

Fundraising platforms – fixing a regulatory black hole

Suzanne McCarthy considers the rationale for regulating fundraising platforms

In March 2017 a terrorist drove a car over Westminster Bridge near the Houses of Parliament killing six people and injuring at least 50. In May of that year another terrorist detonated a home-made bomb at the Manchester Arena killing over 20 people, wounding more than 100 including many children and causing countless others psychological trauma. In the following month Grenfell Tower, a 24-storey block of flats in West London, caught fire with the loss of 72 lives and many injured. All of these events led to an outpouring of financial donations with many of these made via online fundraising platforms. On the JustGiving platform alone 500 separate pages appeared after the Manchester Arena attack and 700 following Grenfell Tower. Others have used fundraising platforms to crowdfund for a particular project or cause such as the Charlie Gard GoFundMe appeal which raised £1.3 million towards the costs of sending that child to the United States for treatment (Guardian 2017), which sadly did not happen because of his death.

Online fundraising platforms and how they are used

There is no official legal definition of online funding platforms. For the purpose of this article they are defined as websites or applications that are operated by commercial companies (for example, JustGiving; GoFundMe), corporate social responsibility initiatives (BT MyDonate; Virgin Money Giving); or registered charities (for example, PayPal Giving Fund). These platforms enable donors to give to charitable causes via their computers, smartphones and other electronic devices using their credit cards, debit cards or digital wallets (devices that allow electronic transactions such as Paypal). Charges and fees may be payable on many of the platforms. As it is very simple to register and set up a page, fundraising platforms are very attractive both to charities and individuals. It is no wonder that the number of platforms has grown like topsy.

Crowdfunding campaigns, such as for Charlie Gard, are used by individuals, groups of individuals and commercial organizations to raise funds for charitable purposes. Such appeals often appear on the same site as registered charity fundraising campaigns, and the public may not be able to distinguish between the two. If the fundraising is for a registered charity, then donors can check the charity's registration number with the Charity Commission, be assured that their donation will go into the charity's bank account and that the charity will file an annual report disclosing its finances. But where the money is raised via a crowdfunding appeal, it will be passed to the crowdfunder to distribute and there is no easy way of veri-

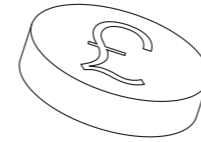
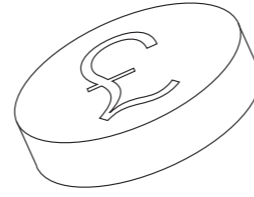
fy if the crowdfunding asked is genuine or discover how donations will be used or funds spent.

The call for regulation of fundraising platforms

Appeals on fundraising platforms have been successful in raising money for charitable causes. One of the largest of these platforms, JustGiving, has helped people raise more than £3 billion for good causes since 2001. Nevertheless, anxieties started to be expressed in the media and by parliamentarians about the possibility of fraudulent activity (Independent 2017), lack of oversight of the purpose, destination of funds collected, and the need for accessible and clear information about how the platforms operate and the fees they charge. The *Mail Online* reported, for example, that JustGiving took more than 6 per cent from almost every donation made and £20m annually from fundraisers (Daily Mail 2017a) and specifically criticised that site for taking more than £25,000 in fees from money donated for the Grenfell Tower victims (Daily Mail 2017b, The Sun 2018). This criticism may be unfair considering that commercial platforms charge to cover their costs and to have funds to invest in their platforms. Nevertheless, there were worries that public trust and confidence in donating specifically via fundraising platforms and more generally could be adversely influenced by these concerns.

What became apparent was that fundraising platforms were unregulated. There are, of course, other areas where regulation is non-existent but might be desirable. One of these is political advertising, the subject of an earlier article I wrote for *risk®ulation* where I posed questions which I believe could assist in helping to identify if regulation of a sector is possible (McCarthy 2017). These are: whether regulation is feasible and appropriate given the subject matter; the type of regulation that might be introduced – self regulation, co-regulation or statutory; who would pay for the regulation – government or the sector involved; what powers and sanctions the regulator might be given; and how and to whom would the regulator be accountable. In respect of political advertising the conclusion reached was that, as things stood, regulation was not feasible both for reasons of principle (free press; freedom of political speech) and of pragmatism considering the problems associated with investigation, sanction and, most importantly, the co-operation of political parties. Fundraising via fundraising platforms is, however, a different proposition, and it is instructive to consider how it was possible for regulation, in contrast with political advertising, to make inroads into that area.





The Government made it clear that there was little prospect of statutory regulation of fundraising platforms being introduced. It asked the Fundraising Regulator and the Charity Commission to work with the platforms to address the public's concerns and promote high standards and good practice. Thus, it fell to the charity sector's statutory regulator for England and Wales, the Charity Commission, and a self-regulator, the Fundraising Regulator, which oversees fundraising by, or on behalf of, charitable, philanthropic and benevolent organizations in England, Wales and Northern Ireland, to act. The Government, while not willing to be directly involved, did remain very interested, looking particularly to the Fundraising Regulator, which took the lead in these discussions, to provide the Minister for Civil Society with reports on progress.

Bringing fundraising platforms into regulation

Through a series of meetings with many of the main online-giving platforms agreement was reached on a number of important issues. These included: working with the regulators to disseminate clear and consistent public advice about the choices available for donating; reviewing the platforms' counter-fraud measures and their resilience to fraud and creating a forum for sharing advice and intelligence about potential fraud threats; and recognising their legal responsibility to make clear to donors upfront what proportion of their donations would reach their charity by explaining their fees and charges (Charity Commission 2017). In addition, and importantly, it was confirmed that fundraising platforms would be allowed to register with the Fundraising Regulator and thus voluntarily comply with its regulation.

The platforms also agreed to work with the Fundraising Regulator on the introduction of a specific section in the Code of Fundraising Practice devoted to online fundraising. That section was introduced in June 2018 and includes, inter alia, obligations on the platforms to publish good practice guidance on how to set up a fundraising page. This covers raising money for a cause where no charity is identified as the beneficiary, and how an individual fundraiser should publicize their appeal to prospective donors on their fundraising page including who is organizing the appeal, what the money raised will be used for, and what they will do with the money if too little or too much is raised.

Conclusion

Unlike with political advertising, the reasons that prevented regulation of that subject were in respect to fundraising

platforms either not present or could be overcome. As such, I suggest the following responses to the questions posed:

Yes, to whether regulation is both feasible and appropriate. However, as to the type of regulation and who will pay for it, considering that the Government remained interested in some type of control being introduced but uninterested in introducing statutory regulation, it was left to the Fundraising Regulator, a self-regulatory body, to do most of the heavy lifting with some assistance from the Charity Commission, with the sector paying. But it must be recognized that the Fundraising Regulator regulates with the consent of the fundraising community. If shaming and naming (for example, where things have gone wrong and the Fundraising Regulator's recommendations are not accepted) does not work, then the next step is for it to report the breach to a statutory regulator such as the Charity Commission or the Information Commissioner which have sharper teeth. The Fundraising Regulator is accountable to donors, the sector and to the public. Should it fail as a self-regulator, the Government may have no alternative but to bite the bullet and introduce statutory regulation of fundraising and to do so possibly by increasing the Charity Commission's jurisdiction to include fundraising platforms.

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