

## Lessons from the Fundraising Regulator's case reports

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At the beginning of autumn the Fundraising Regulator published ten case reports into charity fundraising following complaints from the public. These follow on from the regulator's change of policy (announced last year) to 'name and shame' charities and agencies who fall short of the Fundraising Code's standards.

In many of the reported cases the charities involved had contracted out aspects of their fundraising to agencies, whose personnel acted inappropriately or made mistakes, leading to a public complaint. In dealing with the complaints the Fundraising Regulator investigated both the agency and the charity's compliance with its Code.

In deciding whether those charities had complied with the Code in working with third parties the Fundraising Regulator paid particular attention to the contracts they had in place for these fundraising arrangements.

These are key documents as a 'professional fundraising' arrangement must be accompanied by a written contract, with certain terms to protect the charity and the public, where it meets the definition of such an arrangement under the Charities Act 1992.

The Fundraising Regulator is now encouraging charities to update their fundraising materials to comply with the new Fundraising Code which came into effect on 1 October.

With this new Code now in operation it would be prudent to check your contractual arrangements with fundraisers are compliant and working as they should.

### **The Fundraising Code & professional fundraising contracts**

The newly revamped Fundraising Code retains a section dedicated to its standards for charities 'working with third parties'. This section emphasises the responsibility of charities for the actions of their contracted fundraisers, both at law and as a requirement of the Code.

Moreover it includes an ongoing obligation of due diligence for charities in identifying appropriate external fundraisers, monitoring their work, ensuring compliance with the law and taking steps to ensure the relationship is satisfactory and that the public are protected.

The strength of your charity's contract with a professional fundraiser will be a key part of compliance with this section of the Code. The Code includes specific requirements which your contract will need to contain, such as review procedures and clear expectations from the fundraisers for their work.

However, more broadly, we think this document can provide the framework for both parties' compliance and in particular your charity's ability to monitor, review and remedy and failures in a fundraisers works.

As the Code notes, the Charities Act 1992 and the Charitable Institutions (Fundraising) Regulations also legally require all charities who enter into arrangements with 'professional fundraisers', defined in that legislation, to maintain written agreements which meet certain requirements.

These agreements must specify, in particular 'any voluntary scheme for regulating fund-raising, or any voluntary standard of fund-raising, that the professional fund-raiser ... undertakes to be bound by for the purposes of the agreement' – which for almost all charities in England & Wales will include the Code itself.

### **Lessons from the FR's case reports**

These case reports are an excellent resource for charities and their fundraisers to develop good practice going forward under the new Code and to benchmark existing contractual arrangements against.

We would in particular note that a professional fundraiser's failure to comply with the Code would not necessarily lead to finding of non-compliance with the beneficiary charity, where the charity had taken robust monitoring, investigation and remedial action as part of the relationship.

We would therefore recommend you review the terms of your existing arrangements and any new proposal to ensure they allow this good practice, as well as an appropriate 'exit strategy' for the very worst case scenarios.

Finally we did note that in one complaint investigation the Fundraising Regulator did find fault where a charity made 'no reference to the requirement on the [fundraising] agency to adhere to' the Fundraising Code; which may also be a breach of the law under the Charities Act 1992.

If you have any queries arising from the investigations or around best practice for fundraising contracts and the law please do not hesitate to get in touch.

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