



Acceptance and Refusal of Donations Policy

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Version	Reviewed	Changes since last version
1	June 2019	Original
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1. Purpose and scope

1.1 Mulberry Schools Foundation (“the Foundation”) seeks to raise funds to further its charitable purposes, which will include soliciting donations from companies, organisations and individuals based in the UK and overseas.

1.2 The purpose of this policy is to:

- give guidance on the legal requirements and set out the policy of the Foundation in relation to the acceptance and refusal of donations;
- provide information and guidance to Trustees and staff/volunteers on how to process donations and identify key risk factors; and
- set out a process to follow to identify high-risk donations and make decisions on whether or not to accept them.

1.3 This policy applies to all donations totalling £5000 or above¹ and donations which the Trustees regard as suspicious (see paragraph 5.11).

1.4 This policy has been developed taking into account the relevant guidance issued by the Charity Commission² and the Institute of Fundraising.³

2. Who does this policy apply to?

2.1 The Trustees are mindful of their legal and regulatory duties to ensure that the Foundation actively manages risks associated with the acceptance and refusal of donations. Decisions as to the acceptance or refusal of donations will be made on a case-by-case basis.

2.2 Ultimate responsibility in respect of the acceptance or refusal of all donations rests with the Trustees. The Trustees must act reasonably and prudently in the interests of the Foundation in pursuing the Foundation’s objects, as under Article 2 of the Foundation’s Articles of Association, (“Objects”) and have an overarching duty to act in the best interests of the Foundation.

2.3 This policy has been adopted by the Foundation’s Board of Trustees and is to be communicated to all current and future Trustees, staff⁴ and volunteers working on fund-raising to ensure their commitment to it.

2.4 All existing and new Trustees, staff and volunteers working on fundraising shall receive a copy of the policy, shall be deemed to have accepted it and shall be required to take account of it in respect of their activities in connection with the Foundation.

¹ For repeat donors, this figure is cumulative; once the total donations received from one single donor reaches the figure provide, this policy applies.

² In particular, Chapter 2 of the Charity Commission’s Compliance Toolkit on Protecting Charities from Harm – Due Diligence, Monitoring and Verification of End Use of Charitable Funds:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/677252/Chapter2new.pdf

³ Institute of Fundraising, Acceptance, Refusal and Return A Practical Guide to dealing with Donations:

[https://ciof.org.uk/iof/media/IOF/Policy/iof-acceptance-refusal-and-return-a-practical-guide-to-dealing-with-donations-\(5\).pdf?ext=.pdf](https://ciof.org.uk/iof/media/IOF/Policy/iof-acceptance-refusal-and-return-a-practical-guide-to-dealing-with-donations-(5).pdf?ext=.pdf)

⁴ “staff” in this policy refers to those employed, seconded or providing in-kind support.

2.5 This policy does not form part of any employee's contract of employment and it may be amended at any time at the Trustees' sole and absolute discretion.

3. **When can a donation be refused?**

3.1 Any decision as to whether a donation should be rejected must involve a careful analysis and weighing up of, on the one hand, the extent of any possible harm to the Foundation, and on the other hand, the benefit to the Foundation arising from accepting such donation.

3.2 A donation can only be refused if:

- accepting the donation would be detrimental to the achievement of the charitable purposes of the Foundation; or
- it would be unlawful to accept it.

4. **Refusal on the grounds that accepting the donation would be detrimental**

4.1 A donation can be refused if the Trustees, acting reasonably, consider that accepting the donation would be detrimental to the achievement of the charitable purposes of the Foundation. The Trustees must weigh up the benefit of receiving the funds against the potential detriment to the Foundation's objects as set out in its Articles of Association. The procedure in paragraph 7 should be followed.

4.2 Situations in which acceptance of a donation may be detrimental to the Foundation include the following:

4.2.1 **Potential loss of other donations, staff or volunteers** – a reasonable expectation by the Trustees that acceptance of the donation would lead to:

- a loss of donations from other supporters, foundations or funders that is equivalent, over the longer term, to the value of the donation;
- a loss of volunteers whose services would be at least of as great a value as the donation; or
- a loss of current staff, or an inability to appoint staff in the future

~~for example, as a result of reputational damage to the Foundation.~~

4.2.2 **Reputational damage to the Foundation** – where it can be clearly shown that acceptance of the donation would damage the reputation of the Foundation.

4.2.3 **Potential harm to the Foundation's beneficiaries** – a reasonable expectation by the Trustees that acceptance of the donation could harm the Foundation's beneficiaries.

4.2.4 **Identity of a donor** – where it is clear that the activities of a donor are directly inimical to the objectives of the charity, the agreed policies of the Foundation, or to the beneficiaries of the Foundation.

4.2.5 **Costs** – where it can be shown clearly that the cost to the Foundation of accepting a donation will be greater than the value of the donation itself.

- 4.2.6 **Practical considerations** – which mean that an otherwise acceptable donation is refused. For example, where support is tied to a particular project or activity which, whilst reflecting the Foundation’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 Foundation, whilst in need of the capital asset, has no resources with which to maintain the running costs associated with it.
- 4.2.7 **Nature of the donation** – it may be appropriate for the Foundation to refuse a donation 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.
- 4.2.8 **Conditions attached to the donation** - where the offer of support is dependent upon the fulfilment of certain conditions placed upon the Foundation, the Trustees may consider that it in the best interests of the Foundation to refuse that support, particularly where such conditions could be seen to fetter the discretion of the Trustees. Such cases might exist where:
- any condition linked to the support is, in itself, contrary to the objects of the Foundation;
 - 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 Foundation;
 - any condition that requires the Foundation to adopt a particular policy or allows the donor to have a say in selecting beneficiaries; or
 - conditions linked to the support will divert the Foundation from pursuing its current purposes, policies or work priorities as a necessary result of the fulfilment of the conditions alone.
- 4.2.9 **Source of the funds** – where money laundering or other criminal activity is suspected (see further below at paragraph 5).
- 4.3 A donation can only be refused on the grounds of it being detrimental to the Foundation if:
- the Trustees have a reasonable expectation of detriment arising from the acceptance of the donation; and
 - it is reasonable to conclude that such detriment is likely to be greater than, or at least equal to, the benefit to be obtained by accepting the donation.
- 4.4 The ultimate decision about whether to accept a donation must always relate to the potential detriment to the Foundation’s charitable objects. The Trustees (and any delegated decision makers) must not allow their individual or collective personal, political or ethical views to affect their decision.

Ethics and values of the Foundation

- 4.5 Although the ethics and values of the Foundation will be important in reaching the decision, these cannot be the decisive factors. The Trustees must be able to demonstrate that acceptance of the donation would be detrimental to achievement of the Foundation's objects.
- 4.6 The ethics and values of the Foundation must only be taken into account once the Trustees have established that:
- those ethics and values are relevant to the objects of the Foundation as set out in its Articles of Association;
 - it is reasonable to conclude that acceptance would be detrimental to the achievement of those objects; and
 - it is reasonable to conclude that such detriment is likely to be greater than the benefit to be obtained by accepting the donation.
- 4.7 The procedure set out in paragraph 7 must be followed if the Trustees believe that accepting a donation may be detrimental to the Foundation for any of the reasons set out above.

5. **Refusal on the grounds of illegality**

- 5.1 A donation must be refused if it is being made to facilitate money laundering or other criminal activity.

Money laundering

- 5.2 Money laundering is the process by which the proceeds of crime or illegally obtained money are processed or spent to create the appearance that they have come from a legal or legitimate source. The Trustees are aware that charities can be targets for money launderers.

- 5.3 It is an offence under the Proceeds of Crime Act 2002 if a person:

- conceals, disguises, converts or transfers criminal property or removes it from the UK;
- enters into or becomes concerned in an arrangement which he knows or suspects facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person; or
- acquires, uses or has possession of criminal property.

Terrorism

- 5.4 A donation must be refused if the Trustees know or have reasonable cause to suspect that the donation is connected to terrorist property. In this case, accepting the donation could be a criminal offence under the Terrorism Act 2000.

- 5.5 There are a number of terrorism offences but the most likely offences that could be committed by the Foundation in relation to donations it receives are the following:

- the provision of money or property for the purposes of terrorism;

- receiving or providing money or property where it may be used for the purposes of terrorism;
- facilitating the laundering of terrorist money;
- making funds, financial services or economic resources available to or for the benefit of a designated person; or
- dealing with funds or economic resources owned, held or controlled by a designated person.

5.6 There are particular offences relating to proscribed organisations and designated persons and the Foundation must ensure that any individual or entity donating to the Foundation is not associated with a proscribed organisation or a designated person.⁵

5.7 “Proscribed organisations” are organisations the Home Secretary believes commit, are prepared for, promote/encourage or are otherwise concerned in terrorism. The presence of proscribed organisations or their members could affect the Foundation, particularly when operating in areas of conflict.

5.8 “Designated persons” are individuals and entities where there is reasonable cause or HM Treasury believes that they are or have been involved in terrorist activity or are owned, controlled or acting on behalf or at the direction of someone who is.

5.9 In the case of certain terrorism-related activities and offences, the law imposes a positive duty to report matters to the police and failure to do so is a criminal offence. If a Trustee or member of staff of the Foundation has reasonable cause to suspect that money or other property will or may be used for the benefit of a proscribed organisation or a designated person, it must be reported to the Counter Terrorism Internet Referral Unit, <https://www.gov.uk/report-terrorism> or contact via the Anti-Terrorist Hotline **0800 789 321**. Alongside this the Foundation should report this to the Charity Commission as a serious incident.

Other criminal activity

5.10 A donation must be refused if the Trustees know or have reasonable cause to suspect that the donation is a benefit arising from conduct that would be criminal in the United Kingdom, such as tax evasion or where donors seek tax relief on their donation while at the same time seeking private benefit as a result of their donation, for example, by insisting the Foundation purchase services from an associated company as a condition of the donation.

Is the donation suspicious?

5.11 Factors that could alert the Trustees to the donation being suspicious include, but are not limited to:

⁵ The lists of proscribed organisations and designated persons can be found here: <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>; <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>

- if the donation is from an anonymous source above £1,000;
- if the source or destination of funds differs from the original details provided;
- if information known about the donor reveals criminality or association with criminality;
- a condition that the donation must be passed to a particular person or entity; or
- where the donation is to be returned after a period of time, either to the donor or a third party, in a different currency;
- the donation being particularly large;
- the donor being previously unknown to the Foundation or to Mulberry Schools Trust;
- the geographical origin of the donation (e.g. from a country with oppressive regimes or where there is a high level of corruption and bribery or a tax haven);
- the donation being made by an entity different from the ultimate donor;
- the timing of the donation or the frequency of the donations; or
- the Trustees having any concerns or suspicions that the donation may be connected to money laundering or other criminal activity.

5.12 For all donations falling within the scope of this policy the Trustees should carry out the procedure in paragraph 7. If a donation is refused due to suspicions of criminal activity the Trustees must follow the procedure in paragraph 7.6.

6. **Tainted charity donations**

6.1 The Tainted Charity Donations Rules (“TCD Rules”) are a set of UK tax law rules intended to avoid the misuse of charities for the provision of inappropriate benefits to donors. The rules are complex but can result in requirements to reimburse HMRC for tax benefits provided to a charity where it is shown that (broadly):

- an arrangement has been entered into between a charity and a donor; and
- that arrangement and a donation from the donor to the charity would not have been entered into independently of one another; and
- the donor has received some form of financial advantage directly or indirectly from the charity.

6.2 The Trustees must take account of the TCD Rules whenever the Foundation is entering into arrangements with a donor or receiving donations from an entity with which it has some pre-existing connection, such as through previous business dealings.

7. **Procedure to be followed**

7.1 Within 28 days of being notified of the donor's intention to make the donation (or, if there was no notification, of receipt of the donation) that falls within the scope of this policy, the Trustees will carry out the following steps:

- complete the questionnaire set out at Schedule 1 to this policy. This will help the Trustees to assess whether there is a risk that acceptance of the donation may not be in the best interests of the Foundation and/or may be illegal; and
- if, following completion of this questionnaire, there are a number of risks identified with the donation, or the Trustees are otherwise suspicious of the donation, the Trustees must complete the Concerns Log at Schedule 2.
- if, following completion of the Concerns Log, the Trustees identify that no further action is necessary, the donation can be accepted.

7.2 For an ongoing donation which has been accepted but where risks have been identified, the risks must be recorded in the Concerns Log and the Trustees must review the questionnaire at Schedule 1 at six-month intervals. If there has been a change in circumstances following this review, the Trustees shall complete a new Concerns Log and carry out further action as appropriate.

7.2.1 If the need for further action is identified, the Trustees must take further steps necessary as set out in paragraphs 7.6 to 7.10 below.

Solicited donations

7.3 If a donation being solicited by the Foundation falls within the scope of this policy, the Trustees must carry out these steps before any agreement is made with the potential donor.

Anonymous donations – unable to identify

7.4 If the Trustees are unable to identify the exact source of a donation, they must complete the Concerns Log and decide what action to take in accordance with this policy.

Detrimental impact

7.5 If a donation may be refused on the grounds of detrimental impact, the Trustees must consider all of the factors set out at paragraphs 4.2 and 4.3 above before reaching a conclusion.

Further steps (as appropriate)

7.6 *Anonymous donations*

7.6.1 If a donation totalling £25,000 or more comes from an unknown or unverified source, the Trustees must file a serious incident report with the Charity Commission.⁶

7.7 *Criminal activity*

7.7.1 If the Trustees suspect that a donation is being made to facilitate money laundering or other criminal activity, they will:

⁶ See <https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>.

- contact the police;
- submit a Suspicious Activity Report to the National Crime Agency (NCA);
- file a serious incident report with the Charity Commission; and
- refuse the donation.

7.8 *Charity Commission advice or consent*

7.8.1 Where there is a cause for concern about whether or not to refuse a particular donation, the Trustees may wish to seek advice or authority from the Charity Commission. Particular circumstances in which such advice or an order might be of particular benefit include 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; or
- 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 Charity Commission advice or an order to mitigate against the threat of negative publicity engendered by the refusal of a donation.

7.9 *If a donation is refused*

7.9.1 If, after following the procedure outlined at above, the Trustees decide to refuse a donation, they must, within 28 days:

- notify the potential donor of the decision; and
- in the case of a high-profile donor, prepare a media strategy to respond to any queries on the decision to refuse to accept the donation.

7.10 *If a donation is accepted*

7.10.1 If, after following the procedure outlined above, the Trustees decide to accept a donation and identify no potential risks, the Trustees need not take any further action in relation to accepting the funds.

7.10.2 If, after following the procedure outlined above, the Trustees decide to accept a donation but identify potential risks, they must record this in the Concerns Log at Schedule 2 and where this is a repeat donation, repeat the steps outlined above for every further donation.

8. **Delaying a donation**

8.1 On occasion the Foundation 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). The Foundation 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 Foundation explains the tax advantages accurately to the donor.

9. Monitoring and Records

9.1 The Trustees will keep records of any due diligence carried out in relation to all donations and all steps taken to comply with this policy and keep these records for at least six years.

9.2 The Foundation should keep written minutes of decisions (or copies of resolutions) concerning the acceptance or refusal of donations and the reasons for those decisions and, in line with best practice, keep these minutes for at least six years after the decision, or in the case of accepted donations, six years after the donation has been spent by the Foundation.

10. Delegation

10.1 The Company Administrator, appointed by the Trustees from time to time, is responsible for raising concerns about donations warranting attention in line with this policy. The Company Administrator is responsible for reviewing the donation in line with this policy and will make a decision following discussion with and advice from the Board of Trustees.

11. Implementation, maintenance, review and dissemination of this policy

11.1 The Foundation's Board of Trustees has overall responsibility for ensuring that this policy complies with the Foundation's legal obligations and that all those under the Foundation's control comply with it. The Trustees shall periodically review and evaluate this policy and its schedules and evaluate their effectiveness and implementation, taking advice from external specialist advisers where appropriate. Any improvements identified will be implemented as soon as practicable.

Schedule 1 – KNOW YOUR DONOR QUESTIONNAIRE

QUESTION		YES/NO?	COMMENTS (including details of responses to questions, checks made and any risks identified)
Information about the donor			
1.	Is the donor known personally to one of the Trustees or does the Foundation have an established relationship with the donor?		
2.	Is the donor anonymous to the Trustees?		
3.	Identity checks – is the donor:		
	<ul style="list-style-type: none"> a charity registered in England and Wales? 		
	<ul style="list-style-type: none"> a company in the UK? 		
	<ul style="list-style-type: none"> a company (or other entity) overseas? If an overseas entity, have we checked against international sanctions and watch-lists? 		
	<ul style="list-style-type: none"> an individual? If an individual overseas, have we checked against international sanctions and watch-lists? 		
	<ul style="list-style-type: none"> a UK taxpayer and can Gift Aid be claimed? 		
4.	If the donation is coming from or via a company, have checks been carried out on the company (Companies House search or overseas equivalent)? Does this search reveal anything unusual about the company?		

5.	Other background checks:		
	<ul style="list-style-type: none"> • Internet searches (Google, Youtube, Facebook, Twitter, etc) • Have any public concerns been raised about the donor or his/her/its activities? • Is there any adverse publicity about the donor that could have a damaging effect on the Foundation? • Is further research required? If so, include details. 		
6.	Could accepting the donation have a detrimental impact on the Foundation, eg loss of supporters, staff, beneficiaries, or damage to the Foundation's reputation?		
7.	Is the donor a related party ⁷ ?		
8.	Is the donation being made by an entity different from the ultimate donor? If so, Qu 1 to 7 should be applied to this ultimate donor.		
Nature of the donation			
9.	Was the donation unsolicited?		
10.	Is it a single donation, or one of a number of regular donations?		
11.	In what form is the donation being received? (i.e. cash, cheque, bank transfer).		

⁷ A related party can include a person who is able to exercise control over the Foundation or where terms/conditions attached to the donation create effective control. Examples would include donations from trustees (clearly a related party), spouses or close family members of trustees (possibly), organisations in which a trustee has an interest (e.g. a company owned by a trustee), but would also

include a scenario in which a donation (of a size to be material to the organisation as a whole) is given with conditions on how it is spent that effectively place control into the hands of the donor. This needs to be reviewed on a case-by-case basis, as the definition can be quite broad.

12.	Is the donation coming from outside of the United Kingdom? If so:		
a)	Has the source and origin of the donation been verified and recorded?		
b)	Are particular financial controls needed to receive certain funds? E.g. do Trustees need to open new accounts in particular currencies?		
c)	If the funds have been received through intermediaries, are the Trustees satisfied that these transactions have been through properly regulated and registered agents?		
13.	Broadly, are the Trustees content that there are no concerns regarding the source of the money?		
Conditions			
14.	Are there any conditions attached to the donation? If so:		
a)	Would compliance with the conditions lead to costs which may exceed the value of the donation?		
b)	Do the conditions specify that the Foundation has to adopt a particular policy?		
c)	Do the conditions provide that the donor has a say in selecting beneficiaries?		

d)	Has the donor specified that the donation must be passed to a particular person or entity?		
e)	Has the donor specified that the donation must be returned after a period of time, either to the donor or a third party, in a different currency?		
f)	Do the conditions in any other way fetter the discretion of the Trustees and/or undermine the Foundation's independence?		
Other issues			
15.	Are there any costs associated with accepting the donation?		
16.	Broadly, is there anything unusual or strange about the donation?		

Schedule 2 – CONCERNS LOG

Name of donor			
Amount of donation		Date received	
Form of donation (e.g. cheque, direct transfer, cash)			
Name of bank			
Sorting code & account number		BACS reference	
Account name			
Name of cheque signatory			
Currency used			
Nature of suspicion/reason for query			
Previous donations from this source?			
Check donor against: 1) Consolidated list of financial sanctions targets ⁸ ; and 2) List of proscribed organisations ⁹ and record results.			
Conditions attached to the donation?			
Action to be taken (tick all that apply)		Donation accepted – review after 6 months	
		Report to the police (state crime reference number)	
		Report to the NCA	
		Report to the Charity Commission	
		Report to HMRC	
		Refuse donation	

⁸ The consolidated lists can be found at: <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>.

⁹ See Home Office publication, *Proscribed Terrorist Organisations* at: <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>

	Other action (record overleaf or attach)	
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