
Article written by Neil Long for Codicil Magazine—Winter 2011

When charities benefit under a will, they want the job done efficiently and cost-effectively, while solicitors want to do a good job for their clients. On the face of it, we all want the same thing – but sadly, it doesn't always work out that way.

In this article, I shall discuss some of the issues that solicitors come across 'on the front line' when acting with and for charities. The intention is to cover some common areas of tension and to make some helpful suggestions as to how we might work together.

These, then, are my 'top ten' points from practice.

Administration of estates

The common theme uniting the first three points is that of goodwill and good public relations. Charities, rightly, are held in high regard by the public, and any interaction between charities and individuals is an opportunity for the charity to at least maintain, and hopefully enhance, its reputation with individuals and families. In that spirit:

1. Where your charity receives a legacy or share of residue, is there an opportunity to name a facility, service or building after your benefactor?

This creates enormous goodwill, at relatively little cost. Obviously, not all bequests are sufficient to build a hospital wing, but even more modest receipts might justify a token of remembrance.

A plaque in an animal charity's reception area, or a bench in the garden of a cancer treatment centre makes it look as if the gift really counts. In one case dealt with by a colleague, a bequest was used by a charity

to provide an ambulance which, once commissioned, bore the name of the benefactor. The family were delighted, so much that other members of the family included that particular charity in their wills.

The risk is that sometimes, quite large sums of money disappear into the charities coffers without much in the way of recognition. The right sort of acknowledgment can work wonders, even in cases where the family are upset that they've been passed over in favour of a charity. Think whether this is something that applies to your charity, could you do more?

2. The issue of the disposal of personal belongings is sometimes a vexed one, especially where a charity is a residual beneficiary.

Raising your game

Clearing, sorting and disposing of household items, clothing and so on, can be a time consuming burden for the family. Families can find it a particularly irksome task if they won't benefit under the will. Those charities with shops in their trading operations might consider offering to help with the clearance of the house, sharing some of the burden with the family, and this can also generate further income for the charity as the items are sold.

3. Allied to the previous point, where the charity is a residual beneficiary, anguish and ill-will can be avoided if the charity takes a sensible and proportionate view on allowing the family to retain some of the deceased's personal belongings.

Thousands of pounds of legal costs have been wasted on negotiating this kind of thing, most of which could easily be avoided by parties taking a sensible view from the outset. The same principle applies to how a charity residuary beneficiary deals with the family's wishes for funeral/mourning expenses and the cost of a wake. Experience shows that an unyielding, inflexible approach causes ill-will, again, this can be eliminated if a more reasoned view is taken.

Moving on to other aspects of estate administration, there are a couple of points to make in relation to how charities manage the relationship they have with the executors and their solicitors.

4. Larger charities may wish to consider preparing pro forma instructions setting out their expectations of how the estate will be managed, especially where they are a residuary beneficiary.

Such protocol might cover:

- The frequency with which the charity expects to receive status reports.

You may wish to specify that the executors should make a progress report to you, say, monthly, however great or small progress has been. Or, perhaps, when certain events occur - such as: on completion of the schedule of assets and liabilities; on making the application for the grant; once the cash assets are collected in; on the sale of the house; at the first distribution and once inheritance tax clearance has been obtained;

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- The degree of consultation expected in respect of major decisions. Is your charity happy to rely on the executors' decisions, or do you want to see supporting documents? Do you want to use certain estate agents for the sale of the house? Do all offers for the house need to be reported? What do you expect to see when considering offers for the house - just the estate agents' recommendations, or a second opinion from a surveyor?
- Do you want to set down any ground rules over the disposal of jewellery and household items? Is there a de minimis value below which you're happy for the executors to get on with it? Can the executors use their discretion to dispose of items to other charities if you are unable to use them? A case in point was where a major charity was unable to take computers and office furniture (of modest cash value), but they were happy for the executors to give it to a charity that was just starting up and desperately needed the equipment.
- How do you want to be paid? Set out your bank details if you want funds transferred electronically.
- Do you require interim administration accounts to be prepared? Do you have particular requirements as to how they are presented?

There are, no doubt, a number of issues that could be covered in the protocol. You may be able to add to the list given. The aim is clarity. The main point is that charities should feel able to set out what they expect, which makes the lives of the executors and the legacy officer much more straightforward.

5. **Solicitors' Costs (Part I)**

The Law Society urges professional executors to give residuary beneficiaries information about the costs likely to be

incurred in dealing with the matter.

Solicitors should provide this as a matter of course. You may find it helpful to add it to your internal checklist and, if you don't get the information at the beginning of the administration, ask for it.

Once you've got the costs information, and perhaps a copy of the engagement letter, read it. If you don't like the hourly rate, say so at the beginning of the matter. If you're unhappy with the level of fee-earner, or the extent of the work to be undertaken, ask about it. The point here is to get things on to a proper footing at the beginning. It's much easier to act at the outset to prevent problems arising than it is to put things right later. Be bold, speak out and start things off in the right way.

Solicitors Costs (Part II)

Some solicitors have reported a trend of charity residuary beneficiaries to challenge their costs, almost as matter of course. The issue has been raised on the Solicitors for the Elderly discussion forum, and there have been some fairly trenchant responses.

Overcharging is wrong and where it occurs, charities should pursue the issue relentlessly. But where full costs information has been given at the beginning, and quotes or estimates have been adhered to, it seems wrong for solicitors to be drawn into lengthy defences about their legitimate, authorised costs. Clever charities know the long game, and know that they risk harming their reputations if they adopt this as a strategy.

6. If you think the administration is starting to go wrong, and the case doesn't seem to be proceeding smoothly, act early.

Under Rule 2.05 of the Solicitors' Code of Conduct, firms are obliged to have proper complaints handling systems in place, but it's better not to let it get out of hand. If things seem to be slipping, pick up the

phone and speak to the lawyer handling the case. If he or she can't resolve it, or doesn't take your call, speak to the matter partner – s/he should be identified in the engagement letter. Tell them why you're not happy and make sensible arrangements for how the matter should be taken forward.

If that fails, get hold of the complaints partner and ask her or him for a meeting. Meets are by far the most productive way of resolving these types of issues – people respond much better in a face-to-face environment, and it avoids the need for endless rounds of letters that don't take the matter forward.

Estate disputes

A couple of issues seem to crop up time and again. So mentioning these seems relevant.

7. If there are a number of charities in the same position in a dispute, then try and agree a single representative from among your number.

The lawyers then have a single point of contact, and the necessary dialogue between the charities themselves can be carried on by the charities, rather than the lawyers. This saves time, money and hassle.

8. **Mediate, negotiate, compromise and settle.**

While charity trustees are obliged to maximise the value of the charity's assets. They also have wide powers to compromise on claims and settle disputes. These powers can be found in s15(f) Trustee Act 1925 and, where necessary (perhaps in more complex cases), guidance can be sought from the Charity Commission in accordance with s29 Charities Act 1993.

The authority for making ex-gratia payments originally came out of a case in *Re Snowden* (1970), but is now embodied in legislation at s27 Charities Act 1993.

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The Charity Commission gives some very helpful guidance on these issues – see forms CC3 and CC7, which are available on its website.

9. Where the testator makes it clear to you during his or her lifetime that s/he wants to benefit your charity, take the time to ensure they've talked to their family about it.

One of the biggest sources of friction is where family members are 'passed over' in favour of charities. If the family are aware of the testator's choice, much dissent can be avoided. We are lucky in having complete testamentary freedom in the UK, but as we all know from recent cases, litigation can result where the family's expectations are disappointed.

If the testator is absolutely committed to leaving their entire estate to charity, you have a part to play in making sure the gift succeeds, and if that means getting the family on board at an early stage, do it.

General

These items don't fall into any of the preceding categories, but are areas which can cause headaches. Avoid them.

10. When drafting wills, best practice dictates that a charity's registered number should be recited, so as to avoid any mistakes.

It helps enormously if the main number is made prominent in digital and printed material, and if your charity is registered directly with HMRC, make your 'X' number easy to find.

11. Some testators want to give gifts for specific purposes. But making gifts too specific can cause problems.

The risk is that such gifts might fail and, while the doctrine of cy-près might save it, it should not be relied on. The operation of ss 15 – 18 Charities Act 2006 broadens the scope of when such gifts might be applied for charitable purposes, but it is undesirable to have to rely on that.

Where testators wish to achieve certain outcomes, it is preferable to express the gift in general terms in the will, perhaps coupled with a letter of wishes (which is not binding) requesting the charity to direct the funds for the purpose the testator had in mind. While the terms of the gift are a matter for the testator, the will drafter has a role to play in framing the wording, and the charity's printed material can help make it clear how testators should go about benefitting your charity, guiding them where they feel the need to make the gift to achieve a particular outcome. It's probably a good idea to ask a solicitor to read over your digital and online material, and maybe they'll even be prepared to comment on this aspect for you!

So there you have it. It seems to have turned over into eleven 'top tips'; but doubtless there could have been even more, space permitting.

Concluding Comments

Taking a broad view of the top 10 (or 11!), what themes emerge? Well, when you're speaking to potential donors, encourage them to discuss the gift with their families, to avoid tensions later on. Make sure the gift is framed widely, and that any material you have in the public domain encourages that. A prudent question is half of wisdom; when dealing with the solicitors in the administration, ask prudent questions, be practical, open, efficient and direct. Deal with incipient problems as they arise; don't let things get out of hand. Think ahead, and think about the family – meet them halfway, but use your statutory powers to achieve the best outcome.

I would like to start a debate about how we can improve our handlings of charitable gifts, and would welcome all comments and suggestions about how we, solicitors and charities alike, deal with the issues raised.

Feel free to email me on neil.long@fsilaw.com and editorial permission notwithstanding, I shall respond in the next issue of Codicil.

About the author



Neil Long is a solicitor in the Contentious Trusts and Probate Team. The Team act for charities, families, settlors, trustees, beneficiaries, other lawyers and intermediaries all concerned with substantial trust and estate disputes in the UK or with international elements.

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