

## **Inheritance conflicts within blended families**

Blended families, as a term, has come to replace the phrase 'step-family' in recent years, as a description of those families in which two partners, each with their own children from existing relationships, enter into a new relationship – be it a marriage, a civil partnership or a cohabitation – and form a new, single family unit. In time, the partners may have children together, meaning that the family unit is comprised of children with three distinct sets of parentage. The welcome elimination of the taboo around issues like divorce – reflected in the introduction of no fault divorces in April 2022 – means that the concept of a blended family is now seen as an accepted part of modern life. Figures quoted on the website of [Step](#), a 'global professional body, comprising lawyers, accountants, trustees and other practitioners that help families plan for their futures' help to underline the degree to which the old fashioned view of a 'traditional' family unit has all but broken down. According to these figures, the professional members of Step have seen an increase in the following less traditional family units:

- Multi-jurisdictional families (78%)
- Cohabiting families (73%)
- Mixed-ethnicity families (61%)
- Same-sex relationships (54%)
- Non-biological children (51%)

At the same time, 75% of the same professionals report that the number of blended families they work with has risen in the last 10 years. Meanwhile, the UK stepfamily resource centre, [Happy Steps](#), estimates that one in three UK families are now blended families. Figures like these are backed up by statistics published by the [Office for National Statistics \(ONS\)](#), which state that, in 2020, only 63.2% of opposite sex couples and 69.9% of same sex couples were, on their wedding day, getting married for the first time. Given all of this it's probably more important than ever to look at the issues which arise within blended families when a parent dies and the question of inheritance arises. In a standard family unit, such questions are fairly easily dealt with – the first parent to die leaves their estate to the surviving parent, and when the surviving parent dies, everything is left to the children of the partnership. In a blended family, there's a good chance that things won't be anything like this simple, and careful estate planning is required in order to ensure that the difficult process of coping with the death of a parent isn't made even more difficult by an dispute – or even a court case – over the division of the estate they left behind.

One of the reasons why the question of blended families can be trickier in England and Wales than in some other parts of the world is the concept on testamentary freedom. In simple terms, this means that an individual is free to write a will leaving their estate to anyone they choose – from spouses and children to the local dog's home – with no legal obligation, for example, to provide for members of their family. If the parties who have been disinherited in this manner feel that they have been unfairly treated, then they could make a claim under the provisions of the Inheritance (Provision for Family and Dependents) Act 1975, and this right extends to the likes of spouses and children as well as anyone who was financially dependent upon the deceased. Despite this potential safety net, the principle of

testamentary freedom differs from the situation in many other countries – such as France, Scotland and Spain - in which the law states that children have a legal right to varying percentages of the estate of the deceased. It's not too difficult to come up with scenarios in which the combination of testamentary freedom and a blended family could easily lead to conflict.

The first piece of advice to give to anyone wishing to avoid inter-family arguments following their death – and this applies to blended and non-blended families alike – is that you need to write a will. Not writing a will means that any estate you leave will be divided in line with the laws of intestacy, and this means, at the time of writing, that the first £322,000 of any estate will pass automatically to a spouse or civil partner, along with the possessions of the deceased. Any portion of the estate worth more than £322,000 will then be divided between the spouse or civil partner and any surviving children of the deceased. In a scenario such as this involving a blended family it's easy to see that the children from any second marriage, or the children brought to the marriage by the surviving partner, will be disinherited.

The issues around blended families and inheritance disputes, however, range far beyond the question of whether a will has been written or not. It's easy to imagine, for example, a scenario in which a widow with children from a first marriage remarries. As is the case with many marriages, the widow and her new husband write wills leaving the entirety of their estates to each other. When the widow dies, however, the husband remarries and loses touch with the children, and writes a new will leaving the whole of his estate (much of which was inherited from his first wife) to his new wife. The outcome being that when the husband dies, the children find themselves in a position of being left nothing from their mother's estate.

The case of [Miles vs Shearer](#), which was heard in the High Court in 2021, offers a real world example of the kind of scenario outlined above. In this case Mr Shearer gifted a sum to his two daughters from his first marriage while he was still alive, while informing them that he wouldn't provide them with any more support. He then remarried and, on his death, left the vast bulk of his £2.2 million estate to his second wife. The two adult daughters made a claim under the aforementioned Inheritance (Provision for Family and Dependents) Act 1975, attempting to obtain a ruling that 'reasonable financial provision' be made for them from their late father's estate. The case failed, with the judge ruling that neither claimant had demonstrated a financial requirement for maintenance beyond what could be achieved through an adjustment of their lifestyles. As well as the details to the claimants earning potential and maintenance requirements, the judgement was based in large part on evidence which showed the deceased had expressed a clear and unambiguous intention for his adult daughter's to receive no further financial provision from him, during his life or following his death.

This may seem a relatively extreme case, but the principle of testamentary freedom means that a similar outcome could easily arise, almost by accident, in any number of blended families following the death of a parent.

The next piece of advice for anyone hoping to avoid inheritance disputes following their death is that it makes sense for all the parties involved to sit down and talk about estate planning prior to the event. Many people find conversations of this kind difficult, of course, but a huge number of the disputes which arise following the reading of a will do so because

the people who find themselves being disinherited had no idea that it was going to happen. Many people don't fully grasp the fact, for example, that if they and their spouse write what are known as 'mirror wills' – the standard arrangement in which each spouse leaves everything to the other – then following their death the surviving spouse will be free to completely rewrite their will. In addition, other events such as the surviving spouse being declared bankrupt, or remarrying and then divorcing and losing assets in a settlement, could have a huge impact on the size and value of any estate still left to pass on to the children from the first marriage.

One possible solution is the creation of mutual wills, which involve both parties agreeing that the wills they have drawn up won't be revoked or amended at any point in the future without the consent of the other party. With mutual wills, the death of one of the parties will leave the other legally forbidden to make any changes to their will, something which runs counter to the standard approach of anyone being able to amend or replace their will as and when they choose provided they have the mental capacity to do so. While this approach may offer reassurance to both parties at the time of writing, it leaves any surviving partner in the position of not being able to make alterations to take into effect life-changes such as a new spouse or more children or grandchildren. In the mutual will scenario, it is the later additions to any blended family which could find themselves being effectively disinherited.

Another form of estate planning which could minimise the risk of inheritance disputes is the use of trusts, which can be set up to protect assets and ensure that they are passed on as you wish them to be following your death. One common option is a Life Interest Trust, which sees the surviving spouse either provided with an income from the estate, or given the use of an asset such as the family home until their death. At this point, the remaining estate will be passed to the children of any first marriage. Clearly, this would protect those children, but offers an inflexible solution and may require provisions stating that the trustees are allowed to release more capital from the estate as and when needed.

A Discretionary Trust, on the other hand, means that the estate in question can be distributed to a number of different beneficiaries. In most cases a trust of this kind is underpinned by a letter of wishes, in which you can set out instructions and guidance for the trustees on how the Trust will be distributed. Ultimately, however, letter of guidance or not, the trustees will have the ultimate power to decide how the funds from the estate should be distributed, so it may make sense to appoint one of your children as a trustee, to ensure that nothing can be done without their approval.

