

# Guidance Notes for Lay Executors

## When a Will contains a Legacy to a Church

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### Thank you

Firstly, thank you for taking on the role of executor. Being an executor isn't easy, the role can be demanding but it can also be rewarding. Although this is a difficult and upsetting time, in administering an estate you will resolve all outstanding issues - leaving space and peace for those left behind.

With special thanks to the Institute of Legacy Management (ILM), this resource provides further information that we hope you find useful. There is also a Terminology List at the end of this resource for your reference. Please note that this guidance principally relates to the estates of people domiciled in England. If the deceased person owned assets abroad, you are strongly advised to consult an expert in this field.

### The Charitable Status of the Church of England

Charities have a range of Governing Documents. Charitable Trusts are governed by Trust Deeds, Charitable Companies will have a Memorandum and Articles whilst Charitable Associations usually have a Constitution. Parochial Church Councils (PCCs) have been recognised as charities for many years and are governed by two pieces of Church of England legislation, called Measures. These are 'The Parochial Church Councils (Powers) Measure 1956 as amended' and 'The Church Representation Rules (contained in Schedule 3 to the Synodical Government Measure 1969 as amended)'.

### Parochial Church Councils (PCC)

The Parochial Church Council (PCC) is the executive committee of a Church of England Parish and consists of clergy, the churchwardens of the parish, together with representatives of the laity. The basic responsibilities of their members, as charity trustees, have not changed significantly for some time. Charity law and the

requirements placed on PCCs do change periodically, and PCCs must regularly consult the Charity Commission for the latest changes.

The Parochial Church Council is the preferred recipient of any legacy gift. Previously common variants include the vicar and churchwardens (V&C). If a legacy is left to the V&C, the PCC will contact 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.

## A Registered Charity Number

All PCCs hold charitable status, and all 16,000 of the Church of England churches are currently excepted from registration with the Charity Commission, apart from those whose annual income exceeds £100,000. They will be registered and have individual Charity Numbers.

If a registered charity number is provided within the will, please check the name of the church and charity number match. You can check this is by searching the name of the church and parish (for e.g. St Mary's Church, Stockton) using the [Charity Commission Find a Charity Search](#)

## Contacting the Beneficiary

If not yet known, please let the beneficiary church know of the death and of the legacy at the start of the estate administration, as many will want to offer their condolences, prayers and appreciation. Where the gift has been restricted for a particular use or fund, it can be particularly helpful.

It may also be helpful to point the beneficiary church in the direction of our [Guidance Document: A PCCs Guide to Receiving a Legacy](#) to help them with the administration process.

Most individuals wish to leave a gift to the work of their local parish church, however a legacy may be left to other areas of the Church.

### **Parish Church:**

There are 16,000 churches and several hundred St Mary's in the Church of England, so it is important that you have the correct details of the correct church!

It is easiest to locate the church and its contact details via the Internet. We have a website dedicated to finding churches here <https://www.achurchnearyou.com>

Alternatively you can type the name of the church and parish into Google as most churches now have a dedicated website. Once you have found the correct details, it is best to contact the Vicar, Treasurer, Legacy Officer or Churchwarden.

### **Cathedral:**

If a legacy is left to a Cathedral, you may find there is more than one recipient body for legacies named (e.g. Gift to the Cathedral, the Music Foundation, the Fabric Fund or to the Friends Society).

It is best to check the Cathedral's website for contact details and then to speak with the Legacy Officer, The Dean or member of the Development Team.

[A full list of Cathedral Contacts can be found by clicking here](#)

### **Diocese:**

A legacy may be left to a Diocese. The Church of England is divided into 42 Dioceses (regional church bodies) and each has their own Diocesan Bishop and Diocesan Board of Finance (DBF). The DBF is the proper receiving body of a legacy. It is best to check the Dioceses website for contact details and then to ask to speak with the Diocesan Secretary or Head of Finance.

### **A National Body:**

A legacy may be left to one of the national bodies of the Church of England, most commonly The Archbishops' Council or the Pensions Board. In this instance, please contact Financial Planner Ruth Norval ([ruth.norval@churchofengland.org](mailto:ruth.norval@churchofengland.org)).

If you have any difficulty contacting the beneficiary Church, Cathedral or Diocese please do not hesitate to [Contact Us Directly](#)

## Multiple Beneficiaries

If there are several charities and/or churches named in the will, they can liaise with each other or even agree a 'lead' charity, thereby cutting down the number of letters you need to write and receive and speeding up the process. Please be aware that all PCC members are volunteers, therefore it can be more appropriate for large charities to take the lead as they have appointed paid professional staff.

## PCC Legacy Policy

Many PCCs have a Legacy Policy on how potential legacy income will be spent. Since needs change over the years, many PCCs encourage gifts to be left for the general purposes of the parish rather than a restricted purpose.

**Unrestricted Legacy:** If the gift is unrestricted, the PCC may wish to discuss possible uses of the gift with the executor and if appropriate, family members. Possible uses can include the deceased's known areas of interest in church (e.g. music, youth, buildings etc.) information from a Letter of Wishes, and/or the church's priorities at the time.

**Restricted Legacy:** If the gift is restricted, the PCC will need to ensure that the gift can be used inline with the restriction. If it cannot meet the specific charitable intention outlined in the will, they will approach the executor to discuss how the terms of the gift could be changed, so that the gift can be used for broadly similar purposes.

For example, a legacy may be restricted to 'repairing the tower' however, the church repaired the tower 5 years prior and it will not need repairing for another 100 years. However, the church is currently raising funds to repair the roof and might suggest that the terms of the gift are broadened to 'repairing the roof', a similar purpose to the testator's original intention. If the executor and PCC cannot reach an agreement, the PCC may apply to the Charity Commission for a "scheme" to reapply the legacy funds.

**In Remembrance:** The PCC will also wish to discuss the best way to honour the gift received. Each church is different and some churches have a Book of Remembrance, whilst others are able to erect more permanent memorials such as plaques, trees or engraved candles. The PCC may offer to pray and/or hold a special service in memory of the deceased. If you wish to discuss any of the above in further detail, please contact the Priest in Charge.

## Legacies of a fixed amount (pecuniary legacies)

If the legacy is a specified lump sum or a specific item, the church simply needs a photocopy of that part of the will, which states its benefit. Please enclose it when you contact the church advising them of their benefit and when you expect to have Probate granted (usually no later than six months after the date of death).

When finalised, please send a cheque (made out to the Parochial Church Council) for the correct amount, with a covering letter confirming the deceased's name, address and any other information you consider helpful.

## Legacies of a share of what is left (residuary legacies)

Residue is that which remains after all the testamentary debts, tax due, pecuniary legacies and administration costs have been paid. Charity residuary beneficiaries are required by the Charity Commission to ask you for certain basic estate documents and for more detailed information as the administration unfolds.

### These will include:

- **A Photocopy of the Will** - with your first letter, if possible. Until Probate has been granted, a will is confidential and a church will respect that. After the Grant of Probate, a will becomes a public document.
- **A Copy of the Schedule of Assets and Liabilities** - these include real estate, shares, valuable antiques, art and jewellery.
- **Valuations of Significant Assets** – such as property or land.
- **Estate Accounts** – these are a requirement under law for any beneficiary who requests them.
- **Tax Deduction Certificates**

As the administration proceeds, if possible please inform the church of any significant problems such as claims on the estate, unforeseen or relatively large costs, any possibly litigious or contentious disputes, or any simple requests by the family which are not covered by the will but could quickly be dealt with.

## Ex-Gratia Payments

You may find as executor that you are asked to make payments to people, which are not part of the estate administration or are not gifts set out in the will. There may appear to be a very good moral reason why the payment (known as an 'ex gratia' payment) should be made. However, it is important to remember 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 a residuary beneficiary, the PCC can only lawfully apply its funds for charitable (i.e. Christian Ecclesiastical) purposes. Therefore where charities are beneficiaries, you should not make any ex-gratia payment without their prior consent.

If after due consideration of the specific case, the PCC felt they would be acting immorally by not making the ex-gratia payment despite the parish not benefiting, the PCC would need to apply to the Charity Commission, who will decide on the merits of the case. Further information is available via the Charity Commission's booklet [CC7 Ex Gratia Payments by Charities which can be downloaded here](#)

## Tax Matters

As executor, you have a duty to finalise the deceased's outstanding tax affairs and pay all taxes due as a result of the death, or arising during the administration. There are certain charity tax concessions, which apply when a charity benefits from a legacy.

There are a number of other areas of tax an executor may need to be aware of. These could include **IHT Calculation** (lifetime gifts), **Capital Gains Tax** (if an asset is sold gaining value since death) and **Income Tax** (accounting for it in the year in which income has been received).

You are strongly advised to seek advice, either from a solicitor or from HMRC if you have any concerns regarding tax and the estate you are administering.

## Inheritance Tax (IHT)

UK-registered and exempt charities (including churches) are exempt from IHT and charitable relief should be claimed from HMRC Capital Taxes in the IHT 200 or the IHT 205 return you make. You have twelve months to make the return; otherwise HMRC may issue a penalty that would be your personal responsibility.

Where the residue is shared between charities (exempt) and individuals or other types of organisation (non- exempt), you will need to consider which shares of residue should bear the IHT on residue before you distribute it.

## Variations

A Deed of Variation can vary the will where it is in the interests of all affected beneficiaries. The most common reason is that the will is poorly structured for tax. A Deed of Variation can be entered into once all the beneficiaries have agreed; however, if an affected beneficiary is a minor, a Deed of Variation cannot be used.

## Executors' Expenses

Beneficiaries fully appreciate the time and effort non-professional executors give to administer the estate. Not least, by acting in person as executor, you are saving the estate legal fees. However, unless the will includes a clause enabling the executor to make a charge for his or her time, non-professional executors are not legally permitted to do so. This is regarded under law as 'profiting from a position of trust'.

You are, of course, entitled to reclaim all reasonable expenses actually incurred, such as the cost of travelling, fares, postage, telephone calls, photocopying and any payments made for such items as death certificates, swearing etc.

## Estate Accounts

Executors must provide on request to residuary beneficiaries (charitable and non-charitable) a set of estate accounts at the end of the administration; professional estate administrators do so as a matter of course. The Charity Commission requires charities that benefit from residue to ask for estate accounts. This is not for them to question the probity of the administration but to clarify that there is no outstanding matter that would create a liability on charity trustees. For the clearest arrangement, accounts should comprise the following:

- The capital asset and liabilities at the date of death
- An expenditure account, to include:
  - Any Inheritance Tax, administration expenses and pecuniary legacies
- An income account, details of payments since death (ideally by tax year)
  - Interest, dividends, rents paid
- A distribution account, i.e. how the estate has passed to all beneficiaries

Estate accounts should be sent to the residuary beneficiaries for their approval.

## Thank you again!

The church named in the will you are about to administer is truly grateful, not only to the deceased, by whose generosity their work can continue to grow God's Kingdom, but also to you, the executor, by whose time and effort the deceased's generosity may take effect.

Please do not hesitate to contact the named church early on if an issue arises. Alternatively, you can contact the National Legacy Officer via the [Church Legacy Website](#) or telephone the Legacy Information Line on 08445 870875.

## Helpful Terminology

<b>BENEFICIARY:</b>	A person or organisation that is left something in a will.
<b>LEGACY:</b>	A gift by will, usually money left to a person or organisation.
<b>RESIDUARY LEGACY:</b>	A gift (total or of the remainder) of the estate after all other gifts have been made and debts cleared.
<b>PECUNIARY LEGACY:</b>	A gift of a fixed sum of money.
<b>SPECIFIC LEGACY:</b>	A particular named item left as a gift in the will. For example, a piece of jewellery, furniture or painting etc.
<b>ESTATE:</b>	The total sum of possessions, property and money left at death after debts have been paid.
<b>CODICIL:</b>	A document used to change an already made will.
<b>EXECUTOR:</b>	Person(s) appointed to carry out the terms of the will.
<b>TESTATOR/TESTATRIX:</b>	A person who has made a will.