

What does it cost to challenge a Will?

A poorly drafted Will can create uncertainty concerning the intentions of the deceased as to how their assets were to be distributed. This can lead to arguments as to whether the Will is valid and a potential challenge from relatives or friends of the deceased who believed they should have been included. In addition, with people now living longer and the increase of dementia and other diseases, there are now more incidents of Wills being challenged on grounds of lack of the appropriate mental capacity.

In most cases where a dispute over a Will occurs (typically between family members) it is best to seek to resolve any disputes amicably. Where this is not possible, court action might be the only alternative, but it comes at a cost both personally and financially.

Personal cost

Challenging a Will can require considerable court action both in terms of time and complexity. Except in cases where the value of the deceased assets i.e. the estate is less than £30,000 any claim will be in the High Court. The usual steps required in this type of court action include, for example the preparation and filing of a legal document called a Claim Form together with Particulars of Claim which set out the basis of the claim, then the party seeking to uphold the Will, in this case the Defendant, will have to file a response to that document called a Defence.

There will be the need for documentation and evidence to be assembled and eventually exchanged between the parties, which if there is a challenge on the grounds of mental incapacity will include the need for medical records and/or reports and opinion. Witness statements may also be required to support claims concerning the intentions of the deceased. If there are doubts as to whether the deceased signed the Will, handwriting experts may be needed.

All in all it is not a process to be entered into lightly. It can involve both parties in considerable amounts of time and places them under further emotional pressure, usually at a stage when emotions are in any event very fragile. It can of course result in the breakdown of family relationships.

Financial cost

Any court action can be costly – it will be necessary to instruct a solicitor to undertake or defend the court action. Assuming the matter proceeds to court each party should be budgeting up to £50,000 plus VAT in legal fees – which needs

to be paid during the course of the action. The cost of court action therefore needs to be weighed against the amount of money that is disputed – particularly if, as can occur, the legal costs are to be taken out of the estate of the deceased. Before commencing court action it is always a good idea to consider the value in monetary terms of the claim and seek professional help to advise you as to the likely cost and merits of your claim.

In court actions there is a general rule that the unsuccessful party will be ordered to pay the successful party's reasonable costs. This could mean therefore that if you unsuccessfully challenge a Will you could end up with a costs bill in excess of £60,000. This is only a general rule and the judge that decides the matter at trial has discretion as to who should pay whose costs.

Disputes concerning a Will can, and as is recognised by the court, do arise not necessarily because of the conduct or fault of either of the parties to the dispute, but because the 'fault' is that of the deceased for example if:

- There is confusion or uncertainty surrounding the Will
- The circumstances of the case raise reasonable ground for the need and cost of investigation

In these circumstances the costs will be taken out of the estate.

Given the high costs and high risks at stake in bringing, or defending, a court action disputing a Will the best advice is of course to encourage loved ones to consult a professional to draft their Will – this alone will mean the Will is less likely to be challenged. If a claim is to be brought or defended professional advice should be sought so that an informed decision can be made as to whether there are proper grounds to challenge the Will, the costs likely to be incurred and crucially whether the amount of the claim justifies the personal and financial cost involved.

If you would like further advice on this subject, or any other Dispute Resolution matter please contact Herrington Carmichael LLP's Dispute Resolution team on 01276 686 222 or 0118 977 4045 or email drteam@herrington-carmichael.com.




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