



IHT

125. ATTACKS ON TESTAMENTARY FREEDOM

Many tax advisers see the will as a tax planning tool and make the reasonable assumption that the testator has full testamentary freedom, so that your client is able to leave their estate to whoever they like in a tax-efficient manner.

However, sadly nothing is ever that straightforward, as potential claims against the will must be taken into account, for example, under the Inheritance (Provisions for Family and Dependants) Act 1975, when looking at the overall IHT planning.

In July 2015 the much-publicised case of *Ilott v Mitson* [2015] EWCA Civ 797 saw the Court of Appeal decision that a 'disinherited' daughter was able to have one-third of her mother's estate, which had been left entirely to animal charities under the mother's will. The decision considered that the estranged (only) daughter of the testator, who was living on meagre finances, was entitled to make a claim for reasonable financial provision. This was despite the fact that as an adult child the daughter had lived independently of her mother for some years.

This case is now being taken to the Supreme Court, by the animal charities to whom the mother left her entire estate. It will be interesting to see if the Court of Appeal's decision is upheld.

What *Ilott v Mitson* does show is that IHT planning through wills is extremely complicated, not just in terms of the tax planning itself but also in considering potential claims by disgruntled family members, for example under the 1975 Act as shown by this case. In addition, consideration has to be given to other hefty subjects such as questions of testamentary capacity together with possible 'undue influence' claims. Where widows and widowers are involved, a key point to achieve

maximum IHT efficiency is the identification of any unused nil rate band. As a practical point, I consider that a register of all clients' unused nil rate bands is essential.

Further, IHT planning through lifetime transfers should be given the same respect as will drafting with regard to challenges over capacity and undue influence, especially where the potential beneficiary is closely involved in the lifetime transfer negotiations. Attendance notes of meetings about such lifetime IHT planning could be called upon at some stage as evidence with regard to possible legal claims by family members.

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