

REGULATING FUNDRAISING FOR THE FUTURE

Trust in charities, confidence
in fundraising regulation

September 2015

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FOREWORD

Britain is a generous society with a strong tradition of philanthropic action. In turn, there is tremendous, though not inexhaustible, public goodwill towards Britain's charities. As such, they have a privileged status in society. With this comes a responsibility to live up to the very highest standards. Most charities are conscious of this and strive to work to high standards in everything that they do.

Where this falls short – as has recently happened in the case of some fundraising practice – it is important to ensure that charities and the bodies charged with regulation act swiftly and effectively to restore public trust. As Lord Hodgson, a previous reviewer of fundraising regulation, has noted, the charity sector is only as strong as its weakest link.

Britain is a better place because of our collective generosity, which enables the work of thousands of charities and voluntary organisations. The two are inextricably linked: and we are clear that charities and voluntary organisations must be allowed to raise funds from the public.

We are equally clear that this right to ask is not unbounded. For the public, the right to be left alone, or approached with respect and humility, is equally strong. This is not simply a matter of public interest, but is also key to the long-term sustainability of charities.

As a response to the greater demands placed upon them, we have seen an increase in charities' fundraising activities. However this has meant that the balance between giving and asking has sometimes gone awry. Some of the techniques used, or the manner in which they have been used, present a clear risk of damaging charities in the public eye. Despite this, we are clear that charities and those working within them have the best intentions. Unfortunately, good intentions are not always enough to avoid bad outcomes.

The recommendations in this report aim to achieve a better balance between the public's right to be left alone and charities' right to ask. We have sought to resolve many competing arguments, not least of which has been the call for direct government intervention. But we remain of the view that in order to maintain public trust it is up to charities to take responsibility for a better relationship with their donors and the wider public. This begins with charity trustees, who we believe need to take a more active role in the oversight of fundraising.

We now have the opportunity, indeed the duty, to bring about change. We believe our proposals will create a simple and clear system, comprehensible to the public and charities, and proportionate to the issues at hand. The clear majority of those we have spoken with as part of this Review have expressed their full appreciation of the seriousness of the problems and a clear desire to find a solution. We hope to have provided a constructive way forward, including plans for implementation.

Ultimately our ambition is that charities view and conduct fundraising not simply as a way to raise money, but most importantly as a conduit between their donors and the cause they wish to support.



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ACKNOWLEDGEMENTS

This has been an ambitious review that has drawn considerable attention from the media, charity sector and public alike.

It has taken great effort to create such a detailed analysis over a relatively short period of time. We would like to express our thanks to all those who have made this possible, particularly Karl Wilding, Elizabeth Chamberlain, Helen Raftery, Aidan Warner, Teresa Scott and Chloe Stables of the National Council for Voluntary Organisations (NCVO) and Susann Hering of the Cabinet Office.

We would not have been able to achieve this without their help.

We would also like to thank everyone who has contributed to the consultation either in person, via the phone, online or by post. A detailed list can be found in Annex II.

GLOSSARY

ASA	Advertising Standards Authority	PACAC	Public Administration and Constitutional Affairs Committee
CC20	Charity Commission guidance 'Charities and Fundraising'	PECR	Privacy and Electronic Communication Regulations
CCNI	The Charity Commission for Northern Ireland	PFRA	Public Fundraising Association
DMA	Direct Marketing Association	MPS	Mail Preference Service
FRSB	Fundraising Standards Board	NCVO	National Council for Voluntary Organisations
HEFCE	The Higher Education Funding Council for England	NEO	National Exemption Order
ICO	Information Commissioner's Office	SCVO	Scottish Council for Voluntary Organisations
IoF	Institute of Fundraising	SMA s	Site Management Agreements
OSCR	Office of the Scottish Charity Regulator	TPS	Telephone Preference Service

EXECUTIVE SUMMARY

PART 1: ISSUES AND PROBLEMS

THE CURRENT APPROACH TO THE SELF-REGULATION OF FUNDRAISING IS NOT WORKING

The Review received sufficient verbal and written evidence to show that the current approach to self-regulation is no longer fit for purpose. A number of systemic weaknesses were identified in both the design and implementation of the current system. Self-regulation has lost the confidence of both fundraising organisations and the public.

THE CURRENT APPROACH IS UNNECESSARILY COMPLEX AND BADLY RESOURCED

The chief concern reported to the Review is the unnecessary complexity of the current system. Specific problems include a wasteful duplication of resources as well as confusing and frustratingly slow decision-making processes. These have partly been attributed to the involvement of too many bodies whose roles and functions lack clarity and often overlap. There is a need for clear separation of powers and responsibilities in the future.

Many respondents – including the Fundraising Standards Board (FRSB) – argued that self-regulation is currently under-resourced. Many of the complaints made arise from non-compliance, which suggests both insufficient training and support from all bodies involved. There has been a lack of coordination between the self-regulatory bodies and other regulators, leading to further confusion and inaction. It is evident that the existing self-regulator is inappropriately resourced and that its financial reliance on a membership model creates perverse incentives.

THERE IS LITTLE APPETITE FOR STATE REGULATION...

We found little appetite for state regulation of fundraising, either from charities or government. We understand that state regulation would raise

as many problems as it would address, particularly high costs and lack of speed in responding to change.

...BUT A RECOGNITION THAT STATUTORY INVOLVEMENT IS HELPFUL

Hybrid models of regulation that involve statutory bodies either directly or implicitly were recognised as useful, potentially offering the benefits of both state regulation (such as compulsion, threat of enforcement) and self-regulation (speed, professional involvement), albeit with the disadvantages of such approaches. In order to work, future fundraising regulation needs the clear and visible co-operation of statutory regulators.

ALTERNATIVE FUNDING MODELS EXIST FOR THE FUNDRAISING REGULATOR

The Review has explored alternative models for funding a new fundraising regulator, including the current membership subscription model. Alternatives proposed to the Review include a levy on Gift Aid or fundraising income, the latter operating above a de minimis level. A levy on Gift Aid would however turn fundraising regulation into a statutory system.

SANCTIONS NEED TO BE MORE EFFECTIVE

Any regulatory system needs a range of effective sanctions to drive compliance and those currently at the disposal of the FRSB are insufficient. Moreover, one of the few options to address poor practice available to the FRSB – asking the Institute of Fundraising (IoF) to change the Code of Practice in light of complaints received – has proven ineffective and ultimately damaged relationships between the FRSB and IoF. The most successful sanction has proven to be Public Fundraising Association's (PFRA) ability to withhold access to fundraising via its street

fundraising booking system. Nevertheless, a wider, more effective set of sanctions is required by the fundraising regulator.

JURISDICTION NEEDS TO COVER ALL FUNDRAISING ORGANISATIONS

Any self-regulatory system based on the notion of membership is likely to suffer from a lack of public confidence. The Review has heard that charities in particular are concerned about the problem of 'free riders' and concluded that any new fundraising regulator should have the power to adjudicate over all UK-based fundraising organisations, regardless of whether they have registered with the regulator or publicly shown their support for the system.

COMPLIANCE AND GOOD PRACTICE MATTERS...AND STARTS WITH TRUSTEES

Many of the recent problems have occurred due to a lack of compliance with the existing rules, or disregard of the available guidance. Charity trustees and managers have too often been absent from discussions on fundraising practice or values. We share the desire, expressed by many to the Review panel, to re-connect charitable values with fundraising practice and ensure effective oversight by trustees and management.

PART 2: A NEW APPROACH TO FUNDRAISING REGULATION

A SINGLE, NEW REGULATOR: THE FUNDRAISING REGULATOR

The Review recommends that a new approach to fundraising regulation is based around a ‘three lines of defence’ model: trustees, the fundraising regulator, and finally relevant industry statutory regulators across the UK.

We acknowledge that the FRSB has striven hard to represent the public interest. Nevertheless, we have concluded that in the interests of public trust in charities and confidence in fundraising regulation, a new fundraising regulator should replace the FRSB.

The Review proposes the establishment of a new body, the Fundraising Regulator. The Fundraising Regulator would be responsible for regulating all types of fundraising by UK-based organisations. It should be the public facing body responsible for all complaints about fundraising.

Its functions should focus on regulation only: responsibility for the Code of Practice and adjudication against this Code. It should also perform a strategic convening role, bringing relevant regulators and industry bodies together to help regulation keep abreast of wider issues and trends.

The Fundraising Regulator should be accountable to parliament, specifically the Public Administration and Constitutional Affairs Committee (PACAC), to which it should present its annual report. The Review suggests that PACAC should also lead a review of the progress made by the Fundraising Regulator after 18 months from the publication of this report.

RESOURCING OF THE REGULATOR SHOULD BE BASED ON FUNDRAISING EXPENDITURE

The Review has concluded that the fairest, most effective approach to resourcing the Fundraising Regulator is a levy on fundraising expenditure. This should apply to organisations reporting an annual fundraising expenditure of £100,000 or

more. The Review recommends a stepped levy so that those spending more on fundraising make a greater contribution.

A COORDINATED EFFORT: A CO-REGULATORY APPROACH

The Fundraising Regulator will need formal, effective relationships with UK charity regulators. The Review recommends that statutory regulators should highlight the responsibility of charities to support the Fundraising Regulator, both financially and by complying with its rules and adjudications. Statutory regulators should clearly signpost the Fundraising Regulator. There should be a strong relationship between the Code of Fundraising Practice and guidance for trustees produced by regulators, such as CC20 in England and Wales.

A MORE EFFECTIVE SANCTIONS REGIME

The Fundraising Regulator should have a wider array of sanctioning powers including naming and shaming, cease and desist orders, compulsory training and clearance of future campaigns among others. We have not recommended fines on the basis that these primarily harm donors and beneficiaries.

Under a co-regulatory system, statutory regulators should act as a ‘backstop’ in cases that raise regulatory concerns on issues that fall within their remit and powers. For example, the Charity Commission would have a role when the Fundraising Regulator has evidence of fundraising practices that, in addition to being in breach of the rules, raise concerns about breach of trustee duties.

RESPONSIBILITY FOR THE CODE OF FUNDRAISING PRACTICE

The Review has concluded that the IoF has not stewarded the current Code of Practice in such a way as to protect public confidence in self-regulation or charities more widely. It remains open to accusations of conflicts of interest. The

Code should instead be overseen by the Fundraising Regulator.

The Fundraising Regulator’s structure should comprise a Fundraising Practice Committee and a Complaints Committee. The former should include the expertise of professional fundraisers. The latter should be supported by an independent reviewer to address complaints regarding process.

A SINGLE CODE

The PFRA rulebook should be merged with the Code of Fundraising Practice, while the Fundraising Promise should be abolished. The Code of Fundraising Practice should clearly relate to guidance for trustees, primarily CC20 in England and Wales.

CHARITIES SHOULD REGISTER TO SHOW THEIR SUPPORT FOR THE CODE

The Fundraising Regulator should adjudicate over all fundraising organisations. We recommend that those organisations that wish to show their compliance with the Code should be able to register with the Fundraising Regulator. The FRSB ‘tick’, a badge of membership, is valued: organisations should be encouraged to display a similar badge to indicate their registration.

THE CREATION OF A FUNDRAISING PREFERENCE SERVICE

A key frustration of members of the public is the lack of control over how and how many times they are approached with fundraising requests. The Review recommends that the Fundraising Regulator establishes a ‘Fundraising Preference Service’ (FPS) where individuals can register if they no longer wish to be contacted for fundraising purposes. Any organisation engaging in high volume fundraising would have a responsibility to check their contacts against this ‘suppression list’ before the start of a campaign.

THE INSTITUTE OF FUNDRAISING: RENEWED FOCUS ON GOOD PRACTICE AND MEMBER SERVICES

As the professional association for fundraisers, the IoF should resolutely focus on encouraging good practice and supporting fundraisers to move beyond a compliance mind-set. Of course it should also represent fundraisers in the new regulatory system. Freed of responsibility over the Code, this represents a significant opportunity for the IoF to help organisations comply with the rules and rebuild public trust in fundraising.

THE PUBLIC FUNDRAISING ASSOCIATION: MERGER WITH INSTITUTE OF FUNDRAISING

Throughout the period of the Review, there was evidence of greater collaboration between the IoF and PFRA. We believe that a merger between these organisations is appropriate, given their focus on supporting members and providing business to business services. We would strongly encourage progression towards a merger. However, we propose that the regulatory aspects of the PFRA’s work – acting as a repository for public complaints, adjudication, and then deciding upon appropriate sanctions – should transfer to the Fundraising Regulator.

PART 3: NEXT STEPS FOR FUNDRAISING REGULATION

CHARITY TRUSTEES AND MANAGERS: GUIDANCE AND RESPONSIBILITIES

Post-Review, a priority and challenge is to change the values and attitudes of the individuals and organisations involved in fundraising. Trustees and senior managers of all fundraising charities should read and observe the guidance on 'Charities and fundraising' (CC20). The principles of this guidance should be reflected in the operational standards laid out in the Code of Fundraising Practice, and charity managers should support fundraisers in following these.

THE FUNDRAISING REGULATOR: ESTABLISHMENT AND IMPLEMENTATION

The Review has recommended an overall approach based upon the principles of co-regulation, rooted in self-regulation. This is based on a strong expectation that fundraising bodies will willingly support and comply with the new Fundraising Regulator. Although this represents a considerable risk, non-compliance represents an even greater risk to public trust in charities particularly. We urge all fundraising charities to show their support for this new system.

We have recommended difficult structural changes for the bodies involved in the current approach to self-regulation. We therefore propose a summit to bring all parties together and agree the resourcing, transition arrangements and accountability mechanisms for these changes. Our aim is to move swiftly to secure these changes with the support of all those concerned.

RE-ESTABLISHING THE RELATIONSHIP WITH DONORS

Charities need to show that they put donors' interests firmly at the heart of their fundraising activities. We strongly encourage all fundraising organisations to make a public commitment, promising that they will review their use of donors' personal data and take steps towards

adopting a system of 'opt in' only in their communications.

A forthcoming EU Regulation on reforms to data protection is likely to enforce such changes in law soon. We believe charities should reflect how much they value their supporters by leading the way. While we acknowledge that such changes will be challenging for many charities, the recent revelations into fundraising practices and the serious concerns they have raised have made this a matter of urgency.

CONCLUSION: BEYOND REGULATION

Fundraising needs to move above and beyond regulation and compliance, from simply just doing things right to also doing the right thing. Charities need to view and approach fundraising no longer as just a money-raising technique, but as a way in which they can provide a connection between the donor and the cause.

We welcome therefore the proposal from senior fundraisers and academics to establish a 'Commission on the Donor Experience', with an emphasis on strengthening relationships between fundraising organisations and donors. And we welcome any move that shifts fundraising away from aggressive or pushy techniques and instead towards inspiring people to give and creating long-term, sustainable relationships.

INTRODUCTION



1.1 CONTEXT

Britain is a generous society, characterised by a long and well-established tradition of charitable giving and philanthropy. It is estimated that the public gave £10.8bn to charities in 2012/13, with an additional £2.0bn given via charitable bequests (legacies).¹ International comparisons suggest that Britain is one of the more generous nations in the world.²

Many British people give. It is estimated that between half and three-quarters of the population donate to charity in a typical month.³ However, evidence suggests that over the long-term this proportion may be in decline, partly due to the emergence of other outlets for ‘doing good’ such as the purchase of ethical goods, and partly due to changing generational attitudes. As such, it has been argued that society is increasingly reliant upon a ‘civic core’ of committed individuals who give a disproportionate share of their time and money to charity.⁴ And it is these individuals who increasingly find themselves the subject of fundraisers’ interest.

The British public’s support for charities and voluntary organisations, and their work both domestically and internationally, is similarly deeply ingrained. The National Council for Voluntary Organisations (NCVO) estimates that there are currently around 160,000 active charities operating in the UK, of whom approximately 100,000 are estimated to generate income from donations and fundraising activities. Public support is accompanied by an expectation that they should play a role across many aspects of society including, but not limited to, supporting those most in need of help that neither the state nor the market can.

As the frontiers of the welfare state shift, such a role is likely to gain importance, with charities and voluntary organisations providing much needed support. Moreover, public bodies such as schools, hospitals and universities are now more likely to depend upon fundraised income in their resource mix. In short, our reliance as a society upon so-called voluntary income is likely

to increase in future years, and therefore efforts to protect and grow such income are a concern for all.

Charities are important vehicles for the public to engage with the causes and beneficiaries they care about. They bring together the time, money and resources of concerned citizens by organising volunteers and fundraising.

Academic research suggests that amid a complex range of internal motivations and external influences, asking is an important part of the decision to give to charity.⁵ A recent large-scale review of literature suggested that almost all gifts to charity take place following an ask to give in the preceding weeks. As many studies note, altruism and reciprocity are motivating factors, but these nevertheless require both awareness of need or the cause, and the external trigger to give. The ask to give that is the core of fundraising practice is a necessary one, although studies also caution against asking donors too much.⁶

FOOTNOTES

1. For a short overview of data on the public’s financial relationship with charities, see <http://data.ncvo.org.uk/a/almanac15/individuals/>.
2. For example, see Johns Hopkins University Comparative Nonprofit Sector Project: <http://ccss.jhu.edu/publications-findings/?did=308>.
3. The Community Life Survey estimates three quarters of the public gave in a typical month in 2013/14: <https://www.gov.uk/government/statistics/community-life-survey-2013-to-2014-statistical-analysis> CAF’s UK Giving 2014 estimates the figure to be 44%: <https://www.cafonline.org/about-us/publications/2015-publications/uk-giving-2014.aspx>.
4. See Mohan and Bulloch (2012) TSRC Briefing Paper 73: The idea of a ‘civic core’ <http://www.birmingham.ac.uk/generic/tsrc/research/quantitative-analysis/wp-73-idea-civic-core.aspx>.
5. The best review of literature currently available is Bekkers and Wiepking (2007) Generosity and Philanthropy: A Literature Review. https://generosityresearch.nd.edu/assets/17632/generosity_and_philanthropy_final.pdf
6. See Bekkers & Wiepking (2007) p.24.

While many observers can agree on the ends for which income is raised from the public, not all can agree on the means by which it is raised. Indeed, the background to this Review is one of public concern over intrusive or aggressive fundraising methods. Therefore the Review has considered whether or not sufficient checks and balances are in place – whether in charities themselves or the self-regulatory system – to retain public trust in organisations that fundraise.

In undertaking this Review, we are clear that fundraising is a critical, necessary way for charities to support those in need. Fundraisers must be able to ask. The work of charities and voluntary organisations is too important not to. But we are equally clear that however important the ends, this does not justify the use of any means. Fundraising must be undertaken in a responsible, respectful manner that views donors as long-term partners, not short-term opportunities to be exploited. Indeed, such is the importance of charity and voluntary action, that we strongly believe that change is required to effectively regulate fundraising practice. Public trust and confidence in charities and voluntary organisations must not simply be retained, but strengthened.

IS THERE A PROBLEM?

The FRSB reported over 48,000 complaints against charities in 2013 in the context of an estimated 20 billion donor contacts. The greatest absolute volume of complaints was in response to post addressed to a named person. Since the events surrounding the death of Olive Cooke, fundraising has been the subject of substantial media and public interest.⁷ However, not all agree that there is cause for concern.⁸ We have heard arguments that charities and voluntary organisations are largely trusted, that there is little evidence that charitable giving is in decline, or that the two are somehow not linked. We have similarly heard arguments that the volume of complaints in relation to the volume of fundraising activity is relatively minor and as such can be ignored.

Such arguments are troublesome. Britain remains a generous society, but in a culture characterised by the decline of deference, limited brand loyalty and rising pressure on discretionary income, charitable giving (often described as a ‘luxury good’) should not be assumed to continue at the same level. Further, we have heard many arguments that the current approach to complaints monitoring fails to sufficiently represent levels of unhappiness with fundraising. As such, we conclude that strengthening both the regulation of fundraising and the role of charity trustees is necessary to protect the charity brand, and this in turn is reflected in the terms of reference for our Review.

FOOTNOTES

7. The Review team have collected recent media coverage of fundraising at <https://www.pinterest.com/NCVO/fundraising-self-regulation-review/>.
8. For example, see Debra Allcock-Tyler’s opinion article: <http://www.thirdsector.co.uk/debra-allcock-tyler-data-tells-public-fundraising-not-crisis/article/1356427>.

1.2 PURPOSE OF THE REVIEW

The Review was asked to assess the effectiveness of the current self-regulatory system for fundraising in the light of recent high-profile cases of malpractice. It was tasked with making recommendations to both the Minister for Civil Society and the charity fundraising sector on changes that might be needed to ensure that self-regulation succeeds in protecting the interests and the retaining confidence of the public, whilst serving beneficiaries.

1.3. TERMS OF REFERENCE AND SCOPE OF THE REVIEW

The terms of reference of the Review were discussed between NCVO and the Cabinet Office. They were approved by the Review Panel at its first meeting.

They were designed in particular so as not to overlap with the current work underway by the Institute of Fundraising (IoF) and the Fundraising Standards Board (FRSB).

It was agreed that the Review would be strategic in its focus. In particular, it would consider:

- The structure of self-regulation and the relationship between standard setting, enforcement and operational management.
- The structure and operation of the self-regulatory system and the current self-regulatory bodies in a UK-wide context.
- The scope of regulation and the sanctions available.
- The responsibilities of charity trustees and chief executives.
- The role of third-party fundraisers and their relationship with charities.
- The relationship between the fundraising sector and the public.

The full terms of reference of the Review as finally agreed are set out in Annex I of this report.

1.4. OTHER RELEVANT ISSUES

In parallel to this Review, there are a number of developments as a consequence of action taken following media reports into charity fundraising.

CHARITIES (PROTECTION AND SOCIAL INVESTMENT) BILL

A number of government amendments to the 'Charities Bill' currently going through parliament aim to raise the profile of fundraising and highlight the role of trustees by:

- Requiring third party, commercial fundraisers to include terms in their contract with the client charity setting out their fundraising standards. This will include how fundraisers will protect vulnerable people, and how the charity will monitor whether standards are being met.
- Requiring charities with income over £1m to set out in their trustees' annual reports their approach to fundraising, whether they use commercial fundraisers, and how they protect vulnerable people from undue pressure in their fundraising.

FRSB INVESTIGATION

The FRSB launched an investigation into charity fundraising practices on 18 May 2015, following allegations that Olive Cooke was overwhelmed by fundraising requests and in light of the subsequent public concerns about charity fundraising practices.

The investigation commenced shortly after the Prime Minister, David Cameron, issued a statement asking the FRSB to investigate, which was supported by Rob Wilson, Minister for Civil Society, who called for 'thorough and swift action' to restore public trust.

An interim report published on 9 June found that the public wants greater clarity on and more control over how contact details are used and the amount of times people are asked to give to charity. Although the majority of people recognise the vital work that charities do and the

need for donations to fund that work, the collective experience is that too many charities are asking too often, and that the methods of asking are too aggressive.

The report therefore identified areas of the IoF's Code of Fundraising Practice that could be strengthened to improve donors' collective experience of fundraising and address concerns raised about charity-specific practices.

CHANGES TO THE IOF CODE OF FUNDRAISING PRACTICE

In light of the FRSB interim findings, the IoF Standards Committee has taken action to strengthen charity fundraising practices by making a number of changes to the Code of Fundraising Practice, such as:

- Making it clear that fundraising organisations across the UK must comply with the Code in its entirety by changing all 'ought' requirements to 'must'.
- Introducing standardisation in the presentation and wording of 'opt-out' statements for fundraising methods, which all charities will be expected to follow.
- Strengthening compliance with the Telephone Preference Service (TPS) based on the latest guidance from the Information Commissioner's Office (ICO).

The Standards Committee has also set up four specific task groups to look at the full range of issues raised by the FRSB report, such as:

- The frequency and volume of approaches to individual donors, so that donors do not feel 'bombarded' by correspondence or 'pressurised' into giving.
- How individuals can more simply and easily

manage their preferences on what fundraising communications they receive from charities.

- What standards charities should have to comply with, over and above legal requirements, in relation to the buying, sharing and selling of data.
- Standards specifically related to telephone fundraising, including the introduction of TPS Certification requirements.

PUBLIC ADMINISTRATION AND CONSTITUTIONAL AFFAIRS COMMITTEE (PACAC) INQUIRY INTO FUNDRAISING IN THE CHARITABLE SECTOR

Following a further media story about charities and their use of call centres to raise funds, PACAC launched an inquiry into fundraising in the charitable sector.

The inquiry is focusing on four key areas:

- The extent and nature of practices adopted by call centres raising funds for charities and the impact on members of the public, particularly vulnerable people.
- The government's recently proposed legislative changes on this issue.
- How charities came to adopt these methods and how they maintained proper governance over what was being done on their behalf.
- The leadership of charities and how their values are reflected in their actions and activities.

At the time of writing, the Committee has not yet reported, nor have we seen any draft recommendations.

SCOTTISH COUNCIL FOR VOLUNTARY ORGANISATIONS (SCVO) REVIEW OF FUNDRAISING

SCVO has launched an informal review of fundraising in Scotland, which has been running alongside the present Review.

SCVO's review is limited to legislation relating to fundraising in Scotland and aims to assess whether or not the current system of charity fundraising self-regulation is working.

In particular, SCVO's review is considering the structure of the self-regulatory system in Scotland and the enforcement of fundraising rules, and whether changes are needed to strengthen public trust.

ICO'S REVIEW OF DIRECT MARKETING GUIDANCE

Following the recent media coverage highlighting direct marketing and data-trading practices, the ICO announced plans to update the guidance it provides for organisations carrying out direct marketing. This includes information about the Privacy and Electronic Communications Regulations (PECR), third-party consent and buying and selling of personal data.

The ICO has already clarified that fundraisers who call existing donors registered with the TPS are in breach of the PECR. This in turn has prompted the IoF to change its Code of Fundraising Practice so that fundraisers can no longer make direct marketing calls to TPS-registered numbers, except where donors have told them this is acceptable.

THE EUROPEAN GENERAL REGULATION ON DATA PROTECTION

A major reform of data protection law is currently being discussed at EU level, and a EU Regulation is expected to be in force by 2017.

Key changes include new rules on:

- The need to ensure explicit consent is given for the collection, storage and processing of personal data
- An individual's 'right to object to profiling'
- An individual's 'right to be forgotten'.

The restrictions on the use of data will be applicable to most types of fundraising including direct mail, telephone, mobile, email, SMS and online.

Some of the changes that will follow are likely to have a profound effect on fundraising practices. These are welcome steps in the light of long-standing concerns about fundraising tactics and behaviours that have been occurring for some time. Nevertheless, the introduction of these changes will need to be appropriately managed and in particular, organisations will require an adequate transition period to adapt.

CURRENT SYSTEM

2

2.1 OVERVIEW OF CURRENT LANDSCAPE

The current landscape of fundraising regulation is a complex system of bodies, self-regulation and statutory regulation, which regulate a mix of specific activities and organisations.

It has been described by many as ‘patchwork’: some matters are covered by statutory regulation (for example data protection requirements, regulation of lotteries, some types of charity collections); others are covered by various forms of self-regulation (for example, direct mail under the Direct Marketing Association (DMA) and the Mail Preference Service (MPS), non-cash face-to-face fundraising under the PFRA). Further, some of these bodies cover commercial activity as well as charitable fundraising.

However, ultimately it is charities and their trustees who are responsible for ensuring their charity complies with the law relating to fundraising and follows best practice.

The Charity Commission for England and Wales, the Office of the Scottish Charity Regulator (OSCR), and the Charity Commission for Northern Ireland (CCNI) are the bodies responsible for charity law and statutory regulation in the UK.

While considering the whole landscape, the Review has particularly focused on the three self-regulatory bodies that relate to fundraising charities: the IoF, the FRSB and the PFRA (Public Fundraising Association).

The FRSB is the main body responsible for the self-regulation of fundraising and is the public-facing element of the system. It is responsible for handling complaints from the public about fundraising and, where appropriate, investigating these. The FRSB adjudicates against the standards developed by the IoF and publishes the outcome of its investigations. It has a limited set of sanctions at its disposal.

The IoF is the professional membership body for fundraisers. Its Standards Committee has developed the Code of Fundraising Practice,

which sets out good practice standards for the fundraising community. The Code is in part developed as a response to the outcome of adjudications by the FRSB.

Face-to-face fundraising on the street – often referred to as ‘chugging’ – has its own regulatory body: the PFRA. The PFRA operates a booking system for local authorities to allocate public space to charities; it also provides mystery shopping and training. It has its own code of practice, adjudication system and sanctions.

This arrangement for the regulation of charitable fundraising was last reviewed in Lord Hodgson’s quinquennial review of the 2006 Charities Act. Lord Hodgson recommended that the sector simplify the confused landscape of self-regulation and agree a division of responsibilities to remove duplication and provide clarity to the public. Further, he tasked the sector to draw up plans to deliver a sector-funded, public-facing, central self-regulatory body with responsibility for all aspects of fundraising.

Despite Lord Hodgson’s recommendations, there appears to have been little change to the structure and operation of self-regulation. The complexity of the system, and the related very low public awareness of its existence, continues to be a major problem.

The following sections outline in more detail the main bodies and their relationship.

2.2 THE MAIN SELF-REGULATORY BODIES

THE IOF

The IoF is a professional membership body for fundraising practitioners in the UK. According to its latest annual report, it has more than 5,400 individual members (fundraisers), 300 organisational members (charities) and 50 corporate members (businesses that work with charities). It is funded via membership fees and payment for services provided to its members, such as training.

Its main regulatory responsibility relates to the Code of Fundraising Practice ('the Code'), which it publishes and updates. The Code represents the standards set by the fundraising community, through the IoF's Standards Committee, which all members are expected to adhere to. It is based on the principles of 'openness, honesty and respectfulness' and sets out the legal requirements that all fundraisers need to adhere to, as well as additional recommendations on good practice standards that go beyond the requirements in law.

Complaints against the Code have to be issued to the adjudicator (the FRSB) and may result in a change of the Code or, if a member is found to be in serious breach, the expulsion of a specific organisation from IoF membership.

Aside from its regulatory activities, the IoF also provides professional excellence and compliance services to its members, such as leadership training, workshops on delivering fundraising excellence and policy representation. It also offers an accreditation to professional fundraisers through its academy.

The IoF is possibly the most well-known self-regulatory body for charitable fundraising and benefits from its broad membership. However the Review has received substantial criticism that the IoF has been slow to adapt recommendations from the adjudicator to change the Code because of the dominant professional interests on the Standards

Committee. Further, the Review has received evidence that the interests of the IoF are often at odds with the adjudicator, which further complicates the current regulatory approach.

THE FRSB

The FRSB was established following the 2006 Charities Act as the self-regulator for charitable fundraising. It is intended to represent the public interest and act as the public-facing part of the current system.

As part of a voluntary scheme, the FRSB is a membership body that regulates all types of fundraising in order to drive up the standards of the profession and provide the public with an effective platform for complaints. It is funded by membership fees determined on a sliding scale by income.

Charities that sign up to the FRSB commit to a 'fundraising promise'. This is broadly in line with the principles behind the Code, which FRSB members also commit to abide by. Anyone can instigate a complaint with the FRSB against the Code or the fundraising promise, which it will then investigate and adjudicate.

The FRSB should be the first point of contact for a complaint about fundraising. If the FRSB receives a complaint about a non-member, it will try to refer the complaint to another appropriate regulatory body.

The FRSB complaints process consists of three stages.

Stage 1. When the FRSB is first contacted with a complaint, it will pass it on to the charity or supplier to resolve. The charity or supplier is required to try to resolve the issue within 30 days of receiving the complaint and to feed back on the outcome to the FRSB.

Stage 2. If the complaint is not satisfactorily resolved, the complainant can escalate their concerns to the FRSB within two months of

receiving the charity's final response. Once the FRSB has received the complaint, it will initiate its investigation. The process is informal and aimed at an amicable resolution: the FRSB works with the member charity concerned and the complainant to try to resolve the problem rather than sanction for a breach. The FRSB will generally not independently instigate a stage 2 review or take a view of whether the stage 1 resolution was satisfactory unless prompted to do so.

Stage 3. If the complainant is still not satisfied with the outcome, they can ask the FRSB's Board of Directors to adjudicate. The FRSB Board will review the complaint and report its conclusion within 60 days. The adjudication of the FRSB Board is final and published in the form of a report. As with stage 2, the Board's role is seen to be more focused on mediation than regulation.

THE PFRA

The PFRA was established in 2004 as a membership organisation for both charities and fundraising agencies. It provides specialist compliance, enforcement and allocation services to its members, for both street and door-to-door fundraising.

The PFRA currently has a total of 166 members (124 charities and 42 agencies). The vast majority of its income is provided by a levy of 70p per donor recruited on either the street or door to door. A small membership fee is also payable.

The PFRA enforces the Street and Door-to-Door Rulebooks, which are aligned with the IoF's Code of Fundraising Practice. The Rulebooks, however, provide an additional level of compliance and enforcement, to reflect the specialist role of street fundraising.

The Street Rulebook is enforced through Site Management Agreements (SMAs) negotiated by

the PFRA on behalf of its member with local authorities and business improvement districts. The SMAs enable improved compliance by:

- limiting the number of days fundraisers can work per week;
- capping the number of fundraisers who can be present on each authorised day; and
- establishing areas of city centres where fundraising may not take place.

This is considered to be an effective mechanism for ensuring compliance and managing high volumes of fundraising activity. This is because fundraising – even if fully compliant with all existing rules – in aggregate has previously been the subject of public dissatisfaction.

One of the most distinctive features of the PFRA is a mystery shopping programme and the imposition of penalty points on its members where breaches are observed.⁹ This penalty points system has two main benefits.

- It acts as a deterrent to poor behaviour.
- It serves as an intelligence and data-gathering tool, which allows it to identify members who are consistently non-complying.

Door to door fundraising is mainly regulated by the House to House Collections Act 1939, which provides local authorities across the UK (and Metropolitan Police in Greater London) with a licensing role, including the power to refuse an application.

However, some charities that undertake house-to-house collections across a large number of local authorities on a regular basis can apply for a National Exemption Order (NEO), which

FOOTNOTES

⁹ Depending on the severity of the rule breach, members can receive penalties of either 20, 50 or 100 points. When 1,000 points is reached, the PFRA sends an invoice to the member responsible, which must pay £1,000. Thereafter, any points incurred above the 1,000-point threshold are invoiced on a monthly basis.

2.3 CHARITIES AND THE ROLE AND RESPONSIBILITIES OF TRUSTEES

exempts them from the need to apply for individual licences in each local authority; they need only notify the authority of the date and time of collections in their area. NEOs were originally intended to reduce the burden on occasional, large-scale, national cash collections on recognised 'flag days', such as the annual Poppy Appeal.

Under current law, the Minister for the Cabinet Office is responsible for the national exemption order scheme for house-to-house collections. There are currently 47 national exemption order holders.¹⁰

However the use of NEOs is causing additional complexity and perceived unfairness in the system:

- There is a view that NEOs create an un-level playing field, disadvantaging smaller, more local charities.
- Some NEO holders do not provide sufficient notice of their proposed collections to local authorities. This makes it difficult for authorities to keep an accurate list of who will be collecting where and at what time and they therefore struggle to allocate collection slots to charities that do not hold NEOs. This can cause further resentment, especially from local charities.

Responding to the lack of regulation, the PFRA is currently piloting a project for door-to-door fundraising. The 'Pilot D2D Compliance' project started in 2013 and focused on London for its first six months. Its purpose is to gauge the degree of code compliance present across PFRA members. In 2014, the pilot was expanded nationwide, which increased the level of observations undertaken.

Trustees have an overriding duty to act in the interests of the charity. In doing so, they must act prudently, balancing issues of resourcing and potential risks to the charity.

Trustees' duty of care requires that they exercise reasonable care and skill in carrying out their responsibilities. Charity Commission guidance, Charities and Fundraising (CC20), makes it clear that these duties also apply to fundraising; trustees must therefore ensure their charity complies with the law relating to fundraising and follows best practice. This includes all aspects of fundraising, including fundraising methods, the costs involved, the financial risk and how the money raised is spent.

In particular, trustees need to think carefully about the impact their fundraising methods will have on public opinion and the reputation of their charity.

Furthermore, where members of the public or volunteers are fundraising on behalf of the charity or where the charity employs a professional fundraiser, trustees should ensure that they have proper and appropriate control of the funds. It is important that trustees bear in mind that even when the day-to-day management of fundraising has been delegated to staff or volunteers, trustees still carry the ultimate responsibility.

The guidance also states that trustees should be aware of whether the proposed fundraising activities correspond with the charity's values, and it highlights the importance of carefully considering the reputational risks and ethical implications of any method of fundraising.

However, it was widely reported to the Review (not only by the regulatory bodies but also by charities) that there is a current disconnect between ethos and values of some charities and their fundraising practices.

FOOTNOTES

10. For a list of current NEO holders, see <https://www.gov.uk/government/publications/national-exemption-order-scheme>.

2.4 HOW SELF-REGULATION CURRENTLY WORKS

The FRSB's, IoF's and PFRA's positions, relationships and roles are causing a number of problems in the current operation of self-regulation.

In particular the FRSB's membership structure is seen as a major flaw in the system. The voluntary nature of the scheme is viewed by both the sector and the public as a weakness, and does not inspire confidence in the effectiveness of the regulator.

As highlighted by one of the submissions to the Review:

"The FRSB is not independent: it is accountable to a membership of fundraising charities, and this should change if the conflicts of interest between members of the public and fundraising charities become too salient."

The dependency on the payment of membership fees is also causing the regulator to operate with insufficient resources, which leads to further issues about effectiveness. These deficiencies are also likely to be the main causes of the FRSB's poor visibility to the general public.

The membership structure is also reflected in the way in which complaints are handled, which is seen as not adequately representing and protecting the public interest.

The absence of effective sanctions available to the FRSB means that the complainant doesn't receive adequate retribution: the FRSB's sanctioning ability is mostly limited to requesting changes to the Code of Fundraising Practice.

However the Code is placed within the responsibility of the IoF, causing further problems to how self-regulation currently operates. The IoF sees itself as 'guardian of the Code' and has demonstrated a great deal of resistance to making changes at the FRSB's request: the Review heard that recommendations

for change made by the FRSB have been frequently rejected or ignored (since 2012, 13 recommendations have been issued to the IoF, but only 3 have been responded to).

"FRSB has a ridiculous process basing adjudication of public complaints on a single insistent voice rather than volume or severity. It has moved from being an adjudicating Board to a full service operation without the respect of the sector or its fellow self-regulatory bodies. It seeks to change code on outcome of this single voice."

The IoF's ownership of the Code is also considered to lead to conflicts of interest, because it allows fundraisers to set their own rules. Recent changes announced by the IoF to remedy this imbalance, such as the appointment of an independent chair and the revision of the composition of its Standards Committee, have widely been considered insufficient to properly address the problem.

The IoF's dependency on fundraisers was raised as a matter of concern by a number of submissions to the Review:

"The IoF's role as creator of the Code has at times created a conflict of interest, given that all its members are charities or agencies. The Code has arguably been created for the fundraising sector by the fundraising sector. This weakness has now been partly addressed by the introduction of representatives from the general public to the Code's committee. But the Code is still arguably created by an organisation that has an inherent conflict of interest."

"The IoF seems mainly focused on supporting fundraising as a profession and sees things from the fundraisers' point of view rather than the public's. It is not well-placed to protect the public interest, and certainly not well-resourced."

The overlap of responsibilities and functions of the three main bodies has further consequences: not only does it mean that there are overlapping memberships (with the waste of charity resources that this entails), but it has also led to confusing duplication of the rules produced by each body (the FRSB Fundraising Promise, the IoF's Code of Fundraising Practice and the PFRA's Rulebook).

All these factors have contributed to poor relationships between the FRSB, IoF and PFRA. Added to this, there is a lack of communication between the FRSB and other regulators, particularly the Charity Commission. The IoF has also communicated insufficiently with regulators, specifically the ICO.

The submissions to the consultation carried out as part of this Review confirm the faults in the system identified above.

2.5 ANALYSIS OF SUBMISSIONS TO THE WRITTEN CONSULTATION

The following results are based on 119 responses to the consultation on the structure of fundraising self-regulation, which ran from 28 July to 14 August 2015 (responses were accepted until 2 September).

Of the total responses, 92 (77%) were from organisations, and 27 (23%) were from individuals. To give an accessible insight into the responses, we have categorised the most common answers to each of the questions we asked, along with their frequency.

When reading the consultation responses, it is worth noting that the total number of respondents varies by question since there was no requirement to answer all questions.

For a full analysis of consultation responses, please see Annex III.

Q1. WHAT ARE THE STRENGTHS OF THE CURRENT SELF-REGULATORY SET-UP?

22% of respondents (11) said that the input of experts is seen as very important to the setting of effective rules. 18% of respondents (9) thought self-regulation is seen to be more flexible, adaptable and low cost than statutory regulation.

Q2. WHAT ARE THE WEAKNESSES OF THE CURRENT SELF-REGULATORY SET-UP?

According to 23% of respondents (29), the main weakness of the current set-up is the number of bodies involved, thereby creating a complicated system that is difficult for the public to understand (22%, 28). 17% (22) also complained about the optional membership model and the current ineffectiveness at policing and enforcing standards (17%, 21).

Q3. DOES SELF-REGULATION CONTINUE TO BE AN APPROPRIATE APPROACH TO REGULATING FUNDRAISING?

90% of respondents (69) believe that self-

regulation continues to be appropriate, as it is or with some reform. Four respondents believed that the Charity Commission or other statutory regulators should take over fundraising regulation. A further three believed that a statutory body should play a supporting role to a self-regulatory body, as it would be able to issue stricter sanctions.

Q4. WHAT ARE THE STRENGTHS AND WEAKNESSES OF CURRENT BODIES?

a) FRSB

- Strengths: its kitemark – the ‘Give with confidence’ tick – is clear and well known; it is a single point of contact for complaints; it is independent.
- Weaknesses: it is poorly resourced, slow and lacks expertise; membership is optional; it lacks sanctions.

b) IoF

- Strengths: it is established and well known in the sector; it develops good practice.
- Weaknesses: there is a conflict of interest, as it is the trade association for fundraisers but also sets the Code; it is overprotective of the Code; it is focused on larger charities.

c) PFRA

- Strengths: it is effective at ensuring compliance; it has good relations with councils.
- Weaknesses: its remit is limited to face-to-face fundraising; it lacks independence.

Q5. WHAT CHANGES, IF ANY, DO YOU BELIEVE SHOULD BE MADE TO THE CURRENT SELF-REGULATORY STRUCTURE?

The most common response (23%, 38

incidences) was for a move to a single regulatory body. A significant number (17%, 28) called for it to have universal coverage and representation from members of the public. Further recommendations said the regulator should have more sanctions (10%, 17) and a clear complaints process (5%, 7) and be clearly independent from both government and the fundraising trade association (9%, 15).

Q6. WHAT DO YOU CONSIDER THE MOST EFFECTIVE WAYS TO ENSURE COVERAGE OF AND COMPLIANCE WITH A SELF-REGULATORY REGIME?

There was consensus (25%, 37 responses) that a variety of sanctions are needed, from naming and shaming and penalty points through to audits, restricting the use of particular fundraising channels and mystery shopping (20%, 30). There was disagreement over the use of fines, with some respondents claiming it would be an effective sanction (9%, 13) and others saying it could deter donors and harm beneficiaries. Clarity around best practice and training for trustees and fundraisers were also seen as important (7%, 10).

Q7. HOW COULD IT BEST BE ENSURED THAT A FUTURE SELF-REGULATORY SYSTEM IS ADEQUATELY RESOURCED?

The most popular answer (45%, 36 responses) was for a sliding scale of fees based on voluntary income or fundraising spend. Eleven respondents (14%) suggested that the government should contribute wholly or partially to the system and nine (11%) recommended using a proportion of Gift Aid.

Q8. WHICH CHARITIES SHOULD BE COVERED BY SELF-REGULATION?

Out of 66 respondents, 48% called for all charities that engage in fundraising to be covered by the regulator. Eight respondents (12%) recommended that an income threshold should be in place, the most common suggestion

being an income of £1m or more. There was a general concern that smaller charities should not be burdened by excessive administrative requirements.

Q9. SHOULD ADDITIONAL MEASURES BE PUT IN PLACE TO MONITOR OR REGULATE OPERATIONAL FUNDRAISING AGENCIES, SUCH AS CALL CENTRES? IF SO, WHAT SHOULD THESE BE?

The most common response (30%, 35 incidences) was that charities have responsibility for standards. Others (18%, 21) felt that the same code of practice should apply to both charities and agencies, and that charities should not be more heavily regulated than commercial industries. Twenty respondents (17%) felt that there should be stricter regulation for agencies.

Q10. DO YOU HAVE VIEWS ON HOW TO ENSURE CHARITIES ADHERE TO HIGH STANDARDS IN PUBLIC FUNDRAISING, OTHER THAN THROUGH FORMAL REGULATORY STRUCTURES?

Many respondents (22%, 26) believed that trustees and chief executives should have accountability for the fundraising methods the charity uses and that training (16%, 19) or guidance could be used to promote fundraising awareness (15%, 18). Fourteen respondents (12%) suggested an annual fundraising report or audit, possibly contained within the annual report, for charities to disclose the fundraising practices they use and how much money is raised through each method.

TYPES OF REGULATORY MODELS

3

3.1 SELF-REGULATION

The Review's analysis of the existing approach to fundraising regulation has led to the conclusion that, whilst the current set up was suitable in the circumstances that immediately followed the 2006 Charities Act, it is no longer adequate to address the evidence of bad practice that has occurred and the increasing public concerns.

The Review received suggestions that other models of regulation might provide an alternative template for fundraising regulation. This section therefore reviews the models and regulators most widely cited to draw lessons and inform the Review's options.

A self-regulatory scheme is one in which the rules that govern industry behaviour are developed, administered and enforced by the same people whose behaviour is to be governed, rather than being imposed by the state. In this system, the state only provides the general underlying legal framework while the industry determines its own regulatory standards and enforces them accordingly.

This system has a number of advantages:

- it allows the knowledge and expertise of all parties to inform the rules;
- it is more flexible and responsive to change (for example self-regulatory bodies can extend their remit without the need for legislative change);
- the lower regulatory burden on the industry is usually beneficial to the market's profitability and can generally help it to function better;
- it involves lower costs for the state since self-regulation is usually industry-funded.

These benefits of self-regulation were confirmed by a number of responses to the Review's consultation. For example one submission highlighted that:

"It is unlikely that an external regulator would have sufficient understanding of the impacts across this very broad range of activities, particularly the unintended consequences."

The most important aspect of self-regulation is that, if done well, it encourages a culture of engagement, goodwill and responsibility on the part of the industry.

However, self-regulation also presents a number of disadvantages:

FOOTNOTES

11. The Act itself does not specifically regulate fundraising: rather, the sector was given an opportunity to attempt a self-regulatory system, with a residual power remaining with Government to legislate if they failed.

3.2. STATUTORY REGULATION

- most notably it is a system which may be open to abuse since it is marked by a lack of accountability and transparency;
- there may also be a risk of bias towards weak standards that are too favourable to the industry and do not sufficiently account for issues of public interest;
- even in cases where a complaint is upheld, self-regulators are often regarded as 'toothless' because of their inability to impose effective sanctions.

The greatest weakness, however, is the inherent conflict of interest within any self-regulatory system: the self-regulator relies both financially and for its authority on those which it is intended to regulate. Therefore if sector buy-in is not sufficiently high, the credibility of the whole system can be undermined and its financial viability threatened.

Statutory regulation refers to any regulation that is implemented by law. Although it is often used as a synonym for 'state regulation', which involves the performance of regulatory activities directly by government bodies, statutory regulation does not necessarily mean government control.

Statutory regulation does however require some form of state intervention in the regulatory regime. For instance, an act of parliament can force the industry to form a self-regulatory body, and establish in law aspects such as what sectors should be represented in the entity and the ethical criteria to be observed by its members.

An immediate advantage of statutory regulation is the universal coverage that can be achieved by legal compulsion. This further grants statutory regulation legal enforceability and democratic accountability, making it effective at controlling the behaviour of sector organisations and introducing minimum standards of quality, fitness and service performance. The statutory nature of the system makes the imposition and enforcement of stringent sanctions less problematic than in a self-regulatory context, since non-compliance would constitute a breach of law.

However, such a comprehensive system of regulation can be highly expensive. It is also less flexible and responsive to change, putting it in danger of becoming inefficient, irrelevant to the sector or stifling to innovation. It may also result in greater burdens being imposed on market participants and thereby inspire lower levels of cooperation.

Many submissions to the Review's consultation highlighted the drawbacks of statutory regulation and raised concerns about whether statutory intervention is therefore appropriate for fundraising regulation:

"In our opinion it remains unclear what benefits a statutory body would provide and how any of the recent incidents would have been avoided if one had been in existence."

"It is debatable what added value this approach would bring to the current situation. Other regimes of statutory regulation are hugely expensive and still experience the occasional breach."

3.3. CO-REGULATION

Much of the current debate about fundraising regulation has swung between the relative merits of self-regulation vs. statutory regulation. However, there is a further possibility of combining state with self-regulation and adopting a co-regulatory approach.

There are various arrangements that can be classified as co-regulation, but it usually involves industry self-regulation with some oversight or ratification by government.

Co-regulation allows the industry to regulate itself in the first instance, but provides a statutory 'back stop'. It can allow for a wider range of sanctions than a purely self-regulatory model, depending on the degree of government oversight or involvement. In a co-regulatory system the statutory regulator could also have a reserve power to set an industry standard if there are no rules or the existing rules are deemed inadequate, therefore ensuring democratic accountability and 'teeth'.

Whilst not as speedy in its response to changing circumstances as a purely self-regulatory system, co-regulation combines significant advantages of both self-regulation and state regulation:

- It is flexible and cost effective;
- It tends to have the support and buy in of the industry it regulates;
- The possibility of statutory intervention and the presence of strong sanctions means that it is considered to provide greater protection to the public;
- It depends upon effective compliance regimes to ensure that public interest outcomes are achieved;
- Its performance builds public confidence.

3.4. EXAMPLES OF SUCCESSFUL REGULATORY SYSTEMS

Each of the approaches to regulation outlined in the previous section has provided the basis on which a number of well-established and successful regulators have been structured. A more detailed analysis of how some of these regulators operate is in Annex IV.

An analysis of how some of these regulators are structured and operate indicates that effective and efficient regulatory systems present the following characteristics:

- A clear and simple structure and a single interface with the public, to ensure public understanding and awareness of the system and in turn build public trust and confidence in its effectiveness.
- A good working relationship and close co-operation between the main regulator and the statutory regulator. In particular, it is important to ensure that there are enough areas of common interest between the two regulators to make co-regulation feasible.
- A good balance between the interests of the public and the industry. In particular both at the time of developing the rules and adjudicating their non-compliance:
 - the public interest needs to be adequately and correctly represented,
 - the industry's professional expertise needs to be appropriately applied.

- An appropriate range of incentives for compliance and sanctions for non-compliance:
 - adjudication processes have to be swift, transparent and fair;
 - sanction regimes have to be proportionate to the issues they are intended to address, but effective in providing remedy and addressing public concern.
- There needs to be a mechanism to secure funding which gives confidence about the independence of regulation.

Ultimately however, it is the nature of the relationships between the regulatory decision-maker, industry actors and regulated entities, as well as relevant statutory bodies and the executive administration, that builds trust in the system and is crucial to the overall effectiveness of regulation. Achieving good regulatory outcomes is almost always a co-operative effort: by the main industry regulator and other regulators, the regulated, and often the broader community.

OPTIONS ANALYSIS

4

OPTIONS ANALYSIS

Close examination of the current fundraising regulation has highlighted a number of problems that lead to inefficiencies in the enforcement of appropriate practice standards.

The Review has come to the conclusion that the critical fault of the system lies in the complexity of the institutional landscape and subsequent diffusion of power and responsibilities across a number of bodies. The system is defined by a lack of separation between regulation and compliance assurance. Further, there is little strategic overview leading the system to be overly focused on reactive, issue-based standards development.

It is evident that a change in the regulatory landscape is required in order to improve the regulation of fundraising. The Review has considered a number of options, a summary of which can be found below.

4.1 MODE OF REGULATION

The current model of fundraising self-regulation has proven insufficiently effective at protecting public trust and confidence in charities. The Review therefore saw merit in reviewing a number of regulatory models and their respective benefits in the context of fundraising regulation.

SELF-REGULATION

Fundraising is currently self-regulated. This means it is governed by a system to which the relevant organisations subscribe on a voluntary basis.

Pros

- It would be positive for public trust in charity if charities are seen to be taking issues with regards to fundraising seriously by voluntarily submitting themselves to better self-regulation.

Cons

- The system would rely on the sector taking collective responsibility for high standards in fundraising. A lack of statutory compulsion would need to be replaced by peer pressure to compel organisations to submit themselves to the regulator.
- The voluntary nature of the system might appear weak in the eyes of the public.

STATUTORY REGULATION

Statutory regulation of fundraising would most likely be delegated to the Charity Commission in England and Wales and relevant charity regulators in the devolved administrations.

Pros

- Making fundraising regulation part of the remit of the statutory regulator would send a strong signal to both the sector and the public that the appropriate regulation is a key priority.
- A statutory regulator would have a strong mandate to fulfil this role.
- This option would ensure immediate and universal coverage of fundraising charities.

Cons

- Mandating fundraising regulation would involve the state as a major stakeholder. This might incentivise government to introduce significantly stronger regulation on fundraising activities.
- In order to fulfil this task, the statutory regulator would require additional funding and additional powers.
- The remit to regulate fundraising would be limited to charities only, and disregard other large bodies which fundraise such as higher education institutions and NGOs.

CO-REGULATION

A third option considered by the review is a co-regulatory system in which the main regulator is an independent body which is backed up by a statutory regulator, for example the Charity Commission for England and Wales.

Pros

- This system would incentivise the sector to take a major stake in the effective regulation of fundraising by backing the authority of the independent regulator with statutory force.
- It would encourage more effective collaboration between regulatory bodies governing charities, thereby enabling better regulation of all issues related to the sector.

Cons

- The power of the main regulator exists entirely by virtue of the threat of statutory measures which would be applied in cases of non-compliance.
- It might be perceived as weak by the public because of the lack of statutory compulsion.

4.2. FUNCTIONS

One of the key issues of the current system is that power is diffused across too many bodies which – in their individual missions to determine effective fundraising regulation – are set at odds with each other. On top of this, all bodies have vested interests besides fundraising regulation, such as retention of members, representation of a profession or delivery of a service, which inhibits their effectiveness.

SEPARATING REGULATION OUT FROM OTHER FUNCTIONS

One option is to separate the regulatory function from compliance functions and other ‘business to business’ services that may be provided to the fundraising community. This would mean that both the IoF and PFRA would lose all regulatory functions they currently have, in particular code setting and sanctioning. Effectively this would lead to a separation of regulatory and compliance functions.

Pros

- It would prevent undue influence of secondary business interests on issues which should be approached in the light of fundraising regulation only.
- It would create a clear division of responsibilities, thereby making the regulator sufficiently independent to consider the range of stakeholder interests involved in fundraising.
- It would counter-act the current public perception that the system is unduly biased towards the interests of fundraisers.
- It would improve the regulator’s efficiency by removing systemic conflicts of interests which slow down the decision-making process.

Cons

- It would be necessary to ensure that regulation remains implementable and relevant to fundraising practitioners.
- A separation of functions does not circumvent the need for all industry bodies to work

together effectively. Steps would still need to be taken to improve collaboration.

- This option relies on the goodwill of the professional bodies to relinquish their regulatory functions, which could greatly impact the cost effectiveness and implementation speed of this option.

RETAINING REGULATORY FUNCTIONS WITHIN PROFESSIONAL ASSOCIATIONS

Another option is to keep the current structure of diffused regulatory responsibilities but tidy it up in a way which ensures sufficient independence from secondary interests. This could reflect current IoF plans to increase the independence of its Standards Committee and merging with the PFRA, effectively bringing all business to business services together in one body but leaving the regulatory function spread across two bodies. In this scenario the merged IoF-PFRA would effectively have regulatory powers over fundraising in public spaces which were previously owned by the PFRA. It would also retain its power over the Code which is a key regulatory power.

Pros

- Increasing the independence of the Standards Committee will address the criticism of conflicts of interest, and therefore be important for public trust in charities and confidence in regulation.
- The merger of IoF and PFRA would ensure more consistency between street fundraising practices and other fundraising methods.

- Maintaining the Code within the responsibility of the IoF ensures that fundraising standards remain implementable and grounded in practice.

Cons

- The measures to ensure greater independence of the Standards Committee will not mitigate the problem of a lengthy negotiation process every time the code needs changing since – under current IoF proposals – fundraisers will still hold strong influence on the Standards Committee.
- Keeping the standard-maker separate from the regulator does not solve the issue of insufficient strategic oversight of fundraising practice and too many issue-based interventions.
- The system would rely very heavily on an effective referral system between the new IoF-PFRA merged body and the self-regulator since the former would still retain powers to regulate (fundraising in public spaces) and amend the Code. If no such system was in place, the self-regulator’s position would be untenable.
- Increasing the IoF’s remit to the regulation of fundraising in public spaces while also retaining all its current responsibilities would give undue power to the IoF without balancing it against a strong independent body. This would increase the negative public perception of a systemic bias towards fundraisers, damaging charities and the profession in the long term.
- Despite its good work in establishing and developing the Code, the IoF has lost confidence of the sector and the public to continue hosting it. It is not believed to sufficiently reflect public interest when setting the Code.

4.3 STRENGTHENING EXISTING BODIES OR RESHAPING THE SYSTEM

A key outcome of the public consultation conducted by the Review was that the FRSB does not command the confidence of the public nor the charity sector. It has been unable to establish a strong position for itself within the self-regulatory environment and is further weakened by a poor relationship with the IoF.

Better fundraising regulation is inherently linked to a better industry regulator which is at the heart of an improved system. In the light of this, the Review has considered the options below.

STRENGTHENING THE FRSB

The Review has considered strengthening the current self-regulator, the FRSB, in such way that it is able to function effectively. This would include better powers to investigate, adjudicate, sanction and refer where appropriate. In order to staff these activities appropriately, the FRSB would require an increased income which could be achieved by increasing its membership fee and – more crucially – its membership base.

Pros

- Maintaining the FRSB would be time and cost effective. A set of relevant reforms could be implemented relatively rapidly. Although this would still incur costs, savings can be made by building on the existing structure of the organisation.
- It would retain all existing institutional knowledge, resulting in a shorter transition period once the changes have taken effect.

Cons

- A strengthened FRSB would continue to suffer from the reputational issues of the current organisations along with the difficult working relationship with the other regulatory bodies. This is a key risk since a self-regulator which does not command the confidence of the sector will not be able to function effectively.

- This option might be perceived to be ‘tinkering around the edges’ and therefore inspire neither confidence from the public nor sufficient compliance from the sector.
- Securing the cooperation of other regulatory bodies would be difficult due to the loss of confidence in the FRSB.

ESTABLISHING A NEW FUNDRAISING REGULATOR

An alternative option is to replace the FRSB with a new body with stronger powers to investigate, adjudicate and sanction. This body will need to sit in a better connected network of organisations which have a stake in the regulation of fundraising and require the appropriate funding to fulfil its responsibilities.

Pros

- The new body can operate from a clean slate and would therefore be able to concentrate on high ethical standards and leadership from the outset.
- It would not suffer from the reputational damage of the FRSB and could instead focus on building its own reputation as a strong regulator.
- It would be easier to mobilise buy-in from new organisations which previously chose not to join the FRSB.
- A clean slate enables a new regulator to be given a wider, more strategic remit with a clearer governance structure.

Cons

- Establishing a new organisation would incur significant costs, higher than those of reforming an existing body.
- The transition process would be complex, requiring provisions for the transfer of some of the institutional knowledge of the FRSB as well.
- A new body would have to re-establish a relationship with all of the FRSB’s previous members.

4.4 JURISDICTION

Fundraising regulation should continue to be UK-wide in scope. However, there are questions of whether the regulator should adjudicate only over organisations that actively engage with the regulator, for example by registering, or over all organisations that carry out fundraising (including non-charitable fundraisers and agencies).

REGISTERED ORGANISATIONS ONLY

In this option, organisations would register with the fundraising regulator and thereby subject themselves to its adjudication. Organisations which do not register would be outside the remit of the regulator.

Pros

- Organisations are proactively agreeing to be regulated. It is therefore more likely that they will comply with rulings, making the standards more easily enforceable.

Cons

- The remit would be limited and the regulator would constantly have to expend efforts on recruiting new organisations.
- The lack of universality significantly weakens the regulator both in the eyes of the sector and the public.
- This option is less likely to deal with ‘free riders’, i.e. those organisations who are most likely to engage in malpractice will not be effectively regulated by this system.

UNIVERSALITY

Universality would mean that any organisation that carries out fundraising activities is within the

4.5. FUNDING

jurisdiction of the fundraising regulator, regardless of whether it has registered or indicated in any other way that it agrees to comply with its adjudications.

Pros

- Covering all organisations is more likely to secure public trust in charity and confidence in regulation.
- Universality is the best way to ensure a system which is fair and effective across the whole fundraising sector.

Cons

- Care needs to be taken to ensure proportionality. Small fundraising organisations carrying out low level of fundraising activities should not be disproportionately burdened.
- The system requires organisations to recognise the jurisdiction of the regulator even if they haven't proactively engaged.

A further consideration is how any change in fundraising regulation will be funded. It has become apparent to the Review that the lack of sufficient funding and an appropriate funding mechanism has a significant impact on the ability of the regulator to effectively fulfil its duties in the current system.

It is therefore important to consider a range of options to find an appropriate and sustainable funding source for the new model.

MEMBERSHIP MODEL

All three self-regulatory bodies currently rely on a membership model whereby fundraising bodies or individual fundraisers sign up to their organisation in order to receive benefits which include regulation among a number of other services.

Pros

- Membership is an active choice. Therefore, those organisations which choose to become members are likely to be more engaged with the subject and feel like they have a stake in the overall success of the system.
- It provides regular, sustainable income and thereby financial security to the regulator.

Cons

- A membership model is in conflict with universality and in the case of a regulator weakens the system overall.
- The need for voluntary sign up makes a regulator look weak and may disproportionately skew power towards members since the regulator's financial viability is linked to their subscription.

- Too much of the regulator's focus would have to be spent on gaining new members and retaining its current base, thereby removing focus from the regulatory function.

STATE FUNDING

Another option worth considering is grant-funding by the state.

Pros

- State funding would signal statutory support for the fundraising regulator and give it a strong mandate to regulate effectively.
- It would make its income independent from its regulatory function, thereby preventing undue influence of secondary interests.

Cons

- Grant funding by the state has declined and it is unlikely that government will be able to commit to sufficient funding in the current climate of austerity.
- Although a number of regulators are funded by the state, it is unusual for this to be self-regulators. If the fundraising regulator was state funded (as the Charity Commission for England and Wales is), the government might consider it financially prudent to combine both grants and charge the Commission with the regulation of fundraising.
- It may compromise confidence in the system by the fundraising sector.
- It may compromise the independence of the system.

LEVY ON GIFT AID

An option which is commonly cited to fund regulation of charities is a levy on Gift Aid. The Review has considered this option and come to the following conclusions.

Pros

- The levy would be targeted at all organisations

that fundraise and therefore have a stake in the effective regulation of the activity.

- It is argued by those in favour that the levy would be simple to collect and a small proportion of the amount reclaimed.

Cons

- Gift Aid is not public spending, but a relief from tax. As such, it is income foregone by government. In order for a levy to work in practice, Gift Aid would need to be converted to public spending and therefore be subject to normal public expenditure controls, which we do not believe is in the interests of charities or donors.
- The cost of implementing system changes to collect a Gift Aid levy are disproportionate to the amounts collected.
- The involvement of HMRC in collecting a levy of any kind would de facto make such a system statutory in nature; statutory regulation has already been identified as a less popular and less sustainable option.

LEVY ON VOLUNTARY INCOME

A further option which the Review explored is a levy on fundraising organisations. This could be based on the amount of voluntary income they receive.

Pros

- A levy on voluntary income would be effective at targeting those organisations which receive the most funds from the public and therefore have a higher duty to ensure they act responsibly.
- Similarly to the membership model, the sector would pay for its own regulation and therefore have an interest in it working efficiently.

Cons

- Linking the levy to voluntary income could be viewed unfavourably by the public who mostly

4.6 SANCTIONS

wish for their donations to be spent on the cause.

- Smaller charities which engage in little or no fundraising and instead rely on legacies could be disproportionately hit.
- It does not adequately address the issue that has caused most public concern, that is the industrial scale of fundraising activities undertaken and the persistent asking despite individuals' requests to be left alone.
- A universal levy will have to be based on a percentage charge or smooth banding of a sliding levy to ensure fairness across the sector.

Cons

- A universal levy will have to be based on a percentage charge or smooth banding of a sliding levy to ensure fairness across the sector.
- Provisions would have to be made to avoid any undue burden on smaller organisations to declare their fundraising expenditure.
- Organisations may attempt to evade a higher levy by allocating fundraising expenditure to other activities.

LEVY ON FUNDRAISING EXPENDITURE

A final option to consider in this context is a general levy on fundraising organisations which is based on fundraising expenditure instead of income.

Pros

- Similarly to the membership model, the sector would pay for its own regulation and therefore have an interest in it working efficiently.
- This type of expenditure is already recorded in the annual return that charities have to submit to the Charity Commission and therefore simple to monitor.
- A levy on fundraising expenditure introduces proportionality across the sector, ensuring that small organisations which may benefit from one off donations or wills do not get unduly burdened.
- It is an effective way of addressing the issue of high volume donation requests, therefore somewhat disincentivising mass-campaigns which do not generate sufficient return.

FINANCIAL PENALTIES

The Review has considered whether the fundraising regulator should be able to issue financial penalties as part of its remit.

Pros

- The power to issue financial penalties is a significant tool for a regulator to deter misconduct and evidences a level of institutional maturity.
- Penalties could be used to either completely fund or top-up the income of the Fundraising Regulator.
- Financial sanctions contribute to the public perception that the regulator has strong powers and is effective.

Cons

- Financial penalties could incentivise the fundraising regulator to issue a high number of penalties, thereby jeopardising its impartiality.
- It is illogical for a fundraising regulator established to protect the interests of the public, including donors, to fine charities whose income is from donors.
- It would be difficult to ensure proportionality of penalties across all charities; small charities may be disproportionately affected while large charities might experience little impact.
- Financial penalties could seriously threaten the sustainability of some charitable and fundraising organisations which do not have sufficient financial reserves to comply with these penalties.
- For larger charities, penalties would need to be substantial in order to drive compliance: however substantive fines would likely

encourage greater use of legal redress and a loss of public confidence in charities more broadly.

NON-FINANCIAL PENALTIES

The Review has further considered the application of non-financial penalties. These include a variety of sanctions which are discussed in more detail in section 5.6.

Pros

- Non-financial penalties are more appropriate for a not-for-profit sector since many organisations will not have the sufficient level of reserves to comply with such sanctions. As such, monies which were intended to support good causes would not need to be diverted for this purpose.
- Penalties which aim to improve compliance with the regulatory system (such as training) are more constructive to achieving high standards in the long-term.

Cons

- Unless sufficiently strong, non-financial penalties may not provide a sufficient deterrent for misconduct. This in turn could lead to the regulator appearing weak.

A REGULATORY MODEL FOR THE FUTURE: THE REVIEW'S RECOMMENDATIONS

5

5.1 CRITERIA FOR A NEW REGULATORY SOLUTION

In order to make recommendations for a more effective regulatory regime, as required by the terms of reference of the Review, it is essential first to consider what a regulatory regime should be seeking to achieve. There are three aspects to this question: what a regulatory regime should do; how it should be structured to achieve that; and what detailed rules are put in place to achieve the objectives.

This Review is concerned about the processes, structures and accountabilities that need to be put in place. The detailed rules should be dealt with in the substance of a code and relevant regulations.

The Review is recommending a number of changes to the current regulatory framework, the key ones being:

- A model built along 'three lines of defence'.
- The abolition of the FRSB and the establishment of a new Fundraising Regulator, which no longer has a membership structure but universal remit to adjudicate all fundraising complaints and stronger sanctions for non-compliance.
- Adequate resources to reflect the enhanced role of the Fundraising Regulator.
- A strong co-regulatory relationship with the Charity Commission or other relevant statutory regulator.
- The move of the Code of Fundraising Practice to the new Fundraising Regulator.
- A single Code of Practice, clearly aligned with the Charity Commission's guides on charities and fundraising.
- The speedy merger of the IoF and the PFRA into a single organisation.
- The creation of a registration 'badge' which organisations can display as a sign of their commitment to regulation and high standards.
- More focus on best practice and compliance by the merged PFRA-IoF body.
- The creation of a 'Fundraising Preference Service', which would enable members of the public to prevent the receipt of unsolicited contact by charities and other fundraising organisation.
- A move by fundraising organisations towards adopting a system of 'opt in' only in their communications with donors.

5.2 THREE LINES OF DEFENCE MODEL

The Review has set itself a number of criteria for what the proposed regulatory solution should seek to achieve. In particular, the new model of fundraising regulation should be structured in order to meet the existing 'Principles of Good Regulation':

- **Proportionality**
Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- **Accountability**
Regulators must be able to justify decisions, and be subject to public scrutiny.
- **Consistency**
Regulators should be consistent with each other, and work together in a joined-up way.
- **Transparency**
Regulators should be open, and keep regulations simple and user-friendly.
- **Targeting**
Regulation should be focused on the problem, and where appropriate, regulators should adopt a goals-based approach.

In addition, the Review's goal has been to ensure that the emerging regulatory framework is one which:

- Addresses current public, political and media concerns around fundraising practices.
- Creates a long term framework for maintaining public trust in the sector.
- Allows charities to continue to fundraise effectively.

The Review has structured its recommendations on a new regulatory regime of fundraising to reflect a 'three lines of defence' model.

The basic three lines of defence structure is set out below:

1. First line of defence – trustees are the first line of accountability for the charity's fundraising activities and have the responsibility to ensure fundraising is carried out in compliance with the law and to high ethical standards.
2. Second line of defence – if malpractice occurs, a specialised fundraising regulator has the power to intervene to ensure the public interest is protected.
3. Third line of defence – the relevant statutory regulator acts as the backstop in cases that raise regulatory concerns on issues that fall within their remit and powers.

5.3 A NEW FUNDRAISING REGULATOR

It has been common ground that the FRSB does not offer a credible form of self-regulation and that significant change is needed.

The evidence submitted throughout the Review made clear that the FRSB has ultimately failed. While it has some significant achievements to its name, it has proven insufficiently effective in dealing with the major ethical and cultural issues that have arisen in recent times. As a result, the existing system has lost the confidence of parliament, of the government and of the public, all of whose support is essential if self-regulation is to succeed. Crucially, the FRSB has also lost the support of parts of the charity fundraising sector.

The Review agreed that 'tinkering around the edges' would not be sufficient and that this was the last opportunity for the sector to come forward with proposals for a new system.

The Review therefore recommends that the FRSB should be abolished and replaced by an entirely new regulator. This newly established body should be named the Fundraising Regulator to ensure clarity to the public and provide a break from the past. The Fundraising Regulator should be operationally independent of government but accountable to parliament. It should also be sufficiently independent of the interests of the fundraising industry and represent the public interest.

5.4 A CO-REGULATORY MODEL

The Review has considered a breadth of models in its efforts to improve the regulation of fundraising.

It has concluded that self-regulation remains the most appropriate mechanism for the charity sector to show its commitment to high ethical standards which safeguard public trust and confidence. However, in order to ensure greater effectiveness as well as reassurance to the public, the self-regulatory system needs to be strengthened by an effective relationship with statutory regulators which can act as a 'backstop'.

The Fundraising Regulator should therefore work in close co-operation with the Charity Commission (for charities in England and Wales) or other relevant statutory regulator (such as the OSCR for charities in Scotland, the CCNI for charities in Northern Ireland, as well as the Higher Education Funding Council for England (HEFCE) for universities or the Trading Standards Authority for non-charitable organisations). The statutory regulators identified would act as an additional 'backstop' in cases that raise regulatory concerns on issues that fall within their remit and powers.

With regards to charity fundraising in England and Wales, the principle should be that the Charity Commission would have a role when the Fundraising Regulator has evidence of fundraising practices that, in addition to being in breach of the rules, raise concerns about breach of trustee duties, including the duty to safeguard the reputation of the charity. The Charity Commission's interest would be based on the fact that serious or persistent failures in fundraising may represent a wider governance failure.

5.5 POWERS AND FUNCTIONS

The Commission would also become involved in complaints when a charity is damaging public trust and confidence through its fundraising activities or the fundraising activities of others working on its behalf. The Commission's regulatory concern would be limited to issues of charity law such as misappropriation of funds and compliance by trustees with their legal duties and responsibilities.

The Charity Commission's responsibility would therefore continue to be to ensure trustees have fulfilled their legal duties and responsibilities in overseeing their charity's fundraising.

This will require active engagement and open communication channels between the Fundraising Regulator and the relevant statutory regulator. This co-regulatory approach should therefore be governed by a Memorandum of Understanding setting out in detail how this relationship would operate. The Review recommends that one of the commitments of each statutory regulator should be to ensure greater visibility of the Fundraising Regulator through their websites and other communication channels.

In the case of the Charity Commission for example, the following additions could be made to the website:

- a link to the Fundraising Regulator for complaints about fundraising;
- an alert or 'red flag' on the Charity Register if a charity is subject to adjudication by the Fundraising Regulator.

The Review further recommends that current guidance on 'Charities and Fundraising' (CC20) is amended to highlight the role of the Fundraising Regulator and the Charity Commission's expectation that charities pay the fundraising levy. There should be a clear link between the principles laid out in CC20 for trustees and the operational guidance in the Code of Fundraising Practice. We expect similar agreements to be developed with devolved regulators.

The Fundraising Regulator should have:

- **Universal remit**
All organisations that carry out fundraising activities (whether charities, not-for-profits or agencies) should be subject to the regulatory powers of the Fundraising Regulator. This would mean that the new Fundraising Regulator is not based on a membership model but on a 'fundraising levy'.
- **The ability to register organisations**
The regulator should offer the ability to register any organisations that wish to show their commitment to the Code of Fundraising Practice. As a sign of registration, the organisation would receive a badge (see section 5.14) to display in all its fundraising material and communications.
- **The ability to proactively investigate**
If there has been a breach of regulatory standards, then the regulator should have the discretion to investigate regardless of whether a particular individual has made a complaint. In this context the issue is one of industry standards and of the regulator's power to provide either an adjudication, guidance or sanction that will inform subsequent behaviour, not of ensuring redress to an individual who has suffered harm.
- **Convening power**
The Fundraising Regulator should be responsible for convening on a regular basis all relevant parties (Charity Commission, OSCR, CCNI, DMA, ASA, ICO, Which?, and the merged PFRA-IoF) to ensure regulatory cooperation on fundraising issues.

- **Stronger sanctions**
The Fundraising Regulator should have a wider variety of penalties which it should apply based on clear guidelines (see section 5.6).
- **Host the Fundraising Practice Committee**
The Code of Fundraising Practice should be owned by the new Fundraising Regulator (see section 5.7).
- **Issue an annual complaints report**
The Fundraising Regulator should publish an annual complaints report, which should include an overview of the key reasons for complaint, an indication of organisations most complained about, and the outcome of adjudications.

5.6 SANCTIONS

The Fundraising Regulator should be equipped with increased powers of enforcement to demonstrate that there are consequences for breaching the rules. Stronger sanctions should provide a credible deterrent for poor practice and drive greater compliance.

An effective new regime must provide credible ways to deter and sanction breaches of the fundraising standards, in order to command the confidence of both the individuals directly affected and of the wider public.

However, the sanctions currently available to the FRSB have proved inadequate to deter misconduct and unsatisfactory for individuals who have raised a complaint.

The Fundraising Regulator should therefore be equipped with a wider range of sanctions, which it should be able to issue at its discretion depending on the gravity of the case.

In particular, the Fundraising Regulator should have the power to:

- ‘Name and shame’ the organisation and/or individuals against which there has been an adjudication.
- Order compulsory training for fundraisers who have not adhered to the rules.
- Issue an order to ‘cease and desist’, requiring the organisation to stop engaging in a certain type of fundraising for a period of time.
- Require the organisation against which it has adjudicated to take specified steps to inform its donors about the ruling.
- Require the organisation against which it has adjudicated to submit any future fundraising campaign plans for its approval (in addition,

the provision of pre-launch advice to fundraisers, on request and upon payment of a fee, would be a useful service for the regulatory body to provide).

- Make a referral to the relevant statutory regulator in cases where the fundraising malpractice indicates a governance failure or a breach of other legal requirements.

These sanctions should not be viewed in hierarchical order but would be options available to the Fundraising Regulator depending on the circumstances of each case.

The Fundraising Regulator should produce clear guidelines on the circumstances in which it would issue specific sanctions.

5.7 RESPONSIBILITY FOR THE CODE

The IoF is not a suitable organisation to host the Code of Fundraising Practice. It has failed in its stewardship of the Code to represent the public interest. The changes to the governance of its Standards Committee which it recently announced, although a step in the right direction, unlikely to restore public confidence in self-regulation.

The Review recommends that the Code is removed from the IoF and handed over to an independent standards setting committee hosted by the Fundraising Regulator.

This is to address the need for independent governance of the Code of Fundraising Practice. In the course of its consultation, the Review frequently heard the view expressed that the current set up is flawed by a conflict of interest:

- The control of the Code by the IoF presents fundraisers the opportunity to set their own rules which will be biased towards weak standards.
- It is not conducive to public trust and confidence in charities to continue to allow the profession to set its own rules.
- The recent commitment to appoint an independent chair and some independent members to the Standards Committee by the IoF, addresses some concerns but does not resolve problem caused by the fact that final decisions are made by the IoF board.

5.8 THE COMPLAINTS COMMITTEE

The Complaints Committee would become active if a formal investigation of a complaint needs to be conducted and the matter hasn’t been resolved at the first stage.

The first stage of a complaint would be to seek swift and informal resolution, by a relevant member of staff contacting the organisation complained about and dealing with the matter.

However, if it is necessary to conduct a formal investigation the Complaints Committee will rule on the matter and decide whether the Code of Fundraising Practice has been breached.

The Review recommends that there should also be an independent review procedure to allow complainants to request a review of the Committee’s ruling. However this should be limited to cases where the complainant is able to establish that there has been a substantial flaw of process, or show that additional relevant evidence is available.

5.9 FUNDING

The proposed system would be fully funded by the industry through the payment of a levy on fundraising expenditure to the Fundraising Regulator. This levy should be paid annually by any organisation that spends more than £100,000 per annum to generate donations from the public.

This information is already captured separately in the accounts charities submit to the Charity Commission and would therefore not generate an additional burden for the approximately 2,000 organisations concerned.

The levy should be applied on a sliding scale, requiring those organisations which have high fundraising expenditure (and thereby high contact volumes with donors) to contribute more to effective regulation. However, care should be taken that no organisation's – or group of organisations' – contribution is so disproportionately large that it could be seen to influence the Fundraising Regulator or have a stake in its operations.

In order for the new regulator to improve on current fundraising regulation, it will need to increase the size of its operations to deal with a higher volume of cases and take on additional responsibilities as outlined in previous sections. It will further need to build up healthy reserves to ensure its independence and the ongoing viability of its operations. The Review estimates the required annual budget to be between £2,000,000 – 2,500,000.

In order to raise this sum, the Review estimates that the approximately 2,000 organisation with a fundraising expenditure above £100,000 per annum would be required to pay a levy of around £1,300 on average. However, it is important to emphasise that we recommend a stepped levy to achieve the total sum required.

Once established, the Fundraising Regulator should consider consulting the sector on whether £100,000 is the appropriate level to start charging and where each banding should be set. It might also wish to consider charging a small administrative fee for the registration of bodies below the levy threshold.

5.10 GOVERNANCE STRUCTURE

The Fundraising Regulator should be set up as a company limited by guarantee, with no share capital.

The principle decision-making body of the Fundraising Regulator would be the Board of Directors, each member of which should be appointed by public competition, to ensure all the necessary skills and competences for the proper management of the body.

Operationally the Fundraising Regulator would be run by a Chief Executive Officer, who would be appointed by the Board and report to them. There would also be a Head of Complaints, supporting the Complaints Committee, and a Head of Standards and Compliance, supporting the Fundraising Practice Committee, who would each be members of the Board and report directly to it.

5.11 ACCOUNTABILITY

The Chair and Chief Executive of the Fundraising Regulator would be expected to appear regularly (for example on an annual basis) in front of PACAC, and report on its work.

In addition, there should be an expectation that a copy of the Fundraising Regulator's annual report and annual complaints' report are presented to Parliament.

The annual report should include key operational performance data, such as:

- Number of organisations registered.
- Number of complaints resolved, with turnaround times and the complainant's satisfaction with case handling.
- Number of complaints reviewed by the Independent Reviewer.
- Number of cases escalated to the statutory co-regulator.
- Number of cases initiated independently and/or number of sector alerts issued highlighting key risks and trends.
- Number of times information was formally exchanged with other regulators.

The annual complaints report should include reasons for the complaint and details of the organisations that have been subject to complaint and adjudication.

A further criteria for the accountability of the new regime should be provided by an independent review after three years of the Fundraising Regulator being in operation. Such a review would be an important benchmark in testing the effectiveness of the new regulatory regime and could also contribute to secure any lasting effective change.

5.12 A NEW FUNDRAISING PRACTICE COMMITTEE

A new Fundraising Practice Committee, with responsibility for the Code, should be hosted by the Fundraising Regulator.

The Fundraising Practice Committee should be responsible for setting the rules in the Code of Fundraising Practice, and updating them in light of developments in fundraising practices.

The Fundraising Regulator should adjudicate any complaint received against the rules in the Code of Fundraising Practice.

The membership of the Fundraising Practice Committee should ensure the appropriate balance of:

- Fundraising expertise
- Donor and public representation
- Legal expertise

In addition, the Review suggests that a member of the Institute of Fundraising should be given observer status on the Committee.

5.13 THE CODE OF FUNDRAISING PRACTICE

The Review has not undertaken a full systematic examination of the existing IoF Code, but it has identified some deficiencies that have been highlighted in evidence presented as part of the consultation.

In particular, the existing code is seen to be ineffective due to the following weaknesses:

- Some requirements are not reflective of existing legislation or best practice recommendations of other regulators.
- There is too much time lag between a request by the FRSB to add or tighten a rule and necessary changes made to the Code.
- Requirements are sometimes disregarded due to lack of clarity or awareness.

In the light of this, the Fundraising Regulator should review the existing Code as a matter of urgency. The Review further recommends that there should be a single code: the current co-existence of the IoF Code, the Fundraising Promise and the PFRA rule book create a confusing landscape.

The Code of Fundraising Practice should reflect the high standards which people expect from charities and other fundraising organisations. Practice codes should be aspirational but practically applicable and rely on an overarching set of ethical standards which both the industry and the general public can support. The Code should also be aligned to the principles set out in the Charity Commission's CC20 guidance.

5.14 A REGISTRATION BADGE

One of the successful elements of the current system which the Fundraising Regulator should replicate is a membership badge similar to the FRSB's 'tick' logo.

This should be displayed on the website and fundraising material of all organisations registered with the Fundraising Regulator as a sign of their commitment to the highest standards.

The Fundraising Regulator should consider the option of revoking usage of the badge if an organisation has gone above a critical mass of adjudications in any given reporting year. This will ensure that the badge remains an ongoing mark of quality and assurance to the public.

5.15 THE CREATION OF A 'FUNDRAISING PREFERENCE SERVICE'

The Review has received evidence from the public which points to frustrations about the lack of control over whether or not a person is approached for fundraising requests and lack of transparency over how their data was acquired in the first place.

At the moment there is no way to 'opt-out' of being approached by fundraisers other than contacting the organisation concerned directly and relying on their good will to unsubscribe an individual. A mechanism should exist whereby a person can quickly and easily exempt themselves from being contacted.

The Review therefore recommends that the Fundraising Regulator should be tasked with the establishment and maintenance of a 'Fundraising Preference Service' (FPS). This will allow individuals to add their name to a 'suppression list', so fundraisers have clear indication they do not wish to be contacted. Fundraisers should have a responsibility to check against the FPS before sending out a campaign. The FPS would provide the public with a 'reset button' for all fundraising communications, completely preventing the receipt of unsolicited contact by charities and other fundraising organisations.

The data file of individuals who have registered would be accessible to charities and fundraising organisations that should screen their donor listings against the suppression list. This should be done by all fundraising organisations to uphold donor confidence, and should be reflected in the Code of Fundraising Standards.

5.16 A NEW SINGLE PROFESSIONAL INSTITUTE OF FUNDRAISING

If an individual who is registered on the suppression list is contacted by a charity or fundraising organisation, the individual can complain to the Fundraising Regulator, which will investigate the complaint.

The Fundraising Regulator should work with the sector to establish clear and reasonable guidelines on what constitutes fundraising communication that is covered by the FPS. This should appropriately reflect the wishes of those people who have chosen to opt out.

The IoF and the PFRA should merge into a single professional fundraising body.

This new body should focus on promoting best practice through training and development.

Activities such as the allocation of space for street fundraising and mystery shopping, which are currently carried out by the PFRA, should be roles of the merged PFRA-IoF, as a business to business service provided to fundraisers.

The regulatory aspects of the PFRA's current work (such as acting as a repository for public complaints about street fundraising) should transfer to the Fundraising Regulator.

Alongside the allocation of public space, the merged PFRA-IoF should consider rolling out a similar service for managing door to door collections.

Once the Institute of Fundraising has sufficient territorial coverage for the allocation of door-to-door fundraising, the Review suggests that the government may want to consider whether the existing National Exemption Orders scheme needs revisiting.

5.17 RECOMMENDATIONS ON RESPONSIBILITIES OF TRUSTEES AND CEOS

The revelations and consequent negative media coverage of the past months have highlighted how fundraising is central to a charity's reputation: fundraising is one of the main public interfaces for charities, with millions of interactions between charities and donors or potential donors every year.

As such, fundraising should be regarded as a critical governance issue. One of the strong themes emerging from the responses submitted to the Review was the emphasis on the need for charities to take more responsibility internally for fundraising activities and adherence to high standards.

No regulatory system on its own will ensure compliance and therefore trustees and senior managers have to take primary responsibility. The Charity Commission already expects charity trustees to ensure that their fundraising is carried out lawfully and in a way that encourages public trust and confidence, whether such fundraising is done directly by their charity or by an intermediary. And the Review heard unanimous consensus that charity trustees and CEOs should be held ultimately responsible for ensuring that their charity acts in an ethical way in all activities, including fundraising.

Charity trustees and CEOs should have a strong governance framework in place so that they have strategic oversight of all fundraising undertaken on their behalf directly with the public or by third party agencies.

The Review therefore supports the amendment to the Charities (Protection and Social Investment) Bill which requires trustees to make a statement in their Annual Report each year setting out their approach to fundraising. This will help ensure that trustees are better informed about fundraising and able to have appropriate oversight.

The Review recommends that such statement should also include whether the charity is registered with the new Fundraising Regulator and pays the fundraising levy.

The Review further recommends that, in order to strengthen the governance framework around fundraising, trustee boards should:

- Regularly review their charity's fundraising processes and compliance with the Code of Fundraising Practice, and not simply whether targets have been met.
- Ensure regular attendance of senior fundraising staff at their meetings.
- Include fundraising activity on the risk register and manage it accordingly.
- Treat compliance with the law on consumer consent to direct marketing as a board-level issue in the context of corporate risk and consumer trust (as recommended by the Nuisance Calls Task Force Report).

Furthermore, it is important that all trustees read and are aware of the Charity Commission's guidance on 'Charities and Fundraising' (CC20), and carefully follow its guidelines when making decisions about fundraising.

RELATIONSHIP WITH AGENCIES

Where a charity uses a professional agency to raise funds on its behalf, trustees and CEOs should ensure that the relationship is based on donor experience, not simply on financial performance.

In particular, trustees should ensure that the professional agency adopts methods of fundraising that:

5.18 FURTHER RECOMMENDATIONS

- Adhere to the charity's values and ethos.
- Do not cause a negative impact on public opinion and the reputation of the charity.
- Do not risk causing donors to feel that they are being unduly pressured into donating.
- Do not risk causing the public to develop a negative perception of the charity and charities generally.

In addition, the Review recommends that charity trustees and CEOs should play a more active role in managing the relationship with fundraising agencies, by:

- Observing the activities of the agency through site visits and/or regular monitoring of calls.
- Getting involved in the agency's work by meeting fundraisers, jointly authoring materials, overseeing the training of frontline staff.
- Making it a requirement for the agency to provide a briefing and preparation session in conjunction with the charity itself before fundraisers begin any campaign.
- Ensuring the agencies contracted:
 - are members of recognised trade associations (eg. the Direct Marketing Association) and bound by their rules
 - reward their fundraisers on the basis of call quality and donor satisfaction, not simply on financial performance
 - have a Vulnerable People Policy written in accordance with industry regulators
 - are fully compliant with data protection law
 - only work with assured data which has been checked and certified by the charity
 - regularly publish their complaint rates.

DEALING WITH VULNERABLE PEOPLE

The Review supports the amendment to the Charities (Protection and Social Investment) Bill which requires charity trustees to make a statement in the Annual Report indicating what the charity has done to protect vulnerable people and other members of the public from undue pressure in their fundraising.

In addition, the Review recommends that when planning a fundraising campaign trustees and CEOs should be made aware of the needs of vulnerable individuals so that they can consider whether such a campaign is appropriate.

In particular, the Review recommends that:

- Charities should implement the DMA's guidelines for dealing with vulnerable customers in all their fundraising activities and communications.
- Compliance with the DMA's guidelines should be the object of regular review by the board of trustees or by an independent audit committee.
- Specific training should be provided to all fundraising staff (whether in house or agency) on:
 - Identifying vulnerable consumers;
 - Dealing with vulnerable consumers in a clear, respectful and understanding manner.

Furthermore, the proposed FPS will be an important tool to ensure vulnerable individuals are protected: if a person is deemed vulnerable, a family member or appointed carer will have the opportunity to ensure that person cannot be contacted by registering their status on the FPS.

DATA PROTECTION

Although outside the Terms of Reference of this Review, a key issue that has emerged both as part of the consultation and due to extensive media coverage is that of data protection and the use of data by agencies working on behalf of charities.

The practices uncovered are deeply worrying and likely to have a severe impact on levels of public trust and confidence in charities. The Review therefore thinks it is appropriate to make the following additional recommendations:

- The ICO should produce specific guidance that outlines its regulatory approach to the context of charities and fundraising. In particular such guidance should address:
 - What constitutes proper informed consent and how this relates to specific fundraising practices
 - For how long consent is 'valid', with specific reference to legacy databases
 - The ICO's enforcement approach to wrongdoing by charities in light of the stronger regulatory powers and more effective sanctions it has available.

RE-ESTABLISHING THE RELATIONSHIP WITH DONORS

Fundraising should be viewed and approached by charities not simply as a money raising mechanism, but most importantly as the way in which charities provide a conduit between their donors and the cause.

The Review therefore recommends that charities should take steps in order to put donors' interests firmly at the heart of everything they do, including their fundraising. In particular, charities should make a commitment to their donors, promising that they will review their use of supporters' personal data and adopt a system of 'opt in' only for their communications.

The Review also supports the creation of a 'Commission on the Donor Experience', with the objective to increase both funds raised and donor satisfaction by appealing to the feelings, thoughts and desires of donors as well as emphasising the needs of the charity. This Commission will consider how donors can be put at the centre of fundraising strategies, by looking at how donors view and interact with fundraisers. Ultimately the aim is to build trust and confidence in the work that charities do and how they raise money.

NEXT STEPS



NEXT STEPS

In order to ensure a smooth transition from the current regulatory arrangement to the new system proposed in this report, the Review strongly recommends that a sector summit takes place as a matter of urgency.

The summit would have the involvement of the Office for Civil Society, the Charity Commission for England & Wales (and other national statutory regulators), the FRSB, the IoF, the PFRA, and a sufficiently representative group of large and smaller fundraising charities.

The purpose of the summit would be to formalise the necessary transitional arrangements, in particular:

- Closing down of the FRSB;
- Setting up of the Fundraising Regulator;
- Transferring responsibility for the Code of Fundraising Practice from the IoF to the Fundraising Regulator;
- Transferring the regulatory powers of the PFRA to the Fundraising Regulator;
- Developing Memoranda of Understanding between the Fundraising Regulator and statutory co-regulators such as the Charity Commission;
- Agreeing a timetable for the announced merger of the IoF and the PFRA;
- Ensuring there is commitment from all relevant bodies to resource this transition;
- Acquiring the commitment from the fundraising charities present to register with the Fundraising Regulator once established.

Following this summit, the Review recommends that the Minister for Civil Society, in agreement with the sector, should make an appointment to task the setup of the new Fundraising Regulator. The individual appointed as founding chair

should have the appropriate expertise in both charity regulation and fundraising regulation.

The Review expects that the new Fundraising Regulator would be operating within six months from the launch of the present report. In the transition period, the current FRSB would continue to act as the main regulator of fundraising.

After 18 months from the launch of this report, the Review suggests an interim progress report to PACAC by the founding chair of the Fundraising Regulator.

The Review suggests the following key performance indicators for the Fundraising Regulator's report to PACAC:

- The new governance structure is in place, with a fully appointed board of directors and fully operating Complaints Committee and Fundraising Practice Committee.
- The fundraising levy has been set with relevant banding system.
- Clear Memorandums of Understanding for the co-regulatory relationship have been agreed with all identified statutory regulators.
- Responsibility for the Code of Fundraising Practice has moved to the Fundraising Regulator's Fundraising Practice Committee.
- The number of organisations registered with the Fundraising Regulator and paying the levy is sufficiently high to ensure its financial sustainability.
- The Fundraising Regulator has developed a three year strategic plan.

ANNEX

TERMS OF REFERENCE OF THE REVIEW INTO THE SELF-REGULATION OF FUNDRAISING

These terms of reference have been agreed by the Cabinet Office and the Review panel.

PURPOSE

To review the effectiveness of the current self-regulatory system for fundraising in the light of recent high-profile cases. To make recommendations and proposals to ministers, the charity sector and other bodies involved in fundraising, on the changes needed to ensure an effective system of self-regulation, which protects the interests and the confidence of the public while serving beneficiaries.

SCOPE

The Review will take the main forms of fundraising as in scope: direct mail, telephone, doorstep and textile collections. It will consider:

- The structure of self-regulation, and the relationship between standard-setting (including the Code of Fundraising Practice), enforcement and operational management.
- The operation of the self-regulatory system and the current self-regulatory bodies (Fundraising Standards Board, Public Fundraising Regulatory Association, Institute of Fundraising).
- The scope of regulation itself (who is regulated; who is not) and sanctions.
- The responsibilities of charity chief executives and trustees.
- The role of third-party fundraisers and their relationship with charities.
- The relationship between the fundraising sector and the public.

The Review will be strategic. It will not make detailed recommendations on, for instance, the content of the Code of Fundraising Practice.

REVIEW PANEL

- Sir Stuart Etherington (chair)
- Lord Leigh of Hurley
- Baroness Pitkeathley
- Lord Wallace of Saltaire

SECRETARIAT

NCVO, with Cabinet Office support.

CONSULTATION

The panel and secretariat will consult:

- Representatives of the public interest
- Consumer experts
- Parliamentarians
- The three fundraising self-regulatory bodies
- Chief executives/chairs of large fundraising charities
- Umbrella representatives of small charities
- Representatives of commercial fundraisers
- Representatives from the media
- Other self-regulatory bodies
- Academics specialising in regulation.

TIMING

The Review is expected to report by Monday 21 September 2015.

ANNEX

LIST OF BODIES AND INDIVIDUALS CONSULTED

THE ENGAGEMENT PROCESS

As part of the Review, the Panel and the chair aimed to engage with the widest possible range of stakeholders, despite the limited timeframe.

A public consultation was published on the NCVO website and was open from 28 July to 14 August. Over 120 responses were submitted, mainly from organisations (fundraising charities and agencies) but also from individual members of the public.

Three evidence sessions took place between the Panel and the FRSB, IoF and PFRA.

Two roundtables with the chief executives of the main fundraising charities were held

THE FOLLOWING REGULATORY BODIES WERE INTERVIEWED ON A ONE-TO-ONE BASIS BY THE CHAIR:

- Charity Commission
- Information Commissioner's Office
- Advertising Standards Authority
- Professional Standards Authority
- General Medical Council
- Which?

The review panel also benefitted from legal advice to support the development of its recommendations.

A full list of the bodies and individuals consulted can be seen below.

ONE-TO-ONE MEETINGS:

- Guy Parker, Advertising Standards Authority
- Christopher Graham, Information Commissioner's Office
- Sarah Atkinson and Paula Sussex, Charity Commission
- Lord Hodgson of Astley Abbots
- Baroness Barker
- Baroness Hayter of Kentish Town
- David Brindle, The Guardian
- Katherine Faulkner, Daily Mail
- Jan Tregelles, Mencap
- Lynda Thomas, Macmillan Cancer Support
- Simon Gillespie, British Heart Foundation
- Matthew Reed, Children's Society
- David Canavan, Ray Goodfellow and Michael Wood, RSPCA
- John Low, CAF
- David Bull, Unicef
- Mark Atkinson, Scope

- Jeremy Hughes, Alzheimer's UK
- Tom Wright, Age UK
- Harry Cayton, Professional Standards Authority
- James Johnson, Pell & Bales
- Ken Burnett and Giles Pegram
- James Partridge, Changing Faces
- Andrew Seagar and Lisa Johnston, Citizens' Advice Bureau
- Clare Tickell, Hanover Housing

PHONE INTERVIEWS:

- Dr Jane Collins, Marie Curie
- Heidi Travis, Sue Ryder Care
- Malcolm Hurlston, CBE, Registry Trust
- Dame Esther Rantzen, Silver Line
- Emma Boggis, Sport & Recreation Alliance
- Baroness Delyth Morgan, Breast Cancer Now
- Mike Adamson, British Red Cross
- David Nussbaum, WWF
- Niall Dickson, General Medical Council
- Cathy Elliott, UK Community Foundations
- Paul Stennett, United Kingdom Accreditation Service
- John Preston, Church of England
- Paul Brekell, Action on Hearing Loss

- Jim Clifford, Bates Wells & Braithwaite
- Vickie Hawkins, Médecins Sans Frontières
- Jacqui McKinlay, Centre for Public Scrutiny
- Loyd Grossman, Heritage Alliance

REVIEW PANEL EVIDENCE SESSIONS:

- Alistair McLean, Colin Lloyd and Andrew Hind, FRSB
- Peter Hills-Jones and Paul Stallard, PFRA
- Peter Lewis and Richard Taylor, IoF

CEO ROUNDTABLES

- Richard Leaman, Guide Dogs UK
- Tom Wright, Age UK
- Matthew Reed, Children's Society
- Mark Flannagan, Beating Bowel Cancer
- Sir Tony Hawkhead, Action for Children
- Sir Stephen Bubb, ACEVO
- Caron Bradshaw, Charity Finance Group
- Sue Killen, St. John Ambulance
- Justin Forsyth, Save the Children
- Michael Adamson, British Red Cross
- Major-General Martin Rutledge, The Soldiers' Charity
- Peter Wanless, NSPCC
- Harpal Kumar, Cancer Research UK
- Mark Goldring, Oxfam

- Loretta Minghella, Christian Aid
- David Bull, Unicef
- Dame Helen Ghosh, National Trust
- David Alexander, Action Aid
- Jan McLoughlin, PDSA
- Chris Simpkins, The Royal British Legion
- Jeremy Hughes, Alzheimers' UK
- Campbell Robb, Shelter
- Jon Sparkes, Crisis
- Susan Daniels, National Deaf Children's Society
- David McCullough, Royal Voluntary Service
- Barbara Young, Diabetes UK
- Hannah Terry, Charities Aid Foundation
- Paul Bossier, RNLI
- Paul Ward, Mind
- Mike Clarke, RSPB

CONSULTATION SUBMISSIONS

- Acevo
- ActionAid
- AGS Global Fundraising Services
- Alcohol Concern
- Alzheimer's Society
- Arthritis Research UK

- Arts Council
- Association of NHS Charities
- Asthma UK
- Barnardo's
- Battersea Dogs & Cats Home
- Blue Cross
- Breast Cancer Now
- British Heart Foundation
- British Legion
- British Red Cross
- Canal & Rivers Trust
- Cancer Research UK
- Cass Business School
- Cats Protection
- Centre for Public Scrutiny
- Charities Advisory Trust
- Charity Finance Group
- Christian Aid
- Church of England
- Clic Sargent
- Clothes Aid
- Crisis
- Diabetes UK

- Direct Marketing Association
 - Directory of Social Change
 - Dogs Trust
 - Epilepsy Action
 - Ethicall
 - Foretel
 - Friends of the Earth
 - Friends of the Earth Scotland
 - Fundraising Standards Board
 - Girlguiding
 - The Guide Dogs for the Blind Association
 - HOME Fundraising
 - Hospice UK
 - Institute of Fundraising
 - Kingston Smith LLP
 - Labour Party
 - Listen
 - Macmillan
 - Marie Curie
 - Mencap
 - Metropolitan Police Service
 - Minton Associates
 - MND Association
 - National Deaf Children's Society
 - National Trust
 - Newcastle CVS
 - nfpSynergy
 - NSPCC
 - Oxfam GB
 - Pell & Bales
 - Plan
 - RNIB
 - RNLI
 - Rogare
 - Royal Free Charity
 - RSPCA
 - Salvation Army
 - Samaritans
 - Save the Children
 - Scout Association
 - Small Charities Coalition
 - Stone King LLP
 - Textile Recycling Association
 - The Children's Trust
 - The Springboard Project
 - The Wildlife Trust for Bedfordshire,
Cambridgeshire & Northamptonshire
 - Toynbee Hall
 - Unicef UK
 - United Kingdom Accreditation Service
 - UnLtd
 - VSO International
 - Wales Council for Voluntary Action
 - Warwickshire Association of Youth Clubs
 - Water Aid
 - Which?
 - Wildlife Trusts
 - Withers LLP
 - Woodland Trust
 - World Animal Protection
 - WWF
- IN ADDITION, THE REVIEW RECEIVED SUBMISSIONS FROM:**
- 5 consultants;
 - 22 private individuals/members of the public.

ANNEX



CONSULTATION ANALYSIS

The following results are based on 119 responses to the consultation on the structure of fundraising self-regulation, which ran from 28 July to 14 August 2015 (responses were accepted until 2 September). Of the total responses, 92 (77%) were from organisations, and 27 (23%) were from individuals.

To give an accessible insight into the responses, we have categorised the most common answers to each of the questions we asked, along with their frequency.

Q1. STRENGTHS OF THE CURRENT SELF-REGULATORY SET-UP

- The input of experts is seen as very important to the setting of effective rules – although responses to Q5 show that respondents also feel this should be in conjunction with lay representation.
- Self-regulation is seen to be more flexible, adaptable and low-cost than statutory regulation.
- *‘Self-regulation allows charities to speak with an independent, collective, voice. We also welcome the clear line that self-regulation draws between the third sector and the government, which enhances the sector’s independence. It also facilitates innovation and the sharing of best practice.’*

Q2. WEAKNESSES OF CURRENT SELF-REGULATORY SET-UP

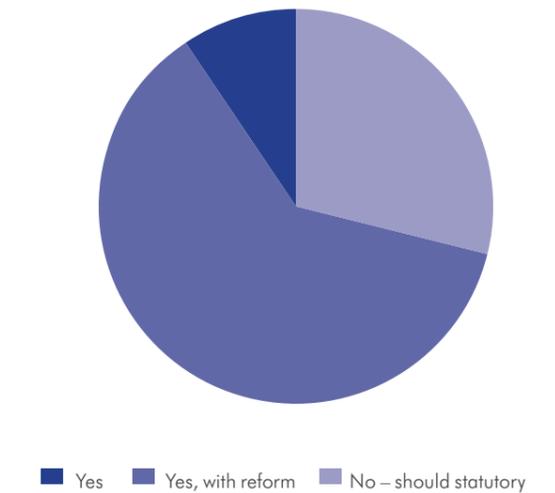
- The main weakness of the current set-up is seen to be the number of bodies involved, creating a complicated system that is difficult for the public, and fundraisers themselves, to understand.
- Optional membership means not all charities are covered. The system is perceived to be ineffectual at policing and enforcement as a result.
- Responses to Q4 below also highlight concerns that as a result of optional membership, the FRSB and IoF are perceived to be accountable to their members before the public.
- ‘The system is disjointed with no clear boundaries or remit, leading to disparity between standards. The sector is slow to

respond and change. Lack of independent scrutiny. Regulator and regulated are too closely linked. Membership programme provides funding so there is a perception that there are no consequences for non-compliance.’

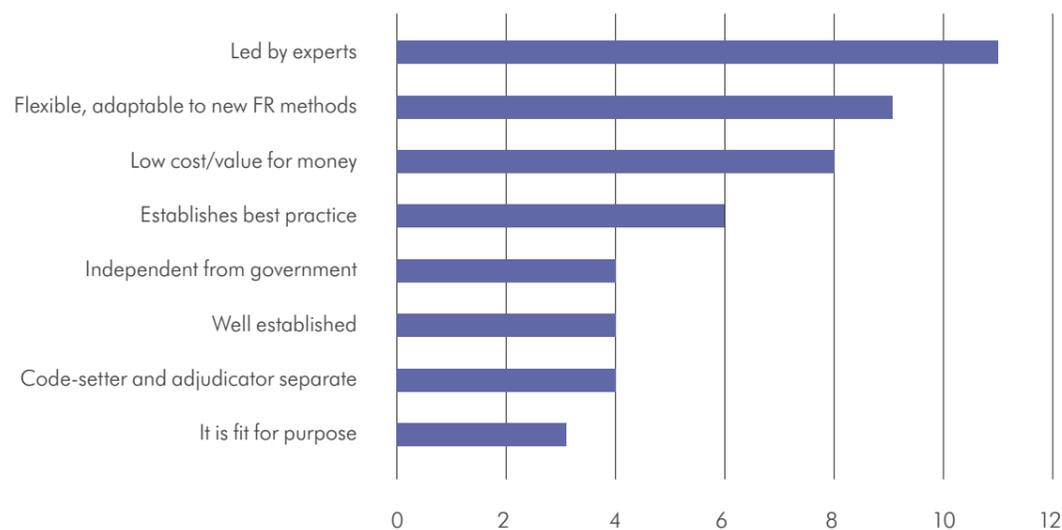
Q3. DOES SELF-REGULATION CONTINUE TO BE AN APPROPRIATE APPROACH TO REGULATING FUNDRAISING?

- 90% of respondents believe that self-regulation continues to be appropriate, provided flaws in the current system can be addressed.
- Four respondents, from a variety of backgrounds, believe that the Charity Commission or another statutory regulator should take over fundraising regulation. A further three believe that a statutory body should play a supporting role to a self-regulatory body, as it would be able to issue stricter sanctions.

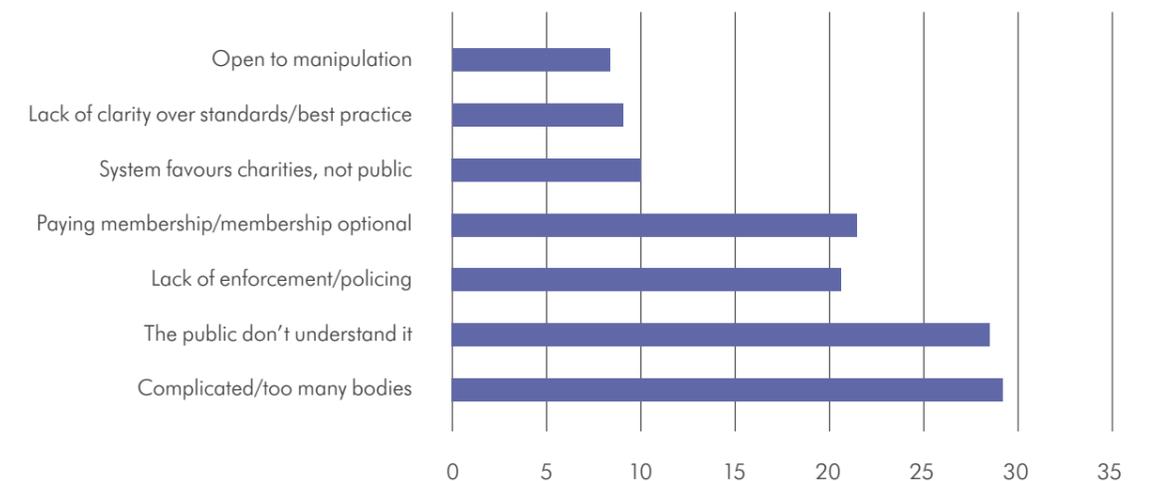
Q3. Does self-regulation continue to be an appropriate approach to regulating fundraising



Q1. Strengths of the current self-regulatory set-up



Q2. Weaknesses of the current self regulatory set-up



Q4. What are the strengths and weaknesses of current bodies?
a) Fundraising Standards Board

Strengths		Weaknesses	
Tick is clear/well known	10	Poorly resourced/inexpert/slow	18
Independent	5	Membership is optional	17
Single point of contact	3	Lacks sanctions	14
Clear complaints process	3	Focus on complaints, not standards	11
Data and reporting	2	Accountable to members before public	9
High level of membership	2	Not well known	10
Lay members	1	Secretive, opaque	7

b) Institute of Fundraising

Strengths		Weaknesses	
IoF is established among sector	11	Conflict of interest	13
Well known	8	IoF is overprotective of the Code	4
Develops best practice	6	Focused on large charities	4
Expertise	7	Code should be clearer/better known	4
High level of membership	5	Opaque adjudication system	2
Effective	5	Poorly resourced	2
		Low membership	2

c) Public Fundraising Association

Strengths		Weaknesses	
Good enforcement	6	Limited remit	5
Good relations with councils	3	Lacks independence	4
Effective	3	Not well known	3

Q4. WHAT ARE THE STRENGTHS AND WEAKNESSES OF CURRENT BODIES?
a) Fundraising Standards Board

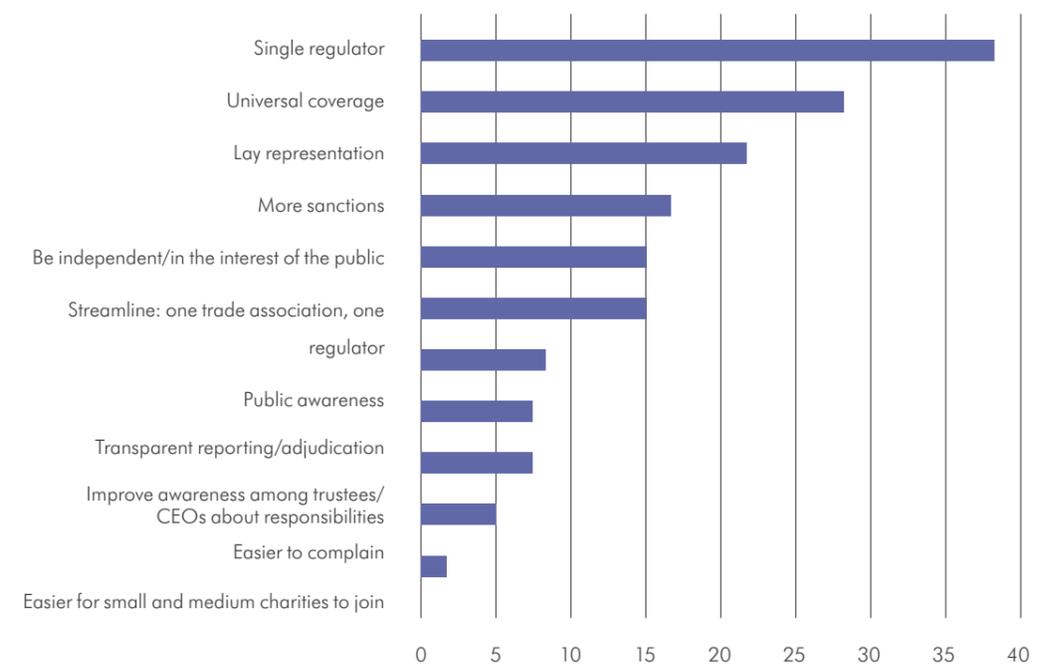
- The main weaknesses of the FRSB are seen to be its lack of resource and expertise in fundraising (particularly compared to the IoF), and the fact that the complaints system is slow.
- It is believed to lack sufficient sanctions to deal with poor practice, perhaps linked to its membership model. As one respondent said: *'The FRSB has had to attract its own membership for its survival – which diverts its attention from its role as a regulator and this model is deeply flawed – as any robust approach could lead to a rapid decline in membership.'*

- The 'Give with Confidence' tick is well known and some respondents have suggested a similar kite mark for fundraising agencies.

b) Institute of Fundraising

- The IoF is well known and respected in the sector and is seen to be effective in developing and promoting good practice.
- However, there was a clear concern that as a trade association, it sets its own code of practice: this is seen by many as a conflict of interest.
- One respondent suggested, *'There will be a continuing need for some of these organisations, such as the IoF, to act as trade'*

Q5. What changes, if any, do you believe should be made to the current self-regulatory structure?



bodies promoting and sharing best practice but without the responsibility for regulating their members.'

Q5. WHAT CHANGES, IF ANY, DO YOU BELIEVE SHOULD BE MADE TO THE CURRENT SELF-REGULATORY STRUCTURE?

- A significant proportion of respondents said that there should be a move to a single regulatory body. Many called for it to have universal coverage of all (fundraising) charities. The regulator should have more sanctions, a clear complaints process, and be clearly independent from both government and the fundraising trade association.
- 'Simplify and have two (better-known) entities only. Promote these to the public so they know where to go if they have any complaints.'

c) Public Fundraising Association

- Many respondents suggested that the IoF and the PFRA should merge or work more closely together, and that the PFRA's enforcement and mystery shopping programme should be expanded to cover telephone fundraising.
- The PFRA has made great strides over recent years to professionalise and focus on its core activity. There is some evidence that the mystery shopping and fines from the PFRA are driving up standards. The recent strategic relationship with the IoF will enable better working together.'

Q6. WHAT DO YOU CONSIDER THE MOST EFFECTIVE WAYS TO ENSURE COVERAGE OF AND COMPLIANCE WITH A SELF-REGULATORY REGIME?

- Most respondents believed that a range of proportionate sanctions, from naming and shaming to mystery shopping and banning the use of certain fundraising channels, was necessary.
- While some respondents advocated for fines for poor practice, others argued this might put the public off donating and would adversely affect beneficiaries.
- Clarity around best practice and training for trustees and fundraisers were also seen as important.
- 'The new regulatory body needs to set standards for all charities and their suppliers

to help establish a culture within the fundraising industry which effectively identifies, responds and roots out poor fundraising practice. Fines would not be possible without statutory regulation but there may be a role for statutory back up to ensure there are sanctions that can be enforced on charity trustees whose fundraisers don't uphold fundraising standards. Charities are conscious of their brand and repeated offenders should be named publically and the official endorsement of the new regulator's stamp of approval removed.'

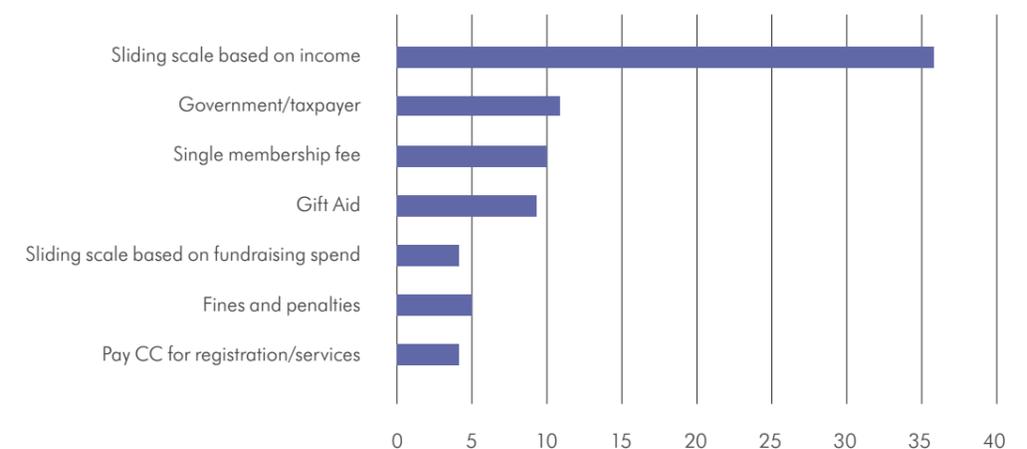
Q7. HOW COULD IT BEST BE ENSURED THAT A FUTURE SELF-REGULATORY SYSTEM IS ADEQUATELY RESOURCED?

- The most common proposal for resourcing a regulator was for charities to pay a fee based on their voluntary income (perhaps above a certain threshold – see below). 'We would recommend that all fundraising charities make

Q6. What do you consider the most effective ways to ensure coverage of and compliance with a self-regulatory regime?



Q7. How could it best be ensured that a future self-regulatory system is adequately resourced?



a contribution commensurate with their budget and income. It seems right that organisations who are operating very significant fundraising operations should take a higher burden of the cost of regulating fundraising as a whole.'

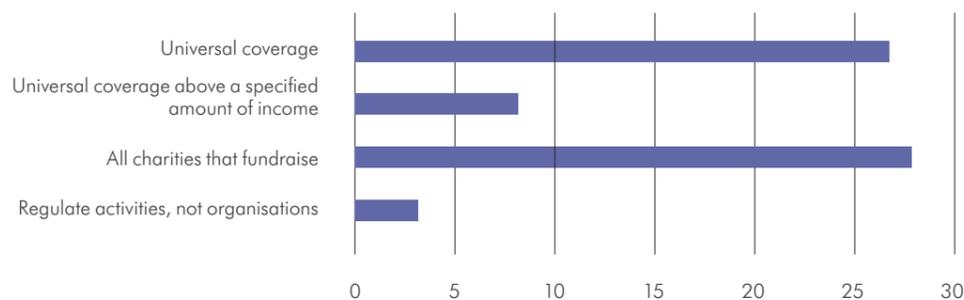
- Some respondents suggested that the regulator could be supported by an element of government funding, either to provide the initial set-up cost or as an ongoing contribution: 'Government support to supplement membership fees to ensure effective administration of the standards as suggested above.'

Q8. WHICH CHARITIES SHOULD BE COVERED BY SELF-REGULATION?

- Universality was the most popular response, either among all charities or all charities which undertake fundraising activity.
- 'All should be included albeit probably need year 1 to be free and very low levels for low brackets. May have to kick in at level statutory accounts are required. However audits should be mandatory for charities with £100m+, paid for by the charity and reported to standards council annually.'

- 'Mandatory membership of any self-regulatory needs to be phased in over several years, broadly in line with known risk profiles. I would start with the c2000 charities with gross incomes over £5m, then progressively (as the self-regulator gears up for greater volumes) down through £2m+ to £1m+. There is a case for requiring any charity that spends more than a de minimis amount (say £10k pa) on raising funds from individuals through third parties (direct (e)mail, telephone agencies etc) to register with the self-regulator.'
- 'All registered charities must comply. Levy perhaps not applied to the smallest, mainly due to the disproportionate cost of collection. The threshold needs to be calculated by those who will collect it and who can therefore cost it. Possibly a minimum of £1m voluntary and/or trading income.'

Q8. Which charities should be covered by self-regulation?



Q9. SHOULD THERE BE A THRESHOLD FOR FUNDRAISED INCOME BEFORE MEMBERSHIP OF A SELF-REGULATORY BODY IS EXPECTED? WHAT SHOULD THE THRESHOLD BE?

- There was no clear answer about who should become members of the self-regulatory body. Some respondents suggested that the burden of funding the body should fall to large charities, who are more likely to use fundraising techniques such as telephone and direct marketing, than smaller charities.
- 'Concerns about the costs of additional regulation, particularly in terms of time. The cross-sector financial sustainability review found that many organisations were having difficulties due to stretched capacity. Additional regulation could stretch that capacity still further, creating concerns for some organisations. Steps must be taken to ensure that any additional regulation is as proportionate and focused as possible, ideally using existing methods that will minimise the cost impact on charities.'

Q10. SHOULD ADDITIONAL MEASURES BE PUT IN PLACE TO MONITOR OR REGULATE OPERATIONAL FUNDRAISING AGENCIES, SUCH AS CALL CENTRES? IF SO, WHAT SHOULD THESE BE?

- Charities are seen to have ultimate responsibility for the agencies and the methods they use. However, agencies should abide by stricter guidance, ideally the same Code of Fundraising Practice, and an accreditation or licensing scheme should be considered.
- 'We suggest two important changes: making charities ultimately accountable for the work of their agencies and adherence to the IoF Codes of Practice; strengthening the audit and enforcement process of organisations like the FRSB and PFRA. Both of these changes would place additional – but appropriate – pressure on fundraising organisations to ensure their own assurance mechanisms were adequate.'

Q9. Should there be a threshold for fundraised income before membership of a self-regulatory body is expected? What should the threshold be?



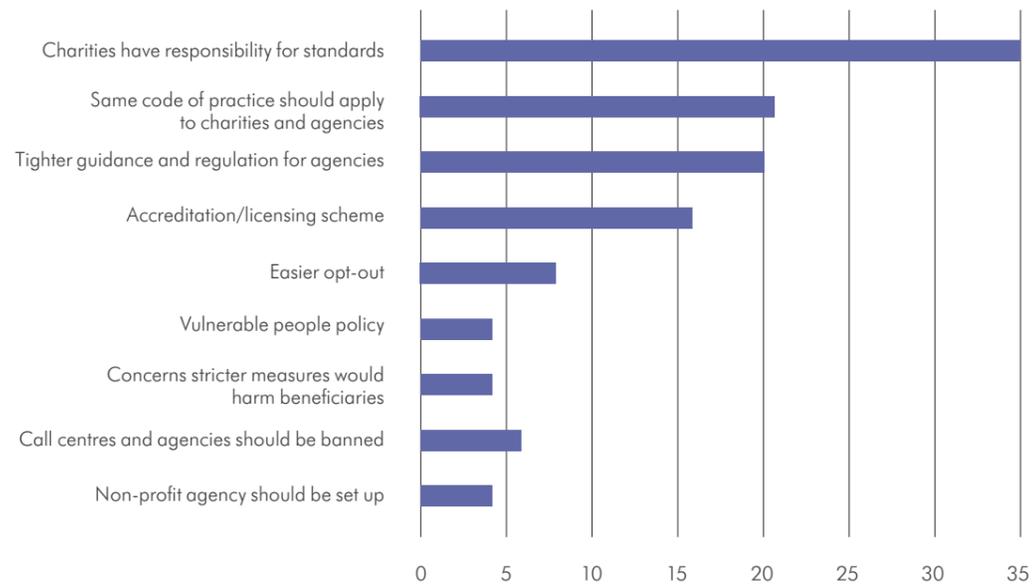
Q11. DO YOU HAVE VIEWS ON HOW TO ENSURE CHARITIES ADHERE TO HIGH STANDARDS IN PUBLIC FUNDRAISING, OTHER THAN THROUGH FORMAL REGULATORY STRUCTURES?

- Trustees should have accountability for the fundraising methods the charity uses, and awareness could be promoted through training or guidance.
- The public should have better awareness of the regulator in order to build trust and confidence.
- Thirteen respondents suggested an annual fundraising report or audit, possibly contained within the annual report, for charities to disclose the fundraising practices they use

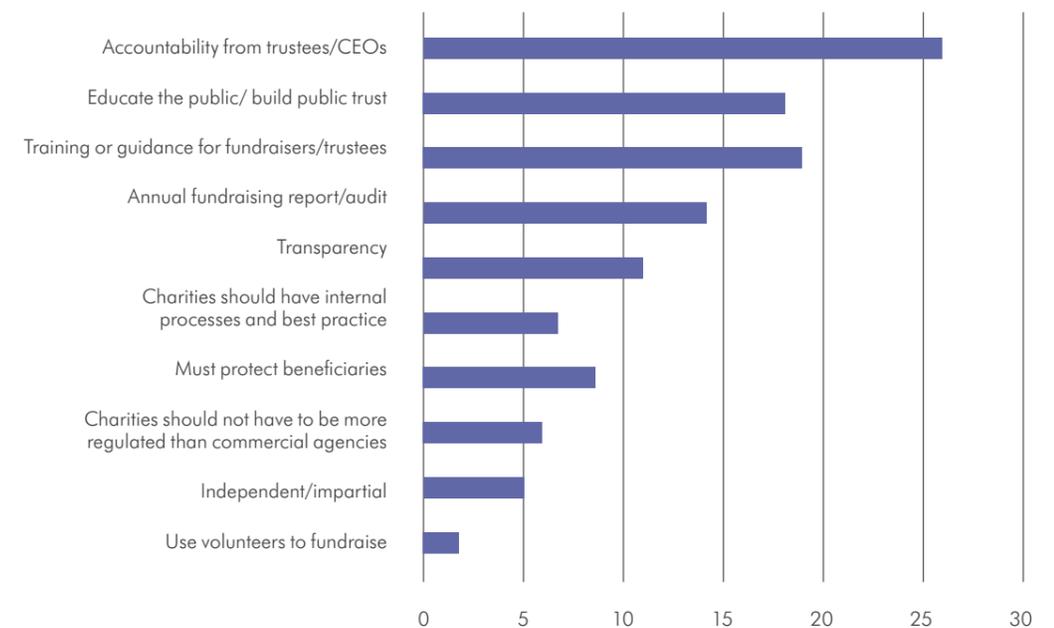
and how much money is raised through each method.

- *‘Greater levels of fundraising literacy will be important going forward as organisations balance the need to fulfil their fiduciary responsibility to maximise the returns on fundraising investment and also prevent any harassment or coercion of supporters. The government’s recommendation for fundraising plans to be published in an annual report is a largely symbolic measure but it will at least prompt trustees to ensure they are comfortable with the fundraising techniques being employed... Too often, governance bodies of charities only see the financial balance sheet without the information on what activities the financial performance was based on.’*

Q10. Should additional measures be put in place to monitor or regulate operational fundraising agencies, such as call centres? If so, what should these be?



Q11. Do you have views on how to ensure charities adhere to high standards in public fundraising, other than through formal regulatory structures?



ANNEX

NM

ANALYSIS OF SUCCESSFUL REGULATORS

Advertising Standards Authority

The Advertising Standards Authority (ASA) is the UK's independent regulator of advertising across all media.

The system is a mixture of:

- co-regulation for broadcast advertising under a contract from Ofcom, and
- self-regulation for non-broadcast advertising

FUNDING

The ASA is funded by advertisers through an arm's length arrangement that guarantees the ASA's independence:

- 0.1% levy on the cost of buying advertising space
- 0.2% levy on some direct mail

The levy is collected by the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof)

The separate funding mechanism ensures that the ASA does not know which advertisers choose to fund the system or the amount they contribute.

The levy is the only part of the system that is voluntary. Advertisers can choose to pay the levy, but they cannot choose to comply with the Advertising Codes or the ASA's rulings.

SANCTIONS

- 'Cease and desist': if an ad is ruled to be in breach of the Codes, then it must be withdrawn or amended.
- Bad publicity: the ASA's rulings are published and receive wide media attention. The ASA also lists information on non-conforming advertisers until they act in compliance with the code.

THE ADVERTISING CODES

The UK Advertising Codes are written by two industry committees:

- the Committee of Advertising Practice (CAP) writes the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing
- the Broadcast Committee of Advertising Practice (BCAP) writes the UK Code of Broadcast Advertising.

The CAPs are made up of representatives of advertisers, agencies, media owners and other industry groups, all of which are committed to upholding the highest standards in non-broadcast and broadcast advertising.

In addition an independent consumer panel, the Advertising Advisory Committee (AAC), provides a consumer perspective to the policy work undertaken by the BCAP. The AAC members are independent of the advertising industry.

The rules reflect legal requirements, but also contain additional protections to make sure that consumers are properly protected without the need for further legislation. They also demonstrate the industry's commitment to high standards.

THE ASA COUNCIL

The ASA Council is the jury that decides whether advertisements have breached the Advertising Codes. Two-thirds of the Council members are independent of the advertising and media industries

The remaining members of the Council have a professional background in the advertising or media sectors.

LEGAL BACKSTOPS

- Ofcom: in the case of persistently run ads that break the advertising rules, broadcasters risk being referred to Ofcom, which can impose fines and even withdraw their licence to broadcast.
- National Trading Standards Board: in the case of misleading or unfair non-broadcast advertising the ASA can refer the advertiser to Trading Standards for legal proceedings to be taken against them.

Office of Communications (Ofcom)

Ofcom is a statutory body established under the Communications Act 2003. Under this Act and the Broadcasting Act 1996, Ofcom is required to draw up a code for television and radio, covering standards in programmes, sponsorship and product placement in television programmes, fairness and privacy. This code must reflect the standards and objectives set out in the Communications Act, and also give effect to a number of requirements relating to European Union directives. It is a set of principles and rules, and includes practices to be followed in relation to matters of fairness and privacy.

In cases of a breach of this code, Ofcom will publish a finding on its website. When a broadcaster breaches the code deliberately, seriously or repeatedly, Ofcom may impose statutory sanctions against the broadcaster such as:

- issuing a direction not to repeat a programme or advertisement
- issuing a direction to broadcast a correction or a statement of Ofcom's findings which may be required to be in such form, and to be included in programmes at such times, as Ofcom may determine

- imposing a financial penalty
- shortening or suspending a licence (only applicable in certain cases)
- revoking a licence (not applicable to the BBC, S4C or Channel 4).

In most cases, the maximum financial penalty for commercial television or radio licensees is £250,000 or 5% of the broadcaster's 'Qualifying Revenue', whichever is the greater.

Prescription Medicines Code of Practice Authority (PMCPA)

The Prescription Medicines Code of Practice Authority (PMCPA) is the self-regulatory body that administers the Association of the British Pharmaceutical Industry's (ABPI) Code of Practice for the Pharmaceutical Industry at arm's length of the ABPI.

The PMCPA is a not-for-profit body that was established by the ABPI.

The PMCPA:

- administers the ABPI Code
- operates the complaints procedure under which the materials and activities of pharmaceutical companies are considered in relation to the requirements of the ABPI Code
- provides advice and guidance on the ABPI Code
- provides training on the ABPI Code
- arranges conciliation between pharmaceutical companies when requested to do so
- scrutinises samples of advertising and meetings to check their compliance with the ABPI Code.

THE ABPI CODE OF PRACTICE AND ROLE OF THE PMCPA

The ABPI Code sets out the requirements for the promotion of medicines for prescribing to UK health professionals and appropriate administrative staff. It also includes detailed provisions for the supply of information about prescription-only medicines to patients and the public. It reflects and extends beyond legal requirements.

The ABPI Code is administered by the PMCPA, which operates separately from the day-to-day management of the ABPI. It is drawn up in consultation with the Medicines and Healthcare Products Regulatory Agency (MHRA), the British Medical Association, the Royal Pharmaceutical Society and the Royal College of Nursing.

Compliance with the ABPI Code is a condition of membership of the ABPI and a number of pharmaceutical companies that are not members of the ABPI have agreed to comply with the ABPI Code and accept the jurisdiction of the PMCPA.

The PMCPA deals with complaints received from any source that relate to matters covered by the ABPI Code. If complaints are received about matters not covered by the ABPI Code, or about companies that do not come within the jurisdiction of the PMCPA, the complaint is referred to another appropriate regulatory system.

ADJUDICATION AND SANCTIONS

The sanctions available under the self-regulatory system are broadly similar to those routinely used by the MHRA: monetary penalties and statutory notices requiring the recipient to do or refrain from a particular behaviour.

The PMCPA has an open and public adjudication process. Comprehensive details of completed cases are published on the PMCPA's

website. Case reports are also published in the PMCPA's Code of Practice, which is widely distributed. In addition, since 2006 the PMCPA publishes brief details on ongoing complaints on its website as soon as the parties involved have been notified.

HOW THE PMCPA FITS WITH OTHER REGULATORY BODIES

In the UK, the control of medicines advertising is based on the long-established system of self-regulation supported by the statutory role of the MHRA. The MHRA administers UK law on behalf of the health ministers.

Self-regulation should be the first means of dealing with complaints. The MHRA intervenes where there is a clear case for protection or if self-regulation fails.

A Memorandum of Understanding setting out the arrangements for the regulation of the promotion of medicines for prescribing has been agreed between the PMCPA, the ABPI and the MHRA.

The MHRA and PMCPA cooperate through the Medicines Advertising Liaison Group (a forum where all the regulatory and self-regulatory bodies involved in the control of medicines advertising meet to discuss issues of current concern) and through bilateral contacts where appropriate to promote a common understanding of the advertising legislation.

General Medical Council ESTABLISHMENT

The General Medical Council (GMC) was originally established by the Medical Act 1858. It is now a registered charity. Its purpose is to uphold public safety by ensuring high standards in medicine and public trust in doctors.

Individual registration with the GMC is essential for normal medical practice (it is a prerequisite of

being able to prescribe drugs, it is necessary for NHS employment and it is necessary in order to have a valid claim in court to recover fees for private practice).

A number of the GMC's procedures require secondary legislation in order to amend. These and its decisions are shaped by case law. Appeals against GMC decisions are heard by the high court.

The GMC is independent, but it reports to parliament. It is reviewed on an annual basis by the Commons Health Committee.

The GMC is funded almost exclusively by its registrants. Doctors pay a registration fee of around £400 a year (with discounts for doctors on lower pay). Many claim this back against tax as a business expense.

The GMC board has transformed in recent years from a large body of elected doctors to a small board with a balance of medical and lay members, appointed to four-year terms through an independent process.

REGISTRANTS AND REGISTRATION

The GMC register covers around 250,000 doctors. It provides a publicly searchable online register of doctors. The register displays information about doctors' education and their fitness-to-practise history, including any restrictions on their practice.

Doctors wishing to be admitted to the register must hold a medical degree from a UK or European university or hold a medical degree from a recognised university elsewhere internationally and a pass in a test administered by the GMC.

The GMC also regulates medical schools run by UK universities, enforcing specified standards.

The GMC has recently moved to a system of revalidation, whereby doctors are required to demonstrate that their skills are up to date and they are fit to practise. Previously, doctors remained registered indefinitely provided no decisions to the contrary were taken against them. Doctors now submit, every five years, a portfolio of evidence and appraisals to a senior medic, who approves their continued registration.

GUIDANCE AND ENFORCEMENT

The GMC sets standards for medical practice. The GMC can take action against doctors falling short of these standards. It takes complaints from healthcare providers, the public and statutory bodies, and can initiate its own investigations. It has extensive legal powers to require evidence relating to its investigations. Its powers of sanction extend from letters of advice to warnings, suspensions or removal from the register. It issues sanctions in the pursuit of protecting the public, rather than punishing doctors.

More severe sanctions are only issued following hearings before an independent panel.

The GMC has recently set up a new body to administer these hearings, the Medical Practitioners Tribunal Service (MPTS), following concerns that investigation and adjudication were insufficiently distant from each other. While funded by the GMC, the MPTS is separate and directly accountable to parliament. It acts as a courts service, in contrast to the GMC's prosecution service role.

As part of a recent programme of reforms, the GMC has endeavoured to move towards less adversarial fitness-to-practise procedures, in order to make the process quicker, cheaper and less distressing for doctors and patients. This has entailed the option of holding private meetings with doctors and agreeing suitable sanctions, rather than adversarial public hearings, and was hence subject to criticism from the media that decisions were made behind closed doors.

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