

1 Introduction

- 1.1 Foundation Scotland is Scotland's community foundation. Its role is to 'support communities to shape their future with the capacity and resources to deliver it'. In this context FS, achieves this through donors establishing, growing or contributing to charitable grant-making funds at the Foundation.
- 1.2 As a charity, FS will accept donations from a range of donors, whether they are individuals or organisations. However, FS can also decline donations, i.e. it is not obliged to accept a donation.
- 1.3 Ordinarily, the majority of proposed donations, the source of the donations, and any consequences of donations, fit with the Vision and Role of FS and are acceptable within FS ethos and are manageable within FS financial and operational structure.
- 1.4 However, from time to time, a proposed donation might be unacceptable to FS. The purposes of this policy are to outline what would be considered acceptable, what might be considered unacceptable and the process by which a representative and senior view would be formed when a proposed donation is in question.

2 Scope

- 2.1 This policy applies to all funds donated to FS.

3 Abbreviations and Definitions

Abbreviations

- CEO – Chief Executive Officer
- LMS – the FS Learning Management System

4 Policy

Legal and fiscal context for donations

- 4.1 A fund held by FS is not a distinct legal structure like a charitable trust. It is a restricted fund held on trust by FS in accordance with the terms of the Agreement with the donor and to be used by FS, absolutely, for the benefit of the Fund's purposes in accordance with the terms of the Agreement.
- 4.2 Funds are accounted for separately in accordance with The Charities Statement of Recommended Practice 2005 and other relevant accounting regulation, and acts as a vehicle for giving in line with donors' wishes (which are not binding on FS) without the administrative or regulatory requirements that would be required of a separately constituted charity. The management and distribution of any fund is a matter solely for FS.
- 4.3 Cash and assets donated to establish, grow or contribute to funds at FS are irrevocable donations. They become the property of FS and the Board carries the legal responsibility for ensuring that donations are used for charitable purposes in line with any restrictions agreed with the donor.

- 4.4 Subject to compliance with HMRC regulations, cash donations from UK taxpayers are eligible for Gift Aid, which means that FS can claim an additional percentage of the value of the donation. Gift Aid received is added to funds alongside the original donation. Higher-rate taxpayers may be able to claim additional tax relief on their donations.
- 4.5 Donors who give particular types of donation may be eligible to claim tax relief, depending on their circumstances.
- 4.6 For FS to claim Gift Aid, and for donors to benefit from tax advantages relating to charitable donations, the donor must part with ultimate control over the donated asset. Actual or perceived direct control by donors may jeopardise the basis on which donations are made and the charitable status of FS. Donors and fund advisors (e.g. a family member, named within the Agreement) cannot therefore act independently of FS in relation to their fund. Donors, fund advisors and related parties (e.g. a donor's business interests) cannot benefit from support from their funds.

Types of Funds

- 4.7 The principal type of fund is a Foundation Scotland Fund, a restricted fund, set up by an individual, a family, a business, another charity or other organisation, often in the name of the donor or that of someone, something or a geographic area with whom/which they are associated. In the case of a company being the client, the name of the FS Fund usually includes the business name.
- 4.8 Donors may set up an FS Fund with a donation of a minimum value set by the board from time to time. There are two models for named funds:
 - 4.8.1 Endowment funds: the donation is held as an asset, and invested within the FS endowment. The investment return provides revenue which is used to support charitable causes each year.
 - 4.8.2 Non-invested (or flow-through) funds: the donation is treated as revenue to support charitable causes.

Types of donations FS can accept

- 4.9 FS may accept a variety of donations. All are outright donations of cash and/or assets by living donors made on a one-off or regular basis. The Foundation can also accept planned donations that take effect on the donor's death.
- 4.10 FS welcomes the following types of outright donations.
 - 4.10.1 Cash of any amount, although donations to establish specific funds must meet the minimum requirements as set by the Board from time to time.
 - 4.10.2 Publicly traded shares. The Board will have full discretion over the sale of any donated shares.
 - 4.10.3 Land and buildings as long as, at the Foundation's discretion, they may be sold and/or generate revenue (e.g. rent) for charitable purposes surplus to any associated costs.
 - 4.10.4 Personal property, as long as the items are saleable, and at a value which will offset any costs FS incurs in selling.
- 4.11 FS may also be named as the beneficiary under a will, as follows:
 - 4.11.1 Residuary legacies – a donation made of some or all of the remainder of an estate after all other donations have been handed out and debts paid off.
 - 4.11.2 A pecuniary legacy – a donation made of a fixed sum of money.

- 4.11.3 A specific legacy – a particular named item left as a donation in a will, for example, shares, property, jewellery, furniture or a painting.
- 4.12 Donations from individuals that have been subject to Gift Aid and/or tax refund claims cannot be repaid under any circumstances.
- 4.13 FS may also work with donors who wish to undertake social investment, subject to separate policies and agreements.
- 4.14 FS reserves the right not to accept a donation if the Board determines that the restrictions, liabilities or reputational risks in doing so would be disproportionate to the perceived benefits.

Principles and procedure for review of donations

- 4.15 The main reason for seeking and accepting donations is to establish, grow or contribute to charitable grant-making funds at FS, in order that FS can pursue its charitable aims. However, the core principles which underpin the policy, and which govern the acceptance of donations are the following:
 - 4.15.1 A donation cannot be accepted if it is incompatible with the purposes of FS.
 - 4.15.2 A donation cannot be accepted if there is evidence, or reasonable grounds for believing, that it is comprised of or derived from funds arising from illegal activity, fraud or the evasion of taxation.
 - 4.15.3 A donation cannot be accepted if there is evidence that it would require FS to undertake any action in contravention with current law and regulation or which would create an unacceptable conflict of interest or expose FS to financial or legal liability.
- 4.16 Based broadly on these principles the CEO will review all intended donations to the Foundation and consider acceptance based on the following criteria and questions:
 - 4.16.1 Is the donation consistent with the purposes of FS or in breach (actual or potential) of prevailing charity and other current law?
 - 4.16.2 Has the identity of the donor been verified?
 - 4.16.3 Could acceptance of the donation expose FS to adverse publicity or reputational risk?
 - 4.16.4 Could acceptance of the donation inhibit FS from seeking donations from other donors?
 - 4.16.5 Could acceptance of the donation create an unmanageable conflict of interest?
 - 4.16.6 Does the donation expose FS to an unacceptable cost?
- 4.17 The legal and reputational rights of potential donors will be considered as part of the due diligence in assessing the acceptability of a proposed donation. A clear distinction will be drawn between rumour or speculation and matters of confirmed fact or legal finding, whilst also considering reputational risks that could be brought on FS through public perception of a donor.
- 4.18 In the case of donations which may conflict with these principles, the CEO will refer such intended donations to the Donation Acceptance Committee.
- 4.19 The Donation Acceptance Committee is not a standing committee, but will instead form when required. It will consist of any two Trustees of the Board and a member of the Senior Management Team, who will liaise to review any intended donations which are in question. They will do this promptly, within five working days of any donation referral to them, and review relevant due diligence documents, make a final decision on cases, inform the CEO and/or SMT, and report to the Board via its next quarterly meeting, or sooner, as circumstances dictate.

5 Roles and Responsibilities

- CEO – accept or decline intended donations on behalf of FS, where information is clear as to the acceptability or not of a donation; the CEO (or other SMT member in their absence) will call a meeting of the Donation Acceptance Committee, when required
- Donation Acceptance Committee – will convene, when the acceptability of a particular donation, or donor, is in question

6 Training

- LMS – Anti-Money Laundering

7 References

<https://ciof.org.uk/events-and-training/resources/acceptance,-refusal-and-return-a-practical-guide-t>

8 Review

- 8.1 This policy is reviewed, approved, and endorsed by the CEO. It is updated when required by legislation, to ensure that it reflects statutory responsibilities, government guidance and best practice for FS, or every 24 months whichever is the soonest.