

Supreme Court judgment in *Ilott v The Blue Cross and others*

March 2017

The Supreme Court has today handed down the much anticipated judgment in *Ilott v Blue Cross & others* and has unanimously allowed the charities' appeal on the question of reasonable provision for an estranged adult child in *Ilott v Mitson*.

This is the first time that a claim under the Inheritance (Provision for Family and Dependants) Act 1975 has been considered by the UK's highest Court and provides guidance to both practitioners and testators on what constitutes 'reasonable financial provision' within the meaning of the Act. The decision sees an end to a decade of litigation of the claim of Heather Ilott, the estranged daughter of Melita Jackson.

In effect, the Supreme Court was asked to decide which of the previous decisions represented the correct award and application of the legislation. Was District Judge Million right to award the applicant £50,000 or was the Court of Appeal correct to make housing provision for Mrs Ilott, with an additional fund of £20,000?

Background

Ms Ilott brought a claim under the Act for financial provision from her mother's estate. Ms Ilott had an annual income of less than £5,000 and was reliant on benefits for her daily living needs. Her mother's estate, which was to be divided between a number of charities, was valued at £486,000.

At first instance, District Judge Million awarded Ms Ilott £50,000. Ms Ilott appealed against this award on the basis that it was too low and deprived her of means-tested benefits. The Court of Appeal overturned Judge Million's decision on two counts: that he had failed to explain how he had limited the award to £50,000, in order to reflect Mrs Ilott's financial circumstances and her expectation of receiving any award from her mother's estate; and that he had failed to properly understand the effect of the award on Ms Ilott's entitlement to benefits.

Lady Justice Arden found that the only reasonable financial provision to be made was to award Ms Ilott an amount which allowed her to purchase her home (£143,000) and, in order that her state benefits would not be affected, a sum to meet her family's immediate financial needs (assessed at £20,000).

Supreme Court's Decision

A seven-strong Supreme Court has unanimously allowed the charities' appeal and reinstated the original award of £50,000 made by the District Judge at trial. Lord Hughes (with whom all six other justices agree) found that District Judge Million had made neither of the errors identified by the Court of Appeal. In short, the Court of Appeal had no proper basis for interfering with the judgment made by the District Judge, and the District Judge had been entitled to adopt a 'broad brush' approach.

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The Supreme Court emphasised the importance of limiting awards to adult children to "maintenance", observing that this was an important and deliberate legislative choice and that the purpose of the Act is not to provide legacies to an applicant. The Supreme Court made clear that reasonable provision for 'maintenance' does not extend to 'any or everything which it would be desirable for the applicant to have', nor is it limited to pure 'subsistence'; it implies provision for the everyday living expenses of the applicant. An applicant's needs will not necessarily be the measure of an award under the Act.

The Supreme Court found that it was not appropriate to fix a hypothetical standard of provision and then adjust it for the various factors set out in section 3 of the Act (to which the court are to have regard when assessing reasonable financial provision). The Act requires an assessment by the judge and this assessment might be "coloured" by any of the section 3 factors. In this particular case, the lengthy estrangement and relationship between mother and daughter carried significant weight.

What it means for Guernsey

- The section 3 provisions contained within the Act are set out in identical terms within section 6 of The Inheritance (Guernsey) Law, 2011. We are yet to see an inheritance claim proceed to trial in Guernsey, however, the Supreme Court's decision will frame all future cases that come before the Royal Court
- The outcome reinforces the idea that we are all free to choose who should inherit our estates when we die and is undoubtedly good news for Charities protecting legacy income however there still remains concern as to whether judges at the highest level can limit our testamentary freedom to pass assets to our chosen heirs

Generally speaking, the decision is likely to be welcomed by those who felt there was a need to rebalance the law in favour of the wishes of the testator.

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