

Case Analysis: *Banfield v Campbell* [2018] EWHC 1943 (Ch)

A cohabitant's claim for reasonable financial provision.

On 24 July 2018, judgment was handed down in *Banfield v Campbell*. The case concerned the estate of Sarah Campbell who tragically died at the age of 63 on a holiday flight to the Canary Islands in 2015. A claim was brought by Andrew Banfield for reasonable financial provision to be awarded to him pursuant to the Inheritance (Provision for Family & Dependents) Act 1975 from her estate. The basis of his claim was that he was her cohabiting partner and she was financially maintaining him whilst she was alive. The case reiterates the importance of cohabitants receiving independent legal advice about their positions and testators reviewing the provisions of their Will to ensure that they remain appropriate as their family situations change.

Mrs Campbell had one son, James, from her marriage to Neil Campbell. Mr Campbell died when James was just 10 and Mrs Campbell just 40. A couple of years after her husband's death, Mrs Campbell started a relationship with Mr Banfield. As the relationship continued, Mr Banfield started spending some nights with Mrs Campbell at her home before moving in permanently on a full time basis in 2001. There was dispute between Mr Banfield and James as to whether or not they became engaged to be married in 1999 and even whether they remained in a romantic relationship at the time of Mrs Campbell's death. James maintained that by 2015 Mr Banfield was more like a lodger than a partner.

Mrs Campbell's Will made in 2001 post-dated the start of her relationship with Mr Banfield. By that Will, she left £5,000 to Mr Banfield and her residuary estate to James. Mr Banfield claimed that her Will did not make reasonable financial provision for him given their lengthy relationship and the support that she provided to him by housing him for a significant length of time.

One of the aspects of this case that is particularly interesting is that Mr Banfield was not impecunious. His income exceeded his estimated annual expenditure by over £10,000 per annum. In addition, he had significant savings of around £277,071. His argument was that he needed alternative accommodation at a price of around £450,000 that he could not afford by himself. James accepted that Mr Banfield had a housing need but submitted that suitable, alternative accommodation would cost closer to £220,000 than £450,000. He indicated that, in this context, Mr Banfield only required a capital sum of £100,000, at most, from the estate.

By the time of the trial, the net residuary estate amounted to around £730,000 which consisted almost entirely of the property in which Mrs Campbell and Mr Banfield resided.

In his judgment, Judge Teverson stated as follows:

"The circumstances of the present case provide an example of the vulnerable position in which cohabitants find themselves if they unexpectedly survive their partner."

It is clear from the judgment that some sympathy was held for Mr Banfield who had only been left £5,000 and had to leave the house that had been his home for many years. However, as he was not married to Mrs Campbell, the judge could only award him what he considered necessary for his maintenance if he felt that reasonable financial provision had not been made for him. He had no discretion to award him anything above and beyond maintenance.

The judge accepted that reasonable financial provision had not been made for Mr Banfield and that an order should be made in his favour to satisfy his housing need. The judge accepted that it was not reasonable to say that Mr Banfield could meet his housing needs through the private rental market. He did not, however, feel that the estate should be required to pay out a lump sum to Mr Banfield so that he could own a property outright. He stressed that the purpose of an award of maintenance is not to confer capital on the claimant. As a result, the judge ordered for the property to be sold and for Mr Banfield to have a life interest in one half of the net proceeds of sale for him to put towards obtaining alternative accommodation. A life interest means that Mr Banfield will have the benefit of a half share of the sale proceeds only during his lifetime. He is not absolutely entitled to it and so, on his death, the money will pass to James. In addition, the judge ordered for £20,000 of the estate funds to be retained in case the property purchased by Mr Banfield needed to be adapted to meet his needs.

The judge had to balance the competing needs of a beneficiary with a claimant at the same time as recognising the deceased's right of testamentary freedom. It is unknown whether either James or Mr Banfield are happy with what the judge has ordered. James will ultimately receive the entirety of his mother's estate but not until Mr Banfield's death which could be decades away bearing in mind that he is only 65 years old at present. Whilst Mr Banfield has had his housing need met, he has not been given an absolute interest in a house nor a lump sum of money for him to spend as he sees fit. The parties have not received a clean break from each other due to the life interest trust. This means that they may need to jointly make decisions together in the future which they may consider to be far from ideal and potentially a recipe for further dispute.

When the Will was made, Mrs Campbell and Mr Banfield were at the start of their relationship and so a legacy of £5,000 may have been perfectly acceptable at that point. The judge found though that it was not acceptable once they had been together for a significant length of time residing together at her house. Testators must always consider the need to update their Wills when circumstances change as provisions that were once suitable may be wholly inappropriate years later.

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This article was produced on 24 August 2018. It should not be relied upon as legal advice as individual circumstances will differ.