COLLAS CRILL

Intermeddling: Could you be facing a fine...or worse?

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What is intermeddling?

Intermeddling is an offence under the Probate (Jersey) Law 1998 ('**the Probate Law**'). Article 23 (1) of the Probate Law provides that if any person **takes possession of** or **in any way administers** part of the movable estate of a deceased person **without** obtaining a grant of probate that person **shall** be guilty of the offence of intermeddling.

This offence is not committed if a person:

- has only made arrangements for disposing of a body of a deceased person in any manner authorised by law; or
- places into safe custody or preserves the movable estate of the deceased.

The purpose of the offence of intermeddling is to:

- prevent those who wish to avoid paying stamp duty on probate successfully doing so; and
- to avoid the dissipation of estates to those not entitled to them.

Prosecutions for the offence of intermeddling have to date been extremely rare, however, if an intermeddling offence has been committed, the person/institution committing the offence will be liable to a fine or to imprisonment for a term not exceeding 12 months, or both.

In the past year two cases of intermeddling have been determined in the Royal Court of Jersey. Below we summarise these cases and discuss the proactive approach businesses might wish to take to avoid fines being imposed upon them in future should they find themselves breaching the Probate Law.

AG v Abu Dhabi Commercial Bank PJSC, Jersey Branch

This case involved the estate of a United Arab Emirates ('**UAE**') domiciled individual. A UAE Court directed that all funds of the deceased be paid to the Court's Treasury, in order to be managed in accordance with UAE law. The judgment of the UAE Court was served on the defendant bank's UAE branch.

Upon the death of the deceased, a 'no debit' instruction was placed on the deceased's account. Despite this, the relationship officer in the UAE issued instructions to two Jersey employees of the bank, to send all funds

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of the deceased held in Jersey (totalling just over $400,000) to the Court Treasury. This transfer was made and the offence of intermeddling was committed. The defendant bank had a deceased customer policy which covered these circumstances, but it was not followed.

A month after the transfer, a senior officer of the Jersey branch of the bank noticed that the deceased's account had been emptied, without having obtained a Jersey grant of probate. The Jersey Financial Services Commission ('**JFSC**') was informed of this error, followed by the Attorney General ('**AG**').

The Royal Court noted that the relevant employees were acting on direct orders of the UAE Court. The Royal Court found that the offence amounted to a negligent mistake, however, without any intention to break the law and without intention to achieve a gain for the bank. Complete cooperation with investigators, self reporting, a guilty plea and no prejudice to the heirs mitigated against the error. The Court did, however, impose a £25,000 fine on the bank for having committed the offence and, in addition, a compensation order was made in favour of the Treasurer of the States in the sum of £2,085.27, which covered the stamp duty which had been avoided.

As a multinational company with employers over numerous jurisdictions it was suggested that the offence was committed due to lack of understanding of Jersey probate procedures. Following the incident the bank brought in compulsory training courses regarding the separate status of Jersey and planned computer enhancement to avoid human error in future, and this was noted by the Royal Court as a positive step to have taken.

AG v Standard Bank Jersey Limited

This case involved an estate of a Kenyan domiciled individual, who died domiciled in Kenya where he resided with his long term partner ('**the Partner**'). The Partner had held a power of attorney over the deceased's affairs during his lifetime and a third party authority mandate to operate his account. She was also the executor of his estate, residual beneficiary to his English and Jersey estate, as well as the sole beneficiary to a trust which the deceased had established. There was no doubt that it was the deceased's wish that his assets would transfer to the Partner.

The bank had a formalised 'deceased accounts' procedure in force at the time of the individual's death. Upon his death, the bank should have placed a block on the account and marked it 'deceased', cancelled all standing orders and revoked all third party authorities. The defendant bank was made aware of the death on the day of its occurrence, however, neglected to follow its procedure described above.

The deceased held three accounts with the defendant bank, but only one of these was the subject of the offence of intermeddling. The account in question had been used to meet the Partner's regular expenses prior to the deceased's death. The defendant bank permitted the Partner to continue to operate the account (which had a balance at death of £49,953.41) as she was the sole beneficiary to the estate and the trust and to do otherwise was considered to be to her detriment, as it would cause her fundamental hardship. A total of 107 payments were made out of the account amounting to £9,552.49 in total.

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During a routine check, the defendant bank identified that these transactions had been made on the account of a deceased customer, following which the account was shut down and the money returned by the Partner. The defendant bank self reported to the JFSC and then the AG, stating that it had a deceased accounts procedure and had this been followed the incident would not have occurred. In this instance it was said their procedure was not followed so as to avoid hardship to the Partner.

The Royal Court issued the bank with a £20,000 fine. It was accepted that there was no intention to evade the payment of stamp duty and no intention to dissipate the estate or any part of it to those not entitled to it. As was the case with the bank in the Abu Dhabi Commercial Bank case referred to above, self referral, full cooperation with investigators, a guilty plea at the earliest opportunity, no loss to the estate of the heirs and assurances that further policies had been put in place to avoid this offence being committed by the bank or its employees in future all worked in the defendant bank's favour.

Following the discovery of the incident the bank enhanced its procedures and gave further training to its staff to ensure that it does not happen again.

What can we take from these cases?

Both of these cases indicate a lack of employee knowledge of 'deceased customer policies' and also the consequences of allowing a deceased's assets to be dealt with prior to a grant of probate being obtained and any necessary stamp duty being paid in Jersey.

In the judgments to these cases, it is clear that had there been any intention on the part of the defendant banks to benefit fraudulently or otherwise from the action that was taken, that the decisions would have been very different. Indeed the Royal Court in the Abu Dhabi Commercial Bank case commented that had there been any attempt to avoid paying stamp duty on probate or to dissipate the estate to those not entitled to it, **the fine imposed would have been considerably higher**.

The Probate Law will not be familiar to all of the employees of a multinational company, nor indeed will most lay people named as executors in a deceased person's will be familiar with the law. It is imperative that all staff are adequately trained to understand their 'deceased customer policy' in any jurisdiction in which they operate and all named executors should familiarise themselves with their duties under the Probate Law and, in particular, the offence of intermeddling.

As there have been two instances of this offence being committed in the past year, it would be the ideal time for companies to provide refresher training on their 'deceased customer policy' and/or, if they do not have such a policy, have one implemented as a matter of priority. Both cases above represent a useful reference point for such training and highlight that even if it is an unintentional oversight of a companies internal policies, fines will still be imposed on those who commit the offence of intermeddling.

If this article has got you thinking and you would like to discuss this topic further, please do not hesitate to contact a member of our team who would be happy to discuss this with you further.

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COLLAS CRILL

For more information please contact:



Dionne Gilbert

Partner (Advocate) | Jersey

t: +44 (0) 1534 601682 | **e:** dionne.gilbert@collascrill.com



Arcadius Gregory

Senior Associate* | Jersey

t: +44 (0) 1534 601612 | **e:** arcadius.gregory@collascrill.com

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