

Charities' relationships with donors

A vision for a better future



Recommendations of the
working group on how to enable
donors to give consent
September 2016

It has been a privilege to chair this working group at a critical time in the evolution of the voluntary sector and in its relationship with the public. The sector is needed more than ever before, yet trust is under pressure like never before.

To rise to these challenges, it is essential that charities conduct their fundraising with integrity and respect and, critically, in ways that enable donors to have control. This is about the long-term health of their relationships with the public rather than seeking short-term opportunities to maximise income.

This report considers one aspect of how donors can take more control of their giving – specifically, how they give consent to the fundraising relationships with the charities that they support. This should be the first base of charity fundraising.

The report makes a set of recommendations about how to achieve this. We have listened to donors, to charities themselves and to the various professional bodies and regulators. There is a panoply of cross cutting law and guidance, some of which is consistent across fundraising channels and some of which is not. There is also a panoply of views across the charity sector about the right approach and understandable nervousness about the impact of change for the funding of the causes which charities cherish and support.

That said, change there must be. We cannot continue as we have been. These recommendations attempt to cut through the noise and make proposals that are about doing the right thing – would a reasonable person, whether a donor or a potential donor, be supportive of what we are recommending? I believe they would.

NCVO commissioned this working group, and the report was presented to the NCVO board in September 2016. The Board endorsed the recommendations, so now:

Chair's foreword

a) NCVO will launch the report and share the recommendations with the wider sector.

b) In parallel, NCVO will formally submit the report to the new Fundraising Regulator as the recommended good practice to be incorporated into the Code of Fundraising. It will then be for the Fundraising Regulator to review it, consult appropriately and issue new guidance. We hope this will be based on these recommendations. We believe this process should be done rapidly in order to begin the process of re-establishing trust.

I would like to thank my excellent and hardworking colleagues on the working group and the NCVO secretariat for all their efforts and I very much hope this contribution enables the sector to make progress in this important area.



Michael Adamson
Chief Executive, British Red Cross



Introduction

Fundraising has always been fundamental to the charity sector's success, its sustainability and independence. It is the main way in which many charities interact with the public, with overall giving amounting to £9.6 billion in 2015.¹

Most charity fundraising is undertaken responsibly and in a way that positively engages donors and potential donors.

However, the unprecedented level of scrutiny over fundraising that the charity sector has experienced over the past year has revealed that there is public concern about the large, and growing, number of fundraising asks, as well as a general dislike of some of the methods used by charities to fundraise.

Furthermore, surveys of public trust and confidence in charities continually identify poor fundraising practices as a cause for concern,² suggesting that improvements in this field could help improve public trust and confidence, and potentially in turn boost donations.

One of the recommendations made by the review of fundraising regulation was that charities should review their relationships with donors and consider which principles should underpin their approach, in particular with regards to the use of their donors' personal data for fundraising purposes.

Donors' concerns that their data was being shared without their permission, and their feeling that they generally don't have control over how their data is being used and find it difficult to opt out from charity fundraising requests, needed to be addressed. The working group was therefore established to examine existing practice, propose necessary changes and develop good practice recommendations that the sector should consider adopting.

The recommendations aim to create a stronger and more coherent framework that protects the interests of donors and potential donors, and re-establishes a basis of trust and confidence in charity fundraising practices.

The ultimate result should be to meet the public's increased expectations about how charities conduct themselves, and will therefore be a way in which charities can demonstrate to their donors and the wider public their commitment to good fundraising practice, and to maintaining public trust and confidence.

Promoting good practice

There is already a considerable body of law regulating the use of personal data for direct marketing and other purposes that applies to all organisations whatever the channel of communication that is used, including in this space charities that fundraise. Additionally, there is a body of law which applies to specific channels such as email or other electronic communications. However, the consequence in practice is that while there is a legal backstop to the protection of personal data in all channels, the effectiveness of the legal requirements in protecting donors and potential donors varies between channels.

Moreover, the spirit of the law, as opposed to the strict letter of it, along with the demands of the public, require our sector to show it is operating to higher values than just legal or other requirements.

It is also important to anticipate potential further changes that may occur in the future, both in terms of changes to the law and changes to public attitudes.

Therefore, on occasion the recommendations deliberately set standards that go above and beyond what is legally required. In some cases they also suggest doing more than existing recommended good practice.

Consent: a consistent approach

An updated and consistent approach to consent is the foundation stone for a trusting relationship between charities and their donors. The recommendations adopt the approach that charities should have or obtain consent for all forms of direct marketing for fundraising purposes.

Consent is legally required for most direct marketing, and where it is not legally required, it is considered best practice and is strongly advised.³ There are a number of ways in which consent can be obtained and managed, with many charities already having moved to marketing models based on consent, using explicit consent statements in all their materials or asking their supporters to tick opt-in boxes. Given the inconsistency in legal requirements, it is the working group's view that a more ethical and practical solution is to develop an approach which enables consent to all forms of direct marketing. This would ensure simplicity and clarity, and would therefore reduce the risk of non-compliance by confusion.

What does this mean for charities?

It will be for each charity to judge whether and, if so, how to follow these recommendations. Most importantly, it will be the discretion, and responsibility, of the board of every individual charity to decide how to engage with their donors and potential donors in a way that promotes relationships that are enduring and based on trust.

This is also to reflect the fact that the charity sector is extremely diverse, and charities are very different in how they operate. In particular, there are a number of ways in which charities conduct their fundraising and contact donors and potential donors, ranging from those that choose direct mail as a channel that works well and is less intrusive than others, to those that find telephone appeals more successful.

The recommendations also need to be considered in the context of a constantly challenging social and economic environment, where attitudes and technology change but the need for charities continues and grows. It is therefore important that charities continue to be able not only to raise funds but also awareness about their work.

However, all charities will want to think about how to better communicate with their supporters and how to promote the reasons why they should give their consent, in order to make a clear and compelling case specific to their cause.

The group and its work

Purpose of the Working Group

The working group was tasked with developing proposals on what steps charities should take to move to a system which is based on an individual's 'freely given, specific, informed and unambiguous consent' to be contacted.⁴

In particular, the working group was asked to address the following questions.

- What 'freely given, specific, informed and unambiguous consent' looks like in practice when applied to fundraising communications.
- What practical arrangements are required to achieve a system whereby all fundraising communications are directed only to individuals who have given free, specific, informed and unambiguous consent.
- What are reasonable transitional arrangements.

Process

The working group was established in January 2016 and operated until July 2016. Throughout this time, it regularly engaged with a wider reference group to ensure the recommendations were developed taking into account the range of different types of organisations and fundraising.⁵

Members of the working group also engaged with a range of other stakeholders, including the Fundraising Regulator and the Information Commissioner's Office.

Research

The public is at the receiving end of charities' fundraising asks, so this is an area where the public's views are particularly important. The working group therefore analysed existing research carried out in this field, as well as commissioning further independent research on the specific issue of consent for fundraising purposes.

Existing research

Existing research shows that concerns about privacy and the protection of personal data are increasingly of importance to the public.

The two major concerns people have regarding their personal data are:

- a) data security
- b) data privacy.

For example, Royal Mail market research⁶ reported that:

- 71% of people said that they were concerned about their information being protected from loss or theft
- 90% of people said they were concerned that an organisation would pass on their details to another organisation.

The commonly recurring findings of research undertaken in this field⁷ are:

- the public want control over their personal data
- the public want to know what organisations will do with their personal data
- the public want security of their personal data.

New research

The working group commissioned additional research to specifically look at people's willingness to share their personal data with charities, based on their experience of donating and the communications they have received from charities.⁸

The research has found that there is a profound lack of trust in whether charities will only make contact where permission has been given and how personal information is used: only 36% overall trust that most charities will only contact them if they have given consent (41% donors and 18% potential donors).

The ability to opt out of contact, and to choose by what method and how often to be contacted, would increase donors' willingness to share their personal information. In particular, a charity committing to not sharing data and to treating data securely is more likely to offer reassurances and lead to donors sharing personal information.

However the majority of potential donors would still not share their information, and would require further assurances.

The research has also revealed that there is clear polarisation with regards to contact after a donation is made: a high proportion overall (46%) do not want any further contact. This is driven mainly by potential donors, while *donors* are more likely to want to be kept up to date with news to understand how their donation has been used.

The survey also included a number of questions about the use of indirect consent, to understand in what circumstances this would be acceptable to donors and potential donors.

However, there were very negative reactions to the thought of a charity making contact after data had been received / purchased from a third party (for example, 46% of respondents would find it totally unacceptable and 14% unacceptable for their data to be shared even if the charity had been specifically named).

The majority of respondents (59%) said that they would never agree to share their personal information with another charity or organisation.

Despite many of these results revealing the challenges that charities face ahead in their fundraising, an encouraging finding is that two-thirds of respondents said their trust would increase if charities were transparent and gave control over how personal data was held and shared. So there is an opportunity for the sector to build positive relationships with donors and potential donors, demonstrating that it has listened to the public's concerns and taken action.

The working group has set itself a vision for the future relationship between charities and their donors.

The working group's vision is of a world where donors and potential donors have meaningful control of their relationships with the charities they support.

Donors and potential donors will have informed choice over how their data is used and by whom. In particular, donors and potential donors will be able to easily express their preferences about whether and how they wish to be contacted by the charities they support, including whether they wish to stop being contacted.

Charities will be fully transparent and accountable to their donors and potential donors about the use of their data, ensuring donors and potential donors can easily understand what is happening with their data and enabling them to build a relationship of trust and enduring engagement.

Charities will handle donor information in a safe, secure and sensitive way, demonstrating they can be trusted to handle personal data.

Charities will respect individuals' preferences and ensure they can update or confirm their preferences at regular intervals appropriate to the nature of the contact and channel.

This vision therefore sets a new framework for how charities engage with their donors and potential donors, and particularly how charities meet the public's changing attitudes to issues such as privacy, how their personal data is used and protected, and what control they have over these. It is aimed at addressing the fact that social, political and technological developments are changing the public's expectations about how organisations engage with them – charities being no exception.

This vision, as it becomes reality, will help restore public confidence in charity fundraising and, in turn, in the charity sector as a whole.

Vision

Guiding principles

The recommendations develop good practice in the use of personal data by charities for fundraising purposes.

The recommendations are designed to be ethical, practical and enduring.

In the context of these recommendations, 'consent' means any freely given, specific, informed and unambiguous indication of an individual's wishes by which he or she signifies agreement to the processing of their personal data for fundraising purposes.

Consent should have been secured through the presentation of a clear choice between options. It should be confirmed by an affirmative act, written or oral. This should consist of a statement or conduct, such as providing personal data, which clearly indicates the individual's acceptance of the proposed use of his or her personal data, or ticking a box to opt out or opt in.⁹

Charities should not exchange or share personal data without the consent of the donor or potential donor.¹⁰

Consent cannot be presumed to last forever, and should be appropriately refreshed.¹¹

The period within which consent should be refreshed may vary according to the intrusiveness of the channel of communication, the type of institution, and the nature of the relationship with the donor or potential donor.

An individual's simple act of making a donation should not be viewed by the charity as consent to make further unlimited contact for fundraising purposes.

When organisations use external suppliers to contact current or potential donors and supporters, they should take full responsibility for the way in which these contacts are handled, as if they were doing it themselves, explaining where the data has been secured from. They should ensure a comprehensive quality assurance framework is in place to oversee it.

An extended period of silence, pre-ticked boxes or inactivity should not constitute consent.

Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be given for all of them.

The working group's recommendations promote good practice, and demonstrate how charities should commit to do the right thing by donors and potential donors, and meet the public's increased expectations about how charities operate. They are not legal guidance.

In practice, the recommendations aim to ensure that donors and the public have a positive experience of charity fundraising, and will therefore want to have a long lasting relationship with charities.

Changes to the Code of Fundraising Practice

Over the past year, a number of important changes have already been made to the Code of Fundraising Practice aimed at giving donors more control over fundraising requests and improving their fundraising experience.

The changes mean that:

- every addressed fundraising communication must now carry a clear message explaining how donors can easily stop receiving future communications
- minimum font sizes have been introduced for opt-in and opt-out statements on all printed communication (including newspaper adverts)

Recent regulatory changes

- charities have been banned from selling supporters' data for commercial gain
- charities will only be able to share supporters' data with third parties if an individual provides explicit consent
- charities 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.

Changes to the Information Commissioner's Office Direct Marketing Guidance

The Information Commissioner's Office (ICO) has also recently introduced some new changes to its direct marketing guidance. Many of the changes are specifically addressed at charities and their direct marketing activities, including fundraising. In particular, the amended guidance highlights that, in the charity sector as well as any other sector, any messages that have a marketing element will still be caught by the definition of direct marketing even if the main purpose for the communication is not a marketing one. For charities, this means that most of their communications (including newsletters, fundraising and campaigning communications, and any material promoting the aims of the organisation) fall within the definition of direct marketing.

Other key changes are as follows.

• Freely given consent

More clarification is provided on consent being 'freely given'. Organisations should not 'coerce or unduly incentivise' people to consent to marketing calls. The ICO recommends that marketing consent should not be made a condition of subscription unless the organisation can 'clearly demonstrate how consent to marketing is necessary for the service and why consent cannot be sought separately'.

It cannot therefore be assumed that an individual wants to receive marketing just because they have given to a charity previously, ordered a product or received a service.

Consent should also not be 'buried' in documentation.

• Indirect (third party) consent

The updated guidance provides organisations with more direction around indirect consent, making it clearer that a broad general consent obtained through phrases such as 'are you happy to receive marketing from selected third parties' will rarely amount to an effective consent for third party marketing.

For indirect consent to be valid it needs to be 'clear and specific enough' which in essence means that the person must have anticipated that their details would be passed to the organisation in question, and that they were consenting to messages from that organisation.

Therefore in order for consent to be specific enough, the categories need to allow the individual to foresee the types of organisation that will market to them (such as a 'charity'), what this marketing will be and the mode of such marketing.

• Selling and sharing data

The guidance makes explicit the requirement that organisations must tell individuals if they are selling or sharing their data for marketing purposes.

Recommendations

The recommendations developed by the working group propose a number of further changes that charities should adopt in their fundraising practices, as a way to further improve the way in which they contact and communicate with their donors and potential donors. Specifically:

- 1.** Charities should acquire an individual's consent for fundraising through all channels of communication, and should minimise their reliance on indirect consent and 'legitimate interest' alone.
- 2.** If a charity relies on indirect consent¹³, it should take a cautious approach to its use and provide the necessary safeguards to ensure the individual has a reasonable expectation about being contacted by the charity for fundraising purposes.¹⁴

This would mean for example that:

- Charities making telephone calls to individuals whose data has been obtained through a third party should do so on the basis of the individual having given his or her consent to receive contact from that named charity.
- Charities sending direct mail to individuals whose data has been obtained through a third party should do so on the basis of the individual having given his or her consent to receive contact from charities identified by the cause or by the type of work they do. The charity should have reason to believe that the individual has an interest in its cause or its work, and may therefore want to receive fundraising communications.

The variation in approach between the channels reflects the difference in the degree of intrusiveness in contact through them.

3. Legitimate interest should be avoided as a basis for a charity to contact a potential donor. While it is legal, provided it is combined with reference to a privacy and fair processing statement,¹⁵ it does not create a sufficient presumption of a matching of the cause and the expectation or interest of the donor. If a charity relies on legitimate interest as a way to appeal to potential donors, it should take a cautious approach to its use and provide the necessary safeguards to ensure the individual has a reasonable expectation about being contacted by the charity for fundraising purposes.

In particular, it is recommended that:

- Charities should make a commitment that they will approach individuals on grounds of a legitimate interest no more than once a year.
- When approaching individuals on grounds of a legitimate interest, charities should explain how the data was obtained, and what their legitimate interest is (ie why the charity thinks that the individual might be interested in its cause or its work). The charity should also offer a clear and simple way for the individual to express his or her wish to not be contacted again.

By adopting these measures, charities would be strengthening their legitimate interest and would therefore better ensure they meet the balance of interests test.¹⁶

These recommendations also propose how charities should ensure the consent they have from existing donors is appropriately refreshed and up to date. In particular:

4. When a charity contacts a donor by telephone for fundraising purposes, it should regularly ask the individual if he or she is happy to continue hearing from the charity in this way in the future. Periods of refresh will vary depending on the type of institution and fundraising activity. However, it is proposed that large fundraising organisations that undertake mass fundraising campaigns should refresh consent at least every 24 months.

5. If an existing donor cancels their regular gift, charities should consider that consent to receive further fundraising communications cannot be assumed to continue indefinitely. It is proposed that consent should be treated as lapsed and no longer valid after 24 months from the cancellation of the gift.¹⁷

6. Charities should not generally engage in teleappealing or telematching. In particular, if there has been a change in a donor's circumstances (for example the person has moved house) charities should ask themselves whether it is appropriate to engage in the practice of teleappealing and telematching: if the donor has not informed the charity and updated it on how he or she can be contacted, then there is reason to consider that the initial consent is out of date.¹⁸

7. Where data was acquired a long time ago or donors have been inactive for a long period, charities should refresh and update the consent they have. The length of time may vary by the intrusiveness of the channel of communication, the type of institution, and the nature of the relationship with the donor or potential donor.

The recommendations developed by the working group reflect good practice: as such, it will be for the board of each charity to consider whether to follow the recommendations, and how. In particular, different organisations will have different fundraising strategies and practices, so they will be best placed to decide how the recommendations can be adapted to their circumstances.

The working group however thought it would be helpful to provide examples of how the recommendations can be implemented. These depend on whether the individual is being contacted for fundraising purposes by using:

- their postal address
- their email address
- their telephone number
- their mobile number for SMS contact
- or a combination of the above.

Multiple-channel approach

When a charity uses multiple channels through which an individual can provide their personal data for fundraising purposes – for example by asking for a donation online, or face to face, or through unaddressed printed material – consent statements and communication preferences should be clear and simple to understand.

It should be made clear that the donor has genuine choice over whether or not to consent to being contacted in future for fundraising purposes.

It should be made clear that the donor has the option to choose which contact details they give.

How the recommendations apply in practice

It should be made clear that the donor has the option to choose how they can be contacted.

The donor should always leave the interaction or conversation with a clear understanding of what they have specifically consented to. A charity should always be able to demonstrate that it has consent, such as proof that the information has been specifically and freely shared, for example by completing a prominent statement, or ticking an opt-in box.

When the collection of data happens face to face, charities should be clear to the potential donor how any information provided may be used.

If setting up a Direct Debit, the charity should explain that it is a legal requirement for it to send (either via post or email) an advanced notification letter, even if the donor has opted out of all forms of communication.

If applicable, the charity should also clearly explain to the donor that they will receive further communications related to the donation, such as a welcome call or thank you pack, or updates on how the donation is being used.

As good practice, in their fair processing statements charities should explain to the donor any other way in which their data may be used.¹⁹ In particular, if the charity undertakes data profiling or wealth screening, it should make this clear in the fair processing statement, for example by making explicit use of words such as 'profiling', 'targeting', 'research', and 'wealth screening companies'.

If a potential donor gives their data in person, and not using printed materials (for example by handing over their business card), the charity's representative should say that the individual's information will be recorded and he/she will receive future contact about fundraising. The charity should then send a follow up communication outlining their privacy policy and intended use of the individual's data, providing the opportunity to opt out of future contact.

If an individual makes an unsolicited donation to a charity (eg writes in to make a donation) or contacts them for further information, (eg leaves an answerphone message), there is a reasonable expectation that the charity will respond to thank them for their support. Upon that first contact with the individual, the charity must outline their privacy policy and intended use of the individual's data and include the opportunity to opt out of future contact.

Postal address

When individuals freely and actively give their postal address to a charity, for example when filling in a leaflet, collection envelope, face to face donation form, online donation form, Gift Aid form etc, they should be given the opportunity to consent to their information being used for future communications about supporting the charity via post.

Any person who freely and actively gives their postal address to a charity representative in person (not using printed materials) should be asked for their verbal consent to future fundraising communications by post.

Any person who receives an addressed fundraising communication through the post from a charity that they haven't previously supported should have clearly and freely given:

- their personal contact details to a third party
- their consent to their data being shared with charities in which there is a reasonable expectation that they will have an interest.

Any person who receives an addressed fundraising communication through the post from a charity they have supported in the past should be given the opportunity to opt out of future communication.

The opportunity to opt out of fundraising direct mail communication sent to a named individual should be simple, for example via a freephone number, freepost address and/or email address.

All permission statements (opt-in or opt-out wording to gain consent for fundraising purposes) must be easily visible and legible.

Charities also should consider how to communicate with supporters who, although not registered with MPS, have had no interaction with the charity for an extended period. In doing so, charities should consider what a reasonable person might expect.

For the purposes of communicating with regular givers that have provided their consent to receive direct mail, this consent can be considered valid for the period that their gift remains active. However if an individual cancels their gift, consent would be considered to lapse after 24 months from the point of cancellation. This would allow time for the charity to establish the reasons why the gift was cancelled and whether the individual would like to be contacted in the future.

Email address

When individuals freely and actively give their email address to a charity, for example when filling in a leaflet, collection envelope, face to face donation form, online donation form, Gift Aid form etc, they should be given the opportunity to consent to their information being used for future communications about fundraising via email.

Any person who freely and actively gives their email address to a charity representative in person (not using printed materials) should be asked for their consent for future fundraising communications via email.

Any person who receives a fundraising communication by email from a charity they have supported in the past should have given their consent to receive such contact from that named charity.

The fundraising email communication sent to a named individual should clearly display easy options in which the individual can opt out of future communications (such as an unsubscribe link, freephone number, freepost address and/or email address to allow them to opt out of future communications with a single step).

All consent statements must be easily visible and legible.

For the purposes of communicating with regular givers who have provided their consent to receive fundraising emails, this consent can be considered valid for the period that their gift remains active. However when an individual cancels their gift, this consent should be considered to lapse after 24 months from the point of cancellation.

Telephone number

Any person who receives a fundraising call from a charity they have supported in the past should have given their consent to receive such calls from that named charity.

Any person who freely and actively gives their telephone number to a charity, for example by filling in a leaflet, collection envelope, face to face donation form, online donation form, Gift Aid form etc, should be asked for their consent to their information being used for future fundraising communications via the telephone.

Any person who freely and actively gives their telephone number to a charity in person (not using printed materials) should be asked for their consent for future fundraising communications by telephone.

All permission statements (opt-in or opt-out wording to gain consent for fundraising purposes) must be easily visible and legible.

Any person who receives a fundraising telephone call from a charity that they haven't previously supported should have clearly and freely given their personal contact details to a third party and their consent to their data being shared with that named charity for fundraising purposes.

Charities undertaking telemarketing for donor recruitment purposes must run any lifestyle survey data collected by third parties past the TPS and exclude any individuals that are registered. Charities should only contact individuals registered on TPS if they have their consent to do so.

Every telephone call should be seen as an opportunity to refresh consent and ask for the supporter's consent to be called by the charity again in the future. As a base mark, large fundraising organisations that undertake mass fundraising campaigns should refresh consent every 24 months. Charities should be able to evidence this has occurred in campaign scripts, data files, telephone records and campaign monitoring activity.

Charities should not engage in the practice of tele-appending phone numbers, unless exceptional circumstances occur (such as the individual has given consent to be contacted by phone but has failed to provide a number). In all other circumstances the requirement that personal data is processed fairly and lawfully would not be met and consent cannot be considered as freely given.

Mobile number for SMS contact

SMS is a unique channel which combines in one action a communication method and a payment mechanism. Often the purpose from the charity's perspective is that the initial SMS response is the first stage of an engagement with the supporter. A key principle is that when a supporter is sending an SMS to a charity in response to a piece of fundraising promotion such as a poster, or a TV advert it should be clear to the supporter what will happen next.

Any person who receives an SMS from a charity they have supported must have given their consent to receive further fundraising communications from that named charity.

Any person who freely and actively gives their mobile telephone number to a charity, for example by sending a donation via text in response to an advert, should be given the opportunity to provide their consent to their information being used for future fundraising communications and a route by which they can control further communications.

The choice to receive further fundraising communications should be provided at the moment of soliciting the donation.

If the donor has sent a text as part of an SMS campaign, the charity must be explicit in stating that the donor will receive a further phone call asking them to set up a regular donation.

If a supporter provides their consent to be contacted by SMS they should be given an opportunity to stop future texts in each subsequent message.

To ensure that the spirit as well as the letter of the law is being followed, the text cannot be too small to read on a press advert or so quick it appears on screen for only a few seconds. The risk is that otherwise a supporter is not properly informed of what will happen if they respond to the fundraising request.

The suggested approach in practice would be to use wording such as:

Texts cost X plus standard network rate. By texting you consent to future telephone and SMS marketing contact from <charity>. Text KEYWORD to give X. Text KEYWORDNO to <number> to give X and stop future telephone and SMS marketing contact.

Sample statements

The ICO has published a helpful code of practice on privacy notices.²⁰ This code is designed to help organisations collect and use information appropriately, and suggests a number of ways in which clear and genuinely informative privacy notices should be drafted.

The examples set out below have been drafted to reflect the ICO's guidance, and how they might apply to charities communicating with their donors and potential donors.

These examples are illustrative only, and should not be used as templates – it is for each charity to communicate in a way that reflects its values and its relationship with its donors.

²⁰ ico.org.uk/about-the-ico/privacy-notices-transparency-and-control/.

The key elements of a good sample statement are:

- giving people appropriate choices that are easy to exercise
- using simple language, font and style
- clearly explaining why it would be helpful to provide the information
- clearly explaining how the information provided will be used
- providing an easy way for people to find out who else the information is shared with.

In print and online

Where printed materials are available, there needs to be a clear and simple statement, suitably positioned so that it enables the donor to understand how their data will be used and the contact they are consenting to receive in the future. This should be separate from the information that is required from the donor to make the donation.

The statement could say for example:

It is vital that we can communicate with our supporters. We would like to keep you up to date about the work we are doing, to tell you about the amazing difference you have made and how your financial support can help more.

We will only do this if you tell us that you are happy for us to contact you for this purpose, by completing your contact details below. You do not have to provide this information and can remove or change any of these preferences at any time.

MY CONTACT PREFERENCES

You can send post to me using this address:

You can send emails to me using this address:

You can call me using one or more of these phone number(s):

Home _____

Mobile _____

Work _____

You can use the following mobile phone number to send me texts:

If you ever change your mind about these choices or have any concerns about any communication from us, please call our Supporter Services team on xxx or email us at fundraising@<charity>.org.uk or write to <charity> freepost address.

HOW YOUR INFORMATION WILL BE USED

We respect your right of privacy and to have your data kept as secure as possible.

From time to time we would also like to use your data for profiling, targeting and research purposes so that our communications to you are as appropriate and cost effective as possible. We only allow authorised agents who work on our behalf to access your personal data and will never exchange your details or sell or rent your data to any other commercial or charitable organisation.

For more information about how we use your information please see our privacy policy.

Verbally

If an individual's data is gathered without the use of printed materials, for example as part of a major donor or community fundraising relationship, a statement that the charity's representative could say to the supporter verbally is as follows:

'Thank you so much, we will keep a record of your details and will be in touch in the future about how you can support <charity>. We will also write to/email you in the next few weeks to outline to you and assure you about how we will use and safeguard your personal data. This will also give you the opportunity to share with us how you would like to hear from <charity>.'

On the telephone

The statement could be positioned at any point in the call, again the key being to ensure the individual is clear that they will hear from the charity again by phone for fundraising purposes. An example of the wording that could be used is:

We'd love to stay in touch and call occasionally about how you can donate and help in the future; is that okay with you? How would you prefer to be contacted?

Again the important elements are 'call', 'donate' and the freely given affirmative response.

After the affirmative response is obtained, it would be good practice to highlight that they can change their mind at any time they wish, and explain how this can be done.

Transitional arrangements

The following suggestions may be of interest to those charities that have on their databases individuals whose consent has not been formally secured. Charities should start now to address this issue and will have a period of 24 months to improve the quality of consent on their databases.

As recommended, charities should in these circumstances seek to secure and/or refresh the individuals' consent (and therefore improve the quality of such consent) with the use of appropriate wording in all their communications with supporters, also giving the opportunity to opt out of further contact. With a supporter's affirmative action, their consent will be secured and/or refreshed.

For telephone fundraising, provided the number is not registered on the Telephone Preference Service, the charity should be able to make a phone call to secure the individual's consent to receive future fundraising communications, and to offer the individual a choice as to the channel they want to hear through.

If the number is registered on the Telephone Preference Service, the charity can get in touch by:

- direct mail
- by SMS or email if the individual has signed up to these channels of communication.

In these cases, it is suggested that only one letter, email or text should be sent, and that if the individual person doesn't respond with a clear affirmative statement or action within 6 months, then the charity should assume that it doesn't have consent.

This approach may however not be appropriate for all donors. For some categories of donors, such as legacy pledgers, university alumni and others, further thinking is required on how to ensure appropriate consent is in place.

Annex I

Working group terms of reference

Background

On 25 November 2015, NCVO hosted a meeting of charity chief executives to discuss the ongoing investigations being carried out by the Information Commissioner's Office on a number of charities, and forthcoming changes to the rules on data protection legislation affecting charity fundraising practice. Charities expressed their commitment to change their approach to fundraising so only those who have given their 'freely given, specific, informed and unambiguous consent' would be contacted, as required by the EU General Data Protection Regulation.

Purpose

In view of the forthcoming EU General Data Protection Regulation, the purpose of the working group is to develop proposals on what steps charities should take to move to a system which is based on an individual's 'freely given, specific, informed and unambiguous consent' to be contacted.

Deliverables

The working group will address the following questions:

- what 'freely given, specific, informed and unambiguous consent' looks like in practice when applied to fundraising communications
- what practical arrangements are required to achieve a system whereby all fundraising communications are directed only to individuals who have given free, specific, informed and unambiguous consent
- what are reasonable transitional arrangements
- what is a reasonable timeframe.

Scope

The proposals will apply to fundraising communications carried out by electronic communications, such as:

- telephone (live calls and automated calls)
- text messages
- email
- fax.

The working group will also consider fundraising communications sent by post, and how these could be based on 'freely given, specific, informed and unambiguous consent'.

Timetable

The working group will develop its proposals with a view that the EU General Data Protection Regulation will be implemented at the end of 2017.

Resourcing

NCVO will provide the secretariat for the working group. The group will receive initial financial support from NCVO. A request for additional financial contributions will be made to relevant charities.

Meetings

Occurrence of meetings and other working arrangements will be agreed by the chair and the secretariat.

Working group membership

The working group will be chaired by Michael Adamson, chief executive of the British Red Cross.

Membership of the working group will ensure representation of charities (large, medium and small), the education sector and fundraising experts.

The group should comprise:

- a director of fundraising of a large charity
- a CEO of a medium sized charity
- a CEO of a small charity
- an individual with experience in developing fundraising standards
- a representative of the education sector
- a senior lawyer with expertise in data protection legislation.

Individual members will be agreed by the Chair and the secretariat.

The working group will be additionally supported by a wider reference group of CEOs of fundraising charities.

Reference group

The reference group will have an advisory role with regards to the Working Group. Inclusion on the reference group is open to expressions of interest.

Methodology

The working group will engage with the Information Commissioner's Office and the Charity Commission. The working group will consult widely with the charity sector, the fundraising sector and the direct marketing sector.

Governance

The working group will report to NCVO's board of trustees.

Annex II

Working group members



Mike Adamson, Chief Executive, British Red Cross (chair)

Mike Adamson is Chief Executive of the British Red Cross, the country's leading voluntary crisis response organisation, and part of the worldwide Red Cross and Red Crescent Movement.

Prior to his current appointment, Mike was Managing Director of Operations, responsible for the leadership of the British Red Cross' UK and international programmes and its advocacy work, overseeing a unified approach to all operations. He took on this role in 2010, having previously held several other positions in the organisation between 1992 and 2003, including Head of International Programme Development, Director for the London and South-East Region and Director of Strategy, Planning and Information Systems. In his years away from the organisation, Mike worked for the National Health Service as Director of Commissioning and Primary Care at a Primary Care Trust in Gloucestershire for three years, and spent five years as Managing Director for Services at the Royal National Institute for Deaf People (RNID – now Action on Hearing Loss).

Mike is a board member of the Disasters Emergency Committee (DEC) and of a regional drug and alcohol charity (Nelson Trust). He is also a member of the Foreign Secretary's Human Rights Advisory Panel.

Mike lives in Gloucestershire with his wife Lorna and two daughters Eleanor and Sophie. In his spare time he likes to run, cycle and read – he is also a founding member of his local film club.

Mike has an MPhil in economics from Oxford University and an MBA with distinction.

Nicola Dandridge, Chief Executive, Universities UK

Nicola Dandridge has been Chief Executive of Universities UK since September 2009. Universities UK is the representative organisation for the UK's Universities. Founded in 1918, UUK has 133 members and offices in London, Cardiff and Edinburgh. Its mission is to be the definitive voice for all universities in the UK, promoting the strength and success of UK universities nationally and internationally.

Nicola was previously Chief Executive of the Equality Challenge Unit, the higher education agency which promotes equality and diversity for staff and students in higher education in England, Wales and Northern Ireland. Prior to this, Nicola was a lawyer qualified in both England and Scotland working in private practice.



Mark Flannagan, Chief Executive, Beating Bowel Cancer

Mark has been Chief Executive of Beating Bowel Cancer since July 2010. In his 30 years in the charity sector he has worked at a senior/Board level in a number of high profile organisations, including: the Royal College of General Practitioners; the Royal College of Nursing; Diabetes UK; the BBC; and the homelessness charity, Crisis.

Mark is a Trustee of the Rainmaker Foundation, a charity that empowers small charities to fulfil their potential. He is a member of the NCVO working group on "opt in" to fundraising.

Mark is a commentator on third sector/charity/health matters through his regular blog in Third Sector and elsewhere.

A keen cyclist Mark has raised money for Beating Bowel Cancer by taking part in cycling challenges in 2014, 2015 and 2016.



Eleanor Harrison, Chief Executive, Global Giving

Eleanor's indefatigable energy has led to her to accumulating a wealth of experience in leading teams in the non-profit sector both in the UK and overseas. She was the Director of Action for Children in Conflict (2007-2011), a grassroots charity working with street and other vulnerable children and their families in Thika District, Kenya. She worked for the Refugee Council developing and implementing office and community projects for refugees and asylum seekers in the West Midlands, UK. She has also worked with young people in Uganda on HIV/AIDS issues, with rural schools in Western Kenya on educational resource development, taught in Bosnia and conducted research work in Australia and the UK for charities.

Eleanor was awarded a Groundbreakers Scholarship (2013) for emerging women leaders in the charity sector; a Paul Harris Fellowship Award (2009) for her community service work. She was also nominated for a Community Service Award, Kenya in 2011.

Most recently, in 2015, GlobalGiving UK, under her guidance, was recognised by Digital Leaders 100 as a leading digital organisation. Eleanor holds an MA in International Relations, University of Queensland and a BA (Hons) in Social & Political Sciences, University of Cambridge. In the Queen's Birthday Awards, 2016, Eleanor's passion for helping people and their communities to realise their potential and deliver for themselves and others was recognised with the award of the OBE.

Tim Hunter, Director of Fundraising, Oxfam

Tim Hunter is Director of Fundraising at Oxfam GB. In this role he leads a team mobilising £100 million a year to support the goal of a world free from the injustice of poverty. Prior to joining Oxfam, he was International Fundraising Director for UNICEF, based in Geneva, for 5 years. During this period UNICEF's private sector income grew strongly to \$1.5 billion. He led a global fundraising team operating in more than 50 countries and working with flagship corporate partners. Prior to UNICEF he worked for a number of high profile UK non profits including Shelter – the National Campaign for Homeless People and the NSPCC, where he played a central role in the highly successful FULL STOP Campaign. A regular speaker in the non-profit sector, he has also been Chair of the International Fundraising Congress, which held annually is the largest global event for fundraising and development. Tim is a graduate of the London School of Economics.



Avril Martindale, Partner, Freshfields Bruckhaus Deringer

Avril Martindale is a partner at international law firm Freshfields Bruckhaus Deringer.

Campbell Robb, Chief Executive, Shelter

Prior to joining Shelter in 2010, Campbell was the first Director General of the Office of the Third Sector in the Cabinet Office.

Whilst there, he led the government's work with the Third Sector, including the 2007 Comprehensive Spending Review and the most wide-ranging consultation with the Third Sector, which resulted in the launch of the Third Sector Review. Previously he was Director of Public Policy for NCVO.



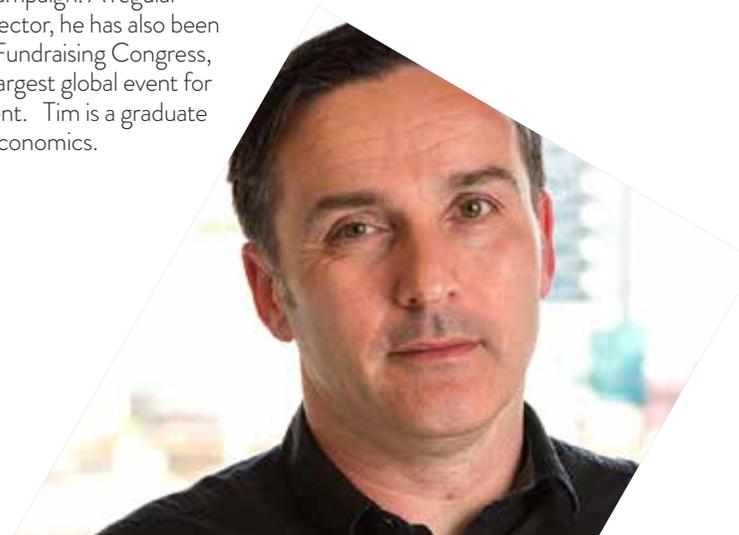
Liz Tait, Director of Fundraising, Battersea Dogs & Cats Home

Liz is Director of Fundraising at Battersea Dogs & Cats Home and proud owner of a Battersea cat.

Liz has been a professional fundraiser for eighteen years, and since September 2010, has been leading the fundraising strategy and team at Battersea, covering public fundraising, major donors, corporates, trusts, legacy marketing, community fundraising and events.

In just five years they increased non-legacy fundraising income from £1.6m to more than £20m; winning Fundraiser Team of the Year from the Charity Times in 2012 and Third Sector in 2013 and 2015. In her life before Battersea Liz was Head of Direct Marketing at the British Red Cross, and led transformational growth in the charity's direct marketing income, which rose from £27m in 2007 to £57m in 2010.

Liz is passionate about the charity sector and in her spare time Liz is a trustee at Action on Hearing Loss (formerly RNID). Liz is also proud to be a Trustee and Fellow of the Institute of Fundraising, chairing the Fundraising Convention Board and the Standards Advisory Board.



Annex III

Reference group

Action for Children
All We Can
Alzheimer's Society
Barnardo's
Book Aid International
Breast Cancer Now
British Heart Foundation
CAFOD
Cancer Research UK
Catch 22
Charity Consultants Limited
Christian Aid
Churches Conservation Trust
Disasters Emergency Committee
Factory
Great Ormond Street Hospital
Children's Charity
Guide Dogs for the Blind Association
Institute of Fundraising
Macmillan Cancer Support
More Partnership
Motor Neurone Disease Association
PDSA
Practical Action
Rethink Mental Illness
Royal National Lifeboat Institution
Royal Society for the Prevention of Cruelty to Animals
Royal Society for the Protection of Birds
Salvation Army
Scope
Sightsavers
Stroke Association
UNICEF UK
University Of Birmingham
University of Manchester
WaterAid UK
Whizz-Kidz
WWF
Yorkshire Cancer Research

Endnotes

¹ UK Giving 2015: An overview of charitable giving in the UK during 2015, CAF (May 2016).

² For the latest, see the Charity Commission's research into public trust and confidence in charities 2016 (www.gov.uk/government/publications/public-trust-and-confidence-in-charities-2016). And the recent YouGov white paper on public opinion and the charitable sector (yougov.co.uk/find-solutions/whitepapers/charity-whitepaper/).

³ See for example the Direct Marketing Association's Code of Practice (dma.org.uk/the-dma-code).

⁴ The working group's terms of reference are in Annex I. The working group's member are listed in Annex II.

⁵ A list of the organisations that took part in meetings of the Reference Group is in Annex III.

⁶ 'Want to talk to me? What customers want in exchange for their personal information' (June 2015).

⁷ See for example the 'Annual Track 2016' carried out for the Information Commissioner's Office, and the report 'Data Protection Rights: what the public want and what the public want from Data Protection Authorities'.

⁸ The research was carried out by Harris Interactive and consisted in 1,023 online interviews: 796 among donors (those who have made a donation over the past 2 years) and 227 among potential donors (those who have not made a donation over the past 2 years). The full analysis of the survey results is published separately.

⁹ Both the ICO and the Direct Marketing Association strongly recommend to secure consent through specific opt-ins for each communication channel. The ICO's Direct Marketing guidance advises that the safest way of demonstrating consent is by providing an unticked opt-in box for each specific form of marketing the charity wishes to use, as it requires a positive choice by the individual to give clear and explicit consent.

¹⁰ This is consistent with recent changes made to the Code of Fundraising Practice (see below). Although sharing of personal data is not prohibited under data protection laws, it is subject to a number of strict and complex rules to make sure that the sharing is fair. This will include, at least: (i) providing donors with enough information to make sure they understand their data may be shared, and how; and (ii) specific consent to sharing.

¹¹ Consent is already expressly considered to be 'for the time being' under the Privacy and Electronic Communications Regulations (PECR). The recommendation is that the same approach should apply to consent for all types of communication, including direct mail.

¹² The Guidance makes it explicitly clear that direct marketing is not limited to advertising goods or services for sale and therefore 'includes promoting an organisation's aims and ideals'.

¹³ The term 'indirect consent' used by the recommendations reflects the ICO's definition, and covers situations where a person tells one organisation that they consent to receiving marketing from other organisations. This is also sometimes known as 'third party consent' or 'third party opt in'.

¹⁴ The ICO's Direct Marketing guidance already states that: 'Organisations must carry out rigorous checks before relying on indirect consent (ie consent originally given to a third party). Indirect consent is highly unlikely to be valid for calls, texts or emails'.

¹⁵ It is legal to send direct mail or conduct direct marketing by live phone calls without consent, if it is considered fair and lawful and in the legitimate interest of the charity. Fairness is an objective assessment of whether the individual has been treated fairly, including whether they understand why their data is being collected and used.

Processing will not be fair unless certain specified information has been provided to the individuals. Furthermore, this is only possible if it doesn't cause unwarranted interference with the individual's rights.

¹⁶ The Data Protection Act recognises that organisations may have legitimate reasons for processing personal data that the other conditions for processing do not specifically deal with. However it requires, among other things, that these interests must be balanced against the interests of the individual(s) concerned. The 'legitimate interests' condition will not be met if the processing is unwarranted because of its prejudicial effect on the rights and freedoms, or legitimate interests, of the individual.

¹⁷ This recommendation reflects the ICO's guidance on time limits for consent, which states that if a customer gives consent when signing up to a service, consent is likely to expire if they subsequently cancel their subscription. The organisation should not rely on that consent to send further unsolicited messages to win the customer back.

¹⁸ This is consistent with the fact that consent under PECR is expressly considered to be 'for the time being'. The ICO interprets this as implying a period of continuity and stability, so that any significant change in circumstances is likely to mean that consent comes to an end.

¹⁹ A large part of the data protection laws deal with whether the processing of personal data is fair. A key part of assessing fairness is what the individual was told at the time their data was collected. Whether or not consent is obtained, it is essential that individuals fully understand what will happen when they hand over their personal data and are not misled.