on ...
4. Remember – Sod's law trumps most statutes when dealing with "that" case ...

Inheritance claims as a Venn Diagram



1975 Act Claims

And finally

1. The practicalities of preparing a LvN statement

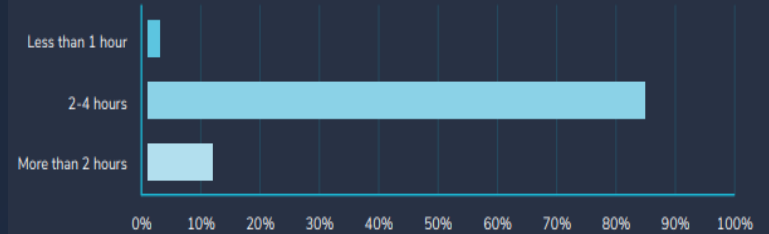
- Finding the file
- Finding the will drafter
- Time taken to draft and get signed off

2. You only know what you know – if you want the comfort of an automated system that checks your will files, note taking, decisions etc, then consider using stand alone software with prompts and trackers that actually then produces a LvN type statement at the point of will execution which is approved by the client in life. Here's one we prepared earlier ..

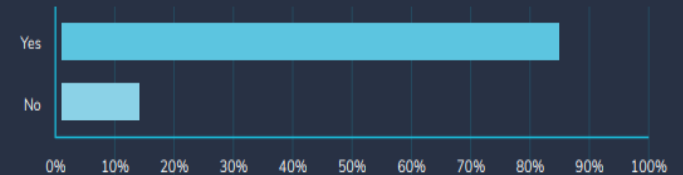


www.larkeonline.co.uk

Q5 How long (in total) does it usually take to complete a Larke -v- Nugus response?



Q6 Do you think that the number of Larke -v- Nugus requests is going to increase in line with the number of actual claims being brought?



The **IDRN** a free support and referral tool. Designed for anyone working in family succession.

The **IDRN** provides speedy access to all of the info needed should a contentious case land your desk, along with general resources for non contentious browsing.

Triage area

Fast track a client

Legal Tech tools

The screenshot shows the top navigation bar with the IDRN logo and links for 'Refer a client', 'Triage', 'Meet The Team', 'IDR Claim Checker', 'Charities', and 'News & Insights'. Below the navigation is a user greeting 'Hi, Lindsay' and a 'Refer a client' button. A sidebar on the left lists categories like '1975 Act', 'Estate Administration', 'Will Writing', 'Beneficiaries', 'Executors', 'Trusts', and 'CPD'. A 'Fast-track a client' button is also visible in the bottom right of the main content area.

The screenshot displays the 'Triage' section, titled 'Our most commonly occurring contentious situations'. It lists four categories, each with a brief description and a 'Learn more' button:

- 1 Disappointed Beneficiary - 1975 Act**: Whether there is a will or not, claims by disappointed beneficiaries are becoming more frequent. Dealing with the claims can be hard enough but trying to work out in what capacity you are representing your client (executor, beneficiary, potential beneficiary) can cause real conflicts of interest. We can help guide you through what you are required to do and/or help bring/defend the claims. [Learn more](#)
- 2 Caveats & Larke vs Nugus requests**: Whether it's a caveat surprise from the Probate Registry or the dreaded pre-claim letter asking for sight of your will file and notes, we have you covered with helpful guidance as to what to do and not to do next. What you can do yourself and when you should stop and get our help before responding or taking next steps. [Learn more](#)
- 3 Executors can't agree**: Estate administration is usually straight forward until your executor clients no longer agree and can't give you agreed instructions. Beneficiaries want you to do different things - whichever choice you make leaves one party [Learn more](#)
- 4 Charity - will legacy challenges**: Fundraising is hard at the best of times and losing a successful will challenge can be devastating. Let us help you respond to these claims with a firm but fair approach. [Fast-track a client](#)



What's next? More completely free CPD

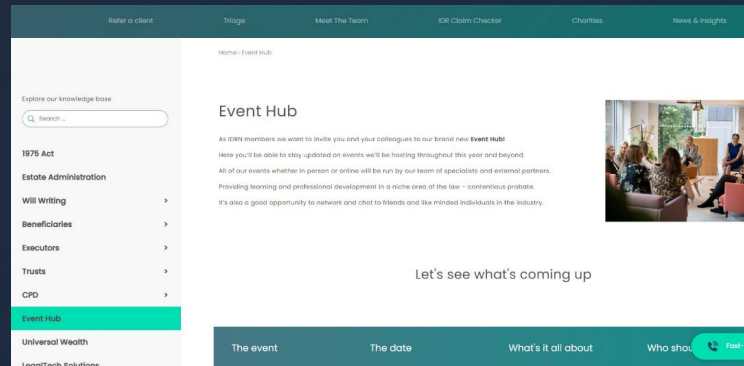
October

Will validity Challenges

Solicitor, Georgina Coates
Partner, Richard Thomas

Tuesday 31st October, 12pm.

Register via the event hub



Join the **IDRN** for free today to keep updated all of our coming webinars and training.

<https://idrn.idrlaw.co.uk/>

