GUIDANCE NOTE: DEFINITION OF PHILANTHROPIC FUNDING

To be followed by all University staff

1 Definition of philanthropic funds .................................................................................................................................. 2
2 Eligible sources of philanthropic funds .................................................................................................................... 2
3 Ineligible sources of philanthropic funds .................................................................................................................. 2
4 Definition of philanthropic intent .............................................................................................................................. 3
5 Exclusions from philanthropic intent ........................................................................................................................... 3
6 Separating Agreements .................................................................................................................................................. 4
7 Corporate Sponsorship .................................................................................................................................................. 4
8 Approaches from donors/funders ............................................................................................................................... 5
9 Requests for Reports to Funders .................................................................................................................................. 5
10 Donor Stewardship ..................................................................................................................................................... 5
11 Notes on University priorities and activities typically supported by philanthropic funds ...................... 5
12 HMRC substantial donor rules ........................................................................................................................................ 6

Appendix 1: Examples of Philanthropic vs Non-Philanthropic Funding ......................................................... 7
GUIDANCE NOTE: DEFINITION OF PHILANTHROPIC FUNDING

To be followed by all University staff

1 Definition of philanthropic funds

The University follows HE sector best practice by defining philanthropic funding according to the rules established for the Ross-CASE Survey, the annual sector-wide survey on philanthropic giving to Higher Education:

Gifts or donations will only be counted as philanthropic funds if they meet BOTH of the following criteria:

A. The source of the funds is eligible: AND

B. The nature of the gift meets the definitions of philanthropic intent (see section 4 onwards)

2 Eligible sources of philanthropic funds

These include:-

a) Gifts from personal donors, in the UK and overseas, of cash and other instruments of wealth, including shares, appreciated securities, bonds etc.;

b) Gifts-in-kind of physical items - property, art, equipment etc.;

c) Actual legacy income received in-year from deceased individuals (notifications of Legacy pledges from living donors should also be reported as with any other donation);

d) Donations from charitable trusts and foundations in the UK and overseas. This includes donations from independent charities associated with NHS Trusts (but not direct from NHS Trusts);

e) Grants made by affiliated support foundations such as North American 501(c) (3) organisations and similar organisations in other countries.

f) Gifts from companies in the UK and overseas;

g) Gifts from overseas governments or their agencies and foundations;

h) Income from the National Lottery and similar sources (e.g. Heritage Lottery Fund, Sport England etc.).

i) Funding through the Land Fill Scheme.

Note that qualifying as an eligible source as above is not enough to determine the eligibility of funds as philanthropic, as the gift must also be made with philanthropic intent (see below).

3 Ineligible sources of philanthropic funds

These include:

a) All funding from HM Government and its agencies, including HEFCE and the Research Councils;

b) Funding from NHS Trusts;

c) All funding from the EU or its agencies;

(16/1/2015 JPA/Finance/DARO/v.1.0)
d) Royalties and other funds generated by the exploitation of the University’s intellectual property rights;

e) Internal transfers within the University.

4 Definition of philanthropic intent

Giving to the University with philanthropic intent is defined as all giving which does not confer full or partial ownership of a deliverable, financial benefit, or control to the funder in return for the funding. The gift must be owned in full by the University once it is received.

5 Exclusions from philanthropic intent

If any one of the following 7 exclusion criteria applies, the whole of the funding associated with an agreement is not considered philanthropic. The University may not deduct the known or estimated value of any such exclusion from the overall value of the funding associated with an agreement and report the net remaining balance.

1. **Contractual relationship:** A contract exists which commits the University to provide an economic benefit for compensation, where the agreement is binding and creates a quid pro quo relationship between the University and the funder. Contract income, including income for clinical trials, is ineligible.

2. **Exclusive information:** The funder is entitled to receive exclusive information, or other privileged access to data or results emerging from the programme of activity.

3. **Exclusive publication:** The funder is entitled to exclusive rights to publication of research or other results through their own branded communication channels (website, report, etc.).

4. **Consultancy included:** Consultancy for the funder or a linked organisation is included as part of the agreement.

5. **IP rights:** The agreement assigns to the funder any full or partial rights to intellectual property which may result from the programme of activity. This exclusion extends to the provision of royalty-free licenses (whether exclusive or non-exclusive) to the funder, and also to granting the funder first option or similar exclusive rights to purchase the rights to any subsequent commercial opportunities. If the written agreement includes any actual or potential future benefit of this kind, it must be excluded.

6. **Other forms of financial benefit:** Any other direct financial benefits are required by the funder as a condition of the funding (e.g. discounted courses, training etc.).

7. **Funder control:** The funder retains control over operational decisions.

(16/1/2015 JPA/Finance/DARO/v.1.0)
relating to the use of funds once the gift has been made. This includes control over appointment and selection procedures to academic posts and student scholarships. It would not be accepted practice in any case for a funder to have final say on the approval of a University appointment. Note that this clause has nothing to do with a donor’s right to know that a gift will be used for a designated purpose, where applicable, which is entirely consistent with a philanthropic gift.

This list is not comprehensive. There may also be other circumstances where service provision with a commercial value means that funding cannot be regarded as having philanthropic intent. If there is any doubt please contact DARO for advice.

6 Separating Agreements

In some circumstances it may be appropriate for philanthropic and contractual elements of a multi-faceted relationship with the University to be summarised in separate written agreements. In these circumstances the funding subject to the gift agreement may be treated as philanthropic, as long as none of the 7 exclusion criteria apply, and as long as the income associated with the gift agreement is not contingent on delivery of any activities included within the separate contractual agreement. (See also: 12 HMRC Substantial Donor rules).

7 Corporate Sponsorship

7.1 Exclusion criteria 1 dictates that in the vast majority of cases corporate sponsorship cannot be counted as philanthropic income, as sponsorship is based on a quid pro quo relationship.

7.2 Any corporate sponsorship which is subject to VAT as a chargeable supply according to HMRC definitions cannot be counted as philanthropic income. HMRC considers an agreement to take the form of sponsorship liable for VAT “if, in return, you are obliged to provide the sponsor with a significant benefit”.

7.3 HMRC advises that this significant benefit might include any of the following:
   a. Naming an event after the sponsor;
   b. Allowing the sponsor to use the University’s name or logo;
   c. Giving free or reduced price tickets;
   d. Allowing access to special events such as premieres or gala evenings;
   e. Providing entertainment or hospitality facilities; or
   f. Giving the sponsor exclusive or priority booking rights.

7.4 HMRC adds the following note: “This list is not exhaustive and there are many other situations in which your sponsor may be receiving tangible benefits. What matters is that the agreement or understanding you have with your sponsor requires you to do something in return.”

7.5 The only circumstances where HMRC considers corporate support not to be eligible for VAT, and therefore can be considered as philanthropic income is where acknowledgement is restricted to:

(16/1/2015 JPA/Finance/DARO/v.1.0)
1. Giving a flag or sticker;
2. Naming a building or University chair after the donor (without the use of a logo);
3. Putting the donor’s name on the back of a seat e.g. in a theatre.

7.6 These HMRC guidelines should be applied in assessing the eligibility of all sponsorship agreements, including those with international companies not subject to HMRC regulations.

8 Approaches from donors/funders
Some companies, trusts or individuals may approach the University about a potential gift, or invite the University to apply for grants; this has no bearing on the philanthropic intent involved, and any gifts or grants gained on that basis are philanthropic if none of the 7 exclusion criteria apply.

9 Requests for Reports to Funders
The donor/funder often requests or requires an accounting of the use of funds and of the impact of the programmes or projects undertaken. Any such request/requirement from the donor for regular status or other reports does not negate the philanthropic intent underlying a specific gift or grant, so agreements with reporting requirements are philanthropic if none of the 7 exclusion criteria apply.

10 Donor Stewardship
Donor stewardship strategies (e.g. providing update reports on the progress of students supported by donors, or informal contact between donors and those supported by their gifts), do not of themselves represent a benefit to the donor. Stewardship of this kind is considered best practice, and is actively encouraged.

11 Notes on University priorities and activities typically supported by philanthropic funds
11.1 Philanthropic funds can support buildings and land, staff appointments, equipment and other assets, scholarships and bursaries, endowment of lectures and other academic activities, core funding of academic activities, and in some circumstances funding of research programmes. (NB None of the 7 exclusion criteria must apply, irrespective of the activity funded).

11.2 Funding for buildings, land and equipment will typically be considered philanthropic, as long as the facilities funded will remain the property of the University.

11.3 Funded staff appointments are philanthropic, but if the agreement states that the member of staff will allocate time to specific activities which would not meet the philanthropic intent definitions within this document (i.e. any of the exclusion criteria e.g. consultancy or work on research contracts) then none of the funding can be counted as philanthropic. Exclusion 7 – funder control – will also need careful assessment.

11.4 Funding for scholarships and bursaries is philanthropic, as long as the student recipient is not required to undertake specific activities of economic benefit to the funder (e.g. research projects, work placements, etc.), in which case none of the funding can be considered philanthropic. Exclusion 7 – funder control – will also need careful assessment.

11.5 Research funding. The exclusion criteria described above mean that the major proportion of research funding for the University, whether in the form of contracts with business and industry or from grant-awarding bodies (even if they themselves are charities), should not be counted as a philanthropic gift.
In some cases grants for research programmes from trusts and foundations may be eligible, but these will need to be assessed closely against the exclusion criteria on a case-by-case basis, given the differences in grant conditions between grant-making bodies (see Appendix 1 for worked examples which are intended to help guide colleagues case-by-case assessments of specific grants/research programmes).

12 **HMRC substantial donor rules**

The University may have multi-faceted relationships with some donors and funders, some of a philanthropic, some of a contractual, nature. HMRC has issued ‘anti-avoidance’ guidance as to tax treatment in these circumstances (known as ‘substantial donor rules’ – the Finance Office has full details), in order “to tackle those who influence or set up charitable structures with a view to avoiding tax rather than with any charitable intent”. As institutions enjoying charitable status, universities have since 2006 been required to comply with these accounting rules.
## APPENDIX 1: EXAMPLES OF PHILANTHROPIC VS NON-PHILANTHROPIC FUNDING

### Example scenarios

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Description</th>
<th>Philanthropic?</th>
<th>Exclusions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A</strong></td>
<td>An individual agrees to fund a research fellowship and a PhD studentship for five years in lung cancer research, and the University offers to name the positions in memory of her husband. The gift agreement is clear that all resulting research outputs, including any intellectual property rights which emanate from the research of the funded positions or their team, will remain the property of the University.</td>
<td>Yes</td>
<td><strong>No</strong> – Applicable Exclusions:</td>
</tr>
<tr>
<td><strong>B</strong></td>
<td>A company endows a Professorship in sustainable engineering. The Chair is named after the company, but the company does not expect private access to privileged or commercially valuable data or information, or private consultancy or training, or other form of direct financial benefit. The company asks for representation on the appointment panel, which the University accepts on the clear understanding that the appointment rests with the University and will follow the University’s appointment procedures.</td>
<td>Yes</td>
<td><strong>No</strong> – Applicable Exclusions:</td>
</tr>
<tr>
<td><strong>C</strong></td>
<td>Identical case to scenario B, but ten days’ consultancy a year is built into the agreement.</td>
<td>No</td>
<td><strong>Exclusion 4</strong> – Consultancy - None of the funding is eligible.</td>
</tr>
<tr>
<td><strong>D</strong></td>
<td>A charitable trust funds a Professorship and a Research Associate for ten years to work in a specific field of regenerative medicine. The agreement states that all findings will be in the public domain. The agreement includes a clause stating that if intellectual property with commercial value emanates from the research programme, the rights to this will be split 50/50 between the University and the charity. All other clauses in the gift agreement are entirely compatible with the definitions of philanthropic intent in this document.</td>
<td>No</td>
<td><strong>Exclusion 5</strong> – IP rights - Even though no specific IP split is agreed, inclusion of this potential financial benefit to the charity makes it ineligible.</td>
</tr>
</tbody>
</table>
A medical charity provides money for research funding. They specify in the agreement that “The grant receiving organisation hereby grants a perpetual, royalty-free non-exclusive licence” to the charity.

Is the Funding Philanthropic?  If No – Applicable Exclusions:

No

Exclusion 5 – IP rights - Even though the IP related rights are non-exclusive, any such inclusion in the agreement makes it ineligible.

A funder uses blanket terms for their research grant agreements. These include the requirement for a share of any resulting IPR even where this is clearly not relevant to the research programme in hand.

Is the Funding Philanthropic?  If No – Applicable Exclusions:

No

Exclusion 5 – IP rights.
If no IPR is anticipated, contact could be made with the donor to seek to have this clause removed. It is the wording of the agreement that counts.

A charitable foundation awards a project grant to the University. The grant has a defined multi-year timeline and payment schedule; milestones to deliver along the way; and a specific purpose.

An annual report and three quarterly updates must be submitted by the University each year. The Foundation may request additional reports. The Foundation "is making the grant in furtherance of its charitable purposes" and requires that any knowledge gained during the project "be promptly and broadly disseminated to the scientific and international development community.

None of the 7 exclusion criteria under 2.7.1 apply.

Is the Funding Philanthropic?  If No – Applicable Exclusions:

Yes

Neither the inclusion of detailed reporting requirements, nor agreed milestone targets along the way, undermine the philanthropic intent of the grant.

A professional institute provides funding for a Principal Researcher exploring a niche area of research. The results of this research are relevant to the interests of the members of the funding institute. The funded person is required to provide the funder with a quarterly report on the progress of the research. The funder has the exclusive rights to publicise the results on their website, thereby putting them in the public domain. The University grants the funder a non-exclusive license to use the results and copyright materials generated in the course of the project.

Is the Funding Philanthropic?  If No – Applicable Exclusions:

No

Exclusion 3 – exclusive publication

(16/1/2015 JPA/Finance/DARO/v.1.0)
### Exclusion 5 – IP Rights

<table>
<thead>
<tr>
<th>I</th>
<th>A funder funds both a piece of research and also a post for a three-year period. The agreement states that the post holder will work both across the research as well as on other projects. The agreement for the research funding includes the requirement for a share in any resulting IPR but there is no specific provision for a share of IPR on the funding of the post.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Is the Funding Philanthropic?</th>
<th>If No – Applicable Exclusions:</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Research funding – Exclusion 5 – IP rights. Post funding – excluded as part of the agreement relates to non-philanthropic activity)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>J</th>
<th>A fellowship is jointly funded by the Medical Research Council (MRC) and a charity. The overall agreement meets all of the criteria for a philanthropic gift.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Is the Funding Philanthropic?</th>
<th>If No – Applicable Exclusions:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charity funded Element - Yes MRC element - No</td>
<td>None The source is ineligible (Government funding).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>K</th>
<th>A major trust (e.g. Wellcome) funds both research contracts through their funding programmes, as well as making philanthropic donations to the University for buildings and equipment.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Is the Funding Philanthropic?</th>
<th>If No – Applicable Exclusions:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research contract funding – No Donations for building – Yes (as long as the University owns the new facility – e.g. building or laboratory).</td>
<td>Research Contract Funding – Exclusion 1 – Contractual relationship</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>L</th>
<th>A Trust or Foundation agrees to support a 5 year Research Programme over 5 years. The funder agrees the business case and receives annual reports on progress. The University promotes the receipt of the gift and the outcomes as the research progresses and at the end of the research programme</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Is the Funding Philanthropic?</th>
<th>If No – Applicable Exclusions:</th>
</tr>
</thead>
</table>
An individual agrees to set up a Restricted Expendable Endowment Fund to support undergraduate and post graduate scholarships

Is the Funding Philanthropic? | Yes
---|---
If No – Applicable Exclusions:

A company agrees to donate the profits from its commercial activities to a University appeal.

Is the Funding Philanthropic? | Yes
---|---
If No – Applicable Exclusions:

A company wishes to donate a percentage of profits from an ongoing commercial activity involving the use of the University’s name

Is the Funding Philanthropic? | Yes
---|---
If No – Applicable Exclusions:

(NB a Commercial Participator Agreement must be drawn up and agreed – please contact DARO for details)

A major donation from an individual or foundation is made to a University appeal and this gift is recognised through the naming of a facility or building.

Is the Funding Philanthropic? | Yes
---|---
If No – Applicable Exclusions:

(naming opportunities must be agreed by the SFRC)

A local or national Group or Association e.g. Masonic Charity Association, Rotary, Lions, Inner Wheel or Faith based group make a donation to a University appeal.

Is the Funding Philanthropic? | Yes
---|---
If No – Applicable Exclusions:
| R | An individual or group chooses to take part in a sponsored walk or run and donates the proceeds to a University appeal |

| Is the Funding Philanthropic? | Yes | If No – Applicable Exclusions: |