

Blog Post for the STEP contentious trusts forum by Emily Gailey, Dispute Resolution solicitor at Payne Hicks Beach written on 12 November 2015 at STEP Forums online
<http://forum.step.org/t/dellal-v-dellal-clawing-back-time-under-the-i-pfd-act-1975/200/1>



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Welcome to the STEP Forums

The STEP Forums are a collection of discussion groups dedicated to the sharing of knowledge between practitioners of topics relating to estate planning, taxation, the drafting and administration of trusts, wills and other private client issues. The various Forums are described below.

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Dellal v Dellal: 'clawing back' time under the I(PFD)Act 1975?

Emily Gailey

It's possible we may soon see a judgment which would finally shed some light on the often overlooked 'claw back' provisions of the Inheritance (Provision for Family and Dependents) Act 1975 (the 'Act').

Sections 10 and 11 of the Act are anti-avoidance provisions which allow the court to bring back into the net estate property which the deceased transferred before death (or contracted to leave by will) with the intention of defeating an application for reasonable financial provision under the Act.

Perhaps unsurprisingly, given the evidential difficulties, these provisions are very rarely used in practice and the case of *Dellal v Dellal* [2015] EWHC 907 (Fam) could be one of the few opportunities practitioners have to see how such a claim would actually operate. Mr Justice Mostyn's recent judgment following an application for strike out and/or summary judgment within the proceedings is an interesting reminder of the powers of the court in such circumstances, and sheds some light on what promises to be an enlightening case.

It revolves around the estate of the property dealer Jack Dellal, who died in October 2012 shortly after the Sunday Times Rich List stated he was worth £445 million. However, unfortunately for his primary beneficiary, his second wife Ruanne, the disclosed assets of his estate on death

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were only £15.4 million. This discrepancy led Mrs Dellal to conclude that Mr Dellal had made various dispositions prior to his death with the intention of defeating an application for provision under the Act, and she has consequently made a claim under sections 2, 10 and 13 against six of her husband's children, one of his grandchildren, and his 96-year-old sister.

Despite the limited evidence provided by Mrs Dellal, so much so that the Defendants argued that she had not identified a single disposition within the relevant period, Mostyn J declined to determine a summary judgment application except on an informed basis. Therefore the application has been adjourned with liberty to restore, and specific disclosure was ordered pursuant to CPR r31.12.

These evidential hurdles aside, Mrs Dellal's claim poses some interesting questions for practitioners, and should she overcome those hurdles then we may yet be able to look for some guidance on these little used 'claw back' provisions.