

Probate: disputes, contested wills and claims against an estate

Most estates are dealt with smoothly. But when someone has died, emotions run high, and sometimes things don't go to plan. A will may not say what the family expected. Someone may feel they've been unfairly left out. Or the people dealing with the estate may not be doing it properly.

If you're in one of those positions, it can feel isolating and overwhelming, and you may not know whether you have any options. The good news is that you do, and that most disputes can be resolved without a court battle if they're handled sensibly and early. Here's a guide to the most common problems.

Can a will be challenged?

Yes, but only on certain grounds. Simply being disappointed with what a will says isn't enough, because people are generally free to leave their estate to whomever they choose. The recognised grounds for a will to be challenged include:

- **Lack of mental capacity.** The person didn't understand what they were doing when they made the will, for example because of dementia or serious illness.
- **Lack of knowledge and approval.** They didn't really know or understand what the will said.
- **Undue influence.** Someone pressured or coerced them into making the will in a particular way. This is different from ordinary persuasion, and it can be hard to prove.
- **Improper signing.** The law requires a will to be signed and witnessed in a particular way. If it wasn't, it may not be valid.
- **Fraud or forgery.** The will, or a signature on it, isn't genuine.

These cases turn on evidence, such as medical records, the will-writer's file notes and what witnesses remember. That's why it's important to act promptly, before memories fade and documents go astray.

Claims against an estate

Even a perfectly valid will can be challenged in another way. Under the **Inheritance (Provision for Family and Dependents) Act 1975**, certain people can ask the court to order that reasonable financial provision is made for them from the estate. This can include:

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- a spouse or civil partner,
- a former spouse or civil partner who hasn't remarried,
- a partner who lived with the person as a couple for at least two years before the death,
- a child of the person who died, of any age,
- someone treated as a child of the family, such as a step-child, and
- anyone who was being financially supported by the person before they died.

The court looks at all the circumstances, including the person's needs, the size of the estate and the wishes of the person who died. Success is never guaranteed. It is also an area with a **strict time limit**: a claim generally has to be brought within six months of the Grant of Probate or Letters of Administration being issued. The court can sometimes allow late claims, but you shouldn't count on that.

There are other types of claim too. For example, someone who was promised a share of a property or business and acted on that promise, such as by working for years for little or no pay, may have a claim even though it isn't in the will.

When there's a problem with the people dealing with the estate

Disputes aren't only about who inherits. Beneficiaries sometimes have concerns about how an estate is being run, for example:

- long, unexplained **delays**,
- **no information** or accounts being provided,
- assets being **sold too cheaply** or not properly accounted for, or
- an executor who has a **conflict of interest**.

Executors have legal duties, and if they don't carry them out properly, the court has powers to step in. In serious cases it can require accounts to be produced, or even remove an executor and appoint someone else. But it's often possible to resolve concerns much sooner with a clear letter and a sensible conversation.

Stopping a grant: what is a caveat?

If you're worried that a grant might be issued when it shouldn't be, for example because you think the will is invalid, you can enter a **caveat** at the Probate Registry. This is a formal notice that effectively puts a hold on the grant being issued. A caveat lasts for six

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months and can be renewed, but it needs to be used carefully, because there can be cost consequences if it isn't justified. It's a good example of a step that's best taken with advice.

Do disputes have to end up in court?

No, and in most cases it's better if they don't. Court proceedings are always expensive, often slow and hard on families, and can leave lasting damage to relationships. Many disputes are resolved by:

- **early, open communication** to clear up misunderstandings,
- **negotiation** between the parties' solicitors, and
- **mediation**, where a neutral person helps everyone reach an agreement they can all live with.

The courts expect parties to try to settle before going to trial, and they can take a dim view of anyone who refuses to consider it. When a case does need to go to court, that route is there, and we can guide you through it.

Why act early?

A few reasons it pays to get advice sooner rather than later:

- **Time limits** may apply, and some are short.
- **Evidence** is easier to gather while it's fresh.
- **The estate** may be distributed, which can make a claim harder, or sometimes more expensive, to pursue.
- **Costs** are usually lower if a dispute is resolved early.
- An honest early assessment can tell you whether you have a strong case, a weak one, or none at all, and that clarity is valuable in its own right.

How we can help

Whether you're worried that a will doesn't reflect what your loved one wanted, you feel you've been unfairly left out, or you're an executor facing a challenge, at MHHP Law we'll listen, give you a straight and honest view of where you stand, and explain your options. We'll always look for a practical, proportionate way forward, and we'll be clear with you about the likely costs and risks before you commit to anything.

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Talk to us

If you're facing a difficult situation with an estate, please get in touch as early as you can. Call Ruth Hayward on 020 3667 4784 or email at ruth.hayward@mhhlaw.com, and we'll help you take the first step.

This article is a general guide for England and Wales and does not constitute legal advice. Every situation is different, and time limits apply, so please take advice on your own circumstances as soon as possible.

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