

## Private Client Services

### PRICING INFORMATION

(in accordance with Law Society of Scotland price transparency guidance and the SRA Transparency Rules)

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*We'll get you the best seat in the house.  
Whatever your ambitions, we'll get you to where you want to sit.....*

# Executries

## THE ROLE OF THE EXECUTOR

When a person passes away their financial affairs have to be closed off properly and we refer to that as their '**estate**' and it being '**wound up**'. A procedure will be followed to ensure, so far as possible, that as a priority, debts (including all taxes) are paid and then remaining wealth is distributed to those entitled to it.

Those responsible for winding up an estate are the '**executors**' (sometimes referred to as trustees). They may be appointed by the deceased by a Will, or, in the absence of a Will, an application can be made to the local Sheriff Court to appoint executors. There are specific rules which determine who is entitled to apply to the court for that appointment. A sole executor is permissible, although, unless a company, is not advisable. Executors often (but don't have to) include lawyers. Executors of larger estates in particular frequently use legal advice for the administration.

The role of an executor, broadly, is to identify and ingather all assets of all estate, settle all debts and then distribute what remains in accordance with the deceased's Will or, in the absence of a Will, in accordance with the rules on distribution set down in law, which, with certain protective provisions, prefers blood relatives and those closer to those more remote.

## TYPES OF ESTATE

An estate will be either '**testate**' or '**intestate**'. A testate estate is one where the deceased had a Will dealing with estate distribution by inheritance. An intestate estate usually is one where the deceased did not have a Will.

Whilst the overall process largely is the same in both testate and intestate estates, there are some additional elements which must be attended to on intestacy.

## CONFIRMATION

"**Confirmation**" is the legal document which when granted by the court (the closest Sheriff Court to the deceased's residence) gives the executors official title and authority to deal with the deceased's estate. Once Confirmation has been obtained, the executors will send it or copies to those organisations, such as banks, building societies, insurance companies, where the

deceased had an interest. Confirmation allows the executors to deal with those interests – for example taking in funds from a bank account, transferring or selling shares, transferring or selling a house. Property which the deceased owned individually will be in limbo until Confirmation is granted. This can be awkward for say bank accounts and payment of bills – although some can be cleared by arrangement with the bank, particularly funeral related bills.

There are limited circumstances when Confirmation is not required. Confirmation almost always will be required if the deceased had any stocks, shares, insurance policies, houses or land, unless owned jointly.

## APPLYING FOR CONFIRMATION

To obtain Confirmation, executors must prepare and submit various forms to the court, and may also have to complete Inheritance Tax forms for HM Revenue & Customs.

To complete those forms, executors have to build up a picture of the overall estate, identifying all assets and liabilities, ascertaining values at date of death, and preparing an inventory. The inventory must include all property of the deceased, including foreign property and joint property (required for HMRC but not Confirmation if transmission to the joint owner(s) is automatic). If the estate is intestate, in almost all cases, the executors have to obtain an insurance policy, known as a “**Bond of Caution**”, which guarantees payments to creditors and beneficiaries.

## INGATHERING & DISTRIBUTION OF ASSETS

Once all the necessary forms have been submitted, together with the court fees, the court will issue a certificate of Confirmation. Executors may then begin paying off debts and making distributions to beneficiaries.

Executors also have to attend to any tax (Income Tax/Capital Gains Tax) arising during the administration period. A tax return may be required, and will need to be attended to before the winding up is completed.

Once all distributions have been made, and tax matters attended to, typically the lawyer who is assisting with the administration will prepare an executry account, detailing all transactions affecting the estate, and the final sums due to all beneficiaries.

TIMESCALE

Executors should not make distributions to beneficiaries until six months after the date of death – as six months post death is the period in which creditors can make claims on the estate. Small estates usually will be wound up between six to twelve months but larger and more complicated estates can often take more than twelve months to be completed and may be up to twenty four months to be completed (perhaps longer if complex).

Executries: How do we charge?

Depending on the nature and complexity of the executry, the legal work undertaken by us may be completed by one or several members of our legal team.

Executries would typically be undertaken on a day to day basis by a **paralegal, solicitor, senior solicitor or associate**. They would be supplemented by more senior members of the legal team where required. Overall supervision of an executry will be by a named Partner.

Below we have set out the hourly charging rates for each of our fee earners.

As a guide, the average number of hours on, for example, an executry is between 50 hours to 100 hours.

The hourly rate stated excludes VAT which is charged at 20%:-

FEE EARNER	UPTO THE FOLLOWING HOURLY RATE (£)
Paralegal	250
Senior Paralegal	260
Trainee	270
Solicitor	335

<b>Private Client Tax Manager</b>	350
<b>Accredited Paralegal</b>	360
<b>Senior Solicitor</b>	360
<b>Associate</b>	390
<b>Senior Associate</b>	430
<b>Director</b>	465
<b>Partner</b>	505
<b>Senior Partner</b>	555

An executry will often need several team members, at different levels of seniority and experience, working in tandem upon it. The team shall seek to work on an executry in a cost effective manner.

If any member of the team mentioned above is promoted during the course of the instruction covered by this engagement letter, the rates set out above for the promoted position will apply from the date of promotion.

The scope of work on a typical executry may require us to:-

- Advise on the operative Will terms or intestacy provisions;
- Advise and assist in the process of estate identification (assets/liabilities);
- Draw up for approval and submission, Confirmation and Inheritance Tax Returns where applicable;
- Draw up for approval and submission relevant Income Tax and Capital Gains Tax returns, where applicable;
- Advise and assist in the payment of accounts;

- Advise and assist in the payment or discharge of inheritances and prior / 'legal rights' (forced heirship) (where applicable);
- Advise and assist in the transfer of moveable assets or heritable property of the estate to beneficiaries thereof including preparing any necessary paperwork or forms, discharges of security and dispositions on behalf of the executors and registration of any transfer of title (if applicable); and
- Complete an Executry Account detailing all financial transactions of the estate.

The number of hours spent on the executry will be determined by the complexity and the unique circumstances of your case. We will discuss the likely cost of the executry with you at our initial meeting and would be delighted to provide you with an estimate. If additional costs arise due to unforeseen circumstances, we will discuss this with you as soon as reasonably possible and we will advise you of any increase in cost that may arise. For executry work we would ordinarily charge 'time in line' and not a 'fixed fee'.

Charges to complete executry administration would as a range be:-

- For a typical executry: with no inheritance tax payable / no disputes / no claims / one Scottish property / no more than two bank accounts / modest investments – £5,000 - £10,000 plus VAT and outlays;
- For a more complex executry – inheritance tax payable / no disputes / no claims / one or more Scottish properties / multiple bank accounts / extensive portfolio of investments - £10,000 - £30,000 plus VAT and outlays.

Factors that shall increase charges would include but not be limited to:- disputes as amongst executors and / or beneficiaries, owning an overseas property/ies (and its/their transfer formalities); negotiation with overseas tax authorities; excess communication; delay in providing instructions, unclear or regularly revising instructions and / or providing overly complex instructions; a shareholding/s in private limited company/ies; a large number of legacies and / or beneficiaries.

Residential conveyancing (transfer / sale after Confirmation) is not included within our charges – we would ordinarily ask a trusted partner to attend to residential conveyancing. For example, the sale of a residential property on the open market.

Preparing a 'Deed/s of Variation' (a variation of the terms of the Will) is not included within our charges.

Succession / personal planning and structuring for beneficiaries is not included within our charges.

Our practice is to render interim fees on a regular basis as the executry progresses.

We provide the option of the charges being assessed by an independent assessor or the Auditor of the Sheriff Court. The charge for an assessment will ordinarily be met by the estate itself.

Each executry is unique – we are happy on request to provide a fee range at the very outset based on information provided and an anticipated scope of work.

The hourly rate does not include any outlays that may be required. These are variable depending on the nature of the executry and may include Court dues. Where possible we will discuss what these may be at our initial meeting.

Typical outlays may include (plus VAT charged at 20% if applicable); registration dues at the Books of Council & Session to register a Will - £20; Court fee for Confirmation – up to £543; additional certificates of Confirmation (if ordered when lodging inventory) – £8; intestate (no Will) and a Bond of Caution – cost set on application to the relevant insurance company; intestate (no Will) dative petition - £19; and other certified documents ordered from the Court – cost dependent on when ordered and type of document – range up to £40.

## **FEBRUARY 2023**

# Wills

## KEY ISSUES TO CONSIDER WHEN MAKING A WILL

A Will sets out how you wish your estate to be distributed and who you wish to appoint as your executors, to deal with the administration.

The key issues to consider when making a Will are set out below:

**Executors** - have the responsibility of administering your estate, gathering in the assets, and paying off bills / liabilities. We suggest you appoint at least two, or one with a substitute or substitutes. Executors should be over the age of 16 and can be family members, friends, or professionals. You can also appoint a corporate executor and our trustee company is available for this purpose. Choice of executors should be dictated by confidence, trust and ability.

**Legacies** - are paid / transferred to beneficiaries in priority to the residue of the estate. Legacies can be sums of money or specific items – common examples include jewellery, valuables, and sentimental items. Small legacies can be included in an 'informal writing' instead of your Will, the advantage being that these can be updated easily. We can provide you with a style informal writing if appropriate.

**Residue** - this is the remainder of the estate after payment of debts, funeral expenses, taxes, forced heirship rights (known as “**legal rights**” in Scotland) and legacies. You do not have to name the items that form the residue individually. The residue usually comprises the bulk of an estate, but this is not always the case. The residue can be left in proportions to a number of beneficiaries or outright to only one.

**Default** - you should consider the possibility that beneficiaries may predecease you, in which case specific legacies, or a bequest of the residue in their favour will fall. You should consider who should inherit in their place. You may wish to specify additional beneficiaries such as the children of a failed beneficiary, or a final beneficiary who is unlikely to fail, such as a charity.

## USE OF TRUSTS IN WILLS

Legacies or the bequest of the residue need not be outright. There may be reasons to give only a restricted financial interest or it may not be prudent to give it outright (say for incapacity or vulnerability reasons). This can be achieved by including a trust provision in the Wills. Trusts



are often used in situations involving second marriages, incapacity, vulnerable beneficiaries or young persons.

It is particularly common to include a trust where any young beneficiaries may inherit (typically children and / or grandchildren). The age of legal capacity in Scotland is 16 and in the absence of any trust provision, a young beneficiary becomes entitled to receive their inheritance outright at age 16. Common ages for trusts for young beneficiaries to inherit are 18, 21 and 25.

**GUARDIANS**

You can appoint a guardian for any children under the age of 16.

**FUNERAL INSTRUCTIONS CAN BE INCLUDED**

These can be as simple as cremation or burial but can also be more detailed. You can also include wishes regarding medical science. You should however also make these wishes known to your family and/or friends as occasionally Wills are not looked at until after a funeral.

**INHERITANCE TAX**

If your estate is likely to pay Inheritance Tax then there are steps that can be taken in your Will to potentially reduce your liability. We would be happy to discuss this with you further.

**Wills: How do we charge?**

Our fixed prices (excluding VAT at a rate of 20%) - subject to any changes required to accommodate your particular circumstances or needs - for Wills are as follows:-

TYPE OF WILL	SINGLE WILL (£)  (a Will drafted for one person)	MIRROR WILLS (£)  (identical Wills drafted for two persons)
Standard Will	425	637.50

Will including a young beneficiary's Trust	600	900
Will including a Liferent	650	975
Will including a Discretionary Trust	700	1,050
Codicil	250	375

If you are married, in a civil partnership or cohabiting, a Mirror Will may only be appropriate where neither you nor your partner has children from a separate relationship. Where this is the case, we will be happy to meet with you and discuss the options based on your circumstances.

Our prices above **include**: taking your instructions at one meeting at our office, providing advice as appropriate to your requirements, providing advice on 'legal rights', preparing a draft will for you to review, making changes following review, complete execution of the will, storage of original will in our secure storage facility and providing you with one copy of your will.

Our fixed price will **not** include: home or hospital visits, more than one meeting at our office, multiple drafts and reviews of drafts, work associated with lifetime trusts such as drafting trust deeds, advice and work associated with bankrupt or otherwise vulnerable beneficiaries, advice on inheritance tax and preparing the transfer of heritable property (buildings and land) into a trust or advice on complex wills, for example, those with guardianship clauses or requiring specific and more detailed consideration and advice on legacies or limiting the inheritance of, or disinheriting, beneficiaries.

Note: This fixed price will **only** cover the services mentioned. Your case may require additional work that is **not** included. We will discuss this with you at our first meeting where possible. If additional costs arise due to matters related to your own personal circumstances, we will discuss this with you at the earliest opportunity as and when these arise and we will advise you of any increase in price that may arise.

# Powers of Attorney

A Power of Attorney should be in everyone's consideration. At any time when you are unable to make decisions yourself, irrespective of the cause, a Power of Attorney avoids the delay and cost of court intervention to deal with your incapacity and leaves immediate decision making with those you trust and have specifically chosen for that purpose.

## BACKGROUND

Powers of Attorney are “**Continuing**” or “**Welfare**” and are often “**combined**” in the one document.

The “**Continuing**” part gives your Attorney(s) the right to make decisions and take actions on your behalf for property and financial matters, the “**Welfare**” part, as the word suggests, gives your Attorney(s) the right to make decisions and take actions on your behalf for matters of personal welfare – such things as medical treatment, care and accommodation, cultural and social activities.

You do not need to combine the two – they can be created separately – you might do that for example if you felt it appropriate to have a particular individual or individuals for one type of Power of Attorney and not the other or if you felt it more likely that you would make future changes to one Power of Attorney and not the other. We can have different Attorney(s) for each function in the same document but, if you deal with the documentation completely separately there will be two registration fees at the Office of the Public Guardian.

To take effect the Power of Attorney must also be certified by the solicitor, and then registered with the Office of the Public Guardian (Scotland).

## Powers of Attorney: How do we charge?

Our fixed prices (excluding VAT at a rate of 20%) – subject to any changes required to accommodate your particular circumstances or needs - for Powers of Attorney are as follows:-

TYPE OF POWER OF ATTORNEY	SINGLE (£)  (a Power of Attorney drafted for one person)	MIRROR (£)  (identical Powers of Attorney drafted for two persons)
<b>Combined Continuing and Welfare Power of Attorney</b>	425 and outlays of 83	637.50 and outlays of 166

Our prices above include: taking your instructions at one meeting at our office, providing advice as appropriate to your requirements, preparing a draft Power of Attorney for you to review, making changes following review, completion by signing of the Power of Attorney – to take place at our office or remotely by video conference, certification of the Power of Attorney and its registration (if requested) at the Office of the Public Guardian and providing you with (on request) up to three certified copies of the Power of Attorney.

Our fixed price will not include: a home or hospital visit if required, more than one meeting at our office to take your instructions and multiple drafts or reviews of drafts.

The registration dues (£83 per Power of Attorney) are stated as of 16 February, 2023.

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