NEW SQUARE Chambers

January 2026

TOO LITTLE, TOO LACHES: *STEPHENSON V DALEY* [2026] EWHC 53 (Ch)

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SUMMARY

This probate trial concerned two issues. The first was whether Elaine Reid ('**the Deceased**') knew and approved of her will, dated 12 July 2016 ('**the Will**'). The second was whether the Defendants' counterclaim to set aside the Will was barred by laches.

Perhaps unsurprisingly, the Court held there was '*little room*' [10] to find an absence of knowledge and approval, where the Deceased's capacity and free will were not in dispute. The Will was simple, professionally prepared, and rational. The Defendants' allegations that the drafting solicitor had forged attendance notes were roundly rejected.

Arguably more interesting is the Court's finding that a challenge to the Will was in any event barred by laches, due to the Defendants' unjustified 7.5-year delay in bringing the claim. This is an unusual, perhaps unique, case where a challenge to a will has been barred by laches, notwithstanding the fact that the will had not been admitted to probate.

BACKGROUND

The Deceased died on 25 October 2016. She was survived by two sons, the Defendants, as well as her cohabiting partner, Malcolm Roocroft ('**Malcolm**').

The Deceased had for most of her life been intestate. However, on 8 July 2016, a telephone call was made to a local firm of solicitors. Instructions were given to draft a will leaving everything to Malcolm. The Court found that Malcolm had been asking the Deceased to make a will to benefit him, and may well have initiated that call.

The proprietor of the firm, Steve Davies, attended on the Deceased on 12 July 2016, with a draft will. Some manuscript amendments were made, although the misspelling of the Deceased's address was missed. The Will was then executed.

Regrettably, the attendance note of that meeting was dated 12 July *2017*, which roughly coincided with a ***Larke v Nugus*** [2000] WTLR 1033 exchange the following year. This was the

basis for the Defendants' allegation that Mr Davies had forged and backdated his attendance notes to give the false impression of due diligence in the will drafting.

Following the Deceased's death, the Defendants quickly entered caveats and sent a letter of claim to Malcolm. There was an unsuccessful mediation. The caveats remained in place. But no claim was brought by the Defendants to set aside the Will, and no claim was brought by Malcolm to propound it.

Malcolm died on 28 November 2024. The Claimants, Malcolm's executors, brought proceedings to propound the Will. The Defendants counterclaimed to set it aside for want of knowledge and approval.

The parties obtained the evidence of a single joint expert in toxicology and clinical biochemistry to opine on the effects on the Deceased of the medication she was taking and of her hyponatraemia (low levels of sodium in her blood). The expert concluded that the effects would likely be mild.

THE JUDGMENT

His Honour Judge Cadwallader, sitting as a Judge of the High Court, noted that, as a matter of law, the prospect of a knowledge and approval claim succeeding was somewhat unusual. The Judge held at [10]:

'It is an unusual feature of this case that the sole ground upon which the defendants seek to set aside the Will is want of knowledge and approval. They accept that the Deceased executed the Will, that it was prepared by a solicitor, that its execution was witnessed by that solicitor and his assistant, that the Deceased had capacity to execute it, and that she was not coerced into doing so. Although they criticise the drafting of the Will, they do not dispute its terms, or its effect, which is very simple. It is not irrational. Nor is it a long document. There is no suggestion that the Deceased could not read, or had become incapable of reading it. In circumstances like this, there is rather little room for a court to find that the Deceased who signed the Will did not know and approve of its contents. That is the defendants' case, however.'

Following ***Pascall v Graham*** [2025] UKPC 26, there is some controversy over whether knowledge and approval is to be determined by a two-stage or unitary test. The Judge preferred the unitary approach (at [18]), but it made no difference on the facts.
The Judge then had little hesitation in rejecting the allegation that Mr Davies forged his attendance notes [41]:

'I reject entirely the suggestion that the evidence in this case justifies the proposition that a solicitor, notwithstanding that his practice may subsequently have been intervened in by the SRA for unrelated reasons […] *should for no apparent benefit to himself, forge an attendance note (something which might end his career and expose him to criminal sanction), let alone do it so unsatisfactorily, even to the extent of writing the correct year upon which the forgery was committed at the top of it.'*

With this allegation dismissed, there was little to suggest that the Deceased did not know and approve of the Will. The fact that her address had been misspelt did not support the contention that she had only read it in part. Malcolm's involvement in the will-making process did not indicate an absence of knowledge and approval, this not being an undue influence case.

The Judge also held that, in any event, the claim was barred by laches. There had been a lengthy period of delay, in which the key witness, Malcolm, had died; the surviving witness' recollections had dimmed; and parts of the will file may have been lost. There was no proper justification for the delay, though the Court did not accept that the Defendants had deliberately waited for Malcolm to die before advancing their challenge to the Will.

COMMENTARY

Few practitioners will be surprised by the finding that a capacitous testatrix, acting of her own free will, knew and approved of a simple, professionally-prepared will.

It will take something unusual, even exceptional, for a challenge for want of knowledge and approval to succeed, where capacity and free will are not in dispute. ***Gill v Woodall*** [2010] EWCA Civ 1430 is a rare example of such a case.[1] Knowledge and approval is, of course, not to be used as a smokescreen for advancing allegations of undue influence or incapacity, although arguably the Defendants came close to doing both here, including by adducing medical evidence that might be thought better suited to an incapacity claim.

This judgment is most notable for the successful invocation of the defence of laches.

It was thought not too long ago that mere delay would not bar a probate claim (***Re Flynn*** [1982] 1 W.L.R. 310). That *may* still be true, but ***James v Scudamore*** [2023] EWHC 996 (Ch) has redefined the landscape. Successful defences of laches have followed in quick succession, of which this appears to be the second, following ***Bowerman v Bowerman*** [2025] EWHC 2947 (Ch) last year.

[1] And it might be argued that that came very close to being an incapacity case; see eg Parry & Kerridge: The Law of Succession (13th edition) at 5-47.

What distinguishes ***Stephenson v Daley*** is that the laches defence was made out even though the Will had never been admitted to probate. Though the Defendants had undoubtedly delayed in claiming to set it aside, it is notable that Malcolm had taken no steps to propound the Will over a similarly long period.[2] It is to the writer's knowledge the first case where a laches defence has barred a claim to set aside a will which had not been admitted to proof.

Those seeking to challenge wills should therefore be aware that the clock may be running from the date of death, and not the date of the grant.

Finally, this is another warning, if one is needed following ***Maile v Maile*** [2025] EWHC 2494 (Ch), that those accusing a solicitor who drafts a will of perpetrating serious wrongdoing need a proper evidential basis on which to do so.

James McKean, instructed by Adam Draper and Hollie Richardson of Rothley Law, appeared for the Claimants.

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[2] A point of law arose, which the Court did not ultimately decide, whether Malcom had partially distributed the estate *to himself* by allowing himself to occupy the estate property after the Deceased's death. It is (admittedly with some bias) suggested that this interpretation is to be preferred to the alternative: that Malcolm was trespassing against himself *qua* the Deceased's executor.