

REGULATING FUNDRAISING FOR THE FUTURE

Trust in charities, confidence in fundraising regulation

September 2015

About the review

A cross party review, appointed by the Minister for Civil Society.

Chaired by Sir Stuart Etherington

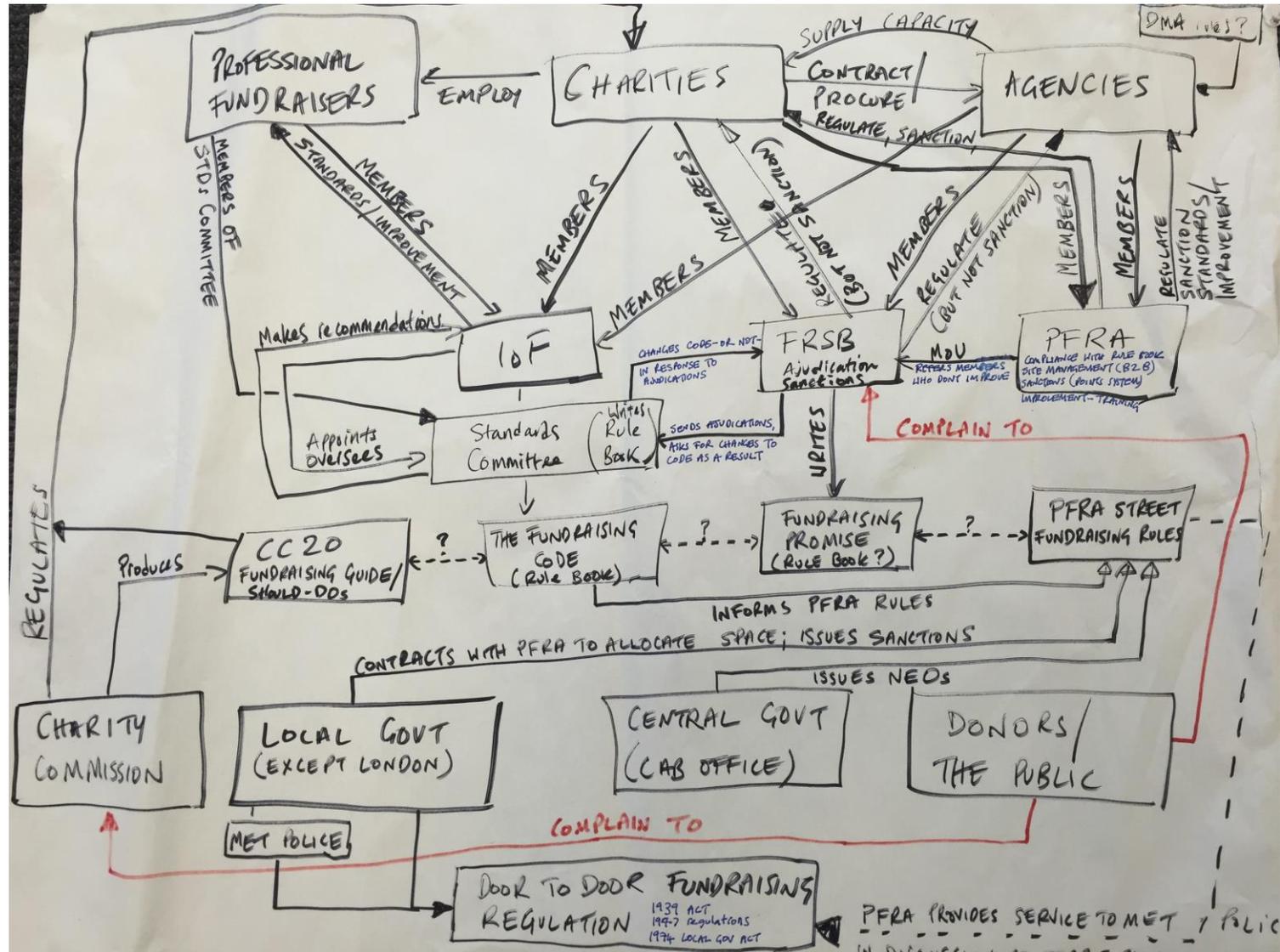
Charged with reviewing how fundraising is regulated and recommending what changes are needed to retain and rebuild public trust.

The review took evidence from 28 July onwards and reported to the Minister on 21 September 2015.

Purpose

- To assess the effectiveness of the current system
- To review the scope of regulation and the sanctions available.
- To review the responsibilities of charity trustees and chief executives.
- To consider the role of third-party fundraisers and their relationship with charities.
- To make recommendations on changes that might be needed to retain and rebuild the confidence of the public, whilst serving beneficiaries.

The current system



What did that tell us?

The system is unnecessarily complex.

- Functions and responsibilities overlap and are diffused across too many bodies.
- There is a lack of separation between regulation and compliance.
- A change in the structure of regulation is necessary.

The existing bodies

The Fundraising Standard's Board (FRSB)

- It is the primary self-regulator of fundraising.
- 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 Institute of Fundraising (IoF)

- It 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.

The Public Fundraising Association (PFRA)

- It operates a booking system for local authorities to allocate public space to street fundraisers.
- It also provides mystery shopping and training.
- It has its own code of practice, adjudication system and sanctions.

Review Consultation

- An online consultation ran from 28 July to 14 August 2015. We received 119 submissions: 92 (77%) from organisations, 27 (23%) from individuals.
- Two round tables with a total of over 30 CEOs from some of the largest fundraising charities.
- Detailed evidence sessions with FRSB, IoF and PFRA.
- Face to face meetings and phone calls with key stakeholders, and other industry regulators (eg. ASA, Which, GMC, Professional Standards Association).

Key issues

The FRSB does not command the confidence of the public nor the charity sector.

- Its membership structure is an inherent weakness.
- It is financially dependent of those it is intended to regulate.
- The sanctions currently available to the FRSB are insufficient.

The IoF is not a suitable organisation to host the Code of Fundraising Practice.

- It has failed to appropriately represent the public interest and protect confidence in self-regulation or charities more widely.
- It remains open to accusations of a conflict of interest and bias: the control of the Code by the IoF presents fundraisers the opportunity to set their own rules.

The PFRA adds to the confusing landscape of self-regulation by duplicating functions.

- It operates its own sanctions regime for street fundraising without involving the FRSB, thereby undermining its position as the fundraising regulator.
- It has a wider set of sanctions available than the FRSB which makes the latter seem weak.

Key conclusions

The current approach to self-regulation is no longer fit for purpose.

- It has been insufficiently effective at protecting public trust and confidence in charities.
- It has lost the confidence of the sector.

The system is burdened by poor relationships and lack of communication between the FRSB, IoF and PFRA.

There is a need to re-connect charitable values with fundraising practice.

- Trustees and senior management have too often been absent from discussions on fundraising and need to establish more effective oversight.

Self-regulation continues to be the most appropriate mechanism for the regulation of fundraising.

- There is little appetite for state regulation of fundraising.
- Self-regulation continues to be seen as more flexible, responsive and effective.

Self-regulation needs to be strengthened and made more effective.

A regulatory model for the future

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

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

The new model of fundraising regulation should be structured on the 'Principles of Good Regulation':

- ***Proportionality***
- ***Accountability***
- ***Consistency***
- ***Transparency***
- ***Targeting***

Three lines of defence

Trustees

Trustees are the first line of accountability for the charity's fundraising activities.

The Fundraising regulator

The Fundraising Regulator has the power to intervene if malpractice occurs.

Statutory backstop

The relevant statutory regulator acts as the 'backstop' in cases that raise regulatory concerns on issues that fall within their remit and powers.

Recommendations

- 1. The abolition of the FRSB and the establishment of a new Fundraising Regulator**, with universal remit to adjudicate all fundraising complaints and stronger sanctions for non-compliance.
- 2. A strong co-regulatory relationship with the relevant statutory regulator**, which should act as an additional 'backstop' in cases that raise their regulatory concerns.
- 3. A single Code of Fundraising Practice**, incorporating all existing rules and aligned with the Charity Commission's guidance on charities and fundraising (CC20).
- 4. The speedy merger of the IoF and PFRA into a single professional association**, which should focus on training and promoting good practice.
- 5. The creation of a 'Fundraising Preference Service'**.

The Fundraising Regulator

1. Powers and functions

- **Universal remit:** power to adjudicate over all fundraising activities, regardless of whether the organisation has registered.
- **Ability to pro-actively investigate,** regardless of whether a complaint has been made.
- **Convening power** of all relevant bodies to ensure regulatory co-operation.
- **Stronger sanctions,** beyond

‘naming and shaming’ and including ‘cease and desist’ orders, compulsory training, etc.

- **Responsibility for the Code of Fundraising Practice.** The Fundraising Regulator would host a new Fundraising Practice Committee, responsible for the Code. The Committee would have a balance of fundraising expertise and public representation.

2. **Funded by a levy on fundraising expenditure** to be paid annually by any organisation that spends more than £100,000 per annum on fundraising.

3. **Accountable to PACAC** with an expectation that a copy of the Fundraising Regulator’s annual report and annual complaints’ report are presented to Parliament.

Responsibilities of trustees and CEOs

Charity trustees should ensure that their fundraising is carried out lawfully and in a way that encourages public trust and confidence. As one of the main public interfaces for charities, fundraising is central to a charity's reputation and as such should be regarded as a critical governance issue.

All trustees should read and be aware of the Charity Commission's guidance on 'Charities and Fundraising' (CC20).

Trustees should:

- Make a statement in their Annual Report setting out their approach to fundraising.
- Declare if their charity is registered with the Fundraising Regulator and pays the levy.
- Regularly review their charity's fundraising processes and compliance with the Code of Practice.
- Include fundraising on their risk register and manage it accordingly.

Fundraising Preference Service

Why?

People want:

- More control over whether they are approached for fundraising requests.
- An easy way to remove themselves from communications about fundraising.

What it is?

A mechanism for people to opt out of all fundraising communications.

How would it work?

- Set up as a website similar to the Mailing Preference Service.
- People register their details.
- Charities check the list before contacting people with fundraising requests.

Further recommendations

Relationship with agencies

Trustees are ultimately responsible, whether fundraising is done directly by their charity or by a professional agency on their charity's behalf.

Vulnerable people

Trustees should make a statement in their Annual Report indicating what their charity has done to protect vulnerable people and other members of the public from undue pressure in their fundraising.

Data Protection

The ICO should produce specific guidance for charities and fundraising.

- What is consent?
- How long is consent valid?
- What are the sanctions?

Re-establishing the relationship with donors

Charities should move towards adopting a system of 'opt in' only in their communications.

Next Steps

A sector summit

Purpose: to discuss practical implementation of the recommendations and transitional arrangements.

Key stakeholders: Office for Civil Society, Charity Commission for England & Wales (and other national statutory co-regulators), FRSB, IoF, PFRA, large fundraising charities.

Reviews

18 months from the publication of the Review's recommendations: **interim progress report to PACAC** by the founding chair of the Fundraising Regulator.

3 years from the establishment of the Fundraising Regulator: **independent review** of the effectiveness of new system.

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