

email No 22
Draft reply to OSCAR

From: iec1053@aol.com

To: robin.fallas@macroberts.com

Subject: OSCR Letter

Date: Tue, 31 Mar 2009 8:38

Attachments: OSCR_Letter_2.doc (547K)

Robin,

Laurie and I have had a look at the changes you have made to the letter and made a couple of comments. Perhaps you could have a look and send back so that we have a clean copy for management on Saturday?

One comment I have added relates to the Charities and Trustee Investment (Scotland) Act 2005. Our auditors have stated that they took the definition of "connected" from section 68 of this act. They gave us a copy at the time and it appears to be stating that we must include child, sister etc. Could you please have a look at this as we don't really know enough about it but you appear to have a different viewpoint from our auditors. Perhaps they are being over cautious?

Thanks again.

Regards,
Irene.

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Eighteen and Under the new VIp project

01382 206222

Mr. Fraser Moore,
Compliance and Investigation Team,
OSCR,
2nd Floor,
Quadrant House,
9, Riverside Drive,
Dundee.
DD1 4NY.

30th March, 2009.

Dear Mr. Moore,

Your Reference MI/INO/09-1342

With reference to your letter dated 23rd March 2009 I now enclose the information you requested. I note that your letter states that you have been given information that there have been some changes to our trustees since our last set of audited accounts. This is indeed the case but these changes were, in fact, made by the management committee in order to address concerns similar to those raised in your letter.

Eighteen And Under now only has one trustee who may be connected, in terms of section 67(2)(a)(iii) of the Charities and Trustee Investment (Scotland) Act 2005 (the Act), to a paid employee. Whilst it is not wholly clear from the wording of the Act that the trustee and employee are indeed "connected" within the terms of the Act, the management committee has cautiously proceeded on the basis that they are connected. Further details are provided in the attached document.

The trustee in question remains a trustee in order to guide our relatively new, smaller, management committee through the process of becoming a company limited by guarantee. The smaller committee is a result of actions previously taken by the management committee to address concerns similar to those mentioned in your letter. For the reasons further described in the attached document, it is envisaged that the trustee in question will step down as a trustee when Eighteen And Under moves to company limited by guarantee status.

[In relation to the one current trustee described above and other trustees having that have been connected to paid staff in the past (see attached document), Eighteen And Under can confirm that the management committee has at all times taken steps to ensure that trustees do not take part in decisions in which they might have, or could be perceived to have, a conflict of interest. [We would be happy to share the minutes of relevant past management committee meetings with OSCR in order to demonstrate this.]

Comment [r1]: I would advise that the Management Committee agrees to the letter. You may wish to wait until after the meeting on 4th April.

Comment [WU2]: Agree too

Comment [laurie3]: agree

Comment [WU4]: Our auditors have said that they have taken the definition of "connected to a trustee" from section 68(2)(a) and (b) of the same act which appears to include child, sister etc.??

Comment [r5]: To be confirmed:

Irene/Laurie, when Irene and I previously spoke on the phone, Irene confirmed that the minutes would reflect this. If so, it might be an idea to include this paragraph.

Please also consider whether you wish to offer OSCR the chance to view past minutes. I understand from Irene that this would not be likely to give rise to any problematic issues.

Eighteen And Under, 1 Victoria Road, Dundee, DD1 1EL, (tel) 01382 206222 website: www.18u.org.uk
Reg. Charity No. SCO 26688



GLOBAL CAMPAIGN FOR VIOLENCE PREVENTION
CAMPAIGNE MONDIALE POUR LA PREVENTION DE LA VIOLENCE
VIOLENCE PREVENTION ALLIANCE ALLIANCE POUR LA PREVENTION DE LA VIOLENCE

We at Eighteen And Under are fully committed to best practice in all we do and if there is anything at all which you think would help us to improve this, or indeed anything we have inadvertently done wrong, please let me know and we will rectify this immediately.

[Separately, Eighteen And Under would like to notify OSCR that it is currently in dispute with Dundee City Council regarding allegations made by the Council in relation to services provided by Eighteen And Under. Should OSCR have any further questions in this regard, we should be happy to assist.]

Please let me know if there is any further information you require.

Sincerely yours,

LAURIE A. MATTHEW
Project Co-ordinator

Comment [r6]: To be considered.

You may wish to consider inclusion of a para along these lines.

Comment [WU7]: Might be a good idea at this point.

Comment [laurie8]: Think this is okay.

Comment [r9]:

Conversion, amalgamation and transfer

56 Conversion of charity which is a company or registered friendly society: applications

- (1) The following may apply to OSCR to be converted into a SCIO, and for the SCIO's entry in the Register—
 - (a) a charity which is a company,
 - (b) a charity which is a registered society within the meaning of the Industrial and Provident Societies Act 1965 (c. 12).
- (2) But such an application may not be made—
 - (a) by a company or registered society having a share capital if any of the shares are not fully paid up,
 - (b) by a company having only a single member.
- (3) Such an application is referred to in this section and sections 57 and 58 as an “application for conversion”.
- (4) Section 54(2) applies in relation to an application for conversion as it applies to an application for a SCIO to be constituted (but sections 4 and 5 do not apply in relation to an application for conversion).
- (5) In addition to the documents referred to in section 54(2), the application for conversion must be accompanied by—
 - (a) a copy of the resolution of the company or registered society that it be converted into a SCIO, and
 - (b) a copy of the resolution of the company or registered society adopting the proposed constitution of the SCIO.
- (6) The resolution referred to in subsection (5)(a) must be—
 - (a) a special resolution of the company or registered society, or
 - (b) a unanimous written resolution signed by or on behalf of all the members of the company or registered society who would be entitled to vote on a special resolution.
- (7) In the case of a registered society, “special resolution” has the meaning given in section 52(3) of the Industrial and Provident Societies Act 1965 (c. 12).

57 Determination of application for conversion

- (1) Before determining an application for conversion, OSCR must consult—
 - (a) the appropriate registrar, and
 - (b) such other persons as it thinks fit,about whether the application should be granted.
- (2) OSCR may grant an application for conversion only if it considers that the charity, if converted into a SCIO as proposed, would continue to meet the charity test.
- (3) OSCR must refuse an application for conversion if—
 - (a) it considers that the SCIO's proposed name falls within section 10,
 - (b) the SCIO's proposed constitution does not comply with one or more of the requirements of section 50 and any regulations made under that section, or
 - (c) the application must, by virtue of regulations under section 6(1), be refused.
- (4) If OSCR considers that a charity, if converted into a SCIO as proposed in an application for conversion, would continue to meet the charity test, OSCR may refuse the application on grounds other than those set out in subsection (3) only if it is satisfied by any representations received from those whom it consulted under subsection (1) that such a refusal would be appropriate.

58 Conversion: supplementary

- (1) If OSCR grants an application for conversion, it must—
 - (a) enter the SCIO in the Register,
 - (b) send to the appropriate registrar a copy of each of the resolutions of the converting company or registered society referred to in section 56(5) and a copy of the entry in the Register relating to the SCIO, and

- (c) once the SCIO's constitution as a SCIO has taken effect, remove from the Register the entry for the converting company or registered society.
- (2) The entry for the SCIO in the Register must, for so long as its constitution as a SCIO has not yet taken effect, include a note stating that fact.
- (3) If the appropriate registrar—
 - (a) registers the documents sent under subsection (1)(b), and
 - (b) cancels the registration of the company under the Companies Act 1985 (c. 6), or of the society under the Industrial and Provident Societies Act 1965 (c. 12),
 subsections (4) and (5) apply.
- (4) The company or registered society is by virtue of this subsection converted into a SCIO, being a body corporate—
 - (a) whose constitution is that proposed in the application for conversion,
 - (b) whose name is that specified in the constitution, and
 - (c) whose first members are the members of the converting company or society immediately before the moment of conversion.
- (5) All property, rights and liabilities of the converting company or registered society become by virtue of this subsection the property, rights and liabilities of the SCIO.
- (6) The entry for the SCIO in the Register must include—
 - (a) a note stating that the charity is constituted as a SCIO,
 - (b) the date on which it became so constituted, and
 - (c) a note of the name of the company or society which was converted into the SCIO.
- (7) In section 57 and in this section, the "appropriate registrar" means—
 - (a) in the case of an application for conversion by a company, the registrar of companies (within the meaning of the Companies Act 1985 (c. 6)),
 - (b) in the case of an application for conversion by a registered society, the Financial Services Authority.

59 Amalgamation of SCIOs

- (1) Any 2 or more SCIOs ("the old SCIOs") may, in accordance with this section, apply to OSCR to be amalgamated, and for a new SCIO ("the new SCIO") to be constituted and entered in the Register as their successor.
- (2) Such an application is referred to in this section and section 60 as an "application for amalgamation".
- (3) Subsections (2) to (4) of section 54 apply in relation to an application for amalgamation as they apply to an application for a SCIO to be constituted, but with references to the SCIO being read as references to the new SCIO (but sections 4 and 5 do not apply in relation to an application for amalgamation).
- (4) In addition to the documents and information referred to in section 54(2), the application for amalgamation must be accompanied by—
 - (a) a copy of a resolution of each of the old SCIOs approving the proposed amalgamation, and
 - (b) a copy of a resolution of each of the old SCIOs adopting the proposed constitution of the new SCIO.
- (5) The resolutions must be passed—
 - (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
 - (b) unanimously by the SCIO's members, otherwise than at a general meeting.

60 Amalgamation: supplementary

- (1) If OSCR grants an application for amalgamation, it must—
 - (a) enter the new SCIO in the Register, and
 - (b) remove from the Register the entries for the old SCIOs.
- (2) On the new SCIO being entered in the Register it becomes by virtue of this section a body

corporate—

- (a) whose constitution is that proposed in the application for amalgamation,
 - (b) whose name is that specified in the constitution, and
 - (c) whose first members are the members of the old SCIOs immediately before the new SCIO was entered in the Register.
- (3) On the removal of the old SCIOs from the Register—
- (a) all the property, rights and liabilities of each of the old SCIOs become by virtue of this subsection the property, rights and liabilities of the new SCIO, and
 - (b) each of the old SCIOs is dissolved.
- (4) The entry for the new SCIO in the Register must include—
- (a) a note stating that it is constituted as a SCIO,
 - (b) the date on which it became so constituted, and
 - (c) a note that it was constituted following amalgamation, and of the name of each of the old SCIOs.
- (5) OSCR must send a copy of the entry in the Register to the new SCIO at its principal office.

61 Transfer of SCIO's undertaking

- (1) A SCIO may resolve that all its property, rights and liabilities should be transferred to another SCIO specified in the resolution.
- (2) Where a SCIO has passed such a resolution, it must send to OSCR—
 - (a) a copy of the resolution, and
 - (b) a copy of a resolution of the transferee SCIO agreeing to the transfer to it.
- (3) A resolution referred to in subsections (1) and (2)(b) must be passed—
 - (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
 - (b) unanimously by the SCIO's members, otherwise than at a general meeting.
- (4) The resolution referred to in subsection (1) does not take effect until confirmed by OSCR.
- (5) If OSCR confirms the resolution—
 - (a) all the property, rights and liabilities of the transferor SCIO become by virtue of this subsection the property, rights and liabilities of the transferee SCIO in accordance with the resolution,
 - (b) the transferor SCIO is dissolved, and
 - (c) OSCR must remove from the Register the entry for the transferor SCIO.

General

62 Third parties

- (1) A person dealing with a SCIO in good faith and for value is not concerned to inquire whether—
 - (a) anything in the SCIO's constitution prevents it acting in the way that it is, or
 - (b) any constitutional limitations on the powers of the SCIO's charity trustees prevent them from binding the SCIO or authorising others to do so.
- (2) Nothing in subsection (1) prevents a person from bringing proceedings for interdict in respect of the doing of an act which—
 - (a) the SCIO, because of anything in its constitution, does not have power to do, or
 - (b) the SCIO's charity trustees, because of any constitutional limitations on their powers, do not have power to do.
- (3) But no such proceedings may be brought in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the SCIO.
- (4) Subsection (3) does not prevent OSCR from exercising any of its powers.
- (5) Nothing in subsection (1)(b) affects any liability incurred by the SCIO's charity trustees (or any of them) for doing anything which, because of any constitutional limitations on their powers, the trustees (or that trustee) do not have power to do.

- (6) Nothing in subsection (1) absolves the SCIO's charity trustees from their duty to act within the SCIO's constitution and in accordance with any constitutional limitations on their powers.
- (7) In this section "constitutional limitations" on the powers of a SCIO's charity trustees are limitations on their powers under its constitution, including limitations deriving from a resolution of the SCIO in general meeting, or from an agreement between the SCIO's members.

63 Amendment of constitution

- (1) A SCIO may by resolution of its members amend its constitution (and a single resolution may provide for more than one amendment).
- (2) Such a resolution must be passed—
 - (a) by a two-thirds majority of those voting at a general meeting of the SCIO (including those voting by proxy or by post, if voting that way is permitted), or
 - (b) unanimously by the SCIO's members, otherwise than at a general meeting.
- (3) The date of passing of such a resolution is—
 - (a) the date of the general meeting at which it was passed, or
 - (b) if it was passed otherwise than at a general meeting, the date on which the last member agreed to it.

64 Regulations relating to SCIOs

The Scottish Ministers may by regulations make further provision in relation to SCIOs including, in particular, provision about—

- (a) applications for constitution as, or conversion into, a SCIO, the determination of applications, entry in the Register and the effect of such entry,
- (b) the administration of a SCIO,
- (c) amalgamation of SCIOs and transfer of a SCIO's property, rights and liabilities to another SCIO,
- (d) the winding up, insolvency or dissolution of a SCIO,
- (e) the maintenance of registers of information about SCIOs (for example, registers of members, of charity trustees or of charges over the SCIO's assets),
- (f) such other matters in connection with the provision made by this Chapter as they think fit.

CHAPTER 8

RELIGIOUS CHARITIES

65 Designated religious charities

- (1) OSCR may designate as a designated religious charity a charity which appears to it to have—
 - (a) the advancement of religion as its principal purpose,
 - (b) the regular holding of public worship as its principal activity,
 - (c) been established in Scotland for at least 10 years,
 - (d) a membership of at least 3,000 persons who are—
 - (i) resident in Scotland, and
 - (ii) at least 16 years of age, and
 - (e) an internal organisation such that—
 - (i) one or more authorities in Scotland exercise supervisory and disciplinary functions in respect of the component elements of the charity, and
 - (ii) those elements are subject to requirements as to keeping accounting records and audit of accounts which appear to OSCR to correspond to those required by section 44.
- (2) OSCR may determine that subsection (1)(c) need not be satisfied in the case of a charity—
 - (a) created by the amalgamation of 2 or more charities each of which, immediately before the amalgamation—
 - (i) was a designated religious charity, or

- (ii) was, in OSCR's opinion, eligible for designation as such, or
- (b) constituted by persons who have removed themselves from membership of a charity which, immediately before the removal—
 - (i) was a designated religious charity, or
 - (ii) was, in OSCR's opinion, eligible for designation as such.
- (3) The provisions set out in subsection (4) do not apply to—
 - (a) a designated religious charity,
 - (b) any component element of a designated religious charity which is itself a charity (whether or not having as its principal purpose the advancement of religion).
- (4) Those provisions are—
 - subsections (1) and (6) of section 16 (in so far as those subsections relate to any action set out in subsection (2)(b) to (d) of that section),
 - section 28(3),
 - section 31(4) and (6),
 - section 34(5)(c) to (e),
 - section 69.
- (5) OSCR may, by notice served on a designated religious charity, withdraw the designation of the charity as such where—
 - (a) it appears to OSCR that one or more of paragraphs (a) to (e) of subsection (1) is no longer satisfied in relation to the charity, or
 - (b) in consequence of an investigation of any component element of the charity under section 28, OSCR has given a direction under section 31(5) in relation to the component element and considers that it is no longer appropriate for the charity to be a designated religious charity.

CHAPTER 9

CHARITY TRUSTEES

General duties

66 Charity trustees: general duties

- (1) A charity trustee must, in exercising functions in that capacity, act in the interests of the charity and must, in particular—
 - (a) seek, in good faith, to ensure that the charity acts in a manner which is consistent with its purposes,
 - (b) act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person, and
 - (c) in circumstances capable of giving rise to a conflict of interest between the charity and any person responsible for the appointment of the charity trustee—
 - (i) put the interests of the charity before those of the other person, or
 - (ii) where any other duty prevents the charity trustee from doing so, disclose the conflicting interest to the charity and refrain from participating in any deliberation or decision of the other charity trustees with respect to the matter in question.
- (2) The charity trustees of a charity must ensure that the charity complies with any direction, requirement, notice or duty imposed on it by virtue of this Act.
- (3) Subsections (1) and (2) are without prejudice to any other duty imposed by enactment or otherwise on a charity trustee in relation to the exercise of functions in that capacity.
- (4) Any breach of the duty under subsection (1) or (2) is to be treated as being misconduct in the administration of the charity.
- (5) All charity trustees must take such steps as are reasonably practicable for the purposes of ensuring—
 - (a) that any breach of a duty under subsection (1) or (2) is corrected by the trustee concerned and not repeated, and
 - (b) that any trustee who has been in serious or persistent breach of either or both of those

duties is removed as a trustee.

Remuneration

67 Remuneration for services

- (1) A charity trustee may not be remunerated for services provided to the charity (including services provided in the capacity as a charity trustee or under a contract of employment) unless subsection (2) entitles the trustee to be so remunerated.
- (2) Where a charity trustee of a charity—
 - (a) provides services to or on behalf of the charity, or
 - (b) might benefit from any remuneration for the provision of such services by a person with whom the trustee is connected,
 the person providing the services (the “service provider”) is entitled to be remunerated from the charity’s funds for doing so only if the conditions set out in subsection (3) are met.
- (3) Those conditions are—
 - (a) that the maximum amount of the remuneration—
 - (i) is set out in a written agreement between the service provider and the charity (or, as the case may be, its charity trustees) under which the service provider is to provide the services in question, and
 - (ii) is reasonable in the circumstances,
 - (b) that, before entering into the agreement, the charity trustees were satisfied that it would be in the interests of the charity for those services to be provided by the service provider for that maximum amount,
 - (c) that, immediately after entering into the agreement, less than half of the total number of charity trustees of the charity fall within subsection (4), and
 - (d) that the charity’s constitution does not contain any provision which expressly prohibits the service provider from receiving the remuneration.
- (4) A charity trustee falls within this subsection if the trustee is—
 - (a) party (in the capacity of a service provider) to a written agreement of the type described in subsection (3)(a)(i) under which any obligation is still to be fully discharged,
 - (b) entitled to receive remuneration from the charity’s funds otherwise than by virtue of such an agreement, or
 - (c) connected with any other charity trustee who falls within sub-paragraph (a) or (b).
- (5) Nothing in subsections (1) or (2) prevents a charity trustee or other service provider from receiving any remuneration from a charity’s funds which that service provider is entitled to receive by virtue of—
 - (a) any authorising provision of the charity’s constitution which was in force on 15 November 2004,
 - (b) an order made by the Court of Session, or
 - (c) any enactment.
- (6) For the purposes of subsection (5)(a), an “authorising provision” is a provision which refers specifically to the payment of remuneration—
 - (a) to the service provider concerned,
 - (b) where that service provider is a charity trustee, to a charity trustee, or
 - (c) where that service provider is connected to a charity trustee, to any person so connected.
- (7) Where a charity trustee or other service provider is remunerated in contravention of this section, the charity may recover the amount of remuneration; and proceedings for its recovery must be taken if OSCR so directs.

68 Remuneration: supplementary

- (1) In section 67—

“benefit” means any direct or indirect benefit,

“maximum amount”, in relation to remuneration, means the maximum amount of the

remuneration whether specified in or ascertainable under the terms of the agreement in question,

"remuneration" includes any benefit in kind (and "remunerated" is to be construed accordingly),

"services" includes goods that are supplied in connection with the provision of services.

(2) For the purposes of that section, the following persons are "connected" with a charity trustee—

- (a) any person—
 - (i) to whom the trustee is married,
 - (ii) who is the civil partner of the trustee, or
 - (iii) with whom the trustee is living as husband and wife or, where the trustee and the other person are of the same sex, in an equivalent relationship,
- (b) any child, parent, grandchild, grandparent, brother or sister of the trustee (and any spouse of any such person),
- (c) any institution which is controlled (whether directly or through one or more nominees) by—
 - (i) the charity trustee,
 - (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (d) or (e), or
 - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together,
- (d) a body corporate in which—
 - (i) the charity trustee has a substantial interest,
 - (ii) any person with whom the charity trustee is connected by virtue of paragraph (a), (b), (c) or (e) has a substantial interest, or
 - (iii) two or more persons falling within sub-paragraph (i) or (ii), when taken together, have a substantial interest,
- (e) a Scottish partnership in which one or more of the partners is—
 - (i) the charity trustee, or
 - (ii) a person with whom the charity trustee is, by virtue of paragraph (a) or (b), connected.

(3) For the purposes of subsection (2) a person who is—

- (a) another person's stepchild, or
 - (b) brought up or treated by another person as if the person were a child of the other person,
- is to be treated as that other person's child.

(4) Section 105 sets out when a person is to be treated as being in control of an institution or as having a substantial interest in a body corporate.

Disqualification

69 Disqualification from being charity trustee

(1) The persons specified in subsection (2) are disqualified from being charity trustees.

(2) Those persons are any person who—

- (a) has been convicted of—
 - (i) an offence involving dishonesty,
 - (ii) an offence under this Act,
- (b) is an undischarged bankrupt,
- (c) has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) or section 34 of this Act, from being concerned in the management or control of any body,
- (d) has been removed from the office of charity trustee or trustee for a charity by an order made—
 - (i) by the Charity Commissioners for England and Wales under section 18(2)(i) of the Charities Act 1993 (c. 10), section 20(1A)(i) of the Charities Act 1960 (c. 58) or section 20(1) of that Act (as in force before the commencement of section 8 of the

Charities Act 1992 (c. 41)), or

(ii) by Her Majesty's High Court of Justice in England,

on the grounds of any misconduct in the administration of the charity for which the person was responsible or to which the person was privy, or which the person's conduct contributed to or facilitated,

- (e) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).
- (3) A person referred to in subsection (2)(a) is not disqualified under subsection (1) if the conviction is spent by virtue of the Rehabilitation of Offenders Act 1974 (c. 53).
- (4) OSCR may, on the application of a person disqualified under subsection (1), waive the disqualification either generally or in relation to a particular charity or type of charity.
- (5) OSCR must notify a waiver under subsection (4) to the person concerned.
- (6) OSCR must not grant a waiver under subsection (4) if to do so would prejudice the operation of the Company Directors Disqualification Act 1986 (c. 46) or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I.2002/3150).