

Working Draft: Response to Code of Fundraising Practice consultation 2024

Introduction

We are pleased to share this working draft of our response to the Code of Fundraising Practice consultation 2024, ahead of the deadline on 1st November.

The responses we have gathered so far draw on the expertise of a wide range of members, as well as discussions we have facilitated between members and the Fundraising Regulator. The feedback we have collected so far is not final and we hope that by sharing this draft members will have a clear picture of charities' initial thoughts on the Code.

We encourage all members to share any additional feedback they have by emailing charlottes@ciof.org.uk.

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Section 1: Behavior when fundraising - <https://www.fundraisingregulator.org.uk/code-consultation-2024/section-1>

1.1.2 You must take all reasonable steps to ensure your fundraising is conducted in a way that reflects positively on fundraising in general. This includes:

- Not unreasonably intruding on a person's privacy;
- Not placing undue pressure on a person to donate;

- Not using unreasonably persistent approaches; and
- Accepting a request to end an interaction.

Our response: We are pleased this standard has become more streamlined and references to being polite have been removed.

However, our members are concerned that the first bullet point is open to a wide range of interpretations which could cause confusion for fundraisers and donors alike. Whilst one person might consider a certain approach an unreasonable intrusion of privacy, another might be comfortable with. As such, we believe that there should be more guidance from the Regulator- in partnership with CIOF and our members- providing more detail on what unreasonable intrusion into someone's privacy would entail, and how this applies to different fundraising specialisms.

1.2.8 You are not expected to assess every existing or potential donor's capacity to make an informed decision. The Chartered Institute of Fundraising (CIOF) provides guidance on Treating donors fairly.

Our response: We believe the wording 'You are not expected to assess every existing or potential donor's capacity to make an informed decision.' could mislead charities and their partners on their duty of care to donors in vulnerable circumstances.

Although fundraisers cannot provide professional mental capacity assessments, our members believe they should be able to recognise signs that someone is in a vulnerable circumstance and the appropriate steps to help them make a fully informed decision on their donation. As such, we recommend you amend this wording to:

"You are not expected to carry out formal assessments of mental capacity, however, you should be alert to the signs that someone lacks the mental capacity to make an informed decision about their donation and take appropriate steps to support them. The Chartered Institute of Fundraising (CIOF) provides guidance on Treating donors fairly."

Other comments

Our response:

The shift to a principles-based approach is widely welcomed by our members. Some charities have highlighted that they think this approach, backed-up by additional guidance, could make fundraising regulation more agile and responsive to changes in technology, legislation and best practice. But members are also conscious this is a significant change to fundraising regulation and have several

questions regarding how this approach will work in practice, notably in relation to self-reporting, additional guidance to support Code compliance and how to best navigate the transition period.

Further guidance on key areas of fundraising will be integral to ensuring all charities are confident they are following best practice, as well as enabling regulation to keep up with changing market conditions. But some members are concerned that when the new Code comes into force next year, much of this guidance will not have been created, creating a gap that could leave some charities, particularly those who do not have specialist compliance teams, unclear on how to move into new areas of fundraising or benchmark their current approach. Our members recognise that producing this guidance will take time and are happy to support you in developing it as soon as possible. With this in mind, some members have offered to share guidance they have produced internally that covers relevant regulations and best practice, in the hope it will provide you with a strong starting point for your own work. We are happy to facilitate and discuss potential next steps with you.

In addition to this, several charities have questions regarding how to approach self-reporting under a principles-based approach. As several standards have been merged to create more holistic ones, this has made them more subjective. Consequently, as charities become accustomed to the new Code, they may be unsure to whether they have met a certain standard and if they should notify you. They would benefit from further guidance on this area.

This challenge is not unique to fundraising, many charities have raised similar questions when deciding whether to self-report to the Information Commissioner's Office (ICO). They found that the guidance produced by the ICO on this matter informative and easy to understand, and therefore recommend you take their approach into consideration when developing your own guidance.

As we move forward, our members would like the proposed six-months transition period to be positive and productive for both you and charities. This will be a critical opportunity to establish if any new standards are creating unintended consequences, and how casework will adapt. They recognise that you are currently still deciding what resources you will produce to support charities during this time, and believe the following would be helpful:

- Re-publishing past casework, explaining how these investigations would be adjudicated on under the new Code;
- Producing examples and case studies of common fundraising challenges and how they would be adjudicated on under the new Code;
- Introducing a sandbox where charities could test new approaches and processes;
- Introducing a 'grace period' during which casework is anonymised, allowing charities to learn how casework is evolving whilst limiting the reputational risk of organisations who have inadvertently breached the new Code.

Finally, whilst our members are pleased that you are consulting on the final version of the new Code, they believe that to fully assess any new standards, they need to put them into practice. They are therefore calling for an additional consultation either during or at the end of the transition period so they can highlight how standards can be improved.

We recognise that this is a significant moment in fundraising regulation that has raised many critical questions about the future. Our members warmly welcomed the opportunities for direct dialogue with you through the recent webinars and roundtable discussions we hosted alongside our partner Bates Wells. As we move forward, they hope that there will be further opportunities for open and constructive discussions on the Code and how it will be implemented, which we look forward to facilitating.

Section 2: Responsibilities of those who govern charitable institutions- <https://www.fundraisingregulator.org.uk/code-consultation-2024/section-2>

Other Comments

Our response:

Overall, our members think this section reads well and provides trustees and those that govern charities with relevant and important information about their responsibilities.

To build on this, they would like to see this section expanded in the future to include signposting to guidance on evolving areas of best practice, including crypto currencies and AI. Doing so would ensure that future guidance in these areas is easy to find and increase charities' engagement with them.

Section 3: Processing personal data- <https://www.fundraisingregulator.org.uk/code-consultation-2024/section-3>

We have not currently received feedback from members about this section but encourage all charities to share any thoughts they have by emailing charlottes@ciof.org.uk .

Other Comments

Our response:

Our members would like to update the legal signposting at the end of this section to clarify when fundraisers can contact people registered with the Telephone Preference Service.

Although a charity cannot contact someone who has registered with the Telephone Preference Service (TPS) on the basis of legitimate interest, they can do so if the person has given consent to be contacted. They therefore recommend the following:

- Including an additional signpost to the ICO's guidance on Telephone marketing- <https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/guide-to-pecr/electronic-and-telephone-marketing/telephone-marketing/#:~:text=You%20must%20not%20make%20an,type%20of%20call%20from%20yo>
[u](#).
- Re-wording the section 'Fundraising Communications' to highlight that fundraisers can still contact donors registered with the TPS if they have given the charity consent to call them.

Section 4: Processing donations- <https://www.fundraisingregulator.org.uk/code-consultation-2024/section-4>

4.5.2 If you are charged for transferring payments, you must record the total donation amount as 'income' and record the charges in your accounts as 'expenditure'.

Our response:

Some of our members are unclear on how and where to record the charges as 'expenditure'. They would like more clarity on whether this needs to be recorded in their fundraising CRM, or as part of their financial accounts.

Other comments**Our response:**

Our members are pleased that this section has become more streamlined, however, they would the Regulator to clarify whether contactless payment mechanisms are considered part of section 4.5- Card and contactless transactions, or if they are covered elsewhere in this section.

Section 5: Volunteers- <https://www.fundraisingregulator.org.uk/code-consultation-2024/section-5-volunteers>

We have not currently received feedback from members about this section but encourage all charities to share any thoughts they have by emailing charlottes@ciof.org.uk .

Other Comments

Our response:

Section 6: Fundraising involving children and people in vulnerable circumstances- <https://www.fundraisingregulator.org.uk/code-consultation-2024/section-6>

We have not currently received feedback from members about this section but encourage all charities to share any thoughts they have by emailing charlottes@ciof.org.uk .

Other Comments

Our response:

Section 7: Fundraising partnerships- <https://www.fundraisingregulator.org.uk/code-consultation-2024/section-7>

7.4.1

You must make a solicitation statement before (as applicable):

- a potential donor gives any money (or in a commercial participation, before a donor purchases the product or service); or
- you ask for any financial details relating to the transaction.

Our response:

We agree with the approach of signposting to the appropriate legislation under this standard, however, our members are conscious that legislation does not require in-house fundraisers to give the same disclosure statements as those described in the Charities Act 1992 as "Professional fundraisers". As such, we would like the Regulator to include provisions in this section regarding solicitation statements for in-house face-to-face fundraisers.

Other comments

Our response:

We agree with the approach of signposting to the appropriate legislation under this standard, however, our members are conscious that legislation does not require in-house fundraisers to give the same disclosure statements as those described in the Charities Act 1992 as "Professional fundraisers". As such, we would like the Regulator to include provisions in this section regarding solicitation statements for in-house face-to-face fundraisers.

Section 8: Public fundraising- <https://www.fundraisingregulator.org.uk/code-consultation-2024/section-8>**8.2.2**

You must treat the locations where you are fundraising with respect and must not leave bags or other property unattended or cause an obstruction or nuisance to the public or other businesses.

Legal signposting:

For street collections and, this includes not positioning yourself within three metres of:

- a shop entrance;
- a pedestrian crossing;
- a cashpoint machine;
- a station entrance;
- a market stall; or
- a street trader, vendor or busker.

For private site collections, this includes:

- working within one metre of the promotional stand (or equivalent). The promotional stand must be no more than one metre away from the shopfront.

If this goes against any conditions included in an agreement with the relevant site owner or manager, the site agreement will apply.

Our response:

Our members would like to update the legal signposting that accompanies this standard to clarify how different agreements have different requirements. They recommend changing the wording to:

“For street collections **and private site collections booked with a council or local authority**, this includes not positioning yourself within three metres of:

- a shop entrance;
- a pedestrian crossing;
- a cashpoint machine;
- a station entrance;
- a market stall; or
- a street trader, vendor or busker.

If you have a stand for your collection then you must remain in sight of it.

For private site collections **booked with a retailer**, this includes:

- working within one metre of the promotional stand (or equivalent). The promotional stand must be no more than one metre away from the shopfront.

Please note, the 1 metre rule only applies to collections that take place outside a shop. Where a site agreement states collections can take place within a business, then you must remain in the area outlined in the site agreement.

If this goes against any conditions included in an agreement with the relevant site owner or manager, the site agreement will apply.”

8.3.1

You must not carry out collections at properties where residents have made it clear they do not wish to be disturbed. This includes:

- A sign reading "no cold callers" or similar; and
- A group of properties in a "no cold calling zone".

Our response:

Our members are concerned that this new standard could create confusion to where charities can carry out door-to-door collections.

There are several signs that people can place on their door or letterbox that indicate they do not want to be contacted, including “no cold callers”, “no traders”, or “no charity fundraisers”. It can therefore be challenging to determine whether a sign is aimed at charitable fundraisers. Our members therefore recommending reinstating the wording of the previous standard:

“You must not knock on the door of any property that displays a sticker or sign which includes the words ‘no cold-calling’, ‘no cold-callers’, ‘no charities’, ‘no charity canvassers’ or ‘no charity fundraisers’.”

8.4.1

You must ensure you have appropriate permissions before starting your fundraising activities and ensure that your activities meet the requirements of the licence, permit, exemption order or permission which applies to your activities.

Accompanying legal signposting

The requirements of licenses and permits vary, but, in general, you will be expected to:

- Apply to the relevant authority in good time before the collection is due to take place;
- Only fundraise on the permitted dates, at the permitted times and in the permitted areas;
- Conduct appropriate due diligence on fundraisers;
- Ensure fundraisers meet minimum age requirements; and
- Provide the necessary official materials and appropriate authorisations to fundraisers.

Some licences and permits may also require you to provide the names and details of individual fundraisers in an area.

More information on exemption orders can be found [here](#).

Our response:

Our members agree with the wording of the standard; however, they would like the legal signposting that accompanies to include more information about the National Exemption Order (NEO) scheme to ensure charities are fully aware of the different ways they can legally carry out house-to-house collections.

They recommend re-writing the final line “More information on exemption orders can be found here” to:

“If you have a National Exemption Order issued by the Department of Culture, Media and Sport, then you do not need to apply for individual licenses to carry out door-to-door fundraising activities. More information on exemption orders can be found here”.

8.4.4

You must ensure that fundraisers and vehicles used for fundraising activity can be clearly identified as representing your charitable institution.

Our response:

Our members would like to see this standard expanded with further details on how fundraising vehicles should be made identifiable. Whilst some charities do have fully branded vehicles, many do not have the budget for this and instead opt for a sticker in the windshield. They would like reassurance that the latter of these approaches complies with the Code.

8.4.5

You must ensure that your fundraisers have appropriate identification for the activity they are carrying out.

Our response:

Our members would like to expand this standard to state that when a charity does not use a stand for a collection, fundraisers must wear identifiable charity branded clothing. This would ensure the public identify legitimate fundraisers and mitigate against fraud.

Other Comments**Our response:**

Our members propose including a new standard in section 8.2: Street Collections and Private site that requires fundraisers to keep records of the dates, times and areas where collections have taken place.

This was a requirement under standard 8.4.20 in the previous Code, which ensured that there were clear records of what site bookings had been made and with whom, enabling charities and agencies to demonstrate that correct procedures had been followed. It is now an essential part of best practice, so our members would like to see these standards maintained in the new Code.

Section 9: Fundraising communications and advertisements-

<https://www.fundraisingregulator.org.uk/code-consultation-2024/section-9>

Other comments

At the start of a fundraising call, you must:

- Check the person is happy for you to contact them at that time; and
- Make clear you are asking for financial or other support (this includes when leaving a voicemail)

Our response:

Our members have raised concerns that this standard has changed significantly from the previous standard 9.4.16 “You must make clear that you are asking for financial or other types of support.” and believe this new standard would impact supporters’ experience.

Many people will interact with a charity several times before choosing to donate to them, including volunteering, reading information on their website or engaging with them on social media. As such, they prefer a holistic experience where they are invited to talk about a range of topics before discussing fundraising. Our members believe that requiring fundraisers to state at the beginning of the call that they are asking for financial support limits the scope of the conversation early on and reduces fundraising to a purely financial transaction. Our members would therefore like to reinstate the previous standard in this new Code.

Other comments

Our response:

Our members would like to update the legal signposting “Legal requirements for fundraising calls” at the end of section 9.3 Fundraising Calls to fully reflect PECR legislation.

PECR Section 19: Use of Automated Calling System defines automated calling systems as one that initiates a sequence of calls and transmits recorded messages. It also states that businesses cannot use them without someone’s consent.

Whilst our members agree that signposting to this piece of legislation will help charities understand what systems they cannot use, they believe the current wording in the Code could mislead charities to believe that all automated dialers are prohibited. When an automated dialer is used to connect donors to fundraising representatives, charities are not required under PECR to ask for someone’s consent. Indeed, this has become common practice in telephone fundraising and has been proven to improve efficiency whilst providing donors with a positive experience. With this in mind they recommend changing the wording of this bullet point to:

“Make automated phone calls **through** automated dialling system (unless you have the person's consent to do this)”.

On top of this, members signposting to ICO guidance on telephone marketing so fundraisers can find more about the rules relating to telephone fundraising- <https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/guide-to-pecr/electronic-and-telephone-marketing/telephone-marketing/#:~:text=You%20must%20not%20make%20an,type%20of%20call%20from%20you.>

Section 10: Online fundraising platforms- <https://www.fundraisingregulator.org.uk/code-consultation-2024/section-10>

We have not currently received feedback from members about this section but encourage all charities to share any thoughts they have by emailing charlottes@ciof.org.uk .

Our response:

Section 11: Events- <https://www.fundraisingregulator.org.uk/code-consultation-2024/section-11>

We have not currently received feedback from members about this section but encourage all charities to share any thoughts they have by emailing charlottes@ciof.org.uk .

Our response:

Section 12: Lotteries, prize competitions and free draws- <https://www.fundraisingregulator.org.uk/code-consultation-2024/section-12>

12.2.1 You must ensure all valid ticket entries are included in the draw, that it is witnessed, and the result is recorded.

Our response:

Although our members agree that in-person draws should be witnessed, they feel this standard does not account for draws that use specialist software to identify winners, such as random name generators. In these cases, it is unclear if the witness is the person using the software, or if an additional person must be present. As such, they would like this standard expanded to include further details on how to carry out online prize draws fairly and in compliance with the Code.

Section 13: Grant making bodies (including trusts and foundations)-

<https://www.fundraisingregulator.org.uk/code-consultation-2024/section-13>

We have not currently received feedback from members about this section but encourage all charities to share any thoughts they have by emailing charlottes@ciof.org.uk.

13.1.1 You must prepare your grant applications responsibly. This includes:
Ensuring you have appropriate permission to include any referees in your application.

Avoiding mass mailings to grant-making bodies, except in exceptional circumstances, for example a national disaster or emergency.

Our response:

Our members would like more clarity on what would be considered 'mass mailings' to grant-making bodies. Whilst all fundraisers should take care to send tailored applications, several grant-making bodies may ask for the same information, in the same format. In these circumstances some of our members feel it is reasonable to send them a mail merge, saving the charity time whilst ensuring the grant-maker receives the appropriate information. With this in mind, they would like this standard expanded to explain what constitutes a mass mailing.

Section 14: Payroll giving and post-tax salary donations-

<https://www.fundraisingregulator.org.uk/code-consultation-2024/section-14>

14.1.2

You must not offer any benefits to donors and must ensure that any references to different levels of tax relief are correct.

Our response:

Our members would like to update this standard so it aligns with HMRC guidance Chapter 4: Payroll Giving.

Currently, 4.4.9 of HMRC guidance states "If a charity provides benefits (for example, free admission to properties or free or discounted tickets to events) in return for donations, the employee's donations will not qualify for relief under Payroll Giving. However, items of low value, for example newsletters, stickers or badges, would still allow an employee's donations to qualify for relief under the scheme."

With this in mind, our members propose re-wording the standard to the below, as well as including signposting to HMRC's current payroll giving guidance-

<https://www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-4-payroll-giving#chapter-42-payroll-giving-agencies>

“Any benefits you offer donors must align with HMRC guidance, and you must ensure that any references to different levels of tax relief are correct.”

Other Comments

Our response:

Our members recommend updating the statement underneath the section title that states, “In this section, ‘you’ means a payroll-giving agency or a professional fundraiser involved in payroll giving or post-tax salary donations, unless we say otherwise.” to fully reflect the different organisations involved in promoting payroll giving.

To take part in payroll giving, businesses must have a contract with an HMRC-approved Payroll Giving Agency (PGA), who administers the scheme. Once the scheme is set up, Professional Fundraising Organisations (PFOs) and Charities can then promote payroll giving to the businesses’ employees. Whilst the description in the introduction of the role of PGAs is accurate, many of the standards in this section apply to PFOs who are proactively promoting the scheme. As such, our members recommend re-wording the above statement to:

“In this section, ‘you’ means a professional fundraising organisation, or a professional fundraiser involved in payroll giving or post-tax salary donations, unless we say otherwise.”

Section 15: Legacies- <https://www.fundraisingregulator.org.uk/code-consultation-2024/section-15>

15.1.3

If a potential testator asks you or any of your officers or employees to act as executor, you must carefully consider the risks and potential conflicts of interest that could arise in meeting the duties and responsibilities as executor.

Legal Requirements for acting as an executor

In England and Wales: Under the Administration of Estates Act 1925, if you are appointed executor, you are legally required to only take out the grant of representation in your own name if you have the power to do so.

Our response:

Our members recommend expanding the section 'Legal requirements for acting as an executor' to highlight that charities who have been named as an executor must always act in the interest of the estate, rather than their own charity.

All executors, whether they are charities, legal professionals, or members of the public, have a duty to carry out the terms of a Will and distribute the relevant assets to all beneficiaries. Although charities take great care to ensure a testator's final wishes are carried out, referencing this in the Code would be a relevant and timely reminder of their responsibilities.

15.1.3

There are considerable risks in paying the costs involved in making a will which includes a legacy to you. But if you choose to do this, you:

- Must not insist that you receive a legacy or that you are appointed as executor in exchange for paying for the will;
- Must always recommend to the potential testator that they should get independent legal advice; and
- Must make it clear to the potential testator that the solicitor or other will writer will be acting only in their interests and on their instructions.

Our response:

Our members would like to update this standard to reflect the different levels of legal advice Will-writing partners can provide and ensure supporters are fully aware of what the partnership is offering. They recommend:

1. Amending the second bullet point to:

"[Charities] Should recommend when appropriate that the testator get independent legal advice, if this service is not provided by the Will-writer."

2. Including an additional bullet point stating:

"[Charities] Must make clear what legal or professional advice can be offered through the service"

These changes would ensure the Code reflects the broad range of players in the Will-writing market and ensure donors have the necessary information to make an informed decision whether to use a free or discounted Will-writing service. Following advancements in legal technology, and an increase in online Will-writing services, there are now a wide range of Will-writing partners for charities to work with, including local and national law firms, online platforms and independent Will-

writers. Each type of organisation is subject to different regulations and can offer different levels of legal and financial advice.

One of the most common types of partners that many charities work with are solicitors and law firms, who are required by the Solicitor's Regulatory Authority (SRA) to uphold the law and act in the best interest of their clients ([SRA Principles:1 and 7](#)). As such, the legal advice they provide is an integral part of the service being offered. Our members therefore believe that recommending the public seek supplementary legal advice prior to engaging with a legal partner would only create unnecessary costs for supporters that give them no additional benefits or legal protections.

Our members do recognise, however, that some charities partner with unregulated Will-writers who do not provide legal advice and/or advice that is tailored to the individual's circumstances. Whilst these partners can still offer a robust service and help the public write legally valid Wills for simple estates, it is important that supporters do their own research into whether the service is suitable for their circumstances. In these instances, our members agree it would be appropriate for charities to include information on their website outlining the level of advice their partner can offer and advising donors to get their independent legal advice.

Other comments

Our response:

Our members think the legal signposting at the end of this section 'Legacies with conditions' could be expanded upon to reflect best practice.

In cases where a charity cannot meet the conditions of a legacy gift, charities will often reach out to the executor to offer their condolences and identify any suitable alternative uses for the gift. Doing so ensures the testator's final wishes are met, whilst making it easier for the executor to manage the estate. Our members would like to see the option to engage with executors included in this section of the Code, or incorporated into future guidance on legacy fundraising.

CC02: Due Diligence- <https://www.fundraisingregulator.org.uk/sites/default/files/2024-08/CCG02%20-%20Due%20Diligence%20v5.pdf>

Our Response to this guidance:

Our members warmly welcome the opportunity to feedback on this guidance and think that overall, the document covers the situations most relevant to fundraising. To build on the advice you have put forward, like to expand the section 'Fundraising partners and others you work with' to recommend that charities carry out due diligence into a potential partner or supplier's commercial viability.

Charities will often be asked to pay for some or all of a service in advance. Whilst this is common practice, if the partner or supplier closes or becomes insolvent then charities can rarely recover these funds. It is therefore essential that charities conduct due diligence into published company accounts to determine the robustness and sustainability of any potential partner. With this in mind, our members recommend:

- Including an additional bullet point under the section 'You checks should include' that states "a review of published company accounts to verify the commercial sustainability of the business or partner".
- Amend tip 6 at the end to say "Before entering into any an agreement with a third-party fundraiser, or others directly related to your fundraising activity such as commercial suppliers etc. you must carry out proportionate due diligence, **including verifying their business and reviewing relevant published company accounts**".