

Memorandum of Understanding

between

the Charities Regulatory Authority

and

the Health Information and Quality Authority

1. Definitions

1.1 In this Memorandum of Understanding:

- (i) “2009 Act” means the Charities Act 2009 as amended from time to time;
- (ii) “2007 Act” means the alth Act 2007 as amended from time to time;
- (iii) “Charities Regulator” means the Charities Regulatory Authority established by section 13 of the 2009 Act;
- (iv) “HIQA” means the Health Information and Quality Authority;
- (v) “HSE” means the Health Service Executive;
- (vi) “MoU” means this Memorandum of Understanding;
- (vii) “parties” means the Charities Regulator and HIQA and “party” means either of them.

2. Purposes and objectives of this MoU

- 2.1** The parties recognise that there are areas where the performance of the functions of the Charities Regulator and HIQA overlap. This MoU provides a framework for a close working relationship between the Charities Regulator and HIQA on matters within these areas. It supports cooperation and collaboration in the interest of ensuring appropriate sharing and assessment of information by both parties in the interest of upholding the integrity of charitable organisations and charitable trusts (“charities”) in Ireland and supporting public confidence in charities operating in Ireland or under Irish law in the interest of service users (for HIQA) and in the public interest for both parties

2.2 The Charities Regulator and HIQA are committed to the statutory purposes of this MoU which are¹:

- (i) to facilitate administrative cooperation between the Charities Regulator and HIQA in the performance of their respective functions in so far as they relate to the regulation of charitable organisations or charitable trusts;
- (ii) to avoid duplication of activities by the Charities Regulator and HIQA, and
- (iii) to ensure, as far as practicable, consistency between decisions made or measures taken by the Charities Regulator and HIQA in so far as any part of those decisions or measures consists of or relates to a determination of any matters concerning the regulation of charitable organisations or charitable trusts.

2.3 The additional objectives of this MoU are:

- (i) to promote cooperation in areas of strategic and high level operational interest;
- (ii) to promote a common understanding of the responsibilities, working procedures, legal powers and constraints of the Charities Regulator and HIQA;
- (iii) to facilitate and provide the necessary safeguards for the exchange of information, with the objective of preventing, detecting and/or remedying misconduct or mismanagement in the administration of charities and charitable funds;
- (iv) to ensure appropriate consultation and co-operation on matters of mutual interest to ensure that charities are encouraged to comply fully with their legal responsibilities under charity and healthcare law and to adopt best practice and governance;
- (v) to promote sharing of knowledge, expertise and experience between the Charities Regulator and HIQA.

3. **Statutory role, functions and relevant powers of the Charities Regulator**

Role of the Charities Regulator

3.1 The Charities Regulator is the independent regulator of Irish charities as established by the 2009 Act.

Functions of the Charities Regulator

3.2 The key functions of the Charities Regulator under the 2009 Act² are:

- (i) to increase public trust and confidence in the management and administration of charitable trusts and charitable organisations;
- (ii) to promote compliance by charity trustees with their duties in the control and management of charitable trusts and charitable organisations;

¹ Section 33(1), 2009 Act.

² Section 14, 2009 Act and section 82, 2009 Act.

- (iii) to promote the effective use of the property of charitable trusts or charitable organisations;
- (iv) to ensure the accountability of charitable organisations to donors and beneficiaries of charitable gifts, and the public;
- (v) to promote understanding of the requirement that charitable purposes confer a public benefit;
- (vi) to establish and maintain a register of charitable organisations;
- (vii) to ensure and monitor compliance by charitable organisations with the 2009 Act;
- (viii) to carry out investigations in accordance with the 2009 Act;
- (ix) to encourage and facilitate the better administration and management of charitable organisations by the provision of information or advice, including in particular by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and model constitutional documents;
- (x) to carry on such activities or publish such information concerning charitable organisations and charitable trusts as it considers appropriate;
- (xi) to provide information or advice, or make proposals, to the Minister for Rural and Community Development³ on matters relating to the functions of the Charities Regulator.

The Charities Regulator also has certain related functions, previously performed by the Commissioners of Charitable Donations and Bequests for Ireland, under the Charities Acts 1961 and 1973.

All functions relating to charitable organisations and charitable trusts that were vested in the Attorney General were transferred to the Charities Regulator pursuant to section 38 of the 2009 Act.

Relevant powers of the Charities Regulator

3.3 The Charities Regulator is mandated by various provisions of the 2009 Act to enter administrative cooperation arrangements with other regulators and to share relevant information with other agencies. In particular:

- (a) section 33 of the 2009 Act requires the Charities Regulator, so far as is consistent with the proper performance of its functions, to endeavour to secure administrative cooperation between it and relevant regulators, and authorises it to enter an MoU or other arrangement with any relevant regulator for the purposes set out above;
- (b) section 32 of the 2009 Act empowers the Charities Regulator to provide a relevant person having functions relating to ensuring compliance with statutory requirements or to the detection, investigation or prosecution of offences with information in the possession of the Charities Regulator as may reasonably be required for the purpose of enabling the relevant person to perform his or her functions;
- (c) in certain circumstances, the Charities Regulator is required under section 28(1) of the 2009 Act to provide information obtained by the Charities Regulator in the performance of its functions that causes the Charities Regulator to suspect that an

³ Functions under the 2009 Act were transferred to the Minister for Rural and Community Development pursuant to the Charities (Transfer of Departmental Administration and Ministerial Functions) Order 2017.

offence has been committed by a charity trustee or a charitable organisation to specified persons.

Particular statutory obligations to provide information

- 3.4 The Charities Regulator is required in accordance with section 28 of the 2009 Act to provide to HIQA any information obtained by the Charities Regulator in the performance of its functions that causes the Charities Regulator to suspect that an offence has been committed by a charity trustee or a charitable organisation where the Charities Regulator is not satisfied that the information has already been reported to HIQA, and HIQA may use such information for the purpose only of the detection, investigation or prosecution of any such offence.

4. Statutory role, functions and relevant powers of HIQA

Role of HIQA

- 4.1 HIQA, having been established under the 2007 Act is an independent statutory authority established to promote safety and quality in the provision of health and social care services for the benefit of the health and welfare of the public.

Functions of HIQA

- 4.2 HIQA's mandate to date extends across a wide range of public, private and voluntary sector services. Reporting to the Minister for Health and engaging with the Minister for Children and Youth Affairs, HIQA has responsibility for:

- (a) Setting standards for health and social care services – Developing person-centred standards and guidance, based on evidence and international best practice, for health and social care services in Ireland.
- (b) Regulating social care services - The Chief Inspector of Social Services within HIQA is responsible for registering and inspecting residential services for older people, people with a disability and children's special care units in order to monitor compliance with relevant regulations and standards. Amongst other enforcement powers, the Chief Inspector of Social Services can attach conditions to the registration of a designated centre (a designated centre as defined under section 2 of the 2007 Act) and cancel the registration of a designated centre.
- (c) Regulating health services - Regulating medical exposure to ionising radiation.
- (d) Monitoring Services – Monitoring the safety and quality of health services and children's social services, and investigating as necessary serious concerns about the health and welfare of people who use these services.
- (e) Health Technology Assessment - Evaluating the clinical and cost-effectiveness of health programmes, policies, medicines, medical equipment, diagnostic and surgical techniques, health promotion and protection activities and providing advice to enable the best use of resources and the best outcomes for people who use our health service.
- (f) Health Information – Advising on the efficient and secure collection and sharing of health information, setting standards, evaluating information resources and

publishing information on the delivery and performance of Ireland's health and social care services.

- (g) National Care Experience Programme - Carrying out national service-user experience surveys across a range of health services, in conjunction with the Department of Health and the HSE.

- 4.2 For the purposes of this MoU, all references to HIQA shall be taken to include the Chief Inspector of Social Services.

Relevant powers of HIQA

- 4.3 Under section 38 of the 2007 Act, HIQA may, subject to any directions given by the Minister for Health and Children under section 29 of the 2007 Act, and on terms and conditions HIQA sees fit to impose, give assistance to a body which performs or proposes to perform a function similar or ancillary to a function that HIQA may perform.
- 4.4 Section 8(3) of the 2007 Act provides that HIQA has all the powers as are necessary or expedient for the performance by it of its functions.

5. Primary Areas of Co-operation

- 5.1 Both parties are engaged in the discharge of their respective regulatory functions in the public interest with particular focus on the protection and enhancement of health and social care services in the case of HIQA and on the proper operation of charities (many of whom are active in health and social care work) in the case of the Charities Regulator. The parties agree that their respective functions will be best discharged in a spirit of mutual cooperation and therefore agree to cooperate in particular in relation to the following matters (without limitation):

- (a) on cross referral of concerns (appropriately redacted) where one party believes that the matter falls within the remit of the other; in this regard, both parties will respect, maintain and adhere to all requirements of the relevant legislation;
- (b) for the Charities Regulator this includes but is not limited to: circumstances where the Charities Regulator, through its investigations and its compliance processes becomes aware of information which may relate to potential deficits in the safety, quality and standard of the service or context of care of a particular charity conducting activities which come within HIQA's remit, including circumstances where the Charities Regulator, through its investigations and its compliance processes becomes aware of information which may relate to suspected concealment, misinformation or fraud involving such a charity or a person responsible for its management that may lead to a suspicion of risk to the safety of residents or service users, which may include but is not limited to safeguarding practices;
- (c) for HIQA this includes but is not limited to: circumstances where HIQA or the Office of the Chief Inspector through its statutory investigation, monitoring and inspection functions becomes aware of concerns which may relate to the management and governance of a charity or which may lead to a suspicion of unlawful activity involving such a charity or a person responsible for its management;
- (d) while each party remains responsible for supervision and enforcement activities for which it is the competent authority, in particular circumstances it may be appropriate for the parties to jointly co-operate and collaborate in the enforcement and execution

of their statutory functions; such occasions will be determined and agreed on a case-by-case basis by the appropriate persons in each party;

- (e) for both parties, information may be exchanged where either party become aware that a charitable organisation may be operating as a designated centre as defined by section 2 of the 2007 Act and is not registered under the 2007 Act or a charitable organisation may be operating as a charity and is not registered under the 2009 Act;
 - (f) for both parties, information may be exchanged where either party have made a decision to cancel the registration of the designated centre under the 2007 Act or charity under the 2009 Act;
 - (g) for both parties, this includes consultation with each party in respect of the development of codes, guidelines and standards on areas of mutual interest and concern that either party may develop and publish from time to time;
 - (h) any other matter in respect of which the parties agree that their cooperation would be in keeping with the spirit of this MoU or otherwise desirable in the public interest.
- 5.2 The parties agree to consult each other in relation to any significant new strategic or policy proposals likely to affect the other party and to provide such relevant information or advice as is necessary.
- 5.3 Where possible, each party will, before publishing any materials, statements, reports or press releases on a matter relevant to the other party and its statutory remit, notify the other party in advance of publication and provide sufficient detail to enable the other party to understand the content of the publication.
- 5.4 The parties agree that they may engage in joint training or knowledge sharing exercises involving their respective personnel where doing so would support the purposes of this MoU.

6. Exchange of Information

General

- 6.1 The parties will ensure that any disclosure of information under the terms of this MoU is carried out in a manner that is prompt, efficient, proportionate and fully in compliance with the law, including in particular the General Data Protection Regulation 2016/679, the Data Protection Acts 1998- 2018, the 2009 Act, the 2007 Act and the Protected Disclosures Act 2014 and any amendments to this legislation.
- 6.2 Neither the Charities Regulator nor HIQA will use any information disclosed under this MoU for any purpose other than the purpose of performing its statutory functions.
- 6.3 Without prejudice to any obligations under the Freedom of Information Act 2014, the Data Protection Acts 1998- 2018 or any other statutory obligations that either party may have, neither the Charities Regulator nor HIQA will disclose any confidential information received under the terms of this MoU to any third party without first obtaining the consent of the party that provided such information. Where information shared under this MoU constitutes confidential information, the parties agree to identify such information as 'Confidential' in the pro forma form in Annex 2 when the information is being shared with the other party.
- 6.4 Nothing in this MoU requires either the Charities Regulator or HIQA to disclose confidential information except in accordance with law.

6.5 Any sharing of data undertaken between the Charities Regulator and HIQA will be appropriately documented and will be subject to strict access and security controls and each party will ensure secure disposal of shared data.

6.6 The parties agree to enter a Data Sharing Agreement which will set out the legal basis for the sharing of any personal data pursuant to this MoU. No personal data shall be shared by the parties unless there is a lawful basis to do so.

7. Liaison and communication

7.1 The parties agree to meet once each calendar year and more regularly where necessary, to review the effectiveness of this MoU and identify any issues that require to be addressed. Strategic, policy or operational meetings will be arranged as required and as agreed between the relevant liaison persons.

7.2 In order to ensure that matters are handled at the appropriate level, contact between the parties will be established between designated liaison persons (as set out in Annex 1). Upon signing this MOU, each party will ensure that the identity and contact details (email and telephone number) of the persons referred to in Annex 1 will be exchanged with the other party. In the event that there is a change in the identity of a contact person referred to above during the term of this MOU, the relevant party will inform the other party of same and will forward the contact details of the replacement contact person.

7.3 The designated liaison persons may delegate ongoing liaison to other members of staff, but should ensure that such members of staff have the appropriate authority to agree principles, policy and processes or are in a position to secure that agreement within a reasonable time.

7.4 The parties undertake to communicate as appropriate on all matters of mutual concern, to act in a good faith and to exchange information relevant to this MoU in a timely manner. Communication will be both formally through scheduled meetings and informally on an ad hoc basis.

7.5 The parties agree to use the pro forma form attached to this MoU at Annex 2 to exchange any concerns or information except in the case of an emergency where information can be exchanged orally. In the case of an emergency where information has been exchanged orally, the disclosing party agrees to use the pro forma form to record the exchange and will share it with the receiving party within a reasonable timeframe.

8. Miscellaneous matters

Legal status of MoU

8.1 This MoU does not give rise to legally enforceable obligations on the part of either party. However, both parties will observe and give due respect to the agreed terms of this MoU.

Amendment of this MoU

8.2 Any provision of this MoU may be varied by the agreement in writing of both parties.

No disclosure if prohibited

8.3 This MoU does not operate to require either party to disclose information to the other if the disclosure of that information by the party concerned is prohibited by law.

Exceptional cases

8.4 While it is intended 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. In these circumstances, both

parties agree to act in good faith and in accordance with all relevant laws and in the interest of transparency and good governance.

Effective Date

- 8.5 This MoU comes into effect upon the date of its signature by both parties and will continue in effect until it is terminated.

Review

- 8.6 This MoU will be reviewed every two years on the anniversary of its signing. In particular, the content of the MoU will be reviewed by the parties to ensure that it remains relevant.

Cost and expenditure

- 8.7 Each party will be solely responsible for the administration of, and any expenditure associated with activities carried out by it under this MoU.

Disputes

- 8.8 Any disagreement arising from the interpretation of this MoU will be referred to the Chief Executives (by whatever name called) of each of the parties, who will endeavour to resolve it within the spirit implicit in this MoU. The parties agree to act in good faith and to make efforts to resolve any matter amicably. Should the matter not be resolved between the Chief Executives, the parties agree to mediation in order to reach a resolution.

Execution

- 8.9 The parties consent to the execution of this MoU by means of a simple electronic signature which shall be considered as an original signature and shall have the same validity, enforceability and permissibility as the original signature for the purpose of this Agreement.

Signed on behalf of the Charities Regulatory Authority

By: Helen Martin

Chief Executive



Date: 25/08/21

Signed on behalf of HIQA

By: Phelim Quinn

Chief Executive



Date: 3 AUGUST 2021

Annex 1 – Designated liaison persons

| Area of Liaison | Charities Regulator | HIQA |
|---|---|--|
| Legal queries | Legal Advisor | Legal Advisor |
| Operational liaison including reporting of concerns | Director of Compliance & Enforcement | Deputy Chief Inspector of Social Services (Disability) |
| Media queries | Head of Communications & Stakeholder Engagement | Media & Stakeholder Manager |

Annex 2

**Form for the Sharing of Information between HIQA
and the Charities Regulator**

| | | |
|-------------|--|--|
| FROM | Charities Regulator Name: Position: Email Address: Phone Number: | Please Tick Appropriate Box <input type="checkbox"/> |
| | OR [delete as appropriate] | |
| | Health Information and Quality Authority Name: Position: Email Address: Phone Number: | <input type="checkbox"/> |

| | | |
|------------|--|--------------------------|
| TO: | Charities Regulator Name: Position: District: Email Address: Phone Number: | <input type="checkbox"/> |
| | OR [delete as appropriate] | |
| | Health Information and Quality Authority Name: Position: Email Address: Phone Number: | <input type="checkbox"/> |

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Name, Registered Charity Number and Address of Charity:

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Relevant Date:

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Description of Incident/Concern:

[Note: All personal data should be anonymised where possible and should only be disclosed if necessary and proportionate to do so]

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Please use additional pages if necessary

Date:
[refers to date form is completed]

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