

Memorandum of Understanding

The Information Commissioner and The Charity Commission

Introduction

1. This Memorandum provides a framework for closer working between the Charity Commission and the Information Commissioner so that charities may continue to enjoy public support and confidence whilst acting in compliance with the legislation referred to below. This MOU does not cover exchanges of correspondence / information when the ICO has a regulatory interest in the Commission either under the Data Protection Act 1998 (DPA) or the Freedom of Information Act 2000 (FOIA).

Both the Charity Commission and the Information Commissioner are fully committed to the aims of this Memorandum, which are to;

- promote a common understanding of each organisation's responsibilities, working procedures, legal powers and constraints;
 - promote co-operation between the Charity Commission and the Information Commissioner's staff at a strategic and operational level;
 - facilitate effective investigation and the exchange of information with the objective of preventing and enforcing against practices which breach the legislation referred to below;
 - ensure appropriate consultation on matters of mutual interest to ensure that charities may be encouraged to comply fully with their legal obligations and adopt best practice in governance and accountability;
2. The Charity Commission and the Information Commissioner will monitor the operation of this memorandum and will review it, initially after one year from the date of this document, and subsequently from time to time as necessary.

3. Any changes to this memorandum identified between reviews may be agreed in writing between the parties.
4. Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation (referred to in 36 below).
5. This memorandum is a statement of intent that does not give rise to legally binding obligations on the part of either the Charity Commission or the Information Commissioner.

Functions and powers of the Information Commissioner

6. The Information Commissioner is a corporation sole appointed by Her Majesty the Queen under the Data Protection Act 1998 and Freedom of Information Act 2000 to act as the UK's independent regulator promoting public access to official information and protecting personal data.
7. The Information Commissioner regulates the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR), the Environmental Information Regulations 2004 (EIR) and the INSPIRE Regulations 2009.
8. In accordance with the Information Commissioner's regulatory powers under the DPA, associated codes of good practice and the Privacy and PECR, the Information Commissioner carries out assessments as to whether the processing of personal data is likely to be in compliance with the DPA.
9. Where the Information Commissioner is satisfied that any of the data protection principles or certain provisions of PECR have been breached, an Enforcement Notice can be served, requiring that an organisation takes specific steps to ensure compliance. Failure to comply with an Enforcement Notice is an offence. A person on whom an Enforcement Notice is served may appeal to the First Tier Tribunal (Information Rights).
10. Where the Information Commissioner is satisfied that there has been a serious contravention of the data protection principles or certain provisions of PECR the Information Commissioner may serve a data controller with a monetary penalty notice.

Functions and powers of the Charity Commission

11. The Charity Commission is established under the Charities Act 2011 ("The Act") and is the statutory regulator and registrar of charities

in England and Wales. The Charity Commission is a non-ministerial government department. The Charities Act 2011 specifically prohibits the exercise of any Charity Commission function being subject to the direction or control of any Minister or other government department.

12. The Charity Commission's objectives (Charities Act 2011, Chapter 2, Part 2, Section 14) are defined as follows:

- the public confidence objective is to increase public trust and confidence in charities;
- the public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement;
- the compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities;
- the charitable resources objective is to promote the effective use of charitable resources; and
- the accountability objective is to enhance the accountability of charities to donors, beneficiaries, and the general public.

13. The Charity Commission's general functions (Charities Act 2011, Chapter 2, Part 2, Section 15) include:

- determining whether institutions are or are not charitable;
- encouraging and facilitating the better administration of charities;
- identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement;
- obtaining, evaluating and disseminating information in connection with the performance of any of the Charity Commission's functions or meeting any of its objectives.

14. In carrying out its functions the Charity Commission must, 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.

15. The Charity Commission maintains a register of charities. The Commission's jurisdiction extends to all registered charities and all unregistered charities (other than limitation on the use of its powers in relation to exempt charities). The term "charities" includes

charitable collections and funds managed on an informal basis by any person or organisation.

16. The Charity Commission has extensive powers for the protection of charities. These can only be used in certain circumstances and are listed at Appendix A. Under section 46 of the Act the Charity Commission has power to institute inquiries with regard to a particular charity or class of charity either generally or for a particular purpose.

17. The Commission also has extensive information-gathering powers. It may:
 - order anyone to provide it with information in his or her possession which is relevant to the discharge of any of its functions;
 - 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.

18. Failure to comply with such a direction is punishable as a contempt of court. Providing false or misleading information to the Charity 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.

19. It follows that the Charity Commission can use these powers only in order to acquire information for use in discharging their own statutory purposes, not (for example) simply in order to obtain information for another body.

20. Although the Charity Commission may use intelligence to inform an investigation, in order to use its regulatory powers the Commission must have evidence which it can present to the charity or person against whom the power is used.

Cooperation between the Information Commissioner and the Charity Commission

21. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the Information Commissioner and the Charity Commission agree that they will:
 - a) Discuss issues of regulatory concern to the respective organisations and their roles at liaison meetings to be

- arranged when an issue of mutual interest or concern arises;
- b) If the Charity Commission receives a complaint or intelligence which appears to be relevant to the DPA or PECR, the Charity Commission will liaise with the Information Commissioner and refer the matter to him if appropriate;
 - c) Communicate regularly (at least annually) to discuss matters of mutual regulatory interest;
 - d) Consult one another at any early stage on any regulatory issues which might have significant implications for the other organisation;
 - g) Share (for comment) at an early stage draft documents (such as consultation papers, guidance and briefings) that may impact on the other's objectives and functions.

Sharing information

- 22. Both the Charity Commission and the Information Commissioner will ensure that any disclosure of information under the terms of this Memorandum is carried out in a manner that is efficient, proportionate and fully in compliance with the Human Rights Act 1998 and the Data Protection Act 1998 (DPA) and with due regard to legal protections, including but not limited to those protections that exist under the laws of confidence and legal professional privilege.
- 23. Sections 54 to 59 of the Charities Act 2011 give the Charity 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 Charity Commission's functions, and from any relevant public authority any information received by the Commission in connection with any of the Charity Commission's functions.
- 24. Section 56 of the Act gives the Charity Commission the powers exercisable at its discretion to disclose information to any relevant public authority any information received by the Charity Commission in connection with any of the Commission's functions:
 - a) If the disclosure is made for the purposes of enabling or assisting relevant public authority to discharge any of its functions; or

- b) If the information so disclosed is otherwise relevant to the discharge of any functions of the relevant public authority
25. The Information Commissioner is a "relevant public authority" for the purposes of Section 56 in the Act.
 26. Section 54 of the Act gives any relevant public body the authority to, at its discretion, to disclose information to the Charity Commission for the purposes of enabling or assisting the Commission with the discharge of any of its functions.
 27. Sections 54 to 59 of the Act do not, however, impose upon the Commission or other person or organisation a duty to disclose information.
 28. In respect of information obtained by or furnished to the Information Commissioner for the purposes of his functions under the Information Acts, it is an offence under section 59 DPA for any current or former member of the Information Commissioner's staff or his agent to disclose such information without lawful authority.
 29. Section 59(2)(e) DPA provides that a disclosure by the Information Commissioner of information obtained by or furnished to him is made with lawful authority where, having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
 30. Section 59(2)(c) of the DPA provides that a disclosure by the Information Commissioner of information obtained by or furnished to him is made with lawful authority where the disclosure is made for the purposes of, and necessary for, the discharge of any functions under the Information Acts (in this case the DPA).
 31. In addition, section 59(2)(d) DPA provides that a disclosure of information by the Information Commissioner is made with lawful authority where the disclosure is made for the purposes of any proceedings, whether criminal or civil.
 32. The Information Commissioner may, at his discretion and in accordance with sub-sections 59(2)(c), (d) and/or (e) of the DPA, disclose confidential information to the Charity Commission.
 33. If information to be disclosed by the Information Commissioner was received by him in the course of discharging his functions as a designated enforcer under the Enterprise Act 2002, any disclosure shall be made in accordance with the restrictions set out in Part 9 of

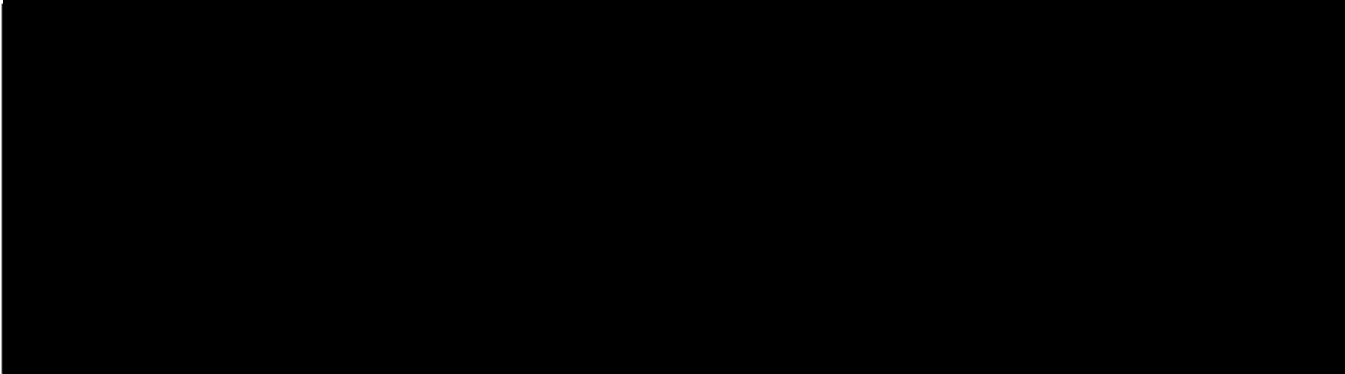
that Act.

34. Where a request for information is received by either party under the DPA or FOIA, the recipient of the request will seek the views of the other party where the information being sought under the request includes information obtained from, or shared by, the other party. However the decision to disclose or withhold the information remains with the recipient party.
35. When exchanging information the provider will mark it with the appropriate security classification.
36. Subject to paragraph 34, unless required by law to do so, the Commission and Information Commissioner agree that there will be no further dissemination of exchanged information without the express consent in writing of the party that disclosed the information.
37. The Commission and the Information Commissioner will exchange information via approved government secure ".gsi" email channels to ensure that efficient and appropriately caveated exchanges take place. However, if another method of information exchange is required, for example information provided on removable media, then this can be mutually agreed by both parties and appropriate transportation arrangements, suitable to the security classification of the information, be made for the transfer of the media.
37. When making a request for information, the party will make clear the deadline for when a response is required. Under normal circumstances, both parties will agree to provide a response within 8 working days of receiving a high priority request and 15 working days for non-high priority. If a quicker response time is required, this will be stipulated on the request. It will also be advisable to speak to the relevant Single Point of Contact (SPOC) to ensure the response time is possible.

Points of contact

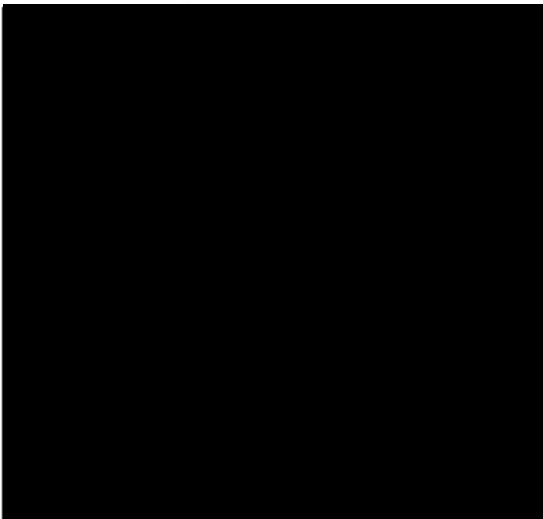
36. Requests for information should be sent via each party's SPoC as follows:

Charity Commission	Information Commissioner
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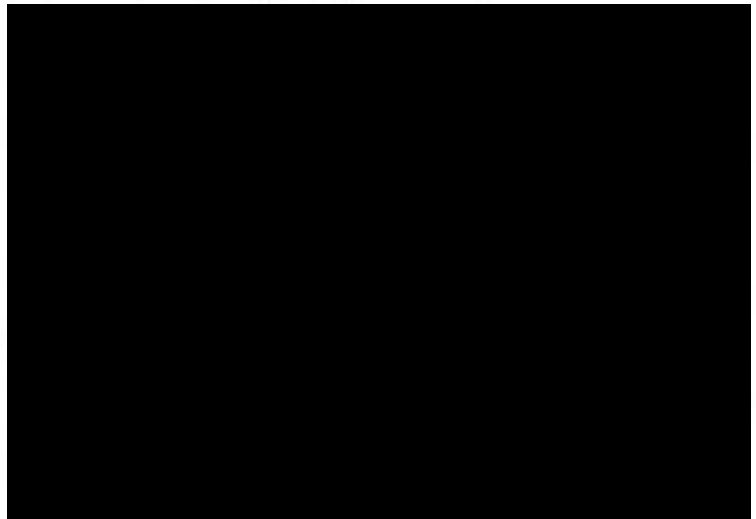


Charity Commission

Information Commissioner



(Date)



(Date)

APPENDIX A

USE OF CHARITY COMMISSION STATUTORY POWERS

1. The Commission also has extensive information-gathering powers. It may:

- 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;
- order anyone to produce documents in his or her possession for inspection or to provide it with information and copy documents which are relevant to the discharge of any of its functions.

Failure to comply with such an order or direction is punishable as a contempt of court. Providing false or misleading information to the Commission is an offence (section 60 of the Charities Act 2011).

However, information acquired by the use of these powers can be used only for the purpose for which the powers were given. It follows that the Commission can use these powers only in order to acquire information for use in discharging its statutory purposes, not simply in order to obtain information for another public body.

The Commission has the discretion to pass information obtained by the Commission for its regulatory purposes to the police under section 10A of the Act.

The power to make such an order or direction will only be properly exercised if this is for the discharge of the Commission's statutory functions. This information is not obtained in accordance with PACE and is unlikely to be admissible in criminal proceedings.

2. The Commission has extensive statutory powers for the protection of charities. These include the power:

- to institute inquiries into the administration of charities;
- to suspend any trustee, charity trustee, officer, agent or employee of the charity;
- to remove any trustee, charity trustee, officer, agent or employee of the charity;
- to appoint new trustees;
- to determine the membership of a charity;
- to suspend or remove trustee, charity trustee, officer, agent or employee of the charity from membership of charity;
- to vest charity property in the Official Custodian for Charities;
- to order individuals not to part with charity property without Commission approval;
- to order individuals not to pay debts owed to the charity without Commission approval;
- to restrict transactions that can be entered into on behalf of the charity;
- to give specific directions for the protection of charity;

- to direct application of charity property;
- to appoint an Interim Manager for the charity;
- to enter premises and seize documents (but not to use force to do so).

The Commission has power to commence proceedings for restitution of loss caused to a charity with the consent of the Attorney General.