

DONATION ACCEPTANCE AND REFUSAL POLICIES AND PROCESSES GUIDANCE

INTRODUCTION

This document sets out the Institute of Fundraising's guidance about Donation Acceptance and Refusal policies and processes. Bates Wells & Braithwaite London LLP have verified that the references to legislation which need to be considered are accurate in respect of the law in England and Wales as at August 2012. Turcan Connell have verified references to legislation from a Scottish viewpoint. Edwards and Co. Solicitors have verified references to legislation from a Northern Ireland viewpoint.

This Guidance contains broad statements and general guidance about legal requirements but fundraising organisations and fundraisers should seek their own legal advice to ensure they comply with legal requirements relating to their fundraising activities. The Institute of Fundraising, Bates Wells & Braithwaite London LLP, Turcan Connell and Edwards and Co. Solicitors do not accept any liability in respect of any person relying on this Guidance except to the extent that they have provided specific advice to that person concerning that person's activities.

The development of this guidance owes special thanks to the IoF's Researchers in Fundraising Special Interest Group.

The underlying principle to accepting or refusing donations

Charity trustees must act reasonably and prudently in the interests of their charity in pursuing the charity's purposes, as set out in its constitution. This duty also applies to those who govern other voluntary organisations but such other organisations are not subject to the same level of regulation. This Guidance is aimed principally at charity trustees. Information is available on trustees' legal duties in the Institute of Fundraising's Code of Fundraising Practice, which can be found at: www.institute-of-fundraising.org.uk/code or from the Charity Commission, at: www.charitycommission.gov.uk or the Office of the Scottish Charity Regulator (OSCR) at www.oscr.org.uk. Because they have to act in the interest of the charity in pursuing its purposes, trustees must, when deciding whether to refuse a donation, do so only if to accept it would be more detrimental to the charity than rejecting it. This should involve a careful analysis of the extent to which the charity is likely to be harmed by accepting a donation and balancing that against the benefit to be obtained

by accepting it. Trustees have to decide these matters on a case by case basis and any policy is there to guide them and their staff in decision-making.

Charity trustees usually have a power of delegation and may delegate decisions on refusal of donations to committees or to staff, as they delegate other decisions. They should be alive to the reputational risks inherent in decisions to accept or reject and establish the terms of any delegation accordingly.

What is the purpose of this document?

Donation Acceptance and Refusal policies, also often known as 'donor due diligence', 'corporate engagement' or 'ethical' policies etc, exist to provide Guidance upon whether donations are usually acceptable to the organisation or not.

This document will explain why it is important to have such a policy and the processes necessary to put it in place, and how to go about creating, implementing and evaluating it. Due to the diversity of resources, expertise, working methods and beliefs/views that exist in the fundraising sector, this document will NOT definitively say what should and should not be included in a policy.

This document provides advice specifically for charities but elements of it will be relevant to non-charities.

The contents of this document are as follows:

1. Why having a policy is important
2. Creating and developing policies/processes – considerations of issues to be included
3. Processes – how to gather, use and store information
4. Implementation – how to run the process and ensure its use

WHY IS A DONATION ACCEPTANCE AND REFUSAL POLICY IMPORTANT?

Having a policy and implementation process ensures that the organisation actively manages risks associated with donation acceptance and refusal. It also enables the organisation to express its values and ethos, how those are

relevant to its purposes and how certain types of donations may be more likely to inhibit the organisation's pursuit of its purposes. Donations to charities can, and should, only be rejected in exceptional circumstances, and having a policy that clearly lays out the organisation's position will ensure that donations are only turned down for proper reasons.

Having a policy will not prevent this issue from arising or people disagreeing with decisions taken, but it demonstrates to stakeholders and the wider public that an organisation is consistent and takes its position and responsibilities seriously.

When looking to demonstrate the importance of such a document we can refer to some high profile cases;

- When the News of the World newspaper closed in the wake of a phone hacking scandal, a number of charities were offered free advertising and a share of the profits from the final edition.
- A convicted paedophile left a legacy to three charities in their will. One of which was a charity working with children.
- A well-known, and highly regarded, English university received a controversial donation from a tobacco firm.

These examples show that it is always prudent to have a policy that has been devised independently from the need to decide about a particular donation. In this way a dispassionate and properly considered policy can be agreed and put in place no matter what scenario arises.

CREATING AND DEVELOPING DONATION ACCEPTANCE POLICIES

What is the position of governance documents and other policies?

Before any organisation produces and implements a policy on donation acceptance and refusal, existing governance or procedural documents that may impact on the creation of a policy should be considered. This will help avoid duplication of work and ensure consistency across policies.

Before drawing up a Donation Acceptance and Refusal Policy, your organisation's governance position needs to be understood. Helpful questions include:

- Do your governing documents already limit or prohibit certain types of donations?

- If so, should they be amended, and how is this done (e.g. Trustees, Members, Charity Commission, OSCR)?
- Who needs to approve a policy and how is this done?

Other relevant documents could include ethical investment policies, purchasing policies, green policies, volunteer processes, register of interests, etc. By being aware of the context and existing situation, organisations will ensure effective use of resources and prevent duplication or inconsistent positions.

Who writes and manages the policy?

When drawing up the policy, consideration should be given as to whom within the organisation should be involved. When looking at fundraising specialisms such as major donor, corporate and community fundraising may be important. However, a number of other parts of the organisation may need to be involved, including any legal, finance or policy professionals.

It should be clear who has responsibility for overseeing the policy, which raises the following questions:

- Who in your organisation has the power to endorse the policy?
- Who will carry out the policy implementation?
- Who will oversee and monitor the use of the policy?
- Who will decide when the policy needs reviewing or amending?

Further information as to implementing and managing the policy and also who actually decides what donations to accept or not can be found later on in this document.

How will values or reputational considerations influence a donation acceptance and refusal policy?

The only basis on which the organisation can refuse a donation are:

- a. That it would be unlawful to accept it (e.g. the organisation knows that the gift comprises the proceeds of crime); or
- b. That accepting the donation would be detrimental to the achievement of the purposes of the organisation, as set out in its constitution. Such detrimental or anticipated detriment has to be set against the benefit of having the funds from the donor, which enable the organisation to pursue its purposes.

Many organisations approach this matter on the basis that acceptance of the donation would be contrary to the organisation's ethics and values. Although ethics and values will be important in reaching the decision, these cannot be the decisive factors. The organisation needs to be able to demonstrate that acceptance of the donation would be detrimental to the achievement of its purposes. For example, it may be evident that the acceptance of a donation would most likely lead to:

- The loss of donations from other supporters or funders at least equivalent, over the long term, to the value of the donation.
- The loss of volunteers whose services would be at least of as great value as the donation.
- The loss of staff or the inability to recruit staff.

There may be some donors whose activities are clearly detrimental to the organisation's beneficiaries and to accept a donation might assist in giving respectability to the donor and help promote the continuance of those detrimental activities.

These are only examples of possible detriment and it may be that the organisation can identify other expected detriments that may be likely to arise if a donation is accepted.

Organisations need to have at least a reasonable expectation of the detriment arising before taking it into account in assessing whether a donation should be accepted or refused.

It is likely that these detriments will arise because acceptance would be contrary to the organisation's values and ethics. But before reaching the point at which the organisation can take this into account, it must be established that:

- a. Those values and ethics are relevant to the objects of the organisation as set out in its constitution;
- b. It is reasonable to conclude that acceptance would be detrimental to achievement of the objects; and
- c. It is reasonable to conclude that such detriment is likely to be greater than the benefit to be obtained by accepting the donation.

If that case cannot be made out, then it will be difficult for the trustees to

argue that they have acted in the interests of the organisation. The organisation's interests must be served by having funds with which to pursue its purposes and so a genuine case with greater (or at least as great) detriment must be made out if a refusal of a donation is to be in the interests of the organisation.

The organisation does not need to establish an overwhelming case; trustees merely have to act reasonably. If they take account of relevant factors, disregard irrelevant ones and take a decision that a reasonable trustee could have taken then they will have complied with their duties.

Where ethics and values can clearly be linked to the purpose of the organisation, there are often relatively easy decisions to be taken. For example, an organisation existing for the advancement of health would clearly be able to refuse a very substantial donation from a tobacco company. However, the same cannot be said for, for example, an organisation whose object is to promote the arts.

Taking the example above, the trustees may have a personal view that funds should not be accepted from tobacco companies but in the case of the arts organisation, this value is not obviously relevant to the organisation's purposes. If the donation is to be refused then it can only be refused if the trustees can reasonably conclude that its acceptance is more likely (or least as likely) to be detrimental to the organisation than refusal of the donation.

What legislation/regulation needs to be considered?

Your Donation Acceptance Policy should take account of relevant legislation and regulations, with key examples including:

- The Charities Act 1992: in relation to commercial participators and professional fundraisers.
- The Charities Act 2011: in relation to seeking the views of the Charity Commission on whether to accept or refuse a particular donation, or an order to sanction the trustees' dealings with charity property.
- Data Protection 1998: in relation to handling the personal data of any donors.
- Freedom of Information Act 2000: in relation to freedom of information requests.

- The Bribery Act 2010: in relation to bribery offences.
- Finance Act 2011: in relation to tainted charity donations.
- Proceeds of Crime Act 2002: in relation to suspected money laundering
- Terrorism Act 2000: in relation to disclosures of beliefs or suspicions of terrorism offences.
- The Charities and Trustee Investment (Scotland) Act 2005: in relation to the regulation in Scotland of commercial participators and professional fundraisers, and the broader duties of charity trustees in managing the charity's affairs and finances.
- The Charities Act (NI) 2008

This is not an exhaustive list, and different legal issues may apply depending on individual circumstances. Charity policies should also take into account relevant Charity Commission guidance which (at the time of going to press) includes:

- CC20 "Charities and Fundraising" - section F4 covers accepting donations with conditions attached and refusal of donations.
- The Charity Commission Compliance Toolkit "Protecting Your Charity from Harm"
- There may also be tax considerations related to donations or donors and so organisations should give serious thought as to checking any policy with legal and/or finance professionals.

The IoF's Code of Fundraising Practice covers both legal and best practice standards for fundraising and can be found at: www.institute-of-fundraising.org.uk/code

What issues should be included/ considered when creating a policy?

As previously stated, the Institute does NOT tell organisations what should be in a policy, or what types of donations should be accepted or refused. However, this guidance aims to raise some of the pertinent issues that organisations may want to consider, whilst keeping practical factors, such as resources and expertise, in mind. These, along with some examples, are as follows:

1. Are there specific industries or activities that run counter to your charitable objectives? E.g. will medical/health organisations work with alcohol or tobacco companies?

2. Will the policy apply to all kinds of donation? E.g. cash, donations in kind, shares, legacies, pro bono work, sponsorship, corporate donations.
3. Is there a threshold, financial or not, as to when your policy applies? E.g. donations over a certain size? Cumulative donations of a certain value over a set time period?

Linked to this, is there a threshold as to when the trustees will seek:

The views of the relevant charity regulator (for example, in England and Wales, from the Charity Commission under section 110 Charities Act 2011 (power to give advice) or in Northern Ireland, from CCNI under (section 49 The Charities Act (NI) 2008. or an order from the relevant charity regulator sanctioning the decision of the organisation (in England and Wales, under section 105 Charities Act 2011 (power to authorise dealings with charity property etc) and in Northern Ireland under section 46 The Charities Act (NI) 2008)).

Similar guidance or orders are not available in Scotland under the OSCR regime so these thresholds would only apply in England and Wales and Northern Ireland.

(It is worth remembering that any correspondence with a regulator could be subject to a later Freedom of Information request so charities should ensure they are happy that whatever they write may end up in the public arena.).

4. Will the geographical location of where the donation is either given or received trigger additional levels of caution? E.g. countries with oppressive regimes or where bribery and corruption are rife.
5. Will the cost of accepting a donation be taken into consideration? This will be most relevant to restricted donations which may be undeliverable without the organisation incurring unacceptable costs beyond the initial donation.
6. Will your organisation choose to apply different policies in different circumstances? E.g. do the same conditions apply to a disaster appeal

as to regular giving or sponsorship?

7. What degree of separation needs to exist between donors and their associates? E.g. do they work with or receive their money from any individuals/companies/activities that are clearly detrimental to the achievement of your organisation's purposes.
8. Will the organisation refuse a donation from an organisation from which it accepts other products, either paid for or free? E.g. sponsorship, investments, financial/legal services or research funding?
9. What is the position on anonymous donations? E.g. truly anonymous donations, where there is no information as to its origin (The concern here regards money laundering and other criminal activity) and donors who opt out of public recognition
 - a. Anonymous donations with a value of over £25,000 need to be reported to the Charity Commission as a serious incident. (This does not apply in Scotland or Northern Ireland).
 - b. The Charity Commission's Compliance Toolkit Protecting your Charity from Harm should be consulted.
10. What is your position on and what processes do you have concerning potentially vulnerable donors? E.g. accepting money from people with illnesses which may affect their judgement or lead to external control of their money?
11. Does this policy apply to both solicited and unsolicited donations? If not, what are the differences?
12. How will you treat potentially unacceptable donors? E.g. what will lead to a donor being 'red-flagged' (highlighted as a potential problem) and what will lead to them being 'red-lined' (automatically rejected)?
13. What is the need for reviewing repeat donors? E.g. do they go through a review each time they give, at an agreed time, or will the review occur at the organisation's discretion?

When considering these and other issues, it may be worth thinking about them in a fictional scenario, to make it easier to see what the potential issues may be. It may also be worth speaking with other charities that work

in the same specialism or with similar donors as you to find out their views and approaches.

It may be helpful for the policy to include a reminder that whatever information/comments the Charity records for a potential donor could end up being disclosed if the donor makes a data subject access request.

CREATION AND DEVELOPMENT OF DONATION ACCEPTANCE PROCESSES

How should information be gathered to inform a review (decision making process)?

Firstly a decision needs to be made as to who gathers or coordinates the information. Is this done in-house by a fundraiser or a researcher, or will it be outsourced to a specialist company?

Once this decision has been made, it will be helpful to then create a template for the review to ensure that all the most important issues and the most useful information sources are used. A range of information may be available to inform a decision – fact, opinion, rumours, allegations and accusations. Not surprisingly, it is generally best to stick to verifiable facts and reliable information presented in a clear and succinct format to facilitate an informed decision.

You can select the sources which you consider reliable, and build an expanding collection of sources over time that can be used in future resources to save time and expense. Confirming that the sources are reliable can involve consulting your peers and considering the source/motive of the provider of the information.

Sometimes, there may be rumours or allegations that have been made against a donor/donation, which though unproven or from an unreliable source, cannot simply be ignored. In such circumstances it may be appropriate to include a reference, but with a caveat to say that the information is unconfirmed by a reliable source. It is then up to the chosen decision-making panel to decide whether this has an influence on their decision, or to discount it.

How much time/resources should be spent on gathering research?

Depending on the donation or the guidance you have in place, it may be easy to find a natural limit to your search for information. You may wish to take into account the level of the donation and the profile of the relationship. For example, you may wish set a limit on the amount of time and depth of any individual review for small donations.

What recording and storing provisions are made?

When developing the policy it should be decided what information should be updated and by whom, in order to ensure all relevant information is recorded in a consistent manner. You may wish to create a document which is used to record the progress and completion of each stage of the review.

It should also be decided who can access information and why they may need to. Individual review documents should be filed in a secure location to allow access for those who need it, but prevent others from doing so and protect the privacy of the donor. It is important to bear in mind, in relation to both what content is stored and its accessibility, that a Data Protection or Freedom of Information request (if your organisation falls under the criteria) could be made to see the review and how all related information was handled and viewed.

IMPLEMENTATION OF THE POLICY AND PROCESSES

What are the timelines for the policy process – donation coming in, review, decision?

The timelines from receiving the donation to making a decision will vary depending on the nature of the relationship with the donor.

When it comes to prospective donors approached by the organisation, donation acceptance should ideally form part of your initial research, with the level of information received varying according to how the donor has come to the organisation and how the donation has arisen.

Unsolicited donations from new donors should be flagged on the day of receipt, so it can be decided if the donation requires reviewing. This may be particularly important where the policy is either to rule out, or treat with caution, donations from specific industries or countries. Although it can be hard to keep track when donations are received every day, it is generally

much easier to refuse a donation before it has been banked.

As for existing donors, organisations may choose to have specified review times in the policy – e.g. once a year, only if the circumstances have changed etc.

No matter who the donor is, the review should be considered and a decision made in reasonable time. Unless an urgent decision is required, you may wish to allow a few days to a week for consideration of the review, depending on availability of those involved and how they decide – in person or via email. It is important to keep a record of the process, when the decision was reached and the reasons why.

Who is involved at the different stages of the process?

The trustees will have responsibility for approving any policy and accompanying processes. The power to implement the policy will have to be delegated from them in accordance with the governing document. This delegation should be recorded as part of the policy documentation. It should be clear who has overall responsibility for managing the process, and this person should be independent of the relationship management process, to avoid one individual managing the whole process.

Although it will most likely be 'on the ground' employees in fundraising or finance departments that will be best placed to flag problematic donations they should never be put in the position to make decisions on whether the donation should be accepted or refused.

Given the nature and importance of the issues it may be appropriate to refer significant donation decisions to the trustees.

As well as knowing who manages the whole process, it should also be clear who is responsible for each part of the process. For example:

- who flags up unsolicited donations warranting urgent review
- who carries out the review of individual donors or prospects (this may or may not be a member of the fundraising team)
- who has an input into the consideration of such reviews and the final decision

Whilst wide and thorough consultation is encouraged when creating the policy, it may be easier to actually make decisions with a small group. This may be an individual or a small group who uses the policy to make an initial recommendation, which is then passed up to a senior member of staff or trustee to approve or reconsider. Whilst this may include a member of the fundraising team, it may be better to do on an 'arm's length' basis to prevent any conflict of interest.

How do you ensure the policy is accepted, complied with and applied correctly and consistently?

The policy (and any plan for its implementation) should be formally approved by the Board of Trustees, and the document made available to all involved with the process. Key individuals should be briefed to create an organisational awareness of procedures, and why the existence of a policy is so important.

Having the policy or its accompanying guidance document set out specific review criteria enables organisations to make consistent and fair decisions no matter what the circumstances, such as if an urgent decision is required and not everyone is available.

At an organisational level, there may be merit in arranging an occasional review/audit of the decisions taken over a period of time, as a check to see whether a consistent approach has been maintained and if not, this can be addressed. Periodic review of the whole process should also be undertaken at agreed intervals, within the context of the organisation's overall arrangements for risk management.

Is there a chance for staff/relevant stakeholders to state an opinion or appeal a decision?

In order to minimise the potential for decisions to be challenged or appealed, it is best to consider how refusals or proposed refusals are reported to senior staff and trustees. Some charities may wish to consider giving key stakeholders an opportunity to contribute an opinion, but there is no legal requirement to do so.

How do you communicate a refusal?

Perhaps most importantly, you should consider in advance who should be responsible for communicating with the donor regarding the donation acceptance policy and the decision arrived at by the organisation. Though

potentially a difficult situation in the short term, transparency about standard procedures and the need to protect the organisation are paramount.

In circumstances where procedures have been followed, but a decision might be considered controversial, it would be wise to ensure that a media strategy is in place. Consider which staff members should be briefed and ready to deal with any press interest, and consider media training for senior members of staff. It may be that you wish to make all staff aware of any organisational position on controversial decisions, but it is important that all queries should be directed to the same point - to a press officer for example - to ensure a consistent and coordinated response.

There should also be awareness as to how queries or questions may come in, whether they come in privately, or through public channels, such as the press, websites, social media and so on, as this may impact on the way queries are handled.

Whenever a decision is taken to refuse a donation, it is for the charity to decide how much detail it gives to the donor or other third parties about the reasons for the refusal. Internally it is important to be able to demonstrate that a clearly defined process has been followed and that a decision has been made on this basis.

Is there an appeals process for donors who have had a donation refused?

Where decisions are being made at trustee level there is unlikely that your policy would include an appeals process. It is important to note that there is no requirement to provide a right to appeal.

How public should the donation acceptance policy be?

You might want to consider the level to which your policy and the rationale behind decisions, is publicised. Issues to consider include:

- Referring back to the existence of a policy and procedures, established in light of the organisation's purposes
- Making the donation acceptance policy publicly available
- Explaining your procedures and rationale

- Being willing to discuss individual cases in detail

Whichever approach is adopted, it should remain consistent, e.g. a willingness to discuss some examples but not others would undermine attempts at transparency.

You might also wish to demonstrate that the decision has been considered in the context of sector-wide standards, such as the Code of Fundraising Practice and Charity Commission and OSCR guidelines.

What contingency plans should be considered?

The risks inherent in adopting a particular policy should be considered, so that contingency planning is in place to deal with any potential problems or holes. A good way to do this would be to task someone with establishing a list of 'what ifs'.

Be aware of anyone who is unhappy with a decision resulting from the donation acceptance and refusal policy. This may include the staff involved, the donor, or other stakeholders.



About the Institute of Fundraising

The Institute of Fundraising is the professional membership body for UK fundraising, working to promote the highest standards in fundraising practice and management. The Institute of Fundraising's mission is to support fundraisers, through leadership, representation, standards setting and education, to deliver excellent fundraising.

The Institute represents over 5,500 fundraisers and 360 fundraising organisations, providing information and support services for Individual and Organisational members.

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Please bear in mind that the Institute does not give professional legal or accounting advice, and while care has been taken with this guidance, you should seek professional advice before taking any actions or incurring costs.

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