THE CHANGING FACE OF F2F

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FACE-TO-FACE FUNDRAISING MAGAZINE #73
REGULAR GIVING

***Paul Tavatgis** on why it's no longer business as usual for the*

Cinderella of fundraising.

Face-to-face fundraising remains the most effective way for charities to inspire thousands of new regular donors, but it currently faces dramatic change. This article aims to help fundraisers understand what is happening in the sector, and how both charities and agencies might adapt. There is a gap in understanding between suppliers and agencies that I hope to demystify.

There are two changes underway: Firstly, the proportion of agencies engaging workers as employees rather than independent contractors has increased. Secondly, external and internal scrutiny means that charities are increasingly emphasising regulatory compliance throughout their fundraising supply chains.

PRESSURE ON THE IC MODEL

The Fair Work Ombudsman (FWO) is running the Charity Collection Inquiry investigating charities' compliance with Australian workplace laws. More charities have been included in the Inquiry in recent weeks, and a report should now be expected in mid-2018. There are also class-action law suits underway, and proposed, into allegations of sham contracting by some agencies. At this stage there have been no decisions in any cases and all agencies are actively defending themselves.

This creates genuine problems for charities in ensuring that their fundraising supply chain is compliant. This area of law is complex and there is no consistent black and white definition of an independent contractor. The FWO is making increasing use of Section 550 of the Fair Work Act 2009 (Cth) in other sectors, creating potential accessorial liability for charities as organisations and individual decision makers.

This increases the incentive to implement effective supply chain due diligence processes.

It is important to note that independent contracting is a lawful way for an organisation to engage workers for whom that classification genuinely applies and that none of the current scrutiny has led to any negative findings against any agency engaging independent contractors.

However, this external attention has led many charities to re-evaluate their policies regarding the engagement of fundraising workers under Australian workplace laws.

SHIFTING FINANCIAL RISK IN F2F

The change in fundraiser engagement models means that more face-to-face fundraisers are now being paid for their time, rather than for the number of donors they recruit. The financial risk of low volumes or high attrition that used to be carried by a commission-only worker, is now being shifted to the agency and the charity. This has led to a sector-wide renegotiation of financial terms, as charities and agencies seek to minimise their share of this risk.

Charities face higher agency fees, while agencies risk lower profit margins. This change is unavoidable for those charities that require workers within their supply chains to be engaged in a way that is consistent with the National Employment Standards (NES) as set out in the Fair Work Act 2009 (Cth). Many charities are also engaged in discussions within their Boards, with staff and with their supporters, to determine their ethical position in respect to how fundraisers are engaged.

INCREASED COMPLIANCE LEVELS LEAD TO INCREASED COST

Fundraising regulations are being more stringently applied by both government and sector self-regulators including the Public Fundraising Regulatory Association (PFRA), which is increasingly effective in ensuring fundraising is conducted within statutory and sector-imposed standards. Government regulators are also applying more scrutiny to face-to-face fundraising. This includes research by the Australian Competition and Consumer Commission (ACCC) into commission-based fundraising and shifts in policy by state-based fundraising regulators, notably the Queensland Office of Fair Trading (OFT). Government attention is focused on the commercial relationship between charities and suppliers.

Increased regulatory compliance increases the constraints upon fundraising agencies.

For those agencies with fewer scruples or less control over their workers, it is now harder to cut corners. This has disproportionately increased their costs, effectively pricing in externalities that were previously avoided.

The whole sector benefits from increased compliance; an inherently good thing. However, this has an impact on agencies that have not been fully complying with regulations; the operation of face-to-face fundraising teams is now harder. Rogue operators must (rightly) either start to comply with the rules, or risk being forced out of the market, creating even more volatility.

INCREASED MARKET VOLATILITY = REDUCED SUPPLY CHAIN TRANSPARENCY

Charities are swapping suppliers to ensure that they can comply with new policies in worker engagement, increasing the pressure for agencies to change their worker engagement models and encouraging new entrants to the market. There are now 33 agency members of the PFRA and many more sub-contractor agencies. This sub-contracting market creates issues for charities as they try to carry out due diligence including thorough supply chain mapping. Charities who contract agencies often are unaware that their fundraising workers are actually engaged by second or even third tiers of sub-contractors. These companies regularly change from agency to agency, creating issues for charities trying to ensure that they are working with trustworthy suppliers, particularly when seeking to manage their reputations in the context of recent media attention focused on individual suppliers.

WHAT DOES THIS MEAN FOR AGENCIES?

Although they perform the same service, an agency engaging workers as independent contractors and one which employs its fundraisers are entirely different businesses.

They have different cultures, financial structures, management styles and values. Shifting engagement models is not as simple as asking Friday's independent contractors to sign employment contracts on Monday. Change is profound, complicated and difficult, requiring major structural changes, and hundreds of practical adjustments.

Poorly performing fundraisers now need to be paid the same as superstars. Every minute of training, travel and fundraising time now needs to be paid. Formal rosters are needed to allow for long shifts at shopping centres.

Fundraisers are no longer free to work the hours they choose, and any overtime adds to costs. Fundraisers' previous motivation to work for themselves and build a business is gone and must be replaced with management, motivation and training systems.

Agency owners who have developed in an environment that encourages entrepreneurship, are now faced with running an entirely alien employment-based model. They may see short-term falls in volumes. This is not a magic bullet to make compliance headaches go away.

To cap it all off, profit margins are going to be lower and more variable. In general, employment-based agencies have always operated less predictable and generally lower profit margins. They must absorb the costs of periods of poor performance and they have higher fixed overheads to pay for necessary human resource management. In contrast, independent contracting-based agencies have generally passed the financial risk to their workers. More of their costs are variable and this makes it easier to manage financial performance and profit margins.

When an agency makes this change, they may try to preserve their margins when they approach their clients with revised fees.

IMPLICATIONS FOR CHARITIES

Charities face increased costs, market volatility, and due diligence and compliance requirements. Targets remain, and budgets are always tight. It is easy in this situation to push back on the agency when they come looking for more money because they've changed their worker engagement model to meet the charities' requirements. Can a charity have its cake and eat it too?

Understand also, that just because an agency has switched to an employment model, this does not automatically guarantee compliance. They may have a letter from a lawyer explaining that their employment contracts are compliant, but this doesn't mean they aren't asking their casual employees to work 50 hours a week and only paying them for 38. Whether the supplier is using the NES or working to an Award, compliance is complicated and there are still many ways to cut corners.

CHARITIES – HOW TO RESPOND?

Understand your supplier's business It is essential to have a clear understanding of your current supplier's business and what their constraints and challenges are. If they are asking for a price rise, what are the drivers of that increase?

Supply chain due diligence is critical This is not just a one-off exercise when a new supplier is appointed, it should be an ongoing process. If you don't have the internal capacity for this, external support is available.

Know who you are working with Charities need to know every company in their F2F supply chain and apply due diligence to each of them. It is not enough to stop at the top-tier supplier. You must have full visibility of your supply chain and should not accept anything less than transparent disclosure from your suppliers. If you have terminated an agreement with a supplier in order to manage compliance or reputational risks, ensure that any new supplier is not merely the result of company 'phoenixing' or equivalent arrangements (that is, ensure you are not still working with that same supplier bearing a different name). This may require understanding how and where the money flows to ascertain who the end beneficiary is in your supplier network.

Participate in sector initiatives Membership of the PFRA is essential. Also, the Labour Standards Centre provides a collective approach to supply-chain management including through its Charity Labour Standards Leadership Group.

Employment is not the magic compliance bullet Due diligence is still essential – ‘inspect, don’t expect’. Ensuring compliance with Australian workplace laws is still a challenge for businesses that exclusively employ their workers and organisations that have recently made a transition to an employment-based model have a lot to learn.

Is in-house an option? Many charities are joining those already running in-house teams. This won’t replace the scale of agency fundraising but can mitigate the volatility. Maybe it’s worth a look.

Maximise long-term value If cost per acquisition (CPA) is rising then it is vital to maximise income. Make sure that you are modelling best practice in donor processes and retention.

Cooperate if you don’t have the capacity in an area, maybe you can work with other charities to build scale? Might there even be scope for a collective, charity-led ‘super in-house’ agency?

AGENCIES – WHAT TO DO?

Keep talking to your clients The charity won’t be able to guess the challenges your business faces. Be open about your experience and they may work with you to help curing change.

Implement basic compliance Compliance and due diligence are here to stay. Implement basic systems and processes to ensure compliance and to respond to client requests. Seek outside help if you need to increase your skills. A good advisor should ‘teach you to fish’ to ensure you develop skills internally to manage your regulatory compliance obligations in-house.
Supply chains are your concern too If you use sub-contractors, undertake checks to make sure they are not damaging your reputation and business. Just because you can take on a sub-contractor doesn’t mean you should. Low quality operators shouldn’t be in the market – don’t hire them.

Workplace law compliance Just because your lawyer has checked your contracts doesn't mean you are compliant. Make sure the reality of your workers' days matches the contract. For employees, how many hours are you paying them for, and how many are they actually working? Are your sub-contractors complying too? If using contractors, are they genuinely independent? Do they meet the common law meaning of 'independent contractor'? Do you complete the Australian Taxation Office's employee/contractor decision tool before deciding to engage your workers?

This article covers a lot of ground in looking at compliance, legal, regulatory, financial and other technical areas. These are all critical, however the key questions are still simple: How do you want the fundraisers in your face-to- face program to be treated? What relationship do you want to have with your suppliers or your clients? Who do you want to talk to donors on your behalf? All organisations should be asking those questions.

Face-to-face is often the Cinderella channel for fundraisers, largely ignored in conference programs and at awards ceremonies. The cry is heard: "There's nothing new in face-to-face…" Well, that's not true now; it's time to realise that the ground is shifting underneath face-to-face fundraising. The fundamentals remain the same – but the environment has changed significantly. Continuing with "business as usual" is not an adequate response. Charities and agencies need to cooperate and compromise with each other to navigate these changes and ensure that a critical fundraising method remains viable.

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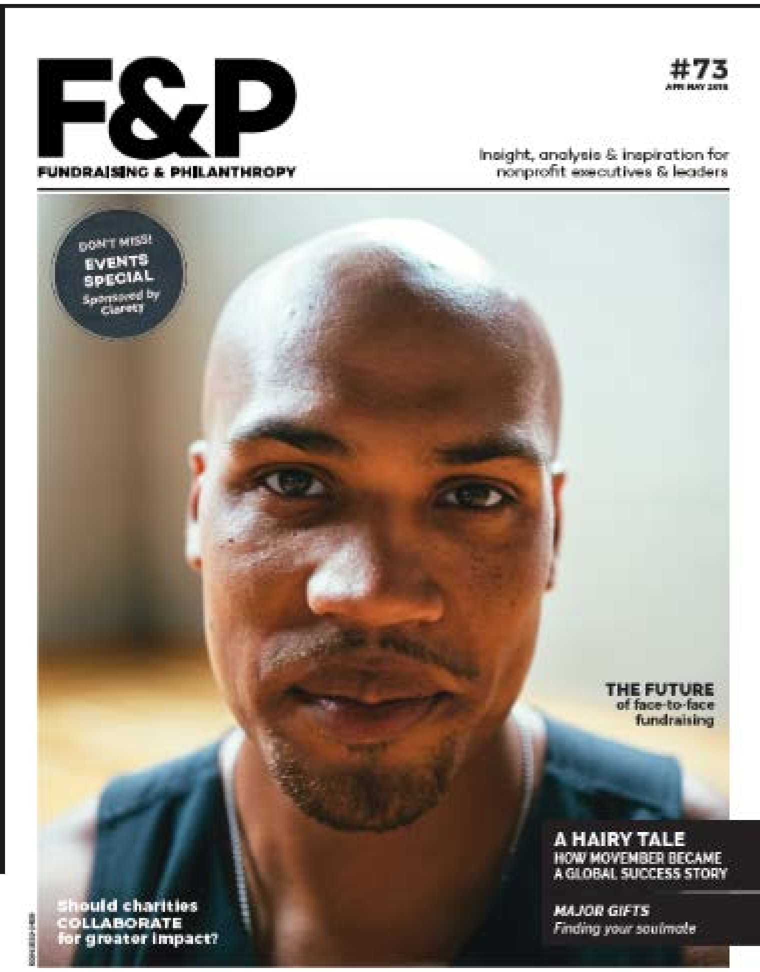

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