

# Factsheet

Someone maintained  
claims under the 1975 Act

## What you need to know about a person who has been maintained by the deceased when it comes to the Inheritance (Provision for Family & Dependents) Act 1975

In accordance with section 1(1)(e) of the 1975 Act, those maintained by the deceased immediately prior to the deceased's death are able to bring a claim against the deceased's estate, provided they have not been adequately provided for.

What does 'being maintained' actually mean?

A person can be considered to have been maintained only if the deceased was making a substantial contribution in money (or a money equivalent) towards the reasonable needs of that person. This will not apply if the arrangement was of a commercial nature (i.e. a person cannot claim that they were being maintained if they rented a property from the deceased at market rate, for example).

The definition is clearly wide. Accordingly, the courts have taken it upon themselves, within the decisions being made, to decipher the meaning.

Although decided some years previous, the case of *Jelley v Iliffe* [1981] Fam 128 remains authoritative on the object of Section 1(1)(e). Stephenson LJ confirmed (at 137) that :-

'the object of this legislation is to remedy, wherever possible, the injustice of one who has been put by a deceased person in a position of dependency on him being deprived of any financial support, either by accident or by design of the deceased after his death'.

Essentially, the purpose of this section is to allow those who have been financially dependent on the deceased to bring a claim. The above case also clarified that the relationship as a whole will need to be considered when assessing whether someone had been sufficiently maintained.

It is important to note that the deceased does not need to have maintained the person to the fullest extent. Instead, the 1975 Act confirms that any person who was being maintained by the deceased immediately before the deceased's death, either wholly or partly, can look to claim.

The person maintained does not need to be a relative or in a relationship with the deceased. In fact, it is arguable that section 1(1)(e) will not apply if any of the other listed relationships apply (see our earlier factsheets and sections 1(1)(a) – 1(1)(d)). This is because section 1(1)(e) specifically states:

"Any person (not being a person included in the foregoing paragraphs of this subsection)..." [emphasis added]

Despite this we regularly see claims being brought under both a relationship status (such as cohabitee) and under this 'maintained' section.

### Are there any other factors that may prevent a claim being made?

The same condition applies here as to all applicants under the 1975 Act. Namely, they can only bring a claim if the disposition of the deceased's estate, either on intestacy or under the terms of the deceased's Will (depending on the applicable circumstances) fails to adequately provide for them.

### The Act dictates that a person can only claim if:

1. they are one of the listed persons set out within section 1(1)(a) – 1(1)(e) of the Act (see our 1975 Act overview factsheet for further details) and
2. the distribution of the deceased's estate effected by the Will or the rules of intestacy (or a combination of both where applicable) does not make reasonable financial provision for the person claiming.

## 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.

In addition, when dealing with a claim by a person maintained by the deceased, the court will have regard to:

- the length of time the deceased maintained the applicant
- the basis on which the deceased maintained the applicant
- the extent of the contribution made by way of maintenance and
- whether, and to what extent, the deceased assumed responsibility for the maintenance of the applicant.

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.

What does 'assumption of responsibility' mean?

Even if the applicant was able to show the deceased substantially contributed to their maintenance, this may not be sufficient to satisfy the court that the deceased assumed responsibility for them.

The following are some examples of situations where it could be held that the deceased 'assumed responsibility' for the applicant:-

- Provided accommodation
- Paid household bills
- Paid a regular allowance or made gifts of money/property
- Paid or reduced the applicant's outgoings e.g. allowing the applicant to rent at less than market value.

An example of the court's approach can be found in the following cases:

- Re Beaumont (deceased) [1980] 1 All ER 266;
- Baynes v Hedger [2009] 2 FLR 767;
- Kenneth Paul King v The Chiltern Dog Rescue, Redwings Horse Sanctuary [2015] EWCA Civ 581.
- Lewis v Warner [2017] EWCA Civ 2182

Details of each of these cases will shortly be published within our case commentary section on the IDRn.

### What does 'immediately before the death of the deceased' mean?

Thankfully the court's approach seems to be one of common sense, with each case being considered on its own facts. In *Re Beaumont*, touched upon above, the court not only considered the position immediately before death but also consider the 'settled and enduring basis of the arrangement'.

Accordingly, if the maintenance ended prior to the deceased's death, evidence should be gathered as to the reason behind this and the maintenance relationship as a whole.

### 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.

### Is there anything else we need to know?

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.



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