

## Banks vs Goodfellow - an extension of the test

A recently decided case has put a modern gloss on the test for testamentary capacity established by *Banks vs Goodfellow* in the 19th Century.

*Key v Key* (2010) concerned a challenge to the Will of an 89 year-old testator (the person making the Will) whose instructions were taken by a solicitor just a week after his wife of 65 years had died.

His two sons claimed that he had lacked the requisite testamentary capacity at the time of writing the Will due to the devastating loss of his wife.

The case led to a discussion of how affective disorders, such as depression caused by bereavement, can affect the decision making powers rather than just comprehension.

Although the deceased could have understood what his property was and even who his relatives and dependents were, he possibly lacked "the mental energy to make any decisions of his own". Lord Justice Briggs stated that the testator had been devastated rather than merely upset by his wife's death and that he had been unable to exercise his decision making powers as required by a testator.

A greater understanding of the mind due to developments in modern psychiatric medicine have therefore led to a slight development of the *Banks v Goodfellow* test.

This means that additional care should be taken to establish capacity where a testator is recently bereaved. Often it is the death of a loved one that inspires people to sort out their own affairs so this situation is not uncommon. Here at the English Will Company we will arrange a time to meet with the testator either at our offices or there own home. At our meetings we can spend time to discuss the requirements of a testator, how they may differ from any existing Will, and gauge from a professional point of view whether the individual is "ready" to be making a new Will or whether they need a bit more time first.