

Duff WE (Willie)

From: Fiona Smith [Fiona.Smith@cornerstone.org.uk]
Sent: 07 March 2006 09:03
To: Charity Act
Subject: FW: Add your voice to the Institute of Fundraising's Scotland submission

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I agree with the Institute of Fundraising's response to your consultation.

Many thanks,

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From: Groups [mailto:groups@institute-of-fundraising.org.uk]
Sent: 06 March 2006 17:26
Subject: Add your voice to the Institute of Fundraising's Scotland submission



Dear Member

I wrote to you in January to alert you to a consultation by the Scottish Executive on fundraising regulations.

The Institute of Fundraising Scotland has now submitted its response on your behalf. We took account all of the submissions we received from members in preparing our response.

07/03/2006

It is attached to this email. Thank you to all members who responded.

In summary the regulations proposed that

- **All** fundraisers should make a statement that they are paid to fundraise when soliciting funds
- Professional fundraisers and commercial participators must state the nature of their remuneration in their contract
- Donors have a 7 day cooling off period for donations £50 or over made by credit or debit card during the course of a radio or television broadcast.

In the Institute's submission, **we strongly opposed the proposal that all fundraisers should state whether or not they are paid when soliciting funds.** We proposed that fundraisers should state whether or not they are paid when asked by a donor or potential donor.

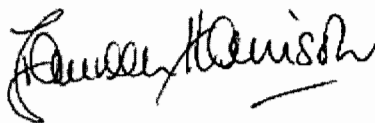
Your views are of course represented in the Institute's submission but if you wish to send the Institute's submission yourself to the Scottish Executive, the impact of our submission will be all the greater.

To do so, simply forward this email to charityact@Scotland.gsi.gov.uk by 10th March (this Friday).

Once in force later in the year, the regulations will affect all fundraisers in Scotland. Please show the Scottish Executive that you support the Institute's position if you can.

Click [here](http://www.scotland.gov.uk/Publications/2005/12/1590029/00303) to view the regulations or go to <http://www.scotland.gov.uk/Publications/2005/12/1590029/00303>

Thank you



Maureen Harrison
Chair, Public Affairs Committee
Institute of Fundraising Scotland

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07/03/2006



**Institute of Fundraising Scotland
Response to Consultation on Benevolent Fundraising Regulations**

Summary

- It is right that commercial participators and professional fundraisers should have a contract with a charity. The regulations are appropriate.
- The Institute does not agree that all benevolent fundraisers should state whether they are paid during every solicitation of funds.
- Volunteer fundraisers, paid employees and professional fundraisers, when asked, should state that they are paid. Professional fundraisers should not be required to indicate the notifiable amount of their remuneration.
- Commercial participators should state the proportion or percentage that will be donated to the charity.
- We do not believe that the regulations for refunds of donations are proportionate. We suggest that OSCR issue guidance on the circumstances where it may be appropriate to offer a refund.

1.0 About the Institute of Fundraising

The Institute of Fundraising (registered charity number 1079573) is the professional body for fundraisers, working to develop, promote and champion excellence in UK fundraising. Committed to raising standards in fundraising practice and management, we engage with charities, Government, media, the general public and other bodies to positively influence the UK fundraising environment. We work to nurture the knowledge and standards of all those who undertake fundraising, offering an extensive range of training and networking opportunities. The Institute represents over 4000 fundraisers and 200 fundraising organisations, providing additional information and support services for Individual and Organisational members. Membership reflects income to the sector of some £5 billion per annum and delivers more than £12 billion service-output covering all areas of social activity. The Institute hosts the 'Remember a Charity' campaign, the Payroll Giving Grants programme and a tax-effective giving initiative.

2.0 About the Institute of Fundraising Scotland

The Institute of Fundraising in Scotland represents some four hundred individuals covering a broad range of Scottish voluntary and community organisations and provides training, networking and representation on fundraising issues. The Institute of Fundraising in Scotland acts as an interface with the public, media and sector stakeholders, developing policy in the voluntary sector arena and reacting swiftly to issues affecting the fundraising environment in Scotland.

3.0 The Principle of the Regulations (Question 1)

The Institute of Fundraising Scotland believes that the regulations should apply to all benevolent fundraising and not just registered charities. This would mean that the regulations would also apply to charities registered in another jurisdiction but fundraising in Scotland.

The Institute welcomes the draft regulations and notes that the Scottish Executive is not required to produce regulations for clause 83 of the Charities and Trustee Investment (Scotland) Act 2005 unless it wishes to do so.

The Institute supported the fundraising regulations in the Charities and Trustee Investment (Scotland) Act 2005 and believes it is right that the Scottish Executive has chosen to clarify the fundraising clauses in the Act with further regulation. The Institute believes that fundraising should be underpinned by the principles of accountability and transparency and all organisations and individuals involved in fundraising should comply with these principles. These regulations will help to ensure that donors are clear about how their gift will be used and will help to deter incidences of fraud or mis-management of funds.

For these reasons, the Institute of Fundraising Scotland believes that the regulations should apply to all benevolent fundraising and not just registered charities. It is essential that benevolent fundraising across Scotland is conducted to the same legal requirements.

The Institute of Fundraising is leading the development of a self-regulation scheme for fundraising, due to begin in Summer 2006. This scheme will be UK wide and the Institute of Fundraising's Codes of Fundraising Practice will set the best practice standards for the scheme. There is a Scottish dimension to the UK scheme and funding has been pledged by the Scottish Executive for this activity.

4.0 Contracts between Professional Fundraisers or Commercial Participators (Question 2)

It is right that professional fundraisers and commercial participators should be required to have a contract with a registered charity or benevolent body.

The Act sets out that regulations will prescribe what requirements should be included in the contracts or agreements between charities and commercial participators or professional fundraisers. The draft regulations set out the prescribed requirements and the Institute believes that the requirements outlined in the regulations are appropriate.

The Institute of Fundraising has produced model contracts for professional fundraisers and commercial participators (see Appendices 1 and 2). We believe that it is right not to be too prescriptive regarding requirements in commercial contracts. Contracts are working documents and need to be flexible enough to reflect the working relationship and agreement. The regulations strike the right balance. We note that ministers will retain powers to legislate further if necessary.

5.0 Requirement that all benevolent fundraisers should state whether or not they are paid (Question 3)

The Institute strongly disagrees with the requirement that all benevolent fundraisers should state whether or not they are paid when soliciting funds. We believe that this requirement is overly prescriptive, burdensome, difficult to implement and unnecessary.

The Institute understands that the regulations as currently drafted would require all fundraisers to state whether they are paid or not as part of every solicitation of funds. This would require direct mail letters to include a statement, event organisers to make a statement and require many individuals who are not remunerated directly for fundraising activities to make a statement, as well as volunteers.

The requirement would be administratively onerous, difficult to implement in all circumstances and difficult to police. Donors are not always asked for support or funds by fundraising professionals – the fundraising ask may sometimes come from an individual indirectly as part of another role with an institution, e.g. a request for funds may be made by a university professor or museum curator. It would be difficult to ensure that all potential fundraisers were aware of the regulations. New Gift Aid regulations mean that it is now beneficial to ask for donations to enter charitable properties. If these regulations were implemented, admission staff would be required to state that they are paid during every

transaction. Volunteer fundraisers would be required to state that they are not paid. Many volunteers fundraise 'in aid' of a charity, sometimes without the prior knowledge of the charity involved. It would be difficult to ensure that all potential volunteers were aware of the regulation and thus able to make a statement about their volunteer status. Furthermore, it is our view that fundraising approaches made by letter or leaflet, both individual appeals and direct mail campaigns, do not require any such statement for the following reasons:

- 1) With a written approach, the potential donor is in total charge of the situation and is under no obligation to respond to the approach.
- 2) Many such written approaches are not actually made by the fundraiser but are made by other members of the organisation seeking funds, such as the Chief Executive, thus making this a difficult principle to establish.
- 3) There is a greater understanding from the public that there are costs involved in the organisation, printing and mailing of a fundraising appeal of this nature. It is therefore unnecessary for statements to be required in every donor communication.

In the case of a benevolent collection, it would be impractical to expect collectors on the street to state to every individual who drops coins into a sealed collecting tin that they are either a volunteer, professional fundraiser or employee of the charity.

It is important that donors are informed about the use of their gift but this should focus purely on the remuneration of one individual is not appropriate. An employee of a charity is remunerated in accordance with their experience and responsibilities. Fundraising is one method of providing funds to allow a charity to serve its beneficiaries. Other services are also required to ensure effective and efficient use of a charity's resources for the best interests of the charity's beneficiaries. Reports must be submitted to regulators (such as OSCR and Companies House); premises, stationery and computers paid for. In many charities with paid staff, a chief executive, finance director, human resources staff and individuals responsible for service delivery may be employed. Finance directors are not required to state that they are paid when preparing accounts, for example. To take a commercial example, consumers would not expect a signatory to a letter from say, their supermarket or bank, to state in the letter that they are paid. Singling out employed fundraisers in this way is missing the point that fundraising is an integral part of a charity's activities, just like any other department or activity.

The Institute believes that a simple and proportionate solution would be to require volunteers, employees of benevolent bodies and professional fundraisers to state whether they are paid or not when asked.

A volunteer could state 'I am an unpaid volunteer of this charity'. An employee could state 'I am a paid employee of this charity.' A professional fundraiser could make a statement indicating their employed status and simply explain the circumstances of their remuneration (see section 5.1).

We believe that this approach is transparent and a practical, workable solution that can be applied across a complex fundraising environment. To require any further regulation on this matter is not proportionate.

6.0 Written or verbal statements made by professional fundraisers in response to enquiries about the professional fundraiser's status (Question 4)

The Institute notes that the regulations state that written information should include information regarding the level of remuneration, how remuneration is calculated and the notifiable amount. The Institute believes that information about how remuneration is determined could be supplied in a simple verbal or written statement when professional fundraisers are asked whether they are paid. Whether the professional fundraiser would respond verbally or in writing would depend on whether the question was posed verbally or in writing.

It would not be right to require a professional fundraising organisation to include specific details about the organisation's remuneration by the charity, details of which will be included in the contract. These figures are agreed between the charity and professional fundraising organisation and should remain confidential. If details were revealed, this could have a detrimental impact on competition. If the regulation refers to an individual's remuneration, it is not appropriate for an individual to be required to reveal details of their pay. The Institute believes that the regulations should require professional fundraisers to state the form of their remuneration and how it is determined when asked, but the exact detail of the statement should be left up to the organisations involved. The response to an enquiry regarding a professional fundraiser's status should be agreed with the charity and the professional fundraiser. Professional fundraisers should not be required to reveal the level or notifiable amount of their remuneration.

Furthermore, it is not always easy to calculate the exact amount of a professional fundraiser's remuneration at the time of the collection. Remuneration will reward the work undertaken, which could include designing a campaign and evaluation, as well as conducting a collection or other fundraising activity.

The Institute notes that a professional fundraiser may be an individual or an organisation. In the Institute's view, an appropriate verbal or written statement in response to an enquiry from a donor or other interested party might look like:

'XXX organisation has a contract with xyz charity to fundraise. XXX organisation receives a set fee for each donor that is signed up/is paid a fee to conduct this fundraising campaign. I am employed by the organisation to fundraise on behalf of xyz charity.'

In the case of an individual fundraiser, the written statement might look like:

'I have a contract with charity xyz to fundraise on its behalf. I receive a set fee for the activities that I carry out on behalf of xyz, based on my experience and responsibilities.'

The statement could be further expanded to explain that charity xyz has determined that this approach is the most effective method and explain the reasons, if charities so wished.

7.0 Statements and written information by commercial participators (Question 4)

The Institute believes it is right that a commercial participator should give accurate details of the amount that will be remitted to the charity. In this situation, a proportion of money paid for a service or goods is given directly to the charity. By associating with the charity, the commercial participator, a business, is also benefiting monetarily from the transaction and may benefit from increased sales. Potential purchasers of goods or services may base their decision on whether to purchase the product based upon the amount that will be given to the charity. Similar products might exist, and a consumer might choose to buy a particular product because part of the monies paid will be going to charity.

The Institute believes that the regulations setting out requirements for commercial participators are appropriate.

To clarify, a commercial participator is a business other than a fundraising business which, during the course of that business, engages in a promotional venture where some contributions will be made to one or more benevolent bodies or used for charitable, benevolent or philanthropic purposes.

A professional fundraiser is an individual who carries on a fundraising business (but not a benevolent body or connected institution) or is an individual who

solicits money or property for a benevolent body and receives reward for doing so.

Note: The Institute notes that there is a typographical error in Section 4, Clause 4 (b). '...clearly indicating the method by which the professional fundraiser's remuneration in connection with the appeal is to be determined...' should read '...commercial participator..'. The clause relates to commercial participators and not professional fundraisers.

8.0 Limit or cap for definition of professional fundraiser (Question 5)

We believe that if all fundraisers are required to state whether they are a paid employee, volunteer or professional fundraiser when asked, then it is appropriate not to include a cap or lower limit for a professional fundraiser.

The Institute notes that volunteers sometime receive benefits from their participation in fundraising activities. One example is where an individual takes part in a charity trek and uses some of the funds raised to cover the individual's expenses. Such an individual would be fundraising only to cover their participation in the event and not as a form of livelihood or employment. We believe that these individuals are clearly volunteers. Best practice would be for volunteers to explain to donors the personal benefits that they are receiving from participating in the event.

9.0 Refund of monies (Question 6)

The Institute does not believe that it is proportionate to include a regulation relating to the refund of donations.

In the Institute's experience, instances of requests for refunds are rare and disputes unheard of. The issue of refunds should be left to best practice. The Institute suggests that OSCR might wish to issue guidance on circumstances when it is permissible for a benevolent body to refund a donation, other than where already set out in current law.

If such a regulation is included in the final regulations, it is not clear to the Institute whether statements have to be made on the actual radio, television or telephone appeal regarding the refund. If so, this could be a significant extra cost and in practice, actually divert focus from the appeal, resulting in a reduction in donations. A more helpful approach would be a requirement for statements regarding refunds to be made on written confirmation of the donation.

The Institute does not agree that the threshold above which a donor is entitled to a refund should be £50. The Institute notes that £50 was the threshold included in the Charities Act 1992, where there is a similar provision. Taking into account

inflation, the Institute estimates that £50 in 1992 would be approximately £80 in 2006. The Institute suggests that a more suitable figure would be £100.

10.0 Transfer of funds and availability of documents (Question 7)

The Institute agrees with the draft regulations.

11.0 Grace period and offences (Questions 8 and 9)

The Institute agrees that six months is an appropriate grace period. The Institute agrees that the offences and fines are suitable.

12.0 Regulatory impact (Question 10)

The Institute of Fundraising notes that charities will also be able to deduct the cost of expenses of a refund if a donor requests a refund of the donation.

The Institute does not believe that it is possible to tell whether the draft regulations will be cost neutral. It is difficult to predict the impact that the requirement that all fundraisers should state whether they are paid on donors' attitudes to giving, if it is included in the final regulations. Furthermore, charities will incur costs in training volunteer fundraisers to make a statement and in ensuring that all individuals involved in solicitation statements are aware of the requirements.

The regulations could also affect competition. If the regulations were to require specific information relating to the notifiable amount of a professional fundraiser's remuneration then competition could also be affected. This might not be the case if the information required was less detailed.

Respondent Form

Name: Maureen Harrison, Vice Chair, Institute of Fundraising Scotland

Address: c/o Sick Kids Friends Foundation
20 Millerfield Place
Edinburgh
EH9 1LW

Registered charity number 1079573

Responding on behalf of a group:

Agree to response being made public.

Agree to further contact by Scottish Executive.