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ASSISTED SUICIDE: COMPROMISING FORFEITURE APPLICATIONS

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If one or more of the beneficiaries of an estate may have assisted the deceased in ending his own life so that the forfeiture rule might apply to disinherit them, can all of the beneficiaries of that estate together, if all adult and competent, nevertheless direct the personal representatives to administer the estate without regard to the forfeiture rule? The question arose in a recent unreported case and it was decided that they could.

A significant number of adults in England and Wales already choose to end their lives at clinics in Switzerland, where assisted suicide is legal. Often those who wish to end their lives will, naturally enough, wish to be accompanied on their final journey by those closest to them; and often they will need or want the care and support of those closest to them whilst making the journey. Others end their lives in this jurisdiction, and may also receive help in doing so from their relatives and friends. Those who are closest to the deceased are also likely to be the persons named in their will or destined to inherit under the intestacy rules. The involvement of the deceased's friends and relatives in their deaths, however reluctantly, then raises the possibility of forfeiture of their interests under the will or intestacy, since any deliberate encouragement or assistance of a suicide is a crime under s. 2 of the Suicide Act 1961, and under the "forfeiture rule" no person who has committed a crime of homicide may inherit from the victim of that crime. The modern forfeiture rule is a rule of the common law first clearly recognised in Cleaver v Mutual Reserve Fund Life Association [1892] 1 QB 147, and in Dunbar v Plant [1998] Ch 412 the Court of Appeal made it clear that encouragement or assistance of a suicide contrary to s. 2 of the 1961 Act will bring the forfeiture rule into operation, even if no prosecution is brought. Prosecutions are in fact rare, and the DPP has published detailed guidance setting out the factors which it will consider when deciding whether or not prosecution is in the public interest.

Since the Forfeiture Act 1982 was passed, it has been possible for a person who benefits under a will or intestacy but whose conduct amounts to an offence of homicide (other than murder) to apply to the Court for relief from the consequences of the forfeiture rule. Before

relief can be given, the Court has to assess whether forfeiture has actually occurred, and then if it has it must go on to decide whether and if so what relief to grant. In practice, anyone who has provided assistance to someone who has committed suicide and who wishes to receive their interest under a will or intestacy may need to bring an application asking either for a declaration that the forfeiture rule does not in fact apply, or for relief from the consequences of the rule. Anyone administering an estate as a personal representative who becomes aware that one or more of the beneficiaries may have assisted the deceased to die may also need to bring the matter before the Court, since a personal representative swears an oath to administer the estate according to the law.

The forfeiture rule also applies where a policy of life insurance is held on trust for, or is assigned to, a person who later encourages or assists in the suicide of the life assured: see Cleaver, above.
Can such cases be compromised? The recent case of Re Peace, Grant v Murphy (2025, unreported), in which Justin Holmes represented the executor of Mr Peace's estate, establishes that they can, at least if the parties involved are all competent adults.

The facts of the case were these. Mr Peace was diagnosed with motor neurone disease in 2019 and immediately joined Dignitas. He became a campaigner for the cause of assisted dying, and he created an extensive and moving blog in which he talked about both his life in general, the progress of his disease and the importance as he saw it of changing the law to permit assisted dying.

In 2020 he visited Dignitas in the company of his friend, G, for an initial consultation. In November 2021 he resolved to end his life there in December 2021 and he made arrangements to travel to the clinic for that purpose. His partner T booked the flights as a matter of convenience. T, who was Mr Peace's principal carer, provided care and support to Mr Peace during the journey.

P, the executor, was aware in general terms of the involvement of T and G in the events leading up to Mr Peace's death and took the view that he could not safely distribute the estate in accordance with Mr Peace's will since under that will Mr Peace had left his flat to T and the residue of the estate to G. P therefore informed the beneficiaries that he intended to make an application to the Court under CPR 64 for a ruling on whether or not the forfeiture rule applied to the gifts to T or to G.

The beneficiaries' preference, however, was simply that they should agree that Mr Peace's estate should be administered as he had intended under his will, without any implementation of the forfeiture rule. Between them, T, G, N and H were the only people who stood to benefit from Mr Peace's entire estate, whether or not the forfeiture rule applied. By s. 33A Wills Act 1837 the effect of the rule is that the person whose interest is forfeited is treated as having immediately predeceased the testator (a similar rule applies in cases of intestacy), and Mr Peace had made gifts over under his will so that even if T and G's interests were both forfeited, the estate would have been divided between N and H.

Doubts were raised in correspondence between the parties, however, as to whether the executor could reply simply on a direction by all four beneficiaries to administer the estate in this way. In Re Ninian, Ninian v Findlay [2019] EWHC 297 (Ch), Chief Master Marsh had said:

> "In this case there was no opposition to the order the claimant sought. Due to the careful way in which the claim had been prepared, it was possible to deal with it at a disposal hearing lasting not much more than an hour. Whether it is possible to deal with similar cases at a short hearing will depend on the view the court takes about the evidence. It is unlikely that the court will ever feel able to deal with a claim of this type without a hearing due to the benefit that is obtained from oral submissions of counsel."

Moreover, the solicitors for two of the beneficiaries had also acted in the case of Morris v Morris [2024] EWHC 2554, and they informed the other parties that the Court had during the course of that case indicated or at least implied that forfeiture proceedings could not be susceptible of compromise. Unfortunately, those indications were not contained within the judgment itself, and the judgment does not give any useful guidance about whether or not proceedings such as these can be compromised. This is because, although the question of possible compromise did arise in Morris, such a compromise became difficult because of the involvement of minor children as beneficiaries. The facts were these. Mrs Morris decided to end her life at a clinic in Switzerland. Her husband Mr Morris assisted her with making the arrangements and provided care and support to her to enable her to make the journey. He applied for relief from forfeiture. The initial defendants to his application were Mr and Mrs Morris's children J, K and S. The children did not oppose the application, and it was initially hoped that a full hearing could be avoided. It became clear to the Court, however, that J, K and S had also travelled to Switzerland with Mrs Morris, and the Court was concerned that the forfeiture rule might conceivably apply to them too. If that had happened, then J and K's children would have inherited their shares in the estate. A litigation friend was appointed to represent J and K's children. Although the litigation friend indicated that he would not oppose the relief sought, the matter was already listed for a hearing and the Court was able to dispose of it at that hearing. In the event, the Court held that mere accompaniment of the deceased on her final journey did not constitute any offence under s. 2 of the 1961 Act, and that J, K and S had not provided either encouragement or assistance to Mrs Morris.

The parties in Re Peace took the view that it would worth asking the Court simply to determine in this case whether the executor Mr P could lawfully distribute the estate in accordance with the request made by all of the beneficiaries in writing in accordance with the well-known rule in Saunders v Vautier (1841) Craig & Phillips 240, or whether there was any rule of public policy which required an application to be made to the Court for a declaration as to whether or not forfeiture had taken place and/or relief from forfeiture.

Deputy Master Bowles, sitting in retirement, was confident that there was no such public policy rule, although in the circumstances of the case he considered it entirely proper for

the executor to have put the question before the Court. He accepted the argument made by all of the parties that if the forfeiture rule had applied, and the estate had been distributed only to N and H, there would have been no rule of law which would have prevented N and H giving to T and G the benefits which T and G would have received under Mr Peace's will. In those circumstances, he could see no valid reason why the beneficiaries, if all adult and competent, could not simply direct the personal representative to administer the estate to achieve the same result, without the need for the parties to prepare a distressing and expensive and time-consuming application to the Court or for the Court to rule upon it. Indeed, the avoidance of such litigation constituted a public policy benefit.

At the conclusion of the hearing Deputy Master Bowles therefore made an order in the following form (so far as material):

> "WHEREAS
> (1) The Claimant is the executor of the late [Mr Peace];
> (2) Mr Peace ended his life at the Dignitas clinic in Switzerland on 8 December 2021;
> (3) By a deed of gift dated 26 November 2021 ("the Deed of Gift") Mr Peace gave the benefit of a Scottish Widows insurance policy ("the Policy") to the First Defendant [T];
> (4) By his will dated 26 November 2021 ("the Will") Mr Peace left [a flat] to the First Defendant [T] and he left the residue of his estate to the Third Defendant [G];
> (5) Questions have arisen as to whether these gifts or any of them might be rendered invalid by the rule of law described in section 1 of the Forfeiture Act 1982 ("the Forfeiture Rule"), but no application either for a declaration that the gifts are not subject to the Forfeiture Rule or for relief from forfeiture under the 1982 Act has been made; and
> (6) The four Defendants are together the people who will inherit the entirety of Mr Peace's estate whether or not any gift contained in the Will or the Deed of Gift stands forfeit.
>
> IT IS ORDERED THAT:
> The Claimant as executor of the estate ("the Estate") of the late [Mr Peace] may lawfully distribute the Estate in the manner requested by Mr Peace in the Will and by the Defendants, that is to say on the footing that the Forfeiture Rule does not apply to any gift made under the Will or in the Deed of Gift or to the proceeds of the Policy (whether or not the Forfeiture Rule is engaged) or alternatively on the footing that relief against forfeiture has been granted in respect of any gift included in the Will or the Deed of Gift, or in respect of the proceeds of the Policy, to which the Forfeiture Rule does apply (even though no application has been made)."

Although Deputy Master Bowles did not give a formal judgment, he indicated that he was content for those present to publicise his decision and the order which he made.

The decision thus opens the way for the beneficiaries simply to direct the personal representatives to administer the estate without regard to the forfeiture rule, if they together hold the entire beneficial interest on any basis and they are competent adults. They can avoid the considerable expense, distress and delay involved in preparing an application for relief from forfeiture. Testators intending to end their lives in this way might also wish to bear this possibility in mind when drafting their wills.

Where, however, minor or unborn children or incapacitous adults are involved, it seems likely that the Court's assistance will still need to be sought. A litigation friend would be able to compromise such proceedings with the Court's approval, but a litigation friend can only be appointed in the context of actual proceedings. Seeking approval of such a compromise under CPR 21.10 might in some circumstances be less expensive than proceeding to a full final hearing, although detailed preparation of the case and particularly the witness statements would be required in any event.

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