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**CHARITY COMMISSION  
FOR ENGLAND AND WALES**



**MEMORANDUM OF UNDERSTANDING**

**THE CHARITY COMMISSION**

**AND**

**THE BIG LOTTERY FUND**

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### **Section 1 - Purpose of Memorandum**

1. This Memorandum provides a framework for closer working between the Charity Commission ("the Commission") and the Big Lottery Fund ("the Fund"). Both the Commission and the Fund 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 the Commission and the Fund's responsibilities, working procedures, legal powers and constraints;
- promote co-operation between the Commission and Fund's staff at a strategic and operational level;
- facilitate effective investigation and the disclosure of information relevant to the objective of prevention, detection and remedy of misconduct or mismanagement in the administration of charities and charitable funds; 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.

### **Section 2 - The Role and Functions of the Commission**

2.1 The Commission is established under the Charities Act 2011 ("The Act") and is the statutory regulator and registrar of charities in England and Wales. The Commission is a non-ministerial government department. The 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 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 mismanagement 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 Act include:

- determining whether institutions are or are not charitable;

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- encouraging and facilitating the better administration of charities; this function includes a power to give advice or guidance to charities;
- identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement; and
- 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.

2.4 In carrying out its functions the Commission will 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.

2.5 In pursuance of its objectives and functions, the Commission maintains a register of charities. The Commission's jurisdiction extends to all registered charities and unregistered charities (other than limitation on the use of its powers in relation to exempt charities). The term "charities" and "charitable purposes" refers to organisations and purposes which are exclusively under the law of England and Wales. They will include charitable collections and funds managed on an informal basis by any person or organisation.

2.6 Most concerns that the Commission identifies in charities are dealt with as operational compliance cases. These cases are not formal investigations, but are aimed at ensuring trustees address any failures and weaknesses in their charity's management. Statutory inquiries may be opened in accordance with Commission's risk framework where there is a high risk to public trust and confidence in charity, where there is evidence of misconduct or mismanagement or charities' assets, reputation, service or beneficiaries are at a high risk of harm or abuse. Opening an inquiry allows the Commission the full range of enforcement powers. The Commission also undertakes proactive and reactive monitoring of charities which give rise to concern.

2.7 The Commission collaborates with police and law enforcement agencies, for example in cases of fraudulent fundraising.

2.8 The Commission has powers for the protection of charities (and may consider using these when dealing with the situation above), although they can only be used in certain circumstances, and in an inquiry. These powers are listed at Appendix B.

2.9 The Commission also has extensive information-gathering powers. It may for example:

- order anyone to provide the Commission with information in his or her possession which is relevant to the discharge of any of its functions; and
- direct anyone to provide written statements, or written answers to questions concerning any matter which it is investigating about which that individual has or can reasonably obtain information.

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2.10 The supply of false or misleading information to the Commission is a criminal offence (section 60 of the Charities Act 2011). However, information acquired by the use of these powers can only be used for the purpose for which the powers were given.

2.11 It follows that the Commission can use these 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.

### **Section 3 - The Role and Function of the Big Lottery Fund**

3.1 The Big Lottery Fund ("the Fund") was formed following the administrative merger of the National Lotteries Charity Board and the New Opportunities Fund on the commencement of the National Lottery Act 2006. The Fund's function is to distribute National Lottery Funding for charitable purposes or purposes connected with health, education or the environment through grants, loans and other arrangements. The Fund may also distribute non-lottery funds and it has also been given functions under the Dormant Bank and Building Societies Act 2008. It is a non-departmental public body and is accountable to Parliament both for the funds that it distributes to grant holders to deliver special projects, and the outcomes of these projects.

### **Section 4- Disclosure of information**

4.1 Both the Commission and the Fund will ensure that any disclosure of information under the terms of this Memorandum is carried out in a manner that is proportionate and fully in compliance with the Human Rights Act 1998, the Data Protection Act 1998 and the Freedom of Information Act 2000 (see further below).

4.2 Sections 54 to 59 of the Act cover disclosure of information and give the Commission the powers exercisable at its discretion to disclose to any relevant public authority any information received by the Commission in connection with any of the Commission's functions, and from any relevant public authority any information received by the Commission in connection with any of the Commission's functions.

4.3 Section 56 of the 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:

- a) the disclosure is made for the purposes of enabling or assisting relevant public authority to discharge any of its functions; or
- b) the information so disclosed is otherwise relevant to the discharge of any functions of the relevant public authority

4.4 Section 54 of the 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.

4.5 The Fund is therefore likely to be a relevant public authority for the purpose of section 54 and 56 of the Charities Act 2011.

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4.6 Information on 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 Register of Charities for England and Wales.

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

4.7 The Commission will only provide information owned by the Commission (or is publicly available) and not information which has been provided to it by other public bodies or prosecuting agencies, unless their consent has been obtained.

4.8 In the event that the Commission is aware of key information which has been provided by another body the Commission may consider contacting the public bodies or prosecuting agencies to request the information be provided directly and/or to notify them of the Fund's potential interest.

4.9 The Commission may from time to time, mark information provided to the Fund as 'for intelligence purposes only' ("Marked Information"). Marked Information may be used by the Fund to inform their investigations, and assist any information gathering. The Fund may not publish or use Marked Information to form decisions and/or take action on their matters. This may be necessary in order to protect ongoing cases by the Commission or other public bodies.

4.10 In some circumstances the Commission may not be able to share sensitive information where acting upon this information could have a detrimental impact on on-going investigations.

4.11 When disclosing information the Commission and the Fund must ensure the provisions of section 54-59 of the Act for the disclosure of information are satisfied. Nothing in this Memorandum commits either party to disclose information nor impose upon the Commission or other person or organisation a duty to disclose information.

4.12 The Commission and the Fund agree that there will be no further dissemination or disclosure of information without the express written consent of the disclosing party.

### **Section 5 – Information Handling**

5.1 When exchanging information, the Commission and the Fund shall ensure that:

- the information is marked with the appropriate security classification and stored securely in accordance with all applicable requirements and HM Government guidelines and the Data Protection Act 1998;
- even where not legally required to do so, the receiving organisation must request permission from the originator if the information is intended to be used for any purpose other than that for which it was received, including intended onward disclosure; and
- information losses, wrongful disclosures or breaches of security relating to information originating in the other organisation is reported to the other organisation

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5.2 The receiving organisation will not disclose information supplied by the originator to any outside organisation or person unless permitted or required by law and will not make any such disclosure without prior written approval from the originator. This information includes intelligence which conforms to the rules of the National Intelligence Model disseminated to the receiving organisation by the originator.

5.3 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 data 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.

5.4 The Commission and the Fund 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.

5.5 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
- 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.

### Section 6 - Specific Information Exchanges

6.1 Information exchanged between the Commission and the Fund will be in accordance with the aforementioned handling protocols.

#### *Freedom of information*

6.2 The Commission and the Fund are obliged to comply with the Freedom of Information Act 2000 ("FOIA"). If the Commission receives a FOIA request for information provided to it by the Fund, will inform the Fund of the request. The Fund will then inform the Commission whether in its opinion the information should be released under FOIA, and if not, the Fund will provide the Commission with the details of which of the exemptions it considers may apply within the statutory timescales provided for in FOIA to assist the Commission in its decision making. If the Fund receives a FOIA request for information provided to it by the Commission, the Fund will inform the Commission of the request. The Commission will then inform the Fund whether it considers that the information should be released under FOIA, and if not, the Commission will provide the Fund with details of which exemptions it considers may apply within the statutory timescales provided for in FOIA to assist the Fund in its decision making. Any final decision in relation to an

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FOIA request to the Commission is a matter for the Commission. Any final decision in relation to an FOIA request to the Fund is a matter for the Fund.

### *Data protection*

6.3 For the purpose of the Data Protection Act 1998 ("the DPA"), the Fund is the data controller for all personal data it holds in order to fulfil its own functions. The Fund will become the data controller for the personal data it receives from the Commission as part of any information disclosure.

6.4 The Commission is the data controller for all personal data it holds in order to fulfil its own functions for the purpose of the DPA. The Commission will become the data controller for the personal data it receives from the Fund as part of any information disclosure.

6.5 The Commission and the Fund will undertake all reasonable steps to ensure that the personal data held by them and supplied to them will only be processed (including internally) in accordance with the DPA.

6.6 The originating party will remain the owner of the information. It is important that any information received by the other is not disseminated to any third party without the written permission of the originating party. Information passed between the parties is to be used only for the purpose that it was shared. If the originating party gives written permission for the information to be disclosed to a third party, the origin of the information should be made clear to the third party, in order that they can take appropriate action on flagging the origin of the information on their own internal systems.

6.7 Where the Commission and the Fund wish to share information on individuals, this information will be kept to the minimum necessary to facilitate the purpose for which the information is shared. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or purposes.

6.8 Information will be provided to the Fund on the condition that it is handled as per the Fund's own information handling policy. It is the responsibility of the Fund to ensure this occurs. The Fund will retain information supplied by the Commission pursuant to the Fund's data retention policy. Where the Commission material is used to inform a specific research paper, it will be clearly referenced. The Fund will store information provided on secure accredited IT systems which can only be accessed by the Fund and approved individuals.

6.9 Information will be provided to the Commission on the proviso 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 Fund 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 Fund material is used to inform a specific research paper, it will be clearly referenced. The Commission will store information provided on secure accredited IT systems which can only be accessed by the Commission and approved individuals.

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



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6.11 Any information shared under this Memorandum should only be viewed by those individuals with appropriate vetting and a valid 'need to know' that information.

### Section 7 – Liaison at Strategic Level

7.1 Representatives of the Commission and the Fund 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 two organisations.

### Section 8- Liaison at Operational Level

#### *General liaison and collaboration process*

8.1 In order to facilitate the flow of information and technical expertise, the Fund and the Commission will appoint officers to act as single points of contact ("SPoCs").

8.2 Requests for information by the Fund to the Commission about a new matter must be made via the Commission's SPoC. Requests for information by the Commission to the Fund should be sent via the Fund's SPoC (see Appendix A). SPoCs may also be able to provide general advice. If a matter is to be reported in either direction, the SPoCs will first consult with each other, preferably by telephone, and later in writing, to provide:

- an explanation as to why the information is being requested and what it is to be used for, including if it is intended to be used publicly;
- a briefing on the case, including actions that have already been taken, actions that are likely to be taken, and, where appropriate, information about any previous involvement by the Commission with the charity and individuals concerned;
- written details of the name, telephone number and e-mail address of the case officer at the Commission and at the Fund.

8.3 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;

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- 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 the Commission or the Fund considers will impact directly on the other must be brought to the attention of the other; and
- it is reported up and/or disseminated appropriately within the Commission and the Fund.

#### 8.4 SPoCs will also:

- ensure that any other general information or announcement that the Commission or the Fund considers will impact directly on the other must be brought to the attention of the other; and
- be able to provide general advice about the Commission or the Fund organisation and procedures where relevant for the purposes of this Memorandum.

#### *Co-ordinated Operations*

8.5 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 Fund 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, Monitoring and Enforcement and the Fund's Head of Internal Audit may designate exceptionally serious cases as Co-ordinated Operations in which the exchange of information and technical expertise will be ongoing and continuous.

8.6 Any decision on whether Commission investigators should participate in a co-ordinated operation will rest with the Commission's Head of Investigations, Monitoring and Enforcement. In reaching a decision, the Head of Investigations, Monitoring and Enforcement will have regard to the nature of the operation and the extent to which it is consistent with the Commission's general function and duties.

8.7 Any decision on whether members of the Fund should participate in a co-ordinated operation with the Commission will rest entirely with the Fund's Head of Internal Audit.

8.8 Where both the Fund and the Commission have a mutual interest in a charity or charitable funds 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, areas of responsibility, liaison arrangements and other policy issues. That protocol will build on the matters agreed in this Memorandum.

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8.9 If action on a referral cannot be completed within the timescales mentioned above, the receiving SPoC will provide the originating SPoC with progress reports at agreed intervals.

8.10 Where possible, advance planning meetings should agree a framework for any joint operations, including all roles and responsibilities.

8.11 Where it appears likely that the conduct of a joint inquiry or other form of intervention in relation to a charity will generate media interest of relevance to both the Commission and the Fund or, given the profile and substance of the case, that a Ministerial briefing ought to be considered, the Commission's Head of Investigations, Monitoring and Enforcement and the Fund's Head of Internal Audit 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 9- Other Designated Points of Contact and Assistance**

9.1 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 Commission and the Fund may also be established between designated points of contact at an operational. Legal or policy. Where they consider it appropriate, designated points of contact may delegate ongoing liaison to members of their staff.

9.2 The Commission will, where appropriate, and subject to available resources provide guidance to the Fund in the interpretation of charity law. Where appropriate and if resources are available, the Fund will provide guidance on, product development, points of law, procedure and operational action.

9.3 As part of their respective staff training programmes, both the Commission and the Fund will ensure that their staff are made aware of the differing organisational, operational and legal frameworks of each organisation. In order to facilitate this, appropriate staff will be offered familiarisation visits and work shadowing opportunities at the other's offices.

9.4 The Commission and the Fund will also explore the possibility of mounting joint training and development initiatives and where practicable, will offer places to each other's staff on relevant internal training courses, conferences and seminars.

9.5 In order to support joint working and outreach, the Commission and the Fund will explore opportunities to co-operate on presentations and seminars for charity sector representatives.

### **Section 10 - General**

10.1 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 making of arrangements to meet specific exceptional needs. Any such circumstances should be agreed in writing between the parties to this Memorandum.

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10.2 Any disagreement arising from the interpretation of this Memorandum will be referred to the appropriate level indicated in the Escalation Protocol as per Appendix A.

**Signed**

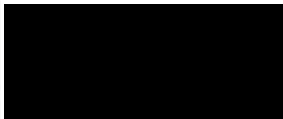
On behalf of the Charity Commission



Date..... *25 January 2017*

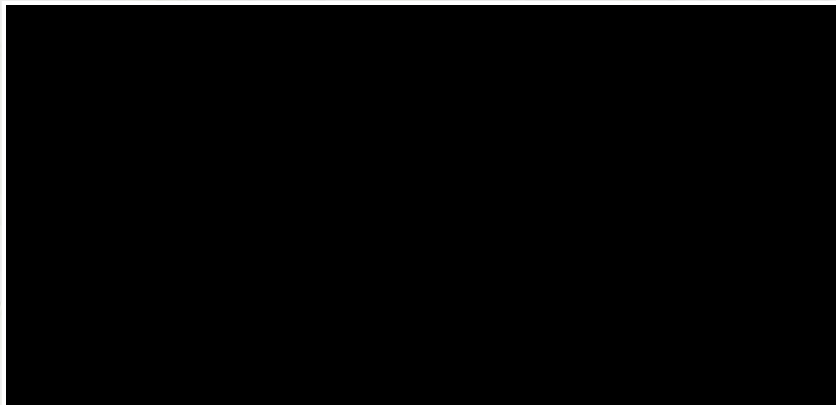
**Michelle Russell**  
Director of Investigations, Monitoring & Enforcement

On behalf of The Big Lottery Fund



Date: *14 February 2017*  
Dawn Austwick  
Chief Executive

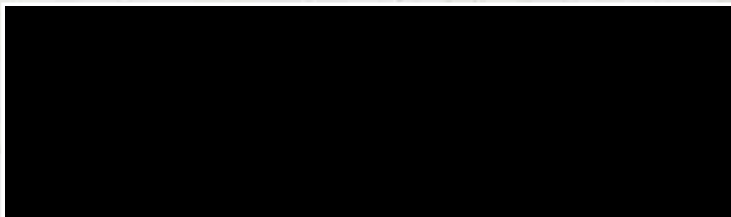
**APPENDIX A  
CONTACT DETAILS AND ESCALATION PROTOCOL**



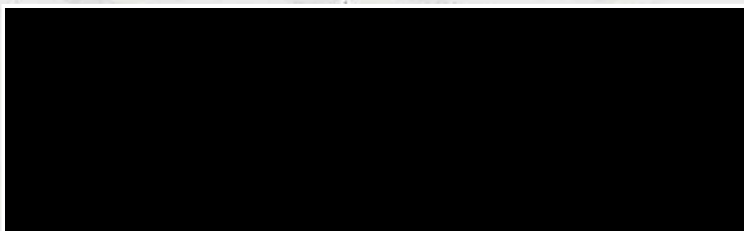
**Escalation Protocol**

There may be occasions when each party to this MoU 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:**



**Big Lottery Fund**



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### APPENDIX B USE OF CHARITY COMMISSION STATUTORY POWERS

The Commission's powers include those listed below, the Commission's support powers are usually only exercised at the request of the charity.

Protective Powers	Statutory reference
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>1</sup> 79, <sup>1</sup> 80(1), CA2011
Make a scheme for the administration of a charity	S79(2)(b) CA 2011 <sup>1</sup>
Appoint new trustees	S76(3)(b) CA 2011 <sup>1</sup> and S80(2) CA 2011
Vest charity property in the Official Custodian for Charities	S76(3)(c) CA 2011 <sup>1</sup>
Order individuals not to part with charity property without its approval ("freezing orders")	S76(3)(d) CA 2011 <sup>1</sup>
Order individuals not to pay debts owed to the charity without its approval	S76(3)(e) CA 2011 <sup>1</sup>
Restrict transactions that can be entered into on behalf of a charity	S76(3)(f) CA 2011 <sup>1</sup>
Appoint an interim manager for a charity	S76(3)(g) CA 2011 <sup>1</sup>
Suspend or remove trustees etc from membership of a charity	S83 CA 2011 <sup>1</sup>
Give specific directions for protection of a charity	S84 CA 2011 <sup>1</sup>
Direct the application of charity property	S85 CA 2011 <sup>1</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>1</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 trustee for the charity	S184(2)-(4) CA 2011
Disqualify trustees who are receiving remuneration	S186 CA 2011

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by virtue of sections 73A CA 1993	
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### 1. Powers only exercisable pursuant to an inquiry under s.46

Support powers	Statutory reference
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
Establish a scheme for the administration of a charity (including the 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 XXXXs and common deposit XXXXs	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

New powers covering the following will be coming in to force as a result of the Charities Act 2016:

- extension of power to suspend any trustee, charity trustee, officer, agent or employee of the charity
- extension of power to remove any trustee, charity trustee, officer, agent or employee
- extension of power to disqualify any trustee, charity trustee, officer, agent or employee
- direct action not to be taken
- direct a charity winding up
- issue an official warning

**APPENDIX C  
TERMINOLOGY**

***Charity Commission***

**Misconduct**

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

**Mismanagement**

We define mismanagement to include any act which may result in significant charitable resources being misused; in a charity's reputation being undermined; or in the people who benefit from the charity being 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 Risk Framework:

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