



Avoiding unwanted legacies

Gerry Morrison & Sarah Greendale explain how to avoid giving & receiving unwanted gifts

Many charities launch successful legacy giving programmes. The key to success lies in good communication with their supporters and awareness of how to avoid the potential legal pitfalls. It is important that appeal literature is accurate and not misleading and charities should always encourage their supporters to have their wills drafted by a qualified solicitor, who is preferably a member of STEP (the Society of Trust and Estate Practitioners).

It is important that charities plan ahead because legacies can come out of the blue even to organisations that do not count the wealthy among their members or supporters. Charities that do not have an active legacy giving programme should take this into

consideration if contemplating a merger or a change in legal structure and should seek legal advice to protect future legacy income.

In terms of the legal terminology and the types of gift a person may leave to charity, a pecuniary legacy is a fixed sum of money, ie “I give the sum of £5,000 to *name of charity*”. A person may also leave a residuary gift to charity that is a percentage of their net estate. An individual may also leave a specific gift to charity that is a gift of a specific item, eg property, jewellery etc. It is important that charities embarking upon a legacy giving programme encourage their supporters to seek legal advice with regard to the types of gift most suitable for them in terms of their estates and also the charity.

Legacies in the headlines

High profile cases have highlighted what can happen when legacies to charities go wrong. The widely publicised case of *RSPCA v Gill* and the dispute between Dr Gill and the RSPCA over the validity of her mother's will leaving the residue of her estate to the charity is an example of how charities can find themselves on the receiving end of adverse publicity when families dispute the validity of legacies.

Charities risk adverse press and adverse costs orders if it is held that they have acted unreasonably in pursuing a case through the courts where the validity of a legacy is contested by family members.

Adverse press, even if it is inaccurate or unfair, can have a significant impact upon a charity's future legacy income and ability to successfully fundraise from the public.

Onerous gifts

Gifts of specific items to charities may, in some circumstances be appropriate, particularly if discussed between the supporter and the charity first, eg if the charity is a museum and an individual is proposing to leave an item of particular interest to the charity which would enhance its collection and help to fulfil its educational, scientific or cultural mission. However, someone may also leave a specific gift to a charity that causes problems, and although gifts of land and buildings may sound attractive due to the potential high value, caution should be taken about encouraging supporters to leave specific gifts without speaking to the charity first particularly if such assets could be received in a dilapidated state or where the capital may not be immediately realised. Supporters should be encouraged to discuss their plans or thoughts with the charity.

Charities need to take care in relation to disclaiming onerous gifts and should liaise with the Charity Commission where necessary. Similarly, charities should be cautious if pressure is put upon them from a moral perspective to disclaim a gift and should also liaise with the Charity Commission before doing this.

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Terminology

It is important that charities use the correct terminology in appeal literature and advise their supporters to seek legal advice when drafting their wills to ensure that their wishes are fulfilled. It is important that the wording in a supporter's will is clear to ensure that the gift goes to their chosen recipient charity or charities. Charities may wish to recommend that supporters have their will or codicil drafted by a solicitor who is a member of STEP to ensure that their adviser is suitably qualified.

We would not recommend charities provide sample wording to supporters in their appeal literature because it might encourage do-it-yourself wills which run the risk of the intended gift (or the whole will) being invalid or expensive costs and bad publicity of rectifying the mistakes if families dispute the validity.

It is also important that charities encourage their supporters to use the correct charity name and registered charity number to ensure the charity is clearly identified on the face of the will. Some charities are affiliated to national charities where local branches of the charity are separate legal entities and registered charities in their own right. Sometimes it is unclear in wills whether a legacy is being left to the national or local branch of a charity and this can lead to disputes between the charities themselves.

Taxing matters

Charities launching legacy giving programmes may wish to familiarise themselves with the potential inheritance tax incentives for supporters to leave legacies to charities in their wills. A gift to a qualifying charity is exempt from inheritance tax and the inheritance tax payable by a charitable donor's estate is reduced. In appeal literature charities should be conscious that the charity inheritance tax exemption appeals to many potential donors, but ensure that the explanation of the potential benefits is not misleading. Potential donors should be encouraged to seek professional advice at all times on inheritance tax, but especially if there is a mixture of charitable and non-charitable beneficiaries in their wills.

The Finance Act 2012 introduced a lower rate of inheritance tax for testators who leave 10% or more of their net estate to charity. The lower rate of inheritance tax is 36% instead of 40%. This lower rate applies to testators who died on or after 6 April 2012.

10% might sound like a lot to some potential donors. On the face of it, they might think that for a £500,000 estate a donation of £50,000 is required, but it is only 10% of their net estate. So if they have their nil rate band available, (which is currently £325,000 and will be until 2017–18), the threshold might be lower than they thought, and this could encourage supporters to give to their chosen charity to get the benefit of the rules.

The Finance Act sets out the conditions that must be met for an estate to qualify for the lower rate of inheritance tax. The lower rate can apply only if part of the estate is chargeable to inheritance tax at a rate other than 0%, that is, where the 40% rate would

otherwise apply to the value of the net estate in excess of the nil rate band, after deducting exemptions and reliefs.

This tax incentive may encourage some people to make charitable legacies and supporters may also be encouraged to increase existing charitable legacies.

The rules could also lead to post-death variations. It is possible to obtain the lower rate of inheritance tax as a result of retrospective treatment under the Inheritance Tax Act 1984 where a beneficiary under the will or Intestacy Rules, makes a gift to a charity by a deed of variation within two years after the testator's death.

This tax incentive also presents opportunities for charities to raise awareness amongst their supporters and to promote the advantages of leaving a gift to charity by will and for testators to review any existing gifts in their current wills. However, charities must ensure that the wording in any of their appeal literature is not misleading. At first glance, when you hear that a 10% gift to charity means a 10% reduction in inheritance tax, this can look to a layperson as if you can always leave the gift to charity without having any adverse effect on the other beneficiaries. Potential donors should always be encouraged to seek professional advice as the rules are complex and to ensure that their wishes are implemented properly to benefit both themselves and the charity.

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