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Tel:

Ms Elizabeth Denham
The Information Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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13th March 2017

Dear Elizabeth,

Concern about charities and 'opt in'.

Thank you for taking the time to consider this concern. I hope you will be able to respond positively by making a comparatively small yet hugely important practical change in the advice that the ICO and the Fundraising Regulator are giving to charities, and so clarify the choices that are open to charities. In doing so I'm confident that you will significantly mitigate some of the anxieties that beset many charities at this time of great change.

This letter has been specifically prompted by the guidance issued recently by the Fundraising Regulator (and I believe confirmed by the ICO), that opting in *'is the 'clearest' and 'safest' form of consent'*. Prior to this we had hoped that charities might avoid the catastrophe that will be 'opt in' by following the 'legitimate interest' route. This concern is real because many trustee boards will now be telling their management teams, *'Ah, we'd better now follow the advice and go for the safest, clearest route'*. So, opt in seems more than likely to be imposed on many charities, because of this advice, perhaps even against the advice of their senior managers. The easily unforeseen consequences of this may be seriously damaging for those charities who choose or are obliged to follow the opt in route.

As there is a clear, viable and more donor-friendly alternative option, we ask that this latest advice be amended now, otherwise it will push some trustees down the opt in route, which may prove disastrous or at best hugely expensive for their charities.

Where charities are now.

Most people working in charities recognise that changes are needed, so broadly support change, particularly where it can be seen that donors will benefit through a better positive donor experience. All charities want to follow the law, of course. And charities are aware that making changes will in places be costly, so they want to be sure that these costs are properly managed so that as far as possible, changes and extra costs are anticipated and planned for and will not have unforeseen consequences that will damage or limit charities' ability to deliver what society expects from them, nor will they compromise their services to beneficiaries, on which so many people depend. We believe most people in charities want to work with the regulators to get this right, now, for everyone's sakes.

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A carefully-structured version of opt out would be much better both for donors and charities.

Recently the Fundraising Regulator published six case histories of how individual organisations have approached the issue of obtaining consent for fundraising communications. One of these, Macmillan Cancer Support (who describe themselves as the most trusted charity in the land) have followed an extensive process summarised in their case study on the Fundraising Regulator's website. There, Macmillan states: 'This in-depth research gave us confidence that an opt out approach would give us unambiguous consent and was the correct decision for our donors and beneficiaries.'

Other charities have also gone down the opt-out route with consistent, demonstrable success. Over more than 30 years the Camphill Village Trust has demonstrated that giving donors control over what they receive from the charity - what they call *continuous donor choice* - easily answers all concerns that donors might have and is very popular. CDC places the donor in complete control over all communications, yet has the effect of building satisfaction and mutually beneficial relationships while increasing support rather than damaging it.

Why opt in is likely to be highly damaging, for both donors and charities.

In their daily business charities see easily the difference in response levels between opt in and opt out. The well-publicised trials in different European countries asking people to agree to something as socially positive as being an organ donor after one's death also show the potential difference starkly. It's been reported that for countries adopting opt out, access to potential organ donors has been generally more than 80 per cent (ie less than 20 per cent will take a positive action to opt out). By contrast, in those countries adopting opt in, generally less than 20 per cent of the public actually take the trouble to opt in. The positive action in both cases is broadly similar, yet one route leads to around four times as many potential organ donors than the other.

That's the problem with opt in compared to opt out, as even the RNLI, arguably Britain's favourite cause (and one of the few charities able to afford the likely loss in going the opt-in route), has shown. They report that somewhere between 19 and 42 per cent of their donors have chosen to opt in. In other words, the loss of 58 per cent or more of their oh-so-expensively recruited donors. Their initial estimate of the fundraising loss they would sustain over five years by following opt in was a staggering £36 million - a loss utterly inconceivable for just about every other charity.

Though this might be a conservative 'worst case' estimate from RNLI, most other charities are simply not in the same boat and would fare very much less well than they would. Inevitably, RNLI will benefit by being first to offer opt in. It's early days and there is ambiguity about the results they report, though they acknowledge they will raise less income via opt in. Despite how well loved and respected they are, even RNLI has not yet shown that opt in will be viable. For many less well-resourced and favoured charities their donor lists would quickly become unviable as the costs of replacing so many once-active donors, possibly just dormant donors who simply fail to get around to opting in, would soon become prohibitive.

Charities can't presume that everyone who doesn't opt in never wants to hear from their charity again. Yet, all these expensively acquired donors are lost when they don't opt in. In opt in only, the open, listening relationship with those who don't opt in is irrevocably lost. Charities can't find out what those supporters might want, nor can they offer those former donors other ways to get involved that they might want to take (while constantly giving

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them the chance to opt out if they want to), or talk to them less but still give them the highlights if they have not supported recently. This is the most frustrating thing: in going for opt in only, charities will lose the chance for dialogue and relationships, the chance to give positive feedback, to bring people closer, to make donors feel good, to show them many other opportunities that they may wish to take.

Our earnest, urgent request

We urge you and your colleagues to please revisit your office's guidance and make it clear to all charities that the opt-out route is also available and equally worth their consideration. Please modify the apparent preference for opt in in earlier guidance by making it clear in the same section of your advice that the opt out route is available and acceptable and may be a better choice for some charities. In so doing you will avoid the current risk that the wording of recent announcements will surely lead many voluntary boards to choose to go for opt in, often without realising either the consequences or the alternatives.

If donors and potential donors are offered the chance to opt out, with each contact, everyone has the chance to do so, or not, as they choose and anyone deeply or even slightly concerned about the issue can easily and immediately choose no further contact. If offered only the chance to opt in, many people quite happy to receive information from a charity they once supported will perhaps unwittingly deny themselves the chance just by overlooking or postponing their reply. The major factor at play here is inertia – the most consistent human response to anything and everything. Inertia often works to help charities (ie, when some donors allow their direct debits to keep paying because they don't get around to cancelling, even though it's easy to do). With opt in, inertia may easily become every charity's worst nightmare because many supporters, originally quite happy to hear from and even give from time to time to a chosen cause, now won't, simply because of inertia. Because life gets in the way. Just because that's the way people are.

Thank you for persevering with this complex, unusually challenging subject. And for your commitment to getting this right and your courtesy in considering this letter. I look forward to hearing from you.

With every good wish,

Yours sincerely,



Ken Burnett



A version of this letter has also been sent to Gerald Oppenheim at the Fundraising Regulator.