



The Acceptance and Refusal of Donations Code of Fundraising Practice

Check-list: key questions to ask

- Does the organisation have a policy on accepting and refusing donations? (3.1)
- Can the trustees demonstrate that they have acted in the best interests of the charity? (2.0, 3.2)
- Are trustees aware that they must not allow outside or personal interests to affect their judgement? (3.2)
- Are clear procedures in place for delegating authority? (3.2)
- Are decisions about larger donations referred to senior staff? (3.2)
- Will the trustees derive any personal benefit from the donation? (3.2)
- If wishing to refuse a donation, can it be shown that doing so will have greater costs than the benefit the gift will bring? (3.2)
- Is the donation dependent upon specific criteria that cannot be met? (3.2)
- Is acceptance dependent upon the charity first spending its own money? (3.2)
- Has the donor requested the donation be returned? (3.2)
- Will it be necessary to apply to the Charity Commission for an order authorising the donation's refusal? (4.0)
- Are policies in place to return certain credit/debit card donations within a specified 'cooling off' period? (4.0)
- Has Charity Commission permission been sought for any ex-gratia payments? (4.0)

2006

- 1.0 The Codes of Fundraising Practice Explained
- 2.0 Acceptance and Refusal of Donations Introduction
- 3.0 Procedure
- 4.0 Key Legal Points

1.0 The Codes of Fundraising Practice Explained

The Institute of Fundraising's **Codes of Fundraising Practice** are structured in order to highlight what is mandatory at law, what the Institute regards as a mandatory requirement for its members and what constitutes advice on best practice.

In this Code a phrase where the word:

MUST in bold indicates a requirement that is mandatory at law.

OUGHT in bold indicates a requirement that is mandatory for members and affiliated organisations of the Institute.

SHOULD in bold indicates a course of action that is recommended as best practice.

Organisations engaged in fundraising **SHOULD** join the Fundraising Standards Board and **SHOULD** follow their complaints procedure.

This **Code of Fundraising Practice** is intended to address fundraising

activity throughout the UK. Legal requirements can vary between different jurisdictions (England & Wales; Northern Ireland; Scotland).

In this Code, **MUST*** in bold indicates a legal requirement within one jurisdiction but not in others.

The Institute recommends that organisations adhere to the most rigorous interpretation of the law applicable to an activity.

Users should be aware that this Code addresses the law as it stands at the date of publication throughout the UK.

Reviews of the law relating to fundraising and fundraising activities, governance and charitable status are ongoing in Scotland, England and Wales.

This **Code** will be revised to take into account any developments or changes in the law that may result from these initiatives.

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2.0 Introduction

The purpose of this Code is to allow trustees and the fundraisers who support them to make clear and consistent decisions regarding the acceptance or refusal of donations.

Irrespective of any internal delegation procedures within the charity, it **MUST** be noted that the ultimate responsibility in respect of the acceptance or refusal of all donations rests with the trustees of the charity.

There is no single specific statute to guide trustees in law on this matter. However, there are relevant legal principles that trustees and their advisers **MUST** ensure are met when deciding whether or not to accept donations.

The law requires trustees, in deciding whether to accept or refuse a particular donation, to consider which course will, taking an overall view, be in the charity's best interests. The law allows practical and ethical factors to be taken into account as long as they are ones that are likely to affect the specific interests of the charity.

These notes therefore seek to provide some general guidance on decision-making in each of these circumstances.

3.0 Procedure

3.1. Establishing a Policy on the Acceptance/Refusal of Donations

A clear policy on the acceptance/refusal of donations is important for all charitable organisations.

- Such a policy, acceptable to all those associated with the charity and agreed formally by the trustees, **SHOULD**:
 - ensure compliance with legal regulation where appropriate;
 - clarify the trustees' legal obligations with regard to the acceptance/refusal of donations;
 - avoid confusion between trustees, fundraisers, volunteers and staff as to who has the authority to take decisions in differing circumstances;
 - help to ensure that decisions are not made on an ad hoc basis but are grounded in the mission and agreed policy objectives of the organisation;
 - provide a clear objective standard against which external regulatory bodies can judge the actions of the charity in cases of potential or actual dispute;
 - provide a clear unambiguous policy statement making decisions intelligible, easier to justify and credible to the public at large; and

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- protect the reputation of the charity against adverse public reaction from existing or potential supporters (who will have acquired greater understanding of the charity's policy position regarding donated support).

3.2 Guidelines for the Acceptance/Refusal of Donations

- Ultimate responsibility for all decisions, even where decision-making has been delegated to staff or volunteers, **MUST** rest with the trustees of the charity.
- The trustees (and their delegates) **MUST** take all decisions relating to the acceptance/refusal of donations "in the best interests of the charity".
- "Trustees **MUST** act reasonably and prudently in all matters relating to the charity and need always to bear in mind that their prime concern is its interests. They **MUST NOT** let any personal views or prejudices affect their conduct as trustees. They **MUST** exercise an appropriate degree of care in administering the charity"

(This text is taken from Charity Commission guidance CC3. The same principles apply in Scotland and similar guidance can be found in the Office of the Scottish Charity Regulator's "Guidance for Charity Trustees: acting with care and diligence").

- The trustees **MUST** be able to demonstrate that they have acted "in the best interests of the charity", irrespective of any individual or collective personal interest or predilection, in each and every case.

The trustees (or their delegates) have a duty to consider carefully, on the basis of the evidence available to them, whether the charity's interests will be better served by accepting or refusing the donation and to act accordingly.

- In making these judgements, trustees and their authorised decision-makers **MUST NOT** allow individual or collective personal, political or commercial interests, nor personal views on political or ethical issues, which are not directly related to the interests of the charity, affect their judgement.
- Consequently, where trustees decide to delegate their responsibility to staff, to volunteers or to local groups/branches, they **MUST** ensure that clear areas of responsibility are established within agreed management structures. Clear procedures for the delegation of decision-making **MUST** be established in writing and agreed formally by the trustees.
- As with general expenditure, where staff and other nominees have the

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authority to sign cheques on behalf of the charity without the clearance of the trustees, so this practice can be extended to the acceptance of donations. Larger donations, and those seen as potentially contentious, **OUGHT** to be referred to senior staff.

- All parties within the charity **SHOULD** be aware of the decision-making procedures agreed by the trustees with respect to acceptance/refusal of donations. All **SHOULD** recognise the boundaries to their decision-making authority and the process for referral where this is exceeded.
- Trustees **OUGHT** to be particularly careful when refusing donations based solely on the grounds of expediency, as judged by themselves.
- In such cases the trustees are potentially answerable to the Charity Commission or the Office of the Scottish Charity Regulator (OSCR) and **MUST** be able to demonstrate clearly to the Commissioners or OSCR how 'the best interests of the charity' have been served in accepting or refusing the donation in question.

England/Wales

In order to pre-empt possible disputes and/or negative publicity in complex or potentially difficult cases, trustees of charities registered in England and Wales may wish to apply to the Charity Commission for an order authorising the charity to refuse a donation (see Section 4.0).

Circumstances where such an order might be of particular benefit are those where:

- it is not immediately clear what the 'best interests of the charity' are in relation to the proposed donation;
- large sums of money or property are involved;
- the trustees have reason to believe that a decision taken by them might be subsequently challenged in the courts; and
- the trustees wish to use the 'authority' of a Charity Commission order to mitigate against the threat of negative publicity engendered by the refusal of a donation.

Scotland

No similar procedure exists in Scotland and trustees of charities which are governed by OSCR **ought** to seek professional legal advice if they are concerned about a particular donation in order to ensure that they fulfil their legal duties when opting to accept or refuse the donation.

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- Trustees **MUST** derive no personal benefit (individually or collectively) from donations, loans or other material support offered to the charity. Where material benefit is tied to support, the support, the benefit or both **MUST** be declined.

Where it is clear that the activities of a donor are directly inimical to the objectives of the charity, the agreed policies of the charity, or to the beneficiaries of the charity, the trustees can refuse the donation.

Where the potential donor is a person or a company whose activities are not directly related to the charitable objects of the charity, but the charity nevertheless wishes to avoid association with the donor, great care should be exercised in coming to a decision (see Section 4.0)

Where it can be shown clearly that the cost to the charity of accepting a donation will be greater than the value of the donation itself, the trustees (in promoting the best interests of the charity) can refuse the donation.

- Trustees **MUST** be able to demonstrate the tangible fact that they have grounds reasonably to believe that acceptance of the donation will itself directly lead to a net decline in the asset base of the charity.

Where the offer of support is dependent upon the fulfilment of certain conditions placed upon the charity, the trustees have the right to refuse that support.

Such cases might exist where:

- any condition linked to the support is, in itself, contrary to the objectives of the charity;
- any condition linked to the support is regarded as unreasonable in relation to the nature of the support in terms of its size or impact on the work of the charity;
- conditions linked to the support will divert the charity from pursuing its current objectives, policies or work priorities as a necessary result of the fulfilment of the conditions alone;
- the conditions linked to the support tie the funds and/or property offered to a specific activity, in which case that specific activity **MUST** itself be:
 - charitable in nature;
 - within the scope of legitimate action permitted by the recipient charity's constitution in order to achieve its charitable aims; and
 - practically achievable by the recipient charity.
- Where an offer of support is itself dependent upon the charity first spending its own money or resources in order to facilitate the execution of the original offer of support, great care **SHOULD** be taken by the trustees who may be placing charitable assets under undue and inappropriate risk.

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Practical considerations may mean that an otherwise acceptable donation is refused. Such cases might exist:

- where support is tied to a particular project or activity which, whilst reflecting the charity's objects, is nevertheless impractical, given the current standing of the organisation. An example of such a case is where support is offered to purchase capital assets (building or land) but the charity, whilst in need of the capital asset, has no resources with which to maintain the running costs associated with it;
 - where the support is presented in an unconventional manner and the cost of processing the donation exceeds the value of the donation. An example of such a case is where a charity is offered a wheelbarrow of penny coins. It might be argued that the costs associated with the counting and processing of the coins will outweigh the value of the donation itself; and
 - where the support consists of goods, services or property which the charity cannot lawfully use, convert, exchange or sell in direct support of its charitable objects.
- Where a change in the donor's circumstances prompts a request for the return of all or part of the donation, great care **SHOULD** be exercised by the trustees.
 - Once a charity has accepted a donation it **MUST** only return it:
 - if the terms and conditions of the gift provide for it to be returned in particular circumstances;
 - where the law specifically provides for the gift to be returned in particular circumstances (see Section 4.0); or
 - by way of an ex-gratia payment, which will be permitted only where the charity is one which is registered in England & Wales (see Section 4.0)

On occasion a charity may wish to refuse a donation, or delay its acceptance, with a view to persuading the donor to make the gift in a more tax-effective manner (e.g. by Gift Aid) A charity can decide to do this provided that the trustees are clearly aware of the risk that the donor might be put off making the donation altogether, and provided that the charity explains the tax advantages accurately to the donor.

4.0 Key Legal Points

Whilst in general it is not sufficient cause to refuse a donation on the grounds of a general objection to the potential donor, Section 62, Charities Act 1992, Part II and section 82, Charities and Trustee Investment (Scotland) Act 2005 do provide trustees with some leeway in this respect. These sections allow charities to obtain a court order preventing unauthorised fundraising where an individual is using fundraising

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methods to which the charity objects or where the charity believes that an individual is not a fit and proper person to raise funds on its behalf.

- Trustees **SHOULD** note however that precise procedures must be followed if injunctions from the courts are to be obtained.

In England and Wales, the source of the authority of an order authorising a charity to refuse a donation is contained within powers conferred on to the Charity Commission by Section 26, Charities Act 1993.

In Scotland, no authority is conferred on OSCR to grant an order authorising the refusal of a donation and there is no specific section of the legislation which deals with the refusal of donations by trustees. However, the trustees' ability to refuse a donation which they believe will be detrimental to the charity emanates from their duty under section 66(1) of the Charities and Trustee Investment (Scotland) Act 2005 to act in the interests of the charity.

In England and Wales, Section 61, Charities Act 1992, Part II, provides for the return of donations of more than £100 made by credit/debit card within a seven day 'cooling off' period. In Scotland, the same limit applies under Regulation 5 of the Charities and Benevolent Fundraising (Scotland) Regulations 2009. In both cases, the donation must have been made in response to an appeal by a professional fundraiser or commercial either in the course of a radio or television show or otherwise made orally (other than by speaking directly to, or in the presence of, the individual to whom the appeal is addressed).

An ex-gratia payment is a payment made to discharge a compelling moral, but not legal, obligation. This type of payment can be made by charities registered in England and Wales but needs to be authorised by the Charity Commission under Section 27, Charities Act 1993. See the Commission's leaflet, Ex-gratia Payments by Charities (CC7).

In Scotland, charities' constitutions must, under section 7(4) of the Charities and Trustee Investment (Scotland) Act 2005, prohibit the distribution of the charity's funds for non-charitable purposes. This, coupled with the lack of any equivalent mechanism permitting OSCR to authorise ex-gratia payments, means that charities which are governed by Scots law and have OSCR as their principal regulator cannot make ex-gratia payments. While they remain entitled to take a commercial view on matters and may agree a compromise with an individual or body which has a valid legal claim, they cannot make a payment where there is no legal case solely on the grounds of compassion or morality.