



Green light for wills to be executed by videolink: new legislation anticipated imminently

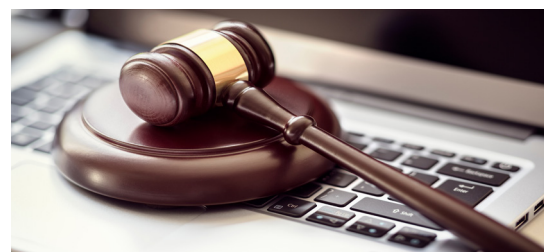
The Ministry of Justice is set to announce this week a seismic modernisation of the law applicable to the execution of wills, according to an article published yesterday in the Daily Telegraph. It is anticipated that it will become clear in legislation that a will can be executed in the presence of two witnesses who are 'present' by taking part in a video conference. The Ministry of Justice (MoJ) is said to be about to announce an amendment to the Electronic Communications Act 2000 so as to permit expressly the use of video links for wills, with retrospective effect as from 31 January 2020 (two days after the first Covid-19 diagnoses in the UK).

This will be a relief to many would-be testators, who may still not be ready or able to venture far from their homes, still less to have any form of physical meeting with professional advisers or attesting witnesses. It will also provide clarity on an issue which has been the subject of much online discussion particularly during lockdown, namely whether or not it is acceptable to attest a signature on a will other than by the witnesses being physically present in the same room or space as the testator. Solicitors have been proactive, practical and creative in formulating solutions to the difficulties created by mandatory lockdown. Wills have been executed with the testator being on the other side of an internal or external wall but visible through glass or through a letter-box, or indeed in a car and visible through a windscreen.



However, there has been much doubt expressed as to whether or not a will could currently be regarded as duly executed in accordance with s.9 of the Wills Act 1837 when the testator is only visible to the attesting witnesses on camera via video conferencing.

The need for practicable solutions has become particularly pressing given the sharp increase in will-making reported by many solicitors. The use of video-conferencing has become the 'norm' for many communications with professional advisers (and discussions between Cabinet ministers!) and indeed many lay people may already have considered it so much part of daily life in 2020 that they would question why wills could not be witnessed using these means. It is hard to imagine that most people, watching a person sign a will through Zoom, Skype or FaceTime, would not feel confident about saying '*I know that this testator or testatrix has signed this document*', particularly if the document were held up to the camera first. However, it cannot be ignored that a camera only tells part of a story about what is happening in a room, and the witnesses will inevitably be less able to provide details as to who was present, what was said before and after the wills was signed etc., which might be relevant to causes of



action other than due execution.

It remains to be seen to what extent testators have attempted to make wills witnessed via video conferencing, and indeed the Court has not yet had to consider the validity of a will made using such technology to put the testator 'in the presence of' the attesting witnesses. It is arguable that such wills are valid in any event, but it would be unfortunate for any testator to make a will using such technology without certainty that his testamentary dispositions will be valid and effective.

A change in statute law to provide such certainty for remote will-making would therefore be welcome. It remains to be seen to what extent any such new legislation will incorporate detail as to the technology to be used, the extent to which the testator and/or the whole of the will has to be visible, and how the signatures are to be placed on the document by the attesting witnesses. Hopefully the introduction of such new legislation will be accompanied by guidance from the Law Society, and in due course reviewed thoroughly by the Law Commission in the course of its ongoing review of the law of wills.