

Constance McDonnell
Serle Court

**Maintenance, needs and obligations
in *Ilott v The Blue Cross & others*
[2017] UKSC 17**

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Previously.....

- Consistent approach of the Court based on:
 - *Re Coventry*
 - *Re Dennis*
- N.B. even in those cases the Court was clear that maintenance should not be defined too prescriptively
 - Goff LJ in *Coventry*: ‘*What is proper maintenance must in all cases depend upon all the facts and circumstances of the particular case being considered at the time*’

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Browne-Wilkinson J in *Dennis*:

*'... in my judgment the word 'maintenance' connotes only payments which, directly or indirectly, enable the applicant in the future **to discharge the cost of his daily living at whatever standard of living is appropriate to him.** The provision that is to be made is to meet **recurring expenses, being expenses of living of an income nature.** This does not mean that the provision need be by way of income payments. The provision can be by way of a lump sum, for example to buy a house in which the applicant can be housed, thereby relieving him pro tanto of income expenditure'*

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Previously.....

- Court had been ready to accept that maintenance meant more than '*mere subsistence*'
- Indeed, the fact that a claimant relied entirely on state benefits was regarded as being a ground for giving him more '*by doing something to alleviate the distress under which he suffers*' (Denning MR in *Millward v Shenton*, 1972)

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Lord Hughes (with whom all the other 6 JJSC agreed)

- The limitation of available relief to ‘maintenance’ was an important legislative choice, and demonstrated the significance of testamentary freedom
- *Dennis was ‘helpful’*
- However, the concept of maintenance is
 - *‘no doubt broad’*
 - *‘clearly flexible’*
 - *‘falls to be assessed on the facts of each case’*

Maintenance

- Maintenance is by definition *'the provision of income rather than capital'*
- Maintenance *'cannot extend to any or every thing which it would be desirable for the claimant to have. It must import provision to meet the everyday expenses of living'*
 - To be strictly construed: the Supreme Court agreed with the outcome in *Dennis* in which an adult son facing threat of bankruptcy was unsuccessful in his claim
 - Lord Hughes said that the claimant in *Dennis* was able to maintain himself even if bankrupt

Maintenance by lump sum: examples

- On a *Duxbury* basis
- Provision of car to enable claimant to commute to work
- Payment to enable claimant (as in this case) to purchase '*necessities for daily living*'
 - White goods, carpets, flooring, curtains, replacement of worn-out furniture
 - Provision of car to enable claimant to commute to work

Maintenance by provision of housing

- Lord Hughes: jurisdiction of Court under 1975 Act is not to confer capital, but only to provide maintenance
- Maintenance may well be provided by housing, but this
'is likely more often to be provided by .. a life interest rather than by a capital sum'
- N.B. The Supreme Court has not placed an absolute prohibition on awarding a capital sum for housing (because 'maintenance' must be tailored to the facts of the case?)

Holidays?

- Not clear whether holidays are included within 'maintenance', i.e. whether they are an everyday expense of living
- Lord Hughes (at para 40): Mrs Iltott's list of desired capital expenditure did not include
'other similar necessities such as a reliable car, nor a holiday'

Needs

- 'Need' must be judged by the standard appropriate to the circumstances, and not by subsistence levels
- Therefore, the Court has jurisdiction under the Act to improve the living standards of claimants (although also to restrict unnecessary/extravagant expenditure of others)
- By implication, a claimant's current standard of living will not dictate what relief they should get

Testamentary wishes

- Lord Hughes:

'It is not the case that once there is a qualified claimant and a demonstrated need for maintenance, the testator's wishes cease to be of any weight. They may of course be overridden, but they are part of the circumstances of the case and fall to be assessed in the round together with all other relevant factors.'

[presumably under s.3(1)(g)]

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Testamentary wishes

■ How will this be applied in practice?

- Additional hurdle for claimant in every 1975 Act case?
 - If so, are claims against intestate estates more likely to succeed?
- Will the weight to be attached to testamentary wishes depend on:
 - Reasonableness of the wishes? (see para 17)
 - How contemporaneously they were expressed?
 - Testator's knowledge at time of making the will?
 - Whether testator had indicated any intention to change his will?
 - Consistency of wishes/duration of time for which testator held same wish

Post-*Ilott* cases

- *Lewis v Warner* (Court of Appeal, 19 Dec 2017)
 - Second appeal
 - 91-year-old claimant ‘needed’ to be able to remain in the deceased’s house where he had co-habited for 20 years
 - CA did not disagree with trial judge’s assessment that he had been ‘maintained’ in this way, and that this maintenance should continue
 - Claimant was well-off, and able to re-house himself
 - Order: for property to be transferred to him for full consideration (based on expert report as to market value)

Ball v Ball [2017] EWHC 1750 (Ch) (Bristol District Registry, 2 August 2017, HHJ Paul Matthews)

- Testatrix had 11 children (3 were claimants, 8 were defendants)

- In 1991 Claimants had reported father for sexual abuse when they were children (he pleaded guilty, suspended prison sentence)

- T excluded Claimants from her will, and split £157,000 estate between other 8 children and grandsons

- No evidence initially or documentary disclosure as to financial circumstances of any party. Witnesses recalled. Claimants were 'getting by' in modest circumstances, and could all do with a lump sum to advance them in life but did not need further income for maintenance (and were generally better off than defendants)

Ball v Ball (continued)

- Abuse by the father was not authorised, instigated or encouraged by T
- T's conduct in reacting to Claimants' complaints about their father by disinheriting them did not create any kind of moral obligation to Claimants
- No other special circumstances
- Will did not fail to make reasonable financial provision for Claimants' maintenance

Nahajec v Fowle (18 July 2017, Leeds County Court, HHJ Saffman)

- T left entire £265,000 estate to friend
- T's 31-year-old daughter brought claim. Child of 2nd marriage
- Claimant worked 32 hours a week for salary, plus 10-15 unpaid hours to gain experience to become a veterinary nurse. Without debts of £6600, she would have been able to fund her outgoings on '*frugal*' existence with only modest expenditure on '*fun*' items
- T separated from C's mother when she was 11 years old and cut himself off. Brief reconciliation 2007-2009 but T cut himself off again as disapproved of C's boyfriend

Nahajec v Fowle (continued)

■ **Held:** will failed to make reasonable financial provision for C, and she was awarded £30,000

–Although C was independent adult, claim was based on ‘*something more*’ than qualifying relationship (which seems to have been that she had repeatedly tried to have relationship with T, she was not profligate, was seeking to exploit her earning capacity, had genuine ambition to improve herself by becoming a veterinary nurse)

–D had money problems too, which militated against significant bequest to C

–£30,000 would enable C to clear her debts and should enable her to improve her position by undertaking a course so as to qualify as a veterinary nurse