



ACCEPTANCE, REFUSAL & RETURN

A PRACTICAL
GUIDE TO
DEALING WITH
DONATIONS

About the Institute of Fundraising

The Institute of Fundraising (IoF) is the professional membership body for UK fundraising. We support fundraisers through leadership and representation; best practice and compliance; education and networking; and we champion and promote fundraising as a career choice. We have over 600 organisational members who raise more than £10 billion in income for good causes every year, and over 6,000 individual members.

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INTRODUCTION

All charities exist to make a difference in the world. Whatever their cause, area of work, or beneficiary group, charities are delivering services, campaigning, and supporting individuals and communities. Fundraisers are passionate about developing relationships with supporters and making sure that their charity has enough money to be able to do the work they need to do.

While it is true that the more money a charity has the more they can do, there can be times when it is right for a charity to not accept certain donations, or to return those that have already been given.

Raising money is crucial, but sometimes there are other considerations that can be more important. The value of a donation may not be worth the cost in potential loss of public trust and confidence in the charity, a detrimental impact to the reputation of the organisation, or a conflict with the charity's ethics and values which could lead to a loss of support in the future. You need to be thinking about what is in the best interests of the charity overall.

When difficult situations arise there often isn't a straightforward 'right or wrong' answer. Charities have to weigh up the potential positive and negative consequences to make a judgement call about what will be in the organisation's best interests.

This guidance has been put together to help charities, fundraisers, and trustees make those decisions. It outlines the legal principles that you need to know, goes through the questions that you will need to think about, and provides practical help and advice so that you can make the right decision for your charity.



Who is responsible for making decisions?

It is up to a charity's trustees to make sure that the whole organisation is being run well and working in the best way to achieve the charity's objectives. That includes setting the values of the organisation, agreeing policies for the organisation, and delegating authority for day-to-day running of the organisation to staff.

Of course, it wouldn't be possible, or practical, for trustees to have to scrutinise every single donation that comes in to the charity. So, while trustees have the overall responsibility for everything a charity does, they will usually delegate power and authority to staff to deal with day to day tasks and decisions. If the trustees have delegated the ability to make decisions on acceptance and refusal of donations, this should be recorded as part of the policy documentation, and be clear exactly who has overall responsibility for managing the process. It's a good idea for the individual with delegated authority should, where possible, be independent of the person who manages many of the relationships with donors, to avoid one individual managing the whole process.

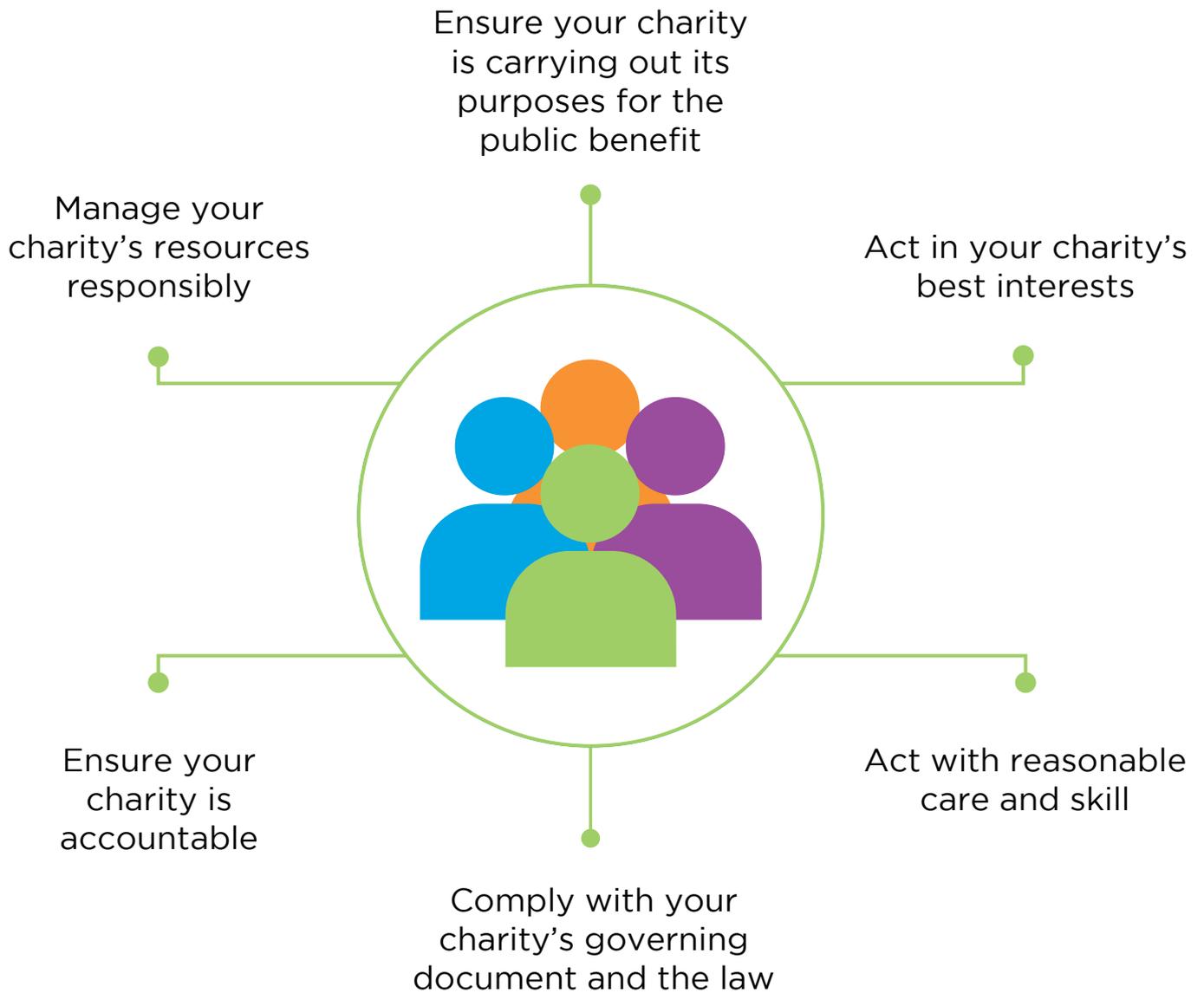
When setting any delegated authority, trustees should be aware of the reputational risks inherent in decisions to accept, refuse or return a donation, and establish the terms of delegation accordingly. While it will most likely be 'on the ground' employees in fundraising departments that will be best placed to flag problematic donations, they should always make decisions according to the agreed policy. For example, it might be that an individual or small group uses a policy to make an initial recommendation, and then passes this up to a senior member of staff or trustee to approve or reconsider. And, if there are difficult decisions or there is cause for concern over the acceptance of some gifts, then it may well be the trustees are involved in the decision making process - especially if there is a discussion over a potential return of a donation.

It is also important to remember that there is **no 'one-size-fits-all' answer** to these difficult situations. Different charities may well legitimately come to different decisions about what donations to accept or refuse - that's why it's so important to be able to demonstrate how that decision was reached and show that they believed it was in the charity's best interests.

“ Trustees have independent control over, and legal responsibility for, a charity's management and administration. ”

The Essential Trustee, Charity Commission

The Essential Trustee, Charity Commission – 6 main duties



Further reading: The Essential Trustee, Charity Commission
<https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

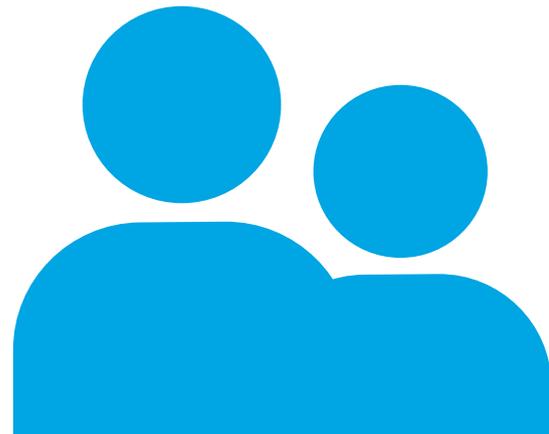


WHAT DO THE RULES SAY?

Trustees are under an overall legal duty to consider which course of action will be in the charity's overall best interests, including the issue of accepting or refusing donations. The law allows practical and ethical factors to be taken into account as long as they are relevant to the specific charity and situation.

However, donations to charities can, and should, only be refused in exceptional circumstances. That's why it's really important to have a policy that clearly lays out the organisation's position and ensures that donations are only turned down for proper reason. For more on how to put together a policy, see the step-by-step guide to developing one of these, starting on page 16.

There are also specific rules about when a donation can be returned or refunded, which are explored later in this guidance.



Remember: If you're not sure of the rules, always refer to the guidance from the Charity Commission for England and Wales, OSCR or NICC.



“ It is, rightly, difficult for a charity to decide to refuse or return a donation – it will need all the money it can get and trustees are under a duty to use all the charity's resources to further its aims for the public benefit. But there are some rare situations when trustees can properly decide that refusing or returning a donation is going to be in the charity's best interests. They will need to weigh the relevant factors carefully. ”

Sarah Atkinson – Director of Policy, Planning and Communications,
Charity Commission for England and Wales

Choosing whether to accept or refuse a donation

Trustees have a responsibility to act in the best interests of their charity in pursuing its purposes, as set out in its constitution. This means that, when deciding whether to refuse a donation, trustees must only do so if to accept it would be more detrimental to the charity being able to achieve its objectives than rejecting it. Making this decision should involve a careful analysis of the risks of accepting a donation, balancing this against the benefit that will be obtained. These matters should be decided on a case by case basis. Donations to charities should only be rejected in exceptional circumstances, when:

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

Does a donation fit with your charity's values?

There may be instances in which charities receive offers of donations from sources not in line with the charity's values and are unsure what to do.

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 inability to recruit staff.

Receiving an anonymous donation

There have been cases in the past where donations to charities have been used to facilitate criminal activity such as money laundering.

To avoid enabling this, it's helpful to operate in line with the following 'know your donor' principles as set out by the Charity Commission:

- Know your donor
- Know your beneficiaries
- Know your partner

Essentially, this means knowing the people and organisations you work with so that you are able to identify and manage any associated risks.

Further reading: Compliance Toolkit (Protecting Charities from Harm), Charity Commission

Delaying a donation to make sure it's tax effective

Occasionally a charity may wish to refuse a donation, or delay its acceptance, with a view to explaining how the donor can 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.

When the reputational costs of accepting the donation would be detrimental to the purposes of the organisation

A charity will want to ensure that accepting a donation does not create a conflict with the values and mission of the organisation which is likely to result in reputational damage with current and potential supporters.

Returning donations that you've already accepted

As with accepting or refusing future donations, when taking the decision about whether to keep or return a donation that has already been accepted, trustees and staff should think carefully about what is in the best interests of their charity. It's also important that they are able to clearly demonstrate how and why a particular decision has been made.

Where specific circumstances may prompt the return of all or part of a donation, great care should be exercised by the trustees.

Once a charity has accepted a donation it can only return it:

- if the terms and conditions of the gift provide for it to be returned in particular circumstances; or
- where the law specifically provides for the gift to be returned in particular circumstances; or
- by way of an 'ex-gratia payment' (a payment made as a result of a compelling moral, but not legal, obligation). This type of donation return will only be permitted where the charity has received an order from the Charity Commission for England and Wales.

When might you be asked to return a donation?

- In the event that an appeal does not raise sufficient funds, donor may be entitled to a refund.
- If an appeal for a specific purpose raises too much money, then legal authorisation may be needed from the Charity Commission before the excess funds can be directed to a similar purpose.

Particular thought should be given to the terms and wording used for a specific appeal to explain to donors what will happen in the event that the appeal can no longer be achieved, or if you raise too much or too little money.

Your wording should say clearly what will happen to any surplus funds and what will happen to donations if not enough funds are raised.

Further reading: Disaster Appeals, Charity Commission guidance



People in vulnerable circumstances

If a fundraiser or fundraising organisation has reasonable grounds for believing that a supporter lacks the capacity to make a decision, then a donation should not be taken.

If a donation has already been made, and at the time of donating the individual lacked capacity (and the charity receives evidence of this) then the charity can and should return that donation, since the original donation was invalid.

It is less clear in other circumstances (e.g. where a person had capacity to give but lacked information or was in a vulnerable circumstance at the time) but the usual considerations on accepting and refusing donation apply.

Charities must weigh up the benefits of receiving a donation versus the reputational damage that may be caused by accepting the gift. 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. Where a donation is of low value, a charity may reasonably conclude that it requires a disproportionate amount of time and resources to investigate and evaluate whether or not the donation should be refused or returned, and the charity may simply have a policy of returning or refusing donations below a certain value in such circumstances without further investigation.

This is definitely something to think about when you put together an internal policy and process. Consider including a specific reference to people in vulnerable circumstances within any such policy and the risk factors that fundraisers should take into account.

Note: It is important to recognise the distinction between an individual lacking the mental capacity to make a decision and someone who has capacity but may be vulnerable at that moment in time. While both situations require a fundraiser to respond appropriately, the fact that issues around mental capacity have a legal context means that this needs to be understood as a discrete part of this area.

Further reading: Treating Donors Fairly, IoF guidance



Is authorisation required to return a donation?

Depending on the circumstances (e.g. the terms of the donation and how the funds were raised), there may be restrictions on whether a donation can be returned and the relevant charity regulator may need to authorise such returns by issuing a specific order.

Northern Ireland

The Northern Ireland position is similar to England and Wales. Under the Charities Act (Northern Ireland) 2008 a charity may, in respect of donations, seek the advice of the Charity Commission for Northern Ireland under Section 46. This section gives the Commission the power to “authorise dealings and to act upon any decisions which may be expedient to the charity” – this comes with the added power of being able to sanction their decision to return or refuse a donation.



Scotland

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 that have OSCR as their principal regulator cannot make ex-gratia payments.

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.

England and 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
- 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.



DEVELOPING A POLICY: A STEP BY STEP GUIDE

Having a clear policy and process on the acceptance and refusal of donations is important for all charities. Having a policy will not prevent these issues from arising or people disagreeing with decisions taken, but it will help you to:



express your values and ethos, how those are relevant to its purposes and how certain types of donations might be more likely to inhibit those purposes



help to ensure that decisions are not made on an ad hoc basis but are grounded in the agreed policy objectives of the organisation



avoid confusion between trustees, fundraisers, volunteers and staff as to who has the authority to take decisions in differing circumstances



ensure compliance with both the Code of Fundraising Practice and any legal requirements



clarify trustee obligations with regard to the acceptance, refusal and return of donations



provide a clear unambiguous policy statement that makes decisions intelligible, and therefore more justifiable and credible to the public at large



provide a clear objective standard against which external regulatory bodies can judge



protect the reputation of the charity against adverse public reaction from existing or potential supporters



demonstrate to stakeholders and the wider public that your organisation is consistent and takes its position and responsibilities seriously.

Creating and developing your policy and process

Where do you start?

To go about creating, implementing and evaluating a policy, it is useful to think about the following:

- How does this policy relate to other governance documents and policies e.g. ethical investment policies, purchasing policies, green policies, volunteer processes, register of interests? Do your governing documents already limit or prohibit certain types of donations? Be sure to avoid duplication of work and ensure consistency across policies
- Who needs to approve this policy and how will this be done?
- Who should decide when this policy needs reviewing or amending, and when/how often should this be done?

Who should lead on this?

When drawing up a policy, consider who should be involved. Depending on the size of your organisation, it's likely that this will include a variety of people across the fundraising team. However, a number of other people might need to be involved, including any legal, finance or policy professionals.

The policy (and any plan for its implementation) should be formally approved by the Board of Trustees.

Once you have an agreed policy and process, it's important to ensure that it is complied with and applied correctly and consistently. The document should be made available to all those who will be involved with the process to ensure organisational awareness of procedures.

Whatever you decide, a careful record must be kept of the decision, and the reasons behind it.

Should your donation acceptance policy be public?

You're likely to want to consider whether to publish your policy for all donors and supporters to see. Charities often decide to do this to show that they have thought about it and be clear. However, be prepared that publishing your policy could lead to questions about your rationale and discussion of individual cases.

Questions to think about

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?

4 Do you need to consider the cost of accepting a donation? E.g. will accepting a restricted donation be undeliverable without the organisation incurring additional costs beyond the initial donation?

5 Will your organisation choose to apply different policies in different circumstances? E.g. do the same conditions apply to a disaster appeal as regular giving or sponsorship

6 What will your position be on anonymous donations? Remember, 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 and Northern Ireland)

7 What is your position on accepting donations from potentially vulnerable donors?

8 Who in your organisation has the power to endorse the policy and make the final decision?

9 Will there be a chance for staff or other relevant stakeholders to state an opinion or appeal a decision?

10 Are you going to make your donation acceptance policy publicly available?



Putting your policy into practice

Timelines for decision making

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.

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.

Carrying out due diligence

Due diligence is the range of practical steps that need to be taken by trustees in order to be assured of the origin of charitable funds and confident that they know the people and organisations the charity works with, and able to identify and manage associated risks.

‘Due diligence’ means carrying out proper ‘checks’ on those individuals and organisations that give money to, or receive money from, your charity, including partners and others that are contracted to work with it.

The appropriate level of checks carried out on a donor is likely to be proportionate to the size of the donation. It’s also the case that different kinds of donations will present different levels of risk.

Further reading: The Charity Commission has a dedicated toolkit on carrying out due diligence here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/677252/Chapter2new.pdf



Communicating a refusal

You should consider who will be responsible for communicating with the donor regarding the donation acceptance policy and the final decision that the organisation has arrived at.

It might also be helpful to discuss this with your media team and consider which staff members need to be briefed in order to handle any questions that come in, either privately or through public channels such as the press, website and social media.

It is also helpful to consider how donation refusals, proposed refusals or returns 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.

Contingency planning

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.

Remember: It's important to review and update the policy as and when required. Have a think about who will do this and what the process will be.



WHAT WOULD WE DO IF...?

These are just a few illustrations of potential situations in which you may need to think about these issues, rather than a comprehensive set of examples. Make sure you know the rules and seek help and advice if you need it, and always think about what is in the best interests of your organisation.

Someone who lacks mental capacity gives us a donation

The daughter of a recent donor finds out that their mother has given your charity a £300 gift. She calls you and informs you that she has control over her mother's financial affairs, and provides evidence of power of attorney. She asks you to refund the donation.

As the donor lacked capacity to make the decision to give money to your charity, then your charity can and should return the donation because the original donation was invalid.



We didn't raise enough money for a specific appeal

You are fundraising to raise £10,000 to buy a piece of medical equipment, but only raise £7,000.

As you didn't raise enough money to buy that specific piece of equipment, and didn't explain clearly what else the donations might be used for, these particular donors are entitled to a refund.

To avoid this happening with specific appeals, clearly state what will happen to any donations if not enough funds are raised for this specific aim, as well as what will happen in the event that you raise surplus funds.

For example, *"In the event that we don't raise enough money for this piece of medical equipment, the money raised will go towards our general charitable activities."*



A donor asks for their money back

A regular donor gave £5,000 six months ago. They call you and say they've lost their job and want £2,500 back.

The person who gave a donation has no legal right to ask for it back, and the charity has an overall duty to put all of their assets towards achieving that organisation's charitable objectives. The starting position is usually that the charity should not give donations back, however, there are exceptions which we have covered in this guide (see page 12).



Someone makes a donation which was intended for another charity

A recent donor contacts you to say that they meant to make a donation to another charity with a similar name, but selected the wrong option on the online giving platform they used.

As this donation was not intended for you, you should return it.



We're worried that accepting a particular donation will impact on our charity's ability to achieve our objectives

You work at an animal welfare charity and get a call from a pharmaceutical firm who used to test on animals. They have a new CEO and want to make a donation. However, you're worried about the reputational impact that this might have on your existing and potential new supporters.

You should be thinking carefully about which donations to accept and refuse in these kind of circumstances. Each charity will have to look at all the information and assess for themselves whether to accept the donation or not. For example, it's important that you conduct due diligence checks so you can make an informed decision. Follow your acceptance and refusal process, ask the right questions and think about what is ultimately in the best interests of your organisation.



Case study: A report from The Charity Commission



**CHARITY COMMISSION
FOR ENGLAND AND WALES**

1. What happened?

The Blencathra Mountain, which sits within the Lake District National Park, was brought to the market in May 2014 with a guide price of £1.75m.

The Friends of Blencathra Ltd was registered with the Commission in June 2014, with objects to promote for the benefit of the public the conservation and protection of the natural environment in particular Blencathra and to promote for the benefit of the public the provision of facilities for recreation or leisure, in particular on Blencathra Mountain.

2. Why the Charity Commission got involved

In early 2016 concerns were raised with the Commission and in local media about the charity, including a lack of response to requests for information about donations, and whether the trustees could raise the amount required to buy the mountain, and the subsequent plans to manage it.

Later on, the Commission was made aware of the withdrawal of Blencathra from the market, and that a number of donors were therefore requesting that their donations were returned.

3. What the Charity Commission found

Having looked into this in more detail, the Charity Commission found that the accounts showed that it had a balance of approximately £240,000 at 31 May 2015, which was significantly lower than the £1.75m guide price. This underlined concerns expressed to the Commission about the charity's ability to buy the mountain even though the trustees had maintained confidence that they had sufficient funds available to them to purchase the property at its market value.

In September 2016, the charity released a statement that confirmed it no longer saw any prospect of a successful purchase due to a number of external factors.

4. The action that was taken

The Commission advised that:

- any unrestricted funds could be applied in furtherance of its objects or distributed to similar charities;
- that restricted funds arising from the appeal to buy the mountain before the charity's formal establishment must be dealt with as a 'failed appeal' in accordance with their guidance.

The trustees took their own legal advice and initially indicated that they planned to offer a refund to those who had donated more than £10.

The Commission provided regulatory advice that the regulations do not allow for a specific threshold to be applied unless this has been addressed at the time of the fundraising appeal by explicitly making clear an alternative use of funds below a

particular value should their plan fail. The charity decided to treat all donations from individual donors as restricted, regardless of when the donation was made or the amount of the donation.

The trustees notified donors directly where possible as well as via its website, social media, local press and local Parish Council notice boards that donations given for the purpose of purchasing the mountain could no longer be used for that purpose and that donors who gave money, or other property, for that purpose were therefore entitled to claim it back, less admin costs.

The Commission confirmed that the charity is permitted by regulations to deduct reasonable administrative expenses such as bank charges, advertising, and mailing costs incurred in returning donations. In accordance with the Commission's guidelines, donors were advised to contact the charity within 3 months and the charity provided a form for those that wished to disclaim their right to a refund and have their money go to a similar charitable purpose.

5. What lessons can be learned

- Be really clear about the purposes that you are raising money for and what might be restricted funds
- How would you deal with a failed appeal if the purpose for which you're raising money for can't be achieved;
- If this is a new campaign and not an existing charity, when to consider registering with the Charity Commission;
- The importance of tracking and noting decision making processes;
- The impact that returning or not returning a donation might have on public trust and confidence in your organisation, and the wider sector.

To read more about the impact of the Charity Commission's involvement, and the actions they took, you can read the full case report.

<https://www.gov.uk/government/publications/charity-case-report-the-friends-of-blencathra-ltd/the-friends-of-blencathra-ltd-case-report>



FURTHER INFORMATION

Institute of Fundraising

<https://www.institute-of-fundraising.org.uk/>

- Treating Donors Fairly – responding to the needs of people in vulnerable circumstances
- Guidance: Governance and Management

Charity Commission for England and Wales

<https://www.gov.uk/government/organisations/charity-commission>

- The essential trustee: what you need to know, what you need to do (CC3)
- Ex gratia payments by charities (CC7)
- Charity fundraising: a guide to trustee duties (CC20)
- Charities and risk management (CC26)
- Charity finances: trustee essentials (CC25)

Charity Commission for Northern Ireland

<https://www.charitycommissionni.org.uk/>

- CCNI EG061 Fundraising for charities – A guide for charity trustees and the public

Scottish Charity Regulator

<https://www.oscr.org.uk/>

- Fundraising Guidance for Charity Trustees

National Audit Office

<https://www.nao.org.uk/>

- Due diligence processes for potential donations

Fundraising Regulator

www.fundraisingregulator.org.uk



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Disclaimer:

"The information in this publication is necessarily of a general nature. Specific advice should be sought for specific situations. The publication reflects the law and guidance as at May 2018".

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