



Public Fundraising **Regulatory** Association

*Quality • Integrity • Transparency*

# The Case for Regulatory Change –

Why forward-looking local authorities ought to pro-actively review their current licensing policies in respect of street and doorstep Direct Debit fundraising, in anticipation of and transition towards their new Charities Act 2006 duties and obligations.

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## 1. Introduction

- 1.1** This document has been originated by the **Public Fundraising Regulatory Association** (PFRA – [www.pfra.org.uk](http://www.pfra.org.uk)), the recognised self-regulator for all forms of ‘face-to-face’ fundraising (that is, the solicitation of ongoing commitments to charities and good causes via Direct Debits, plus “Prospecting” – public data-capture for subsequent follow-up) whether carried out on the doorstep (D2D) or in the high street (F2F), throughout the UK. Our work is actively supported by the Office of the Third Sector (Cabinet Office), Charity Commission, Institute of Licensing, Association of Town Centre Management, and the Institute of Fundraising (which was instrumental in our establishment) via their Advisory Observers sitting on our Board. We also occupy a seat on the Board of the Fundraising Standards Board ([www.frsb.org.uk](http://www.frsb.org.uk)). We operate from offices in London and Edinburgh.
- 1.2** We currently<sup>1</sup> have formal or informal activity management and / or reporting arrangements (commonly called ‘Site Management Agreements’ – SMAs) facilitating street F2F and providing a ‘real-time’ channel for complaints-resolution, covering around **160** (36%) of the **434** eligible district / unitary local authorities accounting for approximately **40%** of the UK adult population. Fundraising activities across both media in these areas generates **520,000+** new donor pledges every year, with a total pledge value to charities in excess of **£54m**.
- 1.3** The PFRA is wholly owned, managed, and funded directly by the charities whose fundraising activity it supports. It receives no state funding whatsoever and charges local authorities no fees for the services it offers. It is a VAT-exempt not-for-profit company.

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<sup>1</sup> As at 1<sup>st</sup> Dec 2008

## 2. What we are asking for

- 2.1 Where relevant, the suspension or amendment of the relevant sub-sections of any licensing policy dealing with street and house-to-house collections to allow for –
- in the case of **street** activity, an appropriate trial (of ideal duration minimum **12** months) of limited town or city centre F2F activity within the context of a **Charities Act 2006** (CA06) compliant draft 'Site Management Agreement' (SMA) negotiated with the PFRA; and
  - in the case of **doorstep** activity, an appropriate trial (of ideal duration minimum **12** months) of unrestricted consecutive borough-wide D2D activities (if these are not already taking place).

## 3. Overall Context

- 3.1 Up to now many local authorities have taken a thorough and resolute approach to what they have perceived to be their required regulatory duties in respect of public fundraising. However we believe – and point to compelling evidence – that most current policies are based on old and superseded law, sometimes supported by Legal Opinions which are themselves outdated and out of context, and even containing fundamental flaws.

- 3.2 Policy to date has been based on interpretations of the **Police, Factories &c (Miscellaneous Provisions Act 1916** (“1916”) and the **House to House Collections Act 1939** (“1939”). Both these Acts stem from a period when charity legislation proceeded from two assumptions –
- i) of “*suspecting impropriety*” (1916, for example, was specifically designed to prevent organised criminals preying on the public’s innocent sympathy by ‘passing off’ individuals as ‘war-wounded’, or operating gangs of small children in what was effectively ‘organised begging’); and
  - ii) that most charitable activity was locally based, so that local licensing authorities would already have the necessary and sufficient knowledge to make informed judgements regarding license applicants.

This meant that the basis for both regulatory regimes was **suspicion** and **restriction**, and that the accompanying regulations required strict inspections of various factors, key among which were –

- i) that all collectors were volunteers i.e. no funds were abstracted for personal wages;
- ii) that all collectors were verified as ‘fit and proper persons’ i.e. had no criminal connections;
- iii) and that the entire proceeds of collections were strictly accounted for i.e. no funds were criminally abstracted or expended in ‘unjustifiable’ expenses (cost-effectiveness).

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**3.3** Since then charity law has evolved and progressed significantly, especially in the last few years. The **Charities Act 2006** (CA06), by introducing the new “**Public Benefit**” test, fundamentally “*assumes propriety*”, which means that the regulatory regime it contains with regard to public collections is based firmly on **acceptance** and **facilitation**. Specifically, various burdensome and time-consuming tasks such as verifying collectors’ IDs, enforcing non-payment of collectors, and scrutinising accountant’s returns *are being removed from the powers and duties of licensing authorities*. ***It is intended that local authorities will no longer have any role or responsibilities with regard to these matters whatsoever***, which will instead be dealt with centrally within the Charity Commission.

**This will have the effect of rendering sections of existing policies touching upon these matters redundant and unenforceable.** Furthermore, sections of the CA06 (and 1992) specifically provide definitions for ‘professional fundraisers’ and **assume** that collecting activity will be carried out by paid staff. Provisions to ensure that the donating public are properly informed with regard to the costs incurred in employing professional fundraisers are already in place (1<sup>st</sup> April 2008) and details can be obtained from the OTS website via this link

(<http://www.cabinetoffice.gov.uk/media/110668/amended%20guidance%20final.pdf>)

Upon implementation, provided a charity – or its agents – can demonstrate that they have the necessary Charity Commission authorisation, licensing authorities will be **required** to issue collections permits regardless of any other considerations, apart from some minor conditions concerning frequency of activity (see “The 48 hour rule” below). Authorities will also be able to make some local conditions but these are likely to take the form of a standard template of ‘model regulations’ from which individual councils will be able to depart only in exceptional circumstances; in any case authorities will not be allowed to make “vexatious” regulations [Hansard 26<sup>th</sup> Oct.2006 column 1626]. The overall effect of the reforms enshrined in CA06 will be to potentially increase collecting activity from as little as 52 weekly collections a year (in some authorities) to a *minimum* of 120+ per year at each of multiple designated collecting locations throughout a borough, for *every* local authority.

**3.4** One highly significant aspect of the new law is the concept of “undue inconvenience” which has been introduced in connection with a council’s right to limit frequency of activity according to the so-called “**48 hour rule**”. Section 60 of the Act states that the **only** ground upon which a local authority may refuse a permit is “*that it appears to them that the collection would cause **undue inconvenience** to members of the public*” by reason of location or frequency, in which case they “*may have regard*” to whether another collection has already taken place (or is planned to take place) on that day “*or on the day falling immediately before, or immediately after, any such day*”. What this means, in effect, is that if a council can demonstrate “undue inconvenience” they can put a 48-hour ‘buffer’ between activities at the same location<sup>2</sup> – but that is **all** they can do.

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<sup>2</sup> i.e. if an activity is permitted on Monday, Tuesday (“the day falling immediately after”) may be blocked out; then Wednesday (“the day falling immediately before”) may be blocked out, but if a valid application is received for Thursday it must be granted as the two 24-hour buffers have already been used up.

Thus a council's power to limit activity hinges on the definition of "undue inconvenience". This is not made clear in the Charities Act itself, but precedent exists with the use of the same phrase in relation to countryside access, where the erection of stiles across public footpaths is contrasted as an "undue" inconvenience compared with the erection of more negotiable 'kissing gates' which is a tolerable inconvenience. Clearly the concept of "undue convenience" demands the concomitant concept of "due" inconvenience – that is, a level of inconvenience which it is reasonable and normal to expect in the given circumstances. Therefore it is clearly the case that urban areas (which already have a significant amount of bustle, obstruction etc which passers-by are required to negotiate) may be expected – indeed, *obliged* – to accept higher levels of activity than a more rural location. This construction also comprehensively abolishes the former concepts of "annoyance of passengers" – rather than *assuming* or *asserting* that people "might" be "annoyed", this Act requires authorities, before prohibiting activity, to be able to *demonstrate scientifically* that "undue" inconvenience is likely to be caused. Furthermore, unlike assumed "annoyance", a determination of "undue inconvenience" is challengeable. Therefore it is equally clear that it is in the interests of both charities and local authorities to establish promptly, accurately, and fairly, what level of activity *is* supportable without becoming an "undue" inconvenience. The introduction of an SMA is the ideal way to achieve this.

## 4. The Case for Change

4.1 The relevant sections of CA06 providing for a new public collections regime will not come into force until at least 2010. However, recognising the inevitability of change, several local authorities have sought to evaluate their ideal operating capacity (from the point of view of both charities rights and shopper / retailer concerns) and transition smoothly towards the new liberalised regime by entering into SMAs with us to manage activity and provide an outlet for complaints and information. Authorities which have taken this step (either directly or via delegation to their Town or City Centre Management Teams / BIDs) include **Leicester, Nottingham, Coventry, Rugby, Manchester, Cambridge, Reading, Bristol, Cardiff** and **Guildford** – to mention just a few. **Westminster** – the most-visited collecting location in the UK – has an SMA covering 30+ locations, each operated 3 – 4 times per week. **Leeds** – the only local authority which ever initiated a 1916 prosecution against F2F – formally adopted an SMA in November 2008.

4.2 Authorities which take this route have the opportunity to be regional pioneers, innovators, and exemplars. In terms of **consumer choice** the argument is compelling; if half a million people can be involved in charitable giving in only about 35% of the country, arguably another million givers – and £100m+ – are potentially available in currently 'closed' locations. The impact on the **retail environment** is likely to be negligible – Nottingham, with its highly sophisticated footfall monitoring, has been unable to discern *any*. In any case even if there is 'some' which can be discerned, there will inevitably be a 'levelling' effect returning to the *status quo ante* when all local authorities are obliged to admit F2F. The impact on the **general public realm** is also unlikely to be noticeable. F2F works effectively in those areas which are already likely to accommodate a multitude of street traders, paper sellers, political soap-box speakers etc – so the addition of a few fundraisers a couple of times a week

probably would not be noticed. Even in the rare event of **public complaints** experience shows they can be dealt with effectively via an SMA<sup>3</sup> – and in any case, as change is inevitable and public perceptions will have to be managed in with *pro*-active education and information, rather than *re*-active prohibition.

- 4.3 The option of retaining a prohibitionist stance is no longer a viable one. Change is inevitable.** There is no advantage to be gained from ‘waiting until the last moment’ (implementation), as, at that point a council will be *obliged* to accept potentially vast levels of activity with nothing but the minimum ‘48-hour rule’ to alleviate the impact. Local public opinion may well castigate officers and members for not having thought through the issues and provided for an adequate local solution. However there are advantages to be gained from being an ‘early adopter’ because various management methodologies can be trialled prior to implementation, enabling the authority to gain experience and expertise ahead of the game, and to acclimatise public and retailer opinion to the changed environment.
- **Accordingly we ask that councils be bold and imaginative and take the necessary steps suggested.**

## **5. Some last words regarding ‘House to House’ Collections, and the question of ‘cost-effectiveness’**

- 5.1** The liberalisation of the licensing regime required in CA06 is far greater in the case of D2D even than for street F2F. In fact the local authority’s power to ‘license’ is being *removed altogether*. Charities which wish to collect door-to-door will henceforward merely be subject to a “Duty to Inform” which effectively means that, provided they have the relevant Charity Commission authorisation, they will be able to collect absolutely unhindered in any local authority area they wish provided they have ‘informed’ the council in advance within the indicated timescale. Local authorities will not be able to withhold access for any reason other than an absence of *bona fides*.
- 5.2** At the moment some local authorities attempt to effectively ‘prohibit’ D2D (and in some cases F2F) by virtue of demanding prior sight of commercial contracts – including commercially sensitive payments terms – and subsequent sight of ‘returns’, to determine ‘cost-effectiveness’. Many charities and their agencies are unwilling to part with commercially sensitive information over the continuing confidentiality of which they retain no control. However, given that this power / duty is, within a very short timescale, to be totally removed from all local authorities, it is reasonable to assume that the Office of the Third Sector and the Charity Commission are content that, providing an agency can demonstrate that they have a Charities Act-compliant contract in place to which the Trustees or relevant delegated officers consent, there is no further need for a licensing authority to concern itself in the matter of cost-effectiveness; therefore we take the view that it is unreasonable for local authorities to continue to seek to concern themselves with these matters.

<sup>3</sup> Please visit our website for details of referees prepared to comment on “up to 90%” reductions in consumer complaints logged.