

Annex B – new Code sections 5-7 (without comments)

5. Personal Information and Fundraising

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

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

Legal References in this Section:

- [Data Protection Act 1998](#)
- [Privacy and Electronic Communications \(EC Directive\) Regulations 2003 \(as amended\)](#)
- [Copyright, Designs & Patents Act 1988](#)
- [Companies Act 2006](#)
- [Charities Act 2011, 2006, 1992](#)
- [Charities and Trustee Investment \(Scotland\) Act 2005](#)

5.1 General

5.1.1 Data protection is an important issue for all fundraisers. Fundraising organisations **MUST*** comply with [all legal requirements relating to data protection](#). *These include:*

i) the current Data Protection Act 1998;

ii) the Privacy and Electronic Communications (EC Directive) Regulations 2003, including the requirements of the Telephone Preference Service. In some circumstances this is a legal requirement for charities, but in other circumstances it may not be. Please see [Legal Appendices guidance at L14.9 for further details](#)); and

*iii) **from 25th May 2018**, the General Data Protection Regulation (GDPR).*

5.1.2 In addition, organisations **MUST** keep up to date with and have regard to relevant [guidance from the Information Commissioner's Office](#). This includes *the ICO's [Direct Marketing Guidance](#), its [Fundraising and Regulatory Compliance Conference paper](#) and its [GDPR consent guidance](#).*

For further information on this topic, please read the Fundraising Regulator's guide on [Personal information, data and consent](#).

The following sections outline data protection considerations of particular relevance to Fundraising.

5.2 Database Practices and Processing Personal Information

Personal information / Personal data means information/data which relate to a living individual who can be identified –

(a) from that information/data, or

(b) from that information/data and other information/data which is in the possession of, or is likely to come into the possession of, the data controller.

Processing

ICO guidance states that: “The definition of processing is very wide and it is difficult to think of anything an organisation might do with data that will not be processing.”

Processing, in relation to information or data, means obtaining, recording or holding information or data or carrying out any operation or set of operations on the information or data, including –

(a) organisation, adaptation or alteration of the information or data (this includes activities such as entering data on a database, wealth screening, data matching and tele-appending)

(b) retrieval, consultation or use of the information or data (this includes buying data from a third party, storing or checking personal information on a database or using personal data to contact individuals for any reason)

(c) disclosure of the information or data (this includes sharing data with other organisations)

(d) alignment, combination, blocking, erasure or destruction of the information or data. (this includes activities such as suppressing or deleting a donor's details on a database)

5.2.1 Fundraising organisations that process personal information **MUST*** register with the Information Commissioner's Office (ICO) unless they are exempt.

Further information on who is required to register and the registration process can be found at <https://ico.org.uk/for-organisations/register/>

5.2.2 When processing personal data (including publically available personal data) for any purpose, organisations **MUST***:

- a) have legitimate grounds for collecting, using and retaining the personal data. (Further information on the grounds (or 'conditions') for processing can be found in Schedule 2 of the Data Protection Act and in the ICO's Guide to Data Protection).

- b) not use the personal data in ways that have unjustified adverse effects on the individuals concerned;
- c) give individuals clear and accessible information about how they will process their personal data, including who the organisation is; what they are going to do with the individual's personal information; and (where relevant) who it will be shared with. (*Further information on communicating privacy information to individuals can be found in the ICO's Privacy Notice Code of Practice*).
- d) only handle personal data in ways that the data subject would reasonably expect; and
- e) not do anything unlawful with personal data.

5.2.3 Organisations **MUST*** comply with any duties of confidentiality they have.

Storage and maintenance of data

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

5.2.5 Organisations **MUST** be able to show that all necessary steps have been taken to ensure that:

- a) databases are accurate and up-to-date
- b) individuals who have asked not to receive direct marketing material are suppressed; and
- c) the organisation ceases to contact deceased individuals where the organisation has been notified or where this information has been identified through use of a deceased suppression service.

5.2.6 Personal data **MUST*** only be kept as long as necessary to fulfil the purpose for which it was collected (*see **rule 5.2.2** for further information on what information must be provided to the individual regarding the purpose of processing*).

5.2.7 Organisations **MUST** 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 to ensure they are not contacted. (*see also **Section 5.7 – "Requests to Cease Direct Marketing"***)

5.2.8 Where an organisation holds an individual's personal data to fulfil a contract or because they have gained their consent, the data **MUST*** be provided to that individual if they request it. The data **MUST*** be provided free of charge and in a structured, commonly used format which is openly accessible to software (such as a CSV file).

5.3 Buying and sharing personal data

5.3.1 Organisations **MUST NOT*** share personal data with any other organisation unless they can evidence that they meet the data processing requirements in **Rule 5.2.2** above.

5.3.2 Where personal data is shared between organisations:

- within a federated structure (i.e where one controls the other or where both are under common control), or
- under a data processing arrangement (i.e where one organisation acts on behalf of another organisation under written contract, such as professional fundraisers, data cleansers, or printing houses)

the organisational structure / arrangement and the processing purpose **MUST*** be clear enough in the privacy information provided to the individual that the organisation can evidence that processing would fall within the individual's reasonable expectation.

5.3.3 Beyond the specific exceptions set out in rule 5.3.2, Organisations **MUST NOT** share the personal data of an individual with any other organisation for that organisation's marketing or fundraising purposes without the freely given, specific, informed and (**from May 2018**) unambiguous consent of that individual to the sharing of the personal data with that other organisation or other specified types of organisation.* *For further information on what constitutes "freely given", "specific", "informed" and "unambiguous" consent, please see the Fundraising Regulator's Guide "Personal Information and Fundraising".*

5.3.4 Even if the individual has consented to their personal data being shared, Organisations **MUST NOT** sell that data to any other organisation.

See **section 5.1-5.2** above (*Processing personal information*) for other considerations regarding sharing data.

5.4 Case Studies

5.4.1 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.

5.4.2 Even if not required by law, fundraising organisations **MUST** obtain permission for case studies, where practical.

5.4.3 If organisations change elements of case studies or use real examples to inspire a case study, this **MUST** be made clear and organisations **MUST** be able to prove that the case study is representative.

5.5 Direct Marketing

“Direct Marketing” is defined as “The communication (by whatever means)...of any advertising or marketing material...which is directed to particular individuals...” (Data Protection Act, 1998).

- The Information Commissioner’s Office states that fundraising activity, as well as the promotional and campaigning activity of charities, is covered by the definition of Direct Marketing (ICO Direct Marketing Guidance, 2016).
- In practice, all relevant electronic messages (for example calls, faxes, texts and emails), as well as most addressed mail are directed to someone, so they fall within this definition.
- The marketing must be directed to particular individuals. Some marketing is not directed to specific individuals (for example, unaddressed mail) and is therefore not covered by this definition.

Further information on what activities are covered by Direct Marketing can be found in the ICO’s *Direct Marketing Guidance* (2016) and the Fundraising Regulator’s guide *Personal Information and Fundraising* (2017).

5.5.1 Fundraising organisations **MUST** have a lawful basis for sending Direct Marketing communications to individuals.

The rules regarding “Consent” and “Legitimate Interest”, the two most common bases for sending Direct Marketing communications, are outlined below. More information on (the “Lawfulness for processing conditions”) can be found on the [ICO website](#).

Consent as a basis for Direct Marketing communications

5.5.2 **From 25 May 2018:** Where an organisation uses, or intends to use an individual’s consent as a legal basis for Direct Marketing communications, the organisation **MUST*** be able to evidence who consented, when they consented, how they consented, and what they were told.

5.5.3 **From 25 May 2018:** Where an individual’s consent is sought, the consent request **MUST***:

- a) use active opt-in methods, such as unticked opt-in boxes.
- b) give granular options to consent separately to different types of processing wherever appropriate.
- c) be separate from other terms and conditions and not be a precondition of signing up to a service (unless necessary for that service).
- d) name the organisation and any third parties who will be relying on the consent.
- e) emphasise the individual’s right to remove consent at any time and offer them easy ways to withdraw consent in subsequent communications.

5.5.4 **From 25 May 2018:** If consent has been obtained for Direct Marketing communications, organisations **MUST***:

- a) offer them easy ways to withdraw consent in subsequent communications.
- b) keep consent under review and refresh it if anything changes.

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

More information on establishing consent can be found in the ICO's Guidance on GDPR and consent and in the Fundraising Regulator's Guide "[Personal Information and Fundraising](#)".

Legitimate Interest as a basis for Direct Marketing communications

5.5.6 Where an organisation uses or intends to use the Legitimate Interest condition as a legal basis for Direct Marketing communications by phone or post, the organisation **MUST*** be able to evidence:

- a) that it is necessary to use this condition as a basis for communicating.
- b) that the communication is legal, fair and proportionate.
- c) that any interest which the organisation may have in contacting the individual is balanced against the individual's own interests and rights regarding how their personal data is used.

5.5.7 When sending Direct Marketing to individuals on grounds of a legitimate interest, organisations **MUST*** explain how their contact data was obtained, and what their legitimate interest is (ie why the charity thinks that the individual might be interested in its cause or its work).

5.5.8 When sending Direct Marketing to individuals on grounds of a legitimate interest, organisations **MUST** offer a clear and simple way for the individual to express his or her wish to not be contacted again.

5.6 Requests from individuals to access their personal data

5.6.1 Where an organisation holds an individual's personal data to fulfil a contract or because they have gained their consent, the data **MUST*** be provided to that individual on request. The data **MUST*** be provided free of charge and in a structured, commonly used format which is openly accessible to software (such as a CSV file).

5.7 Requests from individuals to cease or not begin Direct Marketing

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

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

More information on managing individual's contact preferences can be found in the Fundraising Regulator's Guide "Personal Information and Fundraising".

6. Content of Fundraising Communications

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Legal References in this Section:

- Malicious Communications Act 1988
- Communications Act 2003 (s.127)
- Copyright, Designs & Patents Act 1988
- Companies Act 2006
- Charities Act 2011, 2006, 1992
- Equality Act 2010

- Charitable Institutions (Fund-Raising) Regulations 1994
- Charities and Benevolent Fundraising (Scotland) Regulations 2009
- Charities and Trustee Investment (Scotland) Act 2005

- 6.1 Organisations **MUST** be able to show that all necessary steps have been taken to ensure that communications are suitable for those targeted.
- 6.2 Organisations **MUST NOT*** send a communication that is indecent or grossly offensive and that is intended to cause distress or anxiety.
- 6.3 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.
- 6.4 Organisations **MUST*** ensure literature includes all legally required information, for example, registered charity status or number, full company name and registered office if applicable.
- 6.5 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.
- 6.6 If organisations are fundraising in partnership with one or more organisations, organisations **MUST** state how monies will be allocated between the organisations.
- 6.7 Fundraising organisations **MUST** comply with the CAP (Committee of Advertising Practice) Code and BCAP (Broadcasting Committee of Advertising Practice) and ensure all advertisements are legal, decent, honest and truthful.
- 6.8 Fundraising communications **MUST NOT** mislead, or be clearly likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise.
- 6.9 Before distribution, fundraising organisations **MUST** ensure that there is evidence to prove all claims, whether direct or implied, are capable of objective substantiation.
- 6.10 Particular care **MUST** be taken to avoid causing offence on the grounds of race, age, religion, sex, sexual orientation or disability. This will vary according to the context, medium, audience, product and prevailing standards of decency.
- 6.11 Fundraising organisations **MUST** be able to justify the use of potentially shocking images, and give warnings of such material.
- 6.12 Organisations **MUST** be able to justify the frequency of contact, balancing the desire to communicate with not overwhelming/bombarding recipients.

- 6.13 Organisations **MUST** respect donor's requests around the frequency of contact, and make it easy to communicate these requests.
- 6.14 Fundraising materials **MUST NOT** pressurise potential donors but can use reasonable persuasion.

7. Mail

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Legal References in this Section:

- [Data Protection Act 1998](#)
- [Companies Act 2006](#)
- [Charities Act 2011, 2006, 1992](#)
- [Charities and Trustee Investment \(Scotland\) Act 2005](#)

This section should be read in combination with Section 5 ("Personal Information and Fundraising") and Section 6 ("Content of Fundraising Communications").

7.1 Preparation

7.1.1 In addition to complying with **section 5.7**, Organisations **MUST NOT** send Direct Marketing mailings to individuals registered on the Mailing Preference Service unless the person who registered their address has notified the organisation specifically that they consent to receiving Direct Marketing mailings from them.

7.2 Mail Enclosures

Enclosures can include incentives to encourage donations, inserts that demonstrate the work of the organisation or thank you gifts. Whether sent as standalone items or within other fundraising material, they are subject to the same considerations as other mailed fundraising content.

7.2.1 Fundraising organisations **MUST** be able to demonstrate that the purpose of an enclosure was to enhance the message and/or the emotional engagement in the cause and not to generate a donation primarily because of financial guilt or to cause embarrassment. (*See also **Rule 1.3.3 Rewards/ Incentives and Benefit Packages***).

7.2.2 Fundraising organisations **MUST** consider the safety of any enclosures.

7.2.3 Fundraising organisations **MUST NOT** use enclosures that might cause inconvenience in achieving delivery, unless the donor knows or has requested it.

7.3 Reciprocal Mailing

Reciprocal mailing describes a situation in which two organisations promote each other by post in order to gain a mutual benefit.

See section 5.2 (“Processing data and database practices”) and 5.3 (“Buying and Sharing Personal data”) for considerations related to Reciprocal M