

# Supreme Court confirms that we are free to choose who inherits our estate when we die

Date: Wednesday 15 March 2017

The Supreme Court has found unanimously in favour of the charity appellants when considering, for the first time, the scope of judges' powers under the Inheritance (Provision for Family and Dependents) Act 1975. The ruling confirms our right to choose who will inherit when we die.

Lord Hughes - sitting with the President of the Supreme Court Lord Neuberger, the Deputy President, Lady Hale, Lords Kerr, Clarke, Wilson and Sumption - gave the leading judgment, allowing the charities' appeal.

Putting to rest any doubts, Lord Hughes confirmed:

*"English law recognises the freedom of individuals to dispose of their assets by will after death in whatever manner they wish."*<sup>1</sup>

Further, noting the importance of the work done by charities in society, Lord Hughes confirmed:

*"charities depend heavily on testamentary bequests for their work, which is by definition of public benefit and in many cases will be for demonstrably humanitarian purpose. More fundamentally, these charities were the chosen beneficiaries of the deceased. They did not have to justify a claim on the basis of need under the 1975 Act, as Mrs Iltott necessarily had to do"*.<sup>2</sup>

The Supreme Court reversed the previous decision of the Court of Appeal, having considered the scope of judges' powers under the Inheritance Act. The ruling makes clear that judges should exercise great care before using those powers, underlining the importance of the deceased's wishes.

Charities rely upon income from generous legacies of the type made by Mrs Jackson to undertake their invaluable work. According to the Institute of Fundraising nearly £2 billion a year is donated to charitable causes through legacies, and without this much of their work would not be possible. This ruling has provided valuable confirmation that individuals can choose to leave money to causes they care about, and that choice will be respected.

The Supreme Court confirmed that our choice of beneficiaries should be respected and that judges should not rewrite our wills simply because they may think we should have acted differently.

## **In a joint statement, the charities said:**

"We are pleased that the Supreme Court has given welcome reassurance that - save in limited and specific circumstances - the wishes recorded in a person's will must be respected. Blue Cross, RSPCA and RSPB and the charitable sector as a whole, rely on generous gifts left in wills, without which much of their valuable work could not be done. This judgement will allow us to continue to honour the wishes of individuals who choose to remember charities in their will."

## **James Aspden, a Partner at Wilsons Solicitors who represented the three charities, said:**

"The Supreme Court's unanimous ruling confirms, very clearly, that we are in general free to choose who will inherit our property when we die. It clears up a number of points where the law had become uncertain and will enable people drafting wills to give clearer advice to their clients. The most important message it sends is that your wishes matter and that if you choose to record those wishes in a will, they will be listened to."

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<sup>1</sup> Para 1

<sup>2</sup> Para 46

## **Background to the case**

Mrs Melita Jackson's will left her entire £500,000 estate to charity and she wrote a heartfelt letter in which she explained her decision and instructed her Executors to defend any attempt by her daughter to contest it.

The Inheritance (Provision for Family and Dependants) Act 1975 allows judges to intervene to help spouses and civil partners, and where a family member or dependant is in clear need. Despite her mother's wishes, Mrs Ilott applied under the Act, for provision from the estate. The £50,000 she was originally awarded in 2007 to provide for her 'maintenance needs' was more than trebled to £163,000 by the Court of Appeal in 2015. That decision threatened the freedom of individuals to choose to whom to leave their estate and the charities were given permission to appeal to the Supreme Court.

The Supreme Court's ruling clears up a number of important, related points. It confirms that a long estrangement may justify making no award, or only a relatively small award, even to a blood relative who is in financial need. It reminds judges that their role is not to reward good behaviour by an applicant, or to punish what they regard as bad behaviour by a deceased person. It makes clear that an applicant who is entitled to state benefits will not necessarily succeed, and that those benefits will be considered as part of the applicant's financial resources.

## **Ends**

### **Notes to Editors:**

The Supreme Court decision confirms the importance of testamentary freedom in English law.

### **Summary chronology**

- Mrs Jackson died in July 2004 leaving an estate worth just under £500,000.
- Mrs Ilott made a claim under the Inheritance (Provision for Family and Dependants) Act 1975.
- District Judge Million made an award to Mrs Ilott in 2007 of £50,000 – just over 10% of the estate - by way of 'maintenance' provision under the Act.
- Mrs Ilott appealed the sum but in 2011 the Court of Appeal upheld the award.
- In 2014 the matter came before a High Court Judge again and that Judge again endorsed the award made by the High Court Judge in 2007.
- Mrs Ilott appealed to the Court of Appeal and on 27 July 2015 the Court of Appeal ruled that the award had to be increased to over £163,000 – more than treble the previous award - to provide Mrs Ilott with enough money to buy the Housing Association property where she lives and a capital sum.
- The Supreme Court heard the appeal on 12 December 2017 and delivered judgment on 15 March 2017, reversing the Court of Appeal's decision and restoring the 2007 award of £50,000.

### **Media contacts:**

Please send all media enquiries to the charities' official spokesperson for this case, James Aspden, Wilsons Solicitors LLP, 01722 427677 [james.aspden@wilsonslaw.com](mailto:james.aspden@wilsonslaw.com)

**Additional media contacts are as follows:**

Blue Cross press office, 0300 777 1950, [press@bluecross.org.uk](mailto:press@bluecross.org.uk)

RSPB press office, 01767 681 577, [pressoffice@rspb.org.uk](mailto:pressoffice@rspb.org.uk)

RSPCA press office, 0300 123 0244 [press@rspca.org.uk](mailto:press@rspca.org.uk)

**Useful passages to note from the judgment**

**Testamentary freedom**

Para 1 English law recognises the freedom of individuals to dispose of their assets by will after death in whatever manner they wish.

**The importance of making a will**

Para 47 It is not the case that once there is a qualified claimant and a demonstrated need for maintenance, the testator's wishes cease to be of any weight....

**The relevance on an award of a long estrangement**

Para 22 [T]he circumstances of the relationship between the deceased and the claimant may affect what is the just order to make.

...in other situations, the provision which it is reasonable to make will, because of the distance of the relationship, or perhaps because of the conduct of one or other of the parties, be to meet only part of the needs of the claimant.

Para 35 ...what reasonable provision would be was coloured by the nature of the relationship between mother and daughter.

**An award of a house outright will rarely be appropriate**

Para 15 If housing is provided by way of maintenance, it is likely more often to be provided by such a life interest rather than by a capital sum.

...it is necessary to remember that the statutory power is to provide for maintenance, not to confer capital on the claimant.