

Deciding whether to settle.

When faced with a claim against a charitable legacy gift, deciding whether to settle is not always straightforward. We spoke with some of the charity sectors most experienced legacy officers about making the right decision for your charity.

As Paul Brown from Legacy link describes, the charity commission governs protocol in these situations.

'The charity commission guidance on whether to settle states that charities are 'duty bound to defend their gifts, in most cases you with your charity will be compelled to defend a gift'.

But deciding whether to settle is more about finding a balance.

'I tend to view claims as objectively as possible. You have to kind of look at it and say, 'is it the right thing to do for the charity to fight this claim?'

'Because we are compelled to protect our charitable funds, and any gift is considered charitable funds, so [income] is a component in the calculation but it's not the be-all and end-all'.

Moral judgements.

'Its not all about the money, its about moral judgements. A much better way to define it is to say 'what is the right thing to do for the charity?'

'Is it objectively the right thing to do for the charity to challenge to fight this claim? Are there any other reasons why you shouldn't?'

'And then PR, considering what this look from the outside. Through what lens does this feel like it's the right thing which charity is doing?'

'And so there's lots of very subjective discussion'.

Rebecca Gray from Age UK said:

'We do have some cases where we will know through experience that the claim is quite weak, but it still might be something we need to address, and potentially settle...'

'Because we have to be aware of what it would look like if someone went to the Daily Mail and said '[The charity] wouldn't let me have this, and I'm also a vulnerable person...'

'Taking in that PR issue as well as how successful they may be with any claim.'

So it's a balance.

Relative legal costs are also part of that balance, and any charity naturally wants to limit their expenses disputing a claim.

Benjamin Williams from Cancer Research UK said:

'Charities will very often, as should any sane person, try and stay out of court. You tend to think its unlikely this will go to court, but we're definitely going to be losing something here.'

'We're going to have to offer this person some money to go away because they're clearly so aggrieved, and they're not going anywhere.'

And Paul Brown from Legacy Link added:

'The vast majority of claims are negotiated out. The case where the courts cost so much they lost all the money in the estate, is the rarity rather than the norm. Ive settled dozens on the footsteps of the court on the day of the hearing.'

So whats the worst that can happen?

'It depends how you define 'worst'. From a financial point of view there is the cost - their gift might be completely lost if a claim is successful.'

'Actually probably more dangerous from a charities side is the legal and PR implications of handling a claim badly. The worst case is ending up in court - I would say if you have ended up in court you have failed'.

For smaller legacy gifts, the legal costs might also outweigh the value of the lost income, as Ben continued.

'If it's a small pecuniary legacy we probably wouldn't get involved, but if there is a residuary matter, we almost definitely would get involved. If it's say, like 5 Grand Legacy 5 grand pecuniary, I don't think we would even argue to be honest with you'.

'If the legacy was over 5 grand that might change'.

So it's a balance, but what is important is what is *right* for all parties...

'Its not all about the money, its about moral judgements'.

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