

## Defending Will Validity Claims

### Initial steps:-

#### 1. Consider the merits and complexity of any potential claim & request key documents!

Will Validity claims can come in several forms. The most common arguments put forward by prospective claimants are:-

- A) The formalities for executing the Will were not adhered to by the testator (see s9 Will Act 1837);
- B) The testator lacked the relevant knowledge to legitimately approve the contents of the Will;
- C) The testator lacked the requisite testamentary capacity to execute their Will;
- D) The testator was being unduly influenced by a third party to prepare and execute a Will on particular terms;
- E) The testator may have had their affections poisoned by a third party to influence the terms of the Will; or
- F) The Will is forged/fraudulent.

It is helpful early on to take stock and consider what the prospective claimant is actually arguing, and who bears the burden of proving the validity of the Will.

Ultimately, a prospective claimant will need to set out the concise details of their claim in a formal 'Letter of Claim.' The Letter of Claim should disclose any key documents and evidence which they seek to rely on. If you receive a Letter of Claim out of the blue, then you ought to obtain prompt legal advice. Otherwise, it is best to seek legal advice at the earliest possible opportunity following the discovery of a Caveat or if a probate claim has been hinted at.

If an estate is of high value, or appears particularly complex, you should consider taking legal advice as soon as possible.

#### 2. Understand the Will history & how your charity benefits

Are there any previous Wills?

If the deceased's "Last Will" is later declared invalid, how does this impact your charity?

Does your charity benefit under any earlier Will?

What type of inheritance do you receive?

Do you stand to receive a sizeable benefit from the residuary estate or just a small pecuniary legacy?

The answers to these questions will inevitably steer your strategy around how you handle a claim, but before jumping in, always consider:

- (i) the Charity Commission's guidance and trustee checklist;
- (ii) your charity's mission statement and aims;
- (iii) any internal projects and financial commitments which might be affected by protracted litigation; and

- (iv) the possible PR implications if the case makes it all the way to trial! (See point 7 below).

### **3. Communicate with the Personal Representatives (PR's).**

Write to the PR's to remind them of their responsibility to remain neutral in relation to the potential claim, and to progress the administration of the estate as soon as possible.

You should also ensure that the trustees provide your legacy officer with relevant delegated authorities to deal with any situation which might arise.

### **4. Check whether a caveat has been entered.**

*Caveats* can legitimately be entered where there is a genuine dispute concerning the validity of a deceased's Will, where the Will may not be the true last Will of a deceased or where there is doubt as to the correct person to become the personal representative. However, Caveats should not be used in relation to claims under the Inheritance (Provision for Family and Dependents) Act 1975 (IPFDA 1975).

If the claim on your desk relates to a claim under the IPFDA 1975, you should seek to get the Caveat removed at the earliest opportunity to allow the administration of the estate to proceed. This will also put some pressure on the prospective claimant to progress their claim under the IPFDA 1975 (if they have one!) – as the clock will start ticking on the 6 month window for IPFDA 1975 claims to be issued. If a prospective claimant fails to issue within 6 months from the date of the Grant, they must get the permission of the Court. If a negotiated settlement is to be achieved before a prospective claimant is forced to issue their claim, then the parties need to work quickly following the Grant being obtained.

If a caveat has been lodged, it is important to seek legal advice.

### **5. If there is significant delay in the claimant bringing their validity claim, you should consider applying to the court for a 'Put up or Shut up' Order.**

If granted, a '*Put up or Shut up*' Order will require the prospective claimant to bring their claim promptly (normally within a specified timescale) or their Caveat will be removed, which will allow the administration of the estate to proceed. An Order of this kind will normally carry cost consequences for the prospective claimant too, which will put pressure on the claimant to progress their claim if they truly believe that their claim is a legitimate one. If a claim is not viable and if a prospective claimant is likely to lose, then they are unlikely to want to litigate.

### **6. If there is a valid claim, consider Alternative Dispute Resolution (ADR) at an early stage.**

The courts continue to champion the use of ADR at an early stage, and will frown upon any party who fails to engage in or at least consider the merits of ADR. There can be costs implications for those that refuse to consider/engage in ADR too!

Cost pressures can force a prospective claimant with a “weak” claim to either walk away or propose ADR at an early stage – and so this should be borne in mind from a strategic standpoint - but remember...

If a claim settles early, your charity gets their legacy sooner and avoiding hostile litigation helps to preserve your charity’s public image too. It is also another claim off your desk!

## **7. Think about your image!**

At an early stage, you should consider the potential reputational damage which might be caused if your charity is seen to be pursuing hostile litigation. These considerations will be fact specific, but if you risk bad publicity for vigorously defending a claim, you should give serious thought as to how costly it might be for your charity in the long term. Think bigger picture – and think cost vs benefit!

Early legal advice is always recommended – and particularly in complex or high value claims (as these are the cases which will typically attract media attention).

If you have concerns about a dispute that has landed on your desk, please feel free to contact the team at IDR Law to discuss this further.