

DSC consultation response:

The Fundraising Regulator's proposed registration fees and levy

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1. Introduction

1.1. General comments

It is vital to the process of setting and implementing regulation that the concerns of those being regulated are taken into consideration. So it is encouraging to see the new Fundraising Regulator (FR) providing opportunities for charities to be involved in the setting of registration fees and levies.

There are, however, many unresolved questions relating to fundamental aspects of the FR's remit. This makes responding to this consultation very difficult as the questions posed depend very much on issues which the FR still has not clarified. This greatly undermines the value of the consultation and unfortunately reflects the haste with which the FR was developed, over a period of just ten months. The intention to begin invoicing charities after 1 August, just one week after this consultation closes, is extremely concerning.

It is quite unusual for an organisation to start with the question 'how should we be funded?' before having figured out what the need is, who will benefit and how, and how success can be measured. This is an exercise in putting the cart well before the horse. As a funding bid, this discussion paper wouldn't make it past the initial screening.

1.2. DSC's interest in the consultation

The Directory of Social Change (DSC) is a charity that helps other charities, through training, research and policy advocacy work. We are entirely independent of government, and self-funded through the sale of books and services. Thus DSC does not itself seek donations from members of the public. We are a well-established trainer in the area of fundraising and we help charities raise funds through our fundraising databases. These are informed by our continuous high-quality research on funders, which puts us in a unique position as experts on the fundraising landscape. We also train charity staff and volunteers and publish books on all areas of charity governance and management. Through our policy and research arm, we work to promote and defend the value of the voluntary sector.

1.3. DSC's principle of Responsible Regulation

DSC believes that voluntary activity should be regulated responsibly. Some regulation is necessary to safeguard and maintain the interests of the general public, the beneficiary, and of the organisations and individuals being regulated.

However, it should have a demonstrable benefit and should aim to empower and strengthen voluntary activity rather than control it arbitrarily. We believe that:

- a) Regulation should be proportionate – it must strike a balance between perceived risk and intended benefit. It should recognise the diversity of voluntary sector activity and be developed and applied in a proportionate way.
- b) Regulation should be appropriate – it must be informed by the characteristics, capacity, and needs of the organisations and individuals that are being regulated.

Insofar as is possible it should be focused, rather than acting as a blunt instrument that has unintended effects.

c) Regulation should be enabling – it should seek to empower rather than control voluntary activity. The reasons for the regulation and the regulation itself must be properly understood by those institutions which are applying it. It should be accessible and intelligible to those being regulated. It should seek as far as possible to encourage self-regulation rather than focus simply on enforcement.

2. Impact on charities.

At this moment in time, given the lack of clarity around fundamental questions relating to how the regulatory system will work, there are many reasons for us to believe that the FR could negatively impact the ability of charities to raise funds and help their beneficiaries.

2.1. Risk of damage to public trust and confidence

Arguably the most worrying problem is that registration fees and levies will come directly from the money that people give to charitable causes.

Charities are expected to demonstrate the lowest possible level of ‘overhead’ expenditure and are regularly, often unfairly, criticised for not spending enough on delivering services for beneficiaries. According to a recent study by the Charity Commission, among those people who say they have lost trust in charities, one third of them cite media stories about charity spending as the main reason.¹

What makes this case particularly unpalatable is that not only is it an additional overhead, it is directly linked to people’s generosity. Logically, the more they give, the more of their donation that will be diverted away from the cause. It is, in essence, a tax on charitable giving.

It is not clear if ‘the public’, on whose behalf the FR is intending to work, actually want this. As research by the Charity Finance Group shows, the public is of a view that regulators that are wholly funded by those they regulate could be forced to compromise their independence.² The perception that the FR is unduly influenced by those it regulates would completely undermine its position, as well as trust and confidence in charities more generally.

2.2. Risk of financial loss

Charities’ budgets are already stretched too far. Charities have been forced to dip into reserves in order to keep services running which leaves charities, their beneficiaries, and the charity sector as a whole in a weaker situation. That the FR is now seeking to ‘build up adequate reserves’ by charging levies shows the FR to be out-of-touch with reality.

¹ Charity Commission (2016) Public Trust and Confidence in Charities: <https://goo.gl/JDKSEr>

² Charity Finance Group (2016), [What regulation, who pays? Public Opinion and Charity Regulation](http://goo.gl/oXC8MU) <http://goo.gl/oXC8MU>

More money on regulatory fees means less money for beneficiaries. DSC therefore disagrees in principal with charities covering the cost of the regulator while a statutory grant could be sought, thus freeing up the FR from the need to administer the collection of levies. We also oppose the idea of smaller charities registering for a fee and we question whether the FR has considered the potential impact on vulnerable people who depend on charities, noting that beneficiaries are not referred to once in the entire discussion paper. Registration should be free to all charities under the £100k threshold.

3. Question responses

3.1. Whether £100,000 is the right threshold to set the levy.

In theory, this threshold would exclude all but the largest charities, offering some protection and certainty to smaller charities whose resources tend to be the most stretched. As the discussion paper states, this threshold would mean just 1,961 charities will be required to pay any levy, but that's in theory. We cannot say whether this threshold is correct until the following points are clarified by the FR:

3.1.1. What is fundraising expenditure?

In reality it is impossible to answer this question as the Fundraising Regulator has not made clear what charity expenditure will count towards the threshold. This is a big problem, which diminishes the value of this consultation. It is illogical to ask charities what the threshold should be before consulting on what spending should count towards that threshold. The FR is essentially asking the question 'how long is a piece of string?'

3.1.2. Is it expenditure on raising funds as per the charities SoRP?

It is not clear if by 'fundraising expenditure' the regulator intends to count the costs incurred by a charity in raising funds as per the charities SoRP which invites charities to report on costs relating to the activities below. It is clear that by doing so a threshold of £100,000 would be far too low:

- Seeking donations, grants and legacies
- Operating membership schemes and social lotteries
- Staging events, including the performance fees, licence fees and other related costs;
- Contracting with agents to raise funds on behalf of the charity;
- Operating charity shops selling donated and/or bought-in goods;
- Operating a trading company undertaking non-charitable trading activities;
- Advertising, marketing and direct mail materials, including publicity costs not associated with education material designed wholly or mainly to further the charity's purposes; and
- Investment management costs.³

3.1.3. It is clear from the list above that many of these expenditures do not relate to the issue the FR is meant to address, that is, fundraising from members of the public.

³ Statement of Recommended Practice paragraph 4.45
http://www.charitySORP.org/media/620742/frs102_module-4.pdf

Including spending on things like managing a charity shop, managing investments or making grant applications would completely miss the point. Managing a charity shop is costly and would very quickly push an organisation beyond the £100,000 threshold. These are not the problem areas that the FR was set up to address.

3.1.4. What about communications which are not aimed at generating income?

Unfortunately the regulator continues to muddy the water by giving briefings suggesting that spending on activities which promote awareness of a charities purpose and aims but does not seek donations could count towards the threshold. If these are included, then the £100,000 threshold is not very much and more charities will be caught, unfairly, by the levy with potentially too great a burden being placed on the resources of smaller charities.

3.1.5. What does the FR mean by 'expenditure... to generate funds from the public' as per paragraph 15 of the discussion paper?

The discussion paper obfuscates the issue by referring to 'expenditure... to generate funds from the public' and 'fundraising expenditure'. These are not the same thing. In other areas of charity regulation 'the public' is understood to be a distinct group of people, for example the Lobbying Act makes distinction between 'the public', 'supporters' and 'members' which all vary in terms of the formality and history of their relationship with an organisation. Furthermore it is unclear whether sending a letter to a private company requesting sponsorship would be classified as public fundraising? It is vital that the FR lays out what type of people and organisations would be classified as 'the public'.

3.1.6. How can we be sure the threshold won't need to be lowered or the levies adjusted upwards?

It is unclear how the FR has arrived at the £2.5m figure it claims will be needed to regulate fundraising. There is every reason for charities to expect to contribute increasingly higher amounts over time as the FR expands its operations. The FR has expressed its desire to regulate fundraising in Scotland and Northern Ireland. It is not clear whether the £2.5m budget would cover the work in these regions.

3. Recommendations

- The FR should seek a statutory grant to fund its operations. This would remove the administrative burden from the FR and ensure public donations are used for their intended purposes, protecting public trust and confidence.
- Immediately take action to set out clearly what the FR means by 'fundraising expenditure' and which charities need to register.
- Immediately specify what the FR understands to be 'the public' for fundraising purposes. Does that include members? Private companies?
- The regulator should push back its plan to begin invoicing charities 'after 1 August' in order to properly consider the responses to this consultation and to set out what it means by 'fundraising expenditure'.
- Having done the above, it would be advisable to conduct this consultation again.

- A registration fee for membership should not be introduced for charities which do not meet the threshold. Membership for these charities should be free.
- The FR needs to build the case for the benefits of membership more strongly. Doing so will increase take-up among charities and improve the chances of success for the regulation of fundraising.
- The FR should set out clearly what safeguards are in place for those charities that register. There is currently no agreed appeals process for FR decisions and so there is a major risk here for public trust and confidence in charities.
- The FR should clarify the implications of the reserve powers held by the Minister for Civil Society. The discussion paper states that the Charities (Protection and Social Investment) Act 2016 could be used to force charities to pay 'a regulator' however this is confusing as the FR is non-statutory.

About the Directory of Social Change

The Directory of Social Change has a vision of an independent voluntary sector at the heart of social change. We believe that the activities of charities and other voluntary organisations are crucial to the health of our society.

Through our publications, courses and conferences, we come in contact with thousands of organisations each year. The majority are small to medium-sized, rely on volunteers and are constantly struggling to maintain and improve the services they provide.

We are not a membership body. Our public commentary and the policy positions we take are based on clear principles, and are informed by the contact we have with these organisations. We also undertake campaigns on issues that affect them or which evolve out of our research.

We view our role as that of a 'concerned citizen', acting as a champion on behalf of the voluntary sector in its widest sense. We ask critical questions, challenge the prevailing view, and try to promote debate on issues we consider to be important.

DSC has a long-standing interest in charity law and regulation, especially the Charity Commission with which we work closely according to our principal of responsible regulation.