

# **Consultation on changes to the Code of Fundraising Practice**



**February 2017**



**Foreword by Lord Grade of Yarmouth, Chair of the Fundraising Regulator and Suzanne McCarthy, Chair of the Fundraising Regulator's Standards Committee**

The Code of Fundraising Practice and its associated rulebooks for face-to-face fundraising set out the standards expected of all organisations carrying out charitable fundraising across the UK. The Code underpins the system of voluntary regulation which fundraisers commit to and provides a framework for assessing public complaints.

The last 18 months has seen several important changes to the way fundraising is regulated. As recommended by the cross party [Review of Fundraising Regulation](#), (chaired by Sir Stuart Etherington), responsibility for the Code has transferred from the Institute of Fundraising to the new Fundraising Regulator. Adjudicating on public complaints and developing the Code, roles previously performed by two different organisations, is now undertaken by this single regulator.

Following poor practice highlighted in several news stories, including the well-publicised cases of Olive Cooke and Samuel Rae in 2015, the public remain concerned about the way charities seek donations. These cases highlighted that public trust in charities can no longer be taken for granted, and the onus is now on the sector to win back confidence for its work in raising money for so many vital causes. A robust and flexible Code of Fundraising Practice which sets high standards for fundraising is an important part of restoring that public confidence.

This consultation is part of the open and ongoing dialogue we want to have with fundraisers on the standards to which the sector should hold itself accountable. At the same time, we want to give the public a stronger voice in the conversation by taking into account the needs and experiences of individuals who have been asked to give, particularly those in vulnerable circumstances.

In this consultation we have focused on those areas that represent the most pressing issues as identified in our conversations with fundraisers, legislators, representative bodies and the public. These include monitoring arrangements between charities and third parties, oversight of fundraising activities by trustees and requesting donations from people in vulnerable circumstances. However, while the Review also recommended that the Fundraising Regulator should develop and operate a new service to give individuals greater control over their communications from charities, we have not included the new Fundraising Preference Service (FPS) in this particular consultation. The reasons for this omission are explained in Section 1 which describes the consultation's purpose.

We hope that you find this consultation stimulating and we very much look forward to receiving your comments.

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# 1. The Purpose of this Consultation

The Code of Fundraising Practice and its associated rule books for street and door fundraising outline the standards expected of all charitable fundraising organisations across the UK. The standards were developed by the fundraising community through the work of both the Institute of Fundraising (IoF) and the Public Fundraising Association (PFRA). The last substantive changes to the Code were made in March 2016 by the IoF.

Responsibility for maintaining and updating the Code was transferred to the new Fundraising Regulator on 7<sup>th</sup> July 2016. The Fundraising Regulator sees its role in keeping the Code under review as an ongoing process of formal and informal engagement with fundraisers, regulatory partners and the public.

## **In Scotland and Northern Ireland**

Charity law and fundraising regulation in Scotland is different to the system in place within England and Wales.

Fundraising by charities only registered in Scotland is subject to Scottish charity law and the Scottish system of self-regulated fundraising through the Independent Standards and Adjudications Panel for Fundraising in Scotland ('The Independent Panel'). The Fundraising Regulator and the Independent Panel in Scotland will work closely together in proposing and considering amendments to the Code of Fundraising Practice.

Northern Ireland is soon to undertake a public consultation on how fundraising will be regulated there.

## **Scope**

At this early stage in the transition of the Code, we feel that it is best to concentrate on developing the Code in line with current issues and concerns rather than conducting a "root and branch" review or develop it entirely afresh. In addition, respondents are asked if they wish to comment on the layout, clarity and accessibility of the Code (Section H). Responses on those issues will be taken into account in considering whether revisions to the Code's format are required.

There are two key issues not covered in this consultation: the new Fundraising Preference Service and new regulations and guidance on data and consent. There are several reasons for this.

The Fundraising Regulator is currently developing the new Fundraising Preference Service (FPS), which was the subject of separate consultations during 2016. The FPS is expected to come into operation for charities registered in England and Wales in the spring or summer of 2017, and our intention is to issue guidance nearer the time of its implementation.

We are working with the Information Commissioner's Office (ICO) to ensure that the Code is compliant with the ICO's guidance on data and consent and adequately takes account of the additional requirements in the General Data Protection Regulation (GDPR) which comes into force in May 2018. Two new pieces of guidance are scheduled for release in early 2017 which will influence the development of the Code in this area: the ICO guidance on the GDPR and our own

sector-specific guidance on data and consent. We intend to consult on data and consent separately once the ICO's guidance is released to ensure the full implications for the sector are taken into account.

This consultation, the first that the Fundraising Regulator has issued on the Code, concentrates on those areas which the Fundraising Regulator considers to be the most pressing considering the changing legal and regulatory context in which fundraisers operate, conversations we have had with key stakeholders and recommendations from recent adjudications, research and guidance.

## Structure

In explaining the Code changes presented in this consultation we have:

- a. included the legal and / or regulatory context underlying that specific Code rule and where a legal requirement exists, whether it is specific to particular nations. A legal requirement in England and Wales may not be a legal requirement in Scotland or in Northern Ireland, although it may be a matter of good practice.
- b. highlighted what the existing Code covers. Readers should note that with regards to the existing Code we use the word "**MUST\***" (with an asterisk) where there is a legal requirement and the word "**MUST**" (with no asterisk) where there is no legal requirement but we are treating the issue as a professional standard to be met by fundraising organisations. We intend to continue to use this format in the amended Code;
- c. set out if, and how, we propose to change the Code and what form of words we propose to use to amend or add to the existing Code; and highlighted as part of any proposed Code change where guidance from other bodies may provide additional context or support to fundraisers. Where guidance is linked to a specific Code rule, it may provide further context in considering whether that rule was breached.
- d. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

There is an opportunity at the end of the consultation response form for you to highlight any issues or practices that are not covered by the consultation or the existing Code that you feel should be addressed (see Questions G1 and G2). We are also keen to hear your views on the current format of the Code, including how clear it is to read and understand. It would be helpful when giving your comments if you would include your reasons and any recommendations for improvements.

We welcome your views and comments. You can submit your response by filling in our online survey or by post. Contact details are provided in Section 3 below.

## 2. Consultation questions

### PART A: Charity trustees

#### Why we are reviewing the Code in this area

In England and Wales, legislators have put increasing emphasis on the duty of Trustees to oversee the fundraising activities of charities. While this legislation extends in scope to England and Wales, the principles of good governance and the duty of charity trustees to act in the best interests of the charity, apply across the UK.

The [Fundraising in the charitable sector inquiry](#) published by the Public Administration and Constitutional Affairs Committee on 14<sup>th</sup> January 2016 emphasised that Trustees “must ensure that their charity’s values are reflected in the way the charity operates at all levels, having regard to the Charity Commission’s guidance and the interests of the charity, its beneficiaries, donors, employees and volunteers”.

In June 2016, the Charity Commission for England and Wales published their [CC20 guidance](#) which introduced six principles that explain what Trustees need to do to comply with the law relating to the management and control of their charity’s fundraising. The principles require Trustees to plan and supervise fundraising, protect the charity’s reputation, money and other assets, follow fundraising laws and regulation, follow recognised standards for fundraising and be open and accountable.

The [Charities \(Investment and Social Protection\) Act 2016](#) places new duties on Trustees in some English and Welsh charities to include in their Trustees’ Annual Report a statement about how their organisation monitors its fundraising activities. More information can be found [here](#).

The Code currently incorporates the new Charities Act 2016 requirements with respect to Trustee Annual Reports as follows:

**1.2 g) (General principles):** *Charities that are legally required to have their accounts audited under [section 144 of the Charities Act 2011](#) **MUST\*** state in their trustee Annual Report (as specified within [section 13 of the Charities \(Protection and Social Investment\) Act 2016](#)):*

- *The charity’s approach to fundraising activity, and whether a professional fundraiser or commercial participator was used.*
- *Details of any voluntary regulatory fundraising schemes or standards which the charity or anyone fundraising on its behalf has agreed to.*
- *Any failure to comply with a scheme or standard cited.*
- *Whether and how the charity monitored fundraising activities carried out on its behalf.*
- *How many complaints the charity or anyone acting on its behalf has received about fundraising for the charity.*
- *What the charity has done to protect vulnerable people and others from unreasonable intrusion on a person’s privacy, unreasonably persistent approaches or undue pressure to give, in the course of or in connection with fundraising for the charity.*

## How we propose to change the Code

In addition to continuing to include the requirements of the Charities Act 2016, the Fundraising Regulator proposes to incorporate the Charity Commission's revised [CC20 guidance](#) and OSCR's charity trustee guidance into the Code by adding as follows:

*Trustees of charities registered in England and Wales **MUST** follow the six principles of the Charity Commission's CC20 guidance in overseeing the fundraising activities of their charity and any third parties fundraising on the charity's behalf. These include:*

- *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.*

*Further guidance on operating according to these principles is found in the Charity Commission's [CC20 guidance for trustees](#), [the essential trustee guide \(CC3\)](#) and in the [Code of Good Governance](#).*

*For Scottish charities, [OSCR's interim Fundraising Guidance](#) provides information on the legal requirements of Scottish Charity law in relation to fundraising and charity trustee duties:*

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

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

### Questions

**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?

Yes / No

If no, please explain how the wording could be improved.

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

## PART B: The fundraising ask

### Why we are reviewing the Code in this area

The Code currently states that fundraisers may ask a maximum of three times for a donation in a phone call, the aim being to avoid placing undue pressure on prospective donors.

However, a Fundraising Standards Board (FRSB) adjudication in December 2015 expressed concern that permitting up to three asks during a call may wrongly create an assumption among fundraisers that three requests within any one call is always appropriate, irrespective of the call recipient's response. The FRSB recommended that there should be adequate flexibility for fundraisers to alter their approach according to the context of each call, and in some cases terminating the call before they have made three asks.

A further FRSB recommendation proposed that consideration should be given to whether a limit on fundraising asks should be extended to other person-to-person fundraising interactions beyond phone calls.

The question as to how a fundraising ask can avoid placing undue pressure on a member of the public is further influenced both by the ICO's direct marketing guidance which advises that "Organisations will generally need an individual's consent before they can send marketing texts, emails or faxes, make calls to a number registered with the TPS, or make any automated marketing calls under PECR" (see also the reference to the forthcoming consultation on data and consent in Section 1: The Purpose of this Consultation above) and the current Code requirements regarding people in vulnerable circumstances (see Part E below).

In addition, the Code currently deals with telephone fundraising asks in the following Code rule:

*8.3.1 I) Fundraisers MUST NOT, at any point in a telephone call, be unreasonably persistent or place undue pressure on the recipient to donate, and MUST NOT ask for a donation more than three times during that call.*

### How we propose to change the Code

The Fundraising Regulator seeks to strengthen protection for the public against undue pressure by fundraisers across all channels of communication.

While we propose that the "three asks" rule should remain as a useful limit for telephone fundraisers we propose the following:

- To make this more specific by referring to financial contributions rather than to all "donations". This is to distinguish between a request for money (where undue pressure is most likely to be felt) and other forms of support, such as a request for a member of the public to contribute their time or sign a petition. The proposed revised wording would read as follows:

*Fundraisers MUST NOT, at any point in a telephone call, be unreasonably persistent or place undue pressure on the recipient to donate, and MUST NOT ask for a **financial contribution** more than three times during that call.*



- In line with the FRSB's recommendations, we also propose that an additional rule is added (which is already in the street and door-to-door fundraising rulebooks) to ensure a consistent approach across **all** person-to-person fundraising channels by recognising the member of the public's initial response to the fundraising approach before determining the appropriateness of continuing with the fundraising ask. This rule would read:

*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.*

### **Questions**

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

Yes / no

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?

Yes / no

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

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

Yes / no

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

## PART C: Solicitation (disclosure) statements

### Why we are reviewing the Code in this area

A solicitation statement (sometimes called a “disclosure” statement) is a detailed declaration which must be made by professional fundraisers and commercial participators when fundraising in England and Wales. It is intended to make third-party fundraising relationships clearer to members of the public and help the latter make an informed decision as to whether to donate. It includes information regarding the organisations involved and how each will be remunerated or benefit as a result of the donation.

While solicitation statements are a requirement of the Code (and the law), there is currently no clear stipulation on when they must be given. An FRSB investigation in May 2016 identified that the public is sometimes not given this information until after a transaction is made.

The Fundraising Regulator is concerned that such statements should be given in a timely manner in order to ensure that the prospective donor is able to make a fully informed decision before donating. In particular, it is important that where fundraising is undertaken by a professional fundraiser, the person being asked to make the donation is clear *before* they give as to whom is soliciting the donation and that the person asking is a professional fundraiser.

With respect to solicitation statements, the Code currently contains the following provisions:

**4.2 d)** *Before soliciting money or other property a “professional fundraiser” **MUST\*** have a written agreement in place with the Client, and each time a “professional fundraiser” solicits money or other property, they **MUST\*** make a disclosure (or solicitation) statement.*

**e)** *When acting solely as a Consultant or Fundraiser in Northern Ireland, such statements and contracts **MUST** be made (future regulations in Northern Ireland may make this a legal requirement).*

In the case of telephone fundraising, additional legal requirements already exist in the Charities Act 1992 that an oral Solicitation Statements must be given during the call itself and followed up by a written statement where a payment of £100 or more is donated. This additional duty is noted in the legal appendices to the existing Code:

**L 10.1 d)** *In the case of telephone fundraising, the appropriate statement **MUST\*** be made during each call and within seven days of any payment of £100 or more being made by the donor to the professional fundraiser, the professional fundraiser **MUST\*** give the donor a written statement, and notify the donor of their right to a refund/cancel. (Section 60 (5) Charities Act 1992.)*

### How we propose to change the Code

Alongside the existing rules on solicitation statements in the Code, the Fundraising Regulator proposes to add an additional rule to make clear that irrespective of the channel used, the solicitation statement must be given *before* the individual makes a commitment to donate. We propose that the point of commitment is defined as being the point at which money is given by the donor or (as in the case of a direct debit

promise to pay at a future date), the point at which any financial details relevant to the transaction are requested by the fundraiser.

This rule proposed would read as follows:

*In all cases, the disclosure (or solicitation) statement **MUST** be made **before** any commitment is made by the individual to donate. This **MUST** be 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).*

## Questions

**C1.** Does the proposed new 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?

Yes / no

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

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

Yes / no

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

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

### **Why we are reviewing the Code in this area and how we propose to change the Code**

Fundraisers or others involved with a charity may identify where an aspect of their organisation's fundraising practices falls below the standards required.

The Fundraising Regulator recognises that in-house and third party staff and volunteers need to have a clear process to raise such issues with their organisations with confidence and without fear of negative repercussions. The Regulator holds the view that, although it should not prescribe the internal processes of charities and agencies for whistleblowing, it is right that the Code should require that charities publicise to their employed staff and volunteers their whistleblowing policy. For that reason, it wishes to include a new Code rule requiring this be done, which would be worded as follows:

*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. The policy should 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 to the Fundraising Regulator, the Independent Fundraising Standards and Adjudication Panel for Scotland or (if determined) the relevant regulatory body in Northern Ireland.*

#### **Questions**

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

Yes / no

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

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

Yes / no

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

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

Yes / no

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

## PART E: People in Vulnerable Circumstances

### Why we are reviewing the Code in this area

As a result of several high-profile cases, there has been a focus on how charities approach people in vulnerable circumstances for funds.

The Fundraising Regulator is keen to ensure that the Code's requirements give fundraisers both sufficient flexibility to adapt their fundraising ask on a case-by-case basis while at the same time ensuring that the needs of people in vulnerable circumstances are adequately recognised and protected.

The Code currently covers this by including the following provisions:

**1.2 e) (General principles):** *i) Fundraisers **MUST** take all reasonable steps to treat a donor fairly, enabling them to make an informed decision about any donation. This **MUST** include taking into account the needs of any potential donor who may be in a vulnerable circumstance or require additional care and support to make an informed decision.*

*ii) 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.*

*There is more information available about responding to the needs of people in vulnerable circumstances and helping donors to make informed decisions in the Institute of Fundraising's ['Treating Donors Fairly' Guidance](#).*

*iii) If a fundraiser knows or has reasonable grounds for believing that an individual lacks capacity to make a decision to donate, a donation **MUST NOT** be taken.*

*iv) A donation given by someone who lacked capacity at the time of donating **MUST\*** be returned.*

**Section 1.2 g) (General principles):** *Charities that are legally required to have their accounts audited under section 144 of the Charities Act 2011 **MUST\*** state in their trustee Annual Report what the charity has done to protect vulnerable people and others from unreasonable intrusion on a person's privacy, unreasonably persistent approaches or undue pressure to give, in the course of or in connection with fundraising for the charity.*

The Fundraising Regulator is keen to understand if the Code's current requirements on treating donors fairly and protecting vulnerable people are sufficient to meet the needs of people in vulnerable circumstances and fundraisers who engage with them or if this requires expansion.

### Questions

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

Yes / No

If no, please explain why.

**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 / No

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

## PART F: Charity Collection Bags

### Why we are reviewing the code in this area

An adjudication by the FRSB in December 2015 considered a case in which the complainant received a clothing collection bag through the post in spite of having a “cease and desist” notice on their door requesting no unsolicited marketing materials. The FRSB’s determination recommended that the Code be reviewed to consider specifically prohibiting the delivery of collection bags to households displaying a “no bags” sign.

The Code currently contains the following rule with regards to unwanted door-to-door fundraising approaches:

**16.10 s) (Conduct of Collections):** *Fundraisers **MUST NOT** knock on any door of a property that displays a sticker or sign which includes the words ‘No Cold Calling’. For more information see guidance on no cold calling stickers.*

However, this rule does not cover charity bag drops as they are not an approach which involves actually calling on a householder.

### How we propose to change the Code

The Fundraising Regulator has become aware that this is an area of continuing concern for the public. We therefore propose to add an additional rule to the Code as follows:

*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 either the words ‘no charity bags’ or ‘no junk mail’.*

### Questions

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

Yes / No

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

## **PART G: Third parties**

### **Why we are reviewing this area of the Code**

A number of recent regulatory developments have emphasised the importance of adequate arrangements existing between charities and third parties involved in fundraising in order to ensure that good fundraising practice is maintained. These have included:

- In May 2016, an FRSB adjudication in relation to telephone fundraising recommended that the Fundraising Regulator should include a standardised best practice benchmark for both telephone fundraising agencies and charity clients to work to, including mandating a minimum statistically significant percentage of calls to be reviewed by the charity which had contracted the service. The aim of the FRSB's recommendation was to improve both the clarity and consistency in approach taken by charities in monitoring the fundraising activity of third party fundraising on their behalf.
- The Charities (Protection and Social Investment) Act 2016 includes new standard legal obligations regarding agreements made between charities registered in England and Wales and professional fundraisers / commercial participators (as these third parties are defined in [section 58 of the Charities Act 1992](#)). These new duties were incorporated into the Code in November 2016 in sections 4.5 (Working with Third Parties) and 12.4 b (Commercial partnerships).
- The Fundraising Regulator's adjudication decision on the Neet Feet Fundraising Agency and the charities employing that agency (November 2016) stressed the need for the Code to provide further detail on what "reasonable efforts to ensure the ongoing compliance" of third party agencies meant for charities.

In considering the above, the Fundraising Regulator wants to ensure that both charities and third parties working on their behalf are effectively monitoring fundraisers to make sure that:

- there is full compliance with the Code and that such monitoring is meaningful for both organisations and not simply a "tick box exercise"; and
- charities and fundraising organisations working across all channels take a consistent approach to the monitoring of fundraising compliance.

The Fundraising Regulator also seeks to adequately reflect in the Code changes in the law pertaining to contracts between charities and third parties fundraising on their behalf.

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

Following the recommendations made in the Neet Feet decision, the Fundraising Regulator considers that further Code guidance on ways that fundraising organisations may evidence that they have undertaken reasonable steps to ensure the compliance of third parties would help clarify responsibilities in this regard.



The Code currently includes the following rule:

**4.2 b) (Working with third parties):** Organisations **MUST** check, and make all reasonable efforts to ensure, the ongoing compliance of third parties with the Code and their legal requirements.

### **How we propose to change the Code through additional guidance**

While, the FRSB propose mandating percentages in terms of the quantity of monitoring expected against the number of calls made, the Fundraising Regulator is also mindful that setting an arbitrary benchmark may put an unhelpful focus on compliance for compliance's sake. Our aim is to foster an approach whereby fundraising organisations assess their agreements with third parties and set appropriate levels to ensure monitoring achieves effective compliance.

Where monitoring practices are included within the scope of an investigation, the Fundraising Regulator proposes that it should consider the adequateness of these arrangements on a case by case basis. However, the following supplementary guidance to Code 4.2 b (shown in **Bold**) is proposed to provide further clarity on key areas that fundraising organisations will be expected to consider in planning and implementing any monitoring strategy:

*4.2 b) Organisations MUST check and make all reasonable efforts to ensure the ongoing compliance of third parties 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 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;**
- **establishing a named individual with lead responsibility for monitoring compliance;**
- **developing clear reporting requirements with the third party 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;**
- **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 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 parties can be found in the IoF's guide "[Successful Partnerships for sustainable fundraising](#)".**

## ii) Fundraising agreements

The Charities (Protection and Social Investment) Act 2016 places new duties on charities and professional fundraisers regarding what arrangements are included within fundraising agreements to protect the public from “unreasonable intrusion” on a person’s privacy, “unreasonably persistent approaches” or “undue pressure” to give. These requirements were added to the Code in November 2016.

The Fundraising Regulator believes that providing examples of how these terms may be applicable within the context of the Code would aid fundraisers’ understanding of their responsibilities. The Fundraising Regulator proposes to add the following additional guidance (in bold) to the existing Code reference to the Charities (Protection and Social Investment) Act 2016:

*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.**

### Questions

#### 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 / No

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

**ii) Fundraising agreements**

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

**Yes / no**

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

**Yes / no**

If no, please comment on how the wording could be made clearer.

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

The Fundraising Regulator inherited the Code of Fundraising Practice from the Institute of Fundraising in July 2016.

We want to ensure that the Code adequately meets the needs of fundraisers and members of the public, both in terms of providing a clear set of standards to be followed and reflecting current practice.

### **Questions**

We would like to hear your views on the following:

**H1.** How easy is the Code to understand?

In your answer, please consider:

- a) the clarity of language used
- b) the layout / order of the Code
- c) how effective the Code is in highlighting existing legal requirements
- d) the accessibility of the Code for different audiences

**H2.** In what areas, if any, do you feel the Code could generally be improved?

**H3.** Are there any issues not covered either by the existing Code or this consultation that you think should be considered for inclusion in the Code or Guidance? (if yes, please explain why in your answer)

**H4.** Are there any areas in the Code that you would like to see removed or amended which are not mentioned in this consultation and why? (if yes, please explain why in your answer)

### 3. Responding to this Consultation paper

Responses should reach us by Friday **28<sup>th</sup> April 2017**. Earlier responses are welcome.

Please complete your response using the online system at <https://www.surveymonkey.com/r/fundraisingcodeconsultation2017>

or send your response with the completed Respondent Information Form included at the end of this paper (see “Handling your response” below) to: [consultations@fundraisingregulator.org.uk](mailto:consultations@fundraisingregulator.org.uk)

or by post to:

Code consultation responses  
Policy Department  
Fundraising Regulator  
2nd Floor, CAN Mezzanine  
49-51 East Road  
London  
N1 6AH

If you have any questions, please contact the Fundraising Regulator (email: [consultations@fundrasingregulator.org.uk](mailto:consultations@fundrasingregulator.org.uk)).

This consultation, and all future Fundraising Regulator consultations, can be viewed online on the consultation pages of our website at [www.fundraisingregulator.org.uk](http://www.fundraisingregulator.org.uk)

#### **Handling your response**

We anticipate publishing all responses. However, if you ask for your response not to be published, we will consider your request seriously.

#### **Next steps in the process**

A summary of responses will be published on the consultation web pages together with the Fundraising Regulator’s decisions regarding changes to the Code and when any changes will take effect. Changes to the Code will be made having taken into account the consultation responses received.

#### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the contact details above.

## 4. Respondent Information Form and consultation

### Question summary

We anticipate publishing a summary of all responses and a list of respondents. However, if you ask for your response not to be published, we will consider your request seriously. If you wish to request that your response remains confidential, please email us at: [consultations@fundraisingregulator.org.uk](mailto:consultations@fundraisingregulator.org.uk)

#### 1. Contact details

Name

Email Address

#### 2. I am responding as...

- an Individual
- an Organisation or body that represents Fundraising Organisations
- a Charity / not-for-profit
- a Commercial Organisation (agency, consultancy, company)
- Other (please specify)

#### 3. Organisation name

(If not responding as an Individual)

#### 4. I am responding as a:

- |   |  |  |
|---|--|--|
| <input type="radio"/> Member of the public            | <input type="radio"/> Director                       | Governance Officer/Manager <input type="radio"/> |
| <input type="radio"/> Donor/supporter                 | <input type="radio"/> Fundraising Manager/Supervisor | Compliance Officer/Manager <input type="radio"/> |
| <input type="radio"/> Volunteer                       | <input type="radio"/> Fundraiser                     | Policy Officer/Manager <input type="radio"/>     |
| <input type="radio"/> CEO                             | <input type="radio"/> Trustee                        |  |
| <input type="radio"/> Head of Educational institution | <input type="radio"/> Board member                   |  |
| <input type="radio"/> Other (please specify)          |  |  |

## Questions

### **PART A: Charity trustees**

**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?

Yes / No

If no, please explain how the wording could be improved.

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

### **PART B: The fundraising ask**

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

Yes / no

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?

Yes / no

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

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

Yes / no

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

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

**C1.** Does the proposed new 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?

Yes / no

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

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

Yes / no

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

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

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

Yes / no

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

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

Yes / no

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

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

Yes / no

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



## **PART E: People in Vulnerable Circumstances**

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

Yes / No

If no, please explain why.

**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 / No

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

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

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

Yes / No

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

## **PART G: Third parties**

### **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 / No

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

### **ii) Fundraising agreements**

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

**Yes / no**

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

**Yes / no**

If no, please comment on how the wording could be made clearer.

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

**H1.** How easy is the Code to understand?

In your answer, please consider:

- a) the clarity of language used
- b) the layout / order of the Code
- c) how effective the Code is in highlighting existing legal requirements
- d) the accessibility of the Code for different audiences

**H2.** In what areas, if any, do you feel the Code could generally be improved?

**H3.** Are there any issues not covered either by the existing Code or this consultation that you think should be considered for inclusion in the Code or Guidance and why?

**H4.** Are there any areas in the Code that you would like to see removed or amended which are not mentioned in this consultation and why?