



Attorney General's Guidance Intermeddling in estates of deceased persons

These Guidelines are produced in order to clarify when it is necessary for the Registrar of Probate to refer a case of suspected intermeddling to the Attorney General.

In relation to financial services businesses, they are also intended to set out certain additional public interest factors with respect to the Attorney General's Code on the decision to prosecute.

It should be noted that matters relating to *bona vacantia* are under the jurisdiction of the Receiver General.

1) The presence of any of the following factors should lead to a referral:

- i) The amount concerned is in excess of £10,000.
- ii) There are a number of persons entitled to a share of the estate and those individuals' interests have been prejudiced by the intermeddling.
- iii) The person who has intermeddled is a member of a profession, membership of which would suggest either awareness of the requirements under the Probate (Jersey) Law 1998 (as amended) or awareness that such requirements are likely to exist.
- iv) It appears that the person who has intermeddled has acted in bad faith.
- v) The intermeddling has come to light through a person other than the intermeddler.

2) Cases involving all of the following factors will generally not need to be referred to the Attorney General:

- (i) The amount concerned is less than £10,000; and
- (ii) The person who has intermeddled has acted in good faith and there is no indication that the intermeddling was a deliberate attempt to circumvent the Law; and
- (iii) The person who has intermeddled is the sole heir or beneficiary or if there is more than one heir or beneficiary, the others have indicated their approval either in advance or retrospectively, of the actions of the person who as intermeddled; and

- (iv) The person who has intermeddled is a person with no prior experience of legal matters. Those with no prior experience of legal matters cannot be expected to have the same level of knowledge about the probate process as those who have had prior experience; and
- (v) There is no ground for supposing that the intermeddling was deliberately done to advance an ulterior motive, for example, to deliberately gain some advantage (financial or otherwise) or to damage the interests of a third party; and
- (vi) The matter has only come to light because the person who has intermeddled has informed someone of what has happened, for example, where an executor has brought attention to their own intermeddling.

3) There may be circumstances where Officers of the States of Jersey Health and Social Services Department, Officers of the States of Jersey Housing Department, Officers of the States of Jersey Police, banks or other financial organisations and private nursing homes intermeddle with some part of the moveable estate of a deceased person as a direct result of providing appropriate care and services to that person. In such circumstances, the presence of all the following factors shall mean that the case will not generally need to be referred to the Attorney General:

- i) The part of the estate concerned comprises of a cash amount of no more than £500 and/or personal effects of minimal value and/or wedding rings and/or engagement rings.
- ii) The person who has intermeddled has written notification in advance indicating the approval of their proposed actions from at least one of the heirs or beneficiaries of the estate and that approval shall contain acknowledgement that there are no known heirs or beneficiaries who they may believe might object to the action taken.
- iii) The person who has intermeddled has acted reasonably and in the course of their duties.
- iv) The person who has intermeddled has acted in good faith and there is no ground for supposing that the intermeddling was deliberately done to gain some advantage (financial or otherwise) or to damage the interests of another party.

4) The above factors are purely for guidance and the Registrar of Probate is reminded that each case will turn on its own facts.

5) If the Registrar of Probate is in any doubt as to whether to refer a matter to the Attorney General, then the matter should be so referred.

Financial services businesses:

- 6) **In addition to those matters set out at paragraph 17 of the Attorney General's Code on the decision to prosecute, the following public interest factors will be considered in relation to financial services businesses, namely whether:**
- (i) The trigger event for the payment away of the deceased's movable estate was a decision taken by a bank or financial institution in another jurisdiction over which the Jersey bank or financial institution had no control;
 - (ii) The estate which has been subject to an alleged act of intermeddling comprises complex asset structures held in multiple jurisdictions;
 - (iii) The alleged intermeddling took place as the direct result of an act by an automated system;
 - (iv) The alleged intermeddling took place as the direct result of an unavoidable manual error by a bank or financial institution in Jersey

These factors apply only to cases of intermeddling.

Code on the decision to prosecute issued by Her Majesty's Attorney General for Jersey:

<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20Code%20on%20the%20Decision%20to%20Prosecute%20March%202016.pdf>

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