

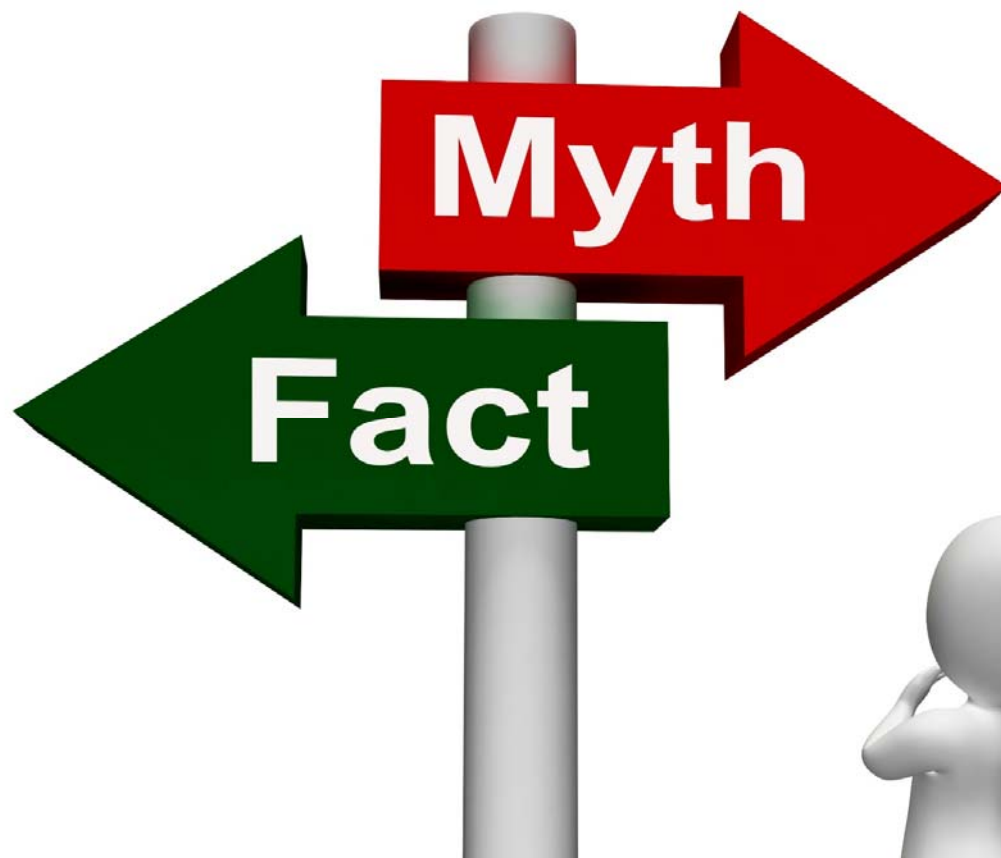
# The Law of Unintended Consequences: Public Health Act funerals, intestacy and next of kin

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Practitioner: Professional Paralegal Register

# Section 46 Public Health (Control of Disease) Act 1984 – legal duty on Local Authority to arrange funeral if no-one else to do so

- No duty on a local authority to identify relatives
- Section 46(5), deceased's estate pays funeral costs and officer time etc. as a right – no need to find any relative to approve
- National government policy – refer intestacies to Government Legal Department (GLD) Bona Vacantia Division (BVD) “as soon as possible after death” where over £500 estate
- Risks to authorities if officers decide to circumvent government procedure



# BVD procedure (1)

- Use standard case referral form BV1A (for most of England & Wales)
- As soon as possible after death - NB no suggestion that referrer should undertake any genealogical research (heir hunter myth)
- **Bona Vacantia – Estates**
- Government Legal Department (BVD)  
PO Box 2119  
Croydon CR90 9QU
- [bvestates@governmentlegal.gov.uk](mailto:bvestates@governmentlegal.gov.uk)
- 020 7210 4700

[Home](#)

News story

## The official website of the GLD/Bona Vacantia Division

Information regarding websites appearing to be, or connected to, the official website of the GLD/Bona Vacantia Division

Published 5 August 2015  
From: [Bona Vacantia](#)



There are a number of other websites and Twitter Feeds which, by use of such terms as bona vacantia, unclaimed estates or Heir Hunters, may lead people to wrongly believe that by accessing such sites they are using or contacting GLD/BVD whereas they are, in fact contacting private "heir hunter" firms.

News story

## New internet phishing alert

New emails and letters appearing to be from employees of the Government Legal Department/Bona Vacantia Division are in circulation

Published 8 August 2016  
Last updated 8 August 2016 — [see all updates](#)  
From: [Bona Vacantia](#) and [Government Legal Department](#)



Internet phishing alert

These are giving the recipient opportunity to claim ownerless properties and funds through the Bona Vacantia Division

<https://www.gov.uk/government/organisations/bona-vacantia> ▼

The Treasury Solicitor acts for the Crown to administer the estates of people who die intestate (without a Will) and without known kin (entitled blood relatives) and collect the assets of dissolved companies and other various ownerless goods in England and Wales. BVD is part of the Government Legal Department.

#### Unclaimed estates list

A list of unclaimed estates held by the Treasury Solicitor. Last ...

#### Complaints procedure

Complaints procedure. If you have a complaint about the Bona ...

#### Bona vacantia companies ...

Bona vacantia companies guidelines. Guidance on ...

#### About us - Bona Vacantia

'Bona Vacantia' means vacant goods and is the name given to ...

[More results from www.gov.uk »](#)

#### Changes to Bona Vacantia Division (BVD) guidance - GOV.UK

<https://www.gov.uk/government/.../changes-to-bona-vacantia-division-bvd-guidance> ▼

1 Aug 2016 - The Bona Vacantia Division (BVD) would prefer that you do not send in original documents. Instead please send copies of the originals certified as true copies by: The Post Office checking service or a practicing UK Solicitor (in the UK); Notary Public or Apostille (outside the UK). More details can be found ...

#### The official website of the GLD/Bona Vacantia Division - GOV.UK

<https://www.gov.uk/government/.../the-official-website-of-the-gldbna-vacantia-divisi...> ▼

5 Aug 2015 - There are a number of other websites and Twitter Feeds which, by use of such terms as bona vacantia, unclaimed estates or Heir Hunters, may lead people to wrongly believe that by accessing such sites they are using or contacting GLD/BVD whereas they are, in fact contacting private "heir hunter" firms.

#### Bona vacantia - Wikipedia

[https://en.wikipedia.org/wiki/Bona\\_vacantia](https://en.wikipedia.org/wiki/Bona_vacantia) ▼

For most of England and Wales, the Bona Vacantia Division of the Government Legal Department is responsible for dealing with bona vacantia assets on behalf of the Crown.

#### Bona Vacantia Unclaimed Estates and Adverts - Datasets - Data.gov.uk

<https://data.gov.uk/dataset/bona-vacantia-estates-advertisements> ▼

The Bona Vacantia Division advertises the estates of deceased persons for kin to identify their own entitlement.

#### Bona Vacantia List | UK Unclaimed Estates

[www.bonavacantialist.co.uk/](http://www.bonavacantialist.co.uk/) ▼

The current list of unclaimed Estates for deceased persons in England & Wales is below. This list is updated daily. To subscribe to updates free of charge, complete the form here. The Bona Vacantia Division of the Government Legal Department recommends that reasonable enquires are made before referring an estate to ...



Copycat – beware!  
False 'government' advice!

2017  
confirmation



**Government  
Legal Department**

Bona Vacantia Division (BVD)  
PO Box 2119  
Croydon  
CR90 9QU

T +44 (0)20 7210 4700  
F +44 (0)20 7210 3104

**DX: 325801 Croydon 51**

[www.gov.uk/bonavacantia](http://www.gov.uk/bonavacantia)

Our reference: BVFOI/264/17 re Various

**Freedom of Information Act 2000 Request**

You asked for the following information from the Government Legal Department ("the Department"):

Is the information provided on your website the totality of your guidance on referring an estate to the Bona Vacantia Division, or is additional or supplementary information available.

Your request will be dealt with by the Bona Vacantia Division ("the Division") under the Freedom of Information Act 2000.

The Division holds all the information that you have requested.

The information published on the Division's website is the only guidance on referring estates to the Bona Vacantia Division held by the Division.

  
**Anglia Research**  
Global Experts in Probate Genealogy Est.1979

## BVD procedure (2)

- BVD advertise estates within 5 days
- Advertisements monitored by major probate research firms and heir hunters
- Rules of intestacy – only closest living relatives can inherit
- Research has to prove the relationship before valid claim accepted by BVD
- Many relatives often located within days if not hours – often in time to attend funeral and give information
- Relatives choose researcher from those who contact them, to act on their behalf (if any)



### Uncles and Aunts of Walter Howell



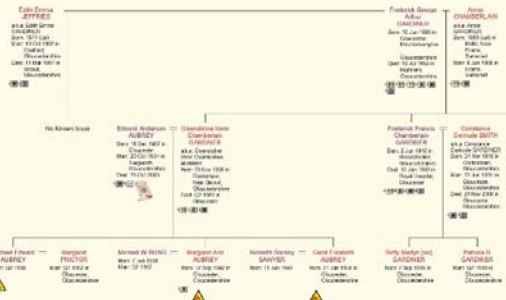
### Stem 3 Descendants of Emma Lydia Maude



### Stem 7 Descendants of Joseph Wilfred



### Stem 1 Descendants of Frederick George Arthur



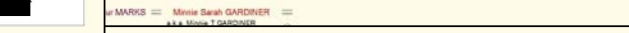
### Stem 8 Descendants of Sydney Jesse



### Stem 4 Descendants of Frances Ellen



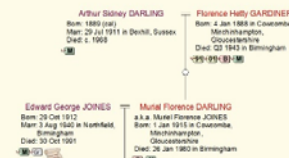
### Stem 9 Descendants of Minnie Sarah



### Stem 2 Descendants of Lavinia Alice



### Stem 5 Descendants of Florence Hetty



### Stem 6 - The Deceased (Partial) Intestate's stem Descendants of Walter Ernest



### The Maternal Relatives



## BVD Procedure (3)

- If BVD assess the relative's claim as valid, claimant referred back to holder of the details of the assets (eg local authority).
- Personal Representative or PR (equivalent to *executor* of a will) is appointed, collects in assets and instructs will search in case of a hidden or missing will (charged to estate).
- Other entitled relatives become aware of the death through work of other genealogical researchers and contact the PR.
- Transparent process means all entitled relatives can claim their entitlement and mistakes/fraud can be rectified.

# The useful bounty

- One heir hunting organisation (the Heir Hunters Association) has openly admitted to interception of estates before they are referred to the GLD Bona Vacantia Division.
- The referring intermediary (ie person with knowledge of intestacy) is paid a “useful bounty”.
- Members of the heir hunting organisation encourage the practice as a business model.

# Befriend an officer ...

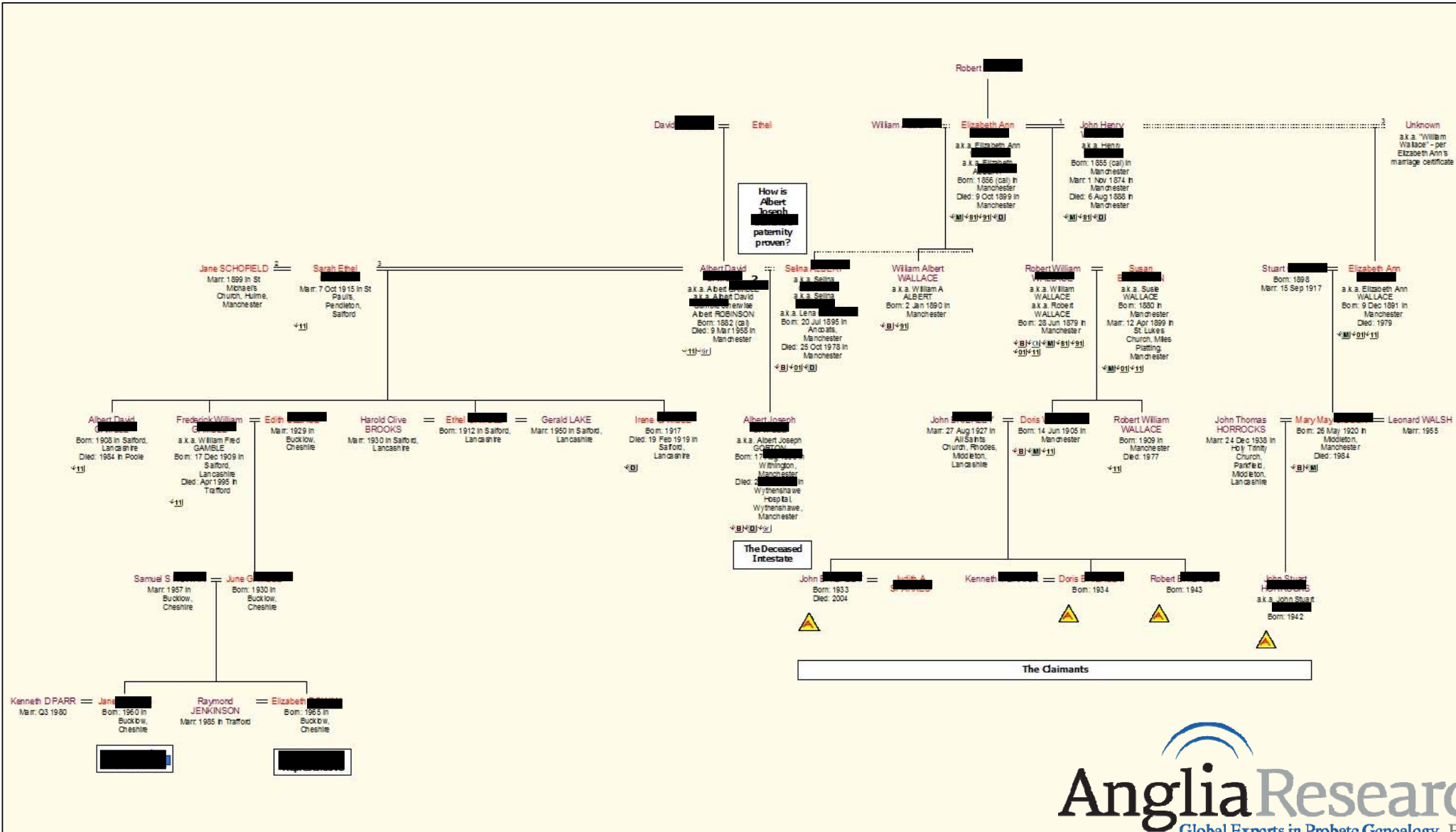
- Imagine ... heir hunter agents being sent to councils and hospitals, on an hourly rate, travel costs and 10% commission to be paid out on fees from intestacies gleaned.
- FOIA response from a senior finance officer (where 43 cases have been referred):
  - “I have another case for you. The estate is only worth £xxx [redacted] but hey, every little helps.”
  - “I hope you had a good Christmas and are ready for some new year cheer. I have a new case for you which is rather a pickle ...”
  - “Hi xxx. We are becoming like old friends now. I have another case that you may be able to assist me with.”

# 'insider dealing' and prior knowledge cases

- *R v Cook* (2012) – misconduct in a public office, fraud and theft. 16 months' imprisonment.
- Council officer for 11 years, responsible for referrals to BVD.
- Delayed passing details to BVD and instead traced easy to find relatives as 'Heir Solutions Limited' and 'earned' up to £160,000 commission.
- Prosecutor: *"It is a very serious breach of trust, not only in respect of her employer but the public generally. It is akin to insider trading because she is getting a head start."*

# The 'basic error' cases

- Basic genealogical research is flawed.
- Wrong people are identified; or
- More remote relatives are paid out because closer relatives have not been found by the heir hunter.
- With advertisement, these mistakes would have been found out by other genealogists or the BVD before wrongful payments were made.
- Are council officers trained to understand genealogy and the legal order of entitlement?



# The 'half a job' cases

The £21k case of John David Brown McKenzie was referred by a Norfolk authority to a well known heir hunting company, who located entitled cousins from 3 maternal aunts and uncles of the deceased.

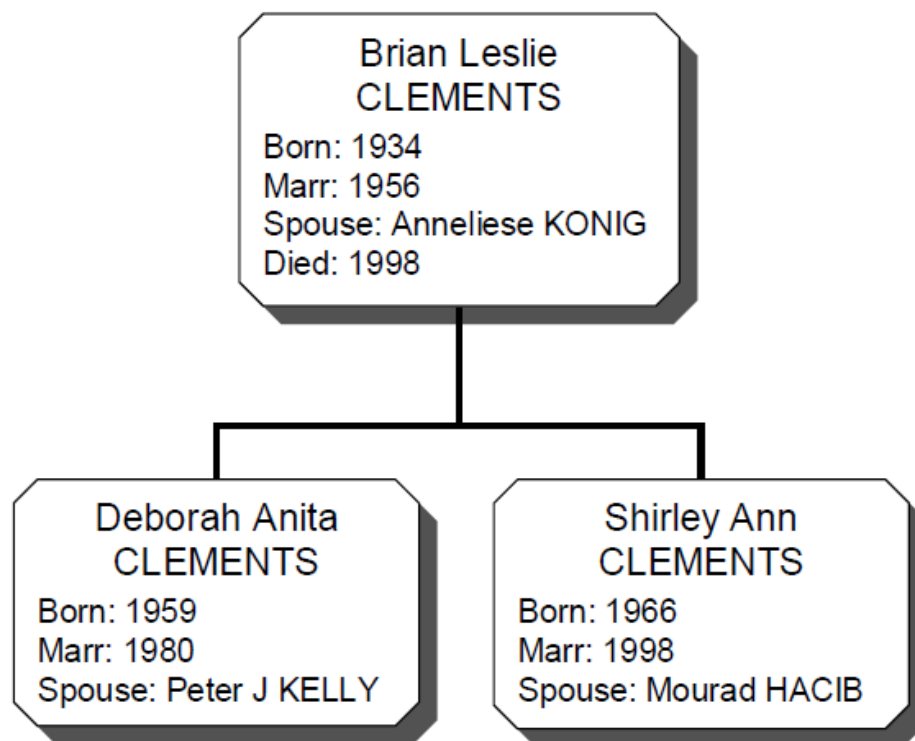
The heir hunters clearly felt they had put in sufficient work to share in the entire estate, for they made no effort to research the paternal side.

Paternal aunt is still alive - easy for a professional genealogist to identify and locate. She has spent over 3 unsuccessful years trying to obtain her rightful share of the estate.



# The 'money for old rope' cases

Brian Clements died in 1998, and his daughter Deborah was the informant.



In 2013 the council referred this case to heir hunters, who contacted one of the daughters. The heir hunter persuaded her to sign successive finder's fee agreements for 25% of the net estate, then 33% of the net estate and then 33% of the gross estate, plus VAT.

£285,000 estate – fee to heir hunter of £95,000 plus VAT (£114,000) for easy work of an hour or two.

Other daughter took legal action successfully for her share of the 40% taken from the estate.

Same heir hunter, different case referred by a council – fee claimed of one third (plus VAT) of £3.4m. Relatives taking legal action.

# The 'deliberate error' cases

- A high value case was passed exclusively by a Lancashire council to an amateur researcher with no relevant qualifications.
- The only entitled relatives descended from 4 aunts and uncles of the deceased.
- Of these 4 stems, 2 were easily descended to entitled cousins.
- **One cousin gave the heir hunter detailed family information about the other two stems.**
- The heir hunter ignored this information and the stems were not investigated.
- The heir hunter acted as Personal Representative by taking a Limited Power of Attorney and distributed the estate to the 'known' relatives, retaining one-third finder's fees for herself.
- The missed relatives have now been told of their loss and are pursuing their claims.

# The offer of a 'no cost' service to local authorities to trace heirs

- Why the heavy marketing to councils of a service which the council doesn't have to pay for?
- Who pays? Protecting the relatives of the deceased person.
- Exclusivity = no competition = high fees.
- If no transparency - who will check the accuracy of research or the charging level?
- Does 'no cost' to the council mean quality is irrelevant? Due diligence on genealogical credentials.

# An unregulated industry – ‘risky business’

- Lack of due diligence in procurement - 111 councils using heir hunters had no adequate or formal selection method that they can report: *“we picked a random company off the internet ... and would use a random company in future if necessary.”*
- No contract terms = lack of protection from overcharging for located next of kin.
- Exclusivity: bypassing market competition = elevated fees.
- Lack of transparency: work not checked for accuracy. Missed beneficiaries, erroneous and fraudulent claims may never to be uncovered; claims against councils if uncovered.

# An echo chamber of misinformation ...

- Misunderstanding of government policy on referrals to the Bona Vacantia Division: the BVD *“expects a Local Authority to have conducted searches with a genealogy company to trace entitled next of kin before referring the case to them”*. Wrong!
- To avoid the risk of holding on to assets for ‘prolonged periods’.
- ‘Relatives will otherwise not find out about their inheritance’.
- Misinterpretation of statutory duties: *“if we do not do this ... we may well be accused of acting ultra vires.”*
  - 71 councils wrongly say their use of heir hunters is in fulfilment of duties under Section 46 of the Public Health Act 1984.

# Perception vs Fact: financial motivations

- 97 councils now say they see using heir hunters as a way to try to avoid or recoup public health funeral costs (despite estates paying anyway, by law).

HOWEVER...

- Only 39 councils were able to report figures showing that a family had taken over funeral arrangements (using estate funds).
- Funeral arrangement costs would have been payable from the deceased's assets regardless.
- NB - where there is no estate, not surprisingly the success rate for families contributing to funeral costs is negligible.

# Best of intentions

- To notify relatives of the death – stated by 32 councils.
- To allow relatives to attend the funeral – stated by 29 councils.
- Ascertain whether the deceased had a funeral choice – stated by 20 councils.
- To seek relatives to pay for a funeral where the deceased had no assets – protection of public purse.

BUT

- BVD advertisement process finds more relatives more quickly.
- Possessions more likely to indicate religion/funeral choice.
- Extremely rare from local authority evidence that estranged relatives bear funeral costs themselves.



# Category 1 'offences': "under the radar"

- Information that is passed to heir hunters by officers with no record, scrutiny or protection.
- Information by the back door – the links between funeral directors, house clearance companies, valuers/estate agents and heir hunters.
- Not picked up by FOIA research. No transparency.
- Audit risk – requires recognition that information about intestacy has a monetary value and public bodies are vulnerable to malpractice.
- *R v Cook* – misconduct in a public office

## Category 2 'offences': "in denial"

- 163 authorities admit to using heir hunters at least occasionally
- Only 10 claimed to have entered into a contract; one had a 'data protection agreement'
- Many wrongly believe no contract exists because no money changes hands.
- 39 councils refused to provide the information under an FOIA request that they had provided to the heir hunter. 'Confidential'!
- No check on accuracy of research

## Category 3 'offences': "trying hard"

- Some councils attempt formal tender process. Does not cure the problem for relatives and thus for authorities
- Exclusive information about an estate means higher fees.
- Exclusive information about an estate means no scrutiny and no checks on accuracy.
- Exclusive information means less speed or urgency to locate all relatives; some may be omitted forever

# Charging for leads

- Birmingham City Council set a starting bid of £200 per intestacy 'lead' (their word).
- 60% of weighting to choose heir hunter was on the fee offered per lead.
- November 2017 – January 2018: 62 referrals made to chosen researcher/heir hunter.
- *I take the view that the Council has acted unlawfully on the following grounds: the Council, as part of its tendering exercise is purporting to charge for the provision of information to genealogical services; such a charge cannot be justified under s 111 of the Local Government Act 1972; and nor can the charge be justified under the general power of competence under s 1 of the Localism Act 2011, as the Council cannot demonstrate it is lawfully charging under s 3 of the 2011 Act or is lawfully trading under s 4 of the 2011 Act.*

Richard Clayton QC

# Matters for councils to consider

- Do councils want to allow heir hunters to present themselves to members of the public as agents of that council, with all the authority that this implies?
- If so, what are the implications for the council and its relationship with heir hunters, with whom the vast majority of councils claim to have no contracts?
- Should councils consider the financial implications to members of the public of setting up a non-competitive process?
- Is this a legal and/or public relations disaster waiting to happen?

# Be prepared: sign up to be consulted

- We have compiled an exhaustive sixty page consultation report using responses from FOIA requests to all councils in England and Wales and specialist legal opinion.
- Some headline statistics and extracts used in today's talk.
- Councils can sign up to obtain a copy of the draft and comment before final version issued later this year.
- Email [rosie.kelly@angliaresearch.co.uk](mailto:rosie.kelly@angliaresearch.co.uk)