



Guidance note on the 2015 decision in *Ilott v Mitson*

1. Factual background

- 1.1. Melita Jackson (“D”) died at age of 70 leaving a net estate worth £486,000.
- 1.2. D’s Will left a pecuniary legacy of £5,000 and residue to 3 charities (“the charities”).
- 1.3. The Will made no provision for D’s only child, Heather Ilott. Heather (“C”) sought further provision from D’s estate pursuant to the Inheritance (Provision for Family and Dependents) Act 1975 (“the Act”).
- 1.4. C left home at 17. Therefore she made her life entirely independently of D for 26 years. She did not even invite D to her wedding. C had no expectation of anything from D’s estate.
- 1.5. C has 5 children and lives “in modest circumstances” (little income save for state benefits). C has not had paid employment since her eldest son was born (around 30 years ago). At the time of the first hearing, C’s youngest child was 10. Her husband used to work as a delivery driver but has a back problem and now only works part-time as a support actor.
- 1.6. C may be able to obtain part-time work (certainly once her youngest child leaves school). However, this is not a foregone conclusion as she cannot drive and lives in a rural location.
- 1.7. C has no physical or mental incapacity.
- 1.8. D left two side letters explaining why she was not leaving a gift to C in her Will.

2. Chronology of Claim

- 2.1. **First instance decision: District Judge in Family Division [2007] (unreported)**
 - 2.1.1. The District Judge concluded that the combination of C’s financial circumstances, the size of the estate, the absence of other demands on the estate and the unreasonable conduct of D towards C outweighed other factors such as C’s own conduct towards D, such that reasonable financial provision had not been made for C out of D’s estate.
 - 2.1.2. C was awarded £50,000, representing a capitalisation of the sum which the District Judge found it would be reasonable in all the circumstances for C to receive from D’s estate for her maintenance.
 - 2.1.3. Thanks to a pre-trial offer they made, the District Judge ordered that the charities who had resisted the claim could recover their trial costs out of C’s £50,000 award, before C received it.
- 2.2. **First appeal: Eleanor King J [2009] EWHC 3114 (Fam)**
 - 2.2.1. C appealed against the size of the District Judge’s award, seeking more than £50,000. The charities then cross-appealed on the ground that the District Judge had failed properly to apply the law and that, had he done so, he would have found it reasonable for D to make no provision for C.
 - 2.2.2. Eleanor King J heard only the charities’ cross-appeal and found in their favour. She ruled that the District Judge had (i) erred in law and (ii) erred in his balancing of the various factors under Section 3 of the Act and thus had been “plainly wrong” to make an award to C. C was awarded nothing. Eleanor King J described the charities’ approach as “pragmatic”.
 - 2.2.3. C’s appeal was never heard.



- 2.3. Court of Appeal Judgment [2011] EWCA Civ 346**
- 2.3.1. C applied for and was given permission to appeal Eleanor King J's decision, despite bringing her application 9 months late. This second appeal therefore went to the Court of Appeal.
 - 2.3.2. The Court of Appeal did not agree with Eleanor King J that the District Judge had erred in law. It found that he had asked himself the correct question.
 - 2.3.3. The Court of Appeal also did not agree that the District Judge had been plainly wrong to make an award to C.
 - 2.3.4. The Court of Appeal therefore overturned Eleanor King J's ruling and re-instated the District Judge's original order (i.e. an award of £50,000 less the charities' trial costs). In the process, the Court of Appeal reviewed the existing case law relating to claims by adult children, providing guidance that is the leading modern authority on such claims.
 - 2.3.5. The Court of Appeal directed that C's original appeal against the quantum of the District Judge's decision should be heard by a High Court Judge other than Eleanor King J.
- 2.4. Remitted appeal (re size of award) [2014] EWHC 542**
- 2.4.1. C's original appeal against the size of the District Judge's award was heard by Parker J, an experienced Family Judge.
 - 2.4.2. Parker J rejected C's argument that she should have been awarded enough to buy her Housing Association home (at a discount), on the basis that providing this would render meaningless the District Judge's determination that C's lack of expectation tempered.
 - 2.4.3. C's appeal failed as Parker J did not think that the District Judge, "doing the best that he could with the material with which he was presented", could be said to be wrong. C's award stayed at £50,000.
- 2.5. Second Court of Appeal hearing (re size of award) [2015] EQCA Civ 797**
- 2.5.1. C applied for permission to make a second appeal against the size of the award made to her in 2007. Despite applying late, permission was granted.
 - 2.5.2. The Court of Appeal allowed C's appeal, ruling that the District Judge's 2007 Judgment was "vitiating by legal errors" so must be set aside.
 - 2.5.3. The Court of Appeal went on to carry out a fresh analysis of the section 3 factors and concluded that C's award should be increased from £50,000 to £143,000 with which to buy her home plus a further £20,000 to add a small supplement to her income. This will arguably make less difference than the original award to C's ability to maintain herself, as she was already absolutely entitled to live in her home and if she ever uses the property to raise money, she will risk the loss of her benefits.
 - 2.5.4. This award was expressly intended to provide C with additional funds without disturbing her benefits entitlement (although query whether it is in fact effective in that respect).

3. What the 2015 Court of Appeal judgment is NOT authority for

- 3.1. A child has a right to provision from his/her late parent's estate.
- 3.2. A child with necessitous financial circumstances will obtain provision from his/her late parent's estate.
- 3.3. Any claim against an estate with charity beneficiaries will now succeed.



4. What the 2015 Court of Appeal judgment CAN be seen as authority for (when calculating the size of the award a successful applicant should receive)

- 4.1. An appeal court can choose whether to carry out its analysis using the facts as they were when the original trial took place (here, in 2007) or as at the date of the appeal (here, 2015). If the Court of Appeal's approach is correct, it is even possible to use a mixture of facts from both dates.
- 4.2. If a Judge does not know what effect his proposed award will have on the applicant's benefits, he should ask the parties to research the point and provide answers. If he does not do so, his Judgment will be flawed.
- 4.3. In order to be within the 1975 Act, an award must be for the applicant's future maintenance, not for an immediate, major "spending spree".
- 4.4. For charities, any money received from a testator's estate can be regarded as a "windfall" for the purposes of the Act.
- 4.5. The fact that the applicant is an adult and has been living independently of the deceased for some years is still a powerful factor against them that must be taken into account. As a minimum, it means that the court "is not concerned to provide her with an income that would fully support her needs."
- 4.6. An award that achieves nothing more than replacing state benefits the applicant would otherwise be entitled to receive accomplishes nothing and is arguably improper.
- 4.7. The fact that the applicant did not expect to inherit anything (e.g. if the testator told them they would not) carries little weight for the purposes of the 1975 Act.
- 4.8. A long estrangement need not result in a reduced award under the Act, as responsibility for estrangement is "difficult to quantify".
- 4.9. The Court need not pay particular regard to the testator's wishes when considering how to exercise its powers under the 1975 Act.
- 4.10. An applicant who relies on State Benefits should be accorded a similar degree of sympathy as an applicant who is elderly or disabled.
- 4.11. The provision of housing can amount to a contribution towards maintenance needs as the owner can use the property to raise money in the future to supplement her income, through an equity release scheme.



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