

Good Practice Guidance

Working with lay executors

Key Principles: Sensitivity, Transparency, Integrity

Introduction

A 'lay executor' is an individual who is named in a Will as an executor or trustee and who administers an estate personally without formal legal representation from a firm of solicitors.

Working with lay executors can be as rewarding as it is challenging, and if handled sensitively may sometimes result in the recruitment of new supporters for the charity. It's important we don't hold any preconceived perceptions of the lay executor, including their level of allegiance to the charity or how disappointed or pleased they may have been with the distribution of the estate in the Will.

Things to think about

Lay executors' situation and experience

It's important to remember that in the majority of cases lay executors are close family, friends or associates who have been personally affected by the death of the donor. It's likely that they are grieving and often have no idea of the size of the task they have taken on when they agreed to be a named executor in the Will. Sensitivity in this context means that we need to be aware of their potential feelings, although we have to request certain documents and establish a proper level of communication. This may be one of dozens of cases in our workload, but for the lay executor, it could well be the most upsetting and arduous task they are undertaking.

Some lay executors are very grateful for any help given. Others can feel patronised by the offer of support and feel that all the charities want to do is to get as much money as quickly as possible. This is why it is often better for the initial contact to be simply one of support and an invitation to enter into a dialogue.

It's important for us to find a balance to develop a good working relationship. To that end, it's helpful if we set out at the beginning how the matter will proceed, which will depend at what stage of the journey we've received the notification. For example, it's probably not a good idea to push for a retrospective valuation of a property, if the house has already been sold. If we require this information, we can normally find details of property sales on sites such as Zoopla and Rightmove, which saves

unnecessary correspondence with the lay executor.

Explaining what we're doing and why

To build trust, it's necessary for us to be as transparent as possible with lay executors about our role, what we need to do and why. In administering legacies, it's important to explain that we are fulfilling our responsibilities as a charity, with the aim of honouring the donor's wishes.

For example, in the case of a residuary gift, legacy professionals are required by the Charity Commission to obtain copies of the Will, schedules of assets and liabilities, valuations of property and final estate accounts. Being both transparent and sensitive may involve mentioning to the lay executor that any requests for this information are not to in any way question their integrity. Rather, it is for their own protection (for reasons we outline at the time), to fulfil legal requirements, and to satisfy the charity's auditors. Likewise, this information can help charities (as beneficiaries) understand the conditions of the gift more fully and help identify any aspects of the estate where, for instance, charity concessions could help reduce estate costs. For charities registered in Scotland, the Office of the Scottish Charity Regulator (OSCR) does not legally require legacy professionals to obtain this information, however it is considered good practice and as above, it is for the lay executor's own protection and to satisfy our charity's auditors.

Likewise, there may be situations in which we may not be able to use a gift for its original purpose; if so, we will discuss alternatives with lay executors as appropriate. In Scotland, if the gift was given for a specific purpose and it is not possible to give effect to that purpose, the charity must apply to the OSCR to reorganise the restricted donation.

Acting with Integrity in cases where lay executors do not engage

There are rare occasions when lay executors simply don't want to engage with the charity. At that point, we or our colleagues need to make decisions about how to approach the matter (potentially via an established decision making protocol, see [Member Toolkit](#)) Once a notification has been received, the charity has a legal entitlement to that gift and the executor has a legal duty to ensure that the gift is made in accordance with the wishes of the donor. However, after a set period, some charities may decide it is not in their best interests to pursue the legacy, if the cost in money, time and reputation outweigh the benefit.

These can be difficult conversations. It is never a good idea to meet angst with angst and, occasionally a legacy professional may have to refer communication to a superior or manager within their charity. Lay executors have fewer legal duties compared to solicitors, so it's important for us to have realistic expectations. As legacy professionals, we need to strike a balance of asserting the charity's right to the gift against putting additional stress on a lay executor who may not have fully understood the obligation to distribute the estate exactly as set out in the Will. Once a relationship has been established with the lay executor, it should be clearer to us

what the best approach would be.

When we receive a letter, email or telephone message, a prompt reply from us shows dignity and respect. Even if we are unable to answer a query immediately, an acknowledgement shows the sender that they have our attention and that we are not ignoring them.

There may be times, especially towards the end of the administration, where an element of compromise is needed. For example, whilst we do require evidence of income and outgoings throughout the process, these need not be formal accounts. We may feel that, in order to maintain a good relationship, it is not necessary to obtain full details and valuations of all assets, or to question the expenditure on a memorial.

When concluding the estate, a personal 'thank you' for the gift and an indication of our acknowledgement of the amount of work that has gone into the administration is not only courteous, but also an opportunity to initiate a continued relationship, if that is what we feel that the lay executor may appreciate (see [Guidance Notes - Communications following receipt of gifts](#)).

Further reading and useful links

- [The role of the lay executor](#)
- [Guidance for a lay executors](#) and [Law Skills article](#)
- See [ILM Member Toolkit: Guide for lay executors](#)
- [Post-bereavement](#)
- [Bereavement training](#)

See [Member Toolkit](#) for examples of wording for communicating with lay executors.