The ethics of legacy fundraising during emergencies

⚓ ETHICS

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ROGARE
THE FUNDRAISING THINK TANK

Contents

This is one of four projects Rogare has commenced to look at how the Coronavirus/Covid-19 pandemic might affect fundraising. The others are:
- Responding to arguments that fundraising during the pandemic is inappropriate
- Fundraising during economic emergencies – collating and assessing existing research and evidence
- Critical reflections on how the Covid-19 pandemic might change fundraising.

Details of all these projects – and all Rogare's projects and outputs – can be found on the Rogare website – www.rogare.net

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Foreword

Claire Routley
Legacy Fundraising UK, project team leader

In March 2020, I suggested to Ian MacQuillin that it could be a good idea for Rogare to look at the ethics of legacy fundraising during emergency situations. From conversations in the sector, many legacy fundraisers seemed to be struggling with what might be appropriate and what might not be during the Coronavirus outbreak. I hoped that a piece of work that reflected on those issues would be helpful for fundraisers both during the Coronavirus situation, and in any future challenging circumstances that our sector might encounter, as Ian outlines on the next page.

In order to bring different views to the table, we assembled a fantastic team of fundraisers with experience in ethics and legacies who, together, were able to identify the key ethical issues to consider and how they might begin to be addressed. The team included fundraisers from the

UK, the US, Canada and Australia, so represented a range of different (although largely Anglophone) markets. Working with such knowledgeable and committed individuals who have freely given their time to the project for the benefit of the sector has been a privilege, and I would like to thank them for their invaluable contributions.

I hope that the report will be of relevance to legacy fundraisers, NPO/NGO directors and trustees who might be challenged by the ethics of legacy fundraising at this time. However, as we identify later on, many of the issues that we discussed are relevant to legacy fundraising in normal circumstances – but magnified during an emergency. I hope, therefore, that this report will provide some useful reflections on the ethics of legacy fundraising per se, and particularly the importance of reflecting deeply on ethical issues as part of everyday practice. ◔

Project team

Claire Routley, Legacy Fundraising UK (UK)
Dr Claire Routley has worked in fundraising for over 15 years, for charities large and small. In 2011, she completed a PhD looking at why people choose to leave charitable legacies. She is now a fundraising consultant, and a tutor for the Institute of Fundraising's qualification courses. She is also a member of Rogare's international advisory panel. She continues with legacy fundraising research and was named AFP's emerging scholar 2017.

Heather Hill	LAPA Fundraising (USA)
Cherian Koshy	Des Moines Performing Arts (USA)
Lucy Lowthian	Sue Ryder (UK)
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Thank you also to Stephen George, Good Leaders (UK), for reviewing a draft of the paper.

Foreword

Ian MacQuillin
Director, Rogare – The Fundraising Think Tank

Fundraising regularly faces accusations of being unethical – not just that the particular instances of it are unethical, but that there is something inherently dodgy about the whole enterprise. There are one or two usual suspects that are lightning rods for such allegations. Street face-to-face fundraising ('chugging') is one. Legacy fundraising also gets more than its fair share of criticism.

Because it deals head on with death, the ethicality of legacy fundraising has been brought into focus during a health emergency in which so many people are dying.

To explore this issue, Rogare initiated this project to identify the ethical issues facing legacy fundraising in all emergencies that are likely to result in severe loss of life, such as a pandemic or epidemic (even a man-made one such as the opioid crisis), war, or societal disruption (such as might be the result of economic depression or natural disaster).

And, having done so, analyse these ethical dilemmas through the lens of existing theories of fundraising ethics to recommend possible resolutions.

The project is led by acknowledged legacy fundraising practitioner and academic Dr Claire Routley, whose project team comprises a mix of legacy fundraisers and those who have specialised knowledge of fundraising ethics (which of course is not to say that the legacy fundraisers on this team are not also sufficiently knowledgeable about ethics).

At Rogare we have spent some considerable time expanding existing concepts and theories of fundraising ethics and developing new ones. This is the first project in which we have attempt to apply them coherently to ethical challenges in professional practice. The modus operandi adopted by the project team – identifying categories of ethical dilemma and analysing these through the lenses of various normative theories of fundraising ethics – will be the template for how we address similar challenges in the future.

I'd therefore like to thank Claire and the whole project team for doing such a fantastic job in a very short time. ◔

1
Introduction

As the world was engulfed by the Coronavirus/ Covid-19 outbreak in early 2020, fundraisers around the world faced a range of challenges, from the cancellation of events they relied on to support their beneficiaries, to reforecasting income streams, to adapting to increased digital communication. Alongside these practical challenges, they faced ethical quandaries around what was and wasn't appropriate given the wider situation.

This quandary was, and still is, arguably most acute in legacy fundraising (which we have defined for the purposes of this paper as soliciting legacy donations and stewarding donors who have expressed an interest in or intention to leave a gift to the charity in their end of life plans). Is it appropriate to pursue a form of fundraising where a gift is only activated by death, in a situation where, globally, millions have become ill, and hundreds of thousands of people have died? And what can we learn for the ethics of legacy fundraising in any future emergency situations? The situation was summed up eloquently by UK fundraiser Nick Posford on the *Critical Fundraising Forum*:

"As someone who was rather startled to see a legacy ad a couple of weeks ago in my Facebook feed, I have come to think it is not morally wrong but rather [the ethical question is about] how it is done. So the Facebook ad seemed oblivious to the current situation – it was pre-planned and scheduled, as part of Free Wills Month – which made it very jarring, plus I was conscious of being in the high-risk group and it was at the start when everything was panicky and changing minute by minute. But, in the same way that it is really important we talk about our wishes if we were to be really ill and what we would want (DNACPR,[1] die at home vs hospital etc.), I am not against the idea that during a time of global crisis, with (early) death more prominent in most of our minds, it could be appropriate to encourage thoughts about legacies for future generations etc. But it is the messaging, the audience, sensitivity and respect that need careful consideration."

With the help of an experienced team of legacy fundraisers and those with expertise in fundraising ethics from the US, Canada, Australia and the UK, this project aims to address those issues.

1.1 Role ethics – ethics or best practice?

In the early stages of our discussion it became clear that some of the specific ethical quandaries that we were discussing were probably not ethical issues per se, but examples of what would probably be widely agreed to be poor legacy fundraising practice, which were thrown into particular relief during the Coronavirus outbreak.

It should be clearly stated that it goes beyond Rogare's purview to define what is good or poor practice in any area of fundraising. However, what we can say is that, over recent years, a wide range of research has been undertaken into legacy fundraising that points to what is likely to be ineffective in practice and a good legacy fundraiser should be aware of this literature and act accordingly – see, for example, James and Rosen (2020).

Similarly, it became clear that many of the ethical scenarios we were discussing were the same as would apply to day-to-day legacy fundraising – for example, discussing death is an issue which affects legacy fundraising practice on an ongoing basis – but again, these issues appear magnified in an emergency situation. During the best of times, there is tension in the donor's mind between a desire to avoid thoughts of death and a desire to secure symbolic immortality. This tension becomes more pronounced during a crisis. So, while sensitivity to this phenomenon is always important for fundraisers to have, it is especially important during a time of crisis (ibid).

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1   A 'do not resuscitate' instruction for medical staff.

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'In the early days of the Coronavirus outbreak, charities seemed to be waiting on each other to make decisions, and/or looking to 'gurus' for advice on what was and wasn't appropriate, rather than having a firm ethical foundation on which to base their decision making.'

This is considering fundraising's professional ethics through the lens of 'role ethics', a branch of virtue ethics. Virtue ethics argues that what is ethical is what a virtuous person would do, and that there are particular virtues, such as honesty and trustworthiness, that a virtuous person should have. However, on top of that, people working in particular roles are expected to have virtues that pertain to being able to perform that role ethically, and such virtues are "differentiated" to that role (Swanton 2012, p. 208).

The oft-called for undifferentiated virtues required of a successful fundraiser would include honesty, respectfulness, compassion and others (e.g. Fischer 2000; Marion 1994, pp51-54). But there will be other virtues that a professional fundraiser will need specifically to be able to perform her professional role as a fundraiser (Koshy 2017). One of these is likely to be 'competence' (MacQuillin 2019), which in the context of legacy ethics means being able to differentiate between and appropriately use (or not) good and bad legacy fundraising practice.

So in the context of emergency situations, it is important to go beyond considerations of whether a fundraiser is acting ethically as a human being (would it be ethical for a lay person to act this way during an emergency situation?), and consider whether they are acting ethically in their differentiated role as a fundraiser seeking legacies.

1.2 Applying ethical decision making in legacy fundraising

It became apparent that 'legacy fundraising' is not one activity. Instead it encompasses a broad range of sub-activities, from raising awareness of the potential of legacy giving among a cold audience, through to stewarding people who have committed to make a gift. Given the diversity of methods employed, as mentioned above, our initial discussions centred on a range of particular scenarios, such as whether it is ok to continue with stewardship activities, or is it ok to reach out to cold audiences?

However, the problem in thinking that way about ethics is that, in a diverse and rapidly changing world, it's virtually impossible to come up with a full list of all possible scenarios, which means that every new situation would throw up a new set of ethical questions. Instead, we adopted the principles of decision rules, which in practice meant addressing higher-level questions, which should encompass the various scenarios we had been discussing, through different ethical lenses.[2] Rather than try to address the very specific situations legacy fundraisers might find themselves in, this paper will therefore deal with these higher-level questions.

Although a little late for the Coronavirus situation, it also became clear that it would be advisable for legacy fundraisers, and indeed, directors and boards, to have carefully considered their approach to ethics generally, and legacy fundraising ethics in particular, before an emergency occurs: a lesson that could be taken forwards for the future. For the legacy fundraising practitioners on the team, it was clear that, particularly in the early days of the Coronavirus outbreak, charities seemed to be waiting on each other to make decisions, and/or looking to 'gurus' for advice on what was and wasn't appropriate, rather than having a firm ethical foundation on which to base their decision making.

Ideally, legacy fundraisers and the charities they serve shouldn't change their ethics just because of the situation they find themselves in. It could be helpful, therefore, as part of this process of ethics

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2   Particular thanks to project team member Cherian Koshy for bringing these ideas to the team's attention.

consideration, for fundraisers to create an ethical values statement,[3] which is regularly reviewed, and which guides day-to-day practice. When an emergency strikes, it could be deliberatively reviewed, considering whether any of the thinking that went into creating it has changed.

A useful first step in this process is to clarify the core approach to fundraising ethics. In recent years, Rogare has worked to clarify the core possible approaches to fundraising ethics, essentially:[4]

Trustism – fundraising is ethical when it maintains and protects public trust.

Donorcentrism – fundraising is ethical when it gives priority to the donor's wants, needs, desires and wishes (and, in the consequentialist view, this maximises sustainable income for the nonprofit).

Rights Balancing – fundraising is ethical when it balances the duty of fundraisers to ask for support (on behalf of their beneficiaries) with the right of the donor not to be subject to undue pressure to donate, such that a mutually beneficial outcome is achieved and neither stakeholder is significantly harmed.

Being clear about the core underlying ethical principle will enable organisations and fundraisers to make consistent decisions, grounded in a solid ethical position. However, this also pointed out to us as a working group that what might be ethically acceptable to one organisation, might not be to another, depending on their underlying ethical principles and organisational values; essentially there is no one wrong or right answer. We've therefore addressed the questions that might underlie our decision rules through the different ethical lenses of Trustism, Donorcentrism, and Rights Balancing.

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3   For an example of an ethical values statement, see https://www.mariecurie.org.uk/who/plans-reports-policies/ethical-statements/fundraising

4   For more on Rogare's approach to ethics, see https://www.rogare.net/fundraising-ethics

1.3 How to use this paper

- This paper doesn't give you definitive answers about what is right or wrong, what is appropriate and isn't – ethics isn't as simple as that. Instead, we explore questions, and try to bring in multiple perspectives and arguments. And ultimately these issues will always have to be worked through in your own organisation and context.

- As expressed above, we would recommend thinking through your overarching approach to ethics as an organisation, which will give you a solid base to work from whatever the external situation.

- In our working through of the overarching questions, we've flagged some of the key critiques which might be levelled at legacy fundraising and then sought to think about a) whether there is solid evidence for those critiques, and b) whether they can be mitigated. It may be that some of this thinking and some of these arguments can be brought into your organisation – although of course, you may come to different conclusions than we do in the paper. In the case of the current pandemic, for example, if you were aware that your donors were likely to be in a vulnerable group, it would strengthen some arguments and weaken others, and may bring you to an alternative conclusion.

- We hope that the process we go through in this paper could provide a useful model as you grapple with particular ethical dilemmas in your situation i.e. rather than consider every activity individually, consider whether they might be abstracted to, and addressed at a higher level. Once you've done that, you could identify the key arguments as to why they might be unethical, seek out evidence for and against those arguments, and consider if and how they might be mitigated.

- In some circumstances, you might wish to run through those lower level, more specific dilemmas in the same way to help you come to conclusions on specific courses of action. ◔

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Question set 1 – 'offence' and other overarching ethical questions

Our initial scenarios included a range of questions such as the consideration of people in vulnerable circumstances, communicating about a death-related subject at a time when thoughts of mortality were high, or public perceptions around 'ambulance chasing'. Many of these scenarios could be summed up by the overarching questions below:

1a **Where is the line (or how do we decide where the line is) on when it is appropriate/inappropriate to ask for a legacy gift?**

1b **Does risk of death or physical/economic disability change whether marketing is ethical or just how, and to whom, we market?**

1c **How do we weigh or offset offence of some versus impact to mission by those who accept? Since this is always trailing (or afterwards) how can we make ethical decisions in the present?**

2.1 Offence and other overarching questions – Trustism lens

Trustism is a shorthand label for a normative approach which posits that "a fundraising act would be ethical if it promoted, sustained, protected or maintained public trust, and unethical if it damaged these things" (MacQuillin 2016, p12).

The rationale of Trustism is a consequentialist idea, that is, it's the consequence of damage to public trust which determines the ethics of an action. And, further, it's the inferred consequences of reduced public trust which denote the changes as "damaging", and there is empirical research that shows correlations of 'trust' to people's propensity to give to nonprofits in general, and people's commitment and lifetime donations value given to particular nonprofits (ibid).

Even though there is research that suggests that when people have a high degree of trust in charities they are more likely to give, and give more (Sargeant and Lee 2002), the general challenge of Trustism to determining applied ethical questions is that 'public trust' cannot be easily correlated to specific fundraising acts. For example, an Australian bi-annual research series on behalf of the national charity regulator (Rutley and Stephen 2017) tracks "low, medium, high" responses to the question: "How much trust and confidence do you have in the following institutions and organisations?"

The research tracks frequently cited factors which influence the research respondents' trust, but of the top six, only three are partly attributable to fundraising actions ("high portion of funds go to those in need", "provides information on how it spends its funds", "is well known").

There is also a difference between actual and potential consequences. When it comes to offence, it's rare that a decline in trust in some individuals would transfer to others without some form of publicity. While the contemporary environment makes the 'public' part of public trust quite a bit easier, it would have to be considered whether the risk is so high that it would result in a public outcry sufficient enough to detract others from giving. The decision rule would be decided by whether the act causes more calculable harm or that the act measurably risks more calculable harm, with each organisation deciding on the threshold for their own risk analysis.

To apply a Trustist approach to specific ethical decisions, fundraisers would need a more specific understanding of the make-up of 'public trust'. This would include adherence by charities to:
- stated or unstated norms which donors consider are part of a wide social consensus, and
- a charity's own stated behaviour standards (such as donor charters or service standards).

Some of the unstated norms are very simple and ascertainable, and important for fundraisers, e.g. "It is respectful and courteous to correctly spell a person's name." This might lead to an applied ethical conclusion using Trustism: "A mass-marketing mail/email campaign using a dataset which does not have very high, confirmed correctness of people's names is not ethical, because the disrespect and discourtesy of misspelling some recipients' names will damage public trust." (A crisis has no particular additional impact on this example.)

Some of the unstated norms – e.g. "it is hurtful to communicate frightening news or show shocking images to vulnerable people" – are contested and complex.

> '*Even though there is research that suggests that when people have a high degree of trust in charities they are more likely to give, and give more, the general challenge of Trustism to determining applied ethical questions is that 'public trust' cannot be easily correlated to specific fundraising acts. When applying Trustism to determine the ethical position of an action during a crisis, it becomes even harder to attribute an effect on trust to certain fundraising actions.*'

When applying Trustism to determine the ethical position of an action during a crisis, it becomes even harder to attribute an effect on trust to certain fundraising actions. There are three reasons why this is difficult.

1. Multiple factors affect trust formation or damage. One is the passing of time. It's a truism that "it takes 20 years to build a reputation and five minutes to ruin it".[5] However, context and quality of the behaviour are also important to the durability of trust. For example, consider two individuals associated with a charity whom a donor has never met. The trust likely to be imputed to a pro bono solicitor/attorney preparing a will could be high by virtue of her position, while the trust imputed to a telephone caller on behalf of a charity could be low.

2. Generalised attributions may be incorrect for particular people. For example, part of this paper was written during Ramadan. The statement "spending money on charity advertising during a crisis is unethical because it detracts from the goal that funds go to those in need" might seem plausible. However Islamic charities spent money on promotional banners, email and Facebook advertising as they always do in this month.[6] One of the stated proper recipient groups of zakat (obligatory giving often made during Ramadan) is 'zakat administrators'. We could conclude that Muslims probably would not share this ethical appraisal of "spending money on charity advertising during a crisis".

3. During a crisis, it is more difficult to accurately anticipate the effect of fundraising actions because less can be known about the situation of donors and the public to whom the actions are directed. In 'normal' times it is sometimes difficult for fundraisers to determine whether a person is in vulnerable circumstances (e.g. cognitive impairment may not be evident in casual conversation; a donor may not share their recent bereavement or loss of employment with

a fundraiser). A crisis means that the incidence of vulnerable circumstances could be more frequent, but also harder to discern because gathering timely information is harder (e.g. face to face contact is highly restricted and mail delivery is slow).

The foregoing might suggest that since there are so many factors that need to be included in a Trustist decision-making process – many of which may be difficult to reliably ascertain or assess – then either attempting a Trustist-based resolution is not possible; or that the best thing to do is to assume negative effects on public trust and so not press ahead with a practice or programme that might be considered ethically contentious. Neither is true.

The analysis of Question Set 2 shows how a Trustist lens can be applied to some practical ethical challenges in legacy fundraising during emergencies. This Trustist analysis of Question Set 1 however highlights some of the underpinning factors that need to be taken into account in considering whether the context for that practice would be ethical.

While it may be difficult to assess these, it is not impossible. But if they are not considered, fundraisers might assume that the risk to public trust is too great and simply stop all ethically-contentious practices. They might come to the same conclusion if they feel it is just too difficult to take into account all relevant factors.

This is not what Trustist ethics is about. As a consequentialist theory, Trustist ethical approaches are based on achieving good outcomes and avoiding harmful ones. Those outcomes cannot be guessed at, much less arrived at by gut feeling or instinct. Instead, they must be based on best available evidence and theory. Note that this is 'best available'; it does not have to be complete or irrefutable, and there will be available information that fundraisers can draw on to help them make the most informed decisions they can.

These decisions are unlikely to be cut and dried, 'right' or 'wrong' options (that's not how ethics works anyway). But they will be more informed and ethically defensible than if fundraisers did not consider any of these things. ◔

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5   Attributed to Warren Buffet in: Anderson, D.R. (2005). *Corporate Survival: The Critical Importance of Sustainability Risk Management.*

6   https://fundraising.co.uk/2020/05/29/mytennights-raises-10-9m-for-charity-during-ramadan/ – accessed 7 June 2020.

2.2 Offence and other overarching questions – Donorcentrism lens

In an earlier paper on ethics in fundraising, Rogare director Ian MacQuillin (2016, p20) offers the following simple definition of Donorcentrism: "Fundraising is ethical when it prioritises the needs of the donor (and, in the consequentialist version of this theory, that this raises more money)."

We have assumed that there are conditions under which legacy fundraising is deemed to be ethical from a Donorcentrist perspective. Indeed, those of us who are practitioners contributing to this paper have many examples of donors who have expressed profound satisfaction with their legacy gifts, which suggests that this assumption is valid. The relevant question for this paper is whether the context of an emergency – particularly one such as a pandemic where there is a high likelihood that many people will die – makes it less likely, or even impossible, to conduct legacy fundraising in a manner that prioritises the needs of the donor.

One way of considering this question is to think about what the needs of the donor are with respect to legacy fundraising, whether there is anything about the context of an emergency that shifts those needs, and whether these shifts would make legacy fundraising unethical. We will consider each of these points in turn.

First, what are the needs of the donor when it comes to leaving gifts in wills? While this paper does not seek to propose an exhaustive list, principal among the needs of the donor when leaving an end-of-life gift are: to be treated with dignity, to be able to manage one's estate efficiently and in line with one's wishes, and to achieve symbolic immortality.

- Treating a person with dignity involves respecting them as a person, not treating them simply as a means to further your objectives.

- Managing one's estate efficiently and effectively could include being able to take advantage of favourable tax treatment where possible, while dividing proceeds in accordance with one's preferences. In the UK, for instance, leaving more than 10 per cent of one's estate to charity can reduce the overall rate at which the remaining estate is taxed, thereby enabling an individual to leave a larger total sum to one's family (HMRC, n.d.). It is also common practice in the UK for charities to offer free will writing programmes, whereby supporters of the charity are invited to make a simple will with a participating solicitor at no cost to themselves, with the understanding that they will be asked during the process of drawing up the will whether they wish to leave a gift to a charity; the offer of the free will is not contingent on leaving a gift, merely on the openness to being asked.

- Achieving symbolic immortality involves the feeling of continuing to make an impact beyond the point of one's death (Routley 2011; Routley and Sargeant 2015).

The need to be treated with dignity is one that exists across all forms of fundraising; the needs around estate management and symbolic immortality are specific to legacy fundraising. Again, we have taken for granted that it is possible to solicit legacy gifts and steward legacy pledgers in a way that prioritises their needs.

The next question to consider is whether the context of a widespread emergency shifts these donor needs in a way that compromises the possibility of ethical donor-centred legacy fundraising. How might the context of an emergency such as a pandemic compromise Donorcentrist legacy fundraising? At a

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time of emergency, individuals may be more worried about their own well-being – physical, mental, and financial. They may be afraid of becoming sick or dying; they may be worried about losing their jobs or otherwise having less disposable income. In this context, does practical donor-centred fundraising become impossible? Arguably no, provided it is done thoughtfully (which is a prerequisite for donor-centred legacy fundraising in a non-emergency context as well).

In all situations and across all income streams, ethical fundraising involves treating donors with dignity, respecting them as individuals and taking account of their needs and preferences. Any legacy fundraising activity conducted during a time of emergency – whether to existing supporters or to new audiences – ought to acknowledge the current environment and reflect sensitivity to this. When communicating with existing legacy pledgers, a donor-centred approach could involve reaching out to pledgers to enquire about their wellbeing and signposting them to relevant services or information that the charity can offer, if applicable.

Arguably, the donor needs that are specific to legacy fundraising – to be able to manage one's estate efficiently and effectively and to achieve symbolic immortality – are, if anything, heightened during a time of emergency. When people are worried about their health, they may feel a particular urgency to settle their affairs. For charities to stop talking to their supporters – especially those who have already expressed an interest in leaving a legacy – about leaving a gift in their wills at this time could deny those supporters an opportunity to take advantage of beneficial programmes like a free will offer, not to mention the opportunity to express their wishes for symbolic immortality, at a time when they might value this most.

Provided it is done sensitively, there is no particular reason that the context of an emergency should make good donor-centred (practice) and Donorcentrist (ethical) legacy fundraising less possible. In fact, an argument can be made that when people are feeling less financially secure, talking to them about a gift in their will as opposed to a gift today is more appropriate.

Also, for donors who are facing economic uncertainty, particularly through retirement, some legacy gift options (specifically gift annuities and trusts in the USA) provide tax-advantaged vehicles that can even provide income to the donor for their lifetime.

These opportunities create a donor-centered approach that may be significantly meaningful and advantageous to the donor. For existing legacy pledgers, the context of an emergency might raise concerns about whether the charity will continue to exist and thus be able to fulfil their need for symbolic immortality; in this case, regular and transparent communication about the charity's financial position is important and can be reassuring. Legacy pledgers may even appreciate the opportunity to respond with cash gifts today in order to secure the charity's future through a difficult period.

The previous few paragraphs might seem like 'special pleading' – arguments selected by fundraisers to deflect Donorcentrist concerns about legacy fundraising. Sometimes, conclusions about the ethics of legacy fundraising purport to come from a 'donor-centric' approach, but are actually from a 'self-centric' approach. Legacy fundraisers often observe that many criticisms come not from legacy pledgers, but from people who have *not* made a gift in their will to charities important to them. Not having done so, they therefore do not understand the genuine joy, fulfilment or symbolic importance which many legacy pledgers experience. This means that a debate about applying Donorcentrism can be unbalanced because the genuine benefits for legacy donors are not understood or accepted as genuine. ❻

> ❻ *'The donor needs that are specific to legacy fundraising – to be able to manage one's estate efficiently and effectively and to achieve symbolic immortality – are, if anything, heightened during a time of emergency.'*

2.3 Offence and other overarching questions – Right Balancing lens

The Rights Balancing approach suggests that an act is ethical if it balances the duty of the fundraiser to ask on behalf of the beneficiary with the relevant rights of the donor, specifically the duty not to place undue pressure on the donor, thereby striking a balance between the two entities (MacQuillin 2016, p16).

Legacy fundraising always poses a challenge for fundraisers as they try to discern how to balance the needs of current beneficiaries as it relates to future gifts with legacies. Legacy fundraising can often be perceived as reducing income today in order to obtain future gifts, thereby straining the divisions between current beneficiaries and future beneficiaries.

Amid a crisis such as the Coronavirus pandemic, these concerns are heightened as immediate needs are perceived to be more pressing. Given the choice between current cash flow and a bequest gift, it can seem that the balance may be skewed to the current need.

It is important that fundraisers and boards interrogate these assumptions and perceptions from all possible angles, addressing a full analysis of the potential risks and rewards. If the institution had invested in legacy giving in full force a decade ago, the organisation's current unmet needs might have been significantly diminished.

As decision-makers consider legacy marketing, especially during the Coronavirus pandemic, it is essential to fully weigh all the advantages and disadvantages involved for both the current state of the organisation as well as the future state.

First, as discussed above, fundraisers have imperfect, incomplete, or absent information regarding the risk of causing donor offence (here, we are classifying 'offence' as one milder result of 'undue pressure'). Prior to legacy marketing or an ask, it may be impossible for a fundraiser to even assess these risks in a meaningful way. However, there is certainly a non-zero risk of potentially offending a donor but it is important to remember that these risks are ever-present. In fact, it has been the case for nearly half a century as Fink and Metzler (1982) explain: "In the 1960s, many people considered a discussion of bequests to be unseemly or macabre." It is possible that a donor is offended because of their situation or an unknown circumstance. Knowing that there is some potential of risk of any legacy marketing, decision-makers need to consider how credible that risk is against the following factors:

a) Would the donor perform their own risk calculation? That is, does a relatively minor offence get outweighed by the donor's goodwill towards the organisation by the opportunity to have an outsized impact on a cause they care about? Many of the markers of a likely legacy donor indicate that these are often the most loyal and supportive donors who have prioritised their impact on the beneficiary.

b) Would the institution be better off even though some are offended? If there are some that are offended due to the timing of an ask, will the gifts of those who respond positively outweigh and provide greater value for the organisation's beneficiaries? According to *The Chronicle of Philanthropy*, the average amount of charitable gifts to various organisations made by a bequest in the USA is more than $78,000 (Stiffman 2019). While intentional offence should always be avoided, unintentional offence may be outweighed by substantial gifts that support future beneficiaries. It is also important to note, as Rosen (2010) confirms, that in the USA many bequest gifts are realised in a relatively short amount of time, on the average of five years, supporting current beneficiaries as well. ⑥

> ⑥ *'It is possible that a donor is offended because of their situation or an unknown circumstance. Knowing that there is some potential of risk of any legacy marketing, decision-makers need to consider how credible that risk is.'*

3

Question Set 2 – 'urgency' and other ethical dilemmas in practice

The initial scenarios the project team discussed for the second question set included issues such as the possibility of people making legacy decisions in a hurry, the risk of short-term offence leading to long-term detriment to legacy giving, or the importance of offering a convenient way to give at a time when other options (e.g. attending events) might not be available. These could be summed up with the overarching questions below:

2a **Does urgency impact the ethical implications of legacy marketing?**

2b **Whose urgency matters most? The donor, the beneficiary, or the organisation, (perhaps something else) and why?**

2c **How does an environmental factor (pandemics, war, famine, etc.) change the ethical rules that are followed and why would certain environmental factors matter more than others, such as lack of access to healthcare, economic inequality, etc.?**

2d **In an environment of imperfect information (not knowing whether a donor is affected or how severely they are affected) how should a fundraiser discern the probability of urgency?**

2e **Does it matter that certain organisations may be seen as more worthy currently/in an emotionally heightened situation? Or vice versa i.e. not taking away from current giving?**

From the overarching theoretical questions we considered previously, these questions move us more of an applied ethical space. Again, we explored these using the lenses of Trustism, Donorcentrism and Rights Balancing Fundraising Ethics.

3.1 Urgency and other practical dilemmas – Trustism lens

As a reminder, the Trustism lens says that "fundraising is ethical when it promotes, sustains, protects or maintains public trust in fundraising practices and the fundraising profession, and unethical when it damages it" (MacQuillin 2016, p12).

Urgency, using the Trustism lens, would arguably be about neither the donor, nor charity, but an urgent need to protect public trust. During an emergency, there may therefore be a need to rethink legacy marketing plans to retain the trust of both existing donors and the wider public.

Although, as expressed in Question Set 1, it can be challenging to apply Trustism without information as to how particular actions affect trust, it may well be that during an emergency people will look at organisations with a greater degree of scrutiny, seeing their actions as reflecting their 'true colours',[7] and therefore, that perceived poor behaviour in the short term could damage trust in the long term. Therefore, the Trustist lens would suggest that marketing plans/communications need to be sensitive to the situation, and may need to balance the need to strengthen existing relationships with managing wider public perception.

Charities driven by the Trustist approach may consider delaying direct legacy asks and focus on softer communications, and addressing the best interests of their supporters in the hope that they will feel more positive towards them in the future. Charities may also need to consider what types of legacy marketing, and which messages are most appropriate during an emergency situation. For example, drip feeding the legacy message through other communications may be more effective in retaining trust than a direct or personal ask, which may be deemed insensitive.

However, from a Trustism viewpoint, it could also be argued that connecting with existing legacy supporters urgently should be a charity's priority, with a time of crisis being the time for excellent stewardship and donor care (which takes account of

> *'The Trustist lens would suggest that marketing plans/communications need to be sensitive to the situation, and may need to balance the need to strengthen existing relationships with managing wider public perception.'*

the particular circumstances of the emergency e.g. lack of face-to-face contact) rather than solicitation.

This may particularly be the case for legacy supporters who may be more likely to be elderly and isolated than other donors. For example, from a Trustism perspective, personal communications such as a phone call to see how the supporter is doing may demonstrate that the charity cares about its supporters and their emotional state (and not just how they benefit the charity financially). Indeed, not connecting in this way with existing legacy supporters might damage trust with this supporter group.

Conversely, it could also be argued from the Trustism position that failing to ask for legacies might damage trust. Given the positive, well-being and empowerment-enhancing benefits of legacy giving, it could be argued that failing to provide people with the information about or ability to leave a legacy – at a challenging, well-being-suppressing, disempowering time – might impact on the trust that donors, and potentially the wider-public have in a charity, as might failing to take actions that could help the charity's beneficiaries.

Indeed, a study conducted in the UK during the pandemic found that 42 per cent of respondents said that it was strongly appropriate to ask for gifts in wills during this time, while 13 per cent said that it was strongly inappropriate (although we can't be aware of the potential impact of a vocal minority on trust) (May 2020).

The Trustist approach might also point to a particular

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7   See for example, pledges to boycott various companies due to their behaviour during the pandemic e.g. https://www.thelondoneconomic.com/business-economics/these-are-the-firms-people-are-pledging-to-boycott-after-coronavirus/25/03/ – accessed 7 June 2020.

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issue around will making. Due to heightened death awareness, people may feel a sense of urgency to write their wills to ensure their affairs are in order and that their loved ones would be cared for should anything happen to them. However, in an emergency, emotions run high and people can start to panic. This can result in rushed wills and hasty decisions instead of taking due care, time and consideration to write it. A charity being perceived to rush supporters towards writing a will before they've had time to properly consider things could negatively impact on trust.

There could be an increase in disappointed family members who contest the validity of wills made in vulnerable circumstances (e.g. their family member

'In an emergency, emotions run high and people can start to panic. This can result in rushed wills and hasty decisions instead of taking due care, time and consideration to write it. A charity being perceived to rush supporters towards writing a will before they've had time to properly consider things could negatively impact on trust.'

lacked capacity to make a decision to donate; or they didn't have the relevant knowledge and/or approval required to write their will and make an informed decision). If the emergency is a pandemic (like Coronavirus) and social distancing is enforced, the practical issue of finding witnesses to sign a will is challenging and could result in more contested wills, resulting in negative publicity for charities concerned. These risks can be mitigated by encouraging family-wide conversations about legacy giving.

In urgent situations, charities might be more likely to be approached to provide legal advice/ information regarding will writing. The Trustist lens might suggest that charities should be cautious in coming up with solutions to issues (such as finding witnesses) and refer supporters to a legal professional. The urgency of the situation might also mean that charities that offer a will writing service could be seen as profiting from the crisis – they might be seen as 'ambulance chasing' – and thus those working from a Trustist position might want to consider the potential impact of such schemes on public trust.

Finally, using the Trustism lens to consider whether some charities may be seen as more worthy during a crisis, it may be that the public are more supportive and trusting of those charities deemed 'worthy' during a crisis (such as frontline charities, those helping those more vulnerable to the emergency – see Smith, Gallaiford and Locilento 2020) and respond better to their legacy asks. Indeed, it might be that some charities might be perceived as wasting resources if they were to ask while their messages were drowned out, therefore damaging trust. However, the long-term nature of legacy giving might mitigate this issue, enabling people to support relevant charities now, but continue their support of other charities into the long-term future, once the immediate crisis has passed. ❻
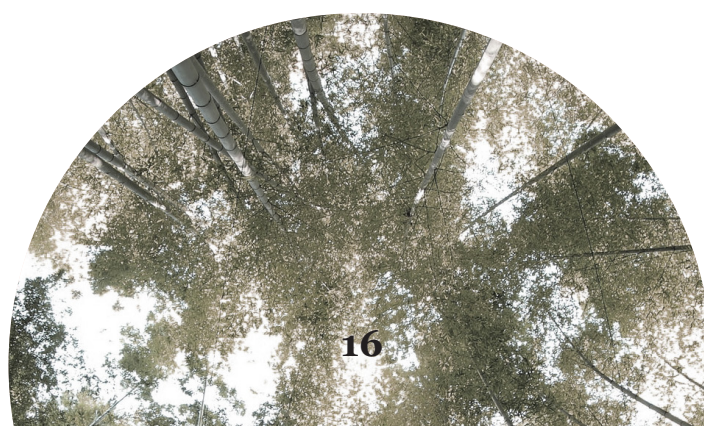
3.2 Urgency and other practical dilemmas – Donorcentrism lens

Utilising the Donorcentrism approach, the question of whose urgency matters most would be a relatively easy one: using an ethical approach which foregrounds donors' needs, wants, desires and wishes' (MacQuillin 2016, p14) would suggest that it's the donor's urgency that matter most, either because that's the right thing to do, or because, in the long-term, it's likely to lead to additional giving to a cause.

Using this lens, does it become unethical to foreground the legacy giving needs of the charity, when it's the donors' urgency that matters? Given that the pandemic has appeared to lead to an upsurge in end-of-life planning (Warwick-Ching and Barrett 2020), it could, in fact, be argued that it would be unethical not to inform about legacy giving, and associated schemes such as will-making, at a time when it appears to be genuinely relevant to donors, as long as that is done in an appropriate manner which doesn't negatively impact on a donor (as discussed earlier in this paper).

However, for some donors, urgency could be particularly challenging, with the urgency of the situation forcing them to confront death in a way that might be deeply uncomfortable for them. Indeed, researchers have gone as far as to argue that fear of death can potentially induce "paralyzing terror" (Solomon, Greenberg and Pyszczynski 2000). The quote at the beginning of this report from someone in a high-risk group seeing a legacy advert illustrates this discomfort with death well. And, as question 2b (see p14), alludes to, the combination of environmental factors (such as increased risk of death), and not knowing how severely a donor is affected by them (e.g. personal levels of death anxiety), could mean that some people perceive legacy fundraising activities to be unethical.

Can the 'urgency' issue of heightened death-anxiety be mitigated? The answer here would bring us back to many of the arguments made in response to Question Set 1, which we won't repeat in detail here – but, to recap briefly, that by developing legacy fundraising in a way that addresses donor needs (including to treat donors with dignity, enable them to manage an estate efficiently, and to help them to achieve symbolic immortality), fundraisers can begin to mitigate this issue. (And, of course, back to our opening point about the importance of good legacy fundraising per se.)

Although it isn't Rogare's place to define good or bad practice in legacy fundraising, the question of urgency, combined with a Donorcentrist approach, would suggest that legacy fundraising that leads with death, or triggers death-fears could be unethical, while legacy fundraising that helps people to overcome death fears would be ethical. For example, legacy fundraising could encourage donors to reflect upon their lives, or what they might like their giving to achieve or how they might achieve a sense of symbolic immortality. Indeed, encouraging donors to reflect on their lives particularly might help to develop feelings of nostalgia and therefore actually reduce death fears (Routley 2019). It might, therefore, even be possible that, through a Donorcentrist lens, it's unethical not to fundraise in a way that can help donors to escape their day-to-day concerns through reflection on the past.

The final challenge is whether it would be wrong to engage in legacy fundraising for certain types of charities not directly concerned with the emergency in question. It's likely that the Donorcentrist lens would reject this assertion, suggesting instead that what matters are the causes, and particular charities, that matter to the donor. As Beth Breeze's (2010) research shows, donors can struggle to negotiate the number of potential beneficiaries and instead choose the charities they support using their own mental maps, and personal experiences or, as Breeze terms it, philanthropic autobiographies. From an individual donor's perspective, therefore, the needs of their local theatre who are struggling to survive without bookings might be even more pressing than those of a medical charity who are directly involved on the frontline of fighting the Coronavirus pandemic. It's arguable that the Donorcentrist approach would absolutely support the donors' right to give a legacy gift wherever it mattered most to them, regardless of actual need (if even it were possible to quantify need during an emergency objectively).

This was highlighted in another Rogare project exploring how the pandemic's impact on fundraising (Smith et al 2020): "Fundraisers learn from the outset that giving is voluntary: the decision to give always rests with the donor. If a charity declares that its needs are not as great as others during the pandemic and chooses not to fundraise, it is taking that right to choose away from the donor. This is not donor-centred fundraising." ◑

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3.3 Urgency and other practical dilemmas – Right Balancing lens

Again, the Rights Balancing approach posits that the ethical act is one that balances the fundraiser's duty to the beneficiary with the rights of the donor. Here it is important to remember that institutions that squander resources on poor legacy marketing materials and strategies have acted unethically both to donors and to beneficiaries. Resources must be stewarded well and used in a manner that advances both the cause of the beneficiary and the donor.

Amid this backdrop and in context of various crises, it can seem 'tone-deaf' to solicit legacy donations when some perceive more urgent needs exist.[8] These pressing needs are more obvious during the writing of this paper as the world grapples with the resources needed to combat Coronavirus. While it might be easy for a fundraiser to assume that all available resources be dedicated to a cure for the virus, it is clear that institutions and many donors do not feel the same way. From food security, domestic violence, race relations, education, and myriad other causes, we are witness to a global philanthropic diversion from pandemic-specific giving.

While the fundraiser may not know the particular circumstances of the donor to discern whether legacy marketing might cause offence, they may also be unfamiliar with the donor's value priorities. The donor may well feel like they are unwilling, unable, or unfamiliar enough with pandemic-related charities and therefore would prefer to make a gift to the arts or some other cause important to them; the donor may feel like an outright cash gift to an 'urgent' cause is more

appropriate, or they might perceive that an asset based gift would have a greater impact. Regardless of the specific circumstances, it is important that the fundraiser not act paternalistically towards the donor by deciding in advance what they will and will not care about or make a gift to support.

As the donor's rights include the avoidance of pressure that is potentially undue, the assumption remains that some pressure may be ethical and appropriate. In this light, legacy marketing may be viewed as the exercise of a minor amount of pressure that is appropriate given the beneficiary's need. In order for a proper balance to be struck, it is important that an authentic, urgent beneficiary need is present. If one actually does not exist, the balance is skewed highly in favour of the donor to potentially not be solicited.

While this seems rather unlikely, it is even more unlikely given the future tense of beneficiaries impacted by a legacy gift. Rather, if a charity is unable to proffer a genuine beneficiary need, it may need to reconsider its legacy programme as a whole.

The Rights Balancing ethic highlights the importance of proper legacy planning. Charities that deploy the same legacy strategies regardless of circumstances, without amending them,[9] do a disservice to both the beneficiary and the donor. But contextualizing a charity's approach to legacy asks during a specific crisis, such as Coronavirus, would mitigate much of the ethical risk of legacy marketing. ❻

> ❻ *'Regardless of the specific circumstances, it is important that the fundraiser not act paternalistically towards the donor by deciding in advance what they will and will not care about or make a gift to support.'*

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8 The 'tone-deaf' concern was one that regularly appeared in the sister project that looked at how to respond to criticisms that charities ought not fundraise during the pandemic (Smith et al 2020).

9 See James and Rosen (2020) for a research-led perspective on legacy fundraising practice during the pandemic.

4
Conclusions

Many of the original ethical dilemmas we considered were actually about poor legacy fundraising practice or, indeed, situations that also affect day-to-day legacy fundraising. However, both of these issues, we concluded, could be amplified during a time of emergency. Our first key takeaway from this project is therefore to stress the importance of role ethics i.e. drawing on what research tells us is likely to be effective legacy fundraising practice, and being sensitive to the situation in which an organisation is fundraising.

We also reiterate here the recommendation made earlier that organisations think carefully through their overarching approach to the ethics of legacy fundraising. As part of this process, an organisation could create an ethical values statement: this wouldn't necessarily be changed during an emergency, but could be reviewed during challenging times to ensure that the thinking that went into it hadn't changed.

As expressed above, rather than try to review every possible ethical challenge, we distilled those challenges into overarching ethical questions focused on:

a) understanding when it is appropriate/inappropriate to ask for a legacy

b) the implications of urgency for legacy marketing.

We reviewed both questions through three key ethical lenses: Trustism, Donorcentrism and Rights Balancing. On the following page we summarise key learnings from that process.

Trustism

This can be a difficult lens to apply in practice, as we often don't know how trust is affected by particular actions. However, there may well be potential for greater scrutiny during an emergency, and thus a greater risk of damaging public trust. Thus, it could be argued that the most appropriate approaches are those with a lower risk of damaging trust e.g. reaching out to value existing legacy supporters rather than broadcasting messages to new audiences.

Donorcentrism

This lens foregrounds the importance of fundraising in a way that meets donor needs. It may well be that those needs are heightened during an emergency. For example, the need to achieve symbolic immortality might be heightened at a time when risk of mortality is increased. Organisations using this lens should also be conscious that there may be a particular issue with highlighting death (and thus stimulating death fears) in the context of an emergency.

Rights Balancing Fundraising Ethics

The Rights Balancing lens utilises some elements of both Trustism and Donorcentrism. For example, in order to understand donor rights, one can draw on what donors want and need. Overall, the lens suggests that while there is some potential risk of offence, this is likely to be outweighed by the benefit of legacy giving to beneficiaries, particularly given the relatively high value of legacy gifts.

Furthermore, the opportunity to make a legacy gift could meet a donor's tangible needs (e.g., the need to avoid taxes) while also meet the donor's psychological needs (e.g., the need for symbolic immortality). However, organisations using this lens need to be confident that there are genuine beneficiary needs that legacy giving can help meet.

In conclusion then, as well as the overarching context of fundraising in an emergency, the particular circumstances involving a particular charity and a particular donor will affect the ethicality of asking for a legacy gift. Organisations seeking to apply this thinking might also find it helpful to echo the process used in this paper to address overarching questions, and apply the different ethical lenses to particular practices to understand whether each is appropriate for them.

Also, each of the lenses suggests some areas of ethical risk, so it will be important for organisations to consider those, and how they would be mitigated and managed. By working through dilemmas in this logical, evidence-based way, considering a variety of perspectives, individual fundraisers can approach their senior teams with carefully thought-out arguments and organisations can be increasingly confident in their decision making and judgement.

However, when considering the overarching questions we addressed, each of the lenses allows for an argument to be constructed as to how legacy fundraising is, or could be, ethical, although Trustism specifically might suggest that organisations be more cautious.

Of the three lenses we utilised in our exploration of the ethical issues, we believe that Rights Balancing provides the most sound approach because it takes into account donor wellbeing *and* the needs of the organisation's beneficiaries.

Furthermore, using this lens can bring the organisation's plans into sharper focus to provide a clearer course of action. Using this frame suggests that inaction around legacy fundraising could be more problematic than sensitive action, because of the potential detrimental impact on the organisation's beneficiaries. ❻

> *'Of the three lens we utilized in our exploration of the ethical issues, we believe that Rights Balancing provides the most sound approach because it takes into account donor wellbeing* and *the needs of the organisation's beneficiaries.'*

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