

## Sismey v Salandron and the potential impact on will disputes



Section 11 of the Inheritance (Provision for Family and Dependents) Act 1975 aims to limit an individual's ability to leave gifts and legacies to another person in their will as a result of a contractual agreement.

The recent case of *Sismey v Salandron* [2021] is the first time that a s.11 matter has been fully litigated in court. In it, the court ruled in favour of upholding the contractual agreement made by the testator before his death.

This blog explores the case and potential implications of the judgment.

### The facts

*Sismey* involved a testator who, as part of his formal divorce settlement, agreed to leave his property to his son.

This agreement was approved by the courts at the time. Additionally, the testator's partner at the time was also made aware of the agreement and signed a document accordingly stating she understood the agreement terms.

Upon receiving a terminal cancer diagnosis, the testator married his partner so that she could receive the benefit of his pension upon his death.

### The inheritance dispute

An issue arose because the marriage to his new wife revoked the testator's existing will and subsequently disinherited his son.



The son therefore brought a claim to enforce the divorce settlement agreement, under which he was to receive the Testator's property. This was met by a counterclaim from the Testator's wife, who brought a claim under the IPFDA 1975, citing s.11 and requesting an order that the property remain with her as part of her reasonable financial provision.

The counterclaim highlighted the need for consideration in a contractual agreement, with the wife arguing that no such consideration had been received by the Testator.

While the court deemed that an element of collusion had been involved in the divorce settlement, in the Testator's attempt to defeat future claims by his new wife, the court considered that full and valuable consideration *had* been received by the Testator.

The agreement to pass his property to his son meant that no pension sharing order would be made against his large pension, which was deemed valuable consideration.

## What does *Sismey* mean for future inheritance disputes?

Notwithstanding the fact that this case found in favour of upholding the contractual agreement, it seems to open the door to the possibility that a s.11 claim may prevail in the event any consideration provided is not deemed to be of full value.

The wider ramifications of this case could affect how solicitors involved in disputes (not limited to divorce) approach and construct settlement agreements. In addition, it brings s.11 to the forefront of solicitors' minds when considering the options available to clients in pursuing reasonable financial provision.

It will be interesting to see if the outcome of this case marks the floodgates opening for s.11 claims being fully litigated in court and, if so, whether a clear pattern emerges from judicial decision making. Moreover, while testamentary freedom and the intentions of a Testator are often prioritised in contentious probate claims, s.11 demonstrates a palpable way to curtail this if claims were to be successful.

## How we can help

At Cripps, we keep up with all new legal developments so we can provide you with the best advice. To find out if we can help resolve your inheritance dispute [please contact our inheritance disputes team](#).