



Submission to the Lords Select Committee on Charities

Background

1. The Cross-party Review (the Etherington Review) of fundraising regulation was published in September 2015.¹ Chapter 5 of the Review set out the criteria for and recommendations about what a new regulatory regime should seek to achieve, what it should do, how it should be structured and the rules to be put in place to achieve those objectives.
2. This was followed by the report of the Parliamentary Public Administration and Constitutional Affairs Committee (PACAC), published on 25 January², which emphasised the role of Trustees in protecting the values and reputation of the charities they are responsible for, as well as cooperating with the Regulator and the Commission in making strengthened arrangements work effectively to protect the interests of the public.
3. Subsequently, the Charity Commission issued new guidance for charities' trustees about fundraising from the public (CC 20). The guidance emphasized that trustees have ultimate responsibility for fundraising and must provide effective oversight, focusing on donor care and ensuring that their charity complies with the law and follows best practice.³

What was proposed

4. A principal recommendations of Sir Stuart Etherington's Review⁴ was the creation of a new approach to fundraising regulation based on a 'three lines of defence' model: trustees, a new, independent fundraising regulator funded via a levy, and the relevant charity statutory regulators across the UK - the Charity Commission in England and Wales, the Charity Commission for Northern Ireland (CCNI) and the Office of the Scottish Charity Regulator (OSCR).

¹ Regulating Fundraising for the Future: trust in charities, confidence in fundraising regulation, NCVO, September 2015.

² The 2015 charity fundraising controversy: lessons for trustees, the Charity Commission, and regulators, House of Commons Public Administration and Constitutional Affairs Committee, Third Report of Session 2015-16, HC431.

³ Charity Fundraising: a guide to trustee duties, Charity Commission, June 2016.

⁴ Regulating Fundraising for the Future, op cit.

5. The Review concluded that the Fundraising Standards Board (FRSB) was under-resourced and lacking independence, both because of its membership structure and its reliance on the Institute of Fundraising (IoF), to secure changes to the Code of Fundraising Practice. The Review therefore proposed the establishment of a new body, the Fundraising Regulator, responsible for the independent, 'voluntary' regulation of all types of fundraising by UK based charities and for complaints about fundraising in the UK. Funded by a levy on the industry, it would take over the regulatory role of the FRSB and also the Code from the IoF, as well as the Rule Books on Door-to-door and Street Collections from the Public Fundraising Association (PFRA).
6. The Review also recommended that the Fundraising Regulator should have a convening role, to bring relevant regulators and industry bodies together to ensure that regulation takes place in the context of wider issues and trends.
7. In the new system, the Charity Commission and other statutory regulators would act as a 'backstop' in cases where there are regulatory concerns that are within their remit and powers, for example where there is evidence that, in addition to breaches of fundraising rules, there are wider concerns about a breach of trustee duties. The Government has taken reserve powers in the Charities Bill to introduce statutory regulation, should the new, voluntary system prove unsuccessful.

Governance and Purpose

8. The Fundraising Regulator is a company limited by guarantee without a share capital, governed by a non-executive Board of Directors drawn from inside and outside the fundraising sector, including members with extensive experience of regulation, codes of practice and the charitable sector. The Directors are responsible for the overall control and strategic direction of the company. The Board is chaired by Lord Grade.
9. Our purpose is to ensure that fundraising is respectful, open, honest and accountable to the public. We will:
 - **Set and promote standards of fundraising practice** (the Code of Fundraising Practice and associated Rule Books) in the charitable sector across the UK, in consultation with the public, fundraising stakeholders and legislators.
 - **Investigate cases** where fundraising practices have led to significant public concern.
 - **Adjudicate complaints** from the public about fundraising practice, where these cannot be resolved by the charities themselves.
 - Operate a Fundraising Preference Service to **enable individuals to manage their contact with charities**.
 - Where poor fundraising practice is judged to have taken place, **recommend best practice guidance** and take proportionate **remedial action**.

10. As a values-base regulator, we aim to:

- Protect the public, donors and potential donors, not least those who are vulnerable, from unacceptable fundraising practices.
- Sustain and enhance public confidence in the charitable sector.
- Support the sector to understand and carry out its responsibilities in engaging with the public, creating a positive donor experience.
- Act independently, transparently, fairly and proportionately.

11. A regulator, statutory or otherwise, cannot operate effectively without the confidence of the sector it regulates. Nonetheless, our first accountability is to donors and the public.

Setting up the Regulator

12. The Fundraising Regulator began work with a Chair and Chief Executive in early January. Our set-up funding, totaling £624K and covering the period January to August 2016, was provided by 45 of the 50 charities with the largest expenditure on fundraising. Five charities declined to cooperate.

13. In the set-up period, we have:

- Registered as a company limited by guarantee.
- Put in place robust governance arrangements (Board, Standards Committee and Adjudication Committee) and financial systems.
- Recruited staff (sixteen staff out of a provisional complement of nineteen are in post) and developed our HR policies.
- Negotiated transition from the FRSB, including two staff members and intellectual property.
- Developed our strategic capability, including a business plan and budget, performance monitoring, risk management and a communications plan.
- Developed appropriate IT systems, a website and a published complaints process.
- Published proposals for a Fundraising Preference Service (FPS), arising from the report of the FPS Working Group.
- Published proposals for a levy to meet our annual running costs
- Published proposals for a registration system for charities and fundraising agencies, through which they demonstrate a commitment to best practice.
- Signed a MOU with the Charity Commission.

14. Perhaps most important, we have put considerable time and effort into building relationships with the charitable sector – individual charities and representative bodies – through meetings, seminars and presentations, and with a range of

stakeholder organisations, including the Information Commissioner's Office (ICO), Charity Commission, OSCR, CCNI, the Direct Marketing Association, the IoF and the Commission on the Donor Experience.

15. We have also 'brokered' our geographical coverage across the UK. We will regulate charities in England and Wales. Scotland has opted for a co-regulatory arrangement, whereby we regulate the fundraising in Scotland of charities based in England/Wales and an Independent Panel linked to OSCR regulates the fundraising of charities based in Scotland, albeit with a single Code of Fundraising Practice. Arrangements for Northern Ireland will be determined in the autumn.
16. In early July, we took over responsibility for fundraising regulation, complaints handling and adjudications from the FRSB, inheriting the Code of Fundraising Practice from the IOF and the Rule Books on Street and Door-to-door collections from the PFRA.

Next Steps

17. Since our launch in early July, we have handled 143 complaints and over 200 enquiries from the public. 51 complaints have been about non-fundraising issues and we have redirected them as appropriate; 48 complaints have been referred back to the charities concerned, to be resolved within 28 days. The remaining complaints are either being investigated (wider public interest) by our own staff or are pending allocation.
18. Complaints include a range of issues – doorstep fundraising, addressed mail, cash collections, fundraising behaviour, misleading fundraising, data protection breaches, frequency of contact and approaches to vulnerable people.
19. We are also investigating a case, revealed by The Sun, of alleged fundraising malpractice in Bristol; this involves a fundraising agency (Neet Feet) and eight client charities.
20. The Code of Fundraising Practice is central to our consideration of complaints and public interest cases. The Standards Committee will be the keeper of the Code. We will be proactive in amending the Code, in consultation with the sector and the fundraising community, and have already identified several priority areas where changes will need to be made to reflect new circumstances and issues. The current PFRA Rule Books and the Code of Fundraising Practice will be merged into a single document and be cross-referred to guidance for trustees contained in CC 20 in England and Wales. We plan to launch a major consultation in the new year on Code development and changes.
21. In addition to producing reports with recommendations for charities to amend their practices, the Fundraising Regulator will have an appropriate range of sanctions to use if necessary. These may include 'naming and shaming', cease and

desist orders, requirements for training and clearance of future fundraising campaigns.

22. The expectation is that all charities wishing to demonstrate their compliance with the Code and be badged accordingly will, from September, register with the Fundraising Regulator for payment of a nominal fee.
23. We will also implement the proposals for a Fundraising Preference Service (FPS), so that members of the public can register if they no longer want to be contacted by charities for fundraising purposes. Organisations spending over £100k on fundraising would have a responsibility to check their contacts against a list of those individuals who have opted out before seeking to fundraise from them by telephone, email, email or SMS/MMS. Our aim is to have the FPS up and running by March 2017.
24. It is clear that the majority of larger and medium-sized charities have failed and in many cases are still failing to observe the requirements of data protection legislation in relation to data sharing and selling and establishing unambiguous donor consent, although a number of large and some smaller charities have now led the way in taking vigorous steps to address the problem and implement a change in culture.
25. We will work closely with the ICO, the Charity Commission and the Institute of Fundraising to ensure that guidance for charities in this critical area is consistent, clear and well-publicised. The forthcoming report of the NCVO's *Working Group On How To Secure Donors' Consent*, which will be passed to the Fundraising Regulator, will provide an opportunity to reinforce these messages and showcase some examples of good practice.
26. A key task from September onwards is to roll out the levy. Just over 2000 charities, based on the volume of their fundraising expenditure declared to the Charity Commission, and all fundraising agencies are being asked to contribute, to meet our annual running costs of c. £2.1m (as indicated in the Etherington Review).
27. In Scotland, we will continue to discuss with OSCR and the Independent Panel the operational details of the co-regulatory system, to ensure that it works seamlessly for donors and cross-border charities.

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