

## Your Legal Questions

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Solicitor



**Q. My Grandmother is 86 and lives in a care home. She has not made a Will and I have been told that she does not have the capacity to make a Will. What does this mean and is there anything that can be done?**

**A.** The fact that your Grandmother lacks capacity is nothing to do with her age. Anybody who makes a Will must have what is known as testamentary capacity whatever their age. To satisfy the test for capacity a person must be of sound mind, memory and understanding. In the case of your grandmother this means that she must understand the nature of the document and its effect, the extent of her assets and must be able to understand and appreciate the claims to which she ought to give effect e.g. an appreciation of her family and those having a moral claim upon her. Equally she should be free from any mental disorder or delusion which might pervert her sense of right. There are many cases which have come before the Courts which have established the legal test. If there is any doubt as to capacity the Solicitor preparing a Will would normally request the client's permission to seek a report from the client's doctor to confirm whether or not the client has capacity. The doctor may also be asked to act as a Witness to the Will where capacity fluctuates.

In cases such as this where a person no longer has the capacity to make or amend a Will, it is possible to ask the Court of Protection to consider authorising a statutory Will. I would suggest that you take legal advice to consider whether this may be appropriate in your Grandmother's case (i.e. in her best interests) and the merits of doing so.

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