

ANNEX 2: Experience Portfolio

Instructions:

- You must provide 3 portfolios which cover a range of matters you have handled from your caseload.
- These portfolios should demonstrate your experience in the relevant area of practice. (If you have completed portfolios at **Annex 1** you do not need to complete this section).

Date you were instructed in the case: **May 2021**

Provide an outline of the facts of the case.

I was instructed to act in the administration of the estate of [REDACTED]

During the course of my investigations the following issues arose:

It was initially unclear whether the deceased had died testate or intestate.

There were concerns over the security of a property and also a vehicle owned by the deceased.

There was only limited evidence as to the extent of the deceased's assets (other than the freehold property) and liabilities.

The property, although structurally sound and located in a desirable location, was in a poor state of repair internally. The valuation of the property, at the date of death, would be critical to determining whether or not the estate had a liability to Inheritance Tax (IHT).

On a sale of the property in the course of the administration it was necessary to consider whether or not a liability to Capital Gains Tax (CGT) would arise and, if so, how that liability might be mitigated.

On establishing that an intestacy had arisen, the extent of the beneficial interests in the estate was unclear and the location of a number of the potential beneficiaries was unknown. The question of who should apply for Letters of Administration arose and not all potential beneficiaries of the estate could be traced initially.

Provide an explanation of the law arising in the case and how the law applies to the facts of the case.

Administration of Estates Act 1925 (as amended) – having established that the deceased died intestate, I established the strict order of priority of the identity of the blood relatives of the deceased who were entitled to make the application to be appointed as the Administrator of the estate, and from whom I could take instructions in the administration. I satisfied myself that the person from whom I was receiving instructions was authorised to give those instructions.

Non-Contentious Probate Rules 1987 – these Rules set out the procedure to be followed to make the application for the appointment of the Administrator. I ensured that the application, being made by the deceased's cousin of the whole blood, complied entirely with the

requirements of these Rules. I ensured that all categories of applicants entitled in a prior degree were cleared off. I submitted the application to the Probate Registry with all supporting documents and evidence.

Inheritance Tax Act 1984 (as amended) – the 1984 Act sets out the basis of the report to be made to HMRC for IHT purposes and the calculations to be made to ascertain whether or not the estate is liable to IHT. I therefore had a duty to ensure that the valuation of the estate assets and liabilities at the date of death was accurate for IHT purposes. I kept a record of all of the valuations and submitted copies of them along with the IHT400 (as required) and relevant schedules. In support of the application for the issue of the Grant of Letters of Administration, I ensured that the provisions of the 1984 Act were followed in making the appropriate report to HMRC, using form IHT400 for that purpose.

Payment of Inheritance Tax is by the end of the sixth month after the person died.

Chargeable Gains Tax Act 1992 (as amended) – the 1992 Act sets out the basis on which any chargeable capital gain arising during the course of the administration will be calculated and, if appropriate, made subject to Capital Gains Tax (CGT). On disposal of the deceased's freehold property I considered the provisions of the 1992 Act and whether or not a liability to CGT would arise.

Trustee Act 1925, section 27 – under section 27, the Administrator may give notice of her intention to distribute the assets of the estate, requiring any person interested therein to send in particulars of his claim (whether as a creditor or as a beneficiary *Re: Aldhous 1955*) to the Administrator within a stated time, not being less than two months from the date of publication of the notice. No one had any knowledge of deceased's financial affairs (no Attorney had been acting prior to his death), including details of any potential creditors. This notice was therefore placed in the London Gazette and a local newspaper to give the Administratrices who were applying the fullest protection possible.

Re: Benjamin 1902 – the Administrator will not be protected by section 27 if she is aware of the rights of a beneficiary but simply cannot find him/her. In these circumstances the Administrator can apply to the court for a Benjamin Order permitting her to distribute the estate on the basis of a particular assumption, for example that the beneficiary had predeceased the deceased without leaving issue of his own.

Income Tax legislation affected the beneficiaries and estate e.g. Taxes Management Act 1970; Income Tax (Trading and Other Income) Act 2005 and Income Tax Act 2007. There was a requirement to account for and pay the income tax due for the period of administration and to report the same to the Beneficiaries.

Provide an outline of any procedural and process matters that arose in the case and how they were dealt with.

Before an application could be made to the court for the issue of a Grant of Letters of Administration, it was necessary to establish whether or not the deceased had made a valid Will. I sent a letter of enquiry to all local firms of solicitors to ascertain whether they held an original Will for the deceased and/or whether they had a record of ever having acted for the deceased in the preparation of a Will. In that event I asked for confirmation as to what had happened to the original Will if it was no longer in that firm's possession. I also made an enquiry of the deceased's bank, where it was believed a Will might be held in safe custody. I instigated an online search of the National Will Register.

After completion of those enquiries, when it became clear that the deceased had died intestate (please see "Evidential Issues"), I was able to accept full instructions from the client, having provided to her my Letter of Engagement and agreed with her my terms of business.

I received from the client numerous papers relating to possible assets and liabilities of the estate. I carried out a full review of all of these papers and thereafter, in relation to each of these, I sent a letter of enquiry to all relevant authorities, for example the deceased's bank and

life assurance company, to ascertain the full value of the assets at the date of death for probate/IHT purposes. I also carried out a financial assets search. I also obtained from the Land Registry up-to-date Office Copy Entries relating to the registered title of the deceased's property, together with an up-to-date location plan to show the full extent of that property.

I also notified, in writing, all creditors of the estate that I was acting on behalf of the intended Administrator.

In order to afford some protection to the intended Administrator in respect of unknown creditors and claims against the estate, I arranged for Notices for Creditors under section 27 Trustee Act 1925 to be posted in both a local newspaper, circulating in the area of the location of the deceased's property, and also in the London Gazette.

The identity of persons entitled to apply for the issue of the Grant of Letters of Administration, and the identity of those persons beneficially entitled on intestacy, was established by a review of the deceased's family tree. Whilst the information available was substantial it did not appear to be complete. On instruction from the intended Administrator I gave written instructions to a firm of genealogists to ensure that a full investigation of the beneficial entitlement to the estate was carried out. This would ensure a full and proper distribution of the net estate and also afford protection to the Administrator against any possible claim by a disappointed beneficiary.

Given the complexity of the report from the genealogists, I also obtained comparable quotations for an indemnity insurance policy that would protect the PR's in the event the report/family tree was incorrect (because there were some risks and uncertainties raised in the genealogists in their report).

The application for the Grant of Letters of Administration was to be founded by submission of a legal statement PA1A (which replaced the old Oath for Administrators). Note that an online application at the time could not be submitted because there were two applicants.

However, before this could be done we had to first submit an IHT summary (IHT421) with the IHT400 to HMRC. This had to be receipted by HMRC before we were permitted to apply to the Probate Registry. I made a note in my calendar to apply for Probate after the required 20 working days of submitting the IHT421 (being the prescribed time period set by the Probate Registry for online applications) for the Grant with the statement of truth (form PA1P).

Once all information required was to hand I prepared the forms and obtained approval thereof by the applying Administrator. I then submitted the application on their behalf to the appropriate probate registry (having checked first I worked out that paper applications are sent to a separate address to online application).

Following the issue of the Grant of Letters of Administration, I ensured that that document was registered with all interested parties together with the account closure forms (where appropriate), for example the deceased's bank and life assurance company, so that the Administrator's claims for those monies could be processed and monies due to the deceased's estate received on behalf of the Administrator.

Following receipt of sufficient monies on behalf of the estate and the expiry of the s27 section 27 notices, I confirmed that the estate was solvent and proceeded to pay all of the liabilities which we had by then notified about.

Prior to any distribution of estate monies to any beneficiary, bankruptcy searches were carried out with the Land Charges Department against each UK beneficiary. Foreign bankruptcy searches were carried out for foreign beneficiaries. On another file (DIC68/1) I had to deal with an interest scenario that arose when a bankruptcy search did not come back clear and we had to get further evidence that the bankruptcy order had been annulled. But in the matter in question the results were clear.

Following completion of the sale of the deceased's property, I ensured that all final accounts relating to services to the property were obtained and discharged from the estate funds.

On completion of the administration of the estate I prepared final Estate Accounts and obtained the approval thereto of the Administrator. In accordance with those Estate Accounts forms R185 for each individual beneficiary were also prepared and approved by the Administrator. Thereafter, a distribution was made to each beneficiary and a signed form of

receipt and discharge of the Administrator was obtained from each beneficiary.

Income tax

HMRC ask for an income tax to be reported informally during the period of administration if the tax payable was minimal (but above £50). I therefore reported to HMRC and paid the tax due for the period of administration. This was shown in the estate accounts and I informed each beneficiary (normally done using form R185) how much of their inheritance was from income that accrued during the period of administration so that they could report the same accordingly to HMRC (and pay or reclaim any additional tax accordingly depending on their personal circumstances).

Provide an outline of the evidential issues that arose in the case and how they were dealt with.

The replies which I received to my enquiries of local firms of solicitors and the deceased's bank regarding the completion of a Will all confirmed that there was no original Will held in safe custody and, in the case of the solicitors, that none of them had any record of having acted for the deceased in preparation of a Will. The result of the search of the National Will Register was also negative.

The nature and extent of the deceased's assets was established by:-

- a search of the records at the Land Registry;
- an asset search through an agent – however our usual supplier, Landmark Financial Assets Search, no longer provided asset searches so instead we carried out an Experian Credit report which identified some forgotten accounts
- the bereavement notification service was used
- autotrader for the vehicle in the estate
- confirmation from the registrars for each shareholdings of the total number of shares in the estate

Valuations were then obtained from local valuers of the deceased's property and chattels.

I valued the share. The method for valuation for probate purposes is the 'quarter up' method which is set out in the following link to HMRC's tax manual, see - [IHTM18093](#). I then checked this against the investment sponsor's own valuation and communicated with them accordingly until the values had been agreed. Importantly applying the quarter up method correctly can save in tax instead of relying on a general valuation from companies who sometime incorrectly apply an average pricing of shares. Importantly, in valuing the shares it is necessary to take into account any ex-dividend figures that might apply (where the payment of the dividends has been delayed by the company until after the date of death).

The nature and extent of the deceased's liabilities at the date of death was established by information received from various creditors. No claims against the estate were received as a result of the Section 27 Notices.

The duties of the PR's is to obtain the maximum value for each asset. Using the maximum value given by the valuer for each item I circulated a list of the chattels including their values to each of the beneficiaries and informally offered them first refusal. One item was requested by two beneficiaries. The highest bidder was given the item.

As a result of the information received in respect of the assets and liabilities I was able to establish that the estate was solvent. I was also able to calculate that the net value of the estate was above the Nil Rate Band for IHT purposes (£325,000).

Payment of the tax was issued prior to the deadline (see above) as summarised on IHT421

(which confirms my estimation of the tax).

Confirmation of the calculation of Inheritance Tax was issued by HMRC (using form IHT 302) which confirmed a further amount of £0.80 was still required. HMRC also wrote to confirm the deadline by which they would have to raise enquiries. I advised the PRs that we should not to make a distribution before this deadline and the before the statutory advertisements had expired. I also recommended that it would be prudent to wait for the deadline for claims under the Inheritance (Provision for Family and Dependents) Act 1975 also to expire. However, the PR's were confident that there were no persons with the locus standi to be able to bring forward a claim under that act (even financial dependants). I advised that Administrator cannot be compelled to make a distribution of the estate of the deceased before the expiration of one year from the death. Nevertheless, they instructed me to distribute the estate before this particular deadline had expired.

I obtained from the client evidence of her relationship to the deceased and how that had arisen (their fathers were brothers of the whole blood). I made further enquiries of the client, other family members of the deceased and some of his friends. These enquiries enabled me to "clear off" those who would have a prior entitlement to administer the estate under the 1925 Act.

I was also able to establish, through my enquiries, that all of the persons known to be beneficially entitled to the estate were of full age. It was therefore sufficient, for the purposes of the 1925 Act, for only one person to be appointed as the administrator of the estate. However, two people decided to apply together.

Provide an outline of any ethical or conduct issues that arose in the case and how they were dealt with.

Whilst it was thought most likely that the deceased had died intestate, this was not immediately apparent. I accepted instructions, on a no fee basis, from the intended Administrator, initially only to carry out such enquiries as were necessary to ascertain whether or not a valid Will was in existence. I did not wish to undertake work in the administration of the estate if in fact a valid Will did exist and other persons were the Executors and/or a firm of solicitors was to be involved.

Before formally accepting instructions from the intended Administrator, I checked my file records to ensure that there was no potential for a conflict of interest.

I also agreed that my professional fee based on the gross value of the estate in accordance with the law society's recommendations (see 'An Approach to Non-Contentious Costs' The Law Society (Remuneration Committee, 1992).

Provide an outline of any funding issues that arose in the case and how they were dealt with.

The intended Administrator had sufficient resources of her own to meet the initial valuations fees (including the RICS Red Book Probate valuation) and the buildings insurance. Since it was not possible to close any of the accounts until the Letters of Administration had been issued in this case, the PR had to wait to be reimbursed. However, the deceased held sufficient funds in his [REDACTED] account to cover the IHT tax bill and the funeral bill. I sent

the funeral bill and the IHT423 to the bank to request payment. This would have been done in plenty of time, except that the coroners office took 6 months to issue the Death Certificate and some of the asset providers did not accept the interim death certificate. I had to therefore ask the coroner's office to confirm directly to the asset providers that the interim death certificate was genuine.

██████████ were part of HMRC's Direct Payment Scheme, so upon receipt of the signed IHT423 they were able to pay the tax directly. However, they failed to confirm that tax had been paid in advance of the deadline, so I had to ring them on several occasions to ensure payment occurred and no interest on the tax payable accrued.

Provide an outline of the advice provided to the client and the outcome of the matter.

I advised the client on the following:

1. The meaning of "intestacy" and the effect that this would have both in relation to the persons entitled to administer the estate and the persons entitled to benefit therefrom. I explained in detail to the client the distribution of the net estate under the terms of the 1925 Act and in particular the per stirpes provisions thereof.
2. The duties of the Administrator and in particular the need to protect the estate assets; following issue of the grant of representation, to collect those assets; to ensure that all known creditors are paid, where necessary following the bankruptcy order and, thereafter, ensuring distribution of the net value of the estate in accordance with the statutory provisions in favour of the beneficiaries entitled thereto.
3. The IHT issues arising in the administration and the payment of IHT to the estate and the use thereof to ensure that no liability to IHT arose.
4. The use of the section 27 Notices in order to advertise for claims against the estate to be made in a known timescale.
5. Additional protective measures as well as the genealogist's report. I recommended the indemnity insurance route so that if a potential beneficiary were missed, the Administrator could pay for his/her share of the estate by relying upon the provisions of the insurance policy. I recommended the indemnity insurance route as being the most timely and cost-effective way of dealing with that matter and because it was advised as being necessary by the genealogists.

Provide an outline of the decisions you have to make in the case and whether you had to take and strategic decisions in the case.

The key decisions which I made included:

The nature and extent of the enquiries to be made into the existence of a valid Will.

The means of protection to the Administrator using a section 27 Trustee Act 1925 advertisement.

The use of a firm of professional genealogists to establish the full extent of the beneficial interests in the estate. This being preferable to relying on the information available from other family members, some of whom had already researched the deceased's family tree.

The completion of a financial assets search. This was essential in view of the unknown nature of the deceased's assets and liabilities. We also went through historic bank records of the deceased which had revealed that the deceased had been a previous lottery winner. I then

proceeded to check that the deceased had not been incorrectly receiving any means tested benefits from that date (which otherwise would have represented a potential claim by the Department of Work and Pensions, Recovery of Estates Team).

Advising the PR on how to protect the extent of their liability by utilising the deadlines under the I(PFD)A 1975, s27 of Trustee Act 1925, HMRC's deadline for raising enquiries as IHT and arranging indemnity insurance as the least risky solution to enable a prompt and accurate distribution of the net estate.

I also adhered to other key deadlines during the administration such as noting when the insurance policy covering the deceased's property was going to lapse for non-payment of premium. I took prompt steps to arrange suitable insurance to ensure that the cover remained in place and to arrange payment of the insurance premium for that purpose.

Additionally, when the property sold during the administration I recognised that the property had gained in value since the date of death such that there would have been a capital gains tax liability on the sale of the property. I drafted (with the assistance of a qualified accountant) a memorandum of appropriation so as to appropriate equity in the property to the beneficiaries who could then utilise their unused personal allowances for capital gains tax purposes (as well ofcourse as the estate's own allowance). This had to be prepared and completed in advance of the exchange of contracts. I limited my own liability to the drafting of the document and not to the tax advice of calculation of the percentages for the memorandum of appropriation.

Before obtaining arranging third party services, I always made a point to obtain two separate quotations since I had an extended duty of care to the beneficiaries of the estate as well as my clients (the Administrators). As such I was able to save a 7% commission fee on the sale of the vehicle, ~£1,500 on the quote of the first genealogist company we approached, ~£1,200 on the cost of the indemnity insurance recommended by the genealogists, ~£25 on the agent for the statutory advertisements, ~£80 on the buildings insurance and CGT liability. Additionally, I worked closely with the Administrators who completed many of the non-legal works (such as weekly property checks). I was thereby able to offer a value for money service to both the Administrators and the beneficiaries and justify my services.

Provide a description of any training or development needs you have identified as a result of having dealt with the case.

To maintain, and keep up-to-date, my knowledge of intestate succession and the procedural issues surrounding it.

To understand the services offered by genealogists and accountants and also the basis of their charging.

I have subsequently attended a webinar hosted by an internationally renowned firm of genealogists which has assisted me in updating and improving my knowledge.

To further develop my in-house file management systems to ensure that details of beneficial entitlements to the estate are accurately recorded and maintained throughout the administration period.

To further develop in-house file management systems to ensure that essential dates are recorded and actions taken in a timely manner.

I have undertaken training in connection with case management software.

Please identify the knowledge and understanding learning outcomes met through this portfolio.

Full administration of a taxable estate and application of Letters of Administration.

Identify how the portfolio demonstrates your experience in probate practice.

Full administration of a taxable estate including (for this particular estate):-

1. Taking initial instructions and advising on the procedure and options for who could take out Letters of Administration. Protecting estate assets with insurance. Placing Trustee Act 1925, section 27 notice/advertisement
2. Valuation of assets through banks, shareholdings (quarter up method), instructing professional valuation of property and vehicle
3. Preparation of a list of assets and liabilities for probate
4. Submission of full IHT account and payment of IHT
5. Application of Letters of Administration to the probate registry
6. Collection/sale of assets
7. Payment of liabilities
8. Obtaining IHT clearance certificate
9. Appropriation of property to beneficiaries so that they could use their Annual Exemption Allowance for CGT and closure of utilities/council tax once the property was sold
10. Finalising pre and post-death income tax and capital gains tax for the deceased and estate to HMRC.
11. Preparation of estate accounts to be approved by the PRs and beneficiaries
12. Bankruptcy searches against all beneficiaries
13. Completion of administration, distributing the funds, issuing R185s to each beneficiary