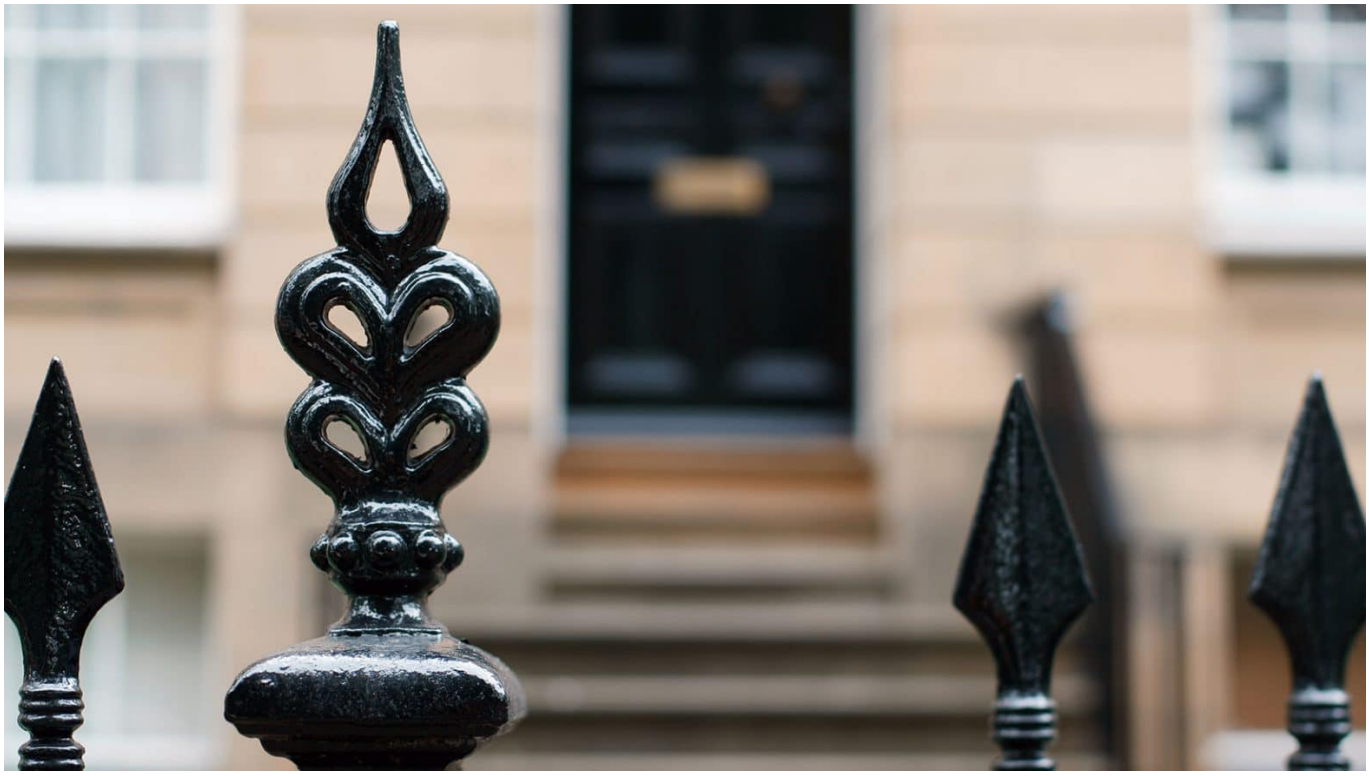
DNA testing in estate disputes



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DNA testing to ascertain parentage has become more prominent. Recently, a care worker inherited a large country estate after successfully proving through DNA testing that he was the son of an aristocrat.

The increased ability to determine parentage through genetic testing has an important impact on determining entitlement under Wills, trusts and also on claims under the Inheritance (Provision for Family and Dependants) Act 1975 (the 1975 Act).

Bringing a claim

Establishing parentage can be the difference between someone receiving or being denied an entitlement under a Will or trust. In order to pursue a claim for provision under the 1975 Act you need to establish you are eligible – i.e. within the class of eligible claimants. One eligible class is children of the deceased, regardless of legitimacy.

If parentage was disputed, a claimant would need to demonstrate their entitlement. A means of doing so is via DNA testing.

Advantages of DNA testing

DNA tests prove a biological relationship. The tests can be highly accurate, are generally quick and painless and can be done by way of a saliva sample. They are comparatively low cost, especially if compared to looking to prove parentage by, for example, the production of witness statements and other evidence.

What happens if the provision of DNA evidence is not agreed?

The two most common scenarios where someone may want evidence by way of a DNA test in an inheritance dispute is: (1) to prove they are biologically related to the deceased or (2) to prove that someone else is not biologically related to the deceased.

DNA tests during someone's lifetime

In *Nield-Moir v Freeman*, the defendant had refused to take a DNA test to establish paternity on the basis that:

- her mother and the recently deceased man she believed to be her father were married at the time of her birth;
- his name was on her birth certificate; and
- following the divorce between her mother and the deceased, he paid maintenance for her until she was 16 years old. The judge concluded the Court had jurisdiction to submit a living person to undergo a DNA test to establish parentage. The judge made an 'unless order', which *required the defendant to either submit to the DNA test or the Court would draw adverse inferences from her refusal. In Anderson v Spencer [2018] the Court was asked to decide whether DNA evidence extracted from a deceased person during his lifetime for medical purposes could be released to determine parentage. In this case, the deceased had bowel cancer, which carried a 50% risk of inherited predisposition. Therefore, there was a particular benefit of the applicant knowing his parentage as he was advised by a genetic counsellor that if the deceased was his father, he should undergo a colonoscopy every two years.*
- *The Court of Appeal agreed that the High Court had power to direct the use of post mortem DNA testing to establish parentage in circumstances where its absence would lead to an injustice and a sample was readily available after death.*
- *Posthumous DNA testing*
- The claimant's evidence was through witness statements from third parties, claiming the defendant had admitted she was not the deceased's daughter during his lifetime.

If you would like to discuss a dispute about the entitlement to an estate, please contact our specialist partner, Philip Youdan on Philip.youdan@cripps.co.uk.

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