

# Ethical Business: Charitable Gifts Acceptance Policy

October 2020

Approving authority:	The Court
Consultation via:	ARC, UE, EC, Director of Governance and Legal Services, University Secretary
Approval date:	20 November 2020
Effective date:	20 November 2020
Review period:	2 years
Responsible Executive:	Head of Development and Alumni
Responsible Office:	Development and Alumni

POLICY

**HERIOT-WATT UNIVERSITY  
ETHICAL BUSINESS: CHARITABLE GIFTS ACCEPTANCE POLICY**

**CONTENT**

<b>Section</b>	<b>Page</b>
1 Introduction	3
2 Policy Aims and Purpose	3
3 Scope	4
4 Definition of Charitable Gifts	4
5 Refusal of Gifts	4
6 Due Diligence – key principles	5
7 Lines of Responsibility	6
8 Return of Gifts	7
9 Rights of Donors and Prospective Donors	8
10 Complaints Procedure	8
11 Gift acceptance and policy review	8
12 Related Policies, procedures and further reference	8
13 Further help and advice	9
14 Policy Version and History	9
Appendix 1 Exclusions from philanthropic intent	11
Appendix 2 Definitions	12
Appendix 3 Donor Charter	13
Appendix 4 Flow chart of Gift Acceptance	14

**POLICY**

## 1. INTRODUCTION

In the Review of Philanthropy in UK Higher Education (HEFCE 2012), it is stated that:

*All universities should have clear processes and governance mechanisms for acceptance of gifts as part of their normal ethical and risk management frameworks.*

In the Universities UK publication Strategic Fundraising, which builds on HEFCE's 2012 Review, this point is further stressed:

*Does the institution have a due diligence process in place to satisfy itself that funds do not derive from activity that is illegal, or runs counter to the core values of impartial, independent research, scholarship and teaching?*

The UK Bribery Act 2010, and Transparency International resources, also emphasise the importance of clear, comprehensive and auditable processes for determining the sources of philanthropic funding, within the reasonable resource and capacity of the receiving organisation.

Heriot-Watt University is a charity registered in Scotland (SC000278). Accordingly, it is subject to charity law in Scotland and to regulation by the Office of the Scottish Charity Regulator (OSCR). The members of the University Court are the governing body of the University and as such, they are the charity trustees and thus are ultimately responsible for operations of the charity.

It is imperative that the integrity of the University's teaching and research activities be free from compromise or undue influence, including the perception thereof. The freedom to pursue academic inquiry wherever it may lead is integral to the University's long-established values. This must be part of the shared vision of the University and its supporters. The support provided by donors has frequently been valuable to facilitate such academic activities, but in so doing it is important to maintain an appropriate separation between the receipt of a charitable gift on behalf of the University and the provision of academic services. The Development and Alumni Office plays a significant and effective role in ensuring that an appropriate degree of separation exists, while still providing donors with access to regular information about the activities that they have supported.

## 2. POLICY AIMS AND PURPOSE

- 2.1 The purpose of this **Charitable Gift Acceptance Policy** is to ensure the reputations of all parties i.e. donors and Heriot-Watt University be wholly protected from any real or perceived impropriety in the relationship that is established through the offer and receipt of a charitable gift.
- 2.2 This policy seeks to ensure that charitable gifts to Heriot-Watt are properly received, recorded and administered using appropriate internal controls and that the University's acceptance and management of gifts are in compliance with external regulations and the Heriot-Watt's fiduciary obligations to donors.
- 2.3 For the avoidance of doubt, philanthropic gifts are distinguished from research grants which are predominantly accessed via UK Funding Councils, EU and other publicly funded sources, the latter being administered by Research Enterprise Services (RES). These funds are **excluded** from this policy. Please refer to Appendix 1: Exclusions from philanthropic intent.

- 2.4** It should be noted that gifts which are exempt from this policy include grants of any size from charitable foundations registered with the regulatory authorities in the UK, EU and other parts of the world. These will not be subject to ethical review and can be progressed to the signing of an appropriate agreement with the funder if such support does not contravene the stated 'refusal of gifts' element of this policy.

### **3. SCOPE**

- 3.1** This Policy applies to all members of the Executive and governing body (the Court) and those serving on its committees, in particular, Governance and Nominations Committee as well as the Endowment Committee.
- 3.2** The scope of this Policy is relatively wide in its coverage of activities that may give rise to conflicts of interest in relation to charitable gift acceptance. In particular, the policy establishes 'refusal of gifts' and sets out the principles that the University will follow when seeking and accepting gifts from individuals and companies and the commitments that it makes to donors and prospective donors. It is not possible for policy guidance to be all inclusive; therefore, individuals must apply reasonable judgement and comply with the spirit and not just the narrow letter of the Policy. If in doubt, Court and Court Committee Members should seek the advice of the University Secretary.
- 3.3** It must be noted that as the University operates internationally, both through its campuses in Dubai and in Malaysia and through arrangements with partners in other jurisdictions, the Policy shall pay due regard to non-UK legislation that might be applicable. In particular, the University shall ensure that its operations in Dubai and Malaysia meet any minimum statutory requirements of the host country. Where UK regulations are of a higher standard, the University will also apply these where reasonably practicable.
- 3.4** All offers, loans and donations of works of art, artefacts, images, recordings and archival documents that may have potential heritage value fall within the scope of the University [Museum and Archive Collections Development Policy](#) and will be referred to the Heritage and Information Governance service for consideration in accordance with that policy.

### **4. DEFINITION OF CHARITABLE GIFTS**

- 4.1** Charitable donations and gifts include, but are not exclusively limited to, gifts from individuals, corporates and trusts and foundations from UK and overseas in the form of cash or cheques, property, shares or bonds, tangible personal property (gifts in kind) and legacy gifts (please refer to Appendix 2: Definitions for eligible and ineligible sources of philanthropic funds).
- 4.2** In the case of legacy gifts left to the University but which have not yet been received, e.g. where probate is pending, recognition is required under FRS102. Legacy gifts will adopt the same due diligence and gift acceptance procedures outlined in this document.

### **5. REFUSAL OF GIFTS**

- 5.1** The University **will not** accept philanthropic donations from individuals or organisations for the following reasons:
- Judged to be inconsistent with the University mission, vision, values or charitable status;

- Where the proposed donation arises in whole or in part from any illegal activity;
- Judged to present a significant risk to damage the reputation of the University;
- Judged to harm the University's relationship with its students, benefactors, research supporters, partners, local community or other external stakeholders;
- Incur or likely to incur ongoing costs that cannot be met or demonstrated to be met from existing resources;
- Limit or compromise freedom of enquiry or academic integrity;
- Are from companies that run counter to our charitable values;
- Are from individuals where personal or academic gain is perceived for making such a donation. The University's selection criteria for admissions are based exclusively on academic achievement and are independent of philanthropic support of the University. No gift will affect the academic record of any current or future student, nor will it have any bearing on any dispute between a student and the University. Where there is any perception of personal or academic gain, the Head of Development and Alumni will discuss the concern with the prospective donor and may, for example, suggest deferring a donation until after graduation;
- Doing so may result in any legal action on the part of the University; and
- Doing so may damage the reputation or cause other harm to the University.

**5.2** The University recognises that perceptions of what is acceptable and factors affecting reputations may change over time. In its acceptance of gifts, the University will act in good faith according to the standards prevailing at the time of receipt.

**5.3** Following receipt of a philanthropic donation, should information come to light about the source of funds or donor which is judged to fall under the provisions set out above, Heriot-Watt University shall deploy procedures outlined in Section 8: Return of Gifts.

## **6. DUE DILIGENCE – KEY PRINCIPLES**

- 6.1** The Development and Alumni Office will take all reasonable measures to ensure it is aware of the source of funding for gifts and will undertake due diligence to ensure that gifts are for purposes consistent with the University's mission, no legal or reputational issues are raised by their acceptance, that the activity to be funded does not create unacceptable conflicts of interest for the University and that the nature or level of the gift does not result in unacceptable current or future financial liabilities for the University.
- 6.2** Due diligence will be undertaken in order to conform to statutory requirements and recommended best practices, particularly the 'Know Your Donor' principles developed by the Charity Commission. The Charitable Gifts Due Diligence Process is particularly concerned with the 'Identify' (i.e. know who you are dealing with) and 'Verify' (i.e. where reasonable and the risks are high, verify this) elements of this checklist.
- 6.3** Due diligence will be carried out by the Development and Alumni Office insofar as is permitted by privacy and data protection restrictions. To manage the balance between the need to know and the right to privacy, in its due diligence investigation the Development and Alumni Office will typically focus on reviewing and noting only information that is relevant to the funds or donor and that is in the public domain. All searches will be undertaken and documented in compliance with relevant privacy law and with the recognition that individual donors and prospective donors have the right to request personal data held about them by the University, including reasons for declining gifts.
- 6.4** The Development and Alumni Office shall maintain a secure Due Diligence Log in which all reports completed under the Charitable Gifts Due Diligence Process are recorded and stored in accordance with data protection, privacy and records retention legislation and

POLICY

policies. Acceptance and refusal of gifts will be recorded at each stage of the decision-making process and securely recorded within the Development and Alumni Office database.

- 6.5** If a gift is offered anonymously, so that the donor is unknown to anyone in the University, the Development and Alumni Office will be charged with seeking such information from the donor's representatives so as to ensure that it would be appropriate for the University to accept the funds. This will involve consideration of the principles outlined in previous sections of this document and any other possible influence that might be exercised by or any potential benefit that might be derived by a donor who seeks to remain anonymous. Where gifts arrive with no paperwork and it is impossible to return the gifts, the funds will normally be retained and credited to a student scholarship or access bursary fund.
- 6.6** Where conditions are attached to the offer of a gift, other than designating use for a specific project for which fundraising is taking place, the University will not normally accept a gift prior to ensuring that any imposed conditions are appropriate and can be satisfactorily met.
- 6.7** Where the offer of a gift relates to a scholarship, bursary or prize, the donor may wish to set selection criteria to be used in deciding how to make the award. The University will ensure that the selection criteria being used by the third party donor do not themselves amount to unlawful discrimination in accordance with the Equality Act 2010. The University will undertake an Equality and Privacy Impact Assessment with respect to fundraising in support of access, inclusion and widening participation activity to identify that the bursary, scholarship or prize both has a legitimate aim and is proportionate. Where an offer of a gift is not identified and justified in the general EPIA as it applies to fundraised activity, the University will undertake an EPIA appropriate and specific to that offer of gift in order to identify that the bursary, scholarship or prize both has a legitimate aim and is proportionate. The University will record and store these in the Due Diligence Log in accordance with the lawful donor selection criteria.
- 6.8** Donors will receive appropriate acknowledgement of their gifts, and their gifts will be used for the purposes for which they are given. Unrestricted gifts will be allocated to projects or other University activities at the discretion of the University.

## 7. LINES OF RESPONSIBILITY

In accordance with the Court: Statement of Primary Responsibilities:

**The Court** is unambiguously and collectively responsible for overseeing the entirety of the University's activities and, as such, the Court comprises the trustees of the University for the purpose of the Charities and Trustee Investment (Scotland) Act 2005.

*The Court shall act as the trustee for any property, legacy, endowment, bequest or gift in support of the work and welfare of the University.*

The Court delegates authority to the **Governance and Nominations Committee** to

- a) Advise the Court on:
  - i) all matters relating to governance, the conduct of Court business and good governance practice

The purpose of the **Endowment Committee** is to manage, *inter alia*, the general oversight of fundraising activities. The secondary remit of the Endowment Committee is to oversee fundraising activities, especially those undertaken by the Development Office.

Detailed due diligence procedures have been developed to operationalise this policy and the following is a top-level summary:

### **7.1 Gifts up to £5,000**

Gifts up to £5,000 will normally be accepted by the Development and Alumni Office without further investigation if: (i) they are given without conditions in support of an existing fundraising project or programme and (ii) are received from donors already known or on the donor's database. In other cases, the Head of Development and Alumni or his/her delegate will judge whether to accept the gift, conduct a more extensive process of due diligence or liaise with the donor regarding any concerns.

### **7.2 Gifts up to £50,000 Head of Development and Alumni**

All such gifts will be notified to the office of the Head of Development and Alumni on their offer or receipt, which will initiate an appropriate process of due diligence and assign a named contact within the Development Team.

Donors offering pledges valued at over £5,000 will be asked to complete a gift agreement that outlines the details of the gift, the project to be supported (if designated), a pledge payment schedule and naming rights (if applicable).

Agreements and charitable income up to £50,000 will be signed by the donor and by the Head of Development and Alumni on behalf of the University.

### **7.3 Gifts up to £100,000 University Secretary**

Appropriate diligence including risk assessment will be undertaken. Agreements and charitable income will be authorised by the University Secretary.

### **7.4 Gifts up to £250,000 Vice-Chancellor**

Appropriate diligence including risk assessment will be undertaken. Agreements and charitable income will be authorised by the Vice-Chancellor.

### **7.5 Gifts up to £1,000,000 Governance and Nominations Committee**

Appropriate due diligence including risk assessment will be undertaken. Agreements and charitable income will be authorised by the Vice-Chancellor on recommendation from the Governance and Nominations Committee.

### **7.6 Gifts of £1m+ University Court**

Appropriate due diligence including risk assessment will be undertaken. Agreements and charitable income will be authorised by the University Court. The Development and Alumni Office will be responsible for providing decision-makers with sufficient facts pertaining to the donation in question, to enable the Committee to come to a fair and informed decision on acceptance.

## **8. RETURN OF GIFTS**

**8.1** Gifts made to the University will not normally be returned to the donor.

**8.2** In cases where a gift with agreed restrictions has been received by the University in good faith but where circumstances have changed so that the original purposes of the gift cannot be fulfilled in whole or in part, then the University will normally seek to use the

funds in a way that closely corresponds to the original objectives of the donor, consulting the donor or the donor's representative wherever possible.

- 8.3** Gifts that are paid in error by the donor's bank, and bank overpayments, will be refunded to the donor.

## **9. RIGHTS OF DONORS AND PROSPECTIVE DONORS**

- 9.1** Heriot-Watt University is committed to its donors and remains dedicated to treating alumni, friends and all supporters with the highest level of care and respect. A donor charter (Appendix 3) has been produced to assure donors and prospective donors of the integrity and accountability of the Development team and of their commitment to the highest professional standards at all times.

## **10. COMPLAINTS PROCEDURE**

- 10.1** Heriot-Watt University will seek the opportunity to set right anything a donor feels has been done wrongly and will do its utmost to discuss and resolve such issues. In the first instance, any complaints should be raised with the Head of Development and Alumni for investigation. If a donor remains dissatisfied with the initial response, the complaint will be addressed in accordance with the University's relevant complaints procedure. See point 6 of the policy: <https://www.hw.ac.uk/students/doc/complaint-policy.pdf>.

## **11. GIFT ACCEPTANCE AND POLICY REVIEW**

- 11.1** This policy will be reviewed every two years, or more frequently should legislative requirements change and approval by the University Court be required. Such reviews shall be formally reported to the University Court.

## **12 RELATED POLICIES, PROCEDURES AND FURTHER REFERENCE**

### **Internal Policies**

Ethical Business: Bribery Prevention Policy

<https://www.hw.ac.uk/documents/ethical-business-bribery-prevention-policy.pdf>

Ethical Business: Conflict of Interest Policy

(Policy for University Court and Court Committee members)

<https://www.hw.ac.uk/services/docs/ethicalbusinessconflictinterestpolicy.pdf>

Ethical Business: Gifts and Hospitality Policy

<https://www.hw.ac.uk/documents/ethical-business-gifts-hospitality-policy.pdf>

Museum and Archive Collections Development Policy

<https://www.hw.ac.uk/documents/collections-development-policy.pdf>

Data Protection Policy

<https://www.hw.ac.uk/documents/heriot-watt-university-data-protection-policy.pdf>

<http://www.hw.ac.uk/policy1>

<http://www.hw.ac.uk/policy2>



## External Legislation and Guidance

Review of Philanthropy in UK Higher Education (HEFCE 2012)

<http://www.hefce.ac.uk/pubs/rereports/Year/2012/philanthropyreview/Title,92282,en.html>, p10.

Universities UK publication Strategic Fundraising

<http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2014/strategic-fundraising.pdf>, p32.

The Bribery Act 2010

<http://www.legislation.gov.uk/ukpga/2010/23/contents>

Transparency International resources

<http://www.transparency.org.uk/publications/adequate-procedures-guidance-to-the-uk-bribery-act-2010/>

The Equality Challenge Unit – Positive Action through Bursaries, Scholarships and Prizes

<https://www.advance-he.ac.uk/knowledge-hub/equality-act-2010-positive-action-through-bursaries-scholarships-and-prizes>

The Woolf Inquiry – An inquiry into the LSE's links with Libya and lessons to be learned

<http://www.lse.ac.uk/News/News-Assets/PDFs/The-Woolf-Inquiry-Report-An-inquiry-into-LSEs-links-with-Libya-and-lessons-to-be-learned-London-School-of-Economics-and-Political-Sciences.pdf>

## Procedures

Procedures for Responding to Requests for Personal Data

<https://www.hw.ac.uk/documents/data-protection-responding-to-requests.pdf>

<http://www.hw.ac.uk/procedures>

## 13. FURTHER HELP AND ADVICE

Kerryn Kirkpatrick, Head of Development and Alumni – [k.kirkpatrick@hw.ac.uk](mailto:k.kirkpatrick@hw.ac.uk)

## 14. POLICY VERSION AND HISTORY

Version No	Date of Approval	Approving Authority	Brief Description of Amendment
V.5	20 November 2020	The Court	

## APPENDIX 1: Exclusions from philanthropic intent

If any one of the following seven 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 licences (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 relating to the use of funds once the gift has been made.

## APPENDIX 2: Definitions

### Eligible sources of philanthropic funds

- 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 (notifications of Legacy pledges from living donors should also be reported as with any other donation)
- 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 (e.g. Heritage Lottery Fund, Sport England, etc.)
- 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 be made with philanthropic intent (see Appendix 1).

### Ineligible sources of philanthropic funds

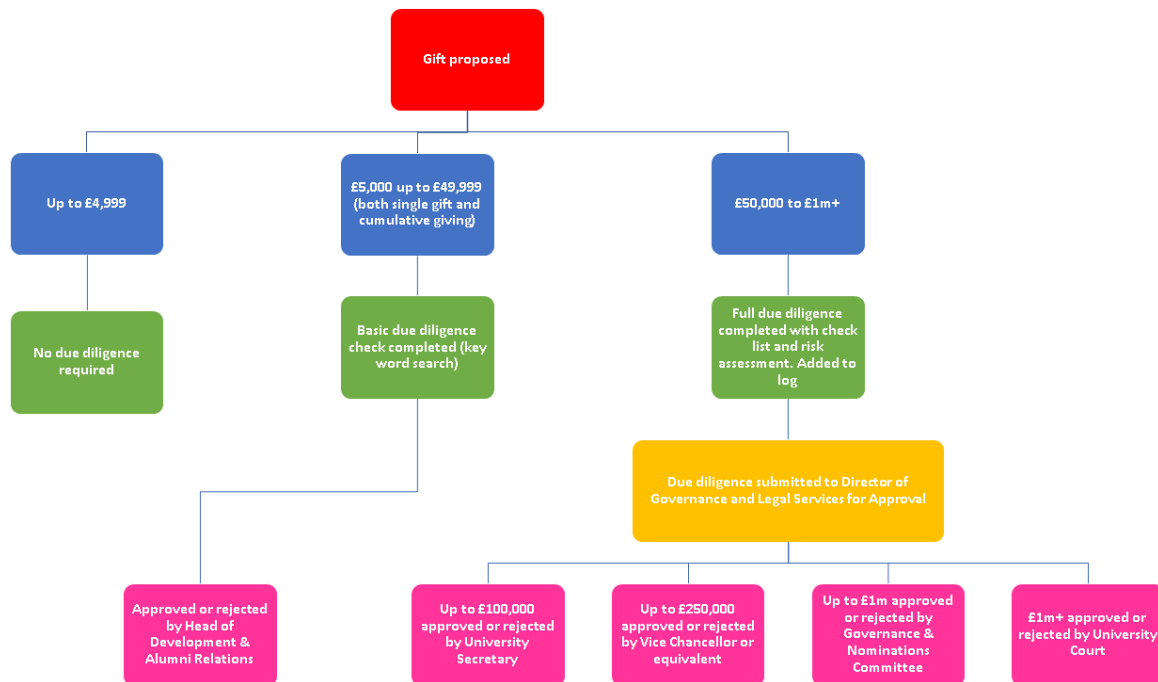
- All funding from HM Government and its agencies, including the Research Councils
- Funding from NHS Trusts
- All funding from the EU or its agencies
- Royalties and other funds generated by the exploitation of the University's intellectual property rights
- Internal transfers within the University

### APPENDIX 3: Donor Charter

Donors and prospective donors may expect:

- To be treated by members of the Development and Alumni Office, volunteers and other University staff involved with the solicitation and receipt of gifts in a fair, transparent, accurate and honest manner in accordance with all applicable laws and the professional code of fundraising ethics and good practice.
- To be informed in all fundraising solicitations of the University's name, contact details and charitable status.
- To be informed whether those seeking gifts are volunteers, employees of the University or financial / legal advisers.
- To receive fundraising solicitations and stewardship reports from the University that are truthful, accurately describing the University's activities and the intended / actual uses of donated funds.
- To receive prompt responses to questions relating to gifts or any other aspect of the Development and Alumni Office's work.
- To receive appropriate and timely acknowledgment, recognition, and publicity for their gifts unless donors indicate a preference for privacy.
- To remain anonymous in terms of external donor recognition, if requested
- To be assured that donors' rights to privacy and confidentiality will be respected, with all donor records being kept securely and in full compliance with the Data Protection Act of 1998 and other applicable privacy legislation. Donors will have the right to see their own donor record and to challenge its accuracy.
- To be asked in writing for permission to be cited in case studies and other promotional material (including photographs) prior to publication.
- To be consulted, where possible, about alternative uses of a donation if their gift cannot be used for its originally intended purpose.
- To be kept informed of the impact of their philanthropy and the University's evolving needs and priorities. This includes receiving progress reports on supported activities and invitations to attend relevant events to see first hand the benefits their support brings the University.
- To have their details removed from the University's alumni and fundraising databases or to have the number/type of solicitations limited upon request.
- To be assured that the University will not sell or give its donor list to a third party.
- To have access to the University's most recent published financial accounts and be assured that the University's financial affairs are conducted in a responsible manner, consistent with the obligations of stewardship and legal requirements of the Office of the Scottish Charity Regulator.
- Unrestricted gifts will be allocated to projects or other University uses at the discretion of the University. To this effect, the Development and Alumni Office will ensure that donors of unrestricted gifts are informed of the allocation of their gift through an initial letter and, thereafter, by ongoing communications from the Development and Alumni Office, as appropriate.
- For publicity purposes, or in response to Freedom of Information requests, the total value of gifts from individual donors within a given period may be disclosed, subject to review by the Heritage and Information Governance service to ensure that any information provided cannot be used to identify individuals.

**APPENDIX 4: Flow chart of Gift Acceptance**



\* Refusal of gifts will be documented at each stage of the decision-making process and formally recorded on the Development and Alumni database.