

## The Institute of Fundraising's practical guidance for dealing with donations

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Alison Paines

PARTNER | UK

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The Institute of Fundraising has recently produced instructive guidance on how and when charities should consider refusing or returning donations. This follows the Charity Commission's own updates to its advice on refusing donations in January this year.

This guidance is intended to assist trustees wherever they are faced with a decision to accept, return or refuse donations – this includes where a particular donation carries a reputational risk but also where, for example, donations do not make use of tax reliefs applicable to the charity or are surplus to a particular appeal.

Trustees who already have a power to refuse or return a particular donation (on the terms of the donation, under their constitution or by statute) must take special care to ensure they satisfy their duties to act in their charity's best interests when considering how to deal with a donation. The treatment of the donation must be justified in line with the charity's purposes.

To this end the guidance suggests that *'for a donation to be refused, or returned, the charity must be reasonably satisfied that the damage caused by accepting the donation will outweigh the monetary benefits'* of accepting the donation. To refuse or return a donation trustees must be able to identify tangible damage to the charity caused by the reputational damage of accepting a *'bad'* donation, for example in the loss of future donations. The guidance suggests that donations should only be rejected in exceptional circumstances.

The guidance is, helpfully, not prescriptive as to how exactly this decision-making process should be carried out. It rejects any *'one size fits all'* approach for trustees to deal with donations, on the basis that what is in a particular charity's best interests will be highly dependent on its own values and the likely consequences of, say, accepting a donation contrary to them.

In addition, while charities are expected to be diligent they can be proportionate in the resources they expend on considering and seeking Charity Commission authority to deal with a donation. So, for example, the guidance notes that in order to be proportionate a *'charity may simply have a policy of returning or refusing donations below a certain value ... without further investigation'* where they are made by people in vulnerable circumstances. However the charity always has the option of seeking Charity Commission approval for a course of action in *'complex or potentially difficult cases'*.

Where Trustees wish to refuse a donation but do not have a pre-existing power to do so and cannot show on the basis above that it is strictly in the charity's best interests, the law on *'ex-gratia payments'* will also be engaged.

An ex-gratia payment is a payment where the trustees believe that they are under a moral obligation to make the payment, but are not under any legal obligation to make the payment, have no power under the governing document of the charity to make the payment, and cannot justify the payment as being in the interests of the charity.

If a proposed payment is an ex gratia payment it will need to be authorised by an Order of the Charity Commission by section 106 of the Charities Act 2011 or by the Attorney General or the Court. There is currently no scope for charities to make ex gratia payments without authorisation below a certain monetary threshold, and the Institute of Fundraising's suggestions for dealing quickly with low value donations will not apply in these circumstances.

Going ahead the Institute of Fundraising recommends that charities develop and implement policies for returning and refusing donations, which they may then also choose to make public, to guide and justify their decision-making on this issue. This policy should *'provide a clear objective standard'* for considering donations, taking into account the Charity Commission and Fundraising Regulator's oversight.

We recommend that trustees of charities who rely on major donations for support consider implementing a donations acceptance policy. If you would like to discuss how your charity could adopt such a policy please do contact any member of our [team](#).

# Authors

Alison Paines

PARTNER | LONDON

Charities

 +44 20 7597 6057

 [alison.paines@withersworldwide.com](mailto:alison.paines@withersworldwide.com)