

PROVING A WILL IS VALID

Often a question arises after a testator dies as to whether the last Will which is produced by the family represents a valid Will for the purpose of a probate application. Where there is evidence in probate proceedings raising a doubt as to testamentary capacity, there rests on the executor the burden of satisfying the Court that the Will-maker had the appropriate level of capacity at the time he or she executed the Will. If, following a vigilant examination of the whole of the evidence, a doubt is felt to be substantial enough to preclude a belief that the Will-maker was of sound mind, memory and understanding at the time of execution of the Will, probate will not be granted. In those circumstances an earlier Will might be examined for the purpose of probate or alternatively, the deceased may be intestate, that is leave an estate with no Will directing as to how it is to be distributed.

Similarly, where there are suspicious circumstances and undue influence surrounding the circumstances of a new Will, especially where there is sudden change to a Will benefiting those who have played a role in arranging to have a new Will made, these circumstances will be examined by the Court.

Experience has shown suspicious circumstances and undue influence being exerted on the Will-maker are often linked.

There is a large body of medical evidence which comes into play to explain the level of undue influence and how it might affect an elderly Will-maker in communicating his or her testamentary intentions.

This challenge can often lead to an application to the Court where parties are in contest as to how an estate should be divided. We have over 50 years of experience in representing parties in these disputes and have found that a mediation process can quickly and effectively resolve the contest before costs get out of hand.

BILL ANDREWS