

1. General

Charities of all sizes and their size and their activities. Donations will be used for a variety of purposes. For example, to meet the costs of a kitchen at a community centre. An appeal for funds, for example, to relieve the effects of a flood and poor health amongst

2. Scope of this Guidance

The aim of this guidance is to highlight potential pitfalls of such appeals. It concentrates on the situation where the appeal fails to fulfil the purposes of its funding. This note – might also point out very general) terms, for example, purpose for which the appeal is impractical to carry out if the specific purpose increases.

This note only deals with the donations received in the grant out of the donations.

This note does not cover

- fundraising appeals where donations to a charity are made in the name of the charity.
- generally how a charity runs an appeal or administers it, but one fundamental principle is that funds received in response to an appeal must be used for that purpose, or else it is in breach of trust.
- whether any part of the appeal is within the charity as stated in its objects, but it is important that the funds raised are clearly within the

fundraising appeals. Depending on the appeal, it may be either quite specific as to how the funds will be used. An appeal for funds, for example, to meet the costs of a place of worship, to refurbish a church, or to fund a hospital is quite specific. A school PTA running costs generally, to relieve financial hardship, sickness and disability is quite general.

If an appeal might be too specific, the charity should avoid such pitfalls. The note highlights the risk of raising too much or too little money to cover the costs. However, other factors – not covered in this note – might also point out an appeal is in specific (rather than general) terms to be any need for the specific purpose. A change in circumstances makes the appeal impractical or if the costs of carrying out that

If a charity makes an appeal and expends the funds for the aim of the appeal, or it makes a grant out of the donations then fulfils that objective.

If a charity is not itself a charity, where it pays the costs of an appeal "on behalf of" a charity but not on behalf of or

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S A M P L E

3. Broad Appeals

It might sometimes suit a charity to make an appeal in broad terms, for example, an appeal for funds solely for a particular project. The advantage of such a broad appeal is that the charity can use the funds for any of its proper purposes, including the payment of its general running costs, payment of its staff, or anything else, provided that it is for its charitable purposes.

Are there any disadvantages to making an appeal framed in general terms? One disadvantage is that donors might be less inclined to donate if they would not know what the funds would be used for. This might be the effect where the appeal is for a specific benefit to be conferred on specific beneficiaries, nor a particular category or location of beneficiaries. The charity might need to "market" itself by providing information about what it provides to its beneficiaries.

Where, despite these points, a charity wishes to issue a very broad appeal, it will need to ensure that the appeal is framed in a way that it is clear that the funds are to be used for any of the charity's charitable objects as stated in its constitution. Below are some examples of the sort of words that might be used. The law does not specify the exact words that must be used, but a general fund-raising appeal should be framed in a form of words for its appeal that makes it clear that the proposed wording is broad enough to cover any use of the funds raised. We have set out some examples below about the legal effect of using such words.

Although a charity may wish to include in it (or in other literature) a list of the work it undertakes or benefits that it provides, it should not state or imply that these are the only types of work or benefits it provides. Otherwise the appeal might be limited to raise funds for such types. Again, it should consult legal advice in this context about its literature.

4. Examples of broad appeals

Here are some examples of broad appeals:

- (a) The charity asks for funds for its "general purposes". This is the broadest appeal one could make, as it allows the charity to use the funds for any of its proper purposes.
- (b) The charity asks for funds for its "general running costs". This would not allow the charity to use the funds for anything other than any of its projects.

ns by issuing an appeal framed in broad terms, for example, an appeal for its general purposes rather than solely for a particular project. The advantage of such a broad appeal is that the charity can use the funds raised for any of its proper purposes, including the payment of its general running costs, payment of its staff, or anything else, provided that it is for its charitable purposes.

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s projects from time to time. Whilst this would not allow the charity to use the funds for anything other than any of its projects.

SAMPLE

(e.g. it could not discretion as to Typically, a charity public of the sort the following line this and other pro would then go on This would not substantially the with donations fr projects differing proceeds of the charity's work in example. Therefore should add word very different in n that the type of b be the case.

- (c) The charity asks that the funds be used to purchase “medical equipment” for the hospitals. The charity would be relatively flexible in the way the funds would be used to allow the funds to be used to purchase medical equipment for those hospitals, but the funds would be used towards purchase of medical equipment for a discretion as to the hospitals in question.

5. Examples of specific a

Of course, the charity must be provided that it is consistent with the purpose and that purpose is stated in general words. Nevertheless, the (outlined under the "P" potentially arising from the circumstances.

We have mentioned funding/purchase of any of a charity appealing for

- (a) The charity asks for a "simple machine" for a project. The charity would not allow a machine that is more than 100 pounds in weight. This type of equipment is not available in the area. Below, this restriction is shown as a constraint in the linear programming problem if the charity is to be satisfied with the machine.

costs), it would give considerable funds to any of its projects. In its appeal leaflet by informing the funds, perhaps adding words along of one of our projects. To support we give a donation to our charity". It project in the leaflet in some detail. the charity's other projects are it could fund those other projects er, it may wish to devote funds to le. It would not be able to expend e projects if the example of the its projects are all similar to that s to fund other types of project, it e charity's other projects may be t might also be prudent to spell out ects will or might differ if that might

the purchase from time to time of a particular health authority. This is above examples in that it does not other than medical equipment for e to put any of the appeal funds ent, or to fund purchase of medical would however give considerable equipment it purchases/funds for the

appeal to any extent a broad one. From the appeal for a very particular appeal, it would then not need to use care of the sort of legal problems (narrow wording" headings below) items which are too narrow in the

of a very particular purpose -
ent. Here are some other examples
very specific aims.

the purchase of a “kidney dialysis” could be a very specific aim, and it costs a second machine or any other hospital. As we have explained, the funds raised would create a potential for more than the cost of a single

needs of victims
supplies or assist
hospitals. Again,
of the appeal mig
the stated purpos

6. Adding general wording

As explained above, st
appeal only enables a ch
wish the charity to use th
could either instead be
particular need, or altern
of particular needs to
“secondary” purpose. Fo
provide shelter for victim
the earthquake.” In the
use of general wording
indirectly helps victims of

Similarly, where a church
visual equipment for a
purpose such as “or if it
funds left over, the mo
purposes or activities.” It
not be possible to buy t
insufficient or because o
time the appeal issued
anticipates that there ma
will use those excess fun

7. Dealing with funds raised

Where the wording use
donations which will be
any particular purpose, it
use for a particular purp
from that appeal falls sh
equipment, it could place
could either:

- spend the funds r
further funds avai
sum raised and th
- if in addition to t
available to be sp
those other funds

Similarly there would not
“general purposes” and
buy the equipment and t
fund and used at any tim

such as food, clothing, medical
accommodation, rebuilding of schools or
whether the relative narrowness
raised exceed the costs of fulfilling

Wording

(or listing particular needs) in an
need, even if the charity or donors
To avoid this problem, the appeal
items rather than stating just such a
could be added after the statement
al also covers a more general
contains a secondary purpose: “to
provide relief for anyone affected by
ing to a particular earthquake, this
sed in any way which directly or

nds to purchase replacement audio
church, it could add a secondary
funds for that purpose or there are
he church for other youth-related
ing clearly anticipates that it might
ther because the funds raised are
ces which are not foreseen at the
es further in that it clearly also
it states how the charity can and

Wording

appeal is very wide, e.g. it asks for
al purposes” and does not mention
e in mind a target sum that it would
of equipment. If the amount raised
does not have enough to buy the
al purposes fund. In that situation, it

ritable purposes, or wait until it has
al purposes which it can add to the
at it originally intended to buy; or
appeal, it already has other funds
al charitable purposes, it could use
and buy the item of equipment.

ty where it appeals for funds for its
ore than the target amount: it can
into the charity’s general purposes
purposes.

SAMPLE

ss funds

specific (or is fairly general but not
int needed for a particular purpose
which can only be resolved by formal
have outlined below). Paragraph
a problem. Another example is an
astating earthquake, flood, or fire
appeal is for a “single purpose”, e.g.
who have to leave their homes as
by the appeal left after spending all
on could not simply be used by the

d by appealing for funds for two or emergency accommodation, food, wording to the one or more stated for those affected by the disaster in paragraph 6 above. Even where a the appeal, there might still be a to relieve the effects only of that

appeal for funds to buy equipment for the statement of the specific purpose will be applied which are left over or specific purpose.

as expected, but the wording of its
the excess funds received, the legal
as a “subsequent failure” of the
and differently in law from a failure
paragraph 9 below as to excess

not mean that none of the amount appeal's purposes; the necessary but the excess amount can only be any of the excess amount to donors. Section 275 of the Charities Act 2011 fund qualifies under that Section. If solution and take the other necessary es to which it could put the excess qualify under Section 275, the charity scheme (a "cy-près" scheme) whereby n the excess funds can be used. excess funds need to be applied in in detail, the charity needs to do in

9. Problems arising from

If an appeal is established, there are excess funds, there are two possible situations as a “failure ab initio” follows.

The general law entitles a charity to a “failure ab initio”. The Charities Act 2011 sets out two exclusive scenarios as follows: below, Section 65 instead

If Section 63 does apply to contact, known donors must sign a written disclaimer. The charity must also try to contact donors who cannot be found, or who are “cy-près” scheme for contributions contributed to a cash collection

Alternatively, Section 65 adds a statement (it is the event of the appeal failing for purposes unless at the time of effect that if the appeal fails. Where the appeal fails, the charity must make that declaration to see if donors who did not sign one do not want a refund, then the charity must take these steps, a declaration by the Act, funds must be used in accordance with a cy-près scheme made by the Commission

Since these rules and the consequences (if the appeal subsequently) are detailed in the Act, charities should seek advice as to what exactly

insufficient funds

If a charity raises insufficient funds for its purpose, but rather than there being a surplus, the law categorises that situation as a “failure ab initio”. It will only be able to use the funds as

donations returned to them when there is a change in that basic position. The law is in each of two different, mutually exclusive scenarios. The Charities Act will apply unless, as explained below, the charity can avoid it.

If a charity raises insufficient funds, it must take certain steps to contact, or try to contact, known donors to see if they would like a refund or if they will instead agree to have their donation used for a different purpose. The charity must also try to contact donors through advertising in a specific way. In relation to the donors who cannot be identified, the Charity Commission would make a declaration (Section 64 deems donors who are “cy-près” scheme for contributions contributed to a cash collection to be unidentifiable.)

When the charity issues its appeal, it must also (so) inform donors that in the event of the appeal failing for purposes unless at the time of effect that if the appeal fails. Where the appeal fails, the charity must make that declaration to see if donors who did not sign one do not want a refund, then the charity must take these steps, a declaration by the Act, funds must be used in accordance with a cy-près scheme made by the Commission

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