



## Provisions for Family and Dependants

In this country, we enjoy what is known as testamentary freedom which means we can do whatever we want in our Wills, but the safety-net for people who should be provided for is the Inheritance (Provision for Family and Dependants) Act 1975.

The following summarises a recent case.

The estranged adult daughter of a testator who specifically excluded her from her Will has been allowed to bring a claim against her deceased mother's estate.

Melita Jackson died in 2004 leaving a Will that divided her residuary estate, totalling £486,000, between three charities. Her daughter, Heather, was not included in the Will and a detailed letter of wishes to the executors laid out clear reasons why she wasn't provided for.

The letter described how her daughter left home at 17 and asked her mother to have no contact with her, so Melita stated that she felt she had no moral or financial obligation to her daughter and that her daughter was not financially dependent on her.

She went further to express her wish that her executors should defend any claim brought by her daughter against her estate due to the 'distress and worry' that she had suffered due to her daughter's actions during her lifetime.

Heather, aged 50, lives mainly on state benefits and has five children. She brought a claim in the County Court and was awarded £50,000. The judge stated that in assessing whether the provision was 'reasonable', taking into account the circumstances of the case, the factors had produced an unreasonable result.

Heather appealed to the High Court as she thought that £50,000 was not a high enough award. In the High Court her appeal was dismissed and her original award overturned based on the cross-appeal by the residuary charities that the judge had erred in law.

She then brought a challenge in the Court Of Appeal where much debate occurred about the original judgement and subsequent overruling.

Justice Arden referred to the Inheritance (Provision for Family and Dependants) Act 1975 and said that the key point of section 2(1) is 'reasonable financial provision'. She stated that its application must take into account the circumstances of the case and current social conditions and values.

The previous age limit applied by the Act for children had been removed and she referred to this in her judgement which included: 'the removal of these restrictions makes it clear that Parliament intended that an adult child should be able to bring a claim even if it was possible for him or her to subsist without making a claim on the estate'.

Heather's appeal succeeded and her case for appeal on quantum will be heard in the High Court, by a different judge, later in the year. Potentially her original award of £50,000 can be increased by the subsequent judgement.

The solicitor acting for the charities, The Blue Cross, the RSPB and the RSPCA, said that the ruling lacked clarity and practical guidance. He described the decision as a 'landmark in scrapping previous guidance but providing nothing in its place'.

Although his thoughts might be shared by practitioners who will be asking what more a testator can do to protect their estate from future claims, it is vital that clients are properly advised about how their Wills should be structured if they are thinking of not providing for someone that could have a potential claim.

Please contact us for further information.

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