



House of Commons  
Public Administration  
and Constitutional Affairs  
Committee

---

**The 2015 charity  
fundraising  
controversy: lessons  
for trustees, the  
Charity Commission,  
and regulators:  
Government response  
to the Committee's  
Third Report of  
Session 2015–16**

---

**Sixth Special Report of  
Session 2015–16**

*Ordered by the House of Commons to be printed  
19 April 2016*

## The Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

### Current membership

[Mr Bernard Jenkin MP](#) (*Conservative, Harwich and North Essex*) (Chair)

[Ronnie Cowan MP](#) (*Scottish National Party, Inverclyde*)

[Oliver Dowden MP](#) (*Conservative, Hertsmere*)

[Paul Flynn MP](#) (*Labour, Newport West*)

[Rt Hon Cheryl Gillan MP](#) (*Conservative, Chesham and Amersham*)

[Kate Hoey MP](#) (*Labour, Vauxhall*)

[Kelvin Hopkins MP](#) (*Labour, Luton North*)

[Rt Hon David Jones MP](#) (*Conservative, Clwyd West*)

[Gerald Jones MP](#) (*Labour, Merthyr Tydfil and Rhymney*)

[Tom Tugendhat MP](#) (*Conservative, Tonbridge and Malling*)

[Mr Andrew Turner MP](#) (*Conservative, Isle of Wight*)

### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/pacac](http://www.parliament.uk/pacac) and in print by Order of the House.

### Committee staff

The current staff of the Committee are: Dr Rebecca Davies (Clerk), Ms Rhiannon Hollis (Clerk), James Harrison (Second Clerk), Dr Adam Evans (Committee Specialist), Dr Henry Midgley (Committee Specialist), Ms Penny McLean (Committee Specialist), Rebecca Usden (Committee Specialist), Ana Ferreira (Senior Committee Assistant), Iwona Hankin (Committee Assistant), and Mr Alex Paterson (Media Officer).

### Contacts

All correspondence should be addressed to the Clerk of the Public Administration and Constitutional Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 3268, the Committee's email address is [pacac@parliament.uk](mailto:pacac@parliament.uk).

## Sixth Special Report

---

The Public Administration and Constitutional Affairs Committee published its Third Report of Session 2015–16, *The 2015 charity fundraising controversy: lessons for trustees, the Charity Commission, and regulators*, as HC 431 on 25 January 2016.

The Government's response was received on 13 April 2016 and is appended to this report.

## Appendix: Government Response

---

### 1. General allegations

**These relate in particular to charities' work with third party fundraisers:**

- (a) The Telephone Preference Service (TPS) was systematically ignored or consent claimed where there was none. Some charities make it difficult or impossible for donors to opt out of consenting to further communication from them or other charities.
- (b) Selling of data, including to scamming companies.
- (c) Obtaining donations from vulnerable people by means of undue pressure or insufficient safeguards. Some charities were specifically targeting vulnerable people because they were understood to be 'fair game' and easy targets.
- (d) Some charities were harvesting data through awareness campaigns only to then approach people with a fundraising ask. They did not have sufficient consent to do so.

### **PACAC verdict:**

"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."

*The Government agrees with the Committee's overall conclusion that, while the vast majority of charities are well run and supported by dedicated, selfless people who wish to change society for the better, some large organisations have damaged the reputation of the sector through irresponsible and immoral practices. This has had a negative impact on the ability of even small charities to fundraise and do good.*

*Government has supported the establishment of a tougher self-regulatory environment but charities have a key role to play in putting their own house in order. This requires proactive support of, and compliance with, the new regulator and a genuine culture change where an organisation's charitable ethos runs through all activities. This is key to improving trust and confidence in charities which will safeguard their sustainability in the long term.*

## 2. The role of trustees (governance)

- (a) It is essential for trustees to reflect their values in the way that they conduct the governance of their charities and in the way the charity operates at all levels. The conduct of sub-contractors should be subject to the same degree of governance.

*The Government agrees with the Committee's conclusion and calls for better trustee oversight of the conduct of sub-contractors, as outlined in the Etherington Review. In July 2015 the Government amended the Charities (Protection and Social Investment) Bill to require contracts between charities and sub-contractors to set out conduct they expect from third party fundraisers, including how they will protect the vulnerable and how this behaviour will be monitored.*

- (b) There is still some reluctance on the part of many trustees to accept that last summer's controversies was not just a failure of process or an excusable oversight, but a failure of trustees to understand that their primary role is governance.

*We welcome the Committee's call for trustees to understand their responsibilities. The Charity Commission is already doing vital work in this area through its 'essential trustee' guidance, and its updated guidance for trustees on fundraising, something we encourage all charity trustees to pay close attention to.*

- (c) 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. Trustees must accept this in full and demonstrate a change in attitudes and behaviour.

*Government's measures in relation to greater transparency are aimed at encouraging better attitudes and behaviours in the long term. We agree with the Committee's assessment that regulation alone cannot bring this about.*

- (d) Trustees need to take positive action to ensure that they are not blind to their charity's fundraising activity. 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.

*It is for the trustees of each charity to implement this recommendation but we agree with the principle.*

- (e) The Charity Commission and the new fundraising regulator should reinforce the fiduciary responsibility of trustees in their guidance. The future fundraising regulator should publicise its view of good trustee practice once it has been set up.

*It is for the Charity Commission and the Fundraising Regulator to respond to this recommendation. However, we agree that it is of vital importance for both to show leadership in this area.*

### 3. The new regulator

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

*Government has accepted the recommendations of Etherington review in full and therefore welcomes this endorsement. However, the decision will be for the Fundraising Regulator headed by Interim Chair, Lord Grade.*

- (b) 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.

*We agree with this conclusion. Government has been clear that this is the last chance for charities to put their own house in order. Should they fail to meet the expectations of the public, Government will be forced to intervene and mandate statutory regulation.*

- (c) There should be a donor representative on the board of the new regulator. 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.

*This is for the new Fundraising Regulator to decide. However, we agree that the donor perspective should play an important part in the regulation of fundraising.*

- (d) 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.

*This recommendation is for the new Fundraising Regulator. Government agrees that effective protection of vulnerable people will be key in any new guidance on fundraising practices. Consulting with relevant groups is a sensible approach.*

- (e) The new regulator should take urgent steps to create a public profile. Even a more proactive regulator will depend on the public bringing cases of malpractice to its attention.

*It is for the Fundraising Regulator to implement this recommendation.*

- (f) The new regulator should be more proactive in seeking out malpractice. 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.

*This recommendation is for the new Fundraising Regulator. It is in line with the Etherington report, which Government fully supports.*

- (g) 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.

*This recommendation is for the new Fundraising Regulator. Decisions on the scope of fundraising regulation will be for the new Fundraising Regulator. However Government's position is in line with the recommendations of the Etherington review in this respect and does not go beyond it.*

- (h) We are not persuaded of the case for a new fundraising telephone 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.

*The Government supports the Fundraising Preference Service (FPS) which will give people who feel inundated by fundraising requests a simple way to opt out of everything. It may also give more nuanced options to remain opted in contact with those charities a person genuinely supports. The details of this are currently being worked out by a sector-led working group. The FPS will cut across all direct channels, including telephone, text message and mail and will therefore not simply duplicate existing services. It will also address the issue that other services, such as the Telephone Preference Service (TPS) and Mail Preference Service (MPS), were often ignored in the past and are not an effective way of removing consent across a number of fundraising channels. Finally, while such limitations may not exist for other sectors, the need arises because people involuntarily find themselves subscribed to multiple lists following ongoing poor practice such as data sharing and selling without consent.*

#### **4. The role of the Charity Commission**

HM Treasury and the Cabinet Office must address the future funding of the Charity Commission, especially given the role that is outlined by the Etherington review and the other responsibilities which this report recommends.

*The 2015 Spending Review maintained the Charity Commission's annual budget at £20.3m per year until 2020. The Government also invested £8m over the financial years 2014/15, 2015/16 and 2016/17 for a transformation programme to enable the Commission to become a more effective and efficient regulator. The Charity Commission will shortly consult on options for its future funding.*

- (a) The new regulator should be held to account in public by the Charity Commission, not PACAC. The latter will of course remain closely interested in the sector, but the Charity Commission is better placed to fulfil this function.

*Government explained during the passage of the Charities (Protection and Social Investment) Act 2016 that it does not currently support giving the Charity Commission oversight of self-regulation since this in itself would represent quasi-statutory regulation. What is more, the Charity Commission itself has said that it currently has neither the necessary resources nor expertise to properly fulfil this function. Reserve powers in section 14 of the Charities (Protection and Social Investment) Act 2016 would enable the Government to make the Charity Commission responsible for fundraising regulation, should the new system of self-regulation fail.*

- (b) 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.

*Government explained during the passage of the Charities (Protection and Social Investment) Act 2016 that the Charity Commission already has the power to hold hearings. However, it does not usually do so because it would not be an effective means of undertaking its casework. Government did therefore not pursue these changes to the bill.*

- (c) 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.

*The Commission's board has already played a leading role in the transformation process which has helped accelerate progress towards the Commission becoming a tougher and more effective regulator. The Government has no objection to Commission Board members being referred to as "Commissioners" if the Commission decides to do so, but we do not see a need to change the legislative underpinning of the Commission's governance arrangements.*

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.

*As already summarised under point 4b, Government does not support giving the Charity Commission an oversight role of the Fundraising Regulator and therefore does not support this recommendation.*

## **5. The role of the ICO**

- (a) The Information Commissioner should establish a memorandum of understanding with the new regulator without delay to allow both 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.

*This recommendation is for the Information Commissioner and Fundraising Regulator. We understand that this work is in progress.*

- (b) 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.

*The Government keeps the sanctions available for breaches of the Data Protection Act (DPA) periodically under review. We plan to use the forthcoming General Data Protection Regulation (GDPR) as an opportunity to stress test the existing sanctions available in relation to the misuse of personal data to ensure they are fit for purpose for the digital age. In particular, we will review current penalties for data protection breaches and aim for sanctions that act as effective deterrents against the misuse of personal data in all context.*

- (c) 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 recommendation is for the Information Commissioner.*

## **6. The role of the Cabinet Office**

- (a) 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.

*The Government accepts this recommendation. The new regulations must operate proportionately in relation to the nature and amount of fundraising undertaken. Where no or very little public fundraising is undertaken, then a simple declaration of this should suffice. We will ensure that this is reflected in the relevant guidance.*

- (b) 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.

*As outlined under point 4b, Government did not accept this recommendation since it would in practice amount to a form of statutory regulation. Instead we have given charities one last chance to make self-regulation work. Section 14 of the Charities (Protection and Social Investment) Act 2015 does provide the Minister for the Cabinet Office with the powers to intervene with statutory regulation should it become necessary.*

- (c) 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.

*Government notes this conclusion.*