THE QUEEN'S AND LORD TREASURER'S REMEMBRANCER – POLICIES

FEES

The following fees will normally apply (no VAT is payable)-

Matter	Fee
Granting a disposition	£650
Foregoing Crown benefit	£750
Assignation of intellectual property	£500
Renunciation or assignation of a lease	£500
Discharge of a standard security	£500
Consent to administrative restoration	£100 or £125 for expedited service
Discretionary payment	£300

Please note outlays are payable in addition. This will include our external agent's fees if we need to outsource the case.

BV1. General

The Queen's and Lord Treasurer's Remembrancer ("QLTR") is the Crown's representative in Scotland who deals with ownerless property, known as "bona vacantia".

The QLTR's role is based on the common law principle that ownerless property *may* be dealt with by the Crown. If an asset becomes bona vacantia, the Crown can choose to deal with it if it wishes to - but it is not obliged to. The Crown's right to bona vacantia is a right peculiar to the Crown and differs from a right of ownership as it is normally understood.

Normally such an asset will either be sold for full market value, or disclaimed. Where the Crown disclaims an asset, a copy of the notice is published in the Gazette and, in the case of Companies, the original will be sent to Companies House. The effect of a disclaimer is to remove the Crown interest.

What the QLTR will not do for you:

- pay the liabilities of dissolved companies
- manage or insure property or assets
- take formal possession of assets before selling them
- sell where it is not cost effective to do so
- guarantee title when selling – the risk of buying a bona vacantia asset is with the purchaser
- give you legal advice

COMPANIES

BV2. COMPANIES: GENERAL

Property, cash and any other assets owned by a company when it is dissolved automatically vest in the Crown. This is because the law says this happens. You can find the main provisions of this law in the Companies Act 2006.

Continuing liabilities of a company do not pass to the Crown on dissolution.

Jurisdiction and its importance in bona vacantia

Who deals with dissolved companies' assets depends on:

- the last registered office address;
- where the asset is situated.

If the company's last registered office the asset were both in Scotland, the matter will be dealt with by the QLTR.

If the company's last registered office and the asset were both in England or Wales, but not in the Duchies of Lancaster or Cornwall, the matter will be dealt with by the Treasury Solicitor in England.

If the company's last registered office and the asset were both in Northern Ireland, the matter will be dealt with by the Crown Solicitor's Office in Northern Ireland.

If the company's last registered office and the asset were both in the Duchies of Cornwall or Lancaster, the matter will be dealt with by the Duchies' solicitors, Messrs Farrer & Co

Farrer & Co.
66 Lincolns Inn Fields
London WC2A 3LH

The Duchy of Cornwall comprises the County of Cornwall. The Duchy of Lancaster comprises the county of Lancashire, most of Merseyside (except the Wirral peninsula) and parts of the counties of Greater Manchester, Cheshire and Cumbria. Further details as to the precise boundaries of the Duchy can be obtained from the Duchy Office.

Duchy Office
1 Lancaster Place
Strand
London WC2E 7ED
Tel: 020 7836 8277

If the last registered office and the asset are in different jurisdictions, the location of the last registered office will usually determine who deals with the asset. In the case of land, jurisdiction will be determined by the country in which land is situated. In Scotland, all land falling as bona vacantia normally falls within the jurisdiction of the QLTR, regardless of where the registered office is situated.

The QLTR does not deal with foreign assets but may deal with assets in Scotland which are owned by a foreign company.

Restoring a company

It may be possible to restore a company. If this happens, the company comes "back to life", and assets vesting in the Crown as bona vacantia belong to the company again. However, if the Crown has disposed of the asset while the company has been dissolved, you will not be entitled to the asset back. However, we will pay you whatever consideration we received from the sale (less any costs we had in dealing with the asset).

Petitions for the restoration of a company to the Register of Companies served on the Lord Advocate will be passed to the QLTR Office to be dealt with. The QLTR would not normally expect to oppose a petition for restoration on principle, but will seek payment of any expenses incurred in connection with the disposal of the company's property. The QLTR will require a written undertaking to be provided for payment of these expenses, failing which the QLTR will oppose the petition.

Notifying the QLTR about company assets

You do not require to be a former director or shareholder of a company: anyone can let us know about company assets which may have fallen to the Crown.

BV3. COMPANIES: DISCRETIONARY PAYMENTS

General

The QLTR operates a policy of discretionary refund of monies we hold for companies which have been struck off the Register of Companies or dissolved under the Companies Act 2006 or its predecessors. This applies to companies still capable of being restored to the Companies Register.

The QLTR recognises that restoration of a company can be burdensome and the legal costs where a court action is necessary might be significant. As a concession, the QLTR will consider an application for a discretionary payment to a maximum of £1,500. The £1,500 limit reflects the anticipated potential costs of applying to the sheriff court to seek to restore a company and also the risk to the Crown in making a discretionary payment if the dissolved company were subsequently restored to the companies register.

Such a payment is entirely at the discretion of the QLTR. There is no entitlement to such a payment in the companies legislation. If the QLTR is prepared to make a discretionary payment in a particular case, only one payment will be made in respect of each company.

In the case of companies which can be restored to the register, an administrative fee (see our Fees section) will be deducted from any discretionary payment. No discretionary payment will be considered where the funds we hold are £300 or less.

Application for a discretionary payment

Applications will normally only be considered from:

- all of the former company members (shareholders) provided the company was solvent when it was dissolved; or

- the former liquidator to distribute as if he or she were still the liquidator of the company.

Where former company members are seeking a discretionary payment, all former members of the company will require to approach the QLTR. Otherwise, the QLTR will require to be shown satisfactory evidence from any member not seeking a share that they do not wish to participate and will not seek to restore the company. Documents confirm identity will also be required.

Former members additionally will also be required to provide the following:

- evidence that they were the only members of the company at the date of dissolution;
- confirmation that there were no outstanding creditors of the company at the date of dissolution, or that all creditors were paid in full;
- if a payment is not to be split equally between all former members, agreement between all former members as to the division of any discretionary payment;
- a signed and independently witnessed statement from any former company member who does not wish a share of any discretionary payment undertaking that they will not apply to have the company restored to the register; and
- an indemnity to repay the sums in the event the company is restored to the register. Note: QLTR have a *pro forma* indemnity which we will provide.

Former liquidators will require to provide a sworn statement that-

- they were the liquidator of the company at the date of dissolution;
- they will not apply for the company to be restored to the register; and

- any payment will be distributed as if they were still the liquidator of the company.

Please note: Applicants will also require to indemnify the QLTR against any claims which may arise, for example if the company is subsequently restored to the companies register.

Proof of identity

Proof of the identity of all former members of the company is required in the form of current passport or UK photocard driving licence (or equivalent) and a utility bill/bank statement (not more than three months old), or copies certified to be a true copy by a solicitor, for each applicant.

Charities

Where the dissolved company was a charity, the QLTR will not consider it appropriate to make a discretionary payment to the former members of the dissolved company. The QLTR may be prepared to consider such a payment (within the limits set out above), to any charity to which the other assets of the dissolved company were transferred with the agreement of OSCR subject to receipt of the following evidence:

(i) there are no outstanding creditors of the dissolved company;

(ii) an undertaking from its former members that they will not seek to restore the company; and

(iii) provision of an acceptable indemnity to protect the Crown's position if the former company was subsequently restored to the companies register.

Where the company cannot be restored by its former members or directors, or by the liquidator

The QLTR will consider such cases on their merits.

At that point those connected to the former company will already have had at least 6 years in which to restore the company pursuant to the mechanisms in the companies legislation which is the remedy which that legislation provides. On any approach the QLTR will therefore expect a full exposition of the surrounding circumstances and background, including why the company was allowed to be dissolved, whether it was solvent at the time of dissolution, why the company was not timeously restored and why those approaching the QLTR consider it appropriate to invite the QLTR to consider a discretionary payment (for example to alleviate hardship).

An administrative fee will be deducted from any discretionary payment in those circumstances.

BV4. COMPANIES: LIVE BANK ACCOUNT OF, OR OTHER FUNDS HELD FOR, DISSOLVED COMPANY

When a company is dissolved, any funds in its bank account fall to the Crown. The bank should immediately freeze the company bank account and send the contents to the QLTR. Cheques should be made payable to "The Queen's and Lord Treasurer's Remembrancer" and be accompanied by a letter setting out the name, company number and date of dissolution of the company.

If we discover any such bank account which is apparently still operating, we will ask the bank to remit the balance to us. We may ask the Bank to account for its dealings with the account.

Similarly, any other funds which are held for a dissolved company should be remitted to the QLTR with a letter setting out the name, company number and date of the dissolution of the company and confirmation as to who held the funds and information as to why the funds were held. Details of any payments out of the funds after dissolution should also be provided. Again, we may ask the fund holder to account for any dealings with the fund.

BV5. HERITABLE PROPERTY

Where heritable property is referred to us, the first point we will seek to establish is whether there is a plausible Crown interest in it. To do this, we will ask to see copies of the following:

(a) the last known Title (with copy of any other deed referred to for the description, if appropriate) or a Land Certificate/title sheet disclosing the registered proprietor of the subjects;

(b) a Legal Report in relation to the property (this is a type of conveyancing search report);

(c) a suitable and clear plan showing the extent of the property;

(d) where this would assist for a complicated title, for example if the interest is the residue of a larger area that has been the subject of a number of earlier partial disposals, an explanation of how those titles fit together with a sketch plan to illustrate that;

(e) in the case of property belonging to a company which is dissolved, details of the company's number, the date it dissolved and its registered office. You should normally be able to obtain this from Companies House.

Valuation

We are guided by the District Valuer ("DV") on the valuation of property. The DV will be instructed once the interested party has agreed in writing to reimburse the QLTR for the DV fee. The DV fee is payable whether or not that party subsequently agrees to buy at the DV figure. We will only release the valuation once the DV's costs have been met.

Where heritable property is disposed of by competitive bid, it is normally a condition that the successful purchaser will be liable for the DV fee. In the event of competitive bids, the QLTR will usually instruct a private firm of solicitors to act as the QLTR's agent.

Title

It is for those making the approach and their professional advisers to satisfy themselves as to title. That will therefore be reflected in the warrandice granted on a sale of any such property by the QLTR, which will be limited to simple warrandice, an undertaking that the seller will not in future voluntarily do anything to prejudice the right granted by a deed to a purchaser.

The QLTR will not register advance notices under the Land Registration etc. (Scotland) Act 2012.

In appropriate cases the QLTR may require the purchaser to enter into a clawback arrangement with the QLTR to protect the public purse against a future uplift in value of the subjects – that might happen for example if planning permission is obtained after the QLTR has disposed of the subjects. Such an arrangement will enable the QLTR to share in the uplift in value for an appropriate period. The QLTR will take advice from the DV as to what terms would be appropriate in a particular case. The QLTR will instruct a private firm of solicitors to act as the QLTR's agent to document the clawback arrangement and to take a standard security over the property to secure the sums due under the arrangement.

Reservation of the Crown's position

Please note that the QLTR always reserves the right not to proceed with a disposal and to take action other than a disposal, for example to disclaim the property.

BV6. AMENITY LAND

Once a building company has completed development of an area and sold off all the individual plots, it may continue to own the amenity areas which were not sold off to the individual owners. Where the building company has been dissolved, the Crown will have right to those amenity areas.

The QLTR recognises that amenity areas within a residential estate can be sensitive matters. The QLTR will have to consider whether it is appropriate

for the QLTR to deal with such an area, and ordinarily the QLTR may consider it appropriate simply to disclaim the interest.

To enable consideration to be brought to any approach regarding amenity land, it can be anticipated that the QLTR will require the interested party to-

- provide the items referred to in BV5 HERITABLE PROPERTY, to prove that title to the area has not already been transferred;

- exhibit a copy of the title to a sample plot in the development from the building company to the first buyer of that plot and a copy of any Deed of Conditions affecting that plot;

- establish whether the local authority maintains the area.

BV7. OUTSTANDING SECURITY OR CHARGE ON LAND FALLING TO THE CROWN

The Companies Act provides only that the assets of the dissolved company are to be treated as BV. The Crown, therefore, has no liability for the company's debts and takes the assets free of any debt. However, the QLTR cannot give a clear title when there is an existing security. It will normally be the responsibility of the interested party to negotiate the discharge of the security with the heritable creditor.

If there is inadequate value in the property against the amount due under the security then the QLTR may in any event decide to disclaim.

BV8. DISCHARGE OF SECURITY IN WHICH THE CROWN IS CREDITOR

Where the QLTR is approached to execute a Discharge of an outstanding Standard Security (usually where the creditor under the security was a company which has now been dissolved), the QLTR is only likely to consider it appropriate to do so on payment of all sums due under the security (the QLTR will require evidence of what is due under the security if an all sums security), production of strong evidence (in terms satisfactory to the QLTR) that all sums due under the security have been repaid or on the QLTR being satisfied by those making the approach that the security has prescribed.

In any event, the QLTR may consider it more appropriate for those approaching to pursue alternative remedies and a discharge would only be considered in exceptional circumstances. For instance, consideration may require to be given by those seeking to have the security lifted to other possibilities such as indemnity insurance, restoring the company or the mechanism in section 18(2)-(4) of the Conveyancing and Feudal Reform (Scotland) Act 1970.

It is strongly recommended that any debtor under any such security take their own advice as to their position. The QLTR would expect to have

been approached in advance of any consignation or application to the court under that mechanism where it is considered the interest of the creditor has fallen to the Crown as BV.

BV9. SERVICE ON LORD ADVOCATE OF CALLING-UP NOTICE OR NOTICE OF DEFAULT

Sections 19(3) and 21(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 provide for service of a Calling-up Notice or Notice of Default on the Lord Advocate. These Notices are passed to the QLTR Office as agent for the Lord Advocate.

In most cases, funds recovered by the Creditor in excess of the sums due under the Security should be remitted to us as bona vacantia.

BV10. CROWN AS LANDLORD OF A CROFT OR AN AGRICULTURAL HOLDING

Crofting law and agricultural holdings are specialist areas of law and the QLTR will normally expect to take specialist legal advice in order to consider options.

BV11. CROWN AS LANDLORD OR TENANT OF A LEASE

Where appropriate, the QLTR will take the advice of the District Valuer, or other valuer, as to the value of the landlord's or tenant's interest in a lease, taking account of any relevant terms of the lease.

Where the tenant under a commercial lease is a dissolved company it is likely that the QLTR would expect to disclaim any such interest which is raised with the QLTR under section 1013 of the Companies Act 2006. It will be for landlords and their advisers to consider the implications of that in terms of the 2006 Act.

BV12. PRESCRIPTIVE CLAIMANTS

Where the Crown is notified as part of a prescriptive claimant process under the Land Registration etc. (Scotland) Act 2012, we normally seek to establish two points:

1) **That no one (other than the Crown) appears to have an interest in the property.**

We are concerned here with the level of effort which been made to trace title. If not enough has been done, we may consider it appropriate to object when we receive the section 45 notification.

In a case where it is suggested the Crown interest arises because no title to the subjects can be traced in the property registers, the QLTR will expect evidence of appropriate efforts to trace a title.

We will expect to see evidence of investigations by appropriately qualified persons (such as professional title researchers or Registers of Scotland themselves) who have been provided with an appropriate budget to enable full and proper investigation into the title position to have been carried out.

Failing that, it is likely that the QLTR will respond requesting those items (or requesting evidence of appropriate efforts to trace a title) and without reasonable sight of those items it can be anticipated that the QLTR is likely to consider it appropriate to object under section 45 of the 2012 Act when subsequently notified by the Keeper of any application.

2) If (1) applies, whether it is plausible that the Crown may have acquired the interest in the property.

If it appears that after a reasonable level of searching that there are no traceable owners or representatives, it may then be plausible the Crown has acquired the interest as *bona vacantia*. In that case – normally - it is unlikely to be considered appropriate for an applicant to be able to seek title to *bona vacantia* under sections 43-45 of the 2012 Act, and instead a disposal for value may be considered.

The main exception to that is where it is suggested a relevant genuine error has arisen: see Section BV13. ERRORS.

Approaching the QLTR

The QLTR will expect to be approached in advance of any notification under section 43 of the 2012 Act with relevant titles, searches and an explanation as to why it is considered that the property may be *bona vacantia*. Those items should be provided in any event along with the section 43 notification to the QLTR.

It must be appreciated that the QLTR usually has no prior knowledge of the subjects in question and those items are required to bring consideration to the matter.

Objections by the QLTR to a prescriptive claim

An objection by the QLTR to an application by a prescriptive claimant is not an act of possession by the QLTR. Any such objection is under reservation of all options of the QLTR (including the QLTR's discretion to disclaim any property falling to the Crown as *bona vacantia*).

BV13. ERRORS

General

It is not the role of the QLTR to fix past mistakes or negligence. It is for the directors, shareholders and others responsible for a company's assets to deal with the property and assets of a company before it is dissolved.

Bona vacantia can be avoided by ensuring assets or property are transferred or dealt with before a company is dissolved.

If you are a former member, shareholder or liquidator of a company and you want to get an asset back from the Crown, then subject to the exception described below you will need to restore the company or buy it from the QLTR for open market value.

There is no guarantee that the QLTR will sell the asset back to you or at all – the QLTR may sell it on the open market if that would get better value for the Crown.

Exception for conveyancing errors

Where the QLTR is approached because it is suggested there has been a past conveyancing error that can no longer be corrected, the QLTR *may* be prepared to disclaim the Crown interest. The QLTR will **not** usually agree to dispone any *bona vacantia* assets for nil value.

This exception for conveyancing errors is primarily designed to account for circumstances where a seller company dissolves prior to completion of registration of transfer of title to a purchaser, resulting in the asset falling to the Crown at no fault of the purchaser. Even in this type of case, other facts at hand may lead the QLTR to decide not to disclaim the Crown's interest.

A full explanation will be expected to allow the QLTR to be able to bring consideration to the matter to confirm, as far as is possible, that a genuine error has arisen and that the QLTR is being approached as a last resort to seek a resolution. That explanation should include:

- a detailed summary of the nature of and circumstances surrounding the error in question;
- supporting evidence, such as evidence to demonstrate that the price has been paid in full;
- relevant titles and searches (and a plan of the subjects if appropriate) to confirm where title presently rests;
- an assessment of the following matters as part of the explanation being provided to the QLTR:
    - an explanation of whether those affected have any other remedies and if so why it is not considered appropriate to pursue those – the QLTR would not for example expect to be used as a mechanism by a former director or shareholder to avoid the need to petition the courts to restore a company (or equivalent);
    - if those approaching the QLTR were connected to a former company (or equivalent) left with title to subjects,

confirmation with supporting evidence that the company was not insolvent and had no unpaid creditors at dissolution;

- where applicable, confirmation with supporting evidence that during the period that title was in name of a (by then) dissolved company (or equivalent) outgoings for the subjects were being met (e.g. council tax/rates);

- evidence to support the current value of the subjects.

If the QLTR is satisfied it would be appropriate to disclaim the Crown interest, those affected by the conveyancing mistake may then be able to seek either a vesting order to the property (see section 1021 of the Companies Act 2006) or to invoke the legislative provisions for prescriptive claimants – see also BV12. PRESCRIPTIVE CLAIMANTS.

OTHER ASSET TYPES

BV14. CASH ASSETS OF INDIVIDUALS OR TRUSTEES

Monies due to an individual or group of individuals (e.g. trustees) who cannot be traced can be treated as bona vacantia at common law. We will usually accept them if we are satisfied that sufficient efforts have been made to trace the true owners.

We will accept the following as BV at common law-

- a cash legacy or residue payment due to an individual under a Will, or a payment due under the Scots law of intestacy, if the entitled individual is known to exist and we are given evidence to satisfy us that they cannot be traced;

- miscellaneous client balances from solicitors or others.

Solicitors may wish to refer to the Law Society of Scotland's Guidance for cash balances against "Rule B6: Accounts, Accounts Certificates, Professional Practice and Guarantee Fund" on their website.

When the funds are remitted, we will require the following information-

- name of client/beneficiary of funds and any information as to what the funds relate to;

- last known address of client/beneficiary of funds;

- details of the efforts made to trace the client/beneficiary of funds.

If however you do not have this information, and will not be able to obtain it, your cheque submitting the funds to us should be accompanied by a written explanation of that and why that has arisen in this case (for example that all records have been destroyed so the client/beneficiary cannot be identified).

Cheques should be made payable to "The Queen's and Lord Treasurer's Remembrancer".

Please note that we do accept composite cheques for several balances, provided they are accompanied by a breakdown which includes the above details for each balance.

BV15. REFUNDS OF BV MONEY

When asked to refund BV money due to an individual or trustees (see Section BV14 "CASH ASSETS OF INDIVIDUALS OR TRUSTEES"), we will-

- require proof of entitlement of the claimant to the funds, or their entitlement to have dealt with the property, as the case may be;

- where appropriate, require an indemnity***** from (or on behalf of) the entitled party;

- deduct outlays and £50 for admin costs, or if the funds were raised through sale of heritable property on our instructions, deduct outlays and £650 for admin costs (unless admin costs for the sale of heritable property were recovered from the purchaser).

*****NOTE: It is our practice to refund BV money held to the person/organisation who forwarded the funds to us in the first instance. However, if this is not possible and the funds are being refunded direct to an individual/trustee, we will require an indemnity in respect of the sum to be refunded.

No interest is paid on monies refunded.

No VAT is payable on the admin fees being deducted.

Normally no payment will be made more than 10 years from the date of receipt of the funds by the QLTR. Any claim received outwith that period will be considered according to circumstances.

BV16. Intellectual property

The QLTR may deal with intellectual property previously owned by a dissolved company which now belongs to the Crown. The QLTR can sell bona vacantia intellectual property for its open market value, and will not transfer bona vacantia intellectual property for less than the minimum consideration set out below plus costs.

QLTR normally outsources the consideration and valuation of any request regarding intellectual property to external agents, and you will need to agree to pay their fees before proceeding with any transaction. The sale price of a Trade mark, Patent or Artist's Resale Right (where copyright still subsists) - £2000 or market value, whichever is higher.

When you approach the QLTR, you do so on the basis that there is no guarantee that the QLTR will sell the intellectual property to you because the QLTR will always make an independent assessment of the correct manner of disposal and who to sell it to (if anyone).

The QLTR will not transfer intellectual property with any title guarantee or provide any representations or warranties in connection with it (either express or implied). This means that when the QLTR sells rights, no guarantee or assurance is given that the Crown has the legal right to sell them or provide any assurance about past disputes or other matters that might be relevant to a purchaser. You will have to deal with any subsequent disputes that may arise.

If an offer is made to sell intellectual property it will not include any goodwill that may be associated with it.

BV17. Shares

The QLTR deals with the disposal of shares previously owned by a dissolved company which are now owned by the Crown.

QLTR usually sell shares for market value or disclaim the Crown's interest.

The QLTR does not:

- transfer shares for no consideration;
- transfer shares with any title guarantee;
- assist with disputes that may arise from the transfer of shares;
- normally exercise any powers of a shareholder

If you wish to approach the QLTR regarding shares, you must write to us and include:

- the name, company number and last registered office of the dissolved company that owns the shares. You can get this from Companies House;
- a copy of any share certificate;
- a copy of the share register of the issuing company showing that the dissolved company was registered as the holder of the shares;
- details of any dividends declared by the issuing company in the last 3 years;
- details of any dividends declared since the date the company was dissolved, which are now payable to the Crown as bona vacantia;
- a copy of the last 3 years audited accounts of the company;
- a copy of the articles of association of the issuing company

QLTR normally outsources the consideration and valuation of any request regarding shares to external agents, and you will need to agree to pay their fees before proceeding with any transaction.

ULITMUS HAERES CASES ("UH")

"Ultimus Haeres" is Latin for "ultimate heir". It refers to the Crown's right to a person's estate where a person dies "intestate", which refers to the situation where the person does not leave a will and has no spouse or civil partner or any other blood relative, or has no relatives who can be easily traced.

In those cases, the person's estate (e.g. cash, shares, pension etc. and land or buildings), is claimed for the Crown by the QLTR as "ultimus haeres" (last heir). The assets are gathered in by the QLTR Office, and the surplus after the deceased person's debts and the funeral account have been paid, fall to the Crown.

Heirs can appear later and, provided they prove the appropriate relationship, the net assets of the estate can be paid to them.

Reporting a death

Where there has been a death and there are apparently no spouse, civil partner or blood relatives, the death should be reported immediately to the National Ultimus Haeres Unit. The contact details for the National Ultimus Haeres Unit are as follows:

National Ultimus Haeres Unit
Procurator Fiscal Office
Cameronian House
3/5 Almada Street
Hamilton
ML3 0HG

Telephone number - 0300 020 4196
Email: NationalUltimusHaeresUnit@copfs.gov.uk

(See also UH 2 INITIAL INVESTIGATION OF ESTATE)

UH1. UH FEES

UH fees are as set out below.

Fees charged on completion of administration of Estate

A fee of 10% of the estate held at the point of completion of administration of the estate will be charged subject to:

- a minimum fee of £300 (even if the estate is less than £3,000); and
- a maximum fee of £3,000 (in cases where there is no heritable property included in the estate), or £4,000 (in cases where there is heritable property included in the estate).

If additional estate comes to our attention after the administration has been completed then an additional fee according to circumstances may be charged.

Fee for checking documents in support of a claim

An additional fee may be charged for checking the documents supporting a claim of the estate by a spouse, civil partner or a blood relative (see Section UH7 PAYMENT OF UH ESTATE below) if all the documents required in support of a claim have not been submitted and we have to request these or if points arise from our examination of the documents.

UH2. INITIAL INVESTIGATION OF ESTATE

If a person dies intestate without known blood relatives or surviving spouse or civil partner the fact should be reported immediately to the National Ultimus Haeres Unit ("NUHU") – see the contact details above and on our website www.qltr.gov.uk.

NUHU will investigate the deceased's background and circumstances and collect for safe keeping appropriate documents, papers and valuables. If it appears to be a UH estate NUHU will report the details to us.

Friends, solicitors, local authorities, hospitals or care homes should not attempt to ingather the estate themselves.

NUHU will take particular note of the existence of a co-habitee who intends to make a claim under section 29 of the Family Law (Scotland) Act 2006 (see Section UH8 below).

UH3. ACCEPTANCE AS UH ESTATE

An estate cannot be accepted as a UH estate if-

- there is a valid Will, even if the executor cannot be found;
- the estate is insolvent;
- there is a blood relative or spouse or civil partner with a known address.

When an estate is reported to us by NUHU we add details to our website (see above under "UH MATTERS – Information on our website").

We will not normally now commence our administration of an estate before 12 weeks have elapsed from the date the estate is reported to us by NUHU. That period is to allow a further opportunity for an entitled person to claim the estate before our administration commences. Any person who therefore considers that they can claim an estate are encouraged to intimate that to us without delay.

Once the administration of an estate has commenced, it will be administered to conclusion (and the appropriate fee charged), even if a relative appears in the course of that work.

UH4. ADMINISTRATION OF ESTATES

Administration means that all the known assets belonging to the deceased are ingathered, and all known debts due by the deceased are paid from the estate. Debts will be paid when we are in possession of sufficient funds to enable us to do so. This can occasionally lead to a delay in payment if we are waiting for funds.

Heritage is sold in accordance with Section UH5 below.

The arrangements for the disposal of the deceased's personal belongings, other than jewellery and photographs, are made by NUHU. Depending on the value, they may be sold, distributed to local charity shops or otherwise disposed of. NB: we only retain photographs and jewellery items.

If the estate remains unclaimed after 5 years (previously 2 years) from completion of the administration jewellery will, where appropriate, be disposed of under the direction of an auctioneer. Any sums realised from the sale of individual items will then be credited to the estate. Other jewellery from estates will be periodically sold at auction as a block (usually just for the value of the metal) and in that event sums realised will not be attributed to an estate. The QLTR may seek to pass photographs to any interested institution, otherwise they will be destroyed.

UH5. SALE OF HERITAGE

Heritage will be advertised on the open market for sale cleared of the deceased's belongings. It will also be included in the Asset Register of heritable property falling to the Crown on the QLTR's website.

UH6. CLAIMING UH ESTATES - TIME LIMIT

See above (UH Matters – Information on our website) for the information available on our website regarding UH estates which have not been claimed.

The QLTR will place an advert periodically in a newspaper to draw wider attention to the information which can be found regarding UH estates on the website.

Enquiries about Confirmation to a deceased's estate should be directed to the Commissary Office at the Sheriff Court for the area where the deceased resided.

Normally no claims on UH estates will be accepted after the later of 20 years from the date of death or 2 years after completion of

administration. Any claim received outside that period, including a claim in satisfaction of prior or legal rights (these are rights of the spouse, civil partner or children/descendants of the deceased), will be considered according to circumstances.

UH7. PAYMENT OF UH ESTATE

Subject to what follows, the QLTR will pay over the net estate held following completion of administration to the party confirmed as executor (usually as executor-dative unless a Will has subsequently been discovered).

The executor must provide us with personal identification in the form of passport/UK photographic driving licence (or equivalent), a recent (not more than three months old) utility bill/bank statement (or copies certified to be a true copy by a solicitor), the principal Confirmation document and (if applicable) a copy of the executed bond of caution.

In addition, documentary proof of the blood line to the deceased in the form of original (or copies certified to be a true copy by a solicitor) birth, marriage and death certificates and a family tree showing the executor's relationship to the deceased will be required.

Where the net estate held by the QLTR is less than £2,000, as an alternative to confirmation being obtained, payment can be made to a claimant who could have been appointed executor-dative against an indemnity.

The supporting documents (other than a confirmation and copy bond of caution) referred to in the preceding paragraph are also required (ie regarding ID, documentary proof of the bloodline and a family tree).

No interest is paid on a UH estate. Funds are held in a Government Banking Service account which does not bear interest. The QLTR is not subject to the Law Society Rules on administration of executry estates.

If additional estate is subsequently received, the QLTR will normally expect the executor-dative to obtain an eik and bond of caution in respect of the additional funds. Where the additional estate is less than £2,000 however, and this does not have tax implications, the QLTR may consider paying the additional estate to the executor-dative against a suitable indemnity. An additional fee may be deducted by the QLTR.

UH8. CO-HABITEE'S RIGHTS UNDER THE FAMILY LAW (SCOTLAND) ACT 2006 ("THE ACT")

Section 29 of the Act gives a co-habitee the right on intestacy to apply to a court for financial provision from the deceased's net estate within six months of the date of death.

If an estate has been passed to NUHU for investigation where there is a co-habitee who intends to make such an application, it is essential that

the co-habitee advises NUHU of that intention in writing as soon as possible to prevent the disposal of property of the deceased which might be the subject of the application to the court.

On receipt of the written notification, we will suspend further action pending either the order or interim order of the court, or the expiry of the prescribed time limit (six months from the date of death) if no such application has been made and intimated to us.

If an application to the court is successful, and we hold funds which are covered by the court's order, they will be paid over on production of the court order.

UH9. DISCRETIONARY PAYMENT TO PARTY WHO IS NOT AN ENTITLED INTESTATE HEIR

The QLTR may consider applications for a discretionary payment from an estate on grounds of:

(a) relationship;

(b) services rendered to the deceased; or

(c) the intention of the deceased regarding the disposal of his or her means and estate.

We will ask for independent and other evidence to support the request.

When considering a discretionary payment on grounds of relationship, the QLTR would want to be satisfied that there were benevolent grounds for considering a payment. Such grounds might arise out of hardship or unfairness in a particular matter raised with the QLTR. The QLTR would be looking for some form of social element to the relationship between the deceased and a claimant. That might, for example, arise where the claimant was a stepchild of the deceased intestate, or where a claimant had always been treated by the deceased as though they were the deceased's child or part of their family.

In the case of services rendered, evidence of the applicant's contribution to the deceased's quality of life will be required.

In the case of the deceased's intention, applications for a discretionary payment fall into 2 broad categories:

- the deceased left some form of testamentary writing bequeathing all or part of his or her estate to certain parties which, for one reason or another, was not a valid testamentary writing;

- the deceased left no such testamentary writing but it is alleged that the deceased made oral statements of his or her intentions.

If the estate remains unclaimed, such a request will be considered two years after administration of the estate was completed.

If a discretionary payment is made, and a subsequent claim is received from an executor, the estate held by the QLTR is the sum held at the date of the claim by the executor.

UH10. SERVICE ON LORD ADVOCATE OF CALLING-UP NOTICE OR NOTICE OF DEFAULT OF A STANDARD SECURITY WHERE THE GRANTER IS DECEASED

Service of a Calling-up Notice or a Notice of Default on the Lord Advocate is made in accordance with sections 19(3) and 21(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970.

It will be for those acting for the creditor to consider how the 1970 Act requires those notices to be served and whether the mechanism of service on the Lord Advocate is available in a particular case.

These Notices are passed to the QLTR Office to be dealt with as agent for the Lord Advocate and we may request sight of a copy of the death certificate (because that very often discloses registration of the death by a relative). We recognise that ultimately it is a matter for the courts in any particular case as to whether a notice has been validly served for the purposes of the legislation.

Net funds recovered by the Creditor in excess of the sums due under the Security should, if agreed with us to be appropriate, be remitted to us (although they may require to be reported in the first instance to NUHU for investigation as to whether a UH estate might be in view).

UH11. DISCLAIM OF INHERITANCE IN FAVOUR OF ANOTHER FAMILY MEMBER

Family members often decide to take no benefit from a deceased's estate, in favour of another family member.

If the document declaring the family member's intention has not been carefully prepared, and the legal effect of the document is to renounce rights of succession, those rights fall to the Crown.

In such circumstances, where the true intention of the renouncing party is clear and is vouched, the QLTR will provide a letter stating that the QLTR makes no claim on the estate with the intention that the share reverts to the free estate for distribution to the other claimants. A fee of £250 will be charged to cover consideration of the approach, and supporting papers, and the preparation of the letter.