

**Wills, Trust & Tax Team**



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# **Mediating 1975 Act/ contentious probate disputes**

**Alex Troup**

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**St John's Chambers**

# The current climate



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Halsey v. Milton Keynes General NHS Trust  
[2004] 1 WLR 3002

PGF II SA v. OMFS CO 1 Ltd [2014] 1 WLR  
1386



“ Given the size of this estate, the unused nil rate tax band, the ready availability of specialist probate mediators at the Chancery Bar, and the ease with which CPR57 enables wills to be proved consensually, one might have hoped that a Deed of Family Arrangement might have facilitated a measure of reconciliation and healing between Mr Wharton’s two (or three) families. But whatever steps were taken (and of course I do not know and do not in this judgement direct criticism at anyone) they were unsuccessful, and I must decide the case on the law.”

# Lilleyman v. Lilleyman [2012] 1 WLR 2801



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“While it may be that a “no holds barred” approach to certain types of litigation is entirely appropriate, it is not in my judgment at all appropriate in the context of claims under the Inheritance (Provision for Family and Dependants) Act 1975, where, even in a big money case, the costs are likely to form an ever-increasing part of the subject matter of the dispute until ... it is the costs burden alone which prevents settlement.”



- ENE - Seals v. Williams [2015] EWHC 1829 (Ch); CPR r.3.1(2)(m)
- Ch FDR
- Case management directions – “Ungley” and “Jordan” orders

# Practicalities – when?



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“If the claimants are right in their assessment of their costs, then, even without a success fee, the costs incurred by them exceed the sum over which battle has been joined. The great British public must think that something has gone wrong somewhere if litigation is conducted in that way. I share that sense of horror. One answer has to be to engage in mediation constructively and at the very earliest stage.” - Ward LJ in Shovelar v. Lane [2012] 1 WLR 637

# Other practicalities

- Who
- Where
- Authority
- Position statements
- Costs
- Joint opening session



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# Tips for success



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- Think ahead
- Bring the evidence you will need
- Tax
- Keep an eye on the clock
- Forms of settlement – e.g. PD57 para 6.1
- Drafting the order





- Oral agreement – Brown v. Rice [2007] BPIR 305
- Conditional settlement – Newbury v. Sun Microsystems [2013] EWHC 2180 (QB)
- Partial settlement – Pinnock v. Rochester [2011] EWHC4049 (Ch)