



In my last article I addressed the question ‘is there a time limit to pursue a claim against the validity of a will?’. In this article I look to address the same question but in relation to claims under the Inheritance (Provision for Family and Dependents) Act 1975.

In short, a time limit does apply to a claim under the 1975 Act; a claim of this kind must be issued within 6 months from the date of the grant of probate.

It is not impossible to bring a claim after 6 months but it requires an application to the court for approval to do so.

I recently explained that issuing a claim (and the subsequent process) can be a costly and time intensive process for parties. In light of this, some parties try to reach an agreement with their opponent to extend the time limit to issue the claim (or, more specifically, to agree that no party will object to issuing the claim outside of the 6 month period) while settlement discussions are taking place. This can save time and costs for all concerned, particularly if an agreement can be reached without the need for the court’s involvement.

The case of *Cowan v Foreman* considered this point and, at first instance, the judge stated that this type of agreement ‘should never in the future rank as a good reason for delay’. However, on appeal, the Court of Appeal disagreed, stating that ‘whilst the final decision always rests with the court, where there is a properly evidenced agreement to which no objection has been taken by the Executors and beneficiaries, it is unlikely that in the ordinary way, a judge would dismiss an application for an extension of time’.

If parties to a 1975 Act dispute want additional time to engage in settlement discussions in the run up to the 6 month deadline and the claimant’s position needs protecting, it is therefore open to the claimant to enter into



this type of agreement with the knowledge that, if a settlement is not reached, the court is likely to give considerable weight to the agreement when deciding whether to allow the claim to proceed 'out of time'. Nevertheless, it is still the case that in these circumstances an application to issue out of time will still need to be made, the court will consider all of the circumstances of the particular case in making its decision and there remains a risk that the court might not grant the relief sought. An alternative option in these circumstances therefore might be for the claimant to proceed with issuing their claim and for the parties to subsequently agree a stay in proceedings if the claimant wishes to avoid that risk.

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