



# **Fundraising Regulator FPS working group**

**Response to discussion paper**

Prepared by

**Ian MacQuillin, director, Rogare, Centre for Sustainable Philanthropy,  
Plymouth University**

**In consultation with Rogare's advisory panel**

March 2016



## Introduction

This is the submission to the Fundraising Regulator's FPS working party discussion paper 'Proposals for a Fundraising Preference Service'.

This response has been compiled initially from the Rogare faculty's interpretation of the proposals in the discussion paper (and the wider contextual environment of the FPS) and augmented with input from Rogare's 64-member advisory panel of practising fundraisers.

It is a matter of record that Rogare is opposed to the establishment of the Fundraising Preference Service in principle.

First, we believe that allowing potentially huge numbers of people to opt out of ever being asked to give to charity again does not achieve the correct balance between protecting the donor from unreasonable intrusion and allowing charities to meet the needs of their beneficiaries, by raising the income needed to provide services - our estimate is that the FPS in conjunction with similar moves to opt-in, could result in a 20 per cent (£2bn) reduction in annual voluntary income to charities by 2020.

Second, we do not believe the charity sector ought to be subject to more stringent regulation than other sectors of public life in the United Kingdom. If people have a so-called 'right to be left alone', then they have a right to be left alone from everyone, not just charities. In which case, the reset should apply to all direct market (such as commercial sales and marketing, market research, local and central government and political parties and non-fundraising charity communications). But fundraising should not be singled out for special regulatory treatment.

However, we also accept that the FPS - as something that is "close to the minister's heart" - is going to happen. We are therefore engaging with this consultation, in what we hope and trust will be perceived as a constructive manner, with suggestions that we think will lessen the impact on charities' abilities to raise funds while still providing the reset facility stipulated by the minister for civil society.

But we would urge the Fundraising Regulator and the minister to take as much time as necessary to get this as 'right', even if this means that the timetable for implementation needs to be put back.

## Scope - page 2

### Definitions and trading

You propose that the FPS should apply to “fundraising communications”, which you define as those:

*“Carried on for gain and wholly or primarily engaged in soliciting or otherwise procuring money or other property.”*

We recommend that the term “for gain” be dropped or replaced. “For gain” would encompass anything done for commercial profit as well as voluntary income. This would mean that the FPS would prevent charities from carrying out trading activities with people who were FPS-registered. Trading and fundraising are discrete operations, often conducted by separate organisational entities, and should not be conflated in this way.

If it is the intention that the FPS restrict charities’ commercial operations as well as their fundraising operations, we believe the Fundraising Regulator should formally make an announcement to this effect to give charities and other stakeholders the opportunity to respond accordingly.

There are similar concerns with the phrase “procuring money”. There are many ways that charities can “procure money” other than by asking for it - trading, as described, and financial investments, for example.

We would also urge caution with the use of the phrase “or other property” and that this require careful consideration. Direct debit solicitation falls outside the scope of street collection licensing - contained in the Police, Factories Etc (Miscellaneous Provisions) Act 1916 - because Direct Debits are not considered money under law but instead are considered to be ‘choses in action’ - in this cases, promises of money at a later date. However, the doorstep collection licensing regime catches Direct Debit solicitations because the relevant legislation - House to House Collections Act 1916 - specifies “money or other property” (Direct Debits falling under ‘other property’). So the rationale for including “other property” in this context is clear.

However, in the context of the FPS, ‘other property’ would also encompass requests for donated goods, gifts-in-kind and pro bono services. Later in this document we will strongly recommend that the FPS be available only to residential and not business addresses. But if people are able to register a business address with the FPS, the inclusion of the phrase “other property” might seriously restrict

charities' requests for gifts-in-kind, such as requesting a company to provide vaccines, for example. We do not think this is the intention of the FPS and would urge caution it that does not become an unintended outcome.

We suggest that the definition of 'fundraising communications' be simplified to explicitly refer *only* to a request for a voluntary donation:

*"Carried on wholly or primarily for the purpose of soliciting voluntary donations of money ~~or other property.~~"*

Other property is here struck through to signify that this term should be subject to very careful consideration.

However, we approve of the term "wholly or primarily".

Providing that you are able to develop a working definition of 'primarily' in this context, it should be a relatively simple matter for the regulator to determine in the case of a complaint, whether the communication being complained about was or was not 'primarily' designed as a solicitation vehicle.

## **Lotteries**

The discussion paper states that charities' right to run lotteries "implies" that it is a form of fundraising.

We do not think that the FPS should be seeking to regulate forms of communication based on an 'implication'. We therefore call on The Fundraising Regulator to make an explicit justification for why lotteries should be classed as fundraising and why they should therefore fall within the remit of the FPS.

Lotteries are, in any case, subject to a separate regulatory regime governed by the Gambling Commission. We would therefore recommend that the Fundraising Regulator consult with the Gambling Commission on the status of lotteries and the most appropriate form of regulating their dissemination and marketing.

While there is such ambiguity surrounding charity lotteries, these should not be included within the remit of the Fundraising Preference Service, and further discussion with relevant stakeholders should continue with a view to integrating lotteries into the FPS at a later date if it is considered appropriate to do so.

## **Thank you communications**

Initially, the discussion document is clear that messages of thanks to donors should not be prevented by FPS registration (second bullet point on page 2).

And yet the last two paragraphs on page 2 suggest that the Fundraising Regulator is actually considering this.

Thank you communications do not fall within the definition of 'fundraising communications' either as defined in the FPS discussion document or our proposed revision.

To include them would only be possible by either substantially moving the goalposts or else simply making up the rules as the Fundraising Regulator goes along. Anything that falls outwith the definition of 'fundraising communications' should not be covered by the FPS. The FPS cannot simply include other communications that do fall outside the definition on a whim.

The argument has been made that receipt of thank you communications "could leave FPS registrants unclear or frustrated with the seeming failure of registration to end forms of contact".

However the role of the FPS is only to end forms of contact that fall within the definition of 'fundraising communication'. If some people are 'frustrated' that they continue to receive communications from charities that are not related to asking for money, then the role the FPS should play is to provide better education and communication about what its role is and what FPS-registration prohibits, not simply to prohibit further types of communication that are not strictly covered.

NB - we suggest that if the Fundraising Regulator is concerned that people might be frustrated that registration doesn't stop some forms of contact, a bigger source of frustration might be that small charities are exempt.

## **Recommendations for sections 'Scope' (p2)**

- The definition of 'fundraising communication' should be revised to read:  
*"Communications carried on wholly or primarily for the purpose of soliciting voluntary donations of money ~~or other property.~~"*
- FPS registration should not extend to trading activities because fundraising and trading are separate activities.

- If the intention is to extend the FPS to trading activities, then the consultation should be relaunched with the specific aim of allowing charity trading and finance arms to input, in the knowledge that the FPS would affect their activities.
- Inclusion of lotteries should be subject to further consideration in consultation with the Gambling Commission.
- Communications expressing thanks for gratitude for making a donation should not fall within the remit of the FPS.

## **Channels - page 3**

### **Registration**

The document says that the FPS should apply to individuals and not on a household basis. However, we strongly urge the Fundraising Regulator to establish the FPS such that individuals may only register a residential address and not a business address. The rationale behind the FPS is to protect individuals from receiving direct marketing fundraising they do not wish to receive. We suspect it has been envisaged that this will cover relatively low donation levels such as making a £5 SMS donation, or upgrading a monthly Direct Debit by £2.50, for example.

It also has the potential to impact on major gift fundraising - for example, a mailing to prospects to inform them of a new patrons' scheme that is based on an annual donation of £1,000, and high value donor clubs (where donors give around £50 or more by Direct Debit).

But if people are allowed to register on the FPS using a business address, this would have potentially very serious consequences for corporate fundraising. At a stroke, some companies could ensure that charities could no longer make a cold approach about a corporate donation or partnership. And we have already highlighted the potentially damaging consequences of not being allowed to ask for donated or pro bono services or gifts-in-kind.

### **Face-to-face**

We do not think that under the terms of the FPS - i.e. individual not household level - that there's any justification for including street or doorstep F2F. There are existing codes around door to door. The FPS should be restricted to addressed print, telephone and email.

### **Social media**

We can see no workable way in which social media comms could be covered by the FPS as there are so many ways in which those registered could come into contact with fundraising messages even if not directly sent them by charities. We therefore propose social media remains outwith the remit and scope of the FPS.

## **Recommendations for sections 'Channel' (p3)**

- Only residential addresses should be registered with the FPS, not business addresses.
- Street and doorstep F2F should not come under the remit of the FPS.
- Social media should not come under the remit of the FPS.

## **User experience and choice - page 4**

### **Reset**

We support the idea that FPS registrants should have the option of listing the charities from which they want to continue to receive fundraising communications.

There are issues about how this would be delivered cost-effectively but we trust the Fundraising Regulator will resolve those cost issues without imposing an unnecessary financial burden on charities.

We will however point out one issue. Providing a drop down menu of 160,000+ charities would probably be impractical, so we are assuming that FPS will rely on people to input the names of charities. However, this is problematic, as people do not always know the names of charities they support. For example, people will often say they give to 'Cancer Research' although there is no such charity.

If there are charities that people are happy to hear from, it is probably because they have relationships with those charities.

We therefore suggest having a series of options that people may opt in to indicate which organisations they do or do not want to hear from (this information could then be offered in a 'receipt' to registrants - as suggested in the final paragraph of p4):

- a. I do not wish to be asked to make a donation to any charity, including those I currently support, except those with an income below £1m.
- b. I am happy for those charities I have made a donation to in the past two\* years to talk to me about ways in which I can support their work. No other charity may contact me to ask for a donation.
- c. I am happy for those charities to which I make a regular gift\*\* (such as a monthly Direct Debit or a periodic SMS donation) to talk to me about ways in

which I can support their work. No other charity may contact me to ask for a donation.

d. I am happy for the following charities to talk to me about ways in which I can support their work.\*\*\*

\* TBC – both in terms of duration and when that duration should start. We would suggest two years since the last donation, details that the charity will hold, with the onus on the charity to provide evidence in the case of a complaint.

\*\* the FPS will need to agree a list of what constitutes a ‘regular gift’.

\*\*\* notwithstanding the concerns we raise above about the potential for the registrant to make a mistake when entering the name of the charity.

A possible fifth option could be:

e. I don’t wish to receive fundraising comms from the following charities.

This would allow people to enter the names of charities they have had bad experiences with rather than go for a blanket opt out. If say it’s Charity X that’s driven them to go to FPS, it would be better that they get have the opportunity to specifically opt out of receiving communications from Charity X rather than opt out of all charity comms just to make sure Charity X is covered.

We believe that option a. will provide the ‘reset to zero’ opt out that government requires. But options b. and c. provide simple ways of opting back into receiving fundraising communications for organisations that registrants have relationships with, phrased in such a way to encourage them to opt back in.

We assume that if FPS can legitimately persuade people that they don’t need to implement the total reset, that that’s what it will want to do, in order to protect charity income.

One of the key things that drives people’s trust in charities is being clearly informed how their donation has helped. However, such ‘stewardship’ communications are expensive and it is entirely likely that charities will not be able to engage in non-ask stewardship communications with FPS-registered donors if they are unable to ask them for further donations that would offset the costs of the stewardship communications programme. An unintended consequence of the FPS would be that registrants stopped receiving all or most communications from charities (not just fundraising asks) because it has become uneconomic for charities to do so (one of our advisory panel described it as “throwing money down the drain”). This would have the further unintended consequence of

decreasing trust in charities rather than increasing it, because people would not be being informed about how their donations have been used.

Giving people simple options to opt back into to charities they already have relationships with minimizes this risk (this is also an argument against prohibiting thank you communications). We therefore find it hard to envisage a strong and convincing argument against the inclusion of options b. and c.

Although the discussion paper states that people may re-engage with individual charities to renew their consent or by removing themselves from the FPS register, we think this is unlikely - we would suggest the Fundraising Regulator ascertain from the mail and telephone preferences services how many people take themselves off the register after registering.

We also suggest that on the FPS landing page, it is made clear the types of fundraising communications people will be opting out of. This text could read something like this:

*Once you have registered with the FPS, no charity ((unless they have an income of less than £1m) - including those you currently give to - will be able to contact you to ask for a donation for as long as you remain registered with the FPS. This includes appeals connected with a recent emergency somewhere in the world, or any other urgent need for funds closer to home. Charities that could not ask you for support might include art galleries, museums, theatres, hospitals, and schools, as well as organisations that provide services to help people in the UK and overseas.*

#### **Recommendations for section 'User experience and choice' - page 4**

- Registrants should be offered the options of opting back into fundraising communications from charities they:
  - Have given to in the past [TBC] years
  - Charities they make regular gifts to
  - Named individual charities

#### **Duration - page 5**

We do not support the idea that FPS registration should be indefinite (i.e. not time limited) for non-vulnerable people (see also p12 for comments on vulnerability).

This is for two reasons.

First there will be an asymmetry between opt out and opt in durations. The possibly precedent-setting deal struck between the British Red Cross and the Information Commissioner's Office means that opt-in consent will last for two years and must be renewed. It seems inequitable that permission for charity contact should last for two years but prohibition of charity contact lasts for life.

Second, if there are large swathes of people who might have registered with the FPS in response to, say, ongoing media coverage (which may or may not be accurate), and who once the storm has subsided would be happy to resume receiving charity fundraising communications, we think it would be unethical – because it does not achieve the necessary balance we described in the introduction – not to facilitate this. Asking such people to renew their registration after two years gives them the opportunity to allow their registration to lapse (if they subsequently choose to re-register, their details are already on file and they do not have to re-register from scratch).

On the other hand, if some people care sufficiently that they absolutely do not want to receive fundraising communications from charities, then asking them to renew that conviction with the FPS once every two years is not a great inconvenience.

If the FPS proposes to issue receipts (p4) and an annual reminder about their contact preferences, then there seems to be no practical reason why they cannot be reminded after a certain period that their registration needs to be renewed.

### **Recommendations for section 'Duration' - page 5**

- FPS registration should be limited to two years and should be renewed every two years.

### **Application - page 6**

We do not support the suggestion that charities with incomes below £1m should be exempt from the provisions of the FPS. This is a tough call for us, because we want as many charities as possible to be able to conduct the level of sustainable fundraising they need to do in order to deliver services for beneficiaries.

However, the point of the FPS is that it allows people an option to reset to zero ALL the fundraising communications they receive. If they click the reset, but they still

receive substantial levels of fundraising communications, we are concerned that this could severely damage trust in the Fundraising Regulator and the FPS and through that the practice of fundraising. People that might otherwise have opted back in (through whatever means available) to receiving fundraising communications may not do so because they are frustrated that the total reset hasn't prevented all fundraising asks. This might be an especially acute issue if small charities expand into direct marketing to fill the void left by larger charities.

Many people are also unlikely to have a reliable idea exactly what some charities' income levels are. They may perceive certain charities to have more or less income incorrectly and therefore the exclusion parameters becomes meaningless. We suggest this is likely to lead to far more frustration and confusion than any that would derive from receiving a text or email thanking donors for their donation.

It seems far better to obtain registrants' consent to be contacted by small charities (the FPS is after all about consent) rather than giving small charities blanket permission to do what larger charities are prohibited from doing.

One option would be to offer a further option to those outlined in our response to the section on User experience:

- f. I am happy for small charities (those with an annual income of less than £1m) to talk to me about ways in which I can support their work. Such small charities might be local hospices, arts organisations (and their 'friends' groups), sports clubs, federated branches of national charities, parent teacher associations etc. I understand that if I don't tick this option, organisations such as these will not be able to contact me to ask for my support. No other charities may contact me to ask for a donation.

There are also some very obvious logistical issues about how the small charity threshold would be monitored. How would FPS keep track of and tabs on all those charities that hovered around the £1m income mark, making sure that if they were below the threshold, it was acceptable to contact people but if they were above, they were not. Income levels may fluctuate each year, meaning that some charities could regularly move above and below the level (particularly if they had had a good fundraising year).

We are concerned that this will impose a serious financial burden on the Fundraising Regulator, which will be borne by those covered by the FPS. So larger charities will be paying for smaller charities to be exempt.

## **Recommendations for section 'Application' - page 6**

- FPS registration should apply to ALL charities, regardless of their income.
- People should have the option to opt back in to receiving fundraising communications from 'small' charities.

## **Vulnerable people - page 7**

Clearly, vulnerable people need to be protected, and we believe the Institute of Fundraising's guidance on vulnerable people - [Treating Donors Fairly](#) - should provide the basis of ALL deliberations that the Fundraising Regulator conducts in respect of vulnerable people.

So while we of course support the need to protect vulnerable people, we do have a couple of concerns.

First, there are different levels of vulnerability, and the IoF guidance differentiates between people who are vulnerable because they lack capacity to make an informed decision about whether to donate, and people who are temporarily vulnerable due to circumstances, such as suffering a recent bereavement, or due to health matters. As the IoF guidance points out, such people may not be in similar vulnerable circumstances later in their lives.

We therefore think the FPS should not have a single category for 'vulnerable' people, but that vulnerability in terms of the FPS should be reserved for people who lack capacity to make an informed decision whether to donate. For such people, the opt-out would be in perpetuity.

We have already suggested a two-year duration for FPS registration (after which time it needs to be renewed). So people who are vulnerable through circumstances can opt-out of being asked to support charities for two years and renew that opt-out if they still consider themselves to be vulnerable after that time. In other words, no special category or opt out is needed for people who are considered vulnerable through circumstance.

Second, the proposal for other people to sign people up to the FPS is potentially extremely harmful and open to abuse. For example, some relatives who fear that the value of their bequests from an individual may be reduced by the level of that individual's charitable donations, might try to sign that person up to FPS.

We therefore recommend that serious consideration be given to how the authority to sign up by third parties is allocated. To prevent abuse, this might need to be very restricted – for example a relative with power of attorney, or other person who has power of attorney for that individual. This would require liaison with the Office of Public Guardians.

In fact there is no way with an online system to be sure that the person supposedly signing up is really that person, so there should in any case be a system of confirmation to the individual at the address concerned that they have personally signed up to FPS and intended to do so, and a cool-off period in which they can change their mind.

We are also concerned that this system would be open to further abuse of one party adding mass registrations to the FPS. For example, this could happen if a media organisation offered to register its readers/viewers/listeners with the FPS. This could potentially result in thousands of people being added to the FPS at one fell swoop.

### **Recommendations for section 'Vulnerable people' - page 7**

- Differentiate between vulnerability due to lack of capacity (permanent FPS registration) and circumstantial vulnerability (limited two-year registration, as per recommendation on p10).
- Safeguards need to be in place to prevent abuse of the system for registering vulnerable people.

**ENDS**

## Rogare Associate Members

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

Bluefrog – creative agency (UK).

DTV Group – creative, TV and film agency (Worldwide).

Ethicalcall – 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**