



Code of Fundraising Practice consultation

Institute of Fundraising response to the
Fundraising Regulator

November 2018

The Institute of Fundraising is the professional membership body for UK fundraising. Our mission is to support fundraisers through leadership, representation and education, and we champion and promote fundraising as a career choice. We have 600 Organisational members who bring in more than £9 billion in income, and over 6,000 Individual members.

Our response has been informed by discussions with our Standards Advisory Board, Scottish Standards Advisory Board, special interest groups, and our wider membership.

EXECUTIVE SUMMARY

The Institute of Fundraising (IoF) is supportive of the proposed changes to the Code of Fundraising Practice (Code) and welcomes the approach taken by the Fundraising Regulator (FR). It is essential that the Code is straightforward to use, accessible, and easy to understand so that fundraisers can be sure that they are fundraising to the right standards so that members of the public are treated in the right way and with respect.

We acknowledge that for experienced fundraisers and those used to the current Code, making large changes to the format and amending the style and structure will take some time to get used to. It will also mean that charities need to adjust policies, processes, training materials and compliance procedures to respond to a new version of the Code – as such the communication and implementation of changes needs to be carefully considered.

We recognise the considerable work that has taken place to produce this revised draft of the Code and hope that our response plays a positive role in helping to ensure that the Code is as clear possible.

As well as detailed comments, our key points on this consultation are:

- The 'Plain English' review of the Code is welcomed and positive – we support the revised wording and believe it will contribute to greater accessibility and understanding.
- A glossary of key terms used within the Code is a helpful addition which we support (although we have some specific points made below)
- The incorporation of the face-to-face rulebooks in the Fundraising Methods section of the Code is also welcomed to ensure that all the relevant standards for fundraising can be found in the same document.
- We acknowledge that the Code is primarily to be an online resource rather than a PDF document – a number of issues around accessibility and navigation will need to be looked at as the online functionality is developed to complement the revised Code and we strongly encourage continued engagement from the FR on this including testing and dialogue with fundraisers.

OVERVIEW OF THE CHANGES

GENERAL COMMENTS

1. The IoF welcomes the opportunity to contribute to the current consultation on the Code. We support the intention of the proposed changes by the FR and believe that the proposed changes overall will lead to an easier to use and more accessible Code for the sector.
2. The Code of Fundraising Practice underpins the standards of fundraising which are expected of charities and fundraisers. As the organisation that previously set and owned the Code, and with our members across the UK using it to inform and guide their fundraising, we know just how important a role the Code plays in ensuring high levels of fundraising practice. It is crucial that fundraising standards are clear and straightforward to understand and follow – not just for professional fundraisers, but also for trustees, CEOs, volunteers, partners and agencies, and all those in charities who need to access it so they can go about their work with confidence and ensure the public always receive the right experience of fundraising.
3. The Code has always evolved over time and will always need to adapt to ensure that it can be as easy to use, accessible, and clear as possible – as such we think it is the right time for the FR to be proposing these changes. Our consultation response supports these objectives and aims to refine the FR's proposals so that the intended outcomes can be best achieved. Where we suggest changes it is based on feedback we have received from across our membership (both individual fundraisers, charities, and partner agencies) on how the revised Code can work best for them.

4. We recognise that the new Code is mainly intended as a digital resource, which will be hosted on the FR website and navigated and searched in a more interactive and intuitive way than a PDF or Word document allows. We welcome this – the accessibility of the Code can be greatly enhanced through digital technology and an innovative approach (hyperlinking to sections, pop up boxes, creative design etc.). There have been some suggestions raised with us about the design and accessibility of the Code online which we include in our response below. However, as the website design develops we would like to see the FR do further outreach and user accessibility testing to seek feedback and comment to inform the new functionality – we would be happy to help and engage our members in this process.

5. Our response to this consultation is split into three sections. In section A, we address the question of whether we agree with the proposed approach the FR has set out. In Section B, we address each section where there has been a major change to the Code’s structure and/or content as they have outlined. In section C, we ask for clarity over how the FR plans to introduce the new Code and when fundraisers would be expected to be ready for the new changes, as well as providing individual comments on specific standards. These may be outside of the focus of this consultation but need future consideration.

**A) DO WE AGREE WITH PROPOSED APPROACH THE FUNDRAISING
REGULATOR HAS SET OUT IN THIS CONSULTATION?**

6. Yes, we support the FR’s effort to improve the style, accessibility, clarity and presentation of the Code.

7. We recognise that there may be short-term implications for experienced fundraisers who are very familiar with the Code, to have to adapt and get used to a new version, as well as update training materials, internal policies and procedures, agreements with third parties, compliance and monitoring systems. Charities often undertake an annual audit of their fundraising compliance, and a change in the Code part way through the year is likely to cause some issues for them carrying this out. This should be considered by the FR as part of an implementation and transition process to a new version of the Code being released.

8. Despite any practical difficulties in adapting and getting used to a new format and structure, we take the view that amending the Code along the lines of what has been proposed would be beneficial and positive in the longer-term. It is hoped that new fundraisers coming into the profession will benefit from a revised practical resource that is accessible and easy to use. We believe others who use the Code (e.g. trustees, volunteers, the public) will be able to more easily understand the requirements set out.

9. We have heard strong support from across our membership on the intended outcomes that the FR is hoping to achieve through this consultation. There is a recognition that this is a complicated, intricate, and time-consuming process to deliver but one that will be beneficial and worthwhile. However, as there are substantial changes proposed as part of a thorough overhaul of the Code, we have noted some concern from members that there may be inadvertent or unintended implications coming from some changes. While we recognise that this is not the intention of the FR (that the consultation is not about the substance of the rules), we do seek some reassurance that a balanced and flexible approach would be taken to any future regulatory action by the FR.

For instance, if a newly worded part of the Code seems to take on a new meaning or throws up different issues in a future investigation or adjudication on a complaint.

B) REVIEW OF SPECIFIC CHANGES

Table of contents and reordering of the Code

10. We welcome the FR's attempt to create a more straightforward structure to the Code's content. Prior to this consultation, the Code comprised 20 sections with individual sections dedicated to different areas of fundraising practice. The revised Code proposals should make it easier for individuals and charities to find information that is relevant to their fundraising.
11. The separation of the Code into two parts; Rules relevant to all fundraising and rules relevant to specific fundraising practices is a sensible revision. However, it is important that there are appropriate and consistent links between the sections – or solutions found through innovative design on the webpages – which makes it clear where there are relevant sections in another section (use of a 'pop up box' or 'just in time' message for example). While we appreciate the FR's desire that fundraisers will read and understand the general rules, in practice people will often go to the section of the Code that is most relevant for their job or activity (e.g., corporate partners). Therefore, there would need to be an appropriate message or link in that section to inform people of any other section they might need to read, rather than assume that everyone would always read the General Rules first.
12. We notice that fundraising areas such as auctions and clothing collections are not included in the Code. These areas might have been expected to have been included in the Code by fundraisers. It would be helpful for the

FR to clarify why these areas have not been included. If they are deemed not relevant, we would recommend including links to places where information on these areas can be found (e.g. guidance). Signposting would be useful in this instance, even if there are not specific standards relating to these topics.

13. It was noted by some members that there would be some sections that they intuitively would expect to find in the Contents page but were absent. For example, there is no section for 'advertising in newspapers' or 'television/radio appeals'. While there is a section named 'Fundraising communications and advertisements' perhaps this could be clearer. Equally, under Fundraising Methods section A is titled 'collections' which as a title is not particularly clear to the activity that it covers.
14. We also have had feedback from charities that the detail and length of the contents section (over four pages) can feel overwhelming and perhaps make it seem that the Code is really complicated and technical. This could potentially have a negative impact on the Code's accessibility. While this might be solvable through digital solutions, we believe that it might be worth reviewing to see whether the contents page can be reduced in size and with some sections merged (e.g., 'cash, tills, & receipts' could appear on one line rather than three).
15. We also suggest that the section of 'General Rules' could be reviewed to make it more easy and manageable. For example, 'Processing Donations' and 'Processing personal data' can be shorter standalone sections (rather than a subset of General Rules) with the first section of 1 a) and b) being the 'General Rules'. We believe that this section should be split into smaller sections to make it easier for users to follow.

16. It would also be worth considering whether the digital section within Fundraising Methods should instead constitute an independent section e.g. 'digital fundraising' and a subsequent section which is 'online giving' to differentiate better between two different areas (one being more about advertising and communicating digitally, and the other about the operation and payments through an online giving page).
17. There has also been some confusion noted that there is a 'General Rules' section at the beginning of the Code, and then 'general rules' or 'general' sections that appear under subsequent sections (e.g., under Face-to-face and fundraising communications and advertisements, and also under processing donations). This use of 'general' in different sections can be confusing. Whilst we believe the structure of the revised Code is improved by the FR's proposal, the layout could still be refined. We have received feedback that the subheadings in the new contents page are confusing to follow and that it is not clear when a topic ends and a new one begins.
18. The formatting of the Code is inconsistent, one example being its use of information boxes. In some cases, these are used to provide links to further information or guidance, whereas other times they include legal requirements e.g. the text box below GR72. We would like to see the Code formatted consistently to improve its presentation and clarity for users.
19. There is also a lack of clarity around the applicability of rules for certain geographical regions. For instance, in relation to the fundraising rules in Northern Ireland, it is unclear whether the standard GR51 applies to all charities who work in the country or just those who are registered there.
20. We have had feedback that the 'Working with Others' section should be renamed. We have been told that this title implies that this section will

cover wider responsibilities than just fundraising (i.e. charities might work with others on a project but not in fundraising). It was proposed that perhaps a title such as 'Fundraising with Others' would be more appropriate.

21. We also have had comments looking to see whether there are additional design/creative elements that can be brought in to make the legal jurisdictions clearer, for example using coloured shading.
22. It has also been proposed by some members that the Glossary could be moved to the beginning of the Code (or more prominently signposted at the beginning) as on a PDF/Word document. Some people reading it did not realise it existed until they got to the end.
23. We have received feedback that it would be very helpful for Code users if there was an accompanying document to the Code, detailing the changes made from the old to new document. For example, highlighting that 1.2 e of the general principles has become GR27 in the new Code. We would ask the FR to consider some additional material to help the transition to a new Code.

A new Code introduction

24. The inclusion of an introduction to the new Code is welcome. It is important that fundraisers understand the purpose of the Code, who it is for and how it is enforced.
25. The inclusion of the Code's values needs to be made clearer. The FR should clarify the purpose and significance of the 'values' – do they serve a regulatory function for complaints to be adjudicated against these

values? At present, the status of the values appears ambiguous. They are repeated in GR01, is this repetition necessary?

26. We would also welcome clarity over the inclusion of GR02 and the requirement to be 'polite' which has been incorporated from the Rulebooks around how the FR would regulate on this rule. We of course believe that fundraisers should never be impolite, but 'politeness' can be very subjective – for example if a charity did not adequately say 'thank you' to a donor after a gift has been given, would that fall below the requirement of being 'polite'? Does a fundraiser always have to say 'please'? Further clarification from the FR would be welcome as to the behaviour and communications that would be viewed as 'polite' in the context of adjudicating according to the Code.

27. We welcome the inclusion of several definitions for key terms in the introduction (stylised in italics). By providing these definitions at the beginning of the Code, it provides clarity for the subsequent sections. This is particularly important because of the changes to the way in which the Code now addresses fundraisers. The clarification of the term 'You' is very important as will be discussed further in the Plain English review section of our response.

28. However, we have received comments that it is currently unclear who the new Code is intended for. The Code defines 'charitable organisations' as including both charities and voluntary organisations (which do not have to be strictly charitable) with philanthropic aims. This definition makes it unclear whether the Code's intended recipients include community interest companies (CIC's) and social enterprises.

29. It is also important to be clear as to who is held liable for potential breaches of the Code. For example, 'You' sounds very personal to the individual – however, in an investigation or adjudication it would be the charity who would be held to account and we suggest that this could be more clearly explained.
30. We believe it could be valuable for the Code to include a 'how to use the Code' section in the introduction, with some additional resources such as a checklist or chart to aid understanding. The FR has mentioned during the consultation process that one of the issues with the way the Code was previously used, was that fundraisers didn't know which fundraising practices were relevant to them. The Code remains a large document and further help for those using it to navigate and engage with it would be useful.
31. We also suggest including hyperlinks connecting key terms to their definitions in the glossary for the online version of the Code. Understanding key terms is vital for being able to use the Code correctly. By providing hyperlinks, fundraisers and the public would be able to use the Code with fewer difficulties, improving its accessibility.
32. Finally, we have received comments that there is limited awareness that the glossary is included in the Code. The only mention of it in the introduction is a single sentence on p.6. We suggest that the introduction should make it clearer that there is a glossary included in the new draft or bring the Glossary up to a section at the beginning of the Code before the general rules.

The 'Plain English' review of English in the Code

33. We support the Plain English review of the Code. The language in the new draft of the Code has been simplified and is easier to follow, making it accessible for both fundraisers and those in charities who need to access and use it, as well as the public and other stakeholders. There is less unnecessary jargon and it is more concise, making this a welcome proposal.

34. The use of 'You' to denote who fundraising rules apply to is a positive change which makes the content clearer. Previously there was inconsistency in terms of who the standards within the Code applied to. For example, in the Public Collections section of the old Code, there were alternating references to 'Organisations' then 'Collectors' for different standards within the same section. This made it difficult for some fundraisers to follow and prevented the document from having a logical flow. However, the question over personal liability (see p27. is raised through the use of 'You').

35. The simplification of the language within the Code has in general, made it much easier to read. We welcome this change, provided this has not compromised the meaning of the standards within the Code. We understand that the FR will be undertaking a full legal review of the Code following the consultation which we welcome.

A glossary of key terms used within the Code

36. We welcome the FR's addition of a glossary into the Code. It is important that key terms throughout the document are clear and easy to understand

for fundraisers and the wider public. However, there are several terms within the glossary that are either unclear or would seem to need amending.

The terms where we have questions are:

37. 'Commission payments'- This term is included on page 15 of the Code. We suggest this term should be defined in the glossary so that users do not mistake it for 'performance related pay'.
38. 'House to house collections'- We note that in the Charities Act 2006, the term 'door-to-door' for collections is used instead. We believe it would be useful to clarify in the 'house to house' definition that this includes door-to-door collections within it.
39. 'Face to face fundraising' – We question whether face-to-face fundraising has been defined too narrowly in the Code. Currently, it only includes gifts solicited '*by direct debit and/or standing order*'. We believe this is too narrow as it excludes both continuous credit and debit card payments for lotteries, as well as premium rate text messages. It also includes 'private land' where other forms of fundraising (such as payroll giving in a work place) can take place. We believe the definition should include any face-to-face dialogue involving the solicitation of a gift (provided that it is for charitable benefit).
40. 'Consultant'- This term is included in the glossary but does not appear anywhere else in the Code.

41. 'Private Site'- This is defined as 'private land... which is subject to an Institute of Fundraising agreement with the property owner or manager.' The IoF does not have agreements with private site owners or managers (often the agreement will be direct with a charity or fundraising agency). This is an issue as three standards (FM25, FM33 and FM44) refer to this definition which is incorrect.
42. 'Beneficiary'- The definition provided in the Code is '*A person or group of people eligible to benefit from a charitable organisation*'. A beneficiary is commonly understood to be a person who benefits from a charity rather than someone who is eligible to do so. What the Code definition describes is a potential beneficiary instead. Also, some beneficiaries are not people (animals), or wider causes (the environment) – and suggest that the definition be reviewed to take these into account if necessary.
43. 'Donation'- This donation could be problematic as it will likely exclude certain types of transactions, e.g. charity memberships or lottery ticket sales which would normally be considered part of a donation (in terms of regulation and the interaction with a supporter). We would not want to see some of the general rules not applying to these types of transactions. For example 'You must not take advantages of mistakes by a donor' should apply to all forms of fundraising, whether it was for a donation or in the sale of a lottery ticket.
44. 'Collector' – We accept the definition provided. However, we would like the FR to make it clear in the glossary that this definition applies specifically within the context of the Code. This is because the term collector has a different meaning in legislation- excluding selling.



A table of those rules proposed for deletion or amendment.

45. We support the intention to reduce repetition and to delete information that is unnecessary or inappropriate. We believe the Code should be as focused and concise as possible to make as accessible as possible.

46. The Code is meant to provide the standards for fundraisers across the UK, it is not meant to be a catch-all document for every issue that could possibly affect all fundraisers. When other regulators such as the ICO provide detailed guidance on legal compliance, it is unnecessary for the Code to repeat it. It would be more practical in these instances for the Code to include links to the relevant rulings provided by other organisations. Therefore, we support the FR's inclusion of links to other regulators for specific advice and legal requirements.

47. We also support the removal of content which focuses more on providing guidance to fundraisers rather than setting regulatory rules, as it is best displayed and hosted elsewhere.

48. Fundraisers and the public want to be able to follow standards and guidance without difficulty. The inclusion of irrelevant or superfluous information makes this more difficult to do. The changes the FR has made have largely corrected this.

Comments on specific rule amendments and deletions

In addition to the general comments above, there are several changes regarding specific standards that we believe should be considered in relation to the deletions and mergers:

Mergers

- 49.'Number 2'- We propose rephrasing **GR06**. The rule was created as the result of a merger of three rules, two of which were in the Code and the other one which came from the rulebooks. We believe that the standard reads well for the most part, however we would change the last sentence. We suggest changing this to 'and end the conversation in a polite way.'
- 50.'Number 4'- We address this in section C in reference to Gift Aid in more general terms. Specifically, we question why there is legal information for Gift Aid included in the Code, when there isn't for other forms of tax relief. This information should be provided by HMRC and ought to be signposted to them, rather than being repeated in the Code.
- 51.'Number 9'- The proposed new rule is repetitive. Both sentences amount to essentially stating the same point- that lotteries must comply with the law.

Deletions

The FR has numbered each deletion in Annex B. With regards to specific rules selected for deletion, we make the following comments:

52. 'Number 28'- We agree with the proposed deletion. The Three Peaks Challenge is a specific event and event requirements are already covered by rules concerning challenge events and the GRs. We already provide guidance for the Three Peaks Challenge event and ask the FR whether they could include a link in the Code to IoF's guidance.

53.'Number 35' - We agree with the proposed deletion. We accept the FR does not want to endorse a specific organisation's training, however a link to our Public Fundraising Compliance work would be useful for issues related to public fundraising.

54.'Number 42' - We agree with the proposed deletion. We ask the FR if they could include in the Code, signposts to relevant guidance in relation to the drafting of wills.

Incorporation of the face-to-face rulebooks in the Fundraising Methods section of the Code rather than as a separate document

55.We believe that the incorporation of the face-to-face rulebooks into the Code is a positive development. Including the rulebooks in the main Code should ensure that public fundraisers understand their responsibilities in relation to the entire Code, rather than just face-to-face fundraising.

56.We also note that incorporating the rulebooks has some challenges that need addressing - although some are for IoF and others rather than the FR. For example, the compliance directorate at the IoF assess public fundraising compliance with a penalty point system which is partly based on the public fundraising rulebooks. We will need to consider the most appropriate way to manage the compliance work within a revised Code.

57.We have noticed that the glossaries for the rulebooks have not been incorporated into the Code. Several of the terms appear within the Code, but are not included in the Code's glossary. For example, the term 'subcontractor' is included in the Code without a corresponding definition

in the glossary. We question why these have not been included and ask whether the FR will be including them at a later date?

OTHER COMMENTS

Transition and implementation

58. A number of members have asked about future process and the plans around launching the new version of the Code. The revised Code structure is a significant change in the Code's presentation which will take time for fundraisers to adapt to, as well as to appropriately update a whole range of policies, materials, and resources.

59. An appropriate transition period would be needed so that charities have time to adapt and update their work and ensure that agreements and policies are up to date. Alongside a transition period, we would also welcome some reassurance from the FR on how complaints or investigations will be carried out when a new Code is released. For example, would the FR find a charity non-compliant for not having updated their policies, training, or materials to incorporate the new Code changes?

If so, then a much longer transition period would be necessary to give charities the time to adapt and change. A clear statement on how the FR would expect charities to respond, and what it would deem to be non-compliant, is needed at the end of this consultation period – and depending on this approach an appropriate transition period given. If the FR expects all charities to update and change their material and policies to ensure compliance, then at least three months would be needed for a transition period.

60. The IoF is committed to supporting our members and the wider fundraising community and will work with the FR to ensure that fundraisers have the information and guidance necessary to adapt to a new Code of practice.

Specific comments that lie outside the main focus of this consultation

61. During the process of this consultation response, it has become apparent to us that there are a few other issues that may need addressing. These are additional to the main points covered by the FR in this consultation. We recognise that these comments may lie outside the scope of this consultation, but the FR may wish to review them in the future.

62. We believe that the Code should promote compliant fundraising for everyone, even if it is not enforceable in relation to certain individuals or organisations. The Code differentiates between connected volunteers and independent volunteers in both the introduction and glossary.

- i. We support this distinction. Charities should not be held responsible for the conduct of fundraising activities when they have no knowledge of them.
- ii. We would like to see however, a statement emphasising that independent volunteers, and indeed anyone fundraising for a charitable cause, should follow the Code's values.
- iii. We have also noticed that these terms have replaced the widely understood phrases – 'in aid of' and 'on behalf of', which were previously used in the Code. This is not necessarily an issue but we are aware that fundraisers who are used to the using the old Code, may search for these old

terms and find to their surprise that they haven't been included.

63. We find the wording of GR76 to be unclear. The standard currently reads '*you must get permission from that person's estate where possible.*' We have had some comment that this is ambiguous as what would constitute 'possible' – is there any rephrasing that would aid clarity?

64. We believe that defining direct marketing as '*the communication of advertising or marketing materials to particular individuals*' is problematic. This definition is the one currently used by the ICO. Whilst it is appropriate in relation to data protection, fundraisers commonly understand and use 'direct marketing' to also include broadcast advertising (press adverts, billboards, direct response television). We would like the FR to make it clear that this applies to the legal definition of direct marketing for the purposes of communications with particular individuals, rather than the wider concept of 'direct marketing' as is commonly used.

65. We also have noticed that there is a missing standard for WO64. This standard is currently blank.

66. We have noticed that six standards begin with 'You **MUST** consider'. For some rules, (FM78, FM136 and FM232) this language is problematic as it is unclear how either the FR or the Office for the Scottish Charity Regulator (for Scottish charities' fundraising) would enforce the rules. It is also unclear what requirements charities need to meet for complying with these standards.

To take a Scottish fundraising example, FM232 states that fundraisers and charitable organisations reorganising restricted funds '**MUST** consider applying to the OSCR to reorganise the restricted fund.' This appears to be very hard to enforce in practice and we suggest that the use of words such as 'Consider' need to be reviewed within the Code accordingly. In the instance of FM232, there should be a blanket rule- if charities are reorganising funds, they have to apply to the OSCR for consent or they are in breach of the Code. This would prevent inconsistency and unfairness in how the standard might be applied. At present, it is unclear reading this standard whether charities who do not apply to the OSCR are in breach of the Code or not.

Additional comments on incorporation of the rulebooks into the Code

In addition to the points we have raised so far in our consultation response, our compliance team have informed us of several issues with specific rules following the incorporation of the rulebooks into the Code:

67. **FM44-** We have two points to make concerning this standard (labelled a and b).
 - a. FM44 refers to IoF Site Management Agreements with private sites. As mentioned earlier in this response, the IoF does not have agreements with private site owners or managers and so request that the references to these agreements in the Code removed.
 - b. We believe that the final sentence should be removed from FM44 and moved to the end of FM43. It states '*this rule does not apply to a fundraiser escorting a member of the public to a promotional*

stand, or to a different part of a promotional stand, having already successfully engaged them.'

The sentence was lifted from the 'three step rule' in the private site rulebook and does not belong in FM44. This is because it does not refer specifically to members in queues or those who are seated. Instead it applies to fundraisers who are speaking to a member of the public at a private site.

68. **FM50-** This rule states that '*For private-site fundraising, if you do not have a promotional stand, fundraisers must wear charity-branded clothing.*' This standard omits several details which are included in the rulebooks. Specifically, the rulebooks provide additional requirements including that clothing must be clean, presentable, visible and identifiable. We would like to find out more about why this part of the original standard from the rulebook has been removed. Similarly, **FM47** has the same issue with elements of the Rulebook requirement now not included in the Code.

69. **FM15-** This rule provides a link to the Trading Standards Institute guidance, which no longer exists. This is an area that the IoF are currently looking at and would happy to talk to the FR separately to ensure charities have accurate information.

70. **FM36-** We agree with the requirements outlined concerning ID badges. We suggest one additional obligation for fundraisers wearing them - that ID badges are not corrupted or manipulated. It is vital that fundraisers do not tamper with their identification and this should be reflected in the Code.