

## **Consultation on the Code of Fundraising Practice - February to April 2017**

### **Summary of question responses and proposed changes**

#### **BACKGROUND**

The Fundraising Regulator's first Consultation on the Code of Fundraising Practice took place between 3rd February and 28th April 2017. The Consultation sought views on the following areas:

- A: Charity Trustees
- B: The fundraising ask
- C: Solicitation (disclosure) statements
- D: Raising concerns about fundraising practice (whistleblowing)
- E: People in vulnerable circumstances
- F: Charity collection bags
- G: Third parties
- H: The Code – general questions

The Consultation sought qualitative and quantitative feedback. For each area of the consultation, this summary document sets out:

- The percentage of respondents who agreed with any proposed changes to the Code set out in the Consultation.
- The key points raised by respondents.
- The response of the Fundraising Regulator in answer to the points raised by respondents, including amendments that may be required to the Code consultation rules as drafted. Responses to *Section H* will be considered as part of a wider review of the Code.

#### **RESPONSES**

The consultation received 225 responses, with 182 from named organisations (a list of these organisations can be found in **Annex A** below).

Of the total responses, 199 were complete. The highest level of engagement with the consultation was from Charities (59%).

36 respondents classified themselves as individuals while 129 identified their response to be on behalf of a charity. Fundraising managers and staff were the most prominent role represented, making up 36% of the total.

## **ADDITIONAL INPUT FROM PUBLIC WORKSHOPS**

In addition to the consultation, the Fundraising Regulator engaged Light and Shade, a research consultancy, to carry out deliberative workshops with the public. Deliberative Workshops are a form of facilitated group discussion that provide participants with the opportunity to consider an issue in depth. This research was conducted as a means of testing some of the wider consultation themes and proposals, specifically, the fundraising ask, solicitation statements and vulnerability.

An executive summary of the findings from these workshops can be found in **Annex B** below and these views are referenced at the end of the relevant section summary.

## **PART A: CHARITY TRUSTEES**

72% of the 203 respondents who answered this section **agreed** that the proposed additional wording of the Code gives sufficient clarity on how Charity Trustees are expected to oversee the fundraising activities of their charity. However:

- Several organisations felt that directly referencing the principles set out in CC20 within the Code could lead charities to believe they have an obligation to adhere to these principles. As the principles set out in CC20 are not obligatory but rather guidelines for Trustees, they felt that it would be preferable for the Code to simply signpost to CC20 as it does with other third party guidance.
- One organisation recommended the clarification of obligations of charities which do not have a Trustee Board.
- Some organisations pointed out that the CCNI “Running your Charity” Guidance was also of relevance to Trustees in Northern Ireland but asked for it to be clarified that CCNI did not author the Code of Good Governance.

### **Response by the Fundraising Regulator**

The Fundraising Regulator has concluded that:

- The Code Consultation’s wording on Trustees should be revised to ensure there is equal weight given to respective national guidance.
- The bullet points outlining the detail of CC20 be removed.
- In light of the point regarding charities without a Board of Trustees, the new Code wording has been extended to emphasise that it is intended to apply to anyone who serves on a charity’s governing body.
- The wording to be amended to highlight the CCNI’s “Running your Charity” Guidance in Northern Ireland and to remove the inference that the Code of Governance is owned or authored by CCNI.

## Final Code wording

### Section 1.2 (General Principles)

1.2 i) Trustees of Charities (or for Charities without a Trustee Board, those who serve on its governing body) **MUST** have regard to national guidance in overseeing the fundraising activities of their Charity and any third parties fundraising on the charity's behalf.

For Charities registered in England and Wales, guidance is found in the [Charity Governance Code](#) and in the Charity Commission's [CC20 guidance for trustees](#), and [essential trustee guide \(CC3\)](#).

For Charities registered in Scotland, the following OSCR guidance provides information on the legal requirements of Scottish Charity law in relation to fundraising and Charity Trustee duties:

- [Interim Fundraising Guidance](#)
- [Guidance and good practice for Charity Trustees](#)

For Charities registered in Northern Ireland, the [Code of Good Governance](#) and the Charity Commission for Northern Ireland's ["Running your Charity" Guidance](#) set out the principles and key elements of good governance for the boards of voluntary and community organisations.

## Other issues

### Nominated Trustee for compliance and fundraising

One organisation suggested the inclusion of a recommendation for the Board of Trustees to nominate a Trustee with responsibility for overseeing fundraising activities and compliance with the Code.

**Response by the Fundraising Regulator:** While there may be merit in a Trustee being allocated lead responsibility for fundraising, the Fundraising Regulator is concerned that fundraising should be acknowledged by Boards as a shared responsibility and not the preserve of any single individual. It is for Charities themselves to decide the best way to ensure fundraising and the Code is given adequate consideration as part of their governance responsibilities.

## PART B: THE FUNDRAISING ASK

79% of the 194 respondents who answered this section **agreed** that the focus on limiting the number of fundraising asks is helpful in safeguarding the public from undue pressure.

However, where an individual is identified as vulnerable, a few organisations commented that the conversation should be immediately terminated regardless of the number of asks that have taken place.

### Response by the Fundraising Regulator

The Fundraising Regulator decided that the wording of the general rule on not continuing to ask for support should be extended to incorporate the point on people in vulnerable circumstances.

#### Final Code wording

Section 1.2 (General Principles)

1.2 g) Fundraisers **MUST NOT** continue to ask an individual for support if:

- that person clearly indicates – by word or gesture – that they do not wish to continue to engage; or
- they have reasonable grounds for believing, in the course of their engagement with the individual, that they are in vulnerable circumstances which mean they are unable to make an informed decision to donate.

#### Section 8.3 (During the call)

8.3.1 l) In addition to the rule outlined in section 1.2, Fundraisers **MUST NOT**, at any point in a telephone call, be unreasonably persistent or place undue pressure on the recipient to donate, and in particular, **MUST NOT** ask for a financial contribution more than three times during that call.

### Other issues

#### Focussing on the “manner” of an ask

Several respondents commented that the changes proposed were not a “silver bullet” to prevent undue pressure. They observed that the manner of the financial ask is as important as the number of asks and that there are other ways in which undue pressure can be avoided.

**Response by the Fundraising Regulator:** The Fundraising Regulator agrees that how a financial “ask” is communicated is as important as the number of asks, and feels that fundraiser training may be a way to focus on this aspect.

#### Whether three financial asks is sufficient

Several organisations felt that there may be scenarios in which more than three financial asks could be appropriate. A few organisations felt that limiting the number

of asks could oversimplify the nature of the fundraising interaction and did not take into account the conversational aspect of the fundraising interaction in which a fundraiser can provide information and reassurance which may lead an individual to agree to donate.

**Response by the Fundraising Regulator:** The Code rule specifies that the fundraiser “must not ask *for a financial contribution* more than three times during that call”. This does not prevent fundraisers from providing additional information and reassurance (e.g. “how are you feeling today?”, “how much do you know about this issue?”), so long as this does not involve a request for a financial contribution.

### **Different types of financial ask**

A small number of organisations sought further clarity on whether the “three ask” rule applied to different types of request, for example, in conversations with major donors or where organisations ask for a donation at the point of sale of tickets.

**Response by the Fundraising Regulator:** The Code rule specifies that the fundraiser “must not ask for a financial contribution more than three times *during that call*” (i.e. it is clear that the three ask limit refers to telephone conversations only and does not apply to other channels). The rule applies to all direct marketing telephone calls, irrespective of the fundraising context.

### **Whether three asks applies to each conversation or each individual**

A few organisations suggested that it is not currently clear whether an organisation is able to ask the same individual for a donation on more than three separate occasions. For example, where an organisation has an ongoing relationship with a major donor there may be several conversations around different projects and donations before a donation is secured.

**Response by the Fundraising Regulator:** The Code rule applies to individual direct marketing calls only, clearly specifying that a fundraiser “must not ask for a financial contribution more than three times *during that call*”. It does not refer to or place a limit on the number of separate conversations that a fundraiser may have with a potential donor.

However, the additional rule (*Fundraisers MUST NOT continue to ask an individual for support if that person clearly indicates – by word or gesture - that they do not wish to continue to engage*) would apply, irrespective of the type of donor or method of engagement.

Whether the *frequency* of direct marketing communications is justified is dependent on a range of factors, including the reasonable expectations of the individual, the purpose of the communication and the basis on which the organisation justifies the communication.

### **Definition of “financial ask”**

A few organisations felt greater clarity was required on the boundaries of what constitutes a financial ask. For example, when a fundraiser tells an individual about what a donation will buy, e.g. ‘A donation of £5 could buy a mosquito net for a child’,

or, if once an individual has agreed to donate, a fundraiser asks further questions regarding payment method and schedule.

**Response by the Fundraising Regulator:** Taken on their own, neither of the examples cited demonstrate a financial ask on the basis that:

- The point at which a financial ask is made is not when information is provided about the cause, but when money (or other property) is requested. In the first example cited, the implication is that no “ask” has been made at this point.
- In the latter case cited the fundraiser is not seeking a donation, but asking administrative questions to facilitate the processing of the donation once it has been agreed.

### **Considering a fundraising ask against the Code**

Several respondents highlighted potential issues of clarity in terms of considering cases where the Code may have been breached in this area including:

- Gestures indicating that an individual does not want to engage with a fundraiser are open to interpretation.
- It is unclear whether the fundraiser or the individual holds the burden of proof and this will impact on the approach taken by the fundraiser.
- It is unclear who will consider cases of dispute regarding ‘undue pressure’.

**Response by the Fundraising Regulator:** The Fundraising Regulator may consider cases where there is an alleged breach of the Code or where a dispute in relation to an alleged breach between a complainant and a fundraising organisation is unresolved.

Factors considered would include the strength of the evidence supporting or refuting a reported breach and where the balance of probability lay. Further information on how the Fundraising Regulator considers individual cases can be found at <https://www.fundraisingregulator.org.uk/wp-content/uploads/2016/06/Complaints-Investigations-and-Remedies-Policy-December-2016.pdf>

#### **How did the views expressed in the public workshops compare with consultation responses?**

On reflection, participants felt that two or three financial asks were appropriate depending on the circumstances:

- Under 30s were much more accepting of three asks.
- Over 50s were least open to three, preferring a maximum of two.

However, a maximum of three asks was acceptable to most participants if:

- Fundraisers are aware that they should terminate after one or two asks if they realise the member of the public is not interested; OR
- if they recognise that the member of the public’s circumstances suggest that pursuing a donation is not appropriate.

## PART C: SOLICITATION (DISCLOSURE) STATEMENTS

79% of 189 respondents agreed that the proposed new wording on solicitation statements ensures that the person making the donation is clear before they give as to who is soliciting the donation.

73% of 181 respondents agreed that, where applicable, the solicitation statements should make clear that the person seeking a donation is a professional fundraiser.

### Final Code wording

Section 4.2e (Working with third parties)

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

### Other issues

While the Fundraising Regulator does not feel that any of the following comments necessitated a change to the proposed wording of the new rule, a number of points were raised as follows:

#### The content of the Solicitation Statement and how it is applied

- Some organisations noted that the wording focuses on the **timing** of the solicitation rather than the **content** of the statement. There is **no reference to the existing legislation** that covers what needs to be communicated by the professional fundraiser. Numerous organisations recommended that the Code to be aligned with the Cabinet Office 2008 'Charitable Fundraising: Guidance on Part 2 of the Charities Act 1992' and the example statements contained therein.
- There is **no reference** to the fact that there are **different pieces of legislation in Scotland and Northern Ireland** establishing solicitation requirements. Organisations recommended that the 2009 Charities and Benevolent Fundraising (Scotland) Regulations be referenced.
- **Definitions** of '**professional fundraiser**' and '**commercial participant**' are not made explicit. Organisations recommended that the Code should clarify, specifically that 'professional fundraiser' refers to third party fundraisers rather than fundraisers directly employed by charities.
- A solicitation statement that would be used by charitable fundraisers would be **inappropriate for lotteries** due to the diverse range of lottery operators. A few organisations recommended different guidance for lottery fundraisers.
- One organisation recommended removing the £100 minimum to providing the statement and notice of cancellation outlined in the Charities Act 1992 as the limit is set much lower in other legislation (£42).
- It is unclear if the guidelines apply to **payroll giving schemes**.

**Response by the Fundraising Regulator:** The purpose of the Code is not to introduce additional standards which could contradict existing legislation, but to provide further clarification and additional standards where gaps in the law exist.

Sections 4.2d and 12.1e of the Code and section L10 of the Code's accompanying legal appendices emphasise the existing legal basis for Solicitation Statements for Professional fundraisers and Commercial Participators. L10 references the 2008 Cabinet Office guidance on how such solicitation statements should be given and by whom.

When reviewing the Code the Fundraising Regulator will consider whether further clarification beyond this document is required within the Code on the content of solicitation statements and the definitions of professional fundraisers and commercial participators.

### **Unnecessary restriction of fundraisers**

A few organisations expressed concern that putting limits on when the statement is delivered could unnecessarily restrict fundraisers' ability to act. They argued that fundraisers should be able to use their experience to decide on the appropriate timing of the solicitation statement.

**Response by the Fundraising Regulator:** The proposed wording allows considerable flexibility for fundraisers to use their experience to determine at what point they introduce the solicitation statement during an interaction whilst setting clearly defined limits based on the point at which a commitment has been made by an individual. Considering this, the Fundraising Regulator did not agree with the view that the new rule would prove unduly restrictive and does not propose to change the existing proposal.

### **How did the views expressed in the public workshops compare with consultation responses?**

Most participants when presented with a range of examples for when disclosure could take place reached a conclusion in line with the proposed change to the Code being that:

- Disclosure should occur prior to the making of a financial commitment, but not necessarily at the outset of a conversation with a fundraiser.
- This was regarded as akin to expectations on comparable transactions; for example, online purchases requiring Terms and Conditions agreement after deciding to purchase, but prior to payment.
- When presented with the proposed change to the Code the majority agreed that this was appropriate.

## **PART D: RAISING CONCERNS ABOUT FUNDRAISING PRACTICE (WHISTLEBLOWING)**

96% of 185 respondents **agreed** that fundraising organisations should be required to have an internal procedure for members of staff and volunteers to raise concerns.

79% of 179 respondents **agreed** that this requirement needed to be in the Code.

79% of 179 respondents **agreed** that the proposed new code rule was clear on what fundraising organisations must include in their whistleblowing policy.

However, the following points of concern were raised.

### **Flexibility over how the whistleblowing policy for fundraising is introduced**

- A significant number of organisations questioned whether the Code should require the whistleblowing policy for fundraising activities to be independent of a broader organisation whistleblowing policy.
- Some of these organisations felt that requiring a whistleblowing policy specifically for fundraising activities was primarily an operational decision and that a charity should have flexibility to be able to decide how best to appropriately manage their organisation and resources. They recommended that there should be an alternative option for existing whistleblowing policies to be adapted to also encapsulate fundraising.
- A few organisations were concerned about the burden that the new requirement could place on smaller organisations.

### **Escalation to the Fundraising Regulator only as last resort**

- One charity suggested that the new wording did not make it explicit that escalation to an external regulatory body should only occur after resolution through internal processes has failed.

### **Response by the Fundraising Regulator**

In light of feedback, the Fundraising Regulator has decided to amend the draft rule to emphasise that:

- The whistleblowing procedure on fundraising does not have to be independent of a wider organisational whistleblowing policy.
- Escalation to an external regulatory body may occur where consideration through internal processes is not possible.

## **Final Code wording**

Section 1.6 (Complaints) (amended to “Complaints and concerns”)

*Fundraising organisations **MUST** have a clear and published internal procedure for members of staff and volunteers to report any concerns they may have regarding their organisation’s fundraising practice. This could be either a standalone policy or part of a wider whistleblowing policy made available to staff and volunteers. In either case, the policy **MUST** include:*

- i) the type of issues that can be raised and the process for doing so;*
- ii) how the person raising a concern will be protected from victimisation and harassment;*
- iii) how and what the organisation will do in response to receiving such information; and*
- iv) how an individual can escalate their concerns on fundraising practice to the Fundraising Regulator or the Independent Fundraising Standards and Adjudication Panel for Scotland in the event that internal consideration is not possible.*

## **Other issues:**

### **Legal basis for whistleblowing**

It was highlighted that there is no clear definition included in the proposals regarding what ‘whistleblowing’ means in the context of the Code and there is no reference to the Public Disclosures Act.

**Response by the Fundraising Regulator:** The Fundraising Regulator is not a public body and individuals do not have the same legal protections in reporting concerns as whistleblowing disclosures made to “prescribed persons” within the Public Disclosures Act. For this reason, the policy on raising concerns about fundraising is proposed as a Code standard rather than as a statutory requirement.

## **PART E: PEOPLE IN VULNERABLE CIRCUMSTANCES**

88% of 180 respondents **agreed** that the existing wording of the Code adequately recognises the needs of people in vulnerable circumstances.

77% of 184 respondents **agreed** that the existing Code and supplementary guidance gives sufficient clarity to fundraisers on how they are expected to engage with people in vulnerable circumstances.

While the Fundraising Regulator does not feel that any of the comments made necessitated a change to the proposed wording of the existing Code, a number of points were raised as mentioned below:

### **Defining vulnerability**

Concerns were raised by organisations as to how to define and identify vulnerability. Several organisations highlighted that there is no 'one-size-fits-all' approach to defining vulnerability and that using prescriptive measures risked encouraging discriminatory practices and does not recognise the fluctuating nature of vulnerability.

### **Training fundraisers to identify vulnerability**

The Code signposts the IoF's guidance, 'Treating Donors Fairly', in how to establish which groups of individuals are considered to be vulnerable. Some organisations recommended that the Code make explicit an expectation for organisations to heed this guidance. It was also suggested that reference could also be made to schemes which are available to educate the public on issues of vulnerability such as the 'Dementia Friends' initiative developed by the Alzheimer's society and the IoF's Compliance Directorate E-Learning modules on interacting with vulnerable people.

**Response by the Fundraising Regulator:** The Fundraising Regulator agrees that vulnerability is not a fixed concept and it is a charity's responsibility to ensure that fundraisers can make informed judgements on a case- by- case basis. While the Fundraising Regulator is willing to include links to relevant guidance and recommend these as good practice, wherever possible, there needs to be a clear distinction made between this guidance and rules in the Code that are the basis for adjudication decisions.

### **Review of effectiveness of Code and Policy**

One organisation made the point that a fundraiser must not continue to engage with anyone who they suspect to be vulnerable and must take steps to ensure that they are not approached again. They proposed auditing of such incidents to monitor the Code's effectiveness and charities' internal policies.

**Response by the Fundraising Regulator:** The Fundraising Regulator encourages charities as good practice to keep internal records of such incidents and regularly review guidance and training in this area. Where a complaint is made regarding the way a fundraiser has engaged with a person in vulnerable circumstances, the Fundraising Regulator may request further evidence from a charity regarding their approach and what steps they have taken to mitigate the risk of this happening.

**How did the views expressed in the public workshops compare with consultation responses?**

- Identifying when members of the public are in vulnerable circumstances was considered extremely challenging by the majority of participants.
- Without an initial discussion with a person, participants concluded that identifying a potential vulnerability would be almost impossible in many cases.
- Participants recognised that this placed a significant amount of responsibility on an individual fundraiser to be able to recognise vulnerability AND on the fundraising organisation to provide adequate training on this subject.

## PART F: CHARITY COLLECTION BAGS

76% of 169 respondents **agreed** that the addition of the proposed new rule adequately dealt with the distribution of unwanted charity collection bags.

### Classifying Charity bags as “junk mail”

A number of organisations felt that the classification of charity donation bags as ‘junk mail’ was a disproportionate response to a small number of vocal complainants. Some cited a 2016 YouGov survey which found that over 60% of households with a ‘no junk mail’ sign have filled a charity bag or would do so again.

### Response by the Fundraising Regulator

In light of feedback suggesting that some members of the public distinguish between charity bags and junk mail, the Fundraising Regulator proposes that the new rule omit the assumption that “no junk mail” stickers would apply to charity bags.

#### Final Code wording

16.10 (Conduct of collectors)

*16.10 t) 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’, ‘no clothing bags’ or any other words which clearly indicate that the householder does not wish to donate through this method.*

#### Other issues:

##### Disproportionate response

A small number of organisations felt that classifying charity donation bags as junk mail would represent over-regulation by the Fundraising Regulator citing a relatively low number of complaints regarding distribution of unsolicited charity bags and sufficient existing regulation by local authorities/Cabinet Office.

A small number of organisations also opposed the new rule on the basis of the social, environmental and economic good resulting from charity bag collections.

**Response by the Fundraising Regulator:** The Fundraising Regulator considers that while the above points highlight the benefits of charity bags, they do not amount to a case for denying the public an opportunity to stop receiving them where they are unwanted.

##### Monitoring compliance with the rule

One organisation recommended that adherence to door stickers should be recorded by organisations to allow the Fundraising Regulator to monitor and curtail inappropriate behaviour.

**Proposed response by the Fundraising Regulator:** While at this stage we do not intend to increase the burden on bag collectors by making this a Code requirement,

we propose to keep this suggestion under consideration in the event that public complaints suggest an inadequate response by charity bag suppliers to the new rule.

## **PART G: THIRD PARTIES**

77% of 177 respondents **agreed** that the addition of the proposed guidance provided sufficient clarity on the meaning of “reasonable efforts” to ensure the ongoing compliance of third parties.

89% of 175 respondents **agreed** that the further detail suggested needed to be included in the Code in order to adequately reflect the requirements of the Charities Act 2016 in respect of third party contracts.

81% of 161 respondents felt that the additional detail proposed provided sufficient clarity on what is required of charities and third parties.

However, the following issues were raised by some respondents.

### **Proportionality of ‘reasonable efforts’ for different types of organisation**

Some organisations felt that the Code should clarify what would be considered ‘reasonable efforts’ and how this would alter according to the nature and size of the third-party fundraiser. They mentioned that while the list of means of evidencing reasonable efforts was comprehensive, it may be disproportionate for smaller organisations. They proposed that the rule’s wording should be slightly amended to emphasise more clearly that the Fundraising Regulator “may” look at all, or some of, the indicators specified taking into account organisational context.

### **Definition of third parties**

It was also mentioned by these organisations that the Code uses the terms ‘third party’ and ‘third party fundraisers’ interchangeably, and that it was unclear whether ‘third party’ refers to all third-party contractors or only third-party fundraisers.

It was also asserted that it was unclear what constituted a ‘third party fundraiser’ and whether this term covered volunteers, board members or fundraising consultants. One organisation recommended that reference be made to include “fundraising consultants” in the list of means of evidencing compliance as they are commonly used by arts and culture organisations.

### **“All due diligence”**

One organisation recommended strengthening the language on reasonable efforts by adding a duty to “exercise all due diligence”.

### **Response by the Fundraising Regulator**

The Fundraising Regulator proposes to:

- Change the wording on reasonable efforts to “*may include*.”
- Clarify the wording on third parties to say “third party fundraising organisation” throughout.
- Substitute the word “check” for the phrase “exercise all due diligence”.

## Final Code wording

### Section 4 (Working with third parties)

4.2 b) Organisations **MUST** make all reasonable efforts and exercise due diligence to ensure the ongoing compliance of third party fundraising organisations with the Code and their legal requirements.

**Reasonableness for the purpose of this Code requires the organisation to deliver effective and proportionate monitoring. Means of evidencing reasonable efforts to ensure effective ongoing compliance may include (but are not limited to):**

- **ensuring the values of the organisation are reflected in the policies, performance objectives, indicators and, where applicable, the incentives of the third party fundraising organisation;**
- **establishing a named individual with lead responsibility for monitoring compliance;**
- **developing clear reporting requirements with the third party fundraising organisation and regularly reviewing progress against pre-agreed performance, quality assurance and compliance targets;**
- **defining how monitoring will be carried out, including establishing an appropriate frequency for monitoring based on an assessment of the risk posed by the fundraising activity;**
- **approving and regularly reviewing agency compliance training, including frequently observing the delivery of this training onsite;**
- **authorising content and materials for training;**
- **regularly conducting (and documenting the results of) call monitoring, mystery shopping, site visits and/or shadowing with third party fundraisers;**
- **setting out a clear policy for handling complaints and feedback, including the time frames, procedure for escalating and raising internally, and the transfer of information between the charity and the third- party fundraising organisation;**
- **setting out a clear internal procedure for members of staff and volunteers to report any concerns they may have regarding their organisation's fundraising practice; and**
- **agreeing an action plan with the third party fundraising organisation to address any concerns, where these are identified.**

**Further information on assessing risk can be found in the Charity Commission [CC26 guidance on charities and managing risk](#) and in the NCVO's [How-to guide](#).**

**Further information on implementing monitoring arrangements with third party fundraising organisations can be found in the IoF's guide "[Successful Partnerships for sustainable fundraising](#)".**

Section 4.5 (Contracts / written agreements)

4.5 b) Fundraising agreements between charities registered in England and Wales and professional fundraisers **MUST\*** include: iii) how compliance with the agreement will be monitored by the charity as specified within section 13 of the Charities (Protection and Social Investment) Act 2016.

Means of evidencing this requirement may include (but are not limited to) the compliance monitoring measures set out in 4.2b above. The agreement should have adequate provision for the charity to read and, where necessary, review any relevant policies and procedures that the third party has in place which are relevant for the protection of the public. This may include (but is not limited to): policies on people in vulnerable circumstances; complaints handling and whistleblowing; training materials; and the staff code of conduct.

## **PART H: THE CODE – GENERAL QUESTIONS**

The following additional points were raised by respondents. These will be taken into account in reviewing the Code.

### **How the Code could be improved / ease of understanding**

#### **Legal Distinctions**

The use of MUST\* / MUST is confusing, particularly when trying to identify legal requirements. Numerous organisations suggested using MUST and SHOULD to differentiate between a legal requirement and best practice as used by the Charity Commission.

#### **Length of Code**

Although most organisations felt that the Code was generally clear and easy to understand, others felt that is lengthy, repetitive and hard to navigate. It was argued that the Code would benefit from a thorough review to identify gaps, reduce repetition, create a logical order and add cross-references.

A number of organisations recommended the creation of a short 'easy read' version of the Code including checklists for particular fundraising scenarios.

#### **UK Legal Jurisdictions**

Many organisations felt that it is often unclear which parts of Code are applicable across the different legal jurisdictions of England, Wales, Scotland and Northern Ireland, particularly in regards to the proposed changes.

#### **Definitions**

The following terms were considered open to interpretation or needed further clarification:

- 'professional fundraiser' – being different in Scottish and English legislation; unclear if the sale of lottery tickets constitutes 'professional fundraising'
- 'third parties'- being different in Scottish and English legislation
- 'ask', 'commitment', 'solicitation', 'vulnerability'– all being open to interpretation
- appropriate content of the solicitation statement

One organisation suggested that a glossary of key terms would be useful. Others suggested that specific examples of best/bad practice would be useful.

#### **Proportionality**

Organisations felt that the Code is written for large charities and does not adequately address issues for small and medium-sized charities, and that many smaller charities may be unaware of the Code. It was mentioned that there is a need for broad and consistent engagement with charities of all sizes and across sectors.

## **Issues not covered either by the existing Code or the consultation that should be considered for inclusion in the Code or in guidance**

- Use of personal data covering issues such as wealth screening, data mining and major donors
- Social media advertising covering such activities as retargeting and look-alike identification
- Use of prize draws and associated marketing materials
- Door-to-door fundraising activity
- Use of research and publicly available data in fundraising
- Raising funds from trading
- Payroll giving
- Welcome calls as follow up from face-to-face activity
- Event-specific guidance

## **Performance Benchmarks**

Details of how the Fundraising Regulator measures performance against the Code

## **Plan for Future Consultations**

It was suggested that it would be useful for the Fundraising Regulator to clarify its plan for future consultations, Code changes and transition times in order to provide organisations with all the information they need to answer the questions fully and truthfully. It was suggested that this would improve engagement and ensure that all relevant organisations were represented.

## **Areas in the Code that respondents would like to see removed or amended**

### **Amendments/Removals suggested:**

- Correct the names of the main piece of charity law for Scotland (correct titles are The Charities and Trustee Investment (Scotland) Act 2005 and The Charities and Benevolent Fundraising (Scotland) Regulations 2009).
- Throughout the Code and guidance reference is made to 'Trustees' rather than 'charity Trustees' which is confusing as the term 'Trustees' has a different meaning in law to 'charity trustees'.
- The introductory section does not mention that Scotland has a different complaints procedure to England and Wales. This should be updated to reflect the arrangements in Scotland
- One organisation objected to the term 'public nuisance' used in relation to door-to-door clothes collections given the small number of complaints received.
- The Code should state that Gift-Aided admissions are exempt from the general regulations on soliciting donations.

### **Other issues:**

- Lack of enforcement of legislation and the Code by statutory bodies leads to ineffective implementation and an increased resort to punitive measures
- The relationship between the Code and the Fundraising Promise is unclear
- A rulebook on telephone fundraising would be welcomed

- Both the Lotteries Council and the Hospice Lotteries Association perceived a lack of clarity as to the applicability of the relevant provisions of the 1992 Charities Act in relation to professional fundraising. Lotteries organisations sought clarification as to how any potential duplication and overlap between the Gambling Act 2005 and Charities Act would be dealt with.

## **Annex A: LIST OF RESPONDING ORGANISATIONS**

The Fundraising Regulator received responses from 182 organisations (a further 43 responses were from individuals where there was no specific connection to an organisation identified). The organisations which responded were:

Association of Chief Executives of Voluntary Organisations (ACEVO)

ActionAid

Addington Fund

Alzheimer Scotland - Action on Dementia

Alzheimer's Research UK

Amnesty International UK

Appco Group Support

Art Fund

Arthritis Research UK

Arts Council, England

Association of Air Ambulances

Association of Independent Museums

Barnardo's Children's Charity

Bates Wells Braithwaite

Battersea Dogs & Cats Home

British Acoustic Neuroma Association (BANA)

British Gymnastics Foundation

Berkshire MS Therapy Centre

Bethesda House of Mercy

Bircham Dyson Bell LLP

Birmingham Museums Trust

Blue Cross

Book Aid International

British Heart Foundation

Buffalo Fundraising Consultants

Building Heroes Education Foundation

Catholic Agency for Overseas Development (CAFOD)

Call4Backup

Cancer Research UK

Capll Ltd

Cardiac Risk in the Young

CASE

Cats Protection

Charity Law Association

Charity Link

Charity Retail Association

Chilterns Dog Rescue Society

Chilterns MS Centre

Churches Housing Action Team

City Hospitals Sunderland Charity

Clothes Aid (Services) Ltd

Comic Relief  
Compaid  
Cornerstone Fundraising and Development Limited  
CVS Inverclyde  
Demelza Hospice Care for Children  
Depththerapy & Depththerapy Education  
Diabetes UK  
Directory of Social Change  
Eskbank & Newbattle Community Council  
Family Matters Cranhill Parish Church  
Foundation for Social Improvement  
Gambian Aid Through Education  
Great Ormond Street Hospital Children's Charity  
Guide Dogs  
Guideposts Trust  
GuildHE Limited  
Haileybury  
Hampshire and Isle of Wight Air Ambulance  
Heart UK - The Cholesterol Charity  
Help for Heroes  
Home fundraising Ltd  
Hospice Lotteries Association  
Hospice UK  
Human Care Hands Foundation UK  
Institute of Development Professionals in Education (IDPE)  
Indigo-Ltd  
Institute of Fundraising  
International Glaucoma Association  
Iteso Welfare Association  
Jewish Care  
Karat Marketing Ltd  
Karen Gallagher Consulting  
King's College London  
Latin Link  
LDN Research Trust  
Linacre College, University of Oxford  
Local Hospice Lottery Ltd  
London's Air Ambulance  
Lotteries Council  
Lucy Air Ambulance for Children Charity  
Macmillan Cancer Support  
Marie Curie  
MHA  
Michael Sobell Hospice Charity  
Mid and North Essex Mind  
Mines Advisory Group

Money Tree Fundraising  
Monmouthshire County Citizens Advice  
Move On  
Museums Association  
National Autistic Society  
National Museum Directors' Council  
National Museums Liverpool  
National Society for the Prevention of Cruelty to Children (NSPCC)  
National Trading Standards  
Natural History Museum  
Northern Ireland Council for Voluntary Action (NICVA)  
Norwood  
Nottinghamshire Hospice  
NTT Fundraising  
Ocean Youth Trust Scotland  
Office of the Scottish Charity Regulator  
OpenCreates  
Oxfam  
Parkinson's UK  
People's Dispensary for Sick Animals (PDSA)  
People's Postcode Lottery  
Perth and Kinross Association of Voluntary Services  
Powys Animal Welfare  
Recovery Across Mental Health (RAMH)  
Redwings Horse Sanctuary  
Research Institute for the Care of Older People (RICE)  
Rogare  
Royal Shakespeare Company  
Royal Zoological Society of Scotland  
Royal Society for the Protection of Birds (RSPB)  
Royal Society for the Prevention of Cruelty to Animals (RSPCA)  
Runnymede Borough Council  
Rural Community Network Northern Ireland  
Safe Haven for Donkeys in the Holy Land  
Sailors Society  
Samaritan's Purse International  
Scottish Association for Mental Health (SAMH)  
SAT-7 UK  
Save the Children  
Scottish Council for Voluntary Organisations  
Scottish Government  
SeeAbility (The Royal School for the Blind)  
Sense  
Shakespeare Birthplace Trust  
Shakespeare Schools Foundation  
Shelter

Shetland Link Up  
Shipwrecked Fishermen and Mariners' Royal Benevolent Society  
Solace Women's Aid  
Southbank Centre  
SPANNA  
Spitalfields Crypt Trust  
Sport 4 Life UK  
SSAFA, the Armed Forces charity  
St Andrew's Hospice (Lanarkshire)  
St George's Crypt  
Stirling Carers Centre  
Stockdales  
Stroke Association  
Tearfund  
Teens in Crisis  
Telford & Wrekin Arthritis Support Group  
The Bible Reading Fellowship  
The Children's Trust  
The Eve Appeal  
The Heritage Alliance  
The Independent Fundraising Standards & Adjudication Panel for Scotland  
The Marie Trust  
The National Brain Appeal  
The Neuromuscular Centre  
The Salvation Army  
The Woodland Trust  
Thyroid UK  
Top Draw Promotions Ltd t/a The Community Scheme  
Touch Trust  
Troop Aid  
Turcan Connell  
Ulster University  
Unicef UK  
University of Birmingham  
UrbanLeaf  
Veterans With Dogs  
VOYPIC  
Wales Council for Voluntary Action  
WaterAid  
West Dunbartonshire Community & Volunteering Services (WDCVS)  
Wesser Limited  
Winterton Disabled Club  
Wootton George Consulting Ltd  
Working for Wildlife Limited  
World Bicycle Relief  
WWF-UK

Youth Hostel Association (YHA)  
YMCA Wirral  
Young Arts Fundraisers

## Annex B: FINDINGS FROM PUBLIC WORKSHOPS

### Executive Summary

#### Introduction and Aims

In order to get a general public view on certain of the consultation topics, the Fundraising Regulator commissioned Light & Shade, a research agency to conduct three deliberative workshops with the general public. A total of 66 members of the public attended the three- hour workshops across three locations: Watford, Cardiff and Manchester in April and May 2017.

The workshops explored the following subjects relating to fundraising and to The Code of Fundraising Practice:

- The public's views on fundraising, fundraising regulation and the Fundraising Regulator?
- How the public gauge whether undue pressure has been applied during a fundraising interaction (part B of consultation)?
- What did the public expect from fundraisers with respect to vulnerable persons (part E of consultation)?
- How did the public regard the disclosure statement from third parties and at what point in the fundraising interaction should this statement be made (part C of consultation)?

#### Summary of findings

Giving to charity was regarded by the majority as a good thing to do and this positivity was strengthened when the charitable cause was something that individuals were interested in or felt that they cared about. The sense of connection to a charity was further strengthened if there was also a personal or local connection between charity and donor.

The most negative associations with charities and charitable giving were linked to larger, national charities who were sometimes accused of being business-like or corporate in their demeanour. Of principal concern was the question of how much of a donation reaches the end user or cause and how much is used to finance the charity's overheads, salaries, administrative costs and other expenses.

The public also expressed a preference for local fundraising events, such as coffee mornings or sporting events, as opposed to larger-scale, public and more organised approaches to fundraising. The fundraising landscape as viewed by the public was dominated by negative associations with on-street (and to a slightly lesser extent door- to- door and telephone) fundraising activities. These activities were regarded as being typified by: high pressure sales approaches; ubiquitous fundraisers in particular parts of a town or city; an invasion of privacy and personal space; and an experience based on engendering feelings of guilt in the public. Some participants described

being overwhelmed and feeling as if they were being constantly asked to donate.

Awareness of fundraisers being paid and the usage of third parties was mixed, and there was a relatively negative perception across the workshops in this regard. The public objected to the perceived lack of transparency in these relationships and grew concerned about the cost to charities.

While there was no prior awareness of the Fundraising Regulator (or previous regulatory arrangements), the public was reassured to discover that fundraising was regulated. A higher public profile for the Fundraising Regulator was called for and the public could envisage a role for the Regulator in acting as a means of registered charities showing their commitment to high standards. This they felt could potentially increase public confidence in the sector.

Defining undue pressure in the fundraising ask was challenging for the public and recognized as similarly vexing for the Regulator.

The public interpreted undue pressure as a combination of the content, tone and style of the fundraising ask and to them these elements were as important as the number of asks.

Through the use of five fundraising scenarios which were presented at each workshop (see Appendix B) a number of potential indicators relating to style, content and tone of approach were identified:

- Prompting the potential donor with a high suggested donation
  - Not appropriately adjusting the amount during the conversation
- Referring to the potential donor's personal life and behaviours in order to provoke feelings of guilt
- Refusing to actively listen to and observe the signifiers provided by the potential donor during the exchange
- Conveying an overt sense of urgency in the interaction
- Adopting an aggressive or overly sales-led style

Members of the public preferred a fundraising approach that was rooted in active listening, understanding the potential donor and establishing an empathetic connection between fundraiser and donor. They also preferred monetary discussions to be specifically linked to beneficial activities carried out by the charity

Applying a rule relating the number of 'asks' was challenging despite serious debate within the workshops. Three 'asks' was regarded as being absolutely the upper limit of what would be acceptable, and most participants would accept this only if it was clear that interactions should be terminated earlier than three if there was any indication that the member of the public was not keen to continue.

Some older participants preferred a maximum of two asks as they were concerned about whether they would feel sufficiently confident to outright reject the approaches of a fundraiser due to their own desire to remain polite. The younger participants were more accepting of three asks and felt more confident in their ability to firmly extricate themselves from any exchange.

The responsibility for ensuring that fundraisers adopted positive behaviours was placed upon the fundraising organisations themselves.

Identifying potentially vulnerable persons was considered by the whole sample to be highly challenging. Whilst the responsibility to recognise indicators of vulnerability was placed on individual fundraisers, the public clearly stated that they saw this as a potentially problematic area and were clear that fundraisers should, where possible, avoid pre-judging potential donors based on appearances or other outward behaviour. It was felt likely that vulnerability indicators would need to be identified during the fundraising interaction and when this occurred the public expected fundraisers to sensitively terminate the discussion.

Training fundraisers to recognise indicators of vulnerability was regarded as vital and was seen as the responsibility of the fundraising organisation.

Whilst there was no strong desire to see an overly punitive process if fundraisers, in good faith, raised funds from a vulnerable person, the public suggested a 'no questions asked right to reply' for anyone or their representative to claim a refund if they donated via a fundraiser whilst they were vulnerable. A potential pre-emptive measure suggested by some participants was to establish an opt-out service for telephone fundraising that vulnerable persons or their representatives could register with.

The inclusion of a disclosure statement in interactions with third party fundraisers was welcomed by most as it would drive greater transparency in the sector. However, a minority of participants were concerned that this could potentially damage charities' ability to raise funds, particularly if the statement was required to be read out at the outset of the interaction.

Consensus on when to disclose third party status was reached. The statement the public felt should be read out prior to any financial commitment or donation being made. The public believed that this provided them with the opportunity to make an informed decision at that point.

As such, the proposed change to the Code in this respect was approved by the public.