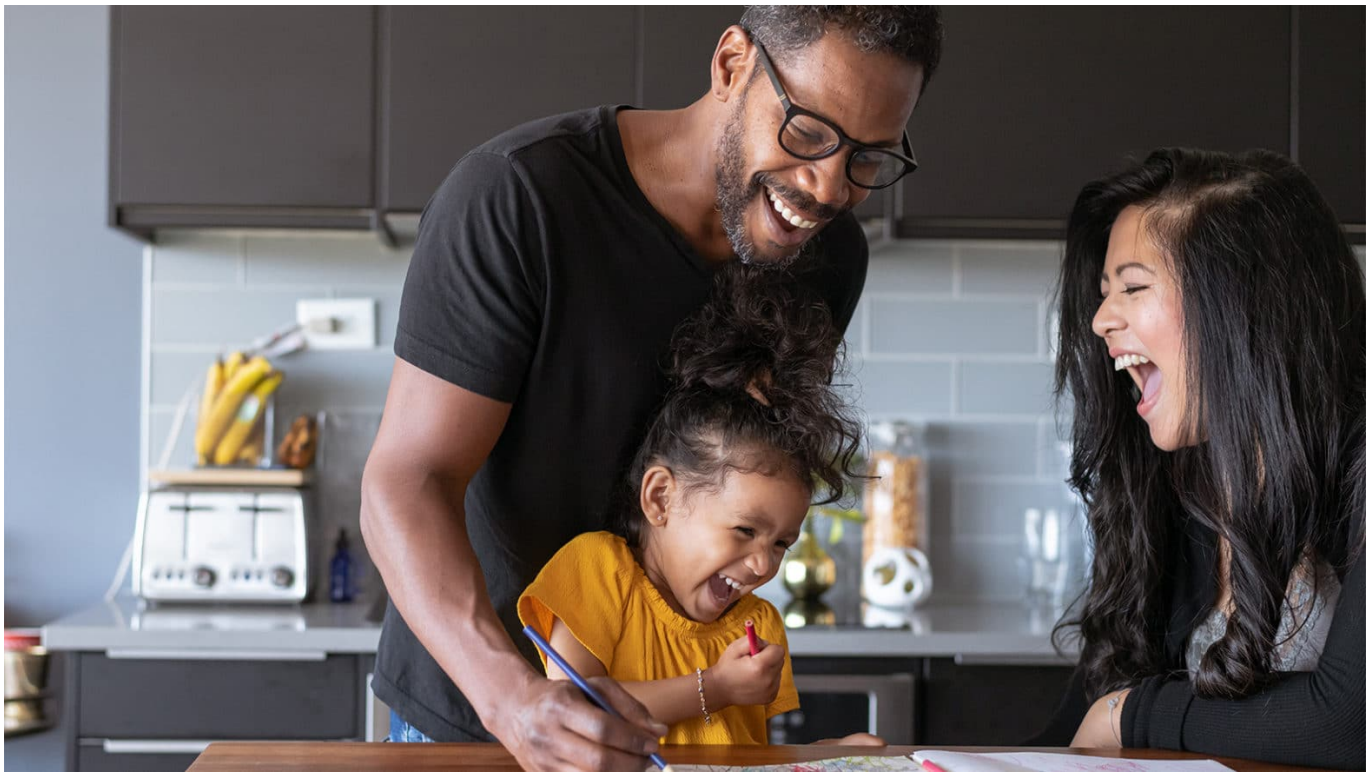
High Court case affirms Court's position on parental obligations in 1975 Act claims



R (Deceased), Re [2021] EWHC 936 (Ch) (16 April 2021)

A recent High Court case demonstrated how strong the obligation on parents is to make provision for their minor children in their Wills.

The Deceased made a Will 3 months before dying aged 41 in 2018. The main assets in his estate were shares in a family business, which were left to the original founders, his parents. His residuary estate was left to his partner, who he had lived with for the last 7 years of his life. In his Will the Deceased expressly stated that he did not think his children from his initial marriage needed any financial support. Additionally, he had not had any contact with them for over 3 years so deliberately left them out of his Will.

The Deceased's ex-wife (who had since remarried) made a claim against his estate on behalf of the two teenage children of their marriage under the Inheritance (Provision for Family and Dependents) Act 1975 (the '1975 Act').

Interestingly, following the divorce, the ex-wife had dropped a child maintenance application against the father as the original order was only for the father to pay contributions of £15 a week. This was owing to the Deceased earning a nominal income due to ill-health. Following this, the Child Support Agency advised the Deceased that he had no liability for child maintenance.

The defendants, being the Deceased's partner as executrix and his mother and father, argued that the Deceased had not provided financial support to his children for over 5 years and had not had any contact with them for 3 years prior to his death. Given the children were completely supported by their mother and their step-father,

they asserted there was no basis for expecting the Deceased to make any sort of financial provision for the children after his death.

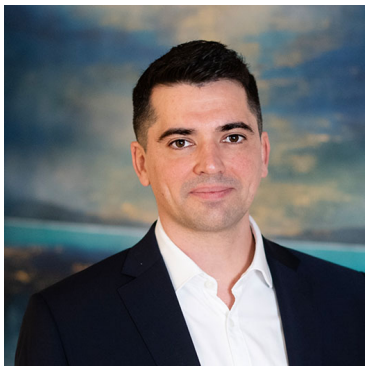
In reaching a verdict, a distinction was made between claims made under s.1 (1) (c) of the 1975 Act, which are made by a child of the Deceased, and applications made under s.1 (1) (d) of the 1975 Act, which are made by a person who was not a child of the Deceased but who had been treated by the Deceased as a child of the family.

In Master Teverson's judgement he stated that, in applications under (c), it would not be appropriate to have regard to the same considerations required in (d). Therefore, he asserted the Defendant's arguments, being that the Deceased did not provide child support and that the children were treated by their step-father as children of his family (and assumed responsibility for their maintenance), could not be relied on to negate his obligation to maintain his children. Master Teverson said the lack of contact and the assumption of responsibility by the step-father might impact the value of the claim but stated that, 'Only in the most exceptional circumstances would I expect the court to accept that the obligation to maintain had been completely severed. The concept of a clean-break is not generally applicable in respect of child maintenance.'

Master Teverson ruled in favour of the claimants, finding that the Will failed to make 'reasonable financial provision' for the Deceased's children by deliberately excluding them from benefitting from his estate.

He awarded the children two lump payments equating to 23% of the Deceased's estate to assist with home living costs, school and university fees, future housing costs, car purchases and counselling. Master Teverson also criticised the defendants for opposing the claim and for arguing there was no obligation for the Deceased to make any provision for his children.

If you have any questions on the content of this article or would like to discuss an Inheritance Act claim, please don't hesitate to contact us.



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