NEW SQUARE Chambers

November 2026

"Hmm…this doesn't look like it's an actual charity"

William Hopkin



How do you approach a gift in a Will to a seemingly non-existent organisation, where it looks like the testator may have been intending to benefit a charity? I've tried to digest the substantive law, and some accompanying thoughts, into 10 points, as follows.

But before diving into those, an example scenario might be a gift said to be to 'the Royal Society for the Prevention of Malaria'. This might be seen as:
a) A gift to, perhaps, the Royal Society of Tropical Medicine and Hygiene;
b) A gift that fails entirely as specifically for that non-existent organisation only;
c) A charitable purpose gift (e.g. to prevent malaria), to be held by the Royal Society.

10 points:

1. Getting to the answer is primarily a question of interpretation, as to the testator's intention.
2. The so called 'non-existent' organisation might simply be a real charity that is just misdescribed, with it being sufficiently clear which organisation was meant. If that's the case, then it can be given to that organisation.
3. Where there is no organisation that properly meets the description, even on a full analysis, matters get a little bit more involved, and the assistance of the Charity Commission, Attorney General or Court may possibly be required (see later).
4. If a gift is interpreted to simply be a purpose gift, the executors can determine how to deploy it to promote charitable purposes e.g. give it to a charity working for those purposes.
5. There may also be occasions where the Will, and any admissible evidence, indicate that the existence of the named institution to receive the gift was essential, in which case the gift would typically fail.
6. Where there is a simple gift, with no trust attached, which is clearly intended to be charitable, but it is too indefinite to be carried into effect, then a direction as to its application can be sought from the Attorney General, under the Royal Sign Manual procedure (which is relatively quick and inexpensive). An example might be a gift simply to 'Cancer Research'.

7. Where there is a trust attached (i.e. the gift is to be held for charitable purposes), but nevertheless the gift remains too indefinite or impractical to be properly deployed by the executors, then the Charity Commission or Court may perfect it under the cy-pres jurisdiction, often on the basis of a general charitable intention.

Pause for a breath here…as this is where is gets a bit "woolly"…

8. Provided that there is enough by way of pointer from the name of the 'organisation' that a charitable purpose was intended, the Courts have often found that the gift was not restricted to a specific organisation and perfected it by a scheme. (I pause to note that this may somewhat blur the difference between points 6 and 7 above).
9. If it is clear that the named organisation was meant to stand in the role of trustee, then a scheme may be sought to enable the appointment of an alternative.
10. Where there is enough ambiguity, and family members, who may benefit from the gift if it failed, are uncontactable or uncomfortable consenting to a charitable distribution, then it may be necessary for an application to the Court. This outcome may also result where there is a dispute between charities as to the correct recipient.



William Hopkin

William.hopkin@newsquarechambers.co.uk

William Hopkin | New Square Chambers

William Hopkin | LinkedIn