

PROBATE AND THE ECCLESIASTICAL COURT

FAQs

1 What is Probate?

Probate is the legal process of (a) proving (or registering) the Will of Personal Estate of a person who has died (the deceased); and (b) authorising the person(s) (or company) named as Executor(s) in the Will to act as such and deal with the assets, possessions and liabilities (the Personal Estate) of the deceased.

2 What are 'Letters of Administration'?

A Grant of Probate is obtained when the deceased has left a valid Will naming one or more Executors. If there is no (valid) Will, or if there is a valid Will but no Executor(s) are validly named in it, the Grant is of Letters of Administration and is made to one or more Administrators.

Grants of Probate and Grants of Letters of Administration are collectively called Grants of Representation.

Executors and Administrators are collectively called Legal Personal Representatives.

In the following answers, for the sake of brevity, the expression Probate is used instead of Grants of Representation.

3 When is Probate required?

In Guernsey it is not (and never has been) compulsory to take out a Grant of Representation. That would only be done if the asset-holder requested it, in order to ensure that the assets were paid out to the lawfully-entitled person(s).

Each institution will have different internal policies as to when Probate may be required. For example, a bank may be prepared to pay out the balance of a small account without Probate, but require Probate to pay out a larger sum.

Probate is not required for real estate (ie, houses and land owned by the deceased) except where the deceased was the owner of the shares in a Guernsey or Alderney limited company which itself owned real estate. In such cases, the shares will count in the value of the personal estate and their underlying value must be determined by reference to the value at the death of the deceased of the relevant real estate. Leasehold interests in real estate count as personal estate for the purposes of Probate.

4 What does the Ecclesiastical Court do?

The Ecclesiastical Court is the equivalent of a Probate Registry. The Ecclesiastical Court issues Probate when requested, so as to enable asset-holders to transfer assets in the Bailiwick of Guernsey to Legal Personal Representatives. If the deceased died without leaving assets in our jurisdiction, Probate cannot be issued here.

Many of the grants of Probate issued are for deceased persons who lived outside the Bailiwick of Guernsey, with considerable numbers in South Africa and others around the world, including Middle Eastern countries, who have bank accounts or investments in Guernsey.

5 How does the Court grant Probate?

The Court, like any other probate registry, requires the applicant to provide the original will, or an affidavit from a lawyer qualified in the relevant jurisdiction, setting out who are the heirs when there is no will, a death certificate, the value of the estate, proof of a Guernsey asset (and that an asset-holder requires a Guernsey Grant of Probate in order to release assets), and appropriate proof of identity and address.

The Court exercises Guernsey customary law, which means it can adapt and evolve flexibly and with agility.

6 Why does the Ecclesiastical Court grant Probate?

The Court has had this function (alongside issuing marriage licences, granting faculties for works to churches, admitting notaries to practice and giving permission for exhumations) for centuries – at least 800 years.

7 What does the Court do with the money raised from fees charged for Probate?

After the payment of the Court's overheads, surplus funds raised from the Probate process have latterly been paid to the Deanery Fund LBG, a charity which makes grants for a wide range of charitable purposes in the Bailiwick. This would cease under the Dean's proposals and the funds would, instead, be paid to the Social Investment Fund on an ongoing basis without any time limit.

8 How much will be available for the Social Investment Fund?

This varies from year to year depending on the value of the estates processed.

9 What are the Court's overheads?

These cover staff costs and salaries, rent, insurance and the like.

10 What are the costs of obtaining Probate, and is it a form of inheritance tax?

The Court charges fees in the form of a tariff linked to value of the personal estate, of £35 per £10,000 value of the personal estate plus some nominal additional amounts for additional documentation. There is an upper cap of fees of £100,000 which is applied to estates with a value of over £28,000,000.

The fees charged are not a form of tax, but a fee for the service provided.

11 Who runs the Ecclesiastical Court?

Responsibility for the Court lies with the Dean of Guernsey (currently the Very Reverend Tim Barker).

The Court sits each Friday morning; the Dean presides (or, when he is unavailable, one of the Vice Deans). He is accompanied by one of the two registrars (currently Advocates Catherine Fooks and Jason Green). They are responsible for all the legal matters relating to the Probate procedure. Two staff support the registrars.

The Court is not run by the Church of England or the Deanery of Guernsey.

12 What are the benefits of the Court administering Probate?

The service provided is one of the quickest in the world, with the Court providing an economic and efficient, high quality, professional and versatile service.

This has been acknowledged by the States in the preparation of the policy letter which led to the debate in 2020.

The Court has also been able to maintain its workflow through both lockdowns unlike many other probate registries around the world.

13 Why did the Dean write to the P & R Committee about reviewing the last States decision?

The Dean wrote to the Chief Minister for various reasons:

- He had made a similar proposal some years ago, which was rejected at the time;
- With the political will to reduce public sector costs and unnecessary work for the States, it seemed to appropriate to suggest this proposal again;
- Transferring the Probate service will lead to disruption and additional costs, and potentially a less profitable service, thereby impacting the surplus;
- What has been offered will ensure (a) the continuation of the high quality service without interruption and (b) the maximum return to the Social Investment Fund (SIF);
- The flow of cash to the SIF will be immediate – from 1 January 2021; the fees from three very large estates will be in this calculation;
- It is thought that Guernsey's lawyers and trust companies do not want the service to transfer - on the basis that 'if it ain't broke, why fix it';
- Whilst an implementation group had been formed, following the States' resolution in 2020, there is still much work to be done in terms of agreeing the rules and regulations that would apply to the function once transferred, and the finalisation of agreements with Sark and Alderney; and
- The outcome desired by the States, of directing the surplus income to the SIF, could be assured by leaving the Probate function with the Ecclesiastical Court, on the basis of the Dean's undertaking to transfer the surplus (after payment of all overheads and a management fee) to the SIF – to ensure that the maximum sum would be available to support the Bailiwick's charitable sector.

14 Is the Court a religious body?

No.

There are no religious symbols in the offices where people attend to make their oaths or affirm (the choice is theirs) as to the truth of the information they have supplied – the same practice as in any court. The only exceptions to this are:

- The availability of the Bible for those who wish to swear an oath on the Bible (as they would do in many courts). Those who do not wish to do so, make an affirmation; and

- The presiding officer wearing a clerical collar; this is not essential and is a practice that the Dean is willing to review.

If the Court continues to deal with Probate, the Probate function will be renamed the Guernsey Probate Registry.

The Ecclesiastical Court (and the Probate jurisdiction it exercises) is a personal role and responsibility attached to the office of the Dean (a Crown appointment). Of course, the Dean is a Church of England priest; but the Court is not run by, or answerable to, the Deanery of Guernsey or the wider Church of England.

15 Could the service not be put out to tender?

The suggestion of going out to tender with the service fails to appreciate the complexity of the customary jurisdiction and the expertise of the staff, which others cannot offer.

16 What does the Deanery of Guernsey get out of the new proposal?

A management fee to recognise the Dean's role in presiding over the Court and managing the service and employing the staff.

17 What profit will the Court make if its proposal is accepted?

None. All the surplus will, from now on without exception and without time limit, be transferred to the third sector, through the SIF.

The States resolution from June 2020 was:

"To agree that a grant be made from General Revenue to the Social Investment Fund of £400,000 per annum for the first two years that the Royal Court operates grants of representation for personal property, with recommendations for the level of this grant for subsequent years to be included in future Annual Budgets."

18 Why continue?

The Dean said, 'I am happy to continue to provide the service, preserving the rich heritage of this Bailiwick and our ancient legal traditions which make this Bailiwick special because I am proud of what the staff achieve, and the value which I believe we add to the Guernsey "brand".'

8 March 2021