Tracking down the beneficiaries of unclaimed estates sounds like the most earnest and uncontroversial of occupations. That could hardly be further from the truth, *reports Jon Robins*

Tracer fire

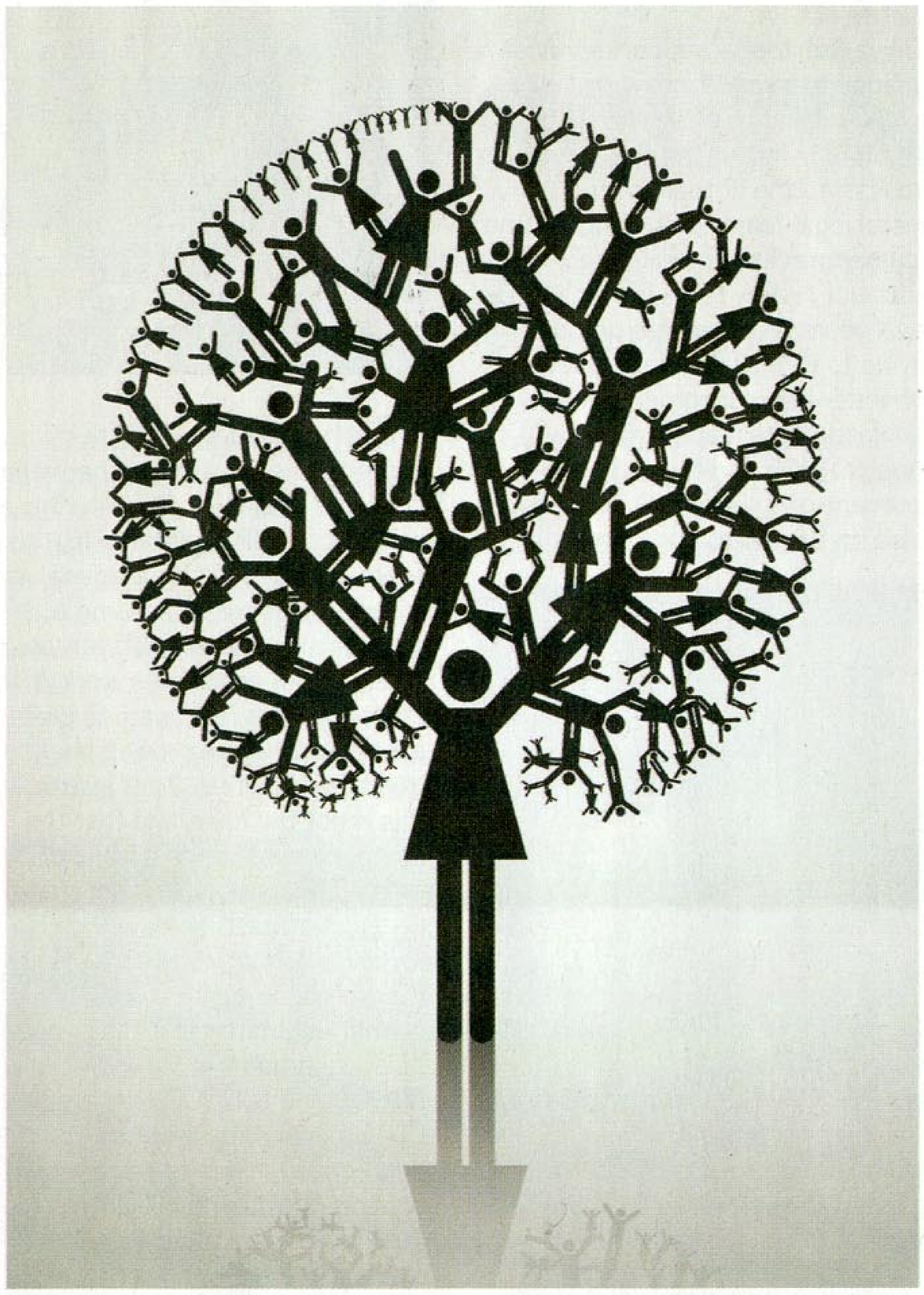
In May 2009, Trevor Moore, a 61-year-old IT consultant from Hertfordshire, was alerted to the existence of a hitherto unknown cousin by the approach of a one-man-band probate research company that was looking for potential beneficiaries for an unclaimed estate. Trevor was told it 'probably wasn't you', but this unsolicited communication roused his interest, which only recently had been piqued by chats with an amateur genealogist friend in the pub.

In September, a second phone call from one of the largest probate research companies further stirred Trevor's curiosity. The firm sent an information pack saying that it would track down his missing inheritance for a 20% cut of the estate, excluding VAT and solicitors' services.

'But 20% of what?' asks Trevor. 'Neither they nor I knew the value of the estate. It seemed ridiculous, particularly if it was something I could do myself.' Fortunately for Trevor Moore, his wife was a lecturer at the College of Law and a work colleague of Professor Lesley King, the *Gazette*'s very own probate law specialist.

Professor King, principal lecturer at the College of Law, has concerns about the conduct of probate research companies, mainly over unsolicited approaches and their use of contingency funding arrangements. 'Obviously, they don't use threats, they use carrots,' she explains. 'But saying: "We will not tell you what we know unless you sign this agreement to give us 30%" is simply not a way that people should be conducting themselves.'

King sees no reason for percentage-based 'no find, no fee' deals. 'The only reason that you have contingency fees in litigation is that people don't have any money to fund litigation upfront.



Therefore, you have to do a deal with a lawyer if you're going to get any kind of legal representation. Plus, to an extent, the lawyer takes the risk and that's why they get these inflated fees if they win.'

By contrast, in the case of probate research companies, as the academic argues, 'here you have an estate with money in it. You have a personal representative whose legal obligation is to find the people who are entitled to the money and the cost of doing so comes out of the estate. It is completely reprehensible that anybody is saying they will find these people and they will then take 30% of their share'.

King points out that the situation is 'slightly different' in cases of *bona vacantia* (literally 'ownerless goods'). Every Thursday, the Treasury Solicitor publishes the lists of such cases which are scoured by so-called 'heir hunters' who use the basic information – the name of the deceased, time and place of death – to reconstruct family trees and then to trace prospective beneficiaries.

This is what happened in Trevor Moore's case. He declined the company's 20% offer and set about doing some amateur sleuthing himself. He is the first to admit it didn't take much detective work, and in less than four weeks he had got to the bottom of a family mystery and completed the required paperwork to authenticate his claim.

Trevor knew of his father's sister, but he wasn't aware of the existence of her son, his cousin, who died in a hospital for the mentally ill. The estate waiting for Trevor and his sister was worth £16,000 – mainly the proceeds of sale of a family home. His aunt had lived in a house in Willesden, north London, owned by Trevor's great grandparents with her brother and Trevor's father, Stanley. Trevor's grandfather had died in the First World War when Stanley was four weeks old and his grandmother died when her son was 15. So Stanley and his sister ended up looking after their own grandparents until they died, just before the Second World War.

Then the siblings inherited the family home where they lived together. Trevor's aunt subsequently married and Stanley moved out. There was then a family dispute that ended with Stanley signing the property over to his sister, who was living in the house with her family, for 'next to nothing', as the sister's new family were effectively 'sitting tenants'.

Trevor calls the recovery of the £16,000 estate 'a kind of poetic justice, as my father lost out first time around'. He describes his detective work as 'no big deal' and says he is 'very happy, delighted even' not to have that sum diminished by around £4,000 (20% contingency plus VAT, plus solicitor's fee). He has an itemised list of expenditure which totals £154.50 and includes everything, even petrol and parking (£7.50).

The issue of the use of contingency-style fees by such companies has become a source of

a rather ill-tempered dispute within a small industry. This has recently caught the public imagination through the BBC's Heir Hunters series, as well as the family history show Who Do You Think You Are? Heir Hunters follows 'the probate detectives looking for distant relatives of people who have died without making a will'.

Earlier this month, the *Daily Mail* attacked the BBC when, as the newspaper said, it 'emerged that many of these firms are charging relatives up to 40% commission just to tell them about their inheritance windfalls'. Conservative MP Philip Davies told the paper that the BBC 'should make it clear the level of fees that these organisations are capable of charging. They should also signpost the official sources where the public could get this information for free'.

Fraser & Fraser is one of a number of firms that appear in the series and has an impeccable pedigree. It does not charge up to 40% and Charles Fraser, head of legal and a member of the Law Society's wills and equity committee, stresses that their funding options have the support of the legal profession. 'We did a survey of the profession and the overwhelming majority were happy for genealogists to be paid on a contingency basis,' he says. A mail-shot sent to over 4,000 solicitors and barristers found that only 9% found that contingency fees were 'never appropriate'.

'I know people who have grave concerns about the genealogists charging on an hourly basis because it's like writing a blank cheque,' Fraser adds. 'The solicitors don't know what research is being done and the genealogists say they cannot find anything and bamboozle them with science.' The only situation where 'no find, no fee' deals could be 'questionable', he argues, are in cases where, first, some beneficiaries are already known and an administrator is acting and, second, where there's a will and an executor.

The anti-contingency backlash is being led by one of the leading players in the market, Title Research, which claims to have foresworn the controversial funding model over 10 years ago. 'The unfortunate situation that has arisen for our competitors is that they haven't modernised,' argues chief executive Tom Curran. 'They have relied on the fact that consumers aren't aware how this industry works. They have relied upon people perceiving this is a windfall rather than a legal entitlement. That simply has to stop.'

Why have they decided to campaign about this now? A number of things have happened, explains Curran. 'The world has become a smaller place because the internet and the cost of doing our work has come down over the years. At the same time, we have seen no modification in the percentage fees, sale tactics or treatment of beneficiaries by our competitors.' The 'tipping point' has been the Heir Hunters series and what Curran believes to be the creation of the impression that signing up to such deals was the right thing to do.

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Title Research is the only player in the market to have ditched contingency fees and its campaign has polarised opinion within a small industry.

Contingency fees are 'currently the most popular fee option', argues Daniel Curran, managing director of Finders International. Appropriately enough, the world of probate research appears to be a family affair and you don't have to be a genealogist to know that not all families agree. Daniel is the brother of Tom Curran of Title Research. Daniel argues that contingency fees are favoured because fees aren't charged to the estate whether or not a missing beneficiary is found. 'As they are only chargeable when the estate is distributed to the heirs, they do not risk potentially indebting any of the parties involved,' he continues. 'They also facilitate cost control, as the percentage limit can be set in advance. They entail no hidden charges and may be renegotiated to manage expectations should new factors come to light while the research work is ongoing.' The Advertising Standards Authority recently upheld a complaint made by Finders against Title Research because it claimed that Title Research falsely suggested it was 'first' to use fixed fees.

Title Research says it acts only under instructions from solicitors or executors and does not chase unclaimed estates. It also reckons the average fee per beneficiary is £420. 'Even last week we saw a case where a firm tried to charge 30% on an estate worth £80,000,' says Tom Curran. 'That's a £24,000 fee and our average fee per case [as opposed to per beneficiary] is between £1,000 and £5,000.'

Interestingly, the other two big players in the industry are also connected by family. The longest established company, Hoopers, began in 1923 with one of the Fraser family as a founding partner. Michael Tringham, chairman of Hoopers, takes his hat off 'begrudgingly' to Title Research for 'their marketing skills'. However, he argues because of competition, companies can't charge 25% or 30%. 'It just isn't realistic. You cannot do that in any industry where there is competition.' He points out that there are more than 30 companies now which describe themselves as probate genealogists; when he started in 1972 there were only 'a handful'.

Hoopers' approach is that, where a will exists, but named beneficiaries cannot be found or it's necessary to trace heirs, then only fixed fees are appropriate. In the case of an intestacy and if a family is widespread – 'and in our experience members may well be living across five continents' and there might be 'divorces, illegitimacies, wars, emigration and quarrels' that can create 'a world of barriers', and so a reasonable hourly rate, or a 'no find, no fee' basis is appropriate.

Tringham also takes issue with the 'misleading' 'heir hunter' tag. While it might be 'a catchy headline', it doesn't accurately describe his firm's work. 'Each year a few thousand estates are at risk of becoming intestate, so that their value falls into the government's pockets,' he says. 'The reasons may be that an individual has not made a will – or, if they have, that named beneficiaries have themselves died or apparently disappeared. Naturally, the families involved want to avoid this, so we work with their legal advisers to make sure that the deceased's assets go where they would have wished.'

In the world of probate research, Kin is a new player, having started in 2004, in what its promotional literature calls 'a closed industry dominated by a small number of well-established family firms' ('... some of these firms are as old as the records we use...'). It reckons that less than a third of its cases come from the Treasury list, 40% from solicitors, and the remainder from partners overseas and other referrals. 'Let's not forget that in cases where there is no will, the individuals we locate are often unaware that the deceased even existed,' says founder Matthew Siddell. 'In these instances, surely we should be compensated for the value we have added in delivering the inheritance to the beneficiaries that they would never otherwise receive?' As he puts it, surely '85% of something is better than 100% of nothing?'

So is Title Research's campaign a sophisticated marketing ploy? 'That's a load of nonsense,' replies Tom Curran. 'We haven't heard any substantive argument from any competitor at all and, with the greatest respect, calling this "a marketing ploy" is not a constructive contribution given the huge amount of evidence that we are putting forth.' In particular, Curran points to recent moves made in Ontario, Canada, to clampdown on heir hunters' percentage fees by amendments to its Crown Administration of Estates Act. As a result all estates administered by the Office of the Public Guardian and Trustee of Ontario must apply a maximum 10% cap of the value of the estate on percentage fees, and the name of the deceased and the value of the estate must be disclosed

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before a beneficiary is asked to sign such an agreement.

Title Law is lobbying for regulation in the UK. So far 44 law firms and other professional organisations are listed on its site in support of the Fairness Campaign. Richard Grosberg, former chair of the Law Society's probate section and head of private client at East Midlands firm Nelsons solicitors, is one such signatory. He objects to companies that find out 'information about somebody's entitlement and tell that person that they have information that "could be to your advantage", however they will not tell the [the full details] unless you agree to pay a lot of money, a percentage of the estate. That instinctively feels wrong and it is arguable whether it is legal or not.'

The lawfulness of contingency arrangements is, according to Professor King, 'legally very interesting'. She reckons they are 'probably unenforceable'. The academic argues that, if a consumer were to sign up to such a deal, only to 'find out that they have inherited £500,000 and don't want to give 30% away', the companies would be 'desperate' not to have the agreement tested in court. On this particular point, both camps cite counsels' opinions backing their point of view.

To an extent heir hunters are 'providing a commercial service', reckons Stephen Beck, a partner at Kent based solicitors Whitehead Monckton and head of the online probate company prob8.co.uk. 'Members of the public do not know of the existence of let alone search the Treasury Solicitor's *bona vacantia* list,' says Beck; adding, they are 'therefore actively bringing the existence of possible inheritances to the attention of potential beneficiaries', diverting assets from 'the Treasury's coffers'.

However, Beck calls their approach 'certainly questionable', in particular singing up beneficiaries for 30% of the whole estate. 'If we as online estate administrators suggested we were going to take anywhere near this amount in fees we'd have no business,' Beck says; adding that 'unfortunately' there are 'many other institutions such as high street banks' who charge 'apparently high fees', which is of 'extreme frustration' to solicitors trying to provide 'a specialist service for a reasonable charge'.

Grosberg is critical also of the attitude of the Treasury Solicitor and the *bona vacantia* division. 'They do not seem to see their role as finding the beneficiaries of these estates themselves,' he says. 'Instead, what appears to happen is that they will put sufficient information into the public domain to enable other firms [to] do that work and quite clearly do it on a speculative basis.'

Patricia Wass, current chair of the probate section and a partner at south-west firm Foot Ansteys, points out that the probate section only deals with reputable operators and is keen to make the point that both Fraser & Fraser and Title Research are 'friends of the section'. 'Contingency fees are a business model and my view is that people have to be free to choose the business model that they prefer when they are employing a professional to do work for them,' she says. Wass says that the section is looking at 'regulation for unregulated wills writers', and that probate research 'is just another area of work that has unfortunately attracted unscrupulous people'. She adds: 'Personally, I think regulation would be a good idea because what concerns me is people ... going to the Treasury list and charging huge fees.'

Daniel Curran of Finders argues that clamping down on contingency fee agreements would be 'a disproportionate reaction and would restrict consumer choice'. He says: 'If contingency agreements were banned, there would be cases where a search for a missing heir would not be undertaken and others where the estate of known heirs would be consumed in the search for missing heirs.'

Curran argues that the issue was ventilated in the discussion surrounding the Ministry of Justice consultation over Christmas on Regulating Damage Based Agreements. This was mainly concerned with the perceived excesses of employment tribunals, in particular the furore over equal pay claims. Curran argues that ministers 'expressly declined' to regulate in this area. Justice

minister Bridget Prentice has confirmed by letter that any new provisions would not cover 'other fee arrangements, including those used by Mr Curran's firm'.

Simonne Llewellyn, deputy managing director at Finders, makes the point that the anti-contingency fee lobby 'appears to be ill-motivated and totally out of step with the prevailing agenda'. She cites in particular the Jackson review, which appeared to give the thumbs up to contingency fees, while drawing back from conditional fees and the principle of recoverability.

Michael Tringham reckons the call for regulation is 'at best self-serving'. 'We are regulated now and individuals' rights protected by common law and consumer protection laws.' The usual consumer protections are reflected in Hoopers' contracts, such as a cooling-off period, the right to cancel and the recommendation to take legal advice.

He questions whether regulation could deal with the rationale behind all fee structures. 'Would fixed fees reflect that some research can be completed in a couple of clicks using internet resources rather than long laborious searches among dusty archives?' he asks, adding that regulation would 'add bureaucracy and costs for the families we work for'.

'Regulation cannot stop unscrupulous operators – it didn't "save" the banks,' he concludes. ■

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For more information about the Law Society's probate section, visit www.lawsociety.org.uk/probate or email: probatesection@lawsociety. org.uk