

HOSPICE LOTTERIES ASSOCIATION

CONSULTATION RESPONSE

Fundraising Preference Service Final Recommendations Paper

1.0 Introduction

The Hospice Lotteries Association (HLA) pleased to participate in a consultation process to assist in the establishment of the Fundraising Preference Service. The following paper is submitted further to that request and in response to the Final Recommendations distributed by the FPS Working Group in July 2016.

2.0 HLA membership

The Hospice Lotteries Association consists of 129 member Hospices Lotteries, from across the United Kingdom and Ireland. Of these, 65 members are licensed through the Gambling Commission and pay Personal Management Licence fees as well as ongoing fees under the various bands for Society Lotteries.

The Hospice Lotteries Association members enjoy a strong consultative relationship with the Gambling Commission and are well educated in the need for and the practical application of the regulatory framework provided by the Gambling Act 2005.

3.0 Response to Discussion Paper

The HLA is grateful for the opportunity to respond to the recommendations included in the Working Party's report and outline these in bold below.

The document discusses in some detail the types of communications that could be deemed fundraising marketing but stops short of defining them. The HLA would like to see the final definitions completed ahead of the implementation of this FPS program as they are central to the delivery of a successful understanding of the FPS principles.

In saying this, it is recognised that these definitions is the province of the Fundraising Regulator and not the FPS Working Group.

4.0 Response to Recommendations

1. The FPS should present users with a simple re-set option to express their preference to no longer receive fundraising communications.

In principle this sounds very reasonable and follows the recommendation in the Etherington Report. The HLA remains unconvinced, however, that the FPS will meet a donor need considering that
a/ the FPS service intends to recommend that registrants direct Telephone and Mail preferences to the existing TPS and MPS.
b/ there is already a means to unsubscribe from unwanted emails
c/ texts can be blocked by telephone number on all mobile telephones
d/ the FPS has made clear that it cannot resolve the issues of Face to Face fundraising or social media, the only two areas which do not appear to have an automatic reset option already in place.

So it seems that the FPS overrides and duplicates already existing services, causing potential clashes and additional costs without meeting a specific need.

It appears evident that HLA members will have to pay to screen supporters (at an additional cost) for services that are already in place. Did the working party consider whether the FPS was an unnecessary option and a cost that was not needed by charities for whom their cause is the most important thing? Larger charities can absorb these costs. Smaller ones will find the fee high in relation to its usefulness. Certainly the big red button option.

2. The FPS should give users the additional option of indicating specific fundraisers from which they do not want to receive fundraising communications.

This option (the small red button) appears to be reasonable considering that the FPS is certain to be implemented but that affirmation should be taken in the context of the statement at point one.

3. When a registrant has used the re-set option, fundraisers that have an existing relationship with the registrant should have the opportunity to clarify the individual's preferences and enquire about the status of the relationship in light of the registration.

Again this seems wholly reasonable, except that in referring supporters to TPS and MPS on the FPS website, the option to call or mail the supporter could be removed before a charity has the option to make this clarification.

4. For this purpose, the FPS should capture the necessary information and make it readily available to fundraisers.

It is assumed though not stated that the charities will have a time period within which to contact those supporters on their lists, and in which they can recognise registration to the FPS (a grace period, as per the TPS rules)

5. The nature of the existing relationship between the registrant and a charity or other fundraising organisation should be sufficiently robust, and the opportunity to 'check in' should be limited to organisations that have received a donation from that individual over the past 24 months.

Has the working group looked at the Data Protection Act and the provisions made within it in deciding what is a reasonable period for a charity to believe a supporter to be in a robust relationship?

6. The application of the FPS should be determined by the type of fundraising undertaken (direct marketing) and the level of expenditure on such activity, as a reasonable indicator of the volume of activity. This threshold should be set by the Fundraising Regulator at a level that ensures the FPS can work in practice, meets public expectations, and significantly reduces the risk of registrants still receiving unwanted fundraising communications.

The HLA again would like to see more detail around the setting of these thresholds. There has been little discussion to date around the rationale for the Regulators levy setting process.

7. The FPS should have its own definition of what constitutes a 'fundraising communication', which should be narrower than the ICO definition of direct marketing. It should be based on communications where the core purpose is to raise funds.

Again the HLA would like to see more detail around these deliberations. Lotteries communications are already heavily regulated by the Gambling Commission so decisions on the intricacies of content are very important to the members.

8. The FPS should not be a barrier to communications that have other purposes and should not prevent other communications where the fundraising content is incidental.

Once the details of what constitutes a fundraising communication is made, then other communications should be exempt from further fundraising regulation, though not from the other forms of control already in place (i.e. the Advertising Codes, Gambling (Licensing and Advertising Act) etc.)

9. The Fundraising regulator will need to consider the case for issuing guidance, and the Working Group suggests that communications about lotteries and raffles should be considered fundraising communications. The working group did not take a view on trading communications: it saw that there is both a case for them being a fundraising communication (since from the organisation's point of view the purpose is to raise funds) but also for them to be excluded (since from the recipient's point of view they could be seen as an offer to make a transaction).

This is a key area of concern for HLA members and shows an inconsistency in approach. Trading communications involve raising of funds by sale of goods or services. It is considered by the membership that lottery tickets and chances are a straight commercial transaction of goods, in exactly the same way. The HLA would contend that neither of these means of raising funds is a straight fundraising ask, as the chance to win a prize is at least partly contributable to the sale of an entry.

The question of raffles and lotteries has been long misrepresented in the charity regulation world. The fact is that lotteries are protected by law as a means for charities to increase their income, but the purchaser of a ticket may have any number of drivers for the purchase of a chance. It is true that it may be a philanthropic reason but it could equally be true that the ticket is purchased solely with the desire to win the prize, and that the interaction with the charity may be considered to be on exactly the same level. The notion that a lottery or raffle purchase is not a commercial transaction is a flawed one. Hence the inclusion of lotteries in Gambling Regulations.

It is the contention of the HLA that neither trading nor lotteries should be considered to be an issue for FPS compliance.

10. The Working Group was wary of offering a prescriptive list of what would count as a fundraising communication. In line with the principles of self-regulation, it is important that fundraisers think responsibly about whether a communication is designed to generate funds or whether any such element is incidental to some other purpose.

It appears incongruous that considering the heavy retribution that appears to be reliant on the Fundraising Regulation working that it is considered safe for fundraisers to decide for themselves how much marketing in a communication makes it fundraising centred and how much does not.

11. The FPS should be based on individual entities rather than households, although some overlap has to be accepted in relation to landline telephony.

The HLA has no issue with this position.

12. The FPS should focus on core channels of communications: telephony, mail, texting and e-mail. The FPS should not extend to social media or “door-knock”. The FPS might give assistance through leaflets, stickers or guidance in relation to door-knock. The FPS, based on capture of addresses, could be extended to unaddressed mail and door-knock if practices changed causing problems that demanded this response at a later stage.

See the comments made at recommendation 1.

13. The FPS should provide a signposting function to existing preference services such as the TPS and MPS. This would mean that the FPS:

- Directs the user to the TPS if the frustration is with nuisance calls;
- Directs the user to the MPS if the frustration is with junk mail.
- The FPS should not be seen by fundraisers as some form of over-ride to the TPS and MPS. Charities and other fundraising organisations must in any case respect the preferences expressed by individuals under these schemes and have the necessary consents to contact individuals registered.

Again, see the comments at recommendation 1.

14. The FPS should allow registration by a third party of vulnerable individuals only where that third party has the necessary Power of Attorney or equivalent. The FPS should deal differently with these individual cases if the clear need and ask is for all communications to stop and for no direct contact with the vulnerable individual.

The HLA has no issue with this position.

15. The registration process has to maximise user understanding of what FPS will deliver and any limitations that exist. This might require infographic material at the start and some form of confirmation or receipt and the end of a registration.

The HLA has no issue with this position.

16. The FPS should not prevent registrants to give fresh consent to being contacted at any point after FPS registration by engaging with charities and other fundraising organisations. Equally, the FPS should not prevent charities and other fundraising organisations from getting in touch for fundraising purposes with an individual previously registered on the FPS, if that person engages with them and gives the appropriate consent.

The HLA has no issue with this position.

17. The FPS should be accessible as a service by phone as well as online, although efforts should be made to maximise the online option.

The HLA has no issue with this position.

18. Registration on the FPS should be time-capped, and expire after two years. The FPS provider would be responsible for sending a communication three months before expiry, asking the individual to refresh and therefore confirm the registration for another two years.

The HLA has no issue with this position.

19. The Fundraising Regulator should include compliance with the FPS as a requirement of the Code of Fundraising Practice.

The HLA has no issue with this position.

5.0 Conclusions

A more donor centred approach to Fundraising is long overdue and the HLA is largely supportive of direction being undertaken out of the Etherington Report. It remains to be convinced however that the stringent regulation of lotteries provided under the Gambling Act need to be added to with further regulation and cost.

The report does appear to offer practical solutions to many of the difficulties surrounding the FPS and its implementation. However the HLA considers that there is still much that needs consideration and justification in the recommendations documented in the report.

Whilst the opinions of the eminent representatives on the working group are highly valued, there should be more to the decision making process than those opinions of large charities with substantial budgets.

It is hoped that the consultation will provide the voices of those for whom this additional burden of administrative time and cost hits hardest.

On behalf of the HLA, thank you for the opportunity to consult on this issue.

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