



Title Research

entitlement

Entitlement – The Newsletter of Title Research

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Tom Curran, Chief Executive Title Research

Welcome

A very Happy New Year to you and a warm welcome to this issue of entitlement. I hope you have noticed our new look which sits alongside our new logo and new London office address – please do update your records. What hasn't changed is our commitment to our core values of being a progressive and fair-minded business.

It is the topic of best practice in estate administration that forms the theme of this issue and you can read the excellent articles by Elnora Terakopian and Chris Butcher on what best practice means to them and their firms, and why it is important.

Best practice is at the heart of our business model. Clients often tell me that they choose to work with us because of our open, transparent and value driven approach to delivering service. Our fees are always charged like other professional fees, to the estate as a whole and not by way of excessive percentage based commissions which unfairly discriminate against some beneficiaries who are entitled to inherit.

Whilst on the subject of value for money, you can also read below about our new fixed-price Asset Repatriation service for estates that have overseas bank accounts, property or shares. We now guarantee to repatriate the asset or you pay nothing!

I hope you find entitlement an enjoyable read and do please also have a look at our new website www.titleresearch.com

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Working on an estate that has overseas shares, bank accounts, or real property?

We can undertake repatriation and transfer for a fixed-price with guaranteed 100% success or your money back.

Our clients tell us only too often that they have embarked on the process of trying to close an overseas bank account in North America, or repatriate a holiday home in Greece, only to become jaded and exhausted by a time-consuming maze of foreign bureaucracy and unfamiliar procedures. Success is not automatic and often the tale has no happy ending leaving the PRs or practitioner defeated.

For us though the story is quite different. On behalf of clients, we have over the years undertaken thousands of such research cases into people and assets in foreign jurisdictions.

As our knowledge and experience has grown, so has our dedicated team, the number of cases handled each year and also our success rate, such that now we undertake repatriation and transfer for a fixed-price with guaranteed 100% success or your money back. The fixed-price will be for the total work involved including all time to complete the repatriation and transfer and disbursements. We guarantee 100% success or a full refund of the price.

Call us now to for a no obligation discussion and quote on 020 7332 9090 or email info@titleresearch.com

Win a copy

The Trust and Estate Practitioner's Guide to Mental Capacity

by Richard Dew et al, and

The Mental Capacity Act 2005

by Aswini Weeraratne et al.

Published by LexisNexis, these two volumes are the most comprehensive publications available on the new Mental Capacity Act and surrounding law, containing commentary on all the key provisions such as Lasting Powers of Attorney, Court of Protection, Case and Treatment and Life-Time Transactions.

We have one copy of each to give away to a lucky reader. For a chance to win, please email info@titleresearch.com inserting "Win a Copy" in the subject line and include your name, title, postal and email addresses.

Closing date is 15th February 2009. The winner will be notified after this date. Good luck!

We've moved!

Our new London office address is:

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Please update your records.
Thanks!

Best practice in estate administration

What does best practice in estate administration actually mean? Does it vary from firm to firm because of interpretation? How do you explain it to lay PRs? Two leading practitioners, Elnora Terakopian and Chris Butcher, present below what best practice means to them and their firms and why it is important.



Chris Butcher is a Partner and Head of the Probate Department of Michelmores LLP and a co-author of Sweet & Maxwell's Probate Practice Manual.

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Efficiency, professionalism and openness

Best practice in estate administration should be much more than simply following the requirements of the Solicitors' Code of Conduct 2007. Key matters are efficiency, professionalism and openness.

Efficiency requires not only the right staffing structure of experienced lawyers and appropriate other fee earners for the more routine work, but also the use of modern systems, be they a purchased probate package or a system that a firm has developed itself. Although some of the administration includes routine work and should be effected with the use of standard letters, there must be experience in the team in order to identify scope for tax planning or simply to make use of available exemptions. How many firms arrange for investments to be sold as soon as probate has been obtained without in better financial times considering making use of executors' capital gains tax allowances? In the present financial climate, relief from inheritance tax arising from the sale of shares and houses at a loss should almost always be claimed. Those reliefs will not be available if the assets are transferred to the beneficiaries to be sold later.

"Professionalism is more than just carrying out the basic estate administration."

Professionalism is more than just carrying out the basic estate administration. We in Michelmores seek to know our clients fully so that we can advise the family in a wider sense, while at the same time distinguishing between work that is included in the administration and that for which a separate fee will be incurred. Deeds of variation are classic examples, not just for the estate itself but also for someone who has died in the previous two years. Alas, so many solicitors concentrate just on the matter in hand without considering the wider picture.

"Clients can then make a reasoned choice on whether they want a cheaper no frills service or one that goes the extra mile for their long-term benefit."

An important aspect of best practice is openness with the client. The client understandably needs to know the anticipated costs and timescale. If a fixed fee cannot be quoted because of uncertainties at the outset, it is important to state at the beginning how the fees are calculated and to give as good an estimate of the likely figure as possible. That in itself must be followed up with appropriate reviews (and diary notes made accordingly).

The estimate of fees should make it clear what work is included and importantly what is not. Additional costs may arise from the need to trace assets or beneficiaries. In most if not all cases, Personal Representatives should agree that the costs for this should be based on the amount of work involved, with a working time-and-expenses budget, rather than on a percentage commission basis.

Internal systems

Best practice is not just for the benefit of the client. There is no reason for a bill only to be submitted at the end of the administration. Billing should be carried out frequently, such as on obtaining a grant of representation and on a monthly or quarterly basis thereafter.

Projected timescales can be over-optimistic. If nothing is happening for good reason, it is not difficult to tell the client why. A simple email will often suffice.

With the advent of large institutions entering the probate market, there will be an uneven financial playing field. It is even more important now for solicitors to have good systems for carrying out the administration of estates with all their financial ramifications. Clients can then make a reasoned choice on whether they want a cheaper no frills service or one that goes the extra mile for their long term benefit.

What tools are available for all of this? For clients, why not send them a simple guide to the administration of an estate for them to refer to during the administration? For the lawyers, courses are arranged through the Society of Trust and Estate Practitioners and the Probate Section of the Law Society. Help is also at hand in the form of books such as the Law Society's Probate Practitioner's Handbook and Sweet & Maxwell's Probate Practice Manual.



Elnora Terakopian is a partner specialising in wills & probate at West London firm, Owen White & Catlin.

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Understanding client needs

When I think about best practice in estate administration, I consider what it would mean to me if I were the client rather than the solicitor. A friendly, professional, understanding service provided efficiently and at a reasonable cost? Someone who could identify with the bereavement process as well as the legal process? A cheap and quick service? All of the above?

"Best practice to me means understanding my clients and their needs and wishes"

Googling 'best practice' reveals adverts for cheap or even free advice from non-solicitors – and there lies the conundrum. In today's market we have to provide an individually tailored (possibly out of hours), competitively priced service, with sound legal and taxation advice (perhaps across various jurisdictions) with a strong network of colleagues standing behind us ready to assist.

Best practice to me means understanding my clients and their needs and wishes, advising them of the law and of the best way forward for them in their individual circumstances, thinking outside the box and finding alternative solutions.

Providing a complete package

I attend a range of good quality conferences to keep abreast of the current caselaw, to understand the best approach to take in dealing with more complicated estates, and to keep up-to-date with current and foreseeable changes in the law, procedures and practice.

My legal training is but one string in my bow: my response as a human being – my empathy and my understanding – is, at times, more valuable to my client than explaining the probate process

and the ins and outs of IHT200. I have trained with Cruse at their bereavement and loss workshop, which has helped me better understand my bereaved clients, allaying their fears and, when necessary, passing them a box of tissues. To me, best practice is providing my clients with a complete package from start to finish.

- Explaining the probate procedure to my clients including giving tax advice;
- Assisting in valuations of properties and chattels by having a range of trusted external professionals to recommend;
- Being on hand to swiftly reply to telephone calls, emails and letters from clients and having well-trained support staff to assist;
- Progressing cases quickly and efficiently;
- Obtaining the assistance of external companies when required, for example, Title Research. Ensuring a professional relationship with them and agreeing their charges to be hourly rather than contingency based, to the financial advantage of the estate and the beneficiaries;
- Having a good team of in-house specialists for example, civil litigators, conveyancers and commercial solicitors to assist with areas outside my expertise;

- Providing clients with clear guidance as to costs and preparing regular invoices and keeping clients informed of the costs;
- Paying legacies and making interim distributions as soon as possible;
- Above all, being respectful of my clients and the deceased.

"As the market expands we need to be the best we can be."

In providing this service I realise I am competing with other solicitors and professionals. Do we all provide the same service? Regrettably, my experience suggests, that we do not. Many clients have come to me having appointed another solicitor or other professional to act on their behalf and having been disappointed. The most common complaint I hear is that the matter was not dealt with promptly, that the person handling the matter was insensitive and often unreachable, did not advise them of the law, or of the possibility of claims against the estate or the current tax regime. As the market expands we need to be the best we can be and, as the Americans say, 'on top of our game.' In today's increasingly competitive marketplace, we cannot afford to lose clients for any of the above reasons.

Best practice – our position



Nicholas Beetham is Business Development Manager at Title Research.

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Managing risk

The themes that emerge from our contributors' pieces in this "Best Practice" edition are those of client service, empathy, professionalism and efficiency. Competition is rife and likely only to increase and practitioners need to keep abreast of the challenges of the changing market.

Risk management is a live issue and our role is to assist in that part of the best practice process. Our clients transfer risk to us with every set of instructions: the risks of distributing the right amounts to the wrong

people, or the wrong shares of residue, albeit to (some of) the right people, or overlooking the distribution of a pecuniary legacy to its intended legatee. Every time we value a portfolio, we identify the (frequent) discrepancies and demonstrate its true composition, enabling the correct completion of the relevant IHT account. We arrange for the transfer of overseas assets into the PRs' names, and the subsequent sale. All of which facilitate the administration and reduce risk.

"We do our best to be absolutely transparent – certainly we are very open about our fees"

Occasionally, our research will disinherit those who were thought entitled to take on intestacy. In a number of cases, we've shown that well-meaning PRs' DIY research has put them on the point of distributing to the deceased's cousins when, in fact, the next of kin has been in the class of the deceased's siblings of the whole blood – and the PR has not even been entitled to the grant. In other cases, PRs have mistakenly identified second cousins (never entitled as of right on intestacy in England & Wales) instead of first cousins once removed (who can be) and we've been

able to help our clients avoid an incorrect distribution and its effects. Our reports help with court proceedings, applications for statutory wills and applications for missing beneficiary indemnities.

Transparent charging

We do our best to be absolutely transparent – certainly we are very open about our fees: we always quote a fee for a job based on how long the work will take to do, based on hourly rates and the cost of certificates and other disbursements which we charge at cost with no mark up.

We do not operate on the percentage commission, or so-called "contingency fee" basis where heirs are required to sign an agreement giving up a percentage of their entitlement to the heir-locator who's found them. Not only is it inconsistent with value for money, it discriminates in favour of known beneficiaries at the expense of the equally entitled missing, and exposes the PRs (and their advisers) to the risk of action against themselves personally. Furthermore, no-one has yet constructed a satisfactory argument that the commission basis is consistent with best practice in estate administration.

Research update

Although, as usual, we've been finding beneficiaries and other relevant people all over the world, in this edition of entitlement we're focussing our case studies a little more on our asset related services. You can find more examples at www.titleresearch.com

Don't forget – we guarantee to repatriate assets or your money back!

The estate of "Pistol" Pete

The facts

Based in the north of England, this deceased had been an enthusiastic member of a Wild West re-enactment society. Not only had he owned an extensive wardrobe of valuable cowboy costumes and other western regalia, he'd also invested in numerous American stocks and shares.

The problem

Our client was administering Pistol Pete's estate and found old share certificates relating

to the US holdings. However, there was no clue as to where the shares were registered and the PRs were in a quandary: what was the composition of the US estate and how could they recover the assets?

The solution

The US portfolio had been neglected and bore little resemblance to what the share certificates implied so we reconstructed the portfolio as at the date of death. Some stocks

had escheated to various State Governors' offices. We had to demonstrate the PRs' ownership of all the stocks and recoup them into their hands.

The outcome

We dealt with the completion of the necessary IRS returns and other paperwork, obtained the Bar-coded Medallion Guarantees and subsequently recovered all the property into the PRs' hands.

French without tears

The facts

Our client was administering the estate of his deceased and had bundles of old share certificates, coupons and uncashed dividend cheques. He was unsure whether any certificates were valid – perhaps they were all worthless.

The problem

We received the bundles in the DX, together with instructions to reconstruct and value the portfolio as at the date of death, repatriate any overseas assets and sell all the securities.

The solution

Our first task was to separate out the UK securities from the overseas, and also those that had changed name (a routine task to the experienced trained eye). Among the numerous holdings were TNU SA of France (formerly Eurotunnel SA), Woolworths Limited of Australia (not to be confused with our own dear Woolworths plc), MTN Group (the South African multinational telecoms group) and IBM of the US. We knew from experience that the hardest jurisdiction of the three to deal with would be France, with the US coming a very close second.

The outcome

We used our local knowledge to liaise with the French authorities and arranged the sale of the TNU stock. For the IBM shares, we assembled the paperwork, including the Barcoded Medallion Guarantee, W8BEN and notarised affidavits and arranged the transfer and sale. Extra US formalities were required as the US shares exceeded the IRS threshold of \$60,000, thereby requiring IRS tax assessment and clearance. We used our local knowledge and experience to have the English grant resealed in Australia and South Africa and arranged for the smooth transfer of those securities. The combined sales realised more than £134,000.

Second cousin? Or first cousin once removed?

We often hear from clients who tell us that they're in touch with one of the intestate deceased's second cousins, who has applied for the grant to the estate. As a rule, they mean the

deceased's first cousin once removed – second cousins are not entitled as of right on intestacy in England & Wales. Your first cousin's children are your first cousins once removed – they are also your children's second cousins.

One way to remember the distinction is:

Siblings share parent(s); first cousins share grandparent(s) but not parent(s); second cousins share great-grandparent(s), but neither grandparent(s) nor parent(s).

Commitment to quality

We are the only organisation in our sector to have its services endorsed by The Law Society of England & Wales. Title Research is an accredited Investor in People and has achieved the ISO 9001 total quality standard. This means we handle cases with the utmost care and professionalism.



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