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Foundations in the United Kingdom: Organisations and Nations in a State of Flux

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Abstract

In the absence of a legal foundation form, and with differing national legal contexts, researching UK foundations presents major conceptual and practical challenges. This paper maps and critically discusses the UK foundation landscape; it highlights the blurred boundaries of foundations as an organisational form and outlines the different expressions of charity laws that foundations face across the UK's constituent parts. Examining data on foundation characteristics, the paper shows that although data on foundations indicate that the organisational characteristics and activities of UK foundations resemble those in Germany and the US, there remains an urgent need for more, and for more robust, data and insights on UK foundations to allow for meaningful comparison. Pointing to increased socio-economic challenges and changes in political perspectives on foundations, the paper explores the shifting attitudes towards, and expectations and roles of, UK foundations and reflects on the issues ahead.

Keywords: philanthropy, philanthropic foundations, trusts, public policy, third sector

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Foundations in the United Kingdom: Organisations and Nations in a State of Flux

When exploring philanthropic foundations in the UK, lyrics from the late-19th century comic opera *The Pirates of Penzance* come to mind: 'A paradox, A paradox, A most ingenious paradox'. First of all, despite widespread reference to UK foundations, there is no such thing as the organisational form of 'a foundation' in the UK. Unlike some jurisdictions, such as Germany and other civil law countries, the UK has no separate legal category, framework, structure, or status for foundations: their creation, registration, governance and supervision simply form part of general charity law (Dunn, 2014). Secondly, the UK is anything but 'united' as regards foundations' legal contexts. Despite a common origin in the *1601 Statute of Charitable Uses*, charity law has developed along different trajectories within the UK's constituent parts; Scotland, Northern Ireland, and England and Wales have their own bodies of charity law and their own charity regulators (Breen, Ford, & Morgan, 2009; O'Halloran, McGregor-Lowndes, & Simon, 2008). Nonetheless, the UK presents an interesting setting for exploring foundations within the comparative context of these papers.

From a scholarly perspective, looking at the UK provides insights for examining foundations' origins, organisational characteristics and operating contexts. Alongside Scotland giving birth to one of the key drivers in global foundation philanthropy, Andrew Carnegie, and the UK being home to one of the three wealthiest foundations in the world, the Wellcome Trust, English charity law provides a historic nexus between Germany and the United States. The fifth-century German civil law code *Lex Salica*, which addressed the transfer and use of property for pre-defined purposes during or after the lifetime of its conveyor, is widely considered as playing a central role in establishing English charity law and in the development of the English concept of a trust (Gaudiosi, 1988; Rounds & Rounds III, 2012). In turn, English acts and statutes on charity and trusts that evolved from the 13th century onwards and cumulated in the *1601 Statutes of Charitable Uses* provided the roots

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3 and basis for US charity law, as well as inspiration for developments in Canada, Australia
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5 and even Japan (Kelley, 2005; Simon et al., 2016). On top of historic links, contemporary
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7 charity law in England and the United States has also tended to develop along parallel paths:
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9 'there is more that is similar than different' (Fremont-Smith, 2004, p. 114; see also Garton,
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11 2009; Kiger, 2000).

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13
14 In the absence of a legal foundation form, this paper begins by outlining the different
15
16 ways in which the idea of a UK foundation is approached and cast. Thereafter, the legal
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18 differences for foundations across the UK's constituent parts are examined. Turning attention
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20 to Anheier's (this issue) exploratory framework, the paper then moves towards mapping the
21
22 UK foundation landscape and discussing the associated practical and conceptual issues. After
23
24 outlining and reflecting on the wider shifting context for UK foundations and their place
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26 within the socio-political landscape, concluding thoughts on the challenges ahead are offered.
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Defining UK foundations

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31 With no specific legal definition or framework, the question of how to identify and
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33 demarcate UK foundations presents itself. Firstly, in general debates about the charity sector,
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35 the notion of a 'foundation' is frequently used interchangeably with, and indiscriminately
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37 from, the idea of a 'trust'. This masks that the former originates in civil law while the latter is
38
39 an idea derived from common law; it ignores that a foundation is a separate legal entity while
40
41 a trust is not. However, to the extent that both a foundation and a trust share the underlying
42
43 aim of managing and providing resources for others' benefits, the basis of such conceptual
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45 conflation can be appreciated.
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49 A second approach, also recognisable in other European countries' discussions on
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51 foundations, is to simply transfer foundation labels and categories from the US (see Prele,
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53 2014). Especially the idea of a 'private foundation' has seen widespread adoption. However,
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55 as illustrated by the recent English House of Commons' International Development
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3 Committee's (2012) report on 'private foundations', transferring such labels to a context
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5 where they have no legal relevance can be problematic, a source of confusion.

6
7 A third path is taken by the UK's membership association for philanthropic
8
9 foundations and grantmaking trusts, the Association of Charitable Foundations (ACF). This
10
11 simply acknowledges that 'there is no distinct legal definition of a charitable foundation'
12
13 (Association of Charitable Foundations, 2018). Instead, ACF emphasises that UK
14
15 foundations are identified through a combination of how they derive their funding and by the
16
17 activities they pursue. As regards the former, foundations are usually considered to be
18
19 charities with sustainable, independent and private income; in relation to the latter, they
20
21 pursue their aims through 'funding or otherwise supporting individuals or other
22
23 organisations'. Such activities can include campaigning, policy and influencing work (Charity
24
25 Commission for England and Wales, 2008). Reference points for identifying and demarcating
26
27 foundations are thus ambiguous and flexible rather than specific. As ACF concedes, this
28
29 leads to 'great diversity' (Association of Charitable Foundations, 2018).

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33 Such 'great diversity' is of limited use when trying to bound research on foundations.
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35 Thus, in research on and from the sector, reference is often made to Anheier's (2001) casting
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37 of foundations (i.e. an asset that is: non-membership based, relatively permanent and has an
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39 identifiable organisational structure; a private entity; non-profit distributing; and serving a
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41 public purpose – see for example SMART, 2010), or attention is drawn to the definition used
42
43 in the only regular annual survey of UK foundations. This defines foundations more broadly
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45 as 'independent grantmaking charities, whose income derives mainly from private sources'
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47 (Pharoah & Bryant, 2012, p. 9). While either of these approaches can assist in roughly
48
49 separating foundations from other charities, a need for further clarification remains.

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52 To strengthen meaningful and relevant research on UK foundations, the spectrum of
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54 foundations' varied organisational characteristics – including differences in age, size, and
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2
3 approach – needs to be more strongly established, recognised and taken into account (Jung,
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5 Harrow, & Leat, 2016). Although still an emergent area for academic research, such
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7 differentiation between various foundation types is evident in the self-clustering by
8
9 foundations in umbrella bodies and membership associations. This can be by region, such as
10
11 the Scottish Grant-Making and the Northern Ireland Trusts Groups; by foundations' perceived
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13 organisational characteristics, exemplified by the national network for accredited community
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15 foundations, UK Community Foundations, and by ACF's Corporate Foundations and Smaller
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17 Funders networks for trusts and foundations associated with corporates and businesses and
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19 for those giving less than £500,000 per annum respectively; and by areas of interest or
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21 activity – from funders working in the areas of asylum, refugee and migration, to mental
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23 health and school funders (Association of Charitable Foundations, 2017b; Scottish Grant-
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25 Making Trusts Group, 2017; UK Community Foundations, 2017). An integrative theory of
26
27 the area is, however, missing (Jung et al. 2016).
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National legal differences for foundations

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33 As UK grantmaking trusts and foundations tend to be registered charities (Traynor &
34
35 Walker, 2015), it is necessary to understand the wider legal context for UK charities. This is
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37 complex. With the country composed of four nations – Scotland, Northern Ireland, England,
38
39 and Wales – there have always been inherent tensions between, and questions about, the
40
41 national and administrative unity of the UK (House of Lords, 2016). These have become
42
43 more prominent since the 1990s, a time when the UK set off on a major devolutionary
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45 journey.
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49 While maintaining the sovereignty of the UK's Parliament in Westminster, devolution
50
51 over the last two decades has seen an increasing transfer of powers to Scotland, Northern
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53 Ireland and Wales (House of Lords, 2016). The result is that the four nations are covered by
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55 three bodies of charity law and by three separate charity regulators: the Office of the Scottish
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3 Charity Regulator (OSCR), an independent non-ministerial department established as part of
4 the Charities and Trustee Investment (Scotland) Act 2005, registers and regulates charities in
5 Scotland and answers directly to the Scottish Parliament (Office of the Scottish Charity
6 Regulator, 2017); the Charity Commission for Northern Ireland, established as part of the
7 Charities Act (Northern Ireland) 2008, fulfils this role for Northern Ireland (Charity
8 Commission for Northern Ireland, 2017); while the remaining two nations, England and
9 Wales, are covered by a joint regulator, the Charity Commission for England and Wales
10 (Charity Commission for England and Wales, 2017). The latter has been described as 'the
11 mother of all charity commissions' (Simon et al., 2016, p. 1151). Its origins go back to the
12 *Charitable Trusts Act of 1853* and to the body of Commissioners set up to inspect and
13 supervise charitable trusts by the *1601 Statute of Charitable Uses* (O'Halloran et al., 2008).
14 Its current statutory objectives, functions, powers and duties are set out in the Charities Act
15 2011 as amended by the Charities (Protection and Social Investment) Act 2016 (Charity
16 Commission for England and Wales, 2017).

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33 Notwithstanding that historically, and in its contemporary expressions, charity law
34 within these three jurisdictions has a lot in common, there are differences in relation to the
35 definition of, requirements for, and recognised structures and forms of charitable
36 organisations. These become especially noticeable when a charity registered in one of the
37 jurisdictions intends to become active in one of the others: despite being registered in the UK,
38 it faces and needs to address cross-border regulation requirements (Breen et al., 2009; Office
39 of the Scottish Charity Regulator, 2016).

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The precise variations, nuances and expressions of UK charity law, and the ways in
which the UK's charity sectors have evolved, have been widely explored in the literature
(Peter Alcock, 2009; Pete Alcock, 2012; Breen et al., 2009; Garton, 2009; Morgan, 2012;
O'Halloran et al., 2008). Within this body of work, there is a small subset focused on

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3 foundations. While this has emphasised developments in England and Wales (e.g.
4
5 Boddington, Bater, Khan, & Wellcome Trust, 2014; Dunn, 2014; European Foundation
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7 Centre, 2007, 2015), it points to the importance of variations in the idea of 'public benefit'
8
9 (see Morgan, 2012).
10

11
12 Unlike in the US, where statutory agencies tend to emphasise exclusion rather than
13
14 inclusion criteria to determine whether an organisation should be considered a foundation or
15
16 not (Internal Revenue Service, 2018), in the UK emphasis is placed on whether a 'charitable
17
18 purpose' is met and a 'public benefit' is provided. As outlined in Table 1, the idea of 'public
19
20 benefit' is cast relatively broadly within each of the three UK jurisdictions. While these
21
22 national differences highlight that ideally a nation-specific approach to exploring UK
23
24 foundations would be pursued, the knowledge-base for doing so in an appropriate way is
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26 currently insufficient.
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31 Table 1 about here
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35 Mapping the UK foundation fields

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37 In order map the UK against the categories highlighted by Anheier (this volume), it is
38
39 important to examine foundation numbers. However, obtaining reliable and relevant data
40
41 remains challenging. Although the last few years have seen growing research activities to
42
43 address this, one is still frequently reminded of Anthony Sampson's description of British
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45 trusts and foundations as 'underground rivers in a barren countryside', where the only
46
47 indications of their existence 'are the green fields they make fertile in unexpected places'
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49 (cited in Nielsen, 1985, p. 9).
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53 According to the regulators' latest available numbers, there are around 180,000
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55 registered charities in England and Wales plus another 24,000 in Scotland (Charity
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3 Commission for England and Wales, 2017b; Office of the Scottish Charity Regulator,
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5 2017b). As the register for Northern Ireland is still in the process of being set up, a list of
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7 organisations deemed to be charities puts the number of charities in Northern Ireland at
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9 around 6,200 (Charity Commission for Northern Ireland, 2017b). Of these, 5,590 have been
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11 confirmed and listed on the Charity Commission for Northern Ireland's register at the time of
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13 writing (Charity Commission for Northern Ireland, 2017c). Given the exclusion of small
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15 charities from official registers and cross-border charities' need to register with multiple
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17 regulators (Morgan, 2012), all of these numbers have been repeatedly called into question.
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19 Some sector commentators have even argued that the number of charities in the UK could
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21 easily be twice as large (Ainsworth, 2015). Combined with the aforementioned definitional
22
23 hurdles surrounding UK foundations, there is thus no reliable way for identifying the precise
24
25 nature, size and scope of the UK foundation landscape.
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29 Bearing in mind that the idea of a 'foundation' and of a 'trust' tend to be used
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31 interchangeably in the UK, and that within organisational research labels can be indicators of
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33 organisational forms, a crude starting point for gathering information about the size of the
34
35 UK foundation landscape is thus to look for charities that bear either of those titles. While
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37 this approach results in both false positives (e.g. the British Heart Foundation, a
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39 predominantly fundraising charity) as well as omissions (e.g. The Henry Smith Charity, a
40
41 major UK grantmaker), the picture that emerges when searching for 'foundation' and 'trust' on
42
43 the regulators' registries is as follows: Scotland lists 692 organisations with the title
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45 'foundation' and 5,220 with the title 'trust' (Office of the Scottish Charity Regulator, 2017b);
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47 in Northern Ireland, 76 foundations and 523 trusts are registered (Charity Commission for
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49 Northern Ireland, 2017c); while in England and Wales the numbers increase to 14,362 for
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51 foundations and 53,952 for trusts (Charity Commission for England and Wales, 2017b).
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3 Another approach is to examine the membership numbers of the national umbrella
4 bodies for foundations, the Association of Charitable Foundations (ACF) and UK
5 Community Foundations (UKCF). As membership of these bodies is elective, numbers are
6 necessarily smaller: on their webpages ACF refers to around 340 members, while UKCF lists
7 46 community foundations.
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14 Somewhere in between those two extremes sits information available from national
15 charity support organisations, such as the Directory of Social Change, and international
16 membership bodies, such as the European Foundation Centre. The former estimates that there
17 are currently around 8,000 grantmaking trusts and foundations active in the UK (Traynor &
18 Walker, 2015), while the European Foundation Centre's latest available estimate, dated 2013,
19 points to around 12,000 to 13,000 – albeit unspecified – public benefit foundations across the
20 UK. If so, the number of foundations in the UK is substantially below the 22,000 and 87,000
21 foundations in Germany and the US respectively (Bundesverband Deutscher Stiftungen,
22 2017; Foundation Center, 2014).
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33 Amongst these numbers and across these sources, a variety of organisational
34 expressions can be identified. These include the labels of family, corporate and community
35 foundations. Furthermore, when looking at foundation categories in Germany and the US
36 (e.g. Bundesverband Deutscher Stiftungen, 2016; Council on Foundations, 2016; Toepler,
37 2016), it becomes clear that the UK's foundation forms, while not formally cast, do strongly
38 overlap with, and are similar to, organisational differentiations in the other two countries. For
39 example, the German notion of 'Anstaltsträgerstiftung', organisationally-bound foundations,
40 such as hospitals whose resources usually derive from endowments and/or the provision of
41 public services, is prominently illustrated in the UK education and healthcare landscapes (see
42 Checkland, 1980; Gaudiosi, 1988); the idea of 'Kirchliche Stiftung', i.e. ecclesiastic
43 foundations, runs through British history (see Rex & Armstrong, 2002), while the idea of a
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3 'Verbrauchsstiftung', or limited-life foundation is prominently illustrated by the UK's Diana,
4 Princess of Wales Memorial Fund which spent out in 2012. Foundation forms that remain
5 prominent in Germany but are generally extinct in the US – such as industrial foundations,
6 i.e. business-owning foundations such as Germany's Robert Bosch Stiftung – can also be
7 easily identified within the UK: the Edrington spirits group and the Guardian newspaper are
8 just two such examples. This places UK foundations' flexibility closer to the German than the
9 US model. Even the underlying rationales for such industrial foundations' establishment in
10 the UK, such as protections from takeovers, appear similar (e.g. Anheier et al. this issue;
11 Maclean, 2001).

22 **Comparing and differentiating UK foundations' approaches**

23
24 To examine, differentiate and structure foundation discourse within, and across,
25 diverse contexts, Anheier (this volume) points to the Foundation Triangle as a potential
26 organising framework. This distinguishes between foundations' approach (operating,
27 grantmaking, mixed), roles (innovation, complementarity, substitution, build out), and wider
28 purpose (relief, protection, change). The idea is that foundations' choices vis-a-vis these
29 categories will allow for a clustering, and subsequent examination and comparison, of
30 foundations' national and international expressions. While intuitive and appealing, the
31 application of this and comparable frameworks to the UK is problematic. First of all, trying to
32 examine foundations' activities and roles has been a longstanding problem in the UK, an
33 irritating, irrelevant and 'academic' question to the foundation field: 'Foundations don't see it
34 as their role to have roles and visions' (foundation commentator cited in Leat, 2007, p. 103).
35 Secondly, there are broader conceptual questions about the typological rigour and relevance
36 of foundation frameworks, classifications, and typologies (Jung et al., 2016) that also need to
37 be considered when trying to apply the Foundation Triangle.

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3 Central to the Foundation Triangle is the distinction as to whether a foundation
4 pursues a grantmaking, an operating or a mixed role. A grantmaking foundation funds other
5 organisations to achieve its aim(s); an operating one runs its own programme(s); a mixed
6 approach combines both grantmaking and operating functions. There is no doubt that all three
7 approaches exist within the UK. Examples of major UK grantmakers are the Wellcome and
8 Leverhulme Trusts; UK operating foundations include the Prince's Trust and the Carnegie
9 UK Trust; mixed forms are illustrated by Guy's & St Thomas' Charity and the Royal Society
10 (Pharoah, 2009; Pharoah, Walker, & Goddard, 2017). Mirroring global research traditions
11 (see Toepler, 1999), the common perception is that within the UK the grantmaking form is
12 the dominant one amongst these. This is illustrated by the findings from a broader survey
13 looking at foundation funding for research and innovation across Europe by Pharoah and
14 Zimmeck (2015): within their sample of 58 UK foundations, 57% emphasised grantmaking,
15 7% were operating foundations, while 36% were hybrids and pursued both.
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31 Whether or not operating and mixed foundations are a useful label in contexts where
32 no legal forms of the foundation exists is, however, debatable. As the focus shifts away from
33 grantmaking, the distinction between a foundation and other organisational labels in the third
34 sector becomes increasingly blurred (Toepler, 1999). Furthermore, the bases and rationales
35 for casting and demarcating these foundation forms in the UK contexts appear abstruse and
36 conceptional problematic. For example, UK universities, religious institutions, as well as
37 early alms houses and residential charities tend to be registered as charities, often take the
38 form of a trust, frequently have an endowment, and can, and indeed do, make grants.
39 Theoretically, they should therefore be considered as either operating or mixed foundations.
40 In practice, however, this is not the case: they tend to be ignored or excluded. This is evident
41 in the latest survey of UK foundations (Pharoah et al., 2017), where those that are operating,
42 direct service providing, support a single institution, beneficiary or cause, or devote less than
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3 50% of their charitable spending on grants are not taken into account. As such, concerns
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5 arise as to whether UK foundation research, policy and practice have been too narrow in their
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7 approach to, and understanding of, the foundation field to-date. Alternatively, it could be
8
9 argued that the inclusion of operating and mixed foundations unnecessarily blurs the
10
11 boundaries; that these should be considered separately rather than alongside pure
12
13 grantmaking ones.
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16 **Exploring foundations' activités, roles and purposes**

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18 Moving away from 'approach' towards the areas that receive foundations' attention, a
19
20 number of insights can be learnt from foundations' grantmaking activities. Such information
21
22 usually concentrate on certain subsets of foundations, such as the top-300 grantmakers
23
24 (Pharoah, Jenkins, & Goddard, 2014; Pharoah, Jenkins, Goddard, & Walker, 2016), top-100
25
26 family foundations (Pharoah, Goddard, & Jenkins, 2015), or corporate foundations (SMART,
27
28 2010). However, as Pharoah and colleagues, authors of the only major ongoing survey of the
29
30 UK's top-300 foundations' giving trends, have repeatedly highlighted, the material from
31
32 which one can glean such insights resembles a patchwork quilt: data come from a variety of
33
34 sources, are derived using a diversity of methods, and cover different timeframes (Pharoah et
35
36 al., 2014; Pharoah et al., 2016; Pharoah, Jenkins, & Goodard, 2015). While this leaves
37
38 knowledge gaps, the survey's repeat application of the same approach and method – using
39
40 financial figures from annual reports, accounts and foundations' webpages, press releases and
41
42 media reports, as well as tax statistics, estate data and other relevant surveys and research
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44 (ibid.) – allows for the identification of some key and recurring trends.
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48 In general, the total of the top-300 UK foundations' annual giving stands at around
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50 £2.7bn; it makes up 15% of the total of private charitable giving in the UK (Pharoah et al.,
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52 2016). This is roughly comparable to the percentage of foundation grantmaking amongst
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54 private giving in the US (Pharoah et al., 2014). It is estimated that around 71% of UK
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3 foundations' grantmaking is given to the UK, the rest overseas (Traynor & Walker, 2015). Of
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5 the UK allocation almost all, 69%, is available to the different parts of the UK; the remaining
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7 2%, ca. £580m, is allotted unevenly across the UK, with England receiving approximately
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9 £418m, Scotland around £80m, Wales £65m, and Northern Ireland £3m, with further awards
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11 designated for specific parts of Britain, such as the Channel Islands and the Isle of Man
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13 (Traynor & Walker, 2015). While foundation giving is dwarfed by government funding for
14
15 UK charities - government providing around £13.3bn to England and Wales and £2.3bn to
16
17 Scotland and Northern Ireland (Pharoah, Goddard, et al., 2015) - with government funding
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19 increasingly taking the shape of contracts rather than grants, foundations now provide more
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21 grants, measured by value, compared to the state (Association of Charitable Foundations,
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23 2016).
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27 The dominant position amongst UK foundations is held by the Wellcome Trust. In
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29 2015, it gave away £673 million, one-quarter of the top-300 foundations' grants; with
30
31 £17.13bn in assets, it also held one-third of all the assets amongst the top-300 foundations
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33 (Pharoah et al., 2016). According to the Wellcome Trust's latest available accounts, these
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35 numbers now stand at £856m worth of grants, with the Trust holding total assets net of bond
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37 liability of £20.85bn (Wellcome Trust, 2016). Looking at the second largest endowed
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39 foundation, the Garfield Weston Foundation with an endowment of £10.85bn, and at the
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41 second and third largest UK grantmakers, the Leverhulme Trust and the Children's
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43 Investment Fund Foundation with grantmaking worth £81.37m and £80.81m respectively
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45 (Pharoah et al., 2016), the UK's long tail of philanthropy becomes apparent (and that the
46
47 richest foundations are not necessarily always the biggest grantmakers). Mirroring the US, a
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49 small number of large foundations dominate the picture, with 20 foundations accounting for
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51 51% of all top-300 grants (Pharoah et al., 2016).
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3 The causes that receive the majority of funding from the top-300 UK foundations are
4 'education and training', around 24%, followed, with 11% each, by 'health' and 'arts/culture';
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7 at the bottom of the list sit 'religion, rights and environment' with 3%, 2% each for the
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9 categories of 'mental health' and 'international', and finally 1% go to 'elderly' as well as to
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11 'animals' (Pharoah et al., 2016). A slightly different picture emerges from other sources. For
12
13 example, there are indications that 'education' alongside 'community/social welfare' and
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15 'children and young people' tops the causes supported by corporate foundations (Walker,
16
17 2013), and the areas of 'health', 'social welfare' and 'religion' are the highest-ranked recipients
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19 of foundation funding in the report by Traynor and Walker (2015).
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22 Given differences in focus, sample size, classification and method, comparison is
23
24 once again difficult. A picture akin to the German landscape (Anheier et al., this issue) seems
25
26 impossible to draw. In addition to the philanthropy potpourri that results from the UK's use of
27
28 the umbrella ideas of charitable purposes and public benefit to identify charities in the first
29
30 place, the kaleidoscope of activities that can be found within individual foundations present
31
32 an additional complication. This is prominently illustrated by the RS Macdonald Trust's
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34 (2017) simultaneous focus on social issues (tackling child abuse), medical issues (visual
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36 impairment, neurological conditions and medical research in general), animals (animal
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38 welfare and pet ownership) and rescue operations (funding for RNLI lifeboats, lifeboat
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40 stations and crew training) and by the Wellcome Trust's (2017) 47 different funding schemes.
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42 The latter cover the areas of biomedical science and population health research, product
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44 development and applied research, humanities and social science, and public engagement and
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46 creative industries. Here, even the notion of 'multi-purpose foundations' and the
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48 categorisation of their respective role(s) (see Anheier et al., this issue) seems to be a stretch.
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50 This then points towards some of the conceptual challenges inherent in the Foundation
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52 Triangle and this issue's frameworks.
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3 Broadly, the Foundation Triangle's categories resonate with a number of other
4 frameworks put forward to map and differentiate UK foundations. The extensive body of
5 work by Leat (1999; 2007) for example identifies five characteristics of British foundations'
6 activities (doing what the state doesn't do, pump priming, innovation, unpopular causes, and
7 emergency funding), points to three forms of grantmaking cultures (gift givers, investors, and
8 collaborative entrepreneurs), and argues that foundations' roles can be considered as
9 providing complementarity, substitution, redistribution, innovation, social change,
10 preservation of traditions and culture, and safeguarding of pluralism. The challenge with such
11 categories is that they tend to fall short on benchmarks for typological rigour and relevance
12 (Jung et al., 2016). Reviewing and examining the field of foundation classifications,
13 typologies and taxonomies, Jung et al. (2016) thus point to the criteria for assessing
14 typological quality put forward by Eppler et al. (2011). Accordingly, to be rigorous, explicit
15 classification principles need to exist, clusters need to be unique, the scope needs to be
16 specified, categories' membership needs to be clearly defined, and clear and explicit category
17 boundaries need to be provided; to be relevant, classification systems need to offer simplicity,
18 clarity, usefulness, typicality, and unique and unambiguous labels.

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38 In this regard, the utility of using foundations' purposes, activities and roles within the
39 Foundation Triangle as well as the differentiation between foundation and approach in the
40 foundation typology (Anheier, this issue) warrant further conceptual development before
41 being applied to the UK. Ideas such as 'innovation', 'complementarity', 'substitution' and
42 'build-out' within the Foundation Triangle, and notions of 'smaller' and 'larger' foundations
43 appear too broad. While indicative ideas for each category are provided (Anheier, this issue),
44 the clarity, bounding, uniqueness and usefulness of these distinctions is less obvious.
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52 Furthermore, it means that the accompanying foundation matrix (Anheier, this issue) which
53 brings together approach (operating and mixed foundations; grantmaking foundations) with
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3 size (smaller foundations; larger foundations) currently also appears to be of limited utility
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5 for the UK context.

6 7 **Examining the socio-political landscape of UK foundations**

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Alongside the organisational characteristics and expressions of foundations, this special issue's introductory paper points to the importance of foundations' wider operating contexts. Within the UK, foundations live in 'interesting times' (Association of Charitable Foundations, 2016, p. 3).

In addition to the wider tendency of foundations becoming a central component of the 'private welfare state' in Europe and the US (Boesso, Cerbioni, & Kumar, 2014), UK foundations face major shifts in Britain's policy landscape, a changing socio-political atmosphere towards and perception of foundations, and pressures towards remodelling the roles and approaches of foundations. Even prior to the Westminster government's decision to proceed with Brexit - the UK's withdrawal from the European Union - and initiating this process by triggering Article 50 of the Treaty on European Union in March 2017, foundations had witnessed major shifts and changes in the UK's social, political and economic landscapes over the last decade. Alongside the aforementioned process of devolution, a key issue has been the 2008 recession and Westminster's Conservative-led coalition government's subsequent implementation of controversial austerity measures aimed at reducing the UK's deficit.

Whether or not these measures were based on conceptual fallacies (Boyer, 2012), they have emphasised ongoing funding cuts for charities and the public sector, a shift from government grants to contracting, and the wider transfer and implementation of market ideas and ideals to charities. These have been sitting side-by-side with rising demands for, and pressures on, the charity sector as the sector tries to counterbalance a 'perfect storm' of interlocking problems: a stagnating economy, increasing unemployment, declining incomes,

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3 rising prices, housing crises, controversial welfare reforms, as well as cuts in benefits and in
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5 public and social services (Jones, Meegan, Kennett, & Croft, 2015; Macmillan, 2011; Oxfam,
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7 2012). These will continue to be major issues for charities in general, and for foundations'
8
9 funding decisions more specifically: poverty in the UK is perceived as 'endemic' (Bunyan &
10
11 Diamond, 2014, p. 5), with the UK being considered to be 'one of the most unequal nations in
12
13 the developed world' (Belfield, Cribb, Hood, & Joyce, 2016; see also OECD, 2015; Oxfam,
14
15 2016; The Equality Trust, 2017). On this basis, Hayman (2016, NP) has equated the
16
17 Westminster government itself to 'an old-style philanthropic foundation: an entity built
18
19 around a delicate truce between a benevolent rich and a grateful poor'. While this
20
21 generalisation appears unflattering and unfair to large numbers of UK foundations, it does
22
23 highlight some of the popular preconceptions and prejudices about the UK foundation sector.
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27 Within this context of pressing social, economic and political challenges, a simplistic
28
29 political 'enchantment with philanthropy' has been noticeable (Harrow & Jung, 2011, p.
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31 1055). Policy debates in the UK show more than a passing resemblance to Macdonald's
32
33 (1956, p. 3) sentiment of a foundation being 'a large body of money completely surrounded
34
35 by people who want some': there is a strong interest by policymakers in accessing
36
37 foundations' resources for their own policy agendas and ambitions. While a recurring
38
39 comment from the foundation field has been that they are reluctant to be 'sucked into
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41 replacing what government ought to be doing' (Askeland, 2010) and that 'replacing money'
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43 for government is not their role' (Espinasse, 2017), the longstanding US critique of
44
45 foundations as 'warehousing assets' has gained increased policy traction in the UK (Gaul &
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47 Borowski, 1993; Kail, 2017); the question as to whether the UK should follow the US and
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49 implement a mandatory annual minimum payout for foundations has become a recurring
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51 political issue (Bishop & Green, 2012; HM Government, 2010, 2011).
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3 Senior foundation stakeholders have compared the minimum payout idea to 'dawn
4 raids on both our [foundations'] assets and our [foundations'] independence', arguing that the
5 proposal was 'plucked out in the hope of finding more money to support charities, and came
6 without deep thought' (Emerson, 2011). The evidence-base and need for a minimum payout
7 requirement has also been questioned by recent research of foundations' grantmaking levels.
8 Comparing available longitudinal data, this has found that UK foundations already tend to
9 meet the proposed minimum payout level of 5% (Pharoah, Harrow, & Jung, 2017). With
10 strong opinions prevailing amongst proponents and opponents of minimum payout
11 arrangements for foundations (see Alliance, 2017), there is, however, an understanding and
12 acknowledgement that foundations do need to clarify their role and contribution to UK
13 society more prominently (Emerson, 2011). Demonstrating impact, legitimacy and
14 accountability have become 'operational necessities' for UK foundations (Tomei, 2013, p. 9).
15 While these are longstanding and recurring issues in global and UK philanthropy, going back
16 to at least the last quarter of the 19th century (see Bremner, 1956), they have gained renewed
17 prominence in UK foundation discourse.

18
19 Legitimacy and accountability also sit within growing questions about the nature of
20 'charity'. While within the UK trust in charities appears to remain higher than trust in other
21 sectors (Charity Commission for England and Wales, 2017d), there are clear indications that
22 recent high profile charity scandals have led to growing concerns about the ways charities
23 raise and spend their money (Charity Commission for England and Wales, 2016). In relation
24 to foundations, these scandals have tended to focus on questions about the use of foundations
25 as creative tax management vehicles (e.g. Charity Commission for England and Wales,
26 2016b) and on a general tightening of laws and regulations.

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28 A major 2013-2016 investigation into the London-based advocacy organisation Cage
29 and its perspectives and commentaries on terrorism led to trenchant critiques of two major
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3 UK foundations, the Joseph Rowntree Charitable Trust and the Roddick Foundation. The
4
5 resulting case reports point to the difficulties that foundations and their trustees increasingly
6
7 face in weighing up numerous issues: their founders' intentions and values, the interpretation
8
9 and enactment of their charitable responsibilities, 'good faith' in their grantees, external
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11 expectations of in-depth scrutiny and assessment of recipients' actual and potential objectives,
12
13 and stronger regulation (see Charity Commission for England and Wales, 2016c, 2016d).
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16 To strengthen evidence of, and knowledge on, foundations' positive contribution to
17
18 society, various developments geared towards identifying, tracing and measuring impact have
19
20 taken place. On the one hand, foundations, sector bodies and think tanks have worked
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22 together in developing Inspiring Impact, a UK-wide initiative aimed at advocating impact
23
24 measurement to, and developing more appropriate impact measurement tools for, charities.
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26 Their vision is that within the next five years, by 2022, the planning, measurement and
27
28 assessment of impact, defined as 'the difference an organisation's work makes to those it
29
30 seeks to help' will become the norm across the majority of UK charities and social enterprises
31
32 (Inspiring Impact, 2017).
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35 While intuitive and appealing, there are, though, also indications that the wider focus
36
37 on charities', and especially on foundations', impact could become problematic for
38
39 foundations, particularly, when government gets involved. This is illustrated by a recent
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41 'working paper' and accompanying 'tool' published by the UK's Cabinet Office. The declared
42
43 intention for this material is to enable foundations to achieve 'total impact' through
44
45 highlighting 'latest practice' and outlining 'crucial steps' that foundations seeking to achieve
46
47 total impact need to take (Cabinet Office, 2014a, 2014b). When examining the working paper
48
49 more closely, uncertainties about governmental agendas for, and expectations of,
50
51 philanthropic foundations arise: it is reminiscent of a proxy intervention and points towards
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53 increased oversight and control for foundations (Harrow & Jung, 2015).
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3 As the state takes a stronger interest in foundations, the evolving relationship between
4 the state and foundations warrants further exploration. While within academic discourse it is
5 widely appreciated that foundations' activities are better suited to complement rather than
6 substitute state spending, such understanding has not necessarily been reflected in the UK's
7 recent and contemporary policy discourse and approach (Daly, 2011; Healy & Donnelly-Cox,
8 2016). Indeed, the regime type associated with the UK appears to be shifting.

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10
11 Building on the work of Esping-Andersen's models of the welfare state in capitalist
12 societies, the UK's regime type for foundations has previously been described as being
13 'liberal' (Anheier & Daly, 2007). However, as Esping-Andersen's original classification has
14 been criticised for ignoring that the UK's welfare system combines both inclusive and
15 individualistic aspects (Wickham, 2005, p. 4), the extent to which the liberal regime type
16 label has been the most appropriate for UK foundations is open for discussion. Instead, a
17 more nuanced perspective of the UK's context might have been a 'liberal collectivist' one:
18 while the economic model has some resemblance with the US's, public attitudes towards the
19 roles and responsibilities of the state have tended to be more comparable to those in European
20 countries than to those in the US (Grimshaw & Rubery, 2012; Wickham, 2005). Thus, the
21 recasting of the UK as being 'liberal-market economy like' (Anheier, this volume) seems
22 preferable. The extent to which the UK's liberal collectivist approach will survive is,
23 however, uncertain. With the Westminster government's intensified pursuit of, and reinforced
24 emphasis on, neoliberalism, the UK's model is in a flux: it could easily turn into a full liberal
25 market economy (Grimshaw & Rubery, 2012). Indeed, there are increased public questions as
26 to whether the Westminster government's approach to Brexit is merely a veil for further
27 'exposing the UK to the full rigours of the market and global capitalist forces' (Crook, 2017;
28 Merrick, 2017).

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3 Simultaneously to being seen as a readily available financial resource, foundations
4 also face the pressure of being asked to act as a conduit for encouraging and facilitating
5 innovation (e.g. Smith Institute, 2013). Recognising the wider need for exploring different
6 ways in which the UK's socio-economic and political challenges can be addressed
7 (Association of Charitable Foundations, 2017a), foundations have thus started to examine a
8 number of new avenues. These mirror the internationally noticeable interest in models of
9 philanthrocapitalism (see Salamon, 2014; also Hammack and Smith, this issue), with
10 widespread UK discussions about the advantages and disadvantages of alternative funding
11 models, such as charity bonds, social impact bonds, social impact investment partnerships,
12 'try before you buy' approaches and social bridging finance (see Robertson Trust, 2016).
13 From these, a set of commonalities have been identified in expert exchanges initiated and led
14 on by one of Scotland's largest foundation, the Robertson Trust. Summarised in a 3P model
15 of alternative funding approaches, this argues that all of these approaches: are concerned with
16 prevention as investment, necessitate wider partnerships, and need a rigorous approach for
17 linking investment or funding to performance (Mair, 2016).
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35 Especially, the notion of wider partnerships and collaborations has been noticeable
36 amongst UK foundations. These range from attempts at taking on new roles and trying to
37 work more closely with government (e.g. Jung, Kaufmann, & Harrow, 2014) to improving
38 funders' understanding of the grantmaking landscape and exploration of non-financial support
39 mechanisms that foundations can provide. Thus, alongside a new 360 Giving platform aimed
40 at identifying and mapping disparate foundation activities and developing a complete dataset
41 of all charitable grants in the UK (360 Giving, 2017), a number of leading foundations have
42 started to place special emphasis on taking a more inclusive and applied perspective on
43 working with grantees – from offering advice on strategy development and PR, to working
44 with grantees on building their networks and capacities. Examples include variations on the
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3 Funders Plus framework developed by the Diana Princess of Wales Memorial Fund (DP
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5 Evaluation, 2012), the more recent Grants Plus programme advocated by the Esmée Fairbairn
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7 Foundation, the Robertson Trust and others (Esmée Fairbairn Foundation, 2017), as well as
8
9 the John Ellerman Foundation's (2017) emphasis on being a 'responsive funder' and the Rank
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11 Foundation's (2017) 'engaged philanthropy' framework.
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14 While these go beyond the 'Make it your own awards' approach trialled by the Case
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16 Foundation in the US (Gibson, Levine, & Deitz, 2010) and appear ahead of developments in
17
18 Germany, where foundations' interest in engaged philanthropy is still more emergent,
19
20 knowledge on, and for, more collaborative approaches to foundations' activities has seen
21
22 limited theoretical exploration to-date.
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24 **Concluding thoughts**

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27 Turbulent times are a recurring theme for UK foundations, from the dissolution of the
28
29 monasteries and the appropriation of their assets in the early 16th century to the more recent
30
31 demands that have arisen since the 2008 recession. Foundations' relationship with
32
33 government remains in a state of flux (Association of Charitable Foundations, 2016). If
34
35 anything, it is going to become more difficult. To this end, calls for more nuanced and
36
37 reflective understanding of UK foundations' organisational characteristics, expressions and
38
39 practices remain pertinent.
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42 When comparing UK foundation policy, practice and research discourses to those in
43
44 Germany and the US, it is clear that the diverse foundation forms, approaches and
45
46 distinctions within the German and US landscapes resonate with a variety of organisations in
47
48 the UK's nonprofit and public sectors. Yet, in the UK most of these are currently not
49
50 considered to constitute foundations – emphasis is placed on the grantmaking form. This not
51
52 only limits the extent to which the UK foundation landscape can be compared in a
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54 meaningful way to developments in Germany and the US, it also appears to restrict the
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3 extent to which UK foundations' potential can be harnessed in the current and forthcoming
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5 shifts in the UK's socio-political and economic landscapes.

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7 Chiming with wider discussions about foundations that have been articulated in other
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9 countries – including the role, rationale and perception of philanthropy, as well as changing
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11 perspectives on foundations' governance and practice (see Buchanan, 2016) – there are
12
13 ongoing tensions in the UK between political traditions of mutuality and reciprocity on the
14
15 one hand, and the governmental vision of rolling back the state with an expectation that the
16
17 charity sector will fill the resulting gaps on the other (see Daly, 2011; Macmillan, 2011;
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19 Jones et al., 2015). With the recent release of a report on the sustainability of the charity
20
21 sector and wider challenges of charity governance by the House of Lords Select Committee
22
23 on Charities (2017), there is also little doubt that on top of the pressing current socio-political
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25 issues that foundations already face and try to address, the UK's leaving of the EU will lead
26
27 to further headaches in the foundation world.
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31 In light of Brexit, substantial shortfalls in funding for all areas of public life are
32
33 widely anticipated. Not only will this result in an inevitable increase in funding applications
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35 and competition for foundation resources, but in a recent series of commentaries on
36
37 'Foundations and Brexit', foundation representatives highlight some of the wider effects this
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39 is likely to have on the diversity of, and approach to, their funding: funding for science,
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41 research, culture and the environment will need to be weighed up against addressing poverty,
42
43 inequality, and basic public services (Association of Charitable Foundations, 2017a). In
44
45 addition, Brexit presents UK foundations with questions about their own future
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47 organisational identities and self-perception: what will be their role in, and relationship to, the
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49 wider European and international foundation landscape (Salole, 2017)?
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For Peer Review

Tables

Table 1 – Charity regulators, criteria and structures across the UK's jurisdictions

	Scotland	Northern Ireland	England and Wales
Key legislation	Charities and Trustee Investment (Scotland) Act 2005	Charities Act (Northern Ireland) 2008	Charities Act 2011
Regulator	Office of the Scottish Charity Regulator (OSCR) - independent, non-ministerial department	Charity Commission for Northern Ireland - independent, non-departmental, public body	Charity Commission for England and Wales - non-ministerial government department
Criteria used in determining whether an organisation constitutes a charitable body	Requirement to pass charity test's two requirements of 1. It must have only charitable purposes 2. Activities must provide public benefit in Scotland or elsewhere	Must have purposes which fall under one of 12 descriptions of purposes listed in the Charities Act and the purposes must be for the public benefit.	Requirement to meet two principles: 1. There must be an identifiable benefit or benefits and 2. Benefit must be to the public or a section of the public
Charitable purposes as defined by regulator	<ul style="list-style-type: none"> Prevention or relief of poverty Advancement of education Advancement of religion Advancement of health (including the prevention or relief of sickness, disease or human suffering) Saving of lives Advancement of citizenship or community development (including rural or urban regeneration and the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities) Advancement of the arts, heritage, culture or science Advancement of public participation in sport (and 'sport' means sport which involves physical skill and exertion) Provision of recreational facilities or the organisation of recreational activities, 	<ul style="list-style-type: none"> The prevention or relief of poverty The advancement of education The advancement of religion The advancement of health or the saving of lives The advancement of citizenship or community development The advancement of the arts, culture, heritage or science The advancement of amateur sport The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity The advancement of environmental protection or improvement The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage The advancement of 	<ul style="list-style-type: none"> The prevention or relief of poverty The advancement of education The advancement of religion The advancement of health or the saving of lives The advancement of citizenship or community development The advancement of the arts, culture, heritage or science The advancement of amateur sport The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity The advancement of environmental protection or improvement The relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage The advancement of

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	<p>with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended, and only in relation to recreational facilities or activities which are:</p> <p>(i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or</p> <p>(ii) available to members of the public at large or to male or female members of the public at large.</p> <p>(Office of the Scottish Charity Regulator 2017c)</p>	<p>animal welfare</p> <ul style="list-style-type: none"> • Any other charitable purposes. 	<p>animal welfare</p> <ul style="list-style-type: none"> • The promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services • Any other charitable purposes
<p>Charitable structures</p>	<p>Across the UK, four main types of charity structures exist. Two of these are corporate bodies, i.e. perceived as constituting an individual legal entity, two are not. Of these, only three are currently listed in Northern Ireland, though the fourth is forthcoming.</p>		
	<p>Legal forms with a corporate body:</p> <ul style="list-style-type: none"> • Charitable Company Limited by Guarantee (CLG) • Scottish Charitable Incorporated Organization (SCIO) <p>Legal forms without a corporate body:</p> <ul style="list-style-type: none"> • Unincorporated association • Trust 	<p>Legal forms with a corporate body:</p> <ul style="list-style-type: none"> • Charitable Company • (Charitable Incorporated Organization – specified in the Charities Act (Northern Ireland) 2008 but not yet commenced at the time of writing) <p>Legal forms without a corporate body:</p> <ul style="list-style-type: none"> • Unincorporated association • Trust 	<p>Legal forms with a corporate body:</p> <ul style="list-style-type: none"> • Charitable Company Limited by Guarantee (CLG) • Charitable Incorporated Organization (CIO) <p>Legal forms without a corporate body:</p> <ul style="list-style-type: none"> • Unincorporated association • Trust
<p>Based on Charity Commission for Northern Ireland 2014, Charity Commission for Northern Ireland 2016, Charity Commission for England and Wales 2017c, Office of the Scottish Charity Regulator 2017c, Office of the Scottish Charity Regulator 2017d.</p>			

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