

Fees information for probate work

Probate work is handled primarily by Lance Christopher and John Maddock, who are qualified Fellows of the Chartered Institute of Legal Executives and Emma Harris, a Senior Associate, and occasionally by other Associates within the Private Client team. The work which they do concerns the administration of the estates of deceased persons and the ancillary tax accountancy and legal aspects which that involves.

It is the firm's practice to have a client partner on each estate which is handled, whose role is to carry out overall supervision of the estate. Often the individual who has died will have been a client of the firm whose tax and private client affairs may have been handled by the firm during his or her lifetime. It is usually that partner who will be the client partner on the estate following the individual's death. The administration of estates may involve particularly complex areas of tax law and/or other areas of law, and it is usually the client partner or a member of the Private Client team who will provide the additional input on those areas where required.

The key stages of work in the administration of an estate:-

1. Application

- Initially it will have to be established if there is a valid Will and in the event that there is no Will or the Will is invalid, the estate will fall to be distributed in accordance with the statutory intestacy rules. It needs to be established at the outset who is or are the executor(s) of the Will who are prepared to take responsibility for giving effect to the Testator's wishes or who will be the administrator(s) of the estate in the case of the estate of an intestate individual. In what follows, the executors or administrators are referred to collectively as the personal representatives ("**PRs**").
- It will be the responsibility of the PRs to identify all debts which the deceased owed at his death and often statutory advertisements will be made under the Trustee Act 1925 to establish if there are any creditors whose existence are not known to the PRs.
- In addition it will be necessary to establish what assets are comprised within the estate and to establish the value of each of those assets as at the date of death. This will normally involve correspondence with all relevant persons to establish such a value. In the case of certain assets, such as buildings, land and unquoted shares, it will be necessary to appoint a valuer with the appropriate skills to provide such values for those assets.
- Once all the above have been collected together, we will assist with the application to the relevant Probate Registry so that the authority of the PRs to administer the estate can be confirmed or conferred by the court. This in turn will enable the PRs to make title to the estate assets which will be accepted by all relevant third parties. A Witness

Statement will be prepared for signature by the PRs, and lodged with the Probate Registry.

- At the same time we will complete the appropriate form of Inheritance Tax ("**IHT**") account setting out details of the values of all assets comprised in the estate and details of all debts owed by the deceased and deductible liabilities, such as funeral expenses. This in turn will enable the IHT liability to be computed. That tax, or a proportion of that tax, will need to be paid before a Grant of Probate or Letters of Administration, known collectively as a Grant of Representation (the "**Grant**") is issued by the relevant Probate Registry. Having regard to the fact that generally estate assets will not be able to be collected in or realised until the issue of a Grant, advice will be given as to how that liability can be funded at that stage, from assets within the estate under the so-called Direct Payment Scheme, by way of loan or otherwise.

2. Administration

- Once a Grant has been issued, we will assist the PRs to call in the estate assets and to effect any sales of assets, which will raise the necessary funds to enable all debts owed by the deceased to be discharged and to meet the cost of any testamentary and administration expenses, including the payment of IHT and any other taxes.
- We will assist the PRs in ascertaining, identifying and locating the relevant beneficiaries, whether named in a Will or taking under the rules of intestacy.
- We will assist the PRs in the appropriation of particular assets to such beneficiaries, and/or effecting the distribution of the proceeds of sale of such assets.
- We will secure that all branches of HMRC will accept that payments have been made to discharge in full any tax liabilities, such as any pre-death Income Tax or Capital Gains Tax, IHT on the estate and Income Tax and Capital Gains Tax on income and gains received or realised during the estate administration. We would ensure that any income distributed to a beneficiary is vouched out to the relevant beneficiaries setting out the amount of Income Tax discharged before receipt, which information will be required by the beneficiary in completing his or her own personal tax return.

3. Accounting

- The final aspect will be the preparation of estate accounts giving details of all information relating to the estate and setting out how the estate is to be distributed amongst the beneficiaries under the terms of the Will or the statutory intestacy rules. Those accounts will be approved by the PRs. In appropriate cases, interim estate accounts will be prepared in the course of the estate administration, so that it will be seen what steps have been taken in the administration of the estate to that date and it will highlight the remaining areas which need to be resolved.

Complications in particular cases

Certain estates can give rise to particular problems and difficulties, or indeed opportunities, which will involve additional time being spent over and above the work normally required in the administration of an estate:-

- The deceased may not have been up to date with the preparation of personal tax returns during his lifetime and may have no accountant who handled that aspect on his behalf. In those circumstances, we would assist in establishing what income or gains accrued during the period for which no reporting has been made and tax returns will be prepared for submission to HMRC. When agreement has been reached concerning those liabilities, we would arrange for the discharge of the outstanding tax together with interest and penalties where applicable.
- It is a requirement for PRs to identify what gifts were made by the deceased during the seven year period immediately prior to the death. We will provide assistance in identifying any such gifts and will make appropriate disclosures to HMRC. In certain cases the deceased may have made gifts more than seven years before his death, but the deceased may have enjoyed benefits from the assets which were gifted. This can result in the asset being treated as forming part of the estate for IHT purposes through the application of the reservation of benefit provisions.
- Certain estates may include assets which are located outside the UK and it may be necessary for an application to be made to courts outside the UK to make title to those assets. It will be necessary to establish the domicile of the deceased at the date of his death, which will assist to establish whether and to what extent any UK Will can validly dispose of those assets. In addition there are circumstances when an individual was not domiciled in the UK at this death who may be treated for IHT purposes as being so domiciled by virtue of the length of periods of residence in the UK. This can give rise to a deemed UK domicile and can result in a UK IHT liability. If those assets also attract a liability on the death outside of the UK, consideration will need to be given to what extent double taxation relief can be claimed.
- The valuations prepared in relation to estate assets may not be accepted by HMRC for IHT purposes. This can be the case where the estate owns shares in unquoted companies which are not eligible for 100% business property relief and in the case of land and buildings. Negotiations will need to take place with HMRC until a figure can be agreed as to the value as at the date of death.
- Specific issues can arise in relation to agricultural estates and interests in businesses in the context of the application of agricultural and business property relief. There can be cases when the availability of either or both of those reliefs or the extent of application of those reliefs will need to be examined and agreed with HMRC.
- The deceased may have had a life interest in a settlement or trust which came to an end on his death. That can give rise to the trust and the estate being aggregated for the purposes of computing the overall IHT liability and the apportionment of the aggregate liability between the estate and the trust or settlement in question.

- In certain cases disagreements may come to light as between the beneficiaries of the estate or between the PRs themselves. This can give rise to contentions that the last Will of the deceased is not valid, because of lack of capacity or undue influence or having been executed incorrectly. In certain cases, a beneficiary may feel that inadequate provision has been made to him or her and the beneficiary in question may decide to make an application to the court for greater provision under the Inheritance (Provision for Family and Dependents) Act 1975.
- There are certain cases when tax planning opportunities will arise following the death. For example, it may be possible for the beneficiaries to gift the whole or part of their entitlements under the Will or intestacy rules within two years of death under a deed of variation. The effect of such a deed is effectively to enable the Will to be altered for IHT and/or Capital Gains Tax purposes with the result that the Will shall be regarded as containing the varied provisions in it.
- If an individual creates a discretionary trust in respect of the whole or part of his estate, the PRs will have the opportunity to exercise a power of appointment within two years of death with the result that the effect of such an appointment will be written back into the Will for IHT purposes. Each of these planning opportunities can, in appropriate circumstances, confer potentially significant tax savings.

Likely timescales for the key stages of the work

1. Key stage 1: The Application

The work involved at this stage will vary according to whether there is a valid Will, the size of the estate, the nature and location of the assets, and the ease with which they can be identified and valued. In many cases, we may be relying on other agencies, eg valuers or accountants, or indeed donees of lifetime gifts, for the provision of necessary information.

In simple cases, a Grant may be obtained within 2-3 months from death.

In more complex cases, a Grant may take 3-6 months to deliver.

2. Key stage 2: The Administration

Variations at this stage can be even more pronounced, according to the complexity of the estate and what enquiries are raised by HMRC on IHT and other pre-death tax issues, and their speed of response, as well as the ease by which the beneficiaries can be located and the estate distributed to them. In certain cases, distributions need to be deferred until the expiry of six months from the date of the Grant, in order to protect PRs from personal liability (to the extent that distributions have passed through their hands) in the event of a successful claim under the Inheritance (Provision for Family and Dependents) Act 1975. In addition, if estate assets are to be sold or transferred, the timescale for this stage will need to factor in the time required for such sale or transfer.

In simple cases, assuming there is no reason to defer distribution, this stage may take 3-6 months from the date of the Grant.

In more complex cases, this stage may take 6-12 months, depending on the resolution of the particular issues involved.

3. Key stage 3: Accounting

As noted above, in appropriate cases, interim estate accounts may be produced during the Administration stage, and the final accounts when the Administration stage is completed.

Fees

The firm charges primarily by reference to the amount of time spent by the relevant fee earners. The main bulk of the work will be carried out by Lance Christopher, John Maddock or Emma Harris, whose hourly charging rates are £320, £320 and £320 respectively (plus VAT in each case). Depending upon the nature of the estate there may be some involvement from the client partner or by a member of the Private Client department who is asked to assist by the client partner. The hourly charging rates for other members of the team range from £210 to £300 (plus VAT). The client partner in question will normally be one of the following:

| Name | Hourly rate |
|--------------------|--------------------|
| Martin Paisner CBE | £650 |
| Rosamond McDowell | £525 |
| Robert Brodrick | £525 |
| James Bacon | £525 |
| Frederick Bjørn | £525 |
| Basil Dixon | £495 |
| Sam Carver | £490 |
| Jessica Henson | £380 |

All of the above figures exclude VAT (currently at 20%) and are correct as at 18 December 2020.

When the firm begins work on the estate administration, it will seek to give an indication of the likely fees for handling the estate administration and if particular problems or difficulties arise along the lines indicated above, the figure quoted may need to be altered and brought to the attention of the PRs. In appropriate cases we will provide an indication of the likely charges for all work done up to the issue of a Grant, by reference to the specific circumstances of the case, and a further indication at that stage, or at monthly or agreed or appropriate intervals thereafter, to cover the work from the issue of the Grant up to the completion of the estate administration.

Experience has indicated that if one is concerned with an estate falling between £1m and £3m, the overall charges are unlikely to exceed 3% of the value of the estate. If the

charges were to exceed that level, one would expect to find particular problems or difficulties which had to be resolved over and above what one would expect to find in a straight forward estate administration.

One would not expect the charges to reach such a percentage in the case of very significant estates. It is not necessarily correct that a significant estate can give rise to more significant problems than an estate of more modest size.

Work done on the sale or transfer of particular assets, or to take advantage of post-death tax planning opportunities would not normally be included in the general retainer relating to the estate administration and would be costed out separately and by agreement with the PRs and/or beneficiaries.

Disbursements

The administration of an estate may include certain additional costs that are payable to third parties. In most cases, these will be met from assets within the estate. On occasion, the firm may be prepared to fund these costs on behalf of the PRs, on an interim basis. In that event, such costs would be added to our charges as a disbursement. These might typically include

(a) Court fees: £155 Not subject to VAT

A proposal was laid before Parliament in 2018 to implement a new banded structure of fees for a Grant, with a maximum Court fee of £6,000, but this proposal was widely opposed, and has been dropped.

(b) Commissioner's fees ca. £7 Subject to VAT @20%

These fees will apply only in more complex cases which require affidavit evidence. In straight forward cases, only a witness statement is now required, signature of which is not done under oath.

(c) Land Registry search fees ca. £3 per search Subject to VAT @ 20%

These may be required to check the title to real property in an estate.

(d) Statutory Notice fees £64.25 and upwards Subject to VAT @ 20%

These costs may be generated to provide PRs with protection from unknown creditors prior to distributing an estate, and include the costs of a posting in the London Gazette and in relevant local newspapers.