



RECEIVING A LEGACY - Some guidelines

1 General advice and Pecuniary Legacies

TIMING : Pecuniary legacies (fixed amounts of money) tend to be paid by the executors (the people administering the will) within a few months of the death, whereas residual legacies may take several months or years for complete payment, as the estate may take some time to administer and wind up.

Professional executors and administrators like banks and solicitors tend to notify the church (technically the PCC) that it benefits under the will of the deceased within a few weeks of the death. They may provide (for a residuary legacy) a schedule of assets and liabilities (a list showing how the estate is made up and its net value). Other lay executors may take several months to notify you, waiting until the grant of probate — official acknowledgement that all the estate has been identified and taxes paid, so that distribution of the proceeds can then begin. Please deal courteously and sympathetically with such lay people - they will often be grieving relatives acting as executor for the first time, unpaid and in their own spare time.

PCC's Response to Notification

As soon as you are notified of a legacy, write to the executors expressing the church's condolences, and giving up-to-date contact details (normally the PCC treasurer or incumbent). Provide your bank details if you would like payment to be made directly into your bank. It is worth asking for a photocopy of the will and any codicils (later amendments to the main will) if you haven't already been sent them, particularly for residuary legacies.

Once probate has been granted, all wills are public documents. If necessary you can get a copy by writing to The Postal Searches & Copies Dept, York Probate Sub-Registry, Duncombe Place, York, YO1 7EA enclosing a cheque for £5 made payable to HM Paymaster General, including full details of the deceased's name, address, and date of death.

If the PCC has no idea who the benefactor is (it does happen!), the executors may be able to throw some light on the testator's connection with the church – although it may have been in childhood decades before - try the baptism & marriage registers, or even the Sunday school records! It may be sensible to ask if the benefactor had any area of special interest in church matters (eg children, music) as this may help the PCC to mark the legacy in some appropriate way. If the deceased had restricted what the legacy was to be spent on, and this is no longer relevant, you will need to seek clearance from the Charity Commissioners to use it for a broadly similar purpose.

Establishing Donor's Interests

Most legacies to churches do not contain any restrictions on how the PCC can spend the gift. Depending on the testator's connection with the church, you may want to discuss with the executors if the donor had expressed any non-binding preferences about how part of the gift might be spent, or whether it would be particularly appropriate to remember the donor's connection in some way (eg if the donor was involved in the musical ministry of the church, and new choir robes or hymnbooks are currently needed). Some churches also keep a memorial book to record benefactors, as a small permanent reminder to parishioners of the key role of legacies in the development of the parish.

Capital Endowments

Sometimes legacies set up capital endowments, from which only income can be drawn. Under the Parochial Church Councils (Powers) Measure 1956 and its successors there is a requirement for all permanent endowments benefiting parishes through PCCs to be held by a Diocesan Authority (the Board of Finance). This means that if the PCC receives a legacy establishing a permanent capital sum from which income is used (whether for general or specific purposes), the diocese should be alerted and arrangements made for the money to be passed to the diocese for investment. The income is then paid to the PCC.

Can I convert a legacy to Vicar and Churchwardens to the PCC?

From time to time a legacy is left to the vicar and churchwardens (V&C) of a specific parish. This practice dates back to the days before PCCs existed, and these days PCCs are the legal trustees of parish funds. When such V&C legacies arrive, the monies do not belong to the PCC. However the vicar & wardens may feel it is more appropriate for the PCC to be the recipient. This is possible through a scheme with the Charity Commission whereby the V&C pass on to the PCC both the legacy and the responsibility to ensure that the testator's wishes are carried out. Legal advice should be sought, initially through your diocesan secretary or registrar.

If there is any ambiguity over the naming of the parish as the intended beneficiary, the executors may want you to produce some evidence of the donor's connection to the church (for example, if the will simply says "I leave £100 to the church in Borchester", which could mean the non-conformist chapel). If the church's name in the will is incorrect, it may be necessary for a solicitor to use the Royal Sign Manual procedure.

Your job is to ensure that the church gets the full amount that is due. So please check the will carefully to ensure that it appears to be valid. Has it been properly signed, dated and witnessed by two independent witnesses who are not beneficiaries, both present at the time of signing? Codicils need to refer to the original will and its date, and have two witnesses. Executors can be (and often are) beneficiaries.

When the Church receives less than expected on a pecuniary legacy

It is possible that the testator may have spent most of their wealth before death (eg on nursing home fees), and the estate may not be large enough to pay all the beneficiaries. The estate is then abated, and any pecuniary legacies reduced in proportion to the available estate. In such circumstances ask the executors for a schedule of assets &

liabilities and estate accounts, and do not approve them until you have checked them carefully against the will and codicils etc.

When the executors pay the legacy, they may ask the PCC to indemnify them against future claims on the estate (unknown liabilities come to light, or someone contests the will). Resist such pressure by crossing out such requests in any receipts the executors provide you with. If they refuse to pay unless indemnified, add a restriction that limits the PCC's liability to the value of the legacy paid, and to its fair share within the entire estate.

2. Residuary legacies

It is important to keep all the papers relating to each legacy together in a file in chronological sequence. You are strongly advised to have a "diary sheet" on which you make a log of all actions, correspondence, phone calls etc. Residuary legacies can drag out over many months or years, and a written record is essential, especially if there are any disputes or court proceedings. You may need to chase some executors regularly to find out how their administration of the estate is progressing. Most professional executors (solicitors and banks) are fairly prompt and businesslike. But for many lay executors it may be the first time that they have had to carry out what can be a time-consuming and sometimes distressing job - and many have busy jobs or family responsibilities - so please try and understand their situation and exercise a little patience if necessary.

With a residuary legacy it is vital to get photocopies of:

- the will and any codicils
- the schedule of assets and liabilities
- and (eventually) the estate accounts

These are the prime documents that show the church's interest in the estate, and the value of the assets. Check that the will and codicils have been correctly drawn up, signed and witnessed by two independent persons who are not beneficiaries. Executors can be (and often are) beneficiaries.

Quite often a church is a joint beneficiary with other charities in the residue of a will. Usually the charities will work together to resolve any issues about the estate and maximise the amount that is available to distribute between them. Most national charities have a specialist legacy administration officer, often a member of the ILM Institute of Legacy Management, who deals with scores of legacies a year. They are generally very willing to help smaller charities like churches, and you should generally let them take the lead if unexpected issues crop up.

The PCC's main concern is to ensure that the value of the residuary estate is maximised. You need to examine two areas: the assets and the liabilities.

Assets

The main assets are likely to be property, investments and savings. You should ask for independent valuations of significant items (eg for property or valuable possessions), and if there is any doubt ask for two independent valuations from professionally qualified valuers. Try to ensure that the assets are widely marketed, not sold cheaply to an associate. A property may have significant development value, and be worth more if planning permission is obtained.

If a will gives a named specific item to a beneficiary (eg a valuable painting to a nephew), and the item is otherwise disposed of before death, the gift is “adeemed” (revoked), and it no longer forms part of the estate. The nephew cannot claim the monetary value of the painting, only the named object.

If there are significant holdings of stocks and shares in the estate, the executors may have to pay Capital Gains Tax on any rise in value since the death of the testator, reducing the value of the estate. The executors can appropriate the relevant proportion of the stocks or shares to any charitable beneficiaries, including the church. As the PCC is a charity, it does not pay CGT on any investment gains. PCCs are generally advised to ask the executors to appropriate the shares (at probate value) to the charity by making a suitable note in the estate file. Then instruct the executors (as “bare trustees”) to sell the investments, rather than transferring them into the name of the church, remitting the proceeds directly into the PCC’s bank account. The stockbrokers Charles Stanley (020 7953 2297 Charles Milner) provide special rates for charities wishing to buy or sell stock market investments.

If there are significant property assets which are not to be sold immediately, you should check that the executors are insuring and maintaining the property adequately, and ask for evidence if necessary.

If any property or land has been appropriated (or assented or transferred) to the charity since death, or if it has been held in trust for the charity beyond the administration period (eg there has been a life tenant), then any sale of the property has to comply with section 36 of the 1993 Charities Act, following a specialist valuation and legal advice. In all property matters it is important to ensure that the asset is not sold to a “connected person” at undervalue. Allied Surveyors (08700 740 760) provide a nationwide s36 valuation service with special discounts for charities.

It often happens that the benefactor has not left any specific instructions about the disposal of household items such as furniture, photographs and jewellery. Most charities have a policy of agreeing that items of sentimental value may pass directly to close relatives and friends providing the executors approve. However, any individual items thought to be worth more than say £100 should be independently valued and offered to relatives who are interested at that valuation.

Liabilities

Any estate has a number of liabilities. To arrive at the residuary value of the estate, the gross value of the sum of the assets is reduced by items such as:

- funeral expenses, death certificates and related fees
- debts, mortgages and outstanding bills owed at the time of death
- taxes on inheritance, income and capital gains
- executors’ expenses for travel, correspondence, professional fees etc
- specific and pecuniary (fixed sum of money) legacies itemised in the will

The duty of the PCC is to try and ensure that the value of the liabilities is minimised, to maximise the residual value. You can find details of the liabilities in the schedule of assets & liabilities, and in the final estate accounts. You should challenge any liabilities that appear to be excessive or unreasonable.

Inheritance Tax

Inheritance Tax (IHT) is payable on most assets transferred at death (see the Inheritance Tax Act 1984). The current rate of IHT at death is 40%. In 2006-7 the first £285,000 of an estate (the nil-rate band) is exempt from IHT – the NRB rises to £300,000 in 2007-08. There are a number of exemptions from these general principles (eg some business assets). The most important general exemptions are for transfers between spouses and to charities, including PCCs.

In practice this means that the taxable value of the residuary estate for IHT purposes should be reduced by the value of any charitable legacies. Sometimes the executors get the IHT calculation wrong, and pay too much IHT to the Inland Revenue, so reducing the value of the residue unnecessarily. So you should check the IHT calculations carefully, or ask a probate professional to do it for you. The Inland Revenue website provides lots of useful advice and examples at www.inlandrevenue.gov.uk/cto/.

The Inland Revenue allows Deeds of Variation (or Deeds of Family Arrangement) to be drawn up within 2 years of the death by beneficiaries to a will. This can result in substantial savings in IHT. For example when a spouse dies within two years of their partner, or when a surviving spouse wants to make an additional gift to charity. It is essential to take independent legal advice.

Capital Gains Tax

Gifts to charities are exempt from Capital Gains Tax (CGT) (see TCGA 1992 s257). This exemption can generally be secured by the executors appropriating (or assenting) the assets into the name of the charity, and then selling the assets as “bare trustee” on behalf of the charity. Appropriation is simply a note on the estate file that the executors have appropriated the assets and are now holding them as agents of the charity. For appropriation of land (as opposed to stocks or shares), a Declaration of Trust may be required, and appropriation must be carried out before exchange of contracts.

Income Tax

Income (eg dividends, interest, rents) accruing to charities during the administration of an estate is exempt from income tax. However, most income received by the executors is net of tax already deducted (eg by banks). So it is very worthwhile for the PCC to reclaim its share of any income tax paid by the estate. You will need to obtain from the executors an Inland Revenue form R185 (Estate Income) itemising the PCC's share of any tax paid. A separate R185 is required for every tax year in which income is paid to the PCC, including any income accrued at death. Claims have to be made within 6 years of the income arising. The PCC will need to transfer the details from the R185(EI)s to an R68 form to claim a refund from the Revenue. There is lots of useful advice and examples at the website <http://www.inlandrevenue.gov.uk/trusts/>.

Professional fees

Professional executors are allowed to charge reasonable professional fees for their services. Most solicitors charge between 2.5% and 4.0% of the gross value of the estate (plus VAT and expenses), and the proportion may be higher for small or more complex estates. Banks tend to charge rather more (around 5%). Lay executors are only allowed to charge for direct out-of-pocket expenses (eg travel, postage, legal fees), not for their time.

The Law Society has published guidance on the factors that should be taken into account when solicitors set their fees for non-contentious probate work. They also have to provide clear information about how their fees will be calculated before starting work for a client like an executor.

Ex-gratia payments

Fairly frequently charities are approached with requests to agree an ex-gratia payment to someone not benefiting under the will of the deceased. It may be someone who has shown kindness to the benefactor in their last years. Or it could be a close relative not mentioned in the will. Or a technical mistake has been made in the drafting of the will, voiding the intended gift. It is important to recognise that as a charity, the PCC does not have the same freedom and discretion as a private individual to give away part of its legal entitlement.

As Trustees of the parish, the PCC can only lawfully apply its funds for charitable (ie Christian ecclesiastical) purposes, which do not generally include making payments to disappointed relatives! If after due consideration of the specific case by the full PCC they decide that they would be acting immorally by not making an ex-gratia payment, despite the parish not benefiting, they can apply to the Charity Commission, who will decide on the merits of the case. It is essential to read the Charity Commission's booklet CC7 Ex Gratia Payments by Charities — downloadable from the web www.charity-commission.gov.uk - for the full details, which includes a long list of the evidence the PCC will need to produce. There is even more detail in the Commission's Operational Guidance.

Estate accounts

At the end of the administration, the PCC will be asked to approve the estate accounts. You should:

- cross-check the final accounts against the schedule of assets
- check all pecuniary legacy payments against the will and any codicils
- check expenses for anomalies (eg debts at death, executors' expenses)
- check professional fees (see above) and challenge if unreasonable (see below)
- check IHT, CGT and income taxes have been correctly calculated and paid
- check the arithmetic
- consult with other residual beneficiaries to see if they are satisfied

Because accounts appear in many formats, be prepared to challenge anything you cannot understand before approving them. Once signed off, you have no further redress.

When things take a very long time!

Some executors take an awfully long time to administer estates and distribute the proceeds. This is why it is so important to keep an orderly file and "diary log" of all events, phone conversations etc. If you haven't heard from the executors with a progress report for three months, you should enquire what action is being taken. If you fail to get a satisfactory reply, chase again in writing, so you have clear evidence.

Making a Complaint

If you are still not satisfied, write formally to the Complaints Partner (for a firm of solicitors or accountants) or Complaints Officer (at a bank). Complaints to solicitors are handled

under Rule 15 of the Law Society's Practice Rules. If you don't get a satisfactory reply in say 21 days, write advising them that you will be writing formally to the Law Society's Consumer Complaints Service 0845 608 6565) if the matter is not resolved in say 14 days. The equivalent for accountants is the ICAEW Professional Standards Office 01908 248100 www.icaew.co.uk.

If you think the legal fees for administering the estate professionally are excessive, ask the solicitors for a full narrative explanation. If you are still not satisfied, ask the solicitor (within a month of the bill being advised) for a remuneration certificate from the Law Society. An alternative route is to get a legal costs draftsman to independently assess the fees, though you will have to pay for this service independently.

Quite often executors are lay people (eg relatives of the deceased) and not used to the administration of legacies. Greater pastoral care should be shown if relatives of the deceased are administering the estate. They can instruct a firm of solicitors or accountants to do the work, and the costs are then borne by the estate. In law they have a duty to the Probate Court to produce an inventory and account to the Court. The threat of a summons to the Court can often produce the accounts and a distribution, though this should be used with care.

Accounting for legacies

Under SORP, legacies should be recognised in the parish accounts as soon as practical and prudent to do so. Three conditions need to be met:

- entitlement when the money is receivable or legally enforceable
- certainty when there is reasonable certainty that the money will be received
- measurement when the monetary value of the gift can be reliably calculated

Legacies should be included in the annual PCC accounts on the earlier of the money being received or the final estate accounts being agreed. Substantial residuary legacies that have been notified at the year-end, but are incapable of accurate financial measurement, should be included in the notes to the accounts with an estimate of their value.

Life interest legacies

A life interest legacy (also known as "reversionary interest" or "interest in remainder") occurs when a legacy to the PCC (the remainder) is subject to the interest for life of one or more individuals. A typical example of this type of legacy is when a testator leaves a house to their partner whilst they want to remain in residence, but when the property is vacated the proceeds of the house sale are split between different family members and charities, including the church. So the PCC may not get the legacy money until many years after the original testator's death. As well as properties, such "will trusts" may include investment portfolios or other assets.

It is vitally important that the PCC maintains in active contact with the executors whilst the life tenancy exists, particularly if the church's share of the eventual legacy is significant (say more than one-third) or likely to be substantial (eg eventually worth more than £30,000). When the legacy is first notified ask the executors for similar information to ordinary residual legacies (eg copy of will and codicils, schedule of assets and liabilities), which should give an indication of the legacy's potential value at today's prices. If necessary, explain that as a legally accountable public charity, the PCC is required to keep

detailed accurate records. If possible try and discreetly determine the approximate age of the life tenant if they are not already known to the church.

In the case of a property you should try and find out:

- whether it is registered or not and whether it is freehold or leasehold
- where the deeds are stored
- who is responsible for the buildings insurance and the level of cover provided
- who is responsible for the maintenance of the property and how this is funded
- whether the life tenant actually resides at the property

In the case of an investment portfolio try to discover:

- details of investments and their values at death
- whether the portfolio is actively managed or not, and if so by whom
- if professional investment managers are used, and their terms of engagement
- the investment philosophy - especially the balance between capital growth and income
- the trustees' actual powers over capital and income
- It may be possible to persuade the executors/trustees to vary their powers if this is in the long-term interests of both life tenant and the ultimate beneficiaries including the PCC.

Ensure that all this information is carefully written down and filed. After the initial contacts and fact-find you should contact the executors again at least once every three years to determine the current position and what changes have occurred.

The PCC should not normally ask for any of this information directly from the life tenant, so it is not accused of "trying to get their hands on the money". It is all too easy to antagonise elderly or frail life tenants, so contact should normally always be with the executor. If the life tenant is known to be frail it may be relevant to enquire if an enduring power of attorney has been arranged, so that someone else (eg the executor) can take over if the life tenant becomes incapable of handling their own financial or legal affairs.

Sometimes the life tenant is the sole executor or trustee. In these cases direct contact is inevitable, and has to be handled with great tact and pastoral concern for the individual. If the life tenant is not already known to the church, aim to build up the relationship gradually over the years.

The PCC will want to ensure that any property is reasonably insured and maintained. If the life tenant only has a low income there may not be sufficient to provide adequate cover, and the building and garden may rapidly deteriorate. If the church's interest in the long-term value of the house is significant, it may be sensible to offer to use some of the PCC's own resources to ensure its long-term interests are reasonably protected.

Most of the issues raised in the earlier parts of this paper are also relevant to life interest legacies.