Ilott ignored - financial provision and the 1975 Act

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A judge in Cardiff has side-stepped the Supreme Court's view on appropriate housing provision in a 1975 Act claim.

In *Ilott v The Blue Cross and others* the Supreme Court said that *'if housing is to be provided by way of maintenance it is likely more often to be provided by... a life interest rather than by a capital sum.'*

However, in *Thompson v Raggett and others*, a judge has just concluded that a 79 year old cohabitee, who had conceded in cross examination that she could live in rented accommodation, should receive a cottage outright plus £160,000.

Mrs Thompson was undoubtedly deserving. She had lived with the late Mr Wynford Hodge for 42 years at his farm and caravan park. She had cared for Mr Hodge's elderly mother, maintained the home and worked without pay at the caravan park.

But relations between Mr Hodge and three of Mrs Thompson's four children were strained. When he came to make his will he left everything to two farming tenants Ms Evans and Mr Berisha. His reason for leaving Mrs Thompson nothing appears to have been that he did not want anything to fall into the hands of her children.

He justified his decision in a letter of wishes saying that Mrs Thompson would not be able to live independently once he passed away (and needed to move to a care home). In fact, an occupational therapist gave expert evidence to the effect that Mrs Thompson could live at home if one of her sons and his wife moved in to provide care.

Mr Hodge also said Mrs Thompson was financially comfortable in her own right. That was manifestly untrue; Mrs Thompson had been financially dependent on Mr Hodge from the outset of their relationship.

Introducing Mrs Thompson's son into the care package gave the judge a route to ordering outright housing provision, notwithstanding the Supreme Court's views.

There is a line of authority, pre-dating *Ilott* but nevertheless persuasive, that says where there is animosity between the claimant and those that would otherwise benefit from the estate a clean break may be more appropriate than a life interest. That is designed to avoid disputes over, for example, property maintenance during the period of the life interest.

In this case, the judge could not point to any animosity between Mrs Thompson and the beneficiaries (Ms Evans and Mr Berisha). However, he did find that Ms Evans and Mr Berisha had inherited some of Mr Hodge's mistrust of Mrs Thompson's son. This, the judge found, coupled with Mrs Thompson's wish (and need) for her son to move in with her to provide care, justified outright transfer to Mrs Thompson of one farm cottage.

In total the award amounted to £385,000 out of an estate totalling c. £1.5million.

The case is an example of a judge engaging in a degree of creative analysis to arrive at the 'right' decision. But one very unhelpful conclusion that some may draw is that bitterness and animosity are a basis for greater outright provision. That is likely to breed further litigation and could impede settlement by raising the 'price' in cases where emotions already hinder resolution.

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