ANNEX B

Levy discussion paper - summary report

Introduction

In July 2016 the Fundraising Regulator published a discussion paper seeking views on the arrangements for its funding through a registration and levy system. 123 responses were received by the submission deadline of 22nd July.

This Annex summarises responses to the discussion paper. We include some quotations from some responses to illustrate the views we received but we do not name the respondents.

A list of those who responded to the discussion paper are included at **Appendix 1**. A frequently asked questions document, covering points raised which are not considered to fall directly within the scope of the discussion paper is included as **Appendix 2**.

Banding thresholds

- Of the options outlined, a banded approach (option 1 on the paper) was seen by the majority of respondents as the most proportionate, practicable and clear means of levying as "too many bands would be difficult to manage while fewer become unequitable".

- It was highlighted that when formalised, **the bands will need to be amended to avoid overlap between thresholds** (£100,000 to £149,999, £150,000 to £199,999 and so on).

Organisations below the £100k threshold

There were a range of views expressed about contributions from fundraising organisations which fell below the £100k threshold.

- Some respondents felt that even the administration fee proposed for registration for this group should be removed or minimal to ensure that their burden is minimised.
- However, some larger charities argued that there may be benefits in increasing the number of charities who are contributing towards the levy overall, on the basis that this would spread the burden of the costs more widely.
- There was also a view that this could increase commitment, on the basis that Charities who pay the levy may be "more invested" in the success of the Fundraising Regulator.

Lower threshold

- A majority of respondents agreed with the principle expressed in the discussion paper that smaller charities *within the scope of the levy* should not be disproportionately disadvantaged by the cost of the levy or the requirements of being registered with the Fundraising Regulator. However, it was highlighted that under the current proposals, **small and medium sized charities above the £100k threshold pay proportionally more of their income than larger charities in the top band**. For many respondents, this felt “regressive and unfair”.

Upper threshold

- Several respondents emphasised disparity in the levy proposed at the upper threshold:
    - Concern was expressed regarding the percentage of charity spending dropping from 0.17% to 0.03% as the expenditure increases.
    - A significant number of respondents felt that the **band of £5M to £20M is too large**. They advocated splitting this band down further to ensure contributions were proportionate, on the basis that charities with higher fundraising expenditures would likely occupy more of the regulator’s time.
    - Some respondents felt that **levy consideration should include the volume of communication with donors versus return on investment**. They argued that those who constantly contact donors “with little return on investment” should be subject to a higher levy than those who use “more cost-effective methods”.
    - A minority of responses also questioned **whether the levy for the 13 charities above the £20m spend threshold should be capped at 0.03%**. One response suggested that given the scale of fundraising within this small group of charities, the percentage of charity spend ratio should not fall below 0.05%, and that an individual tariff could be justified.

Flat rate charge

- Some respondents felt that flat rate charges were not appropriate for the regulator because of the range of organisations involved in terms of factors such as size, expenditure and income.
- Some also saw a risk that the flat rate charge would have difficulty gaining traction as “ultimately, the proposed levy system allows Charities to make a choice as to whether they register or not”.

Agencies

Two respondents commented specifically on the flat rate proposed for agencies:

- "The proposed **flat fee for agencies should be replaced with a tiered band system,** to recognise the disparity in size between agencies".
- Any levy asked of agencies **needs to be balanced against the precarious position of this group in the current fundraising climate** and the need to ensure fundraising agencies sign up to the Fundraising Regulator and follow the Code of Fundraising Practice.

Exempt charities

- It was highlighted that while the FR anticipates 150 exempt charities would be eligible to pay the proposed flat rate, the discussion paper does not specify if this only applies to exempt charities who spend over £100,000 a year on generating voluntary income. The FR should clarify this point.

- Although exempt charities have a different reporting regime, they still allocate spending to costs generating voluntary income. One respondent therefore reasoned that it would be possible to include exempt charities in banding – albeit that there may need to be a greater reliance on self-disclosure than for charities registered with the Charity Commission. They suggested that it would be a fairer system if **exempt charities could be included in banding**.

Higher Education Institutions

Comments on the £1,500 flat rate proposed for higher education institutions included:

- It would be better to **use the term 'higher education institutions' (HEIs) rather than 'universities'** in defining the FR's scope. The latter term could inadvertently restrict the application of the Fundraising Regulator's proposals to only those with university title.
- **FR should clarify the levy situation for the 18 universities which are registered charities**. Registered charity HEIs are subject to a different accounting regime from most charities (i.e., the same accounting framework as the exempt charity institutions). Consequently, these charities would be placed under additional burden if they were required to report fundraising expenditure. It seems "reasonable and fair" that the charity HEIs, whether registered or exempt, should be subject to a flat levy.
- The £1500 flat rate **levy for the higher education category was seen to be disproportionate to the scale of fundraising undertaken by many HE institutions and the risk posed by their methods**:

    - "Members expressed their concern about a levy which could well ask them to pay more for fundraising regulation in terms of a pound for pound spend, market share, services received or the analysis of risk merits compared to registered charities".
    - "While an annual cost of £1,500 does not represent a significant proportion of university expenditure, it will be significant to institutions in the process of developing and expanding a fundraising department or who have a low level of expenditure on fundraising. If the regulator

wishes to engage with universities with small fundraising departments, it is suggested that a means must be sought to offer those institutions a zero or reduced levy rate".

- It is suggested in the discussion paper that the Regulator will "maintain and publish a register of those charities within the scope of the levy and whether they have paid it." There was concern that the flat rate could misleadingly imply that all unregistered charities would be listed as within scope for the levy, regardless of whether or not they fundraise. It would be greatly **misleading to list all HEIs on this register** and we would strongly urge the regulator to reconsider this.

Possible concessions

- There may be a case for lowering the "flat fee proposed" for universities from £1500 to either £800 or £1000.
- Alternatively, all Universities and HE Institutions (whether exempt or registered charities) could be asked to report the actual spend on fundraising annually to HEFCE as part of their annual accounts submission.

Fundraising spend as a basis for levy eligibility

Defining key financial measures

The discussion paper proposes to use the annual return to the Charity Commission on fundraising spend for the year ending 31 December 2014 as the basis for calculating levy eligibility. However:

- several respondents asked that the Fundraising Regulator **clarify in more detail how "fundraising expenditure" would be defined in the context of establishing the levy threshold**, including whether it proposed to include charity shops and retail costs, membership schemes, grants, statutory funding and funding that has been aligned to a specific project. It was also highlighted that some charities count certain costs, such as support services as fundraising expenditure where others do not.

- A small number of respondents similarly felt that the **meaning of "the public" in the context of fundraising spend** was too broad in the paper and should be further defined. Some charities may be caught by the levy for expenditure on raising funds, even where this does not involve generating donations from the public.

Calculating levy beyond the first 3 years

Most respondents agreed that the **2014 SORP figures declared on fundraising spend were a fair starting point for calculating levy eligibility**. However:

- There is a need to consider a straightforward way of calculating the levy /reporting annual spend beyond the 3 years to minimise administrative burdens on organisations. **Respondents sought further information on when and how the levy will be reviewed** for the period post March 2019.
- Charities will need to budget appropriately and most will be carrying out their budget planning for 2019 in Q3 2018. The **Fundraising Regulator needs to take account of charities' budget planning processes and give adequate prior notice** of changes in the way the levy is calculated in 2019.
- Any **levy review would need to take account of inflation** as a factor in bringing more charities into the net and moves them up the bands.
- **FR should consider a policy for newly established charities** which may not be in a position to know fundraising spend levels immediately. One respondent suggested that those who anticipate that they will spend over £100,000 on generating voluntary income should be allowed to voluntarily pay the levy.
- One respondent suggested that **a 12-month grace period should be applied for charities before being asked to pay the levy where they unexpectedly exceed a banding threshold**: "This would make the system fair and reduce the impact of the considerable increases between certain bands. It may also reduce the risk of 'creative accounting' as charities are aware that exceeding a band by £5 in one year does not automatically mean they need to pay the levy at the higher amount."
- One respondent identified a risk that **changes in fundraising spend trends could pose a risk to the long term sustainability of FR.** As organisations increasingly implement an opt-in communication strategy, significant amounts of their spend could move from fundraising to awareness and engagement with no direct request for voluntary income. This could result in some charities moving into a lower band which could potentially reduce contributions.

Suggestions for levying beyond the initial 3-year period included that:

- The Fundraising Regulator could **work with the Charities SORP Committee to agree a definition of fundraising expenditure for the purposes of the Levy**, in consultation with charities.
- The Fundraising Regulator could **liaise with the Charity Commission to ensure that the amount spent on generating voluntary income is always a standalone question on the annual return** to make it easier to identify charities who need to pay the levy. Up to date information will therefore be available on annual basis. The amounts due should therefore be capable of adjustment on a yearly basis.

Flat rate charge / registration fee:

- *While the Fundraising Regulator might publicise a list of those charities not registered this is unlikely to have any significant consequence to these Charities because it is not mandatory. Ultimately, the proposed levy system allows Charities to make a choice as to whether they register or not, as a result there is a risk that the flat rate charge becomes pointless.*
- The flat rate registration fee is fine. All charities can afford this no matter what size.

Other issues

- **FR £2 million costs and transparency:** Several respondents queried the stated income required of £2-2.5 million per year by FR. They sought further detail on how this figure was calculated and annual reporting requirements to reassure those paying the levy voluntarily that good financial management was in place.
- **Timing of implementation:** One respondent noted that the Fundraising Regulator proposed that the levy would apply from 1 August 2016, but would not issue its terms and conditions until September. It asked that the Fundraising Regulator does not begin to invoice charities for the levy until after those terms and conditions have been published; as it would be difficult for trustees to commit their charities to the Fundraising Regulator before they knew the precise terms on which that commitment was made.
- **Naming registrants and non-registrants:** It is suggested in the consultation that the Regulator will "maintain and publish a register of those charities within the scope of the levy and whether they have paid it." Some respondents highlighted that "naming and shaming' may undermine the underlying principle that registration should be on a voluntary basis.

- **Making the case for regulation:** FR need to build the case for registration and regulation more strongly. Focus should be on training and advice services as well as penalising poor behaviour. Doing so will increase take up among charities.

- **Reserves:** A few responses questioned the desire for FR to build up reserves without it acknowledging that in the current financial climate many charities were spending rather than accumulating reserves.

A list of additional points raised which are not considered to fall within the scope of the discussion paper but where clarification is helpful, have been incorporated as part of a frequently asked questions document (see **Appendix 2**).

APPENDIX 1

<u>Responses received (+ 2 responses received from individuals)</u>

ACA
ACEVO
Action for Kids
Action Medical Research
Addenbrooke's Charitable Trust
All We Can
Amnesty International UK
Ashgate Hospicecare
Barnardos
Battersea Dogs & Cats Home
BHF
Blue Cross
Bluebell Wood Children's Hospice
Bolton Hospice
Brain Tumour Research
British Horse Society
British School of Osteopathy
Cafod
Campaign to Protect Rural England
Cancer Research UK
CARE International UK
CASE Europe
Cats Protection
Central Manchester University Hospitals NHS Foundation Trust Charity
Charity Finance Group
Charity Law Association
Church Army
Church Mission Society
Church Pastoral Aid
Crisis Point
Crohns and Colitis UK
Dame Allan's Schools
Dementia UK
Diverse Abilities
DSC
Embrace the Middle East
Epilepsy Action

Farleigh Hospice
Feba Radio
Five Talents
FOP
Fundraiser at JustB
Guide Dogs
GuildHE
Harper Adams University
Hays Macintyre
Health Poverty Action
Hearing Loss
HEFCE
Hft
Hospice UK
IDPE
International Glaucoma Association
IOF
Jewish Care
Jewish Leadership Council
Lindsey Lodge Hospice
Macmillan Cancer Support
MAF UK
Martin House Children's Hospice
MHA
Missing People
More Partnership
MQ
Muscular Dystrophy UK
Naomi House and Jacksplace hospices for children and young adults
NAVCA
NCVO
NICVA
NSPCC
Orbis
Overgate Hospice
Oxfam GB
Plan
Polycystic Kidney Disease Charity
Prince's Trust House
Queen Elizabeth Hospital Birmingham
Queen's University of Belfast Foundation
Redwings Horse Sanctuary
RNLI
Royal Agricultural Benevolent Institution
Royal Air Force Benevolent Fund
Royal Institute of Navigation

Royal Opera House
Russell Group of Universities
Saint Francis Hospice
Save the Children
SENSE
SERV Herts & Beds, The Bloodrunners
Sightsavers
Spinal Injuries Assocation
Sports Aid
SSAFA; the Armed Forces charity
St Barnabas Hospices (Sussex)
St Cuthbert’s Hospice
St Gemma's Hospice
St George's Hospital Charity
Stairway to Heaven Memorial Trust
Stoll, (Sir Oswald Stoll Foundation)
Stroke Association
Tearfund
Telford & Wrekin Arthritis Support Group
The Children's Society
The Leprosy Mission Scotland
The Mare & Foal Sanctuary
The Migraine Trust
The Paristamen CIO
Thomley
Together for Short Lives
Tower Hamlets Mission
Tree Aid
Universities UK
University of Bradford
University of Essex
WaterAid
William Harvey Research Foundation
Woodland Trust
Woof Ability
World Horse Welfare
Worldvision
WWF-UK

APPENDIX 2

Frequently Asked Questions – included in Levy & Registration responses

"1% of charities are expected to carry the burden of funding the Fundraising Regulator"

According to the latest FRSB Complaints Report, the majority of fundraising complaints received have been concerned with larger charities that carry out high levels of fundraising activities. They reported that 1% of reporting charities (all of which have voluntary income of £10 million and over) generate six in every 10 complaints received. It is therefore appropriate that those charities who do the most fundraising carry the heaviest fundraising burden. The regulatory risk increases in proportion to the amount of fundraising taking place.

"There is no standard for measuring spend on generating voluntary income and we note the regulator is expecting charities to do this above and beyond SORP requirements increasing bureaucracy and potentially adding costs for charities at a time when every penny counts."

We're looking to keep the process as simple as possible for charities, and therefore do not propose to ask for extra data which we feel would pose an unnecessary burden. This why we've decided to use the SORP fundraising spend data *already submitted* by charities to the Charity Commission at the end of 2014 to calculate the levy going forward. We will work with the Charity Commission and financial stakeholders to develop an appropriate model for calculating levy eligibility beyond the initial levy period.

"The more the public give, the more of their donation will be diverted. It is in effect a tax on charitable giving."

We are implementing the levy on the basis of fundraising expenditure, not voluntary income. We are therefore not taxing public donations, but the fundraising spend used to attract public donations. This is an important distinction that we feel must be made clear.

"FR should seek a "statutory grant" for its operations to ensure public donations are used for their intended purposes (DSC, CFG)"

Aside from the cost imposed on the tax payer, seeking a statutory grant from the government would ultimately result in statutory regulation, as it would make the Fundraising Regulator answerable to government in terms of its regulatory priorities.

The case made by the Review of Fundraising Regulation, which we are in complete agreement with, is that fundraising regulation is more effective and responsive to changes in the sector if it is done with the unequivocal voluntary support of the sector. To support this system of independent self-regulation, the sector needs to fund it.

"The levy should be voluntary and it should be up to individual organisations to decide whether to pay."

The levy *is* voluntary, yet necessary for the Fundraising Regulator to be effective as an independent self-regulator of the charity sector. If the charities that we have requested to pay the levy do not respond, then we will consider publishing a list of such charities that have not made payment. This may also result in a higher payment to be made by the other charities that qualify for the levy.

"Will there be an additional requirement to split fundraising expenditure data between England, Wales, Northern **Ireland** ***and Scotland to reflect different regulatory arrangements where these apply?"***

No. The Fundraising Regulator's geographical remit covers:

- Charitable fundraising in England and Wales
- Charitable fundraising in Scotland carried out by organisations *registered* in England and Wales (i.e. cross-border charities)

Therefore, we will only ask for levy contributions from fundraising organisations that fall within these categories.

Charities *registered in Scotland* are subject to separate regulatory arrangements and will not be asked to contribute towards the levy. The regulatory arrangements for charities registered in Northern Ireland are still to be determined.

For more information, go to:
https://www.fundraisingregulator.org.uk/about/regulation-in-scotland-and-northern-ireland/).

"It is not clear to us why a separate registration fee is necessary. If the basis on which the lower band is levied applies to a charity some years but not others, is the charity expected to pay the flat rate charge every time it crosses back above the threshold? Paying the levy itself should cover registration and de-registration."

There will be no extra registration charge to those who pay the levy. The registration charge will only apply to charities who fall below the £100,000 minimum levy threshold. There will be a separate fee for fundraising agencies, which we are currently working to establish.

"Why do you pay your trustees?"

We do not have trustees. FR is a company limited by guarantee, not a charity or a public body, so to compare its role or the way it is governed with these organisations would be misleading.

It is normal practice for regulators to pay their Boards and the rates we pay our board members are the same as the FRSB.

"We are concerned that the use of a badge could create significant reputational risks for the Fundraising Regulator. The "FR" Badge would be seen as an endorsement for the fundraising activities of the charities registered with the Regulator, despite the Regulator's lack of resources to monitor and vet the activities of these charities"

In order to make it clear that the badge does not provide endorsement, it will state that the fundraising organisation using it is "registered with" the Fundraising Regulator. This will indicate that the organisation has voluntarily signed up to be regulated by the Fundraising Regulator, rather than suggesting endorsement by FR.