GUIDANCE ON THE DEFINITION OF PHILANTHROPIC SOURCES AND PHILANTHROPIC INTENT

Includes:

- Summary description
- Full guidance for reporting purposes

1) Summary description

(For internal staff in terms of deciding which support service to refer to when seeking research funding support.)

OPPA (formerly DARO) supports you with philanthropic funding. Funding is philanthropic when it is:

- a gift – whether from an individual, a company, a trust or foundation, a lottery fund, or an overseas government agency
- not given by the UK or EU government – including agencies like HEFCE, research councils and NHS trusts
- not a quid pro quo – the intent must be to give, not to receive exclusive benefits, rights or operational control in return
- not corporate sponsorship – i.e. the company gets tangible marketing, hospitality or event benefits in return.

2) Full guidance on the definition of philanthropic sources and philanthropic intent

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.
B. The nature of the gift meets the definitions of philanthropic intent.
The purpose of this reporting is to:

- report on and benchmark the University’s fundraising performance through the annual Ross -CASE survey
- monitor institution’s fundraising activity and performance year on year
- set targets for the Development Office at the University
- guide and inform the basis of our campaign goals.

Assessing philanthropic status

1. The following sources of the funds are philanthropic:
   - gifts from personal donors, in the UK and overseas, of cash and other instruments of wealth, including shares, appreciated securities, bonds etc
   - gifts-in-kind of physical items – property, art, equipment etc
   - actual legacy income received in-year from deceased individuals (legacy pledges from living donors are excluded from any part of the survey)
   - 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)
   - grants made by affiliated support foundations such as North American 501(c)(3) organisations and similar organisations in other countries
   - gifts from companies in the UK and overseas
   - gifts from overseas governments or their agencies and foundations
   - income from the National Lottery and similar sources (eg Heritage Lottery Fund, Sport England etc)
   - funding through the Land Fill Scheme

Ineligible sources of philanthropic funds include:

- All funding from HM Government and its agencies, including HEFCE and the research councils.
- Funding from NHS Trusts.
- All funding from the EU or its agencies.
- Royalties and other funds generated by the exploitation of the University’s intellectual property rights.
- Internal transfers within the institution.

2. The nature (intent) of the gift must also meet the Ross -CASE Survey’s definition of philanthropic intent to be considered philanthropic. That can be judged by assessing whether any of the following seven are features of the agreement, if so, the funding will not be considered philanthropic:
   - it is a contractual relationship (which commits the recipient institution to provide an economic benefit for compensation, where the agreement is binding and creates a quid pro quo relationship between the recipient institution and the funder)
   - exclusive information (where the funder is entitled to receive exclusive information, or other privileged access to data or results emerging from the programme of activity)
   - 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)
   - consultancy included (consultancy for the funder or a linked organisation is included as part of the agreement)
   - IP rights (if the agreement assigns to the funder any full or partial rights to intellectual property which may result from the programme of activity)
other forms of financial benefit (any other direct financial benefits are required by the funder as a condition of the funding – eg discounted courses, training etc)

funder control (the funder retains control over operational decisions 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. 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)

Separating agreements

In some circumstances it may be appropriate for philanthropic and contractual elements of a multi-faceted relationship with an organisation to be summarised in separate written agreements. In these circumstances the funding subject to the gift agreement is eligible for the survey, 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.

Corporate sponsorship

Exclusion criteria 1 dictates that in the vast majority of cases corporate sponsorship must be excluded from the survey, as sponsorship is based on a quid pro quo relationship.

As the definition of ‘sponsorship’ can vary greatly between institutions, for the purposes of the Ross-CASE survey any corporate sponsorship which is subject to VAT as a chargeable supply according to HMRC definitions must be excluded from the survey. 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”.

HMRC advise that this significant benefit might include any of the following:

- naming an event after the sponsor
- displaying the sponsor’s company logo or trading name
- participating in the sponsor’s promotional or advertising activities
- allowing the sponsor to use your name or logo
- giving free or reduced price tickets
- allowing access to special events such as premieres or gala evenings
- providing entertainment or hospitality facilities
- giving the sponsor exclusive or priority booking rights.

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.”

The only circumstances where HMRC consider corporate support not to be eligible for VAT (and which as a result could be included within the Ross-CASE Survey, as long as none of the general exclusions apply) is where acknowledgement is restricted to:

- giving a flag or sticker
- naming the donor in a list of supporters in a programme or on a notice
- naming a building or university chair after the donor (without the use of a logo)
- putting the donor’s name on the back of a seat in a theatre.
Notes on University priorities and activities typically supported by philanthropic funds

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 limited circumstances funding of research programmes. (NB None of the 7 exclusion criteria must apply, irrespective of the activity funded.)

- **Funding for buildings, land and equipment** will typically be eligible for the survey, as long as the facilities funded will remain the property of the University.

- **Funded staff appointments are eligible**, 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 the funding should be excluded in full from the survey. Exclusion 7 – funder control – will also need careful assessment.

- **Funding for scholarships and bursaries is eligible**, 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 the funding should be excluded in full from the survey. Exclusion 7 – funder control – will also need careful assessment.

- **Research funding**. The exclusion criteria described above mean that much research funding for institutions, 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 gift and should therefore be excluded from the survey. 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 institutions’ case-by-case assessments of specific grants/research programmes).

Mary Haworth
Office of Philanthropic Partnerships and Alumni
24 August 2016
## Appendix 1 – Examples of the principles applied to grants

<table>
<thead>
<tr>
<th>Example scenario</th>
<th>Eligibility for the survey</th>
<th>Number and nature of exclusion criteria</th>
</tr>
</thead>
<tbody>
<tr>
<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>ELIGIBLE</td>
<td>None</td>
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<tr>
<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>ELIGIBLE</td>
<td>None</td>
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<td>Identical case to B, but ten days’ consultancy a year is built into the agreement.</td>
<td>INELIGIBLE</td>
<td>One exclusion: No. 4 – Consultancy. None of the funding is eligible.</td>
</tr>
<tr>
<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 survey.</td>
<td>INELIGIBLE</td>
<td>One exclusion: No. 5 – IP rights. Even though no specific IP split is agreed, inclusion of this potential financial benefit to the charity makes it ineligible.</td>
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<td>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.</td>
<td>INELIGIBLE</td>
<td>One exclusion: No. 5 – IP rights. Even though the IP related rights are non-exclusive, any such inclusion in the agreement means exclusion from the survey.</td>
</tr>
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<td>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.</td>
<td>INELIGIBLE</td>
<td>One exclusion: No. 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.</td>
</tr>
<tr>
<td>Case</td>
<td>Description</td>
<td>Eligibility</td>
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<tr>
<td>G</td>
<td>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 2.2.1 apply.</td>
<td>ELIGIBLE</td>
</tr>
<tr>
<td>H</td>
<td>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.</td>
<td>INELIGIBLE</td>
</tr>
<tr>
<td>I</td>
<td>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.</td>
<td>INELIGIBLE</td>
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<tr>
<td>J</td>
<td>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 according to the Ross-CASE rules.</td>
<td>ELIGIBLE; MRC element INELIGIBLE</td>
</tr>
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<td>K</td>
<td>A major trust (e.g. Wellcome) funds both research contracts through their funding programmes, as well as making philanthropic donations to institutions for buildings and equipment.</td>
<td>Research contract funding INELIGIBLE; Donations for building ELIGIBLE (as long as the institution owns the new facility – e.g. building or laboratory)</td>
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</tbody>
</table>