



Fundraising Regulator consultation into revision of code of practice

Response to discussion paper

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In consultation with Rogare's International Advisory Panel

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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.

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

We consider the proposed amendment may be problematic, but we are raising this concern only in an advisory capacity to alert the Fundraising Regulator to this issue.

This would effectively extend the regulatory remit of the Fundraising Regulator to include the actions of trustees, who normally fall within the remit of the Charity Commission. The question we wish to raise is whether this would result in a clash of regulatory responsibilities between F-Reg and the Charity Commission?

Would the Fundraising Regulator have the authority to take action against a charity if one of its trustees were in breach of the code of practice because they had failed to follow one of the six principles and a complaint had ensued from this failure? Or because an F-Reg investigation had uncovered this without a complaint being made.

We are sure the Fundraising Regulator has considered or is considering this but we thought it was worth raising this point nonetheless.

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.

The feeling among agencies seems to be that three asks works well and that many people give on the third ask. We acknowledge the erstwhile FRSB's concerns that including an upper limit could give the impression that a call ought to contain three asks, or that three asks may be made under any circumstances. However, we note the Fundraising Regulator is proposing greater provision in the code regarding the supervision of agencies by charities and Rogare's feeling is that allowing a three-stepped ask gives charities the flexibility they need while the requirement to effectively supervise agencies provides the necessary protection and redress in the event of any complaint.

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?

No.

This proposed change to the code would ensure that membership renewals, for example, were unambiguously brought within the remit of the code, because while all donations are financial contributions not all financial contributions are donations.

However, having different limits on how often a person can be asked for support (three for financial contributions; potentially unlimited for non-financial asks) seems likely to cause confusion, especially if the non-financial ask is part of a stewardship campaign that will culminate in a financial ask.

We also cannot see the rationale for separating financial from non-financial contributions: If a person does not want to sign a petition after three times of asking, it seems unlikely they will sign it after the fourth.

Our recommendation is simply that the code be amended to say:

*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 **support** more than three times during that call.*

Or, to make this more explicit:

*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 the call recipient to take any action (whether this is make a donation or engage in some kind of activism, such as signing a petition)** more than three times during that call.*

This raises for us the question about when a non-ask call can be considered part of an overall fundraising campaign or a standalone activity, and whether a standalone ask for non-financial support would actually be encompassed by the code, and thus fall within the remit of the Fundraising Regulator, which we raise here as an open question.

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

Yes.

It seems perfectly sensible to extend the rules relating to street and doorstep fundraising to telephone fundraising.

However, we would like to see guidance around this and to ensure that there is leeway for fundraisers to have conversations, and that a general lack of enthusiasm at the start of a conversation should not be interpreted as “clearly indicating” that the call recipient does not wish to engage.

For example:

“I totally can’t talk, my TV is on fire!” Trying to carry on engaging with the recipient would be clear breach of the code.

“It’s not a great time. My TV has just broken down again.” It would probably not be best practice to carry on trying to engage this recipient, and probably a bit dumb, but we don’t think doing so counts as a breach of the code.

"It's not a great time, my favourite programme is on in five minutes." This is not 'clear indication by word or gesture' that the person does not want to talk. It seems a reasonable response for the fundraiser to say: "I realise you really want to see that, but I promise this will only take a couple of minutes."

We also think it is worth the Fundraising Regulator considering what a 'gesture' clearly indicating the person does not wish to engage might sound like over the phone (or you could just wait until someone complains and establish this by precedent).

Part C - solicitation statement

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.

Our understanding is that this is required already for street and doorstep fundraising and many telephone agencies already adopt this as best practice, so this new wording sensibly codifies existing best practice.

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

No.

This may have something to do with how this consultation has phrased part **b.** of this question. The person seeking the donation is NOT a "professional fundraiser" as defined by the relevant legislation. The "professional fundraiser" is the agency this person works for - which is why "professional fundraiser" is contained within scare quotes in the code - but individual paid fundraisers fall outwith the legal definition of "professional fundraiser", unless the individual is actually a "professional fundraiser" e.g. a self-employed capital appeals consultant. Most of the people who are required to give a solicitation statement will not be "professional fundraisers". See s2.1.3 in <http://webarchive.nationalarchives.gov.uk/20081230001423/http://www.cabinetoffice.gov.uk/media/110668/amended%20guidance%20final.pdf>

It therefore depends on what F-Reg intends the new rule to convey. The solicitation statement only requires that people working for "professional fundraisers" disclose how much the agency they work for is being paid for the campaign and how that amount is calculated.

Is the intention that it should be made clear that the person seeking the donation receives remuneration (i.e. a wage or a salary)? If this is the case, we would question why the Fundraising Regulator considers this to be relevant information

for the donor when the donor is already being given information about how the “professional fundraiser” is remunerated.

Part D - 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.

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

Yes.

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

Yes.

We would like to see the Fundraising Regulator provide advice and guidance about what these processes might look like, and perhaps provide an off the shelf whistle-blowing process that small charities can adopt. This is because while this ought not be too difficult an undertaking for large charities, it might be for small charities, and it would be unfair if they fell foul of the code for not having something they are very unlikely to need.

We would recommend that guidance on part i) of the new rules states that the whistleblowing process would be for breaches of the code of practice, or any other breaches of any other legislation or regulation (such as ASA rules, data protection, or fraud). It should be made clear that the whistleblowing process is not available to people simply to register their dislike of particular types of fundraising.

Part E - vulnerable people

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

Yes.

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.

Both above answers are given with the caveat that we claim no specialist knowledge in the relation to best practice in the protection of vulnerable people.

However, one member of Rogare's Advisory Panel raised the following point:

I asked my colleagues working in policy and services to look at the relevant section of the code and guidance.

Their feedback was all about the guidance:

- There is a lack of guidance on what to do if an attorney (for property and finance) tries to donate on behalf of someone who lacks capacity.

This point maybe beyond the scope of the consultation but I think it's important nonetheless

- On page 11 of the guidance there is wording that I think is ill advised, it could be considered patronising to older people and seems to conflate being older and being vulnerable at times:

"Instead, when communicating or fundraising with someone who is older, the fundraiser should take reasonable steps to ensure that they understand the information and donation."

"Be aware of the impact of some of the messages and understand that those in a vulnerable situation may find it harder to say 'no' to a donation ask."

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.

Part G - Third parties

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?

No.

By answering no to this, we want to clarify that this ‘no’ relates to just one aspect of the guidance. On the whole the approach taken by the Fundraising Regulator is sensible and proportionate. Charities ought to have reasonable checks in place to monitor the performance of their third party contractors. Those measures should be genuine and not a ‘tick box exercise’, and so we agree that there is no point setting arbitrary targets. What is important is to encourage charities to buy in to a culture of compliance and monitoring and we think the approach taken here will encourage that, particularly by establishing a named person who has ownership of this task.

Our point of concern is with the first provision of the guidance:

- ensuring the values of the organisation are reflected in the policies, performance objectives, indicators and, where applicable, the incentives of the third party.

Our concern is twofold:

First, values are nebulous and it will be difficult in practice to decide whether the values of an organisation are reflected etc (and how well reflected – a lot, a little, comprehensively, adequately?). For example, one of Samaritans’ values is ‘Listening’. In the event of a complaint from a person that a telephone fundraiser hadn’t listened to him, how would F-Reg identify whether Samaritans and a third party agency were in breach of the code for failing to ensure that the value of ‘Listening’ had been incorporated into the agency’s performance objectives? If no other part of the code had been breached, would this even be relevant?

From the perspective of practical regulation, we think this first provision is redundant and will not help the Fundraising Regulator to adjudicate breaches of the code.

Other concrete rules will have been breached in order for a charity’s values to have been compromised by a third party because they were not reflected in its targets,

incentives etc. If a third party organisation is in breach of the code, and the charity is also in breach of the code because it failed to adequately monitor that third party, then the Fundraising Regulator will have plenty of scope for action without the need to resort to investigating whether values were or were not adequately reflected in performance objectives etc.

On the other side of the coin, it seems to us unlikely that a charity or third party will be in breach of failing to ensure values are reflected, etc. without this leading to further, more concrete breaches of the code.

Our second objection to this first provision in the proposed new guidance relates to the ethics of regulation. We think that the Fundraising Regulator ought to concern itself with the facts of regulation – i.e. whether concrete, tangible provisions of the code have been breached. We do not think it is the role of the regulator to become involved in regulating a charity's values, or how it communicates those values. We think this could lead to any regulator exceeding its regulatory remit by imposing its own values about how the thing it regulates ought to be done, rather than sticking to the facts about how that thing is or isn't done according to the code.

However, we recognise the importance from a charity's perspective of instilling its values into its third party contractors, and that if a charity can do this, then this is likely to lead to a higher degree of compliance with the code of practice.

We therefore suggest removing the first provision of the new guidance from the list of things against which F-Reg can adjudicate. We then recommend adding a paragraph beneath this bullet-pointed list to the effect of:

“One way to ensure a culture of compliance with a charity's third party contractors is to ensure that the values of the organisation are reflected in the policies, performance objectives, indicators and, where applicable, the incentives of the third party.”

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?

No.

The proposed additional text says that the agreement between a charity and a professional fundraiser “should” include certain things. What status does “should”

carry under the code? Does this mean that charities are at liberty to include some or all of these things. We understand that F-Reg wants to operate flexibly on a case-by-case basis, and that requiring some small- to medium-sized charities contain all these things might be excessive (but then it might not - the requirement to have these might just have to be a cost a charity pays when it contracts a professional fundraiser). But this notwithstanding, while we feel that this proposed new text provides good guidance on what charities could do, we are unclear on what it is that they ought to/must do.

Part H - 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? (if yes, please explain why in your answer)

We do not believe the Fundraising Regulator ought to be soliciting for other areas to be reviewed in the code. If this is done, this means that later iterations of this consultation process will contain new material that will again need to be put out for consultation. Otherwise there is a risk that new material could be included in the code without there being adequate discussion of any proposed new measures. We think it far better for F-Reg to concentrate on consulting on its own proposals and delivering these. The regulator can then run a second consultation asking for ideas about how else the code could be changed.

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)

Same answer as for H3.

ENDS

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