



Finders, keepers

By using professional probate genealogists, practitioners can save time and money as well as significantly reduce the risk of claims from missing beneficiaries, says **Andrew Kidd**

TRACING ONE'S FAMILY history has become a major interest area in recent years, illustrated by the popularity of television programmes and genealogy websites which allow users to search and access historical information and documents such as census results, birth, marriage and death records. Family tree software is also more readily available. Indeed, growing consumer interest in inheritance and in tracing heirs is more than just a casual pastime, with professional probate genealogists providing important services which underpin the work of solicitors.

Professional probate genealogists specialise in identifying and tracing heirs, locating people who may be beneficiaries under a will or the intestacy rules. They are frequently instructed by solicitors, executors or administrators and trustees, or may act directly for the beneficiaries. By working with professional probate genealogists, solicitors can potentially avoid incurring unnecessary costs and diminish the risk of claims from overlooked beneficiaries – which is of course all in the client's interest.

Why work with professional probate genealogists?

In 2008, almost 300,000 grants of representation were extracted in England and Wales. In the great majority of these estates, the beneficiaries will have been known and in touch with the deceased at the date of death. However, in a small number of cases, maybe as few as two per cent, research will be required to find missing heirs. These are of two main types.

First, in testate estates, one or more beneficiaries entitled under the provisions of a will may be missing, or may have predeceased the testator, with enquiries then becoming necessary to locate those benefiting under a gift-over clause or by the operation of section 33 of the Wills Act 1837, for example.

Secondly, in intestate estates, it is necessary to identify and locate those persons who are entitled under the intestacy rules. In these cases, more probative enquiries may be necessary to trace such persons. Various technical methods are used including preparing extensive family trees.

The issues surrounding wills and

succession are often complex and many solicitors or administrators dealing with an intestate estate will have encountered a feeling of dismay when it becomes apparent that a deceased may not have left a valid will.

However, solicitors should consider the various solutions to problematic cases, including those involving low-value estates, 'homemade' wills containing very little information, no known next of kin or cases involving cross-border issues such as overseas beneficiaries.

Probate genealogists are experts in finding solutions to such issues. By referring these kinds of cases to professional probate genealogists, they are frequently able to apply their specialist knowledge and methodology to achieve a successful result for our clients.

As well as dealing with technical problems being in the client's interest, there are important commercial reasons why solicitors should consider using the services of professional probate genealogists. Solicitors dealing with intestacies will no doubt have in the back of their mind that if they

distribute the estate to those entitled under intestacy rules, there is the possibility that a valid will is later traced. Should this happen, it can be difficult to resolve and be very costly and time consuming for the solicitor involved. Insuring against this risk is an important way for solicitors to safeguard against the costs involved. It is in fact a requirement of the most commonly used insurance policies for the solicitor to have instructed a professional probate genealogist to carry out a missing will tracing exercise. On completion of this exercise, and if no will has been traced, the genealogists can obtain a 'missing will' insurance policy. This covers the solicitor against the possibility of a will or more recent will being found. As with any such insurance, this can be of great comfort to the client.

Similarly, where there are missing beneficiaries, despite best endeavours, it is

appropriate to consider taking out 'missing beneficiary indemnity insurance' even if it is considered that the possibility of the missing beneficiaries coming forward at some time in the future to be remote. Such insurance cover protects solicitors from the costs associated with untraced beneficiaries coming forward to make a claim against an estate in the future.

What to look for

There is a certain art to the work undertaken by professional probate genealogists framed by training, experience and expertise. Success rates must be high in order for it to be viable. Differences do exist between professional firms, and it is also important to make sure any firm you work with has the necessary level of expertise.

Solicitors looking to work with a professional probate genealogist firm should check their website and other promotional material

for evidence to substantiate accreditations as there is no formal regulatory body governing such firms and it rests with the individual firm to set their own standards should they choose to do so. Many firms have their own professional code of conduct to demonstrate their commitment to a professional and ethical service. Accreditations to look for include: membership of a professional association – for example, the Association of Professional Probate Genealogists; a firm approved by the Expert Witness Directory; an approved Expert Witness place; and a firm approved by a reputable insurer.

Solicitors should also check basic company information such as the company registration, membership of the FSA and data protection registration.

Fee options

The professional probate genealogy sector has been the subject of interest recently largely due to practices around fee arrangements. The approach to costing is one the differentiating factor between firms. Two main types of costing exist:

The first is the so-called 'contingency fee' arrangement. This began in response to the Treasury Solicitor advertising *bona vacantia* estates. Probate genealogists then worked on these cases speculatively and claimed a commission fee from the heirs they located.

Contingency fee arrangements, which are currently the most commonly used fee arrangement, have been subject to recent discussion. In his recent review of civil litigation costs, Lord Justice Jackson concluded that contingency fees were a legitimate method of charging and that they had a role to play in the provision of legal services in certain cases.

The second cost basis is where the genealogist works on either a 'time and expenses' basis or on a 'fixed-fee' basis, agreed in advance with the personal representatives. These costs are payable regardless of the outcome.

It is the choice of the personal representatives to choose the costing basis most appropriate to the estate. They remain in control throughout, with fees (which are generally negotiable) being agreed directly with the professional probate genealogy firm.

There is no 'one size fits all' solution and a good firm of probate genealogists will be able to discuss a variety of fee options and costing methods.

Andrew J Kidd is a senior associate in the private client department at Silverman Sherliker LLP Solicitors in central London. He is grateful to international probate and genealogy firm Finders for its input into this article: www.findersuk.com

Case study: Margaret Abbott

The case of Margaret Abbott illustrates how a seemingly hopeless case can be resolved by turning to professional probate genealogists.

The late Mary Elizabeth Jones was born in 1917 in London, the daughter of William and Fanny Smith (names have been changed). Upon the death of her mother, her father remarried in 1938 and subsequently had another daughter, Margaret.

Mr Smith left his second wife and child a few months after the birth of his daughter, and moved to Leicester where he set up home with another woman. The late Mrs Jones and her half-sister Margaret had never met and, when the deceased died intestate, the solicitors handling her estate were unaware of Margaret's existence. They were in touch with cousins of the deceased and were preparing an application for a grant of letters of administration on their behalf. However, when they referred the case to

the probate genealogists to ensure that the family tree was correct, their research discovered Margaret's existence and thus her entitlement as the sole heir to her late half-sister's estate.

Margaret has now been able to use the inheritance to undertake travel across the world, although she has always expressed her wish to have known her late half-sister and more about her family.

For the solicitors involved, referring the case to the probate genealogy firm potentially saved them from the costs associated with having to unscramble an estate which had been distributed among those who were not the rightful beneficiaries, should Margaret have later come forward to make a claim against the estate. This also highlights the importance of insurance to protect solicitors and their clients against such scenarios.

Dealing with probate genealogy issues

Do not give up on a difficult case such as a lack of information which leads to the inability to trace beneficiaries. Professional probate genealogists can often use their expertise and experience to find solutions to these tricky problems.

Speak with two or more firms of probate genealogists at the earliest opportunity. Advice is free and probate genealogists will be keen to provide it. You should receive a detailed assessment, covering the likely prospects, any foreseeable difficulties, and the implications to the estate of the different costing methods suggested.

Consider the probate genealogists' advice carefully and revert back to the genealogists to answer any questions or concerns you have.

Select the costing method which is appropriate for the estate, bearing in mind the personal representatives' overriding duty to act with due diligence.

Consider how the heirs known to the estate will be best served.