

# the good fundraiser

**response to proposals on *The regulation of fundraising scheme* by  
the Self-regulation Steering Committee**

by Ed Mayo

#### **About the National Consumer Council**

**The National Consumer Council (NCC) makes a practical difference to the lives of consumers around the UK.**

**With changes in provision of services by government and companies, there is apparently more choice, and more talk about meeting consumers' needs. Yet, the rhetoric does not always match people's experience: markets can operate in ways that act against consumer interests; and consumers who are disadvantaged or inarticulate can be ignored.**

**The NCC uses its insight into consumer needs to advocate change. We conduct rigorous research and policy analysis to investigate key consumer issues, and use this to influence organisations and people that make change happen. We don't just respond to policy discussions, but shape future debate through our groundbreaking thinking.**

**An open and collaborative organisation, we seek to work with public service providers, businesses and regulators. We hold regular policy forums which provide us with a unique opportunity to exchange views and test our thinking.**

**Our relationship with the Department of Trade and Industry – our main funder – gives us a strong connection within government. But we are ready to challenge any organisation, public or private, that does not give consumers a fair deal.**

**We have linked organisations in Scotland and Wales, and a close relationship with colleagues in Northern Ireland. We play a leading role within European and worldwide consumer groups, ensuring that cross-border consumer issues are tackled and the consumer voice is heard within global institutions.**

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(The Self-regulation Steering Committee consists of representatives from the Charities Aid Foundation, Institute of Fundraising, Public Fundraising Regulatory Association, National Council for Voluntary Organisations, Association of Chief Executives of Voluntary Organisations, Scottish Council for Voluntary Organisations, Charity Law Association and the Charity Commission.)

The National Consumer Council (NCC) welcomes the chance to respond to this proposal. The NCC has made inputs to the Buse Commission in the course of its work, including its extensive work on principles of self-regulation – summarised in *Self-regulation: the NCC's position* (available at [www.ncc.org.uk/regulation/selfregulation\\_position.pdf](http://www.ncc.org.uk/regulation/selfregulation_position.pdf)) – and *Seeking resolution: the availability and usage of consumer-to-business alternative dispute resolution in the United Kingdom* – available at [www.ncc.org.uk/protectingconsumers/seeking\\_resolution.pdf](http://www.ncc.org.uk/protectingconsumers/seeking_resolution.pdf)).

There are more charities than ever before, and charities are more visible than ever before. Charities are involved in a range of public interest services and their users' beneficiaries gain from this provision made possible by effective fundraising.

Charities see donors in different ways – not simply as consumers of their services on behalf of a public interest objective, but also more widely as funders, investors possibly public interest representatives.

At the same time, not all charities have been quick to respond to 'show me / prove it' expectations of contemporary society. It is possible that the endowment of relatively higher levels of trust that exist for many charities has encouraged an insularity in terms of keeping up with basic steps in accountability and openness that other institutions in society have needed to respond to.

Across the sector there have been improvements – but not as fast or as convincingly as in sectors such as the disability field and some agencies in relation to overseas development.

In this context, the proposals on self-regulation of fundraising are significant.

The NCC has two sets of comments. First, we welcome the initiative as something that addresses an apparent weakness in the sector in relation to complaints. Second, we make a series of comments on the proposal itself.

# 1. The positive use of complaints

The charity sector does not appear to be as effective at instituting and managing complaints systems as other sectors. This appears to be the case not just for donors, but also for service users and beneficiaries. It is striking that, at a time when nearly all public bodies (whether providers or regulators) have invested quite heavily in processes of response, redress, record keeping and adjudication, most of the major charities do not do so.

This is particularly striking in view of the fact, noted by the Independent Complaints Reviewer, that a large number of the complaints received by the Charity Commission are actually about charities, and not about the Commission's handling.

The positive example of the social housing sector, which includes industrial and provident societies, registered charities and exempt charities, is a useful exception and benchmark, notably for service users.

Having said this, we are not aware of systematic research that unpicks the concerns and attitudes of different groups in relation to complaints or potential complaints. Is there greater tolerance of some mistakes by charities, or a reluctance to complain? The 'nuisance' of intrusive fundraising appears to be a consumer concern, but are there other issues that rank higher? Is it the case for donors, as in NCC research on consumer trust in companies (available at [www.ncc.org.uk/involvingconsumers/matter\\_of\\_trust.pdf](http://www.ncc.org.uk/involvingconsumers/matter_of_trust.pdf)) that an acknowledgement and quick apology will often suffice? Are there areas of particular concern, such as major gifts and legacy protection?

A clear way of dealing with complaints opens up the opportunity for complaints to be treated as a form of management information both for charities themselves and for the sector as a whole.

## 2. The proposal

It is reasonable to look to develop an approach that aims to be proportionate and fit most effectively with existing structures for the sector. The connection with the Institute of Fundraising therefore carries some logic. It needs to allow for the distinct regulatory role of the Charity Commission, and it needs to distinguish cases that require different intervention such as fraud. Frequently a complaint will be the tip of the iceberg and it is important not to rule out fraud-related complaints, and, where appropriate, to pass on details of complaints to appropriate regulatory bodies.

Yet the model proposed has two main weaknesses.

**A. The proposal is unclear as to whether the underlying purpose of the scheme is dispute resolution (examining complaints in order to resolve individual incidents) or operational improvement (using complaints to make things better).**

It could be argued that the real need is for a thorough-going transformation of professional values and attitudes within charity fundraising and that this scheme does little to promote this pro-actively, leaving it instead to existing bodies that have failed to achieve this to date.

One example is the commitment in the Donor's Charter to truthful and honest statements in fundraising. It is hard to argue that charity annual reports represent a true and fair portrayal of the activities of a charity, being designed primarily by fundraisers to tell good news. Is it truthful to suggest to a new donor that a £10 gift buys an ox, or a plough or similar concrete benefit, if this is the marginal cost once fundraising costs of donor recruitment and so on are met? The true cost may be much higher, and if so, this fundraising device is simply an acceptable deceit in the fundraiser's toolkit. A good charter needs effective ways of giving guidance as to what it means to live up to it in cases such as these.

We propose that there needs to be a clearer process for external inputs into the code and a clear and open approach to review of the code. Ultimately, this might be also be better achieved through the overall process carrying, through periodic reviews, the approval of the Charity Commission.

We believe that there should be an obligation on member charities to publicise the complaints scheme. But without greater confidence in the improvement process, we advise against this being promoted as a claim of 'best practice' rather than assurance of

‘good practice’. After all, the proposal makes no suggestion for improvement in the substance of the code itself. The risk exists in setting standards that are not best practice and therefore crowd out the space and recognition for genuine innovation and best practice. Similarly, the requirement for a complaint to relate to a breach of the code is unduly restrictive – making the process less future-proof in the case of new concerns that arise before they can be reflected in the scope of the code.

A further concern is the lack of independence of the proposed governance structure. The proposal has been put together by groups with an interest in fundraising. In doing so, they have watered down safeguards in the original Buse Commission proposals for greater independence from the interests of those being regulated. Of course, it is true that donors are rarely represented in an organised or collective way. We propose that there needs to be greater recognition of the role of lay representation, including majority membership and an independent, lay Chair. The comparisons in terms of governance with the Quality Standards Task Group or Giving Campaign – initiatives primarily by the sector for the sector – are misplaced.

We propose that the guiding principle for self-regulation should be one of protecting the interests of donors – promoting operational improvement, over and above the specifics of dispute resolution.

**B. The proposal is unsustainable if it aims to resolve disputes, but not to offer redress.**

The sanctions set out in the paper fail to recognise that a fundamental purpose of independent complaints systems is redress. Instead it assumes that complainants are pursuing another line of philanthropic intent, in that their goal is to improve the working of the charity rather than achieve redress for themselves. This is a major weakness. If a donor gives money for something and the charity is in clear breach of its obligations in relation to this donation, it should be open that this money is repaid to the donor. This clearly has a strong basis in law, but is one example only – there can be many forms of redress. This element needs to be explicit.

In a similar way, we are unsure that the process set out is constructed in a helpful way. Having an Independent Complaints Reviewer as a third line of complaints handling has the merit of building on what exists. But it might read to a complainant to be a bureaucratic process, with little clarity as to why this is distinct, as opposed to an appeals process in relation to the judgement of the institution. Equally, the Step 4 could be seen as making the process long-winded, and means that the Council will be able to overturn the decision of the independent reviewer. If the Council does not have a lay majority, this reduces further the independence of the process.

We have concentrated here on the two primary weaknesses in the proposal as we see it. We have not gone through the text to applaud the many positive elements we see in the proposal.

What is proposed is an improvement. However, the NCC is not in a position to provide a public endorsement for this as it stands.

The flaws that we point to could be addressed and we have made practical suggestions to this end. However, as it stands, it would not be unfair for critics to characterise it as a model of self-regulation *by* fundraisers *for* fundraisers.

Yet, there is a need for regulation in this field, as well as the need for a better understanding of donor and other stakeholder concerns in relation to charities. We agree that it is worth exploring robust self-regulation before moving to other regulatory options and hope that our comments contribute to this end.