

Factsheet

Cohabitee Claims
under the 1975 Act

What you need to know about Cohabitees when it comes to the Inheritance (Provision for Family & Dependents) Act 1975

What is a cohabitant?

A cohabitant is someone who was in a relationship with and lived with the deceased prior to their death.

In *Baynes v Hedger* [2008] EWHC 1587 (Ch) the Court held it was not necessary for there to be a sexual relationship. It must however be an 'open and acknowledged' relationship.

The Civil Partnership Act 2004 came into force on 5 December 2005 ensuring the provisions of the 1975 Act were updated to include same-sex cohabitants.

I am a cohabitant, can I bring a claim?

To bring a claim against an estate under the 1975 Act, a cohabitant will have to establish that:-

- they lived with the deceased for at least two years immediately before the death of the deceased (S.1(1A)); and
- they lived in the same household as the deceased (S.1(1A)(a)); and
- they were living with the deceased as if they were married or civil partners (S.1(1A)(b)).

Establishing the position of a cohabitee can often present problems if those involved in the relationship were quite private or if the relationship itself had been kept a secret from family members and friends.

A cohabitant can make a claim under the 1975 where the distribution of the deceased's estate either under a Will and or the Rules of Intestacy does not make reasonable financial provision for them.

What is 'reasonable financial provision'?

The starting point for all claims under the 1975 Act is a claim for 'reasonable financial provision'.

As a cohabitant the definition for what is considered 'reasonable' can be found at Section 1 (2)(b) of the 1975 Act. Namely:-

"...such financial provision as it would be reasonable in all the circumstances of the case for the applicant to receive for [their] maintenance.

This means that a cohabitant can only look to claim for a provision for their maintenance and will need to show evidence of their financial circumstances to support such a claim.

What if the applicant moved out temporarily before the deceased died?

The Court has considered this aspect and applied it in quite a practical way. It has tended to consider the general arrangements that were in place before the deceased's death rather than those which existed immediately or within the two years prior.

In *Re Dix, deceased* [2004] 1 W R 1399 the Court had to consider whether a temporary interruption in the two year rule satisfied the statutory requirements. It was held that the Court could look beyond the two year period to establish the nature of the relationship. Further, if the evidence indicated that the interruption was merely transitional and the relationship was still recognised as continuing throughout, the couple would satisfy the criteria.

This approach was later confirmed in *Kaur v Dhaliwal and another* [2014] EWHC 1991 (Ch). Here the deceased and the applicant lived together for one year and forty-nine weeks and had been in relationship for over four years prior to the death. It was argued by the defendants that the applicant did not satisfy the two year rule as the deceased had travelled to India to be with his son.

The Court dismissed this argument and held that the couple's settled relationship had continued throughout the period in dispute until the deceased's death.

What does 'living in the same household' mean?

Although *Santos v Santos* [1972] 2 All ER 246 is not a case for a claim under the 1975 Act, it is helpful when considering whether an applicant and the deceased were 'living together in the same household'. It has been quoted in many of the 1975 Act cases to address the same.

In *Santos, Sachs* LJ held that the relevant word was 'household' and that the applicant and the other party would be considered living in the same household if they are tied by their relationship. It went further to state that the tie of the relationship would not simply mean living under the same roof but would require consideration of various elements.

In *Gully v Dix* [2004] 1 FLR 918, the applicant had been living with the deceased from 1974. She had left him 3 months prior to his death because of his intolerable behaviour. When he died, the applicant argued that despite this, she had a claim under the 1975 Act as a cohabitee. The Court held that the applicant did have standing to make the claim under the 1975 Act. It was held that had the circumstances shown an irretrievable breakdown of the relationship then they would not have been considered as living together in the same household. However, as this was not the case, she was able to bring her claim.

How can you establish if the applicant and the deceased lived as husband or wife or civil partner?

The test as to whether the person was living with the deceased as husband or wife or civil partner is set out in *Re Watson (deceased)* [1999] 1 FLR 878. In this case, the applicant and the deceased had a 30 year attachment to each other but they did not live together until 10 years before the deceased died.

The couple lived companionably, without sexual relations, until the deceased went into hospital where he died intestate. The issue was whether the claimant was living as the wife of the deceased. The test applied by the Court was whether in the opinion of a reasonable person with normal perceptions, it could be said that the two people in question were living as husband and wife.

In considering the issue the Court held that the circumstances of the case, the nature and character of their relationship should be considered. This included the deceased's assumption of responsibility for the claimant as well as the fact that they had lived together for 10 years. Taking all the factors into account, it led them to conclude that she had lived as his wife.

The decision in *Re Watson* also reaffirmed the Court's stance in relation to the two year rule as they held that separation caused by illness did not break the continuity of the period of cohabitation.

The Court recognises the 'multifarious nature of marital relationships' and apply the Act accordingly. For example in *Swetenham v Walkley & another* [2014] WT R 845, even though the applicant and the deceased were residing in different houses, the Court found that they had been living together as husband and wife for the purposes of cohabiting under the 1975 Act.

It seems only sensible for the Court to consider an array of situations with regards to how people chose to live and have relationships. There are many elements to take into account, one being the increasing cost of living which may mean that less people can afford to get divorced or move out and may end up living together for longer than anticipated.

Can a claim be made if a couple were divorced and later lived together as cohabitants?

In *Chekov v Fryer and another* [2015] EWHC 1642 (Ch), the Court found that an ex-wife who was living with her former husband at the time of his death could make a claim under S.1(1)(ba).

The case involved a couple who had been married but divorced in 1981. The divorce order included a prohibition on either party making a 1975 Act claim unless they remarried. The applicant and the deceased did not remarry. On the deceased's death, he left all of his estate to his sons (from a previous relationship). The applicant successfully argued that although she wasn't entitled to bring a claim as a former spouse, it did not stop her making a claim as a cohabitee.

What Orders can the Court make?

The court has wide powers which are set out in Section 2 of the 1975 Act. Provided the court is satisfied that the Will or Rules of Intestacy (see our Intestacy Remembrall) do not make reasonable financial provision for the person claiming, they can make a number of orders. These include (but are not limited to) one or more of the following:

- An order for periodical payments;
- An order for a lump sum payment;
- The transfer of property within the estate;
- The settlement of property for the benefit of the person claiming;
- The acquisition and transfer or settlement of a property from the net estate;
- An order varying any ante-nuptial or post-nuptial settlement (including those made within a Will) on the parties to a marriage or civil partnership, where the deceased was one of the parties. This includes the power to alter any settlement for the benefit of the survivor, any child of the marriage or civil partnership, and any person treated as a child of the deceased in relation to that marriage or civil partnership;
- An order varying, for the applicant's benefit, any trusts upon which the deceased's estate is held.

In addition to the specific orders the court can make, there are a number of consequential and supplemental orders available to the court. These are to allow the court to monitor and give effect to the specific orders made. These include, for example, ordering any person holding property which forms part of the net estate of the deceased to transfer that property as shall be required by the court.

What are the relevant Factors?

When considering any claim under the 1975 Act the court will give due consideration to the case as a whole. To assist, the court will require the following information, which is set out in section 3 of the 1975 Act:

- the financial resources and financial needs which the applicant has or is likely to have in the foreseeable future;
- the financial resources and financial needs which any other applicant for an order under section 2 of this Act has or is likely to have in the foreseeable future;
- the financial resources and financial needs which any beneficiary of the estate of the deceased has or is likely to have in the foreseeable future;
- any obligations and responsibilities which the deceased had towards any applicant for an order under the said section 2 or towards any beneficiary of the estate of the deceased;
- the size and nature of the net estate of the deceased;
- any physical or mental disability of any applicant for an order under the said section 2 or any beneficiary of the estate of the deceased;
- 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.

The Court will additionally have regard to the following factors set out under section 3(2A) of the 1975 Act:-

- The age of the applicant;
- The length of time during which the applicant lived in the same household as the deceased (as if they were a married couple or civil partners);
- The contribution by the applicant to the welfare of the family of the deceased including, looking after the home or caring for the family.

When considering the length and contribution, the Court will also look at the actual standard of living the cohabitees enjoyed during the deceased's lifetime, not an objective standard of living.

In *Negus v Bahouse* [2008] EWCA 1002 the deceased, who was a wealthy man, asked the woman he was dating to move in with him. She gave up her rented accommodation to do so. The deceased then proceeded to ask her to give up her job to look after him and for this, he paid her a small monthly sum. The deceased also paid for lavish holidays and whatever else she needed. The deceased died leaving an old Will which predated his relationship with the applicant thereby no provision was made for her.

The Court held that the applicant was entitled to reasonable provision from the estate as a cohabitee. In deciding the award, the above factors were taken into account as well as the fact that the deceased had paid for everything and promised her more. It was stated that maintenance did not mean just enough to get by, the lifestyle should be taken into account.

The court will take into account the facts known at the date of the final hearing, not at the deceased's death or after the final hearing. All relevant information and evidence will therefore need to be gathered and presented to the court in time for the final hearing if the parties wish for the court to take it into consideration.

Is there a deadline to bring a claim?

There is a strict six month time limit from the date of the Grant of Probate for bringing a claim - it is therefore important that specialist advice is sought early. While it may be possible to bring a claim outside this time limit, the Court's approval is needed.

To obtain approval it is necessary for the party seeking the relief to have acted promptly. They must also set out the details of their claim to show they have good prospects of success.



Fact sheets, commentaries, case studies and the IDR Law Almanack a central record of all of our enquiries can be found on the [IDR Network](#).

Inheritance
Dispute
Resolution
It's all we do.