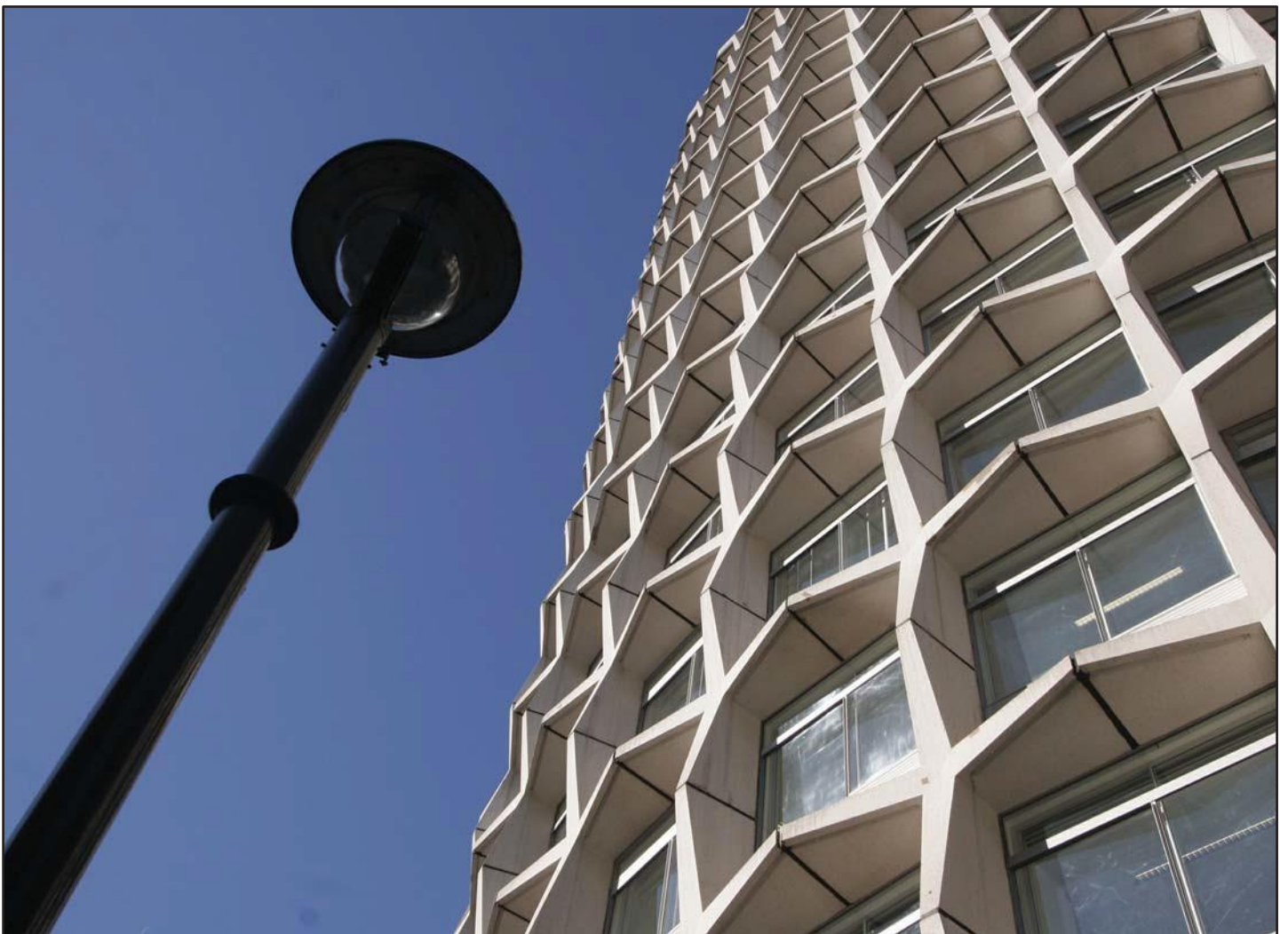


Referring cases to the Treasury Solicitor (BV)

A guide for local authorities and hospitals.

The Estates Group of TSoI's Bona Vacantia Division administers the estates of people who die intestate and without known kin.



The Treasury Solicitor (TSol) deals with the administration of an estate when someone has died without leaving a will, spouse, civil partner or entitled relatives. In these circumstances, their estate becomes *bona vacantia* (ownerless goods) and TSol (BV) will undertake the administration of the estate on behalf of the Crown.

You may have become involved with a deceased person's affairs because: –

- a) the person died at your Hospital, Hospice or Care Home; or
- b) you arranged the person's funeral.

Before you refer a case to TSol

Before you consider reporting an estate to TSol, please ask yourself the following questions: –

1. Did the deceased leave a valid will, and if so, can I contact the executor and beneficiaries?
2. Can I get in touch easily with any blood relatives entitled to the estate?
3. Is the estate insolvent?

If the answer to any of these questions is yes, you should not refer the estate to TSol as there will be someone with a prior entitlement to deal with it: a relative, someone named in the will as executor or beneficiary or a creditor if the estate is insolvent.

The following notes are intended for you to use as a guide when deciding whether to refer any particular case to TSol. The last section gives more details concerning small estates with a net value of £5,000 or under, which are dealt with differently.

Funeral Expenses

TSol does not arrange or give instructions for the funeral. If no one else is prepared to make the arrangements, the local authority has a statutory obligation to do so under Section 46 of the Public Health (Control of Diseases) Act 1984.

Funeral expenses are the first charge of an estate. They have priority over the liabilities and any assets must first be used to pay them.

Sometimes as mentioned above the local authority may in the absence of any other willing person arrange the funeral but at other times friends of the deceased or the hospital or nursing home where the deceased died may wish to take responsibility for this.

In all cases the cost of the funeral should be in accordance with the deceased's status, religion and estate. Generally if there are sufficient funds in the estate a private funeral may be arranged but the cost should be kept within a reasonable amount.

Generally we would expect a reasonable cost of a cremation to be approximately £2,000. In circumstances where the deceased has stated the wish to be buried, we would expect the total funeral cost to be no more than £4,000.

If a sum greatly in excess of the average quoted is spent, and if TSol administers the estate, we will ask for a full explanation and details of the amount spent and may refuse to allow the full amount to be recovered from the estate.

If you are arranging a funeral that is likely to be expensive please contact us for advice before going ahead with the arrangements.

Flowers

Floral tributes are usually regarded as the responsibility of the person ordering them but we will pay a maximum of £50 towards the cost if it seems that the deceased would not otherwise have any flowers.

Memorials or headstones

The cost of a memorial or a headstone is a legal liability of an estate and in the estates we administer we are willing to allow a reasonable sum to be spent on a headstone. However, it is best not to give any instructions to the stonemason until it is known who will administer the estate because, if entitled kin are traced they may take a different view and you could become contractually liable for payment of the account.

When referring a case to TSol, if a headstone is required you may mention this to us so that it can be recorded in the file and dealt with if TSol administers the estate.

Wills/Kin

If a search of the deceased person's home and papers reveals the existence of a valid will or surviving blood relatives, then the matter need not, be referred to TSol.

Do you need to refer the case to TSol?

Firstly, you need to know whether someone other than TSol should deal with a deceased person's estate. If someone has died testate (ie they left a valid will), the Executors can apply for a Grant of Will and Probate or the Residuary Beneficiary can apply for a Grant of Letters of Administration with the will annexed.

1. Is there a Valid Will?

A will is usually accepted as valid by the Probate Registry if it is: –

- (a) signed by the deceased and two witnesses, and
- (b) dated and gives clear indication of the deceased's wishes.

2. Can I contact the Executor or Beneficiaries?

If you have what appears to be a valid will you should write to the executor informing them of the death and asking them to take over the administration of the estate. If you get no reply and someone different is named in the will as beneficiary, you should write to the beneficiary explaining the position and suggest that he or she should approach the Probate Registry in the absence of the executor. Where no executor is named at all you should write directly to the beneficiary.

Where there is a valid will and an entitled relative, the will takes precedence.

This is straightforward where you have the will; but sometimes you might have nothing more than a note in the deceased's case-papers, or an indication found amongst personal papers, that the will is lodged with a particular firm of solicitors or bank. In that case you should write to whoever holds the will asking them to pass on to the executor details of the death. If you hold any assets or have a claim against the estate it would be advisable to ask for the executor's name and address so that you can pursue the matter.

3. What if I cannot contact the Executor or Beneficiaries?

It will not always be possible for you to get in touch with the people named in the will. If the will is old, for instance, they might have moved away from the addresses given or might even have died. People often make a will naming one person as executor and sole beneficiary and then forget to make a new will if that person dies.

In such cases, even though the will may be legally valid, effect cannot be given to the deceased's wishes and for practical purposes you should proceed as if there is no will at all. If the case is eventually referred to TSol, you should send us the will if you have it.

If there is no will, a surviving blood relative may be entitled to share in the estate.

4. Can I get in touch with Entitled Relatives – and how hard should I try?

If you intend to report a death to TSol because you either hold assets or personal property or wish to make a claim against the estate, please first of all make reasonable enquiries to establish that the deceased has not left entitled relatives or a will.

The definition of what constitutes reasonable enquiries will differ from case to case but TSol would expect you to have written to the address of any possible relative found either in your own case-papers or as a result of a brief search of any of the deceased's personal papers to which you have access. One common source of information is a diary/address book (which might contain entries in the deceased's maiden name if she was a married woman).

If you are responsible for arranging the funeral you might have occasion to write to relatives by marriage who are not themselves entitled, or to friends; if so, it would be helpful to ask if they have any knowledge of entitled blood relatives. Such enquiries need not be extensive; if you write to a possible relative and get no reply TSol would be responsible for making any further enquiries which might be necessary.

5. Who Is An Entitled Relative?

The deceased's husband, wife or civil partner and then any children would have first claim in the absence of a valid will to the contrary.

After the above, anyone descended from a grandparent of the deceased would be entitled to share in the estate in priority to the Crown. A diagrammatic family tree in which the entitled relatives are shown in block letters and non-entitled relatives in standard letters can be found at the end of this leaflet.

The tree attempts to make clear the distinction between a first cousin once removed (entitled) and a second cousin (not entitled): the two are sometimes confused.

A similar confusion arises with a half-brother and a step-brother (or sister). A half-brother shares a common parent with the deceased (i.e. that parent has married twice and has produced a child of each marriage) and is entitled. A step-brother does not share a common parent with the deceased (i.e. one of the deceased's parent has married someone who already has a child) and is not entitled.

6. What about adopted children or a deceased person who was adopted?

Anyone legally adopted has the same rights as if he or she had been born into their adoptive family. They do not retain any rights of the family into which they were born. Similarly, if a deceased person was adopted then only their adoptive family have these same rights to his or her estate, if there is no will. Legal adoptions have been possible since January 1927.

Important Note

TSol can only administer the estate of someone who has not been survived by any blood relatives with a prior entitlement. We cannot act if:-

1. You trace an entitled relative who is unwilling or unable to deal with the administration of the estate,
or
2. You trace an entitled relative but subsequently lose contact with that person, or establish that he or she has subsequently died.

Once it has been confirmed that a blood relative entitled to share in the estate has survived the deceased, TSol cannot be involved in the matter. Even if the relatives die, disappear or refuse to act TSol cannot take an interest in the matter. TSol can only suggest that in circumstances such as these you refer to your own legal advisers for advice.

Solvency

1. Is The Estate Insolvent?

The estate is insolvent if the deceased has left more debts than funds to settle them. If this happens any monies must be used for payment of the debts.

The funeral expenses are the first legal charge against any estate and the funeral director (or if his account has been paid by someone else, the person responsible for paying it) has first claim. Only when this account has been dealt with can anyone else including other creditors claim the residue.

This being so, you should not refer insolvent estates to TSol since there will be no residue for us to collect once the creditors have been satisfied, and we will not accept the case.

2. What Is The Value Of The Estate?

Should the estate be only marginally solvent, it may still be uneconomical for TSol to become involved. See the section below concerning Small Estates.

Bona Vacantia – Small Estates

When an estate consists only of a net cash residue of £500 or under, you may retain the money and the case need not be referred to TSol.

When an estate consists of a **cash residue of over £500** but under £5,000 the case should be referred to TSol and the balance of cash may be sent to TSol at the same time.

In all these small cases it is assumed that you are not aware of any entitled relatives and that the deceased died intestate. In all cases we need to have, at the very least, the following information:–

- marital status.
- the actual date and place of death (and, if this a home, or hostel, the date of the deceased's admission and last private address if admission was recent)
- if the deceased died at or had recently occupied a private address we need confirmation that the tenancy has been terminated, that no rent is due and that furniture and effects have been disposed of.

Where personal effects are held in an estate and you do not consider these effects to have any saleable value, they may be disposed of in any way you think fit. If you believe that the personal effects (usually jewellery) may have some value, then please arrange to sell them via a local firm of reputable auctioneers.

In the exceptional instance of an estate with a net cash value of less than £500 but with effects which appear to be saleable, the effects should be sold and if the net estate then exceeds £500, the case should be referred to TSol.

Your Administration Fees

If TSol administers the estate, we would be willing to pay reasonable administrative charges for any work you have carried out in connection with your statutory duties, under s.46 of the Public Health (Control of Diseases) Act 1984. We have agreed a flat rate fee with some authorities. Please contact us if you would like to agree a flat rate fee.

Please do not carry out considerable amounts of work on behalf of the estate without checking with TSol first.

How to refer a case to us

If there is no immediate indication that a deceased person has left a valid will or surviving blood relatives, and if the net value of their estate is above £500, then you should refer the matter to us as soon as possible.

You can refer a case to us using the Information About the Deceased Form (Form BV1A), which you will find on our website www.bonavacantia.gov.uk or you can telephone us for a copy on 020 7210 3116/3117.

When forwarding a completed form BV1A, please send with it – by Recorded Delivery – the following:

- All documents of value such as Title Deeds and Stock/Share certificates (and share dividends/vouchers). These should be itemised;
- All Birth, Marriage and Death certificates, old letters, and diaries/address books;
- Credit/Debit and Store cards - these should be cut in half before you send them;
- Bank and Building Society passbooks or statements, insurance policies & premium receipt books;
- The funeral bill and any other bills.

Cheques

Please don't send cash through the post. Cheques should be made payable to the Treasury Solicitor, and it would be helpful if you could write the case reference and name of the deceased on the back.

Jewellery

Jewellery should be retained in safekeeping until disposal instructions are received from TSol.

Money Laundering

In accordance with good practice, and with the aim of preventing money laundering, TSol (as the Crown's Nominee for dealing with assets that vest in the Crown 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, TSol 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.

