



Stone King's Legacy Team Lunchtime Update: Common Issues and Pitfalls Faced by Legacy Officers

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Paul Sutton, Partner
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Who we are

- Stone King LLP – national leaders for charity law in the UK
- The Charity Legacy Team
 - Charity
 - Dispute Resolution and Litigation
 - Trusts and Estates
 - International and Cross-Border Succession
- Speaking today
 - Chairing: Jonathan Burchfield – Partner, Charity and Social Enterprise Team
 - Contentious issues: Paul Sutton – Partner and Head of the Dispute Resolution and Litigation Team
 - Non-contentious issues: Charlotte Macdonald – Associate Solicitor, International and Cross-Border Succession Team

Common Contentious Issues and Pitfalls

Paul Sutton

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Common Problems

1. Inaction
2. Lack of Communication
3. Difficulty getting information
4. Failure to Distribute
5. Incompetence/Negligence
6. Fees

Executor not administering the estate properly

Complaint

Solicitor's letter

Has the Executor Intermeddled?

- If no -will he/she renounce?
- If yes or refuses to renounce consider:-
 - a) citation to take out a grant or
 - b) application to the court

Court Remedies

Application under s116 Senior Courts Act 1981

Application for substitution/removal under s 50 Administration of Justice Act 1985

Case Examples

What if you don't need to get rid of the executor?

e.g. because estate has been substantially administered

Solicitor's correspondence
Application under Part 64 CPR
Courts Powers

Incompetence or Negligence

How do claims arise?

Does your charity have a claim in negligence?

Has the Executor been guilty of a breach of trust?

Remedy- damages

Possible complaints to the Legal Ombudsman or SRA

Fees

- a) Is remuneration authorised by the Will?
- b) By the Trustee Act 2000?
- c) Have all beneficiaries agreed?
- d) Application to court to determine entitlement

Challenging Fees

Request breakdown

Complain to Personal Representative

Rights in relation to solicitors fees

- Assessment
- Complaint to Legal Ombudsman?

Common Non-Contentious Issues and Pitfalls

Charlotte Macdonald

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How should charities deal with chattels

- Definition of 'personal chattels' – all tangible movable property save for:
 - Money or securities for money (Krugerrands)
 - Business property
 - Investment property
- If you have been left the entire estate should you allow family members to access chattels?
 - Legal position
 - Reputational issues
 - Practical approach – allow family members items with no value, give them first refusal on other items.
- Pets – technically a personal chattel (unless a working animal)
 - What to do with the pet – are there any conditional gifts associated with receiving the pet?

Has your charity been appointed as an executor

- Firstly can your charity act as executor?
 - Yes, if it has ‘trust corporation status’.
 - Yes, if it is possible for the charity to pass a resolution to authorise a person to act (note it is preferable to name the position of the individual, rather than the individual themselves, in case they leave the charity).
 - If a charitable company – can you appoint an attorney and apply for letters of administration with will annexed?
- If yes, should the charity agree to be the executor?
 - Conflict of interest, if not the sole beneficiary?
 - Does the charity have the required expertise?
 - Should the charity instruct a firm of solicitors to act on their behalf?
 - Does the value of the legacy left to the charity mean the time and effort of acting as an executor is worthwhile?

Gifts to your Charity

- Has your charity been named correctly in the will
 - Are there provisions in the will to save the gift (probably not if it is a homemade will, likely in a professional will).
 - Has your charity merged with another – and if so, has this been registered with the Charity Commission?
 - Royal Sign Manual procedure (no trusts in the gift).
- Can your charity use the gift as specified?
 - Charity Commission procedure, cy-pres (where there is a trust element to the gift).
 - Royal Sign Manual procedure (no trusts in the gift).

Foreign elements

- Difficulty in foreign courts/lawyers recognising the charity
- Practical difficulties – different culture/type of law
- Can the gift take place under the foreign will (eg essentially invalid)
 - Article 83(4) EU 650/2012 - will this save the gift?
- Tax – Is there a charitable exemption?
 - Will the foreign country recognise the UK tax exemption
- Brexit – changes to charitable exemption not automatically applied
 - Hein Persche v Finanzamt Lüdenscheid
 - Domicile needs to be correct – if not can have significant tax problems

What to look out of in estate accounts

- Good estate accounts should:
 - Be accurate
 - Clearly list costs
 - Be understandable
 - Assets at date of death
 - Liabilities at date of death
 - Costs post death
 - Assets in post death
- Check that charity exemptions have been claimed.
- Check that assets have been appropriated where necessary to reduce CGT

Any Questions

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