



Institute of Legacy Management

Institute of Legacy Management's response to the LSB Call for Evidence Estate Administration and Probate Activities

Background Information

The Institute of Legacy Management (ILM) was established in 1999 to provide charity legacy professionals with training services, sector recognised qualifications and a network of support. With 500 members, representing 300 charities, we are the foremost provider of information and training on legacy case management, relied upon by the charity sector to ensure that the £2 billion of legacy gifts received each year is managed in accordance with donors' wishes and in compliance with the Law. In addition to our traditional role, we also work with bodies including Remember a Charity, the Law Society, the Charity Commission and the Law Commission to ensure that the legal environment supports and promotes charity legacy giving.

Summary

ILM has encouraged its members to respond to the Call for Evidence on behalf of the charities they represent directly, although the views expressed in this submission reflect some general views which have been shared with Directors.

The Board of ILM welcome the opportunity to respond to this Call for Evidence. ILM would support a proposal to make estate administration a reserved legal activity which is regulated by an approved legal services front-line regulator. ILM believes that this would provide a practical and cost effective mechanism for redress when problems are identified which is currently unavailable to beneficiaries in some cases.

Response to Questions

One – What problems do you see with probate and estate administration services?

Experienced charity legacy officers have an enhanced working knowledge of Inheritance Tax and Capital Gains Tax issues relating to estate administration. Without the necessary skills and experience a lack of understanding in probate and estate administration services or lay executors can lead to too much IHT being paid or CGT not being avoided in appropriate situations.

Many Wills prepared by some will writing firms are poorly drafted leading to partial intestacies or lack of clarity on how the Will is to be interpreted. In many cases this leads to increased costs and delays during the administration period.

Two – What causes problems most often?

- a. issues with a Will**

- b. there not being a Will**
- c. issues with the actions of an estate administration provider**
- d. issues with a lay executor**
- e. the actions of a beneficiary**
- f. issues with government agencies involved in the administration process**

ILM recognises that for many people, finalising the estate of a loved one personally is a selfless act that they undertake because of their connection to the deceased. However, there is also a public perception that the costs of administering estates by solicitors, banks and will writers are excessive and some lay executors do the work because they want to save costs.

Most problems are caused by charities having to deal with lay executors who do not always react well to requests for information or who do not understand their own fiduciary duties or they do not understand that charities also have a duty to optimise their legacy income.

Some ILM members have noted that new post handling processes and problems caused by a general backlog at HMRC is leading to estates being delayed which has an impact on cash flow for charities that rely so heavily on legacy income to support their work.

Three – What are the consequences?

Accidental partial intestacies discovered once the testator has died mean that beneficiaries named in the Will do not receive as much as the testator might have intended. Dealing with the issues causes delay and unnecessary costs as beneficiaries may need to be traced by costly tracing firms and the payout of the legacies are delayed for all beneficiaries.

It is incumbent upon Charities to seek independent legal advice when they may be required to give up all, or part, of its entitlement under a Will. If there are problems with a Will caused by poor drafting or poor administration practice, charities have to spend funds which could be put to better use in support of their charitable work.

Four – What do you do (or what can be done) to put problems right?

ILM would support tighter regulation of estate administration and probate activities. One charity has advised that they are dealing with one case where the directors of the firm are currently in prison for fraud but on release they could start up another firm and conduct the same business.

ILM would support the introduction of compulsory indemnity insurance for all estate administration providers; currently a requirement for solicitors.

To understand this from a charity viewpoint - one charity told ILM that they had given instructions to sell shares to a firm of solicitors who were acting as Executors; that firm delayed selling the shares which resulted in a loss of value which exceeded £60,000. This sum was repaid to that charity by the firm's insurers.

If this had happened on an estate being handled by a lay executor or by an unregulated firm of estate administration providers, the only recourse would have been to issue a negligence action directly against the Executor or the Directors of the firm. A charity would be very mindful of bringing such an action against a lay executor because of the resulting risk to reputation, even if the claim had good merit.

ILM would support the introduction of an accreditation scheme and continuing professional development requirements to ensure that estate administration practices are current and are recognised as best across the sector.

Request for further evidence

If estate administration was to become a reserved legal activity, ILM would encourage the LSB to consider seeking further views and evidence on whether Executors should be required to prove to the Probate Registry that they have administered and distributed an estate in accordance with the terms of the Will. Currently there are no mandatory requirements on Executors to do this.

Many charities subscribe to a bequest notification service and are informed when they have been named in a Will once a Grant of Probate has been issued and the Will becomes a public document. In line with best practice guidance, many charities follow up with Executors if they have not received notification of these legacies directly after a reasonable period after death. If these estates are administered by family or friends, many charities are faced with difficult decisions about whether to ask when their legacies might be paid.

It is, unfortunately, a common occurrence that lay executors do not respond to these requests for information and legacies remain unpaid. One national charity has advised that in one financial year it was required to write-off over £50,000 worth of legacy income because of the risks to reputation if they pursued unpaid legacies too rigorously with lay executors.

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