NEW SQUARE Chambers

November 2026

Deceased's estate ordered to pay £127,500 to daughter who cared for her late mother

Laura Scanlon (née Webster)

***Rogers v Wills* [2025] EWHC 1367 and [2026] EWHC 2231**

On 25 August 2026 DJ Wales handed down his judgment on quantum in respect of a dispute concerning the estate of the late Ursula Wills, known as Sheila ("**the Deceased**"), who died testate in April 2020. In June 2025 HHJ Paul Matthews had handed down judgment on the issue of liability in contract and unjust enrichment.

By way of background, the claimant had been the principal carer of the Deceased for 900 days prior to her mother's death. The claimant had trained to be a nurse but had left training to raise her family, and her husband was a retired GP. Under the Deceased's will the defendant was appointed as the Deceased's executor and the estate was to be divided equally between her six surviving children. Following the Deceased's death the claimant took sums amounting to £100,000 from the Deceased's bank accounts. It was the claimant's case that the Deceased had agreed that the claimant should be compensated for providing that care, which gave rise to a claim in contract, and a claim for unjust enrichment was also made in the alternative.

HHJ Paul Matthews found in favour of the claimant in both contract and unjust enrichment, and DJ Wales has now decided that £127,500 represents a reasonable contractual charge for the care provided to the Deceased.

The liability judgment of HHJ Paul Matthews in 2025

The issue before HHJ Paul Matthews concerned whether the Deceased's estate had any liability to the claimant for the care that she had provided to her mother prior to her death.

Liability in Contract

HHJ Paul Matthews considered the Deceased's capacity to contract (applying the provisions of the Mental Capacity Act 2005), what the obligation of the Deceased was (i.e. to pay a reasonable sum), and whether there was the intention to create legal relations in light of the mother-daughter relationship.

With regards to the intention to create legal relations HHJ Paul Matthews stated that it is always a question on the evidence available (with the relationship being only one element of this) as to whether there was an intention to create legal relations (para 177). At para 182 he stated as follows:

"Close family members sometimes do create legal relationships between themselves, intending them to take effect. When one person gives another a present for the latter's birthday, or at Christmas time, no one doubts that both parties intend the transfer of legal ownership of the article given to be effective. It was formerly in the legal ownership of the giver, and now it is in the legal ownership of the recipient. It is also perfectly lawful, and quite common in family businesses, for a business owner to employ a close relative in that business and undertake to pay the employee under the terms of the contract of employment. In Pearce v Merriman [1904] 1 KB 80, a wife granted her husband the tenancy of a house belonging to her, both parties intending the tenancy to have legal effect. Again, one member of a family may lend a large sum of money to another. The lender may think long and hard before asking for repayment, and may grant indulgences that he or she would not grant to non-family members, but that does not mean that there was no intention to create a valid contract of loan."

HHJ Paul Matthews found that on the facts, **the claimant and the Deceased had entered a contract for the Deceased to be cared for at the claimant's home for a reasonable price.**

With regards to capacity, he found that the Deceased had not lost capacity in October 2017, with the relevant evidence including the Deceased making a professionally drawn will in December 2015 and executing powers of attorney in September 2017 and February 2018. It was held that the Deceased's diagnosis of vascular dementia in July 2018 did not automatically mean that she thereafter ceased to have capacity or that she did not have capacity in October 2017 (para 239).

With regards to the intention to create legal relations, it was found that such an intention existed, with HHJ Paul Matthews finding that the Deceased: did not want charity, knew that she had sufficient resources, and had insisted that the claimant be paid "properly" for looking after her (para 240).

Liability in Unjust Enrichment

Having concluded that the Deceased's estate was liable in contract HHJ Paul Matthews then considered if his conclusion were wrong, would the Deceased's estate nonetheless be liable applying the principles of unjust enrichment.

With regards to unjust enrichment, HHJ Paul Matthews examined the potentially unjust factors of "failure of basis" (previously known as "total failure of consideration") and "free acceptance".

As to "free acceptance", HHJ Paul Matthews observed that the courts had in recent times accepted "free acceptance" as an unjust factor justifying recovery for benefits conferred (para 223), but that there was a substantial body of pro-unjust enrichment academic opinion that did not accept "free acceptance" as an unjust factor (para 225).

In his judgment HHJ Paul Matthews considered the case law on "free acceptance" and the academic arguments in depth.

At paras 227 to 229 he considered the potential overlap between "free acceptance" and "failure of basis" and found them to be different. At para 229 he explained:

"…the difference between failure of basis and free acceptance lies in whether the services (or goods) supplied were supplied on a shared basis. If they are, the relevant principle is – or can be – failure of basis. If not, then it may be free acceptance. If, in the window cleaner case, B returned home just as the cleaner was beginning work, and saw what was happening, understanding that the cleaner expected to be paid, but forbore to object to the benefit being conferred, B would have freely accepted the benefit of those services, and should pay a reasonable price for that part which B could have prevented. (That was Birks' original example.) But B's liability would not be because of a failure of basis. It would be because B could have prevented it and did not."

At para 235 he held:

"In my view, free acceptance does have a role to play as an unjust factor in the currently accepted English law unjust enrichment model. In my judgment the law is that a reasonable person who benefits from services rendered who should have known that the services were expected to be paid for but, having a reasonable opportunity to do so, did not reject them cannot deny having been unjustly enriched."

Applying the law to the facts HHJ Paul Matthews found that **if the claimant had not been successful with regards to her contractual claim, then she nonetheless had a successful claim against the Deceased's estate in unjust enrichment based on "free acceptance"** (para 244). HHJ Paul Matthews also observed that if the claim in contract had failed then an unjust enrichment based on "failure of basis" would also be unsuccessful (para 247).

The quantum judgment of DJ Wales in 2026

The issue of quantum was pursued solely on the basis of the contract that had been found by HHJ Matthews.

DJ Wales observed at para 17 that, depending on the facts, the starting point in a contractual claim for assessing a reasonable charge is likely to be a comparison of the probable cost of obtaining the same or a similar serve in the market place without discount for income tax and national insurance (as it is likely that the claimant will have to be pay these on the recovery of a debt).

After analysing the evidence, DJ Wales found as follows:

- The period of care covered by the contract was 850 days (paras 29 to 30)
- The claimant and her husband were capable of providing a level of care equal to or exceeding that of a professional trained carer (para 31)
- The Deceased had required continuous supervision and vigilance with the claimant and her husband having been unable to leave the Deceased alone in the house (para 33)
- The claimant with the assistance of her husband, had managed the Deceased's numerous medical conditions, including deafness, diabetes, angina, incontinence, cataracts, dementia, diverticulosis & diarrhoea, rectal prolapse, skin cancers, kidney disease, and glaucoma (para 41)

At para 45 DJ Wales held as follows:

"…the nearest commercial comparator for the service provided by the Claimant, would be those of a live-in carer, present 24/7, available to provide assistance at any time, and providing extensive support with activities of daily living through waking hours, including personal assistance, medical and dementia care, cooking, cleaning, companionship and activities, together with health management and administration of medication, and overwatch during the night, including nightly toileting and occasional emergencies. This comparator does not include board, lodging and travel, which would have to be allowed for in addition."

After considering commercial comparators, DJ Wales held that the sum claimed by the claimant (a daily charge of £150) represented a reasonable contractual charge for the services that she had provided to her late mother. At para 59 he observed the daily charge of £150 to be:

"…materially below the below the likely market cost of comparable commercial care, while fairly recognising the extent of services actually provided which [the Deceased] *agreed were to be paid for properly"*

Judgment was given in the sum of £127,500 plus interest.

Conclusion

HHJ Paul Matthews' detailed examination of the law concerning capacity to contract, intention to create legal relations, and "free acceptance", will no doubt be of assistance to those considering bringing similar cases in the future. However, hopefully litigation will be the last resort as this indeed was a case that cried out for settlement via mediation, with the approved cost budget of the claimant for the trial on liability being £84,085 as compared to the £127,500 recovered.

Interestingly it was noted by HHJ Paul Matthews at para 237 of his judgment that section 7 of the Mental Capacity Act 2005 provides as follows:

(1) If necessary goods or services are supplied to a person who lacks capacity to contract for the supply, he must pay a reasonable price for them.

(2) 'Necessary' means suitable to a person's condition in life and to his actual requirements at the time when the goods or services are supplied.

The claim was not pleaded on this alternative ground, however it may have provided another potential avenue for obtaining the relief sought.



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