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The Law Commission's consultation on wills: our roundtable discussion

2023



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On Wednesday 12 July 2023, Farrer & Co LLP hosted a discussion regarding the Law Commission's upcoming Supplementary Consultation on wills, due September 2023.

The discussion focussed on the two issues which the Law Commission proposes to consult on again, being (1) whether marriage should revoke a will, and (2) electronic wills.

Revocation of a will following marriage

- As some (but certainly not all) know, marriage revokes a person's will (we'll call this the "General Rule"). If the testator does not put another will in place after marriage, then on death their estate is distributed according to the intestacy rules. Charities do not benefit on an intestacy, and so may be prejudiced by the General Rule.
- Following discussion, the conclusion was that charities would benefit from the General Rule changing, such that marriage does not revoke a will. While it was recognised that that would likely result in more Inheritance (Provision for Family and Dependents) Act 1975 claims from spouses, the majority of attendees emphasised that they would rather defend a gift from a claim than be cut out by the General Rule.
- On that basis, the consensus was that charities might sensibly lobby for a change to the General Rule, and answer any further consultation by putting forward a case for reform.
- Reforming the law in this way could also help protect against predatory marriage, as it would remove a key encouragement (being access to the spouse's estate through the intestacy caused by the marriage).
- Even if the law is not reformed, the strong view was that there is a lack of awareness around marriage revoking a will and that this should change. It was not clear what advice spouses were receiving regarding the effect of the General Rule, and it was agreed that greater awareness would likely lead to more spouses executing wills after marriage, potentially providing benefit to charity.
- The attendees also considered whether marriage registrars should be required to explain the General Rule to spouses, to increase awareness, and again encourage more will making. Another consultation took place in September 2020: "Getting Married: a consultation paper on Weddings Law" which could be of assistance. The consultation paper notes the need to simplify the "complex maze" of different types of rules for different ceremonies. In particular, the summary states that the Law Commission is considering the legal preliminaries that should be required prior to a wedding.

Representatives in attendance

Age UK

Battersea Dogs & Cats Home

Blood Cancer UK

Cancer Research UK

Charities Aid Foundation

Macmillan Cancer Support

NSPCC

Remember a Charity

Save the Children Fund

The Guide Dogs for the Blind Association

The Royal National Lifeboat Institution



An increase in legacy donations by just 0.5% (to 4%) would raise an additional £0.5 billion for charities."

- Legacy Foresight, July 2023



The majority agreed that charities would benefit from the General Rule changing so that marriage does not revoke a will.”

Electronic wills

- The Law Commission is considering (1) whether electronic wills should be allowed, and if so (2) how they should be implemented.
- The attendees agreed that the easier and cheaper it is to make a will, the more wills will be made, potentially increasing the number of charitable bequests.
- Those who were at the ILM conference in July will have heard Legacy Foresight’s suggestion that charities focus on driving up high value giving. They mentioned that currently 3.5% of wealth at probate is going to charities and that an increase in that figure by just 0.5% to 4% would raise an additional £0.5 billion for charities.¹ Anything that increases accessibility presents an opportunity for charities, and delegates thought that electronic wills could make a real difference.
- Making wills electronically would follow the general direction of technological travel, and could have benefits other than accessibility, including for example a series of prompt questions, one of which may be ‘do you want to leave a share of your estate to charity’. The prompt could even explain the tax benefits of charitable giving, which may increase the number of charity bequests.
- One issue that was considered was whether the technology currently exists to support an electronic will making platform. Crucial to this was the technology necessary to match the safeguard against fraud provided by a witnessed wet signature.
- There is also a security concern that an electronic system may compromise the privacy of wills with potential for data leaks. On the flip side, electronic wills could be easily registered and stored.
- It was agreed that if electronic wills were allowed, there would need to be systems to ensure that they were not more easily challenged than paper wills. Checks and balances would be needed to ensure that testators clearly knew and approved of the will’s contents, for example, and were not more susceptible to undue influence in the process.
- Overall, it was agreed that there was uncertainty regarding what an electronic will process or platform may look like and whether it may be feasible, but in theory it would be a positive change from a charity perspective.

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Electronic wills could make a real difference to accessibility of will making.”

Conclusion

- All attendees agreed that the ILM should respond to the new Consultation and put forward a case for reform that would benefit charities.
- One approach discussed would be to push for reform of the General Rule, so that marriage no longer revokes a will.
- Attendees also agreed that a key issue currently is accessibility of will making, and that electronic wills may present an opportunity in that regard.

What next?

Please complete our short survey on the upcoming will consultation. It can be found in the attached email and should take no more than two minutes to complete. By doing so, you will be providing valuable data which will help to inform responses to the Law Commission’s Supplementary Consultation on Will Reform in September.

How to find out more

Visit our Lasting Legacy campaign [here](#).

Please get in touch with your legacy dispute questions. We would be happy to help.



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