



Attwaters Jameson Hill – Guide to Inheritance Claims

Where someone has died without making proper provision in their Will for their relatives or dependents, those individuals may have a possible claim under the Inheritance (Provision for Family and Dependents) Act 1975.

The aim of the Inheritance Act is to make reasonable financial provisions for those who have not been financially provided for in a deceased will or under the intestate rule.

Any application under the Inheritance Act must be made within six months of a grant of probate being granted.

Who is entitled to make a claim under the Inheritance (Provision for Family and Dependents) Act 1975?

1. the wife or husband of the deceased;
2. a former wife or former husband of the deceased who has not remarried;
3. a child of the deceased;
4. any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage
5. any person who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased;
6. any person if the deceased died on or after 1st January 1996 and, during the whole of the period of two years ending immediately before the date when the deceased died, the person was living—
 - a. in the same household as the deceased, and
 - b. as the husband or wife of the deceased

What is reasonable financial provision?

If you are the husband or wife of the deceased you would be able to make a claim if you have not been left reasonable financial provision, which means such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance.

In respect of all other categories highlighted above financial provision is deemed as to what would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance. The courts will not make an order on the grounds that the deceased will was morally wrong or unfair.

Grounds for making a claim

The court will first decide whether the applicant has been left reasonable financial provision. The court will decide that by looking at the following facts:

1. the financial resources and needs
 - a) which the applicant has or is likely to have in the future;
 - b) of anyone else entitled to make a claim under the Inheritance act or any other beneficiary named in the will.
2. the size of the net estate
3. 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.

What orders can the court make

The court can make an order for:-

1. periodical payments from the net estate of the deceased,
2. a single lump sum payment from the estate.
3. a property owned by the deceased be transferred to the applicant.
4. the creation of a trust for the applicant
5. the purchase of property using assets of the estate

Legal costs

If the matter is settled amicably it is common practice for all costs to be paid out of the estate. If the matter proceeds to a court then the judge will decide who will pay costs. Each party could be ordered to pay their own costs or one party may be ordered to pay the other sides costs.