



Testators in the UK are generally free to leave their estate by their Will to whoever they choose. If a testator dies without leaving a Will, the intestacy rules apply. These rules do not provide for cohabiting partners to inherit and, with 3.4 million couples cohabiting in the UK, this may leave many surviving partners without adequate provision and in difficult financial circumstances.

### Claiming under Inheritance (Provision for Family and Dependents) Act 1975

There is however a remedy for surviving partners – the 1975 Act allows certain categories of eligible claimants to bring a claim for reasonable financial provisions to be made to them from the deceased's estate.

#### Eligible applicants

Cohabitees are commonly able to bring a claim under the Act under one of two categories:

##### 1. Cohabitation with the deceased

In order to be eligible under this category a cohabitee must have been living in the same household as the deceased, as their husband, wife or civil partner, for the two years immediately before the deceased's death.

##### What constitutes the same household?

Case law has been relatively flexible about the definition of living in the same household, for example, the court



held in *Lindop v Agus and others* [2009] that a couple who had been together for five years but lived between two households, with the deceased regularly staying over at the applicant's house, were living together.

## 2. As a person who, immediately before the deceased's death, was maintained by the deceased

Maintenance is not defined in the 1975 Act, but an eligible applicant under this category must have been supported financially by the deceased immediately before their death. This may include providing rent-free accommodation or contributions to the applicant's income or living expenses.

### Reasonable financial provision

An eligible applicant must demonstrate that reasonable financial provision has not been made for them from the deceased's estate.

The court will consider a number of factors in order to determine whether a *Will* or the intestacy rules make reasonable financial provision for the applicant. In the case of cohabittees these include:

- their financial needs and resources;
- their medical needs;
- their age;
- the length of cohabitation; and
- the contribution the cohabitee made to the welfare of the family of the deceased.

Any award made by the court to a cohabitee will be limited by what is reasonable in all the circumstances for the applicant to receive for their maintenance. This differs from the standard applicable to a spouse of the deceased, which is not limited by maintenance.

If you have any questions on the content of this article or would like to discuss an Inheritance Act claim, please don't hesitate to contact one of the [team](#).