

## England and Wales High Court rule litigation costs must be kept separate from 1975 Act awards

Synopsis: A recent case in which the England and Wales High Court have ruled that litigation costs in disputes under the Inheritance (Provision for Family and Dependents) Act 1975 should be dealt with separately from substantive awards.

Date published: 11.09.2024

This recent case ([Jassal vs Shah, 2024 EWHC 2214 Ch](#)) concerned the estate Fiaz Ali Shah (the deceased), a single man with four children, who entered a relationship with Srendarjit Kaur Jassal in 2000, and later cohabited with her. In 2006, describing Jassal as 'my wife' the deceased created a will under which he left everything to her.

However, later that year the deceased created another new will, under which he left Jassal, now described as his 'close friend' only half of the proceeds of a particular property he owned. The will also instructed that the residue of his estate was to pass to two of his children, Sajad and Shabana Shah.

The relationship and cohabitation between the couple had ended in 2012. Six years later, the deceased created yet another will which made Sajad sole beneficiary. In 2020, Fiaz Ali Shah died, leaving an estate valued at £1.4 million. Jassal, having been left nothing, launched a claim for reasonable provision under the Inheritance Act 1975 (The 1975 Act), claiming that she and the deceased had resumed their relationship prior to his death.

Executors, Sajad and Shabana Shah fought this claim, arguing that at no point had Jassal and the deceased resumed cohabitation and she had been living as his tenant in another of his properties, Salt Hill Mansions.

The case was first heard in November 2021 by Deputy Master Marsh. He favoured Jassal's evidence that she and the deceased had been living together in the same household for two years prior to his death, as if they were a married couple. Therefore, Jassal qualified for an award under section 2 of the 1975 Act.

Jassal was granted a half share of the Salt Hill Mansions property, along with a £385,000 lump sum for her maintenance needs. There was no further order made by the Deputy Master in respect of costs, as the award expressly stated that costs had already been dealt with as part of the lump sum granted.

The executors appealed this decision on the grounds that Deputy Master Marsh had made an error of law by awarding Jassal her litigation costs, equating to £140,000 plus VAT, as part of the substantive award for her maintenance needs. They argued that the costs should have been kept separate from the award in accordance with the usual practice under the Court Procedure Rules, stating that the court will almost always determine the substantive claim first and then proceed with a decision on whether to make an order with regards to any litigation costs. As claims under the 1975 Act are governed by the Court Procedure Rules, this procedure should be adhered to.

When deciding how to determine the substantive claim under the 1975 Act, the court must have regard to the claimant's financial needs. This includes an obligation to pay litigation costs. Therefore, a court may wish to consider the claimant's litigation costs as part of the substantive determination of the claim.

The appeal went to the England and Wales High Court under Deputy High Court Judge James Pickering. He examined precedents set in the previous cases of *Lilleyman v Lilleyman* in 2012 and *Hirachand v Hirachand* in 2021, both of which were under the 1975 Act.

Pickering said that his decision was determined by the fact that 'as things stand, proceedings under the 1975 Act are squarely governed by the CPR' and with that being the case 'the approach taken by Briggs J in *Lilleyman* was (with respect) the correct and indeed the only approach which was properly open to him. Indeed, the subsequent decision in *Hirachand*, albeit not directly on point, only seems to confirm this'.

Pickering went on to say that: 'it was simply not permissible for Srendarjit's [Jassal's] litigation costs to be considered as part of the substantive award' and that, instead, Deputy Master Marsh should have 'considered the appropriate substantive relief ignoring those litigation costs (however unrealistic that may have been) and should then, subsequently and separately, have gone on to consider the matter of costs.'

Eventually, the executors' appeal was duly allowed with Marsh's original order being varied such that the lump sum awarded to Jassal would be reduced to exclude any litigation costs and VAT. Pickering also ordered the executors to pay Jassal her costs for the original proceedings (but not the appeal), as she was the clear winner of that part of the dispute.

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