

From:
To: [SLC info](#)
Subject: The Succession (Scotland) Act 1964 request for review as part of your Eleventh Programme
Date: 10 June 2022 16:19:48

Dear Sirs,

After recent discussions with various legal professionals I want to set out the situation in which my brother and I recently found ourselves and ask that the above may be looked at as part of your Eleventh Programme. I believe that the legislation in relation to intestacy needs to be reviewed and amended to more properly reflect life, death, dignity, decency and relationships in the 2020s.

My brother and I have recently been victims of this Act and everyone I have spoken to, the majority of them legal professionals, has agreed that there is something fundamentally wrong with it.

My father Alex died in 2006. His only sibling was a brother James to whom he was close. James married Fay in the 1970's and they had no children. Fay was an only child. James died in 2008. He appeared not to have made a will. Fay grew increasingly reclusive after James's death. She had no younger relatives that we were aware of and my brother and I did what we could to support her. My brother helped her with shopping and things in the house to some extent. She ceased communicating with almost everyone in her last few years. Twice in the past year I had to have the local police visit her house to find out if she was ok. She lived in Fife while I am in Edinburgh and have no transport. Sadly when they last visited on 4th February this year Fay was found dead in her home. As far as my brother and I were aware she had no other living relatives so the police treated me as next of kin, released the house keys to me and I set about visiting the house to gain as much information as I could in order to make arrangements and to do the right thing particularly in memory of my uncle. He was very fond of my brother and I and until his death sent us each a cheque at Christmas. After his death Fay continued to do that saying "it's what Jim would have wanted".

My brother and I found the house to resemble a time capsule from when we used to visit as a family back in the 70' and 80's. The decor and ornaments were the same. James's clothes were all still in the house. It was also full of paperwork; bills, statements, dividends, correspondence -piles and piles of paper in every room. We were hoping to find a will but after 3 days searching my brother and I found no trace of one. Worse still there seemed no evidence of my uncle leaving a will and it looked very much as if his estate had never been dealt with or confirmation sought when he died. I gathered what meaningful paperwork I was able to find and registered the death and took care of what essentials I could. I handed the paperwork to and took advice from Nigel Cooke solicitor at Mackenzie's in Kirkcaldy. He explained that in these circumstances the estate might pass to the Q and LTR and to the Crown as my brother and I were not Fay's blood relatives but that further investigations would first be made into the possibility of blood relatives by the Ultimus Haeres Unit. Having trawled very carefully through several of Fay's address books I was confident she had no other living relatives, blood or otherwise with whom she had any contact. Had I found any possible names I would have of course notified them of Fay's death and advised them of the funeral arrangements.

So my brother and I took time to arrange the best funeral we could and were the only 2 people to attend. I did all this mainly to honour my uncle and fathers' memories. I paid nearly £4000 for the funeral in March last year.

This is where the hurtful, insensitive, clumsy and inhumane laws came into play. The Ultimus Haeres unit made extensive enquiries, seemingly deliberately ignoring my brother and I in the process although they were well aware of our existence. They knocked on the doors of neighbours in the street to ask about relatives yet failed to even approach my brother or I. Then after some months I was told by our solicitor that a blood relative had been found! - a descendant of a pre-deceasing cousin of Fay's no less! He was then appointed executor dative of the estate. Obviously my brother and I have never heard of him, he knew nothing about Fay's circumstances and asked through his solicitor if my brother and I could help by providing further information such as title deeds for the the property, James's estate etc. Everything I found had been passed to my solicitor who could pass it on to the executor dative's solicitor but I could not believe that this was the proper process. The estate seemed to be a mess and would take a total stranger even longer than it would have taken my brother and I to sort out. I had to wait indefinitely for reimbursement of the funeral expenses. That is bad but certainly not my main gripe. It is just wrong that the house and money which Fay was left with after the death of my uncle should now go down a completely different branch of the family tree simply because we were James's blood relatives and not Fay's. The money for the house would have come from my uncle's father, from the Westwater family. Fay's family had no capital. My brother and I are now the only surviving members of that line of the Westwater family tree. Neither of us have children. Ironically there were many of our family photos and even family tree information listing my brother and I and relating to my uncle in the house. That will now go to people to whom it will mean nothing or more likely to landfill. It has gone to landfill as the house was gutted before sale. It is difficult enough to come to terms with the fact that you are the end of the line without having to watch part of

that line being snuffed out by strangers. It is hard to convey the hurt and outrage this has caused me. I realise nothing can be done about our current situation and I assure you it is nothing to do with the money or the property. It feels morally wrong and wrong on a very human level. It feels like an insult to my uncle, my father and grandfather. I realise the situation has arisen through both his and Fay's failure to make wills but that shouldn't make this painful process inevitable. Of course I understand that when there appears to be nobody around with any official connection to the deceased there must be some kind of process or things would grind to a complete halt but surely not when there are relatives on hand, who feature in the family trees in the home of the deceased, who have done all the right things like arranging the funeral from their own pocket, registering the death, searching the house for information, who the police and other authorities were willing to regard as next of kin. Even finding a will in someone else's favour would have been infinitely preferable to this.

Although I work with legal professionals I am a lay person and am obviously seeing this from that viewpoint but surely the law currently should be more in tune with common sense and decency. I found the conduct of the Ultimus Haeres Unit to be particularly callous and insensitive. My brother and I felt like imposters when we were completely ignored during their assiduous search for a remote blood relative. I understand that they must take those steps but even if they had gone through the motions of a short discussion with my brother or myself it would have felt less hurtful and inhumane.

As a coda to the above, my solicitor was advised in January this year by the solicitor acting for the blood relative that they hoped to have confirmation soon and that I would then be reimbursed for the funeral expenses. I heard nothing more until March when I glanced at properties for sale in the street where my aunt (and uncle) had lived and was horrified to see their house for sale with a closing date which had already passed and featuring extensive photographs of the property which had been completely cleared of everything. The blood relatives are aware of the existence of my brother and I, they know we were close to our uncle if not to our aunt and they did not see fit even to let us know that the property was about to be cleared in case there was anything we would like to keep beyond the few photos we found at the time of my aunt's death and funeral. And what took the biscuit was the fact that I had still not been paid for the funeral, a year later, and I was told there was nothing I could do but wait until they chose to pay.. Payment was finally forthcoming on 22nd March this year. I understand that the law is not interested in emotions, feelings and sentiment but I am quite disgusted with this whole process. Both the complete bypassing of my brother and I at every step of the way (apart from allowing us to get on with actually doing the right thing when our aunt died, including finding out where our aunt's parents were buried and spreading some of her ashes there!!) and the failure of the blood relative to show us, the ones who took that responsibility and actually cared about my aunt, the most basic level of common decency. My uncle and his brother, my father, would never have treated people this way. It feels like their memories are being sullied first by a completely outdated and unfit for purpose piece of legislation then again by strangers who don't know any of the family and have no connection to it other than through the thin blood line.

It appears that either way my brother and I would have had no claim on the estate with priority going either first to a blood relative, regardless of how remote, or secondly to the Crown.

I have looked at your website to see if this would have been better submitted on a form but was unable to find one. If that would be more helpful please direct me to the appropriate form and I will be very happy to complete it and to supply further information.

I realise this is a somewhat laboured and disorganised account but would be very grateful if the issues raised could be taken into consideration when you are looking at areas for your Eleventh Programme.

I would be grateful if you would confirm receipt of this email.

Yours faithfully,
Sheila Westwater also on behalf of my brother Alan Westwater