



# White Paper Conferences: Contentious Probate 2024

**SPEAKER:** Alexander Learmonth KC

**DATE:** Tuesday 27 February 2024

**TIME:** 10am - 4pm

**LOCATION:** The Caledonian Club / Hybrid

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Alexander  
Learmonth KC  
**SPEAKER**

White Paper Conferences: Contentious Probate 2024

How do you contend with – or defend – personal representatives battling with each other, including probate applications, letters of administration and strategic use of caveats?



*"The breadth and depth of his knowledge are second to none."*

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# ‘Non-contentious or common form business’ Senior Courts Act 1981, s.128:

“non-contentious or common form probate business” means the business of obtaining probate and administration **where there is no contention as to the right thereto**, including—

- a) the passing of probates and administrations through the High Court in contentious cases where the contest has been terminated,#
- b) all business of a non-contentious nature in matters of testacy and intestacy not being proceedings in any action, and
- c) the business of lodging caveats against the grant of probate or administration;

King v King [2023] EWCH 2822 (Fam)

# The NCPR

## Senior Courts Act 1981, s.127:

“(1) Rules of court (in this Part referred to as “probate rules”) may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 for regulating and prescribing the practice and procedure of the High Court with respect to non-contentious or common form probate business.

(2) Without prejudice to the generality of subsection (1), probate rules may make provision for regulating the classes of persons entitled to grants of probate or administration in particular circumstances and the relative priorities of their claims thereto.”

# Caveats

## NCPR r.44:

“(1) Any person who wishes to show cause against the sealing of a grant may enter a caveat in any registry or sub-registry, and the registrar shall not allow any grant to be sealed (other than a grant ad colligenda bona or a grant under section 117 of the Act) if he has knowledge of an effective caveat; provided that no caveat shall prevent the sealing of a grant on the day on which the caveat is entered.

(6) A caveator who has no interest contrary to that of the person warning, but who wishes to show cause against the sealing of a grant to that person, may within eight days of service of the warning upon him (inclusive of the day of such service), or at any time thereafter if no affidavit has been filed under paragraph (12) below, issue and serve a summons for directions.

# Caveats continued

## r.44:

(10) A caveator having an interest contrary to that of the person warning may within eight days of service of the warning upon him (inclusive of the day of such service) or at any time thereafter if no affidavit has been filed under paragraph (12) below, enter an appearance in the registry in which the caveat index is maintained by filing Form 5 and making an entry in the appropriate book; and he shall serve forthwith on the person warning a copy of Form 5 sealed with the seal of the court.

(13) Unless a registrar of the Principal Registry by order made on summons otherwise directs, any caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action.”

# Contentious business

## CPR r.57.1, PD57A

1.1 This Section of this practice direction applies to contentious probate claims.

1.2 The rules and procedure relating to non-contentious probate proceedings (also known as 'common form') are the Non-Contentious Probate Rules 1987 as amended.

2.2. The claim form must be issued out of (1) Chancery Chambers at the Royal Courts of Justice; or (2) one of the Chancery district registries; or (3) if the claim is suitable to be heard in the County Court (a) a County Court hearing centre in a place where there is also a Chancery district registry; or (b) the County Court at Central London.

# Protection for grantees

## Administration of Estates Act 1925, s.27.

“Every person making or permitting to be made any payment or disposition in good faith under a representation shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the representation”

*Cobden-Ramsay v Sutton* [2009] WTLR 1301

See *Parsons v Reid* [2022] EWHC 755 (Ch).

# Citations

## NCPR r.46

“(1) Any citation may issue from the Principal Registry or a district probate registry and shall be settled by a registrar before being issued.

(2) Every averment in a citation, and such other information as the registrar may require, shall be verified by an affidavit ....

(3) The citor shall enter a caveat before issuing a citation ...

(6) A person who has been cited to appear may, within eight days of service of the citation upon him (inclusive of the day of such service), or at any time thereafter if no application has been made by the citor”

# Citations to accept or refuse or to take a grant

## NCPR r.47

“(1) A citation to accept or refuse a grant may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or the survivor of them or of the executors of the last survivor of deceased executors who have proved.

(3) A citation calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of six months from the death of the deceased, provided that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.”

# Citations to propound a will

## NCPR r.48

“(1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired, the citor may—

(a) in the case where no person has entered an appearance, apply to a registrar for an order for a grant as if the will were invalid and such application shall be supported by an affidavit showing that the citation was duly served; or

(b) in the case where no person who has entered an appearance proceeds with reasonable diligence to propound the will, apply to a registrar by summons, which shall be served on every person cited who has entered an appearance, for such an order as is mentioned in paragraph (a) above.”

# Mission Creep - *Phipps v Goulbourne* [2024] EWHC 130 (Ch)

- Tetla dies in May 2020
- Daughter Derina finds copy of 2010 Will in June 2020
- Husband Bruce enters caveat in February 2021
- Bruce issues for citation under r.48 in June 2022
- Derina enters appearance in July 2022
- Bruce applies by summons for order in November 2022
- Registrar makes order ex parte in January 2023
- Order served on Derina 3 February 2023

# Phipps continued

- Derina issues claim in Chancery Division 2 March 2023
- Sends unsealed claim to Bruce 2 March 2023
- Validity of claim form expires 2 July 2023
- Derina issues application for relief from sanctions 28 July 2023
- Hearing 14 December 2023
- No point taken on ChD's jurisdiction
- Relief from sanctions refused.

# Phipps – mission creep

- Para 51: “I recognise that the effect of this judgment is that the Claimant has lost the opportunity to propound the will.”
- Para 40: “It was submitted ... that the effect of not granting relief would be extremely serious. It would prevent her from seeking to propound the will. In view of the terms of the unless order which provides that in the event of default a grant will issue “as if the will is invalid”, I agree that will be the effect if relief is not granted.”
- ???



# Thanks for attending

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