

**JOINT WORKING AGREEMENT**  
**OSCR AND THE SCOTTISH FUNDING COUNCIL**



**Scottish Funding Council**

Promoting further and higher education

## **1. Purpose**

1.1 The purpose of this agreement is to set out the arrangements for joint working and sharing of information between the The Scottish Charity Regulator (OSCR) and the Scottish Further and Higher Education Funding Council (SFC).

1.2 It should

- ensure effective liaison, where appropriate, in the development of guidance for the sector; and
- set out the circumstances in which OSCR and SFC will share information and collaborate.

## **2. Context**

2.1 OSCR is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) and is the registrar and regulator of charities in Scotland. Section 1 of the 2005 Act sets out OSCR's general functions:

- To determine whether bodies are charities
- To keep a public register of charities
- To encourage, facilitate and monitor compliance by charities with the provisions of the 2005 Act
- To identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct
- To give information or advice, or to make proposals, to the Scottish Ministers relating to OSCR's functions.

2.2 SFC was established in 2005 under the terms of the Further and Higher Education (Scotland) Act 2005 (the F&HE(S) Act). The Post Education (Scotland) Act 2013 provided a legislative framework to support the restructuring of the college sector along regional lines. Its statutory duty is to exercise its functions for the purposes of securing the:

- (a) coherent provision by the fundable bodies (as a whole) of a high quality of fundable further education and fundable higher education; and
- (b) undertaking of research among the fundable bodies.

The 'fundable bodies' are the colleges and higher education institutions listed in schedule 2 of the F&HE(S) Act.

The Council's functions include:

- approving institutions for addition to or removal from the list of fundable bodies, having assessed their suitability with regard to various matters, including their governance and management;
- making grants, loans and other payments to institutions;
- securing provision for assessing and enhancing the quality of further and higher education, including monitoring the performance of regional strategic bodies;
- promoting or carrying out studies designed to improve economy, efficiency and effectiveness in the management or operations of institutions;
- providing Scottish Ministers with information, advice and assistance as required; and
- protecting Scottish Ministers' rights and interests in respect of certain property.

2.3 All legally self-standing Scottish-based colleges and universities are registered charities in Scotland and therefore subject to the regulation requirements of OSCR, including the submission of annual accounts and applicable monitoring information. OSCR also has the power of inquiry under section 28 of the 2005 Act should any concerns about possible non-compliance or mismanagement/misconduct arise.

### **3. Sharing of information**

3.1 Section 24 of the 2005 Act permits the disclosure of information between OSCR and any office holder or public body in the UK or elsewhere if this disclosure is made for any purposes connected with either OSCR's functions or to enable or assist with the exercise of the relevant office holders or body's statutory functions.

3.2 Similarly, section 24 of the 2005 Act permits any office holder in the Scottish Administration, Scottish Parliamentary Corporate Body, local authority, constable or other Scottish public authority with mixed or no reserved functions to disclose information to OSCR for the purpose of enabling or assisting OSCR to exercise any functions.

3.3 Both OSCR and SFC will encourage the disclosure and exchange of information where appropriate, in order to maximise the efficiency and effective delivery of their respective functions. They will ensure that information is disclosed in a manner that is efficient, proportionate and fully in compliance with the Human Rights Act 1998, the Data Protection Act 1998, the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679 and enabling Data Protection Act 2018 and Freedom of Information (Scotland) Act 2002.

## **4. Areas for joint working**

### **4.1 Complaints & Enquiries**

- 4.1.1 Any complainers who contact OSCR or SFC will, in the case of a complaint between an individual and a college/university be referred to the appropriate college/university and its internal complaints procedure. If the complainer is not satisfied with the institution's handling of the complaint, the complaint could be referred to the Scottish Public Sector Ombudsman (SPSO).
- 4.1.2 If the complaint is about misconduct in the administration of the charity or there is a significant risk to charitable assets, OSCR will make inquiries and take appropriate action if necessary. As part of this process OSCR will, where the complaint relates to SFC's duties and functions, inform SFC and discuss how the inquiry will be carried out. Collaboration between OSCR and SFC will be particularly helpful where the complaint is in direct relation to governance or financial management matters.
- 4.1.3 If the complaint is regarding the misconduct of an individual member of the Board of Management of a Further Education College and non compliance with the Code of Conduct for Members of Devolved Public Bodies, the complaint will be referred to the Commissioner for Ethical Standards in Public Life in Scotland (CESPLS). OSCR will liaise with the CESPLS regarding any appropriate action.
- 4.1.4 Paragraph 8 (Part 1) of SFC's Financial Memoranda with institutions describes the actions the Council will take where there are concerns about the governance or management of an institution. If SFC has evidence that indicates possible misconduct in the management of an institution or that there is a significant risk to its charitable assets, SFC will advise OSCR.
- 4.1.5 SFC are also notified by the Regional Strategic Bodies of any breaches by assigned colleges of the terms of the regional Financial Memorandum. Where evidence indicates possible misconduct in the management of an institution or there is a significant risk to charities assets, SFC will advise OSCR.
- 4.1.6 In line with the SFC proactive risk based approach the SFC will also provide quarterly updates to OSCR of those bodies categorised as critical or high risk. SFC will also contact OSCR immediately where serious concerns arise in relation to an institution's governance and/or financial health.

## **4.2 Operational referral process**

- 4.2.1 Both OSCR and SFC agree that all operational referrals and requests for information under the terms of this agreement will be dealt with promptly by appropriate members of operational staff to be known as Single Points Of Contact (“SPOC”).
- 4.2.2 The SPOCs will ensure that routine referrals are actioned within fifteen working days of receipt, and urgent referrals within five days. SPOCs will consult each other to discuss and agree an appropriate time scale for actioning immediate referrals, regard being had to resource availability and proportionality of action. Referrals should be submitted in the format requested by the relevant SPOC. If action on a referral cannot be completed within the relevant time scales, the receiving SPOC will provide the originating SPOC with progress reports every fifteen working days or at mutually agreed intervals.
- 4.2.3 OSCR and SFC will exchange information where this assists in resolving casework in either organisation. Anonymised information may be provided where there is clear justification for doing so. In appropriate cases a meeting may be convened between relevant OSCR and SFC officers, the purpose of which will be to exchange information and to consider any joint action as appropriate.
- 4.2.4 Meetings will be convened at mutually convenient times, in the interests of expediency, meetings should be held within the standard timeframes outlined in this agreement. Any exchange of information will be carried out in a manner that complies with section 3 above.

## **4.3 Consultation and communication**

- 4.3.1 OSCR and SFC will meet every six months to share information about trends, concerns, data, approaches and initiatives, which are relevant to the aim of ensuring the good governance of colleges and universities. They will also:
- consider each other and sector bodies in terms of any major consultation activity being carried out and also liaise when developing any applicable guidance to ensure the relevance for this particular sector of charities.
  - collaborate on external communications or handling external media interest where there is a matter of mutual interest and also issue joint circulars to the sector on matters of interest.
  - ensure their members of staff are aware of the content of this agreement and the responsibilities it places on each individual member of staff.

## **5 General**

- 5.1 Both organisations are committed to the principles of continuous improvement and therefore will monitor the working arrangements contained in this agreement. Representatives of OSCR and SFC will meet every six months, but also make contact as appropriate either by telephone or email and where major issues arise additional meetings may be arranged.
- 5.2 Whilst it is intended that the arrangements in this agreement should apply generally, it is recognised that some circumstances will require special handling. Nothing in this agreement prevents the making of arrangements to meet specific exceptional needs.
- 5.3 Any disagreement arising from the interpretation of this agreement will be referred to the Chief Executives of OSCR and SFC, who will endeavour to resolve it within the spirit implicit in the co-operation arrangements. The agreement will be amended if necessary to reflect the agreed outcome of the referral.
- 5.4 This agreement came into effect on September 2016. The agreement will be reviewed<sup>1</sup>:
- In the event of any significant changes to the legislative framework for each organisation
  - At the request of either organisation.

## **6. SINGLE POINTS OF CONTACT**

- 6.1 The following are the main points of contact:

OSCR: Head of Enforcement

SFC: Chief Operating Officer and Secretary to the Council

**David Robb**  
**Chief Executive, OSCR**

**Dr John Kemp**  
**Interim Chief Executive, SFC**

---

<sup>1</sup> Updated May 2018 (Take account of GDPR)