

Donations and Fund-Raising Policy and Guidance¹
Adopted August 2017 Review due 2018

1.0 KEY PRINCIPLES AND BEHAVIOURS

Note: MUST* and MUST NOT* (with asterisk) denotes legal requirement

MUST and MUST NOT (without asterisk) denotes requirement of the Code of Fundraising Practice

The work of Helmsley Recreation Charity (the Charity) will be; Legal, Open, Honest & Respectful.

1.1 Legal References in this Section

- General charity law principles
- Gift Aid Rules
- Charities Act 1992
- Charities Act 2011
- Charities and Trustee Investment (Scotland) Act 2005
- Charities (Protection and Social Investment) Act 2016

The following Legal Appendices MUST be read in conjunction with this section of the Code of Fundraising Practice

- L7 Acceptance and Refusal of Donations
- L14 Data Protection

1.2 General Principles

a) A legal principle underpinning fundraising is that all funds raised for a particular cause MUST* be used for that particular cause.

b) Fundraisers MUST NOT denigrate other individuals or the Charity.

c) The Charity MUST NOT exaggerate facts relating to the potential beneficiary.

d) The Charity MUST NOT take advantage of mistakes made by the donor.

e) i) Fundraisers MUST take all reasonable steps to treat a donor fairly, enabling them to make an informed decision about any donation. This MUST include taking into account the needs of any potential donor who may be in a vulnerable circumstance or require additional care and support to make an informed decision.

ii) Fundraisers MUST NOT exploit the credulity, lack of knowledge, apparent need for care and support or vulnerable circumstance of any donor at any point in time. There is more information available about responding to the needs of people in vulnerable circumstances and helping donors to make informed decisions in the Institute of Fundraising's 'Treating Donors Fairly' Guidance.

iii) If a fundraiser knows or has reasonable grounds for believing that an individual lacks capacity to make a decision to donate, a donation MUST NOT be taken.

iv) A donation given by someone who lacked capacity at the time of donating MUST* be returned.

f) The Charity MUST NOT engage in fundraising which:

- Is an unreasonable intrusion on a person's privacy
- Is unreasonably persistent;

Or

- Places undue pressure on a person to donate.

g) Charities that are legally required to have their accounts audited - does not apply.

¹ Based on the [Code of Fundraising Practice](#) by The Fundraising Regulator. Use the website for document with links.

1.3 The Donation

1.3.1 Requesting Donations

- a)** When using donor information in a case study or any other type of publicity, the Charity MUST* comply with any duties of confidentiality that they have and comply with data protection law if publishing a case study that includes information that could identify a donor.
- b)** Fundraisers MUST NOT encourage existing donors in any way to change an existing charitable donation to another fundraising organisation.
- c)** The Charities Act 1992, and Charities and Trustee Investment (Scotland) Act 2005 allow charities to obtain a court order preventing unauthorised fundraising where any individual is using fundraising methods to which the charity objects or where the charity believes that an individual is not a fit and proper person to raise funds on its behalf.

1.3.2 Acceptance and Refusal of Donations

- a)** The Trustee (and its delegates) MUST* act in the best interests of the charity when deciding to accept or refuse a particular donation.

1.3.3 Rewards/ Incentives and Benefit Packages

It is common for charities to engage a donor by offering them benefits related to the size and frequency of the gift.

- a)** The Charity MUST ensure that benefits are appropriate for the Charity to be giving, and proportionate to the size of the gift.
- b)** Fundraisers MUST be aware of when benefits nullify potential tax relief such as Gift Aid or top-up payments available under the small donation rules. If benefits do prevent the donation qualifying under Gift Aid or the small donation rules, the Charity MUST NOT* attempt to reclaim tax on the sum.

1.4 After the Donation

- a)** Any specified reporting requirements to which a donation is subject MUST* be complied with.
- b)** The Charity MUST* only make a Gift Aid reclaim in respect of a donation if all of the Gift Aid conditions are met. One of these is that a donor's Gift Aid declaration MUST* comply with the new guidance issued by HMRC setting out the information that declarations are required to include from 1st January 2013. Where a donation is not eligible for Gift Aid and the Charity wishes to make a claim under the small donations rules, it MUST ONLY* do so if all of the small donation conditions are satisfied.
- c)** The Charity MUST* ensure that accepted donations are used to support the cause in accordance with the conditions attached to the donation, which may arise from donor's stipulations or representations made by the charity as to the uses of the funds.

1.5 Use of Funds

The law in relation to changing the terms of a gift is complex and the Charity should obtain advice from legal advisers or the Charity Commission before seeking to change the terms, even if there is donor consent.

- a)** If an appeal is being run for a particular purpose, fundraisers MUST include a statement indicating what will happen to funds received if the total funds raised are insufficient or exceed the target.

1.6 Complaints

- a)** The Charity MUST have a complaints procedure which MUST also apply to any Third Parties fundraising on its behalf.
- b)** The Charity MUST respond to any complaints from donors, beneficiaries or other parties in a timely, respectful, open and honest way.
- c)** The Charity MUST ensure that the learnings from any complaints are acted upon.

1.7 Returning Donations

- a)** The Charity MUST* not return donations unless certain criteria are fulfilled.

2.0 WORKING WITH VOLUNTEERS

2.1 Legal References for this Section

- Data Protection Act 1998
- Safeguarding Vulnerable Groups Act 2006
- Health & Safety at Work Act 1974
- Management of Health & Safety at Work Regulations 1999
- Charities Act 2006
- Licensing Act 2003
- Gambling Act 2005
- Equality Act 2010

The following Legal Appendices MUST be read in conjunction with this section of the Code of Fundraising Practice

- L8 Professional Fundraisers and Agreements
- L9 Commercial Participators and Agreements

2.2 Volunteers

2.2.1 Introduction

2.2.1.1 Definitions and Types of Volunteers

For the purposes of this Code, a volunteer fundraiser is someone who, without payment or other material benefit (excluding reimbursement of expenses), raises money or engages in a fundraising activity for the Charity.

2.2.1.2 Distinguishing ‘on Behalf of’ and ‘in Aid of’ Volunteers

There are two distinct categories of volunteers:

1) On behalf of:

If a volunteer is ‘on behalf of’, they will have been appointed by the Charity to act on its behalf and the Charity will be responsible for his or her acts. An ‘on behalf of’ relationship offers volunteers more support from the Charity. From the Charity’s perspective, it offers the Charity more control over a volunteer’s activities but the Charity also then becomes responsible for acts carried out by the volunteer as an agent of the Charity .

2) In aid of:

A volunteer acting ‘in aid of’ the Charity is raising funds but acting independently of the Charity. A charity will often not know about the volunteer’s acts. This will give volunteer fundraisers control over, and complete responsibility for the fundraising activity. Although the Charity therefore has less control, if fundraising methods are used of which the charity disapproves, action can be taken to prevent the fundraising.

The more interaction and involvement with ‘in aid of’ fundraisers, the more likely the relationship could be seen as ‘on behalf of’.

a) The Charity MUST ensure that the information and support which is provided to volunteers is appropriate for the type of relationship that exists.

2.2.1.3 When is a ‘Volunteer’ not a Volunteer?

a) Some “volunteers” may be fundraising in order to raise their profile and/or to attract customers by associating themselves or their brand with the Charity. If the “volunteer” arrangement falls within the definition of professional fundraiser or commercial participator, there are legal obligations which MUST* be complied with.

2.2.2 Issues Related to All Types of Volunteers

2.2.2.1 Initial Considerations

- a)** The Charity MUST store volunteers' personal contact information and this storage MUST* comply with the Data Protection Act 1998.
- b)** The Charity MUST* comply with legal duties concerning the use of the Disclosure and Barring Service, Disclosure Scotland or Access NI checks.
- c)** The Charity MUST NOT discriminate on grounds of race, sex, sexual orientation, religion or belief, age, disability, pregnancy or maternity, or gender reassignment when recruiting and managing volunteer fundraisers unless there are sound ethical or necessary reasons for doing so.
- d)** Volunteers MUST have only their out-of-pocket expenses reimbursed.

2.2.2.2 Handling of Funds Raised

- a)** The Charity MUST make it clear to all volunteers that anyone raising money MUST* ensure that the Charity receives all that money.

2.2.3 Specific Considerations when Working with 'on Behalf of' Volunteers

- a)** There is a range of legal obligations placed on the Charity in respect of health and safety, some of which apply to volunteers. The key obligations are:
 - i.** The Charity MUST* conduct itself in such a way as to ensure, so far as is reasonably practicable, that volunteer fundraisers are not exposed to risks to their health and safety (the specific obligations are set out in the Health and Safety at Work Act 1974)
 - ii.** The Charity MUST* carry out appropriate risk assessments and (if there are over 5 employees) MUST* keep clear records of all risk assessments and training undertaken.
 - iii.** The Charity MUST* make and give effect to appropriate arrangements for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.
 - iv.** The Charity MUST* audit the adequacy of their risk assessment procedures.
 - v.** The Charity MUST* appoint one or more competent person(s) to implement the measures needed to comply with health and safety law.
- b)** Where appropriate, the Charity MUST check the suitability and credentials of volunteer fundraisers to act as responsible people on the Charity's behalf and in the case of house to house collections MUST* carry out due diligence to check if collectors are fit and proper persons.
- c)** The Charity MUST provide such training and support as may be needed to enable volunteer fundraisers to effectively carry out their role in a legal, open, honest and respectful manner.

2.2.4 Specific Considerations when Working with 'in Aid of' Volunteers

When discussing 'in aid of' relationships, all standards apply only where the Charity has been made aware of the fundraising activity in advance of its occurrence.

- a)** The Charity MUST make it clear that any arrangement where fundraising is undertaken independently of the Charity is 'in aid of' and that the Charity will not accept any responsibility or liability for these events. There is more information about working with volunteers in the Institute of Fundraising's – Volunteer Fundraising Guidance

3.0 WORKING WITH CHILDREN

3.1 Introduction

The age at which children may engage in fundraising activities may vary by type of activity, geographic location and law.

3.2 In Advance of Any Activity/Event

3.2.1 Age Limits and Permissions

There are some activities which cannot be undertaken by children and young people without adult involvement (the age restriction depends on the activity and location). These include:

- Street and house to house collections
- Raffles
- An event involving alcohol

a) The Charity MUST* get explicit parent or guardian consent to collect data until children have capacity to give fully informed consent themselves. Many the Charity view the age of capacity as 12, however, no definitive age is set out in legislation and whether consent is needed may depend on the context in which data is being collected/used.

b) Any information collected from anyone under 14 years of age MUST NOT be disclosed without consent from a parent or guardian.

c) When organising fundraising activities, the Charity MUST* abide by any relevant age limits imposed by legislation.

d) There will be times when the Charity MUST* undertake the Disclosure and Barring Service checks for adults working with children.

e) Contact with children in or near school premises MUST be made only with the prior knowledge and approval of the Head Teacher or a member of the school's staff designated by the Head Teacher and according to procedures agreed with them.

f) The Charity MUST ensure that the fundraiser/organisation's representative understands their responsibility and the actions it must take in relation to activity organisers, the children participating, and the parents/guardians of any participating children.

3.3 Undertaking the Fundraising Activity

a) The Charity MUST employ all best efforts to avoid soliciting regular donations, such as Direct Debits, from under 18s.

b) The Charity MUST gain a parent's or guardian's permission before photographing or publishing photographs of their children.

c) The Charity MUST provide children and parents/guardians with guidance on how to undertake fundraising safely and legally.

3.4 After the Event/Activity

a) All monies received MUST be acknowledged promptly by the Charity.

There is more information about fundraising with children in the Institute of Fundraising's – Fundraising in Schools guidance.

4.0 WORKING WITH THIRD PARTIES

4.1 Legal References for this Section

- Charities Act 1992;
- Charitable Institutions (Fund-Raising) Regulations 1994;
- Data Protection Act 1998;
- General law of Confidentiality;
- Charities (Protection and Social Investment) Act 2016

The following Legal Appendices **MUST** be read in conjunction with this section of the Code of Fundraising Practice

- L10 Solicitation Statements
- L14 Data Protection

4.2 Introduction

- a)** This section outlines standards involved in working with third parties, including consultants, freelance fundraisers, agencies and suppliers, as well as the standards expected of them. The Charity **MUST** require the adherence of third parties to the Code.
- b)** The Charity **MUST** check, and make all reasonable efforts to ensure, the on-going compliance of third parties with the Code and their legal requirements.
- c)** The Charity **MUST** require that any agency or third party that they work with complies with the requirements of the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 as set out in the Code, including the requirements of the Telephone Preference Service, regardless of the country or legal jurisdiction in which the agency is based or operating. In some circumstances this is a legal requirement for charities, but in other circumstances it may not be. Please see the guidance at L14.9 for further details.
- d)** Before soliciting money or other property a “professional fundraiser” **MUST*** have a written agreement in place with the Client, and each time a “professional fundraiser” solicits money or other property, they **MUST*** make a disclosure (or solicitation) statement. Please see the guidance at L10 for further details.
- e)** Deleted – related to Northern Ireland.
- f)** The Charity **MUST** require any agency or third party they work with to inform them of any notice received by the agency or third party to cease or not commence direct marketing from (or on behalf of) an individual.
- g)** The Charity **MUST** require any agency or third party they work with to comply with any notice or request from (or on behalf of) an individual to cease within a reasonable period (meaning as soon as is practicable, but in any event not exceeding 28 days), or not begin to process that individual’s personal data for the purpose of direct marketing. This includes any such notices or requests made through the Fundraising Preference Service.

4.3 Definitions

For the purposes of this section these definitions apply:

“Fundraising Services” means the soliciting of donations or promises of donations for charitable, benevolent or philanthropic purposes in return for a reward.

“Consultant” or “Freelance Fundraiser” is used here to mean an individual, partnership, company or other business which is providing services to an organisation in relation to fundraising.

“Client” is used here to mean the Charity to which services are being provided by the Consultant or Freelance Fundraiser.

“Professional Fundraiser” A Consultant or Freelance Fundraiser who provides Fundraising Services in England and Wales or Scotland is likely to fall within the legal definition of “professional fundraiser”.

4.4 Pre-Contract

- a)** Consultants and Freelance Fundraisers **MUST** only claim experience, qualifications and achievements that can be substantiated.

4.5 Contracts/ Written Agreements

- a)** If the Consultant/Freelance Fundraiser falls within the definition in England and Wales or Scotland of “professional fundraiser”, see below for contract requirements which **MUST*** be complied with. Otherwise an agreement or Contract **MUST** be in place between the Consultant/Freelance Fundraiser and the Charity.

- b)** Fundraising agreements the Charity and professional fundraisers MUST* include:
- details of any voluntary regulatory fundraising scheme or standard that the professional fundraiser undertakes to be bound by;
 - how the commercial organisation will protect the public from unreasonable intrusion on a person's privacy, unreasonably persistent approaches or undue pressure to give; and
 - how compliance with the agreement will be monitored by the charity, as specified within section 13 of the Charities (Protection and Social Investment) Act 2016.

Further guidance can be found here.

c) The agreement MUST include clear and realistic expectations of the activities to be undertaken, budget, resources, timings and the possible outcomes.

d) Review procedures MUST appear in the agreement.

e) The Charity MUST* consider performance at these reviews and decide whether further action is appropriate (such as invoking penalty clauses, or reviewing the agreement).

f) Scotland.

g) Northern Ireland.

4.6 Fees

a) Consultants/Freelance Fundraisers MUST state the actual amount and/or basis of remuneration in any proposal or agreement and make completely clear all fees, expenses and other associated costs, the basis or range upon which fees will be based and the payment timescale.

b) If a Consultant/Freelance Fundraiser falls within the definition of "professional fundraiser", the agreement MUST* include details of the fees and expenses the professional fundraiser will be paid.

c) Consultants/Freelance Fundraisers MUST NOT be remunerated by commission or commission-only methods, unless certain criteria are fulfilled (see 19.6 Commission)

d) Any allowance for variation of payment levels MUST be clearly justified by reference to the particular circumstances and to include a variation mechanism allowing the Charity the option to terminate before a variation takes effect.

4.7 Conflicts of Interest

a) Each party MUST alert the other party if either is aware of a potential conflict of interest, whether perceived or actual, and MUST NOT represent conflicting or competing interests without the express consent of the parties concerned and after full disclosure of the facts.

4.8 Confidentiality

a) Consultants/ Freelance Fundraisers MUST NOT* disclose any information of a confidential nature obtained during their relationship with the Charity, unless it is information within the public domain or information which may otherwise be legally disclosed.

b) Terms governing conditions of confidence and what constitutes confidential information MUST be stipulated as part of the written agreement between the Consultant/ Freelance Fundraiser and the Charity .

For more information on selecting and using online giving platforms, see The Institute of Fundraising's 'Making the Most of Digital Donations' guidance.

5.0 FUNDRAISING COMMUNICATIONS AND TECHNIQUES

5.1 Legal References in this Section:

- Data Protection Act 1998
- Malicious Communications Act 1988
- Communications Act 2003 (s.127)
- Copyright, Designs & Patents Act 1988
- Companies Act 2006
- Charities Act 2011
- General law of Confidentiality

- Charitable Institutions (Fund-Raising) Regulations 1994
- Charities Act 1992
- General principles of charity law
- Equality Act 2010
- Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended)
- The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
- Electronic Commerce (EC Directive) Regulations 2002
- Provision of Services Regulations 2009
- Gambling Act 2005

The following Legal Appendices MUST be read in conjunction with this section of the Code of Fundraising Practice

- L14 Data Protection

5.2 General Principles

a) Data protection is an important issue for all fundraisers. The Charity MUST* comply with all legal requirements relating to data protection. In addition, the Charity MUST keep up to date with and have regard to relevant guidance from the Information Commissioner.

b) The Charity MUST NOT* send a communication that is indecent or grossly offensive and that is intended to cause distress or anxiety.

c) The Charity MUST* ensure that materials adhere to copyright laws and that permission is obtained from the rights holders for the use of images, logos etc.

d) The Charity MUST* ensure literature includes all legally required information, for example, registered charity status or number, full company name and registered office if applicable.

e) The Charity MUST* ensure that materials do not imply money is for a restricted purpose when it may be used for different purposes or for general funds.

f) If the Charity is fundraising in partnership with one or more charities, the Charity MUST state how monies will be allocated between the charities.

g) Fundraising: the Charity MUST comply with the CAP (Committee of Advertising Practice) Code and BCAP (Broadcasting Committee of Advertising Practice) and ensure all advertisements are legal, decent, honest and truthful.

h) Fundraising communications MUST NOT mislead, or be clearly likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.

i) Before distribution, fundraisers MUST ensure that there is evidence to prove all claims, whether direct or implied, are capable of objective substantiation.

j) Particular care MUST be taken to avoid causing offence on the grounds of race, age, religion, sex, sexual orientation or disability. This will vary according to the context, medium, audience, product and prevailing standards of decency.

k) Fundraising the Charity MUST be able to justify the use of potentially shocking images, and give warnings of such material.

l) The Charity MUST be able to justify the frequency of contact, balancing the desire to communicate with not overwhelming/bombarding recipients.

m) The Charity MUST respect donor's requests around the frequency of contact, and make it easy to communicate these requests.

n) Fundraising materials MUST NOT pressurise potential donors but can use reasonable persuasion.

o) All permission statements (opt-in or opt-out wording to gain consent for marketing purposes) displayed in fundraising materials MUST be at least the same font size as the larger of (i) any text asking for the recipient's personal details, or (ii) any text specifying the donation amount. If there is no text asking for personal details or specifying donation amount, any permission statements MUST be in the minimum font size of 10. Click here for the Institute of Fundraising's Managing Preferences guidance on this.

p) The Charity MUST* either cease within a reasonable period (meaning as soon as is practicable, but in any event not exceeding 28 days) or not begin to process an individual's personal data for the purpose of direct marketing where they receive notice from or on behalf of an individual to do so. This may include:

- notice in writing from (or on behalf of) an individual, whether or not described as a formal section 11 request (under the Data Protection Act 1998)
- notice from (or on behalf of) an individual submitted through the Fundraising Preference Service or notice from the Fundraising Preference Service that such a request has been made.
- Any other indication of wishes from an individual (or made on their behalf) that that they do not wish to be contacted for direct marketing purposes, such as via preferences and unsubscribe mechanisms.

5.3 Case Studies

a) If using real life case studies, fundraising the Charity MUST* comply with the requirements of the Data Protection Act 1998 and MUST NOT* disclose information received in circumstances where a legal duty to keep the information confidential arises.

b) Even if not required by law, for fundraising the Charity MUST obtain permission for case studies, where practical.

c) If the Charity changes elements of case studies or use real examples to inspire a case study, this MUST be made clear and the Charity MUST be able to prove that the case study is representative.

5.4 Use of Personal Data

a) Fundraising: the Charity will usually need to be registered (or "notified") under the Data Protection Act 1998 with which they MUST* comply. [Click here for guidance on this.](#)

b) All personal data MUST* be collected fairly and lawfully.

c) The retention and use of personal data in any research MUST* comply with data protection law.

d) The Charity MUST* maintain good data hygiene practices (removing incorrect/incomplete information from your data) to ensure donor information is accurate, reflects donors' communication preferences and is retained only for as long as necessary.

e) The Charity MUST NOT* send unsolicited marketing communications to consumers if explicit consent is required and has not been obtained.

f) The Charity MUST* comply with any duties of confidentiality they have.

g) If any marketing, such as a questionnaire/survey, is also used to collect personal data, it MUST* be made clear, along with the identity of the data controller, the purposes for which personal data are to be held and whether any disclosures to third parties will be made.

h) The Charity MUST be able to show that all necessary steps have been taken to ensure that:

- communications are suitable for those targeted
- databases are accurate and up-to-date and, if rented, bought etc., have been run against the most relevant suppression list(s)
- anyone who has been notified as deceased is not mailed again; and
- data has, if possible, been through a deceased suppression service in order to remove deceased supporters.

i) Where it can be identified or attributed to one or more individuals, all information gathered MUST be treated as confidential.

6.0 DIRECT MARKETING

6.0 Legal References in this section

- Data Protection Act 1998

The following Legal Appendices **MUST** be read in conjunction with this section of the Code of Fundraising Practice

- L14 Data Protection

6.1 Definition

“Direct marketing” is defined in the Data Protection Act 1998 as the communication of advertising or marketing materials to particular individuals, and includes the sale of goods and services and the promotion of an organisation’s aims and ideals.

“Direct Mail” is a form of direct marketing. It is any print-based fundraising material delivered primarily through the letterbox and encompasses mail (both solicited and unsolicited), door-drops and inserts delivered within a third-party publication.

6.2 Preparation

a) The Charity **MUST** ensure cold mailing lists have been run through the Mailing Preference Service to ensure they are not sending mail to those who have requested not to receive it.

6.3 Enclosures in Direct Mail Packs

Enclosures can include incentives to encourage donations, inserts that demonstrate the work of the Charity or thank you gifts.

a) The Charity **MUST** consider the safety of any enclosures.

b) The Charity **MUST** be able to demonstrate that the purpose of an enclosure was to enhance the message and/or the emotional engagement in the cause and not to generate a donation primarily because of financial guilt or to cause embarrassment.

c) The Charity **MUST NOT** use enclosures that might cause inconvenience in achieving delivery, unless the donor knows or has requested it.

6.4 Chain Letters

a) The promotion of chain letters **MUST** be discouraged.

6.5 Selling/renting marketing lists

a) The Charity **MUST NOT** share personal data for payment with any other organisation for that organisation’s marketing or fundraising purposes.

6.5 a) does not apply to the sharing of personal data between charities which are within a federated structure and/or where one controls the other or both are under common control.

b) Even if not for payment, the Charity **MUST NOT** share the personal data of an individual with any other organisation for that organisation’s marketing or fundraising purposes without the explicit consent of that individual to the sharing of the personal data with that other organisation or other specified types of organisation.

6.5 b) does not apply to the sharing of personal data between the charities which are within a federated structure and/or where one controls the other or both are under common control.

Subparagraph 6.5 b) does not apply where the personal data are being shared with a data processor (the Charity that are, under written contract, acting on behalf of another organisation e.g. professional fundraisers, data cleansers, printing houses etc.) and where the requirements with regard to data processing under the Data Protection Act 1998 (including the written contract setting requirements as to security) are also met.

“Explicit consent” under subparagraph 6.5 b) means that an individual must have provided a positive indication that they agree to their personal data being shared. This could take the form of ticking an opt-in box, or another action that signifies agreement, such as oral confirmation, or the provision of contact details where the individual has been clearly informed that by giving these details they agree to their data being shared.

For further information on the legal requirements relating to data protection please see the legal appendix on [Data Protection](#) and the [guidance available from the Information Commissioner's Office](#).

6.6 Managing communication preferences

a) The Charity MUST include on all fundraising communications sent to a named individual, clearly displayed details of how the recipient can, by a single step, opt-out of receiving such communications from the charity on whose behalf the communication was sent. This MUST be at least the same font size as the larger of (i) any text asking for the recipient's personal details, or (ii) any text specifying the donation amount. If there is no text asking for personal details or specifying donation amount, this information MUST be in the minimum font size of 10.

Click here to read FAQs on this. In the Institute of Fundraising's [Managing Preferences](#)

There is more information about Direct Mail in the Institute of Fundraising's [Direct Mail guidance](#)

7.0 RECIPROCAL MAILING

7.0 Legal references in the section

- [Data Protection Act 1998](#)

The following Legal Appendices MUST be read in conjunction with this section of the Code of Fundraising Practice

- [L14 Data Protection](#)

7.1 Introduction

a) All list owners engaging in reciprocal mailing MUST subscribe to the [Mailing Preference Service \(MPS\)](#) as a protection to their supporters' rights to privacy.

7.2 Initial Considerations

a) The Charity MUST* observe the provisions of the [Data Protection Act 1998](#), including those around permissions to pass on donors' data.

b) To undertake reciprocal mailings, the Charity MUST* be registered with the [Information Commissioner's Office \(ICO\)](#) for the following 3 purposes:

- advertising, marketing and public relations
- fundraising
- trading/sharing in personal information

7.3 Processes/Agreement

a) The Charity holding a manual index MUST* satisfy their reciprocal mailing partner about the standard and quality of their list.

b) The Charity engaging in reciprocal mailing MUST* exchange written agreement of the terms and conditions of the mailings, which should include the list content, dates for use, levels of list cleanliness and content of the mailing.

7.4 Mailing

a) Any variation in agreement which permits reciprocal mailings to be used more than once MUST contain full details of the agreement, including:

- details of which part of the list were exchanged on all similar reciprocal mailings with other fundraising organisations or other organisations within a mutually agreed period of time; and
- the type and number of supporters on the list – i.e. those paying by direct debit, cash, bankers order, covenant etc.

b) All returned 'non-deliverable' items and information concerning changes to the supporter file MUST be passed back promptly to the list owner for file maintenance purposes.

8.0 TELEPHONE

The following Legal Appendices MUST be read in conjunction with this section of the Code of Fundraising Practice

- L8 Professional Fundraisers and Agreements
- L10 Solicitation Statements
- L12 References In Documents
- L14.9 Data Protection – Telephone

8.1 Introduction

This section will cover all fundraising calls that are made to solicit both financial and other forms of donations, such as volunteering time, but will not cover administrative/informative or “thank you” calls (although these standards may be used as guidance for those calls). Fundraising calls will also include any voicemails left to potential donors.

8.2 Preparation and Procedure

8.2.1 Working with Suppliers

- a)** If the supplier falls within the definition of a professional fundraiser, the supplier MUST* have a written agreement with the Charity.
- b)** If using external suppliers who do not fall within the definition of a professional fundraiser, an agreement MUST be in place.
- c)** Agreements with professional fundraisers MUST* include details of the payment/expenses the professional fundraiser will receive together with the other matters legally required to be included in agreements with professional fundraisers.
- d)** Agreements with suppliers who are not professional fundraisers MUST include this information.

8.2.2 Target Audience Exclusion

- a)** The following categories of potential telephone recipients MUST* be excluded:
 - all those who have registered with the Telephone Preference Service, unless they have notified the fundraising organisation they will consent to receiving calls from them (see 8.2.3)
 - any individual who, on a previous occasion, has registered an objection to the use of the telephone for soliciting gifts or support for that particular fundraising organisation;
 - and any person who has written to the fundraising organisation to ask it not to use their contact details for marketing purposes or has otherwise asked not to be called.
- b)** A recipient MUST NOT* be called using an automated dialling system (i.e. a system that can dial a series of numbers automatically and play a recorded message) unless the recipient has consented to this.
- c)** Any person known to be under the age of 16 MUST NOT be called.
- d)** Also, the Charity MUST NOT generate telephone fundraising calls by random digit dialling, whether the dialling is manual or by computer.

8.2.3 The Telephone Preference Service

The Telephone Preference Service (TPS) and Corporate Telephone Preference Service (CTPS) allows individuals or companies to register their telephone numbers to indicate that they do not wish to receive unsolicited sales and marketing telephone calls.

- a)** The Charity MUST* always check telephone numbers against TPS/CTPS before making calls.
- b)** The Charity MUST NOT* make direct marketing calls to Telephone Preference Service (TPS)/Corporate TPS (CTPS)-registered numbers unless the person who registered the number has notified the Charity that they are happy to receive calls for the time being.

The Information Commissioner’s Office has produced guidance on direct marketing, including the definition of ‘consent’ and the key points for consent to be valid.

Administrative calls differ from marketing calls in that they are not made with the specific purpose of soliciting a donation/sale, and so are outside of the Regulations.

c) Marketing calls under the guise of administrative calls **MUST NOT*** be made.

d) Telephone fundraising agencies carrying out fundraising calls on behalf of a charity **MUST** have an up to date TPS Assured certification or be in the process of applying.

Please see Institute of Fundraising's Frequently Asked Questions for more information

8.2.4 Pre-Call Contact

a) All responses to contact which indicate that the potential recipient of the call does not wish to receive it **MUST*** be complied with.

8.2.5 Calling from an identifiable number

a) Fundraising agencies **MUST** make every fundraising call using a telephone number which can be identified by the recipient and to which the recipient can return the call.

Charities, wherever possible, **MUST** make every fundraising call using a telephone number which can be identified by the recipient and to which the recipient can return the call.

8.3 During the Call

8.3.1 Key Requirements

a) Fundraisers **MUST*** make appropriate disclosure statements.

b) If the telephone call is first contact with a donor, the caller **MUST** ask if the recipient consents to being contacted at that time. If the recipient asks not to be called again, the Charity **MUST*** comply with the request

c) The Charity **MUST*** identify itself when making a direct marketing call.

d) If asked, the Charity **MUST*** provide a valid business address or free phone telephone number that recipients can use to contact the Charity.

e) If the Charity uses a subcontractor (such as an external telephone fundraiser who falls within the definition of professional fundraiser), then the subcontractor **MUST** inform contacts of the identity of the Charity on whose behalf the calls are being made along with details of the sub-contractor's remuneration in connection with the appeal.

f) The appropriate statement **MUST*** be made during each call and a written statement must be sent within seven days of any payment being made by the donor to the professional fundraiser.

g) Scotland .

h) The Charity **MUST*** have a written agreement in place requiring subcontractors to comply with relevant data protection law.

i) The Charity **MUST*** avoid making silent calls and do all in their power to ensure donors do not think they are receiving nuisance calls. Ofcom's Revised Statement on the Persistent Misuse of an Electronic Communications Network or Service gives

details about what is considered a silent call and how the Charity can lessen the chance of it happening. This includes:

- limiting abandoned calls to a rate not exceeding 3% of all live calls made on each individual campaign over a 24 hour period;
- playing a brief information message giving details about any call answered before an agent is available;
- providing call line identification on outbound calls, so that potential donors are able to make a return call;
- a 72 hour period before a telephone number receiving an abandoned call may be called again without the guaranteed presence of an agent; and
- unanswered calls must ring for a minimum of 15 seconds.

j) Calls **MUST NOT** be made after 9pm, unless requested by the recipient.

k) The Charity **MUST** make clear that the call is seeking financial or other forms of support.

l) Fundraisers **MUST NOT**, at any point in a telephone call, be unreasonably persistent or place undue pressure on the recipient to donate, and **MUST NOT** ask for a donation more than three times during that call.

m) Fundraisers **MUST NOT** continue a call if, at any point during the call, the recipient gives a clear indication they do not want the call to continue.

8.3.2 Voicemail

a) If leaving a voicemail, fundraisers **MUST** make it clear what the purpose of the call is.

8.4 After the Call

8.4.1 Fulfilment of Donations

a) The fundraiser **MUST*** in certain circumstances write to the donor repeating the disclosure statement and notifying the donor of their right to a refund.

b) Refunds **MUST*** be given where donors correctly exercise their rights to a refund.

c) If donations are paid to the external telephone fundraiser, they **MUST*** be paid on to the fundraising organisation as soon as reasonably practicable after receipt and, in any event, no later than 28 days after receipt (unless, in England and Wales, a different time frame has been agreed).

d) Any written information soliciting donations sent by a charity as a result of the call **MUST*** include a statement that the Charity is a charity.

e) Scotland – ..

f) Where donors' details are stored, fundraisers **MUST*** ensure compliance with the requirements of the Data Protection Act 1998.

There is more information about telephone fundraising in the Institute of Fundraising's Telephone Fundraising guidance

9.0 DIGITAL MEDIA

9.0 Legal references in this section:

- Equality Act 2010
- Privacy and Electronic Communications (EC Directive) Regulations 2003
- Gambling Act 2005
- The Law on Lotteries in Northern Ireland
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

The following Legal Appendices **MUST** be read in conjunction with this section of the Code of Fundraising Practice

- L8 Professional Fundraisers and Agreements
- L9 Commercial Participants and Agreements
- L10 Solicitation Statements
- L12 References in Documents
- L13 Raffles and Lotteries
- L14 Data Protection

9.1 Accessibility and Usability

Being accessible means using the latest web technologies to accommodate the needs of as many users as possible.

a) All digital platforms **MUST*** comply with the Equality Act 2010 and the Charity **MUST*** make "reasonable adjustments" to accommodate the needs of all users.

Information about accessibility can be found from the Royal National Institute of Blind People's (RNIB) web access centre or the World Wide Web Consortium, the W3C.

9.2 The Charity' Own Websites

9.2.1 Information to be Provided

As well as their main websites, the Charity may have other related websites or micro sites created for specific campaigns or events. This section covers all websites created by the Charity.

- a) The Charity MUST* have specified information on their website about their status. For further detail please see L12 References in Documents L12.2 and L12.3.
- b) The Charity MUST ensure that a contact number and/or an email address are easy to locate.

9.2.2 Data

- a) The Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended in 2011), contains rules about the use of cookies (text files storing an individual's information) on websites. The Charity MUST* ensure they abide by the Regulations and wider data protection requirements.
- b) The Charity MUST* notify website users about the website's use of cookies, and in particular MUST* do so in a suitably prominent and understandable manner to ensure that the user's consent to the use of cookies is informed.
- c) Requests to unsubscribe MUST be addressed in a timely fashion. The Information Commissioner's Office has suggested time limits which can be found on their website.
- d) The Charity MUST clearly explain data capture and use, for example through a privacy policy or statement.
- e) All information about data capture and use MUST be easily accessible from the website homepage and any page which collects personal data.

9.2.3 Content

- a) The Charity MUST* have the necessary intellectual property permissions to use or share digital content, such as images, audio, video etc.

9.3 Donations and e-commerce

9.3.1 Electronic Payments

There are a number of standards that apply to electronic payments, such as the Payment Card Industry-Data Security Standard (PCI- DSS) for processing card transactions, and the Direct Debit Guarantee for processing Direct Debits.

9.3.2 Online Raffles and Lotteries

- a) The Charity MUST* comply with the Gambling Act 2005.
For more information on the different types of lotteries and the rules that apply to each type, please see L13 Raffles and Lotteries and/or speak to the Gambling Commission, who regulate this area.

9.3.3 Online Trading, Trading Subsidiaries and e-commerce

- a) The Charity MUST* only trade if its documents allow it.
- b) The Charity MUST* comply with all relevant consumer law and digital commerce legislation including the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.
- c) If merchandise sales or fundraising events (such as challenge events) are carried out through a trading subsidiary, the Charity MUST* make this clear on relevant communications or web pages.
- d) The Charity MUST* ensure that descriptions and images of goods are sufficiently accurate that donors are not misled about what they are buying.
- e) The Charity MUST* have the necessary intellectual property permissions to use or share digital content, such as images, audio, video etc.
- f) The Charity MUST* comply with legal requirements as to delivery, cancellation, refunds and returns and MUST have policies that set out processes and timings for potential customers.
For more information, please see the guidance on this.

9.4 Working with Third Parties

- a)** Professional fundraisers and commercial participators working on digital media projects MUST* have written agreements in place with the charity and MUST* make the appropriate statements.
- b)** When not legally required to have written agreements, the Charity MUST still have contracts or agreements in place.
- c)** The Charity MUST undertake due diligence on both the financial and reputational dealings of potential partners before agreements are put in place. This is especially important when working with non-UK based third parties who are not bound by UK law.
- d)** If placing fundraising content on a third party's platform, the Charity MUST apply the same due diligence as if it was on their own website. For more information on selecting and using online giving platforms, the Institute of Fundraising's 'Making the Most of Digital Donations' guidance.

9.5 Social Media

- a)** The Charity MUST ensure that usernames and passwords for their social media accounts are only available to trusted individuals.

9.6 Mobile Devices and Platforms

9.6.1 Definitions

Mobile may consist of separate platforms/channels or simply using a mobile device to access a version of an organisation's website. Mobile devices may include but are not limited to smartphones, tablets, Personal Digital Assistant (PDA), and gaming consoles.

9.6.2 SMS and MMS

- a)** If the Charity uses Premium SMS it MUST* register with the Phone-Paid Services Authority (PSA) and comply with its Code of Practice unless providing exempt services (as defined in the PSA Code).
- b)** The Charity MUST* only send marketing messages to individuals' mobile phones where those individuals have previously notified the Charity that they consent to receiving such communications.
- c)** The Charity MUST* make the registration process for messaging clear on all forms of relevant documentation including websites and MUST* include procedures for unsubscribing on all marketing messages.
- d)** The Charity MUST* make the cost of premium rate messages clear to donors and MUST explain to donors how and when they will be billed.
- e)** The Charity MUST* follow data protection rules and rules set out in the Privacy and Electronic Communications Regulations 2003 when parental/bill payers' consent is required.
- f)** Reply by SMS MUST be an option for opting-out and be clear in all communications.
- g)** The Charity MUST use a simple opt-out message.
- h)** Users MUST* be able to exercise their opt-out choice from any message, free of charge (except for the costs of the transmission of the refusal).
- i)** For competitions and prize draws, the Charity MUST provide a clear and simple method of accessing any terms and conditions and MUST publish the identity of the promoter.

9.6.3 Charity Short Codes

- a)** When receiving donations by SMS, the Charity MUST use Charity Short Codes (approved 5 number codes that can be rented by fundraising the Charity to identify donations and pass on the VAT content to the Charity).

9.7 Email

9.7.1 Data Protection

- a)** The Charity MUST* comply with the requirements of the Data Protection Act and MUST NOT* disclose information obtained in situations where a legal duty to keep information confidential arises.
- b)** The Charity MUST* provide a valid address for opt-out requests.

9.7.2 Content

- a)** Emails MUST carry a statement confirming the status of an organisation, and MUST* do so in certain circumstances.
- b)** The Charity MUST NOT send bulk emails from named individual's email accounts.
- c)** The Charity MUST use a simple opt-out message.

10.0 TRUSTS

10.2 Introduction (no 10.1)

"Trust Fundraising" refers to the process of asking for support from trusts and foundations that make grants for charitable/philanthropic purposes.

"Foundation" is, for the purposes of this Code, synonymous with 'Trust'.

- a)** This Code covers all forms of Trust Fundraising, but when applying for statutory funding, such as EU, UK government or local authority grants, there may be additional rules and these MUST be followed in conjunction with this code.

10.3 Preparation and Procedures

- a)** Mass mailings and cold calling to trusts MUST generally be avoided, except under exceptional circumstances, for example a national disaster or emergency.
- b)** The Charity MUST obtain permission of referees before submitting applications, with the referee seeing the application before submission.

10.4 The Application

- a)** All applications MUST* fit within the applicant organisation's own objectives.

10.4.1 After Applications Have Been Accepted/ Rejected

- a)** Administrative requirements of the trust regarding payment MUST be strictly adhered to (the standard will depend on terms and conditions of the application) and MUST* be followed where they form conditions under a contract.
- b)** Any conditions attached to the grants, such as the trust having management, advisory or other inputs into the work, or requirements for public acknowledgement of the trust's support, MUST be understood and agreed to by both parties before the grants are formally accepted.
- c)** When applications are rejected, appeals or attempts to persuade trusts to reconsider MUST only be made in rare circumstances – such as where there are clear mistakes of fact, or trusts have specified appeal procedures.

10.5 Reporting and Accounting

10.5.1 Reporting

- a)** If changes are being planned about how grants may be spent which differ from what was originally proposed, the trust's approval MUST* first be obtained in writing if that is a requirement of the trust's funding.
- b)** All reporting guidelines and requirements MUST be closely followed and MUST* be followed where they form conditions under a grant contract.
- c)** If there are potentially serious problems with the funded work (for example, the likelihood of significant delays to timetables or real risk of failure to complete), trusts MUST be informed as early as possible, and kept informed as matters develop and any notification requirements in the contract MUST* be followed.

10.5.2 Accounting

- a)** All legal accounting requirements MUST* be followed, and the Statement of Recommended Practice (SORP) MUST* be followed.

b) When appeals for specific projects are so successful that not all money can be allocated to them, or projects do not go ahead the Charity MUST obtain Charity Commission advice regarding the use or return of remaining funds.

There is more information about trusts and grant fundraising in the Institute of Fundraising's Grant Making Trusts guidance

11.0 MAJOR DONORS

11.1 Legal References in this Section

- General trust law principles
- Proceeds of Crime Act 2002

The following Legal Appendices MUST be read in conjunction with this section of the Code of Fundraising Practice

- L7 Acceptance and Refusal of Donations

11.2 Definitions

“Major donor” is an individual or family with the potential to make or procure a gift which would have a significant impact on the work of the Charity.

11.3 Money Laundering

a) The Charity MUST* take reasonable steps to assess and manage risks to their its activities, beneficiaries, property, work and reputation. Money laundering and adverse publicity about a donor are examples of how an organisation could be exposed to criminal liability and suffer reputational damage.

b) The Charity MUST undertake due diligence on both the financial and reputational dealings of potential partners before donations are accepted.

c) The Charity MUST be aware of the Proceeds of Crime Act 2002 and that it applies to money or other property that has been obtained through conduct that is criminal under UK law, even if obtained in ways that are legal in another country.

11.4 General Requirements

a) If giving gifts to a major donor, the Charity MUST ensure that any benefits are appropriate for the Charity to be giving, and proportionate to the size of the donation received.

Note that some benefits may cause Gift Aid relief to be lost and others may be subject to the tainted donations rules.

b) Where talking about finances and financial benefits, fundraisers MUST inform donors that they are not in a position to offer formal financial advice.

There is more information about major donor fundraising in the Institute of Fundraising Major Donor guidance.

12.0 CORPORATE PARTNERS

12.1 Legal References for this Section

- Charities Act 1992
- Charities (Protection and Social Investment) Act 2016
- General charity law principles

The following Legal Appendices MUST be read in conjunction with this section of the Code of Fundraising Practice

- L8 Professional Fundraisers
- L9 Commercial Participators
- L12 References in Documents

12.2 Definition

“Corporate Partnership” is a partnership between a fundraising organisation and a commercial entity, where the commercial entity provides money, skills or other resources to the fundraising organisation.

12.3 Preparation

- a)** The Charity MUST carry out a process of due diligence, proportionate to the scale of the relationship, before engaging in a partnership.
- b)** The Charity MUST ensure there are no conflicts of interest, or potential conflicts of interest relating to the partnership.

12.4 Written Agreements

- a)** If the arrangement is such that the corporate partner falls within the definition of a 'commercial participator' then the commercial participator MUST* have a written agreement in place with the Charity and certain information MUST* be included in this.
- b)** Fundraising agreements between The Charity and commercial participators MUST* include: details of any voluntary regulatory fundraising scheme or standard that the commercial participator undertakes to be bound by;
 - how the commercial organisation will protect the public from unreasonable intrusion on a person's privacy, unreasonably persistent approaches or undue pressure to give; and
 - how compliance with the agreement will be monitored by the charity, as specified within section 13 of the Charities (Protection and Social Investment) Act 2016.

Further guidance can be found here.

- c)** Variation MUST* be in accordance with the term in the agreement specifying how any variation should take effect.
- d)** Scotland.
- e)** Commercial Participators MUST* make a disclosure statement which includes, among other things, the name(s) of benefitting the Charity and the amount of funds they will receive.
- f)** In other situations, if goods or services are being sold during the course of the partnership, there MUST be a written agreement governing the relationship between the company and the Charity/trading subsidiary concerned (even where this is not strictly required by the relevant Acts). This MUST be approved and understood by all parties.
- g)** The agreement MUST be considered, negotiated and agreed by authorised representatives of both parties before its commencement.
- h)** Scotland.
- i)** Review procedures MUST appear in the agreement and the Charity MUST consider performance at these reviews and decide whether further action is appropriate (such as invoking penalty clauses, or reviewing the agreement).

12.5 Legal and Tax Issues

- a)** The Charity, as it has an income of over £10,000, MUST* state on letters and other documents that contain a request for money or other property for the benefit of the charity its name and the fact that it is registered. In practice this usually means stating its charity registration number.
- b)** Scotland.
- c)** Charities which are also registered companies MUST* also comply with the relevant company law requirements. This includes the requirement to have the word "limited" in the Charity's name (unless an exemption applies – in which case status may be indicated by stating "a company limited by guarantee") together with registered company number, place of registration (e.g. England) and its registered office address. It MUST also name either all its trustees/directors or none.
- d)** As a result of the partnership, situations may arise where fundraising the Charity or the corporate partner may have to pay tax or VAT. The Charity MUST* ensure that any liabilities are paid.

There is more information about corporate partnerships in the Institute of Fundraising's Charities Working with Business guidance.

13.0 RAFFLES AND LOTTERIES

13.1 Legal References for this Section

- Gambling Act 2005
- Gambling Commission's Licence Conditions and Codes of Practice
- Betting, Gaming, Lotteries and Amusements (NI) Order 1985

The following Legal Appendices MUST be read in conjunction with this section of the Code of Fundraising Practice

- L13 Raffles and Lotteries

13.2 Key Points and Legalities

a) This area is one of the most heavily regulated fundraising activities, but also one of the most popular. The range of regulation is set out in detail in the Legal Appendices and MUST* be followed.

b) Additional standards are included in the Legal Appendices and MUST be observed.

The Gambling Commission should be referred to for queries and up-to-date advice.

There is more information about raffles and lotteries in the Institute of Fundraising's Raffles and Lotteries guidance

14.0 FUNDRAISING THROUGH PAYROLL GIVING

14.1 Legal References for this Section:

- Data Protection Act 1998
- Charitable Deductions (Approved Schemes) Regulations 1986
- Charities Act 1992
- HMRC payroll giving rules

The following Legal Appendices MUST be read in conjunction with this section of the Code of Fundraising Practice

- L8 Professional Fundraisers and Agreements
- L9 Commercial Participators and Agreements

14.2 Introduction and Initial Considerations

Fundraising within the workplace is varied in form and is subject to both direct legislation and self-regulation. This Code specifically addresses donations made directly from an employee's salary.

This could take the form of:

- Payroll Giving: a tax-effective scheme whereby the donation is taken from an employee's pay before tax is deducted; or
- Post-tax salary donations: where employees' donations are taken directly from their salary after tax has been deducted.

14.2.1 Definitions

"Payroll Giving Agency (PGA)": agencies that are registered charities who receive the donation from the employer and forward it to the beneficiary organisation on behalf of the donor.

"Fundraising Organisation": all charities, social enterprises, universities, NHS trusts etc who will benefit from fundraising efforts made by their staff or external fundraisers.

"External Fundraisers": are either individual professional fundraisers or professional fundraising the Charity (PFO's) that are hired by the beneficiary organisation to undertake fundraising on their behalf.

"Fundraiser" Any individual soliciting donations (including External Fundraisers).

14.2.2 Pre-Tax Payroll Giving

a) Employers using the payroll giving scheme MUST* have a written agreement in place with a PGA.

b) The Charity/employers MUST* not offer benefits for donations received via pre-tax Payroll Giving, or overrule an individual employee's decision as to where their donation goes.

- c)** The Charity MUST* comply with the requirements contained in The Charitable Deductions (Approved Schemes) Regulations 1986 and subsequent amendments.
- d)** If the Charity/employers are going to highlight the different levels of tax relief, they MUST ensure fundraisers have up to date information from HMRC.
- e)** The Charity MUST ensure that donors are aware that, following a Payroll Giving promotion, they are still free to elect to give to any fundraising organisation of their choice.

14.2.3 Post-Tax Donations from Salary

a) Where External Fundraisers who fall within the legal definition of a 'professional fundraiser' are used to take and process the donation or claim back the tax, a written agreement with the fundraising organisation MUST* be in place.

14.3 Promoting Committed Giving in the Workplace

14.3.1 Establishing the Fundraising Relationship

a) Before any approaches to solicit donations are made to a group of employees, Fundraisers or Fundraising The Charity MUST agree conditions of access with the relevant employer.

14.3.2 Fundraising Activity in the Workplace

- a)** The Charity MUST* ensure that all materials, especially completed donor forms, are held securely and in accordance with their obligations under the Data Protection Act 1998.
- b)** The Charity's fundraisers MUST* wear photo identity badges provided by the organiser of the activity, or the relevant fundraising organisation(s) in a visible place at all times.
- c)** The Charity MUST ensure that sufficient safeguards exist and are followed throughout the solicitation process to avoid pressurising potential donors, though reasonable persuasion can be used.
- d)** Fundraisers MUST ensure that donors are aware that they have the right to terminate an agreement to donate to a Fundraising Organisation at any point.

14.3.3 Using External Fundraisers

This section should be read in conjunction with the section Working with Third Parties.

- a)** External Fundraisers (who fall within the definition of a 'commercial participator' or 'professional fundraiser') hired by the Charity MUST* have a written agreement with the Charity.
- b)** External Fundraisers (who fall within the definition of a 'commercial participator' or 'professional fundraiser') hired by the Charity MUST* make legally compliant statements as to how they are paid.
- c)** External Fundraisers MUST agree in advance with the Charity all procedures, including the processing of donors' details, and fundraising materials.
- d)** The Charity MUST provide external fundraisers with necessary information about the Charity's objectives and clear guidelines about conduct and the different tax reliefs in this area.
- e)** External Fundraisers MUST process information as swiftly as possible and ensure that information relating to new donors is passed to the Charity as soon as possible.
- f)** If External Fundraisers are representing multiple charities, they MUST ensure all charities are represented in an entirely neutral manner.

14.4 Payroll Giving Agencies

PGAs receive employees' donations, which have been deducted by the employer from the payroll, and distribute these donations timely and efficiently to the relevant fundraising the Charity. Legal and best practice guidance for PGAs can be obtained from the Payroll Giving Centre. The Charitable Deductions (Approved Schemes) Regulations 1986 place certain requirements on employers, which are not mentioned here, but maybe useful/necessary for employers/fundraising the Charity to be aware of. There is more information about payroll giving in the Institute of Fundraising's Committed Giving in the Workplace guidance.

15.0 EVENTS

15.1 Legal References for this Section

- Data Protection Act 1998
- Health & Safety at Work Act 1974
- Package Travel, Package Holidays and Package Tours Regulations 1992
- Charities Act 1992
- Charities Act 2006
- Johns v. AG(1976)
- General principles of Charity Law
- Food Safety Act 1990
- Food Hygiene (England) Regulations 2006
- Safeguarding Vulnerable Groups Act 2006
- Countryside and Rights of Way Act 2000
- Gambling Act 2005
- Civil Aviation (Air Travel Organiser's Licensing) Regulations 2012

The following Legal Appendices MUST be read in conjunction with this section of the Code of Fundraising Practice

- L8 Professional Fundraisers and Agreements
- L9 Commercial Participators and Agreements
- L13 Raffles and Lotteries

15.2 Pre-Event Planning

15.2.1 Venue/Location

a) When identifying a suitable venue/ location for an event, the Charity:

- MUST* consider issues of equal access for all, even if an event is being targeted at a specific group of people.
- MUST* ensure the venue complies with legal requirements about health and safety.
- MUST ensure the venue/location is fit for purpose, taking note of any restrictions.
- MUST be able to justify any environmental impact the event may have.

b) If any specialist equipment is required or recommended, a list MUST be given to each participant/team far enough in advance for them to borrow/purchase any necessary items, making clear who is responsible for the kit and its suitability.

c) Participants MUST NOT be able to proceed if the equipment mentioned above is not adequate.

d) Where participants require the use of vehicles, organisers MUST advise participants to take rest stops and plan journey timetables that recognise road safety, especially speed limits.

15.2.2 Risk Assessment & Insurance

a) The Charity which are employers MUST* carry out a sufficient and suitable risk assessment before undertaking an event of any size. Other fundraisers (who are not employers) MUST carry out a risk assessment where it is reasonable to do so.

b) The Charity MUST* carry out the Disclosure and Barring Service checks where appropriate.

c) Any compulsory insurance policies (for example, covering employees and use of cars MUST* be in place.

d) The Charity MUST ensure there is sufficient third party public liability cover in place and MUST consider if other insurance cover should be taken out.

e) The Charity MUST be clear which party is insuring against which risk.

15.2.3 Licences/Permissions

a) The Charity when planning an event MUST* ensure that any required permissions or licences are obtained from the local authority or other relevant bodies.

b) The maximum number of participants may be dictated by permissions/licences or local conditions. These numbers MUST NOT be exceeded – in some cases this will be a legal requirement that MUST* be adhered to under the licence agreement and/or insurance policy.

c) When looking to use private property for an event it MUST* obtain permission if necessary.

d) Scotland.

e) The Charity MUST comply with relevant local guidance or site specific information where appropriate when planning an event.

f) The Countryside Code in England and Wales MUST be observed by all.

15.2.4 Events on Open Access Land (England and Wales)

Events taking place in England may rely on the use of land mapped as “open access land” under the Countryside and Rights of Way Act 2000 (“the Act”). This right allows the public to use the relevant land on foot for open air recreation, subject to the user not causing damage to any walls, fences, hedges or gates and to a number of general restrictions set out at Schedule 2 of the Act. Schedule 2 provides that “open access land” may not be used for (amongst other things):

- organised games, camping, hand-gliding or para-gliding; or
- engaging in any activity which is organised or undertaken for any commercial purpose.

As yet, there is no legal precedent which helps determine whether an organised fundraising event is affected by the restrictions in the Act.

a) If in any doubt, the Charity planning an event on open access land MUST seek permission from landowners in respect of the particular activities they intend to undertake.

15.2.5 Written Agreements

a) The Charity MUST have written agreements with all external parties clearly highlighting all parties’ rights, responsibilities and obligations.

b) If any party is a professional fundraiser or a commercial participator, a written agreement MUST* be in place.

15.2.6 Promotional Materials

a) All promotional materials supplied to potential participants and, particularly, material sent to them as part of ‘fundraising packs’ MUST* indicate clearly if any part of the funds raised by the participant in the name of the Charity are to be used towards the participant’s expenses or otherwise to benefit the participant.

b) Recruitment materials designed to attract potential participants and, in particular, press advertisements, MUST NOT* mislead readers into believing that their commitment would be limited to any minimum personal registration fee.

c) The Charity MUST ensure that all marketing materials have accurate and clear details of the event and clearly state how the money raised from the event will be used.

15.2.7 Financial Procedures

a) The Charity MUST* obey tax and VAT rules and regulations for all events. Further guidance can be found from the IOF guidance Fundraising and VAT

b) For monies received in advance of, or during an event, the Charity MUST have financial procedures in place. Please see the Institute of Fundraising’s guidance Handling Cash at Events.

15.2.8 Cancellations and Contingency Plans

a) Sponsorship forms MUST* be clear about whether sponsorship money is given subject to any conditions (eg. that the participant will complete a marathon). If money is given on this basis and a sponsored event is cancelled, or a participant is unable or unwilling to take part or complete the event for any reason, the participant MUST* contact donors and ask if they are still happy for sponsorship monies to go the Charity. If not, the donation MUST* be refunded to the relevant donors. If sponsorship money is given without conditions it automatically belongs to the relevant charity regardless of whether or not an activity is completed.

b) Fundraising the Charity planning an event MUST have a plan to cover all eventualities that may reasonably be anticipated, and brief the relevant individuals to understand exactly what is expected of them.

15.2.9 Events Organised by Third Parties

The Charity MUST have an agreement with the event organiser allocating specific responsibilities and risk.

15.2.10 'In Aid of' Managed Events

A volunteer acting 'in aid of' an organisation is raising funds but acting independently of the Charity. An organisation will often not know about how the volunteers act.

The Standards below only apply when the Charity has been made aware of the event.

- a)** If an individual or group contacts the Charity in order to put on a third party event there MUST be clear identification of the body responsible for the event and that the event is 'in aid of' and that the Charity will not accept any responsibility or liability for these events.
- b)** The Charity MUST make it clear to the individual or group that it is their responsibility to organise all aspects of the event.
- c)** The Charity MUST ensure that there are proper arrangements in place for monies to be transferred to the Charity quickly and efficiently.

15.3 People

15.3.1 Staff/Volunteers

- a)** The Charity MUST have marshals and stewards with relevant experience, where necessary.

15.3.2 Participants/Attendees

- a)** The Charity MUST NOT* unlawfully discriminate against people in respect of disability, sex or race, in relation to an event. Further information is available from the Equality and Human Rights Commission and the Equality Commission for Northern Ireland.
- b)** Some participants may fall within the definition of professional fundraisers (for example, if the cost of the event is being paid for by the Charity or by sponsorship and falls outside the minimum level of remuneration permitted under the relevant legislation). If this is the case, there MUST* be a written agreement and the Charity MUST ensure participants are aware of their legal obligations about giving donors certain information.
- c)** Where the participant does not personally pay the whole cost of the trip, but uses some of the sponsorship money for this purpose, the Charity MUST ensure the participant knows that this MUST* be made clear to every donor.
- d)** The Charity may want to reserve the right to refuse permission for a potential participant to take part in an event. Any such refusal MUST* comply with consumer and discrimination legislation.
- e)** Any consents legally required for the participant to be involved in an event MUST* be obtained in writing in advance of the event taking place.
- f)** The Charity is legally responsible for ensuring the health and safety of its employees and those that are affected by their activities (so far as reasonably practicable). The Charity MUST* ensure that their health and safety arrangements (e.g. adequate medical cover and evacuation arrangements) are appropriate in the context of the event and country.
- g)** The fundraising organisation MUST ensure participants are aware of the fundraising targets they are expected to meet.
- h)** If a certain age, or level of fitness, preparation or training is required for safe participation this MUST be agreed with the participant in advance, along with any consents required for the participant to be involved, which MUST be agreed in writing in advance.

15.3.3 Specific Issues for Challenge Events

- a)** Travel legislation including the Package Travel, Package Holidays and Package Tours Regulations 1992 and the Civil Aviation Air Travel Organisers' Licensing Regulations 2012 ("the Travel Regulations") MUST* be complied with.
- b)** The Charity MUST be clear who is responsible for complying with the Travel Regulations.
- c)** The Charity MUST check the track record and reliability of the tour operator and any sub-contractors.

- d)** All data obtained in the course of preparing for and running an event MUST* be treated in accordance with the principles of data protection law.
- e)** When organising a challenge event and drafting data collection statements you MUST clarify with the tour operator who will be collecting the data and for what purposes the data will be collected and held.
- f)** If an event organiser, or participants themselves, fall within the definition of professional fundraiser or commercial participator, they MUST* have a written agreement in place with the Charity for which funds are being raised and MUST* make the appropriate statements.
- g)** The Charity MUST take reasonable steps to ensure compliance with these requirements.

15.4 On the Day

15.4.1 General

- a)** Before the event, the Charity MUST conduct a final check to ensure everything is in place, especially fire exits, first aid and equipment provisions.
- b)** Organisers MUST implement procedures at the event to avoid congestion.

15.4.2 First Aid

- a)** Provision for first aid MUST* be made for employees and anyone else who might reasonably be considered to be affected by an organisation's activities.

15.4.3 Selling/Trading

- a)** If selling products at an event, the Charity MUST* ensure they are eligible to trade or that the trade fits within the trading exemptions.
- b)** Any products being sold at the event MUST* comply with relevant safety standards.
- c)** Any food being supplied MUST* comply with regulations applying to food (Food Hygiene (England) Regulations 2006).
- d)** If selling/providing alcohol, the relevant licences/permissions MUST* be in place and age limits MUST* be adhered to.

15.4.4 Raffles and Lotteries

- a)** If a lottery (which includes a raffle) is to be held at the event, it MUST* comply with the Gambling Act 2005. For further information please see L13.0 Raffles and Lotteries.

15.5 Three Peaks

This section provides additional standards for the Three Peaks Challenge, where teams are challenged to climb Ben Nevis, Scafell Pike and Snowdon, the highest mountains in Scotland, England and Wales.

- a)** An organiser MUST:
- register all groups of 12 or more with the Glen Nevis Visitor Centre, the central registration point for all of the peaks at least twelve months in advance (unless a shorter timeframe is agreed);
 - limit the number of walkers to no more than 200 per event;
 - only run events at peak times where crucial to success or if it is the only workable option;
 - remove the time pressure element by excluding the driving time between mountains and allocating a minimum driving time for all participants which is added to the walking time, regardless of the actual duration of the drive.
- b)** Arrival or departure MUST NOT be between the hours of 2300 and 0500.
- c)** The Charity MUST always use the Visitor Centre at Glen Nevis as the start point for Ben Nevis.

15.6 Post Event

15.6.1 Outstanding Monies

- a)** The Charity MUST* not allow participants to use tax-effective methods to pay the registration fee, minimum sponsorship or other fees in breach of the Gift Aid rules (which prevent Gift Aid being applied where, (a) the donor is either the participant or a "person connected" to the participant and (b) the benefit to the participant exceeds the permitted benefits).

b) Procedures and/or a policy for following up on non-payment and not reaching minimum sponsorship requirements **MUST** be in place.

There is more information about event fundraising in the Institute of Fundraising's [Event Fundraising guidance](#).

16.0 PUBLIC COLLECTIONS

16.1 Introduction

This section covers collections for cash, goods and Direct Debits whether carried out in public places, from house to house or on private property. The law governing collections varies according to the type and location of the collection and the nature of donation sought. For a detailed explanation of the different legal requirements, see the Legal Guidance.

The controls on public collections apply to collections for charitable purposes, and include collections for benevolent and philanthropic purposes.

16.2 Legal References in this Section

- [House to House Collections Act 1939](#)
- [House to House Collections Regulations 1947](#) ("the Regulations")
- [Model street collection regulations contained in the Charitable Collections \(Transitional Provisions\) Order 1974](#)
- [Police, Factories, etc. \(Miscellaneous Provisions\) Act 1916](#)

The following Legal Appendices **MUST** be read in conjunction with this section of the Code of Fundraising Practice

- [L6 Fundraising in a Public Place](#)
- [L8 Professional Fundraisers and Agreements](#)
- [L9 Commercial Participators and Agreements](#)
- [L10 Solicitation Statements](#)
- [L12 References in Documents](#)

16.3 Licensing/Permission Requirements

a) The Charity when carrying out any collection **MUST*** comply with the relevant licensing/permission procedures.

b) Where a [IOF Compliance Directorate](#) site management agreement is in place, the Charity **MUST** comply with it.

c) In England and Wales, a licence to collect **MUST*** be obtained from the relevant authority in the area, such as the local authority or the Metropolitan Police (unless the collection is house to house and the charity holds a [National Exemption Order](#) – see the [Legal Guidance](#) and below for further detail).

d) Northern Ireland.

e) Scotland, **f and g)** Scotland.

h) Licences **MUST*** be applied for in good time before the collection is due to take place.

16.4 Exemption Licence Holders (National Exemption Orders, Exemption Orders and Exempt Promoters)

a) Where a Fundraising Organisation has the benefit of a national exemption licence (in England a [National Exemption Order](#)) for house to house collections it **MUST**:

- establish a clear annual programme of collections;
- fix specific dates a year in advance for all collections (some fundraising the Charity advocate two years) and negotiate any proposed changes to dates with relevant authorities at the earliest opportunity and confirm all changes in writing;
- make every attempt to avoid a conflict in collection dates;
- inform relevant authorities of collection dates and, as far as possible, the specific areas to be covered by the collection;

- confirm all agreed dates in writing to the relevant authorities;
- notify relevant authorities, immediately, of any decisions to cancel a collection;
- where practicable, advise relevant police authorities and all other Exemption Order holders/ Exempt Promoters by letter of agreed collection dates at the earliest opportunity;
- abide by established collection dates;
- ensure that sufficient collectors are available to support an effective collection in order not to deprive other charities of the opportunity to collect;
- be able to provide information on the precise dates and locations of all collections; and
- MUST NOT book large blocks of time.

b) Scotland.

16.5 Working with Third Parties

a) When working with third parties, the Charity MUST have contracts in place except where commercial participators or professional fundraisers are involved, contracts MUST* be in place. See section 4.5 for further details on what these contracts are required to include.

b) Additionally, when a collection involves a commercial participator or professional fundraiser appropriate statements MUST* be made.

c) Northern Ireland.

d) The Charity MUST NOT undertake fundraising activity using third parties without instigating a training and briefing programme for all collectors.

e) Where a collector is a paid charity employee, paid officer or paid trustee, the collector MUST* make a statement to the effect they are being paid to carry out the collection.

f) The Charity MUST seek to clarify the ownership of copyright with respect to all materials and databases connected with the activity, prior to instigating that activity.

16.6 Age of Collectors

a) The Charity MUST* ensure any age limits on collectors are complied with.

16.7 Selection and Authorisation of Collectors

a) In England and Wales, for house to house collections, Fundraising The Charity MUST* exercise all due diligence to ensure collectors are fit and proper persons to collect.

b) For house to house collections, collectors MUST* be given a certificate of authority and badge.

c) For street collections, each collector MUST* generally have the written authority of the promoter.

d) Scotland.

16.8 Training and Instructions

a) For house to house collections, the promoter MUST* exercise due diligence to ensure that collectors comply with the House to House Collections Regulations 1947.

b) Northern Ireland.

c) The Charity MUST ensure that all fundraisers/ agents are properly trained to the Institute's prescribed training standards for face to face fundraising.

16.9 Collection Materials

a) Collectors MUST* comply with any legal requirements relating to collection boxes, certificates of authority and badges.

b) All printed materials seeking money or goods on behalf of the Charity MUST* state that the charity is registered.

c) Scotland.

d) Materials MUST include contact details for the Charity and collectors, where different.

e) Personnel representing the Fundraising Organisation and, where possible, their vehicles, MUST be clearly identifiable as representing the Fundraising Organisation

f) To ensure that efficient and effective monitoring of all collections takes place, the issue and return of all materials connected with the collection MUST be recorded.

16.10 Conduct of Collections

- a)** All collections MUST* be carried out in accordance with the terms of the relevant permit or licence. Collectors MUST* only make approaches in areas and during operating hours set by terms of agreements/licences/permissions (unless a follow up is agreed with an individual).
- b)** All personal information MUST* be collated and returned to the Charity in a prompt and secure manner as agreed by the Charity and in compliance with Data Protection legislation.
- c)** For house to house collections, collectors MUST NOT* 'importune any person to the annoyance of such person', or ignore a request to leave or a request not to return.
- d), e and f** – Scotland.
- g)** In cases where the activity is to secure a form of non-financial commitment, but there is a possibility that the Charity will subsequently ask for a financial commitment, collectors MUST inform the individual being engaged during the initial activity of this possibility.
- h)** The Charity MUST be able to provide full details of all those collecting on their behalf within a given area, including name, address, telephone number, the area to be covered and the exact period during which the collector is authorised to collect.
- i)** If times are not set out as part of agreements or licences, standard operating hours MUST be 9am-9pm on a weekday and 10am-9pm on a weekend.
- j)** Collectors MUST to avoid causing obstruction, congestion and nuisance to the public.
- k)** Collectors MUST ensure that they wear appropriate clothing, which includes ensuring any provided clothing showing the name of the Fundraising Organisation is visible.
- l)** Collectors MUST NOT smoke or fundraise under the influence of alcohol or illegal drugs.
- m)** Collectors MUST NOT pressurise the public to give their support, but they can use reasonable persuasion.
- n)** The Charity MUST employ all best efforts to avoid soliciting regular donations, such as Direct Debits, from under 18s.
- o)** Collectors MUST be able to give the public information on how to make a complaint.
- p)** Collectors MUST, when asked to do so, terminate their approach in a polite manner.
- q)** Collectors MUST be courteous at all times.
- r)** If a "No Cold Calling Zone" has been created legitimately (i.e. within [Trading Standards Institute guidelines](#)), collectors MUST NOT cold call. Find out more about [fundraising and Cold Calling Zones](#) in the Institute of Fundraising's Guidance
- s)** Fundraisers MUST NOT knock on any door of a property that displays a sticker or sign which includes the words 'No Cold Calling'. For more information see the Institute of Fundraising's [guidance on no cold calling stickers](#).

16.11 Handling the Proceeds of a Cash Collection

- a)** The relevant standards for [Handling Cash Donations](#) MUST be observed and legal requirements MUST* be complied with.
- b)** Arrangements MUST be made for the receipt of the collection proceeds and all used and unused materials connected with it at a specified point authorised by the organiser of the collection.

16.12 Information to be Provided to the Licensing Authority

- a)** The promoter of the collection MUST* send any necessary information to the licensing authority within the required period after the collection.
- b)** The Charity MUST have procedures in place to enable accounts to be created within this timescale.

16.13 Collections on Private Property

- a)** The Charity MUST* have permission from the property owner/manager to collect and MUST* ensure they only collect on times/dates/areas specified.
- There is more information about public collections in the Institute of Fundraising's [Face to Face Fundraising](#) and [House to House Fundraising](#) guidance.

17.0 STATIC COLLECTIONS

17.1 Legal References for this Section

- General Charity law principles
- Charities Act 1992

The following Legal Appendices MUST be read in conjunction with this section of the Code of Fundraising Practice

- L12 References in Documents

17.2 Introduction

The most common form of collection appeals undertaken outside the requirements of existing legislation governing public collecting activity are appeals involving the use of static collecting boxes – either floor standing or on counters in shops, pubs, hotels, hospitals, reception areas etc.

17.3 Organisational and Promoter Responsibilities

- a)** The Charity MUST issue a certificate of authority/badge signed by the promoter bearing the name of the fundraising organisation that will benefit from the collection, together with the collector's name, address and signature.
- b)** The Charity MUST provide the promoters/collectors with guidance/procedures for collectors to follow and make it clear when the collector can vary these procedures.
- c)** The Charity MUST make all reasonable efforts to regain certificates of authority/badges and collection boxes from collectors on ceasing to act as a collector, or if they are no longer deemed fit to collect.

17.4 Collectors' Responsibilities

- a)** The collector MUST* obtain permission of site holders to collect on the premises. This permission MUST be in writing.
- b)** Collectors MUST possess a certificate of authority/badge signed by the promoter bearing the name of the fundraising organisation that will benefit from the collection, together with their own name, address and signature.
- c)** The certificate of authority MUST be shown to the siteholder.
- d)** Collectors MUST make it clear to siteholders that if a box is lost or stolen, or if they want to end the collection, that they need to contact the collector or fundraising organisation, preferably in writing.

17.5 Appearance and Maintenance of Collection Boxes

Where the management of static collection boxes is undertaken on behalf of charities or other voluntary the Charity by third parties who receive reward for this activity and who solicit in connection with it, it is important that all parties concerned with the static collection box activity are aware of their responsibilities and obligations under Part II of the Charities Act 1992 or Part 2 of the Charities and Trustee Investment (Scotland) Act 2005.

- a)** All notices, advertisements and other documents issued by, or on behalf of the Charity and which, in any way, seeks support for the Charity, MUST* include a statement that the charity is a registered charity.
- b)** Scotland.

17.6 Collecting and Sending Donations to the The Charity

- a)** If the collector is a professional fundraiser, all monies MUST* be returned to the promoter/organisation without deductions of fees or expenses as soon as is reasonably practicable.
- b)** If it is not practical for the collector to open and count collecting boxes, the Charity MUST have robust procedures and instructions for siteholders to count, record and bank/deliver proceeds.
- c)** If desired, siteholders MUST be provided with a receipt that contains the address of the site, the box number, the date and the amount collected. The collector MUST send the Charity the full sum

of all monies taken from all boxes without deduction of expenses or fees, unless specifically agreed.

d) The Charity and promoters **MUST** keep separate records of income raised, and expenses/fees for maintenance and administration.

There is more information about static collections in the Institute of Fundraising's Management of Static Collection Points guidance.

18.0 LEGACIES

18.1 Legal References for this Section

- Charities Act 1992
- Charities and Trustee Investment (Scotland) Act 2005
- General charity law principles
- General trust law principles

18.2 Key Principles

a) A fundraiser **MUST NOT*** exert undue influence on a potential legator.

b) The Charity **MUST** ensure that all legacy fundraising activity is done whilst considering:

- the duty of trustees to optimise the benefit to the fundraising organisation;
- the potential legator's freedom to provide for her/his family and others; and
- the sensitivities of the potential legator and his/her family and friends.

c) The Charity **MUST** ensure fundraisers do not provide legal advice.

18.3 Undertaking Legacy Fundraising

a) Whenever legacy fundraising is done by an external third party who is a professional fundraiser, this fundraising **MUST*** comply with professional fundraising legal obligations.

b) If a potential legator asks the Charity or any of its officers or employees to act as executor, the Charity **MUST** carefully consider whether to agree, bearing in mind the duties and responsibilities of acting as executor and potential risks to the Charity. If the Charity itself is to be appointed as executor and take out the grant of representation in its own name, the Charity **MUST*** have the power to do so (and for legators domiciled in England and Wales this usually means that the organisation must have trust corporation status).

c) The Charity **MUST** ensure that any incentives and recognition devices are of appropriate value, which will usually be of minimal cost.

18.3.1 Written Communications Seeking Legacies

a) The Charity **MUST** make clear that the contents are not intended to constitute legal advice by the Charity and that potential legators should seek their own professional advice.

b) If the Charity provide potential legators with suggested wording for legacies to the Charity to be included in their Wills, they **MUST** ensure that the suggested wording is accurate (which may involve seeking legal advice) and that the Charity is clearly identified (which will depend by jurisdiction, but will usually mean providing the Charity's full name, address and the registered office address if it is a company – and registered charity number, if applicable).

18.3.2 Communicating in Person

a) The Charity **MUST** consider the needs and situation of vulnerable individuals before embarking on face-to-face legacy fundraising activity.

b) If holding an event that is solely about legacies or where legacies will be discussed and potentially solicited, the Charity **MUST** be open about the reason for the invitation to an event.

c) Event organisers **MUST NOT** be exploitative in their 'use' of beneficiaries or supporters as case studies or testimonials, and **MUST** respect their dignity and privacy.

d) Individual face-to-face meetings in a potential legator's home to discuss legacies **MUST NOT** occur without that person having first had the opportunity to decline the meeting.

e) In all individual face-to-face legacy fundraising, fundraisers **MUST**:

- accept the right of the potential legator to invite a third party of their choice to be present at any stage of the face-to-face meeting(s);
- remind the potential legator of the purpose of their face-to-face visit;
- ensure that the meeting is undertaken in a manner and at a length sensitive to, and suiting the interests and concerns of, the particular potential legator and **MUST*** ensure that the fundraiser's behaviour cannot be construed as threatening or exerting undue pressure or influence;
- accept the right of the potential legator to terminate the face-to-face meeting at any time, and **MUST** accept the termination promptly and courteously; and make and retain attendance notes of meetings and communications with the potential legator on file.

18.3.3 Fundraisers' Involvement in Making a Will

If the witness to the will is the beneficiary or a connected person to the beneficiary organisation, the validity of the will could be challenged.

a) The Charity **MUST NOT** draft or be directly involved in drafting Wills in favour of the Charity.

b) Fundraisers/the Charity **MUST** ensure that they are absent at all times during the preparation, drafting and signing of the Will.

c) Witnesses to a Will under which the Charity benefits **MUST** be independent of the Charity, including staff and volunteers, to avoid any risk of "undue influence" which could affect the validity of the legacy.

18.3.4 Fundraisers' Relationships with Potential Legators

Close relationships can develop between a fundraiser and a potential legator. This can sometimes favour the fundraiser rather than the Charity, and a legacy may be left to the individual in their personal capacity, rather than to the Charity.

a) If a legacy is offered in a personal capacity, fundraisers **MUST** explain that, should the legator wish to give a legacy to him/her personally, then the fundraiser **MUST** disclose the gift to his/her line manager at the Charity.

b) Fundraisers **MUST NOT** take advantage of their employment by the Charity to solicit a personal legacy.

c) If an organisation considers that a fundraiser has abused his/her position and has solicited a personal legacy, the Charity **MUST** follow disciplinary procedures for dealing with such situations.

18.3.5 Paying for Wills with Charity Funds

a) Fundraisers **MUST NOT** make it a condition that the Charity is included in the Will and **MUST NOT*** exert undue influence on potential legators.

b) The Charity should take account of any guidance issued by the Charity Commission in relation to paying for Wills with charity funds.

18.4 After a Legacy Has Been Made

18.4.1 Ongoing Contact with Legators

a) The Charity **MUST*** respect the wishes of the legator if they want no further marketing communications (which would include any fundraising requests) from the organisation or, wherever possible, if they request a certain level of contact.

b) If a legator or potential legator asks the benefitting organisation to explain to disinherited family members why they are being disinherited, the organisation **MUST** decline or otherwise only explain why the Charity needs the legacy.

18.4.2 Conditional/Restricted Gifts

a) If a legacy is left with a request/wish, rather than subject to conditions, the Charity **MUST** consider whether to comply with the legator's wishes.

- b)** If a legacy is left on condition or subject to a binding obligation that it must be used for a particular purpose or project or such like, the Charity MUST contact the administrator/executor if the conditions cannot be fulfilled before accepting the legacy or, otherwise, if the conditions can be fulfilled and the legacy is accepted, the organisation MUST* follow those conditions.
- c)** Scotland.

18.4.3 Administering Legacies and Gifts

a) The Charity MUST respect the legator's or their estate's wishes about any public recognition of the gift.

b) Where case studies are sought, permission MUST be obtained from the next of kin, where possible.

There is more information about legacies in the Institute of Fundraising's Legacy Fundraising guidance.

19.0 PAYMENT OF FUNDRAISERS

19.1 Legal References for this Section

- General principles of charity law
- Employment Rights Act 1996
- Data Protection Act 1998
- Charities Act 1992
- Charities Act 2006
- HMRC Gift Aid Rules
- House to House Collections Act 1939
- House to House Collections Regulations 1947
- Charitable Collections (Transitional Provisions) Order 1974 (contain model local regulations)
- National Minimum Wage Act 1998
- House to House Charitable Collections Act (NI) 1952 and 1953
- Police, Factories, etc. (Miscellaneous Provisions) Act 1916

The following Legal Appendices MUST be read in conjunction with this section of the Code of Fundraising Practice

- L3 The Payment of Trustees
- L8 Professional Fundraiser Agreements

19.2 Scope

This section applies to the Charity when paying fundraisers, no matter what the specific fundraising technique involves or who they are employed by, for example, be it the Charity or another professional organisation.

19.3 Overarching Principle

a) All funds MUST* be used reasonably and prudently in the interest of the fundraising organisation. This involves ensuring that remuneration of fundraisers is proportionate to the benefit reasonably expected to be obtained.

19.4 Choosing the Appropriate Payment Mechanism

a) Practices and controls MUST be in place to ensure that payment methods do not leave the fundraiser or organisation out of pocket.

19.5 Excessive Remuneration

a) Payments to fundraisers MUST NOT* be excessive. For the purposes of this code, an excessive payment should be regarded as one which is considerably more than an ordinary, well-informed person would consider reasonable.

b) Where appropriate, maximum caps or reducing sliding scales **MUST** be used to avoid excessive remuneration.

19.6 Commission

a) The Charity **MUST NOT** use commission payments unless the following conditions are met:

- other sources of fundraising investment have been explored and exhausted;
- payments are subject to approval by the fundraising organisation's trustees, or senior executives when power has been delegated; and
- safeguards are in place to ensure excessive remuneration is not permitted.

19.7 Performance Management Systems

a) Robust performance management systems **MUST** be in place, recognising the impact of the payment method on the fundraiser, the fundraising organisation, the beneficiaries and the public at large.

b) Remuneration systems **MUST** be monitored to ensure that they continue to strike a balance between allocating risk and incentivising fundraisers effectively.

19.8 Individuals' Requirements

19.8.1 Staff

a) Where an employment relationship exists, the employer **MUST*** ensure that their chosen method of remuneration meets the Employment Rights Act 1996 in Northern Ireland The Employment Rights (Northern Ireland) Order 1996, and **MUST*** comply with the minimum wage rules in the National Minimum Wage Act 1998. Further information is available from the Department for Business Innovation and Skills.

19.8.2 Professional Fundraisers

a) Those freelance fundraisers and consultants who fall within the legal definition of a professional fundraiser **MUST*** comply with the applicable legal requirements.

19.8.3 Volunteers

a) Volunteers **MUST** only have their out-of-pocket expenses reimbursed.

19.8.4 Trustees

a) Trustees **MUST NOT*** be paid for fundraising on behalf of the Charity unless specific criteria are met (which differ according to jurisdiction).

There is more information about the payment of fundraising in the Institute of Fundraising's Payment of Fundraisers guidance.

20.0 HANDLING DONATIONS

The following Legal Appendices **MUST** be read in conjunction with this section of the Code of Fundraising Practice

- L8 Professional Fundraisers and Agreements
- L9 Commercial Participators and Agreements

20.1 Preparation and Procedure

20.1.1 Scope

For the purposes of this Code and the law, collection envelopes and collection boxes are treated in the same way, unless otherwise stated. The following guidance covers donations received in person and donations received through the post.

20.1.2 General Requirements

- a)** Records MUST be made of donations for specific purposes (certain appeals/projects etc) to ensure that the terms of donations are complied with. Such terms MUST* be complied with.
- b)** Professional fundraisers and commercial participators MUST NOT* make any deduction from cash received for the Charity. Other fundraisers MUST NOT* make deductions from cash received unless agreed with the Charity.
- c)** Local Authorities may impose additional rules about making deductions from collections and fundraisers/fundraising the Charity MUST* comply with these where relevant.
- d)** Expenses MUST* be met (where previously agreed) by the Charity after receipt of the donation.

20.1.3 Receipts

- a)** For house-to-house cash collections where a sealed collecting box is being used, donations MUST* be placed inside. Otherwise, the collector MUST* issue and sign a receipt for the donated amount.
- b)** Under the model regulations for street collections, donations MUST* be placed in sealed collecting receptacles. It is not necessary to give a receipt.
- c)** Scotland.

20.1.4 Banking

- a)** Cash MUST be banked as soon as is practicable. To aid this, the Charity MUST have a procedure on banking donations, such as who does it and when.
- b)** Cash not banked immediately MUST be placed in a safe or other secure location.
- c)** Scotland.

20.2 Cash

- a)** Cash MUST be collected, counted and recorded by two unrelated individuals, wherever possible. (Collection boxes MUST* only be examined and opened by the promoter of the collection (e.g. a charity's fundraising manager) and one other responsible person or by an official of a bank).
- b)** Unsecured cash MUST never be left unattended or in an unattended environment.
- c)** At the earliest possible date, reconciliation MUST be made between cash banked and income summaries. Where practical, this MUST be undertaken by a person independent of the counting and cashing up of the money.
- d)** Cash MUST be counted in a secure environment.

20.3 Cheques

- a)** Cheques MUST be banked or, where used, sent to the Charity's fulfilment house promptly.
 - b)** If sending cheques to a fulfilment house or external processor, the Charity MUST ensure the method of sending the cheque is appropriate to the value being transported.
- Further information about cheque procedures is available from the [Cheque and Credit Clearing Company](#).

20.4 Charity Vouchers/Cheques

Charity voucher/ cheque accounts enable donors to make donations(s) via a lump sum or regular amounts into an account. The agency administering the account will claim and add Gift Aid to the donation. The donor is issued with a book of vouchers/cheque book to donate this money to their preferred charities. On receiving the voucher/ cheque, the beneficiary charity contacts the agency and arranges for the donation to be transferred.

- a)** The Charity MUST NOT* reclaim tax on the donation, as the Gift Aid was added before receipt.
- b)** Vouchers MUST be banked/ redeemed promptly, ideally the next working day, unless the voucher organisation requires otherwise

20.5 Card Transactions

This section applies to transactions both where the donor is or is not present.

The steps that need to be taken to ensure security will vary depending on the number of transactions that are made. Guidance is available from the Payment Card Industry Security Standards Council.

- a)** The Charity MUST comply with the Payment Card Industry Data Security Standards (PCI-DSS). PCI-DSS consists of 12 requirements that all the Charity and businesses processing card payments have to meet.
- b)** Additional security measures such as Verified by Visa and 3D Securecode MUST be used for online transactions where resources allow.
- c)** The PCI-DSS state that the CSC should not be stored and this requirement MUST be observed.
- d)** Where charges are made for transferring payments, the total donation amount MUST be recorded as income, with a further record of expenditure to cover the charges.

20.6 Direct Debits

a) The procedures and rules surrounding direct debits will vary dependent on the bank used by the Charity. The Direct Debit Guarantee exists to provide unified standards and protection to customers. If the Charity signed up to the scheme it MUST* comply with it.

20.7 Children

- a)** Children under 16 MUST NOT be left with overall responsibility for handling money and/or responsibility for counting collected money.
- b)** House to house collections MUST NOT* be carried out by anyone under 16. Collectors in street collections MUST NOT* be under 16.
- c)** Scotland.
- d)** Northern Ireland.

20.8 Handling Cash at Events

The information in this section about events only applies to donation processes.

20.8.1 Record Keeping

a) The Charity MUST* ensure that they comply with HMRC requirements regarding record keeping for VAT purposes.

20.8.2 Floats

- a)** Floats MUST be signed for by a nominated individual.
- b)** Where petty cash expenditure is paid from the float, this MUST be recorded separately and any receipts kept.
- c)** Floats and any sale monies received MUST be kept separate from the cash handler's personal money.

20.8.3 Tills

In this section, tills include all taking and storing money receptacles.

- a)** All monies MUST immediately be put into the till.
- b)** Change MUST be given only from the till and never from personal money.

20.8.4 Cheques From Trading

- a)** Change MUST NOT be given for cheques.
- b)** Refunds MUST NOT be available until the money is in the Charity's account.

There is more information about the handling of donations in the Institute of Fundraising's Handling of Cash and Other Donations guidance.