

<b>Document name</b>	Joint Working Agreement: OSCR and Foundation Scotland	
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## **Joint Working and Data Sharing Agreement**

between the

**Scottish Charity Regulator (OSCR)**

and

**Foundation Scotland**

in respect of the

**Revitalising Trusts Project**



## **1 Purpose**

- 1.1 The purpose of this agreement is to set out the arrangements for joint working and data sharing between the Scottish Charity Regulator (OSCR) and Foundation Scotland to ensure effective delivery of the Revitalising Trusts Project (the Project), including the circumstances and purposes for which information including personal data may be shared between the parties.

## **2 Parties to the agreement**

- 2.1 OSCR is the independent registrar and regulator of Scotland's 25,000+ registered charities. It is a non-ministerial office of the Scottish Government accountable to the Scottish Parliament, established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) and by Order made under section 104 of the Scotland Act 1998.
- 2.2 Foundation Scotland is a private company limited by guarantee, registered as a charity in 1992 (SC022910) and incorporated in 1994 (SC152949). It is Scotland's community foundation and a member of the UK Community Foundations Network.

## **3 Context to the Project**

- 3.1 Under section 1 of the 2005 Act, OSCR is responsible for the operation of an effective regulatory framework for charities in Scotland. Its general functions are provided for in section 1(5) of the 2005 Act and include:
- 3.1.1 to determine whether bodies are charities (through application of the charity test);
  - 3.1.2 to keep a public register of charities (the Scottish Charity Register);
  - 3.1.3 to encourage, facilitate and monitor compliance by charities with the provisions of the 2005 Act; and
  - 3.1.4 to identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in respect of such misconduct.
- 3.2 Under section 1(6) of the 2005 Act, OSCR may do anything (whether in Scotland or elsewhere) which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.
- 3.3 A body must meet the charity test in order to be entered and remain in the Scottish Charity Register. To meet the charity test a body must have wholly charitable purposes (as defined in section 7 of the 2005 Act) and provide public benefit in Scotland or elsewhere. OSCR determines whether a body provides public benefit through consideration of the activities the body undertakes in furtherance of its charitable purposes.

- 3.4 In exercising its functions, OSCR may at any time make inquiries with regard to a charity. Where it appears to OSCR as a result of its inquiries that a charity no longer meets the charity test it must either direct the charity to take steps necessary to meet the charity test or remove the charity from the Scottish Charity Register.
- 3.5 OSCR's Operational Plan for 2021-22 includes an objective to refresh and review the Scottish Charity Register to ensure it contains only active and fully compliant charities.
- 3.6 It is OSCR's view that Foundation Scotland is the best placed body for OSCR to collaborate with in delivering the Project due to its experience and specialisms in understanding the complexities of trust arrangements and providing means through which the purposes of a charitable trust can be best achieved either through reorganisation or similar. Foundation Scotland has been working within the charity sector since 1992, providing support and advice to individual donors, trusts and corporate bodies on their giving with the aim of supporting communities in Scotland.

#### **4 Purpose and scope of the Project**

- 4.1 The purpose of the Project is to ensure that charitable assets held by charitable trusts are used effectively to provide public benefit. In order to achieve this purpose, the Project will:
  - 4.1.1 identify charitable trusts in the Scottish Charity Register that may not be providing public benefit due to their apparent inactivity or low level of activity;
  - 4.1.2 make inquiries to seek to understand why charitable trusts identified through the Project may be inactive or underactive and assess whether further action is necessary;
  - 4.1.3 explore options for resolving the inactivity or underactivity of charitable trusts identified through the Project and reach agreement with the charity trustees of such charitable trusts on an appropriate solution. The solution may result in reorganisation of a charitable trust including dissolving the charitable trust and transferring its remaining assets to another charity. This may, but need not, be a transfer of the remaining assets to a fund or funds managed by Foundation Scotland.
- 4.2 In the course of carrying out the above purpose, Foundation Scotland may identify to OSCR charitable trusts that meet the Project criteria but whose charity trustees are not responding to or cooperating with the Project. In such cases, OSCR will risk assess the information provided by Foundation Scotland to decide whether to open an inquiry into the charity.
- 4.3 The Project will focus upon charitable trusts that, were it not for their inactivity or low level of inactivity, provide public benefit through the disbursement of charitable funds as grants, awards, loans or other payments to charities, third sector, non-profit or community organisations or individual beneficiaries in Scotland or elsewhere.

- 4.4 OSCR and Foundation Scotland will agree the criteria by which a charitable trust will be deemed to be within the scope of the Project and may agree to exclude any charitable trust or type of charitable trust from the Project.

## **5 Project Advisor**

- 5.1 Foundation Scotland will employ or appoint a Project Advisor and will be responsible for providing line management and supervision to the post holder. The Project Advisor will be responsible for delivering all aspects of the Project as set out in the role profile agreed between the parties.
- 5.2 OSCR and Foundation Scotland will ensure that the Project Advisor is given access to colleagues who can provide information, advice and technical support on all aspects of the design, implementation, administration and evaluation of the Project.

## **6 Sharing of information (excluding personal data)**

### *Agreed purposes*

- 6.1 For the agreed purposes of the Project as provided for in clause 4.1 of this agreement (and for no other purpose), information (excluding personal data) will be shared between the parties on the basis provided for in clauses 6.2 and 6.3.

### *Basis for sharing information (excluding personal data)*

- 6.2 In respect of OSCR, its legal basis for sharing information with Foundation Scotland is that, in terms of the 2005 Act, the sharing of information is calculated to facilitate, or is conducive or incidental to, the exercise of its functions. One of OSCR's functions is to encourage, facilitate and monitor compliance by charities with the 2005 Act. In order to comply with the 2005 Act, charities must provide public benefit. The agreed purpose of the Project is to ensure that charitable assets held by charitable trusts are used effectively to provide public benefit.
- 6.3 In respect of Foundation Scotland, it will share information with OSCR on charitable trusts contacted and assisted through the Project, including the outcomes of that assistance. In accordance with clause 4.2 of this agreement, Foundation Scotland will also share with OSCR information about charitable trusts that do not respond to or cooperate with the Project and which remain inactive or show a low level of activity.

## **7 Sharing of personal data**

### *Agreed purposes*

- 7.1 For the agreed purposes of the Project as provided for in clause 4.1 of this agreement (and for no other purpose), personal data of the type set out in clause 7.6 will be shared between the parties, subject always to Data Protection Legislation and the data protection principles and provisions contained in this agreement.

### *Basis for processing for agreed purposes*

- 7.2 In respect of OSCR, its legal basis for processing shared personal data is that, as a statutory body, the processing is necessary for the performance of a task carried out in the public interest and in the exercise of official authority vested in OSCR by virtue of the 2005 Act.
- 7.3 In respect of Foundation Scotland, its legal basis for processing shared personal data is legitimate interest, being the processing of personal data to complement and enhance OSCR's statutory functions to ensure that charities are providing public benefit.

### *Defined terms*

- 7.4 The terms 'controller', 'processor', 'data subject', 'personal data', 'personal data breach', 'processing' and 'appropriate technical and organisational measures' are as set out in Data Protection Legislation.

### *Data Protection Legislation*

- 7.5 All applicable data protection and privacy legislation in force from time to time in the UK shall apply to the Project, including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 as amended and all other legislation and regulatory requirements in force from time to time which apply to the parties relating to the use of personal data (including, without limitation, the privacy of electronic communications). UK GDPR has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

### *Shared personal data*

- 7.6 The personal data to be shared by OSCR and Foundation Scotland under clause 7.1 of this agreement shall be confined to the following categories of information relevant to the following categories of data subject:
- 7.6.1 names, addresses, email addresses and telephone numbers of charity trustees
- 7.6.2 names, addresses, email addresses and telephone numbers of principal contacts for charities where the individuals are not charity trustees

Each party acknowledges that OSCR will regularly disclose to Foundation Scotland, the shared personal data collected by OSCR for the agreed purposes.

### *Effect of non-compliance with Data Protection Legislation*

- 7.7 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by Foundation Scotland shall, if not remedied within 14 days of written notice from OSCR, give grounds to OSCR to terminate this agreement with immediate effect.

*Particular obligations relating to data sharing*

- 7.8 OSCR shall ensure that it has all the necessary notices and consents and lawful bases in place to enable lawful transfer of shared personal data to Foundation Scotland for the agreed purposes.
- 7.9 Where, in the course of transferring documents to Foundation Scotland, OSCR identifies that such documents contain personal data of a type that is not agreed to be shared under clause 7.6 and is not considered by OSCR to be relevant and necessary for the agreed purposes of the Project, OSCR shall redact such personal data from the documents before transferring them.
- 7.10 Foundation Scotland shall:
- 7.10.1 process the shared personal data only for the agreed purposes of the Project;
  - 7.10.2 not disclose or allow access to the shared personal data to anyone other than the Project Advisor. In the prolonged absence of the Project Advisor and to enable continued operation of the Project, access to the shared personal data may be allowed by Foundation Scotland's Primary Data Controller with the agreement of OSCR;
  - 7.10.3 ensure that the Project Advisor is subject to written contractual obligations concerning shared personal data which are no less onerous than those imposed by this agreement;
  - 7.10.4 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
  - 7.10.5 not transfer any personal data received from OSCR outside the EEA unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

*Mutual assistance*

- 7.11 Foundation Scotland shall assist OSCR in complying with all applicable requirements of the Data Protection Legislation. In particular Foundation Scotland shall:
- 7.11.1 consult with OSCR about any notices given to data subjects in relation to the shared personal data;
  - 7.11.2 promptly inform OSCR about the receipt of any data subject rights requests;
  - 7.11.3 provide OSCR with reasonable assistance in complying with any data subject rights request;

- 7.11.4 not disclose, release, amend, delete or block any shared personal data in response to a data subject rights request without first consulting with OSCR wherever possible;
- 7.11.5 assist OSCR, at the cost of OSCR, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
- 7.11.6 notify OSCR without undue delay on becoming aware of any breach of the Data Protection Legislation;
- 7.11.7 at the written direction of OSCR, delete or return shared personal data and copies thereof to OSCR on termination of this agreement, unless required by law to store the shared personal data;
- 7.11.8 use compatible technology for the processing of shared personal data to ensure that there is no lack of accuracy resulting from personal data transfers;
- 7.11.9 maintain complete and accurate records to demonstrate its compliance with this clause and to allow for audits by OSCR or OSCR's designated auditor; and
- 7.11.10 provide OSCR with contact details of at least one employee as a point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the procedures to be followed in the event of a data security breach, and the regular review of Foundation Scotland's compliance with the Data Protection Legislation.

## **8 Communications**

- 8.1 The content, timing, and method of dissemination of all general communication to the public, the media and all communication targeted at particular interest groups about the Project will be agreed between OSCR and Foundation Scotland and will indicate the Project as a collaboration between the parties.
- 8.2 The content of all initial written communication to individual charitable trusts identified as meeting the Project criteria will be agreed between OSCR and Foundation Scotland and will indicate the Project as a collaboration between the parties.
- 8.3 The parties may agree on a case-by-case basis which of them will respond to general enquiries about the Project including (but not necessarily limited to) enquiries from other charities not meeting the Project criteria but with an interest in the Project.
- 8.4 Once contact with individual charitable trusts has been established, the Project Advisor may use her own discretion as to the most appropriate way to maintain contact, provided that all written communication with the charitable trust or its advisors, including emails, is branded as being on behalf of the Project and identifies

the Project as a collaboration between OSCR and Foundation Scotland.

## **9 Reference Group**

- 9.1 Foundation Scotland will establish a Reference Group for the Project and will determine the terms of reference and membership of the Reference Group in agreement with OSCR. The Reference Group will be convened and serviced by the Project Advisor and will meet approximately quarterly.
- 9.2 Notwithstanding additional details that may be in the agreed terms of reference, the general purpose of the Reference Group shall be to assist the parties in the fulfilment of the purposes of the Project, to provide headline advice and guidance on the direction of the Project, to identify learning points as the Project progresses, to advise on adjustments as necessary and to evaluate the Project outcomes.
- 9.3 No information shared between the parties for the agreed purposes under sections 6 or 7 of this agreement will be disclosed to or shared with members of the Reference Group. The Reference Group will be permitted to receive reports on the progress of the Project that include aggregated data, statistics, and anonymised case studies.

## **10 Provision of objective support and guidance to charity trustees**

- 10.1 In the course of delivering the Project, it is intended that the Project Advisor will identify charitable trusts whose trustees are seeking guidance and support with the most effective way of revitalising their charitable funds for public benefit. The Project Advisor will liaise with colleagues in OSCR and Foundation Scotland for technical assistance with a view to setting out options for these charities and enabling a solution focused approach.
- 10.2 In delivering the Project, the parties will be careful to differentiate between the roles of Foundation Scotland and the Project Advisor to offer support and guidance to charitable trusts on options for revitalising and the role of OSCR to make decisions on any application for consent or reorganisation of charitable trusts arising from the Project.
- 10.3 In some cases the options set out for a charitable trust may include the possibility of reorganisation by winding up the trust and transferring its remaining assets to a fund or funds managed by Foundation Scotland. Where appropriate, this option will be presented to the charity trustees and may identify the full range of services and support that Foundation Scotland can offer. This will be done on the understanding that a final decision on the options remains with the charity trustees who will be required to decide which option is in the interests of the charity

## **11 Liaison between the parties**

- 11.1 In order to ensure that matters under this agreement are handled at the appropriate level, contact between OSCR and Foundation Scotland should be established between designated points of contact. Where they consider it appropriate, the designated contacts may delegate ongoing liaison to colleagues.



11.2 The designated points of contact for the Project are:

for OSCR: Steve Kent, Policy Manager [steve.kent@oscr.org.uk](mailto:steve.kent@oscr.org.uk) 0131 376 3617  
for Foundation Scotland: Chris Holloway, Head of Social Investment  
[chris@foundationscotland.org.uk](mailto:chris@foundationscotland.org.uk) 0141 341 4965

## 12 Complaints

12.1 In the event that any complaint about the Project is received by either party, the complaint will, in the first instance, be notified to the other party through the designated point of contact. Depending upon the nature of the complaint and the party to which it was addressed, the designated points of contact will agree how and by whom it is to be addressed in accordance with the published complaints procedures of the respective parties.

## 13 General

- 13.1 OSCR and Foundation Scotland are committed to principles of continuous improvement and while it is intended that this agreement should remain in force for the duration of the Project, the working arrangements may be reviewed, and the agreement updated as the parties consider appropriate.
- 13.2 While it is intended that the arrangements in this agreement should apply generally, both parties recognise that there may be circumstances that require special handling. Nothing in this agreement shall prevent the parties making special arrangements to meet exceptional circumstances.
- 13.3 Any disagreement arising from interpretation of this agreement shall be referred to the Chief Executives of OSCR and Foundation Scotland who will endeavour to resolve it in a spirit of partnership and co-operation. If necessary, the agreement will be amended to reflect the outcome of their resolution.



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Maureen Mallon  
Chief Executive OSCR

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Giles Ruck  
Chief Executive Foundation Scotland