

Response to call for evidence about Will writers

In response to the call for evidence I will simply relate an experience which this firm is involved in at present. For in excess of thirty years we have been the family solicitors for a farming family and have held their deeds and documents together with their Wills. The farming partnership was mother, father and son. The son had farmed with his parents all his life. We held Wills for many years which were in favour of the son in relation to all the farming assets.

In 2009 the father died unexpectedly and we were not instructed in the administration unfortunately. During the administration we were consulted, as the administration was not going well by unlicensed financial advisers who were conducting the administration. We offered to review the administration of the estate but our instructions were cancelled by a daughter of the family. When we asked for instructions from the mother, who had asked us to undertake the review as an executrix of the father's Will, we heard nothing further.

In the summer of 2010 we saw the mother who was very poorly with a brain tumour. This was when instructions were received to review the administration of the estate. She was living with the daughter who cancelled the instructions at the time. In that consultation the mother did not ask us to make a new Will. Within two weeks of that consultation the mother had been taken to Will writers and had made a new Will entirely in favour of the daughter, depriving the son who had farmed with her all his life from the benefit of a significant share in the farming assets which had been intended for him for twenty years previously.

The Will was witnessed by the financial advisers who were administering the estate of the father.

We know the estate of the father to be un-administered because we are holding the title documents. We do not believe that had the mother been advised by regulated professionals in relation to the administration of the father's estate and by regulated professionals in relation to the last Will she made, that this situation would have arisen. We saw the mother two weeks prior to the new Will and she did not tell us that she wanted to make one. Two months after making the new Will she was dead.

In our training and by our professional regulations, we have to act in the best interests of clients and, where circumstances present which are so obviously unusual as the circumstances described above, we are duty bound to make enquiries and to ensure that the Will maker is receiving independent legal advice. In this particular case we have questions of capacity, undue influence and duty to provide for a child all ignored by Will writers.

The consequence is that the family is now involved in a dispute which has the potential to cost them tens of thousands, if not hundreds of thousands of pounds and, we find that as

custodians of the documents, we are in receipt of competing claims for the documents and the property in them.

If Will writing was subject to the regulation that solicitors are subject to, we do not think that such circumstances would arise. Similarly, reserving the activity of probate appears not to be having the desired effect, because unregulated parties are conducting probate and simply asking the executors to attend the Registry to swear the papers. The reservation amounts to very little in fact.

It strains imagination to see how this can be in the public interest.

Andrew Morris

Okells Solicitors

Vice President Herefordshire, Breconshire and Radnorshire Law Society.