5 Stone Buildings

# Adult Child Claims under the Inheritance Act 1975

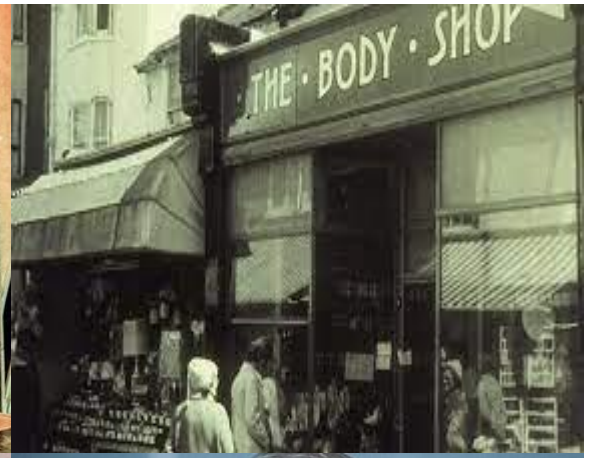
Elis Gomer and Hugh Cumber

18 July 2024
www.5sblaw.com

# Introduction

- 1975 Act came into force on 1 April 1976; represented an update to the Inheritance (Family Provision) Act 1938.

- Meant that all children were eligible applicants for reasonable financial provision.





# Historical context (i)

- 1938 Act restricted claims for family provision by adult children to unmarried daughters or adult son or married daughter who by reason of some mental or physical disability were incapable of maintaining themselves. Law Commission recommended changing this. Possible tests involving 'actual dependency' or 'special circumstances' were rejected so as to avoid fettering the Court's discretion.

- It was thought that the court would police the limits of claims by adult children, and the underlying assumption behind this decision was that claims by adults who were capable of supporting themselves (and thus were not dependent on the deceased) were bound to fail.

- Envisaged at the time that the adult children who applied would broadly mirror those who could bring a claim under the 1938 Act, and the changes enacted were to remove gender inequality and allow for the anomalous situations not covered by the 1938 Act, e.g. where an adult child has sacrificed a great deal to care for an elderly or infirm parent.

# Historical context (ii)

- Not the intention of Parliament or the purpose of the 1975 Act to impinge upon testamentary freedom by obliging testators to provide for their children; this would be to introduce 'forced heirship' by the back door. Nor was the Act intended to make adult child claims more likely to succeed.

- Proposals still heavily opposed – given that the Law Commission envisaged that adult children could only rarely succeed, it was argued that it was wrong for persons whose applications would only rarely, if ever, succeed should have a right to apply.

- In the event, the Act was passed with no restriction on eligibility for any child, with the courts being left to decide whether a notionally eligible child applicant should in fact succeeds in their claim for provision.

# Early cases

- *Re Coventry* [1980] Ch 461, per Oliver J: *"In order to enable the court to interfere with and reform those dispositions it must, in my judgment, be shown, not that the deceased acted unreasonably, but that, looked at objectively, his disposition or lack of disposition produces an unreasonable result."*

- *"It cannot be enough to say 'here is a son of the deceased; he is in necessitous circumstances; there is property of the deceased which could be made available to assist him but which is not available if the deceased's dispositions stand; therefore those dispositions do not make reasonable provision for the applicant.' There must, as it seems to me, be established some sort of moral claim by the applicant to be maintained by the deceased or at the expense of his estate beyond the mere fact of a blood relationship, some reason why it can be said that, in the circumstances, it is unreasonable that no or no greater provision was in fact made."*

# A moral claim?

- Much debate about the meaning of 'a moral claim' in the authorities. Arguably an unhelpful term (morality being an inherently subjective concept). See *Re Hancock* (1998) 2 FLR 346, where the Court of Appeal emphasised that there was no additional threshold that had to be negotiated by an adult child claimant to show that he/she had a moral claim although *"it may be difficult for a child who is able to earn their own living to show that reasonable financial provision has not been made for them without some special circumstances such as a moral obligation".*

- Lord Hughes in *Ilott v The Blue Cross* [2017] UKSC 17: *"There is no requirement for a moral claim as a sine qua non for all applications under the 1975 Act, and Oliver J did not impose one. He meant no more, but no less, than that, in the case of a claimant adult son well capable of living independently, something more than the qualifying relationship is needed to found a claim, and that in the case before him the additional something could only be a moral claim. That will be true of a number of cases."*

# What could amount to a 'moral claim'?

- Cases where special factors justifying provision have included the following:
  - Cases where the applicant suffers a mental or physical disability (see e.g. *Re Wood* [1982] LS Gaz R 774, though the nature and extent of the disability will be important);
  - Cases where the child has worked in a family business and has expected to inherit (see e.g. *Re Campbell* [1983] NI 10 where a son had lived on his father's farm since birth and worked on the farm all his adult life; *Re Creeney* [1983] NI 397 where a son went to work in the family shop for low wages and who received the business (which ceased trading); *Re Abram* [1996] 1 FLR 379 where the child worked in the deceased's business for very low wages);
  - A failed mutual will agreement under which husband and wife agreed to provide for their son on the death of the survivor, and the survivor made a new will in favour of his second wife (*Re Goodchild* [1996] 1 WLR 694);
  - claims by children who have made personal sacrifice to care for an aged parent (see e.g. *Re Jennings* [1994] Ch 301, albeit with the qualification that the purpose of the Act is not to reward meritorious conduct).

# Ilott v Mitson (i)

- Claimant: Heather Ilott (46 at trial), only daughter of Melita Jackson (the deceased). Deceased left entire estate (£485,000) to charity on the grounds that she was estranged from Heather. Heather and her family lived in straitened circumstances, in rented accommodation which was almost entirely financed by the public purse, through housing and council tax benefit.

- Deceased and Heather had been estranged since Heather left home to live with and then marry her husband, of whom her mother disapproved, three attempts at reconciliation having failed. Deceased had left a letter explaining why she had disinherited her daughter, which the district judge did not find wholly "founded on truth".

- Heather sought reasonable provision from the estate. Ambitious case on quantum which was of almost no assistance to the judge (seeking more than the entire estate at times). DJ Million heard case over 2 days (29 and 30 May 2007) and awarded a lump sum of £50,000.

# Ilott v Mitson (ii)

- Both sides appealed: charities arguing that Heather should have got nothing, and Heather arguing she should have got more. Charities' appeal dealt with first:
  - 1 December 2009: Family Division (Eleanor King J): [2010] 1 FLR 1613. Appeal allowed; claim dismissed; no basis for displacing Deceased's testamentary wishes.
  - 31 March 2011: Court of Appeal (Sir Nicholas Wall P; Arden and Black LJJ): [2011] EWCA Civ 346. Appeal (out of time) allowed; DJ Million's decision reinstated; trial judge's decision was open to him on the facts; properly directed on the law; no basis for Family Division to intervene. Remitted to Family Division to hear Heather's quantum appeal.
- Heather's appeal:
  - 3 March 2014: Family Division (Parker J): [2014] EWHC 542 (Fam). Appeal dismissed; DJ Million's trial decision upheld.
  - 27 July 2015: Court of Appeal (Arden and Ryder LJJ; Sir Colin Rimer) [2015] EWCA Civ 797. Appeal allowed: DJ Million's award set aside and substituted with (1) £143,000 to Heather to buy the house she lived in and (2) an option to receive a further £20,000 in one or more instalments (so as to preserve state benefits).

# Ilott v The Blue Cross and ors

- Charities appealed to the Supreme Court, largely because of two aspects of the Court of Appeal's decision: (a) *"For the Charities, any money from this estate is a windfall"*; charities should not be considered to have a competing financial need; and (b) it was wrong of DJ Million to take the relationship into account. The Court of Appeal's approach to the impact of state benefits was also criticised.

- Supreme Court's decision handed down on 15 March 2017 (about two months shy of ten years after the first decision): [2017] UKSC 17. It should be noted that the appeal route that the case had taken meant that the Supreme Court was limited to considering quantum only; it is at least arguable, from reading the decision, that 'no provision at all' was seen by some on the panel as the correct result.

- Result: Appeal allowed – DJ Million's decision reinstated.

# Ilott v The Blue Cross and ors

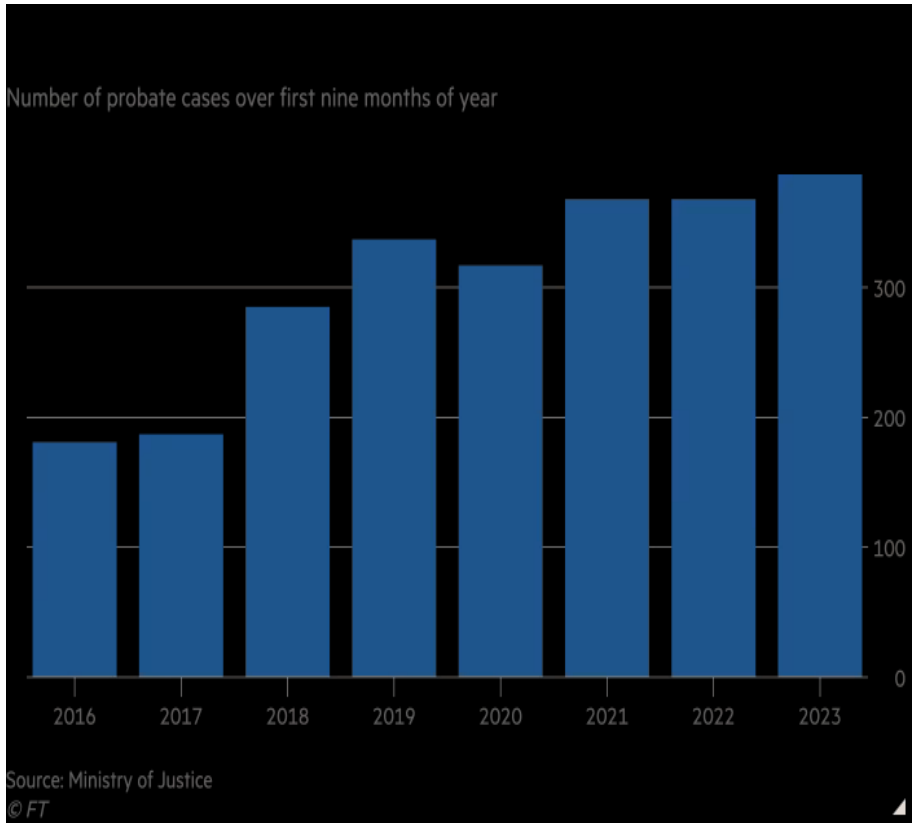
- Lord Hughes emphasised the importance of the testator's wishes: *"It is not the case that once there is a qualified claimant and a demonstrated need for maintenance, the testator's wishes cease to be of any weight. They may of course be overridden, but they are part of the circumstances of the case and fall to be assessed in the round together with all other relevant factors."*

- The Court of Appeal had erred in finding that the claim of the charities was on a par with Heather's claim. *"…it was not based on personal need, but charities depend heavily on testamentary bequests for their work, which is by definition of public benefit and in many cases will be for demonstrably humanitarian purposes. More fundamentally, these charities were the chosen beneficiaries of the deceased. They did not have to justify a claim on the basis of need under the 1975 Act, as Mrs Ilott necessarily had to do. The observation that, because the charities had no needs to plead, they were not prejudiced by an increased award to Mrs Ilott is, with great respect, also erroneous; their benefit was reduced by any such award. That may be the right outcome in a particular case, but it cannot be ignored that an award under the Act is at the expense of those whom the testator intended to benefit."*

# The present climate

- Much higher number of claims under the Act being made as part of a significant increase in estates disputes generally (claims having doubled since 2016 and on the rise before then; in excess of 10,000 caveats entered a year). Anecdotally, adult child claims are a large percentage of these claims.

- Several reasons for this: more complex families, bigger estates (and thus more to fight over); availability of CFA funding and a greater awareness of the possibility of such claims generally (*"Ilott says I get a house"*, even though it says nothing of the sort), coupled with the tendency to have expected an inheritance to fund e.g. house purchase or provision in retirement.



# The typical claimant

- Whilst the legislative intent of the Act in respect of adult children was to deal with edge cases and not to disturb the orthodoxy that an adult child who is not financially dependent should not expect financial provision has not changed, the typical claimant will usually not be financially dependent but will rely on a combination of the following:
  - Necessitous financial circumstances, usually amounting to a financial deficit on a monthly basis and/or debts. Usually, though not always, the claimant will not own their own home.
  - Some level of physical or mental impairment. It is a rare claimant these days who does not cite anxiety and depression as a relevant factor under section 3. It is unclear to what extent this should be treated as a disability (and this will to a large extent be context specific) though it appears likely that the key question will be whether the claimant is capable of working to some extent or at all.
  - In most cases, long-term estrangement or a poor relationship with the deceased. This is often argued to be a neutral factor or contended to be an unreasonable reason not to make provision for the claimant. In many cases, this will get very close to an argument that failing to make provision is inherently unfair (in other words, that the claimant should receive something from their parent's estate notwithstanding the estrangement).

# "Something more"?

- So how do we tell the good claims from the bad? I would suggest that the following points should be borne in mind:
  - The starting point is that a claimant must make out a substantial case that the wishes of the deceased should be amended. No provision can be reasonable provision in the circumstances of the case; in most cases, it will be.
  - A financial need is not sufficient by itself, however acute it is, in circumstances where the claimant was not dependent on the deceased; the will must have produced an unreasonable result, usually because the reasoning underpinning it does not make sense on its own terms.
  - Estrangement is usually a key factor and it has become part of the idiom of these cases, after *Ilott*, for a claimant to assert that their *"relationship with the deceased was good"* or that, if it is conceded that it was not, *"the estrangement was not my fault"*. In most cases the reason for it is irrelevant. A common sense approach to the fact of estrangement indicates its real relevance in most cases: the simple fact that, in most circumstances where two individuals are estranged, nobody would expect one individual to provide for the other.

# Assessing claims

- Given how rare contested trials under the Act are – and how this can, in turn, make it difficult to form 'reference points' in relation to claims – it is easy to forget that adult children have historically fared poorly under the Act:
  - In most cases involving long-term estrangement, the claimant fails. *Ilott* and the factually similar case of *Nahajec* are outliers; the key point is that the estrangement arose from an ultimatum by the parent, which was found to be unreasonable, and they very much turn on their own facts – *Wellesley, Mohammed, Batstone* and *Shapton* are far more typical 'estrangement' cases.
  - It is worth remembering that the eventual decision in *Ilott* – after no fewer than five appeals – was that the original District Judge's decision should not be interfered with. That decision is somewhat rough and ready in places but was plainly one he was entitled to reach. Provided a thorough assessment of the section 3 factors has been carried out, an award (or the lack of one) will be very difficult to appeal successfully (see *Fennessy*).

# Assessing claims (ii)

- Continued:
  - An income deficit should not be taken at face value; there will often be double counting and the figures will often not match up to the underlying documents.
  - Contemporary litigation under the Act generally involves claimant firms setting out a very bullish case on quantum. It is simply not credible to argue that a claimant should end up significantly better off for having been omitted from a will than he would have been if he had been included; making out a claim under section 3 of the Act does not 'open the door' for a much larger claim.
  - 'Maintenance' does not mean *"everything that might conceivably be useful"*; most awards under the Act are carefully targeted (see appendix). Most awards even among successful claimants are a fraction of what was sought. It is proper when assessing maintenance to have regard to actual support provided by the Deceased to the Applicant during the Deceased's lifetime.
  - Care should be taken not to make an arbitrary lump sum award when the claimant has not made out a case for provision – but, on the other hand, there is nothing inherently wrong with a lump sum if it has been arrived at in a principled way, and the argument by defendants that this would not be 'maintenance' is misplaced.

5 Stone Buildings

# Thank you

Elis Gomer and Hugh Cumber

18 July 2024

www.5sblaw.com