



***Fundraising self-  
regulation:  
An Analysis and Review***

## Fundraising self-regulation: An Analysis and Review

### Authors:

Ian MacQuillin, Rogare – The Fundraising Think Tank

Dr Adrian Sargeant, Director -Institute for Sustainable Philanthropy

Harriet Day, Institute for Sustainable Philanthropy

Published: November 2019

*This report was developed as part of the 'Sustainable Frameworks for Public Fundraising' project, managed by the European Center for Not-for-Profit Law Stichting (ECNL). The project is made possible by the International Center for Not-for-Profit Law (ICNL) through the Civic Space Initiative*

*This publication is wholly financed by the Government of Sweden. The Government of Sweden does not necessarily share the opinions here within expressed. The author bears the sole responsibility for the content.*



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# 1.0 Introduction

The Philanthropy Centre has been engaged by the European Center for Not-for-Profit Law Stichting to conduct research that will support it in drafting a set of principles for statutory regulation and self-regulation on fundraising.

The objectives for the project are:

1. To map the key principles and standards on fundraising covered by self-regulation.
2. To assess trends in self-regulation and how self-regulation adapts to a changing environment.
3. To identify areas where existing self-regulation has a special relevance.
4. To assess whether donors' rights are used as a basis of developing self-regulation, and if so, how. What other criteria (if any) are used to create robust self-regulation of fundraising?
5. To identify the compliance mechanisms currently in operation: identify the various models, practices and challenges in compliance - what works, what does not work and why? What are the enforcement procedures (if any) when deviations/breaches are found?
6. To determine how best to measure the success and effective implementation of self-regulation. To identify examples (if any) of assessments conducted on self-regulatory practices; significant CSO governance practices (board et al) and its implication on the success / failure of self-regulation; correlations (if any) between monitoring and enforcement and the success or failure of self-regulation.

7. To track how self-regulation impacts the various CSOs by maturity (years since registration) / scale - multi national, regional, local/ scope of fundraising - mostly funded by grants or mass market methods/ governments etc.
8. To identify any synergies between self-regulation and legislation: an integrated regulatory framework with an effective and appropriate balance between legislation and self-regulation.

We first conducted an extensive review of the existing research and thinking around fundraising self-regulation specifically, and the self-regulation of Civil Society Organisations (CSOs) more generally. Very little scholarly attention has been focused on fundraising self-regulation - with only a handful of papers focusing specifically on this topic (e.g. Lee 2003; Harrow 2006; Bies 2010; Breen 2009, 2014; Rutherford et al 2018). While there is more scholarship available on CSO regulation more generally (Lloyd et al 2010; Civicus 2014), we found that there was insufficient theory and data to answer the research questions posed above. We therefore conducted a series of 22 quantitative interviews with key individuals involved in fundraising self-regulation around the world. Our interview questions can be found in Appendix 1 and our participating organisations and countries at Appendix 2 (actual interviewees are anonymous).

Given the nascent nature of this field we treat our interviewees as additional informants, supplementing the analysis and insight we developed from our review. Illustratory quotes are therefore provided alongside our summary of the academic and professional thinking on each key theme in our report.

We begin our analysis by defining self-regulation as a medium for delivering

regulatory objectives. As well as providing definitions and exploring various typologies for regulation and the means of delivering self-regulation, the report also examines what are generally considered the advantages and disadvantages of self-regulation vis-à-vis other forms of regulation, principally state 'command and control' legislation.

Then, having reviewed the field of self-regulatory theory and practice, the report progresses to how self-regulation has been developed and implemented in CSO's both in general and how this has developed in the field of fundraising more specifically.

We then drill down into what the literature says about fundraising self-regulation and describe the main methods of fundraising self-regulation currently in evidence around the world. We also explore a number of typologies that have been developed to classify this activity.

Finally, the report explores many challenges inherent in regulating fundraising, some of which have not been explored (at least in a formal way) previously. This will enable us to make normative recommendations about the future development and implementation of regimes aimed at regulating fundraising and to delineate what might constitute best practice in this space.

As this report is specifically tasked with exploring fundraising self-regulation, we have purposely avoided exploring or describing how fundraising is regulated by the state, except where this is relevant to how it is self-regulated. So we have not, for example, attempted to provide any kind of overview of various national or regional legislation controlling fundraising or how the state apparatus enforces this (such as by issuing collection permits). Insight in respect of these issues can be found elsewhere (e.g. European Center for Not-for-Profit Law 2017).

Neither does this report focus in particular detail on the issue of beneficiary framing (the use of beneficiary stories and images in charity marketing and fundraising) and the self-regulatory initiatives that have been put in place. Initiatives such as the new ethical guidelines developed by VENRO (the umbrella organisation for German aid organisations) in association with the German regulatory body DZI (VENRO 2018); or the related Narrative Project from the UK's aid agency umbrella group BOND (2015). This is simply to keep this report and the issues it raises to a manageable size. Nonetheless, the question of the self-regulation of beneficiary framing is an integral part of fundraising self-regulation so we do consider this, where relevant, without devoting a significant portion of the report to it.

It should be noted too, that we devote a section of this report to detailing the recent events that have taken place in respect of self-regulation in the United Kingdom. We do this for three reasons:

First, the UK is seen by many as a leader in innovation in regulatory theory and practice (Bartle and Vass 2005; OECD 2010; Hodges 2016).

Second, fundraising self-regulation in the UK is arguably the most developed and advanced anywhere in the world, with the fullest and most prescriptive set of standards set out in any code of conduct (Fundraising Regulator 2017). It also has an established regime to proactively (by actively monitoring and checking fundraising practice) and reactively (by investigating complaints) ensure compliance with the prescribed standards (MacQuillin and Sargeant 2017).

Third, over the course of this century, the UK has seen huge upheavals and transformations in how fundraising is regulated (Harrow 2006, Hind 2017, MacQuillin and Sargeant 2017), a history that sheds light on many of the regulatory

issues and challenges highlighted in our review.

To streamline and avoid repetition, we use the following abbreviations throughout the report:

CSO-SR = civil society organisation self-regulation

FR-SR = fundraising self-regulation

SRR = self-regulatory regime.

A full glossary of abbreviations used frequently in this report can be found in Appendix 5.

## 2.0 Self-regulation

### 2.1 What is self-regulation?

**Self-regulation, essentially, is regulation by the people whose actions and behaviours need (or ought) to be regulated:** Thus, “those who are subject to regulation develop and enforce it” (Bartle and Vass 2006, p3). It is also seen as “regulation of the conduct of individual organisations or groups of organisations by themselves” (ibid, p19); or “voluntary rules developed by those who have to comply with them” (ibid, p20).

The review of FR-SR in the United Kingdom that followed the ‘Fundraising Crisis’ of 2015 (Hind, 2017), described self-regulatory “schemes” as those in which:

*“The rules that govern industry behaviour are developed, administered and enforced by the same people whose behaviour is to be governed, rather than being imposed by the state. In this system, the state only provides the general underlying legal framework while the industry determines its own regulatory standards and enforces them accordingly.” (Etherington et al 2015, p31):*

**Academics too have addressed the issue of definitions**, for example, “the existence of a written code of ethics, conduct standards, or principles or a written statement of policies, guidelines or procedures for the voluntary regulation of the activities of ... members” (LaBarbera 1983, p132); and a “set of institutions or informal arrangements for affecting organisational behaviour, with a key feature of self-regulation being that standards and rules of conduct are set by an industry-level organisation rather than a governmental or firm-level apparatus” (Bies 2010, p1062-1063).

In respect of CSO-SR:

*“The common thread to all forms of CSO self-regulation is that it is not fully mandated by government regulation; at least some aspects of each CSO self-regulatory initiative are the result of voluntary participation by the sector in developing and administering common norms and standards of behaviour.” (Warren and Lloyd 2009, p2).*

An alternative perspective is provided by **two definitions from the European Commission and the Australian Government**. The European Commission describes self-regulation as the “possibility for economic operators, their social partners, NGOs or associations to adopt amongst themselves and for themselves common guidelines at the European level” (European Commission 2003, p11).

The Australian government’s definition is that: “business sets its own standards of conduct and enforces those standards without any government involvement, either in drafting, promoting or enforcing them.” (Bartle and Vass 2006, p22).

**Several common themes emerge from these definitions.**

Self-regulation is:

- a) Voluntary;
- b) Independent of the state; and
- c) A set of standards and the processes to ensure compliance with those standards.

The first commonality is that **membership of the self-regulatory scheme is**



**voluntary** – that membership or the SRR is not compulsory or that members are not coerced into joining it. *“The defining characteristic of all self-regulatory mechanisms is their voluntary nature; NGOs are free to decide whether or not they want to abide by the standards set by a particular code of conduct or certification scheme.”* (Lloyd 2005, p8.) This is often referred to as ‘pure self-regulation’ (Gunningham and Rees 1997; Bartle and Vass 2005), or *“profession-led self-regulation”* (Bartle and Vas 2005, p41). This may be contrasted with ‘classic’ or ‘command and control’ regulation by the state (Bartle and Vass 2005, p19). However, this defining voluntary nature is often cited as a major criticism of self-regulation (Lloyd 2005). It can be seen as weak precisely because it is voluntary.

**In practice, self-regulatory regimes may not all be so ‘voluntary’**, since while there may be no formal requirement that an organisation joins an SRR, there are often implicit or tacit pressures that compel them to do so. For example, some funding bodies will not make grants to organisations unless they have been accredited by the relevant national regulator (Lloyd and de las Casas 2006); while the Fundraising Regulator (F-Reg) in the UK has ‘named and shamed’ those organisations that have not voluntarily paid to become members of the SRR it runs (Radojev 2017b). Even just the threat of naming and shaming by F-Reg has proven successful in driving more organisations to join the scheme (Rutherford et al 2018).

Second, **self-regulation is independent of government**. However, government can be involved in providing the impetus to establish self-regulation. From 2002-2006 in the UK, for example, the government was instrumental in pushing for and facilitating the development of a new FR-SR regime that saw the establishment of the Fundraising Standards Board (FRSB) (Harrow 2006). Our interview data also indicated that government influence was an

issue in many other countries. In Australia, for example, the absence of a separate regulator requires there to be regular consultation and dialogue between the government and the professional association (FIA). While in Germany institutions at the State level are included as stakeholders in the management of the scheme. We also note a rise in the use of reserve power (Breen 2014) enshrined in legislation to establish statutory regulation should self-regulation fail (or at least be deemed to be insufficiently successful). See for example section 68 of the Charities Act 2006 (in England and Wales) and Section 97 of the Charities Act 2009 (in Ireland).

It is worth noting that **authors see self-regulation in other sectors as rarely completely independent of the state**. It is frequently considered to be embedded within the regulatory framework as just one option that the state can use to achieve its regulatory objectives (Bartle and Vass 2006). We see similar forces at play in the context of fundraising. Gugerty (2010), for example, notes that self-regulation in African countries seems to have occurred as a consequence of regulatory initiatives proposed by governments. Similarly, in Ecuador non-profits have pursued self-regulation to be seen as more accountable to government and to the wider public.

Third, the literature about self-regulation stresses that **it contains two essential or crucial elements** (European Center for Not-for-Profit Law 2016) that give self-regulatory regimes their strength (Prakash and Gugerty 2010):

- a) Professional standards
- b) Compliance with and enforcement of, those standards

This is particularly evident in the Australian government’s definition of self-regulation given above:

*“Business sets its own standards of conduct and enforces those standards without any government involvement, either in drafting, promoting or enforcing them.” (Bartle and Vass 2006, p22, emphasis added).*

## 2.2 Standards

The **most common forms of standards setting in self-regulation are through codes of conduct and voluntary standards, followed by an accreditation process against those standards.** Codes of conduct are indeed the most common form of CSO regulation (Warren and Lloyd 2009), and we will look at fundraising standards specifically later in this report. This section looks at how standards are developed and promulgated more generally through codes of conduct or codes of practice.

**Codes of Conduct are not a new concept,** as the first professional code was purported to have been created in 1912 by the American Medical Association (Davis, 2003). Such codes help to articulate the standard of professional conduct that is expected of all those who are caught under that code, and acts as a benchmark against which people and organisations can be measured. So internally a code serves these purposes, but externally it also serves to ensure compliance with legislation, to market to the public what the organisation or body stands for, and to mitigate risk by ensuring misconduct and errors are controlled. In a CSO context, codes act as an indication of efforts to create *“common evaluative and normative standards for professionals working in the non-profit sector”* (Bromley and Orchard 2016, p2).

Thirty years ago, Mark S. Frankel, argued that codes of practice exist at the *“nexus of society and the professions”* (Frankel 1989, p109) and hypothesised that **they could be**

**categorised based on their subject matter** (ibid, pp110-11):

1. Aspirational – contain ideals to which the addressee should strive.
2. Regulatory – have detailed rules to govern conduct and adjudicate grievances.
3. Educational – add to understanding through their provisions, which encourage commentary and interpretation.

Commentators have drawn a clear distinction between aspirational and regulatory codes, with a criticism of regulatory codes that it would be nearly impossible to identify, consider, and then attempt to resolve, all the moral dilemmas anyone subject to the code might encounter. There are felt to be many dilemmas that could not be distilled into a regulatory code (Sweeney and Siers 1990). To an extent though, this misses the point of professional standards, namely that the codes that contain them are not designed to cover all eventualities but to provide minimum standards for the most common eventualities.

**So, what do these codes actually address?**

It is helpful to draw a distinction between codes of ethics and codes of practice. The academic literature on regulation and codes in general uses the terms ‘code of ethics’, ‘code of conduct’, and ‘code of practice’ interchangeably to broadly refer to a set of principles intended to provide guidance to internal and external stakeholders. The CSO-SR literature similarly uses these terms interchangeably with only Lloyd and de las Casas (2006) **distinguishing between codes of ethics and standards.** We believe that distinction is helpful:

- Codes of Ethics – are seen as aspirational codes of principles/ethics that signatories strive to achieve, which are analogous to Frankel’s aspirational codes.

- Professional Standards – codes of conduct in which more defined standards are met, analogous to Frankel’s regulatory codes.

**Standards are concerned with strict liability – a fundraiser may or may not do this and so, (at least in principle), are black and white.** In our analysis, we found standards that dealt with matters such as the use and processing of personal data, privacy, gift acceptance, fundraising expenses, transparency and accountability and commission-based payments. They also dealt with issues such as the degree of pressure (if any) that might be applied to secure a gift and the treatment of the vulnerable. In our analysis we found that only the UK has a more detailed system where guidance is provided in respect of each major form of fundraising.

**Ethics are more concerned with the values that ought to guide professional practice,** which can be used to interpret any grey areas that are not explicitly covered by professional standards.

Criticisms that some have raised, that codes of practice are somehow anti-ethical and remove the element of ethical decision-making (Robin et al 1989; Dienhart 1995) therefore miss the point. A code of practice is not a substitute for a code of ethics. In fact, it might be misleading to refer to ‘codes’ of ethics at all as this implies that ethical knowledge can be reduced to a set of simple rules.

Unfortunately for the fundraising sector globally, **knowledge and understanding of fundraising’s professional ethics is low,** since there is little ethical theory that underpins fundraising’s various codes of practice, or even, ironically, those that are labelled ‘codes of ethics’. While there has been interest in whether business codes are best understood in terms of consequentialist ethics (Starr 1983) or deontological ethics (L’Etang 1992), little has been done to consider CSO codes in a

similar way, particularly in respect of fundraising’s professional standards (though see MacQuillin 2016a, 2017a). Fundraising is one of the few professions that does not have a fully worked-through system of professional ethics. Nowhere can you find detailed treatises on fundraising ethics as you can for the closely related field of marketing ethics (see for example, Smith and Murphy 2012).

This is a significant weakness that we believe needs to be addressed.

## 2.3 Compliance and enforcement

**Effective compliance regimes, put in place by the regulated industry, are a required and integral part of the self-regulatory process** (Bartle and Vass 2006). Since without effective compliance measures, only those organisations that are already most committed to adhering to professional standards might commit to them (Lloyd and de las Casas 2006), leaving those who are less committed to breach standards without fear of being caught. If compliance is not enforced, then regulatory outcomes may not be achieved, and there is a danger that self-regulation will be replaced by statutory regulation when so-called ‘reserve powers’ are invoked (Breen 2014). Without standards and the mechanisms with which to enforce compliance with those standards, a self-regulatory regime is inoperable.

**Standards, naturally, must come before any compliance procedures are established,** since without professional standards there is nothing to comply with (though there is nothing to prevent standards and compliance measures being developed and implemented simultaneously). However, as we shall see, many FR-SR regimes have minimal standards, and even those that have more

complete standards are much weaker in compliance.

A major study of global CSO-SR conducted by the One World Trust (OWT) found that **compliance mechanisms generally fell into one of two categories** (Obrecht et al 2012):

**Reactive** – Compliance mechanisms only become active if non-compliance by an SRR member is suspected. Reactive compliance mechanisms tend to use complaints-based sanctions, such as the DZI’s power to remove its seal of approval based on a legitimate complaint (Obrecht et al 2012). Though not included in the OWT initiative, fundraising self-regulation in the UK also operates on a complaints-system. As Bartle and Vass (2005) point out, complaints may not be a wholly reliable measure of the success of the SRR taken in the round. Many variables can influence complaint levels.

**Proactive** – SRR members are required to actively and regularly monitor and report on their compliance with standards. This is typical of accreditation/certification schemes and may require re-certification after a fixed period of time and that a CSO be stripped of certification if it fails to meet the requisite standards. Proactive compliance according to the OWT study is passively proactive, if that isn’t an oxymoron, in that members are required to monitor their own compliance. However, the OWT study makes no mention of a key type of proactive compliance conducted by regulatory bodies, namely mystery shopping. This is routinely conducted by the IoF Compliance Directorate in the UK and involves agents of the IoF monitoring the

performance of street fundraisers against codified professional standards and monitoring live telephone fundraising calls<sup>1</sup>.

In this report we adapt the OWT terminology. Our use of these terms is as follows:

**Reactive** – the regulatory body investigates allegations of non-compliance.

**Proactive** – the regulatory body actively looks for evidence of non-compliance.

**Passive** – regulatory scheme members monitor or assess their own compliance against standards established by the regulatory body. This was a form of compliance used by some of the FR-SRRs included in our research.

**An essential part of a compliance regime is the sanction that can be imposed for failure to comply.** As stated above, DZI can remove its seal of approval following a substantiated complaint. Many other countries run such seal of approval schemes and our research suggests that the potential to remove the seal is a substantive power. One respondent from a fundraising association said that:

*“...losing the quality seal has more impact than (actually) having the quality seal”. (Fundraising Association Interviewee)*

In the UK, F-Reg’s responses to an upheld complaint are<sup>2</sup>:

- An apology for the complainant.

<sup>1</sup> <https://www.institute-of-fundraising.org.uk/regulation-and-compliance/fundraising-compliance/>

<https://www.institute-of-fundraising.org.uk/regulation-and-compliance/fundraising-compliance/standards/mystery-shopping-and-compliance/>

*Mystery shopping is also conducted in Australia by the Australian PFRA and the Fundraising Institute of Australia and New Zealand by the PFRA (information provided by relevant interviewees).*

<sup>2</sup> <https://www.fundraisingregulator.org.uk/more-from-us/resources/complaints-process>

- A requirement for further training and/or action taken to learn from the breach.
- Recommending that the organisation conduct an independent external audit of its fundraising.
- Referring the case to the relevant statutory regulator, for example, the Charity Commission or the Information Commissioner's Office.
- Remove the charity from its register and suspend the use of its badge.

**A frequent criticism of CSO-SR is the lack of enforcement measures once an organisation has signed up to a code**

(Leader 1999). A criticism levelled at the UK's FRSB, for example was that it did not have sufficient teeth to enforce compliance (Etherington et al 2015). This is perhaps an unfair criticism, when one considers that the sanctions available to its successor (Fundraising Regulator - F-Reg) are not significantly more powerful.

Our research suggests that **enforcement of breaches of voluntary codes is remarkably rare:**

*"In the USA, there are myriad codes, not all of them enforced. In fact, the only one that is enforced is the AFP (Association of Fundraising Professionals) Code of Ethics. The rest are certainly published and they are respected by the members of their associations but there's not an enforcement process. I think it's very common."* (Fundraising Association interviewee)

Where codes are enforced, the typical sanction employed would be expulsion from the scheme or professional association (e.g. expulsion from the AFP or having the Seal of Approval removed, as is the case in the Netherlands). However, this sanction is

used only rarely, with associations and regulators preferring to work constructively with an offender rather than imposing penalties, at least immediately. They were also keen to impress on members their shared responsibility for the sector as a whole and saw that educational duty as a key facet of their modus operandi.

This seemed particularly true of formal FR-SRRs for face-to-face fundraising.

*"When an organisation is identified as in breach or we hear something that is not correct, then we begin a whole process. We are going to ask them, so what's going on here? And then at the end of this process, we either just say okay - it's all right. Or we subject them to further scrutiny. At the end of that we say you have to change this or that within a few months, then you can keep your recognised status. Or if you're not changing those things, you just lose your recognition."* (Regulator interviewee)

*"We could kick people out of our membership if they were continuing to breach the code of practice, but that is about essentially kicking them out of a membership organisation rather than enforcing a regulatory standard."* (Fundraising Association interviewee)

However, **compliant behaviour will not be guaranteed by regulation alone.** By having standards and the means to enforce those standards: an 'ethical culture' can be embedded in the regulated industries. This too is seen as an "essential" component (Hodges 2016, p3). While we have stressed that codes of best practice standards and codes of ethics are not the same thing, a core component of ethical behaviour is to observe and adhere to a sector's codified professional standards. The culture that embeds that approach has come to form an organisation's leadership: *"The cause of*

*ethical failure in organisations often can be traced to their organisational culture and the failure on the part of leadership to actively promote ethical ideals and practices.”* (Brien 1998, p391.)

Indeed, a British government inquiry laid the blame for the recent ‘Fundraising Crisis’ (Hind 2017; MacQuillin and Sargeant 2017) on a “*negligent or wilfully blind*” failure of governance by trustees to ensure compliance by third party fundraising agencies (Public Administration and Constitutional Affairs Committee 2016, p36). A failure later admitted by some of the UK’s largest charities (Weakley 2015).

In terms of assessing their success, **self-regulatory compliance regimes perform two roles for which performance criteria can be set** (Bartle and Vass 2005, p53-54):

- a) Secure outcomes that meet regulatory objectives.
- b) Hold both regulator and regulated to account through reporting requirements:
  - i. Regulated – for the achievement/delivery of regulatory outcomes.
  - ii. Regulated – for the design and delivery of the SRR itself.

Assessing both the performance of the SRR and the compliance of the regulated profession or sector should be based on multiple indicators and the framework for analysing and interpreting these indicators should be clear.

## 2.4 Co-regulation

Essentially, co-regulation is “*self-regulation with a statutory element and with the clear involvement of a public authority*” (Bartle and Vass 2005, p33) or “*public oversight*” (ibid, p49). It implies a joint arrangement of

some sort in a kind of “*in between position*” linking profession-led and statutory regulation (ibid, p33). Co-regulation should be regarded as a “*new paradigm*” in self-regulation (ibid, p48).

The Australian government describes co-regulation as “*a process where industry develops and administers a code and the government provides the ability to enforce it through legislative backing*” (ibid, p22). While for the European Union it is: “*... the mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field (such as economic operators, social partners, NGOs or associations)*” (European Commission 2003, p11).

Bartle and Vass (2005) have helpfully developed a spectrum of forms of co-regulation based on the strength of state involvement in the co-regulatory regime:

**Co-operative** – Co-operation between regulator and regulated on the operation of statutory backed regulation. The UK’s Public Fundraising Regulatory Association (PFRA) engaged in this form of co-regulation by jointly drafting fundraising access agreements – called ‘site management agreements’ (SMA) – with local authorities and then jointly enforcing the rules contained in those agreements (Ganley and MacQuillin 2013).

**Delegated** – Delegation of statutory powers by a public authority. An example of delegated co-regulation is that carried out by the Advertising Standards Authority in the UK, which regulates advertising using powers delegated by the statutory communications regulator Ofcom.

**Devolved** – Devolution by government of statutory powers to a self-regulatory scheme. An example from the UK is the General Medical Council, which self-regulates the medical profession according to precise legal requirements.

**Facilitated** – The explicit encouragement and support of self-regulatory schemes by a public authority. The schemes themselves are not backed by the full force of statute.

**Tacit** – No statutory backing and little explicit role for public authorities. This is closest to pure self-regulation.

It would be easy to assume that the ‘tacit’ category is not co-regulation at all since there is no formal or even an explicit role for the state. SRRs in this category appear to adopt old-style profession-led pure self-regulation through sectoral codes of conduct. But, many of these SRRs were established by the threat of state legislation (Bartle and Vass 2005) and the state maintains a passive interest in the background, ready to step in (perhaps to activate a ‘reserve power’) when shocks to the system delivered by the pressures of market failure, public opinion, or interest groups (Hood et al 2001) motivate it to do so. After a new regulatory regime emerges as a consequence of state intervention, the state then retires to the background of this new ‘tacit’ SRR until the next shock emerges. This has been described as process of ‘punctuated equilibrium’ and is precisely the process that has happened to self-regulation in the UK twice in the 21<sup>st</sup> Century. We will elaborate on this analysis later in the report.

**We conclude that some schemes can operate independently of the State perhaps where a Code of Ethics that pertains (or includes reference) to fundraising is operated** (e.g. Columbia, Egypt, Nigeria). The State may be content to allow such efforts to fulfil their necessary function for society, but only so long as it is deemed to be effective. From our research we learned that the State can potentially pervade and envelope all forms of self and co-regulation, such that self-regulation should be viewed as ‘embedded’ within the regulatory state and not separate to it. From this perspective, self-regulation operates with the sanction, support, or threat of the

regulatory state and any independence that regulators have is independence *within* the regulatory state and not independence *from* it. “*Self-regulation therefore has to be interpreted in the context of meeting (either tacitly or actively) certain public interest objectives*” and is “*simply one of the instruments available to the regulatory state*” (Bartle and Vass 2005, p44). But the state achieves these public interest objectives through the process and principle of ‘subsidiarity’.

In the United States the AFP Code of Ethics is administered quite separately from government and may thus be viewed as independent. But in California that voluntary code has been deemed insufficient and legislators have acted, for example, to ban fundraising counsel from being compensated by commission.

In Table 2.1 we provide an analysis of FR-SRs using the Bartle and Vass (2005) framework. It appears that the vast majority of initiatives seem to fall into the category of tacit self-regulation, for example, the AFP’s various codes and standards, and accreditation bodies such as CBF and Imagine Canada.

**Table 2.1. Types of FR-SR and the Co-Regulation Spectrum**

Type of co-regulation	CSO/FR-SR body	Type of SR	Compliance
Co-operative	IoF Compliance Directorate (UK)	Code of standards (owned by F-Reg)	Proactive
	PFRA (Australia) PFRA (New Zealand)	Code of standards	Proactive/Reactive
Delegated	Fundraising Preference Service (England and Wales)	Preference service (Not accommodated on existing typologies)	Reactive
Devolved	DZI (Germany)	Accreditation agency/information service	Reactive
Facilitated	Fundraising Regulator (England and Wales, Northern Ireland)	Code of standards	Reactive
	Scottish Fundraising Standards Panel (Scotland)	Code of standards	Reactive
Tacit	AFP Code of Ethics (USA, Canada, Mexico, Columbia, Egypt, China) CASE (worldwide)	Code of standards	Reactive/Passive
	Association of Development Agencies in Bangladesh	Code of standards	Reactive/Passive
	Belgian Consortium for Emergency Relief	Umbrella mechanism	N/A
	Better Business Bureau/Wise Giving Alliance (USA)	Information Service/Ratings agency	N/A
	CBF (Netherlands)	Accreditation agency	Reactive
	Charity Navigator (USA)	Information Service/Ratings agency	N/A
	Disasters Emergency Committee (UK) Help Argentina	Umbrella mechanism	N/A
	Fundraising Institute Australia	Code of standards	Proactive/Reactive/Passive
	Guidestar (USA, UK, India, Korea)	Information Service/Ratings agency	N/A
	Imagine Canada	Accreditation agency/information service	Reactive
International Statement on Ethical Principles in Fundraising (24 national signatories)	Code of ethics	None	

Source: Examples of FR-RR - Developed from Bartle and Vass (2005)



## 2.5 Strengths and Weaknesses of Self-Regulation

To adequately address the notion of the strengths and weaknesses of a self-regulatory approach, it is necessary to adopt a stakeholder perspective.

For the profession of fundraising **the most commonly cited advantage of self-regulation was that it frequently focused on best practice**, and best practice that could potentially form the basis for a significant learning opportunity. It could help those new to a role or new the sector to identify how they ought to behave. The utility here is based on a perception of practicality. Standards or a code of practice add value because they provide the real detail of how to behave, drawing on a wealth of professional experience and practice.

*"I think the strengths of the professional standards are they're grounded in real-world practice. While they're underpinned by principles, those principles are then enumerated in specific, very specific things that fundraisers are not allowed to do. So in some senses, telling fundraisers what they can't do might be seen as unnecessarily negative, but I think it does help ... We see our professional standard as establishing the baseline for what is acceptable within the actual standard." (Regulator interviewee.)*

A further benefit is a given industry's **desire to forestall government intervention and regulation** (Bowie 1979). In the UK, that was certainly a significant factor in the creation of the Fundraising Standards Board (FRSB). Organisations were exhorted to participate in the scheme to prevent more onerous and possibly blunt interventions by government

that might seriously impede the sector's ability to raise funds. Avoiding that was therefore regarded as a significant benefit.

A further advantage articulated by our interviewees was that **the industry itself will typically handle complaints**. Processes can thus be established that are more nimble than those created by government. A greater understanding of the issues on the part of those handling complaints can also ensure that they are handled in a timely manner, greatly enhancing the efficiency of the overall process. This benefits the focal organisation since fewer resources have to be spent investigating and perhaps defending particular complaints.

*"Yeah, I mean it's fair to say that is reflective of my experience in the UK where our ability to fine members within a relatively short period, generally speaking, yielded much more positive responses in terms of improvements in behaviour." (Regulator interviewee.)*

As we noted above, self-regulation can also offer participating organisations the benefit of a badge that **provides testimony to their commitment to high standards** and to the quality of the service provided. The ability to use the logo or badge associated with a self-regulatory scheme boosts an organisation's credibility and through that it's fundraising effectiveness (LaBarbera 1982, Darnall and Carmin 2005).

**For consumers, a major benefit of self-regulation is that many programs go beyond basic standards of truthfulness and honesty** in any claims they might make in communication and focus instead on issues that are inherently harder to define and legislate against. Several advertising codes, for example, include provisions

concerning advertising taste, fear appeals and the degradation of societal groups (LaBarbera 1980). In fundraising, requirements often relate to transparency in reporting (by forcing members to issue annual detailed financial reports), limitation of fundraising expenses at a defined threshold (to control perceived overspending), avoidance of the use of pressure, and the stimulation of particular emotions such as guilt. This level of granularity causes codes to be much more demanding or stringent than relevant government legislation or regulation and this is important since most advertising complaints, for example, are concerned with issues of taste not governed by regulation.

Self-regulation also **provides the public with an additional recourse for lodging a complaint against communications or behaviours** that may be deemed inappropriate. It is interesting to note in the United States, for example, that historically changes have been brought about to control certain advertising practices, even when the statutory body, the Federal Trade Commission, had refused to take action (LaBarbera 1983).

The government too accrues benefit. Prior to the growth of self-regulation in the United States there was a significant backlog of complaints filed with the Federal Trade Commission (FTC). Since the establishment of self-regulatory schema, routine cases are now turned over to self-regulatory bodies leaving the government free to focus its resources on more difficult cases and areas of innovation (Sargeant 2009).

Equally, just as self-regulation can serve to bolster and supplement 'base' standards contained in regulation, so too can that regulatory base be informed by the 'base' established in professional standards. Industry can learn from government, but so too can government learn from industry. In

this way **self-regulation can inform public policy standards.**

**The literature also highlights a number of weaknesses** associated with a self-regulatory approach.

The first is that **it can distort professional practice to reflect the needs or influence of powerful stakeholders** who do not necessarily have the best understanding of the sector and the wider impact that any change in regulation might have. In many countries the press are a powerful stakeholder group that can influence change by highlighting what they perceive to be poor practice, irrespective of whether there is evidence that such poor practice is widespread or endemic. Negative press can lead to new regulations that might require non-profits to divert resources from service delivery to regulatory compliance (Edward and Hulme 1996; Ebrahim 2003; Senate Finance Committee Staff 2004; Panel on the Nonprofit Sector 2007).

A second weakness is that **self-regulation is largely based on voluntary participation.** The industry itself comes together to decide on the requisite standards and then to enforce compliance amongst its members. The needs and voices of other stakeholders may not be included and as a consequence there can therefore be a tendency to create standards that set only a low bar to compliance (Hopgood 2005; Bornstein 2003). Trade associations or professional bodies can also decide to implement weaker regulations if they fear that tougher standards would result in a loss of membership.

The voluntary nature of participation is also a weakness in and of itself. Many organisations will sign up to the standards, but many more might not and it is of course very likely that those with the lowest standards of behaviour will be the least

likely to join. Even where organisations do sign-up they may seek to manipulate or evade the rules to suit their own commercial purposes. In the control of advertising aimed at children for example, advertisers were found to be employing varying definitions of what constituted a 'child' (e.g. Hawkes and Harris 2011), with self-stated commitments being less rigorous and binding, the narrower the definition employed.

The wider literature also suggests that a problem can occur with 'regulatory capture' where over time, the regulator comes to serve the regulated, rather than the public interest (Grabosky and Braithwaite, 1986). This has apparently been a problem in the food sector (Mello et al 2008, Miller and Harkins 2010, Babor and Robaina 2013) although we are unaware of any examples where this has been an issue in fundraising.

A further weakness of self-regulation can lie in the manner in which standards of behaviour are enforced. As we have just noted above, **many purely voluntary schemes have no formal mechanism to force organisations to comply or punish recalcitrant behaviour** and are rendered ineffectual as a consequence. There is now a body of empirical literature in the realm of business ethics and compliance that casts doubt on the true impact of self-regulation when there are no legal sanctions (Panjwani and Caraher 2013, Lloyd et al 2010).

*"Well, I think the weakness is, if someone drops their membership it's no longer necessarily as enforceable as it could have been. When we get into that business where we're trying to enforce this, the easiest way to make it not enforceable is for the person to revoke their membership immediately. Yes, we could still move forward, but it doesn't make it easy when we have no real power over somebody who said they're not part of us anymore." (Regulator interviewee)*

*"So we have no statutory powers. We rely on persuasion. We rely on reputation, if we need to enforce findings that might be made about poor practice, so when my colleagues in the complaints and investigations team produce their decision about a particular complaint, that will say not just what's gone wrong, but it will make recommendations for improvement. But we have no formal powers to enforce that." (Regulator interviewee)*

Self-regulation also gives rise to the free rider difficulty in that organisations may try to exempt themselves from incurring costs associated with producing the general social benefit associated with the scheme. So those participating in self-regulation and promoting high standards serve to enhance the public trust which in turn benefits other nonprofits who have decided not to participate (Prakash and Potoski 2006).

In our review of the literature, we were surprised not to find any reference in respect of weaknesses of self-regulation to the costs of administering a system of self-regulation and whether the costs are justifiable given the stated benefits. An analysis by Sargeant (2016) indicates that there would appear to be economies of scale in regulation and that as a consequence there may be little merit in isolating fundraising from other forms of marketing related activity. In the UK, for example, Sargeant (2017) estimates that for the advertising regulator, the ASA, the cost of handling a typical complaint from a member of the public is around £263. For F-Reg, the new fundraising regulator the cost is £3125, money that has of course been

diverted (by the funding levy) from the societal causes to which it had been donated.

*“So, I would say the disadvantages, especially with our size, is cost. So, for us, if we want to meet in person, which we still are, at the end of the day, I think it’s the best way. You get a few people in a room, spend some time, really dig into them and understand the nuances of their responses. It’s expensive, and it’s time consuming for us. And, fortunately, we’ve actually literally, as of two days ago, had a funder step up to help us do this. So, that’s really outstanding.” (Regulator interviewee)*

Although not cited in the literature, the issue of cost did emerge from our interviews.

**The costs of operating a scheme can also (ironically) serve to limit a regulators ability to promote its endeavours.** It was felt that schemes were only effective where the public were aware of their existence and significant levels of awareness come at a cost that may simply not be achievable for a smaller initiative.

*“Well I don’t know if we should call it a weakness, but it’s certainly a start-up weakness. This standards committee was totally new in the Netherlands. So three years ago, we ourselves the CBF made up the standards and we monitored them. A lot of people still think that we are making up the standards. Everybody knows us and there are not a lot of people who knows the independent standards setting committee. One of the things we try to do is to, everywhere we come, we just explain how the system works, but we cannot talk to everybody.” (Regulator interviewee)*

*“So, there’s public perception and public perception is I believe very far away from realising there are the professional standards that people abide by, and this is probably so in many other countries too, in the sense that the press diligently ignores this. They just don’t care about it, and whenever there is a story they can report about some misconduct, they will. And without ever asking other questions in terms of, what is the background to this, we know this, we know how it works.” (Fundraising Association interviewee)*

Finally, for governments there can be a further drawback to self-regulation, since action taken by an industry can serve to deflect political interest or derail nascent regulatory proposals because the need has thus been obfuscated. Governments can legitimately see regulation as something that should sit within their purview and resent attempts by industry to interfere with what they would regard as a legitimate process.

These ideas are summarised in Table 2.2.

**Table 2.2 Strengths and Weaknesses of Self-Regulatory Regimes**

	<b>Industry</b>	<b>Consumers</b>	<b>Government</b>
<b>Strengths</b>	Forestalment of government regulation / Maintain control	Less intrusive fundraising	Reduction of case backlog
	Efficient resolution of complaints	More tasteful fundraising	Resources freed for new issues and unresolved cases
	Enhanced public relations through adoption of regulator's logo or badge	An additional channel for complaint resolution	Guidance in developing public policy standards
<b>Weakness</b>	Industry discord/Evasion of standards	Potential industry bias in adjudications	Infringement on policing authority
	Free riding if participation is voluntary	Low bar for compliance / lower standards	Regulatory capture
	Costs of scheme operation	Costs of scheme operation	Weak enforcement

## 3.0 Fundraising self-regulation

### 3.1 Drivers for self-regulation

Around the world, self-regulation has often been the preferred option for civil society. Its overarching goal is to “*establish a system of rules that will ensure compliance and project a sense of credibility without placing limits on the ability of well-functioning CSOs to advocate and provide services*” (Obrecht 2012, p7). **Note that the objective is to facilitate CSO activity and not impose unnecessary limits on them**, which echoes a widely cited duty of regulators to help their regulated industry to grow (Hodges 2016).

A major review of CSO-SR conducted from 2008 to 2010 by the One World Trust (OWT) – an international CSO whose aim is to promote accountable global governance identified 309 CSO-SRRs around the world. The authors identified a variety of motives for the establishment of these schemes:

- a. Legitimacy
- b. Accountability and transparency
- c. Build public trust
- d. Forestall/complement statutory regulation
- e. Maintain competitiveness
- f. Protect donors’ interests/empower donors
- g. Helping fundraisers to grow.

**a. Legitimacy** – The growing influence of CSOs around the world has led to demands for increased scrutiny (Warren and Lloyd

2009<sup>3</sup>). As CSOs have become more vocal in their advocacy role, which often involves criticism of the state, so they have had to meet demands to justify their own legitimacy answering key questions such as “*what right do they have to say the things they do*” (Lloyd 2005, p6).

**b. Accountability and transparency** – Accountability is closely related to the question of legitimacy. CSOs adopt self-regulation so that they might provide a mechanism that allows donors to trust the claims they make (Prakash and Gugerty 2010), and promote good internal management, government and organisational effectiveness (ECNL 2016).

**c. Build public trust** (Lloyd 2005) – By demonstrating legitimacy and accountability the public trust can be enhanced CSOs adopt and apply ‘quality management’ that includes professional standards and appropriate success/effectiveness measurements and indicators (ECNL 2016). Commitment to apply these standards leads to increased credibility with donors and the public and gives donors a reason to trust the claims CSOs make (Prakash and Gugerty 2010). CSO-SR can therefore reduce the “*information deficit*” that donors have in respect of the CSOs they support (ibid, p23).

Perhaps most importantly, increasing trust through self-regulation leads to increased philanthropic support (Sargeant and Lee 2002a, 2002b, 2004; Steinberg 2006; Molnár 2008; Tremblay-Boire et al 2016).

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<sup>3</sup> Warren and Lloyd’s paper is part of the One World Trust’s review of CSO-SR and is written mainly in the context of the humanitarian and development sectors.

Public trust was mentioned by many of our interviewees as a key criteria against which to define success of their FR-SRR, as well as being one of the objectives of FR-SRR – however, this did not come up as often or indeed as automatically as we might have expected.

*“Yes. I would say at its core it's really about three things. One is credibility, the second is trust, and the third is excellence. So, I think those first two are related. In Canada, there's 86,000 registered charities, and some of our 90,000 non-profits who are seeking funding from the public all the time. And, it is important that individuals, particularly, who are considering gifts to organisations, can think about how those organisations steward and go about the process of soliciting those gifts.” (Regulator Interviewee)*

**d. Forestall/complement government regulation** (Warren and Lloyd 2009) – This is a common driver of self-regulation in many sectors and has been a major factor in the development of FR-SR in the UK (Harrow 2006). It is certainly a current concern in Australia (Edwards 2015) and New Zealand, particularly in relation to the issue of fundraising costs and what information a third-party fundraising agency ought to disclose to a potential donor (Public Fundraising Regulatory Association [New Zealand] 2012). CSO-SR has often been adopted in an attempt to forestall particularly **“restrictive”** (Obrecht 2012, p15) **“heavy-handed or repressive government intervention”** (Bies 2010, p1058).

Opinion in our research was divided on whether the impetus for self-regulation had been to forestall government intervention. Some felt that the notion of forestalling government intervention was too simplistic because the scheme and its association

requirements went well beyond what would typically be required by governments. But it was seen by many as a secondary benefit.

*“I wouldn't say it forestalls it. I think it gives us something to lean on. When I've met with regulators and shared with them our ethics, to be honest, they'd never heard of them before. They didn't know we even had ethics in our business. It's one of the misperceptions of our business. The challenge is though, on the other side of it is that I think even in some of the cases our ethics and professional standards are tougher than most regulators want to be. Things like commission-based fundraising.” (Fundraising Association interviewee)*

*“Yes, I would say. I'd say that was probably seen as something that would be a secondary benefit that would flow from the stated objectives. As in, if we're able to raise the standards of both agencies and the capability of charities to work with those agencies, fundraising would be more sustainable.*

*Yes, it would quieten down the sector and forestall any degree of government intervention. (Regulator interviewee)*

**e. Maintain competitiveness** – A big driver of CSO-SRRs is the need to ensure that member organisations have **“access to resource and relationships”** within the market in which they operate (Bies 2010, p1059) and/or to enable them to diversify funding streams (Lloyd 2005). It has also been argued that the role of CSO-FRR is to reduce harmful competition between civil society organisations (Similon 2015). One of the key roles of the PFRA in the UK, for example, was to ensure the sustainability of the F2F market and avoid a ‘tragedy of the commons’ as well as forestalling

government intervention (see s7.0). Self-regulation can thus encourage collaboration and co-operation between members and other stakeholders and to help them build capacity (Obrecht 2012). This in turn improves competitiveness alongside trust and credibility.

**f. Protect donors' interests and/or 'empower' donors** – There is a definite school of thought that a main role of self-regulation is to protect donors' interests and ensure that CSOs act in way that donors wish them to act (Prakash and Gugerty 2010). This is explored in more detail later in this report as it's the rationale that underpins many FR-SRRs). As well as protecting their interests, an argument also runs that the purpose of self-regulation, particularly in the context of fundraising, is to empower donors so that they can make informed decisions about donating to charity (Breen 2009). It is argued that if donors are provided with high quality information that can have greater confidence that their money will go to a legitimate charity and be used by that body for its charitable purpose. The role of empowering donors by providing trustworthy information is performed by numerous certification schemes and information services.

While many interviewees in our research mentioned donors as one of the main stakeholders and thought that self-regulation could offer benefits to donors by indicating that standards were being met, here was no real sense that interviewees felt that this was to 'empower' donors per se.

**g. Helping fundraisers to grow** – Enlightened thought leaders see one of the purposes of regulation to help their regulated industry to grow (Hodges 2016). We included a question in our research to explore what those involved in FR-SR thought about this issue. We purposely didn't define what we meant by 'grow' – whether that was helping charitable giving

to grow, helping the quantity and/or quality of fundraising to grow, or some other sense – and left that to the interpretation of each interviewee. We asked about growing 'fundraising' because fundraising is the name of the regulated industry/profession. It was a question that many had not considered and was more likely to be advocated by profession-led bodies while externally-sponsored bodies were more equivocal, and more likely to see their responsibility not to inhibit rather than grow.

*"I think that's an interesting question because I would actually look at the opposite side of the coin which is what is it that holds growth back? And for me, what holds growth back is lack of donor trust. And what causes lack of donor trust, unethical practice. If you look at both sides of the same coin, without self-regulation, we have the potential to do very significant damage, in my opinion." (Fundraising Association interviewee)*

*"Grow? Well, I would hope our approach doesn't inhibit. Whether it grows fundraising in the sense that more money is generated I think is impossible to know. I don't know how I'd go about measuring that... I think we want to support it, not inhibit it. That's the key point." (Regulator interviewee)*

*"I'd say (our) role is very much about helping fundraising grow, or helping improve the standards and excellence of fundraising, because our guidance is about helping our charities raise more money. Helping fundraising grow, or charities be more sustainable through raising more money, I think is probably a secondary outcome of the fundraising regulatory system." (Fundraising Association interviewee)*



*“Well, our objective is not to help it grow. Our objective is to help the system be healthy, if you know what I mean, and sustainable. There's a lot of discussion (here) about the purpose of the organisation. Is it to raise more money? Or to have more influence on stakeholders? For example, to make changes within organisations that are, other organisations than our own. So the purpose is not to grow the amount of money, the purpose is to make the sector more sustainable and effective and more impactful.” (Regulator interviewee)*

*“I would say it creates an environment with which you can succeed. To me self-regulation is an area that allows organisations to flourish, foster and grow. It's just builds trust. To me without some sense of self-regulation among the charitable world we would have an area that would be almost like the Wild West of fundraising which is an American term in a lot of ways but we don't want that. We want to make sure that there's high trust and it allows the whole sector to grow and grow together.” (Fundraising Association interviewee)*

### 3.2 When Does Regulation Occur?

Unless they are also beneficiaries of a charity, members of the general public are most likely to encounter or interact with charities through fundraising, which is the main interface between charities and the public. It is fundraisers who often make first contact with people, bring them into supporting the cause, and stewarding their relationships. While donors and non-donors will encounter advocacy and campaigning through the news media and social media –

which can lead to complaints and friction if there is a feeling that that kind of advocacy is being done inappropriately. It is fundraising that “*seems to encapsulate much of what is in the public mind when ‘control’ of charities is called for*” (Harrow 2006, p90).

Academic research shows the percentage of people who give in response to a solicitation is in the high 80s (Bryant et al 2003; Bekkers 2005; Bekkers and Wiepking 2007), while actively asking for donations rather than “*passively*” (Bekkers and Wiepking 2007, p23) presenting someone with an opportunity to give increases the likelihood they will donate (Lindskold et al 1977). Put bluntly, the more you ask someone, the greater the likelihood they will give.

Those people who agree to the solicitation become donors; those who decline do not.

This provides an opportunity to classify self-regulation of particular fundraising activities according to the point in the process where solicitation occurs. This is the approach taken by Breen (2014). She draws a distinction between:

- Pre-solicitation
- During solicitation
- Post solicitation.

**Pre-solicitation regulation** – is concerned with ensuring fundraisers have appropriate permissions to be able to make that solicitation (Breen 2014). In many countries, this form of licensing is the preserve of the state (ECNL 2017), and is perhaps at its most extreme in Finland. In Finland the police licence all forms of public fundraising, including on TV and social media – resulting in strained relationships between CSOs and the police. The system is now under review from the Finnish Ministry of Internal Affairs. Other forms of pre-solicitation regulation include the requirement to pre-clear broadcast material, for example, in the UK by

Clearcast<sup>4</sup> and Australia by CAD<sup>5</sup>; and compliance with preference services and do not call registers, including the UK's Fundraising Preference Service.

**During-solicitation regulation** – this falls largely under the remit of fundraising regulatory codes, such as F-Reg's code of practice, Imagine Canada's standards, etc. However, there will also be intersection with other regulatory regimes, such as those relating to advertising or broadcasting. Proactive compliance – mystery shopping and observation of fundraisers can occur at this stage.

**Post-solicitation regulation** – will also be covered by existing codes of practice and ethics, since these are intended to enforce best practice standards across the entire span of a donors' relationship with a charity. But they will also encompass the kinds of standards required of certification schemes, such as not exceeding the approved upper limit on fundraising and administrative expenditure, and submitting relevant financial information.

This is a helpful and insightful division of where regulatory intervention may occur in the fundraising process, but many FR-SR regimes and initiatives will span these borders. For example, fundraising codes of practice will not only apply to the act of solicitation but will also apply to how the relationship with the donor is stewarded.

### 3.3 Methods of CSO self-regulation

**Civil society self-regulation takes place in three main, overarching ways** (Warren and Lloyd 2009):

1. Two or more organisations come together to define common norms and

standards to which they can be held accountable, which happens in most cases of CSO-SR.

2. A third party organisation such as a peer CSO or a 'watchdog' can undertake external assessments as is a common method of delivering FR-SR though formal regulatory agencies such as CBF in the Netherlands and DZI in Germany, and informal 'watchdogs' such as BBB Wise Giving Alliance in the USA.
3. The government can be involved in 'certain circumstances', in which cases, power is delegated to a self-regulatory body to set standards for the sector. However, as it is argued that self-regulation is just one tool available to the state to meet public interest objectives, and that the state takes at least a passive role in most forms of SRRs, it is likely there is more widespread state involvement (in some capacity) in CSO-SR than Warren and Lloyd (2009) suggest.

Also, as we saw earlier, each of these methods of delivering CSO-SR includes – or ought to include – the two components of a) professional standards and b) compliance with those standards.

**The One World Trust review of CSO-SR identified the main ways that self-regulation is delivered or achieved** (Warren and Lloyd 2009). These are listed below together with two further methods that were not explicitly mentioned but which nonetheless bear consideration.

- a. Codes of conduct, practice or ethics
- b. Certification/accreditation schemes
- c. Information services
- d. Working groups
- e. Self-assessment tools

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<sup>4</sup> <https://www.clearcast.co.uk>

<sup>5</sup> <https://cadoas.freetv.com.au>

- f. Awards schemes
- g. Umbrella mechanisms (Similon 2015)
- h. Proactive and reactive compliance (Obrecht et al 2012).

The OWT study points out that self-regulation has not “permeated” the global CSO sector evenly, and that there is no “one-size fits all model” (Warren and Lloyd 2009, p1).

### 3.3.1 Codes of conduct, practice or ethics

**Codes containing a set of prescriptive professional standards are the most common form of CSO-SR**, with 51 per cent of the CSO-SRRs described by One World Trust using this form. They are often hosted by umbrella or representative bodies that can apply to all actors in civil society, or just those in certain sectors or activities, such as fundraising (Warren and Lloyd 2009). The literature on CSO-SR tends to group codes of standards/practice and codes of ethics together and uses the terms interchangeably (e.g. ECNL 2016). However, as we saw earlier, codes of ethics and codes of practice have different roles and objectives. Within the CSO-SR literature, only Lloyd and de las Casas (2006) distinguish between codes of ethics and standards:

- Ethics – aspirational codes of principles/ethics that signatories strive to achieve (such as the International Statement on Ethical Principles in Fundraising (AFP 2017). This international statement is supported by fundraising associations around the world.
- Standards – codes of conduct in which more defined standards of behavior are met (such as the PFRA Code in Australia).

We noted earlier that the literature tends to conflate and confuse professional standards and professional ethics. This lack of clarity regarding the distinction between ethics and standards was apparent in our research.

*“We don't have a separate charter or ethical framework if you like, for charitable fundraising, because we've got such a well-developed code of practice which sets the rules. There are pieces, I guess, of things related to ethics in bits of our guidance, but they're probably relevant and specific to those areas rather than brought together as anything more formal.” (Fundraising Association interviewee)*

*“I don't think we actually combine them, I think we have a page or a page and a half that describes the code of ethics, these are the guidelines or what you should think about when you're a fundraising organisation in relation to your fundraising operation. And all our other things we do are separate from that. So I would say we're not combining it.” (Fundraising Association interviewee)*

*“So the ethical code, our fundraising ethics is one of the criteria in our seal of approval standards. The seal of approval standards cover fundraising, nonprofit ethics, they cover issues of good governance, so supervisory and governing structures. They cover the issue of efficiency and also effectiveness. They cover the issue of transparency because there are no legal transparency duties here, so we have quite explicit requirements, what to publish in an annual report and on the website.” (Regulator interviewee)*

Some codes of practice contain values about how fundraising ought to be conducted. For example the code of practice run by the Fundraising Regulator in England and Wales places three values of openness, honesty and respect right at the very start (Fundraising Regulator 2017, s1.0). Equally, in America the first bullet point in the AFP's Code of Ethical Standards includes the imperative that fundraising must be practiced with integrity, honesty, truthfulness and in a way that safeguards the public trust (Association of Fundraising Professionals 1964/2014).

One regulator commented:

*"I think the sort of strength of the system is that there two parts to it... it's the values and the ethics first and then the standards which are required of fundraisers.*

*So it's entirely right to have high-level statements at the start of the code, but to have those made distinctly because they're values that underpin everything that follows, which is about the standards that should apply to how you fundraise ... And then for a regulator holding the code and developing the code, if you get a complaint, then you can judge that complaint in one of two ways or against both criteria." (Regulator Interviewee)*

The lack of clarity between ethics and standards notwithstanding, fundraising codes of practice/standards were almost universally praised in our study not just for providing accepted standards and guidance on best practice, but for ensuring that practice is based in practitioner knowledge:

*"I think one of the things I'm hearing from our members who follow the code is that it provides them with an understanding of how to conduct fundraising that's best practice*

*because otherwise, you know, what does best practice look like? It's sort of hard to sort of get at. It does result in improved fundraising practice and a little bit of consistency around that which then results in reduced non-compliance and higher donor satisfaction. It kind of keeps the sector reputation high." (Fundraising Association interviewee)*

Another key argument in favour of standards was the notion that practitioners are the most well placed group to recognise poor practice and to adapt them to reflect that emerging learning:

*"The method of developing a review in the professional standards is based on (the views of) practitioners from both sides, from both agencies and charities. And drawn from individuals who've done face-to-face fundraising for well over a decade as well. So that gives us the ability to actually highlight flaws. That gives us the ability to build the professional standards in a way that will actually be relevant to fundraisers, as in it's not kind of pie in the sky types of stuff." (Regulatory interviewee)*

The question of how much input fundraising professionals and practitioners ought to have into developing their professional standards is an important one that we will return to later in this report.

### **3.3.2 Certification/accreditation schemes**

**Certification schemes**, which number 24 per cent of the global CSO-SRRs described in the OWT study (Warren and Lloyd 2009), **involve some form of proof or verification that a set of principles or standards have been followed**, and can be subdivided into:

- a) Self-certification
- b) Peer certification
- c) Third-party certification

Third-party certification is when a ratings agency conducts an independent assessment of a CSO's operation. They generally focus on two areas: a) fundraising and stewardship of donor funds, and b) assessing operational quality (e.g. Give India, Cooperation Committee for Cambodia). Three quarters of the certification schemes in the OWT study were third-party schemes.

Typical FR-SR accreditation schemes are those we have already encountered: DZI in Germany and CBF in the Netherlands, both of which give 'seal of approval' recognition to CSOs and are recognised as part of the formal voluntary SRR in their countries.

The ability to use the logo or badge associated with a self-regulatory scheme – whether this is a 'seal of approval' type badge such as the awarded by DZI, or a badge of membership, such as F-Reg's tick logo – boosts an organisation's credibility, and through that its fundraising effectiveness (LaBarbera 1982; Darnall and Carmin 2005). Evidence from the Netherlands suggests that CSO members of a certification scheme increased their fundraised income by seven per cent over a 10 year-period, while donors who are aware of the accreditation scheme will give more than those who are not (although it has no effect on how much confidence they have in CSOs) (Bekkers 2006). La Barbera (1982) also demonstrated that company credibility and message effectiveness are bolstered by advertising self-regulation to a greater extent than government regulation.

This came through in our qualitative research too:

*"The consumer polling that we've done about their perceptions of these programmes is indicating that if they don't know anything about them,*

*they'll be more likely to give to organisations that have this independent accreditation. And, if they were already predisposed to liking these types of programs their willingness to give shoots up about another 20 points So, it's actually fairly powerful for those organisations that go through it." (Regulator interviewee)*

**Nonetheless, several questions can be raised about the operation of accreditation/ratings agencies.**

One of these is the legitimacy of the accreditation bodies. What gives them the right to assess the quality of CSOs and their fundraising operations? Do they have the relevant knowledge to do this? The fact that so many of them set arbitrary upper limits on fundraising expenditure suggests that they may not, and in 2013 the three American third-party agencies and information services – Guidestar, Charity Navigator and BBB Wise Giving Alliance – wrote an open letter to the donors of America to correct a misconception about what matters when deciding what charity to support (Taylor et al 2013).

This exchange related to the 'overhead myth' – the misconception that the amount a charity spends on overhead or fundraising is a good way to judge's a charity performance (it is not). Ironically, this is a myth that many ratings agencies have created and, at least in the past, have seemingly done their best to perpetuate to drive interest in their work (Ortman and Svitkova 2007).

Another question is accountability. Ratings bodies have a great deal of influence – many institutional donors will not grant to an unaccredited CSO (Lloyd and de las Casas 2006). So to whom are they accountable to ensure their influence is used well, particularly if such watchdogs are 'self-appointed'? (Jordan 2008).

As well as maximising the amount of money going to beneficiary services, accreditation bodies also wish to maximise their own profit (Ortman and Svitkova 2007), which suggests a conflict of interest that requires a level of accountability, perhaps through co-regulation with CSOs. SRRs can be collaborative joint ventures between regulated and regulator.

### 3.3.3 Information services

**Accreditation organisations can morph into information services.** The DZI for example performs this dual role the main purpose of which is to increase transparency by providing donors, the public and other stakeholders with basic information about how CSOs operate (Warren and Lloyd 2009). This then serves to reduce the ‘information deficit’ we described earlier. Yet the evidence suggests that donors continue to consistently overestimate key measures such as how much money is spent on fundraising costs (Sargeant et al., 2000; Bekkers, 2003).

A paradigmatic example of an information service is Guidestar (Bies 2010), which operates in the USA, UK, Korea and India, providing information on programmes and grant making, alongside demographic details such as size and location. And while many information services are provided by private third-party bodies such as Guidestar, they can also be provided by statutory bodies (such as the register of charities maintained by the Charity Commission in England and Wales). Or they can be from CSO sector actors, such as the now-defunct Charity Facts website or the UK’s How Charities Work<sup>6</sup>, set up by the National Council for Voluntary Organisations.

<sup>6</sup> <https://howcharitieswork.com>

<sup>7</sup> <https://www.charityintelligence.ca>

Questions about legitimacy and accountability apply as much to third party information services as they do to accreditation bodies. For example, the self-styled ‘donor advice’ website Intelligent Giving, which operated in the UK for a few years at the end of the 2000s, is cited as an example of an information service (Warren and Lloyd 2009). However, Intelligent Giving was highly distrusted by the fundraising sector in the UK, particularly concerning its stance on street fundraising (e.g. Barrett and Jordan 2008; MacQuillin 2008). Similarly, Charity Intelligence Canada<sup>7</sup> is an information service that also experiences distrust and criticism from those it provides information about, for example, for a “*naïve analysis of data and lack of knowledge of CRA [Canada Revenue Agency] guidelines and how nonprofits in Canada actually work*” (Levy-Ajzenkopf 2011, p13).

We have already seen how the driver for more accountability of CSOs through regulation is often a smokescreen to undermine their legitimacy and credibility (Warren and Lloyd 2009). It is a fair question to ask whether some ratings agencies and information services are helping those they ‘regulate’ to grow or whether there is a different agenda at play (Hodges 2016).

### 3.3.4 Working groups

**The first step in the development of many self-regulatory initiatives is a working group from within the civil society sector.** The FR-SRR that emerged in the UK in 2006 grew out of a commission set up to explore options by the IoF (Harrow 2006). While the IoF no longer has a formal role in FR-SR in England and Wales (its Compliance Directorate being the

exception), it contributes massively by developing guidance to augment F-Reg's code of practice.

### 3.3.5 Self-assessment tools

**Working groups often produce tools and other outputs that CSOs can use to improve practice.** For example, the IoF's guidance on vulnerable people contains a nine-point checklist on developing a policy on fundraising from vulnerable people (IoF 2016a). The ImpACT Coalition in the UK – a sectoral group established to improve transparency and accountability in CSOs – developed a number of toolkits for use by CSOs, and was a model that was subsequently adopted by the CSO sector in Hungary (Cranley 2011).

### 3.3.6 Awards ceremonies

**Award schemes look to identify, highlight, and reward good practice** (Warren and Lloyd 2009). The high public visibility that is created when awards are granted helps to draw attention not only to the programme and the standards it sets, but also to the awarding body. If the award scheme can be established and gain credibility then it can help to heighten awareness of exemplary models of best practice among NGOs (Songco 2007).

### 3.3.7 Umbrella mechanisms

**This is a form of self-regulation that is not included in the OWT typology.** Whereas codes of practice are often drawn up by umbrella bodies that represent the entire sector or a particular subsector, such

as the AFP's various codes in the USA, this heading refers to a particular form of umbrella body that regulates competition between charities by streamlining or unifying their fundraising efforts. This reduces wasteful competition between charities and maximises the amount that can be spent on project work (Similon 2015). Examples of such self-regulating umbrella mechanisms are the Disasters Emergency Committee in the UK and the Belgian Consortium for Emergency Relief (ibid).

### 3.3.8 Proactive or reactive compliance

**Achieving compliance with delineated standards is an essential component of any SRR.**

Formal proactive compliance is activity that is carried out by a body that has a formal or official role in the SRR, such as the observation or mystery shopping of F2F, street, and private site fundraisers by officers or agents of the IoF's Compliance Directorate<sup>8</sup>.

Informal proactive compliance is where the mystery shopping (or similar) is carried out by organisations or individuals who do not have a formal role in self-regulation. This often probes best practice that is not subject to regulatory code enforcement, such as how long it takes charities to thank donors – if at all (Scriver 2017). But such mystery shopping programmes can uncover issues that are subject to regulatory enforcement, such as data protection issues (Radojev 2017a). These sit alongside other kinds of informal self-regulation – such as awards ceremonies and self-assessment tools that are described in the OWT research (Warren and Lloyd 2009).

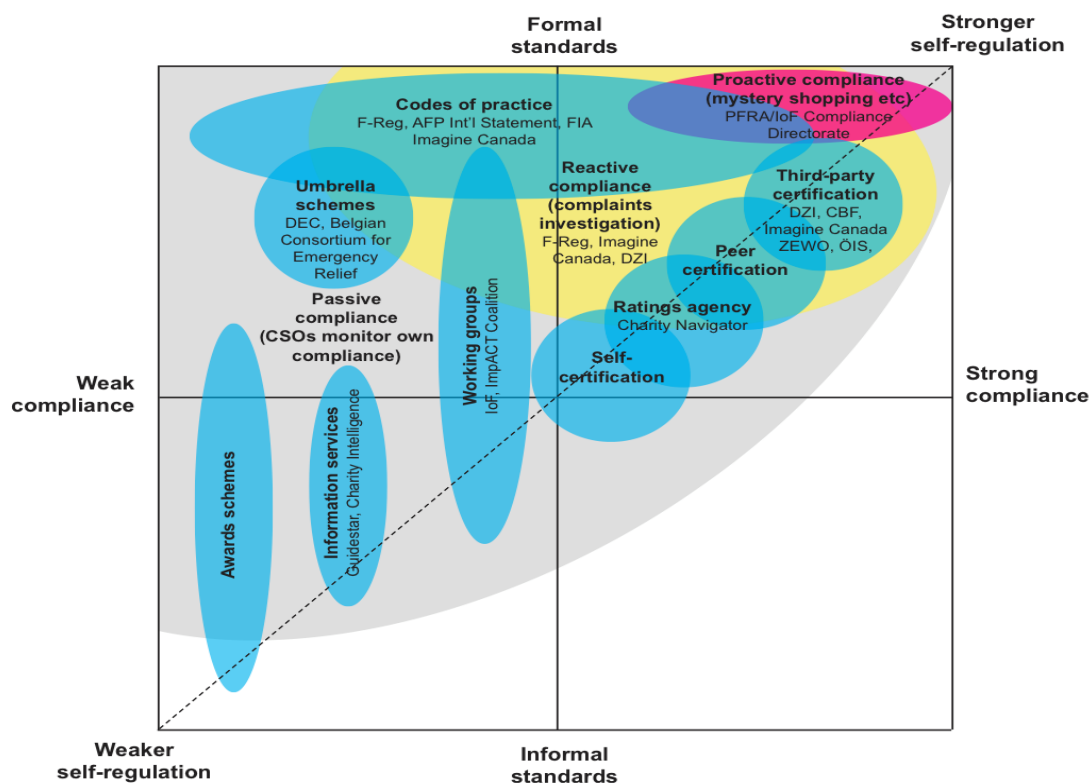
<sup>8</sup> <https://www.institute-of-fundraising.org.uk/regulation-and-compliance/fundraising-compliance/standards/mystery-shopping-and-compliance/>

Reactive compliance is, as Obrecht et al (2012) describes, compliance activity in response to an allegation or complaint of non-compliance. Yet not all of the FR-SRRs included in our research had processes to receive and act on complaints from members of the public. Of course, there are many advanced and sophisticated public complaints processes, particularly among bodies that regulate against defined and publicly-shared standards, such as DZI, CBF, Imagine Canada, and F-Reg, the latter of which operates a low-cost telephone number to report complaints<sup>9</sup>. Bodies that formally regulate F2F fundraising also have well-defined and established complaints procedures, because the type of fundraising they control has significantly more contact with members of the public, and so has the potential for more to go wrong. Other FR-

SRRs operate more informal complaints procedures, whereby complaints are investigated and heard by members of an association's ethics committee, for example. And some encourage whistle-blowing by fundraisers and trustees rather than relying on complaints from members of the public. One participant from a regulatory body told us that the complaints they receive from members of the public are not particularly good and it's those from trustees that are typically more useful and actionable.

In Figure 3.1 we embed the notion of proactive and reactive compliance with the presence of formal and informal standards to show the relative strength of various regulatory approaches. We do so adapting the approach of Warren and Lloyd (2009).

Fig 3.1 Fundraising self-regulatory standards setting and enforcement mechanisms



Developed from Warren and Lloyd (2009). Blue = standards setting mechanisms; Red = proactive compliance; Yellow = reactive compliance; Grey = passive compliance.

<sup>9</sup> <https://www.fundraisingregulator.org.uk/complaints/make-complaint>



**The strongest self-regulation comes when a regulatory body actively looks for examples of non-compliance with a formal code of practice through mystery shopping and fundraiser observation.**

This improves upon the process of reactively investigating allegations of breaches of the code of practice typified by F-Reg in England and Wales and DZI in Germany. Nonetheless, proactive compliance is rare in FR-SR, and the bedrock of FR-SR is a code of conduct backed by reactive compliance, as provided by the Fundraising Regulator in England and Wales and the Scottish Fundraising Standards Panel.

Working groups are given more prominence in our application of the model as these can often be quite formalised structures such as those run by the IoF that feed in to codes of practice. Any guidance they produce would need to be code-compliant and subject to the compliance mechanisms. Information services by contrast are downgraded, since many are not trusted by the fundraising profession and so compliance with their 'standards' may be unlikely (and potentially, also undesirable). Awards schemes are similarly downgraded because although they promote good practice, they are closer to public relations than to self-regulation.

Umbrella schemes (from Similon 2015) appear in the more formal but weaker quadrant since they will be subject to relevant professional standards. But the regulation in the sense of removing potentially harmful competition, will be done by umbrella scheme members according to the membership criteria of the scheme, and not by regulatory authorities.

This descriptive analysis shows that there are a number of FR-SR initiatives in the formal standards/strong compliance quadrant and this appeared to be the trend.

### 3.4 Accountability in CSO self-regulation

This paper has already looked at accountability in respect of the accountability required of regulators. But one of the main purposes of SRRs is to hold those they are regulating accountable for their actions.

Accountability is a “*complex and dynamic concept*” (Ebrahim 2003, p815):

*“It may be defined not only as a means through which individuals and organisations are held responsible for their actions...but also as a means by which organisations and individuals take internal responsibility for shaping their organisational mission and values...and for assessing performance in relation to goals...”*

**Accountability can also be described in terms of two dimensions:**

**answerability and enforcement** (Schedler 1999). 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). This mirrors the two dimensions of self-regulation: standards setting and compliance/enforcement, permitting standards relating to accountability to slot easily into a code of practice.

But it can be helpful to ask the following questions:

- a) For what are CSOs accountable?
- b) To whom are they accountable?

And

- c) How are they accountable?

The answer to this last question is through the regulatory and self-regulatory regimes described previously.

The answer to the first question is also relatively straightforward: they are accountable for a set of actions and behaviours as defined in their professional standards, however these are laid out, such as through a code of practice, accreditation standards, or the norms of an umbrella mechanism such as the Belgian Consortium for Emergency Relief.

The question of ‘accountability to whom’ is much more complex and nuanced since CSOs have multiple stakeholder relationships with their donors, clients and other CSOs (Bies 2010; Brown and Moore 2001). They thus have multiple constituencies (Sargeant 2008) or multiple actors (Lloyd 2005). The word ‘clients’ suggests this refers to a CSO’s beneficiaries or service users, but other authors make this more explicit by talking about accountability to “*beneficiaries and supporters*” (Warren and Lloyd 2009, p4). So, while the accountability is to donors because they provide the funding, beneficiaries “*provide the basis for an organisation's purpose and moral legitimacy*” (Lloyd and de las Casa 2006, p3). However, some commentators do not differentiate between the claims to accountability of donors and beneficiaries, including them both in the category of “*charity constituents*” (Brody 2001, p473).

It was interesting to note that many of our interviewees felt that beneficiaries should be a key stakeholder of FR-SRR.

*“The key stakeholders for me are the charity trustees, the donors, and the beneficiaries.”*

*“I think because of the way we are set up primary stakeholders are fundraisers themselves or charities themselves because they pay our levy, which funds what we do. But alongside them sit the people who donate the money, whether those are individuals or corporates or foundations, and also the people who benefit from the services, because it's a sort of virtuous circle in that sense. I know we say that we're here to represent the interests of the public, and that is true because that's how this started... But now over time there's an opportunity to make sure that there is no repetition of (poor practice) and that we do develop an approach that will respond to a member of the public with real concerns about what they feel they've been affected by, but also remember that the money is raised for a particular set of purposes.” (Regulator Interviewee)*

**Fundraising is indeed a unique context since CSOs serve two distinct markets** (Sargeant 2008):

- Resource allocation market – where resources are provided to beneficiaries.
- Resource attraction market – where resources are raised from donors and supporters.

This suggests that CSOs will owe different accountabilities (or duties) within these two markets (MacQuillin 2018b):

- One set of accountabilities to beneficiaries within the resource allocation market.
- A different set of accountabilities to donors and supporters within the resource attraction market.

Because CSOs are accountable to multiple stakeholders, and because the claims of these various stakeholders are not necessarily aligned with each other, nor necessarily align perfectly with the

purposes of a CSO's personnel (Brown and Moore 2001) the question arises as to how to "balance the demands of multiple stakeholders" (Lloyd 2005, p3). Balancing the needs of these stakeholders is the 'crux' of being accountable in a CSO context (Lloyd and de las Casas 2006).

This potential misalignment of stakeholder priorities compels a CSO to "choose to embrace or resist particular stakeholder demands" (Brown and Moore 2001, p574). However, the "problem for most self-regulation initiatives is that the standards they set are not strengthening and clarifying the relationships with these different sets of stakeholders equally" (Lloyd and de las Casas 2006, p3). Donors hold most power, so mechanisms including compliance measures for ensuring accountability between donors and CSOs are generally quite strong (ibid).<sup>10</sup> The majority of CSO-SRRs are centred on setting standards that "address the needs of, and clarify and strengthen accountability to, those stakeholders that have the ability to affect them the most – governments, donors and the general public" (ibid, p4). This is what Lloyd (2005) refers to as "upwards" accountability (ibid, p4).

**Beneficiaries, on the other hand, despite being the reason why most NGOs exist, generally lack the power to make demands of CSOs and as such fail to receive the same level of attention as donors.** This 'downward accountability' is therefore weak (Lloyd 2005), even though it has been argued that because CSOs claim to speak on beneficiaries' behalf, they have a moral obligation to be accountable to them (Lloyd 2005).

In order to balance the demands of these stakeholders Brown and Moore (2001, p574) suggest that non-profits ask themselves the following three questions:

1. Are we accountable on moral grounds to this stakeholder? Do the demands of one stakeholder deserve to be taken more seriously than another?
2. Are we accountable on legal grounds to this stakeholder? Are we answerable in terms of laws, regulations, formal policies or customs having the force of law?
3. Are we accountable on prudential grounds to this stakeholder? Are we answerable because the stakeholder can impose high practical costs for failures to respond?

The view of many authors is that **beneficiaries are owed a high degree of moral accountability and that it is their interests that should take precedence** (e.g. Brown and Moore 2001; Lloyd 2005, Civicus 2014). Two recent initiatives in the UK have emphasised the primacy of beneficiaries among a CSO's various stakeholders. A draft code of ethics for the charity sector developed by NCVO stipulates that the interests of the people [that charities] work for should be at the heart of everything they do (NCVO 2018). While a two-year inquiry into the future of civil society in England called for a shift in power to become more accountable to the people CSOs serve (Civil Society Futures 2018, particularly p43-44).

**But there is a school of thought that argues that the primary accountability ought to be upwards towards donors.** This line of argument can be understood through the context of Principal-Agent Theory. Developed in the context of rational choice and transaction cost theory, Principal-Agent Theory describes a relationship in which one party – the principal – delegates work to an agent and then monitors that agent to make sure they are fulfilling the duties assigned to them (Bies 2010; Prakash and Gugerty 2010). In a

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<sup>10</sup> Lloyd and de las Casas are writing in the context of institutional donors and INGOs, but their ideas hold true for all donors and all CSOs.

commercial context, principals are the stockholders of a company and the agents are the board of directors appointed to represent and protect the interests of the stockholders (Bies 2010).

However, CSOs do not have formal owners in the same way as companies, so instead 'owners' could be defined as donors (Fama and Jensen 1983<sup>11</sup>). It is then the role of nonprofit boards, acting as principals to protect and steward donor investments by controlling the agents (CSO personnel) who have been mandated to carry out specific tasks in support of the donor's interests (Bies 2010; Prakash and Gugerty 2010). One could even consider the donor to be the Principal (Bies 2010; Prakash and Gugerty 2010) and the CSO the Agent, and in some circumstances, it even seems natural to do so (Brown and Moore 2001).

However, Brown and Moore (2001, p572) consider it "misleading" to think of CSO accountability in the context of Principal-Agent Theory. They say so for two reasons.

The first is that it isn't clear legally who the principal stakeholder should be. In England and Wales for example, trustees of charities are legally required to act in the best interests of the charities they represent, not donors (Charity Commission 2012). While trustees of American charities have two legal fiduciary duties: to be loyal to their organisation and act with prudence (Brody 2001).

The second reason is one we have already considered – that beneficiaries' interests take moral precedence and that CSOs exist at least in part to *"give their clients and beneficiaries more powerful claims against their donors; to insist that the funds available to donors be used for the benefit of clients in ways that the clients think are best. To decide that the principal [i.e. donor] is the most*

*powerful stakeholder would be to sacrifice this important purpose of [CSOs]."* (Brown and Moore 2001, p573).

Casting the donor in the role of Principal also leads to the possibility that the donor, through his or her agents, can exert an undue influence on the CSO through the phenomenon of "donor dominance" (Clohesy 2003, p134). Perhaps the greatest danger inherent in donor dominance is 'mission drift' by a CSO in pursuit of a gift, or *"institutional surrender... the transformation of an organisation and its mission in order to protect itself by obtaining donors' gifts"* (Clohesy 2003, p133). But donor dominance can be felt in other ways, including inappropriate behaviour by donors (Hill 2018; Perry 2018; Sandoval 2018), and undue influence that powerful donors have to influence policy (Goss 2016; Reckhow 2016), to the point that it can undermine locally-organised civil society (Morvaridi 2016). Dominance can also extend to exerting influence over the development of fundraising's professional standards and ethics (MacQuillin and Sargeant 2018).

### 3.5 CSO-SR – three theoretical perspectives

The Principal-Agent Theory we mention above is just one of three theoretical foundations employed by American academic Angela L. Bies to understand the evolution of CSO self-regulation in Europe. The others are Resource Dependence Theory and Institutional Theory (Bies 2010). Each of the three theoretical perspective suggests a different type of self-regulation oriented towards different objectives and outcomes.

There are illustrated in Table 3.2.

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<sup>11</sup> Cited in Bies (2010, p1064).

**Table 3.2. Theoretical foundations for different types of CSO-SR**

Foundational theory	Type of self-regulation	Orientation	Examples
Principal-Agent	Compliance-oriented	External authority and hierarchical institutions	CBF, DZI, ZEWO (Switzerland), ÖIS (Austria)
Resource Dependency	Adaptive	Organisational survival, competition and strength	Guidestar (UK), FRSB (UK), ABFO (UK)
Institutional	Professional	Influencing standards, norms, values and practices	Attempts to establish CSO-SR in Poland

Source: Developed from Bies (2010)

### 3.5.1 Compliance-oriented CSO-SR based on Principal-Agent Theory

Self-regulation based on Principal-Agent Theory views its role as acting in the interest of the donor, who is cast in the role of Principal (Bies 2010) and results in SRRs with an external orientation with standards set and compliance enforced by an external regulatory body, such as a ‘watchdog’ or third-party accreditation agency. Such a self-regulation entity acts as the principle on behalf of “some donors or consumer stakeholders” (Bies 2010, p1064). This self-regulation body then seeks to “moderate...organisational management and operations” (Bies 2010, p1064-1065) in non-profits which are thus viewed as agents whose role, as Fama and Jensen (1983) suggested, is to protect and steward donor investments. Many of the types of CSO-SRRs we have already encountered conform to this model, particularly the CBF (Netherlands) and DZI (Germany). But F-Reg in the UK also appears to adopt a Principal-Agent approach. It has repeatedly aired the view that its role is to represent the interests of donors and the public (Birkwood 2016a, 2016b); while its former chair has also said that donors are also ‘consumers’ (MacQuillin 2016b).

*“(They) were quite clear, which was basically saying, ‘We are here to represent the public. We are here to protect the public from bad fundraising, to protect the public from harm that can come from fundraising’, rather than, ‘We are here to help you raise the most amount of money you can’. They come at it from that point of view, which is what do we need to have as rules that protect the public from harm, from bad experiences, and make sure that charities are fundraising well.” (Fundraising Association interviewee)*

A central concern of Principal Agent Theory is to ensure that the agent operates in line with the principal’s interests, given that their goals may diverge (Bies 2010), and as we have already seen, CSOs have multiple stakeholders whose interests may not always be perfectly aligned (Brown and Moore 2001).

Prakash and Gugerty (2010) therefore argue that the role of CSO-SR is to mitigate what they call ‘agency slippages’, which occur when the interests of agents and principles are misaligned and agents (in this case CSOs) act in line with their own preferences, rather than the principal’s (in this case, the donor). Agency slippages

occur when nonprofit managers deploy organisational resources in ways that do not efficiently or appropriately serve the mandate outlined by the funding principals (ibid). The role of CSO-SR is therefore to correct such a slippage and ensure CSOs “*serve the mandate of the funding principles*” (ibid, p24) and function as per the principal’s objectives.

### **3.5.2 Adaptive CSO-SR based on Resource Dependence Theory**

Under adaptive CSO-SR, CSOs are motivated to put in place self-regulatory initiatives that that are most likely to ensure their organisational survival by allowing them to compete for resources and so is responsive to changing market conditions. Adaptive regulation can also emerge in the absence of effective statutory regulation to forestall government intervention.

But the resource this type of self-regulation seeks to protect is not only monetary, it can also encompass intangible resources such as legitimacy, trust and reputation i.e. many of the drivers to CSO-SR we described earlier.

From the resource dependence perspective, resource exchanges can occur in both directions (ibid) – individual donors receive largely intangible benefits such as a ‘warm glow’ or enhanced self-esteem (Bekkers and Wiepking 2010), while institutional donors receive “*conferred legitimacy and mission delivery through their good acts*” (Bies 2010, p1068).

CSO-SR based on Resource Dependence Theory therefore regulates this exchange transaction, with nonprofits developing proactive self-regulation forms and “*donors/ consumers utilising and relying on the resources of these self-regulation entities for sorting nonprofit quality and informing charitable giving*” (Bies 2010, p1068). It stems from a desire to “*make exchanges*

*efficient, reliable, mutually beneficial, and ‘profitable’*” (ibid, p1070).

This quote from Bies further emphasises how donors are often considered to be the same as consumers. CSO-SR is therefore just another form of consumer protection-style regulation (Bies 2010) in the tradition of initiatives that have evolved to regulate commercial market relationships (Baldwin et al 2012; Bartle and Vass 2005).

The examples of adaptive self-regulations that Bies (2010) gives are the UK version of Guidestar (an information service) and the Accrediting Bureau for Fundraising Organisations (ABFO) – a joint venture between the Charities Aid Foundation and the Consumers Association that existed for a short time in the 1990s. Bies also includes the Fundraising Standards Board (FRSB) in this category.

### **3.5.3 Professional CSO-SR based on Institutional Theory**

Institutional Theory posits that organisations are “*best understood as embedded within communities, political systems, industries, or coordinative fields of organizations*” (Feeney 1997, p490). Each institutional environment possesses pressures, rules, norms, requirements and sanctions to which individual organisations have to conform to receive support and legitimacy. So from this perspective CSOs might aim to copy and imitate the norms they see being used by other CSOs and/or that are outlined in a code of practice (Obrecht 2012).

The Association of Fundraising Professionals' various standards are perfect examples of this as they contain a large amount of profession-led content, such as guidance developed through working groups. Similarly, the Brazilian Fund Raisers Association (ABCR) was formed in 2001 (in part) to provide guidance to the profession.

**This type of profession-led self-regulation is often called 'pure' self-regulation** (Gunningham and Rees 1997), however, as we noted earlier, the government is rarely far away.

### 3.6 Effectiveness of self-regulatory regimes

**A further lens through which to analyse SRRs is that of effectiveness** (Lloyd et al 2010). Perhaps unsurprisingly there has been considerable interest on the part of academics in the effectiveness of self-regulatory regimes. This literature is typically sector specific, looking the advertising of potentially harmful products such as alcohol and high calorie foods (Ronit and Jensen 2014). Marketing to vulnerable groups, such as children, has also received considerable attention (Mello et al 2008).

The majority of this literature, which we will summarise below, adopts a consumer protection perspective on the issue of effectiveness, viewing effectiveness as the extent to which consumers are appropriately protected from harm.

There is currently no literature (to our knowledge) that addresses the effectiveness of initiatives aimed at the self-regulation of fundraising per se, and it was clear from our interviews that comparatively little attention had been given to measuring the efficacy of schemes.

*"So I think we really do not know how it works exactly. So we just try to do our best and I think everybody who says I'm sure that this is having an impact on giving and the public trust, I think it's just not true.*

*People are just people and they are giving with their heart and they are not giving with their brains."*  
(Regulator interviewee.)

We believe that this gap reflects the relatively low level of academic interest in the topic (certainly in comparison to other forms of marketing) the nascent nature of many regulatory regimes and the absence of third-party pressure (or funding) to conduct such analyses.

But the past 30 years have seen considerable interest in the regulation of advertising, including direct response advertising, which is widely used for the purposes of fundraising. The comparison is hence instructive. However much of the literature is normative or reliant on subjective measures of effectiveness such as ratings of various criteria by advertising executives. Where academics have studied samples of advertising activity and assessed these against the various codes, the efficacy of self-regulation in controlling content has been found to be questionable (Smith et al 2014). Numerous breaches have been evidenced (Jones and Donovan, 2002). These one-off studies aside, there are currently no generally accepted measures of conformity to industry-imposed codes (Babor et al 2008; Smith et al 2014).

*“Despite the widespread adoption of self-regulatory guidelines by the alcohol industry (for example) there exists no reliable quantitative and systematic means to determine whether marketing practices conform to these industry self-regulation codes, other than qualitative procedures employed by industry-appointed complaint review groups.” (Babor et al 2013)*

So the impact of self-regulatory regimes in controlling poor practice is, at best, open to question. The real impact on professional practice is difficult to measure and where this has been approached rigorously (as in advertising research) the efficacy has been called into question.

That said, in some countries (e.g. Australia and New Zealand) mystery shopping exercises by phone or street-based fundraising are routinely conducted, ensuring that any necessary disclosures or compliance statements are made by and that donors are treated appropriately (e.g. not pressured into giving). The anecdotal evidence suggests that such regimes are effective in improving practice, particularly as greater penetration for the requisite scheme is achieved.

*“The internal measures of self-regulation I think are things like making sure that all charities that are doing face-to-face fundraising are known to the PFRA. We're almost there, I think we're up to about 85 or 90%, we've got a couple of hold-outs. Also, the success of self-regulation is that we have I would say significantly improved the capacity and capability of agencies to consistently meet the PFRA standard. (Many) meet it some of the time, but not consistently enough, I think.” (Regulator Interviewee)*

*“I guess we can measure success by the mystery shopping. We've only started mystery shopping with two quarters worth. We don't have enough data to say, but you could actually track trends in the kind of non-compliant behaviour that your mystery shopping identifies over time. There's possibly some measurement there. (Association Interviewee)*

There are other criteria that might be applied. Obrecht (2012), for example proposes **three conceptions of effectiveness**, of which quality enhancement is only one. These are:

**Successful signalling** – membership of the scheme changes the perception and opinions of stakeholders to an extent that their resulting behaviour is a benefit to CSOs. This could be improved trust resulting in increased donations (Sargeant and Lee 2002a, 2002b, 2004). It could also be removing the basis for statutory intervention, so the effectiveness of the CSO-SRR can be based on whether threats of government intervention do in fact recede.

**Authenticity** – whether CSOs actually do change their behaviours to be more compliant with professional standards. So under this conception of effectiveness, self-regulation is effective if the signalling is true and organisations are actually complying with prescribed standards and not free-riding (i.e. falsely signalling that they part of the SRR). If CSOs are authentically complying with standards, then professional practice improves.

**Improved quality** – by being part of an SRR, CSOs improve their overall operational quality, not just in areas that are directly related to the SRR's standards. Effectiveness of the SRR is therefore assessed against how much CSOs improve overall their systems, practices or relationships.



As we noted earlier, signalling is regarded by many as an important process but this in turn requires there to be a degree and ideally a high degree of public awareness. None of our respondents indicated that this was the case. In general, levels of awareness among members of the wider public was felt to be low. This in turn has seemingly led some agencies to define their success (at least in part) by increasing the level of awareness achieved.

*"And, what we're seeking to do with this entire program is create consumer brand awareness with it. And so, actually, for the first time now, Imagine Canada is doing consumer marketing. We're actually doing paid advertising to the public so that they'll start to recognise the seal. And, we redesigned it so it actually looks like a seal of approval, much like a fair trade coffee or an ISO 9001."* (Regulator Interviewee)

In some jurisdictions, awareness of the scheme among practitioners was also felt to be a key criteria by which to judge effectiveness.

*"We're pushing out training so the number of chapters that earn 10-star status which means they have actually offered at least one ethics training during the year is growing. That's obviously one that's important to us. But having ethics on the agenda at each international conference and at the leadership academy, is another one. It will push up awareness."* (Association Interviewee)

*"Well there are of course, several criteria. We have to see growth in the number of organisations that want to be qualified and that are qualified, who have the quality seal."* (Association Interviewee)

*"So, we're looking at, how is the program growing? Are sector leaders still responding to it, and wanting it, and desiring it? We do regular retention statistics. So, how are those organisations who got in five years ago, are they saying, "It's still of value. We're going to continue to go through it and pay for it?"* (Regulator Interviewee)

One regulator suggested that the efficacy of their regime would be enhanced if the organisations achieving accreditation would do more to communicate that achievement to their potential donors and thus spread awareness.

*"Well, it's an interesting question because there's really a two-fold response. So, one is, Imagine Canada doesn't even know who these donors are because we accredit organisations. If there has been one weakness in the program right now, it has been either the lack of the capacity or the reticence of organisations to tell their donors they've been accredited. You'd think it's a no brainer, especially when the data says they'll give you more money. But, they haven't done a particularly good job of standing on the highest mountain and saying, "Guess what? We went through this, and we're now accredited." We're working with them now more effectively. We redid the brand. We got way more support services and mechanisms to help them do that."* (Regulator Interviewee)

The public trust was also mentioned by many interviewees as a key criterion by which to define effectiveness, although it was recognised that it could be hard to determine cause and effect since so many other factors could also be in play.

*“But public trust, there are really so many factors to consider ... You cannot say that because right now 80% of public donations and 550 organisations are within the regulation system that the public trust has gone up or gone down. Yeah. There are a lot of researchers trying to explain why public trust is going up and down and it seems to me that one person says this and the other person says (something different).”* (Regulator Interviewee)

*“So I think we really do not know how it works exactly. So we just try to do our best and I think everybody who says I'm sure that this is having an impact on giving and the public trust, I think it's just not true. People are just people with their heart and they are not giving with their brains.”* (Regulator Interviewee)

Complaints were mentioned too as an indicator of success, but it was recognised that this was problematic since one could argue that a scheme is effective if it generates complaints. One may also argue that it is effective if it reduces poor practice and thus consequentially, complaints. It is therefore difficult to assess the implications of a rise or fall in complaints.

*“The external measures I'd say we would say is overall complaint levels and the degree of trust and confidence in fundraising from the public, more general.”* (Regulator Interviewee)

*“I'm sure the regulator would say that complaint rates would be a sign of success. But would it be good if they had gone up or down? One could mount an argument for success in either scenario.”* (Fundraiser Interviewee)

### 3.7 Processes for updating standards

Having looked at the forms of self-regulation currently employed in fundraising and how the effectiveness of such schemes is measured we may now turn our attention to the topic of renewal. Most FR-SRRs in our sample revisit their codes or standards only infrequently (every four-five years or so), although most have a mechanism of some kind for handling any emergent issues as they arise.

*“The constitution will get amended at the end of general meeting. Everything else around the rule book, code of conduct, and other bits and pieces get amended as things come up. And they go through the board So I'll do a paper, we will take it to the board, or the logistics committee. It goes to the logistics committee and they will take it and decide whether that needs to go to the board, or they'll make a recommendation and the board will decide on that. So the board's made up of charities and agencies. They do what's, you know, on behalf of the sector essentially.”* (Regulator interviewee)

*“The code was refreshed in 2014. We don't refresh it frequently, but we look at emerging issues that may need to be wrapped into the code that aren't.”* (Fundraising Association interviewee)

*“So (its) reviewed after five years. But what, we have stuff behind the scenes that we look at, indicators. So the compliance rate for me is quite important.” (Regulator interviewee)*

As to be expected a variety of stakeholders are typically involved as a consultation period is implemented, although not all profession-led bodies had mechanisms for allowing members of the public to contribute their views. It was interesting to note that those FR-SRRs that were practising proactive compliance by monitoring ongoing scheme compliance were also able to gather their own data to use to inform change.

*“We’d want to consult members and definitely a broader group of stakeholders around that as well.” (Regulator interviewee)*

*“I would say 80 per cent of the changes come from the executive team, based on feedback through our own quality assurance processes. So when we’re doing site inspections, when we’re interviewing fundraisers in the street, when we are reviewing the answers that members have given in their accreditations we can see patterns.” (Regulator interviewee)*

*“We also consult with our members who are professionals as well as charities and suppliers to the sector and relevant government agencies and consumer and donor advocates across the board so that they all have a view on what is truly best practice in those areas. And the level of fundraising input is very high. At the end of the day, the board has the final say on whether the standards are in the right place so that the fundraisers do a lot of the input, but the board who are made up of both fundraisers, advocates and suppliers would actually be the final sign off.” (Fundraising Association interviewee)*

**It seemed to us that the key issues in the review process were the frequency with which reviews were scheduled to happen and the extent to which a variety of stakeholders were routinely involved in that process.** Different schemes prioritised different groups. Most amendments seemed to happen on an ad hoc basis as issues arose, rather than as a consequence of any well thought out process or plan. Indeed, the processes adopted by many of our interviewees appeared reactive rather than proactive in the sense of responding to problems rather than identifying issues before they became a problem.

### **3.8 Components of an Effective Scheme**

In our previous section we examined the topic of scheme effectiveness, but we did so from the perspective of some of the metrics that might be used to assess the effectiveness of a scheme. In this final section we examine the topic of effectiveness more broadly and from the perspective of what makes for an effective scheme.

LaBarbera (1980) was the first to focus on the effectiveness of self-regulation, in her case in the advertising sector, delineating the following list of questions that the author believed should be posed.

1. Are the provisions of the advertising code relevant?
2. Do members adhere to the code?
3. Do members cooperate with the recommendations of code administrators?
4. Has there been an increase in public credibility perceptions of the industry’s advertising?

5. Is there little or no pressure for government regulation of the industry's advertising?
6. Is the self-regulation programme revised periodically?

Although the advertising sector has experienced manifold changes which have resulted in a plethora of modifications to advertising codes, academics generally concur (see for example Drumwright and Murphy 2009), that this set of questions is still relevant in assessing self-regulation effectiveness.

Examining the literature more widely we can find a number of recurrent themes relating to effectiveness of advertising self-regulation (Harker 2004).

**Adequate funding** – The scheme should have the resources it needs to properly fulfil its requirements. Funding should be sufficient, not token. And it is worth noting that a key problem with the operation of the Fundraising Standards Board in the United Kingdom was that it received only limited funding and was consequentially unable to conduct any proactive compliance – i.e. routine monitoring of fundraising activity (Hudson 2012; Etherington et al 2015).

**Standards** – A written code of conduct or ethics (notwithstanding the caveats we have expressed earlier regarding the differences between standards and ethics) should be created, which specifically focuses attention on problem areas that consumers have highlighted. Representatives from relevant stakeholders should be included and the resultant document should be clear, unambiguous and easily accessible by all.

**Complaint acceptance** – An independent complaint administrator should be appointed to receive complaints. That individual should then process all relevant complaints with screening only undertaken to ensure that the complaint falls within the remit of the code. A fundraising regulator

might therefore screen out complaints about charity advertising for the purpose of brand building, or complaints about advertising from other sectors.

**Code enforcement** – It is recommended that schemes should have in place a mechanism for hearing each complaint informally, involving alleged offenders in the process. If agreement cannot then be reached the complaint can be escalated to a formal grievance committee that should consist of an equal number of professionals and members of the public. An appeals process should also be delineated, and all procedures should be clearly documented to ensure transparency and due process. The literature also concurs that to be effective there must be serious consequences for the offender. Economic consequences are widely felt to be most effective, but it is worth noting that some schemes are set up to name and shame offenders who can thus suffer reputational harm.

**Periodic audit** – A scheme should be subject to audit to ensure that the policies and procedures delineated are being appropriately followed. The body or group undertaking the audit should include stakeholder representation and its report should be published and widely disseminated.

**Education** – There should be formal mechanisms in place to disseminate and promote the professional standards or code to the industry. Standards of behaviour should form the basis of professional education or other criteria or certification necessary for entry to the industry. Dissemination should also include recent decisions and precedents and any changes or modifications that have been made to the code.

**Public awareness** – The public too should be made aware of the existence of the scheme and how and where to lodge a complaint. They should also have easy

access to complaint reports, judgements and any penalties imposed. Member bodies should assist by distributing information on the code and complaints procedure. One of the weaknesses of FR-SR highlighted earlier in our study is that in many countries the public is not sufficiently aware of the scheme.

**Learning orientation** – Harker (2003) argues that not only should the public be made aware of a scheme, complaint generation and resolution should be seen as key indicators of success, and that the industry must learn through the precedent system about what types of advertising are generally unacceptable to society. A culture of learning should therefore be created for a scheme to function optimally. For industry, complaints, certainly at the informal resolution stage, should be viewed as a natural opportunity to learn and not something to be ashamed of. Member organisations should approach complaints with this mindset. Organisational learning is best achieved in a forum where actors can admit to failures without fear of punishment (Crack 2013) and internal processes should reflect this. CSOs should explain to their stakeholders that owning up to failure can actually improve accountability, as long as lessons are learned and shared with peers. The willingness to disclose evidence of under-performance should be considered as a sign of credibility if it facilitates dialogue about best practice (Crack 2017).

**Regulator integrity** – the regulator or code administration body should be independent from the industry being regulated so that it can avoid the charge of collusion (Harker and Harker 2002). Ideally the code should be developed by industry experts with public involvement and consultation and then the regulator adjudicates against that code. This is essential since precedent may be set through adjudication that may require amendments to the code and the regulator must therefore not be set up in such a way as it must adjudicate against

itself and give rise to a conflict of interest. But at the same time, the regulator must be accountable to those they are regulating, so independence from those they are regulating does not imply there should be minimal collaboration or accountability. Regulatory independence should not lead to regulatory arrogance.

**Transparency** – implicit in many of the items above is the need for transparency. All parties should be cognisant of the process that will be employed and the penalties for non-compliance. Transparency is viewed as being in the public interest, but it is also in the interest of potential violators. Transparency is one of the five principles of better regulation (BRTF 2005a, p51-52).

**Duty of care** – care must be given to complainants in the handling of their cases. Full information should be provided on the mode of operation, who considered the case and a full and written decision should be provided in a timely manner (Harker and Harker 2002). This tracks back to the duty of regulators to be accountable to those they are regulating and provide information on those decisions under the Better Regulation Agenda.

**Membership take up** – a final element of scheme effectiveness, where schemes are voluntary is the notion of take-up. The majority of trade association or professional membership must be willing to accept and comply with the scheme so that it achieves the critical mass necessary to control the majority of conduct.

Many of these factors are of course interconnected. Harker (2003) for example, investigated the role of public awareness of the advertising code in Australia. She reports that the majority of Australians were not aware of the existence of the self-regulatory processes and that this was in turn due to a problem of insufficient funding.

However, it is worth noting that the literature on the effectiveness of advertising self-regulation focuses on outputs – is there a code of practice, do organisations join the scheme; rather than achieving regulatory outcomes, whatever they may be – improvements to the public trust, lower levels of distress, etc. It is not necessarily the case that because all the mechanisms for ASR are in place, the change necessary to achieve public outcomes will follow.

## 4.0 Fundraising Code Content

As we established earlier, where professional standards were articulated as part of a scheme a number of recurrent themes could be identified. **Codes typically began by articulating ethical principles and thereafter delineating specific behaviours that fundraisers were expected to adopt (or avoid).** Frequently cited points of concern included the storage and use of personal data, privacy, the treatment of the vulnerable, gift acceptance, fundraising expenses, transparency and accountability, commission-based payments and issues such as the degree of pressure (if any) that might be applied to secure a gift. It is important to recognise that in most jurisdictions some of these dimensions might also be the subject of law/regulation and compliance with those requirements might also be an issue.

Some of these elements are relatively simple to document and apply. Many jurisdictions, for example, outright ban the use of commission-based remuneration in the fundraising context. Similarly some jurisdictions recommend fundraisers not to accept personal gifts from donors, or at least gifts of significant value.

Others are more difficult to articulate and apply. The topic of ‘pressure’ for example, appears in many codes. F-Reg’s code of practice requires that fundraisers **“must not engage in fundraising which...places undue pressure on a person to donate”** (Fundraising Regulator 2017, s1.2f). This mirrors the legal language of the Charities Act 2006 (s64A(4)(c)), which contains a reserve power for the introduction of statutory regulation that would allow the relevant government minister to set regulations that prevent undue pressure being applied.

There is though, no formal definition of pressure and if a fundraiser may not apply

‘undue’ pressure, this implies that some pressure is ‘due’ or permissible under certain circumstances. Regrettably codes do not define what ‘undue pressure’ might look like or what those circumstances might be (MacQuillin 2016a; MacQuillin and Sargeant 2018). So in 2017, F-Reg conducted focus group research to identify what the British public might consider to be undue pressure in a fundraising solicitation. Participants in this research considered that it would occur when a fundraiser sought to (Caffery 2017, p23-24):

- Prompt the potential donor with a high suggested donation and not appropriately adjust the amount during the conversation.
- Reference the potential donor’s personal life in order to provoke feelings of guilt.
- Refuse to actively listen to and observe the information provided by the potential donor during the exchange.
- Induce a sense of overt urgency in the interaction.
- Adopt an aggressive or overly sales-led style.

None of these has so far been incorporated into the code, but it shows a distinct Principal-Agent/consumer protection ethos in actively finding out what the public might not like about fundraising and then taking steps to protect them from those things. One of the issues identified in the F-Reg research is the so-called lifestyle ask – ‘for the price of a cup of coffee you could buy a mosquito net’ (second bullet point above) (Caffery 2017). Yet this is a technique that is proven to increase the donation amount (Savary et al 2015).

Similarly, **one of the core values that many FR-SR bodies aim to uphold (particularly certification schemes and ratings agencies) is that only an ‘appropriate’ amount of donations should be spent on fundraising and administration costs.** At one level, this is uncontroversial and trivial as it would be clearly wrong to spend an inappropriate sum. The key questions are how one decides what an appropriate amount is, and whether this is *“acceptable”* (Breen 2009, p118). Yet most of these schemes seem to have simply chosen a figure they feel is appropriate with little regard to how this will impact the CSOs they are regulating, but with every regard to what they think the public want.

So fundraising regulatory bodies adopting the Principal-Agent ethos are acting not just in protection of the interest of donors as consumers, but also to ensure that CSOs’ behaviours accord with donors’ values about how fundraising ought to be conducted. Or in the absence of evidence about what those values actually are, what the regulator believes those values are, or ought to be. An example of this is how the ICO in the UK stated that ‘wealth screening’, processing donors’ data to find those who might be able to make large gifts would be unlikely to conform to relevant data protection legislation. This was because it was an activity that people are *“highly unlikely”* to expect *“as a result of their charitable giving”*, and that people would *“not reasonably expect”* that giving a gift

*“would lead the charity to profile their wealth to see whether they could increase their donations or leave a legacy”* (Information Commissioner’s Office 2017, p9-10). ICO had no evidence about what donors’ reasonable expectations in this respect might be; it was simply conjecture about what ICO thought they would be. It was possible that this was driven primarily by what individual officers of the ICO thought they ought to be.<sup>12</sup>

This raises **two interesting philosophical and ethical questions that fundraising regulators need to address:**

1. Is their role to ensure compliance with fundraising standards to ensure donors are treated fairly and professionally under those standards?
2. Or is their role also to change CSO behaviours so they accord with the values that people may have about fundraising?

These are important questions that existing fundraising self-regulators ought to address and should be central to the establishment of any future FR-SRRs. The ICO’s justification for regulatory intervention in the UK contained much value-laden language that articulated a particular view of wealth screening as exploiting and abusing donors. This may simply be an inappropriate position for a regulator to take as they interpret their role (MacQuillin 2017b).

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<sup>12</sup> *The reason given by ICO for discounting the fines it levied was that donors might be upset that money they had donated would be used to pay a regulatory fine; but not because that money would no longer be available to spend on beneficiary services. This is an example of how the donor takes primacy over the beneficiary in the values brought to the regulation of fundraising.*



## 5.0 The Role of Beneficiaries

We noted earlier that a CSOs stakeholders can be drawn from two distinct markets:

- Resource allocation market – resources are provided to beneficiaries.
- Resource attraction market – resources are raised from donors and supporters.

This in turn suggested that CSOs will owe different accountabilities (or duties) within these two markets (MacQuillin 2018a):

- One set of accountabilities to beneficiaries within the resource allocation market:
  - For fundraisers, their main duty to beneficiaries within the allocation market will be to ensure the CSO they work for has the necessary sustainable income to provide services.
- A different set of accountabilities to donors and supporters within the resource attraction market:
  - For fundraisers, the main duties to donors will be to ensure they uphold relevant legal, professional and ethical standards, such as not to subject them to undue pressure to donate.

Principal-Agent-based, consumer protectionist FR-SRRs are focused exclusively on the set of duties fundraisers

owe to donors within the resource attraction market.

Profession-led ‘pure’ self-regulation in the form of such codes of practice drawn up by professional associations have emphasised donor-focused standards, which regulatory bodies then enforce. Theory development of fundraising’s professional ethics also focuses on and emphasises ethical duties to donors reflecting a concept called ‘donor centrism’ or ‘donor-centred fundraising’ (MacQuillin 2016a, 2017c<sup>13</sup>). Most of the theorising about fundraising ethics barely mentions any duties (and thus accountabilities) that fundraisers might have to their beneficiaries (MacQuillin 2016a).

Thus duties/accountabilities to beneficiaries appear rarely in any formal aspect of FR-SR.

Perhaps the most explicit example where they do is the ‘Fundraising Guarantee’ from the Scottish Fundraising Standards Panel, which includes the statement:<sup>14</sup>

*“We value the support of donors and understand the need to balance our duties to beneficiaries, with our duties to donors.”*

The Donation Charter<sup>15</sup> developed by the *Istituto Italiano della Donazione* (IID) in Italy also contains a section on the rights of beneficiaries, which covers, among other things, their rights to privacy (s2.5), to be treated with respect (s2.4) and for funds to

<sup>13</sup> This paper cannot accommodate a full discussion on fundraising’s normative ethics. However, it is recommended that readers of this paper also read MacQuillin (2016, 2017c, 2017e, 2018a, and 2018b – all freely available online) and MacQuillin and Sargeant (2018) to glean a fuller understand of the current state of fundraising’s professional ethics.

<sup>14</sup> <https://www.goodfundraising.scot/fundraising-guarantee/>

<sup>15</sup> <http://www.istitutoitalianodonazione.it/it/indagini/attivita/carta-della-donazione>

be used efficiently and effectively in the provision of services to them (s2.1).

The only consistent theme relating to beneficiaries that we could find in our review concerns the case of so called 'poverty porn' images. Imagine Canada's standards, for example, contain one (Standard C8) that stipulates:

*"The organisation does not exploit its beneficiaries. It is sensitive in describing those it serves (whether using graphics, images or text) and fairly represents their needs and how these needs will be addressed."*

Similar provisions are active in Germany.

Duties to beneficiaries under FR-SRRs are often expressed more informally. The Fundraising Regulator has regularly made statements to the effect that what is in the best interests of donors is also, ipso facto, in the best interests of beneficiaries. This is evident too in the following comments:

*"I think we do consider beneficiaries, and the way in which we think about beneficiaries is around we want to make fundraising as effective and as efficient as possible. So effective in the sense of being able to meet the standard that we set. If charity agencies meet that standard they will fundraise in a really ethical and sustainable way that protects the brand of the charities...Therefore, the charity will have more money to actually deploy through its programs to actually support beneficiaries." (Regulator interviewee)*

*"So, it might be that, as I say, secondarily, it will be by protecting the public, we are also protecting beneficiaries, because by stamping down on bad practice we're enabling you to have good practice, which will mean that you can raise more money in the future and do more for your beneficiaries." (Fundraising Association interviewee)*

In effect, this seeks to align beneficiary interests with those of donors in order to justify a donor-focused regulation. It discounts the possibility that the interests of different CSO stakeholders may not align, and that different stakeholders may require different levels of accountability (e.g. Brown and Moore 2001). This may not necessarily be the case. We outlined the focus on pressure in many codes. While it may be in the interests of donors not to have any pressure applied in a giving scenario, this should perhaps be tested against the rights of the beneficiary for the organisation to provide them with such aid as may be needed. Some pressure (perhaps the use of a strong image) may be appropriate.

Rights Balancing Fundraising Ethics would argue that fundraising is ethical when it:

*"Balances the duty of fundraisers to raise money on behalf of the beneficiary with the relevant rights of donors and the public to obtain a mutually optimal outcome such that neither group is significantly harmed." (MacQuillin and Sargeant 2018)*

But this perspective also requires an acknowledgement that fundraising regulators need to move away from the consumer protection position many have adopted, and the basis for doing this is an understanding that being a donor is not quite the same thing as being a consumer (MacQuillin 2016b).

A donor is not someone who acquires goods or services from a charity for their own use (an exchange) but someone who provides resources to a CSO that are then converted into goods and services for use by a different stakeholder group (beneficiaries). Rather than being an exchange, a donation becomes a transfer process by which resources are moved from the resource attraction market to be converted into

goods and services in the resource allocation market.

Consumption, by contrast, is 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, which are enforced by regulation.

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.

However, FR-SRRs are currently only operationally and philosophically set up to regulate the first part of this transfer as if it were a bilateral exchange, acting in the interests of donors, whom they view as the principals in this exchange. This idea is illustrated in Fig 5.1

***Fig 5.1 The asymmetry in fundraising regulation***



**The challenge for fundraising regulators is to be able to switch out of this Principal-Agent, consumer protection ethos confined to the resource attraction market and into something that encompasses the impact of their regulation on beneficiaries.** They might do so by considering relevant research (Breeze and Dean 2012; Warrington and Crombie 2017), or actively seeking the views of beneficiaries during a consultation process.

To be clear, the question regulators currently set out to answer is:

- Are the public being harmed by fundraising and if so, how can we protect them from that?

...without considering any potential harm to beneficiaries.

A new approach would require them to ask an additional question:

- Are beneficiaries being sufficiently helped by fundraising and, if not, how can we facilitate that help?

...and consider any potential harm to beneficiaries that might result from restrictive regulation.

Any organisation that is regulating the entire process of transferring donations from the attraction market to the allocation market might sometimes have to act as the 'voice' of the beneficiary, not just the 'voice of the donor', in making sure that process delivers beneficial outcomes for both groups while also avoiding significant harm to them, and being accountable to fundraisers and beneficiaries for their actions.

While the 2017 version of the International Statement on Ethical Principles in Fundraising required fundraisers to be "strictly answerable" to their donors, organisations and beneficiaries, few involved in FR-SR seem to have given much consideration to what this means in practice how it could be incorporated into standards and how those standards could be subsequently enforced. In fact, when asked in our interviews who they considered to be their organisations' primary stakeholders, only two participants spontaneously mentioned beneficiaries. Even if FR-SR organisations do not adopt a Principal-Agent perspective, the donor centred mindset is so strongly-embedded that they accord donors and public trust considerable prominence to the point that they are not thinking of beneficiaries as

stakeholders in their regulatory activity,  
unless prompted to do so.

## 6.0 Fundraising Self-Regulation in the UK

We stated in the introduction to this report that we would focus deliberately on the regulatory changes in the UK, since **the UK has, arguably, one of the most developed forms of FR-SRR (the world's most comprehensive code of practice and both reactive and proactive compliance mechanisms) and has experienced the most regulatory change and upheaval.**

What has happened in the UK can thus inform how FR-SRRs might develop in other countries. We do not mean to imply that the UK should be used as an ideal scheme, merely that the UK experience is instructive in delineating the forces that shape the development and implementation of FR-SR.

Since the start of this century, British fundraising has suffered two 'shocks to the system' resulting in new two new self-regulatory regimes (see Fig 6.1). The chronology either side of the first shock that lead to the establishment of the FRSB can be found in Harrow (2006) and a simplified version is contained in Appendix 4.

Prior to this, FR-SR in the UK had been of the 'pure', profession-led type, with a well-established voluntary code of practice (in fact, 20-30 separate codes for different aspects of fundraising) produced by the Institute of Fundraising, with its first iteration appearing in 1982 (IoF 2002). However, there was no formal, independent mechanism to ensure compliance with the code. An attempt to establish an accreditation system along the lines of DZI and CBF in the 1990s came to nothing. This

was a joint venture between the Consumers Association (now called Which?) and the Charities Aid Foundation, called the Accrediting Bureau for Fundraising Organisations (ABFO), but it failed to get enough CSOs to sign up to its standards (Benjamin 2000; Bies 2010). During this period (in 2000), the PFRA was set up as a department of the IoF<sup>16</sup>, specifically for the self-regulation of street and doorstep F2F, while charity advertising was regulated by the Advertising Standards Authority, a co-regulatory body carrying out a delegated self-regulatory remit.

The driver for this first shock was the British government's report Public Action Private Benefit (Cabinet Office Strategy Unit 2002), which stated that public trust in charities was low, stressing the nuisance aspects of (interruption) fundraising, particularly in relation to street F2F (Harrow 2006). The IoF then established a commission, the role of which was to develop options for implementing self-regulation by establishing an independent complaints investigator – which appeared in 2006 in the form of the Fundraising Standards Board – and to ensure that the donor's or supporter's perspective is taken into consideration (Boswell 2003).

### 6.1 The evolution of fundraising regulation in the United Kingdom, 2000-2018

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<sup>16</sup> At that point the IoF was known as the Institute of Charity Fundraising Managers (ICFM).



Therefore, there needs to be a system by which members of the public can exercise this right by registering a 'total reset' on their fundraising communications. Effectively, what the Etherington review recommended was a preference service whereby people could opt out of receiving any fundraising materials from any charity. This later became the Fundraising Preference Service.

- Regulation of fundraising – comprising the IoF (which set the code of practice), the FRSB (which investigated complaints and adjudicated against breaches of the code), and the PFRA (which regulated street and doorstep Direct Debit fundraising). This was felt to be confusing and ineffective. Etherington recommended the FRSB be replaced by a new organisation, the IoF code be transferred to this new organisation (ibid), and the PFRA merge with the IoF (ibid). These recommendations were all taken on board and the Fundraising Regulator replaced the FRSB and took over the code of practice from the IoF in July 2016, at which point the PFRA was absorbed by IoF to become its Compliance Directorate. F-Reg thus held responsibility for standards setting and reactive compliance, functions that had previously been conducted by two separate organisations, as they are in many other sectors, particularly advertising (International Council for Ad Self-Regulation 2017).
- Trustees should take a more hands-on approach to managing fundraising, including direct management of third-party agencies (Etherington et al 2015).

The Etherington report suggested that more oversight by trustees was the solution to the excesses, as the Etherington report saw it, of aggressive, short-term fundraising methods.

However, an enquiry into fundraising conducted by the House of Commons' Public Administration and Constitutional Affairs Select Committee concluded that the blame for the Fundraising Crisis actually lay with charity trustees for a "*failure of governance*" (Public Administration and Constitutional Affairs Committee 2016, p36).

The upshot of both of these inquiries was that the Charity Commission rewrote its CC20 guidance for trustees to provide them with a greater role in overseeing fundraising (Charity Commission 2016), though not the executive management role the Etherington review had called for.

The government also made legislative changes as a result of the 2015 Fundraising Crisis. The Charities (Protection and Social Investment) Act 2016, which came into force on 1 November 2016, was originally not slated to have any sections pertaining to fundraising. However, two requirements directly affecting fundraising were inserted into the act requiring CSOs to put in place monitoring procedures for third-party agencies, and to publicise this measure along with their procedures for dealing with vulnerable people in their annual reports (MacQuillin and Sargeant 2017). The IoF (2016a) subsequently produced guidance on fundraising from vulnerable people ('working group' style self-regulation).

Following the data protection issues relating to Samuel Rae, the IoF amended the code of practice to prohibit the sale of donors' data (Institute of Fundraising 2015) even though this would have been legally permissible. In this way, the self-regulation standards were pushed well beyond the minimum legal standard. The National Council for Voluntary Organisations (NCVO 2016) also set up a working group to look at data protection issues in preparation for the new European General Data Protection Regulation (GDPR), with a particular remit to explore what kinds of consent would be required in order to contact donors. GDPR does not require specific consent in all



cases; sometimes an organisation may process subjects' data if it has a "legitimate interest" to do so, which includes direct marketing fundraising (European Union 2014, p25). However, the NCVO working party recommended, among other things, that charities ought to require consent for all fundraising (even though GDPR does not require them to) and should "minimise" their use of legitimate interest (NCVO 2016, p10-11). Although these recommendations have not been incorporated into F-Reg's code of practice, some charities have voluntarily committed to contact donors only if they have their consent to do so, some of whom are predicting significant falls in income as a result (Radojev 2017c).

Charity advertising remained within the remit of the Advertising Standards Authority.

Scotland set up its own review of fundraising regulation, led by the Scottish Council for Voluntary Organisations (Harmer and SCVO 2015). As a result of this, F-Reg's remit does not extend to Scotland and the Fundraising Preference Service does not operate there. Scotland uses F-Reg's code of practice, but the Scottish Fundraising Standards Panel (SFSP) reserves the right to develop its own standards in the future (SCVO 2016). SFSP only runs reactive compliance (complaints investigation).

## 6.2 Lessons from the UK's Fundraising Crisis

There are several lessons that can be taken from the Fundraising Crisis that can help to inform the analysis or development of FR-SRRs elsewhere in the world:

- a. The role of the media in driving regulatory change.
- b. The role of the government in driving regulatory change.
- c. Values-driven calls for change beyond what the law permits.
- d. Reinforcement of the ethos of Principal-agent, consumer protection FR-SR.
- e. Marginalisation of fundraising profession in standards setting.
- f. Alleged confusing nature of existing FR-SR.
- g. Adherence to the Better Regulation Agenda.

### 6.2.1 The role of the media

**In many countries the press are a powerful stakeholder group that can influence change by highlighting what they perceive to be poor practice, irrespective of whether there is evidence that such poor practice is widespread or endemic.** Negative press can lead to new regulations that might require nonprofits to divert resources from service delivery to regulatory compliance (Edward and Hulme 1996; Ebrahim 2003; Senate Finance Committee Staff 2004; Panel on the Nonprofit Sector 2007).

It is arguable that without the media storm (e.g. Lake 2015) that followed Mrs Cooke's death, the regulatory change that engulfed British fundraising would not have taken place. Six months before she died, a local newspaper ran a story about Mrs Cooke with a photo showing her surrounded by reams of direct mail appeals and saying she was overwhelmed by the volume of fundraising<sup>17</sup>. There was no pressure for

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<sup>17</sup> This article, originally available at – <http://www.bristolpost.co.uk/PLEADING-DISGRACE-Olive-92-targeted-charities> – is no longer online, but is referenced in paragraph 15 of this UK Parliament report - <https://publications.parliament.uk/pa/cm201516/cmselect/cmpubadm/431/43105.htm#footnote-181> (accessed 23 November 2018)

regulatory change as a result of this. Arguably it was the media coverage that was the tipping point in public opinion (Hood et al 2001). There are media hostile to fundraising in Ireland, Australia, New Zealand, and to a lesser extent Canada (MacQuillin 2018c), and professional associations there are keen to learn from the British experience in order to head off similar media-driven regulatory challenges of their own (e.g. MacQuillin 2016c, MacQuillin 2018c). It seems a reasonable hypothesis that the most vitriolic media attacks on fundraising happen in countries with a high level of ‘interruption’ fundraising methods, particularly street F2F fundraising. Many media dislike the use of these channels.

### 6.2.2 The role of government

It should be no surprise that there was government involvement in the regulatory change that followed the Fundraising Crisis, nor is it necessarily inappropriate that government was involved, since self-regulation is now ‘embedded’ within the regulatory state. The government commissioned the National Council for Voluntary Organisation to conduct a review of FR-SR (Etherington et al 2015), which recommended the creation of the Fundraising Preference Service (FPS) as a way of opting out of all fundraising communication. However, the driver for the FPS appears to have been the personal will of a government minister (Ainsworth 2017) and despite much opposition from the fundraising sector (Sargeant 2015) the FPS has been implemented in a diluted form. Originally it was to have provided a total reset to zero of all fundraising communications, but now it allows individuals to decide which charities they no longer wish to receive all marketing

materials from. Our choice of words here is very specific. The FPS allows an opt-out from all direct marketing from a focal charity because the Fundraising Regulator was unable to develop a workable definition of ‘fundraising communication’ [Fundraising Regulator 2016]). After a year of operation, the FPS has few users and has been described as a ‘lame duck’ (Ainsworth 2018), supporting the contention of many in the sector that it was never needed.

The history of the FPS is an example of what has been termed ‘uninformed legislative interference’ in fundraising (MacQuillin 2018c), which is what happens when government ministers drive through (or attempt to drive through) legislative or regulatory control of fundraising motivated by their own values about how fundraising ought to be done. Other examples would be the Alberta Charitable Fund Raising Act 2000 in Canada, where legislators were accused of *“not always [having] done their research...sometimes preferring to shoot from the hip rather than go through the tedious process of consultation with professionals”* (Charity Village 1998). Furthermore, another example is the Assembly Bill 2855 in California, which would have required (it was defeated) CSOs to include details of how to contact the Attorney General’s Office (the fraud investigator) on all fundraising materials, including their website (The Agitator 2016a, 2016b)<sup>18</sup>.

### 6.2.3 Values-driven calls for change beyond what the law permits

While it is true that professional standards will be based on values, the question, as we have previously discussed, are **whose values should they be based on, and who**

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<sup>18</sup> Interestingly, two of our interviewees – one regulatory, one fundraising association – told us that the biggest issue they faced was fraud and not bad fundraising practice.

### **ought to establish and develop those values?**

Much regulatory intervention during and in the wake of the Fundraising Crisis appears to have been driven by values about how fundraising ought to be conducted. This goes beyond traditional ‘foundational’ virtues that underpin codes, such as openness and honesty, tolerance, commitment to the public good, and others (Association of Fundraising Professionals 1964/2014; Independent Sector 2002; Fundraising Regulator 2017). This is about importing into regulation values based on factors such as how much CSOs ought to spend on fundraising. Whether donors have a ‘right’ not to be asked to give to charity (Etherington et al 2015), whether CSOs ought only to contact people if they have their consent to do so (NCVO 2016), or whether donors would not expect charities to process their data to see if they can give a bigger gift, which is an abuse of their generosity (ICO 2017). All these impose higher standards on fundraisers than the law requires, but often in the absence of evidence that the higher standards are necessary.

NCVO’s review of self-regulation provides no philosophical justification why the public have a ‘right’ not to be asked to give to charity: rights cannot simply be created out of thin air. Yet this ‘right’ provides the rationale for the Fundraising Preference Service, which was established without a regulatory impact assessment ever being conducted.

Going beyond the law in self-regulation standards may be desirable in bringing out the best in individual fundraisers (Independent Sector 2002) and as a way of improving and maintaining public trust (Lloyd 2005). It is our contention however, that regulation that seeks to impose higher standards on fundraisers ought to be able to justify why these higher standards are required in response to a defined problem or challenge, and demonstrate evidence of

a) why this particular intervention is needed, and b) what the effect of that intervention will be (See, for example the Five Principles of Better Regulation in Appendix 3). Regulatory intervention should not come about because the regulator holds a particular view about how fundraising ought to be conducted.

We do acknowledge, however, that **sometimes self-regulation may need to go ‘beyond the law’, because the law itself is inadequate for the purpose of regulating fundraising** (Lloyd 2005), or to supplement existing legislation (see s3.1d).

### **6.2.4 Reinforcement of the ethos of Principal-Agent, consumer protection FR-SR**

As the examples given in the previous paragraphs illustrate, the ethos of the role of the fundraising regulators was to act in the interests of donors as principals. This is no better illustrated than by regulatory intervention designed to protect the public’s claimed ‘right to be left alone’ from fundraisers in the form of the FPS. But as we have previously said, the donor centric, Principal-Agent-based, consumer protection ethos was conceived within the ‘pure’, profession-led, self-regulation on which regulatory change in the summer of 2015 was built. For example, one press release from the IoF that summer was headlined: “Fundraising code to be strengthened to protect vulnerable people and put the donor in control.” (IoF 2015)

A further example of the Principal-Agent, consumer protection perspective, taken by British fundraising regulators, is evident in this comment from Andrew Hind, the second and final chair of the FRSB. Addressing a session of the British Parliament’s Public Administration and Constitutional Affairs Committee (PACAC), Hind criticised the IoF’s standards committee for having “*failed to outlaw*

*practices that the public have quite clearly said they find unacceptable*"<sup>19</sup>. Which begs the question that only those fundraising practices that the public find acceptable should be the ones fundraisers should be permitted to use, as we have noted previously. Should this be the case, 'interruption' methods such as 'chuggers', telephone, and direct mail would all be candidates for outright bans, even though the public's perception of acceptability correlates with some of the more effective forms of new donor acquisition (nfpSynergy 2013).

To ensure the public's requirements in this respect were observed, Hind called for (in the same PACAC evidence session) a truly independent standards setting body for fundraising that should have a majority of lay members, be housed outside the IoF (i.e. the professional association for fundraisers) and set all the rules for the industry.

### 6.2.5 Marginalisation of fundraising professionals in standards setting

In pure, profession-led self-regulation, professional standards are established by members of the profession. The involvement of fundraising practitioners in setting standards was generally seen as a strength of existing FR-SRRs though support for this often came from organisations closer to profession-led fundraising:

*"Well the nice thing is in our case is it comes from practitioners who understand the business and know the business. I think that's a real strength. They are not done by some third party regulatory body who doesn't understand our business."* (Fundraising Association interviewee)

From 1982 until July 2016, fundraising's professional standards in the UK were set by the IoF through a process of working groups and consultations. In July 2016, the code of practice was removed from the IoF and transferred to F-Reg. The IoF now only has observer status on F-Reg's standards committee<sup>20</sup> and fundraisers have no control over the standard to which they work, a change that was actually welcomed by the IoF (IoF 2016b). This comment from our study refers specifically to the transfer of the code of practice from the IoF to F-Reg:

*"It's still a document that is there to at least in major part reflect the experience of fundraisers. The difference now is that they can contribute to and influence rather than write their own rules which has, I think, quite rightly been put in another place, because it's up to us to reflect not only what fundraisers tell us, but to reflect our own experience of regulation and to reflect what the law says about charities more generally, into which fundraising has to fit and indeed does."* (Regulator interviewee)

This is a question that is central to FR-SR globally: **how much control, input and influence do fundraising professionals have on their standards, or ought to have?**

The questions we have previously asked are:

1. How good are the standards?
2. In whose interest are the standards created and enforced?

<sup>19</sup> <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-and-constitutional-affairs-committee/fundraising-in-the-charitable-sector/oral/21331.html> – accessed 26 November 2018.

<sup>20</sup> <https://www.fundraisingregulator.org.uk/more-from-us/board-and-committees>

3. Who sets and reviews/changes the standards and do they have sufficient knowledge/expertise to do so?

How good the standards are will be partly contingent on how much input experts in the subject matter of those standards have, and we have encountered throughout this report examples of standards or standard-setting bodies where that expertise is disputed by the professionals required to adhere to those standards. This has particularly been true in the case of information services, such as Charity Intelligence (Canada) and Intelligent Giving (UK), but the question can be asked of any regulatory body that sets standards in defiance of professional opinion – the paradigmatic example being the ‘overhead myth’.

When the Accrediting Bureau for Fundraising Organisations failed in the UK in the 1990s (Bies 2010), its CEO blamed the lack of buy-in from charities on their not wanting to be regulated: *“The response from charities was: ‘What on earth do they think they’re doing, sticking their nose in our business?’”* (Benjamin 2000.)

Perhaps fundraisers’ reluctance to being regulated is not that they don’t wish to be, as the ABFO CEO claimed, but because they suspect that regulators don’t have the expertise or knowledge of fundraising to be able to do it sufficiently well without bringing their own values to the table. After all, if you are going to stick your nose into someone else’s business in order to ‘extract’ (Obrecht 2012) compliant behaviour from them, then you ought to know what that business is.

### **6.2.6 Alleged confusing nature of FR-SRR**

Common to the analyses of FR-SR in the UK, as we discussed above, is that it was seen as too complicated and confusing for the public to understand. But as we argued earlier, what was actually described as confusing was primarily the SRR for public collections and/or F2F fundraising. In simplifying the situation, the highly effective FR-SR provided by the PFRA was weakened and the possibility of further FR-SR of the type delivered by the PFRA was closed off.

This is a relevant consideration for FR-SR globally, since regulatory regimes for F2F (either separate or incorporated into a wider FR-SRR) exist in the UK, Australia, New Zealand, Ireland, Hong Kong, the USA and France (Hills-Jones 2018), as well as other countries notably the F2F Observatory in Spain run by the *Asociación Española de Fundraising* (Spanish Fundraising Association)<sup>21</sup>. The most prominent parts of codes in other countries are often the parts that focus on public collections or other interruption methods of fundraising – for example in Sweden, the Quality Code run by the *Frivilligorganisationernas Insamlingsråd* (Swedish Fundraising Council) has specific guidance for telephone and F2F alongside a quite brief (11 bullet points) overall guidance section.<sup>22</sup>

We have hypothesised that public opinion pressures for regulatory intervention (Hood 2001 et al), expressed via the media, will be greatest in those countries that use more visible interruption methods.

In such cases, this pressure, coupled with uninformed legislative interference, could result in potentially effective embryonic FR-SRs being derailed. Or the clamour for control of visible public fundraising methods could result in harsher regulatory

<sup>21</sup> <https://www.aefundraising.org/servicios/observatorio-f2f/> – accessed 29 November 2018.

<sup>22</sup> <https://www.frii.se/kvalitet-styrning/vagledningar/> – accessed 29 November 2018.

intervention than is necessary, to protect the public's so-called 'right' to be left alone.

### 6.2.7 Adherence to the Better Regulation Agenda

**The Better Regulation Agenda is a European initiative designed to improve the quality of new regulation through better impact assessments and consistent review so that EU policies achieve their objectives in the most effective and efficient way.** The UK's Better Regulation Task Force (BRTF 2003, BRTF 2005a, p51-52; BRTF 2005b, p26-27) have delineated five principles of effective regulation. These are:

1. **Proportionality** – regulators should intervene only when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
2. **Accountability** – regulators should be able to justify decisions and be subject to public scrutiny (see below).
3. **Consistency** – government rules and standards must be joined up and implemented fairly.
4. **Transparency** – regulators should be open, and keep regulations simple and user-friendly.
5. **Targeting** – regulation should be focused on the problem and minimise side effects.

BRTF says that *"should a proposed regulation not meet each of the five tests, it should not be adopted. Similarly, if an existing regulation is found not to meet the five tests, it should be amended."* (BRTF 2005b, p4). Further, the five principles are intended to apply to independent as well as government regulators (ibid).

We do not propose to go through a point by point analysis of the current fundraising regime in England and Wales to assess whether each point adheres to the Better Regulation Agenda, though this is an exercise that all CSO-SRRs and FR-SRRs might find helpful in their own jurisdiction.

However, to glean insight into whether the Better Regulation Agenda was a factor in establishing the framework of the new FR-SRR in England and Wales, we can look at the original proposal for the Fundraising Preference Service (FPS), which was for a total reset to zero of all charity fundraising from all charities.

**Consistency** – if members of the public can opt out of one type of marketing (fundraising) in its entirety why should other sectors be allowed to contact people with impunity? As a matter of consistency, consumers should be able to opt out entirely of receiving all commercial marketing as well as fundraising and other charity marketing. If the public have a 'right' to be left alone from charity marketers and fundraisers – why do they not have a similar right to be left alone by all other marketers? It is therefore inconsistent to single out fundraisers for this regulatory intervention.

**Untargeted** – the main driver for the FPS was as a corrective to the situation that befell Olive Cooke (and presumably others in a similar position). Yet as the committed charity supporter that she was (BBC 2015), it is a genuine question whether Mrs Cooke would ever have availed herself of the FPS's services. By providing an opt-out to everyone – not just those in need of protection – the regulatory intervention in the form of the FPS was not targeted at the specific problem.

**Not proportional** – the FPS was put in place without a regulatory impact assessment (RIA) ever being conducted – as is required by the Better Regulation Agenda (BRTF 2005b) and is mandatory for

statutory regulators under the UK Government's Regulators' Code (Department for Business Innovation and Skills 2010). Based on feedback from practitioners about how they expected to be impacted by the FPS, Professor Adrian Sargeant estimated that the original 'total reset' version of the FPS could have resulted in an annual drop in voluntary income of £2bn, or 20 per cent (Sargeant 2015). This figure was disputed by F-Reg on a number of occasions<sup>23</sup>, but with no firm counter-evidence from an RIA to support that disputation. Also, solutions to the regulatory problem the FPS set out to address already existed in the form of the UK's Mail Preference Service and Telephone Preferences Service. Alternative regulatory solutions could also have been in place through changes to the code of practice and strengthening guidance on fundraising from vulnerable people, as indeed they were (IoF 2016a). This suggests that regulatory intervention in the form of the FPS was neither needed – as its low usage suggests (Ainsworth 2018) – nor proportional.

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<sup>23</sup> For example, a comment made by F-Reg's then CEO Stephen Dunmore to the lead author of this paper during a plenary session at the IoF Convention in 2016.

## 7.0 PFRA and the self-regulation of a common pool resource

An avenue of self-regulation that has been totally ignored in the literature on FR-SR is the idea of the regulation of so-called 'common pool resources' (CPR) to avoid a 'tragedy of the commons' situation.

The tragedy of the commons describes what happens when users of a common resource – such as grazing land, a forest, or a fishery – can't resist or stop themselves from overusing that resource, with the result that it is irreparably depleted.

It was proposed by ecologist Garrett Hardin in a paper in the renowned journal *Science* in 1968 (Hardin 1968). The example Hardin used to develop his idea was that of a group of herdsmen grazing sheep on common land. It makes sense for each herdsman to add another sheep because he benefits at the expense of the other herders. But being rational, all the other herdsmen have the same idea and soon you can't move for sheep and the common grazing land is destroyed forever.

**The argument as applied to fundraising is that donors are just such a common resource and that fundraisers are depleting this resource by continually overusing it.** Although not considered in the academic literature on CSO-SR, and barely touched upon in the literature on other aspects of CSO activity, fundraisers have recognised that their activity could result in a tragedy of the commons (Saxton 2001; Phillips, M. 2011; Blankey 2013). Although he didn't use the term, it was precisely the concept of the tragedy of the commons that Sir Stuart Etherington was invoking when he said that fundraisers were 'overfishing (their) waters' which had led to the Fundraising Crisis in the UK (Corfe 2015).

In an article in *Professional Fundraising* in 2001, Joe Saxton used the concept to describe how the fundraising profession is good at "*over-exploiting and burning out new fundraising techniques, so that they no longer work, or more usually create a rather negative image in the eyes of the public*" (Saxton 2001).

Invoking classic tragedy of the commons reasoning, Saxton (ibid) pointed out: "*It is always worth any individual charity taking up a new technique because it will probably work for them...however, the net effect of a plethora of charities taking up the technique is that it becomes over-used and loses its impact much more quickly...The ethical dilemma for any charity is that while it may realise that a technique is being over-exploited, it gains nothing by not using it, and everything by doing so.*"

Traditional responses to a tragedy of the commons situation have been to either privatise the resource or to impose top-down (i.e. government) regulation (Diamond 2005).

However, there is a third solution. In 2009, American political economist Elinor (Lin) Ostrom was awarded the Nobel Prize in economics in recognition of her work in demonstrating that what she termed 'common pool resources' (CPR) could be successfully managed by the people who had access to the resource. A rebuttal of the tragedy of the commons idea: in other words, self-regulation.

Ostrom showed that groups that successfully managed their own resources were characterised by eight 'design principles'. These are:



1. **Clear boundaries** – between what is and is not the shared resource and clear boundaries also between legitimate and non-legitimate users of the resource.
2. **Proportional equivalence between benefits and costs** – so that members of the group have to negotiate for their benefits and higher levels of benefits must be earned.
3. **Collective choice arrangements** – shared users of the resource make their own rules about who can use it and how and when they can use it.
4. **Monitoring** – members of the group regularly monitor the condition of the resource and how other members are using it.
5. **Graduated sanctions** – there is a system of sanctions in place for transgressions of the group’s rules, but they start low and become stronger for repeated breaches.
6. **Conflict resolution mechanisms** – there are ‘arenas’ and mechanisms for resolving conflict quickly and at low cost.
7. **Minimal recognition of rights** – the rights of users of the resource to make their own rules are recognised by government.
8. **‘Nested enterprise’** – when groups and the resources they use are part of larger systems, there must be appropriate co-ordination and governance between them: this is called ‘polycentric governance’ and it means that one single organisation does not need to

maintain total authority, but governance can be distributed throughout the various groups in appropriate “*nested organisational layers*” (Ostrom 2010, p13).

Joe Saxton argued in 2001 that the solution to fundraising’s tragedy of the commons lay with sector bodies and a broader regulatory environment. It was, indeed, a determination to prevent a tragedy of the commons arising in street fundraising that led to the formation of the Public Fundraising Regulatory Association (PFRA) in 2000. This was made clear in an article in *Professional Fundraising* written by then PFRA-board members Matt Sherrington and Anne Bolitho (2002) – e.g. “*we were overgrazing our pastures, particularly in London*”<sup>24</sup>.

Until it was merged into the IoF in July 2016, PFRA operated as an example of one of Ostrom’s ‘institutions for collective action’ – “*institutional arrangements that are formed by groups of people in order to overcome certain common problems over an extended period of time by setting certain rules regarding access to the group (membership), use of the resources and services the group owns collectively, and management of these resources and services*”<sup>25</sup>. They employed many of Ostrom’s design principles in its efforts to avert a tragedy of the commons in domain of street and doorstep F2F fundraising (Ganley and MacQuillin 2013; PFRA 2013a):

1. The PFRA/identified legitimate (members) and non-legitimate users of the resource.

<sup>24</sup> *The PFRA was established because there was a gap in the public collections legislation in England and Wales. Local authorities have the power to issue licences for cash collections, which comes from an obscure act that dates from the First World War. However, as Direct Debits did not exist in 1916, they are not covered by the act and so councils have no power to grant licences for collections of Direct Debits through F2F fundraising (Ganley and MacQuillin 2013).*

<sup>25</sup> <http://www.collective-action.info/introduction>

2. Costs and benefits were proportionate: the more a CSO successfully used the resource, the more it had to pay for having done so.
3. It had collective choice agreements in that members established and administered the allocations systems that decided which members could fundraisers where and when.
4. PFRA monitored the activities of its members.
5. PFRA imposed graduated sanctions (financial penalties were not imposed until rule breaches reach a specified threshold and subsequently the amount of financial penalty was proportional to the number of infractions).
6. There were conflict resolution systems for resolving diary clashes.
7. It was recognised by local authorities as having the right to make and enforce rules.
8. It was part of a polycentric governance system with responsibilities and duties outlined in agreements with the Institute of Fundraising and Fundraising Standards Board.

Thus the PFRA demonstrated the eight design principles that Ostrom identified as characteristic of successful self-regulation of a common pool resource. The Australian PFRA has adopted very similar processes to the PFRA in the UK (Hills-Jones 2018), but other F2F SRRs regulating street fundraising in other countries have not yet achieved the UK's level of sophistication. Some, in Argentina for example, consist of little more than charities sharing dates on email to make sure they don't clash on sites.

The PFRA also acted as the standards setting body, developing rules for F2F fundraising that were tailored to the special conditions of F2F and were compiled based on the expert guidance of F2F practitioners. These rules went beyond what was required of the IoF's code of practice. These extra rules are now held and developed by the Fundraising Regulator<sup>26</sup>.

The PFRA was successful in its self-regulatory activities, measured against specific targets: it significantly reduced complaints in areas where it had active co-regulatory arrangements with local authorities (PFRA 2013b), increased trust in its regulatory capabilities (Bettison 2013; Vernon-Jackson 2013), and reduced the prevalence of hostile media coverage of F2F fundraising (PFRA 2013a).

Despite being a successful self-regulatory body, the PFRA was merged with the IoF as part of the changes to the UK's FR-SR following the Fundraising Crisis. Its design principles remain in place at the IoF Compliance Directorate. But its role in nested polycentric governance has been considerably weakened. This kind of distributed regulation between multiple bodies regulating their specific areas of expertise was considered to be too confusing for the public, and thus required a single regulator to simplify the process.

Yet the PFRA model of self-regulation provides a model that could be adapted to many forms of fundraising. F2F is an 'interruption' method of fundraising (Phillips, M. 2013), a form of fundraising that is highly visible and attracts a relatively

<sup>26</sup> <https://www.fundraisingregulator.org.uk/more-from-us/resources/street-fundraising-rulebook>  
<https://www.fundraisingregulator.org.uk/more-from-us/resources/door-door-fundraising-rulebook>  
<https://www.fundraisingregulator.org.uk/more-from-us/resources/private-site-fundraising-rulebook>

high proportion of complaints<sup>27</sup>, and can have a poor public image. Many of the issues highlighted by the Fundraising Crisis were those that could have led to a tragedy of the fundraising commons, particularly the amount of fundraising communications received by some individuals, which has the hallmarks of ‘overfishing the waters.’

The principle of polycentric self-regulation could apply to any form of fundraising, particularly interruption methods such as telephone and direct mail. It would not by any means be easy to establish self-regulation of telephone or direct mail using Ostrom’s eight design principles but so far, it hasn’t been attempted or even contemplated.

Further work would therefore be helpful to establish whether the PFRA model might have wider applications. Far from being a confusing add-on for a marginal form of fundraising, self-regulation of F2F has been the engine room for innovation (such as proactive compliance, controlling the volume of fundraising) in FR-SR in many countries. Yet both scholarship and practice have so far failed to recognise this.

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<sup>27</sup> *In fact, while other interruption methods such as telephone and doorstep fundraising do attract high levels of complaints, the percentage of the total annual complaints about fundraising in the UK was always in single figures (Fundraising Standards Board 2016, p22; Fundraising Regulator 2017, p5).*

## 8.0 Conclusions and Recommendations

In the review conducted for this study we could find little academic interest in the topic of the self-regulation of fundraising, despite there being a multiplicity of schemes in operation around the world.

**The majority of these schemes are relatively simple, consisting of only a code of ethics** that in most cases is linked to a professional association of some kind (e.g. Brazil, Egypt and Ghana) and subject to variable (if any) levels of enforcement. A variety of more sophisticated schemes were also identified, with the scheme in England and Wales, being arguably the most elaborate and robust.

**Fundraising self-regulation appears to routinely cover issues of fundraising ethics**, with many organisations publishing Codes of Ethics or including ethical guidance at the outset of a more general Code of Practice. These principles typically pertain to matters such as fairness, honesty, transparency, respect and equality. Fundraising codes of practice, by contrast, supply more granular detail. We found standards typically addressed matters such as the use and processing of personal data, privacy, gift acceptance, fundraising expenses, transparency and accountability and commission-based payments. They also dealt with issues such as the degree of pressure (if any) that might be applied to secure a gift and the treatment of the vulnerable. Only the UK has a more detailed system where guidance is provided in respect of each major form of fundraising, although some countries do have more detailed guidance in place to cover more 'intrusive' forms of fundraising such as direct dialogue, house-to-house and telephone fundraising (e.g. Australia and New Zealand). Our cross-sectional methodology did not allow us to quantitatively examine trends in self-regulation, but drawing on our qualitative evidence it was interesting to note that the

most recently created schemes appeared to fall into the 'stronger self-regulation, stronger compliance quadrant' of our model. We do not claim that this is where the majority of self-regulatory mechanisms are presently located, but it seems fair to conclude that this is at least the direction of travel. We could certainly find no examples of schemes that had developed in a way that had weakened the associated powers. Once established the direction of travel is firmly towards greater levels of self-regulation and control.

**Self-regulation, by definition, is well suited to adapt to a changing environment.** The profession can make changes in real time, responding to events and sometimes crises, as they occur. Codes of ethics were routinely adapted when a new ethical issue arose and in the more sophisticated schemes we examined, changes could be implemented as the result of proactive monitoring or adjudications/judgements being handed down from the scheme itself. Our interviewees felt this ability to respond quickly was a key strength and not something that could be so easily accomplished through formal regulation or legislative change.

We found that smaller changes would typically happen on a routine basis, particularly where schemes had adopted a proactive stance, with standards being modified to reflect learning as it emerged. But we noticed too, that occasional 'step changes' can take place following a crisis of some kind and the associated media coverage. In these circumstances change is more dramatic and may even require the replacement of the regulatory regime in its entirety.

**We found too that self-regulation seemed better suited to domains involving matters of taste, preference**

**and respect** (in the sense of respect for the needs of the donor). Our evidence here is drawn from the domain of advertising where considerably more analysis has taken place, and since fundraising is a form of advertising (or marketing promotion), this would seem to be a legitimate approach. As was noted earlier the most common complaints raised about advertising are not about accuracy or truthfulness, rather they are concerned with matters such as taste and respect. These are both issues that are culturally situated and because they are subject to change, difficult to define. Self-regulation should therefore focus on issues that are inherently harder to define and thus legislate against. These includes matters such as the appropriate depiction of beneficiaries and the concept of what might constitute reasonable pressure in charitable solicitations. Some schemes also go so far as to stipulate whether (and to what degree) it is appropriate to stimulate specific emotions in a fundraising context.

Self-regulation can also focus on issues of reputation that in some sense require the sector to move beyond the law. It has been argued, for example, that securing the public trust is essential if there is to be a flourishing voluntary sector, freely funded by public donations. Meeting the legal minimum standards of behaviour may have little or no impact on the public trust, but behaving in a manner consistent with elevated norms may serve to bolster that trust and increase giving. Self-regulation might thus cover the acquisition and use of personal data, the efficiency of fundraising operations, the acceptance of personal gifts, the payment of commission, etc.

**We further conclude that self-regulation is suited to scenarios where a degree of professional knowledge is necessary to specify what might be appropriate behaviours.** These appropriate behaviours will typically move well beyond the minimum that may be demanded by the law as we allude to above. Self-regulation allows

professionals to set guidance to aid other professionals in a range of different contexts and to hold all accountable to a written standard or code.

We were asked specifically to look at whether donors' rights were typically used as the basis for developing such codes. Our conclusion here has to be an emphatic 'yes.' **All the schemes we looked at had adopted a predominantly 'consumer protection' perspective, focusing on the actual or perceived needs of the donor community.** Rather less attention had been devoted to the needs of the charity beneficiary. As we have outlined above, there are numerous circumstances where the needs of these two groups may be in conflict and a consideration of both might yield better or more ethical practice. This would certainly be the case if one were to adopt a 'rights balancing' approach to fundraising professional ethics. The omission of the beneficiary from the debate about regulation reflects the lack of power that may be exerted by this group and creates a serious imbalance that many new sector initiatives have deliberately sought to address, albeit in other non-fundraising contexts.

We dedicated a significant portion of this report to delineating the characteristics of effective self-regulatory regimes. **Critical to this is the development of formal mechanisms that ensure compliance with the specified standards.** Our analysis revealed a spectrum of reactive and proactive enforcement mechanisms although many 'schemes' were found to have no formal approach to ensuring compliance. More developed schemes encourage whistle-blowing and complaints from sector professionals, trustees and donors, while the most advanced forms of self-regulation, including that initiated by the PFRA, routinely include mystery shopping exercises of face-to-face, door-to-door and telephone fundraising activity. It is worth noting too that some advertising schemes also permit organisations to

submit material for pre-approval before a given campaign is aired.

When deviations or breaches from a professional code are identified, measures include expulsion from the self-regulatory regime (or association) and the loss of any accompanying badge or seal of approval. While this doesn't directly impose economic consequences on the offender, we found that the indirect effects are substantive. This appeared to be a key factor. As one of our interviewees noted, losing the accreditation was far more impactful than gaining or holding it. This is particularly the case where expulsions or deviations from the code are highlighted by the regulator and possibly aired publicly in the press.

Other sanctions include being called to issue an apology, formally review one's current approach to fundraising and being referred to a statutory regulator for more serious offences, perhaps those involving a breach of the law.

It was interesting to note that our interviewees were generally reluctant to impose sanctions preferring to work with offenders to improve their practices. Sanctions were regarded as a last resort, but where these were implemented, they needed to have teeth and to involve genuine economic consequences for the offender.

Our analysis also focused on the characteristics of effective schemes. Here we draw attention to the Better Regulation Agenda and suggest that new regulatory initiatives be deliberately constructed to meet their five principles of better regulation. **The more it adheres to the agenda, the more successful and effective it will be judged.** The Better Regulation Agenda contains normative rules for regulators, such as being able to justify their decisions and open them to public scrutiny and appeal. **A successful and effective FR-SRR will help fundraising to grow and will not place**

**unnecessarily restrictive regulatory measures in its way.**

**A successful scheme also contains a code of standards that is directly relevant to professional practice**, implying the need for substantive input from and consultation with professional practitioners and/or their representative bodies. The involvement of practitioners is not in itself a success indicator since there is no guarantee that the input from practitioners will be relevant; but involvement of practitioners should be included. Moreover, the standards contained in the code should be clearly linked to the FR-SRRs stakeholders and the duties it owes to those stakeholders. The success/effectiveness indicators are therefore that the code exists and the strength or relevance of its standards. Involvement of practice in setting the standards is not required or essential, but it is strongly recommended.

As we have just noted above, compliance mechanisms must be in place. Self-regulation has two essential components: standards and compliance. Without compliance measures, the FR-SRR is incomplete and cannot be judged successful or effective. We have delineated three levels of compliance in this report – proactive (monitoring fundraising of activity by the regulator), reactive (investigation and adjudication of complaints by the regulator), and passive (scheme members assess their own compliance with standards). **The strongest form of compliance will be reactive reinforced with proactive, and CSO members of the FR-SRR are less likely to fall foul of both types of enforcement measures if they are also practising passive compliance.** However, proactive compliance is costly and requires resources many FR-SRRs may not possess. Moreover, embryonic FR-SRRs may not have progressed sufficiently to be able to put reactive compliance in place. Nonetheless, reactive compliance is the minimum required by effective FR-SRRs. This means having in place a process by

which members of the public can make complaints about noncompliant behaviour and the procedures to investigate those complaints.

We were surprised at how little review of self-regulatory practices had been conducted. No robust studies were conducted of the links between monitoring/enforcement and the success or failure of fundraising SR. Analyses of correlations are therefore impossible. Only the PFRA schemes (e.g. UK and Australia) appear to be capturing detailed data to track their own performance and wider impact on practice. This is of course greatly aided by their proactive regulatory stance as they can track changes in compliance as they directly experience them. This seemed to us to be a distinctive achievement as data of this kind has alluded other sectors, including advertising. The PFRA model is therefore instructive and outlined in some detail in this report.

We were similarly asked to assess how self-regulation impacts various CSOs by maturity, scale, geography etc. **We conclude that organisations engaged in ‘interruption’ based fundraising methods are most likely to find themselves in contact with self-regulatory regimes.** Public collections, FTF, DTD and telephone fundraising are heavy focuses of self-regulatory effort. It is not the age of the non-profit, or the sector in which they happen to be operating that is the issue, it is the use of particular techniques. Nonprofits engaged in fundraising only from grant making trusts and foundations will have little exposure, except perhaps to established norms of fundraising efficiency/expenditure and requirements that pertain to transparency and accountability. It is true that international NGOs may face additional challenges in the sense that the ‘rules’ they are subject to might vary by jurisdiction, creating a degree of complexity that must be navigated. But for now though, the incidence of ‘sophisticated’ self-regulatory

regimes (i.e. involving more than the administration of a simple code of ethics) is relatively low. It may thus be a few more years before genuine complexity is an issue.

Finally, this report has explored the relationship between self-regulation and the regulatory state. We examined in some detail the concept of co-regulation and plotted our various self-regulatory initiatives on a continuum from ‘co-operative’ to ‘tacit’. In the former, cooperation between the regulator and regulated is required for the operation of statutory backed regulation. In tacit schemes, by contrast, there is no statutory backing and little explicit role for public authorities. Although in this scenario the state can choose not to intervene directly in fundraising practice, the threat that it might do so appears a significant determinant of self-regulatory success. **We thus don’t see self-regulation and legislation as binary alternatives, the picture that emerges from our analysis is one of a ‘partnership’ of varying degrees of involvement.** We say this because in our view it would be a mistake to conceive of ‘tacit’ schemes as free of government involvement *and* interest. They may be free of government involvement, but they may not be free of government interest and to assume the latter would be a mistake. So long as government’s wider policy objectives are met by the fact of the scheme’s existence there may be no need for government involvement, but this can quickly change, particularly if a crisis or a scandal of some kind emerges. From this perspective, self-regulation operates with the sanction, support or threat of the regulatory state and any independence that regulators have is independence *within* the regulatory state and not independence *from* it.

In respect of where the line should be drawn between regulation and self-regulation we believe that the answer to

that lies in the domains of taste and respect we referred to above. Legislative frameworks lend themselves to the delineation of absolutes, while self-regulation flourishes in the domain of the grey. **Professionals need to identify for themselves what constitutes acceptable behaviour, codify that behaviour and hold their peers accountable.** Equally donors and other stakeholder groups should have a mechanism for challenging those perspectives and ensuring that their own needs are factored into self-regulatory decision making and as appropriate, revisions to any code.

We have examined several models of self-regulation in this report. Despite the caveats and criticisms, we made about fundraising in the UK we believe the experience of FR-SR in the UK (F-Reg and SFSP) is instructive. The UK possesses the most detailed standards currently delineated. It also provides both a code of practice and systems for reactive and proactive compliance. Our main caveat regarding the UK model is that the FR-SR is an extractive, third-party sponsored regime and F-Reg has given many hints that its regulatory rationale is based on Principal-Agent, consumer protection principles. The marginalisation of the fundraising profession in standards setting is also a cause for concern, since as the overhead question repeatedly shows, extractive, third party FR-SRRs can set standards that are antagonistic to professional practice and do not necessarily have buy-in from many fundraising professionals.

We have also examined schemes involving accreditation of some kind, notably Imagine Canada, CBF (Netherlands) and DZI in Germany. Such schemes accredit organisations that are part of their initiative and provide a signal of quality (and sometimes information) to donors. **These countries indicate their accreditation has been successful in driving up standards and supporting the practice of philanthropy.** There are also a plethora of

schemes or services that simply provide information to donors consistent with their perspective on 'best practice.' Examples here include Charity Navigator, Guidestar (USA, UK, India and Korea). There are, in addition, schemes that are more focused on the efficient management of philanthropy and/or the reduction of harmful competition. Examples here include the Disasters Emergency Committee (UK) and the Belgian Consortium for Emergency Relief. This category also includes the PFRA initiatives to prevent the so-called tragedy of the commons. Finally, there are numerous professional associations around the world that supply a Code of Ethics or Code of Conduct for their members. Some of these are enforced (e.g. the AFP Code of Ethics), but many are not. **The International Statement of Ethical Principles of Fundraising has been signed by 24 national organisations, but not all actively enforce the rules on their members.**

All the schemes we identified suffered from weaknesses to one degree or another and the detail of this is outlined in our report. **There is thus no 'perfect' or 'model' scheme that we can recommend. We acknowledge too that what is right for one country may not be right for another.** Rather, we hope that we have highlighted the issues that must be considered in the design of FR-SRR so that readers can design a scheme that is appropriate for their unique needs and the very distinctive environment in which their will have to operate.

As we conclude our report we would, in addition, offer the following advice to the European Center for Not-for-Profit Law as it prepares to support those considering the introduction of a self-regulation of fundraising scheme:

1. New regulators should be encouraged to reflect on the principles of effective scheme design outlined in this report (Pages 43-46). This includes the



provision of adequate funding, the derivation of appropriate standards, the creation of mechanisms for complaint acceptance/handling and code enforcement. Issues such as regulator integrity and transparency, should also be considered.

2. We further believe that regulators should be encouraged to reflect on the measures they will use to assess their own effectiveness. It was interesting to note that we could find little evidence of effectiveness tracking in our research, with the notable exception of the PFRA initiatives. In fairness, this is criticism that can also be laid at the door of other sectors, notably the advertising sector, but the difficulty of measurement should not preclude efforts to identify appropriate measures and employ them
3. We recommend that all involved in fundraising regulation should review their accountability processes, but more than this, rethink what kinds of accountability they owe their various stakeholders, based on the theory and scholarship we have described in this report. We particularly recommend devising a model for beneficiary accountability in fundraising self-regulation.
4. We believe that ECNL could add significant value by developing guidance for establishing future FR-SRRs – similar to the guide to developing SRRs for advertising published by the International Council for Ad Self-Regulation (2017).
5. We also believe that fundraising regulators should be encouraged to adhere to the Better Regulation Agenda and the five principles of better regulation. We therefore recommend producing guidance for fundraising regulators on how they might do this.
6. We found considerable confusion in our research on the differences between

codes of fundraising standards and codes of fundraising ethics. Additional guidance could be provided to clarify the distinction and explore the implications for further self-regulatory developments in national contexts. We also believe that the domain of fundraising ethics deserves more serious thought and study, so that an appropriate rationale may be developed for the content of codes and the advice offered. The development of codes of fundraising ethics seemed to us ad hoc and largely reactive.

7. Finally, we believe that ECNL might explore how the PFRA model of self-regulating a common pool resource can be applied to other forms of fundraising. The thinking underpinning this model is new and the wider applications of this approach have yet to be fully explored.

# Appendix 1 – Interview questions

## A. Role of self-regulation

1. What is the purpose of self-regulating fundraising in your country? In other words, what is it that self-regulation is aiming to achieve; what are its objectives? You can be as brief or detailed as you wish in this answer
2. How does self-regulation in your country help fundraising to grow?

## B. Professional standards

3. What professional standards for fundraising exist in your country and in what form do they exist (e.g. code of practice, accreditation standards etc.)? Please provide a link or, if possible, an English translation.
4. Which body owns and develops (reviews and makes amendments to) the professional standards for fundraising in your country?
  - a. What is the process this body adopts for developing and reviewing professional standards?
    - i. Whose views and considered when developing/reviewing standards?
  - b. What level of input do fundraisers (or organisations representing them) have in developing and reviewing these standards?
    - i. Do fundraisers – or bodies representing them – have the final say on their professional standards or is this control vested in a different, external body or stakeholder?
5. How were these standards developed? Were they developed within your country in response to particular national conditions/situations or were they adopted/adapted from a different organisation (e.g. by adopting the AFP's standards)?
6. What do you see as the advantages/strengths of:
  - a. The professional standards
  - b. The method of developing and reviewing the professional standards.
7. What do you see as the disadvantages/weaknesses of:
  - a. The professional standards?

- b. The method of developing and reviewing the professional standards?
- c. What could be done to improve them?

### C. Ethics

- 8. Some national self-regulatory regimes combine codes of ethics and best practice. If this is the case in your country, please provide the rationale for combining ethical and best practice provisions.
- 9. Some national self-regulatory regimes have codes of fundraising ethics that are separate to any codified best practice standards? If this is the case in your country, what is the rationale for having separate ethical and best practice standards?
- 10. Assuming your country has ethical codes/provisions, were these codes/provisions developed within your country in response to particular national conditions/situations or did you adopt it from a different organisation (e.g. by adopting the International Statement on Ethical Principles)?

### D. Compliance and enforcement

- 11. How does the self-regulatory regime ensure compliance with standards, and what organisations are responsible for this? Please describe the compliance/enforcement activities that are undertaken as part of the established self-regulatory procedures (e.g. accreditation process, a complaints process, mystery shopping etc.), including any sanctions that can be applied. Please give as full a description as possible or, alternatively, direct us to a description of these processes in English.
- 12. What do you see as the advantages/strengths of these compliance/enforcement processes?
- 13. What do you see as the disadvantages/weaknesses of these compliance/enforcement processes? What should be done to improve these processes?
- 14. What role do fundraisers (or organisations representing them) have in ensuring fundraisers abide by the codes or are permitted to operate?

### E. Accountability

- 15. Whom do you see as the primary stakeholder in self-regulation of fundraising?
- 16. How do you ensure accountability to the primary stakeholder you identified in Q15?
- 17. Whom do you see as the other stakeholders in self-regulation of fundraising, if any?
- 18. How do you ensure accountability to the stakeholders identified in Q17?
- 19. If you did not include charity beneficiaries in your answer to Q17, please describe how the self-regulatory regime in your country considers and acts on the interests of charity beneficiaries and/or considers the impact of regulatory activity on beneficiaries. What is

your rationale for taking into account, or not taking into account, the interests of beneficiaries in your regulatory activity?

20. How does the regulatory body communicate and justify its behaviours, actions and decisions to the fundraisers it regulates and what ways are there for fundraisers to influence the regulator's behaviours, actions and decisions?
21. Do you see any strengths or weaknesses/advantages or disadvantages in how self-regulation is accountable to various stakeholders?

#### F. Success measurement

22. How is the success of self-regulation assessed and measured in your country?
23. What do you consider to be the strengths of how self-regulation is measured?
24. What do you consider to be the weaknesses of how self-regulation is measured?

#### G. Miscellaneous

25. If street fundraising (so-called 'chuggers') is practiced in your country, what are the arrangements for regulating it (setting standards *and* ensuring compliance) and (if relevant) permitting it to take place (e.g. licensing)?
  - a. What do you think are the strengths and weaknesses of this system (or lack of system)?
26. What role does national and/or local government have in the self-regulatory regime for fundraising? Note, this is not the same as what legislation exists or whether there is a statutory regulator. We are interested in whether and how the state is directly or indirectly involved with the self-regulatory regime.
27. What other regulatory regimes outside of fundraising and/or civil society do you look to for ideas to develop self-regulation of fundraising or for ways to measure the success of self-regulation of fundraising?
28. What do you think are the barriers or inhibitors to implementing self-regulation?

## Appendix 2 – Interviewees

Our interview sample consisted mainly of representative from bodies involved in FR-SRRs. We have grouped these roughly into fundraising associations and regulatory bodies, though there is cross over between two roles or regulators and associations and with this division for our research purposes we don't mean to imply that there is a division in real life in terms of values, approach or attitudes (though at the same time neither does that such a division does not exist). Generalising, most of the regulatory bodies represent 'self-driven' or 'internally-sponsored' components of an FR-SRR, while the regulatory bodies are generally 'third-party driven' or 'externally-sponsored' components (Obrecht 2012). However, the PFRAs are closer to self-driven organisations.

### Fundraising Associations

- Association of Fundraising Professionals (USA)
- Association of Fundraising Professionals (Canada)
- Charities Institute (Ireland)
- Deutscher Fundraising Verband (Germany)
- Frivilligorganisationernas Insamlingsråd (Sweden)
- Fundraising Institute of Australia
- Institute of Fundraising (UK)
- Vastuullinen Lahjoittamien (Finland)

### Regulatory bodies

- Centraal Bureau Fondsenwerving (Netherlands)
- Charities Regulator (Ireland)
- Deutsches Zentralinstitut für soziale Fragen (Germany)
- Fundraising Regulator (England and Wales)
- Goede Doelen Nederlands (Netherlands)
- Imagine Canada
- PFRA Australia
- PFRA New Zealand

## Other interviewees

- Five fundraising practitioners
- Moroccan Center for Innovation and Social Entrepreneurship

### List of countries' FR-SRR researched either through primary (P) or secondary (S) research.

Argentina (P)	Italy (S)
Australia (P/S)	Korea (S)
Austria (S)	Japan (S)
Belgium (S)	Mexico (P)
Brazil (S)	Morocco (P)
Canada (P/S)	Netherlands (P/S)
China (P/S)	New Zealand (P/S)
Columbia (P/S)	Nigeria (S)
Ecuador (S)	Norway (P)
Egypt (S)	Spain (S)
Ethiopia (S)	Sweden (P/S)
Finland (P/S)	Switzerland (S)
France (S)	United Kingdom (England and Wales) (P/S)
Germany (P/S)	United Kingdom (Scotland) (S)
Ghana (S)	United States of America (P/S)
Ireland, Republic of (P/S)	

# Appendix 3 – Five principles of good regulation

Better Regulation Task Force (2005b)

## Proportionality

Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.

- Policy solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed – don't use a sledgehammer to crack a nut.
- All the options for achieving policy objectives must be considered – not just prescriptive regulation. Alternatives may be more effective and cheaper to apply.
- 'Think small first' – Regulation can have a disproportionate impact on small businesses, which account for 99.8 per cent of UK businesses.
- EC Directives should be transposed without gold plating.
- Enforcement regimes should be proportionate to the risk posed.
- Enforcers should consider an educational, rather than a punitive approach where possible.

## Accountability

Regulators must be able to justify decisions and be subject to public scrutiny.

- Proposals should be published and all those affected consulted before decisions are taken.
- Regulators should clearly explain how and why final decisions have been reached.
- Regulators and enforcers should establish clear standards and criteria against which they can be judged.
- There should be well-publicized, accessible, fair and effective complaints and appeals procedures.
- Regulators and enforcers should have clear lines of accountability to Ministers, Parliaments and assemblies, and the public.

## Consistency

Government rules and standards must be joined up and implemented fairly.

- Regulators should be consistent with each other, and work together in a joined-up way.
- New regulations should take account of other existing or proposed regulations, whether of domestic, EU or international origin.

- Regulation should be predictable in order to give stability and certainty to those being regulated.
- Enforcement agencies should apply regulations consistently across the country.

## Transparency

Regulators should be open, and keep regulations simple and user-friendly.

- Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all interested parties.
- Effective consultation must take place before proposals are developed, to ensure that stakeholders' views and expertise are taken in to account.
- Stakeholders should be given at least 12 weeks, and sufficient information, to respond to consultation documents.
- Regulations should be clear and simple, and guidance, in plain language, should be issued 12 weeks before the regulations take effect.
- Those being regulated should be made aware of their obligations, with law and best practice clearly distinguished.
- Those being regulated should be given the time and support to comply. It may be helpful to supply examples of methods of compliance.
- The consequences of non-compliance should be made clear.

## Targeting

Regulation should be focused on the problem and minimise side effects.

- Regulations should focus on the problem and avoid a scattergun approach.
- Where appropriate, regulators should adopt a 'goals- based' approach, with enforcers and those being regulated given flexibility in deciding how to meet clear, unambiguous targets.
- Guidance and support should be adapted to the needs of different groups.
- Enforcers should focus primarily on those whose activities give rise to the most serious risks.
- Regulations should be systematically reviewed to test whether they are still necessary and effective. If not, they should be modified or eliminated.



## Appendix 4 – Timeline of UK ‘shock to system’ 2002-06

From Harrow (2006, p92)

- 2002** HM Government Strategy Unit publishes report – *Private Action, Public Benefit* – calling for a new self-regulatory initiative for fundraising
- 2003** IoF establishes the ‘Buse Commission’ to explore objectives and scope of FR-SR, chaired by then deputy chair of NCVO, Rodney Buse.
- 2003-04** Buse Commission reports in two phases, proposing a Charity Fundraising Standards Board.
- 2004** IoF establishes a steering group with representatives from major charities to construct a Regulation of Fundraising Scheme (RFS) and Regulation of Fundraising Unit (RFU), which at this stage are a part of the IoF. RFS proposals are presented to the Home Office and funding is sought for an independent body.
- 2005** Home Office and Scottish Office agree to proportionally fund RFS and RFU – which will be hosted by, but independent of, the IoF.
- Home Office issues consultation on the principles on which the government should base its assessment of the success of FR-SR.
- 2006** Government confirms support to establish a new independent self-regulatory body – now named the Fundraising Standards Board (and this time, known by initials FSB) – which will become self-funding through membership fees. Launch scheduled for October.
- 2007** The FSB is publicly launched following delays (Stephens 2006). NB, the FSB added the extra ‘R’ to become the FRSB in July 2007 following objections from the Federation of Small Businesses, which also used the acronym FSB (Stephens 2007).

## **Appendix 5 – glossary of abbreviations frequently used in this report**

- AFP – Association of Fundraising Professionals (USA)
- A-SR – Advertising self-regulation
- A-SRR – Advertising self-regulatory regime
- BRTF – Better Regulation Task Force (UK)
- CBF – Centraal Bureau Fondsenwerving (Netherlands)
- CSO – civil society organisation (used throughout this report to denote all charity, NGO and nonprofit organisations)
- CSO-SR – civil society organisation self-regulation
- CSO-SRR – civil society organisation self-regulatory regime
- DZI – Deutsches Zentralinstitut für soziale Fragen (Germany)
- ECNL – European Center for Not-for-Profit Law
- F2F – face-to-face fundraising
- F-Reg – Fundraising Regulator (England and Wales)
- FPS – Fundraising Preference Service (England and Wales)
- FRSB – Fundraising Standards Board (UK)
- FR-SR – fundraising self-regulation
- FR-SRR – fundraising self-regulatory regime
- IoF – Institute of Fundraising (UK)
- NCVO – National Council for Voluntary Organisations (England and Wales)
- OWT – One World Trust
- PFRA – Public Fundraising Regulatory Association (UK, New Zealand and Australia)
- SFSP – Scottish Fundraising Standards Panel
- SRR – self-regulatory regime.

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