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INHERITANCE ACT CLAIMS – ADULT CHILD (CLAIMANT) GUIDANCE NOTES

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WHAT IS AN INHERITANCE ACT CLAIM?

An Inheritance Act Claim is simply a claim made under the Inheritance (Provision for Family and Dependents) Act 1975 ("**1975 Act**"). The claim is also known as a claim for "reasonable provision" or a "dependency" claim.

As an Adult Child of the Deceased you have the right to make a claim under the 1975 Act for reasonable financial provision for your maintenance from the Deceased's estate. To be successful you will need to prove:

1. That the Deceased was domiciled in England or Wales. Domiciled simply means that England or Wales was the Deceased's permanent home;
2. That you are the legal child of the Deceased;
3. That the Will (or if there is no Will the rule of intestacy) has failed to make reasonable financial provision for you;
4. If the Will or the rules of intestacy have failed to make reasonable financial provision, you must then show what reasonable provision you require.

Points 1 to 3 are described as the threshold questions. Once these are proven, the dispute is then about quantum i.e. what should be given to you.

Sometimes cases are fully disputed whereby it is argued that no provision at all is needed as the Will or rules of intestacy have already provided reasonable provision. Alternatively, the parties sometimes accept an Adult Child is entitled to further provision, but there is disagreement on the value of the claim being made.

WHAT CAN I EXPECT TO RECEIVE?

The Court takes into account the factors at Section 3 of the 1975 Act in assessing (a) whether the provision already provided is reasonable and (b) what (if any) further financial provision is required.

The factors are:

- a) Your financial circumstances now and in the foreseeable future.

This is a key factor within the 1975 Act. As part of the claim you must be willing to give complete disclosure of your income, means and resources.

- b) The financial circumstances now and in the future of any other applicant.

More than one person is permitted to make a claim against an estate under the 1975 Act. If there are competing claims then the court must balance the competing interests. The other types of applicants that can apply are:

- A legal spouse of the Deceased or a former spouse who has not remarried;
- Any person that was treated by the Deceased as if they were their child by virtue of any marriage the Deceased was party to;
- Any person dependant on the Deceased;
- An unmarried partner of the Deceased that cohabited with the Deceased for two years or more.

If there are no other claims made, then this factor is neutral.

c) The financial circumstances now and in the future of the beneficiaries of the estate.

If the beneficiaries of the estate have financial needs of their own, the court must consider them. Beneficiaries sometimes argue a “means based” defence whereby they argue that they also require provision to meet their own needs.

If there are competing needs, then this factor is very important to consider.

d) Any obligations owed by the Deceased to the parties.

As an Adult Child of the Deceased, it may be difficult for you to demonstrate that the Deceased owed you any obligations. The courts takes the view that if you are healthy and above a certain age, you are capable for providing for yourself. However, this assumption may be displaced by evidence that the Deceased was supporting you financially, or promised to do so, or by circumstances which indicate they may have had a moral obligation to provide you with greater provision than they did.

e) The size and nature of the net estate.

This is a very important factor. The value of the estate effectively limits the claim as the court cannot order any more than what the estate is worth. Any debts or liabilities owed by the estate would also be paid first so that your claim is only ever against the net estate.

The nature of the estate is also important. If the estate contains mainly properties then these may have to be sold before money can be paid. In addition, if the estate contains a family business the court will be keen to ensure that the company continues to trade if the Deceased’s intention was the business should pass through the family.

f) Whether any other parties are suffering from any physical or mental disability.

The court will always consider this factor. Costs of care or the impact of the disability on working capacity will be relevant to consider.

g) Any other relevant factor including conduct.

This is a catch all provision and is very wide. It will apply on a case by case basis.

The Court does not give more or less weight to any of the above factors but must weigh each in the context of all the factors.

Though it is impossible to predict the outcome of these cases given the high level of judicial discretion involved, the following guidance from case authorities assists in defining the nature of the provision you can claim:

In *Re Dennis* [1981] 2 All ER 140, Browne-Wilkinson J said: *'...the word 'maintenance' connotes only payments which, directly or indirectly, enable the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him. The provision that is to be made is to meet recurring expenses, being expenses of living of an income nature. This does not mean that the provision need be by way of income payments. The provision can be by way of a lump sum, for example to buy a house in which the applicant can be housed, thereby relieving him pro tanto of income expenditure'*.

In *Re Coventry* [1980] Ch 461, the following was said: *'... I think it is clear on the one hand that one must not put too limited a meaning on [maintenance]; it does not mean just enough to enable a person to get by; on the other hand, it does not mean anything which may be regarded as reasonably desirable for his general benefit or welfare.'*

In the Supreme Court authority of *Ilott v The Blue Cross* [2017] UKSC 17 (considered below) Lord Hughes considered that the frequently-cited summary of 'maintenance' in *Dennis* (cited above) is *'helpful'*. He further said that maintenance claimable is:

- *'no doubt broad'* (para 14)
- *'clearly flexible'* (para 15)
- *'falls to be assessed on the facts of each case'* (para 15)

From our experience we expect to achieve:

- Accommodation security. This can range from a house outright (in rare cases) or money to help with payment of rent or a mortgage;
- Provision to meet future costs of care;
- Provision to meet everyday costs of living and the costs of retirement;
- Provision to pay for replacement of white goods;
- Provision to fund the cost of a replacement car.

The amount of provision awarded depends on the facts of the case. You will only be given provision if you can demonstrate you are in need of financial assistance. If you can meet your own needs, then you will be unable to claim for any provision, or the items listed above.

CASE EXAMPLES

Set out below are case examples of successful 1975 Act claims. These help illustrate the nature of 1975 cases and the amounts that can be awarded.

***Ilott v The Blue Cross* [2017] UKSC 17**

On 15 March 2017 the Supreme Court handed down judgment in the case of *Ilott v The Blue Cross* [2017] UKSC 17. This is the first time that the 1975 Act has been considered by the highest court and the judgment clarifies a number of issues in relation to claims under the 1975 Act and in particular for claims involving adult children.

Facts

Mrs Ilott was the estranged adult daughter of the deceased. She had left home at 17 to live with, and subsequently marry, a man of whom the deceased disapproved.

The deceased left her entire estate worth some £486,000 to charities.

Mrs Ilott was in modest circumstances living with her five children and her husband in rented housing association accommodation and the household was funded almost entirely by the state, through housing and council tax benefits, which are means tested, and child benefit and working tax credit, which are not.

Mrs Ilott knew that she was not provided for in the deceased's will and so had no expectation of benefit.

At trial in 2007 the District Judge concluded that the will had not made reasonable financial provision for Mrs Ilott and awarded her £50,000.

On appeal the High Court Judge found the District Judge had been wrong to reach the conclusion that the will had not made reasonable financial provision and therefore dismissed the claim.

On appeal to the Court of Appeal the Court concluded that the High Court Judge had been wrong - reasonable financial provision had not been made - and so the case was sent back to a different High Court Judge to determine quantum.

The High Court Judge restored the original award of £50,000.

Mrs Ilott appealed to the Court of Appeal again and on this occasion the Court of Appeal concluded that the District Judge had been wrong and substituted an award of £143,000 which would have enabled Mrs Ilott to buy her house plus a sum of £20,000 to be drawn down to use for contingencies. The criticisms that the Court of Appeal made of the District Judge's decision were that he had not explained how he had taken the long estrangement into account and that he had not taken account of the effect of any award on Mrs Ilott's benefits.

The Supreme Court appeal

The charities appealed to the Supreme Court. The Supreme Court concluded that the District Judge had properly assessed all the section 3 factors and concluded the estrangement was the reason the testator made the will she did.

So Mrs Ilott was a non-dependent adult child lacking any expectation of benefit. The estrangement and Mrs Ilott's straitened financial position were the two dominant features which entitled the Judge to conclude that reasonable financial provision had not been made and to be influenced in the level of provision by the lack of relationship between mother and daughter.

The Court also concluded that the judge did address the impact on benefits of any order he might make. The award he made would enable Mrs Ilott to maintain and replace ordinary

household items, which was something she could not do at her income level, without affecting her benefits.

The Court rejected the Court of Appeal's award of a sum to buy a house. Although reasonable financial provision could, in principle, be made by the provision of housing that should correctly be done by creating a life interest in the sum rather than outright payment of it.

The Court said that the Court of Appeal should not have proceeded on the basis that little weight be given to the length of the estrangement, the testator's very clear wishes or Mrs Iltott's lack of expectation of benefit in part because the charities had no expectation of benefit either. The charities were the testator's chosen beneficiaries and did not have to justify a claim on the basis of need.

The judgment points out that in all cases where the relevant standard of provision is maintenance, a financial need for maintenance must be established as a necessary but not sufficient condition for the making of an order under the Act. However, it is not necessary that a moral claim must be proven (see Lord Hugh's comment at paragraph 20 of the judgment).

In discussing maintenance the judgment points out that the concept of maintenance is broad but that it does not extend to the provision of anything that it would be desirable for the Claimant to have.

Although the judgment recognises that the provision of maintenance might conveniently be provided by a lump sum designed to be exhausted over the period for which maintenance is required or by a lump sum to purchase a car or deal with the urgent need to replace household items, the statutory power is to award maintenance and not to confer capital.

"The level at which maintenance may be provided for is clearly flexible and falls to be assessed on the facts of each case. It is not limited to subsistence level. Nor, although maintenance is by definition the provision of income rather than capital, need it necessarily be provided for by way of periodical payments, for example under a trust. It will very often be more appropriate, as well as cheaper and more convenient for other beneficiaries and for executors, if income is provided by way of a lump sum from which both income and capital can be drawn over the years, for example on the Duxbury model familiar to family lawyers: see Duxbury v Duxbury (Note) [1992] Fam 62 . Lump sum orders are expressly provided for by section 2(1)(b). There may be other cases appropriate for lump sums; the provision of a vehicle to enable the Claimant to get to work might be one example and, as will be seen, the present case affords another. As Browne-Wilkinson J envisaged (obiter) in In re Dennis (above) there is no reason why the provision of housing should not be maintenance in some cases; families have for generations provided for the maintenance of relatives, and indeed for others such as former employees, by housing them. But it is necessary to remember that the statutory power is to provide for maintenance, not to confer capital on the Claimant. Munby J rightly made this point clear in In re Myers [2005] WTLR 851 at paras 89–90 and 99–101. He ordered, from a very large estate, provision which included housing, but he did so by way not of an outright capital sum but of a life interest in a trust fund together with power of advancement designed to cater for the possibility of care expenses in advanced old age. If housing is provided by way of maintenance, it is likely more often to be provided by such a life interest rather than by a capital sum."

Iltott does not fundamentally change the law in this area or the test to be applied to adult child claims. What can be taken from *Iltott* is simply that:

- Adult child claims are limited to maintenance;

- What is reasonable financial provision is an objective and central test;
- In judging reasonableness of financial provision reasonableness of decision could be a factor;
- Maintenance is a broad and flexible concept;
- Maintenance can be provision to meet everyday living expenses;
- Maintenance can be a lump sum or house;
- Maintenance is not just enough to “get by”;
- Maintenance probably includes holidays;
- The claim is not a legacy for the deserving or about achieving fairness;
- A “moral” claim by an adult child is not a prerequisite for a claim to be successful;
- Each case falls to be assessed on its individual facts and it is perfectly permissible for different judges to come to different non-appealable decisions.

***Nahjec v Fowles* [2017] EW Misc 11 CC**

This is the first adult child claim to follow *lott*. In *Nahjec* the deceased father made no provision for his adult daughter. The relevant facts were:

- (i) The estate was worth £265,710.
- (ii) The Deceased and daughter had been estranged. She had ‘a father who was stubborn and intransigent. That was not her fault.’
- (iii) The daughter was not very well off. She had income of £1,240 and outgoings of just over £1,500. She had debts of £6,600. She had inherited £16,000 on her mother’s death.
- (iv) The defendant to the claim was also not very well off.
- (v) The daughter was in good health (despite a health scare) and aspired to become a veterinary nurse. The daughter was 31 and had a full working life ahead of her.

HH Judge Saffman awarded the daughter a lump sum of £30,000 (amounting to 11.3% of the net estate).

This case demonstrates the flexibility of the court and also demonstrates that post-*lott* independent adults, even when estranged from their parent, are still capable of being successful. This is so even if a claimant is relatively young with full working capacity.

***Gold v Curtis* [2005] WLTR 673**

In *Gold* the Claimant son was excluded from his mother’s estate as he had ‘had enough’ and ‘been estranged’.

The Claimant was 55 with outgoings which exceeded his income and responsibility for providing care to an adult daughter with a mental health condition. The court considered the s.3 criteria but appeared to give weight to the fact that:

- The deceased was very domineering;
- That there had been a reconciliation;
- That the daughter would be dependant for life;
- That the Defendant was in a comparably stronger position.

The Claimant was awarded £250,000 (£220,000 to supplement income and £30,000 to replace capital items) from a net estate of £870,000.

Re Myers [2005] WTLR 851

In *Myers*, a claim was brought by the adult daughter against the substantial estate. The Claimant suffered with mental fragility and had attempted suicide. The Claimant claimed that she required support to buy a flat, equip it, and pay off debts. The court awarded £275,000 to purchase a flat and £241,500 to equip it, pay off debts and provide a living allowance. The court considered that the Claimant had been hampered by her mental fragility and that the deceased could have shown his displeasure by treating her less favourably rather than entirely excluding her.

PARTIES TO THE CLAIM

If you make a claim under the 1975 Act, then effectively you are altering the inheritance that is due. As such, all beneficiaries must be defendants to the claim. It is important to note that the estate does not pay the legal fees on behalf of you or the beneficiaries. As such, if the beneficiaries fight the case to court and do not win, then they cannot recover their costs and will have to pay personally.

The executors or administrators of the estate are also named as defendants, but they should adopt a neutral position and must not take sides. Their role is simply to provide information relevant to the dispute, such as estate accounts. If the executors take sides, then their costs cannot be recovered from the estate.

TIME AND COST

The law requires all 1975 Act cases to be issued at court within six months from the Grant of Probate or Letters of Administration. If you miss this deadline, the court will have to give you permission to hear the case.

The time it takes to actually resolve 1975 Act cases and the costs involved vary significantly. On average, if matters are settled out of court this normally takes six months. Court proceedings can take over a year on average.

Regarding costs, this is hard to predict as much depends on the complexities of the case and the personalities of those involved. Details of costs will be provided to you on the beginning of the case and regular updates will be provided as matters progress.

OUR APPROACH

Each law firm approaches litigation and resolution of disputes differently. Our approach is

unlike most firms. Our team contains specialist lawyers that handle many Inheritance Act claims. Our experience shows that these cases are best handled sensitively with a resolution reached in private. In most cases, it is more productive to adopt a conciliatory approach and resolve the issues without the adversarial process of court proceedings, especially given that these disputes involve family matters.

The benefit our approach is that:

- You achieve a settlement without the risk of litigation;
- Claims are resolved more quickly;
- Matters are kept private and confidential;
- It reduces your legal costs.

We achieve the above through a process called mediation. Once your case is set out in correspondence, we offer a meeting with the other side and an independent third person (the mediator) to exchange offers with a view to settling the claim. This approach is very effective and around 80-90% of cases settle at mediation. As mediation is voluntary, you are in complete control over the settlement of your case and you can create solutions which are not open to the courts when deciding cases.

If matters do not settle, then court proceedings are the only feasible alternative. Our team specialise in these disputes and as such we are well placed to advise you on the merits, likely results at court and the costs and risks of court proceedings.

SUMMARY

Inheritance Act claims allows Adult Children to seek more provision from an estate. These claims provide a useful alternative to challenging the validity of a Will as will disputes are costly, time consuming and difficult cases to argue.