Time limit for Inheritance Act claims

The Inheritance (Provision for Family and Dependants) Act 1975 ("the Inheritance Act") allows certain relatives or financial dependants to bring claims for 'reasonable financial provision' to be made to them from an estate. The limitation date for these claims is usually within 6 months of the date of the grant of probate.

If they are not issued before the limitation date, the claimant will require the court's permission to bring a claim and this is not always granted.

Inheritance Act claims where permission was refused

A recent example where permission to issue a late Inheritance Act claim was refused is the case of Sargeant v Sargeant [2018]. Mr & Mrs Sargeant were married for over 45 years when Mr Sargeant died in 2005. A grant of probate was issued in 2006 and Mr Sargeant's farming estate (worth over £3 million) was left to a discretionary trust. Mrs Sargeant, her daughter Jane and Jane's children were named as *potential* beneficiaries. This meant that the trustees of the trust would decide who from the above group would benefit from the trust and also what payments they would receive.

Planning permission was later obtained which boosted the value of some of the farmland to around £8 million. Mrs Sargeant struggled financially and a dispute arose between her and Jane, resulting in Mrs Sargeant attempting to bring an Inheritance Act claim in order to gain a larger share of Mr Sargeant's estate. However, she did not issue her claim until 2016 (some 10 years after the grant of probate was issued) and had missed the limitation date.

Mrs Sargeant's argued that permission should be granted to her because she had a good claim and the estate had not been distributed. Also, that the above increase in the value of the land was a significant change in circumstances. The court agreed that Mrs Sargeant had *"at least an arguable claim, and that if it were to succeed…it might result in a transfer of assets to her of substantial value."* However, the court disagreed that there was a good reason for her 10 year delay.

It held that Mrs Sargeant; "*took her own decision to continue to work within the arrangements provided for by the will, rather than to explore whether she had any option available to vary them, in the full knowledge of the financial difficulties she was under"* and also that she *"had maintained that decision over a very long period."*

Mrs Sargeant had also been aware that planning permission might be granted and she was therefore unable to

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justify the delay in making her claim. As a result, the court refused her permission.

Similarly, in Berger v Berger [2013], another claimant was prevented from bringing an Inheritance Act claim against her late husband's estimated £7 million estate. Mr and Mrs Berger were married for over 35 years before Mr Berger died. Mrs Berger was not left out of her late husband's will, but she claimed that the income which she received from his estate was insufficient to maintain her home and lifestyle.

Because Mrs Berger waited over 6 years after the grant of probate was issued to bring her claim, the court refused permission.

What factors will the court consider?

When deciding whether or not to grant permission the court is likely to consider:

- what is just and proper
- how promptly and in what circumstances the claim has been brought
- whether any negotiations were commenced within the time limit, or whether any delay after the expiry of the limit may be accounted for by negotiations
- whether the claimant has an arguable Inheritance Act claim if permission is granted for them to pursue the claim
- whether the estate had been distributed before a claim has been made or notified; and
- whether the claimant has any other of means redress if permission is refused

The Inheritance Act limitation date

The purpose of the limitation period is to balance the rights of those entitled under a will (or intestacy) to receive their share of an estate within a reasonable period of time with those of any potential claimants. Had Mrs Sargeant and Mrs Berger made their claims earlier, their cases may have had very different outcomes.

The clear message from the above cases is that, although someone may potentially have had a good Inheritance Act claim, timing is everything. It is therefore critical for any potential claimants under the Inheritance Act to be aware of the limitation period and also what can happen if they do not issue their claim in time.

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Our specialist team of inheritance solicitors can provide further advice about making or defending an Inheritance Act claim. Please contact us for an initial free 30-minute telephone consultation.

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