



Advisory



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In- and Outsourcing

KYD - Know Your Donor

The importance for NPOs to perform due diligence regarding their donors

The non-profit sector plays a vital role in society and, as such, non-profit organizations (NPOs) must have access to sufficient funding. For this reason, charities need to understand the money laundering risks they face and, where higher risks are identified, they need to take steps to mitigate them adequately. The various measures implemented to fight money laundering must be proportionate to the risks faced by the NPO.

Donations received from the public are generally received by direct cash deposits into the association's bank account or by cash payments directly to the association's members. NPOs can easily raise large amounts of funds through such donations. However, in some cases the reasons for donations are fraudulently distorted and organisations need to protect themselves against this.

NPOs must remain aware that their sector is vulnerable to abuse from a money laundering perspective and as such, that they must be vigilant and have a good understanding of the risks and implement measures to mitigate them. The NPO sector is keenly aware of the importance of public confidence for its long-term viability.

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I. Why it is important to pay attention to the donations

While it could be true that the more money a charity has at its disposal, the more things can be done, it may be right not to accept certain donations or to return those that have already been donated.

Fundraising is crucial, but sometimes other considerations may take precedence. The value of a donation must be weighed against the potential loss of public trust, a negative impact on the reputation of the organisation or a conflict with the organisation's ethics and values that could lead to a loss of support in the future. Thought needs to be given to what is in the best interests of the charity as a whole. Beyond ethics, NPOs can be used to a limited extent to launder the proceeds of crime on behalf of criminal entities.

During the year 2019, two main issues marked the fundraising field, and showed the importance of carrying out due diligence on donations. The first one is about the Sackler family who owns the Purdue Pharma company, the maker of OxyContin med, subject of numerous lawsuits in the United States. Following the numerous criminal prosecutions and scandals, NPOs receiving donations from this family have reacted. Some museums

such as the Louvre or the Britain's National Portrait Gallery have decided to return the money received and make the name Sackler disappear from their donors. Others such as the Salomon R. Guggenheim Museum have decided to no longer accept money from this donor.

The other example involves Jeffrey Epstein, who was charged of sexual violence and exploitation. Some institutions such as the MIT also decided to send the money from Jeffrey Epstein back because his donations were not in line with the core values upheld. The biggest scandal came from the MIT, which was accused of being aware of Mr. Epstein's status as a sex offender when accepting his donations¹.

These two examples show how an organization can have its name linked to an unethical donor and must therefore react in terms of prevention or remediation.

II. How to manage a due diligence of the donors

It is important to know that there is no "one size fits all" solution to address these difficult situations of conflict of interest. Different charities may legitimately make different decisions about which donations to accept or refuse.

¹ "How an élite university research center concealed its relationship with Jeffrey Epstein", Ronan Farrow, The New Yorker, September 7, 2019.

Therefore, it is important for the organisation to be able to explain how the decision was made and how this decision was made in the best interest of the organisation.

a) Delimitate the responsible staff for this task

Of course, it would not be possible for the directors to review every donation that arrives at the NPO. As is customary for example in the financial sector, a risk-based approach should be applied. This means that, in the ordinary course of business it will be the regular staff who is in charge with the decision to accept or refuse donations. However, in more sensitive cases, the decision should be taken somewhere else in the organisation. It is important that this is appropriately documented in the organization's policy documentation, so the process is known. Furthermore, it is good practice to apply a "four-eye" principle, and a check and balances process.

b) Analyse the risks and decide the cases of refusal

NPOs have a responsibility to act for their defined interests and for the successful achievement of its objectives. This means that, when they decide to refuse a donation, NPOs must only do so if accepting it would be more prejudicial than refusing it. This decision must be based on a careful analysis of the risks associated with accepting a donation, balancing that risk against the benefit

that will be generated. These issues must be decided on a case-by-case basis.

Donations to charities should only be refused in exceptional circumstances:

- If it is illegal to accept it (for example, the organisation knows that the donation includes the proceeds of crime) or
- If the donation is contrary to the values and objectives of the organization and its acceptance could compromise the goals devoted to the organization. In this case, the safeguarding of the organization's values and ethics must be weighed against the acceptance of the donation that financially enables the organization's activities to be carried out.

For example, it may be obvious that accepting a donation would most likely result in:

- the loss of donations from other donors or sponsors, at least equivalent, in the long term, to the value of the donation
- the loss of volunteers whose services would be at least as valuable as the donation
- the loss of personnel or inability to recruit new staff.

c) Require and keep some information

NPOs are well-advised to obtain and review information on major donors in a structured manner in order to understand whether the donors are legitimate and whether they are making legitimate donations. Among the information considered are:

- donor identification information
- the nature and stated objectives of the donor's activities
- the financial capacity of the donor to provide the donation and the source of the donor's funds
- does the NPO's donation match the objectives of the donor organisations?

NPOs should adequately document their respective business processes, including the processes of fundraising and distribution to beneficiaries. This includes keeping records of relevant information obtained from their donors as well as their beneficiaries, along with transaction records. These records will be useful in the event these donations are challenged to prove the good faith and diligence of the organization.

III. The importance of developing and publishing a clear policy

As mentioned above, it is likely that a NPO refuses donations only exception-

ally. In order to make sure that the donations are refused where necessary and for the reasons defined and specified by the organisation.

It is therefore key for NPOs to have a clear policy and procedure for accepting or refusing donations. Such a policy will not prevent questions from being asked or people from disagreeing with decisions made, but it will help proper decision-making and documentation of the same.

More specifically, such a policy will be helpful to:

- Communicate internally and externally your values and ethics, their relevance to your goals and how certain types of donations may be more likely to interfere with them.
- Help ensure that decisions are not made on an ad-hoc basis, but are based on the agreed policy objectives of the organisation and avoid confusion between trustees, fundraisers, volunteers and staff about who has the authority to make decisions in defined circumstances
- Ensuring compliance with good fundraising practices and any legal requirements

- Clarify the obligations of trustees with respect to the acceptance, refusal and return of donations
- Provide a clear and unambiguous policy statement for the general public and stick to it in order to be beyond suspicion from the different institutions.

Broadly speaking, having a clear and public policy will help to protect the charity's reputation against negative public reaction from existing or potential donors. One of the most important things for a charity is to demonstrate to stakeholders and the general public that the organisation is consistent and takes its position and responsibilities seriously.

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