

## **Is creating a foundation going out of fashion?**

***Nigel Siederer* looks at the fluctuations over the past 55 years and the issues behind the marked reduction in the past few years. Gift aid in his view is not the complete alternative.**

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### **Two contrasting attitudes**

David Sainsbury is set to become the first UK philanthropist to give away £1 billion in his lifetime, so reported the *Sunday Times* in May. Sainsbury (aka Lord Sainsbury of Turville), currently the science minister, intends after leaving government to direct the trustees of his charity, Gatsby Charitable Foundation, to make plans to spend its income and capital before he dies. He is quoted as saying: ‘If you want to do more innovative and risk-taking things it is easier to do them with a donor who is living.’ Gatsby’s gifts and pledges already amount to £500 million since Sainsbury created it in 1967, aged 27, and the combined spend of investment income and capital will bring its total to well over £1 billion.

But listen to his older cousin John (Lord Sainsbury of Preston Candover) debating the Charities Bill in January 2005: ‘A senior QC tells me he now advises his clients only to give out of income rather than endowing a grant-making charity, because of what he calls unwarranted interference by the authorities. In the long term it is worrying if one believes in the value of the permanent nature of endowed charities. Gift Aid is now marginally more tax efficient than giving through an endowed charity—as well as being simpler, with no involvement from the Charity Commission.

‘Giving through Gift Aid also has great merit in terms of privacy and confidentiality which many of the most generous benefactors value highly. For some years it has only been with the Charity Commission's special permission that particular grants have not been named in a grant making charity's annual report—and the commission makes it all too clear that it does not like giving it. The latest SORP would effectively outlaw anonymity. Of course all gifts should be revealed to the Charity Commission and to the Inland Revenue, but why should they be published if the benefactor or a foundation wishes to remain anonymous? Once, anonymous gifts were those most valued. If the present regulatory regime—including forbidding anonymity—had existed in 1973 when I set up the Linbury Trust I would certainly not have done so.’

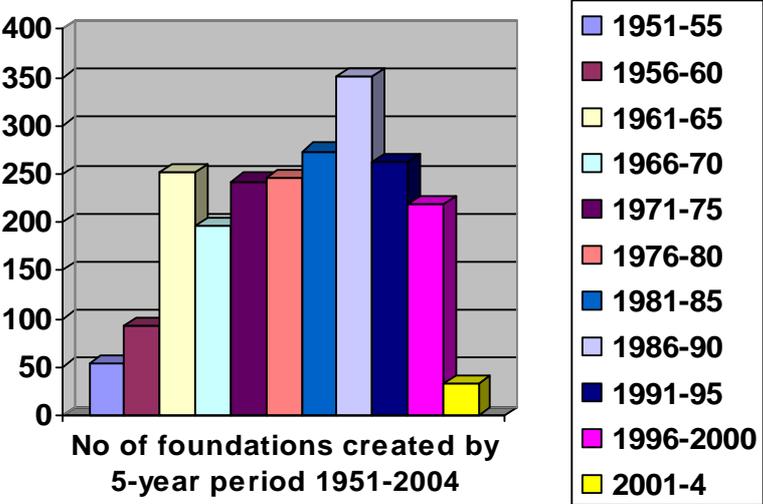
So, two different attitudes to foundation-creation by two of the UK’s most experienced practitioners – one believing in permanently endowed charities but completely put off by the bureaucracy, and the other not wanting permanence

but liking control. But is philanthropy going out of fashion? And are the Sainsbury cousins typical?

**Has foundation creation dropped?**

Research by the (Association of Charitable Foundations (ACF)) via its *Philanthropy UK* project a couple of years ago suggested that a fifth of wealthy people considering establishing a grant-making trust decided against doing so because of what they had heard about the bureaucracy and disclosure requirements. New figures unavailable to ACF suggest it may be as high as a third. But that also means that two-thirds of the potential settlers were undeterred.

Foundation creation, though not unknown in past centuries and the early 20<sup>th</sup> century, is largely a post-second world war phenomenon. While some parochial charities and livery companies are indeed venerable, more than 90 per cent of foundations were created after 1950. The bar chart looks at the post-war period in five-year lumps. The full 1990s decade now shows a significant but not drastic drop in foundation creation, but an apparently severe drop since 2001. Peak years were 1962, 1973, 1977, 1985-90, and 1995.



Source: *Directory of Grant-Making Trusts* up to 1995; subsequent information re creation dates supplied directly from the *Directory of Social Change* database

Some health warnings about the data:

- The table shows foundations still in existence in 2005. Little is known about why foundations cease operating (apart from a few which are time-limited when set up). Certainly family foundations, around half the total, tend (with honourable exceptions) to lose their connection with the founding family after two or three generations, transmogrifying into bodies still bearing the founder’s name but controlled by independent trustees. But there is no evidence that David Sainsbury’s plan to spend his foundation out in his

lifetime is following any pervasive tradition of deliberate limited-term philanthropy. Other philanthropists like Joseph Rowntree were content to leave questions of permanence to future trustees.

- The formation dates of Scottish charities are not easily found. The data – covering 2452 trusts – has an England/Wales bias. There are, however, no signs of distinctive trends in Scottish philanthropy.
- The data includes company foundations, some large fund-raising charities which make grants, Arts Councils, and some Lottery distributors. Although these include some of the largest grantmakers, they are probably only 13 per cent numerically. They tell us little about individual philanthropy, and their unchanging presence does not distort the data as regards trends.
- The 2500 foundations covered give around £25,000 annually. Smaller ones are not covered.
- There is a lag-time between the creation of a trust and its inclusion in a guide – normally at least four years. This is because endowments take time to generate stable income, procedures have to be set up and grants made on a scale large enough to put the trust in the top 2500, and accounts filed which the *DGMT* compilers can monitor. The lag-time may be even longer where a ‘shell’ trust is created in expectation of receiving its main endowment when the settlor eventually dies. This means the apparent slump in 2001-4 can be ignored; much the same appeared ten years ago in the then incomplete data for the early 1990s.

However, early-1990s creations still show a drop of 25% from the late 1980s, and the late 1990s show a drop of a further 13%. Gift Aid, introduced in 1990, seems to have had a significant effect. But other factors may also be at work, as 1995 showed a small revival, e.g. philanthropists’ perceptions of the political and financial climate.

### **Foundations versus Gift Aid**

Tax-effective giving used to require a seven-year covenant, reduced in 1981 to four years. Covenanted giving into a charitable foundation allowed income tax to be reclaimed over four/seven years; and one-off grants could then be made from the foundation as trustees decided. Setting up a foundation thus allowed a donor to plan their giving when they had funds available, and to give indirectly (ie through the foundation) to a wide range of charities selected later, when suitable proposals were available – as they might not be at the time the funds were contributed. A foundation could also be set up with a bequest (free of inheritance tax), placing giving in the hands of the donor’s trustees, with the donor’s name living on – if they wished – in the name of the foundation. Investment income on the endowment (also tax-relieved) would maintain its real value, with sufficient excess for giving to continue indefinitely – thus creating a foundation with perpetual existence.

From 1995 onwards, as Lord Sainsbury of Preston Candover has lamented, the SORP has forced disclosure of grants and of other information such as investment policy, internal structure, and senior staff remuneration. Yet many foundations were already publishing grants lists, having recognised that secrecy was damaging the image of foundations generally and that extraneous applications would be discouraged if grant-seekers knew more about a foundation's patterns of giving. The climate was also being affected by the emergence of new transparent grant-makers based on public appeals, such as Comic Relief, the ITV Telethon, and BBC Children in Need. There seems to be no widespread mood to resist the statutory drive for transparency, and many previously secretive foundations began publishing information about themselves for the first time and with good will. This was particularly true of foundations run by trustees with diminishing links to a founder.

Where the founder was still alive, the picture was different. Some were happy to disclose the giving, but others felt the enforced transparency made it more difficult for a foundation to be regarded as an extension of the founder's private giving.

There may be other reasons why creating a foundation might not be an automatic choice among new philanthropists. Some simply regard foundations as symbolically old-hat, and are not attracted by the traditional voluntary sector. They are fascinated by notions of 'venture philanthropy' – lending money to community businesses, and looking for causes with an entrepreneurial spirit that matches their own. Tax-effectiveness may be less important to them (though not necessarily to their accountants!), and they are impatient with bureaucracy. But the increasing flexibility of charity law means that a foundation can be a useful vehicle for giving this type of help, and Gift Aid is limited to registered charities. It's largely the foundation image that doesn't suit.

And Gift Aid, while allowing one-off gifts to be made tax-effectively and secretly, isn't a complete alternative to using a foundation. It requires the identity of the beneficiary charities to be known, and so cannot satisfy a wish to give generally in a chosen field or to advertise for proposals. Gift Aid is a relief of tax on current income, so very large gifts may not be feasible because a good cause may need cash at an inconvenient time for the donor. Tax effective giving from capital is more complicated, though reliefs have been enhanced. And with a foundation or a directly-funded charity alike, giving shares, though tax-relieved, is not necessarily an attractive choice, since the recipient cannot hold onto the shares out of loyalty to the donor but is required to consider selling and diversifying from time to time, as any prudent shareholder should do.

So creating a foundation still has many advantages. It remains a good strategic course for planned long-term giving, and provides the charitable sector with stable sources of funds, independent of government. If a donor can stomach the transparency and accepts that the future can't be entirely predicted, the

attractions of creating a long-lasting eponymous giving institution are unlikely to disappear. Even Lord Sainsbury of Preston Candover has not given up hope entirely. He is said to be considering amendments to the new Charities Bill which renew the notion that it should have a ‘philanthropy objective’ and would allow some confidentiality to grants made by a foundation with a living settlor.

### **Creating a foundation versus using Gift Aid**

<b>Creating a foundation</b>	<b>Gift Aid</b>
Grants require trustees’ decisions. Creating a foundation requires planning	Gift Aid can be used spontaneously
Investment income is tax relieved	Tax relief is only available when a grant is made. Until then, investment income belongs to the donor
A foundation can receive gifts whenever convenient to the donor	Timing of needs may not match the time when the donor has excess current income available
Can receive planned capital gifts (including gifts of shares – though sale of the shares must be considered to diversify the capital)	Only a minority of large charities can handle capital gifts effectively at donor’s convenience
Gifts to a foundation cannot be rescinded or reclaimed if the donor’s circumstances change	Gifts via Gift Aid are only made when a beneficiary charity needs them, so the level of giving can match changes of fortune
Particular beneficiary organisations need not exist, as funds can be given tax-effectively to a foundation with general objects	Named beneficiary organisations must exist and be able to receive gifts and administer Gift Aid
Gifts can be made to non-charities and individuals for charitable purposes	Gifts can only be made to charities with provable status
Giving is delegated to trustees who must be found and be willing to give unpaid time	Giving is fully controlled by donor
A foundation has a bureaucracy of its own, to administer incoming funds and grants – including (with large foundations) a director who must have a rapport with the donor	Gift Aid forms must be completed for each donation
A foundation’s grants are public knowledge	Gift Aid donations are secret
A foundation can last indefinitely	The potential for Gift Aid dies with the donor, though a foundation can be created as a bequest in their will – but if a foundation is to be created anyway,

	why not during the donor's lifetime?
The donor's name can be attached to the foundation in perpetuity	The potential for publicity is unlikely to outlive the donation (unless the donor's name is given to a building etc)

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