



House of Commons
Public Administration
and Constitutional Affairs
Committee

**The 2015 charity
fundraising
controversy: lessons for
trustees, the Charity
Commission, and
regulators**

Third Report of Session 2015–16



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relating to the report*

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The Public Administration and Constitutional Affairs Committee

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Summary

In response to allegations made over the summer by the Daily Mail in relation to the unethical practices employed in fundraising activities, the Government set up the Etherington Review into the regulation of Charity Fundraising. PACAC also launched an inquiry, to examine both the regulation of charity fundraising and the way in which trustees of large charities govern fundraising.

Witnesses to our inquiry, including employees and trustees of some of the charities whose outsourced fundraising activities have been criticised, expressed shock at the Daily Mail's discoveries. There was consensus amongst witnesses both that trustees had failed in their duty to extend their governance to fundraising, particularly in the management of sub-contractors, and in support of Etherington's proposals. The Government is right to welcome Etherington's recommendations. This is the last chance for self-regulation. It is essential that the Etherington system is made to work effectively, though it can only work by supporting effective governance by trustees.

Trustees are ultimately responsible for every aspect of their charity's activity, including fundraising. No system of regulation can be a substitute for effective governance by trustees. Good governance in general is about sustainability of reputation in the long-term, as well as the sustainability of finances. Each of the charities that gave evidence to us should re-examine their governance of fundraising and other charities should learn lessons from this episode. Trustees must have the right skills, information and attitude to prevent poor practice in the future. They are responsible not merely for fundraising within the charity but for fundraising by sub-contractors as well. We welcome the Charity Commission's new guidance on the duties of trustees over fundraising, in particular their emphasis that trustees need to ensure that charities (and their sub-contractors) always act in accordance with their values. Our forthcoming report on Kids Company will also draw out lessons from that case study for trustees.

The Government is correct to accept the findings of the Etherington review. The Etherington proposals should however be further enhanced. The Charity Commission should gain a higher profile and be more proactive to ensure the new system works, holding public hearings rather than solely the private inquiries it holds now. The Commission should act as guarantor of the system, ensuring that regulators cooperate with one another and that trustees understand their duties. Trustees, the Commission and regulators should assist the sector in developing a more ethical fundraising culture, and to make sure that bad practices are not tolerated.

The Government should monitor the sector to ensure that it is able to use its reserve powers under the Charities Act should self-regulation fail. ***It would be a sad and inexcusable failure of charities to govern their own behaviour, should statutory regulation become necessary.***

1 Introduction

1. In the summer of 2015, the Mail on Sunday and Daily Mail carried a series of reports which alleged that many of the best known charities in the UK (including Oxfam, the NSPCC, Save the Children and the RSPCA) had used, often through sub-contractors, exploitative and unethical fundraising methods. These methods included buying and selling personal data, ignoring the Telephone Preference Service (TPS) and putting pressure on vulnerable people to donate.¹ In doing this, they failed to uphold the values of their organisations within their fundraising functions. The media also brought to light a number of specific cases, including that of Olive Cooke - who received hundreds of fundraising communications a month, and Samuel Rae - whose personal data was repeatedly bought and sold by charities and commercial companies.

2. Until now, the charity fundraising sector has been regulated by three bodies (all membership organisations). The Institute of Fundraising set a code of fundraising practice. The Fundraising Standards Board receives complaints and adjudicates on whether any of its member charities have, or have not, broken the code. The Public Fundraising Regulatory Association regulates street and doorstep direct debit fundraising.

3. The Government reacted to the Mail on Sunday and Daily Mail's allegations by announcing a review of fundraising regulation. It asked Sir Stuart Etherington, the Chief Executive of the sector representative body, the National Council for Voluntary Organisations (NCVO) to chair the review. Sir Stuart invited Lord Leigh of Hurley, Baroness Pitkeathley and Lord Wallace of Saltaire to support him in this work. The review reported on 21 September 2015.

4. The main recommendation of the Etherington review was that a new single regulator should be established to replace the Fundraising Standards Board and to take over the role of setting the code from the Institute of Fundraising. It also recommended that the Charity Commission should oversee the new regulator. These recommendations are more fully described in Chapters 4 and 5 of this Report. The Government accepted the Etherington report's recommendations in full, as soon as they were published.

5. In May 2015, the Government introduced the new Charities (Protection and Social Investment) Bill in the House of Lords.² The Bill is currently in the Commons. It focusses on the role and powers of the Charity Commission. It will enact many of the recommendations of the Hodgson review of the implementation of the Charities Act 2006. It also draws on the National Audit Office's work in 2013 on the operation of the Charity Commission. The Bill also includes sections on fundraising - described in Chapter 7 of this Report.

6. Our inquiry has taken oral evidence from many of the charities named in the Mail on Sunday and Daily Mail reports, namely from the RSPCA, NSPCC, Oxfam and Save the Children, both from their Chief Executives, and from the Chairs of their trustee bodies. Sir Stuart Etherington, William Shawcross, Chair, the Charity Commission, and Rob Wilson the Parliamentary Under Secretary (Minister for Civil Society) at the

1 The Telephone Preference Service (TPS) is the official central opt out register on which individuals can record their preference not to receive unsolicited sales or marketing calls. It is a legal requirement that all organisations (including charities, voluntary organisations and political parties) do not make such calls to numbers registered on the TPS unless they have the recipient's consent to do so.

2 [Charities \(Protection and Social Investment\) Bill \[HL\] 2015-16](#)

Cabinet Office and his officials also gave oral evidence. We received a large volume of evidence and representations in reaction to the original allegations, and in response to our inquiry, from charities, representative organisations and from individuals. We also took evidence from the Daily Mail reporter, Katherine Faulkner, whose undercover work exposed the unethical practices.³ PACAC commends the Daily Mail and Mail on Sunday, and Katherine Faulkner in particular, for the highest standards of ethical investigative reporting, which even the charities concerned have commended to us.

7. This Report looks at the practices exposed by the media and at the role of trustees in the governance of their charities. We then consider the recommendations of Etherington for the reform of charity fundraising regulation, and the respective roles of the Charity Commission, of the Information Commissioner, and of the Cabinet Office. We do, however, regard the lessons for charity governance to be by far the most important lessons to be learned from this episode.

8. PACAC is shortly to publish its Report into the Government funding and subsequent collapse of the charity known as Kids Company. The proper meaning of governance, the role of charity trustees, and the role of the Charity Commission are themes common to both reports. While the findings and recommendations of both reports have a direct bearing on charity law and regulation, and on charities in England and Wales, we hope that the devolved administrations in Scotland and in Northern Ireland will also be able to draw lessons from both Reports.

³ Katherine Faulkner gave evidence to us in private, but the transcript is available online. [Qq 102–173 Oral Evidence 20.10.2015](#)

2 Fundraising and the allegations

The Importance of Fundraising

9. Charities rely upon fundraising to carry out their activities. Analysis by the National Council of Voluntary Organisations (NCVO) shows that charities received £18.8 billion pounds from individuals in the financial year 2012–13.⁴

10. The charity sector is substantial, complicated and varied. The latest charity register contains 164,889 entries. Of those, only 6.4% (10,619) have an income above £500,000, who together have an annual income of £62 billion - 88.9% of the sector's total income. This includes income from sources other than fundraising, including commercial activities like charity shops, and from Government contracts. A majority of charities earn less than £100,000, and 41% of them less than £10,000 a year.⁵

11. The Fundraising Standards Board (FRSB) told us that most direct marketing and what are known as 'public collections' come from larger charities. Public collections include fundraising on the street, whether by collecting cash or by inviting people to sign up to longer-term donations, but also door to door collections and other collections from private property.⁶ In 2014, the FRSB estimated that charities with a turnover of over £10 million were responsible for 85% of direct marketing and 73% of public collections by value. Charities with a turnover under £1 million pounds were responsible for just 0.5% of direct marketing and a negligible amount of public collections.⁷

12. The fundraising landscape is increasingly competitive. A large charity can spend in excess of £20 million a year on its fundraising activity.⁸ In 2014, 93% of surveyed charities said that fundraising had got tougher in the previous 12 months, and 94% of them thought it would get even tougher in the succeeding 12 months.⁹ The Charity Commission told us that the "harsh reality is that competition for funds, particularly for larger charities, large fundraising charities, is fierce and fiercer than it has ever been".¹⁰

13. Some charities rely heavily upon donations from certain groups within society. Save the Children told us that 58% of their donor base was aged over 51 (compared to 45% of the general population). The RSPCA told us that 72% of their donors were either "empty nesters" or "retirees" (a greater proportion than in the general population).¹¹ Battersea Dogs and Cats Home told us that their supporters tend to be aged over 45.¹² Similarly, 19.4% of Oxfam's donors whose age is known are over the age of 65, which is a slightly higher proportion than in the general population.¹³ The RSPCA told us that this was typical of the sector as a whole.¹⁴

4 National Council of Voluntary Organisations, *Civil Society Almanac Fast Facts*, June 2015

5 Charity Commission *Recent charity register statistics* (September 2015)

6 Institute of Fundraising *Public Collections*

7 *FCS25* (Fundraising Standards Board)

8 Q 24 *Oral Evidence 8.9.2015*, Q 290, Q 292 *Oral Evidence 20.10.15*, *FCS38* (NSPCC)

9 Price Waterhouse Coopers *Managing Charities in the new normal*, 2012, p.3

10 Q 425 *Oral Evidence 3.11.15*, *FCS7* (Lepra)

11 *FCS43* (RSPCA)

12 *FCS18* (Battersea Dogs and Cats Home)

13 *FCS34* (Oxfam), Office for National Statistics *Overview of the UK Population*

14 *FCS43* (RSPCA), Charity Aid Foundation *UK Giving 2014* p.8

14. Fundraising for charities can range from a national or international campaign, down to a purely local effort, like raising money for the local school or hospital. Different types of charities have different types of relationship with their donors: the relationship between a university and its former students, for example, is unique to that sector.¹⁵ Fundraising regulation must be flexible enough to deal with the different sizes, types and behaviours of different charities.

Allegations of poor practice made in the press

15. In May 2015, Olive Cooke, who was the UK's oldest poppy seller, died. At the time of her death, allegations were made that she had been pressurised by leading charities to make donations to them.¹⁶ Newspaper reports alleged that she received 267 letters from charities every month. She had told the Bristol Post in 2014 that she was “overwhelmed” by all these requests for donations.¹⁷ Media reports confirmed in the summer of 2015 that her death was not related to fundraising.¹⁸ The Fundraising Standards Board published its own report on the case last week.¹⁹

16. In June 2015, the Daily Mail began an investigation into charity fundraising. Katherine Faulkner was the journalist on the Daily Mail who covered the story. She worked for three months under cover inside a telephone fundraising contractor called GoGen.²⁰ Many leading charities had contracted with GoGen to raise money on their behalf. The Daily Mail continued to investigate fundraising into the autumn of 2015, publishing stories about Samuel Rae's experiences. Despite having completed a lifestyle survey, Mr Rae's data was then sold to charities who in turn sold them on to other charities, firms and even to criminal lotteries.²¹ The Sun carried out an undercover investigation of Pell and Bales, another telephone fundraising company.²²

17. The Daily Mail's investigation uncovered a number of abuses by fundraisers and charities which included

- a) **Ignoring the Telephone Preference Service (TPS):** The Telephone Preference Service allows consumers to opt out of receiving any unsolicited telephone calls. Katherine Faulkner told us that GoGen believed that they “did not need to bother with the Telephone Preference Service”, as the people they contacted had indicated either that they were willing to be contacted by a charity or might donate to a particular cause.²³ As discussed later, this claimed consent was invalid.
- b) **Gaining consent for calls:** some charities make it difficult or impossible for donors to opt out of consenting to further communication from them or other charities. For

15 [FCS47](#) (Russell Group)

16 [BBC Poppy collector Olive Cooke 'exhausted' by charity requests](#), May 2015

17 [Bristol Post 'A pleading disgrace: Bristol woman 92 is targeted by 10 charities a day wanting her cash'](#), October 2014

18 [BBC Olive Cooke inquest: poppy seller suffered depression](#), June 2015

19 Fundraising Standard's Board [FRSB investigation into Charity Fundraising Practices instigated by Mrs Olive Cooke's case](#) (January 2016)

20 Q 103 [Oral Evidence 20.10.15](#)

21 [Daily Mail 'New shame of charities: widower's details were passed on 200 times, leading him to lose £35,000 and get 731 demands for cash'](#) (August 2015)

22 [The Sun Will gotten gains](#) (June 2015)

23 Qq 104–105 [Oral Evidence 20.10.15](#)

example, both Great Ormond Street Hospital and Macmillan Cancer Support required donors to agree that the charity could pass on their details to others.²⁴

- c) **Selling data:** in the case of Samuel Rae, the Daily Mail (assisted by Mr. Rae’s family) were able to show that “his data was sold on hundreds of times.” His data was sold on by some charities to scamming companies.²⁵
- d) **Obtaining donations from vulnerable people:** we heard allegations that some fundraisers behaved unethically in relation to vulnerable people. GoGen had a call script for vulnerable people in which the fundraiser continued to press for a donation after discovering the individual was confused or suffered from dementia. Katherine Faulkner told us that there was a “certain amount of what I would call manipulation of vulnerable and elderly people”.²⁶ She recounted a shocking instance where an elderly lady was unable to work out how much she was donating to a particular charity, yet because she could remember how much she had increased her donation by, she passed GoGen’s tests for vulnerability, and her donation was taken.²⁷
- e) **Targeting vulnerable people:** we heard evidence that in some charities, “vulnerable and elderly people have been seen as fair targets”.²⁸ The Fundraising Standards Board found that in the case of Oxfam and Listen Ltd, this allegation was unsubstantiated.²⁹

18. The Fundraising Standards Board conducted investigations into Diabetes UK’s and Oxfam’s work with their sub-contractor Listen Ltd. Diabetes UK, Listen Ltd and Oxfam are members of the FRSB, and so bound to follow the code.³⁰ These investigations supported some of the Mail on Sunday and Daily Mail’s allegations. In the case of Diabetes UK the FRSB found that:

- Diabetes UK’s campaign breached several conditions of the Institute of Fundraising Code (which is set by the Institute of Fundraising and defines best practice for the industry), particularly that “the majority of the 25,000 plus respondents to this campaign would have been misled by Diabetes UK as to how their personal data would be used”.
- The charity had “a clear ulterior motive to solicit contact details for a subsequent fundraising approach and the appeal was not solely designed to assist the public by raising awareness of diabetes and offering free pedometers as indicated by the campaign’s marketing materials”.
- The charity “had not secured the proper consents from respondents before commissioning fundraising calls to be made to them. For its part, Listen Ltd did not check that the charity had obtained those consents”.³¹

24 Q 155 [Oral Evidence 20.10.15](#)

25 Q 110 [Oral Evidence 20.10.15](#)

26 Q 380 [Oral Evidence 3.11.15](#)

27 Q 139 [Oral Evidence 20.10.15](#)

28 Q 420 [Oral Evidence 3.11.15](#)

29 Fundraising Standards Board [Oxfam](#) and Diabetes UK and [Listen Ltd](#)

30 *Ibid*

31 Fundraising Standards Board, [FRSB Adjudication on Diabetes UK and Listen Ltd](#), November 2015

In the case of Oxfam, the Fundraising Standards Board found that:

- Oxfam had breached the fundraising code by “failing to make sufficient efforts to check and ensure the ongoing compliance of third parties”.³²
- Oxfam did not include a clear opt out from contact in their SMS text message to donors, they also did not leave sufficient time between the text message and subsequent fundraising calls for the charity and sub-contractor to update their contact lists for any donors who had opted out of communication.³³

Listen breached the code by failing to ‘verbally deliver the required solicitation statement’ and ‘by limiting opt out requests to three pre-selected phrases.’³⁴ The Street Academy were found to have breached the code by failing to issue the required verbal solicitation phrase. They also failed to confirm that a follow up call would be made to ask for a regular donation.³⁵

19. So far, the Fundraising Standards Board has only published investigations into Diabetes UK, Oxfam, Listen Ltd and the Street Academy. They are conducting other investigations currently into the other allegations made in the media.

20. In the case of Oxfam, the FRSB found against the charity on all the substantive allegations. However they criticised the Mail on Sunday for their headline, ‘OXFAM TARGETS DONORS AGED 98’ which they found to be “not only misleading but inaccurate and untrue.”³⁶ The FRSB went on to say -

The FRSB has seen no evidence to suggest that Oxfam had targeted any age group during its PSMS campaign. There was also no evidence to suggest that Listen had done so, or had actually contacted a 98 year old on behalf of the charity. The allegation arose from a general Listen training exercise which did not specifically focus on the delivery of Oxfam’s PSMS campaign.³⁷

The Mail on Sunday submitted their own evidence to this inquiry disputing both the FRSB’s finding in respect of the headline, and FRSB’s fitness to adjudicate on newspaper reporting -

It [the FRSB] has seemingly wilfully diverted attention away from the serious wrongdoing of Oxfam and its agents which was uncovered by a powerful Mail on Sunday investigation (carried out by an award-winning journalist and shortlisted for the Investigation of the Year award) by giving priority in its report to wholly unfounded criticisms of our article and in particular its headline, which the FRSB felt able to state was “untrue” “inaccurate” and “misleading”, relegating to a poor second place what should have been of paramount importance to any regulator, namely its censure of the serious regulatory breaches our investigation revealed. As a result, Oxfam is misleadingly declaring it has been cleared of the most serious allegation against it. The FRSB has undermined its investigation, and indeed its very

³² [FRSB Investigation on Oxfam & Listen Ltd](#), 18 December 2015

³³ [FRSB Investigation on Oxfam & Listen Ltd](#), 18 December 2015

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

raison d'être and exposed itself as a weak and ineffective regulator that is not fit for purpose.³⁸

21. These fundraising issues are not isolated episodes. There is plenty of evidence of public concern about fundraising, before these allegations were made. IPSOS MORI conduct a biennial survey of the public about charities. Since 2010, a majority of the public have reported that “some of the fundraising methods used by charities make me uncomfortable”.³⁹ Research for New Philanthropy Capital shows that 15% of the public felt “there was something wrong with how charities were raising their money”.⁴⁰ OFCOM in its Nuisance Calls Panel Survey, in January to February 2015, noted that 12% of the public found calls from charities “distressing”: the highest proportion of any sector.⁴¹ The Charity Commission confirmed that these polls reflect its own information.⁴²

22. Despite this, New Philanthropy Capital and Cancer Research UK told us that most people trust charities, more than most other institutions, and most fundraising “happens to a high standard”.⁴³ A majority of the public do find calls from charities annoying, but this is substantially lower as a proportion than any of the other institutions which commonly call the public.⁴⁴

23. Fundraising supports charities in carrying out their duties to their beneficiaries. Charities do very important work to support their beneficiaries all over Britain and internationally. In a 2014 survey for the Charities Aid Foundation, 70% of people reported giving money to charity in the previous 12 months. Other surveys report similar figures: the Halifax Giving Model found that 75% gave to charity and Mintel’s Charitable Giving in the UK report found 76% gave to charity in 2014.⁴⁵ 83% of donors increased their donation in 2015.⁴⁶

24. We have no doubt that most of the charities in the UK do not engage in the practices outlined above. However, the behaviour of some charities has damaged the reputation of the sector as a whole. Smaller charities told us that these practices have a direct effect on the reputation of all charities and make it harder for them to raise money from the public.⁴⁷ The good work done by most within the sector can be undermined very easily. This makes it all the more essential that greater care is taken over the governance of fundraising in some charities and its regulation is reformed. Good governance in general is about sustainability of reputation in the long-term as well as of finances.

38 [FCS49](#) (Daily Mail)

39 In 2010, 60%, 2012 67%, 2014 66% of respondents agreed with that statement. IPSOS MORI [Public Trust and Confidence in Charities](#) (June 2014) p.10

40 [FCS27](#) (New Philanthropy Capital)

41 OFCOM [Landline Nuisance Calls Panel Survey Wave 3 January–February](#), April 2015 p.10

42 Q 390 [Oral Evidence](#) 3.11.15

43 [FCS19](#) (Cancer Research), [FCS27](#) (New Philanthropy Capital)

44 53% of respondents found calls from charities annoying. This compares to 88% for accident claims, 86% for PPI claims, 84% market research, 83% for TV insurance, and 60% for phone/broadband services. OFCOM [Landline Nuisance Calls Panel Survey Wave 3 January–February](#) April 2015 p.10

45 Charities Aid Foundation [UK Giving 2014](#) (April 2015) p.7

46 Halifax [The Halifax Giving Monitor 2015](#) (March 2015)

47 [FCS37](#) (Keith Adams), [FCS7](#) (Lepra), Age UK Bury Written Evidence To be published, [Guardian Are charities in denial about the true harm done by fundraising scandals](#) (November 2015)

3 The role of trustees: governance

The role of trustees in fundraising

25. Our inquiry focussed on the quality of leadership and oversight provided by the trustees of all of the four charities that we saw. For this reason, we held two oral evidence sessions with the same charities, one with executives and one with chairs of trustees. We explored how trustees see their role, not only concerning the oversight of fundraising activities, but about how trustees had sought to ensure that governance and leadership of all of their charity's activities reflected the mission and values of that charity. This included what sub-contractors and volunteers might be doing on the charity's behalf. The Charity Commission agreed trustees had "let the general public down" and that these practices were "utterly unacceptable", "horrific obviously" and "an appalling abuse of charity and the whole nature of charitable purpose".⁴⁸

26. The Commission told us that:

The governance of charities does not depend on anyone except the trustees. Trustees are utterly responsible for the governance of their charities [...] It is the trustees who are responsible for employing fundraising organisations that use extremely dubious methods.⁴⁹

The Government's Taskforce on Nuisance Calls said that businesses should treat compliance with the law on consumer data as a board level issue; Which? told us that in the case of charities, the Board of Trustees should be responsible.⁵⁰

27. The Charity Commission's specific guidance on fundraising tells trustees that they "are legally responsible for making sure that your charity's fundraising is carried out in compliance with your legal trustee duties"⁵¹ The guidance makes clear that a trustee's obligations go beyond the letter of the law: the Commission says that "whether your charity's values are implicit or explicit, you and your co-trustees have an important role in setting and protecting them". This includes ensuring that "your approach to fundraising and your fundraising plan reflect the charity's values" and that "there are effective processes in place to communicate the charity's values to its fundraising employees, volunteers and fundraising partners".⁵²

28. Many of the Daily Mail and Mail on Sunday's allegations relate to the cumulative impact of fundraising on individuals. As Oxfam told us, this problem goes beyond any possible regulatory system and charities need to take responsibility for the cumulative impact of their fundraising.⁵³

29. ***It is essential for trustees to reflect their values in the way that they conduct the governance of their charities. The Charity Commission supports this view. 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***

48 Q 379 [Oral Evidence 3.11.15](#) Q 280 [Oral Evidence 20.10.15](#), Q 1 [Oral Evidence 8.9.15](#), [FCS13](#) (British Red Cross)

49 Q 395 [Oral Evidence 3.11.15](#)

50 *Which Nuisance Calls and Texts Taskforce Recommendations* (December 2014), [FCS26](#) (Which)

51 Charity Commission [Charity Fundraising a guide to trustee duties](#), December 2015

52 *Ibid.*

53 Q280 [Oral Evidence 3.11.15](#)

charity, its beneficiaries, donors, employees and volunteers. Charitable ends can never justify uncharitable means. The conduct of sub-contractors should be subject to the same degree of governance. This is as true of fundraising as it is of any of their other activities.

The trustees' responses to the allegations

30. In response to questions about the unethical and possibly illegal fundraising activities being carried out on their behalf, the charity trustees each outlined changes they are making, or have already made, to ensure that the values and ethos of their charity is reflected in the way in which their charities undertake fundraising activity.⁵⁴

31. Many of the representatives of the charities who gave evidence to us, admitted there were flaws in their governance. For example, Karen Brown, Chair of Oxfam, told us that “our monitoring procedures were not adequate to the task,⁵⁵ while Daphne Harris, Chair, RSPCA, conceded that “the truth is we did not know that this had happened” with respect to the allegations concerning Mr Rae.⁵⁶ Mark Wood, Chair, NSPCC, said that although they had account management processes which were supposed to ensure compliance with good practice in fundraising, “what we have identified here are some breaches in terms of those suppliers who assist us with fundraising”.⁵⁷ Sir Alan Parker, Chair, Save the Children, told us that “it is clear from the Daily Mail’s investigation that we haven’t been doing enough to ensure that these [our charity’s] values are enforced in practice across all our activities”.⁵⁸

32. The representatives of the charities were contrite and apologetic in varying degrees about what has occurred, but all insisted that they only became aware of these failings at the time of publication of the media’s reports.⁵⁹ Daphne Harris told us that:

We have reviewed the way we work with Listen, the company we use to do our fundraising, with more focus on quality instead of quantity. I think that is very important and that is something we have decided. We are happy with the way they have dealt with the accusations by disciplinary action or further training. We have put that into train as well and we have set up a new committee on fundraising to get better oversight with a specific group of trustees monitoring the issue.⁶⁰

Karen Brown said:

Ultimately trustees are responsible for what has happened and we take that responsibility very seriously. I think there are two things. We have let the general public down insofar as those who are working in our name—agents—have acted in ways that are simply not acceptable. We are very sorry that that has happened.⁶¹

54 Qq 259–60 [Oral Evidence 20.10.15](#)

55 Q 260 [Oral Evidence 20.10.15](#)

56 Q 262 [Oral Evidence 20.10.15](#)

57 Q 259 [Oral Evidence 20.10.15](#)

58 [FCS42](#) (Save the Children)

59 Q 276 [Oral Evidence 20.10.15](#)

60 Q 259 [Oral Evidence 20.10.15](#)

61 Q 260 [Oral Evidence 20.10.15](#)

33. The Etherington review makes the observation that “Charity trustees and managers have too often been absent from discussions on fundraising practice or values”.⁶² Though Karen Brown said she “had some sympathy with that view”, the Direct Marketing Association told us that “the main problem is that some charities do not properly understand their obligations under current direct marketing regulation”.⁶³ In September 2015, Civil Society Magazine reported a poll of charity professionals which showed 80% were ‘satisfied’ or ‘very satisfied’ with the ethics of their charities’ fundraising.⁶⁴ Many of the allegations of abuses focus on the work of sub-contractors like GoGen. Sir Stuart Etherington indicated that many charity trustees and executives were unaware of what happened inside sub-contractors.⁶⁵

34. Last summer’s controversies were evidence of a failure of governance by trustees. The evidence reported here suggests that there is still some reluctance on the part of many trustees to accept that this was not just a failure of process or an excusable oversight, but a failure of trustees to understand that their primary role is governance, which means their overriding responsibility is to sustain the mission and values of their charitable organisation. Managing reputational risk is central to this role, for without good reputation, no organisation can be effective. In this role they failed. Trustees are as responsible for the activities of any sub-contractors, as for any part of a charity’s operations. All the chief executives of the charities that gave oral evidence to us admitted that they did not scrutinise fundraising sub-contractors enough. The only possible conclusion is that, by failing in this responsibility, trustees were either negligent, or wilfully blind to what was being done in their names.

Proposed improvements to governance

35. The Etherington review focussed on the regulatory and self-regulatory structures around fundraising, and less on improvements to governance and leadership, although Sir Stuart Etherington accepted that they had to be part of the solution.⁶⁶ Rob Wilson MP, the Parliamentary Under Secretary in the Cabinet Office (Minister for Civil Society), told PACAC that he believed that “we need to make sure that the culture in the sector changes alongside the enforcement and regulation that we are proposing to implement”.⁶⁷

36. The Government’s Charities (Protection and Social Investment) Bill includes clauses to assist in making fundraising more transparent. Should the Bill become law, charities with an income over £1 million pounds would have to say in their annual report whether they use commercial fundraisers, whether they subscribe to any voluntary code, if and how they have monitored fundraising activities, the number of complaints they receive and how they protect vulnerable people in fundraising.⁶⁸

62 Sir Stuart Etherington, Lord Leigh of Hurley, Baroness Pitkeathley and Lord Wallace of Saltaire *Regulating fundraising for the future: trust in charities, confidence in fundraising regulation* (September 2015)

63 FCS17 (Direct Marketing Association), Q 269

64 Civil Society *Fundraisers critical of umbrella bodies’ response to summer of discontent* (September 2015)

65 Civil Society *Sir Stuart criticises charity leaders insufficient concern over fundraising* (November 2015)

66 Q 333 [Oral Evidence 3.11.15](#)

67 Q 412 [Oral Evidence 3.11.15](#)

68 Q 422 [Oral Evidence 3.11.15](#), [Charities \(Protection and Social Investment\) Bill](#) (HC Bill 69), we discuss the bill further in Chapter 7 of this Report.

37. Several charities commented that transparency would assist in changing the culture of charities. Guide Dogs for the Blind and Save the Children told us that these disclosures could enable the public to compare charities and their ethics.⁶⁹ The British Red Cross said that:

Responsibility is both individual and collective. It must be clear and unambiguous with a clear line of sight from the public through to the governance of the charity and ultimately to the regulator⁷⁰

38. The Etherington review focussed on the regulation of fundraising. The Government is right to promote greater transparency in annual reports about fundraising, however, this is no more than a means to an end. Stronger regulation is no substitute for the required change of attitudes and behaviour from trustees. The Fundraising Standards Board is right to say that maintaining public trust in charity fundraising must be the first priority for the industry. Trustees must accept this in full, demonstrate this acceptance in changed attitudes and behaviour, and recognise it is their mission and values which should drive the governance of their charity.

What trustees should do

39. The Etherington review, as well as many submissions to our inquiry, have proposed measures trustees should take, such as: improving trustees' scrutiny of fundraising at board level; improving the skills of trustees; trustees themselves monitoring fundraising activities; and ensuring vulnerable people are protected.⁷¹ It is for trustees, in the first instance, to examine whether they are satisfied with their own ability to ensure that their charity lives up to its values.

40. In all the cases we examined, trustees need to take positive action to ensure that they are not blind to their charity's fundraising activity. It is welcome that trustees of these charities are taking such action. It is vital that these changes are effective so that trustees can have confidence in the methods and ethics of fundraising conducted on their behalf, whether by employees, volunteers or by contractors.

41. Some trustees may lack the skills to guide their charities in raising funds. Battersea Dogs and Cats Home suggested that it would be useful for the new regulator to run training for trustees.⁷² Sir Stuart Etherington told us that it was important to have an "appropriate balance of skills" on any board of trustees.⁷³ In the case of some smaller charities, it would be inappropriate to mandate a level of skill and scrutiny that is not required to protect their reputation. There is a danger that an overly aggressive approach to regulating trustee boards and their remit could lead to a reduction in the number of people willing to be a trustee.⁷⁴

42. Some charities have already made changes to their fundraising practices. For example, the RNLI has decided to move to an 'opt-in' system from 2017, where donors

69 [FCS09](#) (Guide Dogs for the Blind)

70 [FCS13](#) (British Red Cross)

71 Sir Stuart Etherington, Lord Leigh of Hurley, Baroness Pitkeathley and Lord Wallace of Saltaire [Regulating fundraising for the future: trust in charities, confidence in fundraising regulation](#) (September 2015) pp.61–2, [FCS42](#) (Save the Children), [FCS38](#) (NSPCC), Qq 266–73 [Oral Evidence 20.10.15](#), Q 329 [Oral Evidence 3.11.15](#)

72 [FCS18](#) (Battersea Dogs and Cats Home)

73 Q 329 [Oral Evidence 3.11.15](#)

74 Q 329, Q 395 [Oral Evidence 3.11.15](#)

would have to opt in to be contacted by the charity.⁷⁵ This move is welcome and moves by other charities to reform their governance over fundraising practices are necessary to ensure that the practices identified last summer do not recur.⁷⁶

43. The Charity Commission and the new fundraising regulator should reinforce the fiduciary responsibility of trustees in their guidance. The new regulator, and where necessary, the Charity Commission, should validate and recommend suitable training courses for trustees. The Charity Commission is right to have reviewed its fundraising guidance in the light of the events of the summer 2015, and in that guidance to emphasise the primary responsibility of trustees in respect of fundraising. The future fundraising regulator should publicise its view of good trustee practice once it has been set up.

CAGE

44. CAGE is an organisation which describes itself as “an independent advocacy organisation working to empower communities impacted by the War on Terror”.⁷⁷ It “highlights and campaigns against state policies, striving for a world free from oppression and injustice.... Cage has been campaigning against the War on Terror for more than a decade” and has “provided a voice to survivors of the War on Terror through its media work.” CAGE is not a charity. Its website adopts a political Islamist tone.⁷⁸

45. Prior to 2015, the Joseph Rowntree Trust and the Roddick Foundation funded the organisation CAGE. From December 2013, the Commission “engaged with two charities”, scrutinising “each charity’s relationship with CAGE during this period, including analysing whether the grants were appropriate and whether the trustees had ensured that their charitable grants were used for exclusively charitable purposes in line with their charity’s objects.”⁷⁹ The Commission said in March 2015 that

public statements by CAGE officials heightened concerns about the use of charitable funds to support their activities. In our view, those statements increased the threat to public trust and confidence in charity and raised clear questions for a charity considering funding CAGE’s activities as to how the trustees of those charities could comply with their legal duties as charity trustees. In these circumstances, the Commission took robust action and on Monday 2 March 2015 required further unequivocal assurances from the two charities that they have ceased funding CAGE and had no intention of doing so in the future.

The Commission said that the two charities responded as follows:

The Roddick Foundation provided all the assurances within 24 hours as requested, stating that it has not funded CAGE since December 2012; it gave assurances that it has no further payment pending and no intention or proposal

75 Royal National Lifeboat Institution [RNLI is first major charity to give supporters control over contact](#) (October 2015), FCS48 (Jim Brown)

76 Q 270, Q 309 [Oral Evidence 20.10.15](#)

77 [CAGE](#)

78 *Ibid*, Andrew Gilligan [Cage; the extremists peddling lies to British Muslims to turn them into extremists](#), February 2015

79 Charity Commission [Charity Commission Statement: Charities funding CAGE](#) (March, 2015)

to fund CAGE in the future. The Joseph Rowntree Charitable Trust did not provide all the assurances within 24 hours. It did confirm that it last made a grant payment to CAGE in January 2014, that no further payments would be made under the 2011 grant, that no funding proposals were under consideration, that the Trust had no current plans to fund Cage and that no further grants would be made without written consultation with the commission. However, it did not initially provide an unequivocal assurance that the Trust would not make any future grant to CAGE under any circumstances. Yesterday, the Trust stated that this was an extremely difficult decision to make, but in the interests of all its grantees and the other work of the Trust, the trustees confirmed that they have decided to give the commission an assurance that it will not fund CAGE either now or in the future.⁸⁰

46. CAGE “commenced judicial review proceedings against the Charity Commission for what it... [believed was] an unlawful exercise of powers in the wake of the Mohammed Emwazi case and the subsequent pressure exerted by the Commission on charities associated with CAGE. After the publicity CAGE received around Emwazi, it... [claimed] that the Charity Commission acted outside of its powers by exerting unlawful pressure on charities not to fund or associate with CAGE, despite CAGE not being a charity itself. As a result CAGE [said that it found]... it much more difficult to fund its advocacy and [it said that] charities have been deterred from sharing a platform with it”.⁸¹

47. The claim for judicial review was withdrawn in October 2015. The parties involved agreed that “trustees must be free to exercise their fiduciary powers and duties in the light of the circumstances that exist at the time if acting properly within their objects and powers. The Commission does not seek to fetter the charities’ exercise of discretion whether to fund CAGE for all time, irrespective of changed circumstances. The Commission recognises that it has no power to require trustees to fetter the future exercise of their general powers under its general power to give advice and guidance. In consequence there is no obligation on the trustees of J[oseph] R[owntree] T[rust] to fetter the proper and lawful exercise of their discretion in future”.⁸²

48. The Charity Commission made it clear to PACAC that the case “made no change in our position in our responsibilities, our duties and our rights” and that their lawyers had concluded

The Commission’s ability to have regulatory engagement with charities under its powers, including asking for assurances about future conduct, and to move into inquiry mode if and when appropriate, remains intact and is unfettered by the case. Charities should, in the absence of good reason to the contrary, co-operate with the reasonable requirements and requests of the commission.⁸³

80 Charity Commission [Charity Commission Statement: Charities funding CAGE](#) (March 2015)

81 CAGE [Cage to take legal action against the Charity Commission](#) (June 2015)

82 [The Queen on the Application of CAGE Advocacy UK Ltd and the Joseph Rowntree Trust v the Charity Commission](#) (October 2015)

83 Q 429 [Oral Evidence 3.11.15](#)

49. They added that “our view still is, and is not in any way fettered by the court case, that trustees risk breaching their duties for charity trustees by funding groups like CAGE.”⁸⁴ The Commission advised us that their “regulatory engagement with both the charities is continuing, so... [their] report will be published shortly”.⁸⁵

50. **The Charity Commission should be commended for pursuing charities who use their funds to finance CAGE, which describes itself as “campaigning against the War on Terror”. CAGE is a political organisation, not a charity. The Charity Commission were right to resist CAGE’s attempt to bring a judicial review, which CAGE were wise to withdraw.**

Donations from overseas

51. The CAGE case drew our attention to the issue of donations from overseas. PACAC has become aware that donations from overseas may in some cases reflect malign influences on the charities concerned but there is currently no system for alerting the authorities about funds arriving from hostile governments or terrorist supporting organisations. This is not a matter we have explored in any detail but we have had informal conversations that have alerted us to the issue.

52. **The Charity Commission and the Government should consider proposals about how donations from overseas could be made notifiable through the Charity Commission so that the authorities become aware of charities in receipt of funds from potentially harmful sources. The Government might consider employing the same definition of an overseas donation and similar reporting mechanisms as are used in the Political Parties, Elections and Referendums Act 2000 in respect of foreign political donations.**

84 Q 432 [Oral Evidence 3.11.15](#)

85 *Ibid*

4 A new fundraising regulator

Fundraising regulation: the current situation

53. Fundraising in the charity sector is currently regulated through three membership bodies. The Institute of Fundraising is responsible for maintaining the code of fundraising. The Fundraising Standards Board receives complaints about how charities have raised funds and adjudicates on whether complaints which the charity cannot resolve arose from breaches of the Institute of Fundraising's code. The Public Fundraising Regulatory Association sets the code for and regulates face to face fundraising.⁸⁶

54. Each of these three bodies is appointed by the sector. The Institute of Fundraising and Public Fundraising Regulatory Association are both professional membership bodies and their members elect their board. The Fundraising Standards Board is also a membership organisation but its board is made up of representatives from leading organisations within the sector, such as the Charity Law Association, the Scottish and Welsh Councils for Voluntary Organisations and other regulators.

55. The Fundraising Standards Board currently has 1,952 members. The Institute of Fundraising currently has 5,400 individual members and 400 organisational members.⁸⁷ This is a small proportion of the 164,889 charities which are registered by the Charity Commission in England and Wales, and even of the 10,619 of those with an income over £500,000.⁸⁸ The Public Fundraising Regulatory Association has 166 members, of which 126 are charities and the other forty are fundraising companies.⁸⁹

The origins of the current system: the Charities Act 2006

56. In 2002, the Cabinet Office's Strategy Unit produced for the then Prime Minister, Rt Hon Tony Blair, a review of charity law and charitable status. The review recommended the simplification of the regulation of fundraising. It concluded that "a self-regulatory scheme which the sector itself helps to set up and run has the best chance for success".⁹⁰

In 2006, the Government passed the Charities Act. The Act established the regulatory scheme described above. It also granted Ministers a reserve power to step in if self-regulation failed. The Act also laid down that, after five years, the Government would commission a review of the regulatory system's operation to check that they were still fit for purpose. Baroness Scotland, speaking in support of the Bill in the House of Lords, commented that the Government wished to "sustain high levels of public confidence in charities through effective regulation".⁹¹

86 National Audit Office *Regulating Charities: a landscape review*, July 2012 pp.37–8

87 Institute of Fundraising *Annual Report and financial statements for the year ending 31st March 2015* p.3

88 Many charities like universities are not regulated by the Commission so the total number of charities is actually higher. Charity Commission *Recent Charity Register statistics* (September 2015)

89 Public Fundraising Regulatory Association *PFRA Members*

90 Strategy Unit Report *Private Action Public Benefit: A review of Charities and the wider not-for-profit sector* p.65

91 *HL Deb, 7 June 2005, c 787*

Lord Hodgson's Review and subsequent action

57. In November 2011, the coalition Government appointed Lord Hodgson of Astley Abbots to undertake the review required under the 2006 Act. Lord Hodgson's review was not limited to fundraising, but covered the entire operation of the Act. In 2013, PASC published its Report on the operation of the Charities Act 2006 that covered, amongst other subjects, the self-regulation of fundraising.⁹²

58. Lord Hodgson's review and PASC's report made a number of similar points. Both Lord Hodgson and PASC agreed that regulation of fundraising required simplifying,⁹³ and that the current regulators needed to build public awareness of their work.⁹⁴ Both reports recommended that the Charity Commission should be more involved in promoting the self-regulatory system to ensure that public trust and confidence in the sector was maintained.⁹⁵

59. In January 2013, after the publication of the Hodgson review, the then Minister for Civil Society, Nick Hurd MP, convened a meeting of the major regulators of fundraising.⁹⁶ A review, led by PWC and partially funded by the Cabinet Office, was established to consider how to simplify the regulatory structure. The review reported in 2014 and made recommendations about collaboration, including the creation of a shared overarching strategy, a shared communications strategy and improved communications between the three existing regulators. It did not recommend the creation of a single regulator.⁹⁷

Criticisms of the current regulatory structure

60. As the allegations made by the Daily Mail and Mail on Sunday have highlighted, the current fundraising regulatory structure is complex, confusing and lacks effectiveness. The Chair of the Fundraising Standards Board told us that "we do not have an effective regulatory structure for fundraising".⁹⁸ In particular, we were told that:

- "the rules that govern fundraising are set only by fundraisers, [leading] to a code of fundraising practice that is far too weak"⁹⁹
- membership of the regulatory scheme is voluntary and that makes the regulator less powerful.¹⁰⁰
- the regulators have not been proactive in the past.¹⁰¹
- the FRSB is also currently weak, and needs to be underpinned by statutory authority.¹⁰²

92 Public Administration Select Committee, Third Report of Session 2013–14 *The role of the Charity Commission and "public benefit": Post-legislative scrutiny of the Charities Act 2006*, HC 927, December 2013

93 Lord Hodgson of Astley Abbots *Trusted and Independent: giving charity back to charities* (July 2012) p.90, [HC \[2013–14\] 927](#), December 2013 p.38

94 Lord Hodgson of Astley Abbots *Trusted and Independent: giving charity back to charities* (July 2012) p.92, Public Administration Select Committee, [HC \[2013–14\] 927](#), December 2013 p.39

95 *Ibid.*

96 Q 373 [Oral Evidence 3.11.15](#)

97 Price Waterhouse Coopers *Sustainability of fundraising self-regulation* (July 2014)

98 Q 68 [Oral Evidence 8.9.15](#)

99 Q 56, Q 68 [Oral Evidence 8.9.15](#)

100 Q 68 [Oral Evidence 8.9.15](#)

101 Q 68 [Oral Evidence 8.9.15](#)

102 Q 57, Q 58, Q 68 [Oral Evidence 8.9.15](#)

- there are currently two codes of fundraising. There is a code which sets out good practice for fundraising on the street (set by the Public Fundraising Regulatory Association) and there is a code for other fundraising (set by the Institute of Fundraising).
- there are three main regulators of funding. Professor Hind from the Fundraising Standards Board told us that this is “ridiculously confusing” for the public.¹⁰³

61. We also heard that the regulators have not coordinated their work with each other:

- After the Daily Mail’s and Mail on Sunday’s reports in the summer, the Fundraising Standards Board recommended a number of changes to the Institute of Fundraising’s code in June 2015. In September the FRSB gave evidence to us that most of these changes had not been made.¹⁰⁴ By December, the Institute had made most of them. However some, such as reviewing the number of permitted asks in a telephone call, are still under review.
- This problem is longstanding. The Fundraising Standards Board gave us a list of recommendations that they had made to the Institute for revisions of the code since September 2012. Of those recommendations, only 4 of the 13 made were accepted. In some of the cases where a recommendation was accepted, the Institute put off implementing the recommendation for long periods of time, in one case 9 months and in another case 18 months.¹⁰⁵
- The Institute of Fundraising only adopted guidance that stated that charities had to abide by guidance from the Information Commissioner in November 2015. Prior to that, the code had merely stated that charities must comply with data protection legislation.¹⁰⁶ The Information Commissioner told us that

It is a matter of some disappointment that the Institute of Fundraising appeared to be resisting the reality that the direct marketing guidance did apply to the charity sector. We found a concern to find a balance between privacy of donors and the needs of charities and the good causes and so on. I have had to explain, “I am sorry, privacy is a fundamental right. The Privacy and Electronic Communications Regulations apply to all direct marketing and they apply to you.” But it took until, I think, 18 August to get the Institute of Fundraising to change the guidance they had on their website and to agree that the clarity that came from the 2013 Information Commissioner’s Office Direct Marketing Guidance really did apply to the charity sector.¹⁰⁷

62. The Institute of Fundraising say that most of the issues discovered by the media relate to compliance with the code, rather than the code itself.¹⁰⁸ The fact that the three regulators themselves disagree about this point underlines the failure of the system. The Information Commissioner is right to be disappointed that the Institute failed include his guidance on their website until after last summer’s events.

103 Q 78 [Oral Evidence 8.9.15](#)

104 [FCS32](#) (FRSB Annex A)

105 [FCS32](#) (FRSB Annex B)

106 Institute of Fundraising [Code of Fundraising Practice: Code Changes](#) (November 2015)

107 Q 177 [Oral Evidence 20.10.15](#),

108 [FCS30](#) (Institute of Fundraising and Public Fundraising Regulatory Association)

The proposed new fundraising regulator

The structure of the new regulator

63. The Etherington review proposed a single regulator to replace the three existing regulators, to demonstrate “a break from the past”.¹⁰⁹ This was broadly welcomed by witnesses to our inquiry.¹¹⁰ Etherington proposed that the regulator should have

- a universal remit covering all charities.¹¹¹
- the ability to register charities who follow the code.¹¹²
- the ability to proactively investigate fundraising practice in charities.¹¹³
- the responsibility to convene all the other interested parties such as consumer bodies, statutory regulators and professional representatives.¹¹⁴
- stronger sanctions and a wider range of penalties for charities who break the code, including naming and shaming, ordering compulsory training for fundraisers, issuing an order to cease and desist, forcing an organisation to inform its donors of poor practice, requiring a charity to submit any new fundraising campaign to the regulator for approval and referral to the Charity Commission.¹¹⁵
- the ability to host and set a single fundraising practice code,¹¹⁶ and;
- the ability to issue an annual complaints report identifying organisations and the nature of complaints that had been made.¹¹⁷

The hybrid model

64. Sir Stuart Etherington proposed a hybrid system of regulation. The new regulator will be convened by the sector, maintaining the current system of self-regulation. However, the Charity Commission will act as a backstop to the new regulator, treating the failure of a charity to comply with its directions as a governance issue. We discuss the role of the Commission further in Chapter 5.

65. The review considered that statutory regulation of fundraising had several disadvantages, especially higher costs.¹¹⁸ Sir Stuart Etherington told us that statutory regulation would have increased costs for the sector and for the Government. He said

109 Sir Stuart Etherington, Lord Leigh of Hurley, Baroness Pitkeathley and Lord Wallace of Saltaire [*Regulating fundraising for the future: trust in charities, confidence in fundraising regulation*](#) (September 2015) p.50

110 Q 306 [Oral Evidence 20.10.15](#), [FCS13](#) (British Red Cross), [FCS15](#) (Oxfam), [FCS19](#) (Cancer Research UK), [FCS21](#) (Hospice UK), [FCS41](#) (Action for Children, Alzheimer’s Society, Barnardo’s, British Heart Foundation, the Guide Dogs for the Blind Association and the Royal British Legion)

111 Sir Stuart Etherington, Lord Leigh of Hurley, Baroness Pitkeathley and Lord Wallace of Saltaire [*Regulating fundraising for the future: trust in charities, confidence in fundraising regulation*](#) (September 2015) p.52

112 *Ibid.*

113 *Ibid.*, p.53

114 *Ibid.*

115 *Ibid.*, p.54

116 *Ibid.*, p.9, 58

117 *Ibid.*, p.53–4

118 *Ibid.* p.8

We are suggesting the self-regulator would cost around £2 million to £2.5 million. Probably if you did statutory regulation it would cost a bit more and of course it would fall on the public purse, which happens at the moment. It would cost a lot more, it would be more complex, you would need to ensure that they had the expertise to police this area of work. In some ways statutory regulation is a very blunt instrument in relation to what is quite a fast-moving field—fundraising. You also tend to get a little bit more litigation if statutory regulation is involved, so it becomes a little bit more litigious.¹¹⁹

66. Self-regulation is also more flexible than statutory regulation. The Charity Commission told us that statutory regulation risked making the charitable sector an arm of Government.¹²⁰ Fundraising is by its nature “fast moving” and any statutory code would require frequent amendment to keep up to date.¹²¹

67. Rather than being a membership body, the Etherington review recommended that the new regulator be funded by the sector through a levy. He explained that, crucially, the regulator “[will] not [be] a membership-based organisation; there will be a levy on charities to support this. If it is a membership based structure it gets into all sorts of conflicts of interest”.¹²²

68. We endorse Sir Stuart Etherington’s recommendation that the new regulator should be funded by a levy, rather than being a membership organisation.

69. There was consensus amongst the witnesses to our inquiry in supporting the Etherington proposals. The Government is right to welcome the Etherington review. This is the last chance for self-regulation. It is essential that the Etherington system is made to work effectively, though it can only work by supporting effective governance by trustees.

Progress towards creating a new regulator

70. Sir Stuart Etherington recommended that the Minister for Civil Society should appoint the chair of the new regulator who should in turn appoint the board.¹²³ The Minister appointed Lord Grade, the former chair of Channel 4, to chair the new regulator in November 2015.¹²⁴ On 16th December, Lord Grade appointed Stephen Dunmore as the interim Chief Executive of the new regulator.

71. On 4 December 2015, Sir Stuart Etherington convened a summit of major charity leaders (from the fifty largest charities), the Cabinet Office, the Institute of Fundraising, the Fundraising Standards Board, the Public Fundraising Regulatory Authority, the Association of Chief Executives and the Small Charities Coalition.¹²⁵ The summit discussed the practicalities of implementing the new regime.

119 Q 343 [Oral Evidence 3.11.15](#)

120 Q 417 [Oral Evidence 3.11.15](#)

121 Q 93 [Oral Evidence 8.9.15](#)

122 Q 337 [Oral Evidence 3.11.15](#)

123 Q 341 [Oral Evidence 3.11.15](#)

124 Cabinet Office [Lord Grade announced as interim chair of the new fundraising regulator](#) (November 2015)

125 Third Sector [Sir Stuart Etherington calls charity bosses to a major fundraising summit](#) (November 2015)

Is Etherington appropriate?

72. The National Council of Voluntary Organisations has been clear that the Etherington Review represents the first stage in a process. Sir Stuart Etherington said that the sector now faces the task of “taking the recommendations made and turning them into reality”.¹²⁶

73. Under the preceding arrangements, only the Fundraising Standards Board has a donor representative on its board. The Etherington Review proposes more interaction between industry, regulators and donors in two ways. Firstly the review says that there should be a donor representative on the standard setting committee convened by the new regulator. Second, it states that a Commission for Donor Experience should be set up. The Commission had its first meeting in November 2015. Sir Stuart Etherington proposes that a donor representative should be on the board of the new regulator as well.¹²⁷

74. Sir Stuart Etherington is right to propose, in addition to the donor representation envisaged in the review, that there should be a donor representative on the board of the new regulator. This representative could be appointed by a consumer representative body such as the Institute of Customer Service. This appointment would demonstrate the independence of the new regulator from the fundraising sector, and would help to guarantee that donor interests remain, as they should, at the heart of its view of regulation.

75. The review suggests moving the ownership of the code defining good practice from the Institute of Fundraising to the new regulator. As noted previously, we heard that at GoGen, fundraisers were attempting to raise money from vulnerable people, including people who were confused about what was happening.¹²⁸ We were also informed about the case of Mr Samuel Rae, whose data was sold by leading charities. Mr Rae suffers from dementia and following the sale of his data by charities, media reports alleged that he was targeted by criminals and lost money.¹²⁹

76. There are a number of groups working on how vulnerable people within society should be treated by the fundraising and related industries. The Prime Minister’s Champion Group on Dementia Friendly Communities has produced guidance for financial services companies that examines the role of banks in monitoring the accounts of vulnerable people. In evidence to us, the Alzheimer’s Society suggest a cooling off period for donations from vulnerable people and an automatic alert to anyone holding a power of attorney for charity donations.¹³⁰

77. The new regulator should consult the Prime Minister’s Champion Group on Dementia Friendly Communities and any other representative groups for vulnerable people to examine how they can update the code. The new regulator should set out best practice in this area and make it clear that trustees are responsible for ensuring their charities apply the code.

126 Sir Stuart Etherington *What’s next for fundraising regulation* September 2015

127 Q 340 [Oral Evidence 3.11.15](#)

128 Qq 125–139 [Oral Evidence 20.10.15](#)

129 Q 110 [Oral Evidence 20.10.15](#), *Daily Mail* [New shame of charities: widower’s details were passed on 200 times leading him to lose £35,000 and receive 731 demands for cash](#) (August 2015)

130 [FCS20](#) (Alzheimer’s Society)

78. None of the current regulators of fundraising has a public profile that matches regulators in other sectors. In 2011–12, MORI found that 90% of the public had not heard of the Fundraising Standards Board.¹³¹ In 2013, PASC recommended that the FRSB take steps to raise its profile.¹³² However, both Sir Stuart Etherington and Hospice UK told PACAC that the FRSB's profile was still low in 2015.¹³³

79. The new regulator should take urgent steps to create a public profile, without which the new regulator will be unable to raise public trust and confidence in fundraising and the sector as a whole. Even a more proactive regulator will depend on the public bringing cases of malpractice to its attention.

80. The previous regulators admitted to us that they should have had a more proactive approach, seeking to find out if people were complying rather than waiting for complaints.¹³⁴ Many charities agree.¹³⁵ Since the Public Fundraising Regulatory Association began mystery shopping, they have seen a decline in violations of their code from occurring on 58% to 48% of their visits.¹³⁶

81. Many charities are not regulated by the Charity Commission. Some English and Welsh charities are not regulated by the Commission: these include universities, academies and museums. These charities have alternative principal regulators such as the Higher Education Funding Council which regulates universities, or the Department of Culture, Media and Sport which regulates museums.¹³⁷

82. Sir Stuart Etherington confirmed to us that these charities were not consulted in his review.¹³⁸ He decided to exclude these charities as he wanted to produce a swift review in order to deal with the allegations by the Daily Mail and Mail on Sunday. The More Partnership gave evidence saying that “we are concerned that the voices of these important areas of charitable endeavour were entirely excluded from the invited consultation”.¹³⁹ The Russell Group said that while they recognised the importance of the issue, they thought that some of the suggestions in the review would have a negative impact upon the University sector.¹⁴⁰ For example, it is expected that the education institutions will approach their alumni, outside the restrictions to prevent cold-calling.

83. Sir Stuart Etherington is right to say that the new regulator should be more proactive in seeking out malpractice and believe approaches like that of the Public Fundraising Regulatory Association could help. A more proactive approach can help to rebuild public trust and confidence in the sector and also in ensuring that the sector does not have to depend on investigative journalists to reveal what is happening. It is reasonable that Sir Stuart Etherington's review omits excepted charities such as Universities. However, the Government has decided they fall under the new regulator's

131 IPSOS MORI *Public Perceptions of charity: a report for the charities act 2006 review* (May 2012) p.4

132 Public Administration Select Committee, Third Report of Session 2013–14, *The role of the Charity Commission and public benefit: post legislative scrutiny of the 2006 Charity Act*, HC 76, (June 2013) p.39

133 Q 347 *Oral Evidence 3.11.15*, FCS21 (Hospice UK),

134 Q 78 *Oral Evidence 8.9.2015*

135 FCS24 (Save the Children), FCS6 (RSPCA), FCS9 (Guide Dogs for the Blind Association), FCS13 (British Red Cross), FCS15 (Oxfam), FCS19 (Cancer Research UK)

136 FCS23 (Public Fundraising Regulatory Association),

137 National Audit Office *Charity regulation: a landscape review* (July 2012) p. 6, Charity Commission *Exempt Charities* (September 2013)

138 Q 345 *Oral Evidence 3.11.15*

139 FCS36 (More Partnership)

140 FCS47 (Russell Group)

remit. The new regulator should urgently consult with these charities on its approach to regulating them.

84. Sir Stuart Etherington has suggested a new Fundraising Preference Service to supplement the Telephone Preference Service (TPS). The Information Commissioner said the new service would both duplicate some features of the already existing Telephone Preference Service and would confuse the public.¹⁴¹ We heard evidence that the Fundraising Preference Service will close some loopholes in the TPS, for example nobody will be able to claim that any opt in overrides the preference service.¹⁴²

85. The practicalities of the new Fundraising Preference Service are still to be worked out.¹⁴³ The new regulator has set up a working group led by George Kidd, head of the Direct Marketing Commission, to examine the practicalities of introducing the Fundraising Preference Service.¹⁴⁴ Charities have raised concerns about the practical implementation of the service. For example some charities have written to us to say that a binary system, where someone either opts in to all communication or opts out of all communication, “could lead to longstanding and valued links between individuals and the charities about which they care becoming collateral damage”.¹⁴⁵

86. We are not persuaded of the case for a new fundraising preference service. It would duplicate the function of the existing Telephone Preference Service (TPS), and add limitations to the activity of charities that do not exist for any other sector. If a new preference service is to be introduced, the new fundraising regulator should urgently seek to discuss with the Information Commissioner how the new telephone preference service can work alongside TPS, without creating conflict and confusion in the minds of the public.

141 Q 205 [Oral Evidence 20.10.15](#)

142 Q 164 [Oral Evidence 8.9.2015](#)

143 Q 352 [Oral Evidence 3.11.15](#)

144 National Council of Voluntary Organisations [Fundraising summit, what happened, what you need to know](#) (December 2015)

145 [FCS41](#) (Action for Children, Alzheimer’s Society, Barnardo’s, British Heart Foundation, the Guide Dogs for the Blind Association and the Royal British Legion)

5 The role of the Charity Commission

The previous role of the Commission

87. The Charity Commission is the statutory regulator for most charities in England and Wales. Scotland and Northern Ireland have their own charity regulators.

88. The Commission has at present no formal regulatory role with respect to fundraising. William Shawcross told us that “we have had a watching brief, but our job has not been to regulate charity fundraising”.¹⁴⁶ The Commission carried out this watching brief by working with the Fundraising Standards Board and other regulators. They have a memorandum of understanding in place which sets out the Charity Commission’s role and have supported some initiatives, for example, giving the Fundraising Standards Board assurance over whether charities wishing to raise money in supermarkets have submitted accounts.¹⁴⁷

89. The Commission does publish guidance to trustees on fundraising. This guidance sets out trustees’ legal duties with respect to fundraising. Trustees have a general duty to act in the best interests of their charity. The Commission reminds trustees, in its guidance, that they should bear in mind the long term impact of a dubious fundraising campaign, even if it brings in a short term cash injection.

90. The Commission is currently revising its guidance on fundraising. The Commission published new guidance for consultation on 3rd December 2015. The consultation period finishes in February 2016.¹⁴⁸ The new guidance updates the Charity Commission’s previous guidance, including two new annexes on the legal and reporting requirements arising out of the Charities (Protection and Social Investment) Bill. In the new guidance, the Commission emphasises the role of trustees, their responsibility for fundraising and their importance as guardians of a charity’s values.¹⁴⁹

91. Since 2010, the Charity Commission, like the rest of the public sector, has seen cuts to its budget. The Commission’s budget reduced from £31.4 million in 2009–10 to £20.9 million in 2014–15.¹⁵⁰ In the spending review on 25th November 2015, the Chancellor announced that the Commission will receive £20 million every year until 2020.¹⁵¹ During this period, the Commission has also embarked on significant internal re-organisation.¹⁵²

The Charity Commission and the hybrid model of regulation

92. The Etherington review envisages a much larger role in fundraising regulation for the Charity Commission. It recommended the new regulator adopt a “strong co-regulatory approach with the Charity Commission or other relevant statutory regulator”.¹⁵³ The

146 Q 376 [Oral Evidence 3.11.15](#)

147 Q 377 [Oral Evidence 3.11.15](#)

148 Charity Commission [Charity Fundraising: a guide to trustee duties](#) (December 2015)

149 *Ibid.*

150 Charity Commission [Charity Commission Resource Accounts 2009–10](#) (July 2010) p.34, Charity Commission [Charity Commission Resource Accounts 2014–15](#) (June 2015) p.76

151 HM Treasury [Spending review and autumn statement](#), Cm 9162 (November 2015) p.109

152 National Audit Office [Follow up on the Charity Commission](#) HC 908 (January 2015) p.7, Q 404 [Oral Evidence 3.11.15](#)

153 Sir Stuart Etherington, Lord Leigh of Hurley, Baroness Pitkeathley and Lord Wallace of Saltaire [Regulating fundraising for the future: trust in charities, confidence in fundraising regulation](#) (September 2015) p.49

Commission would act as a ‘backstop’ where its remit is involved: using its enforcement powers where necessary.¹⁵⁴ The Charity Commission has described its new role in similar terms: “under the new system that is being proposed by Rob Wilson, the Minister for Civil Society, and by Sir Stuart Etherington, we will have a much bigger role—a backstop role. We will not be on the forefront of it, but we will be much more involved in the system”.¹⁵⁵

93. Sir Stuart Etherington described how this would work:

if a charity persists in not going along with the recommendations of the self-regulator then ultimately the referral would be to the statutory regulator—normally the Charity Commission; some other fundraising organisations will have another principal regulator—which would then see it as a governance issue, would then see it as a failure to act and they would have much more severe penalties.¹⁵⁶

The Commission will support the regulator, in the new system, by interpreting a failure to comply with the regulator’s instructions as a failure of governance over which the Commission has responsibility. The new regulator will also be able to refer charities to the Charity Commission.

94. From 2007 until 2014, only 4% of the Commission’s inquiries related to fundraising.¹⁵⁷ William Shawcross told us that he anticipated very little extra work for the Commission from the new arrangement, with the new fundraising regulator referring few cases up to the Commission.¹⁵⁸ William Shawcross agreed though that should the caseload from these new arrangements rise, then the Commission would need further funding.

95. HM Treasury and the Cabinet Office must address the future funding of the Charity Commission so that it can carry out its functions in the way that the Government, charities and the public expect. This is becoming increasingly urgent given the role that is outlined by the Etherington review and the other responsibilities which this report recommends.

Accountability

96. It is important that the public knows who is responsible for regulating the fundraising sector. Rob Wilson told us that “the problem with the current system is that it is very confused—overlapping”.¹⁵⁹ One of the virtues of the new system, recommended by the Etherington review, is that there will be a single regulator responsible for fundraising in the UK.

154 Sir Stuart Etherington, Lord Leigh of Hurley, Baroness Pitkeathley and Lord Wallace of Saltaire [Regulating fundraising for the future: trust in charities, confidence in fundraising regulation](#) (September 2015) p.50

155 Q 396 [Oral Evidence 3.11.15](#)

156 Q 337 [Oral Evidence 3.11.15](#)

157 Joint Committee on the Draft Protection of Charities Bill [Draft Protection of Charities Bill](#) HL 108, HC 813, (February, 2015) p.17

158 Q 404 [Oral Evidence 3.11.15](#)

159 Q 401 [Oral Evidence 3.11.15](#)

97. The Etherington review proposes that PACAC should hold the new regulator to account for its performance. It recommends both that we should hold a hearing on the new regulator's annual report and scrutinise progress in setting up the new regulator after 18 months.¹⁶⁰

98. The Commission has powers under Section 46 of the Charities Act to hold class inquiries into a particular issue which runs across many charities.¹⁶¹ The Commission has not in the past held such inquiries or inquiries into individual charities in public, because it relies on whistle blowers and others who require confidentiality to give evidence.

99. The Commission first became aware of the allegations about fundraising after the death of Olive Cooke and the investigations by the media.¹⁶² The Commission told us that they were 'taken aback' and 'shocked' by what had happened.¹⁶³ Under the new system, the Commission will be 'much more involved' and thus will need to have a higher profile on fundraising issues.¹⁶⁴

100. The new regulator should be held to account in public, but this should be the function of the Charity Commission. Save in the most exceptional circumstances, PACAC has neither the time nor the resources to do this, nor to investigate the workings of individual charities (such as in its forthcoming report into Kids Company). PACAC will of course remain closely interested in the sector, but the Charity Commission is better placed to fulfil this function. The Charity Commission has the expertise and must have the resources.

101. The Commission should hold annual hearings on fundraising regulation and other public hearings into the workings of charities. The Government should make any necessary amendments to the Charities (Protection and Social Investment) Bill to enable the Commission to hold public hearings, for example to ensure that witnesses to any inquiry have the requisite legal privilege to give honest responses to any questions from the Commissioners.

102. The Attorney General traditionally acted in England representing the Crown as *parens patriae*.¹⁶⁵ Historically this role was unlimited in theory and wide ranging in practice. As the role of the Charity Commission was extended, many of its powers overlapped with those held by the Attorney General.¹⁶⁶ The Charity Commission still exercises some of powers in "only with the agreement of the Attorney General."¹⁶⁷

103. In order to underline the constitutional status of the Commission's board, the Commission should restore the proper title of its board members, so they are all known as the Charity Commissioners. This would both restore their unique status, and underline that the Chair and his fellow commissioners are jointly and severally liable for the conduct of the Charity Commission in England and Wales, just as a Chair and other trustees should understand how they are responsible for a charity they govern.

160 Sir Stuart Etherington, Lord Leigh of Hurley, Baroness Pitkeathley and Lord Wallace of Saltaire *Regulating fundraising for the future: trust in charities, confidence in fundraising regulation* (September 2015) p. 10

161 Q 513 [Oral Evidence 3.11.15](#)

162 Q 387 [Oral Evidence 3.11.2015](#)

163 Q 388 [Oral Evidence 3.11.2015](#)

164 Q 396 [Oral Evidence 3.11.2015](#)

165 *Parens Patriae* is the legal principle that the Crown is the legal protector of citizens unable to protect themselves.

166 J. Warburton and D. Morris *Tudor on Charities* 8th edition (London 1995)

167 Charities Act 2011 [Section 114](#)

Monitoring Success

104. The Etherington review proposes several measures of success for the new regulator. The review suggested that the new regulator report after 18 months against these initial performance measures:

- the new governance structure is in place
- the fundraising levy has been set with a relevant banding system
- clear memorandums of understanding have been set up
- responsibility for the code of fundraising practice has moved from the Institute of Fundraising to the new regulator
- enough organisations have registered with the regulator to ensure that it can be financially sustainable; and
- the fundraising regulator has developed a three year strategic plan¹⁶⁸

105. It also proposes that the new regulator should publish an annual report including data on complaints, registrations, sector alerts, reports to the Commission and information exchanges with other regulators. These are all sensible metrics for the Commission to use to monitor the new regulator's success.¹⁶⁹

106. The Charity Commission should monitor the metrics proposed by the Etherington Review. The Commission and regulator should additionally monitor the level of public satisfaction with fundraising, expressed in regular polls such as those carried out by the Commission. The National Audit Office, alongside its annual audit of the Commission's annual report and accounts, should report to Parliament on its view of the Commission's oversight of fundraising regulation.

¹⁶⁸ Sir Stuart Etherington, Lord Leigh of Hurley, Baroness Pitkeathley and Lord Wallace of Saltaire *Regulating fundraising for the future: trust in charities, confidence in fundraising regulation* (September 2015) p. 57

¹⁶⁹ *Ibid.*

6 The role of the Information Commissioner

The role of the Information Commissioner

107. The Information Commissioner is responsible for the enforcement of the Data Protection Act (1998) and the Privacy and Electronic Communications (EU) Recommendations (2003). The Commissioner has responsibility for these regulations across the private, third and public sectors. The regulations set out the ways in which organisations can store and use personal data and the ways in which they can contact people electronically.

108. People on the telephone or mail preference services should never be contacted without an explicit consent.¹⁷⁰ Additionally, people who have objected to any past contact should not be spoken to again.¹⁷¹ In the autumn of 2015, the Information Commissioner's investigations revealed that some charities "do not have accurate and reliable records on whether donors have consented to marketing", meaning they could not comply with the law.¹⁷²

109. Christopher Graham, the Information Commissioner is clear that consent to being contacted is only consent if "you know you have given" consent.¹⁷³ We heard that charities were claiming that they had consent to contact people who had filled in lifestyle surveys and answered questions agreeing that they might potentially like to donate to a cancer charity in the future, or who consented to contact many years prior to the contact being made.¹⁷⁴ The Information Commissioner told us that consents given many years ago, or consents given for another charity or in response to lifestyle surveys do not constitute consents to being contacted under the law.¹⁷⁵

110. Prior to the allegations made by the media, the Commissioner had intervened in the sector. He wrote to eight charities in 2014 reminding them of their responsibilities with relation to data protection. The charities were Christian Aid, the British Heart Foundation, Macmillan Cancer Support, Great Ormond Street Hospital, NSPCC, Barnardo's, Oxfam and the British Red Cross.¹⁷⁶ It is very disappointing that some of these charities do not appear to have given proper attention to the letter from the Information Commissioner and were caught up in the allegations made by the media.

111. The Commissioner said that he would have taken more action had he been aware of the scale of the complaints in the sector.¹⁷⁷ He is currently establishing a memorandum of understanding with the Fundraising Standards Board so that in the future the two organisations can work together and share information.¹⁷⁸ This move to collaborate more

170 Information Commissioner [Guide to Privacy and Electronic Communications Regulations](#) (December 2015)

171 *Ibid.*

172 [FCS16](#) (Information Commissioner)

173 Q 175 [Oral Evidence 20.10.15](#)

174 Q 105, Q 188 [Oral Evidence 20.10.15](#)

175 Q 176, Q 183 [Oral Evidence 20.10.15](#)

176 [FCS51](#) (Information Commissioner)

177 Q 199 [Oral Evidence 20.10.15](#)

178 Q 184 [Oral Evidence 20.10.15](#)

is welcome, however it is too late for many of the people affected by the alleged abuses discovered by the media.

112. The Commissioner explained that the marketing departments of charities were “very buccaneering and felt they had right on their side”.¹⁷⁹ He suggested that some fundraisers “believed they were above the law and a special case”, and that some major charities and even the Institute of Fundraising

were concerned, not to comply with the law, but to see whether there was some wiggle room, and whether I would accept that there was a balance to be found between the privacy of individuals and the manifest needs of the charity and the fantastic work they were doing. I just had to explain, sometimes in rather blunt terms, to some leading charities, “I am sorry, there is not a trade-off here. That is the law. You have to stick to it.”¹⁸⁰

Allegations made by the media and the data protection laws

113. The Mail on Sunday and Daily Mail allegations include violations of data protection regulation. The allegations are described in Part One of this report. Alleged violations of data protection law include selling lists of supporters, avoiding the Telephone Preference Service and relying on invalid consents for contact. In the case of one of the victims, Mr Rae, his details were allegedly passed to criminals who defrauded him of £35,000.¹⁸¹

114. Katherine Faulkner told us that her training at GoGen included a description of the data protection laws which was “a load of nonsense, basically”.¹⁸² She told us that GoGen routinely called people because they had opted in, or had said in a lifestyle survey they were interested in giving money to a charity. Katherine Faulkner told us that “there was no way they could have consented to those phone calls properly”.¹⁸³

115. The Information Commissioner is currently investigating the allegations to determine whether there were breaches of the law in relation to the allegations made by the Daily Mail. The Commissioner is conducting two separate investigations: the first investigation relates to the allegations made by the Daily Mail about phone calls and the second focuses on the sale of data, specifically the case of Mr Rae.¹⁸⁴ Mr. Eckersley, Head of Enforcement at the Commission agreed to publish the results of investigations.¹⁸⁵

116. The Commissioner told us that, in the light of the Daily Mail’s allegations, he is working to improve the awareness of data protection issues in the charitable sector.¹⁸⁶

179 Q 179 [Oral Evidence 20.10.15](#)

180 Q 197 [Oral Evidence 20.10.15](#)

181 [Daily Mail ‘New shame of charities: widower’s details were passed on 200 times, leading him to lose £35,000 and get 731 demands for cash \(August 2015\)](#)

182 Q 104 [Oral Evidence 20.10.15](#)

183 *Ibid.*

184 Q 219, Q 220 [Oral Evidence 20.10.15](#)

185 *Ibid.*, Q 226 [Oral Evidence 20.10.15](#),

186 Q 234 [Oral Evidence 20.10.15](#)

Future Role of the Information Commissioner

117. While it is for charity regulators to regulate the sector, the Information Commissioner has a cross cutting responsibility for data protection. We note above that the Commission is establishing a memorandum of understanding with the Fundraising Standards Board. However such a memorandum will not cover any future regulator. The Information Commissioner agreed with us that he should establish a similar memorandum with any successor regulator.¹⁸⁷

118. A new data regulation may be introduced in this Parliament. This new EU data regulation will have consequences for the regulation of charities.¹⁸⁸ The Information Commissioner and the new regulator should work together to ensure that the sector adopts the new regulation properly.

119. The Information Commissioner should establish a memorandum of understanding with the new regulator without delay. This should be in place by the end of 2016. This memorandum should enable the two regulators to cooperate in ensuring that the charity sector is aware of its obligations and that any abuses are detected and dealt with in the future. The Commissioner must work with the new regulator to ensure that any new data regulations are swiftly incorporated into the code of fundraising.

120. The Commissioner told us that there may be cases in which he would want to prosecute under criminal law, in particular where an individual, rather than an institution, is the focus of an inquiry. Currently, there is no custodial penalty for an individual in this case. We heard Parliament had decided in 2008¹⁸⁹ that a custodial penalty should be available to courts in this instance—but that this had never been commenced, despite repeated recommendations from the Home Affairs Select Committee, the Justice Committee, Joint Committee on the Communications Data Bill and Lord Justice Leveson.¹⁹⁰

121. The Government in its response to the Justice Committee told the Committee that “we therefore intend to conduct a public consultation on the full range of data protection proposals, including on whether to make an Order introducing custodial sentences under section 77 CJIA (a statutory requirement), which will seek views on their impact and how they might be approached”.¹⁹¹ However, PACAC is not aware of any progress on this issue, and have received evidence that the section has not yet been commenced.

122. The Information Commissioner told us that his powers are purely civil, and that there are individuals he cannot reach. Steve Eckersley, Head of Enforcement for the Information Commissioner’s Office, told us that as his powers are solely to fine, there are difficulties with individuals who become bankrupt.¹⁹²

123. The Government has offered no substantive explanation for failing to commence section 77 of the 2008 Criminal Justice and Immigration Act. Despite offering a

¹⁸⁷ Q 236 [Oral Evidence 20.10.15](#)

¹⁸⁸ FCS41 (Action for Children, Alzheimer’s Society, Barnardo’s, British Heart Foundation, the Guide Dogs for the Blind Association and the Royal British Legion)

¹⁸⁹ [Criminal Justice and Immigration Act 2008](#)

¹⁹⁰ Q 205 [Oral Evidence 20.10.15](#), Justice Committee, Ninth Report of Session 2012–13, *The functions, powers, and resources of the Information Commissioner*, HC 962, March 2013, Home Affairs Committee, Fourth Report of Session 2012–13 p.13, *Private Investigators*, HC 100 p.14, Joint Committee on the Draft Communications and Data Bill [Report on the Draft Communications and Data Bill](#) 2012–13 p.60

¹⁹¹ Rt Hon Lord McNally, Minister of State for Justice, to the [Justice Committee](#), June 2013

¹⁹² Q 222 [Oral Evidence 20.10.15](#)

consultation in June 2013, we are unaware of any further progress. This ignores recommendations by the Home Affairs Committee, the Justice Committee, the Joint Committee on the Draft Data Communications Bill and Lord Justice Leveson. It also ignores the recommendations of both the current and former Information Commissioners. The Government should immediately implement this, allowing the Information Commissioner to enforce the law, or give a substantive reason why they will not.

124. The Commissioner along with other regulators has been reliant on complaints from the public and communications from other regulators. The Commissioner does sometimes act proactively, using ‘mystery shopping’ for example on occasion.¹⁹³ However he admitted to PACAC that:

We should be proactive. We should be doing more of the mystery shopping rather than clearing up after the event. Then we should be horizon scanning. It is a fast-moving sector. We should not wait for problems. We should be looking for trouble, frankly, Chairman.¹⁹⁴

125. It is a failing of the Information Commissioner in the past that his office was not more proactive in the past in respect of charities’ misuse of data. The Commissioner is right now to be more proactive. This comes too late for many of the people affected by the bad practice exposed in the summer of 2015.

193 Q 193, Q 194 [Oral Evidence 20.10.15](#)

194 Q 250 [Oral Evidence 20.10.15](#)

7 The role of the Cabinet Office

Charities (Protection and Social Investment) Bill 2015

126. The Cabinet Office oversees appointments at the Charity Commission and is responsible for civil society across Government.¹⁹⁵ The Minister for Civil Society is the responsible Minister within the Cabinet Office for “civil society sector support”.¹⁹⁶ This role is currently held by Rob Wilson MP.

127. In May 2015, the Cabinet Office introduced the Charities (Protection and Social Investment) Bill into the House of Lords. The Bill mostly concerns the powers of the Charity Commission and implements a number of recommendations made by Lord Hodgson and by the National Audit Office.

128. The Bill creates duties for charities with an income over £1 million to report:

- their approach to fundraising and whether they employed a fundraising company
- whether they are a member of any accreditation scheme for fundraising (such as that set up by the regulator)
- if and how they monitored fundraising activities
- the number of complaints they received, and;
- their approach to dealing with vulnerable people.

129. The Bill also amends Section 59 (prohibition on certain fund-raising without agreement in prescribed form) of the 1992 Charities Act. The Bill says agreements between charities and fundraisers must specify

- a) “any voluntary scheme for regulating fund-raising, or any voluntary standard of fund-raising, that the professional fund-raiser or commercial participator undertakes to be bound by for the purposes of the agreement”,
- b) “how the professional fund-raiser or commercial participator is to protect vulnerable people and other members of the public” from “unreasonable intrusion on a person’s privacy”, “unreasonably persistent approaches” or “placing undue pressure on a person”, and
- c) “arrangements enabling the charitable institution to monitor compliance”.

130. We have received representations that the new regulations may burden charities who have limited fundraising activities but still breach the income threshold. The Cabinet Office should be mindful of the additional burden the Charities (Social Investment and Protection) Bill’s reporting requirements place upon charities with limited fundraising activities.

¹⁹⁵ Cabinet Office [Cabinet Office: annual reports and accounts 2014–15](#) (September 2015) p.68

¹⁹⁶ Cabinet Office [Ministerial Role: Parliamentary Under Secretary \(Minister for Civil Society\)](#)

The reserve powers

131. Section 69 of the 2006 Charities Act gave ministers reserve powers to suspend fundraising self-regulation should they deem it desirable or necessary. Ministers could create good practice requirements, such as requiring that fundraising did not intrude into the privacy of donors, did not involve making unreasonably persistent approaches to people, did not create undue pressure on donors and did not involve making any false or misleading representations about fundraising.¹⁹⁷

132. We were told by Sir Stuart Etherington that the Minister intends to create two further reserve powers in the 2015 act. Firstly the Minister will be able to order a charity that has not joined the self-regulatory system to join it. Secondly the Minister will be able to suspend self-regulation and replace it with statutory regulation.¹⁹⁸

133. It is preferable that the Charity Commission should be guarantor of the new regulatory system and therefore responsible for holding the new regulator to account for their regulation of fundraising, rather than the Government resorting to its statutory powers. The Charity (Social Investment and Protection) Bill should be amended to give the Charity Commission the authority to carry out this responsibility. The Charity Commission should report to the Cabinet Office on an annual basis its view of the effectiveness of regulation and whether the reserve powers are needed. The Government should not be deterred from using its reserve powers if necessary, as the reputation of the sector depends upon the proper governance of charities and their fundraising. However, it would be a sad and inexcusable failure of charities to govern their own behaviour should statutory regulation became necessary.

¹⁹⁷ Charities Act 2006 section 69

¹⁹⁸ Q 365 [Oral Evidence 3.11.15P](#)

Conclusions and recommendations

Summary

1. ***It would be a sad and inexcusable failure of charities to govern their own behaviour, should statutory regulation become necessary.*** (Summary)

Fundraising and the allegations

2. **We have no doubt that most of the charities in the UK do not engage in the practices outlined above. However, the behaviour of some charities has damaged the reputation of the sector as a whole. Smaller charities told us that these practices have a direct effect on the reputation of all charities and make it harder for them to raise money from the public. The good work done by most within the sector can be undermined very easily. This makes it all the more essential that greater care is taken over the governance of fundraising in some charities and its regulation is reformed. Good governance in general is about sustainability of reputation in the long-term as well as of finances.** (Paragraph 24)

The role of trustees: governance

3. ***It is essential for trustees to reflect their values in the way that they conduct the governance of their charities. The Charity Commission supports this view. 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. Charitable ends can never justify uncharitable means. The conduct of sub-contractors should be subject to the same degree of governance. This is as true of fundraising as it is of any of their other activities.*** (Paragraph 29)
4. **Last summer's controversies were evidence of a failure of governance by trustees. The evidence reported here suggests that there is still some reluctance on the part of many trustees to accept that this was not just a failure of process or an excusable oversight, but a failure of trustees to understand that their primary role is governance, which means their overriding responsibility is to sustain the mission and values of their charitable organisation. Managing reputational risk is central to this role, for without good reputation, no organisation can be effective. In this role they failed. Trustees are as responsible for the activities of any sub-contractors, as for any part of a charity's operations. All the chief executives of the charities that gave oral evidence to us admitted that they did not scrutinise fundraising sub-contractors enough. The only possible conclusion is that, by failing in this responsibility, trustees were either negligent, or wilfully blind to what was being done in their names.** (Paragraph 34)
5. **The Etherington review focussed on the regulation of fundraising. The Government is right to promote greater transparency in annual reports about fundraising, however, this is no more than a means to an end. Stronger regulation is no substitute for the required change of attitudes and behaviour from trustees.**

The Fundraising Standards Board is right to say that maintaining public trust in charity fundraising must be the first priority for the industry. Trustees must accept this in full, demonstrate this acceptance in changed attitudes and behaviour, and recognise it is their mission and values which should drive the governance of their charity. (Paragraph 38)

6. **In all the cases we examined, trustees need to take positive action to ensure that they are not blind to their charity's fundraising activity. It is welcome that trustees of these charities are taking such action. It is vital that these changes are effective so that trustees can have confidence in the methods and ethics of fundraising conducted on their behalf, whether by employees, volunteers or by contractors. (Paragraph 40)**
7. **The Charity Commission and the new fundraising regulator should reinforce the fiduciary responsibility of trustees in their guidance. The new regulator, and where necessary, the Charity Commission, should validate and recommend suitable training courses for trustees. The Charity Commission is right to have reviewed its fundraising guidance in the light of the events of the summer 2015, and in that guidance to emphasise the primary responsibility of trustees in respect of fundraising. The future fundraising regulator should publicise its view of good trustee practice once it has been set up. (Paragraph 43)**
8. **The Charity Commission should be commended for pursuing charities who use their funds to finance CAGE, which describes itself as "campaigning against the War on Terror". CAGE is a political organisation, not a charity. The Charity Commission were right to resist CAGE's attempt to bring a judicial review, which CAGE were wise to withdraw. (Paragraph 50)**
9. **The Charity Commission and the Government should consider proposals about how donations from overseas could be made notifiable through the Charity Commission so that the authorities become aware of charities in receipt of funds from potentially harmful sources. The Government might consider employing the same definition of an overseas donation and similar reporting mechanisms as are used in the Political Parties, Elections and Referendums Act 2000 in respect of foreign political donations. (Paragraph 52)**

A new fundraising regulator

10. **We endorse Sir Stuart Etherington's recommendation that the new regulator should be funded by a levy, rather than being a membership organisation. (Paragraph 68)**
11. **There was consensus amongst the witnesses to our inquiry in supporting the Etherington proposals. The Government is right to welcome the Etherington review. This is the last chance for self-regulation. It is essential that the Etherington system is made to work effectively, though it can only work by supporting effective governance by trustees. (Paragraph 69)**
12. **Sir Stuart Etherington is right to propose, in addition to the donor representation envisaged in the review, that there should be a donor representative on the board**

of the new regulator. This representative could be appointed by a consumer representative body such as the Institute of Customer Service. This appointment would demonstrate the independence of the new regulator from the fundraising sector, and would help to guarantee that donor interests remain, as they should, at the heart of its view of regulation. (Paragraph 74)

13. The new regulator should consult the Prime Minister's Champion Group on Dementia Friendly Communities and any other representative groups for vulnerable people to examine how they can update the code. The new regulator should set out best practice in this area and make it clear that trustees are responsible for ensuring their charities apply the code. (Paragraph 77)
14. The new regulator should take urgent steps to create a public profile, without which the new regulator will be unable to raise public trust and confidence in fundraising and the sector as a whole. Even a more proactive regulator will depend on the public bringing cases of malpractice to its attention. (Paragraph 79)
15. Sir Stuart Etherington is right to say that the new regulator should be more proactive in seeking out malpractice and believe approaches like that of the Public Fundraising Regulatory Association could help. A more proactive approach can help to rebuild public trust and confidence in the sector and also in ensuring that the sector does not have to depend on investigative journalists to reveal what is happening. It is reasonable that Sir Stuart Etherington's review omits excepted charities such as Universities. However, the Government has decided they fall under the new regulator's remit. The new regulator should urgently consult with these charities on its approach to regulating them. (Paragraph 83)
16. We are not persuaded of the case for a new fundraising preference service. It would duplicate the function of the existing Telephone Preference Service (TPS), and add limitations to the activity of charities that do not exist for any other sector. If a new preference service is to be introduced, the new fundraising regulator should urgently seek to discuss with the Information Commissioner how the new telephone preference service can work alongside TPS, without creating conflict and confusion in the minds of the public. (Paragraph 86)

The role of the Charity Commission

17. HM Treasury and the Cabinet Office must address the future funding of the Charity Commission so that it can carry out its functions in the way that the Government, charities and the public expect. This is becoming increasingly urgent given the role that is outlined by the Etherington review and the other responsibilities which this report recommends. (Paragraph 95)
18. The new regulator should be held to account in public, but this should be the function of the Charity Commission. Save in the most exceptional circumstances, PACAC has neither the time nor the resources to do this, nor to investigate the workings of individual charities (such as in its forthcoming report into Kids Company). PACAC will of course remain closely interested in the sector, but

the Charity Commission is better placed to fulfil this function. The Charity Commission has the expertise and must have the resources. (Paragraph 100)

19. **The Commission should hold annual hearings on fundraising regulation and other public hearings into the workings of charities. The Government should make any necessary amendments to the Charities (Protection and Social Investment) Bill to enable the Commission to hold public hearings, for example to ensure that witnesses to any inquiry have the requisite legal privilege to give honest responses to any questions from the Commissioners. (Paragraph 101)**
20. **In order to underline the constitutional status of the Commission's board, the Commission should restore the proper title of its board members, so they are all known as the Charity Commissioners. This would both restore their unique status, and underline that the Chair and his fellow commissioners are jointly and severally liable for the conduct of the Charity Commission in England and Wales, just as a Chair and other trustees should understand how they are responsible for a charity they govern. (Paragraph 103)**
21. **The Charity Commission should monitor the metrics proposed by the Etherington Review. The Commission and regulator should additionally monitor the level of public satisfaction with fundraising, expressed in regular polls such as those carried out by the Commission. The National Audit Office, alongside its annual audit of the Commission's annual report and accounts, should report to Parliament on its view of the Commission's oversight of fundraising regulation. (Paragraph 106)**

The role of the Information Commissioner

22. **The Information Commissioner should establish a memorandum of understanding with the new regulator without delay. This should be in place by the end of 2016. This memorandum should enable the two regulators to cooperate in ensuring that the charity sector is aware of its obligations and that any abuses are detected and dealt with in the future. The Commissioner must work with the new regulator to ensure that any new data regulations are swiftly incorporated into the code of fundraising. (Paragraph 119)**
23. **The Government has offered no substantive explanation for failing to commence section 77 of the 2008 Criminal Justice and Immigration Act. Despite offering a consultation in June 2013, we are unaware of any further progress. This ignores recommendations by the Home Affairs Committee, the Justice Committee, the Joint Committee on the Draft Data Communications Bill and Lord Justice Leveson. It also ignores the recommendations of both the current and former Information Commissioners. The Government should immediately implement this, allowing the Information Commissioner to enforce the law, or give a substantive reason why they will not. (Paragraph 123)**
24. **It is a failing of the Information Commissioner in the past that his office was not more proactive in the past in respect of charities' misuse of data. The Commissioner is right now to be more proactive. This comes too late for many**

of the people affected by the bad practice exposed in the summer of 2015. (Paragraph 125)

The role of the Cabinet Office

25. **We have received representations that the new regulations may burden charities who have limited fundraising activities but still breach the income threshold. The Cabinet Office should be mindful of the additional burden the Charities (Social Investment and Protection) Bill's reporting requirements place upon charities with limited fundraising activities. (Paragraph 130)**
26. **It is preferable that the Charity Commission should be guarantor of the new regulatory system and therefore responsible for holding the new regulator to account for their regulation of fundraising, rather than the Government resorting to its statutory powers. The Charity (Social Investment and Protection) Bill should be amended to give the Charity Commission the authority to carry out this responsibility. The Charity Commission should report to the Cabinet Office on an annual basis its view of the effectiveness of regulation and whether the reserve powers are needed. The Government should not be deterred from using its reserve powers if necessary, as the reputation of the sector depends upon the proper governance of charities and their fundraising. However, it would be a sad and inexcusable failure of charities to govern their own behaviour should statutory regulation become necessary. (Paragraph 133)**

Formal Minutes

Thursday 14 January 2016

Members present:

Bernard Jenkin, in the Chair

Ronnie Cowan

Kelvin Hopkins

Mr Paul Flynn

Mr David Jones

Mrs Cheryl Gillan

Draft Report (*The 2015 charity fundraising controversy: lessons for trustees, the Charity Commission, and regulators*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 133 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 19 January at 9.15 am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's [inquiry page](#).

Tuesday 8 September 2015

Question number

Mark Goldring, Chief Executive, Oxfam, **Peter Wanless**, Chief Executive, National Society for the Prevention of Cruelty to Children, **Justin Forsyth**, Chief Executive, Save the Children, and **David Canavan**, Acting Chief Executive, Royal Society for the Prevention of Cruelty to Animals

[Q1–67](#)

Alistair McLean, Chief Executive, **Professor Andrew Hind**, Chair, Fundraising Standards Board, **Paul Stallard**, Chair, **Peter Hill-Jones**, Chief Executive, Fundraising Regulatory Association, **Peter Lewis**, Chief Executive, and **Richard Taylor**, Chair, Institute of Fundraising

[Q68–101](#)

Tuesday 20 October 2015

Katherine Faulkner, Investigations Editor, The Daily Mail (In private)

[Q102–173](#)

Christopher Graham, Information Commissioner, and **Steve Eckersley**, Head of Enforcement, Information Commissioner's Office

[Q174–254](#)

Karen Brown, Chair, Oxfam, **Daphne Harris**, Chair, RSPCA, and **Mark Wood**, Chair, NSPCC

[Q255–309](#)

Tuesday 3 November 2015

Sir Stuart Etherington, Chief Executive, NCVO, and Chair, Review of Fundraising Self-Regulation

[Q310–366](#)

Rob Wilson MP, Minister for Civil Society, **William Shawcross**, Chairman, Charity Commission, and **Michelle Russell**, Director of Investigations, Monitoring and Enforcement, Charity Commission

[Q367–516](#)

Published written evidence

The following written evidence was received and can be viewed on the Committee's [inquiry page](#).

- 1 Action for Children, Alzheimer's Society, Barnardo's, the British Heart Foundation, the Guide Dogs for the Blind Association and the Royal British Legion (FCS0041)
- 2 Alzheimer's Society ([FCS0020](#))
- 3 Association of Payroll Giving Organisations (APGO) ([FCS0010](#))
- 4 Battersea Dogs & Cats Home ([FCS0018](#))
- 5 British Red Cross ([FCS0013](#))
- 6 Cancer Research UK ([FCS0019](#))
- 7 Direct Marketing Association ([FCS0017](#))
- 8 Fundraising Standards Board ([FCS0025](#)); ([FCS0032](#))
- 9 Hospice UK ([FCS0021](#))
- 10 Information Commissioner ([FCS0051](#)); ([FCS0016](#))
- 11 Institute of Fundraising ([FCS0022](#))
- 12 Institute of Fundraising & the Public Fundraising Association ([FCS0030](#))
- 13 Jim Brown ([FCS0048](#))
- 14 Keith Adams ([FCS0037](#))
- 15 Lepra ([FCS0007](#))
- 16 Mail on Sunday ([FCS0049](#))
- 17 Market Research Society ([FCS0011](#))
- 18 More Partnership ([FCS0036](#))
- 19 New Philanthropy Capital ([FCS0027](#))
- 20 NSPCC ([FCS0038](#)); ([FCS0050](#));
- 21 Oxfam GB ([FCS0033](#)); ([FCS0034](#)); ([FCS0015](#))
- 22 Public Fundraising Regulatory Association ([FCS0023](#))
- 23 RSPCA ([FCS0006](#)); ([FCS0043](#)); ([FCS0044](#))
- 24 Russell Group ([FCS0047](#))
- 25 Save the Children UK ([FCS0024](#)); ([FCS0031](#)); ([FCS0045](#)); ([FCS0046](#)); ([FCS0042](#))
- 26 The Guide Dogs for the Blind Association ([FCS0009](#))
- 27 UnLtd: The Foundation for Social Entrepreneurs ([FCS0004](#))
- 28 Which? ([FCS0026](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee's website at www.parliament.uk/pacac.

Session 2015–16

First Report	Follow-up to PHSO Report: Dying without dignity	HC 432
Second Report	Appointment of the UK's delegation to the Parliamentary Assembly of the Council of Europe	HC 658
First Special Report	Developing Civil Service Skills: a unified approach: Government Response to the Public Administration Select Committee's Fourth Report of Session 2014–15	HC 526
Second Special Report	Lessons for Civil Service impartiality for the Scottish independence referendum: Government Response to the Public Administration Select Committee's Fifth Report of Session 2014–15	HC 725

