

The Inheritance (Provision for Family and Dependents) Act 1975 - the impact on charity legacies

The Inheritance (Provision for Family and Dependents) Act 1975 permits individuals connected with a deceased person including certain relatives, and others, who were maintained or might have expected to be maintained by that person while they were living, to make a claim to the court for 'reasonable financial provision'.

This can potentially affect the legacy income of charities, and there have been a number of recently decided court cases that have illustrated how such a claim can adversely affect the legacy income of charities.

In July 2015, the Court of Appeal for example handed down its judgment in the matter of [*lott v Mitsou* \[2015\] EWCA Civ 797](#) and awarded a sum of money to the estranged and specifically disinherited daughter of the deceased.

This was at the expense of three national animal charities and despite the deceased authorising her executors to actively defend any claim that may be brought by her daughter. The decision did not of itself create new legal principles but it did illustrate some of the difficulties that charities may experience in defending such a claim.

So what is a charitable beneficiary to do in such circumstances where the testator's wishes are abundantly clear? There is obviously a fine line to tread in terms of protecting a legacy due to a charity, expending charitable funds on litigation, and protecting a charity's reputation in circumstances where the charity is preferred to a family member. How far should a charity go in litigating to protect its interests?

One of the difficulties is that claims under the Inheritance (Provision for Family and Dependents) Act 1975 are discretionary and very fact specific. The result is that it is difficult to predict with any accuracy what the Court will do.

The needs of beneficiaries

In an Inheritance Act claim the Court has to weigh up and consider all the factors set out in section 3 of the Act. One of the factors the Court must consider is (section 3(1)(c)) 'the financial resources and needs of any beneficiaries'.

The Court will take into account and weigh up any needs-based defences put forward by beneficiaries. A charity beneficiary may file evidence of need, but the charities in the *lott* case chose not to do so.

A generally neutral stance by a charity beneficiary in the proceedings can reduce the risk of an adverse costs order (payment by the charity of the claimant's legal costs of taking the proceedings) and there is occasionally the possibility of the charity recovering their own legal costs from the estate.

The kind of case that a charity could make

A charity beneficiary putting forward evidence of 'needs' is in any event a difficult concept. In the *lott* case, the Court of Appeal commented that the charities did not make any case that their resources and needs should be taken into account. The Court therefore assumed that any money received from this estate would be a windfall.

The Court also pointed out that the charities had no expectation of any benefit from the Will as the deceased had no previous connection with the charities.

So while there is no particular rule that says charities can't put forward a 'needs-based' defence, practically it may turn out to be counter-productive.

The size of the charity may be significant. A very small charity may be in such a financial position that the legacy in question would make a big difference to it. However, if a larger charity were to present evidence of multi-million pound legacy income it would be unlikely to gain any sympathy from either the Court or the public.

The claimant in the *lott* case was successful due to a 'perfect storm' of dire financial circumstances and no 'needs-based' defence to contend with. In other cases the charity's position as a beneficiary of the Will might be more material.

What can charities do in connection with a Will?

- try and ensure that testators keep a letter of wishes with their will, to explain why the charity has been included and to emphasise any connection. Maintain links with the testator
- consider the position of beneficiaries who may well have a needs-based defence, i.e. those who are impecunious, disabled or minor children. Sometimes a discretionary trust, where trustees make the appropriate distributions at the appropriate time, can be a good compromise
- encourage life-time giving

What should charities consider when the testator dies and a claim is made?

- the possible advantages of filing evidence of 'need'. This is unlikely to be beneficial
- any connection between the charity and the testator and whether this is likely to have any influence
- the position of the claimant, i.e. their eligibility to bring the claim in the first place and, assuming that that threshold is met, any likely award
- the merits of mediating or least making offers to settle. In the *lott* case, a pre-trial offer made by the charities allowed them to recover their trial costs. An aggressive defence is unlikely to assist and it is always best to try and compromise, taking into account the level of the compromise and the costs involved in pursuing a claim to trial
- how a charity may in any event fund litigation and the impact on its cashflow

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