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Briefing on Wealth Screening, Profiling and Donor Research for fundraising purposes

Background

1. This paper develops two scenarios – one related only to profiling and the other to wealth screening. This is done as a way of crystallising the questions and risks to fundraising practice presented by the ICO's recent public comments on profiling and wealth screening.

2. There are three important principles at stake here.

   a. One is the definition and use of Fair Processing information. What can we reasonably assume people understand when we say we will use their data for fundraising purposes? And is this sector being held to a higher level of detailed explanation on this matter than the commercial sector? For example major retailers collect extensive data through their loyalty card schemes. Their privacy statements use broad phrases like "We may also use your personal details to provide you with a better service and to make shopping at <supermarket> easier." [1]

   A more extensive equivalent in the charity sector might be "We use your data to carry out fundraising activities to support <charity x> and to improve the efficiency and effectiveness of our fundraising operation". Is ICO expecting charities to spell out in (many) words all of the different things that this means? This would be a higher standard than the commercial sector is expected to provide.

   b. The definition of profiling. At what point does "ordinary" and sensible segmentation become "profiling" and why does that that apparently require any more consent than any other fundraising activity which might be being carried out, like being invited to an event or processing which results in the person not being invited to an event?

   c. ICO's view on the practice of appending publicly available data, whether from desk research or from a third party. This is what happens when wealth screening takes place. ICO is reported as having said at the Fundraising Convention this week that this is "not allowed" and the NCVO Working Group has said it should only take place with consent. We want to know the basis in law for this view since we argue that it is an integral part of normal fundraising. If ICO and NCVO disagree, what is the basis for this?

[1] See, for example, https://secure.tesco.com/clubcard/charter

Some things which we take for granted in this paper

3. In this paper we assume that:

   a. all the provisions of PECR are being complied with,

   b. that the donor understands, at least in general terms, that the charity is using her / his personal data for fundraising purposes,

   c. that no sensitive data[2] is being processed.

Profiling and Fair Processing

4. It is a fundamental part of any fundraising process to ask the question “who is most likely to give?” This applies whether the purpose is a major capital fundraising campaign, a disaster emergency situation, revenue support or even a collection for a colleague leaving the office (“should I ask him to contribute – I think they can’t stand each other!”)

5. In a charity there is a fiduciary duty to be efficient about the way in which fundraising is carried out because fundraising itself is not a charitable purpose. Thus any expenditure on fundraising must be justified by its impact on the organisation’s ability to carry out its charitable purposes. Efficiency and effectiveness are not luxuries; they must be a core part of any fundraising planning.

Fundraising Planning – when does it become profiling and is that wrong?

6. A key part of any fundraising strategy determines which supporters and potential supporters will be addressed by what methods, and with what messages. In order to make plans to do this, a range of information can be used. This information may include

   - Past giving history
   - Recent of giving
   - Value of past giving
   - The fundraising method to which the donor responded
   - The message contained in the communication which caused the donor to respond

7. At its most basic level, armed with this information, a charity might use direct mail to communicate about a particular project to those donors who have responded positively to a previous direct mail about the same project. Once the project is finished, it might ask those donors to give to a similar project, and it might once again use direct mail to do so. On the other hand it might use email or social media to resolicit gifts for a very different project where it had found that a different group of donors were highly responsive here.

8. In both cases the charity would be using information it has already obtained from the donor to determine future fundraising activity and would be making decisions about that activity based on data it holds about donors and their previous giving activity.

[2] As defined at https://ico.org.uk/for-organisations/guide-to-data-protection/key-definitions

Questions

Q1. Does ICO regard this type of activity as profiling?

Q2. Does ICO regard the phrase "processing data for fundraising purposes" an adequate description of this kind of activity?

We argue that this is simply basic customer retention behaviour, and is what any reasonable person would expect a charity to do.

The introduction of a little business intelligence

9. Taking the scenario in paragraph 7 above a little further, the charity might discover that people living in a particular group of postcodes are more responsive to a request to upgrade from making one off gifts to a direct debt. The charity decides to bias its direct debit upgrade activity towards these postcodes.

Question

Q3. Does this behaviour now amount to profiling? And would a reasonable person expect a charity to behave in this way?

Again, we argue that this is an entirely ordinary business practice. If ICO does not regard this as normal and included within a reasonable person's expectation of fundraising behaviour, then we would argue that ICO is expecting a far greater level of detail to be provided by the charity sector than the commercial sector. It needs to justify this approach.

Business intelligence gets more sophisticated

10. Further developing paragraph 9, a charity might record a variety of data on its donors and their giving and discover that there is a small subsection of the group who are particularly generous, giving more than – say - £500 each year.

11. The charity clearly needs to pay particular attention to the retention of this group of donors because they are contributing a proportion of all income which far exceeds their numeric strength on the database. As a result it flags these donors on its database as requiring special treatment.

Question

Q4. Does the selection of these donors for special stewardship mailings and invitations to interact with the charity in other ways amount to profiling? And even if it is profiling, is it within the normal expectation of fundraising behaviour?

As before, we argue that this is an entirely ordinary business practice. If ICO does not regard this as normal and included within a reasonable person's expectation of fundraising behaviour, then we would argue that ICO is expecting a far greater level of detail to be provided by the charity sector than the commercial sector. It needs to justify this approach.

Finding more donors like the existing generous contributors.

12. The charity needs to consider how it might enlarge the pool of people giving at £500 per year or more. It starts by some simple rankings on its database of the geodemographic of these donors, scoring the postcodes with a value of 1 to 5. It adds in some data about longevity of giving and initial gift size and scores each of these 1 to 5 as well. The average score for a £500 donor is around 11.

13. The charity then adds up scores for all of the other donors on their database, and finds there are 100 people who score more than 11 but are not giving at £500 or more. It carries out a sensitively worded mailing to all the people who have scored 11 or more and enjoys some success.

Question

Q5. Is this now profiling and is it reasonable to do it? Would a donor expect the charity to do this?

We argue that, once again this in normal. Indeed, the practice is efficient and effective and against the background of some public concern about fundraising and staff costs in charities, the public might welcome thoughtful, efficient behaviour.

Automating the process

14. The charity finds that the scoring exercise has been so successful that it wishes to do similar work but with greater statistical reliability. It therefore carries out a regression analysis using SPSS or some similar software to help work out who is most likely to give at £250 or more.

Q6. Does use the use of a computer to improve statistical reliability turn this process into profiling, and is it reasonable to do it?

Clearly, fundraising more efficiently is not of itself justification for the processing of someone's data in a particular way. However it is a core responsibility of the trustees to have regard for the efficiency of their charity's operation, including fundraising. Indeed, being able to explain to their supporters that they use the most accurate and effective ways of directing their fundraising communication will be attractive to many donors.

Profiling – a summary

15. The paragraphs above explain the extent of "profiling" used by most charities. Indeed many will be nowhere near a sophisticated as this.

We would welcome some clarification from ICO as to what exactly they mean by profiling in this context.

Major Gift Fundraising – some background

16. It is a matter of good practice to ensure that the most appropriate communication, and the most appropriate forms of communication, is used with each potential donor.

17. A growing area of fundraising practice in the UK in the last 30 years has been that of major gift fundraising (referred to in some sectors as Face-to-Face Fundraising, but not to be confused with on street fundraising of the kind regulated by the PFRA). This type of fundraising has been championed by various arms of government, including The Cabinet Office, the Department for Business, Industry and Skills, and the Department for Culture, Media and Sport as well as a number of third sector initiatives, for example Philanthropy Impact and New Philanthropy Capital.

18. Major gift fundraising typically involves members of staff from a charity meeting personally with a potential donor on a number of occasions, and a deep sense of connection between the potential donor and a charity developing before anyone asks the person to consider making a gift. This is a costly mode of fundraising and therefore it is important that it is only deployed where it is proportionate.

19. No one can predict with certainty the outcome of a particular fundraising "ask." However, certain factors predispose that "ask" towards success. One of these is knowing that the potential donor would not be taken aback by the scale of commitment which the charity is proposing they might make. In the words, whether or not they have the means to make a significant gift.

20. There are many ways of working out if a particular individual may have the means to make a large gift. Some of these will be related to employment (some jobs pay more than others), others will relate to previous philanthropic giving or engagement with charitable causes. Evidence of wealth is clearly an important factor.

21. Interest in wealth is not confined to the charitable sector; the continuing success of the Sunday Times Rich List as a piece of journalism provides ample evidence of this. Investment managers, makers of luxury goods, high-value estate agents and many others have an interest in being able to identify the wealthy.

22. It is therefore obvious that a charity wishing to develop a major gift function will want to identify which of its donors is wealthier than average and merit the assignment of a major gift fundraiser to nurture the relationship between donor and charity.

23. Beyond this, a charity will need to brief its fundraisers and senior staff on the people they are going to meet. It is inconceivable that one would send a Chief Executive into a meeting with a potential donor without a proper briefing. No area of business would do this.

Ways of identifying and qualifying wealth – in-house and bought-in

24. Many charities have retained a member of staff whose role is to identify potential high-value donors and to provide appropriate briefings to the Director of Fundraising or other responsible person. These briefings typically include the kind of information available on a LinkedIn profile or a staff profile published on the donor's company webpage. They would also include some history of the person's relationship with the charity and might include an estimate of their potential to make a large gift.

25. In assembling such information, it is extremely unlikely that a charity would record any information that is not either in the public domain or which has not been supplied by the donor themselves. The driving force in restricting information to these two categories is the right of Subject Access. Those who assemble this information are keenly aware that the data subject has the right to see any information which the charity holds.

26. In respect of information about wealth, charities use many sources including publications like the Sunday Times Rich List and public company reports which published directors' remuneration, articles in the financial press describing the results of buyouts and company transactions and so on. All of this is publicly available.

27. Some charities do not have the expertise all capacity to carry out all this work in-house. Instead they will use a Wealth Screening agency to compare their own data with data held by the agency. The only agencies in the UK of which we are aware confine their data solely to publicly available data. This is because they have to be able to verify it in order to have any credibility.

28. When a charity Wealth Screens its data it appoints the agency as a Data Processor within the meaning of the 1998 Data Protection Act. Data is supplied to the agency which compares names and addresses from the charity with names and addresses on their own data. If there is a match, the agency will append information concerning publicly verifiable wealth and return all the data to the charity. The agency does not "harvest" any data from the charity and the only data that it retains is a record of the results – i.e. which records on the charity's database matched records on the agency's database.

29. There is therefore, in law, no disclosure of data to the agency, nor is the charity buying names from any third party, nor is any sensitive data involved.

We argue that this process, so long as the data is processed "Fairly", is no different in law from the screening of a set of addresses against the Postcode Address File in order to append postcodes to an address list.

The legitimacy of wealth screening, therefore, revolves entirely around the provision of Fair Processing information to the data subject and has nothing to do with profiling or automated processing of data or disclosure of data to third parties or obtaining of information on new data subjects from third parties.

30. It is quite clear that a Data Subject needs to be provided with the Fair Processing information when the data is obtained, or if obtained from a third party then before or as soon as practicable after processing commences (First Data Protection Principle 2(1)(b), part II, Schedule 1, Data Protection Act 1998).

31. It is the nature of that Fair Processing Information which is germane to this situation. ICO frequently asks the question "what would the person would expect?"

The production of briefings on potential major donors only applies to a very small subsection of most charities' databases. In respect of these, there is plenty of evidence to suggest that high-net worth individuals expect charities to be carrying out this kind of research[3] *– whether by wealth screening, or simply using Google or reading the newspapers. There are many instances of donors asking the charity "why has it taken you so long to send someone to see me?"*

Related to this is the expectation that senior executive staff would be briefed properly prior to a meeting with a potential donor. It is inconceivable that an organisation would send its Chief Executive into a meeting with a potential donor without briefing her/him properly beforehand, and such a briefing would include a proper CV of the person they are meeting. Omitting to do this would be discourteous to the potential donor.

This kind of research is not "extra-ordinary" – it is normal, necessary <u>and expected</u> that such research should be carried out prior to meetings between people of influence to take place.

[3] Research by Dr Beth Breeze and Theresa Lloyd in 2013 asked wealthy donors how they regard fundraisers. 67% of their sample who were established donors (had been giving for more than 10 years) said that "Fundraising had improved and become more professional in the previous ten years" while 26% said their experience was varied and 5% said it had stayed the same. The primary reason for the improvement, cited by 78% of the research group was "Fundraisers are carrying out better research before approaching donors." Published in Beth Breeze & Theresa Lloyd, *Richer Lives: Why rich people give,* Directory of Social Change, London 2013.

Those from whom large gifts are being sought are highly educated, highly international and almost invariably very "savvy" about what charities do with their data. And while it may be relatively new, major gift fundraising contributed in the region of £400m to UK universities alone last year – a number that has been consistently growing.

In summary, high-value potential donors expect this kind of research to have been carried out before a meeting takes place. If they know a charity is using their data for fundraising purposes then it is very likely that they understand that some kind of assessment of their wealth and giving capacity will be carried out.

The interests of the data controller

32. Two more issues are relevant to this question. The first is due diligence. The Charity Commission requires trustees to have regard for actions which may bring a charity into disrepute. Accepting a gift from a donor whose own behaviour or opinions, or the manner in which his / her money was obtained, is at odds with the purpose or ethics of a charity carries a serious risk of bringing the charity into disrepute. An example might be a charity which works to remove land mines accepting money from a person whose wealth had been derived from the legitimate sale of arms.

33. Due diligence research is necessary before a gift is solicited to ensure that this does not happen. Lord Woolf explicitly recommends this in his report to the London School of Economics and Political Science in his report on the gifts received from the Gaddafi family. He says "It is therefore vital that a university carefully analyses any potential donation. It should seek to obtain sufficient evidence to enable it to come to the right decision as to whether it should accept a gift or not." [4] It happens that this report was about a university, but its principles apply to any charitable fundraising.

34. Finally, Counsel's opinion in respect of Fair Processing has held that there needs to be a balance between the individual's right to have their data protected and a business's legitimate right to pursue their business lawfully, especially if that data is already in the public domain.

Questions

Q7. In this light, what information does ICO regard is necessary to provide to data subject in order for the processing of data in this way to be regarded as fair?

Q8. Provided the Fair Processing information has been supplied and that the data subject has not requested that the data controller cease processing her / his data for this purpose, will ICO confirm that the combination of the legitimate interest of the data controller and the provision of the Fair Processing information renders such processing both lawful and fair?

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[4] See "The Woolf Inquiry" http://www.woolflse.com para 3.5ff

Appendix – About More Partnership

More Partnership is one of Europe's leading strategic advisors to charities which fundraise. Almost all our work involves interaction at a governance and senior executive level in addition to work with core fundraising staff. We are based in Scotland and have staff in England, Northern Ireland, France and Switzerland, with partners also in the United States of America.

We have worked with 120 organisations in the last year alone, including organisations running the largest and best known fundraising campaigns in the UK. These include the University of Oxford (£3bn philanthropic target), Cancer Research UK for the Crick Institute (£100m), and the Royal Botanic Gardens at Kew (£100m) as well as the University of Edinburgh and the Brighton Dome.

A sample of other clients includes the Science Museum Group, Moorfields Eye Hospital, Chichester Festival Theatre, the Ashmolean Museum, Queen's University Belfast, Alzheimer's Research UK, Sheffield Hallam University and Aberdeen Art Gallery. Outside the UK we work in a range of different sectors and geographies. Clients include Ecole Polytechnique in Paris, Trinity College Dublin, Università Bocconi in Milan, the African Medical and Research Foundation (AMREF) in Nairobi and Australian National University in Canberra.

We were commissioned by the Higher Education Funding Council for England to write two reports on the development of fundraising in British universities (2012) and on workforce development in fundraising (2013).