

MINUTES

OSCR BOARD MEETING

Held on 16 April 2007 @ 09.30 am

Quadrant House, Dundee

Present: John Naylor, Chair
 Frank Kirwan, Deputy Chair
 Martin Crewe, Board Member
 Lindsay Montgomery, Board Member
 Iris McMillan, Board Member

Apologies: Annie Gunner, Board Member

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

		ACTION
1	<p>Minutes from previous meeting</p> <p>These were agreed</p>	
2	<p>Declarations of Interest</p> <p>The Board considered the issue of declarable interests and concluded these should be of current rather than historic interests. The following relevant interests were declared at the outset or as matters arose:</p> <p>Chair: involvement with Scouts, a membership organisation.</p> <p>Deputy Chair: member of Audit committee of Amnesty international (a cross border charity with trading subsidiaries) and a university lecturer (relevant to University pilot re fees and possible private benefit of non publicly funded research).</p>	

	<p>Lindsay Montgomery: currently paying private school fees.</p> <p>Martin Crewe: Chief Executive of a charity which charges fees and has a trading subsidiary (<i>MC to confirm</i>).</p> <p>Annie Gunner (re written comments) Chief Executive of membership organisation, whose members charge fees.</p>	
3	<p>Matters Arising</p> <p>3.1 The Chair reported on satisfactory meetings with the Scottish Executive agreeing to the recommendation that 2 additional members be recruited. This had included discussion about the principle of remuneration for OSCR Board members. The Board discussed whether it was appropriate to amend existing arrangements and permit Board members to be remunerated in accordance with permitted SE guidelines. Board members discussed the fact that the Board was not remunerated so that it was similar to the unpaid Boards of the charities that it regulated. They concluded that the roles of a regulator's Board and of a charity were very different.</p> <p>Most importantly payment would be consistent with OSCR's equality responsibilities. The issue arose during initial Board member recruitment. Payment should ensure a greater pool of individuals might be willing to serve as Board members. This would include those who would lose pay for time taken off work and the increasing numbers of self employed individuals with portfolio careers. There was also concern that as OSCR became more established Board membership may be less attractive than when setting up a new body. It was also argued it could reinforce the public accountability of Board members.</p> <p>The Board agreed with the principle of remuneration, the final decision being for Ministers.</p>	<p>The Chair will take this forward in discussions with SE re the recruitment process</p>
3.2	<p>Most other matters arising were covered in the remainder of the agenda.</p>	
4	<p>Monitoring Presentation</p> <p>This was postponed, to allow for discussion of the Rolling Review.</p>	

5	<p>Rolling Review</p> <p>5.1 Priorities</p> <p>Arising from the consultation, the Head of Charities proposed some amendments to the priorities outlined in the consultation paper. This included adding a sample of other fee charging charities, including fee paying tourist attractions, membership based organisations and charities with trading structures. Changes were also made in the priorities in the different phases . Noting these amendments and the indicative sample sizes the Board agreed the Phase 1 priorities and the order in which these should be tackled. The Board noted the Phase 2 proposals and agreed that for newly registered charities the rolling review could take place between 3 and 5 years of registration, again on a risk based approach, as the charities would be subject to annual monitoring in the meantime.</p>	
5.2	<p>Process</p> <p>The Head of Charities introduced the supplementary Board paper outlining the key processes, further detail of the pilot findings including the checklists and decision frameworks, incorporating criteria, for each. She confirmed that it is explicit that a charity will be contacted before a direction under s30 is issued and there would normally be dialogue, although a straight removal without a time limited direction could happen if no suitable direction can be made. She further explained the OSCR internal decision making processes including quality assurance. Both to enhance their understanding of the rolling review process and fulfil their responsibilities, the Board confirmed that wished to be kept informed of cases with a high profile, a high reputation risk to OSCR, or cases referred to SCAP. The Board agreed the process.</p>	
5.3	<p>Criteria assessment</p> <p>The Chair introduced the discussion by noting that decisions taken would lead to precedents being set and that such decisions require to be defensible, consistent and transparent, in accordance with regulatory principles. They will be subject to FOI. Given the nature of the legislation, the limited precedents and strong views that were held by some, this was a difficult</p>	

challenge.

After the initial Board papers were circulated, members had asked for more information to understand the decision making process and criteria better.

Annie Gunner, who had been unable to attend, had commented on the papers. Board members who had reflected on these comments felt that given the nature of the task and information available that it was unlikely that final decisions would be made at this meeting.

The Head of Charities set the scene by reminding the Board members the public benefit test is clearly based in the law and is the test already undertaken for new applications since April 2006. Public benefit is the assessment of the benefit to the public of the activities provided within a recognised charitable purpose together with considerations of disbenefit, private benefit and unduly restrictive conditions. An unduly restrictive condition is therefore only one aspect of the charity test.

The Board considered and relatively quickly agreed the majority of the criteria (and therefore likely outcomes) of the pilots. The Board then discussed the university and the school pilots in considerable depth to tease out the main issues relating to benefit and unduly restrictive conditions.

There was a robust discussion on the merits of quantifying **benefit** both social and economic, particularly whether the charity test should include detailed assessment of net gain and loss to the public purse through balancing tax revenue forgone against public expenditure saved, along with other factors which impacted on the public purse. Noting Frank Kirwan's dissent, the Board decided by majority not to pursue at this stage the public purse argument in depth or the debate about quantifying broader sociological impact when making rolling review assessments. Although these might be technically within the scope of OSCR's competence, the complexity of the issues, their wide ramifications and above all the considerable resource requirements made this unrealistic.

The Board considered, without coming to a firm conclusion, whether the charity test was sequential (where all elements must be met in turn) and whether any particular elements (e.g. unduly restrictive

	<p>conditions) carried greater weight than others. The Board also considered, without coming to a firm conclusion, whether it was material that OSCR decisions might differ from those of the Charity Commission (noting briefly the discussions at the recent UK Regulators Forum) or from HMRC.</p> <p>The Board discussed what might be unduly restrictive conditions, particularly what might be regarded as “undue” in relation to the level of fees charged. The Board valued the extensive range of information provided on the pilot studies noting that results were indicative and recognising the evolutionary nature of the process. After a wide ranging discussion, the Board requested more detailed rationale for the proposed framework together with more comparative information particularly in relation to the school pilot. This would be considered at the next Board meeting.</p>	
5.4	<p>Communications Plan</p> <p>In light of the above discussion it was agreed that publication of the pilot study results would require to be deferred until after the May Board meeting. Further adjustments to the original timetable were also likely to follow the May Board meeting.</p>	
6	<p>Communications</p> <p>The Board briefly considered the results of the charity and public surveys, the proposed format of the Annual Review and the communications plan. For a variety of reasons, the Board agreed the Open meeting would now be held in September.</p>	
7	<p>Audit Committee Report and 2007/08 Budget</p> <p>Frank Kirwan reported that the 2007/08 financial projection is within Scottish Executive allocation and that the 2006/07 March outturn would also be within target. The budget was prepared with a quarterly phasing and the Board agreed that financial reporting to the Board should be on a similar basis. He also updated the meeting on the recent audit committee meeting noting that the internal auditors reported that they were satisfied with OSCR internal controls.</p> <p>Frank Kirwan noted that the Board discussion on risk appetite was outstanding. Iris McMillan sought reassurance about where health and safety matters were addressed.</p>	

	<p>The Chief Executive commented that in commencing a new financial year, SMT were assessing performance statistics and asked for Board input. Statistics on the numbers of status refusals and types of complaints and investigations were suggested.</p>	
8	<p>Chief Executive's Report</p> <p>The comprehensive range of issues and activities outlined in the Chief Executive's report were noted briefly by the Board, who expressed their satisfaction at the progress and ongoing work which had been undertaken by the organisation since January. The Chief Executive also advised that since the report had been prepared, formal notification had been received from Investors in People Scotland that OSCR had met the required standard to attain accreditation. The Chair expressed his pleasure at this outcome, on behalf of the Board.</p> <p>The meeting closed at 4.15pm</p>	