

“ Plain speaking legal advice ”

Claims Under The Inheritance Act 1975

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This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

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HAVE YOU BEEN LEFT OUT OF A WILL OR INSUFFICIENTLY PROVIDED FOR?

Under the Inheritance (Provision for Family and Dependants) Act 1975, a person may have a valid claim against an Estate if they have not been provided for sufficiently, or at all, in a Will. This note provides a brief explanation of who may claim, on what basis and for how much award.

Who can apply

A person can bring an application providing they fall within one of the following categories:

- Spouse of civil partner of the deceased
- Former spouse or civil partner of the deceased
- Any person living with the deceased as husband, wife or civil partner for two years immediately prior to the death
- Child of the deceased
- Any person (not being a child of the deceased) who was treated as a child of the deceased by way of a marriage or civil partnership i.e. a step-child
- Any person who, immediately before the death of the deceased, was being maintained wholly or partly by the deceased

Reasonable financial provision

The person must justify their claim by showing that they have not received reasonable financial provision from the Estate. The benchmark for what is reasonable depends on how the person knows, or is related to, the deceased.

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Spouses or civil partners

For surviving spouses or civil partners of the deceased, the standard is based on what is reasonable for them to receive, whether or not this is for their maintenance. This is not particularly onerous but will obviously depend on all the circumstances of the case.

Short marriages or civil partnerships

Where the marriage or civil partnership was short, this will be considered by the Court but will not necessarily affect or discount the claim.

Other persons

For all other persons, the standard is based on what is reasonable for their maintenance. There must be a moral claim that the provision, if any, was unreasonable in the circumstances.

What is “maintenance”?

Although there is no set definition of “maintenance”, there have been a variety of cases since the Act came into force where Judges have given some guidance. As a general rule, maintenance is what is reasonable for the person to live on without being too luxurious or too destitute and extends to the life, well-being and security of their immediate family for whom the person is responsible.

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Adult children

It is not enough for an adult child (or any other relative) to rely on being a blood relative of the deceased and/or claim that there are assets available in the Estate which would cater for their financial needs. This does not mean, however, that a claim will be struck out simply because the person is an able-bodied adult.

Cohabitants

The approach towards a surviving cohabitant varies depending on how long they were living with the deceased prior to the death, as follows:

- If it was for less than two years, the claim can become complicated and the Court will usually consider each of their contributions to living and lifestyle expenses. The surviving cohabitant will need to show that they were financially dependent on the deceased up until the death.
- If it was for two years or more, the cohabitant is afforded an automatic right to claim regardless of whether they were financially dependent on the deceased.

Award

After the person's claim has been justified, the question arises as to how much to award them. The Court will consider a variety of factors listed in section 3 of the Act. These are very extensive and include issues such as the financial resources and needs of the applicant, any other applicant and any other beneficiary of the Estate.

The award may take the form of a capital sum, income, deferred payments and/or a trust.

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Any person considering bringing a claim should note that there is a time limit of six months from the date of issue of Grant of Probate or Letters of Administration to make the application. After expiry of that duration, permission of the Court is needed.

If after reading this note you believe you may have a valid claim against an Estate, please do not hesitate to contact our Dispute Resolution team who will be able to advise and assist you.

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