



## DURHAM UNIVERSITY

### Gift Acceptance Policy

Durham University actively seeks gift income from UK and internationally-based donors as a legitimate, sustained and vital component of its funding. This policy covers the solicitation and acceptance of gifts and legacies by or in the name of the University. It sets out the University's arrangements which are designed to ensure that such philanthropic support is aligned with its mission, values, strategic objectives and financial needs.

The University is a charity and will at all times observe the requirements of charity law and other relevant legislation as well as the provisions of its own Statutes in relation to the receipt and expenditure of funds.

The Charity Commission expects the charitable sector to be self-regulating in matters of fundraising. Its guidance (CC20) states that:

*"Trustees and their charities follow the Codes of Fundraising Practice developed by the sector, through the Institute of Fundraising, and regulated by the Fundraising Standards Board."*

The Institute's Key Principles and Behaviours form an Annex to this Policy. Its full Code of Practice is found at <http://www.institute-of-fundraising.org.uk/guidance/code-of-fundraising-practice/>

Responsibility for the acceptance and refusal of gifts rests ultimately with the Council of the University even where decision making has been delegated. Council must be able to demonstrate that it has acted in the best interests of the University in each case. It is clear from the guidance available that there is a presumption that in the generality of cases the interests of a charity will be furthered by increasing the resources at its disposal. There is a strong emphasis on great care being taken over any decision to refuse a donation. This may be done legitimately in certain circumstances, but judgements must not be influenced by the personal ethical viewpoints of trustees or those to whom they have delegated their decision making.

Council is responsible for approving this policy which sets out the framework within which gifts and legacies to the University may be accepted. The policy will be kept under review by

the University Executive Committee (UEC) and will be reviewed formally by Council on the advice of UEC and the Ethics Advisory Committee as required and in any event no less frequently than every three years.

The Chief Operating Officer will be responsible for providing such information to the Council at its meetings about the solicitation and acceptance of gifts as the Council shall determine. As a minimum as part of her/his regular reporting, the Chief Operating Officer will provide to the Council a report of all new gift agreements entered into by the University. (A gift agreement is required for all gifts of £10,000 and above.) The report will indicate all “referral gifts”, i.e. those for which a formal test of compliance with this policy has been undertaken, together with the process by which each such gift came to be accepted.

The operation of this policy will be reviewed by the University Assurance Service on a frequency and to a scope which is determined by the Audit Committee.

The University will not accept gifts in cases where to do so would, on the balance of risks:

- Compromise its status as an independent institution 2
- Suppress or falsify academic research
- Limit freedom of enquiry
- Create unacceptable conflicts of interest
- Cause material damage to the University’s reputation (including deterring significant numbers of beneficiaries or other donors)
- Cause financial loss or any other damage to the University
- Be directly inimical to the University’s mission, objectives and publicly-stated values and ethics framework as approved by the Council of the University from time to time (*Note 1*).

Council has delegated authority for the acceptance of gifts to the Vice-Chancellor on the recommendation of the Chief Operating Officer subject always to the requirements of this policy for referral back to Council in appropriate cases. The Vice-Chancellor’s scheme of delegation for the acceptance of gifts forms Schedule 1 to this policy.

The University will take all reasonable steps, having regard to the size and nature of the gift in question, to ensure that it is aware of the ultimate source of funding for each gift and to satisfy itself that the funds do not derive, directly or indirectly, from activity that was or is illegal or which runs counter to the provisions of this policy. Where necessary the University will look behind charitable trusts and foundations in order to satisfy itself about their ultimate source of funding.

The test of compliance with this policy must be undertaken prior to solicitation wherever possible rather than at the point of acceptance. An unsolicited bequest would be an example of an exception to this general approach. Potential gifts which may raise issues in terms of their acceptability under this policy or which may give rise to significant public interest or attract adverse comment will be drawn to the attention of the Chief Operating Officer at the earliest possible stage (*Note 2*). The Chief Operating Officer will be provided with full information of the purpose of and background to the potential donation and shall determine how to proceed in consultation with UEC. This may involve referral of the matter to Council by UEC. In a case where the Chief Operating Officer is unable to act, the Vice-Chancellor will nominate another member of UEC to act in her/his stead.

In undertaking due diligence to assess the acceptability of a potential gift the University will have regard to the rights of prospective donors and will seek to distinguish between rumour or speculation and matters of confirmed fact or legal finding.

The Director of Development and Alumni Relations (the Director) will be responsible to the Chief Operating Officer for the day to day operation of this policy. Responsibility for undertaking due diligence in line with the policy falls to the Director and his/her staff, who will obtain and bring forward all relevant evidence and will present both sides of the argument fairly, i.e. for and against acceptance, before making a recommendation about a particular gift.

Durham University will be transparent about gifts accepted in terms of their sources and purposes. In cases where a donor wishes to remain anonymous, such anonymity will be respected so far as is legally and practically possible. Gifts will not be accepted where the source of the funds in question is unknown.

All University staff, contractors and volunteers who are seeking to raise funds in the University's name must work in partnership with the Development and Alumni Relations Office to ensure compliance with this policy. Colleges, departments and individuals are encouraged to identify and assist in soliciting prospective donors. All such efforts to secure gifts from private sources must be brought to the attention of the Development and Alumni Relations Office (DARO) in advance.

The University recognises a number of student unions, including Durham Students' Union and college Junior, Middle and Graduate Common Rooms, some of which are separate legal entities with their own trustee bodies. The University through DARO is committed to working in co-operation with all those organisations whose members are students of the University to ensure that maximum benefit is derived from fundraising by and on behalf of Durham students.

The University will enter into appropriate gift agreements with donors for all major gifts, defined as those of £10,000 and above. While donors will be offered opportunities for

continuing engagement with the activities that they have funded, the management and governance of those activities will rest solely with the University.

The University will operate its standard policies and procedures including but not limited to recruitment, admissions, hiring, promotion, procurement, management and governance for all research, teaching and other activities funded by gifts.

All funds raised in the name of the University or one of its constituent parts shall be administered by the University or in accordance with arrangements approved by the Chief Operating Officer acting on behalf of University Council. The Development and Alumni Relations Office is responsible for issuing the official gift receipts and donor acknowledgements, and, with the assistance of the Finance Office, for the proper deposit of gift funds. Adequate records of all gifts shall be maintained by the Development and Alumni Relations Office in accordance with accepted accounting procedures to allow a proper audit trail.

The University will not normally return a gift which has been accepted in good faith in compliance with this policy; indeed the circumstances in which it may do so are extremely limited by law. Exceptionally, subsequent events or the subsequent availability of additional information may give rise to the need to review a previous decision to accept a gift. A decision to return a gift shall always be a matter for the Council on the recommendation of the Vice-Chancellor, having taken appropriate legal advice.

The University will respond promptly to a complaint by a donor or prospective donor about any matter which is addressed in this policy. A designated member of the Development and Alumni Relations Office will attempt to satisfy the complainant's concern in the first instance. A complainant who remains dissatisfied may request in writing a review of their complaint by the Chief Operating Officer of the University or her/his nominee, and will be advised of the outcome of this review in writing.

This policy is available on the web at <http://www.dunelm.org.uk/file/GAP2015.pdf> and will be provided in hard copy to donors and prospective donors on request.

*Note 1 The values and ethics which are currently applicable (April 2015) are those set out in section 2 of the University Strategy 2010 – 2020.*

*Note 2 Escalation of decisions to the Chief Operating Officer will be informed by a list of "caution topics" which are set out in Schedule 1.*

*Note 3 The financial limits set out in this policy shall apply to the total value of each gift or to the total value of gifts from a single donor in each calendar year, whichever is the greater.*

## **Schedule 1 Scheme of delegation for the acceptance of gifts**

## **Schedule 2 Types of gift**

## **Schedule 3 University Library Gift Acceptance Policy**

## **Annexure: Institute of Fundraising Code of Practice: Key Principles and Behaviours**

### **Schedule 1**

#### **Scheme of delegation for the acceptance of gifts**

The Director of Development and Alumni Relations is responsible to the Chief Operating Officer for ensuring the effective operation of this scheme of delegation and providing regular assurance reports accordingly. Responsibility for undertaking due diligence in line with this policy for all gifts including (for the avoidance of doubt) those being solicited through the Development and Alumni Relations Office (DARO), Colleges and Departments, falls to the Director of DARO and his or her staff, who will obtain and bring forward all relevant evidence and will present both sides of the argument fairly, i.e. for and against acceptance, before making a recommendation about a particular gift.

Staff are not expected routinely to screen individual gifts below £10,000 for compliance with this policy, but will nevertheless bring such gifts to the attention of the Chief Operating Officer if they become aware of potential compliance issues.

A number of “caution topics” have been identified to inform staff when they should refer the decision to solicit or accept a particular gift to the Chief Operating Officer. The list is not exhaustive and staff are expected to adopt a prudent approach, referring any gift or prospective gift to the Chief Operating Officer which might be expected to attract special interest, attention or adverse comment.

The “caution topics” are:

- Areas of business of corporations and individuals who are their principal (>10%) owners or former owners: arms manufacture, tobacco, alcohol, gambling, pornography.
- Companies or states which have attracted widespread public criticism of their conduct in specific areas and individuals who have held high office (main board or cabinet level) in such organisations: human rights, child labour, anti-competitive practices, environmental responsibility.
- Significant gifts (greater than £1,000) from current or prospective students and/or persons known to be in a close familial or personal relationship with a current or prospective student.

In the case of gifts which raise no issues in relation to this policy and always provided that no relevant interest has been declared by the member of staff concerned, the delegated limits for acceptance are as follows:

Vice-Chancellor: unlimited

Deputy Vice-Chancellor, Chief Operating Officer, Chief Financial Officer: up to £1 million

Director of Development and Alumni Relations: up to £250k

Head of Major Gifts: up to £100k

Annual Giving Manager: up to £10k

## Schedule 2

### Types of Gifts

The following gifts are or may be acceptable (depending on restrictions):

- Cash or equivalent
- Tangible personal property
- Shares
- Real estate (property and land)
- Bequests
- Other gifts

Such gifts and donations may or may not attract Gift Aid and tax deductions, depending on the tax status of the donor. These benefits will not influence the University's decision to accept or decline a gift.

The following criteria govern the acceptance of each type of gift:

#### Cash or equivalent

Cash donations of over £100 will not be accepted. Cheques are accepted and should be made payable to 'Durham University'. The University accepts payment by Credit Card and Direct Debit which can be made via a donation form which can be downloaded at: [www.dunelm.org.uk/sslpage.aspx?pid=773](http://www.dunelm.org.uk/sslpage.aspx?pid=773)

#### Shares

The University can accept both publicly traded securities and closely held securities.

Publicly traded securities: Marketable securities may be accepted subject to completion of the necessary transfer formalities and the payment of any Stamp Duty. As a general rule, all marketable securities will be sold upon receipt unless otherwise directed by the Chief Financial Officer acting on the advice of appointed investment advisers. In some cases marketable securities may be restricted by applicable securities laws: in such instances the final determination on the acceptance of the restricted securities will be made by the Chief Financial Officer, acting on such advice as s/he deems necessary.

Closely held securities: Closely held securities, which include not only debt and equity positions in non-publicly traded companies but also interests in limited partnerships and limited liability companies, or other ownership forms, can be accepted subject to the

approval of the Chief Financial Officer. However, such gifts must be reviewed prior to acceptance to determine that:

- There are no restrictions on the security that would prevent the University from ultimately converting those assets to cash.
- The security is marketable or likely to become marketable in due course (without imposing any undue costs, administrative or other burdens in the interim).
- The security will not generate any undesirable tax consequences for the University. 7

If potential problems are identified on an initial review of the security, further review and advice from suitably qualified professionals may be sought before making a final decision on acceptance of the gift. The Chief Financial Officer (acting on any necessary advice) will make the final determination on the acceptance of closely held securities. In the normal course of events every effort will be made to sell non-marketable securities as quickly as possible, unless professional advice is to hold the security or to defer its sale.

### **Tangible Personal Property**

Tangible personal property includes art, furniture, books, memorabilia, coin and stamp collections, jewellery, vehicles and any other personal property item owned by a donor. It excludes property and land. The University will examine a potential gift of tangible personal property for the item's financial value, its potential use by the University, any associated on-going risks or costs to the University and, if the item will not be used or kept, whether the item could be sold quickly and converted into cash.

### **Real Estate (Property and Land)**

Gifts of real estate may include gifts of developed property or undeveloped land. Prior to acceptance of gifts of real estate, the University shall require a structural survey or other similar review of the real estate to ensure that it offers no significant on-going financial or environmental risks or costs to the University. The cost of such survey or review will generally be an expense of the donor. Prior to acceptance of the real estate, the gift will have to be approved by the Chief Financial Officer acting on such professional advice as he or she deems to be necessary. Some criteria for acceptance of the real estate (but not an exhaustive list) are as follows:

- Is the real estate useful for the purposes of the University?
- Is the real estate marketable?
- Are there any restrictions, reservations, easements or other limitations associated with the real estate?

- Are there on-going costs, which may include insurance, taxes and mortgages associated with the real estate?
- Does the structural survey show that the real estate is in a reasonable state of repair and likely to remain so prior to disposal?

The University may accept a remainder interest in a personal residence, farm, or vacation property subject to the provisions above. The donor or other occupants may continue to occupy the property for the duration of the stated life. On the death of the donor, the University may use the property or convert it to cash at its absolute discretion.

### **Legacies**

The University will accept legacies and bequests. The University asks donors wishing to leave a bequest or legacy to execute an appropriate Codicil in their will, or visit [www.dunelm.org.uk/legacies](http://www.dunelm.org.uk/legacies) for more information.

### **Other Gifts**

The acceptance of any other gifts not listed above will be considered on a case by case basis.

## Schedule 3

### University Library Gift Acceptance Policy (Statement of Principles)

Durham University Library has throughout its history benefited significantly from the generosity of its friends and benefactors. Many important, valuable and useful gifts, and numerous donations of money to purchase library materials, have enriched both its teaching and its research collections. To this day, gifts to the Library of relevant publications and collection items in all formats are welcomed and encouraged. All gifts are accepted at the discretion of the University Librarian. In so doing, the Library wishes to focus on materials that it would like to retain, and normally will not accept material which will not be added to the Collection.

When considering any offer to donate material to the Modern and General Collections of Durham University Library, the following guidelines apply:

- Donations are welcomed which fall within the scope of the Library's Collection Management Policy, if they are of academic value and if they contribute significantly to the usefulness of current teaching and research collections or the Library's established strengths.
- The University encourages all academic staff to donate a copy of any academic publication written or edited by them to the University Library.
- Durham University Library seeks where possible to evaluate the potential benefit of any donation in relation to regional/national collection development priorities and access and document delivery provision.
- The Library does not usually accept donations that duplicate existing stock, except in the case of core reading list materials, or any material that is out of date or in poor physical condition.
- The Library aims to balance the likely value to the Collection of a potential gift against the costs of cataloguing, processing, storing and conserving it. Any prohibitive delays in dealing with the regular flow of purchased library materials that acceptance of a gift could entail may also be taken into account.
- Donations are accepted without obligation to the donors and on the understanding that upon receipt the material becomes the property of the University Library.
- The Library will determine the most appropriate way to treat any donated material. Donations will normally be dispersed and items will be shelved with materials on the same subject or in other sequences rather than kept in separate, discrete collections. The processing of donated material is usually, though not always, given a lower priority than that accorded to purchased stock.

- Donated material is subject to the same de-selection criteria as other library materials.
- Durham University Library reserves the right to dispose of any gifts it deems unsuitable or unwanted.
- Potential donors should contact the Librarian in advance for further advice and guidance about donating library materials.

## Annexure

(Excerpt from the Institute of Fundraising's *Code of Fundraising Practice – 2015*)

### KEY PRINCIPLES AND BEHAVIOURS

KEY: \* denotes legal requirement

#### 1.1 Legal References in this Section

- General charity law principles
- Gift Aid Rules
- Charities Act 1992
- Charities Act 2011
- Charities and Trustee Investment (Scotland) Act 2005

The work of all of the Institute's members will be **Legal, Open, Honest** and **Respectful**.

#### 1.2 General Principles

- a) A legal principle underpinning fundraising is that all funds raised for a particular cause **MUST\*** be used for that particular cause.
- b) Fundraisers **MUST NOT** denigrate other individuals or organisations.
- c) Organisations **MUST NOT** exaggerate facts relating to the potential beneficiary.
- d) Organisations **MUST NOT** take advantage of mistakes made by the donor.
- e)i) Fundraisers **MUST** take all reasonable steps to treat a donor fairly, enabling them to make an informed decision about any donation. This **MUST** include taking into account the needs of any potential donor who may be in a vulnerable circumstance or require additional care and support to make an informed decision.
- ii) Fundraisers **MUST NOT** exploit the credulity, lack of knowledge, apparent need for care and support or vulnerable circumstance of any donor at any point in time. There is more information available about responding to the needs of people in vulnerable circumstances and helping donors to make informed decisions in our 'Treating Donors Fairly' Guidance.
- iii) "If a fundraiser knows or has reasonable grounds for believing that an individual lacks capacity to make a decision to donate, a donation **MUST NOT** be taken."

iv) “A donation given by someone who lacked capacity at the time of donating **MUST\*** be returned.”

### **1.3 The Donation**

#### **1.3.1 Requesting Donations**

a) When using donor information in a case study or any other type of publicity, organisations **MUST\*** comply with any duties of confidentiality that they have and comply with data protection law if publishing a case study that includes information that could identify a donor.

b) Fundraisers **MUST NOT** pressurise donors or potential donors, but may use reasonable persuasion.

c) Fundraisers **MUST NOT** encourage existing donors in any way to change an existing charitable donation to another fundraising organisation.

d) The Charities Act 1992, and Charities and Trustee Investment (Scotland) Act 2005 allow charities to obtain a court order preventing unauthorised fundraising where any 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.

#### **1.3.2 Acceptance and Refusal of Donations**

a) The trustees (and their delegates) **MUST\*** act in the best interests of the charity when deciding to accept or refuse a particular donation.

#### **1.3.3 Rewards/ Incentives and Benefit Packages**

It is common for organisations to engage a donor by offering them benefits related to the size and frequency of the gift.

a) Fundraising organisations **MUST** ensure that benefits are appropriate for the organisation to be giving, and proportionate to the size of the gift.

b) Fundraisers **MUST** be aware of when benefits nullify potential tax relief such as Gift Aid or top-up payments available under the small donation rules. If benefits do prevent the donation qualifying under Gift Aid or the small donation rules, organisations **MUST NOT\*** attempt to reclaim tax on the sum.

### **1.4 After the Donation**

a) Any specified reporting requirements to which a donation is subject **MUST\*** be complied with.

b) Fundraising organisations **MUST\*** only make a Gift Aid reclaim in respect of a donation if all of the Gift Aid conditions are met. One of these is that a donor's Gift Aid declaration **MUST\*** comply with the new guidance issued by HMRC setting out the information that declarations are required to include from 1st January 2013. Where a donation is not eligible for Gift Aid and the organisation wishes to make a claim under the small donations rules, it **MUST ONLY\*** do so if all of the small donation conditions are satisfied.

c) Fundraising organisations **MUST\*** ensure that accepted donations are used to support the cause in accordance with the conditions attached to the donation, which may arise from donor's stipulations or representations made by the charity as to the uses of the funds. 11

### **1.5 Use of Funds**

The law in relation to changing the terms of a gift is complex and organisations should obtain advice from legal advisers or the Charity Commission / Office of the Scottish Charity Regulator (OSCR) before seeking to change the terms, even if there is donor consent. In Scotland, in cases where donor consent cannot be obtained, OSCR can permit the restricted fund under which a gift is held to be 'reorganised' if certain conditions are met, but only where it is not possible to ascertain the donor's wishes in relation to the proposed change.

a) If an appeal is being run for a particular purpose, fundraisers **MUST** include a statement indicating what will happen to funds received if the total funds raised are insufficient or exceed the target.

### **1.6 Complaints**

a) Organisations **MUST** have a complaints procedure which **MUST** also apply to any Third Parties fundraising on their behalf.

b) Organisations **MUST** respond to any complaints from donors, beneficiaries or other parties in a timely, respectful, open and honest way.

c) Organisations **MUST** ensure that the learnings from any complaints are acted upon.

### **1.7 Returning Donations**

a) Fundraising organisations which are charities **MUST\*** not return donations unless certain criteria are fulfilled. For all other fundraising organisations, donations **MUST** only be refunded in line with any policies or in exceptional circumstances. It may not be lawful to return a donation and fundraisers **MUST** take advice from legal advisers or the Charity Commission / OSCR before doing so.

DECEMBER 2015

ENDS