

Leaving a legacy to charity

Including a gift to charity in a will is a great way to make a difference and there are also tax benefits.

Legacies are an important source of income for the charity and voluntary sector. £2.04 billion in legacy income was received in 2012/13. The most recent data from Legacy Foresight (an organisation that compiles data from 76 member charities) suggests that such legacy income is increasing (although year-on-year growth has slowed, in their opinion because of a slowdown in the rate of growth of the UK housing market).

However, legacy income is still only 11% of total income from individuals and 5% of overall income to the sector. As solicitors and will writers we can play a role in changing this. A study carried out by the Cabinet Office Behavioural Insights Team, published in 2013, found that when will writers mentioned the possibility of a leaving a legacy to charity, the percentage who did rose from 4.9% to 10.8%. This increased to 15.4% when people were asked if there are any causes they are passionate about. Asking people at the right moment whether they want to leave a legacy is important, as is the way in which the question is asked based on knowledge of the options available.

Types of gift

A cash gift, or pecuniary legacy, is a straightforward option. But the effects of inflation could mean the ultimate value becomes less than intended. This problem can be dealt with by updating a will regularly, or linking a cash legacy with inflation.

Another possibility is a gift of individual possessions, known as a specific legacy. This might be property, shares, rights or a valuable possession. It is also worth providing for what happens if the possession is sold during the client's lifetime, otherwise the gift might fail completely.

If a client would like a charity to benefit more significantly, an alternative option might be a residuary legacy. This involves giving all or a proportion of an estate to charity after expenses and any legacies have been paid.

Finally, for more significant estates, the client may prefer to establish their own charity. This can happen either during lifetime, with the principal gift to that charity happening on death, or otherwise the charity is created in the Will itself. Clients can be concerned about whether existing charities would use the funds they receive in the way they would wish, or clients may have particular causes they wish to provide for. A bespoke charity can address these points.

Drafting the Will

It is important that a charity is properly identified in the drafting of the legacy. The full name, address and registration number



Pictured: Chris Rowse

should be included, and this information is often available from the Charity Commission for charities in England and Wales (or Scottish or Northern Irish regulators as appropriate). Many charities have a helpful section on their website with template wording for legacies.

- The UK Civil Society Almanac 2015, NCVO
- Legacy Foresight Bulletin (issue 2) 2015
- The UK Civil Society Almanac 2015, NCVO 'Applying behavioural insights to charitable giving' (28 May 2013), Cabinet Office

A legacy can be given for specific activities of the charity, subject to an expression of wishes or binding obligations. The risk of including a binding obligation is that the legacy could fail if the charity isn't able to use the legacy for the purpose. A letter setting out the client's wishes provides more flexibility and is often a better option. The trustees of the recipient charity should take the wishes into account, but are not bound legally to follow them.

You should also consider what happens if the charity beneficiary ceases to exist. If this is the result of a 'relevant charity merger' under the Charities Act 2011, and the merger is entered in the Charity Commission's register of charity mergers, the legacy will usually take effect as a gift to the successor charity. However, a legacy may fail if the wording provides that the charity must be in existence at the date of the testator's death.

If a legacy intended for a charity fails, the property will become part of the deceased's residuary estate. To avoid this it is advisable to discuss with clients whether they want to include power for executors to choose a suitable alternative charity if the intended charity no longer exists.

Tax benefits

There is no Inheritance Tax (IHT) on gifts under a will to charities or community amateur sports clubs (CASCs). Legacies to overseas charities are mostly not exempt from IHT. But gifts to an organisation within



Pictured: Andrew Godfrey

the EU do now qualify, if the organisation would qualify for charitable status if it was based in the UK. It may also be possible to find a UK charity which will use the legacy to carry out activities abroad in the way the testator wishes (UK charities can of course provide benefit overseas, including to foreign charities). Gifts of foreign property to a UK charity will need careful consideration which is beyond the scope of this article.

The value of a gift to a charity or CASC will be deducted from the estate before IHT is calculated. In some cases this may bring the total estate value below the taxable threshold, which is £325,000 for 2015/16. This may also be used in conjunction with the increased nil rate band as proposed in the recent Summer Budget.

Where an individual leaves more than 10% of his or her net taxable estate to charity, the estate will benefit from a 36% rate of IHT, which is a 10% reduction from the usual rate of 40%.

Charities are not liable to capital gains tax (CGT). If the executors sell assets a CGT liability may arise against the executors. This can be avoided by appropriating the assets to a beneficiary charity, and the executors will then sell as bare trustees on behalf of the charity. If the asset is land it will be necessary to comply with provisions in the Charities Act 2011 concerning the disposal of charity land. Care will be needed regarding a potential SDLT charge arising when the estate still has liabilities at the time of appropriating land.

Final tip

It's a good idea to encourage clients to let a charity know that they should benefit from a legacy under a will, as this helps charities to plan ahead.

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