

Updated guidance on the execution of wills during the COVID-19 crisis

The Society's Non Contentious Business Committee has published the following updated guidance in relation to execution of wills during the COVID-19 crisis. It is recognised that members have seen an increase in the amount of wills that they are making as a result of this crisis. Caution should be exercised by members when taking instructions, particularly from new clients, when it is likely that face to face meetings are not possible.

The starting point for execution of wills is that the law has not changed in terms of valid execution so members do need to exercise caution. Members should also note that it is thought that the virus can live on paper for around 12 hours (or perhaps longer) so any documents need to be handled with care accordingly. Consideration should be given to government guidelines on this matter and the protective steps that are recommended by government.

Members are approaching the current problems in a number of ways and there are a range of methods open to you depending upon your firm's policy and also the situation of the particular client. This is not intended as a definitive list but is intended to assist members in their thinking:

1. Members are still seeing clients face to face but with strict social distancing and personal protection measures being put in place. Government guidance on how to do this safely should be considered by solicitors before doing this. Under guidance issued by the Ministry of Justice, solicitors who are having wills executed come within the definition of keyworkers.
2. Members are sending out wills for execution by the client without the solicitor being physically present for execution. The correspondence from the solicitor should have clear instructions on how to have the will validly executed and who can or cannot be a witness. Some solicitors are then using Facetime, Zoom or Skype or other similar platforms to talk the client through the execution process while the solicitor watches to ensure, as best as they can in the circumstances, that the will has been executed validly. Members must be mindful of undue influence and also of any beneficiary (or spouse or civil partner of a beneficiary) witnessing given that the client is likely to only be seeing close family relatives at this time.
3. Members are also becoming creative in some ways such as witnessing through a window. The Society cannot give any guarantees on whether this method would be effective but there is old case law (*Casson v Dade 1781*) in which it was suggested that it may be sufficient to have two witnesses who are in line of sight but not in the same room. Members may also wish to consider the recent case of *Man Ching Yuen v Landy Chet Kin Wong (2020 2016/1089)* in the First Tier Property Tribunal. In that case, a transfer deed that was signed in Hong Kong and witnessed by one proprietor's solicitor in London via Skype, was held not to have been validly executed. This is not a binding decision and relates to execution of a deed, not a will but should be considered by members.
4. Members may wish to consider directed signatures as this has helped a number of colleagues with getting wills signed in atypical ways.
5. One other option may be a statutory will application if, for example, you can get instructions but having the will signed becomes absolutely impossible. This may become more difficult if there is a reduction in the operation of the Courts.
6. Members may also wish to consider advising clients who have executed wills in some of the ways set out above to come back after the current crisis has passed to have the will

executed in a more traditional manner. This may allay concerns about undue influence, capacity or execution.

It is hoped that the Courts would take a pragmatic view on the validity of execution in the current circumstances however members of the Society cannot rely on this and no assurances can be given in that regard at this time. Members should endeavour to keep full records of the circumstances of the execution of the will so that representations can be made to a Court in due course if required. If members can provide as much proof as possible then it would be hoped that the Court would take a sympathetic view given the current emergency situation.

Members must also be aware of the difficulties of any death bed will for a client who has COVID-19 as there are much tighter restrictions on visiting in hospitals than in normal times. Similar issues apply for residents of care homes which are now fully locked down to visitors and there will be issues around obtaining instructions, assessing capacity and having the will executed properly.

Members are also reminded of the requirement to keep good notes and records generally in relation to the instructions and the execution of a will. Members may also find it useful to consider whether they would be able to fully reply to a *Larke v Nugus* letter if required. Members can access the *Larke v Nugus* guidance and precedent letter through the link below:

<https://www.lawsoc-ni.org/larke-v-nugus>

Law Society of Northern Ireland
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