Charity legacies – best practice for managing disputes in the wake of Ilott v Mitson

Legacy income is on the rise, but despite a recent success for charities in the Supreme Court, so are challenges to charity legacies.

Leticia Jennings sets out the practical steps for charities to take if a legacy is challenged

Charity legacies are in the headlines following the Supreme Court’s recent decision in the long-running case of Ilott v Mitson. Mrs Ilott had challenged her mother’s will, under which the estate was divided equally between three charities, claiming that her mother, from whom she was estranged, should have made reasonable financial provision for her.

Bringing a decade-long legal battle to an end, the Supreme Court agreed with the judge at first instance that Mrs Ilott was entitled to only a modest payment from the estate, overturning the Court of Appeal’s subsequent decision to increase the award to a six-figure sum. The Supreme Court confirmed that the courts will only interfere with a person’s testamentary freedom in very particular circumstances, and that charities do not have to justify their position as beneficiaries.

This is great news for charities, and there was much relief right across the third sector, although the 10 years it took to get to this stage cost the charities significant time and money on litigation. The Supreme Court’s judgment is welcome, but with challenges to legacies becoming more frequent, charities need to be aware of the steps they can take to resolve disputes as they arise.

Practical steps when a charity legacy is challenged

Challenges to legacies to charities include: challenges to the validity of the will containing the legacy; claims under the Inheritance (Provision for Family and Dependants) Act 1975 (as in the Ilott v Mitson case); and claims based on proprietary estoppel, where a person claims that the testator promised property to them and that they then acted on that promise to their detriment.

So what should charities do to resolve disputes as quickly as possible, while keeping costs and reputational damage to a minimum?

- Seek early legal advice on the merits of the claim. Facing legacy disputes head on can save much time and money, and it may be possible either to see off very poor claims in their entirety through correspondence, or to resolve claims with real merit without the cost of going to trial.
- Consider the evidence available to support the charity’s position. For instance, if the claim concerns testamentary capacity, it is usually possible to obtain a copy of the testator’s medical records. If the will was professionally drafted, the drafting solicitor is obliged to provide an account of the circumstances surrounding the making of the will, which may include the testator’s reasons for leaving a legacy to a specific charity.
- If more than one charity is involved, the charities should consider appointing one firm of solicitors to act for them jointly, to keep costs down.

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- Consider lodging a caveat at the Probate Registry, to prevent anyone obtaining a grant of probate while the charity takes advice and gathers evidence. This is a cheap and simple process.
- It is often possible to reach a settlement through discussions and correspondence. Otherwise, consider formal negotiations using a specialist mediator.
- Always keep PR issues under review. It is good practice to prepare a clear statement of the charity’s position, but be wary of making any kind of public statement without legal advice.

In our experience, it is entirely possible to resolve most legacy disputes without recourse to litigation, and the sooner a charity takes steps to address the situation, the better placed it will be to reach a prompt and cost effective solution.