

## **Consultation on the Code of Fundraising Practice - February 2018**

### **Introduction**

This consultation paper explains the first of the consultations that the Fundraising Regulator will be running in 2018. We anticipate a busy year of engagement with the charitable fundraising sector and the public at large.

As always, we welcome the views of all those who use or are affected by changes to the Code of Fundraising Practice. We are committed to continued engagement through consultation to check our assumptions and inform any changes we make to fundraising standards and practice.

### **About this consultation**

This consultation is formed of three parts.

Parts A and B deal with specific issues in the current wording or inclusion of rules within Code of Fundraising Practice that have been raised by stakeholders or identified following our regulatory work over the last 18 months since our launch.

Part C concerning online fundraising platforms introduces a new rules to the code where the existing rules do not cover adequately a popular and growing fundraising method.

Parts A and B are classed as Category 3 consultations within our published consultation process and Part C is a Category 2, therefore there are different timescales for responses to different parts of this consultation. You can read the full 'Guide to our Consultation Process' on our website.

**Part A – Complaints Handling – Responses by 28th February 2018**

**Part B – TPS compliance auditing– Responses by 28th February 2018**

**Part C – Online Fundraising Platforms– Responses by 14<sup>th</sup> March 2018**

Full details of how to respond are included at the end of this document.

Thank you for engaging with us and we look forward to receiving your responses.

## Part A – Complaints Handling

### The context for this consultation

Our complaints and casework function has now been operational for over a year. We are considering areas of the Code of Fundraising Practice that might be usefully reviewed based on our casework evidence, feedback from charities and difficulties encountered by the Casework Team when making casework decisions about complaints handling from members of the public.

The Fundraising Regulator considers that the tone used in the rules contained in 1.6 of the Code is subjective and could be viewed as emotive. This is unhelpful in certain cases where the charity in question views that if found in breach of this rule it is a further judgement and comment about the general practices of the charity beyond the specific case or its handling.

We use this section of the Code when we do not consider that charities have responded in full or promptly to a complaint. In doing so, we have found that organisations feel that, when identifying that they have breached of this section of the Code, we are by implication stating that they may have intentionally not been open or honest when responding to complaints. This is unlikely to be the case and it is also not likely to be the intention of the Fundraising Regulator to imply this.

#### Current rules:

##### 1.6 Complaints and concerns

- a) Organisations **MUST** have a complaints procedure which **MUST** also apply to any Third Parties fundraising on their behalf.
- b) Organisations **MUST** respond to any complaints from donors, beneficiaries or other parties in a timely, respectful, open and honest way.
- c) Organisations **MUST** ensure that the learnings from any complaints are acted upon.

### The purpose of this consultation

We propose to remove the wording '*timely, respectful, open and honest*' and instead be more specific about what we mean by those terms.

The Fundraising Regulator considers that the proposed wording makes clearer what we expect of organisations when they consider, investigate and respond to complaints and removes the unhelpful and emotive implication that when not responding to complaints fully, organisations have been intentionally dishonest.

**Proposed revised wording (amendments in *italics*, deletions are struckthrough):**

### **1.6 Complaints and concerns**

a) Organisations **MUST** have a clear and publically available complaints procedure which **MUST** also apply to any Third Parties fundraising on their behalf.

b) When dealing with complaints organisations **MUST** ensure that:

i) complaints are investigated thoroughly and objectively to establish the facts of the case, avoiding undue delay; and

ii) complaints are responded to fairly, proportionately and appropriately.

c) Organisations **MUST** regularly review any lessons to be learnt from complaints and use that learning to inform future fundraising activity.

### **Consultation questions on Part A**

The Fundraising Regulator is seeking your views on the proposed changes to the Code:

**1.** Does the proposed revised wording for the rules contained in 1.6 of the Code explain what is required of organisations regarding complaints?

Yes / No (If no, please explain your reasoning)

**2.** Are there any other comments you wish to make on the proposed revised wording?

## Part B – TPS compliance auditing

### The context for this consultation

Rule 8.2.3 of the Code requires telephone fundraising agencies making calls on behalf of a Charity to have a TPS assured accreditation or to have begun the process.

Although TPS assured is certainly one way to demonstrate compliance with a recognised accreditation, it is not the only way that compliance can be achieved in this regard.

The Fundraising Regulator has received comments from smaller organisations that the current rule imposes resource demands upon them that they view as disproportionate to the size of the organisation and scale of the fundraising activity that they carry out.

Where auditing compliance is the key requirement for this rule, if organisations can achieve this via more cost effective or less resource demanding methods, they should not be obliged by the code to achieve this by the TPS assured accreditation alone.

#### Current Rule:

##### 8.2.3 The Telephone Preference Service

The Telephone Preference Service (TPS) and Corporate Telephone Preference Service (CTPS) allows individuals or companies to register their telephone numbers to indicate that they do not wish to receive unsolicited sales and marketing telephone calls...

...d) Telephone fundraising agencies carrying out fundraising calls on behalf of a charity **MUST** have an up to date TPS Assured certification or be in the process of applying.

### The purpose of this consultation

The Fundraising Regulator proposes the removal of rule 8.2.3. Allowing organisations discretion in how they audit compliance with legal requirements regarding TPS.

Our proposal is that rather than a rule, the TPS assured accreditation should be signposted in the introduction to this section instead. This will enable organisations to be aware of this specific TPS compliance auditing service, but not mandate them to use it.

**Proposed revised wording of the introduction to TPS (amendments in *italics* deletions are ~~struckthrough~~):**

### **8.2.3 The Telephone Preference Service**

The Telephone Preference Service (TPS) and Corporate Telephone Preference Service (CTPS) allows individuals or companies to register their telephone numbers to indicate that they do not wish to receive unsolicited sales and marketing telephone calls.

*It is important that organisations take steps to audit their compliance with the legal requirements regarding TPS. TPS Assured is a recognised accreditation scheme that organisations can use to demonstrate their compliance...*

~~... d) Telephone fundraising agencies carrying out fundraising calls on behalf of a charity **MUST** have an up to date TPS Assured certification or be in the process of applying.~~

### **Consultation questions on Part B**

The Fundraising Regulator is seeking your views on the proposed changes to the Code:

**1.** Do you agree that the Code of Fundraising Practice should not mandate the use of the TPS assured accreditation scheme for all organisations and therefore remove rule 8.2.3?

Yes / No (If no, please explain your reasoning)

**2.** Do you agree that the proposed additional wording in the introduction to 8.2.3 draws sufficient attention to the need for organisations to audit compliance with TPS?

Yes / No (If no, please explain your reasoning)

**3.** Are there any other comments you wish to make on the proposed revised wording?

## **Part C - Fundraising Platforms**

### **The context for this consultation**

There has been a rapid increase over the last few years in the popularity of on-line giving platforms and crowdfunding for fundraising, particularly where charities or individuals want to raise money quickly, whether as a response to an emergency to help individuals in need or for a charity for general purposes or for a specified project.

Many charities use giving platforms as part of their overall approach to fundraising to direct supporters from their website to a fundraising platform if they wish to donate to their causes.

Individuals wanting to raise funds for a cause, will often use a crowdfunding approach, sometimes tied to an event they are taking part in like the London Marathon where the end beneficiary will usually be a charity, but with increasing popularity may be a more localised cause of personal connection (e.g supporting medical costs)

It is very simple for an individual or charity to register and set up an account. Most giving platforms have some form of identity checking and anti-fraud processes in place.

Currently the code does not have any rules specifically for this popular and increasing method of fundraising. There several considerations for the Fundraising Regulator regarding the use of online platforms and the organisations that run them:

- Public trust and confidence – the use of fundraising platforms is specifically designed to enable connecting the public to connect with charitable causes. The public need to have confidence in both those who are asking them to donate and in the platform being used that they are legitimate if they are to give.
- Wider public trust– with confidence in fundraising practices being brought sharply into focus over the last few years, all methods used need to ensure that they contribute positively to the way fundraising is viewed by the public.
- Guidance from platform providers – Members of the public choosing to use online giving platforms need to understand the mechanism fully and currently the guidance from providers lacks consistency for both those who set up a page and those who donate via it.
- Transparency to the public – there has been a particular focus in the media and parliament about the fees and charges made by fundraising platform providers. The Fundraising Regulator does not have a remit in dictating how a commercial supplier operates its payment arrangements, those arrangements do need to be clear for all parties involved in a donation transaction. Information given to users of fundraising platforms, is currently inconsistent across different providers.

### **The purpose of this consultation**

The Fundraising Regulator will be adding rules regarding online fundraising platforms to the Code of Fundraising Practice under section 9 Digital Media. We propose the following rules as worded are added to the code.

**We propose to add the following to section 9.0 of the Code of Fundraising practice (Digital Media)**

**9.3 Online Fundraising platforms**

For the purpose of this Code, **online fundraising platforms** are websites or applications operated by commercial companies, not-for-profit organisations or by charities themselves which host charitable fundraising campaigns by individuals or organisations. They enable donors to give to charitable causes using their computers, smartphones and other electronic devices, and via their credit cards, debit cards or digital wallets (devices that allow an individual to make electronic transactions, such as Paypal).

*Alongside the rules below, Fundraising Platforms should particularly refer to the following sections of the Code:*

*Section 4: Third parties for considerations relating to agencies providing fundraising services.*

*Section 5: Personal Information and Fundraising for considerations relating to data protection.*

*Section 12: Corporate Partners for considerations relating to Commercial Participator relationships and providing hosting services to fundraising organisations.*

*Section 20: Handling Donations for considerations relating to card transactions.*

**Remuneration for hosting a fundraising campaign**

9.3.1 Where a Fundraising Platform receives a proportion of the donation or gift aid as remuneration for hosting a fundraising campaign, the organisation **MUST** ensure that the following details are clearly visible to individuals donating through their site and displayed before the point at which financial details are requested:

- a) How their remuneration will be calculated (for example as a percentage of the gift aid, a charge levied on a donation or X pounds/pence of each donation).
- b) The amount of remuneration they will receive, if this is known at the point of donation, and if not, an example that demonstrates the sum the organisation would receive on a hypothetical donation.

**Responsibilities of Fundraising Platforms hosting appeals by individuals**

9.3.2 Fundraising platforms **MUST** publish good practice guidance for individuals setting up a fundraising page on their website to ensure that prospective donors are adequately informed about appeals in advance of donating and that funds raised are administered effectively.

9.3.3 The guidance **MUST** be clearly visible to individuals setting up a fundraising page on the site and **MUST** be displayed before the point at which donation pages are published.

9.3.4 The guidance **MUST** highlight the following considerations for individual fundraisers in how they plan their appeal to prospective donors. The implications of raising money for a cause where no charity is identified as the beneficiary, including:

- a) the possibility that the appeal may itself need to be registered as a charity with the Charity Commission; and
- b) if the fundraising platform is itself a charity, that the appeal will need to satisfy the legal requirements for public benefit.

9.3.5 The guidance **MUST** highlight the following considerations for individual fundraisers in how they publicise their appeal to prospective donors through their fundraising page on the site:

- a) who is organising the appeal;
- b) what the money will be used for (the purpose of the appeal). See also Code rule 5.2e on money given for a restricted purpose;
- c) where applicable, what the target of the appeal will be - this might be a time target or a financial target;
- d) whether the fundraiser is raising money on behalf of or for a registered charity;
- e) how donations can be made;
- f) what deductions will be made for expenses; and
- g) what the fundraiser will do with the money if:
  - they do not raise enough to meet their stated target;
  - they raise an amount in excess of their stated target; or
  - the original purpose for which they are seeking donations becomes invalid for any reason.

9.3.6 The platform **MUST** require individuals setting up a fundraising page on the site to provide a clear affirmative action before the donation page is published (through an active opt-in method such as an unticked opt-in box) signifying that the individual has read and understood the guidance.

### **Payment Services**

9.3.7 Fundraising Platforms which fall under the scope of the Payment Services Directive **MUST\*** comply with all legal requirements relating to the Payment Services Regulations 2017.

**Legal Note** - During the consultation, we will take legal advice to check the law where relevant, in particular for Trusts for in England & Wales, Scotland and Northern Ireland for any implications regarding these new code rules on fundraising platforms

## Consultation Questions on Part C

The Fundraising Regulator is seeking your views on these additions to the Code:

**1.** Do the proposed rules cover adequately the areas of concern regarding online fundraising platforms?

Yes / No (If no, please explain your reasoning)

**2.** Do you approve of the wording for the proposed additional rules for inclusion in the Code in Section 9?

Yes / No (If no, please explain your reasoning)

**3.** Are there any other comments you wish to make on the proposed revised wording?

## Responding to this Consultation

Responses to **Part A** on complaints handling and **Part B** on TPS compliance auditing should reach us by **Wednesday 28<sup>th</sup> February 2018**.

Responses to **Part C** on the new code rules for online fundraising platforms should reach us by **Wednesday 14<sup>th</sup> March 2018**

Please send your response by email to [consultations@fundraisingregulator.org.uk](mailto:consultations@fundraisingregulator.org.uk)

or by post to:            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: [enquiries@fundraisingregulator.org.uk](mailto:enquiries@fundraisingregulator.org.uk)  
tel:0300 999 3407.

## 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 final decision regarding changes to the Code.

## Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please let us know using the enquiry contact details above.