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**CHARITY COMMISSION  
FOR ENGLAND AND WALES**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CHARITY COMMISSION FOR ENGLAND AND WALES  
AND THE OFFICE FOR STUDENTS**

**February 2019**

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## Section 1 - Purpose of the Memorandum

- 1.1 This Memorandum of Understanding (“**Memorandum**”) sets out how the Charity Commission for England and Wales (“the **Commission**”) and the Office for Students (“the **OfS**”) (together “the **Parties**” and each respectively a “**Party**”) will work together and communicate effectively, both in their respective regulatory operations and in formulating the regulatory policy framework within which they both work.
- 1.2 Both the Commission and the OfS are fully committed to the aims of the Memorandum which are to assist in their respective functions in the following ways to:
- promote a common understanding of each Party’s responsibilities, working procedures, legal powers and constraints;
  - promote co-operation between the Parties’ staff at a strategic and operational level;
  - facilitate effective investigation with the objective of prevention, detection and remedy of misconduct or mismanagement in the administration of charities and charitable funds;
  - ensure the effective disclosure of information in compliance with all relevant legislation; and
  - ensure appropriate consultation on matters of relevant and significant policy initiatives to ensure that charities comply fully with their legal obligations and adopt best practice in governance and accountability.
- 1.3 The OfS is principal regulator of:
- higher education institutions in England that are exempt charities included in paragraphs 2-6 of Schedule 3 to the Charities Act 2011 (“the **Charities Act**”); and
  - exempt charities that are administered by or on behalf of a higher education institution included in paragraphs 2-6 of the Schedule 3 to the Charities Act and that fall within paragraph 28 of Schedule 3 to the Charities Act.
- In this Memorandum, these charities are referred to as “**HE Exempt Charities**”. They are more fully described in Appendix A.
- 1.4 This Memorandum is intended to be consistent with the principles of better regulation set out in section 21 of the Legislative and Regulatory Reform Act 2006 and in the Regulators’ Code.<sup>1</sup> Consistent with these principles, the Commission and the OfS should, where possible, agree secure mechanisms to share information with each other about the charities they regulate, to help target resources and minimise duplication, whilst maintaining an appropriate and proportionate level of accountability.
- 1.5 This Memorandum is not legally binding with the exception of paragraphs 4.14-4.23A (inclusive), 4.25 – 4.46 (inclusive) and Section 6 which are legally binding. It will cease to have effect if either Party is wound up and will not bind any successor bodies unless transfer is agreed and the Memorandum reissued under the name of the successor.

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<sup>1</sup> <https://www.gov.uk/government/publications/regulators-code>

## Section 2 – Parties to the Memorandum

### The Role and Functions of the Commission

- 2.1 The Commission is subject to the legal framework as set out in the Charities Act and is the statutory regulator and registrar of charities in England and Wales. The Commission is a non-ministerial government department. Section 13 of the Charities Act specifically prohibits the exercise of any Commission function being subject to the direction or control of any Minister or other government department.
- 2.2 The Commission's objectives as defined in section 14 of the Charities Act are to:
- increase public trust and confidence in charities (“the public confidence objective”);
  - promote awareness and understanding of the operation of the public benefit requirement (“the public benefit objective”);
  - promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities (“the compliance objective”);
  - promote the effective use of charitable resources (“the charitable resources objective”); and
  - enhance the accountability of charities to donors, beneficiaries, and the general public (“the accountability objective”).
- 2.3 The Commission's general functions as set out in section 15 of the Charities Act include:
- determining whether institutions are or are not charities;
  - encouraging and facilitating the better administration of charities; this function includes a power to give such advice or guidance to charities as the Commission considers appropriate;
  - identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement;
  - obtaining, evaluating and disseminating information in connection with the performance of any of the Commission's functions or meeting any of its objectives; this function includes the maintenance of an accurate and up to date register of charities (“the **Register of Charities**”).<sup>2</sup>
- 2.4 The Commission's general duties are set out in section 16 of the Charities Act. Amongst other things, they specify that, in carrying out its functions the Commission will, so far as relevant, have regard to the principles of best regulatory practice, including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent, and targeted only at cases in which action is needed. The Commission must also have regard to the need to use its resources in the most efficient, effective and economic way. The Commission has a wide discretion to decide how to achieve its objectives, and carry out its functions and duties.
- 2.5 In pursuance of its objectives and functions, the Commission maintains the Register of Charities. The Commission's jurisdiction extends to all registered charities and unregistered charities in England and Wales (but is subject to the limitation on the use of its powers in relation to exempt charities discussed further in paragraph 2.12 below). The term “charities” and “charitable purposes” refers to organisations and purposes which are exclusively charitable under the law of England and Wales. They will include charitable collections and funds managed on an informal basis by any person or organisation.

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<sup>2</sup> <https://www.gov.uk/government/organisations/charity-commission>

- 2.6 Most concerns that the Commission identifies in charities are dealt with as operational regulatory compliance cases. These cases are not formal inquiries, but are aimed at ensuring trustees address any failures and weaknesses in their charity's management. Statutory inquiries under section 46 of the Charities Act may be opened in accordance with Commission's Regulatory and Risk Framework<sup>3</sup> where there is evidence of misconduct or mismanagement, or where there are serious concerns about potential or actual abuse within a charity. The Commission also undertakes proactive and reactive monitoring of charities which give rise to concern. Appendix D sets out further information on terminology used by the Commission.
- 2.7 The Commission works with other agencies, regulators and government departments where appropriate to help it achieve its statutory objectives, to complement its work and to minimise dual regulation. Where there is a problem within a charity that is being adequately addressed by another agency (or agencies) the Commission may work with them to increase effective regulation.
- 2.8 The Commission's powers include those listed at Appendix C. These powers include powers for the protection of charities (which the Commission may consider using these in the situations described above). The Commission's powers can only be used in certain circumstances and for some powers, only within a statutory inquiry.
- 2.9 The Commission also has information-gathering powers. It may for example:
- order anyone to provide the Commission with information in their possession which relates to any charity and is relevant to the discharge of any of the Commission's functions (section 52 of the Charities Act); and
  - direct anyone to provide accounts and written statements, or written answers to questions concerning any matter which it is investigating about which that individual has or can reasonably obtain information (section 47 of the Charities Act).
- 2.10 The supply of false or misleading information to the Commission is a criminal offence (section 60 of the Charities Act).
- 2.11 Information acquired by the use of the Commission's information-gathering powers can only be used for the purpose for which the powers were given. It follows that the Commission can use its information-gathering powers only in order to acquire information for use in discharging statutory purposes, not (for example) simply in order to obtain information for another body.
- 2.12 The Commission must consult the relevant Principal Regulator before exercising any specific power in respect of an exempt charity. The Commission may not exercise its power to institute a statutory inquiry under section 46 of the Charities Act into an exempt charity unless requested to do so by the Principal Regulator. The decision to institute a statutory inquiry on receipt of such request is, for the avoidance of doubt, a matter for the Commission at its sole discretion. The Commission may open monitoring and operational cases without a request from the Principal Regulator. Decisions of the Commission may be subject to appeal to the First-tier Tribunal (Charity) (schedule 6 of the Charities Act) or judicial review in the Administrative Court. Use of the Commission's powers is discussed further in section 3 below.

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<sup>3</sup> <https://www.gov.uk/government/publications/risk-framework-charity-commission/regulatory-and-risk-framework>

The Role and Functions of the Office for Students

- 2.13 The OfS was established by the Higher Education and Research Act 2017 ("**HERA**") and its responsibilities include:
- Establishing and maintaining a register of English higher education providers;
  - Preparing and publishing a regulatory framework that includes initial and ongoing conditions of registration;
  - Granting (and revoking) degree awarding powers and university title;
  - Assessing the quality and standards of higher education provided by specified higher education providers;
  - Monitoring financial sustainability of individual providers and reporting annually on patterns and trends in financial sustainability;
  - Providing grants, loans and other payments to eligible higher education providers;
  - Compiling and making available higher education information about providers and their courses and publishing this information; and
  - Providing information and advice to the Secretary of State responsible for higher education.
- 2.14 Informing these functions are the OfS's general duties to have regard to the need to:
- protect the institutional autonomy of English higher education providers;
  - promote quality, and greater choice and opportunities for students, in the provision of higher education by English higher education providers;
  - encourage competition between English higher education providers in connection with the provision of higher education where that competition is in the interests of students and employers, while also having regard to the benefits for students and employers resulting from collaboration between such providers;
  - promote value for money in the provision of higher education by English higher education providers;
  - promote equality of opportunity in connection with access to and participation in higher education provided by English higher education providers; and
  - use the OfS's resources in an efficient, effective and economic way.
- 2.15 The OfS also has a legal duty to follow the principles of best regulatory practice, including the principles that regulatory activities should be transparent, accountable, proportionate and consistent, and targeted only at cases in which action is needed.
- 2.16 With effect from 1 April 2018, the OfS is the principal regulator of HE Exempt Charities.<sup>4</sup> These charities are described in paragraph 1.3 above and in Appendix A. As principal regulator of HE Exempt Charities, the OfS has a "compliance objective", which is to do all it reasonably can to promote compliance by the trustees of HE Exempt Charities with their legal obligations in exercising control and management of the administration of their charity (section 26 of the Charities Act).
- 2.17 If the OfS identifies a concern about an HE Exempt Charity or the management or administration of any other charity or charitable assets, it will work with the Commission to

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<sup>4</sup> Regulation 25 of the Higher Education and Research Act 2017 (Consequential, Transitional, Transitory and Saving Provisions) Regulations 2018.

determine how best to address that concern in accordance with this Memorandum. Where possible, the OfS will use its regulatory powers and supplementary powers to address regulatory concerns that arise in relation to HE Exempt Charities and the other higher education providers that it regulates. If the concern relates to a potential breach of charity law or other matter in which the Commission has a regulatory interest, the OfS will notify the Commission of the concern promptly and may invite it to use any of its regulatory powers (including but not limited to opening an inquiry under section 46 of the Charities Act). This does not affect the use by the OfS of its own regulatory powers.

- 2.18 For the transition period from 1 April 2018 to 31 July 2019 (“**the Transition Period**”), the OfS will be operating under some carried forward powers from the Higher Education Funding Council for England (“**HEFCE**”) and the Office for Fair Access (“**OFFA**”) under the Further and Higher Education Act 1992 and other legislation as set out in HERA. This means that the OfS will continue to operate HEFCE’s accountability framework until 31 July 2019. Although the OfS will have some powers under HERA during the Transition Period, its new regulatory framework will not be fully in effect until 1 August 2019. During the Transition Period, the OfS will undertake its activities as principal regulator as set out in its published regulatory advice (OfS 2018.23<sup>5</sup>). During this Transition Period, the OfS will consider how it will operate its duties from 1 August 2019 when its regulatory framework will be fully operational. As noted in paragraph 6.5 below, the Parties may review this Memorandum to reflect the OfS’s new regulatory regime coming into force in August 2019.

### **Section 3 – Areas of Joint Interest and Activity**

#### Monitoring charities

- 3.1 The OfS will determine any monitoring that may be necessary to enable OfS to fulfil its responsibilities as principal regulator of HE Exempt Charities, including its compliance objective (referenced in paragraph 2.16 above).

#### Collecting and publishing information

- 3.2 The Commission’s public Register of Charities includes such information about the registered charity as the Commission thinks fit. The Commission publishes this information to increase charities’ accountability to their supporters, beneficiaries and the public.
- 3.3 HE Exempt Charities falling within paragraphs 2-6 of Schedule 3 to the Charities Act submit audited financial statements to the OfS as required by the OfS’s terms and conditions of funding (OfS 2018.15)<sup>6</sup> and the OfS’s accounts direction (OfS 2018.26)<sup>7</sup>. Those that are exempt charities under paragraph 28 of Schedule 3 to the Charities Act are not required to submit audited financial statements to the OfS. The OfS’s accounts direction requires HE Exempt Charities falling within paragraphs 2-6 of Schedule 3 to the Charities Act to make charity disclosures in relation to their charitable status in the interests of ensuring transparency and accountability for stakeholders. These arrangements continue through the Transition Period to 31 July 2019. From 1 August 2019, the OfS will regulate HE Exempt Charities that are English HE providers using ongoing conditions of registration, which will include the submission of audited financial statements to the OfS. HE Exempt Charities falling within

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<sup>5</sup> <https://www.officeforstudents.org.uk/publications/regulatory-advice-5-exempt-charities/>

<sup>6</sup> <https://www.officeforstudents.org.uk/publications/terms-and-conditions-of-funding-for-higher-education-institutions/>

<sup>7</sup> <https://www.officeforstudents.org.uk/publications/regulatory-advice-9-accounts-direction-guidance-on-preparing-and-publishing-financial-statements/>

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paragraphs 2-6 of Schedule 3 to the Charities Act are currently required to make their financial statements publicly available – they generally do this by publishing them on their websites.

### Serious incident reporting

- 3.4 The Commission requires charities to report serious incidents to it.<sup>8</sup> A serious incident is an adverse event, whether actual or alleged, which results in or risks significant loss of the charity's money or other assets, damage to the charity's property or harm to its work, beneficiaries or reputation.
- 3.5 The OfS sets out in its terms and conditions of funding (OfS 2018.15) and its regulatory framework (OfS 2018.01) the requirements that it places on higher education providers to notify certain reportable events to the OfS – these are set out in paragraph 494 of the regulatory framework (OfS 2018.01).<sup>9</sup> The OfS will report annually to the Commission on the number of reportable events arising in HE Exempt Charities and other charitable higher education providers notified to the OfS and the nature of those reportable events.

### Use of statutory powers

- 3.6 Both Parties have intervention powers that they can use if there are serious concerns about the administration of an HE Exempt Charity or other charity. This section relates to the operation of each Party's regulatory regime and how the Parties will enable clear and timely communication.
- 3.7 If the OfS identifies concerns about the management or administration of an HE Exempt Charity or any other charity or charitable assets, it will notify the Commission in writing as soon as possible, setting out the concerns it has identified. If the Commission identifies concerns about the management or administration of an HE Exempt Charity, it will notify the OfS in writing as soon as possible, setting out the concerns it has identified.
- 3.8 Concerns may arise from the Parties' normal interaction with HE Exempt Charities or other HE providers or stakeholders, or from reports by the auditors of HE Exempt Charities, or in other ways (including from third parties, such as whistle-blowers). Where concerns have been identified, the Parties will work closely to seek to agree a course of action to be taken to address them. The agreed course of action will be compatible with the Parties' respective statutory functions, duties and powers. Where possible, it will also follow the principles set out in the following documents (as applicable and as amended from time to time):
- the Commission's Regulatory and Risk Framework (and other applicable Commission guidance);
  - OfS's terms and conditions of funding until 31 July 2019 (OfS 2018.15);
  - OfS's regulatory guidance about how it discharges its duty as principal regulator (OfS 2018.23).
- 3.9 Using its supplementary powers<sup>10</sup>, the OfS may take action(s) to secure compliance in lieu of referring a matter to the Commission (in light of proportionality considerations), such as accepting undertakings from a charity to do or not to do certain things or writing a warning/compliance letter. The OfS may discuss this approach with the Commission prior to taking such action(s).

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<sup>8</sup> See the Commission's guidance, "[How to report a serious incident in your charity](https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity)" at <https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>

<sup>9</sup> <https://www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/>

<sup>10</sup> Under paragraph 15 of Schedule 1 to the Higher Education and Research Act 2017.

- 3.10 The notification by the OfS to the Commission under paragraph 3.7 may invite the Commission to use any of its regulatory powers (including but not limited to opening an inquiry under section 46 of the Charities Act) or indicate that those powers may be required at some stage during the conduct of the case. In such cases, the OfS will supply the Commission with all information that is relevant and appropriate in the circumstances. Where the OfS requests the Commission to open a statutory inquiry, it should provide an explanation of the legal basis for disclosing supporting information and whether any restrictions on the use of the information may apply.<sup>11</sup> The Commission is not obliged to accept the OfS's request and, in such cases, will explain to the OfS in writing why it has decided not to use its powers and if it proposes to take any other action. The Commission may provide the OfS with any comments it wishes to make on charity law issues, in particular, whether it believes that there may be any aspects of the case that require the Commission's intervention.
- 3.11 The Commission must consult the OfS before using any of its regulatory powers in respect of HE Exempt Charities. Unless it has identified a significant and/or urgent risk to a charity's property and/or reputation and subject to paragraph 3.12:
- The Commission's method of consultation will usually be in writing (generally by email to [regulation@officeforstudents.org.uk](mailto:regulation@officeforstudents.org.uk)).
  - The OfS will respond to such a consultation within a period that may be agreed between the Parties' respective points of contact.
- 3.12 If the Commission has identified a significant and/or urgent risk to an HE Exempt Charity's property, beneficiaries and/or reputation, the consultation method with the OfS and period will be of such type and length as the Commission may decide, to enable the Commission 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 information gathering activities. When the action has been taken in respect of an HE Exempt Charity, the Parties may jointly consider what further action is needed, if any.
- 3.13 Where the Parties have a shared concern about a charity or charitable assets they may agree at the earliest opportunity a case strategy, the role of each Party in the investigation, areas of responsibility, and liaison arrangements.
- 3.14 The outcome of any investigation into an HE Exempt Charity by either Party or both Parties will be made available to both Parties and may be placed on, or linked to, each Party's website in accordance with their respective published policies on disclosing information, including inquiry and regulatory reports.

#### Enabling powers

- 3.15 Charities can ask the Commission to use its enabling powers, for example they can:
- apply for orders that will enable them to take an action not otherwise allowed under the general law or the charity's governing document, such as authorising certain dealings with charity property or paying a charity trustee; and
  - seek the Commission's advice on charity law issues.

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<sup>11</sup> Decisions by the Commission to open an Inquiry are subject to appeal to the Tribunal and the full reasons and evidence relied upon are publically disclosable in that hearing. The Commission must be able to rely on the information supplied in that context.

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- 3.16 To ensure that any proposed advice from or action by the Commission would not lead to a conflict between the HE Exempt Charity and the OfS in relation to the OfS's functions, when using its enabling powers in ways that affect the use of the assets of an HE Exempt Charity or where the Commission thinks it would otherwise assist the OfS, the Commission will consult with the OfS in advance of using its powers in accordance with paragraphs 3.11 and 3.12 above.
- 3.17 For proposed changes to an HE Exempt Charity's governing document, it should be noted that the Commission provides advice to the Department for Education which has responsibilities relating to such changes.
- From 1 April 2018 to 31 July 2019, the OfS has no formal powers or responsibilities in this area but is notified when such changes are being considered. This is the same process as has operated previously.
  - From 1 August 2019, the OfS will have oversight of the consistency of registered providers' governing documents with the public interest governance principles under section 14 of HERA – these principles are set out in Annex B of the regulatory framework (OfS 2018.01<sup>12</sup>). The oversight of the public interest governance principles is currently the responsibility of the Privy Council.

As is the case currently, the Commission will consult the OfS if an HE Exempt Charity for which it is principal regulator seeks the Commission's consent to amend its governing documents.

### External communications

- 3.18 The Parties will consult on draft texts before publishing reports or issuing public statements relating to issues that they have jointly worked on under the terms of this Memorandum.

### Policy development and liaison

- 3.19 The Parties are key stakeholders in the regulation of HE Exempt Charities and in the development of the law and policy in each Party's respective area of expertise. The Parties will work together to develop, interpret and apply relevant law and policy with the aim of ensuring the effective regulation of HE Exempt Charities, whilst minimising the administrative burden on them where possible.
- 3.20 Work that the Parties may develop jointly may include working practices or protocols, and public and operational guidance.
- 3.21 Where the Parties are developing policy that impacts on both Parties, the lead individual responsible for that work in each Party 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 Party will approve such work (for example, board or executive level) and the timetable for doing so.
- 3.22 In order for this to be effective, the Parties will provide each other with information on their respective structures and individual staff responsibilities in relevant areas of their organisations, and update these as they change.

### Staff development and training

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<sup>12</sup> <https://www.officeforstudents.org.uk/publications/securing-student-success-regulatory-framework-for-higher-education-in-england/>

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- 3.23 As part of their respective staff development and training programmes, the Parties will ensure that their staff are made aware of the differing organisational, operational and legal frameworks. In order to facilitate this, where appropriate a Party's staff may be offered familiarisation visits to the other Party's offices.
- 3.24 The Parties will also explore the possibility of providing joint training and development initiatives and, where practical, will offer places to the other Party's staff on relevant internal training courses and seminars.

### Responding to complaints

- 3.25 This paragraph is about third party complaints about the Parties' performance in relation to matters covered by this Memorandum, but distinguishes between complaints that should be routed through each Party's complaints procedure and complaints that are about how the Parties interact:
- Each Party will be solely responsible and accountable for third party complaints about the services that it provides and will deal with such complaints in accordance with its own complaints procedures.
  - Where a complaint, feedback or suggestion from a third party concerns how the Parties interact with each other, the recipient of such complaint, feedback or suggestion will notify the other Party and share the information that it has received. The Parties will ensure that there is a prompt exchange and analysis of information and, where appropriate and practical, take a joint approach to resolving the issues raised. The Parties anticipate that this situation will most likely result from a review of individual complaints or a joint review of complaints.

### Co-ordinated Operations

- 3.26 The permitted level of exchange of information is such that close cooperation on investigations is possible. Although there is no statutory basis for a joint investigation the OfS and the Commission can on occasion co-ordinate their operations ("**Co-ordinated Operations**"). Joint approaches can take place with the permission of the charity and every effort should be made to encourage the charity to take this option, as it will usually involve the least use of both charity and official resources. If permission is refused, exchange of information may still occur. On occasion, the Commission's Head of Investigations and Enforcement and the OfS's Director of Competition and Registration may designate exceptionally serious cases as Co-ordinated Operations in which the exchange of information and technical expertise will be ongoing and continuous.
- 3.27 Any decision on whether Commission investigators should participate in a Co-ordinated Operation will rest with the Commission's Head of Investigations and Enforcement. In reaching a decision, the Head of Investigations and Enforcement will have regard to the nature of the operation and the extent to which it is consistent with the Commission's objectives, general functions and duties.
- 3.28 Any decision on whether members of the OfS should participate in a Co-ordinated Operation with the Commission will rest entirely with the OfS's Director of Competition and Registration. In reaching a decision, the Director of Competition and Registration will have regard to the nature of the operation and the extent to which it is consistent with the OfS's regulatory framework and its general duties under HERA.
- 3.298 Both Parties will aim to agree a written protocol at the earliest opportunity, and within a maximum of 15 working days, to cover case strategy, the role of each Party in the investigation,

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areas of responsibility, liaison arrangements and other policy issues. That protocol will build on the matters agreed in this Memorandum.

- 3.30 If action on a referral cannot be completed within the timescales mentioned above, the receiving single point of contact will provide the originating single point of contact with progress reports at agreed intervals.
- 3.31 Where possible, advance planning meetings should agree a framework for any joint operations, including all roles and responsibilities.
- 3.32 It is possible that the conduct of a joint inquiry or other form of intervention in relation to a charity may generate media interest of relevance to both the Commission and the OfS or that, given the profile and substance of the case, a Ministerial briefing ought to be considered. In these circumstances, the Commission's Head of Investigations and Enforcement and the OfS's Director of Competition and Registration will be consulted. All media interest in Co-ordinated Operations will be dealt with by agreement of both Parties prior to release of any information.

### Section 4 – Information Sharing

- 4.1 Section 63(3) of HERA allows the OfS to provide information it holds to any person if the disclosure is made for the purposes of the performance of a function of the OfS. Section 63(4) also allows the OfS to provide such information for the purposes of another person's functions, where that person and their functions are specified in primary or secondary legislation. Where section 63(3) or (4) gives the OfS the power to disclose information, the effect of section 63(5) is that (with the exception of data protection law) a disclosure made in accordance with that power cannot breach any obligation of confidence or other restriction on the provision of information (however imposed).
- 4.2 When disclosing information under the statutory gateway or its general powers, the Commission and (in so far as applicable) the OfS must ensure the provisions of section 54-59 of the Charities Act (where applicable) and the terms of this Memorandum are satisfied. Nothing in this Memorandum commits either Party to disclose information nor imposes upon the Commission or other person or organisation a duty to disclose information.
- 4.3 In addition to the Commission's general powers, sections 54 to 59 of the Charities Act provide a statutory gateway, as well as our general powers, for the disclosure of information by the Commission and the OfS. However nothing in sections 54 to 57 authorise the making of a disclosure which is:
- contrary to the Data Protection Act 1998, the General Data Protection Regulations, the Data Protection Act 2018 (and any subsequent legislation) (section 59); or
  - prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016 (section 59); or
  - contrary to the Human Rights Act 1998 and other relevant legislation.
- 4.4 Section 56 of the Charities Act deals with disclosures **by** the Commission generally and gives the Commission the powers exercisable at its discretion to disclose information to any relevant public authority any information received by the Commission in connection with any of the Commission's functions if:
- the disclosure is made for the purposes of enabling or assisting relevant public authority to discharge any of its functions; or

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- the information so disclosed is otherwise relevant to the discharge of any functions of the relevant public authority.
- 4.5 Section 54 of the Charities Act deals with disclosure to the Commission generally and gives any relevant public authority the ability, at its discretion, to disclose information to the Commission if the disclosure is made for the purposes of enabling or assisting the Commission with the discharge of any of its functions.
- 4.6 The Parties agree that the OfS is a relevant public authority for the purpose of section 54 and 56 of the Charities Act.
- 4.7 Information about the status of charities (whether registered or removed, or if an interim manager has been appointed), the activities of a charity and where it is able to operate, main contact details, the financial history, and whether there is a public statement regarding the opening of an inquiry are also available as part of the public Register of Charities.
- 4.8 The Commission has the discretion to disclose information it has received in connection with any of its functions under section 56. However if:
- the information has been received by the Commission under s.54(1) subject to an express restriction the Commission must first obtain consent to further disclose the information (section 56(3)); or
  - the information has been received by the Commission from HMRC the Commission must first obtain the consent of HMRC to further disclose the information (section 57(2)). Section 57(3) makes it an offence to disclose HMRC information in contravention of 57(2).
- 4.9 Section 58 of the Charities Act modifies sections 54 to 57 in respect of disclosures to and by principal regulators of exempt charities.
- 4.10 The Commission also has the discretion to disclose, under its general powers under the Charities Act 2011, information other than that which it has received from third parties. Such disclosures must also be compliant with all relevant legislation.
- 4.11 The Commission and the OfS agree that there will be no further dissemination or disclosure of disclosed information received from the Commission or the OfS without the written consent of the Party that disclosed the information. Such permission must not be unreasonably withheld. For the avoidance of doubt this includes intelligence information which conforms to the rules of the National Intelligence Model. The exceptions to this are:
- with regard to all information other than that received by way of intelligence, the receiving organisation might, in the case of court proceedings, be required to disclose some of this information at short notice to the court. As a consequence the receiving organisation might, on an exceptional basis, be unable to obtain prior permission from the originator because of time constraints. In such cases, the receiving organisation will inform the originator of the disclosure retrospectively and without undue delay; or
  - the circumstances set out in paragraph 4.22 below.
- 4.11A Paragraph 4.11 does not apply where information is to be shared by the OfS under sections 63(3), 63(4) or 112(3) of HERA.<sup>13</sup> In these circumstances, the OfS will apply a rebuttable presumption that the information is not intended to be disclosed and must seek and consider representations from the Commission before disseminating or disclosing information it has received from the Commission.

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<sup>13</sup> As the law currently stands, the OfS considers that this would be the only legal basis for disclosing information.

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- 4.12 If the originating Party gives written permission for the information to be disclosed to a third party, the recipient Party will ensure that the origin of the information is made clear to the third party so that that the third party can take appropriate action to flag the origin of the information on its own internal systems.

### Confidentiality

- 4.13 Where information is shared between the Parties, unless it is demonstrably in the public domain, such information is to be treated as commercial and/or confidential and not disclosed beyond the Parties unless agreed in writing. Nothing in this Memorandum prevents the Parties from complying with their duties under the Freedom of Information Act 2000 (“FOIA”).

### Information Handling

- 4.14 When exchanging information, the Commission and the OfS must ensure that the information is:
- marked with the appropriate security classification (paragraph 4.16 below);
  - exchanged using a secure platform as detailed in paragraph 4.15 below; and
  - stored securely in accordance with all applicable requirements including HM Government guidelines and the General Data Protection Regulation and Data Protection Act 2018.
- 4.15 The Commission and the OfS will disclose information via a secured data sharing platform. For the Commission this would normally be the government secure “.gsi” email channel. In the event that such arrangements are not feasible or if another method of information disclosure is required, for example absence of access to government secure email or information provided on removable media, then this may be mutually agreed by both Parties. Appropriate communication or transportation arrangements suitable to the security classification of the information or communication, in particular secure encryption, must be made for the transfer.
- 4.16 Both parties will ensure that all disclosures are appropriately protected using the Government Security Classification (GSC) system as follows:
- Official – the majority of information that is created or processed by the public sector. This includes the sub set of information to be protected by Official - Sensitive
  - Secret – very sensitive information that justifies heightened protective measures to defend against determined and highly capable threat actors
  - Top Secret – the most sensitive information requiring the highest level of protection from the most serious threats.

Information shared through this Memorandum will attract a protective marking under the Government Protective Marking System of at least OFFICIAL.

- 4.17 The Commission and the OfS agree that the information disclosed between the Parties is to be used by the receiving Party only for the purpose for which it was shared. The written consent of the originating Party must be obtained before the disclosed information can be used for any other purpose unless the receiving Party is required by law to use the information for another purpose. Neither Party is permitted to share any information (including without limitation personal data) received from the other Party pursuant to this Memorandum with a third party without the prior written consent of the other Party.

## Official

- 4.17A Paragraph 4.17 does not apply where information is to be shared by the OfS under sections 63(3), 63(4) or 112(3) of HERA<sup>14</sup>. In these circumstances, the OfS will apply a rebuttable presumption that the information is not intended to be disclosed and must seek and consider representations from the Commission before disseminating or disclosing information it has received from the Commission.
- 4.18 Information will be provided to the OfS on the condition that it is handled as per the OfS's own information handling policy. It is the responsibility of the OfS to ensure this occurs. The OfS will retain information supplied by the Commission only for as long as there is a business purpose to do so and not any longer than is necessary for the OfS to perform its functions. Where the Commission material is used to inform a specific research paper, it will be clearly referenced.
- 4.19 Information will be provided to the Commission on the condition that it is handled as per the Commission's information handling policies. It is the responsibility of the Commission to ensure this occurs. The Commission will retain information supplied by the OfS only as long as there is a business purpose to do so and not any longer than is necessary for the Commission to perform its functions. Where the OfS material is used to inform a specific research paper, it will be clearly referenced.
- 4.20 Each Party confirms that, as a minimum, it has considered the risks of the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to any information transferred and personal data transferred and processed in connection with this Memorandum and have arrangements in place to manage or mitigate these risks.
- 4.21 Each Party will ensure that any security breaches leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data or information received from the other Party is reported to the other Party as soon as practically possible following the security breach. Where the security breach concerns personal data transferred to a Party by the other Party it must notify the other Party within the 72 hour or such other reporting requirements specified by the Data Protection Legislation.
- 4.22 The Parties must insofar as it is lawful and reasonably practicable cooperate with one another in respect of any internal regulatory or ministerial investigation or enquiry which relates to information shared with one another.
- 4.23 The Commission may from time to time, mark information disclosed to the OfS as 'for intelligence purposes only' ("**Marked Information**"). Marked Information may be used by the OfS to inform their investigations, and assist any information gathering. The OfS acknowledges that it is not intended that Marked Information will be published or used (or relied on) as the reason for any decision made and/or action taken on their matters and will follow the process in paragraph 4.23A for such Marked Information. This may be necessary in order to protect ongoing cases by the Commission or other public bodies.
- 4.23A Where Marked Information is to be shared by the OfS under sections 63(3), 63(4) or 112(3) of HERA,<sup>15</sup> the OfS will apply a rebuttable presumption that the information is not intended to be disclosed and must seek and consider representations from the Commission before disseminating or disclosing information it has received from the Commission.

### Freedom of information

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<sup>14</sup> As the law currently stands, the OfS considers that this would be the only legal basis for disclosing information.

<sup>15</sup> As the law currently stands, the OfS considers that this would be the only legal basis for disclosing information.

4.24 The Commission and the OfS are obliged to comply with the FOIA and the Environmental Information Regulations (“EIR”). If the Commission receives an FOIA/EIR request for information provided to it by the OfS, will inform the OfS of the request. The OfS will then inform the Commission whether in its opinion the information should be released under FOIA/EIR and if not, the OfS will provide the Commission with the details of which of the exemptions it considers may apply within the statutory timescales provided for in FOIA/EIR to assist the Commission in its decision making. If the OfS receives an FOIA/EIR request for information provided to it by the Commission, the OfS will inform the Commission of the request. The Commission will then inform the OfS whether it considers that the information should be released under FOIA/EIR, and if not, the Commission will provide the OfS with details of which exemptions it considers may apply within the statutory timescales provided for in FOIA/EIR to assist the OfS in its decision making. Any final decision in relation to an FOIA/EIR request to the Commission is a matter for the Commission. Any final decision in relation to an FOIA/EIR request to the OfS is a matter for the OfS.

Data protection

4.25 The Parties agree to comply with the Data Protection Act 2018 and the General Data Protection Regulation and any other legislation relating to the processing of personal data and privacy which apply to them respectively (the “Data Protection Legislation”). In this Memorandum the following terms have the meaning given to them in the Data Protection Legislation:

- Controller;
- Processor;
- data subject;
- personal data;
- “special categories of personal data”;
- Joint Controller;
- processing; and
- “appropriate technical and organisational measures”.

4.26 Each Party is the Controller for all personal data it holds in order to fulfil its own functions. Each Party is independently responsible for ensuring that its obligations as Controller are complied with and the rights of data subjects protected in respect of personal data received by it and for which it is Controller.

4.27 Subject to any restriction specified by the Party transferring personal data, a Party may determine the means of processing any personal data transferred pursuant to this Memorandum (the “Transferred Personal Data”). In accordance with paragraph 4.17 the receiving Party can only use Transferred Personal Data for the purpose that it was transferred unless otherwise agreed in writing by the other Party.

4.28 The Parties do not anticipate that any transfer of personal data pursuant to this Memorandum (“Transferred Personal Data”) will involve any of the following forms of processing:

- the processing of personal data by one Party on behalf of the other Party; or
- the processing of personal data jointly by the Parties causing the Parties to be Joint Controllers

in the event that a transfer of personal data will amount to either of these forms of processing the Parties will negotiate in good faith a supplementary agreement setting out each Party’s rights and obligations in accordance with the requirements of the Data Protection Legislation.

## Official

Subject to any agreement to the contrary the Parties envisage that on receipt a Party will become the Controller of all Transferred Personal Data received from the other Party.

- 4.29 All transfers of personal data by the Parties must specify:
- the appropriate security classification in accordance with paragraph 4.16;
  - the lawful basis on which the personal data is transferred;
  - the purpose(s) for which the personal data is transferred;
  - any special categories of personal data shared and the lawful basis on which it is transferred; and
  - any restrictions on the use of the Transferred Personal Data by the receiving Party, including without limitation a restriction on the purpose(s) for which the personal data can be processed.
- 4.30 The Parties must ensure that the personal data transferred is not irrelevant or excessive for the purpose for which it is transferred.
- 4.31 Each Party must ensure that it processes Transferred Personal Data fairly and lawfully in accordance with the Data Protection Legislation and that it has legitimate grounds under the Data Protection Legislation for processing the Transferred Personal Data.
- 4.32 In respect of special categories of personal data each Party confirms, to the extent it is required to do so, that it has in place a policy document in accordance with Part 4 of Schedule 2 of the Data Protection Act 2018.
- 4.33 The Parties must only transfer personal data to each other using the secure methods referred to in paragraphs 4.15 and 4.16. The Parties undertake to have in place for the duration of this Memorandum appropriate technical and organisational security measures to:
- prevent unauthorised or unlawful processing of the Transferred Personal Data and accidental loss or destruction of or damage to the Transferred Personal Data; and
  - ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Transferred Personal Data to be protected.
- 4.34 It is the responsibility of each Party to ensure that its members of staff are appropriately trained to handle and process the Transferred Personal Data in accordance with the technical and organisational security measures agreed by the Parties and have entered into confidentiality agreements with their members of staff relating to the processing of personal data. The level, content and regularity of training referred to must be proportionate to the staff member's role, responsibility and frequency with respect to their handling and processing of the Transferred Personal Data.
- 4.35 Each Party undertakes to notify data subjects of such information as they are required to in accordance with the Data Protection Legislation.
- 4.36 Without prejudice to the Parties' primary responsibilities, where a Party receives a request from a data subject for disclosure of information which includes information provided by the other Party, the receiving Party must immediately notify the disclosing Party of the request. The disclosing Party will then inform the receiving Party whether in its opinion the information should be released and if not the disclosing Party will provide details of why it contends such information should not be disclosed.

## Official

- 4.37 When a Party receives a data subject request pursuant to Articles 17-22 of the General Data Protection Regulations which relates to Transferred Personal Data, the Party in receipt of the request must immediately notify the other Party. In such instance, the other Party agrees to provide such assistance as is reasonably required to enable the Party in receipt of the request to comply with the data subject request within the time limits imposed by the Data Protection Legislation.
- 4.38 Each Party must comply with its obligations to report any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Transferred Personal Data (a "Personal Data Breach") to the Information Commissioner's Office or such other supervising authority and (where applicable) the data subjects as required by the Data Protection Legislation. Each Party must inform the other Party of any such Personal Data Breach irrespective of whether there is a requirement to notify the Information Commissioner's Office or data subjects. The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Personal Data breach in an expeditious and compliant manner.
- 4.39 Each Party is responsible for maintaining its own records of:
- each Data Protection Transfer made to the other Party; and
  - each data subject request received, any additional correspondence with each data subject, the decision made and information exchanged in respect of each data subject request.
- 4.40 The Parties confirm that each has appropriate information handling and retention policies and procedures in place for the purpose of the Data Protection Legislation. The Parties acknowledge that personal data will only be transferred to it pursuant to this Memorandum on the condition that such personal data is handled in accordance with their respective information handling and retention policies.
- 4.41 Each Party in receipt of Transferred Personal Data must not retain or process such personal data for longer than is necessary to perform its function and must comply with its own retention policy to ensure such personal data is deleted accordingly.
- 4.42 If a Party appoints a third party processor to process Transferred Personal Data it must comply with Article 28 and 30 of the General Data Protection Regulations.
- 4.43 The Parties to not envisage any Transferred Personal Data being transferred outside the EEA.
- 4.44 Where a Party's material is used by the other Party to inform a specific research paper it will be clearly referenced.
- 4.45 Each Party agrees to provide to the other Party such information any documentation concerning the matter in which personal data (and any other information) is processed as the other Party reasonably requires in order to satisfy itself that the Data Protection Legislation and/or this Memorandum is being complied with. Such information and documentation must include, without limitation, information concerning the security measures in place to protect disclosed information, classes of individuals with access to disclosed information, information handling policies and retention policies, policies pursuant to Part 4 of Schedule 2 of the Data Protection Act 2018, data protection impact assessments which concern the processing of Transferred Personal Data or other information shared pursuant to this Memorandum.
- 4.46 The Parties will ensure that, to the extent required by Data Protection Legislation, the essence of the "Data Protection" and "Information Handling" part of this Memorandum is made available to data subjects.

## Section 5 – Liaison

- 5.1 Representatives of the Parties will hold strategic policy meetings at least once a year. The aims of these meetings will be to:
- discuss common policies and strategies;
  - discuss problem areas and developing trends in charity abuse and exploitation;
  - update or consult on development of relevant law, policy, and practice; and
  - review the provisions of the Memorandum and the overall effectiveness of the liaison and collaboration between the Parties.

### *General liaison and collaboration process*

- 5.2 In order to facilitate the flow of information and technical expertise, the Parties must appoint officers to act as single points of contact (“**SPoCs**”), as detailed in Appendix B.
- 5.3 Requests for information by one Party to the other Party about a new matter must be made via the other Party’s appropriate SPoC. SPoCs may also be able to provide general advice.
- 5.4 The SPoCs will aim to ensure that:
- the disclosure of information and referral of individual cases are screened and processed with an appropriate degree of uniformity and speed;
  - routine referrals will be dealt with within fifteen working days of receipt, and any urgent referrals within eight working days;
  - where personal data needs to be transferred to facilitate an investigation such transfer will be in accordance with section 4 (Information Sharing);
  - if action on a referral cannot be completed within the timescale specified above, the receiving SPoCs will provide the originating SPoC with progress reports at agreed intervals;
  - any general information, intelligence, announcement, or warning that either Party considers will impact directly on the other is brought to the attention of the other, and reported up and/or disseminated appropriately within the Parties.

### *Other Designated Points of Contact and Assistance*

- 5.5 Operational referrals and requests for information should be channelled through the SPoCs as detailed above. However, in order to ensure that other matters are handled at the appropriate level, and that policy considerations are taken fully into account, contact between the Parties may also be established between other designated points of contact at an operational, legal or policy level. Where they consider it appropriate, the other designated points of contact may delegate ongoing liaison to members of their staff.
- 5.6 The Commission will, where appropriate, and subject to available resources, provide guidance to the OfS in the interpretation of charity law. Where appropriate and if resources are available, the OfS will provide guidance on, the development of guidance, points of law, procedure and operational action.
- 5.7 In order to support joint working and outreach, the Parties will explore opportunities to co-operate on presentations and seminars for charity sector representatives.

**Section 6 - General**

- 6.1 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 Parties from making arrangement to meet specific exceptional needs. Any such circumstances should be agreed in writing between the Parties to this Memorandum.
- 6.2 This Memorandum takes effect from the date of signature of the last Party to sign it. The Memorandum will continue in force until terminated in writing by either Party in accordance with paragraph 6.3 or superseded by a future memorandum.
- 6.3 Either Party can terminate this Memorandum by giving the other Party no less than three months' notice in writing. In such cases the Memorandum will terminate on the last calendar day of the full month that is three months following the date the written notice is served.
- 6.4 Either Party may propose amendments to this Memorandum at any time. Amendments will come into effect on a date to be agreed by all parties.
- 6.5 The Parties may review and, if necessary, amend this Memorandum to reflect the OfS's new regulatory regime coming into force in August 2019.
- 6.6 In the event of any dispute arising out of or in connection with this Memorandum, the Parties will in good faith seek to resolve that dispute. Any disagreement will be referred to the appropriate level indicated in the Escalation Protocol set out in Appendix B. Where the dispute cannot easily be resolved, the matter may be referred in the first instance to the Chief Executives of the Parties and subsequently, if the issue remains unresolved, to the Chairs of the Parties.
- 6.7 This Memorandum will be published on the respective websites of the OfS and the Commission.
- 6.8 If any data protection legislation changes in any way so that this Memorandum is no longer adequate for the purpose of governing lawful transfers of data as envisaged by this Memorandum, the Parties will negotiate in good faith amendments to this Memorandum in light of the new legislation.
- 6.9 Nothing in this Memorandum is intended to, or shall be deemed to establish any partnership or joint venture between the Parties, constitute any Party the agency of the other Party or authorise any Party to make or enter into any commitments for or on behalf of any other Party.
- 6.10 This Memorandum does not give rise to any right for a third party to enforce any of its terms.
- 6.11 In the event of a conflict between the contents of this Memorandum and a provision contained in legislation, the latter shall prevail.
- 6.12 This Memorandum is governed by and must be construed in accordance with the law of England and Wales. Each Party agrees that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Memorandum or its subject matter or formation.

**Signed**

On behalf of the Charity Commission for England and Wales



Date 27 February 2019

**Helen Stephenson**, Chief Executive

On behalf of The Office for Students



Date 4 February 2019

**Nicola Dandridge**, Chief Executive

**APPENDIX A  
THE EXEMPT CHARITIES REGULATED BY THE OFS AS PRINCIPAL REGULATOR**

The following exempt charities are regulated by the OfS as Principal Regulator at the time of the signing of this Memorandum:

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

## Official

Queen Mary University of London	St George's, University of London	Teesside University
Ravensbourne	University of St Mark & St John	University of Warwick
University of Reading	University of Salford, The	University of the West of England, Bristol
Roehampton University	University of Sheffield, The	University of West London, The
Royal Central School of Speech and Drama, The	Sheffield Hallam University	University of Westminster, The
Royal College of Art	University of Southampton	University of Winchester
Royal Holloway College and Bedford New College	Solent University	University of Wolverhampton, The
Royal Northern College of Music	Staffordshire University	University of Worcester
Royal Veterinary College, The	University of Suffolk	Writtle University College
	University of Sunderland	University of York
	University of Surrey	York St John University
	University of Sussex, The	

In addition to the charities listed above, the OfS is also Principal Regulator of charities that are “connected institutions” for the purposes of paragraph 28 of Schedule 3 to the Charities Act because they are:

- Administered by or on behalf of a charity listed above; and
- Established for the general purposes of, or for any special purpose of or in connection with, a charity listed above.<sup>16</sup>

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<sup>16</sup> Please note that students’ unions and the colleges and halls of the universities and halls of the universities of Oxford, Cambridge and Durham are excluded from the definition of “connected institutions”. This means that these charities are regulated as charities by the Commission, not by the OfS as Principal Regulator.

**APPENDIX B  
SINGLE POINTS OF CONTACT**

Each Party must nominate a single point of contact (“**SPoC**”) to represent their organisation in this Memorandum and the related joint activity. In order to reflect both the operational and strategic elements of this Memorandum, there will be a SPoC for matters concerning data sharing and other operational disclosures, and a SPoC for all other matters, including strategic relationship and policy development.

Changes to the SPoC should be notified to the other Party at the earliest opportunity. At the time of the signing of this Memorandum the SPoCs were as follows:

Name	Job title/responsibility in relation to this Memorandum	Contact details
Operational		
[REDACTED]	Head of Financial Assessment, Office for Students	[REDACTED]@officeforstudents.org.uk
[REDACTED]	Intelligence Analyst, Charity Commission for England and Wales	[REDACTED]@charitycommission.gov.uk
Strategic		
[REDACTED]	Head of Financial Assessment, Office for Students	Tel: [REDACTED] Email: [REDACTED]@officeforstudents.org.uk
[REDACTED]	Public Affairs Manager, Charity Commission for England and Wales	Tel: [REDACTED] Email: [REDACTED]@charitycommission.gov.uk

**Escalation Protocol**

There may be occasions when each Party to this Memorandum encounter difficulties. This should be resolved locally by the listed SPoCs in the first instance. However, if this is not possible then the following protocol must be followed:

**Charity Commission:**

Operational:

[REDACTED]

Operational Intelligence Manager

[REDACTED]@charitycommission.gov.uk

Strategic:

[REDACTED]

Head of External Affairs

[REDACTED]@charitycommisson.gov.uk

**OFS**

Operational:

[REDACTED]

Director of Competition and Registration

[REDACTED]@officeforstudents.org.uk

Strategic:

[REDACTED]

Director of Competition and Registration

[REDACTED]@officeforstudents.org.uk

**APPENDIX C  
THE COMMISSION'S POWERS**

The Commission may only apply most of these powers to an HE Exempt charity after consultation with the OfS as Principal Regulator. It may only exercise its power to institute inquiries if requested to do so by the Principal Regulator.

The Commission's protective powers include those listed below. Those powers marked with an asterisk are only exercisable when an inquiry under s.46 is open.

<b>Power</b>	<b>Statutory reference</b>
Require a charity to change its name in certain specified circumstances	S42-45 Charities Act
Institute inquiries into the administration of a charity	S46 Charities Act
Obtain evidence during an inquiry	S47 Charities Act*
Enter premises and seize documents	S48-49 Charities Act*
Call for documents and search records	S52-53 Charities Act
Issue an official warning to a charity, charity trustee or trustee for a charity	S75A Charities Act
Suspend or remove any trustee, charity trustee, officer, agent or employee of a charity	S76,* 79,* 80(1), Charities Act
Appoint new trustees	S76(3)(b) Charities Act* and S80(2) Charities Act
Vest charity property in the Official Custodian for Charities	S76(3)(c) Charities Act*
Order individuals not to part with charity property without its approval ("freezing orders")	S76(3)(d) Charities Act*
Order individuals not to pay debts owed to the charity without its approval	S76(3)(e) Charities Act*
Restrict transactions that can be entered into on behalf of a charity	S76(3)(f) Charities Act*
Appoint an interim manager for a charity	S76(3)(g) Charities Act*
Make a scheme for the administration of a charity	S79(2) Charities Act*
Remove a disqualified trustee	S79A Charities Act
Suspend or remove trustees etc from membership of a charity	S83 Charities Act*
Give specific directions for protection of a charity	S84 Charities Act*
Direct specified action not to be taken	S84A Charities Act*
Direct a charity to wind up	S84B Charities Act*
Direct the application of charity property	S85 Charities Act
Give directions about dormant bank accounts	S107-109 Charities Act
Determine the membership of a charity	S111 Charities Act

## Official

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 Charities Act
Disqualify an individual as a trustee or charity trustee	S181A Charities Act
Order a disqualified person to repay sums received from a charity while acting as charity trustee or trustee for the charity	S184(2)-(4) Charities Act
Disqualify trustees who are receiving remuneration by virtue of section 185 Charities Act	S186 Charities Act
Ensure the safekeeping of charity documents	S340 Charities Act

The Commission's enabling powers, which are usually only exercised at the request of the charity, include the following:

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

## APPENDIX D TERMINOLOGY

### *Charity Commission*

#### **Misconduct**

We define misconduct to include any act (or failure to act) that the person committing it knew (or ought to have known) was criminal, unlawful, or improper.

#### **Mismanagement**

We define mismanagement to include any act (or failure to act) that may cause charitable resources to be misused or the people who benefit from the charity to be put at risk.

#### **Inquiry**

If the Commission considers that the charity is potentially at significant risk, it may open an inquiry under section 46 of the Charities Act 2011. The Commission can open inquiries with regard to charities or a particular charity or class of charities. Some of its powers can only be used when an inquiry is open. More details can be found in the Charity Commission's Regulatory and Risk Framework:

<https://www.gov.uk/government/publications/risk-framework-charity-commission/regulatory-and-risk-framework>

The Commission's general approach to statutory inquiries and the powers and obligations it has when it opens one are explained in more detail in its published guidance "Statutory inquiries into charities: guidance for charities" at:

<https://www.gov.uk/government/publications/statutory-inquiries-into-charities-guidance-for-charities-cc46>