

MEMORANDUM OF UNDERSTANDING BETWEEN THE CHARITY COMMISSION AND THE HIGHER EDUCATION FUNDING COUNCIL FOR WALES

Section 1 Purpose and Objectives

The purpose of this Memorandum of Understanding (MoU) is to set out how the Charity Commission for England and Wales (the Commission) and the Higher Education Funding Council for Wales (HEFCW) propose to work together and share information in order to co-ordinate their regulatory activities with respect to Higher Education Institutions (HEIs) in Wales.

It is intended to promote:

- clarity about our respective roles and responsibilities
- effective working, information sharing and communication between us; and
- liaison in the development of any guidance for the sector.

Section 2 Our roles

A. Charity Commission

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

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

Its aim is to provide the best possible regulation of charities in England and Wales, in order to increase their efficiency and effectiveness and public confidence and trust. The Commission has a range of powers that it may use to protect charities and their property and/or reputation from abuse and poor practice. A range of decisions of the Commission are subject to appeal to the Charity Tribunal.

The key principles of an effective charity regulation framework are set out at Appendix A and are based on the Better Regulation Commission's (BRC) principles of good regulation. In particular, the Commission operates a risk-based regulatory regime and adapts the type and degree of our direct regulatory engagement in relation to our assessment of risk.

Charitable HEIs in Wales are required to register with the Commission and are subject to the regulatory requirements of the Commission, including the submission of annual accounts, an annual return and supplementary monitoring return.

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B. HEFCW

HEFCW was established in 1992 under the terms of the Further and Higher Education Act 1992 confirmed by the Education Act 2002. HEFCW is an Assembly Government Sponsored Body (AGSB) responsible for administering Welsh Assembly Government (WAG) funding for higher education (HE) in Wales. HEFCW distributes funds for education, research and related activities at twelve higher education institutions (HEIs), including the teaching activities of the Open University in Wales, and for HE courses at further education colleges. HEFCW is also responsible under the Education (School Teachers' Qualifications) (Wales) Regulations 2004 and the Education Act 2005 for the accreditation of Universities and Colleges in Wales that provide initial teacher training for school teachers and for commissioning research to improve the standards of teachers and teacher training.

HEFCW's functions include:

- making grants, loans and other payments to HEIs in Wales and others who provide HE courses or services connected with the HE sector;
- securing provision for assessing and enhancing the quality of higher education;
- promoting or carrying out studies designed to improve economy, efficiency and effectiveness in the management or operations of institutions; and
- providing Welsh Ministers with information, advice and assistance as required.

Section 3 Working together

A. Sharing of Information

Under sections 10 and 10A of the Charities Act 1993, HEFCW and the Commission can share information about any charity within HEFCW's jurisdiction. But those sections do not impose an information sharing duty.

Both the Commission and HEFCW will disclose and exchange information where appropriate, in order to maximise the efficiency and effective delivery of their respective functions. Neither the Commission nor HEFCW will disclose information received from the other to any other person or body without first consulting the disclosing party. When exchanging information the provider will mark it with the appropriate security classification and the recipient will treat the information received appropriately. Where information is disclosed in connection with an ongoing investigation, neither of us will pre-judge the outcome of the investigation.

We will establish channels of communication between our operational staff to enable them to offer what they believe to be relevant information when they consider it

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reasonable to do so, and respond appropriately and promptly to requests for such information.

The Commission and HEFCW may also share a wide range of information about trends, concerns, risk assessments, data, approaches and initiatives, which are generally relevant to ensuring the good governance of HEIs in Wales.

Both organisations will ensure that any disclosure of information under the terms of this policy statement is carried out in a manner that is efficient, proportionate and fully in compliance with the Human Rights Act 1998, Freedom of Information Act 2000 and the Data Protection Act 1998.

B. Complaints and concerns about Welsh HEIs

This section sets out how we will enable clear and timely communication between HEFCW and the Commission where complaints or concerns arise about the administration of a Welsh HEI as a charity.

Where either the Commission or HEFCW identifies concerns about the administration of a Welsh HEI as a charity, it will notify the other in writing as soon as possible, setting out any charity law issues it has identified. Concerns may arise from our normal interaction with Welsh HEIs (including public information disclosure), or from reports to us by auditors of Welsh HEIs, complaints, or in other ways.

The Charity Commission and HEFCW will then work closely to seek to agree a course of action to be taken, provided the proposal is compatible with our respective statutory functions, duties and powers. The Commission will advise HEFCW whether it believes that there may be any aspects of the case that require its formal intervention, and will inform HEFCW if a formal inquiry under section 8 of the Charities Act 1993 is opened.

The Charity Commission's will follow the principles set out in the Commission's published [Risk and Proportionality Framework](#) and [CC47 Complaints about Charities](#) (and related operational guidance). These documents are available on the Commission's website.

HEFCW's Financial Memorandum with HEIs describes the actions HEFCW will take where there are concerns about the governance or management of an institution. Any complainant who contacts HEFCW concerning a complaint between an individual and a Welsh HEI will be referred to the appropriate HEI and its internal complaints procedures. If the complainant is a student, and is not satisfied with the HEI's handling of the complaint, the complaint can be referred to the Office of the Independent Adjudicator.

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C. Complaints about the Commission and/or HEFCW

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

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

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

D. Consultation with sector and external communications

The Commission and HEFCW will have consideration for each other and Welsh HEI sector bodies in terms of any major consultation activity being carried out. We may also liaise when developing any specific guidance for the sector.

The Commission and HEFCW will endeavour to collaborate on external communications or handling external media interest where there is a matter of mutual interest and may also issue joint circulars to the sector.

E. Monitoring and points of contact

Both organisations will monitor the working arrangements contained in this MoU. An annual review will be carried out and this will examine all aspects of the MoU in order to identify any areas for improvement and best practice. Representatives of the Commission and HEFCW will meet when necessary, and there will be at least one formal policy meeting per year.

In order to ensure that issues are handled at the appropriate level and that developing policy considerations are taken fully into account, we have established designated points of contact. Where they consider it appropriate, designated points of contact may delegate ongoing liaison to members of their staff.

The Commission and HEFCW will work to ensure that relevant staff in both organisations are aware of the content of this statement and the responsibilities it places on each individual member of staff.

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Section 4 General

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

Any disagreement arising from the interpretation of this statement will be referred to the Chief Executives of the Commission and HEFCW, who will endeavour to resolve it within the spirit implicit in the MoU. If necessary, the MoU will be amended to reflect the agreed outcome of the referral.

Nothing in this MoU is intended to create a legally binding obligation or to confer legal rights on either party.

Signed

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Sam Younger
Chief Executive
Charity Commission for England
and Wales

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Philip Gummatt
Chief Executive
Higher Education Funding
Council for Wales

Points of contact

The following are the designated points of contact:

The Commission: Head of Wales Office
HEFCW: Director of Finance & Corporate Services

This MoU was approved in January 2011 and will be reviewed following one full year of operation in 2011.

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Appendix A

Key principles of an effective charity regulation framework

An effective framework of charity regulation should:

- A be based on the Better Regulation Commission's (BRC) principles of good regulation and the Charity Commission's statutory objectives together with other principles that the Commission applies to charity regulation.
- B cover all the assets of a charity and ensure that they are only used to further the purposes of the charity (which must be for the public benefit);
- C ensure that a charity's governance arrangements are adequate for the effective and efficient furtherance of its purposes, are followed in its administration and can be changed when necessary to ensure its continuing effective operation;
- D ensure that the charity complies with relevant legal and statutory requirements of charity law so far as it is consistent with proportionality and good regulation to do so;
- E require the charity to provide to all stakeholders adequate financial information about the use and application of its resources.