Example Legacy Income recognition policy from ILM member charity.

Recognition of Legacy Income

Where funds are received along with correspondence this is deemed to be sufficient evidence of entitlement. Probate is not obtained in respect of all estates and is not a requirement for recognising income where funds have been received.

The Charity will recognise income from legacies prior to receipt where entitlement is established, the likely value of the gift can be identified and where it is probable the gift will be received.

Entitlement

Entitlement will exist where The Charity has:

- Received a distribution from the executors along with evidence the gift has been given to The Charity by a supporter in their will or by an executor.

  Or
- Received a copy of the will together with evidence of probate AND no party has a legal claim with some probability of success challenging The Charity's entitlement to that part of the gift being recognised.

Probability of receipt

- Where there is uncertainty about receipt because the economics or practicality of collection, whether due to misappropriation or some other factor, then the gift should not be recognised or should be removed from the accrual until receipt is again deemed probable.

Measurement

Residuary Valuations

Where entitlement to a gift has been established, the value of the gift can be measured, and receipt of the gift is probable, then the gift should be valued and included as an asset.

Valuation Method – Measurement

> Valuation method 1 = (Net Estate - X% for costs) – (Pecuniary and specific gifts) x % to The Charity
>
> Valuation method 2 = (Net Estate – actual administration costs) – (Pecuniary and specific gifts) x % to The Charity
>
> NET ESTATE = Latest known total asset value Less pre death liabilities

The Net Estate can be established using the latest available information. This will initially be found on S&F notifications or on Grants of Probate, but it may also be identifiable from information provided by executors. The Net Estate may change during the administration as asset and liability values are updated.

The decision whether to use Valuation Method 1 or Valuation Method 2 is dependent on whether there is sufficiently reliable information available on the likely level of final costs. Only where it can clearly be shown that the X% deduction is inappropriate and a better estimate properly justified, should the X% be replaced by an alternative deduction for estate administration costs.

Factors to consider

Specific Gift values

Sometimes a residuary gift will be subject to a specific gift. Where the value of that specific gift can be reliably estimated then this estimate can be used when making a valuation.

Property Prices

Almost invariably the property prices used for probate will differ from the final sale price. However, until contracts are exchanged there is uncertainty on what the final sale price will be, and any value used will involve a degree of subjectivity.
The following guidelines will inform the property value used in our latest valuations. Where it is appropriate to depart from the guidelines a written explanation should be logged with the valuation.
Guidelines:

- Where a sale has taken place the probate value should be replaced by the sale value. When the valuation is based on Valuation method 1 the gross sale price should be used as the transaction costs will be covered by the 8%.

- Where contracts have been exchanged the agreed sale price should be used and no deduction made for transaction costs other than the standard 8%.

- Where the executors have accepted an offer on a property the offer price should be included. It is accepted that reductions will result from this approach, but this is covered by the 8% costs deduction.

- If a sale falls through after a valuation has been made using the offer price, the valuation should be updated to reflect the next best offer unless there is doubt about the proceed-ability of the offer in which case we should use the probate value or best alternative such as a surveyors report or other reliable estimate of value.

- Where a property valuation has been provided by a qualified surveyor, that valuation should be used unless evidence exists that this valuation is incorrect. Where that is the case the surveyor should be asked to update their valuation, but an alternative valuation may be required in the period prior to receiving the updated valuation.

- Asking prices are not reliable indications of value and do not justify increases to property valuations. If possible, agents and executors should be asked to provide a figure for the likely sale value as opposed to the asking price. Where no information is available, other than the asking price, the lower of the asking price and probate value should used.

- Where offers have been made on a property but not accepted a judgement must be made as to whether that offer, is a realistic offer. If the offer is thought to be unreliable, a written justification should be provided for using an alternative valuation and this should be approved by a Senior Legacy Manager.

- Mortgages should be accounted for in valuations as a liability of the estate in both Valuation method 1 and 2.

Share Prices and Investment Values

Where the Charity is sometimes made aware of the value of specific investments and where these differ from the value submitted for probate, then adjustments should be made to the value of the legacy. However, it is not practical to monitor the prices of these assets and the valuation is only required to be updated when the executor provides an updated valuation or sales information. The Charity's policy in respect of shares is to ask for immediate sale irrespective of market conditions. Where there has been a sharp market correction it may be appropriate to ask executors for an updated valuation. This is particularly the case on material legacies with considerable value in shares. Where there has been a sudden market correction it may be appropriate to consider the impact of this on the overall legacy accrual and a decision may be made to make an adjustment to the whole accrual.

Litigation, Complexity and Probability of Receipt
Where it is alleged that The Charity is not or might not be the proper beneficiary of the gift in the will the legacy should not be valued until entitlement is re-established.
Entitlement will not exist on any part of a legacy where it is identified that a party, with some prospect of success, is intending to make a claim alleging that the Will is invalid (improper execution, testamentary capacity, undue influence etc) the legacy should not be valued.

Where it is identified that a party, with some prospect of success, is bringing a claim under the Inheritance Act (Family and Dependents) 1975 then the legacy should not be valued unless it is possible to ring fence a sum representing the maximum claim available under the act.

Where it is identified that a party, with some prospect of success, is bringing a proprietary estoppel claim, then the asset against which the claim is brought should be excluded from the valuation.

Where entitlement is established but issues arise later which mean it is no longer probable that the funds will be received then the valuation should be removed. This might be due to misappropriation or questions about the economic value in pursuing the funds.

Where a legacy is only deemed to be due after settlement of a legal claim then it is the settlement date and not the probate date that is relevant for deciding the accounting period. This is because until the settlement, no entitlement had been established.

Pecuniary Gifts – precise gifts of money

Recognised on earlier of receipt of funds or confirmation of probate.
Removed or adjusted where evidence of abatement or where there is no longer deemed to be probability of receipt.

Specific

Based on valuation of asset provided by executor or from another reliable source including internet research.

Deduction made for sale costs of X% (but we should do further research on this and potentially apply a different deduction)

Life Interest

Where a gift is subject to the prior interest of a life tenant it should not be accrued for unless the life tenant has themselves died or unless an agreement has been reached partitioning the capital of the trust between the beneficiaries prior to the death of the life tenant.

Scottish Estates

The Scottish equivalent of probate does not provide details of liabilities such as mortgages. These estates should not be valued unless evidence is provided confirming the extent of liabilities and the presence or otherwise of Legal Rights claims.

Post YE pre Cut Off

Where income is received, or where information is received sufficient to value the legacy prior to the Cut Off date, that income should be accounted for in the accounting period where the probate date was in the accounting period.

Where a legacy is only deemed to be due after settlement of a legal claim then it is the settlement date and not the probate date that is relevant for deciding the accounting period. This is because until the settlement, no entitlement had been established.

Post Cut Off

Where information is received after cut off which enables a legacy to be recognised but where probate (entitlement) existed before the end of the accounting period, this will only be included in the prior year where the individual legacy is in excess of £500k on the basis this is the agreed limit of materiality for this purpose.

Where a legacy is only deemed to be due after settlement of a legal claim then it is the settlement date and not the probate date that is relevant for deciding the accounting period. This is because until the settlement no entitlement had been established.

X% reduction

Method described and data available on request