Beware of issuing 'hopeless' Inheritance claims in expectation of settlement

Ever since the well-known case of *Ilott v The Blue Cross and others [2017]* where an adult child was awarded £50,000 from her mother's estate (notwithstanding their estrangement), practitioners are regularly approached by adult children in order to claim from an estranged relative's inheritance. There is often reference to a "10% rule" based on what was awarded in the *Ilott.*

And because Solicitors are offering to act on a "no win no fee basis" and defendants are caving in, due to advice on the uncertainties of litigation and costs risk, it appears that more and more adults are searching for a way to make good on their parent's estrangement or disinheritance.

However, Clients should be made aware of the fact that the *Ilott* Judgment is one end of a broad spectrum, as the recent case of *Shapton v Seviour [2020]* illustrates.

Carly Shapton brought a claim pursuant to the Inheritance (Provision for Family and Dependants) Act 1975 against her father's estate. Shapton was 32 and her father, who passed away in 2016, had left his entire estate to his wife Maria (Shapton's step-mother).

Sadly, Maria was diagnosed with Motor Neurone Disease in 2017 and by the time of the trial, was wheelchair bound. Although, even prior to the diagnosis, Maria was a low wage NHS worker. The entire estate was worth approximately £268,000, most of which was the family home.

It appears that both Colin and Maria Seviour had planned to leave their estate equally to their four children on the second death as between them. However, following Colin's death and Maria's estrangement with Colin's children, Maria made a new will whereby her step children (Carly and her brother) were excluded.

Carly thought that it was 'unreasonable' to not receive any of her father's estate given their 'incredibly close relationship'.

Carly claimed that she needed £75,000 of the deceased estate so that she could buy a larger home in order for her children to have a bedroom of their own and for her partner to have office space.

Mrs Shapton further sought to suggest that she and her husband were of limited financial means, highlighting that she had no savings or assets, large credit card debts, and were incurring loan, credit card and bank charges of around £450 per month.

Maria defended the claim by asserting that Mrs Shapton enjoyed very luxurious holidays and had a combined income that was more than adequate to meet their day to day needs.

The Judgment

Not only did Judge Lloyd dismiss Carly's claim, he ordered for Carly to pay the legal costs for the case

"The estate is a small one and some 80% is tied up in Maria's house, where she has lived for many years and wishes to remain for as long as possible She will need every penny to live out her remaining years in dignity and comfort'.

In relation to the Claimant's status…

'she and her husband have a high combined income, which is more than adequate to meet their day to day needs'.

In relation to Carly's debt and desire for a larger house, Judge Lloyd commented,

'I was left with the clearest picture that Carly and her husband live a comfortable life', 'the high figure they pay for loans, credit cards and bank charges is self-inflicted', and, 'yes, they feel they need a larger house, but that was never on the cards in this application'.

'The will is quite clear: Maria, having survived her husband, takes the estate outright. I understand that Maria has changed her will. This is her prerogative'.

The Inheritance (Provision for Family and Dependents) Act 1975

The Act is designed to allow a court to make provision for a claimant who is in financial need or there is some other reason which would make it unconscionable for provision not to be made for them.

The Act is <u>not</u> designed to compensate disappointed beneficiaries but only those persons who have a financial need. This recent judgment mirrors developing judicial comment in the recent will validity cases

of *Rea v Rea [2015]* and *Barnaby v Johnson [2019]* where the unsuccessful disappointed beneficiaries have been criticised by the judiciary for pursuing clearly unmeritorious claims.

But it is clearly attractive for CFA practitioners and claimants alike; a steady stream of such cases has grown in the post-Ilott years because of the attraction of achieving certainty by settling for a relatively modest sum such as 10% of the estate.

In the case of Nahajec v Fowle [2017] EW Misc 11, an adult child successfully brought a claim for reasonable financial provision from her father's modest estate (valued at £265,000), again in circumstances where there had been a fall out and estrangement between the Deceased and the Claimant. The Claimant was awarded the sum of £30,000 to support her through education to train as a veterinary nurse, even though she had not expected her father to pay for her education during his lifetime.

Whether or not an adult child will succeed in their claim turns on what facts the court considers to be of paramount importance in a particular case, and the weight given to each of the Section 3 factors listed in the Inheritance (Provision for Family and Dependants) Act 1975. It is therefore not always clear to determine whether a case is "hopeless", or whether it carries a greater degree of litigation risk.

The decision also illustrates is that very many of these cases should not be settled.

Defendants' advisors should remain robust as tempting as it may be to advise a settlement of an unmeritorious claim due to risk. These are often cases where no award at all would be the right outcome; as this present judgment states: 'No provision may be reasonable provision.'

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The main Section 3 factors, which are at the heart of all 1975 Act claims, comprise:

1. the financial resources and financial needs which the applicant has or is likely to have in the

foreseeable future;

2. the financial resources and financial needs which any other applicant for an order under section 2 of the 1975 Act has or is likely to have in the foreseeable future;
3. the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
4. any obligations and responsibilities which the deceased had towards any applicant for an order under the section 2 of the 1975 Act or towards any beneficiary of the estate of the deceased;
5. the size and nature of the net estate of the deceased;
6. any physical or mental disability of any applicant for an order under section 2 of the 1975 Act or any beneficiary of the estate of the deceased; and
7. any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

Whilst the section 3 factors allow the current financial circumstances of a Claimant to be taken into consideration together with their likely needs in the future, there is also the clear need to carefully take into consideration the needs of other potential beneficiaries of the Estate, including claims of the main beneficiary.

Importantly, the claims of financial hardship of the claimant were clearly not accepted by Deputy Master Lloyd in this case, who commented that Carly's suggestions that they could only afford a holiday if it was put on a credit card as being "disingenuous at best" given it was apparently clear that Mrs Shapton and her husband had enjoyed "several very luxurious holidays with [her husband's] parents, that they had "had the use of a speed boat" and her grandmother had assisted them with the deposit on their house.
Unfortunately, as practitioners we often come across disgruntled disinherited beneficiaries; but as we know there are two sides to every story. Practitioners should be asking the hard questions of their clients in order to understand the true financial needs of the claimant and the potential defendant before advising on pursuing such claims.

Personally, I have found that the relatively recent directions for Early Neutral Evaluation or FDR often succeed where conventional advice and even mediation has failed, and I would urge practitioners to request directions for such hearings if they are not directed as a matter of course.

Beware of issuing 'hopeless' Inheritance claims in expectation of settlement Continued...

We are used to very little in the way of useful precedent since the 1975 Act came into force; each time a new case comes to court we hope that there will be a decisive definition of a certain term or a more concrete judgment that we can use to advise clients.

Whilst there remains a long way to go, it is useful to remember the almost barbed comments of Deputy Master Lloyd that the claim was *"absolutely hopeless"*.

Further, in determining the issue of costs when he ordered that Carly Shapton bear the costs of the proceedings, Deputy Master Lloyd commented that the claim *"never stood a reasonable prospect of success"*.

Priya Tromans

St Ives Chambers

3rd July 2020