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INHERITANCE ACT CLAIMS – COHABITEE (CLAIMANT) GUIDANCE NOTES

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WHAT IS AN INHERITANCE ACT CLAIM?

An Inheritance Act Claim is simply a claim made under the Inheritance (Provision for Family and Dependents) Act 1975 (“**1975 Act**”). The claim is also known as a claim for “reasonable provision” or a “dependency” claim.

As a Cohabitee of the Deceased you have the right to make a claim under the 1975 Act for reasonable financial provision for your maintenance from the Deceased's estate. To be successful you will need to prove:

1. That the Deceased was domiciled in England or Wales. Domiciled simply means that England or Wales was the Deceased's permanent home;
2. That you lived with the Deceased as husband and wife in the two years preceding the death of the Deceased;
3. That the Will (or if there is no Will the rule of intestacy) has failed to make reasonable financial provision for you;
4. If the Will or the rules of intestacy have failed to make reasonable financial provision, you must then show what reasonable provision you require.

Points 1 to 3 are described as the threshold questions. Once these are proven, the dispute is then about quantum i.e. what should be given to you.

Sometimes cases are fully disputed whereby it is argued that no provision at all is needed as the Will or rules of intestacy have already provided reasonable provision. Alternatively, the parties sometimes accept a Cohabitee is entitled to further provision, but there is disagreement on the value of the claim being made.

WHAT CAN I EXPECT TO RECEIVE?

The Court takes into account the factors at Section 3 of the 1975 Act in assessing (a) whether the provision already provided is reasonable and (b) what (if any) further financial provision is required.

The factors are:

- a) Your financial circumstances now and in the foreseeable future.

This is a key factor within the 1975 Act. As part of the claim you must be willing to give complete disclosure of your income, means and resources.

- b) The financial circumstances now and in the future of any other applicant.

More than one person is permitted to make a claim against an estate under the 1975 Act. If there are competing claims then the court must balance the competing interests. The other types of applicants that can apply are:

- A legal spouse of the Deceased or a former spouse who has not remarried;
- An Adult child of the Deceased;

- Any person that was treated by the Deceased as if they were their child by virtue of any marriage the Deceased was party to;
- Any person dependant on the Deceased.

If there are no other claims made, then this factor is neutral.

c) The financial circumstances now and in the future of the beneficiaries of the estate.

If the beneficiaries of the estate have financial needs of their own, the court must consider them. Beneficiaries sometimes argue a “means based” defence whereby they argue that they also require provision to meet their own needs.

If there are competing needs, then this factor is very important to consider.

d) Any obligations owed by the Deceased to the parties.

As a Cohabitee of the Deceased, the court may be inclined to recognise that certain duties are normally owed to one another by those cohabitating in a serious relationship, especially if you lived together as husband and wife. More often than not, in these types of relationship there is an expectation of financial support which the court will consider as part of the claim.

e) The size and nature of the net estate.

This is a very important factor. The value of the estate effectively limits the claim as the court cannot order any more than what the estate is worth. Any debts or liabilities owed by the estate would also be paid first so that your claim is only ever against the net estate.

The nature of the estate is also important. If the estate contains mainly properties then these may have to be sold before money can be paid. In addition, if the estate contains a family business the court will be keen to ensure that the company continues to trade if the Deceased’s intention was the business should pass through the family.

f) Whether any other parties are suffering from any physical or mental disability.

The court will always consider this factor. Costs of care or the impact of the disability on working capacity will be relevant to consider.

g) Any other relevant factor including conduct.

This is a catch all provision and is very wide. It will apply on a case by case basis.

The Court does not give more or less weight to any of the above factors but must weigh each in the context of all the factors.

Though it is impossible to predict the outcome of these cases given the high level of judicial discretion involved, the following guidance from case authorities assists in defining the nature of the provision you can claim:

In *Re Dennis* [1981] 2 All ER 140, Browne-Wilkinson J said: ‘...the word ‘maintenance’ connotes only payments which, directly or indirectly, enable the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him. The provision that is to be made is to meet recurring expenses, being expenses of living of an income nature. This does not mean that the provision need be by way of income payments. The provision can be by way of a lump sum, for example to buy a house in which the applicant can be housed, thereby relieving him pro tanto of income expenditure’.

In *Re Coventry* [1980] Ch 461, the following was said: ‘... I think it is clear on the one hand that one must not put too limited a meaning on [maintenance]; it does not mean just enough to enable a person to get by; on the other hand, it does not mean anything which may be regarded as reasonably desirable for his general benefit or welfare.’

In the Supreme Court authority of *Ilott v The Blue Cross* [2017] UKSC 17 (considered below) Lord Hughes considered that the frequently-cited summary of ‘maintenance’ in *Dennis* (cited above) is ‘helpful’. He further said that maintenance claimable is:

- ‘no doubt broad’ (para 14)
- ‘clearly flexible’ (para 15)
- ‘falls to be assessed on the facts of each case’ (para 15)

From our experience we expect to achieve:

- Accommodation security. This can range from a house outright (in more rare cases) or money to help with payment of rent or a mortgage;
- Provision to meet future costs of care;
- Provision to meet everyday costs of living and the costs of retirement;
- Provision to pay for replacement of white goods;
- Provision to fund the cost of a replacement car.

The amount of provision awarded depends on the facts of the case. You will only be given provision if you can demonstrate you are in need of financial assistance. If you can meet your own needs, then you will be unable to claim for any provision, or the items listed above.

CASE EXAMPLES

Set out below are case examples of successful 1975 Act claims. These help illustrate the nature of 1975 cases and the amounts that can be awarded.

Negus v Bahouse [2007] EXHC 2628 (Ch)

The Claimant was in a relationship with the Deceased for nine years. The Deceased’s net estate was £2.2 million.

The Deceased's estate was left entirely to his son. The court transferred across an Apartment owned by the Deceased (free of mortgage) and valued at £300,000 plus a sum of £200,000 to provide a living standard equating to that enjoyed during the Deceased's lifetime.

HH Judge Roger Kaye QC commented

"In my judgment having regard to her age, the length of time she was with Henry, the factual background that I have previously mentioned, the fact that he paid for everything and provide her with a home and to the promises she made to him about the roof over her head, she is entitled at least to a reasonable degree of financial security and a degree of comfort for the rest of her life"

The Court of Appeal said that it was not appropriate to apply an objective standard of what was a reasonable standard of maintenance but would look at the standard of living enjoyed during the Deceased's lifetime. Maintenance will therefore be tailored to needs in light of the standard enjoyed during the relationship.

Cattle v Evans [2001] EWHC 945 (Ch)

The Claimant (Tina) and the Deceased were co-habiting. The Deceased died intestate.

Tina owned a property worth £110,000 subject to a mortgage which was tenanted. This provided her with a small income along with a pension of £400 per annum. Tina's financial position was precarious and she was unable to work.

Prior to his death the Deceased had purchased a property in Wales in which they were living. If she has to move out of the property she would have to move back to her own property and have to claim benefits.

The court held that reasonable financial provision had not been made. It held that a transfer of the Welsh property would be excessive (as it was much larger than Tina required). It held that reasonable provision was the purchase of a property for no more than £100,000 to be held on trust for the intestate beneficiaries for life.

Swetenham v Walkely & Bryce [2014]

Beryl Swetenham was in a relationship with the Deceased for 30 years. They kept their financial affairs separate.

The court held that a second home was not a barrier to living in one household. Walden-Smith J stated

"They did not share a common pot of finances. There was informality to the arrangement financially. But it was Beryl's house he moved into. She carried out all those things that a woman of her generation would no doubt have considered natural to do for the man in her life. He did what he would have considered was the right thing to do, which is to pay for any of the outgoings when they were outside the house. In that sense there was a communal pot"

The court found that Beryl was entitled to reasonable provision from the estate to support a care package she required. £201,219 was awarded to support that care package.

Thompson v Raggett [2018] EWHC 688 (Ch)

The Deceased died aged 90 with an estate worth £1.5 million. Joan Thompson was not provided for in the will.

The Deceased justified his position on the basis that

“..I am Joan’s main carer and envisage that she may go into a home following my death. I confirm that Joan has her own finances and is financially comfortable”.

This was not correct. Joan’s monthly income was £1,114 per month. She had savings of £2,500. She has a requirement (as in *Swetenham*) for care. The evidence was that it would be in her best interest to live at home rather than a care home.

The court held that reasonable provision had not been made. Contrary to the normal provision of a life interest in a property which would revert back the estate on Joan’s death, the court awarded her a property outright worth £225,000, £29,000 to renovate the property and £160,000 to fund her in home care. The court were persuaded to provide an outright capital transfer given the long period of cohabitation between the couple and the need for a clean break between the parties. Further, there was no obvious reason as to why the beneficiaries were chosen, and certainly no obligation on behalf of the Deceased to maintain them.

Taylor v Redmond [2017]

The claimant had cohabited with her partner for 7 years before his death. They occupied a one bedroomed flat. The estate was worth £900,000 and the Deceased’s Will made no provision for the claimant. The Claimant was 70 years old, had no property and limited income and savings.

The Court awarded the claimant a lump sum of £145,000 and a life interest in a property to be bought by the estate for £180,000.

Banfield v Campbell [2018]

The claimant began a relationship with the Deceased in around 1994. From around 2001, they lived together in the deceased’s home.

By the Deceased’s Will made in 2001, the Deceased left the residue of her estate on trust for her only child, when he attained 25. He was 35 at the date of the instant hearing.

The Deceased died in 2015, aged 63. The claimant, aged 66, had a number of serious health issues including spinal decompression and diabetes. His health had affected his living arrangements with the Deceased. From around 2011, he had found it more convenient to sleep downstairs in a reclining chair and only went upstairs to take a shower. His annual net income was £29,226. His estimated annual expenditure was £18,444. He had capital of around £277,000. His main need was for alternative accommodation.

He wished to move to a two-bedroom, ground-floor maisonette and sought a lump sum of between £350,000 and £450,000 to enable him to buy such a property.

The defendant was in employment and was the sole beneficial owner of an investment property bought for £450,000 in 2016.

The value of the Deceased’s net estate was roughly £725,000 and consisted almost entirely of the property in which she had lived with the claimant. The Deceased left the claimant £5,000 in her will.

The defendant did not accept that the Deceased and the claimant had been living together "as husband and wife" in the two years or more before the deceased’s death.

The court held that the claimant did not receive reasonable financial provision under the will of his late partner, with whom he had been in a relationship for over 20 years. An order was made providing for the sale of his late partner's home and for him to be granted a life interest in one-half of the net sale proceeds, which were to be used in or towards providing alternative accommodation for him.

PARTIES TO THE CLAIM

If you make a claim under the 1975 Act, then effectively you are altering the inheritance that is due. As such, all beneficiaries must be defendants to the claim. It is important to note that the estate does not pay the legal fees on behalf of you or the beneficiaries. As such, if the beneficiaries fight the case to court and do not win, then they cannot recover their costs and will have to pay personally.

The executors or administrators of the estate are also named as defendants, but they should adopt a neutral position and must not take sides. Their role is simply to provide information relevant to the dispute, such as estate accounts. If the executors take sides, then their costs cannot be recovered from the estate.

TIME AND COST

The law requires all 1975 Act cases to be issued at court within six months from the Grant of Probate or Letters of Administration. If you miss this deadline, the court will have to give you permission to hear the case.

The time it takes to actually resolve 1975 Act cases and the costs involved vary significantly. On average, if matters are settled out of court this normally takes six months. Court proceedings can take over a year on average.

Regarding costs, this is hard to predict as much depends on the complexities of the case and the personalities of those involved. Details of costs will be provided to you on the beginning of the case and regular updates will be provided as matters progress.

OUR APPROACH

Each law firm approaches litigation and resolution of disputes differently. Our approach is unlike most firms. Our team contains specialist lawyers that handle many Inheritance Act claims. Our experience shows that these cases are best handled sensitively with a resolution reached in private. In most cases, it is more productive to adopt a conciliatory approach and resolve the issues without the adversarial process of court proceedings, especially given that these disputes involve family matters.

The benefit our approach is that:

- You achieve a settlement without the risk of litigation;
- Claims are resolved more quickly;
- Matters are kept private and confidential;
- It reduces your legal costs.

We achieve the above through a process called mediation. Once your case is set out in correspondence, we offer a meeting with the other side and an independent third person (the mediator) to exchange offers with a view to settling the claim. This approach is very effective and around 80-90% of cases settle at mediation. As mediation is voluntary, you are in

complete control over the settlement of your case and you can create solutions which are not open to the courts when deciding cases.

If matters do not settle, then court proceedings are the only feasible alternative. Our team specialise in these disputes and as such we are well placed to advise you on the merits, likely results at court and the costs and risks of court proceedings.

SUMMARY

Inheritance Act claims allows Cohabitees to seek more provision from an estate. These claims provide a useful alternative to challenging the validity of a Will as will disputes are costly, time consuming and difficult cases to argue.