

**PAPER NUMBER: 2013-11-12/BOARD/364**

**MINUTES**

**OSCR Board meeting**

**Held on Thursday 12 September at 3pm**

**At Scottish Legal Aid Board, 44 Drumsheugh Gardens, Edinburgh EH3 7SW**

**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  
Fiona Ballantyne, Board Member (part of meeting)

**In attendance:** David Robb, Chief Executive  
Martin Tyson, Head of Registration  
Laura Anderson, Head of Enforcement  
Judith Hayhow, Head of Support Services  
Jane Holligan, Board Secretary

|           |  | <b>ACTION</b> |
|-----------|--|---------------|
| <b>1.</b> | <b>Apologies</b><br><br>Apologies received from Kaliani Lyle.  |               |
| <b>2.</b> | <b>Declarations of interest</b><br><br>None  |               |
| <b>3.</b> | <b>Agenda Item 1: Minutes of previous meeting – 25 June and matters arising</b><br><br>Minutes approved. Deputy Chair asked that draft minutes be circulated to Board Members more quickly after Meetings.<br><br>There were no matters arising. | <b>DR</b>     |

|                  |  |                  |
|------------------|--|------------------|
| <p><b>4.</b></p> | <p><b>Agenda Item 2: Chief Executive’s Report</b></p> <p>The Chair and Chief Executive noted that in July they had met with William Shawcross, Chair of the Charity Commission for England and Wales, and separately with John Swinney, Cabinet Secretary for Finance, Employment and Sustainable Growth. Both meetings allowed a constructive exchange of views.</p> <p>The Head of Registration gave the Board an update on ongoing proceedings at the Scottish Charity Appeals Panel. The panel is hearing an appeal by St Margaret’s Children and Family Care Society against OSCR’s decision to uphold the issuing of a direction to that charity to meet the charity test. He said that the current round of proceedings would conclude on Friday 13 September but they would then resume on 1 November when the panel would hold hearings about costs. Staff would of course inform Board Members when the panel reaches a decision, likely to be announced on 1 November, though perhaps not with full reasons at that point.</p> <p>The Head of Registration reported that the panel would hand down a decision by the end of the week on another case where a former charity trustee has appealed an OSCR decision. Regarding a further appeal by Dyspraxia Scotland, he said that OSCR had withdrawn its opposition because of extenuating circumstances and proportionality considerations. OSCR agreed it would engage further with the charity rather than continuing the hearing.</p> <p>Regarding a case involving the Dalkeith Miners Charitable Society, MT reported that OSCR has decided to refuse consent for a reorganisation. Staff met with the charity to explain the reasons for this, but the charity may ask for a review. A paper on lessons learned from this inquiry about how OSCR should regard cases and complaints that come to it because of disputes between charities will be presented to the Board at its November meeting.</p> <p>Fiona Ballantyne, Board Member, joined the meeting.</p> <p>The Head of Registration then gave an update on the assessments of fee-charging schools. Further decisions will be issued after school terms start.</p> <p>He noted that the Charity Commission and HMRC are looking at Exclusive Brethren charities. Board members recommended that OSCR keep in contact with these bodies about developments in this work.</p> | <p><b>MT</b></p> |
|------------------|--|------------------|

The Head of Enforcement said that OSCR continued to cooperate with Audit Scotland about a case involving a leisure trust. Regarding arms' length external organisations, the Chief Executive noted that Scottish Government and umbrella groups were separately interested in the impact of ALEOs. Board members said that lessons from the inquiry into the Shetland Charitable Trust might be useful context while officers pointed out that charity law was intended to allow these bodies to qualify for charitable status.

In relation to the independence referendum, the Chief Executive said that officers were about to issue a response to a charity that was subject to a concern about possible political activity finding that there were no grounds.

The Head of Enforcement outlined progress in a separate compliance case about a charity recently granted status but where concerns had been raised about the charity's activities. OSCR is liaising with the police and HMRC.

Board members were reminded that a Board representative is required at the two Meet the Regulator meetings planned for Edinburgh and may also be asked to take part in events during Trustees' Week.

The Chief Executive distributed final proof copies of the Annual Review to Board Members and said printed versions would be distributed parliamentarians with an electronic version available on the website. Regarding engagement, he noted too the positive reaction to the final version of OSCR's referendum guidance.

The finalised version of the Equality Strategy would not be published until the final outcome of the case before SCAP because the panel was currently considering pertinent equality issues.

Regarding the risk-led regulation project, the Chief Executive said that OSCR had announced it intended to publish charity accounts and the initial reaction had been positive. There was some discussion about the different statutory role of the Charity Commission, which is required to publish accounts. Since OSCR is not specifically required by law to do so it is reviewing any potential legal impediments to taking this action. Board members said they supported publishing charity accounts. They discussed that one option would be to ask charities to give permission for accounts to be published and note on the

|                  |   |  |
|------------------|---|--|
|                  | <p>Register if this was refused. The Head of Enforcement said that staff were developing and testing a risk framework and would present a paper on publishing accounts at the November Board meeting. Regarding charities working overseas, the Head of Enforcement said a further paper on these charities would be presented at the next Board meeting.</p> <p>On the issue of social enterprise, the Chief Executive said that OSCR has seen an increase in the number of complex structures being proposed by charities in this area. He said that staff were gathering information to increase their understanding and also to ensure this fast-growing sector is taken account of in operations and guidance. Annie Gunner Logan said that as a member of Social Enterprise Scotland she could assist with this. As part of ongoing dialogue, officers have invited the Chair of the Scottish Parliament’s Cross-Party Group to OSCR.</p> <p>The Chief Executive drew members’ attention to the draft Framework Agreement with Scottish Government. The Deputy Chair offered to submit comments to him on the draft content that he felt did not fully reflect OSCR’s status as a non-ministerial department.</p> <p>The Chair gave an update on Board appointments. He said that dates had been set for advertisements and interviews, which would take place on the 12<sup>th</sup> and 18<sup>th</sup> of December.</p> <p>The Chief Executive said that senior managers would hold a bilateral meeting with the Charity Commission in London in October.</p> <p>The consultation on the Charities SORP has just opened. The Head of Enforcement said that all events were oversubscribed and feedback had been constructive.</p> <p>Members noted the appendix regarding sickness absence. They asked that this information be reported to the Board on a six-monthly basis.</p> <p>Board members <b>noted</b> the paper.</p> | <p><b>LA</b></p> <p><b>DR</b></p> <p><b>LM/DR</b></p> <p><b>JH</b></p> |
| <p><b>5.</b></p> | <p><b>Agenda Item 3: Inquiry and Intervention policy</b></p> <p>The Head of Enforcement introduced the paper. She said that since 2009 when the policy was developed, officers had learned from reactions to the inquiry process. One issue was managing expectations around the level of engagement with a complainant since OSCR acts on</p>  |  |

|   |           |
|---|-----------|
| <p>behalf of the public and not any individual.</p> <p>We acknowledge concerns at the outset and write to them with the outcome of any inquiry but this does not satisfy everyone. Some are unhappy with the level of information; others with our conclusions, thinking we should be tougher.</p> <p>The emerging draft policy does not differ largely from the existing approach but seeks to be clearer about what to expect. It is more robust about dealing with people who repeatedly seek information about progress. There are considerations too about how the policy interacts with people's Freedom of Information rights.</p> <p>Board members suggested that staff contact the Scottish Public Services Ombudsman's office to seek input about their approach. They also suggested that while we should acknowledge there were some complainants who could be problematic, we should not base our policy around those people. OSCR depends on whistle-blowing and must nurture those who can provide crucial information. They asked for language that acknowledges some of the risks that people take when bringing forward concerns.</p> <p>The Board said they were happy with the direction of travel but that some rewording of the policy was needed to give a more positive impression to potential complainants. Setting out what complainants need to provide, particularly in terms of evidence, should also be included.</p> <p>The Head of Enforcement said she would present a follow-up paper at the November meeting. One issue that might be covered is the range of OSCR's powers (which are not as graduated as we would like) and how we expect to use these. Some Board Members felt that we should set out what our powers are and that it should be evident when charities fell short of expectations. . Board members agreed that OSCR should be tougher with those who do not supply accounts. While defaulters should be given opportunities to comply, members said that action should be taken against persistent offenders otherwise you disbenefit those who do comply. Members and staff discussed constructing a scale from maladministration to misconduct that would make it clearer how seriously we take certain action or inaction. It was noted that decisions from SCAP cases would also provide guidance on what action was proportionate and justified where there was non-compliance with administrative requirements.</p> <p>The Board <b>noted</b> the paper.</p> | <p>LA</p> |
|---|-----------|

|           |  |  |
|-----------|--|--|
|           |  |  |
| <b>6.</b> | <b>Agenda Item 4: Audit Committee minutes</b><br>The Board <b>noted</b> the minutes.                             |  |
| <b>7.</b> | <b>Any other business</b><br>None raised.<br>Fiona Ballantyne gave her apologies for the November Board meeting. |  |