HOUSE OF COMMONS

Public Administration and Constitutional Affairs Committee

Oral evidence: Fundraising in the charitable sector, HC 431

Tuesday 20 October 2015

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Written evidence from witnesses:

– Christopher Graham and Steve Eckersley

– Karen Brown and Daphne Harris

Watch the meeting

Members present: [Mr Bernard Jenkin (Chair); Ronnie Cowan; Oliver Dowden; Paul Flynn; Mrs Cheryl Gillan; Kelvin Hopkins; Mr David Jones; Gerald Jones; Tom Tugendhat; and Mr Andrew Turner.]

Questions 102-309

Witness: **Katherine Faulkner**, Investigations Editor, *The Daily Mail*, gave evidence.

Q102 Mr Bernard Jenkin (Chair): This Committee is in session. It is a private session, at your request, but we are recording a transcript and you have not requested an opportunity to redact the transcript in any way. Thank you very much for coming in. It is going to be very useful for us to hear from you before we quiz the other witnesses. Could I ask you to identify yourself, for the record, please?

Katherine Faulkner: Yes. I am Katherine Faulkner. I am the Investigations Editor at *The Daily Mail*.

Q103 Chair: Can we ask you to outline what you found in your investigation?

Katherine Faulkner: In our undercover investigation into fundraising? Yes. In June this year, I worked for three weeks undercover in a fundraising call centre that is used by some of Britain's biggest charities. It has shut down now, but it was called GoGen. The charity call centre was being used by Oxfam and by Macmillan. It had been used in the past by Save the Children but not while I was there. It was being used by Cancer Research UK and had been used in the past by the RSPCA and a whole string of other charities—the British Red Cross was its biggest client.

As part of my time there, I was trained as a call adviser, which meant that I was, on behalf of those charities, calling people up and asking them to give money, basically. I was on various different sorts of campaigns—sometimes it was asking for a direct debit from people who had never been called before and other times I was calling existing charity supporters and asking them to increase their donation. We had a different script for every campaign and, as I say, I worked there for about three weeks.

Q104 Chair: What did you find in particular that you think should be of most concern to us?

Katherine Faulkner: There were a number of things that I thought were of serious concern. The first was the attitude to who was being called in the first place. The understanding at GoGen was that they did not need to bother with the Telephone Preference Service, because they took the view that all the people that they were calling had opted in at some point, but it was very vague about how they had given this consent to be called. I failed to understand, for example, on a cold calling campaign where you were calling people who had never heard of the charity, how those people could have consented to that phone call in the first place. This was never made clear.

I knew about the Data Protection Act from my previous work in the field of data, because I had done a previous investigation into data and worked with the ICO on that, so I was well aware when I was being trained at GoGen that everything they were telling me about consent to phone calls was a load of nonsense, basically. There was the issue over who we were calling and what permission those people had given to be called, which was of concern. We were routinely calling people on the Telephone Preference Service. I believed there was no way they could have consented to those phone calls properly.

That was the first issue. The second issue—

Q105 Chair: Can you just go back a minute? When you say it was a load of nonsense, what sort of nonsense were they telling you?

Katherine Faulkner: They were saying that, for example, "We do not need to screen the people we are calling against the Telephone Preference Service because everybody you call at GoGen will have opted in either by ticking a box, saying, 'I have opted in,' or they might have said in a lifestyle survey, 'I would be interested potentially in giving to a cancer charity,' and we are then allowed legally to call them on behalf of Cancer Research UK or Macmillan, even if they are on the Telephone Preference Service."

Q106 Chair: Your understanding is that is not correct?

Katherine Faulkner: That is not correct. The Information Commissioner has said that is not correct, but the problem is there has been a lack of clarity in the law that has allowed that sort of practice to flourish and part of the Etherington review recommendations is tightening up that idea of consent, which I think is at the heart of this. One of the recommendations of the Etherington review, as I understand it, is to make consent specific to an organisation, which would really help so that consent is not transferable between organisations when data is traded. If Cancer Research UK want to call you, for example, they have to have proof that you have consented to Cancer Research UK calling you. You have not said in a survey 20 years ago that you are quite interested in cancer charities. That does not constitute proper consent, or it should not.

Tom Tugendhat: Nor giving certain things to Cancer Research UK and certain things to the RSPCA.

Chair: Just a minute. David.

Q107 Mr David Jones: Am I correct? I think you said in your evidence also that telephone numbers had been obtained from a company called Data Partnership, which operated out of Manila?

Katherine Faulkner: This is our previous investigation into data, where I first got a sense of what was going on here in terms of the data trading. As part of that investigation, we identified a number of charities who were using some unscrupulous data companies to obtain data. One of them was Data Partnership. What was going on there was that they did not have their own call centre in Manila—that is where they were buying data from. It is a practice where, essentially, if charities want to call people who are on the Telephone Preference Service, they have to prove that those people have given consent. They buy lists of people who have supposedly consented to a call from a data company and the data company gets those consents by calling people with a survey from a call centre, for example in Manila, and asking people a series of questions, "Would you like to do a lifestyle survey? We will give you £20 at the end of the call if you do it. It will take 10 minutes." People say, "Okay then," and then they ask a series of what seem like innocent lifestyle questions, such as, "If you were to support a charity would it be a cancer charity, an animal charity, a children's charity or a development charity?" You give your answer, but what you do not realise, and what is not made properly clear to you, is that every single answer you give is being sold as a lead to either a company or a charity somewhere. Another question on the survey might be about insurance, and then that answer gets sold to an insurance company. Another answer might be about window cleaning—it could be anything—and so those surveys are being used to generate data on people, which is then sold to charities and other organisations as well.

Q108 Mr David Jones: What is your understanding of the legality of a company calling from Manila to somebody who has indicated that they want to participate in the Telephone Preference Service?

Katherine Faulkner: If they are on the Telephone Preference Service they should not be called and, even if you are in Manila, if you are making that call on behalf of a UK-based company, that is not legal.

Q109 Mrs Gillan: Can I just follow up? I think you said that David Light of Data Partnership knew that their operations were illegal?

Katherine Faulkner: That strand of that Data Partnership investigation was done by my colleague, so I am not absolutely up on the detail of it, but I believe the transcript of what he said is in the report that I gave you. I am sorry, I do not remember it off the top of my head, because I did not do the interview with him.

The broader picture of what is going on here is that the vagueness in data laws about what constitutes consent has led to an entire industry of data companies who are not worried about the regulation and who bend the rules, to say the least, routinely. They sell data to charities and legitimate companies claiming that all these people have opted in, it is all above board, they have registered with the Data Regulator and everything is fine. Those companies and charities perhaps do believe that this stuff is genuine, but I am not sure how much they are doing to check.

In that data investigation, the reason we were targeting those organisations is that we had had information to suggest that that data was being sold to conmen who were targeting pensioners as part of a criminal scam, so we were very concerned about that data, where it was coming from and what it was being used for. We were quite surprised to learn that legitimate companies and charities were also getting involved in buying this data.

Q110 Mrs Gillan: Did your investigations lead you to those conmen? Were you able to show that the same lists that were given to certain charities were also handed on to people who were—

Katherine Faulkner: We did manage to prove that that was so in the case of a gentleman called Samuel Rae. I do not know whether you recall our investigation late this summer into him—his data was sold on hundreds of times. Using subject access requests, we were able to trace what had happened to his data and we found that some charities had directly sold his details to scam companies—companies associated with scams—so that was quite scary.

Q111 Mrs Gillan: Which charities were those?

Katherine Faulkner: The Diabetes Research and Wellness Foundation.

Q112 Ronnie Cowan: What led you to GoGen in the first place? Why them?

Katherine Faulkner: We were contacted by a whistleblower who had worked there, after the death of Olive Cooke. She wrote to us anonymously, sending us a number of calling scripts that she had used while she was there. She wrote us a detailed letter talking about what had happened while she was working at GoGen, and the concerns she had over essentially harassing elderly people for donations. That letter is part of the dossier that I have given to Bernard.

Q113 Ronnie Cowan: Did she front up to the charities that were involved or was her first port of call to the newspaper?

Katherine Faulkner: She quit her job and had not ever raised it with anyone because she thought it was awful and she just wanted to leave, and when there was a lot of publicity surrounding the death of Olive Cooke, she decided to get in touch with us. She did not ask for any money. She just sent us a load of information and we followed it up.

Q114 Paul Flynn: The real villains in this piece are the data companies who were selling information and pretending that they were live leads, and the charities are as much the victims as anyone else, but the articles that were produced in your newspaper reflected the agenda of The Daily Mail that, like the agenda of the Government, is to kick charities at the moment. Should you have concentrated your attack on data companies?

Katherine Faulkner: There are two parts to my answer. The first is that the first investigation that I did when I became Investigations Editor this year was a major investigation into data companies. We put it on the front page three days in a row with huge spreads inside. We named all of those responsible. A week before we published that, we took all our evidence about those data companies—there were six in total—to the regulators and the regulators are now looking at those data companies and what we found out about them. If you look at our page 7 today, you will see that the ICO has taken action against one of the companies involved because they were passing on medical data, so we did a huge amount on data trading. No newspaper has done more on those data companies.

The second part of my answer is there is absolutely no agenda with me or anybody at *The Daily Mail* to kick charities. We were acting on information that I was given by a whistleblower. I went into that organisation to see for myself. We gathered evidence. The evidence was pretty shocking. We published a story.

Q115 Paul Flynn: But this investigation started with the sad death of a lady collecting for the British Legion, but the case as presented turned out to be a false one. It was a false interpretation—she did not die for that reason. There were other factors involved, but that was never really corrected, was it? The image is there of this wonderful elderly lady who had been driven to her death by a charity.

Katherine Faulkner: About six months before her death, Olive Cooke spoke to her local newspaper in Bristol about the way in which she was being targeted by charities and her interview is very powerful. She talks about how she felt overwhelmed, how she felt that she was getting over 100 letters a month. That was just a few months before her death.

Her family have subsequently said that there were other reasons for her death—that is absolutely right—and we have always reflected that in our coverage ever since they have said that, but there is no doubt that, in the months before her death, this elderly lady felt overwhelmed by the number of charitable approaches that she was experiencing. There is clearly a public interest in that kind of experience being reported—that that was happening to older people had really not come to light before. We have been absolutely overwhelmed at *The Daily Mail* since we published our stories about charity fundraising by letters from older people who are having the exact same experience, so I would not seek to belittle that.

Q116 Paul Flynn: Just one point: like most other MPs I get complaints and in particular I take them very seriously when elderly people are exploited, particularly ones suffering from dementia, as many of them are. I have never had one case on the charities, and I am sure they exist and I am sure you are absolutely right to expose it, but I have dozens of cases of criminal companies offering prizes to people and saying, "You have won this. Send off some money," and that seems to dwarf the charity stuff. Has The Daily Mail done lots on these companies?

Katherine Faulkner: You will find that a lot of those companies buy their data from lists that have been passed on by charities. We proved that that was the case in our investigations.

Q117 Paul Flynn: From the charities?

Katherine Faulkner: Yes, the Diabetes and Welfare Research Foundation—

Q118 Paul Flynn: These are criminal companies who are carrying out fraud? They are offering prizes that are non-existent in order to dupe elderly people?

Katherine Faulkner: To dupe elderly people, exactly. They are targeting the very same people who generously give to charities. They end up on lists that get washed around and used by scam companies. That is one of the main concerns about what the charity is doing, that this data is ending up in the hands of criminals—exactly right. It is exactly that concern that motivates our investigations.

Q119 Tom Tugendhat: You did an undercover into GoGen. How many other of these companies are there?

Katherine Faulkner: There are many. *The Mail on Sunday* did a separate investigation into a company called Lists Unlimited. *The Sun* did another investigation into another company whose name I cannot remember—I am sorry—but there are a lot of them.

Q120 Tom Tugendhat: But they are not licensed in any way? They can just set up and operate from anywhere?

Katherine Faulkner: This is the problem. Charity fundraising regulation has been so complex and so ineffectual for so long, I think it is something that has now been quite widely recognised. It seemed to us that essentially the Fundraising Standards Board was the body that was supposed to regulate these call centres, as well as any other fundraising bodies, and what they were essentially doing is a kind of reactive service whereby, if they received a complaint, they would investigate it. I may be wrong on this but I think their only real power was to name and shame the company involved. About seven months before my investigation, there was a complaint against GoGen for exactly the type of abuse that I found when I was there, which was that a lady who was suffering from dementia was pressured to give money. A member of her family made a complaint to the Fundraising Standards Board. The complaint was upheld after they listened to the call, and GoGen was named on the FRSB website as having had this complaint upheld against it and they promised to put new measures in place, but obviously the culture had not changed by the time I got there.

Q121 Chair: To what extent do you think charities themselves, and indeed the leaders of these charities themselves, were complicit in this culture?

Katherine Faulkner: I certainly think that all of these charities simply have to take responsibility for what was going on in their name.

Q122 Chair: That is a different answer to a different question.

Katherine Faulkner: What do you mean by complicit?

Chair: How much do you think they knew? We can argue with them that they should have known, but how much do you think they knew, or was there wilful blindness?

Katherine Faulkner: It is difficult for me to say. I can tell you about what I saw in the call centre. To be fair, I cannot tell you about the extent to which the charities monitored it. I imagine there must have been a degree of wilful blindness, otherwise how could it have continued?

Q123 Chair: Your reports have dragged the names of these charities into the mud of the allegations that you have made. How justified is that if these charities were innocent parties?

Katherine Faulkner: Yes. These practices were happening. I do not think they are innocent parties.

Q124 Chair: If they are not innocent parties, how much do you think they knew about this problem?

Katherine Faulkner: They must have known.

Q125 Chair: They might be guilty of being misled, but to what extent do you think they were misled or they just refused to look?

Katherine Faulkner: I certainly think they must have refused to look. They must have known, for example, about the policy on vulnerable people, which meant that, even if somebody said they had dementia, they were getting confused and so on, that you could still take money from them—you just had to ask them in a slightly different way.

Q126 Chair: What evidence do you have of that?

Katherine Faulkner: I have put that policy in your dossier that I gave you.

Chair: Yes, but just tell us.

Katherine Faulkner: We had what was called a vulnerable bank details ask. All the calls were scripted and there was a structure that you had to stick very closely to. You could not deviate from that, so for everything that somebody might say there was a scripted response. If somebody said, "I am getting confused. I have dementia, I have memory problems," you had to say, "Are you happy to continue with the call? We want our calls to be of the highest ethical standard,"—it was something along those lines—and, "Are you happy to continue with the call?" If they then said yes, you could still go on to ask them for money but you simply had to use a special bank details ask, which is what it is called, for vulnerable people. That script involved asking for bank details in a slightly different way, but the only extra thing in it was that you had to get them to confirm, I think, the number of their house and the amount that they were willing to give.

Q127 Oliver Dowden: Do you have any evidence that the charities were aware of that script?

Katherine Faulkner: They must have been. It was a script being used in their name. The scripts—

Q128 Chair: Can I ask, because my understanding is that the charities themselves approved the scripts. Is that correct?

Katherine Faulkner: This is a slightly different thing. There is the script that you have for each campaign, which is talking about the charity and all the work it does and therefore, "Will you give us some money?" The charities write those scripts with GoGen, so that is the main script you are basing it on. However, as soon as somebody says, "Yes, okay, I will give you some money," you move on to this other script that is a generic script used in all campaigns across GoGen no matter what the charity, and that script is where you ask for money and the bank details.

Q129 Tom Tugendhat: Forgive me, but I am going to be very clear. Did you at any stage meet any members of the charity in the GoGen centre?

Katherine Faulkner: No.

Q130 Tom Tugendhat: Were you at any stage told by GoGen during your training sessions that the charities had approved the scripts?

> ***Katherine Faulkner***: Yes.

Q131 Tom Tugendhat: You were told by GoGen that the charity, whichever it was, Macmillan say, had approved the script that you were going to use?

> ***Katherine Faulkner***: There has never been any confusion over that. The charities even said that in your Committee, I think.

Q132 Tom Tugendhat: They said that they approved some of the script, but you are saying there are two scripts here. Forgive me, I just want to be absolutely clear.

> ***Katherine Faulkner***: No, that is fine. They certainly write the main script, which talks about the work of the charity. The other scripts are what always get used if somebody agrees to give money, and it is about asking them for their bank details, reassuring them that they can give their details over the phone and so on.

Q133 Tom Tugendhat: The bit that I am particularly interested in is the—

> ***Katherine Faulkner***: The second bit.

Tom Tugendhat: Exactly right, because the dementia element you mentioned is of particular concern. All of it is concerning, but it is particularly concerning not only that vulnerable people are being targeted, but that, even once they are recognised as being vulnerable, they are then continuously being targeted. That is why I am particularly interested in that bit.

> ***Katherine Faulkner***: Yes, I understand that. You would have to ask the charities whether they looked at those scripts, but my argument would be those scripts were an absolutely integral part of the telephone fundraising. They were used on every single call where somebody gave money. I think it would be extraordinary if the charity had not looked at them or asked to see them, particularly when there had been an FRSB adjudication over treatment of vulnerable people just months before—the vulnerable bank details ask had been developed in response to that complaint. Incredibly, that was seen to be their adequate response, which was asking for bank details from vulnerable people in a slightly different way. What was told to me was that that new policy for vulnerable people had been sent out to all the charities and they had all been happy with it. I was told that by GoGen.

Q134 Tom Tugendhat: GoGen told you specifically that they had said—

> ***Katherine Faulkner***: That the charities had seen that vulnerable policy and that they were happy with it, but I do not have proof of that. That is what I was told by GoGen.

Tom Tugendhat: No, no, but you had specifically been told that?

> ***Katherine Faulkner***: Yes.

Q135 Mr David Jones: You referred to the second script as a vulnerable persons script—I think that is how you described it a moment ago. Is that how it was known within GoGen?

Katherine Faulkner: It was a bank details ask in case of suspected vulnerability. I cannot remember exactly—

Q136 Mr David Jones: So, in other words, the vulnerability was acknowledged in the way that the script was referred to?

Katherine Faulkner: Yes. This was their version of having a really responsible attitude to vulnerable people. If somebody was vulnerable you were supposed to identify them. In the scripts that I was sent by the whistleblower that predated my time at GoGen and predated this complaint that I mentioned, there was nothing about vulnerable people. When I got there they had developed this specific policy for vulnerable people, so if you identified somebody as vulnerable, you would go through this specific script. That was seen by them to be an adequate way of dealing with vulnerable people.

Q137 Chair: Can I ask about the suckers list? What is that?

Katherine Faulkner: The suckers list? A suckers list is a term used within the data industry for a list of people who are known to be generous or gullible.

Q138 Chair: Did that include vulnerable people?

Katherine Faulkner: Yes.

Q139 Mrs Gillan: Can I ask you, because you were working in the call centre—I think that was a very brave thing to do, quite frankly—when you came across somebody that responded in a way that led you to believe that they were vulnerable, did you find it easy to get money from them yourself? I gather you were very—

Katherine Faulkner: Elderly people were always the most likely to give money. I had only one call where I had serious concerns about somebody's vulnerability, and that was when I was making a phone call on behalf of Macmillan and asking somebody to increase their monthly donation. It was a lady who was already giving a monthly donation and I was asking her to increase. She had refused twice, but in GoGen you always had to ask three times. On the third time, you have to ask them to just add £1. People find it very difficult by that point in the call to refuse, so the highest proportion of yeses are for that extra £1. She said yes to that, but then we were going through the bank details ask and she was starting to repeat herself. I thought, "I am not happy with this," so I raised this with the supervisor and said, "This lady has agreed to give a gift but she is starting to repeat herself and what should I do?" and so he referred me to go down the route of the vulnerable bank details ask. In that case, I had to get her to confirm the amount that she had agreed to increase her gift to, which I think was £4. I said, "Sorry, madam, please could you confirm to me the amount that you have agreed to increase your gift to?" and she could not remember. I told this to the supervisor and he said, "How much is she increasing her gift by?" and I said, "She is increasing it by £1," and he said, "Well, see if she can remember how much she is increasing her gift by." I went back to her and said, "Do you remember how much you are increasing your gift by?" and she said, "By £1," and she said she remembered that bit, and so it was all approved. He just gave me a thumbs up. There is a video of this that I have shared, and that was it. That was the kind of practice that went on. I had serious concerns about that call and I flagged it up to

Macmillan and provided them with all the evidence. They have told me they are investigating.

Q140 Chair: Before we move on, what do you think of the values of the people who you were working for in the call centre?

Katherine Faulkner: Who I was working for? Some of them believed that they were doing the right thing and that the end essentially justified the means. These charities do incredible work—they save lives and they help people who are in circumstances of poverty unimaginable to us in the west. Many of them took the view that it is absolutely ridiculous for anybody in this country to say they cannot give an extra £1. "I do not care if I am putting pressure on them, I do not mind if they feel bothered by a call, because this call could save somebody's life," was their point of view.

Q141 Chair: And others?

Katherine Faulkner: There was quite a high staff turnover rate. Quite a few people were uncomfortable with it and would leave.

Q142 Paul Flynn: Were those questions on the vulnerable persons script designed to exploit them even more or to defend them? Was it meant to find out who this person was who gave them the money, that she is not responsible, or was it a way of further exploiting them and asking them questions that would trap them into making larger donations?

Katherine Faulkner: I have provided my interpretation of the vulnerable script to the Committee. The vulnerable bank details RC—you can have a look for yourself and see what your interpretation is—had been created as a kind of tick box exercise to prove that something was being done to protect vulnerable people. Obviously, in reality, vulnerable people are not protected by simply asking them in a different way for bank details and making sure that they can confirm the number of the house that they live at. It is not real protection for vulnerable people, and that was recognised by GoGen. As soon as we printed our story they said, "We recognise this policy was not good enough. We tried to strengthen it but now we realise, given your exposures, that it was obviously not strong enough." They instituted a brand new policy as soon as we published our story, saying that if anybody said, "I have dementia, I have memory problems, I am getting confused," you would politely end the call, rather than going on to ask them for money. Of course, by then it was a bit too late.

Q143 Paul Flynn: How do you deal with the fact that you yourself, by doing a good job for this company, were exploiting elderly people? Is it just a question of the end justifying the means? You were successful at getting money out of vulnerable people.

Katherine Faulkner: What I did was expose a practice that I thought was deeply problematic and as a result of the stories I have published—not just as a result of them but I think they helped—we are potentially getting a new system of charity regulation that I think is going to protect vulnerable people in the future. I think that was probably more important.

Q144 Oliver Dowden: I was interested in the suckers list. Do you have any evidence of the breakdown of the suckers list? Are they predominantly elderly, vulnerable people? Did you get any sense of who the suckers were?

Katherine Faulkner: They are predominantly elderly. Companies associated with scams are only interested in elderly people, so it might be worth looking at the case that we have published today—the ICO has fined a pharmaceutical company whom we exposed as selling the details of NHS patients who were using that pharmacy to get prescriptions. They were selling the details of people. The company is Pharmacy2U. Pharmacy2U was selling lists of people who had used their service, either for NHS prescriptions or to just buy things from the pharmacy, to companies. One of the companies that they were selling those lists of data to was an Australian lottery company that has been associated with scams against the elderly. They sold the details of 3,000 people to this lottery scam company and what is really interesting is that the lottery scam company only wanted the details of people who were 70 or older.

Q145 Oliver Dowden: They specifically said that?

Katherine Faulkner: Yes. They wanted males aged 70 or over.

Chair: We are all gasping.

Katherine Faulkner: It is on page 7, so have a look.

Q146 Ronnie Cowan: What was the structure of the staff in the call centre? Was it like a bank of people on phones and one supervisor walking the floor?

Katherine Faulkner: Unusually for a call centre, there were lots of separate rooms rather than one big room. Each room would have a supervisor in that room who would give you a pep talk at the beginning of the shift, and there was an overall shift supervisor who was overseeing the performance of the entire call centre for that shift.

Q147 Oliver Dowden: How many people in each room were there making calls?

Katherine Faulkner: There were about 20 to 30 in each room, and there were about 10 rooms, so there were quite a lot of people working. You would have a day shift and an evening shift.

Q148 Oliver Dowden: As part of your pep talk before you started were targets set?

Katherine Faulkner: Yes, there were targets, and again this is in the dossier that I have given to you, Mr Jenkin, but it is—

Oliver Dowden: It is a very thick document.

Katherine Faulkner: Sorry, yes, I know.

Q149 Oliver Dowden: So are the targets set at the beginning of every shift?

Katherine Faulkner: Yes.

Q150 Oliver Dowden: Is it what the room was going to earn or what the individuals were going to earn?

Katherine Faulkner: We would get new targets set verbally at the beginning of every shift, but there was also an overall guideline target for staff at GoGen of how many people you had to sign up on a cold calling shift per hour and how many people you had to get to increase their gift on a direct debit shift per hour. There were two types of campaign: there was cold calling and direct debit increase. The first type is people who were new donors to the charity who you are trying to recruit, and the other type was people who already donated to the charity and you were trying to get them to increase their gift.

Q151 Oliver Dowden: If I am a supervisor of a room and there are 10 rooms, am I in competition with the supervisors of the other rooms?

Katherine Faulkner: Kind of informally they would joke about that, yes. Really the key thing from GoGen's point of view was to get through to as many people as possible and to get them talking, and to go through the script with them, because they got paid per contact. Even if you were not getting people to say yes, if I had got someone to sit there for five minutes to listen to me and go through the script, GoGen will get paid for that phone call. It was important to them to get as many contacts as possible, as they called it.

Q152 Oliver Dowden: Was the supervisor's salary affected by that as well?

Katherine Faulkner: I do not know about that.

Q153 Mr Andrew Turner: Just one question. You said earlier on that some telephonists felt this was worthwhile in view of the benefits that occurred generally. What proportion are there of those rather than those who do the job in a sort of normal way?

Katherine Faulkner: What do you mean "in a normal way"?

Mr Andrew Turner: Well, whatever it is, anything other than jolly enthusiastic because they have done a good thing?

Katherine Faulkner: A lot of people came on board with what GoGen were doing because they believed in what the charity was doing. That is definitely the case and then, as I say, others were not comfortable with it.

Q154 Mr Andrew Turner: The proportions?

Katherine Faulkner: It is difficult to say, because people would just leave and you would not see them again. There was such a high turnover. Even on my training day there were 10 of us and by the end of the day one person had left. People would drop out and drop in. It is difficult to say.

Q155 Mrs Gillan: Just before I ask the sector's response questions, the thing that made my blood run cold was reading these specific charities: Great Ormond Street requires donors to agree to have their details passed on to third parties and there is no option to opt out and in Macmillan they say, "Your details will be kept securely but shared with suppliers or partners". This is to raise more money for the charity so I presume that they are taking money for passing on their lists?

Katherine Faulkner: Yes. It is a very complex question but essentially the issue of consent, you are right, is right at the heart of this problem. Some of the ways that charities are gaining consent for calls I would say is questionable and certainly does not appear to fit with the ICO's guidelines on the PECR regulations and on data protection. For example, if you have to tick "my privacy policy" if you want to donate £10 online, you are giving consent to having your data shared—a condition of donating to the charity. That has happened in many cases in the past. I do not know if the charities are now changing their opt-ins but that is one thing that has certainly happened in the past.

Q156 Mrs Gillan: That is really the next question. What is your assessment of the way in which the sector has responded to all these revelations and the allegations that effectively have been made? Have they responded well or adequately, or do you think that there are still enormous risks surrounding this area and that more needs to be done?

Katherine Faulkner: It is difficult to generalise, because they have responded differently. Some charities threatened us with legal action before we published our story and—well, I should not really talk about it—others were quite open and said, "Well, you have identified things we were really concerned about," and suspended their fundraising straight away and started investigating it. There were different responses.

Q157 Chair: Let us praise the good charities. Which were they?

Katherine Faulkner: Oxfam suspended their fundraising in the UK. They were the first to do that and they looked at it.

Q158 Mrs Gillan: Is that it?

Katherine Faulkner: Well, then the other charities followed suit.

Q159 Chair: Can you tell us who threatened you with legal action?

Katherine Faulkner: I do not know if I should. I am not sure. Should I say anything? I don't know.

Chair: Everything you say is public and it is privileged, but it is up to you.

Katherine Faulkner: Maybe I could go back to my lawyers and see if they are going to kill me if I tell you. I can only really say that my communications with them might not have been the warmest, but Sir Stuart Etherington has told me that they are ready to change and they recognise what has happened here is really serious and that things need to change in order to restore trust in the sector. That sounds very welcome.

I think the big test is how they respond to your report and to Sir Stuart Etherington's report. That is the test of how they are going to respond.

Q160 Mrs Gillan: We are dealing with vast amounts of data here. It is really quite frightening. Some firms apparently are boasting that they are holding 45 million records of donations, which is astronomical. In your contact with the charities or in your experience around this investigation do you think that the charities believe that they have to take responsibility for what is going on? We are finding it quite difficult to dig under the surface. Indeed, with some of the big charities that we had before us it took them to the end of the session and they had to be asked before they apologised.

Katherine Faulkner: I think you have identified something quite important in your last session, which was that these charities have got so used to not really being questioned because they have such fabulous reputations. Indeed, I think a lot of journalists shied away from challenging charities because they do such good work. It is a little bit of a taboo subject, and then after the death of Olive Cooke people started asking these questions. It is probably quite a difficult psychological shift for them but charities control a huge amount of money that is freely given. They enjoy huge privileges. They are not subject to FOI in the same way that public sector organisations are, for example, so they are not subject to the same levels of transparency as other bodies that control huge amounts of our money. I think that there perhaps needs to be a little bit more transparency there about what is going on in charities.

Q161 Mrs Gillan: Do you think they are too big and too beneficial to fail, in many ways?

Katherine Faulkner: It is beyond my pay grade to offer opinions. My role is to uncover things that have not been in the public domain previously and to try to bring things to light that are perhaps hidden. It is kind of over to you now.

Q162 Gerald Jones: There were regulations in place previously. How do you feel the charities and the data mining firms have evaded discovery under the current regulatory structure?

Katherine Faulkner: I do not think anybody is adequately resourced to police what is going on in the world of data. The sharing and selling and trading of data is a huge industry making hundreds of millions of pounds a year. As far as I can see, there are regulations but nobody is checking up on these data companies. Until we exposed that this data company had a relationship with Pharmacy2U, they were selling people's records. The ICO's Deputy Commissioner said today that if *The Daily Mail* had not exposed it, it would have just carried on. I think the deputy commissioner was right. The data industry is slightly out of control, but I do not think that anyone is really regulating what goes on with our personal data.

Q163 Gerald Jones: How best can we deal with that in terms of closing those loopholes?

Katherine Faulkner: I think that one of the main problems is that we have an opt-out system in the UK. In terms of calling people up—cold calling—as long as you have not opted out of having your data shared or being called by an organisation, they can call you. It is the other way round in other countries such as Germany. In Germany, you have to have opted in to that organisation for them to be able to call you. The Telephone Preference Service was supposed to be the way that you could blanket opt-out to cold calls but the problem with the Telephone Preference Service is that it has the caveat "unless you have opted in". That is when you get companies and charities trying to get hold of these, I would say, phoney opt-ins from surveys and so on. There is an industry that has sprung up around providing these opt-ins—opted-in data—which enables companies and charities to get around the TPS. The TPS is not working in its current form.

Q164 Gerald Jones: The Etherington review talks about self-regulation and, given the abuses that you have uncovered, are you confident that that would work?

Katherine Faulkner: I think the Etherington review makes some really good recommendations and the key will be enforcing them and ensuring they are not watered down. For example, as I just told you, there are serious problems with the Telephone Preference Service in my opinion. The fundraising preference service that Sir Stuart Etherington has proposed would be a blanket opt-out of fundraising. In other words, if you joined the fundraising preference service, then even charities you are signed up to would not be able to phone you because you have said you do not want fundraising calls. That is great as long as it does not get watered down, caveats inserted, “Oh, but it is okay if we know this person, they have given to our charity before.” As soon as you do that it will go the same way as the Telephone Preference Service, I think.

Q165 Mr David Jones: You must have spoken to a few irate people during your three weeks at GoGen. Did anyone ever ask you to remove their telephone number from your database?

Katherine Faulkner: Yes. When that happens, you have to do it, but if somebody says, “I am so fed up with phone calls, absolutely I don’t want any more calls, leave me alone,” then you do not—you have to only if somebody specifically says, “Please can you take my number off your list.”

Q166 Mr David Jones: If they did ask you to do that, you would remove it for all the charities you were representing or just for the charity you were calling for?

Katherine Faulkner: No, just for the one making that campaign.

Q167 Mr David Jones: So those details would remain for every other charity on your database?

Katherine Faulkner: Yes, that is right.

Q168 Chair: I have two final questions. We are going to have the Information Commissioner in front of us: what do you think is the question we should be asking him?

Katherine Faulkner: I think the key question is how can we strengthen the idea of consent in the law so that it is a genuine consent, and so that the consent is linked to a named organisation and not just general consent. How can we ensure that people’s consent is not said to last forever? Surely there needs to be a time limit. If you said, “Yes, you can call me” 20 years ago, it does not mean that you still want cold calls 20 years later. Those are the kinds of things that I think are at the heart of it. The other question from me is: why are charities permitted to buy and sell an individual’s data? Why is it allowed? I do not really understand why they need to do that.

Q169 Kelvin Hopkins: It seems to me that the logical way to deal with this is if the charities had their own staff calling people rather than using companies to do it. If Macmillan had their own group of people—I know they are more expensive and it would be a bit more difficult, no doubt—people would then trust it when we have these companies doing the job.

Katherine Faulkner: Bring it in-house?

Kelvin Hopkins: Would it not be a good idea to require charities to do their own work rather than getting companies to do it for them?

Katherine Faulkner: It is a fair question but I think, to be fair to the charities, they do have a real problem here because charities do not want to be spending too much of their charitable funds on fundraising, for obvious reasons; they want it to go to the work. They want to keep the proportion of the money that they are spending on staffing and administration and raising more money as low as possible, and I think that is a laudable aim. They say that, in order to do that, they do have to outsource this stuff to cheaper providers, otherwise the public will suddenly start asking why is 50% of their money going to—

Q170 Chair: The costs of the fundraising. They only get a net income. They do not have to account for the costs of the operation and the gross income to the operation because that is all outsourced. They just get the net figure into their accounts?

Katherine Faulkner: No, I think it is just that it is simply much cheaper and more effective to use a professional company to do it. This is what they say. They think it would be a waste of their charitable funds.

Chair: I rather suspect that if they get income from a fundraising operation that they have contracted with, they will only show the income from that fundraising operation—they will not show the gross income and the costs.

Tom Tugendhat: When the four chief executives were here they did say that they accounted for the cost, I seem to remember.

Chair: They accounted for the cost? We need to clear that up.

Tom Tugendhat: We need to clear that up but I seem remember that.

Katherine Faulkner: Essentially I think there is a tension there and it is difficult for charities potentially to get the balance right between the two things.

Q171 Chair: We will get some advice on that. I have one other question about the trustees: what is the question we should be asking the trustees who are also coming before us this morning?

Katherine Faulkner: Well, obviously the trustees' role is to protect the reputation of the charity, so I think that the key issues for trustees is answering Cheryl's previous question from the last session, which is: have you turned a blind eye to fundraising and concentrated too much on the work that your charities have done, and perhaps not paid enough attention to the somewhat grubby business of raising money that you would rather not think about? That is the shift that needs to take place. It needs to be a key part of what they are thinking about.

Q172 Mrs Gillan: It may be in the brief, I do not know, but how was GoGen paid? Was it paid a proportion of every £1 it raised or was it paid by the number of calls it made?

Katherine Faulkner: It was the number of calls where you got through to somebody and got past the initial opening, as it was called. If I were to call you, I would say, "Hello, my name is Katherine, I am calling from GoGen. Could I have a couple of minutes of your time?" You said, "Oh no, I am just popping out." I would say, "Oh really, just a couple of minutes"—you would always make two attempts—"I promise I won't be long." If you said, "Oh, go on, then," and I got to tell you about the charity and the work, GoGen would get paid for that call. But if you said, "No, really I definitely do not want to talk to you," and hung up the phone, then GoGen would not get paid.

Q173 Mrs Gillan: How much?

Katherine Faulkner: I do not know how much.

Mrs Gillan: You do not know how much. Okay.

Chair: Katherine, thank you very much indeed for your evidence and, if I may say so to my colleagues, for your rather amazing work. I think you have done a great public service and the charities in the end will thank you.

Katherine Faulkner: Thank you.

Examination of Witnesses

Witnesses: **Christopher Graham**, Information Commissioner, and **Steve Eckersley**, Head of Enforcement, Information Commissioner's Office, gave evidence.

Q174 Chair: Welcome to our two further witnesses to this session on charitable fundraising. Could each of you identify yourselves for the record, please?

Christopher Graham: I am the Information Commissioner.

Steve Eckersley: I am Head of Enforcement at the Information Commissioner's Office.

Chair: Thank you very much for being with us today.

Q175 Paul Flynn: What in your view is valid consent for an individual to be contacted by a charity?

Christopher Graham: It is consent that you know you have given. If you are taken by surprise and you say, "Why are you ringing me?" then you did not give consent. Best practice is that there should be a box that you would tick to opt in, but it depends on the circumstances. What we have discovered over recent months in the course of our investigation is that there are far too many people who say, "No, I never gave consent, go away," which suggests that lists are being traded and passed around and people who may have given their consent for one purpose find that they are contacted by others basically trading on their goodwill.

Q176 Paul Flynn: If somebody fills out a lifetime survey that purports to be just an enquiry about their views on half a dozen subjects and includes a question saying, "If you were to give to a charity would you give to an animal charity or a medical charity or an elderly charity?" and answers that question what their preference would be, would you regard that as valid consent to be approached by that charity?

Christopher Graham: No, particularly if it was done many years ago, which is the case that we are all interested in. I think the message is getting across to the charity sector that the rules that apply to direct marketing apply to them, just as they apply to everybody else. Certainly in the case of phone calls, you have to have consent that would override somebody's indication on the Telephone Preference Service that they did not wish to be disturbed, thank you very much. They just have to be better at making clear that they are approaching people who want to hear from them.

Q177 Paul Flynn: How confident are you that the charities are aware of their obligations under data protection legislation?

Christopher Graham: They are certainly more aware than they appeared to be a few months ago. We published very clear guidance when the Privacy and Electronic Communications Regulations came in, and we renewed that guidance in 2013. It is a matter of some disappointment that the Institute of Fundraising appeared to be resisting the reality that the direct marketing guidance did apply to the charity sector. We found a concern to find a balance between privacy of donors and the needs of charities and the good causes and so on. I have had to explain, "I am sorry, privacy is a fundamental right. The Privacy and Electronic Communications Regulations apply to all direct marketing and they apply to you." But it took until, I think, 18 August to get the Institute of Fundraising to change the guidance they had on their website and to agree that the clarity that came from the 2013 Information Commissioner's Office Direct Marketing Guidance really did apply to the charity sector.

Q178 Paul Flynn: They were sinners in the past. Are you satisfied that they are all virtuous now?

Christopher Graham: I think Steve might comment on the progress that we have been making in the one-to-ones with charities.

Steve Eckersley: Yes, Mr Chairman, one of the tactics that we used as part of our enforcement is to hold organisations to account. We hold a compliance meeting and what we do is we invite the organisation in and we have a face-to-face discussion, making sure that they have the checks and balances and due diligence that would ensure that they can comply with the Privacy and Electronic Communications Regulation or the Data Protection Act. We have been quite successful in this approach and this is the approach that we took for most of the organisations that we identified following *The Daily Mail* exposé.

Q179 Paul Flynn: The trustees of these charities are generally people doing work for the best of motives, usually at no remuneration for themselves. Are they in a position to impose better behaviour on their own charities? Are they informed enough? Do they have the powers to ensure that their charities do not stray?

Christopher Graham: Charity trustees, of course, have to work within the charity law and the law administered by the Charity Commissioner and I think this will be a wakeup call for the charity sector generally, including the trustees who I believe you are hearing from later.

I think probably the direct marketing side of the charities were the ones who were being very buccaneering and felt they had right on their side. Their job was to raise as much money as they possibly could for good causes and that was manifestly a good thing to do. It has taken a lot of work to explain that the rules really do apply to them, but we think the message is getting through and if it still does not get through then we will not hesitate to use our enforcement powers to make sure the Privacy and Electronic Communications Regulations are observed.

Q180 Paul Flynn: Are you sympathetic with the charities who are competing for a shrinking pool of donations and they see a competitor charity using chuggers and using illegitimate methods of pressure on the vulnerable? Is it not inevitable that they have to compete in such a market and take on these bad practices?

Christopher Graham: No, I do not think it is inevitable and I think it is up to the regulator, including the Information Commissioner, to make sure that there is level playing field and everyone sticks to the rules. You could say isn't it difficult for people operating in direct marketing generally because we are living in difficult times and people are buying less and so on, so surely you will turn a blind eye? The answer is no, I will not turn a blind eye, I will enforce the rules.

Paul Flynn: I am grateful to you, thanks.

Q181 Chair: Can we just go back to your notion of valid consent, which you said a few moments ago, if I recall correctly, that this is when somebody ticks a box in favour of being contacted?

Christopher Graham: Our best practice is that in a privacy policy or any communication there is an opportunity to opt in to receiving further communications, but it depends on the circumstances. There may be situations where opt out would be perfectly acceptable. The important thing is that the data subject, as we say, should be clear what the choice is and it is manifestly clear that if people are protesting that they are being bothered and contacted by charities, however worthy, that they do not want to hear from then they cannot be said to be consenting.

Q182 Chair: Is this a matter of law or is this a matter of best practice?

Christopher Graham: It is a matter of the Information Commissioner's Office recommending best practice to comply with the law, with the Privacy and Electronic Communications Regulation and the Data Protection Act. But it is very difficult to say that in all circumstances a particular mode of consent is appropriate.

Q183 Chair: How much of what has been going on does not constitute valid consent, in your view?

Christopher Graham: Again, it depends on the circumstances. I think there was quite a lot of evidence from what we have been investigating that charities were using lists of names that were not their own supporters but were the supporters of somebody else or perhaps lists of people who had signed up to a lifestyle survey, as we have heard. They were likely prospects but they had not given their consent and that is what our investigation is really all about.

Q184 Chair: When did you first learn of these practices?

Christopher Graham: We were concerned about some of the big charities ignoring the Telephone Preference Service. We wrote to eight major charities in March 2014, so it was a long time before *The Daily Mail* got going. Interestingly, although we had very many complaints about nuisance phone calls, we had relatively few complaints about charities. It came as a surprise to us when we started investigating and we found that the Fundraising Standards Board were getting many, many complaints, but people were not complaining to the Information Commissioner's Office, which was kind of odd because people are very ready to complain to the Information Commissioner's Office about nuisance phone calls for commercial products.

We have now established or are in the process of establishing a memorandum of understanding with the Fundraising Standards Board so we can share information. If they do have 50,000 complaints, then the regulator for the Privacy and Electronic Communications Regulations ought to know about that. But we did not.

Q185 Chair: If you knew about this long before *The Daily Mail* blew this into the public domain in a very big way, how satisfied are you that you were taking sufficient action about it?

Christopher Graham: I am very satisfied that we contacted the big charities that I mentioned—

Chair: That was not the question.

Christopher Graham: The answer to your question is that we have been engaged with dealing with nuisance phone calls on a very broad scale, working with other regulators over the past—

Q186 Chair: I will ask the question again. How satisfied were you, are you, that you were doing enough?

Christopher Graham: I do not think you can ever say we are doing enough. We are doing a lot. I am very satisfied that Steve Eckersley's enforcement team is working very professionally with a whole series of police-like investigations on nuisance phone calls in general, of which charities are a part.

Q187 Chair: How long should a valid consent last for?

Christopher Graham: It absolutely depends on what the service is and what the offer was. You cannot say hard and fast.

Q188 Chair: If you tick a box or you fail to tick a box that excludes you from contact, how long should that negative consent last for?

Christopher Graham: I would say in the case of the gentleman who was the subject of the second *Daily Mail* investigation, to be deemed to have given your consent 14 years ago because you took out some pet insurance or signed a lifestyle statement is manifestly not consent.

Q189 Chair: What regulatory activity have you been involved in to deal with that problem?

Steve Eckersley: Mr Chairman, there are two investigations that I would like to highlight and one operation. First of all, Operation Linden is something that the Information Commissioner's Office brought together and we are keen to work with other agencies in order to understand a little bit more about the way that list brokers and lead generators collect personal data and turn it into profit by selling it to large-scale organisations, and also the way that they trade personal data. I know it finds itself under what we call the data cycle. Quite often, that manifests itself further down the track with a resulting cold, unsolicited call, but more concerning is the fact that it also manifests itself into a scam, particularly targeting vulnerable members of the community, which obviously we are concerned about. We work closely with the police, trading standards and Citizens Advice to get a better foothold and hopefully disrupt that type of activity.

Just turning to the two investigations, so first of all—

Q190 Chair: I asked a very short question and I am getting a very long answer. I am sorry, I am going to make you give me shorter answers because I think it will be more helpful. How effective has your regulatory action been at dealing with this problem?

Christopher Graham: Should I deal with that as the Commissioner? That is a bit like asking, "How long is a piece of string?" I am confident, as the Commissioner charged with regulating the Data Protection Act and Privacy and Electronic Communications Regulations, that the resources I have with my enforcement team are making a substantial impact on the scourge of nuisance phone calls, including charity calls. I can only know what is brought to my attention and what I am working on. You have asked for my opinion and my opinion is that we are being pretty effective, but I cannot know that there are not other concerns out there that are not being registered with the Information Commissioner's Office.

Chair: I think that is a fair answer.

Q191 Mrs Gillan: Mr Eckersley, you were trying to give us two case studies that you were doing in your investigation, but the danger for me is that these charities in the case study you were trying to outline for us are very closely linked with scams, it would seem, which is a great shame because one sector is criminal activity and the other is trying to raise funds for good causes. However, will your investigations extend to looking at those charities who openly admit that they sell on their lists? We have been given evidence that there are at least two, if not more, charities that say to people, "We are going to sell on your details because it helps my charity make money."

Steve Eckersley: The short answer to that, Mr Chairman, is yes, it will stretch to that, particularly under an offence in the Data Protection Act, and particularly under a breach of one of the principles, not least the first principle, which is fair processes.

Q192 Mr David Jones: Mr Graham, you mentioned the issue of how long a consent should be deemed to last. A lot of these tick boxes contain a phrase of the sort, "We will share your details with a select number of other companies, carefully selected" or words to that effect. We have had evidence that, in fact, these were being widely sold by the charities and in fact became a commodity that were traded widely in the marketplace. How would you interpret such a narrow consent?

Christopher Graham: In the case that is highlighted in the papers today of Pharmacy2U—it is not the charity—we have imposed a civil monetary penalty of £130,000 for just that activity. Information had been traded and has landed up in some very undesirable hands, including an alternative herbal remedy product that had been criticised by the Advertising Standards Authority for misleading advertising and, unbelievably, an Australian lottery scam. That is where a company takes unto itself the right to pass on information because they said, "We would like to pass your details on to companies that may have been of interest," but I should not think anyone thought they were going to be dealing with an Australian scam lottery.

We have imposed that civil monetary penalty because that is a breach of the first data protection principle under the Data Protection Act of fair processing. It is not fair processing. You have to see it to make that judgment: is that fair or not? Many times we find ourselves ticking boxes that companies will introduce us to other companies that they believe will be of interest to us, but it is stretching goodwill too far to include Australian scammers.

Q193 Mr David Jones: You mentioned a moment ago that you can only respond to complaints that are made to you. Do I understand that to mean that you do not act proactively?

Christopher Graham: We have an invitation on our website, which is now very well publicised, for people to register their concerns about scam mail, about nuisance phone calls, and we can build up a picture from all those small instances that lead us to where these mail shots are coming from and phone banks. That is how we are able to execute warrants to raid the warehouses where the mobile phones are firing these things off in Hove, Trafford and so on. Although it is as nuisance when you receive one of these calls to have to do something else, going on the ICO website and registering your concern really does help Steve and his team to identify who these people are and get on with it. But a bit of mystery shopping—am I allowed to say that?

Steve Eckersley: Yes.

Christopher Graham: We are also doing some mystery shopping where we buy SIM cards and we—perhaps I had better not go into too much detail about that. We set out to get called.

Q194 Mr David Jones: So you do act proactively?

Christopher Graham: Yes, we do. It is a combination of consumers contacting us and us then following up useful leads and doing a bit of mystery shopping.

Q195 Mr David Jones: How big is your enforcement department—Mr Eckersley's department?

Steve Eckersley: A couple of years ago before the problem manifested itself we were around 28 strong and now it is just short of 60 strong, but not all those investigators are investigating this particular problem. In terms of the Privacy and Electronic Communications Regulations, cold calling, we have at any one time about 12 to 15 investigators investigating cases across the UK. We have been very successful. If you look at the amount of penalties that we have issued, it is quite substantial.

There was a significant change, though, in April of this year when the Government removed the threshold. At one time in relation to breaches of PECR, as it is termed, we had to prove substantial damage and distress but we argued the case that that should be removed so that we could take more effective regulatory action, and that happened on 6 April. We have many fines in the pipeline and that is exactly what we are going to do. We are going to target organisations and we are going to hold them to account and issue fines where appropriate.

Q196 Mr David Jones: Mr Graham, you mentioned that last year you became aware of the activities of, I think, eight charities that were causing you concern?

Christopher Graham: Yes.

Mr David Jones: Given that, what was your personal reaction to the allegations made and published by *The Daily Mail*?

Christopher Graham: I was very shocked at the nature of the abuse that was uncovered, in particular the case of Olive Cooke, which I think we all found very distressing. This is something that we have been concerned about for the past five years and, working with the Serious Organised Crime Agency, trading standards and Citizens Advice, we are co-sponsors of a campaign called Think Jessica, which was specifically designed to raise attention so that people will watch out for vulnerable elderly people who were subject to mail scams and phone scams. It looked as if this was sort of a variant of that with somebody who was elderly, had a great sense of public spirit, wanting to help, a poppy seller and so on, just being driven to distraction by repeated requests for money by different charities.

We are very aware that those people who are elderly and living alone are particularly vulnerable. They are at home for a start, they believe that when the phone rings it might be important and you answer it, and very often they have a sense of public spirit and they somehow feel guilty that they are not contributing. They need to be looked after particularly.

Q197 Mr David Jones: But you cannot have been wholly shocked, I would suggest, given what you had experienced the previous year when you obtained details of the other eight charities?

Christopher Graham: I think the circumstances of that particular case we would all agree were particularly distressing, but it was not the first time certainly, because of our involvement with Think Jessica, that I have heard of this sort of case, I have to admit. What I was shocked about in relation to the second case, Mr Rae, was I became increasingly concerned that the evidence was that the fundraisers believed that they were somehow above the law and a special case. It took an awful lot of persuading that there was not a trade-off to be done. I felt in the early contact with the Institute for Fundraising and with some of the major charities that they were concerned, not to comply with the law, but to see whether there was some wiggle room, and whether I would accept that there was a balance to be found between the privacy of individuals and the manifest needs of the charity and the fantastic work they were doing. I just had to explain, sometimes in rather blunt terms, to some leading charities, "I am sorry, there is not a trade-off here. That is the law. You have to stick to it".

Q198 Mr David Jones: Were any of the charities identified by *The Daily Mail* among the charities that you had been concerned about the previous year?

Steve Eckersley: Yes.

Q199 Mr David Jones: This was well over 12 months before *The Daily Mail* published its article, so those organisations clearly were still carrying out those activities in June of this year, notwithstanding that you had approached them in the early part of last year?

Steve Eckersley: Yes.

Christopher Graham: We had drawn particularly to their attention the fact that the Telephone Preference Service could not be overridden except with prior consent. To the extent that one of the problems that *The Daily Mail* was issuing was the frequent overriding of the Telephone Preference Service because of this concept of warm donors and so on, that was certainly very disappointing. But I do stress the fact that the Fundraising Standards Board had apparently had 50,000 complaints was unknown to us. If we had had that level of complaints at the Information Commissioner's Office, we certainly would have been faster on the case.

Q200 Mr David Jones: But with respect, you expressed concern in the early part of last year to some of the charities who were later identified by *The Daily Mail*. It is quite clear that they ignored what you told them, didn't they? They just carried on with their previous practices?

Christopher Graham: It appears that that is the case.

Q201 Mr David Jones: Don't you feel, frankly, that as a regulator you have failed in relation to those charities?

Christopher Graham: No, I absolutely don't, because we acted on the information that we had. The information that bad practices were continuing was going to the Fundraising Standards Board and not to us. Meanwhile, in another part of the world, I have got the Home Affairs Committee demanding that we take action on the issue of private investigators. Steve's team was heavily involved with another operation, Operation Spruce, dealing with that, and then working with the other regulators on nuisance phone calls generally—Operation Spruce and Operation Linden. We were not inactive, but we were active on a very wide front.

Q202 Mr David Jones: You may not have been inactive but what I am suggesting is that you were ineffective in curbing the activities of these charities, who continued their abuses until June when *The Daily Mail* exposed them.

Christopher Graham: All credit to *The Daily Mail*. We have been acting on that information, and the evidence is that the charities are now coming to heel. I am confident that we are going to be able to enforce the law. I think some of the suggestions that have come from Sir Stuart Etherington's review are probably unnecessary and probably going to make the situation less clear than it is now. But there should be absolutely no doubt, from all the coverage of this issue and the interest of no fewer than three Whitehall Departments who have been scrambling to take action on the charity issue, that the problem is now being dealt with. It is easy to regret the locust years, but we are getting on with it now.

Q203 Mr David Jones: Do you consider that if the allegations of *The Mail* are true that those charities have broken the law?

Christopher Graham: That is what we are investigating.

Q204 Mr David Jones: So you do think there is a prima facie case that they have broken the law?

Christopher Graham: There is certainly a prima facie case. The investigation is to see whether the breaches are of a civil nature, or possibly in some cases of a criminal nature, and then decide what the appropriate thing to do about it is. But I am concerned to get compliance by hook or by crook, and I think we are succeeding.

Q205 Mr David Jones: Would you like the law to be tightened?

Christopher Graham: If I had a shopping list of things that I would like, I would like our direct marketing guidance to have the status of a code laid before the House and recommended by the Secretary of State. That is one of the recommendations that you might make, because then organisations like the Institute of Fundraising, or whatever is a successor body that is going to be the code-writing body, and the Fundraising Standards Board and so on, would have to have regard to a statutory code. I think that would be good.

I am not in favour of the fundraising preference service idea, which I think is simply a confusion. The Telephone Preference Service is something I can enforce under the Privacy and Electronic Communications Regulations. I am worried that the fundraising preference service is something that I would not have any status to enforce, and it just might lead to greater confusion when we need clarity.

One change I would like this Committee to consider would be to deal with individual rogue elements working within charities, where there is a criminal breach of the Data Protection Act. As we learned from the "Money Box" programme on Saturday, someone at Aviva had decided to put a whole load of customer information out there, and that is a criminal act that is being investigated by the police, or the story we saw in *The Sun* yesterday of the payday loan companies. Where you have individuals simply going rogue, the penalty under the current legislation, until an Act of Parliament that you have passed is commenced, is a fine-only regime in the Magistrates' Court, and that is desperate. When you passed the Criminal Justice and Immigration Act in 2008, in section 77 you provided for the possibility of a custodial penalty, and that has never been commenced.

The Justice Committee, the Home Affairs Committee, the Joint Committee on the Communications Data Bill and Lord Justice Leveson, have all said, "This ought to be commenced." But it still has not been commenced, years after you passed it. It is increasingly clear that data, which is so valuable, is very vulnerable to rogue behaviour by individuals. I can impose all the civil monetary penalties I like for the civil breach, but we need a criminal breach.

Q206 Chair: We have got the point. In this case, we are not dealing with individuals. We are dealing with large charities and organisations who have contracted to work with charities.

Christopher Graham: Well, hang on, because until we have finished our investigations we do not know exactly what all the details of the chain have been.

Q207 Mr David Jones: Finally, could you tell us which were the charities that caused you concern last year that were identified in *The Mail*?

Christopher Graham: I will have to write to you on that, because I have this in the briefing but—

Q208 Mr David Jones: You will write and tell us that?

Christopher Graham: I will write and tell you that.

Q209 Oliver Dowden: You mentioned the story in *The Mail* today and the sale of the data to the Australian lottery company. As I understand it, that was in relation to over-70s, and there seems to be a pattern here of the sale of data in relation to vulnerable people. Is there a higher level of consent required for vulnerable people? Do you differentiate as to the level, the way in which people can consent, as between an ordinary person, a more elderly person, a more vulnerable person? Is there any differentiation there?

Christopher Graham: There is no differentiation in the law, but the £130,000 penalty was for the breach of the first data protection principle, which is that personal information must be processed fairly, and there is quite a lot of evidence of unfair practices. If people are being particularly singled out because they are elderly and vulnerable, that obviously would not be fair. Again, it is a question of looking at the individual cases and deciding what is appropriate.

Q210 Oliver Dowden: But you do not issue specific guidance to ask for a higher level of consent required from people who are, for example, suffering from dementia or very elderly?

Christopher Graham: I have mentioned the Think Jessica campaign that we have been involved in for the past five years, and our direct marketing guidance makes it very clear that the offer to the consumer has to be clear. The privacy notice has to be clear. There is no point in producing a load of either legal gobbledegook that nobody can understand or a tick box buried at the end of pages and pages of stuff when you are not quite clear whether the tick box is to opt in or opt out, or perhaps you are ticking a double negative. There is a lot of subterfuge involved in all this, and that is what we are trying to combat.

Q211 Chair: I think the point that Mr Dowden is making is that, if somebody is on the end of a telephone and they are clearly confused and there is persistent means to try to obtain a form of consent from that confused person, surely that is against the law? That should be against the law?

Christopher Graham: You can't seek consent over the phone, because you should not be—

Q212 Chair: What about somebody who is already on a direct debit and you are seeking to get them to increase their direct debit and you have somebody confused on the end of the phone? We have had the evidence that this is what they do. When they are confused, they ask them not how much they want to give but whether they want to increase the amount and can they remember how much they have just said they are going to increase the amount. If they can remember, that constitutes consent. Off they go; they raid the bank account for more money.

Christopher Graham: I have to work within the Data Protection Act and the Privacy and Electronic Communications Regulations, but the Charity Commission and the new regulatory structure that has been recommended by Sir Stuart Etherington may very well have views about what charities ought to be doing in relation to more vulnerable people. The law does not make a distinction.

Q213 Chair: The law does not make a distinction, so what these call centres have been doing, in your view, is legal in that instance?

Christopher Graham: On that particular point, you might well take the view that it is not ethical, but that is a matter for charity regulation rather than data protection.

Q214 Chair: But doesn't that raise a problem about the whole system of regulation that we have, which is that you produce guidance and rules and then there are going to be people who say, "If the rules don't stop you doing that, that is okay and we will do that"? How would you bring ethics into a system where the rules themselves are just a reflection of what we try to get people to do ethically, but in themselves they do not carry values naturally. They do not make people better people. That is the problem, isn't it?

Christopher Graham: Data protection law and the Data Protection Act and the Privacy and Electronic Communications Regulations is only part of the regulatory structure or the phenomenon that you are looking at, which is charity fundraising. The role of the Charity Commission and the role of the Fundraising Standards Board, or whatever its successor body will be, is important. But I am part of that bit that deals simply with the direct marketing operation, and the rules that we apply are the rules that apply to anyone who is in the direct marketing business. That is why I see it as part of the nuisance phone calls.

Q215 Mrs Gillan: In your written evidence to us you made a point, at point 20, that there are a number of enforcement tools available to you for taking action against anyone who breaches the PECR—the Privacy and Electronic Communications Regulations. There is criminal prosecution, non-criminal enforcement, consensual audits and power to serve a monetary penalty—to impose a fine of up to £500,000. Have you ever taken action against any charity?

Christopher Graham: We are in the process of conducting that investigation, and the answer is yes. I have imposed civil monetary penalty on a charity for a breach of the Data Protection Act. It was not for this activity; it was around a security issue. But I do not say, "Oh dear. Charity. Can't go there". The rule is that the rules apply to everybody.

Q216 Mrs Gillan: But it is just one charity over the last five years?

Christopher Graham: One springs to mind, and we will see where we get to with the investigations that are resulting from this latest flurry.

Q217 Mrs Gillan: It is just that you have had these powers for approximately five years, and also you raised the red flag over 12 months ago. I am surprised that you are not that much further on 12 months later. Do you think that you have possibly dragged your feet a little?

Christopher Graham: No, absolutely not. I think the Government dragged their feet in introducing the change that was brought in in April to lower the test that we had to prove so far as the Privacy and Electronic Communications Regulations were concerned. Previously, we had to establish that the activity had caused substantial damage or substantial distress, which was really quite difficult to do. It took an awful lot of persuading to get this change made, but since 6 April it is much easier and, as a result, in terms of phone activity generally, we have imposed a total of £1.7 million in civil monetary penalties, with another £1 million coming down the track. It is not all charity, but nevertheless the activity is being effectively dealt with.

Q218 Mrs Gillan: The change was 6 April this year?

Christopher Graham: Of this year, and we have been arguing for it for, what—

Steve Eckersley: 18 months, two years.

Christopher Graham: We put the business case up and then nothing happened, and eventually I had to get extremely stroppy about it.

Q219 Chair: Which allegations is the investigation that you announced in September covering?

Steve Eckersley: First of all, the first part, Operation Cinnabar, is focusing on the allegations that were explored by *The Daily Mail* in the early part of the year, and the second investigation—

Chair: I am sorry, just tell us exactly what you understand those allegations to be.

Steve Eckersley: It was around charities making what were perceived as unlawful calls. It was around charities and other organisations buying and selling and trading personal data, which obviously stretches into the Data Protection Act, and you can see the interaction between the two legislations. That was the first aspect. We have held 13 compliance meetings with the organisations—

Q220 Chair: What is the second investigation's aspect?

Steve Eckersley: The second investigation relates to the exposé uncovered by *The Daily Mail* in relation to Mr Rae. This is where he was contacted by apparently hundreds of organisations, and further down the track he suffered some actual fraud. I think he lost around £30,000 in personal finance.

There are two investigations. Some of the charities are involved in both and, as Chris said, we will contact you in relation to that. But they focus on broadly the same issues: first of all, whether there are any breaches under the Privacy and Electronic Communications Regulations; and, secondly, whether there are any breaches under the Data Protection Act. These are civil-based investigations.

But just picking up on the point made earlier, Mr Chairman, if we do uncover evidence that people have broken the law and breached section 55 of the Data Protection Act, which is a criminal offence, we will take action and, if necessary, prosecute them. The Information Commissioner's Office is a Crown prosecutor. We are entitled, together with the CPS, to take enforcement action, and we will do if that presents itself.

Q221 Chair: A lot of this activity was carried out not by the charities themselves but people contracted to the charities. Does that mean the charity could be subject to prosecution, or does that just mean you prosecute the contractor?

Steve Eckersley: There is a possibility that the charity could be subject to a prosecution. I just want to make the distinction, though, if you are referring to prosecution, do you mean for a criminal offence or non-criminal?

Chair: I don't know. I am asking you.

Steve Eckersley: Quite often it is misinterpreted. If we take civil proceedings in relation to an organisation that is responsible for a civil breach of the Data Protection Act or PECR, quite often we do hold the organisation to account and, on occasions, the organisation will have to pay a fine. But in terms of criminal conviction, we have various powers under the Data Protection Act. Non-notification, for example, where the organisation fails to notify the Information Commissioner's Office that they are processing personal data, is a good tool for us in terms of our ongoing work in this particular area. Many organisations led by individuals have been prosecuted for that. If the opportunity does present itself, we will take the necessary enforcement action.

Q222 Chair: What happens to the individuals who are running call centre companies that have now gone bust? Are they potentially personally liable for civil or criminal investigation?

Steve Eckersley: They may be liable for criminal prosecution, but there was a difficulty that we have highlighted before in relation to individuals who basically go bankrupt or collapse an organisation, only to recover then and start off again as a phoenix organisation. We recognise the problems in relation to that, and this is something that we need perhaps to work with other partners to combat.

Q223 Chair: So the people who have dissolved their companies already have protected themselves?

Steve Eckersley: To a certain extent, yes. As I say, they may well have protected themselves from civil proceedings but not necessarily in relation to criminal proceedings.

Q224 Chair: To what extent will you pursue these people as incapable of being fit and proper people to be directors of companies?

Christopher Graham: We are working with the other members of the round table dealing with the nuisance phone call issues on the suggestion to Government that directors should be disqualified under similar circumstances, and that is an idea that is being given consideration to. One of the operations involved in this dissolved pretty quickly, went out of business pretty quickly, and then turned up as still fundraising.

Q225 Chair: Exactly. What can you do about that?

Christopher Graham: I think Ministers are well aware of the issue and it would involve a legislative change.

Q226 Chair: When will you be publishing the results of these two investigations?

Steve Eckersley: It is difficult to give you a specific date, but we will do it as quickly as possible. Operation Cinnabar is far more advanced than the second investigation involving Mr Rae, but as soon as we have an outcome we do intend to publish that.

Q227 Chair: Are we talking weeks or months or years?

Steve Eckersley: In relation to the first operation, probably months. I think Beaufort is much more complex than the first investigation, because it could lead to a criminal prosecution if there is evidence of wrongdoing or a criminal breach, so that is further down the track. As I say, I think it would be dangerous for me to suggest a particular date of completion.

Q228 Chair: What takes so long?

Steve Eckersley: What normally takes so long is gathering the evidence, and that evidence could be obtained from a wide range of sources including, for example, the organisations themselves. It may be that we need to interview witnesses. It may be that we have to share information and obtain evidence from other organisations.

Q229 Chair: How many people do you have on that particular investigation?

Steve Eckersley: There are around two or three investigating that particular aspect. They start the investigation off, developing the intelligence sources, finding out a little bit more about the general compliance history, about the organisation concerned, the charity concerned, to see whether they have breached the Data Protection Act previously or the previous electronic communication regulations. They bring that together and then we will grow the investigation and the team around that.

Q230 Chair: Mr Graham, how do you prioritise investigations in your organisation?

Christopher Graham: We assess the threat. We assess the level of noncompliance and misbehaviour. I am very glad that I have an enforcement team that is led by a distinguished, retired member of the Greater Manchester Police force, and many of his colleagues similarly. This is a very professional operation.

But data protection has come so high up everyone's list of priorities now that scarcely a week goes by without some new scandal being drawn to our attention, and deploy people on this, deploy people on that. I am reminded of being given a very hot time by Mr Vaz and the Home Affairs Committee in order to prioritise the investigation of private investigators. Naturally, Members of Parliament are very concerned that the Information Commission is doing its job. The organisation, over the past six years while I have been Information Commissioner, has grown in scale and complexity. We have over 400 staff now. It is a £20 million company. I think we do a pretty good job.

Q231 Chair: Can I just join in the festival of pressure on the Information Commissioner and suggest that the seriousness of the allegations made about the whole charitable sector are potentially extremely damaging to the whole sector? How important do you think it is to put more than three people out of 60 investigators on that particular investigation?

Christopher Graham: The enforcement department that Steve leads is able to flex to deal with particular investigations that need to be taken forward. Using the information hub, colleagues in other departments and so on, we can act very effectively. The fact you have three individuals working on that investigation at the moment, doing what needs to be done to get the information together, is probably fine.

Q232 Chair: Can I just ask Mr Eckersley a question? What is the relationship between the number of people you put on an investigation and how quickly you can do the investigation?

Steve Eckersley: It is a combination of things. Obviously, volume of information and evidence to review. It is identifying the different lines of inquiry; identifying whether there are other organisations that can support the investigation.

Q233 Chair: Yes, I understand that, but what is the relationship between—

Steve Eckersley: Although I have highlighted the fact that there are two or three individuals who are commencing the investigation, I did say that we would grow that in scale and size, and that is ordinarily what happens in our—

Q234 Chair: Can you answer the question? What is the relationship between the number of people on an investigation and how quickly you can conduct the investigation?

Christopher Graham: If I put 100 officers on it, I could do it more quickly.

Chair: Thank you.

Christopher Graham: Can I also make the point, though, that in another part of the organisation, our policy delivery department, our strategic liaison people are working with the charity sector to make sure that they understand what the rules are. Compliance is not just a question of going after what happened previously; it is also about making sure that standards are raised now.

Chair: Understood.

Christopher Graham: It is not just the enforcement.

Q235 Tom Tugendhat: Can I take on exactly from that point? Your point about compliance and working with others is very important. Could you tell the Committee a little bit about how you intend to work with the other regulators who do fundraising and seeing how you can take this forward, so that it is not only your three investigators but your three investigators plus the others?

Christopher Graham: I mentioned that we were developing a memorandum of understanding with the Fundraising Standards Board. I have had some good meetings with the Institute of Fundraising. I have had good meetings with individual charities, who I think now get it. But I do see this as part of a subset of the whole nuisance phone call scourge, and that is where we are working through Ofcom with the Telephone Preference Service, with the Consumers' Association, Which?, and so on, to try to synchronise our swimming, to make sure we really make the—

Q236 Tom Tugendhat: I understand that, but while it is in some areas a subset of the nuisance phone call scourge, it is actually a very specific charity sector threat as well because of the ethics and the regulations surrounding it. Can you talk a little bit about the successor organisations that may come along and how your memorandum will affect those and when you hope it will come into effect?

Christopher Graham: I had a very good meeting with Sir Stuart Etherington and the National Council for Voluntary Organisations when he was producing his report. I will wait to see what institutions emerge from the new structure, but it will be very important to work in a joined-up way with them. Any memoranda of understanding that we have, we would then seek to have similar with the new bodies. We are part of the solution, we are not the whole of the solution, but we must not ever have a situation again where the Fundraising Standards Board is aware of complaints and we, as the backstop regulator with the statutory power to deal with it, were not aware.

Q237 Tom Tugendhat: No, indeed, but there is more to it than that as well, surely, from your perspective, which is to help to make sure that the code of conduct that is written for the Fundraising Standards Board, and whoever their successor organisation is, is not only compliant with the law but is compliant with the ethical construct that you would see as essential for all people holding information.

Christopher Graham: That is why I want statutory recognition of our direct marketing guidance because then the new bodies would have an obligation to have regard to a statutory code. Something can be done there, I think. There should not have been any doubt that the direct marketing guidance of 2013 applied to charities as it applied to everybody else. But I suppose it might have helped, in retrospect, for that to be a statutory code to which they had to have regard.

Q238 Tom Tugendhat: The last point I was going to ask is about your existing powers, and you are clearly asking for an extension of existing powers there in that particular area. On a very specific area, we have come back time and again here in this morning's session, both in the public and the private session, to the abuse of vulnerable people, whether that be the elderly in general or whether that be more specifically those with dementia and with memory problems. I am very keen to nail home here this question: do you think that there should be specific regulation, specific powers under your authority, to protect those who are being targeted in a particularly nasty way, if I may say, which is those who may not be entirely aware of the surroundings of the call and who are being abused by those organisations?

Christopher Graham: I can give advice on best practice and working with other agencies through Think Jessica, and I think we were doing that. But I am a creature of statute; I am working with the Data Protection Act and the Privacy and Electronic Communications Regulations. To the extent that the landscape may change with the General Data Protection Regulation, which is being finalised in Brussels at the moment—and presumably there will be a knock-on to PECR—I will obviously apply whatever the law is.

But best practice goes a bit beyond that. I think we have all learned from the experience of recent months, and to the extent that there are more and more people who are over 70 and who are apparently being targeted, then it is a question of all agencies taking that on board and doing what we can to protect them.

Q239 Tom Tugendhat: Do you think, though, there is more than that? I am really trying to get home here the fact that if I were to be bothered by nuisance phone calls I hope I would be aware enough to deal with it myself. If various of my relatives were to be bothered by it and they are in a vulnerable state, whether slightly mentally or slightly due to age, where it is not just a nuisance but abuse, surely it should be considered a crime.

Christopher Graham: Yes, but the point I am making is that it is not a crime under data protection law. But one of the encouraging things about the second *Daily Mail* story was that Mr Rae's son, acting with a power of attorney, exercised rights under the Data Protection Act with subject access and blew the whole thing open. I think we all have a responsibility to look after elderly relatives, elderly neighbours. That is what the whole Think Jessica thing was about and I am proud that we were involved in that initiative.

Q240 Tom Tugendhat: Do you think you require extra powers in order to make sure you can fulfil that duty even more?

Christopher Graham: Not specifically that duty, but I would stress that if we commenced section 77 of the Act that I referred to and Steve knew that he was dealing with a recordable offence and, in the case of criminal reach of the Data Protection Act, could interview people under caution and require them to attend instead of having to ask politely, and if the perpetrators of this knew that a recordable offence would be on their record and that they could go to prison, that would make a huge difference to this whole dirty world of dealing in people's personal information.

Q241 Kelvin Hopkins: I think my colleagues have teased out or I suggest that you were asleep or at least dozing on the job before these newspaper reports came out. You mentioned in passing that you became aware there were 50,000 complaints that you apparently had not known about before, which suggests you have had a rather relaxed attitude toward this over a long time. Then also you seem reluctant to want the law to be strengthened and that you do not want Etherington to be beefed up, as I think I would personally. Don't you think a bit more rigour, a bit more passion and a bit more enthusiasm would be a good idea?

Christopher Graham: I am sorry if I have not been conveying passion and enthusiasm and I do not recognise the sleeping bit. The 50,000 complaints, to be clear, were made to an organisation called the Fundraising Standards Board. They were not made to the Information Commissioner's Office. I might have been alerted. I should have been alerted to this but I was not, so I am putting in place a memorandum of understanding to make sure that I am. We do get a lot of complaints about nuisance phone calls. We get surprisingly few about charities. We still get surprisingly few about charities despite all the hue and cry. I do not want to rehearse what I have already said to the Committee, but I think we are working hard, we are making a difference, we are calling the sector to order. I think it is unreasonable to criticise the Information Commissioner's Office for doing what we can in this area and I think you will see a difference.

Q242 Kelvin Hopkins: Is it partly because the charities, or these companies that fundraise on behalf of charities, target elderly people in particular, people who are less likely to complain and perhaps less able to complain? We have a responsibility of linking with the Ombudsman and one of the problems I think with the Ombudsman is that, if you are articulate, confident and professional, you can deal with these people. But if you are not, and if you are an ordinary person dealing with institutions, even knowing about them and knowing where to complain, it is difficult. If you are relatively poor, relatively uneducated, and relatively more working class and elderly, you are not going to be in a position to complain, and you are going to be bullied by these people in a way that has led to at least one suicide it seems.

Christopher Graham: We are all concerned about the impact on elderly and vulnerable people but I suspect we are all subject to hypermarketing by the charity sector. Do we all complain? I know when I get a nuisance phone call I should go on to the ICO website and log the details but I do not. I just shout at the individual who has been doing that. But there is no reason why there should be fewer complaints about charity fundraising of that sort than there are of commercial companies unless it is that people feel some sort of sense of restraint because after all it is a good cause. But I have charities that are absolutely in overdrive in terms of direct mail and also phone calls, and I have to say hand on heart I do not always complain to the ICO. I do not think we should say it is only the over-70s and only the vulnerable who are being targeted in this way. I should not think the charities would raise very much money if they were.

Q243 Chair: But the law needs to protect the weakest, not the strongest.

Christopher Graham: Yes, but the point Mr Hopkins was making was that there are fewer complaints because it is the over 70 year-olds who are vulnerable who are being targeted.

Q244 Chair: Could you say when you are going to publish the Think Jessica report?

Christopher Graham: The Think Jessica report is a project that has been running for the past five years. I can send the Committee details about it.

Q245 Chair: Would it not be beneficial to everybody concerned if you did produce a report that people could draw upon while everyone is thinking about this?

Christopher Graham: I have two tasks as a result of this session. One is I am going to write to you with the names of the eight charities we contacted in March 2014 and warned about the Telephone Preference Service, and the other thing is I will send you details of the Think Jessica project.

Q246 Chair: That is very helpful, thank you, and we will publish it on our website. You have made some criticism of Etherington and there has been some reference to what additional powers you could do with. Could you send us a note summarising your critique of Etherington, what you think is good and what you think is going to be less helpful, and also what additional powers you think you will need?

Christopher Graham: Certainly, Chairman.

Q247 Chair: Am I right in saying that one of your obligations is to advise the Government on data matters?

Christopher Graham: Yes.

Q248 Chair: This comment my colleague makes that he feels you were asleep at the wheel, what advice were you giving the Government about all this before the newspapers hit?

Christopher Graham: I have already explained that we had been badgering the Government to make it easier to impose civil monetary penalties for nuisance phone calls over an 18-month period. Finally I threw all my toys out of the pram and the legislation was fast-tracked just before the general election and that has made a significant difference.

Q249 Chair: But there are other aspects of this that, for example, you did not know about or you were not being complained to about. What we really want to know is what you personally have learnt from this experience and what you think your organisation needs to learn from this experience.

Christopher Graham: Yes. The earlier question was what advice had I given to Government and I could not give advice to Government about complaints to the Fundraising Standards Board that I was not aware of.

Q250 Chair: I appreciate that. Let us go on to the question I just asked.

Christopher Graham: Yes. What have I learned?

Chair: What do you think you as Information Commissioner should learn from this in retrospect and your organisation should also learn?

Christopher Graham: That my organisation should be on the front foot in terms of enforcing the law. We should be proactive. We should be doing more of the mystery shopping rather than clearing up after the event. Then we should be horizon scanning. It is a fast-moving sector. We should not wait for problems. We should be looking for trouble, frankly, Chairman.

Q251 Chair: That is a good way of putting it. What was your first reaction as you looked at the front of *The Daily Mail* and these stories were being published? What was your emotional reaction?

Christopher Graham: I was sick to my stomach when I read of the lady who had thrown herself off the Clifton suspension bridge. In the case of Mr Rae, similarly I felt someone had been taken advantage of but I was proud that his son had used the rights that every citizen has under the Data Protection Act to get access to their personal information. In the son's case, he was acting the power of attorney to get the information from various data controllers and that has provided the trail that will help us to find out what went wrong.

Q252 Chair: How much did you think, "Oh dear, I should have known more about this"?

Christopher Graham: I think if I spent a lot of time worrying about what I should have known—I have quite enough to deal with the things that I do know about, but it is certainly true that we need to be on the front foot rather than simply reacting to bad news that comes our way.

Q253 Chair: In our report we will try to make as positive suggestions as we can about recommendations about the Information Commissioner's Office in this. But could I emphasise on behalf of the Committee that we know that public money is very scarce; I expect your resources are very scarce? I expect the people in your organisation work very hard. We thank them for what they do; we wish them well. We hope that the suggestions we make in our final report will be positive ones and ones you feel you can act on.

Christopher Graham: Thank you, Chairman and I am sure that my staff, who will have been looking at the broadcast, will be very appreciative of the remarks that you have made on behalf of the Committee.

Q254 Paul Flynn: You have several times said that you were surprised because the level of complaints you have from charities is relatively low but a great deal from other areas in which there is abuse of telephone systems. Can you give some idea of the proportion of this? What proportion of complaints do you have about charities and about other organisations, because we realise *The Daily Mail* has its own agenda on this?

Chair: Can you pop that in your written note?

Christopher Graham: We can write to you with the statistics.

Chair: Sorry, Paul. I do apologise but we are 10 minutes behind already. Thank you very much indeed.

Examination of Witnesses

Witnesses: **Karen Brown**, Chair, Oxfam, **Daphne Harris**, Chair, RSPCA, and **Mark Wood**, Chair, NSPCC, gave evidence.

Q255 Chair: While you are still sitting down, may I just emphasise that you are each chair of the charity that appeared before us in the guise of chief executive earlier, but missing is Save the Children Fund. I wish to emphasise that it is not their fault and we are going to subject them to the same questions, albeit in writing, and you have not been singled out unfairly. It does allow you to give fuller and franker answers with only three of you here. Thank you very much for joining us. Could I ask each of you to identify yourselves for the record?

Karen Brown: I chair Oxfam.

Daphne Harris: I chair RSPCA.

Mark Wood: I chair the NSPCC.

Q256 Chair: Thank you. Could I ask each of you to summarise the values and ethos of your charity?

Karen Brown: Our values are inclusivity, empowerment and accountability and I believe it is very important that we carry those through in every aspect of Oxfam's work.

Daphne Harris: Ours is compassion, integrity, courage, commitment and vision, and equally I would like to believe that they are carried forward in everything we do, from our volunteers to our staff and everybody who bears our name.

Mark Wood: Putting children first and in particular a concern as to the legal state of children relative to adults. Taking a stand; running a series of campaigns particularly where we see discrepancies in the law relating to cruelty and abuse. Making an impact. It is particularly important that we calibrate the effectiveness of the activity we undertake with donors' money. Never settling for second best, which is avoiding compromise so that when we pursue an objective we pursue that objective relentlessly. Finally, working together, and this is the element of collaboration between ourselves and other charities with similar charitable objectives and also with the Government and, most importantly, with the social services.

Q257 Chair: Could each of you summarise the values and ethos of your charity and its relationship with your donors?

Mark Wood: We have published a charter that is designed to enshrine our relationship with donors. That has specifically addressed the three areas of concern that result from the recent publicity around fundraising activities among the charities and across the charities sector. The first is that we never sell data relating to our donors. We are quite clear about that. We do not do that.

Q258 Chair: You have never done that?

Mark Wood: We have never done that, we do not do it currently and we are not considering doing it into the future. The second is that we do not breach the Telephone Preference Service unless we have specific reason to imagine that somebody has registered with the TPS but has also explicitly, unequivocally and unambiguously indicated that they would like to hear from us and continue to be updated by us. The third is that we have a very prescriptive code around the number of times that we contact our donors in a year, so there is a six-monthly interval between contacts and therefore—and this will depend on how the calendar falls—the maximum number of times an individual should expect to hear from us over 12 months is three times.

Daphne Harris: We do not cold call, because we do not think that is right. People in the past have opted out but we are looking at that with the Etherington report and welcome the review. But we believe that our donors are our life blood and we very much appreciate the way they support us. We have 55,000 and growing, so it is in our interests to find out what they want from us and I think what has happened is going to sharpen our focus a great deal.

Karen Brown: I would agree with what my colleagues have said, that our supporters are our life blood. They enable us to carry out work around the world to try to radically affect poverty. We have 400,000 supporters who give to us, of which 160,000 have been with us for more than 10 years. I believe that that is partly because we treat them fairly and we do not pester them. We, too, do not cold call. We mind a lot about consent. We have opt-in and opt-out procedures and in any communication with our supporters we always remind them that they can contact us and make it very clear how they can contact us if they wish to indicate a preference. At the current time, two-thirds of the phone numbers we have from supporters or contacts on our database are opted out from receiving phone calls from us at all. I give that as an example of the fact that we are putting into practice our values and our ethos. We, too, have a supporters' charter and it makes absolutely clear that we do not sell any of our supporters' data or share data with anybody else and that has been the case for as long as I can identify.

Q259 Chair: How do you see your duties and obligations as trustees in respect of your oversight of fundraising? You have answered that question to a degree, but that is now. What went wrong before *The Daily Mail* blew the gaff on some of what was being done in your name?

Mark Wood: I think fundamentally, and I am sure this is consistent across many charities, we are confident that we have procedures and practices that regulate the way we relate to donors in an appropriate way. However, I think what we have identified here are some breaches in terms of those suppliers who assist us with fundraising from those practices, and that is what has caused us concerns.

Daphne Harris: In addition, we have stopped exchanging data with other charities or other organisations. We have reviewed the way we work with Listen, the company we use to do our fundraising, with more focus on quality instead of quantity. I think that is very important and that is something we have decided. We are happy with the way they have dealt with the accusations by disciplinary action or further training. We have put that into train as well and we have set up a new committee on fundraising to get better oversight with a specific group of trustees monitoring the issue.

Q260 Chair: Do you have anything to add to that?

Karen Brown: A little bit. I will try to keep it brief. Ultimately trustees are responsible for what has happened and we take that responsibility very seriously. I think there are two things. We have let the general public down insofar as those who are working in our name—agents—have acted in ways that are simply not acceptable. We are very sorry that that has happened. However, we do have monitoring procedures in place. The shame of it is that our monitoring procedures were not adequate to the task. For some reason they did not spot what was going on in these agencies.

Q261 Chair: How often in your trustee body, before all this became very public, did you discuss the ethics of fundraising, the practices of fundraising and the oversight of fundraising?

Karen Brown: I have looked back at our agendas, and in our board meetings across the last five meetings fundraising has been actively discussed in at least four and in some of those board meetings it would be a specific session rather than as part of the chief executive's report.

Q262 Chair: How much of that was about how to raise more money rather than about how the money was being raised?

Karen Brown: I think the answer is obviously we monitor the amount of money that is being raised but we do raise questions about the way in which money is being raised. What I take from this, though, is that we need to make that hardwired into our system, not just rely on the fact that our trustees are driven by an ethic and so are inclined to raise those kinds of questions. From now we have put our fundraising methods on to the same footing as we have health and safety, which means that we will have an annual check on what methods we are using and whether we are satisfied that they are within the ethos of Oxfam.

Mark Wood: We operate a fundraising committee, which is a group of trustees and co-opted members drawn from large supporters, generous supporters and large donors. That meets four times a year and is a committee of the board. It has the same status as the audit committee or the finance committee, so it has a management responsibility in terms of information flowing to that committee, and that committee has the authority of the board to make decisions on behalf of the board. The board agenda includes fundraising pretty much every meeting. To give you two examples of that, we have recently launched a new device for fundraising that involves a lottery monthly competition. That came to the board three times before being approved. Some time ago we made the decision to cease street fundraising, because of concerns that had been raised by our volunteers across the country, and that was debated at the full board three times. I am confident that we attend both to the mechanisms of fundraising and the underlying merits of those methods.

Daphne Harris: I have only been in the chair for three months but in that time I have set up a small group, an inquiries group, with the previous chair and another couple of officers, to inquire as to what has gone wrong here, how we can put it right. It is not in our interests to let this happen. Also we are setting up a new committee structure. We were doing that anyway, and fundraising, our income generation committee is going to take a much higher place. I think it is fair to say we have realised we have to do better.

Q263 Chair: Thank you for that. Of course, the Charity Commission sets out your statutory obligations. Trustees must ensure their charity complies with the law relating to fundraising and follows best practice. Why do you think trustees did not succeed in this?

Daphne Harris: With Mr Rae, I would like to apologise. What happened to Mr Rae was totally unacceptable and I apologise here unreservedly, but the truth is we did not know that this had happened. Once we knew, we took action. I think hindsight is a wonderful thing and obviously you might think we should have done, but we did not and that is the truth. But we will make sure we do better. That is our mission—to do better for the future. It is not right that a vulnerable person should have had this happen and I am very sorry about that.

Q264 Chair: But looking at your trust, and you have been a trustee for more than three months, how do you think the trustees were blind to what was happening on your watch?

Daphne Harris: I do not think we were blind as such. We had reports. The reports went to the finance committee and then recommendations would travel up to the council. I think thanks to *The Daily Mail's* investigation this has opened our eyes a great deal and I can only say for the future we will do better. Obviously if we had known about Mr Rae we would have—

Q265 Chair: I appreciate what you have learnt about charitable fundraising and what was going on in charitable fundraising. What have each of you learnt about governance as operated by the trustees? What have you learnt about how you govern your charities to make sure that all that is done in your name conforms with what people expect you to believe in?

Mark Wood: May I respond to that? It seems to me it is self-evident that our routine of auditing the performance of our suppliers has not been adequate. That said—

Q266 Chair: If I may, you are answering a process question. I am asking a deeper question. It is about almost a kind of moral vigilance question.

Mark Wood: I agree, and what we have done since the revelations is to interview the management of each of the suppliers that we have worked with. So, we have added a level of examination of these organisations to the process of examination that our audits have followed. I think it is true to say that we have become concerned in some cases about the approach that these organisations take to fulfilling their duties on our behalf and we have identified two instances where we have had very explicit breaches of contract and suspended our relationship with those entities. Certainly, one of the consequences of these revelations is that we will be much more intrusive in examining the culture as well as the operation of these suppliers.

Q267 Chair: Sir Stuart Etherington said that charities' trustees and managers have too often been absent from the discussion on fundraising practices and values. Do you think that is a fair criticism for him to make?

Mark Wood: No.

Daphne Harris: No, but I think we could do better. Can I just say briefly what we have tried to do since, or we have done? As a result of the publication of *The Daily Mail* article, we called an extraordinary meeting on 12 June with Listen—we do still use Listen as a company to raise funds for us—with their senior management to review the account and all processes undertaken. As a result, we have already increased our presence at Listen and ongoing staff training programmes to ensure good practice.

Q268 Chair: That is what you have done since, but beforehand?

Daphne Harris: I have personally, which I admit I have not done before, listened in to calls, randomly taking calls to assure myself of the process and any changes I feel I should report to the council that we might need to make.

Q269 Chair: How unfair is Sir Stuart Etherington's report?

Karen Brown: I have some sympathy with his view. We have a lot on our plates as trustees, and I do not wish that to sound in any way defensive. But we have to ensure that in managing agendas, in managing the questions we ask, we do not get overcome by the business in front of us and we do really constantly remember who we stand for. There is a compact between our supporters and our beneficiaries, and in letting our supporters down we have also let our beneficiaries down and we have to win back that trust. We spent a lot of time looking at and reviewing immediately all our practices and all our relationships with the agencies involved. The specific lesson I have learnt is that we did not, as trustees, spot the extra risk that working with subcontractors presents to any organisation in any sector and we should have, as should our executive. We have highlighted that risk, but more generally I think we have to find time to think through now how we build our ethical checks into processes like audit.

Q270 Chair: My last question, which you have already answered, to the other two. What lesson do you take from your failure to embed your charity's values in fundraising?

Daphne Harris: I think the same as has been said, we need to have our eye on the ball more. We now know what to look for, and I think lessons will be learnt.

Mark Wood: We have drawn the conclusion that we need to work with far fewer organisations, and be guided much more by the style and culture of the organisation than simply the financial bargain that we strike with those organisations. Our practice in the past has been to select agencies campaign by campaign by campaign. In the future I think what we will be doing is working much more closely to identify the individuals who act as representatives of the NSPCC and build a relationship with those people for the longer term. Fewer agencies, much deeper relationships.

Q271 Mrs Gillan: Mr Wood, you have mentioned that you have a donors' charter. I have been on to your website and I can't find it easily. It may be I can't navigate it, but I would have thought it needs to be accessible and on your website. But I have read this very interesting trustee role profile, which identifies the role of a trustee, collective responsibilities and personal responsibilities. Really, the word "donor" does not feature in that set of rules and regulations for you, the trustees. Would you consider altering your collective responsibilities and your personal responsibilities to include responsibilities towards your donors?

Mark Wood: I hope it is implicit in the obligations that we have to exercise property custody and governance over the assets of the organisation.

Q272 Mrs Gillan: But if it was implicit, this set of rules was in place prior to the abuses that we are investigating.

Chair: May I simply add, the Charity Commission's own guidance to trustees is explicit about your obligation to your donors.

Mrs Gillan: Do you not think it is time to make it explicit in your own documentation?

> ***Mark Wood***: I am grateful for you pointing out the discrepancy between the Charity Commission's guidance and our own trustee role profile. I am satisfied, however, that all of our trustees understand that they have an absolute obligation to ensure that we look after our financial resources and the relationship with the donors to the highest standard.

Q273 Mrs Gillan: We have an expression here that if it is okay, it is good to put it on the face of the Bill. Do you not think it would be good to put it on the face of the Bill?

> ***Mark Wood***: Yes. I do not disagree with that philosophy.

Q274 Kelvin Hopkins: Just a brief question. Oxfam referred to having suspended their partnership with Listen Limited, when they are actually contractors. The use of that term "partnership" implies a different kind of relationship, but they are actually paid contractors. Would it be more appropriate to use the term "contractor" rather than "partner"?

> ***Karen Brown***: I think it would be perfectly appropriate to use the word "contractual". Oxfam delivers its work around the world through partners, who will be smaller organisations in different parts of the world, and we do try to work in partnership. We think that that is the best way to work most effectively. But there is clearly an onus on us to supervise our subcontractors, and we fully accept that. By the way, we have subsequently ended our relationship, so that was an interim position, and we have terminated relationships with Listen, and GoGen went out of the business.

Q275 Mr Andrew Turner: Could I ask Ms Harris, it is all very well to say that this has been brought to our attention, and we have changed. What we have to do, or perhaps what you have to do, is see things that we are not seeing. Do you understand that?

> ***Daphne Harris***: Yes I do. As I have said before, I can only say that in the future I think we will be looking at things with different eyes. Hindsight, as I have said, is a wonderful thing, but all we can do is say we will do better. We owe it to our donors to do better, and vulnerable people. I mean that sincerely. We will do better. Take me at my word, see what happens, but we will do better.

Q276 Mr David Jones: When did each of you become aware of the allegations reported by *The Daily Mail*?

> ***Mark Wood***: On publication.

> ***Karen Brown***: Well, just prior to publication actually, when *The Mail on Sunday* approached Oxfam, and of course trustees were alerted to the fact that they were making enquiries.

> ***Daphne Harris***: Ours is exactly the same as has just been said.

Q277 Mr David Jones: You were all present during the evidence given by the Information Commissioner earlier, and you will recall that he said that his office approached eight separate charities last year, expressing concern about these practices. Just by way of clarification, can I assume that none of you represents one of those charities?

> ***Karen Brown***: I think that Oxfam was compliant after the letter that he referred to in 2013, as opposed to 2014, and therefore we were not in receipt of the 2014 letter, when he reminded eight—

Q278 Mr David Jones: So you were not one of those charities?

> ***Karen Brown***: No.

> ***Daphne Harris***: We do not believe we were, no.

Mr David Jones: You do not believe?

> ***Daphne Harris***: We were not, no.

> ***Mark Wood***: We were not.

Q279 Mr David Jones: You are assuring the Committee that none of you represent one of those charities. Are you all confident about that?

> ***Mark Wood***: Correct.

Q280 Mr David Jones: Thank you. What did you do when you became aware of the allegations reported in *The Mail*?

> ***Karen Brown***: We immediately set up a working group of the chair, vice chair, treasurer and the two trustees who over the last few years, one and then another, have taken a lead interest, as lead trustees, in the area of fundraising, to guide the management, our executive, in the handling of what was upon us. One of the issues—

Q281 Mr David Jones: Just pausing briefly, was that immediately upon discovery of these allegations? So that would actually be before publication.

> ***Karen Brown***: Immediately. In a way, there is a natural way in which that happens, because the chair, vice chair, and treasurer are already part of the honorary officers body, so we extended an invitation to two more to join the honorary officers in handling this. We then had to establish the facts, and that was what the executive set about doing. We were appalled by the headline of *The Mail on Sunday*, which said in big bold letters on the front page, that "Oxfam targets 98 year-old". Oxfam absolutely, categorically, does not target 98 year-olds. Indeed, those people who are over 75 is only 5% of Oxfam's supporter base. I can continue with the steps that we took thereafter, if you wish me to.

Q282 Mr David Jones: No, I think that that is fine for now. What about the RSPCA?

> ***Daphne Harris***: As I have said, I was not the chair then but my understanding is, and I have enquired about this, that the officers, which includes the chairman, treasurer and the vice chair, and the senior staff met and discussed it with our legal officer, and looked into the implications and set about immediately trying to put things right.

Mr David Jones: How?

Daphne Harris: I was not at the meeting, but I have said that we have had meetings with Listen, and all sorts of enquiries have taken place. We have changed the way we deal with Listen. We don't cold call, so we were not doing that. But we have obviously had to take this very seriously. We do not want to lose our donors. We need to look after then.

Mark Wood: We had three courses of action immediately after publication. One was we reviewed the 121 complaints that we have had over the previous 12 months, which had gone through our normal complaint process but we wanted to review and understand what was behind those complaints in relation to the TPS waiver point, and we—

Q283 Mr David Jones: So those were all complaints about the TPS?

Mark Wood: We make about 350,000 telephone calls a year, and in the preceding 12 months we had received 121 complaints, which had gone through the process, where action had been taken or they had been apologised or dealt with. We re-examined those complaints, to make sure there was nothing new to learn from those complaints.

Secondly, we established with our executive board—this is a group of trustees, the chairman of the fundraising board, the finance director, the head of fundraising, and four trustees—an intensive repeat review of each of our suppliers, visiting the management and relistening to calls. We have a facility whereby from our office in London we can listen to the calls made at any point without any announcement, from our suppliers.

The third thing that we did was to gain the pro bono services of two senior members of a leading audit firm, who in their personal capacity reviewed the contracts that we have in place with our suppliers to make sure that they were fit for purpose and that our account management processes were appropriate.

Q284 Mr David Jones: Can each of you assure the Committee that these practices have ceased so far as your individual charities are concerned?

Karen Brown: It would depend, it is a little bit difficult; we need to understand what practices you are referring to?

Mr David Jones: The complaints that we have had catalogued today of breach of TPS, pressurising elderly people. I think that you are fully aware of the matters.

Karen Brown: I just wanted to check which aspect. As far as the TPS is concerned, we believe that we were compliant with the TPS anyway, not in breach. As far as any undue pressure that any member of the public may have experienced, we want to be able to pursue that absolutely as far as we possibly can. *The Mail on Sunday* has helpfully provided us with a transcript of their evidence so that we can ensure that we have indeed dealt with the problem. We have not been able to yet acquire a transcript from *The Daily Mail* as to the second article in July, which we would very much appreciate having in order that we can check and verify what actually took place and whether we need to take further steps.

Q285 Mr David Jones: So you are still not wholly satisfied?

Karen Brown: We can't be because we have not got our hands on the evidence.

Q286 Mr David Jones: Ms Harris?

Daphne Harris: Yes, I think it is the same for us. All I could say is that we are not cold calling, which I think is one of the problems. We do have a system set up where words are asked and if the call gets to a point where a certain word or an indication is made, the call is wound down, because we do not want to be calling vulnerable people. As I think you would agree, people's status can change. When you have opted in to give funds to us, you can be fit and well and then that can change. Indeed, I have heard people being talked about who are over 70. I am over 70, and I have lots of contact from charities because I want to, because I ask to hear about their work, and so I get masses of papers come through my door but I do not mind. I think it is very difficult, and one of the things we do look to the Etherington review to tell us is this vulnerable person, because I think that is key to where we went wrong and we must try to sort that out.

Mark Wood: I think I have slightly lost track of the question.

Daphne Harris: I have lost track as well.

Mark Wood: The question is, are you confident that you have—

Q287 Mr David Jones: Are you confident that these practices have ceased so far as your individual charity is concerned?

Mark Wood: We went back and looked back first and established the position as far as the complaints were concerned, as I have described. We discovered in there a breach of our ruling as far as the TPS is concerned with a single batch of individuals, 128 if I remember correctly, which we notified the Information Commissioner of immediately. That was not a process problem; it was an individual human error. Looking forward, we found, as I said at the beginning of the meeting, the three areas of concern are not areas that we participate in, in any event, and we found no exception to that, other than this human error breach that we discovered.

Q288 Mr David Jones: How often do your trustee bodies discuss complaints about fundraising? Is it a regular occurrence?

Karen Brown: Yes. For the last four years we have reviewed annually, as part of our annual report discussion, all the complaints that are made to Oxfam in all aspects of our work, including fundraising. We have a year-on-year comparison, and fundraising is broken down into the different areas of fundraising so that we can see what level of complaint it is, how it compared with the year before, and also how it benchmarks against the FRSB complaints benchmark. For instance, in the telephoning area, our complaint rate is less than a third of the average of complaints from other charities.

Daphne Harris: Our complaint rate probably was not helpful because it was one in 1,000 of fundraising calls, but what we have come to realise, and I think I said earlier, we want to look at quality in future and not quantity, and we want to make it easier for people to be able to complain. We do have a call centre that is open 24/7, so people can complain and they do, and that is recorded and passed on to us. Obviously we take that seriously. But I think this has opened our eyes to the fact that we need to be more available, and we are going to work on how that should be. But once again, we are waiting for the review to get some guidance.

Mark Wood: I personally received 15 complaints last year, which I deal with individually; I write and often speak to the complainant personally. I see all the complaints the chief executive receives and see his replies and ensure that they are resolved. At each of our trustee meetings, we have a dashboard of some 40 key performance indicators, which very much copy the pattern or reflect the pattern that Oxfam has described in relation to tracking our complaints against our targets.

Q289 Mr David Jones: May I ask, how satisfied are you that a recent Ofcom poll found that 12% of the public find calls from charities distressing and 53% find them annoying? Do you think that this method of fundraising is actually productive or counter-productive?

Karen Brown: I think that is a really helpful question. We do not want to either annoy, deeply annoy or ever distress people. One of the steps that I took after this happened was to read through the comments that supporters wrote in, in response to our director of fundraising's e-mail telling them what had happened, and he invited comments back. We received 200, and I read through every one of those and I found it very instructive. I think the best thing that can come out of this exposure, which *The Mail* has enabled, is if we fully appreciate that we try to act responsibly in relation to our own charity but we have to act responsibly collectively and take responsibility for the cumulative impact on individuals. The regulation can be tightened, but that still leaves something in our cumulative approach that needs addressing as well.

Mr David Jones: Yes, because you are still making telephone calls to people who are at least irritated, but at worst distressed by it.

Karen Brown: Yes. The more that we can promote the fact that they can stop those calls from coming into their homes and the better that we can get at putting members of the public absolutely at the heart of the way we conduct our fundraising, the truer we will be to our values. Often charities are very nervous about investing money, and so we lag behind commerce in terms of the customer relations management systems that enable our supporters to have a full choice of how high the dial is turned up in terms of the way that we engage with them. We need to get better at that and make the investment and explain that it is right that we have administrative costs, in order that we can look after our supporters.

Mark Wood: I would agree. I think it is less and less effective as a technique. I am not at all surprised by the findings that you describe and I think they mirror the findings in relation to general cold calling for PPI claims, or whatever else it is. We have reduced materially the number of phone calls that we make and see it as a less and less important channel for fundraising.

Daphne Harris: One of the complaints we get is the time of day, the inconvenience that it gives to people when they are trying to prepare their meals or something. That must be taken on board; that is important. I think one of the issues is, though, we are a charity that receives no direct state aid and so we have to, day-by-day, take the requests from the public to do everything they expect us to do and we need to raise funds. But what I have learnt from all of this is that must be balanced against raising funds properly and making sure that we do not upset our donors, because without them we are nothing. That is the conclusion I have come to.

Q290 Mrs Gillan: Can I ask a question of you, Ms Harris? I was trying to get my head around the scale of this and I was very surprised from your last annual report to read that your fundraising costs for 2014 are £21 million. That is a huge amount of money to be spent on fundraising. What proportion of that is spent on telephone activity?

Daphne Harris: For every pound spent, we get £2.46 back.

Mrs Gillan: No, that was not my question. I know that, I have read the annual report. What proportion of the £21 million that you spend on fundraising is spent on telephone contact?

Daphne Harris: I wouldn't know the answer to that.

Q291 Mrs Gillan: Could you have a look and let us know?

Daphne Harris: Yes, I certainly would.

Q292 Mrs Gillan: It is a huge sum of money and I would be very grateful. I do not know whether either NSPCC or Oxfam know what your fundraising costs are, off the top of your head, for the last financial year and what proportion was spent on telephone?

Karen Brown: I can give you an approximate. It is over £20 million, something like £21 million, and we spend about £3.5 million on telephone fundraising, although that will now go down very considerably.

Q293 Mrs Gillan: So this really is big business. For the NSPCC?

Mark Wood: Somewhere in the comprehensive briefing notes that have been prepared for me, I have those numbers. I am not able to immediately recall them.

Q294 Chair: Perhaps you can each send us a note, just so we have it.

Mark Wood: I shall certainly do that.

Mrs Gillan: It is literally millions that is spent on this area.

Karen Brown: Some of that we do in-house now.

Daphne Harris: Can I just add one thing? Some of our cost is because we have a rolling three-year programme, and we are in year two, so our costs were higher because we had invested more.

Q295 Chair: When you first heard the allegations were going to be made in *The Daily Mail*, in respect of each of you, did your charity, or anyone speaking or acting on behalf of your charity, say or do anything that might be construed as a threat of legal action against *The Daily Mail* about those allegations?

Karen Brown: I have no knowledge of that.

Daphne Harris: I have no knowledge.

Q296 Chair: What would you do if you found that that was the case?

Mark Wood: I think I would have to consider it very carefully, but prima facie it would be an entirely inappropriate action.

Q297 Chair: Ms Harris, you have kept saying you do not do cold calling.

Daphne Harris: We do not.

Chair: But it all depends what you call a cold call, does it not? One of the questions we asked the Information Commissioner was about what "valid consent" constitutes. Whatever the rules might say, ethically people often feel they are being cold called when their name might be on some list for some legal reason. You do cold calling, don't you?

Daphne Harris: I think the people we call have agreed to let us call them.

Q298 Chair: What kind of agreement have they given?

Daphne Harris: When I listened in to calls, they were asked did they want to be contacted, and if they did not then we would not contact them again.

Q299 Chair: So at the start of every call the question is asked, "Do you mind if we speak to you?"

Daphne Harris: Yes, it is.

Q300 Chair: Right. Okay, that is clear. To Ms Brown, Oxfam was using GoGen to raise funds before it went bust. That is correct, isn't it? You said you were compliant with TPS, but the evidence we have is that GoGen did not comply with TPS or it found excuses or reasons not to comply with TPS, on the basis of opting in or not opting out, including even a vague question from a lifestyle survey or some such, which had nothing to do with your charity specifically. Are you confident that GoGen did not breach TPS on your behalf?

Karen Brown: As I said earlier, we would be even more confident if we had had access to the evidence. But the GoGen campaign was based in the street, where people were asked to sign one of those PDSs, I think they are called, in order to consent to a follow-up call. I am confident that there were no follow-up calls unless they had actually signed that consent in the street.

Q301 Chair: Well, I have to say, I think we have conflicting evidence on this.

Karen Brown: Right. Well, as I say, I really would welcome the evidence.

Q302 Chair: In respect of what Ms Harris has told us, isn't this part of the difficulty of sifting the truth out of what people may or may not feel that they can tell you in terms of what is going on? I am not going to make accusations, but I think there are lessons about—

Daphne Harris: No, I was telling you the truth. The call I listened in to, the caller was asked, "Hello, Mrs Whoever. Is it all right if I speak to you today?"

Q303 Chair: Yes, but that is now, isn't it? You don't know if that was happening before.

Daphne Harris: Yes. No, I don't. I can't say.

Karen Brown: In terms of consent, we believe it should be prior consent. The consent should apply to the specific channel that is being used and it should be time-bound. Our policy, and I really hope our practice, is that we do not make calls to people where those three factors are not the case. I think there is a real difficulty with this phrase “cold call”, because the public, very understandably, use it differently. If they are surprised by a call in their own home, they regard it as a cold call, and that is why we believe we are compliant with proper opt-in measures.

Where people have opted out of the Telephone Preference Service, as the Information Commissioner said, charities are at liberty to contact people if they have consent that overrides the Telephone Preference Service, and that may be where some of the confusion lies.

Chair: We are going to come to the regulatory aspects, and the Etherington proposals.

Q304 Kelvin Hopkins: Sir Stuart Etherington has suggested a hybrid model of self-regulation and government oversight. How confident should the public be in self-regulation, given the failures that have been identified?

Mark Wood: I think we have to be very careful about self-regulation. There are many examples of self-regulation across many sectors proving to be inadequate, particularly where there is intense competitive pressure, and it is clear that to some extent charities compete for people’s philanthropic generosity. I think we have to be quite cautious about self-regulation.

We are very comfortable with the recommendations that have been made. We think the fundraising preference service may remove a great deal of the ambiguity that arises when somebody on one hand has opted out of TPS and on the other hand has said, “Yes, I would like to hear from a charity”. Having that very clear preference stated would seem sensible to us. It is also, from our point of view, a very practical thing to do because, of course, we do not want to be spending what would otherwise be money that would go to our charitable endeavour on pursuing people that really have no interest in talking to us and we have been introduced to by some flimsy basis for justification. We are not interested in that at all. In short, fundraising preference we think is a good idea. Sir Stuart’s recommendations we have a great deal of sympathy with and look forward to working with him on the practicalities of implementing those recommendations.

There is also a suggestion that self-regulation should be replaced by a body for which there is a levy imposed. While we are uncomfortable with the concept of a levy being an additional burden on charities, we think that it is money that is worth investing in order to ensure that the general standard of fundraising is raised such that the public as a whole have confidence in the methods and means by which charities pursue raising funds.

Q305 Kelvin Hopkins: So if we parliamentarians lobbied for Etherington to be beefed up about self-regulation in particular, you would not object?

Mark Wood: Not at all.

Q306 Kelvin Hopkins: The consumer group Which? has suggested that the Government should take action against senior officials at board level in companies that do not comply with data protection laws. Should the Charity Commission adopt this recommendation? Indeed, would you recommend that any company breaking the law be prosecuted?

Mark Wood: Absolutely.

Karen Brown: As far as Sir Stuart Etherington's report is concerned, the fact that there would be a single regulator for all is a great step forward. As soon as that comes into place, that will help everyone. At the moment, it is an optional self-regulator for those who sign up to the code. There does need to be, and there is planned to be, some more work on how that would work out in practice, but the important thing is that the self-regulator must be properly funded and have the force of law behind it, which is what Sir Stuart has proposed.

Daphne Harris: The RSPCA's position is that we will go along with the Government and the charitable sector in deciding whether it is to be self-regulation or statutory regulation. We prefer self-regulation but we will practise diligently whichever is decided. We would like to see one regulator, to see fundraising being kept as a self-regulation activity, to put the power back to donors by listening and responding better to our supporters. Finally, if charities do get it wrong in the future, we want effective sanctions in place. That is our position.

Kelvin Hopkins: I have to say that I am somewhat sceptical about self-regulation, as is Mr Wood, but I will pass on. Thank you.

Chair: You probably have a more comprehensive reaction to Etherington and if you want to submit that to us in writing, that would be quite helpful.

Q307 Chair: My last question: how will you make sure that your trustees, as a body, are confident that these abuses are no longer going on?

Karen Brown: I will never feel confident. We have reviewed all our policies, we have renewed our fundraising policy, we have put in place a revised handbook, we have done due diligence on all our suppliers, but we have to make sure that we have a system that is as good in five years' time as, after spring cleaning, it is now, and better. We have to go on improving. As I said earlier, all the regulation in the world will not be enough to solve the irritation of the public unless we work collectively as a sector to address it.

We have not talked very much about vulnerable people, but we do have a policy in place at Oxfam that goes beyond what the current regulation is, where as soon as a fundraiser has any sense that possibly somebody might be a vulnerable person, their instruction now is to terminate the call and then thought is given to whether to send them something in the post.

Chair: Does anyone have anything to add to that?

Daphne Harris: Only that I feel the same. I shall make sure that the trustee body knows how I feel and how they should feel, how serious this is and how seriously we must take it. Thank you.

Mark Wood: I think I would phrase it slightly differently. Any breach is inexcusable. We are all exposed to human error and the consequence of that is that we have to make sure that our procedures are as robust as they possibly can be. An important part of that is very intense scrutiny.

Q308 Chair: What recommendations should we include in our report for all trustees of all charities, in respect of what we learn from this episode?

Mark Wood: There is a common theme in the answers that we have been giving around oversight. It seems to me that a fundraising committee that has the same status as the audit committee and finance committee is a vital component of proper governance. The reason I say that is because it is important that management reporting flows through from the executive within a charity to the trustees, and having a subgroup of suitably qualified trustees to oversee the performance of the fundraising team is a crucial part of that. Many charities operate with a trustee responsible for fundraising or there is a small informal group. That has to be formalised and that flow of information has to be formalised.

Secondly, the regulatory changes that we have just been discussing—if anything, beefed up, as we have said—would be extremely helpful. There may be an element within the constitution of the board that needs to be examined, which is that many charities quite naturally have people who are subject matter experts in the purpose of the charity. Having a board that is balanced, in terms of having not only people who have a drive to ensure that the charitable endeavour is fulfilled but also that there is a group of people who can complement that with appropriate financial skills, may be important. Therefore, looking in a more direct way at the balance of skills that a board has and obliging boards to do an annual audit of that balance of skills may be another valuable component.

Q309 Chair: That is a very useful answer, if I may say so. Thank you very much. Do charities have compliance officers or should they have a compliance officer?

Karen Brown: That is a very interesting question in the light of this. Despite the compliance that was in place within our fundraising division, we now have appointed a compliance officer. It will depend, according to the charity. I also think that there are other ways of formalising the flow of information about fundraising through different board structures. It would be equally appropriate if it came through an audit committee but it needs to come through. It can't stop at the committee level. It also needs to flow on up to the board. The whole board has to take responsibility for fundraising.

Mark Wood: I completely agree. For the larger charities that have the resources to be able to constitute a formal audit committee, that compliance function often is performed by the audit committee receiving independent audit reviews and internal audit reviews of the performance of the charity.

Chair: If you have any other thoughts about developing governance, we would be very interested in those in writing. If there are no further questions, you have been very helpful. I would ask you to take back to your charities that you are all, in your own way, household names, a huge amount of public trust is put in you, and your employees must also feel hurt and let down by what has happened. I still think this country holds charities in very high regard and long may that be so. Thank you for what you do.