THE INSTITUTE OF LEGACY MANAGEMENT

ILM FACTSHEET

Inheritance (Provision for Family and Dependants) Act 1975 Claims

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Understanding law, understanding you

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In England and Wales we enjoy what's known as "freedom of testamentary disposition" i.e. the freedom to leave your estate to whoever you wish under your will, provided that will meets certain formalities

This factsheet looks at the Inheritance Act, what it is and why we have it

Inheritance Act 1975 - what is it and why have it?

In England and Wales we enjoy what's known as "freedom of testamentary disposition" i.e. the freedom to leave your estate to whoever you wish under your will, provided that will meets certain formalities (most notably set out in section 9 Wills Act 1837) and that the person making it is of sound mind, knows and approves their will and is free from undue influence and fraud.

This differs to a number of other jurisdictions where often strict rules dictate to whom you should leave some or all of your estate (known as "forced heirship").

The Inheritance Act therefore acts as something of a "safeguard" to that freedom of testamentary disposition by helping to ensure that anyone who may, perhaps, have been financially dependent on a person or otherwise eligible (collectively known as "eligible claimants") but who, whether by reason of that person's will or, where no will was left, the rules of intestacy, finds themselves requiring financial support (referred to in the Inheritance Act as "reasonable financial provision") can seek that from the deceased person's estate.

Of course, each case turns on its own facts and merits and there will be some cases which are stronger than others.

Contrary to what some might think, however, an Inheritance Act claim isn't actually a hostile claim against the estate. Rather, it's a claim to vary the devolution of that estate. As such, generally speaking personal representatives should adopt a neutral role and let the active parties litigate the case. Of course, it's common for a personal representative also to be one of the active parties (whether as someone seeking financial provision or a beneficiary defending a claim). It is perfectly acceptable for that person to act in both capacities provided they keep the two roles separate.

Who can claim?

Section 1 of the Inheritance Act lists the people who can bring a claim for reasonable financial provision. These are:

- the spouse or civil partner of the deceased;
- a former spouse or civil partner of the deceased who has not remarried or entered into a further civil partnership;
- any person who was living with the deceased as their spouse or civil partner in the same "household" for the two years immediately prior to the death;
- the deceased's child, including an adult child;
- any person who was treated as the deceased's "child", for example, but not exclusively, a step-child, grandchild or similar; or
- any person who was being "maintained" by the deceased immediately before their death, whether wholly or partly.

What can an eligible claimant claim?

But for spouses and civil partners who enjoy a higher standard of award under the Inheritance Act, all other eligible claimants can claim for such financial provision as is reasonable in all the circumstances of the case for them to receive for their maintenance (section 1(2)(b)). This is generally known as "the maintenance standard".

"Maintenance" isn't defined in the Inheritance Act but, broadly, means an amount sufficient to provide for a person's needs where their own financial circumstances mean they're unable to do so themselves.

This might mean meeting a monthly income shortfall or covering mortgage or rental costs. The courts have generally seen it as such provision as to enable a person to enjoy the standard of living they would otherwise have done, but for the deceased's death, taking various other factors into account (more of which below).

Conversely, spouses and civil partners aren't limited by this "maintenance standard" and are able to claim for such financial provision as is reasonable in all the circumstances regardless of if it's required for their maintenance (sections 1(2)(a) and 1(2)(aa)).

When assessing how much to award a spouse or civil partner, in addition to the factors set out below, the court will also have regard to what's generally referred to as the "divorce standard" i.e. by looking at what that spouse or civil partner would have received had the marriage been terminated by divorced rather than death (section 3(2)).

While the courts have a wide discretion, the starting point is generally seen as a 50/50 split of the "matrimonial assets", borrowing from key cases dealing with financial relief from divorce. Crucially, however, the Inheritance Act makes clear that "nothing requires the court to treat such provision as setting an upper or lower limit on the provision which may be made by an order".

What factors does the court take into account when determining what, if any, award to make?

These are helpfully set out under section 3 of the Inheritance Act and are:

(a) the financial resources and financial needs which the person or persons seeking financial provision has or have or are likely to have in the foreseeable future;

(b) the financial resources and financial needs which any beneficiary of the estate has or is likely to have in the foreseeable future;

(c) any obligations and responsibilities which the deceased had towards any person seeking financial provision or any beneficiary;

(d) the size and nature of the net estate;

(e) any physical or mental disability of any personal seeking financial provision or any beneficiary; and

(f) the "catch all" of any other matter, including the conduct of any person, which in the circumstances of the case the court may consider relevant.

Do all cases go to court?

No. The vast majority of cases settle before trial, often either at mediation or through correspondence. However, cases do occasionally get to trial and, if considered legally significant or of sufficient public interest, will be reported (both in the press and the Law Reports).

These cases in turn can have persuasive authority for courts in future cases as well as parties bringing and defending claims. purposes as is it was made on the deceased's death.

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Are there any time limits to bring Inheritance Act claims?

Yes. Generally, a person looking to bring a claim should issue that claim at court within six months from the date of the grant of representation in the estate (section 4).

This time limit is intended to protect personal representatives who distribute after that period and also to ensure that estates don't remain locked up and unadministered for years.

The courts do, however, have discretion to allow claims outside of this time limit and will generally consider a number of factors. There has been a lot of case law on this topic recently and it appears that the greatest factors in determining whether the court will allow a claim to be brought outside of the usual time limit are:

- the merits of the claim; and
- the reason for the delay.

Tax

What legal factsheet would be complete without a talk on tax! This is, though, an oft-overlooked area but can prove incredibly useful particularly when looking to negotiate a settlement, particularly for charities who are generally exempt from tax.

While it is relatively well known that a will or intestacy can usually be varied for tax purposes within two years of death by way of a "deed of variation" what is less well known is that there is similar provision under section 19 of the Inheritance Act which provides that any order for financial provision is deemed to have effect for tax purposes as is it was made on the deceased's death.

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