

# **Dispute Resolution: avoiding issues with charitable estates**

How to avoid getting into disputes where there is a charity beneficiary present, and how to resolve such issues once they have arisen

# Overview

**Welcome** - Naomi Collison, Remember A Charity

**How to avoid getting into disputes where there is a charity beneficiary present** - Amelia Edwards, Solicitor, mfg Solicitors LLP

**How to resolve such issues once they have arisen** - Stephanie Kerr, Partner, Irwin Mitchell

**Q+A and Close** - Naomi Collison, Remember A Charity



# mfg Solicitors LLP



Our Contentious Probate Team based is made up of 2 leading partners, Robert and Andrew. In the team we also have Victoria, a 4-year PQE Solicitor, Amelia, a newly qualified Solicitor and Sophie Inchley, a legal caseworker.

Recognised in the Legal 500 as a **top tier** law firm in the West Midlands for practice in Contentious Trusts and Probate.

Offices in Kidderminster, Worcester, Bromsgrove, Telford, Ludlow and Birmingham.



Our Will, Trust & Estate Dispute team in Manchester is made up of Stephanie Kerr (Partner), Kirsty McNulty (Senior Associate), Lucy-Allena McIlroy (Associate), Olivia Jack (Associate), Freya Spencer (Paralegal), Caroline McCann (Team PA).

- Part of the national team which won the Best Contentious Probate Team (Large) at the British Wills & Probate Awards 2024
- Recognised in the UK Legal 500 2024 for contentious trusts and probate
- One of the 'Best Law Firms' in 2024 according to The Times



# Types of disputes which might arise

- Charity name in the Will (changed, wrong or ceased to exist)
- Ambiguity in the gift
- Validity challenges
- Inheritance Act claims

# Charity Name: Be Specific

- Must ensure include accurate details of the charity you are wishing to leave a bequest to.
- Key details to include:
  - Name (and abbreviation if applicable)
  - Address
  - Charity Number
  - If the charity is a charitable company, can use details from the register of companies.
- Example Legacy:

I give £x to the British Heart Foundation (BHF), a charity registered in England and Wales (number 225971). Its registered office is at 180 Hampstead Road, London NW1 7AW.

The screenshot shows a website interface for finding charities. At the top, there is a dark navigation bar with the logo 'REMEMBER A CHARITY IN YOUR WILL Help the work live on...' on the left, and links for 'Making a Will', 'Leaving a gift', 'About us', and 'Stories' in the center. A 'Get started' button is on the right. The main content area has a yellow background with the heading 'Find a charity' and the text 'Our member charities rely on gifts in Wills to continue their wonderful work.' Below this, it says 'Search below for your favourite charity, by name, cause or location.' and 'Alternatively, [view a list](#) of all our member charities.' A search form is centered, containing three input fields: 'Search for a charity:' with a placeholder 'Charity name / keyword...', 'Search by cause:' with a dropdown menu set to 'All causes', and 'Search by area served:' with a dropdown menu set to 'All areas'. A 'Submit' button is to the right of the form. At the bottom center, there is a circular 'Back to top' button with an upward arrow.

# Charity Name: Changed since the Will?

Where a change has been made to a charity's governing document, name etc., a gift in a Will executed before (but taking effect after) the change can be distributed to the altered charity. This is because the charity remains the same charity, albeit with a different name or objects ***Re Bagshaw [1954] 1 WLR 238***

# Charity Name: How to save a gift from lapsing

- Save a gift:
  - Will contains a saving provision specifying how the gift should be administered in these circumstances e.g. substitution etc.
  - If the charity has ceased to exist following a merger, incorporation or other reorganisation, but its details have been entered in the register of mergers maintained by the Commission
  - The charity's governing document included a dissolution provision identifying a charity to receive its assets.



# Charity Name: Construing a Gift

- PRs may gain some clarity when construing the gift to see what the testator intended from looking at the legal identity of the charity. For example:
- A gift to an **unincorporated charity** (that is, a charitable trust or charitable unincorporated association) by name takes effect as a **gift for a charitable purpose** (Re Vernon's Will Trusts (1962), [1970] Ch 300). Survival of the named charity is not crucial, unless there is something to show its continued existence was essential to the gift (that is, the terms of the gift indicate that the specific identity of the named institution is determinative).
- A gift to a **charitable corporation** (such as, a charitable company, a charitable incorporated organisation (CIO), a charitable community benefit society or a Royal Charter body) takes effect as a **gift to the named charity**, unless there is strong evidence to indicate an intention by the testator to create an enduring trust for a charitable purpose (Re Finger's Will Trusts [1972] Ch 286). Based on this, **a legacy to a specific incorporated charity cannot usually be saved by a general charitable intention.**
- ***When Will drafting - do you check the legal identity of the charity?***

# Charity Name: Case Study

- Deceased left a legacy to 'x' Charity India
- The Charity named was a well-established charity who carried out work globally, but the legacy team at the charity confirmed that they did not have a specific separate India Charity.
- The legacy was therefore paid to 'x' charity UK, but a note was made that the legacy should be donated for causes in India specifically.
- The Deceased further made a donation to an Elephant Orphanage in Asia.
- It was logistically very difficult to locate the charity as there was limited information provided in the Will by way of contact details.

# Charity Name: Case Law Principles

General principle:

- Court should usually place a benign interpretation on charitable gifts to save them from lapsing ([\*Weir v Crum-Brown\* \[1908\] AC 162](#)).
- Where PRs can construe a gift to a named charity that would otherwise fail (because it no longer exists) as a gift for general charitable purposes they should choose another charity carrying out those objects without further reference to the regulator.

# Charity Name: British Racing Drivers

Knipe v British Racing Drivers Motor Sport Charity [2020] EWHC 3295

## **Facts and Decision:**

T had been a professional racing driver and a long-standing member of the British Racing Drivers Club.

### First Gift:

- Left a gift in their Will to the "British Racing Drivers' Club Benevolent Fund"
- Court determined this could be seen as a gift to the "British Racing Drivers' Club Motor Sports Charity", a registered charity and benevolent fund administered by the British Racing Drivers' Club.

### Second Gift:

- "Cancer Research Fund" - an indication of a general charitable purpose for cancer research.
- Extrinsic evidence showed the name had been taken by several subsidiary charities of larger registered charities - all had ceased to exist by the date of death.
- No evidence that T had a strong connection to any particular cancer research charity.
- Court found a general charitable intention.
- Cancer Research UK and the World Cancer Research Fund, agreed to take half shares of the gift with the court's blessing, as the names of both charities matched some of the words used in the Will.

# Charity Name: Dryden Case

## *Dryden v Young [2024] EWHC 1095 (Ch)*

### **Facts:**

- T divided her Estate into 15 equal shares including organisations and charities.
- The Will included a clause which prevented charities from receiving gifts if [the charity] “has changed it’s name” or merged before the Estate was distributed.
- Some of the charities listed in the Will were unregistered, had changed names, or had been liquidated.

### **Issues:**

- The Court had to discuss:
  - How to interpret the wording used to identify the recipient
  - Whether the gift could be considered a general gift for charitable purposes
  - Whether the gift was to a charitable trust or a charitable unincorporated association

### **Decision:**

- Court used its powers of interpretation and deemed that the seven charitable gifts were valid, and the court identified a suitable body to receive each gift.

# Charity Name: Cy-près Scheme

- A cy-près scheme reassigns a charity's assets to a new purpose (cy-près = "as near as possible")
- Can be used when:
  - Original purpose of a charity is no longer possible or legal or has been fulfilled in another way
  - Charity's definitions of people, places, or areas are outdated
  - Charity has ceased to be charitable in law
  - Two charities with similar purpose want to merge but can't legally do so
- Charity trustees can apply to the Charity Commission for a cy-près scheme. The process can be complex and time-consuming.
- [Cy-près | Practical Law](#)

# Royal sign manual procedure

## What is the Royal Sign Manual?

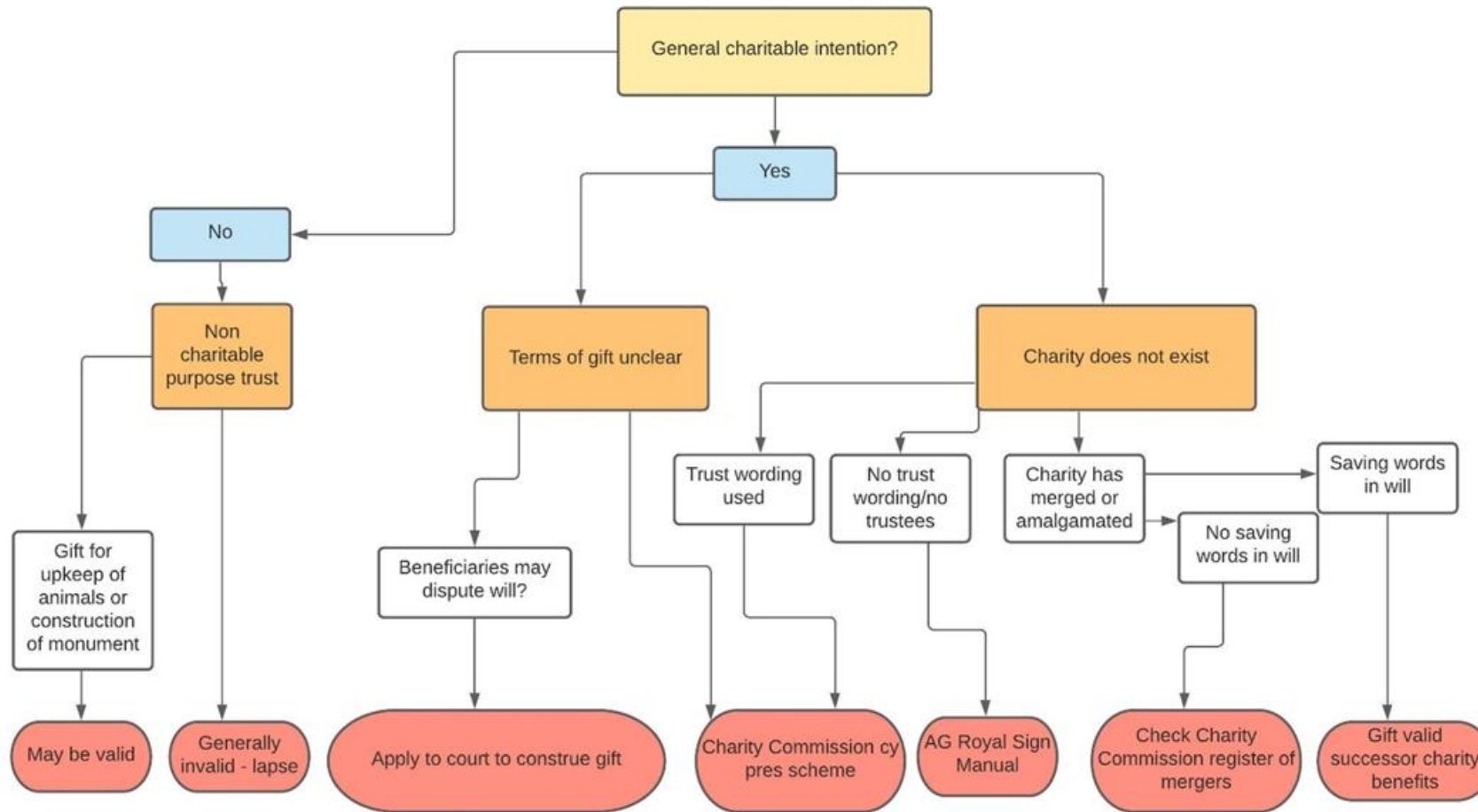
- Signature of the King (delegated to the Attorney General) to identify charitable beneficiaries when their identity is unclear in a deceased's Will.
- Will says "*£500 to the cruelty to animals research charity*" (name similar to well-known registered charitable organisations but which don't exist).
- To honour the deceased's intentions at the time of the Will, interested parties can use the Royal Sign Procedure to identify the charitable organisation so they can distribute the gift from the estate.
- The Attorney General will try to look at various factors to try and determine to whom the testator wanted to benefit from their estate:
  - The name of the incorrect charity
  - What charities the testator had links with; and
  - Whether the testator spoke of any charity to friends and family.

# Charity Name: Royal Sign Manual & Cy-Pres

- Mr Baines' Will provide for his residuary estate to pass in equal shares to:
  - "Paul O'Grady on trust for charitable purposes connected with rescue dogs"
  - "The Hospital for Sick Animals".
- Mr Baines drafted the Will himself and left no indication of which institution or purpose he wanted to benefit.
- The PRs apply to the Commission for a cy-près scheme in relation to the residuary gifts:
  - Paul O'Grady gift: The Commission authorise a scheme for the gift to Paul O'Grady for rescue dogs to be applied cy-près to the Battersea Dogs & Cats Home, because there are charitable trusts attached to the gift and there is a strong association between Paul O'Grady and this charity.
  - "Hospital for Sick Animals" gift: direct gift, with no trusts and no named trustees. The Commission referred the matter to the Attorney General to use the Royal Sign Manual procedure. Gift used to benefit the Queen Mother Hospital for Animals, located near to where Mr Baines lived.



# Charity Name: Flowchart



# Ambiguity/Errors: Avoiding Issues

- Section 21 Administration of Justice Act 1982
- Is any part of the Will ambiguous or meaningless?
- Extrinsic evidence can help the Court
- This means the Will file is of crucial importance

# Ambiguity/Errors: Case Law

|   |  |
|---|--|
| Manuscript amendment on first draft Will    | <p><i>"House 25% to Steven +25% Keith of sale proceeds +50% to residue."</i></p> <p><i>"÷ between all those mentioned in clauses 4.1-4.8."</i></p>   |
| Solicitor's attendance note of 27 July 2016 | <p><i>"He would like the sale proceeds of the house to be divided as to 25% to Stephen, 25% to Keith, with a final 50% going to Residue."</i></p> <p><i>"The Residue is to be divided between <b>those people</b> mention in clauses 4.1 to 4.8 <b>in equal shares.</b>" (my emphasis added)</i></p> |
| Term of the executed Will of August 2016    | <p><i>"Subject as above my Trustees shall hold my Residuary Estate upon trust for such of the beneficiaries named in Clauses 4.1 to 4.8 inclusive absolutely as shall survive me and in accordance with the provisions relating to each gift."</i></p>   |

# Ambiguity/Errors: Case Law

## **Pead v Prostate Cancer: [2023] EWHC 642 (Ch)**

- Will had various beneficiaries (charities and individuals)
- Rectification of the Will pursuant to s20 Administration of Justice Act 1982 (substituting "4.1 to 4.8" with "4.1 to 4.3." - to cut out the charities' share of residue)
- Interpretation/construction of clause 11 of the Will (ambiguous - does it mean shared equally or for the purposes stated or in proportion to each legatee?)
- Claimant argued T was charitable, but not so charitable as to leave a gift of residue?
- Court held: Beneficiaries at 4.1 to 4.8 receive the residue, pro-rated in accordance with their legacy.

# Ambiguity: Case Study

- Calculations showed 90% to grandchildren and 10% to charity
- Will stated 90% to charity and 10% to grandchildren
- Evidence was presented to charities seeking variation of the Will
- Deed of Variation executed to correct the error
- Will-drafter paid all parties' legal costs

# Validity/IA Claims: Conversations

- Encourage Testators to have a conversation with their families
  - Prior knowledge of the Will might minimise the risk of dispute/claims
  - Can understand each other's reasoning
  - BUT: difficult in cases where T is estranged from family members

# Validity/IA Claims: document T's reasons

- Letter of Wishes to accompany the Will
- Witness Statement to further strengthen position - defend 1975 Act claim and Will validity challenge
- Demonstrate a sufficient link between the Deceased and Charity to help defend claims under the 1975 Act such as in the case of ***Ilott v Mitson* UKSC/2015/0203**

# Validity Challenges: Avoiding Issues

- Comprehensive file notes should be taken to explain T's reasons because the Will-drafter is a **material witness**. They can be:
  - summonsed to answer questions under oath
  - subpoenaed to lodge the Will
  - subject to a pre-action disclosure application
  - cross-examined at trial
  - ordered to pay costs
- The Will-drafter must disclose the Will if a probate claim is issued
- The Will-drafter should not act in the litigation



# Validity Challenge: Case Law

## **Vegetarian Society v Scott: [2013] EWHC 4097 (Ch)**

- Joint experts concluded T had schizophrenia
- T was neither vegan nor vegetarian
- *"The plain fact in this case is that when making his 2006 Will Mr. McKeen did not feel the bond of natural love and affection with his blood family that usually exists. Accordingly, he consciously decided to leave his estate elsewhere."*

# ADR & Other Options

- Deed of Variation
- Mediation/Negotiation
- Ex-gratia payments for IA claims
- Cy-pres or Royal Sign Manual Procedure
- Court proceedings - charity might be the claimant/defendant/neutral

# Summary: How to avoid disputes

Ensure:

- Legacy is specific and clear
- Include as many details of the charity.
- Reasons for legacy are clear
- Check the interpretation of the legacy and the wording in the Will.
- Double check client's instructions during the meeting
- Refer to the Deceased's intentions in Will file.

# Summary: How to resolve issues

- Charities have a duty to maximise the benefit received from the estate
- Closely monitor the progress in the administration of the estate
- Charities should take specialist legal advice at an early stage when dispute arises (as should the Will-drafter if there is potential negligence)
- Consider ADR where appropriate

# Extra guidance

- [Charities and litigation: a guide for trustees - GOV.UK](#)
- Explains what charity trustees need to know when taking or defending legal action generally, and when the Charity Commission ('the commission') needs to be involved.
- Applies to all types of legal action that a charity might have to take or defend but not to criminal cases or challenges to decisions by the commission.

# Questions



# Thank you for listening!

Please get in touch if you have any further queries or need assistance:



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**Thank you**