

Annex C

Table of other changes to existing Code – Data Protection

The table below highlights areas of the Code relating to data not picked up in Annex A.

- Where we have identified rules as inaccurate or not compliant with current law, we have made additions (indicated in red) or highlighted these for deletion and indicated the reason in the right hand margin.
- Where rules are accurate, but wider data considerations also apply, we propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:

Section 5: Personal information and Fundraising includes further information on [Code requirements relating to data protection](#).

Change ref no.	Current Code reference and wording	Changes
1	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 law if publishing a case study that includes information that could identify a donor.	We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998: Section 5: Personal information and Fundraising includes further information on requirements relating to data protection .
2	2.2.2.1 Initial Considerations a) Organisations MUST store volunteers' personal contact information and this storage MUST* comply with the Data Protection Act 1998.	We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998: Section 5: Personal information and Fundraising includes further information on requirements relating to data protection .

3	<p>3.2.1 Age Limits and Permissions</p> <p>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</p> <p>b) Any information collected from anyone under 14 years of age MUST NOT be disclosed without consent from a parent or guardian.</p>	<p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p>Section 5: Personal information and Fundraising includes further information on <u>requirements relating to data protection</u>.</p>
4	<p>4.2 Introduction</p> <p>c) Organisations MUST require that any agency or third party that they work with complies with the requirements of the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 as set out in the Code, including the requirements of the Telephone Preference Service, regardless of the country or legal jurisdiction in which the agency is based or operating. <i>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.</i></p>	<p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p>Section 5: Personal information and Fundraising includes further information on <u>requirements relating to data protection</u>.</p>
5	<p>5.4 Use of Personal Data</p> <p>e) Organisation MUST NOT* send unsolicited marketing communications to consumers if explicit consent is required and has not been obtained</p>	<p>We propose to delete 5.4 e) as it is superseded by references included in the proposed Data and Consent revisions to Sections 5 and 6.</p>
6	<p>6.4 Chain Letters</p> <p>a) The promotion of chain letters MUST be discouraged.</p>	<p>We propose to delete this rule as the practice is outdated and likely to be incompatible with GDPR.</p>

<p>7</p>	<p>7.1 Introduction</p> <p>a) All list owners engaging in reciprocal mailing MUST subscribe to the Mailing Preference Service (MPS) as a protection to their supporters' rights to privacy.</p> <p>7.2 Initial Considerations</p> <p>a) Organisations MUST* observe the provisions of the Data Protection Act 1998, including those around permissions to pass on donors' data.</p> <p>b) To undertake reciprocal mailings, organisations MUST* be registered with the Information Commissioner's Office (ICO) for the following 3 purposes:</p> <p>advertising, marketing and public relations</p> <p>fundraising</p> <p>trading/sharing in personal information</p> <p>7.3 Processes/Agreement</p> <p>a) Organisations holding a manual index MUST* satisfy their reciprocal mailing partner about the standard and quality of their list.</p> <p>b) Organisations engaging in reciprocal mailing MUST* exchange written agreement of the terms and conditions of the mailings, which should include the list content, dates for use, levels of list cleanliness and content of the mailing.</p>	<p>We propose to delete this section and refer to the revised Section 5 rules on Data processing and data sharing as the most relevant consideration in relation to this practice.</p>
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	<p>7.4 Mailing</p> <p>a) Any variation in agreement which permits reciprocal mailings to be used more than once MUST contain full details of the agreement, including:</p> <p>details of which part of the list were exchanged on all similar reciprocal mailings with other fundraising organisations or other organisations within a mutually agreed period of time; and</p> <p>the type and number of supporters on the list – i.e. those paying by direct debit, cash, bankers order, covenant etc.</p> <p>b) All returned ‘non-deliverable’ items and information concerning changes to the supporter file MUST be passed back promptly to the list owner for file maintenance purposes.</p>	
<p>8</p>	<p>8.1 Introduction</p> <p>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.</p>	<p>We propose to delete this introductory section as it is misleading (some rules in this section apply universally to all telephone calls and not solely to Direct Marketing calls). Instead, we propose to clarify in specific rules where they apply to Direct Marketing calls only (see below).</p>
<p>9</p>	<p>8.2.2 Target Audience Exclusion</p> <p>a) The following categories of potential telephone recipients MUST* be excluded:</p>	<p>We propose to clarify that refers specifically to Direct Marketing calls as follows:</p> <p>a) The following categories of potential telephone recipients MUST* be excluded from marketing calls:</p>

	<ul style="list-style-type: none"> - all those who have registered with the Telephone Preference Service, unless they have notified the fundraising organisation they will consent to receiving calls from them (see 8.2.3) - any individual who, on a previous occasion, has registered an objection to the use of the telephone for soliciting gifts or support for that particular fundraising organisation; - and any person who has written to the fundraising organisation to ask it not to use their contact details for marketing purposes or has otherwise asked not to be called. <p>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.</p>	<p>We also propose to ensure that the Fundraising Preference Service and other requests are recognised through the addition of the following clause in “categories excluded”:</p> <ul style="list-style-type: none"> - Any individual who has requested for the fundraising organisation to cease or not begin Direct Marketing as outlined in Section 5.7. <p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p><i>Section 5: Personal information and Fundraising includes further information on <u>requirements relating to data protection.</u></i></p> <p>We propose to delete the following clauses for the sake of brevity as these are covered by the new rule proposed in Section 5.7:</p> <ul style="list-style-type: none"> - any individual who, on a previous occasion, has registered an objection to the use of the telephone for soliciting gifts or support for that particular fundraising organisation; - and any person who has written to the fundraising organisation to ask it not to use their contact details for marketing purposes or has otherwise asked not to be called.
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<p>10</p>	<p>8.2.3 The Telephone Preference Service</p> <p>The Telephone Preference Service (TPS) and Corporate Telephone Preference Service (CTPS) allows individuals or companies to register their telephone numbers to indicate that they do not wish to receive unsolicited sales and marketing telephone calls.</p> <p>a) Organisations MUST* always check telephone numbers against TPS/CTPS before making calls</p> <p>b) Organisations MUST NOT* make direct marketing calls to Telephone Preference Service (TPS)/Corporate TPS (CTPS)-registered numbers unless the person who registered the number has notified the organisation that they are happy to receive calls for the time being.</p> <p>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.</p> <p>The Information Commissioner’s Office has produced guidance on direct marketing, including the definition of ‘consent’ and the key points for consent to be valid.</p> <p>c) Marketing calls under the guise of administrative calls MUST NOT* be made.</p> <p>d) Telephone fundraising agencies carrying out fundraising calls on behalf of a charity MUST have an up to date TPS Assured certification or be in the process of applying.</p>	<p>We propose to amend rule 8.2.3 b) to emphasise consent and to mirror the proposed new wording in 7.1.1 on the Mail Preference Service:</p> <p>b) Organisations MUST NOT* make direct marketing calls to Telephone Preference Service (TPS)/Corporate TPS (CTPS)-registered numbers unless the person who registered their address has notified the organisation specifically that they consent to receiving Direct Marketing calls from them.</p> <p>We propose to reword the references to guidance on administrative calls and Direct Marketing to say:</p> <p><i>Further guidance on whether a communication constitutes an administrative purpose or a Direct Marketing purpose can be found in the Direct Marketing guidance of the Information Commissioner’s Office and the Fundraising Regulator’s Guide “Personal Information and Fundraising”.</i></p>
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	<i>Please see Institute of Fundraising's Frequently Asked Questions for more information.</i>	
11	<p>8.3.1 Key Requirements</p> <p>b) If the telephone call is first contact with a donor, the caller MUST ask if the recipient consents to being contacted at that time. If the recipient asks not to be called again, the fundraising organisation MUST* comply with the request</p> <p>h) Organisations MUST* have a written agreement in place requiring subcontractors to comply with relevant data protection law.</p> <p>k) Organisations MUST make clear that the call is seeking financial or other forms of support.</p>	<p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p><i>Section 5: Personal information and Fundraising includes further information on requirements relating to data protection.</i></p>
12	<p>8.4.1 Fulfilment of Donations</p> <p>f) Where donors' details are stored, fundraisers MUST* ensure compliance with the requirements of the Data Protection Act 1998.</p> <p>There is more information about telephone fundraising in the Institute of Fundraising's Telephone Fundraising guidance</p>	<p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p><i>Section 5: Personal information and Fundraising includes further information on requirements relating to data protection.</i></p>
13	<p>9.2.2 Data</p> <p>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.</p>	<p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p><i>Section 5: Personal information and Fundraising includes further information on requirements relating to data protection.</i></p>

	<p>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.</p> <p>c) Requests to unsubscribe MUST be addressed in a timely fashion. The Information Commissioner's Office has suggested time limits which can be found on their website.(link)</p> <p>d) Organisations MUST clearly explain data capture and use, for example through a privacy policy or statement.</p> <p>e) All information about data capture and use MUST be easily accessible from the website homepage and any page which collects personal data.</p>	
14	<p>9.6.2 SMS and MMS</p> <p>b) 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.</p> <p>c) Organisations MUST* make the registration process for messaging clear on all forms of relevant documentation including websites and MUST* include procedures for unsubscribing on all marketing messages.</p> <p>e) 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.</p>	<p>We propose to add the word "marketing" to rules f) and h) to emphasise that the opt out does not cover service messages (ie. messages sent with an administrative purpose). The new rules read as follows:</p> <p>f) Reply by SMS MUST be an option for opting-out and be clear in all marketing communications.</p> <p>h) Users MUST* be able to exercise their opt-out choice from any marketing message, free of charge (except for the costs of the transmission of the refusal).</p>

	<p>f) Reply by SMS MUST be an option for opting-out and be clear in all marketing communications.</p> <p>g) Organisations MUST use a simple opt-out message.</p> <p>h) Users MUST* be able to exercise their opt-out choice from any marketing message, free of charge (except for the costs of the transmission of the refusal).</p>	<p>We also propose to add the following line to 9.6.2 to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p><i>Section 5: Personal information and Fundraising includes further information on <u>requirements relating to data protection.</u></i></p>
15	<p>9.7.1 Data Protection</p> <p>a) Fundraising organisations MUST* comply with the requirements of the Data Protection Act and MUST NOT* disclose information obtained in situations where a legal duty to keep information confidential arises.</p> <p>b) Organisations MUST* provide a valid address for opt-out requests.</p>	<p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p><i>Section 5: Personal information and Fundraising includes further information on <u>requirements relating to data protection.</u></i></p>
16	<p>9.7.2 Content</p> <p>c) Organisations MUST use a simple opt-out message.</p>	<p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p><i>Section 5: Personal information and Fundraising includes further information on <u>requirements relating to data protection.</u></i></p>
17	<p>14.3.2 Fundraising Activity in the Workplace</p> <p>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.</p>	<p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p><i>Section 5: Personal information and Fundraising includes further information on <u>requirements relating to data protection.</u></i></p>

<p>18</p>	<p>15.3.2 Participants/Attendees</p> <p>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.</p>	<p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p><i>Section 5: Personal information and Fundraising includes further information on <u>requirements relating to data protection.</u></i></p>
<p>19</p>	<p>15.3.3 Specific Issues for Challenge Events</p> <p>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.</p> <p>e) When organising a challenge event and drafting data collection statements you MUST clarify with the tour operator who will be collecting the data and for what purposes the data will be collected and held.</p>	<p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p><i>Section 5: Personal information and Fundraising includes further information on <u>requirements relating to data protection.</u></i></p>
<p>20</p>	<p>16.10 Conduct of Collections</p> <p>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. Please read the Fundraising Regulators guide on Personal information, data and consent</p>	<p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p><i>Section 5: Personal information and Fundraising includes further information on <u>requirements relating to data protection.</u></i></p>
<p>21</p>	<p>20.5 Card Transactions</p> <p>a) Organisations MUST 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.</p>	<p>We propose to add the following line to cover off additional responsibilities under GDPR, PECR and the Data Protection Act 1998:</p> <p><i>Section 5: Personal information and Fundraising includes further information on <u>requirements relating to data protection.</u></i></p>

