**Wills and Testamentary Freedom**

The Inheritance (Provision for Family and Dependants) Act 1975 restricted testamentary freedom by giving children and other classes of people the right to make claims from an estate for ‘reasonable financial provision’. Similar provisions were brought into force in Northern Ireland in the Inheritance (Provision for Family and Dependents) (NI) Order 1979. The recent case of *Ilott v Mitson* (2015) EWCA Civ 797 has tightened these constraints further in England and Wales. While this is not a case from Northern Ireland, the points arising are still persuasive in a Northern Irish context.

In the *Ilott* case, Mrs Ilott had been estranged from her mother, Mrs Jackson, for 30 years ever since she left home to marry at the age of 17. Several attempts at reconciliation between the two had failed.

Upon her death, Mrs Jackson’s estate totalled £484,000.00, of which Mrs Ilott was initially to receive £50,000.00. The first Court of Appeal hearing felt that this figure was unreasonable provision for an adult child. After remittance to the High Court and upon further appeal the figure was increased to £164,000.00, which was intended to cover the daughter’s living expenses without affecting her state benefits. With this sum Mrs Ilott was able to buy a house and was still left with a small sum which would provide a regular income.

It was the desire of the Court of Appeal that the deceased’s testamentary wishes were balanced with the court’s own statutory power to ensure reasonable financial provision for maintenance. It was of the view that Mrs Jackson had acted in “an unreasonable capricious and harsh way towards her only child”. Although Mrs Ilott was an adult and had lived independently for several years, it was held that this was outweighed by the basic level of her own resources.

There are several points to take from this case. If a testator is leaving a substantial gift to charity, the reason for choosing the particular charity or cause should be recorded in case there are any future challenges (Mrs Jackson had no particular connection to any of the three charities she named in her will). If there are any family estrangements the testator should note detailed reasons for their decision to limit any provision for those who would expect to benefit from their estate. If appropriate they should detail any attempts to make contact and the response received (in the *Ilott* case, the court was of the view that there was nothing to support the view that Mrs Ilott wanted to be estranged from her mother). In addition, if there are unequal gifts to children of equal relationship the reasons for this should be noted, such as if a gift is for the special needs of one child. Other evidence confirming the reasons why the testator drafted their will in a particular way, such as supporting statements from witnesses, may also be of benefit in case of future challenges.

It is often possible that understanding the reasoning of the deceased when making their will can be enough to stop a beneficiary from making a claim. However, it should be remembered that claims cannot always be prevented. Taking steps to obtain full written explanations signed by the deceased can help ensure that the deceased’s wishes are later upheld by the court in the face of a challenge.

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