



Charity Commission CC20 revised guidance

Consultation response

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February 2016

Introduction

This is the submission to the Charity Commission consultation on the revision of CC20 – *Charity Fundraising: A Guide for Trustees* – from Rogare, the fundraising think tank at Plymouth University’s Centre for Sustainable Philanthropy. This consultation response is not on behalf of a charity and so no trustees have contributed to it.

1. Have you used the current version of our fundraising guidance which is called ‘Charities and Fundraising’ (CC20)?

1a. If yes, when did you last use the current version?

We have used CC20 within the past year to help produce teaching materials and lecture notes on fundraising regulation and fundraising ethics for an undergraduate class in nonprofit marketing and fundraising.

1b. Do you find the current or the new version most helpful?

Were we to repeat this exercise, the existing version would be most useful.

Reasons why:

Short answer

The existing CC20 is an excellent explanation of trustees’ roles and duties in relation to fundraising. It sets out what they must do and gives clear examples of the questions they should consider. It is easy to follow, particularly in the way it presents a ‘short answer’ followed by an ‘in more detail’ section. The existing CC20 is structured under chapter headings that relate to subject matter, e.g. legal duties in relation to fundraising. This is simple and easier to follow.

The revised draft guidance introduces six principles that trustees must follow. These are inherent in the existing CC20 although they are not expressly presented and described as in the new CC20.

However, by reordering and redrafting the information to fit under the heading of these six principles, it shifts the focus from what charities need to know to what they need to do. On the face of it, this seems a sensible move considering the inaction of trustees during 2015. However, in our view, by reducing the number of pages and grouping information under the six principle headings, the draft CC20

does not provide trustees with a comprehensive understanding of what they need to know in order to act on the six principles.

The focus is on action but not on having a full account of why they should act, that is provided much more effectively in the existing CC20.

The fact that some trustees may not have followed the existing CC20, as evidenced by the recent reports issued by Sir Stuart Etherington and the Public Administration and Constitutional Affairs Committee is not the fault of the guidance. It is possible that at 72pp, the existing guidance is daunting. But halving the number of pages in an attempt to get more trustees to read it is not a benefit if it provides them with a less well consider outline of their duties.

The draft CC20 seems more of a response to failings highlighted of trustees highlighted in these reports rather than any inherent failings or weakness of the guidance. We would therefore urge the Charity Commission to revisit the existing guidance and see how this can be strengthened or streamlined. One solution might be to include the six principles at the start of the existing guidance and then highlight at relevant points throughout the remainder of the guidance which of these principles is being addressed.

In more detail

Existing CC20

The new guidance differs quite noticeably from the existing guidance. The existing guidance groups trustees' duties into the following sections:

- Complying with the legal duties in relations to fundraising
- What trustees should consider before launching an appeal
- What they should consider when choosing a method of fundraising
- What risks trustees should be aware of?

Under each category, the guidance elaborates with a series of specific tasks, recommendations, duties and guidance and explanation for trustees.

For example, in terms of reputational risk, the existing CC20 (p9) says:

“Is there a risk of alienating your donors, beneficiaries or the public when employing particular methods of fundraising? Are there any ethical issues that should be taken into account?”

Under developing a plan, the existing CC20 says (p9):

“Fundraising costs money, and to be effective, it may require initial investment from the charity. A major fundraising appeal can be a significant financial commitment that will involve planning and an assessment of the risks and setting of a budget. Trustees should balance their investment with the expected income, ensuring it is a reasonable investment.”

CC20 currently contains sections on fundraising issues – including guidance on how much a charity should spend on raising further funds (p28) accepting donations that have conditions attached (p30), and managing complaints (p3) – working with commercial partners and fundraising and the law.

Each section is presented with a ‘short answer’ that provides the topline detail followed by an ‘in more detail’ section that provides fuller explanation and guidance.

Draft revised CC20

The revised CC20 has a different focus. Rather than outline what the duties a trustee must fulfil, it sets out the principles trustees should follow in order to “control” and be “directly involved” in fundraising. These are:

- Plan effectively
- Supervise fundraisers
- Protect the charities reputation, money and other assets
- Know about and comply with laws and regulation
- Follow recognised standards
- Be open and accountable.

The difference between the existing and revised guidance is that these ‘principles’ are contained within the existing CC20 but are not explicitly presented as principles. The new format seems therefore to be in response to Sir Stuart Etherington’s call for trustees to take more ownership of fundraising.

To that extent, the language of CC20 has also changed. There is a more explicit focus in the draft guidance on what trustees need to do rather than what they need to know.

For example, the revised guidance (s5.3/p9) makes a point of *emphasising* the ‘risk’ of working with a third party agency more explicitly than the existing

guidance does (see p10). Whereas the existing guidance talks about the need to spend money to raise money, the new guidance focus more on the reputational risk of incurring high fundraising costs, e.g. (p13):

“The commission is aware of models used by some fundraising companies which mean that the charity receives only a very small proportion of the money donated by the public, both at start-up and at later stages of the fundraising. These models can attract negative media coverage, complaints and regulatory intervention. This is because it can create the perception that the charity is being exploited or abused for private gain, and therefore mismanaged.”

NB the draft guidance removes several phrases and instructions that appear in the existing guidance would appear help trustees in devising their fundraising plan.

For example, in terms of reputational risk, the existing CC20 (p9) says:

“Is there a risk of alienating your donors, beneficiaries or the public when employing particular methods of fundraising? Are there any ethical issues that should be taken into account?”

Rather than provide a full critique of the draft guidance - which has not been requested, in any event) we shall highlight one of the principles and comment on that: Planning Effectively (s4)

s4 outlines trustees duties to plan effectively for fundraising. It says trustees will decide their charity's overall approach to fundraising and set its fundraising strategy (what funding is needed, why it is needed and by when). Trustees will need to include in the plan details such as the fundraising methods to be used and how much will be spent on fundraising. It also says the plan will need to cover the issues of managing or avoiding the reputational risk posed by fundraising, and how fundraising will reflect the charity's values.

We believe the structure and language used in the revised guidance - using s4 as an example - raises issue of trustees' experience, knowledge and competence to exercise their duties in relation to fundraising.

Do trustees have the requisite knowledge and experience to be able to identify and manage the reputational risk associated with fundraising?

Do trustees have the requisite knowledge and experience to be able to ensure fundraising reflects the charity's values; or phrased differently, do they have the knowledge and experience to ensure their charity's values enhance and support fundraising?

The existing CC20, particularly with its discrete section on 'fundraising issues', gives trustees a more complete steer on how they should address such questions than the revised guidance.

As a further example, in s6.3, the draft guidance says:

'Fundraising activity should be developed with donor, supporter and public perception in mind as well as income expectations and other goals.'

But it provides no advice how to interpret public perception and how to balance that with income generation. For example, public perception of certain forms of fundraising is often negative. What is the revised guidance advising trustees about such forms of fundraising?

We have already cited the paragraph in s6.4 that warns against fundraising models that only 'deliver a small proportion of money donated by the public' - such forms of fundraising are actually few and far between.

The general tone of the guidance is to warn trustees off fundraising without providing sufficient information and guidance about how they can make the best-informed decisions.

The new guidance is heavily focused on the reputational risk of fundraising; but the whole tone presents fundraising as a problem to be solved, instead of an integral and positive part of the culture of the charity sector that, like any other part of the organisation, needs governance. This could prove unhelpful and potentially sets trustees up on the wrong footing. It exacerbates the current atmosphere of fear and could make charities less effective, as they will be unwilling to access the funding they need to achieve their goals.

In our view, the draft guidance is directing trustees to action without having a complete knowledge of why they should act, which we feel could be detrimental to fundraising, and therefore the long-term financial health of a charity and consequently detrimental to the lives of the charity's beneficiaries and/or service users.

The existing CC20 is on the whole better at providing a more complete and coherent overview of what trustees ought to do, why they ought to do it, and the factors they need to consider in order to do it.

2. The new version is shorter than the current version. Please select whether you think the new version is:

Too short - see answer to Q1b.

3. In the new version, do you find the explanation of trustee duties in relation to fundraising clear?

3a. What don't you find clear? What would you like the commission to do to make it clearer?

On the whole, yes, the explanation of trustees' duties is clear in the draft guidance. But as we explain above (Q1b), the draft guidance does not provide sufficient explanation of how and why these duties should be discharged, or the matters that must be taken into account when discharging them: the existing CC20 does this better.

As explained above, the Commission should make clearer what trustees need to know in order to execute their duties, such as how they should identify, manage and balance risk. This is done better in the existing guidance.

4. There are six principles trustees can use to fulfil their responsibility for their charity's fundraising. Do you find these a useful way of describing what trustees need to know and do?

No. The six principles are a useful way of describing what trustees need to DO, not what they need to KNOW. As we explain above (Q1b), we feel the existing CC20 does this better and much of the nuance has been lost by translating the information contained in the existing guidance to fit under the six principles.

4a. What is missing? What do you think would work better?

As we explained in more detail above (Q1b), we suggest including the six principles as the start of a streamlined version of the existing guidance, and

reference what principle is being addressed at relevant points throughout the guidance.

5. The commission has focused less on describing the wider legal rules that apply, in addition to trustee duties, to specific types and aspects of fundraising. For example, the rules on data handling and protection, collections in public spaces, and lotteries. This is

- **so that we can focus on trustee duties which we regulate**
- **to avoid duplicating the free information on these rules which is produced by other regulators, agencies and the Institute of Fundraising**
- **to reduce the length of our guidance**

Should the commission keep this focus on trustee role and duties?

No. The existing CC20 is an excellent one-stop shop about what trustees need to know and do about fundraising. Providing this extra guidance is a strength, rather than a weakness of the existing guidance. The focus of the revision should be: What do guidance do we need to provide trustees in order for them to effectively execute their duties in relation to fundraising. These duties extend further than the areas the Commission directly 'regulates' (of which there are very little).

It should not be to reduce the size or avoid duplication of information - these factors are byproducts of the information and guidance trustees need and we believe that has already suffered in an attempt to reduce the size of the guidance.

Some of the problems last summer were in data protection and fundraising best practice in relation to collections in public spaces. These are areas that fall outwith the Commission's direct remit. But if the intention with this guidance is to help trustees execute their duties in relation to fundraising, then this information should be included in CC20.

You should not underestimate or discount just what an excellent wealth of information the existing guidance provides. It contains (almost) everything a trustee needs to know in one place. With the revised guidance, they will have to source various bits of information.

5a. Do you think the guidance includes enough links to sources of information about the wider legal framework for fundraising?

No.

5b. What information about the wider legal framework do you think should be included in the guidance?

The draft guidance should reinstate section H of the existing guidance. It should also point trustees to relevant legislation when this is appropriate (e.g. when talking about solicitation statements in s6.4, and s8 which stipulates the areas of fundraising that are covered by legislation, without stating what this legislation is). The Charities Act 2006 is not references in the revised guidance. Why is this?

This also seems to be the most appropriate questions at which to raise a further concern.

The regulatory framework for fundraising will change considerable in the next 12 months as the new Fundraising Regulator and the Fundraising Preference Service come on stream - working groups looking at the implementation of the FPS will report in the summer and we do not yet know what their recommendations will be. Is it not premature to publish this guidance ahead of those recommended change as valuable context and information could be lost, context and information which could influence other section of this guidance.

6. The commission has included two examples to help trustees avoid mistakes. Do you think it is useful to have these examples?

Yes, it is useful to have examples. But the two examples included in the draft guidance ('be clear about your role' p8; 'justify fundraising costs', p12) are not particularly well explained. The fundraising costs example only says that any agreement with a third party is in the charity's best interests and maintains its reputation. This is simply a restatement of what is in the draft guidance already but contains nothing about how trustees can avoid a mistake, such as not entering into a fundraising agreement that will deliver a large income over five years because the return on investment in the first year is low (probably negative). This example draws attention to the very few third party fundraising methods that only deliver a low return to the charity - what does this even mean: a low return in the first year, or that it delivers a low return (on investment or net income) overall (i.e. it has not worked well)? Television adverts can deliver an extraordinarily low return if they

don't work. Is this example supposed to advise trustees not to use a form of fundraising that will have a low return *if it fails*?

The repeated references to 'only a small part of the donation reaching the charity' do not describe most fundraising methods, actually show a poor understanding of fundraising on the part of the Charity Commission in drafting this document, and represent poor advice to trustees. This section is more likely to lead them to error, rather than avoid it.

In any case, fundraising costs apply to in-house fundraising, not simply to that which is contracted out, and must also be justified to critics.

Section F2 of the existing guidance provides a much better explanation of fundraising costs (though it does require revision) than does the revised guidance, which appears to overstate the risks of fundraising costs.

6a. Are there other parts of the guidance where it would be useful to include an example?

As we explained in our response to Q1b, we think the revised guidance is deficient in providing trustees with the information about how to meet the six principles effectively, so 'avoiding mistakes' sections are invaluable additions to the revised guidance, provided they provide genuine information about how to enact the principles without making mistakes, rather than restating what the guidance already says.

7. The system for regulating fundraising is principally self-regulatory and the final version of the guidance will describe the new self-regulation system, which is currently being developed. This version of the guidance seeks to describe the commission's role and its regulatory expectations of fundraising charities.

Does this guidance help you to understand what the commission expects of the trustees of fundraising charities?

Yes. This section - s12 - is an improvement on the existing CC20. However, in light of our comments to Q6 regarding fundraising costs, we would query how likely it actually is that the Commission would launch an investigation based on high fundraising costs or whether including this will hinder rather than help trustees

make an informed decision about how much money to invest in their organisations' fundraising operations.

8. Would you use the checklist, which is at section 13 of the guidance?

8a. Why would you not use the checklist? Which changes to the checklist would make it more useful?

We are neither trustees nor fundraisers. These two questions are therefore not applicable to Rogare.

9. How do you think the Commission can best help trustees become familiar with how their duties apply to fundraising? How could your organisation help us with this?

We believe that the lack of engagement between fundraisers and trustees (and indeed senior staff and colleagues) is one of the most important issues facing the charity sector and one of the most potentially damaging if it is not resolved.

Fundraisers are often presented as the 'enemy' in matters of public perception and ethical practice. Yet it is not fundraisers who set their own targets or budgets: it is trustees, finance directors and ceos. If a fundraiser has her budget cut and targets raised, then mass-market, transactional fundraising methods - those which have the potential to damage public perception and risk the charity's reputation - are the ones she will need to employ in order to meet those targets.

Rogare has recently conducted research into relationship fundraising that suggests that fundraisers have regularly called for budget to build the relationship fundraising practices that would develop the types of relationships that Sir Stuart Etherington called for in his review and (rather ironically) charged trustees with the responsibility of building. That budget was rarely forthcoming.

The events of last summer highlighted twin failures of professional ethics and stakeholder engagement, particularly a failure of engagement between trustees/SMTs and their fundraisers. However, the problem has been treated as a regulatory issue that can be solved through regulatory changes. In effect it is put a regulatory sticking plaster on an ethical wound.

Rogare is aiming to rectify both matters this year with a review of the fundraising's professional ethics and a project to explore how fundraisers can better engage with their stakeholders, particularly trustees and SMTs.

Rogare is developing a new theory of fundraising ethics that seeks to balance fundraiser's duties to the beneficiaries (to raise money) with their duties to their other stakeholders, principally, but not exclusively, donors.

So we believe that trustees need to be made aware not just of their regulatory and legal responsibilities in regard of fundraising, but also their ethical and moral duties in regard of fundraising.

We believe that we could work with the Charity Commission in publicising these ideas to trustees in order to provide them with a fuller, more rounded idea of their role than can just be provided by adhering to legal and best practice requirements.

10. The [Regulators' Code](#) is a short document which sets out a framework for how regulators should engage with those they regulate. Section 2 of the Code is about regulators providing straightforward ways to hear the views of those they regulate. Section 5 is about the advice and guidance that regulators provide.

Do you think that this consultation process meets the principles in section 2 of the Regulator's Code?

Yes.

10a. Do you think that this guidance meets the principles in section 5 of the Regulator's Code? If not, what do you think would help meet those principles?

No. We feel that this guidance is not fully compliant with s5.1 of the Regulator's Code because, for the reasons outlined above (particular responses to Q1b and Q6), the guidance will not always allow trustees to make best-informed choices about fundraising. As we say in response to Q1b, we believe this is because of the way the guidance has been restructured to focus on what trustees need to do, rather than what they need to know; and because a wealth of information has been excised from the existing guidance in order to make it shorter.

Rogare Associate Members

Rogare is supported in its work by a number of Associate Members – suppliers to the fundraising sector that share our critical fundraising ethos. Our Associate Members are:

Bluefrog – creative agency (UK).

DTV Group – Direct response agency (UK).

Ethical – telephone fundraising agency (UK).

HOME Fundraising – doorstep fundraising agency (UK).

Rapidata – regular giving specialist (UK).



Associate Members – helping Rogare to change the way we think about fundraising