

## Cut out of my inheritance: what can I do?



People tend to avoid talking about certain topics with family members, such as what will happen to their assets after they die. Therefore, quite often, it can come as a shock to people to realise that, for whatever reason, they have been cut out of a Will they were expecting to benefit from. So what can you do if you were expecting an inheritance and didn't receive it? Ultimately, this will depend on the facts of each case.

The default position in England and Wales is that a person has testamentary freedom to leave their assets to whoever they choose, whether that be their spouse, children, neighbour, or a charity they have no previous affiliation with. This is in contrast to many other countries where there are 'forced heirship' rules which require you to leave a portion of your estate to certain people, such as your children. It can therefore come as a surprise to people when they discover that they haven't been left anything from someone they felt should provide for them.

Whilst testamentary freedom is enshrined in English law, there are circumstances where it can be challenged. Two common ways this can be done are by: (1) challenging the validity of the Will; and/or (2) bringing a claim under the Inheritance (Provision for Family and Dependants) Act 1975 ("the Inheritance Act").

### Challenging a will

There are a number of grounds on which the [validity of a Will](#) can be challenged, including the following:

- The testator lacked testamentary capacity;
- The testator did not know and approve of the contents of their Will;
- The testator was subject to undue influence;



- The correct formalities under s.9 of the Wills Act 1937 were not followed; and
- The testator was fraudulently coerced into signing the Will

If a Will is successfully challenged, the deceased's estate would pass under the terms of a previous Will or under the intestacy rules if there was no previous Will.

## The Inheritance Act

The [Inheritance](#) Act enables certain categories of people to make a claim against a deceased person's estate on the basis that the deceased did not make reasonable financial provision for them (either by virtue of their Will or under the intestacy rules).

Those eligible to make a claim include, but are not limited to, a spouse/civil partner of the deceased, children of the deceased, or any other person who was being financially supported by the deceased prior to their death.

The Court has wide powers to make an award from a deceased person's estate. It could for instance order that a lump sum or periodical payments be paid to the claimant from the deceased's estate.

If you have any questions on the content of this article please don't hesitate to contact us.