

IS YOUR WILL YOUR FINAL WORD?

Claims under the Inheritance (Provision for Family and Dependants) Act 1975
"Inheritance Act 1975"

Many people assume that in line with English law you can leave your estate to whomever you choose and that your last Will and Testament is your final word on who may benefit from your assets. However, in recent years many claims are being brought in the Courts for the right to receive a part of the estate of someone who has died and your final word may therefore be overturned by a Court after your death.

Under the Inheritance (Provision for Family and Dependants) Act 1975 certain categories of applicant including adult children and cohabitants are entitled to make a claim on the estate on the basis that the deceased's Will (or distributions on intestacy if there is no Will) does not make reasonable financial provision for them. Other than a surviving spouse of the deceased the test is what is reasonable in all the circumstances for their maintenance. The question a Court has to consider is not whether the deceased acted unreasonably but whether objectively it was unreasonable for the applicant to receive the provision (if any) made for them in the Will. The Court has a wide discretion and must take into account a number of factors including the financial needs and resources of the claimant and also the deceased's obligations and responsibilities towards that claimant.

In these hard times it is likely that more and more claims will be made by close relatives or dependants of the deceased person if somebody has been excluded from the deceased's Will. In order to limit claims so far as possible, specialist solicitors advice should be taken when writing a Will. It may be better to leave a legacy to the close relative rather than excluding them totally.

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