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Claims for Reasonable Financial Provision

Inheritance (Provision for Family and Dependants) Act 1975

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Contents

Legal Framework

- | Who is entitled to bring a claim?
- | What is reasonable financial provision?
- | How does the Court determine an application?
- | Relevant factors

Categories of Claimant

- | Claims by spouse/civil partner
- | Divorce vs Death
- | Cohabitees and Death
- | Adult Children
- | Other people maintained by the deceased

Interim Orders and Costs, Including Conditional Fee Arrangements

Legal Framework

Who is entitled to bring a claim?

Section 1(1) of the Inheritance (Provision for Family and Dependents) Act 1975

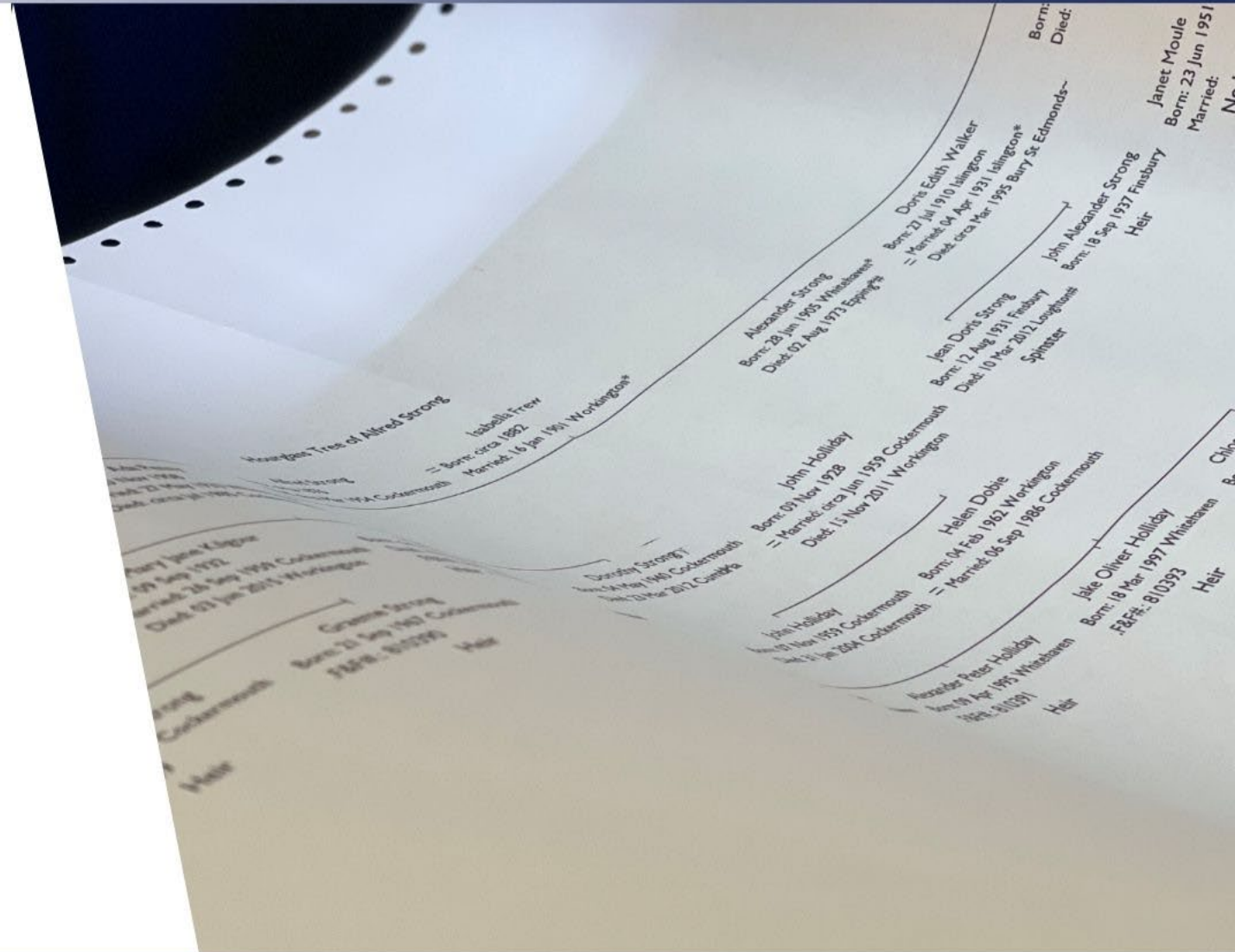
- | (a) Spouse or civil partner of the deceased;
- | (b) Former spouse or civil partner, not remarried or entered into another civil partnership;
- | (1A) Living with the deceased as cohabitants for at least two years before their death as husband and wife;
- | (c) Child of the deceased;
- | (d) Treated as the deceased's child – step-child, adopted child or foster child; and
- | (e) Financially maintained wholly or partly by the deceased.

Legal Framework

Who is entitled to bring a claim?

For those individuals that fall under Section 1(1) of the 1975 Act, must show that they have been:

- | Left out of the will entirely;
- | Left a gift, but the gift was not sufficient to meet their needs; or
- | Where there is no will, that they are not sufficiently provided for under the intestacy rules.



Legal Framework

Who is entitled to bring a claim?

Any claim needs to be made within six months of the date of the Grant of Probate or Letters of Administration otherwise it is out of time under Section 4 of the 1975 Act:

- | Applying out of time, needs exceptional reasons: **Re Bhusate [2020] EWHC 52 (Ch)**
- | Can apply even when Grant of Probate/Letters of Administration have not been obtained

| Deceased must also be shown to have been domiciled in England and Wales at the date of his death – Section 1(1) of the 1975 Act:

- | Domicile of birth/ origin
- | Domicile of choice: **Proler v Kholi (2018) (Ch)**

Legal Framework

What is the reasonable financial provision?

| Depends on your status as a beneficiary:

a) Spouse or civil partner: Section 1(2)(a):

“such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife [or civil partner] to receive, *whether or not the provision is required for his or her maintenance...*”

b) All other categories of department relationship: Section 1(2)(b):

“such financial provision as it would be *reasonable in all the circumstances of the case for the applicant to receive for his maintenance.*”

Legal Framework

What is reasonable financial provision? —————

| Spouse or civil partner:

| Provision that is reasonable taking into account all the circumstances;

| Whether or not for his or her maintenance; and

| Generally, a higher level of financial provision is afforded to the surviving spouse.

| Divorce cross-check: starting point is what the spouse/civil partner may have received if marriage had been terminated by a divorce instead of death:

Lilleyman v Lilleyman [2012] EWHC 821 (Ch)

Legal Framework

What is the reasonable financial provision?

- | All other applicants: such financial provision is required for their maintenance
- | In all cases, what is reasonable will depend on the facts. This could lead to the Court making a capital award, i.e. a lump sum for maintenance, periodical payment, or a lifetime interest in the property. This all depends on the case before the Court, and the Judge who is deciding the matter.
- | In considering maintenance, the Court will also consider life expectancy in the process of capitalising any lump sum payment:
 - | Family Courts: Duxbury tables
 - | Civil Courts: Duxbury tables, may be convinced to use other methods, such as Odgen Tables.

Legal Framework

How does the Court determine an application?

- | Court has wide powers which are set out in Section 2 of the 1975 Act.
- | Provided Court is satisfied that the will or rules of intestacy do not make reasonable financial provision for the Claimant, the Court has the power to make a number of orders, including, but not limited to:
 - o An order for periodical or lump sum payments
 - o Transfer of property within the estate
 - o Settlement of property for the benefit of the person claiming
 - o Acquisition and transfer or settlement of property from net estate
 - o Order varying ante or post nuptial settlement on parties to marriage/civil partnership where deceased one of the parties
 - o Order varying any trusts which deceased's estate held
- | Court can also make a number of consequential and supplemental orders to monitor and give effect to specific orders made, such as ordering any person holding property which forms part of net estate of deceased to transfer property required by the court

Legal Framework

Relevant factors

- | Section 3 of the 1975 Act sets out the relevant considerations taken into account by the Court:
 - | Financial resources and needs of the applicant, beneficiary or any other applicant – now and in the foreseeable future;
 - | Obligations and responsibilities deceased had to the applicant or beneficiary;
 - | Size and nature of the deceased's net estate;
 - | Any physical or mental disability of any beneficiary or applicant; and
 - | Any other matter, including conduct or any other person that the court may consider relevant.
- | If married or in a civil partnership, Court will also consider the applicant's age, duration of marriage/civil partnership, contribution made to welfare of the deceased's family. Also the divorce cross check is applied.



Legal Framework

Relevant factors

Other factors considered is the conduct of the parties, including (but not limited to):

| What attempts have been made to resolve matters pre-action. Whilst there is no formal process to follow, the Association of Contentious Trusts and Probate Specialists have created a recommended Code of Practice to encourage cooperative working between the parties:

- Letter of Claim to all relevant parties: executors/administrators/affected beneficiaries
- Affected parties to send a Letter of Response
- If possible, make a joint request from third parties for documents required
- If required, and possible, to provide joint instructions to an expert
- Parties to engage in correspondence seeking to narrow the issues and resolve the dispute
- If dispute not resolved, may become necessary to issue Court proceedings

. | Claimant has the burden of proof to establish that reasonable financial provision has not been made
. | Affected beneficiaries can choose to 'defend' by submitting financial information. If not provided, Court normally assumes that there the beneficiaries do not have a financial need



Claimants

Spouse/Civil Partner under Section 1(1)(a)

| Paul v Paul [2022] EWHC 1638

| Garbutt v Garbutt [2023] EWHC 1053 (Ch)

| Kaur v Estate of Karnail Singh & Ors [2023] EWHC 304 (Fam)

| **Word of warning:** you are considered married or in a civil partnership up until the decree absolute is made. This means if you are separated or having obtained the decree absolute, at law still considered spouse/civil partner.

Claimants

Former Spouse/Civil Partner under Section 1(1)(b)

| Chekov v Fryer [2015] EWHC 1632 (Ch)

| Sismey v Salandron [2022] WTLR 281 (Ch)

| Section 15(1) of 1975 Act: enables the Court on the making of a divorce, nullity of marriage, or judicial separation order, to order that a party to a marriage shall not be able to apply for an order under Section 2 of the 1975 Act.

Claimants

Cohabitees – s. 1(1)(ba) and (1A)

| Section 1(1)(ba) and (1A) of 1975 allows an applicant to make a claim when:

| During whole period of two years ending immediately before deceased died, the applicant was living:

- a) In the same household as the deceased; and
- b) As if they were a married couple or civil partners.

| What is the same household?

| Household does not mean 'house'

| **Gully v Dix [2004] EWCA Civ 139**

| What happens is partners maintaining two properties?

- a) **Kotke v Saffarini [2005] EWCA Civ 221**
- b) **Churchill v Roach [2002] EWHC 3230 (Ch)**

Claimants

Cohabitees – s. 1(1)(ba) and (1A)

- | Living as if married or in a civil partnership?
 - | Flexible test
 - | **Re Watson [1999] 1 FLR 878**
 - | Publicly acknowledged relationship: **Baynes v Hedger [2008] EWHC 1587 (Ch)**

- | Two years before death
 - | What happens if partner involuntarily away due to illness etc: **Re Watson [1999] 1 FLR 878**
 - | Interrupted cohabitation, but relationship continuing:
 - a) **Gully v Dix [2004] EWCA Civ 139**
 - b) **Kaur v Dhaliwal [2014] EWHC 1991 (Ch)**
 - | Determined by whether the relationship had irretrievably broken down or merely suspended/temporary

- | Additional factors in Section 3(2A) for the Court's consideration are the age of the applicant, length of period lived in same household as married couple/civil partner, and contribution made by the applicant to the welfare of the family of the deceased, including caring for the home or family members: **Lewis v Warner [2017] EWCA 2182 (Civ)**

Claimants

Adult Children: Section 1(1)(c)

- | Illot v Mitson [2017] UKSC 17
- | Miles v Shearer [2021] EWHC 1000 (Ch)
- | Batstone v Batstone [2022] WTLR 835
- | Estate of Annan (deceased) [2023] EWHC 662 (Ch)
- | Fennessy v Turner (unreported)
- | Estate of William Pyburn (deceased) (unreported)



Claimants

Other people maintained by the deceased: Section 1(1)(e)

- | Maintained immediately prior to the deceased's death and adequately provided for
- | What does maintain mean?
 - | Deceased was making a substantial contribution in money (or a money equivalent) towards the reasonable needs
 - | Doesn't apply if the relationship was of a commercial relationship
 - | Definition is very wide and for the Courts to interpret
 - | Not required to the fullest – can be wholly or partly maintained
 - | Don't need to be a relative to be covered
 - | Other factors considered:
 - | Length of time deceased maintained the claimant
 - | Basis on which the deceased maintained the claimant
 - | Extent of the contribution made by way of maintenance
 - | Whether, and to what extent, the deceased assumed responsibility for maintenance of claimant
- | Assumed responsibility: not shown just from deceased making substantial contributions. Examples of assumed responsibility are providing accommodation, paying household bills, paying a regular allowance or making gifts, allowing claimant to rent less than market value, paying or reducing the claimant's outgoings.

Claimants

Other people maintained by the deceased: Section 1(1)(e)

| Re Beaumont [1980] 1 All ER 266

| Kenneth King v Chiltern Dog Rescue and Others [2015] EWCA Civ 581

| Lewis v Warner [2017] EWCA 2182

| What constitutes immediately before death?

| Courts to determine, but giving a common sense approach

| Each case decided on own facts

| If maintenance finished prior to deceased's death, evidence should be gathered for reason behind this, and maintenance relationship as a whole

Interim Orders and Costs

(including Conditional Fee Arrangements)

| Interim Orders: Section 5 of the 1975 Act: permits for conditions and restrictions to be made on interim order where:

| Applicant is in immediate need of financial assistance, but it is not yet possible to determine what order (if any) should be made; and

| Property forming the net estate of the deceased is or can be made available to meet the needs of the Claimant.

| Costs = General rule = loser pays the winner's costs

| Previously, this did not include the success fee on a conditional fee arrangement and the winner would remain responsible for this

| **Hirachand v Hirachand [2021] EWCA Civ 1498**

Questions?



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