

# **IoF RESPONSE TO THE FUNDRAISING REGULATOR: CONSULTATION ON CHANGES TO THE CODE OF FUNDRAISING PRACTICE**

**April 2017**

## **ABOUT US**

The Institute of Fundraising is the professional membership body for UK fundraising. Our mission is to support fundraisers, through leadership, representation, standards-setting and education, and we champion and promote fundraising as a career choice. We have over 575 Organisational members who bring in more than £9 billion in income, and over 6,000 Individual members.

## **OUR RESPONSE**

### **General Comments**

The Institute of Fundraising welcomes the Fundraising Regulator's consultation on the Code of Fundraising practice. The Code is, and has always been, an evolving set of standards that should be regularly reviewed and revised where needed to adapt to the changing environment and ensure excellent fundraising practice which builds public trust and confidence from donors and enables charities to raise the income that is vital to deliver their objectives.

We are encouraged with the level of engagement that the Fundraising Regulator has undertaken around this consultation through speaking at a number of events across the UK and participating in webinars to raise awareness and answer questions. It is positive to see an open and transparent process which has included engagement with a broad range of stakeholders.

We set out our full responses to the specific questions asked in the Consultation below, but we also have some general comments which we outline here first.

### **Consideration on application across all jurisdictions**

While fundraising undertaken by charities only registered in Scotland is not regulated by the Fundraising Regulator, and arrangements for fundraising regulation in Northern Ireland remain under consultation, the Code of Fundraising Practice remains applicable UK-wide. Therefore, it is absolutely vital that the Code is equally applicable and accessible across all jurisdictions. We encourage the Fundraising Regulator to keep this front of mind while reviewing the consultation responses to inform changes, and ensure that any additions or amendments that are made are equally relevant and appropriate to England, Wales, Scotland and Northern Ireland.

### **Transition times**

Thought and consideration needs to be given to appropriate transition times to be introduced alongside any changes to the Code, as well as the production of any further guidance or resources which are needed to explain or clarify new requirements. We have heard from some

members that without acknowledgement of this within the consultation it made it harder to answer the questions fully as they were unsure as to how changes would be implemented. Once decisions have been made on the outcome of the Code consultation, we would be happy to support the Fundraising Regulator in discussing the practicalities of transition times or any further guidance needed to avoid any unintended consequences and ensure that fundraisers are aware of and prepared for any forthcoming changes.

### **Consultation format**

The presentation of the consultation was useful in separating the areas into different areas and giving a rationale and background to the proposed changes. However, we do think that there are some areas which could be improved for future consultations. For example, a 'yes/no' format did not always seem appropriate, and the wording of the questions in some places did not seem to always match the proposed changes or address the main issue. Where we thought that was the case we have provided some additional general comments for that section.

## **CONSULTATION QUESTIONS**

### **PART A: Charity Trustees**

#### **General**

The role of trustees in relation to fundraising activities has been increasingly emphasised over the last 18 months culminating with the publication of revised guidance for trustees on fundraising (CC20) from the Charity Commission for England and Wales in June 2016 and the new reporting requirements placed on trustees in some English and Welsh charities by the Charities Act 2016.

We have reflected this increased emphasis in our own work at the IoF by publishing our practical handbook for Trustees in October 2016 in partnership with NCVO, CFG and ACEVO and holding our first Trustees and Fundraising conference.

We therefore support the proposed change to the Code of Fundraising Practice to formally incorporate the expectation that charity trustees will oversee the fundraising activities of their charity.

#### **A1. Does the proposed additional wording of the Code (combined with the existing Code requirements) give sufficient clarity on how Charity Trustees are expected to oversee the fundraising activities of their charity?**

No

#### **If no, please explain how the wording could be improved?**

However, while we are supportive in principle to this addition in the Code, we think that the proposed wording could be refined to make it absolutely clear what the requirement and expectation is of charity trustees. As currently worded, the proposal is unclear as to whether it

introduces 1) a general duty to have oversight of the fundraising activities, or 2) an obligation to specifically follow the six suggested principles set out in CC20.

It is important that the distinction between regulatory requirements and guidance is clear. The six principles are presented in CC20 as principles that trustees 'should follow to help [them] meet [their] responsibility for [their] charity's fundraising'.<sup>1</sup> There is a subtle, but important, difference here between incorporating a trustee's overall duty to ensure effective oversight of fundraising activity – setting an outcome to be achieved – compared with stipulating specific steps that must be followed in pursuit of that outcome.

It is also important that this requirement – for trustees to oversee fundraising activities of their charity – is applicable across all jurisdictions and appropriately reflects differing regulatory guidance from statutory regulators in Scotland and Northern Ireland.

We suggest that the following alternative wording would be more suitable as it emphasises that trustees across the UK have the same duty to effectively oversee fundraising activities.

*"Charity trustees **MUST** have effective oversight of the fundraising activities of their charity and any third parties fundraising on the charity's behalf."*

It would also be helpful to amend the references to relevant charity regulator guidance that follows to make clear that this is signposting, rather than a Code requirement in itself. We suggest the following:

*"Trustees of charities registered in England and Wales may find it helpful to follow the following six principles set out in the Charity Commission's CC20 guidance [insert link]:*

- *Planning effectively;*
- *Supervising their fundraisers;*
- *Protecting their charity's reputation, money and other assets;*
- *Identifying and ensuring compliance with the laws or regulations that apply specifically to their charity's fundraising;*
- *Identifying and following any recognised standards that apply to their charity's fundraising; and*
- *Being open and accountable.*

*Trustees of charities registered in Scotland may find it helpful to refer to OSCR's interim Fundraising Guidance [insert link] which provides information on the legal requirements of Scottish Charity Law in relation to fundraising and charity trustee duties.*

*Trustees of charities registered in Northern Ireland may find it useful to refer to the Charity Commission for Northern Ireland's Code of Good Governance [insert link]."*

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<sup>1</sup> <https://www.gov.uk/government/publications/charities-and-fundraising-cc20>

**A2. Are there any other comments you wish to make on the proposed additional wording of the Code on Charity Trustees?**

We also think it would be helpful to signpost additional guidance that would help trustees and fundraisers. We suggest that the recent guidance produced by the IoF, NCVO, ACEVO, and CFG, is referenced in the Code to provide further help and to be consistent with how other pieces of external guidance are signposted in the Code signposting to external guidance in the Code:

*"There is more information available in the Institute of Fundraising's guidance, ['Trustees and Fundraising: A Practical Handbook'](#)."*

**PART B: The fundraising ask**

**General**

**B1. Is the existing focus on limiting the number of fundraising asks helpful in safeguarding the public from undue pressure?**

Yes

It is absolutely vital that individuals are not placed under undue pressure when a fundraiser asks for support. Giving a maximum number of asks that can be made over the telephone provides a safety net which can provide reassurance to donors and the public as well as provide fundraisers with a clear understanding of what is acceptable. However, the ultimate focus should always be on ensuring that all individuals are never put under undue pressure to make a donation. A limit on fundraising asks should be thought of as one way of achieving this outcome, but not the only way.

**If no, please explain why, giving your reasons with any supporting evidence.**

**B2. For telephone calls, does a narrower focus on financial asks (as opposed to requests for other forms of support) put the right emphasis on where the risk of undue pressure lies?**

No

While limiting the number of financial asks on a telephone calls can provide reassurance within the Code as to how a conversation should be conducted, the proposed wording alone will not sufficiently protect members of the public from undue pressure. We maintain the view that focusing simply on the *number* of fundraising asks can be a red herring as the key factor should be placing the emphasis on the manner in which any financial ask is made and considering the interaction and conversation as a whole. If asked badly, or inappropriately, an individual may feel under undue pressure from being asked for a financial contribution just once. Equally, an individual could be perfectly comfortable with being asked for financial support more than three times, if asked well and as part of an engaging dialogue. We have been pleased to see the Fundraising Regulator acknowledge this throughout their engagement with the sector as part of the consultation process and hope to see it reflected in any change to the Code.

**B3. Does the proposed new wording of the two rules provide sufficient clarify on when a fundraising ask is or becomes inappropriate?**

No

**If no, please explain why, giving your reasons with any supporting evidence.**

In setting and finalising the wording for this particular standard in the Code, we recommend that steps are taken so that any confusion or unintended consequences are avoided. For example, we understand that 'asking for a financial contribution' would not include any promotion of Gift Aid (or any other administrative questions). We also understand that it refers to the request for a gift, rather than a further discussion of how much that donation might be or ways in which it might be given. For example, when communicating with long-term and committed major donors with who they have a long standing relationship, it is common for a fundraiser to need to discuss a whole range of potential types of donation and available projects requiring support with a donor who is already committed to that particular charity. The Fundraising Regulator should ensure that these issues are suitably addressed so that there is appropriate information or guidance provided to ensure clarity for all.

We have also received comments and questions from our members as to how 'undue pressure' would be adjudicated upon and what evidence or information charities might be expected to capture and record around this. Further clarification on this would also be welcome.

**PART C: Solicitation (disclosure) statements**

**General**

Transparency is an absolutely vital part of maintaining and building trust and confidence in fundraising and we agree with the principle that the solicitation statement is provided before money is given or financial details are requested. However, the current proposed wording has the potential to cause confusion. In particular, reference to 'any commitment made by the individual to donate' is ambiguous and subjective and therefore would make it hard for fundraisers to follow as well as being a firm basis for adjudications.

**C1. Does the proposed wording on solicitation statements address the following concerns:**

**a. That the person making the donation is clear before they give as to who is soliciting the donation?**

No

**b. That, where applicable, it is made clear that the person seeking a donation is a professional fundraiser**

No

In response to these questions the proposed wording on solicitation statements does not ensure that either a) the person making the donation is clear before they give as to who is soliciting

the donation or b) that, where applicable, it is made clear that the person seeking a donation is a professional fundraiser. That is because the proposed changes focus specifically on *when* this statement is made, rather than what is included in the statement – those concerns are already addressed by the legislation.

With that in mind, we suggest the following revised wording better meets the desired objective:

*"In all cases, the disclosure (or solicitation) statement MUST be made at any time **before** money is given by the donor or before any personal financial details relevant to the transaction are requested by the fundraiser (whichever is sooner)."*

This wording gives the fundraiser flexibility to use their experience, expertise and judgment to disclose the relevant information at the most appropriate point depending on the specific conversation and individual, while ensuring that donors are able to make an informed decision as to whether to donate before making a financial transaction or commitment.

The issue of appropriately reflecting requirements in different jurisdictions is relevant to this proposal. There are different rules around solicitation (disclosure) statements in Scotland and Northern Ireland to those in England and Wales, and it is important that this is recognised in the wording of the Code requirement.

We are also aware of ongoing confusion among some about the definitions and use of the terms 'professional fundraiser' and 'commercial participator'. We would like to see further guidance to help clarify and aid the understanding of the requirements, as well as confirm that the requirements relating to solicitation statements *only* apply to professional fundraisers and commercial participators. In addition to this, clarification on how/if this Code requirement would apply to professional fundraising organisations promoting payroll giving schemes would be helpful.

What is more, we are aware that – in their current format – solicitation statements do not necessarily effectively fulfil their purpose and could be much more helpful to both the public and charities achieve their desired objective. We encourage the Fundraising Regulator to seek opportunities to improve the legislation.

## **PART D: Raising concerns about fundraising practice (whistleblowing)**

### **General**

#### **D1. Do you agree that fundraising organisations should be required to have an internal procedure for members of staff and volunteers to raise concerns?**

We believe that all staff members and volunteers should be able to report concerns about an organisation's fundraising practice in a safe manner and for these concerns to be appropriately acted on. We support the principle of trying to achieve this outcome within the Code of Fundraising Practice. Some charities, particularly larger ones with existing internal 'whistleblowing' procedures in place, are already doing this as they review their complaints policies or other internal procedures.

However, we do not think this outcome is best met by including a requirement in the Code for every fundraising organisation to have to introduce a whistleblowing policy for fundraising.

**D2. If yes, do you agree that this requirement needs to be contained in the Code?**

While we support the principle which underpins this proposal – that members of staff and volunteers should be comfortable raising any concerns about fundraising practice – we do not agree that the Code of Fundraising Practice should make it a mandatory requirement for every fundraising organisation to write and agree an internal policy on this.

This requirement is likely to be disproportionate for smaller organisations and reduces the flexibility for charities to be able to decide how best to appropriately manage their organisation. While adopting a number of policies/procedures is often a good way of ensuring good governance, this should be a decision by the organisation to determine the best way to manage its activities.

It is our view that the Code should be primarily outcomes/principle based in terms of governance decisions and that mandating all organisations adopt specific policies becomes too operational.

Instead of containing the requirement to have an internal procedure in the Code, we suggest introducing a standard which ensures that the desired outcome is achieved, but gives flexibility as to how. For example:

*"Fundraising organisations MUST ensure that all staff and volunteers are able to raise any concerns about fundraising practice."*

This could include a note which suggests that this could be achieved through a number of ways, including but not limited to a whistleblowing policy or other internal procedure, but does not make it a formal requirement.

If introduced, this Code requirement would need an appropriate transition period to allow organisations sufficient time to prepare.

**D3. Does the proposed new Code rule provide a clear statement on what fundraising organisations must have in their whistleblowing policy?**

If the Fundraising Regulator decides to go ahead with this proposal, we would emphasise the need to be mindful that some organisations, depending on their area of work/sub-sector, are already required to have a specific whistleblowing procedure – for example, the NHS-wide 'Freedom to Speak Up' whistleblowing policy. For that reason, there would need to be flexibility in the statement on what fundraising organisations must have in their whistleblowing policy to allow for synergy between a fundraising whistleblowing policy and other whistleblowing policies have already been implemented in other areas of the organisation.

Thought would also need to be given as to providing further guidance as to what should be included within a whistleblowing policy so that organisations can be sure they are adequately meeting the standard required.

## **PART E: People in vulnerable circumstances**

### **E1. Does the existing wording of the Code adequately recognise the needs of people in vulnerable circumstances?**

Yes

We believe that the current focus in the Code on achieving the outcome that donors are treated fairly, their individual circumstances are taken into account, and that people in vulnerable circumstances have their needs met is correct. We believe the crucial issue is to recognise that 'vulnerability' encompasses a whole range of conditions and circumstances that change over time and that a one size fits all rule (e.g. to not fundraise to people over a certain age) is likely to be discriminatory and give a poor experience to the public.

People are individuals and need to be treated with sensitivity and respect – hard and fast rules are very unlikely to achieve that, and the current focus on recognising potential signs of vulnerability and acting accordingly to adjust an approach (or not ask for donations) is the most appropriate way to achieve excellent fundraising for all. People may be in a vulnerable circumstance at one point in their life, but their circumstances can change – this can only be recognised through a flexible and individual approach which takes into account that individual's specific context and circumstance so that they can be treated with care and sensitivity.

Additionally, it is important to remember that some individuals in vulnerable circumstances are fully able and want to give a charitable donation and their individual rights have to be respected. However, there is a fundamental difference with people who lack the capacity to give – the Code is right to recognise this and to be clear that any donation given where there the individual lacks capacity should not be asked for, and if it is received, then be returned.

We believe that the current emphasis on helping individuals make an informed decision about their donation is the correct, but at the same time believe it is important that there continues to be a clear requirement that "Fundraisers MUST NOT exploit the credulity, lack of knowledge, apparent need for care and support or vulnerable circumstance of any donor at any point in time."

Any thought to revise or add in requirements in this area must also take into account the potential unintended consequences. While they may be well-intentioned at heart, the potential to cause offence to some individuals (or groups of individuals), to be inadvertently discriminatory, or to refuse donations which are given with full capacity, must all be avoided.

### **E2. Does the existing Code and supplementary guidance give sufficient clarity to fundraisers on how they are expected to engage with people in vulnerable circumstances?**

Yes

We believe that the emphasis should be on ensuring that all fundraisers are adequately trained and have the right resources and guidance to be able to plan campaigns, recognise signs that someone might be in a vulnerable circumstance and then respond appropriately. It is also

important to recognise that the particular rule in the Code under 'vulnerability' is not viewed as the only way to achieve the desired outcome – the overall principles to ensure people are not put under undue pressure to donate, the monitoring of third parties, should all work together to give people the best experience of fundraising and protect people in vulnerable circumstances.

However, we are always keen to try and do more. We would be open to working with the Fundraising Regulator and others to update and expand the resources on offer in this area.

## **PART F: Charity collection bags**

### **F1. Does the addition of the proposed new rule adequately deal with the distribution of unwanted charity collection bags?**

The proposal that organisations operating house to house bag collections for charitable purposes **must not** deliver bags to a property that displays a sticker or sign that includes the words 'no charity bags' is welcome. Clear expressions of preference from members of the public must be respected.

However, including charity bags within the definition of 'junk mail' and including it in this Code requirement would not be appropriate. The ICO defines junk mail as "unwanted postal marketing such as flyers, competition entries and postal campaigns".<sup>2</sup> It is important for the Fundraising Regulator to note that the majority of charity collection bags are not delivered via the postal system (e.g. Royal Mail) but, rather, are delivered by hand by the respective collection company. They are therefore different from postal marketing.

Charity collection bags provide a low cost and effective way for charities to fundraise and for the public to donate unwanted items of clothing and household items. While charity bags are unsolicited, it does not necessarily follow that they are unwanted. Research conducted by IoF members indicates that many householders welcome both the opportunity to declutter their homes and donate to charity at the same time. The same research also shows that over 60% of households with a 'no junk mail' sign or sticker have filled a charity bag or would do so again.

The most recent Annual Complaints Report (from the former FRSB) highlighted that the public's main concern in terms of collection was bags not being collected (74% of all complaints), while ignoring 'no cold calling stickers' generated only 5% of complaints.<sup>3</sup> Therefore, we do not believe that the proposed new rule adequately deals with the distribution of unwanted charity collection bags, and could have negative unwanted consequences.

With this in mind, we propose the following alternative wording:

*"Organisations operating house to house bag collections for charitable purposes **MUST NOT** deliver bags to a property that displays a sticker or sign which includes the words 'no charity bags'."*

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<sup>2</sup> <https://ico.org.uk/for-the-public/junk-mail/>

<sup>3</sup> <https://www.fundraisingregulator.org.uk/wp-content/uploads/2016/10/FRSB-Annual-Complaints-Report-2016-1.pdf>

## **PART G: Third parties**

### **General**

#### **i) Reasonable efforts in monitoring compliance**

##### **G1. Does the addition of the proposed guidance provide sufficient clarity on the meaning of “reasonable efforts” to ensure the ongoing compliance of third parties?**

Yes

The addition of the proposed guidance does provide sufficient clarity on the meaning of ‘reasonable efforts’. We understand from the Fundraising Regulator’s consultation engagement and webinars that the list of bullet points included in the proposed Code wording are suggestive/illustrative, and that you would not expect all means of evidencing reasonable efforts must be used in all cases as this would not be always be appropriate. We would endorse that approach, but do not think that it is made as clear as it could be from the proposed wording.

We suggest that the wording should be very slightly amended to be clear that the most effective means should be used according to the risks identified in the specific situation:

*“Means of evidencing reasonable efforts to ensure effective ongoing compliance **may** include (but are not limited to):...”*

#### **ii) Fundraising agreements**

##### **G2. Do you agree that further detail suggested needs to be included in the Code in order to adequately reflect the requirements of the Charities Act 2016 in respect of third party contracts?**

Yes

##### **If yes, does the additional detail proposed provide sufficient clarify on what is required of charities and third parties?**

Yes

The Institute of Fundraising would be happy to work with the Fundraising Regulator to update the guidance “Successful Partnerships for Sustainable Fundraising” (referenced in the Consultation paper) to ensure the relevant practical steps that charities and third parties must take are included, or to produce further resources to give further help.

## **PART H: The Code – general questions**

### **General**

While we do not have any specific feedback on the language, layout and format of the Code of Fundraising Practice, we maintain that it must be as accessible as possible.