Law Commission consultation on Wills

Consultation Paper No 231

Institute of Legacy Management response

November 2017

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Summary

The Institute of Legacy Management (ILM) is the professional body for legacy professionals – those responsible for the sensitive and successful administration of donors' final gifts to charitable organisations. Our members deal with issues arising from the drafting and administration of wills on a daily basis. We are uniquely positioned therefore to provide insight into the issues on which the Law Commission is currently seeking input via your consultation on the Wills Act 1837.

We have consulted in detail with our members on the following elements of the consultation:

- Dispensing powers
- Undue influence / knowledge and approval
- Possibility of the Mental Capacity Act 2005 replacing the test in Banks v Goodfellow
- Donationes mortis causa – should the doctrine be abolished?
- Signing on testator's behalf and witnesses to wills

A summary of the outcome is as follows:

Dispensing powers (Q27 & 28)
Members are generally supportive of the introduction of a dispensing power.

Undue influence / knowledge and approval (Q37 & 40)
Members are supportive of the creation of a statutory doctrine of undue influence.

Possibility of the Mental Capacity Act 2005 replacing the test in Banks v Goodfellow (Q3)
Members reject the proposal that the Mental Capacity Act 2005 be adopted as the standard test for testamentary capacity.

Donationes mortis causa – should the doctrine be abolished? (Q63)
Members were supportive of the retention of the doctrine of donationes mortis causa.

Signing on testator's behalf and witnesses to wills (Q17, 18, 19, 20 & 21)
Members expressed a general view that greater clarity was the most important outcome of any change in this area.

Other issues
Our consultation has highlighted several areas which ILM believes the Law Commission should be looking at with a greater sense of urgency. Most critically, we are concerned by the consultation's approach to the impact of technology. The distribution of digital assets, increasing role of technology in the drafting, execution and storage of wills and the rising number of unregulated providers in this area give our members cause for concern now. By conferring powers in this area to the Lord Chancellor via a future Wills Act, the Law Commission have failed to acknowledge and promote discussion around the real challenges already being acutely felt as a result of technology in this area. We would urge the Law Commission to give more timely consideration to this issue as a matter of urgency.

About the Institute of Legacy Management

The Institute of Legacy Management (ILM) www.legacymanagement.org.uk is the membership body for legacy professionals – those responsible for the successful and sensitive administration of donors' final gifts to charitable organisations.

The Institute was established in 1999 to provide individual legacy professionals with a network of support and dedicated training services. Today it represents and supports more than 600 individuals, working in over 350 charities, not-for-profit organisations and associated professions.

Across the sector, legacy professionals are responsible for over £2.8bn (1) of charitable income each year – income that many charitable organisations rely on for their survival. They are proud to do the work they do, they know they are representing a person's final wishes, and they conduct their work with great skill and compassion.

Ultimately, ILM seeks to ensure that every donor's charitable legacy achieves its greatest potential. In working towards that goal, the Institute partners with a range of companies and professional bodies to ensure the legal environment supports and promotes charity legacy giving, and to offer members additional support, information and collaboration opportunities.

We are proud to:

- Act as a crucial network uniting legacy professionals across the UK
- Provide dedicated training services to maintain and improve practices across the profession
- Work with probate professionals and other service providers to improve and strengthen the legacy management process from start to finish
- Maintain and deliver information about the legacy management profession to the wider community
- Help define and share the highest professional standards for legacy management

Our vision

Ensuring every generous donors' final wishes achieve their greatest potential.

Our mission

- To support our members in the delivery of professional, proactive and sensitive legacy case management.
- To champion the interests of donors, members and charities to optimise the impact of legacy gifts.
- To drive professional standards and benchmark performance in legacy giving.

(1) Legacy Foresight – Legacy Giving 2017 report

A unique perspective

As the professional body for charity legacy professionals, ILM is uniquely placed to provide insight into the issues on which the Law Commission is currently seeking input.

Our members deal with issues arising from the drafting and administration of wills on a daily basis. As a body – given their professional knowledge and experience, and number of estates they are involved in the administration of – they are uniquely exposed to the issues arising.

In 2015, 6 in every 100 deaths (36,080 estates) resulted in a gift to charity (2). On average (mean), each ILM member has an ongoing workload of 187 cases (3).

How long have you worked in legacy administration?	What is your organisation's annual legacy income?
Less than 1 year – 7% 1-2 years – 7% 2-3 years – 12% 3-5 years – 20% 5-10 years – 23% 10+ years – 32%	Less than £20,000 – 1% £20,000 - £400.000 – 5% £400,000 - £1m – 12% £1m - £8m – 37% £8m - £20m – 12% Over £20m – 32%

What % of your time is spent on legacy administration?	Do you hold a legal or other professional qualification?
Less than 20% = 17% 20 - 50% = 14% 50 - 70% = 16% 70 - 90% = 18% 100% = 35%	Yes – 64% No – 36%

(Data from 2017 member engagement survey)

Mindful of the objectives of the Law Commission's current consultation on wills, which are:

- Supporting testators in exercising their testamentary freedom
- Protecting testators from fraud and undue influence
- Increasing clarity and certainty

ILM members are keen to help ensure that any changes to the 1837 Wills Act ensure that the appropriate safeguards remain in place to ensure testators, and their often-generous final wishes, continue to achieve their greatest potential.

(2) Smee and Ford, 2015 market analysis
(3) ILM member survey 2017

Methodology

ILM has encouraged member organisations to engage with the consultation, consider the implications of the proposals and to submit responses on behalf of their organisations.

We have also facilitated dialogue amongst members to provide them with a platform through which they can discuss their views on the consultation topics.

To help shape ILM's formal response on behalf of our members, we facilitated a round table discussion, attended by a cross section of UK charity representatives.

Attendees were as follows:

Macmillan Cancer Support
Marie Curie
British Red Cross
RNLI
Salvation Army
Barnardo's
Christian Aid
Blue Cross

Discussion at our round table focused on the five areas of the Law Commission's consultation which members felt might have the most significant impact. These were:

- Dispensing powers
- Undue influence / knowledge and approval
- Possibility of the Mental Capacity Act 2005 replacing the test in Banks v Goodfellow
- Donationes mortis causa – should the doctrine be abolished?
- Signing on testator's behalf and witnesses to wills

A summary of the general legal position in relation to each was provided, then a general discussion took place. Our key thoughts/observations on each of these areas can be found in the sections that follow. We also invited comments on other issues covered by the consultation which we have also included.

Dispensing powers

Consultation Question 27
We invite consultees to provide us with evidence of how common it is for a will to be invalid for non-compliance with formality requirements.

Consultation Question 28
We provisionally propose that a power to dispense with the formalities necessary for a valid will be introduced in England and Wales.
We provisionally propose a power that would:
(1) be exercised by the court;
(2) apply to records demonstrating testamentary intention (including electronic documents, as well as sound and video recordings);
(3) operate according to the ordinary civil standard of proof;
(4) apply to records pre-dating the enactment of the power; and
(5) allow courts to determine conclusively the date and place at which a record was made.

SUMMARY: Members are generally supportive of the introduction of a dispensing power. Balance however, needs to be carefully struck between potential benefit and any risk of undermining important will writing formalities. Evidence of how common such circumstances are and the impact they can have on testators and charity beneficiaries are outlined in the transcript of discussion below.

A: Two instances: one with a witness, who left the room when the testator was signing – we were unable to do anything; it went to intestacy. The other was in relation to a testator who had signed twice so it was queried and 20 years later, the will was eventually proved.

B: I'm not sure how dispensing power protects against undue influence.

C: In my view, a dispensing power is a good idea, but I would favour that it is narrowly drawn – i.e. only to be invoked if it can be shown that someone tried to make a will but because of a technicality it is invalid (and the dispensing power could be used to 'save' that will).

B: If it's narrow, why have it?

C: I think it could be seen to be an opportunity to save gifts to charities, co-habitees etc. that might otherwise be lost because the will is declared invalid and the estate is dealt with under the intestacy rules or an earlier valid will (that might not include the charity or co-habitee).

D: In my experience, the issues are mainly in relation to drafting errors. We need to consider the proposal also in the context of electronic wills - how would an 80-year-old know about the changes. The priority is to try to save the will – that is critical. A dispensing power would be a useful tool.

B: I think a major issue is the different ways in which the probate registries address matters. The staff have different interpretations / approaches to checking whether the formalities have been complied with: some scrutinise the location of signatures, ask us to track down witnesses…if dispensing powers helped to get rid of that administrative issue that would be good – but if it's another layer / burden, it could be a nightmare.

E: The formalities issue has worked against us – we conceded on one difficult issue and made an ex gratia payment, as we felt it was morally the right thing to do. It's difficult to get trustees to approve in principle ex gratia payments. 20 years back, we had once case where one of the witnesses had fallen out with the testator and refused to acknowledge that it was their signature when we were trying to prove the will. It was a difficult job and eventually the estate was dealt with under the intestacy rules.

C: So, what's your view on the dispensing power?

E: It would be helpful.

F: It would be helpful if you know / can determine the testator's wishes. We had a case where a lady had written instructions and sent them to her solicitor but there were delays in execution and she died intestate. That was not what she wanted, but we couldn't do anything, other than speak to the beneficiaries about giving the charity some money because that had been the testator's true wish.

D: And often it is just not appropriate to ask a family in those circumstances.

G: It hasn't had a massive impact on me professionally – one or two events in 20 years.

B If a witness is so old they can't remember; dispensing power may be helpful then.

C: Remember it is a power only – it doesn't have to be invoked. Would it be helpful, if it was available?

A: Where is it used currently?

C: Australia, other Commonwealth countries…Australia uses it more than others.

K: It could be helpful.

C: If drawn narrowly?

H: It's most likely an issue when we are dealing with homemade wills – we've don't tend to see too many of these actually. It's not likely to happen often.

C Are you in favour?

H: It's a useful additional power.

I: Are homemade wills (or "non-professionally drafted" ones) on the up?

D: In our experience, they are on the rise.

G: Electronic wills will increase.

J: Handwritten wills are likely to decrease.

D: We've had a case where someone retyped their original will and executed that. It was lucky that the changes didn't impact on certain relevant bits. We find more people are doing this.

B: The days of solicitors executing wills at someone's home are long gone. We do still get lots of people asking about how to properly execute the will. Like Marley v Rawlings, signing the wrong one.

B: I'm broadly in favour.

Undue influence / knowledge and approval

Consultation Question 37
We provisionally propose the creation of a statutory doctrine of testamentary undue influence.

Consultation Question 40
We provisionally propose that the requirement of knowledge and approval should be confined to determining that the testator:
(1) knows that he or she is making a will;
(2) knows the terms of the will; and
(3) Intends those terms to be incorporated and given effect in the will.

SUMMARY: Members are supportive of the creation of a statutory doctrine of undue influence. Some of their current issues and concerns are highlighted in the transcript below.

C: At the moment, the law has a presumption in relation to undue influence on lifetime gifts, so if a lifetime gift looked "suspect", such as a huge gift to a carer or to a solicitor, the law would say the person receiving the gift must convince them it was a legitimate gift, free of undue influence. The same presumption doesn't currently apply to gifts in wills. So, if the gift looks suspect, the person alleging that there is undue influence has to prove it. My view is that testamentary gifts should have the same "protection" (for testators) as lifetime gifts.

B: I agree. The burden is currently on us. As a church and charity, we don't want to be in a litigious position. If the burden was the other way around, then the family member / neighbour or whomever etc. would have to explain that they did not subject the testator to undue influence. If it's the right way around, we would be settling difficult cases tomorrow!

L: We have spent so much of the charity's funds in the past collating evidence to prove that there has been undue influence.

M: We had to settle, as it was just too much money being spent by the charity in the end. It was blatantly fraud, but we had to prove it, and it cost too much to do so.

I: It's easy to spin charities as being greedy – but in fact they are just trying to determine the position.

A: What are the cost implications? With knowledge and approval, the costs aren't so weighted against us, but if it's undue influence, we are in a worse position.

C: With knowledge and approval the court has jurisdiction to take the costs out of the estate. But on an undue influence claim, the costs are borne by the 'losing' party i.e. if you succeeded in an undue influence claim, the fraudster would ordinarily pay costs, but equally, if you lose the challenge, you might be the one ordered to pay costs.

A: Is it harder if it's fraud?

I: It's still the same balance of probabilities but it's generally a higher threshold.

C: It's trying to help the cases where there are genuine concerns of undue influence and not forcing people to dress up a claim as knowledge and approval.

Possibility of the Mental Capacity Act 2005 replacing the test in Banks v Goodfellow

Consultation Question 3
We provisionally propose
(1) that the test for mental capacity set out in the Mental Capacity Act 2005 should be adopted for testamentary capacity; and
(2) that the specific elements of capacity necessary to make a will should be outlined in the MCA Code of Practice.

SUMMARY: Members reject the proposal that the Mental Capacity Act 2005 be adopted as the standard test for testamentary capacity. Their evidence and justification for this position are outlined in the transcript of their discussion below.

C: At a recent event, people said "what's wrong with it? We all know what it means, despite archaic language. Although it's a 19th Century test, it still stands which suggests its fit for purpose. There's always a rush to modernise, but if it's doing the job, do we need to change it?". The Law Commission is proposing to adopt the Mental Capacity Act and to have a separate Code of Practice setting out the Banks v Goodfellow points. What are your views?

E: There's so much case law on Banks v Goodfellow, the code would have to take all of that into account.

B: I don't see the need and see lots of disadvantages with bringing in this change.

G: It's linked to lowering the age to 16, but without that, I see no reason to change it.

C: The Court of Protection uses it, whilst other Courts use the Banks v Goodfellow test. So, the basis of this inconsistency might be a reason for change?

H: I don't think it should change.

L: The issue is getting evidence on lack of understanding. The whole area needs clarification.

C: More education - for example, for medical practitioners?

B: The case is historic – the modern Act should be done away with, not the other way around!

A: Playing devil's advocate – if capacity was decided using the Mental Capacity Act and if no statutory will was made, what's the difference in relation to the level of capacity? And if the threshold is higher than the Mental Capacity Act, isn't it harder to make a will? We should be helping people to make wills.

C: The Mental Capacity Act does have principles underpinning it, it does promote testamentary freedom. It recognises that having an illness or disability doesn't automatically mean that someone does not have capacity.

D: I'm concerned about an automatic assumption of capacity. If you have a presumption, the case of incurious will writers will grow. Where there is an issue of capacity, the onus is on the others to prove it.

D: If you flip it round – unless you are going down the statutory will route, the burden of proof will flip and it will affect charities. We'll be fighting more and the door is open to more challenges.

E: It is a lot to expect practitioners to have enough knowledge of capacity issues to the level of assurance that the courts require. I don't know how to resolve it.

B: An issue of consciousness and understanding – if you have dementia, but still have capacity, it's hard to draw the line.

E: People are entitled to challenge capacity – it's a long process.

C: Consultation Question 3 provisionally proposes the test is replaced. Do consultants agree? It's an attempt to bring it into the modern age, but do you think actually it would be unnecessary and unhelpful.

C: The Mental Capacity Act doesn't specifically cover wills.

K: Should we codify Banks v Goodfellow?

C: The Law Commission discounted that. Their preference is to have one capacity test, under one Act.

A: It doesn't sound logical to have one set of capacity laws in one place and another set elsewhere.

B: My view is that they should tweak what's currently in place.

H: Banks v Goodfellow is so good, it should be brought into statute!

D: Banks v Goodfellow is flexible enough. Codifying it would make it too rigid.

B: They're trying to make it easy but I don't think this proposal would do that.

C: In the Vegetarian Society v Scott – he was painted as a barmy man, but the judge said he did have capacity and was able to make the decision. The benefit of Banks v Goodfellow remaining uncodified is that it's open to the judge to interpret and apply the law. When the law is set down in an Act, judges are more limited on interpretation. That is one argument against the proposal to codify.

E: Most feel that judges are better than MPs. The case is open to flexibility and interpretation still.

Donationes mortis causa – should the doctrine be abolished?

Consultation Question 63
Do consultees believe that the DMC doctrine should be abolished or retained?

SUMMARY: Members were supportive of the retention of the doctrine of donations mortis causa, whilst mindful of issues relating to execution, so hope the Law Commissions consultation will provide greater clarity in terms of its use.

G: I think I had one come in yesterday – the keys to a car and the log book were given away two days before the testator died.

C: Just a car?

G: Yes, the testator knew he was dying, and delivered the person the keys and logbook.

B: I think it's helpful and gets us away from ex gratia territory, which can be trouble. I say, keep it, please.

N: If the idea is that we should be encouraging people to write wills, how can it still be ok for people to essentially do what they want on their deathbed – doesn't it make a mockery of everything?

B: It's very restrictive, and based on the condition that the testator is dying, but can be really helpful and good if it hits the spot.

N: Why does it exist at all?

C: Remember that it's a very old doctrine, derived from when people died often owning chattels only.

I: I don't think it really applies to much - mainly limited to jewellery, artwork…

C: The feeling is to leave the law on deathbed gifts as it is?

B: It is a benefit to us.

N: On the flipside, it isn't always beneficial.

L: We had an experience of one chap who had taken delivery of the title deeds; the case went to court, we tried to get him out of the house.

D: It's rarely a house. The house is the real problem.

C: L, how did your case end?

L: I don't really want to go into it, but it was helpful to us that the testator had a history of will-making.

J On the issues of delivering the necessaries for gifting property on a deathbed will, when paying a mortgage, you don't just get a piece of paper; unregistered land must be registered etc.

C: I suppose though that you do get a copy of title - but how many people on their deathbed would have it to hand?

B: Is that the rationale for wanting to abolish it?

C: On the one hand, it does fly in the face of lifetime gift giving and wills. You don't have to execute a deed or will to gift it away on your deathbed.

D: What about limiting it to exclude houses / land? It's currently quite widely drawn, so you can give away pretty much anything provided the conditions are met, so an option could be to limit its scope, but not abolish it?

C: Limit it to chattels?

B: The problem is 'deathbed'. For some with three months to live going into palliative care, that's a deathbed. I don't think the overall doctrine is a problem. It's the interpretation of 'deathbed' that's the problem.

Signing on testator's behalf and witnesses to wills

Consultation question 17
We provisionally propose that a person who signs a will on behalf of the testator should not be able to be a beneficiary under the will.
Consultation question 18
We provisionally propose that a gift made in a will to the spouse or civil partner of a person who signs a will on behalf of the testator, should be void, but the will should otherwise remain valid.
Consultation question 20
We provisionally propose that a gift in a will to the co-habitant of a witness should be void.
Consultation question 19
We provisionally propose that if the law is changed so that a gift to the co-habitee (or other family member) of the witness is void, then a gift to the co-habitee of a person who signs the will on behalf of the testator should be void.
Consultation question 21
We invite consultees' views on whether gifts in a will to the parent or sibling of a witness, or to other family members of the witness, should be void. If so, who should those other family members be?

SUMMARY: Members shared their experiences and expressed a general view that greater clarity was the most important outcome of any change in this area. They were less specific – in terms of responses to consultation questions – about how this could best be achieved. Notes from the discussion below.

D: My experience of this is a person signing in hospital – the beneficiary held the testator's hand to sign it. It's a huge anomaly.

C: Another issue is that the current legislation is old. The rule doesn't only apply to beneficiaries, but also to their spouses and civil partners – but currently not to cohabitees. The proposed change would extend the rule to apply to cohabitees.

E: As a general question – how necessary is it to change this by statute and not as a case law/common law issue?

C: It would be difficult for the Court to interpret the law to make the change because as drafted it is unambiguous. Legislation would be needed.

I: Yes, it would really have to be legislated for.

C: The Law Commission paper asks, "what is a cohabitant?'. The 1975 Act attempts a definition, so it is a distinct concept. I'm sensing there's not much concern over this proposal.

D: To remove the anomaly makes sense – to reflect what's actually happening in practice.

C: It's also proposing to extend the rule (against a person signing the will on behalf of a testator) so that it applies to the wider family - to do so could risk discriminating against the elderly and infirm, who may

not have such wide enough social circles; are you not putting them at risk of not binge able to find a witnesses / someone to sign on their behalf?

D: My mum wouldn't trust anyone outside her family circle.

H: Where do you draw the line? With the elderly and infirm with small social circles – who do you trust to witness / sign on your behalf? If it's a homemade will, it limits who can witness it.

G: It might promote professionally drawn wills.

C: In some jurisdictions, wills have to be drawn up by a public official. That's a massive departure from the process in England. So, I think it is important to get the balance right. In my view, the law should be brought up-to-date to include cohabitees, but not exclude any and everyone related to the person signing.

K: It's a sliding scale. I tend to agree with C. Restricting people may put them off drafting wills.

A: I don't mind if it's clear cut. If you know the rule then you could ask a neighbour to sign/witness: remember, they don't have to read the will. What worries me is change itself – how will it be made known to people so that they know what they can and cannot do?

C: That is something stakeholders, and charities, can assist with when we know what the law will be. You can distribute guidance and information on your websites – but of course, that relies on people reading it.

I: Yes, that's an opportunity for charities to reach out and discuss with the public, these changes.

B: We'll be caught in the crossfire. Looking at Question 18 – spouses and civil partners are out, but others are in.

H: You'd have to ask for the family tree to determine whether the person signing was allowed to or not! If you found out it was a distant family member that would be an issue!

C: And of course, it's conceivable that elderly people might forget about this rule – it might not spring to mind.

Other issues

Attendees were asked to share thoughts on any other areas of the consultation.

ELECTRONIC WILLS

H: Well I though the issue of moving to electronic wills is relevant.

C: We didn't mention it as the consultation isn't actually proposing to bring electronic wills in as such, but is proposing to reserve power to the Lord Chancellor to bring it in in the future, when technology has caught up. The press would have us believe that texted wills will be okay very shortly, but that's not what the consultation is actually proposing.

B: Who determines when technology has caught up?

I: With forensic analysis, almost anything can be found. You can show when and how something was created, etc. – but you can't prove who was sending it. The real issue with electronic wills, in my view, is the risk of not being able to determine who actually created the electronic will. Can we be sure it was the testator? Unless we start looking at bringing in access requirements by fingerprints, eye scans, etc. That would be costly.

C: So electronic wills are probably the way things are headed, but there's a long way to go.

L: Will there be an opportunity to question how electronic wills should be brought in when it is finally proposed?

C: There ought to be a consultation on the relevant bill before parliament, but it could be a private bill – but there would be some form of public process.

K: But we do need to recognise that electronic documenting etc. is a growing industry and we need to catch up quicker. On the legacy marketing side, there are more charities offering online will-writing facilities nowadays.

I: There are some difficult issues but it is something that we will need to deal with sooner rather than later; but in a way, that's safe. It's likely to be a massive job.

G: It should be brought in soon I think.

I: There ought to be a debate on it now?

H: Yes.

L: We do need to think about the impetus for the consultation – isn't it to make it easier for the public to write wills? If so, electronic wills need to be at the fore.

H: It feels like this part of the document is so broad, it needs a whole other consultation. The Law Commission didn't dedicate enough time it – they have skirted over it.

L: It's not helpful for us given that we have people telling us that they want to have digital wills.

N: Currently we have a hybrid situation – an online portal but you have to physically sign the document

I: That's not really the sort of issue they are talking about here; technically that would not be a 'digital' will.

N: What about services already in the marketplace where drafting is not verified by a professional?

G: And it's not regulated.

N: In reality, people are building and rolling out these "will writing" systems and people then potentially end up making "bad" wills. This and the issue of digital wills is the elephant in the room and the Law Commission has skipped over it.

G: Unregulated and digital will writing is the biggest bugbear for us.

N: In reality, we have to deal with this issue now, people want it. If these wills don't stand up, it's useless. There are real concerns about safeguards, which aren't enough to give people access to will writing.

G: Those preparing the wills for these systems are not trained professionals.

L: And they are not seeing people so wouldn't be liable for capacity claims.

H: More people are computer savvy nowadays so they will think that making online wills is easier and more accessible. On Question 16 about formalities and barriers – people will think it's easy, but it's more complex.

C: We'd have to think about how to change section 9 of the Wills Act to allow them, how to ensure an electronic will is not tinkered with, how to ensure capacity is checked etc.

J: And what about video wills?

L: And what about how to keep track of online wills – will you remember you made one, can you access it again, how do you change it?

INTESTACY

D: I'm surprised that the intestacy rules haven't been tackled. I went to an "intestacy roundtable" and most involved with that had the impression that the issues around the intestacy rules would be tackled by the Law Commission first, so I am surprised that instead it has decided to tackle will writing in this limited way. It's all interlinked.

B: I can just see it coming – deathbed wills on the day of death and it's up to the charities to decipher all the evidence. Where's the protection for the trustees?

CAPACITY

K: The overarching need is to protect testators and also, will writers, and to increase clarity and certainty around this. The Law Commission will need to decide on and explain how far they think this will go

digitally speaking. Then we can know the boundaries and can as profession work within those and inform testators about their options.

H: What about an accreditation scheme i.e. of people who a testator could consult to determine capacity – like a body equivalent to STEP or the SRA? Though that could be costly.

J: What are the barriers in terms of the current formalities – I think it works. Isn't a GP/consultant there to help determine capacity? The cost of assessing it could be deducted from the estate.

H: Capacity is also difficult because of the blurring between the medical and legal question. Is it up to the judge or a doctor?

C: Should capacity be checked in each case or give the will writer discretion to request it?

E: But, equally, a 16 year old's will could remain valid for 70 years.

SOCIAL NORMS – CREATING AWARENESS AND CULTURAL CHANGE

J: And how many people know that marriage makes a will invalid?

D: The question is, how do we encourage people to make wills?

E: The barrier / issue is the fact that people do not know they should make a will – i.e. they don't know about the consequences of not making one, not electronic wills.

H: And some people just can't be bothered.

L: The speed at which circumstances can change – you might need to change your will every other week at this rate

C: Every single person that joins the armed forces gets a will-making kit. It tells you why it's important, things to consider, when to review, how to store, how to execute etc. Should everyone have that?

J: Perhaps when you are sent your national insurance card? Get it in people's minds young.

D: There's a tool on the government website – "what happens if I die without a will". We send people to the link and 100% of them have no idea and are shocked!

C: Yes, for instance to know that a "common law wife" is not a thing!

D: Yes: as a partner you can make a claim of course under the 1975 Act, but you aren't entitled automatically.

N: The reality is there are several important issues not being addressed in this Consultation. We should make that point in our response.