

More

The Public Administration and Constitutional Affairs Committee Report into Fundraising Some comments from More Partnership

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Summary

1. The Public Administration and Constitutional Affairs Committee (PACAC) report on “The 2015 Charity Fundraising Controversy” contains two significant departures from Sir Stuart Etherington's review. In most other respects it supports and amplifies what Etherington has said.
2. The most significant departure from Etherington recommended by PACAC is the reporting line for the new regulator. PACAC recommends that instead of reporting to Parliament (to PACAC), the new regulator should report to the Charity Commission for England and Wales. If all UK charities were regulated by the Charity Commission, then this would be an obvious reporting line. However, as discussed in our earlier paper on the December 4 2015 Sector Summit¹, the regulatory environment is rather more complex than this. PACAC's recommendation does not address the question of how charities outside England and Wales might be related to a fundraising regulator which reports to an English and Welsh agency, nor does it address the nature of any relationship between exempt charities' statutory regulators and the Charity Commission. The Committee does, however, recommend that the new fundraising regulator should work with non-Charity Commission statutory regulators (e.g. HEFCE) concerning the regulation of fundraising by exempt charities.
3. The second, and perhaps surprising, departure is PACAC's scepticism about the proposed Fundraising Preference Service. It has heard the Information Commissioner's opposition to the idea, and notes that this would add a limitation to the activities of charities which do not exist for any other sector. The Committee recommends that at the very least the new fundraising regulator must work with the Information Commissioner to ensure that the new preference service can work in such a way that it does not create conflict and confusion in the minds of the public.

Background

4. Following the Daily Mail's reporting on fundraising over the summer of 2015 and the Prime Minister's call for action to improve fundraising practice, the Public Administration and Constitutional Affairs Committee of the House of Commons (PACAC) decided to hold an enquiry.
5. Over a period of four months the Committee took both oral and written evidence. It interviewed the Daily Mail reporter who had broken the story on charity fundraising, as well as Chief Executives and Chairs of the trustees of a number of large charities. It is also interviewed Sir Stuart Etherington, as well as the Information Commissioner and the Charity Commission. Charity Regulation is a devolved matter and we assume this is why the evidence collected was confined to England and Wales.
6. Written evidence was supplied by a number of large charities, the Charity Commission, Rob Wilson MP, the Minister for Civil Society, as well as the Information Commissioner's Office (ICO), the Consumer's Association, the Russell Group and More Partnership, amongst others.
7. The PACAC report includes consideration of the Etherington report, and indeed suggests some modifications to it.

¹ http://www.morepartnership.com/library/Sector_Summit.pdf

8. The main areas for the committee's work were:
 - Charities ignoring the Telephone Preference Service (TPS) and their use of subcontractors
 - The trading of data
 - Targeting vulnerable people
 - It also considered broader issues of Charity Regulation, the controversy surrounding grants made by two charitable trusts to CAGE, and donations from outside the UK.

On Governance

9. The Committee re-emphasised Etherington's focus on the extent to which trustees need to exercise their governance responsibility in respect of fundraising, including the use of subcontractors and fundraising agencies.
10. The Committee highlights the forthcoming Charities (Protection and Social Investment) Bill which, if passed, will require a charity with an income of over £1 million per year to disclose in its annual report whether it has used commercial fundraisers, the fundraising code of practice to which it subscribes, the number of complaints it has received and how it protects vulnerable people in fundraising.
11. Perhaps the most important phrase in this section is found in paragraph 39: "trustees [must] have confidence in the methods and ethics of fundraising conducted on their behalf, whether by employees, volunteers or by contractors."

It seems that in future fundraising will occupy more time for those who govern institutions, and more time for those who report on their activity. It is to be hoped that this will be seen as an opportunity to ensure not only that fundraising is done well, but that fundraising charities embed into their management and governance structures behaviours which lead to long, fruitful and satisfying relationships between donors and the organisations they support.

Donations from Overseas

12. Caught up in a section on CAGE and the extent to which charities themselves (i.e. grant-making trusts) should fund advocacy organisations such as CAGE is a short section on the receipt of donations from outside the UK.
13. The Committee says that the CAGE question had brought their attention to the receipt of donations from organisations which "may in some cases reflect malign influences on the charities concerned" and about which "there is currently no system for alerting the authorities about funds arriving from hostile governments or terrorist-supporting organisations."
14. The Committee recommends that "The Charity Commission and the Government should consider proposals about how donations from overseas could be made notifiable through the Charity Commission so that the authorities become aware of charities in receipt of funds from potentially harmful sources."

We understand the Committee's concern about money being provided by organisations for malign purposes. Set against that must be the very significant quantity and value of donations received by British charities, not least British universities, each year for entirely proper charitable purposes. It is difficult to see how a system of reporting overseas donations could avoid being onerous, off-putting to donors and ultimately counter-productive.

Fundraising Regulation

15. The Committee endorses the Etherington recommendation to fund the new regulator through a levy.
16. The Committee endorses the Government's support for the Etherington review.
17. The Committee describes the Sector Summit held on 4 December 2015 as having "discussed the practicalities of implementing the new [regulatory] regime." (Paragraph 70) It is generous to describe the Sector Summit as a discussion. It was a series of speeches followed by a small number of questions.
18. The Committee recommends that the new regulator consult the Prime Minister's Champion Group on Dimension Friendly Communities, and other representative groups, to examine how the new code of fundraising practice can take account of the needs of vulnerable people.
19. The Committee recognises that not all fundraising charities are regulated by the Charity Commission, while Sir Stuart Etherington confirmed that these charities were not consulted as part of his review. While endorsing Etherington's approach, the Committee calls for "urgent consultation" between the new regulator and these charities on how their regulation will be pursued.

The broad direction of travel laid out by Etherington is endorsed by the Committee.

It is easy to agree with the need to protect those who are vulnerable from inappropriate fundraising. Nevertheless, it remains the case that identifying exactly who is vulnerable is not always easy or obvious.

The Committee appears keen to ensure that all fundraising charities fall within the new regulatory regime, irrespective of the nature of their own statutory regulator.

Fundraising Preference Service

20. The Committee says it is "not persuaded of the case for a new fundraising preference service." (para 85) noting that it would duplicate the function of the existing Telephone Preference Service and add limitations to the activity of charities that do not exist in any other sector.
21. The Committee says that if such a service is to be introduced, then the new regulator must urgently "discuss with the Information Commissioner how the new service would work alongside TPS, without creating conflict and confusion in the minds of the public."

It appears that the Committee has not fully understood that the intention of the Fundraising Preference Service is to cover all forms of communication with donors and potential donors, not simply the telephone. However, we welcome the Committee's emphasis that another preference service should not create conflict and confusion in the minds of the public. This mirrors the Information Commissioner's own concern which he gave in oral evidence.

The Charity Commission

22. The Committee expresses concern that the role envisaged by Etherington for the Commission as the "statutory backstop" for fundraising regulation, together with other matters considered by the Committee could place a burden on the Commission which it could not meet within its existing budget. The Committee recommends that HM Treasury and the Cabinet Office address this.
23. The Committee disagrees with Etherington over the reporting line for the new fundraising regulator. Etherington had recommended that the regulator report to PACAC each year. By contrast the Committee says "The new regulator should be held to account in public, but this should be the function of the Charity Commission. Save in the most exceptional circumstances, PACAC has neither the time nor the resources to do this... The Charity Commission has the expertise and must have the resources." (Paragraph 99)
24. The Committee suggests extensions to the way in which the Commission gathers evidence about the workings of charities, and recommends restoring the title of its board members to that of "Charity Commissioner."

One senses that the Committee was keen to reinforce the role of the Charity Commission, especially in respect of its powers to hold trustees to account, and its role in guarding public trust in the very idea of "charity."

The suggestion that the new regulator should report to the Charity Commission is understandable given the increasing emphasis on trustees' role in making sure that fundraising is appropriately carried out. However there may be some unintended consequences hidden in this recommendation. These arise as a result of the limited nature of the Charity Commission's jurisdiction over charities it does not regulate.

For example, the Etherington Review contains the aspiration that the new fundraising regulator would be a UK-wide operation, reporting to a committee of the UK Parliament. However, PACAC is suggesting that the regulator should report to a body which only has jurisdiction in England and Wales. Charity regulation is a fully devolved matter and so it is hard to see how Scotland or Northern Ireland, even if they accepted a new UK-wide fundraising regulator, would accept that the regulator's reporting line should be to the Charity Commission.

Exempt charities are also left in the peculiar position by this recommendation. These charities, not regulated by the Charity Commission, are being asked to operate within a regulatory framework for fundraising which reports to a body which has no immediate jurisdiction over them.

The Information Commissioner

25. The Committee notes the evidence from the Information Commissioner who said "he would have taken more action had he been aware of the scale of complaints in the [charitable] sector." It is critical of the Commissioner's apparent lack of action in respect of charities hitherto.
26. It welcomes a new memorandum of understanding between ICO and the existing FRSB and noted the need for a new memorandum with the new regulator. PACAC wants this memorandum to be in place by the end of 2016, to "enable the two regulators to cooperate in ensuring that the charity sector is aware of its obligations and that any abuses are detected and dealt with in future."
27. The Commissioner noted that some charities "do not have accurate and reliable records on whether donors have consented to marketing." The Committee spent some time with the Commissioner exploring the meaning of consent. What was unexplored was the impact of ICO's earlier advice to charities, especially in respect of the Telephone Preference Service. This had advised charities that while calling those on TPS with whom the charity had a relationship might be a "technical breach" of the regulations, they should "proceed with caution" implying that explicit consent was unnecessary.
28. The Committee supported recommendations from other parliamentary committees which had called for greater powers for the Information Commissioner to be able to enforce the law, including the introduction of custodial sentences.

The withdrawn advice from the Information Commissioner regarding the use of the telephone to call existing charity supporters has left an unfortunate legacy. There is documentary evidence of the advice itself, but there is dispute and uncertainty concerning the date (and even the year) in which this advice was withdrawn and replaced with the latest guidance on direct marketing. This latest guidance is now itself being updated.

We agree that no guidance from ICO has ever suggested that cold calling of telephone numbers registered on TPS without consent is acceptable.

However, many well-behaved charities have large numbers of people on their databases who, despite being registered with TPS, have consented to receive telephone calls from those specific charities. The early ICO guidance implied that it would take a relaxed view on the calling of those with whom there was a demonstrable existing relationship, so long as this was cautious and did not give rise to complaints. Because of this, charities did not record such consent when obtained because it was unlikely, in the context of the time, to have to prove that consent had been obtained.

It is clear that such consent should, in future, be recorded. But there remains a significant problem for charities with large populations of people who have already indicated they would not object to receiving a telephone call but in respect of which this consent has not been recorded.

This matter will come to the fore once again with the introduction of the EU General Regulation on Data Protection. The question of "grandfather rights" must be addressed in a way which respects the law and also the reasonable expectations of the data subjects and the charities they support.

Interaction between the Cabinet Office, the Charity Commission and the new Regulator

29. The Committee reiterated its preference that the Charity Commission should be the "guarantor of the new regulatory system", rather than the government resorting to its statutory powers. It has therefore recommended that the Charity (Social Investment and Protection) Bill should be amended to give the Charity Commission the authority to carry out this responsibility. It is also recommended that the Commission should report to the Cabinet Office on an annual basis about the effectiveness of the new co-regulatory regime.