

Museum Development Yorkshire



How To...develop a legacy giving programme

A practical guide prepared for Museum Development Yorkshire by Development Partners

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How To...develop a legacy giving programme

A practical guide prepared for Museum Development Yorkshire by Development Partners

1. Introduction and brief

Development Partners was commissioned by Museum Development Yorkshire (MDY) to undertake a programme of activity to develop legacy giving for museums and cultural/heritage attractions in the region. The programme included mentoring a number of regional organisations; two workshops on legacy giving, organised in association with Rollits solicitors; and this Guide.

Michael Turnpenny, MDY Museum Development Manager said:

‘Here at MDY we believe that museums need to find new ways of making money so that they become more resilient organisations. The development of fundraising from legacies is important for small and medium sized museums for whom legacies tend to be random and unexpected. Many organisations receive legacies passively – they are a pleasant surprise when they arrive! This Guide aims to equip organisations to actively encourage supporters to remember the organisation in their will, by putting in place structures and communications to stimulate and effectively manage legacies. We believe that more proactive management of legacy programmes should increase the likelihood of supporters remembering the cultural organisations they support in their wills, and generate vital funds from this area of fundraising, currently under-developed in our sector.’

2. Context: Background to legacy giving in the UK

According to research, just 30% of the population of the UK have written a will, and only around 5-7% of people leave a legacy to a charity¹. Of these donations, a very small proportion is given to arts/cultural charities.

Legacy giving makes up 5.6% of the charitable sector’s total income, and only 1% of total income for arts charities. However, 60% of charity ‘stakeholders’ (i.e. people who have some kind of connection with a charity) said they would consider leaving a legacy if asked in the right way.¹

¹ www.philanthropyuk.org/quarterly/articles/legacy-giving-golden-goose-or-lame-duck

As organisations with networks of committed supporters, there is unquestionable potential for arts and cultural organisations to explore and actively develop this area of fundraising.

One cultural organisation which has successfully built this area of fundraising is the National Trust, now 6th in the UK 'league' of charities for legacy income and generating £50m in 2012/2013. Around 18,000 outstanding pledges are anticipated to raise over £700m in future income. *See Section Three for more detail of NT legacy programme and outcomes.*

So, how should legacy giving sit with other fundraising activities? How can cultural organisations start to develop this area of fundraising? What impact will it have on communications and messages? What is the right way to ask? This guide aims to help answer these and other practical questions.

3. Are you fit to fundraise?

Fundraising fitness

The fundraising marketplace is extremely competitive and donors make choices about who and what to support based on their confidence in the organisation seeking their funds as well as any particular project or activity to be funded. Thus the organisation needs to be 'fundraising fit' to give confidence to potential supporters that there is a clear vision and the ability to deliver against plans and promises. An organisation, however small or large, needs to have:

- Strong leadership – an involved and proactive Board
- Clear mission, vision, aims and priorities shared and understood across the organisation (Trustees, staff and volunteers)
- A well-articulated case for why the organisation is worthy of support
- A realistic and robust business plan
- A good track record of financial management
- Fundraising expertise and resources
- Established communications channels

Development of legacy giving should be an integral and integrated part of an organisation's fundraising strategy, and therefore all the above requirements apply. Particularly vital to the development of a legacy programme are:

- The organisation's mission and core values must be clear and evident in all communications. It is these that will inspire potential legacy donors.

- Staff or volunteer capacity (time and appropriate levels of expertise and experience) is essential to provide a contact point for potential legators, keep track of the organisation's contact with each potential donor and, ideally, to be able to develop and sustain long-term, personal relationships with potential legacy donors. A legacy programme is more about developing high-quality relationships than resorting to mass communications
- Ability to identify key potential donors by maintaining an efficient system to track and manage the organisation's contact with individuals (visits, donations, attendance at events, correspondence). Ideally, this would be a dedicated CRM (Customer Relationship Management) database system, but smaller organisations may need to make do with Excel spreadsheets or even a manual system
- The financial stability to confidently elicit and receive legacies - they should not be actively sought unless a sustainable future (5-10 years) is realistic.

These all need to be in place before embarking on an active legacy fundraising programme.

4. Legacies: a special sort of individual giving?

In many respects, legacy fundraising is no different to any other form of fundraising. The organisation needs to:

- clarify the case for support/message
- identify and reach out to potential supporters and donors
- keep them informed and engaged in the organisation
- cultivate the relationship and, crucially
- make the right ask at the right time.

However, some aspects are unique to legacy fundraising: appreciation and management of these is vital:

- Motivation to give
- Timescale
- Sensitivity

4.1 Motivation to give

Legacy giving relies upon the potential donor understanding and sharing the mission of an organisation, and feeling confident that it resonates with their own personal values. Leaving a gift to an organisation is a way of creating a personal memorial, however small or large, which reflects what was important to the donor. It is a way, in death, of leaving a mark and making a difference.

Awareness of this motivation, which is stimulated by an emotional response to, and affinity with, an organisation's core values and mission, should inform all communications encouraging legacy giving.

Legacy giving is likely to be a further step in a donor's relationship with an organisation: the final phase of a person's donation 'journey', but one which enables the benefit of the relationship to continue beyond death. A legacy can make an enduring impact on the organisation and its future audiences through the work it enables to take place.

Legacy giving by one individual can influence others to leave legacies, including their friends and relatives, further 'stretching' the legacy's impact.

For some people whose lifetime disposable income is limited, a legacy is an ideal way to support an organisation they have cared about. It should not be assumed that those supporters who cannot donate much when alive, will not do so at the end of their lives.

4.2 Timescale

Legacy income is erratic and unpredictable. Legacies can have a very long lead time (decades) from the point of a pledge being made, to it being realised as income. They can come apparently 'out of the blue' (although there is usually a very good reason, once explored, to explain the gift). Until there is a 'critical mass' of legacy donations generated, and a pattern established over a number of years (as now with the National Trust after more than 10 years' experience), it is impossible for an organisation new to legacy giving to estimate the volume, or timescales, of likely income from legacy donations.

This should not be an excuse to delay developing a legacy-giving programme: return on investment can be extremely high – legacy-giving has the best return of all the National Trust's fundraising activities.

4.3 Sensitivity

Most communications around legacies will be through online and printed communications, but their effectiveness will depend on the relationship formed with the donor through many different encounters.

Some people may want to discuss their interest in leaving a legacy: others will not. Organisations need to be prepared for these conversations so that they are not uncomfortable for either party. If the dialogue is handled with honesty and transparency, which acknowledges the unique nature of this final donation, it should avoid awkwardness.

Those who are known to have pledged a legacy should be treated as major donors, and relationships with them maintained and developed. They are part of the organisation's closest 'supporter family' and need to be kept informed and engaged. The only exception to this is if they express a wish NOT to be contacted.

Specific legacy communications need to be carefully managed to avoid insensitive timing, such as sending out legacy letters close to significant birthdays, or writing when someone's spouse has recently died.

5. Developing a legacy policy

5.1 What would legacies fund?

In order to communicate clearly and honestly to prospective legacy donors, the organisation needs a legacy policy outlining how any legacies received would be used. Such clarity should increase the likelihood of receiving legacies which reflect organisational priorities, and reduce the likelihood of receiving inappropriate or unwanted legacies (particularly of objects).

The unpredictable timescale of legacies means that legacy giving campaigns should not be harnessed to specific current or planned projects or capital campaigns, which could be out of date or completed by the time the legacy is received.

For many organisations for whom revenue funding is a constant concern, it is very tempting to put off the future and focus on immediate needs. However, to motivate donors, legacies should be channelled to support enduring organisational values, not to prop up day-to-day operational revenue shortfall. An organisation needs to focus on making itself run efficiently without legacies, so that they can provide the 'icing on the cake' and future security. This will make the organisation more likely to be sustainable in the longer term, and therefore more attractive as a proposition for all support and donations, including legacies.

5.2 A legacy policy

A legacy policy is unique to each organisation, reflecting organisational needs, aspirations, vision and mission. It should be approved by Trustees and communicated widely as a public document. The legacy policy should determine:

- a) the activities for which legacies will be encouraged
- b) how the organisation will manage any unrestricted legacies received

The policy will be clearly communicated to prospective legacy donors, with the intention of increasing the likelihood of receiving legacies which reflect the organisation's priorities.

It is to the organisation's benefit to encourage unrestricted income whenever possible. However, this may not be attractive to some potential legators, whose affinity with the organisation is specific to an area of activity. By creating ring-fenced, but broadly defined, funds legators can direct their gift appropriately. For example, an organisation might create:

A designated fund supporting activities which educate and inspire young people

A designated fund supporting conservation of buildings and collections

An expendable endowment fund securing a long term future for the organisation by building an invested fund which will generate annual income in perpetuity

The policy should also describe how unrestricted legacies would be allocated between the funds, eg:

25% young people fund

25% conservation fund

50% endowment fund

By defining and communicating the organisation's preferred destination of legacy gifts, the risk of receiving unwanted or unnecessarily restrictive legacies should be reduced. However, it is important to include in the Policy how such legacies would be dealt with by, for example including the terms on which the organisation will accept assets (objects/property) including the option to convert to funds if appropriate.

The Policy may also include how legators will be acknowledged (unless anonymity is requested). This acknowledgement should tie-in with the organisation's strategy for acknowledging all donors.

In drawing up the legacy policy, consideration needs to be given to how to deal with possible challenging legacy situations, such as contested legacies where the family or executors are unhappy with the legacy, and wish to contest it. Such situations need dealing with sensitively but assertively. Even with 'straightforward' legacies, it is desirable to develop a positive relationship with the family of a legacy donor, involving them, as appropriate, and keeping them in touch with the organisation which meant so much to their deceased relative. There are numerous examples of other family members leaving legacies to organisations their parents/siblings/children have supported. In such situations, legal advice should be sought to ensure any negotiations find a mutually satisfactory conclusion. *These areas are explored further in Section Three.*

6. Finding and cultivating potential legacy donors

Typically, arts and cultural organisations have established networks of people who support the organisation's work to varying degrees. Supporters including Friends, members, volunteers, donors and trustees have all chosen to enter an enhanced relationship with the organisation, showing that they consider the work of the organisation to be meaningful, and matters to them.

These are the groups of individuals with whom the organisation already has a relationship, and the constituency with whom there is greatest likelihood of eliciting a legacy.

These groups should be the focus of the first phase of a legacy-giving programme.

Typically, more women than men leave legacies to charities (although often they will leave legacies to organisations that were important to a pre-deceased husband/partner). Most legacy donors have had a direct link with the organisation. Anecdotally, and perhaps understandably, those who don't have families appear to be more likely to leave to charities.

6.1 Research and understand prospects

It is vital to research and understand legacy prospects, and the nature of their contact with the organisation, in order to be able to present the most compelling and inspiring case to them for remembering the organisation in their will. By understanding that contact, it is possible to identify and prioritise those who have the closest relationship with an organisation, remembering the partners and families of those who have already died.

It is important to consider 'wealth profiling' the database using specialist companies such as Prospecting for Gold who, from information in the public domain, profile individuals' wealth and assets, thus giving an indication of potential. Organisations are often surprised at the results of these searches, which help them prioritise all their donor cultivation activities.

6.2 When to 'make the ask'

The answer to this question is simple: when a prospect is ready. For most organisations this will not involve a one-to-one conversation. Rather, the prospect will have been made aware of the possibility of leaving a legacy to the organisation through communications of many sorts; will have gained confidence in the organisation through their contact with it; and will be inspired by its vision for the future. All of this will have been enabled through a variety of communications as detailed below.

The timing of their decision to leave a legacy cannot be forced, but it can be encouraged through tailored communications and prompts, such as reports on legacies previously received.

The organisation needs to be positioned to answer questions and hold individual discussions to convert interest into actual pledges.

7. Communications - how to build relationships with legacy prospects

7.1 Messages

Most cultural organisations are so busy communicating short term messages with a commercial imperative (eg: events, activities, exhibitions) that the core values of the organisation can be overlooked, or assumed to be understood by the audience.

However, these core values are the messages which resonate most with potential legacy donors.

It is therefore vital to find opportunities to be explicit about these enduring values and the organisation's driving mission. These messages are not only important in bespoke legacy communications, but across other communications that can help build respect and trust in the organisation.

- Consider examples of organisations (from top ten league of legacy donations received) which convey and reinforce simple and powerful core messages across all their communications, and legacy communications in particular including:
 - Cancer Research UK: 'Lets beat cancer sooner'
 - RNLI: 'The Charity that saves lives at sea'/ 'Your legacy is our lifeline'
 - RSPCA: 'Protecting and standing up for animals'/ 'Help us care for all animals in the future, every single day'
 - British Heart Foundation: 'Fight for every heartbeat'
 - National Trust: 'For ever, for everyone'
 - NSPCC: 'protecting vulnerable children'/ 'to end cruelty to children in the UK'

The messages emphasise an appeal for help, a thank you, or (most likely) a combination of the two.

- For smaller local organisations this sharp focus and clarity of core values/mission needs to be spelt out simply and powerfully, with the emphasis on **why the organisation is important** for its local/specific community/area of interest or specialism e.g.:
 - Looking after the heritage of Xtown for future generations
 - Keeping theatre alive for the people of ???
 - Preserving and presentingfor
- This core value message needs to be underpinned by other key messages which might have been lost or not highlighted sufficiently to date, including:
 - This is a charity and relies on donations
 - The priorities are (education, art, a fair chance for all etc)
 - The vision is ...
 - The mission is ...
 - This is what the organisation does (brief examples of the scope and deliverables)
 - This is a robust, sustainable organisation – ie it will still be around in 5/10 years/the future
 - It is trustworthy – reputation and integrity
 - It can provide a fitting memorial for the donor
 - A legacy will deliver benefits for future generations/posterity
 - A legacy will deliver Inheritance Tax advantages to the beneficiaries of the donor's estate
- The message needs to stress the benefits to the donor (in terms of being a fitting memorial and leaving a mark on the world) which they will want to hear. It is an emotional message, but one which as always needs a strong call to action to conclude it. The call to action is to: 'remember XXX in your will and make x happen ...' (whatever your key legacy message is...)

- Describe the legacy policy, highlighting the types of legacy that are most helpful to an organisation
- All communications need to include legal details of the organisation: registered charity number; company number; contact details
- Any legacy communication should stress the importance of having professional advice in writing a will, to avoid any future complications caused by possible legal shortcomings of well-intentioned, but inaccurate or invalid 'amateur' wills.

7.2 Communications platforms

Cultural organisations have a range of communications platforms, print and digital, which should be harnessed, in different ways and to different degrees for different audience groups, in support of a legacy programme.

The legacy message should be included as part of the portfolio of funding opportunities in any general overview of 'support the museum'.

There should also be legacy specific information (in print and online) which can elaborate on some of the more detailed aspects, especially regarding technical legalities of legacy giving.

The legacy message should be presented to prospects via their own tailored communications:

- Trustees
 - Board papers – so they understand the strategy, and action plan
 - Annual reports
- Supporters: Friends/Members/Volunteers
 - Briefings as part of regular meetings/get-togethers
 - newsletters (e- and print, if still produced)
 - online in members' areas etc
- Those who are interested in the organisation, but more distant
 - Enewsletter lists
 - Magazines
 - Online web pages
- General visitors
 - General leaflets – include legacies as part of an overall 'support' message, a very special way of supporting the organisation...introduce the idea, and direct those interested to the website/to other dedicated print for more detail
 - Online – again part of overall support message with a link to dedicated pages for more info.
- Dedicated legacy information
 - Online – dedicated 'Remember us in your will' pages
 - Dedicated leaflets

7.3 Who can best deliver the message?

When being presented in person (at a Friends' or supporters' meeting, or online film clip) the legacy message should be delivered by someone (or people representing different aspects of the organisation) who the potential legacy donors will trust, respect, and be inspired by. Possible advocates include:

- Chair or Director of the organisation
- Trustee
- an artist/curator/historian/educationalist/collector
- someone who has themselves committed to leaving a legacy and is prepared to explain why
- someone who has benefitted from facilities/programme enabled by a legacy
- an appropriate celebrity as high profile advocate

7.4 How and when is it best to launch a legacy programme?

There are external 'hooks' for the launching of legacy campaigns, such as 'Make a Will' week, or other national campaigns which can be used as a springboard. Alternatively, there may be elements of the organisation's programme which highlight appropriately the legacy message, eg an anniversary (been around for x years, help us continue for another x); or a major development; or the completion of something that has been enabled by a legacy.

It is not essential to launch a legacy programme with a bang! It can be more appropriate to introduce information about leaving a legacy in a quiet way, gradually ensuring that the messages are included in all core and bespoke communications.

7.5 Developing relationships with potential legacy donors

It is important to develop action plans for each group and person being targeted with the legacy message, in order to give a structure and schedule to the legacy programme, and in order to ensure that legacy activity fits and complements other fundraising communications. These should include:

- Understanding the relationship they have with the organisation.
 - What aspect (if any in particular) of the organisation is important to them?
 - How long have they been involved/active in supporting the organisation
 - How do they engage with the organisation? eg do they:
 - Visit frequently
 - Attend events – if so which ones, how often, over how long a period?
 - Volunteer – if so in what capacity, what area of activity?
 - How do you communicate with them – what vehicles do you use?
 - Enewsletter
 - Print newsletter – do they prefer this, or simply don't have email?
 - Do they follow you on Twitter?

- Understanding of what would be appropriate engagements with them to enable the conversation around legacies to take place
- Developing an action plan of opportunities and actions over next 12 months, highlighting which can be used for each person or group, including
 - Enewsletter and digital comms
 - Printed publicity inc newsletters; magazines; leaflets
 - Events and activities including
 - Exhibition openings; previews
 - Special events
 - Friends or supporters' event

It is also important to have action plans for those who have made known a commitment/pledge to leave a legacy to the organisation. These communications are likely to be very private and discreet – but the donor may still want some kind of relationship with organization. They should be (if they wish) added to the organisation's major donors' communications and engagement list, and invited to private views, etc, as appropriate.

8. Donations given in memory

The making of donations in memory of loved ones is a practice which appeals to many people. This often takes the form of a wish to donate a bench: but you can have too many benches!

Although these donations are clearly not legacies, they are commemorative of a deceased person, and so should be seen as part of the wider 'family' of legacy communications.

It is advisable to have a clear process for encouraging and receiving 'in memoriam' donations which is consistent and compatible with the legacy programme. Again, the opportunity to be able to give an enduring memorial that reflects a person's interests and values, can be appealing to relatives and friends. Sometimes these loved ones continue to support the organisation themselves.

This opportunity should be included in communications around legacy giving.

9. The legal perspective and 'health' warnings

The notes below highlight some key aspects of developing a legacy programme, from a legal perspective. See Section 3 of this guide for more detail of these issues in the notes from presentations by Rollits and the National Trust at the *'Legacy Giving: Getting It Right'* workshops, organised by Museums Development Yorkshire in association with Rollits.

9.1 Types of Legacy

There are different ways in which people can provide for a legacy within their will. The main ones are:

A pecuniary legacy: A fixed sum of money cited in the will. This can, of course, reduce in real value over time, but the value of such a legacy can be retained by linking it directly to the Retail Price Index.

A residuary legacy: All or a percentage of the residue of the estate after all other bequests to friends and family have been made and all costs and taxes deducted. This has the advantage of keeping track with inflation as it is not a fixed sum.

A specific gift: This could be a gift of building, stock, shares or valuable personal property which could be sold. It could be artefacts or collections (which may or may not be relevant or of interest to the recipient organisation).

9.2 When legacies go wrong

- Unwanted gifts

It is very important to encourage the legacies you want, and discourage those you don't. As described in more detail in Section 3, this means being clear about what the organisation will need to sustain it in the future. Ideally, you will want unrestricted, cash legacies – if a legacy is too restrictive you may find yourselves in a position of either refusing the gift (thus incurring reputational risk) or accepting something which could have a negative impact on the organisation and its sustainability.

- Conflict and challenge

There have been a number of high profile examples of cases where legacies left to charitable organisations have been the cause of conflict with family members, a number of which are highlighted in Section 3.

Any conflict should be anticipated and avoided by discussion and negotiation at the earliest opportunity, to try and find an accommodation which satisfies all parties. Conflict over contested legacies can lead

to significant reputational damage for an organisation, no matter how justified the case, and it is better to negotiate to an acceptable, even if lesser, settlement rather than fight to the 'bitter' end and win the legacy 'battle' but lose the reputational 'war'. Always take professional advice.

9.3 Encourage having wills professionally written

There are basic requirements of a will, which need to be fulfilled in order for the will to be legal:

- It must be in writing
- It must be made by a person over 18 years old
- It must be made by a person who has sound mind, memory and understanding, and a clear intention that it should operate after that person's death
- It must not be made as a result of undue or improper influence
- It must be signed by the testator and be witnessed by two witnesses

Over and above these requirements, a will needs to be clear and robust: cases of unclear wills can lead to conflict, contested wills, or even render a will illegal. See above, and case studies discussed in Section 3.

For these reasons it is always advisable to encourage potential legacy donors to draw up their will with a solicitor, and not encourage any 'home-made' versions of wills by providing pro forma forms or codicils.

9.4 The role of solicitors

The hope is often expressed that solicitors might be able to suggest gifts to specific charities when advising clients on writing their wills.

Firstly, this rarely happens, and clients usually have a very clear idea before they write their will, of the charities they want to remember. This is why it is vital to raise awareness of legacy donations to those people who are closest to, and strongest supporters of, an organisation.

Moreover, such a recommendation would be wholly inappropriate for a solicitor, and even contravene professional guidelines, or invalidate a will, should it be contested.

That said, it is appropriate and advisable to raise awareness with the legal profession, of the charitable status of cultural organisations, especially where there is a strong local presence in a community.

10. Measuring/evaluating the legacy programme

Because legacy fundraising is a long term process, it is important to keep reviewing and evaluating the programme's achievements against objectives. This is important in order to set the expectations of trustees, as part of the overall fundraising strategy.

Evaluation is not, particularly in the early days, just about legacies received, but about the processes set up in order to trigger gifts. You should measure number of enquiries, pledges, relationships being cultivated and overall awareness of the organisation as a potential beneficiary. Armed with this information you can tweak activity to make the programme more effective.

Always evaluate how and why each legacy received has come about. Was it a complete surprise, or the result of a nurtured relationship? As time goes by and the legacy programme impacts on more people, the results should show an increase in the legacies received because of activity directly generated by the organisation. Then, legacies may become easier to predict and produce a significant return on the organisation's investment.

11 Acknowledgements

The *Legacy Giving: Getting It Right* workshops were organised by Museums Development Yorkshire in association with Rollits, one of Yorkshire's leading law firms with offices in York and Hull. Rollits clients range from major PLCs to small private companies, together with charitable organisations and institutions and social enterprises, including many within the cultural sector. Particular thanks to:

- Pat Coyle, Director of Client Relations
- Gerry Morrison, Head of Charitable and Social Enterprise team; specialises in charity law.
- Andrew Digwood, Partner, specialist in dispute resolution
- Sarah Greendale, Solicitor, specialising in charities and social enterprise

For more information visit www.rollits.co.uk or contact Gerry.Morrison@rollits.com.

Legacy Giving: Getting It Right workshops presentations:

- Thanks to Victoria Bullock, Fundraising Consultant for the National Trust, Yorkshire and North East for her presentation on the National Trust and its legacy programme over the last 10 years.
- York Museums Trust. Thanks to Janet Barnes, Chief Executive, who gave a personal view of legacy support, particularly for York City Art Gallery.

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Section Two: 'Quick Start' How To develop a legacy giving programme

	Characteristics of Legacy Fundraising	Impacts on Legacy Fundraising process. Action required. Need to:
<i>Section 1: 3</i> General fundraising fitness: Are you ready to fundraise?	Do you have in place: <ul style="list-style-type: none"> • Strong leadership/active Board • Clear priorities/case for support • Realistic business plans • Financial track record • Fundraising expertise/ resource • Comms for fundraising 	Review these areas (honestly) and revise and strengthen as required.
<i>Section 1: 4</i> Legacies: Motivation to give	Prospective legacy donor needs to trust the organisation, to feel shared CORE VALUES, and have confidence that the org will maintain and act on those values in the future. Are organisation's core values clear and evident in all comms?	<ul style="list-style-type: none"> • Reaffirm core values in overt manner to inspire potential donor's confidence and trust in long term plans/ aspirations. • Ensure that all comms, give/embody same message. • Ensure organisation's charity status and need for support is evident on all comms.
Timescale	Legacies have indeterminate lead time - can be a long lead time...or not. Can't know/plan precisely. Slow (but potentially high) return on investment.	<ul style="list-style-type: none"> • Ring-fence time/ resource for legacy devt. • Structure resource: need consistency of records, personnel, message, long term. • Manage expectations of Trustees
<i>Section 1: 5</i> Develop a Legacy Policy	Legacy Policy should cover how the organisation will manage funds given as legacies, to give confidence to those considering leaving a legacy that their money will be well managed, and well used.	Legacy Policy should give guidelines, clarifying <ul style="list-style-type: none"> • What legacies will fund. • Encourage unrestricted donations • How funds will be managed • How to acknowledge donors • How to deal with challenging issues
<i>Section 1: 6</i> Finding/ nurturing potential legacy donors	Legacy message appeals to those for whom the organisation and its values/ work, <u>really</u> matter. Clarify best ways to communicate with them (as groups/as individuals) People who make known their intention to leave a legacy need keeping engaged with the organisation	<ul style="list-style-type: none"> • Research and understand the prospects who are closest to your organisation inc: Friends/Members/volunteers/supporters • Develop action plans for each group/ind. • If possible get people to declare their receptiveness to the legacy message • Have an informed, member of staff to personally deal with enquiries • Treat those who pledge as major donors
<i>Section 1: 7</i> Comms Message(s)	Legacy message needs to be evident and consistent in all general comms platforms, as well as legacy specific. Potential for insensitivity or offence.	<ul style="list-style-type: none"> • Stress core values, and why the organisation is important • Underpin core message with other key messages (which might have been lost)
Comms Platforms	Legacy comms need to be integral in overall fundraising strategy/action plan Social media are inappropriate for the sensitivity and complexity (or audience) of specific legacy messages; but create an environment of awareness.	Have dedicated legacy information in different comms: <ul style="list-style-type: none"> ▪ Digital: Online, web pages; newsletters ▪ Print – leaflets; magazines; ▪ Annual reports Target leaflet to those predisposed to give, but not as 'cold' communication to general visitors.
<i>Section 1: 9</i> <i>Section 3</i> Legal	Legacies need to conform to precise legal requirements to be valid and avoid challenge and conflict.	Encourage the legacies you want (and discourage those you don't want). Encourage having wills professionally written.
<i>Section 1: 10</i> Measuring/ evaluating the campaign	Legacy fundraising is a long term process, so it is important to keep reviewing and evaluating the fundraising campaign against objectives and achievements including: number of enquiries, pledges, relationships being cultivated.	<ul style="list-style-type: none"> • Have regular structured log of activity/impacts as go along. • Track enquiries, pledges, responses to comms campaigns/general. • Measure and evaluate legacies left (and why: surprise/left field/ nurtured. • Need to have regular process for review • Tweak activity reflecting review

Section Three: Presentations from *Legacy Giving: Getting It Right* workshops

Presentation by Victoria Bullock, Fundraising Consultant for National Trust Yorkshire and North East



Me and my role

Victoria Bullock, Fundraising Consultant at the National Trust. I work alongside a Grants Consultant and we cover the full region.



Fundraise for key projects in the region. (The National Trust receives no government funding and is entirely funded by visitors, members, fundraising, grants and tenants).

Fundraising is the second largest income stream after membership and raises £70million each year. In Yorkshire and the North East we have raised over £600,000 for our work in the region in 2013/14. This does not include legacy income!



Provide advice, training and support to properties and General Managers on fundraising, gift and donor management.

Run events for donors, prospects and legacy pledgers.

Manage and advise on key high value donor relationships in the region



A little bit about National Trust legacies



We're **sixth** in UK for legacy income



Legacy income was **£50m** in 2012/13 with 908 new notifications



Average value per bequest is £43,000

Approx **18,000 pledges** worth over **£700m** in future income



Only 30% of the population have a Will and only 7% of these leave a charitable legacy



Where do legacies fit in the NT?

- Fundraised income second largest income stream
- 2012/13 - £99m - £50m from legacies
- ROI higher than any other income stream
- Legacies go direct into our 'project pot' – not overheads
- 1/5 to 1/3 of National Trust project funding is from untied legacies



Legacy review

We are 5th in income but 17th in notifications

In 10 years our notifications have fallen by 10%

Our notifications can track the increase and decrease in promotional spend 7 years previously.

92% of our pledgers are members but only 0.58% of members are pledgers.

Learnings:

- *Our Legators of the future are already having a relationship with the National Trust*
- *Investment in promotion has a direct impact on notifications*



Use of Legacy Funds



Untied legacies go direct into the 'project pot' and are a major source for **general fund** projects.

30 year old promise not to spend on overheads (eg wages)

Specified legacies go into an appropriate 'Defined Purpose Fund'. These can be national or regional.



Themed pots:

- Neptune – coastline
- Outdoors
- Gardens
- Specific properties





Whole Trust legacy development priorities



2013/14 budget is **£42m**

Aspirational target - £100m per annum

We will continue to do what we do now, just better with improved targeting and messaging



Free Wills Month in October

Provide information for making wills



National Trust

Our team

- A team of 5 at the moment split into Legacy Administration and Legacy Development.
- Following our review we have invested in an extra post to promote legacies.
- Three trained solicitors in head office (inc. Head of Legacies) – essentially to trouble shoot as all disputes/legal issues are dealt with by an external firm of solicitors to avoid conflict of interest
- A Fundraising Consultant in each region to work directly with properties and local pledgers.



Regional legacy notifications

	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13
Northern Ireland	7	4	5	9	8	13
Wales	13	10	8	17	13	6
South West	48	45	64	47	38	41
London & South East	42	37	37	33	28	29
North West	38	35	31	23	22	27
Midlands	20	23	23	19	16	10
East of England	4	2	6	10	13	13
Yorkshire & North East	21	26	15	16	13	13



Regional legacy income

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Northern Ireland	£8,508	£2,103,935	£175,411	£146,060	£730,461	£182,920
Wales	£625,460	£1,033,728	£182,722	£93,273	£127,201	£1,081,013
South West	£3,089,736	£6,307,403	£1,188,350	£3,952,578	£2,255,372	£1,303,419
London & South East	£1,621,347	£1,142,844	£952,537	£1,959,289	£2,107,292	£1,178,444
North West	£953,722	£1,471,113	£1,383,053	£1,405,850	£1,756,135	£2,389,376
Midlands	£540,128	£2,216,136	£2,086,329	£1,514,032	£1,903,728	£473,342
East of England	£6,023	£379,474	£246,381	£3,500	£131,418	£316,810
Yorkshire & North East	£305,605	£937,255	£416,938	£1,113,972	£460,176	£735,919



Legacy advice for fundraisers

It's fine to speak with supporters about legacies – especially if they ask first!

The National Trust can act as **executor** if we are main beneficiary.

General fund legacies **do not** pay overheads.

Supporters can specify where the legacy is use. Steer away from current projects & priorities – **think long term**

Never push a supporter. Pressure = lost legacy

Tell Whole Trust team. We like to say thank you and record any wishes you agree so we can comply.

Charitable legacies are free of inheritance tax. They can't be Gift Aided.



Promoting legacies in Yorkshire and the North East



Strong storytelling: share stories of the impact of legacies in the region and encourage properties to do the same.

Use effective cross messaging – ensuring fundraising and legacy messages are visible at property and on web pages

"If you would like to find out how you can support our work by volunteering, making a donation or leaving a legacy contact us on xxx."



Talk to supporters about legacies as and when appropriate. Working with warm groups – major donors, centres and associations and volunteers. Asking donors who can't give now if they've considered legacy giving



Promoting legacies in Yorkshire and the North East



Develop new approaches to our legacy events - look for local, low cost activity, e.g. supporter reception before exhibition opening

Supporting enquiry visits and developing local stewardship relationships where appropriate



Demonstrate the long term need for funding for the organisation, 'For ever, For everyone'.

Develop events for cultivation and stewardship at key properties – this year we are holding events at:

- Fountains Abbey and Studley Royal
- The Farne Islands
- Wallington



What have legacies helped us to achieve this year?



- An endowment has been gifted for the conservation and maintenance of Lindisfarne Castle. One of the biggest costs to the National Trust is ongoing maintenance of the historic buildings that we own so a legacy of this type is a considerable support to our properties.
- Three legacies left to the NT through 'Neptune' have helped us to fund a project to In a nutshell it is a 3 month breeding site with 2% of the UK's little terns. Protecting the site from dogs, theft etc is labour intensive and requires a rota of 4 people manning for 24 hours over the 3 months. This is a pure conservation project to enabling the breeding to continue.

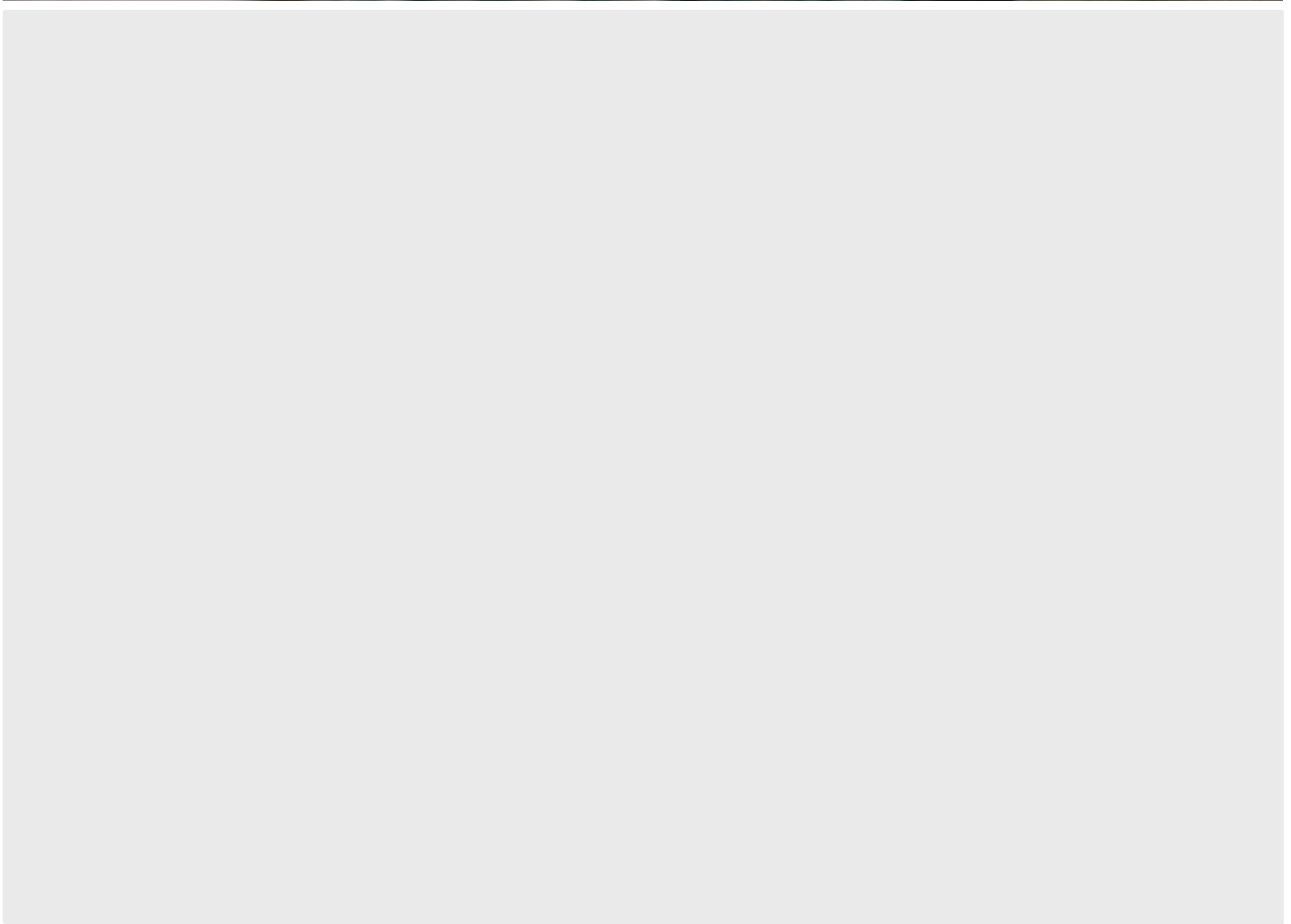


- A legacy left to protect the countryside will be used to part fund our appeal to rebuild a Victorian Swing Bridge at Allen Banks in Hexham that was washed away by flooding in 2013. We have fundraised nearly £30,000 and will be match funding the money raised with a legacy left to the National Trust to protect the enjoyment of the countryside.



Key points

- Active promotion and relationship building is key – a leaflet is not enough.
- It doesn't stop with a pledge – people renew their wills all the time so stewardship of your pledgers is vital.
- Keep cultivation and stewardship separate as the messages are very different.
- It can be a sensitive subject but handled with care legacies can be a significant income stream for your organisation.
- Independent legal support is vital to retain a conciliatory approach and to protect your brand.
- Your future Legators are your visitors, members, supporters.
- Legacy development is a long game and requires investment. The average lead time is 7 years from expression of interest to a notification.



Legacy Giving: Getting It Right

There are some important issues which Charities need to be aware of in relation to legacy income. Set out below are some points for Charities to consider:-

Points to consider in Appeal Literature

There is no need for charities to provide sample wording for donors wishing to leave legacies in their Wills. Sample wording might encourage “DIY” Wills which run the risk of the intended gift (or the whole Will) being invalid and extra expense incurred (and/or bad publicity) for rectifying the mistakes.

It is important that the charity provides the following information to ensure that when a Will is drafted, the legacy is unambiguous and that the charity is easily identifiable:-

- Full charity name
- Charity address
- Registered charity number

Inheritance Tax (IHT) and Charitable Gifts

A gift to a qualifying charity is exempt from IHT. The charity receives the entirety of the gift and the IHT amount payable by the Estate is reduced. Although reducing the IHT paid, a gift to charity affects the amount received by other non-charitable Beneficiaries.

It is important to make supporters aware of the tax benefits of bequeathing money to charity and to consider this when preparing a Will.

The Finance Act 2012 introduced a lower rate of inheritance tax for testators who leave 10% or more of their net estate to charity. The lower rate of inheritance tax is 36% instead of 40%. This lower rate applies to testators who died on or after 6 April 2012.

10% might sound like a lot to some potential donors. On the face of it, they might think that for a £500,000 estate a donation of £50,000 is required, but it is only 10% of their net estate. So if they have their nil rate band available, (which is currently £325,000 and will be until 2017-18), the threshold might be lower than they thought, and this could encourage more people to give to a charity to get the benefit of the rules.

The Finance Act sets out the conditions that must be met for an estate to qualify for the lower rate of inheritance tax. The lower rate can apply only if part of the estate is chargeable to inheritance tax at a rate other than 0%, that is, where the 40% rate would otherwise apply to the value of the net estate in excess of the nil rate band, after deducting exemptions and reliefs.

This tax incentive may encourage more people to make gifts and supporters may also be encouraged to increase existing gifts. The rules could also lead to post-death variations. It is possible to obtain the lower rate of inheritance tax as a result of retrospective treatment under the Inheritance Tax Act 1984 where a beneficiary under the Will or Intestacy Rules, makes a gift to a charity by a deed of variation within two years after the testator's death.

So what are the points to consider in appeal literature? Well, this is an ideal opportunity for charities to raise awareness and to promote the advantages of leaving a gift to charity by Will and for testators to review any existing gifts in their current Wills.

Charities must ensure that wording in any of their appeal literature is not misleading. At first glance, when you hear that a 10% gift to charity means a 10% reduction in inheritance tax, this can look to a layperson as if you can always leave the gift to charity without having any adverse effect on the other beneficiaries.

Potential donors are encouraged to seek professional advice as the rules are complex and individuals need to ensure that they get inheritance tax advice to ensure that their wishes are implemented properly to benefit both themselves and the charity.

Increasing tax benefits gives charities the opportunity to look at taking advantage of increasing legacy income. However, it may be some time before increases in legacy income filter through to charities but this is definitely a step in the right direction.

Legacies and Litigation - how to avoid the pitfalls

Legacies can sometimes prove difficult for charitable organisations. Such organisations can minimise the risk of problems arising, and if they do arise, there are ways to manage any ensuing dispute.

Case Law

There are two recent cases which have demonstrated how legacies can cause problems for charities. These two landmark cases involved the same charity, the RSPCA.

The cases involved very different scenarios - one a valid but poorly drafted will, the other a will which ultimately was found not to be valid. One in which the charity won the war but arguably lost the peace, the other in which they simply lost, and at enormous cost.

Both cases however highlight the most important single issue for Charity Trustees when a legacy gives rise to a dispute - how to manage (or not to manage) the conflicting duties on the one hand to maximise the assets of the charity by enforcing the legacy to the fullest extent, and on the other hand to manage the risks to the charity both in terms of its exposure to negative publicity and in terms of its exposure to legal costs.

RSPCA v Sharpe.

In this case, the testator Mr Mason, had made a will in which he expressed a wish to leave *“the maximum that could be left free of tax”* (and that was more or less the exact wording in the will itself) to his friends, Mr & Mrs Sharpe and his brother John, with the Masons to receive 78% of that amount, and brother John 22%. Mr Mason’s will also made a specific bequest of his house in Gosport to Mr & Mrs Sharp.

His residuary estate was then to go to the RSPCA.

Mr Mason died in 2007 when the inheritance tax threshold was £300,000. Once that threshold is passed, inheritance tax is charged on all gifts excluding gifts to spouses, civil partners or - importantly - to charities.

The Sharpes and brother John argued that the will should be interpreted to mean that “the maximum free of tax” meant £300,000 irrespective of the value of the specific gift of the house, even though this triggered a charge to inheritance tax (and meant that the residue then passing to the charity was substantially smaller once the tax of £112,000 was taken into account).

The RSPCA argued that the Sharpes should receive £102,180 plus the house worth £169,000 with John Masons receiving just under £29,000, a total of £300,000 - with the residue of the estate passing entirely free of tax to the charity. The non-charity beneficiaries steadfastly refused to meet, mediate or negotiate with the RSPCA and its lawyers and the dispute ground with grim inevitability to Court.

At the first instance trial, the Judge, Mr Justice Peter Smith ruled against the RSPC, refusing them permission to appeal and in court criticising them for “imposing a tax burden” on Mr Mason’s relatives and friends - even though of course the RSPCA’s argument would have meant that nobody had to pay inheritance tax. He also ordered them to pay all the legal costs of the other parties.

Online media in particular seized on the judgment and although the inaccurate statements were quickly removed from reports, the bad press was already out there and fell on fertile ground amongst commentators keen to promote the notion of the “money grabbing” charity, taking money from Mr Mason’s friends and relations and dragging them through Court to do it.

The Court of Appeal, however, did give the RSPCA permission to appeal, and the three appeal Judges found unanimously in the charity’s favour, with Lord Justice Patten saying “the will does not disclose a misunderstanding of inheritance tax,” nor, he said, did it permit the relevant clause to be construed in the way that the Sharpes and John Mason had argued.

So the charity won the argument, received the full residuary legacy free of a charge to tax, and the Court of Appeal even ordered that the majority of the charity’s legal costs should be met out of the estate.

However, the press of course did not take much interest in the result of the appeal, and to some extent the damage had already been done to the RSPCA’s reputation, and the case threw a harsh light on the question of how trustees should react when faced with a choice between collecting or surrendering legacies which are contested by disappointed family members who were often quite unaware until after their loved-one’s death of the existence of a sizeable charitable legacy.

The media reporting of RSPCA v Sharpe took the angle that the charity was “challenging the will” when in fact all that they were seeking to do was to uphold what they believed was the correct interpretation of Mr Mason’s intentions in making his will - the problem really lying in sloppy and ambiguous drafting of that will by the late Mr Mason’s solicitors.

Also, the RSPCA could argue that their Trustees owe a duty not only to the charity in seeking to maximise its assets, but also to its supporters and benefactors if it genuinely believes that they wished to leave a particular legacy to the charity for the furtherance of its objects.

It has been said of the Sharpe case that both the late Mr Mason and his non-charity beneficiaries could have benefitted from some better legal advice. In the case of the deceased, had his will been less ambiguous the dispute may not have arisen in the first place. In the case of the beneficiaries, had they been more willing to engage in

discussions with the RSPCA at an earlier stage, then the legal costs to the estate as a whole could have been substantially reduced.

After the Sharpe case, the RSPCA's chief executive, perhaps flush with his success in the Court of Appeal and the sizeable award of legal costs against the estate said; "the RSPCA will continue to respect the wishes of its benefactors. It will not lightly surrender legacies left in good faith and in the belief that the funds will be used to combat cruelty to animals."

Indeed, he, and we, might have been forgiven at that stage for thinking that whatever the reputational risk - which as we have seen could itself be considerable - the message from the Courts was that Charities had a green light to fight such cases to the 'n'th degree' with minimal risk of exposure to an adverse costs order - with the presumption being that costs would be awarded against the estate where a will was ambiguous and a beneficiary - charitable or otherwise - had to make their argument or risk losing out.

The Gill case

Mr & Mrs Gill were farmers. They made mirror wills to the benefit of each other, and upon the second death leaving everything - including the family farm worth around £2.3 million - to the RSPCA.

They had a daughter, Dr Gill, who had been on track to pursue a successful career as a university academic and lecturer, before her parents had (she said) led her to believe that she was going to inherit the family farm and so with that in mind, coupled with a wish to help her ageing parents, Dr Gill put her academic career on hold, and bought a property adjacent to the farm so that she could help to work the land in preparation for (as she believed) inheriting the farm.

Mr Gill died in 1999, and Mrs Gill in 2006. Imagine Dr Gill's surprise then when she discovered that the effect of her mother's will was to leave the farm that she had uprooted her life to prepare to inherit to the RSPCA. She was, we are told, devastated by this news, and embarked upon a lengthy legal battle over several years to challenge her late mother's will and overturn the apparent legacy gift to the charity. On the face of it, the will appeared perfectly valid. It seemed to have been drawn up by a solicitor and properly explained to Mrs Gill by her solicitor who had met her at their office to discuss it.

Unlike other jurisdictions, in this country we have no "forced heirship" rules whereby family members have some automatic expectation of entitlement from a parent's will, and it is in general extremely difficult to challenge the validity of a will, no matter how capricious the gifts within it may appear to be.

There was however, a good deal of conflicting evidence in the case, and Dr Gill argued that her late father had a "domineering" nature and would have exerted undue influence on her late mother in the drawing up of her will. Meanwhile, it was contended, Mrs Gill suffered from various conditions of poor mental health, including agrophobia.

Equally, and importantly, there was no evidence before the Court as to why Mrs Gill would have wanted to benefit the RSPCA to the complete exclusion of Dr Gill, her only daughter.

At first instance the Court found that Mrs Gill knew and approved of the contents of the will, but that on a balance of probabilities the late Mr Gill had exerted undue influence on his late wife and so the will was not valid. The Judge also found that in any event Dr Gill would have succeeded on an argument based on proprietary estoppel - in other

words she had been led to believe that she would inherit the farm, and she had rearranged her own life, to her detriment, in expectation upon that belief.

The Court said that it would be “unconscionable” for Dr Gill not to inherit the farm - controversially coming as close as English law has ever come to an implied doctrine of forced heirship.

The RSPCA appealed against both of these findings, seeking to overturn the outcome entirely, and Dr Gill cross-appealed (perhaps because of the personal slight that such a conclusion would suggest) against the finding that her late mother had known and approved of the contents of the will, relying on evidence of the state of her mother’s mental health to seek a finding that Mrs Gill did not know or approve the will’s contents.

Unlike in the Sharpe case, the Court of Appeal on this occasion was no friend to the RSPCA, and the charity lost its appeals on both points, with Dr Gill succeeding in obtaining a judgment to the effect that her late mother could not have approved the will. The Court also ordered the RSPCA to pay the vast majority of Dr Gill’s legal costs of the case, in excess of £1,000,000 on top of its own legal bill. On this occasion, this was because it was the charity who the Court felt had refused unfairly to mediate the case.

On this occasion the reputational damage to the RSPCA was even more considerable than the (arguably unfair) backlash which they suffered from the Sharpe case.

It is perhaps worth noting at this point that the Gill decision was described by the Court at the time as being based on an “unusual” and “remarkable” set of facts and as such it is believed by some to fall into that old maxim that “hard cases make bad law” - but nonetheless it highlights some practical lessons which can only be good practice for benefactors and charities in the future.

It’s worth noting that compared to the total wealth donated to charities each year through legacy giving, cases like these are still very rare. But when they do arise, they are often bitter, costly and complex, drawing on case law dating back almost 300 years.

What can charities do to reduce the likelihood of dispute?

So trying to draw together some lessons from these two rather different cases, what - first of all - can charities do to reduce the likelihood of disputed legacy cases like these arising? Often, the problems arise because the first that the charity and the deceased person’s family gets to know about the gift is after the most important witness has already died.

I think there are three tips from the cases we have looked which might help to minimise the risk:

- Firstly, consider what might be done to encourage supporters to engage both with the charity and with their family and other beneficiaries **before** setting up a legacy gift.
- Secondly, you can take a horse to water and all that, but if they do then wish to proceed, then encourage them to have their will drawn up or at least reviewed by a specialist solicitor with some knowledge of this area.
- Thirdly, find some way of recording both in the charity’s records and in the benefactor’s papers kept with their will, a set of reasons to explain why they chose to make the legacy gift. This was one of the most notable and, to the Court, telling omissions from the available evidence in the Gill case.

Contemplating litigation

If a charity finds itself in a position of contemplating litigation either to contest the interpretation of a will, or to dispute a family member's attempt to invalidate a gift to it, then there are also some considerations to bear in mind.

Remember the conflicting duties that the Trustees must bear in mind. Maximising the assets of the charity versus jeopardising the charity's reputation. Protecting the integrity of its benefactors' wishes versus exposing the charity to financial risk from legal costs.

Think about how the reputational angle might play out. There is some considerable force behind a charity saying that all they were seeking to do was to raise money for its (presumably commendable) objects, and to carry out a benefactor's genuine wishes. However, might the press favour the disgruntled family members, or perceive the charity as hard-headed and avaricious?

The two cases highlight the importance of being prepared to engage in mediation, negotiation or other forms of Alternative Dispute Resolution (ADR) even if it might appear unlikely to achieve a final resolution to all the issues in the case. Courts are increasingly prepared to punish parties who in the judge's view have been unreasonably unwilling to do so by making extremely tough adverse costs orders which might not even necessarily follow the outcome of the case.

Finally, before becoming engaged in any litigation, charities should ensure that they liaise with the Charity Commission or ask their professional advisers to do so. The Commission has published some draft guidelines on litigation for charities, and they can be found on the Commission's website.

Charity Mergers

In relation to charity mergers, charities must be aware of the Register of Mergers. These provisions were originally introduced by Charities Act 2006 and they were intended to ensure that legacy income to merged and dissolved charities does not "fall through the net". The provisions are restated in the Charities Act 2011. Charities must be aware of this if they are contemplating a merger or incorporation. Whether or not the Register of Mergers will take effect as intended depends upon the wording used in Wills. Many merged or incorporated charities are still retained as dormant "shell charities" to ensure that they continue to receive any future legacy income.

We would encourage potential donors to seek legal advice, particularly in relation to the types of gift most suitable for them and the charity and how best to ensure that the donor's wishes are fulfilled. We would also advise that Wills should be drafted by a qualified Solicitor, preferably one who is a member of the Society of Trust and Estate Practitioners (STEP).

If you have any queries on any issues raised in this guide please contact Gerry Morrison on 01904 688539. This document is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice.

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