

NEWS IN BRIEF

Drafting wills after *Ilott v Mitson*

Theoretical testamentary freedom was significantly restricted 40 years ago when the Inheritance (Provision for Family and Dependants) Act 1975 gave children and some others rights to make claims for 'reasonable financial provision' from an estate.

The Court of Appeal's second decision in *Ilott v Mitson* (2015) EWCA Civ 797 has caused some consternation as it seemed, to many solicitors, an unreasonable extension of the constraints.

The case of Mrs Ilott seemed a poor one. Estranged from her mother, the deceased Mrs Jackson, for 30 years, with attempts at reconciliation failing, Ilott was a daughter who had apparently chosen to elope, leaving home to marry at 17 and living an alternative lifestyle.

Ilott was initially given only £50k from an estate of £484k. The first Court of Appeal hearing decided it was unreasonable provision for the adult child, and remitted the case to the High Court, which then upheld the figure. On appeal, that was increased to £164k, so that the daughter's living expenses were relieved without affecting the state benefits on which she relied. This sum enabled Ilott to buy her home, with a small sum to provide income.

The Court of Appeal sought to balance the deceased's testamentary wishes with its statutory power to ensure reasonable financial provision was made for maintenance only. The basic level of the daughter's resources outweighed the importance that would normally be attached to the fact that, as an adult child, she'd lived independently for many years. The court decided Jackson had acted in 'an unreasonable, capricious and harsh way towards her only child'.

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