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How to give [successfully] to a charity, church, or club

A Guide provided by Rod Jones of Convenient Wills

1 Welcome

Thank you for requesting this guide. I hope you find it helpful and informative.

This guide aims to equip you with a few facts and some advice that will help to reduce the risk of a gift to a charity, church, or club -- that is made in your Last Will and Testament ("Will") -- from failing due to a technical error in the wording.

Some charities, churches, and clubs require specific wording to be used for any gift to them. In view of this, and the fact that it can be very risky to supply examples of clauses to be used as they can be taken out of context with the other precedents in the Will, this guide is just that: a guide to help you. You will need to undertake additional research by either speaking to a professional will-writer or reading a specialist book on the topic -- but at least this guide will help you know what information is required.

This guide is provided on that basis. We regret we cannot accept any responsibility or liability for any adverse outcomes for you, your family, or any charity, church or club no matter how caused. In addition, we do not accept any liability for any mistake, error, or omission from this guide.

This guide is one of a number of guides and reports available from our web site www.convenient-wills.co.uk; they cover a wide range of aspects dealing with estate planning in general, and making your Last Will & Testament and Lasting Powers of Attorney in particular.

All our downloadable guides and reports use hyperlink technology. This allows you, if you are reading the document direct from a computer with access to the Internet, to click on a hyperlink (indicated with blue, underlined text) and you will be taken through to the appropriate article. Please note that the guide is not designed to be printed off; if you wish to print off the guide please [contact us](#) and we will send you an amended version.

If you require further information or clarification on any aspect of this guide then please do not hesitate to contact me. I will be only too pleased to help.

And finally, as you read this guide you may realise that it would be a lot easier, quicker, and simpler for a professional to make the will for you. We would like to help. Please [click here](#) to read the full features and benefits of our home visit service, or [click here](#) to register your interest (without obligation) in our services.

Rod Jones

Rod Jones A.C.I.B.
Proprietor of **Convenient Wills**

2 Introduction

This guide is designed to:

- ♦ explain the different types of gift that you can include within your will;
- ♦ Highlight the aspects that need to be included in your Will is the gift to your chosen charity, Church or club is not to run the risk of failing; and
- ♦ highlight some of the traps to avoid, and give you some tips to follow, when making a legacy.

3 Glossary

- ♦ **Legacy:** A legacy is a gift of money, or property, or a personal chattel given in a will.
- ♦ **Bequest:** A bequest is a gift made in a will. Most modern wills just refer to making a gift, but traditionally drafted wills refer to 'bequests'.
- ♦ **Pecuniary:** A gift of money made in a will. So a gift of £100 is a pecuniary legacy.
- ♦ **Residue:** The person's estate that remains to be distributed after all legacies have been paid away, debts repaid, and funeral costs and taxes paid. Gifts from this source are referred to as 'Residuary Gifts'.
- ♦ **Contingent:** Contingent means conditional. So where a gift is made subject to an event occurring then that gift is a 'contingent gift'.

4 The Required Will Wording

It may surprise you but many gifts to nominated charities, churches, and clubs are never received by the desired beneficiary. The reasons why they are never received include:

- ♦ the Will failed to clearly indicate the amount of the gift, or what the gift comprised of;
- ♦ the size of the gift was deemed to breach the Inheritance (Provision for Family and Dependants) Act 1975 and was therefore deemed void;
- ♦ the Will failed to clearly identify which charity, Church, or club was to benefit;
- ♦ the Will lacked the necessary administrative clauses to discharge the executors from their duties, or to direct what should happen in the event that the charity changed its name, merged with another, or simply ceased to exist; and / or
- ♦ the Will stipulated that the gift was to be used for a specific purpose - and thus created a trust which the charity/Church/club could not honour -- or the restrictions placed on the gift were too onerous for the charity/Church/club, or not practical.

If you are giving to a charity, Church or club ideally your Will needs to address these issues. We will now look at these potential failings individually.

5 How Much To Give or What to Give

The first decision to make when making your Will is what you intend to give to your chosen charity, Church, or club. You could give specific items (for example: furniture, jewellery for them to sell). It is more common however to give a pecuniary legacy. i.e. Money.

How much you give is personal to you; it is your choice. Legacies vary in size from the small cash gift to many £1000's. All we can say is that any gift you make will be gratefully received by your nominated charity; it will give them much needed additional financial resources that allow them to continue, or expand, the services they provide.

When deciding there are a couple of factors that you need to consider.

Firstly, is the amount of the gift to be set at a specific level? You have two choices here. One is that you give a specific amount away, the second is that the gift is index-linked in some way. The benefits of giving away an index linked gift is that its purchasing power increases in line with inflation whereas one that is a fixed gift diminishes (in real terms) over a period of time. If you do choose to give an index-linked gift then you'll need to include a clause that protects your executors from challenges by the charity, Church, or club that the calculation by the executors was wrong.

If your gift is a percentage of the residue of your estate then this type of gift is index-linked by virtue of being a fixed percentage of an estate that will increase in value over time due to inflation.

A second consideration is to decide when you intend to make the gift? For example: Do you wish to make the gift at the time of your death irrespective of whether your spouse is alive at that time? Or is the gift conditional upon your spouse having predeceased you? Some people are happier giving much larger amounts when they are sure that the gift will not detrimentally affect their surviving family. The following is a classic example:

For example: Mr and Mrs Smith have been lifetime supporters of their local charity XYZ. They agree that on their death they each wish to continue this support by including a number of legacies to the charity. They decide that on their first death, and bearing in mind that their surviving spouse will probably need most of their savings, they each incorporate a gift of £100 that is to be paid irrespective of whether their spouse survives them or not. A second gift is included for the sum of £5000 but this is conditional upon their spouse predeceasing them. This bigger gift is included at this stage because they realise they can afford to give away more at this time without impacting upon the quality of life of their surviving spouse.

Lastly, a third potential gift is included in the will. This gift is the 'fall-back' clause; Mr and Mrs Smith both hope the clause is never called upon because it covers the risk of them both dying and none of their children and grandchildren surviving them also. This is the family wipe out scenario. Its inclusion though does need to be considered when drafting a will. In this example Mr and Mrs Smith decide that 50% of their residuary estate should go to their chosen charity XYZ and the other 50% should be distributed equally between their nieces and nephews.

If we now break down this example into its constituent gifts contained within the will the will should contain clauses along the lines of:

- ♦ *I give, free of inheritance tax, £100 to the charity XYZ.* This is a simple cash gift. It would be included in both Mr and Mrs Smiths's Wills. On their respective deaths this amount will be paid away to their chosen charity. You will appreciate that the amount actually received by charity is £200 overall, as both Mr and Mrs Smith have each donated £100 to the charity at the time of their respective death.
- ♦ *If my husband has predeceased me and subject thereto then I give, free of inheritance tax, £5,000 to the charity XYZ.* This is the conditional gift (i.e. It is subject to a condition being fulfilled - in this example the husband would have had to have predeceased the now-deceased wife. If he has then the wife's executors will pay the £5,000 to the nominated charity; if he is still alive however then the gift would fail by virtue of the husband still being alive; no payment is therefore made to the charity.) So, after the first death the charity will have received £100. Then on the second death they will have received £5,200 in total.
- ♦ *... I give my residuary estate to my husband, but if this gift should fail I give my residuary estate to my children and equally if more than one, but if this gift should fail then I give 50% of my residuary estate to those of my nieces and nephews alive at my death and who attain aged 18 equally and 50% to charity ...* This is a simplified and significantly shortened extract of a typical 'back-stop' residue clause of a will - but it does show the structure of the clause even though the fine detail is omitted. **WARNING: the wording in the example above [in blue italics] is for illustration purposes only; it is not suitable in its present form for inclusion in a will. If you do use it you are very likely to create problems with your will in the future.**

This is a simplified example residuary estate clause with a 'back-stop' override; the testator hopes it will never have to be relied upon but if the worst did happen to their family they would at least have the peace of mind knowing that their estate will be distributed to the people and charities they want to benefit (rather than the Government dictating who should benefit on your behalf).

Incidentally .. Great care is needed with the wording of the residuary estate clause. We have deliberately not included a practical example here as there are so many variations, each one reflecting the individuality of each testator's wishes. The risk is that had we included a full example some people will copy it word for word, believing that -- as a working example -- it is suitable for them. But this would only have been correct in a very small number of cases.

- ♦ *On my death I give the residue of my estate to XYZ* We have included this example clause to highlight the dangers of drafting your own will. If you search the Internet for example clauses you may come across this example on a number of charitable web sites. The way this example is presented implies that it is a standard wording that everybody [who wishes to make a gift to their favourite charity] should include in their Will. They do not explain the consequences of including such a clause. But this clause would, in effect, give all your residuary estate (see Glossary above) to the nominated charity. This could, potentially, be a sizeable gift. If the clause was inserted at the wrong point in the residual estate clause it could have unwanted consequences for your family. You occasionally hear of situations where 'everything went to the cat's home' - well, this is the style of clause the deceased would have used.
- ♦ Our recommendation would be to use the services of a professional Will writer or solicitor if you are looking to make a sizeable gift to charity out of the residue of your estate. The professional Will writer/solicitor will word the clause clearly, and should also include the additional administrative clauses as explained below. Our free guide '[11 Ways to Make Your Will](#)' explains why we make this recommendation.
- ♦ Where the gift comprises an item (as opposed to money) then care is needed to ensure that the item is clearly identified in the Will. If the description is not clear there is a risk that the gift will fail. Where the gift is valuable a family member may resent giving away such an item to a charity and may therefore 'err on the side of caution' when interpreting the description contained in the Will.

A further point to consider is whether the charity will even accept a physical gift. Many will not. The reason is that the cost of collection and storage and disposal of the item outweighs any financial benefit to the charity. If you are considering giving an item to charity we recommend that you speak to them beforehand to ensure that your proposals are okay with them.

6 Do Not Overlook the Inheritance (Provision For Family And Dependants) Act 1975

If you have dependants (e.g. Minor children, or a surviving spouse, or a long term partner) at the time of your death then you must make sufficient provision for them. If you fail to do so they may challenge your Will under the Inheritance (Provision for Family and Dependants) Act 1975. If they win then any sizeable gift to a charity is likely to be reduced pro rata and may even be stopped altogether.

7 The charity, Church, or club was not clearly identified

It should not be difficult to clearly identify the charity of your choice. The full name, address and charity number for any charity can be found on the [Charity Commission's website](#) and these details should be quoted in full in the Will.

It is also recommended that you contact the charity to check if they have any specific wording they would like you to use -- as some do have specific phrases. The charity will also advise if they have any restrictions that are applicable.

For example: This is an American case but it demonstrates clearly the problems of not clearly stipulating the charity to benefit. An American multimillionaire decided to give away his whole estate to a charity that he named in his will. He did not include any address of his preferred charity, but just quoted their name. The problem was, when he died, no charity with that name existed in his local town. Nor was there one in his State. But there were 5 or so in the States that surrounded his home State. As the amount of the gift was many millions of dollars all of these five similarly-named charities got their lawyers involved to stake a claim on the legacy. Many years later, and millions of dollars in lawyers fees later, the estate was settled. The charities received very little of the many millions of dollars that were available initially. The lawyers were the actual winners.

So our recommendation is that whenever a gift is made to a charity that the full name, their full address, and the charity commission's registered number all be quoted.

Care is required when making a gift to a church or club in your Will. In the past people have given money to their Vicar/Minister/Priest expecting that the money will be used by him/her for the benefit of the congregation. In many cases though this money has been retained by the church representative because the gift was made to them personally -- rather than the Church.

Gifts have also been made to the church wardens, and the Parochial Church Council was similar unwanted outcomes.

As a consequence many church governing bodies now prefer you to make a gift to their central funds from which they will then distribute the monies to your local church. For example: the Church of England prefer monies to be sent to the appropriate local diocese. The Methodist Church require specific wording to be included in a Will. This though has both advantages and disadvantages.

It is possible to include a gift in your Will that is designated for a charity that has specific objectives, with the choice of the actual charity being made by the executors themselves at the time of death of the testator. The wording of the clause though will need to include protection for the executors from accusations by other charities that the executor's choice did not comply with the will. A statement, included in the will's clause, along the lines that 'the executors decision shall be final and binding upon all beneficiaries' may be sufficient.

One final point to consider. The gift to a club or society must be made to a person or persons who can give a discharge to your executors for the payment. If the gift is specifically to a club then the gift will almost certainly fail as the club do not have the ability to provide a discharge for the executors. The gift should be given to the trustees, or chairman, or committee of the club rather than the club itself. Our clause is quite long to reduce the risk of the trustees etc thinking the gift is for them personally.

8 Administrative Clauses Missing

Many gifts to charities, churches and clubs omit the very necessary discharge clause for the executors. Without this clause the executors need to 'follow the money' to ensure that it is spent in a way that it is supposed to be spent. Unsurprisingly most charities/churches/clubs are not prepared to grant access to the executors to view their accounts to check this is so, and therefore the gift is refused.

The executor's receipt discharge is only a short, simple cause as shown in the example below. Nevertheless it must be included in all Wills where a donation is made to a charity, Church, or club.

But what if the charity, Church or club changes its name, merges with another organisation, or even just simply ceases to exist? Unless your Will includes administrative clauses that explain what is to happen in these circumstances then the gift runs the risk of failing. A professional will writer normally includes administrative clauses designed to protect the gift from these risks. If you are making your own will you will need to consider how you can best overcome these risks.

9 The Gift Comes with Conditions

Many people indicate that the gifted monies are to be used for a specific purpose. Depending upon how the clauses worded these conditions may create a problem.

For example: I give £1000 to charity XYZ for the benefit of people living in Staffordshire.

This simple statement, on the face of it, is clear. However how can the charity ensure that only people from Staffordshire benefit from the gift? The short answer is: They can't. The gift will therefore risk failing.

The solution is to give the gift to the charity for their 'general purposes'. You can then add a wish that the monies be used for a specific purpose.

It is surprising how simple restrictions create problems. We had one client who wanted to give £150,000 to a charity in the form of an endowment. With an endowment the capital is invested, and only the income can be spent by the charity. The capital is held in trust. The problem with this gift was that the capital was not big enough to generate enough income to keep pace with inflation and cover the trusts administration costs of running the trust. The charity said they would respectfully decline the gift therefore.

The solution however, was for the gift to be made for 'general purposes' with the expressed wish that the monies be used for the education of the school's pupils.

10 Example Legacy Clause

The following is an example of a legacy gift clause. In this example we have chosen the Dove Service as the nominated charity to benefit. The amount is £1000 (with no indexation). The clause includes the appropriate discharge clause for the executors. A clause confirms that the charity may spend money however it sees fit. In this example we have not included any expressed wish as to how we would like the money to be spent by the charity. The legacy clause [in this example to the Dove Service] should read:

I give £1,000, free of inheritance tax, to The Dove Service (Registered Charity No. 1086625) of The Dudson Centre, Hope Street, Hanley, Stoke-on-Trent ST1 5DD. The charity is to apply the gift received for the general purposes of the charity, and the charity has full powers to expend capital as well as income for such purposes. The receipt of the Honorary Treasurer or the proper officer for the time being of the Dove Service shall be a complete discharge to my Executors.

If you are going to use the above example as a template for your own gifts remember to change the amounts, the charity, the charity No, and the charity address accordingly.

As explained earlier in this article we do not propose including an example clause for a gift made from the residue of estate. The reason is that we believe there is too greater risk of misinterpretation of such a clause. We urge you to use a professional writer to draft it for you.

11 The Dove Service

If you would like more information as to how you could help this important charity please call the Dove Service on **01782 683155** or visit their [web site](#). They do tremendous work across North Staffordshire and South Cheshire.

12 Inheritance tax - how calculated

Gifts to charities are presently exempt of inheritance tax. Despite this we still recommend that the gift clause retains the instruction that the gift to the charity is given 'free of inheritance tax'. This is because the tax position of charities could change in the future.

The government is proposing with effect from April 2012 to offer a 10 percent discount of the inheritance tax due subject to certain conditions being met. Exact details of this discount are awaited.

If your estate is likely to incur inheritance tax then you should use the services of a professional will-writer to help draft your will; the reason being that how the tax is to be calculated needs to be included in your will. Known as 'Pro-Benham' and 'Anti-Benham' clauses, these clauses clarify the position where where gifts and/or residue are to be paid to both IHT-exempt and non-IHT-exempt beneficiaries.

An explanation of these clauses is beyond the scope of this guide.

13 The Simple Solution To Making Your Will

We hope you have found this guide helpful and informative. As you can see the making of a gift to charity, club or church should not just be a matter of including a simple legacy clause within your Will. There are a number of other elements that you need to include as well.

Giving away your money to a charity, Church, or club is, for most people anyway, only a small part of their estate planning. As you can see, this guide is some seven pages long. The reading time required by yourself to ensure an entire Will that you draft yourself is in compliance with the Wills Act 1837 (As Amended) is therefore quite substantial. Further, the more you research into what should be included in a Will the more you realise there is yet more to learn. And even when the task is done you may have nagging doubts about its legality and validity if you have not used the services of a professional. You can see therefore why is often a better use of your time to use the services of a professional Will writer to make your Will. In that connection we, **Convenient Wills**, would like to help you.

Using a professional will-writer can be quicker and more cost effective in the longer run.

Convenient Wills is the only home visit, specialist Lasting Powers of Attorney & will-writing business located in Newcastle-under-Lyme that covers North Staffordshire, South Cheshire and North Shropshire.

Convenient Wills, as a specialist home-visit will-writing service, offers you:

- ♦ **no travel time and costs:** we come to your home, thereby saving you travel costs, and time;
- ♦ **flexible appointment times:** our appointments are held at times convenient for you, including daytime, evening, and at the weekend. There is no need for you to take time out from work;
- ♦ **a relaxed atmosphere:** the discussions are held in the comfort and relaxed atmosphere of your own home -- and not in an 'oppressive' office in your local (or not so 'local' in some cases) town;
- ♦ **time saving:** our experienced and friendly consultant will advise and guide you through all the options you should consider -- thus eliminating the need for you to undertake any prior research, such as searching the Internet or library to see what you should include;
- ♦ **a bespoke will:** your Will will be legal and personalised to match your exact wishes. This means, for example, that the names of your children will be included in your will rather than just referring to them as your 'children'; and we will draft your will to match your wishes rather than making your wishes fit into one of our pre-formatted template wills.
- ♦ **a fixed fee:** We do not charge extra for the inclusion of, say, a trust in your will (Unlike some of our competitors). Nor do we do increase our fees if we feel you can 'afford' to pay more; and
- ♦ **protection:** our processes (which includes visiting you twice) ensure your Will can be defended from claims of lack of capacity, undue influence, and fraud.

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