Minutes: Scottish Charity Regulator (OSCR) Board meeting, 25 September 2024. Quadrant House, Dundee

Board Members Present: Marieke Dwarshuis (Chair)
Jill Vickerman (Vice-Chair)
Lynn Bradley
Kirsten Howie
Neil MacKay
Robin Strang

OSCR attendance: Judith Hayhow – Head of Corporate
Martin Tyson – Head of Regulation & Improvement
Senior Manager, Higher Risk Cases & Quality Assurance
HR & Learning Coordinator
Finance Governance & Business Manager
Senior Manager Policy and Sector Improvement
Senior Legal Advisor (item 8 only)
High Risk Cases Manager (item 12 only)
High Volume Casework and Risk Assessment Manager
(item 12 only)

Item	Area	Action
1	**Chair's introduction, welcome and apologies** MD welcomed everyone to the meeting. Apologies were noted from Katriona Carmichael CEO, Bill Maxwell Board member and the Senior Manager Digital and Comms.	
2	**Declaration of interests** There were no declarations of interest.	
3	**Minutes of previous meeting and action log** The minutes from the 26 June 2024 meeting were agreed as a true record. The Action Log was reviewed Following review at the end of the meeting it was agreed that those remaining items listed as "proposed closed" could be closed.	

4	**Chair update**	
	MD covered the following points in her update	
	- Our CEO is currently off work due to illness and will be until at least mid-October 2024. MD thanked staff, in particular MT and JH for business continuity. MD noted that she had been doing additional work to support MT and JH during this time. - JH has been appointed temporary Accountable Officer. - MD, JH and MT met with the Director of Public Service Reform around emergency spending controls. - Two of the current Board member appointments are due to end in March 2025. Discussions with the individuals regarding possible reappointment will be held over the coming weeks.	
5	**CEO update**	
	MT and JH gave a joint update	
	- Discussions are ongoing with Scottish Government Third Sector Unit about commencement dates of the 2023 Act due to timing issues with secondary legislation, and specifically issues around accounting standards. - The Charities Reference Group met on Monday 23 September and discussed the Equality and Engagement Strategies, both of which they were content with. - Assurance was given to Board members around the recent data breach. It was noted that there has been no response as yet from the Information Commissioner and our expectation is that the response will be recommendations rather than a sanction. Board members thanked the team for their swift action following recognising the breach and noted the actions which had been taken by OSCR staff.	
	Action – Feedback to be provided on the ICO response to the next meeting.	**JH**
	- There has been an initial discussion with the Scottish Government Finance Business Partner regarding the 2025-6 budget timetable and process. At this stage OSCR is not being requested to supply any information to supplement the Budget Commission information which was prepared in July. - The Civil Service People Survey 2024 is now live and our response rate is currently 58%. The survey will remain open for 2 further weeks.	

6	**SG Emergency Spending Controls**	
	MD introduced this item referring to discussions at the August Strategy Day when she had advised that Ministers were writing to all parts of Government and to public bodies outlining spending control expectations. OSCR received a letter from the Cabinet Secretary for Social Justice on 26 August outlining that all discretionary spend should be reviewed, particularly in relation to new contracts which had not yet been awarded, and marketing. Board Members noted that given OSCR's NMO status decision making around budget movement is a matter for Board consideration.	
	To inform the decision making, JH presented a paper which provided Board Members with information on discretionary spend, together with recommendations as to whether budget amendments should take place. Board Members noted that spend on technical implementation of the trustee database and other aspects of the 2023 Charity Act have been agreed as essential spend by SG, and therefore do not form part of the considerations.	
	Turning to proposed events the Senior Manager Policy and Sector Improvement advised that an OSCR in-person event based solely on the Act would be difficult to justify. As we currently have a high level of engagement directly with TSIs and umbrella bodies, including 12 meetings which have been scheduled. A parliamentary event had been planned at the start of the year, however on reflection the Senior Manager Policy and Sector Improvement advised we would seek to engage with MSP's on an individual basis. It was noted that The Gathering is the event which could be the most effective, given the high visibility of the event in the sector, and that an OSCR session would reach a large target audience. In addition, through attendance at the Gathering, OSCR staff can interact with a wide range of sector bodies. Board members discussed the merits of the events and agreed that the in-person OSCR event should not proceed, suggesting that staff explore the feasibility of an online event instead. It was agreed that The Gathering is a good event when used properly and the recommendation that OSCR attend, and host one or two sessions was agreed. The SCVO price increase compared with the 2023 event was questioned, and Board Members agreed that the possibility of OSCR jointly hosting an event with another organisation to share the cost should be explored.	
	MD summarised that	
	• The Board were content to support an autumn event but that an online solution should be explored rather than in person.	

	• The parliamentary event should not proceed • OSCR should attend The Gathering but host no more than 2 events and consider the possibility of joint hosting. **Action – Consideration to be given to an online autumn event.** JH then introduced other proposals to reduce discretionary spend (on Travel, Learning and Development and Legal Fees) Board members discussed the importance of maintaining the Learning and Development budget. They warned of the negative impact of cutting Learning and Development including engagement impacts, staff not evolving, not training for future technology and the message this sends to staff. There were also concerns around ensuring that decision-making around training does not become too challenging/restrictive. Board members discussed the merits of reducing the legal budget for this year. Whilst it was noted that charities were increasingly seeking legal advice to challenge OSCR decisions it was not considered that the default position for OSCR as a publicly funded organisation was to instruct legal advice ourselves. OSCR should not be seen as escalating this. MD summarised that the Board agrees to the approach on hospitality, travel costs, office improvements and procurement as in the paper. The Board would like to maintain the Learning and Development budget as it currently is. No changes will be made to the Legal Fees budget, but this will be reviewed in December. **Action – Legal fees budget to be reviewed in December.** **Action – Budget projections to be updated in line with Board decisions** MD will seek clarity at the meeting with the Director of Public Service Reform if savings made will be surrendered or if the budget will be reduced.	**Senior Manager Policy and Sector Improvement** **Finance Governance & Business Manager** **Finance Governance & Business Manager**
7	**Performance Update** The Finance Governance & Business Manager introduced the paper which outlines progress on delivery of the Business Plan. He advised that there have been no big changes since the update at the August Strategy Day.	

Board members found the narrative on the dashboard helpful and requested that a RAG status also be included to further increase clarity. It was requested that additional information about the 'helpfulness rating KPI' (KPI 7) and specifically an action plan outlining how we will address this, be prepared for consideration at the next meeting.		
Action – provide a further update on KPI 7, including an action plan and assessment of likelihood to meet the stated target	**Finance Governance & Business Manager**	
Looking at KPI 10 it was clarified that we are not in control of the work coming in so cannot guarantee to meet this challenging KPI. Performance here may also get worse before it gets better as we work to review and close older cases. There was a discussion around amending the KPI to have a 2-track approach to exclude delays we cannot control, and this will be taken cognisance of when we develop KPI's for 2025-6.		
Action – RAG status to be included in relation to KPI's including confidence rating for year end. This will be presented to the Board at the November meeting for discussion.	**Finance Governance & Business Manager**	
The HR & Learning Coordinator gave the People update – - Due to the introduction of the Oracle system, Board Fees will be double this month. We will monitor the new process for fee payments when the new system goes live and adjust fee payments accordingly as appropriate. - Board members questioned the Civil Service Expectations training they have been asked to complete. Board members were reminded that this was discussed and agreed at a previous Strategy Day and the training will allow Board members to understand what is expected of OSCR Staff. - The 35 Hour working week will begin on 1 October 2024. It is anticipated this will have a positive impact on staff wellbeing by providing a better work life balance. We are not expecting a significant operational impact from the reduction to the working week but the effects on staff and workload will be monitored and reported at the next Board meeting (Action B121).		

8	**Review of Standing Orders, Schedule of Delegated Powers including Scheme of Financial Delegation and Terms of Reference of Committees**	
	The Senior Legal Advisor introduced this paper for the Biennial review noting that there are limited changes as these have been recently reviewed. No changes to the Standing Orders are proposed. In the Schedule of Delegated Powers an annex has been added titled 'significant corporate policies' which are reserved for Board Approval. The ARAC TOR in the Schedule of Delegated Powers has been amended and the Financial Scheme of Delegation spending limits have been aligned with SG and updated to include reference to Oracle.	
	Board members asked for clarification around points 9.1b in the Standing Orders as this appears to conflict with the Schedule of Delegated Powers. There was a discussion around SIRO report to ARAC, the Environmental Strategy and the Risk management framework. It was noted that authority for the determination of regulatory decisions was not specifically delegated from the Board to the CEO, though the CEO does subdelegate this to the Head of Regulation and Improvement. This needs to be clarified in the Schedule of Delegated Powers.	
	Action – Change 9.1 in Standing Orders to that which is delegated to the Chief Executive in the Schedule of Delegated Powers.	**Senior Legal Advisor**
	Action – In the Schedule of Delegated Powers add the determination of regulatory decisions to matters that are delegated to the Chief Executive.	**Senior Legal Advisor**
	Action – In Appendix A to the Schedule of Delegated Powers, add Environmental Strategy and Knowledge Management Strategy to the Strategic Documents, and add Risk Management Framework to the Governance Documents.	**Senior Legal Advisor**
	There was a discussion around removing Guidance and good practice for trustees as a document that requires Board approval. It was decided this should remain as this Guidance embodies high level organisational policy in a key area of regulation.	
	Action – Documents to be updated and circulated to the board in tracked changes by 9 October 2024, for agreement by correspondence.	**Senior Legal Advisor**

9	**Review of OSCR's Regulatory Priorities**	
	MT introduced this paper and requested feedback from Board members on the Priorities remaining largely unchanged, expanding the scope of one and changes to the timing of future review of the Regulatory Priorities.

Board members discussed item 4 "Poor relationships and conflict in charities", looking at whether/how OSCR could become more proactive in this area, but also consider the limits of its ability to impact. How much impact does our messaging have in these areas? Board members recognised that some of the issues are not matters the regulator can resolve and that we need to manage expectations of us (making clear what only charities and those in them can affect).

On reserves, charities experiencing financial distress may look for information and support from OSCR when speaking to funders. Board members considered whether making charities aware of what OSCR can and can't provide would be helpful.

Board members then discussed item 2 "Misuse of Scottish charities for private benefit" and how changes in case handling were addressing this. Internal training when the new guidance is launched will also include this.

Board members asked questions around lawyers holding trusts that may not meet the charity test. It was explained that the Revitalising Trusts project has been addressing this and there will be media stories around positive action on this within the next fortnight. Work has also been done with the Law Society of Scotland Charity Law Sub-Committee and there will be some publicity through the profession.

There was a discussion around the lack of data to back up conclusions in the paper. It was noted that data foundations are becoming firmer through the Annual Return process and that it is intended there will be a clearer connection between the Regulatory Priorities, the Business Plan and the KPIs. This can then better inform where resource will be spent.

MD said that the Business plan and Regulatory Priorities will come together to the Board to be reviewed at the same time.

The Board agreed the amendments to the Regulatory Priorities as proposed in the Board paper, and that the annual review of the | |

	Regulatory Priorities will become part of the annual business planning process.	
10	**ARAC update** LB introduced this item noting two additional areas of risk to those already in the paper. • The financial situation and the requirement to make savings, and the impact this has on our financial resilience. • The CEO being incapacitated and what this might mean to the delivery of business objectives. The Finance Governance & Business Manager updated on the Oracle risk. Testing has been done within the office. There will be an update in the November meeting on implementation. Training, drop-in sessions and a Teams group has been created to support staff. There are staggered start dates with finance going live 1 October, HR will go live on 8 October. We will also have "hypercare" which is a helpline for any issues. **Action – ARAC to consider additional risks around financial resilience and long term absence of senior staff at next meeting.** **Action – Update on the launch of Oracle to be provided to the Board at the November meeting.**	 **LB/ Finance Governance & Business Manager** **LB/ Finance Governance & Business Manager**

11	**Cases committee report**	
	JV introduced this paper highlighting that the minutes from the last meeting are still in draft form. JV noted that the Casework Committee agendas contain an increasing number of challenging cases. This along with an increase in the volume of cases being received is beginning to be reflected in the outstanding numbers of cases. Significant progress had been made over the past few years reducing the numbers of outstanding cases however this is beginning to reverse. Staff are doing all they can to address this including changes to the process for dealing with registration applications where insufficient information is provided.	
	There was a discussion around proactive work on common themes coming through in cases. An example of targeted engagement was given around independent schools. There has been liaison work with the Scottish Council for Independent Schools. An update was given on new work being carried out in the past few weeks, a proactive review of all independent schools looking at their financial position and a small number has been identified for possible pro-active contact.	
12	**S45 (Defaulting Charities)**	
	The Senior Manager, Higher Risk Cases & Quality Assurance introduced this item and the purpose of the paper which is to allow more understanding of where we have got to over the last twelve months with the work on Defaulting Charities and to consider what we want to achieve in the long term with this work.	
	Two hundred long term defaulting charities were removed from the Register by the end of August and if we continue with the current approach it is unlikely the number of defaulting charities on the Register will drop below 7%. Once SCIO powers come in this percentage may reduce to 5-6%.	
	Board members discussed whether it would be better to focus on larger defaulting charities with possibly larger remaining assets or older, smaller defaulting charities. They sought clarity over what happens when a charity is taken off the Register. It was explained that any remaining charitable assets must continue to be used for public benefit and if we found they were not we could open an inquiry case in respect of an entity that had been taken off the Register.	
	MT noted that the last submitted accounts, which may be quite a number of years ago, are not a current picture of assets or income of	

	a defaulting charity, that the current position is unknown, and the charity may very well no longer operate or exist. There is also a risk in retaining significant numbers of defaulting and disengaged charities on the Register where this creates a misleading picture of how effectively we can regulate them and their assets. It was noted that defaulting charities with last known assets over £100,000 or with heritable property are now being looked at. MD asked the Board to consider how much effort and time we want to put into this. What level of inaccuracy of the Register are we content to live with? Is the protection of (notional) charitable assets more important than an accurate register? By contacting defaulting charities sooner would we be more likely to get a response? What is the maximum we can do with the resource we have? It was noted that by not removing charities with large possibly remaining assets and removing those with small possibly remaining assets then the defaulting charities that remain on the Register would only be those with notional large assets. MD summarised that the Board's original concern had been to reduce the number and proportion of defaulting charities on the Register (as embodied in KPI 1), but the Board are equally concerned about protecting charitable assets. She noted that early contact may go further to protecting the charitable assets. The Board would like to understand better the amount of resource this takes and ways of targeting and stratifying defaulting charities and adapting approaches. As the work progresses, and we adapt our approach it is recognised that KPI 1 in its current form may need to change. The optimal outcome of this work is the reengagement with charities, for them to submit accounts and/or have an orderly wind up. **Action – Further proposal on how best to progress the work on Defaulting Charities to be brought to Cases Committee and a future Board meeting.**	 MT
13	**Programme Board update** MT introduced this item and updated from the last Programme Board meeting in August. • There is now a preferred bidder for the database work and contact negotiations have begun. • Engagement work is in full swing.	

		Commencement dates – timing is dependent on accounting standards and subsequent charity accounting regulations. It was noted that Scottish Government Legal Division are working on this. Both OSCR and Third Sector Unit think there may be a way through this by phasing commencements. Options will be brought to the Programme Board by correspondence or at the October meeting. We are aware of the risks around messaging with the sector as commencement dates may change.	
14	**Review of Board papers and agreement of Action Log** The Action log was agreed with no further changes to those in item 3. The Board said the papers were good and easy to read and enabling good discussion. Board highlights would be reviewed before publication to staff.	
15	**Dates of next meetings and Board Schedule of Business** The dates of the 2025 meetings were agreed as 19 February 25 March Strategy Day 23 April 26 June 20 August Strategy Day 24 September 19 November The 19 February meeting will be online with the others in person in Quadrant House. It was noted that an approach has been made for a speaker at the November Board meeting.	
16	**Close** MD closed the meeting and a private meeting of the Board followed.	