

Can a will be executed if a person loses capacity after giving instructions to a solicitor but before signing?



The Law Society has recently provided guidance on the steps a solicitor should take if they are instructed to prepare a will and the person who instructs them loses capacity between the date of instruction and the date of execution. It may surprise some people to learn that a Will executed in these circumstances can be valid (despite the testator lacking capacity at the date of signing) if it can be shown that:-

- The person had sufficient capacity when they gave the instructions
- At the date of signing they remember giving those instructions; and
- They understand that the Will they are signing was prepared in accordance with those instructions

These rules were established in the case of *Parker v Felgate (1883)*.

As the Law Society's guidance note highlights, solicitors presented with this situation should be careful to ensure that they take detailed attendance notes at each stage. If the rules in *Parker v Felgate* cannot be met or the testator lacks full testamentary capacity then it may be possible to apply for a statutory will under the Mental Capacity Act 2005.

For a solicitor to be in the position to advise on the appropriate way forward, they should be arranging an expert assessment of the testator's testamentary capacity at the appropriate times, especially after a suspected loss of capacity. While this might come at an extra cost to the client, it could help to prevent lengthy and costly disputes after their death, which could have a significant impact on their estate.

Read [the Law Society's recent article](#).



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