

The new fundraising regulatory regime – what has been proposed and where are we now?



Lizzie Jones and Rachel Holmes | 4 February 2016

By now you will probably have read the headline recommendations of Sir Stuart Etherington's review of the self-regulation of fundraising. This article aims to give you a little more detail on the proposals and describes some of the steps that have been taken since the report was published.

The report: "*Regulating Fundraising for the Future*"

The report is on the [NCVO's website](#) and contains a helpful executive summary, setting out what the review panel considers to be the shortcomings of the existing regime and its recommendations for change.

The report is broken down into the following chapters:

1. Introduction – context, purpose and scope of the review
2. Current system
3. Types of regulatory model – self-regulation, statutory regulation, a hybrid of the two, and examples of successful regulatory systems
4. Options analysis
5. A regulatory model for the future: the Review's recommendations
6. Next steps
7. Annexes – terms of reference for the review, list of bodies and individuals consulted, consultation analysis, analysis of successful regulators (including Ofcom, the Advertising Standards Authority and the General Medical Council)
8. References.

This article focuses on the recommendations.

The review panel considers that the regulatory regime should aim to strike a balance between ensuring public confidence in fundraising and allowing charities to fundraise

effectively. The system it recommends involves both self-regulatory and statutory aspects, with a "three-line defence" against malpractice:

1. Trustees should take primary responsibility for ensuring good fundraising practice, whether carried out in-house or by professional fundraising organisations (**PFOs**);
2. A new fundraising regulator to replace the FRSB, provisionally named "The Fundraising Regulator" (the **Regulator**);
3. Statutory regulators should act as a backstop, stepping in where malpractice falls within their remit. The report envisages various bodies playing a role here, including the UK charity regulators (the Charity Commission, the Office of the Scottish Charity Regulator, and the Charity Commission for Northern Ireland), the principal regulators of exempt charities, and Trading Standards.

Trustees

The report encourages trustees to view good fundraising practice as part of their governance responsibilities and (in the case of charities in England and Wales) to ensure that they read and comply with CC20 (*Charities and Fundraising*) (which is currently being revised and the consultation draft suggests a much greater emphasis being placed on trustee oversight of fundraising practice). The report contains fairly detailed suggestions on what trustees can do to improve management of their fundraising, including:

- making a public commitment to reviewing their use of donors' personal data, and using an opt-in (rather than opt-out) system. The report notes that the [forthcoming EU Regulation on data protection](#) is likely to require this in any event;
- inviting senior fundraising staff to attend trustee meetings;
- covering fundraising matters in their charity's risk register;
- carrying out more thorough due diligence in their relationships with PFOs. The list of recommendations here includes: pre-contract investigations to ensure (among other things) that the PFO's methods are consistent with the charity's ethos, that the PFO is a member of a recognised trade organisation (such as the Direct Marketing Association), that it has a vulnerable persons policy, and that it rewards fundraisers on the basis of call quality rather than simply on financial performance; active management of the relationship with the PFO by way of site visits, joint authorisation of fundraising materials etc;
- adhering to the Direct Marketing Association's [guidelines for call centres on dealing with vulnerable consumers](#) and regularly review compliance with those guidelines;
- training fundraising staff (whether in-house or agency) on identifying and dealing with vulnerable consumers.

The Fundraising Regulator

Broadly speaking, under the current regulatory regime, the Institute of Fundraising (**IoF**) curates the Code of Fundraising Practice (the **Code**), the Public Fundraising Regulatory Association (**PFRA**) works with local authorities to manage street and door-to-door fundraising practice and the Fundraising Standards Board (**FRSB**) deals with fundraising-related complaints from the public. The review panel considers that this patchwork of organisations is unnecessarily complex, with the bodies concerned having overlapping responsibilities and the system being generally under-resourced.

The report recommends establishing the Regulator as a company limited by guarantee and having it take responsibility for producing and enforcing the Code, which should incorporate the [PFRA's rule books](#). The Regulator should be accountable to Parliament (via the Public Administration and Constitutional Affairs Committee) and submit an annual report on its operations.

It should regulate all fundraising but run a voluntary membership scheme, allowing organisations that join to use a quality mark similar to the FRSB's 'tick'.

It should be funded by stepped fees paid by the sector itself, with fees being levied on organisations reporting £100K or more annual fundraising expenditure.

It should have a Committee of Fundraising Practice responsible for keeping the Code up-to-date, made up of fundraising experts, legal experts, and individuals representing donors and the general public. The report recommends that the Code be reviewed as a matter of urgency.

It should also have a Complaints Committee, able to adjudicate where complaints cannot be resolved informally and with an independent review panel to review decisions with which complainants are unhappy.

To enforce the Code, the Regulator should have various sanctions at its disposal, including naming and shaming, issuing cease and desist orders, and requiring fundraising organisations to obtain clearance for future campaigns. The report opposes giving the Regulator a power to issue fines, on the basis that these would ultimately be paid by donors, potentially undermining public confidence and trust in the system.

The IoF and the PFRA should merge and focus on encouraging good practice and acting as an advocacy group for fundraisers. The merged body could also continue some of the PFRA's existing practices, such as allocating space for street

fundraising and "mystery shopper" monitoring of fundraising practice. In future, it should consider providing similar services in relation to door-to-door collections. The report suggests that, once the merged body has sufficient territorial coverage for allocating door-to-door collections, the Government should consider reviewing the [National Exemption Orders scheme](#).

Statutory regulators

This section focuses principally on the Charity Commission, but urges regulators to highlight the responsibility of charities to support the Regulator and signpost the Regulator in their publications. There should be a strong relationship between the Code and any fundraising guidance they produce.

Other recommendations

The report recommends the introduction of a new Fundraising Preference Service, to work in the same way as the Telephone Preference Service.

The Information Commissioner should produce specific guidance on fundraising issues, dealing in particular with:

- what constitutes informed consent;
- for how long consent remains valid;
- its enforcement approach to wrongdoing by charities.

Next steps

1. There should be an urgent summit meeting between the Office for Civil Society, the FRSB, the Charity Commission, OSCAR, the Charity Commission for Northern Ireland, the IoF and the PFRA, to create transitional arrangements;
2. The Review panel *"expects that the new Fundraising Regulator would be operating within six months from the launch of the present report"*;
3. The new regulatory regime should be reviewed three years after the Regulator has been established.

The Government accepted the review panel's recommendations in full.

Developments since the report was released

Lord Grade is to be the first chair of the new Regulator; Stephen Dunmore (former chief executive of the Big Lottery Fund) will be its interim chief executive.

At a meeting on 12 October 2015:

- The FRSB agreed to help set up the Regulator and continue to regulate in the interim;
- The IoF agreed to pass responsibility for the Code to the Regulator;
- The IoF and the PFRA outlined their plans to merge in March 2016;
- Representatives of large fundraising charities agreed to provide set-up funding for the Regulator.

Since that meeting:

- A working group has been established to develop the Fundraising Preference Service (**FPS**). The group has been given [terms of reference](#) and aims to finalise its recommendations by early summer 2016;
- NCVO has been in talks with the Information Commissioner and the CEOs of some large fundraising charities, to discuss the impact on charities of the new EU General Data Protection Regulation;
- A working group of charity CEOs is being established to develop proposals on how charities can move towards a system whereby supporters opt into being contacted.

On 3 December 2015, the Charity Commission issued [a consultation draft of guidance on fundraising](#) to replace the current version of CC20. This consultation will run until 11 February 2016; the final version is scheduled for publication in spring 2016. The consultation draft places much greater emphasis on the role of trustees in overseeing fundraising activity and includes a checklist for trustees on controlling fundraising. The Charity Commission has also produced a one-pager listing the following key fundraising principles for trustees:

- Plan effectively
- Supervise your fundraisers
- Comply with fundraising law
- Protect your charity's reputation and other assets
- Follow recognised standards
- Be open and accountable

The fundraising summit recommended in Sir Stuart Etherington's report was held on 4 December 2015. It was hosted by NCVO, whose website holds (or links to):

- A [summary of events](#);
- A copy of [Sir Stuart's speech](#);
- [Slides from the Charity Commission's presentation](#);
- The [speech](#) of the Minister for Civil Society;

- [A recording of the event.](#)

The IoF has added the following paragraphs to the Code, on the subject of giving supporters the opportunity to opt into (or out of) receiving fundraising materials:

"All permission statements (opt-in or opt-out wording to gain consent for marketing purposes) displayed in fundraising materials MUST be at least the same font size as the larger of (i) any text asking for the recipient's personal details, or (ii) any text specifying the donation amount. If there is no text asking for personal details or specifying donation amount, any permission statements MUST be in the minimum font size of 10."

"Organisations MUST include on all fundraising communications sent to a named individual, clearly displayed details of how the recipient can, by a single step, opt-out of receiving such communications from the charity on whose behalf the communication was sent. This MUST be at least the same font size as the larger of (i) any text asking for the recipient's personal details, or (ii) any text specifying the donation amount. If there is no text asking for personal details or specifying donation amount, this information MUST be in the minimum font size of 10."

In late January 2016, the Public Administration and Constitutional Affairs Committee published its report: "[The 2015 charity fundraising controversy: lessons for trustees, the Charity Commission, and regulators](#)". We will summarise this in our next bulletin and keep you updated on future developments. In the meantime, please contact us if you have any questions concerning fundraising law and good practice.

If you require further information on anything covered in this briefing please contact [Lizzie Jones](#) (elizabeth.jones@farrer.co.uk; 020 3375 7138), [Rachel Holmes](#) (rachel.holmes@farrer.co.uk; 020 3375 7561) or your usual contact at the firm on 020 3375 7000. Further information can also be found on the [Charities](#) page on our website.

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