

EARLY ONSET DEMENTIA

With early onset dementia becoming an ever increasing reality, how do you protect yourself and the testator from attack on the grounds there was cognitive impairment?

Reference sheet

Inheritance (Provision for Family and Dependants) Act 1975

URL: <https://www.legislation.gov.uk/ukpga/1975/63>

Case law

- **Banks v Goodfellow (1870) LR 5 QB 549**

"It is essential...that a testator shall understand the nature of the act and its effects, shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made".

- **Leonard v Leonard [2024] EWHC 321 (ChD)**

URL: <https://www.bailii.org/ew/cases/EWHC/Ch/2024/321.html>

The Golden Rule - *"that when a solicitor is instructed to prepare a will for an aged testator, or for one who has been seriously ill, he should arrange for a medical practitioner first to satisfy himself as to the capacity and understanding of the testator, and to make a contemporaneous record of his examination and findings"*

- **Todd v Parsons [2019] EWHC 3366 (Ch)**
URL: <https://www.bailii.org/ew/cases/EWHC/Ch/2019/3366.html>
- **Boast v Ballard & Ors [2022] EWHC 1533 (Ch)**
URL: <https://www.bailii.org/ew/cases/EWHC/Ch/2022/1533.html>
- **Sharp & Anor v Adam & Ors [2006] EWCA Civ 449**
URL: <https://www.bailii.org/ew/cases/EWCA/Civ/2006/449.html>

“The golden rule is a rule of solicitors' good practice, not a rule of law giving conclusive status to evidence obtained in compliance with the rule. Nevertheless, where a testator's apparent mental state is observed and recorded at the time when he actually executes the will in complete compliance with the rule and with the care with which it was in the present case; and where professional people concerned reached a properly informed and recorded conclusion that the testator does have testamentary capacity, it will require very persuasive evidence to enable the court to dislodge that conclusion.”

- **Clitheroe, Re Probate [2021] EWHC 1102 (Ch)**
URL: <https://www.bailii.org/ew/cases/EWHC/Ch/2021/1102.html>