

Unfairly left out of a Will?

Under the Inheritance (Provision for Family and Dependents) Act 1975 as amended on 1 October 2014, 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.

Domicile of Deceased

The Estate must be of someone who has died domiciled in England and Wales. Whilst this will usually be clear, sometimes further evidence will be needed such as tax status and connections with other countries.

Who can apply?

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

- Spouse or civil partner of the deceased
- Former spouse or civil partner of the deceased who has not formed a subsequent marriage or civil partnership with someone else
- Any person living with the deceased as spouse or civil partner for two years immediately prior to the death
- Child of the deceased (this includes adopted children)
- Any person (not being a child of the deceased) who was treated as a child of any family
- Any family in which the deceased at any time stood in the role of a parent, this includes being a single parent. The family can be just the deceased and the person making the application
- Any person who, immediately before the death of the deceased, was being maintained wholly or partly by the deceased. This does not include situations where the maintenance is part of a commercial relationship (e.g. being paid to clean the deceased's house)

There is no domicile requirement for the applicant.

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.

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 it is for their maintenance and the Court will often use a starting point of what they might have received had there been a divorce, although this does not give a clear maximum figure that is reasonable. This will obviously depend on 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.

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 been 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 who the person is responsible.

Adult children

It is not enough for an independent adult child (or any other relative) to rely solely on being a blood relative of the deceased and/or claim that there were 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

The time period will not be stopped if the deceased spent the last few weeks of their life in hospital.

Award

After the person's claim has been justified, the question arises as to how much to award them. The Court will



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consider a variety of factors listed in section 3 of the Act. These are very extensive and include issues such as 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.

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. The Court will need a good explanation for the delay in order to consider giving permission and it may affect the date at which the Court values the Estate's assets.

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 assist you.



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