



Charity Finance

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How to assess the risk of contesting a legacy

There are risks for trustees who get involved with legacy disputes, explains Jonathan Fowles, barrister at Serle Court.

The involvement of charities in inheritance disputes made the headlines back in the spring when three well-known animal welfare charities took Mrs Ilott's provision from the estate of her estranged mother to the Supreme Court in *Ilott v Blue Cross*. The charities succeeded in their appeal, and the Supreme Court noted the importance of legacy income to the charities sector.

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Now it is widely reported that three animal welfare charities – Dogs Trust, World Animal Protection, Friends of the Animals – along with Heart Research UK are contesting the entitlement of Richard Guest to the estate of his late partner, Tracy Leaning, which is worth around £340,000. In a 2007 will, Leaning had provided for her savings, her house and her belongings to go to the charities. It is said that in later years she met Guest, but in 2014 was diagnosed with cancer. Following her

diagnosis, Leaning apparently executed a new will, in which she left her belongings, her house and £60,000 in cash to Guest. She died in 2015.

The charities are disputing the validity of the second will – in effect, claiming that the 2007 will is her last will and testament, governing the distribution of her estate. If and when it reaches court, such a dispute is known as a probate claim, and there are a number of bases on which the will may be found to be invalid. There could have been a failure to comply with a technical, formal requirement, such as the witnessing of the deceased's signature, or the deceased may, for example, have lacked mental capacity to make the will or not have truly known and approved of its contents.

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Trustees may justifiably be concerned about the reputational risk which their charity will incur if it makes a claim to inheritance in the courts. The decision of the charities in the most recent case to pursue their claim, rejecting an offer of £60,000 from Guest, has received some implicitly negative coverage, in keeping with the robust, if not harsh, recent treatment of the sector in the

national press. There is also the risk that trustees may be liable to pay the charity's and the other side's legal costs if the case fails and it ought not to have been brought.

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As is reflected in the Charity Commission's guidance on charities and litigation (CC38), both the law and the Commission regard the use of charity funds in risky litigation as being in principle to be avoided if reasonably possible. Probate claims in particular are often inherently risky since they tend to involve substantial disputes about facts, for example the deceased's state or condition of mind and interaction with others, which will turn on a judge's view of documentary and live evidence.

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But it is important that trustees are not unduly squeamish in inheritance disputes where they have a strong claim and have received advice to that effect. Obviously, trustees must act in the best interests of the charity, and the Commission's guidance acknowledges that this extends not only to the safeguarding of charity assets (eg by not risking them unduly in court), but also to the recovery of assets from third parties, as when seeking to recover a legacy under a will. A trustee cannot roll over in the face of a dispute or accept a token offer from the other party, even where

court proceedings would cause distress within a family. There are occasions when trustees can seek the sanction of the Charity Commission or the court to act in recognition of a moral obligation by waiving the charity's strict legal entitlement, but such cases are unusual.

Having explored alternatives such as negotiation and mediation, trustees ought to consider protecting themselves from personal liability for costs by seeking the Charity Commission's advice. The risk of retrospective claims against trustees for breach of charitable trust in making, accepting or refusing settlements offers can also be avoided by obtaining the Charity Commission's approval.



For the charity trustee, therefore, the decision of whether and how to conduct a legacy dispute is not an easy one. But the risks can

be managed with legal advice, adherence to Charity Commission guidance, and where appropriate, Commission sanction or advice.