

# ROGARE

THE FUNDRAISING THINK TANK

## **NCVO enquiry into self-regulation of fundraising**

**Consultation response**

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# 1 What do you consider to be the strengths and weaknesses of the current self-regulatory set up? Do you believe self-regulation continues to be an appropriate approach to regulating fundraising?

## Is self-regulation appropriate?

Self-regulation is the most appropriate approach to regulating fundraising. The scale of any wrongdoing in fundraising does not justify a statutory approach. For example, there have been 19 stage 3 adjudications in the nine years of the Fundraising Standards Board's existence (an average of just over two a year). This does not suggest a huge demand for a statutory regulatory solution to complaints about fundraising.

It is important that in this review that a sense of perspective is maintained and the need for reform should be judged against the overall performance of self-regulation rather than based on demands for change that have followed the suicide of Olive Cooke, for which no evidence points to fundraising as a contributory factor - her family have stated categorically that fundraising did not play a part in Mrs Cooke's death and it was not brought up at all at the Coroner's inquiry<sup>1</sup>.

The five principles of better regulation as identified by the Better Regulation Task Force in 1997 were (Better Regulation Commission 2005, pp26-27):

**Proportionality** Regulators should intervene only when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.

**Accountability** Regulators should be able to justify decisions and be subject to public scrutiny.

**Consistency** Government rules and standards must be joined up and implemented fairly.

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<sup>1</sup> <http://www.thirdsector.co.uk/inquest-death-olive-cooke-hears-nothing-fundraising-requests-she-received/fundraising/article/1356382>

**Transparency** Regulators should be open, and keep regulations simple and user-friendly.

**Targeting** Regulation should be focused on the problem and minimise side effects.

These are intended to apply to independent as well as government regulators (ibid p4).

Any proposed reform of self-regulation must ensure that it adheres to these five principles. In particular it must be proportionate in ensuring that any interventions are really necessary and are proportionate to the risk posed. And in targeting, they should ensure that they address the actual issue and are not blanket changes that would cause side effects that damaged charities' ability to raise the money they need to provide services for their and beneficiaries and service users.

### **Strengths of current set-up**

The strength of self-regulation of fundraising is that there is a separation of powers between the body that writes the code of practice (currently the Institute of Fundraising) and the body that investigates breaches of the code (currently the FRSB).

This is the standard approach in most professions and industry sectors and is the approach used in advertising, where the Committee of Advertising Practice writes the various advertising codes and the Advertising Standards Authority investigates breaches of the codes and applies sanctions.

Calls for a 'single' regulatory body for fundraising miss the point that this is not how self-regulation operates in most other sectors and would probably undermine public trust, since the body that sets the code of practice would also investigate breaches of its own code. The investigations and enforcement body must be independent of the body that sets the code.

Another strength is that there is a clear complaints process operated by the FRSB. This follows the tried and tested model used by other complaints ombudsmen of facilitating a resolution between the complainant and organisation before getting involved to make an adjudication e.g. the complaints process provided by [Ombudsman Services](#) for communications, energy and property industries, [ABTA](#) for the travel trade, and the [Financial Ombudsman](#) for the financial services industry.

It is simple to find the right organisation to complain to. Enter 'fundraising' and 'complaint' into Google (Fig 1) and the first six results are from the FRSB. Even 'charity' and 'complaint' (Fig 2) brings up the FRSB as the sixth entry with the Charity Commission, government and Citizen's Advice occupying higher spots, each referring the visitor to the FRSB if they have a fundraising complaint.

**Fig 1.**

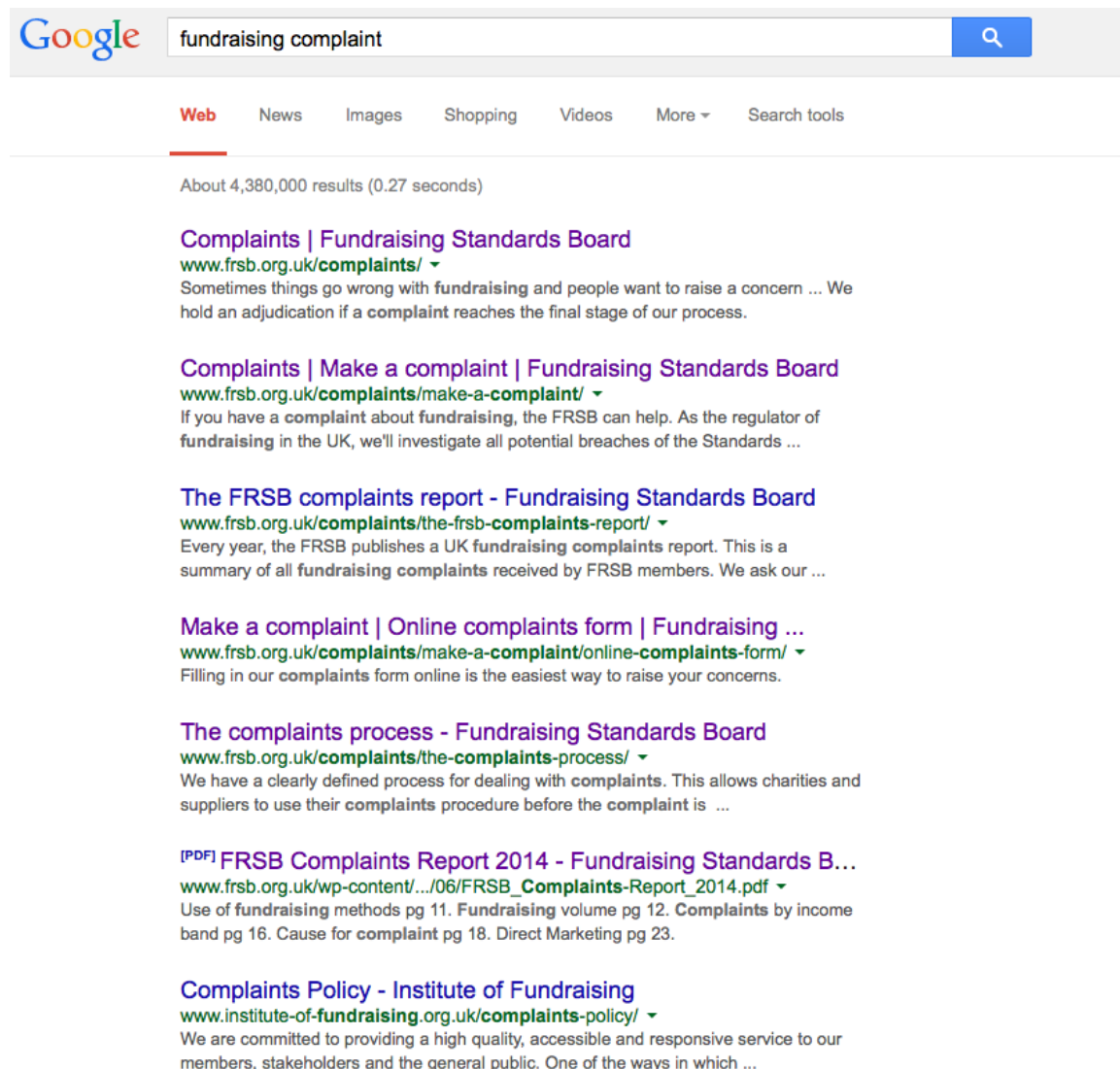
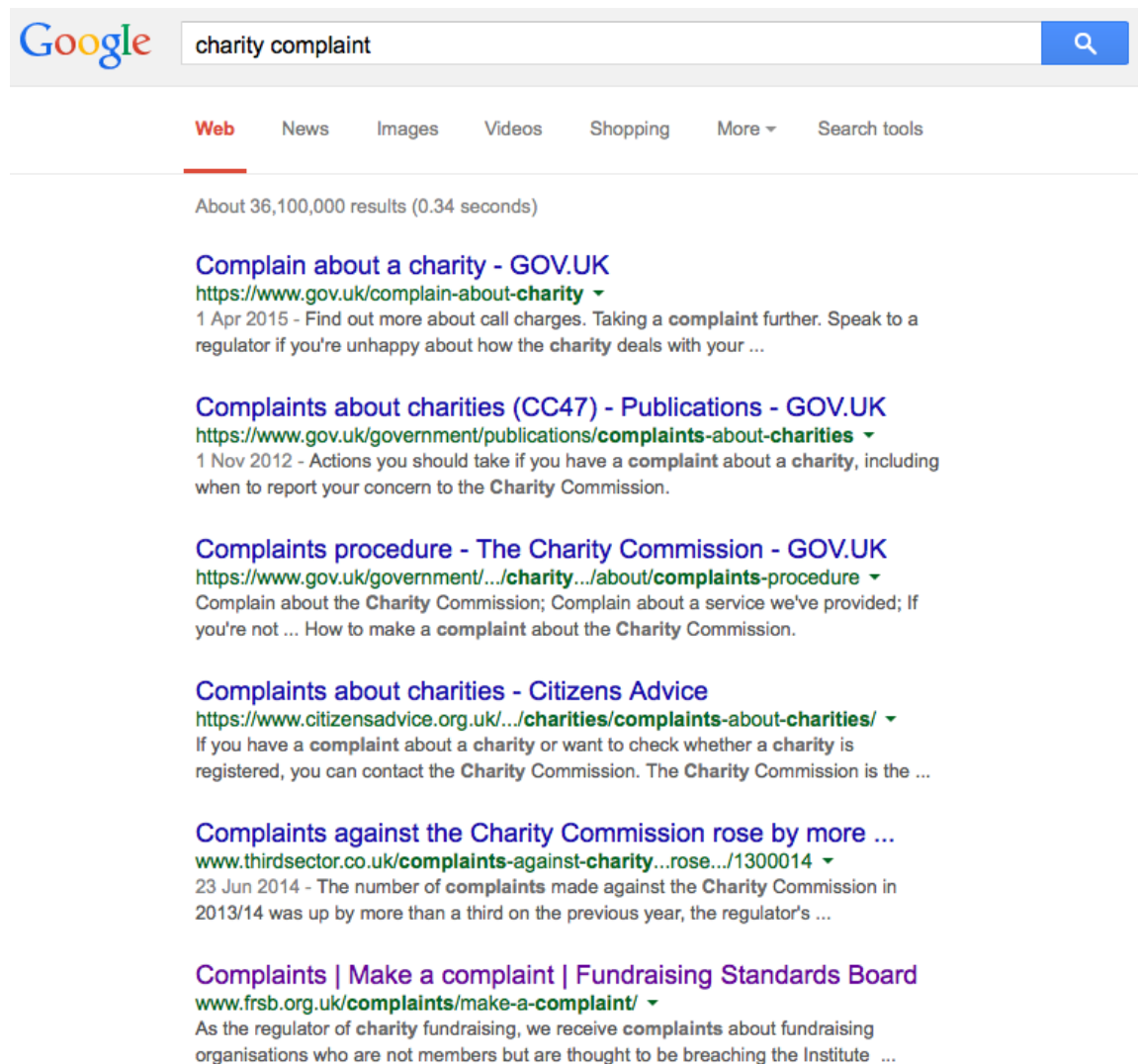


Fig 2



Despite perceived wisdom that the self-regulatory system for fundraising is complicated, its two key components – separation of code writing and code enforcement bodies, and the complaints process – suggest that it follows standard practice and is not complicated.

### Weaknesses of current set up

One weakness of the current self-regulatory set up is that it is perceived to be complicated, even though it is not.

The element of the regime that appears to be causing this confusion is the presence of the Public Fundraising Regulatory Association (PFRA).

The PFRA regulates street and doorstep (but not private site) face-to-face fundraising (F2F). It exists in response to market demand. Councils have no statutory power to regulate so-called 'chuggers' and so the PFRA was formed by charities to enable a co-regulatory solution to be put in place jointly with councils, a solution for which charities are prepared to pay (70p per donor). Whereas as the FRSB is a consumer regulator, the PFRA is an organisation-to-organisation (specifically nonprofit-to-local authority) regulator and has no public facing regulatory responsibilities - any that it did have were relinquished to the FRSB following the PwC report into self-regulation<sup>2</sup>.

The reason there was a market demand for a regulatory body for street fundraising was to avert a 'tragedy of the commons' that would have resulted from the universally-acknowledged fact that the public collections licensing regime is archaic and not fit for purpose - the Charities Act 2006 proposed introducing a unified licensing regime for cash and Direct Debit collection, although this section was never brought into force.

When Lord Hodgson reviewed the Charities Act 2006, as regards fundraising he focused on public collections and self-regulation. Regulation (not just self-regulation) of public collections *is* confusing, because the legislation is not fit for purpose. The relationships that PFRA had with councils, IoF and FRSB was confusing, but much of this has now been rationalized through various MoUs between the organisations (for example, PFRA handed over all complaint handling about F2F to FRSB).

However, in his review of CA06 (HM Government 2012), Lord Hodgson appears to have conflated regulation of public collections specifically with the self-regulation of fundraising generally. The idea that self-regulation is confusing because it involves three organisations (IoF, FRSB, and PFRA) rather than the usual two (e.g. CAP and ASA) seems to stem from Lord Hodgson's report (and the NCVO's advisory panel report into CA06, which Lord Hodgson quotes<sup>3</sup>).

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<sup>2</sup> [http://pwc.blogs.com/press\\_room/2014/07/pwc-publish-review-of-the-sustainability-of-fundraising-self-regulation.html](http://pwc.blogs.com/press_room/2014/07/pwc-publish-review-of-the-sustainability-of-fundraising-self-regulation.html)

<sup>3</sup> "...there is an immediate need to resolve the current confusion about the different roles and responsibilities of the 3 bodies involved in the self-regulatory system - the Institute of Fundraising, the FRSB and the PFRA. In particular, it is necessary to clarify: a) who sets the

F2F raises around £130m a year (street and door combined). However, this is a tiny segment of income secured through charity fundraising.

A vastly bigger slice of fundraising is actually regulated by a fourth body that is never mentioned when 'simplification' of fundraising self-regulation is mentioned - the Advertising Standards Authority, which investigates complaints against all types of charity fundraising advertising (including TV adverts, poster and magazine adverts). ASA's website specifically discourages people from taking a complaint about a charity fundraising advert to the FRSB<sup>4</sup>.

The presence of the PFRA as regulating a very small fundraising niche is a distraction and should not exert a distorting influence on the need to reform, or not, the relationship between the two main bodies involved in self-regulation - the IoF and the FRSB.

The current review could do a great service to the fundraising sector by dispelling this myth. However, a weakness of this set up is that other organisations that could have a role in the self-regulation of fundraising, such as the Charity Retail Association and the Textile Recycling Association, are not formally part of it.

A further weakness of the current set up is that membership of the FRSB is voluntary and, unlike the ASA, any organisation that conducts fundraising can choose to remain outside it.

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standards; b) who enforces and adjudicates those standards; c) what is the role of charities with regards to ensuring the standards are followed?" (HM Government 2012, s 8.17, p90.) There was NEVER any confusion over who set the standards (IoF) and who enforced them (FRSB) unless PFRA was entered into the equations (which conducted its own quality control and mystery shopping and established further rules relating to its co-regulatory site agreements with councils, which did to respond to and fill a niche regulatory gap).

<sup>4</sup> "The ASA regulates ads that refer to fundraising. But if you have a complaint about fundraising in general, for example on-street collection, you can contact the **Fundraising Standards Board** (FRSB). The FRSB monitors and helps resolve public complaints about fundraising. They require their members to treat the public with respect and honesty." <https://www.asa.org.uk/Consumers/What-we-cover/Complaints-outside-remit.aspx>

## **2 What do you consider to be the strengths and weaknesses of the bodies currently involved in self-regulation?**

### **Institute of Fundraising - Strengths**

The IoF has produced an excellent code. In all the clamour for change that has occurred since the death of Olive Cooke, there has been little recognition that there is an extensive code that contains ethical and best practice prescriptions and has served the fundraising sector excellently. The UK's code of practice for fundraising – developed and maintained by the Institute of Fundraising – leads the world and is far more comprehensive than that maintained by the Association of Fundraising Professionals in the USA. The IoF deserves credit and recognition for what it has achieved in owning and developing the code over the past 30 years. A sporting analogy when discussing whether to change a team would be that the IoF is the 'player in possession'.

### **Institute of Fundraising - Weaknesses**

The Institute jealously guards its ownership of the code, so much so that it is a moot point whether the IoF's primary consideration is to maintain an advantage over the FRSB and to protect its own role in self-regulation. For example, the IoF announced a review of the code "in light of the death of Olive Cooke" (thereby cementing in the popular imagination a causal link between Mrs Cooke's death and substandard professional standards) before the FRSB had announced what action it was to take (the FRSB was likely to recommend a review of the code anyway).

The recent decision to revise the standards committee so that members of the fundraising profession hold a minority of places (seven, compared to eight non-fundraisers, including four lay members), smacks of a decision taken hastily to placate public, media and political opinion. Rather than strengthen public trust, it has the potential to weaken public trust should the committee recommend measures that the IoF board cannot accept, such as banning fundraisers from contacting people who are retired (not beyond the bounds of possibility). It also gives voting rights to the ceo of the Fundraising Standard Board. This means the ceo of the FRSB will help set the standards his organisation enforces, so compromising his organisation's independence. It also gives voting rights to the PFRA. This means the PFRA – even though its remit covers F2F only – will determine standards for trust, major gift,

telephone fundraising etc. However, other organisations, such as the Charity Retail Association, do not receive such privileges.

This all suggests a serious weakness. Notwithstanding the excellence of the code, the IoF's recent decisions suggest a preference for protecting its primacy in developing the code rather than protecting the integrity of the code itself.

### **Fundraising Standards Board - strengths**

The FRSB should be recognised for what it has achieved. The complaints process is established, easy to follow, and works. The 19 stage 3 adjudications the FRSB has delivered since its inception in 2006 have delivered appropriate adjudications and none has caused particular widespread controversy for either being too harsh or too lenient. Sanctions and remedial measures imposed by FRSB have been adopted and recommended by relevant charities. In terms of its complaints ombudsman role, FRSB satisfactorily performs the role it was set up to do.

While falling short of its target of 5,000 member charities, FRSB has in excess of 1,500 members covering a massive proportion of fundraised voluntary income. While coverage could be wider, the engagement of fundraising charities to the scheme is significant. In terms of coverage and uptake, the FRSB cannot be considered to have failed.

### **Fundraising Standards Board - weaknesses**

The inherent weakness in the FRSB stems from the way it was originally established as a consumer protection organisation. From its very inception, a 'consumer champion' ethos has pervaded the FRSB that has manifested in the way the FRSB has promoted itself to the public and the media and taken opportunities to proactively solicit complaints from the public (rather than reactively deal with complaints once they have been made).

The board of the FRSB is deliberately constituted to exclude representation from the fundraising profession (any fundraisers who are on the board are there to represent their professional body - which is not necessarily the same thing as representing their profession).

This is not to say that a consumer protection model is necessarily a bad thing. However, the FRSB has demonstrated that it cannot always assign a proportional weighting to the importance or relevance of consumer complaints. For example, following the death of Mrs Cooke, the FRSB solicited complaints from members of the public. It received initially 384 complaints (total number of complaints about fundraising in 2014-15 as reported in the FRSB's annual complaint report were in excess of 52,000<sup>5</sup>).

Fourteen (14) complaints received by FRSB in its investigation following Mrs Cooke's death related to concerns that the Mailing and Telephone Preference Services (TPS & MPS) were not effective in stopping unwanted communications.

FRSB therefore recommended that fundraisers could no longer contact any donor with whom the charity has an existing relationship if those donors are members of the TPS and if they had not provided permission to continue contact.

And it said in the report: "Based on the complaints so far received about MPS, the FRSB feels it is clear that the service is not working the way that people expect it to and encourages the IoF to look into this particular issue as part of its review."

These two recommendations are based on just 14 complaints.

It may be that reform relating to TPS/MPS is needed in the manner recommended by the FRSB - but the views of 14 complaints are not supporting evidence.

It must be questions whether the interventions proposed by the FRSB accord with the five principles of better regulation as set out by the Better Regulation Task Force, particularly in terms of proportionality and targeting (wholesale changes risk catching those agencies that adhere to current rules as well as those that are breaking them).

On top of this, the FRSB wants to be known as 'the' fundraising regulatory body (not as one part of a polycentric regulatory system and regime), which is either a cause of or symptom of the regular internecine struggles with the IoF for primacy within the current self-regulatory set up.

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<sup>5</sup> <http://www.frsb.org.uk/2014-fundraising-complaints-echo-public-concerns/>

### **Public Fundraising Regulatory Association**

As a former employee of the PFRA I do not think it would be appropriate for me to comment on the association's strengths and weaknesses.

### **Advertising Standards Authority/Committee of Advertising Practice - strengths**

The ASA/CAP is established, respected, and works. It also has universal coverage of the advertising industry

### **Advertising Standards Authority/Committee of Advertising Practice - weaknesses**

No weakness with the ASA/CAP set up spring readily to mind. However, this does not mean weakness do not exist.

## **3 What changes, if any, do you believe should be made to the current self-regulatory structure?**

There are two factors in any reform of fundraising self-regulation that ought to be non-negotiable.

1) The body that oversees complaints into breaches of the relevant professional codes of practice must be separate to and independent of the body that sets those codes.

2) The code of practice must be owned by the fundraising profession. It must be developed by fundraisers and not imposed on fundraisers by any external authority, organisation or special interest group (whether formally or informally constituted). Consumer oversight of the code is comes from the check and balance provided by the complaints investigation body.

The first of these prescriptions exists in the current set up through the separation of the functions of the FRSB and IoF.

Until a few weeks ago, the second also clearly and unambiguously existed as the code of practice was devised by the standards committee of the Institute of Fundraising - a body composed entirely of professional fundraisers. However the decision of the IoF

to reduce the number of places held by professional fundraisers to seven out of 15 calls into doubt the professional autonomy of fundraisers to set their own professional standards.

Professional autonomy is the freedom to make decisions without being beholden to any employer or other stakeholder: they are able to exercise their own judgement.

This decision potentially seriously weakens the fundraising profession. This is not defensive rhetoric. Professional autonomy is usually taken to mean the professionals' right to self-regulation and to set their own standards (Brien 1998).

Therefore, to restore certainty to the second prescription, and to end in-fighting between the FRSB and IoF, the self-regulatory regime should be reformed along the lines of the model used in the advertising industry.

A new model modeled along the lines of the Committee of Advertising Practice should be established to write, develop and maintain fundraising's professional standards. This, for now, is referred to as the Committee of Fundraising Practice (CFP).

Following the CAP model, the CFP would be formed from representatives of relevant stakeholders, including: IoF, PFRA, Charity Retail Association, ASA, Direct Marketing Association, Information Commissioner's Office. It should also have lay representation and also select members of the profession to serve as individual practitioners rather than represent professional bodies, and co-opt others as required. It should be chaired by a respected figure with substantial relevant knowledge.

The sole role of the CFP would be to write and maintain professional standards. It would not be encumbered with other roles such as lobbying government over preferred fundraising methods or Gift Aid and as such there should be little or no conflict with the FRSB over who has primacy in setting standards - it will be the CFP.

The FRSB should remain largely as it is - a complaints ombudsman.

However, it is recommended that FRSB carry out a review of its governance and constitution to ascertain if its consumer protection ethos strikes the correct balance by conforming to the five principles of better regulation, especially in ensuring charities are able to raise requisite funds to provide services for their beneficiaries and user

groups<sup>6</sup>. One possible recommendation would be to appoint a small number of fundraising practitioners to its board (sort of the reverse of lay membership of the standards board).

The PFRA should remain as it is. As a body set up by charities in response to a problem with the market, PFRA has prevented a 'tragedy of the commons' situation. The recommendation is to fund this new CFP/FRSB set up through Gift Aid (see Q5). However, extra regulatory solutions over and above setting professional standards and investigating breaches of those standards should be funded by those organisations that require that extra regulation. Charities that do not do street fundraising should not be required to subsidise the regulation of those that do.

But more importantly, the ability to provide extra regulation where needed outside of the CFP/FRSB framework builds flexibility into the system.

Whenever the market throws up a regulatory problem or an issue with the 'common pool resource' (Ostrom 2010) of charity donors, any group of charities can come together to put their own regulatory solution in place, with the freedom and flexibility to do what is required, when it is required. For example, if land owners complain that there are too many charity challenge events taking place and participants are not following the Countryside Code, then charities might decide that they wish to run a diary that allocates certain events at certain times, and establish a quality control or mystery shopping system to ensure that participants abide by relevant codes.

How this is formally accomplished (new independent body, department of FRSB, special interest group of IoF, set up by organisation external to the fundraising sector such as the Campaign to Protect Rural England) is irrelevant. What is important is that the self-regulatory regime has the flexibility built into it to accommodate such a development - which pertains only to access to fundraising capacity, and not to professional standard setting (which will be the responsibility of the CFP) or complaint handling (FRSB).

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<sup>6</sup> The Royal Institute of Chartered Surveyors, for example, has conducted research in how to apply these principles - <https://apceye.wordpress.com/2012/12/07/rics-rules-of-conduct-for-members-and-firms-5-principles-of-better-regulation/>

There is plenty of evidence that having 'polycentric' decision making in public industries often delivers better value than more centralized structures (Ostrom 2010), and that so-called 'tragedy of the commons' situations (Hardin 1968) - the unchecked depletion of a common pool resource - are regularly avoided by individuals coming together to self-regulate their access to the resource, including imposing sanctions on those who transgress the mutually-agreed rules (Ostrom 2010). The PFRA shows many of the 'design principles' for such self-regulation highlighted by Nobel laureate Elinor Ostrom (ibid).

#### **4 What do you consider the most effective ways to ensure coverage of and compliance with a self-regulatory regime?**

The mistake made by the FRSB in its early years was to focus on communicating to donors how to complain to charity and encouraging them to make complaints.

The CFP needs to focus on a communications campaign to fundraisers to explain the system, explain that it applies to all fundraisers (see Q6) and encourage them to abide by the rules.

Anyone who wishes to complain about fundraising will find a way to do so - more than 52,000 did last year<sup>7</sup>.

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<sup>7</sup> <http://www.frsb.org.uk/2014-fundraising-complaints-echo-public-concerns/>

## **5 How could it best be ensured that a future self-regulatory system is adequately resourced?**

The new self-regulatory regime should be funded through Gift Aid.

The amount could either be a percentage that is deducted from Gift Aid revenues before it is distributed to charities or it could be calculated proportionally for bands of charities based on their voluntary incomes (so that charities doing more fundraising pay more).

Any extra regulation over and above standards setting and complaint handling (such as agreeing site access and running diaries for particular types of donor acquisition) would be subject to separate funding arrangements with charities conducting this type of fundraising paying the regulatory fee as a cost of business.

**6 Which charities should be covered by self-regulation? Should there be a threshold for fundraised income before membership of a self-regulatory body is expected? If so, where would you set this threshold?**

Standards for a profession apply to all members of the profession, not just those who have joined a particular professional body.

Therefore, all fundraisers should be subject to the professional standards and this means all charities that employ a member of staff who is paid to fundraise or contract a third party organisation or individual to fundraise should be part of the self-regulatory regime.

There is no *de minimis* threshold.

**7 Should additional measures be put in place to monitor or regulate operational fundraising agencies, such as call centres? If so, what should these be?**

No. The current code of practice states that charities are responsible for the standards of the agencies to which they contract any fundraising operations. Moving the role of ensuring that these standards are adhered to a third party regulatory body absolves charities of their own responsibility in these matters. If it is the role of the self-regulatory body to monitor agencies for bad practice, why should/would the charities do it? If the self-regulatory body does not find bad practice, then there is no need for the charity to look for it. If bad practice subsequently comes to light, then the responsibility for failing to prevent it lies with the self-regulatory body, not the charity.

This in no way prevents charities from establishing formalized mystery shopping or quality control procedures, such as those that are currently operated by the PFRA and the feasibility of which for other forms of fundraising are being explored by the IoF.

Fundraisers working at agencies will be subject to all the rules and prescription of the code under a reformed system, as they currently are. There should be no need for this question. The fact that it has been posed is addressed in the response to the final question.

## **8 Do you have views on how to ensure charities adhere to high standards in public fundraising, other than through formal regulatory structures?**

This review of self-regulation has been driven by a perception that poor fundraising standards led to the death of Mrs Cooke. Even though there is no robust evidence to support this assertion, there is still a perception that fundraising standards have slipped, or are aggressive, or in other ways in need of reform.

However, it is not self-evident that standards are poor and evidence and argument needs to be produced to make this case.

However, let's for the sake of argument assume that poor fundraising can be also defined as fundraising that is compliant with the code of practice but in some other way puts pressure on donors, for example by many charities contacting donors so that the pressure is felt cumulatively (as may have happened with Mrs Cooke).

If this is the case, then the reasons for it are likely to be complex issues such as: the culture of short-term targets that fundraisers are given by their board and senior management team and the lack of professional respect that some have in fundraising (the idea of fundraising being a 'necessary evil'); whether fundraisers are confident in challenging these targets and developing a culture of philanthropy that can change the views of their colleagues or whether they will do anything at any cost to meet those targets, and indeed whether they want to change the culture; the support that junior fundraisers get in managing third party agencies; and many others.

If scenarios such as these are the root of the problem, then it is important to realise that regulatory reform will not provide the solution, and any changes to the self-regulatory system that focus on amending the code of practice in the way recommended by the FRSB will be a regulatory sticking plaster applied to what is essentially a question of culture and professional ethics.

This review can only be one component of change to fundraising. Rogare is currently reviewing fundraising's professional ethics and is working to develop a new normative theory of fundraising that will provide an ethical framework to resolve ethical dilemmas.

We are working on the notion that:

*Ethical fundraising balances the duty of fundraisers to ask for support (on behalf of their beneficiaries) with the right of the public not to be put under undue pressure to donate.*

It is in this space - the space between the rights of the beneficiary and the rights of the donor and other stakeholders - that ethical decision making frameworks need to be used to determine what amounts to 'undue pressure'.

A further matter arises in that issues of cumulative pressure cannot be solved by individual fundraisers adhering more strictly to the code. This is approaching a common pool resource dilemma or a 'tragedy of the commons' - of the type that has already been successfully addressed by the PFRA.

It is therefore recommended that the fundraising sector explore the literature on management and regulation of common pool resources to glean how this may be applied to fundraising.

## References

Better Regulation Commission (2005). Better regulation - from design to delivery.

London <http://www.eesc.europa.eu/?i=portal.en.self-and-co-regulation-literature.3257>

Brien, A. (1998). Professional ethics and the culture of trust. *Journal of Business Ethics*, 17(4), 391-409.

FRSB (2015). Investigation into charity fundraising practices - interim report. London: FRSB [http://www.frsb.org.uk/wp-content/uploads/2015/06/FRSB-Interim-investigation-report\\_Published-9June2015.pdf](http://www.frsb.org.uk/wp-content/uploads/2015/06/FRSB-Interim-investigation-report_Published-9June2015.pdf)

Hardin, G. (1968). The tragedy of the commons. *Science*, 162(3859), 1243-1248.

HM Government (2012). Trusted and Independent: Giving charity back to charities - Review of the Charities Act 2006. London: The Stationery Office

Ostrom, E. (2010). Beyond markets and states: Polycentric governance of complex economic systems. *The American Economic Review*, 641-672.

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