



Permission granted to bring an Inheritance Act claim after 25 years

Two recent court decisions have been grabbing the headlines in relation to the limitation period under the Inheritance Provision for Family & Dependents Act 1975 (‘the [Inheritance Act](#)’).

Under the Inheritance Act, certain relatives and financial dependants can claim ‘reasonable financial provision’ from an estate. There is a strict 6-month limitation period (from the date of the grant of probate) in which to bring the claim.

It is possible for a claimant to ask the court’s permission to bring a claim after the limitation period has expired. Such permission is only usually granted in exceptional circumstances and with good reason.

Inheritance Act claims – ‘Standstill agreements’

As a result, parties to Inheritance Act claims will sometimes enter a ‘standstill agreement’. This type of agreement is used to either extend or suspend the limitation period.

In the recent case of *Cowan v Foreman [2019]*, the court criticised the use of standstill agreements. Mrs Cowan brought a claim under the 1975 Act against her late husband’s estate after the limitation period had expired, resulting in a total delay of 13 months.

The court did not agree that Mrs Cowan’s application was likely to be successful and it refused permission for her to bring a claim out of time. Justice Mostyn also stated:

‘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. If the parties want to agree a moratorium for the purposes of negotiations, then the claim should be issued in time and then the court invited to stay the proceedings while the negotiations are pursued.’

This case called into question the use of standstill agreements in Inheritance Act claims. Yet, just as it seemed that the court was likely to take a dim view on the parties not adhering to the 6-month limitation period, the High Court then decided to grant a widow permission to bring a 1975 Act claim 25 years and 9 months out of time.

Out of time claim

In *Bhusate v Patel* [2019], Mr Bhusate died in 1990 without making a will. In July 2017 his widow sent a letter of claim and she issued proceedings in November 2017, many years after the limitation period had expired.

The court held that the claimant, Mrs Bhusate, had demonstrated compelling reasons why the court should grant her permission to bring her claim out of time. These included:

1. The merits of her claim were very strong.
2. The delay in bringing the claim was because Mrs Bhusate was “powerless to do anything”. In part, this was due to her limited education and the poor level of English, which she alleged she had in her witness statements.
3. The opposing beneficiaries obstructed the sale of the estate property in 1994 and did nothing to break the impasse for 23 years. They waited until Mrs Bhusate issued proceedings and then raised the expiry of the limitation period limitation to deprive the claimant of her entitlement.
4. If the application was refused, Mrs Bhusate would have no remedy, no benefit from the estate and would be left homeless.

To grant permission after this length of time was unprecedented and Chief Master Marsh stated that he had read the *Cowan* judgment before making his decision in *Bhusate*.

What does this mean for claims under the Inheritance Act?

- Each Inheritance Act claim is dealt with on its own merits and the 6-month limitation period still applies.
- The only way to avoid the costs and uncertainty involved in making an application to obtain the court’s permission to bring a claim, is to issue Inheritance Act proceedings within the 6-month limitation period.
- Standstill agreements are made between the parties and the court may not agree with any delay to an Inheritance Act claim being made.
- The court does not grant permission in every case to bring late Inheritance Act claims, though the *Bhusate* decision involves the longest period of delay where the court has granted such permission.

It will be interesting to see how the *Bhusate* and *Cowan* decisions are applied by the courts in future claims.

Thinking of making a claim?

If you want to pursue a claim under the Inheritance Act, it is vital to consider obtaining specialist legal advice as soon as possible. Our [Disputed Wills team](#) offers a free initial 30-minute telephone consultation if you need advice about making a claim against an estate.