

## Disputing a will: lack of knowledge and approval



It is possible to challenge the validity of a will on the basis that a testator did not know or approve of its content.

### What does testator need to know?

A testator must know the terms of their will and how their estate will be distributed on their death. They do not need to understand all of the technical or legal wording used but must be aware of the effects and financial consequences of their will.

### Suspicious circumstances

This knowledge is presumed where a Will has been correctly executed, however, if there are suspicious circumstances surrounding the execution of a will then this presumption can be challenged.

Circumstances which might raise suspicion and might warrant further investigation include:

- When a will is prepared by someone who benefits under it;
- When a testator indicates that their will had been made on different terms, after it has been executed;
- When a testator suffers from a physical or mental impairment;
- When a will is homemade and no professional legal advice was sought; or
- When the witnesses were not independent.

When considering a claim under on these grounds, the court will consider all the relevant evidence available and come to a conclusion as to whether or not the person asserting the will is valid has discharged the burden of



establishing the testator knew of and approved the content.

This may be demonstrated by providing evidence that:

- The testator read the will, in the presence of a solicitor or that the will was read to the them;
- the terms and effect of the will were explained to them;
- the testator gave instructions for the will to be drafted on the same terms; or
- the attesting witnesses provide evidence that the testator knew and approved of the contents of the will.

In a situation where a will has been duly executed in the presence of a solicitor who has taken careful attendance notes showing that they carefully explained the contents of the Will to their client for example, it can be difficult to demonstrate that the testator did not know or approve of the content of their will. However, whether suspicious circumstances arise and whether this suspicion can be rebutted will depend largely on the individual facts of each case.

If you have any questions on the content of this article please don't hesitate to contact one of the [team](#).

Written by



[Dino Sikkel](#)

Partner