

QBE European Operations



QBE Risk Alert

Probate Matters & the Risk of PPI Claims

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Probate Matters & the risk of PPI Claims for Solicitors

There has recently been concern from members of the profession, in the light of the STEP guidance alerting firms to the risk of PPI claims arising out of probate/estate administration matters, where the firm did not advise beneficiaries of the potential for unrealised PPI claims within the estate.

QBE's guidance to our Solicitor clients following input from QBE panel firms RPC and BLM, is as follows:

1. Current Clients for whom the firm has acted in drafting a will

Where clients for whom the firm has drafted a will live beyond 29th August, your client's right to claim PPI will have expired to the extent no claim has been made.

There is therefore no risk to the firm in terms of future beneficiaries claiming that the firm has failed to realise any potential PPI claims, and no action is required.

2. Current Probate Matters

For Estates that are currently being administered, or fall to be administered before 29th August, it would be prudent to clearly exclude investigation of potential PPI claims from the scope of the retainer, and flag it to clients as an additional charged service option.

A suggested form of wording for your retainer could be: *'if you require such investigations to be made, you must advise us in writing within [] days. Please note, that a further charge would be made for such investigatory work, as follows []'.*

3. Historic Probate Matters

In respect of historic (closed) probate files, our advice to firms is dependent on whether you consider that the firm was under a *duty* to pursue PPI on behalf of an estate.

- If the firm was under a duty, then it will need to put in a PPI claim on all closed estates and it will need to review all estates going back to 2004 (the long stop date).
- If the firm was *not* under a duty, then it should do nothing. Indeed, re-examining files, contacting clients to advise of a potential claim, or blanket notifications of potential circumstances are all liable to be counter-productive, as they could be interpreted as a tacit admission of previous negligence, and as such, should be avoided. In any case, firms do not have an obligation to review advice on a file in respect of which there is no evidence of negligence.

While QBE cannot advise firms on the extent to which they may have a duty to pursue PPI on behalf of an estate, as that will be very much fact dependent, we would observe that while a solicitor has a duty to maximise the estate, it is not generally under a duty to bring a speculative claim, and any claimants would have to prove that the firm had such a duty and were in breach of it. This is unlikely to be straight forward.

Concern has been expressed that Claims Management Companies ('CMCs') post 29 August 2019 may turn their attention from pursuing direct PPI claims to the pursuit of claims for beneficiaries against professionals for the failure to pursue PPI claims.

Predicting CMCs' future behaviour as to the farming of claims is difficult to do with any certainty. There are however a number of specific factors which further indicate that it will not be straight-forward for CMCs to institute a claim against a solicitor after the expiry of the 29th August deadline for PPI claims:

1. There is no database of beneficiaries – so potential claims could only be initiated following speculative cold-calling exercises and / or advertising by CMCs, in the hope that they identified people who were recently the beneficiary of a will.
2. The CMC would then have to make enquiries of the solicitor, a process which would be less straightforward than contacting a bank via an online questionnaire (as is currently the case).
3. The solicitor might or might not be able to find the file (for older matters it may well have been destroyed).
4. Even if there is a file, it might not be possible to find out whether the deceased had a potential PPI claim. This information is likely to be harder to obtain after 29th August deadline.
5. Even if there was a duty to make a PPI claim any claim would be a loss of chance claim.
6. There may well be limitation arguments. Under any circumstances, there will be the 15-year longstop, which would prohibit claims from August 2004 or before.
7. The claim might be very low value (average successful claims are under £3,000).
8. Finally, even if the claim is ultimately successful, any monies would need to be shared between the residuary beneficiaries.

None of us has a crystal ball and can predict the future with any certainty. However, from our analysis we take the view that proving a claim and making a recovery will be much more complex and may be far less attractive to CMCs and to potential claimants than may have been indicated by other reports. In particular, CMCs have the added difficulty of actually sourcing potential claimants – not just do they need to find beneficiaries that think they should have received more but the co-operation of the personal representatives will be key.

This Note does not purport to provide a definitive statement of the law and is not intended to replace, nor should it be relied upon as a substitute for, specific legal or other professional advice. We would recommend that firms seek their own independent legal advice in relation to their management of probate files and potential PPI claims.

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