

Case studies

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A recent case involved two sisters who were close friends with a solicitor. The first sister made a Will in 1987 through a firm unrelated to that of the first solicitor, in which she appointed her sister and the solicitor as Executors and Trustees. She had also made gifts to the first solicitor and members of his family.

When the first sister died in 1999, the second sister gave the first solicitor handwritten instructions as to the terms of her own new Will. Again, the instructions included gifts to the solicitor and his family; the gifts were of a significant amount, both in themselves and having regard to the size of the estate.

The solicitor, who practised in criminal law, gave the instructions to the probate department within his firm. A Will was drafted to which the solicitor made some amendments to correct spelling and addresses. In 2001, the sister gave instructions for a Deed of Variation of the Will of her late sister which once again, benefited the solicitor and his family. However again he did not advise her to seek independent advice and although the Deed was drafted by another partner in the firm, the partner took instructions from the solicitor. There were no allegations of dishonesty or undue influence.

Complaints were made by relatives of the sisters. The allegations were admitted before the Tribunal. The estate was worth over £800,000 and the benefit to the solicitor and his family was significant. The Tribunal confirmed its approach not to link the penalty to the size of the estate and the solicitor was ordered to pay a fine of £20,000 and costs of £9,643.37.

Until the hearing the solicitor had had an unblemished career of 35 years. A bundle of testimonials demonstrated he was a well respected member of the community, highly regarded by clients and fellow

practitioners, and members of the judiciary; a person with integrity and commitment, who played an active role in his local legal community and had obtained a "5 star" ranking in "The Good Lawyer Guide 2010".

He had found his appearance before the Tribunal devastating. He told the Tribunal he had been unaware of his duties. However, the Tribunal considered it obvious that any solicitor should have realised that where a client proposed to leave a significant gift under a Will, he/she must be advised to take independent advice.