

Missed Assets and Liabilities

Managing Risk in Estate Administration



Investigating a Deceased's finances is a large part of a Personal Representative's job during the process of estate administration. It's one of their primary and most urgent duties and is an essential part of the due diligence, risk management and best practice they are expected to carry out within their role.

UNCLAIMED ASSETS IN THE UK

2020 figures from Reclaim Fund Limited - the fund banks pay assets into when they have reached 15 years or more - show that there was a staggering £1.3 billion left in the fund that

year, a figure which has been increasing annually for some years.

Added to this staggering figure, unclaimed shares, pensions, and savings are at unprecedented levels. Data from the 2016 FSA report found that a snapshot look at 'gone away' pension accounts (where the pension provider has lost contact with the account owner), has resulted in £200 billion unclaimed pension money over the years, while over £3 billion lies in National Saving and Investments, as yet repatriated to its rightful owners. The Share registers are known to be holding around £640

million in dividends, reported by the Dormant Asset Commission Report of March 2017.

With the past couple of decades seeing a sea change in the behaviour of people in terms of house and job moves, the move to online account access, and the lack of good record-keeping within finances, coupled with the introduction of Workplace Pensions with every job move, finding unclaimed assets has never been harder. An industry study conducted in 2021 revealed that 88% of professionals believe it is getting harder to locate estate accounts, and 28% of families of the deceased simply do not know where all their loved ones' assets are. The need for thorough due diligence in the estate administration process is therefore paramount for all concerned.

DUE DILIGENCE

Personal Representatives, whether they are the Executor, or have been instructed to act on behalf of the Executor, are responsible for an estate 'in perpetuity' and have a responsibility to find the Beneficiaries of an estate and to confirm that those Beneficiaries are receiving what is owed to them.

Executors **must** locate all the assets in an estate so that they do not disadvantage the Beneficiaries and must be able to **demonstrate** that they have conducted a thorough search of all financial institutions where assets may have been held by the Deceased. They must also identify all liabilities in the estate and ensure these are settled before the assets of the estate are distributed. This vital due diligence is an integral part of the process of estate administration and it's important that Executors have access to a robust and reliable way to complete such due diligence in order to fulfil their obligations and protect them from associated personal risk.

MANAGING RISK

The risks to Executors of not locating all the assets and liabilities at the time of administering the estate are very real.

The implications of not doing so include, but are not limited to:

- HMRC fines for understated Inheritance Tax
- Additional costs to Executors incurred from having to resubmit estate paperwork after distribution has taken place
- Personal liability for disadvantaging Beneficiaries should assets later come to light
- Lack of financial viability for estate administration professionals to re-open files if the value of the missed assets is small, although there is an obligation to do so
- Personal liability of the Executor and Beneficiaries for recovery of missed liabilities after estate distribution
- Negligence claims

As professionals in the industry, we all have a role to play in advising clients of the potential risks and costs attached to

failing to identify assets at the time that the Deceased's estate is administered. In that regard, it's vital to have a thorough best-practice process in place to ensure these assets are located.

BEST PRACTICE

Sarah Walker, Partner at Weightmans, understands the challenges faced by Personal Representatives and the need to operate first-class best practice across all the firm's cases -



In these more modern times of electronic statements and communications by text and email, it has become increasingly common for deceased people to leave no paper record of their assets behind. As a result, this can make ascertaining all the assets in an estate, a lengthy and almost impossible task. We strongly recommend to all Personal Representatives that they take advantage of the various means of protecting them from liability available in the market and this advice is provided to them in writing at the outset of the administration.

We chose some years ago to make missing asset searches and s27 Trustee Act 1925 notices compulsory where a professional is appointed to administer an estate and this move has paid dividends. We find additional assets or information on a large percentage of all the estates we handle including on occasion more accounts held by a bank with whom we have already been in correspondence. For a modest fee, this vital due diligence should be part of every solicitor's toolkit.



Best Practice

ASSET AND LIABILITY SEARCHING

Best practice by Personal Representatives now increasingly reflects a vital requirement to conduct a financial asset and liabilities search on every estate being administered where they are acting as Executor.

EstateSearch are now the largest provider of Financial Asset & Liability Searches in the UK and have been pioneering new data and technology to help private practitioners identify assets and liabilities since 2018. Our award-winning Financial Profile Service gives Executors, Beneficiaries, Deputies and Attorneys peace of mind through comprehensive, efficient and demonstrable due diligence that mitigates risk and the cost of missed assets or liabilities.

We actively notify and search a comprehensive list of banks, building societies, investment managers, share registrars, pension providers and insurers of the Deceased and notify the professional practitioner when a financial institution reports a 'match.' Responses and updates can be seen in real-time in our portal and include copies of any relevant correspondence, reference numbers and contact details.

The search offers an unrivalled level of transparent due diligence, a clear audit trail of all reasonable steps taken to locate the assets of the estate, and a fast and efficient search with a fully detailed, final report delivered on day thirty.

The service also includes our Liability search, an electronic check of the Experian database and all credit records held by the deceased, delivered as a report within 24 hours, as well as vulnerability registration to prevent identify theft, fraud, and financial abuse.

CLIENT CARE LETTER WORDING AND DUE DILIGENCE CHECK LIST

When advising Executors and administrators, it is important to make them aware that they are responsible for securing estate assets and settling any debts. They need to understand the cost of discovering assets after distribution, and that they could become personally liable for unsettled debts owed by the deceased. When acting as the Executor, professionals should similarly inform the beneficiaries that they could become personally responsible for such debts.

EstateSearch recommends that all professionals demonstrate best practice to their clients, by advising them of these risks and including details of their policy on asset and liability searching. Additionally, many firms have found it useful to refer to our due diligence check list when seeking to ensure best practice has been conducted for all clients.

For more information on any of our services visit our website www.estatesearch.co.uk, or email hello@estatesearch.co.uk to find out more.

Advice to clients about estate due diligence and potential personal liability - what to put in client care letters

When advising executors and administrators, it is important to make them aware that they are responsible for securing estate assets and settling any debts. They need to understand the cost of discovering assets after distribution, and that they could become personally liable for unsettled debts owed by the deceased. If you are acting as executor, you should similarly inform the beneficiaries that they could become personally responsible for such debts. As a legal professional, you play a vital role in ensuring your clients access the appropriate services to help them minimise such liability.

We have developed some specimen wording for inclusion in your client care letter. Use **Option 1** if you are acting as the executor and **Option 2** if you are advising an executor. For more information, please contact us on 0330 900 7500 or by emailing one of our expert team at: helpdesk@estatesearch.co.uk.

Option 1 – Acting as Executor

The Executor is responsible for securing all assets and settling all debts associated with the deceased's estate. It is possible that not all the deceased's assets will be apparent from their personal papers, this may include on-line accounts, pensions, shares and life insurance policies. If an asset is missed this could mean beneficiaries do not receive their full entitlement, and discovery after of an asset after initial distribution will incur further costs which will need to be met by the estate. Similarly, not all debts may be apparent and it is possible for those creditors to seek payment from the assets distributed to beneficiaries of the estate.

To increase our confidence of discovering all assets and to minimise the risk associated with any missed creditors, we commission an Estatesearch Financial Profile Report. This service notifies leading financial organisations of the death and searches electronic credit records to help us ensure all assets are collected and debts settled before distribution of the balance to the beneficiaries. The Estatesearch Financial Profile Report is quick, concise and easy to understand.

If you do not want us to commission such a report, please confirm this in writing within the next 7 days.

Option 2 – Acting for Executor

It is possible that not all the deceased's assets will be apparent from their personal papers, this may include on-line accounts, pensions, shares and life insurance policies. If an asset is missed this could mean beneficiaries do not receive their full entitlement, and discovery of an asset after initial distribution will incur further costs which will need to be met by the estate. If the deceased had debts which were not apparent from their personal papers, it is possible for those creditors to later seek payment either from the executors or from the assets distributed to beneficiaries of the estate.

To minimise this possibility, we recommend that you ask us to commission an Estatesearch Financial Profile Report. This service notifies leading financial organisations of the death and searches electronic credit records to help us ensure all assets are collected and debts settled before distribution of the balance to the beneficiaries. The Estatesearch Financial Profile Report is quick, concise and easy to understand.

Please confirm (in writing) whether you wish us to commission the Estatesearch report or not. If you instruct us to commission the report, you will be taken as giving consent on behalf of the deceased to our sharing necessary personal information with Estatesearch, so that they can prepare it.

Estate Administration Due Diligence Check List

Will Search

I understand that the discovery of a later Will/discovery of a Will could result in incorrect distribution of the estate, which could generate claims against the Personal Representative and/or Beneficiaries.

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By ticking I hereby confirm and request LAW FIRM to proceed with a Will Search Combined at a price of £95 + VAT on my behalf.

Asset and Liability Search

I understand that if an asset is missed this could mean beneficiaries do not receive their full entitlement, and discovery of an asset after initial distribution could incur further costs which will need to be met by the estate. If the deceased had debts which were not apparent from their personal papers, it is possible for those creditors to later seek payment either from the executors or from the assets distributed to beneficiaries of the estate.

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By ticking I hereby confirm and request LAW FIRM to proceed with an Asset & Liability Search at a price of £185 + VAT on my behalf to help identify all assets and liabilities and mitigate against these risks

Please confirm (in writing) whether you wish us to commission the Estatesearch report or not. If you instruct us to commission the report, you will be taken as giving consent on behalf of the deceased to our sharing necessary personal information with Estatesearch, so that they can prepare it.

Gazette Notices

I understand that it is important to identify all potential creditors or claimants of an estate to protect the Personal Representative from future liability or claims.

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By ticking I hereby confirm and request LAW FIRM to proceed with the placement of a Section 27 Gazette Notice for £80 +VAT, and where the Deceased owned property an advert in a relevant local newspaper for the relevant local fee.

I hereby request and authorise LAW FIRM to proceed with the additional search enquiries I have ticked above.

Signed:

Personal Representative Name:

Dated: