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**CHARITY COMMISSION
FOR ENGLAND AND WALES**



MEMORANDUM OF UNDERSTANDING

**THE CHARITY COMMISSION for
ENGLAND and WALES**

AND

**THE CHARITY COMMISSION for
NORTHERN IRELAND**

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Section 1 - Purpose of Memorandum

1. This Memorandum provides a framework for closer working between the Charity Commission (CCEW) and the Charity Commission for Northern Ireland (CCNI). Both CCEW and CCNI are fully committed to the aims of the Memorandum which are to assist in their respective functions in the following ways to:
 -) promote a common understanding of CCEW and CCNI's responsibilities, working procedures, legal powers and constraints;
 -) promote co-operation between CCEW and CCNI's staff at a strategic and operational level;
 -) facilitate effective investigation with the objective of prevention, detection and remedy of misconduct or mismanagement in the administration of charities and charitable funds;
 -) maximise information sharing about charities in the public interest;
 -) ensure the effective disclosure of information in compliance with all relevant legislation; 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.

Section 2 - The Role and Functions of CCEW

- 2.1 CCEW is established under the Charities Act 2011 ("The 2011 Act") and is the statutory regulator and registrar of charities in England and Wales. CCEW is a non-ministerial government department. The 2011 Act specifically prohibits the exercise of any CCEW function being subject to the direction or control of any Minister or other government department.
- 2.2 CCEW's objectives as defined in section 14 of the 2011 Act are to:
 -) increase public trust and confidence in charities ("the public confidence objective");
 -) promote awareness and understanding of the operation of the public benefit requirement ("the public benefit objective");
 -) promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities ("the compliance objective");

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-) promote the effective use of charitable resources (“the charitable resources objective”); and
-) enhance the accountability of charities to donors, beneficiaries, and the general public (“the accountability objective”).

2.3 CCEW’s general functions as set out in section 15 of the 2011 Act include:

-) determining whether institutions are or are not charitable;
-) encouraging and facilitating the better administration of charities; this function includes a power to give advice or guidance to charities;
-) identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement; and
-) obtaining, evaluating and disseminating information in connection with the performance of any of CCEW’s functions or meeting any of its objectives; this function includes the maintenance of an accurate and up to date register of charities.

2.4 In carrying out its functions CCEW 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.

2.5 In pursuance of its objectives and functions, CCEW maintains a register of charities. CCEW’s jurisdiction extends to all registered charities and unregistered charities (other than limitation on the use of its powers in relation to exempt charities). The term “charities” and “charitable purposes” refers to organisations and purposes which are exclusively under the law of England and Wales. They will include charitable collections and funds managed on an informal basis by any person or organisation.

2.6 Most concerns that CCEW identifies in charities are dealt with as operational compliance cases. These cases are not formal investigations, but are aimed at ensuring trustees address any failures and weaknesses in their charity’s management. Statutory inquiries may be opened in accordance with CCEW’s risk framework where there is a high risk to public trust and confidence in charity, where there is evidence of misconduct or mismanagement or charities’ assets, reputation, service or beneficiaries are at a high risk of harm or abuse. Opening an inquiry allows CCEW the full range of enforcement powers. CCEW also undertakes proactive and reactive monitoring of charities which give rise to concern.

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- 2.7 CCEW collaborates with police and law enforcement agencies, for example in cases of fraudulent fundraising.
- 2.8 CCEW has powers for the protection of charities (and may consider using these when dealing with the situation above), although they can only be used in certain circumstances, and in an inquiry. These powers are listed at Appendix B.
- 2.9 CCEW also has extensive information-gathering powers. It may for example:
-) order anyone to provide CCEW with information in his or her possession which is relevant to the discharge of any of its functions; and
 -) 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.
- 2.10 The supply of false or misleading information to CCEW is a criminal offence (section 60 of the Charities Act 2011). However, information acquired by the use of these powers can only be used for the purpose for which the powers were given.
- 2.11 It follows that CCEW can use these powers only in order to acquire information for use in discharging statutory purposes, not (for example) simply in order to obtain information for another body.

Section 3 - The Role and Function of CCNI

- 3.1 CCNI is established under the Charities Act (Northern Ireland) 2008 ("The 2008 Act") and is the statutory regulator and registrar of charities in Northern Ireland. CCNI is a non-departmental public body and is sponsored by the Department for Communities.
- 3.2 CCNI's objectives are set out in section 7 of the 2008 Act and are as follows:
-) to increase public trust and confidence in charities ("the public confidence objective")
 -) to promote awareness and understanding of the operation of the public benefit requirement ("the public benefit objective")
 -) to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities ("the compliance objective")

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-) to promote the effective use of charitable resources (“the charitable resource objective”)
-) to enhance the accountability of charities to donors, beneficiaries and the general public (“the accountability objective”)

3.3 Section 8 of the 2008 Act sets out CCNI’s general functions as:

-) determining whether institutions are or are not charitable;
-) encouraging and facilitating the better administration of charities;
-) identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein;
-) determining whether public collection certificates should be issued and remain in force, in respect of public charitable collections;
-) obtaining, evaluating and disseminating information in connection with the performance of any of the Commission’s functions or meeting any of its objectives; and
-) giving information or advice, or making proposals to the Department on matters relating to any of the Commission’s functions or meeting any of its objectives

3.4 In carrying out its functions CCNI 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.

3.5 In pursuance of its objectives and functions, CCNI maintains a register of charities. Every organisation which is a charity under the law of Northern Ireland must register in the register of charities. CCNI’s jurisdiction extends to all registered charities and unregistered charities (those not yet entered on registered of charities). The terms “charities” and “charitable purposes” refer to organisations and purposes which are exclusively charitable under the law of Northern Ireland.

3.6 Most concerns that CCNI identifies in charities are dealt with as regulatory cases. These cases are not formal investigations, but are aimed at ensuring charity trustees address any failures and weaknesses in their charity’s governance. Statutory inquiries may be opened in accordance with CCNI’s risk framework where there is a high risk to public trust and confidence in charity, where there is evidence of misconduct or mismanagement or charities’ assets, reputation, service or beneficiaries are at a high risk of harm or abuse. Opening an inquiry allows CCNI the full range of enforcement powers.

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CCNI also undertakes proactive and reactive monitoring of charities which give rise to concern.

- 3.7 CCNI collaborates with police and law enforcement agencies, for example, in cases of fraudulent fundraising or misuse of charitable resources.
- 3.8 CCNI has powers for the protection of charities (and may consider using these when dealing with the situation above), although they can only be used in certain circumstances, and in an inquiry. These powers are listed at Appendix C.
- 3.9 CCNI also has extensive information-gathering powers. It may for example:
 -) order anyone to provide CCNI with information in his or her possession which is relevant to the discharge of any of its functions; and
 -) 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.
- 3.10 The supply of false or misleading information to CCNI is a criminal offence (section 25 of the Charities Act (Northern Ireland) 2008). However, information acquired by the use of these powers can only be used for the purpose for which the powers were given.
- 3.11 It follows that CCNI can use these powers only in order to acquire information for use in discharging statutory purposes, not (for example) simply in order to obtain information for another body.

Section 4- Disclosure of information

CCEW's information sharing powers

- 4.1 When disclosing information under the statutory gateway or their general powers, CCEW and CCNI must ensure the provisions of section 54-59 of the 2011 Act (where applicable) and the terms of this Memorandum are satisfied. Nothing in this Memorandum commits either party to disclose information nor imposes upon CCEW, CCNI or other person or organisation a duty to disclose information.
- 4.2 Sections 54 to 59 of the 2011 Act provide a statutory gateway, as well as CCEW's general powers, for the disclosure of information by CCEW to CCNI. However nothing in sections 54 to 57 authorise the making of a disclosure which is:
 -) contrary to the Data Protection Act 1998 (and any subsequent legislation) (section 59 of the Act); or
 -) prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (section 59 of the Act); or

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-) contrary to the Human Rights Act 1998 and other relevant legislation.
- 4.3 Section 56 of the 2011 Act deals with disclosures **by** CCEW generally and gives CCEW the powers exercisable at its discretion to disclose information to any relevant public authority any information received by CCEW in connection with any of CCEW's functions if:
- a) the disclosure is made for the purposes of enabling or assisting relevant public authority to discharge any of its functions; or
 - b) the information so disclosed is otherwise relevant to the discharge of any functions of the relevant public authority.
- 4.4 Section 54 of the 2011 Act deals with disclosure **to** CCEW generally and gives any relevant public authority the ability, at its discretion, to disclose information to CCEW if the disclosure is made for the purposes of enabling or assisting CCEW with the discharge of any of its functions.
- 4.5 CCNI is therefore likely to be a relevant public authority for the purpose of section 54 and 56 of the Charities Act 2011.
- 4.6 Information about the status of charities (whether registered or removed, or if an interim manager has been appointed), 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 public Register of Charities for England and Wales.
<https://www.gov.uk/government/organisations/charity-CCEW>
- 4.7 CCEW has the discretion to disclose information it has received in connection with any of its functions under section 56. However if:
-) the information has been received by CCEW under s.54(1) subject to an express restriction CCEW must first obtain consent to further disclose the information (section 56(3)); or
 -) the information has been received by CCEW from HMRC CCEW must first obtain the consent of HMRC to further disclose the information (section 57(2)). Section 57(3) makes it an offence to disclose HMRC information in contravention of 57(2).
- 4.8 CCEW also has the discretion to disclose, under its general powers under the Charities Act 2011, information other than that which it has received from third parties. Such disclosures must also be compliant with all relevant legislation.
- 4.9 In some circumstances CCEW may not be able to share sensitive information where acting upon this information could have a detrimental impact on on-going investigations.

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4.10 CCEW and CCNI agree that there will be no further dissemination or disclosure of disclosed information received from CCEW or CCNI without the written consent of the party that disclosed the information. Such permission must not be unreasonably withheld. For the avoidance of doubt this includes intelligence information which conforms to the rules of the National Intelligence Model. The exceptions to this are:

) with regard to all information other than that received by way of intelligence, the receiving organisation might, in the case of court proceedings, be required to disclose some of this information at short notice to the court. As a consequence the receiving organisation might, on an exceptional basis, be unable to obtain prior permission from the originator because of time constraints. In such cases, the receiving organisation will inform the originator of the disclosure retrospectively and without undue delay; or

) the circumstances set out in paragraph 6.1 below

4.11 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

CCNI's information sharing powers

4.12 Section 24(1) of the 2008 Act deals with disclosures **by** CCNI generally and gives CCNI the powers exercisable at its discretion to disclose information to any relevant public authority any information received by CCNI in connection with any of CCNI's functions if:

(a) the disclosure is made for the purposes of enabling or assisting relevant public authority to discharge any of its functions; or

(b) the information so disclosed is otherwise relevant to the discharge of any functions of the relevant public authority.

4.13 Section 24(2) of the 2008 Act deals with disclosure **to** CCNI generally and gives any relevant public authority the ability, at its discretion, to disclose information to CCNI if the disclosure is made for the purposes of enabling or assisting CCNI with the discharge of any of its functions.

4.14 CCEW is a public authority for the purpose of section 24 of the Charities Act 2008.

4.15 CCNI has the discretion to disclose information it has received in connection with any of its functions under section 24(1) of the 2008 Act. However, if the information has been received by CCNI under s.24(2) of the 2008 Act subject to an express restriction CCNI must first

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obtain consent to further disclose the information (section 24(6) of the 2008 Act).

- 4.16 CCNI also has the discretion to disclose, under its general powers, information other than that which it has received from third parties. Such disclosures must also be compliant with all relevant legislation.
- 4.17 Nothing in section 24 (1) or (2) of the 2008 Act authorises disclosure of information where there is an express restriction imposed by or under any other statutory instrument.
- 4.18 In some circumstances CCNI may not be able to share sensitive information where acting upon this information could have a detrimental impact on on-going investigations.
- 4.19 Information about the status of charities (whether registered or removed, or if an interim manager has been appointed), 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 public Register of Charities for Northern Ireland.
<http://www.charitycommissionni.org.uk/charity-search/>

Section 5 – Information Handling

- 5.1 When exchanging information, CCEW and CCNI shall ensure that the information is:
 -) marked with the appropriate security classification (paragraph 5.3 below);
 -) exchanged using a secure platform (paragraph 5.2 below); and
 -) stored securely in accordance with all applicable requirements including HM Government guidelines and the Data Protection Act 1998
- 5.2 CCEW and CCNI will disclose information via a secured data sharing platform. For CCEW this would normally be the government secure “.gsi” email channel. In the event that such arrangements are not feasible or if another method of information disclosure is required, for example absence of access to government secure email or information provided on removable media, then this may be mutually agreed by both parties. Appropriate communication or transportation arrangements suitable to the security classification of the information or communication, in particular secure encryption, must be made for the transfer.

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- 5.3 Both parties will ensure that all disclosures are appropriately protected using the Government Security Classification (GSC) system as follows:
-) Official – the majority of information that is created or processed by the public sector. This includes the sub set of information to be protected by Official - Sensitive
 -) Secret – very sensitive information that justifies heightened protective measures to defend against determined and highly capable threat actors
 -) Top Secret – the most sensitive information requiring the highest level of protection from the most serious threats.

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

- 5.4 CCEW and CCNI agree that the information disclosed between the parties is to be used by the receiving party only for the purpose that it was shared. The written consent of the originating party must be obtained before the disclosed information can be used for any other purpose unless the receiving party is authorised by law to use the information for another purpose.
- 5.5 Information will be provided to CCNI on the condition that it is handled as per CCNI's own information handling policy. It is the responsibility of CCNI to ensure this occurs. CCNI will retain information supplied by CCEW only for as long as there is a business purpose to do so and not any longer than is necessary for CCNI to perform its functions. Where CCEW material is used to inform a specific research paper, it will be clearly referenced.
- 5.6 Information will be provided to CCEW on the condition that it is handled as per CCEW's information handling policies. It is the responsibility of CCEW to ensure this occurs. CCEW will retain information supplied by CCNI only as long as there is a business purpose to do so and not any longer than is necessary for CCEW to perform its functions. Where CCNI material is used to inform a specific research paper, it will be clearly referenced.
- 5.7 CCEW and CCNI will ensure that any information losses, wrongful disclosures or breaches of security relating to information received from the other organisation are reported to the other organisation as soon as practically possible following the loss, wrongful disclosure or breach.
- 5.8 CCEW may from time to time, mark information disclosed to CCNI as 'for intelligence purposes only' ("Marked Information"). Marked Information may be used by CCNI to inform their investigations, and assist any information gathering. CCNI may not publish or use Marked Information to form decisions and/or take action on their matters. This

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may be necessary in order to protect ongoing cases by CCEW or other public bodies.

- 5.9 CCNI may from time to time, mark information disclosed to CCEW as 'for intelligence purposes only' ("Marked Information"). Marked Information may be used by CCEW to inform their investigations, and assist any information gathering. CCEW may not publish or use Marked Information to form decisions and/or take action on their matters. This may be necessary in order to protect ongoing cases by CCNI or other public bodies.

Section 6 - Data Protection and Freedom of Information

Freedom of information

- 6.1 CCEW and CCNI are obliged to comply with the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations ("EIR"). If CCEW receives a FOIA/EIR request for information provided to it by CCNI, it will inform CCNI of the request. CCNI will then inform CCEW whether in its opinion the information should be released under FOIA/EIR and if not, CCNI will provide CCEW with the details of which of the exemptions it considers may apply within the statutory timescales provided for in FOIA/EIR to assist CCEW in its decision making. If CCNI receives a FOIA/EIR request for information provided to it by CCEW, CCNI will inform CCEW of the request. CCEW will then inform CCNI whether it considers that the information should be released under FOIA/EIR, and if not, CCEW will provide CCNI with details of which exemptions it considers may apply within the statutory timescales provided for in FOIA/EIR to assist CCNI in its decision making. Any final decision in relation to an FOIA/EIR request to CCEW is a matter for CCEW. Any final decision in relation to an FOIA/EIR request to CCNI is a matter for CCNI.

Data protection

- 6.2 For the purpose of the Data Protection Act 1998 ("the DPA"), CCNI is the data controller for all personal data it holds in order to fulfil its own functions. CCNI will become the data controller for the personal data it receives from CCEW as part of any information disclosure.
- 6.3 CCEW is the data controller for all personal data it holds in order to fulfil its own functions for the purpose of the DPA. CCEW will become the data controller for the personal data it receives from CCNI as part of any information disclosure.
- 6.4 CCEW and CCNI 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.

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- 6.5 Where CCEW and CCNI 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.
- 6.6 This MoU will also comply with the General Data Protection Regulations when these are applied in the UK from 25 May 2018.

Section 7 – Liaison at Strategic Level

- 7.1 Representatives of CCEW and CCNI will hold strategic policy meetings at least once a year. The aims of these meetings will be to:
-) discuss common policies and strategies;
 -) discuss problem areas and developing trends in charity abuse and exploitation;
 -) update or consult on development of relevant law, policy, and practice; and
 -) review the provisions of the Memorandum and the overall effectiveness of the liaison and collaboration between the two organisations.
- 7.2 Additional meetings may be convened as necessary, between appropriate key staff, to address these and other issues. Where appropriate, CCEW and CCNI may invite HM Revenue and Customs or other third parties to participate in meetings and consultations.

Section 8- Liaison at Operational Level

General liaison and collaboration process

- 8.1 In order to facilitate the flow of information and technical expertise, CCNI and CCEW will appoint officers to act as single points of contact (“SPoCs”).
- 8.2 Requests for information by CCNI to CCEW about a new matter must be made via CCEW’s SPoC. Requests for information by CCEW to CCNI should be sent via CCNI’s SPoC (see Appendix A). SPoCs may also be able to provide general advice. If a matter is to be reported in either direction, the SPoCs will first consult with each other, preferably by telephone, and later in writing, to provide:
-) an explanation as to why the information is being requested and what it is to be used for, including if it is intended to be used publicly;

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-) a briefing on the case, including actions that have already been taken, actions that are likely to be taken, and, where appropriate, information about any previous involvement by CCEW or CCNI with the charity and individuals concerned;
-) written details of the name, telephone number and e-mail address of the case officer at CCEW and at CCNI.

8.3 The SPoCs will aim to ensure that:

-) the disclosure of information and referral of individual cases are screened and processed with an appropriate degree of uniformity and speed;
-) routine referrals will be dealt with within fifteen working days of receipt, and any urgent referrals within eight working days;
-) if action on a referral cannot be completed within the timescale specified above, the receiving SPoCs will provide the originating SPoC with progress reports at agreed intervals;
-) any general information, intelligence, announcement, or warning that either CCEW or CCNI considers will impact directly on the other is brought to the attention of the other, and reported up and/or disseminated appropriately within CCEW and CCNI.

8.4 SPoCs will also:

-) ensure that any other general information or announcement that CCEW or CCNI considers will impact directly on the other must be brought to the attention of the other; and
-) be able to provide general advice about CCEW or CCNI organisation and procedures where relevant for the purposes of this Memorandum.

8.5 This section now details operational liaison between CCEW and CCNI. The liaison procedure that will be followed in the case of joint inquiries is covered in section 8.17.

Charity Registration and Maintenance of Registers

8.6 If during the process of registering a charity, it becomes evident that the charity should also be registered in the other jurisdiction, CCEW will notify CCNI and the charity accordingly and vice versa. However, it is not the responsibility of either to ensure that the charity registers with the other body.

Charity changes

8.7 Both CCEW and CCNI operate regimes whereby there are specific actions that charities take that they must seek consent for or notify the

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regulator. This information is available on each regulator's website. When dealing with such cases, if it is identified that charities are registered in both England and Wales and Northern Ireland, each regulator will consult with the other and where possible agree a consistent recommendation or decision.

Monitoring

- 8.8 Both CCEW and CCNI undertake monitoring activities, and will share the details of their approach to monitoring and the results of this work. Within the constraints of their respective legislative frameworks, CCEW and CCNI will endeavour to minimise the burden of their monitoring approaches on charities registered in both jurisdictions and will work together in sharing relevant information in the furtherance of their respective monitoring activities.

Public accountability

- 8.9 Both CCEW and CCNI are committed to encouraging openness and transparency in the financial reporting and management of charities so as to maintain public trust and support.
- 8.10 CCEW and CCNI will work together in developing and promoting the charity SORP and underpinning regulations, through the SORP making body for UK charities by the Financial Reporting Council, so that charities that are required to produce accrual accounts throughout England, Scotland, Wales and Northern Ireland continue to follow the same recommended practices.

Investigation of charity abuse and misconduct

- 8.11 CCEW and CCNI will consult each other about any complaint or allegation of serious misconduct in relation to a charity registered in both jurisdictions before any inquiry action is taken. In appropriate cases, joint inquiry, intervention and reporting will be considered and if appropriate a lead investigator will be agreed (see paragraph 8.17)
- 8.12 Where it appears likely that the conduct of a joint inquiry or other form of intervention will generate media interest in both jurisdictions, or, given the profile and substance of the case, that a Ministerial briefing ought to be considered, the Chief Executives of CCEW and CCNI will be consulted as to the appropriate approach.
- 8.13 Where abuse within a charity registered within both jurisdictions results in CCEW or CCNI conducting a formal investigation into a charity, each will provide information to the other about conduct and outcome of that inquiry, where appropriate.
- 8.14 Where financial abuse within charities registered in both jurisdictions raises issues of a criminal nature, CCEW and CCNI will liaise with the police authorities both jointly and separately in accordance with their own regulatory responsibilities.

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- 8.15 Where CCEW is aware of misconduct, mismanagement or any other compliance or monitoring issues in the administration of a charity registered in both jurisdictions, it will provide, in accordance with the procedures set out in this Memorandum, any evidence of such misconduct or mismanagement considered relevant to the discharge of the functions of CCNI and vice versa.
- 8.16 Where CCEW removes a trustee from the register under automatic or discretionary disqualification powers, CCNI shall be informed. Similarly if CCNI removes a trustee from the register, CCEW shall be informed.

Co-ordinated Operations

- 8.17 The permitted level of exchange of information is such that close cooperation on investigations is possible. Although there is no statutory basis for a joint investigation CCNI and CCEW can on occasion co-ordinate their operations ("Co-ordinated Operations"). Joint approaches can take place with the permission of the charity and every effort should be made to encourage the charity to take this option, as it will usually involve the least use of both charity and official resources. If permission is refused, exchange of information may still occur. On occasion, CCEW's Head of Investigations, Monitoring and Enforcement and CCNI's Head of Compliance and Enquiries may designate exceptionally serious cases as Co-ordinated Operations in which the exchange of information and technical expertise will be ongoing and continuous.
- 8.18 Any decision on whether CCEW investigators should participate in a co-ordinated operation will rest with CCEW's Head of Investigations, Monitoring and Enforcement. In reaching a decision, the Head of Investigations, Monitoring and Enforcement will have regard to the nature of the operation and the extent to which it is consistent with CCEW's general function and duties.
- 8.19 Any decision on whether members of CCNI should participate in a co-ordinated operation with CCEW will rest entirely with CCNI's Head of Compliance and Enquiries.
- 8.20 Where both CCNI and CCEW have a mutual interest in a charity or charitable funds both parties will aim to agree a written protocol at the earliest opportunity, and within a maximum of 15 working days, to cover case strategy, the role of each party in the investigation, areas of responsibility, liaison arrangements and other policy issues. That protocol will build on the matters agreed in this Memorandum.
- 8.21 If action on a referral cannot be completed within the timescales mentioned above, the receiving SPoC will provide the originating SPoC with progress reports at agreed intervals.

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- 8.22 Where possible, advance planning meetings should agree a framework for any joint operations, including all roles and responsibilities.
- 8.23 Where it appears likely that the conduct of a joint inquiry or other form of intervention in relation to a charity will generate media interest of relevance to both CCEW and CCNI or, given the profile and substance of the case, that a Ministerial briefing ought to be considered, CCEW's Head of Investigations, Monitoring and Enforcement and CCNI's Head of Compliance and Enquiries will be consulted. All media interest in Co-ordinated Operations will be dealt with by agreement of both parties prior to release of any information.

Section 9- Other Designated Points of Contact and Assistance

- 9.1 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 CCEW and CCNI 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.
- 9.2 CCEW will, where appropriate, and subject to available resources provide guidance to CCNI in the interpretation of charity law. Where appropriate and if resources are available, CCNI will provide guidance on, product development, points of law, procedure and operational action.
- 9.3 As part of their respective staff training programmes, both CCEW and CCNI will ensure that their staff are made aware of the differing organisational, operational and legal frameworks of each organisation. In order to facilitate this, appropriate staff will be offered familiarisation visits and work shadowing opportunities at the other's offices.
- 9.4 CCEW and CCNI will also explore the possibility of mounting joint training and development initiatives and where practicable, will offer places to each other's staff on relevant internal training courses, conferences and seminars.
- 9.5 In order to support joint working and outreach, CCEW and CCNI will explore opportunities to co-operate on presentations and seminars for charity sector representatives.

Section 10 - General

- 10.1 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. Any such

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circumstances should be agreed in writing between the parties to this Memorandum.

- 10.2 Any disagreement arising from the interpretation of this Memorandum will be referred to the appropriate level indicated in the Escalation Protocol as per Appendix A.

Signed

On behalf of the Charity Commission for England & Wales

.....

Date.....



On behalf of the Charity Commission for Northern Ireland

.....

Date:.....



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APPENDIX A CONTACT DETAILS AND ESCALATION PROTOCOL

The SPoC for the CCEW is [REDACTED]

CCEW contact for strategic or policy issues is [REDACTED]

The SPoC for the CCNI is [REDACTED]

Escalation Protocol

There may be occasions when each party to this MoU encounter difficulties. This should be resolved locally by the listed SPoCs in the first instance. However, if this is not possible then the following protocol must be followed:

CCEW:

Level 1

Intelligence Manager

Level 2

Head of Investigations, Monitoring and Enforcement

CCNI:

Level 1

Head of Compliance and Enquires

Level 2

Chief Executive

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APPENDIX B USE OF CCEW STATUTORY POWERS

CCEW’s protective powers include those listed below. Those powers marked with an asterisk are only exercisable when an inquiry under s.46 is open.

Power	Statutory reference
Require a charity to change its name in certain specified circumstances	S42-45 CA 2011
Institute inquiries into the administration of a charity	S46 CA 2011
Obtain evidence during an inquiry	S47 CA2011*
Enter premises and seize documents	S48-49 CA 2011*
Call for documents and search records	S52-53 CA 2011
Issue an official warning to a charity, charity trustee or trustee for a charity	S75A CA 2011
Suspend or remove any trustee, charity trustee, officer, agent or employee of a charity	S76,* 79,* 80(1), CA2011
Appoint new trustees	S76(3)(b) CA 2011* and S80(2) CA 2011
Vest charity property in the Official Custodian for Charities	S76(3)(c) CA 2011*
Order individuals not to part with charity property without its approval (“freezing orders”)	S76(3)(d) CA 2011*
Order individuals not to pay debts owed to the charity without its approval	S76(3)(e) CA 2011*
Restrict transactions that can be entered into on behalf of a charity	S76(3)(f) CA 2011*
Appoint an interim manager for a charity	S76(3)(g) CA 2011*
Make a scheme for the administration of a charity	S79(2)(b) CA 2011*
Remove a disqualified trustee	S97A CA2011
Suspend or remove trustees etc from membership of a charity	S83 CA 2011*
Give specific directions for protection of a charity	S84 CA 2011*
Direct specified action not to be taken	S84A CA2011*
Direct a charity to wind up	S84B CA2011*

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Direct the application of charity property	S85 CA 2011
Give directions about dormant bank accounts	S107-109 CA 2011
Determine the membership of a charity	S111 CA 2011
Exercise the same powers as the Attorney General with respect to taking legal proceedings, except for petitioning for the winding up of a charity	S114 CA 2011
Disqualify an individual as a trustee or charity trustee	S181A CA2011
Order a disqualified person to repay sums received from a charity while acting as charity trustee or trustee for the charity	S184(2)-(4) CA 2011
Disqualify trustees who are receiving remuneration by virtue of sections 73A CA 1993	S186 CA 2011
Ensure the safekeeping of charity documents	S340 CA 2011

CCEW's support powers, which are usually only exercised at the request of the charity, include the following:

Power	Statutory reference
Authorise cy-près application of gifts belonging to unknown or disclaiming donors	S63-66 CA 2011
Make a scheme in relation to a charity governed by charter or by or under statute, subject to Order in Council	S68 CA 2011
Establish a scheme for the administration of a charity (including the alteration of purposes cy-près)	S69 (1)(a) CA 2011 (see also S62 and 67 CA 2011)
Appoint or remove trustees; remove officers or employees	S69 (1)(b) CA 2011
Vest or transfer property, or require or permit any person to call for or make any transfer of property or any payment	S69 (1)(c) CA 2011
Alter provisions in Acts of Parliament establishing or regulating a charity, subject to Parliamentary approval	S73 CA 2011
Establish common investment funds and common deposit funds	S96-103 CA 2011
Authorise dealings with charity property or other actions in the interests of the charity	S105 CA 2011

Official

Authorise ex-gratia payments	S106 CA 2011
Give advice and guidance to a charity trustee or trustee for a charity	S110 CA 2011 (see also S15(2)-(3) CA 2011)
Grant a waiver to a person disqualified from acting as a charity trustee	S181 CA 2011
Relieve trustees, auditors etc from liability for breach of trust or duty	S191 CA 2011
Authorise regulated amendments to memoranda and articles of charitable companies	S198 CA 2011 (as amended)

Official

APPENDIX C USE OF CCNI STATUTORY POWERS

CCNI's protective powers include those listed below. Those powers marked with an asterisk are only exercisable when an inquiry under s.22 is open.

Power	Statutory reference
Require a charity to change its name in certain specified circumstances	S20 CA(NI) 2008
Institute inquiries into the administration of a charity	S22 CA(NI) 2008
Call for documents and search records	S23 CA(NI) 2008
Suspend or remove any trustee, charity trustee, officer, agent or employee of a charity	33(1)(i),* 33(2)(i)* 33(4), CA(NI) 2008
Make a scheme for the administration of a charity	S33 (2)(ii) CA(NI) 2008*
Appoint new trustees	S33(1)(ii)* S33(5) CA(NI) 2008
Order individuals not to part with charity property without its approval ("freezing orders")	S33 (1)(iv) CA(NI) 2008*
Order individuals not to pay debts owed to the charity without its approval	S33 (1)(v) CA(NI) 2008*
Restrict transactions that can be entered into on behalf of a charity	S33 (1)(vi) CA(NI) 2008*
Appoint an interim manager for a charity	S33 (1)(vii) CA(NI) 2008*
Suspend or remove trustees etc from membership of a charity	S34 CA(NI) 2008*
Give specific directions for protection of a charity	S36 CA(NI) 2008*
Direct the application of charity property	S37 CA(NI) 2008*
Give directions about dormant bank accounts	S48 CA(NI) 2008
Determine the membership of a charity	S50 CA(NI) 2008
Ensure the safekeeping of charity documents	S51 CA(NI) 2008
Enter premises and seize documents	S52 CA(NI) 2008*
Exercise the same powers as the Attorney General with respect to taking legal proceedings, except for petitioning for the winding up of a charity	S53 CA(NI) 2008

Official

Order a disqualified person to repay sums received from a charity while acting as charity trustee or trustee for the charity	S87(4) CA(NI) 2008
Disqualify trustees who are receiving remuneration by virtue of sections 88 CA (NI) 2008	S90 CA(NI) 2008

CCNI's support powers, which are usually only exercised at the request of the charity, include the following:

Power	Statutory reference
Authorise cy- prés application of gifts belonging to unknown or disclaiming donors	S26-29 CA(NI) 2008
Make a scheme in relation to a charity governed by charter or by or under statute, subject to Order in Council	S30 CA(NI) 2008
Establish a scheme for the administration of a charity (including the alteration of purposes cy-prés)	S31 (1)(a) CA (NI) 2008 (see also S26 and 29 CA (NI) 2008)
Appoint or remove trustees; remove officers or employees	S31 (1)(b) CA (NI) 2008
Vest or transfer property, or require or permit any person to call for or make any transfer of property or any payment	S31 (1)(c) CA (NI) 2008
Alter provisions in Acts of Parliament establishing or regulating a charity, subject to Parliamentary approval	S32 CA (NI) 2008
Authorise dealings with charity property or other actions in the interests of the charity	S46 CA (NI) 2008
Authorise ex-gratia payments	S47 CA (NI) 2008
Give advice and guidance to a charity trustee or trustee for a charity	S49 CA (NI) 2008 (see also S49(4)-(5) CA (NI) 2008)
Authorise regulated amendments to memoranda and articles of charitable companies	S96 CA (NI) 2008 (as amended)
Grant a waiver to a person disqualified from acting as a charity trustee	S86(4)-(6)CA (NI) 2008
Relieve trustees, auditors etc from liability for breach of trust or duty	S91 CA (NI) 2008

APPENDIX D TERMINOLOGY

Misconduct

We define misconduct to include any act (or failure to act) that that 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) that may cause charitable resources to be misused or the people who benefit from the charity to be put at risk.

Inquiry

If CCEW considers that the charity is potentially at significant risk, it may open an inquiry under section 46 of the Charities Act 2011. CCEW can open inquiries with regard to charities or a particular charity or class of charities. Some of its powers can only be used when an inquiry is open. More details can be found in the Charity CCEW's Risk Framework:

<https://www.gov.uk/government/publications/risk-framework-charity-CCEW>

If CCNI considers that the charity is potentially at significant risk, it may open an inquiry under section 22 of the Charities Act (Northern Ireland) 2008. CCNI can open inquiries with regard to charities or a particular charity or class of charities. Some of its powers can only be used when an inquiry is open. More details can be found on the CCNI website:

<http://www.charitycommissionni.org.uk/concerns-and-decisions/>