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Legacies Policy

FR007 Fundraising Policies

March 2024

**Contents**

[1 Introduction 2](#_Toc161914537)

[2 Scope and Purpose 2](#_Toc161914538)

[3 Definitions 2](#_Toc161914539)

[4 Preparation of Wills 3](#_Toc161914540)

[5 Notification 4](#_Toc161914541)

[6 Administration of Legacies 4](#_Toc161914542)

[7 Application of Restricted Legacy Income 4](#_Toc161914543)

[8 Legacies from Residents to Colleagues 5](#_Toc161914544)

[9 Charity Aid Foundation Vouchers 6](#_Toc161914545)

[10 Donation of Overpaid Resident Fees 6](#_Toc161914546)

[11 Colleagues and Volunteers Non-Participation in Residents Legal Documents 6](#_Toc161914547)

[12 Roles and Responsibilities 9](#_Toc161914548)

[13 Training and Monitoring 9](#_Toc161914549)

[14 Communication and Dissemination 9](#_Toc161914550)

[15 EDI Impact Assessments 10](#_Toc161914551)

[16 Resources 10](#_Toc161914552)

[17 Appendices 11](#_Toc161914553)

[17.1 Appendix 1: Application form for Restricted Funds [FR006a] 11](#_Toc161914554)

[18 Version Control 12](#_Toc161914555)

1. Introduction
   1. Legacies form a major part of MHA’s charitable income, and we are heavily dependent upon this income stream to fund our charitable services.
   2. Colleagues must read this policy in conjunction with the Restricted Funds policy and guidance [FR006].
2. Scope and Purpose
   1. This policy is aimed at all MHA colleagues and volunteers.
   2. This policy applies to all areas relating to legacies including:
   * The preparation and administration of legacies in which MHA is a beneficiary.
   * Deeds of variation.
   * The application for restricted funds [FR006a] [Appendix 1].
   * Charities Aid Foundation vouchers.
3. Definitions

| Term | Definition |
| --- | --- |
| **Beneficiary** | A beneficiary is a person or organisation who receives money or property because someone specifically names them in their will. |
| **Charities Aid Foundation Vouchers** | This is another form of giving to charities [Resource 1]. |
| **Deed of Variation** | A Deed of Variation allows a person or organisation who is awarded a gift in a Will to redirect the money to other parties - e.g., to another person or a charity – by altering the terms of the Will after the death of the Testator. This can be done usually up to two years after the date of death of the Testator but only with the consent of all beneficiaries under a Will. |
| **Legacy** | A term for a gift that you leave to a person, charity, or organisation in your Will. There are several different types of legacy (also known as a bequest), but the main ones are:   * **Residuary bequest**: A gift made of what is left of an estate after all other gifts have been handed out and debts paid off. To do this it would be either the total of the residue or a percentage/share. * **Pecuniary bequest**: A gift made of a fixed sum of money. * **Specific bequest**: A particular named item left as a gift in a Will. For example, a piece of jewellery, furniture, or a painting. |
| **Legator** | Someone who leaves a legacy in their Will. |
| **Restricted Wills and Funds** | When the deceased has specified that the money should be used for a specific purpose - i.e., for MHA it could be a particular service / home / scheme / project. The wording of the Will is very important. |
| **Testator** | A person who has made a Will or left a legacy. |
| **Will** | A will is a legally binding written declaration of what a person has decided should be done with their assets, including money and property, after their death. |

1. Preparation of Wills
   1. Where someone is considering making provision for MHA within their Will then the following applies:
   * The person considering MHA in their Will should be encouraged to seek the advice of MHA’s Legacy Manager if they require assistance.
   * If we are informed about a legacy that someone has made in their Will, the MHA colleague should ask if they could record this information and pass these details on to the Legacy team. Due to GDPR only where we have specific permission can we record this information.
   * To avoid any suggestion of undue influence, MHA colleagues or volunteers must not be involved in the preparation of the Wills of residents and members. Legators should instead be referred to an independent legal advisor.
2. Notification
   1. All correspondence regarding legacies must be immediately referred through to the Legacy team at Epworth House via [giftsinwills@mha.org.uk](mailto:giftsinwills@mha.org.uk).
3. Administration of Legacies
   1. Homes and schemes must forward all correspondence regarding the administration of legacies to the Legacy team at Epworth House, even if the terms of the Will state that the bequest is for a particular home or scheme. This is because the Legacy team are the only people authorised to process legacies due to issues and complications that can arise when dealing with solicitors and executors.
   2. Only the Legacy team are authorised to give a valid receipt for legacies.
   3. Legacies of under £1,000 for amenity funds will be administered by the Legacy team and then paid over to the locally held amenity fund.
4. Application of Restricted Legacy Income
   1. All legacy income is recorded and allocated strictly according to the terms of the Will. If we cannot spend monies for those purposes this will be referred to the Restricted Funds Panel regardless of the value of fund. The Restricted Funds Panel will assess options and potentially apply to the Charity Commission for a change of purpose (all gifts of £10,000 and over will be referred to the panel regardless).
   2. Local managers, area managers, and regional managers for MHA Communities, are informed about the notification of a legacy left for the benefit of the scheme or home.
   3. Income received for the benefit of a particular home or scheme should not normally be used to replace general property capital funding unless there are specific reason to do so. E.g. If capital funding is not likely to be available for some time and that the need for the investment is reasonable.
   4. As outlined in Restricted Funds Policy [FR006] the Restricted Funds Panel has the ultimate authority to determine the application of specific charitable income within the Financial Plan approved by the Board.
   5. An annual statement will be distributed to each home and scheme showing the restricted fund balance, capital expenditure allocated against the opening balance, funds allocated in the current year and additional funds received in the year (if any).
   6. Refer to the Restricted Funds Policy [FR006] for authority levels for expenditure of restricted funds by amount.
5. Legacies from Residents to Colleagues
   1. Individual colleagues and volunteers must not accept legacies from residents. Colleagues may not be beneficiaries of Wills or legacies of any person using MHA’s services for whom they provide / have provided services. A colleague may find out that a Will is going to be made in which they will receive a legacy or that a Will has been made with a legacy specified for them. Any instances must be reported to the line manager immediately. In cases where a colleague receives these funds without prior knowledge, this must be notified immediately to the Director of People and Communications and, following discussion, a decision should be taken regarding where the funds should be deposited. It is recommended that funds received in this way be passed to MHA to continue our services for older people, usually at the local project.
   2. In circumstances where a colleague and a person using our services have a pre-existing relationship, prior to and separate from MHA, where the colleague is to benefit from the person’s Will, this is acceptable and should be recorded in the colleague’s personnel file [HR8.2].
6. Charity Aid Foundation Vouchers
   1. Legacies received by MHA via a Charities Aid Foundation voucher should be processed by the Legacy team. As with all other types of legacy if these are received locally, they should immediately be forwarded to the Legacy team at Epworth House.
7. Donation of Overpaid Resident Fees
   1. Donations of overpayment fees to MHA are not classed as a legacy. Please refer to Donation of Overpaid Resident Fees Policy [FR012].
8. Colleagues and Volunteers Non-Participation in Residents Legal Documents
   1. For the purpose of this section, “Colleagues” refers to both those employed by MHA and volunteers.
   2. In order to maintain professionalism, ethical standards, and legal compliance, **colleagues are prohibited from reading, explaining, witnessing, and signing legal documents** **for those who use MHA’s services** including residents, tenants, and members, their family, friends, and advocates who may approach colleagues to sign documents.
   3. Wills and other documents relating to personal affairs, property, and finances are considered as legal documents.
   4. **Reading Documents**
      1. If colleagues are asked to assist in reading legal documents or explaining the content of the documents (e.g., to residents, tenants, or members), colleagues must inform the individual that they are not permitted to do so and must instead ask for support from the relevant person such as family, friends, power of attorney, or an advocate. This does not include supporting residents to understand their DoLS, BIP, MCA documentation in line with best interest planning and informed decision making which is all part of safeguarding (refer to Safeguarding Adults Policy [CP019] for more information.
   5. **Conflict of Interest**
      1. Colleagues witnessing legal documents could potentially be perceived as having a vested interest in the outcome of the agreement. This perception might arise due to their affiliation with the organisation, making it challenging to establish their impartiality and independence in the witnessing process.
   6. **Legal Impartiality**
      1. Witnesses’ to legal documents are required to be neutral parties without any direct connection to the content or parties involved in the agreement. Colleagues, by virtue of their employment by MHA, could be seen as having a connection to the resident, thereby raising questions about their ability to fulfil the role of an impartial witness.
      2. In some jurisdictions, the legality of a witnessed legal document could be called into question if a conflict of interest or lack of impartiality is evident. Invalid contracts could lead to legal disputes and financial losses for both the organisation and the involved parties.
   7. **Professionalism and Ethical Standards**
      1. Maintaining a high level of professionalism and ethical conduct is crucial for both colleagues and the organisation. Allowing colleagues to witness legal documents could potentially compromise this professionalism by blurring the lines between their personal and professional responsibilities.
   8. **Perception of Influence**
      1. Those using MHA’s services might feel pressured to agree to terms if a colleague is involved in the witnessing process. This could result in individuals agreeing to terms they might not fully understand or be comfortable with.
   9. **Privacy and Confidentiality**
      1. Witnessing a legal document often requires access to sensitive and private information. Allowing colleagues to witness contracts could inadvertently expose confidential information to them, potentially breaching data privacy and confidentiality regulations.
   10. **Lasting Power of Attorney Legislative Guidance**
       1. Regulation 8(3) of the LPA Regulations (or Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (SI 2007/1253) states that an LPA will not be valid if the certificate is given by one of the following people which includes:
   * A member of the donor’s family.
   * An attorney under the LPA or any member of their family.
   * An attorney under any other LPA or EPA executed by the donor (whether or not the other power has been revoked).
   * Any colleague of the organisation providing services (including, owner, director, manager) in which the donor lives when the LPA is executed, or any member of their family - no MHA colleague can agree to give the certificate.
9. Roles and Responsibilities

|  |  |
| --- | --- |
| Role | Responsibilities |
| **Legacy Officer** | * The Legacy Officer is a member of the Legacy team within Fundraising and their role is to administer all legacies (including those for restricted funds and amenity funds), and thereby to ensure that MHA receives all the legacy income due to it. * The Legacy Officer receives details of all legacies admitted to Probate in England and Wales in which MHA is named as a beneficiary. |
| **Legacies Manager** | * The Legacy Manager leads the Legacy team within Fundraising and has overall responsibility for legacy income, including giving limited guidance to people asking about including a legacy to MHA in their Will - e.g., providing a shortlist of local solicitors or MHA’s registered charity number and address. |
| **Head of Fundraising** | The Head of Fundraising has overall responsibility for all areas of fundraising and also sits on the Restricted Funds Panel. |

1. Training and Monitoring
   1. Compliance is assessed through direct observation, monitoring, and supervision of our colleagues and volunteers.
2. Communication and Dissemination
   1. This policy is disseminated and implemented within all MHA services through MHA’s channels of communication.
   2. Each colleague’s line manager must ensure that all teams are aware of their roles, responsibilities.
   3. This policy will be available to the people we support and their representatives in alternate formats, as required.
   4. Any review of this policy will include consultation with our colleagues, review of support planning, incident reports, quality audits and feedback from other agencies.
   5. Queries and issues relating to this policy should be referred to the Standards and Policy Team [policies@mha.org.uk](mailto:policies@mha.org.uk)
3. EDI Impact Assessments
   1. Equality, Diversity, and Impact Assessment to be confirmed.
4. Resources
   * [FR006, Restricted Funds Policy](https://intranet.mha.org.uk/Interact/Pages/Content/Document.aspx?id=10410&utm_source=interact&utm_medium=quick_search&utm_term=%e2%80%a2%09FR006)
   * [FR008, Amenity Funds Policy](https://intranet.mha.org.uk/Interact/Pages/Content/Document.aspx?id=12638&utm_source=interact&utm_medium=quick_search&utm_term=amenity++)
   * [FR012, Donation of Overpaid Resident Fees Policy](https://intranet.mha.org.uk/Interact/Pages/Content/Document.aspx?id=13966&utm_source=interact&utm_medium=quick_search&utm_term=%e2%80%a2%09FR012+)
   * **Resource 1 - Charities Aid Foundation Vouchers:** For more information, please refer to the Charities Aid Foundation’s website [www.cafonline.org](http://www.cafonline.org)
5. Appendices

Appendix 1: Application form for Restricted Funds [FR006a]

|  |  |  |  |
| --- | --- | --- | --- |
| **Start Form** | | | |
| Please attach any quotes you have in support of application with the following completed form. | | | |
| **Home or Scheme** |  | | |
| **Completed By** |  | | |
| **Area Manager** |  | | |
| **Amount Requested** |  | | |
| **Date Requested** |  | | |
| **Application Information – What is the intention of spend?** | | | |
| **Explain how spend successfully meets any restriction** | | | |
| **Bank Details** | | | |
| **Bank** |  | | |
| **Account Name** |  | | |
| **Sort Code** |  | | |
| **Account Number** |  | | |
| **Authorised by** | **Level** | **Signed** | **Date** |
| Home / Scheme Manager | Under £5,000 |  |  |
| Area Manager | £5,000 - £9,999 |  |  |
|  |  |  |  |
| Restricted Funds panel | £10,000 and above. |  |  |
| **End Form** | | | |

1. Version Control

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| --- | --- | --- | --- | --- |
| Version | Version Date | Revision Description / Summary of Changes | Author | Next Review Date |
| 6 | October 2023 | * Regular Compliance Review * Removal of Donation of Overpaid Resident Fees from the legacy policy as these are not classed as a legacy. * Addition of non-participation in residents legal documents. | * Legacies Manager * Head of Fundraising * Standards and Policy Manager | October 2025 |
| 7 | March 2024 | * Clarification around income received for the benefit of a particular home or scheme (see section 7). | * Legacies Manager * Head of Fundraising * Standards and Policy Manager | October 2025 |