



# Good Practice Guidance

## Claims against the estate

## **Key Principles: Sensitivity, Transparency, Collaboration, Informed**

When legacies are left to charities, it's our obligation to ensure that we receive the whole entitlement to apply to our charity's objectives, and so that our donor's final wishes achieve their greatest potential. However, we may come across cases where claims against an estate may put our goal at risk. There are claims which find their basis in a legal framework, as opposed to *ex gratia* claims, which do not have a legal remedy.

Being informed about the types of claims we may see, and being transparent and positive in our approaches to them will help us deal with these claims in the best way possible. Collaborating with colleagues and seeking help or information from expert sources if needed is also vital when working on responding to a claim. Naturally, sensitivity is necessary throughout the process of responding to a claim, given that we will be working with bereaved people, even if they are not the ones who have made the claim.

### **Things to think about**

#### **Legal challenges**

If a legal challenge arises, it's important that we receive the information as soon as possible and that we share this information with our charitable co-beneficiaries, where appropriate. This is where building up a trusting relationship with the lay executor and solicitors (see **Guidance Notes - Working with lay executors** and **Guidance Notes - Working with solicitors**) will help. A personal conversation with the lay executor or solicitors may be useful, via the lead charity if one has been appointed (see **Guidance Notes - Working with multiple charities**).

Seeking independent legal advice is recommended when faced with a legal challenge, as claims will affect our charity's entitlement. Bearing in mind our Principles of Sensitivity and Collaboration, it is always worth considering alternative dispute resolution before litigation, and treating all parties throughout with respect. Disagreements may be inevitable, but how we solve them is the crucial factor. At all times we need to be aware of the damage that may be caused to our charity's reputation, which is one of our most valuable assets, and may impact on our ability to secure future donations and legacies.

Often there are time limits and deadlines that run in relation to legal claims and/or court proceedings. It's always important to check that we are aware of any time limits, especially if we receive court documents.

#### **Moral claims against the estate**

##### **Ex-gratia claims**

These claims are usually requests by members of the donor's family for a payment for others or themselves (*ex gratia* claims), or requests for carrying out wishes from the Will which were not properly executed. Charities should have *ex gratia* payments policies in place which have agreed by their Trustees, to ensure consistency of approach internally. However, decisions will be specific to each charity; even if the situations appear identical, different charities may arrive at different decisions based on the same evidence depending on the views of the charity Trustees.

Charities are required to investigate these claims and may request additional information, in order to present it to our Trustees. It's valuable to remember that while the charity's Trustees may make a decision to honour an *ex gratia* claim (a task which they cannot delegate), there is no legal obligation for

the charity to make a payment. At the same time, we may need to ensure that the donor's family understands from the outset that the charity may not be able to honour the claim.

The ultimate authority to honour an *ex gratia* claim differs between UK countries. The authority is derived from the Charity Commission for England and Wales, and the Northern Ireland Charity Commission for charities in Northern Ireland. In Scotland, charities are unable to make *ex gratia* payments on moral grounds (i.e. with no legal basis) under the Charities and Trustee Investment (Scotland) Act 2005. This would amount to a 'non-charitable payment' and would not be permitted by OSCR. Unlike the position in England and Wales, Scottish charities cannot apply to OSCR for consent to make *ex gratia* payments. This is also the position in Scotland in relation to the *de minimis* principle (see below).

Sensitivity needs to be at the core when we consider an *ex gratia* claim, as we are dealing with a bereaved or disappointed family member or friend. As such, it's vital that we are empathic in all our dealings. In responding to *ex gratia* claims, it's also worth thinking about the possibility of negative press following a decision.

### **De minimis principle**

The *de minimis* principle derives from a Latin maxim, meaning "of minimum importance". This refers to something that is so trivial or small in the eyes of the law that regulation does not cover it.

In other words, the charity's Trustees have discretion to act within a framework for legacy issues which sit outside of legal strictures, as they consider it to be in the best interests of the charity. As legacy professionals, we may be able to exercise this discretion on behalf of the Trustees as part of agreed delegated authority (depending on what our charity policies specify), for instance for requests of items of sentimental value. There is no set amount for the *de minimis* as it varies from charity to charity.

It's worth us bearing in mind that while some requests may be trivial in the eyes of the law, they may be of great importance to the family or friend making that request. As such, treating such requests and the decision on whether or not to honour them is best done with great sensitivity.

### **Further reading and useful links**

- [Charity Commission CC7 Guidance on \*ex gratia\* payments \(England and Wales\)](#)
- [Charity Commission for Northern Ireland](#)
- [Scottish Charity Regulator \(OSCR\)](#)
- [Case studies](#)