

## **THE TREASURY SOLICITOR BONA VACANTIA DIVISION**

### **GUIDE TO DISCRETIONARY GRANTS IN ESTATES CASES**

This guide contains important information. The Treasury Solicitor cannot give you legal advice upon specific cases and the following information is provided for guidance only. The Treasury Solicitor may change this guide at any time. You may wish to take independent legal advice.

#### **SECTION 1: INTRODUCTION**

##### **How assets reach the Crown**

1. When a person dies leaving assets it is important to discover who the new owner will be. In general, this is determined by either the will of the dead person ("the deceased") or, if the deceased left no will, by an Act of Parliament called the Administration of Estates Act 1925.
2. If the deceased left a valid will which gave away all of his or her assets then there can be no question of those assets passing to the Crown under the Administration of Estates Act. However, if there is no such will, section 46 of the Administration of Estates Act needs to be looked at to find out who the new owner will be. Section 46 sets out a list of different groups of people ("entitled relatives") who will be entitled to the assets in these circumstances. People in the groups nearer the top of the list will take before those in the groups nearer the bottom. The Crown is in a final group that takes effect if there is nobody in any of the earlier groups.
3. The people in the different groups of entitled relatives include the deceased's husband or wife and children together with a number of other relatives. There is a tree diagram showing all of the categories of entitled relatives on the Bona Vacantia Division's website at [www.bonavacantia.gov.uk](http://www.bonavacantia.gov.uk) Alternatively, a diagram can be obtained by writing to the Treasury Solicitor using the contact details at the end of this guide.
4. The result is that the Crown is entitled to inherit a deceased's assets if he or she: (i) died without leaving a valid will which disposed of all of his or her assets; and (ii) was not survived by any relatives within the groups higher up the list; and (iii) was domiciled within England and Wales with the exception of the royal duchies of Lancaster and Cornwall. The purpose of this guide is to set out what the approach of the Crown is to property that it has inherited in this way. It is not an Act of Parliament and should not be read like one. New cases arise all the time and the Crown, through the Treasury Solicitor, will decide each case on its merits.

## **The power to make grants out of assets which reach the Crown**

5. The starting point is that the assets belong to the Crown. They are an example of what lawyers call "bona vacantia" - legal Latin for "ownerless goods" (which can include assets other than just goods). The Crown is under no obligation to deal with such assets in any particular way. If they are not given away under the principles explained in the following paragraphs then, together with other forms of bona vacantia and subject to deduction of the costs of collection and administration, they will be transferred to the Exchequer to be dealt with in the same way as money raised by general taxation.
6. Although the assets belong to the Crown, the Crown has a power to make grants out of them - to give part or all of them away. This power is recorded in section 46 itself, which states that the Crown "may" make provision for the "dependants" of the deceased and for "other people for whom the [deceased] might reasonably have been expected to make provision". It does not matter whether the dependants were related to the deceased. Parliament's use of the word "may" emphasises that there is no obligation upon the Crown to make such provision. The use of the power is discretionary and no applicant has any right to a grant. However, the power must be exercised fairly.

## **The role of the Treasury Solicitor**

7. The Treasury Solicitor has been appointed by the Crown to collect assets which pass to the Crown in the way outlined above and to exercise the power to make discretionary grants. The Treasury Solicitor acts upon guidance and directions received from H-M Treasury. The Treasury Solicitor deals with all matters relating to bona vacantia through a specialist section of the Treasury Solicitor's Department known as the Bona Vacantia Division (see the contact details at the end of this guide).

## **SECTION 2: POLICY AND PRACTICE**

### **The Treasury Solicitor's policy**

8. The Treasury Solicitor's policy is to consider all applications on their merits and to make grants to people who the deceased might reasonably have been expected to benefit (including, where appropriate, the deceased's dependants). This general statement of policy should be read in the light of factors set out elsewhere in this guide. Decisions will be taken in the light of all information available to the Treasury Solicitor at the time of the decision. They will be communicated to applicants as soon as practicable.
9. Section 5 of this guide provides examples of the sorts of cases in which the Treasury Solicitor has exercised the discretion to make discretionary grants. These examples are intended to be helpful but are not intended to provide a complete picture.
10. The factors which the Treasury Solicitor will consider include:
  - (a) the size and nature of the deceased's "net estate" (see paragraph 11, below);
  - (b) the length and nature of the relationship between the deceased and the applicant;

- (c) any legal or moral obligations which the deceased had towards the applicant;
- (d) the way in which the applicant behaved towards the deceased including the contribution (if any) made by the applicant to the welfare of the deceased; and
- (e) any other matter which, in the particular circumstances, the Treasury Solicitor considers relevant.

The practical effects of these factors are explored at greater length in sections 3, 4 and 5 below.

- 11. The "net estate" of a deceased person is the difference between the total value of the deceased's assets less funeral, testamentary and administration expenses, debts and liabilities, including any inheritance tax payable out of the estate on death. Administration expenses will include the Treasury Solicitor's costs of administering the estate.

### **How to apply for a discretionary grant**

- 12. The Treasury Solicitor does not insist upon the use of a particular form - applications in any written form will be considered, including applications made by e-mail. If it is not practicable for an applicant to make a written application, prospective applicants should contact the Bona Vacantia Division using the contact details at the end of this guide.
- 13. Despite this flexible approach, it is important that the Treasury Solicitor has as much relevant information as possible before she determines an application for a discretionary grant. It follows that all applicants, but especially those who have applied informally, may need to add substantially to the information which they have initially provided. The Treasury Solicitor is entitled to request further information where necessary and to postpone a decision upon a grant to allow time for it to be provided.
- 14. The Treasury Solicitor may believe from information already on file that a grant should be made. In such circumstances the Treasury Solicitor can make a grant without any application being made. However, these cases are likely to be rare and an application should, where possible, be made.

### **When to apply**

- 15. It is important that applications are submitted as soon as possible. This will help to prevent evidence being lost or watered down and will help the Treasury Solicitor to determine all applications for grants from a single estate at the same time. Nonetheless, the Treasury Solicitor cannot determine applications for grants until the administration of the deceased's estate is complete. This is because the extent of the assets comprised within the estate will not be clear until then.

### **The amount or value that may be granted**

- 16. It is not possible here to provide detailed guidance about the likely values of grants. The circumstances vary too much.
- 17. Nonetheless, the following basic points may be found helpful.

- (a) No grant can be made unless the deceased's assets have passed to the Crown. This may seem obvious, but applicants sometimes lose sight of it in cases in which relatives who are entitled to the assets come forward.
- (b) No grant can exceed the amount of the deceased's net estate.
- (c) If there are two or more applicants, the Treasury Solicitor will determine the applications in a way which takes proper account of the interests of all applicants and of the Crown.
- (d) The Treasury Solicitor will consider, but will not be bound by, any statement of reasons which the applicant submits in support of an application for a discretionary grant of a specified amount. In a case in which an applicant has provided services to a deceased free of charge, evidence of what it would have cost the deceased to buy such services may be helpful. However, it should always be remembered that a discretionary grant from the Treasury Solicitor is a recognition of the applicant's services rather than a payment for them.
- (e) The Treasury Solicitor's practice is to make a deduction of 5% from the amount of a net estate before making a discretionary grant. The purpose of this deduction, which is known as the "insurance provision", is to create a fund to protect the Crown against cases in which discretionary grants are made and entitled relatives later come forward. It is explained in section 6 of this guide.

### **SECTION 3: THE INHERITANCE PROVISION ACT 1975**

- 18. Under the Inheritance (Provision for Family and Dependents) Act 1975, people within a number of different categories can make a claim against the estate of a deceased person on the ground that "reasonable financial provision" was not originally made for them.
- 19. The relevant categories of applicants include the husband or wife of the deceased, a child of the deceased, a person who has lived together with the deceased in the same household for two years immediately before the date of death as the husband or wife of the deceased and a person who was being maintained by the deceased immediately before his or her death. There are other categories. Claims under the Act require court proceedings which must generally be brought within six months of the date on which a grant of representation is first taken out. If you think that you may be able to make such a claim then you should seek independent legal advice from a solicitor or Citizens' Advice Bureau as soon as possible.
- 20. The powers of the courts to make orders under the 1975 Act (which replaced and extended powers first introduced in 1938) often overlap with the Treasury Solicitor's powers to make discretionary grants. Since the same sum of money cannot be paid twice, which application will be dealt with first?
- 21. The answer is that, before determining an application for a discretionary payment, the Treasury Solicitor will normally require an applicant to make a claim under the 1975 Act. This is because the administration of an estate is not fully complete while a claim under the 1975 Act is outstanding. Accordingly, a discretionary grant cannot normally be made until the outcome of any court proceedings (including threatened court proceedings) is known.
- 22. The Treasury Solicitor may depart from the above approach if the deceased's estate is only of a modest size (less than £20,000) or in other circumstances where the Treasury Solicitor thinks that it would not be reasonable to expect an application under the 1975 Act to be pursued - for example, when the applicant is frail due to old age or ill health.

23. The ground upon which court orders are made under the 1975 Act is not the same as the Treasury Solicitor's policy in relation to discretionary grants. However, similar considerations may well apply to applications for each.

## **SECTION 4: THE DECEASED'S LAST WISHES; VALID AND INVALID WILLS**

### **The deceased's last wishes**

24. The Treasury Solicitor will consider evidence about the last wishes of the deceased. The way in which those wishes were expressed is less important than the reliability of the evidence that the deceased wished them to take effect after his death. Examples of relevant evidence may include: (a) a formal will, invalid owing to some defect of execution; and (b) detailed written instructions from the deceased to his solicitor setting out his last wishes.
25. The Treasury Solicitor is entitled to request further information about an alleged statement by the deceased. Allegations of uncorroborated oral statements will be treated with considerable caution.
26. Although the Treasury Solicitor will consider the deceased's last wishes, it does not follow that she will necessarily give effect to them. The Treasury Solicitor will consider all relevant matters and may well have a clearer idea of the extent of the deceased's assets than the deceased had - especially if he or she died unexpectedly.

### **Cases in which the deceased has left a valid will**

27. It may seem surprising that there can be any possibility of property passing to the Crown in a case in which the deceased left a valid will. However, this can happen when the deceased left a valid will which did not effectively dispose of the whole of his estate. Discretionary grants are sometimes made in these cases.
28. One example merits specific consideration. Section 15 of the Wills Act 1837 provides that a gift to a person who witnesses the execution of a will is void. So, if the deceased did not make an alternative gift and did not leave any entitled relatives, the property which is the subject of the failed gift may pass to the Crown as bona vacantia. Although the witness who lost the gift may apply for a grant, a grant will not automatically be made to that witness.

## **SECTION 5: EXAMPLES**

29. The first part of this section contains examples of the types of cases in which discretionary grants have commonly been made. The second part of this section contains examples of the types of case in which they have commonly been refused. They are intended to be helpful but not to provide a complete picture or to guarantee that grants will automatically be made where similar circumstances arise.

## **Examples of common cases where grants have been made**

### **30. Services and kindnesses rendered**

- (a) An applicant for a grant may have provided the deceased with substantial free services for which the deceased might otherwise have had to pay. The deceased might reasonably have been expected to leave the applicant something in recognition of those services. Although this did not occur, the Treasury Solicitor is able to make a grant to the applicant to discharge the deceased's moral obligation.
- (b) Examples of the sorts of services relied upon by applicants in the past have been washing, cleaning, cooking, shopping, providing nursing care, repairing or redecorating the deceased's property and helping the deceased with financial or business matters.
- (c) Discretionary grants may also be appropriate where the applicant has rendered acts of kindness to the deceased which have been of real help and value even though they did not include things for which the deceased might have reasonably been expected to pay.
- (d) A discretionary grant is unlikely to be made when the acts relied upon are not substantial. Similarly, a grant is unlikely to be made if the Treasury Solicitor considers that the evidence put forward in support of the application is unconvincing.

### **31. Established relationships - partners**

- (a) If the deceased was married at the time of his or her death then, in general, the estate will not pass to the Crown. However, discretionary grants have often been made in cases when the applicant and the deceased, although unmarried, lived together in an established relationship. For example, the deceased may have lived with his or her partner as man and wife. Alternatively, the deceased may have lived with his or her partner in an established same sex relationship.
- (b) Such partners may have a claim under the Inheritance (Provision for Family and Dependents) Act 1975. If so, the policy of the Treasury Solicitor is not to make discretionary grants until the application under the 1975 Act has been concluded. For more details, see section 3, above.

### **32. Established relationships - other cases**

- (a) Discretionary grants have been made in cases in which the deceased and the applicant had a close relationship. Examples include cases where: (i) the applicant was dependent upon the deceased; (ii) the applicant and the deceased made their home together as way of enjoying friendship and support without an intimate physical relationship.
- (b) Cases in this class vary widely and all applications will be considered against the Treasury Solicitor's general policy.
- (c) Evidence that there has been little or no association during the latter years of a deceased's life may tend to weaken an application (and see paragraph 10(c), above).

### **33. Grants to charities and other bodies**

It is possible for the Treasury Solicitor to make grants to charities and other bodies. The Treasury Solicitor adopts the same approach to grants to these bodies as she does to other grants. For example, the Treasury Solicitor could make a grant to a hospice which has cared for the deceased at considerable expense throughout a long terminal illness.

## **Examples of common cases where grants have been refused**

- 34. Applications based solely upon the following have commonly been refused.

- (a) the applicant's financial circumstances;
  - (b) the fact that the applicant is related by marriage to the husband or wife of the deceased;
  - (c) the fact that the applicant was the fiancé/e of the deceased;
  - (d) friendship; and
  - (e) conversations in which the deceased stated an intention to benefit the applicant.
35. Similarly, natural kinship (that is, blood relationship) alone is unlikely to justify a grant by itself. However, it should be recalled that most close relatives will be entitled under the Administration of Estates Act, thereby preventing the estate from passing to the Crown as bona vacantia at all.
36. It should be stressed that applicants in the cases listed above are not barred from receiving discretionary grants.

## **SECTION 6: COSTS AND THE INSURANCE PROVISION**

- 37.
- (a) The cost to the Treasury Solicitor of administering the deceased's estate is one of the items to be taken into account when determining the sum from which a discretionary grant can be made.
  - (b) The Treasury Solicitor's costs involve two elements: (i) disbursements; and (ii) staff costs.
  - (c) Disbursements are charged to the estate account at cost.
  - (d) Staff costs are calculated using a form of time costing based upon the hourly rate of the case officer handling the file together with a percentage increase (typically between 30% and 50%) to reflect the complexity of the issues involved. The hourly rates of case officers differ depending upon seniority.
  - (e) The Treasury Solicitor's charging system is currently under review. The percentage addition is likely to be excluded and the hourly rates increased to reflect the true cost to the Treasury Solicitor of administering the estate.
38. An applicant's costs of applying for a discretionary grant will not generally be refunded.
39. The insurance provision.
- (a) Before the Treasury Solicitor administers a deceased's estate as bona vacantia she advertises for entitled relatives. These advertisements are placed on the Bona Vacantia Division's website and in newspapers circulating in the area where the deceased used to live.
  - (b) It occasionally happens that, despite such advertisements, no entitled relatives come forward until after an estate has been administered and a discretionary grant made. Provided that the entitled relatives come forward within 12 years, the Treasury Solicitor will pass the whole of the estate to the deceased person's relatives. In these circumstances, the Treasury Solicitor does not usually try to recover discretionary grants from the people to whom they have already been paid (but see (d), below). So the result is that the Crown will be out of pocket.
  - (c) To protect the Crown against such losses, the Treasury Solicitor retains a set percentage of all bona vacantia estates as a form of insurance. The current rate is 5% and has been set at a level which reflects the Treasury Solicitor's past experience of late claims by entitled relatives. The Treasury Solicitor may change the insurance provision at any time without notice to reflect changes in her experience of claims.

- (d) The Treasury Solicitor retains the right to seek repayment of discretionary grants from people who have withheld material information and/or misrepresented material facts.

## **SECTION 7: MONEY LAUNDERING**

In accordance with good practice, and with the aim of preventing money laundering, the Treasury Solicitor (as the Crown's Nominee for dealing with assets that vest in her as bona vacantia) operates in accordance with the principles laid down in Part VII of the Proceeds of Crime Act 2002 ("the Act") and the Money Laundering Regulations 2003 ("the Regulations").

For that reason, the Treasury Solicitor makes such enquiries as are deemed necessary to comply with the Act and the Regulations, including obtaining evidence of identity from those with whom we do business and retaining such evidence in accordance with our record-keeping procedure.

## **SECTION 8: CONTACT DETAILS**

40. The Bona Vacantia Division has its own Internet website [www.bonavacantia.gov.uk](http://www.bonavacantia.gov.uk) and information about bona vacantia matters may be obtained from that website.

It can also be obtained from:

The Treasury Solicitor (BV)  
One Kemble Street  
London  
WC2B 4TS

Tel. 020-7210-3116/7

Fax. 020-7210-3104

Email: [bvinfo@tsol.gsi.gov.uk](mailto:bvinfo@tsol.gsi.gov.uk)

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