

MINUTES

OSCR BOARD MEETING

Held on 5 September 2008 @ 9.30 am

Sheraton Hotel, Edinburgh

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

In attendance: Jane Ryder, Chief Executive
 Marieke Dwarshuis, Head of Charities
 Judith Hayhow, Head of Resource Management
 Quentin Fisher, Senior Legal Advisor.

Apologies: Kirsty Gray, Head of Monitoring & Investigation

		ACTION
1.	<p>Welcome</p> <p>The Chair welcomed Oscar Mendoza to his first Board meeting and all members to the first full meeting of the new Board.</p>	
2.	<p>Minutes and Declarations of Interest</p> <p>The Minutes of the meeting of 22.07.08 were approved.</p> <p>In terms of declarations of Interest, Lindsay Montgomery declared a non financial interest in that he currently pays school fees for his grandson.. Martin Crewe and David Hughes Hallett, advised</p>	

	that they were members of the National Trust for Scotland, a charity in Phase 1a. Annie Gunner Logan advised that none of the Care Providers considered in the Rolling Review Phase 1a, were members of the association for which she is Chief Executive.	
3.	Matters Arising	
3.1	It was noted that Fergus Ewing, Minister for Community Safety will attend the 18 November meeting of the OSCR Board.	
3.2	Members noted that the OSCR Open meeting will now take place on 3 November .08 at The Golf Hotel, Carnoustie. The originally proposed venue, the Caird Hall in Dundee, was not available on the revised date.	
3.3	The 2007/08 Annual Report and Accounts were Laid before Parliament on 3 September , with a press release highlighting the OSCR recommendations to Ministers having been issued the following day. Press coverage stemming from this has been positive to date.	
3.4	There were no other matters arising	
4.	<p>Meeting the Charity Test</p> <p>Following considerations at the Board meeting in May, Members noted the considerable amendments which had been made to the Meeting the Charity Test Guidance, and confirmed their satisfaction that in general terms the document was now very clear.</p> <p>There was discussion in respect of the following parts of the document:</p> <ul style="list-style-type: none"> • Examples of analogous purposes were discussed and agreed. • It was agreed that for purposes of consistency, some minor wording changes should be made to the examples of possible private benefit. <p>There was some discussion on the interpretation of disbenefit, and particularly whether the use of the words 'harm', 'detriment' and 'disadvantage' as alternative adjectives was appropriate. It was agreed that it would not be appropriate to refer to disbenefit as disadvantage, but the term 'detriment' should remain in addition to 'harm'.</p> <ul style="list-style-type: none"> • Fees and facilitated access; there was considerable discussion on facilitated access 	

(i) The need for consistency and reliability of any funding contribution (i.e. not just a “one off”).

(ii) Any funding contribution made by the charity itself would be particularly persuasive.

(iii) Purely personal funding arrangements, such as help from extended family, or an employer, designed to facilitate access, would not normally be regarded as making the service more publicly available. It was agreed that this part of the Guidance would be redrafted to reflect the discussion.

(iv) The cost of providing benefit; it was agreed that this section should be redrafted to make clear that what might be considered was not a fee low in relation to an individual beneficiary, but low in relation to the cost of provision of that or a similar type of service.

(v) Minor wording changes to the examples of undue restriction section were requested by the Board.

(vi) Section 8.3, Reviews and Appeals, should make it clear that it is not possible to make an Appeal against a Direction issued by OSCR. In practice, at the end of the period of the Direction, if the charity has not complied, OSCR commences the removal process – and it is at this stage a review of the decision to remove a charity can be requested.

Subject to the above amendments, the Board approved the Guidance in principle. That said, it was recognised that following discussion on implementation and interpretation of the guidance and the policies contained within it, through consideration of the Phase 1a Rolling Review outcomes further amendments could potentially be required to the Guidance. In the event, no further amendments were required.

5.	Rolling Review – Phase 1a – Outstanding Issues and Outcomes	
	<p>At its meeting in June the Board requested that certain policy areas be further researched by OSCR staff, and presented as part of the Rolling Review Phase 1a considerations. Paper 139 was structured in three parts, supported by Appendices, to deal with Policy issues; Information updates from charities; and the Phase 1a results. Members had been asked to highlight any substantive concerns stemming from the paper, prior to the meeting, and comments were received from a number of members. These were considered as part of the discussion on each element of the paper.</p> <p>Part A – Outstanding issues. Facilitated Access paid for by an employer.</p> <p>Members considered the issue of facilitated access paid for by an employer.. The Board agreed that where support arrangements stem from a personal connection, such as that flowing from a family or employment relationship, that this would not normally be regarded as opening up access. The Board further considered that were access arrangements are available to a group of people that is in some way restricted it was particularly important to have regard to the impact these arrangements have on opening up access, especially for those that have limited financial means. . Minor wording changes to the text of the paper were agreed to reflect this more explicitly.</p> <p>No other changes to Part A were proposed.</p> <p>Part B – Further Information from Charities in Phase 1a.</p> <p>At its previous meeting the Board had requested additional information in respect of some of the Charities involved in Phase 1a. This was provided in part B and the contents were noted.</p> <p>Part C – Analysis of Results</p> <p>The Board considered and agreed that Part C accurately reflected the policies and principles outlined in the Meeting the Charity Test Guidance, together with subsequent discussions on</p>	

interpretation. (The Chief Executive and David Hughes Hallett were not present for this part of the discussion, in order that should a charity fail to comply with a Direction, and request a review of the decision to subsequently remove them from the Register, DHH and JR could undertake the review). All of the conclusions outlined in the paper were agreed by the Board. DHH and the CEO rejoined the meeting.

Directions to Charities

There followed considerable discussion in relation to the proposed Directions which would be issued to those charities who had been unable to demonstrate that they met the requirements of the Charity Test.

As previously stated, charities have no right of appeal against a Direction, and it is only when the Directional period ends and the charity is not considered to have complied, that the process of removal from the Register commences. In light of this, the Board noted that a charity issued with a Direction, with which it had no intention of complying, could in theory remain on the Register for a considerable time period, until the directional period and removal period elapsed.

The Board decided that:

(a) Where the Direction related to a substantive matter (in particular a failure to provide public benefit) , charities in receipt of a Direction would be asked to confirm within 3 months of receipt of the Direction that they intended to comply with it. Those charities which indicated that they did not intend to comply, would be notified that the removal process would commence immediately.

(b) After considerable discussion, the Board agreed that such a Direction and a substantive matter should normally give charities 12 months from the date of Direction to submit a business plan to OSCR which demonstrated clearly how they would, within 3 years of the date of receipt of the Direction, achieve compliance with the Charity test requirements. A form of words which suitably reflected this tiered approach to compliance with a Direction, together with an outline of the timescales

	<p>involved, would be prepared and issued to those organisations which fell into the non compliant category.</p> <p>(c) While this structured approach was appropriate for substantive matters, it was not appropriate where there was “technical breach” eg such as that arising out of the constitutional issue. In such cases, the Direction did not need to include a requirement that the charity indicate whether or not they intended to comply within 3 months of receipt. The normal time limit for compliance would be 1 year, consistent with previous Directions. However, the Board noted the recommendations to Ministers contained in the Annual Report. If there were a positive Ministerial response to OSCR’s recommendations regarding the “ constitutional issue” , this could allow OSCR to take a different approach and include a longer time scale within a formal Direction if a formal Direction is needed..</p>	
6.	<p>Rolling Review Phase 1b Proposals</p> <p>The Board noted the contents of Paper 141 which outlined the proposal to continue with a risk based approach to the Rolling Review during Phase 1b, and agreed in principle that this approach was still correct.</p> <p>Members welcomed the fact that the Review proposals include the assessment of a further 4 Independent schools within the first 12 months, as being within the “ high risk” category. Specific discussion on other ‘high risk’ charities ensued, as a result of which, in addition to those categories already outlined in the paper, was identified- - charities which are Registered in Scotland but which work predominantly overseas. The Board agreed that consideration of such organisations could be undertaken and the number in the Random category adjusted.</p> <p>The Board discussed and agreed the appropriate response in a number of different scenarios. In particular, if there were to be any appeal to SCAP, the implications for the remainder of Phase 1b programme would be considered on a case by case basis in light of all the circumstances. Complaints about individual charities not part of the 1b programme would be considered in accordance</p>	

	with OSCR's normal policy and in light of the principles included in Meeting the Charity Test Guidance..	
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7.	<p>Communication Plan</p> <p>The Board considered paper 142 which set out the proposed key messages and communications plan for publication of the revised Meeting the Charity Test Guidance, and the outcomes of Phase 1a of the Rolling Review.</p> <p>The Board stressed the distinction between ‘technical’ breaches, and those of a more substantive nature reflected in the approach to be taken in the issuing of Directions. Communications should make clear OSCR’s response, illustrating the Regulator was acting in a robust yet proportionate manner.</p> <p>The specific arrangements for communicating the outcomes of the Review to those Charities involved, and to the media were noted and agreed, and members noted that all communications requests would be co-ordinated by the Senior Communications Officer, Mark Simpson.</p> <p>Finally, it was noted that decisions in Phase 1b would be communicated to individual charities as made, and we would not be publishing a detailed report of the next 50 or so individual charities in Phase 1b. Any major policy issues would be brought to the attention of the Board, and the Board would receive an update on progress in 12 months time.</p>	
8.	<p>Affordability Research</p> <p>Members noted that Phase 2 of the Affordability Research was underway and that models were being developed. The Board agreed to a six month trial, to enable use of the different models in the context of a number of key issues to be considered. It was noted that at the end of this period, consideration would be given as to whether systematic use of any of the models would enhance the existing decision making process and would be a proportionate and effective use of OSCR resources. Members noted that interim findings of the Research would appear to be consistent with the decisions taken in respect of both phases of the Rolling Review to date.</p>	

9.	<p>Financial Report</p> <p>The Board considered Paper 143 which gave an overview of OSCR's 2008/09 financial position, including projections in respect of the outturn position.</p> <p>Members noted that in all areas except Pay expenditure, the forecasted outturn was slightly below the initial budget allocation, with the outturn projection for the year standing at £3.2m.</p> <p>It was noted that the 3% variance on Pay expenditure reflected the fact that the initial budget had been estimated before the public sector pay settlement had been agreed, (and that the settlement of 4% plus progression was considerably in excess of the 2% plus progression figure which the SG had originally suggested would be approved); that the settlement included the merger of the lower A2 and A3 bands, which had a financial implication for OSCR; and that the original projections were made prior to the decision to restructure the Monitoring and Investigations team, including the recruitment of additional staff. A review of pay expenditure after the August pay settlement had been planned at the start of the financial year, and was underway.</p> <p>The contents of the paper were noted by the Board, and circumstances in which budget variances would be notified to the Board were clarified.</p>	
10.	<p>Any Other Business</p> <p>It was noted that a number of Charities were failing to meet their requirements in terms of References in Documents. Adverts for staff in particular, failing to include reference to the fact that the organisation was a Scottish Charity. It was agreed that all charities should be reminded of the requirement to comply with this part of legislation.</p> <p>The meeting closed at 1.15pm</p>	