

Moving fundraising online

Charities are increasingly making use of digital fundraising; particularly as social distancing restrictions continue.

Molly Waiting and Mairead O'Reilly review the likely impact of changes to the Direct Marketing Code on online charity fundraising.



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As charities face the full weight of the financial impact of the coronavirus pandemic, reaching out to donors and supporters will become more important than ever. However, as social distancing restrictions are expected to remain in place – in some form – for the near future, charities are increasingly turning to digital fundraising avenues.

As many organisations will have experienced, moving any or all of your business operations online can present new issues, particularly in relation to privacy. The rules around electronic direct marketing are likely to come into the spotlight in the coming months as we await the finalisation of the ICO's new draft Direct Marketing Code of Practice.

Once finalised, the code will be a statutory code of practice, which must be taken into account by the ICO when assessing compliance with direct marketing obligations under the data privacy laws, including the General Data Protection Regulation 2016 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR). The code can also be used as evidence in court proceedings. It applies to all organisations that process personal data for direct marketing purposes and so covers charity fundraising, as well as the commercial promotion of goods and services.

A consultation on amendments to the code ended at the beginning of March. Here are some key points from the consultation draft that apply to fundraising:

1. Asking for consent = marketing

The code confirms that processing for 'direct marketing purposes' includes not only the sending of direct marketing communications, such as marketing emails, but all processing activities that lead up to or enable the sending of the communications. This includes trying to generate leads by sending mass messages even if these messages do not contain any promotional material – so an email to

contacts asking them to consent to future marketing will count as a direct marketing communication.

2. Service messages will be interpreted narrowly

The code discusses the boundary between 'service messages' (communications sent for administrative or customer service purposes) and direct marketing messages. This is relevant because a genuine service message is not a marketing message and therefore falls outside the scope of the rules on direct marketing.

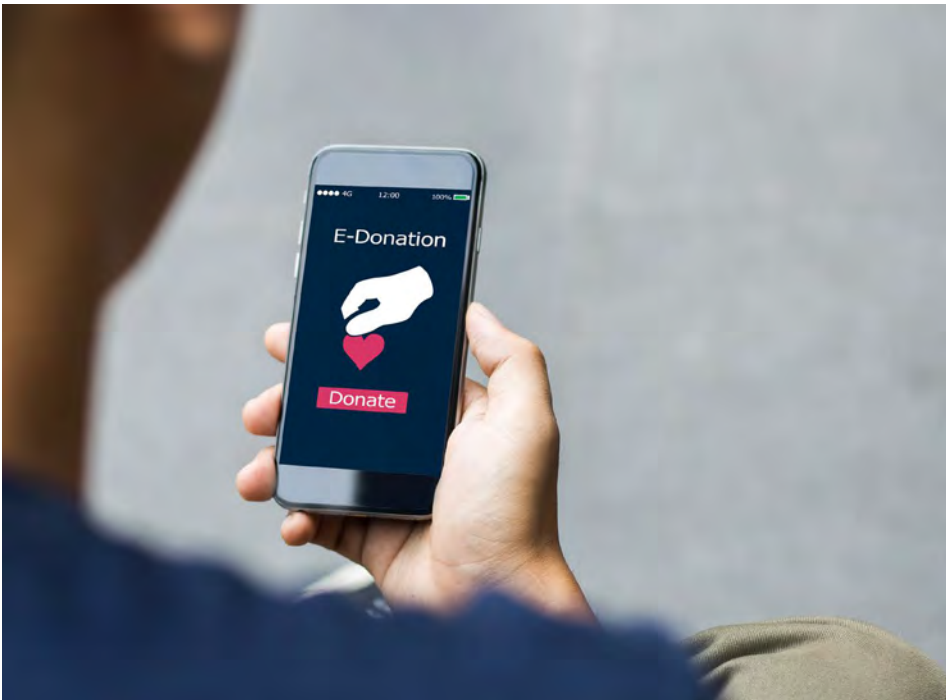
In determining which side of the line a communication falls, the code states that a key factor is likely to be the 'phrasing, tone and context'. A message that actively encourages a person to make use of a new service is likely to be direct marketing, whereas a more factual communication that 'has a more neutral tone' is more likely to be seen as a service message.

3. Joint marketing campaigns may prove more difficult

Unhelpfully for charities and others involved in joint fundraising promotions, the code adopts a wide interpretation of the remit of the PECR for joint marketing campaigns. It cites the example of a supermarket supporting a charity by sending out a marketing email to its customers promoting the charity's work. In this case, the supermarket is not passing the contact details of its customers to the charity, but it will need to have obtained consent from its customers to receive direct marketing promoting the charity. This interpretation would require corporates working with charities to ensure that they have consent from their customers to receive electronic marketing in connection with their corporate social responsibility activities.

4. Be careful with online advertising and new technologies

When targeting individuals through the use of 'audience' tools (tools that allow



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you to display direct marketing to users of a social media platform) it is likely that you will need the consent of the individuals whose data is being processed. You will also need to tell them about your use of audience tools on social media in your privacy notice.

If you are marketing to a 'lookalike audience' (that is, an audience made up of individuals that you have not previously engaged with, but who look like your list-based audience, perhaps because of similar interests or characteristics) you need to ensure that the social media platform has provided individuals with the necessary transparency information. The

code stops short of saying that consent is needed here, reflecting the practical difficulties of obtaining such consent.

While it is yet to be seen how closely the final version will resemble the original draft, the code, once it comes into force, is likely to become a heavily-thumbed guide for those engaged in marketing and fundraising activities.

FIND OUT MORE

Further information on the draft code is at: <https://bateswells.co.uk/2020/01/direct-marketing-code-of-practice/>

Bates Wells responded to the consultation raising concerns about the restrictiveness of the code and its potential impact on the fundraising capabilities of the charity sector.

If you would like to discuss the contents of this article or our response to the code consultation, please contact either Mairead or Molly.

