



Charity Challenge Events Code of Fundraising Practice

Check-list: key questions to ask

- Has the viability of the activity been researched? (3.1, 5.0)
- Is appropriate insurance cover in place? (3.1, 5.0)
- Have potential risks been assessed? (3.1)
- Have any tour operators been appropriately researched? (3.2)
- Are all communications clear and not misleading about how money will be used? (3.3, 4.0)
- Will the fundraising organisation's staff have to attend the event and will their welfare be ensured? (4.0)
- Will participants be professional fundraisers? (4.0)
- Are contracts in place with any professional fundraisers? (4.0, 5.0)
- Where funds raised are used to fund the trip, do participants make this clear to donors? (4.0)
- Do participants know which types of fundraising would be acceptable? (4.0)
- Who will be allowed to participate? (4.0)
- Is there adequate medical cover and an evacuation plan in place? (4.0)
- Do minimum payments cover the costs of the trip? (4.0)
- Are all the legal issues surrounding trip fully understood, such as those surrounding package travel arrangements and flights? (5.0)
- Is it clear who is responsible for abiding by relevant regulations? (5.0)
- Are contracts in place with tour operators? (5.0)
- Who will approve all advertising? (5.0)
- Is it clear who owns the copyright of any materials? (5.0)
- Is the activity trading? (6.0)
- Are all tax issues fully understood? (6.0)
- Have all tax and VAT issues been addressed? (6.0)
- Where can tax relief be claimed? (6.0)

2006

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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

The intention of this document is to provide readily accessible guidelines for people thinking of organising a Challenge Event, particularly but not exclusively, those intended to be run outside the UK. This Code does not seek to provide an exhaustive briefing, nor to be a substitute for proper legal advice, but to ensure that the reader is aware of the most important questions and how to go about getting the answers.

This Code should only be treated as a minimum checklist of issues to consider - there may well be other issues that are equally important to consider for a particular event. It should be read in conjunction with the Summary Code of Practice for Outdoor Fundraising Events in the UK. The issues over protecting the environment and the local people are equally valid for events held outside the UK. In our view, the factor which distinguishes a 'charity challenge event' is that the participant is also receiving a more than notional benefit, which in many cases has a monetary value attached, and seeks to fundraise from supporters in respect of their participation.

3.0 Planning

3.1 General

Analyse the potential benefits and returns. Has the event or series of events been costed? What are the likely returns and impact on staffing? These events can be very labour-intensive and costly, particularly if last-minute changes have to be made. Will this event make the best use of your available resources? Are you clear what your objectives are? For example, relationships with new donors, publicity, fundraising, PR about overseas projects.

Research the market - decide on the destination and tour size.

Research other charities' activities to avoid wasteful clashes but be aware that most events are planned up to two years in advance and some plans and information may not be in the public domain.

Has trustee/senior management approval for this kind of fundraising been recorded? If so, were any conditions placed on any permission given?

Be aware that the issue of high cost-ratios (low return on investment) is of increasing concern to the general public and these events are attracting media attention. Acceptable levels of return are a matter for your trustees and will vary according to the objectives of the event.

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- Insurance is a complex area and you **MUST** be clear which party is insuring which risk.

Check there is insurance in place to cover your and the tour operator's risks, for example in the event of an accident or if the event is cancelled.

Think about personal insurance for the participants. If this is offered to them by the tour operator, are the terms and conditions adequate? Will they be offered group or individual insurance?

- You **MUST** carry out a risk management assessment.

Risks include: weather and natural phenomena such as threats of volcanic eruption, tropical storms or earthquakes and civil disturbances.

Safety of participants - choice of location - is it safe? Assess the risks and have a crisis management plan. When planning to use unstable venues review them systematically. Advice can be sought from the Foreign and Commonwealth Office (<http://www.fco.gov.uk/travel/>).

3.2 Contracts with the Tour Operator

In many cases, the tour operator you contract with will sub-contract much of the travel arrangements to ground handlers in the country. Investigate both the tour operator and their sub-contractors. What are their safety records like? Ask for references from other charities. Check with any relevant industry bodies. For contracts with the Tour Operator, service and equipment providers, ensure that amongst other things the contract covers:

- the quality of equipment to be used and standards of service expected, for example, qualifications of instructors or staff used for the event
- your right to cancel or postpone the event and the amount of refund (if any) you would be entitled to.

Are the Tour Operator's booking conditions for participants reasonable? Do they give minimum protection to the consumers? Are participants being asked to sign unreasonable waivers of liability such as "Participation is at your own risk"?

Identify who, within your organisation, is the most appropriate person to sign the contract.

3.3 Promotional Literature

Ensure that all promotional literature presents a fair assessment of the tour, what participants will do, and the level of fitness required. Many charities try to ensure

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that potential participants have a relevant level of fitness by organising pre-tour sessions or giving out training guidelines.

- It is recommended that all promotional materials supplied to potential participants and, particularly, material sent to them as part of 'fundraising packs' **MUST** spell out clearly if any part of the funds raised by the participant in the name of the charity are to be used towards the tour costs.
- Recruitment materials designed to attract potential participants and, in particular, press advertisements, **MUST NOT** mislead readers into believing that their commitment would be limited to the minimum personal registration fee.
- There **OUGHT** to be transparency at all stages of the advertising process.

4.0 Relations with Stakeholders

- Will staff or representatives from your charity have to attend the event? If so you **OUGHT** to clearly define their role and ensure their welfare.

Check your employee liabilities and come to an agreement with the staff re: their job description, hours of work etc. Many charities send their own staff to do initial research.

Remember the charity's responsibilities to employees and obligations to volunteers on the trip.

Do the participants fall within the definition of professional fundraiser in the Charities Act 1992?

- Where there is a clear and more than notional benefit to the participants which is, or might be, considered to be more than £1000, they **MUST** be treated as if they are professional fundraisers.
- If so they **MUST** sign written agreements containing all the necessary terms (see Section 6.4).
- They **OUGHT** to also be advised on the statement to make when soliciting money.
- As part of a commitment to transparency, the Institute of Fundraising's recommendation is that where there is a clear and more than notional benefit to the participants which is, or might be considered to be, less than £1000 they **OUGHT**, nevertheless, be treated as if they are professional fundraisers.

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It is a key issue of public concern for those events where the participant does not personally pay the whole cost of the trip, but uses some of the sponsorship money for this purpose.

- In this case it is *particularly important* to make sure that the participant recognises that this **MUST** be made clear to every donor if you are to avoid accusations of misrepresentation.
- Participants **OUGHT** be briefed on the charity's policy of acceptable and unacceptable methods or sources of fundraising in the charity's name.

Consider whether to vet potential participants. For example checking:

- their suitability to take part in the challenge event; and/or
- their suitability to fundraise for your charity.

You may want to reserve the right to refuse permission for a potential participant to take part, but you need to be aware of consumer legislation, which can make such terms unfair.

Consider whether to impose any age limits. Will you allow accompanied children - and, if so, of what age? Would a large contingent of participants from one organisation unbalance the group and lead to cliques, spoiling the event for others?

Be clear when the potential participant is eligible to go on the trip - when they have paid a minimum, a certain percentage or the whole? Ensure the terms of entry are spelled out so the charity retains the right to refuse a potential participant and to give them their money back.

Consider the recovery of money from participants after the event.

- It is strongly recommended that the minimum payment before travel **OUGHT** to be sufficient to cover at least all the costs of the tour.
- There **MUST** be adequate medical cover and evacuation arrangements in the context of the event and country.

Be clear who is responsible for arranging medical cover.

5.0 Key Legal Points

- The legal issues surrounding these events are particularly complicated and you **MUST** understand them fully and/or get appropriate specialist legal advice.

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There are special legal requirements for overseas travel events - e.g. the Package Travel, Package Holidays and Package Tours Regulations 1992 (“the Package Travel Regulations”) and The Civil Aviation Air Travel Organisers’ Licensing Regulations 1995 (“the ATOL Regulations”).

The Civil Aviation Authority (“the CAA”) has issued guidance for charities organising challenge events involving flights. However, there is an apparent conflict between charity law and travel law over money to be paid back should the tour company fail after the costs have been paid. Potential participants who receive donations do so as agents of the charity and they hold the money in trust for them. The charity is responsible for the money which has been raised in their name. However, should cash need to be returned by the CAA, they would return it to the participant. This issue remains unresolved and you should take professional legal advice.

Should (a) anyone promoting the event and/or (b) participants be treated as a “professional fundraiser” under the Charities Act Part II, 1992.

- If so, then there **MUST** be a written contract covering all the terms set out in the Charitable Institutions (Fund-Raising) Regulations 1994.
- The contract with anyone promoting the event **OUGHT** also make very clear the allocation of specific responsibilities and risk
- The charity **OUGHT** to own copyright on all materials produced for the event.
- The charity **OUGHT** to approve all promotional material and advertisements in advance.
- The charity **OUGHT** to check its proposed tour company’s reliability, and its contract with them is also crucial.
- It **MUST** make absolutely clear who is responsible for which risks and who is responsible for complying with the Package Travel Regulations and ATOL Regulations.

There may be Data Protection issues, particularly what rights the tour operator has to use participants’ data.

6.0 Key Tax and VAT Points

- The tax issues surrounding these events are particularly complicated and you **MUST** understand them fully and/or get appropriate specialist tax advice.

Should the event be arranged by the Charity or run through a trading subsidiary?

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- If the income is likely to be treated as trading income, then you **SHOULD** consider using a trading subsidiary.

The tax and VAT implications of charity challenge events will depend on how the event is organised. The following are the most likely scenarios:

1. Participants pay for the travel costs and commit to raising a certain amount of sponsorship.

Where the participants pay the charity for their own travel expenses, then there may be a supply of a package holiday to the participant. Charities could find themselves *trading* in package holidays if they collect the funds in from participants for travel costs, insurance etc. This can easily be avoided by asking participants to deal direct with the travel operator.

The sponsorship raised by individuals will be donations collected by the individual and passed on to the charity. These donations are outside the scope of VAT and are not trading.

2. Participants raise a minimum amount of sponsorship to be eligible to participate, but travel costs can be paid from sponsorship raised.

A 'minimum amount of sponsorship' is effectively the same as specifying an entry fee. If participants are only allowed on the trip if they pay this amount, then this is an entry fee and the charity is providing a service in return. This is trading for tax purposes and it is a business activity for VAT purposes. So the minimum amount of sponsorship is subject to VAT (if the charity is registered or now exceeds the threshold).

- You **SHOULD** also consider whether this activity should be channeled through a trading subsidiary if it is to be regular trading activity.

It may be possible to keep it within the charity if the event qualifies as small-scale and is not regular.

A further question arises in respect of the VAT treatment of this type of activity. As stated above, this would be within the scope of VAT (whether in the charity or a trading subsidiary). You also need to consider whether the Tour Operator's Margin Scheme (TOMS) rules apply. These apply to any organisation selling-on package tours. A charity collecting in sponsorship from participants and then using those funds to pay for travel and accommodation has effectively sold a tour to a participant.

Under TOMS, the sale price of the tour (presumably the minimum sponsorship and any other charges, such as registration fees) is matched against the cost of the tour. The 'margin' or gross profit is the basis for calculating the amount of VAT due to HM Revenue and Customs. No VAT can

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be recovered on invoices for the cost of the tour. No VAT invoice should be issued to participants.

A further twist in the tail is that holidays enjoyed outside the EU fall within the zero-rates of VAT. So you may have a situation where the TOMS applies, but the event is taking place outside the EU. In this case there is a zero-rated VATable supply equivalent to the margin of income over costs. No VAT has to be charged, but this does have an effect on the overall VAT position of the charity.

Sponsorship raised by participants that is in excess of the minimum sponsorship is a pure donation. These amounts can be paid to the charity, or they can be paid into the trading subsidiary initially, and then transferred to the charity promptly.

3. **Participants pay for the event up front and, in some cases, if they raise a minimum amount of sponsorship, the participant receives all or part of the event costs back from the charity.**

The treatment will be similar to either point 1 or point 2 above. It ends up being one or the other arrangement, depending on whether they raise enough funds. This option is more difficult to administer, however, as it will not be known what the tax and VAT treatment ought to be until after the event.

4. **The travel company organises the event and makes a donation to a named charity for every place booked.**

In this scenario, the charity is only receiving a donation and so this is outside the scope of VAT and not trading. However, arrangements allowing the travel company to use the charity's logo or mailing list need to be on a proper footing.

- The charity **OUGHT** to issue a licence for the use of the logo and mailing list and charge a fee (subject to VAT if you are registered).
5. **Charity advertises for participants, using their name and logo, but a travel company handles all travel arrangements. Participants have to book with the travel company and have a separate agreement with the charity to raise a certain amount of sponsorship.**

The charity may be acting as an agent for the travel company and so care should be taken that respective roles and responsibilities are entirely clear.

- If the travel company is benefiting from promotion of its name and business, then you **SHOULD** consider whether the charity needs to charge a fee for this.

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If the arrangements make it clear that the charity is not the tour operator, then this should ensure that the charity is not undertaking this particular business activity. However, care is still needed in regard to the sponsorship agreement. If the charity stipulates that a minimum sponsorship has to be raised, then this is the same as an entry fee. It is then within the scope of VAT and possible trading if undertaken on a regular basis.

Registration Fees

These are often charged in addition to the requirement to raise sponsorship. These are within the scope of VAT.

Advertising Costs

The costs of advertising in newspapers etc. may well fall within the special relief for charities and therefore be at zero-rate. Note that the advertisement has to be placed by a charity and should be to raise funds. The relief does not apply to the travel company advertising for participants.

Gift Aid, CAF Vouchers and Other Tax Effective Giving

Note that only the donation element of income from these events can be paid through gift aid, covenant or CAF voucher.

- Participants **MUST NOT** use tax effective means of paying their minimum sponsorship, registration fees or other fees that are a purchase of a service.

Clearance in Advance

It is wise to obtain clearance for your event from Customs and Excise in advance. You will need to plan ahead to allow sufficient time for this and it is preferable if clearance is obtained before publicity material has been printed, so that you can change it if necessary. There are many variations and this guidance only sketches a few of the common ways in which charities organise these events. You may well find, therefore, that you get a different ruling for your event to the ruling colleagues get in another charity. Small differences in the way an event is organised may change the ruling. You should also consider obtaining clearance for relief from VAT on your advertisements.

To be safe, all challenge events can be channelled through the trading subsidiary and then there will be no problems over direct taxation. All the funds can be transferred back to the charity.

Impact on Overall VAT and Tax Position of Charity

- These events **SHOULD NOT** be considered in isolation.
- You **OUGHT** to plan and discuss the impact on the rest of the charity with your finance section.

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VAT and tax have to be considered in the context of the charity's entire activities. A particular VAT treatment for these events could have a significant financial impact on the overall position of the charity.

Update from Budget 2000

The Government Budget introduced some changes to charity VAT legislation. In particular, the rules on fundraising events have been relaxed and a charity may now stage up to 15 events of a similar type in one year. However, events providing more than two nights' accommodation have been specifically excluded. Charities should operate the Tour Operators' Margin Scheme (TOMS) if they are operating these types of events and VAT will apply.

7.0 Appendices

7.1 Useful Contacts

- **Civil Aviation Authority**

Consumer Protection Group
CAA House
45-59 Kingsway
London WC2B 6TE
Tel: 020 7379 7311
Fax: 020 7453 6431
Website: www.caa.co.uk

- **Charity Commission Direct**

PO Box 1227
Liverpool L69 3UG
Tel: 0845 300 0218
Fax: 0151 7031 555
Website: www.charity-commission.gov.uk

- **ABTA**

The Association of British Travel Agents Ltd.
30 Park Street
London SE1 9EQ
Website: www.abta.com

- **MASTA**

Medical Advisory Services for Travellers Abroad
Moorfield Road, Yeadon, Leeds, LS19 7BN
Tel: 0113 238 7500
Website: www.masta.org

7.2 Useful Publications

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

- Charity Commission booklet CC20 Charities and Fundraising - <http://www.charity-commission.gov.uk/publications/cc20.asp>
- Guidance notes issued by the Civil Aviation Authority - <http://www.caa.co.uk/default.aspx?catid=33>
- Question and answer guidance on package travel regulations is available from the Department for Business, Innovation and Skills (BIS) - <http://www.berr.gov.uk/whatwedo/consumers/buying-selling/holidays-travel/package-holidays/index.html>

7.3 The Institute of Fundraising's Model Contract

See the Code of Fundraising Practice, 'Best Practice for Fundraising Contracts' for the Model Contract. Alternatively, charity solicitors should be able to provide a suitable simple contract for a fee.

7.4 Working Party

- Janet South (Chair, Kingston Smith)
- Mark Astarita (NDCS)
- Bev Ayre (The Children's Society)
- Nick Chetwood (The Guide Dogs for the Blind Association)
- Elizabeth Clement (British Diabetic Association)
- Brendan Eley (Mary Rose Trust)
- Colin Hill (GDBA), Megan Munsell (NSPCC)
- Julie Sorrell (British Heart Foundation)
- Jim Swindells (Blue Cross)
- Louise Cowell (GDBA)
- Jon Scourse (GDBA)
- Christine Rigby (Bates, Wells & Braithwaite)
- Kate Sayer (Sayer Vincent & Co.)
- Philip Kirkpatrick (Bates, Wells & Braithwaite)

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