

# Mitra's Monday Aide-Mémoire

## Welcome to my Monday Aide-Mémoire ...

### Does an agreement or a promise need to be in writing to make it valid? Can a verbal promise be enforced?

To avoid any misinterpretation, a promise made or an agreement reached should be recorded, preferably in writing. This gives everyone a good point of reference should there be any dispute as to its terms - or even as to its existence!

Whilst recording an agreement in writing is usual in the commercial world, it is not (unsurprisingly) common when it comes to close family members. After all, families are supposed to trust one another. Recording a promise in writing would almost undermine this relationship of trust.

### Case Scenario

So, what happens in a situation where a promise is made verbally but there is subsequently a dispute as to its existence? In my many years of dealing with contentious matters, I have often come across the following scenario:

*A parent promises the "family home" to a child upon their death (very often a child who has lived with them and cared for them in their old age) but fails to ensure that this takes effect at a later date – such as leaving the property as a pecuniary legacy in a Will or making provisions along those lines.*

In a scenario such as the one above, how does one enforce a verbal promise?

### Estoppel

Estoppel is a relief which can be given to a claimant and is at the discretion of the court. As a helpful reminder to practitioners, the main features of an estoppel claim (whether proprietary or promissory) are:

1. The deceased made a promise or led the claimant to believe that they would make a gift to them.
2. The claimant genuinely believed the deceased and relied on these assurances.
3. The claimant acted (or abstained from acting) to their own detriment as a result of relying on the deceased's assurances.

### Practical pointers

Many of my fellow contentious probate practitioners will no doubt have come across a scenario featuring the above three factors. As a helpful reminder, I have listed here a few key points to consider before advancing an estoppel claim:

- Manage your client's expectations: A promise made by a parent may be no more than an expression of intent in passing and may not be relied upon. Substantial evidence will be required.
- Consider positive actions taken: Did the deceased speak to third parties (such as friends, neighbours, social workers, etc.) and is there a record of this? Did the deceased scribble down any notes?
- Although the assurance given does not have to be explicit, it still needs to be clear enough. Therefore, look at the full context and circumstances. Was there a continuing pattern of conduct and/or words used by the deceased which raised your client's expectations?
- Be aware that assurances and expectations can change over time – carefully consider this with your client.
- Explain that even though the detriment does not need to be financial, it needs to be substantial. Discuss with your client how they have been affected - for instance, have they uprooted themselves from a familiar surrounding or changed jobs? This can be considered a detriment.
- There must be a causal link between the assurance relied on and the detriment. A belief that they might acquire something is not enough, evidence will be required to prove the detriment.
- The detriment must be suffered after the deceased's assurance/promise. Actions taken before the promise was made are not likely to be considered or given weight to.
- There must be proportionality between the expectation and the detriment. For instance, if your client thought the estate was worth only £200k and acted to their detriment based on this expectation, they cannot then pursue a claim for an estate valued at £1m.

### Note:

*This is an equitable relief and is purely at the discretion of the court. Clients should be advised that there is not a guaranteed sum which will be awarded to them. Even if successful in proving that there was a promise, the client might not recover much or only a percentage of the estate.*

If you have any questions or wish to discuss the above, feel free to contact me on 0121 746 3352.

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