

COMPLIANCE FRAMEWORK

November 2017 v1

FOREWORD

Welcome to our Compliance Framework

We have been asked by some members if we could provide a compliance framework to help organisations ensure they had the necessary structure in place to meet compliance requirements. Following a difficult couple of years, recent fines and adjudication outcomes, as well as the fast approaching advent of the GDPR, there has probably never been a better time to have a robust compliance programme in place.

While this framework is currently aimed at charities and direct marketing, the overall premise, references and some templates are equally applicable to other organisational and campaign types.

You should have started getting ready for GDPR and a compliance programme will certainly assist you. Remember that GDPR applies to your whole organisation (not just your donor data) and there may be a lot of preparation work to be done - make sure you read references to Privacy by Design and Privacy Impact Assessments as well as following the links to GDPR guidance.

Our compliance framework suggests things to consider when building your compliance programme and provides toolkits including documents to read, tips, examples and checklists to help you through your compliance journey. There are also quick reference guides to regulation and other supporting documentation as well as a detailed Glossary.

It should be noted that this is purely guidance and a starting point - you should read the full guidance referenced to ensure context and not rely solely on the information contained herein. While the IoF will make every effort to ensure this document is kept up to date, it is the responsibility of organisations to make sure they are fully compliant with both statutory and non-statutory regulation.

To assist us to improve our service to members and to build shared knowledge and understanding, please tell us of any topics you feel need further information, guidance and support (compliance@institute-of-fundraising.org.uk). If you have uncovered particularly useful tools, guides or learning materials, let us know so that we can share these with other members.

We hope you find this framework helpful.

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SECTION 1 – BUILDING AN EFFECTIVE COMPLIANCE PROGRAMME FOR YOUR CHARITY

Introduction

A compliance programme is designed to assist your organisation to meet its obligations and to reduce the risk of breaking the law. A compliance programme should result in your organisation being able to demonstrate and evidence its commitment to compliance with relevant laws, including legislative requirements, industry codes, organisational standards as well as other standards of good corporate governance, ethics and sector expectations.

The [Fundraising Regulator](#) sets the standards for charitable fundraising across the UK, in consultation with national regulatory and sector bodies, charities and the public. For charities registered in England, Wales and Northern Ireland, the Fundraising Regulator deals with public complaints about fundraising. The [Scottish Fundraising Standards Panel](#) deal with complaints relating to Scottish registered charities.

Charities in England, Wales and Northern Ireland and third party fundraisers can register with the Fundraising Regulator and find guidance on its website, the website of the [Charity Commission England and Wales](#) and [Charity Commission Northern Ireland](#). Scottish registered charities can find national guidance on the Scottish Fundraising Standards Panel website and the website of the [Office of the Scottish Charity Regulator](#) (OSCR). Please use the links to see what is available.

Why Have a Compliance Programme?

A compliance programme provides an opportunity to not only improve your organisation's performance, but also to reduce the potential cost of failing to meet legal and other self-regulatory obligations. A robust compliance programme is crucial to ensure that your organisation complies with their obligations under the relevant laws and regulations.

It should also monitor and record instances of non-compliance and demonstrate how they have been/are being addressed by internal or external actions. The purpose of a compliance programme is threefold: to enable your organisation to meet their obligations under relevant laws; to help your organisation comply with the Code of Fundraising Practice; and to enhance the donor experience.

Six things to consider before you build a compliance programme:

1. Identify and prioritise what specific compliance requirements you want to target (e.g. internal requirements, code compliance or legal compliance?).
2. Assess and understand the range of consequences if you do not comply (e.g. negative judgments by the Fundraising Regulator or fines by statutory regulators?).
3. Gauge the likelihood and severity of non-compliance (e.g. your risk assessment procedures should be routinely measuring and mitigating risks).
4. Consider the perceived vs actual level of existing compliance (e.g. do donors/stakeholders view your organisation differently than you do? Why?).
5. Isolate possible reasons for existing non-compliance; (e.g. methodically assess non-compliance in three tranches: people, policies and processes – you can then prioritise action more effectively).
6. Evaluate compliance controls already in place and their strengths and weaknesses (e.g. do you have the right controls but they are not being implemented properly, or do you have inappropriate or ineffective controls?).

3 Principles and 12 Basic Steps of a Compliance Programme

The 3 principles of an effective compliance programme:

1. Compliance programmes must be relevant and proportionate to the importance of their desired outcomes.
2. Programmes to verify compliance must therefore be efficient and proportionate to members' costs and burden, without compromising desired outcomes.
3. Costs of ensuring compliance must be proportionate to the benefits of compliance.

12 Basic Steps to Better Compliance*

Commitment

1. Commitment by the governing body and senior management to effective compliance, which is then embedded throughout the entire organisation.
2. The compliance policy is aligned to the organisation's strategy and business objectives, and is endorsed and owned by the governing body.
3. The governing body and senior management endorse the objectives and strategy of the compliance programme.
4. Appropriate resources are allocated to develop, implement, maintain and improve the compliance programme.
5. Individual and collective compliance obligations are both clearly identified and regularly assessed.

Implementation

6. Responsibility for compliance outcomes is clearly articulated and assigned.
7. Competence and training needs are identified and addressed to enable employees to fulfil their compliance obligations.
8. Behaviours that create and support compliance programmes are encouraged, and behaviours that compromise compliance are not tolerated.
9. Controls are in place to manage the identified compliance obligations and achieve desired behaviours.

Monitoring and measuring

10. Performance of the compliance programme is monitored, measured and regularly reported on.
11. The organisation is able to demonstrate and evidence its compliance programme through both documentation and field practice.

Continual improvement

12. The compliance programme is regularly reviewed and continually improved.

*A more detailed process is set out in Appendix A.

Compliance Through Fundraising Standards Information (Annual Reports)

The Charities (Investment and Social Protection) Act 2016 puts additional fundraising reporting requirements on charities registered in England and Wales as listed below. Please note that if your charity is registered in Scotland or Northern Ireland, there may be different requirements. For Scotland, please refer to [Charities and Trustee Investment \(Scotland\) Act 2005](#) and the OSCR website. For Northern Ireland, please refer to [The Charities \(Accounts and Reports\) Regulations \(Northern Ireland\) 2015](#) and the The Charity Commission for Northern Ireland's website.

What must be included (England and Wales:

The Charities (Investment and Social Protection) Act 2016 requires that charities which are required legally to have an annual accounts audit, include in the trustee Annual Report the following information:

- The approach taken by the charity to activities by the charity or by any person on behalf of the charity for the purpose of fundraising, and in particular whether a professional fundraiser or commercial participator carried on any of those activities;
- Whether the charity or any person acting on behalf of the charity was subject to an undertaking to be bound by any voluntary scheme for regulating fundraising, or any voluntary standard of fundraising, in respect of activities on behalf of the charity, and, if so, what scheme or standard;
- Any failure to comply with a scheme or standard cited;
- Whether the charity monitored activities carried on by any person on behalf of the charity for the purpose of fundraising, and, if so, how it did so;

- The number of complaints received by the charity or a person acting on its behalf about activities by the charity or by a person on behalf of the charity for the purpose of fundraising;
- What the charity has done to protect vulnerable people and others from unreasonable intrusion on a person's privacy, unreasonably persistent approaches or undue pressure to give, in the course of or in connection with fundraising for the charity

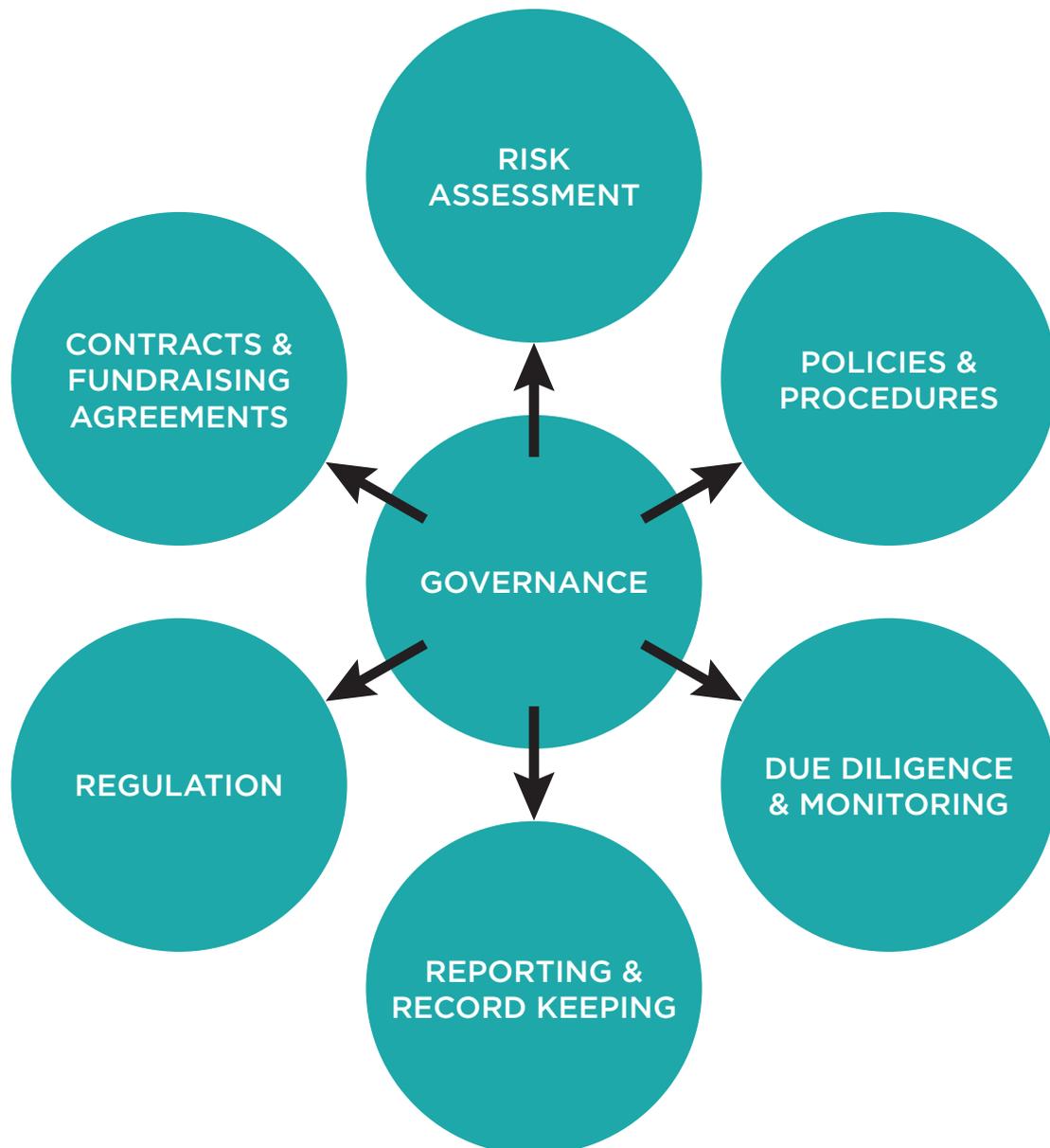
Fundraising Complaints

Complaints received should also be analysed so you can identify trends, implement improvements, monitor and then analyse again:

- The nature or types of complaint
- The cause of the complaints
- The total number of dismissed complaints
- Trends showing improvements or otherwise
- The number of complaints resolved without disciplinary action
- The number of complaints that resulted in disciplinary action
- The average length of time for resolution of complaints

SECTION 2 - GETTING STARTED

The diagram below suggests elements which should be included in a robust compliance programme:



There is a section on each of the topics listed in the diagram above. At the end of each section is a “toolkit” containing links to useful guidance as well as example templates and additional information. Please remember that templates and checklists are a starting point and you should always make sure that these satisfy the needs of your organisation and cover any applicable statutory and non-statutory regulation.

SECTION 2.1 – GOVERNANCE

Governance can be thought of as: ‘the systems and processes concerned with ensuring the overall direction, effectiveness, supervision and accountability of an organisation’.

Charity fundraising in the UK is governed on a self-regulatory basis, with some laws underpinning the self-regulation. It is therefore important that you understand which laws you need to comply with and these may be dependent on where your charity is registered.

Toolkit

The IoF has produced guidance called [Trustees and Fundraising](#) which contains:

- A handbook: [Trustees and Fundraising: a Practical Guide](#)
- Animation: [Trustees and Fundraising](#)
- Presentation: [What trustees need to know about fundraising](#)
- Getting trustees on board with fundraising – [10 Top Tips](#)

There is further guidance which is jointly owned by NCVO, ACEVO, SCC, ICSA and WCVA (supported by the Charity Commission and the Clothworker’s Company) [Good Governance: a Code for the Voluntary and Community Sector](#).

Charity Commission Guides

England and Wales

The Charity Commission for England and Wales has produced the following guidance:

- [CC20 Charity Fundraising](#): A Guide to Trustee Duties (also available in Welsh)
- [CC3 The essential trustee](#): what you need to know, what you need to do (also available in Welsh)
- [Taking responsibility for our charity’s fundraising](#): a checklist for trustees (also available in Welsh)

Scotland

For Scottish charities, OSCR’s interim Fundraising Guidance provides information on the legal requirements of Scottish Charity law in relation to fundraising and charity trustee duties:

- [Guidance and good practice for Charity Trustees](#)
- [A Guide to the Charities and Benevolent Fundraising \(Scotland\) Regulations 2009](#)

Northern Ireland

For Charities in Northern Ireland, the Charity Commission for Northern Ireland’s Code of Good Governance sets out the principles and key elements of good governance for the boards of voluntary and community organisations.

- [Running your charity](#): support for trustees on key aspects of running a charity effectively
- [The Code of Good Governance](#)

SECTION 2.2 - RISK ASSESSMENT

Risk assessment is a systemic process of evaluating the potential risks that may be involved in a projected activity or undertaking. Risk assessments are valuable in demonstrating the thought processes and activities undertaken by an organisation in considering its future. These assessments should be living documents and track changes, progress and measures put in place to mitigate all types of risk to an organisation including financial, regulatory and reputational risks.

Appendix B is an outline of steps to be taken managing risk by campaign - there is also an example risk register in the templates section. This approach can also be applied more generally to risk assessments of any part of your organisation. At the end of this section, there are references to other useful guides.

Toolkit

Risk management (Appendix B)
Example [Risk Register template](#).

Useful Guidance

The Charity Commission for England and Wales:
[Charities and risk management \(CC26\)](#)

The Charity Commission for England and Wales:
[Chapter 2 Tool 1: The risk assessment cycle](#)

Institute of Risk Management: [Risk management for charities](#)

NCVO: [How to manage risk](#)

SECTION 2.3 - POLICIES & PROCEDURES

Your policies and procedures should not only enable compliance to any statutory or non-statutory rules, but also reflect the values and ethics of your organisation. Policies and procedures allow staff and volunteers to perform and understand their roles and responsibilities within the parameters of a secure framework.

Policies and procedures should be controlled documents which enable you to ensure that staff are working to the latest version. It is normal to review procedures at least once a year and you should document changes including providing the reason for the change.

Below is a list of headings outlining the areas in which you should have policies and procedures (this list is not exhaustive) as well as a toolkit providing links to useful guidance, templates and examples.

- Governance
- Health & Safety
- Human Resources
- Risk Management/Organisation Contingency
- Finance
- IT
- Safeguarding
- Fundraising
- Marketing and Communications
- Confidentiality
- Data Protection
- Data
- Suppliers
- Complaints

Model examples of policies and procedures should be used as a guide rather than a definitive product and you should always make sure that your policies and procedures reflect current legislation and any non-statutory codes or rules your organisation may follow:

Toolkit

- Institute of Fundraising: [Volunteer Fundraising](#)
- VolResource: Information for voluntary and community organisations, giving example policies as well as a [policies and procedures checklist](#)
- ISO have produced a [sample document control procedure](#) and [templates](#) which may be useful

SECTION 2.4 - DUE DILIGENCE & MONITORING

Due diligence is action that is considered reasonable for organisations to be expected to take in order to keep the organisation or others safe. This may include the detailed examination of a company and its financial records, done before becoming involved in a business arrangement with it.

It is important that organisations carry out due diligence where necessary – in particular when working with third parties or sourcing data from third parties. However, it is not just a case of ticking off a list, you need to evidence the due diligence you have carried out and keep records of this. You should also keep monitoring and carrying out spot checks and again, keep records of what you have done, when, and any remedial action taken or risks identified as a result of the due diligence process. Organisations routinely monitor and review the progress in certain areas of their business and record results – finance being an obvious example. Use your policies, procedures and risk assessments to help determine all areas where monitoring would be beneficial.

How much fundraising monitoring should we carry out?

Monitoring your fundraising will help you move from being reactive to proactive. It helps identify

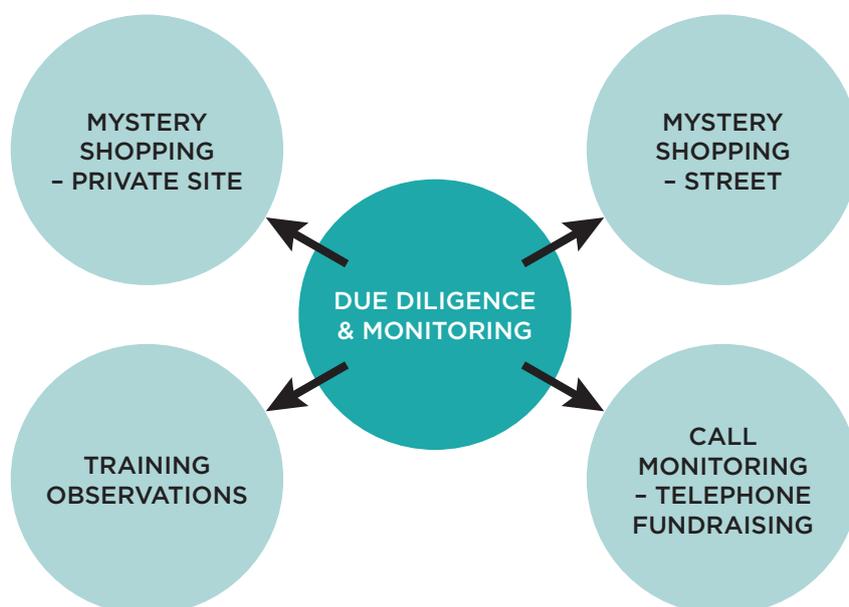
areas of excellence and those needing improvement making your campaigns robust and more likely to give a long-term ROI as donors will feel happy and supported. Good monitoring and recording also demonstrates to donors, government and regulators that you take the quality of your fundraising seriously and are acting appropriately.

The Charity Commission says of its own monitoring,

“Regulatory supervision and monitoring of charities is carried out in a proportionate way and targeted where intervention is most needed to stem abuse in the sector.”

The key factor is that the monitoring is **proportionate**. We may all have different views of what this means, but at the least you should be able to demonstrate why you believe the amount of monitoring you carry out *is* proportionate. This should be further evidenced with the outcomes of your monitoring and the remedial action you have taken to improve any areas of concern.

While organisations should also carry out their own monitoring, this can be supplemented through using external resources. For example, the Institute of Fundraising’s Compliance Directorate offer a number of monitoring options:



Toolkit

- [Lead Generation/Third Party Suppliers Due Diligence Checklist](#)
- [Fundraising Third Party Supplier Due Diligence Checklist](#)
- [ICO: Privacy Notice checklist](#)

Example monitoring forms:

These are examples of the forms currently in use by the Institute of Fundraising for call monitoring in the call levelling elearning programme and for Private Site mystery shopping. We would recommend you use these as a basis for your monitoring, but also add additional areas of monitoring you may wish to include, such as opt-in, brand, etc.

Institute of Fundraising:

- [Telephone](#)
- [Private site](#)

Guidance

- Charity Commission for England Wales: [Due diligence, monitoring and verifying the end use of charitable funds](#)
- ICO: Data Protection – General: [Getting it right: small business checklist](#)
- ICO: [Direct Marketing checklist](#)
- Institute of Fundraising: [Due Diligence/Know your Donor](#)
- Institute of Fundraising: [Due Diligence checklist](#)
- Institute of Fundraising: [Successful partnerships for sustainable fundraising](#)

SECTION 2.5 - REPORTING & RECORD KEEPING

As a charity you will have regulatory reports to submit to HMRC, the Charity Commission, Gambling Commission, etc.. Some of this reporting will depend on your charity's income and the nature of the reporting may vary depending where your charity is registered. For instance, if your head office is in Northern Ireland, then you will need to send an annual report to the Charity Commission for Northern Ireland. As a rule of thumb, England and Wales currently follow the same regulations, while Scotland and Northern Ireland may each have their own. Make sure you know in advance the records you need to maintain to complete your returns and also register for online submissions and passwords in plenty of time.

Record Keeping

There are legal requirements to keep certain records for a number of years - accounts, taxation, HR, lottery, to name a few.

The National Archives are the experts in record keeping. Visit their website which contains a wealth of information and free advice on record keeping and you can also subscribe free of charge to their monthly newsletter www.nationalarchives.gov.uk

The Charitable Institutions (Fund-Raising) Regulations 1994 state that

“a professional fund-raiser or commercial participator who is a party to an agreement made for the purposes of section 59 of the Charities Act 1992 shall, on request and at all reasonable times, make available to any charitable institution which is a party to that agreement any books, documents or other records (however kept) which relate to that institution and are kept for the purposes of the agreement.”

These records must be in legible form.

This suggests that where a third party is used to fundraise on behalf of a charity, they must keep records and documents relating to the fundraising

agreement and make these accessible to the charity when asked. The relevant records are now further broadened with the new requirements under The Charities (Investment and Social Protection) Act 2016 for fundraising agreements to include:

- *The approach taken by the charity to activities by the charity or by any person on behalf of the charity for the purpose of fundraising, and in particular whether a professional fundraiser or commercial participator carried on any of those activities;*
- *Whether the charity or any person acting on behalf of the charity was subject to an undertaking to be bound by any voluntary scheme for regulating fundraising, or any voluntary standard of fundraising, in respect of activities on behalf of the charity, and, if so, what scheme or standard;*

Where the charity has required in its fundraising agreement that the third party be a member of a particular body or hold particular accreditations, the third party must be able to give documented evidence of meeting this requirement.

- *Any failure to comply with a scheme or standard cited;*
- Third parties need to keep records of any failures to comply with the scheme or standard cited.
- *Whether the charity monitored activities carried on by any person on behalf of the charity for the purpose of fundraising, and, if so, how it did so;*
 - *The number of complaints received by the charity or a person acting on its behalf about activities by the charity or by a person on behalf of the charity for the purpose of fundraising;*

Third parties need to keep records of complaints received in accordance with the requirements of the fundraising agreement and in particular where these relate to the 3 prohibited behaviours:

- Unreasonable intrusion on a person's privacy

- Unreasonably persistent approaches
- Undue pressure
- Complaints handling and the responsibilities of both parties must be clear in the Fundraising Agreement. Charities must review complaints received by the third party.
- *What the charity has done to protect vulnerable people and others from unreasonable intrusion on a person's privacy, unreasonably persistent approaches or undue pressure to give, in the course of or in connection with fundraising for the charity*

This could include the third party maintaining documentation on training materials, training records, recruitment processes, DBS checks, data recycling processes, etc.

In addition there are records which you need to keep to evidence your compliance to legislation. For example, where you rely on consent to contact supporters, e.g. to comply with PECR or your charity's in-house policy, you need to keep records of what consent was obtained as well as how and when. You will also need to keep records of due diligence and monitoring carried out (especially if working with third parties to source data).

Assess the elements of your fundraising and decide which records you need to keep and for how long.

Good housekeeping will help you comply with legislation and ultimately save you time and effort. Create an annual calendar showing reviews for policies/procedures, deletion dates for certain

records over a particular age, renewal dates, submission dates, etc..

Employ change control processes following reviews of policies/procedures and risk assessments.

Toolkit

- www.gov.uk: [Charities and Tax](#)
- www.gov.uk: [Send a Charity's Annual Return](#)
- HMRC: [Setting up and running a charity - Charities: Detailed Guidance Notes](#)
- Charity Commission for Northern Ireland: [Annual Reporting](#)
- Charity Commission for England and Wales: [Complete your annual return](#)
- OSCR: [Annual Monitoring](#)
- Gambling Commission: [Regulatory Returns](#)
- Charity Finance Group (Buzzacott LLP) - [Retention of Accounting Records](#)
- National Archives : [How to manage your information](#)

SECTION 2.6 – REGULATION

Regulation is a broad term and relates to both statutory and non-statutory rules. Make sure that you follow the regulations (including codes of practice) which relate to the country/ies of your organisation's registration. For England, Wales and Northern Ireland, this is the Fundraising Regulator and for Scotland it is the Office of the Scottish Charity Regulator (see also the Scottish Fundraising Standards Panel).

Note: It is a requirement in Scotland that you follow the Fundraising Code of Practice issued by the Fundraising Regulator, but there may be additional requirements under the laws of Scotland which you must also adhere to. See the [OSCR website](#) and the [Scottish Fundraising Standards Panel](#) website for further information.

The toolkit for this section lists some of the legislation which you should know about. In addition, the Code of Fundraising Practice also gives a list of applicable regulation at the top of each section.

The operating licences issued by the Gambling Commission apply to promoting lotteries in England, Scotland and Wales and therefore exclude the British Islands which have their own regulations (Channel Islands and Isle of Man) and also Northern Ireland. If you want to promote a lottery outside of England, Scotland and Wales, you need to ensure you are complying with the laws of that country. Similarly, if someone from outside of England, Scotland and Wales asks to join your lottery, you must make sure that in allowing them to join, you and they are not breaking any laws of the country of their residence.

Toolkit

List and links to some applicable [rules and regulations](#)

SECTION 2.7 - CONTRACTS & FUNDRAISING AGREEMENTS

Identify in your compliance programme what specific responsibilities and obligations you and your suppliers should respectively hold. You should also agree levels of access to compliance data held by both parties, and the terms under which it will or can be shared (see record keeping above). Your fundraising agreement must specify certain criteria (see the checklists in the toolkit below).

Agreements must include clear and realistic expectations of the activities to be undertaken:

- Budget
- Resources
- Timings
- Possible outcomes
- Review procedures

In **England and Wales**, you must consider performance at the reviews and decide whether further action is appropriate.

In **Scotland**, the method by which a contract may be varied must be provided for in the contract where the contract is with a professional fundraiser or commercial participator and must include similar provisions requiring the variation to be in writing and preventing an unfavourable variation from being imposed by one party alone.

In **Northern Ireland** there is no equivalent legislation in place to date which governs contracts or written arrangements with third parties. Northern Ireland organisations may adopt the good practice of the other jurisdictions.

All contracts should reflect the ethics of your organisation, your legislative requirements and allow you to perform the tasks (policies and procedures) you have identified in your compliance framework.

Toolkit

- [Data and Data Supply Agreements](#)
- [Agreements between Charitable Organisations and Commercial Participators - Checklist](#)
- [Agreements between Charitable Organisations and Professional Fundraisers - Checklist](#)
- [Fundraising Agreement Additional Considerations Checklist](#)

SECTION 3 - GUIDANCE AT A GLANCE

	AUTHOR	TITLE
GOVERNANCE	<p>The Charity Commission The Charity Commission</p> <p>OSCR IoF Jointly owned by NCVO, ACEVO, SCC, ICSA & WCVA</p>	<p>A guide to trustee duties (CC20) The essential trustee: what you need to know, what you need to do (CC3) Good Governance Trustees and fundraising Good Governance A Code for the Voluntary and Community Sector</p>
RISK MANAGEMENT	<p>The Charity Commission</p> <p>The Charity Commission</p> <p>Institute of Risk Management</p> <p>NCVO</p>	<p>Charities and risk management (CC26)</p> <p>Chapter 2 Tool 1: The risk assessment cycle</p> <p>Risk management for charities</p> <p>How to manage risk</p>
POLICIES & PROCEDURES	<p>IoF</p> <p>VolResource</p> <p>Good Governance</p>	<p>Volunteer Fundraising</p> <p>Information for voluntary and community organisations</p> <p>Policies and Procedures</p>
DUE DILIGENCE & MONITORING	<p>Charity Commission</p> <p>Information Commissioner's Office</p> <p>Information Commissioner's Office</p> <p>Institute of Fundraising</p> <p>Institute of Fundraising</p>	<p>Due diligence, monitoring and verifying the end use of charitable funds Data Protection – General Getting it right: small business checklist Direct Marketing checklist Due Diligence/Know your Donor Due Diligence Checklist</p>
REPORTING & RECORD KEEPING	<p>www.gov.uk www.gov.uk HMRC</p> <p>Charity Commission for Northern Ireland Charity Commission OSCR Gambling Commission National Archives</p>	<p>Charities and Tax Send a Charity's Annual Return Setting up and running a charity Charities: Detailed Guidance Notes</p> <p>Annual Reporting Complete your annual return Annual Monitoring Regulatory Returns Information Management</p>

SECTION 3 - GUIDANCE BY SOURCE

SOURCE	DOCUMENT
Charity Commission for England and Wales	CC20 Charity Fundraising: A Guide to Trustee Duties
Charity Commission for England and Wales	CC3 The essential trustee: what you need to know, what you need to do
Charity Commission for England and Wales	Due diligence, monitoring and verifying the end use of charitable funds
Charity Commission for England and Wales	Complete your annual return
Charity Commission NI charity effectively	Running your charity : support for trustees on key aspects of running a
Charity Commission NI	Annual Reporting
DIY Committee Guide (NI)	The Code of Good Governance
Fundraising Regulator	Fundraising Regulation in Scotland
Fundraising Regulator	Personal Information and Fundraising : consent, purpose and transparency
Gambling Commission	Regulatory Returns
HMRC	Setting up and running a charity – Charities: Detailed Guidance Notes
ICO	Getting it right: small business checklist
ICO	Direct Marketing checklist
ICO	Conditions for Processing
ICO	Overview of the GDPR – Key Areas to Consider
ICO	Direct Marketing Guidance
ICO	Privacy by Design
ICO	Conducting Privacy Impact Assessments – Code of Practice
ICO	Privacy Impact Assessments – editable annexes (enter this into a search engine to access the word document)
ICO	Privacy notices, transparency and control
ICO	Privacy notice checklist
ICO	Subject Access Code of Practice
Institute of Risk Management IoF	Risk management for charities Trustees and Fundraising: a Practical Guide
IoF	Trustees and Fundraising

SOURCE

DOCUMENT

IoF	What trustees need to know about fundraising
IoF	Volunteer Fundraising
IoF	Due Diligence/Know your Donor
IoF	Due Diligence checklist
IoF	Successful partnerships for sustainable fundraising
ISO	sample document control procedure
ISO	templates
NCVO	How to manage risk
NCVO, ACEVO, SCC, ICSA and WCVA (supported by the Charity Commission and the Clothworker's Company)	Good Governance: a Code for the Voluntary and Community Sector.
OSCR	Guidance and good practice for Charity Trustees
OSCR	A Guide to the Charities and Benevolent Fundraising (Scotland) Regulations 2009
OSCR	Annual Monitoring
OSCR	Good Governance
The Charity Commission for England and Wales	Charities and risk management (CC26)
The Charity Commission for England and Wales	Charities: Due diligence, monitoring and verifying the end use of charitable funds
VolResource	Policies and procedures checklist
www.gov.uk	Taking responsibility for our charity's fundraising: a checklist for trustees
www.gov.uk	Charities and Tax
www.gov.uk	Send a Charity's Annual Return

SECTION 4 - RULES & REGULATIONS AT A GLANCE

	RULE / REGULATION	ORGANISATION	ADDITIONAL GUIDANCE / USEFUL WEBSITES
CHARITY & FUNDRAISING	Charities Act 2016	Charity Commission for England and Wales	
	Charities & Trustee Investment (Scotland) Act 2005	Office of the Scottish Charity Regulator (OSCR)	
	Charities Act (Northern Ireland) 2013	Charity Commission for Northern Ireland	
	Code of Fundraising Practice	Fundraising Regulator	
	Street Fundraising Rule Book	Fundraising Regulator	
	Door-to-Door Fundraising Rule Book	Fundraising Regulator	
	Private Site Fundraising Rule Book	Fundraising Regulator	
GAMING	Gambling Act 2005	Gambling Commission	
	License Conditions and Codes of Practice (LCCP)	Gambling Commission	
	The Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985		
	The Betting and Lotteries (Northern Ireland) Order 1994		
CONSUMER	Consumer Protection from Unfair Trading Regulations 2008		
	The Consumer Protection Regulations 2008 and 2014 amendment		www.gov.uk : Guide on the Consumer Protection (Amendment) Regulations 2014
	The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013		
	The Consumer Rights Act 2015		www.gov.uk : Policy paper: Consumer Rights Act 2015
	Safeguarding Vulnerable Groups Act 2006		
	The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007		

	RULE / REGULATION	ORGANISATION	ADDITIONAL GUIDANCE / USEFUL WEBSITES
MARKETING & COMMUNICATIONS	Code of Fundraising Practice	Fundraising Regulator	
	CAP Code	Advertising Standards Agency (ASA)	
	BCAP Code	ASA	
	Regulation of Investigatory Powers Act 2000 (as amended 2010) Investigatory Powers Act 2016		www.gov.uk : RIPA Codes Investigatory Powers Act
	Communications Act 2003 (as amended)	Ofcom	
	Electronic Communications Act 2000		
	Electronic Commerce (EC Directive) Regulations 2002		
	Malicious Communications Act 1988		
	Direct Marketing Guidance	ICO	
DATA	Code of Fundraising Practice	Fundraising Regulator	
	Data Protection Act 1998	ICO	
	Privacy and Electronic Communications Regulations 2003 (as amended 2016)	ICO	ICO: What are PECR? Guide to Privacy and Electronic Communications Regulations Direct Marketing Guidance
	GDPR	ICO	ICO: Overview of the GDPR EUGDPR: Homepage of EU GDPR
TAX	Gift Aid	HMRC	www.gov.uk : Gift Aid Claiming Gift Aid as a Charity or CASC Claim Gift Aid online
		HMRC	www.gov.uk : Charities and tax Charity money, tax and accounts Get recognition from HMRC for your Charity VAT Charities

SECTION 5 – GLOSSARY

Agreement

An agreement usually lacks one or more of the essential elements that are required to be present in order to form a valid contract that will be considered legally enforceable by a court of law.

The essential difference between an agreement and a contract is that typically an agreement will only modify a contract that is already in place but does not place an obligation on either one of the parties to provide consideration to the other party, which a contract requires. A contract can involve the exchange of promises between the parties to the contract, while an agreement may simply involve one party accepting the offer from another party.

Conditions for Processing

In order to comply with the first principle of the Data Protection Act processing must be fair and lawful. At least one of the conditions listed in Schedule 2 (for personal data) or Schedule 3 (for sensitive data) must be met in order for the processing to be lawful.

For direct marketing, the most commonly used conditions for processing personal data are either Consent or Legitimate Interest.

Legitimate Interest should be used when you can't satisfy any of the other legal conditions for processing.

See ICO Conditions for Processing and Overview of the GDPR – Key Areas to Consider for more information.

Consent

One of the lawful conditions for processing is that the individual has consented to their data being collected and used in the manner and for the purposes specified.

Consent for Direct Marketing

For unsolicited direct marketing using electronic communications – those made by email, SMS, automated call recording, social media (where directed to a specific individual) and Telephone

Preference Service registered phone numbers (both landline or mobile) – Privacy and Electronic Communications Regulations (PECR) apply and you must have consent which is informed, specific and freely given from an individual to use these channels of contact for marketing purposes. This type of consent is often referred to as 'explicit' consent. The GDPR goes further and says that consent must be informed, specific and freely given with an unambiguous indication of the individual's wishes.

How long does consent last?

There is no definitive answer to this question and therefore you need to take a sensible and reasonable approach, taking into consideration the context in which the consent was previously given and the relationship you have with the individual. It would be wise to document your considerations in reaching your decisions.

For indirect consent, the ICO suggests that consent should have been obtained within the last six months ([ICO Direct Marketing Guidance](#)).

Some charities have suggested that for data which you contact on a regular and frequent basis, consent should be refreshed at least once every 24 months, but you really need to carry out your own assessment and document this.

Further information is available from ICO [Direct Marketing Guidance](#).

Contract

A contract is a legally binding agreement reached between two parties, the terms of which the courts have the authority and obligation to enforce.

The essential difference between an agreement and a contract is that typically an agreement will only modify a contract that is already in place but does not place an obligation on either one of the parties to provide consideration to the other party, which a contract requires. A contract can involve the exchange of promises between the parties to the contract, while an agreement may simply involve one party accepting the offer from another party.

Controlled Document

Controlled documents are those which typically have a means of identifying the most recent version (whether this be by date of release, version number or both) and are owned and authorised by an individual or group of individuals. Controlled documents (such as procedures) are typically reviewed at least once a year and may also be reviewed additionally in accordance with change such as legislative or organisational changes.

Controlled documents will either display within or by separate associated documentation, changes made and the reasons for these.

The aim is to ensure that staff relying on these documents can easily identify that they are working to the latest version. The change control documentation (changes made and reasons for these) can help provide evidence for audit or in cases of investigation.

While your organisation may not want or need to comply with ISO 9001 (the international standard that specifies requirements for a Quality Management System), the ISO have produced a [sample document control procedure](#) and [templates](#) which may be useful.

Compliance Framework

A structured set of guidelines that details an organisation's processes for maintaining accordance with established regulations, specifications or legislation.

Direct Marketing

Direct marketing is defined in section 11(3) of the Data Protection Act as:

“the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals.”

Fundraising, campaigning and charitable promotions of not-for-profits fall within this definition. This includes promoting the aims of a charity.

Direct marketing can be solicited or unsolicited, but depending on the method of communication used, you may need to comply with PECR.

Put simply, a **solicited** message is one that is actively requested. So if someone specifically asks you to send them some information, you can do so without worrying about PECR (although you must still say who you are, display your number when making calls, and provide a contact address).

An **unsolicited** message is any message that has not been specifically requested. So even if the customer has 'opted in' to receiving marketing from you, or you are relying on legitimate interest it still counts as unsolicited marketing. An opt-in means the customer agrees to future messages (and is likely to mean that the marketing complies with PECR). But this is not the same as someone specifically contacting you to ask for particular information.

Due Diligence

Due diligence is action that is considered reasonable for organisations to be expected to take in order to keep the organisation or others safe. This may include the detailed examination of a company and its financial records, done before becoming involved in a business arrangement with it.

Fundraising Preference Service (FPS)

The FPS allows members of the public to stop email, phone calls, addressed post and/or text messages from a selected charity or charities. All charities have to comply with FPS and notification means vary dependent on the size of the organisation. For more information on how FPS works and how your organisation will be notified if an FPS request is received from a member of the public, please refer to the Fundraising Regulator's website and go to [Fundraising Preference Service for Charities](#).

GDPR (General Data Protection Regulation)

The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) is a regulation by which the European Parliament, the European Council and the European Commission intend to strengthen and unify data protection for individuals within the European Union (EU).

The GDPR will apply in the UK from 25 May 2018. The government has confirmed that the decision to leave the EU will not affect the commencement of the GDPR.

Governance

Governance can be thought of as: ‘the systems and processes concerned with ensuring the overall direction, effectiveness, supervision and accountability of an organisation’.

ICO

The Information Commissioner’s Office (ICO) is responsible for the enforcement of the Data Protection Act 1998, and also responsible for Freedom of Information. The ICO will also be responsible for the enforcement of the GDPR from 25 May 2018.

Implied Consent

Implied consent is consent which is not expressly granted by a person, but rather implicitly granted by a person’s actions and the facts and circumstances of a particular situation (or in some cases, by a person’s silence or inaction). For further information, see the ICO’s [Direct Marketing Guidance](#).

Indirect Consent

The ICO use the term ‘indirect consent’ to cover situations where a person tells one organisation that they consent to receiving marketing from other organisations. This is also sometimes known as ‘third party consent’ or ‘third party opt-in’. Indirect Consent will be relevant to any organisation using a bought-in marketing list. It will not have had any contact with those customers before, so they cannot have told the organisation directly that they

consent to its marketing. But the list broker or other third party source might claim that the customers have consented to receiving marketing from other organisations.

You should check the origin and accuracy of bought-in lists. You should screen call lists against the TPS, and only use bought-in lists for email, text or recorded calls with very specific consent.

ISO

ISO is an independent, non-governmental international organisation with a membership of 161 national standards bodies. Through its members, it brings together experts to share knowledge and develop voluntary, consensus-based, market relevant International Standards that support innovation and provide solutions to global challenges.

Lead Generation

The initiation of consumer interest or enquiry into products or services of a business.

Legitimate Interests

The Data Protection Act recognises that you may have legitimate reasons for processing personal data that the other conditions for processing do not specifically deal with. The “legitimate interests” condition is intended to permit such processing, provided you meet certain requirements. See [ICO Guide To Data Protection – Conditions for Processing](#) for further information). The use of legitimate interests under GDPR will continue:

Article 6(1) of the GDPR states that data processing shall be lawful only where at least one of the provisions at Article 6(1) (a)-(f) applies. Article 6(1) (f) applies where: “processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, **except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.**”

Recital 47 (GDPR) says

“The legitimate interests of a controller, including those of a controller to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller.”

Note: You must comply with PECR. Therefore if consent is required for your chosen method of communication, you cannot rely on legitimate interests as a condition for processing.

Where you are relying on legitimate interests as a condition for direct marketing processing by telephone, you must suppress telephone data against the Telephone Preference Service list.

The Code of Fundraising Practice also requires you to suppress named addresses against the Mail Preference Service list.

You must also suppress against FPS for all channels (see FPS for more information).

Privacy notices will need to set out legitimate interests and individuals will have the right to object to processing based on legitimate interests.

[Click here for a checklist](#) to assist if you are considering relying on legitimate interests for your direct marketing.

For further information and guidance on legitimate interests see the Fundraising Regulator’s guide [Personal Information and Fundraising: consent, purpose and transparency](#) and the IoF’s guide, [GDPR: The Essentials for Fundraising](#).

MPS

The Mailing Preference Service is a free service funded by the direct mail industry to enable consumers to have their names and home addresses in the UK removed from lists used by the industry. It is actively supported by the Royal Mail and all directly involved trade associations and fully supported by The Information Commissioners Office. It is not a legal requirement to screen data against the MPS list.

NCVO

National Council for Voluntary Organisations is the umbrella body for the voluntary and community sector in England. It is a registered charity (no 225922) NCVO works to support the voluntary and community sector and to create an environment in which an independent civil society can flourish.

NEO

National Exemption Order holders are National exemption order (NEO) holders are exempted under section 3(1) of the [House to House Collections Act 1939](#) from having to apply for individual collection licences from local authorities.

Non-statutory

Common law – if something is non-statutory it is based on customs, precedents or previous court decisions.

Privacy by Design

Privacy by design is an approach to projects that promotes privacy and data protection compliance from the start. Under the GDPR, a privacy by design approach will be a legal requirement. The ICO have produced guidance on this: [Privacy by Design](#).

Privacy Impact Assessment

It is advisable to have a process in place for Privacy Impact Assessments (PIA). Privacy Impact Assessments are designed to help organisations meet their data protection responsibilities and individuals' expectations of privacy.

Under GDPR, a Data Protection Impact Assessment (principally the same as a PIA) will be mandatory in certain instances. Of note is that part of a DPIA involves consultations with stakeholders following a risk assessment. If you have any risks which are considered high and have found no way of mitigating these to a medium or low risk, then you have to consult with the ICO before you may commence your project. Make sure you build additional time into your project plan to allow for this – you will need a minimum of 8 weeks, but you should be aware that it could take longer for the consultation to be complete.

The ICO have produced guidance on: [Conducting Privacy Impact Assessments – Code of Practice](#), [Privacy by Design](#). The ICO have also produced editable forms and documentation to be used in a PIA: Privacy Impact Assessments – editable annexes.

Privacy Notices/Statements

Being transparent and providing accessible information to individuals about how you will use their personal data is a key element of the Data Protection Act 1998 (DPA) and the EU General Data Protection Regulation (GDPR). The most common way to provide this information is in a privacy notice. For further information please refer to ICO [Privacy notices, transparency and control](#). [Click here for the ICO's privacy notice checklist](#).

Recording Consent

Where you rely on consent for marketing, you need to be able to evidence what consent was obtained, how, when and from where. This doesn't mean that you need to attach the call recording, script or webpage used against each supporter. You should be able to reference the relevant script or questions asked, the privacy statement in place at that time, when/how the consent was obtained and by whom (e.g. data supplier name, fundraising agency, event).

You should also be able to record consent given for each channel. So long as you rely on that consent, you will need to keep the relevant information used to obtain the consent at that time. See also information on Subject Access Requests, Privacy Notices and Privacy Impact Assessments.

Refreshing Consent

Consent doesn't last indefinitely and you will need to regularly confirm with an individual that they are still happy for you to market to them. If you have consent to contact an individual for marketing purposes via a particular channel, then you may use that channel to refresh consent and ask for consent to market via different channels. You must bear in mind the timeliness of this request.

If you don't have consent, you consider the consent to be unreliable or it was given too long ago, then you may write or telephone that individual so long as they have not previously asked you not to and their address or phone number is not listed on the MPS, FPS or TPS registers. You must be sure that your contact would be lawfully and fairly made.

Regulation

Regulation is a broad term and relates to both statutory and non-statutory rules.

Risk Assessment

Risk assessment is a systemic process of evaluating the potential risks that may be involved in a projected activity or undertaking. Risk assessments are valuable in demonstrating the thought processes and activities undertaken by an organisation in considering its future.

Safeguarding

Safeguarding means protecting people's health, wellbeing and human rights, and enabling them to live free from harm, abuse and neglect.

SMA

Site Management Agreements set controls on where and when fundraising can take place – this refers to street fundraising. The IoF work with local

authorities and Business Improvement Districts (BIDS) to establish co-regulatory agreements.

Soft Opt-in

Although organisations can generally only send marketing texts or emails with specific consent, there is an exception to this rule for existing customers, known as the 'soft opt-in'. This means organisations can send marketing texts or emails if the following three conditions all apply:

- they have obtained the contact details in the course of a sale (or negotiations for a sale) of a product or service to that person;
- they are only marketing their own similar products or services; and
- they gave the person a simple opportunity to refuse or opt out of the marketing, both when first collecting the details and in every message after that

This does not mean that organisations can use soft opt-in for general fundraising purposes.

Statute

A written law passed by a legislative body.

Statutory

Required, permitted or enacted by statute.

Subject Access Requests

Under the sixth principle of the Data Protection Act, individuals have the right to access their personal data. You may receive a Subject Access Request (SAR) anyone you have contacted (including by social media) and will need to be able to provide information on when and how you obtained their data for processing as well as providing the data you hold. SARs should normally be received in writing. You do not need to respond to a request made orally but, depending on the circumstances, it might be reasonable to do so (as long as you are satisfied about the person's identity), and it is good practice at least to explain to the individual how to make a valid request.

Therefore we would recommend that you provide anyone fundraising on your behalf with sufficient information for them to be able to explain the process and give an address for the request to be submitted.

Notes:

1. There is no requirement to give a reason for a SAR request, but it may help you to provide the relevant information if an explanation is given.
2. SARs don't have to be in a particular format, say that they are a SAR or be addressed to a particular individual. It is therefore important that your staff are able to recognise a SAR and deal with it according to your organisation's SAR process.

For further guidance, refer to [ICO Subject Access Code of Practice](#). Remember that a SAR relates to paper/hard copy records as well as those held electronically and may also include information held in electronic backups.

Suppression List

A suppression list is sometimes also called an 'unsubscribe list'. It is a list which contains data from individuals who don't want to receive contact either by a particular channel or at all. For instance, the MPS list contains addresses where a member of the household has expressed the wish not to be contacted by mail for marketing purposes. Charities will normally have their own suppression lists (often by channel) and would suppress these details against a bought in list. These suppression lists are often referred to as 'house lists'.

TPS

Telephone Preference Service is a free service. It is the official central opt out register on which you can record your preference not to receive unsolicited sales or marketing calls. It is a legal requirement that all organisations (including charities, voluntary organisations and political parties) do not make such calls to numbers registered on the TPS unless they have consent to do so (PECR applies to TPS registered numbers).

SECTION 6 – EXAMPLE CHECKLISTS

Example Lead Generation - Third Party Suppliers Due Diligence Checklist

Always check ICO's recommendations for their latest due diligence checklist (paragraph 179). We recommend the following which includes the most recent [due diligence checklist](#) (Page 45 of version 2.2 of the Direct Marketing Guide) by the ICO:

Broker or lead generator?

Know who you are dealing with – a broker may use multiple sources making it difficult for you to carry out adequate due diligence. Be clear who you are working with and what you expect from them.

Who compiled the list?

Ask for proof of provenance of the data and an auditable consent history.

When was the list compiled?

It is important that those on the list would reasonably expect you to contact them. It is suggested that a list compiled more than six months ago is unlikely to provide a reasonable expectation.

When was consent obtained?

Ask how long ago did the supplier gain consent to contact the data subject.

Do you consider this a reasonable time frame, e.g. would the data subject reasonably expect contact from the supplier?

You will then need to ensure that the consent gained for you to contact the data subject was recent enough for there to be a reasonable expectation that you would make contact – suggested maximum of six months old for new contact.

Who obtained consent and in what context?

You will need to establish that the supplier had consent to contact the data subject in a marketing context and that the consent was legally and fairly obtained (reasonably you only need to check the most recent establishment of consent).

Where a supplier is relying on legitimate interests to contact data subjects to gain consent for you to market to them, you should be clear that the grounds used for legitimate interests are fair and lawful and do not override the rights of the individual.

What method for consent was used?

Was it opt-in or opt-out?

Was there an affirmative response required by the data subject (e.g. tick box, verbal consent).

Was the information provided clear and intelligible?

Was it clear that the purpose was to collect consent to direct marketing?

Have you checked the privacy notice?

How was the information provided? (e.g. behind a link, in a footnote, in a pop-up box, in a clear statement next to the opt-in box?).

Did the consent to contact list organisations by name, by description or was the consent for disclosure to any third party?

Note: it is unlikely that you can rely on indirect (third party) consent for email, SMS, automated calls or numbers registered with TPS unless the consent given was specific, informed and freely given. For GDPR consent will also need to be unambiguous, e.g. there must be an affirmative action by the data subject. See [ICO Direct Marketing Guide](#) (indirect consent).

What contact preferences are collected?

Under PECR you must have specific consent to market via email, SMS, automated messages or to numbers registered on TPS. These should be individually collected by contact method - consent for all methods is not adequate.

Has the seller received any complaints or is under investigation/been investigated recently?

Ask the seller. Check the ICO, DMA and Fundraising Regulator websites. Search the seller on the internet.

Is the seller a member of a professional body or accredited in some way?

Confirm with the professional body/accreditor
Check the terms and conditions of membership/accreditation and make sure you are happy that these align to your values

Will they provide written assurance that they and any subcontractors/affiliates they may use to carry out the service, work to prevailing EU/UK regulations?

This should form part of your contract with them.
Under GDPR any organisation supplying data to EU organisations must comply with GDPR.

Who are the subcontractors/affiliates?
Carry out checks on these too.

Example Due Diligence Checklist for Fundraising Third Party Suppliers (Agencies)

Company structure and share holdings

Who owns the company you will be doing business with?

Financial performance

Ask to see past years published accounts to check if there are any indicators/concerns, e.g. are there considerable debt/cash flow problems? What would happen if the company became insolvent during your campaign? If you have concerns, speak with the company and carry out a risk assessment

Insurance and indemnity

Check this meets your requirements

Experience and references

What experience does the supplier have which may help you meet your campaign's goals?
Ask for contacts from current and past clients so you can obtain references

Has the supplier received any complaints or is under investigation/been investigated recently?

Ask the supplier. Check the ICO, DMA and Fundraising Regulator websites. Search the supplier on the internet.

Confirm the credentials of the third party and its key staff

Accreditations achieved - include ISO standards
Professional memberships - check with the membership body that they are still current

Terms of employment and remuneration

Terms of remuneration, contractual arrangements, bonuses and rewards, training and employment conditions can reflect on your charity too - are you happy with the way an agency employs, trains and rewards staff?

Training

Who provides the training and what qualifications do they have?

What does the training include - ask to see training programme (content, format, length of training sessions, classroom/field based)

How are learners assessed?

Will you be able to sit in on training sessions?

Will you be able to provide some of the training?

Policies

Ask to see policies which may have a bearing on whether or not you want to work with the third party, e.g. vulnerable people, whistle blowing, loan worker, data protection, data security, Subject Access Requests, etc.

Data

How will the third party ensure the integrity and security of your data?

What data transfer processes do they use?

Are they registered with the ICO?

How will they capture your data – is there a standard format or can they build a bespoke report if required? Do they suppress data against TPS, MPS, FPS? How will you access your data in the event of suspension/termination of contract/insolvency?

Sub-contractors and affiliates

Will they outsource any of your work to sub-contractors and affiliates? Who are the sub-contractors/affiliates and where are they based? What work will be outsourced?

Complaints

What is their complaints policy? Does this align with yours and if not, will they adopt your policy? Make sure you include complaints handling in your final Fundraising Agreement with clear responsibilities and access for you to review complaints which relate to your campaign.

Monitoring

What monitoring does the supplier carry out on its fundraisers? What access will you have to carry out the monitoring you require?

Reporting/Meetings

What reports can the supplier provide?

How often would you be able to meet with them?

Fundraising Agreement Checklist

Agreements between Charitable Organisations and Professional Fundraisers

Minimum legal requirements:

I have included the name and address of each of the parties to the agreement

My agreement includes the date on which the agreement was signed by or on behalf of each of those parties

I have included the period for which the agreement is to subsist

I have included the terms relating to the termination of the agreement prior to the date on which the period above expires

I have included terms relating to the variation of the agreement during that period (This is obligatory in Scotland)

My agreement contains a statement of its principal objectives and the methods to be used to attain those objectives

The agreement explains the amount of remuneration or expenses the professional fundraiser is entitled to receive for the services contained in this agreement and I have shown the manner in which that amount is to be determined

My agreement states any voluntary scheme for regulating fundraising, or any voluntary standard of fundraising, that the professional fundraiser undertakes to be bound by for the purposes of this agreement (e.g. by signing up to the Code of Fundraising Practice by registering with the Fundraiser Regulator)

The agreement explains how the professional fundraiser is to protect vulnerable people and other members of the public in the course of, or in connection with, the activities to which my agreement relates. In particular, this agreement addresses how this will be achieved in relation to:

1. Unreasonable intrusion on a person's privacy
2. Unreasonably persistent approaches for the purpose of soliciting or otherwise procuring money or other property on behalf of the charity
3. Placing undue pressure on a person to give money or other property

I have included arrangements to enable my charitable institution to monitor compliance by reference to this agreement

If there is more than one charitable institution party to the agreement, I have given provision as to the manner in which the proportion in which the institutions are respectively to benefit under the agreement is to be determined

Agreements between Charitable Organisations and Commercial Participators

Minimum legal requirements:

I have included the name and address of each of the parties to the agreement

My agreement includes the date on which the agreement was signed by or on behalf of each of those parties

I have included the period for which the agreement is to subsist

I have included the terms relating to the termination of the agreement prior to the date on which the period above expires

I have included terms relating to the variation of the agreement during that period (This is obligatory in Scotland)

My agreement contains a statement of its principal objectives and the methods to be used to attain those objectives

For each method used to attain the objectives, my agreement includes a description of charitable contributions which are to be given or applied for the benefit of my charity and the circumstances in which they are to be given or applied

The agreement explains the amount of remuneration or expenses the commercial participator is entitled to receive for the services contained in this agreement and I have shown the manner in which that amount is to be determined

My agreement provides the proportion of the consideration given for goods or services sold or supplied by the commercial participator, or of any other proceeds of a promotional venture undertaken by him, which is to be given to or applied for the benefit of the charitable institution

The agreement states the sums by way of donations by the commercial participator in connection with the sale or supply of any goods or services sold or supplied by him which are to be so given or applied

My agreement states any voluntary scheme for regulating fundraising, or any voluntary standard of fundraising, that the commercial participator undertakes to be bound by for the purposes of this agreement

The agreement explains how the commercial participator is to protect vulnerable people and other members of the public in the course of, or in connection with, the activities to which my agreement relates. In particular, this agreement addresses how this will be achieved in relation to:

1. Unreasonable intrusion on a person's privacy
2. Unreasonably persistent approaches for the purpose of soliciting or otherwise procuring money or other property on behalf of the charity
3. Placing undue pressure on a person to give money or other property

I have included arrangements to enable my charitable institution to monitor compliance by reference to this agreement

If there is more than one charitable institution party to the agreement, I have given provision as to the manner in which the proportion in which the institutions which are so party are respectively to benefit under the agreement

Fundraising Agreement Additional Considerations Checklist

In addition to the minimum legal requirements listed above, we recommend that for all channels, you consider the following for your Fundraising Agreements documents:

- Reference to Code of Fundraising Practice and relevant Rule Books
- Attrition and clawback clauses – how can you ensure the quality of the fundraising to give long-term ROI?
- Complaints handling
- Ethics and ethos
- Fee structure – could the fee structure have a negative impact on the quality of fundraising?
- KPIs – consider KPIs relating to donor experience as well as financials
- Materials – scripts, brand items, etc. including privacy notices
- Observations/visits – frequency and considerations
- Payment methods – paperless direct debit, direct debit mandate, card, standing order, BACS and PCI DSS etc.
- Reporting – frequency, type, format
- Responsibilities of charity and third party
- Solicitation statement
- SLAs – include response times for information relating to complaints and monitoring
- Training – specific requirements you may have
- Vulnerability people
- Data – is this going to be included in the Fundraising Agreement or as a separate Agreement?

In addition to the above, for each channel we recommend you include the following:

- **Private Site**
Specific reference should be made to the relevant section of the Code of Fundraising Practice – Namely that organisations **must** have permission from the property owner/manager to collect and **must** ensure they only collect on times/dates/ areas specified. The right to request proof of permissions from suppliers should be included in the agreement. The Fundraising Regulator sets the Private Site [Rulebook](#). Adherence to

this Rulebook and the Code of Fundraising Practice should be included as a condition of the Fundraising Agreement where applicable.

- **Door-to-Door**
Include reference to the provisions of the House-to-House Collections Act 1939 and House-to-House Regulations 1947, specifically those related to the licensing of these collections. All door-to-door collections (whether for money or other property – this includes direct debit) must take place under the authority of either a licence issued by a local licensing authority, or a National Exemption Order issued by central government. You should ensure however that the different legal provisions across the UK are properly referenced. Links are provided here:

[House to House Collections Act 1939](#)
[House to House Collections Regulations 1947 \(“the Regulations”\)](#)
[House to House Charitable Collections Act \(Northern Ireland\) 1952](#)
[House to House Charitable Collections Regulations \(Northern Ireland\) 1952 & 1953](#)
[Civic Government \(Scotland\) Act 1982](#)
[Public Charitable Collections \(Scotland\) Regulations 1984.](#)

The Fundraising Regulator also sets the D2D Fundraising Rulebook, which specifies additional ‘day-to-day’ rules. Adherence to this [Rulebook](#) as well as the Fundraising Code of Practice should be included as a condition of the Fundraising Agreement where applicable:

- **Street**
The Fundraising Regulator also sets the Street Fundraising Rulebook, which specifies additional ‘day-to-day’ rules for this form of fundraising. Adherence to this [Rulebook](#) and the Code of Fundraising Practice should be included as a condition of the Fundraising Agreement where applicable:

- **Telephone**

- The supplier is TPS Assured (Call Centre) accredited or in the process of applying
- How and when can you access call recordings, random selection and access to all outcomes
- Suppression files - from charity to supplier and return, agreement on the frequency and format of these
- Live call listening -access to monitor live calls
- Data recycling - what data recycling rules will be applied
- Data retention - the length of time the supplier will retain call recordings
- Conforming with Ofcom rules such as persistent misuse
- Adherence to the Code of Fundraising Practice

Data Supply Agreements

Data

The ICO is your main source of information for all things to do with data. We recommend you read their [Direct Marketing Guidance](#) and check regularly for updates.

Other useful sources of information are the Fundraising Regulators guidance entitled, “Personal Information and Fundraising: Consent, Purpose and Transparency” and the IoF’s document, “GDPR Essentials for fundraising organisations”.

You can also subscribe to the ICO’s newsletter which is a valuable source of information on what is happening currently and forthcoming changes: [ICO Newsletter](#)

The sections below suggest items to consider for inclusion in a data supply agreement.

Data supply agreements

Consider including the following:

- Consent
- Consent question – what question will you use to ensure consent is informed (purpose), specific (who will use the data) and freely given (have a choice about whether to give consent or not) and is unambiguous (there is a positive affirmation by the data subject)
- Privacy notices used ([See Privacy Impact Assessment, Privacy Notices/Statements and Privacy Notice Checklist](#))
- Quantity and frequency of data
- Replacement data – you should include a replacement clause for data which for example is number/address not recognised or where the data subject is not known. You should also return such data giving the reason for its return. This will help ensure that the quality of data supplied to you is consistent. It will also help you manage your data suppliers, as you may not wish to continue working with a supplier who is providing you with large quantities of such data.
- Make sure the data is supplied on your terms and to your standards.
- Assurance that supplier and any subcontractors/affiliates they may use work to prevailing EU/UK regulations, for GDPR this includes any organisation outside of the EU
- Data transfer security measures (within and outside of EU)
- Data retention – how long will data be kept?
- Provision of provenance of data
- Access of information requests and complaints handling ([See Subject Access Requests](#))
- Suppression lists – make sure you receive any Do Not Contact requests given directly to your data supplier and vice versa.
- SLAs and access for monitoring – frequency, quantity, timing

Legitimate Interests Checklist

Make sure you keep a record of the assessment you made when deciding to rely on legitimate interests and you have established a relationship with the individual. In particular this must demonstrate how you have considered the rights and freedom of the data subjects.

You are clear about the grounds for lawful processing to be relied upon

You have checked these grounds will still apply under GDPR

You have balanced your interests with those of the data subjects and documented this

The data subjects would reasonably expect you to process their data on this basis

The processing would be fair and lawful and comply with all the data protection principles

You have included legitimate interests in your privacy notice

You understand that data subjects have the right to object to their data being processed on the grounds of legitimate interests and have made provision for this

SECTION 7 - EXAMPLE TEMPLATES

Telephone Fundraising

Example call monitoring form and guidelines

Compliance		Passed	Failed
C1	Did the fundraiser ask for the named person or confirm they are the mobile bill payer?	<input type="checkbox"/>	<input type="checkbox"/>
C2	Did the fundraiser clearly give their name?	<input type="checkbox"/>	<input type="checkbox"/>
C3	Did the fundraiser clearly state who they were calling on behalf of?	<input type="checkbox"/>	<input type="checkbox"/>
C4	Did the fundraiser ask if the person was happy to continue with the call at that time?	<input type="checkbox"/>	<input type="checkbox"/>
C5	Did the fundraiser ask if the person was over the age of 16 at least?	<input type="checkbox"/>	<input type="checkbox"/>
C6	Was the purpose of the call made clear?	<input type="checkbox"/>	<input type="checkbox"/>
C7	Did the fundraiser explain the call was being recorded?	<input type="checkbox"/>	<input type="checkbox"/>
C8	Did the fundraiser explain the reasons for the call recording?	<input type="checkbox"/>	<input type="checkbox"/>
C9	Did the fundraiser ask if it was OK to continue with the recorded call?	<input type="checkbox"/>	<input type="checkbox"/>
C10	If a financial ask was made, did the fundraiser make a solicitation statement?	<input type="checkbox"/>	<input type="checkbox"/>
C11	Did the fundraiser make the appropriate number of asks (not more than 3)?	<input type="checkbox"/>	<input type="checkbox"/>
C12	If applicable, was the Gift Aid scheme explained correctly?	<input type="checkbox"/>	<input type="checkbox"/>
C13	If applicable, was the Gift Aid disclosure statement read?	<input type="checkbox"/>	<input type="checkbox"/>
C14	If applicable, did the fundraiser state the support consists of a regular financial commitment?	<input type="checkbox"/>	<input type="checkbox"/>
C15	Did the fundraiser protect the data protection rights of the data subject?	<input type="checkbox"/>	<input type="checkbox"/>
Soft Skills			
S1	Did the fundraiser speak clearly?	<input type="checkbox"/>	<input type="checkbox"/>
S2	Did the fundraiser demonstrate listening?	<input type="checkbox"/>	<input type="checkbox"/>
S3	Was the fundraiser rude or aggressive?	<input type="checkbox"/>	<input type="checkbox"/>
S4	Did the fundraiser engage in a polite manner?	<input type="checkbox"/>	<input type="checkbox"/>
S5	Was the fundraiser overly pushy?	<input type="checkbox"/>	<input type="checkbox"/>
S6	Did the fundraiser try to sell on cancellation?	<input type="checkbox"/>	<input type="checkbox"/>
S7	Did the fundraiser correctly represent the facts?	<input type="checkbox"/>	<input type="checkbox"/>
S8	Was the fundraiser truthful?	<input type="checkbox"/>	<input type="checkbox"/>
S9	Was the fundraiser a good ambassador for the charity?	<input type="checkbox"/>	<input type="checkbox"/>
Ending the call			
E1	Did the fundraiser end the call if asked?	<input type="checkbox"/>	<input type="checkbox"/>
E2	Was the call ended in a polite and appropriate manner?	<input type="checkbox"/>	<input type="checkbox"/>
E3	Does the outcome provided match the outcome of the call?	<input type="checkbox"/>	<input type="checkbox"/>
TPS, data and complaints information			
G1	If applicable, could the fundraiser explain TPS/demonstrate they understood TPS?	<input type="checkbox"/>	<input type="checkbox"/>
G2	Could the fundraiser provide the data source information if asked?	<input type="checkbox"/>	<input type="checkbox"/>
G3	If asked, could the fundraiser give an address or Freephone number for the charity?	<input type="checkbox"/>	<input type="checkbox"/>
G4	If asked, could the fundraiser give a valid business address or telephone number for the agency they work for?	<input type="checkbox"/>	<input type="checkbox"/>
G5	Could the fundraiser give details about the complaints process if asked?	<input type="checkbox"/>	<input type="checkbox"/>

The notes below are aimed at enabling monitors to assess calls in a consistent manner. These notes should be used in conjunction with the Call Monitoring Form or Call Monitoring Report.

Using the Call Monitoring Form

Scoring can be either by entering a '1' or 'P' for a pass and a 'O' or 'F' for a fail on the Call Monitoring Form.

Guidance Notes

We have included some guidance against each section. Both the questions and notes have been taken from information included in the Code of Fundraising Practice as well as additional information from TPS Assured (Call Centres), the LCCP (Gambling Commission) and the Data Protection Act. In some instances where there may be conflict or differing opinions, e.g. location of solicitation statement, age question, we have aimed to provide enough information for you to make an informed decision. However, not applying recommended best practice would not be considered a compliance fail.

C1 Did the fundraiser ask for the named person or confirm they are the mobile bill payer?

Fundraisers must ask for a named individual and not just pitch to whoever answers the phone. Where the data being used is from an SMS campaign there may not be a name supplied in which case the fundraiser must ask to speak to the bill payer of the mobile number they are calling and make every effort to ensure they are speaking to the correct individual.

In some cases, the data provided to the fundraiser will not contain a first name but may contain initials instead (or indeed not first name at all). Fundraisers should use the full name provided in the data and therefore although it may seem unusual to ask for Mr T J Smith, this should not be viewed negatively.

C2 Did the fundraiser clearly give their name?

If you are not clear of the fundraiser's name, then this is a fail.

C3 Did the fundraiser state clearly who they were calling on behalf of?

If an agency is used, the fundraiser must be clear that they are calling on behalf of an organisation and not say "from". If the agency fundraiser uses the word from, then this is non compliant and should be scored as "O".

Where the fundraiser is employed directly for the organisation, it is fine for them to say "from".

C4 Did the fundraiser ask if the person was happy to continue with the call at that time?

If the fundraiser doesn't ask the question, this is a fail.

It is reasonable for the fundraiser to explain the call shouldn't take that long and to ask when would be a more convenient time to call back, but if the data subject doesn't want a call back, then the fundraiser should politely end the call as not interested or do not contact (depending on what the data subject says) and not reschedule.

C5 Did the fundraiser ask if the person was over the age of 16 at least?

Refer to campaign information provided by charity/agency.

If the campaign is to recruit new supporters, then an age question must be asked – failure to ask the question is a fail.

a. Lottery/raffle calling - all

The minimum age to participate in a lottery or raffle is 16.

Some organisations choose to set a higher age limit as this helps reduce attrition and may be an internal standard set in line with their vulnerability, social responsibility or other policies. This also brings regular lottery payments in line with the Fundraising Code of Practice: where participation involves a regular payment, the Fundraising Code of Practice says that the minimum age must be 18 (see b.)

For lottery/raffle calling, the age question must always be asked.

The Gambling Commission advised that in this sort of lottery promotion, they are happy for an age in excess of 16 to be used.

b. Other fundraising – acquisition

Where the campaign is to recruit new supporters, then an age question must be asked.

The fundraising code of practice says that (3.3 Undertaking the Fundraising Activity):

“Organisations MUST employ all best efforts to avoid soliciting regular donations, such as Direct Debits, from under 18s.”

Some organisations choose to set a higher age limit as this helps reduce attrition and may be an internal standard set in line with their vulnerability, social responsibility or other policies, but as a rule, the minimum age where a regular donation is being solicited is 18.

c. Other fundraising – current/previous supporters

Where the data subject has previously supported the charity and therefore age verification has already been undertaken, there is no need to ask the age question again.

This information should be provided in the campaign information provided prior to call monitoring. However, this depends on the type of previous support and whether or not the age was obtained initially.

C6 Was the purpose of the call made clear?

The purpose of the call must be made clear at the beginning of the call (principles 1 and 2 of DPA). See below from the TPS Assured Call Centre audit under section 1 Policy Audit: “2.4 You must clearly state at the beginning of the conversation all commercial purposes of the call and must restrict the content of the call to

matters directly relevant to these purposes.” If the fundraiser does not make it clear that the call is to gain fundraising support, then this is a fail and should be marked as “0”. For GDPR purposes, organisations will need to make clear all the purposes for which the data collected may be processed and used.

C7 Did the fundraiser explain the call was being recorded?

This should be explained early on in the call and prior to the pitch. If the explanation is after the pitch has started or not at any point in the call, then this should be marked as a fail and scored as “0”

C8 Did the fundraiser explain the reasons for the call recording?

In order for the call recording to be used in certain circumstances, the data subject needs to have been told how the call recording might be used.

As usage for call recordings can vary, this must be included in the campaign information. If the fundraiser fails to use the exact wording (if any) in the campaign information, then this is a fail and should be scored as “0”.

C9 Did the fundraiser ask if it was OK to continue with the recorded call?

This is a best practice suggestion to cover incidents where the data subject may volunteer sensitive information, e.g. health details, or where the campaign asks for sensitive details to be collected. The campaign information should indicate if this question is to be asked or not. If the question is to be asked, then the score should be “0” if it is not asked or if the fundraiser continues with the call without positive affirmation from the data subject.

C10 If a financial ask was made, did the fundraiser make a solicitation statement?

Where the data subject agrees to make a financial arrangement, and a professional fundraiser is being used (e.g. a fundraiser working for an agency), the fundraiser must

provide a solicitation statement. This should be made up of the fee the agency expects to be paid (notifiable amount) and the method this is determined, e.g.

"I work for fundraising company x on behalf of charity y. We expect to be paid £w in connection with this particular appeal, and the method used to determine our payment was [method z]".

If the fundraiser is employed directly by the charity (in-house fundraiser), then they only need to state that they are a paid fundraiser and do not have to give the notifiable amount. If the data subject doesn't agree to make a financial arrangement then no solicitation statement has to be given.

The Code of Fundraising Practice (section 4, paragraph 4.2 (e)) says the solicitation statement must be made either before money is given by the donor or before any financial details relevant to the transaction are requested by the fundraiser (whichever is the sooner).

Failure to give a solicitation statement if it would normally be required, should be scored as "0"

C11 Did the fundraiser make the appropriate number of asks (not more than 3)?

The maximum number of fundraising asks that can be made in a call is 3.

However, if the data subject seems to be vulnerable* (whether that is financially, mentally, etc.), then it would not be appropriate for the fundraiser to make 3 asks.

The score should be "0" if the fundraiser makes more than 3 asks or if there were more asks than appropriate e.g. due to the vulnerable state of the data subject.

C12 If applicable, was the Gift Aid scheme explained correctly?

The Gift Aid scheme should be explained in accordance with the campaign information – some campaigns such as lottery, are not eligible

for Gift Aid. Failure to read the exact script will be scored as "0". If the fundraiser makes every attempt to read the script but is stopped by the supporter, then this would be deemed a pass and should be scored as "1".

Example:

By agreeing to Gift Aid you can boost your donation by 25p of Gift Aid for every £1 you donate. Gift Aid is reclaimed by the charity from the tax you pay for the current tax year. Your address is needed to identify you as a current UK taxpayer.

C13 If applicable, was the Gift Aid disclosure statement read?

To claim Gift Aid you need to get a Gift Aid declaration from the donor. It should state that the donor:

- has paid the same amount or more in Income Tax or Capital Gains Tax in that tax year
- agrees to Gift Aid being claimed

If the fundraiser makes every attempt to read the disclosure statement but the supporter doesn't let the fundraiser continue, this should still be classed as a 1.

C14 If applicable, did the fundraiser state the support consists of a regular financial commitment?

See the campaign info. Where a regular financial ask is being made, the fundraiser should make this clear. Failure to do so is scored as "0".

C15 Did the fundraiser protect the data protection rights of the data subject?

The fundraiser must only share information held with the data subject. If a gatekeeper answers the call, the fundraiser must not divulge any information about the data subject including:

- Any contact consent the data subject may have given
- Any previous support by the data subject
- The reason the fundraiser is calling the data subject

Soft Skills

S1 Did the fundraiser speak clearly?

If you could not easily understand what the fundraiser was saying, then it is likely that the fundraiser was not speaking clearly. To judge this, ask the following questions:

- Did they speak too quietly making it difficult to hear?
- Did they speak too quickly making it difficult to understand or follow what they were saying?
- Did they adjust their speech if asked by the data subject?

S2 Did the fundraiser demonstrate listening?

Did the fundraiser respond appropriately to what the data subject said?
Did the fundraiser talk over the data subject?

S3 Was the fundraiser rude or aggressive?

If the fundraiser swore, was non-respectful or just generally rude or aggressive in their approach or tone, then this would be a fail.

S4 Did the fundraiser engage in a polite manner?

Was the fundraiser well-mannered, courteous and respectful in their approach towards the data subject?

S5 Was the fundraiser overly pushy?

It is reasonable for fundraisers to objection handle, however where it is clear that the data subject is not interested or has concerns in giving their bank details over the phone for example, then the fundraiser should not persist. For guidance, if the fundraiser uses the same objection handling more than once or tries more than three times to objection handle the same point, the fundraiser should be deemed as being overly pushy.

S6 Did the fundraiser try to sell on cancellation?

It is absolutely fine for the fundraiser to make it clear that the data subject can cancel at any time. However the fundraiser should not use the option to cancel at any time as a direct means to get a sign up, e.g. if the fundraiser suggested that the data subject should sign up and then cancel prior to the first payment or in the case of regular payments, cancel after the first payment, this should be a fail and scored as a "0".

S7 Did the fundraiser correctly represent facts?

Fundraisers should only give facts which have been authorised by the charity or in circumstances where the charity has agreed to this, e.g. facts which are taken from the charity's website.

Facts should not be exaggerated by the fundraiser, e.g. if the fact is that 60% of all chocolate eaters will become obese, then fundraisers should not say "nearly all chocolate eaters will become obese" or "eating chocolate will make you obese".

S8 Was the fundraiser truthful?

Fundraisers must be honest and open throughout the call, i.e. they must be truthful about the reason for the call and about any information they provide pertaining to the charity.

S9 Was the fundraiser a good ambassador for the charity?

Fundraisers should always consider that they are representing the charity. This means not taking advantage of the vulnerable, not being forceful in gaining donations, being honest about the cause of the charity and being respectful and polite at all times.

Ending the call

E1 Did the fundraiser end the call if asked?

Fundraisers must politely end calls when asked.

E2 Was the call ended in a polite and appropriate manner?

If the fundraiser argued, hung up or was otherwise rude or inappropriate in their approach then this should be a fail and scored as “0”.

If the fundraiser decided to end the call as they were speaking with a vulnerable* person, then they should end the call appropriately and sensitively. Failure to do so should be scored as “0”.

E3 Does the outcome provided match the outcome of the call?

Is the outcome provided with the URN the same as the outcome of the actual telephone call, e.g. if the call outcome shows DNC and the call hadn't been answered, then this should be scored as “0”.

TPS data and complaints information

G1 If applicable, could the fundraiser explain TPS/ demonstrate they understood TPS?

TPS means Telephone Preference Service. It is free to register with TPS and registration is finite. TPS registers the telephone number and does not keep a record of the individual who registered the number.

A TPS number may not be called for marketing purposes unless an individual has given consent to be called on that number.

Consent to call overrides TPS registration.

Note: most organisations will put a number on DNC if a gatekeeper asks them to.

G2 Could the fundraiser provide the data source information if asked?

Fundraisers would need to be able to explain how this information can be obtained dependent on the policy of the organisation they are calling for, but do not need to be able to provide it immediately. This type of information would be classed as a Subject Access Request and it would be normal for the fundraiser to provide the client services number of the organisation for which they are working.

In addition, TPS Assured would expect fundraisers to at least be able to provide some information, such as ‘we are calling because you have previously donated/taken part in an event/bought products from us/suggested you were interested in our charity in a recent survey’.

However, if it is a gatekeeper who is asking for this information, the fundraiser should say that “[data subject name] can obtain this information from xxxxxxxx” (dependent on the policy of the organisation they are calling for).

This information should be provided in the campaign information.

G3 If asked, could the fundraiser give an address or Freephone number for the charity?

The fundraiser must be able to provide contact details for the charity and one of these means should be free of charge. If a telephone number is given and this is not a Freephone number, then this should currently be scored as a “0” because the code currently specifically says Freephone number.

G4 If asked, could the fundraiser give a valid business address or telephone number for the agency they work for?

The fundraiser should have this information to hand, if they can't give the information, then score this as “0”, if they have to ask someone else for the information, then this should still be a “0”.

G5 If asked, could the fundraiser give details about the complaints process?

The fundraiser should be able to explain how to make a complaint (e.g. write to charity x at y address or call customer services on xxxxxxxx). They should know where to direct the complaint dependent on whether the complaint relates to the agency or to the charity and if they are unclear, they should ask.

Tips to identify a vulnerable person

In order to be consistent, we suggest call monitors should be listening for vulnerability indicators as set out in the IoF's guidance, '[Treating Donors Fairly](#)'. These indicators would include:

- a. Examples of indicators which could mean that an individual is in a vulnerable circumstance or needs additional support could include:
 - Physical and mental medical conditions (both permanent and temporary conditions)
 - Disability
 - Learning difficulties
 - Times of stress or anxiety (e.g., bereavement, redundancy)
 - Financial vulnerability (where a gift from a donor may impact on their ability to sufficiently care for themselves or leave them in financial hardship)
 - English not being the donor's first language
 - Influence of alcohol or drugs
 - Where people live (for example, in supported housing)
- b. Indicators that the individual appears confused:
 - Asking irrelevant and unrelated questions
 - Responding in an irrational way to simple questions
 - Asking for questions or information to be continually repeated
 - Saying 'yes' or 'no' at times that it is clear they haven't understood
 - Taking a long time or displaying difficulty in responding to simple questions or requests for information
 - Repeating simple questions such as 'who are you, what charity is it, what do you want'
- c. Indicators that the individual may have physical difficulties:
 - Wandering off the subject at hand and making incongruous statements
 - Displaying signs of forgetfulness
 - Unable to hear and understand what is being said
 - Unable to read and understand the information they are provided with
 - Displaying signs of ill-health like breathlessness or making signs of exasperation or discontent
- d. Indicators that the individual may be in a vulnerable circumstance or lack capacity:
 - Giving a statement such as 'I don't usually do things like this, my husband/wife son daughter takes care of it for me'
 - Saying that they are not feeling well or not in the mood to continue
 - Indicating in any way that they are feeling rushed, flustered, or experiencing a stressful situation
 - Having trouble remembering relevant information, for example forgetting that they are already a regular donor to that charity (e.g., have an existing Direct Debit), or have recently donated
 - Donating an unexpectedly large gift with no prior relationship? (NB. There being no prior relationship before a gift is made does not on its own constitute 'vulnerability': many legacy and major donor gifts to charities are given without the existence of a relationship between the donor and charity.)

Example Private Site Mystery Shopping Form

Location:

Shopper:

Assessment Date:

Assessment Time:

Your Name:

Date of Birth:

Your Postcode

MSRef number:

If there was a sign up, did you do it on an iPad or paper form?

N/A Electronic Device Paper Form Other *N/A if no sign up*

Successful:

Yes No

PFO/Charity:

Charity Code: *To be filled out in office*

Fundraiser's name/description:

Private Site Location:

Section A: Initial Observation

1. Number of fundraisers present: (N/S)

2. Were the fundraisers easily identifiable, either by the presence

of a promotional stand or by wearing charity branded clothing? (Required)

Yes No N/A

3. If A2 is No please state how many FR's were in breach: (N/S)

N/A

4. If charity branded clothing was worn, was the charity's name printed clearly on it and not rendered illegible by degradation or dirt or other obscuration? (Required)

Yes No N/A

5. If A4 is No please state how many fundraisers were in breach: (N/S)

N/A

6. Were all the fundraisers' charity ID badges visible (Required) Yes No

Please ask to see some ID if it isn't visible. If an ID badge was being worn this should be Yes - if it seems to have twisted this is still Yes. BUT if a lanyard is being worn INSIDE clothing so all you can see is the strap, this must be NO.

7. If A6 is No then please state how many were not visible (N/S) N/A

8. Did the fundraisers comply with the 3 step rule? Yes No

Once a verbal greeting has been made a fundraiser MUST not take more than three steps alongside or in pursuance of that member of the public. This does not apply to a fundraiser escorting a member of the public to a promotional stand, or to a different part of the promotional stand, having successfully engaged them.

9. If A8 is No then please state the number of FR's in breach: (N/S) N/A

10. If outside a shop at a High Street location, were the fundraiser(s) within 1 metre of the promotional stand (if present) and was the stand no more than 1 metre away from the shop front? (Required) Yes No N/A

11. If not outside a shop at a High Street location and a stand was present, was there at least 1 fundraiser attending it with a line of sight to the stand? (Required) Yes No N/A

N/A if question 10 has been answered

Section B: Engagement

Opening words used (Required)

12. Did the fundraiser engage with you in a polite manner? Yes No

13. Did the FR discuss the charity and its work? *Please briefly outline what was said.*

14. Did the fundraiser state that the support consists of a regular donation or, in the case of prospecting or SMS prospecting, that there would be a follow up call to ask for a regular donation? (Required) Yes No N/A

This should only be marked N/A when carrying out a refusal and the fundraiser does not get as far as describing the type of support they're looking for

15. Did the fundraiser encourage you to sign up and then cancel soon after? (0,3) (Required)

Yes No N/A

It is fine to say you can cancel at any time, but not ok for the fundraiser to persuade you to sign up and then cancel soon after. If you have answered Yes please leave a comment to explain what was said.

16. Was the fundraiser rude or aggressive? (Required)

Yes No

17. Did the fundraiser use flirtation, guilt tripping or inappropriate personal persuasion? (Required)

Yes No

Section C: Signup

There is a statement that the fundraiser should give you either verbally or by drawing your attention to a written version, they may do both. This statement will be different depending on whether the fundraiser works for an Agency (in which case answer Questions 18 and 19) or directly for a charity (in which case answer Questions 20 and 21). If you are only asked to sign or initial the form next to the statement, even if they have not explained what you are signing for, then you should answer YES to question Q19 for Agency fundraisers and Q21 for in house fundraisers. If you can answer YES to either of the 2 questions, then the other question must be N/A as they are not required to do both. However, if they do both, please mention this in the comments. If the fundraiser fails to do any of these things score both questions NO. DO NOT prompt them or ask for additional information.

18. Before taking any bank details from you, did the Fundraiser verbally disclose the charity they were fundraising for, the notifiable amount, and its method of calculation?

Yes No N/A

If this question is answered Yes, then the next question is N/A. The notifiable amount is the amount paid to the fundraising agency to carry out this campaign. The method of calculation is how this amount was calculated e.g. 'A fee paid for each donor'. Please comment on whether they verbally disclosed or asked you to read the statement before signing the paper form or electronic device, or if the disclosure was made after they asked you to sign it. Please state amounts given.

19. Before taking any bank details from you, did the Fundraiser draw your attention to a written statement disclosing the charity they were fundraising for, the notifiable amount, and its method of calculation?

Yes No N/A

If this question is answered Yes, the question above is N/A. The notifiable amount is the amount paid to the fundraising agency to carry out this campaign. The method of calculation is how this amount was calculated e.g. 'A fee paid for each donor'. Please comment on whether they verbally disclosed or asked you to read the statement before signing the paper form or electronic device, or if the disclosure was made after they asked you to sign it. Please state amounts given.

The Fundraiser may give the statement verbally, draw your attention to the written statement, or do both. However if you can answer yes to either of these questions, the other question must be N/A as they are not required to do both, however, if they do both, please mention in the comments. If they do neither, score both questions No. If the fundraiser fails to do any of these things DO NOT prompt them or ask for additional information.

If you have answered No to question 18 and 19, are you absolutely sure that they did not disclose the notifiable amount and the method of calculation before taking any bank details from you? If so please continue with the assessment form.

20. If they were working in-house, before taking any bank details from you, did the fundraiser verbally disclose that they were a paid fundraiser and give the name of the charity they work for? Yes No N/A

21. If they were working in-house, before taking any bank details from you, did the fundraiser draw your attention to a written statement informing you that they were a paid fundraiser and giving the name of the charity they work for? Yes No N/A

The Fundraiser may give the statement verbally, draw your attention to the written statement, or do both. However if you can answer yes to either of these questions, the other question must be N/A as they are not required to do both, however, if they do both, please mention in the comments. If they do neither, score both questions No. If the fundraiser fails to do any of these things DO NOT prompt them or ask for additional information.

If you have answered No to questions 20 and 21, are you absolutely sure that they did not inform you that they were a paid fundraiser raising funds for charity X before taking any bank details from you? If so please continue with the assessment form.

22. Was the gift aid scheme explained before being asked whether you would like to opt in? Yes No N/A

Greenpeace cannot claim Gift Aid and as such should be marked as N/A.

23. Did the fundraiser clearly explain the choices available to you for future contact from the charity and did they request your consent for all the options given? (Required) Yes No N/A

Section D: No Signup

24. Did the fundraiser persist after the first refusal? (Required) Yes No N/A

25. Did the fundraiser persist after an attempt to end the conversation? (Required) Yes No N/A

This question should be answered Yes if the fundraiser persists after a third refusal or after a clear attempt to end the conversation.

Section E: General

26. Was the conversation ended in a polite manner? (Required)

Yes No

27. Based on your interaction with the charity today, how likely is it that you would recommend supporting this charity to your friends? (score from 0 to 10 with 10 being the most likely)? (Required)

Please explain your answer

28. General comments (Required):

Appendix A - Compliance programmes should identify the different stages of activity:

Stage 1: Understand the requirements

- Read, understand and interpret the professional standards laws, regulations, and policies

Stage 2: Analyse your association's existing compliance system

- Analyse the existing organisation-specific rules, directives and enterprise policies against the professional standards Regulations
- Identify gaps in the current systems
- Determine what needs to be done to close the gaps

Stage 3: Design compliance system

- Develop a budgetary estimate for compliance and seek commitment of funding
- Assign responsibilities so that each section of the organisation dealing with fundraising knows who is doing what in the compliance effort
- Have a system to track and manage your activities
- Develop a strategic plan so that everyone responsible for activities in the organisation understands the compliance effort
- Confirm the scope and establish the due diligence documentation method and storage

Stage 4: Implementation

- Conduct awareness training for relevant employees and stakeholders.
- Document and promote compliance strategies among suppliers and affected employees
- Develop a system to help employees and stakeholders who raise concerns of any kind stemming from possible non-compliance.
- Develop formal policies and procedures to deal with non-compliance
- Consider needed additions to the compliance programme, if other important areas of compliance are identified.

Stage 5: Monitoring and evaluation

- Collect and analyse compliance, complaints and disciplinary data
- Take periodic representative sampling to determine the level of compliance with requirements
- Analyse sampled data
- Audit periodically to confirm consistency between declarations and observations
- Investigate in response to people's complaints
- Analyse compliance failure and take measures to rectify the situation.

Stage 6: Improvements

- Effect changes as a result of lessons learnt from experience, monitoring and evaluation exercises
- Effect changes from the feedback of suppliers on the standards and the adequacy of compliance with the Code's requirements
- Effect changes as a result of new compliance requirements.

Stage 7: Report to the Board

- Methods of implementation of compliance plan
- Systems for monitoring and evaluation of compliance program
- Results of the analysis of self-declared forms and audit outcomes
- Non-compliance and disciplinary action if any taken
- Effectiveness of the existing compliance plan
- Changes to the compliance plan and reasons for such

Appendix B - Risk Management

Risk Management Plan

A risk is an event or condition that, if it occurs, could have a positive or negative effect on a campaign's objectives. Risk management is the process of identifying, assessing, responding to, monitoring, and reporting risks. A Risk Management Plan should define how risks associated with the campaign will be identified, analysed and managed. It should outline how risk management activities will be performed, recorded and monitored throughout the lifecycle of the campaign and provide templates and practices for recording and prioritising risks.

In this example we look at risk management of a campaign, but the process is applicable to any risk assessment. It is worth checking whether or not your organisation has an existing process or procedure for risk management as this should be followed wherever possible. If there isn't such a process in place or if you want to make sure that the process is comprehensive enough, then this document is aimed to assist. The Risk Management Plan should be created by the campaign manager in the planning stages of the campaign and should be monitored and updated throughout the campaign. As a minimum it should include:

- the process which will be used to identify, analyse, evaluate and treat risks both initially and throughout the life of the campaign, including estimated costings (where practical);
- a Risk Register including Risk Status;
- how often the Risk Register will be reviewed, the process for review and who will be involved;
- who will be responsible for which aspects of risk management; and
- how Risk Status will be reported and to whom.

Additional suggestions for inclusion are:

- the process for transferring approved risk costings into the campaign budget; and
- the process for transferring risk mitigation strategies into the campaign structure.

The Risk Management Plan should be a controlled document and any changes should be subject to a version update, review date and sign off by a senior member of staff.

Identifying Risks

Identifying potential risks should be the first step in creating a Risk Register. Initially this could take the form of a brainstorming session with the campaign team and appropriate stakeholders to identify the risks.

The wording of each risk should follow a simple two-step approach:

1. Consider what might be a 'trigger' event or threat (e.g. 'poor quality data causes costs to rise') - several triggers may reveal the same inherent risk; then
2. Identify the risk - use a 'newspaper headline' style statement

Risk identification should include evaluation of:

- environmental factors (i.e. political, legislation, media, environment)
- organisational culture (i.e. objectives, values)
- campaign scope (i.e. target audience, aims, methodology, data)
- trustees
- human resource (i.e. management, training, staffing, absence)
- health and safety
- client service levels
- reputation (i.e. government, public, media)
- resource (i.e. budget, IT, payment methods)
- premises
- finance

Careful attention should be paid to:

- campaign deliverables, assumptions and constraints
- cost/effort estimates
- resource planning
- key campaign documents - campaign brief, associated legislation, codes of practice

Also consider the risk in terms of the 3 prohibited behaviours:

- unreasonable intrusion on a person's privacy;
- unreasonably persistent approaches for the purpose of soliciting or otherwise procuring money or other property;
- placing undue pressure on a person to give money or other property

Note:

It is very easy to identify a range of risks that are outside the specific campaign and are actually general organisational risks. Risks which are not specific campaign risks should be noted and passed to the relevant senior manager for consideration and inclusion in the overall Risk Register rather than forming part of the campaign's own Risk Register.

Risk Register and Analysis

The list derived from the above deliberations should form the basis of the Risk Register. Risk Registers should contain the following:

- risk identity
- probability of risk happening
- impact of risk
- mitigation
- contingencies
- review dates
- change of status and reason

The probability and impact of occurrence for each identified risk needs to be assessed and it is common to use a RAG approach to clearly identify these in the Risk Register. It is also useful to give definitions for the different probability and impact levels, for example:

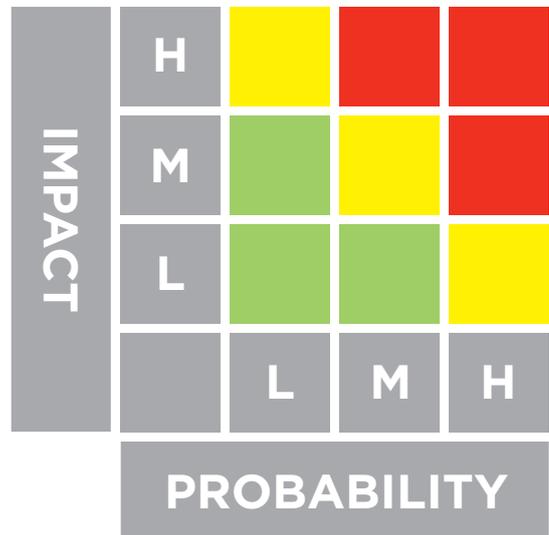
Probability

- High (Red) - Greater than 65% probability of occurrence
- Medium (Yellow) - Between 25% and 65% probability of occurrence
- Low - (Green) Less than 25% probability of occurrence

Impact

- High - Risk that has the potential to greatly impact campaign cost, campaign schedule or performance
- Medium - Risk that has the potential to slightly impact campaign cost, campaign schedule or performance
- Low - Risk that has relatively little impact on cost, schedule or performance

Risks that fall within the Red and Yellow zones will need risk response planning which may include both a risk mitigation and a risk contingency plan.



Risk Response Planning

It is sensible to assign each major risk to a campaign team member for monitoring purposes to ensure that the risk will not be overlooked.

For each major risk, an approach should be selected to address it, for example:

- **Avoid** eliminate the threat by eliminating the cause
- **Mitigate** identify ways to reduce the probability or the impact of the risk
- **Accept** nothing will be done
- **Transfer** Make another party responsible for the risk (buy insurance, outsourcing, etc.)

For each risk that will be mitigated, the campaign team will need to identify ways to prevent the risk from occurring or reduce its impact or probability of occurring. This may include adding tasks to the campaign schedule, adding resources, etc.

For each major risk that is to be mitigated or that is accepted, a course of action should nevertheless be outlined to minimise impact should the event still materialise.

Risk Monitoring

The Risk Register should be used as a living document. Changes can be made to status as deemed appropriate as well as new risks and revised solutions added. A review of the Risk Register should form part of the agenda of any campaign review. In addition, any campaign change requests should be analysed for their possible impact to the campaign risks.



COMPLIANCE FRAMEWORK

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