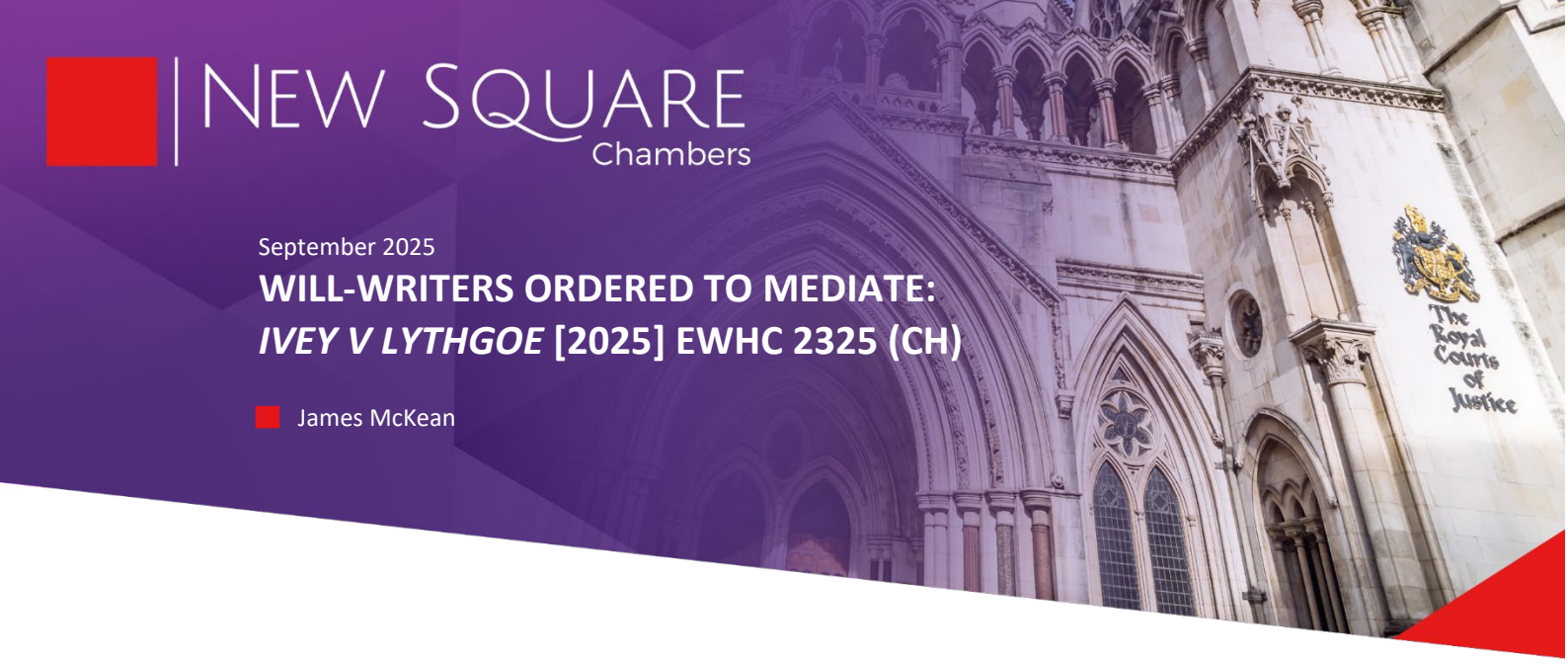

NEW SQUARE Chambers

September 2025

WILL-WRITERS ORDERED TO MEDIATE: *IVEY V LYTHGOE* [2025] EWHC 2325 (CH)

James McKean

SUMMARY

A company of will-writers has been ordered to attend a mediation of a probate and rectification dispute arising from wills it was alleged to have drafted.

The Court also ordered consolidation of the probate / rectification claim with a separate negligence claim against the will-writers, but held that it was premature for the will-writers to be named as costs-only parties to the probate / rectification claim before it had been tried.

BACKGROUND

The underlying dispute concerned two wills of David Ivey, dated 1994 ('**the 1994 Will**') and 15 July 2009 ('**the 2009 Will**').

The Claimants were Mr Ivey's beneficiaries on intestacy and beneficiaries of the 1994 Will. They claimed to set aside the 2009 Will for want of knowledge and approval and alleged that the 1994 Will had never been executed. They alternatively claimed that, were either of Mr Ivey's wills to be admitted to probate, it should be rectified. The First Defendant, the sole beneficiary of the 2009 Will, defended the claim.

The 2009 Will and, the Claimants alleged, the 1994 Will had been drafted by Trust Inheritance Limited, a company trading as will writers ('**Trust Inheritance**'). The Claimants had separately issued protective proceedings against Trust Inheritance in negligence in the County Court.

The Claimants and the First Defendant had agreed to mediate the probate / rectification claim and a mediation had been arranged.

Trust Inheritance had refused to attend the mediation, claiming that their involvement should follow the resolution of the underlying dispute.

The Claimants applied for orders principally (i) ordering Trust Inheritance to attend the mediation (ii) joining Trust Inheritance to the probate / rectification claim as a costs-only party and (iii) consolidating the claims.

THE JUDGMENT

His Honour Judge Paul Matthews, sitting as a Judge of the High Court, ordered Trust Inheritance to attend the mediation and ordered the consolidation of the probate/rectification claim with the negligence claim. The Judge held at [26]:

'I consider that this tripartite litigation cries out for mediation. There is no new law involved, and the essential disputes of fact are both clear and not numerous. The important documents have already been disclosed. The value of the claims will quickly be exceeded by the costs of a trial. The best chance of resolving the matter will come earlier, when fewer costs have been incurred, compared to later. The risks for each party of going on with the litigation will be an important consideration at the mediation. Two of the three parties have already agreed to mediate, and the arrangements have been made.'

The Claimants were ordered to serve Particulars of Claim setting out their case in negligence against Trust Inheritance before the mediation.

The Judge refused to order Trust Inheritance to be joined as a costs-only party to the probate/rectification claim, holding that it would be putting '*the cart before the horse*' for the Court to exercise its discretion under section 51 of the Senior Courts Act 1981 to join Trust Inheritance where negligence was not admitted and the probate / rectification claim had not been tried [18].

COMMENTARY

The Court's relatively new jurisdiction to order parties to engage in alternative dispute resolution ('**ADR**'), now enshrined in CPR r 3.1(2)(o), is already well-known. This appears to be one of the first times it has been exercised in the probate context.

While drawing general principles from a single exercise of discretion is unwise, an order that the drafting firm attend a mediation of a probate / rectification claim, before that claim has been tried, will be considered by claimants to be helpfully practical. The Judge's comments at [26] are typical of the Court's pragmatic stance on mediation and may be usefully deployed in correspondence which invites will drafters to engage in ADR. Adding the drafting firm to a mediation can provide an injection of cash to unlock a deal, especially if the 'primary' parties are impecunious and the estate's value cannot quickly be realised.

Those that draft wills, and their insurers, may take a different view. If the drafting firm is to be dragged into every probate dispute at an early stage, it will waste costs mediating claims that may not be meritorious or sincere. Trust Inheritance might also feel hard done-by that it was ordered to mediate a claim against it which had not even been particularised. Moreover, mediations involving three (or conceivably more) parties are more expensive, harder to arrange, and might be said to have lower prospects of success.

Notable also is the decision not to add a drafting firm to a probate / rectification claim until after the claim had been tried or liability admitted. Joinder of costs-only parties is increasingly fashionable *after* probate claims (as in last year's decision in ***Leonard v Leonard (Costs)*** [2024] EWHC 979 (Ch)), and this is authority that it must come after. A workaround for the impatient may be to issue a negligence claim and seek consolidation.

James McKean, instructed by Mel Grose and Hayley Gaffney of Coodes, appeared for the Claimants.

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