



Ilott v Blue Cross & Ors - Factsheet

Wilsons acted for the successful appellants in Ilott v Blue Cross & Ors, the first time the Inheritance (Provision for Family and Dependents) Act 1975 has been considered at the highest level.

James Aspden, a Partner with Wilsons, comments:

"The Supreme Court's unanimous ruling confirms, very clearly, that we are in general free to choose who will inherit our property when we die. It clears up a number of points where the law had become uncertain and will enable people drafting wills to give clearer advice to their clients. The most important message it sends is that your wishes matter and that if you choose to record those wishes in a will, they will be listened to."

The Supreme Court's decision represents the leading authority on needs-based claims under the Inheritance Act. The ruling clears up a number of uncertainties and misunderstandings about the Act and gives guidance designed to help us to know where we stand when dealing with Inheritance Act claims.

What does the Supreme Court's ruling mean?

The deceased's wishes matter

"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..." (Para 47)

Need may not be enough, on its own, to justify an award

"[Need]... is a necessary but not a sufficient condition for an order. Need, plus the relevant relationship to qualify the claimant, is not always enough." (Para 19)

The court's power is limited to providing for maintenance

"[T]he statutory power is to provide for maintenance, not to confer capital on the claimant." (Para 15)

'Maintenance' means the day-to-day cost of living at a reasonable and appropriate standard

"The concept of maintenance is no doubt broad, but... it cannot extend to any or everything which it would be desirable for the claimant to have. It must import provision to meet the everyday expenses of living." (Para 14)

A lump sum can be an appropriate way to meet expenses over a period of time

"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." (Para 15)



An award can provide a lump sum to buy/replace everyday things

“[Items] needed to make the household function properly can perfectly sensibly fit within the concept of maintenance... replacement of essential household items is not... an indulgence; rather it is the maintenance of daily living.” (Para 41)

An award of a house usually will not be appropriate

“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.” (Para 15)

If an award is made, it does not have to cover all of the applicant’s needs

“Nor, if the conclusion is that reasonable financial provision has not been made, are needs necessarily the measure of the order which ought to be made.” (Para 22)

A long estrangement may justify a small award

“[T]he provision which it is reasonable to make [may], because of the distance of the relationship, or perhaps because of the conduct of one or other of the parties, be to meet only part of the needs of the claimant.” (Para 22)

Behaviour is relevant, but only within reason

“[C]are must be taken to avoid making awards under the 1975 Act primarily rewards for good behaviour on the part of the claimant or penalties for bad on the part of the deceased.” (Para 47)

A decision to leave money to charities should be respected

“[C]harities 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.” (Para 46)

This note is intended only to provide a summary of the key legal points that can be taken from the Supreme Court's decision in Ilott. Every case is different and there is no substitute for proper legal advice.



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