

Heir inapparent

With growing controversy over fee structuring among heir hunters, David de Menezes examines current practice and highlights possible risks for practitioners



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'There is mounting evidence of the need for better regulation to ensure that beneficiaries are treated fairly, and probate practitioners should carefully consider the risks involved in appointing heir locators on a percentage fee basis.'

An unexpected inheritance from a long-lost relative may seem like the stuff of dreams, but in reality this process can be far more sinister than you might expect.

Whether the deceased left a valid will or died intestate, probate solicitors involved in the administration of an estate are often faced by the need to locate beneficiaries. An executor or administrator has a duty to locate all beneficiaries and distribute the estate to those entitled. In many cases, the beneficiaries will have been in touch with the deceased at the date of death and can easily be found. From time to time, however, the solicitor will need help from specialist probate genealogists or heir locators to find missing beneficiaries.

Methods of payment

Probate solicitors have a choice of two charging methods when instructing an heir locator firm. Fees can be charged hourly, based on an agreed budget and the amount of research involved, or as a percentage of the estate, also known as a 'contingency fee'. Most heir locators offer both charging methods, and in both cases generally boast a success rate of almost 100% for locating beneficiaries.

Percentage fees have been the subject of growing controversy in recent months, following concerns from beneficiaries and solicitors about excessive percentage fees and the techniques used by heir locators to sign beneficiaries up to commission fee agreements. There is mounting evidence of the need for better regulation to ensure that beneficiaries are treated fairly, and probate

practitioners should carefully consider the risks involved in appointing heir locators on a percentage-fee basis.

Percentage fees tend to range between 10% and 30%, but can be as high as 40%. Consider this example: on an £80,000 estate, a time-based fee for a case would typically be between £1,000 and £5,000. However, using the percentage fee model, the charge for the same work might range from £8,000 to £32,000. If the estate is worth £350,000 (close to the average property price in London) a percentage fee would soar to between £35,000 and £140,000, but a time-based fee would stay the same (£1,000-£5,000). Even a 10% fee on a larger estate can lead to disproportionate costs.

Fees at this level will usually far exceed the fee charged by the solicitor administering the estate. Should the cost of locating missing heirs not fairly reflect the amount of research involved? Is there not the risk that a percentage fee agreement could be challenged by beneficiaries, and is it likely that a court would consider percentage fees at these levels to be fair and reasonable? Such litigation could be aimed at the personal representative (PR) for neglecting their duty to the estate by allowing it to be depleted in this way. On the same basis, a professional adviser may also face being brought into such litigation, if they have advised the PR to locate beneficiaries on a contingency-fee basis.

Consider also how percentage fees work in practice. The orthodox approach is to withhold the name of the deceased and the value of the estate until the beneficiary agrees to sign the heir locator's percentage fee agreement.

This effectively holds the beneficiary to ransom and puts them in a position where they are being asked to sign away a percentage of an unknown amount.

Industry concern

The concerns of probate practitioners have now led the government of

Guardian and Trustee of Ontario. The legislation also forces heir locators to disclose the name of the deceased, the value of the estate and a breakdown of costs.

In England and Wales, if beneficiaries cannot be found for an estate, they can be referred to the Bona Vacantia Division of the Treasury

television series, *Heir Hunters*, which follows the competition to track down beneficiaries.

There is gathering momentum towards the need to clean up bad practice and support fair pricing in this industry. Professional bodies representing the legal profession have an important role to play in encouraging practitioners to consider fair pricing when instructing genealogists, and to consider the risks associated with percentage fee agreements. This includes the Society of Trust and Estate Practitioners, the Law Society and the Institute of Legal Executives.

Probate genealogists are unregulated, but the legal landscape is changing and the Legal Services Board, in its capacity as oversight regulator of the legal profession, could also play a role in regulating probate genealogists.

Further, the Treasury Solicitor needs to make greater efforts to locate beneficiaries to *bona vacantia* estates, in a way that avoids putting consumers at risk and ensures that beneficiaries receive their full legal entitlements. ■


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Ontario to create statutory powers to curb the practices of heir locators who charge percentage fees. In January this year it passed legislation capping percentage fees at 10% on estates referred to the Office of the Public

Solicitor. The Treasury Solicitor will publicly advertise these estates, many of which are quickly picked over by heir locators in a race to sign beneficiaries up to generous percentage fees. This practice has spawned a BBC

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