



A practical guide to conducting trials of 1975 Act claims

Charlie Newington-Bridges, Barrister
St John's Chambers

1975 ACT TRIALS: INTRODUCTION



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- Early Stage Checklist
- Procedure
- Interim Applications
- Documentary evidence
- Witness statements
- Needs and resources schedule
- Pitfalls at trial

Early Stage Checklist



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➤ Checklist

- ✓ Domicile of deceased
- ✓ Eligibility of claimant
- ✓ Definitions in s25
- ✓ Limitation – 6 month rule
 - ✓ S4 application
- ✓ s3 factors – application and weight

➤ Reasonable financial provision?

PROCEDURE (1)



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Court?

- ✓ High Court (Chancery or Family Division)
 - CPR 57.15
- ✓ County Court
 - CCA 1984, s25

Judge?

- ✓ District Judges
 - *President's Direction (Civil Procedure Rules 1998: Allocation of Cases: Costs) 22 April 1999) [1999] 1 FLR 1295*

PROCEDURE (2)



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CLAIMANTS

NO GRANT

- Not required
 - Death after 1 October 2014
 - Sch 2, para 6 Inheritance and Trustees Powers Act 2014

- No Defendant – CPR 57.16(3A)
 - Apply directions as to representation
 - Explain why no grant
 - Will/testamentary documentation
 - Property & Liabilities
 - Who has documents?
 - Beneficiaries

DEFENDANTS

PARTIES

- All PRs & residuary beneficiaries
- Substantial Interest
 - Where large numbers
 - If doubt – CCMC
 - Representation order – CPR 19.6

REPRESENTATION

- PR/Beneficiary
 - 1 solicitor/counsel
 - Application – s50 AJA '85/directions
 - Costs

INTERIM APPLICATIONS (1)



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- s5 – “Where....it appears to the court....that the applicant is in immediate need of financial assistance....the court may order thatthere shall be paidout of the net estate of the deceased such sum....that the court thinks reasonable”
 1. **“Final Order”, “Immediate Need” and “Financial Assistance”**
 - ✓ Costs – Smith v Smith [2011] EWHC 2133 (Ch)
 - ✓ M v M [2011] EWHC 3574 (Ch) Immediate = current not urgent
 2. **Property that can be made available**
 - ✓ Cash, cash equivalents or liquid assets
 3. **Strong Prima Facie Case**
 - ✓ On overview

INTERIM APPLICATIONS (2)



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- **“Sums or sums” = money**
 - ✓ Lump sum or periodical payments

- **Specific purpose**
 - ✓ House – Re Besterman [1984] Ch 458 – or Car

- **Conditions or Restrictions**
 - ✓ Brought into account – Re Ralphs [1968] 1 WLR 1522
 - ✓ Obtain job or state benefits – Barnsley v Ward (1980, unreported)

- **Periodical payments cease on s2 order**
 - ✓ Claimant not bound to repay interim award
 - ✓ Bowden v Howley (2004, unreported) & Francis 3[76]

MEDIATION



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- Consider whether claim suitable for ADR
- General rule now – most are
 - Serious question of law
 - domicile or interpretation;
 - Interpretation of Act under Human Rights Act 1988
- ADR should now be considered as a matter of routine
 - PGF II SA V OMFS Company Ltd [2013] EWCA Civ 1288
- Mediation or Early Neutral Evaluation
 - Seals v Williams [2015] EWHC – Norris J ordered ENE in 1975 Act Claim
 - Manchester & Birmingham?
 - CPR 3.1(2)m amended to give court to hear ENE with aim of helping parties settle case (1 October 2015)

WITNESS STATEMENT (1)



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- Drafting and structuring by solicitor
- Ensure read, understood and agreed by client
- Face to face/in conference?
- Try to avoid changes to facts in 2nd statements
- Standard tactic in cross-examination
 - Take to statement of truth
 - Point to inconsistency
 - Suggest disingenuousness

WITNESS STATEMENT (2)



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CONDUCT OF DECEASED

- Prominent in client's mind...
- ...but in practice conduct of deceased rarely relevant
- ...or of any persuasive effect in outcome
- Potatoes!

AVOID CONDUCT UNLESS:

- Remarkable feature of case
- Relevant to obligations assumed by deceased
- Explains why financial provision fails meet relevant standard

DON'T IRRITATE COURT/RUN UP COSTS UNNECESSARILY!

DOCUMENTARY EVIDENCE



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1. Deceased

- ✓ Domicile
- ✓ Will
- ✓ Letter of wishes?
- ✓ Relationship with client

2. Claimant/Defendant Evidence

- ✓ Date of birth
- ✓ Occupation – promotion prospects - uncertainty
- ✓ Retirement date
- ✓ Health
- ✓ Short story of relationship

3. Net Estate

- ✓ 3 x valuations of property
- ✓ Shares/bonds/investments
 - Date of valuations
 - Mark to market or estimates?
 - Realisable/liquid?
 - Lock up?
- ✓ Private company shares
 - Valuations
 - Buyers?
 - Articles of Association
 - Pre-emption rights
 - 'B' Shares/voting
- ✓ Tax problems?
- ✓ House in which defendant widow living?

NEEDS & RESOURCES SCHEDULE - INCOME



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GENERAL POINTS

- Make sure first one is correct
- Suggest client signs with statement of truth
- Difficulty where 2nd iteration materially different from 1st

INCOME

- Most cases – relatively straightforward
- Wage slips – 6 months
- Maintenance?
- Irregular income?
- Bonuses?
- State pension
- Disability benefits
- Be ready to explain one-off income
- EBAY addict?!

NEEDS & RESOURCES SCHEDULE - EXPENDITURE



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GENERAL POINTS

- Often underestimated....but don't exaggerate
- Post-Death Expenditure – May be depressed by bereavement and uncertainty – not true guide
- Painstaking – make sure tallies with bank statements
- Conscientious barrister prepping for X-examination
- Set out monthly or weekly

INDIVIDUAL ITEMS

1. Decoration & replacements
2. Depreciation/amortisation of car
3. If financing - balloon payment at end of rental period
4. Servicing and repairs
5. Arrears of rent/tax/vat
6. Medical/dental
7. One-off university fees/contributions
8. Holiday
9. Christmas costs
10. Hobbies

NEEDS & RESOURCES SCHEDULE - ASSETS



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HOUSE

- 3 x valuations
- Mortgage – when due to be paid off

CHATTELS

- Cars
- Boats
- Works of art

INTERESTS

- Private company shareholdings
- Trusts
- Life policies
- Pension policies
- Expectation under other estates?

NEEDS & RESOURCES SCHEDULE – DEBTS/FUTURE LIABILITIES



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MORTGAGE

- Type
 - ? Amount outstanding
 - ? remortgage date - when
 - ? Reduction in monthly payment
 - ? Redemption date

OTHER DEBT

- Credit card – amount outstanding + monthly payment + interest rate
- Loans – amount outstanding + monthly payment + interest rate

FUTURE LIABILITIES

- Care homes fees – very few have made provision
- Cars, white goods, furniture/, decoration, home maintenance

PRE-TRIAL CONFERENCE



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➤ BRIEF CLIENT

- Claim generally
- Prospects of success
- Costs risk
- Effect of offers made or received

➤ 1975 ACT v OTHER LITIGATION

- Family history/relationships/emotions
- Sympathy/understanding
- Hand holding

➤ WHAT, WHEN, WHO & HOW

- Structure of trial
- When client involved

TRIAL – CROSS-EXAMINATION



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Litigation risk \approx Client risk

No Coaching, but:

- Read and re-read own witness statement
- Read and re-read other witness statements
- Explain need for consistency
- Read and re-read evidence
- What areas/topics?
- Think about those area/topics

TRIAL – SOLICITOR INVOLVEMENT



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BE THERE!

- Note taking
- Early procedural issues
- Passing of notes during cross-examination
- Discussion during cross-examination
- Brief adjournment?
- Suggestions for closing
- Client hand-holding



CLIENT MYTH NO.1

- COSTS WILL COME OUT OF THE ESTATE

COSTS WILL, PRIMA FACIE, FOLLOW THE EVENT

- UNSUCCESSFUL PARTY PAYS

OVERRIDING PRINCIPLES – CPR 44.2

- COURT'S GENERAL DISCRETION
- ORDINARILY STANDARD BASIS
- PAYMENT ON ACCOUNT
- CONDUCT PRE AND POST CLAIM RELEVANT