

SPEAR'S

How to protect charitable gifts in your will

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The rise of charitable gifts in wills has led to the increase in the number of related disputes too, according to research from the Co-op Legal Services - here's what HNWs need to ask their lawyers, writes James Berry

The number of people leaving money to charities in their wills has risen, with one in ten people leaving money to a good cause in the last year compared to just one in 16 from the year before, research from the Co-op Legal Services found.

Recently there has been an increase in the number of disputes related to charity donations in wills. More charities are coming forward to challenge re-written wills that do not include them, as demonstrated earlier this year in the case of *Ilott v The Blue Cross & Others* case where the Supreme Court ruled the charity was entitled to a chunk of Mrs Jackson's inheritance, despite her daughter's protests.

The Dogs Trust is one of the latest charities embroiled in a legal dispute, over the will of the late Tracey Leaning. Ms Leaning drew up a will in 2007 leaving her whole estate to the Dogs Trust and other charities. However, in 2014 a new will was produced that left £340,000 of her estate to her partner Richard Guest on the condition that he took care of her three dogs.

It is understood from press articles that the Dogs Trust argue that the will is invalid on the basis that the second will was not properly created including that the page with Ms Leaning's signature was detached from the rest of the document. This may invite questions as to whether there were any pages of the will with other provisions that have also become detached.

Ms Learning made her new will in 2014 in favour of Mr Guest after she was diagnosed with brain tumour, and it may argued that she lacked mental capacity to do so. Arguments around mental capacity are being

put forward in probate cases more and more, perhaps because of the rise in the number of people suffering from dementia.

Obtaining specialist advice on capacity when drafting a will can make all the difference in avoiding (successful) contention later on. The best way is to have capacity confirmed by a solicitor when the will is being prepared who can, where there is doubt, instruct a medical expert to undertake a capacity assessment and Counsel to advise on the scope of that assessment any issues as to capacity that might arise. Otherwise, the Court will have to try to reach a conclusion on the testator's mental capacity at the relevant time by less than perfect means including witness and documentary evidence. This kind of evidence is likely to be more contentious, leading to Court proceedings, and therefore more costly.

Research suggests that just 40 per cent of Britons make a will. There are many lessons to be learned from recent legal disputes over wills, but first among them is that challenges can be avoided by taking proper legal advice and ensuring that any potential issue as to the testator's mental capacity is headed off at the time the will is produced.

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