



An Rialálaí  
Carthanas

Charities  
Regulator

# Report of Consultative Panel on Charitable Fundraising

June 2017



In February 2016, the Charities Regulatory Authority (“the Charities Regulator”) established a Consultative Panel on Charitable Fundraising (the “Panel”) at the request of the Tánaiste and then Minister for Justice and Equality, Frances Fitzgerald (the “Minister”).

The Panel was established to consider:

1. The commencement of Sections 93 to 96 inclusive of the Charities Act 2009 (the “2009 Act”);
2. The Minister’s power to make Regulations to govern charitable fundraising pursuant to Section 97 of the 2009 Act;
3. Other options for regulation of charitable fundraising such as a code of practice, having regard to resources, take up, monitoring and enforcement; and
4. The role of the Regulator in the regulation of charitable fundraising.

This report sets out the Panel’s observations and proposals on these mandates.

# Chairperson's Foreword

**Charities in Ireland have a long and honourable history, supporting a vast array of charitable causes both here and throughout the world.**

Charities frequently fill gaps which central government cannot or does not and they also play a crucial role in enabling positive change to happen in society. The importance of fundraising by charities cannot therefore be overstated: it fulfils the function of providing much-needed funds and it is the meeting point between the public and the charity concerned. It is crucial that there is trust in the fundraising process as the public becomes attentive, in a positive way, to the funding needs and outlook of the charity it is asked to support. Charities are entitled to seek the support of the public in their worthy endeavours; it is how the “ask” is approached and undertaken which concerns us here.

The character and scale of fundraising activities by charities has developed beyond recognition in the last 30 years, particularly since online fundraising and direct debit pledges have become popular. Ireland has a large number of very small charities (perhaps with one employee) and a small group of large charities, dependent on full-time fundraising divisions and expected to raise several million euro annually. This dependence became even more significant during the recent economic recession, when State funding was severely cut. This Panel's work is timely and appropriate given the reliance of charities on the large sums raised annually from the public and the need to ensure that this momentum continues.

The Panel believes that regulation of fundraising by charities should be brought about in a proportionate and measured way, so as not to disrupt the vital flow of funds to the charity sector. In particular, the Panel has been anxious to balance the public's need for the work of charities to continue, against the requirement to ensure that funds are raised in a correct and appropriate manner.

In recent times, fundraising law reform was addressed in a feasibility study, funded by the Department of Community, Rural, and Gaeltacht Affairs, which culminated in a ‘Statement of Guiding Principles for Fundraising’ in 2008 (“the Guiding Principles”). This was followed by an Implementation Group under the independent chairmanship of Mr Peter Cassels, which submitted its report to the new Charities Regulator in December 2014. The group consistently championed the need for every charity to sign up to the Guiding Principles, to guarantee their universal application.

This quest for universality proved elusive and the sign-up rate to the Guiding Principles remained patchy, except in the case of the larger charities (approximately 80% of which had signed up by 2015). One of the principal recommendations of the Implementation Group was that the Charities Regulator should use its powers to formally approve the Guiding Principles and that a section dealing with adherence to the Principles should be included in the mandatory online annual report of charities.

Until the commencement of the Charities Act 2009 (‘the 2009 Act’), regulation of charitable activities in this jurisdiction was piecemeal, concentrating on property transactions, charitable donations and bequests. Fundraising activities were regulated by the Street and House to House Collections Act 1962 and the Gaming and Lotteries Act 1956 and were enforced by An Garda Síochána. However, neither of these pieces of legislation capture all the fundraising methods now routinely relied on by charities. Regulation of charities, with a capital ‘R’, has only become part of the armoury of the State since 2014, with the creation of the Charities Regulator set up under the 2009 Act. Although passed into law in 2009, the bulk of the Act was not commenced until October 2014. Since 2014, there has been a sea change in the regulation of the charity sector in Ireland, of which fundraising forms a crucial part.

The new Charities Regulator was in start-up phase from 2014-2016, and as increased resources have been made available, the Regulator has moved from strength to strength. Part 4 of the 2009 Act entitled 'Protection of Charitable Organisations' was commenced in September 2016, giving the Regulator extensive powers of investigation, reporting, search and entry of premises. In addition to the registration obligations of charities, the Accounting and Reporting Regulations for Charities are ready to go into operation shortly. These measures are designed to regulate the operation of charities and to provide protection for charitable entities, its clients and donors alike. However, they do not fully address the issue of how such funds are obtained by a given charity from the donor public in the first place, and this is the subject matter of this Report.

This Panel was created in February 2016, by the Charities Regulator at the invitation of the Minister for Justice and Equality, Ms Frances Fitzgerald. It is the first Consultative Panel set up by the Charities Regulator and its members are a diverse group of practitioners drawn from within the charity sector, and others working in the area, together with the CEO of the Charities Regulator and two Board members. Set up under Section 36 of the Charities Act 2009, the Panel is invited to 'make observations or proposals' in this report to the Charities Regulator. In reaching its conclusions, the Panel was assisted by the findings of a series of public consultation meetings and an on-line survey. The unstinting commitment of each of the Panel members to the Panel's work has resulted in its unanimous findings and proposals. I wish to thank each and every Panel member for giving so generously of their time and expertise to the Panel's work and its report.

**Ann FitzGerald**

Chairperson

June, 2017

# Acknowledgements

The Panel wishes to thank Superintendent Anthony O'Donnell of An Garda Síochána for attending and assisting the Panel in its deliberations, and Benefactors for supplying data to the Panel for use in Appendix 2 of the Report.

The Panel wishes to thank Judith Corcoran, Secretary to the Panel, for her excellent work and dedication, without whom the Panel's report would not have been completed on schedule. Thanks are due also to the Charities Regulator who facilitated the Panel's meetings and gave assistance in every possible way.



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# 1 Executive Summary

**Fundraising plays a vital role in the running of many Irish charities. It is a source of funding which many charities are dependent on, not just to run existing services, but also to meet increasing demands for their services, at a time when state funding is declining.**

Fundraising is also the place where many charities come face to face with their donors and supporters. It provides the opportunity for charities to explain the impact of their work and make themselves available to be questioned.

Trust and transparency are at the core of this fundraising relationship. The generosity of the Irish public and donors towards charities is dependent on the trust and transparency between them and the charitable organisations they support.

However, prior to the commencement of the Charities Act 2009, fundraising by charities was governed by a mix of self-regulation by the charities themselves and statutory regulation which has failed to keep pace with the types of fundraising activities being undertaken in communities across Ireland.

The Charities Act 2009 addresses these issues. The Consultative Panel on Charitable Fundraising was established by the Charities Regulator, at the request of the Tánaiste and then Minister for Justice and Equality, Ms Frances Fitzgerald. Its mandate was to: consider the role of the Charities Regulator in the regulation of charitable fundraising; other options for the regulation of charitable fundraising; the commencement of Sections 93-96 of the Charities Act; and the Minister's power to make regulations in relation to charitable fundraising under Section 97 of the Act.

In addressing this task, the Panel members drew on their own expertise, reviewed previous reports on fundraising in Ireland, undertook a consultation process to get the public's views on this issue, and sought the view of An Garda Síochána. The Panel remarked on the lack of reliable data on fundraising activities by charities which will shortly be addressed by changes to the online reporting requirements for charities.

The Panel believes it is important to implement a balanced regulatory regime for charitable fundraising, ensuring that public trust and confidence in charities is protected while avoiding unnecessary red tape.

### **The role of the Regulator and other options to regulate fundraising:**

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The Panel proposes that a direct approach be adopted to the regulation of fundraising, under the overall leadership of the Charities Regulator, with the active support and involvement of other state agencies such as An Garda Síochána, who are charged with the regulation of cash collection.

The Panel warns of the need for caution when new legislative provisions are being drawn up or implemented, to ensure that charities are not disadvantaged, compared to other organisations which fundraise but are not considered to be “charitable organisations” under the 2009 Act and so are not subject to any provisions introduced under the 2009 Act.

### **Guidelines for fundraising by charities:**

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The Panel recommends that the Charities Regulator issues guidelines for charities which fundraise, under section 14 of the Charities Act. The Panel proposes that the Regulator require charities to report annually on their fundraising activities as part of their annual report/return for the Register of Charities. For their part, the public is encouraged to report concerns about fundraising, initially to the charity concerned. If a complainant fails to get a satisfactory resolution, he/she should be facilitated in bringing their concerns to the Charities Regulator for follow-up action.

### **The commencement of sections 93-96 of the Charities Act, 2009:**

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Addressing the issue of regulation of cash and non-cash collections (i.e. the commencement of Sections 93-96 of the Charities Act), the Panel considers it appropriate that responsibility for the regulation of cash and non-cash collections should remain with An Garda Síochána (non-cash being usually in the form of signing a regular direct debit). It recommends that these sections should only be commenced when there is an effective and efficient system for allocating permits for both cash and non-cash collections. If these sections of the Act are commenced before such a system is established, the Panel is of the view that there would be significant negative consequences for charities reliant on this income and is therefore highly inadvisable.

The Panel notes that a ‘location management system’ for non-cash collections has been developed and piloted by a group of Irish charities using an IT package designed to offer a fair and manageable system of permits and notifications. While the system displays potential, An Garda Síochána has raised a number of issues such as security and data protection. The Panel recommends that further work be undertaken as a matter of priority to find a workable solution.

### **The Minister’s power to make Regulations under section 97 of the Charities Act:**

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The Panel considers that regulations by the Minister should be brought in on a phased basis. The Panel recommends that the Minister’s power to make regulations in relation to charitable fundraising under Section 97 of the Act should only be commenced in conjunction with Sections 93-96. The Panel is aware that the Department is currently preparing draft accounting and reporting regulations for charities which will require increased administrative work by charities. The Panel considers that an excessive regulatory burden should be avoided and thus the timing of regulations brought in under Section 97 will be critical.

The Panel believes that the proposals set out in the report will ensure a balanced and fair approach to regulating charitable fundraising.

## 2 Overview

### 2.1 Establishment of the Consultative Panel on Charitable Fundraising

In February 2016, the Charities Regulatory Authority (“the Charities Regulator”) established a Consultative Panel on Charitable Fundraising (the “Panel”) at the request of the Tánaiste and then Minister for Justice and Equality, Ms Frances Fitzgerald (the “Minister”).

The Panel was established to consider:

1. The commencement of Sections 93 to 96 inclusive of the Charities Act 2009 (the “2009 Act”);
2. The Minister’s power to make Regulations to govern charitable fundraising pursuant to Section 97 of the 2009 Act;
3. Other options for regulation of charitable fundraising such as a code of practice, having regard to resources, take up, monitoring and enforcement; and
4. The role of the Regulator in the regulation of charitable fundraising.

(The “Mandates”).

The Panel met 10 times over the course of 17 months to discuss the mandates. This report sets out the Panel’s observations and proposals on these mandates.

A copy of the terms of reference and rules of procedure of the Panel is available at Appendix 1.

### 2.2 Profile of Charitable Organisations

Charitable organisations provide a variety of services to a wide range of beneficiaries both in Ireland and abroad. Ireland has a long and honourable history of charitable activity, with large numbers of people donating their time, money and skills on a voluntary basis to causes which they are passionate about. Charities vary from small volunteer-run organisations, to large entities employing hundreds of staff. They are all linked by a common ethos however: each has a charitable purpose which is of public benefit. The value provided by charities cannot be measured in purely financial terms but rather they contribute to the physical, mental, social and psychological well-being of the communities they serve.

Fundraising plays a vital role in ensuring that charities are able to deliver their services. This is more important than ever in an era of declining State funding, where charities have seen the demand for their services rise.<sup>1</sup> In this context, charities arguably have a right to fundraise when necessary. Fundraising also performs a function as the ‘public face’ of charities, “the means by which they interface with the public, present their justification for support and are available to be quizzed and judged accordingly”<sup>2</sup>.

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1 According to The Wheel, 63.5% of non-profit organisations have experienced an increase in beneficiary numbers between 2009 and 2012 (The Wheel: A Portrait of Ireland’s Non-profit Sector, p.7.)

2 O’Halloran, Kerry: Charity Law, Round Hall, Dublin, 2009, p.377.

As to the scale of fundraising, it has been noted that the fundraising landscape in Ireland is characterised by a large number of small organisations operating in a local or regional context and often depending on volunteers or part-time staff for fundraising, and by a small number of larger organisations usually operating at national or international level and employing full-time professional fundraising teams.<sup>3</sup> While information on charitable organisations is available from a number of sources, there is a dearth of comprehensive statistical data in this area. This situation is expected to improve in the coming years however, given the recent introduction of mandatory reporting by charities as well as the Charities Regulator’s forthcoming Accounting and Reporting Regulations.

### 2.3 Why the Panel was established

Ireland currently has a patchwork of regulation which applies to fundraising by charities – there is a mix of self-regulation and statutory regulation which together, or separately, govern and regulate specific activities. Self-regulation is mainly in the form of the ‘Statement of Guiding Principles for Fundraising’ (more on this in Chapter 4) and statutory regulation is in the form of the Street and House to House Collections Act 1962, and the Gaming and Lotteries Act 1956. These acts are out of date, given the many forms of fundraising now taking place. The 2009 Act provides for better regulation of charitable organisations. New regulations for financial reporting to the Regulator are being progressed and will provide for greater transparency in the annual accounts filed by charities, which will in time include details of their fundraising activities. Under Section 39(5)(h) of the 2009 Act any organisation applying for inclusion on the Register of Charities must provide the Regulator with details of its fundraising activity. Sections 93 to 96 (not yet commenced) provide for the amendment of the Street and House to House Collections Act 1962, as it relates to charities.

The 2009 Act does not however specifically regulate the manner in which fundraising is carried out. In light of the outdated nature of the 1962 Act, and the options and opportunities that the 2009 Act provides in relation to the regulation of fundraising by charities into the future, the Minister requested the establishment of this Panel so that it could consider and make recommendations on the Mandates.

### 2.4 The Panel’s Approach to the Mandates

In considering the four Mandates, the Panel members took into account:

- Their practical knowledge and experience of fundraising as currently carried out by charities;
- The various options available in relation to “regulation”, to include self-regulation, co-regulation and statutory regulation and what form of regulation exists in certain international jurisdictions;
- Reports previously published in Ireland relating to fundraising by charities;
- A public consultation process facilitated by the Regulator (see Appendix 4); and
- The view of An Garda Síochána on Sections 93-96 of the 2009 Act and whether or not this is practically workable by them at this time.

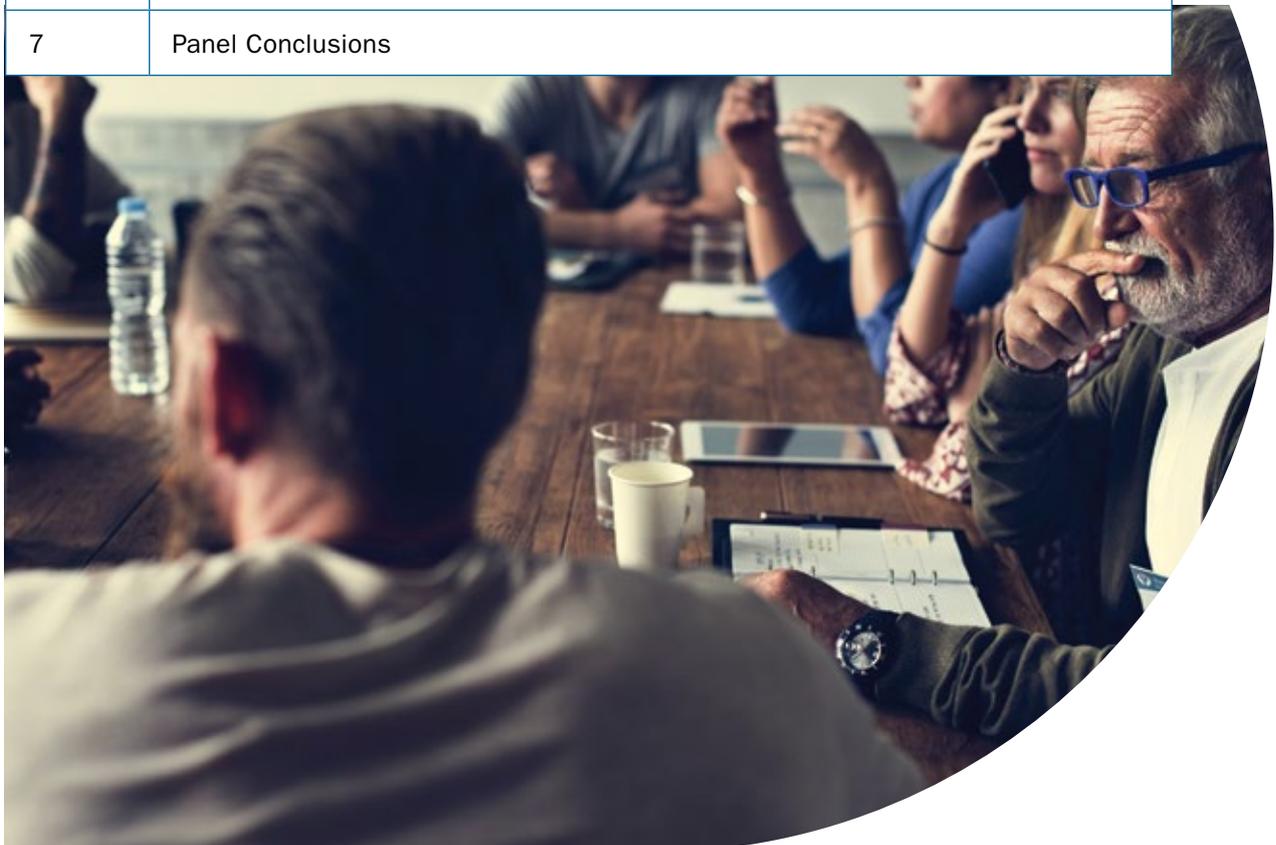
<sup>3</sup> O’Halloran, Kerry: *Charity Law*, p.379.

The Panel found that previously prepared reports were beneficial and acknowledge the work that others put into their preparation. In many ways this report builds on various recommendations previously made in a number of those reports.

In considering regulation of fundraising in other jurisdictions, the Panel reviewed the existence, or not, of regulation and the manner of regulation in Northern Ireland, Scotland, England and Wales, as well as Denmark, Australia and the USA. This report will not benefit from an account of the position in each jurisdiction. However, the situation in England and Wales is set out in Appendix 3 in view of the significant level of activity in the area of fundraising by charities in that jurisdiction during the lifetime of this Panel. That activity and the steps taken are not all recommended by the Panel, but it provides a good comparator and example of the level of activity in fundraising regulation in another jurisdiction.

Based on the Panel's approach to the Mandates, its observations and proposals are contained in the subsequent chapters of this report as follows:

Chapter	Mandate Addressed
3	The role of the Regulator in the Regulation of Charitable Fundraising (Mandate 4)
4	Options for regulation of Charitable Fundraising (Mandate 3)
5	The Minister's power to make Regulations pursuant to Section 97 (Mandate 2)
6	Commencement of Sections 93-96 of the 2009 Act (Mandate 1)
7	Panel Conclusions



# 3 The role of the Regulator in the Regulation of Charitable Fundraising (Mandate 4)

## 3.1 Regulatory Framework

‘Regulation’ is typically used to describe the entire statutory regime which governs a particular sector or activity. Regulation in this sense includes all of the primary and secondary legislation, as well as measures to improve practice through the provision of guidelines and codes by the relevant supervisory Authority.

In the area of charities, the current primary legislation consists principally of the Charities Act 2009 and the Charities Acts of 1961 and 1973. It also includes legislation which gives powers to bodies such as the Revenue Commissioners, An Garda Síochána and various State authorities which impact on the scope of activity of registered Irish charities.

### 3.1.1 The Charities Act 2009

The Charities Act 2009 aims to provide for the better regulation of charities. Its main provisions were brought into effect on 16 October 2014 with the establishment of the Charities Regulator. The 2009 Act provides for the statutory definition of a charity. It also sets out the duties and responsibilities of the trustees of charities and provides extensive powers to the Charities Regulator to ensure compliance with the law. The key functions of the Regulator are to establish and maintain a public register and to ensure charities comply with the Charities Acts.

Prior to the Charities Act 2009, the Office of the Revenue Commissioners granted charitable tax exemptions – CHY numbers – to applicants fulfilling certain criteria. Upon the establishment of the Regulator, approximately 8,000 organisations with CHY numbers were “deemed registered” and incorporated onto the Regulator’s Register of Charities. By virtue of the 2009 Act, any organisation with an exclusively charitable purpose and providing public benefit which wishes to operate or carry out activities in Ireland, is obliged to make an application for inclusion on the Register. Under Section 39(5)(h) of the 2009 Act, an application for inclusion on the Register must specify the manner in which the organisation proposes to raise money. It is estimated that as many as 15,000 organisations may feature on the complete Register. Over the next few years a key strategic objective of the Charities Regulator is to consolidate and further develop the Register of Charities. This work will help to strengthen the accountability of registered charities and provide a clear, transparent source of information for donors, beneficiaries and the public. An end goal is that a member of the public will be able to check the Register online, examine any registered charity and decide whether they want to support them with their time and/or money.

Part 4 of the Charities Act 2009, “Protection of Charitable Organisations” was commenced on 5 September 2016. This section of the Act grants the Regulator broad powers of investigation, including the power to require a charity’s trustees to produce its books, records or other documents. The Regulator may also appoint an inspector to investigate the affairs of a charitable organisation. An inspector is similarly able to require the production of documents, including documents relating to bank account(s) where it is believed that financial misconduct may have taken place. An inspector may also examine people on oath and demand their assistance in relation to the investigation. Part 4 also covers the consequences of contraventions of the Act. In certain circumstances, the Regulator may impose intermediate sanctions: either the removal of a charity from the Register for a specified period or the publication of details of the contravention on its website.

### 3.1.2 Secondary Legislation and Guidelines

Secondary legislation includes statutory instruments which are required to give effect to an Act. For example, section 4(1) of the Charities Act 2009 provides that:

“the Minister may by regulations provide for any matter referred to in this Act to be prescribed”.<sup>4</sup>

In this context, it should be noted that the key statutory instruments which will be required to give effect to the Charities Act 2009 will be the forthcoming Accounting and Reporting Regulations. These regulations will give effect to the accounting and reporting provisions of the Charities Act which relate to:

- S.47 – Duty to keep proper books of account
- S.48 – Annual statement of accounts
- S.50 – Annual audit or examination of accounts
- S.51 – Regulations in relation to audits/examinations
- S.52 – Annual reports

It is a key objective of the Charities Regulator to ensure that the Accounting & Reporting Regulations come into effect and that they operate efficiently. These regulations will provide a crucial regulatory foundation and framework for charities to improve their governance, including fundraising.

The Regulator also has a function to encourage and facilitate the better administration and management of charities by the provision of information and advice, including by issuing (or, as it considers appropriate, approving) guidelines, codes of conduct and model constitutional documents.

Given the experience of other supervisory authorities, it is reasonable to expect that documents issued or approved by the Regulator would be adopted by charities as the preferred standard. Many of the documents issued will help charity trustees and charities to understand the requirements of the 2009 Act. Guidelines will contain the ‘musts’, that is, legal or regulatory requirements or duties that trustees must comply with.

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4 Charities Act 2009, Part 1, Section 4(1).

Guidelines will also contain ‘shoulds’, that is, good practice(s) which the Regulator expects trustees and charities to implement. It is reasonable that the Regulator require the trustees of each registered Irish charity to be able to explain and justify their approach, particularly if they decide not to follow the good practice set out in guidelines issued.

Guidelines on fundraising by charities introduced by the Regulator would facilitate and encourage improvements in practice, where necessary, and would set the standard which charities would be expected to meet. Full legal enforceability would, however, require the introduction of regulations brought in by the Minister for Justice and Equality, under section 97 of the 2009 Act.<sup>5</sup>

### 3.1.3 ‘Better Regulation’

Better regulation aims to ensure that legislation and the regulatory framework is fit for purpose. Regulation should be (1) necessary, (2) proportionate, (3) effective, (4) accountable, (5) consistent, and (6) transparent, as set out in the 2004 Government White Paper, *Regulating Better*. Particularly with charities, the regulatory framework should ensure a balance between the requirements to regulate and protect charities and the avoidance of unnecessary red tape or regulatory burden. To this end, a phased and proportionate approach should ensure that the right amount of regulation is introduced at the right time so that charities can comply with the law and maintain the capability to help their beneficiaries.

## 3.2 The Charities Regulator’s Approach

The Charities Regulator intends to be a responsive regulator. It strives to encompass the principles of better regulation<sup>6,7</sup> in that regulation is transparent, accountable and consistent. It also encompasses the concept of ‘right touch’<sup>8</sup> in that regulation is proportionate and targeted at risk.

This proportionate approach to regulation for entities that have never been regulated is to concentrate resources at areas of highest risk and ensure that those charities assessed as being of greater risk receive greater levels of scrutiny. A responsive approach is achieved through a whole system approach whereby a number of processes, procedures and tools work together to enable the Regulator to identify and respond to assessed risk in the most appropriate way. These include:

- dedicated procedures for receiving solicited and unsolicited information;
- a range of tools for assessing information and determining the most appropriate action to take in the particular circumstances;
- up to date business intelligence and data analytics that provide comprehensive information on risk and compliance within charities;
- a dedicated information handling system that supports risk profiling.

<sup>5</sup> *Hogan and Gwynn Morgan: Administrative Law in Ireland*, 4th edition, 2010, p.64-65.

<sup>6</sup> Hampton, P.: *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, 2005.

<sup>7</sup> Department of An Taoiseach: *Government White Paper, Regulating Better*, 2004.

<sup>8</sup> Professional Standards Authority for Health and Social Care in UK (formerly the Council for Healthcare Regulatory Excellence (CHRE)).

A proportionate approach also acknowledges the actions being taken by more compliant registered charities. The Regulator has adopted a responsive approach to regulation whereby the type, frequency and intensity of regulatory intervention is informed by assessments of risk. As a responsive regulator, the Regulator will also be fully transparent, open and fair when discharging its regulatory function. For example, this is achieved through the publication of reports, guidance documents and the tools used to monitor compliance.

Responsive regulation depends on the attitude, behaviour and level of compliance of the particular charity and its trustees. While most registered charities are motivated to deliver their charitable purpose in accordance with the 2009 Act and relevant regulations, the Regulator recognises that a minority of registered charities may be unwilling, incapable or ineffective in complying with the law. Responsive regulation aims to identify the registered charities who persistently breach the law and ensure that proportionate and meaningful sanctions are implemented.

### **3.3 Panel Observations**

The Panel has taken note of the range of legislative provisions which regulate fundraising by charities, in particular the role of the Charities Regulator. The Panel believes it is important to implement a balanced regulatory regime for charitable fundraising, ensuring that public trust and confidence in charities is protected while avoiding unnecessary red tape. In this context the Panel notes that other organisations which fundraise, and are not considered “charitable organisations” under the 2009 Act, and do not therefore appear on the Register of Charities of the Regulator, are not subject to regulatory provisions which may be introduced under Section 97 of the Charities Act. The Panel recommends that due caution should be exercised when any such provisions are being drawn up to ensure that charities are not at a disadvantage compared to other organisations when fundraising.

### **3.4 Panel Proposals**

The Panel proposes a simple and direct approach to the regulation of fundraising. Overall leadership and direction should come from the Charities Regulator, with the active involvement and support of other State Authorities with a regulatory role, particularly An Garda Síochána, who are charged in law with the regulation of cash collections in Ireland. Given the size of the sector the Panel does not recommend the establishment of further intermediate structures to deal with fundraising (such as has occurred in England and Wales as set out in Appendix 3). The Panel is of the belief that in a small country such as Ireland such structures would add a layer of unnecessary bureaucracy to the regulatory process.

# 4 Options for regulation of Charitable Fundraising

## (Mandate 3)

### 4.1 Regulatory Framework

Under Section 14(1)(i) of the Charities Act 2009, the Charities Regulator has a statutory function to encourage and facilitate the better administration and management of charitable organisations by providing information or advice. The Act sets out that this should occur:

*“in particular by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and model constitutional documents”.*<sup>9</sup>

The Panel believes that the subject of fundraising offers a prime opportunity for the Regulator to provide guidance to charitable organisations, building on the considerable work that has already been done by the sector in this area.

### 4.2 History

In 2008, a ‘Statement of Guiding Principles for Fundraising’ (“the Guiding Principles”) was drawn up on foot of a feasibility study on Codes of Practice for the sector, led by Irish Charities Tax Research (ICTR) and supported by the (then) Department of Community, Rural and Gaeltacht Affairs. The Guiding Principles were drafted by a Working Group, in line with the recommendations of the feasibility study. The group also reviewed codes from other jurisdictions and sectors, considered best practice guidelines on regulation and took into account feedback from consultations with stakeholders.

In the following years, an Implementation Group endeavoured to encourage charities to sign up to the Guiding Principles. Progress on this was slower than expected; the financial crisis caused resource constraints and also a deferred implementation of key provisions of the Charities Act 2009, including a postponement of the establishment of the Regulator. The uncertainty, which these delays created, impacted negatively on sign-up rates. In response, the Implementation Group adopted a more focused approach, targeting the top 407 fundraising charities in Ireland.

To date, 250 charities with a total income of €1.3 billion have signed up to the Guiding Principles.

The Implementation Group recommended that the Charities Regulator formally approve the Guiding Principles and that information on charities’ adherence to the Guiding Principles be included in the Register of Charities. Additionally, the Implementation Group recommended that funding bodies, the Revenue Commissioners and An Garda Síochána include questions on sign-up to the Guiding Principles on their application forms for funding, tax relief and fundraising permits respectively. It also called for the development of an effective monitoring process for the Guiding Principles as well as the resourcing of ongoing support and the promotion of public awareness.<sup>10</sup>

<sup>9</sup> Charities Act 2009, Part 2, Section 14(1)(i).

<sup>10</sup> ICTR: *Development and Implementation of the Statement of Guiding Principles for Fundraising*, 2014, p.21.

### 4.3 Panel Observations

The Panel noted the recommendations of the Implementation Group, as set out in its final report of 2014, and of the work which has been done by the sector to date. The Panel observes that the regulatory environment has changed since the publication of that 2014 report, in particular with the establishment of the Charities Regulator and the commencement of Part 4 of the Charities Act 2009, which equips the Regulator with powers of investigation and enforcement. The Panel believes that the Regulator is best placed to take the lead on the issue of regulation of charitable fundraising and that the production of unambiguous guidelines for charitable organisations on fundraising from the public falls within the Regulator's remit. Ownership of such guidelines by the Regulator will give them weight within the sector and provide clarity for charitable organisations on what is expected of them. Although such guidelines would not be mandatory, they would specify the standards to which charitable organisations should adhere when undertaking fundraising. The prospect of such guidelines was broadly welcomed during the Panel's public consultation process.

Guidelines are to be issued by the Charities Regulator as set out under section 14(1)(i) of the Charities Act 2009, to encourage and facilitate the better administration and management of charitable organisations. The Charities Regulator has advised the panel that it expects charities which fundraise to do so in a way which protects their charity's reputation and encourages public trust and confidence in their charity. This includes following the law and recognised standards, protecting charities from undue risk, and demonstrating respect for beneficiaries, donors, and the public. Following the good practice set out in the guidelines will assist charity trustees to run their charity effectively and to comply with their legal duties. As charities vary in terms of their size and activities, charity trustees should consider and decide how best to apply the new guidelines to their charity's circumstances.

### 4.4 Panel Proposals

1. The Panel formed the view that guidelines should be introduced and that these should come from the Charities Regulator. It is envisaged that such guidelines will be issued by the Regulator in tandem with this Report.
2. Charity trustees have overall responsibility and accountability for their charity and this includes its fundraising activities. They have a key role to play in setting their charity's approach to raising funds and ensuring that it is implemented in practice. The Panel recommends that the guidelines be targeted at supporting them in discharging their responsibilities.
3. The guidelines should apply to all types of fundraising from the public for the benefit of charities and their beneficiaries. They should apply regardless of whether:
  - fundraising from the public is a small or major part of the charity's approach to raising money;
  - the fundraising is carried out by the charity itself, by a subsidiary trading company fundraising on behalf of the charity, or by another person or organisation fundraising on the charity's behalf or by a person or organisation who uses the charity's name in advertising.

4. The Panel believes that charity trustees should ensure that all key people within their charity involved in fundraising implement the guidelines. These include senior management; staff including those within governance, compliance, controls and risk management; trading company directors and senior staff; professional fundraisers and volunteers. Donors, potential donors and members of the public should also be able to use the guidelines to ensure they are educated and informed prior to making a donation. Guidelines are to contain legal or regulatory requirements or duties with which trustees must comply as well as standard(s) of good practice with which trustees should comply.
5. Echoing the recommendations of the Implementation Group in its 2014 report, the Panel proposes that the Charities Regulator require charitable organisations to report annually on their fundraising activity, by means of questions in the compulsory annual report/annual return.
6. Members of the public should be encouraged to report concerns regarding fundraising initially to the charity in question and, failing a satisfactory resolution, to the Regulator.
7. The new guidelines will require familiarisation and so the Panel proposes that an information campaign take place to educate both charities and members of the public on the new guidelines and what they will entail.
8. In addition to promoting awareness of the guidelines, charities may also require specific assistance and/or resources to aid them in achieving these standards. The Panel is of the view that umbrella organisations in the sector are best placed to assist in this regard, given their knowledge of the sector. Representatives of umbrella organisations have expressed a willingness to take on this role. As such, they should be tasked with providing templates and resources to help with implementation of the guidelines.
9. The Panel recommends that the efficacy of the new guidelines be evaluated in due course and proposes a three-year review from date of issue by the Charities Regulator.

# 5 The Minister's power to make Regulations pursuant to Section 97 (Mandate 2)

## 5.1 Regulatory Framework

As noted previously, Sections 93-97 of the Charities Act 2009 have not yet been commenced. Charitable fundraising is currently governed by various legislative provisions:

- Cash collections fall under the remit of the Street and House to House Collections Act 1962;
- Sales of scratch cards and lottery tickets for charitable purposes fall under the remit of the Gaming and Lotteries Act, 1956.

'Non-cash' collections – such as direct debits and standing orders – are not currently regulated.

In this context it should be noted that although the guidelines proposed in the previous chapter would set the standard which charities would be expected to meet when fundraising, full legal enforceability would require the introduction of regulations brought in by the Minister for Justice and Equality, pursuant to section 97 of the 2009 Act.

## 5.2 Forthcoming Accounting and Reporting Regulations

The Panel notes that the Department of Justice and Equality, at the request of the Minister, is currently in the process of preparing draft Charities (Accounting and Reporting) Regulations, as mentioned in Chapter 3. These have been a complex undertaking and will be the most far-reaching financial regulation of charities undertaken in the State.

Section 48 of the 2009 Act addresses the requirements for the annual statement of accounts of a charitable organisation. Section 50 of the Act concerns the annual audit or examination of the accounts of a charitable organisation. Section 51 of the Act concerns regulations in relation to audits and examinations. Section 52 of the Act concerns the annual reporting of charitable organisations. Each of these sections requires regulation to be made by the Minister to enable the proper operation of the sections.

The regulations will make provision for the preparation and scrutiny of accounts prepared by charities and the preparation of annual reports by charities. The regulations will also make provision for the preparation and scrutiny of group accounts and the preparation of group annual reports by parent charities. The regulations will enhance transparency and provide accountability for the stewardship of charitable funds and, through the audit or independent examination of accounts and their publication, provide assurance to funders and other stakeholders. This should promote public confidence in the sector.

### 5.3 Panel Observations

Until the establishment of the Regulator, regulation of charitable fundraising practices was primarily undertaken by the sector, on a self-regulatory basis. A prime example of this self-regulation are the Guiding Principles, referred to in the previous chapter, which was developed by Irish Charities Tax Research, itself a charitable organisation, in consultation with various stakeholders in the charitable sector. This process has been characterised as a facilitative bottom-up approach, which was welcomed by the charity sector and by the government.<sup>11</sup> While self-regulation may encourage charitable organisations to promote a culture of engagement and responsibility, there are also drawbacks. A system which is designed by the same organisations which it is intended to monitor may be perceived as weak or lacking in credibility. It may also suffer from a lack of buy-in, while the absence of any statutory underpinning limits the imposition of effective sanctions for breaches.

Section 97 of the Charities Act 2009 provides for statutory regulation of charitable fundraising. It grants the Minister power to “make regulations relating to the manner and conduct of fund-raising by, or on behalf of, charitable organisations, including collections and non-cash collections under the Act of 1962 for the purpose of ensuring that any such fundraising is not carried on in a manner that—

- (a) unreasonably intrudes on the privacy of those from whom funds are being solicited,
- (b) involves the making of unreasonably persistent approaches to persons to make donations to the charitable organisation concerned,
- (c) results in undue pressure being placed on persons to make such donations,
- (d) involves the making of any false or misleading representations in relation to—
  - (i) the extent or urgency of any need for funds on the part of the charitable organisation concerned,
  - (ii) the application of any funds donated,
  - (iii) the charitable organisation or its purposes, activities or financial position.”<sup>12</sup>

Any unlawful contravention of regulations made under this section would constitute an offence. Statutory regulation achieves universal application, requires compliance and includes sanctions. However, there are also shortcomings: there is a risk that regulations could be perceived as overly prescriptive and bureaucratic, while any regulations made under Section 97 will only affect charities and not impact on other organisations which fundraise. It could therefore unfairly burden charities in regulating their fundraising activities.

<sup>11</sup> Breen, Oonagh: *Regulating Charitable Solicitation Practices – The Search for a Hybrid Solution*, Financial Accountability & Management, 25(1), February 2009, p.135.

<sup>12</sup> Charities Act, Part 7, Section 97(1).

## 5.4 Panel Proposals

The Panel recommends that a phased approach to the regulation of charitable fundraising is appropriate, with regulations under Section 97 to be enacted in due course when the following issues have been addressed:

1. The Panel considers it inadvisable to commence Section 97 of the Act prior to the commencement of Sections 93-96, as the sections appear to be intrinsically connected. Section 97 refers to the regulation of both cash and non-cash collections. Therefore, until the concerns detailed in the next chapter of this report are resolved, the Panel considers that it would be inappropriate to commence Section 97.
2. The Panel recognises that the forthcoming Accountancy and Reporting Regulations will require rigorous compliance by charitable organisations. Compliance will entail a significant additional administrative burden on charitable organisations. The Panel believes an excessive regulatory burden should be avoided. The Panel is of the view therefore that the timing of regulations brought in under Section 97 will be critical.
3. It is important to take into consideration that regulations introduced under Section 97 will only apply to fundraising by charitable organisations and will not affect other organisations which fundraise. Therefore, care should be taken in relation to the content of such regulations to avoid imposing a disproportionate burden on charities.



# 6 Commencement of Sections 93-96 of the Charities Act 2009

## (Mandate 1)

### 6.1 Regulatory Framework

Cash collections are currently regulated by the Street and House to House Collections Act 1962 (“the 1962 Act”). A ‘collection’ under the 1962 Act is defined as a collection of money from the public in any public place(s) and/or by house to house visits.<sup>13</sup> However, there is no definition of ‘money’ in the 1962 Act, and no provision covering the collection of bank account or credit card details for donations, which is not currently regulated.

Sections 93-96 of the Charities Act 2009 will amend the 1962 Act, primarily by extending its remit to also cover ‘non-cash’ collections. It would also expand the term ‘money’ to include “(a) money paid by means of an electronic transfer, and (b) a cheque, banker’s draft, bill of exchange, promissory note or other negotiable instrument”<sup>14</sup>. To date, these sections of the Act have not been commenced by Ministerial Order.

#### Cash Collection:

A cash collection is any collection of money in a public place, usually on the street, outside a church gate, shopping centre or door-to-door. A cash collection usually involves members of the public placing coins or bank notes into collection boxes or buckets for charitable purposes, and this can include the offer or exchange of a badge, emblem or other token. Cash is donated on the spot by the public and is not usually receipted, with details of individual donors not being captured or requested in most instances. Cash collectors are usually volunteers or staff of the charity, or in some cases paid third party fundraisers.<sup>15</sup>

#### Non-cash Collection:

A non-cash collection is a request in a public place for regular donations, usually by monthly direct debit, credit card or electronic transfer. This typically happens on busy high streets or door to door, and includes a cooling-off period before any first donation. The donor’s details are captured at the time to set up and confirm the regular gift. This type of fundraising is also known as “face-to-face” fundraising. Non-cash collectors are usually staff of the charity, paid third party fundraisers, or in some cases volunteers.<sup>16</sup>

<sup>13</sup> Street and House to House Collections Act 1962, Section 1.

<sup>14</sup> Charities Act, Part 7, Section 93(a) (ii).

<sup>15</sup> For the legal definition of “collection” see Charities Act, Part 7, Section 93(a) (i).

<sup>16</sup> For the legal definition of “non-cash collection” see Charities Act, Part 7, Section 93(a) (ii).

## 6.2 Current Regulation

The current regulation of charitable fundraising in terms of cash and non-cash collections is managed as follows:

### Cash collections:

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Under the 1962 Act, regulation of cash collections is the responsibility of An Garda Síochána. Those intending to “hold a collection” must apply for a collection permit from the Chief Superintendent of the locality in which the collection is to be made. The collection must occur within that locality. A Chief Superintendent has the discretion to attach conditions to collection permits as well as to refuse or revoke collection permits on certain specified grounds. A decision to attach conditions, refuse or revoke collection permits can be appealed by the applicant to the District Court;<sup>17</sup> the District Court’s decision on such an appeal is final.

The 1962 Act makes certain activities an offence such as:

- to allow an unauthorised collection to be held in a public place or to act as a collector in an unauthorised collection;
- to act as a collector without a collector’s authorisation;
- to grant a collector’s authorisation to a person under the age of 14;
- to use a collection box that does not display the name of the object of the collection.

Currently the penalties for offences under the 1962 Act are a fine of IR£50 and/or six months imprisonment.<sup>18</sup>

### Non-cash collections:

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There is no statutory regulation of non-cash collections yet in force, although Sections 93-96 of the 2009 Act are intended to apply to non-cash collections when commenced. In the absence of legislation, charities that were regularly conducting non-cash collections agreed to self-regulate by a voluntary code of practice. A location management system was established and this is now overseen by Charities Institute Ireland. Details of the location management system are set out in Appendix 5 of this Report. The code of practice governs the responsibilities of the organisers of the fundraising, and the responsibilities and behaviour of the fundraisers. The location management system allows charities to submit requests for locations all around the country. Locations have conditions that control boundaries and buffer zones, numbers of fundraisers, rest periods and set days of fundraising. The system is programmed to allocate locations fairly and equitably to charities, and to minimise nuisance to members of the public. The majority of charities conducting non-cash collections are signed up to these agreements, and it is generally only ad-hoc non-cash collections that currently fall outside this system.

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17 If a member of the Garda not below the rank of inspector states on oath that he believes on reasonable grounds that the proceeds of a collection would be used for illegal purposes then the Court must disallow the appeal. Law Society: *Charity Law, the Case for Reform*, p.168.

18 Street and House to House Collections Act 1962, Section 25.

### 6.3 Proposed amendments to the Street and House to House Collections Act 1962

The commencement of Sections 93-96 of the Charities Act 2009 would expand the remit of the Street and House to House Collections Act 1962 to include non-cash collections. It introduces a permit regime for non-cash collections which is similar (but not identical) to the existing regime for cash collections. It also includes provisions regarding the marking of collection boxes for cash, which are significantly expanded.

#### Cash collections:

The 2009 Act proposes that the following conditions must be met for cash collections:

- collection boxes must bear the relevant collection permit number and be securely sealed;
- money must be placed in the collection box in the presence of the donor;
- the collection box must be delivered unopened to the holder of the collection permit or an authorised representative;
- the collection box must clearly display the name of the organisation for whom the collection is being held and, for charitable organisations, the registered charity number of the organisation.

#### Non-cash collections:

In order to hold a non-cash collection in a locality, an application will have to be submitted to a Chief Superintendent of An Garda Síochána. If the application is granted, the applicant will receive a permit “authorising him to hold non-cash collections in that locality during the period of 12 months specified in the permit by the Chief Superintendent”<sup>19</sup>.

As a condition of receiving the permit, the applicant will be obliged to notify the Chief Superintendent of the place and date of the proposed non-cash collections in advance.<sup>20</sup> Where the Chief Superintendent receives such a notification at least three months prior to the intended collection date(s), s/he will also inform anyone who held a collection (cash or non-cash) on the same day in the previous year.

A further provision will allow a member of An Garda Síochána to confiscate items connected to a non-cash collection from the person holding it if no permit for the collection has been granted, if s/he does not produce a permit when asked or if s/he does not provide her/his name and address when asked. Supplying false information in connection with a collection permit will also become an offence and the fine for all offences under the Act will be raised to a maximum of €5,000.

<sup>19</sup> Charities Act, Part 7, Section 93(c), 5A (1).

<sup>20</sup> Not earlier than six months and not later than 14 days before the proposed collection date. Charities Act 2009, Part 7, Section 93(d), 6A (3).

The following conditions must also be met for non-cash collections:

- the collector must wear something which clearly displays the name of the organisation, the registered charity number of the organisation (if applicable) and/or the object for which s/he is collecting;
- completed non-cash contribution forms must only be received by the holder of the relevant non-cash collection permit or an authorised representative;
- forms for use in non-cash collections must clearly display the name of the organisation, the registered charity number (if applicable), the relevant collection permit number and the bank account details to which contributions are to be made.

## 6.4 Panel Observations

1. Regulation of cash collections is currently in place through the Street and House to House Collections Act 1962. Provisions in Sections 93-96 of the 2009 Act add important amendments regarding collection boxes, which will lead to increased transparency. This is seen as welcome and necessary by the Panel.
2. The Panel supports the extension of the 2009 Act to include regulation of non-cash collections, indeed this is both overdue and necessary. However, the Panel has significant concerns regarding the proposed mechanism of regulation. The commencement of Sections 93-96 of the 2009 Act pre-supposes that non-cash collections function similarly to cash collections. This is not the case for the following reasons:
  - Cash collections are usually held across large fundraising areas (for example, across a city) often to allow for a large number of individual fundraisers. They require time and effort to organise and are often reliant on volunteers. They are used by many charities normally as recurring occasional events, sometimes focussing on a specific “flag day”.
  - Non-cash collections operate continuously in different local areas (for example, on one specific street) and require a high volume of alternating locations. Full-time staff are usually employed for non-cash collections.
3. Due to these differences, the proposed method of regulation of non-cash collections is likely to have negative consequences:
  - While a charity might have secured a non-cash collection permit from An Garda Síochána for a location, under the 2009 Act, they will also need to secure permissions for each specific location through a notification process. The Panel agrees that An Garda Síochána should regulate the permit system for non-cash collections in accordance with the proposed amendments, however the notification process creates significant challenges.
  - Each Chief Superintendent’s Division is independent and entitled to reach its own decision on the issue of permits. Charities’ experience of the permit system currently in place for cash collections suggests a lack of consistency in the volume and frequency of cash collection permits granted to charities from one Division to another. It is critical for charities conducting non-cash collections that they can rely on an effective, fair and equitable allocation of small fundraising locations. If this is not the case, or if locations are allocated on an infrequent or inconsistent basis, then this method of fundraising becomes inoperable.

4. The expansion of the permit system to include non-cash collections is also likely to result in a considerable increased administrative burden for An Garda Síochána, due to the substantial surge that will come about from applications and notifications for non-cash collections, as follows:
  - Each charity which secures a 12-month non-cash collection permit is obliged to submit lists of daily proposed fundraising notifications to the Chief Superintendent(s) of the relevant Division;<sup>21</sup>
  - Each of these notifications will require to be checked by the Chief Superintendent to ascertain if any other notification has already been granted for the same date and place this year. In this case, the Chief Superintendent may direct that the proposed non-cash collection shall not take place at that locality or place on that date, if it is considered necessary or desirable in order to ensure the maintenance of public order or the prevention of annoyance to the public;<sup>22</sup>
  - The Chief Superintendent will also be obliged to check if any other cash or non-cash collection was granted on that same date the previous year, and if so, notify the previous holder of the collection within seven days;<sup>23</sup>
  - If a notification is not authorised, it is likely the charity would have to submit a new notification for a different location on the same date to try to secure the authorisation.
5. The Panel met with An Garda Síochána to outline its concerns with respect to the regulation of non-cash collections and the commencement of Sections 93-96. It was acknowledged that An Garda Síochána currently does not have the necessary resources to handle the extra workload which the implementation of a permit system for non-cash collections would require. At present a paper-based system is used to manage permits for cash collections, which fall under the 1962 Act.
6. In this context, the Panel notes that a location management system has been developed and operated by a group of Irish charities in relation to non-cash collections. This is not a new concept; as early as 2002 the Law Society of Ireland recommended the creation of a national computerised database containing a calendar of all collection permits granted throughout the country by district.<sup>24</sup> One of the findings of the Panel's public consultation process was that a degree of confusion exists regarding permits being issued at local and at national level. The Panel believes that a location management system has the potential to resolve this. The Panel is also of the view that it would significantly reduce the administrative burden of the collection permit and notification system and is an avenue which should be explored further.

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21 Charities Act 2009, Part 7, Section 93(d), 6A (3).

22 Charities Act 2009, Part 7, Section 93(d), 6A (4).

23 Charities Act 2009, Part 7, Section 93(d), 6A (6)(a).

24 Law Society: *Charity Law, the Case for Reform*, 2002, p.173.

7. The location management system was discussed at the meeting the Panel held with An Garda Síochána and was welcomed by An Garda Síochána as a potentially valuable tool for managing cash and non-cash collections. It was noted however that a number of issues would need to be addressed before any such system would meet An Garda Síochána criteria, including:

- the roles and responsibilities of those operating the location management system, whether this be An Garda Síochána or another body;
- the configuration of the location management system, either as an independent system or as a 'region' within a UK system;
- the requirement of An Garda Síochána for 'real-time' information on fundraising via the location management system to facilitate policing;
- the need for the location management system to conform to the security standards of An Garda Síochána;
- the role of An Garda Síochána as data controller, including data protection issues if An Garda Síochána is to hand over information to a third party, especially if data is to be processed outside the jurisdiction;
- the status/legal standing of any organisation or body potentially authorised to manage the receipt of 'notifications' regarding charitable fundraising under the Charities Act 2009;
- the issue of charities operating outside the location management system;
- the question of whether subscription fee(s) could/should be charged for the location management system and what form such fees, if any, should take;
- the governance of the location management system, including issues such as a right of appeal for charities.

The Panel welcomed these observations from An Garda Síochána as useful for the further development of a location management system.

8. The Panel also requested a written submission from An Garda Síochána to feed into this Panel report; a letter was duly received by the Panel in June 2017. This letter set out the position of An Garda Síochána as follows:

*"At this juncture it is the view of An Garda Síochána that prior to a final determination being made on the most effective approach to implement the processing of applications for non-cash collection permits under the current or amended legislation, the matters raised by An Garda Síochána should be further examined and tangible options developed prior to the commencement of Sections 93 to 96 of the Charities Act 2009."*<sup>25</sup>

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25 Letter from An Garda Síochána to Consultative Panel, 20 June 2017.

## 6.5 Panel Proposals

The regular, dependable income raised from the public by direct debits or so-called non-cash collections is critical for charities. It enables charities to make genuine long-term commitments to their beneficiaries. It often provides unrestricted income which can support challenging causes or critical support services. It helps charities have financial independence and increases their income by allowing them to source funding externally through grants and co-funding where this is related to levels of public support.

The Panel are of the view that failure to implement an appropriate permit system prior to commencement of Sections 93-96 of the Charities Act 2009 is likely to result in significant negative consequences for those charitable organisations reliant on this fundraised income.

The Panel proposes that the following measures should take place in relation to Section 93-96 of the Charities Act 2009:

1. Responsibility for the regulation of cash and non-cash collections should remain with An Garda Síochána, in light of its considerable experience in this area. Furthermore, administration of the collection permit system by An Garda Síochána facilitates the detection of bogus or fraudulent collections;
2. The Panel are of the view that Section 93-96 should be commenced in due course. This will ensure the regulation of all collections from the public by bringing both cash and non-cash collections under the remit of the Street and House to House Collections Act. The Panel recommends, however, that this should only take place when an effective and efficient system of allocating permits and notifications for both cash and non-cash collections is put in place. Commencement in the absence of such a system would impose a major administrative burden on An Garda Síochána, would in turn have significant negative consequences for charities relying on income from these methods, and would be highly inadvisable;
3. The Panel notes the location management system which has been developed by a group of Irish charities. The Panel believes an automated location management system has the potential to significantly reduce the administrative burden of the collection permit system. In this context the Panel acknowledges that there are issues to be resolved in the operation of a location management system in order for such a system to meet a range of security and data protection concerns as highlighted by An Garda Síochána. The Panel recommends that further work be undertaken in this regard as a matter of priority.

# 7 Panel Conclusions

Regulation of the charitable sector has been a long time coming. The Charities Act 2009 is the first major update of charity legislation in almost half a century. It is beyond question that this legislation was necessary: to increase public trust and confidence in the sector, to address issues of non-compliance and to ensure that charitable organisations are accountable to their donors, beneficiaries and members of the public. The Panel acknowledges and welcomes the steps which the Charities Act 2009 and the new Charities Regulator have taken to achieve that.

In line with its Mandates, the Panel has specifically considered the issue of the regulation of charitable fundraising, taking into account Panel members' expertise as well as previous work undertaken by the sector in this area. Papers prepared by members of the Panel formed the basis for substantive Panel discussions. The importance of fundraising for charities has been detailed earlier in this Report. Many charitable organisations rely on the income which fundraising generates and would be unable to fulfil their charitable purposes without it. Any measures which impact on charitable fundraising should therefore be carefully considered.

The Panel concludes as follows:

1. There should be a measured approach to regulation of charitable fundraising which would consist, in the first instance, of new guidelines detailing best practice in fundraising methods for charitable organisations which fundraise from the public. The Panel recommends that these guidelines be drawn up by the Charities Regulator and issued by it, pursuant to its function under Section 14(i) of the Charities Act 2009. Guidelines are to be issued by the Regulator in conjunction with the launch of this report. The efficacy of the fundraising guidelines should be reviewed within three years of their issue.
2. The Panel proposes that Sections 93-96 of the Charities Act 2009, dealing with cash and non-cash collections be commenced in due course. This will ensure the regulation of collections from the public by bringing both cash and non-cash collections under the remit of the Street and House to House Collections Act and under the management of An Garda Síochána. It will regularise the current unsatisfactory situation where no permit is required to hold a non-cash collection. The Panel recommends, however, that the commencement of these sections should only occur when an adequate permit system is in place in An Garda Síochána. Failure to implement an appropriate permit system, prior to commencement, is likely to result in significant negative consequences for those charitable organisations reliant on fundraised income.
3. The Panel is of the opinion that a phased approach to the regulation of charitable fundraising is appropriate, with regulations under Section 97 to be enacted in due course, once the following three issues have been addressed: the Panel recommends that section 97 should be commenced in tandem with Sections 93-96 of the Charities Act 2009; that the impact of the 'Accountancy and Reporting Regulations' has been reviewed to avoid an excessive regulatory burden; and that there be consideration of the fact that Section 97 regulations will refer only to charities and not to other fundraising entities.

The Panel believes that the adoption of its proposals as set out in this report will ensure a balanced and fair regulation regime of charitable fundraising. Such a regime will permit charities to flourish while ensuring that they remain accountable to the people whom they serve.

# Bibliography

## Legislation

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Charities Act 2009.

Street and House to House Collections Act 1962.

Gaming and Lotteries Act 1956.

## Books and Reports

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2into3: *The Irish Not-for-Profit Sector Fundraising Performance Report*, 2016.

Breen, Oonagh: *Regulating Charitable Solicitation Practices – The Search for a Hybrid Solution*, Financial Accountability & Management, 25(1), February 2009.

Centre for Nonprofit Management: *The Hidden Landscape, First Forays into Mapping Nonprofit Organisations in Ireland*, Trinity College Dublin, 2006.

Department of An Taoiseach, *Regulating Better*, Government White Paper, 2004.

Department of Finance: *VAT on Charities Working Group Report*, 2015.

Etherington, Sir Stuart et al.: *Regulating Fundraising for the Future: Trust in charities, confidence in fundraising regulation*, September 2015.

Hampton, Philip: *Reducing administrative burdens: effective inspection and enforcement*, HM Treasury, 2005.

Hogan and Gwynn Morgan: *Administrative Law in Ireland*, 2010.

ICTR: *Exploring the Irish Fundraising Landscape, a Report on the Practice and Scale of Charitable Fundraising from the Public in Ireland*, 2007.

ICTR: *Regulation of Fundraising by charities through legislation and codes of practice*, 2008.

ICTR: *Charitable Fundraising in an Economic Downturn, the first annual report on income and fundraising activity in Irish charities*, 2009.

ICTR: *Development and Implementation of the Statement of Guiding Principles for Fundraising*, 2014.

Law Society, The: *Charity Law, the Case for Reform*, 2002.

McKinsey & Company: *Philanthropy in the Republic of Ireland, an assessment of the current state and future potential of philanthropic giving in the Republic of Ireland*, 2009.

O'Halloran, Kerry: *Charity Law*, Round Hall, Dublin, 2009.

Wheel, The: *Ireland's Non-profit Sector, The Big Picture*, 2012.

Wheel, The: *A Portrait of Ireland's Non-profit Sector*, 2014.

# Appendix 1:

## Panel Terms of Reference and Rules of Procedure

### 1 AUTHORITY

- 1.1 The Consultative Panel on Charitable Fundraising is established by the Charities Regulatory Authority (the 'Authority') in accordance with Section 36 of the Charities Act 2009 (the '2009 Act').

### 2 MANDATE

- 2.1 The Consultative Panel is established to consider:
1. The commencement of Sections 93 to 96 inclusive of the 2009 Act;
  2. The Minister's power to make Regulations to govern charitable fundraising pursuant to Section 97 of the 2009 Act;
  3. Other options for regulation of charitable fundraising such as a code of practice, having regard to resources, take up, monitoring and enforcement; and
  4. The role of the Authority in the regulation of charitable fundraising.

### 3 COMPOSITION

- 3.1 The panel consists of individuals invited by the Charities Regulator as follows:

- Chairperson – Ann FitzGerald (Charities Regulator Board Member)
- Niamh Callaghan (Solicitor, Mason Hayes & Curran)
- Tom Costello (Charities Regulator Board Member)
- John Cunningham (Chair, Immigrant Council of Ireland)
- John Farrelly (CEO, Charities Regulator)
- Deirdre Garvey (CEO, The Wheel)
- Jim Howe (Fundraising Practice & Operations Manager, Concern)
- Lucy Masterson (CEO, Charities Institute Ireland)
- Sheila Nordon (Former Executive Director, ICTR)
- Liz Roche (Independent Fundraising Consultant)

- 3.2 A focus group of charitable donors shall be put in place so as to ensure that their views are taken into account by the Panel.

## 4 CHAIRPERSON

- 4.1 The Chairperson is appointed by the Board of the Authority.
- 4.2 The Chairperson is responsible for the efficient conduct of the business of the consultative panel, in particular by:
  - planning the work of the panel together with the Chief Executive;
  - ensuring, together with the secretary to the panel, that the rules of procedure are respected;
  - aiming to achieve consensus on issues discussed by the panel; and
  - reporting on the activities of the panel as appropriate.

## 5 ADMINISTRATIVE SUPPORT

- 5.1 A secretary and executive to the panel shall be appointed by the Chief Executive.
- 5.2 The Authority shall provide such administrative facilities as may be necessary to enable the panel to perform its functions.

## 6 MEETINGS

- 6.1 Meetings are held with sufficient frequency to enable the consultative panel to carry out its functions.
- 6.2 Members may participate in meetings by telephone or teleconference. Members so participating are considered to be present at the meeting.
- 6.3 Meetings are chaired by the Chairperson. In his/her absence, an acting Chairperson is appointed from among the members.
- 6.4 The Panel may act in the absence of one or more members. If members cannot attend all or part of a meeting, they must notify the Secretary in advance of the meeting.
- 6.5 The quorum for meetings is five members.
- 6.6 The agenda for each meeting is established by the Chairperson and shall be circulated with related papers in advance of the meeting.
- 6.7 Each member of the consultative panel present has one vote. Decisions are made by consensus or by a majority of the votes of the members present. If there is an equal division of votes, the Chairperson has a casting vote.
- 6.8 Any employee of the Authority or other person may be invited to attend for particular items at the discretion of the Chairperson but they are not entitled to vote.

## **7 MINUTES OF MEETINGS**

- 7.1 Minutes of each meeting are prepared by the Secretary.
- 7.2 The minutes shall include:
- the names of all attendees;
  - a summary record of the proceedings; and
  - decisions taken or conclusions reached by the consultative panel.
- 7.3 Draft minutes are sent to members before the next meeting. They are adopted at the following meeting, signed by the Chairperson and a copy provided to the Chief Executive and the Board of the Authority.

## **8 REPORTING**

- 8.1 The final report of the panel, including any recommendations, shall be presented to the Board of the Authority within nine months of the date of the first meeting of the panel.
- 8.2 The period referred to in paragraph 8.1 may be extended by the Authority upon request of the panel.

## **9 GUARANTEES OF INDEPENDENCE AND CODE OF CONDUCT**

- 9.1 The terms of reference of the consultative panel shall be published on the Authority's website.
- 9.2 The names of the members and the organisation they represent (if any) are made public.
- 9.3 Where, at a meeting, any member of the panel present at the meeting has a material interest in the matter under discussion shall:
- Disclose such interest;
  - Neither influence nor seek to influence a decision to be made in relation to the matter;
  - Absent himself or herself from the meeting when the matter is being discussed;
  - Take no part in relevant deliberations;
  - Refrain from voting on any relevant matters; and
  - Not count for quorum purposes for that item only.
  - Relevant disclosures shall be recorded in the minutes of the meeting(s) concerned.
- 9.4 Members of the consultative panel will abide by the Authority's Code of Conduct.
- 9.5 Members of the consultative panel are required not to disclose third-party confidential information received by them while performing their duties, even after their duties have ceased.

## **10 EXPENSES**

10.1 The following allowances and expenses are payable by the Authority:

- (a) the travelling and subsistence allowances of panel members in accordance with such scales as may be determined from time to time by the Minister for Justice and Equality with the consent of the Minister for Public Expenditure and Reform;
- (b) the administrative expenses of the panel.

## **11 LEGAL ISSUES**

11.1 The consultative panel may request the Authority to seek legal advice where necessary on matters within its terms of reference.

## **12 GENERAL PROVISIONS**

12.1 These terms of reference and rules of procedure are approved by the Board of the Authority.

# Appendix 2:

## Data on Charitable Fundraising

In recent years, a number of research reports on the non-profit sector (of which the charity sector is a subset) have been produced.<sup>26</sup> The size of the non-profit sector has been variously estimated as between 18,000<sup>27</sup> and 24,000<sup>28</sup> organisations, while there are currently just over 8,000 organisations on the Charities Regulator's online Register of Charities. The registration process is still ongoing; when the Register is complete it is anticipated that this figure will be closer to 15,000. There is a dearth of accurate and comparable data on charitable organisations however; this is expected to change with the advent of the Charities Regulator and the forthcoming Accounting and Reporting Regulations.

Most Irish non-profit organisations are relatively small. It has been reported that:

- > about one quarter (25.9%) of organisations have annual income of €99,999 or less;
- > a further 22.1% have income levels between €100,000 and €299,999;
- > almost another quarter (23.9%) have income levels of between €300,000 and €999,999; and
- > 16.6% have income levels in excess of €1m (although most are between €1m and €5m).<sup>29</sup>

This breakdown is almost identical for expenditure levels.<sup>30</sup> Other research similarly found that just over half of organisations surveyed had annual income of less than €100,000 while only 11% had income exceeding €1 million in 2014.<sup>31</sup>

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26 All charities are, by their nature, non-profit organisations. As a condition of registration with the Charities Regulator, an organisation must have exclusively charitable purpose(s) and all of the organisation's property must be applied in furtherance of that purpose(s). Charitable organisations must also be able to provide benefit to the public or a section of the public. It does not follow, however, that all non-profits are charities. If a non-profit organisation does not have a charitable purpose or if its activities do not provide public benefit then it does not fulfil the legal criteria required of a charitable organisation. Furthermore, certain organisations including political parties, trade unions, chambers of commerce and sports clubs may well be non-profit bodies but nevertheless fall outside the definition of charitable organisations as per the Charities Act 2009. There is limited data available purely on charities however; most research reports focus on the broader category of non-profits, of which charities comprise a sub-section.

27 2into3: *The Irish Not-for-Profit Sector Fundraising Performance Report 2016*, 2016, p.4.

28 Centre for Nonprofit Management: *The Hidden Landscape, First Forays into Mapping Nonprofit Organisations in Ireland*, Trinity College Dublin, 2006, p.20.

29 The Wheel: *Ireland's Non-profit Sector, The Big Picture*, 2012, p.7.

30 The Wheel: *Ireland's Non-profit Sector, The Big Picture*, 2012, p.6.

31 2into3: *Fundraising Performance Report 2016*, p.6.

Benefacts, a public database of civil society organisations, holds detailed financial information on 3,319 registered charities.<sup>32</sup> The Benefacts database indicates that in 2015:

- 24.3% (1,058 charities) had a turnover of below €75,000;
- a further 39.5% (1,720 charities) had a turnover of between €75,001 and €1m;
- 8.1% (354 charities) had a turnover of between €1m and €5m in 2015; and
- 4.2% (181 charities) had a turnover of more than €5m.

The total combined turnover figure for these charitable organisations in 2015 was €9,227,881,069. The total amount of funds secured by these charitable organisations via fundraising methods in 2015 was €687,888,020 or 7.45% of total funding. Anecdotally, it would appear that fundraised income as a percentage of total income may in fact be much larger than reported here in the case of many charities; the Panel is of the view that there is a compelling need for more comprehensive data on the charities' sector.

Almost 70% of non-profit organisations fundraise from the public, with individual giving accounting for up to 25% of organisations' revenue, according to some sources.<sup>33</sup> This is second only to revenue from the State, which has declined noticeably over the past decade.<sup>34</sup> An increase in fundraised income has been reported by some organisations recently; however a decrease in total income has also been observed.<sup>35</sup> Figures provided by ICTR to the Department of Finance suggest that income in the charities sector dropped significantly between 2008 and 2013. In the case of the top 400 charities in Ireland, ICTR estimates indicate that total income dropped from €3.25 billion to €2.78 billion in the five-year period. The average reduction in the case of publicly fundraised income over the period was estimated to be in excess of 20%, with some charities experiencing reductions as high as 35%.<sup>36</sup> These figures now require to be updated and do not reflect the current picture in the sector with the numerous challenges it faces, including a reduced subvention in many instances from the State.

32 Benefacts holds financial information on charitable organisations which are incorporated as companies; it does not currently have data on unincorporated charitable organisations. It also excludes from its analysis entities that are out of its scope, such as government bodies. Therefore, the figures given exclude organisations such as the Arts Council, the Higher Education Authority, the Health Services Executive and Pobal, for example, even though these and others are listed on the Charities Regulator's website as registered charities. The figures also exclude the 23.9% of charitable companies which filed abridged accounts in 2015 and for whom therefore no information on income and expenditure is available. The figures thus relate to 3,319 charitable companies.

33 *The Wheel: A Portrait of Ireland's Non-profit Sector*, p.13 and p.11. ICTR reported that fundraised income accounted for 23.1% of income in a study of 960 fundraising charities (data from 2004 Mapping Survey) ICTR: *Exploring the Irish Fundraising Landscape, a Report on the Practice and Scale of Charitable Fundraising from the Public in Ireland*, 2007, p.x.

34 The percentage of income which non-profit organisations report as coming from the State fell from 62.2% in 2004 (ICTR: *Exploring the Irish Fundraising Landscape*, p.x) to 52.7% in 2012 (*The Wheel, Portrait of the Non-Profit Sector*, p.11) to 43% in 2014 (2into3: *Fundraising Performance Report 2016*, p.7). It should be stressed that these reports rely on different data sets and different sampling frames and as such the figures are not directly comparable. Nevertheless, they are indicative of trends in the sector over the past decade, particularly with regard to budget cuts and reduced State spending as a consequence of the financial crisis of 2008.

35 According to one source, 57% of non-profit organisations reported a decrease in income over the period 2009-2012 while 19.2% reported an increase in income over the same period (*The Wheel: Ireland's Non-profit Sector, The Big Picture*, 2012, p. 86). On the other hand, it has been reported that fundraised income increased for the 5th consecutive year in 2014, rising by 7% compared to 2013 (2into3: *Fundraising Performance Report 2016*, p.17). The report notes however that in 2014 the majority of organisations (63%) experienced no change in fundraised income, 17% reported an increase in fundraised income and 20% experienced a decrease. However, the average increase was more than double that of the decrease.

36 Department of Finance: *VAT on Charities Working Group Report*, 2015, p.10.

# Appendix 3:

## International Context

It is worth noting, in very general terms, that international models of regulating fundraising usually fall within one of the following:

- Self-regulation – where the codes/rules which govern fundraising are developed, administered and enforced by the charities whose behaviour is to be governed. It is usually voluntary in nature i.e. the charities choose to adopt the codes due to the perceived benefits of doing so. This is the type of regulation that applies to the Statement of Guiding Principles for Fundraising. The obvious potential negative aspect of self-regulation is the lack of a legal backstop or piece of legislation to enforce the codes/rules.
- Co-regulation involves self-regulation (such as the Statement of Guiding Principles for Fundraising) with some oversight by an independent body. By way of example, this could involve a combination of a code of practice developed by the sector that is backed by a statutory body.
- Statutory regulation – this is regulation that is implemented by legislation, such as, by way of example what could be introduced by virtue of section 97 of the 2009 Act.

In considering regulation of fundraising in other jurisdictions, the Panel reviewed the existence, or not, of regulation and the manner of regulation in our nearest neighbours Northern Ireland, Scotland, England and Wales as well as Denmark, Australia and the USA. This Report will not benefit from an account of the position in each jurisdiction. However, it is worth commenting on the position in England and Wales, given the significant level of activity in the area of fundraising by charities in that jurisdiction during the lifetime of this Panel. That activity and the steps taken are not all recommended by the Panel, but it provides a good comparator and example of the level of activity in fundraising regulation in another jurisdiction.

The specific activity in England and Wales that the Panel observed and considered, commenced with a report published by Sir Stuart Etherington and others in the UK, entitled “Regulating Fundraising for the Future” and dated September 2015 (the “Etherington Report”). The Etherington Report noted that the then current model of “self-regulation” of fundraising in England and Wales “has proven insufficiently effective at protecting public trust and confidence in charities”. However, importantly in relation to the work of the Panel, it is predicted that statutory regulation is likely to follow in England and Wales if charities do not take the opportunity to voluntarily commit to the stated “robust, accountable and independent scrutiny”.

The Etherington Report recommended “three lines of defence” model;

- The first line of defence – Charity Trustees as the first line of accountability for the charity’s fundraising activities. The Panel fully agrees with this position.
- The second line of defence – if malpractice occurs, a specialised fundraising regulator has the power to intervene to ensure the public interest is protected.
- The third line of defence – the relevant statutory regulator acts as the backstop in cases that raise regulatory concerns on issues that fall within their remit and powers.

As a result of the Etherington Report, the office of the Fundraising Regulator was established in January 2016 and as of 7 July 2016, fundraising in England and Wales is regulated by the Fundraising Regulator, which is a separate and independent body to the Charity Commission in the same jurisdiction.

The mission of the Fundraising Regulator is to carry out an independent and non-statutory authority role in a way that –

- protects the public, donors and potential donors, particularly those who may be vulnerable, from unacceptable fundraising practices;
- sustains and enhances public confidence in the charitable sector;
- supports the sector to understand and carry out its responsibilities in engaging with the public, creating a positive donor experience; and
- ensures consistent fundraising standards across the UK.

The Fundraising Regulator has taken over the authority role of the Fundraising Standards Board and has taken over responsibility for the “Code” from the Institute of Fundraising (“IoF”). The Fundraising Regulator has entered into a Memorandum of Understanding with the Charity Commission, the Information Commissioner’s Office, the Higher Education Funding Council for England and the Institute of Fundraising.

Complaints against fundraising by charities can be referred to the Fundraising Regulator following unsuccessful attempts to resolve the issue with the charity involved.

The Fundraising Regulator is a company limited by guarantee without a share capital, governed by a non-executive Board of Directors drawn from inside and outside the fundraising sector, including members with extensive experience of regulation, codes of practice and the charitable sector.

The IoF is the professional membership body for UK fundraisers. Its mission is to support fundraisers through leadership, representation and education. The IoF champions and promotes fundraising as a career choice. It also is the leading provider of fundraising training in the UK and provides qualifications in fundraising. The IoF published the Code that all professional fundraisers were encouraged to observe. Control of the Code has now passed to the Fundraising Regulator.

The fundraising provisions of the (UK) Charities (Protection and Social Investment) Act 2016 came into force on 1 November 2016 and enable charities to demonstrate their commitment to protecting donors and the public. The UK Charity Commission issued the following summary of the content of the new provisions:

1. The first requirement applies where a charity, registered or unregistered, uses a professional fundraiser or commercial participator to raise funds. Broadly, it says that the compulsory written agreements between charities and these third parties must include extra information covering:
  - the scheme for regulating fundraising or recognised fundraising standards that will apply to the professional fundraiser or commercial participator in carrying out the agreement;
  - how the professional fundraiser or commercial participator will protect the public, including vulnerable people, from unreasonably intrusive or persistent fundraising approaches and undue pressure to donate; and
  - how charities will monitor the professional fundraiser or commercial participator’s compliance with these requirements.

2. The second requirement applies to registered charities that, by law, must have their accounts audited. It says that these charities have to include extra information about fundraising in their trustees' annual report. Broadly, the extra annual statements are about the charity's:

- > approach to fundraising;
- > work with, and oversight of, any commercial participators/professional fundraisers;
- > fundraising conforming to recognised standards;
- > monitoring of fundraising carried out on its behalf;
- > fundraising complaints;
- > protection of the public, including vulnerable people, from unreasonably intrusive or persistent fundraising approaches, and undue pressure to donate.

As noted above, while not recommending each of the steps taken in the UK, the Panel found it useful to consider and learn from the recent and constantly changing UK experience.

# Appendix 4:

## Public Consultation on Charitable Fundraising

In tandem with the work of the Panel, the Regulator carried out a public consultation process on charitable fundraising in Autumn 2016. The consultation featured public meetings as well as an online survey which ran from 4 October 2016 to 8 November 2016.

### Public Meetings

Three public meetings were held in 2016 – in Dublin on 4 October, in Galway on 6 October and in Cork on 11 October – as part of the consultation process. The meetings were open to members of the public and were publicised on the Regulator’s website and other communication channels. The meetings addressed the topic of charitable fundraising as well as the Regulator’s draft Accounting and Reporting Regulations. A short presentation on each issue was held and then questions, comments and feedback were sought from the floor. In total 322 people registered to attend these events. Results of these meetings are summarised below.

The current permit system for cash collections was described as confusing given that some permits are issued at local and some at national level by the Gardaí. This can result in a situation where there are multiple people collecting in the same area who may (or may not) have permits. It was pointed out however that for large urban locations limiting permits to one organisation per day may result in wasted opportunity if the organisation does not use its permit, while reducing location size to individual streets also brings its own problems. An online calendar or a location management system which would list which organisations are collecting in which location(s) on a given day would be helpful in reducing congestion and public nuisance. The issue of resourcing of such systems was raised. It was also noted that while charitable organisations hold collections under the Street and House to House Collections Act, 1962, other legislation governs the selling of items such as flowers, lottery tickets etc.

The need for better regulation of house to house collections was raised. It was pointed out that there are widespread scams where donations/clothing left out for legitimate charities are picked up by unmarked vans and then sold on. Collectors calling to elderly people after dark was also noted as an issue that should be addressed.

The Regulator’s proposed guidelines on fundraising for charitable organisations were broadly welcomed; there is a need to restore public confidence in charities. The issue of ensuring compliance with the guidelines was raised. In this context, it was noted that sanctions for non-compliance with such guidelines need to be clearly spelled out and that a robust complaints procedure is required if they are to be effective. On the other hand, acknowledgement of fully registered and compliant charities is also desirable for example through a public awareness campaign and/or by means of a trustmark or seal of approval which could be used by charities on stationery and publicity materials.

Other issues raised included:

- > the need for accurate and standardised reporting of the cost of fundraising, including how the costs associated with direct debits are accounted;
- > the question of online fundraising websites and how they might be regulated;
- > the issue of individuals fundraising directly e.g. for a sick child, which – while not illegal – diverts money away from charitable organisations providing such services and does not have any controls or oversight. (It was noted in this context that if money raised is being used inappropriately then it is fraud and, therefore, a matter for An Garda Síochána.)

### Online Consultation Process

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An online survey was also carried out as part of the public consultation process. This ran from 4 October 2016 to 8 November 2016.

The online survey comprised six questions, focusing on:

- > donation patterns;
- > priorities when donating;
- > potential areas of concern when donating;
- > on-street fundraising;
- > door to door fundraising; and
- > respondents' views on the current situation regarding charitable fundraising.

The aim was to gather quantitative data and therefore close-ended multiple choice questions were used.

There were a total of 364 responses to the online survey, with 94 incomplete responses which were disregarded for the purposes of this report. Of the 270 complete responses, 109 respondents described themselves as charity staff, 73 described themselves as volunteers, 63 described themselves as members of the public and 25 selected the 'other' option: primarily fundraising consultants, treasurers, accountants or other service providers. Of the 270 respondents, 60% answered in a personal capacity, 32% on behalf of a charity and 8% on behalf of an organisation other than a charity.<sup>37</sup> The survey results are broadly consistent across all categories of respondents surveyed.

### Donation patterns

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114 respondents (42%) donate regularly to charities via standing order while just 4 respondents (1%) do not donate to charities at all. 129 respondents (48%) donate occasionally or to specific events/causes while 23 respondents (9%) regularly donate to on street and/or door to door collections.

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<sup>37</sup> In this context, it should be noted that of the 109 respondents who described themselves as charity staff, 45% answered in a personal capacity, 52% answered on behalf of a charity and 2% answered on behalf of an organisation other than a charity. Similarly, for the 73 respondents who described themselves as volunteers, 58% answered in a personal capacity, 31% answered on behalf of a charity and 11% answered on behalf of an organisation other than a charity.

## Priorities<sup>38</sup>

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When considering making a donation to a charity, the most important factor is the cause or issue that the donation is going towards (82%). This is followed by the reputation of the charity (41%) and the governance of the charity (23%).

## Potential areas of concern<sup>39</sup>

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The biggest concern when considering making a donation is the potential misuse of donated funds (58%) followed by whether a charity is legitimate (36%) and not knowing where/how the donation would be spent (33%).

## On street fundraising

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In relation to on street fundraising, 36% of respondents find being approached to set up a donation via standing order aggressive and annoying while 30% prefer not to give their details to someone on the street. These figures suggest that there is high dissatisfaction with the manner in which on street fundraising is currently being carried out. 22% understand that charities need to pursue all funding options and 8% find it a convenient way to set up a regular donation. 2% always enquire about where the money will go and 2% did not respond.

## Door to door fundraising

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In relation to door to door fundraising, 37% of respondents think being approached at home for a donation by door to door fundraisers is inappropriate. 23% are sometimes comfortable with being approached at home for a donation while a further 23% are comfortable if it is for a local cause. 15% of respondents are always comfortable being approached at home and 2% did not respond.

## Views on current situation regarding charitable fundraising<sup>40</sup>

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As to charitable fundraising, the data clearly shows that stronger regulation is the most popular option (49%). Also important is preventing too much red tape from hindering charities' efforts to raise money (39%). Putting more measures in place to protect vulnerable people is similarly seen as worthwhile (19%).

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38 Multiple answers possible; percentages do not add up to one hundred.

39 Multiple answers possible; percentages do not add up to one hundred.

40 Multiple answers possible; percentages do not add up to one hundred.

# Appendix 5:

## Location Management System as operated by Charities Institute Ireland

The Face to Face Forum working together with Charities Institute Ireland has invested in a pilot programme with the Institute of Fundraising in the UK. This partnership is providing a location management system for face to face fundraising in Ireland.

The location management system is a computer software programme that allows charities to submit requests for small locations all around the country. Locations are currently being mapped to Garda Divisions, Districts and Sub-Districts and all locations have set conditions including:

- > defined boundaries and buffer zones;
- > maximum number of fundraisers allowed;
- > rest periods for locations; and
- > set days where fundraising cannot take place.

The locations are ranked by how often they are requested and how much charities want to use them. Then using algorithms, which take into account each of the above conditions and previous history and usage, the system allocates locations fairly and equitably to the relevant charities. There is a brief period for charities to swap locations or move to other available locations, before the process is complete.

This has been the most significant investment made by face to face fundraising charities to date, and it represents an important development in terms of effectively managing fundraising sites. The operational costs come through Charities Institute Ireland, and are funded by the charities conducting face to face fundraising. Charities Institute Ireland also supports the reporting, monitoring, mystery shopping (quality control) and best practice functions in line with the Face to Face Code of Practice.

The system can provide any authority (such as the Gardaí or the Charities Regulator) with transparent access to view all activity. It provides clarity on which charities and which agencies working on their behalf are operating in any particular location at any given time.

Essentially, the system manages and allocates all locations for non-cash collections in the country, with set conditions and fair agreements. It has the potential to provide the same service to cash collections, so long as conditions and agreements can be made, but this would be a significant development which would require further investment.







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