



**Collaboration Agreement
between
The Office for Students
and
The Fundraising Regulator
Dated: 11 May 2018**

Introduction

1. This Agreement sets out a framework by which the Office for Students (OfS) and the Fundraising Regulator (FR) (together 'the Parties' and each respectively a 'Party') will collaborate in taking forward their respective remits. It is intended to promote:

- Effective working and communication between the two Parties
- Clarity of understanding about their respective roles and responsibilities.

2. This Agreement is consistent with the principles of better regulation whereby public bodies, wherever possible, should be able to rely each other's systems of oversight and assurance to minimise the accountability burden placed on providers whilst maintaining an appropriate and proportionate level of accountability for public funds.

3. This Agreement is not a statutory or contractual document, but both Parties agree to abide by its terms in so far as it is reasonably possible. It will cease to have effect if either Party notifies the other that it no longer wishes to observe the Agreement as set out below, or is wound up and will not bind any successor bodies unless transfer is agreed and the Agreement reissued under the name of the successor. This document is not addressed to or intended to create any rights or expectations for any third party.

4. This Agreement provides for co-operation between the Parties, however, they each remain solely responsible for their respective functions.

Parties to the Agreement

The Office for Students

5. The OfS was established by the Higher Education and Research Act 2017 (the Act) 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
- Providing information and advice to the Secretary of State responsible for higher education.

6. 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
- use the OfS's resources in an efficient, effective and economic way.

7. The OfS also has a legal duty to follow the principles of best regulatory practice (so far as relevant), including the principles that regulatory activities should be transparent, accountable, proportionate and consistent, and targeted only at cases in which action is needed.

8. Regulations originally made under the Charities Act 2006¹ appoint the OfS as principal regulator of:

- higher education providers that are exempt charities, or that become exempt charities by Ministerial order²
- charities administered by or on behalf of those registered higher education providers.

9. The principal regulator role is intended to be 'forward looking' and the OfS may act as principal regulator only in respect of anything about a provider's charity law compliance that it becomes aware of on or after 1 June 2010.

¹ SI 2010 501; SI 2018 245

² Charities Act 2011, schedule 3 paragraphs 2-6

10. The Regulations referred to in the previous paragraph and this collaborative agreement do not apply to those higher education providers that are currently registered charities or to higher education providers that are part of a non-charitable provider.

11. The 2011 Act³ gives principal regulators a general duty to do all they reasonably can to meet the compliance objective, namely, to do all they reasonably can to promote compliance by the trustees of the charities for which they are responsible with their legal obligations in exercising control and management of the administration of their charities. If principal regulators identify a concern about a charity they may invite the Charity Commission for England and Wales to use its statutory powers of investigation and intervention.

The Fundraising Regulator

12. The Fundraising Regulator is the independent regulator of charitable fundraising in England, Wales and Northern Ireland. Registration with the Fundraising Regulator is voluntary although it considers all fundraising organisations in England, Wales and Northern Ireland to be within its remit. The Fundraising Regulator's general functions are:

- owning the Code of Fundraising Practice and the Rulebooks on Street Fundraising and Door-to-door Fundraising
- investigating cases where fundraising practices have led to significant public concern
- investigating complaints from the public about fundraising practice, where these cannot be resolved by the charities themselves
- operating a fundraising preference service to enable individuals to manage their contact with charities
- providing support and advice to the sector on good practice in relation to fundraising.

13. Its aim is to provide effective self-regulation of fundraising by charities in England, Wales and Northern Ireland, in order to increase public confidence and trust.

Purpose of the Agreement

14. This Agreement sets out how the Parties propose to work together in coordinating their regulatory operations where one Party has concerns about an exempt higher education charity's fundraising practices.

Scope of the Agreement

15. The key principles of an effective charity regulation framework are set out at Annex A. The Parties consider these to comply with general better regulation principles that both of us follow. In particular, each Party operates a risk-based regulatory regime and adapts the type and degree of its direct regulatory engagement in relation to its assessment of risk.

³ Charities Act 2011, Section 26(3)

16. In order to ensure that issues are handled at the appropriate level and that developing policy considerations are taken fully into account, the Parties have established designated points of contact (see Annex B).

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

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

Areas of joint interest and activity

Monitoring charities

18. The OfS does not actively monitor the fundraising of the exempt charities that it regulates, however, it uses its notifications procedure to follow up any serious concerns over charity regulation that may be raised by any individual or organisation – this incorporates matters raised under public interest disclosures. Details of the notifications process may be found on the OfS's web-site. The OfS also requires the exempt charities to report serious incidents that may pose a significant risk to a charity's property, work, beneficiaries or reputation – fundraising issues would be encompassed within these requirements. Both the notifications and serious incident reporting procedures are part of the OfS's fulfilment of its responsibilities as principal regulator of higher education providers as charities.

Investigations and action short of investigations

19. The OfS has statutory powers that it can use if there are serious concerns about the administration of a higher education provider; this includes requesting that the Charity Commission for England and Wales use its powers in respect of the exempt charity concerned. The Fundraising Regulator runs a self-regulatory framework and therefore has no statutory powers. This section relates to the operation of each Party's regulatory regimes and how it will enable clear and timely communication.

20. The current self-regulatory framework for fundraising is as follows:

- Charities and their trustees are the first line of accountability for the charity's fundraising activities. Most fundraising complaints should be dealt with by charities in the first instance.
- If serious malpractice occurs, or if a charity fails to adequately resolve a complaint, the Fundraising Regulator will intervene to ensure the public interest is protected.
- The relevant statutory regulator may act in cases that raise regulatory concerns on issues that fall within their remit and powers.

21. Where one Party identifies concerns about the fundraising of a provider as a charity, and subject to appropriate measures to address any considerations of confidentiality or privilege, it will notify the other Party in writing as soon as possible, setting out any potential charity law or governance issues it has identified.

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

- The OfS's terms and conditions of funding and its regulatory notice on how it will monitor higher education institutions until 31 July 2019 and the OfS's regulatory framework from 1 August 2019 onwards.
- The Fundraising Regulator's Complaints Policy.

23. The Fundraising Regulator will use OfS's notifications process to raise with the OfS regulatory concerns it has identified as a result of its work. Where the OfS identifies concerns about an exempt higher education charity's fundraising practices it may refer this to the Fundraising Regulator and/or may investigate the circumstances itself as per the OfS's own statutory responsibilities and its policies and procedures.

24. The outcome of any investigation will be made available to both Parties, again subject to appropriate measures in respect of any confidentiality or privilege issues, and may be placed on, or linked to, their websites in accordance with their respective published policies on disclosing information, including inquiry and regulatory reports.

External communications

25. 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 Agreement.

Policy development and liaison

26. The Parties are both key stakeholders in the charity regulation of higher education charities and in the development of policy in their respective areas of expertise. The Parties will work together to develop, interpret and apply relevant law and policy in a way that is consistent with the key principles of charity regulation set out at Annex A, with the aim of minimising the administrative burden on higher education charities. Joint developments may include working practices or protocols, and public and operational guidance.

27. Where one Party is developing policy that impacts on both of us, the lead 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 of us will approve such work (for example, Board or executive level) and the timetable for doing so. In order for this to be effective, 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. The Parties will not re-issue this Agreement where such changes take place, but each Party will notify the other in writing where such changes take place.

Staff development and training

28. 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, appropriate staff may be offered familiarisation visits to each other's offices. The Parties will also explore the possibility of providing joint training and development initiatives and, where practical, will offer places to each other's staff on relevant internal training courses and seminars.

Responding to complaints

29. This section is about complaints about the Parties' performance, but distinguishes between those that should be routed through each Party's own complaints procedures and those that are about how the Parties interact.

30. Each Party will each retain responsibility and accountability for handling complaints about the services it provides when working separately and that fall within the Party's own complaints procedures.

31. Where the complaint is about how the Parties 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. The Parties 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.

Information sharing

32. Section 63(3) of the Act allows the OfS to provide information to any person if the disclosure is made for the purposes of the performance of a function of the OfS.

33. Section 63(4) of the Act allows the OfS to provide information to any relevant person if the disclosure made for the purposes of the relevant person, where the relevant person is the Privy Council or a person prescribed by regulations made by the Secretary of State.

34. In accordance with Section 63(3) of the Act, both Parties will share information that is relevant to the remit of the organisation and will notify each other, where appropriate in advance where there are likely to be significant developments or announcements which may have an impact on the other organisation's work.

35. The Parties will share information in line with OfS's notifications process – in practice this means:

- the FR raising serious concerns about fundraising practice with OfS through the notifications process
- the OfS communicating the outcome of any investigation to the FR on its completion, including if it were determined by the OfS that no investigation were necessary.

36. The FR will, if it so chooses, include a referral to the OfS as principal regulator as part of its published response to concerns raised to it. The OfS does not publish the outcomes of its assessments of or investigations into public interest disclosures and the FR will not publish the OfS's response. If there is a change to provider's conditions of registration or registration status as result of a fundraising issue, this will be published on the OfS's register. As a public body, the OfS is subject to the Freedom of Information Act (2000) and any requests for information about cases referred by the FR will be considered in line with OfS's obligations under that Act, as for any other request.

37. Nothing in this section authorises the OfS or the FR to provide information to each other where doing so contravenes applicable data protections legislation.

Freedom of information

38. The OfS is subject to, and the FR will have regard to, the requirements of the Freedom of Information Act 2000 which is UK legislation pertaining to England, Wales and Northern Ireland. Where relevant, due regard will be given to the Freedom of Information (Scotland) Act 2002.

39. Both parties will consult with each other about any disclosure of information that may affect the OfS's responsibilities under the Freedom of Information Act. The OfS will notify the FR if it receives a Freedom of Information request that involves any of the FR's information which is held by the OfS.

Confidentiality

40. Where information is shared between the Parties, unless it is demonstrably already in the public domain such information is to be treated as commercial and/or confidential and not disclosed beyond the OfS and the FR unless agreed in writing. Nothing in this Agreement shall prevent the OfS from complying with its duties under the Freedom of Information Act 2000. It is possible that one Party may wish to engage with a higher education provider or other organisation as a result of the information shared by the other Party. Where this arises, the Party that has shared the information will have the opportunity to notify the provider or other organisation that it has shared the information before the other Party takes action, unless this would prejudice the Party seeking to take action.

Related agreements

41. There are no related agreements beyond this Agreement.

Term of this Agreement

42. This Agreement takes effect from 1 April 2018. The Agreement will continue in force until revoked in writing by either Party or superseded by a future agreement.

Termination

43. Either Party can terminate this Agreement by giving the other Party no less than three months' notice. In such cases the Agreement will terminate on the last day of the full month that is three months following written notice being served.

Updates to this Agreement

44. Either Party may propose amendments to this Agreement at any time, but to become effective an amendment requires the agreement of the other Party. Amendments will come into effect on a date to be agreed by all parties.

Publication

45. This Agreement will be published on the respective websites of the OfS and the FR.

Liaison

46. The OfS and the FR will:

- meet at least once a year to identify areas where the Parties need to work jointly and discuss any additional areas on ad hoc basis in between these annual meetings
- review the provisions of this Agreement every two to four years and, where necessary, renegotiate its terms.

47. Each Party shall nominate a primary officer and other named contacts to represent their organisation in this Agreement and the related joint activity.

48. Changes to the primary officer and other named contacts should be notified to all other parties at the earliest opportunity. At the time of the signing of this Agreement nominated contacts were as follows:

Job title/responsibility in relation to this Agreement
Head of Transition Period Regulation Team, Office for Students
Head of Casework, Fundraising Regulator

Signed:

Signed on behalf of OfS:	
	
Chief Executive	Date: 11 May 2018

Signed on behalf of the Fundraising Regulator:	
	
Chief Executive	Date: 11 May 2018

Annex A: Key principles of an effective charity regulation framework

An effective framework of fundraising regulation should:

- A be based on the Better Regulation Commission's (BRC) principles of good regulation and the Fundraising Regulator's objectives together with other principles that the Fundraising Regulator applies to charity regulation.
- B ensure that a charity's governance arrangements are adequate for effective and efficient fundraising practice and ensuring that the public is accurately informed about how the money is raised and used by the charity.
- 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 all relevant legal and statutory requirements.
- E require the charity to provide to all stakeholders adequate financial information about the use and application of its resources.