

## NARRATIVE REGARDING TRANSPARENCY PROBATE

### PROBATE

The Solicitors Regulatory Authority (SRA) which regulates Law Firms now requires us to make clear how we charge for certain legal services.

The purpose of these rules, referred to generally as the “Transparency Rules”, are to make sure you have the information you need to make an informed choice when choosing a Law Firm to work with.

The area of law generally referred to as “Probate” covers the administration of estates following a death. The Transparency Rules apply to probate work undertaken by Solicitors where the administration of the estate itself is not contested and where all the assets are within the United Kingdom.

The term “Probate” is used to describe a number of different situations. When someone dies leaving assets, those assets are called their “estate”. How an estate is administered depends upon whether or not the person left a will and the value of their assets.

Broadly speaking, there are two distinct parts to the process. The first stage involves making an application to the Probate Registry. This is the part of the Court System in England and Wales which deals with this area. The process involves the Will being sent to the Probate Registry accompanied by a Legal Statement signed by the executors and the Probate Practitioner. The legal statement can be signed by Practitioners on behalf of the client and any of the applying executors, uploaded to an application through My HMCTS dashboard or sent by post.

If the Probate Registry is satisfied with the Will and the Legal Statement it issues an official certificate known as a “Grant of Probate”. The phrase “Probate” actually comes from a Latin verb “probus” which means to prove. The whole point of obtaining a Grant of Probate is that it provides evidence to third parties that the executors are legally entitled to deal with the estate. A Grant of Probate is not always necessary in small estates but is always necessary, for example, where the deceased owned a property. A Grant of Probate provides evidence to the Purchaser of the executor’s right to transfer the title to them.

If the person who died did not leave a will, then they are said to have died “intestate”. There is a set of rules known as the “intestacy rules” which apply in all cases where a person died without leaving a will (or their will is not valid). The intestacy rules which are based on a family tree, determine who is entitled to apply and who will receive the estate. The application differs slightly in cases where the deceased did not leave a will. The certificate issued in these cases is known as a grant of “Letters of Administration”.

In cases where there is a will, it appoints a person or persons to deal with the administration of the estate. They are known as the “executors”. Their authority comes from the will and although it is necessary for them to obtain the Grant of Probate in order to deal with the estate they are otherwise entitled to act immediately. In cases where there is no will, the individuals who apply have no authority until the Probate Registry issues it to them. They are known as the “administrator”.

### The Role of HMRC

Broadly speaking, there are two kinds of estates. Those where inheritance tax is payable (“taxable estates”) and those where inheritance tax is not payable (“non-taxable estates”).

Certain kinds of non-taxable estates are known by HMRC as “excepted estates”. In such cases, it is necessary to submit a form to HMRC known as IHT205. This is sent to the Probate Registry at the same time as the application for probate. This form is described as a “Return of Information” and precise figures are not always required. In more complex estates, particularly where inheritance tax is

payable it is necessary to file a full Inland Revenue account in form IHT400. This is actually a suite of forms with sub-sections for different types of assets. If tax is payable, it is always necessary to provide a formal valuation of all the assets referred to in the form. The valuation in all probate cases is at the date of death. In the case of taxable or complex non-taxable estates, it is necessary to submit the form IHT400 to HMRC before an application to the Probate Registry can be made. If tax is payable then inheritance tax must be paid at this time (where the assets includes land and buildings the tax can be paid by annual instalments or on sale).

The second stage of the Probate process is generally referred to as the “administration”. The administration phase involves collecting in and transferring assets and discharging liabilities. Depending upon the size and complexity of the estate, this process might be straightforward or complicated.

### **COMPLICATING FACTORS**

There are a number of factors which may not only affect the time a matter will take to complete but also the general level of charges. Examples of these are set out below:-

- i) Where the will (or the application of the Intestacy Rules) are contested by those who feel that inadequate provision has been made for them.
- ii) In cases where beneficiaries are charities. Special rules apply to charities which require additional due diligence and valuations.
- iii) Estates where there are business or agricultural assets and relief that needs to be obtained.
- iv) Estates with complex investment portfolios including stocks and shares.
- v) Estates where assets are held in trust.
- vi) Estates where the whereabouts of beneficiaries are not known and they need to be traced.
- vii) Estates where there are assets in foreign jurisdictions.
- viii) Estates with ongoing requirements for maintenance and safekeeping of properties,

### **TIMESCALES**

The Probate Team at DRK pride themselves on progressing probate applications and administration of estates promptly and efficiently. In more straightforward cases, usually the family/executors are able to provide all of the information without the need for your Solicitor to make further enquiries. In more complex cases, information is often not easy to obtain and there are often delays whilst institutions and others respond appropriately. Often, your Solicitors will have to liaise with Accountants and Financial Advisors.

In the case of a straightforward estate, we would normally expect to have completed the information gathering and prepared all the necessary probate forms within about 6 – 8 weeks. This does however very much depend upon responses being received from third parties and our executor clients responding to requests for information promptly. Once this phase is completed, the application to the Probate Registry can be made. The amount of time the Probate Registry takes to process a Grant depends upon their current levels of work. As we deal with the Probate Registry all the time and the time taken often varies, we will give you the best possible information about the likely timescale at that time.

It is DRK's normal practice where we are instructed to administer a straightforward estate to arrange for the executors to sign all necessary account closures and asset transfer forms at the time of the application for Probate. This enables us as soon as a Grant has been obtained to submit these to the various institutions. We would normally expect to be able to complete this process in a further 8-10 weeks. This is then followed by us producing draft estate accounts to the Executors and once approved, and all other matters have been completed, to distributing the estate to the beneficiaries.

In more complex cases (particularly where tax is payable), the process often takes significantly longer. For example, we may have to liaise with Accountants where there are business assets. It can take several months to obtain all the necessary professional valuations and collate the information. In cases where tax is payable, arrangements have to be made for the tax to be paid. Tax on financial assets must be paid with six months of the date of the end of the month in which the person died. After that,

interest is payable. There is a process whereby money held in Banks etc. can be paid directly to HMRC under something known as the Direct Payment Scheme. HMRC understand that where assets and estates include property, this cannot be turned into money until it is sold. In the case of property assets, the tax can be payable over ten years by annual instalments (with interest), on the understanding that if the property is sold in the meantime, the tax must be paid in full at that point. The form once submitted to HMRC is usually dealt with by them in approximately four weeks and thereafter an application for Probate can be made on the timescales referred to above. Application for Clearance from HMRC in straightforward estates can take approximately twelve weeks thereafter. Where Agricultural Property Relief/Business Property Relief is being claimed it can take significantly longer, depending upon whether the District Valuer approves the Valuations/Reliefs/Exemptions.

The administration of complex estates then depends very much upon the nature of the estate, the makeup of the assets and the circumstances of individual beneficiaries.

## **DUE DILIGENCE**

As in all cases of work undertaken by Solicitors, it is necessary for a due diligence process to be followed. This involves in particular your Solicitors providing you with terms of business/engagement and obtaining evidence of your identity and residential address for money laundering purposes. In all cases, where monies are sent or assets transferred to beneficiaries, it is also necessary to obtain evidence of those individuals' identity and to check at the Land Registry that there are no pending actions in bankruptcy against them.

## **DISBURSEMENTS**

Disbursements, is a term Solicitors use to describe payments they make on a Client's behalf to third parties. In the context of the administration of an estate they include, for example, Probate and Land Registry fees, Bank Transfer fees and Bankruptcy Searches. DRK generally pay these disbursements from their own funds and include them in their invoice.

In cases where DRK is instructed simply to obtain a Grant of Probate or Letters of Administration, the disbursements would principally include the Court Probate fees. In cases where the Firm is involved in the full administration of the Estate, there are likely to be other disbursements in addition, examples of which are as follows:-

Section 27 Notice £200-£250 (this is a statutory advertisement in advertising for Creditors of the Estate). Although not required in all cases, it protects executors from being subject to claims from creditors after they had distributed the estate.

£2.00 Bankruptcy Search against the names of all beneficiaries.

Indemnity fees – When dealing with a sale of shares, often certificates cannot be found and indemnity payments are required to the Registrars before new certificates will be issued. In more complex estates where tax is payable, it will be necessary to obtain professional valuations for land and buildings and other assets.

Land Registry fees payable in cases where properties are transferred to beneficiaries.

## **FIXED FEES**

We are able to offer a fixed fee service where we are instructed to apply for a Grant of Probate of a Will or Letters of Administration. **In order for this fee to apply, we would require our Client to provide us with complete information regarding the deceased's assets and liabilities so that we can prepare the necessary paperwork.** We send a full explanatory letter setting out what information is required on being instructed.

### **Fixed fees – Application for Grant only – non taxable *excepted* estate (form IHT205)**

DRK Legal Fees £1,000 plus vat of £200 making a total of £1,200

#### **Disbursements**

Court fee (currently £155 in all cases)

Costs for additional official copies of the Grant, £1.50 each (the number required will depend upon the number of assets).

**Application for Grant only – non-taxable estate requiring a full Inland Revenue Account for example where estate is claiming Residence Nil Rate Band or Balance of Transferable Nil Rate Band) (form IHT400).**

DRK Legal fees £2,000-£3,000 plus vat of £400-£600 making a total of £2,400-£3,600

**Disbursements**

Court fee (currently £155 in all cases).

Costs for additional office copies of the Grant, £1.50 each (the number required will depend upon the number of assets).

**Application for Grant only – taxable estate requiring a full Inland Revenue Account (for IHT400)**

DRK Legal fees £4,000-£6,000 plus vat of £800-£1,200 making a total of £4,800-£7,200

**Disbursements**

Court fee (currently £155 in all cases).

Costs for additional office copies of the Grant £1.50 each (the number required will depend upon the number of assets).

**NON-FIXED FEE WORK- where DRK are obtaining all financial information and administering the Estate.**

Each estate has its own peculiar facts and circumstances. Some matters will fall neatly within the framework of fixed fees. Many however will not. For that reason, all of the members of the team at DRK are happy to deal with any initial enquires and to undertake a simple fact find in order to ascertain what work will be required and to give a realistic fee estimate. There is no charge for providing a fee estimate in advance of being instructed.

In some cases, Clients decide as things are moving forward, that they would like their Solicitor to carry out more work. This never causes a problem and your Solicitor will provide an estimate for any further work.

Enquiries should be made to a specific member of the team who will be pleased to provide further and detailed information. It is difficult to provide any meaningful estimate without a clear understanding of the nature and extent of the estate and the circumstances and number of the beneficiaries.

All members of the DRK Probate Team are happy to provide full costs information prior to being instructed.

Once we have provided you with a written quote for the agreed work to be done that price will not change, unless the original information we are given is shown to be incorrect or circumstances change.

**Non-Taxable Estates – where DRK are obtaining all financial information and administering the estate.**

The exact cost will depend on the number of assets in the estate, and the number of beneficiaries. Our fees will be calculated based on the number of hours spent on the matter. The hourly rate will depend on the level of experience of the Fee Earner dealing with your matter. Further clarification will be given once we have completed our initial assessment.

However, the average price range will be as follows:

Our fees can range from £3,000 - £8,000 plus vat of £600 - £1,600 – making a total of between £3,600-£9,600 depending upon the value and complexity of the estate.

**TAXABLE ESTATES – Where the total value of the assets in the estate exceeds the nil rate band and Inheritance Tax is payable and where DRK are obtaining all financial information and administering the estate.**

The exact cost will depend on the number and complexity of the assets in the estate, and whether the estate is claiming any tax reliefs/allowances, and the number of beneficiaries. Our fees will be calculated based on the number of hours spent on the matter. The hourly rate will depend on the level of experience of the Fee Earner dealing with your matter. Further clarification will be given once we have completed our initial assessment.

However, the average price range will be as follows:

Our fees can range from £8,000 - £20,000 plus vat of £1,600 - £4,000 – making a total of between £9,600-£24,000 depending upon the value and complexity of the estate.

## **THE DRK PROBATE TEAM**

There are four members of the DRK Probate Team. They have many decades of experience between them in dealing with all aspects of the Probate process and administration of estates.

The Probate Team is split between three offices. Bernadette Emmett is based at the Firm's office in Northwich, Mark Darlington at Winsford, and Simon Masters and Emma Rigby at Sandbach.

Any member of the team will be happy to deal with any enquiry. If any member of the Team feels that your matter would be best dealt with by a different member of the team they will make the appropriate recommendation.

### **Simon Masters (Based in Sandbach)**

Simon is the Head of the Firm's Private Client Team and deals with all aspects of Wills, Probate and Estate Administration. Simon also has considerable experience in dealing with Powers of Attorney, Trusts and large and complex property transactions (commercial and residential). Simon is also the Firm's Managing Director. He has been a qualified Solicitor since 1986. Simon joined Rigby & Company, one of DRK's predecessor practices as a Partner in 1996. He deals on a daily basis with all kinds of estates and tends also to deal with the more complex cases, particularly those involving businesses and farms. Simon is very familiar with inheritance tax issues around business and agricultural property relief. Simon works closely with his Probate Assistant, Carole Buckley, who has over 20 years' experience dealing with this work. She is the first point of contact and does a considerable amount of work "behind the scenes". Simon's hourly charging rate as the senior lawyer is £250 per hour plus vat of £50 making a total of £300 per hour.

### **Bernadette Emmett (Based in Northwich)**

Bernadette has over 18 years' experience of dealing with all aspects of Probate and Administration of Estates. She qualified as a Solicitor in 2003. She joined the team at DRK in April 2017. She also has considerable experience in dealing with Lasting Powers of Attorney and in the administration of the affairs of those who are unable to manage by reason of mental incapacity through the Court of Protection. Bernadette's hourly charging rate is £200 per hour plus vat of £40 making a total of £240 per hour.

### **Mark Darlington (Based in Winsford)**

Mark is the Firm's Probate Manager. He has over 30 years' experience of dealing with all aspects of Wills, Probate and Administration of Estates. He has been with the Firm almost "man and boy". Mark has a very significant Client following in the area having acted for several generations of the same families. Mark's hourly charging rate is £170 per hour plus vat of £34 making a total of £204 per hour.

### **Emma Rigby (Based in Sandbach)**

Emma joined DRK in June 2021. She qualified as a Solicitor in 2018. Emma has experience in dealing with the very difficult area of death bed Wills, all other aspects of Wills, Lasting Powers of Attorney, and is able to undertake all aspects of the administration of estates. Emma's hourly charging rate is £170 per hour plus vat of £34 making a total of £204 per hour.