



Consultation on changes to the Code of Fundraising Practice

Response from The Independent Fundraising Standards & Adjudication Panel for Scotland ('the Panel')

Background

The Panel was established in December 2016 for the purposes of overseeing the enhanced system of self-regulation of fundraising by charities registered in Scotland. The Panel's main functions are to:

- to oversee fundraising standards in Scotland; and
- to oversee fundraising complaints made about Scottish charities.

The Panel, in conjunction with the Scottish Charity Regulator (OSCR), the Scottish Council for Voluntary Organisations (SCVO), the Institute of Fundraising (IoF) and the Fundraising Regulator, organised events in Scotland on the subject of the proposed changes within the consultation. The aim of these events was to give those within the sector an opportunity to find out more about the changes and, encourage the Scottish sector to provide formal responses to the consultation.

While this response is from the Panel, we have also taken this opportunity to highlight key themes identified throughout the consultations events.

The Panel welcome this opportunity to comment on the Fundraising Regulator's consultation. If you have any questions about our response, please contact Gillian Mackay, Secretariat to the Panel on fundraisingsecretariat@outlook.com.

Nature of the Scottish charity sector

The shape of the charity sector in Scotland varies greatly from that in England and Wales: approximately half of the charities in Scotland, excluding cross border charities, have an annual income of less than £25,000 and within that nearly three-quarters have an income of less than £10,000. Furthermore, approximately two-thirds of Scottish only registered charities are run solely by volunteers.

Consultation Response

We consider that the Code needs to be accessible for two main audiences: charity trustees, their employees and volunteers who need to know and understand the legal requirements and their responsibilities; and members of the public such as donors and beneficiaries who should have an expectation of how they will be treated and feel confident in challenging fundraising practices that don't meet with the requirements of the Code.

In order to achieve this, we feel the Code itself needs to be fluid and as straightforward as possible in conveying the relevant information. Keeping this in mind at the consultation events, we were keen to understand whether charities thought the Code had already achieved this and, if not, whether they had suggestions to improve it.

At all of the events, we received feedback that the Code doesn't really work in its current format and there are several reasons for this. It is clear that charities find the Code too lengthy and are put off by this: fundraisers find it difficult to encourage their charity trustees to read the Code and develop a clear understanding of their roles and responsibilities in line with it. They also consider that the Code is quite repetitive throughout due to the crossover in sections which also further lengthens the document.

Most people find the use of MUST* / MUST confusing, particularly when trying to identify legal requirements, and often find they have to re-read the same information several times to fully understand what's being communicated. There is also confusion surrounding the varying legal requirements throughout the different geographical areas and there was uncertainty at the consultation events regarding a number of the proposed changes, and which of these applied in Scotland, if any. Charity trustees of cross-border charities find not only the Code but the whole fundraising landscape difficult to navigate.

Taking these points into consideration, we believe the following suggestions would improve the Code:

1. A brief or simplified version of the Code with toolkits and checklists would be extremely helpful for smaller charities as well as donors and beneficiaries. This would give them the basic need-to-know information which could then link through to the full guidance and legal appendices for further detail.
2. Reduction of repetition by restructuring the document and making it more adaptable to change in the future. This would hopefully reduce the length of the document while, at the same time, making it more fluid and accessible.
3. Event specific guidance would be well received within the sector. We've received many comments from fundraisers and charity trustees who, for example, want to run a coffee morning or a raffle and they'd find it very helpful to be able to find all relevant details in one place, perhaps including a checklist, that could be used as a step-by-step guide.
4. Amending MUST* and MUST to, for example, MUST and SHOULD or perhaps MUST and OUGHT would immediately make the document more straightforward.
5. Splitting the Code up by geographical location would help in making it more manageable and accessible for everyone, and would prevent confusion around responsibilities and legal requirements.

6. More guidance and information specifically for charity trustees of cross-border charities would be welcomed to help them understand their responsibilities. This could perhaps be a brief version of the Code specifically for these types of charities.

As noted above, we received feedback that there is confusion surrounding the varying legal requirements throughout the three nations. We have provided some examples for context:

7. Professional fundraiser - the definition of 'professional fundraiser' differs between the legislation in Scotland and that in England and Wales. It was highlighted at several of the consultation events that within the consultation document itself, it suggests that the requirements would be extended to all fundraisers, regardless of whether they fall within the definition of a professional fundraiser. We consider it extremely important that this is clarified.
8. Solicitation statements – the requirements under Scottish legislation were not included within Part C of the consultation document despite there being differences to that of England and Wales, and Northern Ireland. We received comments at the consultation events that fundraisers were concerned about the proposed changes including how prescriptive this could become. They would welcome proposed wording that could be used and that would meet with the legal requirements of their nation, while not being restricted to this and potentially discouraging donors who could potentially hear the same speech from a variety of charities and lead them to be cautious about giving. There were also questions surrounding how this would work in practice when a donor approaches the fundraiser and makes a donation, unsolicited.
9. Third parties – there are legislative differences between Scotland and England and Wales, particularly since the Charities (Protection and Social Investment) Act 2016 was introduced and aspects of this were incorporated into the Code. The proposals within Part G appear to be designed for large charities and there are no proposed proportionate measures for small and medium sized charities. It is likely that even large charities will find these requirements difficult to attain, never mind voluntary-led, small charities who simply seek advice from a freelance fundraiser or friend.

We note the intention to include both the Charity Commission and OSCR's guidance for charity trustees within the Code. As noted above, there was confusion at the consultation events regarding which of the proposed changes within the consultation applied in Scotland. Specifically at Part A of the consultation, with the addition of sections from the Charity Commission for England and Wales' CC20 guidance for trustees led to a number of questions. Most queried whether the changes also applied in Scotland and, if not, whether OSCR would be taking a similar approach which in turn raised a number of concerns surrounding proportionality for small charities.

Although we consider it helpful to provide links to these pieces of guidance within the Code to underpin the relationship between trustee duties and fundraising, it's

obvious that charities want the Code to be clear, concise and accessible. Adding in these pieces of non-statutory guidance will potentially complicate the document further given the fundamental legislative differences between the two.

Some other areas that were highlighted throughout the consultation events related to Part B and Part E of the consultation paper. Almost all attendees considered that there was not enough guidance around either of these parts, specifically what constitutes an 'ask' and how to define and identify vulnerability, and they often felt that it was important that these two sections be read in tandem given the significant crossover. It is hugely important that charities recruit emotionally intelligent fundraisers who can understand, and be sensitive to, an individual's vulnerability, regardless of what that is. The Code is so specific in its guidance and it is not simply a case of limiting the number of 'asks' because in some cases no 'asks' would be appropriate. What is important is that fundraisers know that everyone is vulnerable to pressure and it's imperative that they do not exploit this.

Conclusion

It is important to us that the Scottish charity sector's views are not only represented in the consultation response but that the Code itself works in practice for Scottish charities. We therefore welcome the opportunity to work with the Fundraising Regulator going forward to develop the Code and any appropriate guidance.