

POLICY STATEMENT FOR JOINT WORKING
OSCR AND THE SCOTTISH FUNDING COUNCIL



1. Purpose

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

2. Context

- 2.1 Under section 1 of the Charities and Trustee Investment (Scotland) Act 2005 (the CTI(S) Act) OSCR is responsible for the operation of an effective regulatory framework for Scotland including the granting of charitable status, maintenance of a public register of charities, the investigation of apparent misconduct and facilitation and monitoring of compliance with the CTI(S) Act.

- 2.2 SFC was established in 2005 under the terms of the Further and Higher Education (Scotland) Act 2005 (the F&HE(S) Act). 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;
- 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, an annual return and supplementary monitoring return. OSCR also has the power of enquiry and intervention should any issues of non-compliance or mismanagement/misconduct arise.

3. Objectives

- 3.1 The objectives of this statement are:-

- Ensure effective liaison in the development of any guidance for the sector; and
- Set out the circumstances in which OSCR and SFC will share information and collaborate.

3 Areas for joint working

3.1 Complaints & Enquiries

- 3.1.1 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).
- 3.1.2 If the complaint is about misconduct in the administration of the charity or there is a significant risk to charitable assets, OSCR will make enquiries 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 enquiry 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.
- 3.1.3 Paragraph 12 of SFC's Financial Memorandum 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.
- 3.1.4 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 Standards Commission. OSCR will liaise with the Commission regarding any appropriate action.

3.2 Sharing of information

- 3.2.1 Section 24 of the CTI(S) Act permits the disclosure of information between OSCR and any person, government department, local authority police officer or body discharging functions of a public nature where the disclosure is made for any purpose connected with the discharge of the relevant person's or body's statutory functions.
- 3.2.2 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 and the Data Protection Act 1998.
- 3.2.3 OSCR and SFC will share information about trends, concerns, data, approaches and initiatives, which are relevant to the aim of ensuring the good governance of colleges and universities.

3.3 Consultation and communication

- 3.3.1 OSCR and SFC will have consideration for 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.
- 3.3.2 OSCR and SFC will 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.
- 3.3.3 OSCR and SFC will work to ensure staff are aware of the content of this statement and the responsibilities it places on each individual member of staff.

4 General

- 4.1 Both organisations are committed to the principles of continuous improvement and therefore will monitor the working arrangements contained in this policy statement. An annual review will be carried out and this will examine all aspects of the policy statement in order to identify areas for improvement and best practice. Representatives of OSCR and SFC will meet when necessary, and there will be at least one formal policy meeting per year.
- 4.2 Whilst it is intended that the arrangements in this statement should apply generally, it is recognised that some circumstances will require special handling. Nothing in this statement prevents the making of arrangements to meet specific exceptional needs.

- 4.3 Any disagreement arising from the interpretation of this statement 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 statement will be amended if necessary to reflect the agreed outcome of the referral.
- 4.4 OSCR and SFC will keep the working of the statement under review, update it regularly, and carry out a formal review after one year.

5 POINTS OF CONTACT

- 5.1 The following are the main points of contact:

OSCR: Head of Enquiry & Investigation

SFC: Director of Governance & Management: Appraisal and Policy

Approved January 2007
Review February 2008
Reviewed July 2009