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The Right Balance: What is the Appropriate Fee?

Contingency Fees, Flat Fees & Hourly Rates in Missing Heir Work

In recent months there has been a campaign to outlaw contingency fee agreements in our industry and we would like to address the claims against the way our firm works, because we have not seen the media present a balanced picture of the issues, or a thoughtful debate about the repercussions of curtailing Freedom of Contract in our work, given our industry promotes the public good by reuniting individuals with lost legacies.

There are two types of case that our firm work: those which have been referred to us by a solicitor or administrator, and those which we find from public advertisements, such as the Treasury Solicitor's unclaimed estate list.

In instances where an estate has been referred to us by a solicitor or administrator, we charge a flat fee, or an hourly rate; in the knowledge that those fees will be paid by the estate rather than the individual heirs.

If we choose to work on a case advertised by the Treasury Solicitor, then there is no-one to whom we can send our bill, given no-one is instructing us. Therefore, in order to cover our costs, we request that the heirs we locate sign an agreement allowing us to share a percentage of whatever they each receive from the estate. If for any reason they receive nothing then neither do we. This is a 'Contingency Fee' scheme.

Almost always, the heirs we locate are happy to sign a contract allowing us to claim our fee once their share of the estate has been distributed, given that, without our involvement, they would almost certainly never have known about the potential windfall they may receive, or the family members we have researched.

On most competitive cases, where the deceased died in the UK and their heirs reside in this country, the average contingency fee charged by most firms is around 15%. Sometimes, a case will attract a higher percentage if the research is complex or requires international cooperation; sometimes it might attract a lower percentage if the research is straightforward and the heirs are close kin. At other times, when a case is not easy to solve, a specialist researcher may have to become involved for a share of the fee.

Where international cooperation is required between genealogical agencies the total fee will be split among all the firms involved. Conceivably, only two firms may share the fee, but it is not unusual that this fee will be shared amongst 3-5 different firms,

all operating in separate countries. Therefore, a 30% fee (which sounds high) means each firm will receive a contingency fee of between 6-15%.

There are plenty of scare stories about isolated incidents of ill-advised firms charging grossly inflated percentages, but one major problem within our profession is quite the opposite: some companies charge uneconomic fees, perhaps at 5% or lower, in order to seduce before levying hidden charges or because they do not understand how difficult it is to make a return in this business.

The trouble is that genealogy firms are only paid when the administering solicitor distributes the estate, which is often 12-18 months after the case was advertised and worked –though we've sometimes waited up to 5 years to receive a cheque!

Underselling poses a problem given that some new entrants often miscalculate their pricing and as a result, they end up bankrupt 1-2 years down the line. This causes distress to heirs who are left without representation and headaches to firms, like mine, which often end up having to pick up the pieces when an estate's administration is left in limbo.

Another charge levelled at our profession is that of expenses and hidden charges, which can often go hand-in-hand with depressed fees. One rival firm has built a reputation for loading the estate with hidden charges and requesting expense payments from heirs, but this is not generally the norm. My firm's costs are transparent and simple to understand. Our fees, like those of most reputable firms, are solely contained in the contract a client signs, with no additional hidden costs and we will never charge our clients money for a family tree.

We would like to point out that since December 2007, the value of estates advertised by the Treasury Solicitor were withdrawn from the public domain. Until we submit a fully documented claim, we cannot know this vital piece of information, and this can only come after we have committed resources to locate heirs and obtain all the necessary documents to prove a claim.

Therefore, a contingency agreement means we bear all the risk, as neither we, nor the heirs, can find out the value of the estate until a claim is admitted by the Treasury Solicitor. By taking a percentage fee, we are at the mercy of the estate lottery. Given the risk, there cannot be a fairer system for cases where there is no-one to instruct us or agree to pay our fees prior to the start of research.

Sometimes, the estate is so small that we make a loss. The heirs still receive their share of the estate, but the sum of our fees from each heir does not always cover the costs and time of proving their claim. In other instances, we make a profit, but none of this is certain at the time that we ask the heirs to put pen to paper. After all, a Will can suddenly appear –and this happens every year- so in such cases we make no revenue at all. If we levied a fixed fee, we would get paid even if a Will was found.

Some firms are campaigning to outlaw contingency fees, but their solution of hourly fees, or a flat rate, is simply not appropriate for cases like those advertised by the Treasury Solicitor. The hours and manpower expended by the genealogy firms would mean that the bill that they would submit to the estate could be substantial. In

some cases, the amount of work might dilute the estate to the extent that the heirs would receive nothing at all!

The world of probate genealogy includes many more elements than the research itself and that a good company will be open and honest at all times and allow heirs to ask all the questions they need to before signing a contract. This approach invariably results in happy clients who inherit a sum, 100% of which they were not expecting and 0% of which they would have received without our involvement. Equally, we are duly recompensed for our work, allowing us to continue to track down missing beneficiaries for years to come.