



Memorandum of understanding between the Charity Commission and the Fundraising Standards Board

Contents

Page numbers

1.	Introduction	3
1.1	Purpose	3
1.2	Context	3
2.	Roles	3
3.	Complaints handling and compliance	4
3.1	Complaints the Commission deals with	4
3.2	Complaints the Commission does not deal with	4
3.3	Complaints the FRSB deals with	5
3.4	Complaints the FRSB does not deal with	6
3.5	Process for dealing with complaints	6
3.6	Resolving issues of jurisdiction and 'grey areas'	6
4.	Sharing information	7
4.1	Legal basis	7
4.2	Information that may be disclosed	8
4.3	Ongoing liaison	9
4.4	External communications	9
5.	Interpretation	9
6.	Review and amendment	9
7.	Special handling	9

Annexes

A	Complaints made to the Charity Commission about fundraising
B	Complaints made to the Fundraising Standards Board about fundraising
C	Fundraising Standards Board - complaints procedure
D	Charity Commission investigations - summary of the process
E	Fundraising Standards Board Fundraising Promise

1. Introduction

1.1 Purpose

To set out the powers and responsibilities of, and the relationship between, the Charity Commission (the Commission) and the Fundraising Standards Board (FRSB) in relation to charitable fundraising in England and Wales.

1.2 Context

The Commission is established under the Charities Act 1993.¹ Without prejudice to its specific powers and duties, the Commission's general function is to promote the effective use of charitable resources by encouraging the development of better methods of charity administration, by giving charity trustees information or advice on any matter affecting their charities and by investigating and checking abuse.

Under section 3 of the 1993 Act, the Commission maintains a register of charities. The Commission's regulatory jurisdiction extends to all registered charities established in England and Wales, and all unregistered charities other than exempt charities. The term "charities" includes charitable collections and funds managed on an informal basis for charitable purposes by any person or organisation.

The FRSB was set up to enable the self-regulation of fundraising, an initiative borne out of the recommendations of the Strategy Unit report 'Private Action, Public Benefit' and the work of the Buse Commission. The Charities Act 2006 includes a reserve power for the Secretary of State to make secondary legislation to regulate fundraising should the scheme not meet the Government's stated success factors. The FRSB operates a scheme open to charities and all other bodies raising charitable funds.

This memorandum of understanding sets out how the two organisations have agreed to work together to help the sector to achieve the highest standards in fundraising and to help to make the self-regulation of fundraising a success.

2. Roles

The Charity Commission is responsible for regulating the conduct of all charities in England and Wales and has a regulatory remit over all charitable funds raised, to promote their effective use and proper administration. It provides advice and support to charities and helps to resolve difficulties that have arisen within charities. In most cases this can be done by providing remedial support, but in more serious cases it may be necessary to intervene by using protective legal powers.

The FRSB is established to promote high fundraising standards by its members (who join on a voluntary basis) throughout the UK. Members agree to adhere to the highest standards of good practice in fundraising by signing up to the Fundraising Promise (see Annex E), agreeing to follow the Institute of Fundraising's Codes of

¹ This will be superseded by the Charities Act 2006 when the relevant provisions take effect

Practice (which can be found through: <http://www.institute-of-fundraising.org.uk/>), having a robust complaints procedure and accepting the authority of the FRSB to make the final decision on a fundraising related complaint. Where complaints about fundraising are not resolved directly with the organisation concerned, members of the public can complain to the FRSB about organisations which are members of the FRSB. The FRSB will attempt to resolve any issues through recommended remedial action and if necessary will adjudicate and impose sanctions, which for the most serious cases, will include withdrawal of FRSB membership.

3. Complaints handling and compliance

3.1 Complaints the Commission deals with

The Commission does not investigate complaints about a charity unless there is a serious risk of significant harm or abuse to the charity, its assets, beneficiaries or reputation; where use of its powers are necessary to protect them and where this represents a proportionate response to the issues in the case. If there is evidence of mis-management (falling short of deliberate and continuing abuse) but the trustees are willing to work with the Commission to resolve the problems, the Commission will, through a mainstream case, provide supervision and guidance to ensure that the trustees adhere to best practice. In the most severe cases a formal inquiry will be opened. Commission intervention is specifically designed for use in circumstances where there is some grave, general risk to a charity's interests and is principally about protecting a charity and its assets.

Where the Commission does take forward a case or opens an inquiry relating to fundraising it usually relates to cases:

1. Where significant charitable assets are at risk, for example where it appears that there is bogus fundraising activity taking place, where the organisers are unlikely to give the proceeds to a charitable cause;
2. Where fundraising or administration costs are excessive. Abuse of this kind is only likely to warrant an inquiry if exacerbating circumstances exist, for example the sheer level of loss or expenditure, persuasive evidence and/or previous warnings by the Commission; or
3. Where fundraising material is seriously misleading to the public, where funds raised are not used for the stated purpose and where the public statement requirements of the Charities Act 1992 Part II are persistently not met.

The Commission will continue to tackle these serious regulatory issues.

3.2 Complaints the Commission does not deal with

The Commission does not take up cases where the complaint is about policies pursued or actions taken by the trustees of a charity, acting reasonably within the law and the provisions of the charity's governing document. Such decisions are for trustees to take (and justify), and they often have very wide freedom to do so. The

Commission is precluded from acting in the administration of any charity under section 1(4) of the Charities Act 1993.

The majority of complaints about fundraising which fall into this category relate to the fundraising methods a charity has used. For example the Commission receives complaints from members of the public who have received unsolicited 'gifts' from charities or complaints from members of the public who feel that fundraisers have used aggressive or otherwise offensive fundraising techniques. Although some people question whether particular fundraising methods are ethical, the Commission has no general power to tell charities to stop using a legal method of fundraising, but it would be concerned if a method caused such widespread concern or offence as to undermine public confidence in a charity or the sector as a whole.

Linked to this are the legitimate decisions taken by trustees about how much to spend on fundraising ventures as part of their fundraising strategy. There is no legal or recommended limit for fundraising costs, because costs can vary depending on the size of the charity, its line of work and its current and future plans. As mentioned above (paragraph 3.1) only in exceptional cases does the Commission pursue enquiries in cases of exceptionally high or disproportionate fundraising or administration costs. The Commission does however look for opportunities to endorse work carried out by other organisations which highlights best practice in relation to fundraising costs; the Institute of Fundraising's Code of Practice on 'Accountability and Transparency in Fundraising' is a good example.

3.3 Complaints the FRSB deals with

Charities, other organisations and individuals that are members of the FRSB scheme have agreed to the FRSB's membership conditions and must therefore:

1. Adhere to and promote the FRSB's Fundraising Promise (see Annex E), which is a promise made to the public by members of the FRSB scheme, committing to the highest standards of best practice;
2. Adhere to the Institute of Fundraising's Codes of Practice (which can be found through: <http://www.institute-of-fundraising.org.uk/>) which represent the standards set for fundraisers in the UK. Each Code covers a separate fundraising technique, and provides information on areas of the law and guidance on the techniques themselves;
3. Use the FRSB scheme logo on all fundraising communications and specified company literature (unless it is impractical to do so);
4. Ensure the organisation has a robust complaints procedure in place for dealing with fundraising complaints from members of the public;
5. Select a complaints co-ordinator who will act as the primary point of contact with the FRSB; and
6. Accept the authority of the FRSB to make the final decision on a fundraising-related complaint

The FRSB aims to improve standards in fundraising and expects its members to adhere to best practice. It deals with complaints against its members' fundraising methods and practice and will judge these against the Fundraising Promise and the Institute of Fundraising's Codes of Practice. The FRSB deals with complaints against its members in line with its published complaints procedure (see Annex C).

3.4 Complaints the FRSB does not deal with

The FRSB does not deal with the following types of complaints:

1. Complaints against non-members;
2. Complaints alleging fraud or any other criminal offence (although the outcome of the investigation of such complaints by another body will be monitored and sanctions may be applied against the member as a result); and
3. Complaints about member charities that do not relate to fundraising.

3.5 Process for dealing with complaints

The starting principle for both organisations is that on receiving a complaint they will usually ask the complainant to try to resolve the issue with the charity directly, only where this has not been successful will the organisations consider whether to take further action.

The further action that the Commission or the FRSB take when dealing with complaints from this stage will depend on the nature of the case, and each organisation has its own procedures it must follow.

Annex A gives an overview of how the Commission deals with complaints it receives about fundraising and in what circumstances and at what stage it may share information with the FRSB.

Annex B (this is in two parts) gives an overview of how the FRSB deals with complaints it receives about fundraising and in what circumstances and at what stage it may share information with the Commission

Annex C is the FRSB's published complaints process that members agree to when they become members of the scheme.

3.6 Resolving issues of jurisdiction and 'grey areas'

There will be occasions when the Commission or the FRSB receives a complaint which the complainant has not been able to resolve directly with the charity and where it is not instantly clear which organisation should lead further work to resolve the complaint.

There is a particular need to share information about these types of complaints and it is likely that a number of these will be discussed by representatives of the two organisations on a case by case basis initially.

This may result in the FRSB assisting complainants to get in contact with the Commission or vice versa.

Section 4.3 below explains that each organisation will have single points of contact ('SPOCs'). They will be the liaison points in any ambiguous situations, and will refer to the role descriptions set out in sections 3.1-3.4 in this MoU to assist this discussion.

Each organisation will keep a record of advice received from or information shared with the other. When discussing cases, the Operations SPOCs may identify issues or trends which may warrant further policy input. In such cases they will alert the Policy SPOCs who will consider what further action could be taken to resolve the issues.

4. Sharing information

4.1 Legal basis

Under section 10 of the Charities Act 1993, the Charity Commission is permitted to share information with any person or organisation discharging functions of a public nature where the disclosure is made for any purpose connected with the discharge of that person or organisation's functions. It does not however impose a duty upon either the Commission or other person or organisation to disclose information. The regulatory function carried out by the FRSB has sufficient public nature to enable it to be considered a public body for these purposes and the Commission is therefore entitled to share information with the FRSB.

Similarly, the FRSB can share information regarding non-members with public bodies where the disclosure is made for a purpose connected with the function of such a body and can do so in the case of members where it is in the public interest to do so. It may also assist complainants to get in touch with other regulators, which may involve sharing information directly with the Commission. The FRSB is therefore able to share relevant information with the Commission.

The Commission and the FRSB will encourage the exchange of information between them where appropriate in order to maximise the efficiency of their respective functions. Any information disclosed to the other is strictly confidential unless otherwise explicitly advised or with the consent of the disclosed party. Where information is disclosed about an ongoing investigation, the organisation which is made party to it will not pre-judge the outcome of the investigation or take action on that basis.

Both organisations will ensure that any disclosure of information under the terms of this memorandum of understanding is carried out in a manner that is efficient, proportionate and fully in compliance with the Human Rights Act 1998 and the Data Protection Act 1998.

4.2 Information that may be disclosed

The Commission may provide information about its work in relation to members and prospective members of the FRSB on a strictly confidential basis and where it would not jeopardise the successful resolution of a case. This will be considered on a case by case basis and may include the following:

1. Notification that a formal inquiry under section 8 of the 1993 Act has been opened about an FRSB member, together with a brief note of the cause for concern;
2. Notification of the outcome of a formal inquiry about an FRSB member prior to publication of the report on the inquiry;
3. Information on the register of removed trustees kept in accordance with s72(6) of the 1993 Act (as requested in relation to existing or prospective members);
4. Details of charities which have been removed from the register of charities (as requested in relation to existing or prospective FRSB members); and
5. Notification of the intention to remove an FRSB member from the register of charities before making this information public.²

The FRSB may provide the Commission with information about its work on a strictly confidential basis. This will be considered on a case by case basis and following a consideration of whether disclosure is in the public interest. This may include:

1. Information to be provided in response to specific requests from the Commission about ongoing cases in stage 2 of the FRSB complaints process where it will assist in an ongoing Commission investigation and, in the case of FRSB members, it is in the public interest to disclose such information.
2. Notification that a complaint is being referred to the FRSB as part of stage 3 of the FRSB complaints process (see Annex C);
3. Notification of the outcome of a case before it is made public on those cases that reach stage 3 of the FRSB complaints process (see Annex C); and
4. Details of those charities whose applications for membership of the FRSB have been refused and a brief note of the reasons; and

Each organisation will also endeavour to provide information in response to reasonable ad hoc requests for other information.

² Charities are only removed because they have been dissolved, wound up, ceased to exist, are no longer deemed to be charitable or no longer meet the threshold requiring them to be registered with the Commission

4.3 Ongoing liaison

The Commission and the FRSB have links on both operational and policy issues. Each organisation has therefore designated two main liaison points:

1. Single point of contact on all operational matters (Operations SPOC):
Commission – Compliance Manager
FRSB – Compliance Manager
2. Single point of contact on policy issues (Policy SPOC).
Commission – Senior Policy Advisor with fundraising remit
FRSB – Director

These four individuals will meet on a regular basis for update meetings, together with the Head of Policy from the Commission. Initially these meetings are scheduled quarterly but the frequency and attendees may be reviewed as the relationship develops.

The Commission will be invited to attend FRSB meetings with observer status and will receive copies of all Board papers and minutes of these meetings. One of the Commission's SPOCs will endeavour to attend on a regular basis.

4.4 External communications

Where there is a matter of mutual interest and it is considered appropriate the Commission and the FRSB will collaborate on external communications.

5. Interpretation

Any disagreement arising from the interpretation of this memorandum of understanding will be referred to the Executive Director of Policy and Effectiveness of the Commission and the Director of the FRSB, who will endeavour to resolve it within the spirit implicit in the co-operation arrangements.

6. Review and amendment

The developing relationship and this memorandum of understanding will be kept under review and will be amended if necessary and as agreed by the Executive Director of Policy and Effectiveness of the Commission and the Director of the FRSB. In particular, it will be reviewed after the first six months of operation.

7. Special handling

Whilst it is intended that the arrangements in this memorandum of understanding should apply generally, it is recognised that some circumstances will require special handling. Nothing in this memorandum of understanding prevents the making of arrangements to meet specific exceptional needs.



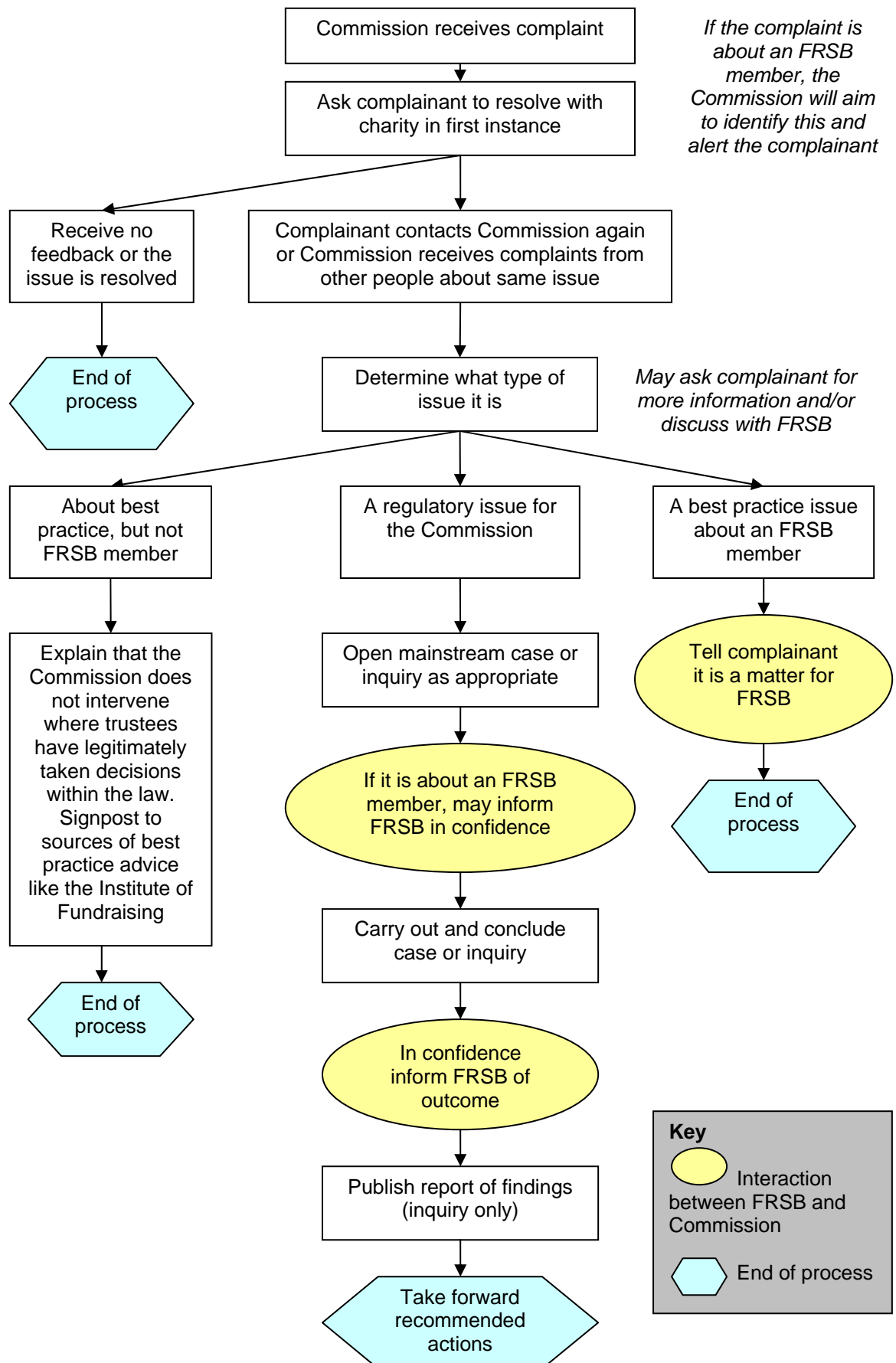
Rosie Chapman
Executive Director Policy and Effectiveness
Charity Commission



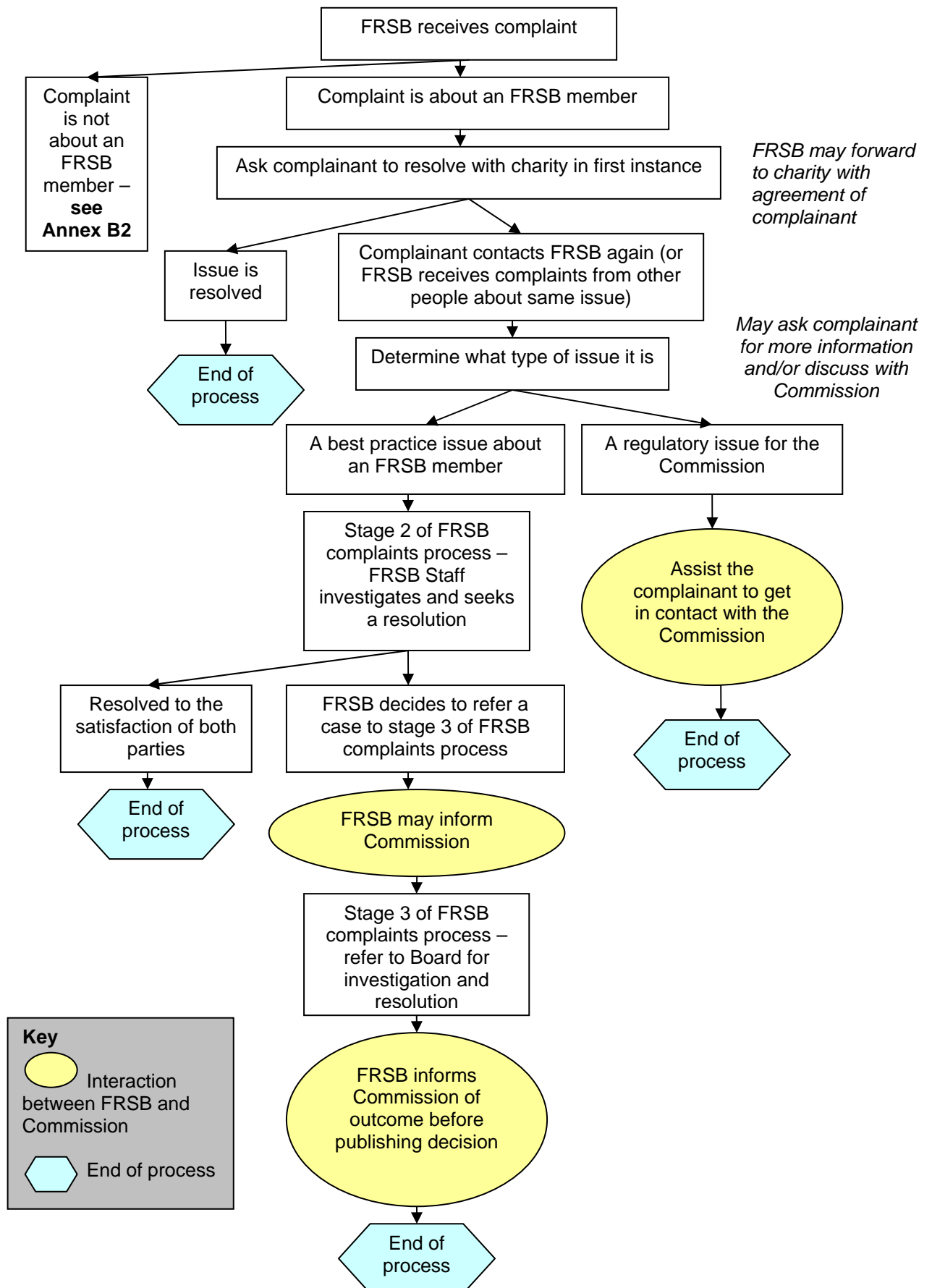
Jon Scourse
Director
Fundraising Standards Board

16 March 2007

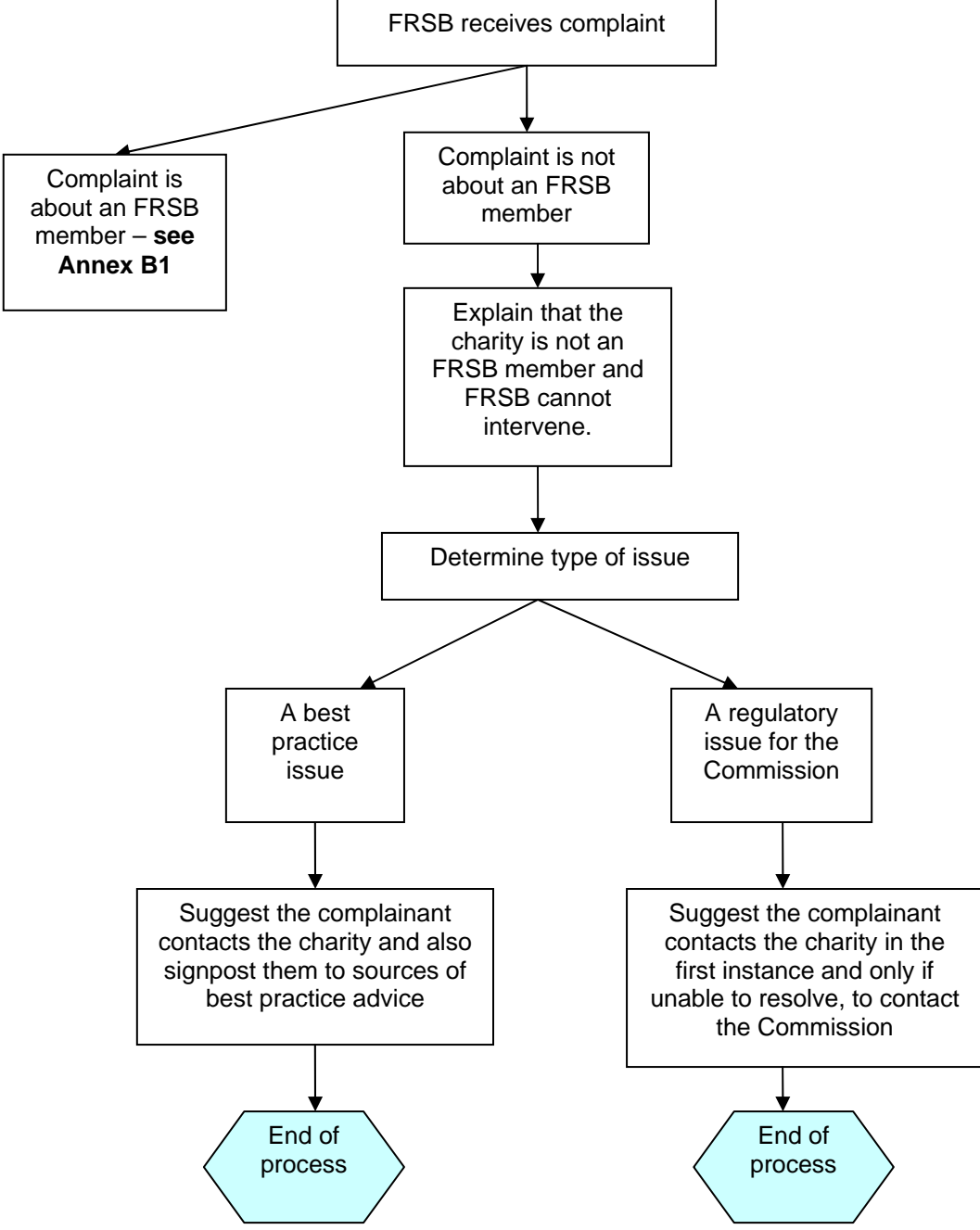
Complaints made to the Charity Commission about fundraising




Complaints made to the Fundraising Standards Board about fundraising



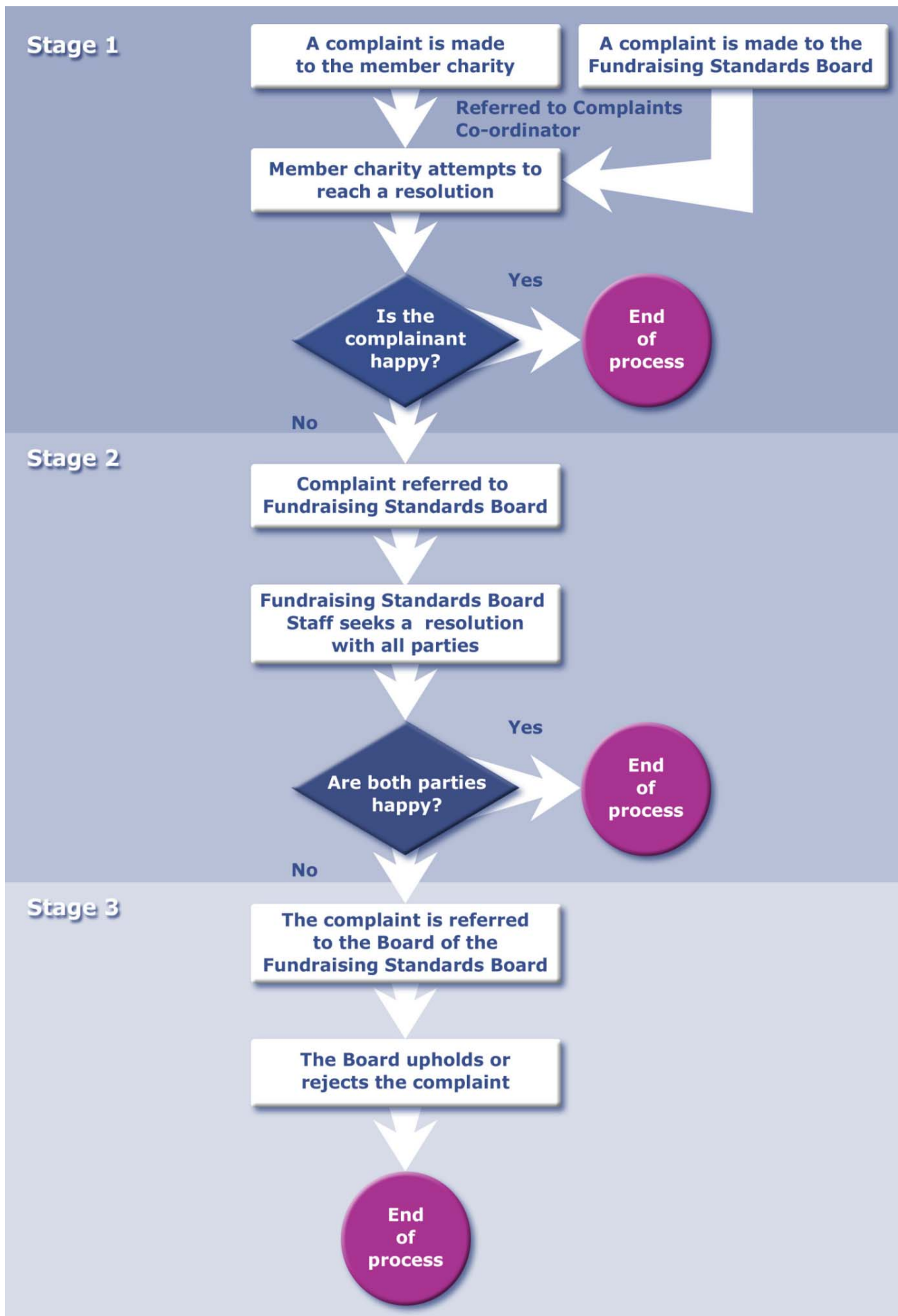
Complaints made to the Fundraising Standards Board about fundraising



Key

 End of process





Charity Commission investigations – summary of the process

Not all investigations are inquiries as mainstream cases (or mainstream investigations) are conducted without opening a formal inquiry under Section 8 of the Charities Act 1993.

An investigation will typically have five phases:

(1) Evidence Gathering- We gather evidence about the causes for concern and the charity's activities generally. This will normally involve seeking additional information and responses from the trustees and elsewhere.

(2) Consideration of evidence- We will come to a view as to what extent, if any, the causes for concern are substantiated.

(3) Confirmation of our findings- If we believe that causes for concern are substantiated we will advise the trustees of our conclusions. If they are not substantiated we will advise the trustees and close the inquiry/investigation at this point.

(4) Remedial action- We will consider what action is appropriate, either for the trustees or the Commission to rectify the causes for concern, insofar as this is possible.

(5) Preparation of an Inquiry Report- Inquiry reports will only be published for inquiries and not for mainstream investigation cases. The Commission will, except in very exceptional cases, publish a report providing a statement of the results of an inquiry. The charity would be given an opportunity to see the statement and comment on any factual inaccuracies before publication takes place.



The Fundraising Promise

What Is the Fundraising Promise?

The Fundraising Standards Board Fundraising Promise is a promise made by members of the FSB scheme to the public, committing to the highest standards of practice, and ensuring that all their activities are open and fair, honest and legal. By signing up to the FSB scheme you will be agreeing to adhere to the Fundraising Promise when raising funds.

Our Fundraising Promise

We are members of the Fundraising Standards Board (FSB) self-regulatory scheme. The FSB works to ensure that organisations raising money from the public do so honestly and properly. As members of the scheme, we follow the Institute of Fundraising's Codes of Fundraising Practice and comply with the key principles embodied in the Codes and in this Promise .

We Are Committed to High Standards

- ◆ We do all we can to ensure that fundraisers, volunteers and fundraising contractors working with us to raise funds comply with the Codes and with this Promise
- ◆ We comply with the law including those that apply to data protection, health and safety and the environment

We Are Honest and Open

- ◆ We tell the truth and do not exaggerate
- ◆ We do what we say we are going to do
- ◆ We answer all reasonable questions about our fundraising activities and costs. Please contact us, visit our website or see our Annual Report if you require further details

We Are Clear

- ◆ We are clear about who we are, what we do and how your gift is used
- ◆ Where we have a promotional agreement with a commercial company, we make clear how much of the purchase price we receive
- ◆ We give a clear explanation of how you can make a gift and amend a regular commitment

We Are Respectful

- ◆ We respect the rights, dignities and privacy of our supporters and beneficiaries
- ◆ We will not put undue pressure on you to make a gift and if you do not want to give or wish to cease giving, we will respect your decision
- ◆ If you tell us that you don't want us to contact you in a particular way we will not do so

We Are Fair and Reasonable

- ◆ We take care not to use any images or words that cause unjustifiable distress or offence
- ◆ We take care not to cause unreasonable nuisance or disruption

We Are Accountable

- ◆ If you are unhappy with anything we've done whilst fundraising, you can contact us to make a complaint
- ◆ We have a complaints procedure, a copy of which is available on request. If we cannot resolve your complaint, we accept the authority of the FSB to make a final adjudication

give with confidence



Fundraising Standards Board

PO Box 42197, London SW8 1ZS

T: 0845 402 5442

F: 0845 402 5443

Minicom: 18001 0845 402 5442 (via Typetalk)

E: membership@fsboard.org.uk

W: www.fsboard.org.uk

11/06

Registered in England and Wales. Company Limited by Guarantee.
Community Interest Company No.584626. Registered Office: 66 Lincoln's Inn Fields, London, WC2A 3LH.