

Legacy fundraising

Income from legacies now represents a quarter of the total amount given to charities each year, and is predicted to rise.



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Leticia Jennings reviews the current issues in charity legacies

Law Commission consultation on wills and will making

The current system of will making is based on the 1837 Wills Act, and certain aspects now seem out of place in modern society, with our rapidly changing family structures and ever-increasing reliance on digital technology. For example, a will can only be validly executed in a very prescribed way, and even a small deviation renders the will invalid, meaning that a person's estate could potentially pass to remote family members or even to the Crown, as opposed to the deceased's intended beneficiaries.

In summer 2017, the Law Commission published a consultation on proposals to reform the law on wills. The central aim of the consultation is to make the will-making process easier and more accessible, to support and promote testamentary freedom.

The proposals include:

- Give power to the courts to dispense with the strict formalities for a will where it's clear what the deceased wanted.
- Change the test for capacity to make a will to take into account the modern understanding of conditions like dementia.
- Provide statutory guidance for doctors and other professionals conducting an assessment of whether a person has the required mental capacity to make a will.
- Make new rules protecting those making a will from being unduly influenced by another person.
- Lower the age that a will can be made from 18 to 16.
- Confer power on the Lord Chancellor to make provision for electronic wills in the future once the necessary technology is sufficiently developed to protect against the risks of fraud and exploitation.

Charities are significant beneficiaries of UK legacies, so it is vital that the charity sector is represented and its voice is heard. The Law Commission's consultation

provided an opportunity for the sector to join the national discussion around wills and will making. BWB was pleased to host and chair a roundtable of representatives from eight of the country's leading charities, as well as experts from BWB's Legacies, Trusts & Probate Disputes team, to discuss the most effective way forward with respect to some of the ideas being proposed.

While the Law Commission's decision to consult on key reforms was welcomed, there was a general consensus among delegates that the law is largely settled and widely understood. However, delegates were keen to see progress on the issue of electronic wills, to ensure as many people as possible take the opportunity to make a will – noting, of course, that without a will no charity can inherit.

GDPR for legacy administration

Charities are getting to grips with the General Data Protection Regulation (GDPR), which comes into force in the UK and across the European Union on 25 May 2018 (see our article on page 9 of this update).

Focusing on the specific area of charity legacies and legacy administration, BWB has collaborated with the Institute of Legacy Management (ILM) to produce a factsheet for ILM members.

The factsheet focuses on eight specific areas of legacy administration management that will be affected by the introduction of the GDPR, and the implications of GDPR for legacy administration generally. These areas include recording legacies in a database, communicating with executors and next of kin, collating and sharing information about other beneficiaries to the estate, and the processes that ought to be put in place when a charity's legacy administration is outsourced.

The factsheet is part of BWB's programme of events and other important updates to help charities get ready for GDPR.

ILM members can download a copy at <https://www.bwbllp.com/knowledge/2017/12/01/bwb-partners-with-ilm-on-gdpr-factsheet/>