

Factsheet

Inheritance (Provision for
Family & Dependents)
Act 1975

What is it?

The Inheritance (Provision for Family & Dependants) Act 1975, or "1975 Act" for short, was created to allow certain people associated with a deceased person to bring a claim against their estate if they had not been adequately provided for.

The 1975 Act is not a Will claim and so you will not be contesting a Will or challenging it. Instead, it is a separate claim that is brought despite the existence of the Will.

Who can claim?

Those who may be able to claim are:

- A spouse or civil partner of the deceased;
- A former spouse or civil partner of the deceased who has not remarried or entered into another civil partnership;
- A person who, although not married or in a civil partnership with the deceased, lived with the deceased as if they were married or in a civil partnership for the two years immediately prior to the deceased's death;
- A child of the deceased;
- Any person who was treated as a child of the deceased;
- Any person who immediately before the death of the deceased was being maintained by the deceased.

There are certain requirements to each of the above and week by week we will be unlocking webinars, factsheets, blog posts and commentaries discussing each of the elements.

What are the time limits?

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 that 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.

Can I stop or pause the time limit?

If the deadline for bringing a claim has not already passed, all relevant parties have capacity, all are over the age of 18 years, and all agree, it may be possible to enter into a standstill agreement. This is a contract which essentially prevents another party from opposing any claim being brought out of time.

There are risks associated with such agreements. Accordingly, advice should always be sought on the suitability of entering into such an agreement.

What is the claim process?

As with most claims, the first step is to obtain evidence. 1975 Act claims are predominantly based on financial circumstances. As such, obtaining details of the estate value, the beneficiaries' finances, and your client's finances is essential.

A specialist Solicitor will be able to assess the merits of the case and establish whether it is worth pursuing a claim and, if so, the likelihood of success.

There is no formal protocol to follow. However, the Association of Contentious Trusts and Probate Specialists ('ACTAPS') have created a recommended Code of Practice to encourage cooperative working between the parties.

The Code of Conduct sets out the following process:

1. A letter of claim should be sent to all relevant parties (usually the Executors/Personal Representatives and any adversely affected beneficiaries). The letter of claim should include the following:
 - a. a clear summary of the claim;
 - b. details of the factors set out in section 3 of the 1975 Act (the 'section 3 factors');
 - c. copy documents the party intends to rely upon;
 - d. a summary of the remedy sought.
2. The Executors/Personal Representatives and affected beneficiaries should then look to respond with their Letter of Response within 21 days. The Letter of Response will be different for the Executors/Personal Representatives and affected beneficiaries. Each letter should set out:
 - a. whether they intend on defending the claim;
 - b. their knowledge of the section 3 factors;
 - c. any documents they intend to rely upon, or which any other party is likely to wish to rely upon;
3. If documents are required from third parties (such as obtaining medical records) the parties should seek to make a joint request for those documents. Likewise, if experts are needed (such as medical or RICS surveyors), the parties should seek to provide joint instructions.

Following the above, the parties should engage in correspondence seeking to narrow the issues and resolve the dispute where possible. If it is not possible to do so, court proceedings may become necessary. Consideration should always be given to the time limits for bringing a claim.

I am an Executor, do I need to get involved?

Executors/Personal Representatives have a responsibility to provide certain documents to assist in any dispute. They do not need to wait until formal court proceedings are started. Equally, once court proceedings are started, the Executors/Personal Representatives have an obligation to respond to the claim and to provide certain documents.

Difficulties often arise when the Executors/Personal Representatives and beneficiaries are the same person. Practitioners must be careful to advise their clients of the need to keep each role separate. There can be significant adverse cost consequences of failing to do so.

It all seems so unfair

This is something we hear often.

Although testamentary freedom (being the right for a person to decide who should receive their assets after they die) exists in England and Wales, the 1975 Act does impose on that freedom in certain circumstances. This can lead many to feel that claims made under the 1975 Act are unfair or go against the deceased's wishes.

If a person bringing a claim under the 1975 Act has good grounds for doing so, it is likely that the deceased's estate will need to be distributed differently to the terms of their Will (or the Intestacy Rules if there is no valid Will).

Do I need someone to advise me?

While not a legal requirement, it is always sensible to obtain advice from a specialist. Only certain professionals are authorised to provide advice in a dispute, so it is important to choose carefully. When appointing a specialist they will be able to discuss their credentials with you as well as providing you with information on your options, the process, and next steps.

Although a useful summary for clients and individuals alike, this fact sheet is an overview only. Many factors will need to be considered. There are particular issues that affect particular parties depending on particular circumstances. 1975 Act claims are therefore best dealt with by a specialist.

What next?

If you are one of the following:

- someone considering (or currently bringing) a claim;
- a beneficiary who has been notified of a claim or an intended claim;
- an Executor or Personal Representative of an Estate that has received notification of a claim or intended claim; you are likely to benefit from an initial no obligation discussion with one of our experts, so do please get in touch.

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