

DUAA and the Charity Soft Opt-in: The Need to Revisit Regulatory Interpretation

1. Executive Summary

The extension of the soft opt-in to charities under Section 114 of the Data (Use and Access) Act 2025 represents a significant and deliberate shift in the direct marketing framework. Parliament introduced this reform to correct a long-standing imbalance between commercial organisations, which have long benefited from the PECR soft opt-in, and charities, which were effectively excluded because the “similar goods and services” criterion did not map onto charitable activity. Government materials confirm that the intention was to create a level playing field by allowing charities to send marketing “for fundraising or to promote their charitable work” to individuals who have expressed an interest in their purposes.

The draft ICO guidance, however, risks reintroducing many of the barriers that the DUAA amendment sought to remove. By drawing distinctions between “charitable” and “commercial” activity, and by requiring separate segmentation and preference regimes, the framework becomes significantly more complex than either the statutory text or Parliament’s stated intention suggests. Several charities report that they may not be able to adopt the charitable-purpose soft opt-in because of the technical and administrative burden. Larger charities with modern systems also indicate that adoption may be delayed or constrained. Smaller charities, which already struggle with CRM limitations, may be excluded entirely.

This matters because fundraising and income-generating activity underpin the ability of charities to deliver services and provide public benefit. Evidence from charities shows that supporters perceive their relationship with a charity holistically: purchasing from a charity shop, joining a membership scheme, entering a lottery, or attending an event are all viewed as acts of support for the organisation’s mission. Income from retail, membership, lotteries, raffles, trading subsidiaries and similar activities ultimately contributes to the charity’s work. The distinction drawn in the draft guidance between “charitable” and “commercial” communications does not reflect charity law or supporter behaviour.

A workable approach is one that reflects Parliament’s intent, avoids unnecessary duplication with charity law, and provides practical clarity. It should enable charities to use the soft opt-in across the full range of legitimate revenue-raising activity linked to their purposes, and should allow supporters who re-engage meaningfully with a charity to be presented with a clear soft opt-in opportunity. If the framework remains overly restrictive or impractical, the communities that rely on charitable services risk losing out. The DMA remains committed to working constructively with the ICO to ensure the final guidance is both practical and aligned with the purpose of the DUAA reforms.

2. All Charity Revenue-Generating Activity Furthers the Charitable Purpose

2.1 Legal foundation

The draft ICO guidance suggests a separation between “charitable” and “commercial” activities. However, in accordance with charity law, charities conduct both types of activities to fulfil their charitable purpose(s).

Charity law provides a clear basis for understanding how the charitable purpose soft opt-in should operate. Sections 1 and 2 of the *Charities Act 2011* establish that a charity must be constituted and operated *exclusively* for charitable purposes, and that all its activities must further those purposes. Section 3 sets out the list of recognised charitable purposes, each of which must be applied for public benefit. The Charity Commission’s CC3 guidance (“The Essential Trustee”) reinforces that trustees are responsible for ensuring that every activity, whether frontline delivery or fundraising, advances the organisation’s objects.

Income-generating activity is explicitly recognised as part of this framework. Charities may conduct trading that is directly linked to their purposes, or they may operate non-primary-purpose trading through wholly owned trading subsidiaries. The Charity Commission’s CC35 guidance explains that such subsidiaries exist with a central purpose to generate funds for the parent charity and must transfer profits accordingly. They are not independent commercial enterprises; they form part of the wider group serving the charitable mission.

Section 114 of the *Data (Use and Access) Act 2025* amends *PECR Regulation 22* by creating a soft opt-in for charitable purposes where an individual has expressed interest or offered support. As charitable law requires all income-raising activities to support the charitable purpose—whether conducted by the charity itself, or by a trading subsidiary which functions to benefit the parent charity—communications relating to such activity fall naturally within this statutory scope. This interpretation is consistent with Government’s own explanation that the change permits marketing “for fundraising or to promote their charitable work”.

Legal advice submitted to the DMA notes that implying certain fundraising or trading activities do not further the charity’s purpose could be read as a comment on charity law rather than data protection law.

While trading subsidiaries are not required to further the charitable purposes through their own activities; their role is to undertake commercial activity and transfer profits to the charity. This legal structure does not alter the supporter relationship, which remains centred on the charitable purpose the organisation exists to advance.

2.2 Fundraising Regulator definition of “fundraising”

The Fundraising Regulator uses a broad definition of “fundraising” that includes retail sales, lotteries, raffles, membership schemes, events, challenge fundraising, corporate partnerships, sponsorship, and trading activities. This definition reflects the way modern charities operate and how supporters engage with them. It acknowledges that organisations raise funds through diverse channels, each forming part of a coherent fundraising strategy. Alignment with this sector-standard definition would provide consistency across regulatory frameworks and reflect the reality of how charities engage supporters.

2.3 Evidence from across the sector

Sector submissions provide consistent evidence that supporters experience all interactions with a charity as part of a single relationship, and that income streams are interconnected.

English Heritage notes that supporters “view their relationship as a singular one”, regardless of whether they are visiting a site, attending an event, purchasing goods or donating. The British Heart Foundation reports that “71% donate items to our shops to support our cause”, demonstrating that supporters understand retail activity as part of the charity’s mission. Oxfam’s ALPs model shows supporters moving across petitions, campaigning, retail, events and regular giving in ways that reinforce each other.

Evidence also illustrates that a dual soft opt-in regime is operationally difficult. Wood for Trees highlights that CRM platforms are not designed to maintain separate charitable and commercial soft opt-ins. They show that a significant share of income-raising activity—including retail, raffles and lotteries—would fall outside the ICO’s interpretation, reducing the usefulness of the provision.

The Donkey Sanctuary reports that it would be required to maintain “three separate datasets”, and that its CRM platform, Blackbaud, “is not configured to easily accommodate the proposed changes”, causing uncertainty and likely delay in adoption. CAF UK Giving 2025 identifies £1.7bn from retail goods, £1.63bn from membership fees, £1.11bn from lotteries and £514m from raffles. These are mainstream channels supporting charitable purposes.

Governance Committee discussions reflect shared concerns: multiple soft opt-ins would increase administrative burden, complicate supporter communications and create compliance risk. Smaller organisations would face proportionally greater challenges.

RHS provides further evidence that supporters view all engagement with the organisation—purchasing tickets, attending flower shows, participating in educational programmes, visiting gardens, donating, volunteering or joining membership schemes—as supporting the RHS charitable purpose. RHS notes that supporters do not recognise any distinction between “commercial” and “charitable” products or services which, for the RHS, are hugely varied such as “becoming a RHS Member, donating, attending our flower shows and events, taking part in

our scientific research programmes, volunteering, taking part in our community programmes, purchasing a plant via our online or physical shop” They contend that supporters see all of these as a “way of supporting the charitable work of the RHS” and that introducing such distinctions for marketing permissions would reduce clarity, undermine supporter understanding and complicate communication.

A submission by Vulnerable paths outlined evidence from behavioural research and frontline practice that indicates that fundraising and service-related communications operate together to advance charitable purposes. Messages that explain how a charity works, describe available services, or include stories of service users can reduce psychological barriers to seeking help and increase awareness of support that individuals may not otherwise access.

Several charities note that a modest financial contribution (or simply the option to provide a financial contribution) can increase comfort in engaging with services, helping individuals overcome behavioural, cultural and social barriers which may inhibit initial or repeat contact. This is further supported by considerations within behavioural economics and psychology relating to reciprocity, decision staging and inertia, among other well-established mechanisms. This demonstrates that fundraising communications support both the financial sustainability of charities and the uptake of their services, reinforcing that fundraising is integral to advancing charitable purposes.

2.4 Parliamentary and Government intent

Government’s factsheet explicitly states that the charitable soft opt-in covers marketing “for fundraising or to promote their charitable work”. Lords debate on the amendment emphasised the intention to create a “level playing field” between charities and commercial organisations. Parliament expected a broad interpretation covering the range of activities that support charitable objectives. This context should guide the finalisation of ICO guidance.

2.5 Operational consequences of dual or triple regimes

Requiring separate charitable and commercial soft opt-ins would create complexity across supporter communications, technical systems and governance processes. Charities would need to maintain distinct datasets for consent, charitable soft opt-in and commercial soft opt-in, each with different communication rules. This would present difficulties in explaining preference choices transparently to supporters and ensuring that the correct permissions are used across different channels.

CRM systems would require significant reconfiguration. Many platforms, particularly widely used systems such as Blackbaud, are not designed to manage overlapping lawful bases of this kind. Additional segmentation, data-handling and call-centre processes would increase costs and slow operational delivery. Smaller charities would be disproportionately affected, potentially choosing not to use the soft opt-in at all. This would limit the intended benefits of DUAA and restrict the fundraising capacity Parliament sought to enhance. Consequently,

instead of achieving the goal to “level the playing field”, as was the intention of this amendment, it risks creating yet further imbalance; not only between commercial and charitable organisations, but between large and small charitable organisations, too.

A further point of interpretation concerns supporters who have previously unsubscribed or objected to direct marketing but later re-engage with a charity through a new transaction or interaction. PECR Reg 22(3) applies at the point when details are “obtained in the course of” a transaction or expression of interest, and DUAA extends this to individuals who have “expressed an interest in the charitable purposes”. Where a supporter voluntarily returns to make a donation, purchase a ticket, renew a membership, or participate in any activity that demonstrates renewed interest, this constitutes a fresh point of collection.

Charities should therefore be able to offer the charitable-purpose soft opt-in at that moment, provided the offer is transparent and the opt-out is clearly presented. Indeed, the ICO advises under Respecting People’s Preferences of the Direct Marketing Guidance that “a person’s **most recent indication** of their wishes about your direct marketing is **the most important** and it is possible for them to change their mind”. Preventing the use of soft opt-in in such circumstances would treat returning supporters differently from supporters engaging for the first time, and would reduce the effectiveness of DUAA in enabling sustainable supporter engagement.

3. The Consumer Perspective

Supporters engage with charities through a wide range of activities that they view as part of a single ongoing relationship. Evidence from across the sector shows that individuals do not distinguish between a charity’s “charitable” and “commercial” functions. They focus on the cause, the mission, and the impact of their support. This perspective is essential for interpreting how the charitable soft opt-in should apply.

English Heritage notes that supporters “view their relationship as a singular one”, regardless of whether they have visited a site, renewed membership, purchased goods or attended an event. Each action is motivated by their interest in the charity’s purpose. The British Heart Foundation similarly observes that retail activity is mission-aligned: “71% donate items to our shops to support our cause”. Market research conducted by Oxfam in July 2024 showed that ‘74% of Oxfam’s target audience shopped at Oxfam shops to support our cause’. This reflects a shared understanding that shops, lotteries, memberships and events all fund the organisation’s objectives.

Evidence from retail and trading activity reinforces this point. The British Heart Foundation (BHF) notes that supporters do not distinguish between the charity and its trading subsidiary when donating items, buying goods or participating in retail-based fundraising. BHF explains that customers engage with charity shops because they wish to support the underlying charitable mission, and that treating these interactions as a separate ‘commercial’ category does not reflect supporter behaviour. As BHF sets out: ‘Insights collected by BHF in July 2024 found that 71% of people donating items to our shops and stores stated that they did so specifically to support our cause, while 65% stated that they donated items out of convenience.’ BHF

concludes that collecting contact details in a retail context can reasonably be understood as part of a supporter expressing interest in the charity's purposes, and therefore should fall within the scope of the charitable soft opt-in.

Oxfam's ALPs model provides a detailed illustration of modern supporter behaviour. Individuals move fluidly between volunteering, campaigning, retail, one-off gifts and regular giving. Communications across these touchpoints reinforce each other. Supporters expect a coherent experience, not differing messages depending on which part of the organisation they interacted with last.

Data from Wood for Trees supports this behavioural evidence. Their analysis suggests that consumers interpret almost all interactions with a charity as expressions of support for the organisation. The IN/OUT matrix shows that supporters expecting updates about a charity's activities would logically expect communications about income-raising opportunities that enable that work.

RHS provides further evidence that supporters view all engagement with the organisation, such as purchasing tickets, attending flower shows, participating in educational programmes, visiting gardens, donating, volunteering or joining membership schemes, as supporting the RHS charitable purpose. RHS notes that "supporters do not differentiate between charitable and commercial products and services but instead see it all as a way of supporting the charitable work of the RHS. They are reminded of this Charitable Purpose rather than just purchasing a Garden entry or a Show ticket or a membership or purchasing a plant online." Consequently, introducing such distinctions for marketing permissions would reduce clarity, undermine supporter understanding and complicate communication.

Multiple submissions emphasise that supporters expect transparency. They want to understand how their support contributes to the cause and how their data will be used. A unified soft opt-in aids transparency because it provides a single, consistent explanation of how the organisation will use contact details to communicate about activities that support its purpose. By contrast, asking individuals to navigate between charitable soft opt-in, commercial soft opt-in and consent-based options would be difficult to explain clearly. This could undermine trust and reduce engagement.

A single charity soft opt-in approach accords with reasonable consumer expectations. Individuals assume that income raised through shops, raffles, lotteries, events, membership and trading subsidiaries contributes to the charity's mission. Treating these interactions as fundamentally different for marketing purposes introduces unnecessary complexity and diverges from the way supporters understand and experience their relationship with the organisation.

4. Specific Suggestions for Improving the ICO Guidance

This section sets out targeted amendments that would provide legal clarity, operational feasibility and greater alignment with supporter expectations. The recommendations draw

directly from legal analysis, sector evidence and practical feedback from charities and CRM specialists.

1. Remove the “sole purpose” test

The requirement that communications must have the “sole purpose” of furthering charitable purposes introduces ambiguity. Charity law already requires that *all* activities of a charity or its trading subsidiary further the charitable purpose. A “sole purpose” threshold may create artificial distinctions between charitable and income-generating activity and risks unintentionally redefining charity law. Removing this test would bring the guidance into line with the legislative intent of Section 114 DUAA and avoid duplication with existing trustee duties.

2. Confirm that all income-raising activity may fall within the charitable soft opt-in

Evidence from English Heritage, BHF, RHS, CAF UK Giving and Oxfam demonstrates that supporters understand shops, raffles, lotteries, membership and events as part of their support for the charity. Income from these channels is used exclusively for charitable purposes. The guidance should confirm that communications relating to such activity may fall within the charitable soft opt-in, provided the individual has expressed interest or offered support.

3. Provide a unified definition of “expressing an interest” and “offering support”

Supporters engage in multiple ways across a wide cycle. A clear definition should recognise the full range of activities that indicate interest in a charity’s purpose, including purchases, donations, petitions, membership renewals, volunteering, event attendance and campaign participation. This definition should reflect modern supporter journeys, including the multi-channel patterns illustrated by Oxfam’s ALPs framework.

4. Enable charities to “let people change their minds”. Allow conversion of existing consented supporters on next interaction and allow the charitable soft opt-in to be applied at any genuine point of re-engagement going forward.

Where supporters re-engage with a charity through a new donation, purchase, membership renewal, event registration or any other interaction indicating renewed interest in the charity’s purposes, this ought to constitute a new point of collection under PECR and DUAA.

The guidance should clarify that charities may offer the charitable-purpose soft opt-in at such points, even where the individual previously unsubscribed or objected, provided the offer is transparent and the opt-out is clearly presented. This approach reflects supporter behaviour, ensures fair treatment of returning and first-time supporters, and supports the DUAA objective of enabling sustainable charitable fundraising.

As an operational example, The Donkey Sanctuary proposal offers a practical, proportionate transition mechanism. Existing supporters who provide contact details through a new

interaction, having been given an opt-out at that point, should be eligible for the soft opt-in. This would avoid running parallel consent-only and soft opt-in datasets indefinitely and reduce operational complexity.

5. Avoid requiring a separate commercial soft opt-in

A distinct commercial soft opt-in would create dual regimes that are not grounded in charity law and would impose unnecessary burdens on the sector. Evidence from Wood for Trees and charity submissions demonstrates that CRM systems are not designed to support multiple overlapping regimes. Maintaining a single soft opt-in across both the charity and its trading subsidiaries is more consistent with the statutory purpose of Section 114 and supporter expectations. Importantly, most charities have never used the “commercial soft opt-in” because they believe strongly that all activity supports their charitable purposes as expressed in charity law and supporter expectations.

6. Clarify how opt-outs apply across the organisation

The guidance should explain when an unsubscribe applies organisation-wide and when it applies only to specific communication types. A proportionate approach would treat opt-outs as applying across all soft-opt-in communications unless the supporter requests otherwise. This would reflect supporter expectations and reduce complexity in data management.

7. Align definitions with the Fundraising Regulator

The Fundraising Regulator’s definition of “fundraising” is widely understood in the sector and encompasses retail, lotteries, raffles, membership, events, trading, sponsorship and partnerships. Alignment would ensure consistency across regulatory regimes and better reflect the realities of how charities raise funds.

8. Address mixed-content communications

Many charity emails contain a mixture of updates, impact reporting, events and fundraising opportunities. The guidance should clarify that organisations may include income-raising content in such emails where the individual has shown interest in the charitable purpose. This reflects the interconnected nature of supporter engagement and avoids disincentivising informative content.

9. Acknowledge CRM and operational feasibility

Sector evidence demonstrates that legacy CRM systems, including Blackbaud, are not configured for multiple separate soft opt-ins. The guidance should recognise that segmentation requirements must remain proportionate. Solutions should work for small and mid-sized charities without requiring substantial system redevelopment.

10. Provide practical examples covering retail, membership, events and subsidiaries

Clear examples would assist with consistent implementation. These should include:

- A supporter donating goods whose value is realised when another supporter purchases the item in a charity shop;
- a supporter joining a membership scheme;
- a supporter taking part in a lottery or raffle;
- a supporter purchasing a training course delivered via a trading subsidiary;
- a supporter signing a petition or attending an event;
- a supporter donating their time as a volunteer

Examples should show when the soft opt-in applies and how the opt-out should be communicated.

11. Avoid distinctions that could conflict with charity law

Statements suggesting that certain revenue-generating activities are not “in furtherance of charitable purposes” risk creating inconsistency with the Charities Act 2011 and Charity Commission guidance. The ICO guidance should avoid categorising activities as “charitable” or “commercial” and instead rely on the statutory test of furthering charitable purposes.

12. Provide proportionate expectations for smaller charities

Where guidance introduces processes requiring more advanced CRM capabilities, it should acknowledge that many organisations will not have immediate capacity for extensive segmentation. Proportionate expectations will help avoid discouraging adoption of the new provision.