

CODE of FUNDRAISING PRACTICE

Best Practice Events Legacy Challenges Data Protection
Raffles Transparency Lotteries Accountability
Trusts Collections Donations

Best Practice Events Legacy Challenges Data Protection
Raffles Transparency Lotteries Accountability
Trusts Collections Donations

Best Practice Events Legacy Challenges Data Protection
Raffles Transparency Lotteries Accountability
Trusts Collections Donations

Best Practice Events Legacy Challenges Data Protection
Raffles Transparency Lotteries Accountability
Trusts Collections Donations

CONTENTS

1.0	Key Principles and Behaviours	Page 2
2.0	Working with Volunteers	Page 4
3.0	Working with Children	Page 6
4.0	Working with Third Parties	Page 7
5.0	Fundraising Communications and Techniques	Page 8
6.0	Direct Marketing	Page 10
7.0	Reciprocal Mailing	Page 11
8.0	Telephone	Page 12
9.0	Digital Media	Page 14
10.0	Trusts	Page 17
11.0	Major Donors	Page 18
12.0	Corporate Partnerships	Page 18
13.0	Raffles and Lotteries	Page 20
14.0	Fundraising Through Payroll Giving	Page 20
15.0	Events	Page 22
16.0	Public Collections	Page 27
17.0	Static Collections	Page 32
18.0	Legacies	Page 33
19.0	Payment of Fundraisers	Page 36
20.0	Handling Donations	Page 37
L1.0	Legal Appendices	Page 40-82

CODE OF FUNDRAISING PRACTICE

The Code of Fundraising Practice represents the standards set by and expected of all Institute members and corporate supporters.

The Code and Self-Regulation of Fundraising

The principle of self-regulation is to allow individuals and fundraising organisations to demonstrate best practice, eliminate poor practice and increase public trust and confidence in the voluntary and community sector.

There are two key parts to self-regulation. Firstly, the Code of Fundraising Practice contains the standards that the fundraising community sets through the work of the Institute of Fundraising's Standards Committee, as well as offering legal guidance in key areas.

Secondly, the Fundraising Standards Board (FRSB) acts as an independent public complaints system for the self-regulatory scheme, licensing the scheme's logo to its members and offering a system of redress for the public. Members of the FRSB scheme are required to adhere to the Code of Fundraising Practice and the Fundraising Promise.

The Institute of Fundraising encourages all fundraising organisations to join the FRSB.

Our Values

The conduct of Institute members and corporate supporters **MUST** be legal and **OUGHT** to be open, honest and respectful.



Legal Matters

This Code sets standards across all areas of fundraising. We have used “**MUST**” where there is a legal requirement and “**OUGHT**” where there is no legal requirement but the Institute of Fundraising is treating the issue as a professional standard to be met by members of the Institute and its corporate supporters. Bates Wells & Braithwaite London LLP have verified that each “**MUST**” and “**MUST NOT**” reflects a legal requirement in respect of the law in England and Wales as at June 2012. Turcan Connell have verified that each “**MUST**” and “**MUST NOT**” reflects a legal requirement in respect of the law in Scotland as at June 2012. Edwards and Co. Solicitors have verified that each “**MUST**” and “**MUST NOT**” reflects a legal requirement in respect of the law in Northern Ireland as at June 2012.

The Code contains broad statements and general guidance about legal requirements but fundraising organisations and fundraisers should seek their own legal advice to ensure they comply with legal requirements relating to their fundraising activities. The Institute of Fundraising, Bates Wells & Braithwaite London LLP, Turcan Connell, and Edwards & Co. Solicitors do not accept any liability in respect of any person relying on these Codes except to the extent that they have provided specific advice directly to that person concerning that person’s activities.

1.0 Key Principles and Behaviours

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

The work of all of the Institute’s members and corporate supporters will be Legal, Open, Honest and Respectful.

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 **OUGHT NOT** to denigrate other individuals or organisations.
- c. Organisations **OUGHT NOT** to exaggerate facts relating to the potential beneficiary.
- d. Organisations **OUGHT NOT** to take advantage of mistakes made by the donor.

1.3 The Donation

1.3.1 Requesting Donations

- a. When using donor information in a case study or any other type of publicity, organisations **MUST** comply with any duties of confidentiality that they have and comply with data protection law¹ if publishing a case study that includes information that could identify a donor.
- b. Fundraisers **OUGHT NOT** to pressurise donors or potential donors, but may use reasonable persuasion.
- c. Fundraisers **OUGHT NOT** to encourage existing donors in any way to change an existing charitable donation to another fundraising organisation.

- d. 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 trustees (and their delegates) **MUST** act in the best interests of the charity when deciding to accept or refuse² a particular donation.

1.3.3 Rewards/Incentives and Benefit Packages

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

- a. Fundraising organisations **OUGHT** to ensure that benefits are appropriate for the organisation to be giving, and proportionate to the size of the gift.
- b. Fundraisers **OUGHT** to be aware of when benefits nullify potential tax reliefs such as Gift Aid. If benefits do prevent Gift Aid organisations **MUST NOT** make a Gift Aid claim.

1.4 After the Donation

- a. Any specified reporting requirements to which a donation is subject **MUST** be complied with.
- b. Fundraising organisations **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

In certain instances, it may not be possible to use the monies raised for a particular gift for its intended purpose. The law in relation to changing the terms of a gift is complex³ and organisations should obtain advice from legal advisers or the Charity Commission/Office of the Scottish Charity Regulator (OSCR) before seeking to change the terms, even if there is donor consent.

- a. If an appeal is being run for a particular purpose, fundraisers **OUGHT** to 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. Organisations **OUGHT** to have a complaints procedure which **OUGHT** to also apply to any Third Parties fundraising on their behalf.
- b. Organisations **OUGHT** to respond to any complaints from donors, beneficiaries or other parties in a timely, respectful, open and honest way.
- c. Organisations **OUGHT** to ensure that the learnings from any complaints are acted upon.

1.7 Returning Donations

- a. Fundraising organisations which are charities **MUST** not return donations unless certain criteria are fulfilled⁴. For all other fundraising organisations, donations **OUGHT** only to be refunded in line with any policies or in exceptional circumstances. It may not be lawful to return a donation and fundraisers **OUGHT** to take advice from legal advisors or the Charity Commission/OSCR before doing so.

¹ Section L14

² Section L7.0

³ Section L7.0

⁴ Section L7.0

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
- Charities and Trustee Investment (Scotland) Act 2005
- Gambling Act 2005
- Equality Act 2010
- Health and Safety at Work (Northern Ireland) Order 1978
- Safeguarding Vulnerable Groups (Northern Ireland) Order 2007
- Management of Health and Safety at Work Regulations (Northern Ireland) 2000
- Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985
- Betting and Lotteries (Northern Ireland) Order 1994

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 a fundraising organisation or other philanthropic or benevolent institution.

2.2.1.2 Distinguishing 'on Behalf of' and 'in Aid of' Volunteers

There are two distinct categories of volunteers:

- a. **On behalf of:** If a volunteer is 'on behalf of', they will have been appointed by the organisation to act on its behalf and the organisation will be responsible for his or her acts. An 'on behalf of' relationship offers volunteers more support from the organisation. From the organisation's perspective, it offers the organisation more control over a volunteer's activities but the organisation also then becomes responsible for acts carried out by the volunteer as an agent of the organisation.
- b. **In aid of:** A volunteer acting 'in aid of' an organisation is raising funds but acting independently of the organisation. An organisation 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 organisation 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. Organisations **OUGHT** to 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 organisation. 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. Organisations **OUGHT** to store volunteers' personal contact information and this storage **MUST** comply with the Data Protection Act 1998.
- b. Organisations **MUST** comply with legal duties concerning the use of Criminal Records Bureau (CRB), Disclosure Scotland or Access NI checks.
- c. Organisations **OUGHT NOT** to 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 **OUGHT** to have only their out-of-pocket expenses reimbursed.

2.2.2.2 Handling of Funds Raised

- a. Organisations **OUGHT** to make it clear to all volunteers that anyone raising money **MUST** ensure that the organisation 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 organisations in respect of health and safety, some of which apply to volunteers. The key obligations are:
 - i. Organisations **MUST** conduct their organisation 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 or, in Northern Ireland, the Health and Safety at Work (Northern Ireland) Order 1978).

- ii. Organisations **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. Organisations **MUST** make and give effect to appropriate arrangements for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.
- iv. Organisations **MUST** audit the adequacy of their risk assessment procedures.
- v. Organisations **MUST** appoint one or more competent person(s) to implement the measures needed to comply with health and safety law.
- b. Where appropriate, organisations **OUGHT** to check the suitability and credentials of volunteer fundraisers to act as responsible people on the organisation'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. Organisations **OUGHT** to 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 of⁵' relationships, all standards apply only where the organisation has been made aware of the fundraising activity in advance of its occurrence.

- a. Organisations **OUGHT** to make it clear that any arrangement where fundraising is undertaken independently of the organisation is 'in aid of⁵' and that the organisation will not accept any responsibility or liability for these events.

⁵ Section 2.2.2.1 b

3.0 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 collections⁶
 - Raffles⁷
 - An event involving alcohol⁸.
- a. Organisations **MUST** get explicit parent or guardian consent to collect data until children have capacity to give fully informed consent themselves. Many organisations 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 **OUGHT NOT** to be disclosed without consent from a parent or guardian.
 - c. When organising fundraising activities, organisations **MUST** abide by any relevant age limits imposed by legislation.
 - d. There will be times when organisations **MUST** undertake Criminal Records Bureau (in England and Wales), Disclosure Scotland (in Scotland) and Access NI (in Northern Ireland) checks for adults working with children.

- e. Contact with children in or near school premises **OUGHT** to 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. Organisations **OUGHT** to 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. Organisations **OUGHT** to employ all best efforts to avoid soliciting regular donations, such as Direct Debits, from under 18's.
- b. Organisations **OUGHT** to gain a parent's or guardian's permission before photographing or publishing photographs of their children.
- c. Organisations **OUGHT** to 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 **OUGHT** to be acknowledged promptly by the organisation.

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 and Trustees Investment (Scotland) Act 2005
- Charities and Benevolent Fundraising Regulations (Scotland) 2009

4.2 Introduction

- 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. Organisations **OUGHT** to require the adherence of third parties to the Code.

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 organisation to which services are being provided by the consultant or freelance fundraiser.

“Professional fundraiser⁹” 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 fundraiser¹⁰”.

Before soliciting donations a “professional fundraiser”¹¹ **MUST** have a written agreement¹² in place with the client, and each time a “professional fundraiser” solicits donations, they **MUST** make a disclosure (or solicitation) statement¹³.

- When acting solely as a consultant or fundraiser in Northern Ireland, such statements and contracts **OUGHT** to be made (future regulations in Northern Ireland may make this a legal requirement).

4.4 Pre-Contract

- Consultants and freelance fundraisers **OUGHT** only to claim experience, qualifications and achievements that can be substantiated.

4.5 Contracts/Written Agreements

Regulation can differ between the three UK legal jurisdictions and caution should be exercised to ensure correct compliance in each area.

- If the consultant/freelance fundraiser falls within the definition in England and Wales or Scotland of “professional fundraiser”¹⁴, see below for contract requirements which **MUST** be complied with. Otherwise an agreement or Contract **OUGHT** to be in place between the consultant/freelance fundraiser and the organisation it is providing services to.
- The agreement **OUGHT** to include clear and realistic expectations of the activities to be undertaken, budget, resources, timings and the possible outcomes.
- Review procedures **OUGHT** to appear in the agreement.
- In England and Wales, the Client **MUST** consider performance at these reviews and decide whether further action is appropriate (such as invoking penalty clauses, or reviewing the agreement).

⁶ Section 16.0

⁷ Section 13.0

⁸ Section 15.0

⁹ Section L8.0

¹⁰ Section L8.0

¹¹ Section L8.0

¹² Section L8.4

¹³ Section L10.0

¹⁴ Section L8.0

- e. In Scotland, the method by which a contract may be varied **MUST** be provided for in the contract where the contract is with a professional fundraiser¹⁵ or commercial participator¹⁶ and **OUGHT** to include similar provisions requiring the variation to be in writing and preventing an unfavourable variation from being imposed by one party alone.
- f. In Northern Ireland there is no equivalent legislation in place to date which governs contracts or written arrangements with third parties. Northern Ireland organisations may adopt the good practice of the other jurisdictions.

4.6 Fees

- a. Consultants/freelance fundraisers **OUGHT** to 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”¹⁷, the agreement **MUST** include details of the fees and expenses the professional fundraiser will be paid.
- c. Consultants/freelance fundraisers **OUGHT NOT** to be remunerated by commission or commission-only methods, unless certain criteria are fulfilled.
- d. Any allowance for variation of payment levels **OUGHT** to be clearly justified by reference to the particular circumstances and to include a variation mechanism allowing the client the option to terminate before a variation takes effect.

4.7 Conflicts of Interest

- a. Each party **OUGHT** to alert the other party if either is aware of a potential conflict of interest, whether perceived or actual, and **OUGHT NOT** to 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 a client, 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 **OUGHT** to be stipulated as part of the written agreement between the consultant/freelance fundraiser and client.

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 and Benevolent Fundraising (Scotland) Regulations 2009
- Charities Act 1992
- Charities and Trustee Investment (Scotland) Act 2005
- General principles of charity law
- Equality Act 2010

- **Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended)**
- **Consumer Protection (Distance Selling) Regulations 2000**
- **Electronic Commerce (EC Directive) Regulations 2002**
- **Provision of Services Regulations 2009**
- **Gambling Act 2005**
- **Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985**
- **Betting and Lotteries (Northern Ireland) Order 1994**

5.2 General Principles

- Data protection is an important issue for all fundraisers. Fundraising organisations **MUST** comply with all legal requirements relating to data protection¹⁸.
 - Organisations **MUST NOT** send a communication that is indecent or grossly offensive and that is intended to cause distress or anxiety.
 - Organisations **MUST** ensure that materials adhere to copyright laws and that permission is obtained from the rights holders for the use of images, logos etc.
 - Organisations **MUST** ensure literature includes all legally required information¹⁹ for example, registered charity status or number, full company name and registered office if applicable.
 - Organisations **MUST** ensure that materials do not imply money is for a restricted purpose (such as buying a goat, or helping a particular child) when it may be used for different purposes or for general funds.
 - If organisations are fundraising in partnership with one or more organisations, organisations **OUGHT** to state how monies will be allocated between the organisations.
- Fundraising organisations **OUGHT** to comply with the CAP (Committee of Advertising Practice) Code and BCAP (UK Code of Broadcast Advertising) Code and ensure all advertisements are legal, decent, honest and truthful.
 - Fundraising communications **OUGHT NOT** to mislead, or be clearly likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.
 - Before dissemination, fundraisers **OUGHT** to ensure that there is evidence to prove all claims, whether direct or implied, are capable of objective substantiation.
 - Particular care **OUGHT** to 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.
 - Fundraising organisations **OUGHT** to be able to justify the use of potentially shocking images, and give warnings of such material.
 - Organisations **OUGHT** to be able to justify the frequency of contact, balancing the desire to communicate with not overwhelming/bombarding recipients.
 - Organisations **OUGHT** to respect donor's requests around the frequency of contact, and make it easy to communicate these requests.
 - Fundraising materials **OUGHT NOT** to pressurise potential donors but can use reasonable persuasion.
 - Where known, organisations **OUGHT** to communicate appropriately with vulnerable people, who could include, but are not limited to: service users and client groups and people with learning difficulties and/or disabilities.

¹⁵ Section L8.0

¹⁶ Section L10.0

¹⁷ Section L8.0

¹⁸ Section L14.0

¹⁹ Section L12.0

5.3 Case Studies

- a. If using real life case studies, fundraising organisations **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, fundraising organisations **OUGHT** to obtain permission for case studies, where practical.
- c. If organisations change elements of case studies or use real examples to inspire a case study, this **OUGHT** to be made clear and organisations **OUGHT** to be able to prove that the case study is representative.

5.4 Use of Personal Data

- a. Fundraising organisations will usually need to be registered (or “notified”) under the Data Protection Act 1998 with which they **MUST** comply.
- 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. Organisations **MUST** maintain good data hygiene practices (removing incorrect information from your data) to ensure donor information is accurate, reflects donors’ communication preferences and is retained only for as long as necessary.
- e. Organisations **MUST NOT** send unsolicited marketing communications to consumers if explicit consent is required and has not been obtained or if the consumer has requested that the processing of any personal data relating to him or her for marketing purposes shall cease.
- f. Organisations **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. Organisations **OUGHT** to 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
 - 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 **OUGHT** to be treated as confidential.

6.0 Direct Marketing

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. Organisations **OUGHT** to ensure cold mailing lists have been run through the Mailing Preference Service (MPS) 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 organisation or thank you gifts.

- a. Fundraising organisations **OUGHT** to consider the safety of any enclosures.
- b. Fundraising organisations **OUGHT** to 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. Fundraising organisations **OUGHT NOT** to 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 **OUGHT** to be discouraged.

7.0 Reciprocal Mailing

7.1 Introduction

- a. All list owners engaging in reciprocal mailing **OUGHT** to subscribe to the Mailing Preference Service (MPS) as a protection to their supporters' rights to privacy.

7.2 Initial Considerations

- a. Organisations **MUST** observe the provisions of the Data Protection Act 1998, including those around permissions to pass on donors' data.

- b. To undertake reciprocal mailings, organisations **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. Organisations holding a manual index **OUGHT** to satisfy their reciprocal mailing partner about the standard and quality of their list.
- b. Organisations engaging in reciprocal mailing **OUGHT** to 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 **OUGHT** to 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
 - 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 **OUGHT** to be passed back promptly to the list owner for file maintenance purposes.

8.0 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 organisation.
- b. If using external suppliers who do not fall within the definition of a professional fundraiser, an agreement **OUGHT** to be in place.
- c. Agreements with professional fundraiser²⁰ **MUST** include details of the payment/expenses the professional fundraiser will receive together with the other matters legally required to be included in agreements²¹ with professional fundraisers.
- d. Agreements with suppliers who are not professional fundraisers **OUGHT** to 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 them²²

- 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
- 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 **OUGHT NOT** to be called.
- d. Also, organisations **OUGHT NOT** to 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 (landline or mobile) to indicate that they do not wish to receive unsolicited sales and marketing telephone calls.

- a. Organisations **MUST** always check telephone numbers against TPS/CTPS when intending to call cold donors.
- b. Organisations **MUST NOT** make direct marketing calls to TPS/CTPS registered numbers unless the person who registered the number has notified* the organisation that they are happy to receive calls for the time being.

*organisations may make the judgement that their relationship with a donor is such that they do need to seek further consent to receiving calls. The Information Commissioner’s Office (ICO) urges a cautious approach.

Whilst the law is clear that calls should not be made to anyone registered with the TPS/CTPS unless they have specifically informed the caller that for the time being they do not object, the ICO has produced guidance to explain there are circumstances where they are less likely to take formal action.

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 **OUGHT NOT** to be made but supporters' marketing preferences can be verified during a genuine administrative call.

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.

8.3 During the Call

8.3.1 Key Requirements

- a. Fundraisers **MUST** make appropriate disclosure statements²³.
- b. If the telephone call is first contact with a donor, the caller **OUGHT** to ask if the recipient consents to being contacted at that time. If the recipient asks not to be called again, the fundraising organisation **MUST** comply with the request.
- c. Organisations **MUST** identify themselves when making a direct marketing call.
- d. If asked, organisations **MUST** provide a valid business address or free phone telephone number that recipients can use to contact the organisation.

- e. If an organisation uses a subcontractor (such as an external telephone fundraiser who falls within the definition of professional fundraiser²⁴), then the subcontractor **MUST** inform contacts of the identity of the organisation on whose behalf the calls are being made along with details of the sub-contractor's remuneration in connection with the appeal.

- f. In England and Wales, the appropriate statement²⁵ **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 fundraiser²⁶.

- g. In Scotland, information about remuneration given by a professional fundraiser during a call **MUST** be available in writing and offered to the donor.

- h. Organisations **MUST** have a written agreement²⁷ in place requiring subcontractors to comply with relevant data protection law.

- i. Organisations **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 organisations 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

²⁰ Section L8.0

²¹ Section L8.4

²² Section 8.2.3

²³ Section L10

²⁴ Section L8.0

²⁵ Section L10.0

²⁶ Section L8.2

²⁷ Section L8.4

- A 72 hour period before a telephone number receiving an abandoned call may be called again without the guaranteed presence of an agent
- Unanswered calls must ring for a minimum of 15 seconds.
- j. Calls **OUGHT NOT** to be made after 9pm, unless requested by the recipient.
- k. Organisations **OUGHT** to make clear that the call is seeking financial or other forms of support.

8.3.2 Voicemail

- a. If leaving a voicemail, fundraisers **OUGHT** to 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 refund²⁸.
- 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 organisation is a charity²⁹.
- e. In Scotland this **MUST** also contain the full name and charity number³⁰.
- f. Where donors' details are stored, fundraisers **MUST** ensure compliance with the requirements of the Data Protection Act 1998.

9.0 Digital Media

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 organisations **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 Organisations' Own Websites

9.2.1 Information to be Provided

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

- a. Organisations **MUST** have specified information on their website about their status³¹, dependant on certain conditions.
- b. Organisations **OUGHT** to 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. Organisations **MUST** ensure they abide by the Regulations and wider data protection requirements.
- b. Organisations **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 **OUGHT** to be addressed in a timely fashion. The Information Commissioner's Office has suggested time limits which can be found on their website.
- d. Organisations **OUGHT** to clearly explain data capture and use, for example through a privacy policy or statement.
- e. All information about data capture and use **OUGHT** to be easily accessible from the website homepage and any page which collects personal data.

9.2.3 Content

- a. Organisations **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. Organisations **MUST** comply with the Gambling Act 2005 or, in Northern Ireland, The Betting, Gaming, Lotteries and Amusements (NI) Order 1985.

For more information on the different types of lotteries and the rules that apply to each type, please see the Raffles and Lotteries section³² or speak to the Gambling Commission, which regulates this area.

For Northern Ireland, please consult the Department for Social Development Social Policy Unit and its Information Leaflet-SL4-The Law on Lotteries in Northern Ireland.

9.3.3 Online Trading, Trading Subsidiaries and e-commerce

- a. Organisations **MUST** only trade if their governing documents allow it.
- b. Organisations **MUST** comply with the Consumer Protection (Distance Selling) Regulations 2000 (as amended) which cover sale of goods and services via the internet, and the Electronic Commerce (EC Directive) Regulations 2002 and the Provision of Services Regulations 2009, which govern the conduct of digital commerce in the UK.
- c. If merchandise sales or fundraising events (such as challenge events) are carried out through a trading subsidiary, fundraising organisations **MUST** make this clear on relevant communications or web pages.
- d. Organisations **MUST** ensure that descriptions and images of goods are sufficiently accurate that donors are not misled about what they are buying.
- e. Organisations **MUST** have the necessary intellectual property permissions to use or share digital content, such as: images, audio, video etc.
- f. Organisations **OUGHT** to ensure that they have clear delivery, refund and return policies that set out processes and timings for potential customers.

9.4 Working with Third Parties

- a. Professional fundraisers³³ and commercial participators³⁴ working on digital media projects **MUST** have written agreements in place with the charity and **MUST** make the appropriate statements³⁵.
- b. When not legally required to have written agreements, organisations **OUGHT** still to have contracts or agreements in place.

²⁸ Section L10.0

²⁹ Section L12.0

³⁰ Section L12.0

³¹ Section L12.0

³² Section 13

³³ Section L8.0

³⁴ Section L9.0

³⁵ Section L10.0

- c. Organisations **OUGHT** to 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, fundraising organisations **OUGHT** to apply the same due diligence as if it was on their own website.

9.5 Social Media

- a. Organisations **OUGHT** to 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. Organisations **MUST** only send marketing messages to individuals' mobile phones where those individuals have previously notified the organisations that they consent to receiving such communications.
- b. Organisations **OUGHT** to 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.
- c. Organisations **MUST** make the cost of premium rate messages clear to donors and **OUGHT** to explain to donors how and when they will be billed.

- d. Organisations **MUST** follow data protection rules and rules set out in the Privacy and Electronic Communications Regulations 2003 when parental/bill payers' consent is required.
- e. Reply by SMS **OUGHT** to be an option for opting-out and be clear in all communications.
- f. Organisations **OUGHT** to use a simple opt-out message.
- g. Users **OUGHT** to be able to exercise their opt-out choice from any message, free of charge.
- h. For competitions and prize draws, organisations **OUGHT** to provide a clear and simple method of accessing any terms and conditions and **OUGHT** to publish the identity of the promoter.

9.6.3 Charity Short Codes

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

9.7 Email

9.7.1 Data Protection

- a. Fundraising organisations **MUST** comply with the requirements of the Data Protection Act 1998 and **MUST NOT** disclose information obtained in situations where a legal duty to keep information confidential arises.
- b. Organisations **MUST** provide a valid address for opt-out requests.

9.7.2 Content

- a. Emails **OUGHT** to carry a statement confirming the status of an organisation, and **MUST** do so in certain circumstances³⁶.
- b. Organisations **OUGHT NOT** to send bulk emails from named individual's email accounts.
- c. Organisations **OUGHT** to use a simple opt-out message.

10.0 Trusts

10.1 Legal References in this Section

- **General charity law principles**

10.2 Introduction

“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 **OUGHT** to be followed in conjunction with this code.

10.3 Preparation and Procedures

- a. Mass mailings and cold calling to trusts **OUGHT** generally to be avoided, except under exceptional circumstances, for example a national disaster or emergency.
- b. Organisations **OUGHT** to 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 **OUGHT** to 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, **OUGHT** to 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 **OUGHT** to 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 **OUGHT** to 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 **OUGHT** to 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 organisations **OUGHT** to obtain Charity Commission/OSCR advice regarding the use or return of remaining funds.

11.0 Major Donors

11.1 Legal References in this Section

- General trust law principles
- Proceeds of Crime Act 2002

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 organisation.

11.3 Money Laundering

- a. Trustees **MUST** take reasonable steps to assess and manage risks to their organisation’s 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. Organisations **OUGHT** to undertake due diligence on both the financial and reputational dealings of potential partners before donations are accepted.
- c. Fundraisers **OUGHT** to be aware of the Proceeds of Crime Act 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, fundraising organisations **OUGHT** to ensure that any benefits are appropriate for the organisation to be giving and proportionate to the size of the donation received.

Note that some benefits may cause Gift Aid³⁷ relief to be lost and others may be subject to the tainted donations rules.

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

12.0 Corporate Partnerships

12.1 Legal References in this Section

- Charities Act 1992
- General charity law principles

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. Organisations **OUGHT** to carry out a process of due diligence, proportionate to the scale of the relationship, before engaging in a partnership.
- b. Organisations **OUGHT** to 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'³⁸ then the commercial participator **MUST** have a written agreement in place³⁹ with the institution it proposes to benefit and certain information **MUST** be included in this.
- b. Variation **MUST** be in accordance with the term in the agreement specifying how any variation should take effect.
- c. In Scotland, the method by which a contract may be varied **MUST** be provided for in the contract where the contract is with a professional fundraiser⁴⁰ or commercial participator and **OUGHT** to include similar provisions requiring the variation to be in writing and preventing an unfavourable variation from being imposed by one party alone.
- d. Commercial participators **MUST** make a disclosure statement which includes, among other things, the name(s) of benefitting organisations and the amount of funds they will receive.
- e. In other situations, if goods or services are being sold during the course of the partnership, there **OUGHT** to be a written agreement governing the relationship between the company and the fundraising organisation/trading subsidiary concerned (even where this is not strictly required by the relevant Acts). This **OUGHT** to be approved and understood by all parties.

- f. The agreement **OUGHT** to be considered, negotiated and agreed by authorised representatives of both parties before it's commencement.
- g. Where a Scottish charity has an agreement covering the activities of a commercial partner operating in England and Wales, or the reverse situation applies, it **MUST** ensure that the contract satisfies the legislative requirements of the country where the fundraising will be carried out and **OUGHT** to ensure that the contract covers potential liabilities under all jurisdictions.
- h. Review procedures **OUGHT** to appear in the agreement and fundraising organisations **OUGHT** to 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. In England and Wales, if a fundraising organisation is a registered charity (with an income of over £10,000) it **MUST** state on all its letters and other documents its name and the fact that it is registered⁴¹. In practice this usually means stating its charity registration number.
- b. In Scotland, any literature from either party that is issued on behalf of the charity **MUST** refer to the charity's name, any other name it is known by, its charitable status and its charity number⁴².

³⁷ Gift Aid

³⁸ Section L9.0

³⁹ Section L9.0

⁴⁰ Section L8.0

⁴¹ Section L12.0

⁴² Section L12.0

- c. Charities which are also registered companies **MUST** also comply with the relevant company law requirements⁴³. This includes the requirement to have the word “limited” in the organisation’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 Wales, Scotland or Northern Ireland) 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 organisations or the corporate partner may have to pay tax or VAT. Organisations **MUST** ensure that any liabilities are paid.

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**

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 regulations are set out in detail in the Legal Appendices⁴⁴ and **MUST** be followed.
- b. Additional Institute standards are included in the Legal Appendices⁴⁵ and **OUGHT** to be observed.

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

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**

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:

- a. Payroll Giving: a tax-effective scheme whereby the donation is taken from an employee’s pay before tax is deducted
- b. 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 organisations (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. Fundraising organisations/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. Fundraising organisations **MUST** comply with the requirements contained in The Charitable Deductions (Approved Schemes) Regulations 1986 and subsequent amendments.
- d. If fundraising organisations/employers are going to highlight the different levels of tax relief, they **OUGHT** to ensure fundraisers have up to date information from HMRC.
- e. Fundraisers **OUGHT** to 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'⁴⁶ 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 organisations **OUGHT** to agree conditions of access with the relevant employer.

14.3.2 Fundraising Activity in the Workplace

- a. Fundraising organisations **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. Fundraisers **OUGHT** to 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. Fundraising organisations **OUGHT** to 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 **OUGHT** to 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'⁴⁷ or 'professional fundraiser'⁴⁸) hired by fundraising organisations **MUST** have a written agreement with the organisation they are representing.
- b. External fundraisers (who fall within the definition of a 'commercial participator' or 'professional fundraiser') hired by fundraising organisations **MUST** make legally compliant statements as to how they are paid.
- c. External fundraisers **OUGHT** to agree in advance with fundraising organisation clients all procedures, including the processing of donors' details, and fundraising materials.

⁴³ Section L12.2

⁴⁴ Section L13.0

⁴⁵ Section L13.0

⁴⁶ Section L8.0

⁴⁷ Section L9.0

⁴⁸ Section L8.0

- d. Fundraising organisations **OUGHT** to provide external fundraisers with necessary information about the fundraising organisation's objectives and clear guidelines about conduct and the different tax reliefs in this area.
- e. External fundraisers **OUGHT** to process information as swiftly as possible and ensure that information relating to new donors is passed to the fundraising organisation as soon as possible.
- f. If external fundraisers are representing multiple organisations, they **OUGHT** to ensure all fundraising organisations are represented in an entirely neutral manner.

14.4 Payroll Giving Agencies (PGA)

PGA's receive employees' donations, which have been deducted by the employer from the payroll, and distribute these donations timely and efficiently to the relevant fundraising organisations. Legal and best practice guidance for PGA's 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 organisations to be aware of.

15.0 Events

15.1 Legal References for this Section

- Data Protection Act 1998
- Health & Safety at Work Act 1974
- Health and Safety at Work (Northern Ireland) Order 1978
- Package Travel, Package Holidays and Package Tours Regulations 1992
- Charities Act 1992
- Charities Act 2006
- Charities and Trustees Investment (Scotland) Act 2005
- Johns v. AG (1976)
- General principles of Charity Law
- Food Safety Act 1990
- Food Hygiene (England) Regulations 2006
- Safeguarding Vulnerable Groups Act 2006
- Safeguarding Vulnerable Groups (Northern Ireland) Order 2007
- Countryside and Rights of Way Act 2000
- The Access to the Countryside (Northern Ireland) Order 1983
- Gambling Act 2005
- Civil Aviation (Air Travel Organiser's Licensing) Regulations 2012
- Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985
- Betting and Lotteries (Northern Ireland) Order 1994

15.2 Pre-Event Planning

15.2.1 Venue/Location

- a. When identifying a suitable venue/location for an event, fundraising organisations:
 - **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 for health and safety
 - **OUGHT** to ensure the venue/location is fit for purpose, taking note of any restrictions
 - **OUGHT** to be able to justify any environmental impact the event may have.

- b. If any specialist equipment is required or recommended, a list **OUGHT** to 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 **OUGHT NOT** to be able to proceed if the equipment mentioned above is not adequate.
- d. Where participants require the use of vehicles, organisers **OUGHT** to advise participants to take rest stops and plan journey timetables that recognise road safety, especially speed limits.
- b. The maximum number of participants may be dictated by permissions/licences or local conditions. These numbers **OUGHT NOT** to 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, fundraising organisations planning an event in England and Wales **MUST** obtain permission if necessary.
- d. In Scotland, the position is more complex and, although generally there is no absolute legal requirement to do so, organisers **OUGHT** to be able to show they have made reasonable attempts to liaise with land managers and obtain permission to ensure that there is no breach of the requirement to exercise access rights responsibly.

15.2.2 Risk Assessment & Insurance

- a. Fundraising organisations 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) **OUGHT** to carry out a risk assessment where it is reasonable to do so.
- b. Fundraising organisations **MUST** carry out Criminal Records Bureau, Disclosure Scotland or Access NI checks where appropriate.
- c. Any compulsory insurance policies (for example, covering employees and use of cars) **MUST** be in place.
- d. Fundraising organisations **OUGHT** to ensure there is sufficient third party public liability cover in place and **OUGHT** to consider if other insurance cover should be taken out.
- e. Fundraising organisations **OUGHT** to be clear which party is insuring against which risk.
- e. Organisations **OUGHT** to comply with relevant local guidance or site specific information where appropriate when planning an event.
- f. The Countryside Code in England and Wales and the Scottish Outdoor Access Code in Scotland and the Northern Ireland Countryside Code **OUGHT** to be observed by all.

15.2.3 Licences/Permissions

- a. Fundraising organisations planning an event **MUST** ensure that any required permissions or licences are obtained from the local authority or other relevant bodies.

15.2.4 Events on Open Access Land (England and Wales)

Events taking place in England and/or Wales 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
- 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, organisations planning an event on open access land **OUGHT** to seek permission from landowners in respect of the particular activities they intend to undertake.

15.2.5 Written Agreements

- a. Organisations **OUGHT** to have written agreements with all external parties clearly highlighting all parties’ rights, responsibilities and obligations.
- b. If any party is a professional fundraiser⁴⁹ or a commercial participant⁵⁰, 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 organisation 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. Organisations **OUGHT** to 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. Fundraising organisations **MUST** obey tax and VAT rules and regulations for all events.

For monies received in advance of, or during an event, organisations **OUGHT** to have financial procedures in place. For more information, please see 21.8 Handling Cash at Events⁵¹.

15.2.8 Cancellations and Contingency Plans

- a. Sponsorship forms **MUST** be clear about whether sponsorship money is given subject to any conditions (e.g. 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 organisation. 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 organisations planning an event **OUGHT** to 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

- a. Fundraising organisations **OUGHT** to have an agreement with the event organiser allocating specific responsibilities and risk.

15.2.10 'In Aid of'⁵² Managed Events

A volunteer acting 'in aid of' an organisation is raising funds but acting independently of the organisation. An organisation will often not know about the volunteer's acts. The Standards below only apply when the organisation has been made aware of the event.

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

15.3 People

15.3.1 Staff/Volunteers

- a. Organisations **OUGHT** to have marshals and stewards with relevant experience, where necessary.

15.3.2 Participants/Attendees

- a. Organisations **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 fundraisers⁵³ for example, if the cost of the event is being paid for by the organisation 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 organisations **OUGHT** to 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, organisations **OUGHT** to ensure the participant knows that this **MUST** be made clear to every donor.

- d. Organisations 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. Fundraising organisations are legally responsible for ensuring the health and safety of their employees and those that are affected by their activities (so far as reasonably practicable). Fundraising organisations **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 **OUGHT** to ensure participants are aware of the fundraising targets they are expected to meet.

⁴⁹ Section L8.0

⁵⁰ Section L9.0

⁵¹ Section 21.8

⁵² Section 2.21.2

⁵³ Section L8.0

- h. If a certain age, or level of fitness, preparation or training is required for safe participation this **OUGHT** to be agreed with the participant in advance, along with any consents required for the participant to be involved, which **OUGHT** to 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. Fundraising organisations **OUGHT** to be clear who is responsible for complying with the Travel Regulations.
- c. Fundraising organisations **OUGHT** to 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 **OUGHT** to 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 fundraiser⁵⁴ or commercial participator⁵⁵, they **MUST** have a written agreement in place with the organisation for which funds are being raised and **MUST** make the appropriate statements.
- g. The organisation for which funds are being raised **OUGHT** to take reasonable steps to ensure compliance with these requirements.

15.4 On the Day

15.4.1 General

- a. Before the event organisations **OUGHT** to conduct a final check to ensure everything is in place, especially fire exits, first aid and equipment provisions.
- b. Organisers **OUGHT** to 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, organisations which are charities **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, the Food Hygiene (Wales) Regulations 2006, the Food Hygiene (Scotland) Regulations 2006 or the Food Hygiene (Northern Ireland) Regulations 2006 as applicable). For further details contact the Environmental Health department of the relevant local authority.
- 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 or Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 and the Betting and Lotteries (Northern Ireland) Order 1994. For further information please see 13.0 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 **OUGHT** to:
- 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 **OUGHT NOT** to be between the hours of 23:00 and 05:00.
- c. Organisations **OUGHT** always to use the Visitor Centre at Glen Nevis, as the start point for Ben Nevis.

15.6 Post Event

15.6.1 Outstanding Monies

- a. Organisations **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 **OUGHT** to be in place.

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 Guidance⁵⁶.

The controls on public collections apply to collections for charitable purposes, and include collections for benevolent and philanthropic purposes. The controls apply to collections for all fundraising organisations which are charities, but also to collections for those which are not charities but are established for benevolent and philanthropic purposes.

⁵⁴ Section L8.0

⁵⁵ Section L9.0

⁵⁶ Section L6.0

16.2 Legal References for this Section

- House to House Collections Act 1939
- House to House Collections Regulations 1947 (“the Regulations”)
- House to House Charitable Collections Act (Northern Ireland) 1952
- House to House Charitable Collections Regulations (Northern Ireland) 1952 & 1953
- Model street collection regulations contained in the Charitable Collections (Transitional Provisions) Order 1974
- Police, Factories, etc. (Miscellaneous Provisions) Act 1916
- Civic Government (Scotland) Act 1982
- Charitable Collections (Scotland) Regulations 1984

16.3 Licensing/Permission Requirements

- a. Fundraising organisations carrying out any collection **MUST** comply with the relevant licensing/permission procedures.
- b. Where a Public Fundraising Regulatory Association (PFRA) site management agreement is in place, organisations **OUGHT** to 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 Order⁵⁷ – see the Legal Guidance⁵⁸ and below for further detail).
- d. In Northern Ireland, an appropriate permit or licence **MUST** be obtained from the PSNI station for each local area in which a house to house collection is to be carried out.

e. In Scotland, the collection will be a licensed one and legal obligations **MUST** be met if it is:

- A collection of money (whether given for consideration or not) which is taken in a public place or by means of visits from place to place, but excluding a collection which takes place in the course of a public meeting or by means of an unattended receptacle kept in a fixed position in a public place.

In Scotland, the collection of Direct Debit promises by any means is not currently covered by the licensing rules.

- f. In Scotland, unless an exempt promoter⁵⁹, a written application **MUST** be made at least one month in advance (or within such other period as the local authority may determine).
- g. In Scotland, a licence holder **MUST** appoint an independent responsible person or qualified accountant to act as auditor of the collection upon receipt of permission to collect. If the licence holder appoints an agent to act on his behalf, he **MUST** exercise due diligence in accordance with the Regulations.
- h. Licences **OUGHT** to 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 and Wales, a National Exemption Order⁶⁰, in Scotland, an Exempt Promoter⁶¹ and in Northern Ireland an Exemption Order⁶²) for house to house collections it **OUGHT** to:
 - Establish a clear annual programme of collections

- Fix specific dates a year in advance for all collections (some fundraising organisations 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
 - **OUGHT NOT** to book large blocks of time.
- b.** In Scotland, Exempt Promoters **OUGHT** to observe the above standards and **MUST**:
- Give at least 3 months' notice to the relevant local authority of any intended collection which would otherwise have required a licence
 - Follow the licensed collection rules which apply to licence holders regarding an organiser's duties, certificates of authority, how funds are received and the opening of collections
- Report annually to OSCR, giving an audited account of collections carried out (including a breakdown by local authority area and details of the expenses incurred), a signed organiser's statement and an auditor's statement
 - Publish a notice summarising the audited account of collections in a newspaper with a national Scottish circulation within one month of submission of these records to OSCR.

16.5 Working with Third Parties

- a.** When working with third parties, fundraising organisations **OUGHT** to have contracts in place except where, in England and Wales and Scotland, commercial participators⁶³ or professional fundraisers⁶⁴ are involved, contracts **MUST** be in place.
- b.** Additionally, when a collection involves a commercial participator or professional fundraiser appropriate statements⁶⁵ **MUST** be made.
- c.** In Northern Ireland, there are currently no specific regulations in place in regard to third parties, but fundraising organisations **OUGHT** to follow the forms of contracts used elsewhere in the United Kingdom.
- d.** Fundraising organisations **OUGHT NOT** to undertake fundraising activity using third parties without instigating a training and briefing programme for all collectors⁶⁶.
- e.** Where a collector is a paid charity employee, paid officer or paid trustee, the collector **MUST** make a statement⁶⁷ to the effect they are being paid to carry out the collection.
- f.** The fundraising organisation **OUGHT** to seek to clarify the ownership of copyright with respect to all materials and databases connected with the activity, prior to instigating that activity.

⁵⁷ Section L6.5.4

⁵⁸ Section L6.0

⁵⁹ Section L6.3.5

⁶⁰ Section L6.5.4

⁶¹ Section L6.6.3

⁶² Section L6.7

⁶³ Section L9.0

⁶⁴ Section L8.0

⁶⁵ Section L10.0

⁶⁶ Section 16.8

⁶⁷ Section L10.0

16.6 Age of Collectors

- a. The fundraising organisation **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 organisations **MUST** exercise all due diligence to ensure collectors are fit and proper persons to collect.
- b. In England and Wales, for house to house collections, collectors **MUST** be given a certificate of authority and badge.
- c. In England and Wales, for street collections, each collector **MUST** generally have the written authority of the promoter.
- d. In Scotland, fundraising organisations **MUST** ensure that:
 - Reasonable steps are taken to ensure collectors are fit and proper persons to collect
 - All collectors are at least the minimum age required by that jurisdiction
 - Collectors are aware of their legal obligations.

16.8 Training and Instructions

- a. In England and Wales, 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. In Northern Ireland, fundraising organisations **MUST** ensure that:
 - Reasonable steps are taken to ensure collectors are fit and proper persons to collect
 - Collectors are given a certificate of authority and badge and collecting boxes or receipt books.

- c. Fundraising organisations **OUGHT** to 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. In England and Wales, all printed materials seeking money or goods on behalf of registered charities with incomes over £10,000 **MUST** state that the charity is registered⁶⁸.
- c. In Scotland, all promotional or other materials used by or behalf of any charity registered with OSCR **MUST** (whether the collection is licensed or not, and regardless of the charity's income) include the charity's registered name, any other name by which it is commonly known, the fact that it is a charity (if its name does not already include reference to its charitable status) and its registered Scottish charity number⁶⁹.
- d. Materials **OUGHT** to include contact details for the fundraising organisation and collectors, where different.
- e. Personnel representing the fundraising organisation and, where possible, their vehicles **OUGHT** to 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 **OUGHT** to 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 fundraising organisation in a prompt and secure manner as agreed by the fundraising organisation and in compliance with Data Protection legislation.
- c. In England Wales, for house to house collections, collectors **MUST NOT** “importune any person to the annoyance of such person”, or remain in, or at the door of, any house if requested to leave.
- d. In Scotland, the organiser of a collection **MUST** record the name and address of each collector as well as the number of collecting envelopes issued to him, or the distinguishing number marked on the collecting box given to each collector.
- e. In Scotland, fundraising organisations **MUST** also be able to provide full details of all collectors within a given area, including name, address, telephone number, the precise area to be covered and the exact period during which the collector is authorised to collect.
- f. In Scotland, fundraisers carrying out a licensed collection **MUST NOT** cause annoyance by being insistent or repeatedly pressing an individual to donate and **MUST** leave a property (and may not remain in or at the door of a house) if requested to leave by any of the occupants.
- g. In cases where the activity is to secure a form of non-financial commitment, but there is a possibility that the fundraising organisation will subsequently ask for a financial commitment, collectors **OUGHT TO** inform the individual being engaged during the initial activity of this possibility.
- h. Fundraising organisations **OUGHT TO** 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 **OUGHT** to be 9am-9pm on a weekday and 10am-9pm on a weekend.
- j. Collectors **OUGHT** to avoid causing obstruction, congestion and nuisance to the public.
- k. Collectors **OUGHT** to ensure that they wear appropriate clothing, which includes ensuring any provided clothing showing the name of the fundraising organisation is visible.
- l. Collectors **OUGHT NOT** to smoke or fundraise under the influence of alcohol or illegal drugs.
- m. Collectors **OUGHT NOT** to pressurise the public to give their support, but they can use reasonable persuasion.
- n. Collectors **OUGHT NOT** to approach individuals that may reasonably be considered to be vulnerable adults.
- o. Organisations **OUGHT** to employ all best efforts to avoid soliciting regular donations, such as Direct Debits, from under 18's.
- p. Collectors **OUGHT** to be able to give the public information on how to make a complaint.

⁶⁸ Section L12.0

⁶⁹ Section L12.0

- q. Collectors **OUGHT** to, when asked to do so, terminate their approach in a polite manner.
- r. Collectors **OUGHT** to be courteous at all times.
- s. If a “No Cold Calling Zone” has been created legitimately (i.e. within Trading Standards Institute guidelines), collectors **OUGHT NOT** to cold call.

16.11 Handling the Proceeds of a Cash Collection

- a. The relevant Institute Standards for handling cash donations⁷⁰ **OUGHT** to be observed and legal requirements **MUST** be complied with.
- b. Arrangements **OUGHT** to 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. Fundraising organisations **OUGHT** to have procedures in place to enable accounts to be created within this timescale.

16.13 Collections on Private Property

- a. Organisations **MUST** have permission from the property owner/manager to collect and **MUST** ensure they only collect on times/dates/areas specified.

17.0 Static Collections

17.1 Legal References for this Section

- General Charity law principles
- Charities Act 1992

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.

In Northern Ireland there is no specific legislation which applies but it is good practice to follow the rules applying in the rest of the United Kingdom.

17.3 Organisational and Promoter Responsibilities

- a. The fundraising organisation **OUGHT** to 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. Organisations **OUGHT** to provide the promoters/collectors with guidance/procedures for collectors to follow and make it clear when the collector can vary these procedures.
- c. Promoters/fundraising organisations **OUGHT** to make all reasonable efforts to regain certificates of authority/badges and collections 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 written permission of site holders to collect on the premises.
- b. Collectors **OUGHT** to 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 **OUGHT** to be shown to the siteholder.

d. Collectors **OUGHT** to 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 organisations 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 2 of the Charities Act 1992 or Part 2 of the Charities and Trustee Investment (Scotland) Act 2005.

- a. In England and Wales, all notices, advertisements and other documents issued by, or on behalf of a registered charity with an annual income in excess of £10,000 and which, in any way, seeks support for the registered charity, **MUST** include a statement that the charity is a registered charity⁷¹.
- b. In Scotland, most notices, advertisements and documents (including any document soliciting money or other property) sent by, or on behalf of, any charity in the Scottish Charity Register **MUST** include the charity's registered name, any other name by which it is commonly known, the fact that it is a charity (if its name does not already include reference to its charitable status) and its registered Scottish charity number⁷².

17.6 Collecting and Sending Donations to the Organisations

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, organisations **OUGHT** to have robust procedures and instructions for siteholders to count, record and bank/deliver proceeds.
- c. If desired, siteholders **OUGHT** to be provided with a receipt that contains the address of the site, the box number, the date and the amount collected. The collector **OUGHT** to send the organisation the full sum of all monies taken from all boxes without deduction of expenses or fees, unless specifically agreed.
- d. Fundraising organisations and promoters **OUGHT** to keep separate records of income raised and expenses/fees for maintenance and administration.

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. Organisations **OUGHT** to 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
 - The sensitivities of the potential legator and his/her family and friends.
- c. Organisations **OUGHT** to ensure fundraisers do not provide legal advice.

⁷⁰ Section 21

⁷¹ Section L12.0

⁷² Section L12.0

18.3 Undertaking Legacy Fundraising

- a. Whenever legacy fundraising is done by an external third party who is a professional fundraiser⁷³, this fundraising **MUST** comply with professional fundraising legal obligations.
- b. If a potential legator asks the organisation or any of its officers or employees to act as executor, the organisation **OUGHT** to consider carefully whether to agree bearing in mind the duties and responsibilities of acting as executor and potential risks to the organisation. If the organisation itself is to be appointed as executor and take out the grant of representation in its own name, the organisation **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. Organisations **OUGHT** to 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. Organisations **OUGHT** to make clear that the contents are not intended to constitute legal advice by the organisation and that potential legators should seek their own professional advice.
- b. If organisations provide potential legators with suggested wording for legacies to the organisation to be included in their Wills, they **OUGHT** to ensure that the suggested wording is accurate (which may involve seeking legal advice) and that the organisation is clearly identified (which will depend by jurisdiction, but will usually mean providing the organisation'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. Organisations **OUGHT** to 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, organisations **OUGHT** to be open about the reason for the invitation to an event.
- c. Event organisers **OUGHT NOT** to be exploitative in their 'use' of beneficiaries or supporters as case studies or testimonials, and **OUGHT** to respect their dignity and privacy.
- d. Individual face to face meetings in a potential legator's home to discuss legacies **OUGHT NOT** to occur without that person having first had the opportunity to decline the meeting.
- e. In all individual face to face legacy fundraising, fundraisers **OUGHT** to:
 - 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 **OUGHT** to accept the termination promptly and courteously
 - 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. Organisations **OUGHT NOT** to draft or be directly involved in drafting Wills in favour of the organisation.
- b. Fundraisers **OUGHT** to ensure that they are absent at all times during the preparation, drafting and signing of the Will.
- c. Witnesses to a Will under which an organisation benefits **OUGHT** to be independent of the organisation, 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 organisation, and a legacy may be left to the individual in their personal capacity, rather than to the organisation.

- a. If a legacy is offered in a personal capacity, fundraisers **OUGHT** to explain that, should the legator wish to give a legacy to him/her personally, then the fundraiser **OUGHT** to disclose the gift to his/her line manager at the organisation.
- b. Fundraisers **OUGHT NOT** to take advantage of their employment by the organisation 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 organisation **OUGHT** to follow disciplinary procedures for dealing with such situations.

18.3.5 Paying for Wills with Charity Funds

- a. Fundraisers **OUGHT NOT** to make it a condition that the organisation is included in the Will and **MUST NOT** exert undue influence on potential legators.
- b. In England and Wales, the organisation 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. Organisations **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 **OUGHT** to decline or otherwise only explain why the organisation needs the legacy.

18.4.2 Conditional/Restricted Gifts

- a. 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, organisations **OUGHT** to 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.
- b. If a legacy is left with a request/wish, rather than subject to conditions, organisations **OUGHT** to consider whether to comply with the legator's wishes.

18.4.3 Administering Legacies and Gifts

- a. Organisations **OUGHT** to respect the legator's or their estate's wishes about any public recognition of the gift.
- b. Where case studies are sought, permission **OUGHT** to be obtained from the next of kin, where possible.

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 Aid⁷⁴ 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

19.2 Scope

This section applies to all organisations engaged in paying fundraisers, no matter what the specific fundraising technique involves or who they are employed by, for example, be it the fundraising organisation themselves 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 **OUGHT** to 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 **OUGHT** to be used to avoid excessive remuneration.

19.6 Commission

- a. The Institute of Fundraising opposes commission payments in principle, particularly those payments made on a commission-only basis. Organisations **OUGHT NOT** to 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
 - Safeguards are in place to ensure excessive remuneration is not permitted.

19.7 Performance Management Systems

- a. Robust performance management systems **OUGHT** to 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 **OUGHT** to 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 (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 fundraiser⁷⁵ **MUST** comply with the applicable legal requirements.

19.8.3 Volunteers

- a. Volunteers **OUGHT** only to have their out-of-pocket expenses reimbursed.

19.8.4 Trustees

- a. Trustees **MUST NOT** be paid for fundraising on behalf of the organisation unless specific criteria are met⁷⁶ (which differ according to jurisdiction).

20.0 Handling Donations

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 **OUGHT** to 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 fundraisers⁷⁷ and commercial participators⁷⁸ **MUST NOT** make any deduction from cash received for the organisation. Other fundraisers **MUST NOT** make deductions from cash received unless agreed with the organisation.
- c. Local authorities may impose additional rules about making deductions from collections and fundraisers/fundraising organisations **MUST** comply with these where relevant.
- d. Expenses **MUST** be met (where previously agreed) by the organisation 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. In Scotland, a collector in a licensed collection which is carried out by collecting box **MUST** only accept donations by permitting the donor to place it in a collecting box. Alternatively, the collection can be carried out by sealed envelopes, in which case the collector **MUST** only accept donations in sealed envelopes using the numbered envelopes issued to him. It is not therefore usually possible to issue receipts.

⁷⁴ Gift Aid

⁷⁵ Section L8.0

⁷⁶ Section L3.0

⁷⁷ Section L8.0

⁷⁸ Section L9.0

20.1.4 Banking

- a. Cash **OUGHT** to be banked as soon as is practicable. To aid this, organisations **OUGHT** to have a procedure on banking donations, such as who does it and when.
- b. Cash not banked immediately **OUGHT** to be placed in a safe or other secure location.
- c. In Scotland, where cash is received in collection envelopes or collection boxes as part of a public charitable collection, it **MUST** be counted and banked in accordance with the Public Charitable Collections (Scotland) Regulations 1984, as amended.

20.2 Cash

- a. Cash **OUGHT** to 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 **OUGHT** never to be left unattended or in an unattended environment.
- c. At the earliest possible date, reconciliation **OUGHT** to be made between cash banked and income summaries. Where practical, this **OUGHT** to be undertaken by a person independent of the counting and cashing up of the money.
- d. Cash **OUGHT** to be counted in a secure environment.

20.3 Cheques

- a. Cheques **OUGHT** to be banked or, where used, sent to the organisation's fulfilment house promptly.
- b. If sending cheques to a fulfilment house or external processor, organisations **OUGHT** to 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 donation(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. Organisations **MUST NOT** reclaim tax on the donation, as the Gift Aid as added before receipt.
- b. Vouchers **OUGHT** to 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. Organisations **OUGHT** to comply with the Payment Card Industry-Data Security Standards (PCI-DSS). PCI-DSS consists of 12 requirements that all organisations and businesses processing card payments have to meet.
- b. Additional security measures such as Verified by Visa and 3D Secure code **OUGHT** to be used for online transactions where resources allow.
- c. The PCI-DSS state that the Card Security Code (CSC) should not be stored and this requirement **OUGHT** to be observed.

- d. Where charges are made for transferring payments, the total donation amount **OUGHT** to 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 organisation. The Direct Debit Guarantee exists to provide unified standards and protection to customers. Organisations which have signed up to the scheme **MUST** comply with it.

20.7 Children

- a. Children under 16 **OUGHT NOT** to be left with overall responsibility for handling money and/or responsibility for counting collected money.
- b. In England and Wales, house to house collections **MUST NOT** be carried out by anyone under 16. Collectors in street collections **MUST NOT** be under 16 except in London where, if special consent is obtained, street collectors aged 14 or over can be used
- c. In Scotland, where a collection qualifies as a public charitable collection, children under 14 **MUST NOT** be allowed to participate if it is a street collection, and children under 16 **MUST NOT** be allowed to carry out house to house collections.
- d. In Northern Ireland, youth organisations may have collectors aged 12 years and over if the organisation is approved for the purpose of carrying out the collection by the Department for Social Development.

20.8 Handling Cash at Events

20.8.1 Scope

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

20.8.2 Record Keeping

- a. Organisations **MUST** ensure that they comply with HMRC requirements regarding record keeping for VAT purposes.

20.8.3 Floats

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

20.8.4 Tills

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

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

20.8.5 Cheques from Trading

- a. Change **OUGHT NOT** to be given for cheques.
- b. Refunds **OUGHT NOT** to be available until the money is in the organisation's account.

L1.0 Legal Appendices

L1.1 Contents

- L2.0 General
- L3.0 Payment of Trustees
- L4.0 Travel Law
- L5.0 Advertisements
- L6.0 Fundraising in a Public Place
- L7.0 Acceptance and Refusal of Donations
- L8.0 Professional Fundraisers and Agreements
- L9.0 Commercial Participants and Agreements
- L10.0 Solicitation Statements
- L11.0 Trustee Duties
- L12.0 Charitable References in Documents
- L13.0 Raffles and Lotteries
- L14.0 Data Protection

L2.0 General

Fundraising organisations may take a number of different legal forms and different law applies to different types of organisation. The most heavily regulated type of fundraising organisation is a charity and as such this guidance applies mainly to charities. At the beginning of each section there is a note confirming the type of organisation which the guidance applies to.

- a. Legal requirements also vary between the United Kingdom's three legal jurisdictions (England and Wales, Scotland, and Northern Ireland) and **MUST** be observed.

L3.0 Payment of Trustees

L3.1 England and Wales

These limits on the payment of trustees relate only to fundraising organisations which are charities.

Either:

- The charity's constitution specifically provides for the type of payment proposed or the payment is authorised by an order of the Charity Commission or the Court

Or:

- The charity's constitution does not expressly prohibit the type of payment proposed
 - The payment is not for being a trustee or under a contract of employment
 - The charity complies with the provisions of section 185 of the Charities Act 2011 ("the Act") (see below).
- a. The provisions of section 185 of the Act which **MUST** be complied with are:
- The trustees **MUST** have regard to the relevant Charity Commission guidance (currently CC11 – Trustee Expenses and Payments) before entering into an arrangement to pay a trustee
 - The payment or maximum amount **MUST** be set out in a written agreement
 - The payment or maximum amount **MUST NOT** exceed what is reasonable
 - The trustees **MUST** decide, before entering into the agreement, that the arrangement is in the best interests of the charity and the number of trustees remunerated under s.185, or otherwise, **MUST** constitute a minority of the total number of trustees of the charity.

These provisions also apply to payments to certain persons connected to trustees, including business associates and family. Further guidance is available on the Charity Commission's website.

L3.2 Scotland

A payment to a charity trustee (or connected person) may only be made if:

Either:

- The charity's constitution contains an authorising provision specifically permitting the payment of remuneration to the service provider, trustee or connected person concerned and this provision was in force on 15th November 2004 (the date that the 2005 Act was first laid before the Scottish Parliament)

Or:

- The charity complies with the provisions of section 67 of the Charities and Trustee Investment Act 2005 (the "2005 Act").
- a. The provisions of section 67 of the 2005 Act which **MUST** be complied with are:
- The maximum amount of the payment **MUST** be set out in a written agreement between the individual providing the services and the charity
 - The maximum amount **MUST** be reasonable in the circumstances
 - The charity trustees **MUST** be satisfied before entering into the agreement that it is in the interests of the charity for the services to be provided by the charity trustee or connected person for that maximum amount
 - Immediately after the agreement is entered into, the number of trustees receiving remuneration, entitled to receive remuneration or connected with another charity trustee who is remunerated or entitled to remuneration **MUST** be in the minority

- The charity's constitution or governing document **MUST NOT** expressly prohibit the payment of remuneration.

- b. Under the common law on conflicts of interest, a charity trustee who is to receive remuneration or who is connected with a person who is to receive remuneration **MUST NOT** take part in any of the relevant decisions. There is no obligation to refer to the Office of the Scottish Charity Regulator (OSCR) but trustees should have regard to the relevant guidance (presently section 5 of 'Guidance for Charity Trustees: Acting with care and diligence').

There is nothing to prevent a trustee from being remunerated for services provided in his capacity as a charity or under a contract of employment.

These provisions also apply to payments to those persons connected to trustees, including business associates and family, where the charity trustee might benefit either directly or indirectly from the remuneration provided to the connected person. Further guidance is available in OSCR's guidance for charity trustees and in section 68(2) of the 2005 Act.

The remuneration rules also do not prevent the receipt of remuneration where it is authorised by an order of the Court in Session or any enactment.

L3.3 Northern Ireland

In Northern Ireland the provision which covers remuneration of trustees is section 88 of the Charities Act (Northern Ireland) 2008. It applies to the trustee and anyone connected with the trustee. 'In connection with' can be interpreted as immediate family; partner, a company of the trustee; person in business with the trustee.

Guidance for trustees on the making of agreements for remuneration has not yet been agreed by the Charity Commission for Northern Ireland.

L4.0 Travel Law

This section applies to all fundraising organisations other than where there is a specific reference to charities.

There are special legal requirements for events involving flights and certain other travel services.

The Package Travel, Package Holidays and Package Tours Regulations 1992 (as amended) (“the Package Travel Regulations”) apply to:

“the pre-arranged combination of at least two of the following components when sold or offered for sale at an inclusive price and when the service covers a period of more than 24 hours or includes overnight accommodation:

- a. Transport
- b. Accommodation
- c. Other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package”.

Most of the obligations under the Regulations fall on “the organiser”. This is defined as “the person who, otherwise than occasionally, organises packages and sells or offers them for sale, whether directly or through a retailer”. There are also obligations on retailers who sell packages to consumers. Generally, fundraising organisations will want the specialist tour operator to be the “organiser” with responsibility for compliance. Further basic information is available from the Department for Business Innovation and Skills- but this is a complicated area and you should take professional advice.

There are additional legal requirements for events involving flights (under the Civil Aviation Air Travel Organisers’ Licensing Regulations 1995 (“the ATOL Regulations”). The Civil Aviation Authority (“the CAA”) has in the past issued guidance for charities organising challenge events involving flights. Detailed information is available on the CAA’s website. This is also a complicated area and you should take professional legal advice.

Flying displays, the operation of balloons for public flights and other “unusual aerial events” (e.g. balloon releases and fireworks displays) may require consent from notification to the CAA.

L5.0 Advertisements

This Section Applies to all Types of Fundraising Organisation.

The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (The CAP Code) require non-broadcast advertisements to be legal, decent, honest and truthful. Further information can be obtained from the Committee of Advertising Practice. The UK Code of Broadcast Advertising (the BCAP Code), enforced by the Advertising Standards Authority, contains similar requirements for advertisements on radio and television. Compliance with these codes will ensure that advertisements meet the legal requirements set out below.

- a. In England, public advertisements for an event **MUST NOT** contravene the Town and Country Planning Act 1990 as amended, the Control of Advertisements Regulations 2007 (as amended) issued under it or the Highways Act 1980.

b. In Scotland, public advertisements **MUST NOT** contravene the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, as amended by Amendment Regulations 1992. No advert can be displayed without the consent of the planning authority, although advertisements that fall into certain classes have deemed consent. The Roads (Scotland) Act 1984 (section 100) prohibits anything (including an advert) being placed on a public road without the consent of the roads authority.

There are also laws concerning the public display of advertisements generally and on the highway.

c. All advertisements **MUST** comply with trademark and copyright law.

Consent for billboard type advertisements should be obtained from the local planning authority, from where further information can also be obtained. See also the Highways Agency (www.highways.gov.uk).

Making misleading statements in advertising can give rise to criminal offences as well as civil (i.e. non-criminal) liabilities, for example under the Consumer Protection from Unfair Trading Regulations 2008, the Business Protection from Misleading Marketing Regulations 2008 and the Package Travel, Package Holidays and Package Tours Regulations 1992.

L6.0 Fundraising in a Public Place

L6.1 Section Contents

L6.2 Street Collections- England and Wales

L6.3 Street Collections- Scotland

L6.4 Street Collections- Northern Ireland

L6.5 House to House Collections - England and Wales

L6.6 House to House Collections - Scotland

L6.7 House to House Collections - Northern Ireland

L6.2 Street Collections - England and Wales

L6.2.1 Sources of Law

- **The Police, Factories, etc. (Miscellaneous Provisions) Act 1916 establishes the right of Local Authorities (District Councils), the Metropolitan Police and the Common Council of the City of London to create regulations governing street or public place collections undertaken to benefit "charitable or other purposes"**
- **There are model regulations set out in the Charitable Collections (Transitional Provisions) Order 1974 which many, but not all, local authorities have adopted. Requirements under these regulations will be highlighted throughout.**

L6.2.2 Definitions

- "Street collections" means collecting money or selling goods for the benefit of charitable or other purposes in any street or public place in England and Wales
- "Street" includes any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not
- "Public Place" is not defined in legislation. There is some case law on what is a public place which in theory should cover a place where members of the public go even when they have no legal right to do so, or any place where they are invited to go. It does not include any place to which members of the public can only go by paying or receiving specific permission. In practice areas such as a station forecourt, shopping malls and supermarket car parks are treated as private and not public places. Upcoming reform of the public collections regime is likely to include a definition of what amounts to a public place.

- a. It is commonly argued that collections for direct debits do not constitute a collection of money or other property. That said, the Institute of Fundraising requires that all collections requirements in its Code **OUGHT** to be followed for direct debit collections, other than where they directly refer to cash collections.

L6.2.3 Permits

- a. A collection **MUST NOT** be made until the promoter has obtained a licence from the relevant licensing authority.
- b. Permits **MUST** be applied for at least one month before the date of the collection.

L6.2.4 Age of Collectors

The model regulations set the minimum age for a collector at 16. In London this can be lowered to 14 in some situations.

L6.2.5 Payment of Collectors

- a. If following the model regulations, collectors **MUST NOT** be paid to carry out a street collection but may be paid to carry out a house to house collection.
- b. Any other payments from the collection **MUST** be agreed in advance with the licensing authority.

L6.2.6 Material-Cash Collections

- a. Each collector **MUST** have the written authority of the promoter of the collection and produce this authority when requested to do so by a council official or police officer.
- b. Every collector **MUST** carry a collecting box.
- c. All collecting boxes **MUST** be numbered consecutively and must be securely closed and sealed in such a way as to prevent them being opened without the seal being broken.

- d. Collection boxes **MUST** prominently display the name of the charity or fund which is to benefit.
- e. If the collection is for a registered charity with income over £10,000, all printed materials **MUST** state that the charity is registered.

L6.2.7 Solicitation Statements

The Charities Act 2006 introduced an obligation on some people fundraising for charities who, although paid, would not otherwise fall within the definition of a professional fundraiser.

These are:

- a. Paid individuals carrying out a public charitable collection (except anyone who receives £5 or less per day or £500 or less per year). Such individuals **MUST** make a statement which is equivalent to the s.60 Charities Act 1992 statement.
- b. Paid employees, officers and trustees carrying out a public charitable collection (subject to the same 'lower paid' exception set out above).
- c. If these individuals make a solicitation for a donation for a particular charity they **MUST** make a statement indicating:
 - The name or names of the institutions which will benefit and if more than one, the proportions in which they will benefit
 - The fact that they are an officer, employee or trustee of an institution
 - The fact that they are receiving remuneration as an officer, employee, trustee or for acting as a collector. They do not have to state the amount of their remuneration.
- d. If these individuals make a solicitation for general charitable, benevolent or philanthropic purposes (as opposed to a specific named charity), then they **MUST** to make a similar statement that they are being paid for those general purposes.

L6.2.8 Conduct of Collections

- a. Collectors **MUST** only collect at the times and in the areas stipulated in the licence.
- b. If following the model regulations, collectors **MUST** remain stationary and stand at least 25 metres away from any other collector.
- c. Collectors **MUST NOT** conduct the collection in a manner likely to annoy or inconvenience anybody and must not “importune any person” to their annoyance.
- d. Cash donations **MUST** be placed immediately in the collection box.

L6.2.9 Proceeds of a Cash Collection

- a. Every collector **MUST** deliver, unopened, all collecting boxes in his possession to a promoter.
- b. Collection boxes **MUST** be opened and the contents counted in the presence of the promoter of the collection and another responsible and unrelated person or by a bank official.
- c. A record **MUST** be kept of the proceeds collected by each collector and details of the collecting materials returned.

L6.2.10 Information to Provide to the Licensing Authority

- a. Within one month of the date of a cash collection (three months in London) the promoter **MUST** send a statement (in the form set out in the Regulations), showing the amount received and the expenses and payments incurred, certified by the promoter and a qualified accountant. It should include a list of the collectors and a list of the amounts contained in each collecting box.

There may also be a requirement to place an advertisement confirming certain information about the collection.

L6.3 Street Collections - Scotland

L6.3.1 Sources of Law

- **All such street/house to house collections in Scotland are currently governed by section 119 of the Civic Government (Scotland) Act 1982 and the Public Charitable Collections (Scotland) Regulations 1984.**

L6.3.2 Definitions

- “Street collection” means a collection made by soliciting contributions from passersby in a public place.
- “Public Place” means any place (whether a thoroughfare or not) to which the public have unrestricted access and includes:
 - The door ways or entrances of premises abutting on any such place
 - Any common passage, close, court, stair, garden or yard pertinent to any tenement or group of separately owned houses.

The definition of public place will change in Scotland if and when the Public Benevolent Collections provisions contained in the Charities and Trustee Investment (Scotland) Act 2005 are commenced.

L6.3.3 Permits

- a. Unless an exempt promoter, a written application **MUST** be made at least one month in advance (or within such other period as the local authority may determine).

L6.3.4 Age of Collectors

- a. The minimum age for a collector taking part in a street collection is 14.

L6.3.5 Exemption Holders

- a. In Scotland, anyone organising collections over the whole or a substantial part of Scotland may apply to OSCR to be made an exempt promoter. There are currently 6 exempt promoters.
- b. In Scotland, Exempt Promoters **MUST** report annually to OSCR.
- c. This report **MUST** include an audited account of collections carried out (including a breakdown by local authority area and details of the expenses incurred) as well as a signed organiser's statement and auditor's statement.
- d. They **MUST** also publish a notice summarising the audited collection account in a newspaper with a national Scottish circulation within one month of submission of their records to the Regulator.

L6.3.6 Materials

- a. Collection envelopes **MUST** only be used if the collection is a house to house one.
- b. Every collector in a licensed collection **MUST** be provided with:
 - A collector's badge
 - A certificate of authority
 - A sealed collecting box (in either case, bearing the name of the funds or organisations to benefit from the collection)
 - Clear instructions as to the proper conduct of the collection.
- c. The collector's badge **MUST**:
 - Have the registered name of the organisation which is to benefit from the collection printed on it, along with any other name by which it is known
 - Bear the registered charity number, if applicable, and a reference to the organisation's charitable status unless this is already included in its name.

- d. The collector's certificate of authority **MUST** show:

- The registered name and the address of the funds or organisations which are to benefit from the collection, as well as any other name by which it is known
- The registered charity number, if applicable and a reference to the organisation's charitable status (unless this is already included in its name)
- The name and address of the collector;
- The place in which the collector is authorised to collect
- The period during which the collector is authorised to collect
- The signature of the collector and the promoter of the collection. The promoter's agent may sign on his/her behalf provided that the agent's name and address are also then supplied
- The name and address of the organiser.

- e. Where money is to be collected, every collector **MUST** be provided with a sealed collecting box or collection envelopes in accordance with the requirements specific to that jurisdiction as to when each may be used and what information each must contain (see below).

L6.3.7 Solicitation Statements

- a. In Scotland, the rules regarding solicitation statements apply to and **MUST** be followed by professional fundraisers making solicitations, commercial participators making representations and benevolent fundraisers (other than volunteers) carrying out benevolent fundraising.

L6.3.8 Conduct of Collections

- a. When carrying out a collection by means of a sealed collecting box, the collector **MUST** only accept donations which are made by the donor placing it in a collecting box.
- b. Fundraisers carrying out licensed collections **MUST** have visible ID badges.

L6.3.9 Proceeds of Collection

- a. Arrangements **MUST** be made for the receipt of the collection proceeds of any licensed collection and all used and unused materials connected with it including the collector's badge and certificate of authority at a specified point authorised by the organiser of the collection.
- b. A record **MUST** be kept of the proceeds collected by each collector and details of the collecting materials returned.
- c. All proceeds from all collectors **MUST** be remitted to the organiser of the collection unopened, together with the collector's badge and certificate of authority and any unused collection materials as soon as he ceases to act as a collector (i.e. at the end of the collection) or upon demand by the organiser.
- d. Sealed collecting boxes/envelopes **MUST** only be opened by either the organiser or his agent in the presence of an independent responsible person, or by an official of the bank (having been delivered unopened to a bank).
- e. A record **MUST** be kept of each numbered collecting box which is returned as well as the proceeds in each collector's collecting box (unless opened by a bank official). In the case of an envelope collection, a record **MUST** be kept of the number of envelopes issued to and returned by each collector, and the total amount of money in them.

L6.3.10 Information to be Provided After the Collection

- a. Organisers of collections **MUST** publish a summary of the collection and the accounts within one month of submitting the accounts, unless the collection took place in a single local authority area and the local authority waives this requirement. The summary **MUST** include specified information and be published in one or more newspapers circulating in the area for which the collection was licensed. Exempt promoters **MUST** publish the summary in a newspaper circulating throughout Scotland.
- b. The receipts and papers relating to the collection **MUST** be retained for two years after submission of the accounts.

L6.4 Street Collections - Northern Ireland

L6.4.1 Sources of Law

- **Street collections in Northern Ireland are governed by the Police, Factories etc. (Miscellaneous Provisions) Act 1916. This establishes the right for the Police Service for Northern Ireland (PSNI) to make regulations governing street or public place collections undertaken to benefit charitable or other purposes.**

L6.4.2 Definitions

- "Street" includes any highway and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not
- "Public Place" is not defined in the legislation and some private property can be treated as if it were a public place, for example, supermarket car parks or shopping centres.

L6.4.3 Permits

- a. Permits are issued by the PSNI. The local PSNI station should be approached. The minimum requirement for a notice is the first day of the month preceding the month in which the collection is to be held. A collection **MUST NOT** be made until the promoter has obtained a permit.

L6.4.4 Age of Collectors

- a. Collectors **MUST** be over 16 years of age.

L6.4.5 Payment of Collectors

- a. Collectors **MUST NOT** be paid.

L6.4.6 Materials

- a. Each collector **MUST** have the written authority of the promoter of the collection and produce this authority when requested to do so.
- b. Every collector **MUST** have a collection box.
- c. All collecting boxes **MUST** be numbered consecutively and **MUST** be securely closed and sealed in such a way as to prevent them being opened without the seal being broken.
- d. Collection boxes **MUST** prominently display the name of the charity or fund which is to benefit.

L6.4.7 Conduct of Collections

- a. Collectors **MUST NOT** cause obstruction, inconvenience or annoyance to any person nor harass or annoy any person.
- b. Collectors should remain stationary. Not more than two persons should collect at the same place and a collector should stand at least twenty-five meters away from any other collector.
- c. An animal **MUST NOT** accompany collectors (except for a guide dog).
- d. Donations **MUST** be placed immediately in the collection box.

L6.4.8 Proceeds of Collections

- a. Collection boxes **MUST** be returned unopened with the seal intact to a promoter/permit holder.
- b. Collection boxes **MUST** be opened and the contents counted in the presence of the promoter of the collection and two others who should count and record the amount received prior to lodgement.
- c. A record **MUST** be kept of the proceeds collected by each collector and details of the collecting materials returned.

L6.4.9 Information to be Provided to the PSNI

- a. A returns form **MUST** be submitted to PSNI within two months of the collection and a statement to the senior police officer who granted the permit with accompanying vouchers certified by two officials of the organisation and appropriately audited showing the amount received and expenses incurred.

L6.5 House to House Collections - England and Wales

L6.5.1 Sources of Law

- **The House to House Collections Act (1939)**
- **The House to House Collections Regulations (1947)**

L6.5.2 Definitions

- “House to house collections” means collecting money or other property, whether for consideration or not, by means of visits from house to house (or business to business).

L6.5.3 Licences

- a. A collection for a 'charitable purpose' (which includes benevolent and philanthropic purposes) **MUST NOT** take place from house to house without a licence issued by the local authority in whose area all or any part of the collection will take place. If a collection is for local purposes and to be carried out over a short period, the local authority may grant a certificate exempting the collection from the need for a licence.
- b. Licences **MUST** be applied for at least one month before the date of the collection.
- c. Licences may be refused or revoked if:
- The total amount applied for charitable purposes is seen as inadequate in relation to the likely amount collected
 - The remuneration (of anyone connected with the collection) is seen as excessive in proportion to the likely proceeds of the collection
 - The collection offends section 3 Vagrancy Act 1824
 - The applicant/holder of the licence is regarded as not a 'fit and proper person' to organise a collection
 - The applicant/holder of the licence fails to exercise 'due diligence' to ensure that all collectors are 'fit and proper persons' to collect
 - Appropriate badges/certificates of authority are not properly recorded, issued and returned after the collection
 - There is a failure to give sufficient information to the licensing body regarding any of the above listed matters.
- d. Where an application for a licence is refused or revoked the licensing authority **MUST** provide written notice explaining the decision.

- e. Appeal against such a decision is made directly to the Minister for the Cabinet Office and **MUST** be made within 14 days of date of the notice.

L6.5.4 National Exemption Orders

- Holders of National Exemption Orders do not have to apply for licences every time they wish to carry out house to house collections
- Organisations can generally obtain National Exemption Orders if they have had house to house collection licences in at least 70-100 local authority licensing areas for the two preceding years. There are currently 43 national exemption order holders (who are named individuals working for charitable organisations).
- There are few legal obligations on National Exemption Order holders but it is accepted good practice to liaise with local authorities about dates and locations of collections and observe other good practice requirements regarding the conduct of a collection.

L6.5.5 Age of Collectors

- a. For house to house collections the minimum age for a collector is 16.

L6.5.6 Selection of Collectors

- a. The promoter of a collection **MUST** carry out due diligence to check that collectors are 'fit and proper persons' to collect.

L6.5.7 Training of Collectors

- a. The promoter **MUST** also ensure that collectors comply with the House to House Collections Regulations (1947).

L6.5.8 Payment of Collectors

- a. In England and Wales collectors may be paid to conduct a house to house collection.

L6.5.9 Collection Materials

- a. Every collector **MUST** be provided with:
 - A collector's badge – see below for details – which must be worn prominently
 - A certificate of authority – see below
 - A sealed collecting box or receipt book marked with a clear indication of the purpose of the collection and a distinguishing number.
- b. The collector's badge **MUST**:
 - Have the registered name of the organisation which is to benefit from the collection printed on it, along with any other name by which it is known
 - Bear the registered charity number, if applicable
 - Be signed by the collector on receipt.
- c. The collector's certificate of authority **MUST** show:
 - The purpose for which the collection is being carried out
 - The name and address of the collector
 - The place of the collection
 - The period during which the collector is authorised to collect
 - The signature of the collector and the promoter of the collection.
- d. Badges and certificates of authority in England and Wales **MUST** be standard, supplied by HMSO or, for Exemption Order holders only, of a design approved by Cabinet Office.
- e. Collection envelopes **MUST** only be used by National Exemption Order holders who have obtained the prior permission of the Minister for the Cabinet Office, and there are specific rules governing envelope collections.

- f. The promoter **MUST** keep a record of the collectors' names and addresses and details of badges, certificates, collecting boxes or receipt books given to each collector. When the collection is completed, the promoter **MUST** ensure all badges, certificates, collecting boxes and receipt books are returned.
- g. In addition, if the collection is for a registered charity with income over £10,000, all printed materials **MUST** state that the charity is registered.

L6.5.10 Solicitation Statements

The Charities Act 2006 introduced an obligation on some people fundraising for charities who, although paid, would not otherwise fall within the definition of a professional fundraiser. These are:

- a. Paid individuals carrying out a public charitable collection (except anyone who receives £5 or less per day or £500 or less per year). Such individuals **MUST** make a statement which is equivalent to the s.60 Charities Act 1992 statement.
- b. Paid employees, officers and trustees carrying out a public charitable collection (subject to the same 'lower paid' exception set out above).
- c. If these individuals make a solicitation for a donation for a particular charity they **MUST** make a statement indicating:
 - The name or names of the institutions which will benefit and if more than one, the proportions in which they will benefit
 - The fact that they are an officer, employee or trustee of an institution
 - The fact that they are receiving remuneration as an officer, employee, trustee or for acting as a collector. They do not have to state the amount of their remuneration.

- d. If these individuals make a solicitation for general charitable, benevolent or philanthropic purposes (as opposed to a specific named charity), then they **MUST** make a similar statement that they are being paid for those general purposes.

L6.5.11 Conducting a Collection

- a. Collectors **MUST NOT** “importune any person to the annoyance of such person”, or remain in, or at the door of, any house if requested to leave.

L6.5.12 Handling Proceeds of a Cash Donation

- a. Where a collection box is used, donations **MUST** be placed in that box.
- b. Where no collection box is used, collectors **MUST** record donations immediately in a receipt book and issue a signed receipt to the donor.
- c. All proceeds from all collectors **MUST** be remitted to the organiser of the collection together with the collector’s badge, certificate of authority and any unused collection materials as soon as possible. The seal on collection boxes **MUST** remain intact and envelopes must be unopened.
- d. On receipt of the collection box or receipt book, the proceeds **MUST** be counted or checked in the presence of a promoter and another responsible person or a bank official.
- e. A certified record **MUST** be kept of the proceeds collected by each collector, the amount collected in each box and details of the collecting materials returned e.g. in the case of envelope collections, the number of envelopes containing cash that are returned by each collector and the total amount of money contained therein.

L6.5.13 Information to be Provided to the Licensing Authority

- a. Accounts **MUST** be submitted to the licensing authority within one month of the expiry of the licence.

- b. Where a National Exemption Order has been made, accounts **MUST** be submitted yearly to the Cabinet Office.

L6.6 House to House Collections - Scotland

L6.6.1 Sources of Law

- **Civic Government (Scotland) Act 1982**
- **Public Charitable Collections (Scotland) Regulations 1984.**

L6.6.2 Definitions

- “House to house collection” means a collection made by going from house to house and soliciting contributions from the occupants thereof
- “House” includes a place of business
- “Public place” means any place (whether a thoroughfare or not) to which the public have unrestricted access and includes:
 - The door ways or entrances of premises abutting on any such place
 - Any common passage, close, court, stair, garden or yard pertinent to any tenement or group of separately owned houses.

The definition of public place will change in Scotland if and when the Public Benevolent Collections provisions contained in the Charities and Trustee Investment (Scotland) Act 2005 are commenced.

L6.6.3 Exemption Holders

- a. In Scotland, anyone organising collections over the whole or a substantial part of Scotland may apply to the OSCR to be made an Exempt Promoter. There are currently 6 exempt promoters.
- b. In Scotland, Exempt Promoters **MUST** report annually to OSCR.

- c. This report **MUST** include an audited account of collections carried out (including a breakdown by local authority area and details of the expenses incurred) as well as a signed organiser's statement and auditor's statement.
- d. They **MUST** also publish a notice summarising the audited collection account in a newspaper with a national Scottish circulation within one month of submission of their records to the Regulator.

L6.6.4 Permits

- a. Collections of goods do not require licences.
- b. Unless an exempt promoter, a written application **MUST** be made at least one month in advance (or within such other period as the local authority may determine).

L6.6.5 Age of Collectors

- The minimum age for a collector taking part in a house to house collection is 16.

L6.6.6 Collection Materials

- a. Charities' materials **MUST** include the charity's registered name, any other name by which it is commonly known, the fact that it is a charity (if its name does not already include reference to its charitable status) and its registered charity number (which begins with SCO).
- b. The issue and return of all materials connected with the collection **MUST** be recorded.
- c. The collector's badge **MUST**:
 - Have the registered name of the organisation which is to benefit from the collection printed on it, along with any other name by which it is known
 - Bear the registered charity number, if applicable, and a reference to the organisation's charitable status unless this is already included in its name.

- d. The collector's certificate of authority **MUST** show:

- The registered name and the address of the funds or organisations which are to benefit from the collection, as well as any other name by which it is known
- The registered charity number, if applicable, and make reference to the organisation's charitable status unless this is already included in its name
- The name and address of the collector
- The place of the collection
- The period during which the collector is authorised to collect
- The signature of the collector and the promoter of the collection. The promoter's agent may sign on his/her behalf provided that the agent's name and address are then supplied
- The name and address of the organiser.

- e. Badges and certificates of authority do not take a prescribed form but **MUST** include all of the information required by the legislation, described above.

- f. The organiser of a collection **MUST** record the name and address of each collector as well as the number of collecting envelopes, or the number marked on the collecting box given to each collector.

L6.6.7 Solicitation Statements

- a. In Scotland, the rules regarding solicitation statements apply to and **MUST** be followed by professional fundraisers making solicitations, commercial participators making representations and benevolent fundraisers (other than volunteers) carrying out benevolent fundraising.

L6.6.8 Conduct of Collection

- a. Fundraisers carrying out licensed collections **MUST** have visible ID badges.
- b. A collector **MUST** only accept donations which are made in sealed envelopes.
- c. When carrying out an envelope collection in Scotland, a collector **MUST** only accept donations which are made in sealed envelopes. When carrying out a collection by means of a sealed collecting box, the collector **MUST** only accept donations which are made by the donor placing it in a collecting box.

L6.6.9 Proceeds of Collections

- a. Collection materials **MUST** be opened and the contents counted and witnessed in the presence of the promoter of the collection or another responsible and unrelated person, or they can be delivered unopened to a bank.
- b. All proceeds from all collectors **MUST** be remitted to the organiser of the collection unopened, together with the collector's badge and certificate of authority and any unused collection materials as soon as he ceases to act as a collector (i.e. at the end of the collection) or upon demand by the organiser.
- c. Sealed collecting boxes/envelopes **MUST** only be opened by either the organiser or his agent in the presence of an independent responsible person, or by an official of the bank (having been delivered unopened to a bank).
- d. A record **MUST** be kept of each numbered collecting box which is returned as well as the proceeds in each collector's collecting box (unless opened by a bank official).
- e. In the case of an envelope collection, a record **MUST** be kept of the number of envelopes issued to and returned by each collector and the total amount of money in them.

L6.6.10 Information to be Provided After the Collection

- a. Organisers of collections **MUST** submit accounts for the collection to the relevant local authority within one month of the collection, and the accounts **MUST** satisfy the requirements of the Regulations. (Different requirements apply to exempt promoters, who can submit annual accounts). The receipts and papers relating to the collection **MUST** be retained for two years after submission of the accounts.
- b. Arrangements **MUST** be made for the receipt of the collection proceeds of any licensed collection and all used and unused materials connected with it including the collector's badge and certificate of authority at a specified point authorised by the organiser of the collection.
- c. A record **MUST** be kept of the proceeds collected by each collector and details of the collecting materials returned.
- d. Organisers of collections **MUST** publish a summary of the collection and the accounts within one month of submitting the accounts, unless the collection took place in a single local authority area and the local authority waives this requirement. The summary must include specified information and be published in one or more newspapers circulating in the area for which the collection was licensed.
- e. Exempt promoters **MUST** publish this summary in a newspaper circulating throughout Scotland.

L6.7 House to House Collections - Northern Ireland

In Northern Ireland, if the collection is to cover all of Northern Ireland an exemption order may be obtained to avoid the inconvenience of multiple applications to the Police Service for Northern Ireland (“PSNI”). Applications should be made to Charities Branch of the Department for Social Development (“DSD”).

- a. The organisation **MUST** give reasonable notice to the PSNI on when they intend to act upon the exemption order because if they do not, then there is a chance of an overlap if the PSNI grant another organisation the right to fundraise there.
- b. Exemption Order holders in Northern Ireland **MUST** provide annual accounts to the DSD duly certified by the chief promoter of collections and also certified by an independent responsible person as auditor.
- c. A chief promoter **MUST** be appointed and the exemption order is issued to them. They cannot delegate their role and if they do so then the exemption order is automatically invalid.
- d. The organisation **MUST** give PSNI at least six weeks’ notice before using its exemption order to avoid a local charity seeking a permit to collect and discovering that the holders of an exemption order are collecting in the same area without having notified the PSNI.
- e. Promoters are required to ensure that collectors are ‘fit and proper’ persons and that they receive a certificate of authority and badge.
- f. Materials **MUST** show the name and address of the charity, name and address of the collector, the place of the collection and bear the signature of the collector and the promoter of the collection.

g. Badges **MUST**:

- Meet the specifications set out in the 1952 Act and indicate the purpose of the collection
- Bear the name of the charity and the HMRC reference number
- Be signed by the collector
- Be returned when the collection is completed.

h. Certificates **MUST** show the name and address of the charity, name and address of the collector, the place of the collection and bear the signature of the collector and the promoter of the collection.

i. Collectors **MUST** be issued with collecting boxes or receipt books marked with a distinguishing number.

j. If receipt books are issued, they **MUST** have records of a sum equal to the total amount of the contributions entered therein.

L7.0 Acceptance and Refusal of Donations

L7.1 Delaying a Donation

On occasion a charity may wish to refuse a donation, or delay its acceptance, with a view to persuading the donor to make the gift in a more tax-effective manner (e.g. by Gift Aid). A charity can decide to do this provided that the trustees are clearly aware of the risk that the donor might be put off making the donation altogether, and provided that the charity explains the tax advantages accurately to the donor.

L7.2 Record-Keeping

- a. Where the trustees (or their delegates) decide to refuse a donation, they **OUGHT** to keep a careful minute of their decision and the reasons for it.

It is good practice for charities to adopt a policy about the circumstances in which donations might be refused.

L7.3 Requirements in England and Wales

L7.3.1 Charity Commission

If the trustees are concerned about whether or not to refuse a particular donation, they may wish to seek the views of the Charity Commission under section 110 Charities Act 2011 (power to give advice) or an order from the Charity Commission sanctioning their decision under section 105 Charities Act 2011 (power to authorise dealings with charity property etc.).

Circumstances where advice or an order might be of particular benefit are those where:

- It is not immediately clear what the 'best interests of the charity' are in relation to the proposed donation
- Large sums of money or property are involved
- The trustees have reason to believe that a decision taken by them might be subsequently challenged in the courts; and the trustees wish to use the 'authority' of Charity Commission advice or an order to mitigate against the threat of negative publicity engendered by the refusal of a donation.

See also the section on ex gratia payments below.

L7.3.2 A Legal Obligation to Return a Donation

There may be a legal obligation on a charity to return a donation. For example, the conditions attached to the gift may require the return of the gift in certain circumstances.

One situation where this might arise is known as a failed appeal. This may occur where an appeal for a particular purpose fails to raise sufficient funds to achieve that purpose: strictly the donors may be entitled to a refund.

This can be pre-empted if the wording of the appeal literature makes it clear that in these circumstances, the funds will be used for the charity's general purposes. The donor will not generally be entitled to a refund in those circumstances.

If the donor is strictly entitled to a refund, the provisions of the Charities Act 2011 may help.

Section 65 Charities Act 2011 applies if donors to an appeal are informed that if the appeal fails, donations will be used for general charitable purposes, unless the donor makes a written declaration to the effect that they would like to have the opportunity to reclaim their donation in these circumstances. If the appeal fails, the trustees must then take certain steps to contact the donors who have made declarations: the Charity Commission can then be asked to make a scheme under section 63 Charities Act 2011 to apply the donated funds for different charitable purposes.

More information is available in Charity Commission operational guidance OG53: Charitable Appeals – Avoiding and Dealing with Failure. Note that it will often be easier to ensure that appeal literature simply specifies that the funds will be used for the charity's general purposes if the appeal fails, rather than relying on the more complicated section 65 procedure, which requires the Charity Commission's involvement.

If section 65 does not apply, it may still be possible to ask the Charity Commission to exercise its powers under section 63 to make a scheme to the effect that the property should be used for different charitable purposes. Section 63 allows the Commission to make a scheme in certain circumstances, including where the donor cannot be identified or found after certain advertisements and inquiries have been made. Under section 64 certain donations can be treated as belonging to donors who cannot be identified, including cash in collecting boxes and funds which the Charity Commission has decided should be treated as belonging to unidentifiable donors, because the costs of trying to trace the donors would be disproportionate or because in the circumstances (for instance a lapse of time) it would be unreasonable for the donors to expect the return of their donations.

There may also be scope to take advantage of the Commission's general scheme making powers in the event of a failed charitable gift.

Another example of where there may be a legal obligation to return a donation is under Section 61, Charities Act 1992, Part II, which applies in England and Wales and provides for the return of donations of more than £100 made by credit/debit card within a seven day 'cooling off' period. The donation must have been made in response to an appeal by a professional fundraiser or commercial either in the course of a radio or television show or otherwise made orally (other than by speaking directly to, or in the presence of, the individual to whom the appeal is addressed).

L7.3.3 A Moral Obligation to Return a Donation – Ex Gratia Payment

There may be situations where a charity has no legal obligation to return a donation which has been made, but the trustees feel that there is a moral obligation to do so.

There is scope for the Charity Commission, using its powers under section 106 Charities Act 2011, to authorise a charity to refund a donation in these circumstances. More information is available in the Charity Commission's guidance CC7 – Ex Gratia Payments by Charities and in the Charity Commission's operational guidance OG 11 Ex Gratia Payments by Charities.

L7.4 Requirements in Scotland

While charities in England and Wales can seek an order from the Charity Commission authorising the refusal of a donation, no similar procedure exists in Scotland. Trustees of charities which are governed by OSCR ought to seek professional legal advice if they are concerned about a particular donation in order to ensure that they fulfil their legal duties when opting to accept or refuse the donation.

Where it is clear that the activities of a donor are directly inimical to the objectives of the charity, the agreed policies of the charity, or to the beneficiaries of the charity, the trustees can refuse the donation in the interests of the charity.

Where the potential donor is a person or a company whose activities are not directly related to the charitable objects of the charity, but the charity nevertheless wishes to avoid association with the donor, great care should be exercised in coming to a decision.

Where it can be shown that the cost to the charity of accepting a donation will be greater than the value of the donation itself, the trustees (in promoting the best interests of the charity) can and should refuse the donation.

- a. If refusing a donation, trustees **MUST** be able to demonstrate the tangible fact that they have grounds reasonably to believe that it is not in the interests of the charity to accept the donation, usually by showing that they have cause to believe that acceptance of the donation will itself directly lead to a net decline in the asset base, support or reputation of the charity, or cause harm to its beneficiaries.

Where the offer of support is dependent upon the fulfilment of certain conditions placed upon the charity, the trustees have the right to refuse that support. Such cases might exist where:

- Any condition linked to the support is, in itself, contrary to the objectives of the charity
- Any condition linked to the support is regarded as unreasonable in relation to the nature of the support in terms of its size or impact on the work of the charity
- Conditions linked to the support will divert the charity from pursuing its current objectives, policies or work priorities as a necessary result of the fulfilment of the conditions alone
- The conditions linked to the support tie the funds and/or property offered to a specific activity, and that specific activity is not:
 - Charitable in nature
 - Within the scope of legitimate action permitted by the recipient charity's constitution in order to achieve its charitable aims
 - Practically achievable by the recipient charity.

Practical considerations may mean that an otherwise acceptable donation is refused. Such cases might exist where:

- The support is tied to a particular project or activity, which, whilst reflecting the charity's objects, is nevertheless impractical, given the current standing of the organisation. An example of such a case is where support is offered to purchase capital assets (building or land) but the charity, whilst in need of the capital asset, has no resources with which to maintain the running costs associated with it
- The support is presented in an unconventional manner and the cost of processing the donation exceeds the value of the donation. An example of such a case is where a charity is offered a wheelbarrow of penny coins. It might be argued that the costs associated with the counting and processing of the coins will outweigh the value of the donation itself
- The support consists of goods, services or property, which the charity cannot lawfully use, convert, exchange or sell in direct support of its charitable objects.

While ex-gratia payments to discharge a compelling moral, but not legal, obligation can be made in England and Wales with the Charity Commission's consent, there is no equivalent procedure in Scotland. In Scotland, charities' constitutions must, under section 7(4) of the Charities and Trustee Investment (Scotland) Act 2005, prohibit the distribution of the charity's funds for non-charitable purposes. This, coupled with the lack of any equivalent mechanism permitting OSCR to authorise ex-gratia payments, means that charities which are governed by Scots law and have OSCR as their principal regulator cannot make ex-gratia payments. While they remain entitled to take a commercial view on matters and may agree a compromise with an individual or body which has a valid legal claim, they cannot make a payment where there is no legal case solely on the grounds of compassion or morality.

Where a donor requests it, the law provides for the return (subject to the deduction of any administrative expenses reasonably incurred) of certain donations of £100 or more within a seven day ‘cooling off’ period. This provision exists in Scotland under Regulation 5 of the Charities and Benevolent Fundraising (Scotland) Regulations 2009. The donation must have been made in response to an appeal by a professional fundraiser or commercial participator and either:

- The appeal was made in the course of a radio or television show and payment of at least £100 was made by credit or debit card
- The payment was made, or an agreement was made to make a payment or payments at a later date with the amount or aggregate amount totalling at least £100, in response to an appeal made orally (other than by speaking directly to, or in the presence of, the individual to whom the appeal is addressed) and the payment was made by any means.

L7.5 Northern Ireland Requirements

The Northern Ireland position is similar to England and Wales. Under the Charities Act (Northern Ireland) 2008 a charity may in respect of donations, seek the advice of the Charity Commission for Northern Ireland under s.46. This section gives the Commission the power to authorise dealings and to act upon any decisions which may be expedient to the charity – this also comes with the added power of being able to sanction their decision.

Also, a donation may be refused if some condition in it cannot be fulfilled – if it is impossible or impracticable. There are numerous examples of this, and if the condition fails, then the donation is returned. However, there is a precedent that setting a condition that money to be returned negatives the charitable intent, so it will be applied *cy-près*.

Under s.47 of the Charities Act (Northern Ireland) 2008 the Commission also has the power to authorise *ex-gratia* payments. This is where there is a large sum of money attained by the charity and although they have no legal obligation to return the payment, the trustees of the charity feel that they have a moral obligation to return the donation.

Also, under s.49 the Commission have the power to give advice or guidance and if they so please, the trustees of the charity may approach the Commission to seek their views on a certain donation. However, the trustees are responsible if they follow the advice.

L8.0 Professional Fundraisers and Agreements

L8.1 Scope

This section applies to fundraising organisations which are charities and non-charities that are professional fundraisers or commercial participators.

L8.2 England and Wales – Definition of a Professional Fundraiser

A “professional fundraiser” is:

- a. Any person who carries on a business for gain which is wholly or primarily engaged in soliciting or otherwise procuring money or other property for charitable, philanthropic or benevolent purposes (but charities themselves and their trading subsidiaries are excluded) or
- b. Any other person who solicits money or other property “for reward” (but again charities themselves, their employees and trustees and charity trading subsidiaries are excluded.) There are also exclusions aimed at celebrities who do TV or radio appeals, low paid fundraisers – i.e. those who do not receive more than £1,000 per year or £10 per day, and businesses which fall within the definition of commercial participator.

L8.3 Scotland - Definition of a Professional Fundraiser

A “professional fundraiser” is:

- Any person (other than a benevolent body or a company connected with it) who carries on a fundraising business – being a business carried on for profit which is wholly or primarily engaged in soliciting or otherwise procuring money or promises of money (but, unlike England and Wales, not other property) for one or more particular benevolent body, or for charitable, benevolent or philanthropic purposes

Or:

- Any other person who, other than in the course of a fundraising venture undertaken by a person within the above definition, for reward solicits money or other property for the benefit of a benevolent body or for charitable, benevolent or philanthropic purposes, but excluding:
 - A benevolent body or a company connected with it
 - Any person concerned in the management or control of, or who is an employee of, a benevolent body or connected company
 - People who solicit funds at the instance of a benevolent body or connected company in the course of a TV or radio programme during which that body undertakes a fundraising venture
 - A commercial participator.

Unlike England and Wales, those undertaking public charitable collections are not exempted. In addition, while Scotland has provision allowing it to pass similar de minimus rules to those that exist in England and Wales, it has not used this power.

L8.4 England and Wales, and Scotland: Requirement to have a Written Agreement

L8.4.1 Written Agreements

a. It is unlawful for a professional fundraiser to solicit money for a particular institution unless it is done in accordance with a written agreement with the organisation it is raising funds for. The agreement **MUST** be in writing and signed by or on behalf of both the professional fundraiser and the organisation it is raising funds for. The agreement **MUST** specify:

- The names and addresses of all the parties to the agreement
- The date on which each party signed and the duration of the agreement
- Any terms dealing with early termination or variation
- A statement of the principal objectives of the agreement and the methods to be used to achieve those objectives
- Terms for the payment of fees and expenses to the professional fundraiser
- If more than one charity is involved, how funds raised will be shared between them.

L8.4.2 England and Wales – Professional Fundraisers: Other Requirements

a. A professional fundraiser with an agreement in place with a fundraising organisation **MUST** on request make its books, documents and records relating to that organisation available for inspection and **MUST**, subject to a reasonable excuse, pass on funds to the organisation as soon as reasonably practicable and within a maximum of 28 days.

**L8.4.3 Scotland - Professional Fundraisers:
Other Requirements**

- a. A professional fundraiser **MUST** pass on funds to the charitable institution/benevolent body in accordance with the Regulations. In Scotland, the funds must be passed on as soon as reasonably practicable and in any event within a maximum of 28 days of receipt. Scots law does not permit the parties to agree otherwise, nor does it make an exemption where there is a reasonable excuse.

L9.0 Commercial Participators

L9.1 Scope

This section applies to fundraising organisations which are charities and non-charities that are professional fundraisers or commercial participators.

L9.2 England and Wales - Definition of Commercial Participator

- **The relevant law is set out in the Charities Act 1992 (as amended) (“the 1992 Act”) and the Charitable Institutions (Fundraising) Regulations 1994**

Broadly speaking a “commercial participator” is any person who carries on a business and in the course of that business represents that it will make donations to a charity. For example, a manufacturer that advertises washing powder with the promise that a contribution will be made to charity for each packet sold would be a commercial participator.

The full definition is in Section 58(1) of the 1992 Act. Fundraising businesses and charity trading subsidiaries are excluded.

L9.3 Scotland - Definition of Commercial Participator

- **The relevant law is set out in the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”) and the Charities and Benevolent Fundraising Regulations (Scotland) 2009 (“the Regulations”)**

A commercial participator is defined in section 79 of the 2005 Act as any person who carries on for profit a business other than a fundraising business and in the course of that business, engages in any promotional venture in which a representation is made that benevolent contributions are to be given to or applied for the benefit of a benevolent body or (in an extension of the position in England and Wales) are to be applied for charitable, benevolent or philanthropic purposes, but it does not include a company connected with the benevolent body.

For example, a manufacturer that advertises tissues with the promise that a contribution will be made to support children in disadvantaged areas for each packet sold would be a commercial participator.

L9.4 England and Wales - Commercial Participator Solicitation Statement

- a. Commercial participators **MUST** make a statement every time they represent money will be paid to a charity or an institution which is established for benevolent or philanthropic purposes.

L9.5 Scotland - Commercial Participator Solicitation Statement

- a. In Scotland, the rules regarding solicitation statements apply [L10.0] to and **MUST** be followed by professional fundraisers making solicitations, commercial participators making representations and benevolent fundraisers (other than volunteers) carrying out benevolent fundraising.

L9.6 Requirement to have an Agreement In Place

a. It is unlawful for a commercial participator to represent as part of a promotional venture that it will give money to a charity (or an institution established for benevolent or philanthropic purposes) unless it is done in accordance with a written agreement with the organisation it is raising funds for. The agreement **MUST** be in writing and signed by or on behalf of both the commercial participator and the organisation it is raising funds for. The agreement **MUST** specify:

- The names and addresses of all the parties to the agreement
- The date on which each party signed and the duration of the agreement
- Any terms dealing with early termination or variation
- A statement of the principal objectives of the agreement and the methods to be used to achieve those objectives
- The proportions in which each charity will benefit in cases where the money is to be divided between more than one charity
- What proportion of the price of the goods or services will be given to the charity or what sums will be donated by the commercial participator in connection with the sale or supply of the goods or services
- Any amount the commercial participator will be paid as remuneration or expenses.

L9.7 England and Wales: Other Requirements

a. A commercial participator who has an agreement with a charity **MUST** on request make its books, documents and records relating to that charity available for inspection and **MUST**, subject to a reasonable excuse, pass on funds to the charity as soon as reasonably practicable and within a maximum of 28 days.

L9.8 Scotland: Other Requirements

a. A commercial participator **MUST** pass on funds to the charitable institution/benevolent body in accordance with the Regulations. In Scotland, the funds must be passed on as soon as reasonably practicable and in any event within a maximum of 28 days of receipt. Scots law does not permit the parties to agree otherwise, nor does it make an exemption where there is a reasonable excuse.

L10.0 Solicitation Statements

L10.1 England and Wales

- a. The Charities Act 2006 introduced an obligation on some people fundraising for charities who, although paid, would not otherwise fall within the definition of a professional fundraiser¹. These are:
- Paid individuals carrying out a public charitable collection (except anyone who receives £5 or less per day or £500 or less per year)
 - Paid employees, officers and trustees (subject to the same 'lower paid' exception set out above).
- b. If these individuals make a solicitation for a donation for a particular charity they **MUST** make a statement indicating:
- The name or names of the institutions which will benefit and if more than one, the proportions in which they will benefit
 - The fact that they are an officer, employee or trustee of an institution
 - The fact that they are receiving remuneration as an officer, employee, trustee or for acting as a collector. They do not have to state the amount of their remuneration.

¹ Section L8.0

- c. If these individuals make a solicitation for general charitable, benevolent or philanthropic purposes (as opposed to a specific named charity), then they **MUST** make a similar statement that they are being paid for those general purposes.
- d. Professional fundraisers **MUST** make a solicitation statement every time they solicit donations on behalf of a charity or an institution which is established for benevolent or philanthropic purposes. In the case of telephone fundraising, 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 fundraiser².
- e. Professional fundraisers **MUST** give the following information:
 - The name of the fundraising organisation(s) on whose behalf they are calling
 - If there is more than one organisation, the proportion in which they will each benefit
 - The method by which the fundraiser's remuneration is to be determined
 - Where known, the actual amount of the remuneration or
 - Where unknown, an estimate of the remuneration, calculated as accurately as possible.
- f. A professional fundraiser **MUST** comply with further specific disclosure requirements in relation to television, radio and telephone appeals: (Sections 60(4)(5)(6) of the Charities Act 1992), including rights to cancel a donation and receive a refund (Section 61 of the Charities Act 1992).

Failure to make the correct statement is a criminal offence.

The Cabinet Office published guidance in 2008 - CC20 Charities and Fundraising - which includes example wording of statements. For more detailed guidance, professional advice should be sought.

L10.2 Scotland

- a. In Scotland, the rules regarding solicitation statements apply to and **MUST** be followed by professional fundraisers³ making solicitations, commercial participators⁴ making representations and benevolent fundraisers (other than volunteers) carrying out benevolent fundraising.

A benevolent fundraiser for this purpose is a benevolent body or any company connected with it; any persons who manage or control it; or any employees or agents either of such people or of the benevolent body or connected company. Benevolent fundraising means soliciting or otherwise procuring money or promises of money for the benefit of benevolent bodies or connected companies, or for charitable, benevolent or philanthropic purposes.

- b. Professional fundraisers, commercial participators, and benevolent fundraisers (other than volunteers) **MUST** give the following information:
 - The name of the benevolent body which will benefit
 - If there is more than one benevolent body, the proportion in which each will benefit
 - If the funds are for general charitable, benevolent or philanthropic purposes (rather than for a benevolent body), this must be stated and details given of how the distribution of funds will be determined
 - Whether he is to receive remuneration (unless he is a benevolent fundraiser and is an employee or agent of the benevolent body concerned or a company connected with it, and is carrying out the fundraising in writing).

c. Professional fundraisers⁵ and commercial participators⁶ **MUST** also adhere to these additional rules:

- If the solicitation or representation is made orally (but not by speaking directly to and in the presence of the person to whom it is addressed) or in the course of a radio or television programme, he **MUST** explain the right to a refund or to cancel the agreement which exists in terms of the Regulations
- If he is to receive remuneration, he **MUST**:
 - Indicate how this will be determined
 - State the amount (if known, and if not, the estimated amount) of the remuneration that he as a professional fundraiser will receive or
 - State the amount (if known, and if not, the estimated amount) of the sale proceeds or proceeds of the promotional venture that he as a commercial participator will apply for the benevolent body or purpose, or the amount of the donation(s) that will be made.
- If he provides the statement regarding his remuneration orally, he **MUST**
 - If making the statement in person, advise any person making a payment that he has the information on remuneration available in writing with him if they wish to see it, or
 - If the statement is not made in person, advise any person making a payment that he has the information on remuneration available in writing and will provide it if requested.

A professional fundraiser or commercial participator commits a criminal offence by failing to comply with any of these provisions and the trustees of a charity may be in breach of their duty of care if they do not make statements where appropriate or require statements to be made. Further information and guidance is available from OSCR and/or professional advice should be sought.

In Scotland unlike England and Wales, those undertaking public charitable collections are not exempted. In addition, while Scotland has provision allowing it to pass similar de minimus rules to those that exist in England and Wales, it has not used this power.

L10.3 Northern Ireland

At the present time, there is no equivalent legislation as in England, Wales or Scotland in regard to written agreements. However, it is deemed good practice to follow the England and Wales requirements.

Under the Charities Act (Northern Ireland) 2008, it will be unlawful for a professional fundraiser to solicit money without a written agreement with the organisation it is collecting for that satisfied the prescribed requirements. These provisions have not yet come into force and this Code will be updated to reflect the changing legislation in due course.

²Section L8.0

³Section L8.0

⁴Section L9.0

⁵Section L8.0

⁶Section L9.0

L11.0 Trustee Duties

L11.1 Scope

This section applies to fundraising organisations which are charities.

L11.2 Key Requirements

The overriding duty of all charity trustees is to advance the purposes of their charity. Those occupying equivalent positions in non-charitable voluntary organisations will have similar duties. In advancing their charities' purposes, trustees have several basic responsibilities:

- a. Trustees are responsible for the proper administration of their charity.

Trustees must ensure that the charity's assets and resources are used only for the purposes of the charity and that the charity is run in accordance with its constitution, charity law and all other applicable laws and regulations. Examples of legal requirements placed on trustees in the field of fundraising include the need for appropriate agreements with commercial participators and professional fundraisers, and the need for appropriate licences when conducting street or house to house collections.

- b. Trustees have ultimate responsibility for everything the charity does.

The trustees are responsible for the vision, mission and management of the charity. While they may delegate in some circumstances, it is the trustees who are accountable if things go wrong.

- c. Trustees have to act reasonably and prudently in all matters relating to their charity.

The law imposes a duty of care on the trustees of charities, which is sometimes expressed as a duty "to exercise such care and skill as is reasonable in the circumstances". The duty will be greater if a trustee has, or claims to have, any special knowledge or experience, or if their business or profession means that they can reasonably be expected to have special knowledge or experience. If trustees are not experts in certain matters, they will be expected to take appropriate advice.

- d. Trustees must safeguard and protect the assets of the charity.

As well as obvious assets such as investments, cash and land, a charity's assets include its intellectual property, staff and reputation. So where a charity uses volunteers or paid fundraisers to fundraise, the trustees must make sure that the charity receives all the funds to which it is entitled. Trustees must also consider the impact of controversial fundraising campaigns on the charity's reputation in the long term.

- e. Trustees have a duty to act collectively.

Decisions and responsibilities are shared, so all trustees should take an active role. Trustees can act by majority decision, unless the constitution says otherwise, and some trustees, such as the Chair and the Treasurer, will have particular roles, but all the trustees are collectively responsible for decisions made by the trustees.

- f. Trustees must act in the best interests of their charity.

The interests of the charity are paramount. Trustees should not allow their personal interests or views to override this: they must exercise independent judgment.

- g. Trustees must avoid any conflict between their personal interests and those of the charity.

The main implication of this is that the scope for trustees to benefit personally from their charity is very limited. Trustees must deal appropriately with any conflicts between their own personal interests and those of the charity. They must also be alert to possible conflicts between duties they may owe to other organisations and the duties they have to the charity.

Further information can be found on the Charity Commission website in guidance document CC3: The Essential Trustee.

- h. Trustees in Scotland

Charity trustees are obliged to comply with the Charities and Trustee Investment (Scotland) Act 2005 and any regulations made under it or affecting charities. In particular, charity trustees must adhere to their charity's constitution and comply with their duties under Section 66 of the 2005 Act when exercising functions in their capacity as a charity trustee. Crucially, they must act in the interests of the charity, seek in good faith to ensure that the charity acts in a manner which is consistent with its purposes and act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person.

- i. Trustees in Northern Ireland.

The duties and responsibilities of trustees are contained in the Trustee Act (Northern Ireland) 1958 and more recently the Trustee Act (Northern Ireland) 2001 and for an outline of the specific requirements of Northern Ireland see "The Guide for Trustees" which was drawn up by the Department for Social Development. These are very similar to those set out in the England and Wales 'key requirements'.

L12.0 References in Documents

L12.1 Scope

This section applies to fundraising organisations, which are charities and concerns statements about charitable status on organisations' documents and materials.

L12.2 UK-Wide Requirements

Charities that are registered companies must adhere to the following requirements under the Companies (Trading Disclosures) Regulations 2008 in addition to the jurisdiction-specific charity law rules:

- a. The charity's business letters, order forms and website **MUST** state the following:
- The company's full name
 - The company number
 - The place of registration of the company (e.g. England and Wales or Scotland)
 - The address of the company's registered office (and if more than one address is mentioned, it must be made clear which is the registered office)
 - If the name of the charity does not include the word 'Limited', a statement must be made that the charity is a limited company
 - If the names of the charity's directors are included on the letterhead (which is not compulsory) then all directors must be named.
- b. The company's registered name **MUST** also be disclosed on all notices and other official publications; all cheques, bills of exchange, promissory notes and endorsements; all orders for money, goods or services; all invoices and other demands for payment, receipts and letters of credit; all applications for licences to carry on a trade or activity; and all other forms of its business correspondence and documentation.

L12.3 England and Wales Requirements

- a. All notices, advertisements and documents issued by or on behalf of any registered charity with an income over £10,000 that contain a request for money or other property for the benefit of the charity **MUST** include a statement that the organisation is a registered charity. It is best practice to include the organisation's registered charity number on such documents.
- b. If the charity is a registered company, then its company number, place of registration (e.g. England and Wales) and the address of the registered office of the charity **MUST** also be included if the fundraising material takes the form of a business letter or is published on the charity's website. As a registered company, the name of the charity **MUST** also be disclosed on all fundraising materials that take any of the following forms:
- Business letters
 - Notices and other official publications
 - Bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the charity
 - Any documents relating to the sale or purchase of an interest in land purporting to be executed by the charity
 - Bills, invoices, receipts and letters of credit.
- c. If the charity is a registered company and its name does not include the word 'Limited', a statement that the charity is a limited company **MUST** also be included on all business correspondence.

- d. If the charity uses for fundraising, a trading subsidiary that is a company limited by shares having a share capital, as well as its company number, place of registration and registered office address, the amount of paid up share capital **MUST** also be disclosed if the fundraising material takes the form of a business letter or is published on its website.

L12.4 Scotland Requirements

The only organisations that can call themselves "charities" in Scotland are those that are registered with OSCR.

- a. Charities that are so registered **MUST** comply with the Charities References in Documents (Scotland) Regulations 2007 and make certain statements about their status in their documents.

Foreign charities may refer to themselves as charities established under the law of a country or territory other than Scotland without being registered, but only if they satisfy the criteria in section 14 of the 2005 Act.

- b. Under the Charities References in Documents (Scotland) Regulations 2007, charities entered on the Scottish Charity Register **MUST** specify the following in their documents:
- The charity's full name
 - Any other commonly used name
 - Its Scottish Charity Number
 - If its name does not include 'charity' or 'charitable' it must state that it is a charity.
- c. It **MUST** use the term 'charity', 'charitable body', 'registered charity', or 'charity registered in Scotland'. The terms 'Scottish charity' and 'registered Scottish charity' are reserved for charities established in Scotland or managed/controlled wholly or mainly there.

- d. This information **MUST** be stated in all business letters; e-mails; advertisements; notices; official publications; any document soliciting money/other property for the charity; promissory notes; endorsements; orders for money or goods; bills rendered; invoices; receipts; letters of credit; statutory accounts; educational or campaign documentation; conveyances which create, transfer, vary or extinguish an interest in land; contractual documentation; bills of exchange (except cheques) and the home page of the charity's website.
- e. The rules apply to documents which are issued or signed by others on a charity's behalf as well as by the charity itself. All charities registered in Scotland **MUST** comply, regardless of size or income, although new charities are given an initial six month 'grace' period.
- f. In addition to the UK regulations, Scottish charitable companies **MUST** comply with Section 112(6) of the Companies Act 1989. If the company's name does not include 'charity' or 'charitable', it must disclose its charitable status on all business letters; all notices and other official publications; all bills of exchange; promissory notes; endorsements; cheques; orders for money or goods purporting to be signed by or on its behalf; all conveyances purporting to be executed by it; all bills of parcels; invoices; receipts; and all letters of credit. Unlike the charity law rules, this also applies to cheques. Any person acting on behalf of a charitable company who issues a cheque without this statement commits an offence and will be personally liable for the sum due on the cheque if it is not honoured by the company.

L12.5 Northern Ireland Requirements

- The Charities Act (Northern Ireland) 2008 will require all organisations which operate under one of the recognised charitable purposes, to register with the Charity Commission for Northern Ireland

- Once it has satisfied the 'Public Benefit Test' and also falls under a recognised charitable purpose, that organisation will be supplied with a Northern Ireland Charity Registration (NIC) Number and placed on a public register of charities
- In contrast to England and Wales legislation, there appears to be no threshold for turnover when registering a charity. It means that all organisations large and small will have to register eventually
- When a charity is preparing to register, it must first submit their constitution so the Charity Commission for Northern Ireland can examine whether or not it satisfies the public benefit test and also that it comes under one of the charitable purposes laid out in the Charities Act (Northern Ireland) 2008.

L13.0 Raffles and Lotteries

L13.1 Scope

- This section applies to all types of fundraising organisations
- There are two legal jurisdictions for Raffles and Lotteries in the UK:
 - England, Wales and Scotland⁷
 - Northern Ireland⁸
- a. Organisations **MUST** observe the legal requirements of the relevant jurisdiction

L13.2 Legal References for this Section

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

⁷ Section L13.3-L13.15

⁸ Section L13.16

L13.3 Definitions and Key Requirements

The terms 'raffles' and 'lotteries' are interchangeably used, but cover the same activity. The Act defines a lottery as an arrangement where individuals pay for an opportunity to win a prize that is selected entirely by chance (or, where the selection process involves more than one stage, the first stage relies wholly on chance). This section also looks at prize competitions and draws.

- a. Organisations **MUST** follow certain criteria to ensure they are not running an illegal raffle.
- b. Organisations **MUST** obtain a lottery operating licence to run a raffle and follow criteria as laid down by the relevant licensing authority unless the raffle is exempt from the requirement to obtain a licence.
- c. To run an exempt raffle, organisations **MUST** meet the criteria set out in the Act.

L13.3.1 Exempt Lotteries

The following types of lottery do not require a lottery operating licence from the Gambling Commission.

L13.3.2 Incidental, Non-Commercial Lotteries.

- a. To fall within the exemption:
 - The lottery **MUST** be incidental to a non-commercial event, where none of the sums raised is to be used for private gain
 - Tickets **MUST** only be sold during the event, on the premises where the event is held
 - The draw **MUST** take place during the event
 - The draw **MUST** not rollover
 - Deductions from the profits going to good causes **MUST NOT** exceed £100 in costs and £500 in prizes.

For example, a raffle at a charity ball is likely to come within this exemption.

L13.3.3 Private Lotteries

- a. Residents' lotteries, customer lotteries and work lotteries are often run as sweepstakes, which only people who live in, shop or work on the relevant premises can enter. These can rarely be used for fundraising, as all money collected **MUST** go to the winner.
- b. An organisation (except those established for gambling) can promote a private society lottery to raise funds for its purposes, but the lottery **MUST** only be promoted on the organisation's premises and tickets **MUST** be sold only to the organisation's members and those who are on its premises. These tend to be appropriate for private members clubs.
- c. The promoter **MUST** be a member of the organisation and act under its written authorisation.
- d. Tickets for private society lotteries **MUST**:
 - Give the name and address of each of the lottery's promoters
 - Give the ticket price
 - Say who is allowed to buy tickets
 - All be sold at the same price with no offers such as 3 tickets for the price of two
 - Be paid for before the buyer can be entered into the draw.
- e. The above conditions mean that other than in rare circumstances, cloakroom tickets, **MUST NOT** be used.
- f. Rollovers **MUST NOT** be used.
- g. Rights attached to private society lottery tickets are non-transferable.

L13.3.4 Society Lotteries

- a. Society lotteries **MUST** only be promoted for the benefit of:
- Charities
 - Organisations established for the purpose of enabling participation in, or supporting, sport, athletics or a cultural activity
 - Other organisations conducted for non-commercial purpose and not for private gain.

There are two types of society lottery:

- Small society lotteries, where the value of tickets in any one lottery is not more than £20,000 and do not exceed £250,000 in any year
- Large society lotteries: where the above limits are exceeded. If a society runs a large society lottery, then every lottery it promotes in the following three years will also be a large society lottery.

Many of the requirements are the same for both small and large society lotteries, and this section therefore uses the generic term “society lottery”. Where there are differences, the Code refers to small society lotteries or large society lotteries, as appropriate.

L13.4 Licensing and Permissions

L13.4.1 Small Society Lotteries

- a. The society **MUST** register with the local authority of the area in which it is based before it can run any small society lotteries.

L13.4.2 Large Society Lotteries

- a. A large society lottery **MUST** be run under a licence from the Gambling Commission.

There are two types of licence:

- An operating licence, which authorises an individual or organisation to promote lotteries
- A personal management licence, which authorises an individual to perform specific management or operational functions in connection with the promotion of lotteries under an operating licence.

A personal management licence is required where an organisation has an operating licence and there are more than three people with primary responsibilities for the management, finances and/or promotion of the lottery.

- b. Operators of lotteries where no personal management licence is required **MUST** appoint a “responsible person”, who **MUST** complete a personal declaration form and a Criminal Records Bureau disclosure form (in England and Wales), Disclosure Scotland form (if in Scotland) or Access NI form (if in Northern Ireland).
- c. Every society that proposes running a large society lottery **MUST** possess an operating licence to cover remote lotteries (lotteries where tickets are obtained electronically, i.e. internet, telephone, television or radio) and/or non-remote lotteries (where tickets are purchase in person).

L13.5 Role of the Promoter

- a. The designated individual promoter **OUGHT** to be authorised in writing by the governing body of the society to act as such.
- b. The promoter of a lottery is personally responsible in law for the legality and conduct of the lottery and **OUGHT** to ensure that those distributing and selling tickets are aware of the regulations which apply, even when distribution is sub-contracted.

L13.6 Tickets

- a. The customer **MUST** receive a document (this may be a ticket, a scratch-card or an electronic document that they can keep or print off).
- b. This document **MUST** contain the following details:
 - The name of the society on whose behalf the lottery is being promoted
 - The name and address of the person that the society has authorised to promote the lottery (this will be the external lottery manager, if one is used)
 - The date of the draw.
- c. Tickets for large society lotteries **MUST** also say that the lottery is licensed by the Gambling Commission and give details of the Gambling Commission's website.
- d. Although there is no restriction on ticket price, the price of each ticket **MUST** be the same and be shown on the ticket (or other document) and there **MUST NOT** be any discounts (e.g. five sold for the price of four).
- e. The price **MUST** be paid before the customer becomes eligible to win a prize.
- f. An organisation **MUST NOT** ask customers to pay more than the price of a ticket to qualify for entry into the draw.
- g. Tickets **MUST NOT** be sold to individuals under the age of 16. This age limit does not apply to incidental, commercial and private lotteries.
- h. Tickets **MUST NOT** be sold on the street, though they can be sold in kiosks.
- i. Door to door sales are permitted, but societies **MUST** comply with door to door sales law.
- j. Customers **MUST** have access, in writing, to the contractual terms of the lottery.

L13.7 Prizes

- a. In small society lotteries, the value of the top prize for each lottery **MUST NOT** be more than £25,000.
- b. In large society lotteries, a person buying a ticket **MUST NOT** be able to win more than £25,000 by virtue of that ticket, or 10% of the lottery proceeds, if greater.
- c. Rollover lotteries are allowed but the lottery **MUST NOT** breach relevant maximum prize allowances.
- d. Lotteries **MUST NOT** be linked to other lotteries or competitions where the maximum statutory prize in a lottery could be exceeded (e.g. so that buying one ticket automatically enters the customer into a second lottery).

L13.8 Proceeds

- a. For small society lotteries, ticket sales in a single lottery **MUST NOT** exceed £20,000 and the total value of tickets sold in separate lotteries in a calendar year **MUST NOT** exceed £250,000.
- b. For large society lotteries, the total value of tickets sold of each lottery **MUST** be no more than £4m, and the total value of tickets sales from all non-exempt lotteries in a year **MUST NOT** exceed £10m.
- c. In both cases, at least 20% of lottery proceeds **MUST** go to a purpose of the society.

L13.9 The Draw

- a. The draw **OUGHT** to be witnessed and documented.
- b. All counterfoils of purchased tickets **OUGHT** to be entered in the draw.
- c. To transfer late entries to the next draw, it **OUGHT** to be clear at the point of sale that this will be done.

d. If, for any reason, the draw date needs to be deferred from that stated on the ticket, all reasonable steps **OUGHT** to be taken to ensure that participants are made aware of the change and it **OUGHT** to be discussed with the relevant licensing authority.

L13.10 Post-Draw Procedure

- a. All completed counterfoils and remittances **OUGHT** to be returned to the promoter for audit purposes.
- b. Any prize donated back to a society by the legal owner of a winning ticket **OUGHT** to be shown in the lottery's accounting records as a donation.
- c. Details of winners **OUGHT NOT** to be publicly published without his/her explicit consent.
- d. All winners **OUGHT** to be contacted within seven days of the draw.
- e. All reasonable efforts **OUGHT** to be made to award prizes to the holders of winning tickets.

L13.11 Record-Keeping and Communication with the Licensing Authority

L13.11.1 General Requirements

- a. All records **MUST** be kept for at least three years for each lottery.

L13.11.2 Small Society Lotteries

- a. Within three months of each draw, the society **MUST** send a return to the local authority, signed by two people authorised in writing by the Society.

The information required for the return includes:

- The date on which tickets were put on sale
- The date of the draw
- Total proceeds of the lottery
- Amounts deducted in providing prizes (including rollover prizes)

- Amount deducted for expenses
- Amount applied for the purposes of the society (at least 20% of the proceeds)
- Whether any expenses incurred were paid from a source other than the proceeds of ticket sales and, if so, what that source was.

L13.11.2 Large Society Lotteries

- a. The requirements are contained in the licences issued by the Gambling Commission and organisations **MUST** fulfil these obligations, which will include:
 - To keep accurate records of each lottery they run, showing
 - The total proceeds of the lottery
 - The percentage of proceeds used for prizes
 - The amount of lottery proceeds taken up by expenses
 - The total number of sold and unsold tickets
 - To send the Gambling Commission a description of and/or a copy of the rules of, the lottery, at least 28 days before lottery tickets go on sale
 - Within three months of the draw (or, in the case of a scratch card lottery, within three months of the tickets ceasing to be available for sale), to send a statement to the Gambling Commission detailing the proceeds of the lottery and how the proceeds were distributed between prizes, expenses and the society's purposes. This statement **MUST** be verified by the society's personal management licence holder or, where the society is exempt from needing such a licence, by the "responsible person"
 - At the end of every year (or quarter, depending on the terms of the licence), to send a return to the Gambling Commission giving whatever information the Commission requires

- To keep accounting records of each lottery for at least three years following the draw.
- b. Societies **MUST** also contact the Gambling Commission if they suspect that someone is breaking gambling law or in other specific circumstances set out in the Gambling Commission's Licence conditions and codes of practice available.
- c. Licence holders **MUST** comply with the Gambling Commission's codes of practice referred to above.

L13.12 Running a Lottery Through a Trading Subsidiary

- a. Organisations can run a lottery through a trading subsidiary but they **MUST** still apply for a licence from the relevant licencing Authority. The Gambling Commission will grant permission as long as they meet certain conditions.

L13.13 Using an External Lottery Manager

External lottery managers are individuals or organisations who have been licensed by the Gambling Commission to promote lotteries on behalf of other societies.

- a. Societies using external lottery managers **MUST** still obtain an operating licence and unless they are exempt, may need a personal management licence.

L13.14 Considerations Other than the Gambling Act

- a. A society that uses a premium phone line to allow people to enter its lotteries **OUGHT** to comply with the code of practice published by Phone Pay Plus, the independent regulator of premium rate services in the UK, which has a number of sections of its code are relevant to lotteries.
- b. Societies promoting lotteries **OUGHT** to comply with section 8 of the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (The CAP Code).

L13.15 Prize Competitions and Free Draws

Prize competitions and free prize draws are free from statutory control under the Gambling Act.

- a. To be a prize competition, the arrangement **MUST** require the participant to exercise a level of knowledge or judgement or to display an element of skill that will limit the number of applicants.
- b. To be a free draw, the arrangement **MUST** have a 'free' method of entry, which **MUST** also be convenient, and accessible and the participant **MUST** have the same chance as if entering by any paid route.

L13.16 Raffles in Northern Ireland

- a. Lotteries **MUST** only be conducted in Northern Ireland in compliance with the Betting, Gaming and Lotteries (NI) Order 1985, as amended by the Betting and Lotteries (NI) Order 1994 and as supplemented by the Lotteries Regulations (NI) 1994.

L13.16.1 Small Lotteries at Exempt Entertainments

- a. The lottery **MUST** take place during an entertainment event.
- b. Lotteries under this heading **MUST** meet the following criteria:
 - The person organising the event **MUST** inform the police, at least seven days before the event itself, that it is to take place
 - The lottery **MUST NOT** be the only, or the only substantial, inducement for the public to attend the entertainment event where the lottery is taking place
 - Tickets **MUST** only be sold on the premises where the event is taking place
 - The winners **MUST** be announced during the event

- All proceeds of the event (after deducting expenses) **MUST** be devoted to purposes other than private gain
- The organiser of the event **MUST** tell participants in the lottery how the proceeds are going to be applied
- The organiser of the event **MUST** keep records and accounts of the entertainment, including a record of how the proceeds of the entertainment are to be applied.

L13.16.2 Private Lotteries

A private lottery is one promoted by and for members of one society that may sell tickets to non-members on the society's premises.

- a. A private lottery in Northern Ireland **MUST NOT** realise more than £1,000 on the sale of tickets.
- b. All proceeds, after printing and stationery expenses, **MUST** be devoted to prizes or the purposes of the society, or both.
- c. Each ticket **MUST** include a statement that no prize won will be paid or delivered to anyone other than the person to whom the winning ticket or chance was sold.
- d. No ticket or chance may be issued except by way of sale and that the full price **MUST** be paid for it when it is issued. This means that no ticket or chance may be sold at a discount, for example 5 for the price of 4.
- e. Tickets sold in the lottery **OUGHT NOT** to be sent through the post.
- f. The total amount of expenses (exclusive of prizes) deducted from the proceeds **MUST NOT** exceed whichever is the less of the expenses actually incurred or 10 per cent of the proceeds.
- g. A society wishing to operate a private lottery **MUST** also adhere to the rules relating to advertisement of the lottery.
- h. Societies **MUST NOT** advertise the lottery by any other means than a notice on their premises.

L13.16.3 Society Lotteries

A society lottery is one run by a non-commercial society, but which is neither a small lottery nor a private lottery and tickets are sold to the general public. A society is non-commercial if it is established and conducted for:

- Charitable purposes
 - The purpose of enabling participation in, or support of, athletic sports, games or cultural activities
 - Any other non-commercial purpose other than that of private gain.
- a. A society that wants to promote a society lottery **MUST** obtain a licence from the District Council in which it is based by sending an application form together with a copy of their approved lottery scheme and the relevant application fee; it **MUST** also lodge a copy of its licence application with the local police headquarters.
 - b. To maintain its registration a society **MUST** send a renewal fee on 1st January of each year together with a copy of its updated lottery scheme, if different to the one submitted in the previous year, to the District Council.
 - c. A society lottery in Northern Ireland **MUST** be promoted in Northern Ireland by a society member who has been duly authorised in writing.
 - d. If lottery managers/consultants are used, a lottery certificate **MUST** first be obtained from the magistrate's court.
 - e. Tickets **MUST** specify:
 - The name of the society
 - The name and address of the promoter
 - The name and address of the District Council where the lottery is registered
 - The date of the lottery.

- f. Tickets **MUST NOT** be sold:
- In the street
 - To or by any person under 16 years of age
 - At a bookmaker's office
 - For more than £1 each
 - Door to door by people who visit people's homes as part of their employment
 - As a group of tickets in a set of lotteries where the winner wins a prize in each lottery
 - By means of machine.
- g. The only means of participating in the lottery is by way of the purchase of a ticket and the ticket **MUST** be paid for in full before the purchaser can participate in the draw
- h. Ticket money cannot be returned and prices **MUST** be as stated on the ticket.
- i. The price of each ticket sold **MUST** be the same and tickets **MUST NOT** be sold as, for example, 5 for the price of 4.
- j. If a society promotes two or more lotteries with the same date, the tickets sold in each lottery **MUST** bear a serial number to identify which of the lotteries they relate to.
- k. Winning tickets **MUST NOT** be identifiable in advance and winning **MUST NOT** depend on the purchase of more than one ticket, unless the purchase price of the total number of tickets is no more than £1.
- l. The amount of lottery proceeds which may be deducted to meet expenses (exclusive of prizes) **MUST NOT** exceed whichever is the lesser of:
- The expenses actually incurred
 - Where the proceeds are £10,000 or less, 20% of the proceeds
 - Where the proceeds exceed £10,000, 15% of the proceeds.
- m. The total value of tickets sold in any one lottery **MUST NOT** exceed £80,000 and the total sold by the society for all the lotteries promoted in any 12 month period **MUST NOT** exceed £1 million.
- n. No prize may be worth more than £25,000 or 10% of the proceeds (whichever is the greater) and the total spent on prizes **MUST NOT** be more than 50% of the proceeds.
- o. All proceeds, after lawful deductions, **MUST** be applied for the purposes of the society.
- p. When the lottery has concluded the promoter **MUST**, within three months of the date of the lottery, send the following information to the District Council:
- A completed return form
 - A copy of a ticket.
- q. Societies **MUST** keep copies of all returns, supporting bills, receipts and accounts for at least 18 months after the date of the lottery and may be asked to supply copies of the above information to the District Council or Police Service of Northern Ireland.

L14.0 Data Protection

L14.1 Scope

- This section applies to all types of fundraising organisation.

L14.2 Introduction

Data Protection is an important issue to all fundraisers and impacts on how data is collected, what is done with the collected data and the subsequent relationship with the data subject.

This Code provides a summary of a complex and changing area of law and should not be used to replace professional legal advice.

The Information Commissioner's Office (ICO) provides further information on data protection issues. Their helpline number is 01625 545745.

L14.3 Definitions

Act	Data Protection Act 1998
Data	<p>Information which:</p> <ul style="list-style-type: none"> • Is being processed, or is recorded with the intention of being processed, by means of equipment operating automatically in response to instructions given for that purpose, and • As part of a relevant filing system or with the intention that it should form part of a “relevant filing system” or • If it does not fall within the above, though forms part of an “accessible record”.
Data Controller	A person who alone or jointly determines the purposes for which and the manner in which personal data is, or is to be, used.
Data Processor	A person, other than an employee of the Data Controller who processes data on behalf of the data controller.
Data Subject	An individual who is the subject of personal data.
Consent	<p>The consent of the data subject MUST be absolutely clear. In appropriate cases it should cover the specific detail of the processing, the particular type of data to be processed, the purposes of the processing and any special aspects of the processing that may affect the individual. Consent must be freely given, specific, and informed, giving the individual enough detail to make a decision about how their personal data will be used.</p> <p>Where explicit consent is required to process sensitive personal data, an individual must actively agree - either orally or in writing - to their personal data being processed. Consent based on an individual's inaction is not sufficient. Individuals should also be able to withdraw their consent.</p> <p>It is important to ensure that consent is not just a “tick box exercise” and that data subjects are fully aware of what they are consenting to.</p>
Consent	Data relating to a living individual who can be identified from the data or from the data and any other information in the possession of or likely to come into the possession of the data controller and includes any expression of opinion about them.

<p>Processing</p>	<p>Obtaining, recording or holding data or carrying out any operation on the data including but not limited to:</p> <ul style="list-style-type: none"> • Organisation, adaptation or alteration of the information or data • A retrieval, consultation or use of the information or data • Disclosure of the information or data by transmission, dissemination or otherwise making available • An alignment, combination blocking erasure or destruction of the information or data.
<p>Regulations</p>	<p>Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended and the Information Commissioner’s Privacy and Electronic Communications Guidance.</p>
<p>Relevant Filing System</p>	<p>Any set of information relating to individuals to the extent that the set is structured in such a way that, although the information is not processed by means of equipment operating automatically, specific information relating to a particular individual is readily accessible.</p> <p>A manual filing system will only qualify if it is of sufficient sophistication to provide the same or similar ready accessibility as a computerised filing system. This would ordinarily mean the file is arranged in a way specific to individuals with sub-categories for information relating to the individual. A file based chronologically ordered without indexing or sub-division is unlikely to qualify. Further guidance as to what constitutes a relevant filing system can be found on the ICO website.</p>

L14.4 Notification

a. Personal data **MUST NOT** be processed unless the data controller has notified (i.e. registered with) the Information Commissioner.

b. The duty to notify is on all data controllers, unless an exemption can be relied on. Notable exemptions include:

- Manual data which falls outside the definition of a “relevant filing system”
- Processing for the purpose of staff administration in relation to staff of the data controller

- Advertising and marketing of public relations – this is processing for purposes of advertising and marketing of the data controller’s business, activity, goods or services and promoting public relations in connection with that business or activity, or those goods or services. To be eligible, the personal data being processed **MUST** be limited to the name, address and other identifiers of information necessary for the processing

- Processing by non profit making organisations where the processing is for the purposes of establishing or obtaining membership or support for the organisation, or providing and administering activity for individuals who are either members of the organisation, or have regular contact with it.
- c. Data controllers **MUST NOT** rely on exemptions that do not apply to them.

In all cases exemptions are only applicable to the extent that is necessary for the processing of data.

The duty to notify is on the data controller, who is the person who determines the purposes for which personal data is to be used. The duty does not fall on data processors who are processing data on behalf of the data controller, or on recipients of personal data such as an employee of a fundraising business. If you are required to notify and fail to do so you will be committing a criminal offence.

L14.5 Processing

L14.5.1 Compliance with the Act

- a. To comply with the Act, processing **MUST** observe:
- Data protection principles
 - Data subjects' rights
 - Be consistent with the data controller's notification.

L14.5.2 The Data Protection Principles

- a. There are eight data protection principles which **MUST** be complied with when processing personal data.
- i. Personal data shall be processed fairly and lawfully.
 - ii. Personal data can only be used for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with those purposes.

- iii. Personal data shall be adequate, relevant and not excessive.
- iv. Personal data shall be accurate and kept up to date.
- v. Personal data shall not be kept for longer than necessary.
- vi. Personal data shall be processed in accordance with the rights of data subjects.
- vii. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data.
- viii. Personal data shall not be transferred to a country or territory outside the European Economic Area (EEA) unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects except in a limited number of circumstances, including (without limitation) where consent has been given to the transfer, for reasons in the public interest, where data is available on a public register or with the approval of the Information Commissioner.

L14.5.3 Fair and Lawful Processing: Interpreting Data Protection Principle 1

- a. Data **MUST** be processed "fairly". The Act sets out general requirements that **MUST** be adhered to in order for data to be processed fairly:
- The data subject has neither been deceived nor misled regarding the purposes for which their data is to be processed
 - As far as practicable the data subject **MUST** be provided with the following information:
 - The identity of the data controller
 - The purpose of processing
 - Any other information relevant to the fairness of processing.

b. In addition, for non-sensitive personal data at least one of the conditions listed in Schedule 2 of the Act **MUST** be satisfied.

These include but are not limited to the following:

- The individual has consented to the processing
- Processing is necessary for the performance of an agreement with the individual
- Processing is required under a legal obligation (other than an agreement)
- Processing is necessary to protect the vital interests of the individual (reliance on this condition may only be claimed where the processing is necessary for matters of life and death)
- Processing is necessary for the administration of justice
- Processing is necessary to carry out public functions
- Processing is necessary to pursue the legitimate interests of the data controller or third parties (unless it could unjustifiably prejudice the interests of the individual).

c. Thirdly, processing **MUST** be lawful i.e. not contrary to any law or enactment or done without lawful justification or excuse.

L14.6 Processing Sensitive Personal Data

L14.6.1 Key Issue

There are more onerous requirements in the Act for those processing “sensitive personal data”, which includes information about a person’s ethnicity, religion, sexuality, and health condition.

L14.6.2 When Sensitive Personal Data can be Processed

a. To process sensitive personal data at least one of the conditions relating to fair processing set out in Schedule 2 to the Act **MUST** be met and in addition at least one condition from Schedule 3 to the Act **MUST** be satisfied. These include the following conditions:

- The explicit consent of the data subject
- Where there is a legal obligation on the data processor to do so in relation to employment
- Where it is necessary to protect the vital interests of the data subject and the data controller cannot reasonably obtain consent and consent cannot otherwise be reasonably obtained
- Where a not for profit organisation existing for political, philosophical, religious or trade union purposes processes in the course of its legitimate activities (note: it is doubtful whether many charities fall within this)
- Where information has been made public by the deliberate steps of the data subject
- Where processing forms a necessary part of legal proceedings, is necessary for obtaining legal advice, or for establishing, exercising or defending legal rights;
- Where the processing is necessary for the administration of justice or the functions of any House of Parliament
- Where processing is necessary for medical purposes

- Where processing is necessary for monitoring equal opportunities
- In the course of legitimate political activities, or research activities that are in the substantial public interest or where the personal data **MUST** be processed in circumstances specified by the Lord Chancellor
- Where information has been made public by the deliberate steps of the data subjects.

L14.7 Consent

Consent is one of the most frequently relied upon conditions for fair processing and appears both in relation to processing personal data and sensitive personal data (which requires explicit consent). There is no definition of “consent” contained within the Data Protection Act. However the following principles should be followed:

- If sensitive data is being processed, explicit consent **MUST** be obtained.
- Organisations **OUGHT** to give the collection of data careful consideration.
- Donors/contacts **MUST NOT** be misled or deceived as to how their information will be used and how the organisation may contact them in future.
- If a donor or contact informs an organisation that they do not wish to be subject to direct marketing, then the organisation **MUST** comply with that request.
- If the organisation is part of a group and requires the right to pass personal data to trading subsidiaries or other entities within the group, each entity within the group is considered a separate data controller (unless they are acting as a data processor on behalf of the organisation).

- The organisation **MUST** ensure that data subjects are informed that their information may be shared with the trading subsidiary if such sharing is likely to take place at the point of data capture.
 - When researching individuals, it is unlikely you will need consent to processing sensitive information relating to them if using information in the public domain which the individuals have made public themselves.

L14.8 Privacy and Electronic Communications (EC Directive) Regulations 2003, as Amended

Guidance on the Privacy and Electronic Communications (EC Directive) Regulations 2003 (“the Regulations”) has been produced by the ICO.

L14.8.1 Scope and Definitions

The Regulations cover registrations with the Telephone Preference Service and the sending of unsolicited direct marketing material using the telephone, fax or electronic communication methods including e-mail and text/video/picture messaging.

“Direct marketing” refers to 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.

L14.8.2 Opt-In and Opt-Out

When collecting a person’s personal data, it is important to consider whether or not you would like to contact them again in the future and by what means. It is necessary to obtain the consent of an individual if they are to receive unsolicited direct marketing by electronic means in the future.

Organisations seeking consent for third parties to contact the individual ought to be clear about the data that will be shared and how it will be used. If an organisation is seeking consent on behalf of the third party for the third party to send marketing to the individual, it should make this clear and seek legal advice where necessary about an appropriate form of words.

L14.8.3 Opt-In

For direct marketing by email or SMS to individuals, or by fax to individuals or which uses an automated calling system, it is necessary to get the data subject to consent to such marketing.

For example:

If you would like to receive further information from us by email, please tick this box

L14.8.4 Opt-Out

For direct marketing by post, fax (between two companies), and telephone, consent is not needed, but organisations **OUGHT** to include an opt-out statement. For example:

If you do not want to receive further information please tick this box

Alternatively, where information is being collected online, it is possible to have a statement with the customer being required to opt-out by un-ticking the box:

I would like to receive further information from XYZ Co

L14.8.5 Soft Opt-In

If consent has not been obtained, the only way in which direct marketing may be sent by electronic email or SMS to individuals, under an automated calling system, is if the so called “soft opt-in” provisions are met, that is:

The recipient’s e-mail address (or a mobile number in relation to texts) was collected in the course of a sale or negotiations for a sale (where an individual has actively expressed interest in an organisation’s products or services and has not opted out of further contact); the sender only sends promotional material relating to their similar products and services; and when the address was collected, the recipient was given the opportunity to opt-out, which wasn’t taken.

- a. The opportunity to opt-out **MUST** be given with every subsequent message.

A donation from an individual would not constitute a sale and so the ‘soft opt-in’ would not be relevant for ordinary fundraising. The ‘soft opt-in’ would be relevant if an organisation’s commercial goods and services were being promoted.

L14.9 Telephone

Specific guidance around data protection matters relating to telephone fundraising should be viewed in Section 8.0.

L14.10 Electronic Mail

The Regulations relating to electronic mail refer to e-mail and text/picture/video marketing messages. The Information Commissioner also considers voicemail and answerphone messages to be included.

- a. Organisations **MUST NOT** conceal their identity when sending marketing messages by electronic mail.
- b. Organisations **MUST** provide a valid address for opt-out requests.

- c. Organisations **MUST NOT** send unsolicited marketing material by electronic means to individual subscribers unless the recipient has previously consented to receiving such material.

An individual subscriber is a living individual and includes an unincorporated body of such individuals. It therefore means a residential subscriber, sole trader or unincorporated partnership in England, Wales, Scotland and N Ireland.

L14.11 Keeping Data

- a. The fifth data protection principle requires that personal data **MUST NOT** be kept longer than is necessary.
- b. This means that data that is being processed for a particular purpose **MUST NOT** be kept unless it is still required for that purpose.
- c. Data controllers **OUGHT** to maintain a 'suppression list' (containing details of individuals who have asked not to receive direct marketing material) and always check this against lists for direct marketing.

Before deleting any information it is important to consider whether there are any other legal requirements that mean certain elements of the data need to be retained.

L14.12 Exchanging Lists

- a. If personal data is captured from any source other than from the data subject, the data controller **MUST** ensure, so far as practicable, that the data subject has been given information regarding the identity of the data controller, the purpose of the processing and any other relevant information unless one of a limited number of exemptions set out in the Act applies.

There is a possible exemption from this obligation to provide data subjects with information about who is processing their data and why, when the data has been obtained from a third party, if it would entail "disproportionate effort" or if it is "not practicable" for the organisation for any of these reasons:

- The cost to the data controller of providing this information
- The time (and therefore cost) it would take to provide the information
- The ease with which that information could be provided, set against the degree of harm or concern that non-provision of the data might have.

Any doubts around this complex area ought to be raised and clarified with the ICO.

L14.13 Individuals' Data Rights

- a. If requested in writing, data subjects **MUST** be given:
 - Information about their personal data that is being processed by the data controller
 - A description of that data, the purpose for which it is held and the nature of those to whom it might be disclosed
 - A copy of the data (in supplying any data the data controller **MUST** ensure that personal data relating to another individual is not disclosed unless that individual has consented to such disclosure, or it is otherwise reasonable to do so or the data controller has edited the data so as to remove personal data relating to other individuals
 - Any available information on the source of the data.
- b. This information **MUST** be supplied promptly and in any event, no longer than 40 days after receiving a request, subject to the payment of a fee set by the Home Secretary (currently at £10).

- c. This obligation **MUST** be complied with by supplying the information in permanent form (e.g. a computer print out, letter or form), unless it can be shown that provision of data in a permanent form would involve the data controller in “disproportionate effort”.
- d. If this is the case, then the data controller **MUST** make other arrangements to provide access to the data.

Under Data Protection Principle 6, personal data must be processed in accordance with a data subject’s rights to:

- Require the data controller to stop processing or prevent processing where it can be shown, for specified reasons, that processing data is likely to cause substantial damage or distress to him or to another and that damage or distress is, or would be, unwarranted
- Require a data controller to stop or not to begin processing data for the purposes of direct marketing
- Object to decisions made automatically (without human involvement).


Listed exceptions to this can be obtained from the ICO, though it is unlikely these will apply to fundraising.

Your Comments & Notes

A series of horizontal dotted lines for writing, with a large, light red curved graphic element overlaid on the page.

Your Comments & Notes

A series of horizontal dotted lines for writing comments and notes.



Bates Wells & Braithwaite London LLP have verified that each “MUST” and “MUST NOT” reflects a legal requirement in respect of the law in England and Wales as at June 2012. Turcan Connell have verified that each “MUST” and “MUST NOT” reflects a legal requirement in respect of the law in Scotland as at June 2012. Edwards and Co. Solicitors have verified that each “MUST” and “MUST NOT” reflects a legal requirement in respect of the law in Northern Ireland as at June 2012.

The Code contains broad statements and general guidance about legal requirements but fundraising organisations and fundraisers should seek their own legal advice to ensure they comply with legal requirements relating to their fundraising activities. The Institute of Fundraising, Bates Wells & Braithwaite London LLP, Turcan Connell, and Edwards & Co Solicitors do not accept any liability in respect of any person relying on these Codes except to the extent that they have provided specific advice directly to that person concerning that person’s activities.

To access the online Code of Fundraising Practice and guidance supporting it go to:
www.institute-of-fundraising.org.uk

This printed version of the Code of Fundraising Practice is accurate on June 2012. All and any future updates of the Code will be made online.

(c) Institute of Fundraising, November 2012

Institute of Fundraising, Park Place, 12 Lawn Lane, London SW8 1UD

For more information or to give your feedback, please contact codes@institute-of-fundraising.org.uk

The Institute is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.



www.institute-of-fundraising.org.uk