

**PAPER NUMBER: 2014-02-04/BOARD/370**

**MINUTES**

**OSCR Board meeting**

**Held on Tuesday 12 November at 10am at Mental Welfare Commission, 91 Haymarket Terrace, Edinburgh**

**Present:** The Very Rev Dr Graham Forbes, Chair

Lindsay Montgomery, Deputy Chair

Annie Gunner Logan, Board Member

Prof. David Harrison, Board Member

David Hughes Hallett, Board Member

Kaliani Lyle, Board Member

**In attendance**: David Robb, Chief Executive

Martin Tyson, Head of Registration

Laura Anderson, Head of Enforcement

Judith Turbyne, Head of Engagement

Judith Hayhow, Head of Support Services

Jane Holligan, Board Secretary

David Perkins (OSCR staff observer)

Nicola McBain (OSCR staff observer)

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|  |  | **ACTION** |
| **1.** | **Apologies**    Apologies received from Fiona Ballantyne. |  |
| **2.** | **Declarations of interest**  Kaliani Lyle declared an interest in respect of Board Paper 365, the Chief Executive’s Report (section on Scottish Charity Appeals Panel hearing of an appeal by St Margaret’s Children and Family Care Society) as Scotland Commissioner for the Equality and Human Rights Commission. |  |
| **3.** | **Agenda Item 1: Minutes of previous meeting – 12 September 2013 and matters arising**  Minutes approved.  There were no matters arising. |  |
| **4.** | **Agenda Item 2: Chief Executive’s Report**  The Chief Executive introduced paper 365. Regarding performance information, the Registration and Enforcement teams are making good progress in handling caseloads. The Head of Registration noted there were particular pressures building because of an increased number of local authorities seeking to reorganise charities they oversee to avoid new requirements to do separate audits for every charity and to address problems because some charity’s purposes are outdated. He said the team is working with local authorities to try and avoid a bottleneck in applications at the end of the year. This will ultimately help efficiency because there will be slightly fewer charities on the Register. The Chief Executive noted this is good news too for potential beneficiaries since these reorganisations will help liberate more charitable assets to be used for public benefit.  The Head of Enforcement updated the Board on an inquiry into a charity where the team is liaising with the police and considering next steps.  The Head of Registration noted he had no further update on the St Margaret’s Children and Family Care Society appeal currently before SCAP. The Panel has indicated it will return a decision by 31 January 2014. He also said that the case had been referred to by the Equal Opportunities Committee in its discussions on Equal Marriage. There has also been, in connection with the passage through the Scottish Parliament of the Equal Marriage Bill, a parliamentary question asking what view OSCR might take about the charitable status of a church that spoke out against same-sex marriage. OSCR’s advice was that providing the charity was acting in furtherance of its purposes this action would be unlikely to affect its charitable status. He offered to circulate the answer to the PQ to the Board when it was finalised.  The Chief Executive noted that staff had scheduled a meeting with the Head of the Tribunals Service to offer feedback on recent experience and to register some concerns relating to the procedures of SCAP including the issue of decisions without supporting reasons. Board members said an appellant might be prejudiced where a decision went against them but the reasons were not available.  The Head of Registration said that decisions would be announced shortly about further schools that were subject to individual assessment and some where directions have already been issued for them to meet the charity test. Meetings with individual schools have been reasonably constructive. A further batch of decisions is expected in November. There are still a few schools that have not been reviewed in terms of their charitable status and in some cases these are more complex because of interest from other regulators.  The Chief Executive reported on engagement activity, including for Trustees Week where there had been a number of meetings with trustees and a special blog page started on the website. He noted that the annual programme of Meet the Charity Regulator events had been completed. Board members said they would like to see similar regional events in future. They also suggested doing evaluation of the events so far to inform the future events programme.  The Chair said he was about to take part in short-listing for three new Board members as part of the public appointments process. Board members noted that there might be a gap of a couple of weeks between when the two outgoing members stood down and the new members took up post. They said it would be preferable to have a full Board over a period when decisions relating to SCAP cases might be required quickly. The Chair said he would raise the possibility of a short continuation to cover this period with Scottish Government.  The Chief Executive said that staff had had some constructive meetings with HMRC both in Dundee and at their offices in Bootle, as well as at a meeting with the Charity Commission in London. Members briefly discussed how HMRC determines eligibility for tax reliefs and the Chief Executive confirmed that this was decided by HMRC on basis of the English and Welsh definition of charity.  The Head of Enforcement reported that the consultation on the new charity SORP had received over 160 responses and that OSCR and the Charity Commission had held 26 events engaging 1,600 people in the consultation process. She noted this is the highest level of consultation yet achieved with a Charity SORP.  The Chief Executive set out plans for strategic scenario planning looking at what potential constitutional change might mean for OSCR as an organisation suggesting this should begin once the Scottish Government White Paper was published on 26 November. Board members also suggested having a factual briefing paper available to deal with any external inquiries covering those issues (such as tax) where changes would be necessary if there were constitutional change.  Regarding the summary of management accounts, the Chief Executive noted that there was an error under the item ‘leadership and governance costs’ where no cost had been allocated. He said that Board costs of £2,194 should be noted and this would be corrected. Board members asked that there should be commentary included in the future by staff indicating if they expected a variance to get worse or better. The Head of Support Services said that senior management were discussing various projects still to be agreed and spending for the year would be confirmed at the end of November. She said there had been some knock-on effect from the delay to the SCAP decision in terms of legal fees and when these were expected. Staff are looking at whether these might be brought forward.  The Chief Executive reported that in terms of staff, the senior management team is now fully staffed and there had been two departures at manager level, one of which had been filled internally so far.  The Board **noted** the report. | **MT**  **MT**  **JT**  **GF**  **DR**  **JH** |
| **5.** | **Agenda Item 3: OSCR Review arrangements**  The Head of Registration introduced paper 366. He said he was bringing to the Board a new version of a previous paper on review arrangements taking into account Board comments, to reflect advice that OSCR reviews must be ‘de novo’ decisions (effectively taking the decision again), and to simplify how we communicate our review process. Board members said that a public body should not rule out review options and that they would prefer to keep their options flexible. They asked that wording be changed to reflect this. Members also asked that it be made clear what the review task was and that the reviewer would not be looking at the previous decision but would be taking a new decision and including any new evidence or information. They said that in exceptional circumstances the Board would want to continue to be the body taking a first instance decision particularly when a decision would set a precedent or be crucial to OSCR’s reputation. They also asked that the situation in which this might happen be set out, for instance where the decision was on a subject of wide sensitivity and affecting a large number of people and/or extremely complex. However, there was agreement that this should not constitute a checklist approach and that there would need to be scope for staff to be able to identify cases that needed to be brought directly to the Board. In these rare circumstances, the Board would therefore also have to review its own decision, where requested.  The Board asked staff to adjust the wording to take account of these views and then publish the new Review Procedure. | **MT** |
| **6.** | **Agenda item 4: Publishing accounts**  The Head of Enforcement introduced Paper 367. She noted the Board had expressed broad support for publishing accounts and that the project team had been looking at how to implement this. She said there were some legal issues and officers were also seeking clarification from the Information Commissioner about these. Staff had carried out a small pilot to understand resource implications of redacting personal information from accounts. There were several options for the future including publishing accounts for certain groups of charities, such as larger charities, or campaigning for charities to make accounts available themselves. A separate piece of work was looking at the feasibility of a charity trustee register and members were asked for their comments on this. This register could throw light on who charity trustees are, where they have links with other charities, and inform enforcement work.  Board members reiterated their support for publishing accounts and asked if it might be better to ask charities for consent to publish rather than redacting information. The Head of Enforcement said that this would require seeking consent both from charities and independent examiners/auditors. Board members suggested starting by linking to where charities already published their accounts or where their accounts were made public elsewhere to begin to increase transparency. They considered it should be promoted as best practice for a charity to publish its accounts. Some members said they considered it to be a high priority to deal with those charities on the register who had not filed accounts at all. The Chief Executive said that he considered the regulator had a duty to increase transparency and offer a comprehensive service by publishing the information we held on charities in the same way as the Charity Commission and taking sensible steps to make this happen. He said that having a trustee register would address an area of potential risk where we currently had limited information.  Regarding the trustee register, members asked for a more detailed business case that set out the purpose of doing this, the benefits, feasibility and the resources required.  Regarding publishing accounts, members asked that we build requests for consent into the existing process and link to those charities that were already publishing accounts online in a way that encourages charities to follow best practice and publish their accounts themselves. | **LA**  **LA** |
| **7.** | **Agenda item 5: Dalkeith Miners: Learning points**  The Head of Registration introduced Paper 368 that was to update Board members on this case and set out learning points from the process. Having made a finely balanced decision in the case of Dalkeith Miners Charitable Society’s reorganisation scheme, which was refused, he said that one lesson was that the regulator should be wary of being drawn into disputes between charities and umbrella groups. He said that in cases like this OSCR would try and facilitate agreement between the two groups and might suggest the bodies use a third party to broker a solution to their disagreement, which was a role for a mediator and not the charity regulator. The Board agreed that it was not for OSCR to resolve disputes among charities but to reach assured decisions on points of charity law. The Head of Registration said that the case had improved our understanding of the issues around reorganisations, which had informed the decision made.  The Board noted the paper. | **MT** |
| **8.** | **Agenda item 6: International charities**  The Head of Enforcement introduced Paper 369. She said that ongoing research had established there were very few charities on the register that had no links to the UK. The project is therefore looking at 2,900 charities that work in the UK and overseas. She said that staff would report back on further analysis of this group of charities. Engagement work was also taking place with the umbrella group NIDOS to understand better the risks that these charities face. This will help OSCR respond to the way these charities mitigate these risks. She said that she would report back on that engagement. Board members asked if there were plans to look in detail at any of these charities. The Chief Executive said any future work would be carried out cognisant that most international charities are well aware of their risks and manage them well. Board members asked how many of the group had not submitted accounts. The Head of Enforcement said non-submission levels were broadly similar to all charities. Board members asked however that staff prioritise those charities in that group that had not submitted accounts for closer attention.  The Board noted the report. | **LA** |
| **9.** | **Any other business**  The Chief Executive said that we had been approached by community members and elected representatives about the way a local charity is being run and the Head of Enforcement would circulate an email update on this. | **LA** |