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The members of Geldards LLP are solicitors and a list of members' names is available for inspection at the registered office (Cardiff).

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Geldards LLP is a limited liability partnership registered in England and Wales.

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The Inheritance (Provision for Family and Dependants) Act 1975

A testator (a person making a Will) has complete freedom to leave his estate to whomsoever he pleases. However, certain categories of person may apply to the Court under the provisions of the Inheritance (Provision for Family and Dependants) Act 1975, for payment to be made to them from the estate, either where they have received nothing under the Will, or where they believe that what they have received is inadequate.

Who may claim?

Those who are eligible to make a claim are:

Spouse or Civil Partner

This includes a spouse or civil partner from whom the testator is judicially separated, but not after the relationship is legally dissolved.

Former spouse or civil partner who has not remarried or entered into a new partnership

Whether or not a former spouse or civil partner can apply under the 1975 Act will depend on the terms of the court order made when the financial aspects of the dissolution were finalised. If the court order was expressed to be a 'clean break' settlement, then it is extremely unlikely that any claim brought by the former spouse or civil partner would be successful.

However, if the testator was still maintaining his former spouse or civil partner on his death, then the former spouse or civil partner may have good grounds for a claim.

Child

Children bringing a claim under this category may be natural or adopted, legitimate or illegitimate. They may be of any age, although it is generally the case that an application made by able-bodied children capable of supporting themselves will not be successful. There are, however, exceptions and each case would be considered on its own merits.

Child treated as a child of the Testator

An example would be a step-child where their step-parent has treated them as their own.

Person maintained by the Testator

This category is fairly wide-ranging but is only applicable where the testator was financially maintaining a person. It does not extend to a claimant who was being paid for services. For example, a claim brought by a home carer to whom the testator was paying a wage would almost certainly fail.

Common Law Spouse or Partner

This is a fairly recent development in the law. To qualify under this category, the applicant must satisfy the court that, during the whole of the period of two years ending immediately before the death of the testator, he or she was living in the same household as the testator as the testator's husband, wife or civil partner.

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The Inheritance (Provision for Family and Dependents) Act 1975 - continued

What is 'reasonable provision'?

There are two standards for establishing whether or not provision is reasonable for the applicant. These are:-

The surviving spouse or civil partner standard

This is such financial provision as it would be reasonable for a spouse to receive regardless of whether or not it was required for his or her maintenance. This standard does not generally apply to a spouse who is either judicially separated or divorced from the testator, although the court does have discretion in these circumstances.

The ordinary standard

This provides for such financial provision as it would be reasonable in all the circumstances for the applicant to receive for his or her maintenance. It is this standard that applies to all of the categories of applicants, with the exception of the spouse category.

When assessing what is reasonable, the court will have regard to the facts of each case and will look at different considerations depending on the relationship of the claimant to the testator.

Time Limits

Any claim under the 1975 Act must be brought within six months of the date on which the Grant of Representation is issued and cannot be made prior to the issue of the Grant. Whilst the court does have the discretion to extend this time limit, it tends only to do so in exceptional circumstances.

What you can do to minimise the likelihood of a 1975 Act claim being successful?

Tell us of any unusual family circumstances, in order that we may advise you fully. Make sure you give consideration to all of your family members and dependants when preparing your Will. Leave a written statement setting out the reasons for omitting certain persons who may have expected to have been remembered.

Although the statement will not be legally binding, provided the reasons are good, true and accurate, the court will take them into account when reaching its decision. The statement should be kept up to date, so that it is not disregarded by the court as having been made many years before death, and so out of date of the date of death.

If a claim is likely, consider leaving instructions that your executors should delay distributing your estate until the six month time limit has expired. Please ask a member of Geldards' Private Client team for any further information and advice.

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This is a summary of the subject for general guidance only. Professional advice should be sought to take into account the application of the law to your particular circumstances.

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