

# Regulatory Committee

Wednesday 5 April 2017 4pm

Council Chamber  
Runnymede Civic Centre, Addlestone

## Members of the Committee

Councillors Mrs J Gracey (Chairman), D W Parr (Vice-Chairman), Mrs D V Clarke, R J Edis and Mrs M T Harnden.

In accordance with Standing Order 29.2 any non-member of the Committee who is considering attending the meeting should first request the permission of the Chairman.

## A G E N D A

### Notes:

- 1) Any report on the Agenda involving confidential information (as defined by section 100A(3) of the Local Government Act 1972) must be discussed in private. Any report involving exempt information (as defined by section 100I of the Local Government Act 1972), whether it appears in Part 1 or Part 2 below, may be discussed in private but only if the Committee so resolves.
- 2) The relevant 'background papers' are listed after each report in Part 1. Enquiries about any of the Agenda reports and background papers should be directed in the first instance to **Miss C Pinnock, Democratic Services, Law and Governance Business Centre, Runnymede Civic Centre, Station Road, Addlestone (Tel: Direct Line: 01932 425627). (Email: [clare.pinnock@runnymede.gov.uk](mailto:clare.pinnock@runnymede.gov.uk))**.
- 3) Agendas and Minutes are available on a subscription basis. For details, please ring Mr B A Fleckney on 01932 425620. Agendas and Minutes for all the Council's Committees may also be viewed on [www.runnymede.gov.uk](http://www.runnymede.gov.uk).
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The Chairman will make the final decision on all matters of dispute in regard to the use of social media, audio-recording, photography and filming in the Committee meeting.

## **LIST OF MATTERS FOR CONSIDERATION**

### **PART I**

#### **Matters in respect of which reports have been made available for public inspection**

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### **PART II**

#### **Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection.**

- a) Exempt Information  
(No reports to be considered under this heading)
- b) Confidential Information  
(No reports to be considered under this heading)

1. **FIRE PRECAUTIONS**

The Chairman will read the Fire Precautions which set out the procedures to be followed in the event of fire or other emergency.

2. **NOTIFICATION OF CHANGES TO COMMITTEE MEMBERSHIP**

3. **MINUTES**

To confirm and sign as a correct record, the Minutes of the meeting held on 12 January 2017, which were included in the March 2017 Minute book, previously circulated.

4. **APOLOGIES FOR ABSENCE**

5. **DECLARATIONS OF INTEREST**

If Members have an interest in an item please record the interest on the form circulated with this Agenda and hand it to the Legal Representative or Democratic Services Officer at the start of the meeting. A supply of the form will also be available from the Democratic Services Officer at meetings.

Members are advised to contact the Council's Legal section prior to the meeting if they wish to seek advice on a potential interest.

Members who have previously declared interests which are recorded in the Minutes to be considered at this meeting need not repeat the declaration when attending the meeting. Members need take no further action unless the item in which they have an interest becomes the subject of debate, in which event the Member must leave the room if the interest is a disclosable pecuniary interest or if the interest could reasonably be regarded as so significant as to prejudice the Member's judgement of the public interest.

6. **FUNDRAISING REGULATOR – RESPONSE TO THE CONSULTATION ON CHANGES TO THE CODE OF FUNDRAISING PRACTICE (LAW AND GOVERNANCE)**

**Synopsis of report:**

**To seek endorsement of the Council's response to a consultation from the Fundraising Regulator on proposed changes to the Code of Fundraising Practice and for any minor alterations to be agreed in consultation with the Chairman of this Committee prior to the submission deadline.**

**Recommendation(s):**

**That the response set out in the bold sections in paragraphs 2.6 to 2.25 of this report be approved prior to being submitted to the Fundraising Regulator.**

1. **Context of report**

1.1 The Fundraising Regulator was established in 2015 following the Etherington review of fundraising self regulation. This concluded that the system of charity regulation needed to be strengthened, but stopped short of recommending that regulation was put onto a more formal footing.

1.2 The Fundraising Regulator assumed responsibility for self regulation of charities and third party fundraising bodies from the Institute of Fundraising in 2016, which has now merged with the former Public Fundraising Regulatory Association.

- 1.3 The Fundraising Regulator has no legal powers and sees itself as a co-operative collective of fundraising charities and third parties. The Fundraising Code of Practice guides charities in good practice within the context of existing legislation. Most charities have signed up to the code which was last revised in 2016.
- 1.4 The role of the Fundraising Regulator is to:
- Set and promote the standards for fundraising practice ('the code' and associated rulebooks) in consultation with the public, fundraising stakeholders and legislators.
  - Investigate cases where fundraising practices have led to significant public concern.
  - Adjudicate complaints from the public about fundraising practice, where these cannot be resolved by the charities themselves.
  - Operate a fundraising preference service to enable individuals to manage their contact with charities.
  - Where poor fundraising practice is judged to have taken place, recommend best practice guidance and take proportionate remedial action.
- 1.5 There were two high profile cases of poor practice that highlighted a need to amend the Code of Fundraising Practice. These were the cases of Olive Cooke and Samuel Rae in 2015.
- 1.6 Olive Cooke, a life long and active supporter of the Royal British Legion Poppy Appeal, committed suicide at the age of 92. It was considered that excessive appeals from charities contributed to her state of mind. Her contact details had been sold on by charities and in one year she received 466 direct mailings from a large number of charities and felt 'overwhelmed'.
- 1.7 Samuel Rae's case was another of data being sold and resulted in him losing £35,000 to scammers as well as getting about 730 appeals for donations from charities. Mr Rae lived with dementia and was cared for by his son who discovered what had happened and reported it to the Information Commissioner.

## 2. **Report**

- 2.1 The Fundraising Regulator invited responses to its consultation on eight areas of the code, setting out the proposed changes and asking a series of questions. In addition they held a webinar on 1 March; the weblink for which is listed in the background papers. Officers took part in this and the questions and answers are set out in the report and in the appendix.
- 2.2 The eight parts being consulted on are:-
- A. Charity Trustees
  - B. The fundraising ask
  - C. Solicitation (disclosure) statements
  - D. Raising Concerns about fundraising practice (whistleblowing)
  - E. People in Vulnerable Circumstances
  - F. Charity Collection bags
  - G. Third Parties
  - H. The Code – General questions
- 2.3 Officers submitted questions to the webinar on parts B, C, D, E and F in order to be better informed before making a formal response. It is the response which Members are being asked to endorse. The deadline to respond is 28 April 2017.

- 2.4 The proposed changes are set out in italics, followed by details of the consultation questions and the body of suggested draft responses are set out in bold below:-

### **Part A Charity Trustees**

- 2.5 In addition to continuing to include the requirements of the Charities Act 2016, the Fundraising Regulator proposes to incorporate the Charity Commission's revised CC20 guidance and other guidance by adding:-

*Trustees of charities registered in England and Wales **MUST** follow the six principles of the Charity Commission's CC20 guidance in overseeing the fundraising activities of their charity and any third parties fundraising on the charity's behalf. These include:*

- *Planning effectively;*
- *Supervising their fundraisers;*
- *Protecting their charity's reputation, money and other assets;*
- *Identifying and ensuring compliance with the laws or regulations that apply specifically to their charity's fundraising;*
- *Identifying and following any recognised standards that apply to their charity's fundraising; and*
- *Being open and accountable.*

*Further guidance on operating according to these principles is found in the Charity Commission's [CC20 guidance for trustees, the essential trustee guide \(CC3\)](#) and in the [Code of Good Governance](#).*

- 2.6 The FR asked whether this wording is clear. **Officers consider the wording is clear and have not made any further comment.**

### **Part B The Fundraising Ask**

- 2.7 Before responding to this section, Officers asked what the rationale was behind the '3 step approach'. This is a charity's practice of asking a potential donor three times if they want to give to the charity in some way before desisting if the person says 'no.' The answer received during the webinar was that fundraisers would be expected to use their judgement and sensitivity to avoid exerting pressure on a potential donor. On the issue of asking 3 times before taking 'no' for an answer they were less clear and commented about not being prescriptive and there being a difference between asking for someone's time as opposed to their money, and if so, how much.

- 2.8 The proposed amendment is:-

***Fundraisers MUST NOT, at any point in a telephone call, be unreasonably persistent or place undue pressure on the recipient to donate, and MUST NOT ask for a financial contribution more than three times during that call.***

***Fundraisers MUST NOT continue to ask an individual for support if that person clearly indicates – by word or gesture – that they do not wish to continue to engage.***

- 2.9 There were three questions on this topic and Officers propose responding as set out below:-

**B1.** Is the existing focus on limiting the number of fundraising asks helpful in safeguarding the public from undue pressure?

**Yes / No**

**Placing a limit on the number of ‘asks’ should in theory be useful. However, we feel that if someone says ‘no’ initially that should be enough to indicate that a person does not wish to engage with the fundraiser. This would bring the practice into line with the Street Collections Regulations, where importuning is not allowed.**

**B2.** For telephone calls, does a narrower focus on financial asks (as opposed to requests for other forms of support) put the right emphasis on where the risk of undue pressure lies?

Yes / No

**This authority considers that feel that making a distinction between ‘financial asks’ and other appeals such as signing a petition or volunteering time is a way of justifying some degree of pressure on the potential donor by giving the fundraiser many opportunities to repeat their appeal. Most people know the charities to which they wish to donate their time or money. Receiving unsolicited mail or telephone calls where the fundraiser repeats the appeal in different ways only serves to annoy people who might have donated had the approach not been persistent or so frequent to put people off.**

**B3.** Does the proposed new wording of the two rules provide sufficient clarity on when a fundraising ask is or becomes inappropriate?

Yes / No

**We feel that the second rule is sufficient and provides the clarity that ‘no’ means ‘no.’**

### **Part C Solicitation (disclosure) statements**

2.10 This concerns the statements that professional fundraisers are required to make about third party relationships with charities on whose behalf they collect. This would include commercial clothing collectors and face to face fundraising by people asking for people to donate by direct debit for example.

2.11 The proposed amendment is as set out below:-

*In all cases, the disclosure (or solicitation) statement **MUST** be made **before** any commitment is made by the individual to donate. This **MUST** be either before money is given by the donor or before any financial details relevant to the transaction are requested by the fundraiser (whichever is the sooner).*

2.12 We asked at the webinar whether there is a template for solicitation statements, for consistency and were advised that there were some good examples on their website.

**We consider that the proposed new wording is clear who is asking for the donation and that they may be a professional fundraiser. We are pleased that the £100 threshold before this applies has been removed. However, we feel that the issue of remuneration has not been addressed. For example, whether a professional fundraiser is on commission or paid a flat rate and whether some of the donation goes to the organisation making the appeal out of the proceeds to the charity, and if so, how much? These factors might affect the fundraiser’s approach to potential donors.**

### **Part D Raising concerns about fundraising practice (whistleblowing)**

2.13 **We agree with the section on whistleblowing as this provides a clear framework for how a charity’s employees and volunteers can raise concerns**

**and making it part of the code gives consistency and clear guidance to all concerned.**

### **Part E People in Vulnerable Circumstances**

- 2.14 This is acknowledged as one of the biggest areas of concern, attracting a significant number of complaints and feeds back to the cases mentioned in the context of this report.
- 2.15 During the webinar a number of people asked what the Fundraising Regulator defined as a 'vulnerable person.' Their response was to include not just the elderly, but people who were financially vulnerable, noting that people's circumstances could change rapidly. The issue for them is about treating donors fairly (there is separate guidance on this issued by the Institute of Fundraising.)
- 2.16 No amended guidance has been proposed.

**This Authority agrees that the current wording of the code is clear in terms of recognising the needs of people in vulnerable circumstances and how fundraisers are expected to engage. It is more a question of fundraisers adhering to what the code already says. There are clear expectations of fundraisers and Charity trustees are responsible for overseeing the conduct of the charity and ensuring good training and support is in place.**

- 2.17 A further question was asked about what a charity should do about an unsolicited donation from clearly vulnerable people. The response was that in the event of a complaint from a relative, the donation might be investigated but not necessarily returned, although it was difficult for them to generalise.

### **Part F Charity Collection Bags**

- 2.18 The Fundraising Regulator has become aware that this is an area of continuing concern for the public. An additional rule to the Code as follows:

*Organisations operating house to house bag collections for charitable purposes MUST NOT deliver bags to a property that displays a sticker or sign which includes either the words 'no charity bags' or 'no junk mail'.*

- 2.19 Officers suggested to the panel at the webinar that **'no unsolicited mail' might be a better way of deterring commercial clothing collectors from distributing bags where the householder has indicated to that effect by a door sticker.** The panel invited further suggestions and in our response, Officers would like to also propose **'no unlicensed collections' and/or stickers that refer to 'not trading on the doorstep' should be respected which would filter out from being excluded those charities with a National Exemption Order that do not need a licence to collect.**
- 2.20 At the moment, some professional fundraisers will only respect areas where there are official 'no cold calling' signs, which we feel is not sufficient, so the proposed amendment is a welcome sign that the Fundraising Regulator has acknowledged there is an issue.

### **Part G Third Parties**

- 2.21 Officers are content with the proposals in this regard as set out at sections 4.2 b and 4.5 b (iii) of Appendix 'A', and propose to answer **'Yes'** to those questions.

### **Part H The Code General Questions**



- 2.22 The Code runs to some 68 pages and covers a range of fundraising related practices such as street and house to house collections, lotteries and other forms of gambling. It outlines the standards expected of charities and other fundraising organisations, setting out what they must do by law and what is best practice that should be regarded as law and what is optional.
- 2.23 The Fundraising Regulator provides a wealth of information in publications and on its website. Officers feel it is clearly worded, if lengthy, and is accessible to a range of audiences.
- 2.24 The obvious drawback, as the Fundraising Regulator has been clear about, is that they have no legal powers to enforce the code. They publish adjudications (the first being about 'Neat Feet') and can 'name and shame' bad practice which has a reputational implication for charities. They can 'call in' a fundraising campaign in response to complaints and can write to a Charity's trustees and refer a matter to the Charity Commission to investigate, but within limited resources.
- 2.25 **This Authority considers that updated statutory regulation is needed to properly restore confidence in fundraising and that the Charity Commission, Trading Standards and other enforcement bodies should be better resourced to protect legitimate charities and the public and enforce where fundraising practices are not working.**

### 3. Policy framework implications

- 3.1 The Council's Corporate Business Plan 2016-2020 contains a corporate value of being customer focussed. The welfare of our residents, promoting authorised fundraising and facilitating well run charitable appeals meets this aim.
- 3.2 The corporate theme of Supporting Local People is relevant to regulating charitable collections.

### 4. Resource implications

- 4.1 Officers will be submitting an updated draft Charity Collections Policy to the meeting of this Committee in June 2017, prior to a consultation exercise.

### 5. Legal and Equality implications

- 5.1 The Code of Fundraising Practice references a range of legal requirements donated by 'Must\*' and strives to promote equalities while protecting people with a protected characteristic.

### 6. Conclusions

- 6.1 The consultation on proposed changes to the Code of Fundraising Practice provides this Council with an opportunity to comment and Officers feel it is important to engage in the process.
- 6.2 The Committee's endorsement of the comments set out in the body of this report is sought.

**(To resolve)**

### Background papers

Fundraising Regulator Consultation on changes to the Code of Fundraising Practice February 2017.

Fundraising Regulator March e-newsletter containing a link to the webinar broadcast on 1 March 2017 and questions submitted. <https://www.fundraisingregulator.org.uk/code-of-fundraising-practice/code-consultation/consultation-webinars/> [www.bbc.co.uk/news/uk-england-bristol-33550581](http://www.bbc.co.uk/news/uk-england-bristol-33550581) <http://www.bbc.co.uk/news/uk-34111788>  
Charity Commission CC20 Guidance checklist June 2016

## 7. HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING – LEGISLATIVE AND PROCEDURAL AMENDMENTS (ENVIRONMENTAL SERVICES)

### Synopsis of report:

This report is to inform the Committee of:

1) New legislation affecting the taxi licensing regime in respect of the protection of children, access for wheelchair users to Taxi and Private Hire vehicles and right to work checks.

2) Procedural changes as a result of the expansion of online government services.

### Recommendation(s):

None. This report is for information.

#### 1. Context of report

##### Legislative Changes

- 1.1 The introduction of new legislation has placed additional responsibilities on licensing authorities in respect of the protection of children, access for wheelchair users to Taxi and Private Hire vehicles and right to work checks.
- 1.2 Protection of Children – The Policing and Crime Act 2017 (PCA2017) introduces a new discretionary power for the Secretary of State to issue guidance to local authorities as to how they consider the protection of children from harm in the hackney carriage and private hire licensing process.
- 1.3 No commencement date for these changes has been announced as yet.
- 1.4 Access for wheelchair users to Taxi and Private Hire vehicles The implementation of Sections 165 and 167 of the Equalities Act 2010 (EA2010). These introduce specific requirements for drivers who have a wheelchair adapted vehicle. A Commencement Order will bring these Sections into force on 6 April 2017.
- 1.5 Right to Work checks – The provisions of the Immigration Act 2016 (IA2016) prohibit licensing authorities from issuing a hackney carriage, private hire or operators' licence to anyone who is disqualified by reason of their immigration status. It will be the duty of licensing authorities to carry out immigration checks.

##### Procedural Changes

- 1.6 The Council currently requires all drivers to produce the following as a means of satisfying the fit and proper criteria. 1) An enhanced Disclosure and Barring Service (DBS) certificate. 2) Their driving licence record as held by the DVLA.
- 1.7 Prior to March 2017, these were carried out using a paper driven process

- 1.8 The expansion of Government online services now allows the application for and checking of DBS and DVLA records online.

## 2. **Report**

### **Legislative Changes**

#### Protection of Children

- 2.1 The PCA 2017 introduces a new discretionary power for the Secretary of State to issue statutory guidance to public authorities as to how their licensing functions under taxi and private hire vehicle legislation may be exercised so as to protect children, and vulnerable individuals who are 18 or over, from harm.
- 2.2 Any public authority which has licensing functions under taxi and private hire vehicle legislation must have regard to any guidance issued under this section.
- 2.3 The guidance has not yet been produced but Members are reminded that as a licensing authority we already carry out enhanced DBS checks on all new driver applicants and 3 yearly enhanced DBS checks on all existing drivers.
- 2.4 The licensing authority recognises the depth of concern around the protection of children and the role of the taxi trade. In that respect, the recently introduced Hackney Carriage and Private Hire Licensing policy has a condition that drivers and operators must attend mandatory Child Sexual Exploitation awareness training. Members are asked to note that this will only be when the content and administration of the training has been finalised.
- 2.5 Runnymede licensing officers are working with Surrey County Council and the other Licensing authorities in Surrey to develop and introduce a Surrey wide training program so that all drivers in Surrey are trained to the same standard. This is still under discussion and a report will be submitted with full details when this has been finalised.

#### Access to Taxis by Wheelchair users

- 2.6 Section 167 of the EA 2010 gives local authorities a power (but not a duty) to maintain lists of hackney carriages and private hire vehicles that are suitable for carrying persons in wheelchairs.
- 2.7 Section 165 of the EA2010 places a duty on drivers of wheelchair accessible hackney carriage and private hire vehicles listed by the local authority under S167 of the 'Act' to carry passengers in wheelchairs and provide assistance loading and unloading the passenger and handling the passenger's luggage.
- 2.8 It is possible for a driver to apply for an exemption certificate on medical or physical grounds under section 166.
- 2.9 The Government has published guidance (Appendix 'B') for licensing authorities to help with implementation.
- 2.10 The guidance document provides advice on maintaining lists of vehicles designated as wheelchair accessible, handling applications from drivers for exemption from the requirements, and on transitioning from existing arrangements to those covered by the EA2016. The guidance can be seen at Appendix 'B'.

- 2.11 Although it is not a duty to maintain lists of hackney carriages and private hire vehicles that are suitable for carrying persons in wheelchairs, best practice dictates that Runnymede will maintain such lists.
- 2.12 The individual drivers who have such vehicles, operators and the general trade will be updated on this new legislation.

#### Right to Work checks.

- 2.13 The IA 2016 introduces new responsibilities for licensing authorities in regard to applications for hackney carriage and private hire driver licences and private hire operator licences.
- 2.14 Two new sections have been introduced and inserted into the Local Government (Miscellaneous Provisions) Act 1976 (LGMPA 1976 ). The new sections 79A and 79B explain the meanings of immigration offences and immigration penalties in regard to hackney carriage drivers, private hire drivers and operators licence holders.
- 2.15 From 1 December 2016 all licensing authorities have had a duty to undertake immigration checks on all driver and operator applicants, (this is in addition to the ‘fit and proper person’ test).
- 2.16 There is a new requirement on applicants to produce original copies of prescribed documents to prove their immigration and right to work status. Licensing authorities are required to keep copies of the original documents they have seen.
- 2.17 Licensing authorities will also have new powers to suspend or revoke licences (driver and operator) where an individual has been convicted of an immigration offence or has been required to pay an immigration penalty.
- 2.18 With regard to those with a limited time to remain in the UK, a new section 53A has been inserted into LGMPA 1976, this will prohibit the local authority from granting a licence beyond the period of permission to remain and it can be for a shorter period if necessary. Any licences issued will automatically lapse where the immigration status of a licence holder changes so that they become ineligible to lawfully reside in the UK.
- 2.19 Where the licence has either ended or ceases to have effect, failure to surrender it to the Licensing Authority within 7 days is now an offence.
- 2.20 The additional checks do require additional work on the part of licensing staff to ascertain the ability of the applicant to be granted or retain a licence. As these costs are associated with the ‘issue and administration’ of the licence the additional expenditure can be recovered via the drivers and operators fees under sections 53 and 70 of the LG(MP)A 1976 part II. They have been taken into account in the fees for the year 2017/2018 but this will be monitored to ensure we are making proper recovery and adjusted if required.

#### **Procedural Changes**

##### DBS checks

- 2.21 Previously, drivers completed a hand written DBS form, we would then send this form directly to the DBS and you would be sent the certificate a few weeks/months later. We were able to submit these directly to the DBS because Runnymede was recognised by the DBS as a ‘registered body’. Amongst other requirements to be a registered body we had to submit over 100 DBS forms a year.

- 2.22 The DBS informed the Council in January 2017 that we could no longer submit the required number of DBS forms to remain a registered body and as such they will not accept any DBS forms from Runnymede. An appeal was made against this decision but this did not change the mind of the DBS.
- 2.23 The new procedure involves submitting a DBS application through what is termed an 'umbrella organisation', meaning they can submit forms on behalf of other local authorities. Surrey County Council (SCC) is such an 'umbrella organisation' and they will now be providing the DBS service for Runnymede.
- 2.24 The driver attends the Civic Centre on appointment with proof of identity; these will be checked by the licensing officer who will then open an online application, enter the driver's details and verify the fact that we have checked their identity.
- 2.25 The driver then has to complete an online DBS application (there is no provision for a paper form). They can do this in two ways:-
- a) They can remain at the Civic Centre and complete the online form in the presence of the licensing officer. The licensing officer will remain with them to assist in the form's completion. This is our preferred method as it ensures the application is completed and submitted.
  - b) The licensing officer can obtain a password for them to access the application and they can then leave the Civic Centre and complete the application at another location.
- 2.26 Unfortunately, there will be an additional cost to the driver for this service as whichever umbrella organisation we use, they will charge for the service, purely to cover their costs, SCC charge £9. Of all the DBS umbrella organisations this is the most practical and cost effective for our needs.
- 2.27 Runnymede Council's administration fee for verifying the documents and beginning the application process will remain at £11. DBS charge £44 for their part in the process; this cost has not changed in the past 4 years.
- 2.28 The DBS will then carry out their checks and send the certificate to the driver as soon as they are complete. From the few we have done so far the turn round time is around 5 working days which is significantly quicker than the paper form previously used. Drivers must then show the certificate to the licensing section who check the content, note the reference number and return it to them.
- 2.29 If a driver is already registered with the DBS update service this does not affect them as we will be able to carry their 3 yearly check online, provided they have continued to pay the annual £13 registration fee to the DBS.
- 2.30 All drivers are given information on the DBS update service while they are at the Civic Centre and as an incentive, if they register for the update service Runnymede will not charge the £11 admin fee. Drivers are made aware of the savings they can make by signing up to the DBS update service and this in turn should save time and lower costs for drivers in future years. However to prevent misuse of this offer, if drivers do not keep up their subscription to the update service we will charge this fee on subsequent applications.
- 2.31 The payment system will work as follows; a total of £64 is paid to Runnymede for the DBS check. Runnymede retain £11 administration fee and pay Surrey County Council the remaining £53. Surrey then pay DBS the standard £44 cost of the DBS check and the remaining £9 is an administration fee which pays Surrey's costs for access to the online application process.

## DVLA licence checks

- 2.32 Previously these were obtained by drivers completing a Data Subject Enquiry (DSE) form which allows the Council to obtain a printed copy of their complete driving licence history.
- 2.33 As from 15 Jan 2017 the DVLA removed historic detail from these printed driving licence records and have recommended we now use the online Shared Driving Licence service as this now contains the same information as the printed version. This online service allows the individual to view their driving licence record and to obtain an access code which is randomly generated by the DVLA website, this code is then given to the Council who can then view the driving licence record online.
- 2.34 In the majority of cases the information contained in the online driving licence record will be acceptable and where we need any clarification on specific matters the DVLA have a process whereby we can submit a detailed application stating exactly what information is needed with the drivers consent. We expect this type of enquiry to be very rare.
- 2.35 For the driver this means they will no longer have to pay the £5 fee which DVLA charged for the mandate check or the £8 Council processing charge (unless we have to submit a detailed request for more information).
- 2.36 When making an application for a licence the applicant enters the access code obtained from the online Shared Driving Licence service into the space provided on the application form. The licensing authority will then check the online driving record.
- 2.37 If a DVLA check is due and does not coincide with a renewal we will contact the driver to obtain an access code, this can be done in very little time by e-mail or text.

## **3. Policy framework implications**

- 3.1 Runnymede's Hackney Carriage and Private Hire Licensing policy was amended prior to it being adopted so that it took these legislative and procedural changes into account. However, when the guidance in relation to the protection of children has been produced it will be assessed and amendments made to policy/procedures where necessary.
- 3.2 Statutory legislation such as the EA 2010 should not be duplicated by any policy conditions hence the trade's attention is drawn to this legislation by including this information within the appendices containing conditions and requirements. This is already evident in the policy regarding other statutory legislation where provisions affecting private hire vehicles under The LG(MP)A 1976 part II and hackney carriages under The Town Police Clauses Act 1847 are included.

## **4. Resource implications**

- 4.1 These legislative and procedural changes have led to an increase in officer and administrative time for taxi licensing. In the short term this involves informing the trade and updating application forms and, in the longer term, the process of administering DBS applications and right to work checks.
- 4.2 The cost of amending forms and liaison with the trade is already included within the administrative charge related to taxi licensing, as is the cost administrative processing, although this will be monitored to ensure it reflects the true cost of provision.
- 4.3 To give Members an indication of the extra work and safeguards involved, the list below details the extra measures now in place:

- Officers have attended training provided by the Home Office.
- Officers have sourced a Home Office checklist to identify documentation that can be checked to satisfy this new requirement.
- Appointment times have been introduced to allow for the additional checks.
- Letters, forms and the website have been amended to advise of this new requirement, a checklist has been included on the application forms so applicants are aware of the documentation they need to bring in for their appointment.
- A UV lamp will be used to help check security features on official documents.
- A document reader which analyses documents and identifies forgeries has been purchased jointly with other departments in the Council. This allows for a quick and efficient check of a document's authenticity.

## 5. **Equality implications**

- 5.1 Right to work licence checks are carried out for all applicants. It is RBC policy that there must be no discrimination and all applicants will be treated in the same way during the process. This will also help to demonstrate a fair, transparent and consistent application process. Officers are also aware that assumptions should not be made about a person's right to work in the UK or their immigration status on the basis of their nationality, ethnic or national origin, accent, colour of skin or length of time they have been resident in the UK.

## 6. **Legal implications**

- 6.1 Any legal implications are contained within the body of this report.

## 7. **Conclusions**

- 7.1 Members are asked to note the contents of this report.

**(For information)**

### **Background papers**

Immigration Act 2016  
 Local Government (Miscellaneous Provisions) Act 1976 part II  
 Equality Act 2010  
 Policing and Crime Act 2017  
 Runnymede Hackney Carriage and Private hire Licensing Policy

## 8. **EXCLUSION OF PRESS AND PUBLIC**

If Members are minded to consider any of the foregoing items in private, it is the

**OFFICERS' RECOMMENDATION that -**

**the press and public be excluded from the meeting during discussion of the report(s) under Section 100A(4) of the Local Government Act 1972 on the grounds that the report(s) in question would be likely to involve disclosure of exempt information of the description specified in the relevant paragraphs of Part 1 of Schedule 12A of the Act.**

**(To resolve)**

## **PART II**

### **Matters involving Exempt or Confidential Information in respect of which reports have not been made available for public inspection.**

a) Exempt Information

(No reports to be considered under this heading)

b) Confidential Information

(No reports to be considered under this heading)



# Regulatory Committee

Wednesday 5 April 2017

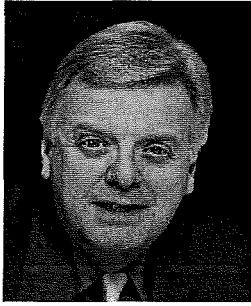
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# Consultation on changes to the Code of Fundraising Practice



**February 2017**



**Foreword by Lord Grade of Yarmouth, Chair of the Fundraising Regulator and  
Suzanne McCarthy, Chair of the Fundraising Regulator's Standards Committee**

The Code of Fundraising Practice and its associated rulebooks for face-to-face fundraising set out the standards expected of all organisations carrying out charitable fundraising across the UK. The Code underpins the system of voluntary regulation which fundraisers commit to and provides a framework for assessing public complaints.

The last 18 months has seen several important changes to the way fundraising is regulated. As recommended by the cross party [Review of Fundraising Regulation](#), (chaired by Sir Stuart Etherington), responsibility for the Code has transferred from the Institute of Fundraising to the new Fundraising Regulator. Adjudicating on public complaints and developing the Code, roles previously performed by two different organisations, is now undertaken by this single regulator.

Following poor practice highlighted in several news stories, including the well-publicised cases of Olive Cooke and Samuel Rae in 2015, the public remain concerned about the way charities seek donations. These cases highlighted that public trust in charities can no longer be taken for granted, and the onus is now on the sector to win back confidence for its work in raising money for so many vital causes. A robust and flexible Code of Fundraising Practice which sets high standards for fundraising is an important part of restoring that public confidence.

This consultation is part of the open and ongoing dialogue we want to have with fundraisers on the standards to which the sector should hold itself accountable. At the same time, we want to give the public a stronger voice in the conversation by taking into account the needs and experiences of individuals who have been asked to give, particularly those in vulnerable circumstances.

In this consultation we have focused on those areas that represent the most pressing issues as identified in our conversations with fundraisers, legislators, representative bodies and the public. These include monitoring arrangements between charities and third parties, oversight of fundraising activities by trustees and requesting donations from people in vulnerable circumstances. However, while the Review also recommended that the Fundraising Regulator should develop and operate a new service to give individuals greater control over their communications from charities, we have not included the new Fundraising Preference Service (FPS) in this particular consultation. The reasons for this omission are explained in Section 1 which describes the consultation's purpose.

We hope that you find this consultation stimulating and we very much look forward to receiving your comments.

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## 1. The Purpose of this Consultation

The Code of Fundraising Practice and its associated rule books for street and door fundraising outline the standards expected of all charitable fundraising organisations across the UK. The standards were developed by the fundraising community through the work of both the Institute of Fundraising (IoF) and the Public Fundraising Association (PFRA). The last substantive changes to the Code were made in March 2016 by the IoF.

Responsibility for maintaining and updating the Code was transferred to the new Fundraising Regulator on 7<sup>th</sup> July 2016. The Fundraising Regulator sees its role in keeping the Code under review as an ongoing process of formal and informal engagement with fundraisers, regulatory partners and the public.

### **In Scotland and Northern Ireland**

Charity law and fundraising regulation in Scotland is different to the system in place within England and Wales.

Fundraising by charities only registered in Scotland is subject to Scottish charity law and the Scottish system of self-regulated fundraising through the Independent Standards and Adjudications Panel for Fundraising in Scotland ('The Independent Panel'). The Fundraising Regulator and the Independent Panel in Scotland will work closely together in proposing and considering amendments to the Code of Fundraising Practice.

Northern Ireland is soon to undertake a public consultation on how fundraising will be regulated there.

### **Scope**

At this early stage in the transition of the Code, we feel that it is best to concentrate on developing the Code in line with current issues and concerns rather than conducting a "root and branch" review or develop it entirely afresh. In addition, respondents are asked if they wish to comment on the layout, clarity and accessibility of the Code (Section H). Responses on those issues will be taken into account in considering whether revisions to the Code's format are required.

There are two key issues not covered in this consultation: the new Fundraising Preference Service and new regulations and guidance on data and consent. There are several reasons for this.

The Fundraising Regulator is currently developing the new Fundraising Preference Service (FPS), which was the subject of separate consultations during 2016. The FPS is expected to come into operation for charities registered in England and Wales in the spring or summer of 2017, and our intention is to issue guidance nearer the time of its implementation.

We are working with the Information Commissioner's Office (ICO) to ensure that the Code is compliant with the ICO's guidance on data and consent and adequately takes account of the additional requirements in the General Data Protection Regulation (GDPR) which comes into force in May 2018. Two new pieces of guidance are scheduled for release in early 2017 which will influence the development of the Code in this area: the ICO guidance on the GDPR and our own

sector-specific guidance on data and consent. We intend to consult on data and consent separately once the ICO's guidance is released to ensure the full implications for the sector are taken into account.

This consultation, the first that the Fundraising Regulator has issued on the Code, concentrates on those areas which the Fundraising Regulator considers to be the most pressing considering the changing legal and regulatory context in which fundraisers operate, conversations we have had with key stakeholders and recommendations from recent adjudications, research and guidance.

## Structure

In explaining the Code changes presented in this consultation we have:

- a. included the legal and / or regulatory context underlying that specific Code rule and where a legal requirement exists, whether it is specific to particular nations. A legal requirement in England and Wales may not be a legal requirement in Scotland or in Northern Ireland, although it may be a matter of good practice.
- b. highlighted what the existing Code covers. Readers should note that with regards to the existing Code we use the word "**MUST\***" (with an asterisk) where there is a legal requirement and the word "**MUST**" (with no asterisk) where there is no legal requirement but we are treating the issue as a professional standard to be met by fundraising organisations. We intend to continue to use this format in the amended Code;
- c. set out if, and how, we propose to change the Code and what form of words we propose to use to amend or add to the existing Code; and highlighted as part of any proposed Code change where guidance from other bodies may provide additional context or support to fundraisers. Where guidance is linked to a specific Code rule, it may provide further context in considering whether that rule was breached.
- d. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

There is an opportunity at the end of the consultation response form for you to highlight any issues or practices that are not covered by the consultation or the existing Code that you feel should be addressed (see Questions G1 and G2). We are also keen to hear your views on the current format of the Code, including how clear it is to read and understand. It would be helpful when giving your comments if you would include your reasons and any recommendations for improvements.

We welcome your views and comments. You can submit your response by filling in our online survey or by post. Contact details are provided in Section 3 below.

## 2. Consultation questions

### **PART A: Charity trustees**

#### **Why we are reviewing the Code in this area**

In England and Wales, legislators have put increasing emphasis on the duty of Trustees to oversee the fundraising activities of charities. While this legislation extends in scope to England and Wales, the principles of good governance and the duty of charity trustees to act in the best interests of the charity, apply across the UK.

The Fundraising in the charitable sector inquiry published by the Public Administration and Constitutional Affairs Committee on 14<sup>th</sup> January 2016 emphasised that Trustees “must ensure that their charity’s values are reflected in the way the charity operates at all levels, having regard to the Charity Commission’s guidance and the interests of the charity, its beneficiaries, donors, employees and volunteers”.

In June 2016, the Charity Commission for England and Wales published their CC20 guidance which introduced six principles that explain what Trustees need to do to comply with the law relating to the management and control of their charity’s fundraising. The principles require Trustees to plan and supervise fundraising, protect the charity’s reputation, money and other assets, follow fundraising laws and regulation, follow recognised standards for fundraising and be open and accountable.

The Charities (Investment and Social Protection) Act 2016 places new duties on Trustees in some English and Welsh charities to include in their Trustees’ Annual Report a statement about how their organisation monitors its fundraising activities. More information can be found here.

The Code currently incorporates the new Charities Act 2016 requirements with respect to Trustee Annual Reports as follows:

**1.2 g) (General principles):** *Charities that are legally required to have their accounts audited under section 144 of the Charities Act 2011 **MUST\*** state in their trustee Annual Report (as specified within section 13 of the Charities (Protection and Social Investment) Act 2016):*

- *The charity’s approach to fundraising activity, and whether a professional fundraiser or commercial participator was used.*
- *Details of any voluntary regulatory fundraising schemes or standards which the charity or anyone fundraising on its behalf has agreed to.*
- *Any failure to comply with a scheme or standard cited.*
- *Whether and how the charity monitored fundraising activities carried out on its behalf.*
- *How many complaints the charity or anyone acting on its behalf has received about fundraising for the charity.*
- *What the charity has done to protect vulnerable people and others from unreasonable intrusion on a person’s privacy, unreasonably persistent approaches or undue pressure to give, in the course of or in connection with fundraising for the charity.*

## How we propose to change the Code

In addition to continuing to include the requirements of the Charities Act 2016, the Fundraising Regulator proposes to incorporate the Charity Commission's revised CC20 guidance and OSCR's charity trustee guidance into the Code by adding as follows:

*Trustees of charities registered in England and Wales **MUST** follow the six principles of the Charity Commission's CC20 guidance in overseeing the fundraising activities of their charity and any third parties fundraising on the charity's behalf. These include:*

- *Planning effectively;*
- *Supervising their fundraisers;*
- *Protecting their charity's reputation, money and other assets;*
- *Identifying and ensuring compliance with the laws or regulations that apply specifically to their charity's fundraising;*
- *Identifying and following any recognised standards that apply to their charity's fundraising; and*
- *Being open and accountable.*

*Further guidance on operating according to these principles is found in the Charity Commission's CC20 guidance for trustees, the essential trustee guide (CC3) and in the Code of Good Governance.*

*For Scottish charities, OSCR's interim Fundraising Guidance provides information on the legal requirements of Scottish Charity law in relation to fundraising and charity trustee duties:*

- Fundraising Guidance
- Guidance and good practice for Charity Trustees

*For Charities in Northern Ireland, the Charity Commission for Northern Ireland's Code of Good Governance sets out the principles and key elements of good governance for the boards of voluntary and community organisations.*

### Questions

**A1.** Does the proposed additional wording of the Code (combined with the existing Code requirements) give sufficient clarity on how Charity Trustees are expected to oversee the fundraising activities of their charity?

Yes / No

If no, please explain how the wording could be improved.

**A2.** Are there any other comments you wish to make on the proposed additional wording of the Code on Charity Trustees?



## PART B: The fundraising ask

### Why we are reviewing the Code in this area

The Code currently states that fundraisers may ask a maximum of three times for a donation in a phone call, the aim being to avoid placing undue pressure on prospective donors.

However, a Fundraising Standards Board (FRSB) adjudication in December 2015 expressed concern that permitting up to three asks during a call may wrongly create an assumption among fundraisers that three requests within any one call is always appropriate, irrespective of the call recipient's response. The FRSB recommended that there should be adequate flexibility for fundraisers to alter their approach according to the context of each call, and in some cases terminating the call before they have made three asks.

A further FRSB recommendation proposed that consideration should be given to whether a limit on fundraising asks should be extended to other person-to-person fundraising interactions beyond phone calls.

The question as to how a fundraising ask can avoid placing undue pressure on a member of the public is further influenced both by the ICO's direct marketing guidance which advises that "Organisations will generally need an individual's consent before they can send marketing texts, emails or faxes, make calls to a number registered with the TPS, or make any automated marketing calls under PECR" (see also the reference to the forthcoming consultation on data and consent in Section 1: The Purpose of this Consultation above) and the current Code requirements regarding people in vulnerable circumstances (see Part E below).

In addition, the Code currently deals with telephone fundraising asks in the following Code rule:

*8.3.1 I) Fundraisers MUST NOT, at any point in a telephone call, be unreasonably persistent or place undue pressure on the recipient to donate, and MUST NOT ask for a donation more than three times during that call.*

### How we propose to change the Code

The Fundraising Regulator seeks to strengthen protection for the public against undue pressure by fundraisers across all channels of communication.

While we propose that the "three asks" rule should remain as a useful limit for telephone fundraisers we propose the following:

- To make this more specific by referring to financial contributions rather than to all "donations". This is to distinguish between a request for money (where undue pressure is most likely to be felt) and other forms of support, such as a request for a member of the public to contribute their time or sign a petition. The proposed revised wording would read as follows:

*Fundraisers MUST NOT, at any point in a telephone call, be unreasonably persistent or place undue pressure on the recipient to donate, and MUST NOT ask for a **financial contribution** more than three times during that call.*

- In line with the FRSB's recommendations, we also propose that an additional rule is added (which is already in the street and door-to-door fundraising rulebooks) to ensure a consistent approach across **all** person-to-person fundraising channels by recognising the member of the public's initial response to the fundraising approach before determining the appropriateness of continuing with the fundraising ask. This rule would read:

*Fundraisers MUST NOT continue to ask an individual for support if that person clearly indicates – by word or gesture – that they do not wish to continue to engage.*

### Questions

**B1.** Is the existing focus on limiting the number of fundraising asks helpful in safeguarding the public from undue pressure?

Yes / no

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

**B2.** For telephone calls, does a narrower focus on financial asks (as opposed to requests for other forms of support) put the right emphasis on where the risk of undue pressure lies?

Yes / no

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

**B3.** Does the proposed new wording of the two rules provide sufficient clarity on when a fundraising ask is or becomes inappropriate?

Yes / no

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

## **PART C: Solicitation (disclosure) statements**

### **Why we are reviewing the Code in this area**

A solicitation statement (sometimes called a “disclosure” statement) is a detailed declaration which must be made by professional fundraisers and commercial participators when fundraising in England and Wales. It is intended to make third-party fundraising relationships clearer to members of the public and help the latter make an informed decision as to whether to donate. It includes information regarding the organisations involved and how each will be remunerated or benefit as a result of the donation.

While solicitation statements are a requirement of the Code (and the law), there is currently no clear stipulation on when they must be given. An FRSB investigation in May 2016 identified that the public is sometimes not given this information until after a transaction is made.

The Fundraising Regulator is concerned that such statements should be given in a timely manner in order to ensure that the prospective donor is able to make a fully informed decision before donating. In particular, it is important that where fundraising is undertaken by a professional fundraiser, the person being asked to make the donation is clear *before* they give as to whom is soliciting the donation and that the person asking is a professional fundraiser.

With respect to solicitation statements, the Code currently contains the following provisions:

**4.2 d)** *Before soliciting money or other property a “professional fundraiser” **MUST\*** have a written agreement in place with the Client, and each time a “professional fundraiser” solicits money or other property, they **MUST\*** make a disclosure (or solicitation) statement.*

**e)** *When acting solely as a Consultant or Fundraiser in Northern Ireland, such statements and contracts **MUST** be made (future regulations in Northern Ireland may make this a legal requirement).*

In the case of telephone fundraising, additional legal requirements already exist in the Charities Act 1992 that an oral Solicitation Statements must be given during the call itself and followed up by a written statement where a payment of £100 or more is donated. This additional duty is noted in the legal appendices to the existing Code:

**L 10.1 d)** *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 notify the donor of their right to a refund/cancel. (Section 60 (5) Charities Act 1992.)*

### **How we propose to change the Code**

Alongside the existing rules on solicitation statements in the Code, the Fundraising Regulator proposes to add an additional rule to make clear that irrespective of the channel used, the solicitation statement must be given *before* the individual makes a commitment to donate. We propose that the point of commitment is defined as being the point at which money is given by the donor or (as in the case of a direct debit

promise to pay at a future date), the point at which any financial details relevant to the transaction are requested by the fundraiser.

This rule proposed would read as follows:

*In all cases, the disclosure (or solicitation) statement **MUST** be made **before** any commitment is made by the individual to donate. This **MUST** be either before money is given by the donor or before any financial details relevant to the transaction are requested by the fundraiser (whichever is the sooner).*

#### Questions

**C1.** Does the proposed new wording on solicitation statements address the following concerns:

**a.** that the person making the donation is clear before they give as to who is soliciting the donation?

Yes / no

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

**b.** that, where applicable, it is made clear that the person seeking a donation is a professional fundraiser?

Yes / no

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

## **PART D: Raising concerns about fundraising practice (whistleblowing)**

### **Why we are reviewing the Code in this area and how we propose to change the Code**

Fundraisers or others involved with a charity may identify where an aspect of their organisation's fundraising practices falls below the standards required.

The Fundraising Regulator recognises that in-house and third party staff and volunteers need to have a clear process to raise such issues with their organisations with confidence and without fear of negative repercussions. The Regulator holds the view that, although it should not prescribe the internal processes of charities and agencies for whistleblowing, it is right that the Code should require that charities publicise to their employed staff and volunteers their whistleblowing policy. For that reason, it wishes to include a new Code rule requiring this be done, which would be worded as follows:

*Fundraising organisations **MUST** have a clear and published internal procedure for members of staff and volunteers to report any concerns they may have regarding their organisation's fundraising practice. The policy should include:*

- i) the type of issues that can be raised and the process for doing so;*
- ii) how the person raising a concern will be protected from victimisation and harassment;*
- iii) how and what the organisation will do in response to receiving such information; and*
- iv) how an individual can escalate their concerns to the Fundraising Regulator, the Independent Fundraising Standards and Adjudication Panel for Scotland or (if determined) the relevant regulatory body in Northern Ireland.*

#### **Questions**

**D1.** Do you agree that fundraising organisations should be required to have an internal procedure for members of staff and volunteers to raise concerns?

Yes / no

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

**D2.** If yes, do you agree that this requirement needs to be contained in the Code?

Yes / no

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

**D3.** Does the proposed new code rule provide a clear statement on what fundraising organisations must have in their whistle blowing policy?

Yes / no

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

## PART E: People in Vulnerable Circumstances

### Why we are reviewing the Code in this area

As a result of several high-profile cases, there has been a focus on how charities approach people in vulnerable circumstances for funds.

The Fundraising Regulator is keen to ensure that the Code's requirements give fundraisers both sufficient flexibility to adapt their fundraising ask on a case-by-case basis while at the same time ensuring that the needs of people in vulnerable circumstances are adequately recognised and protected.

The Code currently covers this by including the following provisions:

**1.2 e) (General principles):** *i) Fundraisers **MUST** take all reasonable steps to treat a donor fairly, enabling them to make an informed decision about any donation. This **MUST** include taking into account the needs of any potential donor who may be in a vulnerable circumstance or require additional care and support to make an informed decision.*

*ii) Fundraisers **MUST NOT** exploit the credulity, lack of knowledge, apparent need for care and support or vulnerable circumstance of any donor at any point in time.*

*There is more information available about responding to the needs of people in vulnerable circumstances and helping donors to make informed decisions in the Institute of Fundraising's 'Treating Donors Fairly' Guidance.*

*iii) If a fundraiser knows or has reasonable grounds for believing that an individual lacks capacity to make a decision to donate, a donation **MUST NOT** be taken.*

*iv) A donation given by someone who lacked capacity at the time of donating **MUST\*** be returned.*

**Section 1.2 g) (General principles):** *Charities that are legally required to have their accounts audited under section 144 of the Charities Act 2011 **MUST\*** state in their trustee Annual Report what the charity has done to protect vulnerable people and others from unreasonable intrusion on a person's privacy, unreasonably persistent approaches or undue pressure to give, in the course of or in connection with fundraising for the charity.*

The Fundraising Regulator is keen to understand if the Code's current requirements on treating donors fairly and protecting vulnerable people are sufficient to meet the needs of people in vulnerable circumstances and fundraisers who engage with them or if this requires expansion.

### Questions

**E1.** Does the existing wording of the Code adequately recognise the needs of people in vulnerable circumstances?

Yes / No

If no, please explain why.

**E2.** Does the existing Code and supplementary guidance give sufficient clarity to fundraisers on how they are expected to engage with people in vulnerable circumstances?

Yes / No

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

## PART F: Charity Collection Bags

### Why we are reviewing the code in this area

An adjudication by the FRSB in December 2015 considered a case in which the complainant received a clothing collection bag through the post in spite of having a “cease and desist” notice on their door requesting no unsolicited marketing materials. The FRSB’s determination recommended that the Code be reviewed to consider specifically prohibiting the delivery of collection bags to households displaying a “no bags” sign.

The Code currently contains the following rule with regards to unwanted door-to-door fundraising approaches:

**16.10 s) (Conduct of Collections):** *Fundraisers **MUST NOT** knock on any door of a property that displays a sticker or sign which includes the words ‘No Cold Calling’. For more information see guidance on no cold calling stickers.*

However, this rule does not cover charity bag drops as they are not an approach which involves actually calling on a householder.

### How we propose to change the Code

The Fundraising Regulator has become aware that this is an area of continuing concern for the public. We therefore propose to add an additional rule to the Code as follows:

*Organisations operating house to house bag collections for charitable purposes **MUST NOT** deliver bags to a property that displays a sticker or sign which includes either the words ‘no charity bags’ or ‘no junk mail’.*

### Questions

F1. Does the addition of the proposed new rule adequately deal with the distribution of unwanted charity collection bags?

Yes / No

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



## **PART G: Third parties**

### **Why we are reviewing this area of the Code**

A number of recent regulatory developments have emphasised the importance of adequate arrangements existing between charities and third parties involved in fundraising in order to ensure that good fundraising practice is maintained. These have included:

- In May 2016, an FRSB adjudication in relation to telephone fundraising recommended that the Fundraising Regulator should include a standardised best practice benchmark for both telephone fundraising agencies and charity clients to work to, including mandating a minimum statistically significant percentage of calls to be reviewed by the charity which had contracted the service. The aim of the FRSB's recommendation was to improve both the clarity and consistency in approach taken by charities in monitoring the fundraising activity of third party fundraising on their behalf.
- The Charities (Protection and Social Investment) Act 2016 includes new standard legal obligations regarding agreements made between charities registered in England and Wales and professional fundraisers / commercial participators (as these third parties are defined in section 58 of the Charities Act 1992). These new duties were incorporated into the Code in November 2016 in sections 4.5 (Working with Third Parties) and 12.4 b (Commercial partnerships).
- The Fundraising Regulator's adjudication decision on the Neet Feet Fundraising Agency and the charities employing that agency (November 2016) stressed the need for the Code to provide further detail on what "reasonable efforts to ensure the ongoing compliance" of third party agencies meant for charities.

In considering the above, the Fundraising Regulator wants to ensure that both charities and third parties working on their behalf are effectively monitoring fundraisers to make sure that:

- there is full compliance with the Code and that such monitoring is meaningful for both organisations and not simply a "tick box exercise"; and
- charities and fundraising organisations working across all channels take a consistent approach to the monitoring of fundraising compliance.

The Fundraising Regulator also seeks to adequately reflect in the Code changes in the law pertaining to contracts between charities and third parties fundraising on their behalf.

#### **i) "Reasonable efforts" in monitoring compliance**

Following the recommendations made in the Neet Feet decision, the Fundraising Regulator considers that further Code guidance on ways that fundraising organisations may evidence that they have undertaken reasonable steps to ensure the compliance of third parties would help clarify responsibilities in this regard.

The Code currently includes the following rule:

**4.2 b) (Working with third parties):** Organisations **MUST** check, and make all reasonable efforts to ensure, the ongoing compliance of third parties with the Code and their legal requirements.

#### **How we propose to change the Code through additional guidance**

While, the FRSB propose mandating percentages in terms of the quantity of monitoring expected against the number of calls made, the Fundraising Regulator is also mindful that setting an arbitrary benchmark may put an unhelpful focus on compliance for compliance's sake. Our aim is to foster an approach whereby fundraising organisations assess their agreements with third parties and set appropriate levels to ensure monitoring achieves effective compliance.

Where monitoring practices are included within the scope of an investigation, the Fundraising Regulator proposes that it should consider the adequateness of these arrangements on a case by case basis. However, the following supplementary guidance to Code 4.2 b (shown in **Bold**) is proposed to provide further clarity on key areas that fundraising organisations will be expected to consider in planning and implementing any monitoring strategy:

*4.2 b) Organisations MUST check and make all reasonable efforts to ensure the ongoing compliance of third parties with the Code and their legal requirements.*  
**Reasonableness [for the purpose of this Code] requires the organisation to deliver effective and proportionate monitoring. Means of evidencing reasonable efforts to ensure effective ongoing compliance include (but are not limited to):**

- **ensuring the values of the organisation are reflected in the policies, performance objectives, indicators and, where applicable, the incentives of the third party;**
- **establishing a named individual with lead responsibility for monitoring compliance;**
- **developing clear reporting requirements with the third party and regularly reviewing progress against pre-agreed performance, quality assurance and compliance targets;**
- **defining how monitoring will be carried out, including establishing an appropriate frequency for monitoring based on an assessment of the risk posed by the fundraising activity;**
- **approving and regularly reviewing agency compliance training, including frequently observing the delivery of this training onsite;**
- **authorising content and materials for training;**
- **regularly conducting (and documenting the results of) call monitoring, mystery shopping, site visits and/or shadowing with third party fundraisers;**
- **setting out a clear policy for handling complaints and feedback, including the time frames, procedure for escalating and raising internally, and the transfer of information between the charity and the third party;**
- **setting out a clear internal procedure for members of staff and volunteers to report any concerns they may have regarding their organisation's fundraising practice; and**

- **agreeing an action plan with the third party to address any concerns, where these are identified.**

**Further information on assessing risk can be found in the Charity Commission CC26 guidance on charities and managing risk and in the NCVO's How-to guide.**

**Further information on implementing monitoring arrangements with third parties can be found in the IoF's guide "Successful Partnerships for sustainable fundraising".**

## ii) Fundraising agreements

The Charities (Protection and Social Investment) Act 2016 places new duties on charities and professional fundraisers regarding what arrangements are included within fundraising agreements to protect the public from "unreasonable intrusion" on a person's privacy, "unreasonably persistent approaches" or "undue pressure" to give. These requirements were added to the Code in November 2016.

The Fundraising Regulator believes that providing examples of how these terms may be applicable within the context of the Code would aid fundraisers' understanding of their responsibilities. The Fundraising Regulator proposes to add the following additional guidance (in bold) to the existing Code reference to the Charities (Protection and Social Investment) Act 2016:

*4.5 b) Fundraising agreements between charities registered in England and Wales and professional fundraisers **MUST\*** include:*

- iii) *how compliance with the agreement will be monitored by the charity as specified within section 13 of the Charities (Protection and Social Investment) Act 2016.*

**Means of evidencing this requirement may include (but are not limited to) the compliance monitoring measures set out in 4.2b above.**

**The agreement should have adequate provision for the charity to read and, where necessary, review any relevant policies and procedures that the third party has in place which are relevant for the protection of the public. This may include (but is not limited to): policies on people in vulnerable circumstances; complaints handling and whistleblowing; training materials; and the staff code of conduct.**

### Questions

#### i) "Reasonable efforts in monitoring compliance

**G1.** Does the addition of the proposed guidance provide sufficient clarity on the meaning of "reasonable efforts" to ensure the ongoing compliance of third parties?

Yes / No

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

**ii) Fundraising agreements**

**G2.** Do you agree that further detail suggested needs to be included in the Code in order adequately to reflect the requirements of the Charities Act 2016 in respect of third party contracts?

**Yes / no**

If yes, does the additional detail proposed provide sufficient clarity on what is required of charities and third parties?

**Yes / no**

If no, please comment on how the wording could be made clearer.

## **PART H: The Code – General questions**

The Fundraising Regulator inherited the Code of Fundraising Practice from the Institute of Fundraising in July 2016.

We want to ensure that the Code adequately meets the needs of fundraisers and members of the public, both in terms of providing a clear set of standards to be followed and reflecting current practice.

### **Questions**

We would like to hear your views on the following:

**H1.** How easy is the Code to understand?

In your answer, please consider:

- a) the clarity of language used
- b) the layout / order of the Code
- c) how effective the Code is in highlighting existing legal requirements
- d) the accessibility of the Code for different audiences

**H2.** In what areas, if any, do you feel the Code could generally be improved?

**H3.** Are there any issues not covered either by the existing Code or this consultation that you think should be considered for inclusion in the Code or Guidance? (if yes, please explain why in your answer)

**H4.** Are there any areas in the Code that you would like to see removed or amended which are not mentioned in this consultation and why? (if yes, please explain why in your answer)

### 3. Responding to this Consultation paper

Responses should reach us by Friday **28<sup>th</sup> April 2017**. Earlier responses are welcome.

Please complete your response using the online system at <https://www.surveymonkey.com/r/fundraisingcodeconsultation2017>

or send your response with the completed Respondent Information Form included at the end of this paper (see "Handling your response" below) to: [consultations@fundraisingregulator.org.uk](mailto:consultations@fundraisingregulator.org.uk)

or by post to:

Code consultation responses  
Policy Department  
Fundraising Regulator  
2nd Floor, CAN Mezzanine  
49-51 East Road  
London  
N1 6AH

If you have any questions, please contact the Fundraising Regulator (email: [consultations@fundrasingregulator.org.uk](mailto:consultations@fundrasingregulator.org.uk)).

This consultation, and all future Fundraising Regulator consultations, can be viewed online on the consultation pages of our website at [www.fundraisingregulator.org.uk](http://www.fundraisingregulator.org.uk)

#### **Handling your response**

We anticipate publishing all responses. However, if you ask for your response not to be published, we will consider your request seriously.

#### **Next steps in the process**

A summary of responses will be published on the consultation web pages together with the Fundraising Regulator's decisions regarding changes to the Code and when any changes will take effect. Changes to the Code will be made having taken into account the consultation responses received.

#### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to the contact details above.

## 4. Respondent Information Form and consultation Question summary

We anticipate publishing a summary of all responses and a list of respondents. However, if you ask for your response not to be published, we will consider your request seriously. If you wish to request that your response remains confidential, please email us at: [consultations@fundraisingregulator.org.uk](mailto:consultations@fundraisingregulator.org.uk)

### 1. Contact details

Name

Email Address

### 2. I am responding as...

- an Individual
- an Organisation or body that represents Fundraising Organisations
- a Charity / not-for-profit
- a Commercial Organisation (agency, consultancy, company)
- Other (please specify)

### 3. Organisation name

(If not responding as an Individual)

### 4. I am responding as a:

- |   |  |  |
|---|--|--|
| <input type="radio"/> Member of the public            | <input type="radio"/> Director                       | Governance Officer/Manager <input type="radio"/> |
| <input type="radio"/> Donor/supporter                 | <input type="radio"/> Fundraising Manager/Supervisor | Compliance Officer/Manager <input type="radio"/> |
| <input type="radio"/> Volunteer                       | <input type="radio"/> Fundraiser                     | Policy Officer/Manager <input type="radio"/>     |
| <input type="radio"/> CEO                             | <input type="radio"/> Trustee                        |  |
| <input type="radio"/> Head of Educational institution | <input type="radio"/> Board member                   |  |
| <input type="radio"/> Other (please specify)          |  |  |

## Questions

### **PART A: Charity trustees**

**A1.** Does the proposed additional wording of the Code (combined with the existing Code requirements) give sufficient clarity on how Charity Trustees are expected to oversee the fundraising activities of their charity?

Yes / No

If no, please explain how the wording could be improved.

**A2.** Are there any other comments you wish to make on the proposed additional wording of the Code on Charity Trustees?

### **PART B: The fundraising ask**

**B1.** Is the existing focus on limiting the number of fundraising asks helpful in safeguarding the public from undue pressure?

Yes / no

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

**B2.** For telephone calls, does a narrower focus on financial asks (as opposed to requests for other forms of support) put the right emphasis on where the risk of undue pressure lies?

Yes / no

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

**B3.** Does the proposed new wording of the two rules provide sufficient clarity on when a fundraising ask is or becomes inappropriate?

Yes / no

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



**PART C: Solicitation (disclosure) statements**

**C1.** Does the proposed new wording on solicitation statements address the following concerns:

a. that the person making the donation is clear before they give as to who is soliciting the donation?

Yes / no

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

b. that, where applicable, it is made clear that the person seeking a donation is a professional fundraiser?

Yes / no

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

**PART D: Raising concerns about fundraising practice (whistleblowing)**

**D1.** Do you agree that fundraising organisations should be required to have an internal procedure for members of staff and volunteers to raise concerns?

Yes / no

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

**D2.** If yes, do you agree that this requirement needs to be contained in the Code?

Yes / no

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

**D3.** Does the proposed new code rule provide a clear statement on what fundraising organisations must have in their whistle blowing policy?

Yes / no

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

## **PART E: People in Vulnerable Circumstances**

**E1.** Does the existing wording of the Code adequately recognise the needs of people in vulnerable circumstances?

Yes / No

If no, please explain why.

**E2.** Does the existing Code and supplementary guidance give sufficient clarity to fundraisers on how they are expected to engage with people in vulnerable circumstances?

Yes / No

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

## **PART F: Charity collection bags**

**F1.** Does the addition of the proposed new rule adequately deal with the distribution of unwanted charity collection bags?

Yes / No

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

## **PART G: Third parties**

### **i) "Reasonable efforts in monitoring compliance"**

**G1.** Does the addition of the proposed guidance provide sufficient clarity on the meaning of "reasonable efforts" to ensure the ongoing compliance of third parties?

Yes / No

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

### **ii) Fundraising agreements**

**G2.** Do you agree that further detail suggested needs to be included in the Code in order adequately to reflect the requirements of the Charities Act 2016 in respect of third party contracts?

Yes / no

If yes, does the additional detail proposed provide sufficient clarity on what is required of charities and third parties?

Yes / no

If no, please comment on how the wording could be made clearer.

**PART H: The Code – general questions**

**H1.** How easy is the Code to understand?

In your answer, please consider:

- a) the clarity of language used
- b) the layout / order of the Code
- c) how effective the Code is in highlighting existing legal requirements
- d) the accessibility of the Code for different audiences

**H2.** In what areas, if any, do you feel the Code could generally be improved?

**H3.** Are there any issues not covered either by the existing Code or this consultation that you think should be considered for inclusion in the Code or Guidance and why?

**H4.** Are there any areas in the Code that you would like to see removed or amended which are not mentioned in this consultation and why?

# QUESTIONS FROM Q&A

## NCVO WEBINAR - 1 MARCH 2017 CODE OF FUNDRAISING PRACTICE

### Questions that came through live

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#### Answered

- Are there any guidelines/regulations around how charities should/must calculate the amount spent on fundraising each year in their accounts?
- On the three asks change, what constitutes a 'gesture' signalling that someone doesn't want to donate?
- Is there a specific definition of 'vulnerable' that this is based on? Also, if we're told by a third party that someone is vulnerable, then we need to record that and according to the ICO last week, we need to notify them that we hold that data - feels uncomfortable?
- Are you including individuals in the 3rd party section or are you talking about companies working on the charity's behalf?
- Regarding disclosure statements - what constitutes a commitment? Would this be before the donor has said yes to the donation or before any transaction details are given?
- There are lots of responsibilities here on trustees but only so many with fundraising knowledge - will this cause recruitment problems when it comes to finding trustees? (I.e. how do the FR reassure trustees?)
- Is there a template solicitation statement for charities to use? This ensures consistent messaging
- 3 step approach: is that from individual or from charity overall?
- How will FR publicise its role to the general public so they understand how the Code helps them?

## Q&A questions

- How are charities expected to control practice of volunteer fundraisers when we don't always know that they are doing it?
- Is the regulator's ambition to transform the code into a principles-based system of regulation?
- What about unsolicited donations from clearly vulnerable people?
- Probably a silly question but does person to person fundraising include telephone fundraising?

### Questions not answered during the webinar:

- Can a charity cold email/mail for donations to private individuals and or corporates whose details have been obtained from public sources? Does such an ask have to include an opt-out from further contact?

**Further guidance on reusing publically available data [can be found here](#)**

- Obviously the Fundraising Regulator and FPS have been brought into effect because of recent controversies or those going unrecognised have damaged the reputation of charities, and action in question to remedy this. If this action is successful, self-regulation continues and public trust in fundraising organisations becomes high, could this affect the future of the FPS/how the Fundraising Regulator operates in the next decade?

**We would like nothing better than for the need for FPS to disappear and we recognise that if charities implement GDPR properly and move to a consent-led approach, it could negate the need for FPS in future. However, right now, this is not the case and the FPS is there as a safeguard.**

- As long as someone is happy to, can we change the ask in the conversation i.e. no they don't want to donate £10 a month, but yes, they would like to take part in our events and would like to sign up?

**Yes, so long as it is within the 3 ask maximum.**

- Does 3 step process apply only to same calling campaign (e.g.) or would "no" mean no indefinitely? What's the stance on asking again in the future?

**3 asks is within the single engagement. Regarding further communications, you have to take a steer from the tone of the individual's response here and weigh up the potential financial benefits against the risk of causing irritation. In terms of data protection, ultimately, it may be difficult to argue that you have a basis for**

**further fundraising contact under consent or legitimate interests if the initial response has been negative.**

- Clarification of 'vulnerable' will vary greatly from charity to charity – in the hospice world could all of our supporters could be seen as vulnerable if they are receiving care or a family member is receiving care?

**Yes, it can be an emotional time and caution is therefore required in asking for a donation to ensure the individual is able to make an informed decision which is not affected by their sensitive state of mind. That said, you may also be better able to recognise where the line is between a sensitive ask and where you may risk exploiting their circumstances as someone who works with this group on a daily basis.**

- Is there a plan for agencies to 'join' the FR programme? If so, in what way and are there any timescales?

**Yes – registration is planned to open for agencies in late March / early April.**

## Questions sent through in advance

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### Answered

- Case studies and examples: it would be very useful to read about or hear about examples of the cases where failings have been found. The names of the charities don't need to be disclosed but it would be very useful indeed to know what about specific practices are deemed inappropriate.
- Please can you explain what is meant by 'referees' in the Trustees section:  
b) Organisations **MUST** obtain permission of referees before submitting applications, with the referee seeing the application before submission
- The Fundraising Regulator talks about stronger powers to sanction – can this be clarified with regards to what power the FR in enforcing the Code, and how this relates to the Charity Commission powers for sanctions?
- What is the relationship between the Regulator and the IoF in working with charities, focusing specifically around the work the IoF is doing around mystery shopping activity for telephone, private site fundraising and face to face?

## Q&A questions

- Is there an organigram to direct which person charities can go to at the Regulator for guidance around the Code?
- As this stage we would like to ask a questions regarding Part A Charity Trustees.  
1) Could we please ask for clarification over point 5 of your proposed change to the Code “Identifying and following any recognised standards that apply to their charity’s fundraising” – could you please clarify what the “Recognised Standards” are that you refer to?
- Point “Supervising their Fundraisers” – What does this entail? Will there be clarity?
- Regarding the Solicitation Statement – Would it not be an improvement to insist that in all face-to-face situations, the statement is introduced verbally and then confirmed by handing over a printed copy? It seems to us that this would ensure that the statement is always 100% consistent with the approved version.
- Fundraising Ask – What is the rationale behind a 3 step approach? If a person says ‘no’ once should that not be enough? Along the same lines as not being able to importune people in the street collections regulations
- Part E - If a person is identified as vulnerable should the fundraiser avoid asking them for a donation – rather than guessing what level of capacity the individual has?
- Part F - What does the panel think of ‘no unsolicited mail’ instead of ‘no junk mail’?

### Questions not answered in the webinar:

- Can we still communicate with supporters who we have been communicating with for years but we do not have proof they are happy for us to do so?  
**You should look to assess the consent you have and whether it is still valid. Our consent self-assessment toolkit and accompanying guidance is designed to help you do this.**
- Consent vs legitimate interest: guidance has been provided on what can constitute each of these things. Please explain in which cases we need, or should rely on guidance, and in which cases legitimate interest is enough.  
**You need to look at each and make a decision as to which is appropriate in the circumstances. Consent is safest but legitimate interest may be applicable in some**

**circumstances where you can evidence a relationship with the individual and where you can show:**

- **that it is necessary for you to contact them.**
- **that the communication is legal, fair and proportionate.**
- **that any interest we may have in contacting you is balanced against your own interests and rights regarding how your personal data is used.**

**Further info on p32 of our guidance.**

- We have been advised that we need to take legal advice to work out the wording for our opt-in options (apparently some charities have already done this). As a small charity that would be very expensive for us and for many others. Is the Regulator planning to provide any framework or template wording for the new rules?  
**You basically need to determine what the purpose( or purposes) are for any communication you wish to send and be as clear as you can be in outlining these to the individual (tick boxes are a good way to do this). There is advice on how to decide what your purpose(s) are and examples of opt-in wording in our guidance**
- Is there any clarity on the form that consent needs to take i.e. is it enough to tell people clearly and openly, do you have to give them a chance to opt out, or do you have to give them opt in only?  
**Opt out should be used with extreme caution. GPR will require consent to be unambiguous so any consent which cannot definitively prove the individual gave permission will not suffice (including pre-ticked boxes. You will need some form of positive action by the individual that indicates their consent. Further info is in our guidance.**
- Are there any updates on when organisations can register to show that they are meeting the funding Code of Practice? **We will be sending updates via our newsletter. You can sign up here**
- If a supporter has given permission for contact from a charity as a required part of their function with that charity (i.e. a volunteer so that they can be managed in their volunteering function, or a service user so that they can be kept informed of the services the charity provides) does this constitute consent for marketing (specifically fundraising) asks?  
**No. Consent for communications with one purpose do not mean consent to communications with an entirely different purpose.**



## Q&A questions

If not, how can consent for marketing/fundraising be gained from those individuals - can this be done through a phone call or through a mailing (given that consent has also theoretically not been given for these approaches to ask for opt-in)?

**It depends on the consent you hold. [See our Consent self-assessment tool here](#)**

- Fundraisers **MUST NOT** continue to ask an individual for support if that person clearly indicates – by word or gesture – that they do not wish to continue to engage. E.g. is somebody saying that they already give to too many charities indication that they do not wish to continue to engage? Even if this is the first concern/'no' that the individual has expressed?

**It's a judgement call, but saying they "already give" wouldn't necessarily indicate that they wish to terminate the conversation (although it might be an indicator).**

**Tone of voice and /or body language is key.**

- Part C - Saying that you are professional fundraiser does not address the issue of remuneration and whether the person making the appeal is being paid commission or a flat rate – perhaps a template script should be agreed for the statement made for consistency? **Suggest you make this point in your consultation response.**
- Why is £100 deemed the appropriate threshold? Shouldn't a solicitation statement apply to any amount pledged?  
**Possibly, but this is law, which the FR does not have powers to change. The code change proposed is about the timing of the statement which is currently unspecified in law.**



# Access for wheelchair users to Taxis and Private Hire Vehicles

## Statutory Guidance

**Moving Britain Ahead**

The Department for Transport has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the Department's website. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard please contact the Department.

Department for Transport  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR  
Telephone 0300 330 3000  
Website [www.gov.uk/dft](http://www.gov.uk/dft)  
General enquiries: <https://forms.dft.gov.uk>



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# Ministerial Foreword



This Government is committed to ensuring that transport works for everyone, including disabled people. Since joining the Department for Transport in 2015, and taking on Ministerial responsibility for transport accessibility, I have made it my mission to challenge the status quo and encourage innovative thinking to improve access to transport across the modes.

I know however, that despite the real improvements which have taken place in recent years, some disabled passengers still face discrimination when attempting to travel. I am clear that this is unacceptable.

Owners of assistance dogs are already protected by provisions in the Equality Act 2010 which make it unlawful to refuse or charge them extra. I want similar protections to apply to wheelchair users, which is why I am delighted that we have commenced the remaining parts of sections 165 and 167 of the Equality Act 2010, making it a criminal offence for drivers of designated taxi and private hire vehicles to refuse to carry passengers in wheelchairs, to fail to provide them with appropriate assistance, or to charge them extra. I hope that in so doing we will send a clear signal to the minority of drivers who think it acceptable to discriminate on grounds of disability that such behaviour will not be tolerated – and, more importantly, to enable wheelchair users to travel with confidence.

A handwritten signature in blue ink that reads "Andrew Jones". The signature is written in a cursive, flowing style.

**Andrew Jones MP,  
Parliamentary Under Secretary of State, Department for Transport**

# 1. Introduction

## Status of guidance

- 1.1 This guidance document has been issued in order to assist local licensing authorities (LAs) in the implementation of legal provisions intended to assist passengers in wheelchairs in their use of designated taxi and private hire vehicle (PHV) services. It provides advice on designating vehicles as being wheelchair accessible so that the new protections can apply, communicating with drivers regarding their new responsibilities and handling requests from drivers for exemptions from the requirements.
- 1.2 This is a statutory guidance document, issued under section 167(6) of the Equality Act 2010 and constitutes the Secretary of State's formal guidance to LAs in England, Wales and Scotland on the application of sections 165 to 167 of the Equality Act 2010. LAs must have regard to this guidance document.

## 2. Putting the law into practice

### Background

- 2.1 We have commenced sections 165 and 167 of the [Equality Act 2010](#) (“the Act”), in so far as they were not already in force. Section 167 of the Act provides LAs with the powers to make lists of wheelchair accessible vehicles (i.e. “designated vehicles”), and section 165 of the Act then requires the drivers of those vehicles to carry passengers in wheelchairs, provide assistance to those passengers and prohibits them from charging extra.
- 2.2 The requirements of section 165 do not apply to drivers who have a valid exemption certificate and are displaying a valid exemption notice in the prescribed manner. An exemption certificate can be issued under section 166 of the Act, which is already in force. This allows LAs to exempt drivers from the duties under section 165 where it is appropriate to do so, on medical grounds or because the driver’s physical condition makes it impossible or unreasonably difficult for them to comply with those duties.
- 2.3 On 15<sup>th</sup> September 2010, the Department for Transport issued guidance on the Act which stated, in relation to section 167, *“although the list of designated vehicles will have no actual effect in law until the duties are commenced, we would urge licensing authorities to start maintaining a list as soon as possible for the purpose of liaising with the trade and issuing exemption certificates”*.
- 2.4 We therefore recognise that many LAs have already implemented some of these provisions, including publishing lists of wheelchair accessible vehicles and exempting drivers. Therefore, there are likely to be a range of approaches being used in practice by LAs across England, Wales and Scotland.

### Transitional arrangements

- 2.5 We want to ensure that the commencement of sections 165 and 167 of the Act has a positive impact for passengers in wheelchairs, ensures they are better informed about the accessibility of designated taxis and PHVs in their area, and confident of receiving the assistance they need to travel safely.
- 2.6 But we recognise that LAs will need time to put in place the necessary procedures to exempt drivers with certain medical conditions from providing assistance where there is good reason to do so, and to make drivers aware of these new requirements. In addition, LAs will need to ensure that their new procedures comply with this guidance, and that exemption notices are issued in accordance with Government regulations. This will ensure that we get a consistent approach and the best outcomes for passengers in wheelchairs.
- 2.7 As such, we would encourage LAs to put in place sensible and manageable transition procedures to ensure smooth and effective implementation of this new law. LAs should only publish lists of wheelchair accessible vehicles for the purposes of

section 165 of the Act when they are confident that those procedures have been put in place, drivers and owners notified of the new requirements and given time to apply for exemptions where appropriate. We would expect these arrangements to take no more than a maximum of six months to put in place, following the commencement of these provisions, but this will of course be dependent on individual circumstances.

2.8 A flowchart setting out the sorts of processes that a LA could follow is set out below. This is an indicative illustration, and it will be down to each LA to determine the actions they need to take to ensure this new law is implemented effectively in their area.





# 3. Vehicles

## Overview

- 3.1 Section 167 of the Act permits, but does not require, LAs to maintain a designated list of wheelchair accessible taxis and PHVs.
- 3.2 Whilst LAs are under no specific legal obligation to maintain a list under section 167, the Government recommends strongly that they do so. Without such a list the requirements of section 165 of the Act do not apply, and drivers may continue to refuse the carriage of wheelchair users, fail to provide them with assistance, or to charge them extra.

## Vehicles that can be designated

- 3.3 We want to ensure that passengers in wheelchairs are better informed about the accessibility of the taxi and PHV fleet in their area, confident of receiving the assistance they need to travel safely, and not charged more than a non-wheelchair user for the same journey.
- 3.4 The Act states that a vehicle can be included on a licensing authority's list of designated vehicles if it conforms to such accessibility requirements as the licensing authority thinks fit. However, it also goes on to explain that vehicles placed on the designated list should be able to carry passengers in their wheelchairs should they prefer.
- 3.5 This means that to be placed on a licensing authority's list a vehicle must be capable of carrying some – but not necessarily all – types of occupied wheelchairs. The Government therefore recommends that a vehicle should only be included in the authority's list if it would be possible for the user of a "reference wheelchair"<sup>1</sup> to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.
- 3.6 Taking this approach allows the provisions of section 165 of the Act apply to a wider range of vehicles and more drivers than if LAs only included on the list vehicles capable of taking a larger type of wheelchair.
- 3.7 The Government recognises that this approach will mean that some types of wheelchair, particularly some powered wheelchairs, may be unable to access some of the vehicles included in the LA's list. The Act recognises this possibility, and section 165(9) provides a defence for the driver if it would not have been possible for the wheelchair to be carried safely in the vehicle. Paragraph 3.10 of this guidance below aims to ensure that users of larger wheelchairs have sufficient information about the vehicles that will be available to them to make informed choices about their journeys.

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<sup>1</sup> As defined in Schedule 1 of the [Public Service Vehicle Accessibility Regulations 2000](#)

## Preparing and publishing lists of designated vehicles

- 3.8 We want to ensure that passengers in wheelchairs have the information they need to make informed travel choices, and also that drivers and vehicle owners are clear about the duties and responsibilities placed on them.
- 3.9 Before drivers can be subject to the duties under section 165 of the Act, the LA must first publish their list of designated vehicles, and clearly mark it as 'designated for the purposes of section 165 of the Act'.
- 3.10 LAs should ensure that their designated lists are made easily available to passengers, and that vehicle owners and drivers are made aware. Lists should set out the details of the make and model of the vehicle, together with specifying whether the vehicle is a taxi or private hire vehicle, and stating the name of operator. Where possible it would also be helpful to include information about the size and weight of wheelchair that can be accommodated, and whether wheelchairs that are larger than a "reference wheelchair" can be accommodated.
- 3.11 However, we recognise that some passengers in wheelchairs may prefer to transfer from their wheelchair into the vehicle and stow their wheelchair in the boot. Although the legal requirement for drivers to provide assistance does not extend to the drivers of vehicles that cannot accommodate a passenger seated in their wheelchair, we want to ensure that these passengers are provided with as much information as possible about the accessibility of the taxi and PHV fleet in their area.
- 3.12 We would therefore recommend that LAs also publish a list of vehicles that are accessible to passengers in wheelchairs who are able to transfer from their wheelchair into a seat within the vehicle. It should be made clear however that this list of vehicles has not been published for the purposes of section 165 of the Act and drivers of those vehicles are therefore not subject to the legal duties to provide assistance. Authorities may however wish to use existing licensing powers to require such drivers to provide assistance, and impose licensing sanctions where this does not occur.

## Appeals

- 3.13 Section 172 of the Act enables vehicle owners to appeal against the decision of a LA to include their vehicles on the designated list. That appeal should be made to the Magistrate's Court, or in Scotland the sheriff, and must be made within 28 days of the vehicle in question being included on the LA's published list.

# 4. Drivers

## Driver responsibilities

- 4.1 Section 165 of the Act sets out the duties placed on drivers of designated wheelchair accessible taxis and PHVs.
- 4.2 The duties are:
- to carry the passenger while in the wheelchair;
  - not to make any additional charge for doing so;
  - if the passenger chooses to sit in a passenger seat to carry the wheelchair;
  - to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort; and
  - to give the passenger such mobility assistance as is reasonably required.
- 4.3 The Act then goes on to define mobility assistance as assistance:
- To enable the passenger to get into or out of the vehicle;
  - If the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;
  - To load the passenger's luggage into or out of the vehicle;
  - If the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.
- 4.4 Once the duties are commenced, it will be an offence for the driver (unless exempt) of a taxi or PHV which is on the licensing authority's designated list to fail to comply with them. We encourage LAs to provide drivers of taxis and PHVs who are not exempt from the duties with clear guidance on their duties with respect to the carriage of passengers in wheelchairs, either as part of existing driver-facing guidance, or as supplementary communication. The Disabled Persons Transport Advisory Committee's Disability Equality and Awareness Training Framework for Transport Staff<sup>2</sup> may provide a useful resource.
- 4.5 Although each situation will be different, we take the view that reasonable mobility assistance will be subject to other applicable law, including health and safety legislation. However, we would always expect drivers to provide assistance such as folding manual wheelchairs and placing them in the luggage compartment, installing the boarding ramp, or securing a wheelchair within the passenger compartment.
- 4.6 Depending on the weight of the wheelchair and the capability of the driver, reasonable mobility assistance could also include pushing a manual wheelchair or

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<http://webarchive.nationalarchives.gov.uk/20080804135759/http://www.dptac.gov.uk/education/stafftraining/pdf/trainingframework-nontabular.pdf>

light electric wheelchair up a ramp, or stowing a light electric wheelchair in the luggage compartment.

- 4.7 It is our view that the requirement not to charge a wheelchair user extra means that, in practice, a meter should not be left running whilst the driver performs duties required by the Act, or the passenger enters, leaves or secures their wheelchair within the passenger compartment. We recommend that licensing authority rules for drivers are updated to make clear when a meter can and cannot be left running.

## Applying for and issuing exemptions

- 4.8 Some drivers may have a medical condition or a disability or physical condition which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which these duties require. That is why the Act allows LAs to grant exemptions from the duties to individual drivers. These provisions are contained in section 166, and were commenced on 1<sup>st</sup> October 2010.
- 4.9 Section 166 allows LAs to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to do so on medical or physical grounds. The exemption can be valid for as short or long a time period as the LA thinks appropriate, bearing in mind the nature of the medical issue. If exempt, the driver will not be required to perform any of the duties. Since October 2010, taxi and PHV drivers who drive wheelchair accessible taxis or PHVs have therefore been able to apply for exemptions. If they do not do so already, LAs should put in place a system for assessing drivers and a system for granting exemption certificates for those drivers who they consider should be exempt.
- 4.10 We suggest that authorities produce application forms which can be submitted by applicants along with evidence supporting their claim. We understand that some licensing authorities have already put in place procedures for accessing and exempting drivers, and as an absolute minimum, we think that the evidence provided should be in the form of a letter or report from a general practitioner.
- 4.11 However, the Government's view is that decisions on exemptions will be fairer and more objective if medical assessments are undertaken by professionals who have been specifically trained and who are independent of the applicant. We would recommend that independent medical assessors are used where a long-term exemption is to be issued, and that LAs use assessors who hold appropriate professional qualifications and who are not open to bias because of a personal or commercial connection to the applicant. LAs may already have arrangements with such assessors, for example in relation to the Blue Badge Scheme.
- 4.12 If the exemption application is successful then the LA should issue an exemption certificate and provide an exemption notice for the driver to display in their vehicle. As section 166 has been in force since 2010, many LAs will already have processes in place for issuing exemption certificates, and as such we do not intend to prescribe the form that those certificates should take. We are however keen to ensure that passengers in wheelchairs are able to clearly discern whether or not a driver has been exempted from the duties to provide assistance, and as such will prescribe the form of and manner of exhibiting a notice of exemption.
- 4.13 If the exemption application is unsuccessful we recommend that the applicant is informed in writing within a reasonable timescale and with a clear explanation of the reasons for the decision.

## Demonstrating exemptions

- 4.14 In addition to the exemption certificate, exempt drivers need to be issued with a notice of exemption for display in their vehicle.
- 4.15 The Department will soon make regulations which will prescribe the form of and manner of exhibiting a notice of exemption. Where a driver has been exempted from the duties under section 165 of the Act, they must display an exemption notice in the vehicle they are driving in the form and manner prescribed by the regulations. If the notice is not displayed then the driver could be prosecuted if they do not comply with the duties under section 165 of the Act.
- 4.16 The Department aims to distribute copies of the notice of exemption to LAs, but they are of course free to produce their own in accordance with the regulations.
- 4.17 Only one exemption notice should be displayed in a vehicle at any one time.

## Appeals

- 4.18 Section 172 of the Act enables drivers to appeal against the decision of a LA not to issue an exemption certificate. That appeal should be made to the Magistrate's Court, or a sheriff in Scotland, and must be made within 28 days beginning with the date of the refusal.
- 4.19 LAs may choose to establish their own appeal process in addition to the statutory process but this would need to be undertaken rapidly in order to allow any formal appeal to the Magistrate's Court to be made within the 28 day period.

# 5. Enforcement

## Licensing measures and prosecution

- 5.1 It is important to note that a driver will be subject to the duties set out in section 165 of the Equality Act 2010 if the vehicle they are driving appears on the designated list of the LA that licensed them, and the LA has not provided them with an exemption certificate, regardless of where the journey starts or ends.
- 5.2 The Government expects LAs to take tough action where drivers breach their duties under section 165 of the Act.
- 5.3 LAs have wide-ranging powers to determine the rules by which taxis and private hire vehicles within their respective areas may operate. We recommend that they use these powers to ensure that drivers who discriminate against disabled passengers are held accountable.
- 5.4 If a driver receives a conviction for breaching their duties under section 165 of the Act, it would be appropriate for the authority to review whether or not they remained a fit and proper person to hold a taxi or PHV drivers' licence. The Government's presumption is that a driver who wilfully failed to comply with section 165 would be unlikely to remain a "fit and proper person".
- 5.5 Authorities might also apply conditions which enable them to investigate cases of alleged discrimination and take appropriate action, even where prosecution did not proceed.