

Leaving a legacy--scholarships and bursaries

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Private Client analysis: What are the key considerations for individuals when considering leaving part of their estate to create a scholarship or bursary? Darren Hooker, associate solicitor in the charity and social enterprise team at Stone King, outlines the practicalities of setting up a scholarship or bursary.

What are the legal challenges to creating a bursary or scholarship scheme?

Typically, we see bursary funds created by a legacy left in a will, and for the benefit of a private institution like a private school. In that case the most important legal challenge is in ensuring that the terms of the will are drafted correctly. It may sound obvious, but simple details such as ensuring the name or registered charity number of a school is correct can avoid difficulties much later on. The will must also be clear as to the purpose which the fund serves and whether it is intended to create permanent endowment (as discussed below). Ensuring that the legacy is correctly set out is the most important step to ensuring that a scheme is successful.

What are the financial considerations in terms of ensuring the long term financial viability of the scheme?

Many donors wish to establish their funds as 'permanent endowment' (ie a fund where only the interest can be spent and the underlying capital amount must be preserved). This may seem attractive at the outset, since it ensures that the fund continues in existence and can provide a benefit in many years to come. However, over time the effectiveness of the fund may decrease. For example, if 20 years ago a donor created a permanently endowed fund of £10,000, then that would no doubt have been a substantial sum and the interest earned could likely have funded numerous bursaries. However, how much interest would that £10,000 fund be earning, and how many bursaries could it fund, today? Or in another 20 years' time?

How can the terms of a scholarship or bursary be structured so as to effectively reflect the intentions of the donor?

As with the first question, the key is for the donor to ensure that they are very clear in setting out their intentions for the fund. A school would then be obliged to follow those donor wishes in administering the fund. Of course, there may be changes in the future that mean that the intentions are no longer relevant. For example, a fund may have been created to provide bursaries to dependents of local artisans and there may no longer be any in the area. In that case, the original purpose of the gift has ceased to be relevant and the school can apply for permission from the Charity Commission to expand the terms of the fund, perhaps to include dependents of other workers. In that case, the Charity Commission will continue to respect the intentions of the donor and ensure that the amended terms are as near as possible to the original.

Can the on-going management of a scholarship be passed on to the descendants of the donor?

The donor can specify who the trustees of the fund should be, and this could include specific individuals such as descendants. However, it would be more usual for the fund to be managed by the school itself since it will likely have more detailed knowledge of the potential applicants and their needs.

What are the tax implications of creating a scholarship or bursary scheme? How does this fit in with broader estate management?

Provided that the terms of the legacy are worded and applied correctly, and the recipient school is a charity for tax purposes, then the donation will be exempt from inheritance tax. Therefore, the recipient school will receive 100% of the value of the donation. In addition, if more than 10% of the net value of a donor's estate is left to charity then inheritance tax will be charged at 36% rather than 40%--this would benefit the rest of the donor's estate.

What, if any, are the risks of creating such a scheme?

One risk to creating a bursary or scholarship scheme by a legacy is that it becomes a burden for the recipient to administer. This could happen where the purpose of the fund, or the terms of the will, are not clear at the outset and time and resources have to be spent in analysing the position and discussing the terms with the trustees of the estate and other beneficiaries (and inevitably lawyers as well). There is also a risk of the fund becoming a burden where the terms of the donation creating the fund are so restrictive as to mean that the fund ceases to serve a useful purpose.

Interviewed by Diana Bentley.

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