

# Consultation on the future of charity fundraising regulation in Scotland

Gathering the views of Scottish charities, and charities raising funds in Scotland, on the options for fundraising regulation

## EXECUTIVE SUMMARY

The Scottish Fundraising Working Group, convened by SCVO, has developed three options for a new charity fundraising regulatory system in Scotland.

We are seeking your views as to which is the best direction to take. The preferred option will be refined further before a consultation is held with the Scottish public in the spring of 2016.

You can respond to the consultation until 31 March 2016 by:  
completing our online survey at

[https://www.surveymonkey.co.uk/r/SCVO\\_Fundraising\\_Consultation](https://www.surveymonkey.co.uk/r/SCVO_Fundraising_Consultation)

- sending a written response to: **research@scvo.org.uk**

If you have any queries, please contact [research@scvo.org.uk](mailto:research@scvo.org.uk) and a member of our team will respond as soon as possible.

## 1. Background and context

The summer of 2015 saw an unprecedented focus on the fundraising techniques used by some charities. In response, two reviews of fundraising regulation were performed. The first, whilst it talked in terms of a UK-wide system, covered only England and Wales and was conducted by NCVO (the [Etherington Review](#)). The second, which [covered Scotland](#), was conducted by SCVO.

The loss of faith in the current self-regulatory system, and the decision to dismantle it as a result of the Etherington Review, meant a new regulatory system would be needed in Scotland. The Scottish third sector discussed the future of fundraising self-regulation at a summit organised by SCVO in November 2015. The [key messages](#) from the summit were:

- The development of the new system of fundraising self-regulation must be owned and led by the charitable sector.
- Developing the new system must be an inclusive process that is representative and produces the best solution for the charitable sector as a whole.
- We have to develop a system that suits the diverse nature of the charitable sector in Scotland.
- Charities can improve how they communicate positive messages to the public and donors about their work and what is necessary to achieve it.

A Scottish Fundraising Working Group was established by SCVO in December 2015 and tasked with:

- Producing an options appraisal for the three main approaches to self-regulation (the UK regulatory approach, a Scottish-specific approach, or a hybrid) which could be used as an engagement tool by the sector.
- Producing an engagement plan for involving the sector and gathering views.
- Developing a final decision making process that is transparent and has legitimacy.

## 2. Vision and principles

The Working Group's vision is a fundraising regulatory system in Scotland that:

- Commands confidence in charity fundraising
- Inspires public trust
- Promotes good fundraising

### **Question 1: Do you have any comments on the Working Group's vision?**

The regulatory options outlined in this consultation have been designed to be:

- Clear and accessible
- Streamlined
- Connected to the existing regulatory model (OSCR, Information Commissioner, Gambling Commission, etc.)

### **Question 2: Do you have any comments on the principles adopted by the Working Group?**

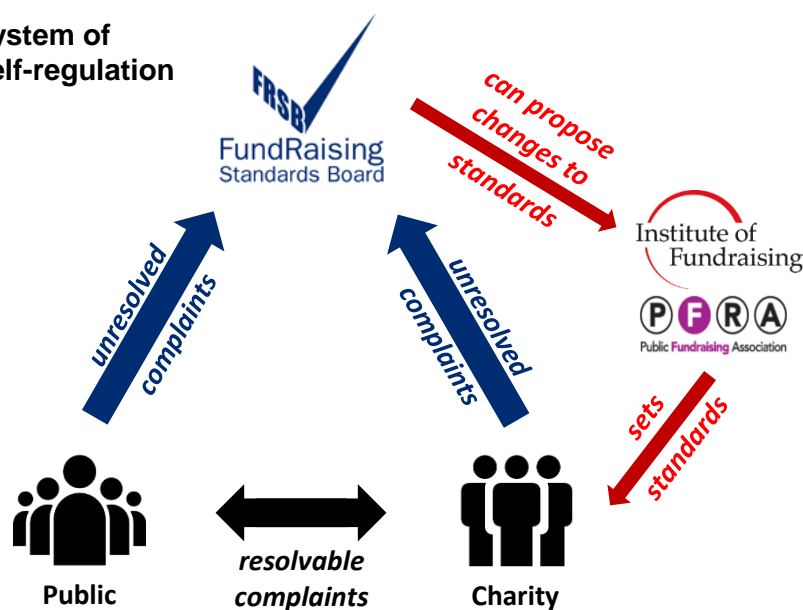
### 3. The current self-regulation system for fundraising in Scotland

The Institute of Fundraising (IoF) sets professional standards for all methods of fundraising in the UK. The Public Fundraising Association (PFRA) develops standards specifically for those requesting donations or direct-debit sign up on the street or door to door. Individual and charity members of both organisations must agree to uphold these standards.

Charities can also choose to be a member of the UK-wide fundraising regulator, the Fundraising Standards Board (FRSB). Members agree to uphold the FRSB’s Fundraising Promise. A complaint against a FRSB member will be referred to the FRSB if it cannot be resolved by the charity concerned. Their actions will be reviewed against the standards set by the IoF or PFRA. The FRSB also collects general data on complaints received by member charities.

A degree of statutory regulation operates alongside this self-regulatory system. Charity law is devolved to Scotland and the Scottish Charity Regulator (OSCR) is the independent regulator and registrar for Scotland’s charities. OSCR has a high-level role in relation to fundraising and its relationship to charity governance. It also regulates certain aspects of fundraising, such as street collections, for example. Other statutory regulators, such as the Information Commissioner (ICO) and the Gambling Commission, also cover methods used in fundraising.

#### The current system of fundraising self-regulation



### 4. Options for a new regulatory system

The Scottish Fundraising Working Group, convened by SCVO, has devised three options for a new regulatory system in Scotland. The options will be refined further, using the responses to this consultation, before an engagement programme with the public in the spring.

Regardless of the option chosen, it is vital that charity trustees play a stronger role in the governance of fundraising. Working with senior staff, they have the power and oversight to ensure their charity does not engage in fundraising practices their donors, or the wider public, do not support.

## **Option 1: A UK-wide Fundraising Regulator acts as intermediary in place of the FRSB**

The Etherington Review's recommendation that the FRSB should be replaced by a new Fundraising Regulator has been accepted by the UK Government and fundraising bodies. This body will cover only England and Wales unless a decision is made in Scotland to join this approach.

The Fundraising Regulator will take ownership of the fundraising standards currently held by the IoF and PFRA, who will merge. The Fundraising Regulator will continue to hear complaints that charities are unable to resolve, but will also proactively investigate poor practice.

Like the FRSB, charities can choose to be regulated by the Fundraising Regulator. However, there is an expectation that all charities spending over £100,000 per year on fundraising will opt to do so and pay an, as yet undefined, levy. The UK Government has stated that it will legally require charities of this size to be regulated by the Fundraising Regulator if they do not voluntarily choose to do so.

Whilst this the Fundraising Regulator does not automatically cover the UK, it could be asked to do so. A Scottish office of such a UK-wide Fundraising regulator could also be established.

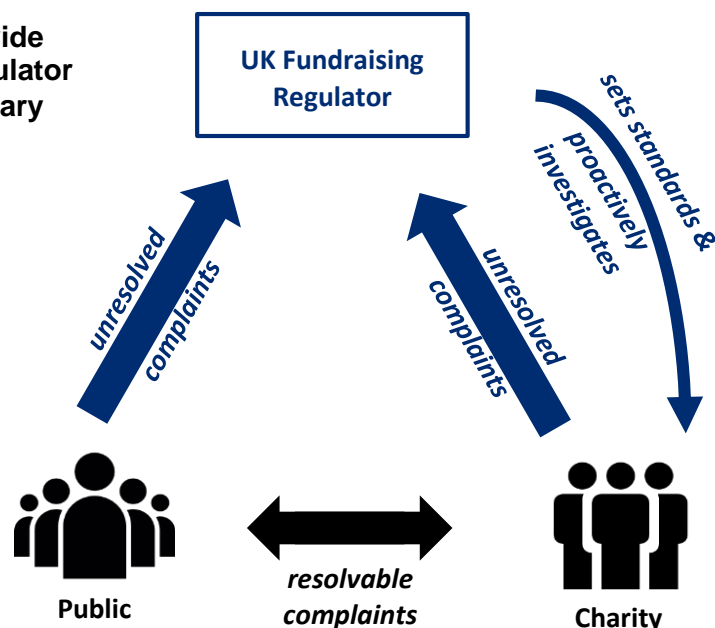
The benefits of this option are that:

1. It would deliver a single, UK-wide, fundraising regulatory system, which offers simplicity and consistency for the public, wherever they live.
2. It would support a single set of standards for fundraisers and charities across the UK.
3. Charities operating across the UK would have a single regulatory regime with which to comply, helping ensure they are focussed on the system's requirements.
4. It is a low-cost option for large UK-wide charities who will be expected to pay a levy to be regulated by the Fundraising Regulator.

The potential issues with this option include:

1. The system may not look sufficiently different from the current system to inspire public trust.
2. Only charities spending more than £100,000 a year on fundraising will be expected to be regulated by the Fundraising Regulator; charities beneath this threshold can choose to do so.
3. It is a 'one size fits all' approach to regulation; donors and charities fundraising in Scotland may wish to see a different approach to that adopted in England/Wales. The Fundraising Regulator would also need to be sensitive to the differing legislative and policy frameworks of England/Wales and Scotland. The influence that will be exerted by a single Scottish representative on the Fundraising Regulator's board (as is currently proposed) is as yet unclear.
4. The UK Government's requirement that large charities opt to be regulated by the Fundraising Regulator could be seen as the precursor to greater statutory regulation by them in the future.

### Option 1: A UK-wide Fundraising Regulator acts as intermediary



**Question 3: Do you have any comments regards the benefits of a UK-wide fundraising regulator?**

**Question 4: Do you have any comments regards the potential issues involved in having a UK-wide fundraising regulator?**

### Option 2: A new Scottish Fundraising Regulator acts as intermediary

Option 2 involves a Scottish Fundraising Regulator taking the place of the FRSB / Fundraising Regulator. It could either be an entirely new body, or it could be located within an existing organisation. A decision would be required as to the size of fundraising charities it covered; those fundraising solely in Scotland are generally smaller than those operating across the UK.

In this option, the fundraising standards could be held by the Scottish Fundraising Regulator (as is the case with the Fundraising Regulator). Alternatively, they could be held by a publicly accountable Scottish Standards Committee managed at arms-length by the merged IoF/PFRA or a new Scottish fundraising body, if such an entity is formed.

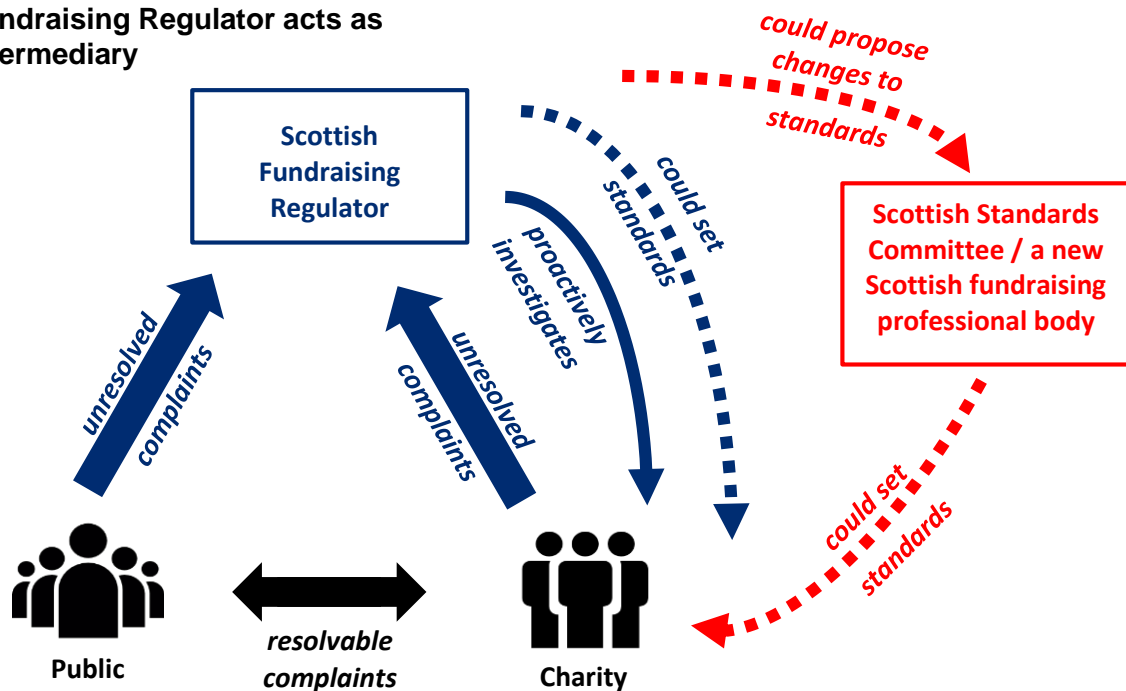
The benefits of this option include:

1. There would be a single, dedicated, body with a clear purpose addressing fundraising regulation in Scotland.
2. It would be designed around the needs of the Scottish public and charities fundraising in Scotland.
3. Public recognition would be assisted by a structure that mirrored that in England, particularly if the Scottish Fundraising Regulator set fundraising standards.
4. Fundraising complaints would be heard in Scotland, which will be familiar to a Scottish public used to institutions such as OSCR, the Scottish Parliament, etc.

Potential issues with this option include:

1. The confusion for the public due to the existence of two Fundraising Regulators with different remits.
2. The cost and inefficiency of having two similar bodies, and whether there is sufficient work for a solely Scottish Fundraising Regulator to justify this.
3. The potential for it being seen as a Scottish solution for the sake of it being Scottish.
4. It involves the most significant change, particularly for UK-wide charities.

### Option 2: A new Scottish Fundraising Regulator acts as intermediary



**Question 5: Do you have any comments regards the benefits of a Scottish Fundraising Regulator?**

**Question 6: Do you have any comments regards the potential issues involved in having a Scottish Fundraising Regulator?**

### Option 3: No intermediary: charities and OSCR have an enhanced role

In Option 3 no single regulatory body replaces the FRSB in Scotland. Instead, a greater responsibility is placed on fundraising charities to self-regulate, whilst OSCR has an enhanced, ombudsman-style, role. A publicly accountable Scottish Standards Committee, or new Scottish fundraising professional body, would set fundraising standards.

This regulatory system would apply to all fundraising charities. They would be expected to adopt a comprehensive complaints process that addresses fundraising complaints effectively and ensures trustees are aware of any public discontent.

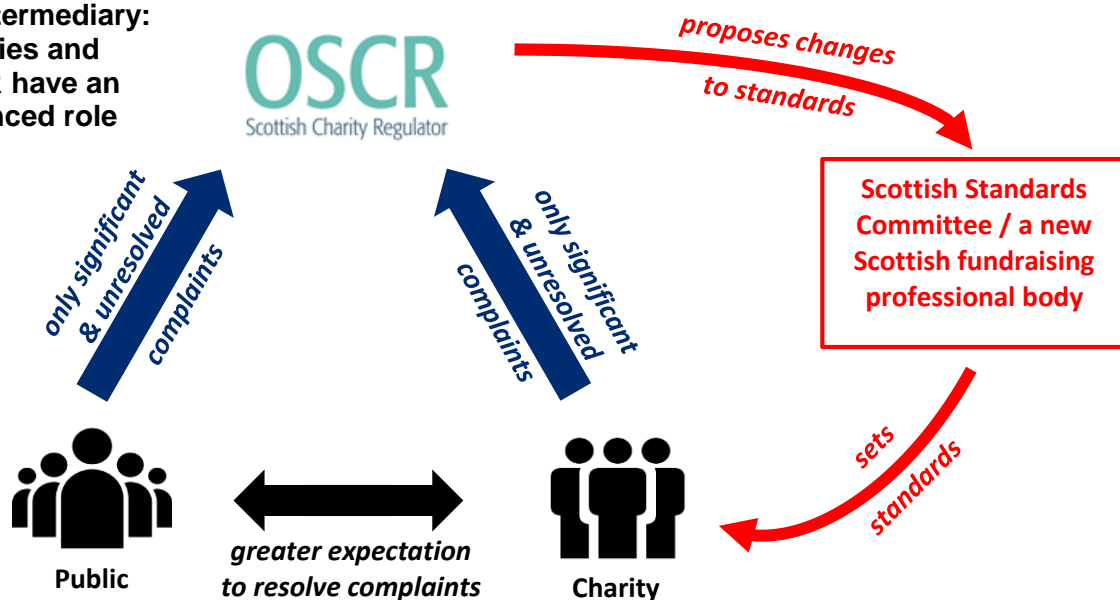
The benefits of this option include:

1. The primary focus would be on self-regulation by charities themselves, in line with the recommendation of the SCVO review of fundraising regulation.
2. Fundraising standards would be aligned solely to the requirements of charities fundraising in Scotland, and Scottish legislation.
3. The public would see a simpler system, where the most serious Scottish complaints go to OSCR, an organisation based in Scotland with good public awareness.
4. Charities fundraising in Scotland already have an ongoing relationship with OSCR which would simply be enhanced.

Potential issues with this option include:

1. The absence of a single regulatory body in Scotland may be seen as Scottish charities opting-out of fundraising regulation, and could confuse the public.
2. Charities operating across the UK would need to comply with two very different regulatory systems which could enforce different fundraising standards.
3. The fundraising standards will not be held within an organisation with high public awareness.
4. OSCR's enhanced role could be seen as signifying statutory regulation, or being the precursor to this in the future.

**Option 3:  
No intermediary:  
charities and  
OSCR have an  
enhanced role**



**Question 7: Do you have any comments regards the benefits of a system involving enhanced roles for charities raising money in Scotland and OSCR?**

**Question 8: Do you have any comments regards the potential issues involved in a system involving enhanced roles for charities raising money in Scotland and OSCR?**

## 5. Summary of options and Scottish Fundraising Working Group recommendation

The three options being consulted upon can be summarised as:

**Option 1** – UK Fundraising Regulator as intermediary

**Option 2** – Scottish Fundraising Regulator as intermediary

**Option 3** – No intermediary: charities take ownership i.e. self-regulation and OSCR has a potentially enhanced role

The Scottish Fundraising Working Group has concluded that Option 3 is best aligned with the recommendations of the SCVO review, the key messages from the Fundraising Summit and the vision and principles adopted by the Group.

Specifically:

- it applies universally to all charities fundraising in Scotland, rather than those over a particular spending threshold or who choose to be members.
- It combines the continuation of self-regulation by fundraising charities themselves with a stronger backstop of the statutory regulator, OSCR.
- The fundraising standards will be designed with the needs of the Scottish public and charities raising money in Scotland in mind, by a body involving fundraising professionals, charity representatives and representatives of the public.

**Question 9: On the basis of the information currently available, which option do you think is the best direction for fundraising regulation in Scotland?**

## 6. The Fundraising Preference Service

The Etherington Review recommended that a Fundraising Preference Service be established and maintained by the Fundraising Regulator. It was envisaged that this would provide the public with a 'reset button' for all fundraising communications, preventing them being contacted against their wishes by fundraising charities.

There are complex issues to be addressed before this idea can become a reality. These include the effect on small versus large charities and whether people can retain contact with their chosen charities whilst blocking others. There are technical challenges too, for example, how fundraising communications are differentiated from other general charity communications, and how the system will work across telephone, email, text and conventional mailings.

Details of how the Fundraising Preference Service will work in practice are not likely to be released until March. The Fundraising Preference Service will, however, be an element of the English/Welsh fundraising regulatory system. As a result, Option 1, as outlined in this consultation paper, includes the Fundraising Preference Service.

Whether the Fundraising Preference Service would be adopted in Scotland for Options 2 or 3 is a matter for Scotland's third sector and public to decide. It is not possible, however, for a decision to be made on this until detailed proposals for how it will operate are released.



The Fundraising Preference Service is being developed by a committee reporting to the English/Welsh Fundraising Regulator. We will pass a report of the Scottish third sector's view on the Fundraising Preference Service to them.

**Question 10: Do you support the introduction of:**

- **A Fundraising Preference Service?**
- **A single 'reset button' for donors to stop contact from charities?**
- **A more graduated system, where certain contact could be stopped by donors?**
- **An opt-in register, where donors must first choose to be contacted by charities?**

## **7. Next steps**

This consultation runs until 31 March 2016.

The Scottish Fundraising Working Group will review the responses from both the third sector consultation, and a public engagement processes that will follow the sector consultation. They will then pass their recommendations to the SCVO Board of Trustees for consideration.

The agreed recommendations for a new fundraising regulatory system for Scotland will be presented to key stakeholders for endorsement in late spring 2016.

More detail on the decision making process can be found in section 8 of the full consultation document.