

# Consultation on ICO Draft Direct Marketing Code of Practice Response from the Scottish Charity Regulator

## 1. Background

### 1.1 The Scottish Charity Regulator

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Office forming part of the Scottish Administration. We are independent of Scottish Government and report directly to the Scottish Parliament every year.

We are the independent regulator and registrar for over 24,500 Scottish charities including community groups, religious charities, schools, universities, grant-giving charities and major care providers. Our work as Regulator ultimately supports public trust and confidence in charities.

## 2. Consultation response

Our response focuses on the areas in the draft Code of Practice that are relevant to charities and fundraising in Scotland.

### 2.1 Scottish Charity Sector

It is important to understand the draft Code of Practice in the context of the charity sector in Scotland. There are currently 24,824 charities on the Scottish Charities Register, 53% have an annual income of less than £25,000, and only 6% have an annual income of more than £500,000<sup>1</sup>. In 2016 68% of Scottish Charities had no paid staff.

Therefore the draft Direct Marketing Code of Practice needs to be viewed in the context of a sector comprised mainly of small organisations with limited resources.

### 2.2 Charities and Fundraising

We welcome the ICO's approach to the draft Code of Practice deliberately underlining that the Code applies to charities and third sector organisations fundraising or promoting their aims and ideals.

The draft Code highlights specific information where it is relevant to a particular type of organisation (charity) or activity (fundraising) through the clear use of headings and examples. The draft Code also includes nine specific examples that help illustrate the point being made, explaining how the Code applies to charities and /or fundraising in particular situations and what procedures should be followed, which are helpful.

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<sup>1</sup> [Figures taken from OSCR Annual Review 2018-19](#)

## Consultation Response

However, we are concerned that many small charities are likely to find a document of the length and complexity of the Code of Practice challenging to engage with. We therefore suggest that it would be helpful if the ICO could extract the information most relevant from the finalised Code and produce a shorter piece of guidance targeted at small charities. We would be happy to help and support this by providing feedback and through promotion across our networks.

### **2.3 Scottish Fundraising Standards Panel**

Charity fundraising in the UK is governed on a self-regulatory basis. This means that the charity sector itself sets the standards for charity fundraising, with some laws underpinning the self-regulation.

There was a UK review of fundraising self-regulation in 2015 which led to the establishment of the Fundraising Regulator for England, Wales and Northern Ireland. In Scotland, the review was followed up by the Scottish Fundraising Working Group and in 2016 it recommended that fundraising in Scotland should continue to be self-regulating: and that the [Scottish Fundraising Standards Panel](#) (the Panel) be established. The Panel oversees the self-regulation of fundraising in Scotland and is responsible for handling fundraising complaints related to Scottish registered charities.

### **2.4 Fundraising Preference Service**

We note that the draft Code refers to the Fundraising Preference Service (FPS). As currently drafted the Code does not make clear that Scottish charities are not included in the FPS. The varying positions between the nations of the UK regarding fundraising should be clarified within the Code. More information on the differences in fundraising regulation between Scotland and the rest of the UK can be found on our website at <https://www.oscr.org.uk/managing-a-charity/fundraising/>.

## **3. Conclusion**

OSCR has welcomed the opportunity to respond to this consultation and looks forward to the publication of the Direct Marketing Code of Practice. We are happy to assist the ICO in any further work targeted at helping charities understand their legal obligations regarding direct marketing and data protection more widely.

We are content for the information provided to be released in full, including contact details. Should you wish to discuss any aspect of the response please contact:

Wendy Marsden  
Policy Officer  
[wendy.marsden@oscr.org.uk](mailto:wendy.marsden@oscr.org.uk)