

# **Memorandum of Understanding between the Charity Commission for England and Wales and the Higher Education Funding Council for England as principal regulator of higher education institutions in England that are exempt charities**

## **Section 1 What this memorandum of understanding is for**

This Memorandum of Understanding (MoU) sets out how the Charity Commission for England and Wales (the Commission) and the Higher Education Funding Council for England (HEFCE) propose to work together:

- in formulating the regulatory policy framework within which we work; and
- in coordinating our regulatory operations.

It is intended to promote:

- effective working and communication between us; and
- clarity about our respective roles and responsibilities.

## **Section 2 Our roles**

A. The Commission is established by the Charities Acts 1993 and 2006 as the non-ministerial Government department that regulates and registers charities in England and Wales. It fulfils this role by:

- securing compliance with charity law, and dealing with abuse and poor practice;
- enabling charities to work better within an effective legal, accounting and governance framework, keeping pace with developments in society, the economy and the law;
- promoting sound governance and accountability.

Its aim is to provide the best possible regulation of charities in England and Wales, in order to increase their efficiency and effectiveness and public confidence and trust. The Commission has a range of powers that it may use to protect charities and their property and/or reputation from abuse and poor practice. The Charities Act 2006<sup>1</sup> (the 2006 Act) extends most of the Commission's powers to apply to exempt charities; the most significant of these are set out at Appendix A. The Commission must consult the relevant principal regulator before exercising any specific power in respect of an exempt charity. The powers were extended on 1 June 2010 (the commencement date). Legal decisions of the Commission are subject to appeal to the Charity Tribunal.

B. HEFCE was established by the Further and Higher Education Act 1992 and its responsibilities include:

- funding Higher Education Institutions (HEIs) in England, and others who provide services connected with the higher education sector;
- ensuring the quality of education provided is assessed;
- providing information and advice to the Secretary of State responsible for higher education.

Underpinning these functions is the need to ensure the public accountability of HEIs and other recipients of funding.

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<sup>1</sup> Charities Act 2006, Section 12 and Schedule 5

Regulations made under the 2006 Act<sup>2</sup> appoint HEFCE as principal regulator of:

- HEIs (listed in Appendix B) that are exempt charities, or that become exempt charities by Ministerial order<sup>3</sup>;
- charities administered by or on behalf of those HEIs.

The principal regulator role is intended to be 'forward-looking' and HEFCE may act as principal regulator only in respect of anything about an HEI's charity law compliance that it becomes aware of on or after 1 June 2010. This will include a cause for concern that had arisen or was continuing on or after 1 August 2009 (the start of the financial year current for all HEIs when the regulations came into force) and was continuing on 1 June 2010.

The Regulations referred to in the previous paragraph and this MoU do not apply to those HEIs that are currently registered charities (except as noted in Section 3 D below) or to the HEI that is part of a non-charitable public body. These are listed in Appendix B for the sake of completeness.

C. The 2006 Act<sup>4</sup> gives principal regulators a general duty to do all they reasonably can to meet the compliance objective, namely, to do all they reasonably can to promote compliance by the trustees of the charities for which they are responsible with their legal obligations in exercising control and management of the administration of their charities. If principal regulators identify a concern about a charity they may invite the Commission to use its statutory powers of investigation and intervention. Principal regulators' other powers and duties are not affected by the 2006 Act.

### **Section 3 Working together**

#### **A. Regulating charities and points of contact**

The key principles of an effective charity regulation framework are set out at Appendix C. We consider these to comply with general better regulation principles that both of us follow. In particular, we each operate a risk-based regulatory regime and adapt the type and degree of our direct regulatory engagement in relation to our assessment of risk. In order to ensure that issues are handled at the appropriate level and that developing policy considerations are taken fully into account, we have established designated points of contact (see Appendix D).

Where they consider it appropriate, designated points of contact may:

- delegate ongoing liaison to members of their staff;
- agree detailed working arrangements or protocols that are relevant to their particular areas of responsibility or in relation to a particular case, charity or group of charities.

#### **B. Monitoring**

HEFCE will continue to apply its usual processes for monitoring HEIs, and we will work together so that HEFCE can determine any additional monitoring that may be necessary to enable HEFCE to fulfil its responsibilities as principal regulator of HEIs as charities.

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<sup>2</sup> SI 2009 Nos.501 and 503

<sup>3</sup> Charities Act 2006, Section 11(11)(a)

<sup>4</sup> Charities Act 2006, Section 13(3)

### C. Collecting and publishing information

As a principal regulator HEFCE must ensure that the information it collects from HEIs includes that required by the Charities Acts and any regulations made under those Acts. We will work together to ensure that the information provided by HEIs complies with those requirements.

The Register of Charities, which is publicly available, includes such information about the charities included on it as the Commission thinks fit. We will work together to ensure that similar information about HEIs is available through HEFCE's website, with suitable links with the Commission's website.

All charities for which HEFCE is principal regulator submit audited financial statements to it as required by the Financial Memorandum between HEFCE and each HEI. HEIs themselves are required to make that information publicly available – often by inclusion on their websites - and we will ensure that it is also available through appropriate links with the Commission's and HEFCE's websites.

### D. Sharing information

Charity legislation<sup>5</sup> permits the Commission and HEFCE to share information about any charity within HEFCE's jurisdiction. The legislation does not impose information-sharing as a duty on either of us.

However, we will:

- Establish channels of communication for our operational staff to enable them to offer what they believe to be relevant information when they consider it reasonable to do so, and to respond appropriately and promptly to requests for such information.
- Encourage the disclosure and exchange of information, in order to maximise the efficiency of our respective functions.
- Ensure that information is disclosed in a manner that is efficient, proportionate and fully complies with the Human Rights Act 1998, the Data Protection Act 1998 and the Freedom of Information Act 2000.

Where information is disclosed in connection with an ongoing investigation, neither of us will prejudge the outcome or (except as set out in section 3E) take action before the conclusion of that investigation.

Neither the Commission nor HEFCE will disclose information received from the other to any other person or body without first consulting the disclosing party. When exchanging information the provider will mark it with the appropriate security classification and the recipient will treat the information received accordingly.

### E. Investigations and action short of investigations

We both have statutory powers that we can use if there are serious concerns about the administration of a HEI. This section relates to the operation of each of our regulatory regimes and how we will enable clear and timely communication.

Where either the Commission or HEFCE identifies concerns about the administration of an HEI as a charity, it will notify the other in writing as soon as possible, setting out any

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<sup>5</sup> Charities Act 1993, Section 10, as amended by Charities Act 2006, Section 75(1) and Schedule 8, paragraph 104

charity law issues it has identified. Concerns may arise from our normal interaction with HEIs (including public information disclosures), or from reports to us by the auditors of HEIs<sup>6</sup>, or in other ways.

We will then work closely to seek to agree a course of action to be taken. Insofar as they do not conflict, and the course of action decided upon is compatible with our respective statutory functions, duties and powers, we will follow the principles set out in:

- the Commission's publication 'Risk and Proportionality Framework' (and related operational guidance);
- HEFCE's institutional engagement and support strategy<sup>7</sup>.

The notification by HEFCE to the Commission may invite it to use any of its regulatory powers or indicate that those powers may be required at some stage during the conduct of the case. The Commission is not obliged to accept the invitation and, in such cases, will explain to HEFCE in writing why it has decided not to use its powers and if it proposes to take any action that does not require their use.

The Commission will provide HEFCE with any comments it wishes to make on charity law issues. It will advise HEFCE whether it believes that there may be any aspects of the case that require its intervention including, in exceptional circumstances, the need to conduct a formal inquiry<sup>8</sup>.

The Commission must consult HEFCE before using any of its regulatory powers in respect of HEIs. Unless it has identified a significant and urgent risk to a charity's property and/or reputation the Commission's method of consultation will usually be in writing. HEFCE will respond to such a consultation within two working days, unless a longer period is agreed between the points of contact.

If the Commission has identified a significant and urgent risk to charity property and/or reputation, it will consult HEFCE in such manner and for such time as it decides, to enable it to take the action it considers to be necessary. Information that may cause such action to be taken may have been acquired through the Commission's own evidence-gathering operations. When such action has been taken, we will jointly consider what further action may be needed and which of us has the relevant expertise to take it.

Where we have a shared concern about a charity or charitable assets we will agree at the earliest opportunity a case strategy, the role of each of us in the investigation, areas of responsibility, and liaison arrangements.

The outcome of any investigation will be made available to both organisations and may be placed on, or linked to, our websites in accordance with our respective published policies on disclosing information, including inquiry and regulatory reports.

#### F. Support powers

All charities can use the Commission's support powers, for example they can apply for orders that will enable them to take an action, such as:

- making payments they have no legal obligation to make and not otherwise allowed by their governing document (ex gratia payments);
- seeking the Commission's advice on charity law issues.

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<sup>6</sup> Charities Act 1993, Sections 44 and 46, as amended by Charities Act 2006, Section 29

<sup>7</sup> 'Model Financial Memorandum between HEFCE and institutions', Annex D

<sup>8</sup> Charities Act 1993, Section 8

To ensure that any proposed advice or action would not lead to a conflict between the HEI and HEFCE in relation to HEFCE's existing functions, when using its support powers in ways that affect the use of the assets of a HEI or where the Commission thinks it would otherwise assist HEFCE, the Commission will discuss with HEFCE in advance:

- the advice it is giving or the action it is proposing;
- how it has been demonstrated to the Commission that the proposed advice or action is in the best interests of the HEI.

For proposed changes to a HEI's governing document, it should be noted that the Commission provides advice to the Department of Business, Innovation and Skills which has responsibilities relating to such changes. HEFCE has no formal powers or responsibilities in this area but is notified when such changes are being considered. This practice will continue.

#### G. External communications

We will consult on draft texts before publishing reports or issuing public statements relating to issues that we have jointly worked on under the terms of this MoU.

#### H. Policy development and liaison

We are both key stakeholders in the regulation of HEIs and in the development of the law and policy in our respective areas of expertise. We will work together to develop, interpret and apply relevant law and policy in a way that is consistent with the key principles of charity regulation set out at Appendix C, with the aim of minimising the administrative burden on HEIs. Joint developments may include working practices or protocols, and public and operational guidance.

In order to ensure that this aim is achieved we will:

- have meetings at least twice a year to identify areas where we need to work jointly;
- provide annual updates, including reports to our Boards, on the operation of the principal regulator relationship;
- review the provisions of this MoU every two to four years and where necessary renegotiate its terms.

Where we are developing policy that impacts on both of us, the lead individual responsible for that work in each organisation will also be responsible for ensuring at an early stage that they establish with their counterpart their respective responsibilities and how they will deliver the work, identifying the way in which each of us will approve such work (for example, Board or executive level) and the timetable for doing so. In order for this to be effective, we will provide each other with information on our respective structures and individual staff responsibilities in relevant areas of our organisations, and update these as they change.

#### I. Staff development and training

As part of our respective staff development and training programmes, we will ensure that our staff are made aware of the differing organisational, operational and legal frameworks. In order to facilitate this, appropriate staff may be offered familiarisation visits to each other's offices. We will also explore the possibility of providing joint training

and development initiatives and, where practical, will offer places to each other's staff on relevant internal training courses and seminars.

J. Responding to complaints

This section is about complaints about our performance, but distinguishes between those that should be routed through the Commission's or HEFCE's own complaints procedures and those that are about how we interact.

We will each retain responsibility and accountability for handling complaints about the services we provide when working separately and that fall within our own complaints procedures.

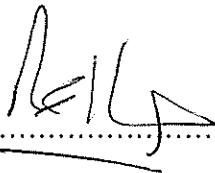
Where the complaint is about how we interact with each other, the recipient will notify the other, and provide a copy of material received as part of the complaint, within three working days. We will ensure that there is a prompt analysis of the complaint and, where appropriate and practical, take a joint approach to resolving the issues raised.

K. General

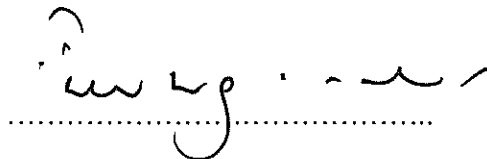
It is intended that the arrangements in this MoU should apply generally. However, we recognise that some circumstances will require special handling and nothing prevents us from making exceptional arrangements to meet specific and urgent needs in relation to a particular case, charity or group of charities.

Any disagreement arising from the interpretation of this MoU will be referred to our respective Chief Executives for resolution within the spirit implicit in this MoU. If necessary, this MoU will be amended to reflect the agreed outcome of the referral. Nothing in this MoU is intended to create a legally binding obligation or to confer legal rights on either party.

**Signed**



Andrew Hind  
Chief Executive  
Charity Commission for England  
and Wales



Alan Langlands  
Chief Executive  
Higher Education Funding Council for  
England

1 June 2010

**The Commission's powers**

The Commission's powers include those listed below. It may only apply most of these powers to HEIs that are exempt charities after consultation with HEFCE as Principal Regulator. It may only exercise its power to institute inquiries if requested to do so by the Principal Regulator. The Commission's support powers are usually only exercised at the request of the charity.

<b>Protective Powers</b>	<b>Statutory reference</b>
Require a charity to change its name in certain specified circumstances	S42-45 CA 2011
Institute inquiries into the administration of a charity	S46 CA 2011 <sup>1</sup>
Call for documents and search records	S52-53 CA 2011
Suspend or remove any trustee, charity trustee, officer, agent or employee of a charity	S76, <sup>2</sup> 79, <sup>2</sup> 80(1) <sup>2</sup> , CA2011
Make a scheme for the administration of a charity	S79(2)(b) CA 2011 <sup>2</sup>
Appoint new trustees	S76(3)(b) CA 2011 <sup>2</sup> and S80(2) CA 2011 <sup>2</sup>
Vest charity property in the Official Custodian for Charities	S76(3)(c) CA 2011 <sup>2</sup>
Order individuals not to part with charity property without its approval ("freezing orders")	S76(3)(d) CA 2011 <sup>2</sup>
Order individuals not to pay debts owed to the charity without its approval	S76(3)(e) CA 2011 <sup>2</sup>
Restrict transactions that can be entered into on behalf of a charity	S76(3)(f) CA 2011 <sup>2</sup>
Appoint an interim manager for a charity	S76(3)(g) CA 2011 <sup>2</sup>
Suspend or remove trustees etc from membership of a charity	S83 CA 2011 <sup>2</sup>
Give specific directions for protection of a charity	S84 CA 2011 <sup>2</sup>
Direct the application of charity property	S85 CA 2011 <sup>2</sup>
Give directions about dormant bank accounts	S107-109 CA 2011
Determine the membership of a charity	S111 CA 2011
Ensure the safekeeping of charity documents	S340 CA 2011
Enter premises and seize documents	S48-49 CA 2011 <sup>2</sup>
Exercise the same powers as the Attorney General with respect to taking legal proceedings, except for petitioning for the winding up of a charity	S114 CA 2011
Order a disqualified person to repay sums received from a charity while acting as charity trustee or	S184(2)-(4) CA 2011

<sup>1</sup> This power may only be exercised on request of the Principal Regulator

<sup>2</sup> Powers only exercisable pursuant to an inquiry under s.46

trustee for the charity	
Disqualify trustees who are receiving remuneration by virtue of sections 73A CA 1993	S186 CA 2011

<b>Support powers</b>	<b>Statutory reference</b>
Authorise cy-près application of gifts belonging to unknown or disclaiming donors	S63-66 CA 2011
Make a scheme in relation to a charity governed by charter or by or under statute, subject to Order in Council	S68 CA 2011
Make a scheme for the administration of a charity (including alteration of purposes cy-près)	S69 (1)(a) CA 2011 (see also S62 and 67 CA 2011)
Appoint or remove trustees; remove officers or employees	S69 (1)(b) CA 2011
Vest or transfer property, or require or permit any person to call for or make any transfer of property or any payment	S69 (1)(c) CA 2011
Alter provisions in Acts of Parliament establishing or regulating a charity, subject to Parliamentary approval	S73 CA 2011
Establish common investment funds and common deposit funds	S96-103 CA 2011
Authorise dealings with charity property or other actions in the interests of the charity	S105 CA 2011
Authorise ex-gratia payments	S106 CA 2011
Give advice and guidance to a charity trustee or trustee for a charity	S110 CA 2011 (see also S15(2)-(3) CA 2011)
Authorise regulated amendments to memoranda and articles of charitable companies	S198 CA 2011 (as amended)
Grant a waiver to a person disqualified from acting as a charity trustee	S181 CA 2011
Relieve trustees, auditors etc from liability for breach of trust or duty	S191 CA 2011



**English Higher Education Institutions that were exempt charities on 14 March 2012**

Anglia Ruskin University	University of Hull
University of the Arts, London	Imperial College of Science, Technology and Medicine
Arts University College Bournemouth	University of Keele
Aston University	University of Kent
University of Bath	King's College London
Bath Spa University	Kingston University
University of Bedfordshire	Lancaster University
Birkbeck College	University of Leeds
University of Birmingham	Leeds Metropolitan University
University College Birmingham	Leeds College of Art <sup>a</sup>
Birmingham City University	University of Leicester
University of Bolton	University of Lincoln
Bournemouth University	University of Liverpool
University of Bradford	Liverpool John Moores University
University of Brighton	University of London
University of Bristol	University College London
Brunel University	London Business School
Buckinghamshire New University	London School of Economics and Political Science
University of Cambridge	London School of Hygiene and Tropical Medicine
Institute of Cancer Research	London Metropolitan University
University of Central Lancashire	London South Bank University
Central School of Speech and Drama	Loughborough University
University of Chichester	University of Manchester
City University, London	Manchester Metropolitan University
Courtauld Institute of Art	Middlesex University
Coventry University	University of Newcastle upon Tyne
Cranfield University	University of Northampton
University for the Creative Arts	Northern School of Contemporary Dance <sup>g</sup>
University of Cumbria	University of Northumbria at Newcastle
De Montfort University	Norwich University College of the Arts
University of Derby	University of Nottingham
University of Durham	Nottingham Trent University
University of East Anglia	The Open University
University of East London	School of Oriental and African Studies
Edge Hill University	University of Oxford
Institute of Education	Oxford Brookes University
University of Essex	School of Pharmacy, University of London
University of Exeter	University of Plymouth
University College Falmouth	University of Portsmouth
University of Gloucestershire	Queen Mary and Westfield College, University of London
Goldsmiths' College	
University of Greenwich	
University of Hertfordshire	
University of Huddersfield	

Ravensbourne  
University of Reading  
Roehampton University  
Royal College of Art  
Royal Holloway and Bedford New College  
Royal Northern College of Music  
Royal Veterinary College  
St George's Hospital Medical School  
University of Salford  
University of Sheffield  
Sheffield Hallam University  
University of Southampton  
Southampton Solent University  
Staffordshire University

University of Sunderland  
University of Surrey  
University of Sussex  
Teesside University<sup>b</sup>  
University of Warwick  
University of the West of England, Bristol  
University of West London<sup>c</sup>  
University of Westminster  
University of Winchester  
University of Wolverhampton  
University of Worcester  
Writtle Agricultural College  
University of York  
York St John University<sup>d</sup>

## English Higher Education Institutions that were registered charities on 25 April 2012

	<u>Registered number</u>
Bishop Grosseteste University College, Lincoln	527276
Bristol Old Vic Theatre School Ltd <sup>9</sup>	900280
Canterbury Christ Church University	1098136
Central School of Ballet Charitable Trust Ltd <sup>9</sup>	285398
University of Chester	525938
Circus Space <sup>9</sup>	1001839
Conservatoire for Dance and Drama <sup>9</sup>	1095623
Contemporary Dance Trust Ltd <sup>9</sup>	250216
Harper Adams University College	528384
Heythrop College	312923
Leeds Trinity University College	1120102
Liverpool Hope University	1060579
Liverpool Institute for Performing Arts	1001565
London Academy of Music and Dramatic Art (LAMDA Ltd) <sup>9</sup>	321821
Newman University College	1110346
University College Plymouth St Mark & St John	312929
Rambert School of Ballet and Contemporary Dance <sup>9</sup>	1098900
Rose Bruford College	307907
Royal Academy of Dramatic Art <sup>9</sup>	312819
Royal Academy of Music	310007
Royal Agricultural College	311780
Royal College of Music	309268
St Mary's University College, Twickenham	1120192
Trinity Laban Conservatoire of Music and Dance	309998

## English Higher Education Institution that is part of a non-charitable body

Guildhall School of Music & Drama

### Notes:

1. The higher education institutions listed are those funded by HEFCE and covered by this MoU. For further information see <http://www.hefce.ac.uk/whatwedo/reg/charityreg/highereducationinstitutionsascharities/charityinformationbyinstitution/>
2. These are the legal names of the institutions (the word 'the' has been omitted in all but one case). Some institutions have different working names.
3. The list has been updated since 1 June 2010 to reflect the following changes:
  - a. Became a higher education institution on 1 August 2010
  - b. Name change from University of Teesside on 6 October 2010
  - c. Name change from Thames Valley University on 10 August 2010
  - d. Became an exempt charity on 1 August 2011 (formerly registered charity no. 529589)
  - e. Leeds College of Music ceased to be a higher education institution on 1 August 2011.
  - f. Some minor modifications have been made to ensure the correct legal name is listed.
  - g. Conservatoire for Dance and Drama (a registered charity) operates as a consortium and distributes HEFCE funding to its members. Members of the consortium are listed above and are marked <sup>9</sup>. Most of the members are registered charities, but the Northern School of Contemporary Dance is an exempt charity and HEFCE is its principal regulator.

**Key principles of an effective charity regulation framework**

An effective framework of charity regulation should:

- A be consistent with the principles in the government's better regulation strategy<sup>3</sup>, the Charity Commission's statutory objectives and other principles that the Commission applies to charity regulation.
- B cover all the assets of a charity and ensure that they are only used to further the purposes of the charity (which must be for the public benefit);
- C promote standards of governance that ensure the effective and efficient furtherance of the charity's purposes;
- D ensure that the charity complies with relevant legal and statutory requirements;
- E require the charity to provide to stakeholders adequate financial information about the use and application of its resources.

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<sup>3</sup> <http://www.bis.gov.uk/policies/bre>

Appendix D (updated 14 March 2012)

**Designated points of contact**

<b>Area of liaison</b>	<b>Charity Commission</b>	<b>Higher Education Funding Council for England</b>
Development of policy	Head of Policy	Deputy Chief Executive
Development of legal framework	Head of Legal Services	Head of Governance
General approach to operational liaison	Head of Operations Taunton	Head of Governance
Initial contact at individual casework level	Head of Operations Taunton	Head of Institutional Risk
Contact for supervision / investigation / statutory action.	Head of Investigations and Enforcement	Head of Assurance