# 1975 Act Claims: Amnir v Bala [2023] EWHC 1054 (Ch) – is the net estate enough?

## Introduction

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**Natasha Dzameh reviews the decision of the High Court in a matter involving competing claims where the net estate was insufficient.**

The number of claims brought, or intimated, pursuant to the Inheritance (Provision for Family and Dependants) Act 1975 ("the 1975 Act") appear to be ever-increasing. There are likely to be numerous reasons for this, ranging from the current economic climate to the amount of media attention given to such claims in recent years.

It is not uncommon to find that the value of the net estate is insufficient to meet the needs of an applicant. This may be due to the size of the estate alone or other factors, such as the existence of competing claims.

The case of Amnir v Bala [2023] EWHC 1054 serves as a lesson to remind Lawyers that, where it is accepted that the applicants have not received reasonable financial provision, they should provide the Court with options and continue evaluating the position as a matter progresses and costs increase.

Master Brightwell aptly stated at the outset of his judgment:

"*What follows below may be seen as an exhortation to parties embarking on litigation under the Inheritance (Provision for Family and Dependants) Act 1975 ("the 1975 Act") to consider in advance the potentially devastating consequences of fighting points of marginal relevance at inordinate cost with the effect of depleting a significant estate so that none of the competing claims on it can be fully met.*"

## Amnir v Bala

### Facts

The Deceased died on 20 March 2019 at the age of 53. The Executors of his estate consisted of one of his sons, Fahid Bala, and one of his daughters, who was a protected party referred to as MN in the litigation. A Grant of Probate was made to them on 21 August 2019.

There were four particular clauses of note in the Deceased's Will. Clause 5 attempted to gift the Residence Nil Rate Band sum, which failed as no residence was devised directly to his direct descendants. Clauses 7 and 8 contained what Master Brightwell referred to as "a tortuously worded Discretionary Trust" of the part of the estate which benefited from Agricultural or Business Property Relief. However, it appeared no property fell within that definition. Clause 9 left the remainder of the estate, which was effectively the whole estate, on Trust. Shama, his most recent wife, would receive the income for life, albeit this was subject to overriding powers in favour of the beneficiaries. The beneficiaries were Shama, Sanowar (the Deceased's mother), his children, and remoter descendants and any persons added by way of a power of addition.

The Will was also accompanied by a letter of wishes setting out that the Trust Fund should be split into 100 equal parts, specifying how many parts should be given to specific individuals. The individual who would receive the most according to this was Fahid, with 40 parts.

Two claims were brought pursuant to the 1975 Act. The first was a claim by Shama and her children pursuant to sections 1(1)(a) and (c) respectively. Shama married the Deceased in an Islamic law ceremony in 2005 and in the UK pursuant to English law in 2012. She had not worked since 2013 when her first child was born. She resided at the matrimonial home, which was an asset of the estate. She had three sons with the Deceased – one born in 2013 and twins born in 2017. Unfortunately, one of the twins had severe health complications due to a premature birth, and died during the proceedings on 25 November 2021.

The second claim was brought by MN, the Deceased's adult daughter born to his first wife. MN resided with Shelina, the Deceased's second wife, and had also resided with the Deceased and Shama for some time. Shelina received the property in which they resided upon the death of the Deceased, due to her and the Deceased being beneficial joint tenants. No application had been made under section 9(1) of the 1975 Act.

MN suffered from significant physical and mental difficulties such that she was unable to live independently. An expert was instructed to consider MN's physical health, mental capacity, and learning difficulties, inclusive of any support she required and her ability to live independently. The expert determined MN did not need 24-hour residential support and could live independently but the care package required in order to do so would cost around £67,340 per year.

The principal assets in the estate consisted of a £1.1m property comprised of commercial units and a three-bedroom flat, the £850,000 matrimonial home (which was subject to a c.£206,000 mortgage), and a further three ground-floor units valued at £350,000. The value of the estate prior to costs was thought to be c.£1.09-2.45 million, depending on a number of matters including a six-figure debt claim, the accuracy of property valuations, etc.

Shama sought around £750,000 for housing, £10,000 for moving costs, £40,000 for a car, and an income but gave no indication as to what this should be. Shama's children sought in excess of £360,000, which consisted of annual costs multiplied by the number of years they had left in education, plus their university costs. No explanation was provided on their behalf as to how their needs would be met in addition to those of Shama in light of the size of the estate. MN sought for the Will to be varied to provide her with 50% of the net estate, and the other 50% to be split between Shama and her children. Shama, her children, and MN had the benefit of legal representation. Arman, one of the Deceased's sons, attended the trial in person and simply asked to be considered if there was anything left in the estate after the claims had been satisfied.

The represented parties agreed at trial that their costs should be paid out of the estate before the court considered the appropriate award. This was caveated somewhat in that Shama considered a reduction should be made to MN's costs. The parties assumed the sum paid from the estate in costs would be treated as an award in favour of the relevant party and read back to the date of death in accordance with section 19(1) of the 1975 Act – i.e. it would be a testamentary disposition to said party for tax purposes. The suggestion was made that Shama be ordered to pay all of the parties' costs and that her award be such as would enable her to do so.

## Judicial consideration of the criteria and costs

Master Brightwell considered Shama's marriage to the Deceased to be approaching a long marriage. She had made a full contribution to the marriage, working prior to the children and looking after them when they were born, as well as caring for the Deceased during his terminal illness. In applying the deemed divorce test, Master Brightwell was satisfied that she would have been awarded significantly more than 50% if the children were to live with her.

He was sceptical about how Shama presented in evidence in relation to her income and expenditure. She alleged her income to be £1,214.06 per month and outgoings to be £4,250 per month, rising to £5,061. This included figures such as £900 per child per year for school uniforms when the children attended state primary schools. Master Brightwell noted that even limiting her expenditure to around half her projected future expenditure would be around £30,000 per year, which was a more modest existence

than she had experienced whilst the Deceased was alive. It was noted that she may remarry, she had some earning capacity, she was financially literate, and her English was good. Nonetheless, she did suffer with depression.

Shama's two children would be dependent upon her during their childhood and had only £250 in a child ISA. Whilst Shama had claimed the Deceased wanted them to be privately educated, there was no evidence his other children were so educated. This was an aspiration at most.

MN's most obvious financial need was for housing, with Shelina having made it clear she could not continue to reside with her. She was unlikely to be made homeless due to state resources. She had a need for occasional holidays with family, some transport, clothing, and some ability to fund carers. Her only income was PIP and she had no future earning capacity. There was limited evidence as to the needs of other beneficiaries.

Shama and her two children resided with the Deceased prior to his death and he had a responsibility to make reasonable financial provision for them. He also had a moral obligation to make reasonable financial provision for MN, having provided her with accommodation into adulthood and having not wanted her to reside with Shelina. There was no moral obligation to pay for post-secondary education for his younger sons or his grandson. Arman had funded his university course by way of loans.

Fahid had used MN as his co-Executor when she lacked capacity. He had also pursued a subsidiary claim in which he dishonestly claimed that two properties within the estate belonged to him. Comments made by Deputy Master Marsh, the judge who dealt with the subsidiary claim, regarding Fahid as a witness were noted. His conduct meant he had exhausted his right to be considered, albeit this was academic in light of the size of the estate.

Shama's costs were £282,000, with those of the children being £102,000 and MN's costs being £319,000. Master Brightwell noted he had been given little assistance on the legal principles said to justify the costs being paid as proposed. He had been directed to Hirachand v Hirachand [2021] EWCA Civ 1498, which dealt with recovery of success fees, but noted that King LJ in that case made reference to the satisfaction of debt being a legal liability that fell within the scope of financial need. The evidence in the current case did not reveal whether the parties had a debt for the full amount of their legal costs.

He stated "*It is a persistent myth that the costs of the parties, or possibly the costs of the claimant(s), are invariably paid out of the estate in a 1975 Act claim. That may have been the practice of the courts in the earlier days of the 1975 Act and its predecessor, but the practice was deprecated in In re Fullard (Deceased) [1982] Fam 42*". 1975 Act claims follow the general costs rules in civil litigation. The difficulty with this in the present case was twofold: If an award was made without directing that the parties' costs be paid out of the estate, the estate may be exhausted in doing so especially if the reality of its value is less than has been estimated. Alternatively, the sums left in the estate could be insufficient to meet the parties' costs whether by way of an order that costs were to be paid by the estate or that an indemnity would be given for those costs not recovered by way of any inter partes costs order.

Arman was not an active party nor had there been an active defence of the claim by anyone on behalf of the estate after the date of the case management hearing. Consequently, there would likely be no defendant to seek a cost order from. The claimants could seek orders for costs against one another following judgment, which could well be justified where settlement offers have been made. However, in the circumstances, the claimants had all accepted the Will did not make reasonable financial provision for any other claimant except insofar as MN's position in respect of the two children was concerned. She effectively considered their maintenance needs met by Shama's claim. An award to Shama would at least partly benefit them. Master Brightwell also considered the fact that each claimant had agreed the other claimants' costs be paid out of the estate and that their claims would exhaust the net estate. For those reasons, in the circumstances, he considered it appropriate for the claimants' costs to be paid out of the estate first after testamentary expenses and administration costs.

Master Brightwell determined the likely range for the net estate to be £1.6m to £1.7m but that it could be considerably less. The only evidence in respect of litigation costs was Shama being indebted to the sum of £55,000. Using the figure of £562,000 to represent the costs likely to be recovered, £1.05m-£1.15m was left in the net estate. Unsurprisingly, Master Brightwell was not persuaded that the Court's discretion extended to the artificial creation of a new debt owed by Shama to justify a greater award to her so as to address costs in the manner that had been submitted.

## Award

Master Brightwell noted "*none of the claimant parties fully recognised the limitations placed upon their claims and none of the parties adopted a realistic position. Once costs have been paid, the estate will not be large enough to meet the claimed financial needs of either Shama and her children, or of MN, let alone both of them.*"

The deceased had failed to make reasonable financial provision for Shama, the two children, and MN in circumstances where it was not objectively reasonable to do so. The most significant factual dispute had been where MN lived in the period from 2015 to 2019. Master Brightwell noted this was only of peripheral relevance to the strength of the moral claim and the determination of what provision was possible and reasonable by the time the size of the net estate was taken into account.

The provision of a home for Shama and her two children was the first priority. It would not be as much as £750,000 given the likely size of the net estate. The estate could not fund accommodation for MN and the carers that would be necessary for that to be viable. Her argument (that provision for her that left her dependent on the goodwill of Shelina, Fahid, and her litigation friend was not reasonable provision) failed to engage with this fact. Either MN would remain in the care of her family or be provided for by the state. Some provision should be made for her so as to allow improvement in her care, mobility, and continence, and potentially provide her with the confidence to undertake some activities outside the home.

The sum of £550,000 was awarded to Shama as being the minimum sum reasonably required to accommodate her and her two children, including moving to said accommodation. The next £300,000 of the net estate was to be divided equally between Shama and MN. Any amount over £850,000 in the net estate would be payable to Shama. This would only provide for limited expenditure and did not provide a capital cushion. MN's award would be held on a Trust compliant with section 89 of the Inheritance Tax Act 1984 with a deputy to be appointed and to act as Trustee. This meant it would not affect her entitlement to PIP or means-tested benefits. No provision was made for the two children separate from Shama. Provision for them had been made in the award to Shama, who had parental responsibility for them. There was no suggestion that Shama would not seek to meet their needs.

The judge noted he had not forgotten the principle of testamentary freedom, but the estate was not sufficient to meet all the reasonable financial needs of the claimants. He concluded that it would not be correct to leave their needs unsatisfied in order to allow provision for other beneficiaries who were not claimants.

## Conclusion

Lawyers should be very careful not to view their client's position in isolation where there are competing claims. Where it is accepted that reasonable financial provision has not been made for more than one individual, the Court will not be impressed with a failure to address how the various needs may be satisfied.

A costs-benefit analysis should be undertaken regularly. It is unwise to expend significant sums of money to resolve factual disputes which have little, if any, bearing on the likely award. Further, it is not the case that all parties' costs will be paid by the estate on a 1975 Act claim regardless of the outcome, albeit this may be more likely where there is a lack of an active defence. It is notable in this case that £703,000 of costs were incurred on a matter which was not actively defended following the case management hearing. This serves as a stark reminder of just how expensive litigation can be and is a useful example to cite to clients who may be opposed to mediation at the outset.