



# Court of Appeal Grants Permission to Bring Late Inheritance Claim

In an earlier [blog](#), we considered how the court had recently dealt with two applications by claimants under the Inheritance (Provision for Family & Dependents) Act 1975 to bring claims out of time.

In one case, permission to bring a late claim after 17 months was refused and, in the other, permission was granted after a staggering delay of over 25 years.

In the case where permission was refused, *Cowan v Forman* [2019], Mrs Cowan brought a claim against her late husband's estate after the 6 month limitation period had expired. The court held that that her application was unlikely to be successful and it refused permission for her to bring the claim. The court also criticised the use of a 'standstill' agreement in the case by the parties and Justice Mostyn commented: "*I was told that to agree a standstill agreement of this nature is 'common practice'. If it is indeed, practice, then I suggest that is a practice that should come to an immediate end. It is not for the parties to give away time that belongs to the court.*"

Standstill agreements are sometimes used by parties in Inheritance Act claims to agree that the defendants to the claim will not oppose the claimant issuing a claim after the 6-month limitation period has expired.

However, just as it seemed that the court was likely to take a dim view of standstill agreements and claimants not adhering to the short limitation period, the High Court then granted another widow permission to bring her Inheritance Act claim 25 years and 9 months out of time.

In *Bhusate v Patel* [2019], Mr Bhusate died in 1990 without making a will. His widow only sent a letter of claim in July 2017 and then issued court proceedings in November 2017. The court granted permission for the claim to be made out of time.

The *Cowan* decision created some uncertainty about the use of standstill agreements in Inheritance Act claims. However, as our above earlier blog explained, each Inheritance Act claim is dealt with on its own merits and the *Cowan* decision was subsequently appealed.

## Court of Appeal decision

The Court of Appeal has now granted Mrs Cowan permission to pursue her claim out of time and it also clarified

that that standstill agreements can still be used in Inheritance Act claims, provided that the parties are advised and the length and nature of the agreement is clearly recorded in writing. Lady Justice King stated:

*"I should stress however, that if parties choose the 'stand-still' route, there should be clear written agreement setting out the terms/duration of such an agreement and each of the potential parties should be included in the agreement. In the event that proceedings have, in due course to be issued, the court should be presented with a consent application for permission to be granted notwithstanding that six months has elapsed."*

## What does this mean for Inheritance Act claims?

The only way to confirm an Inheritance Act claim application is made in time is to ensure that the claim is issued within 6 months of the grant of probate.

However, both the *Bhusate* case and the recent Court of Appeal decision in *Cowan* suggest that the court will consider each case (and the use of any standstill agreement) on its own merit and it may grant permission to bring claims after the 6 month time period has expired in certain cases.

However, there is no guarantee that a standstill agreement will be accepted in every case.

If you have any concerns with regard to the limitation period in an [Inheritance Act claim](#), we can provide you with specialist legal advice. Please contact us at [online.enquiries@LA-law.com](mailto:online.enquiries@LA-law.com).