

MINUTES

OSCR BOARD MEETING

Held on 27 November 2007 @ 09.30 am

Quadrant House, Dundee

Present: Frank Kirwan, Deputy Chair
 Martin Crewe, Board Member
 Lindsay Montgomery, Board Member
 Iris McMillan, Board Member
 Annie Gunner, Board Member

Apologies: John Naylor, Chair

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

Part: Robert Gordon, Director General Justice & Communities

		ACTION
1	<p>Robert Gordon – Director General Justice & Communities</p> <p>The Chair welcomed Robert Gordon to the meeting, who started by giving his positive perspective on the development of OSCR so far. RG identified a number of emerging issues of which he was aware including the timetable for further implementation of the charities legislation, in particular the development of Regulations within the changed landscape of a minority Government. With regard to future Board recruitment and remuneration, RG indicated that Ministers have all the information they need to make a decision very shortly.</p> <p>There was a general discussion of the Crerar Report,</p>	

	<p>and how future relationships between central Government, local Government and other organisations may develop. It was noted that Scottish Ministers have not yet reached a conclusion on how to take the Crerar recommendations forward. The Board stressed it was important in this context, to note certain misunderstandings in the Crerar Report. It is difficult to see a significant overlap between OSCR role and functions and those of other regulators, although OSCR recognises the importance of a rational regulatory landscape and can respond positively on the issue of shared services, complaints handling and other issues raised in the report.</p> <p>It was agreed, now the Charity Law Team has moved to the Civil and International Justice Directorate (and is part of DG Justice) a new Framework Agreement should be drawn up between OSCR and the Scottish Government. The Chief Executive will initiate this, while HORM should establish operational links with Justice Finance and the Justice HR Business Partner.</p> <p>Finally, there was a discussion about OSCR's ability to act in cases of public collections made by bodies that are not charities, but which do not breach the legislation. There is an issue of public understanding and expectation. It was agreed that this may be a matter for OSCR to advise Ministers, in particular in the context of Regulations on Public Benevolent Collections and the (dormant) Provision of the 2005 Act regarding the collection of goods.</p> <p>The Chair thanked Robert Gordon for an interesting discussion.</p>	<p>Chief Executive/Head of Resource Management</p>
<p>2</p>	<p>Minutes from previous meeting</p> <p>The minutes of the 3 October 2007 meeting were approved.</p>	
<p>3</p>	<p>Declarations of Interest</p> <p>Declarations of interest are as those indicated previously.</p> <p>As a part time university lecturer, Frank Kirwan declared an interest in relation to one example quoted in the Charity test guidance, that of university research. It was agreed this did not preclude him participating in the debate.</p>	

4	Matters Arising	
4.1	<p>Board Matters – Register of Interests</p> <p>The Board noted the proposed revised guidance from the Standards Commission. The Board confirmed the Head of Resource Management as the Standards Officer to maintain the Register of interests, and confirmed that advice for Board members was available from the Chief Executive.</p> <p>The Board discussed a number of scenarios where the Code might be particularly relevant and agreed that the Chief Executive should draft an updated protocol for Board guidance.</p>	Chief Executive
4.2	<p>Board Matters – Board Recruitment</p> <p>The Board noted that Scottish Government’s recruitment of Board members is in hand and discussed the appropriate response to Ministers’ decision on remuneration, once this is made.</p>	
5	<p>Meeting the Charity Test</p> <p>The Head of Charities introduced revised guidance confirming that OSCR’s intention is that a shortened form of guidance would be available for issue with application and self assessment forms, the standard guidance would also be available to applicants and in addition more extensive guidance available on particular issues. The revised guidance was well received by the Board noting both its clarity and enhancement through the inclusion of examples.</p> <p>Given that this will be the second round of consultation on Meeting the Charity Test guidance there was a discussion on the nature and style of the consultation questions and whether the consultation was aimed primarily at ensuring an understanding of the requirements rather than seeking agreement. The Head of Charities agreed to review the questions in light of the Board input.</p> <p>A small number of textual changes were proposed and it was agreed that any further wording amendments be sent to the Head of Charities by the end of the week.</p> <p>Following a background introduction on current</p>	

	<p>thinking regarding the commissioning of the research into affordability to further inform OSCR's approach to the assessment of unduly restrictive conditions for fee charging charities, the Board confirmed their agreement to proceed with such research. The tender is to seek proposals on methodologies to assess affordability in the choice of charitable services. It was noted that the timetable for results from the research project would not directly impact on the guidance consultation process or any status applications or rolling review decisions meantime.</p> <p>The Charity Commission's timetable for public benefit guidance was noted.</p>	<p>Head of Charities</p>
<p>6</p>	<p>The Board Cycle 2008</p> <p>The cycle of Board meetings for 2007, and issues to be addressed at each Board meeting were agreed. The March meeting should also include an update/review of the OSCR Corporate Plan 2008/09. The possibility of a corporate Away Day, for staff and Board, was in principle agreed, with June 2008 being a possible date.</p> <p>It was agreed that if/when new Board members have been appointed, the induction programme including meetings be separate from the cycle of Board meetings. It was also agreed that time needs to be factored in, preferably outwith the cycle of Board meetings, for training for the Board. Training needs for the Board will be identified in the course of appraisals currently being undertaken by the Chair.</p>	<p>Chair</p>
<p>7</p>	<p>Communication Strategy</p> <p>The Chief Executive updated the Board on a number of detailed points. It was agreed Board members could play an ambassadorial role for OSCR by raising the profile of OSCR and its role, by highlighting their own position as Board members and indicating how OSCR relates to their different areas of operations whenever an opportunity arises as appropriate, e.g. speaking at conferences as well as in general discussion.</p> <p>It was agreed the proposed leaflet introducing OSCR should highlight ways in which the general public are able to interact with OSCR and what it does – for example how to look up charities on the Register, how to look up reorganisation proposals, how to make a complaint about the charity. The Board</p>	<p>Board Members</p>

	supported the policy of putting resources into increasing public awareness and it was agreed that for the next Board meeting in March there will be further discussion about how to raise the profile of OSCR with the general public.	
8	<p>Cross Border Monitoring</p> <p>The Head of Monitoring and Investigations updated the Board on the first meeting of the OSCR led cross border monitoring reference group and the recent meeting of the UK Regulators Forum at which this issue was also discussed.</p> <p>The area of broadest agreement between the Regulators in all UK jurisdictions is that of partnership working on enquiries and investigations into charities with dual registration, and the need for an agreed approach that avoided duplication of effort and unnecessary burden for such charities.</p> <p>Information gathering is of particular interest to OSCR and the Department of Social Development in Northern Ireland as regards the activities of cross border charities in their respective jurisdictions and these regulators will work together on proposals. It was noted that in Northern Ireland they have the additional Northern Ireland/ Eire dimension to consider.</p> <p>The area of greatest challenge is that of monitoring cross border charities as monitoring is a specific function of OSCR not replicated in England and Wales where the emphasis of the regulatory regime is now that of self regulation. It was noted that this reflects this different stages of development and experiences of the respective constituencies and the regulatory regimes. Further consideration will be given to risk based monitoring requirements for cross border charities that reflect this regulatory landscape and the balancing of the regulatory principles of proportionality, consistency and fairness. It was noted that formal proposals are due to be tabled in Spring 2008.</p>	Head of M&I
9	<p>Audit Committee</p> <p>The timetable and final accounts process for 2007/08, as approved by the Audit Committee on 21 November, was approved subject to any comments from the Chair. It was noted that this timetable and process relates only to the accounts which must be</p>	

	<p>prepared and issued in accordance with the Accounts Directions. It was noted that OSCR is required to lay an Annual Report before Parliament; it is for OSCR to determine whether this should be a single combined document with the Accounts (as was the case in 2006/07) or whether OSCR wishes to issue 2 separate documents. That is scheduled for debate at the Board meeting in March.</p>	
10	<p>Financial Update</p> <p>HORM advised the Board of the projected outturn of £3.0 m for 2006/07. Justice Department Finance has been advised of this position and the £0.6m under-spend will be reallocated within the Justice Portfolio.</p> <p>It was noted that one of the largest uncertainties was that of legal fees. Under the previous agreement with the Development Department, OSCR had assumed some limited risk, with the long stop risk being carried by the Development Department. There should be a similar discussion with the Justice Department in the context of the new Framework Agreement.</p> <p>Finally, the Board noted there had been no reduction in OSCR's budget under the CSR proposals, which in the circumstances was a very satisfactory settlement.</p>	<p>Chief Executive</p>
11	<p>Chief Executive's Report</p> <p>The Chief Executive's Report was noted, including the positive engagement with the Scottish Government not only re progress with the development of Regulations, but also policy discussions with the Third Sector Team and local government division. The Board also noted the discussions regarding the Crerar Report and confirmed the approach and detail of the proposed response.</p> <p>The Board noted the generally positive progress towards the achievement of business objectives, using the Balanced Score card approach. In terms of longer term strategic objectives, the Board noted the proposals regarding the annual charities and public survey, and the proposed development work on the evaluation of public confidence. The Board were invited to contribute suggestions and thoughts towards this theme in advance of the March Board meeting.</p>	<p>Board Members</p>

12	<p>Concordats</p> <p>The Board approved the proposed Concordat with the Crown Office and authorised the Chief Executive to sign this on behalf of OSCR. The Board also approved the proposed review process for all Concordats, and authorised the Chief Executive to proceed on this basis.</p>	<p>Chief Executive</p>
13 13.1	<p>Other Matters</p> <p>Discussions with HMRC</p> <p>The Head of Charities updated the Board on the very constructive meeting with HMRC. The background to this was that, following representations by the Tax Law Committee with the Law Society of Scotland, there was a need for detailed discussion to clarify the issue of “definition clauses” (defining the meaning of the words charitable, charitable purposes or charity) in the constitution of bodies on the Register. In summary, the agreement is:</p> <ul style="list-style-type: none"> o A model definition clause has been agreed which is acceptable both to OSCR and to HMRC o Any bodies which may have adopted the definition clause as previously published by OSCR do not need to change this o Scottish charities already on the Register (are there, in the vast majority of cases, on the basis of recognition by HMRC prior to 2006) which do NOT have a definitions clause in their constitution yet use the terms charitable etc, will NOT be required by HMRC to change their constitutions in order to qualify for tax relief. It would be good practice to make a change however if the constitution were updated for another reason. o Scottish charities to be entered new on the register by OSCR (and that use the terms charitable etc in their draft constitutions), will be advised (both by OSCR and HMRC) that, should they at any point wish to claim tax relief, they would need to define the terms charitable etc. in a way acceptable to HMRC, i.e. by inserting the model definitions clause. o In order to maintain the working practice that entry on the Scottish charity register would in the vast majority of cases satisfy HMRC for the 	

	<p>purposes of granting tax relief, OSCR agreed to bring to HMRC attention any bodies that were entered on the register without a definition clause (where the use of the terms charitable etc would have been required by HMRC).</p> <p>OSCR and HMRC will work towards the implementation of this agreement from January 2008. The draft MOU will be amended to reflect this agreement, although the detail will be set out in a separate public statement. The MOU with HMRC will be brought to the Board for approval at its next meeting in March 2008.</p> <p>A meeting with the Law Society will be held in January 2008, at which HMRC may also be represented.</p> <p>The Board commended what seemed to be a very satisfactory solution.</p>	<p>Head of Charities</p>
<p>13.2</p>	<p>Quarterly Statistics</p> <p>The Board noted the information regarding (a) complaints about charities and (b) the 2 formal complaints about OSCR which had been received over the last 6 months.</p> <p>The Chief Executive reported that OSCR is developing a standard form for members of the public wishing to complain about a charity, in line with the Crerar recommendations that complaining should be made more straight forward. In addition, OSCR has adopted an Unacceptable Actions Policy based on the SPSO model.</p>	
	<p>The meeting closed at 1.15 p.m.</p>	