

**DSC response to proposals for a**

# **Fundraising Preference Service**

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## 1. Introduction

### 1.1. Why a Fundraising Preference Service

The Fundraising Preference Service (FPS) has been the most controversial proposal to emerge from the review of fundraising regulation led by Sir Stuart Etherington in September 2015. The review was undertaken to resolve a perceived crisis in fundraising, which was sparked when the Daily Mail falsely linked the death of a charity supporter to a complaint they had made about the volume of direct mail being received. During this time, media reporting on charities was highly misleading and unfair but it also highlighted some shortcomings including the sale of supporters' data and the practises of some private fundraising agencies. The FPS was proposed as a means of allowing individuals to have greater control over how they can be contacted for the purpose of fundraising.

### 1.2. Trust and confidence in charities

The big worry for charities and, indeed, the Charity Commission, during this period has been the possible negative impact on public trust and confidence in charities. Unfortunately levels of public trust and confidence in charities cannot be easily measured, and the implications of any findings with regard to levels of trust and confidence cannot easily be gleaned. For example, a drop in trust and confidence does not necessarily mean less public giving to charities.

Charity Commission reported in 2016<sup>1</sup> that levels of public trust and confidence in charities had dropped from 6.7/10 in 2014, to 5.7/10 in 2016. Although a drop in this measure is of interest, DSC urges caution when considering this measurement. Public trust and confidence measures are highly subjective and there are always anomalies. For example the same report shows that awareness of the Commission also dropped in spite of recent controversies putting charity regulation in the spotlight. Furthermore people's views of charities are complex, for example four of the least trusted charities are also listed among people's most trusted charities.

### 1.3. Responsible regulation in fundraising

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.

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<sup>1</sup> Trust and Confidence in Charities 2016

<https://www.gov.uk/government/publications/public-trust-and-confidence-in-charities-2016>

<sup>2</sup><http://www.publications.parliament.uk/pa/cm201516/cmselect/cmpublicadm/431/43102.htm>

<sup>3</sup> 'Charities do not have the technology to comply with the Fundraising Preference Service'.

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.

With these principles in mind, it could be debated whether the FPS fits in with this model. The PACAC has expressed concerns that the FPS is an unnecessary duplication of the work of the Telephone and Mailing Preference Services<sup>2</sup> and indeed these services already seem to suffer a lack of public confidence. An IT company with experience in this area has said that the complexities involved mean that very few charities will be capable of adhering to the system.<sup>3</sup> Further more our own research reveals a huge degree of concern among charity staff that the FPS will result in a decline in income.<sup>4</sup> Additionally the proposal seems to lack a lot of detail, particularly in its failure to develop an understanding of the definition of ‘fundraising communication’. We raised similar concerns with regard to the Fundraising Regulator’s consultation on registration fees and levies.

## 2. Responses to proposals

Many of the 19 proposals put forward are interrelated and also do not necessarily touch on all aspects of the FPS that need to be dealt with. Therefore we have taken different parts of the model being proposed and discussed them in light of areas we feel are of most concern to us.

### 2.1 Opting out – asking why.

While the need for the FPS is not clear, the proposal that the FPS should be based on an opt-out system is infinitely better for charities than the other option that was previously discussed, which would have been to have members of the public opt-in to receiving ‘fundraising communications’. This surely would have decimated charities’ income.

When an individual chooses the ‘large red button’, to suppress all ‘fundraising communications’, it is important that they are asked the question ‘why?’ Our understanding from the proposal is that this will happen when an individual selects the

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<sup>2</sup><http://www.publications.parliament.uk/pa/cm201516/cmselect/cmpubadm/431/43102.htm>

<sup>3</sup> ‘Charities do not have the technology to comply with the Fundraising Preference Service’. Civil Society Magazine (online). 30 September 2016  
[http://www.civilsociety.co.uk/fundraising/news/content/22459/charities\\_do\\_not\\_have\\_the\\_technology\\_to\\_comply\\_with\\_the\\_fundraising\\_preference\\_service](http://www.civilsociety.co.uk/fundraising/news/content/22459/charities_do_not_have_the_technology_to_comply_with_the_fundraising_preference_service)

<sup>4</sup> DSC Survey on the Review of Fundraising Self Regulation <https://www.dsc.org.uk/wp-content/uploads/2015/11/Fundraising-Review-DSC-survey-analysis-Nov-2015.pdf>

‘small red button’ specifically to suppress communications from individual charities. This is partly so that those charities can be given feedback.

However it is important that individuals are prompted to think about why they wish to block all charities from contacting them as well. When registering for this option they should be asked why and given a list of options including an ‘other’ option which will allow them to elaborate on the reasons for opting-out.

This will provide important feedback and will enhance our understanding of why people are opting for the general suppression of communications using the ‘big red button’. It could highlight issues that may need to be investigated and will help the sector address key elements of public trust and confidence.

Prompting individuals to think about the reasons for choosing the ‘big red button’ will also help ensure the individual does not mistakenly suppress communications that they want to receive. It will help them go through a thought process during which they may realise that they actually do want to continue receiving important communications from charities.

## **2.2 Definitions**

The definition of ‘fundraising communication’ is central to how the FPS will work. The definition will determine which charities will have to consult suppression lists, it will determine which charities will need to pay fees, and will be used to set the level of those fees. It will also determine what a charity can and cannot do to raise funds. This is one of the biggest reforms in charity fundraising in history and it centres on the definition of ‘fundraising communication’.

Given its importance, and how the definition affects fundamentally how the FPS and wider regulatory framework will operate, it would be expected that this definition had been developed and put out to consultation by this late stage. This is something DSC called for in its response to the Fundraising Regulator’s consultation on registration fees and levies. Not having these fundamentals decided upon makes responding to proposals difficult.

‘Communications where the core purpose is to raise funds’ as a definition is too vague. The FR needs to give examples to illustrate which communications have a core purpose of raising funds, and in which communications is the raising of funds incidental to the core purpose.

For example, members of the Furniture Reuse Network provide a vital service to the community by taking people’s unwanted furniture, restoring it where necessary, and passing it on to people who need it. Not only do they help people experiencing financial difficulties, but they are preventing goods going to landfill, something everybody benefits from. If they put a leaflet through a person’s door advertising their service, offering to remove unwanted furniture, is this considered a ‘fundraising communication’? Is the raising of funds from the sale of that furniture incidental to the function of removing and safely and ethically reusing people’s unwanted furniture?

For another example, is sending a letter advertising a charity shop a ‘fundraising communication’? Is the raising of funds for, say, cancer research in this way incidental to the

great service charity shops provide in our communities by giving people an outlet to recycle clothing and other goods, as well as somewhere affordable where they can shop? Further to this, is 'communications for the core purpose of raising funds' limited to cash donations? Or does it cover the donations of goods and services too? Will advertising for volunteers to conduct fundraising or charitable trading activities be considered a 'fundraising communication'?

It is clear that the working group is of two minds over 'trading communications' and it is clear that guidance will be needed. However the definition of 'fundraising communication' needs to be consulted upon to minimise the risk of unintended consequences for a charity's income and relationship with its donors.

It is vital that the implementation of the FPS is delayed until the definition of this term can be properly consulted on, and the potential impact of the system on charities (especially small charities) can be properly understood.

### **2.3 Individual-level registration as opposed to household-level registration**

We agree that individual-level registration is the most fair and practical way to proceed. Obviously people share landlines but this is becoming less common and basing FPS on a household level would create more overlap.

It is important that when a person is registering a telephone number with the FPS, be it a landline or mobile number, **that they are asked if anybody else also uses the same number.** Doing so will draw their attention to the fact that registering the number could suppress important communications between a charity and the person sharing the landline or mobile number. A person should not, by virtue of being the bill payer, have an automatic right to suppress communications between a charity and others with whom they share a telephone or mobile number. In most cases they may not be aware that this would be a consequence.

### **2.4 Distinction between 'junk-mail' and charity fundraising**

Directing people towards the MPS or FPS, or small or big 'red buttons' depending on their concern seems complicated as a person is unlikely to distinguish between 'junk mail' and unwanted mailing from charities. However there is a notable difference between the huge volume of commercial 'junk mail' an individual receives, and the relatively small amount of charity fundraising appeals received. Few would deny that the intention behind these two types of mailing is inherently different. One is about helping others and altruism while one is about making profit. When a person wants to register with the FPS they may want to suppress 'junk mail'. The distinction between 'junk mail' and communications from a charity need to be explained to the prospective registrant.

### **2.5 Understanding FPS users – getting the tone right**

The proposal struggles with achieving a consistent tone. The Fundraising Regulator needs to be careful of this going forward. Whereas the intention of the service has been to provide individuals with more control over how they are contacted, in parts the recommendations assume that there is an aspect of annoyance involved. It makes assumptions about why a person may wish to avail of the service.

Under the section on the ‘user journey of the FPS website’ the working group has said that opting for a ‘small red button’ would give the registrant the opportunity to ‘name the fundraisers they are frustrated with’ and that this will be communicated to the concerned fundraiser so that they are not ‘the cause of further angst’.

It is a mistake to assume that a person wishes to register with the FPS because they feel annoyed and that a charity has caused them angst. In reality person may wish to register with the FPS for a variety of reasons including personal convenience, leaving a property vacant, or because they feel they are supporting enough charities and have decided not to support more for the moment. The Fundraising Regulator needs to avoid misleading and negative language, and indeed assumptions like this, which portray fundraisers in an unfair light and can do serious reputational harm. Moreover it could serve to convince a registrant that they should be frustrated and that a charity has caused them angst.

## **2.6 Updating preferences**

It is unclear how this will work. Will a charity which as been given permission by an existing FPS registrant be able to apply to have them exempted from suppression? Where a registrant wishes to be contact by an individual charity, can they apply to have their details updated? Additionally the ‘small red button’ approach should offer the registrant to **make exception for a particular charity, or charities working towards a particular cause**, for example international development charities, or mental health charities. Registrants should be enabled to opt-out of ‘fundraising communications’ with exception to their chosen broad category of charity.

Moreover it is unclear how, after registering with the FPS, a person could deregister if they wished. Such a decision would need to be effected immediately. The four-month waiting period for registrations to take affect with regard to mailing communications is too long. A person may wish to deregister in the context, say, of a large-scale humanitarian crisis as they may wish to receive information about charity appeals. Thus deregistering needs to take place instantly and not carry the same delay as registering.

Unfortunately this seems highly complicated and is likely to place a huge burden on charities.

## **2.7 Protection of registrants’ data**

One of the bigger scandals about which public outrage was certainly more justified were revelations that donors’ personal data was being sold to third parties. The FPS proposes sharing a central database of people’s personal data with fundraisers. So this means that more people will have access to more personal data. It is unclear how this contributes to a person’s right to privacy. The FPS needs to have very strong safeguards against the misappropriation of this data and this needs to be fully explained to the public. Failure to do so could result in significant damage to the sector.

## **2.8 Expiry of individual registration at two years**

The expiry of an individual’s registration on the FPS is a highly sensible proposal. In addition to this provision should also be made for a person to quickly and easily deregister from the

FPS as per our response above. If renewing their registration, a person should be guided through the same thought process that they went through when registering for the first time. They should be asked why they are reregistering and also asked to consider the potential unintended consequences of registering. A registrant's circumstances are bound to have changed in two years and they may have started supporting a charity which may not be reflected in their registration. They may also have changed living circumstances and so their registration could unintentionally affect other people.

## **2.9 Compliance with the FPS as a requirement of the Code of Fundraising Practice**

There needs to be an exception for small charities. We understand the proposal is to require all charities spending £100,000 or more on fundraising (note: this is a definition which the Fundraising Regulator has not developed) and that those charities below this threshold would have the option of registering to show a commitment to best practise. However there is an administrative burden associated with the FPS which would be far too great for smaller charities to handle. Most charities have an income below £100,000, meaning that they employ only one or two members of staff, if any, who perform all functions and otherwise have very little available time. Fundraising is often the job of dedicated part-time volunteers.

It is totally unreasonable to expect small charities to take on the additional burden of the FPS and doing so could seriously harm the charity by putting inordinate pressure on its limited resources. Nonetheless a small charity should be able to show a commitment to fundraising best practise by signing up to the Code, but without the burden of adhering to the FPS. This will ensure that small charities are encouraged to adhere to the Code. It is likely that a requirement to comply with the FPS would act as a deterrent.

## **2.10 Outsourcing and monitoring and evaluation of the FPS**

Outsourcing to a private sector organisation would be a big mistake. If the FPS is to go ahead it is vital that the Fundraising Regulator owns it and needs to maintain a high level of control over it. It is not acceptable for an outside agency, particularly a profit-making agency, to have such a direct level of control over aspects of charity regulation. This would raise huge concerns over data security.

Whichever organisation is selected, it needs to produce quarterly reports and needs to be fully transparent with regard to staff pay. It needs to be borne in mind that the service is to be funded using charitable resources. The additional and significant overheads being created here will not be received well by the giving public. A lack of transparency in the organisation delivering the FPS could damage public trust and confidence.

It is not clear from the proposals how the impact of the FPS will be measured. It is even less clear how we will know that the FPS has strengthened public trust and confidence in charities. Indeed between the increased overheads it will generate and the existing donor relationships being put at risk there is a possibility that the FPS could do more harm than good. A comprehensive plan to monitor the services needs to be developed and the Fundraising Regulator, having obtained performance data, should consider whether the

system is worthwhile. The Regulator should be prepared to close the system if it is shown to not be working. A timeframe should be set within which to conduct such a review.

### **3. 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.