

Wills, Trusts & Tax Team



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Resolving contentious probate claims - without going to trial

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Summary



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- 1 Why resolve claims before trial?
- 2 What resolves claims?
- 3 How to resolve claims
- 4 Points for further consideration

Why resolve claims before trial?



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- Because we provide services to clients in order to protect their interests in their matter - Code of Conduct O(1.2)
- Because “parties should bear in mind that the courts increasingly take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is in reasonable prospect.” – ACTAPS Code 2.9
- Because it works and contentious probate claims are rarely zero sum games

What makes claims settle?



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- “It’s all about the money” vs “doing the right thing”
- How important are the merits of the claim?
- Costs and Funding
- Pressure from the courts

Ways to resolve a claim



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- Correspondence
- JSM
- Mediation
- ENE/(Ch FDR)

Mediation



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- A well trodden path!
- Briggs Report – further encouragement for mediation but not compulsory.
- Costs sanctions – *Halsey* guidelines continue to apply. Turn an offer down at your own risk?

ENE/(Ch) FDR – Sound familiar?



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Norris J in Seals v Williams [2015] EWHC 1829 (Ch)

“It is clear that those proceedings and the subsequent Inheritance Act claim generated a great deal of acrimony and that the positions of the parties are in danger of becoming entrenched. An attempt at mediation has largely stalled because of differing perceptions of the issues in dispute and of the strength of the respective arguments.”

CPR r. 3.1(2)(m)



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- The court may “take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing and Early Neutral Evaluation with the aim of helping the parties settle the case.”
- See also Chancery Guide – Chapter 18

Points for further consideration



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- 1) Protected parties
- Part 21 applies – r. 21.10(1) means that no settlement is binding until approved by the court.
- “No order as to costs” settlements and r. 46.4 – how to avoid detailed assessment?

Points for further consideration



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- 2) Tax
- Identify if it is an issue early! Will separate advice be necessary?
- Read back provisions of s. 146 IHTA 1984 vs Deed of Variation – which is the better mechanism for settlement for 1975 Act claims?

Points for further consideration



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- 3) Full and final settlement?
- There is no settlement of a claim unless costs are dealt with as well - Hutchinson v Grant [2016] EWCA Civ 218
- Drafting is key – what are you leaving open? – Pinnock v Rochester [2011] EWHC 4049 (Ch)