

# Memorandum of Understanding

## The Information Commissioner and The Fundraising Regulator

### **Introduction**

1. This Memorandum of Understanding (MoU) establishes a framework for co-operation and information sharing between the Fundraising Regulator and the Information Commissioner (the Commissioner) in connection with the sharing of relevant information and intelligence, set out at 13 below. It sets out the role of each organisation and documents the practical working level arrangements between the Commissioner and the Fundraising Regulator.
2. The Commissioner and the Fundraising Regulator will monitor the operation of this memorandum and will review it, initially after six months 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 26 below).
5. This memorandum is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or Fundraising Regulator.

### **Functions and powers of Commissioner**

6. The Commissioner is a corporation sole appointed by Her Majesty the Queen under the Data Protection Acts 1984 and 1998 to act as the UK's independent regulator promoting public access to official information and protecting personal data.
7. The 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. Section 51 of the DPA places a duty on the Commissioner to promote the following of good practice by data controllers and the observance of the requirements of the DPA by organisations.
9. Where the Commissioner is satisfied that any of the data protection principles have been breached, a number of steps can be taken to seek to change the behaviour of the organisation including:
  - serving information notices requiring organisations to provide the Information Commissioner's Office with specified information within a certain time period;
  - issuing undertakings committing an organisation to a particular course of action in order to improve its compliance;
  - serving enforcement notices where there has been a breach, requiring organisations to take (or refrain from taking) specified steps in order to ensure they comply with the law;
  - conducting consensual assessments to check organisations are complying; and
  - issuing monetary penalty notices, requiring organisations to pay up to £500,000 for serious breaches.
10. The Commissioner may also prosecute those who commit criminal offences under the DPA.

### **Functions of the Fundraising Regulator**

11. The Fundraising Regulator was established in February 2016 as the self-regulatory body for all charitable fundraising undertaken in the UK.
12. The mission of the Fundraising Regulator is to carry out independent and non-statutory regulatory role in a way that:
  - protects the public, donors and potential donors, not least those who may be vulnerable, from unacceptable fundraising practices.
  - sustains and enhances public confidence in the charitable sector.
  - supports the sector to understand and carry out its responsibilities in engaging with the public, creating a positive donor experience.
  - ensures consistent fundraising standards across the UK.
13. 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 and taking action in cases where fundraising practices have led to significant public concern.
- adjudicating complaints from the public about fundraising practice, where these cannot be resolved by the charities themselves.
- operating a funding preference service to enable individuals to opt out of further contact from charities.
- providing support and advice to the sector on good practice in relation to fundraising.

### **Cooperation between the Commissioner and the Fundraising Regulator**

14. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the Fundraising Regulator agree that they will alert the Commissioner to any relevant breaches discovered whilst undertaking it's duties in relation to individual cases, provide relevant supporting information and intelligence, and keep the Commissioner updated on the progress of these cases.
  
15. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and her discretion, the Commissioner agrees that she will alert the Fundraising Regulator to any potential breaches, or information relevant to the functions set out above, discovered whilst undertaking their duties, provide relevant supporting information and keep the Commissioner updated on the progress of these cases.
  
16. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, both parties will:
  - a) Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues and threats) at least every six months.
  - b) Consult one another on any issues which might have significant implications for the other organisation.
  - c) Notify one another of the outcome of a case before it is made public in those cases in which the other body has an interest.

- d) Share in confidence internal guidance and draft external guidance relevant to the functions of both bodies.

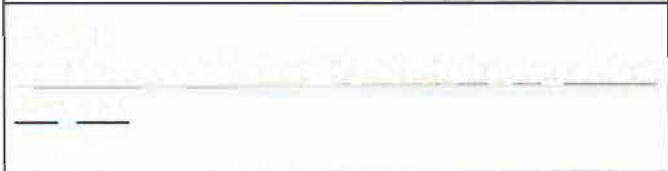


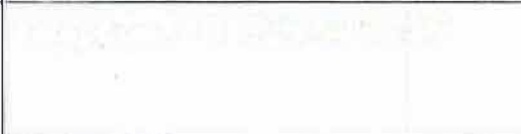
### **Sharing information**

17. Subject to any disclosure restrictions applicable to the Fundraising Regulator, they may disclose confidential information to the Commissioner to facilitate the carrying out any required function of the Fundraising Regulator or a statutory function of the Commissioner, as set out in 6 to 10 and 11 to 13 above.
18. Where the Fundraising Regulator wishes to disclose to the Commissioner information necessary for the discharge by the Commissioner of her functions under the DPA (or under FOIA), section 58 DPA provides that no enactment or rule of law prohibiting or restricting the disclosure of information shall preclude the Fundraising Regulator from furnishing such information to the Commissioner.
19. In respect of information obtained by or furnished to the Commissioner for the purposes of her functions under the Information Acts, it is an offence under section 59 DPA for any current or former member of the Commissioner's staff or her agent to disclose such information without lawful authority.
20. Section 59(2)(e) DPA provides that a disclosure by the Commissioner of information obtained by or furnished to her 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.
21. In addition, section 59(2)(d) DPA provides that a disclosure of information by the Commissioner is made with lawful authority where the disclosure is made for the purposes of any proceedings, whether criminal or civil.
22. Section 59(2)(c) of the DPA provides that a disclosure by the Information Commissioner of information obtained by or furnished to her 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).
23. The Commissioner may, at her discretion and in accordance with sub-sections 59(2)(c), (d) and/or (e) DPA, disclose confidential information to the Fundraising Regulator, where this is necessary for performing the functions set out at 11 to 13 above.

24. 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 as described in the FOIA section 45 Code of Practice, 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 party in receipt of the request.
25. When exchanging information the provider will mark it with the appropriate security classification.

**Points of contact**

26.

Fundraising Regulator	Information Commissioner
Head of Policy and Communication	Intelligence Hub Manager
CAN Mezzanine 49 -51 East Road Old Street London N1 6AH	Wycliffe House Water Lane Wilmslow SK9 5AF
	
	

**Fundraising Regulator**

**Information Commissioner**




Stephen Dunmore,  
Chief Executive

Elizabeth Denham  
Information Commissioner

(Date) 11/10/2016

(Date) October 10/2016

