

Who can contest my will?

You cannot stop someone contesting (challenging) your will after you have died.

Having your will professionally prepared by a lawyer will reduce the chance of a successful challenge.

A will may be contested on the basis that it is **invalid** or **unfair**.

Invalid

Someone with a legal interest in your estate may say that your will is not valid because

- you did not have **legal capacity** when you made it
- you did not **understand** the will when you signed it
- someone **pressured** you to make it
- someone else **fraudulently** signed the will or **tricked you** into signing
- it is **not your last will** and testament
- it was **legally revoked** before you died
- the content of your will is **unclear** or it does not comply with **legal requirements**.

If the Supreme Court agrees that your will is invalid, it may rectify (fix) the will or order that your estate be distributed in a particular way.

Unfair

Someone may challenge your will on the basis that it is unfair and does not properly provide for them.



While the law recognises **freedom of testation** (you are free to leave your estate to whomever you choose), the law also recognises that sometimes there is a **moral duty** to provide for certain family members.

The Supreme Court may, on application, make a **family provision order** if satisfied that your will does not adequately provide for a person's proper maintenance, education or advancement.

Family provision orders

A family provision order may be made whether or not you die with a valid will. If you have a will, the order will change how your estate is distributed.

The following people may apply to the Court for family provision:

- your **spouse** or **domestic partner** (or both)
- any **former spouse** or **domestic partner**, unless a particular type of financial agreement, entered into on or after 1 January 2025, was in force between you and your former partner
- your **child**
- your **stepchild**, if they are vulnerable due to disability, depended on you when you died, cared for you before you died, or they or their parent contributed to your estate
- a **stepchild under the age of 18**, if you were looking after them financially before you died
- your **grandchild**, if their parent (your child) died before you, or you were looking after your grandchild financially before you died
- your **parent**, if they cared for you or you cared for them before you died
- your **sibling**, if they cared for you before you died.

What the Court considers

When deciding whether to make a family provision order, the Court will consider

- **your wishes** (this is the most important factor)
- the **vulnerability** and **dependence** of the applicant
- the applicant's **contribution** to your estate
- the **character** and **conduct** of the applicant.

A family provision order may also be sought when a person dies intestate (without a valid will), if someone believes they will not be properly provided for under the law of intestacy.

See [📖 What if I die without a will?](#) to learn more about the law of intestacy.

Time limits

Generally an application for a family provision order must be made **within 6 months** of the grant of probate or administration. Applicants should seek legal advice before applying to the Court.

Fees and costs

A person who applies to the Supreme Court to challenge a will or seek family provision will usually need to pay a **court fee**. This can be waived (not enforced) in some circumstances. If the fee is charged, it may or may not be paid back from the estate when the court matter is finished.

The Court has discretion to order that **legal costs** incurred by the applicant or other parties be paid out of the estate or by individual parties. Parties may need to cover their own costs and, if their claim fails, they may be ordered to pay the legal costs of other parties.

To that end, the Supreme Court may order a party to pay an amount to the Court (known as **security for costs**) if the Court believes their application for a family provision order may lack merit or if a party will not negotiate with other family members.