

# ACHATES

## Organisational Purpose, Fundraising and Charity Law - A Short Guide

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Supported by:



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# Context and Scope

Welcome to this leaflet which has been designed to set out the purpose and responsibilities of cultural sector charities governed under UK charity law. It draws on what at Achates we refer to as our 'purpose-led' approach.

In this leaflet we outline:

- How subsidised culture in England is organised, funded and regulated;
- What the implications of that regulation are;
- What you and your Board need to be aware of to ensure you are upholding your responsibilities in line with these regulations and UK Charity Law;
- How to apply this to your strategy and operations.

# The Context of Subsidised Culture in England

Access to culture is a human right ([Article 27 of the Universal Declaration of Human Rights](#)), but it is one that is poorly understood. Whilst the right to culture is available to all as a way of life, the distribution of and ability to participate in subsidised culture (the term employed here to refer to 'culture' as it is set out by Arts Council England in [Let's Create](#)) is a far more complex picture. Culture is part of society as opposed to above it or outside of it, but it isn't funded or distributed like aspects of civil society, such as healthcare or education. Funding for culture emerged as part of the post-World War II compact led by the Atlee government and specifically, the first Minister for the Arts, Jennie Lee. However, cultural provision is across the country is not evenly distributed. Local authorities remain the biggest investors in culture, but they only gained full freedom to do so with the Local Government Act in 1972. The result is a landscape which is reflective of the socio-economic history of the locality and with the concentration of investment generally focusing on urban centres.

## How Subsidised Culture is Governed

The way in which it is distributed is also complex; the dominant way in which we consume subsidised culture in England is via an idiosyncratic body of independent not-for-profit organisations. Whilst these independent organisations may be

connected to Arts Council England through funding agreements, they are organisations governed by their Boards, who are the representatives of their stakeholders. Arts Council England itself operates under the 'arm's length principle', meaning it has independence from direct political interference and direction.

## Why Cultural Organisations Become Charities

The majority of cultural sector not-for-profit organisations are constituted as UK registered charities. The concept of subsidised culture as charitable, is itself complex; culture was considered as funded by the state and this meant that not only did it not fit with the Victorian origins of the concept of charitable 'need', but there was also no requirement for culture to be defined as charitable because it was state funded. Culture itself only became a charitable object in the 1990's with the advent of the National Lottery and the designation of culture as one of the 'good causes' it supported. Cultural organisations which chose to register as charities before this time dominantly registered as 'educational charities', a link back to the origins of the word 'culture', as 'cultivating'.

Whether registered as a cultural or an educational charity, charitable objects do not simply state 'education' or 'culture' as the field in which the organisation can legally operate they also offer some qualification as to what is meant by that term for that specific organisation. However, that definition is limited in scope and does not support complex decision making.

# What Does Working Within a Charitable Framework Mean for a Purpose-Led Approach?

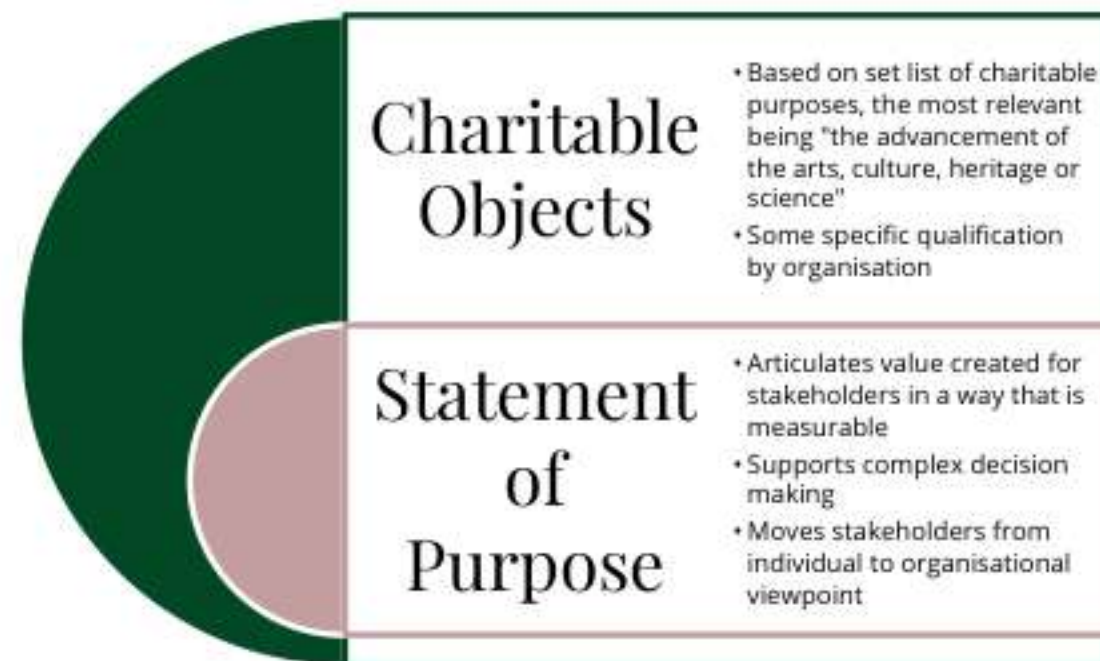
Given the complex history and landscape of subsidised culture in England, it is little wonder that the purpose and value of culture is poorly understood.

As not-for-profit organisations, we are focused on creating wider forms of value with and for our stakeholders and whilst we need to raise and earn income, this is to support this wider value creation and not our primary focus. Unless we realise our ambitions in the breadth of these types of value we cannot consider ourselves to be 'successful' as third sector organisations.

## The Limits of Charity Objects

As charities, we all have Articles of Association that are the governing documents that outline the purpose, management structure, and operating rules of a charity. Ensuring that you set out your purpose in the Articles of Association in a way that supports decision making is vital, but the legal linguistic framework offered is restrictive and can have limited value when making complex decisions. These statements are

designed with mainstream charities which have a single aim, dominant outcome and one group of constituents with a single shared motivation, in mind.



## The Role of a Statement of Purpose

Given culture is a difficult word to define and an area which realises a range of types of impact and outcomes and has stakeholders with a range of motivations, we suggest formally adopting a clear and measurable Statement of Purpose in addition to the charity's objects which can act as a decision-making framework for staff and Board. The Statement of Purpose sits above Vision and Mission, which are themselves generally complex for cultural organisations which are not trying to solve a single problem or need and to put themselves out of business by doing so.

### **Purpose as a Guide to Decision-Making**

Having a Statement of Purpose which is both clear and measurable enables you as staff and Board to move beyond personal ideas and ambitions and to come together at an organisational level to achieve your reason for being, your shared 'North Star', just as you do in a process of creative collaboration. By ensuring all of the elements of purpose are measurable it also enables you to evaluate our process and impact, reflect and learn, evolve and optimise impact with and for beneficiaries and to articulate and celebrate your success.

## How Trustees Must Comply with UK Charity Law

Charities are regulated by UK Charity Law, and it is the legal responsibility of the governing body - the Board of Trustees - to ensure compliance. It is the legal responsibility of the Executive to supply the information to support decision making that is compliant. Trustees have 6 main duties<sup>1</sup>:

1. Ensure your charity is carrying out its purposes for the public benefit;
2. Comply with your charity's governing document and the law;
3. Act in your charity's best interests;
4. Manage your charity's resources responsibly;
5. Act with reasonable care and skill;
6. Ensure your charity is accountable.

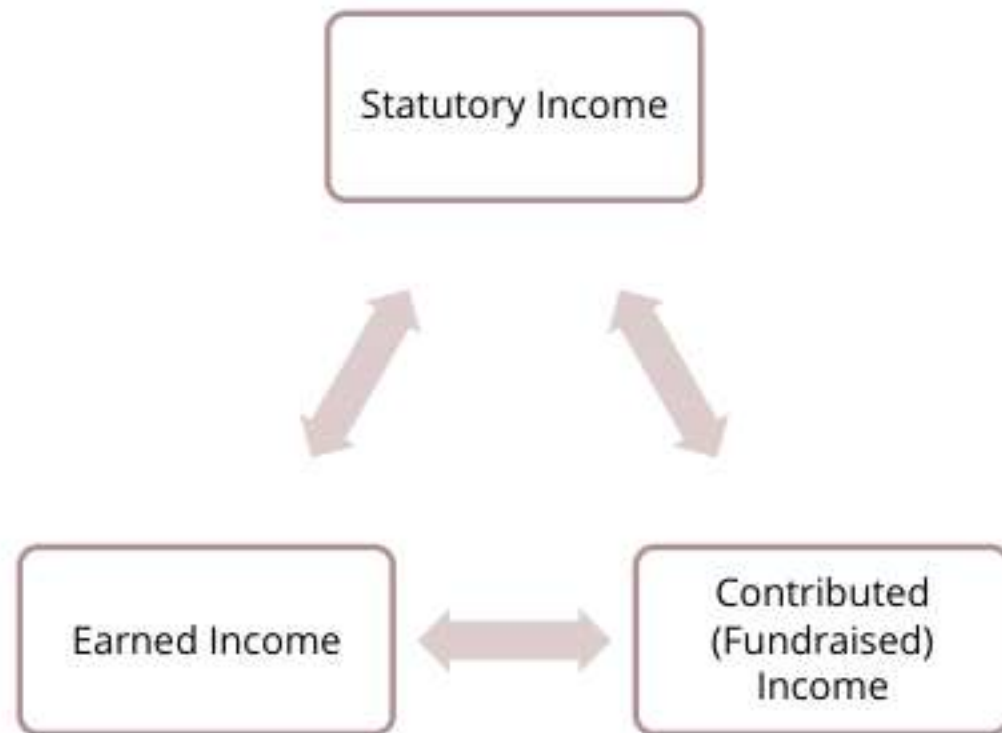
It is important that Trustees are cognisant of these legal responsibilities and whilst it is tempting to focus on the fourth of financial management, meeting them in full is essential and requires a detailed understanding of organisational purpose.

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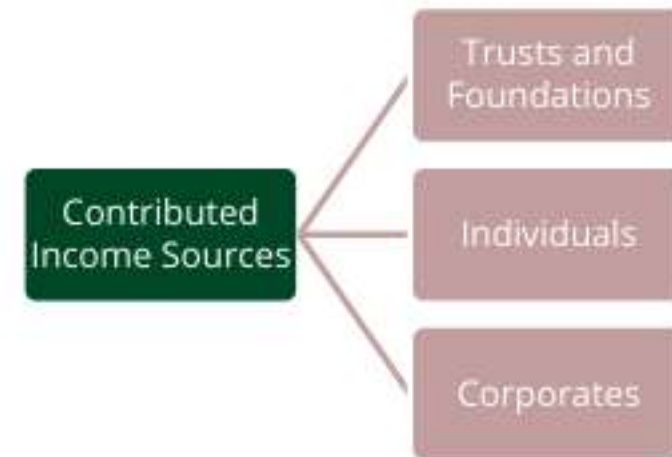
<sup>1</sup> <https://www.gov.uk/guidance/charity-trustee-whats-involved>

# Income Generation and Gift Acceptance Policies

No cultural sector charity can rely solely on state funding for its income; every organisation needs a mix of contributed (fundraising) income and as rising costs outstrip growth in this area, increasingly also new earned income sources.



Many cultural sector charities are now highly reliant on philanthropic donations and corporate partnerships to deliver their purpose. Sometimes, these funding relationships are challenged by third parties over ethical concerns.



In 2024, the Charity Commission issued new guidelines which makes it clear that all charities must assume gift acceptance as their default position. This is also the position of Arts Council England.

## When a Gift Should Be Declined

There are situations in which it is important that a charity declines a gift, including:

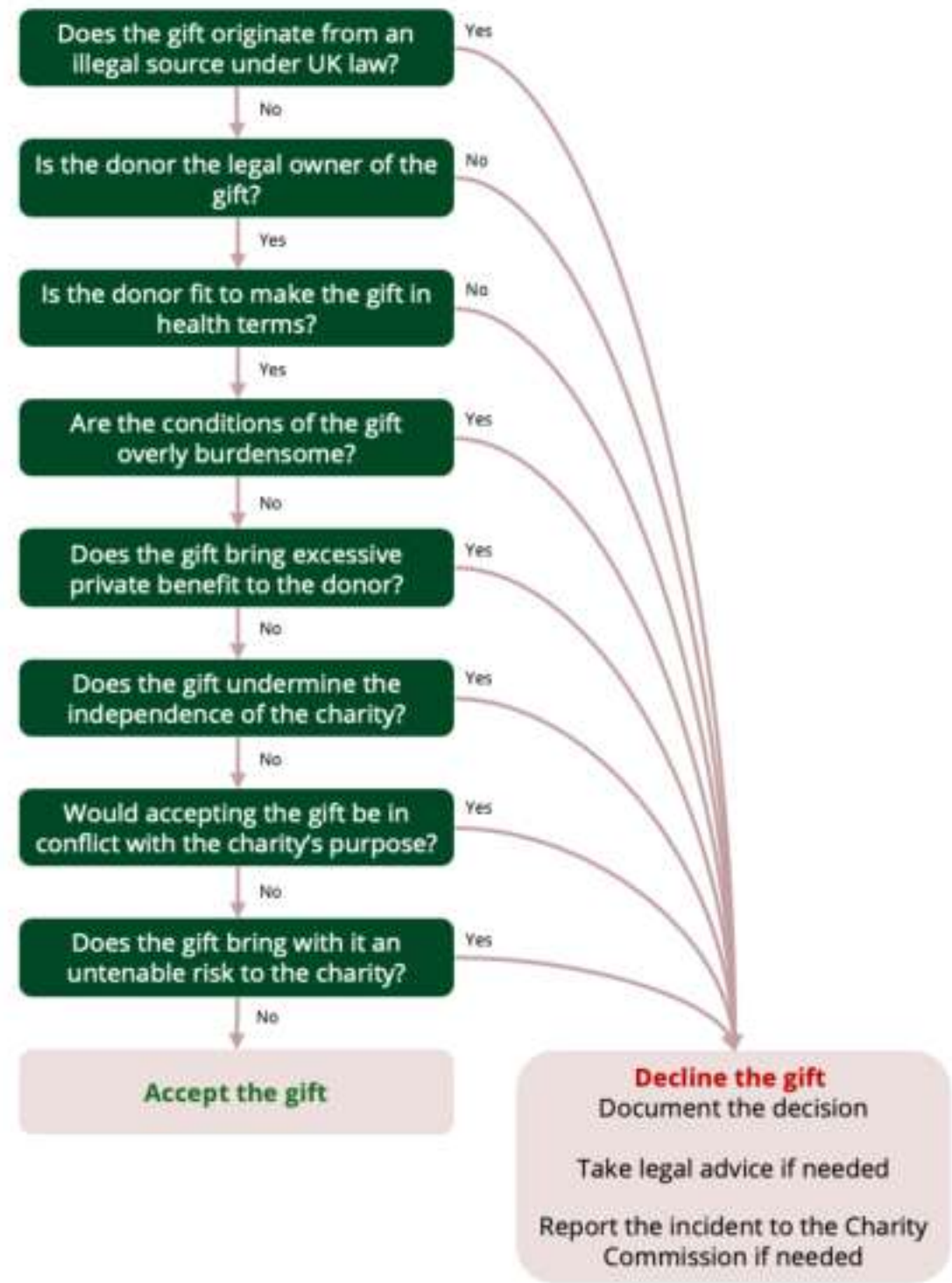
- when it is coming from an illegal source under UK law;
- if the donor is not in a position to make the gift either because they are not the legal owner or if their health disqualifies them;
- if the conditions of the gift are overly burdensome;
- if it brings excessive private benefit to the donor or undermines the independence of the charity.

### Purpose as the Governing Test

However, outside of these conditions, in order to decline a gift, the charity must demonstrate that it is in conflict with the purpose of the charity and bringing untenable risk. When balancing risk in accepting a donation, the Charity Commission states that the primary responsibility is to the furtherance of the purpose of the charity. This means that the Statement of Purpose which give the more nuanced context of the charitable objects, linked to the Articles of Association which are the rules for the governance of the charity, is the key reference point, underlining again the value of a clear Statement of Purpose. The role of the formally adopted Statement of Purpose is another area that is poorly communicated and understood, and Achates again recommends that your specific organisational purpose is regularly discussed with your Board, staff teams and collaborators including artists and creatives.

### When Legal Advice May Be Needed

If as an organisation you decide that you must decline or return a donation, the Charity Commission recommends that you take legal advice on this point if you are unsure of your legal powers to do so as set out in your governing document. It is also important to establish clarity as to whether you are refusing or returning a donation and to follow any conditions or restrictions that come with a power you are using. You will also want to ensure that you are familiar with the terms and conditions of any platform you are using if the gift is received through such a mechanism.



In making such a decision, you should return to the six stated duties of the Trustee already referenced and ensure that you are fulfilling these in the context of understanding that the first responsibility is to the fulfilment of your organisational purpose. You must employ the following decision-making principles in making this decision:

-  Act within your powers
-  Act in good faith and only in the best interests of your charity
-  Make sure that you are sufficiently informed
-  Take account of all relevant factors
-  Ignore any irrelevant factors
-  Manage conflicts of interest
-  Make decisions that are within the range of decisions that a reasonable trustee body could make

### Recording Decisions and Managing Risk

Achates recommends that you document any such decision in line with the six Trustee responsibilities as set out by the Charity Commission in line with your stated organisational purpose and that this forms part of the Minutes of the meeting. If you decide to decline a donation, you must then decide if you need to report a Serious Incident to the Charity Commission. It is important to consider this carefully because if you decide not to make a report about something serious that has happened in your charity and the Charity Commission later becomes involved, you will need to be able to explain why you decided not to report it at the time.

If there is a conflict of interest in making a decision, then you must inform the Charity Commission and request authority to decline the gift.

You can find detailed guidance from the Charity Commission on these points [here](#).

# Purpose, Rights and Responsibilities

Registering as a charity under UK law brings many benefits and protections. Firstly, being a charity means having an internationally recognised gold standard status as a not-for-profit organisation, conferring trust and legitimacy. It brings financial protection for the Non-Executive who are the representatives of the stakeholders in the charity as well as the Executives responsible for the implementation of the organisation's strategy. And finally, it brings privileges in terms of tax reliefs and concessions. These include:

- Gift Aid;
- Tax relief (such as Theatre Tax Relief);
- The ability to reclaim VAT;
- Exemption from Corporation Tax; and
- Other benefits without which many cultural charities would not be viable.

## What Charitable Status Requires

However, what is less well communicated and understood is that when as an organisation you take on constitutional status of any kind and in particular when you take on charitable status and the benefits it confers under UK law, you are surrendering some rights and taking on responsibilities.

## Taking on Charitable Status



Gives an organisation the benefits of incorporation and charitable status



Means you sacrifice the right to advocate on areas not related to your purpose

One of the rights that charities surrender is the right to advocate for and lobby on issues outside of their stated purpose. The artist has, as do all individuals in society, the right to free speech. Free speech is a qualified (or limited) human right and for charities there are greater restrictions. Charities only have the right to advocate or lobby on areas that directly relate to their stated purpose. A theatre can, for example, comment on the need for increased levels of tax relief and the issues explored in the context of a production it is staging, but it is not able to comment on wider social issues not reflected in its purpose or take a political view on the issues being explored. This is why it is important to understand that whilst cultural organisations, artists and creatives are symbiotically connected, their rights and responsibilities are not the same. There is the right of the artist or individual in society and the responsibility of the cultural organisation.

## The Artist and the Institution

So, does this set the artist and the cultural organisation in opposition? Not at all, and it is vital that as cultural

organisations we are discussing these issues with the artists we are working with so that we have a shared understanding of our rights and responsibilities and set appropriate expectations on both sides.

When artists and creatives create work for our spaces they have the right to present and explore a viewpoint that is not an organisational endorsement of that viewpoint. If an organisation chooses to present the existing work of an artist, then it is doing so with an understanding that the artist retains their right to free speech in the context of the presentation of the work. However, as noted, free speech is a qualified human right and the artist must respect the legal limits of free speech in the same way all individuals are required to. This means there is no right to create work that breaches these boundaries and incites hatred or violence (such as work that is antisemitic or Islamophobic).

### Who May Speak, and In What Capacity

	Purpose-aligned topics	Wider topics	Topics that breach legal limits
<b>Artist or staff member speaking as an individual</b>	Yes	Yes	No
<b>Artist or staff member speaking on behalf of organisation</b>	Yes	No	No
<b>Organisation</b>	Yes	No	No

### Speaking Personally, and Speaking for the Organisation

Individual artists, like all individuals, retain the right to free speech, but it is vital that there is clarity as to when they are speaking for themselves and when they are speaking on behalf of an institution. When an artist is speaking on behalf of an organisation they are bound by the same restrictions as the organisation. This relates to artists employed by an organisation, such as an Artistic Director, or a volunteer, such

as a Patron or Ambassador. If an artist takes a commission from an organisation, they do so in the understanding that, in the context of that commission they are bound by the same regulations as the charity when representing the organisation. Being clear when you are speaking for yourself and when for the organisation is essential.

Equally, wider Executive and Non-Executive members retain the right to hold and express views within the limits of free speech as individuals, but when speaking as representatives on behalf of an organisation they are bound by the same constraints. In addition, what is vital to the success of any cultural sector charity is in the organisational purpose and acts as the 'North Star' that binds the team together lifting you together in a shared focus and ambition. Being clear as to that purpose when recruiting and in all organisational communications is key therefore to ensuring that everyone understands the ideas that they are in service to and making decisions in line with.

It is also important to note that charities do have a duty of care to their staff as they are affected by wider social issues. This means that if a staff member or members are affected by external events they should be supported, but that does not give the organisation the right to comment publicly on those events, unless they are related to their purpose.

## About Achates

Achates is a leading cultural consultancy company supporting strategy at an organisational and geographical level; earned and contributed income generation; ethical recruitment; and organisational change.

Our purpose-led approach is explored in greater detail in the Masterclasses on our membership platform, *Achates Community*, our support, learning and leadership platform for cultural sector professionals offering guidance in every aspect of operating a cultural sector not-for-profit organisation.

Achates has defined the elements of purpose for cultural sector organisations and created frameworks to articulate them in a measurable way. These tools include the [9 Types of Impact of Culture and Heritage](#)© which has informed the universal theory of the value of culture which is being adopted by UNESCO. Membership is open to not-for-profit employees and Trustees and costs just £500 a year when paid up front.

To find out more take a look at our [website](#) or visit our specific divisions:

[Achates Generates Income](#) | [Achates Recruits and Brings Change](#) | [Achates Develops Strategy](#) | [Achates Community](#)