Resolving Will and Executor Disputes and Obtaining Your Rightful Inheritance

How to deal effectively with troublesome executors by embracing the power of alternative influencing strategies and targeted legal action

By Justin Patten

This guide provides a complete road map for beneficiaries who want to obtain their inheritance as quickly as possible and are dealing with difficult executors appointed by a Will or they believe the last known Will should be challenged.

After reading this report you will be able to

- *Understand the different legal and negotiation options available to you as a beneficiary and their costs*
- *Follow a 6-point plan for effective inheritance dispute resolution which could help you save thousands in legal fees*
- *Understand how you can maximise your chances of winning in Court should your dispute go that far*

This guide will help you make decisions about your inheritance dispute with more confidence and give you a means to a successful outcome.

Inheritance Disputes – The Costs to Individuals

One of the most frustrating and stressful experiences which you can have is to be a recipient of an inheritance and then not to receive it due to the conduct of another party/parties which is typically an executor(s). At a time of bereavement and sadness the position is compounded by a nagging feeling that something untoward is going on.

If disputes escalate, they can end in either no distribution to you or lead to

- Frustration
- Argument with other unhappy family members
- Legal Costs
- Stress
- Fear that the dispute will go on and on and either the Executors or the lawyers will squander your inheritance.

What Causes Inheritance Disputes?

One of the biggest causes of inheritance disputes is when one or more parties are feeling they have not received a fair share. The question is whether this is a legitimate concern or not. From our experience it can be.

The rise in value of Estates from property wealth has led to more people challenging wills and the conduct of executors. The total number of UK deaths that resulted in an IHT charge has increased. In the tax year 2020 to 2021, there were 27,000 taxpaying IHT estates, an increase of 4,000 (17%) since the previous tax year, 2019 to 2020. IHT tax liabilities created in respect of the tax year 2020 to 2021 were £5.76 billion. This was a rise of £0.8 billion (16%) compared to the previous year. All this shows increased value in Deceased Estates.

Other factors driving increased inheritance disputes include more complex family structures, the increase in re-marriages, blended families, and cohabitation.

There has been an increase in disputes being heard reflected in Court. In 2021, the High Court dealt with 105 disputed probate cases which was increasing from 68 in 2020 and 72 in 2019.

In 2020, more than 10,000 caveats were submitted to probate registries as beneficiaries moved to stop the execution of their loved one's wills.

The System is Skewed Against Beneficiaries

One of the biggest difficulties facing beneficiaries is that you are often alone, and the fact is that the Executor has the resources, information and possibly Estate funds at hand to defend themselves against any allegations.

In addition, if you want to do something about this you may not necessarily have all the help from the Courts.

For example, recently a new inquiry into County Courts has been launched by the House of Commons Justice Committee amid mounting delays in the service. The average time taken for small claims and multi/fast track claims to go to trial is currently 52.3 weeks and 78.2 weeks – a week longer and 2.8 weeks longer than last year.

The Probate Courts are not much better. Recently another House of Commons Judicial Committee inquiry was also launched into probate, the legal term for sorting out a will, amid concerns over delays in processing applications. Probate application delays reveal a slight increase from the previous month of this year – increasing from 13.9 weeks to 14, recent data from HM Courts & Tribunals Service (HMCTS) has revealed. One of the possible methods for disgruntled beneficiaries are the Probate Registries and these are subject to delays too.

As we see later, one of the key skills you need to successfully move against these apparent disadvantages is your ability to be proactive and positive about what is going on and search for dispute resolution strategies which help you and give you more speedy outcomes.

How To Move Forwards

Your fundamental objective is to secure your inheritance as quickly as possible without undermining your legal position and selling yourself short. With this in mind there are a variety of options worth considering which we explore in this Guide.

"The key is to focus your energy on those things that you can influence – this will enable you to make effective changes. If you do this you will find your circle of influence starts to increase – others will see you as an effective person and this will increase your power."
Stephen Covey, the 7 Habits of Highly Effective People

Initial Influencing Steps

Some of the effective initial influencing tools which have been proven to lead to successful outcomes include and have led to avoidance of the Court process include:

- **Ask For An Explanation -** If you are concerned about what has gone on, simply ask someone for their take on what happened either in person or in writing. At the least, you could get useful information, or you might get a satisfactory answer.

- **Ask A Mutual Friend/Relative To Help Sort It Out -** If you are not comfortable asking the other person directly what has happened, get a mutual friend/relative to ask on your behalf or act as a go between.

  If your initial influencing steps have not worked and you remain concerned about the situation, it is worth considering taking legal advice and then advancing to more formal steps.

Next Phase Influencing Steps

The next possible steps[1] which involve more formal methods to resolving your inheritance dispute include:

Write A Letter Before Action/Pre Action-Protocol Letter
One initial step which can be taken is to write a formal letter (either yourself or via a solicitor) to the Executor. It is worth considering that before Court proceedings can be commenced it is important that a Letter Before Claim is sent to the executors of the estate, (and the beneficiaries,) informing them that you intend to take legal action. The letter should set out clearly the grounds on which you intend to challenge them and what evidence you have to support your concerns. The letter should also invite them to consider early settlement and ask them to respond within 21 days saying whether or not they accept the claim. If matters cannot be resolved between the parties, then a claim in Court can be commenced. The cost of such a letter may range from £750 to £1,500 plus Vat depending on the complexity of the matter.

Have A Round Table Meeting
One step which can be relatively inexpensive compared to going to Court is sitting around the table in order to discuss issues is to move a dispute forward. A Round Table Meeting is simply a meeting where the parties and their legal advisors can meet, with the goal of settling the dispute. The meeting takes place on a without prejudice basis, which enables the parties and their lawyers to speak freely without fear that what is discussed will later be used against them in court if they

[1] The law in this guide is relevant to England and Wales only.

cannot reach agreement. This method can be effective, but you must be confident that there is a deal to be done. The cost will be your lawyer's time in preparing and attending such a meeting.

Engage In Mediation

With mediation, a middleman/independent person will help the two sides in a dispute to focus on the issue and consider the best way of solving it. The needs of both sides are taken into account, and you will try to find common ground to find the best solution to the problem. The mediator is not there to make a decision but will help both sides to agree a solution. You can make a mediated agreement legally binding if you make a signed mediated agreement. Selection of the mediator and the timing of the mediation are critical variables. According to statistics the average mediation lasts just over one day and can be set up in a matter of days. A good mediator can cost £2,500 plus Vat for the day which can be split between the parties. Around 75-80% of cases settle on the day of the mediation itself and another 10-15% settle shortly after.[2] Despite these high success numbers we are still cautious about using mediation as it does require other costs to set it up(your lawyers before and during the day) and certain opponents are frankly not worth mediating with. You should certainly not mediate if you believe fraud has taken place or an agreement will not be implemented.

Use Early Neutral Evaluation

This is unknown to many lawyers, but this is when an independent and impartial expert is appointed to give the parties an assessment of the merits of the case. It is not binding so that the parties do not have to implement the assessment. The principle is that a third party (such as a barrister) provides the disputing parties with an objective view on the strengths and weaknesses of their respective cases, which can then serve as a basis for negotiated settlement. Very useful in big Estates (£1million +) and particularly when the respective lawyers have reached a cul de sac on their view of the law. In an inheritance case before the Court of Appeal[3] the Court emphasised benefits of Early Neutral Evaluation which can include:

- Assisting with the identification of issues in dispute
- Speed - it can be a quick process.
- Provides a reality check for the parties.
- Identifying the weaknesses in a party's case
- Enabling settlement discussions where it encourages the parties to move towards a realistic starting position.

[2] https://civilmediation.org/facts-about-mediation/

[3] In Lomax -v- Lomax [2019] EWCA Civ 1467 it was decided that the consent of the parties is not required for the court to exercise its discretion under CPR 3.1(2) to order Early Neutral Evaluation

A Without Prejudice Conversation/Letter
In general, what someone says can be used against them in court. The without prejudice (WP) rule means that statements which are made in a genuine attempt to settle a dispute cannot be used in court as evidence of admissions against the party that made them**.** Thus, you can say something which is effectively off the record. Sometimes on longstanding cases, a simple phone call between disputing parties' representatives on a without prejudice basis can lead to positive discussions and a settlement happening. As a consequence, it is worth considering this approach at all points in a dispute. Generally, for all our clients we are always considering this negotiation strategy, but as we know, it takes two to tango.

Horses for Courses - What Legal Options Are Most Suitable for Me?

If your matter has not moved to positive resolution, you will have to consider more overt legal method. Two of the key inheritance disputes issues are Will Validity and the Conduct of Executors, and in both scenarios what you are ideally looking to do is find targeted legal action (e.g. swift and relatively inexpensive) which has maximum impact. Here we explore those legal strategies:

i) Challenging the Validity of The Will

There are several reasons why a will might be invalid including:

- Want of due execution
- Want of knowledge and approval
- Undue influence
- Fraud or forgery
- Lack of testamentary capacity

Within the arena of challenging a will, these are the possible legal options you can consider:

Lodging Caveats[4] and Then Making An Appearance
Often a sensible first step is preventing a grant of probate to an unsuitable executor and that is to enter a caveat[5], since it generally stops a grant being made in respect of an estate.

[4] https://www.gov.uk/stop-probate-application
[5]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1112982/PA8A_0922_save.pdf

Unless it is legally warned[6], caveats remain in force for six months, unless the registrar orders otherwise, although they can be extended for subsequent periods. They are cost effective as it costs only £3 to lodge one. The caveat can be warned off and then the caveator then will have 14 days in which to respond by entering an Appearance.

It is important to have advice at the Warning/Appearance stage as there are possible costs implications for lodging an Warning/Appearance incorrectly and technical errors can be made. The cost of going through the warning and appearance process is £750 plus Vat. [7]

The benefit for you as caveator is that leads to stalemate and forces the other side to commence legal action which may be preferable for you as you will be defender rather than a Claimant.(Better for legal costs, generally)

Legal Process – Make A Larke v Nugus Request

A Larke v Nugus request can be made by any person who has a genuine concern regarding the validity of the Will and is often made when a client is looking to challenge the validity of the Will for reasons such as:

- they believed that the deceased lacked capacity when the Will was made.
- they have concerns that someone had exerted undue influence over the deceased
- that the deceased did not have knowledge or approve of the Will

The name Larke v Nugus derives from a case where a beneficiary was in dispute with the Executor when they refused to provide a copy of the Will.

If you are making allegations against a Will drafted by a solicitor you need a Larke v Nugus Request done in which you write a series of questions to the solicitor who drafted the will. The estimated fee is £750 plus Vat.

Court Proceedings

If you are going to embark on the Court process within the Will Validity arena you issue a Claim Form and serve Particulars of Claim, setting out the nature of the claim, which is done under Part 7 proceedings. (The Claimant does not have to serve all the evidence at the beginning). The Defendants must then file a Defence within 28 days of service of the Particulars of Claim.

[6] https://www.gov.uk/stop-probate-application/respond-to-a-challenge-against-your-probate-application

[7] Please note that all legal costs mentioned are subject to your circumstances. We charge by fixed fees, hourly rate and in some circumstances provide deferred fees.

The Court will then provide directions as to the case management of the claim. This will include disclosure of all documents on which the parties intend to rely. Eventually a Trial will be held, and Judgment will be handed down.

Frankly we are cautious in advising you to issue on will validity legal proceedings as the cost can get out of kilter to the value of the Estate and it should be a last resort. For the level of legal costs it really does depend on the issues to determine the legal costs as there is a wide range of costs. Of course if the opponent is acting unreasonably you have the prospect of getting a costs order against them. Any expert evidence should be organised in a disciplined way which has cost reducing effect.

ii) Challenging the Conduct Of the Executor

If you have any concerns about the Executor (and accept the will) some of your legal options include:

Renunciation
The executor renounces as Executor and steps out of the picture. This allows the next entitled person to take a grant of probate. Renunciation is an ideal option (and very cost effective) but only a possibility where an executor is cooperative, since he or she cannot be forced to renounce. It is also only possible where an executor has not already intermeddled (got involved) with the estate.[8]

Citations
Citations are a useful method of attempting to force a delaying executor into action, or to entitle another to administer the estate. This can be an ideal pressuring method on an executor and there are two main types to consider: a citation to accept or refuse a grant, and a citation to take a grant.

First, where an executor has not intermeddled and cannot be persuaded to renounce but also is taking no steps to obtain a grant of probate, he can be cited by the person next entitled to a grant to accept or refuse probate If the executor fails to appear or apply for a grant, the citor is entitled to apply for a grant to him/herself.

Otherwise, where an executor has intermeddled in the estate (so that renunciation cannot happen) but has not taken a grant within six months of death he or she may be cited by any person interested in the estate to show cause why that person should not be ordered to take a grant. If the executor fails to appear

[8] https://assets.publishing.service.gov.uk/media/60b74244e90e0732b2acacb6/PA15_0421_save.pdf
Intermeddling means that you have handled the deceased person's assets or held yourself out in the role of an executor. Arranging a funeral, securing goods or moving assets to a place of safety is not intermeddling.

or apply for a grant, the citor may apply for an order requiring the executor to take a grant or for a grant to him/herself or someone else. The application is made in the Probate Registry.

The cost of such is step is probably around £5,000 plus Vat. Not a good step if you want the executor out of the picture completely.

Inventory and Account

A quick way to force a lazy or very silent executor to account for his/her activities is to apply for an order that he or she exhibit an inventory and account of the administration. This should be done by applying to the Probate Registry.

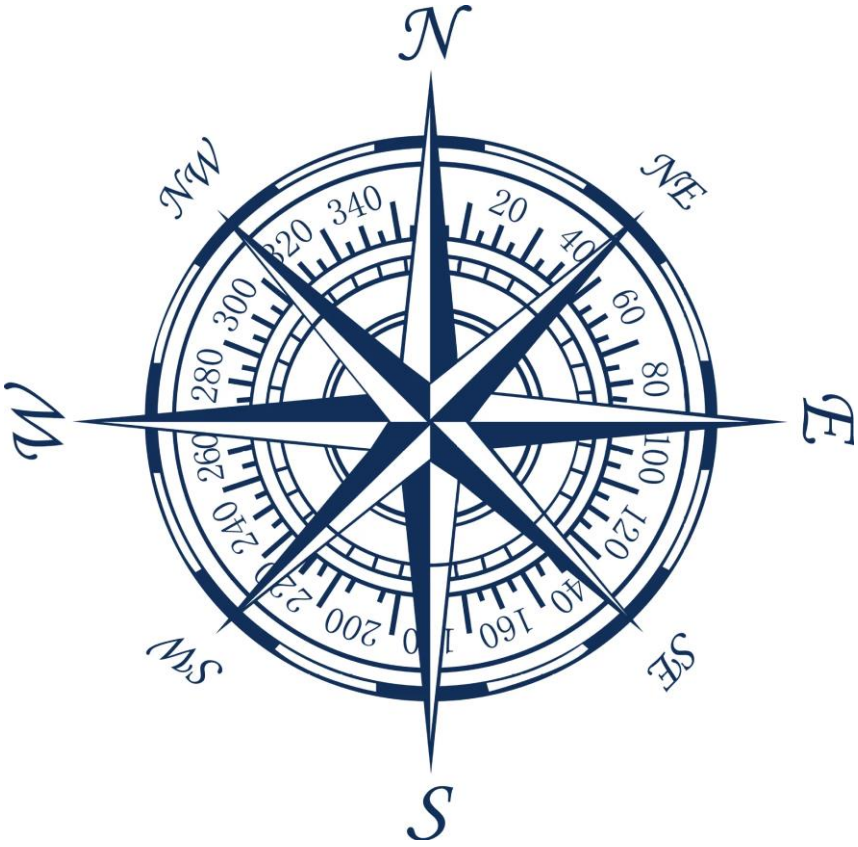
Historically we have liked this application as it can be potent, you may avoid having to go to Court (it can be done without a hearing) but some Probate Registries have been subject to delay so we are less a fan of this method currently as it is not so speedy. It is also does not work on complex Estates where you should use a different method. The cost of such a step is around £5,000 plus Vat and there is no Court fee. The application is made in the Probate Registry.

Removal of Executor

One of the most dramatic steps is you applying for the executor to be removed or replaced in the Chancery Division of the High Court using a Part 8 Claim Form and supported by written evidence. If there is more than one executor, the others must all be joined as parties, often together with the residuary beneficiaries. If a sole executor is being removed, a substitute should be sought otherwise the estate will be left unrepresented.

We like the application as the High Court is a speedy forum, the case law is straightforward, you organise your evidence prior to suing so you have more control, but you have to be pretty confident of success to take such a step. The range of cost is £10,000 to £30,000 plus Vat. As in all litigation, the loser can end up paying the legal costs, so you need to be careful. Before we embark on such a step, we like to see a paper trail to show that this step is a last resort.

How Do We Navigate The Inheritance Dispute Landscape?



Our firm's approach to moving through these different negotiation and legal steps is based around using a Six Point Plan which is set out below. This provides a set of guiding principles to help you reach the place you need to be.

The Human Law Six Point Plan

Evaluate Your Dispute (and Consistently Do So) Probably the most important (and misused) tool within the hands of a disputing party. Due to the emotional nature of inheritance disputes and the fact that as a beneficiary you often have limited information, it is very easy to misinterpret what the Executor is up to and to make poor judgment calls as to what are the strengths and weaknesses of a case and what you should do. Effective evaluation comes from consistent probing and a willingness to look at all available facts and ask searching questions of your

problem. When we advise on a dispute what we are looking to do is to develop what we call a "Helicopter view" which means, rather than getting sucked into the detail of the case, we are seeking to find a clear and calm overview and help you understand how we think your situation will play out.

Some questions to ask – *What evidence is there that something untoward has happened? To what extent are my views of this matter clouded by my emotions? Am I taking a fair stance in making steps to resolve this problem? How does any evidence stack up? Is there missing evidence I need to have a full picture? How will a judge see this if this did go to Court? What are my legal and negotiation options? What are the costs/ benefits of the different options I can take? What are the specific legal costs which can be incurred?*

Obtain as Much Key Evidence As You Can and Present It Compellingly
The nature of being in an inheritance dispute is there can be a lot of information which is not within f your current knowledge. This can include evidence of the Deceased such as bank statements and/or medical records. A key skill which can make a significant difference to long term outcomes is the ability to obtain useful (possibly pivotal) evidence which you should be able to do at low cost. The more the Beneficiary does this prior to instructing the lawyer the better the outcome. Also we are being honest here but the factual material within inheritance disputes can be, dare we say it, both unnecessarily long and boring. Not only is this potentially expensive for the beneficiary but is an expense which can be avoided. Thus, mastery of evidence and an ability to present this in a compelling and interesting way is a skill which can not only save time and cost in helping your lawyer be informed but also can influence the other side and a Judge.

Keep Emotions In Check
The nature of inheritance disputes often contains family history, and this makes it easy to make overly emotional decisions in dealing with your inheritance problem. This can lead to poor judgment calls and making rash decisions which can hurt you later such as making a judge unimpressed with your conduct. How you (and your solicitor) behave can be a critical component of how successful you will be if the matter goes to Court. Generally, in the face of provocation it will serve your interests to be calmer and it help you and your lawyer make better decisions.

> *"I am no longer accepting the things I cannot change. I am changing the things I cannot accept."*
> *— Angela Davis*

Make Thoughtful Open Offers

One of the most important skills a solicitor can make is to make tactical offers which may go before the Court. Traditionally lawyers like to make solely Without Prejudice offers which are not seen by the Judge until after the main issue is determined at Court. We are a firm believer that where you are dealing with an inheritance dispute you should try to put as much as pressure as possible on the opponents by making offers to resolve your inheritance case which you want the Judge to see if the matter goes to Court.(e.g. highlighting your reasonable approach). For an example, on an executor dispute where two arguing siblings are appointed, we might advise our client to say both siblings resign, and a professional executor is appointed instead. Effectively you make strong offers to provide a mechanism of bringing your dispute to an end, but without undermining your long-term position. Such an approach can lead to costs awards being awarded in your favour and protecting you financially.

Select Negotiation and Legal Methods Carefully

As we have demonstrated in this paper when you have inheritance problems there are often in fact a number of legal and tactical options which you can use. Sometimes errors can be made about which is the best method to select. It can be very tempting to jump in to what on the surface looks an appealing option when in fact what you should do is take a different course. The key step which will enable you to make a better decision is doing the Evaluation process thoroughly and then trying to work out what legal and negotiation step is going to get you where you want to be given your situation. That requires good background knowledge of legal and negotiation steps within this arena and an open mind.

Litigate Smartly

This means your lawyer trying to retain maximum control and discipline within the litigation process. It requires the solicitor to be successfully and consistently evaluating your case and being discerning in using expert evidence (such as barristers and financial experts). We believe if you are going to use any legal process you have to be extremely careful in the forum you use so time and cost are not unnecessarily wasted especially as there are significant differences in the time frames/service delivery of the Court you can use. e.g. mediation with a good mediator and the High Court with electronic and prompt Court filing are dispute resolution methods we do support provided it is the best option for you at a given time. Litigate Smartly involves skilful wording in correspondence which has maximum influencing impact. Our firm offers clients fixed fees for litigation so we have every motivation to act in a disciplined way on your case.

What's the Next Step?

If you have a live dispute Human Law has developed a 30-minute "dispute assessment" which we conduct over the telephone with you. What we accomplish in this no-nonsense session is an initial assessment of your case and the most cost-effective approach to resolving your dispute The 'dispute

assessment' is conducted by Human Law principal, Justin Patten, who as well as being an experienced solicitor is fully trained and qualified mediator. He is accredited by the Academy of Experts and a published author in this area of law.

To secure a time for a consultation with Justin email Justin@human-law.co.uk or call 01279 215580 stating the nature of your dispute, and providing as much detail as possible so that we can maximise our time during the telephone consultation.

Resources

http://www.lawbriefpublishing.com/product/elderlylaw/

Our principal, Justin Patten has written a book on elderly law, "A Practical Guide To Elderly Law" which is available on the Law Brief Publishing website which have a series of books available for sale in the legal arena by leading experts in their field. The book is also available on Amazon.

https://academyofexperts.org/

The Academy of Experts offers a useful "expert witness" finding service. Their free service contains a searchable directory of accredited experts from a wide variety of disciplines including:

- Construction Experts
- Forensic Accountants
- Forensic Scientists
- Engineers
- Medico Legal Experts
- Personal Injury Specialists
- Surveyors

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