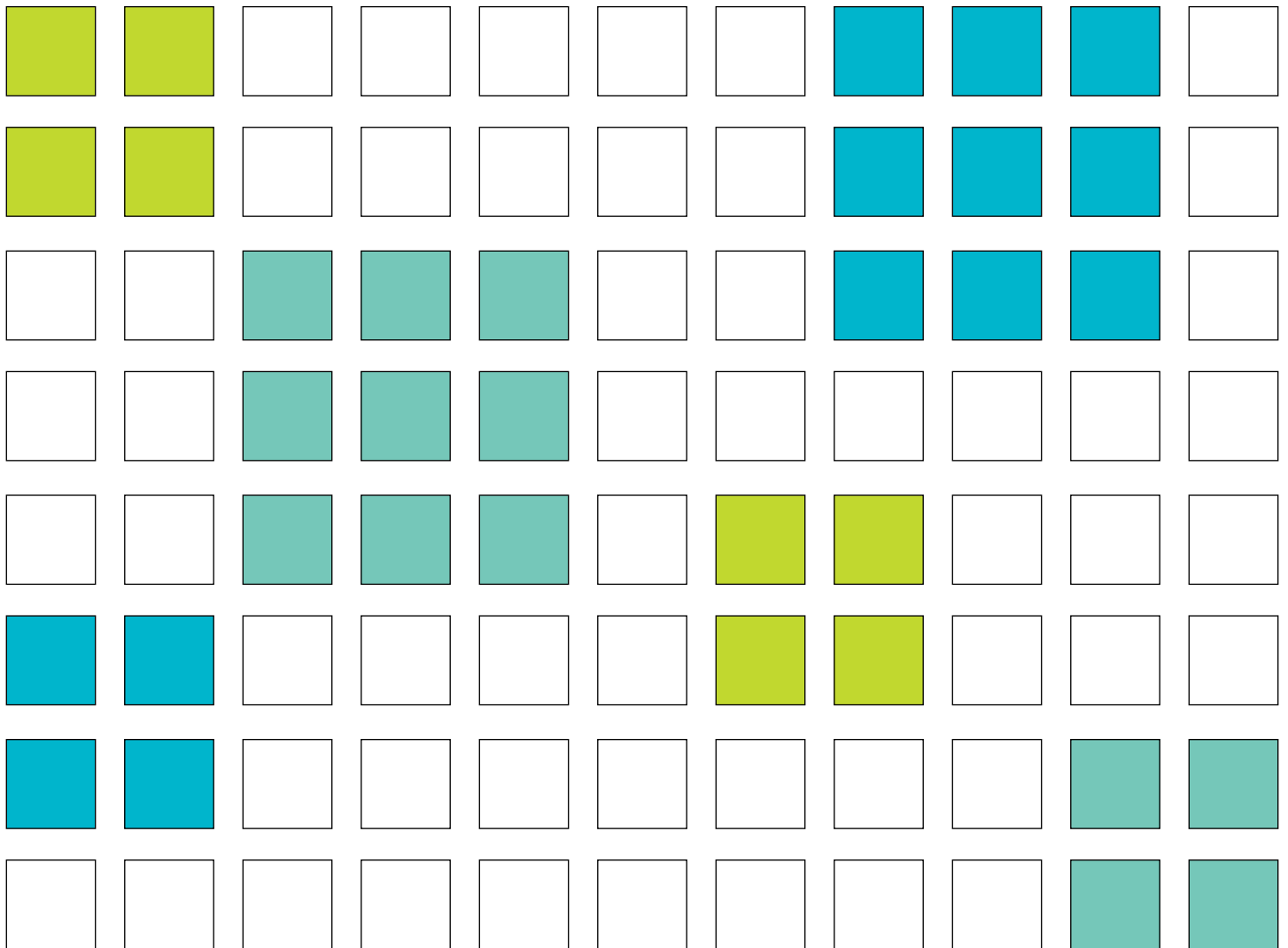


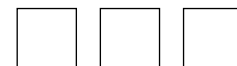
Protecting charitable status

A report on individual charity reviews 2006-11



- There are more than **23,000** charities in the Scottish Charity Register. All charities must report annually on their activities and accounts to OSCR, which monitors these returns
- Between April 2006 and September 2011, OSCR registered **4,949** new charities, after assessing each of them to ensure they met the charity test
- Since 2006, OSCR has carried out active individual reviews of the charitable status of **66** charities, focusing on charities in those categories believed to have the highest likelihood of failing the charity test, as well as a small number selected from case work or at random
- Of the charities targeted for review, **48** met the charity test outright and a further **12** met the charity test after taking steps to carry out our directions

- **1** charity that had put itself forward for a pilot review later withdrew voluntarily, **4** charities chose to wind up and leave the Register during the review; these had no income for at least two years. **1** charity remains under review
- We reviewed **13** schools and, after initial reviews, we issued directions to **5** schools to take steps to meet the charity test
- **4** of these schools did not initially provide public benefit; they have since implemented plans to increase access to the benefit they provide and now meet the charity test
- **1** school that was subject to ministerial control amended its constitution in order to meet the charity test
- We have confirmed that all **13** schools now meet the charity test



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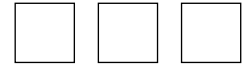
1



executive summary

- On the basis of our targeted review programme the public and the charitable sector can be confident that charities on our Register are generally continuing to comply with the requirements of the charity test
- Through these reviews, we tested perceptions about which types of charity were most likely to fail the charity test. Our assessments gave us greater certainty about which groups in fact have the highest likelihood of failing our regulatory requirements and require closer monitoring, and which do not
- The principal failings found in reviews against the charity test (2006-11) were where:
 - charities' stated purposes were no longer charitable in law
 - charities' activities were not in line with their stated purposes
 - other bodies, including Scottish Ministers or Ministers of the Crown, had control over charities
 - there were undue restrictions preventing people from having access to the benefits that charities provided
 - charities were inactive and provided no public benefit
- Our reviews have prompted a number of charities to deliver greater public benefit and use charitable assets more effectively towards furthering their purposes
- In some cases charities that we reviewed passed the charity test but we had concerns about governance or other aspects of how the charity was run and we made recommendations to guide charity trustees to resolve these issues
- Dissemination of lessons learned is essential. Although we have only directly reviewed a small number of charities, we have magnified the positive effect by targeting most reviews at certain types of charity, then working where possible with umbrella groups to communicate any lessons learned to charity trustees
- Based on our experience, we do not believe we need to actively review a large number of charities in the Register, although we have powers to review any charity
- We will continue to focus our reviews, prioritising those types of charity where there seems to be the greatest likelihood of difficulties in complying with the requirements of the Charities and Trustee Investment (Scotland) Act 2005
- We will, however, broaden the basis for reviews to ensure future reviews cover all of our regulatory concerns, including charitable status and governance
- As circumstances change, we will continue to review and update our assessment of which types of charity we should review, and take into account newly identified areas where issues may arise – for instance, in how charities comply with the new Equalities Act 2010
- Our experience of using a selective, issues-based approach in individual charity reviews, coupled with our findings from inquiries, will inform how we take forward other ad-hoc and routine monitoring work

2



introduction

Charities in Scotland commit to charitable aims and purposes, and work solely for these. In return they hold a special status in society. They enjoy public support and respect for their work to benefit others. As the regulator of Scottish charities, OSCR has a duty to ensure that when an organisation is registered as a charity, the public can be confident that it plans to work for charity and for the public benefit. OSCR must also monitor more than 23,000 Scottish charities and check that they continue to hold to these principles while they remain on the Scottish Charity Register.

As regulator, we aim to support charities and to target our resources where they can have the greatest effect. In carrying out our duty to monitor whether Scottish charities continue to meet the charity test, we took an approach that was focused and proportionate. In this report, we explain how we carried out a programme of individual charity reviews to protect the integrity of charitable status. We conducted individual reviews alongside our other regulatory work and focused them on those groups of charities that we, or the people we consulted, thought might be most likely to have difficulties in meeting the requirements of charitable status.

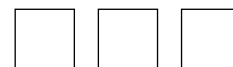
There were different possible issues. These ranged from having purposes that were no longer charitable under new law, to providing insufficient, or no benefit at all, to the public. We therefore carried out in-depth reviews of those charities that we and the public were most unsure about. We also reviewed a number of charities chosen at random to check further on registered charities.

The results of these reviews, carried out over five years, showed that public confidence in Scottish charities is well placed. Even though we focused on those charities with the highest perceived likelihood of failing the charity test, the large majority demonstrated that their activities were charitable and that they were providing public benefit.

However, our reviews also found that certain types of charities have a higher likelihood of failing the charity test, whether through undue restrictions on the benefit they provide, or through failing to provide any benefit through inactivity. The review process itself, which allowed us to work with some groups of charities through their umbrella bodies, enabled us to explain to charity trustees where there was a problem or potential problem so that they could address this in order to meet the charity test. A number of charities increased the public benefit they provide as a result.

During our reviews of charitable status, we found other issues that were of concern because they also pose a risk to charities and their reputation. In some cases, these were around governance, where charity trustees did not have full control or authority over their charity. One conclusion of this programme of individual assessments is that our reviews will be of greatest benefit when we consider all the regulatory issues a charity might face, from an outdated constitution to a governing structure that does not adequately protect charitable assets.

Lessons we have learned from our review process have helped us understand the issues better and introduce new checks, for instance on charities which are inactive. Our work has confirmed our commitment to a proportionate, targeted approach based first on an assessment of risk. However, the kind of reviews we will carry out will look at the charity as a whole rather than charitable status alone, checking on all the issues we know can threaten charitable assets or a charity's reputation and cause concern to the public.



This report aims to set out in detail to an audience of charity trustees, umbrella groups, professional advisers, donors, funders and the wider public, the work we have carried out to review whether individual charities in the Scottish Charity Register meet the charity test. It draws together the lessons we have learned from the first five years of our programme of individual reviews of charities in the Register, which we termed the Rolling Review, and adds to previous reports we have published on this review programme. Through case studies focusing on the latest stage of the review process, we explain our thinking about how we assessed charities against the charity test, and illustrate the criteria and principles we use in reviews.

These lessons will be particularly useful for charity trustees and their advisers. Charity trustees have a duty to act always in the interests of their charity and with appropriate care and diligence. The lessons we highlight from our reviews can help them, in practice, both to ensure that their charity continues to meet the charity test and to identify potential problems in governance. We have compiled the main points in a checklist for charity trustees to help them to review their own charity in order to anticipate any issues. Part of the success of the review programme has been the subsequent effect of our targeted reviews in prompting charity trustees to make changes so that their charity fully meets the charity test. We hope this report will provide new guidance to help them to look carefully at their own charities.

We would like to thank the charities that have taken part in the review process. With their cooperation, this programme has had a positive effect in reinforcing public confidence in the sector, clarifying the basis for future reviews, and helping to focus further the work that Scottish charities already do to benefit people in Scotland and elsewhere.

3

timeline

of programme of individual charity reviews

The 'Charities and Trustee Investment (Scotland) Act 2005' (the 2005 Act) creates the Office of the Scottish Charity Regulator (OSCR). The 2005 Act gives OSCR duties that include reviewing entries in the Scottish Charity Register from time to time and removing any organisation from the Register that does not meet the charity test

2005-2006

OSCR carries out consultation on its proposals for the approach to individual charity reviews (termed the Rolling Review)

'Rolling Review – Proposals for Consultation' published September 2006

Sept 2006-Jan 2007

OSCR publishes results of the pilot programme in 'Rolling Review Pilot Study Report'

OSCR publishes 'Policy Statement on Restrictive Conditions'. This sets out how OSCR considers restrictive conditions generally and includes its approach to assessing fees or charges as restrictive conditions

OSCR publishes 'Decision Framework' for individual charity reviews

OSCR publishes 'Policy Statement on Ministerial Powers'. This sets out how OSCR interprets and applies section 7(4)(b) of the 2005 Act on ministerial powers 'to direct or otherwise control' the activities of prospective or existing charities

July 2007

April 2006

Those charities previously recognised as Scottish charities by HM Revenue & Customs are entered in the Scottish Charity Register

Dec 2006

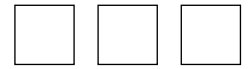
OSCR begins pilot programme of reviews of 16 charities who volunteered to take part

March 2007

OSCR publishes results of the consultation in 'Rolling Review: Proposals for Consultation – Consultation Evaluation Report'

September 2007

First stage of individual review programme begins. We selected 30 charities for assessment: 23 were from categories where particular charity test issues seemed likely; seven were randomly selected



OSCR publishes report on the first stage of risk-based reviews 'Rolling Review-Phase 1a'. Of those reviewed, 19 passed the charity test. We issued directions to a further seven who failed the charity test because of an issue with their constitution, and to four charities which were unduly restricting public benefit

OSCR publishes revised 'Meeting the Charity Test' guidance

October 2008

OSCR publishes policy note on 'Apparently Inactive Charities'

OSCR publishes 'Statement on use of ability to pay research and model' following the conclusion of research commissioned by OSCR

October 2009

OSCR publishes an update on progress of charities issued with directions during first risk-based review stage 'Short Report on Progress with Rolling Review Directions'. This includes further detail about how OSCR assesses the impact of benefits that charities do not charge for as a means of mitigating the impact of restrictive fees

February 2010

OSCR published 'Protecting Charitable Status' on results of the second stage of individual reviews, including progress of charities in complying with directions from previous stages

January 2012

OSCR begins second stage of individual reviews placing 19 charities under review, of which 16 are from groups where particular charity test issues seemed likely or in which possible issues had been identified during routine case-work; three are randomly selected

January 2009

OSCR publishes its 'Corporate Plan 2011-14' outlining strategy to incorporate future individual reviews of charitable status into a more integrated framework looking at regulatory concerns as a whole

June 2011

In its '2010-11 Annual Report' OSCR makes recommendations to Scottish Ministers to change the constitutional structure of NHS endowment funds to help with governance issues

September 2011

4



an overview – why we carry out individual reviews

Following the introduction of the 2005 Act, OSCR became responsible for the regulation of all charities in Scotland. Among these were more than 30,000 bodies already recognised as charitable by Her Majesty's Revenue & Customs (HMRC), the body previously responsible for this task. The 2005 Act provided for these bodies to be entered automatically as charities in the new Scottish Charity Register. Any organisation subsequently applying to become a charity would have to pass the charity test so as to be entered into the Scottish Charity Register and, therefore, be a charity in Scotland.

The requirements of the charity test

The 2005 Act (section 7) sets out the charity test. It says that a body meets the charity test if:

- its purposes consist only of one or more of the charitable purposes in the 2005 Act, and
- it provides (or intends to provide) public benefit in Scotland or elsewhere

When assessing whether a body provides or intends to provide public benefit, we must have regard to:

- any private benefit; that is, benefit gained by members of the body or any other persons (other than as members of the public)
- any disbenefit from the body's activities
- whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.

In addition, a body does not meet the charity test if:

- its constitution allows its property to be distributed or applied for non-charitable purposes
- its constitution expressly permits control by government ministers
- it is a political party or it has purposes to advance any political party.

Most of OSCR's work falls into one of two categories: either reactive, for example, by responding to requests for charitable status or to complaints; or, routine, such as monitoring the annual returns of thousands of charities. However, the 2005 Act also gives OSCR the following duties to:

- review entries in the Register from time to time (section 3(6)(a))
- direct a charity to take steps to enable it to meet the charity test, or remove it from the Register where, following inquiries, it appears to OSCR that it no longer does so (section 30).

We decided that alongside other scrutiny work, we should help to fulfil these duties through an active programme to review the charitable status of charities on the Register inherited from HM Revenue & Customs. While these charities met the requirements for recognition under charity tax law, they had not been assessed against the charity test. We considered that we had a duty to establish a programme of reviews and ensure confidence in the sector.

Following a public consultation in 2006-2007, we confirmed that we were adopting a risk-based approach, selecting certain types of charity as a priority for primarily desk-based reviews. This approach was then piloted during 2007 with a group of eight charities which had volunteered to take part, along with nine charities belonging to an umbrella group (the Scottish Pre-School Play Association). For details of the assessments, please see the '[Pilot Study report](#)'.



Having absorbed the lessons from the Pilot Study we then looked at 30 charities belonging to high-risk groups which we considered for various reasons were most likely to fail particular aspects of the charity test. The categories we looked at in 2007-2008 included:

- Membership-based charities (potential problem with application of property not for charitable purposes)
- Museums (risk of distribution of charitable assets for non-charitable purposes)
- Charities providing residential care (possible unduly restrictive conditions in place on accessing benefit, particularly on account of fees or charges)
- Independent schools (possible unduly restrictive conditions in place on accessing benefit, particularly on account of fees or charges)

The basis of our approach was, if there was a perceived potential for charity test failure, to assess whether this potential was well-founded. We also wanted to determine whether any issues were common to charities in a certain group, and how a charity might mitigate these through its approach or activities. We also chose a small number of charities at random for review to act as a control group and to test confidence about whether charities on the Register generally met the charity test. For further details of all these reviews, please see '[Phase 1a Report](#)'.

Initially in 2007 we considered we might have to review an extensive number of charities on the Register. However, experience has since suggested we will use our resources better by reviewing in depth a small number of charities in groups where there is a perceived likelihood of failing the charity test, and then disseminating the results effectively to other relevant charities. This is also a more proportionate and targeted approach, in line with regulatory principles.

The majority of charities reviewed met the charity test. In cases where charities failed the test we issued directions to charity trustees requiring them to take action to ensure that their charity would be in a position to pass the test within an appropriate period. For results of all our individual charity reviews, please see the table at the end of this report.

5

2009-11 in detail



This report is mostly concerned with the latest stage of reviews, which ran from 2009-11.

In this latest stage we considered the following groups of charities:

- A. Agricultural charities**
- B. Zero income charities**
- C. Student organisations**
- D. Independent schools**
- E. An NHS endowment charity**
- F. Charities selected from case work**
- G. Charities selected at random – which act as a control group**

In the following group case study reports, we set out the issues that concerned us, the background to the selection of the charities reviewed, how the review progressed, and the eventual decision.

This chapter also outlines the progress made by those charities to which OSCR earlier issued directions, in complying with those directions. This is detailed in Part D on 'Independent schools' and in Part H, 'Follow up of directions'.

5A

agricultural charities



We found that the purposes of the agricultural charities we reviewed were not charitable, and that some of their activities were not in furtherance of the purposes stated in their governing documents. We asked them to amend their purposes so that they could be clearly linked to charitable purposes recognised by Scottish law, and to reflect their current activities. Doing so allowed them to meet the charity test.

What was the issue?

We identified agricultural charities as a priority group for review because of concern that their charitable purposes were not clearly linked to the charitable purposes listed in the 2005 Act, and so might no longer be considered charitable in law.

Background

Historically certain purposes associated with agriculture were deemed charitable for tax purposes in the UK. However, in Scotland, the 2005 Act lists 16 charitable purposes which do not include the type of purposes typically adopted by agricultural charities such as 'the advancement of agriculture' or 'maintenance of the purity of the breed'. There was uncertainty, therefore, about whether certain agricultural charities with these stated objects still met the charity test in Scotland.

We decided to review a number of cattle societies, breeders' societies or similar organisations. The three charities chosen were the Society of Border Leicester Sheep Breeders (SC000011), the Highland Cattle Society (SC013974) and the Loudoun & Galston Agricultural Association (SC014230).

The reviews

Society of Border Leicester Sheep Breeders

The Society of Border Leicester Sheep Breeders' stated purposes were:

- The encouragement of the breeding of Border Leicester Sheep and the maintenance of the purity of the Breed by the publication of a Flock Book
- The investigation of cases of doubtful and suspect pedigrees
- The obtaining of classes and augmentation of prizes at various agricultural shows
- To further in every way the prosperity of the Border Leicester breed.

Our research into the background of this charity found that the breed was of historical interest and was classified as a rare breed, whose origins could be traced back to a renowned breeding expert in the mid 18th century. In addition, the society's activities included recruiting people who did not have an agricultural background but who were interested in the history and preservation of traditional breeds, and they did so at various agricultural events. Our view was, on the basis of existing activity, there was potential for this charity to have purposes that were charitable, but that these would have to be redrafted to make a clearer link to the purposes in the 2005 Act.



Our decision

In May 2010, we told the charity that it failed to meet the charity test on the grounds that its purposes were not charitable, and directed it to take steps to do so by amending its stated purposes to charitable ones.

In July 2010, the charity applied for consent to amend its objects to proposed new charitable purposes.

These were:

- The advancement of education
- The advancement of arts, heritage, culture or science
- The advancement of environmental protection or improvement
- The advancement of animal welfare.

All of these were charitable purposes under the 2005 Act, but we asked the charity for more information to demonstrate they were carrying out activities in furtherance of all of these purposes.

The evidence they sent satisfied us that this was the case, and we confirmed in January 2011 that the charity had complied with our direction and now met the charity test. The cases of the other two charities reviewed proved similar.

Follow up

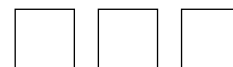
While we reviewed only three charities, our directions and a campaign to communicate the key messages arising from them widely in the farming sector, helped other charities to amend their purposes where necessary. We issued a press release that was widely publicised in the agricultural and rural press urging agricultural bodies to update their constitutions. We asked charities to consider their current activities and how these could be expressed through the purposes contained in the 2005 Act. We also wrote to around 30 charities with similar purposes to inform them about the reviews and our findings. Following our reviews, we saw an increase in the number of requests from this type of charity to bring their constitutions up to date with their current purposes and activities. We are working with several charities to ensure that they can comply with the charity test.

Key points for charity trustees to consider



- Charity trustees should review their charity's constitution regularly to ensure it remains fit for purpose and that it complies with current legislation
- Charity trustees must ensure that the charity's purposes remain current and all the activities it carries out support these. A charity must seek OSCR's consent to amend its purposes.

5B



zero income charities

We identified those charities in the Register that were still submitting annual returns and accounts to us but reported no income or expenditure for at least two years. We determined that where a charity is inactive for a prolonged period it is not usually providing public benefit. Keeping charities that provide no benefit in the Register is potentially damaging to public confidence.

What was the issue?

We considered that charities with zero income were at risk of failing the charity test since, generally, where a charity is inactive for a prolonged period it is not providing public benefit.

Background

We selected four zero income charities for review from among those charities reporting no income for at least two years. These were Maryhill Workspace Ltd (SC020032) Delta (SC001075) Duncan Millar East Loch Tay Charitable Trust (SC032532) and Autoimmune Research Centre (SC034317).

The reviews

Maryhill Workspace Ltd (SC020032)

Maryhill Workspace Ltd was a charity that planned to lease property from a housing association and then let these properties to charities and businesses. However, in 2004 the housing association withdrew its lease leaving the charity with no property to let. The charity confirmed it had been dormant since 2004. It had ceased trading, had no assets or liabilities and no plans to begin operating again in the near future or carry out any charitable activity. The charity, therefore, was providing no public benefit.

Our decision

We let the charity know that we believed it failed the charity test and asked it to consider its next steps. The charity formally asked in 2010 for consent to wind up which we granted and removed it from the Register.

The situation with another charity we reviewed, Autoimmune Research Centre, was broadly similar.



The reviews

Delta (SC001075)

Similarly, a charity called Delta had been formed to promote the welfare of its beneficiaries and people caring for them. The charity did meet a few times but the group of charity trustees, who were all elderly, had agreed to stop operating as no funds remained. The charity's contact told us that the charity had wound up and no longer existed. Charities must seek prior consent from OSCR to wind up; in this case, our consent had not been sought but we determined that in this case it would not be proportionate to take further action on this matter.

Our decision

We removed the charity from the Register after it had provided evidence of its wind up.

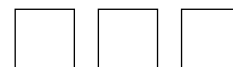
The reviews

Duncan Millar East Loch Tay Charitable Trust (SC032532)

Our review of Duncan Millar East Loch Tay Charitable Trust raised different issues about inactive charities. This trust was set up with capital of £10 with the intention that it would only begin actively pursuing its charitable purposes once it received a pledged legacy. The charity founder's will provided that, when she died, a substantial sum would be transferred into the Trust. During our review, the charity trustees decided that this Trust was no longer their preferred route for using the expected legacy and their lawyers applied for it to be wound up.

Our decision

We granted consent to the wind up and removed the charity from the Register.



Follow up

The reviews of the zero income charities confirmed a risk of failing the charity test and helped us clarify our view on situations where it is possible for a charity to be inactive and pass the charity test. We set out our thinking in our policy note on '[Apparently Inactive Charities](#)' (published October 2009). This explains when it is possible for anticipatory charities, which are not yet active because they are awaiting a defined future event such as a legacy, to pass the charity test. It also explains when inactivity can mean the charity is failing to provide public benefit and, therefore, fails the charity test. We now identify and deal with cases where it appears inactivity may affect the provision of public benefit as part of our routine compliance work.

Key points for charity trustees to consider



- When seeking charitable status, it is important to consider carefully and realistically whether your organisation will be able to undertake planned activities and when this might happen
- When a charity is inactive for a prolonged period and future activity is doubtful, charity trustees should, in furtherance of their duties, consider if it would be appropriate to wind up the charity. A charity must seek OSCR's consent before winding up
- An apparently inactive charity may pass the charity test in certain circumstances, which are set out in our policy.

5c

student organisations



Our reviews of two student organisations showed they met the charity test but revealed that their governance structures posed a regulatory risk because of the potential level of control by the associated universities and colleges over these charities.

What was the issue?

We prioritised student associations and student unions for review to seek clarity on whether the statements of charitable purpose of these types of organisation were acceptable under the 2005 Act. Given that student organisations often carried out certain commercial activity, such as running bars, we also considered there was potential that charitable property might not be applied for charitable purposes.

Background

We selected two student organisations for review: St Andrews University Students' Association (SC019883) and Edinburgh's Telford College Students' Union (SC028544). In both cases, our inquiries found that they passed the charity test with charitable purposes, activities that provided public benefit, and no evidence of any significant private benefit, disbenefit or undue restriction on access to these benefits. There was no evidence that charitable property was being used for non-charitable purposes.

In addition to the issues we originally identified, we also examined whether there was a fundamental problem for this type of charity as a result of legislation. The Education Act 1994 provides that the Board of Management of a university or college must take steps to ensure that an associated students' union or association operates in a fair and democratic manner and that the student organisation is accountable for its own finances. This statutory responsibility may lead to a degree of control by the university or college over the student organisation. Our concern was where, in practice, the constitution of the student organisation allowed further opportunities for the university or college to exert control over the student organisation's operations, finances and governance. The 2005 Act provides that charity trustees, who are in management and control of the affairs of the charity, must act always in its best interests and not those of any third party.



The reviews

St Andrews University Students' Association (SC019883)

We found that the University of St Andrews did have powers to control the St Andrews University Students' Association, in terms of its constitution, which we considered went beyond the level of control required by the Education Act 1994. The Association explained that, in practice, the University did not use these powers.

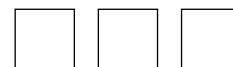
Our decision

We recommended the charity review its constitution to be specific about the circumstances in which the University might control the Association, to set out how charity trustees should deal with any conflicts of interest with the University, and to define the powers available to charity trustees. We also recommended that the Association adopt a clause in the constitution, for the avoidance of doubt only, to ensure that no assets were to be used for non-charitable purposes.

The Association welcomed our recommendations, made in November 2010. Six months later, the Association confirmed it had taken several steps to implement these including:

- Amending its constitution to explain the relationship between the University and the Association, and clarify their respective powers. This stated that in the event of irreconcilable difference, the Students' Association would have ultimate authority over its own governance
- Removing the stipulation that the Students' Association operate within financial limits agreed with the University Court and replacing this with a new memorandum of understanding that stated the Court would not alter the Association's financial plan but would only make recommendations, as appropriate
- Inserting new provisions to cover any conflicts of interest
- Stating that the assets of the Association must only be used for charitable purposes, with a new procedure outlining how any surplus assets would be distributed were the Association to dissolve

The Association told OSCR that, following the changes, "We believe we have full control of the Association's finances, and that the relationship between the Association and the University now reflects that of any other charitable organisation and one of its voluntary, external funders."



The reviews

Edinburgh's Telford College Students' Union (SC028544)

Our review of Edinburgh's Telford College Students' Union, meanwhile, found similar issues with the Union's constitution in that it provided the College with a wide range of powers in relation to the operation of the Union. In this case, however, these powers were being fully utilised; in practice the College exercised a great degree of control over the Union's affairs. College employees were signatories on the Union's bank account, all of the Union's activities had to be approved by the College and the College had recently intervened to suspend a Union President temporarily.

Our decision

We found, therefore, that the College exerted considerable ongoing control over the Union's expenditure and operations, beyond that required by law. We made a number of recommendations to the Union to review its constitution to be clearer about the powers available to its charity trustees and to revisit whether the degree of control it provided to the College was still appropriate. The Students' Union was affiliated to the umbrella body for students, NUS Scotland. We also informally recommended that the Union should ask for support from NUS Scotland, and consider adopting its model constitution. The Union was also asked to give some consideration as to how best to mitigate the lack of continuity or expertise that might arise from its charity trustees being elected annually from a transient student body.

We remain in contact with Edinburgh's Telford College Students' Union and will follow up to assess how these recommendations have been implemented.

Follow up

We met with the umbrella body, NUS Scotland, to share the general lessons learned from these two reviews, which demonstrated that these types of charities were not a high risk in terms of the charity test but that their governance required attention. NUS Scotland is helping other student organisations to clarify and monitor how charity trustees can ensure they have control of their charity and are able to run it in its own interests. As a result of our recommendations and work with the umbrella body, some student organisations have already amended their governing documents to reassert the charity trustees' authority over their charities. Our findings also indicate that comprehensive reviews, beyond the charity test, were needed to identify and resolve those issues that might cause problems in future.



Key points for charity trustees and others to consider

- Make sure that the way that a charity is set up, including any legislation which may have an impact on how it operates, does not inhibit charity trustees from carrying out their duties
- Charity trustees must always run a charity in its interests and not those of any third party, including another charity
- Where there is ambiguity about control over a charity, the charity trustees must have the skills and independence needed to run a charity and resist pressure from outside bodies
- Where there is a risk from lack of continuity within a trustee body, charity trustees should consider how this can be addressed, including by ensuring a suitable induction procedure is in place
- Even when governance arrangements are working satisfactorily charity trustees should review the constitution to ensure lines of authority are clear. It is beneficial to do so before conflict arises
- Charity trustees should seek support from their umbrella body which can provide advice on governance and model constitutions, as well as help introduce procedures to maintain continuity when charity trustee boards change frequently.

5D

independent schools



Our reviews confirmed that fee-charging schools have a higher possibility of failing the charity test as their charges may unduly restrict the access people have to the public benefit they offer, unless these charges are mitigated. In 2008, we identified four schools that did not initially provide public benefit. They have since implemented plans to increase access to the benefit they provide and now meet the charity test.

What was the issue?

From the outset of our review programme, we considered that fee-charging schools might have a high likelihood of failing the charity test because the fees they charged to their students might unduly restrict access to the benefits the charities provide. For this reason, we have selected schools for review at all stages of the review programme so far.

Schools reviewed as part of individual charity review programme

Charity name	Date review started	Outcome
1. Corporation of The High School of Dundee	2006	Met charity test
2. George Heriot's Trust	2007	Met charity test
3. Glasgow Steiner School	2007	Met charity test
4. Gordounstoun Schools Limited	2007	Met charity test
5. Governors of Donaldson Trust	2007	Met charity test
6. Regius School	2007	Met charity test
7. St Mary's Music School Trust Ltd	2007	Met charity test
8. Hutchesons Educational Trust	2007	Implemented direction on public benefit and met charity test
9. Lomond School Limited	2007	Implemented direction on public benefit and met charity test
10. Merchiston Castle School	2007	Implemented direction on public benefit and met charity test
11. St Leonards School	2007	Implemented direction on public benefit and met charity test
12. Jordanhill School	2007	Implemented direction on ministerial control and met charity test
13. Cargilfield School	2010	Met charity test



Background

The early stages of our programme of individual reviews of charitable status resulted in the schools that we reviewed achieving mixed results with regards to passing the charity test. Between 2006 and 2009, we reviewed a range of independent schools that included specialist schools, such as those educating deaf pupils or specialising in excellence in music. The results of these are covered in our publications about the pilot and 2007-09 reviews.

The reviews 2006-09

Some of the schools reviewed between 2006 and 2009 did not pass the charity test. Five schools were given directions to take steps to ensure they could pass the charity test. Four of these, Hutchesons Educational Trust (SC002922), Lomond School Limited (SC007957), Merchiston Castle School (SC016580) and St Leonards School (SC010904), failed the charity test because they were unduly restricting access to the public benefit they provided on the basis of the fees they charged. One other school, Jordanhill School (SC004463), failed because its constitution made it subject to ministerial control.

The reviews 2009-11

From 2009 to 2011 we followed up our initial reviews by monitoring how the schools acted on our directions to be able to pass the charity test. We also reviewed a further school, Cargilfield School (SC005757), and found that it met the charity test. There are further details later in this chapter.

As part of our routine case work we also assessed an application for charitable status from St Aloysius' College (SC042545), a Roman Catholic fee-paying school in Glasgow. This school met the charity test and we entered it on the Register in August 2011.

The directions

One success of our targeted reviews is that they identified failings in charities that they needed to address in order to pass the charity test and, in doing so, provide greater public benefit. Here we look in detail at how the individual school charities followed up directions. We deal with the case of Jordanhill School separately at the end of this chapter since it was the only school that failed the charity test because it was subject to ministerial control.

We issued the four schools that initially failed on the basis of undue restrictions on public benefit with directions in October 2008 to take steps to meet the charity test. The directions issued to the schools were in three parts with each school being directed:

- a) To notify us within three months of the date of the direction as to whether they planned to comply with the direction (the charity may choose not to do so, in which case we would proceed to remove it from the Register)
- b) To develop and submit a plan within 12 months setting out how the school would meet the public benefit requirement of the charity test
- c) To meet the objectives of the plan within three years of the date of the direction.



These four schools indicated that they would seek to comply with our directions and submitted plans which, if carried out, we agreed would enable them to pass the charity test. All four plans involved a combination of action to increase the level of means-tested assistance available to those unable to pay the fees, and to increase the level of activity providing public benefit for which no fee would be charged.

We assessed the plans and the schools' progress against them on the basis of the principles for assessing fees or charges as undue restrictions which we published in 2008. One of the principles proved particularly important, namely:

The scale of any fee is weighed against the full scope of the benefits provided – those that are being charged for, as well as any that are not being charged for. All of the schools took steps to increase the amount of public benefit providing activity which was not charged for. In assessing the impact of these activities on the full scope of benefit provided we regarded activities as providing substantial impact if they were:

- timetabled
- regular
- impacting on unmet need.

The diverse types of activity involved make it difficult to quantify impact or make direct comparisons between the benefit provided by different types of activity, but it is possible to quantify some activities in terms of pupil visits or in terms of resources provided by schools such as teaching time or use of facilities. Assistance which is linked to the financial situation of beneficiaries, usually through means-testing, has the greatest impact on access.

Outcomes

When we assessed the four schools' situations as at 28 October 2011, we looked at whether they had fulfilled the plans they presented to OSCR to meet our directions. We found that overall all the schools had fulfilled the objectives of their plans and were providing public benefit and, therefore, passed the charity test. We look in detail at the initiatives implemented by individual schools on the following pages.



The reviews

Hutchesons Educational Trust (SC002922)

Hutchesons Educational Trust is a large independent school in Glasgow. The school operates a primary and a secondary school. The annual fees for 2007-08 were £6,417 (primary 1), £8,243 (first year) and £8,029 (second to sixth year). The school roll in 2007-08 was 1,750.

Hutchesons took the following main actions to comply with the direction we issued to it:

Activities for which fees are charged:

- provided means-tested bursaries in session 2011-12:
 - at 4.9% of fee income (2.1% in 2007-08)
 - to 9.9% of the school roll (2.6% in 2007-08)
- provided 100% means-tested bursaries:
 - to 2.2% of the school roll (less than 2% in 2007-08)
- amended criteria for means-tested bursaries resulting in a wider spread of bursary provision.

Activities providing public benefit in furtherance of the school's charitable purposes for which no fee is charged:

- use of new specialist sports facilities (athletics and hockey) by local school-age teams
- one-day conferences and events for pupils and staff from other Scottish schools and overseas schools
- joint environmental and other projects with local schools
- marking of public examinations, hosting placements for student teachers and also other smaller scale and one-off activities
- provision of Advanced Higher tuition, although this has been taken up on a very limited basis
- mentoring and classroom assistant work by Hutchesons' sixth-year pupils weekly in three state primary schools, by agreement with the local authority education department
- provision of Saturday morning Primary maths masterclasses under the auspices of the Royal Institution.



Our decision

The school exceeded the outcomes projected in the plan it presented to OSCR in terms of the increase in the absolute numbers of pupils receiving means-tested assistance, the spending on assistance and the percentage indicators. The planned shift of resources to means-tested assistance was therefore more than achieved, and against the background of a falling school roll.

Regarding other activities provided for public benefit, there was some variance from the school's plan in respect of the Advanced Higher teaching for pupils from other schools, which was a key activity. While this took place on a very limited basis, it was not possible to agree wider take-up with local authority schools. The replacement activity of weekly mentoring and classroom assistance from senior Hutchesons' students in three local primary schools was taken up at the suggestion of the local authority. Other activities proceeded largely as planned, with some planned activities replaced by others, such as the maths masterclasses.

We found that, having implemented its plan Hutchesons did not unduly restrict access to public benefit and met the charity test. For fuller details of this case see [our published report](#).

The reviews

Lomond School Limited (SC007957)

Lomond School is a medium sized independent school in Helensburgh. The school operates a nursery, a junior school and a senior school and it has boarding facilities. The annual fees for school session 2007-08 were £2,850 (nursery), £3,960 to £7,485 (junior school), £8,085 (senior school) and boarding costs were £9,210. The school roll in 2007-08 was 592.

Lomond School took the following main actions to comply with the direction we issued to it:

Activities for which fees are charged:

- provided means-tested bursaries (including means-testing of Ministry of Defence, sibling and staff discounts) in session 2011-12:
 - at 6.3% of fee income (less than 1% in 2007-08)
 - to 13.4% of the school roll (less than 1% in 2007-08).
- provided 100% means-tested bursaries:
 - to 2% of the school roll.

Activities providing public benefit in furtherance of the school's charitable purposes for which no fee is charged:

- provision of blocks of weekly PE lessons taught by Lomond School staff in the school's games hall with transport for primary six pupils from six local primary schools



- provision of community sports leadership teaching in local primary schools
- choral event for local schools
- hosting annual triathlon event for Scottish schools
- marking of public examinations and hosting placements for student teachers
- integration of local youth rugby teams with Lomond School teams to allow compliance with Scottish Rugby Union rules, and provision of transport and facilities.

Our decision

While there was some variation in the make-up of the types of assistance provided compared to the plan presented by the school to comply with OSCR's direction, the increase in the amount of means-tested financial assistance provided took place broadly as planned. Compared to the projections in the plan, there was some increase of the amount of funding available in comparison to the charity's income and in the proportion of the school roll in receipt of assistance. This amounted to a notable increase, particularly considering the low starting point, and against a context of falling roll and income.

We found that, having implemented its plan, Lomond School did not unduly restrict access to public benefit and met the charity test. For fuller details of this case see [our published report](#).

The reviews

Merchiston Castle School (SC016580)

Merchiston Castle School is a medium sized independent school that provides education for boys in Edinburgh. It has a junior and senior school, and the majority of pupils are boarders. The annual fees for school session 2007-08 were £10,485 (lower junior school), £16,395 (senior school). Boarding costs ranged from £4,500 to £6,450. The school roll 2007-08 was 438.

Merchiston Castle School took the following main actions to comply with the direction we issued to it:

Activities for which fees are charged:

- provided means-tested bursaries (including means-testing of sibling and staff discounts) in session 2011-12:
 - at 8.2% of gross income (less than 1.5% in 2007-08)
 - to 14.7% of the school roll (3.7% in 2007-08)
- provided 100% means-tested bursaries:
 - to 2.4% of school roll.



Activities providing public benefit in furtherance of the school's charitable purposes for which no fee is charged:

- extension of pupil-to-pupil mentoring schemes for pupils with support needs in three local primary schools
- provision of a technology scholarship
- access to school wildlife and biology facilities for local primary schools
- science and creative writing conferences and workshops with participation for students from other schools
- governance and other assistance to a new Academy School in England – extended to include provision of a 100% Merchiston bursary to an academy pupil
- marking of public examinations, hosting placements for student teachers and also other smaller scale and one-off activities
- provision, by agreement with local authority education department, of weekly swimming lessons for primary six and seven pupils in local schools
- introduction of a Community Choir for boys from local primary schools and Merchiston pupils.

Our decision

Underlying the charity's plan presented to meet OSCR's direction was a shift of the school's resources from scholarships awarded on academic or sporting grounds to means-tested bursaries. This largely took place and there was a significant uplift in the funding available for means-tested assistance to pay fees and in the number of pupils in receipt of assistance. While there was some minor variance in the performance against the projections of the plan, this is in the context of an unanticipated level of increase in the roll and income.

Most activities delivering educational benefit for no charge were achieved. In most cases where they were not, this reflected situations where activities with partner schools or organisations were, for a variety of reasons, not taken forward after a certain stage of planning. In almost all cases, the school organised replacement activities, notably swimming lessons for local primary schools which constituted a substantial, timetabled, regular and curricular benefit not included in the original plan.

We found that, having implemented its plan, Merchiston Castle School did not unduly restrict access to public benefit and met the charity test. For fuller details of this case see [our published report](#).



The reviews

St Leonards School (SC010904)

St Leonards School is a medium sized independent school in St Andrews. It operates a Junior and a Senior School, and has boarding facilities. The annual fees for school session 2007-08 were £6,771 (junior) and £9,339 (senior). Boarding costs were £12,894. The school roll in 2007-08 was 458.

St Leonards took the following main actions to comply with the direction we issued to it:

Activities for which fees are charged:

- provided means-tested bursaries (including means-testing of sibling and staff discounts) in session 2011-12:
 - at 5.2% of annual income (less than 0.5% in 2007-08)
 - to 10.1% of the school roll (less than 1% in 2007-08)
- provided 100% means-tested bursaries:
 - to 1.3% of school roll
- in line with its plan, fee increases averaged below the rate of inflation through the period of the direction

Activities providing public benefit in furtherance of the school's charitable purposes for which no fee is charged:

- use of the school's experience in the International Baccalaureate Diploma to support provision of the baccalaureate in Motherwell College and other schools (within the Scottish education system there was little activity in respect of the Scottish Baccalaureate and this was reflected in low uptake generally of the school's planned initiative)
- hosting Associated Board music exams and 'Music for All' scheme
- science and creative writing conferences and workshops with participation for students from other schools
- marking of public examinations, hosting placements for student teachers and also other smaller scale and one-off activities
- links with local secondary schools did not result in the anticipated take up; however, collaboration provided benefit, particularly through sport and drama
- use of Queen Mary's Library and archive items for history visits by Fife primary schools
- drama outreach workshops in local state primary schools and in conjunction with the East Neuk Youth Theatre Group
- classics roadshow in local state primary schools.



Our decision

The school achieved the aim stated in its plan to meet OSCR's direction of keeping fee increases at or below inflation for most of the direction period, and therefore maintained the real terms' fees at their notional 2005 level.

The school also spent more in absolute terms than its plan suggested on provision of means-tested assistance to students unable to pay the fees. While the proportion of the roll in receipt of assistance was significantly lower than the projections, this reflected the outcome of means-testing and the response from beneficiaries, with the school providing a higher proportion of high value assistance than was anticipated.

The cost of means-tested assistance as a proportion of applicable income was lower than the best-case scenario projected in the school's plan, but this reflected changes in the financial circumstances of the school over the period of the plan.

The outcomes of the school's actions in providing benefit without charge in part reflected developments in the education environment during the period of the plan, particularly the lack of take up of the Scottish Baccalaureate. Efforts to forge partnerships with primary schools were also more productive of benefit than those with secondary schools.

The overall picture of public benefit within the charity was close to what was set out in the plan, taking into reasonable account factors outside the school's control.

We found that, having implemented its plan, St Leonards School did not unduly restrict access to public benefit and met the charity test. For fuller details of this case see [our published report](#).



The reviews

Cargilfield School (SC005757)

From 2009-11 we also carried out an individual review of Cargilfield School. Cargilfield is a small independent preparatory school in Edinburgh which offers education to children aged three to 13 in its nursery, pre-preparatory and preparatory departments. It also has boarding facilities. The average school roll in 2010-11, including nursery children, was 319.

The annual fees for school session 2010-11 were £7,950 (pre-preparatory school: five to eight years), £11,700 (upper school: eight to nine years) and £12,600 (upper school: nine to 13 years). Boarding costs were £15,600 and half day nursery costs were £4,500.

The review

This was the first review of a fee-charging preparatory school carried out by OSCR. In reviewing Cargilfield, we noted that the circumstances of preparatory schools were different from those of other independent schools we have reviewed, which offered secondary school education, or a combination of primary and secondary education. In particular, we recognised that there may be more limited opportunity for preparatory schools to offer the type of benefit provided for no charge which is typically offered by secondary schools, for example, tuition to state school children in specialist subjects. Additionally, the school expressed the view that, on the advice of the police and the Care Inspectorate, it must exercise extreme prudence when considering opening access to its facilities due to the vulnerability of its young beneficiaries.

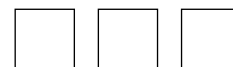
The fees charged by Cargilfield are relatively high when compared to similar provision within the independent sector, although the typical school day at Cargilfield is considerably longer than that at other preparatory schools.

Cargilfield offers facilitated access to the benefit it provides through the provision of means-tested bursary support as well as non means-tested support such as sibling discounts, scholarships and service bursary support for children of military personnel. Almost all of the nursery pupils also receive government support (equating to, on average, £1,535 per pupil) as the school is a registered nursery partner provider. During the last few years, the school has taken a number of steps to increase the level of means-tested support it offers; this has largely been achieved by reducing the level of non means-tested awards and diverting funds to those who cannot afford the fees.

In summary, the school took the following steps in 2010-11 to mitigate the fees it charges for the benefit it provides:

Activities for which fees are charged:

- provided means-tested bursaries (including means-testing of staff discounts):
 - at 6.3% of annual income
 - to 7.5% of the school roll
- provided 100% means-tested bursaries:
 - to 3.4% of the school roll.



Activities providing benefit in furtherance of the school's charitable purposes for which no fee is charged:

- providing a local youth football team, Cramond FC, with use of the school's pitches
- hosting the Scottish Schools' Orchestra Day
- hosting the Scottish Primary School Chess Competition
- hosting the Junior Schools' Lacrosse Competition.

During the course of our review, the school has also committed to advertising its bursary scheme more widely and identifying more opportunities for regular, timetabled use of the school facilities for activities in line with its charitable purpose. It is currently at the early stages of discussions with a local state sector primary school to allow that school's pre-school children to use its outdoor facilities and to access its resources, such as specialist teaching.

Our decision

While the fees charged by Cargilfield are substantial, the school has a number of arrangements in place to facilitate access to the benefit it provides. During our review, we noted a substantial increase in the level of means-tested support offered by the school and its plans to build further on its current position. These include phasing out or reducing aspects of non means-tested bursary provision and increasing the level of benefit it provides for which there is no charge.

The school commits a reasonable portion of its income towards the provision of means-tested bursary support. The majority of these bursaries have been at a very high level, with 4.1% of the school roll being in receipt of an award of 80 – 100% fee remission. The focus on high level bursaries means that the percentage of the school roll who receive such support is slightly lower than other schools we have reviewed.

Activities which provide benefit for which no fee is charged largely involve providing the school as a venue for events hosted and organised by other bodies. To date, this benefit appears to be provided in the main on an ad hoc basis, out of school hours. However, discussions are currently at an early stage to offer regular, timetabled use of the school's facilities for no charge through a partnership with a local state sector primary school.

On balance and taking into account the particular context in which this charity operates, we considered that the arrangements which are currently in place to allow access to the benefit it provides are sufficient to mitigate the fees charged by the school.

We found that Cargilfield School did not unduly restrict access to public benefit and met the charity test.



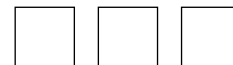
Follow up

As part of our work with independent schools we liaised with the umbrella group Scottish Council of Independent Schools (SCIS), which allowed us to communicate with the wider independent schools sector and explain our approach to reviews of charitable status.

Key points for charity trustees to consider



- When considering whether the public benefit a charity provides is accessible, charity trustees should think about the level of any charges and the degree to which these are mitigated, taking account of whether assistance with access is means-tested, or is restricted in a way that is not in line with the charity's stated purposes
- A charity can increase public benefit in various ways, including by opening up the services it offers to more people or offering additional services and facilities to meet the needs of the people it was set up to help.



School directions – Ministerial control

The reviews

Jordanhill School (SC004463)

What was the issue?

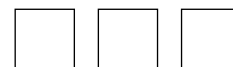
Jordanhill School was selected because it was unique in Scotland in being a state-funded school that was not run by the local authority.

Background

Jordanhill had formerly been the training school for the adjacent teacher training college and became a separate organisation in 1988; it is not run by the local authority but funded directly by the Scottish Government.

The review

Jordanhill's constitution required that the Secretary of State for Scotland (now Scottish Ministers) give consent for any changes to be made to it. The constitution therefore permitted Scottish Ministers to direct or control its activities, breaching section 7(4)(b) of the 2005 Act, which does not allow a charity to be controlled by Scottish Ministers or Ministers of the Crown. Following the pilot reviews we had outlined our position on 'ministerial powers' in a policy paper that set out what did and did not constitute direction or control. You can find it [here](#).



Our decision

We advised Jordanhill that this amounted to ministerial control and meant the charity failed the charity test. We gave the charity two years to resolve this, recognising that this amendment was not exclusively within the control of the charity itself.

The charity complied with OSCR's directions by the deadline date of 28 October 2010. Fortunately, it was able to change its constitution without the need for further legislation because Jordanhill School is a registered company and so is governed by its own Memorandum and Articles. The 'consent' of the Scottish Government was therefore given through correspondence.

Key points for charity trustees to consider



- A charity's trustees must be in management and control of their charity and the charity's constitution must allow them sufficient autonomy to fulfil their duties
- The charity test provides that a charity's constitution must not allow it to be controlled by any Scottish Minister or Minister of the Crown.

5E

an NHS endowment charity



Our review of an NHS endowment charity found that while the charity met the charity test, the way this type of charity is structured poses a potential problem of ministerial control that can only be resolved by legislation. The close relationship these charities have with NHS Boards means that they must have adequate governance arrangements in place to clearly demonstrate their independence from any third party and to ensure that they are applying charitable funds for their charitable purposes only.

What was the issue?

We identified NHS endowment charities as a risk group regarding the charity test because of the perceived risks that their constitutions might expressly permit Scottish Ministers or a Minister of the Crown to direct or otherwise control their activities. There was also some concern that their property might be applied to non-charitable purposes, particularly given the close relationship with NHS Boards.

Background

The way in which the National Health Service (Scotland) Act 1978 established the NHS Health Board Funds and vested the funds raises a number of issues about their structure and the position of related Health Boards. Section 82 of the Act vests the endowments on trust to each Health Board as corporate trustee. This means that all of those who are members of the related Health Board also act in the position of charity trustee for the Funds. The point at issue is the extent to which the constitutional structure of NHS Board endowment funds allows their charity trustees to demonstrate that they are acting in the interests of the charity, when dealing with issues relating to the interests of the Health Board.

The reviews

Lothian NHS Board Endowment Fund (SC007342)

To assess the potential risk we selected Lothian NHS Board Endowment Fund for an individual review of charitable status: the charity had indicated its willingness to take part in the review alongside an internal governance review it had already decided to undertake. We were concerned that the 1978 Act gave the Secretary of State (that is, Scottish Ministers) effective control of the charity. We particularly examined the powers conferred on Scottish Ministers to make decisions in relation to Board composition.

We also looked at the way that charitable funds were organised and applied. The charity confirmed that its assets were not applied to those items where in the normal course of events costs would be met by the Health Board from Exchequer funding, such as standard routine equipment. We also found that general fund income was used to support primary care where this is not otherwise supported (for instance community aspects of mental health care or geriatric care).



Our decision

Having looked at the charity's constitution, purposes and activities we considered that the charity met the charity test.

There were a number of issues relating to governance and accountability, some stemming from the constitutional structure of the charity (and these are covered in more detail in our guidance '[Who's in Charge: Control and Independence in Scottish Charities](#)' published in March 2011). We made a number of recommendations to the charity to take steps to clarify the constitutional structure and governance arrangements so that it could demonstrate at every stage from recruitment to operation and decision-making that the charity was under the sole management and control of the charity trustees acting in the interests of the charity. We also recommended they ensure they had clear arrangements in place regarding the control of funds and, in future, considered potential reorganisation of the large number of restricted funds when the relevant regulations allowing this come into force. At the time we made our recommendations the charity was already implementing several changes to improve its governance structure.

Follow up

Fundamental changes to the trustee structure of this charity (and similar charities linked to other health boards) will require changes to the primary legislation which establish these charities. We recommended such changes to Scottish Ministers in our '[2010-2011 Annual Report](#)'.

Key points for charity trustees to consider



- Charity trustees must be in control of the management and governance of their charity and act in the interests of the charity and not any third party
- Those bodies which set up charities must ensure that the structure allows charity trustees to take decisions independently of anyone who appointed them.

5F



charities selected from case work

We selected some charities for review from case work in 2009 to 2011. These were charities that we were dealing with in routine business such as applications for charitable status or consent to take certain actions or to change their constitutions. These were not charities that were being investigated by OSCR because of a complaint.

What was the issue?

These charities were chosen from case work because there was uncertainty or a lack of clarity about whether they met the charity test for various reasons. The charities chosen were not necessarily from any single group already identified by the consultation or our original proposals. Generally, a closer review of charitable status of these charities clarified that most did meet the charity test but that there were other issues with governance or out-dated constitutions.

Background

We reviewed five charities chosen from casework during this latest stage of the programme. These charities all differed from one another, and had a variety of objects and purposes. We reviewed:

- Scotlanka Network (SC037513), a cultural charity
- Universal Health and Education Trust Limited (SC013443), which had environmental and health purposes
- McNeil Trust Ltd (SC005019) an educational and religious charity
- Tolsta Cemetery Trust (SC000734), a community-owned cemetery
- The Christian Party Charitable Trust (SC025583), a religious charity.

The reviews

Scotlanka Network (SC037513)

Our review of Scotlanka Network was prompted because, when we awarded charitable status to this body, there was still a degree of uncertainty about its plans; we therefore wanted to ensure that it did provide public benefit, as it had had been its intention when we entered it in the Register. We found that this charity – set up to promote Sri Lankan culture and links with Scotland – had clear evidence of activities furthering its various charitable purposes through dancing classes, cultural visits, sporting events, language classes and the planned provision of support for education of students from Sri Lanka.

Our decision

We found the charity did meet the charity test.



The reviews

Universal Health and Education Trust Limited (SC013443)

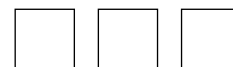
Universal Health and Education Trust Limited was a charity set up 'to advance education and relieve sickness and disease'. This charity had two main distinct activities: to operate an academy of agricultural philosophy, and to establish an eco-village.

We looked at the specific purposes the charity had selected and considered that, while its activities were charitable, they did not advance one of the two charitable purposes stated by the charity, namely the advancement of health. To advance health, a charity should be able to show that the therapies and medicines employed are backed up by independent evidence of efficacy, usually in the form of papers in reputable peer-reviewed journals. We decided the charity's activities did match several charitable purposes, which were the relief of those in need, the advancement of environmental protection or improvement, and the advancement of education.

Our decision

Having reviewed the charity, we considered it did meet the charity test, although we made some recommendations regarding current purposes and the future risk of private benefit. Particularly in relation to the planned eco-village, we recommended that the charity review its charitable purposes to ensure they match those advanced by their activities.

We could not take a view on how the activities of the planned eco-village would fit with their charitable purposes and with providing public benefit, as these are still at a very early stage of development, but this is something that we will monitor. We notified the charity that there was a potential risk that their plans might provide private benefit from the proposed businesses owned by a workers' co-operative or various proposed cottage industries. We asked the charity to ensure that any private benefit is either necessary or incidental to the pursuit of the charity's purposes.



The reviews

McNeil Trust Ltd (SC005019)

Our review of McNeil Trust considered whether any conditions on accessing the benefit provided by the charity were undue as well as having regard to whether the charity's activities were all in line with the charitable purposes set out in its constitution. The charity provides study materials for students of Christian Science as well as offering short-term and long-term accommodation for those wishing to devote their time to such study and for the purposes of religious retreat. The charity charges fees for the provision of accommodation.

We considered that the provision of study materials and the short-term retreats were activities which clearly advanced education and religion, which were the two purposes specified in the charity's constitution. However, although we considered that there was some evidence that the long-term residencies provide public benefit in furtherance of the advancement of religion, we were of the view that that this activity – being focused on the mature members of the church – is also closely aligned to the purpose, the relief of those in need by reason of age.

Our decision

We found that the charity met the charity test, but made a number of recommendations. Overall, given that many of the services provided by the charity were free or moderately charged, we considered that there was not undue restriction on public benefit. We considered that the fees for long-term accommodation were high, and told the charity we expected it to find ways to facilitate access for those who could not afford these, or to signpost potential beneficiaries to other sources of financial support. We recommended that the charity review its activities to ensure that they directly further the charitable purposes as stated in the charity's constitution.

Following our recommendations, the charity is reviewing its purposes to ensure that they accurately reflect the whole range of the charity's activities. It has also committed to updating its website and publicity materials to signpost potential beneficiaries to other Christian Science charities which provide financial support to people who are unable to afford the fees it charges.

The reviews

Tolsta Cemetery Trust (SC000734)

What was the issue?

The individual review of this community-owned cemetery based in Stornoway in the Western Isles tested uncertainty about whether its purpose could be considered charitable under the 2005 Act. The charity was selected for review from case work because of questions about whether a cemetery offering burial services passed the charity test.



Background

Although the provision of cemeteries was charitable when the cemetery trust was established in 1979, this is not one of the charitable purposes listed in the 2005 Act.

The review

This charity's objects are to acquire land for burial places in the beneficial interest of the community, and to maintain and manage the cemetery. Given that burial provision is not expressly a charitable purpose in Scotland, we did further research and analysis to consider the activities and purposes of this charity.

There are historical differences between land tenure in the islands and in mainland Scotland. These account for the fact that whereas in mainland Scotland cemeteries are generally under the management of local authorities, this cemetery in the Western Isles is held in trust on behalf of the community, with the charity providing a burial service for members of the local community. Since the Second World War, there have been some 650 burials at Tolsta.

The charity's activities did have elements of a number of charitable purposes. We found that we could infer two purposes that are detailed in the 2005 Act, namely:

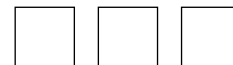
- 'the advancement of health', because burying the deceased safeguards the health of the remaining community
- 'the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage', because burial has a role in providing a spiritual service to the bereaved.

Our guidance on the charity test explains that purpose 7(2)(p) of the 2005 Act, namely 'any other purpose that may reasonably be regarded as analogous to any of the preceding purposes' is intended to allow the flexibility to allow charitable purposes to evolve as society changes. We bear this in mind when we carry out individual charity reviews. However, in this case we did not consider that the purpose of this charity could reasonably be regarded as analogous to a charitable purpose.

This particular cemetery dates from at least the 1800s and possibly earlier, pre-dating the establishment of the trust, and is in itself a historical record of the community. It also has a number of war graves, which are usually considered to be of historical interest. We considered, therefore, that it has a further charitable purpose, which is 'the advancement of arts, heritage, culture and science'.

Our decision

We found that the charity did meet the charity test, but we made recommendations about its constitution. The wording in the constitution did not make it clear which charitable purposes it pursued, nor did it make clear which of those purposes described in the 2005 Act could be inferred. We recommended that the charity amend its statement of purposes accordingly.



The reviews

The Christian Party Charitable Trust (SC025583)

What was the issue?

There was uncertainty about whether the activities of this charity advanced its charitable purpose.

Background

The Christian Party Charitable Trust changed its name in 2011 from Jigsaw Ministries Worldwide, and there were a number of changes to its charity trustee body. We started a review to assess whether it continued to meet the charity test.

The review

Our review of this charity is still in progress.

Key points for charity trustees to consider



- A charity's constitution must make it clear what charitable purposes it is pursuing; these must be clear and unambiguously related to one or more of the charitable purposes listed in the 2005 Act
- Charity trustees should review their charity's purposes regularly to ensure they are current and consistent with the charity's activities and the law. A charity must seek OSCR's consent to amend purposes
- A charity must be able to give evidence that it is carrying out activities, and that these activities advance its charitable purposes
- Charities must provide public benefit and avoid arrangements that could potentially give significant private benefit to individuals.

5G

charities selected at random

While the majority of charities that we have reviewed have been selected on the basis of perceived issues in terms of the charity test, we have continued to select some charities at random to ensure that we have a 'control group' against which to assess the priority categories.

What was the issue?

Several charities were selected randomly as a control group. They did not belong to the types of charity previously identified as presenting issues in terms of the charity test.

Background

We reviewed three charities chosen at random in the latest stage of our individual reviews of charitable status. These were selected from the list of those charities on the Register that did not belong to any of the groups previously identified. The charities chosen were East Ayrshire Women's Aid Kilmarnock (SC001205), Lothian Cat Rescue (SC007631) and Huntly Stroke Club (SC000090).

The reviews

We found no problems regarding the charity test in any of these three charities.

Our review found, however, that one of these charities, Huntly Stroke Club, had expanded its activities to include people with chest and heart problems. These activities were charitable but went beyond those stated in their original purposes.

Our decision

We were satisfied that Huntly Stoke Club passed the charity test, but we made a recommendation that it change its purposes to reflect its up-to-date activities.

Follow up

These reviews of randomly selected charities have generally not exposed problems with charitable status and this helps to reinforce public confidence in the charity sector. We plan to continue to review a small number of charities at random from time to time.

Key points for charity trustees to consider



- Charities should keep their constitutions under review and ensure they continue to be fit for purpose and reflect all current activities. A charity must seek OSCR's consent before amending purposes.

5H

follow up of directions

What was the issue?

The constitutions of six charities we reviewed during our first stage of reviews in 2008 caused them to fail the charity test. This was because the way in which the terms 'charity' or 'charitable' had been defined in their constitution (and/or the purposes that were described in the constitution) made it possible for the charity's property to be used for purposes that are not charitable in terms of the 2005 Act, breaching section 7(4)(a).

The reviews

The following charities were directed in 2008 to make changes to their constitutions to ensure that these terms were defined correctly in order to meet the charity test.

- Isle of Gigha Heritage Trust (SC032302)
- Scottish Youth Hostel Association (SC013138)
- Ullapool Museum Trust (SC018225)
- Andarroch Trust (SC032270)
- Cosgrove Care Ltd (SC013208)
- Bute Museum Trustees (SC000639)

Our decision

We gave these charities one year in which to make the necessary changes to their constitutions. All had complied with OSCR's directions by the deadline date of 28 October 2009. We found that the charities then met the charity test.

Follow up

The difficulty arising from the way in which the words 'charity' and/or 'charitable' are defined in the constitution of a charity first came to light in our '[Rolling Review Pilot](#)' (published in July 2007). In the constitutions of a number of charities these words are defined in terms of UK tax law, which, while largely similar to the definition in Scotland, contains some differences. The combination of this and particular drafting means that some constitutions (containing such a definition) permit the property of the charity to be applied for purposes that are not charitable under the 2005 Act, and the charity therefore does not meet the charity test.

We made formal recommendations to Scottish Ministers in our Annual Report and Accounts 2007-08 for changes to be made to the legislation in order to avoid this problem in the future. In March 2009 Ministers issued a Consultation paper: '**Charities and Trustee Investment (Scotland) Act 2005: Proposals for Minor Amendments to the Act and to the Charities Accounts (Scotland) Regulations 2006**' which included a proposal to amend the 2005 Act so that it sets out that all references to 'charitable purposes' in charity constitutions written before 2005 should be read as including 'charitable purposes' under the 2005 Act. '**Consultation responses**' to this proposal (published on the Scottish Government website) were generally favourable. However, the Government response was that it was not pursuing this proposal at present because of the complexities of making this change in legislation without creating any unintended consequences and that it would continue to monitor the situation.

We are continuing to advise organisations about this issue when they apply for charitable status. We have agreed wording with HMRC which should ensure that charities registered in Scotland are able to pass the charity test and remain eligible to be recognised by HMRC for charity tax reliefs.

Key points for charity trustees to consider



- Charity legislation in Scotland defines charitable purposes specifically in the 2005 Act and there are differences with how this is defined by UK tax law and charity law in England and Wales
- Charity trustees should ensure that their constitutions do not allow charitable assets to be used for purposes that are not charitable in Scotland.

6



where do we go next? individual charity reviews from 2012 onwards

The objective of our individual charity reviews was to ensure that the public can be confident that bodies registered as charities in Scotland meet the charity test laid down by law. Our experience has confirmed our view that the most effective and proportionate way of achieving this is by targeting those charities that belong to groups where perceived uncertainty about their compliance with the requirements is highest.

However, our review programme shows that while we have primarily focused on whether charities meet the charity test, these detailed assessments of charities may also highlight other issues of regulatory concern, such as governance or concerns about long-term financial sustainability. It is important, in maintaining public confidence in charities and achieving a flourishing charity sector, that we address all these issues in designing our programme of future reviews.

Our work in inquiry and intervention supports this outlook. As part of our role, we assess and address any specific complaints about charities in line with our **'Inquiry and Intervention policy'**. Our inquiry work shows that governance concerns are by far the most common cause of complaints about charities to OSCR. Even when governance is not the primary reason for a complaint, we have invariably found it to be a contributing factor when things go wrong.

We plan, therefore, to incorporate future reviews into a more integrated framework that covers all areas of our regulation. The manner in which we review the charities selected will also be woven more closely into the work we do on a daily basis of monitoring, assessment and investigation of charities. This reflects our plans during 2012 to review the basis of our programme for monitoring individual charities, with a view to possibly introducing a more tailored programme of individual monitoring of charities presenting an identified issue.

Taking all this into account:

- The Review programme will continue to be focused on types of charity where we can identify specific potential issues, but we will take into account all aspects of compliance – issues of failure in governance and charity trustee duties as well as of failure of the charity test
- Reviews will therefore be holistic, and look at all aspects of a charity's compliance with the 2005 Act.

Overall, the idea is to move from the charity-test based rolling review, with its roots in the way the Scottish Charity Register was created in 2006, to a programme of proactive reviews which allows us to address a range of recognised issues. This will provide a basis for guidance and outreach work to ensure wider compliance among charities on the Register.

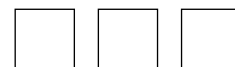


On this basis, we have identified the following groups as priority categories for review in 2012:

Type of charity	Identified issue
Schools which restrict access to benefit on the basis of fees or charges to beneficiaries	Failure of charity test: undue restriction of access to public benefit (continuing issue, based on outcome of earlier reviews)
Charities which restrict access to benefit to those on basis of protected characteristics under Equality Act 2010	Failure of charity test: possible undue restriction based on protected characteristics under Equality Act 2010 Misconduct/mismanagement: failure to comply with applicable legislation (2010 Act)
UK-based charities operating outside UK	Failure of charity test: (various possible public benefit grounds) Increased governance risk because of environment: failure to fulfil trustee duties due to not dealing adequately with the increased difficulty and complexity of an overseas operating environment (lack of accountability for activities overseas, possibility of fraud, lack of internal controls)
Charities established and operating outside the UK	As above, with the additional problems of regulating entities where practicalities of enforcement are difficult

We would also intend to continue to review some charities selected at random, as a 'control group' against which to assess the priority categories, and to ensure that no group of charities is perceived as immune to review.

7



the role of charity trustees

OSCR's individual charity reviews assess whether or not charities meet the charity test as set out in the 2005 Act. The lessons learned in the programme and our experience elsewhere demonstrate that a full understanding of charity trustee duties, along with good governance in practice, help to pre-empt problems such as 'mission drift' – where a charity's activities outgrow its original constitution – or where it fails to fulfil its charitable purposes and its obligation to provide public benefit.

As a matter of good practice, charity trustees should regularly review their charity's constitution and their governance and administration arrangements, drawing on the lessons highlighted by our reviews. By doing so, charity trustees can assure themselves that these are up to date with the legislative requirements and fit for purpose given the current activities of the charity. When charity trustees review their charity and communicate the results clearly, this can improve the charity's transparency and accountability, helping donors, beneficiaries and the public to understand how it fulfils its charitable purposes and delivers public benefit.

Every charity is different and charity trustees should be conscious of the general requirements that charities must meet, as well as any specific issues in terms of governance or meeting the charity test associated with their type of charity as highlighted in our reports on reviews.

preparing for a review

We would recommend that charity trustees preparing to assess their own charity should look at the same documents and ask similar questions to those we would ask in a review. The key documents that charity trustees should consider are the charity's constitution and their Trustees' Annual Report. We have highlighted relevant guidance in this report and in the further reading section and charity trustees should refer in particular to our guidance on '[Meeting the Charity Test](#)'.

We have included a checklist on the following two pages that charity trustees can use when they review their own charity.



checklist for charity trustees

Charity trustees must be in control of the management and administration of their charity and act with appropriate care and diligence in the interests of their charity and not of any third party. They are collectively responsible for ensuring that the charity complies with the law. The following checklist covers some of the key areas that charity trustees should consider both in view of legislative and regulatory requirements, but also as a matter of good practice.

General

- Do we review the charity, its constitution, activities and governance arrangements, on a regular basis as a matter of good practice?

Constitution

- Are our charity's purposes up to date and consistent with its current activities?
- Are our charity's purposes charitable according to the 2005 Act? (If we want to update our purposes, a charity must seek OSCR's consent first.)
- Does the charity's constitution make it clear what charitable purposes it is pursuing, or do these have to be inferred?
- Have we accounted for differences in legislation between Scotland and other parts of the UK? Does the charity's constitution allow charitable assets to be used for purposes that are not charitable in Scotland?

Governance and administrative arrangements

- Does the way that our charity is set up, including any founding legislation, inhibit us as charity trustees from carrying out our duties? If so, we should seek ways to enable this to be changed.
- Can we, as charity trustees, make decisions solely in the interests of the charity?
- Do we have a robust conflict of interest policy and clear lines of authority?

Public benefit

- Is there any undue restriction on accessing the charity's benefit? If so, what are we doing to facilitate access, for instance by mitigating fees and offering other forms of accessing our services and facilities?
- Does the public benefit that the charity provides fit with its charitable purposes?
- Do the charity's activities give private benefit to individuals and how does this private benefit compare to the public benefit it provides?



Activities

- Can we provide evidence that the charity's activities advance its charitable purposes, for instance, if we are aiming to advance health?
- Does our trustees' annual report describe the charity's activities and explain how the charity delivers public benefit?
- Are we sure that our charity or proposed charity will carry out the planned activities?
- If the charity is not active, should we wind it up? (If so, we must obtain consent from OSCR before winding up.)
- Is there a reason why the charity is inactive yet still passes the charity test? (Refer to OSCR's ['Apparently Inactive Charities' policy](#).)

Umbrella bodies

- If our charity is part of a group structure, have we considered establishing or updating a model constitution, and working with the umbrella body to do so?
- What further support can we seek from an umbrella body, such as advice on governance or help in maintaining continuity when charity trustee boards change frequently?



further reading

'Charities and Trustee Investment (Scotland Act) 2005'

'Rolling Review – Proposals for Consultation', September 2006

'Guidance for Charity Trustees', September 2006

'Rolling Review: Proposals for Consultation – Consultation Evaluation Report', March 2007

'Rolling Review Pilot Study Report', July 2007

'Policy Statement on Restrictive Conditions', July 2007

'Decision Framework', July 2007

'Rolling Review-Phase 1a Report', October 2008

'Meeting the Charity Test guidance', October 2008

'Apparently Inactive Charities policy', October 2009

'Short Report on Progress with Rolling Review Directions', February 2010

'Who's in Charge: Control and Independence in Scottish Charities', March 2011

'Corporate Plan 2011-14', June 2011

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table of charities in programme of individual charity reviews

Charity name	Charity number	Umbrella/interest/ risk group	Outcome	Formal recommendations/ Direction*
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Review Pilot stage – 2006-07

East Cults Playgroup	SC001160	Member of large group structures - Scottish Pre-School Play Association (SPPA)	Charity met charity test	None
Midstocket Playgroup	SC014535	Member of large group structures - (SPPA)	Charity met charity test	None
St Devenick's Playgroup	SC016621	Member of large group structures - (SPPA)	Charity met charity test	None
Kingswells Playgroup	SC033296	Member of large group structures - (SPPA)	Charity met charity test	None
Milltimber Community Association Playgroup and Rising Fives	SC010826	Member of large group structures - (SPPA)	Charity met charity test	None
Oldmachar Community Playgroup	SC011360	Member of large group structures - (SPPA)	Charity met charity test	None
Kids Crew Playgroup	SC036325	Member of large group structures - (SPPA)	Charity met charity test	None
Culter Community Playgroup	SC000761	Member of large group structures - (SPPA)	Charity met charity test	None
Cloverfield Playgroup	SC014182	Member of large group structures - (SPPA)	Charity met charity test	None



Charity name	Charity number	Umbrella/interest/ risk group	Outcome	Formal recommendations/ Direction*
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Review Pilot stage – 2006-07

Eastriggs and Dornock Children's Gala Fund	SC029878	Community group	Charity met charity test	None
Pollokshaws Methodist Church	SC018463	Religious	Charity met charity test	None
Coalburn Miners Welfare Charitable Society	SC015679	Miners' welfare	Charity met charity test	Recommendation to amend charitable purposes in constitution to reflect current activities
Corporation of The High School of Dundee	SC011522	School	Charity met charity test	None
University of Dundee	SC015096	University	Charity met charity test	None
Voluntary Action Fund	SC035037	Grant-giving organisation	Charity met charity test after direction	Directed to amend its constitution to define 'charitable' in terms of Scottish law
Board of Management of John Wheatley College	SC021200	College	Charity met charity test after direction	Directed to ensure that its constitution did not expressly permit ministers to direct or control the charity's activities. OSCR also informed Scottish Ministers of its interpretation of sections 7(4)(a) and (b) of the 2005 Act and how these apply to Further Education Colleges
Miners Welfare Society Arniston	SC001535	Miners' welfare	Voluntarily withdrew from pilot review	



Charity name	Charity number	Umbrella/interest/ risk group	Outcome	Formal recommendations/ Direction*
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Phase 1(a) – 2007-09

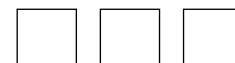
Reguis School	SC022723	School	Charity met charity test	None
Glasgow Steiner School Ltd	SC005339	School	Charity met charity test	None
George Heriot's Trust	SC011463	School	Charity met charity test	None
Gordounstoun Schools Limited	SC037867	School	Charity met charity test	None
St Mary's Music School Trust Ltd	SC014611	School	Charity met charity test	None
Governors of Donaldson Trust	SC017417	School	Charity met charity test	None
Queens House Residential Home	SC010314	Residential care services	Charity met charity test	None
Isobel Fraser Residential Home	SC016007	Residential care services	Charity met charity test	None
Servite Housing Association	SC013035	Residential care services	Charity met charity test	None
Scottish Fisheries Museum Trust Ltd	SC006185	Museum	Charity met charity test	None



Charity name	Charity number	Umbrella/interest/ risk group	Outcome	Formal recommendations/ Direction*
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Phase 1(a) – 2007-09

National Trust for Scotland	SC007410	Membership structures	Charity met charity test	None
Kilwinning Community Sports Club	SC033661	Membership structures	Charity met charity test	None
Scottish Rock Garden Club	SC000942	Membership structures	Charity met charity test	None
Biggar Music Club	SC003275	Membership structures	Charity met charity test	None
Willows Animal Sanctuary	SC029625	Randomly selected	Charity met charity test	Recommendation to amend charitable purposes in constitution to reflect current activities
Sylvia Aitken's Charitable Trust	SC010556	Randomly selected	Charity met charity test	None
Edinburgh Interfaith Association	SC017622	Randomly selected	Charity met charity test	Recommendation to amend constitution to add a provision that expressly ensures property can only be applied for charitable purposes
Providing for People in Paisley	SC008228	Randomly selected	Charity met charity test	None
Robertson Trust	SC002970	Randomly selected	Charity met charity test	None
Bute Museum Trustees	SC000639	Museum	Charity met charity test after direction	Directed to amend constitution to define 'charitable' in terms of Scottish law



Charity name	Charity number	Umbrella/interest/ risk group	Outcome	Formal recommendations/ Direction*
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Phase 1(a) – 2007-09

Ullapool Museum Trust	SC018225	Museum	Charity met charity test after direction	Directed to amend constitution to define 'charitable' in terms of Scottish law
Scottish Youth Hostels Association	SC013138	Membership structures	Charity met charity test after direction	Directed to amend constitution to define 'charitable' in terms of Scottish law
Andarroch Trust	SC032270	Randomly selected	Charity met charity test after direction	Directed to amend constitution to define 'charitable' in terms of Scottish law
Isle of Gigha Heritage Trust	SC032302	Randomly selected	Charity met charity test after direction	Directed to amend constitution to define 'charitable' in terms of Scottish law
Jordanhill School	SC004463	School	Charity met charity test after direction	Directed to ensure that its constitution did not expressly permit ministers to direct or control the charity's activities
Cosgrove Care Ltd	SC013208	Residential care services	Charity met charity test after direction	Directed to amend constitution to define 'charitable' in terms of Scottish law
Lomond School Ltd	SC007957	School	Charity met charity test after direction	Directed to take steps to meet the charity test by providing public benefit
Hutchesons Educational Trust	SC002922	School	Charity met charity test after direction	Directed to take steps to meet the charity test by providing public benefit
Merchiston Castle School	SC016580	School	Charity met charity test after direction	Directed to take steps to meet the charity test by providing public benefit
St Leonards School	SC010904	School	Charity met charity test after direction	Directed to take steps to meet the charity test by providing public benefit



Charity name	Charity number	Umbrella/interest/ risk group	Outcome	Formal recommendations/ Direction*
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Phase 1(b) – 2009-11

Lothian Health Board Endowment Funds	SC007342	NHS endowment	Charity met charity test	Recommendation to make (or cause to be made) amendments to constitutional structure to allow charity trustees to be in control of charity. As this was not in the power of the charity alone, OSCR made a recommendation to Scottish Ministers in its 2010/11 Annual Report in this regard. Recommendation to review the management of funds and to consider rationalisation of those funds
Edinburgh's Telford College Students' Union	SC028544	Students' union	Charity met charity test	Recommendation to review constitution to clearly define governance structure – including setting out the powers of the trustees and specifying the level of control which the Board Of Management of Edinburgh's Telford College may exert over the charity
St Andrews University Students Association	SC019883	Students' union	Charity met charity test	Recommendation to review constitution to clearly define governance structure – including setting out the powers of the trustees and specifying the level of control which the University of St Andrews may exert over the charity
Universal Health and Education Trust	SC013443	Case work	Charity met charity test	Recommendation to amend charitable purposes in constitution to reflect current activities. Recommendation to review content of charity's website to ensure it does not promote any private business



Charity name	Charity number	Umbrella/interest/ risk group	Outcome	Formal recommendations/ Direction*
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Phase 1(b) – 2009-11

Society of Border Leicester Sheep Breeders	SC000011	Agricultural	Charity met charity test after direction	Directed to amend constitution such that it has charitable purposes
Highland Cattle Society	SC013974	Agricultural	Charity met charity test after direction	Directed to amend constitution such that it has charitable purposes
Loudoun & Galston Agricultural Association	SC014230	Agricultural	Charity met charity test after direction	Directed to amend constitution such that it has charitable purposes
Huntly Stroke Club	SC000090	Randomly selected	Charity met charity test	Recommendation to amend charitable purposes in constitution to reflect all current activities
East Ayrshire Women's Aid Kilmarnock	SC001205	Randomly selected	Charity met charity test	None
Lothian Cat Rescue	SC007631	Randomly selected	Charity met charity test	None
Scotlanka Network	SC037513	Case work	Charity met charity test	None
Tolsta Cemetery Trust	SC000734	Case work	Charity met charity test	Recommendation that charity amend constitution to clearly link its charitable purposes with those in 2005 Act
Duncan Millar East Loch Tay Charitable Trust	SC032532	Zero income	Charity wound up and is no longer under review	None



Charity name	Charity number	Umbrella/interest/ risk group	Outcome	Formal recommendations/ Direction*
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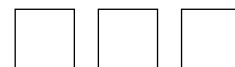
Phase 1(b) – 2009-11

Autoimmune Research Centre	SC034317	Zero income	Charity wound up and is no longer under review	None
Maryhill Workspace Ltd	SC020032	Zero income	Charity wound up and is no longer under review	None
Delta	SC001075	Zero income	Charity wound up and is no longer under review	None
Cargilfield School	SC005757	School	Charity met charity test	Recommendation to update constitution to remove out-dated reference to the role of Secretary of State for Scotland upon the dissolution of the charity
McNeil Trust Ltd	SC005019	Case work	Charity met charity test	Recommendation to amend charitable purposes in constitution to reflect all current activities. Recommendation to facilitate access to its services for those who cannot afford it, or to signpost potential beneficiaries to other sources of financial support
The Christian Party Charitable Trust	SC025583	Case work	Under review	

*We issued advice on good practice in governance to some charities that met the charity test and did not receive a formal recommendation or direction.

9

glossary



Charitable purposes – These are the charitable objects recognised in Section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act), namely:

- a) The prevention or relief of poverty
- b) The advancement of education
- c) The advancement of religion
- d) The advancement of health
- e) The saving of lives
- f) The advancement of citizenship or community development
- g) The advancement of the arts, heritage, culture or science
- h) The advancement of public participation in sport
- i) The provision of recreational facilities, or the organisation of recreational activities with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended
- j) The advancement of human rights, conflict resolution or reconciliation
- k) The promotion of religious or racial harmony
- l) The promotion of equality and diversity
- m) The advancement of environmental protection or improvement
- n) The relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage
- o) The advancement of animal welfare
- p) Any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

Charity – A charity in Scotland is a body that is entered in the Scottish Charity Register. A body can only become a charity if it meets the charity test.

Charity test – The test under the 2005 Act that determines whether a body can be granted charitable status, which means the body must show that it has only charitable purposes and that it benefits the public. In addition, it may not be a political party or have the purpose of advancing a political party, nor can its constitution permit Scottish Ministers or Ministers of the Crown to control its activities, or allow it to distribute or otherwise apply any of its property (on being wound up or at any other time) for a purpose which is not a charitable purpose.



Charity trustees – The people having the general management and control of the administration of a charity. This is usually those people who are elected members of its governing body. Depending on the charity's legal structure they may also be known as Board members, directors, management committee members, charity trustees, governors or patrons.

Constitution or founding document – The document or instrument which establishes the charity and sets out its purposes, how its charity trustees are appointed and how the charity will operate. All bodies applying for charitable status need to submit a copy of their constitution. The type of constitution a charity has will depend on its legal structure. Unincorporated associations will generally have a constitution, trusts will have a trust deed or declaration of trust, and charities formed as companies (usually limited by guarantee) will have articles of association. Sometimes a charity's constitution may be a charter or an Act of Parliament, or some other type of document or combination of documents.

Control – The ability to intervene in a body's activities to ensure that these activities are carried out as the controller wishes.

Direction - If OSCR finds that a charity does not meet the charity test, it will issue the charity with a direction under section 30(1)(a) of the 2005 Act requiring it to take steps that will enable it to meet the charity test. If a charity fails to comply with a direction in the time period specified (usually 12 months), OSCR must remove it from the Register under section 30(3). At that point, the charity can request a review and, if unsuccessful, appeal the outcome of the review to the Scottish Charity Appeals Panel.

Disbenefit – Any harm or detriment caused by an activity.

Ex-officio appointment – An appointment made on the basis of a post, office or role.

Governance – Governance covers the systems and processes concerned with ensuring the overall direction, effectiveness, supervision and accountability of a body. This is carried out by a governing body which may be called the board, the management committee, the executive committee, the trustees or directors, depending on the structure of the body. In a charity, good governance is the responsibility of the charity trustees.

Phase 1(a) – The first stage of the Rolling Review programme (2007-9) after the public consultation and pilot were completed.

Phase 1(b) – The second stage of the Rolling Review programme (2009-11).

Public benefit – To become a charity in Scotland, a body must show it will provide identifiable benefit to the public or a section of the public. In looking at whether public benefit is provided, we take into account the following:

- how any private benefit is balanced against benefit to the public
- how any disbenefit to the public is balanced against benefit to the public
- whether there are any unduly restrictive conditions on obtaining the benefit the body provides.

Recommendation – When OSCR finds an issue during a review which does not result in the charity failing the charity test but is still a cause for concern, it will issue a recommendation to the charity. This will be when the charity does not comply with other aspects of the 2005 Act, for instance by operating outside the terms of its constitution. In such cases, OSCR will recommend that the charity take action to correct the problem within a set period (usually 12 months). If a charity fails to act on a recommendation, OSCR will reassess the situation and may decide to take further action.



Rolling Review – This is the term adopted by OSCR for its programme of individual charity reviews to assess whether or not charities meet the charity test as set out in the 2005 Act (2006-11).

Umbrella body – An association of related institutions that work together formally to coordinate activities or pool resources. Sometimes umbrella groups are to some extent responsible for the activities of the charities that belong to them and act as a parent body; in other instances, they offer support and services to their members. Examples in the charity sector in Scotland include the Scottish Council of Independent Schools, Girlguiding Scotland and the Scottish Pre-School Play Association.



Scotland's charity regulator

The Office of the Scottish Charity Regulator (OSCR) is the independent regulator and registrar of Scotland's 23,000 charities, including community groups, religious charities, schools, universities, grant-giving charities and major care providers. OSCR was set up by the Charities and Trustee Investment (Scotland) Act 2005.

What we are working for

Our vision is for Scotland to have a flourishing charity sector in which the public has confidence.

How we aim to achieve this vision

Our objectives are to:

- Increase public confidence in charities through effective regulation
- Increase the transparency and public accountability of charities
- Increase charity trustees' awareness of, and compliance with, their statutory responsibilities
- Maintain OSCR as a trusted, effective and innovative regulator
- Minimise the burden of regulation on charities, particularly by reducing multiple reporting
- Operate effectively and efficiently.

What we do

OSCR must:

- Decide whether organisations can be charities
- Keep a public Register of charities
- Encourage and help charities comply with the law, and check that they do so
- Identify and investigate apparent misconduct by those who run charities and act to protect charity assets
- Give advice or make proposals to Scottish Ministers about charity regulation.

How we work

We carry out our work in a way that reflects our values. We aim always to be independent, proportionate, accountable, transparent, consistent, fair, targeted and informed.