

1.0 Introduction

Major donor fundraising is about people and relationships. It involves the entire organisation from the chief executive officer to the administrative assistant working in a team to secure the gift. It also involves the family, friends and associates of the major donor affecting the timing, size, regularity, purpose and method of the gift and requires the fundraiser to be resourceful and responsive. Major donor fundraising is usually not an isolated process but a team effort which yields a mutually beneficial outcome for all, yet it is very rarely done in an overt way. There are no broad brush techniques and it can often be difficult to define the next step.

1.1 About this Code

This Code first defines a major donor and what constitutes major donor fundraising. It then sets out best practice and the law for prospect research, cultivation, solicitation, stewardship of the gift, managing gift club schemes and key legal and tax issues. This Code is applicable to all fundraisers, including prospect researchers and consultants, who are engaged in major donor fundraising.

1.2 Defining a Major Donor and Major Donor Fundraising

For the purposes of this Code, a major donor is an individual or family with the potential to make or procure a gift which would have a significant impact on the work being conducted, who is approached and/or cultivated

Major donations aren't always planned. Nor are they always made for philanthropic or altruistic reasons, but, whatever the circumstances, the major donor should take pleasure in making the gift and the fundraiser or organisation be pleased to receive it.

This Code has been written to provide guidance on best practice in raising funds from major donors. This Code does not delve into fundraising techniques about how to raise major donations. Instead, the Code is written to inform the reader about important factors which relate to major donor fundraising.

using personal relationship development fundraising techniques for the mutual benefit of the organisation and the donor. The gift may be of capital, revenue, time or influence. See the Codes of Fundraising Practice, 'Charities working with Business' and 'Fundraising from Grant Making Trusts' for specific information on these activities.

While it is understood that what is required to make a significant impact will be different for different organisations, this Code is particularly relevant to large financial gifts. Personal relationship development refers to the method of fundraising most relevant for major donor fundraising and specifically excludes such methods as direct mail and methods covered by other relevant Codes. Mutual benefit relates to a degree of reciprocity for both the donor and the organisation from the gift that is made.

Arrangements whereby gifts are raised by the donor from others are dealt with in the Code of Fundraising Practice, 'Volunteer Fundraising'.

2.0 Prospect Research

2.1 The Role of Prospect Research in Major Donor Fundraising

The purpose of prospect research within major donor fundraising is to maximise the potential of a major donor by gathering and managing a variety of information which the fundraiser can use to make their relationship with the major donor as rewarding as possible to both the major donor and the organisation.

2.2 The Role of Prospect Research in Major Donor Fundraising

Before undertaking any prospect research, fundraisers **should** understand the key skills required for prospect research. These include:

- understanding how to analyse sources and data
- understanding the motives behind charitable giving
- understanding the fundraising process
- proficiency in locating and processing relevant information
- recognition of wealth indicators
- the importance of using up to date and relevant information.

2.3 Keeping Prospect Research Ethical

Before engaging in prospect research, fundraisers **ought** to:

- Develop a confidentiality policy that reflects the sensitivity of prospect research information. This will aid in compliance with data protection legislation and ensure prospect research information acquired via channels other than the public domain is treated with the utmost respect.

When conducting, presenting and storing prospect research, fundraisers **should**:

- not use unethical methods to obtain prospect research information
- avoid personal prejudice and bias
- accept responsibility for their actions within the fundraising process
- be honest and transparent with regard to their purpose and their identity.

2.4 Keeping Prospect Research Legal

When conducting prospect research, fundraisers **must**:

- comply with the law that governs the processing of personal data and sources, in particular the Data Protection Act (1998) and copyright law. See Institute of Fundraising guidance on copyright and the Code of Fundraising Practice, 'Data Protection'.

2.5 Prospect Research Sources and Techniques

When conducting prospect research, fundraisers **should**:

- understand the strengths and weaknesses of the sources they are using, including accuracy and 'use by' dates
- always use a range of sources
- always cite a source when it is directly used to produce research output
- regularly update the sources they are using
- have a clear understanding of what information is fair and relevant to the purpose it is being used for
- have or develop knowledge of key research techniques.

2.6 Presenting and Storing Prospect Research

When presenting and storing prospect research, fundraisers **should**:

- have a clear understanding of the purpose of the research and present it accordingly
- ensure that the research they present is accurate, relevant to its purpose and timely
- implement a method by which stored prospect research is regularly checked for accuracy and relevance.

2.7 Using External Research Suppliers

When using external prospect research agencies, fundraisers **should**:

- have a clear understanding of research requirements and develop a brief accordingly
- ensure that all issues important to the organisation, such as data ownership, fitness for use and confidentiality, are governed by a legally binding contract.

2.8 Using Prospect Research

Fundraisers **should** use prospect research to:

- plan the best way to approach and/or cultivate major donor prospects
- decide who is best suited to approach the major donor for the first time to introduce the work of the organisation
- decide the most appropriate time for both the major donor and the organisation for an approach to take place
- ensure that whoever is to make the initial approach has all the necessary information about the beneficiary organisation, its work and the major donor.

- using information about the major donor in any publicity or fundraising activities without their prior consent.

Fundraisers and organisations **should** ensure that the same major donor prospect is not approached or cultivated by more than one person in the same organisation, unless this is in a co-ordinated fashion.

3.5 Health and Safety of Fundraisers

Fundraisers and organisations **ought** to conduct a risk assessment and **should** take due precautions in regard to personal safety while they carry out face-to-face meetings. This may include avoidance of one-to-one meetings, provision of mobile phones, logging of times and locations of any visits and telephone calls to a third party or central office once a visit has been concluded.

3.6 Involving Others

Fundraisers **should** maintain excellent internal and external relationships with major donors and with staff and volunteers. When there is a change in staff, a handover **ought** be undertaken.

All fundraisers **should** undergo training to ensure that major donor fundraising is carried out in a responsible manner. Support (including relevant training, if appropriate) should be offered to non-fundraising staff and volunteers, **should** they be involved in major donor fundraising. See the Code of Fundraising Practice, 'Volunteer Fundraising'.

3.0 Cultivation

3.1 The Need or Case for Support

Fundraisers **should** provide a clear and informative outline of the cause. Before 'making the ask', an informative outline of the cause **ought** to have been prepared. By first clearly defining the need, it will be possible to identify accurately who the prospective supporters might be.

3.2 Honesty and Transparency

All major donor fundraising **should** be characterised by honesty, openness and fairness. When approaching and/or cultivating a major donor prospect, fundraisers **ought** to inform the prospect clearly and immediately of the organisation's name, identity, legal status, its mission, and purpose.

Fundraisers **should** offer the opportunity to major donor prospects to discuss the cause or request more information at any time. Donor cultivation **must** not mislead major donor prospects into believing that their donations will only be used for particular projects where this may not be the case.

3.3 Fundraising Materials

Fundraisers **ought to** ensure that all fundraising materials are accurate and correctly reflect the cause, mission, and how the solicited funds will be used.

3.4 Behaviour

Fundraisers **must** ensure that their behaviour cannot be construed as threatening or create undue pressure or harassment to make a donation.

Fundraisers **ought** to avoid the following:

- using forceful, coercive, intimidating, or deceptive techniques in asking major donors for support
- withholding important information or exaggerating the facts relating to the potential beneficiary
- 'making the ask' prior to the fundraiser taking reasonable steps to ensure that the donor knows as much about the cause and organisation as they possibly can (except in situations of raffles or auctions)
- taking advantage of mistakes made by the major donor
- ignoring cultural or religious norms, conventions and etiquettes of the major donor
- using language, food, drink, clothing or behaviour which the major donor finds rude or offensive

4.0 Solicitation

4.1 Making the Ask

Fundraisers **should** think creatively in relation to the benefits a donor can offer. For example, gifts of land, shares, advice and contacts **should** be considered.

When asking for a major gift, the person making the ask **should** do so when they feel the circumstances and timing are appropriate and they **should** be prepared to remain silent until the major donor prospect responds.

Fundraisers **ought** to ensure any incentives or gifts offered to the major donor are appropriate and deliverable. Organisations **must** not accept donations with conditions which they are not able legally or practically to fulfil. See section 7.0 Key Legal Points for more information.

Organisations **ought** to have an ethical policy with regard to the acceptance of donations. See the Codes of Fundraising Practice, 'Acceptance and Refusal of Donations' and 'Charities working with Business' for more information.

4.2 Acknowledging Gifts

Fundraisers **ought** to ensure that all donors receive appropriate receipts (see section 7.0 Key Legal and Tax Issues). Fundraisers **should** be able to articulate the tax efficient options for major donor support. Where appropriate, fundraisers **ought** to advise the major donor to seek relevant financial advice.

When a donor agrees to make a donation the pledge **should** be promptly acknowledged in writing in anticipation of the receipt of the gift. All appropriate members of the organisation's project staff and/or volunteers **should** be advised as soon as pledges are known, subject to confidentiality.

When the donation is received, the gift **should** be promptly acknowledged in writing by an appropriate person, confirming the purpose of the donation and thanking the donor.

5.0 Stewardship

5.1 The Donor's Gift

Fundraisers **must** ensure that major gift contributions are used to support the cause in accordance with the donor's intentions, and reasonable expectations.

Fundraisers **should** ensure proper stewardship of major gift contributions, including timely reports on the use and management of funds. Any specified reporting requirements of a donation that have been agreed **ought** to be complied with.

If there are potentially serious problems with the cause (for example, the likelihood of significant delays to timetables or real risk of failure to complete), the major donor **ought** to be informed as matters develop.

Fundraisers **must** not assume any change in the application and/or conditions of a gift unless there is consent from the donor. If binding trusts have been created over the donation, legal advice **must** be obtained before any use of funds in a manner inconsistent with these trusts.

Fundraisers **should** invite major donors to become involved in the cause whenever appropriate.

5.2 Confidentiality and Data Protection

Fundraisers **must** respect donors' needs for confidentiality and **must** comply with the law relating to fundraising and the use of personal data.

Fundraisers and the organisations that they represent **should** consider how they may best meet major donors' wishes and be transparent in their dealings with donors. Fundraisers **must** give major donors the opportunity to have their names omitted or removed from lists that are sold to, rented to, or exchanged with other organisations. See the Code of Fundraising Practice, 'Reciprocal Charity Mailings' and see Section 7.0 Key Legal Issues.

transparent in all forms of publications and solicitations. It **should** be clear whether the level of donation required is net or gross of reclaimed tax. The fundraiser **must** ensure that any benefits offered do not contravene reasonable use of charitable funds and **should** check whether they adversely affect the tax efficient nature of the gift. If in doubt, appropriate advice **ought** to be sought.

Membership of such a scheme may offer contact with the trustees or senior management of the organisation, opportunities to discuss issues affecting the organisation as well as access to more detailed information from the organisation but it **must** not

confer control or direct influence on the organisation's decision making process.

6.3 Communication

The donor **should** be given an option as to the level and format of communication, and the range of available benefits they wish to receive. The level of recognition and range of benefits offered by the organisation as part of the scheme **must** be honoured, or any changes agreed with the donor.

6.0 Managing Gift or Donor Club Schemes

6.1 Donor Schemes

Major donor membership, friend or gift club schemes are a way of encouraging donors to increase the level of their support, through involvement with the cause and other major donors, and enable fundraisers to manage communication, events and donor recognition in a cost-effective manner.

If properly established and promoted, membership schemes may encourage the creation of a body of major donors who are giving at increased levels, are more aware of the cause and have a closer association with the mission, purpose, aims and objectives of the organisation.

The structure of the scheme, for example the number of different levels of membership and the level of gift required to attain different levels, and whether a scheme is appropriate for an organisation's major donors, **should** be carefully considered before the scheme is introduced

as the launch and maintenance of the scheme may involve committing a significant level of resource. In addition, making significant changes to the scheme, once launched, may be difficult.

6.2 Considerations

The opinions and suggestions of existing donors and potential club members **should** be sought before a scheme is launched to make sure that the level of gift required, concept of the scheme and benefits offered are appropriate and will prove to be attractive to potential members.

Undue pressure **ought** not to be put on a donor to increase their support purely to become a member of the gift club. Donors **ought** always to be given the option of opting out of the scheme.

The level and frequency of gift that is required to become and remain a member of the club **should** be clear and

7.0 Key Legal and Tax Issues

7.1 Professional Fundraising Rules in England and Wales and Scotland

The professional fundraising requirements in the Charities Act 1992 might apply to relationships with a major donor, depending primarily upon the nature of the fundraiser's relationship with the charity for which they are raising funds. In Scotland, similar provisions relating to agreements and statements are contained in sections 79 to 83 of Part II of the Charities and Trustee Investment (Scotland) Act 2005, due to come into force in 2006.

Fundraisers **must*** satisfy themselves before commencing a relationship with a major donor whether or not the rules in the Act and supporting regulations apply, and if so determine at what point and in what form the required statement should be made.

Fundraisers **must*** also point out to a major donor if the method by which they propose to raise the funds for their donation would make them a commercial participator, as this will require them to have a written agreement with the charity.

Fundraisers **must*** also comply with any other legal requirements relating to the form of dialogue being used (e.g. the requirement that formal documents soliciting funds state that the charity is registered).

See also the Code of Fundraising Practice, 'Charities Working with Business'.

7.2 Revocable Gifts

The courts or other authorities can in certain circumstances set aside gifts made by vulnerable people or without due regard to the needs of others. When negotiating a major gift there are, therefore, certain circumstances that will require careful handling. For example:

- social services law authorises local authorities to seek repayment of some gifts made in advance of a person moving into local authority accommodation, if the gift was made with the intention of avoiding accommodation charges
- gifts by bankrupts or in anticipation of bankruptcy can be set aside by the trustee in bankruptcy
- gifts by those incapacitated at the time permanently (e.g. hearing impaired) or temporarily (e.g. drunk) can be set aside, broadly speaking where there is a lack of understanding on the part of the donor or unfair advantage is taken of the donor
- some donors may have limited or no capacity to make gifts out of property they control (e.g. Trustees of private trusts, and attorneys)
- gifts in Wills can be set aside or varied by the courts if the deceased is found to have made insufficient provision for his family or dependants (see also the Code of Fundraising Practice, 'Legacy Fundraising').

Fundraisers **ought** to keep a record of what was known at the time if any of the above appears to be a possibility, and let the charity know of concerns. Any further action **should** only be with the benefit of professional advice.

7.3

Confidentiality and Data Protection

A major donor may be sensitive about public disclosure of their support. They may also be sensitive about other aspects of their affairs entering the public domain. The law on confidentiality is complex. However, broadly speaking, the law will provide an action for a donor if fundraisers or the charity reveal information:

- that is inherently confidential, due either to the nature of the information (e.g. a trade secret) or the context in which it arises (e.g. doctor/patient discussions)
- that fundraisers and donors have agreed is confidential, on the basis of which the donor makes their gift.

Fundraisers **should** as a matter of course raise the issue of confidentiality with a major donor at an early stage and agree what can or cannot be said about them and their involvement with the charity. See also the Code of Fundraising Practice, 'Data Protection'.

When agreeing with a major donor what can or can't be disclosed, fundraisers **should** bear in mind:

- certain charities are subject to the requirements of the Freedom of Information Act 2000
- the charity might have agreed to reveal certain information to others as a matter of course (e.g. other funders)
- the charities SORP requires basic disclosure of the amounts of incoming resources in a charity's accounts.

Data Protection legislation is not clear to what degree fundraisers may develop a file (when researching major donors) before disclosure becomes necessary. It does not appear that disclosure, given the limited numbers involved, would involve the data controller in disproportionate effort.

However, provided that the data itself is not sensitive, but freely available and in the public domain, it would be difficult to suggest that such processing could be unfair.

It would be reasonable to expect that at first point of contact with such a donor, an appropriate declaration **should** be made by the person making that approach relating to the data held.

7.4

Benefit Packages and Conditional Gifts

It is common for a charity to engage a major donor by offering them benefits (e.g. a place at a gala dinner) or recognition (e.g. to name a new building) or less material forms of engagement (e.g. trusteeship). Equally, a major donor might want to make their gift conditional so that, for example, the funds:

- are applied for certain purposes only
- go to another charity if the project fails
- be retained with only income being spent.

Alternatively, a major donor might wish to make a contribution other than by way of gift (e.g. a loan or other form of social investment).

Fundraisers **ought** to be clear in dealings with a major donor whether or not they are able to bind the charity to a particular arrangement. Some conditions might be unacceptable to a charity because of its status (e.g. it requires inappropriate political campaigning) or for operational or reputation reasons. As a result fundraisers **must** ensure any terms are:

- clearly recorded by the fundraiser
- approved by the charity
- legal advice is obtained and acted upon as to the appropriate means of implementing the agreed conditions.

Fundraisers **should** also be aware of the tax implications of any benefits offered to a donor (see 7.7 below).

7.5

Money Laundering

There are various offences relating to money laundering with which fundraisers **must** be familiar – and if necessary comply – when dealing with donors. The offences are contained in the Proceeds of Crime Act 2002 (POCA 2002), the Terrorism Act 2000 (TA 2000) and the Money Laundering Regulations 2003 (MLR 2003).

The offences in POCA 2002 apply to money or other property that someone has obtained through involvement in an activity that is criminal under UK law and that the offender knew or suspected to be such. TA 2000 applies to 'terrorist property'. This is property that is likely to be used for terrorist purposes or the proceeds of terrorist acts, such as a reward for committing the act.

It is an offence to receive, retain or convert money or property known or reasonably suspected to fall into these categories. If the charity operates in a 'regulated sector' (providing financial, business or legal services) you will also be under a positive obligation to keep certain records and report suspicions to the relevant authorities. Further guidance can be obtained from the National Criminal Intelligence Services (NCIS) and is contained in Charity Commission Operational Guidance OG96. See also the Code of Fundraising Practice, 'The Acceptance and Refusal of Donations'.

When approached by a new donor wishing to make a large donation, fundraisers **ought** to satisfy themselves as to the donor's identity and carry out a risk assessment. This **should** be carried out with sensitivity.

Since POCA 2002 applies to money or other property that has been obtained through conduct that is criminal under UK law, it will even apply to property obtained in ways that are legal in the donor's country but illegal here. Fundraisers **ought** to bear this in mind if the donor is not from the UK.

Fundraisers **ought** to be wary of gifts that come with conditions attached. For instance, if a donor offers a large donation on condition that it is used to support a project about which nothing is known, the donor may be attempting to launder money. Before accepting such a gift, fundraisers **must** be satisfied that the named project is a bona fide charitable endeavour, that its work is within the charity's objects and powers and that the trustees are happy for the charity to support the project.

If, in the course of work outside the regulated sector, fundraisers suspect that the property to be donated is the proceeds of crime, the donations **must** not be accepted and fundraisers **ought** to report the proposed donation to the appropriate authorities (usually the Police or NCIS). If fundraisers suspect that the property to be donated is terrorist property, then it **must** be reported to the police.

If fundraising as part of a business in the regulated sector, fundraisers **must** ensure compliance with the obligations in MLR 2003. This includes obtaining proof of identity, keeping records of transactions, training personnel involved in the regulated business and establishing internal reporting procedures. If fundraisers are not clear about their obligations, they **ought** to seek specialist advice.

7.6

Tax Issues

Most major donors will wish their giving to be as tax efficient as possible. An unconditional gift is likely to obtain for a donor relief from capital gains tax and inheritance tax. However, only certain assets when donated create a deduction for an individual donor from their taxable income and/or gains or profits. These are:

- cash gifts (either under the gift aid scheme or through payroll giving)
- gifts of shares, securities and other easily realisable investments (see HM Revenue and Customs leaflet IR178 for details)
- gifts of land (including leasehold interests) in the UK.

Fundraisers **should** be familiar with how these tax reliefs work, and the anti-avoidance provisions relevant to each relief. Fundraisers **should** not describe these reliefs to potential donors unless able to do so accurately. See www.hmrc.gov.uk/charities/chapter_iii.htm for guidance on benefits to donors and members. For more information on charities and trading generally, see www.hmrc.gov.uk/charities/annex_iv.htm.

When completing any major gift fundraisers **must** ensure that the charity is provided with sufficient information to enable it to verify to its auditor or examiner and the tax authorities the nature of the receipt. In particular:

- when the donation is a gift aid payment by an individual, you must obtain an appropriate declaration (the form of which will vary depending upon the method of giving used)
- when the donation is a gift of land, you must ensure the charity provides an appropriate receipt
- if the donor is selling shares on behalf of the charity, you ought to find out whether the donor intends to claim gift aid or share relief, and if the latter record clearly that the donor is acting on behalf of the charity before the sale occurs.

Fundraisers **ought** to agree in advance with the charity any benefit package for or reciprocal arrangements with a donor, and **must not** commit a charity to such arrangements without the charity being given the opportunity to take any necessary tax advice.

If benefits are provided in return for a gift, HM Revenue and Customs might treat the donation as consideration for a standard-rated supply and so subject to VAT. This could oblige the charity to account for VAT on the gift and if the charity is not VAT registered lead to it having to register. Fundraisers ought to check with the charity the VAT status of any benefits to donors and whether any exemptions apply (e.g. for fundraising events) before agreeing to provide the benefits and, if necessary, ensure the charity:

- values the benefits provided
- produces an appropriate VAT invoice to the donor.

See also the Code of Fundraising Practice, 'Charities Working with Business'.

7.7

Tax Avoidance and Evasion

If a donor wishes to make their gift in a way that requires the charity to act in a way that is unusual or complicated, fundraisers **ought** to give the charity the opportunity to seek legal advice to discover:

- whether the arrangement is one that **must** be disclosed to the tax authorities
- so, whether it is the donor, the fundraiser or the charity that is under an obligation to make the disclosure.

Similarly, if fundraisers create a tax-efficient plan, with the intention of offering it to major donors, then legal advice **ought** to be taken on whether or not the details of the scheme need to be disclosed to the tax authorities.

If fundraisers suspect that a donation is part of a tax evasion scheme, they ought to discuss the matter with a tax specialist immediately. Accepting a donation when it is known that it is part of a tax evasion scheme is usually a criminal offence. It is also an offence to accept goods where there is reason to believe that VAT on the goods has been or will be evaded, so donations **must not** be accepted in those circumstances.

8.0 Appendices

8.1 Useful Contacts

National Criminal Intelligence Service
PO Box 8000, London SE11 5EN

8.2 Working Party

- Mide Akerewusi, Scope, Chair
- Anthony Clay, Consultant, Representative from the Standards Committee
- Corrie Darker, The Healing Foundation
- Glen Fendley, Consultant
- Sion Lutley, University of Bristol
- Karl Mitchell, The Woodland Trust
- Julian Smith, Farrer & Co
- Laura Thomas, Institute of Fundraising

CHARITIES WORKING WITH BUSINESS

The Institute of Fundraising's Codes of Fundraising Practice

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 red indicates a requirement that is mandatory at law, '**ought**' indicates a requirement that is mandatory for members and affiliated organisations of the Institute and '**should**' indicates a course of action that is recommended as best practice.

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***' 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 stood at June 2002 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.

Downloadable Codes of Fundraising Practice can be found at www.institute-of-fundraising.org.uk. Alternatively, contact:

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