

The Targeted Regulation framework of the Scottish Charity Regulator

1 Introduction

Charity regulation should add value to the sector by underpinning public confidence in charities.

As a preventative and proportionate regulator, we want to ensure that our resources are focused on the most important issues that affect the Scottish charity sector and on those that have the potential to undermine public confidence about charities. Therefore, we have developed (in consultation with the sector and other relevant stakeholders), a framework that outlines the key issues. This will allow us to prioritise our actions as regulator.

2 The framework

In developing our framework, we have identified two main clusters of issues. These are:

- Protection of charitable assets and beneficiaries
- Protection/integrity of charitable status.

In our experience, these clusters include the main issues that we deal with that have the greatest potential to undermine public trust and confidence in the charitable sector.

Protection of charitable assets and beneficiaries

This cluster brings together a number of different issues.

Some of these issues are in relation to charity trustees – those with legal responsibility for the management and administration of a charity – and the way in which they act in fulfilling that role. For example, where a person acting as a charity trustee is actually disqualified from doing so as a result of an unspent criminal conviction or where a trustee is acting improperly which may adversely impact the charity's assets, beneficiaries or reputation.

More seriously, where a charity is used for or is the victim of criminal activity, this is a significant concern for us and one that may require us to take urgent protective action with respect to the assets and beneficiaries.

Where a charity is operating in a country or territory that is fragile, for example a country or region at war, a number of issues can arise for the charity in trying to carry out activities which may expose the assets to high levels of potential risk.

Charities that do not meet their legal requirements to engage with OSCR may also be at risk in this area; for example those that do not submit the required annual information to the regulator and those that take actions without seeking appropriate consent from us beforehand. Failure of contact with the regulator may indicate that charities are exposing their assets to inappropriate use, or are open to the other key risks in the Framework.

Protection/integrity of charitable status:

Charity law in Scotland has certain requirements that bodies must fulfil before they can be registered as charities – we call this the charity test and there are two parts to it. Firstly, the body must pursue only charitable purposes and, secondly, it must provide public benefit.

The key issues here are to do with the public benefit requirement: particular concerns are where charities are not providing benefit (perhaps because they are inactive, or their activities don't fit their purposes) or where individuals are benefiting privately from what the charity does in ways that are inappropriate. We consider the protection of the 'charity brand' as critical in maintaining public trust and confidence in charities – it is important that we make it clear for everyone dealing with charities what can and cannot legitimately be a charity and show that we are protecting that boundary. It is also important to deal with organisations that call themselves charities when they are not registered as such.

3 The framework in practice

The framework will be used as a tool to ensure that both our proactive and reactive activities are influenced and prioritised. It will help us to introduce a consistent approach across our organisation and help us to detect and deal with problems in a more focused way. For example it will:

- Underpin the assessment and prioritisation of casework
- Focus the activity of the engagement team, allowing them to prioritise guidance and directing us to the groups we should be developing relationships with.
- Influence the information that we collect from charities via the Annual Return process
- Inform the resources we develop to allow charities to better help and equip themselves in dealing with difficult situations
- Initiate group study work where we identify charities that have a tendency to experience such issues.

The framework is not static and will be reviewed every three months. Issues may be re-prioritised or removed and possibly new issues added as a result of our action, our analysis and/or external events. The sector, its operating environment and regulatory approaches are all liable to change and our framework will be adapted appropriately.

4 Summary of key issues that will drive our activity:

- i. Persons acting as charity trustees while disqualified
- ii. A charity trustee acting improperly which adversely impacts on the charity's assets and/or beneficiaries
- iii. A charity being used for or being the victim of criminal activity
- iv. A charity operating in a fragile territory
- v. Charities that repeatedly fail to meet their reporting requirements to the Regulator
- vi. Charities that take actions without seeking prior consent from the Regulator
- vii. Charities that do not provide public benefit
- viii. Individuals or organisations who are inappropriately benefiting from charitable status
- ix. Charities who are at the margins of the charity test or who have complex and/or novel structures
- x. Bodies or individuals who misrepresent themselves as charities.