

Ensuring Scotland has charities you can trust and that provide public benefit

ANNUAL REVIEW 2012



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



Our impact

As Scotland's charity regulator, our vision is for charities you can trust, and which provide public benefit.

We achieve this by:

Registration

- we are Scotland's independent registrar of charities. We consider charity applications and we publish the definitive Scottish Charity Register at www.oscr.org.uk, enabling the public to check charitable status and view information about charities

Engagement

- we are a proportionate, fair and transparent regulator. We undertake outreach work with charity trustees and advisors, and publish a full range of guidance material to assist charity trustees in meeting legal and accounting requirements

Enforcement

- we believe in preventative regulation, but will take action where required. We receive concerns and complaints from the public, and identify potential misconduct through our own monitoring of charities.

We have five functions specified in law:

- We **decide** which bodies are charities
- We **keep** an accurate Register of charities
- We **encourage, monitor** and **facilitate** compliance by charities
- We **identify** and **investigate** apparent misconduct
- We **inform** and **advise** Scottish Ministers

The charity test is a key element of charity law.

It sets the legal standard that all charities in Scotland must meet. For example, a charity must:

- have **only** charitable purposes
- provide a **public benefit**.

A charity cannot place any 'unduly restrictive' conditions on access to the benefit it provides.

Since taking up our powers, we have granted charitable status to over 5,000 charities under the charity test.

This review summarises our work in the financial year 2011-12. All our performance figures, along with further information about our own governance, are published at www.oscr.org.uk

You can receive regular updates on our work and key developments in the charity sector by:



Subscribing to OSCR Reporter, our e-newsletter, at www.oscr.org.uk

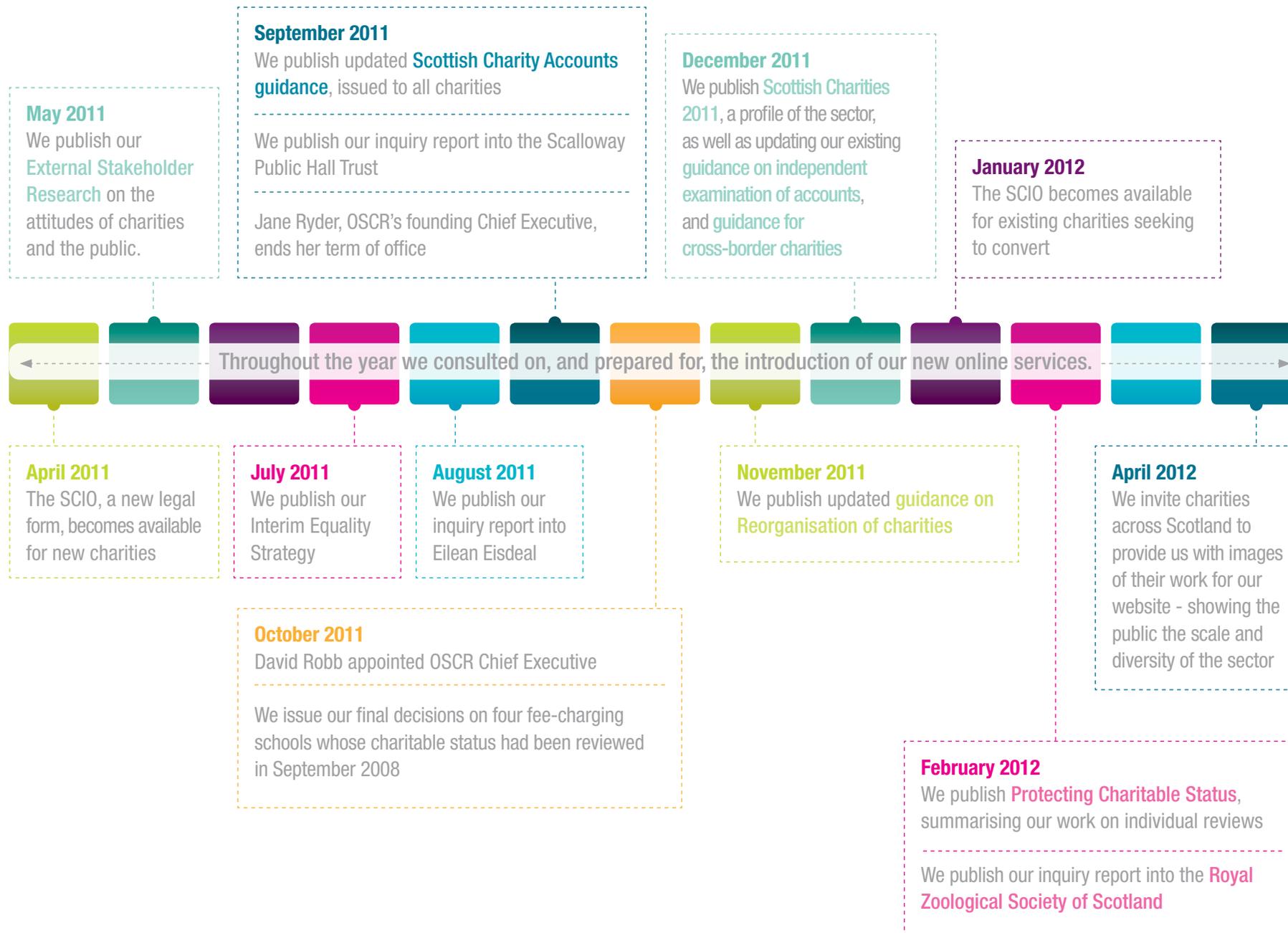


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Following us on Twitter @ScotCharityReg

The year at a glance



The year in figures

86% of annual return and monitoring return forms validated within two months of submission

70% our staff engagement score in the UK Civil Service Survey, the highest in Scotland

787 charities in England and Wales currently entered in the Scottish Charity Register (+57)

130 charities removed from the Register and continuing to report to OSCR on charity assets (-25)

7 reviews requested on OSCR's decisions (-7)

88% of charities trust OSCR to treat them fairly

56 our total number of staff, based in Dundee

2,000 estimated number of charities engaging with our Outreach Programme

736 consents granted for proposed changes to charities (-232)

161 new Scottish Charitable Incorporated Organisations

82% of complaints about potential misconduct resolved within nine months

5 formal complaints made about OSCR (-3)

1,231 applications for charitable status this year (+8%)

89% of charities agree that OSCR's documentation is now 'part and parcel' of what they do

95% of the public believes OSCR's role is essential or important

71% of the public agree that knowledge about OSCR and its role gives them more trust in charities

674 charities removed from the Register, including voluntary removals (-118)

100% of reorganisation applications and **99%** of consents applications decided within deadline

154 charity reorganisation applications (+43%)

17 bodies refused charitable status (-1)

23,459 charities entered in the Register (+171)

324 complaints made about charities (-22)

() = Comparison with last year

Introduction

The past year has continued to present challenges for Scotland's charity sector.

It is clear that the recession has had an impact, with many charities facing difficult decisions. We are encouraged, however, to see that charity trustees are responding to those challenges. We are seeing an increase in applications to reorganise, amalgamate, or change legal form.

The Scottish Charitable Incorporated Organisation (SCIO) became available this year. Currently some 20% of applications for charitable status are for SCIOs. We are encouraged because this demonstrates to us that charity trustees are responding to change and acting in the best interests of their charities.

We are also, as a public body, responding positively to change. Despite a 5.7% reduction in our budget, we have continued to meet all our statutory deadlines and performance targets, seeing significant improvements in performance in some areas. We are determined to become more efficient still and to consider how we can operate more effectively in light of our experience.

During the period of this Review, we implemented OSCR Online, and began a review of our monitoring processes. We will shortly consult with the sector and the public on our revised strategic priorities for 2013-15. We believe it is right, six years after taking up our powers, to take stock of what we have achieved, what we have learned, and what has changed. We want to consolidate our reputation as a progressive, proportionate and preventative Regulator, engaging with the sector we govern, and reinforcing confidence among the public that we serve.

We act in the public interest and could not carry out our work effectively without the support and participation of the thousands of people who run charities. We pay tribute to those who invest their time and money in charities, making individual lives and communities better, throughout Scotland and beyond. We hope that you find this Review informative, and encourage you to sign up to our electronic services and publications so that together we can achieve our vision of charities that you can trust, and that provide public benefit.

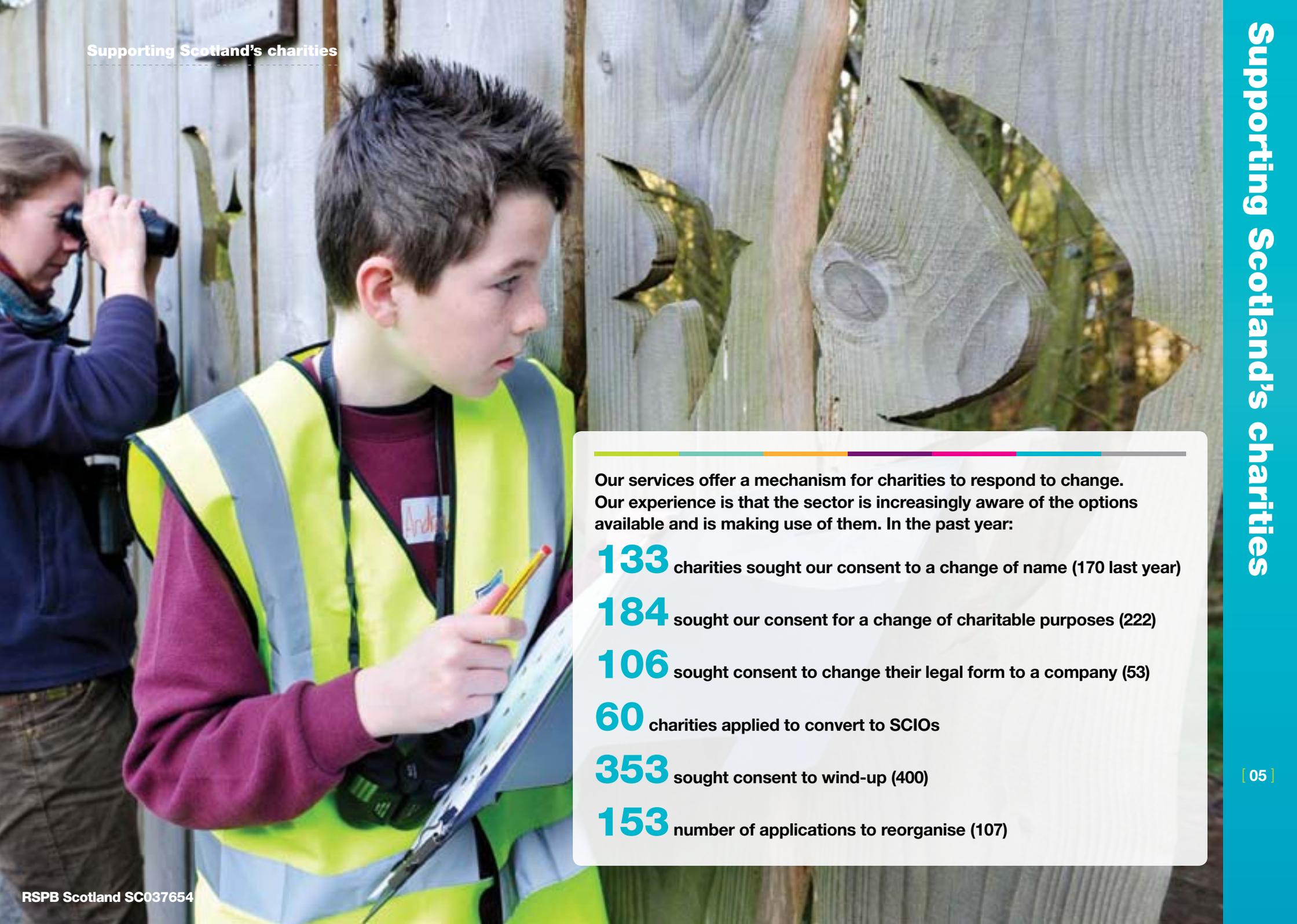


Dr Graham Forbes CBE – Chair



David Robb – Chief Executive

The Scottish Charity Regulator



Our services offer a mechanism for charities to respond to change. Our experience is that the sector is increasingly aware of the options available and is making use of them. In the past year:

133 charities sought our consent to a change of name (170 last year)

184 sought our consent for a change of charitable purposes (222)

106 sought consent to change their legal form to a company (53)

60 charities applied to convert to SCIOs

353 sought consent to wind-up (400)

153 number of applications to reorganise (107)



We welcome the fact that charities seek to make changes to their governing documents. This shows that the trustees are looking to act in the charity's best interests and are regularly reviewing the charity's operation and purposes.



Sometimes change is driven by external factors – such as funders, or from new opportunities that the charity trustees have identified. We welcome the fact that charities seek to make changes to their governing documents. This shows that the trustees are looking to act in the charity's best interests and are regularly reviewing the charity's operation and purposes.

The SCIO came into full effect in 2011-12. This new legal form, unique to Scottish charities, creates a body corporate that can enter into contracts, employ staff, incur debts, own property, sue and be sued. As the transactions of the SCIO are undertaken directly rather than by the charity trustees, it provides a high degree of protection from personal liability. In 2011-12 we entered 238 SCIOs in the Scottish Charity Register, and currently some 20% of new applications for charitable status are for SCIOs.

We continued our work in reviewing the charitable status of those groups of charities where we believed there was a risk that the charity test would not be met. In November 2011 we issued our final decisions on four fee-charging schools against whom we had issued directions in 2008. We had decided at that time that the four schools did not meet the charity test due to unduly restrictive conditions, primarily fees. We ultimately decided that all four had taken sufficient steps in order to remain in the Register. We view this as a positive outcome – by widening access the schools kept their charitable status, and the public benefit they provided was enhanced.

In February 2012 we published [Protecting Charitable Status](#), which summarises our reviews of individual charities since 2006, explains our thinking and the issues we considered, and provides case studies as examples. We also decided at that time that, based on our experience, there was no need for a full-scale review of all charities. Instead, we will continue to focus on those groups of charities where we believe there is the greatest likelihood of difficulty in meeting the requirements of charity law. Our reviews will also be broader, covering regulatory issues such as governance, and we will also examine international charities.



We have built a reputation as an approachable, enabling regulator. Our research shows that the contact most valued by our stakeholders is direct contact with our staff. A key aspect of our role is in assisting charities across Scotland to meet their legal responsibilities. We believe that our positive engagement demonstrates our emphasis on preventative regulation.

Positive engagement (cont)

This year we continued our Outreach Programme, a series of dedicated training sessions aimed at the sector's professional advisers – accountants, lawyers, umbrella bodies, local authorities and Third Sector Interface groups. To date, we have reached an estimated 2,000 charities in this way, providing training on key aspects of charity governance. In addition, a further series of Outreach events was scheduled for the second half of 2012 in Inverness and Oban.

We also decided that this year's Annual Open Meeting should be dropped in favour of smaller, more local events aimed at charity trustees, and available to members of the public. Two pilot events in Paisley and Stirling proved successful, and we intend to hold a series of these new Meet the Charity Regulator events throughout 2013.

We are also keen to participate in events held by other organisations. We believe that this further demonstrates our commitment to engagement, and informs our own thinking. Our Chief Executive, David Robb, and members of our Senior Management Team, have spoken at a range of external events including the Association of Charity Independent Examiners' (ACIE) Conference; Brewin Dolphin's trustee training seminar; and the International Regulators' Forum. We also actively support Trustees' Week 2012, encouraging people to find out about becoming a charity trustee and signposting them to events and sources of information.

In the past year we have continued to advise Ministers based on our experience. Our recommendations include:

- a requirement for organisations engaged in public collections to state positively whether they are charities.
- a review of the National Health Service (Scotland) Act 1978 to ensure that at least a majority of charity trustees of NHS endowment funds are independent of the Health Board
- an overall review of the Charities and Trustee Investment (Scotland) Act 2005

We also meet regularly with the Charity Commission for England and Wales and the Charity Commission for Northern Ireland to share current priorities and discuss emerging issues. In the coming year we will explore taking part in more public-facing events and communication activities with other bodies, such as local authorities.

In the past year we added a number of items to our range of publications and guidance material, designed to support and assist charities in meeting requirements. These include:

- **A guide to working with SCIOs**
- **Guidance on the Scottish Charitable Incorporated Organisation**
- **Updated guidance on the Scottish Charity Accounting Regulations 2006** – issued to all charities
- **Scottish Charities 2011** – a profile of the sector
- **Who's in Charge?** – independence and control of charities
- **Protecting Charitable Status** – OSCR's individual reviews of charities
- **Charity trustees' checklist**
- **Guidance for elected members on becoming a charity trustee.**

We also redesigned our website to feature images of real charities. Our aim is to demonstrate to the public, the diversity and impact of the sector on Scottish life. We will further develop our website to provide more public-oriented information and encourage charities themselves to actively promote the fact that they are regulated – ultimately encouraging public confidence.

Taking action

While our emphasis is on prevention, we will take action where required in order to protect charity assets and the reputation of the charity sector.

Wilful misconduct among Scottish charities is rare. We received 324 complaints about charities in 2011-12, and identified a further 99 cases through our own internal referrals. The majority of cases were dealt with through dialogue with the charities concerned and the provision of guidance and support. We removed 9 charities from the Register as they no longer met the charity test.

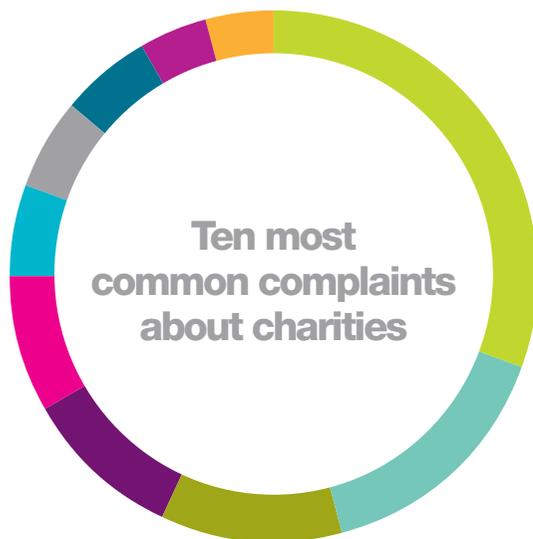
We aim to conclude 75% of complaints cases within nine months and in 2011-12 achieved 82%. We act in the public interest, and not on behalf of individuals or groups. Our [Inquiry and Intervention Policy](#) sets out what charities and complainers can expect from us when we conduct our inquiries.

We continue to see a significant number of complaints about charities failing to provide copies of their accounts on request. We remind charities that the 2005 Act entitles the public to charities' constitutions and most recent accounts, on reasonable request.



Taking action (cont)

Sources of Complaints 2011-12



General Governance	22%
Misrepresentation	11%
External Dispute	8%
Lack of Public Benefit	7%
Trustee Duties	6%
Service Delivery	4%
Non Submission of Accounts	4%
Accounting Irregularities	4%
Internal Dispute	3%
Failure to follow founding document	3%

These figures account for 72% of the complaints we received



Members of the Public	47%
OSCR Internal referrals	23%
Charities	16%
Anonymous complaint	7%
Professional advisor	6%
Other Regulator	1%

Case studies

SC004064 The Royal Zoological Society of Scotland

We helped a charity address its governance issues

The Royal Zoological Society of Scotland (the Society) was founded in 1909 and granted charitable status in the 1920s.

Background

The objects of the Society are to promote the conservation of threatened species and habitats. It operates two facilities open to the public, Edinburgh Zoo and the Highland Wildlife Park and has around 20,000 members.

The complaints we received

In 2011, we received complaints containing a number of allegations including serious misconduct by a senior Zoo manager; that the Society had signed a financial agreement to lease two giant pandas from China while not having the funds available, risking the existence of the Zoo; and that the Society, in not acting upon advice in earlier inspection reports, had left the public at risk of injury and the Society at risk of litigation. Concerns were also raised about the recruitment of new trustees.

Our inquiry

We found no evidence to suggest that the charity trustees did not act with care and diligence and in the best interests of the charity, but our inquiry did highlight areas where we considered the charity trustees needed to strengthen the Society's governance and we made recommendations regarding financial controls, management, communication and the founding document.

We found that the charity trustees took prompt action to investigate the misconduct allegations. It appeared

to us that full and thorough investigations were carried out by the charity trustees. However, a number of weaknesses in the Society's financial procedures and controls were found, as well as significant weaknesses in purchasing and procurement.

The charity trustees explained why they believed the lease of the pandas was a positive investment and provided evidence of the care and diligence applied to the decision-making process. With the zoo licensing reports, the charity trustees explained their reasons and stressed that at no time had the public been at risk as a result of the outstanding works.

We recommended a review of the Society's Royal Charter and Statutes to address ambiguity and ensure that the recruitment and appointment process provided adequate opportunities to introduce new charity trustees. Also, the Society has a large and active membership that should receive clear communication from the Board about relevant matters. We therefore recommended that the Board communicate to the members a clear and transparent process for nomination of people to fill annual vacancies on the Board.

The charity trustees co-operated openly and constructively throughout. We closed our inquiry and monitored the implementation of our recommendations over the following months.

Key lessons for the sector

- Charity trustees should put clear and robust **lines of authority** in place when running any major operations, and all staff and charity trustees should understand and operate within those parameters.
- There should be a **culture of control** embedded in the operations of the charity, with appropriate mechanisms in place to ensure that key policies and procedures are fully and consistently deployed.
- A charity should **regularly review** the effectiveness of its **internal financial controls**. This should include an assessment of whether the controls are relevant to, and appropriate for, the charity and take into account the scale of the charity, the nature of its operations and the risks to be managed.
- A charity should **regularly review** its **governing document** to ensure that it is up-to-date, clear and explicit, and that the trustees have the powers that they need in order to achieve the charity's purposes and to manage its resources effectively. Membership organisations need to address any known areas of ambiguity to help prevent disputes occurring.

You can read our full inquiry report and detailed recommendations at www.oscr.org.uk

Case studies (cont)

SC002323 Forman Memorial Hall

We helped a charity to modernise and operate more effectively

Prior to the 2005 Act, charities faced a potentially costly and lengthy legal process to update and modernise. In the past year, we have processed 154 applications for charities to reorganise, enabling them to better reflect their current activities and operate as modern charities responding to change.

Background

The Forman Memorial Hall in Roberton, near Hawick, was established in 1923 for the use of ‘the inhabitants and Community of the Parish of Roberton for meetings, lectures, social gatherings, entertainments or any purpose calculated to promote the interests, enjoyment and well-being of the inhabitants and Community and for no other purpose’.

The reorganisation

In November 2011 the charity’s trustees applied to us to reorganise because they felt that an updated Constitution would better reflect the charity’s activities and improve its administration.

The existing constitution prohibited the consumption of ‘any excisable or intoxicating liquors or materials in the hall or any part of the grounds’. This, in the view of the trustees, restricted the modern day use of the hall. The trustees also wished to update the definition of the community’s boundaries from ‘the Parish of Roberton’ to an area based on local post codes, and to improve the charity’s governance and administration by the insertion of a winding-up clause in the Constitution.

Finally, the charity’s trustees applied to convert the charity’s legal form to a SCIO. Their view was that the charity’s existing legal form was not conducive to a democratic system of ownership and management of the hall and its grounds as a community facility. The original Deed of Gift, drawn up in 1923, was silent on many administrative matters and the trustees wished to adopt provisions in line with current charity legislation.

We agreed with the trustees that removing existing restrictions on the use of the hall and the inclusion of new provisions in the Constitution would maximise the use of the hall for charitable purposes and for public benefit. Following the statutory period of advertisement for the proposed scheme, we approved the reorganisation in December 2011 and the charity’s subsequent application for conversion to a SCIO in July 2012.

Key lessons for the sector

- We have handled numerous applications from village halls for proposed changes or reorganisation. Such charities may not be large or prominent, but in our experience they are important local charities, particularly in rural areas
- Our experience is that village halls, while well supported, can have problems with governance, but as this example shows, such issues can be addressed with the right advice and using the options available. The process is generally straightforward even, as in this case, with more than one application
- We have worked closely with the Scottish Council for Voluntary Organisations to address these issues. Third Sector Interface organisations are available at local level for advice and support.

Efficient services

Throughout the past year we continued our work in preparing for the launch of OSCR Online, which took place on 6 June 2012.

Our new electronic services provide benefits for the sector and for us as regulator. Using OSCR Online, charities have more flexibility, control and convenience in submitting returns and accounts, and making changes to charity information.

Over half of Scotland's charities have registered for the new system and, at present, some 4,500 have submitted their returns and accounts electronically. Online tutorials and further information are available on our website. We will continue to promote the advantages of OSCR Online, which has been eagerly anticipated and welcomed by the sector.

oscronline – User Views

Nicki Donaldson, SC005247 Home in Scotland, Edinburgh:

'We thought the OSCR Online system was very easy to access and use. It was straightforward to enter our security question details as requested. We're part of a larger housing group and report to several regulators. We feel that online services are much less onerous and we're very happy to use OSCR Online.'

Alan Puckrin, Chief Financial Officer, Inverclyde Council, Greenock (SC019232 Queen Victoria Diamond Jubilee Fund):

'We administer 10 historical charities. Where we've found OSCR Online particularly useful is the ability to amend our own details. We've been able to change email and telephone contacts for individual officers as Principal Contacts, saving time and confusion.'

Barry Monahan, SC039247 Wooden Spoon Society, Fleet:

'We're very much in favour of online services as we report to several regulators including the Charity Commission for England and Wales, Companies House, the Gambling Commission and so on. In fact, we've been reporting electronically to the Charity Commission for some years so we've been looking forward to OSCR Online and are pleased it's now here. We'll definitely be using it in preference to paper and postage.'

Astrid Heward, SC041981 Movember Europe, London:

'When the OSCR Online email arrived, we logged on to check that our password worked and that the details currently held by OSCR were correct. We'd recently moved our UK office and we were able just to log in and change our contact details to the new address. The system was very simple and straightforward to use and we believe that OSCR Online is a good initiative that will make reporting much more convenient for charities.'



You can find out more about OSCR Online, and sign up for the new service at www.oscr.org.uk

In the coming year we intend to implement:

A new Corporate Strategy

More proactive communications

An expanded Outreach Programme

An enhanced website

More efficient services



Our governance

The **OSCR Board** is responsible for our strategy and future direction and oversees our governance. Appointed by Scottish Ministers, our Board Members usually meet every two months. They also act as ambassadors for our organisation, promoting our policies and values and discussing current issues with the sector. All of our Board Members have personal or professional experience of the charity sector, and bring their specialist knowledge and expertise to the organisation.

In June 2012 Oscar Mendoza stepped down as a Board Member after four years, taking up the post of Chief Operating Officer at Mary's Meals. We thank him for his contribution and wish him well for the future.

You can read information about our Board Members, as well as our governance and performance, at www.oscr.org.uk



Information about OSCR's Board Members, as well as our governance and performance, can be viewed at www.oscr.org.uk

Our aim is to encourage and support charities in meeting their legal requirements. Here are five key points to consider.

1.

Sign up for OSCR Online – it's fast, secure and gives you more control!

2.

Tell us about any change in your principal contact – so we can keep you up to date

3.

Sign up for OSCR Reporter – it's free and provides you with useful information

4.

Use our guidance – from charity trustee duties to preparing your accounts

5.

Take part in our events – our Outreach Programme and Meet the Regulator events are aimed at encouraging compliance.

You can contact us as follows:

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