

Contesting a will

If you are left out of a will, or are dissatisfied with the amount you are to receive, you may be able to make a claim from the deceased's estate under the Inheritance (Provision for Family and Dependents) Act 1975. You are also able to make a claim if you receive no or unsatisfactory assets due to the laws of intestacy.

Who can claim?

A person who had any of the following relationships with the deceased can claim on their estate:

- Spouse or civil partner
- Former spouse or civil partner (as long as they have not entered into a new marriage or civil partnership)
- Son or daughter
- Person treated as a child of the family
- Person being maintained by the deceased
- Person cohabiting with deceased as their husband or wife

What must be proved?

To be successful in any claim, you must prove that reasonable financial provision has not been made. In most circumstances, the court will look at only what is reasonable for your maintenance.

If you are a spouse or civil partner of the deceased, the court will look at what financial provision is reasonable in all the circumstances. This gives the court scope to take wider factors into account.

What factors are taken into account?

In any claim, the following factors will be looked at by the court:

- Your financial resources and needs
- The deceased's moral obligations
- The size and nature of the deceased's estate
- The disability of the applicant or any person to receive anything from the estate
- Anything else relevant

In cases started by a spouse or civil partner, the court will also consider:

- The age of the applicant
- The length of the commitment between the applicant and deceased
- The contribution the applicant has made to the family

What order can the court make?

The court can make a variety of orders such as the applicant receiving a lump-sum, receiving regular payments from the estate or that property is transferred to the applicant. The court has the discretion to decide which portion of the estate is used for these.

Is there a time limit for making a claim?

You have 6 months to make a claim after the date on which the power to distribute the estate (the Grant of Representation) was granted. After this date, the court has discretion to allow a claim but valid reasons for not making the claim sooner must be given.

Should I make a claim?

The likelihood of a claim succeeding depends greatly on the circumstances of your case. Any claim made will reduce the total value of the estate due to the costs incurred. As such, it is important to discuss the merits of your case in detail with your legal advisor before making a decision on how to progress.