

Interim report under section 33 of the Charities and Trustee Investment (Scotland) Act 2005 on SC009814 Dr Robert Malcolm Trust

OSCR has appointed an interim judicial factor to the Dr Robert Malcolm Trust to manage the affairs of the charity. This action was taken following the criminal conviction and statutory disqualification of one of its charity trustees and misconduct in the administration of the charity. **[See update below]**

Background

The Dr Robert Malcolm Trust was set up in 1987 and was deemed to be a charity by HMRC sometime before April 2006 when OSCR established the Scottish Charity Register under the Charities and Trustee Investment (Scotland) Act 2005 [the 2005 Act].

The purposes of the trust are:-

- to provide financial assistance by way of bursary, grant, loan, prize or otherwise (i) for the education of any promising student or students of United Kingdom birth who wishes or wish to study medicine, medicine science or related disciplines in the United Kingdom; and (ii) for the further medical education of any doctor or doctors of United Kingdom birth and who practices or practise medicine in the United Kingdom

OSCR opened an inquiry into this charity in 2012 following receipt of information alleging a failure in governance processes leading to the charity's assets being put at considerable risk. Our inquiries into this complex case indicated there had been criminal conduct, so in line with our published policies we made a report to the Crown Office Procurator Fiscal Service [COPFS].

Since then we have worked with the COPFS and Police Scotland to support the prosecution of Ian Brash, one of the charity trustees, who pled guilty on 14 May 2018 to embezzling sums totalling £358,832 from the charity's wholly owned trading subsidiary Robert Malcolm Investments Limited. Final sentence is awaited.

Section 69 of the 2005 Act provides that an individual is disqualified from being a charity trustee if they have been convicted of an offence of dishonesty. Ian Brash is therefore disqualified from being a charity trustee.

OSCR considers that there was also misconduct in the administration of the charity by the remaining two charity trustees who have failed in their duties as charity trustees.

Regulator's Action

As a result of inquiries to date, it appears to OSCR that there has been misconduct in the administration of the charity and it is necessary to act for the purpose of protecting its property.

We have taken the following action:

On 16 April 2019, OSCR issued a direction under section 31(7) of the 2005 Act to the bank which holds the bank account of the Dr Robert Malcolm Trust, directing it not to make any payments from the charity's account without OSCR's prior consent.

We petitioned the Court of Session for the appointment of a Judicial Factor to the charity and to remove the remaining two trustees from the management or control of the charity. On 9 May 2019 Emma Porter of Aver Chartered Accountants was appointed as interim Judicial Factor of the Dr Robert Malcolm Trust. The petition has now been served on all relevant parties.

OSCR
28 May 2019

UPDATE

On 17 June 2019 one of two remaining trustees resigned as trustee. On 26 June 2019 the Court of Session granted our motion to remove the other trustee from any role in the management and control of the charity and appointed Emma Porter of Aver Chartered Accountants as permanent Judicial Factor. The order for removal has the effect of permanently disqualifying the individual concerned from acting as a charity trustee of any charity.