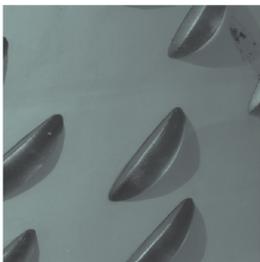


# annual review 2010/2011



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***‘It’s good to know that  
OSCR is there, looking  
after the charity sector’.***

**- 80% of the public agree with this statement**

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***‘A textbook example of firm  
and focused guardianship of  
charitable status’.***

**- *Third Sector* magazine: OSCR’s decision on  
Dundee FC in the Community**

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## scotland's charity regulator

**OSCR is the independent regulator and registrar of Scotland's 23,000 charities, including community groups, religious charities, schools, universities, leisure facilities, grant-giving charities and major care providers.**

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Our vision is for a flourishing charity sector in which the public has confidence, underpinned by OSCR's effective delivery of its regulatory role.

Based in Dundee, we have 55 staff and an annual spend of £3.0 million. Our Annual Report and Accounts 2010-11 were laid before Parliament in September 2011 and are published at [www.oscr.org.uk](http://www.oscr.org.uk)

# introduction from the chair and chief executive

## Welcome to our fifth Annual Review

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The past year has continued to present challenges for Scotland's charities, as the economic climate raises searching questions for the sector. As Regulator, OSCR has produced and promoted guidance specific to such issues, as well as training for third sector support organisations through our Outreach Programme.

From our casework we have seen a continuing high level of applications for changes to charities and for amalgamations and reorganisations. This is encouraging, as it suggests that charities are considering and acting upon the options available to them through the legislation, in order to manage and respond to the challenges they face.

We too have seen a number of changes in the past year. A key element of charity legislation has come to fruition, with the arrival of the SCIO on 1 April 2011. We undertook a considerable amount of work in readiness for the new legal form and anticipate significant demand from the sector.

The Equality Act 2010 came into force, raising a number of issues for OSCR as a public body, and for charities. We urge charities to consider the implications for their activities, and we have produced our Interim Equality Strategy 2011-12 as a first step. We also introduced a new Fail regime in our monitoring process. In this first year some 76% of charity accounts met the required standard, with a Qualified Pass issued to a further 17%.

Having announced our proposals in 2009 for Integrated Reporting, now renamed OSCR Online, in 2010-11 we began the process of developing the technical infrastructure required to implement our new online services and the enhanced Scottish Charity Register. We will continue to provide updates in the run-up to the launch of the new system later this year. In the meantime, we urge charities to check the contact details we hold and to subscribe to our e-newsletter, OSCR Reporter, to keep up to date with developments.

This Annual Review gives a broad overview of our own activities over the past year and as well as performance statistics, it uses case studies to illustrate our experience and provide key points for the sector. We hope that you find it a useful and informative summary of our work and our priorities.

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**95%**

Percentage of the public that believes  
OSCR's role is essential or important.

**23,288**

Number of charities entered in the  
Scottish Charity Register at 31 March 2011.  
This compares to 23,260 in 2009-10.



*Graham Forbes*

The Very Reverend  
Dr Graham Forbes  
Chair



*J. Ryder*

Jane Ryder  
Chief Executive

# the year at a glance

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## May

- » We issued Directions to three agricultural charities to amend their constitutions, as the wording used to describe their charitable purposes did not comply with the 2005 Act. We gave guidance, using a form of wording that would address this issue.

## August

- » Having promoted and supported a fundamental review, we welcomed the National Trust for Scotland's publication of its report into its governance structure.

## September

- » We published our revised Inquiry and Intervention Policy, setting out what charities and complainers can expect from our complaints process.
  - » We published our report summarising our inquiry into SC020862 the Sick Kids Friends Foundation. While finding no evidence of misconduct, we made recommendations to the charity regarding its governance.
- 

## January

- » Our staff took part in the UK Civil Service People Survey, recording positive scores for staff engagement in all areas.
- » We commissioned independent research into the views of charities and the public with the results published in May 2011.

## February

- » We consulted on our draft Corporate Plan 2011-14, published in June 2011.
- » John Naylor OBE retired as Chair and The Very Reverend Dr Graham Forbes CBE was appointed new Chair with effect from 1 March 2011.

## March

- » We published our SCIO guidance, in advance of the commencement of the new legal form for Scottish charities.
- » We published '*Who's in Charge?*', our guidance that provides clarity on independence and control in Scottish charities.
- » We published our revised Carbon Management Plan 2011-14, through which we aim to reduce our CO<sub>2</sub> emissions by 10% over the next three years.

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## October

- » We developed our guidance on the requirements of section 19 of the 2005 Act, where organisations removed from the Scottish Charity Register continue to report to OSCR on assets held at the time of removal.
- » We published our evaluation of the first year of our bespoke monitoring regime for cross-border charities, which identified some issues with understanding the requirements in Scotland.

## December

- » Over 200 charity representatives attended our annual open meeting at Murrayfield Stadium, Edinburgh, to hear a keynote speech from the Minister for Community Safety and to discuss our work and future priorities.
  - » Our Outreach Programme, a series of training events aimed at professional advisers and third sector support organisations, commenced.
-

## corporate services

**Our Corporate Services Team provides a range of services and functions, including IT system support, finance, and records management to ensure OSCR's effective operation; customer focused activities such as communications and responding to Freedom of Information requests; and publishing and maintaining the definitive Scottish Charity Register.**

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In common with many public bodies and charities, OSCR has been affected by the economic downturn, with a 10% reduction in our annual budget for 2010-11. Corporate Services staff have been involved in identifying and reporting efficiency savings, and in the demonstration of Best Value within the organisation, as well as carrying out our more visible externally focused activities.

Our website remains our primary communications platform. The layout of the site was refreshed during the year, making it easier for visitors to search the Register and access our guidance, general information, and

news items. External visitor numbers to the site average around 15,000 each month with searches of the Register and downloading publications being the most commonly carried out functions. The site also allows visitors to request our e-newsletter, OSCR Reporter, which currently has over 8,000 subscribers. In 2011-12 we will commission additional design and technical work for the home page, to prepare for the arrival of OSCR Online.

The Scottish Charity Register is updated on a daily basis, and contains information on each of the 23,000 charities registered with and monitored

by us. Our Register Team are responsible for the issue of Annual and Monitoring return forms to all charities; and for processing incoming submissions and undertaking a completeness check for every set of accounts submitted by charities with an annual income under £25,000. The Register Team also work to identify a primary contact for those charities which fail to submit returns and accounts, with a view to re-engaging them in the monitoring process. During the year, the team handled 2,331 such cases, successfully re-engaging 54% and recommending removal of 132 charities from the Register under sections 3 and 30 of the 2005 Act.

# 730

**Number of bodies registered as charities in England and Wales entered in the Scottish Charity Register, at 31 March 2011. This compares to 656 in 2009-10.**

## case study

### a non-submitting charity faced removal from the Register

Charity A was an unincorporated association granted charitable status by HMRC in 1996. It was entered in the Scottish Charity Register under section 99 of the 2005 Act when OSCR took up its powers in April 2006. The charity initially submitted an Annual Return and latest set of accounts, to which we issued a Qualified Pass with guidance on accounting requirements.

However, the charity failed to submit further Annual Returns and accounts. In line with our standard procedure, we issued three reminder letters and flagged up the charity's non-submission in its Register entry. The charity still failed to engage with us despite our telephone calls and emails. We therefore took steps to remove it from the Scottish Charity Register.

During that time, a new Chairman contacted us to say that Charity A was still active and should not be removed. They had failed to submit their documents following the departure of the treasurer and consequent uncertainty about the preparation of the accounts. They had simply avoided dealing with the issue.

All charities are required to prepare accounts as well as provide basic information to OSCR. Our reporting requirements are not onerous, and as a proportionate Regulator, we will engage in dialogue with charities in order to achieve compliance. In addition, as we have reiterated through our Outreach Programme, a support network exists through third sector organisations where charities can source tailored professional advice at little or no cost.

We set up a meeting between the charity and its local CVS group. The charity gave us an assurance that it would provide us with the required documentation within an agreed timescale. This information was subsequently provided to us and we changed the charity's Register entry status to 'Active'.

# 155

**The number of charities removed from the Register and continuing to report on charity assets to OSCR as required under section 19 of the 2005 Act.**

# 10%

**Percentage reduction in our carbon emissions, as envisaged in our Carbon Management Plan 2011-14.**

# case study

## a non-submitting charity faced removal from the Register

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### Key lessons

- » Charities must engage with OSCR. Simply ignoring our requests for information does not address apparent issues and may ultimately result in removal from the Register under sections 3 or 33 of the 2005 Act
- » The charity in question had an income less than £25,000. Nonetheless, such charities still have a duty to submit accounts and returns to OSCR and we have powers to act where charities do not comply
- » OSCR can appoint an accountant to prepare compliant accounts, at a cost to the charity's trustees personally, under section 45 of the 2005 Act
- » OSCR publishes a list of Defaulting Charities at the following link: <http://www.oscr.org.uk/meeting-our-requirements/monitoring-accounting/defaulting-charities/>
- » The Register is updated daily and provides accurate information to the public and potential funders, including whether charities have submitted an annual return and accounts on time to OSCR.
- » Some 6% of charities fail to comply with our annual reporting requirements within 12 months of the end of their accounting period. Public confidence demands that charities account for the assets they hold. It would not be proportionate or fair for non-compliant charities to avoid their obligations when the majority of charities make the effort to do so.
- » Section 66 duties include that charity trustees must comply with any requirement of the 2005 Act.

# 792

**Number of charities removed from the Scottish Charity Register. This includes voluntary removals and removals due to non-compliance.**

# 95%

**Percentage of Annual Return and Monitoring Return forms validated by OSCR within two months of submission by charities.**

## case study – Freedom of Information

### We issued certain information in response to an FOI request

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In November 2010 we received a request for information under the Freedom of Information (Scotland) Act 2002. The person making the request, a Mrs I, was a trustee of a charity which had made an application to OSCR to reorganise. She requested copies of all the letters of objection to the reorganisation which we had received. We had previously provided a summary to Mrs I of the information contained in the 14 objection letters. In our view there was little additional information that Mrs I could gather from seeing the actual letters, other than to identify the names of the individual objectors.

We responded to Mrs I's request on 23 December 2010, within the required 20 working days. We exempted personal information about the objectors, under sections 38 of the Freedom of Information (Scotland) Act 2002 because we believed that the public interest would not be served by releasing it. Mrs I was dissatisfied with this response and our subsequent review, which upheld our earlier decision.

In January 2011, Mrs I again requested copies of the objectors' letters. We determined that this was a repeated request and that our previous response was valid. We advised Mrs I of her right to appeal our decision to the Office of the Scottish Information Commissioner (OSIC).

In March 2011, OSIC informed us that they had received Mrs I's appeal and would consider the matter. We released all the information, including the objectors' letters, to OSIC to allow consideration of the case. As requested, we also set out our arguments for not releasing copies of the letters. In May 2011, OSIC contacted us to confirm that it upheld our decision and that the objectors' letters should be exempt from release. The decision, and the thinking behind it, can be viewed on the OSIC website at: <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2011/201100422.asp>

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## Key lessons

- » Freedom of Information legislation exists to encourage openness and transparency among public bodies but there are exemptions, for example, personal information or the release of material that may prove counter to the public interest
- » OSCR is committed to the principles of Freedom of Information, but we may choose not to release information where to do so may jeopardise the delivery of our functions. For example, the public would not be served were potential complainers to be deterred because they believed their identity may be released or they could be identified
- » It is worth noting that under the terms of the Freedom of Information (Scotland) Act 2002, it is the **information** held by OSCR that may be released, not the actual document itself. In our view, endorsed by OSIC's decision, the summary given to Mrs I presented a full picture relevant to the objections raised. The actual letters themselves would only serve to identify individual objectors, and OSIC agreed with OSCR's view that we should class such material as exempt.

## charity services

**OSCR's Charity Services Team considers applications for charitable status, charity reorganisations, and applications for consent to proposed changes to charities such as amalgamation or winding-up. The team also receives notifications from charities for changes carried out.**

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We received a total of 1,135 new applications for charitable status in 2010-11, almost identical to the previous year. We refused 18 applications, and in 248 cases the application was withdrawn or not pursued. The total number of charities granted charitable status was therefore 868.

The number of existing charities who applied to take a certain action such as a change of name, winding up or amalgamation remained consistent with last year, with 968 consents and 80 amalgamations being approved. We also handled 3,449 notifications of changes made by charities.

We expect that applications to amalgamate and to reorganise will continue at this high level. In particular, we anticipate that local authorities will

submit proposals to us to reorganise the numerous charitable trusts that they administer, to release additional charitable funds which will be better applied to meet charitable purposes.

In 2010-11 we established our procedures in preparation for the commencement of Scottish Charitable Incorporated Organisations (SCIOs) on 1 April 2011 and produced detailed guidance and information. We expect increasing interest in SCIO status, both from new applicants and for charities seeking to change their legal form when this option becomes fully available in January 2012. We plan to undertake significant outreach work among charity advisers, and with banks and funders, to highlight awareness of the new legal form and its requirements.

# 1,135

**Number of applications for charitable status this year. This compares to 1,131 in 2009-10.**



**868**

**Number of bodies granted charitable status by  
OSCR this year. This compares to 944 in 2009-10.**

## case study – Scotland’s first SCIO – SC042244 South Seeds

### We granted consent to the first of a new legal form

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The Scottish Charitable Incorporated Organisation, or SCIO, is a legal entity able to enter into contracts, employ staff and own property, and which provides protection against personal liability for charity trustees.

Existing charitable companies and charitable industrial and provident societies will be able to apply to convert to SCIO form from 1 January 2012, but existing Scottish charities which are any other type of legal form, and new applicants for charitable status, have been able to apply for SCIO status since 1 April 2011.

South Seeds, based in Govanhill, Glasgow, is Scotland’s first SCIO. The charity works with residents in Govanhill, Strathbungo, Crosshill and surrounding areas to reduce carbon emissions by undertaking home energy checks, providing energy saving devices, and encouraging food growing and composting in gardens and back courts. The project also intends to run workshops and events and create local community gardens.

Kirstie Penman, one of South Seeds’ charity trustees, says that SCIO status allows the charity to be more ambitious in pursuing its purposes.

‘SCIO status offered us an opportunity to set our sights higher and to take on more ambitious challenges than we would have been comfortable with as an unincorporated association, especially in terms of entering into contracts and employing staff’, she says. ‘Because SCIO status provides protection against personal liability for individuals, we believe it will make it much easier for fledgling organisations like ourselves to get up and running’.

#### Key lessons

- » The SCIO legal form provides protection against personal liability for its charity trustees and reassurance for those entering into contracts with it
- » There are, however, important differences between the SCIO and other types of charity, with implications that must carefully be considered. We recommend that those considering SCIO status, and their advisers, should ensure that they are familiar with requirements
- » We have produced new guidance and information, and are meeting with local support groups as part of our Outreach Programme to outline the practicalities of the SCIO. Further information is at: <http://www.oscr.org.uk/ScottishCharitableIncorporatedOrganisations.stm>

# 968

Number of consents granted by OSCR for proposed changes to charities. This compares to 831 in 2009-10.

## case study – SC008877 Royal Aberdeen Workshops for the Blind and Disabled

### We worked with the Insolvency Practitioner and other agencies

The Royal Aberdeen Workshops for the Blind and Disabled was established in 1843 and was registered as a charity in 1895. Under the 'Glencraft' name it provided employment for disadvantaged, disabled and visually impaired people in Aberdeen in the manufacture of mattresses, divan bases and bespoke beds with its products used in prestigious hotels, the oil industry and in prominent buildings such as Balmoral Castle.

In 2009 we received an application from the charity for consent to apply to court. The economic recession and its impact on demand for new furniture had seen a reduction in orders and the charity's trustees wished to apply to dissolve it, on grounds of insolvency. This news caused concern in the Aberdeen area and local MPs, MSPs and Councillors were keen to see the business maintained. OSCR became aware of an initiative by a group comprising local business people and elected representatives to launch a new company with charitable status to continue the work of the Workshops.

We took a proactive approach. As well as liaising with the Insolvency Practitioner for the Workshops, we contacted the promoters of the new company. This

allowed us to explore the issues of timing and co-ordination around the transition to the new charity, as well as an issue about the name of the new company. As a result, we were able to grant charitable status to the new company, Glencraft (Aberdeen) Limited (SC041352), in a timescale which allowed the reopening of the workshops and the rehiring of workers in April 2010.

#### Key lessons

- » Issues of timing can be crucial where charities are dissolving and transferring assets
- » Where there are complex circumstances in a case, contact OSCR early – we will be happy to discuss the issues.

# 18

**Number of bodies refused charitable status by OSCR. This compares to 21 in 2009-10.**

# 3,449

**The number of notifications from charities cleared by OSCR in 2010-11. This compares to 3,655 in 2009-10.**

## case study – The City of Edinburgh Council

### A local authority reorganised 30 charitable trusts to make more effective use of assets

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The 2005 Act introduced new provisions (sections 39 and 42) permitting charities to reorganise with OSCR's consent, rather than the potentially costly process of applying to the Courts.

Several hundred individual charities have used these provisions to date, but we have also identified that many local authorities have dormant trusts for which they act as charity trustee, and where the reorganisation provisions could be used to modernise both the administration and the charitable purposes.

In 2010-11 we worked with the City of Edinburgh Council, to allow the transfer of assets from 30 charitable trusts and bequests for which the Council acted as trustee. Many dated from the 19th Century and as a result, for example, through the failure of the original charitable purposes, some £12.4 million of assets were not being effectively used.

The Council took an innovative approach. It advertised for a charity to act as recipient for the funds and appointed SC040987 Elizabeth Finn Care, a large cross-border charity based in London. We worked with the Council and the charity to ensure that the assets would continue to be used in the spirit of their original trusts and to ensure an orderly transfer of assets. As a result, a substantial amount of funding is now effectively released.

We hope that this project will be seen as an example for similar applications by local authorities in Scotland, unlocking substantial sums of unused assets for the charity sector.

#### Key lessons

- » The 2005 Act contains provisions for charities to reorganise without having to apply to the Courts. Information and guidance is available at [www.oscr.org.uk](http://www.oscr.org.uk)
- » Numerous dormant trusts can be reorganised to allow funds to be released or better applied to charitable purposes. In the case of local authorities this can amount to millions of pounds
- » OSCR plans to publish new guidance on charity reorganisations, with further illustrative case studies, later in 2011.

# 108

Number of charity reorganisation applications made to OSCR.

## case study – SC041870 The Ossian Trust

### An unsuccessful applicant for charitable status successfully reapplied with more information on public benefit

The Ossian Trust plans to erect a heroic statue of the mythic Gaelic bard Ossian on a prominent site in the hills of Morvern, near Oban. This is a large scale and long-term enterprise, involving a distinguished artist and what will be the largest stone carving in Europe. The Trust applied for charitable status in late 2009. We identified concerns about the level of evidence then available to allow us to assess public benefit. Where an application relates to large, publicly visible (and potentially controversial) activity, as in this case, it is proportionate for OSCR to expect a higher level of evidence before making a decision on charitable status. In this case given the lack of sufficient evidence, bearing in mind the nature of the proposed activities, we refused the application as we did not consider the Trust provided public benefit.

The Trust subsequently reapplied for charitable status. At this point, it was able to provide further information as to the nature of the statue, the likely mode of operation and project timescales for the carving, how the public would access and enjoy the site, the level of benefit to the owners of the site, and the environmental implications. While some of this information was necessarily provisional, given the long timescale for the project, it was sufficient to allow us to assess the factors we have to look at when considering public benefit, and the Trust was granted charitable status and entered in the Scottish Charity Register on 3 November 2010.

#### Key lessons

- » OSCR is required to act proportionately and a higher level of evidence is likely to be required in complex, large-scale or controversial cases
- » Before making an application for charitable status applicants should consider whether their plans are sufficiently well-defined for us to assess the likely public benefit from their planned activities
- » To see how we consider issues of public benefit, read our guidance at: [http://www.oscr.org.uk/media/32303/meeting\\_the\\_charity\\_test\\_full\\_guidance.pdf](http://www.oscr.org.uk/media/32303/meeting_the_charity_test_full_guidance.pdf)

# 100%

Percentage of consents applications decided within the statutory deadline.

## enquiry and investigation

**OSCR's Enquiry and Investigation Team monitors incoming charity accounts, and addresses apparent non-compliance. The team handles complaints about charities and investigates apparent misconduct, as well as following up defaulting charities, determining what action is appropriate. This can include removal from the Register.**

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All charities are issued with an Annual Return form, with larger charities also receiving a Supplementary Monitoring Return form that requests more detailed financial information. OSCR's Monitoring Team carries out a basic completeness check on incoming returns and accounts for charities.

In 2010-11, reflecting the fact that we are now in the fifth year of monitoring, we introduced a number of more stringent criteria. Even so, we found that 76% of all the charity accounts we

received met the required standard. Only 7% of charities were advised that their accounts were inadequate, and were required to resubmit them. Some 17% of charities were issued with a Qualified Pass, which means that while there were some deficiencies overall, the accounts were accepted.

We carry out a more extensive check on larger charities and operate a system of 'exception triggers' to identify areas of concern.

# 346

**Number of complaints about charities received from external sources by OSCR in 2010-11. This compares to 310 in 2009-10.**

In addition to our Monitoring programme, we receive complaints and referrals from external sources such as other regulators and members of the public. These continue to remain broadly consistent with previous years. Our experience continues to be that wilful misconduct among charities is rare. In 2010-11 we handled 381 cases arising from complaints and referrals.

We maintain a proportionate approach, where the majority of complaints made to us are resolved through dialogue with the charity and the provision of guidance and support.

# 81%

**Complaints about charities resolved within 9 months, against a target of 75%**

## Ten most prevalent issues raised with OSCR



|  |     |
|--|-----|
| ■ General Governance .....   | 21% |
| ■ External Dispute .....   | 10% |
| ■ Misrepresentation .....  | 10% |
| ■ Failing to provide information (section 23 non-compliance) ..... | 5%  |
| ■ Internal Embezzlement – Charity aware .....                      | 5%  |
| ■ Trustee Duties .....   | 4%  |
| ■ Lack of public benefit .....                                     | 5%  |
| ■ Not responding to OSCR .....                                     | 4%  |
| ■ Service delivery .....   | 4%  |
| ■ Personal Benefit .....   | 4%  |

(all 'other' issues combined total 28%)

# case study – SC000577 Scalloway Public Hall Trust

## We took action and secured a charity's future in the community

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Scalloway Public Hall Trust's objects are to hold Scalloway Public Hall in trust for the use of the inhabitants of Scalloway and its environs. Trustees are also obliged to maintain the Hall in a good state of repair. The Hall is in the Shetland village of Scalloway, which has 1,200 inhabitants.

The charity was already under investigation as it had failed to submit its Annual Return form and accounts. We received a complaint about the running of the charity, which alleged that the Treasurer/Secretary appeared to have sole control of the charity; that no meetings had been held for the last 10 years; and no accounts produced for the last 10 to 12 years. The complainer also alleged that the Hall was in a state of disrepair and that it was unclear how the income of the charity was being spent.

Our subsequent inquiries gave us concerns about the charity's governance and the management of its assets. We decided that there was serious misconduct in the administration of the charity. We found that the charity's financial procedures were grossly inadequate with no financial controls in place, and that the administration of the charity was extremely poor. We established that one individual was in sole management and control of the charity and that no meetings had been held for some considerable time.

Scalloway Public Hall had not been cared for sufficiently, and no remedial maintenance work had been undertaken for some time. No action had been taken by the charity to secure grants that may have been available to help with the maintenance of the Hall.

When we identified the extent of the misconduct, we took action to safeguard the charity's assets and provided support to the community as they took steps to get the charity back on track. We issued a suspension notice under section 31(4) of the 2005 Act to the charity trustee. We also issued a direction to the charity's bankers not to permit any payments from the bank account held in the name of the charity without our prior consent.

The charity's Deed of Trust defined certain local organisations entitled to appoint representatives to the board of trustees. We used these provisions to form an interim management committee to take the charity forward. Scalloway Public Hall Trust now has a management committee in place and has moved forward positively from a situation that could have resulted in the loss of the local village hall.

As we had found evidence that charitable funds had been misappropriated, we submitted a report to the Crown Office and Procurator Fiscal Service. Criminal proceedings were initiated and on 6 July 2011 the former trustee pled guilty to a charge of embezzlement, was fined £500, and ordered to repay the money.

### Key lessons

- » This case study illustrates OSCR's range of powers and how they can be applied, alongside a supportive regulatory approach, to address serious misconduct in the administration of a charity
- » It is essential that trustees ensure that the charity operates with the required number of trustees at all times. There will naturally be a turnover of trustees during a charity's lifetime and action must be taken to address any resulting gap. Failure to do so can result in the charity being inquorate and unable to legitimately function, as well as potentially leaving the charity vulnerable and open to abuse
- » It is essential that charities co-operate fully with OSCR when information is requested. Where problems arise, for example in providing annual accounts, it is important that we are made aware of these at an early stage. In line with our proportionate approach, we aim in the first instance to encourage compliance with the 2005 Act to help prevent matters escalating
- » Trustees are ultimately responsible for the charity's assets and should ensure that measures are in place to safeguard charitable assets including, at their most basic, procedures to protect cash against embezzlement. Proper accounting records must be prepared and must be kept for six years from the end of year accounting period.

## case study – transparency and public confidence

### A charity's trustees refused to provide information to a member of the public

---

In September 2010 we received a complaint from a member of the public, who told us that a Glasgow-based charity had refused his request for information.

The complainer, a Mr A, had asked the charity for a copy of its constitution and its complaints procedure. The charity had responded by asking him why he wanted these documents as they had no record of a connection with him. Mr A explained that he was a local resident and a member of the public. The charity had then declined his request.

We assessed the correspondence supplied to us by Mr A and issued a letter to the charity explaining the trustees' duty to comply with section 23 of the 2005 Act. We instructed the charity to provide Mr A with a copy of its constitution, explaining that their grounds for refusal were not justified, and that they had a general duty under section 66 to comply with the terms of the 2005 Act. Failure to do so could be deemed by us to be misconduct.

The charity responded by seeking clarification on what was meant by the word 'reasonable' in section 23 of the 2005 Act, and alleging that Mr A had caused stress to the charity's staff by making requests for information about another organisation. We wrote to the charity explaining our interpretation (see Key lessons below).

The charity's trustees then discussed the issue and advised us that they had decided *not* to provide Mr A with a copy of the charity's constitution, on the basis that they considered the request unreasonable. It appeared to us that the decision was based upon Mr A's character and motives, rather than whether the request itself was reasonable.

We therefore wrote to the charity, expressing our concern, and reminding the trustees about their duties under sections 23 and 66 of the 2005 Act. We sought information regarding the basis of their decision, advising them that we would consider what regulatory action would be appropriate.

At a subsequent meeting, the trustees decided to provide Mr A with a copy of the charity's constitution and complaints procedure and provided us with a copy of their letter to him. We confirmed to the charity we expected their immediate compliance in the future with such requests for information.

## Key lessons

- » Accountability is important. Section 23 of the Act is intended to encourage the transparency and accountability of charities to the public. The public is entitled to see this information and charities must comply. Entitlement to this information is not limited to a charity's members or beneficiaries
- » Charity trustees are under a general duty (section 66) to ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of the 2005 Act. Any breach of duty is to be treated as being misconduct in the administration of the charity.
- » Charity trustees must make a decision based on whether **the request itself** is reasonable – for example, a straightforward photocopy provided in a few days – and **not** the motive behind the request, the character of the person making the request, or whether meeting the request would be inconvenient or undesirable
- » Failure to comply with section 23 is a common complaint made to OSCR by members of the public (see page 19). Charity trustees should consider the potential reputational impact, and the impact on public trust and confidence in charities generally, by failure to meet such requirements

*Section 23 (Entitlement to information about charities) provides that a person who requests a copy of a charity's constitution or most recent set of accounts is entitled to receive it if the request is reasonable and in a form that the person may reasonably request. The charity may charge a fee, but this must not exceed the cost of producing the copy document(s).*

# 89%

Percentage of charities agreeing that OSCR's documentation is now 'part and parcel' of what they do.

## policy and development

**OSCR's Policy and Development Team was established as part of our Designed to Deliver programme of structural changes. The team delivers a number of business functions and works closely with the Scottish Government's Charity Law Team, other regulators and the sector's advisers.**

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The team's work comprises three main strands:

- » **Policy and research** – producing and revising corporate strategies and procedures, liaison with Scottish Government, charity regulators in other jurisdictions, and other public bodies. This work also includes OSCR's research function, including the production of some management information.
- » **Development** – principally focusing on OSCR's **Outreach Programme**, this function also covers the management of OSCR's programme of guidance, editorial support, and the development and management of OSCR's memorandums of understanding with other public bodies.
- » **Legal support** – this function sees the team providing legal advice to OSCR's staff and Board, as well as technical input to the development of primary and secondary legislation.

In 2010-11 we developed and launched OSCR's Outreach Programme. This included training events which, by the end of March 2011 had been attended by 131 sector advisers. By the end of the programme in June 2011, we estimated that they would reach some 2,000 charities, sharing good practice and, ultimately, encouraging compliance. We published our Interim Equality Strategy 2011-12, responding to the Equalities Act 2010, and are currently developing our new User Focus Strategy as envisaged in the Public Services Reform (Scotland) Act 2010. Policy and Development team members worked with colleagues in the procurement for the technical development of OSCR Online.

During 2010-11 team members represented OSCR on the Scottish Government Working Group tasked with advising Ministers on how best to implement a regime for Scottish Charitable Incorporated Organisations (SCIOs) and later worked with the Scottish Government's Charity Law Team on the development of the supporting Regulations.

We also welcome the fact that the Public Services Reform (Scotland) Act 2010 included a significant number of provisions resulting from recommendations previously made by OSCR, for example amendments to the 2005 Act to permit charities to reorganise restricted funds.

In our Annual Report and Accounts 2010-11, we have made further recommendations, including the following:

- » a general review of current charity legislation, possibly in parallel with a review of the 2006 Charities Act in England and Wales
- » that Scottish Ministers explore with Ministers in England and Wales, and Northern Ireland, a route by which HMRC might formally accept, for the purposes of UK tax relief, all organisations recognised by any UK charity regulator
- » that consideration be given to removing the requirement for the accounts of charities where the local authority is the sole trustee, to be audited

- » that the provisions of the National Health Service (Scotland) Act 1978 be reviewed with a view to ensuring that at least a majority of charity trustees of NHS Endowment Funds are independent of the relevant Health Board.

OSCR's rationale for these recommendations is set out in our Annual Report and Accounts 2010-11, laid before the Scottish Parliament in September and available at [www.oscr.org.uk](http://www.oscr.org.uk)

# 8

**Number of formal complaints made about OSCR.**

## case study – OSCR’s Outreach Programme

### We engaged directly with the sector’s advisers to encourage best practice

In December 2010 we began our Outreach Programme, specifically designed to engage with the sector’s professional advisers and support groups to encourage awareness, dialogue and best practice in meeting regulatory requirements.

Specifically, the programme’s objectives were to:

- » improve the quality of advice and to cascade learning and good practice through the umbrella bodies and professional advisers
- » increase the number of individual charities complying with, and demonstrating an understanding of, regulatory requirements
- » improve the public’s knowledge of charities, encouraging trust in the charity ‘brand’ and confidence in OSCR as a public body.

In the first year of the programme, we have concentrated on working with advisers such as those working in Third sector interface organisations, national intermediaries, and umbrella groups;

local authority staff; and professional advisers, such as accountants and solicitors.

Between January and March 2011, we delivered a total of eight courses. Five were ‘open door’ courses promoted through our website and our network of sector contacts. Two were courses run in conjunction with Moray Council’s **Community Support Unit** for their staff, and representatives from local organisations. The remaining course was run with **Opp2mise**, a support service for the social economy in North Ayrshire. Topics for the courses included ‘Becoming a Charity’, ‘Completing OSCR Returns’, ‘Preventing Fraud’ and ‘Supporting Charities in Financial Difficulties’.

Through these eight courses, we trained a total of 131 charity advisers who expect to support an estimated 2,000 charities over the next 12 months. By the end of June 2011, we had run a further 14 courses, including one in partnership with **Argyll and Bute Council**. We plan to deliver a similar series of courses in 2011-12.

We also supported this year’s **Charity Law Advisers’ Training Programme** run by Edinburgh Voluntary Organisations Council. Piloted by OSCR in 2008 and 2009, this forms part of the Supporting Voluntary Action programme, a capacity-building initiative funded by the BIG Lottery. It delivers a comprehensive four-day ‘Train the Adviser’ course primarily aimed at third sector interface staff. We participated in 10 such courses across the country, from Inverness to Dumfries and Oban to Inverurie, with further activity to follow in 2011-12.

#### Key lessons

- » Offering such training and learning opportunities directly has allowed us to help improve the skills, advice and guidance available to the sector
- » We expect this activity ultimately to improve compliance among charities
- » We actively encourage the sector’s advisers to take part in our Outreach Programme. Information about courses is published at [www.oscr.org.uk](http://www.oscr.org.uk) and promoted through our e-newsletter, OSCR Reporter.

# 14

Number of reviews  
requested on OSCR's  
decisions.

## oscr online

### Make sure you get ready

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In 2010-11 we carried out the technical work required in preparation for OSCR Online, which is scheduled to go 'live' later in 2011. Charities can take steps now to make sure they are ready.

- 1. Check your charity's entry in the Scottish Charity Register and make sure that your contact details are up to date.**
- 2. Check that the contact email address you supplied to OSCR in your most recent Annual Return form is current.**
- 3. Subscribe to our e-newsletter, OSCR Reporter, at [www.oscr.org.uk](http://www.oscr.org.uk) to receive regular updates.**

**OSCR Online** will provide a range of benefits for charities, the public, and for OSCR as a public body:

- » **Streamlined reporting requirements**, with the hard copy Annual Return form reduced from five pages to two
- » **Online submissions**, allowing charities to file their accounts and returns electronically, and to update some of the charity's details such as the Principal Contact
- » **More information for the public** will be available on the Register. We will use charts and graphs to illustrate information about individual charities. We will also highlight where a charity is late in filing its accounts and returns.

When we announce the launch of OSCR Online, every charity for whom we hold an email address will be contacted and supplied with a User Name and secure Password. We will produce full guidance on the new system and its procedures and provide regular electronic updates.

# 65%

Percentage of charities agreeing that OSCR should highlight late submissions in the Register

# 71%

Percentage of the public agreeing that knowledge about OSCR and its role gives them more trust in charities.

**88%**

Percentage of charities  
trusting OSCR to treat  
charities fairly.

## oscr's board

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The past year has seen substantial changes in the leadership of OSCR.

OSCR's first Chair, John Naylor OBE, stepped down in March 2011 at the end of his fixed five year term; Jane Ryder stepped down as OSCR's Chief Executive in September 2011. John and Jane in their respective leadership roles established and developed the proportionate, fair and robust regulatory framework for Scotland's charities which Parliament envisaged. Scotland's charities owe them a debt of gratitude.



Chair  
The Very Reverend  
Dr Graham Forbes



Oscar Mendoza



Fiona Ballantyne



Annie Gunner Logan

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OSCR too recognises what has been achieved by our first Chair and our first Chief Executive, both individually and corporately, and we wish them every success for the future.

Information about OSCR's Board Members, including biographies and registers of interest, can be viewed at [www.oscr.org.uk](http://www.oscr.org.uk).



Prof David Harrison



Deputy Chair  
Lindsay Montgomery



Kaliani Lyle



David Hughes Hallett

## future milestones

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### SEPTEMBER 2011

- » Updated guidance on Scottish Charity Accounting Regulations 2006 issued to every Scottish charity.
  - » OSCR's Annual Open Meeting at Perth Concert Hall, with over 200 charity representatives participating.
  - » Jane Ryder, OSCR's first Chief Executive, steps down.
- 

### OCTOBER 2011

- » OSCR's final ruling on four schools to whom Directions were issued in October 2008 as part of the Rolling Review of charitable status.
  - » New OSCR guidance on charity Reorganisations.
- 

### DECEMBER 2011

- » Publication of Scottish Charities 2011, giving an overview of the sector based on the information submitted by charities to OSCR.
- 

### 2012

- » Commencement of OSCR Online, with streamlined reporting, an enhanced Scottish Charity Register and online submissions.

## five things to remember

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- 1.** Tell OSCR about any change in principal contact – to make sure that your Register entry is up to date
- 2.** Make sure that your accounts are independently examined or audited – or we will fail them!
- 3.** Submit your Annual Return and accounts within 9 months of your accounting year end
- 4.** It's other people's money – the public is entitled to see your constitution and your latest set of accounts on request
- 5.** Finally, make sure that all of your charity's trustees have read and fully understood your constitution and their role.



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