

**Review of the Code of Fundraising Practice 2022-24: Public Call for Information**  
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**Who are we?**

The Charity Law and Policy Unit, based at the University of Liverpool, is the UK's leading authority on legal and policy change relating to charities; it is the only academic Unit of its kind in the common law world with over 25 years of leading research projects and output. It carries out research into the legal issues facing charities and third sector organisations, often with a strong empirical element and leading to proposals for legal and regulatory reform, which have made important contributions to policy change in this field.

We are submitting this evidence, based on our research.

**Which parts of the Code do you think work well, and why?**

In general, we support express overall support for the Code. On our reading, it for the most part offers important, clear, and up-to-date guidance for charitable institutions, and third-party organisations, in their fundraising efforts. Rather than listing all the areas we deem to work well, we will instead focus, in the next section, on the areas we believe necessitate updates or further clarity.

**Are there any issues relating to charitable fundraising that the Code does not adequately cover?**

**Impact of the Charities Act 2022 on the Fundraising Code**

The Charities Act 2022, s6(1) inserts a new Charities Act 2011, s63A(3)(b) requiring that unless donors of £120 or less have made a written statement at the point of donation, then they cannot have a return of their gift. Instead, the trustees will apply the gift to new purposes.

This is relevant to the code in the following ways:

- Online fundraising platforms (currently detailed at 10.2.6), should alert donors to this requirement at the point of donation. They might also be advised to provide a proforma for the written statement.
- Appeals carried out by traditional methods should also alert donors to donors of £120 or less that they have lost the right to a return. They might also wish to provide a proforma for the written statement.

### **Responding to tech developments (generally)**

The 'call for information' makes clear that the Fundraising Regulator is aware that advances in technology have changed the way charities seek to raise funds since the Code's last update. Whilst we are generally in favour of updates to reflect this development, we would urge some caution. We do not see it as essential that the code is updated to reflect every possible new tech development, for instance there are now many, varied, types of cryptoassets that have their own idiosyncrasies however there is little evidence to suggest charities are engaging with crypto beyond some core, longer established coins e.g. Bitcoin and Ethereum. In this sense, specificity of specific coins might be deemed appropriate as guidance would be different depending on the characteristics of each coin. Further, we would urge caution in the code being seen to support nascent cryptoassets whilst the area is largely unregulated e.g. up until a few months ago, the general consensus was that stablecoins were a low risk way to transfer and hold funds – but they have since been shown to be risky due to bad actors and lack of sufficient backing.

In terms of how the law, and guidance, should develop in relation to tech developments the prevailing narrative is that changes should try to remain tech neutral so as to future proof against new developments. The Fundraising Regulator should consider on what basis new tech developments are implemented into the Code, and whether the update could be achieved in a more neutral way. The document is already a lengthy one, and perhaps the Code would be better served in signposting elsewhere / or developing separate guidance where they feel a new payment technology necessitates specific guidance. Otherwise, there is the potential for the Code to be in constant flux.

## **Returns of Gifts made in Cryptocurrency**

The value of any cryptocurrency has proven over the last decade to be highly volatile. Charities should be advised to specify the basis upon which they might make returns of gifts made in crypto (e.g., where an appeal fails, and the individual donation is over £120 in value). For example, the charity should specify whether the value returned will be the value of the gift in sterling at the point of donation, or whether it will be the value in sterling at the point of failure of the charitable appeal (essentially just the return of exact amount of crypto donated). Given charities that engage in crypto tend (and should be advised) to transfer crypto donations straight to fiat currency e.g. pound sterling, then it would be logical for them to state that any return would be the equivalent value of the crypto donation, in sterling, at the time of the donation.

The alternate, returning exact amount of crypto, could impact the charity financially as 1) they would absorb any potential loss in value of the given crypto and 2) a negative outcome for the donor could result in legal challenge.

## **Miscellaneous Crypto Suggestions**

We would suggest that it is important that charities are guided to be clear about fees associated with 'processing' crypto donations, given their tendency to exchange them for fiat currency at the point of donation. However, where they are not following this practice and are instead holding cryptocurrency, they should be advised of the risks and given 'best practice' advice on safely storing these coins. Safe storage will incur fees whether that is through paying an insured third-party storage provider, or buying the necessary equipment to hold assets themselves e.g. external hard-drives with cryptography. Whatever, charities decide, they should be urged to be clear on this to reassure donors.

There needs to be clear guidance on if crypto is eligible for Gift Aid. At present it is unclear if it would be<sup>1</sup> – and given this, perhaps the Code's section on Gift Aid would need to be update for crypto rather than merely signposting to HMRC website.

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<sup>1</sup> For fuller discussion on this point, see: M. R. Shillito, *Regulating the Digital (Currency) Revolution: Unravelling the Technological Challenge Faced by Charities* in J. Picton & J. Sigafos, 'Debates in Charity Law' (2020, Hart Publishing).

As an update to section on 'third party fundraisers', crypto philanthropic fundraising sites should be included e.g. Fidelity Charitable. Again, charities utilising these services should be required to make clear how much commission is charged. These third party organisations should also be subject to the 'safe storage requirements outlined above.

### **Guidance on Charity Involvement with Emerging Payment Tech**

The Charity Commission, and the Fundraising Regulator, in consultation should consider offering broader advice on the suitability of charities engaging with emerging payment tech, particularly in the crypto sphere. This could be linked to in the Code.

### **Relationship between the Fundraising Regulator and the Charity Commission**

The Code should better communicate to charities the division of regulatory responsibility with the Charity Commission. So, for example, the Code should be clear that where a charity deviates from its purposes, then the Charity Commission will step in and ensure that the trustees are properly following the charity constitution.

### **Are there any ways in which the code could be made shorter, clearer or more accessible?**

There is perhaps an inevitability that the Code will grow, given the need to cover new technologies. Given the Code is already a lengthy document, perhaps the Fundraising Regulator needs to consider whether it is essential to outline each and every payment method, or whether the Code should have general advice with a link to specific guidance on particular payment mechanisms. Essentially, the decision is whether the Code should be comprehensive in its coverage or whether it should give a quick oversight and signpost elsewhere for further guidance (particularly around newly emerging payment tech).