

Ex gratia Payments Policy

This policy outlines the procedure to be followed and the criteria that must be met before an *ex gratia* payment can be made from Stroke Association funds.

The policy applies to all staff and volunteers.

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1. Introduction

An *ex gratia* payment is a payment out of a charity's entitlement to a legacy, that the trustees believe they are morally obliged to make, but where there is no legal obligation to do so. This policy explains the criteria for making such payments.

2. Who does this policy apply to?

This policy applies to:

- **staff**, including permanent and temporary colleagues, as well as colleagues on fixed term contracts.
- **volunteers**, including trustees and people on student placements.

3. *Ex gratia* policy

Legal authority for making *ex gratia* payments

Charities may only spend their funds in accordance with their charitable objects. However, *ex gratia* payments can be made with the express permission of the Charity Commission (CC), under s.106 of the Charities Act 2011, if they satisfy strictly prescribed criteria. They also allows charities to make small *ex gratia* payments without such consent if the costs of applying for consent would outweigh the amount involved.

Criteria for making an *ex gratia* payment

The Charity Commission will only authorise the making of such a payment if their strictly prescribed criteria are met:

- The testator's intention is clear and supported by impartial evidence (e.g. there is a note or witnessed conversation confirming their intent);
- The testator died before their wishes could be carried out (e.g. instructions were given to a solicitor but the testator died before executing a new Will);
- The claimant has no legal remedy (E.g. could a claim be brought under the 1975 Inheritance Act?);
- The trustees' decision to make the *ex gratia* payment appears to be one which a reasonable body of trustees might take in the circumstances of the case; and

- The trustees feel they have a moral obligation to make the payment, backed up by appropriate evidence.

Trustees may also consider wider reputational issues, when making their decision.

Procedure to be followed

The Legacies Director can reject *ex gratia* claims where they believe the trustees would not agree to the payment and/or if the claim would be rejected by the Charity Commission. For example because of poor evidence or the spurious nature of the claim.

If the Legacies Director believes there is a valid claim, evidence will be presented to the trustees for their consideration, and if they agree to proceed, a formal application will then be made to the Charity Commission with supporting evidence.

Where the amount of money involved is less than £2,000, the Board authorises the Legacies Director, in consultation with the Executive Director of Income Generation or the Chief Executive, to make the payment, without applying to the Charity Commission. Any such decisions will be reported to the Board of trustees.

Example of an approved *ex gratia*

Mrs F left the residue of her estate to Imperial Cancer Research Fund and the Royal British Legion. She later instructed her solicitors by telephone on 10 December 2003 to amend her will to increase two pecuniary legacies to two other beneficiaries by £15,000 and £10,000 respectively. She cancelled an appointment with the solicitor because of illness and died before a second appointment could be made. The Charity Commission authorised the Imperial Cancer Research Fund and the Royal British Legion to give up £12,500 from both their entitlements.

Breaches of this policy

A breach of this policy could result in reputational risk and breach of Charity Commission guidance.

An *ex gratia* payment made without appropriate authority could lead to personal liability of the Trustees to make good the amount lost.

A breach of this policy by a member of staff is a disciplinary matter.

Policy safeguards

The Legacies Director will provide regular reports on all *ex gratia* cases approved or rejected, for the Executive Director of Income Generation and the Board.

Written legal advice will be provided for trustees, where appropriate, to inform and support decision making.