

Memorandum of Understanding between the Office of the Scottish Charity Regulator and Scottish Public Services Ombudsman

Purpose of the Memorandum of Understanding

The purpose of this memorandum of understanding is to set out the powers and responsibilities of the Office of the Scottish Charity Regulator and the Scottish Public Services Ombudsman and the framework that the organisations have agreed for co-operation and collaboration.

The logo for the Scottish Public Services Ombudsman (SPSO) consists of the letters 'SPSO' in a bold, sans-serif font. The 'S' and 'P' are a dark purple, while the 'S' and 'O' are a lighter, muted purple.

1. Purpose of Memorandum of Understanding

1.1 This Memorandum of Understanding provides a framework for closer working between the Office of the Scottish Charity Regulator (OSCR) and the Scottish Public Services Ombudsman (SPSO). OSCR and SPSO are committed to the aims of this MOU which are to:

- promote a common understanding of the role and functions of each organisation and their regulatory responsibilities, working procedures, legal powers and constraints
- promote co-operation between OSCR and SPSO and their staff at an operational level
- promote better regulation
- facilitate effective and appropriate sharing of information with the objective of assisting each organisation to achieve its objectives; and
- ensure appropriate consultation on matters of mutual interest.

2. The role and functions of OSCR

2.1 OSCR is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) and is the regulator of charities in Scotland. Section 1(5) of the 2005 Act sets out OSCR's general functions:

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

3. The role and function of SPSO

3.1 The Scottish Public Services Ombudsman (SPSO) has the functions set out in the Scottish Public Services Ombudsman Act 2002 (the 2002 Act). SPSO can consider complaints from members of the public who claim to have sustained injustice or hardship as a result of maladministration or service failure on the part of an authority within the SPSO's jurisdiction, providing the matter complained about is one which the SPSO is entitled to investigate. Section 2 of the 2002 Act lists the authorities that come within the jurisdiction of SPSO. This list includes Registered Social Landlords, Higher and Further Education

Institutions, and a number of other organisations that are charities regulated by OSCR, as well as OSCR itself.

4. Requirements relating to complaints

- 4.1 **SPSO** - Section 22 of the 2002 Act (Information about the right to make a complaint) requires a listed authority to take reasonable steps to publicise the application and effect of the 2002 Act, including in particular the right conferred by the 2002 Act to make a complaint, the time limit for doing so and how to contact SPSO. This information must be included in, or provided with, any documents published by the listed authority that contain information about the services it provides to members of the public or about how it deals with complaints. The information must also be included in any response to a complainant who may be entitled to complain to the SPSO. Section 15(4) of the 2002 Act outlines a requirement for OSCR to make and publicise arrangements for any person to see or obtain a copy of a published report about OSCR, unless the Ombudsman otherwise directs.
- 4.2 Section 16A of the 2002 Act requires listed authorities to have in place a complaints procedure that complies with the Complaints Handling Principles approved by Parliament in February 2011. Section 16B allows the Ombudsman to create a model complaint handling procedure for a sector. Later sections deal with how a listed authority would be informed such a procedure applies and the enforcement action the Ombudsman may take in the event of non-compliance. Section 16G places obligations on the Ombudsman to share best practice and to monitor complaint handling trends.
- 4.3 **OSCR** – OSCR powers in relation to inquiry and investigation of charities are outlined in Chapter 4 of the 2005 Act ‘Supervision of Charities’ and OSCR’s Inquiry and Intervention Policy sets out how concerns about charities received from external and internal sources are dealt with.

5. Complaints about listed authorities

- 5.1 In dealing with complaints, OSCR and the SPSO are aware of the possibilities of dual involvement. Although OSCR can through section 24 of the 2005 Act share information with any public body or office holder, SPSO cannot. It is therefore important for staff in each organisation to identify the nature of the complaint at the first point of contact and if applicable refer to the appropriate office.
- 5.2 Appendix 1 to this MOU is a complaints matrix which outlines the organisations which both OSCR and SPSO have jurisdiction over and highlights the types of complaints each would deal with. In general:-

- OSCR will deal with complaints about misconduct, mismanagement, charitable status and the protection of charitable assets.
- SPSO will deal with complaints about maladministration or service failure.

N.B. If either organisation receives a complaint about a charity and it is about the conduct of either a member of the board of management (further education institutions / devolved public bodies) or elected member representative on a charity board of trustees, the complaint will be referred to the Standards Commission.

5.3 SPSO and OSCR normally only deal with complaints (concerns in OSCR's context) that cannot be resolved through the internal complaints procedure of the organisation complained about.

6. Complaints about OSCR

6.1 OSCR's Customer Service Standards outline how OSCR will deal with any complaints about service. The Head of Support Services manages this process, and if a person remains unhappy about OSCR's response to a complaint they can write to the Chief Executive. A copy of the Service Standards can be found on OSCR's website.

6.2 OSCR is a listed authority under the jurisdiction of SPSO. SPSO may investigate a complaint made by a member of the public that they have sustained injustice or hardship as a result of maladministration or service failure on the part of OSCR. SPSO will not usually consider such a complaint until OSCR's internal complaints process has been completed.

6.3 The OSCR liaison person for complaints that SPSO receive about OSCR will be the Head of Support Services. If SPSO, after considering a complaint about OSCR, decide not to conduct an investigation, they must send a statement of reasons to OSCR and to the complainant.

6.4 If an investigation does go ahead, on completion SPSO must send a report of the investigation to OSCR and to the complainant and the report must be laid before the Scottish Parliament. OSCR must make arrangements to allow public inspection of that report.

7. Consultation

7.1 OSCR and SPSO agree that where the functions and actions of one body affect those of the other, they will consult and co-operate together. This co-operation will include the sharing of appropriate information and maintaining effective communication.

- 7.2 Before issuing any guidance, publicity and information to the public or other organisations about any aspect of their current or proposed functions relating to complaints, each party will consider the extent to which it would assist the other if mention were made of those organisations and its functions.
- 7.3 As part of their respective staff training programmes, both organisations will ensure that their teams are made aware of the differing organisation, operational and legal frameworks. In order to facilitate this, appropriate staff will be offered familiarisation visits. Where relevant and possible, each party will invite the other to participate in any conferences, seminars or workshops it organises.
- 7.4 In order to ensure the workings of this agreement, representatives of OSCR and SPSO will keep in regular contact via e-mail and telephone. Where appropriate, formal meetings may be arranged.
- 7.5 Both organisations are committed to the principles of continuous improvement and therefore will monitor the working arrangements contained in this MOU. This will be reviewed every three years, to examine all aspects of the MOU and identify areas for improvement and best practice.

8 General

- 8.1 Whilst it is anticipated that the arrangements in this MOU should apply generally, it is recognised that some circumstances will require special handling. Nothing in this MOU prevents the making of arrangements to meet specific exceptional needs.
- 8.2 Any disagreement arising from the interpretation of this MOU will be referred to the Chief Executive of OSCR and the Ombudsman, who will endeavour to resolve it within the spirit implicit in the co-operation arrangements. The MOU will be amended if necessary to reflect the agreed outcome of the referral.

Jim Martin
Scottish Public Services Ombudsman

David Robb
Chief Executive
Charity Regulator

July 2013

Appendix A: Regulatory interest matrix

	<i>OSCR</i>	<i>Scottish Housing Regulator</i>	<i>Ombudsman</i>	<i>Standards Commission</i>
RSL's	Charitable Status Misconduct/Mismanagement Protection of Charitable Assets (Likely that Scottish Housing Regulator will take most interest)	All	Claim of hardship or injustice resulting from maladministration or service failure on the part of the body.	Conduct Issue regarding Elected Member representation on Board of Charity Trustees.
Higher/ Further Education Authorities	Misconduct / Mismanagement Protection of Charitable Assets. Charitable Status	N/A	Claim of hardship or injustice resulting from maladministration or service failure on the part of the body.	Conduct issue regarding Board of Management member.
National Galleries of Scotland	Misconduct/ Mismanagement Protection of Charitable Assets. Charitable Status	N/A	Claim of hardship or injustice resulting from maladministration or service failure on the part of the body.	Conduct issue regarding Board of Management member.

	<i>OSCR</i>	<i>Scottish Housing Regulator</i>	<i>Ombudsman</i>	<i>Standards Commission</i>
National Library of Scotland	Misconduct/ Mismanagement Protection of Charitable Assets. Charitable Status	N/A	Claim of hardship or injustice resulting from maladministration or service failure on the part of the body.	Conduct issue regarding Board of Management member.
Royal Commission for Ancients and Historical Monuments	Misconduct/ Mismanagement Protection of Charitable Assets. Charitable Status	N/A	Claim of hardship or injustice resulting from maladministration or service failure on the part of the body.	Conduct issue regarding Board of Management member.
Royal Botanical Garden Edinburgh	Misconduct/ Mismanagement / Protection of Charitable Assets. Charitable Status	N/A	Claim of hardship or injustice resulting from maladministration or service failure on the part of the body.	Conduct issue regarding Board of Management member.
General Teaching Council	Misconduct / Mismanagement / Protection of Charitable	N/A	Claim of hardship or injustice resulting from maladministration or service failure on the part of the	Conduct Issue regarding Elected Member representation on Board of Charity Trustees.

	OSCR	Scottish Housing Regulator	Ombudsman	Standards Commission
	Assets Charitable Status		body.	
Care Home	All other i.e. Misconduct/ Mismanagement Protection of Charitable Assets. Charitable Status	If they are an RSL refer.	Service delivery failure that has not been dealt with by RSL/Scottish Housing Regulator/Care Inspectorate own procedures (if care home falls within SPSO jurisdiction).	N/A
Industrial & Provident Societies	All other i.e. Misconduct/ Mismanagement Protection of Charitable Assets. Charitable Status (Note: Financial Conduct Authority may possibly have an interest but OSCR will take lead)	If they are an RSL refer	Claim of hardship or injustice resulting from maladministration or service failure on the part of the body (if in SPSO jurisdiction).	N/A

	<i>OSCR</i>	<i>Scottish Housing Regulator</i>	<i>Ombudsman</i>	<i>Standards Commission</i>
All other	OSCR is the primary regulators of charities therefore would deal with complaint. But there may be time when Ombudsman could become involved - see aside		<p>Charity providing a service on behalf of an Authority within SPSO jurisdiction</p> <p>The Ombudsman should be referred to only when it is clear that the charity is providing a service on behalf of that Authority and there is a claim of hardship or maladministration resulting from service failure on the part of the charity.</p>	