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MINUTES

OSCR Board meeting

Held on Tuesday 25 June at 10am

At OSCR, Quadrant House, 9 Riverside Drive, Dundee

Present: Lindsay Montgomery, Deputy Chair
 Fiona Ballantyne, 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 Hayhow, Head of Support Services
 Moira Cathcart, Senior Legal Advisor
 Jane Holligan, Board Secretary
 Caroline Monk, OSCR staff observer
 Lauren Scott, OSCR staff observer
 Norman McFarlane, Monitoring Manager (Agenda Item 9 only)

		ACTION
1.	Apologies Apologies received from The Very Rev Dr Graham Forbes (Chair) and from Annie Gunner Logan (Board member). Deputy Chair Lindsay Montgomery chaired the meeting in Dr Forbes' absence.	
2.	Declarations of interest David Robb declared an interest in a verbal update on an inquiry into a charity to be provided separately under Agenda Item 2. Kaliani Lyle declared an interest in Agenda Item 5 Equality	

	Strategy update as Scotland Commissioner for the Equality and Human Rights Commission.	
3.	<p>Agenda Item 1: Minutes of previous meeting – 15 May 2013 and matters arising</p> <p>Minutes approved.</p> <p>Board members asked for more information about the possibility they might be called as witness in the Scottish Charity Appeals Panel hearing on St Margaret's Children and Family Care Society. The Senior Legal Advisor said that the charity had not yet lodged its submission with SCAP. She will update the Board about this and the likelihood of Board members being required to attend following that submission.</p>	MT/MC
4.	<p>Agenda Item 2: Chief Executive's Report</p> <p>The Board agreed to discuss first the item on which the Chief Executive had declared a conflict of interest.</p> <p>David Robb left the meeting.</p> <p>The Head of Enforcement gave an update on an inquiry into a charity linked to a football club. Despite protracted efforts by officers there has been no engagement with a key charity trustee. A report is being finalised and once that is completed the final draft will be circulated to other stakeholders for factual accuracy checks where they have registered a formal interest. It was confirmed that the Chief Executive had been excluded from all discussion of this inquiry and would have no input into the final report. The Chair and Chief Executive are to be given sight of that report only shortly before publication.</p> <p>David Robb rejoined the meeting.</p> <p>The Senior Legal Advisor gave an update on hearings before SCAP. She noted that in one appeal the appellant is not being represented legally and where that happens OSCR incurs additional work to ensure that the other party is fully aware of procedures. She noted that the upcoming Tribunals Bill offers an opportunity for SCAP to be brought into the Tribunals network and have its own clerk, which would be beneficial in practical terms.</p> <p>Regarding an appeal about a contested reorganisation, the Head of Registration said that officers were close to a decision. The case was complex and involves law around</p>	LA

	<p>Employment and Sustainable Growth John Swinney MSP on the 4th July. He also reported that the Head of Registration gave evidence to MSPs for a bill on regulatory reform. He has invited MSP Chic Brodie, who is chair of the cross-party group in Scottish Parliament on social enterprise to OSCR to provide greater clarity to him about OSCR's role in relation to this sector.</p> <p>The Chief Executive also reported that he and the Chair were due to meet the new Chair of the Charity Commission William Shawcross in Edinburgh the following week. On another international regulatory matter, he noted that Ireland was putting in place a charity regulator that would recover its costs from the charity sector and that officers will be following progress of this initiative.</p> <p>The Head of Enforcement reported on progress with the new Charities Statement of Recommended Practice (SORP) that was ready for a 17-week consultation to be launched in early July. She noted the work that had been done with colleagues at the Charity Commission and the SORP Committee to get the draft to this stage and also that for the first time the new SORP would be an electronic product as well as available in hard copy. The Chief Executive and the Board recorded their thanks to the Head of Enforcement for her considerable achievement in advancing the new Charities SORP, particularly by chairing meetings of the SORP Committee.</p> <p>There were no questions on the financial and management information.</p> <p>The Chief Executive reported that, following an open consultation and engagement with other regulators and key stakeholders, officers had produced a new draft of guidance on the referendum for publication in July. The main changes are that the guidance is now shorter and clearer about the core question of whether charities can take a position in the referendum – it says they can as long as they meet certain provisos. The guidance is to be published along with all the comments received. The Board welcomed the positive messages for charities in the guidance around what they can do, and were content with draft and for staff to make any further drafting changes needed. Board members said they were keen, however, that OSCR redress any wider misconception regarding the scope of charity trustee duties and the idea that these (and OSCR's remit) do not include protecting a charity's reputation from undue risk. The Chief Executive said officers would engage with stakeholders and continue to</p>	<p>DR</p> <p>LA</p>
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	<p>clarify this point. The Board also asked that OSCR engage more with MSPs so that they are aware of the work it is doing and how this contributes to society in Scotland. The Chief Executive said that the Annual Review that is planned for publication in the autumn will set out OSCR's contribution and would be a platform for clear engagement with parliamentarians.</p> <p>The Board noted the report.</p>	DR
5.	<p>Agenda Item 3: Annual Report and Accounts</p> <p>The Chief Executive presented OSCR's Report and Accounts paper 352 and said that he planned to sign off the Report and Accounts as accountable officer subject to any views and comments from the Board. He drew the Board's attention to the section on Advice to Ministers. The Board suggested that the general information could be presented in a more high-level way with less detail about issues that were for future discussion. David Hughes-Hallett pointed out that the date of his appointment on pages 17 and 34 was wrong and asked for this to be corrected. The Board noted that staff absence levels had increased considerably in 2012-13, and agreed that this was a matter which would be further considered at a future meeting. The Board were content with the draft Report.</p> <p>The Board noted the paper.</p>	JH/DR
6.	<p>Agenda Item 4: OSCR Review arrangements</p> <p>MT presented paper 353 on various aspects of decision-making and review arrangements within OSCR. The Board had a productive discussion mentioning the benefits of drawing on the shared expertise of the Board as a whole; expressing a preference where practicable for keeping reviewers separate from original decisions; noting the pressures of time in some reviews; and considering the different alternatives available including an option for smaller review committees that might include some Board members and co-optees. The Board asked officers to continue to consider the arrangements for staff reviews and formal reviews with a view to developing flexible options that continue to fulfil OSCR's commitment to sound and robust decision-making. It would also be prudent to await the outcome of the SCAP review where the question of the Board reviewing its own decision would be one of the procedural points at issue.</p> <p>The Board noted the paper.</p>	MT

7	<p>Agenda Item 5: Equality Strategy update</p> <p>The Chief Executive presented paper 354 that set out amended wording for Meeting the Charity Test relating to equality requirements and the Equality Strategy for publication, following consultation. He said that officers had arrived at the wording which settles on the statutory position of the Equality Act following the recent experience of cases involving equality requirements and comments received in the consultation. The Board were satisfied that the wording should reflect the legislative requirements and not include any further requirements. The Board questioned the qualification to the proposed wording 'unless there are exceptional circumstances' saying that this undercut the clarity of the message. The Head of Registration suggested recasting the paragraph in terms of what the Regulator would expect of charities and the Board asked him to do this. Other than this, the Board was content with the draft wording and the Equality Strategy.</p> <p>The Board noted the paper.</p>	MT
8	<p>Agenda Item 6: Report from Audit Committee</p> <p>The Deputy Chair presented the Annual Report from the Audit Committee and said that both internal and external auditors were satisfied with how OSCR was operating. The committee had reviewed governance arrangements, efficiency savings, self-assessment, annual reporting and ICT security, among other matters during the course of the year.</p> <p>The Board noted the Report.</p>	
9	<p>Agenda Item 7: Board self-assessment checklist</p> <p>JH presented paper 356 on the Board's self-assessment checklist noting that this was the first time that the assessment had been presented this way. The Board welcomed the checklist and said this was a positive move. Board members asked that the checklist reflect the different ways Board members interact with OSCR staff, including attending Meet the Charity Regulator events and having observers at Board meetings. They also asked that wording around Chair's assessment of Board members be amended to reflect current arrangements, including the frequency.</p> <p>The Board noted the checklist and confirmed they were content with the arrangements.</p>	

10	<p>Agenda Item 8: Risk Register</p> <p>The Head of Support Services presented the Board Risk Register along with the Audit Committee and SMT Registers in Paper 357. The Chief Executive said that OSCR was taking a tiered approach to managing what was effectively one strategic risk register. The Head of Support Services confirmed that the audit committee considered its register at each of its meetings, SMT every two months and the Board annually. Board members suggested that risk might be a standing item on the executive team meetings and that it alert the Board of any significant changes to its register. The Board was content that the Board Risk Register as presented accurately reflected the risks facing OSCR.</p> <p>The Board noted the paper.</p>	JH
11	<p>Agenda Item 9: International charities update</p> <p>The Head of Enforcement introduced Paper 358 and said it was a first step to building up a profile of charities on the Register which are working overseas. She noted that there were 411 charities identified as working overseas but that those which were cross-borders were unlikely to be overseas only as this was not permitted under English and Welsh legislation (unlike in Scotland where they do not need to have a Scottish geographical link). The research already shows there are clusters working in some territories and she proposed doing more research to inform any action as regulator. The Board welcomed the paper as useful and interesting and suggested that consideration be given to placing overseas charities on the Risk Register. The Head of Enforcement said that the regulator will have to ask how empowered it feels, or can be, about acting against such charities. The Board asked for more information on how non-submission rates among this group compared to other charities whose non-submission rates are high. Members asked for more work to be done to flesh out where risks are in order to assess what action might be taken. They noted there might be several risks, including for working with children. The Head of Enforcement agreed that other organisations may have learning points around how to deal with risks arising from working with charities in other jurisdictions. She said that the vast majority of these charities had been given status by HMRC (before 2006 when OSCR took powers) and that the registration process now was different. The Board said it would welcome a</p>	LA

	<p>strategic discussion about charities working overseas with external experts. The Chief Executive said staff would distribute ideas and formats for such discussions with guests on this and other matters.</p> <p>The Board noted the paper.</p>	DR
12	<p>Any other business None raised.</p>	