COMMERCIAL CARE COSTS AMONGST FAMILY MEMBERS

ROGERS v WILLS [2026] EWHC 2231 (Ch)

Rogers v Wills [2026] EWHC 2231 (Ch) is a case which concerns the costs that a family member might recover for the care that they have provided to a loved one. It has the potential to have wide ranging implications for families, particularly given the aging population in the UK and the spiralling costs of professional care. It is a case which should be borne in mind by all practitioners who give advice in respect of wills, probate, and end-of-life issues more broadly.

Judgment has now been handed down giving guidance as to how the care services provided by a family member should be quantified. A copy of the quantum judgment can be found here. As is detailed below, the court saw the appropriate starting point as '*the probable cost of obtaining the same or similar service in the market place*'. In this case, an award of £127,500 was made to the Claimant. Accordingly, it can be seen that this is not a nominal issue, but rather can have significant implications on the ultimate division of an Estate.

Ben Haseldine represented the successful Claimant in both the liability and quantum trials. Chris Bryden drafted the successful pleadings, and led Ben in resisting the Defendant's unsuccessful application to the Court of Appeal for permission to appeal the liability judgment. Instructions were provided throughout by Kleyman & Co Solicitors.

Factual background

In 2017, the Claimant's elderly mother – Sheila – experienced a period of declining health. There were discussions between the Claimant and her five siblings about how Sheila should be cared for but no concrete agreements were reached. Instead, almost by default, Sheila came to live with the Claimant in Bristol.

The Claimant – who had trained as a nurse, and who was married to a retired GP – explored alternative care arrangements for Sheila. These included making enquiries with care homes and live-in care agencies.

In October 2017, the Claimant and Sheila visited the latter's house in Norfolk for a meeting with a representative from a live-in care agency. However, on the return journey to Bristol, Shelia made clear that she did not want to pursue that option, and rather that she wanted to live in Bristol and be cared for by the Claimant. As part of this conversation – and as was reiterated by Sheila to various other family members – it was made clear that Sheila wanted for the Claimant to be paid for the care she provided: she did not want charity. The Claimant agreed with this arrangement.

Shelia remained living with the Claimant and her husband until April 2020 when she died.

During this time, Sheila required consistent supervision and, as her health deteriorated, the level of care that the Claimant provided increased. The most significant escalations in Sheila's care needs stemmed from her diagnosis with dementia and a rectal prolapse which then recurred intermittently throughout the remainder of her life.

The Claimant was fully involved in all aspects of Sheila's care, including managing her medication and medical appointments; dealing with her personal care; assisting with mobility; attending to her at times during the night (including addressing issues associated with Sheila's incontinence); as well as all cooking and cleaning. It was the Claimant's case that her involvement in Sheila's care was 24/7, and the impacts on her own life were significant.

In early April 2020, Sheila had a fall. Her health dramatically worsened and, following a period of palliative care (which again was supported by the Claimant), Sheila died on 19 April.

Throughout this time, the Claimant had not received any payment for the care that she provided to her mother. Neither had any concrete agreement been reached either with her mother or her siblings as to how her entitlement would be calculated.

Between April and May 2020, the Claimant withdrew £125,000 from Sheila's bank accounts. She had had access to these accounts through her role pursuant to a Lasting Power of Attorney.

In seeking to explain her actions, in early June 2020 the Claimant presented a breakdown or invoice to her siblings for the care she had provided to their mother. The Claimant had calculated the number of days that she had provided care to Sheila, and also made allowances for the brief periods when Sheila

had spent time with her other children or in respite care. Pursuant to this invoice, the Claimant sought £135,000, which was calculated as being 900 days of care at £150 per day.

The Defendant – together with her other siblings – objected to the Claimant's actions. The money that she had taken from Sheila's account was returned following complaints of fraud made to the bank, and the Claimant was the subject of a criminal trial at which she was found not guilty.

The liability judgment

The Claimant brought a claim against Sheila's Estate seeking payment for the care she had provided.

The claim was case managed and conducted as a split trial, dealing first with the question of liability.

The liability trial was heard by HHJ Matthews (sitting at a judge of the High Court). The neutral citation for that judgment is [2025] EWHC 1367 (Ch).

In short, HHJ Matthews found that a valid contractual relationship existed between the Claimant and Sheila, whereby it was agreed that the Claimant would be paid '*a reasonable amount*' for the care provided.

It was further found in the alternative that the Claimant had a valid claim in unjust enrichment for the value of the care provided. HHJ Matthews asserted that 'free acceptance' was a recognised unjust factor in English law: '*a reasonable person who benefits from services rendered who should have known that the services were expected to be paid for but, having a reasonable opportunity to do so, did not reject them cannot then deny having been unjustly enriched.*'

The quantum judgment

The key question for DJ Wales was the method of calculating the '*reasonable*' costs of the care provided by the Claimant.

The Defendant submitted that the court should follow the approach taken in personal injury claims where damages are awarded for care provided by family members. In those cases, the court will assess what is a '*proper and reasonable figure*', the ceiling for which is the commercial rate for such services.

However, in a typical case, the commercial care rates are then subjected to deductions to reflect the nature of the care and its relevance to the injury in question, plus a further discount of around 20% to account for income tax and national insurance.

DJ Wales did not accept the Defendant's submissions. He drew a sharp distinction between those personal injury cases which concerned *gratuitous* care, and the index case which centred around a contract for services. He observed that a contractual claim is '*not limited by any tortious issues of causation*', and that the Claimant's claim was for the recovery of a debt rather than damages.

Rather, having considered the authorities relied on by the Claimant, DJ Wales suggested that '*in a contractual claim the starting point for assessing a reasonable charge is likely to be a comparison of the probable cost of obtaining the same or similar service in the market place, without discount for income tax and national insurance*'.

This approach necessarily requires engagement with two principal issues: (1) the nature of the care provided; and (2) the period for which care was provided.

(It is worth noting that DJ Wales was not persuaded that there should be any reduction referrable to income tax or national insurance because the judgment sum would be gross of tax, and it would be a matter for the Claimant to account for that sum with HMRC in due course.)

DJ Wales accepted the Claimant's evidence that she had cared for her mother for 850 days. In presenting this aspect of her case, the Claimant had reviewed her diaries, family photographs, and extensive WhatsApp messages exchanged with her siblings where they discussed their mother's care.

In respect of the nature of the care provided, DJ Wales accepted that Sheila had required '*continuous supervision and vigilance*' throughout the time that she lived with the Claimant. This feature of the care was described as '*overwatch*', and it resulted in the Claimant and her husband only being able to leave their home together for one evening each week when a volunteer attended to sit with Sheila.

It was found not to be necessary to '*re-construct a day by day, week by week, month by month assessment of Sheila's care*'. This was in recognition of the reality that '*persons who need physical assistance for everything they do do not literally receive that assistance during every minute of the day. But their*

condition may be so severe that the presence of a full-time carer really is necessary to provide whatever assistance is necessary at whatever time unpredictably it is required'.

In all the circumstances, DJ Wales considered that '*the nearest commercial comparator for the service provided by the Claimant would be those of a live-in carer, present 24/7, available to provide assistance at any time, and providing extensive support with activities of daily living through waking hours, including personal assistance, medical and dementia care, cooking, cleaning, companionship and activities, together with health management and administration of medication, and overwatch during the night*'.

DJ Wales considered the Claimant's unchallenged evidence as to comparator care costs, with it being noted that those figures did not include provision for '*general household expenses, utilities, food and other household items, activities outside the home, or travel*.' Having considered those rates, and further conducted an assessment based on National Joint Council for Local Government Services rates, the judge concluded that the Claimant's proposed rate – which worked out as £6.25 per hour – contained '*ample headroom by comparison to the commercial figures to allow for the additional overheads of, and services provided by, a commercial enterprise*'. It was noted that the sum claimed by the Claimant was '*materially below the likely market cost of comparable commercial care*'.

Accordingly, the Claimant was successful in her claim that £127,500 represented a reasonable contractual charge for the services provided.

Analysis of the quantum judgment

The quantum judgment confirms the approach that the court should take in cases concerning care provided in a domestic context where it was agreed that those services would be paid for, but no agreement was reached as to the specific amount.

The court will focus on two key questions: what was the nature of the care provided; and for what period was that care provided.

On the basis of this information, the court will then turn to consider the nearest commercial comparator to the services provided and the rates chargeable for such commercial services.

For obvious reasons cases of this nature will be fact-specific. That said, the evidence that will be relevant in pursuing or challenging such a case will likely be similar in many claims:

- Extensive medical disclosure will assist in painting a picture of the relevant care needs, including how these needs may increase or vary over time.

- Witness evidence from others involved either in the provision of care or who witnessed the involvement of the claimant in that care will likely speak to both the issues of the period and nature of care.

- Diaries or other records of time spent providing care and – just as important – times when care was being provided by others will be vital to assist the court in understanding the period for which care was provided.

Evidence will also need to be obtained as to the costs that would have been incurred for comparable care on the open market. In Rogers v Wills, this evidence was presented through a combination of contemporaneous quotes obtained from care providers and open source material. This could equally have been demonstrated through appropriate expert evidence. Accordingly, consideration will need to be given to how a claimant or defendant could best demonstrate their case on quantum.

There are, however, still questions which remain unanswered. Crucially, the quantum judgment addressed only the assessment of quantum where there was a contractual agreement between the care giver and care receiver. No guidance has yet been given as to how quantum might be assessed if the claim was only brought successfully in unjust enrichment. Given that in both contexts the benchmark will be the '*reasonable costs of care*' it might be expected that the same approach would be taken. However, there are authorities at the highest level – including Benedetti v Sawiris [2013] UKSC 50 – which confirm that there are different considerations which may yield different quantum outcomes as between contractual and non-contractual claims. In contract claims, '*the focus would in principle be on the intentions of the parties (objectively ascertained)*'. By contrast, in unjust enrichment claims the court will be more focused on the benefit obtained by the defendant.

It will be interesting to see how Rogers v Wills gains traction and whether it results in an increase in claims brought by family members who have provided care for loved ones. Certainly, in the right case, it has the potential to result in significant financial consequences for an Estate and families at large.

BEN HASELDINE

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