

Challenging an Estate – Claims under the Inheritance (Provision for Family & Dependants) Act 1975

This article considers one way to challenge an Estate – making a claim under the Inheritance (Provision for Family & Dependants) Act 1975 (“The Inheritance Act”).

Generally, a testator may dispose of his assets under his Will in any way he so wishes. However, under the Inheritance Act, a person may make a claim against the estate if they feel that reasonable financial provision has not been made for them under the Will. To make such a claim, they must fall within one of the following categories:-

1. The spouse or civil partner of the deceased;
2. A former spouse or civil partner of the deceased who has not remarried;
3. An unmarried partner of the deceased who lived with them as husband or wife for a period of 2 years before the date of death;
4. A child of the deceased;
5. A person who was treated as a child of the family;
6. A person who was financially maintained by the deceased.

What is ‘reasonable financial provision’?

The answer to this question will depend on what category the applicant falls into.

- For an applicant who is the spouse of the deceased, the provision is based on what it is reasonable for the applicant to receive, as opposed to what is required to maintain them.
- In the case of any other applicant the standard is ‘such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance’.

'Maintenance' is not defined by the Inheritance Act 1975, but the courts have applied the standard of what amount would be reasonable for that applicant to live on.

What provision to award

If it is found that reasonable financial provision has not been made by the deceased, the court must then consider what award, if any, should be made having regard to the following factors:

- the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
- the financial resources and financial needs which any other applicant has or is likely to have in the foreseeable future;
- the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
- any obligations and responsibilities which the deceased had towards any other applicant or towards any beneficiary of the estate of the deceased;
- the size and nature of the net estate of the deceased;
- any physical or mental disability of any other applicant or any beneficiary of the estate of the deceased;
- any other matter, including the conduct of the applicant or any other person, which in the circumstances of the case the court may consider relevant.

Not all of the factors may be relevant in each case, but equal weight and consideration must be given to those which are.

Specific considerations

The merits of an Inheritance Act claim will depend on the individual circumstances, but there are certain types of claim which can be particularly difficult to assess:-

- Short marriages or civil partnerships. The duration of a marriage or civil partnership is a relevant factor which will be taken into account by the court when considering **what award to make**; however the court's approach in the case of **Cunliffe v Fielden** [2005] EWCA Civ 1508 suggests that this does not carry as much weight as if the marriage ended in divorce rather than death.

- Adult children. While historically an adult, financially independent, child of the deceased would struggle to succeed in an Inheritance Act claim, there has been a recent increase in the number of claims brought by adult children. However, the decision of the Supreme Court in *Ilott v Mitson* [2017] UKSC 17 confirms that such **claims are more likely to succeed if there is an 'additional something' in the circumstances of the child**, such as a mental or physical disability, or a moral obligation – for example where the child has worked in a family business or cared for an elderly parent and expected to inherit.

Time Limits

A claim must be issued within 6 months of receipt of the grant of probate; it is therefore vital to seek legal advice in this area as soon as possible so that the evidence necessary to bring a claim can be gathered.

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