

Bank fine for breach of probate rules underlines importance of following procedure

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The case of an international bank fined £25,000 for transferring the Jersey assets of a deceased client to a foreign court without first requesting a Jersey Probate Grant underlines the importance of following the correct procedures, says Ogier Head of Estate Planning, Wills and Probate, Henry Wickham.

Abu Dhabi Commercial Bank was fined £25,000 – plus £2,085 that should have been paid in stamp duty – after admitting one count of "intermeddling", an offence under Article 23 of the Probate (Jersey) Law 1998, relating to the transfer of a deceased person's assets or estate without first having the lawful authority to do so.

In this case, as the deceased client had his accounts in Jersey, and the value of these accounts was over £10,000, a Jersey Grant should have been applied for in the Royal Court of Jersey and then presented to the bank, with instructions as to where the funds were to be transferred, in advance of the money being paid out.

However on this occasion, a bank employee paid the money to a UAE account following a request from a UAE Court without first insisting that the Jersey Grant be obtained.

Henry said: "This is a case where a major bank has had to pay a fine, and suffer the disruption of a criminal prosecution and sustain the associated reputational damage for not following the Jersey probate rules.

"These cases are rare, but they do underline the importance of obtaining the necessary legal authorisation before dealing with the assets of a deceased person.

The Royal Court accepted that there had been no intention by the bank to deprive the heirs of the assets in this case, nor to evade Jersey stamp duty, but an administrative error still resulted in a criminal offence being committed.

"Jersey banks and other financial institutions holding assets on behalf of international clients should take this opportunity to refresh themselves on the requirements of Jersey law on this point. It is important that assets are only released upon the instructions of the person/s named on the Jersey Grant, and not from any other person. The Jersey Grant offers a form of protection to asset holders as it confirms who is legally entitled to administer the Jersey assets, which person has been formally appointed by the Royal Court of Jersey, and indemnifies the asset holder when acting upon that person's instructions".

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