

5 Quick hits from *Ilott v Mitson* [2017] UKSC 17

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10 years after the first instance judgment of the district judge, and five reported judgments later, the case of *Ilott v Mitson* today came to a conclusion as the Supreme Court handed down judgment on the appeal of the defendant charities against the July 2015 decision of the Court of Appeal ([2015] EWCA Civ 797) to award Mrs Heather Ilott £163,000 from her late mother's estate on her claim under *Inheritance (Provision for Family and Dependents) Act 1975*. Her mother had left her entire estate worth £486,000 to three charities to which she had no connection during her lifetime.

The Supreme Court unanimously allowed the appeal and re-instated the original award of DJ Million of £50,000. Lady Hale provides an additional judgment in support. The district judge did not fail to take into account Mrs Ilott's tax position nor did he give inadequate reasons for his decision.

This appeal is the first time either the 1975 Act or its predecessors has been considered by the highest court in England and Wales. More detailed analysis of the judgment will follow from many practitioners and commentators but here are five quick takeaway points from a review of this morning's judgment.

1. Sadly, authoritative guidance on claims by adult children remains lacking. As Lady Hale states at [58] and [66], the state of the present law is "unsatisfactory... giving as it does no guidance as to the factors to be taken into account in deciding whether an adult child is deserving or undeserving of reasonable maintenance."
2. The court's task in the 1975 Act is to decide whether the outcome of the will is unreasonable and if so, what provision would be reasonable. That is a value-judgment [24] which is difficult to challenge on appeal and it is very

broad indeed. DJ Million's first instance decision was not made in error. But had his decision been to either reject the claim entirely [35], or make provision for housing whether identical to the Court of Appeal [65(2)] or by way of life interest [44], then those approaches would also have been legitimate. It remains difficult to advise clients on the merits of a claim when the range of outcomes is so broad, so long as the value-judgement is conducted properly.

3. "Housing is undoubtedly one of the first things that anyone needs for her maintenance" – Lady Hale at [65(2)]. But the main judgment at [15] re-emphasises that maintenance "is by definition the provision of income rather than capital" and that the power under the Act is "to provide for maintenance, not to confer capital on the claimant." So, "If housing is provided by way of maintenance, it is likely more often to be provided by...a life interest rather than by a capital sum" (see also [44] and [65(2)]). How this will work in practice, particularly where relations between the parties is poor or the value of the Estate or property is such that the costs and effort of administering a life interest trust are not negligible, remains to be seen.
4. The list of items which "could properly be described as necessities for daily living" and therefore fall within the meaning of maintenance include "essential white goods, basic carpeting, floor covering and curtains, the replacement of worn out and broken beds", repairs to a house already owned, a reliable car and a holiday. Items which are needed to make the household function properly can perfectly sensibly fit within the concept of maintenance. [40]. Claimants will wish to ensure their schedules of needs and resources properly provide for such items even if they might be considered a "wish list".
5. "Benefits are a part of the resources of the claimant and is relevant to consider whether they will continue to be received" [45] In this case, DJ Million did so on the information before him. Although the award of a £50,000 lump sum exceeded the means tested ceiling for Housing and Council Tax Benefits, "how the Claimant might use the award...was up to her". The Court assumed that it would be spent on necessary items and therefore fall below the limit. Advisors of claimants will continue to have to consider the benefits position and advise appropriately; advisors of defendants are not going to be able to avoid an award being made even if it simply replaces what the claimant obtains through the public purse.

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