

INHERITANCE ACT CLAIMS

The following may be eligible to bring an Inheritance Act claim against the Deceased's Estate:-

1. Spouse or civil partner of the Deceased.
2. Former partner or civil partner of the Deceased.
3. Partner who was continuously living with the Deceased immediately for two years prior to the Deceased's death as husband and wife.
4. Child of the Deceased (and those treated as a child of the Deceased).
5. Any other dependents

Such a claim must be brought within 6 months from the date of the Grant of Probate. Failure to do so may prevent you from bringing such a claim. If you are out of time, leave must first be obtained from the Court.

The crucial question is whether or not the Will failed to make reasonable financial provision for the Claimant in all the circumstances. The burden is always on the Claimant to make out their case for reasonable financial provision from the Estate.

This claim is not a claim to contest the entirety of the Will; it is merely a claim for maintenance from the Estate. It is up to the Court's discretion, if successful, how and in what way the Claimant should be provided for out of the Deceased's Estate.

Spouses or Civil Partners (or those treated as Spouses and Civil Partners)

If the Claimant falls under this category, the provision required need not be for the Claimant's maintenance, instead it is based on what is reasonable for the Claimant to receive, whether or not it is for that person's maintenance.

All other Applicants

In relation to all other applicants, the standard is such financial provision as it would be reasonable in all the circumstances of the case for the person to receive for his maintenance.

Maintenance has not been defined but the Courts have defined that word by reference to what it would be reasonable for that person to live on.

If it has been decided that reasonable financial provision has not been made by the Deceased for the applicant, it is for the Court to decide what provision to make. As previously stated, spouses and civil partners and those treated as such, are not restricted to maintenance whereas other applicants are.

An award by the Court may take the form of a capital sum, income, deferred payment or an amount settled on trust. However any award can only be made in respect of the net Estate.

Section 3 Factors

Section 3 of the Act contains a list of all the factors that the Court must have regard to when answering what is reasonable financial provision and what should be awarded. These include the income, outgoings, assets and liabilities of the applicant when compared with other beneficiaries named under the Will.

The size and nature of the Estate, the conduct of the parties, the length of relationship and any physical or mental condition of any of the parties will all be taken into account.

When considering a claim involving short marriages or civil partnerships, the duration of the marriage or civil partnership is a relevant factor.

In relation to spouses and civil partners that have divorced, it is important to check the consent order between the parties, since it is commonly a clause of the consent order that the parties cannot make a claim for reasonable financial provision under the Inheritance Act at a later date.

See our [article on Inheritance Act claims and adult children](#), for information regarding adult children who have not been sufficiently provided for under the terms of the Will, as a result of conduct or estrangement between the parties.

If you have any questions or queries regarding the content of this fact sheet, or indeed believe that you may have a claim under the Inheritance Act, please contact our Contentious Probate Team at Tollers, who will be happy to advise you further.