



# Payment of Fundraisers Code of Fundraising Practice



**November 2009**

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## 1.0 The Codes of Fundraising Practice Explained

The Institute of Fundraising's **Codes of Fundraising Practice** are structured in order to highlight what is mandatory at law, what the Institute regards as a mandatory requirement for its members and what constitutes advice on best practice.

In this Code a phrase where the word:

**MUST** is in bold indicates a requirement that is mandatory at law.

**OUGHT** in bold indicates a requirement that is mandatory for members and affiliated organisations of the Institute.

**SHOULD** in bold indicates a course of action that is recommended as best practice.

Organisations engaged in fundraising **should** join the Fundraising Standards Board and **should** follow their complaints procedure.

This **Code of Fundraising Practice** is intended to address fundraising

activity throughout the UK. Legal requirements can vary between different jurisdictions (England & Wales; Northern Ireland; Scotland).

In this Code, **MUST\*** in bold indicates a legal requirement within one jurisdiction but not in others.

The Institute recommends that organisations adhere to the most rigorous interpretation of the law applicable to an activity.

Users should be aware that this Code addresses the law as it stands at the date of publication throughout the UK.

Reviews of the law relating to fundraising and fundraising activities, governance and charitable status are ongoing in Scotland, England and Wales.

This **Code** will be revised to take into account any developments or changes in the law that may result from these initiatives.

## 2.0 Introduction

Costs are inevitably involved in fundraising. These include paying fundraisers. The Institute of Fundraising recognises that there is a variety of different payment mechanisms which may be applicable when employing different types of fundraisers in different situations. It is important to establish a payment structure that strikes a balance between sufficiently rewarding the work of a fundraiser and enabling the fundraising organisation to raise as much money as possible on the investment.

- 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.

It is important to motivate fundraisers through a range of techniques, including embedding an understanding of the mission and values of the organisation and their role within it.

This Code 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 charity or another professional organisation.

In this Code, a fundraising organisation refers to any charity, voluntary or community sector organisation that seeks to raise money in order to achieve its objects.

## 3.0 Procedure

Fundraisers might be employees of the fundraising organisation, volunteers, consultants or employees of a firm of consultants. Fundraising organisations **should** ensure that they are clear about the status of their fundraisers and take advice as appropriate.

Fundraisers who are consultants might also be professional fundraisers as defined in the Charities Act 1992 in England and Wales and the Charities and Trustee Investment (Scotland) Act 2005 (see Section 7.2).

This Code applies to the payment of all fundraisers, whatever their status.

## 4.0 Payment Mechanisms

A variety of mechanisms can be used when paying fundraisers. For the purposes of this Code:

‘Payment by results’ refers to any payment mechanism where the amount of payment is based on agreed performance criteria such as payment per donor recruited.

Specifically, a commission payment is a payment that is a percentage of the amount of the donor’s gift.

The most commonly used payment mechanisms and some of their characteristics and features that **should** be taken into consideration when using them, are listed below.

<p><b>Salary</b></p>	<ul style="list-style-type: none"> <li>• Both fundraising organisation and fundraiser know the rate in advance, keeping it accountable and transparent.</li> <li>• May encourage staff retention.</li> <li>• Returns aren’t guaranteed.</li> <li>• Fundraising organisation needs to invest in strong line management skills to ensure sustained good performance from salaried fundraisers.</li> </ul>
<p><b>Fee payment (e.g. per hour/ day/project)</b></p>	<ul style="list-style-type: none"> <li>• Fundraiser rewarded for actual work undertaken.</li> <li>• Employer knows exact costs involved.</li> <li>• Employer pays regardless of outcome.</li> <li>• Valuable mechanism when outcome cannot be easily attributable to one person.</li> </ul>
<p><b>Performance Related Pay/Payment by results</b></p>	<ul style="list-style-type: none"> <li>• Fundraising organisation only pays when money comes in.</li> <li>• Incentive for fundraiser to meet or exceed targets.</li> <li>• May lead to undue pressure on donors.</li> <li>• Hard to predict how much may be paid.</li> <li>• Some fundraisers or other charity staff may perceive the scheme to be unfair where input from more than one party has influenced the donation.</li> <li>• May militate against integrated working where this is necessary for the optimum result.</li> <li>• May result in excess or insufficient remuneration to the fundraiser.</li> </ul>

<b>Commission</b>	<ul style="list-style-type: none"> <li>• Fundraising organisation only pays when money comes in.</li> <li>• Incentive for fundraiser to meet or exceed targets.</li> <li>• May lead to undue pressure on donors.</li> <li>• Hard to predict how much may be paid.</li> <li>• Some fundraisers or other charity staff may perceive the scheme to be unfair where input from more than one party has influenced the donation.</li> <li>• May militate against integrated working where this is necessary for the optimum result.</li> <li>• May result in excess or insufficient remuneration to the fundraiser.</li> <li>• May encourage a short-term focus.</li> <li>• Does not reflect time spent working.</li> <li>• Difficulty in establishing which fundraiser is responsible for which funds.</li> </ul>
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As employees are subject to more detailed management and scrutiny than, for example, consultants, fundraising organisations **should** be aware that some payment mechanisms may be more appropriate for some individuals and circumstances than others.

The impact of the characteristics and features listed above will vary depending upon whether the mechanism is being used as the sole method of payment or as part of a performance reward system. Particular scrutiny **ought** to be given to remuneration that is solely payment by results. A combination of payment methods may be implemented to ensure an acceptable balance between the needs of the fundraiser, fundraising organisation and beneficiaries. For payment by results and commission, public perception **should** be considered.

## 5.0 Choosing the Appropriate Payment Mechanism

### 5.1 General considerations

Before implementing a payment mechanism, consideration **ought** to be given to the following questions:

- What is in the best interests of beneficiaries?
- What are the risks to the fundraising organisation of a particular payment method?
- What safeguards are needed to ensure any party receives appropriate remuneration for their work, for example, even where the anticipated funds are not raised or considerably higher levels of funds are raised?
- Does the form of remuneration encourage behaviours that are consistent with the organisation's fundraising objectives, for example,

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through team working or focused individual effort, to produce the best value?

- Can the payment method be clearly explained in a solicitation statement?
- Would stakeholders, including the public, consider the payment method to be fair?
- How does the form of payment impact upon the donor?

### 5.2 Guiding Principles

Whichever payment method is adopted, there are some guiding principles to be followed:

- Fundraising organisations **ought** to consider the full anticipated costs and income of the fundraising activity when establishing a payment method and level, to ensure the activity remains financially viable.
- The choice of payment method **ought** to be supported by a sound business plan.
- Practices and controls **ought** to be in place to ensure that payment methods do not leave the fundraiser vulnerable in terms of the remuneration that they may or may not receive.
- The payment method **ought not** to leave the fundraising organisation vulnerable. For example, through excessive payment or damage to its reputation.
- Fundraising organisations **should** consider innovative ways to motivate, remunerate and reward their staff. For example, consider staged payment systems, rewards in kind etc.

### 5.3 Excessive Remuneration

An excessive payment is that which is considerably more than an ordinary, well-informed person would consider reasonable.

- Fundraising costs **must not** be excessive.
- Fundraising organisations **should** be aware that excessive remuneration and high pressure techniques will lead to a break down in trust and confidence in both the organisation and sector more widely and **ought** to take steps to minimise this risk (see Section 4.4).

To establish a reasonable payment structure, fundraising organisations **should** consider:

- the reputation and track record of the fundraiser;
- the nature and extent of the work to be done, including the overall objective of the campaign;
- the risk taken by the fundraiser; and
- the state of the market.

Where appropriate, maximum caps or reducing sliding scales **ought** to be used to avoid excessive remuneration. Maximum caps and reducing sliding scales will be influenced by a variety of individual factors including the size of the organisation and the time span involved.

#### 5.4 Public Trust and Confidence

Public trust and confidence are essential in ensuring successful and sustainable fundraising. Members of the public may hold strong views about how, and indeed whether, fundraisers are remunerated which may in turn influence their decision to donate.

- Fundraising organisations **ought** to consider public trust and confidence, balancing public perceptions with a good business plan.

#### 5.5 Commission

The Institute of Fundraising opposes commission payments in principle, particularly those payments made on a commission-only basis. They **ought not** to be used unless all the following conditions have been met:

- fundraising organisations have considered the full business impact and also the impact on the wider fundraising sector of any public concerns about payments, prior to entering the arrangement;
- all other sources of fundraising investment have been explored and exhausted;
- the payments are subject to extensive scrutiny and approval by the fundraising organisation's trustees, or the senior executive when power has been delegated, in terms of evaluating the risk and reward of the payment mechanism; and
- safeguards are in place to ensure excessive remuneration is not awarded, for example by putting maximum caps or reducing sliding scales in place (see Section 4.3).

## 6.0 Payment and Performance Management Systems

### 6.1. General payments

- Any charitable funds **must** be used reasonably and prudently and in the best interest of the fundraising organisation. This includes ensuring that remuneration of fundraisers is proportionate to the benefit reasonably expected to be obtained.
- Trustees, or the relevant person with delegated authority, **must** take sufficient steps to verify that money is being used correctly.

- Fundraising organisations **ought** to distinguish between payment and performance payment and **should** distinguish between employees and other fundraisers in establishing the most appropriate remuneration package.

## 6.2 Performance management

- 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.
- Performance management systems **ought** to be designed to ensure that the chosen payment method does not incentivise fundraisers to exert undue pressure on potential donors; rather, remuneration systems **should** reward both number of supporters and other measures such as the quality of the new relationship formed with the new supporter.
- Remuneration systems **ought** to be monitored to ensure that they continue to strike a balance between allocating risk and incentivising fundraisers effectively.

## 7.0 Working with Volunteers

### 7.1 General fundraising volunteers

- Volunteers **should** have their expenses reimbursed and it is good practice that this happens regularly to ensure volunteers are not left out of pocket.
- Volunteers **should** only have their out-of-pocket expenses reimbursed and **should not** be paid a flat rate amount as this may trigger minimum wage legislation.
- Where possible, receipts **ought** to be received before expenses are paid.

In some cases, it may be appropriate to reimburse expenses in advance, with the subsequent provision of receipts where possible. This may be appropriate for example where larger sums are to be paid and it is unreasonable to expect the volunteer to pay them, or the volunteer's financial circumstances make it difficult for them to incur expenses in advance.

Training that is not related to the activity, use of the fundraising organisation's other facilities, payment in honorarium or payment in excess of out of pocket expenses may lead to a contract of employment being entered into inadvertently.

- If honoraria payments are made, these **ought** to be totally unexpected and proportional to the work undertaken.

## 7.2 Trustees as paid fundraisers

### England and Wales

Trustees **must not\*** be paid for fundraising on behalf of the charity unless the following criteria are met:

Either:

- the charity's constitution specifically provides for the type of payment proposed;

Or:

- the charity's constitution does not expressly prohibit the type of payment proposed; and
- the charity complies with the provisions of section 73A of the Charities Act 1993 (see below); and
- the payment is not for being a trustee or under a contract of employment.

The provisions of section 73A of the Charities Act 1993 referred to above which **must\*** be complied with are:

- the trustees **must\*** have regard to the relevant Charity Commission guidance (presently CC11 – Trustee Expenses and Payments) before entering into an arrangement to pay a trustee;
- the agreement **must\*** be set out in writing;
- the payment **must not\*** exceed what is reasonable;
- the trustee **must\*** form the view that the arrangement is in the best interests of the charity;
- the number of trustees so remunerated **must\*** be in the minority; and
- the relevant trustee **must not\*** take part in any of the relevant decisions.

These provisions also apply to payments to those persons connected to trustees, including business associates and family. Further guidance is available on the Charity Commission's website (see Section 8.1).

### Scotland

Section 67 of the Charities and Trustee Investment (Scotland) Act 2005 prohibits remuneration of charity trustees unless strict conditions are met. These conditions are:

- the maximum amount of the payment is set out in a written agreement;
- the maximum amount is reasonable in the circumstances;
- the charity trustees are satisfied that it is in the interests of the charity for the services to be provided by the charity trustee for that amount (which **must\*** be set out in the agreement);

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- immediately after the agreement is entered into, only a minority of the charity trustees receive remuneration; and
- the charity's constitution or governing document does not expressly prohibit it.

These provisions also apply to payments to those persons considered by the 2005 Act to be 'connected' to trustees, including business associates and family. Further guidance about who may be 'connected' to a charity trustee is available in section 5 of OSCR's guidance booklet, 'Guidance for Charity Trustees: Acting with care and diligence' (see Section 8.1).

The conditions permitting remuneration do not apply if a charity's constitution contains a specific authorising provision permitting remuneration which has been in force since at least 15 November 2004. If the constitution is silent, or contains only a general provision authorising remuneration, then the conditions set out in section 67 must be met. Remuneration is also permissible if authorised by an order of the Court in Session or any enactment.

## 8.0 Key Legal Points

### 8.1 General points

Charity regulators (the Charity Commission in England and Wales, OSCR in Scotland or the Charity Commission for Northern Ireland) may intervene when an adopted method causes widespread concern which undermines public trust and confidence in the charities.

If the fundraising organisation is a member of the Fundraising Standards Board (FRSB), the FRSB may also intervene if a payment mechanism leads to complaints which are not dealt with by the fundraising organisation's internal complaints procedures.

Where an employment relationship exists:

- the employer **must** ensure that their chosen method of remuneration meets the Employment Rights Act 1996, which includes meeting minimum wage regulations. Further information is available from the Department for Business Innovation and Skills (formerly the Department for Business Enterprise and Regulatory Reform) (see Section 8.1).

### 8.2 Professional fundraisers

There are specific requirements for professional fundraisers to make declarations about their remuneration when soliciting funds.

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### England and Wales

As defined in the Charities Act 1992 in England and Wales, a professional fundraiser is:

- any person (apart from the charitable institution or a company connected with such an institution) who carries on a fundraising business for gain which is wholly or primarily engaged in soliciting or otherwise procuring money or other property for charitable, philanthropic or benevolent purposes; or
- any other person who solicits for reward money or other property apart from:
  - any charitable institution or connected company;
  - any officer, employee or trustee of a charity or connected company acting in his capacity as such. Note, however, that although excluded from the definition, these people are now required to make solicitation statements as if they were professional fundraisers (see Section 7.3);
  - any charity trustee;
  - any public charitable collector – other than promoters;
  - people who solicit funds on TV or radio; or
  - any commercial participator.

In addition, the definition of a professional fundraiser in England and Wales does not apply to a fundraiser who does not carry on a fundraising business if the fundraiser receives £1,000 or less by way of remuneration in connection with a particular venture or £10 per day or £1,000 or less per year.

### Scotland

In Scotland, a professional fundraiser as defined by the Charities and Trustee Investment (Scotland) Act 2005 is any person (other than a benevolent body or a company connected with it) who carries on a fundraising business, or any other person who for reward solicits money or other property for the benefit of a benevolent body or for charitable, benevolent or philanthropic purposes other than in the course of a fundraising venture undertaken by a person who carries out a fundraising business. There is no lower earnings limit for the definition of professional fundraisers in Scotland.

The definition of professional fundraisers includes consultants who ask for donations and agencies who use freelancers for face-to-face or telephone fundraising.

- When fundraising organisations are working with professional fundraisers, a signed written agreement **must** be in place containing certain mandatory provisions.

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See the 'Best Practice for Fundraising Contracts' and 'Charities Working With Business' Codes of Fundraising Practice and the Institute of Fundraising's model contracts for further information (see Section 8.1).

### 8.3 Solicitation statements

To aid transparency in fundraising, professional fundraisers are required to make declarations to the public about their remuneration. See also the 'Accountability and Transparency' Code of Fundraising Practice (see Section 8.1).

#### In England and Wales:

- professional fundraisers as well as officers, employees and trustees of a charitable institution (if paid and taking part in a public charitable collection) **must\*** make a statement specifying:
  - the institution or institutions for which they are raising funds;
  - if there is more than one institution, the proportions in which they are to benefit; and
  - if they are professional fundraisers, the method by which their remuneration is determined and the 'notifiable amount' of that remuneration (this will be the remuneration of the professional fundraising organisation if the fundraiser is employed by such an organisation); or
  - if they are paid officers, employees or trustees of the institution acting as collectors in a public charitable collection, the fact that they hold those positions and that they are receiving remuneration. A public charitable collection is a charitable appeal which is made in any public place or by means of visits to houses or business premises (or both). A charitable appeal is an appeal to members of the public for them to give money or other property or involves offering to sell or supply goods or services or exposing goods for sale. For these purposes, a public place is defined as under the Charities Act 2006 (see Section 8.1).

The notifiable amount is the actual amount if known at the time or the estimated amount calculated as accurately as possible.

Further information and guidance is available from the Office of the Third Sector website (see Section 8.1).

- Clarification from the Office of the Third Sector and/or professional legal advice **should** be sought where necessary.
- Solicitation statements **must\*** be made at the time of the solicitation and so, in practice, before a donor has authorised an agreement to donate.

**In Scotland:**

- Professional fundraisers (or their employees) as well as officers, employees and trustees of a charitable institution **must\*** make a statement specifying:
  - the institution or institutions for which they are raising funds and if there is more than institution, the proportions in which they are to benefit; or
  - if they are raising funds for general charitable, benevolent and philanthropic purposes (rather than a particular body), an indication of this fact and the details of how the distribution of funds will be determined;

and:

- if they are professional fundraisers (or their employees), details of whether they are to receive remuneration (if the solicitation is being conducted orally, the professional fundraisers (or their employees) **must** also indicate that the information contained within the statements is also available in writing). If the solicitation is being conducted in the course of a radio or TV programme, or it is not made directly face-to-face (e.g. by telephone), the professional fundraisers (or their employees) **must** also provide information relating to the donor's rights to a refund; and
- if they are paid officers, employees or trustees of the institution, the fact that they are receiving remuneration.

**In Northern Ireland, the new Charity Act will introduce new controls on professional fundraisers and commercial participators, similar to those in England and Wales.**

## 9.0 Appendices

### 9.1 Useful contacts

- Advisory, Conciliation and Arbitration Service  
[www.acas.org.uk](http://www.acas.org.uk)
- Charities Act 2006  
[http://www.opsi.gov.uk/ACTS/acts2006/ukpga\\_20060050\\_en\\_1](http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060050_en_1)  
In particular, for a definition of public place see:  
[http://www.opsi.gov.uk/ACTS/acts2006/ukpga\\_20060050\\_en\\_8#pt3-ch1](http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060050_en_8#pt3-ch1)
- Charity Commission  
[www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)  
In particular, see: CC11 – Trustee expenses and payments
- Department for Business Innovation and Skills (formerly the Department for Business, Enterprise and Regulatory Reform)  
[www.berr.gov.uk](http://www.berr.gov.uk) or [www.bis.gov.uk](http://www.bis.gov.uk)  
In particular, see:  
[www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-rights](http://www.berr.gov.uk/whatwedo/employment/employment-legislation/employment-rights)
- Department for Work and Pensions  
[www.dwp.gov.uk](http://www.dwp.gov.uk)
- Direct Gov workers' rights  
[http://www.direct.gov.uk/en/Employment/Employees/EmploymentContractsAndConditions/DG\\_10027916](http://www.direct.gov.uk/en/Employment/Employees/EmploymentContractsAndConditions/DG_10027916).
- Guidance for Charity Trustees: Acting with care and diligence (Scotland)  
<http://www.oscr.org.uk/PublicationItem.aspx?id=5b7d7df4-8d70-4aa7-af64-2d65c21ae22d>
- Institute of Fundraising  
[www.institute-of-fundraising.org.uk](http://www.institute-of-fundraising.org.uk)  
To view the Codes, see:  
[www.institute-of-fundraising.org.uk/codes](http://www.institute-of-fundraising.org.uk/codes)  
In particular see the Volunteer Fundraising Code of Fundraising Practice:  
<http://www.institute-of-fundraising.org.uk/bestpractice/thecodes/codesoffundraisingpractice/codesdirectory/volunteerfundraising>  
For contract information, see:  
[www.institute-of-fundraising.org.uk/contracts](http://www.institute-of-fundraising.org.uk/contracts)
- Office of the Scottish Charity Regulator  
[www.oscr.org.uk](http://www.oscr.org.uk)  
In particular see: 'Guidance for Charity Trustees: acting with care and diligence'
- Office of the Third Sector  
[www.cabinetoffice.gov.uk/third\\_sector](http://www.cabinetoffice.gov.uk/third_sector)
- Volunteering England  
[www.volunteering.org.uk](http://www.volunteering.org.uk)  
In particular, see: [www.volunteering.org.uk/Resources/information/onlineinformationsheets](http://www.volunteering.org.uk/Resources/information/onlineinformationsheets) and 'Volunteers and the Law':  
[www.volunteering.org.uk/law](http://www.volunteering.org.uk/law).

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### 9.2 Working Party

- Mick Aldridge, PFRA
- Laura Bassett, Medical Foundation for the Care of Victims of Torture
- Graham Bunce, Support Direct
- Jane Colvin, Tim Lilley Fundraising Consultancy
- Andy Capie, ADD
- James Evans, Foot Anstey Solicitors
- Ola Fajobi, British Red Cross
- Ian Gilmour, ok2b
- Alison Graham, Brakeley
- Rick Holland, Confident Philanthropy Ltd
- Pam Judson, Consultant
- Valerie Morton, Chair
- Andrew Peel, Peel Consulting
- Peter Storey, Kidney Research UK
- Wendy Tapping, Hands on Helping
- Chris Wichard, Fundraising Initiatives Ltd.

Institute of Fundraising Code Working Parties provide advice and make recommendations to the Institute's Standards Committee in the process of Code development.