

MARKETING, MARKETING, MARKETING

From Mills & Reeve charity legal update blog at <http://www.charitylegalupdate.co.uk/>.

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Contact legalupdate@sandy-a.co.uk to receive email updates on voluntary sector law and governance.

Mills & Reeve Charity law blog: Marketing, marketing, marketing

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How and when charities can and should get in touch with potential and existing donors has been a charged issue for several years now. Fundraising activities, including various types of marketing communications, are vital for keeping numerous social, environmental, medical and other projects afloat. Concern within the sector as to what will be permitted under the EU General Data Protection Regulation (GDPR) abounds.

The good news is that for direct mail (post) and live telephone call marketing, nothing really changes. Charities can continue to use both media to contact individuals, provided that they have first checked the Telephone Preference Service or Mail Preference Service (as applicable) and their own internal "do not call" lists. Charities have a recognised legitimate interest in conducting such marketing. So long as charities balance the level and content of their marketing activity against the rights of the individuals being contacted, all is well.

The bad news is that where direct marketing is consent based (under the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR)), charities need to check whether the consents they hold for the various marketing media are sufficient to comply with GDPR-standard consent requirements. If the wording used to obtain consent was insufficiently clear and specific, or the individual was not provided with adequate information before giving consent, or an 'opt-out' consent format was used – those consents will need to be refreshed.

If charities do need to refresh consent, timing is everything. Consent that is adequate under current criteria (but is not GDPR-standard) does allow charities to contact those donors via the relevant media, before the GDPR comes in on 25 May 2018, in order to seek updated consent confirmations. However, post-25 May 2018 those same charities will not be able to use those media and will instead have to revert to direct mail and live telephone calls for the same exercise.
