

Internal Policy on the Acceptance and Refusal of Gifts and Donations

Introduction:

The National Library of Wales actively seeks and encourages gifts and donations from a range of sources including individuals, companies, charitable trusts and foundations and its association of Friends. These gifts and donations may be in the form of cash, property, items for the collections¹, in-kind services or pro-bono voluntary work.

The purpose of this policy is to enable the National Library of Wales' Board of Trustees and the staff who support them to make clear and consistent decisions regarding the acceptance or refusal of gifts and donations.

Irrespective of any internal delegation procedures within the National Library of Wales, the ultimate responsibility in respect of the acceptance or refusal of all gifts and donations rests with the Board of Trustees. 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 gifts or donations.

The law requires Trustees, in deciding whether to accept or refuse a particular gift or donation, to consider which course will, taking an overall view, be in the Library'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 Library².

Advice and References: The Institute of Fundraising and the Charity Commission

The Institute of Fundraising is the UK's professional body that supports charities and individual fundraisers in their work. Whilst fundraising itself is largely unregulated in law, there are a number of regulatory requirements that impact upon it. The Institute has developed a Code of Conduct and Codes of Fundraising Practice to provide guides to the law and best practice in relation to fundraising activity throughout the United Kingdom. With regard to specific guidance about the acceptance or refusal of donations, the Charity Commission refers charity trustees to the Institute of Fundraising's *Acceptance and Refusal of Donations Code of Fundraising Practice* (2006)³. Due diligence and risk management are also relevant; guidance for trustees is provided in the Charity Commission's publications *Compliance Toolkit: Protecting Charities from Harm* (2011)⁴, specifically *Chapter 2: Due Diligence, Monitoring and Verification of End Use of Charitable Funds*, and *Charities and Risk Management: A Guide for Trustees* (2006)⁵.

¹ Items for the collections will be considered in accordance with the National Library of Wales' [Collection Development Policy \(2010\)](#).

² [http://www.institute-of-fundraising.org.uk/Resources/Institute of Fundraising/Codes/Acceptance and Refusal of Donations - LRC May 2011.pdf](http://www.institute-of-fundraising.org.uk/Resources/Institute%20of%20Fundraising/Codes/Acceptance%20and%20Refusal%20of%20Donations%20-%20LRC%20May%202011.pdf)

³ Ibid.

⁴ http://www.charitycommission.gov.uk/Our_regulatory_activity/Counter_terrorism_work/protecting_charities_landing.aspx

⁵ <http://www.charitycommission.gov.uk/Publications/cc26.aspx>

Gifts and donations are accepted at the discretion of the National Library of Wales⁶. Any gifts or donations that could create a reputational risk for the National Library of Wales must be referred to the Executive Team and Board of Trustees before approval.

Gifts which are from an individual or company which/who may be or become, as a result of the proposed donation being made, a “substantial donor” in terms of HMRC guidance⁷ must be referred to the Director of Corporate Services who shall be responsible for bringing the matter to the attention of the Board of Trustees.

Guidelines:

In considering the acceptance of a gift or donation, the following guidelines may apply:

- Gifts and donations should support the National Library of Wales’ objectives (as set out in its Royal Charter⁸), mission and strategy.
- Any additional costs and conditions associated with the acceptance of a gift or donation need to be clearly identified and agreed by the National Library of Wales’ Board of Trustees and/or Executive Team, as appropriate.
- Reasonable and appropriate steps should be taken to ascertain that the proposed gift or donation does not arise, in whole or in part, from illegal or unethical activity that might include:
 - crime;
 - tax evasion.
- Reasonable and appropriate steps should be taken to ascertain that the acceptance of the proposed gift or donation would not:
 - require the National Library of Wales to be involved in action that is illegal or unethical;
 - lead the National Library of Wales to contravene legislation on data protection and/or freedom of information;
 - create an unacceptable conflict of interest for the National Library of Wales;
 - expose the National Library of Wales to significant liability;
 - damage the National Library of Wales’ reputation;
 - deter other benefactors;
 - seriously harm the National Library of Wales’ relationship with other benefactors, partners, employees, users or other stakeholders.

The National Library of Wales has the discretion not to accept gifts or donations that may impair or harm, in any way, its reputation or its capacity to carry out its mission and vision⁹. Whilst a gift or donation may be refused if the ultimate cost to the Library of accepting the gift or donation were greater than its value,

⁶ In accordance with the Institute of Fundraising and Charity Commission guidance cited above.

⁷ http://www.hmrc.gov.uk/charities/guidance-notes/annex2/annex_ii.htm#11

⁸ http://www.llgc.org.uk/fileadmin/documents/pdf/Charter_2006.pdf

⁹ In accordance with the guidance cited under **Advice and References: The Institute of Fundraising and the Charity Commission** above.

Trustees must be able to demonstrate that they have reasonable grounds for believing that acceptance of the gift or donation would lead to a net decline in the Library's asset base.

Similarly, any consideration as to whether the acceptance or refusal of a gift or donation would damage the National Library of Wales' reputation must be assessed in purely financial terms; that is, that the acceptance or refusal of a gift or donation would give rise to a greater financial loss to the Library than the sum it would gain by accepting it, or lose by refusing it.

Gifts and donations may or may not attract Gift Aid and tax benefits, depending on the tax status of the donor. These benefits will not influence the National Library of Wales' decision to accept or decline a gift or donation.

Where a donor offers to make a gift or donation with conditions attached, the Board of Trustees reserves the right to make the final decision on acceptance or refusal of the gift / donation.

The National Library of Wales reserves the right to seek legal advice in respect of the acceptance or refusal of any gift or donation.

The Secretary and Head of Governance and the Fundraising Manager can advise on these guidelines and prior consultation will avoid mistakes being made.

Solicitation of gifts and donations or any other fundraising should not be undertaken without agreement from the Fundraising Manager in order to ensure this policy is complied with and to mitigate the risk of uncoordinated approaches to a single potential donor.

The Secretary and Head of Governance will maintain a record of those persons to whom power to accept or refuse gifts and donations has been delegated by the Trustees and any limits placed upon such delegations, and will also keep a record of all donations and gifts referred to the Board of Trustees and/or Executive Team for consideration.

For further information, please contact:

Pedr ap Llwyd
Secretary and Head of Governance

Rhian Evans
Fundraising Manager

Process:

1. In the first instance, the Trustees should check that the funds in question come from a *legitimate* source (i.e., that they are not the product of illegal activity). Central to this are assurances about the identity of donors and the provenance of funds and the conditions attached to them. Applying the 'Know Your Donor' principles will assist the Trustees in this task¹⁰.
2. On the basis of the evidence available, the Trustees need to establish which course of action (i.e., to accept or to refuse the gift or donation) will be in the charity's best interests. The Institute of Fundraising's *Code of Practice* states:

¹⁰ See *Compliance Toolkit* pp. 19 – 25.

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.

Thus it will be necessary for the Trustees to consider the Library's objectives, as stated in the Royal Charter.

Trustees can refuse the gift or donation **if** the grounds for donation **are clear**:

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.¹¹

Furthermore:

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).¹²

3. It will also be necessary for the Trustees to conduct a risk assessment in order to demonstrate that the action (of acceptance or refusal) is reasonable in light of the attendant risks and mitigating actions, and, by extension, serves the best interests of the charity. This is important, as the Institute of Fundraising's *Code of Practice* states:

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.¹³

In conducting the risk assessment, the trustees should:

- identify the relevant risks;
- assess the risks according to potential severity of their impact (insignificant; minor; moderate; major; extreme/catastrophic) and likelihood of their occurrence (remote; unlikely; possible; probable; highly probable);
- evaluate what action needs to be taken on the risks.¹⁴

See Appendix 1 for further details.

¹¹ *Acceptance and Refusal of Donations Code of Fundraising Practice*, p. 6.

¹² *ibid.* Section 4.0 of the Code of Practice states: *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 Trustees 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 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.* *ibid.* pp. 7-8.

¹³ *ibid.* p. 5

¹⁴ *Charities and Risk Management*, pp. 17-24

4. If, having considered the above, the trustees remain unsure as to whether to accept the gift or donation or not, and the case is considered 'complex' or 'potentially difficult', the Institute of Fundraising's *Code of Practice* states:

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.¹⁵*

Pedr ap Llwyd
January 2016

¹⁵ *Acceptance and Refusal of Donations, p. 5.*

Risk Management Matrix*(based on Charities and Risk Management: a guide for trustees (Charity Commission, 2006))*

Risk Assessment Key		
Impact		
Descriptor	Score	Impact on service and reputation
Insignificant	1	<ul style="list-style-type: none"> • No impact on service • No impact on reputation • Complaint unlikely • Litigation risk remote
Minor	2	<ul style="list-style-type: none"> • Slight impact on service • Slight impact on reputation • Complaint possible • Litigation possible
Moderate	3	<ul style="list-style-type: none"> • Some service disruption • Potential for adverse publicity – avoidable with careful handling • Complaint probable
Major	4	<ul style="list-style-type: none"> • Service disrupted • Adverse publicity not avoidable (local media) • Complaint probable • Litigation probable
Extreme / Catastrophic	5	<ul style="list-style-type: none"> • Service interrupted for significant time • Major adverse publicity not avoidable (national media) • Major litigation expected • Resignation of senior management and board • Loss of beneficiary confidence
Likelihood		
Descriptor	Score	Example
Remote	1	May only occur in exceptional circumstances
Unlikely	2	Expected to occur in a few circumstances
Possible	3	Expected to occur in some circumstances
Probable	4	Expected to occur in many circumstances
Highly probable	5	Expected to occur frequently and in most circumstances