

Inquiry & Intervention Policy

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Part A General information

1. Introduction

1.1 This policy sets out how the Office of the Scottish Charity Regulator (OSCR) will deal with inquiries into individual charities, including those inquiries which arise from:

- a complaint from a member of the public
- concerns raised by parties connected to a charity (i.e. trustees/members/employees/volunteers)
- a referral from another organisation including other regulators
- matters referred from an auditor or independent examiner
- internal OSCR referrals, including where we identify issues of interest from media reports.

2. About OSCR

2.1 OSCR is the independent regulator of charities in Scotland. OSCR was established under the Charities and Trustee Investment (Scotland) Act 2005 (The Act) and gained its full powers on 24 April 2006.

2.2 Copies of the Act can be obtained from the Office of Public Sector Information website (http://www.opsi.gov.uk/legislation/scotland/acts2005/asp_20050010_en_1).

2.3 Details of the powers available to OSCR and the powers of the Court of Session on application by OSCR can be found at Appendix 1 of this policy.

2.4 OSCR is a Non-Ministerial Department and forms part of the Scottish Administration, accountable to the Scottish Parliament. Governance of OSCR rests with the Board of eight members. Our jurisdiction does not extend to charities based in and operating in England & Wales or Northern Ireland where different legislation applies **unless** they are also registered in Scotland.

3. Our vision

3.1 Our vision is for a flourishing charity sector in which the public has confidence, underpinned by OSCR's effective delivery of its regulatory role.

4. Our objectives

4.1 Our objectives are to:

- increase public confidence in charities through effective regulation
- increase transparency and public accountability of charities
- increase charity trustees' compliance with the 2005 Act
- establish and maintain OSCR as a trusted, effective and innovative regulator
- minimise the burden of regulation on charities wherever possible, with particular emphasis on reducing multiple reporting
- operate effectively and efficiently, demonstrating a commitment to the principles and practice of Best Value.

5. Our general functions

5.1 The Charities and Trustee Investment (Scotland) Act 2005 states that our general functions are to:

- determine whether bodies are charities
- keep a public register of charities
- encourage, facilitate and monitor compliance by charities with the provisions of the Act
- identify and investigate apparent misconduct in the administration of charities and to take remedial or protective action in relation to such misconduct
- give information or advice, or to make proposals, to Scottish Ministers on matters relating to OSCR's functions.

6. Our values

6.1 We have a statutory duty to have regard to principles which represent best regulatory practice and these underpin our approach to Inquiry & Intervention:

Independent: we will maintain our operational independence, acting without fear or favour, in the public interest.

Proportionate: our actions, procedures and culture will be proportionate to the burden of regulation on charities of different sizes taking into account the degree of risk involved and the potential impact on both charities and OSCR.

Accountable: we will be proactive in accounting to all our stakeholders, which will include involving others on an appropriate basis.

Transparent: we have adopted a Freedom of Information culture from the outset.

Consistent: we will act consistently in our decision making and will also aim to act as an exemplar, observing best practice.

Fair: we will exercise our powers and discretion in a way which is consistent, impartial and even-handed.

Informed: we will gather adequate information from appropriate sources to ensure that our intervention is properly informed.

Targeted: we will target intervention only where there is evidence it is needed, in line with the principles of better regulation.

Part B Complaints and how we deal with them

7. General

7.1 Charities play an important role in our society and many people have an active involvement, as charity trustees, volunteers, through using their services or as donors. Occasionally, people have cause to complain about charities and look to OSCR to make inquiries.

7.2 When we receive a complaint about a charity we consider the information provided to us, take a view as to whether the matter falls within our regulatory remit and, using a risk-based approach, determine the most appropriate action in the circumstances. There may be instances where we will not take the matter forward.

7.3 This policy outlines when and how we will take action on issues reported to OSCR and what charities and complainants can expect from OSCR during the course of inquiries.

7.4 It is important for both complainants and charities to be aware that OSCR acts in the public interest, and not on behalf of individuals or groups.

7.5 We will seek to ensure that any information provided to OSCR by a complainant or by anyone involved in an inquiry is correct and credible.

7.6 It is an offence under the Act for a person to provide any information or explanation that is false or misleading in a material respect, or to destroy or conceal any document which is required for the conduct of any inquiry OSCR may undertake.

7.7 OSCR will provide a copy of this policy to the complainant and to any charity which becomes the subject of inquiry or investigation. OSCR may alternatively direct either party to the [Inquiry & Intervention Policy](#) on the OSCR website.

7.8 All complaints are referred to the Compliance & Investigation Team (CIT) for consideration. They will assess the level of risk presented to the charity and the sector in order to determine a proportionate response in terms of action. While anonymous complaints will be accepted and assessed, anonymous complainants should be aware that having no named contact who can discuss the content of their complaint is likely to hamper our inquiries.

7.9 During the course of our inquiries OSCR will seek to minimise any disruption to the charity while also ensuring compliance with the Act.

7.10 We will not disclose a complainant's identity without permission unless legally obliged to do so (for instance, if a Court required us to do so). However, due to the nature of some complaints the complainant may be identifiable from the issues raised.

8. When OSCR will take action

8.1 OSCR will take action where it decides:

- there is risk of significant damage of or detriment to the charity, its assets, beneficiaries or reputation and intervention is a necessary and proportionate response to protect them
- there is information to suggest serious or sustained mismanagement or misconduct by those in management and control of the charity
- there is information to suggest that the charity does not meet the charity test
- it is appropriate to provide compliance support by working with charities to ensure compliance with the Act where less serious issues are identified.

Or

Where it is identified that a body may be misrepresenting itself as being a charity in Scotland when it is not.

8.2 Some examples of the type of inquiries OSCR will conduct can be found at Appendix 2.

9. Where OSCR will not intervene

9.1 Generally, OSCR will not intervene in the following situations:

- Where it is the responsibility of the trustees to deal with problems or disagreements; in particular OSCR will normally not intervene in disputes relating to employment or contractual disputes.
- In disputes which relate to service delivery within the charity – these should be dealt with through the charity's own complaints procedures.
- In disputes between trustees and members of a charity; decisions about policies pursued or actions taken by the trustees within the law and the provisions of the charity's governing document are for trustees to take and justify. OSCR does not have discretion to overrule a validly taken decision of the charity trustees.
- Where activities are supervised by another regulator and we are satisfied that they will be able to deal with the matter more effectively than OSCR.

9.2 Some examples of concerns where OSCR would not normally intervene can be found at Appendix 2.

9.3 As a proportionate regulator we will only take up issues where we assess that we have sufficient regulatory grounds to do so. We will not act on unsubstantiated allegations, rumour or opinion – to do this and, as a result, disrupt the charity's work would be unfair to that charity, its activities, its users and beneficiaries.

10. Ways to make a complaint

10.1 We will accept complaints by the following methods:

- Completion of OSCR's online complaints form (<https://www.oscr.org.uk/ComplaintsForm.aspx>).
- By email with details of the complaint to info@oscr.org.uk and marked, FAO Compliance & Investigation Team.
- In writing to OSCR's Compliance & Investigation Team at OSCR, 2nd Floor, Quadrant House, 9 Riverside Drive, Dundee DD1 4NY.
- By telephone on 01382 220446.

11. Information we will seek

11.1 We will request the following information to be included within complaints:

- the charity or organisation's name and address
- the charity number (if known)
- complainant's contact details including name, address, email address and telephone number (OSCR will accept anonymous complaints but may be restricted in the action that can be taken)
- complainant's relationship to the charity or organisation about whom the complaint is made
- details of the complaint including, where appropriate, dates, particulars of all parties involved and a description of the issues of concern
- if the charity has a complaints procedure, details of when and whom the complainant has contacted and the outcome of that complaint.

12. Handling complaints

12.1 We will normally acknowledge receipt of complaints within 15 working days providing that contact details have been supplied to allow us to contact the complainant.

12.2 The complaint will then be assessed to establish:

- Whether OSCR has locus to act.
- If the complaint is more appropriate for another regulator to action.
- The seriousness of risk associated with the issues raised by the complainant.
- The action and intervention required (which will be proportionate to the risk(s) presented).

12.3 We will base our assessment on the evidence available and any initial background inquiries undertaken. This may include initial contact with the charity to help us with our understanding of any information received. This assessment will then determine the next course of action. There are normally four potential outcomes at this stage:

1. The complaint merits further inquiry work to be undertaken by a Compliance Officer or an Investigator depending on the seriousness of the issue.
2. The complaint is more appropriate to another regulator and will be either passed to them direct or the complainant will be re-directed, depending on the protocols in place.
3. OSCR determines that, based on the evidence provided, no action is appropriate.
4. The complaint is deemed to be for the charity to resolve through its own complaints procedure.

12.4 In all cases the complainant will be advised of what OSCR has determined within 6-8 weeks of the initial complaint being received.

12.5 If we determine that it is not appropriate for OSCR to intervene in relation to a complaint we will notify the complainant and give reasons for our decision. We will not enter into discussions about the detail of our inquiries.

12.6 OSCR does not issue findings to complainants on each and every allegation made by them since inquiries are not undertaken on the complainant's behalf. Nor do we provide updates during the course of inquiries.

12.7 A flowchart providing an overview of how we handle complaints can be found at Appendix 3.

13. Charities or individuals which are the subject of an inquiry/investigation

13.1 OSCR will generally contact the charity once it has established that there are grounds to conduct an investigation, however, background inquiries may be conducted as part of the assessment stage before such contact is made.

13.2 Normally the person contacted by OSCR will be the nominated primary contact of the charity. Where we have been clearly advised that a solicitor has been instructed to act on a charity's behalf we will generally direct correspondence to the solicitor during the course of our inquiries. However, there may be occasions where we need to contact charity trustees directly and where this is required we will copy the acting solicitor in to our correspondence.

13.3 The charity will be made aware of the general grounds of any complaint or cause for concern and be given the opportunity to respond to these. We will not divulge the name of the complainant without the complainant's permission.

13.4 There may be exceptional circumstances where, due to the nature of the issues identified, we determine that contact with charity trustees may impair our investigations and/or place assets at risk therefore they will not be notified of the investigation at the initial stages.

13.5 During the course of any inquiries/investigation we may ask for information from any charity trustee or person connected with the charity or appropriate public bodies. We will take all reasonable steps to minimise disruption to the work of the charity, its staff, volunteers and trustees during any inquiries/investigation.

13.6 OSCR will generally **not** contact the charity if there is no evidence to support the complaint or allegation and we decide that intervention is not appropriate. However, on some occasions, we may determine that it would be in the best interests of the charity to make charity trustees aware of issues raised, e.g. issues are raised anonymously and we cannot direct the complainant to the charity trustees who it appears are unaware of the concerns.

14. Outcome of an inquiry/investigation

14.1 We aim to conclude inquiries within as short a period as possible and, generally within 6 months. However, the nature of some inquiries, particularly investigations, may be both complex and require input from multiple sources or court action. Our target is therefore to conclude 75% of complaints within 9 months.

14.2 We identify the conclusion of an inquiry as:

- A decision by OSCR that no action is necessary and that the inquiry has been satisfied.
- Recommendations and a report, as appropriate, have been sent to the charity and we have a satisfactory assurance of future action from the charity and have set markers for compliance review where appropriate.
- An application by OSCR to the Court of Session unless there are other matters which require further inquiry while the court action is ongoing.
- Action taken by the police or Crown Office.

14.3 Appendix 1 details OSCR's Inquiry and Intervention powers available to it under the Act and also the powers of the Court of Session where OSCR decides to make an application to the court under the provisions of the Act.

14.4 A closing letter will be sent to the complainant advising that OSCR's Inquiry has concluded and advising them in **general terms** of the outcome.

15. Public transparency

15.1 Any formal direction and suspension notices issued to a charity as a consequence of our inquiries/investigation will be displayed on the charity's entry on the Scottish Charity Register with appropriate reports linked. Where we exercise statutory powers with consent of the court, this will automatically be in the public domain. We will also reflect such action against the charity on its Register entry.

15.2 At any time we may issue press statements or reports about individual inquiries or the exercise of our intervention powers, whether or not there has been an application to the court. Any press statement or report about individual inquiries will be framed taking into account the rights of organisations and individuals concerned. We will also respond to any requests for information in accordance with our obligations under the Freedom of Information (Scotland) Act 2002.

15.3 We intend, from time to time, to issue thematic reports drawing on the experience of investigating complaints and undertaking inquiries as well as the lessons of the monitoring programme to highlight issues of wider public interest.

16. Potential conflicts of interest

16.1 OSCR has several staff who have recent involvement in individual charities, whether as a member of staff, charity trustee or auditor. We have developed a policy for managing conflicts of interest in order to ensure that we avoid any situation where any member of staff might be involved inappropriately in an inquiry into an individual charity with which they have had recent involvement.

17. Complaints

17.1 Complaints about OSCR should be addressed to:

Head of Corporate Services
OSCR
2nd Floor
Quadrant House
9 Riverside Drive
DUNDEE DD1 4NY

Appendix 1

OSCR inquiry or intervention powers

Brief description of power	Source: Charities and Trustee Investment (Scotland) Act 2005
Review entries in the charity Register	s. 3 (6)
Direct a charity to change its name; remove where non-compliant	s. 12 (2), (3) & (5)
Direct a charity not to take action in a consent matter pending further inquiry	s. 16 (6)
Obtain information for Register entry purposes	s. 22 (1)
Make inquiries, either generally or for particular purpose	s. 28 (1)
Direct any charity, body or person from undertaking activities for a period of 6 months while making inquiries	s. 28 (3)
Obtain information for inquiries	s. 29 (1)
Direct a charity to take action to meet the charity test within a specified period	s. 30 (1) (a)
Remove a charity from the Register	s. 30 (1) (b) & s. 30 (3)
Suspend any person concerned in the management or control of a charity for a period of 6 months	s. 31 (4)
Direct anybody misrepresenting themselves as a charity to stop doing so	s. 31 (5)
Restrict transactions of a charity	s. 31 (6)
Direct that property not be parted with	s. 31 (7) and s. 31 (9)
Direct person to cease acting on behalf of a charity	s. 31 (8)
Reports made where a direction or suspension under sections 30 or 31 of the Act	s. 33
Appoint a suitable person to prepare accounts	s. 45 (2)
Direct a charity to recover remuneration in contravention of section 67	s. 67 (7)

Appendix 1 continued

Powers of the Court of Session on application by OSCR

Brief description of power	Source: Charities and Trustee Investment (Scotland) Act 2005
Approve a scheme presented by OSCR for transfer of any assets to another charity	s. 19 (4) and s. 35 (1)
Interdict the charity or body from such action as the court thinks fit	s. 34 (5) (a)
Interdict the body from representing itself as a charity	s. 34 (5) (b)
Appoint a judicial factor	s. 34 (5) (c)
Appoint a trustee	s. 34 (5) (d)
Suspend or remove any person concerned in the management of the charity	s. 34 (5) (e)
Order any financial institution or individual not to part with property without the courts consent	s. 34 (5) (f)
Make an order restricting transactions, which may be entered into or the nature or amount of payments, which may be made in the administration of a charity without the courts consent	s. 34 (5) (g)
Interdict a person from representing a body as a charity or from such other action as the court sees fit	s. 34 (5) (h)
Interdict the charity from representing itself or a person from representing the charity as being established under the law of Scotland	s. 34 (5) (i)
Where misconduct by person outlined in s. 28 (1) (d), interdict that person from acting, or representing itself as acting, on behalf of the charity or body; order the person to pay sums to the charity; order any financial institution not to part with such property without consent	s. 34 (8) & (9)
Order to a financial institution not to part with property belonging to an English and Welsh charity	s. 36 (2)
Order the transfer of property attached under s. 36 (2) to a specified charity	s. 36 (5)

Appendix 2

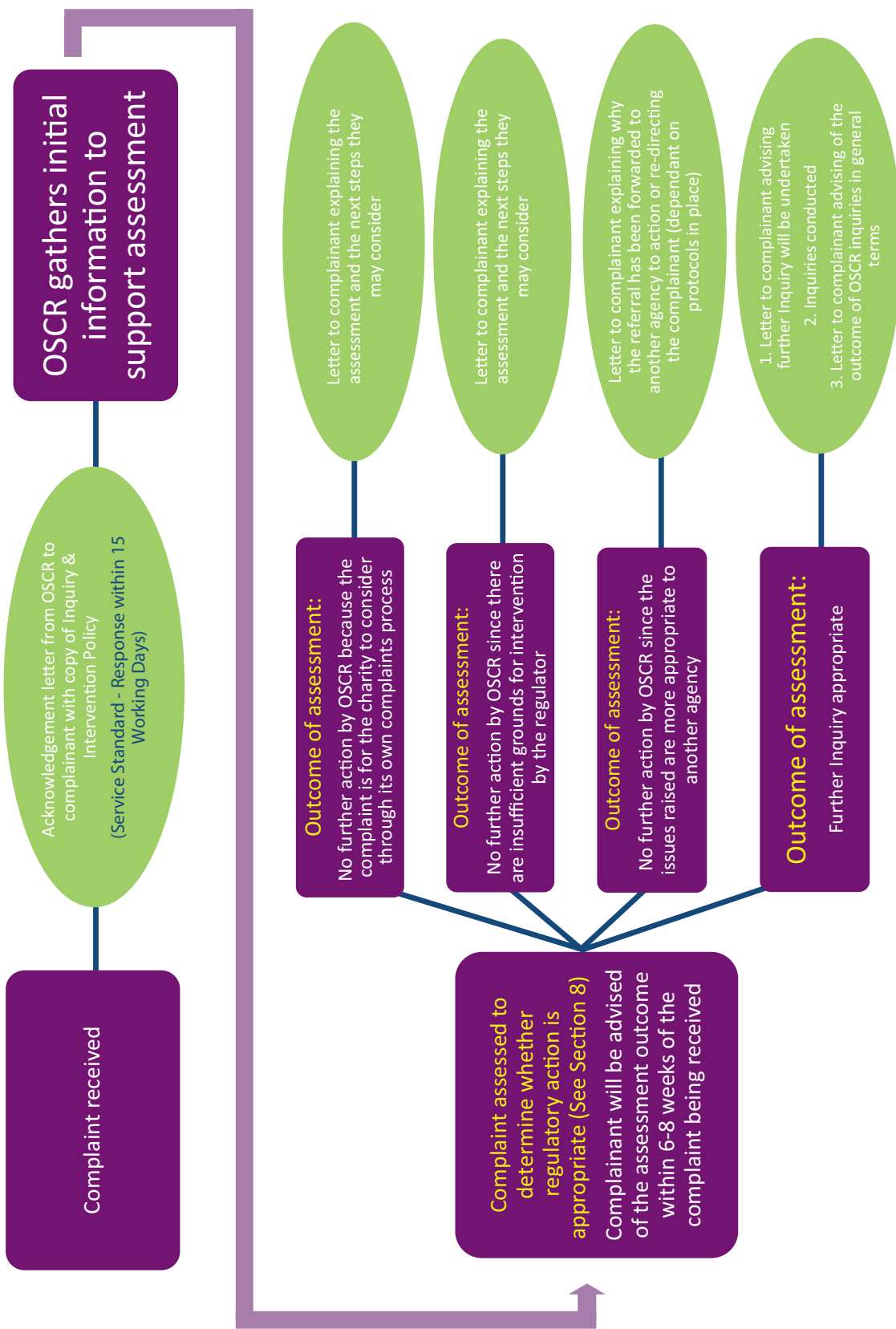
Examples of when OSCR will consider intervention

- i. A member of the trustee board says that the charity is not acting in accordance with its constitution. Annual General Meetings should be held on an annual basis to vote on members of the Board but there has not been such a meeting for over 3 years. The present Chair says no-one else wants the job of serving on the Board so it's not worthwhile holding meetings. The complainant has advised the Board that it is acting outwith its constitution formally and informally but is just ignored. When the Board meets no minutes are taken and no reports are made by the treasurer on the state of the charity's finances.
- ii. An allegation is made that charitable funds are being used by the principal contact of the charity to fund a business overseas. The Board of the charity has been led to believe the money the charity raises is being used for building and kitting out a school in Africa but the complainant has evidence to show this is not the case.
- iii. The complainant is an employee of a charity who is concerned about the running of the charity. Money has gone missing and the Board of the charity is trying to keep it quiet. They do not want the police or OSCR involved because they don't want any bad press since this could have a major impact on the good name of the charity. The complainant has evidence to support the complaint.

Examples of where OSCR will not intervene

- i. A charity held a meeting with its members and the charity trustees have decided to go ahead with their plan to fund raise for an extra minibus despite some of the members feeling this was a waste of time. The complainant doesn't think the minibus is needed and wants OSCR to tell the charity that it is not allowed to do this. We are unlikely to intervene since it is for the charity trustees to decide and justify what activities best meet the needs of the charity.
- ii. The complainant is an ex-employee of the charity and resigned following several disagreements with the Chair, which were witnessed by other board members. An internal complaint has been made and there is a case pending with an Employment Tribunal. The complainant wants OSCR to investigate the charity. However, since this is a matter relating to an internal dispute and employment issue OSCR would not intervene. No information has been provided to suggest non-compliance with the act or misconduct and therefore the complaint should be addressed through the charity's own procedures.
- iii. A member of the public has donated £500 to a charity after reading an advertisement in the local press. The complainant asked the charity how it spent the money 6 months later and the charity has said that it is impossible to provide an exact breakdown of how the money donated was used. The complainant wants OSCR to find out how the money donated was spent. While we will not intervene we will advise the complainant of their right to see the charity's annual accounts.

Appendix 3 Handling complaints – an overview



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