

AN INTRODUCTION TO LEGACY FRAUD

Legacies – money left in wills – are a vital source of charitable income. Some charities receive half or more of their total voluntary income in this way. Because of the large amounts of money involved, and the beneficiaries' lack of control over the administration of the estate, fraud risks can be high.

HELPSHEET

Introduction

Fraudsters know that charities can be easy to deceive because they will not have a full picture of the deceased person's finances and assets. The actions of aggrieved family members can sometimes increase these risks. Nonetheless, charities have a legal duty to manage legacy gifts in ways that ensure the donor's wishes are respected.

What is legacy fraud?

Legacy fraud (also called probate fraud) is the misappropriation of money or property left in a will. The perpetrator might be:

- an executor (a solicitor or lay executor);
- the deceased person's relative or carer; or
- one of your own staff members or volunteers.

Common examples

External

- The executor (lay or professional):
 - fails to notify a beneficiary of their entitlement;
 - underpays a beneficiary by omitting assets or falsifying liabilities in the estate records;
 - steals estate assets;
 - levies excessive fees; or
 - sells assets cheaply to a friend or associate.
- A relative or carer:
 - steals estate assets;
 - conceals estate assets;
 - forges a will or codicil (a supplement to a will); or
 - conceals the existence of a will.

Internal

- A staff member or volunteer diverts legacy income.
- Income is paid to a bogus co-beneficiary.
- Legacy administration records (the will, estate accounts, and so on) are falsified.

Basic controls

These safeguards should always be in place.

- Segregation of duties and responsibilities according to job roles and system access rights. (Do this for receipt of payments, setting up of legacy case files, payments out and file closures.)
- Audit trails that cannot be deleted or over-written for electronic and paper records.
- Exception reporting of things like:
 - changes to bank details;
 - when income received is less than expected; and
 - when spot checks reveal material transaction differences.
- System parameters to enforce formal approval levels.
- Closed files are subjected to final checks using a checklist of procedures to ensure consistency. These should be carried out by someone other than the case handler.

Basic checks

Proactive

- Quantify your legacy fraud risk.
- Check the effectiveness of your internal fraud prevention and detection procedures.
- Ensure that controls track and account for all legacy income.
- Consider engaging a legacy notification service so that you are aware of all legacies due.

- Consider recruiting a qualified and experienced legacy administrator or manager – someone who knows what to look out for when reviewing estate accounts.

Reactive

- When other charities are also beneficiaries, consider working together to make best use of resources and to compare the documentation provided by the executor.
- Always ask for and analyse third-party valuations of estate assets and liabilities, particularly when the figures provided are inconsistent with your knowledge of the deceased. This may involve talking to friends or relatives (care should be taken here) or making online searches for valuations of comparable properties and assets.
- If you have suspicions, obtain specialist legal advice.
- Carry out regular closure reviews for all legacy files to make sure that all income is properly accounted for.
- Check for ongoing receipts after file closure (such as royalties).

CHARITIES are believed to lose more than **£40M** each year to legacy fraud.

Warning signs

Certain kinds of behaviour can be red flags. For example:

- slow (or no) notification of a legacy;
- no response from an executor;
- family members are the only executors;
- assets and/or liabilities seem inconsistent with the lifestyle of the deceased;
- there are no close family members;
- unusual transactions in the estate accounts; and
- unusual entries in the will, or a suspicious codicil.

None of these are clear-cut evidence of fraud, but might point to the need for further investigation.

Taking action

If you suspect legacy fraud act promptly.

- Take specialist legal advice because the relationship between executor and beneficiary can be complex.
- Ask questions of the executor(s) and liaise with other beneficiaries, sharing information as appropriate.
- Contact friends or close relatives to gather information about the deceased's affairs.
- Seek independent validation of assets and liabilities.
- Report the incident to your relevant national law enforcement agency. In the UK this is Action Fraud (England, Wales and Northern Ireland) or Police Scotland (Scotland).
- Report matters promptly to your charity regulator. For reports to the Charity Commission for England and Wales treat it as a serious incident. Use the **online form** to make your report, stating what happened and how you're dealing with it.

If you believe an executor has charged excessive fees you can bring the matter to the attention of the Legal Ombudsman.

CHECKLIST

BUILDING YOUR CHARITY'S DEFENCES

ASK YOURSELF:

- Do we have sufficient in-house knowledge of legacy law and fraud risk?
- Are we using a legacy notification service?
- Do we use external sources to validate entries in the estate accounts?
- Do we liaise with other beneficiaries to make sure we are all receiving the same information?
- Do we contact family and friends to make sure we know as much as possible about the deceased?
- Are regular progress reviews carried out on outstanding legacies?
- Is particular care taken in contentious cases and where there are reversionary legacies with life tenants?
- Do controls make sure our charity receives all that is due to it?
- Are there effective mechanisms to control payments to co-beneficiaries and other third parties out of the amounts we receive from an estate or from property sales, and so on?

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DISCLAIMER

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OTHER RESOURCES

Preventing Charity Fraud contains resources to help charities prevent, detect and respond to fraud.



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