



MEMORANDUM OF UNDERSTANDING

**THE CHARITY COMMISSION FOR
NORTHERN IRELAND**

AND

THE FUNDRAISING REGULATOR

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Section 1- Introduction

1. This Memorandum provides a framework for close working and sharing of information between the Charity Commission for Northern Ireland (“the Commission”) and the Fundraising Regulator.

Section 2- Objectives of the memorandum

2. Both the Commission and the Fundraising Regulator are fully committed to the objectives of this Memorandum, which are to:
 - promote a common understanding of the Commission and Fundraising Regulator responsibilities, working procedures, legal powers and constraints
 - promote co-operation between the Commission and Fundraising Regulator staff at a strategic and operational level
 - facilitate effective investigation and the disclosure of information with the objective of preventing, detecting and remedying misconduct or mismanagement in the administration of charities and charitable funds with regard to fundraising and the safeguarding of funds held for charitable purposes
 - facilitate effective investigation and the disclosure of information relevant to the effective assessment and analysis of research and information on fundraising issues; and
 - ensure appropriate consultation on matters of relevant and significant policy initiatives to ensure that charities comply fully with their legal obligations and adopt best practice in governance and accountability.
3. This Memorandum is a statement of intent that does not give rise to legally binding obligations on the part of either the Commission or the Fundraising Regulator.

Section 3- Functions of the Commission

4. The Commission is established under the Charities Act (Northern Ireland) 2008 (“the 2008 Act”) and is the statutory regulator and registrar of charities in Northern Ireland.
5. The Commission objectives are defined in section 7 of the 2008 Act 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.
6. The Commission's general functions as set out in section 8 of the 2008 Act include:
- determining whether institutions are or are not charities;
 - encouraging and facilitating the better administration of charities;
 - identifying and investigating apparent misconduct or mismanagement in the administration of charities and take remedial or protective action in connection with the misconduct or mismanagement;
 - obtaining, evaluating and disseminating information in connection with the performance of any of CCNI functions or meeting any of its objectives; and
 - establishing and maintaining an accurate and up-to-date register of charities.
7. In carrying out its functions the Commission will 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.
8. In pursuance of its objectives and functions, the Commission maintains a register of charities. Every organisation which is a charity under the law of Northern Ireland must register in the

register of charities. The Commission's jurisdiction extends to all registered charities and unregistered charities. The terms "charities" and "charitable purposes" refer to organisations and purposes which are exclusively charitable under the law of Northern Ireland. They will include charitable collections and charitable funds held or managed by any person or organisation.

9. Charity fundraising is self-regulated by the Fundraising Regulator, which sets and enforces clear standards of conduct for fundraising. Complaints about poor fundraising practice are dealt with in the self-regulatory system but the Commission can and does intervene in some cases involving fundraising concerns. The nature of the intervention will depend on the seriousness of the concern. The Commission's focus in dealing with fundraising concerns will be the charity trustees and compliance with their legal duties. The Commission has a role in fundraising cases where there is evidence that the charity trustees actions or failings, in carrying out their duties to the charity, pose a serious risk to the charity or if there is evidence of a serious risk to charitable funds, or to public trust and confidence.
10. The Commission's interest in fundraising may arise whether or not the fundraising is carried out directly by the charity, by a subsidiary trading company fundraising on behalf of the charity, or by another person or organisation on the charity's behalf.
11. Most concerns that the Commission identifies in charities are dealt with as operational compliance cases. These cases are not formal investigation, but are aimed at ensuring trustees address any failures and weaknesses in their charity's management. Statutory inquiries may be opened in accordance with the Commission's risk framework where there is a high risk to public trust and confidence in the charity, where there is evidence of misconduct or mismanagement of a charity's assets, reputation, service or beneficiaries are at a high risk of harm or abuse. Opening an inquiry allows the Commission the full range of enforcement powers. The Commission also undertakes proactive and reactive monitoring of charities which give rise to concern.

12. The Commission collaborates with police and law enforcement agencies, for example in cases of fraudulent fundraising.

13. The Commission has powers for the protection of charities [and may consider using these when dealing with the situations above], although they can only be used in certain circumstances and in an inquiry. These powers are listed at Appendix B.

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

 - and

 - b. 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.

15. Failure to comply with such a direction is punishable as a contempt of court. Providing false or misleading information to the Commission is a criminal offence (section 25 of the 2008 Act). However, information acquired by the use of these powers can only be used for the purpose for which the powers were given.

16. It follows that the Commission can use these powers only in order to acquire information for use in discharging its own statutory purposes, not (for example) simply in order to obtain information for the Fundraising Regulator.

Section 4- Functions of the Fundraising Regulator

17. The Fundraising Regulator was established in February 2016 as the self-regulatory body for all charitable fundraising undertaken in the

UK. For the purposes of this Memorandum the Fundraising Regulator is considered to be a relevant public body.

18. The mission of the Fundraising Regulator is to carry out an 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; and
- ensures consistent fundraising standards across the UK.

19. 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 fundraising preference service to enable individuals to opt out of further contact from charities; and
- providing support and advice to the sector on good practice in relation to fundraising.

20. The types of concerns the Fundraising Regulator deals with may include complaints regarding:

- How a fundraising organisation collects or solicits property, money or the promise of money from people. This may include misleading or excessive requests by post, over the telephone, face-to-face on the street or at the door.

- A fundraising organisation's relationship with donors. This may include disrespectful, misleading or otherwise unreasonable engagement once a charity has gained an individual's support.
- How a charity works with others to raise money. This may include instances where the relationship (operational or financial) between a third party working on the charity's behalf and the charity is not made sufficiently clear.
- A fundraising organisation's complaints-handling process. For example, a complainant may not have been treated with due courtesy or respect, or not have received a response to a fundraising concern within 28 working days of the complaint being made.
- Issues related to the management of an individual's contact preferences with charities. This may include instances where an individual has been contacted by a particular charity despite their express wish that this should not happen.

21. The Fundraising Regulator may take remedial action with a fundraising organisation where a breach of the Fundraising Code of Practice is found to have taken place. Remedial action may include:

- Recommending that fundraisers undergo relevant training or signposting the fundraising organisation(s) to online guidance to improve their approach.
- Seeking evidence from the fundraising organisation as to how it has / will remedy the issue in future campaigns and / or publish a public apology.
- Request that the organisation suspend fundraising or submit and clear future fundraising campaigns for a period of time, pending an internal review or independent audit.
- Publication of adjudication findings / highlighting issues via the published register.
- Referral to the Charity Commission or other statutory regulator.

Section 5- Sharing of information

22. Both the Commission and the Fundraising Regulator will ensure that any disclosure of information under the terms of this Memorandum is carried out in a manner that is in compliance with the Human

Rights Act 1998, the Data Protection Act 1998 and the Freedom of Information Act 2000 (see further below).

23. Section 24 of the 2008 Act covers disclosure of information and gives the Commission the powers exercisable at its discretion to disclose to any public body or office-holder any information received by the Commission in connection with any of the Commission's functions, and from any public authority any information received by the Commission in connection with any of the Commission's functions.
24. Section 24(1) of the 2008 Act deals with disclosure **by** the Commission generally and gives the Commission the powers exercisable at its discretion to disclose any information to any relevant public body or office-holder in Northern Ireland, in any other part of the United Kingdom or in a country or territory outside the United Kingdom any information received by the Commission in connection with any of the Commission's functions if (a) the disclosure is made for any purpose connected with the exercise of the Commission's functions, or (b) for the purpose of enabling or assisting the public body or office-holder to exercise any functions.
25. Section 24(2) of the 2008 Act deals with disclosure **to** the Commission generally and gives any person listed in section 24(3) of the 2008 Act the ability, at its discretion, to disclose information to the Commission if the disclosure is made for the purposes of enabling or assisting the Commission with the discharge of any of its functions.
26. The Fundraising Regulator has what may be construed as public functions in obtaining information about the sector, providing advice and guidance and assisting in standards for fundraising. The functions of the Fundraising Regulator which ensure and maintain standards of charitable fundraising are likely to assist and/or complement the Commission in discharging its objectives and functions, including its compliance and public trust and confidence objectives. The Fundraising Regulator is therefore likely to be a public body for the purposes of section 24 of the 2008 Act.

27. To assist the Fundraising Regulator's assessments, adjudications and research, the Commission may share information on charities about fundraising issues and more generally. This may include, to:

- confirm whether a particular organisation has applied for charity registration;
- provide historical information about the charity or charity trustees, such as the period that they have served as trustees and including historical information about compliance cases and inquiries that are relevant to the cause of concern;
- confirm whether the Commission has current regulatory casework into a particular charity;
- confirm whether the Commission has removed an individual from their position at a charity, whether trustee, officer, agent or employee;
- share other Commission information about regulatory concerns regarding fundraising issues about existing charities; and
- share in confidence internal guidance and draft external guidance relevant to fundraising matters.

28. Information on the status of charities (whether registered or removed), the activities of a charity and where it is able to operate, main contact details, the financial history, and whether there is a public statement regarding the opening of an inquiry are also available as part of the Register of Charities for Northern Ireland <http://www.charitycommissionni.org.uk/charity-search/>.

29. To assist the Commission in the discharge of its objectives and functions, the Fundraising Regulator may share information on charities about fundraising issues and more generally. This may include, to:

- provide information in response to a specific request from the Commission about ongoing cases in the Fundraising Regulator's complaints process where it will assist in the Commission's case to disclose such information;

- notification that a complaint is being referred to the Adjudication Committee at stage 3 of the Fundraising Regulator's complaints process;
- notification of the outcome of a case before it is made public on those cases that go before the Adjudication Committee;
- details of those organisations whose applications for membership of the FR have been refused and a summary of the reasons;
- where the Fundraising Regulator has concerns about the charitable status or an organisation that it is involved with;
- to inform the Commission if it discovers an organisation which is promoting itself as charitable but which is not registered with the Commission or if it discovers an organisation that it believes should be a registered charity; and
- share concerns it has about fundraisers, or other individuals whose conduct in connection with charity fundraising is such that either a) it may give rise to their fitness or suitability to act as a charity trustee and so the Commission may wish to consider discretionary disqualification or b) there is otherwise a significant risk or impact on a number of charities.

30. The Commission will only provide information owned by the Commission (or is publically available) and not information which has been provided to it by other public bodies or prosecuting agencies, unless their consent has been obtained.

31. In the event that the Commission is aware of key information which has been provided by another body the Commission may consider contacting the public bodies or prosecuting agencies to request the information be provided directly and/or to notify them of the Fundraising Regulator's potential interest.

32. The Commission may need to mark some information provided as 'for intelligence purposes only'. Information marked in this way may be used by the Fundraising Regulator to inform their assessment and guide further information gathering by the Fundraising Regulator but may not be published or used to inform decisions or decide upon actions. This may be necessary in order to protect ongoing cases by the Commission or other public bodies.

33. In some circumstances the Commission may not be able to share sensitive information where acting upon this information could have detrimental impact on on-going investigations.
34. When disclosing information the Commission and the Fundraising Regulator must ensure the provisions of section 24 of the 2008 Act for the disclosure of information are satisfied. Nothing in this Memorandum commits either party to disclose information nor imposes upon the Commission or other person or organisation a duty to disclose information.
35. The Commission and the Fundraising Regulator agree that there will be no further dissemination or disclosure of disclosed information without the express written consent of the party that disclosed the information.

Section 6- Freedom of information

36. The Commission is obliged to comply with the Freedom of Information Act 2000 ("FOIA"). If the Commission receives a FOIA request for information provided to it by the Fundraising Regulator it will inform the Fundraising Regulator of the request. The Fundraising Regulator will then inform the Commission whether it considers that the information should be released under FOIA and if not the Fundraising Regulator will provide the Commission with details of which exemptions it considers may apply within the statutory timescales provided for in FOIA to assist the Commission in its decision making. Any final decision in relation to an FOIA request to the Commission is a matter for the Commission.

Section 7- Data protection

37. For the purposes of the Data Protection Act 1998 ("the DPA"), the Fundraising Regulator is the data controller for all personal data it holds in order to fulfil its own functions. The Fundraising Regulator will become the data controller for the personal data it receives from the Commission as part of any information disclosure.

38. The Commission is the data controller for all personal data it holds in order to fulfil its own functions. The Commission will become the data controller for the personal data it receives from the Fundraising Regulator as part of any information disclosures.
39. The Commission and the Fundraising Regulator will undertake all reasonable steps to ensure that the personal data held by them and supplied to them will only be processed (including internally) in accordance with the DPA.
40. The originating party will remain the owner of the information. It is important that any information received by the other is not disseminated to any other third party without the written permission of the originating party. Information passed between the parties is to be used only for the purposes that it was shared. If the originating party gives written permission for the information to be disclosed to a third party, the origin of the information should be made clear to the third party, in order that they can take appropriate action on flagging the origin of the information on their own internal systems.
41. Where the Commission and the Fundraising Regulator wish to share information on individuals, this information will be kept to the minimum necessary to facilitate the purpose for which the information is shared. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or purposes.
42. Information will be provided to the Fundraising Regulator on the condition that it is handled as per the Fundraising Regulator's own Information Handling Policy. The Fundraising Regulator will retain information supplied by the Commission only as long as there is a business purpose to do so and not longer than is necessary for the Fundraising Regulator to perform its functions. Where the Commission material is used to inform a specific research paper, it will be clearly referenced. The Fundraising Regulator will store

information provided on securely on accredited IT systems which can only be accessed by Fundraising Regulator and approved individuals. Records of individuals and institutions on the Fundraising Regulator databases and systems will be reviewed every 2 years from creation and considered for deletion. It is the responsibility of Fundraising Regulator to ensure this occurs.

43. Information will be provided to the Commission on the proviso that it is handled as per the Commission's information handling policies. It is the responsibility of the Commission to ensure this occurs.

44. Information shared through this agreement will attract a protective marking under the Government Protective Marking System of at least OFFICIAL.

45. Any information shared under this Memorandum should only be viewed by those individuals with appropriate vetting and a valid 'need to know' that information.

Section 8- The referral process

46. Appendix C outlines how the referral process between the Commission and the Fundraising Regulator will work.

47. The Fundraising Regulator will initially assess all complaints about fundraising and will retain any concern that relates to fundraising alone.

48. If a fundraising complaint raises issues that meet the criteria outlined in Appendix B, the concerns will be immediately referred to the Commission in line with the agreed framework.

49. The Fundraising Regulator may at any later stage refer a concern for consideration by the Commission, should new information come to light during the handling of a complaint.

50. The Commission will inform the Fundraising Regulator of any statutory inquiry or operational compliance case opened on

fundraising practices including the details of any relevant individuals who are part of the investigation unless to do so would prejudice the inquiry or compliance case, or compromise other agency action.

51. In cases where a fundraising concern forms part of a wider concern about a charity one of the following two options will occur depending on the case:

a. Cases will be undertaken by both regulators simultaneously, the Fundraising Regulator will deal with the fundraising element and the Commission will deal with the other concerns. The SPOCs will keep each other updated at key stages of the investigations.

or:

b. One regulator will complete their case, and pass the additional concerns to the other body as lead regulator. For example the Fundraising Regulator deals with the fundraising concerns. On completion of the case, any potential governance or breach of trust/charity law issues are referred to Commission who can then take into account the outcome of fundraising case.

Section 9– Information Disclosure Process

52. In order to facilitate the flow of information, the Commission and the Fundraising Regulator agree that all requests for information under the terms of this Memorandum will be dealt with promptly by members of staff appointed to act as Single Points of Contact ("SPOCs").

53. Requests for information by the Fundraising Regulator to the Commission about a new matter must be made via the Commission's SPOC. Requests for information by the Commission from the Fundraising Regulator should be sent to the Fundraising Regulator's SPOC (See Appendix A). SPOCs may also be able to provide general advice, such as both party's regulatory position, organisation and procedures. If a matter is to be reported in either direction, the SPOCs will provide written requests/referrals, which may be initially telephoned through if urgent, to detail:

- a. why the information is being requested and what it is to be used for, including if it is intended to be used publicly;
- b. a briefing on the case or issue, including actions that have already been taken, actions that are likely to be taken and, where appropriate, information about any previous involvement by the Commission with the charity and individuals concerned; and
- c. written details of the name, telephone number and email address of the Commission's and Fundraising Regulator's case officers.

54. The SPOCs will aim to ensure that:

- a. the disclosure of information is processed with an appropriate degree of uniformity and speed;
- b. under normal circumstances, both parties will agree to provide a response within 10 working days of receiving a high priority request and 30 working days for non-high priority;
- c. if a quicker response time is required, this will be stipulated on the request. It will also be advisable to speak to the relevant SPOC to ensure the response time is possible;
- d. any general information, intelligence, announcement or warning that either the Commission or Fundraising Regulator considers will impact directly on the other must be brought to the attention of the other; and
- e. information is disseminated appropriately within the Commission and the Fundraising Regulator.

55. The Commission and Fundraising Regulator will disclose information – up to and including Official – in accordance with the agreed data handling and data exchange controls.

56. Both parties will ensure that all disclosures are appropriately protected using the Government Security Classification (GSC) system as follows:

- a. Official – The majority of information that is created or processed by the public sector.
- b. Secret – Very sensitive information that justifies heightened protective measures to defend against determined and highly capable threat actors.
- c. Top Secret – The most sensitive information requiring the highest levels of protection from the most serious threats.

Section 10- Other designated points of contact

57. Operational referrals and requests for information should be channelled through the SPOCs as detailed above. However, in order to ensure that other matters are handled at the appropriate level, and that policy considerations are taken fully into account, contact between the Commission and the Fundraising Regulator may also be established between designated points of contact at an operational, legal or policy level. Where they consider it appropriate, designated points of contact may delegate ongoing liaison to members of their staff.

Section 11- Escalation protocol

58. There may be occasions when each party to this Memorandum encounter difficulties. This should be resolved locally by the listed SPOCs in the first instance. However, if this is not possible then the posts identified in the protocol at Appendix A must be contacted.

Section 12- Liaison at strategic level

59. Representatives of the Commission and the Fundraising Regulator will hold strategic meetings at a senior level at least once a year or such other frequency as is thought appropriate. The aims of these meetings will be to:

- a. discuss common policies and strategic issues arising from operational matters and areas of joint interest;
- b. discuss problem areas and developing trends in charity abuse and exploitation;
- c. update or consult on development of relevant law, policy and practice; and

- d. review how joint working under this Memorandum is working and the overall effectiveness of the liaison and collaboration between the parties.

60. Additional meetings or working groups may be convened as necessary, involving appropriate key staff, to address these and other issues arising. When appropriate, the Commission and the Fundraising Regulator may invite other interested organisations and statutory regulators to participate in meetings and consultations.

61. Any disagreement arising from the interpretation of this Memorandum will be referred to the appropriate level indicated by the escalation protocol. The Memorandum will be amended if necessary to reflect the agreed outcome of the disagreement.

Section 13- Liaison at operational level

62. Relevant operational officers in the Commission and the Fundraising Regulator will meet as required to monitor the effectiveness of liaison on operational casework, to discuss operational issues generally and identify any issues connected with this that give rise to broader policy considerations.

Section 14- Other assistance

63. The Commission will, where appropriate, and subject to available resources, provide guidance to the Fundraising Regulator on the interpretation of charity law. Where appropriate and if resources are available, the Fundraising Regulator will provide guidance on product development, points of law, procedure and operational action on fundraising matters.

64. As part of their respective staff training programmes, both the Commission and the Fundraising Regulator 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 and work shadowing opportunities at the other's offices.

65. In order to support joint working and outreach, the Commission and the Fundraising Regulator will explore opportunities to co-operate on presentations and seminars for charity sector representatives.

Section 15- General

66. Whilst it is intended that the arrangements in this Memorandum should apply generally, it is recognised that some circumstances will require special handling. Nothing in this Memorandum prevents the making of arrangements to meet specific exceptional needs.

Signed
on behalf of the Charity Commission for Northern Ireland

.....
Frances McCandless
Chief Executive

Date.....

Signed
on behalf of the Fundraising Regulator

.....
Stephen Dunmore
Chief Executive Officer

Date.....

APPENDIX A – CONTACT DETAILS AND ESCALATION PROTOCOL

The SPOC for the Commission is James Walsh

Enquiries Officer

The SPOC for the Fundraising Regulator is the Case Manager

Escalation protocol

Commission:

Level 1

Myles McKeown

Head of Compliance and Enquiries

Level 2

Frances McCandless

Chief Executive

Fundraising Regulator:

Level 1

Head of Casework and Adjudications

Level 2

Stephen Dunmore

Chief Executive

APPENDIX B – TERMINOLOGY

Commission

Misconduct

We define misconduct to include any act or failure to act in the administration of the charity which the person committing it knew or ought to have known was criminal, unlawful or improper.

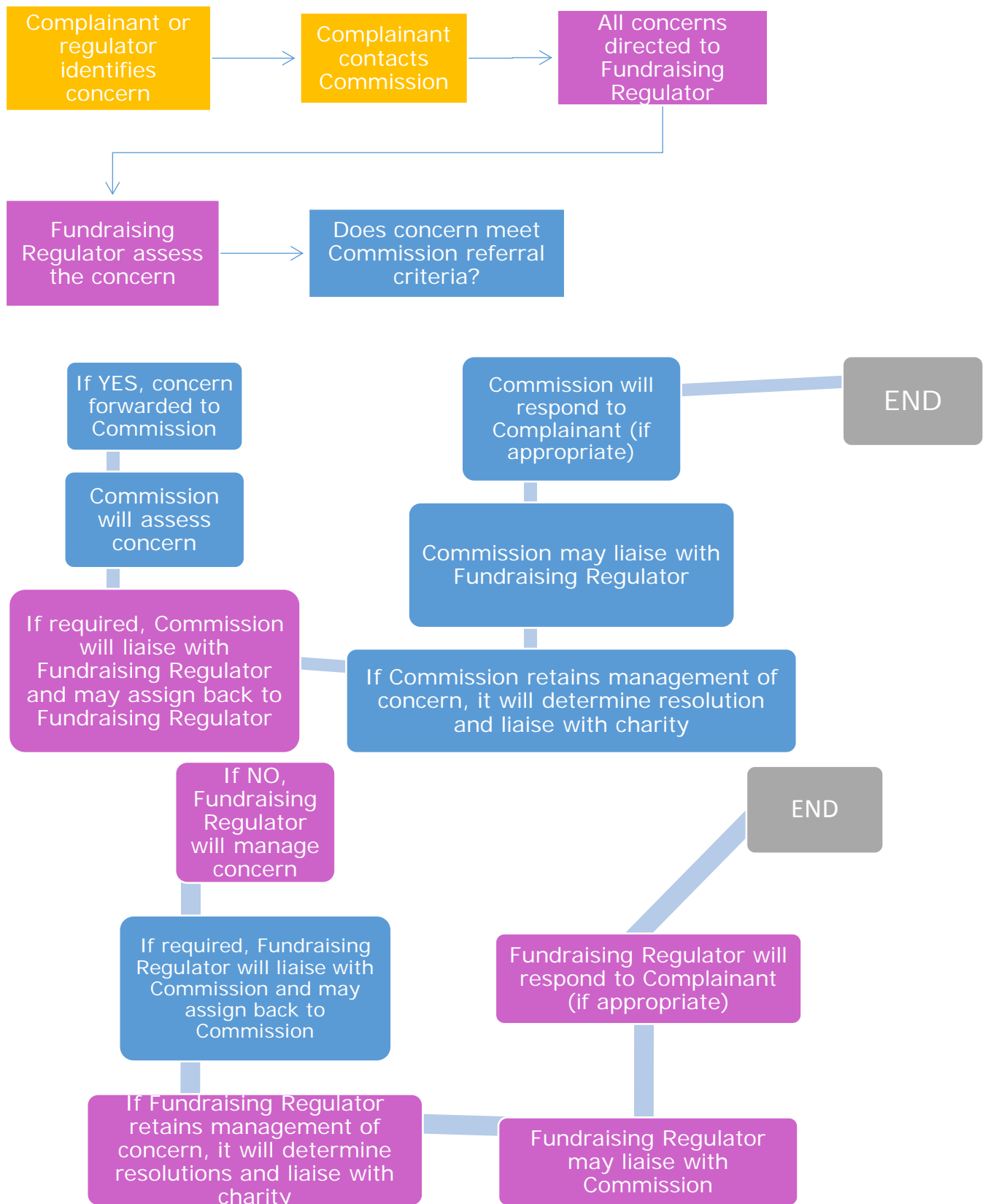
Mismanagement

We define mismanagement to include any act or failure to act in the administration of a charity that may result in significant charitable resources being misused, the charity's reputation being undermined, or the charity's beneficiaries being put at risk.

Inquiry

If the Commission considers that a charity is potentially at significant risk, it may open an inquiry under section 22 of the Charities Act (NI) 2008. The Commission can open inquiries with regard to charities or a particular charity or class of charities. Some of the Commission's powers can only be used when an inquiry is open.

APPENDIX C – REFERRAL PROCESS



The Fundraising Regulator will refer to the Commission the following fundraising cases that also demonstrate evidence of:

Serious concerns about trustee conduct including:

- significantly poor governance
- criminality which exposes related concerns about misconduct and mismanagement in the administration of a charity - fraud, theft, false accounting, tax fraud (including the making of fraudulent Gift Aid claims), or failing to obtain legal authority to fundraise
- trustee action or failings or oversight that present a serious risk to the charity, its reputation or assets
- failure to control or manage conflicts of interest
- misuse of a charity and its fundraising literature to promote extremism (it is not acceptable for charities to promote or use literature which is extremist in nature or radicalising material)
- connection to proscribed or designated organisations, persons or entity (a charity must not provide funding or support to a partner organisation that exposes beneficiaries to activities which directly, or indirectly, promote terrorism. This is so, even if the charity's funding or support were used for legitimate humanitarian aid or other charitable activities. Aside from the risks of committing criminal offences under UK legislation, this is also likely to amount to misconduct on the part of the trustees in managing and administering the work of the charity)
- hosting or promoting inappropriate material on website, social media or fundraising literature
- poor due diligence including lack of records, proper systems or control or monitoring of end use of funds.

Serious concerns about the financial management of the charity including:

- how funds are being spent/not spent (low charitable spending)
- significant financial loss
- financial mismanagement (poor investments, pension deficits, insufficient reserves, qualified examination/audit reports)
- failure to protect and account for all funds raised.

Serious breach of trust including methods of fundraising which are inappropriate for a charity, which would be a breach of trust and pose a significant risk to public trust and confidence.

Serious concerns that a charity is not being used for exclusively charitable purposes/was set up for illegal or improper purposes or for significant private advantage.

Repeated failure by a charity to take adequate action to address rulings set by the Fundraising Regulator, in particular an inability to address rulings of the Fundraising Regulator's Adjudication Committee.