

2009-09-18/BOARD/187

MINUTES

OSCR BOARD MEETING

Held on 7 July 2009 @ 9.45 am

OSCR, Dundee

Present: John Naylor, Chair
Lindsay Montgomery, Deputy Chair
Annie Gunner Logan, Board Member
David Hughes Hallett, Board Member
Iris McMillan, Board Member
Fiona Ballantyne, Board Member
Oscar Mendoza, Board Member

Apologies Martin Crewe, Board Member

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

		ACTION
1.	<p>Chairman's Introduction.</p> <p>The Chairman welcomed Members to the meeting, and congratulated Lindsay Montgomery on being awarded a CBE in the Queen's Birthday Honours List.</p> <p>Oscar Mendoza gave feedback from an Equalities conference he had recently attended at which Dame Suzi Leather, Chair of the Charity Commission for England and Wales had given the keynote speech.</p> <p>Feedback from the Chair's recent meeting with Fergus Ewing, Minister for Community Safety was also provided. It was noted that the Minister was</p>	

	<p>very supportive of the Annual Report Recommendations, and has also agreed to give the keynote address at our Annual Open Meeting in October. The Minister is particularly interested in Fraud, and how OSCR is acting to address possible charity Fraud,</p>	
2.	<p>Minutes and Declarations of Interest.</p> <p>The Board considered the Minutes from the Meeting of 14 May, and subject to minor amendment, they were approved.</p> <p>Declarations of Interest were given by Iris McMillan and David Hughes Hallett, both of whom are Members of the National Trust for Scotland; and Oscar Mendoza, who works for the Big Lottery Fund.</p>	
3.	<p>Matters Arising.</p> <p>1. It was noted that the Chair was still in discussion with the SG re. Board Member recruitment, and there were still issues to be resolved to meet the target of advertising of the post(s) in early September.</p> <p>2. The Corporate Plan is to be published on the website later in the week, with an Executive Summary Document to follow.</p> <p>3. The Charity Commission for England and Wales has now published its Recession Toolkit for Charities, on line. Consideration will be given to the relevance of this to Scottish Charities.</p> <p>4. GTCS Update. Since the last Board meeting, the Scottish Government Branch responsible for the GTCS, together with the solicitor representing the organisation have been working to prepare a Draft Section 102 Order. It is intended that the Order will be considered by the Scottish Parliament after its summer recess, but hopefully before November, which is when a date is likely to be set for the SCAP hearing. Presuming that Parliament will approve the Order prior to this date, and the Order removes all aspect of ministerial control, the SCAP hearing can then be cancelled.</p> <p>5. Creative Scotland, the soon to be established NDPB falls into the same situation as GTCS in that its constitution permits control by Ministers. In the</p>	<p>Chair</p> <p>Chief Executive</p>

	<p>event that it should apply to OSCR for charitable status, as enjoyed by its predecessors Screen Scotland and the Scottish Arts Council, charitable status could not be granted. There has been considerable media coverage, of a recent conference at which this issue was raised. OSCR and the Scottish Government have been aware of this situation for several months, and have already discussed the options available to Ministers if the policy intent is to ensure that the new body secures charitable status. It was agreed that the Chair would write to Mike Russell, the Minister for Culture, External Affairs and the Constitution, and to the Chair Designate restating that the key decision relating to ministerial control and any consequent process was with Ministers not OSCR and offering to meet with them to outline the position once more.</p>	<p>Chair</p>
<p>4.</p>	<p>Ability to Pay Research.</p> <p>Members considered Paper 176, 'Research on Ability to pay for fees charged by Charities'. This Paper outlined the work commissioned by OSCR as the second stage of our research into households' ability to pay, and specifically the attempts made to generate a computer based model which would allow OSCR staff to consider how affordable charges made by charities would be to Scottish households.</p> <p>Over recent weeks the model has been 'tested' using information on charges supplied by charities over the past 3 years of OSCR decisions re charitable status. This has demonstrated that the assumptions previously made in respect of charges and the ability to pay, have been correct. The model is inevitably very formulaic, however, and does not take account of significant issues such as household choice, and prioritisation of expenditure. It was also noted that the financial information used in the research is between three and six years old, and therefore does not reflect the current economic challenges being faced by many households. Significantly, the research focuses on the circumstances of the (potential) beneficiary rather than the charity itself, and specifically the steps the charity is taking to facilitate access to the services it provides.</p> <p>For those reasons, it was agreed that whilst some</p>	

	<p>very useful information had come out of the research, it would not be advisable to use it as the primary basis for taking decisions in connection with status applications. Following lengthy discussion, it was agreed that an additional paper should be brought to the next Board meeting, detailing exactly how it is proposed that OSCR might take account of the research. In addition, the consultants who carried out the work would be asked to confirm whether more up to date income data was available, and how regularly updates could be provided. The research findings will not be published until after the Board has considered this information, and in the meantime a holding line should be prepared for responding to any media enquiries.</p>	<p>Head of Charities</p>
<p>5.</p>	<p>Rolling Review Update.</p> <p>The Board considered Paper 177.</p> <p>It was noted that OSCR has received confirmation from the four charities where OSCR was not satisfied that public benefit was provided, that they intended to comply with the Direction issued. These charities are in the process of preparing action plans detailing the steps they propose to take. There was considerable discussion in respect of who would evaluate these Plans, and the role of the Board in this respect. It was argued that whilst the Schedule of Delegated Authority does permit the Board to make individual decisions, it would be more appropriate for Members to consider the matter along similar lines to the initial rolling reviews.</p> <p>The Board noted the progress which was being made with regard to the Phase 1b reviews, and Lindsay Montgomery expressed disappointment that no International Charity was included in the review group. There then followed discussion on how best to review the work of charities which work outwith Scotland, and it was suggested that a themed study approach might be appropriate.</p> <p>As part of the general discussion, Members highlighted that there was still a perception amongst charities that each would be subject to an individual review at some point in the future. The Board confirmed the approach agreed at the previous Board meeting, that in accordance with the risk</p>	

	<p>based approach to review, a small number of individual charities will be reviewed, but on the basis of the evidence OSCR has now moved away from the original assumptions, and there is now no plan to consider every organisation listed on the Register. It was suggested that re-iterating this message on the website and at the Annual Open meeting would be helpful. Meanwhile consultation on Integrated Reporting will look at the relationship between the Rolling Review, as currently undertaken, and routine monitoring.</p> <p>Using the recent changes of purpose of the St Margaret's Children and Family Care Society as the introduction, the Board considered whether and how OSCR should respond to charities who may use or intend to use exemptions under the Equality Act (Sexual Orientation) Regulations 2007 and arguably discriminate against particular groups in society, thereby raising the question of the charity no longer meeting the public benefit element of the charity test. After much debate, the majority of the Board agreed that until such times as there was greater clarity about the applicability of the 2007 Regulations, it would be premature for OSCR to become involved in reviewing whether the Charity test was still being met on this basis. However, the Board agreed that the equalities situation should be kept under review</p>	
6.	<p>Audit Committee and Corporate Governance review</p> <p>The Chair of the Audit Committee (Lindsay Montgomery) reported on the last meeting of the Audit Committee. At this meeting the internal and external audit reports had been received, which gave satisfactory assurances. The Audit Committee is content with the Annual Report and Accounts which are proposed to the Board for approval</p> <p>The Audit Committee reported on its review of corporate governance arrangements in OSCR in June 2009. It concluded that OSCR had sound corporate governance. The Board noted the report, subject to some textual amendments. The Board agreed that a similar Governance review be undertaken every 2 years.</p>	
7.	<p>Risk Register</p>	

	<p>The Audit Committee had considered the Risk Register in detail at its last meeting, and comments made had been reflected in the copy of the Risk Register presented to the Board meeting.</p> <p>It was noted that the Communications Strategy is mentioned on several occasions as a method of mitigating an identified risk. It was therefore agreed that when the Board next considers the Risk Register, the Communications Strategy should be considered alongside this.</p>	
8.	<p>Annual Report and Accounts</p> <p>The Board considered the Annual Report and Accounts, and, subject to a small number of minor textual amendments, approved the Annual Report and Accounts.</p>	
9.	<p>Chief Executive's report (1) – constitutional issues</p> <p>The Board considered the Chief Executive's first report, which focused on the issues of Regulatory Reform, the Public Service Reform Bill, and the Calman Commission report.</p> <p>Regarding Calman, the Board agreed the paper and restated concerns about the underlying assumption that the present Westminster legislation should be adopted by all jurisdictions.</p> <p>In respect of the PSR Bill, the Board agreed key points to be made in written evidence, to be submitted to the Finance Committee by 14 August.</p> <p>It was agreed that the draft written evidence would be circulated for comment to all Board members prior to submission.</p>	Chief Executive
10.	<p>Chief Executive's Report (2) – other issues</p> <p>The Board noted the second Chief Executive's report, which includes an update on regulatory policy developments, operational issues, and corporate services.</p>	
11.	<p>Integrated reporting update</p> <p>The Board noted the proposed changes to</p>	

	<p>Integrated Reporting for consultation. The views of the Board were then sought on whether OSCR should publish accounts and details on trustees.</p> <p>A spectrum of views was expressed on charity accounts publication including:</p> <ul style="list-style-type: none"> - no publication by OSCR but encouragement of charities to publish on own websites - OSCR would publish summary key high level financial information in a consistent format but not full accounts which varied enormously - Medium and large charities accounts published only <p>The advantages of publication were recognised in driving up compliance and improving transparency and accountability. The disadvantage was the present mixed quality of accounts, the anticipated significant cost associated with the provision of publication of accounts and the limited use likely to be made of such accounts.</p> <p>Whilst the Board could see an intelligence benefit in having a trustee database, the challenges of charities keeping it updated and the costs associated with maintaining it, whether by OSCR or the charity, appeared to outweigh the advantages. It was noted that if accounts were published, then trustee names would be in the public domain. However, moving from one to a second alternative contact trustee to reduce the time and inconvenience to the charity and OSCR when a contact changes, was supported.</p> <p>The consultation will include consideration of OSCR's long term approach to the current Rolling Review programme.</p>	
12.	<p>Annual Concordat Review</p> <p>The Board noted that all Concordats have been as envisaged reviewed annually. The Chief Executive stated that some agreements are more active than others and that due to legislative and structural changes a number would be reviewed within the next 12 months, including the Care Commission and Scottish Housing Regulator. HMRC and the Charity Commission have the widest application and are in most constant use and a concordat with the new Northern Ireland Charity Commission will be developed. A review of the Fundraising Standards Board concordat is dependent on its long</p>	

	<p>term strategy.</p> <p>The Board approved the policy statement for joint working with the Big Lottery Fund and authorised the Chief Executive to sign on behalf of OSCR</p>	Chief Executive
13.	<p>Annual Equalities Review</p> <p>The Board noted the update on the 2008/09 action plan and considerations for 2009/10.</p> <p>The Chief Executive highlighted that the current OSCR equalities strategy reflected initial debate at three possible levels of application:</p> <ul style="list-style-type: none"> - OSCR as employer (effected through OSCR/Scottish Government's HR policies) - OSCR internal processes and interaction with stakeholders in the discharge of primary functions, as reflected in current strategy - Promotion of equalities within charities which was for future consideration <p>The Board agreed that the last element would be revisited as part of the development of a revised strategy in 2011 and with an understanding of the impact of the forthcoming Equality Bill.</p> <p>The Board agreed that Board Members should receive some specific equalities training once the Bill was enacted.</p>	
14	<p>OSCR Annual Conference 2009</p> <p>The Board noted the proposed agenda and format for the 2009 meeting. Some minor amendments were made to the first session. It was agreed that in addition to a combined board member presentation, an external speaker be sought for the other session two presentation. Proposed names are to be sent to the Chief Executive.</p>	Board Members