

CB PROBATE INHERITANCE ACT CLAIMS

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IF A DECEASED'S WILL (OR INTESTACY) FAILS TO MAKE ADEQUATE PROVISION FOR SOMEONE WHO FALLS WITHIN CERTAIN CATEGORIES, THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975 ('THE INHERITANCE ACT') MAY PERMIT THEM TO SUCCESSFULLY CLAIM PART OF THE DECEASED'S ESTATE - EVEN WHERE THAT IS IN DIRECT CONTRAVENTION OF THE DECEASED'S EXPRESS WISHES.

A VIABLE INHERITANCE ACT CLAIM WILL IMPEDE THE ADMINISTRATION OF THE ESTATE AND MAY DELAY DISTRIBUTIONS TO EXISTING BENEFICIARIES BY YEARS.

Inheritance Act claims (also called 1975 Act claims) may be brought by a spouse, former spouse, child or other dependent of a deceased person that was domiciled in England and Wales at the time of their death, if they consider that the deceased's estate does not provide adequately for them. If the court dealing with the claim agrees that the deceased failed to make 'reasonable financial provision' for the claimant, the court will award it from the estate.

What amounts to 'reasonable financial provision' will vary according to the specific circumstances of the claim. The court is required to consider a range of factors such as the financial needs and resources of the claimant and other beneficiaries, the size of the estate, any physical or mental disability of the claimant and any duty the deceased had towards them, but it should also have regard to 'any other matter' it considers relevant. There is no judicial guidance on how to weigh these competing factors, with the result that the ultimate outcome of such claims can be wildly unpredictable.

Perhaps the most widely reported Inheritance Act claim is *Illot v Mitson*, in respect of which the Supreme Court gave judgment in March 2017. In that case, the deceased's adult daughter was awarded £50,000 from her mother's circa £500,000 estate, despite clear and repeated verbal and written instructions from the deceased that her daughter should not receive anything. The Supreme Court's judgment was hailed as a triumph for testamentary freedom since it reduced the Court of Appeal's award and emphasised the importance of having regard to the testator's wishes, but in reality the mother's wishes, which could not have been more clearly or definitively expressed, were supplanted.

At Collyer Bristow, we advise on Inheritance Act claims regularly. Most recently we secured a lucrative settlement for the former spouse and children of a young entrepreneur who died unexpectedly, shortly after he had remarried. In that case there were issues concerning the domicile of the deceased and outstanding liabilities to the IRS which favoured early settlement.

OUR ADVICE IS ALWAYS TAILORED TO THE SPECIFIC CIRCUMSTANCES OF EACH CASE, BUT AS A GENERAL GUIDE:

FOR CLAIMANTS

If you are bringing an Inheritance Act claim it is imperative to get your financial evidence and statement of needs in good order at the outset. This will demonstrate commitment to your claim and should encourage early settlement discussions.

FOR EXECUTORS

Inheritance Act claimants are potential beneficiaries of the estate, so it is essential that you act neutrally in respect of any intimated claim. The Inheritance Act requires claims to be brought within 6 months of the grant of probate or letters of administration. A claimant may take up to 4 months to serve a claim. If you wait 10 months before distributing the estate, you will not suffer personal liability for losses arising, if an Inheritance Act claimant later materialises.

PROBATE INHERITANCE ACT CLAIMS**FOR EXISTING BENEFICIARIES**

In view of the executors' neutral role, it falls to existing beneficiaries to defend the estate against Inheritance Act claims. The purported claim should be analysed dispassionately at the outset. If it has validity, an early, well-pitched offer may be the best way of protecting the estate from the costs and risks of litigation. It will also be the quickest way to realise your inheritance: the Supreme Court's decision in *Illot v Mitson* was not given until 12 years after the initial claim was made!

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