

# What's new at the Fundraising Regulator?

The Fundraising Regulator is responsible for regulation of fundraising in England, Wales and Northern Ireland.

**Hannah Lyons** reports on a busy period for the regulator and forthcoming changes.



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Hannah advises charities and other not-for-profit organisations on a wide range of legal matters including charity formations, mergers and incorporations and constitutional and regulatory compliance. Hannah also has particular expertise in advising on fundraising law and regulation including in relation to data protection, challenge events and lotteries.

The Fundraising Regulator regulates charities and other philanthropic organisations which undertake fundraising, as well as commercial fundraising agencies. It is responsible for setting and enforcing the Code of Fundraising Practice, which promotes the standards for fundraising.

In its complaints report for 2017/18, the Fundraising Regulator reported that it received 1,504 complaints about fundraising and conducted 78 investigations. It identified a breach of the Code of Fundraising Practice in 81% of those cases. Common themes for complaints included the use of supporter data, using misleading information in fundraising communications and complaints handling.

## Changes to the Code of Fundraising Practice

In autumn 2018 the Fundraising Regulator conducted a ten-week consultation on a number of proposed changes to the Code of Fundraising Practice. The changes are designed to make the code easier to use and to re-write it in 'plain English', rather than changing the substance of the code. The consultation sought views on issues including:

- a new table of contents and simple ordering of the content;
- a 'plain English' review of the language used in the code;
- a new introduction;
- a glossary of key terms used within the code;
- the face-to-face fundraising rulebooks being incorporated into the code itself.

The consultation received 114 responses from the sector, which the regulator has confirmed were largely supportive of the changes and the efforts to make it more accessible and easier to navigate. There are, however, some concerns that some of the changes have inadvertently led to more significant changes being made to the

meaning of certain sections of the code.

The Fundraising Regulator published the revised code at the beginning of June, with the changes coming into force in October 2019. This allows time for charities and fundraising organisations to review and adapt to the changes.

While the changes to the content are not intended to be substantial, charities should familiarise themselves with the new code and consider whether they will need to update their fundraising policies, contracts and other documents to refer to the correct sections of the code.

## FIND OUT MORE

For more information see our briefing on the new code <https://bateswells.co.uk/2019/06/revised-code-of-fundraising-practice>

## Changes to the levy

The Fundraising Regulator is funded by a levy payable by charities with fundraising costs of £100,000 or more per annum. The amount is based on a sliding scale ranging from £150 to £15,000 for charities with an annual spend of more than £50 million. From September 2019, the regulator is making some changes to the levy, including introducing two extra bands so that smaller charities can move up the scale more gradually. Registration fees for charities that fall below the levy threshold will continue to be £50 per year.

## Changes to the investigation process

The Fundraising Regulator has also made changes to the way in which it reports on the complaints it has investigated. For any complaints received after 1 March 2019, it will publish the names of the charities (or other organisations) that it investigates. Before this date, the Fundraising Regulator generally published an anonymised summary of its decisions on its website, and has only named charities in cases where the charity has not co-operated, or

where there has been a wider public policy reason for doing so.

Under this new approach, the regulator will publish a summary of all complaints it investigates, whether or not it ultimately finds the charity to be in breach of the code. Charities (and complainants) will continue to be provided with a draft version of the Fundraising Regulator's report and proposed summary ahead of publication, with summaries published on a quarterly basis. The regulator has confirmed that organisations will be named only after the investigation is completed – and that it will recognise where charities take steps to co-operate fully with the regulator and reflect on their methods of fundraising.

The Fundraising Regulator says that it has taken this decision in order to promote and support a culture of ethical fundraising. The policy shift does mean that, more than ever, charities will want to ensure that they and their fundraisers are complying with the Code of Fundraising Practice, and that the charity has good complaints handling processes in place. In our experience, if a charity handles a complaint well, it is rare for the complainant to take up the issue with the Fundraising Regulator.

#### FIND OUT MORE

Emma Dowden-Teale and Charlotte Blackburn covered the issue of complaints in our Spring update at <http://bateswells.co.uk/2019/02/charity-and-social-enterprise-update>

#### Reporting charities to the ICO

The Fundraising Regulator reported 59 charities to the Information Commissioner's Office (ICO) earlier this year for failing to comply with unsubscribe requests made via the Fundraising Preference Service (FPS).

The FPS enables members of the public to unsubscribe from receiving marketing

and fundraising communications from charities by direct mail, email, text and phone. Individuals using the scheme can name the charities that they no longer wish to hear from via the FPS platform. To discover the identity of the requestor, the charity itself needs to log onto the system. These 59 charities had failed to do so and were consequently reported to the ICO. However, at the time of writing the ICO has not taken any formal enforcement action against these charities.

Many fundraising organisations find the rules around sending marketing communications complex, since they have to consider the requirements under the General Data Protection Regulation (GDPR), the Privacy and Electronic Communications Regulations (PECR) and the Code of Fundraising Practice. Certain aspects have not been – and are still not – straightforward. Indeed, the Fundraising Regulator has recognised this by announcing that from March 2019 charities now have 28 days – rather than 21 – to action a request made under the FPS.

The action by the Fundraising Regulator in making these reports to the ICO demonstrates that all organisations must put proper procedures in place to ensure that when they receive an unsubscribe request (whether that be directly or via a notification from the FPS) they act promptly and effectively to cease sending marketing communications. It is also a clear sign that the Fundraising Regulator will liaise with the ICO (and the Charity Commission) over enforcement action against charities.

#### FIND OUT MORE

For more information see [www.fundraisingregulator.org.uk](http://www.fundraisingregulator.org.uk)

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