



myerson

Myerson **Personal**

Our guide to Inheritance Act claims

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Welcome

Although everything we do is ultimately about you, it is important you get to know the team that will be working with you every step of the way.

Our Contentious Trusts and Probate Team are the leading litigation experts in the North, and we don't say that lightly. If you choose to work with us, you will discover exceptionally talented lawyers who have a passion for making a genuine difference to our clients' lives.

Why Myerson?

Our specialist Contentious Trusts and Probate lawyers provide clear advice on disputes over Wills, trusts, and estates.

As a Top 200 UK Law Firm, we are proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500**, and commended by The Times '**Best Law Firms 2023**'. This means you can be certain that you will receive the highest quality legal advice.

Your team of solicitors will provide practical advice and, unlike some other firms, are able to draw on a wide range of specialist support and expertise from other solicitors across our firm, from Real Estate to Private Client and beyond.

Find out more about our [**Contentious Trusts and Probate Team**](#).



Inheritance Act Claims

If you have been left out of someone's Will or do not benefit under the Intestacy Rules, or if you have received less than expected, you may be able to bring a claim for reasonable financial provision against their estate.

The Inheritance Act 1975 protects those who were financially dependent on the Deceased as well as assisting those who were not dependent to bring a claim.

An important point to note is that claims can only be brought where the person died living in England and Wales.

Who can make a claim?

Only certain people can bring a claim (known as a claimant) which includes:

- The Deceased's spouse or civil partner.
- The Deceased's former spouse or civil partner – but they must not have remarried/formed a new civil partnership.
- The Deceased's cohabitee (partner) if they were living with the Deceased in the same household for a period of 2 years ending immediately before the death.
- The Deceased's children.
- Anyone who was treated as the Deceased's child (e.g. stepchildren).
- Anyone who was being maintained by the Deceased immediately before death.



What is reasonable financial provision?

Reasonable financial provision means what is required for a claimant's maintenance – commonly referred to as a “maintenance need”.

This generally means what is necessary for a claimant to meet their daily living costs. A claimant should not expect to receive enough money or property to live a lavish lifestyle but nor should they be worse off than they were before the claim.

The assessment is essentially what a person realistically needs to live on which is decided on a case-by-case basis. This could be, for example, money for a car if they are struggling to use public transport because of a disability or payment of debts. It is important to establish what you need from the estate at an early stage.

The Act is not a means to achieve an equal distribution of the estate or a way to right the “wrongs” of the Will. A claimant needs to prove their case by showing that they have a maintenance need.

What will the court take into account when looking at my claim?

There are a number of factors the court takes into account, commonly referred to as the “section 3 factors”. These are:

- The financial needs and resources which the claimant has now and in the future.
- The financial needs and resources which any other claimant has now and in the future.
- The financial needs and resources which the beneficiaries have now and in the future.
- Any obligations and responsibilities that the Deceased had towards the claimant and beneficiaries.



- The size and nature of the Deceased's net estate.
- Any physical or mental disability which the claimant or beneficiaries have.
- Any other matter, including the conduct of the claimant or any other person, the court may consider relevant.

Many of the factors are based on the present position of the parties but also what might arise in the future.

What do I need to prove my claim?

To prove that you have a claim, you will need to provide information and documentation about your financial position. This will include details of your income (which includes any benefits you receive) and outgoings as well as any debts and savings that you have.

If you own a property, information about the value of your home as well as any mortgage that you have will be relevant. If you are renting a property, details of your rental payments will be required and the terms of any tenancy agreement.

If you are living with another person as a "household", their financial information will also be relevant.

To assist, we will provide you with a financial questionnaire to complete and discuss with you. It is also helpful to have information about the Deceased's assets and liabilities, including whether they owned any property.

How do I start my claim?

If you are thinking about a claim, it is important that your position is properly assessed early on. This enables us to advise you on whether you have a good claim or not.

If we consider that you have a claim, we will then apply for a Standing Search. A Standing Search is an application to the Probate Registry to ensure that when a Grant is issued, you are made aware and will be provided with a copy of the Grant.



This helps avoid deadlines being missed. The Standing Search lasts for six months after which time it can be renewed.

We will then work with you to produce a Letter of Claim. This is an initial letter which formally sets out the basis of your claim and your evidence and is sent to the estate and any beneficiaries.

Is there a time limit for an Inheritance Act claim?

Yes, a claim must be lodged with a court within six months of the date of the Grant of Probate or Grant of Letters of Administration. If this date is missed, the claim can only be brought with the court's permission (see below).

What if I have missed the time limit?

Sometimes there are good reasons why a claim has not been issued in time, for example, illness. The court can give permission for late claims to proceed but an application for permission must be made first and as soon as possible. If you believe you may have a claim and are outside of the time limit, it is very important that you seek legal advice as soon as possible.

Do all claims go to trial?

No – it is very rare for cases to reach trial. Most cases are resolved by Alternative Dispute Resolution, such as mediation.



What is Alternative Dispute Resolution?

Alternative Dispute Resolution is where parties try to resolve their disputes themselves rather than go through the court system. One of the most common ways to resolve a claim is by the use of mediation.

We will advise you if this is appropriate for your claim – see our separate guide for more information on mediation.

What will I get if I win my claim?

The court can make a number of orders including payment of a sum of money, the purchase of a property, or even periodic payments from an estate for several years. What is ordered depends on the individual case. If you are successful in your claim, your opponent will normally also be ordered to pay your legal costs but this is not always guaranteed.

What happens if I lose?

If you are unsuccessful, you will not receive anything from the estate and will normally be ordered to pay your opponent's costs.



You're in safe hands!

If you would like further information about how we can help you with **Inheritance Act Claims** or have any questions, please don't hesitate to contact a member of our **Contentious Probate Team** today.

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