Cancer Research UK response to the Fundraising Regulator’s Consultation on changes to the Code of Fundraising Practice

April 2017

Cancer Research UK is the largest fundraising organisation in the UK. We receive no Government funding for our research and our ground-breaking work is therefore only possible because of the generosity of the public. Last year, we spent £432 million on research in institutes, hospitals and universities across the UK, funding over 4,000 researchers, clinicians and nurses. Our ambition is to accelerate progress to see three in four patients survive cancer by 2034.

Cancer Research UK is committed to best practice in charity governance and fundraising operations. We’re dedicated to creating a positive experience for all of our supporters and have moved to a system of opt-in for all our fundraising communications to put their wishes at the heart of what we do. We welcome steps taken by regulators to improve the clarity and consistency of their guidance to ensure best practice across the sector. We consider this crucial to build public trust and for the future sustainability of the sector.

We welcome the opportunity to respond to the Fundraising Regulator’s consultation on changes to the Code of Practice. We support the proposed changes and generally find the code clear and understandable. Our specific comments and suggestions are as follows:

Part A: Charity trustees

Question A1: Does the proposed additional wording of the Code (combined with the existing Code requirements) give sufficient clarity on how Charity Trustees are expected to oversee the fundraising activities of their charity?

Yes

Question A2. Are there any other comments you wish to make on the proposed additional wording of the Code on Charity Trustees?

We support the inclusion of the six principles of the Charity Commission’s CC 20 guidance in the revised Code of Fundraising Practice. In our response to the Charity Commission’s Consultation on ‘Charity Fundraising: A Guide to Trustees’ Duties (CC20) we agreed that ‘the 6 principles are clear and succinct and provide a helpful focus for Trustees to enable them to discharge their obligations properly’. In the response we also suggested that a link should be provided to the Code of Fundraising Practice and therefore we welcome the link to CC20 in the revised Fundraising Code.

Our only additional observation is that the definition of ‘must’ in relation to adherence to the Code of Fundraising Practice differs to the Charity Commission’s definition of ‘must’ in CC 20. The Fundraising Regulator’s definition states the following:

‘Where there is no legal requirement but we are treating the issue as a professional standard to be met by fundraising organisations’.

Whereas the Charity Commission’s definition is that ‘must’ ‘means something is a legal or regulatory requirement or duty that trustees must comply with’. This difference could be confusing to trustees.

Part B: the Fundraising Ask
Question B1: Is the existing focus on limiting the number of fundraising asks helpful in safeguarding the public from undue pressure?

Yes

Question B2: For telephone calls, does a narrower focus on financial asks (as opposed to requests for other forms of support) put the right emphasis on where the risk of undue pressure lies?

Yes (see below)

Question B3: Does the proposed new wording of the two rules provide sufficient clarity on when a fundraising ask is or becomes inappropriate?

The emphasis on financial asks is sensible, as the vast majority of questions and concerns raised by supporters relate to financial asks. We also understand that the guidance seeks to provide a practical solution to address the perceived source of pressure.

However, we are concerned that the updated wording does not reflect that the principle is the same whether it is financial or otherwise. This wording does not prevent individuals being asked for non-financial support after they have already turned down three financial requests.

We would also urge the Fundraising Regulator to give consideration to the variety of reasons a charity may telephone a supporter. For example, a supporter may have held an event and collected their sponsorship but have yet to send the funds to the charity. In this case, the money is being held by the individual on trust. We would welcome a distinction between a ‘normal’ financial ask and this type.

We believe it would be helpful to provide further detail on the definition of ‘unreasonably persistent’, as outlined in the guidance. This is especially pertinent to the situation outlined above, where an individual is holding the charity’s money. If this is not fully defined, this could make fundraisers feel overly cautious in making that financial ask.

We would also welcome further clarification on the following rule:

"Fundraisers MUST NOT continue to ask an individual for support if that person clearly indicates – by word or gesture – that they do not wish to continue to engage."

It would be useful if the guidance included examples of how this rule might apply in different fundraising scenarios. For example, volunteer street collectors may have inadvertently asked the same individual to contribute twice within a short period if that person has been in and out of a supermarket. Would this be in breach of the above rule or must the interaction be continuous for the rule to apply?

Part C: Solicitation (disclosure) statements

Question C1: Does the proposed new wording on solicitation statements address the following concerns:

a) That the person making the donation is clear before they give as to who is soliciting the donation?

b) That, where applicable, it is made clear that the person seeking a donation is a professional fundraiser?
The proposed wording is helpful and clear. However, in our view, the biggest issue is the content of the statement itself. If the statement is incorrect, the position in the conversation is irrelevant and it would not be clear that the person asking was a professional fundraiser. We believe it would be valuable to see practical examples and further guidance on suggested content, perhaps from the Institute of Fundraising’s Compliance Directorate.

**Part D: Raising concerns about fundraising practice (whistleblowing)**

**Question D1:** Do you agree that fundraising organisations should be required to have an internal procedure for members of staff and volunteers to raise concerns?

Yes

**Question D2:** If yes, do you agree that this requirement needs to be contained in the Code?

Yes

**Question D3:** Does the proposed new code rule provide a clear statement on what fundraising organisations must have in their whistle blowing policy?

We largely believe this rule is clear. However, the proposed rule states that the policy should include ‘the type of issues that can be raised and the process for doing so’: such a list would have to be very generic so as to ensure that it would not deter concerns being raised if something outside of that list was identified. Alternatively, the list could include wording to the effect that it “includes, but is not limited to...”

We would also suggest that further detail is added to the proposed rule, namely that policies should include:

- Provisions for concerns to be raised
- That concerns would be treated confidentially
- Other relevant external bodies to whom concerns could be raised.

**Part E: people in vulnerable circumstances**

**Question E1:** Does the existing wording of the Code adequately recognise the needs of people in vulnerable circumstances?

We mostly agree with the existing wording of the Code on this section. However, it does not seem to allow for circumstances where an individual might recover capacity subsequently to the donation and determine that they were happy to have made the donation.

It would be useful if charities could be signposted towards easily accessible guidance as to the evidence required for a refund and how to manage the practicalities of the process. We would also suggest that the guidance included consideration of people in sheltered or warden-protected housing establishments.

**Question E2:** Does the existing Code and supplementary guidance give sufficient clarity to fundraisers on how they are expected to engage with people in vulnerable circumstances?

The guidance is clear. However, it may be helpful for the Code to include a requirement that all fundraisers be familiar with the ‘Treating Donors Fairly’ guidance, either via training provided by the employer or through reading it themselves. This could help drive consistent understanding across the sector.
Part F: Charity collection bags

Question F1: Does the addition of the proposed new rule adequately deal with the distribution of unwanted charity collection bags?

Yes

Part G: Third parties

Question G1: Does the addition of the proposed guidance provide sufficient clarity on the meaning of “reasonable efforts” to ensure the ongoing compliance of third parties?

The addition is welcome, however we would suggest that further guidance is provided as to what ‘reasonable’ constitutes. Methods used may be similar, however frequency and volume will differ based on the level of risk identified by the charity. We would look to the Fundraising Regulator to take a practical view of an organisation’s interpretation of ‘reasonable’ and would appreciate additional guidance on this point.

Question G2: Do you agree that further detail suggested needs to be included in the Code in order adequately to reflect the requirements of the Charities Act 2016 in respect of third party contracts?

If yes, does the additional detail proposed provide sufficient clarity on what is required of charities and third parties?

Yes, we do agree. The proposed detail does provide some additional clarity, however we have the following suggestions for where amendments or additions would be helpful:

- We have some concern about how easy some of these aspects would be to evidence and how easily an organisation could assess whether this is feasible to deliver. For example, ‘ensuring the values of the organisation are reflected in the policies, performance objectives, indicators and, where applicable, the incentives of the third party’.
- Type and frequency of monitoring will very much depend on the nature of the fundraising activity and organisations need flexibility in deciding what is realistic, proportionate and practical. We therefore suggest the inclusion of the word ‘may’ in 4.2 b) so it reads ‘Means of evidencing reasonable efforts to ensure effective ongoing compliance may include (but are not limited to):
- Section 4 of the Code requires charities to require the adherence of third parties to the Code and requires charities to monitor ongoing compliance. We would welcome the Fundraising Regulator’s consideration of whether clarification could be given to exactly who these measures would apply to, or alternatively a further suggested list of possible compliance monitoring activities that charities could use.
- For example, commercial participators often sell goods in store or online. It can be difficult to understand how best to apply the new provisions of the Charities Act 2016 to these arrangements. We would welcome further guidance from the Fundraising Regulator on commercial participators.
- Furthermore, the term ‘third parties’ is very broad. Would section 4 of the Code apply to third parties who are neither professional fundraisers nor commercial participators – for example, unpaid corporate fundraisers undertaking staff fundraising?

Feedback on bullet points under 4.2b:
- The second bullet point of the proposed wording under 4.2b includes “... establishing a named individual’. It is not clear whether this individual is within the charity, the third party or both.
- The fourth bullet point of the proposed wording under 4.2b includes “… an assessment of the risk posed by the fundraising activity”. It is not clear what the risk applies to or who perceives that risk.
- The eighth bullet point of the proposed wording under 4.2b states "setting out a clear policy for handling complaints and feedback, including the time frames, procedure for escalating and raising internally, and the transfer of information between the charity and the third party”. However, it is not clear what the expectation would be in the case of a whistleblowing concern raised within a third party which related to a charity or the fundraising activities carried out on their behalf, or whether that third party would be expected to disclose such a case to the charity.
- The ninth bullet point of the proposed wording under 4.2b is helpful but should also be linked to the Whistleblowing section of the Code.
- The final bullet point under 4.2b states ”... agreeing an action plan with the third party to address any concerns, where these are identified.” However, it is not stated that there should be monitoring of the completion of agreed actions and obtaining assurances over this.

Part H: The Code – general questions

Question H1: How easy is the Code to understand?

The Code is understandable and clear in its language. However we would also suggest that changes include the old wording alongside the new; this would assist charities in understanding the impact of changes.

Question H3: Are there any issues not covered either by the existing Code or this consultation that you think should be considered for inclusion in the Code or Guidance and why?

Linked to our feedback on Part C, we would welcome clearer guidance on contribution statements for commercial participators. This could include example statements and the requirements for when statements are made orally. Generally, the Code legal guidance on Solicitation Statements (L10.0) is quite confusing, particularly in relation to how those requirements differ for England and Scotland. It would be helpful if this was clarified for solicitation statements in general.

We would also like to emphasise how valuable we find further guidance documents issued by the Institute of Fundraising and look forward to reading further guidance as it is developed.