

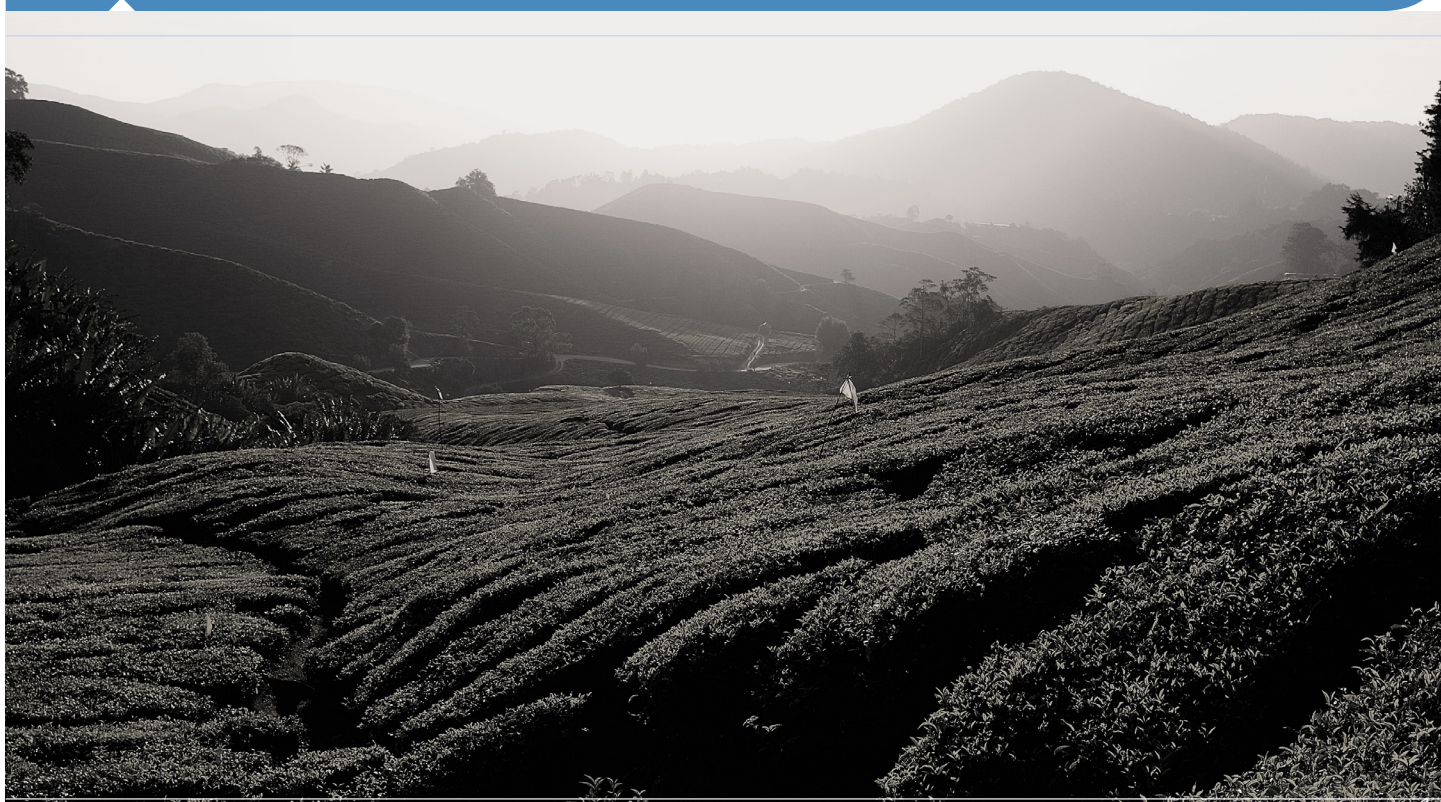
Sustainable | Extraordinary | Philanthropy

Consultants in Philanthropic Management



GG+A WHITE PAPER

Advancement Services—United Kingdom / 2015



The New Era of Consent: Implications of the Revised Privacy and Electronic Communications Regulations and Guidance for Educational Marketers, Fundraisers, and Alumni Relations Professionals

www.grenzebachglier.com

About GG+A

Grenzebach Glier and Associates (GG+A) is one of the leading international philanthropy consultants to institutions and organizations of all sizes and a foremost authority on fundraising and engagement best practices. GG+A has served thousands of organizations, helping them build extraordinary fundraising and engagement programs for long-term, sustainable philanthropy that will have a significant impact on their missions.

GG+A helps to advance the mission of educational, medical, cultural, and other charitable institutions across the Americas, Europe, Asia, and Australia. GG+A currently provides counsel to more than 300 institutions, with campaign goals ranging from £5 million to over £3 billion.

GG+A serves clients from the planning stages, through campaign management, to post-campaign analysis. Client campaigns include significant building and endowment objectives as well as a broad range of special purpose programmes and projects.

Learn more at www.grenzebachglier.com

INTRODUCTION

Many readers of this white paper may have followed at least some of the events that have unfolded in the UK charity sector since May 6, 2015, when a 92-year-old resident of Bristol and a collector for the Royal British Legion's annual Poppy Appeal (the fundraiser supporting current and former personnel of the British military), took her own life. It has since been established that this was a result of long-term and severe depression.

Nevertheless, following a *Bristol Post* story the previous year around the level of fundraising mail and telephone contact she was receiving, a narrative quickly developed in the media that she had been "hounded to death" by charity fundraisers.

Further damaging press coverage followed, most notably a series of undercover reports in the *Mail on Sunday* and *Daily Mail* newspapers around the fundraising practices of several major charities. Reviews of fundraising practices by industry bodies and the UK government are now in progress.

On August 18, 2015, the Institute of Fundraising (IoF) and Information Commissioner's Office (ICO) jointly issued a much more stringent set of guidelines for permission-based marketing and fundraising.

These guidelines have serious implications for telephone, email, and SMS fundraising and marketing practice—in both mass communications and one-to-one contact.

Our white paper, *The New Era of Consent*, aims to:

- + Outline the key points of the new regulatory guidance in plain terms
- + Unpack the implications for fundraising and marketing practice of this stricter regime
- + Suggest ways forward for educational fundraisers, marketers, and alumni relations professionals

WHAT HAS CHANGED?

A key piece of guidance from the ICO around the *Privacy and Electronic Communications (EC Directive) Regulations 2003* (PECR) has been revoked.

These regulations cover any form of telephone calls for marketing and sales purposes (including fundraising) as well as emails, text messages, and automated voicemail broadcast calls, among other forms of communication defined as electronic.

Since these regulations it has not been permissible under law for companies or charities to make marketing telephone calls to telephone numbers registered with the UK Telephone Preference Scheme (TPS)—a UK-wide “do not call” register—without **explicit opt-in consent** from an individual for the **specific method and purpose** for which the charity or company wishes to contact them.

The regulations also forbid the sending of other electronic marketing communications—such as email, text, or automated voicemail messages—to *any* individual, without explicit opt-in consent from that individual for the specific method and purpose for which the charity or company wishes to contact them.

This has always been the case.

In 2010, however, charity sector bodies sought guidance from the Information Commissioner for contacting individuals registered with the TPS with whom charities could be deemed to have an “existing relationship”, such as donors, volunteers, and, in the case of universities and schools, alumni.

The ICO’s response was that this constituted a judgement call for the charity around the level of “existing relationship” that could be deemed to be in place. The ICO indicated that although such calls would constitute a technical breach of the regulations, in practice it was unlikely to prioritise punitive action in the case of complaints, unless there was clear evidence of wilful and repeated

failure to comply with individuals’ subsequently expressed wishes not to be contacted further.

It is this guidance from 2010 that the ICO has now revoked, and charities (including universities and schools) are now expected to fully comply with the PECR.

WHAT ARE THE RISKS OF NON-COMPLIANCE?

The ICO can only take action in response to a complaint. It has the power to impose fines of up to £500,000 in the case of non-compliance—and recent fines it has imposed have ranged from £40,000 to £125,000.

WHAT ACTIVITIES WILL THIS AFFECT?

A whole range of fundraising and marketing activities are affected, including, but not limited to:

- + Telephone fundraising campaigns
- + Email and SMS fundraising campaigns
- + Alumni e-newsletters
- + Phone calls to major gift prospects, if the number is on the TPS
- + Marketing calls to potential students
- + Marketing emails and SMS messages to potential students

DOES THIS AFFECT NON-UK CHARITY FUNDRAISING IN THE UK?

This is European legislation, not just UK law—so if you are in an EU member state you are bound by the law just as is any UK charity.

If you are a non-EU charity, but have set up a UK subsidiary through which you fundraise to allow you to claim Gift Aid (UK tax reclaim on charitable donations) from your donors, then you are equally bound by this legislation.

KEY POINTS FOR ALL EDUCATIONAL FUNDRAISERS AND MARKETERS

Charities (including universities and schools) may not make a marketing or fundraising call to any individual who is registered with the TPS, even if they have called them in the past with no objections, unless the individual has provided to the charity:

- + His or her telephone number
- + Explicit permission to call—this may be written, online, or in a conversation
- + “Informed consent”, *i.e.*, could be reasonably expected to understand the intended purpose(s) of future calls

The charity must be able to demonstrate how and when such consent was given.

Administrative or genuine market research calls to individuals on the TPS *are* permitted, as long as these calls do not seek to obtain information that might be used in further marketing to that individual.

In other words, charities *may not* call individuals on the TPS to obtain their consent to continue to phone them in the future. This would be defined as a marketing call.

Charities *may not* send emails, texts, or automated voicemail messages to people for marketing or fundraising purposes unless:

- + The individual has given that specific charity explicit permission to contact them by such means
- + The individual can be said to have given informed consent, *i.e.*, could be reasonably expected to understand the intended purpose(s) of future communications
- + The charity can demonstrate how and when such consent was given

As with telephone calls, charities *may not* send emails or texts to people to ask for their consent to continue to email or text them in the future. These, again, would be classed as marketing communications. ♦

If you are neither of the above then, regardless of the letter of the law, we would still strongly recommend you abide by these regulations as best practice. They have, after all, been tightened as a result of public dissatisfaction with current fundraising methods. Contravening them, as well as possibly being illegal, is very unlikely to endear you to your donors and potential donors in the UK.

IS THERE PROVISION FOR A ‘SOFT’ OPT-IN?

For the phone, it is possible for opt-in to be deemed to have been given by an individual on the TPS if they sign up for a service, where there is a clear and prominent statement that doing so means they do not object to further calls.

For email, text message, and other electronic communications, however, there is no provision for a “soft opt-in” except for commercial companies.

For charities and other not-for-profit organisations, the regulations require explicit opt-in permission.

WHAT ACTION SHOULD WE TAKE NOW?

Telephone

If you are undertaking telephone marketing or fundraising, you must screen everyone you intend to call against the Telephone Preference Scheme (TPS) as a matter of urgency.

As people can register their mobile numbers with the TPS, you should submit mobile numbers for screening as well as landlines.

Any phone numbers that match against the TPS should be removed from the calling pool. Do not delete the numbers from your database, but make sure they are clearly flagged as TPS registered. If someone’s landline is registered, but their mobile is not—or vice versa—you can keep the unmatched number in the calling pool.

Screening should be renewed **every 28 days** during the time period of your telephone marketing or fundraising campaign.

Email/SMS

Review all the points at which you acquire email addresses and mobile numbers. Is there a clear consent statement that allows you to email or text message people in the ways that you are currently doing so?

Review the email addresses and mobile numbers you have on file. Is there clear evidence in your database to show when consent was secured and by what means?

Any email addresses and mobile numbers that do not meet the above criteria should not be used for marketing or fundraising until the above conditions can be satisfied.

WHAT FURTHER ACTION SHOULD WE TAKE?

You should create a structured organisation-wide plan for all potential touch points with constituents where phone and email consent may be obtained. This plan should detail:

- + Where consent statements exist and do not exist
- + How consent statements need to be put in place or amended to be compliant
- + What training is necessary to ensure that all staff members in contact with constituents understand the importance of gaining valid consents

You should ensure that telephone numbers and email addresses on your database are flagged so that anyone in contact with a constituent can see whether:

- + Any of their phone numbers are TPS registered

- + Consent for phoning/emailing/SMS messaging has been obtained

Depending on your database this might be done by solicit codes or “do not call” flags.

The method you use to flag email addresses and phone numbers should be linkable to a database business rule. This rule should generate a pop-up alert on a constituent record to alert any staff member in contact with constituents that consent needs to be secured (if they phone or email in, for example). You should also:

- + Revisit any contact volume and income projections you have in place for telephone and email activity to make proactive assessments of reduced income/donor numbers, in order to inform senior leadership as early as possible.
- + Protect your budget by forecasting any reduced expenditure on phone, email, or SMS and seeing how that might be best redirected within your annual plan to protect as much income and donor retention as possible, *e.g.*, by sending more direct mail.
- + Ensure that all printed materials you send allow constituents to give consent in a way that meets the PECR. This includes alumni relations mailings such as the magazine, direct mail appeals, and donor stewardship materials.
- + Consult with your database vendor to ascertain the simplest, most efficient ways of securing consent online and ensuring that this consent can be recorded in enough detail to satisfy the requirements of the PECR.

Finally, you should also ensure that all print and online consent statements are simple enough, prominent enough, and explicit enough—but also positive enough that people will actually want to tick the “yes” box! ♦

About the Authors

Adrian Salmon

+44 (0) 7730 133339 | asalmon@grenzglier.com

Vice President of GG+A Europe, Adrian came to GG+A in 2015 after serving for seven years as Footsteps Fund Manager at the University of Leeds, where he dramatically increased the University's number of donors, annual giving income, and contributions from integrated mail and online appeals. Adrian also implemented an automated propensity scoring system, the first to be used by a university in the United Kingdom, and designed and implemented the University's first dedicated 20-seat fundraising call centre.

Previously, Adrian served for more than nine years with The Phone Room Ltd. as Director of Client Services and as Head of TPR Education. There, he headed numerous award-winning telephone campaigns for non-profit clients including the National Galleries of Scotland, Symphony Hall Birmingham, and the South Bank Centre; and established successful telephone fundraising campaigns for Salford University and Birkbeck College, University of London. Adrian is a member of the Institute of Fundraising. Adrian serves on the Advisory Panel of Rogare, the new practitioner-focused fundraising think tank at Plymouth University's Centre for Sustainable Philanthropy.

Kristin Heller

+1 312.372.4040 | kheller@grenzglier.com

Senior Vice President for Advancement Services, Kristin joined GG+A in 2015, bringing to the firm more than 25 years of leadership experience in all aspects of fundraising, campaign planning and execution, strategic research and analysis, and new business development in higher education and academic healthcare institutions, among other areas. Most recently, Kristin served as Executive Director of Prospect Development and Information Strategy for The College of William and Mary, where she oversaw a staff of 18 and designed and directed the prospect services and support program for The College's proposed aspirational \$1 billion fundraising campaign.

Kristin has also held senior leadership positions in Advancement with Rutgers University Foundation, where she directed the research, prospect management, reporting, and campaign information support for Rutgers' \$1 billion fundraising campaign and transition into the B1G Athletics Conference; The Culinary Institute of America; The University of Connecticut Foundation; the Connecticut Children's Medical Center Foundation; and the University of Hartford.

To speak with one of our experienced consultants, call 312.372.4040

© 2015 Grenzebach Glier and Associates
All rights reserved.

401 N. Michigan Avenue, Suite 2800
Chicago, IL 60611 USA
US: +1 312.372.4040
UK: +44 (0) 2079 171758
Email: contactus@grenzglier.com

GG+A
Grenzebach
Glier and
Associates