# Contentious Estates

## A Charity Perspective

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# Introduction

It has been widely reported in recent years that the number of cases reaching the High Court involving Inheritance (Provision for Family and Dependants) Act 1975 claims has increased. It is likely that Estate Administration solicitors, instructed by an Executor, will encounter disputes; whether they be inheritance Act claims, validity claims, capacity claims or under any number of other grounds. With the number of charitable gifts in Wills well over 100,000 per year it is also likely that a charity, or charities, may be a party to that dispute.

When a claim does arise it is appropriate, and advisable, for the Executor to remain neutral, however dealing with contentious estates can still be difficult for an Executor and their advisors, but this guide aims to provide an insight into the processes and procedures a charity must consider when making or defending a claim. Armed with this knowledge an Estate solicitor will be better equipped to manage their Executor client's expectations and to answer any key questions they may have.

This guidance note primarily covers a charity's role when defending a claim (the more common situation) however elements are equally applicable where claims are being made by a charity.

## Our regulatory obligations

The Charity Commission have issued two guidance notes designed to offer information and advice for Charity Trustees engaged in litigation. Whilst *Charities and Litigation: a guide for Trustees (CC38)* and *Charities and Litigation: the legal underpinnings* are designed to cover all types of litigations they provide a useful tool for Legacy Officers when dealing with contentious estates.

The guidance confirms that Charity Trustees do have the right to make and defend claims, however they must be able to demonstrate, at all times, that they are acting in the best interests of their charity.

> *Trustees have a general duty to act in the best interests of their charity. They have a duty to protect and, where necessary, to recover, assets belonging to the charity.*
>
> *(CC38 2.1)*

The Charity Commission lists several factors that Trustees must consider when engaging in litigation.

**FACTORS TO CONSIDER**

1. **The merits of the Charity's case**
   It is often the case, and in fact the Charity Commission recommends, that third party solicitors are instructed to obtain, review and advise on the claim's merits. This may include copies of Will files, medical reports and witness statements.
2. **The prospects of success**
   As part the advice from third-party solicitors an evaluation, based on the evidence, of the prospects of success will be provided. As with these types of matters, as further evidence is revealed, this evaluation may change.
3. **The value of the claim**
   This will be determined by way of the review of the sum claimed by the claimant and by way of potential parameters for settlement.
4. **The costs (in monetary and other resources) of pursuing the case whether the Charity wins or loses.**
   During the course of the matter our third-party solicitors will provide accurate cost estimates.
5. **The ability of the other side to pay costs or damages**
   This principle is, perhaps, less relevant where a Charity is defending a claim as often the disputed funds are held with the estate solicitors. It may, however, need to be considered when making a claim against an estate or considering a claim for costs.
6. **The likely harm to the Charity (in financial or reputational terms) whether it winds the case or not**
   Reputational risk is clearly a big issue for Charities. We wish supporters to keep supporting. On the face of it there is an argument that there is an inherent reputational risk with any litigation against an individual, but Charities must consider the reputational damage if we do not defend speculative and vexatious claims, and are not seen to be honouring the deceased's wishes.

It is important to note that none of the above factors take precedence over another. All must be considered in conjunction with each other and each individual case will be considered its facts.

# Decision making

Once information has been gathered to assess the above factors, each Charity will then be required to make decisions as to how they wish to resolve the matter. These decisions may include whether offers are made or accepted, if mediation is appropriate or if the matter is to be resolved through the Courts.

The Trustees for each charity are ultimately responsible for decisions made. However, in many Charities the Trustees may have delegated the authority to make

decisions to key personnel. Charities must ensure that this delegated authority is complied with and the Legacy Officer will need to liaise closely with that decision maker to ensure that they are fully appraised of the background, evidence and any advice received. You will appreciate that this may lead to a short delay while the necessary approval is obtained.

## Conclusion

Charities do not have the same freedom, when dealing with contentious estates, as personal beneficiates, due to the regulatory obligations withing which Charities must work. In order for these regulatory requirements to be met it is essential that Charities gather the appropriate information from third parties, including Private Client solicitors.

The time taken gathering information, assessing that information and liaising with decision makers within the Charity may be lengthy. All these factors may delay the administration of the estate but, armed with this information, Private Client solicitors will be better able to manage Executor's queries, concerns and expectations.

**Please note that the advice contained in this document is of a general nature and is not a substitute for legal advice of specific advice relating to particular cases. If you have any queries, please contact your legacy officer.**

# About Cancer Research UK

We're the world's leading cancer charity dedicated to saving and improving lives through research. We fund research into the prevention, detection and treatment of more than 200 types of cancer through the work of over 6,000 scientists, doctors and nurses. In the last 50 years, we've helped double cancer survival in the UK and our research has played a role in around half of the world's essential cancer drugs. Our vision is a world where everybody lives longer, better lives, free from the fear of cancer.




Cancer Research UK is a registered charity England and Wales (1089464), Scotland (SC041666), the Isle of Man (1103) and Jersey (247).