



Good Practice Guidance

Introduction

About the Good Practice Guidance

ILM and our members share a vision to ensure every generous donor's final wishes achieve their greatest potential. Legacy management is not an end in itself; it's an opportunity to ensure the final wishes of generous donors help to create the positive change they wanted to see in the world. Donors have placed their trust in us. As such, it's our duty as legacy professionals to fulfil their final wishes in a timely manner, and to optimise the positive impact these gifts have for charities and their beneficiaries.

This Guidance provides a set of Principles for legacy management, offering an ethical framework for legacy professionals. This guidance is designed to support us as legacy professionals to make better ethical decisions, further improve our engagement with stakeholders, and consistently act in a professional manner. That said, our intention is not to provide a prescriptive set of actions for day-to-day legacy management, not least because roles and responsibilities vary greatly between organisations. Rather, this Guidance outlines how these Principles can be applied to the common issues faced over the course of a legacy journey – in other words, from notification of the gift through to receipt and beyond, to make sure the gift benefits those who receive charity support and services, and the donor's wishes are fulfilled.

Legacy professionals currently must adhere to a range of legal prescriptions and restrictions. While compliance with legislative and regulatory frameworks fundamentally underpins our work, legacy management is deeply personal, as this is concerned with a donor's final wishes. As a result, this Guidance seeks to strike a balance between 'process' and 'people'. Donors and their families and friends are at the core of our efforts to ensure that everyone involved is treated with the humanity they deserve, and that all legacy management work adheres to the highest professional standards.

We appreciate that legacy management does not occur in a vacuum. Integration of this discipline with the wider organisation and external partners is key to delivering the best service to donors, executors and their families. Through this Guidance, we'll offer resources and information to help us all achieve our core purpose, demonstrate the value of our work, and create supportive environments for successful legacy management.

Ethical dilemmas and legacies

Ethical decision making is core to every and any strategic or operational decision made within a charity context. An ethical approach is expected by supporters, but also by regulators, the media and Government alike.

Alongside the standard challenges on staff time and resourcing common to many charities, we as legacy professionals can be faced with a wide range of ethical issues in our work. Taking a few examples, we may face decisions about:

- **the value of the legacy versus the cost of administering it:** under what circumstances is it valid and justifiable for a charity to 'write off' all or part of a legacy, and cease administration of it?
- **the source of donor income:** are we assured that the income was created legally (as charities must not benefit from income obtained through criminal means)? If the income was created legally, were those means compatible with our charitable aims? For example, an environmental charity might have misgivings about a legacy where the income was primarily derived from

polluting industries. Alternatively, it might be the case that the charity determines that the benefit of the legacy to combatting pollution may be more important than the prior impact.

- **the character of the donor:** did the donor undertake any past activity which would be at odds with our charitable aims or ethos? For instance, for a children's charity, a legacy from a donor who had a history of offences against children may be wholly unacceptable. However, it might be determined that the donation could have an unprecedented and significant effect on preventing future offences against children, and so the charity might decide to accept such a gift while being transparent about its reasons for doing so.
- **potential media interest or reporting:** there may be times where a gift from a specific individual is likely to attract public and media interest, so we can work to help our press and Senior Teams, as well as Trustees, prepare our charities' response.
- **the varied priorities of other charities involved in a legacy:** how do we balance often competing values while providing clear and proportionate communication to solicitors and executors?
- **communicating with lay executors who do not wish to engage:** how best can we balance our obligations to pursue the legacy with empathy and sensitivity for the loss families and friends are experiencing?
- **sensitive initial, ongoing and final communications with the families of the donor:** is it appropriate to continue communications after the legacy has been received, and under what circumstances?

For these and many other examples, it may not be clear what the 'right' or 'moral' choice is, nor easy to decide. There are often no perfect choices when we are faced with ethical dilemmas within legacy management. The best choice will vary depending on individual circumstances, the charity's own aims and perspectives, any relevant legislation, as well as advice from the relevant Charity regulator for the country in which our charity operates (for example, Charity Commission Guidance CC7 in England and Wales). As such, within legacy management ethical decision making represents a balance between the rights, needs and expectations of all parties. Meeting the wishes of our donor and needs of our charity will not always seem an easy fit with providing a positive experience for family members, lay executors, solicitors or other parties. However, we have a responsibility to inspire trust and confidence both in our own work, but also in our organisations and the charity sector as a whole.

Decision making

Given these dilemmas and the varied responses to them, it's vital for us as legacy professionals to consider our Guidance Principles (see **Our Principles**), judge whether we can provide an ethical basis for our decisions and act with integrity. We at ILM present this document as a means to reflect and build on the good practices, knowledge and approach taken by our members.

How actions might be viewed outside of the organisation will often be a good steer for ethical decision making. Would we happily share the 'why's', 'how's' and 'when's' of our decision with a supporter, family member or other third party? If not, we may need to think about why that is, and reconsider our approach. Legacy professionals represent both their organisations and profession when dealing with donors, executors and solicitors. If someone has a bad experience with a legacy

professional (or interprets behaviour negatively) that person may be less likely to support that organisation in the future or leave a legacy themselves.

Ethical, logical and reasoned decision making is imperative to good morale amongst colleagues. Our ethics are our belief system, which if put into practice demonstrates to others that we are committed professionals beyond reproach. This helps build confidence in colleagues about our own work and the approach of our organisation.

In addition to referring to this Guidance, there are other means by which we help ensure our decision making is coherent and justifiable:

- creating, and referring to, our organisational gift acceptance policy
- working closely in partnership with colleagues from accounts, fundraising and the executive team to ensure a consistency of approach
- engaging with other legacy professionals, for instance through opportunities for training and development through ILM
- developing or reviewing decision making protocols which outline how and when decisions need to be directed up the hierarchy, including to Trustees (visit the **Toolkit** on the members-only section of the ILM website for examples of delegated decision making topics)

As a final point, this Guidance is not intended to remain static. This is the start rather than the end of a conversation with ILM members and other legacy stakeholders, and will be reviewed regularly in light of legislative changes. We look forward to building on this good practice with our members and partners in the years to come, to ensure the legacy sector continues to innovate and thrive.

Thanks

The creation of this guidance was made possible by the dedication and hard work of ILM members. We'd like to say a big thank you to all ILM members who responded to the consultations on the Principles and draft Guidance. In particular, we would like to say thanks to the members of the ILM Good Practice Guidance Taskforce, a diverse group of ILM charity members and other stakeholders with expertise on law, regulation development who authored the Guidance. The organisations represented were:

- Arthritis Care
- Blue Cross
- Cancer Research UK
- Cleaver Fulton Rankin Solicitors
- Drew Lindon Consulting Ltd
- Legacy Foresight
- Legacy Link
- Macmillan Cancer Support
- MND Association
- The National Trust
- RNIB
- The Royal Academy
- Turcan Connell Solicitors

- Withers LLP Solicitors
- World Vision

Disclaimer

Where this Guidance offers information on legal issues, this is given to the best of our understanding. It is not offered as a definitive legal interpretation and is not a substitute for formal legal advice. For legal queries, please seek independent legal advice.

The Guidance is regularly reviewed to ensure that it is up to date with relevant regulations, legislation and case law, but ILM cannot guarantee that all sections will be accurate at all times.