



Best Practice for Fundraising Consultants Code of Fundraising Practice

Check-list: key questions to ask

- Is it clear how the consultant fits into the organisation's employment structure? (3.0, 10.0)
- Are processes accountable and transparent? (3.0)
- Are the consultant's opinions, judgements and recommendations objective and frank? (3.0, 4.1)
- Can any claims about experience and achievement be substantiated? (4.1)
- Is the scope of the consultant's services clear? (4.1, 4.2)
- Does the consultant ensure he/she does not apply undue pressure on potential clients? (4.1)
- Has the consultant set out a written proposal detailing services, costs and timescales? (4.1)
- Is due diligence exercised in regard to potential clients? (4.1)
- Are other consultants treated respectfully? (4.1)
- Are there any potential conflicts of interest? (4.1, 6.0)
- Does the consultancy take place in accordance with agreed terms of reference and expectations? (2.0)
- Are all fees clear? (4.1)
- Is a clear contract in place which follows the Institute's relevant Code? (2.0, 4.2)
- Are fee payments and structures set out in the contract? (4.2, 5.0)
- Are data protection issues identified in the contract? (9.0)
- Does payment follow the Institute's Payment of Fundraisers Code? (5.0)
- Is it clear how expenses will be paid? (5.0)
- Will the consultant act as a professional fundraiser? (2.0, 4.3)
- Are appropriate solicitation statements made, where necessary? (2.0)
- Do both parties comply with the Data Protection Act? (9.0)
- Is it clear what constitutes confidential information? (7.0)
- Does the consultant ensure confidentiality? (7.0)
- Is it clear who owns the copyright of work? (8.0)
- Is there a process in place for managing any potential disputes? (12.0)

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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 Definition of a Consultant

A 'Consultant' may act as an individual, an employee of a company, or an individual from amongst an association of individuals or as an organisation. 'Client' is any fundraising organisation to which the consultant is contracted.

The Consultant may offer a range of services, including but not limited to: strategic planning, monitoring, operational support, reviews, fundraising audits and resource studies, ad-hoc problem solving, diagnosis, training, mentoring, recruitment, consolidation and IT-related activities.

'Consultancy' is independent advice and support in constructing, developing or executing strategic and/or operational plans to meet defined fundraising targets, objectives or aspirations. It may also include IT work in database development, analysis or research.

- Consultancy activity **OUGHT** to take place in the context of agreed terms of reference and expectations.
- Consultants and Clients **SHOULD** agree that this Code of Fundraising Practice applies to their working practices.
- Clients and Consultants **OUGHT** to be aware that, in certain circumstances, a Consultant may also act as a Professional Fundraiser, as defined by the Charities Act 2006 and the Charities and Trustee Investment (Scotland) Act 2005 (this may be further defined with the publication of regulations related to the Charities Act 2006 and Charities and Trustee Investment (Scotland) Act 2005).
- If a Consultant is a professional fundraiser as defined by the law, then there **MUST*** be a contract between the Client and the Consultant and the Consultant **MUST*** make a statement regarding his/her remuneration when soliciting funds.
- Such statements **OUGHT** to be made by consultants acting as professional fundraisers in Northern Ireland (future regulations may make this a legal requirement).

See Section 4.2 of this Code (Contracts) for further information.

3.0 Working with a Consultant

- A Consultant **SHOULD** be appointed by the Client because he/she has special experience, knowledge, insight and skills; and a track record validating these. Consultants may be specialists or generalists, dealing with total strategy or a

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particular field (for example, direct marketing or alumni); and may work with all types of not-for-profit organisations or with a select segment.

- Consultants, as defined above, **SHOULD** work outside the Client's management structure.
- Consultants **SHOULD** be accountable for their contracted services, within agreed terms, to the Client's trustees, management and staff; but will operate as independent agents.
- Consultants **OUGHT NOT** to act as an employee member of staff.
- If a charity hires a Consultant on a short-term contract, the charity **SHOULD** be clear about how the Consultant fits into the structure of the organisation.

A Consultant may work and collaborate with a Client's trustees, management, staff, volunteers, donors, prospects and other agencies (for example, direct marketing, advertising, PR, research, recruitment).

- The Consultant **OUGHT** to be objective and frank in the judgements, opinions and recommendations made.

These opinions may touch upon the competence and credibility of the organisation or of its trustees, management, staff and volunteers.

- The relationship between a Client and Consultant **SHOULD** be based on trust and cooperation, with realistic expectations of the course to be taken, the timings and the possible outcomes.

However, after discussion it may become apparent that the initial brief is impossible to carry out due to the governance of the organisation.

- Any tender process **SHOULD** be open, fair and transparent.

See the Institute of Fundraising's Accountability and Transparency Code of Fundraising Practice.

4.0 Stages of Consultancy

4.1 Acquiring business and promotion of business

- Consultants **OUGHT** only to claim experience, qualification and achievement that can be substantiated.
- Consultants **OUGHT NOT** to guarantee results.

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- Consultants **OUGHT** to make completely clear all fees, expenses and other associated costs, the basis or range upon which fees will be based and the payment timescale.
- Consultants **OUGHT** to advise potential clients of the strengths and weaknesses of their case and objectives.
- Consultants **OUGHT** to ensure that the client understands the scope of the Consultant's service and responsibilities and what input will be required from the client.
- Consultants **SHOULD** exercise due diligence with regard to the credentials of a potential client.
- Consultants **OUGHT NOT** to apply undue pressure to secure contracts.
- Where a prospective Client already has retained fundraising consultants, Consultants **OUGHT** to establish the remit of the retained Consultants and **OUGHT** to confer with the retained consultant(s).
- Consultants **OUGHT NOT** to denigrate other bona fide consultants.
- Consultants **OUGHT** to alert the (prospective) Client and other Clients if a Consultant is aware of or perceives a potential conflict of interest (actual or perceived) between the prospective Client and other Clients with whom the Consultant is already working.
- Consultants **OUGHT** to prepare a written proposal for the Client setting out services and costs and timescales.

See the Institute of Fundraising's Payment of Fundraisers Code of Fundraising Practice for payment information.

4.2 Contracts

- For the relationship to start and continue effectively, both the Client and Consultant **OUGHT** to have clear expectations of what might be achieved, based on the services and resources committed by each party and, over what period.
- There **OUGHT** to be a contract between the Consultant and the Client. The Institute of Fundraising's Best Practice for Fundraising Contracts Code of Fundraising Practice sets out best practice for fundraising contracts and legal requirements. A model contract is also included at the end of the Code.
- The Best Practice for Fundraising Contracts Code sets out guidance on what to include in contracts but the contract **OUGHT** to:

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- be clear about with whom the Client and Consultant will deal and where operational responsibility sits in each case;
 - state to whom the Consultant will report and at what stages (for example, trustees, senior management, fundraising manager); and
 - state the Consultant's terms of remuneration (including charges for VAT and expenses) and the schedule of payments.
- The contract **SHOULD**:
 - include a requirement for review points to be agreed between Client and Consultant, allowing for any over-run or under-run in the programme;
 - be explicit about copyright ownership of materials; and
 - be clear about the terms of disengagement.

4.3 Professional fundraisers

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;
 - 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

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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.

Northern Ireland

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

- Until the new regulations are introduced, the regulations in England and Wales **OUGHT** to be followed.

UK

In practice, Consultants may:

- give advice to volunteers and staff on fundraising activities;
- accompany staff and volunteers during fundraising requests;
- make the fundraising requests themselves.

The Consultant will only act as a professional fundraiser in the last of these three situations.

- In this case, the Consultant **MUST*** have a contract with the Client and **MUST*** make a solicitation statement.

Further information is available in the Paying Fundraisers Codes of Fundraising Practice.

- There are also other legal requirements that professional fundraisers **MUST*** observe. For further information see the Code of Fundraising Practice, 'Best Practice for Fundraising Contracts'.

5.0 Fees

- Consultants **OUGHT** to state the actual basis of remuneration in any proposal or contract.
- Consultants **OUGHT** to be clear about how expenses will be paid (whether separately or covered by the Consultant).

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- Consultants **OUGHT NOT** to be remunerated by commission-only methods (see the Payment of Fundraisers Code of Fundraising Practice).
- Consultants **SHOULD** use time-based fees or some other form of remuneration that is not commission based, such as a fixed fee.

A time-based fee rewards an individual for the time that is spent on a project by that individual.

Reasons for time-based fees include:

- fees reflect the professional time involved;
 - many donors will react adversely to commission only fees;
 - commission-based fees lead to disputes about who (or what combination of people) was responsible for obtaining the gift and how to treat gift aid and payments over a period of time;
 - commission-based fees can lead to bad practice (for example hard-sell) which can damage the fundraising and the reputation of the charity; and
 - in the case of large gifts, a commission-based fee may lead to an unacceptably high level of remuneration and, in the case of a small gift, to an unacceptably low level of remuneration.
- Fee payments and structure **SHOULD** be agreed with the charity and **OUGHT** to be set out in the contract.

For more information see the Payment of Fundraisers Code of Fundraising Practice and information briefing on the Institute's website.

6.0 Conflicts of Interest

- Each party **OUGHT** to alert the other party if either is aware of a potential conflict of interest, be it one that actually exists or could be perceived to exist.
- Consultants **OUGHT NOT** to represent conflicting or competing interests without the express consent of the parties concerned after full disclosure of the facts.

7.0 Confidentiality

- Consultants **MUST** keep in confidence any information of a confidential nature obtained during consultancy with a Client, unless it is information within the public domain or may otherwise be legally disclosed (e.g. with consent).

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- Terms governing conditions of confidence and what constitutes confidential information **OUGHT** to be stipulated as part of the written contract between the Consultant and Client.

For further information, see the section on confidentiality in the Institute of Fundraising Best Practice for Fundraising Contracts Code of Fundraising Practice.

8.0 Copyright

Intellectual property is a complex legal area. The main area of intellectual property rights that will be of concern in dealings between a Consultant and Client is copyright. Essentially, this is a right not to have one's original work copied without consent. Written materials, artwork, software and other copyright materials may be produced by Consultants during the course of their work for the Client and under the terms of their contract. The author of copyright material is its first owner.

- If a Consultant expects to own the copyright, the Consultant **SHOULD** agree to this with the Client in the written contract.
- Clients **OUGHT** to ensure that the copyright of materials of which they expect to own the copyright is transferred to them explicitly in the Contract.
- Copyright may also be licensed exclusively/non-exclusively, for limited terms/irrevocably, for royalties/no payment, with or without sub-licensing rights. Post-contract ownership **SHOULD** be considered.

For further details see the Best Practice for Fundraising Contracts Code of Fundraising Practice.

- If a Client expects to own the copyright, they **SHOULD** agree this with the Consultant in the written contract.
- Rights in the compilation and ownership of databases and mailing lists **SHOULD** be clear and may need assignment in the same way as copyright in the contract.

9.0 Data Protection

Consultants may handle personal data relating to supporters and others.

- Both parties **MUST** ensure that they comply with their obligations under data protection legislation (see the Institute of Fundraising Data Protection Code of Practice).
- These obligations **OUGHT** to be included in the contract. In particular, if the Consultant will be using personal data held by the Client, or collecting personal data on its behalf, this **MUST** be covered by a written agreement.

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For further information, see the section on Copyright in the Institute of Fundraising Best Practice for Fundraising Contracts Code of Fundraising Practice.

10.0 Employment Law

- Consultants and Clients **OUGHT** to be clear that the Consultant is not acting as an employee of the Client.

This is a complex area and sometimes a relationship that is treated by the Consultant and Client as a consultancy will legally be an employer/employee arrangement. This will have adverse tax consequences, as the Client will then be responsible for PAYE and National Insurance contributions. The Consultant may also acquire statutory employment rights. It is recommended that legal advice be taken except in the case of obviously short-term assignments.

11.0 Managing Conflicts

Conflicts can arise during and following the working relationship.

- It **SHOULD** be the aim to resolve problems within the working relationship.
- However, escalation to dispute **SHOULD** be anticipated in the Contract through provision of an agreed practical dispute resolution procedure.

Model Clause 22.3 refers, as an example, to Centre for Effective Dispute Resolution ('CEDR') mediation. This is one of a range of dispute resolutions procedures promoted by CEDR. See the Best Practice for Fundraising Contracts Code of Fundraising Practice.

12.0 Appendix

- Eileen Hammond, Consultant, Institute of Fundraising Standards Committee
- Geoff Howard, Consultant
- Pam Judson, Consultant
- Stefan Lipa, Consultant, Association of Fundraising Consultants
- Redmond Mullin, Consultant, Chair
- Laura Thomas, Institute of Fundraising

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