

What's in a name?

Gifts to charities in Wills can sometimes be expressed badly. It could be a mis-description (eg. the Royal Society for the *Protection of Cruelty to Animals*), or the use of phraseology which unintentionally indicates a general charitable intention, rather than benefiting a specific charity (eg cancer relief). How is an executor to proceed under these circumstances?

Faced with a Will where there is uncertainty about a charitable legacy, an executor could ask for the Will file or request an affidavit from the drafting practitioner. However, if the testator had prepared their own Will, what then? A recent survey by ICM Direct found that one in eight people will rely on self-written Wills. In these circumstances, careful consideration of any extrinsic factors may be crucial to prove the intention behind a charitable gift. Such investigations may prevent the wrong charity from receiving a legacy, or could avoid a dispute arising between two competing charities.

Where a Will names a charity using a name which is similar to, but not exactly the same as, a known charity (and provided that there are no other similarly named charities) the executors may opt to pay the legacy to the 'obvious' recipient. In addition, if the clause incorrectly naming a charity includes an address or registered charity number, this may be good evidence of the testator's intention to benefit the charity with that address and registered charity number.

However, what if a testator leaves money to one established charity but uses the address and/or registered charity number of another? If the donor's intention cannot be clarified from the face of the Will, the two (or more) charities who might have a claim on the funds may need to take legal advice concerning the interpretation of the gift. If agreement cannot be reached between 'competing' charities, it may become necessary to ask for directions from the court to determine the way forward (particularly where the interpretation of the Will allows no reasonable application). In the 1842 case of *Wilson v Squire*, the testator bequeathed a legacy to 'The London Orphan Society in the City Road.' but no institution precisely fitted this description. However, there was a 'London Orphan Asylum' at Clapton, and an 'Orphan Working School' in the City Road. As a result of the inclusion of the address, the court held that the former institution was not, and the latter was, within the description contained in the Will.

A court can consider "...every material fact relating to the person or thing said to be identified by that description" in seeking to determine the intention behind ambiguously-worded clause, where the wording

of the Will alone does not help. In this situation, the court would aim to ascertain the facts known to the testator at the time when the Will was made, putting itself "...into the testator's armchair." This would not be a speculative review of the facts, but rather would aim to ascertain whether a better understanding of the people and facts, known to the testator might shed some light on their intentions as expressed in the Will.

The so-called 'armchair rule' could permit the inclusion of evidence demonstrating that the testator habitually referred to an organisation by a nickname, or a shortened name, which was then used in his Will.

Inevitably, there will be situations where the description of the intended recipient is 'wholly false' (ie no known person or organisation fits the description) but, even then, if the context of the Will and any extraneous evidence provides unambiguous proof of what was intended by the testator, a gift can succeed. Under these circumstances, it is the intended recipient that

receives the legacy, rather than the beneficiary named in the Will. This rule can be applied to situations where a legatee's name is wrong; where an organisation is mis-described, or where the description of an item to be bequeathed is wrong or ambiguous.

What, then, if the Will seems to refer to a more generic charitable purpose rather than benefiting a specific charity? The executors can apply to the court for an Order for construction of the Will (which can be costly and time-consuming). However, there are alternatives to this which may be more preferable. If the gift in the Will is to be held on trust, an application for a Charity Scheme from the Charity Commission can be made, or a Royal Sign Manual Direction can be requested from the Attorney General if the gift is 'immediate'. A Sign Manual application is by far the least costly approach, and can be made through the Treasury Solicitor's Office.

The lesson for practitioners and individuals alike is to ensure that a Will is properly drafted, including as part of the relevant clause the registered Charity Number of the intended charitable beneficiary. This should avoid unnecessary expense and delay, and that the legacy is paid to the right organisation.

For further information please contact **Jane Robinson** on **01865 781000** or **jane.robinson@henmansllp.co.uk**.





The Red Queen

Angela Bowman is the head of our team handling contentious probate and legacy work for charities. She is one of the foremost lawyers in this field and acts for a huge number of national charities. Given the continuing importance for charities of legacy income in the current economic climate and with several key cases coming through the courts and getting a good deal of attention in the press, Henmans is pleased to be a leader in this specialised field.

Angela - pictured above with Tom Dumont (a leading barrister in this field) and his wife Judith on the left and Crispin Ellison (who heads the legacy consultancy company, Legacy Link) and his wife Ilana Richardson on the right - recently hosted this medieval banquet to raise funds for a local community charity and organised a silent auction, to raise funds for charity. Thanks to the donations and bids from guests, the auction raised a total of £1,200.

Update - Bribery Act 2010

The Bribery Act 2010 finally came into force on 1 July 2011. As previously described, the Act creates four offences: bribing, being bribed, bribery of foreign public officials and failure by a commercial organisation to prevent bribery. While the risks of the first three offences are by no means trivial, most attention has focused on the fourth offence. Guidance from the Ministry of Justice and the Charity Commission makes it clear that this offence can apply to charities. An organisation 'will be caught if it engages in commercial activities, irrespective of the purpose for which profits are made'. An organisation will however be protected if it has adequate procedures in place to prevent bribery occurring. The MoJ guidance sets out six principles: proportionate procedures, top level commitment, risk assessment, due diligence, communication (and training) and monitoring and review. It also contains a good deal of additional information and some helpful case studies to help organisations decide how to ensure they comply with the Act. The Charity Commission's own guidance makes it clear that "facilitation payments" are usually unlawful and an improper use of charity funds. Prosecution should be the norm, unless there is duress or strong public interest factors.

For the full guidance see the Ministry of Justice website: www.justice.gov.uk/guidance/making-and-reviewing-the-law/bribery.htm, and the Charity Commission website for its compliance toolkit: Protecting charities from harm.

For more information please contact **Robert Foster**, consultant, on **01865 781000** or robert.foster@henmansllp.co.uk.

Support for the Ashmolean museum

Henmans has been involved in sponsoring the Ashmolean since 2006 and has been proud to be associated with it during the extensive redevelopment that has transformed the building into an award winning and internationally acclaimed museum. Visitor numbers quadrupled in its first year, to 1.2 million.

For those of you who are not familiar with it, the Ashmolean is part of the University of Oxford and is probably the oldest public museum in the world, having opened in 1683. Behind its nineteenth century façade, was a warren of rooms, on different floors and housing its huge range of collections in a totally ad hoc way. The redevelopment required the entire demolition of everything behind the façade so that the new galleries, designed by architect Rick Mather, could be constructed. The new building has allowed the collections to be displayed in a coherent way, demonstrating connections across cultures and continents.

The Ashmolean, since its redevelopment, has been able to host exhibitions of international importance which have been well received by art critics and visitors alike. The exhibition schedule for the year ahead looks particularly exciting and as previous exhibition sponsors ourselves we would thoroughly recommend exploring this sort of relationship.

The Ashmolean is an iconic Oxford institution and it has been a privilege to be associated with it through this period. If you have not yet visited it, go to the website and have a look at what is now on offer at <http://www.ashmolean.org/>. As a result of our sponsorship, our staff and clients can benefit from free tickets to private exhibitions, behind the scenes talks and discounts in the shop and restaurants. If you would be interested in supporting the Ashmolean, have a look at the link on its website, where there are details for individual and corporate sponsorship offerings.



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