

MINUTES

OSCR BOARD MEETING

Held on 31 October 2006 @ 10.00 am

Apex European Hotel, Haymarket

Present: John Naylor, Chair
Frank Kirwan, Deputy Chair
Martin Crewe, Board Member
Annie Gunner, Board Member
Lindsay Montgomery, Board Member

Apologies: Iris McMillan, Board Member

In attendance: Jane Ryder, Chief Executive
Judith Hayhow, Head of Resource Management
Marieke Dwarshuis, Head of Charities
Kirsty Gray, Head of Monitoring & Investigation

ACTION

1. Discussion with the Scottish Executive

- 1.1 The Chair welcomed Mike Palmer, the Head of the Voluntary Issues Unit of the Scottish Executive. Mike Palmer started by reflecting on the very smooth establishment of OSCR as an NMD, and complimenting the Board and staff of OSCR for a transition which from the Scottish Executive perspective has been very positive.
- 1.2 Mike Palmer then went onto introduce and discuss with the Board a number of different topics.

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(a) TII

The Minister intends to issue a statement confirming an intention to legislate to overcome the problems of trustee indemnity insurance. MP also confirmed that this may create an opportunity for addressing other minor difficulties which have come to light, but would not be intended as a vehicle for substantive changes. The legislation is highly unlikely until after the 2007 Parliamentary elections. No date for an announcement could be given. The Chair indicated that on 8 November he was speaking at the Newton Charity Seminar with many key advisers, charities and umbrella bodies present and already this was the topic with the most questions.

(b) Regulations

MP explained that the Scottish Parliament elections in May 2007 gives the Charity Law Team a deadline; Regulations need to be laid before Parliament by the end of February, and would otherwise be delayed until some time after the election. Of the outstanding Regulations:

- SCAP Regulations have been drafted, and the intention is to lay these within the next month. The Chief Executive expressed some reservations about the draft Regulations, just received by OSCR and OSCR will provide detailed comment to VIU as soon as possible.
- Trust Reorganisation Regulations (section 39-42), are out for consultation until the end of January. It will be a very tight turnaround to then get these laid by the end of February. Mike assured the Board that VIU are aware of the need to get these Regulations out, and every effort will be made to get this done. Early feedback from OSCR would be helpful.
- Section 15 Regulations: MP assured the Board that these will definitely be laid before the end of the calendar year. The Board expressed their concern over the delay in producing these Regulations, and stressed the importance of these

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Regulations for the day to day operations of charities.

- Fundraising Regulations: the responses to the consultation are currently being analysed. The intention is that these Regulations will also be produced to meet the February 2007 deadline but it is recognised this is tight.

Looking further ahead, Regulations will also need to be made in respect of SCIO's and dormant accounts, and a follow up on the Accounting regulations.

There is no firm timetable for these at present. It was agreed however that OSCR staff and the Charity Law team should meet before the year end to discuss specific issues regarding the outstanding issues on Accounting Regulations, and to liaise on a response regarding the current Treasury led initiative on dormant accounts.

(c) Scottish Charities Appeal Panel

The Secretariat has now been appointed and is currently organising the training of 24 panel members, the reporting of SCAP decisions and the developing of its website. There is no President, but Vanessa Glyn has an ambassadorial role for SCAP. MP confirmed that if demand did not require the level of resource earmarked that it would be reduced and not used to expand the role and activities of the Panel.

(d) Strategic Funding Review

The Scottish Executive has been taking stock of the implementation of the Strategic Funding Review and MP gave an update on likely changes to the existing model. Some Board members expressed concern at issues left unresolved, in particular the implementation of Full Cost Recovery within the context of service procurement. OSCR's locus in this and similar discussions is to highlight what are the issues for charities, based on OSCR's developing knowledge of the sector.

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The meeting finished with a brief discussion of the developing relationship between the Scottish Executive and voluntary bodies, which is particularly relevant given OSCR's strategy of working with intermediaries as part of OSCR's compliance support strategy.

Mike Palmer was thanked by the Chair for the open and clear way he had discussed the issues. All agreed it had been a most useful session.

It was agreed that Nicky Munro would be invited to a future meeting with the Board as she had been unable to come this time.

2. Minutes from previous meeting

Agreed

2.1 Apologies

Apologies received from Iris McMillan.

3. Declarations of interest

Annie Gunner and Frank Kirwan each declared an Interest as a trustee of "cross border" charities and Martin Crewe declared an interest as an employee of a "cross border" charity. It was agreed that these interests did not preclude them from taking part in the discussion on either agenda item (8) or (9).

4. Matters Arising

- 4.1 Corporate Plan: it was agreed that in future the names of the Board members should be included in this and all other similar documents.
- 4.2 There were no outstanding action points arising from previous meetings that were not taken up in the agenda items for this meeting.

5. Chief Executive's report

- (a) The Chair noted that feedback on the performance of OSCR so far, from

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charities and other stakeholders, has been very positive. This was very encouraging but all recognised there was no room for complacency.

- (b) The statistical report is very useful, but the Board would also like to know how the figures and statistics that OSCR produces and publishes compare with those published by the Charity Commission.

OSCR staff to take forward with Charity Commission

- (c) The OSCR Risk Register will be discussed by the Audit Committee at its meeting on 13/11. It was agreed that the full Board should see the Risk Register once a year.

6. Corporate Planning

The Chief Executive introduced paper 31-10-06/Board/44 which set out proposals in respect of the 2007-10 corporate planning process. It was noted that the Board had agreed at its July 2006 meeting that a target date of March 2007 would be set for publication of the 2007/10 plan. However, it was noted with the planning timelines proposed, the consultation period would have to reduce from the standard three months to one month at best. Following discussion, it was agreed the issue of process was important in terms of reputation management and that the 3 month consultation period should be adhered to. The draft plan will therefore be put out for consultation between February and April, with a view to the final plan being available in May 2007.

Given that the Board had recently agreed the OSCR 2006/07 Strategic Objectives, and had considered in depth the nature of OSCR's role in respect of the creation of a flourishing charities sector, it was agreed that there was no need for a further Board/SMT meeting at this stage. A draft 2007/10 Plan should be prepared and circulated to Board members by the second week in December. Board members' comments could then be discussed at the January Board meeting, at which point staff would also participate in discussions in respect of the draft plan. Proposals in respect of the consultation process would also be considered by the Board in January 2007.

Chief Executive to progress

ACTION

7. Fundraising including Concordats with FSB

The Chief Executive introduced Board Paper 31-10-06/BOARD/45 which provided an overview of different topics related to fundraising.

- (a) The Board reflected that OSCR's role in relation to fundraising is limited, particularly given that fundraising provisions extend to any benevolent organisation not just charities. The Board noted a clear link here to the need for section 15 Regulations dealing with disclosure of charity status.
- (b) The relatively limited role of OSCR highlights the importance of self regulation, to be reflected in the success of the Fundraising Standards Board. The draft Concordat between OSCR and the Fundraising Standards Board was agreed, with the recommendation that OSCR produce very simple guidance for the public consulting FSB as appropriate.
- (c) It was noted that there are no Regulations proposed for the collection of goods, although Ministers may introduce them. This matter was of concern to charities and charity regulators in UK and Ireland. As a first step staff are developing a 5 point check list of simple questions for the public with the aim of a co-ordinated promotion for maximum impact across the UK and Ireland.
- (d) The Board noted OSCR's role in the development of the International Statement of Ethical Principles in Fundraising, and the Chief Executive's proposal to bring this to the Board for endorsement once formally ratified by the UK Institute of Fundraising. Endorsement would be a small step towards addressing an area of growing interest. In this connection, the Board also noted a growing EU and Home Office/Treasury interest in the international application of funds.
- (e) The Board noted that the outcome of the Breast Cancer Research (Scotland) case, in particular

Chief Executive to progress

ACTION

the difference which the new legislation and OSCR new monitoring procedures would have made with earlier intervention. It was recognised that the ultimate sanction of a Judicial Factor is relatively rare and continues to raise new questions, which are being kept under review.

8. The charity test and the definition of charitable

The Head of Charities introduced Board Paper 31-10-06/BOARD/46 and following a full explanation of the issues raised in the paper on the use of tax/English law definitions of charitable purposes in constitutions, the Board discussed the matter in some depth. Having reviewed the options the Board accepted as a principle that OSCR appeared to have no discretion in interpreting the legislation regarding the entry of bodies into the Register which fail the charity test.

The Board agreed that Senior Counsel should be instructed for a further review, and if necessary, the Chief Executive will alert Ministers to the practical consequences arising. It was noted that the Head of Charities would assess the likely extent of the problem based on current applications, particularly those representing cross border registrations. A suitable communications strategy will be developed.

**Chief Executive/
Head of Charities
to progress**

9. Cross Border Charities

The Chief Executive introduced Board Paper 31-10-06/BOARD/47 and in light of the complexities in relation to cross border charities and the desire to minimise the burden of dual regulation, the Board agreed the proposal that cross border charity registration applications would proceed as planned, but that monitoring of these charities would be delayed for a minimum of one year to facilitate further development with the Charity Commission. It was further agreed that a new Concordat would be developed with the Charity Commission, ideally for approval at the next Board meeting.

**Chief Executive
to progress**

ACTION

10. Financial Overview and Audit Arrangements

The Board noted the contents of paper 31-10-06/BOARD/48 which gave an overview of OSCR's 2006/07 financial allocation, together with commentary on the likely outturn position at the end of the year. It was noted that a capital underspend is projected as a result of the decision to delay implementation of a third phase of technical infrastructure development, and that running costs savings had also been made, particularly in relation to the transition of OSCR from Executive Agency to Non Ministerial Department. The Board were asked to note that whilst the projections included estimated legal fees associated with SCAP, and fees in respect of any resulting Judicial Reviews, at this stage it is not possible to accurately predict what these fees might be. It was noted that OSCR were in the midst of an Internal Audit visit by SE Central Service Audit Service, and agreed that an Audit Committee meeting be arranged for 13.11.06 to discuss the findings from this. The Scottish Executive were being kept informed of the latest forecasts.

11. Equalities

The Chief Executive introduced Board Paper 31-10-06/BOARD/49 which outlined the approach that was being taken by OSCR to develop its Equalities Strategy. It was noted that the first Equalities Reference Group meeting had taken place, and had been a very good meeting. Those present had welcomed the breadth of approach OSCR proposed to take in addressing its role in the equalities agenda, and had also welcomed the opportunity to be involved in the development of the strategy from the outset. This was noted by the Board who agreed the Consultation plan as detailed in Appendix 2 of the paper. Board members also indicated their willingness to undertake specific training in respect of equalities.

**Chief Executive
to progress**

12. Date of Next Meeting

Alternate dates in the second half of January 2007
Would be circulated along with a proposed schedule
For the rest of 2007.

PROGRESS:

Charity Commission	: see agenda item 9 (31-01-07/BOARD/59)
Corporate Plan	: see agenda item 7 (31-01-07/BOARD/55)
Fundraising Standards Board	: see agenda item 9 (31-01-07/BOARD/59)
Charity Test	: see agenda item 8 (31-01-07/BOARD/58)
Cross Border Charities	: see agenda item 8 (31-01-07/BOARD/58)
Equalities	: consultation launched 8 January 2007