

Consultation on the Code of Fundraising Practice - February 2018

Introduction

This consultation paper explains the first of the consultations that the Fundraising Regulator held in 2018. We anticipate a busy year of engagement with the charitable fundraising sector and the public at large.

As always, we welcome the views of all those who use or are affected by changes to the Code of Fundraising Practice. We are committed to continued engagement through consultation to check our assumptions and inform any changes we make to fundraising standards and practice.

This document contains both the consultation context, the proposed amendments and then the consultation summaries with the final amendments agreed by the Fundraising Regulators Board for each part of the conversation

About this consultation

This consultation was formed of three parts.

Parts A and B dealt with specific issues in the current wording or inclusion of rules within Code of Fundraising Practice that have been raised by stakeholders or identified following our regulatory work over the previous 18 months since our launch.

Part C concerning online fundraising platforms introduced new rules to the code where the existing rules do not cover adequately a popular and growing fundraising method.

Parts A and B were classed as Category 3 consultations within our published consultation process and Part C is a Category 2. You can read the full “Guide to our Consultation Process” on our website.

Part A – Complaints Handling

The context for this consultation

Our complaints and casework function has now been operational for over a year. We are considering areas of the Code of Fundraising Practice that might be usefully reviewed based on our casework evidence, feedback from charities and difficulties encountered by the Casework Team when making casework decisions about complaints handling from members of the public.

The Fundraising Regulator considers that the tone used in the rules contained in 1.6 of the Code is subjective and could be viewed as emotive. This is unhelpful in certain cases where the charity in question views that if found in breach of this rule it is a further judgement and comment about the general practices of the charity beyond the specific case or its handling.

We use this section of the Code when we do not consider that charities have responded in full or promptly to a complaint. In doing so, we have found that organisations feel that, when identifying that they have breached of this section of the Code, we are by implication stating that they may have intentionally not been open or honest when responding to complaints. This is unlikely to be the case and it is also not likely to be the intention of the Fundraising Regulator to imply this.

Previous rules:

1.6 Complaints and concerns

- a) Organisations **MUST** have a complaints procedure which **MUST** also apply to any Third Parties fundraising on their behalf.
- b) Organisations **MUST** respond to any complaints from donors, beneficiaries or other parties in a timely, respectful, open and honest way.
- c) Organisations **MUST** ensure that the learnings from any complaints are acted upon.

The purpose of this consultation

We propose to remove the wording '*timely, respectful, open and honest*' and instead be more specific about what we mean by those terms.

The Fundraising Regulator considers that the proposed wording makes clearer what we expect of organisations when they consider, investigate and respond to complaints and removes the unhelpful and emotive implication that when not responding to complaints fully, organisations have been intentionally dishonest.

Proposed revised wording (amendments in *italics*, deletions are struckthrough):

1.6 Complaints and concerns

a) Organisations **MUST** have a clear and publically available complaints procedure which **MUST** also apply to any Third Parties fundraising on their behalf.

b) When dealing with complaints organisations **MUST** ensure that:

i) complaints are investigated thoroughly and objectively to establish the facts of the case, avoiding undue delay; and

ii) complaints are responded to fairly, proportionately and appropriately.

c) Organisations **MUST** regularly review any lessons to be learnt from complaints and use that learning to inform future fundraising activity.

Consultation questions on Part A

1. Does the proposed revised wording for the rules contained in 1.6 of the Code explain what is required of organisations regarding complaints?

Yes / No (If no, please explain your reasoning)

2. Are there any other comments you wish to make on the proposed revised wording?

Summary of Consultation Responses and amendments to PART A

Part A of the consultation on Complaints Handling closed on the 28th February 2018.

Following respondents comments there were minor revisions to the proposed amendments regarding Part A – Complaints Handling to add reference to the Fundraising Regulator guidance on complaints handling

The following outlines responses received to the consultation questions and final revisions to the Code. The changes outlined in this paper were approved by the Fundraising Regulator’s Board.

Responses Summary

A strong, positive response was given to the proposed wording of rule 1.6.

- 40 responses received
- 80% of respondents supported the wording for 1.6 of the code

Comments raised mostly covering the following points:

- Objectivity is difficult to achieve on the part of the organisation concerned and in some cases respondents felt that the proposed change implies that an external reviewer needs to be engaged to investigate complaints.
- Further guidance on what is expected would be welcome.

Comments on the responses to consultation

On the basis of responses received, the Fundraising Regulator was content that the proposed wording as it stands reflects the views of the significant majority of respondents. The accompanying ‘Complaints Handling Guidance’ from the Regulator will give further clarity on this subject.

Final Amendments

The changes on complaints handling were made to the Code of Fundraising as of 8th May 2018 and came into immediate effect.

1.6 Complaints

- a) Organisations **MUST** have a clear and publicly available complaints procedure which **MUST** also apply to any Third Parties fundraising on their behalf.
- b) When dealing with complaints organisations **MUST** ensure that:
 - i) complaints are investigated thoroughly and objectively to establish the facts of the case, avoiding undue delay; and
 - ii) complaints are responded to fairly, proportionately and appropriately.
- c) Organisations **MUST** regularly review any lessons to be learnt from complaints and use that learning to inform future fundraising activity.

The following commentary was added to the Code below **1.6 d)** to signpost readers to the new supporting ‘Complaints Handling Guidance’.

“Further information and guidance on Complaint Handling from the Fundraising Regulator can be found [here](#)”

Part B – TPS compliance auditing

The context for this consultation

Rule 8.2.3 of the Code previously required telephone fundraising agencies making calls on behalf of a Charity to have a TPS assured accreditation or to have begun the process.

Although TPS assured is certainly one way to demonstrate compliance with a recognised accreditation, it is not the only way that compliance can be achieved in this regard.

The Fundraising Regulator has received comments from smaller organisations that the current rule imposes resource demands upon them that they view as disproportionate to the size of the organisation and scale of the fundraising activity that they carry out.

Where auditing compliance is the key requirement for this rule, if organisations can achieve this via more cost effective or less resource demanding methods, they should not be obliged by the code to achieve this by the TPS assured accreditation alone.

Previous Rule:

8.2.3 The Telephone Preference Service

The Telephone Preference Service (TPS) and Corporate Telephone Preference Service (CTPS) allows individuals or companies to register their telephone numbers to indicate that they do not wish to receive unsolicited sales and marketing telephone calls...

...d) Telephone fundraising agencies carrying out fundraising calls on behalf of a charity **MUST** have an up to date TPS Assured certification or be in the process of applying.

The purpose of this consultation

The Fundraising Regulator proposed the removal of rule 8.2.3. Allowing organisations discretion in how they audit compliance with legal requirements regarding TPS.

Our proposal was that rather than a rule, the TPS assured accreditation should be signposted in the introduction to this section instead. This will enable organisations to be aware of this specific TPS compliance auditing service, but not mandate them to use it.

Proposed revised wording of the introduction to TPS (amendments in *italics* deletions are ~~struckthrough~~):

8.2.3 The Telephone Preference Service

The Telephone Preference Service (TPS) and Corporate Telephone Preference Service (CTPS) allows individuals or companies to register their telephone numbers to indicate that they do not wish to receive unsolicited sales and marketing telephone calls.

It is important that organisations take steps to audit their compliance with the legal requirements regarding TPS. TPS Assured is a recognised accreditation scheme that organisations can use to demonstrate their compliance...

~~... d) Telephone fundraising agencies carrying out fundraising calls on behalf of a charity **MUST** have an up to date TPS Assured certification or be in the process of applying.~~

Consultation questions on Part B

1. Do you agree that the Code of Fundraising Practice should not mandate the use of the TPS assured accreditation scheme for all organisations and therefore remove rule 8.2.3?

Yes / No (If no, please explain your reasoning)

2. Do you agree that the proposed additional wording in the introduction to 8.2.3 draws sufficient attention to the need for organisations to audit compliance with TPS?

Yes / No (If no, please explain your reasoning)

3. Are there any other comments you wish to make on the proposed revised wording?

Summary of Consultation Responses and amendments to PART B

Part B of the consultation on TPS Compliance closed on the 28th February 2018.

Following respondents' comments there were revisions to the proposed amendments. We also created guidance organisations who fundraise through live telephone calls.

This paper is a summary of responses to the Consultation and final revisions to the Code. The changes in this paper were approved by the Fundraising Regulator's Board.

Responses Summary

- A strong response was given to the proposal not to mandate the use of the TPS Assured Accreditation Scheme (83% of 41 responses)
- The wording proposed received a lower level of agreement (63%)
- Comment focussed on:
 - The need for a rule rather than commentary on the legal requirements.
 - The request for Guidance to replace the accreditation scheme requirement.
 - The fact that it is not only agencies who need to comply with TPS requirements.
 - The need to highlight the distinction between live and automated calls.

Comments on the responses to consultation

The Fundraising Regulator acknowledges the need for a rule to reflect the legal requirements and supporting guidance rather than commentary. The final changes approved by the Board reflect these responses to the consultation.

Final Amendments

The changes were made to Code of Fundraising as of 8th May 2018 and came into immediate effect. The wording for rule **8.2.3 d)** was amended in the Code as follows:

***8.2.3 d)** Organisations carrying out live fundraising telephone calls **MUST** be able to evidence their compliance with legal requirements regarding the Telephone Preference Service.*

The following commentary will be added to the Code below **8.2.3 d)** to signpost readers to the new supporting TPS compliance guidance.

*Guidance can be found in the Fundraising Regulator's **Quick Guide to TPS Compliance**. Consent is required for automated calls, see rule **8.2.2 b)**.*

Part C - Fundraising Platforms

The context for this consultation

There has been a rapid increase over the last few years in the popularity of on-line giving platforms and crowdfunding for fundraising, particularly where charities or individuals want to raise money quickly, whether as a response to an emergency to help individuals in need or for a charity for general purposes or for a specified project.

Many charities use giving platforms as part of their overall approach to fundraising to direct supporters from their website to a fundraising platform if they wish to donate to their causes.

Individuals wanting to raise funds for a cause, will often use a crowdfunding approach, sometimes tied to an event they are taking part in like the London Marathon where the end beneficiary will usually be a charity, but with increasing popularity may be a more localised cause of personal connection (e.g supporting medical costs)

It is very simple for an individual or charity to register and set up an account. Most giving platforms have some form of identity checking and anti-fraud processes in place.

Currently the code does not have any rules specifically for this popular and increasing method of fundraising. There several considerations for the Fundraising Regulator regarding the use of online platforms and the organisations that run them:

- Public trust and confidence – the use of fundraising platforms is specifically designed to enable connecting the public to connect with charitable causes. The public need to have confidence in both those who are asking them to donate and in the platform being used that they are legitimate if they are to give.
- Wider public trust– with confidence in fundraising practices being brought sharply into focus over the last few years, all methods used need to ensure that they contribute positively to the way fundraising is viewed by the public.
- Guidance from platform providers – Members of the public choosing to use online giving platforms need to understand the mechanism fully and currently the guidance from providers lacks consistency for both those who set up a page and those who donate via it.
- Transparency to the public – there has been a particular focus in the media and parliament about the fees and charges made by fundraising platform providers. The Fundraising Regulator does not have a remit in dictating how a commercial supplier operates its payment arrangements, those arrangements do need to be clear for all parties involved in a donation transaction. Information given to users of fundraising platforms, is currently inconsistent across different providers.

The purpose of this consultation

The Fundraising Regulator added rules regarding online fundraising platforms to the Code of Fundraising Practice under section 9 Digital Media. We proposed the following rules as worded are added to the code.

We proposed to add the following to section 9.0 of the Code of Fundraising practice (Digital Media)

9.3 Online Fundraising platforms

For the purpose of this Code, **online fundraising platforms** are websites or applications operated by commercial companies, not-for-profit organisations or by charities themselves which host charitable fundraising campaigns by individuals or organisations. They enable donors to give to charitable causes using their computers, smartphones and other electronic devices, and via their credit cards, debit cards or digital wallets (devices that allow an individual to make electronic transactions, such as Paypal).

Alongside the rules below, Fundraising Platforms should particularly refer to the following sections of the Code:

Section 4: Third parties for considerations relating to agencies providing fundraising services.

Section 5: Personal Information and Fundraising for considerations relating to data protection.

Section 12: Corporate Partners for considerations relating to Commercial Participator relationships and providing hosting services to fundraising organisations.

Section 20: Handling Donations for considerations relating to card transactions.

Remuneration for hosting a fundraising campaign

9.3.1 Where a Fundraising Platform receives a proportion of the donation or gift aid as remuneration for hosting a fundraising campaign, the organisation **MUST** ensure that the following details are clearly visible to individuals donating through their site and displayed before the point at which financial details are requested:

- a) How their remuneration will be calculated (for example as a percentage of the gift aid, a charge levied on a donation or X pounds/pence of each donation).
- b) The amount of remuneration they will receive, if this is known at the point of donation, and if not, an example that demonstrates the sum the organisation would receive on a hypothetical donation.

Responsibilities of Fundraising Platforms hosting appeals by individuals

9.3.2 Fundraising platforms **MUST** publish good practice guidance for individuals setting up a fundraising page on their website to ensure that prospective donors are adequately informed about appeals in advance of donating and that funds raised are administered effectively.

9.3.3 The guidance **MUST** be clearly visible to individuals setting up a fundraising page on the site and **MUST** be displayed before the point at which donation pages are published.

9.3.4 The guidance **MUST** highlight the following considerations for individual fundraisers in how they plan their appeal to prospective donors. The implications of raising money for a cause where no charity is identified as the beneficiary, including:

- a) the possibility that the appeal may itself need to be registered as a charity with the Charity Commission; and
- b) if the fundraising platform is itself a charity, that the appeal will need to satisfy the legal requirements for public benefit.

9.3.5 The guidance **MUST** highlight the following considerations for individual fundraisers in how they publicise their appeal to prospective donors through their fundraising page on the site:

- a) who is organising the appeal;
- b) what the money will be used for (the purpose of the appeal). See also Code rule 5.2e on money given for a restricted purpose;
- c) where applicable, what the target of the appeal will be - this might be a time target or a financial target;
- d) whether the fundraiser is raising money on behalf of or for a registered charity;
- e) how donations can be made;
- f) what deductions will be made for expenses; and
- g) what the fundraiser will do with the money if:
 - they do not raise enough to meet their stated target;
 - they raise an amount in excess of their stated target; or
 - the original purpose for which they are seeking donations becomes invalid for any reason.

9.3.6 The platform **MUST** require individuals setting up a fundraising page on the site to provide a clear affirmative action before the donation page is published (through an active opt-in method such as an unticked opt-in box) signifying that the individual has read and understood the guidance.

Payment Services

9.3.7 Fundraising Platforms which fall under the scope of the Payment Services Directive **MUST*** comply with all legal requirements relating to the Payment Services Regulations 2017.

Consultation Questions on Part C

1. Do the proposed rules cover adequately the areas of concern regarding online fundraising platforms?

Yes / No (If no, please explain your reasoning)

2. Do you approve of the wording for the proposed additional rules for inclusion in the Code in Section 9?

Yes / No (If no, please explain your reasoning)

3. Are there any other comments you wish to make on the proposed revised wording?

Summary of responses to consultation and final amendments

The section summarises comments received in response to the consultation amendments proposed.

Organisations in Scope of Proposed Code Amendments

A significant number of respondents queried what types of organisation will be covered by the Code, and to what extent.

A number of organisations queried whether the Code was designed to cover charities' own websites used for fundraising. It was suggested that rather than online fundraising platforms only, the Code should cover all pages created for the facilitation of online donations. It was also argued that the term 'host' may need altering here to ensure accuracy in the organisations captured within the scope of the Code.

A law firm who responded to the consultation noted that the scope does not provide for individuals who start an online fundraising platform, acting outside of a commercial company, not-for-profit or charity framework. Their recommendation was that this is covered to ensure absolute clarity. A number of charities also noted that it is not clear whether proposed changes to the Code are intended to apply to online fundraising for charities, personal crowdfunding, or both.

Comments on the Response and amendments

- There is clearly an issue regarding the interpretation of which organisations will be covered by this section of the Code. As such, the Fundraising Regulator needed to tighten its definition of those organisations in order to remove ambiguity.

The Fundraising Regulator amended the code as follows:

For the purpose of this Code, online fundraising platforms are websites or applications operated by commercial companies, not-for-profit organisations, by charities themselves, or by an individual which facilitate charitable fundraising campaigns and/or crowdfunding by individuals or organisations for charitable purposes. They enable donors to give to charitable causes using their computers, smartphones and other electronic devices, and via their credit cards, debit cards or digital wallets (devices that allow an individual to make electronic transactions, such as Paypal).

For the purpose of this Code, crowdfunding refers to the raising of funds by an individual, a group of individuals, or a commercial organisation for charitable purposes, but not linked directly to a charity's own bank account. This may mean that money is passed to the crowdfunder to then distribute to a charity, or to spend on a personal cause, for example, assisting a friend or relative with medical expenses.

Donation pages hosted on a charity's own website (i.e. where the donor is not directed away from the charity's own domain name to a third party) are not considered within the scope of this Code section where no fees are levied on individual donations. Where fees (including payment transaction fees) are levied on a donation-by-donation basis by a third party, charities should ensure levels of transparency fall in line with this section of the Code.

Monies raised through online fundraising platforms may go: directly to a registered charity; to a fundraiser or fundraisers to pass on to a registered charity; or to a beneficiary who is not a registered charity.

- A number of organisations raised the point that the Code section only seems to deal with appeals set up by individuals, however, the content is mostly relevant to any fundraising activity taking place through an online fundraising platform (i.e. aside from an individual, it may be hosted by a charity, a group of individuals, or a commercial organisation).

The Fundraising Regulator amended the code as follows:

Responsibilities of Fundraising Platforms

Fundraising platforms **MUST** publish good practice guidance for those setting up a fundraising page on their website to ensure that prospective donors are adequately informed about appeals in advance of donating and that funds raised are administered appropriately.

9.3.1.1 Fundraising platforms **MUST** publish good practice guidance for those setting up a fundraising page on their website to ensure that prospective

donors are adequately informed about appeals in advance of donating and that funds raised are administered appropriately.

9.3.4.1 The guidance **MUST** be clearly visible to those setting up a fundraising page on the site and **MUST** be displayed before the point at which donation pages are published (i.e. put into the public domain).

9.3.4.2 The guidance **MUST** highlight the following considerations for fundraisers in how they plan their appeal to prospective donors. This **MUST** include the implications of raising money for a cause where no charity is identified as the beneficiary, including:

- a) the possibility that the appeal may itself need to be registered as a charity with the Charity Commission; and
- b) if the fundraising platform is itself a charity, that the appeal will need to satisfy the legal requirements for public benefit.

9.3.4.3 The guidance **MUST** highlight the following considerations for fundraisers in how they publicise their appeal to prospective donors through their fundraising page on the site:

- a) who is organising the appeal;
- b) what the money will be used for (the purpose of the appeal). See also Code rule 5.2e on money given for a restricted purpose:
- c) where applicable, what the target of the appeal will be - this might be a time target or a financial target;
- d) whether the fundraiser is raising money on behalf of or for a registered charity;
- e) how donations can be made;
- f) what deductions will be made for expenses; and
- g) what the fundraiser will do with the money if:
 - they do not raise enough to meet their stated target;
 - they raise an amount in excess of their stated target; or
 - the original purpose for which they are seeking donations becomes invalid for any reason.

9.3.4.4 The platform **MUST** require those setting up a fundraising page on the site to provide a clear affirmative (through an active opt-in method such as an unticked opt-in box) action before the donation page is published (i.e. put into the public domain) signifying that they have read and understood the guidance.

N.B. The changes highlighted above have been incorporated in amendments to specific rules outlined in the 'Specific Points' section of this annex.

- A number of organisations asked whether companies whose primary focus is not fundraising, but who do carry out fundraising activities, will be covered, e.g. Amazon, eBay and Facebook.

The Fundraising Regulator believes that the proposed introduction to Section 9.3.4 adequately covers ventures of this nature. The primary focus of the company is not relevant to the scope of these Code changes where online fundraising is taking place.

It is, however, possible that the relationship held with these organisations may fall within the definition of a commercial participator. As such, charities will need to look at these arrangements on a case-by-case basis to identify the areas of regulation relevant to the specific agreement they have with an organisation.

Professional Fundraisers and Commercial Participators

- A number of organisations queried the status of online fundraising platforms and whether this section of the Code is intended to bring them within the definition of a professional fundraiser or a commercial participator.

This section of the Code has been created to outline best practice requirements for online fundraising platforms more generally including the minimum standards expected for transparency, and the level of guidance expected to enable donors and fundraisers to be well informed.

There are an increasing number of online fundraising platforms in the marketplace and each operates using a differing business model and company status (e.g. charity, not-for-profit, or commercial enterprise). As such, splitting out this section of the Code to cover all eventualities is not feasible, nor in scope.

The Fundraising Regulator recommends that charities are mindful of the setup of online platforms through whom they receive donations and are vigilant in ensuring that the information provided, particularly where the platform or fundraiser may fall within the definition of a commercial participator or professional fundraiser, is adequately provided in line with the relevant sections of the Code and associated legislation.

Likewise, the regulator urges online fundraising platforms to ensure that they are clear on where they stand in this regard, and that the relevant information is provided when and where it should be.

Registration with the Fundraising Regulator

- A law firm who responded to the consultation noted that the Code does not explicitly state that online fundraising platforms should register with the Fundraising Regulator.

The Fundraising Regulator agrees with this point and suggests the following addition to the Section 9.3.4 introduction:

The Fundraising Regulator encourages online fundraising platforms to register with us to publically demonstrate a commitment to responsible fundraising. To register, please visit [this page](#).

Company Status

- One online fundraising platform who responded highlighted the importance of platforms being transparent about whether they are a charity, not-for-profit, or commercial organisation. This is to reduce the possibility of the public being misled into thinking that all of the platforms are charities themselves.

The proposed introduction to this section of the Code does outline that online fundraising platforms are within remit regardless of their company status, however, the Fundraising Regulator recognises that it is important for transparency in this area.

As such, guidance drafted to support the Code and outline the expectations of online fundraising platforms includes the stipulation that they should make it clear and accessible for donors as to what their company status is.

Cost of Compliance

- One online fundraising platform who responded to the consultation raised the time and cost implications of being compliant with the Code. It also identified that some platforms could gain competitive advantage by not being compliant as they would not have this financial and staffing outlay.

The Fundraising Regulator appreciates that some online fundraising platforms may need to make changes in order to be compliant with Code revisions. There is, however, significant weight behind the call for the sector to be regulated and as such, we feel that the benefits for the sector in demonstrating its commitment to responsible fundraising in the long-term outweigh initial outlay.

Market Share

One online fundraising platform raised the point that online fundraising is one of the most cost-effective, secure and efficient ways for charities to collect funds. Their concern is that requiring remuneration to be emphasised may force down the levels of donations seen through this method.

They argue further that if the major platforms adopt this guidance and comply with Code requirements, where other platforms do not, it may also have the effect of driving donors to less secure platforms, and giving an unfair market advantage to platforms who do not comply.

All responsible fundraisers and third parties are at risk of unfair competition from those cutting corners and not complying with good practice – that is why the Fundraising

Regulator makes sure that the code requirements and its own costs are kept to a minimum consistent with maintaining a responsible fundraising sector; offers responsible fundraisers the marketing/competitive advantage of registering with the FR to publicly demonstrate their commitment to best practice; and will investigate and, if appropriate, publicly sanction those not complying with the code.

This addition to the Code is based on the principle that donors need to be properly informed to donate. The Fundraising Regulator expects all online fundraising platforms to comply and will investigate cases where a complaint is received by the Regulator in line with our [Complaints Procedure](#).

Cost Vs Quality

- A number of organisations who responded noted that it is important to highlight that the platform with the lowest fees will not necessarily be the best, as it may not offer, for example, the best user experience for donors, or the most effective way for a charity/fundraiser to reach donors.

The Fundraising Regulator agrees with this point, and acknowledges the unique selling points of the various online fundraising platforms. While the Code amendments request that costs are transparent, they do not prohibit platforms from outlining why they take a fee and how they use it to deliver and improve their services.

User Experience

- A number of respondents highlighted the need to ensure that user experience is not disrupted by the Fundraising Regulator's proposed changes. One online fundraising platform commented that they have invested in creating a 'page creation flow' over a number of years which removes barriers and optimises the donor and fundraiser experience. As such, it is argued that the Regulator should not overprescribe where information should appear.
- Another fundraising platform raised that it is imperative that changes are compatible with mobile devices and that all technical implications of the Code's requirements should be taken into account prior to implementation.
- A sector body who responded on this point noted that the Code would need to be flexible to account for the various ways of working exhibited by the online fundraising platforms; as such, it is argued that a principles-based approach would be preferable, outlining intended outcomes but giving flexibility in how this is presented.

The Fundraising Regulator has proposed the changes to the Code in response to an identified need for regulation. These changes and associated underpinning guidance do not seek to disrupt user experience to the detriment of the volume of donations. Instead they seek to enhance the understanding of donors, thereby increasing public confidence and trust in the medium. Guidance has been designed as a set of desired outcomes with little prescription as to when and where information should be

displayed, but a minimum requirement that certain information must be transparent and easy to access.

Misattributed Appeals

- One charity noted that sometimes appeals are started for the incorrect charity, for example, when a fundraiser accidentally selects a charity with a similar name to the one they intended. It was raised that there is inconsistency between the platforms regarding what happens in this situation, and that this area of the Code would be a good place to address this.

The Fundraising Regulator recognises that this does happen sometimes. Guidance created to support the Code stipulates that online fundraising platforms need to be transparent about their refunds policy, including when a donor can and cannot expect a refund. This needs to be clearly accessible on their website.

Responsibilities of Charities

- One sector body queried the responsibility held by charities with regard to fundraisers who are collecting funds through an online platform, dependent on the knowledge/engagement of the charity. It was put forward that signposting to the relevant area of the Code regarding volunteers would be helpful here.

Charities should work with individuals undertaking fundraising through an online platform in the same way as they would with any individual collecting funds offline. The more the charity is aware of/engaged with the fundraising, the more likely it is to be seen as 'on behalf of' rather than 'in aid of'. The Regulator recognises a need to signpost this in Section 9.3.4 of the Code, however, and recommends the below addition:

The Fundraising Regulator amended the code as follows:

Alongside the rules below, Fundraising Platforms should particularly refer to the following sections of the Code:

Section 2: Working with Volunteers for considerations relating to the relationship between charities and those carrying out fundraising activities through online fundraising platforms.

Section 4: Third parties for considerations relating to agencies providing fundraising services.

Section 5: Personal Information and Fundraising for considerations relating to data protection.

Section 12: Corporate Partners for considerations relating to Commercial Participator relationships and providing hosting services to fundraising organisations.

Section 20: Handling Donations for considerations relating to card transactions.

- A number of charities raised a similar point, asking whether charities would be held responsible if an online fundraising platform was in breach of the Code, especially where the charity has carried out due diligence checks on the platform.

As with any other third party fundraiser, the charity has a responsibility to carry out due diligence checks on online fundraising platforms. This is a nuanced area, however, as there is more likelihood of ‘in aid of’ fundraising being carried out through this medium and charities may not be aware that fundraising is taking place or through which platform.

If a complaint is received by the Regulator against a breach of this section of the Code, responsibility would lie with the online fundraising platform. If, however, there were additional salient facts within the complaint indicating that there was also a breach of another area of the Code by the charity, then it would be considered as such (for example if the charity should have known and had failed to enquire about the offer of restricted funds).

Reporting and Gift Aid

- One online fundraising platform stated that platforms should be required to publish information on the total donations processed per annum and the total Gift Aid reclaimed. They also argue that platforms should be required to state where they have been unable to reclaim Gift Aid on eligible donations. Another online fundraising platform stated that there should be complete transparency specifically in reporting how much remuneration a platform has derived from Gift Aid contributions.

Publishing in depth information on Gift Aid is good practice and we propose to keep these options under review in the event that the current requirements on Gift Aid within the Code prove insufficient.

Fraudulent Appeals

- A number of organisations raised issues around how online fundraising platforms detect and deal with fraudulent campaigns. It is argued that where funds are raised by an individual and money is going directly to their own bank account (either to then pass on to a charity or as part of a personal crowdfunding campaign), there is little control over how this is actually then used (e.g. raising money for medical treatment that is not needed). Furthermore, one online fundraising platform argued that where funds are not being sent directly to a charity, it should be a requirement that online fundraising platforms make it clear that there is no guarantee of how much will

get to the charity. There was significant call for a rule within the Code to cover this area.

The Fundraising Regulator recognises that this is an issue of utmost importance to the charity sector, the public, and the online fundraising sector. Draft guidance created by the Fundraising Regulator to support the Code provides: information for donors on how to spot a fraudulent appeal, advice on exercising caution, and how to report where necessary; information for fundraisers on the information required on their appeal page in order to ensure that they do not unintentionally mislead; and recommendations for online fundraising platforms to ensure that donors are aware of the steps they take to prevent fraudulent appeals being set up, and what happens if they become aware of fraudulent activity on their site.

The Fundraising Regulator amended the code as follows:

9.3.4.X The platform **MUST** take reasonable measures to avoid fraudulent activity and money laundering through their site in the guise of fundraising. Where funds raised are not going directly to a charity bank account, the platform **MUST** make it clear that donors give at their own risk prior to the donation being made.

- A number of organisations also noted that there is no provision within the proposed Code rules for a post-appeal audit to ensure that fundraisers have not used funds inappropriately or fraudulently.

The Regulator proposes to keep the option of post-appeal audits under review in the event that the current requirements within the Code prove insufficient.

Privacy

- A number of organisations noted that an explicit rule to address data protection would be useful in this section, especially where other Code sections have recently been amended in line with new requirements. In their experience, it is argued, online fundraising platforms do not always go far enough in informing supporters of how their details will be used, e.g. if they will be passed to the charity to whom they have donated. This can leave charities in an awkward position regarding contacting these supporters, and may facilitate a lack of trust.

The Fundraising Regulator amended the code as follows:

9.3.4.X Online fundraising platforms **MUST*** comply with all relevant data protection legislation. Personal details of donors and fundraisers **MUST*** only be passed on to charities where a clear affirmative action has been provided to indicate that consent has been given.

Specific Points

9.3.4.1

New Technologies

- One online fundraising platform raised a concern that the requirement to provide actual or example remuneration prior to payment details being entered may be restrictive in light of emerging payment technologies.

The Fundraising Regulator feels that the scope of Section 9.3.4.1 along with associated guidance is sufficiently flexible for existing payment methods. As only one online fundraising platform who responded has raised this point, we do not feel that an amendment is necessary at this stage. If there is a significant change to the payment methods available in future then changes will be considered as necessary.

Consistency of Presentation

One online platform noted that the information required as a part of 9.3.4.1 should be required to be in a standardised format so that donors, fundraisers and charities can easily compare, and so that some platforms do not gain an advantage by having less accessible information. A sector body, however, stated that the Code requirement should enable platforms to exercise flexibility and discretion to ensure that fees are communicated in the right way for their model.

- Guidance to support the Code outlines the minimum expected level of information and a suggested way in which this could be presented. It is expected that online fundraising platforms will follow this guidance thus allowing for easy comparison and clarity of information, however, this does not remove flexibility

Real-time Costs

- One online fundraising platform argued that the technology to provide a real-time calculation of how much remuneration the platform will receive from a donation is not difficult to implement and could be put in place by all platforms, rather than using illustrative examples. It is argued that the wording ‘the amount of remuneration they will receive, **if this is known at the point of donation**’ gives platforms an excuse to be opaque. This was echoed by a charity who argued that at least an estimated net contribution after costs should be stated.

The Fundraising regulator has outlined minimum requirements in the proposed Code amendments and associated guidance. Steps over and above this are welcomed and encouraged, however, the regulator is wary of overprescribing, particularly in a sector where technology can be used to provide the information in innovative and accessible ways. In this vein, the Regulator also does not wish to implement rules that exclude some platforms from being compliant as a result of the cost of implementation or because their systems are unable to cater to certain requirements.

Payment Transaction Fees

- A number of online fundraising platforms were of the opinion that payment transaction fees and platform fees should be included as a single charge (for example, presently a platform may express its fee as 5% of the donation plus 2.7% payment transaction fee. The argument is that platforms should take ownership of this charge as any other business does and, therefore, this example would be expressed as a single 7.7% charge). A sector body who responded noted that members had raised this point, and erred towards the side of separating the charges out because of the lack of control over payment transaction fees.

In discussions with online fundraising platforms this has proved to be a divisive issue, however, formal consultation responses do give weight to the argument of combining the fees. The Fundraising Regulator recommends that guidance for online fundraising platforms that has been drafted to support the Code urges platforms to express these charges as one single fee in order to encourage transparency and remove potential for donors to be confused by the fees stated

Stipulation of Maximum Remuneration

- One charity queried whether the Fundraising Regulator should recommend reasonable levels of remuneration for services carried out by online fundraising platforms.

The Fundraising Regulator recognises that there is concern regarding the level of fees charged by some online fundraising organisations. It is not, however, in the remit of the regulator to suggest reasonable charges to a commercial sector incorporating a diverse range of business models.

It is hoped that increased transparency as outlined in this Code section and supporting guidance will increase donor and fundraiser awareness of the charges associated with online fundraising, enabling them to make a fully informed decision on the services that they use.

Individual Remuneration Agreements

- A number of charities raised that many online fundraising platforms use a sliding scale agreement with some charities which may reduce fees based on, for example, the volume of donations processed per annum. They recommend that platforms are obligated to publish details of maximum remunerations, but are still able to offer these arrangements to charities.

The Fundraising Regulator requires online fundraising platforms to show details of the remuneration they will receive as outlined in the proposed Code wording. So long as the information provided is an accurate reflection of the remuneration that will be received, the Regulator has no view on commercial arrangements of this nature. If it is not possible for a platform to adapt this information on a case-by-case basis where

necessary, the regulator would expect to see an example based on the maximum remuneration.

Discouraging Donors

- A number of organisations made the point that donors may be put off giving if the platform's remuneration is as transparent as the Code requires.

A significant point of debate has been the fees charged by online fundraising platforms, particularly in light of recent high profile appeals. Online fundraising platforms operate with differing business models and technological infrastructure, and therefore may offer different services. Transparency around fees is of paramount importance to overall public trust in online fundraising, however, the Regulator is confident that platforms will be able to justify their fees in light of the services they offer in linking charities and donors.

Presentation of Remuneration Information

One charity noted that the location and format of information regarding remuneration needs to be clearly articulated to ensure that a fundraising page does not become bogged down with too much platform-specific information, and to suggest ways for platforms to present this.

- The Fundraising Regulator has guidance to support the Code. This guidance stipulates the minimum requirements regarding the elements that should be included when showing how remuneration is calculated, and where this should be shown.

Terminology

- One online platform raised that the term 'remuneration' may cause confusion, particularly where the platform only charges transaction costs, as it could be argued that this is not remuneration.

To clarify what is counted as remuneration, the Fundraising Regulator recommends the addition of a line prior to 9.3.4.1

The Fundraising Regulator amended the code as follows:

For the purpose of this section on the Code, 'remuneration' relates to any fees levied on a charity, a donation, or associated GiftAid by an online fundraising platform. These could include but are not limited to: platform fees; payment transaction fees; administrative fees; or monthly/annual subscription fees payable by a charity or fundraiser.

- One charity stated that in 9.3.4.1 it is not clear whether the term ‘organisation’ refers to the beneficiary of the funds or the online fundraising platform.

The Fundraising Regulator amended the code as follows:

Where a Fundraising Platform receives a proportion of the donation or gift aid as remuneration for hosting a fundraising campaign, they **MUST** ensure that the following details are clearly visible to individuals donating through their site and displayed before the point at which financial details are requested.

9.3.4.2

- A number of organisations queried what the source of guidance would be and whether the Fundraising Regulator would provide advice on what should be included. One charity suggested that platforms should be required to link to the FR’s own guidance.

The Fundraising Regulator has created guidance for donors and fundraisers. The expectation is that online fundraising platforms will, as a minimum, link to this guidance in the places mentioned in rule 9.3.4.2. It is, however, suggested that the wording is amended to make this clearer.

The Fundraising Regulator amended the code as follows:

Fundraising platforms **MUST** link to the Fundraising Regulator’s good practice guidance for those setting up a fundraising page on their website to ensure that they and prospective donors are adequately informed about appeals in advance of creating a page or donating, and that funds raised are administered appropriately.

9.3.4.3

- Linked to the above point, one online fundraising platform suggested some minor amendments to the wording of 9.3.4.3 to ensure clarity.

The Fundraising Regulator amended the code as follows:

The guidance **MUST** be easily accessible for those setting up a fundraising page on the site and **MUST** be available before the point at which donation pages become active.

9.3.4.4

9.3.4.4 a)

- A number of respondents voiced the concern that this information may discourage page creation, some encouraging its deletion.

Particularly in light of recent appeals related to significant events, this prospect needs to be highlighted for prospective fundraisers. This highlights to prospective fundraisers that there may be legal responsibilities attached to what they are doing and in that spirit, is intended to safeguard fundraisers and aid the distribution of funds.

- One charity noted that they felt this sub-rule applied to only crowdfunding campaigns and that this should be specified. A sector body also pointed out that, as the Code applies across the UK, it would be best to amend the wording to reflect the different regulatory bodies across the UK.

The Fundraising Regulator amended the code as follows:

a) the possibility that a personal crowdfunding appeal may itself need to be registered as a charity with the relevant regulatory body

9.3.4.4 b)

- One sector body who responded noted that the wording of this sub-rule requires further clarification on what satisfies the legal requirements for public benefit.

b) if the fundraising platform is itself a charity, that the appeal will need to satisfy the legal requirements for public benefit. For further information regarding this, please see the Charity Commission's [Public Benefit Rules for Charities](#).

9.3.4.5

Mandating Provision of Information

- A number of respondents suggested that the information in subsections a-g should be set as mandatory fields for those setting up a fundraising page. Questions were raised around what the consequences of that information not being included might be, for example, is the platform in breach of the Code, or would the platform be expected to close the page?

We think the current proposed wording is largely sufficient. Where a platform is aware or should reasonably be aware that it is hosting a non-compliant campaign, it will be in breach of the code if it does not take all reasonable steps to ensure compliance including the closure of the page if necessary. However, we propose to add an amendment to the Code to underline the need for this to be explicit as part of the fundraisers' commitments in using the site.

The Fundraising Regulator amended the code as follows:

Online fundraising platforms **MUST** require their users to comply with those sections of the Code of Fundraising Practice that apply to their fundraising as a

condition of using the site and to provide for the platform to terminate or suspend use of the site if necessary. *The Online Giving Guidance for Fundraisers has more information on the sections of the Code that are relevant to their activities.*

9.3.4.5 b)

- A number of charities raised that this wording may lead to an increase in restricted income which can be difficult to administer if the restriction is too specific, especially for larger charities with high compliance standards.
- Furthermore, they raise the point that charities will not always be able to check how individuals have communicated the purpose of their appeal to donors. As such, they recommend that there is a guidance note for fundraisers to alert charities if there is a specific purpose to their appeal.

The Fundraising Regulator amended the code as follows:

- b) whether the money raised is for a specific purpose or for the recipient to use as they see fit. Where money is raised for a charity for a specific purpose, fundraisers **MUST** contact the charity to ensure they are aware and happy to receive the funds for this stated purpose. See also Code rule 5.2 e) on money given for a restricted purpose;

9.3.4.5 d)

- One online fundraising platform noted that this sub-rule should also include the name of the charity money is being raised for.

The Fundraising Regulator amended the code as follows:

- d) whether the fundraiser is raising money on behalf of or for a registered charity and, where applicable, the name of the charity;

9.3.4.5 e)

- A law firm who responded highlights that where an appeal is set up by an individual, options to trigger Gift Aid may be missed. They argue, therefore, that this should also be stipulated in this rule.

The Fundraising Regulator amended the code as follows:

- e) how donations can be made, including ways to maximise donations via Gift Aid;

9.3.4.5 g)

- An online fundraising platform who responded to the consultation highlighted concern about the potential for reduced page creation and subsequent reduced giving if these requirements are stipulated, and recommend the deletion of this sub-point. In particular, they highlight the difficulty in planning a contingency for funds when they can no longer be used for the original purpose where this change of purpose follows bereavement on the part of the fundraiser.

While we recognise that this may be difficult in some circumstances, the Fundraising Regulator would argue that this point is crucial for transparency, for ensuring that there are no complications in administering funds, and negating the possibility of large numbers of donors requesting refunds. As only one respondent has raised this point, it is recommended that no action is taken.

- The need for guidance around this point was raised by a charity respondent.

Draft guidance for fundraisers includes a point regarding contingency planning if it is likely that the original purpose will not be achievable.

9.3.4.6

- One online fundraising platform stated that in its experience within the sector, and analysis of page creation, tick boxes do not significantly increase the knowledge of the page creator but do lead to a reduction in page creation. It is suggested that there are better ways of educating members of the public on their responsibilities when setting up a page. Another online fundraising platform, however, suggested that there should be a separate tick box specifically for this purpose, separated from the general T&C box.

The Fundraising Regulator has stipulated that the fundraiser would need to 'provide a clear affirmative action (through an active opt-in method such as an unticked opt-in box) before the donation page is published (i.e. put in the public domain) signifying that the individual has read and understood the guidance'.

The use of a tick box in this rule is an illustrative example only. Other methods can be used provided that the online fundraising platform is confident that they can demonstrate that the fundraiser has indicated that they have read and understood the guidance.

- A charity queried whether the term 'opt-in' may be confusing at this time, especially with GDPR coming into effect shortly. The alternative 'through an active method such as ticking an unticked box' was suggested.

The Fundraising Regulator would highlight that it is important to specify that this needs to be an opt-in method in order to demonstrate that the guidance has been understood. It is not thought that this wording will be confusing.

9.3.4.7

- The current wording of this rule states that ‘Fundraising Platforms which fall under the scope of the Payment Services Directive **MUST*** comply with all legal requirements relating to the Payment Services Regulations 2017’. A number of respondents raised queries on this. One online platform noted that the rule should go further, stating that along with the Payment Services Directive, organisations should agree to comply fully with relevant FCA regulations. One charity queried whether online fundraising platforms who do not fall within the scope of the Payment Services Directive still need to be compliant with these rules.
- One online fundraising platform also highlighted the need for crowdfunding platforms to be included along with fundraising platforms.

The Code makes clear that it is the responsibility of fundraisers to check whether changes have been made to the law and best practice which, although not yet incorporated into the Code and the guidance, will apply to your activities.

The Fundraising Regulator amended the code as follows:

Where applicable, fundraising and crowdfunding platforms **MUST**:

- a) comply with all legal requirements relating to the Payment Services Regulations 2017 (if the organisation falls within scope of this, this is a **MUST***); and
- b) comply with all relevant Financial Conduct Authority regulations.