

Rectification of a Will: What happens if a Will contains a mistake?

18 March 2025  Daniel Edwards

It is not at all uncommon for a Will to contain a mistake which would mean that, taken on the face of it, the Will does not reflect the Testator's true wishes.

In some situations such a mistake will give rise to a claim in negligence against the solicitor or other professional that drafted the Will. But in a lot of cases there will be other avenues open to those involved in trying to reach an outcome that gives effect to what the Testator intended. This article looks at one such avenue (that of 'Rectification'). You may also wish to consider our article on questions of 'Construction' i.e. how to interpret a Will.

Can you rectify a mistake in a Will?

In the right circumstances, yes. Mistakes in a Will can be rectified through a court order if it's proven that the Will doesn't reflect the testator's intentions due to a clerical error or misunderstanding. An application to court on this basis is often referred to as a claim for 'Rectification' of a Will.

Which mistakes can be rectified in a Will?

Mistakes that can be rectified in a Will typically include clerical errors and failures to understand the testator's instructions.

Section 20 of the Administration of Justice Act 1982 allows a court to rectify a Will so as to give effect to the testator's intentions where the mistake in question arose because of either a "clerical error" or "a failure to understand the testator's instructions".

- **Clerical errors** might involve typographical mistakes, incorrect details such as names or dates, or errors in incorporating the testator's changes into the final document.
- **Failures to understand the testator's instructions** occur when the person drafting the Will misinterprets or inaccurately records the wishes of the testator.

Rectification is sought to amend these errors to accurately reflect what the testator intended at the time the Will was made.

What is the time-limit for a claim based on Rectification?

A claim for Rectification must ordinarily be issued within six months of a grant of probate being made. If you are looking to make a claim outside of that period, then the permission of the court will first need to be obtained (which may or may not be given).

What is a "clerical error" for the purposes of Rectification?

A "clerical error" in this context refers to a mistake made in the drafting or transcription of the document that does not accurately reflect the testator's intentions. This could include typographical errors, miswriting names, dates or figures, or incorrect recording of the testator's instructions by the person preparing the Will. The error must be a result of a clerical act or omission rather than a misunderstanding or misinterpretation of the law or facts by the drafter.

Cases will always be fact specific, so there is no firm rules as to what will be and what will not be deemed a clerical error. However, some examples of mistakes that have been deemed clerical errors include cases where:

- A married couple signed each other's Wills, rather than their own;
- A solicitor inadvertently omitted an entire clause from the Will;
- A solicitor failed to delete a provision from a Will;
- Incorrect numbers have been used – for example, for clauses that state "in three equal shares" but then go on to name 4 people;
- Cross-references to clause numbering in elsewhere in the Will are incorrect.

According to the Supreme Court in *Marley v Rawlings*, the best judicial summary of the effect of the cases so far decided was given in *Bell v Georgiou* by Blackburne J, where he said:

"The essence of the matter is that a clerical error occurs when someone, who may be the testator himself, or his solicitor, or a clerk or a typist, writes something which he did not intend to insert or omits something which he intended to insert... The remedy is only available if it can be established not only that the will fails to carry out the testator's instructions but also what those instructions were."

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