

## **Cancer Research UK response to the Fundraising regulator's consultation on changes to the Fundraising Code V2.0**

**November 2018**

Cancer Research UK is the largest fundraising organisation in the UK. As a charity, we receive no funding from the Government for our research and our ground-breaking work is therefore only possible because of the generosity of the public. In 2016/17 we spent £432 million on research in institutes, hospitals and universities across the UK, funding over 4,000 researchers, clinicians and nurses. In 2016/17 alone, over 40,000 volunteers gave over four million hours of their time. Our ambition is to accelerate progress to see three in four patients survive cancer by 2034.

CRUK is committed to striving for best practice in our charity governance and fundraising operations. The Code sets standards for charities to adhere to and is as a key part of maintaining public trust and confidence in the charity sector. We therefore welcome the opportunity to respond to the Fundraising Regulator's consultation on changes to the Code of Practice.

We support the Fundraising Regulator's aim to simplify the Code and make it more accessible. However, we do not however feel that the revised Code in its current state achieves this goal. We feel that further review and consultation is required before publication.

While the consultation does not purport to make fundamental changes to the standard of the Code, there are instances where changes have been made to simplify language which have subsequently altered the meaning or have broadened the scope of a rule. In some cases, the newly worded rules go further than legal requirements. We are concerned about the impact this could have on charities.

### **Key points**

- We are very supportive of the Fundraising Regulator's intention to simplify the code. It is useful to have a consolidated Code which incorporates the Appendices and a clear Glossary. However, in some instances, the simplification and reorganisation of the Code has changed meaning or placed higher standards than those required by the law. We also do not feel that incorporating the Face to Face Rule Books is beneficial.
- Our principle concerns are:
  - ambiguity created by changes in language
  - rules which have been inadvertently widened to cover areas of the Code which were not previously covered
  - the inconsistent use of must and must\*
- We recommend that the Code is consulted on again following the technical and legal review.
- We would welcome a fair implementation and transition period, to enable us to update our internal processes, guidance and training. We would also welcome a balanced and flexible approach to future regulatory action, if the changed wording of the Code results in a different interpretation of its meaning.

We will outline some examples to reflect the above concerns, although the examples presented in our response are not exhaustive. Cancer Research UK would be happy to assist the Fundraising Regulator in further, more detailed consultation if that would be helpful.

### ***1) Do you agree with the proposed approach set out in this consultation?***

***Yes/No***

***If no, please explain why, giving your reasons with any supporting evidence.***

Yes,

Cancer Research UK fully supports the intention to simplify the Code and make it more accessible to both fundraisers and the public. We do not however feel that the revised Code in its current state achieves this goal.

Whilst the annexes of deletions and merges provided are useful, there are also instances where changes to language have in fact resulted in material change to the rule itself. These changes are not captured in the annexes provided, casting doubt about whether these are intended amendments or accidental. Whilst there are nuances that we assume will be picked up in the technical and legal review it is imperative that input is sought again from charities before publishing the new Code.

We have concerns where revisions to the Code have resulted in rules being above required law. For example:

**GR63:**

*If you process personal data, you **must\*** keep to any notice or registration as required by the Information Commissioners Office.*

This rule should be amended to reflect GDPR requirements. GDPR has removed the requirement to register with the ICO. Instead, GDPR introduced an annual fee under the Digital Economy Act.

**GR69:**

*You **must** only keep personal data as long as necessary to fulfil the purpose for which it was processed. Please see **section 1.c.I Processing personal data** for more information on what information **must\*** be provided to the individual about processing).*

This requirement does not accurately reflect GDPR's stance on data retention. This is very restrictive, implying personal data can only be used for one single purpose and then must be deleted. The rule does not take into consideration the use for compatible purposes, the exemptions research or archiving, nor the carve outs under Art 23(1) of the GDPR and Schedule 2 of the DPA 2018 (which define situations where organisations are not expected to comply with certain basic positions in the GDPR for overriding reasons). We strongly suggest this is aligned with the rules under GDPR.

**FM181:**

*Tickets sold in the lottery **must not** be sent through the post.*

This is not a legal requirement by the Gambling Act. We request the rationale behind the addition of this requirement, or alignment with the law under the Act.

**2)What is your view on each of the proposed changes? In your response, please give reasons for your views, ordering your comments under each of the heading (a-f) as follows:**

**a) The new Contents page and reordering of rules**

We understand the logic of combining the Code and legal appendices into the three simplified sections– “General Rules”, “Working with Others” and “Fundraising Methods”. We also welcome the deduplication of rules. In practice however, the new Code is difficult to navigate due to the complex

lettering, numbering and roman numerals layout. The original Code was simpler to follow in this sense and the inclusion of the rulebooks requires further consideration- see f).

### ***b) “Plain English” review of language***

We support the review of language in the Code and the reduction of passive verbs. The replacement of ‘the organisation’ and ‘the fundraiser’ with the simplified ‘you’ however creates more ambiguity than it does clarity. ‘You’ is frequently defined as having its own secular meaning for each rule. In order to establish which ‘you’ the rule is referring to, the reader must carefully consult each rules definition. For example:

#### **GR 1.b.i:**

*Please note that in this section (1.b.i. General duties), ‘you’ refers to the trustees of a charitable organisation unless otherwise stated.*

Rather than simplify the Code, it can be at times more complicated to understand who the rule is relevant to as ‘you’ can be several different entities. This therefore leaves some rules more open to misinterpretation. It would in our view be clearer if, using the above example, the rule were to refer to ‘Trustees’ rather than ‘you’.

In some instances where “Plain English” has been used it has moved requirements away from its original meaning. As a result, there are instances where the new language creates ambiguity rather than simplifying the Code.

An example of “Plain English” losing clarity is the replacement of “on behalf of” and “in aid of” fundraisers with “connected” and “independent” fundraisers.

Previously, the “on behalf of” definition was:

*If a volunteer is ‘on behalf of’, they will have been appointed by the organisation to act on its behalf and the organisation will be responsible for his or her acts. An ‘on behalf of’ relationship offers volunteers more support from the organisation. From the organisation’s perspective, it offers the organisation more control over a volunteer’s activities but the organisation also then becomes responsible for acts carried out by the volunteer as an agent of the organisation.*

The new “connected volunteer” definition is:

*A volunteer who works with a charitable organisation to raise funds on its behalf and in its name.*

Whilst we see the logic behind the change in terminology, “in aid of” and “on behalf of” are concepts already understood and embedded by the charity sector. Changing these will result in confusion and by simplifying these definitions, helpful distinctions and clarity have been lost. Our preference would be to retain the language from the original code.

There are also instances where “Plain English” has not been applied and phrasing could be more succinct, for example:

#### **GR08:**

*Before you make any direct or implied claim in your fundraising which is likely to be taken literally, you **must** make sure that there is evidence to prove that the claim is capable of objective substantiation.*

Could instead read:

*You **must** be able to substantiate any claims made during a solicitation.*

This is more accessible and easier for both fundraisers and the public to understand without material change to meaning.

### **c) Code introduction**

Cancer Research UK has no issues with the revised introduction of the code. It is however lengthy and could be condensed.

We note the definition of a “independent volunteer” differs in the introduction:

*a volunteer raising funds for a charitable organisation independently of the charitable organisation but with its knowledge and often using materials provided by the charitable organisation to such volunteers*

to the definition in the glossary:

*A volunteer raising funds for a charitable organisation independently of the charitable organisation. In some cases, the charitable organisation will know about the activity prior to receiving funds raised while in other cases it may not. Where the activity is known to the charitable organisation in advance, the volunteer will sometimes use materials provided by the charitable organisation to such volunteers.*

It is our understanding that a “independent volunteer” is an independent volunteer whether or not a charity knows about them; the difference is that certain standards apply to charities in relation to independent volunteers once they know about them. Further clarity and continuity on this definition is required.

### **d) Glossary of key terms**

The Glossary of key terms is helpful although as noted above there are some inconsistencies with definitions which need to be clarified. To make it easy to identify what a defined key term is in the Code we suggest they are capitalised.

There are definitions which require further consideration to ensure they are not too broad and placing additional requirements on charities.

For example:

**Donor:**

*An individual who gives a donation or is asked to give a donation by a fundraiser.*

This definition implies rules relating to supporters who have kindly chosen to give to our cause, are also applicable to members of the public who have decided not to. In some instances, this is simply unrealistic given we will have no further contact with the individual. We strongly suggest distinguishing between a donor and a member of the public.

### ***e) Rules proposed for deletion or amendment***

Cancer Research UK support the deletion of rules listed in the annex provided. We are supportive of removing duplication in the Code, however there are some instances where the removal of a requirement due to repetition, makes the rule less transparent. For example:

In the original Code 15.3.3(f):

*If an event organiser, or participants themselves, fall within the definition of [professional fundraiser](#) or [commercial participator](#), they must\* have a written agreement in place with the organisation for which funds are being raised and must\* make the appropriate statements.*

This requirement does not appear in the new Code under section 3.e.XI. Whilst we understand the logic that this is repeated elsewhere in the Code, it would in this instance, be useful to highlight in that challenge event participants could be professional fundraisers.

### ***f) Incorporation of fundraising rulebooks in the Code***

The rulebooks are, and should be, more prescriptive than the main Code as they are governing very specific activities. This does not sit well when incorporated into what should be a principle-based Code and somewhat loses the value that it brings. Spreading the rulebooks across the revised Code sections make it harder to navigate and locate vital guidance.

Following the incorporation of the rulebooks into the Code, it appears that some rules have been expanded. This was not disclosed as part of the consultation. For example:

#### **FM25:**

*You must not leave bags unattended on the public highway. A team member must always stay within three metres and be able to see a 'team bag' (if one is used).*

This is in the Street Rulebook but now seems applicable to Private Sites and Door to Door as well.

#### **FM38:**

*You must not approach members of the public or a household in groups of more than two at a time. This includes trainee fundraisers.*

This is in the Door to Door Rulebook but has been extended from "approach[ing] a door" to approaching members of the public or a household and is therefore now applicable to Private Sites as well.

Where rules have been expanded, the Regulator must make this clear to the sector. We suggest keeping the rulebooks separate from the Code for clarity and to maintain fundraising standards.

***3) Are there any points not covered by this consultation that you think should be considered to improve the style, presentation, clarity and accessibility of the Code?***

Below are some areas of concern, inconsistencies or inaccuracies which need to be addressed prior to the publication of the revised Code. This list is not exhaustive.

- There are inconsistencies throughout the code of the use of must, must\* and must not, must not\* . For example:

**WO05:**

*Where appropriate, you **must** check the suitability and credentials of 'connected' volunteer fundraisers to act as responsible people on your behalf.*

- *You **must** comply with legal duties on using the Disclosure and Barring Service, Disclosure Scotland or Access NI checks.*
- *in the case of house-to-house collections you **must\*** carry out due diligence to check if volunteers are fit and proper persons.*

It is our understanding the **must\*** should be applied to both of the above requirements. The old Code stipulates **must\*** for DBS checks so we presume this is an error rather than a rule change.

It would be helpful to hyperlink to the relevant law where **must\*** and **must not\*** are used.

- **There are instances where the revised Code contradicts itself.** For example:

**FM98**

*If you use a professional fundraiser to ask for donations by phone, they **must\*** give the identity of the charitable organisation on whose behalf the calls are being made, along with details of their pay in connection with the appeal (see **section 1.c.IV Solicitation statements** for a fuller of the requirements relating to solicitation statements by professional fundraisers).*

- *In England and Wales, the appropriate statement **must\*** be made during each call and a written statement must be sent within seven days of any payment being made by the donor to you.*

Contradicts;

**WO53:**

*In the case of telephone fundraising, the appropriate statement **must\*** be made during each call and within seven days of any payment of £100 or more being made by the donor to the professional fundraiser. The professional fundraiser **must\*** give the donor a written statement, and tell them about their right to a refund or to cancel a payment. (Section 60 (5) Charities Act 1992).*

- **There are inaccuracies within the revised Code surrounding lotteries. We strongly suggest reverting to the original Code approach of signposting to relevant law. This will mitigate the risk of inconsistencies. For example:**

**FM175:**

*If you need to hold a licence for the type of lottery you are running (see types of lottery in England, Wales and Scotland and in Northern Ireland above), you **must\*** comply with the Gambling Commission's codes of practice, licence conditions, and conditions set out in legislation.*

This implies the Gambling Commission regulates gambling in all of the UK including Northern Ireland. The Gambling Commission is the regulator of gambling only in Great Britain.

Large Society Lotteries are referred to as '*larger society lotteries*'. For consistency, the correct terminology 'Large' should be used.

**FM180:**

*If you are promoting society lotteries, you must comply with section 8 of The British Code of Advertising and Sales Promotion and Direct Marketing (The CAP Code).*

The media of the advert could mean that BCAP is relevant instead. This should say "*or section 18 of The UK Code of Broadcast Advertising (BCAP Code) (as applicable)*". The CAP Code is referred to incorrectly and should instead read, "The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code)". We believe the section reference (section 8) is only applicable in part. Section 17 of the Code, which is not referenced is on lotteries.

- **There is a lack of clarity around geographical regions**

It is not always clear which geographical region fundraising rules are applicable for.

Example:

**GR51**

*Those in Northern Ireland **must** follow the same standard required in England and Wales.*

*Please see **Section 2.c.IV. Solicitation (disclosure) statements for paid third party fundraisers and commercial partners** for requirements regarding solicitation statements in Scotland.*

It is unclear whether the rule applies to all charities who work in country, or just those registered there.

In summary, we strongly suggest further consultation is sought following the technical and legal review and in light of the alterations required to the new Code. This would ensure any inaccuracies are identified prior to publication. We would be happy to provide further guidance and insight to assist the Regulator.

We also request a fair implementation period for this new Code, as well as a pragmatic approach to complaint investigations. This should reflect the fact that the sector will have to make significant changes to internal processes and procedures to reflect the updated Code.

**For any further information please contact Rose Gray, Policy Manager at [rose.gray@cancer.org.uk](mailto:rose.gray@cancer.org.uk) or 020 3469 8046.**