

Memorandum of Understanding between the Scottish Charity Regulator and the Charity Commission for Northern Ireland

Purpose of the Memorandum of Understanding

The purpose of this memorandum of understanding is to set out the operational arrangements for OSCR and the Charity Commission for Northern Ireland to work together with their respective policy and legislative frameworks so as to provide better regulation and guidance for charities that operate across Northern Ireland and Scotland.

OSCR
Scottish Charity Regulator

**The Charity
Commission**
for Northern Ireland

1. Introduction and objectives

This Memorandum of Understanding (MOU) provides a framework for closer working between the Scottish Charity Regulator (OSCR) and the Charity Commission for Northern Ireland (CCNI). OSCR and CCNI are fully committed to the aims of this MOU which are:

- To re-affirm and build upon the co-operation that already exists between OSCR and CCNI
- To ensure appropriate consultation and co-ordination in the interpretation and application of the relevant law and policy
- To set out the circumstances in which OSCR and CCNI will share information and collaborate operationally where a common regulatory approach is required.
- To minimise the burden of dual regulation on charities required to register in both jurisdictions
- To increase effectiveness in dealing with compliance issues in charities registered in both jurisdictions
- To maximise information about charities in the public interest

2. Current Statutory Framework

2.1 OSCR's Statutory Framework

OSCR is established under the Charities and Trustee Investment (Scotland) Act 2005 (2005 Act) and is the regulator of charities in Scotland. Section 1(5) of the 2005 Act sets out OSCR's general functions.

- To determine whether bodies are charities
- To keep a public register of charities
- To encourage, facilitate and monitor compliance by charities with the provisions of the 2005 Act
- To identify and investigate apparent misconduct in the administration of charities and to take remedial action in relation to such misconduct
- To give information or advice, or to make proposals, to the Scottish Ministers on matters relating to OSCR's functions.

2.2 CCNI's Statutory Framework

CCNI is established under the Charities Act (Northern Ireland) 2008 (2008 Act) and is the regulator of charities in Northern Ireland. Section 8 of the 2008 Act sets out CCNI's general functions.

- Determining whether institutions are or are not charities
- Encouraging and facilitating the better administration of charities

- Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein
- Determining whether public collection certificates should be issued, and remain in force, in respect of public charitable collections
- Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission's functions or meeting any of its objectives
- Giving information or advice, or making proposals, to the Department on matters relating to any of the Commission's functions or meeting any of its objectives.

3. Legal authority for disclosure of information

3.1 OSCR's information sharing powers

CCNI is a 'relevant regulator' for the purposes of the 2005 Act, and as such Chapter 3 of the 2005 Act enables OSCR and the CCNI to share information and work together where appropriate.

Furthermore section 24 of the 2005 Act permits OSCR to disclose information to any public body or office holder (in Scotland or any other part of the United Kingdom) for any purpose connected with OSCR's functions, or for the purpose of enabling or assisting the public body or office holder to exercise any functions.

3.2 CCNI's information sharing powers

Section 24 of the 2008 Act permits CCNI to disclose information to any public body or office holder (in Northern Ireland or any other part of the United Kingdom) for any purpose connected with CCNI's functions, or for the purpose of enabling or assisting the public body or office holder to exercise any functions.

3.3 General

OSCR and CCNI will ensure that any disclosure of information under the terms of this MOU is carried out in a manner that is efficient, proportionate and fully compliant with the 2005 Act, the 2008 Act, the Human Rights Act 1998, the Data Protection Act 1998, the Freedom of Information Act 2002 and the Freedom of Information (Scotland) Act 2002.

OSCR and CCNI will not disclose information received under the terms of this MOU to any other person or body without consulting the disclosing party. When disclosing information the provider will mark it with the appropriate government protective security classification.

4. Development of policy and legal framework

Both OSCR and CCNI regard each other as key stakeholders in the development of the law and legal policy in their respective jurisdictions. They will work together to ensure that relevant law is interpreted and applied in a way that achieves, so far as possible within their respective legal and policy frameworks:

- consistency in the application of regulatory principles
- consistency of decision making, especially in areas where there is a UK-wide application; and
- regulatory regimes that promote effective regulation without imposing an unnecessary administrative burden on charities operating in both jurisdictions.

In order to achieve this, senior representatives of OCSR and CCNI will meet at least twice a year. The purpose of these meetings will be to discuss the development of relevant law and policy to address issues of principle and consistency from a strategic perspective. These meetings will most likely be held alongside or as part of the UK Regulators Forum.

Additional meetings may be convened as necessary, between appropriate key staff, to address these and other issues arising. When appropriate, OSCR and CCNI may invite HM Revenue and Customs or other third parties to participate in meetings and consultations.

When they consider it necessary, both OSCR and CCNI will consult relevant umbrella bodies on matters of consistency, particularly in relation to charities operating across the jurisdictions.

5. Operational liaison for charities working in both jurisdictions

This section sets out the detailed areas of operational liaison between OSCR and CCNI, the liaison procedure that will be followed in the case of joint inquiries is covered in section 6.

5.1 Charity Registration and Maintenance of Registers

If during the process of registering a charity, it becomes evident that the charity should also be registered in the other jurisdiction, OSCR will notify CCNI and the charity accordingly and vice versa. However, it is not the responsibility of either to ensure that the charity registers with the other body.

5.2 Charity changes

Both OSCR and CCNI operate regimes whereby there are specific actions that charities take that they must seek consent for or notify the regulator. This information is available on each regulators websites.

When dealing with such cases if it is identified that charities are registered in both Scotland and Northern Ireland, each regulator will consult with the other and where possible agree a consistent recommendation or decision.

5.3 Public Benefit

It is recognised that there are differences between the two legal frameworks in relation to charitable status. However, the objective of OSCR and CCNI is, wherever possible, to reach a common position on issues relating to charitable purposes and public benefit.

OSCR is under obligation to, from time to time, review entries in the Register under section 3(6) of the 2005 Act, as well as to remove from the Register a charity which no longer meets the charity test (Section 30). The Scottish charity test includes a requirement for the charity to demonstrate that it provides (or in the case of a new applicant provides or intends to provide) public benefit. This test applies to all charities on the Scottish Charity Register i.e. including those already registered in other jurisdictions. Where OSCR is reviewing a charity registered also by CCNI OSCR will notify CCNI accordingly.

In Northern Ireland the 2008 Act also includes a provision that the purpose(s) of a charitable institution must be for the public benefit. Under section 16(5) of the 2008 Act CCNI is required to remove from the register any institution which it no longer considers to be a charity and any charity which has ceased to exist or does not operate. Where it does so and the charity is registered by OSCR, CCNI will notify OSCR accordingly.

5.4 Monitoring

Both OSCR and CCNI undertake monitoring activities, and will share the details of their approach to monitoring and the results of this work. Within the constraints of their respective legislative frameworks, OSCR and CCNI will endeavour to minimise the burden of their monitoring approaches on charities registered in both jurisdictions and will work together in sharing relevant information in the furtherance of their respective monitoring activities.

5.5 Public accountability

Both OSCR and CCNI are committed to encouraging openness and transparency in the financial reporting and management of charities so as to maintain public trust and support.

The accounts of charities which are required to produce accruals accounts (including all companies and larger charities) should comply with the methods and principles of the Statement of Recommended Practice (“SORP”).

OSCR and CCNI will work together in developing and promoting the charity SORP and underpinning regulations, through the SORP making body for UK charities by the Financial Reporting Council, so that charities that are required to produce accrual accounts throughout England, Scotland, Wales and Northern Ireland continue to follow the same recommended practices.

Similarly, OSCR and CCNI will, where possible, work together on the standardisation of the format and content of receipts and payments accounts for smaller charities.

5.6 Investigation of charity abuse and misconduct

OSCR and the CCNI will consult each other about any complaint or allegation of serious misconduct in relation to a charity registered in both jurisdictions before any inquiry action is taken. In appropriate cases, joint inquiry, intervention and reporting will be considered and if appropriate a lead investigator will be agreed. Each regulator on a quarterly basis will provide a list of the charities in respect of which enquires have been opened, together with a brief note of the cause for concern in each case.

Where it appears likely that the conduct of a joint inquiry or other form of intervention will generate media interest in both jurisdictions, or, given the profile and substance of the case, that a Ministerial briefing ought to be considered, the Chief Executives of OSCR and CCNI will be consulted as to the appropriate approach.

Where abuse within a charity registered within both jurisdictions results in OSCR or CCNI conducting a formal investigation into a charity, each will provide information to the other about conduct and outcome of that inquiry, where appropriate.

Where abuse within charities registered in both jurisdictions raises issues of a criminal nature, OSCR and CCNI will liaise with the police authorities both jointly and separately in accordance with their own regulatory responsibilities.

Where OSCR is aware of misconduct, mismanagement or any other compliance or monitoring issues in the administration of a charity registered in both jurisdictions, it will provide, in accordance with the procedures set out in the Memorandum, any evidence of such misconduct or mismanagement considered relevant to the discharge of the functions of CCNI and vice versa.

5.7 Removed trustees

Where a trustee is removed in Northern Ireland by CCNI or in Scotland by the Court of Session, each regulator will notify the other of this removal within five working days.

6. Liaison at Individual Casework Level

If, during the course of an inquiry or other form of compliance intervention in respect of a charity, it appears that there is or may be a matter of relevance to the other jurisdiction, the case officer will contact OSCR or CCNI (as appropriate) through the designated point of contact (see below).

Both OSCR and CCNI agree that all operational referrals and requests for information under the terms of this Memorandum will be dealt with promptly by appropriate members of operational staff to be known as Single Points Of Contact (“SPOC”). The SPOCs will ensure that routine referrals are actioned within fifteen working days of receipt, and urgent referrals within five days. SPOCs will consult each other to discuss and agree an appropriate time scale for actioning immediate referrals, regard being had to resource availability and proportionality of action. Referrals should be submitted in the format requested by the relevant SPOC.

If action on a referral cannot be completed within the relevant time scales, the receiving SPOC will provide the originating SPOC with progress reports every fifteen working days or at mutually agreed intervals.

OSCR and CCNI will exchange information where this assists in resolving compliance casework in either organisation. Anonymised information may be provided where there is clear justification for doing so.

In appropriate cases a meeting may be convened between relevant OSCR and CCNI officers, the purpose of which will be to exchange information and to consider any joint action as appropriate. Meetings will be convened at mutually convenient times, in the interests of expediency, meetings should be held within the standard timeframes outlined in this Memorandum. Any exchange of information will be carried out in a manner that complies section 3 above.

7. General Liaison

OSCR and CCNI colleagues will liaise on a regular basis on various issues including the development of policy, guidance and research offering opportunities to be a critical friend on these pieces of work and generally informing each other of emerging trends and best practice. Opportunities to work jointly on these pieces of work will be sought where appropriate as well as where appropriate issuing joint statements through the news media.

Staff liaison may also include discussion to co-ordinate responses to government and EU initiatives, for example responding to proposals for tax changes which may impact on charities across the UK.

8. Staff development and training

As part of their respective staff training programmes, both OSCR and CCNI will ensure that their staff are made aware of the differing organisational, operational and legal frameworks. In order to facilitate this, appropriate staff should be offered

familiarisation visits to each other's offices and the possibility of mentoring by email/video or telephone conference. .

OSCR and CCNI will also explore the possibility of mounting joint training and development initiatives and, where practical, will offer places to each other's staff on relevant internal training courses, conferences and seminars.

9. Designated points of contact

In order to ensure that matters are handled at the appropriate level, and that developing policy considerations are taken fully into account, contact between OSCR and CCNI should be established between designated points of contact (see Annex 1).

Designated points of contact may delegate ongoing liaison to members of their staff, where they consider it appropriate in order to develop operational contact, but should ensure that any member of staff who is in discussion has the appropriate authority to agree principles, policy and process or can secure that agreement within a reasonable time frame.

Operational referrals and requests for operational information should be channelled through the respective Single Points of Contact or SPOCs as outlined.

10. General

Both OSCR and CCNI are committed to achieving recognised service standards when carrying out this Memorandum and will deal with requests from each other as promptly as possible in accordance with those service standards.

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

Both organisations are committed to the principles of continuous improvement and therefore will monitor the working arrangements contained in this Memorandum. This Memorandum will be reviewed every three years.

Any disagreement arising from the interpretation of this Memorandum will be referred to the Chief Executives of OSCR and CCNI, who will endeavour to resolve it within the spirit implicit in the co-operation arrangements. The Memorandum will be amended if necessary to reflect the agreed outcome of the referral.

Approved: May 2015

Annexe 1 – Specific points of contact

Area of Liaison	CCNI	OSCR
Development and agreement of strategic policy	Chief Executive	Chief Executive
Development of policy (general)	Head of Charity Services	Head of Engagement
Legal Framework queries	Head of Charity Services	Head of Registration
Operational Liaison	Head of Charity Services or Head of Compliance and Enquiries	Head of Registration or Head of Enforcement
Conduct of joint inquiries	Head of Compliance and Enquiries	Head of Enforcement
Media queries	Communications Officer	Communications Manager