

INHERITANCE ACT CLAIMS – SPOUSE (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 spouse of the Deceased you have the right to make a claim under the 1975 Act for reasonable financial provision from the Deceased’s estate. An unmarried former spouse also has the right to claim. 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 are the Deceased’s legal spouse or a former spouse that has not re-married;
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 spouse or former spouse 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 and the special factors for a spouse 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. The court would also want to understand the lifestyle you enjoyed with your spouse.

- 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 biological or adopted child of the Deceased (including any adult children);
- 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;
- An unmarried partner of the Deceased that cohabited with the Deceased for two years or more.

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 spouse of the Deceased the court will recognise that certain duties are normally owed by married couples to one another. More often than not a marriage is often associated with 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.

h) The special factors for a spouse

The following factors must be considered by the court under the 1975 Act:

- Your age and the duration of the marriage;
- Your contribution to the welfare of the family of the Deceased and the management of any businesses;
- The provision which might reasonably have been expected had the marriage terminated by divorce rather than death – this is known as the Deemed Divorce Test. The court normally considers that a marriage is an equal partnership and on divorce the starting point is a 50:50 split. The logic is that this assumption should be applied to claims under the 1975 Act so that a surviving spouse should achieve the same level of provision in life as in death (i.e. 50% of the estate).

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. There is a wide degree of judicial discretion for 1975 Act claims which makes it is very hard to predict the outcome of the claims. As Lord Justice Mummery pointed out when dealing with a substantial estate, it is:-

“...perfectly possible for different Judges hearing the same evidence and the same legal arguments to make unappealable decisions varying widely in their assessment of what would constitute reasonable provision for the deceased’s widow”.

Whilst it is hard to predict the precise outcome, from our experience we expect to achieve:

- Accommodation security. This will either be a house to own or somewhere to live rent free or with contribution to rental or mortgage costs;
- Provision to meet future costs of care;
- Provision to meet everyday costs of living and the costs of retirement;
- Provision to maintain the lifestyle enjoyed with the Deceased.

Depending on the size of the estate and the competing interests, spousal claims under the 1975 Act can result a substantial settlement figures being awarded.

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.

Fielden v. Cunliffe [2006]

The Claimant widow was 48 when she married the deceased just over a year before his death at 66.

She was the beneficiary of a Discretionary Trust of Residue along with other beneficiaries. The estate was valued at **£1.4million**.

The Court of Appeal held that the short marriage of one year was an important factor and set out that caution should be used when considering the Deemed Divorce Test under the 1975 Act. The court gave greater weight to the Claimant's financial need than the Deemed Divorce Test.

The Court of Appeal awarded **£600,000**.

P v. G [2006]

The widow had been married to the deceased for 20 years. The estate was worth **£4.5million**.

The widow received the matrimonial home to be held on trust until her death or remarriage and pension income worth **£90,000** per year. The Claimant was awarded a payment of **£2million** to include the matrimonial home valued at **£900,000**. The Judge held:-

- *"I do not consider it unreasonable for someone in Mrs P's position who has had the luxury of a life essentially without money worries in recent years to continue in this way as far as possible."*

Baker v Baker [2008]

The estate was worth £1.4 million.

The widow's life interest in the family home was converted into an outright interest and other assets varied to provide her with an income equivalent to a standard she was used to.

The court did not limit the Deceased's relatively young wife to a life interest in the matrimonial home.

Lilleyman v. Lilleyman [2013]

The widow had been married to the deceased for 3 years. The Court considered that this was a short marriage. The estate was worth **£6million**. The widow received under the Will:-

- A right of occupation in the matrimonial home which was owned as tenants in common and also the right of occupation of an apartment.
- An annuity of **£378** per month and chattels of **£18,000**.

The residuary estate passed to the deceased's two sons.

The widow owned a half share in the matrimonial home worth **£165,000**, a property occupied by her son valued at **£130,000**, a half share in a property acquired by her mother worth **£77,500** and other assets worth a little under **£45,000**.

Her income was **£11,237** per annum (including the annuity) she had expenditure of **£31,770**.

The main value of the estate was 3 companies.

The Defendants argued that the business assets had been built up before the marriage should not be included.

The spouse was awarded the matrimonial house and apartment in satisfaction of her claim to reasonable financial provision. The company assets were maintained and passed to the children as directed by the deceased within his Will.

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 to nine 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 allow spouses to seek more provision from an estate. They are very flexible claims and are designed to provide you with funds to help maintain your lifestyle and give you financial security. 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.