

Adult child claims financial provision under Inheritance Act (Nahajec v Fowle)

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Private Client analysis: Following the outcome of Nahajec v Fowle (heard in the County Court at Leeds), Adam Draper, a partner at Shoosmiths, advises that the successful claim provides a useful analysis of the law and approach to maintenance-based claims in the wake of the Supreme Court case of Ilott v The Blue Cross and others.

Original news

Nahajec v Fowle (in his capacity as executor of the estate of Nahajec deceased and as beneficiary of the estate) [2017] Lexis Citation 270, [2017] All ER (D) 42 (Aug)

The claimant's father's will, which had left the whole of his estate to the defendant, had not made reasonable financial provision for the claimant. Having taken all of the matters in [section 3](#) of the Inheritance (Provision for Family and Dependents) Act 1975 ([I\(PFD\)A 1975](#)) into account, the County Court held that the final provision which would be reasonable for the claimant to receive for her maintenance duly capitalised was £30,000.

What was the background to this case?

The deceased left his estate to his friend Stephen Fowle and appointed him as executor. The deceased left a note accompanying his will emphasising the lack of contact with his three children and the fact that he considered they were '...sufficiently independent of means not to require any provision from me'.

The claimant was the deceased's 31-year-old daughter—the only child of his second marriage. The claimant's claim was for reasonable financial provision for her maintenance.

What were the key issues?

As set out in *Ilott v The Blue Cross and others* [2017] UKSC 17, [2017] All ER (D) 96 (Mar) the judge was obliged to consider all the criteria of [I\(PFD\)A 1975, s 3](#), and arrive at an objective value judgment having weighed all the relevant evidence. The key issues were as follows.

- the estate was worth £265,710
- the deceased and his daughter had been estranged—in District Judge Saffman's opinion she had '...a father who was stubborn and intransigent. That was not her fault'
- the daughter was struggling financially—she had an income of £1,240 and outgoings of just over £1,500, she had debts of £6,600 and had inherited £16,000 on her mother's death
- the deceased's friend (ie the defendant) was also not very well off
- the daughter, who was in good health (despite a recent health scare), aspired to be a veterinary nurse and had her full working life ahead of her. It was the defendant's submission that she had not properly exploited her earning capacity

The value judgment of the court was that 'reasonable financial provision' was a sum to clear the daughter's debts and to assist the daughter to re-train as a veterinary nurse.

How significant is Nahajec?

Nahajec is an interesting case in terms of the approach the court takes in claims under [I\(PFD\)A 1975](#) post *Ilott*.

It is arguable that *Ilott* simply re-stated the orthodox approach to [I\(PFD\)A 1975](#) claims. Each case turns on its own facts and there remains—as bemoaned by Lady Hale in the Supreme Court—a significant degree of judicial latitude and no statutory guidance as to how the s 3 criteria are applied.

Nahajec and *Ilott* are very different cases; however, it is interesting to note that the issues of estrangement and the moral claim (back on the agenda post *Ilott*) were addressed.

In respect of estrangement, the court considered that this was the fault of the deceased who had cut himself off from the family. The court also felt that the claimant, while adult and independent, did satisfy the 'moral claim' beyond merely being a qualified applicant. The court considered that maintenance was a sum appropriate to enable the claimant to clear her debts and fund retraining as a veterinary nurse.

There was no consideration in *Nahajec* of the issue of settling a sum on the claimant under the terms of a life interest (a point advocated by Lord Hughes). One assumes that the District Judge did not feel that this was appropriate given the size of the estate and the nature of the claim.

The *Nahajec* approach contrasts with that taken in *Ames v Jones* [2016] EW Misc B67 (CC). In *Ames* an adult daughter failed in her claim against her stepmother for financial provision from her father's estate. The court took the view that the daughter was capable of providing for herself. In *Ames* the defendant was the deceased's second wife and the majority of the estate was tied up in the marital home.

Nahajec, by contrast, involved a sole beneficiary who was a friend of the deceased and what (by the date of trial) was effectively a cash estate.

What are the lessons from the case? What should practitioners be mindful of when advising in this area?

Claims by adult children under [I\(PFD\)A 1975](#) remain alive post *Ilott*. The value judgment to be applied by the court and the wide discretion within [I\(PFD\)A 1975](#) means that outcomes remain unpredictable.

Practitioners need to be mindful of claims by adult children even if they are estranged. Those children who are struggling financially will arguably continue to have meritorious claims for a capital sum. This is a discussion that will writers need to have when taking instructions. Careful consideration needs to be given to all the s 3 factors and how they may apply.

Each claim is decided on its own facts and without any particular weight being given to the various s 3 factors. However, it is of interest that in *Ilott* the provision was 10.3% of the net estate, and in *Nahajec* it was 11.3%.

Adam Draper is based in the firm's Manchester office but assists clients across the UK and overseas.

He specialises in all types of trust and succession disputes. He advises high net worth and high profile individuals as well as trustees and charities. Adam has expertise in advising and representing in relation to Inheritance Act claims, disputes in relation to wills and trusts, claims against executors and trustees, proprietary estoppel and statutory wills. He also specialises in resolving contentious Court of Protection disputes—this includes disputed statutory wills and disputes involving attorneys and deputies.

Interviewed by Kate Beaumont.

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