

A complex landscape

Clive Vergnaud introduces a breakdown of fundraising regulations across the British Isles.

WHEN WE WERE instructed by one of our charity clients to advise them on their fundraising activities throughout the UK and the Republic of Ireland, we realised two things. First, that as England and Wales lawyers we were not ourselves qualified to advise on all aspects of Scottish and Northern Irish fundraising regulation, or on Irish law. Secondly, that there must be any number of charities conducting fundraising across the UK and Ireland to whom such advice could be of considerable use.

It is a complex legal and regulatory landscape, with legislation dating back to 1939 sitting alongside new provisions introduced by the *Charities (Protection and Social Investment)*

“ Legislation dates back to 1939, alongside new provisions ”

Act 2016, and a variety of other sources of rules. We therefore answered our client's questions from the England and Wales perspective, and instructed charity law colleagues at Edwards & Co Solicitors in Northern Ireland, Turcan Connell in Scotland and O'Connell Brennan in Ireland on the charity's behalf.

Set out below is a (much) summarised version of the firms' responses. Please note that it is designed to give readers an overview, and should not be acted on without

taking professional advice tailored to your charity's specific circumstances.

The table does not deal with street collection, to which a different set of rules applies. The table also does not address data protection requirements or consent issues, whether under current law or in anticipation of the EU General Data Protection Regulation coming into force in May 2018. These are topics that have generated much discussion in the sector recently, but since the position is broadly the same EU-wide, they are not included.

We hope that you will find this piece of work valuable. ■



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Fundraising across the UK and Ireland

Question	England & Wales	Scotland	Northern Ireland	Republic of Ireland
Regulatory bodies				
Does a charity need to have a physical presence in the jurisdiction in which it carries out fundraising? If so, is the local entity required to have locally-domiciled trustees?	No, but any charity carrying out fundraising in the jurisdictions would need to obtain recognition of charity status from the tax authorities (HMRC in the UK; the Revenue Commissioners in Ireland) if it wishes to be eligible for tax advantages.			
If a charity does not have a physical presence in the jurisdiction, does it need to register with the principal regulator for charities conduct door-to-door and telephone fundraising in that jurisdiction?	No. If the charity does not have a physical presence in the jurisdiction, it is not required to register with the principal regulator for charities in that jurisdiction, whether that be the Charity Commission for England & Wales (CCEW), the Office of the Scottish Charity Regulator (OSCR) or the Charity Commission for Northern Ireland (CCNI). There may, though, be limitations on the charity's ability to represent itself as a "charity" or carrying out fundraising for a "charitable" cause.			Yes. Any charity operating or carrying on activities in Ireland must register with the Charities Regulatory Authority.
Is there a fundraising regulator with which a charity carrying out fundraising in the jurisdiction should be registered?	Any charity carrying out fundraising in England and Wales should (but is not legally required to) register with the Fundraising Regulator.	A charity whose sole regulator or lead regulator (for a dual-registered charity) is OSCR is subject to the Scottish system of self-regulated fundraising through the Fundraising Standards and Adjudications Panel for Scotland. There is no process for registering with the Panel.	Discussions on arrangements for fundraising regulation in Northern Ireland are expected to be taken by Summer 2017.	No.

Fundraising across the UK and Ireland (continued)

Question	England & Wales	Scotland	Northern Ireland	Republic of Ireland
Regulatory bodies				
Are there any other registrations, authorisations or approvals a charity is required to obtain in order to conduct door-to-door and telephone fundraising in the jurisdiction?	A charity would need to obtain a licence from the relevant licensing authority (local authority or police service) in the area in which it intends to conduct house-to-house fundraising. There is no specific regulatory body for telephone fundraising in the jurisdictions, but charities carrying out telephone fundraising should comply with the relevant guiding principles (in the United Kingdom, the Fundraising Regulator's Code of Fundraising Practice; in the Republic of Ireland, the Statement of Guiding Principles for Fundraising).			
What are the consequences of a charity carrying out fundraising in the jurisdiction without obtaining the required registrations, authorisations or approvals?	A charity that is not registered with the Fundraising Regulator will not be able to display the "registered with the Fundraising Regulator" badge and logo demonstrating the charity's commitment to the Fundraising Regulator's Fundraising Promise. Failure to obtain a licence to conduct house-to-house fundraising is an offence punishable by a fine and/or a prison sentence.			There are a number of offences for carrying out fundraising without being registered, carrying graduated penalties.
Who is the information commissioner in the jurisdiction and what are its registration and ongoing compliance requirements?	The UK Information Commissioner's Office ("ICO") is the information commissioner for the three jurisdictions. A charity may be required to register with the ICO if it holds and processes personal data, though some not-for-profit organisations are exempt.			The Data Protection Commissioner. A charity may be required to register if it makes use of equipment in the jurisdiction and holds personal data in an automated form.
Relationship with professional fundraisers				
What steps, if any, is a charity required to take when selecting a professional fundraiser to carry out fundraising on its behalf?	In the context of applying for a licence to conduct house-to-house fundraising, a charity will be required to exercise due diligence to ensure that all collectors are "fit and proper persons" and that they comply with the legal requirements. The usual trustee duties to use reasonable care and skill, to act in the best interests of the charity and to protect the assets and reputation of the charity, apply. The Code of Fundraising Practice provides general guidance in relation to selecting a professional fundraiser. In particular, charities should select fundraisers based on their experience, qualifications and any achievements which can be substantiated.			In addition to the usual due diligence, a charity should ascertain whether the fundraiser complies with the best practice principles set out in Irish Charities Tax Research Limited's Statement of Guiding Principles for Fundraising.
What provisions should be included in agreements between a charity and a professional fundraiser?	In England and Wales and Scotland, it is unlawful for a professional fundraiser to raise funds on behalf of a charity unless it has an agreement with the charity setting out certain terms, such as the fundraising methods to be used, how the fundraiser will be paid and, if funds are being raised for more than one charity, how the funds will be shared between them. Since the entry into force on 1 November 2016 of the Charities (Protection and Social Investment) Act 2016, in England and Wales agreements must also include details of any voluntary fundraising scheme or standard the fundraiser agrees to be bound by, how it will protect vulnerable people and ensure it does not unreasonably intrude on a person's privacy or pressure them into donating, and details of arrangements enabling the charity to monitor compliance with the requirements in the agreement. In all jurisdictions, agreements should follow the relevant principles of best practice (in the United Kingdom, the Fundraising Regulator's Code of Fundraising Practice; in the Republic of Ireland, the Statement of Guiding Principles for Fundraising).			
What limits are there, if any, on the level of remuneration of a professional fundraiser under the agreement?	There are no legal or regulatory limits on the level of remuneration of fundraisers but a charity should ensure that the level of remuneration is proportionate to the anticipated income, and is reasonable, prudent and in the charity's best interests.			
What restrictions exist, if any, as to the basis on which a professional fundraiser's remuneration is calculated?	There are no strict legal or regulatory restrictions on the mode of remuneration of fundraisers but it is generally considered that a charity should avoid paying a professional fundraiser on a commission basis unless other sources of fundraising investment have been explored and exhausted, payments are subject to approval by the trustees, and safeguards are in place to prevent excessive remuneration.			
Trustee duties				
What are the duties of a charity's trustees in relation to monitoring the activities that the fundraiser carries out on the charity's behalf?	The trustees have a general duty to ensure that any application of the charity's funds is in the best interests of the charity's work and that its assets and reputation are protected. This means ensuring that fundraisers acting on the charity's behalf are properly supervised; that there are mechanisms in place to monitor compliance with laws, regulation and best practice; and that agreements are in writing and include a clear scope of work, performance indicators and a review procedure, as well as safeguards to ensure donors are treated fairly and that vulnerable people are protected. See CCEW's CC20 guidance document, entitled <i>Charity fundraising: a guide to trustee duties</i> , for more detail about what is expected of trustees of charities carrying out fundraising in England and Wales.			

Fundraising across the UK and Ireland (continued)

Question	England & Wales	Scotland	Northern Ireland	Republic of Ireland
What are the annual reporting requirements of a charity in respect of its relationship with the professional fundraiser?	<p>Specific reporting requirements were introduced for larger charities by the Charities (Protection and Social Investment) Act 2016, including statements about:</p> <ul style="list-style-type: none"> the charity's approach to fundraising activity, and in particular whether a professional fundraiser or commercial participator was used; the steps taken to give effect to the provisions legally required in agreements with professional fundraisers (see above); any failure to comply with voluntary fundraising schemes or standards; the number of complaints the charity or anyone acting on its behalf received. 	<p>Disclosures about whether paid agencies have been used for fundraising purposes, the amount of money paid to those agencies for their fundraising services, and whether the fundraising was carried out with the knowledge of the trustees.</p>	<p>The Annual Monitoring Return requires a charity to state if it raised funds from the public and if it is a member of a recognised self-regulatory charity fundraising body, and declare how it ensures that best practice and standards are complied with.</p> <p>Returns and accounts relating to house-to-house collections are to be made to the Police Service of Northern Ireland or the Department for Communities.</p>	<p>The annual reports to be submitted to the Charities Regulatory Authority by each registered charitable organisation require details to be provided in relation to any relationship with professional fundraisers.</p>
Door-to-door fundraising				
Is a charity itself required to obtain permits or other authorisations for professional fundraisers carrying out door-to-door fundraising on its behalf?	<p>The charity itself is required to obtain a licence from every licensing authority in whose area all or any part of the collection will take place (in England & Wales, the local authority or, if within the Metropolitan Police District, the Metropolitan Police; in Scotland, the local authority; in Northern Ireland, the Police Service of Northern Ireland).</p> <p>In England & Wales and Northern Ireland, a charity that carries out collections throughout the jurisdiction can obtain an order exempting it from the requirement to apply for a licence.</p>			<p>The obligation to obtain a permit lies with the person who proposes to hold a collection (including nominees on behalf of charitable organisations). The application is to the Chief Superintendent of the Garda Síochána in the relevant locality.</p>
What are the disclosure requirements on fundraisers acting on behalf of a charity? Is there a prescribed form of solicitation statement?	<p>The legal requirement is that house-to-house fundraisers must carry a collector's badge and a certificate of authority. For large registered charities, the badge and certificate must state that the charity is registered.</p> <p>Professional fundraisers must state the name of the charity, the method by which their remuneration, if any, is calculated, and the estimated or actual amount of remuneration.</p>	<p>The legal requirement is that house-to-house fundraisers must carry a collector's badge and a certificate of authority. For large registered charities, the badge and certificate must state that the charity is registered.</p> <p>Professional fundraisers must state the name of the charity; the method by which their remuneration, if any, is calculated and the estimated or actual amount of remuneration; and, if this information is available in writing and is requested, the written version must be provided as soon as reasonably possible.</p> <p>Donors of £100 or more must be informed of their right to a refund (or to cancel the agreement) if requested within seven days.</p>	<p>Collectors are required to have a prescribed certificate of authority signed by the chief promoter and the collector, and a prescribed and signed badge which contains a general indication of the purpose of the collection. The certificate is to be produced on demand by any occupant of a house visited by him and the badge is to be worn prominently. There is no prescribed form of solicitation statement.</p>	<p>There is no prescribed form of solicitation statement which is required to be used in these circumstances.</p> <p>For non-cash collections there are obligations for disclosure of the name and registered number of the charitable organisation on garments and forms used for the purposes of collection.</p>

Fundraising across the UK and Ireland (continued)

Question	England & Wales	Scotland	Northern Ireland	Republic of Ireland
What steps, if any, are fundraisers required to take if people ask not to be solicited again?	<p>There is a long-standing statutory requirement that collectors do not ignore a request to leave or a request not to return.</p> <p>Consistent with trustee duties to preserve the reputation of the charity, collectors should be trained to terminate their approach in a polite manner and to report any such requests to the charity so that they can be recorded and taken into account for future collections.</p> <p>If a number has been registered under the Telephone Preference Service then the number must not be used for the purposes of fundraising calls.</p>	<p>Fundraisers ought to record the name and contact number of any person who asks not to be solicited again, and the charity and the fundraiser must both ensure that the request is complied with. If a number has been registered under the Telephone Preference Service then the number must not be used for the purposes of fundraising calls.</p>	<p>Collectors are not permitted to cause annoyance to any person nor remain at the door of any house if the occupant requests them to leave. Collectors should report such requests to the chief promoter.</p>	<p>There are no specific regulations governing this point, but best practice would be to comply with the request.</p>
What other legal requirements or recommended best practices should fundraisers be aware of in respect of door-to-door fundraising in the jurisdiction?	<p>Charity materials carried by fundraisers must bear the charity's registered name, any other name by which it is commonly known, the fact that it is a charity and its registered charity number (if any). Collection tins and boxes must be sealed. Specific rules apply to envelope collections.</p> <p>Fundraisers must be over the age of 16 (unless an exemption applies). Further good practice is set out in the Fundraising Regulator's Code of Fundraising Practice.</p>			<p>In addition to the provisions of the Street and House to House Collections Act 1962 and the Charities Act 2009, charities should comply with the principles set out in the Statement of Guiding Principles for Fundraising.</p>
Telephone fundraising				
What are the disclosure requirements on fundraisers acting on behalf of a charity? Is there a prescribed form of solicitation statement?	<p>Professional fundraisers must state the name of the charity; the method by which their remuneration, if any, is calculated and the estimated or actual amount of remuneration; and, if this information is available in writing and is requested, the written version must be provided as soon as reasonably possible.</p> <p>Donors of £100 or more must be informed of their right to a refund (or to cancel the agreement) if requested within seven days.</p>			<p>Telephone fundraising is not regulated as yet in Ireland. Non-resident charities typically adopt their best practice in their own jurisdiction. Charities typically rely on the Statement of Guiding Principles for Fundraising for guidance.</p> <p>There is no prescribed form of solicitation statement.</p>
What steps, if any, are fundraisers required to take if people ask not to be solicited again?	<p>The charity or fundraisers acting on its behalf must not make telephone contact with people who have previously asked not to be called by or on behalf of the charity, whether on a previous call or in writing. Any such request should be noted and systems be put in place to ensure they do not receive a call.</p> <p>Persons listed on the Telephone Preference Service must not be contacted.</p>			<p>Best practice dictates that measures be taken to ensure that the individual's wishes are respected.</p>
Other				
Are there any changes in legislation, regulation or practice that are proposed to come into effect in the next few years in the jurisdiction?	<p>The entry into force of the EU General Data Protection Regulation in May 2018 will impact on the way in which charities can lawfully process personal data, including for fundraising purposes.</p> <p>Throughout March 2017, the ICO is consulting on its draft guidance on the new consent rules under the EU General Data Protection Regulation.</p>			<p>The Charities Regulatory Authority is likely to increase its remit in the years to come.</p>
	<p>The Fundraising Regulator is consulting on the Code of Fundraising Practice.</p>	<p>Changes to door-to-door collection rules and to the requirements imposed upon professional fundraisers are on the horizon, but no clear timeframe has been set.</p>	<p>Laws relating to lotteries are thought to be under review.</p> <p>Non-resident charities may soon be required to register in the jurisdiction if they "operate" (which may include fundraising) there.</p>	