

Financial appeals: guidance to avoid common pitfalls and failed appeals September 2015



Stewardship Briefing Paper

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introduction

You know the feeling. You seem to be jogging along OK, your income is just enough to cover your general on-going expenses and then without notice the church keyboard packs up. Finding that extra money to replace the keyboard will not be easy.

Whatever the size of church you are part of, regardless of denomination, style of worship or location, you have probably faced a situation like this. The scale of expense will vary—it might be the keyboard; it might be a new outreach initiative; it might be another challenge—but be in no doubt there will always be something that comes along.

In order to meet the financial challenges that these situations bring with them, it is more than likely that you have been involved in some sort of financial appeal, driven by faith but needing finance. Some appeals are quite formal: think of the old thermometer on the side of the church 'filling up' with the new roof fund. Some appeals are far less formal: perhaps delivered from the front of church during a Sunday morning service.

What is clear, however, is that financial appeals sit firmly within the mainstream of church and charity fundraising and for many are an essential element in financing their on-going operations, particularly when the unexpected crops up. However, what might on the surface appear to be straightforward can be anything but. There are common pitfalls which needs to be avoided otherwise you can find yourself in breach of charity law, and perhaps even tax law.

A little pre-planning should see you OK.

This paper seeks to set out some of the more practical considerations that trustees might want to think about when considering how to make an appeal, and also looks at the powers that the Charity Commission is given under the Charities Act 2011 to deal with failed appeals.

When launching an appeal, particularly a large one, the trustees of a charity have no way of predicting its success. It may be that insufficient funds are raised to reach the necessary target; costs associated with the proposed project may rise unexpectedly or a change in circumstances might mean that it is no longer practical to continue. It is easy to see why these appeals may be considered failures. But what if you raise too much money, more than is needed, surely this would not be considered a failure...or would it? On this, read on!

Financial appeals can be a very successful way of raising much needed finances and following these guidelines will help to ensure that your appeal is a successful one.

'failed' appeals

'Failed appeals' is a legal term and perhaps surprisingly is not limited to cases where insufficient funds are raised to meet a target; an appeal will have failed if some or all of the funds raised cannot be **applied** for the purpose or purposes stated in the appeal.

Circumstances where this is the case might include:

- Insufficient funds were raised to carry out the purpose stated in the appeal – the building fund target of £500,000 is never reached, so the building or the improvement work couldn't be done.
- The purpose of the appeal was completed and there were funds left over – all the chairs in the church have all been replaced and a balance of £5,000 is left over from the appeal. Seems like a success, but technically is a failed appeal because all of the funds cannot be applied.
- After some funds had been collected, it became clear that the purpose of the appeal was no longer needed, or could not be carried out – a project to start a local café was superseded by the opening of a new chain coffee shop next door to your proposed site, but already some money has been contributed to the appeal.
- The appeal was for a charity that subsequently ceases to exist before the funds can be properly applied.

Applying the legal definition, in each of these cases the appeal will be considered to have failed. Failed appeals can be the source of frustration and difficulties for the trustees and are best avoided wherever possible. Our practical guide to launching an appeal aims to minimise the possibility of a failed appeal.

launching an appeal: a practical guide

The amount of thought and pre-planning that trustees put into an appeal should be proportionate to the size of the appeal and the amount of funds being sought. Churches are places of relationship, and the relational nature of church can play a significant part in the way in which financial appeals are handled, particularly where the amounts to be raised are relatively small.

In such cases it will probably be all right to handle the financial appeal in a quite informal low-key way recognising that most churches operate with a sense of mutual agreement and understanding. However, if the appeal is larger (perhaps £10,000 or more) the trustees might have to consider a more formal approach because, whilst trustees may choose to delegate the administration of the church to others (paid or volunteer), they remain responsible for its legal and financial actions.



Some guidelines that might be useful for trustees to consider include:

- Appeals should be communicated as an exercise of faith, rather than an exercise of finance.
- Appeals should make it clear what will happen in the event that the appeal fails. Remember this means that either insufficient or excessive funds are raised for the purpose or purposes of the appeal.
- A rough timetable should be provided against which the success or failure of the appeal can be judged.
- Income generated from an appeal fund, including bank interest and Gift Aid recoveries, should be applied for the purpose of the appeal and not used for any other purpose—unless this possibility was made clear by the terms of the appeal, or by the donor, at the time the donation was made.
- To avoid problems later, it is best practice for the appeal purpose to be kept quite broad, or better still, to also contain a secondary purpose for which the funds will be used in the event that they cannot be applied to the primary purpose of the appeal (see the examples below).
- Remember that where any conditions over possible repayment are attached to the appeal, and that could be simply a promise to repay donations if more funds are collected than needed, the appeal becomes 'subject to a term of repayment' and no Gift Aid can be claimed for any of the donations. This is true whether those donations are used by the charity or returned to the donor.
- Where churches choose to tithe their income, they should only do so from funds that are 'unrestricted'. Offerings given by way of special appeals can only be used for the purpose or purposes stated in the appeal and cannot therefore be used as part of the tithe (unless of course that was the purpose of the appeal)! If the church wants to tithe from the appeal funds, it must make this clear in any appeal literature or whenever the appeal is spoken of.

An example of an informal appeal may perhaps be something that is delivered from the front of church along the following lines:

"We believe that it is right to replace the church keyboard and are launching an appeal for that purpose. If you wish to donate then please put your offering into an envelope marked 'keyboard appeal' and we will keep you informed as to progress and let you know when we are close to reaching the amount needed."

A financial appeal to raise money for a larger project may be presented in a more formal way, and will often be written so that donors have a clear understanding of what the appeal is for. An example of a more formal appeal might be:

"We recognise the strategic importance of youth work in our town and are raising funds to refurbish the church's youth room and to replace and bring up-to-date the audio and visual equipment used in that room. If after a period of 6 months and for whatever reason we are unable to use the funds raised solely for this purpose, or there are surplus funds left over following the refurbishment, we will use the money raised on other church youth-related initiatives."

This style of wording does not give the trustees 'carte blanche' to ride roughshod over the wishes of the donor, but it does allow for the wider use of funds in legitimate cases where the appeal fails. Otherwise, funds raised will have to be either returned to the original donors; restricted for a specific purpose that is no longer desired or can no longer be fulfilled; or applied to another purpose but only after the Charity Commission has granted a Scheme allowing this to happen (see below).

initial failure

If an appeal for a specific purpose fails from the outset such that the purpose of the appeal cannot be achieved at all, this is termed an initial failure. Initial failures may arise for several reasons but the chances are increased in cases where the purpose of the appeal is kept very narrow. As suggested above, broadening the appeal or including a secondary purpose should ensure initial failures are avoided.

Where initial failures do happen, the trustees cannot simply make the assumption that the donors would be willing to support different charitable activities from those set out in the appeal. The charity will need to contact identifiable donors and ask them to agree to a change of use for the donation. In some cases, perhaps where the donor does not agree to funds being used for another cause, the donation may have to be refunded. There are specific rules set down in law that govern the procedures to be undertaken. These also deal with the position where donors cannot be identified or traced. We cover this in more detail below.

Where funds are returned to donors and the charity has already claimed Gift Aid on the donation, the charity should contact HMRC, as the Gift Aid will need to be returned.

what if I can't contact my donors?

Sections 62 to 66 of the Charities Act 2011 contain most of the rules concerning failed appeals. They set out the responsibilities of the trustees in such cases and also the powers of the Charity Commission and the Courts. Sections 62 and 63 of the Act deal predominantly with situations of initial failure.

The precise steps to be undertaken are set out in The Charities (Failed Appeals) Regulations 2008 ("the Regulations").

An appeal which has initially failed may have three types or groups of funds held in it:

1. Funds donated by donors who are both identifiable and can be contacted
2. Funds donated by donors who are identifiable but cannot be contacted
3. Funds donated by donors who are legally unidentifiable



The trustees have responsibility for the first of those groups. Where an appeal suffers an initial failure they should:

- Attempt to identify and trace each donor asking them in the first instance to allow the donation to be used for a different purpose. If they agree, they will need to sign a Disclaimer in the form prescribed in the Regulations. The wording is included in Appendix 1. Unless given anonymously, the relational nature of church should mean that a few simple actions will identify the majority of donors.
- Provide an opportunity for other identifiable donors to come forward by advertising (in the form prescribed in the Regulations) that the appeal has failed. The trustees need to allow a reasonable length of time for other donors to come forward. The Regulations prescribe a minimum period of 3 months for this. Once a donor has been traced, the trustees will follow the same procedure as in the first bullet point, above.
- Return the donations to all identified donors that do not agree to have their donations used for other purposes.

For the second group, those donors who cannot be contacted, section 63 of the Charities Act 2011 enables the Charity Commission to make a 'cy-pres Scheme' (Scheme) so that funds can be used for other (similar) purposes. The Scheme will apply both to donations where the donor can't be identified or can't be found and to donations from donors who have disclaimed their right to repayment.

In cases where the Charity Commission grant a Scheme allowing the funds to be used for another (similar) purpose, the charity must retain a reserve fund. This reserve fund must be retained for 6 months from the date the Scheme is made and is held for the benefit of those donors who cannot be identified or cannot be found. No claims can be made by these donors once the 6 month period has expired. See the section headed subsequent failure for more about how the Charity Commission goes about creating a Scheme.

The third group (donors treated as being legally unidentifiable) is covered by Section 64 of the Charities Act 2011. Certain types of fund-raising will result in funds that are automatically designated as legally unidentifiable. Section 64 lists the funds that fall into this category, for example: cash from collection boxes, the proceeds of lotteries and competitions and cash collections by means that do not distinguish one gift from another. This last category is of most relevance to churches—cash offerings being the obvious example. Note, however, that cheques or other forms of identifiable receipt (such as Gift Aid donations) in a church offering will not fall within Section 64.

In certain other cases, perhaps where the costs of trying to recover the funds are disproportionate or prohibitive, or where it would be unreasonable for donors to expect monies to be returned, either the Commission or the Court can issue an Order which treats those funds as legally unidentifiable. In cases where **all** of the appeal donations are deemed to be from legally unidentifiable donors, the trustees' responsibility to advertise in the event of a failed claim is removed.



subsequent failure

In cases where an appeal has achieved its purpose but surplus funds remain, this is termed a subsequent failure. In such cases donors are **not** entitled to a refund of their donations but the Charity Commission can use its powers to create a Scheme, which is a legal document that alters the purpose for which the funds can be applied.

In determining how to apply the donations, the Commission must take into account the spirit of the original gift; the desirability that the donations are used for charitable purposes which are close to the original purpose of the appeal and the need for the charity to have purposes which are suitable and effective in the light of current social and economic circumstances.

The Commission's published policy is to be flexible and imaginative in applying the doctrine, balancing usefulness and practicality with respect for the existing purposes and beneficiaries. The overarching aim is to enable the charity to continue to be effective, useful and relevant.

The Commission is open to suggestions put forward by the charity themselves and commits that it will "always take account of the trustees' views" when making decisions. The underlying spirit of the policy is that the Commission will do all it can to ensure that the funds are applied in the best way possible.

But by following the practical guidelines listed above, charities should avoid the need to get the Commission involved at all!

other matters

conditional gifts

There is one exception to the rule that donors can't have a donation repaid in the event that an appeal suffers a subsequent failure. This arises if a donor explicitly reserves a right to repayment when making the donation.

However, reserving this right makes the gift 'subject to a term of repayment' and as such means that Gift Aid cannot be claimed by the charity in any circumstances. This includes funds used for the stated purpose, and even extends to cases where the donor cannot subsequently be traced and the Charity Commission issues a scheme allowing the funds to be used for other purposes.

It is not the eventual use or repayment of the donation that means Gift Aid cannot be claimed, the condition itself is sufficient to exclude a donation from a Gift Aid claim.

separate bank account

It is all too easy for funds collected for a special purpose through an appeal to become co-mingled with general funds and for the distinction between the funds to become lost over time so that appeal funds are inadvertently used for purposes other than that for which they were donated. Even if the misuse is inadvertent this is a serious breach of charity law on the part of the trustees.

Whilst this may not be worth doing for smaller appeals, one of the easiest ways to ensure that this is unlikely to occur is to keep appeal funds in a separately designated bank account, which can only be used for the purposes set out in the appeal. This and other practical financial controls are more fully referred to in our Briefing Paper [Financial controls in churches and small charities](#).

conclusion

Financial appeals are a legitimate and useful means of raising awareness for initiatives and causes and are part of the mainstream fund-raising for many churches and charities.

However, failed appeals can be both costly and time-consuming to a church or charity and its trustees and by following the practical guidance in this paper; keeping the purpose of the appeal broad; introducing a secondary purpose to the appeal; being clear within the appeal what will happen in the event that the appeal fails; the complications brought about by a failed scheme should for the most part be avoided.

Perhaps it is time to look for that new keyboard after all!



appendix

Form of donor Disclaimer

(Schedule 4, The Charities (Failed Appeals) Regulations 2008)

SCHEDULE 4

I HEREBY DISCLAIM my right to the return of *the sum of £...../ the property consisting of (insert description of property)** given by me for (insert name of charity to which, or descriptions of purposes for which, the money or property was given).

[* Delete as appropriate]

Signed:

Name in capitals:

Address:

Date:

#Signed:

Name in capitals

Address:

Date:

This paragraph may be repeated if further signatures are required.