House of Lords Select Committee on Charities

Evidence submission

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About Rogare

Rogare (Latin for 'to ask') is the University of Plymouth Hartsook Centre for Sustainable Philanthropy's fundraising think tank and the home of Critical Fundraising – the discipline of critically evaluating what fundraisers know, or think they know, about their profession.

Our remit is to explore under-researched and 'under-thought' areas of fundraising. One of our key aims is to generate new practical ideas by pulling together the academic and practitioner branches of the fundraising profession.

Charities' accountability to their donors, beneficiaries and the general public

Executive summary

- This evidence submission focuses specifically on fundraisers' accountability to their donors, beneficiaries and the general public.
- Fundraisers have different duties to donors and beneficiaries, principally:
    - To beneficiaries, to ensure a charity has sufficient income to provide the services and products beneficiaries rely on.
    - To donors (and non-donors), not to subject them to undue pressure to donate.
- Fundraisers therefore need to be accountable to both groups for the effective and ethical discharge of those duties.
- Currently however, there are structures and mechanisms – fundraising's codes of practices and regulatory oversight – that allow fundraisers to be accountable only to their donors.
- From the regulatory perspective, this is partly because regulatory bodies have operated with a 'consumer protection' ethos, seeing their role solely as protecting donors from fundraising practice, but having no duty to beneficiaries.
- To ensure fundraisers can be accountable to beneficiaries, a framework needs to be established to deliver this accountability.
- But that requires a change in regulatory ethos from 'consumer protection' to one of regulating a process of 'donation', in which donors and beneficiaries are equal stakeholders.

1 Introduction

1.1 What we are focusing on

1.1.1 We are choosing to respond to a specific part of this consultation – charities' accountability to their donors, beneficiaries and the general public (section 6) – because this is the basis of a major review of fundraising's professional ethics that we are currently conducting (MacQuillin 2016).

1.1.2 Our evidence is therefore couched specifically in terms of fundraisers' accountability to their donors, beneficiaries and the general public.

1.1.3 This is not to deny or discount that charities have other types of accountability to these stakeholder groups (some of which will be touched on in this evidence submission). However, in light of last year's 'fundraising crisis' and the continued effect of the fallout on the fundraising profession, we consider it important that the committee consider fundraiser accountability in its own right.

1.2 Donors and 'general public'

1.2.1 We contend that it is possible to group 'donors' and 'general public' within the same stakeholder heading. All donors are also members of the general public, and the general public is also composed of people who either already do give to charity (i.e. they are donors), or could give to charity if they don't already do so (i.e. they are potential donors). Around two thirds of British adults give to charity in any given month (CAF/NCVO 2011, 2012), and research in to the number of British adults who donate in any given year puts the figure upwards of 90 per cent (Pharoah et al 2005, p29, Nestlé/MORI 2000).

1.2.2 Further to this, some members of the public who are currently donors to some charities will be only potential donors to other charities. It is difficult – though of course not impossible – to conceive of a set of accountabilities that fundraisers have to their donors, but not to the general public, and vice versa. Therefore, henceforth in this submission, when we refer to 'donors' we take this to include donors, potential donors, non-donors (who can be construed of as 'donors who give nothing') – these three groupings constitute the general public.

1.3 What is meant by 'accountability'?

1.3.1 'Accountability' has been described as a "complex and chameleon-like concept" (Mulgan 2000, p555) with varied meanings and applications, and without going into a full literature review of these various concepts, we feel we should at least sketch out a concept of accountability that will inform this evidence submission.

1.3.2 At its simplest, 'accountability' refers to "answerability, blameworthiness, liability and expectation of account giving"[1]. Accountability can also be can described in terms of two dimensions: answerability and enforcement (Schedler 1999, p14). Answerability is the obligation to inform and explain, and involves acting in a transparent way and justifying actions (ibid). Enforcement describes the capacity of "accounting agencies" to impose sanctions as punishment for improper behaviour (ibid, p15).

1.3.3 In submitting this evidence, we lean towards accountability to donors and beneficiaries meaning how charities should be answerable (in the sense of being required to transparently justify) for their actions to both stakeholders, rather than whether either stakeholder group (or someone who speaks on their behalf) should have authority to sanction charities for a failure of accountability. However, we do not dispute or deny that fundraisers, like any professionals, should be accountable, in the enforcement sense.

1.3.4 Combining both dimensions of answerability and enforcement, accountability can be more formally described as: (Schedler 1999, p17):

A is accountable to B when A is obliged to inform B about A's (past or future) actions and decisions, to justify them [answerability], and suffer punishment in the case of eventual misconduct [enforcement].

1.3.5 Our evidence focuses on the accountability that comes from how fundraisers discharge the duties that they owe to their donors and beneficiaries. Fundraisers must be held accountable for ethically and successfully discharging these duties.

2 Fundraisers' ethical duties to donors and beneficiaries

2.1 The nub of the issue is that fundraisers owe different duties to their donors and beneficiaries.

2.2 Charities have a duty to fufil their charitable mission, which generally involves providing services for their beneficiaries. Fundraisers ensure that charities have sufficient income to be able to provide those services. They therefore have a contractual accountability to the organisations for whom they work to reach their targets and income objectives. But they also have a moral accountability to their beneficiaries to achieve this. Beneficiaries should hold fundraisers morally accountable for any failure to fund the services they rely on.

2.3 This is the foundation of the new theory of fundraising ethics that Rogare has developed as part of its review of fundraising's professional ethics.

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[1] https://en.wikipedia.org/wiki/Accountability - *accessed 30.8.16*

2.4 There is surprisingly little normative theory development in fundraising ethics. What normative theory has been developed has tended to regard fundraising as ethical when it falls into one three main general ideas (MacQuillin 2016a):

- Fundraising is ethical when it maintains and protects public trust in fundraising ('trustism')
- Fundraising is ethical when it gives priority to donors' needs, wants, desires and wishes (the fundraising profession knows the best practice conception of this ethical idea as 'donorcentrism')
- Fundraising is ethical when it brings meaning to donors' philanthropy.

2.5 Ethical thinking in fundraising – at both the academic and practitioner level – has primarily focused on fundraisers' duties to their donors, and the profession has developed its own mechanisms by which fundraisers can be accountable to those donors, such as codes of practice (which contain the profession's applied ethical prescriptions – which are founded predominantly on a combination of 'trustist' and 'donorcentrist' ethics).

2.6 Perhaps as a result of the fundraising profession's prioritisation of duties to the donor, it is not surprising that regulatory mechanisms – whether they be self-regulation in the form of the now-defunct Fundraising Standards Board, or independent regulation through the Fundraising Regulator (the FRSB's successor) – also prioritise(d) the wishes of the donor: the Fundraising Regulator has repeatedly said that its role is to represent the voice of the donor, or to 'speak up for' donors (Birkwood 2016a), and the public will be consulted on changes to the fundraising code of practice (Birkwood 2016b).

2.7 Both regulatory bodies have adopted a 'consumer protection' ethos in their approach to regulating fundraising. By doing this, they have made an assumption that donors are analogous to consumers, and so focused on making fundraisers accountable to donor-consumers at the expense of any duties to beneficiaries.

2.8 Yet what is quite strikingly noticeable is that rarely are charity beneficiaries even mentioned in theorizing around fundraising ethics, let alone any duties that fundraisers might owe beneficiaries described.

2.9 Rogare's conception of fundraising ethics attempts to bring the donor back into the frame. Our theory attempts to identify and describe fundraisers duties to their donors *and* their beneficiaries and develop ethical decision-making frameworks that will allow fundraisers to balance these duties when they come into conflict, since it is the tension between what the donor wants and what the beneficiary needs that results in most ethical dilemmas in fundraising.

2.10 Fundraisers principal duties are:

- To beneficiaries, to ensure a charity has sufficient income to provide the services and products beneficiaries rely on.

- To donors (and non-donors), not to subject them to undue pressure to donate (this obligation is currently enshrined in the code of practice, along with obligations not to make “unreasonably persistent approaches” and not to make “unreasonable intrusions” into a person’s privacy – s1.2f [The Fundraising Regulator, 2016, s1.2f]; other duties include being honest, etc).

2.11 Therefore under ‘Rights Balancing Fundraising Ethics’:

Fundraising is ethical when it balances the duty of fundraisers to solicit support on behalf of their beneficiaries, with the right of the donor not to be subjected to undue pressure to donate.

2.12 Rather than being unethical when fundraising doesn’t prioritise the donor, under Right Balancing Fundraising Ethics, fundraising is unethical when it does not strike the correct balance, which is an overall balance of outcomes that doesn’t significantly disadvantage either donors or beneficiaries.

2.13 For example, a fundraising campaign that repeatedly solicited donors who had requested not to be contacted would be unethical because the balance does not protect donors from unreasonable intrusion into their privacy nor unreasonably persistent approaches. But regulation that prevented fundraisers from contacting vast swathes of people would also be unbalanced and therefore unethical.

2.14 Therefore, to ensure that fundraisers can be ethically accountable to both their stakeholder groups of beneficiaries *and* donors, the structures that hold them accountable must contain consideration of both groups.

3 Donors or consumers? And does this change how we consider accountability to them?

3.1 At present, such dual-accountability mechanisms do not exist since regulatory bodies adopt a consumer protection regulatory ethos, regulating fundraising as if donors are the same as consumers and thus require the same degree of protection and the same mechanisms of accountability (not just ‘answerability’, but also liability, blame, sanction and enforcement).

3.2 However, donors are not consumers, and so do not require equivalent levels of ‘consumer’ protection.

3.3 Consumption is (Lee *et al* 2011):

The process by which people acquire, use and dispose of commodified goods including ideas, services, products, brands and experiences.

3.4 A consumer is therefore someone who acquires, uses (i.e. they acquire for their own use) and disposes of commodified goods. This doesn’t describe the process of donating to a charity: donors rarely acquire and use commodified goods from a charity, and when they do (such as buying from a Christmas catalogue), they are already protected by established consumer protection legislation. But it does describe the process that beneficiaries go through when they acquire and use a nonprofit organisation's products and services. Beneficiaries are a charity's true consumers.

3.5 So what are donors?

3.6 To understand what donors are, we need a concept of donation that is analogous to Lee *et al*'s concept of consumption. If we adapt that concept, we might arrive at something like this for an analogous concept of 'donation':

The process by which people voluntarily provide resources to nonprofit organisations to enable commodified goods (including ideas, services, products, brands and experiences) to be acquired, used and disposed of by the nonprofits' beneficiaries.

3.7 This is quite different from the definition of consumption, principally because it transfers the focus from 'own acquisition, use and disposal' (in consumption) to acquisition, use and disposal 'by others' (in donation).

3.8 'Consumption' is therefore a bilateral transactional relationship (an exchange of commodified goods between consumer and the supplier of goods, an exchange that is usually subject to a contract that grants the consumer certain protections).

3.9 'Donation' is a trilateral relationship, but it's a transfer rather than a simple transaction (resources are transferred from donor to beneficiary via a charity, which turns the resources provided by the donor into commodified goods, a process that is rarely governed by a contract either with donors or beneficiaries, though it sometimes is – for example corporate sponsorship and major donor naming rights).

3.10 To enable fundraising to be truly accountable to donors and beneficiaries, the regulatory mechanisms that hold fundraisers to account need to facilitate this.

3.11 At present, they only facilitate accountability to donors, because they are operating with a consumer protection ethos, and are regulating the process of consumption. But to enable true accountability to donor and beneficiaries, what is need is regulation of the donation process.

3.12 This donation process will inevitably generate tensions between the needs of beneficiaries and the wishes of donors.

3.13 In a nutshell, beneficiaries need fundraisers to raise as much money as is needed, as cost-effectively as possible, to provide the services they require.

3.14 Donors may want to be asked less, asked in different ways or at different times, or not asked at all, which may lead to less income being raised or money raised less cost-effectively.

3.15 When fundraisers are unable to successfully resolve these ethical dilemmas by themselves, accountability to both groups requires a regulatory process that transparently demonstrates how the interests of both were taken into account and balanced in the final resolution.

3.16 At present however, fundraisers can only ultimately be accountable to their donors and not their beneficiaries, because the mechanisms that regulate their profession only provide for accountability to donors.

3.17 This can be clearly seen by returning to Schedler's (1999, p17) description of accountability:

A is accountable to B when A is obliged to inform B about A's (past or future) actions and decisions, to justify them, and suffer punishment in the case of eventual misconduct.

3.18 Fundraisers are obliged to inform donors (or accounting agencies acting on their behalf – such as the Fundraising Regulator, Fundraising Preference Service, Information Commissioner's Office, Advertising Standards Authority etc) of their actions and decisions, and face punishment from these accounting agencies for misconduct.

3.19 But no fundraiser is similarly obliged to inform any of his or her beneficiaries about their fundraising actions, nor to justify them to beneficiaries (for instance, why they chose *not* to conduct a particular fundraising campaign in the teeth of, say, media criticism). And if fundraisers fail to successfully discharge their duty to beneficiaries to generate sufficient funds to provide services, they face no sanction from beneficiaries or any accounting agency acting on behalf of beneficiaries.

4 Balancing accountabilities

4.1 There is a further issue regarding fundraisers' various accountabilities. The International Statement on Ethical Principles, formulated by the American professional organisation the Association of Fundraising Professionals, and to which the UK's Institute of Fundraising is a signatory, aims to "foster the growth of a worldwide fundraising community dedicated to accountability, transparency and effectiveness". It states that fundraisers ought to be (AFP 2006, s2):

"Strictly answerable to their donors, their beneficiaries and their organisations."

4.2 Schedler (1999, p14) says 'answerability' is the closest synonym to 'accountability' that is used almost colloquially. It is difficult to say, then, whether the International Statement on Ethical Principals requires fundraisers only to be 'answerable' (in Schedler's sense) to beneficiaries, donors and organisations, or 'accountable' (comprising the dimensions of answerability *and* enforcement).

4.3 This is problematic. Fundraisers can only be 'answerable' (in the sense of fully accountable, which requires an apportionment of blame and liability if they do not act in the best interest of a particular group) to all three stakeholders when their interests align. When those interests do not align, fundraisers need a framework that will allow them to choose the best course of action that achieves the best overall outcome, and having done that, mechanisms need to be in place to communicate and transparently justify that decision.

4.4 This requires the fundraising profession to adopt a more coherent normative theory of fundraising ethics than it has previously done, one that considers its duties to beneficiaries as well as donors, and we believe the theory of Rights Balancing Fundraising Ethics we are developing at Rogare fits this bill.

5 Conclusions

5.1 The consultation document for this inquiry asks:

- How can charities ensure they are properly accountable to their beneficiaries, donors and the general public?

And further asks:

- What, if any, changes might mean for current arrangements?

5.2 Our view is that fundraisers cannot be properly accountable to both beneficiaries and donors unless both their normative theories of professional ethics and their independent regulation allow for accountability to their beneficiaries.

5.3 Currently both are predicated only (or at least predominantly) on accountability to the donor.

5.4 Therefore, a change in ethos and mindset is required to bring the interests of the beneficiary fully into consideration. It is not sufficient to utter soundbites and platitudes about ‘doing right by the beneficiary’, first if there are no mechanisms and process to ensure that the right thing is actually done, and second if beneficiaries are unable to hold charities accountable for not having done the right thing.

5.5 Fundraisers cannot be fully accountable to their beneficiaries until they as professionals develop their own professional ethics that enshrines this accountability.

In practical terms, this means that fundraisers need to engage in more, and more considered, debate about their professional ethics, which is what Rogare’s review of fundraising ethics aims to do.

5.6 But nor can fundraisers be fully accountable to their beneficiaries if their regulation forces them to be only accountable to donors.

5.7 Therefore, we believe the Fundraising Regulator needs to relinquish its policy of being the ‘voice of the donor’ and to accept that its role is not a consumer protection one. Rather than regulating a bilateral ‘consumption’ process in which donors acquire commodified goods from a charity (which, generally, they do not), the Fundraising Regulator should regulate a trilateral process of ‘donation’, in which donors allow charities to convert their donations into commodified goods for use by beneficiaries.

5.8 This will necessarily take into account the interests of beneficiaries and also necessarily provide mechanisms that will ensure accountability to beneficiaries.

5.9 This means ensuring that fundraisers are not only answerable for their actions, but that they are provided with appropriate opportunities to transparently justify their actions to both donors and beneficiaries. The regulator becomes an overseer of Schedler's first dimension of accountability (answerability), rather than someone who simply wields a big enforcement stick in response to a failure to do what donors want fundraisers to do (though of course it will retain its enforcement powers).

5.10 We make no recommendation here as to what such mechanisms could look like or how they may be brought about, though they could, for example, include consulting beneficiaries on changes to the code of practice in the same way the general public are to be, or commissioning more research of the type conducted by Breeze and Dean (2012) into service users' (beneficiaries') views on fundraising. We do not think this type of charity regulation currently exists anywhere in the world, so developing it would be a challenging and innovative process.

5.11 However, it can only happen if there is a commitment from the current regulator to be part of that process of change, which is what we are calling for here.

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