

## DAVIES SOLICITORS

### LEGAL TEST OF CLIENT'S MENTAL CAPACITY TO MAKE A WILL

In order for a Will to be valid, it is vital that the person making it is capable of understanding the following:-

#### 1. The Nature of a Will

People making a Will should understand that:

- They will die;
- The Will shall come into operation on their death, but not before;
- They can change or revoke the Will at any time before their death, provided they have the capacity to do so.

#### 2. The Effects of Making a Will

People making a Will should also understand:

- Who the Executor is;
- Who gets what under the Will;
- Whether a beneficiary's gift is outright or conditional;
- That if they spend their money, or give it away or sell their property during their lifetime, the beneficiaries might lose out;
- A beneficiary might die before them
- Whether they have already made a Will, and if so, how and why the new Will differs from the old one.

#### 3. The Extent of the Property

People making a Will should also understand:

- The extent of all the property owned solely by them;
- The fact that certain types of jointly owned property might automatically pass to the other joint owner, regardless of anything that is said in the Will;
- Whether there are benefits payable on their death which might be unaffected by the terms of their Will;
- That the extent of their property could change during their lifetime.

#### 4. The Claims of Others

People making a Will should also be able to comprehend and appreciate the claims to which they ought to give effect, and their reasons for preferring some beneficiaries and, perhaps excluding others. For example possible beneficiaries:

- May already have received adequate provision from the person;
- May be financially better off than others;
- May have been more attentive or caring than others or;
- May be in greater need of assistance because of their age, gender or physical or mental problems.