

Letter No 7



Eighteen and Under



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/INQ/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 is connected, in terms of section 68(2)(a)(iii) of the Charities and Trustee Investment (Scotland) Act 2005 (**the Act**), to a paid employee. 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 raised 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 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. Furthermore, the charity believes that the conditions set out in section 67(3) of the Act have been met in relation to remuneration of each relevant connected person.

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
CAMPAGNE 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.

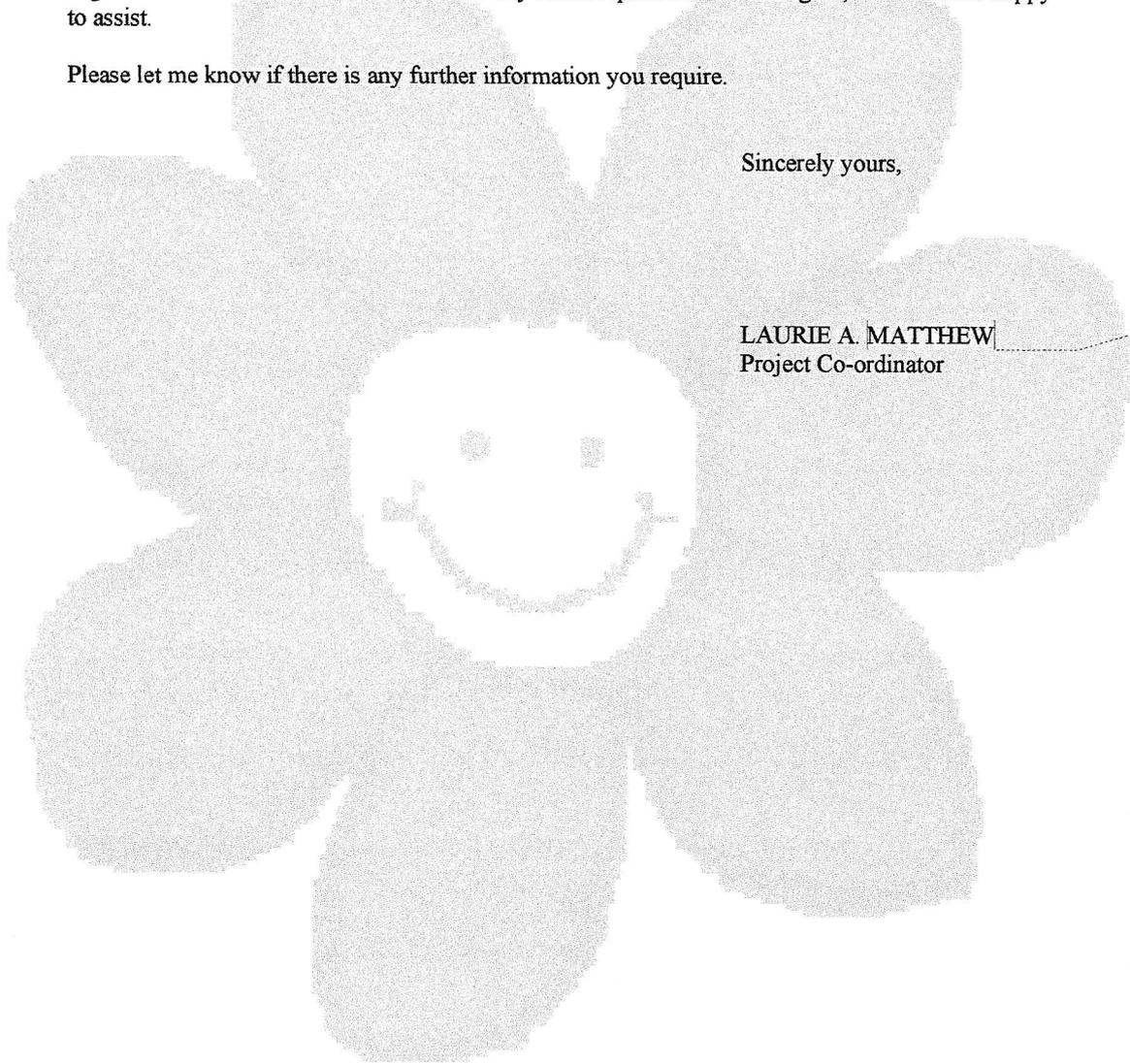
Separately, Eighteen And Under would like to notify OSCR that it is currently in dispute with Dundee City Council regarding allegations made by the Council in relation to services provided by Eighteen And Under. Should OSCR have any further questions in this regard, we should be happy to assist.

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

Sincerely yours,

LAURIE A. MATTHEW
Project Co-ordinator

Comment [r1]:



CURRENT MANAGEMENT COMMITTEE OF EIGHTEEN AND UNDER

KAREN DUFFY
LISA CALLANDER
BARRY EGGLETON
TRACEY MURRAY
JOSEPH LUMBASI
GWEN DOCHERTY

At the time our last accounts were prepared three members (out of nine) of Eighteen And Under's management committee were connected to paid staff (in terms of section 68(2) of the Charities and Trustee Investment (Scotland) Act 2005 (**the Act**)). This was discussed several times at management committee meetings in 2008 and, whilst the management committee was of the view that it had appropriate procedures in place to meet the requirements of sections 66 and 67 of the Act, it was agreed that the situation did not lend itself to achieving best practice easily. Changes were, therefore, implemented as follows:

- Sharron Matthew, whose sister is a paid employee and was a connected person in terms of section 68(2)(b) of the Act, resigned from the committee on the 9th May 2008.
- Sandra Hutton, who was connected with a paid employee pursuant to section 68(2)(a)(iii) of the Act and Norman Clark, who was connected with a paid employee pursuant to section 68(2)(a)(i) of the Act, resigned from the management committee on the 24th November 2008 but this was not put to the management committee until the next meeting on 13th December 2008 at which the resignations were accepted.

In April 2008 Barry Eggleton informed members of the management committee that he had entered into a relationship with an employee. Barry and the employee are connected pursuant to section 68(2)(a)(iii) of the Act¹.

Owing to Barry's experience, the management committee decided that it was in the best interests of the charity that Barry should remain a trustee only for a short-term period (and resign thereafter).

The management committee has since resolved that the charity will proceed to change its legal status to a company limited by guarantee and engaged the services of solicitors in February 2009 to assist in the process. Eighteen And Under has been advised that, to ensure best practice and compliance with sections 66 and 67 of the Act and relevant duties under the Companies Act 2006, it would be advisable for Barry to step down from acting as a Trustee. It is, however, envisaged that Barry will remain a trustee until dissolution of the unincorporated charity in order to assist with the transfer process.

Eighteen And Under can confirm that each individual trustee (and the management committee as a whole) has taken steps, in accordance with section 66(c)(ii) of the Act, to avoid potential conflicts of interest arising. Eighteen & Under would be happy to provide details of the steps taken, should OSCR require.

In relation to section 67(2)(b) of the Act, Eighteen And Under believes that the conditions set out in section 67(3) have been met and would be happy to provide further details to OSCR as required.

Comment [r1]: To be confirmed.

Irene, we discussed this but the management committee should carefully consider by reference to the legislation that I have attached and my comments containing the relevant conditions below.

Comment [r2]:

¹ For information purposes only, and in the interests of responding fully to OSCR's inquiry, the employee in question is, in turn, related to two other employees of Eighteen And Under though neither of those two employees are connected to Barry in terms of section 68(2) of the Act.

However, in order to ensure best practice is achieved, the charity has taken, and is taking, the steps outlined above.

Our solicitors have drafted up documentation for the change in legal form process and Eighteen And Under envisages being in a position to provide this documentation to OSCR shortly.

Eighteen And Under, mindful of its data protection obligations, is more than happy to assist OSCR with its inquiries and is willing to provide further detail as required in response to specific questions from OSCR.

"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,

(Represents Current Law in Force - for pending amendments see Prospective Law on Writings, UK.)

(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 Commission for England and Wales under section 18(2)(i) of the Charities Act 1993 or by the Charity Commissioners for England and Wales, whether under section 18(2)(i) of that Act or under¹ 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).

70 Disqualification: supplementary

(1) A person who acts as a charity trustee while disqualified by virtue of section 69 is guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a period not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both,
- (b) on conviction on indictment, to imprisonment for a period not exceeding 2 years or a fine or both.

(2) Any acts done as a charity trustee by a person disqualified by virtue of section 69 from being a charity trustee are not invalid by reason only of the disqualification.

(3) In section 69(2)(b), "undischarged bankrupt" means a person—

- (a) whose estate has been sequestrated, who has been adjudged bankrupt or who has granted a trust deed for or entered into an arrangement with creditors, and
- (b) who has not been discharged under or by virtue of—
 - (i) section 54 or 75(4) of the Bankruptcy (Scotland) Act 1985 (c.66),
 - (ii) an order under paragraph 11 of Schedule 4 to that Act,
 - (iii) section 279 or 280 of the Insolvency Act 1986 (c.45), or

² words substituted by Charities Act 2006 c.50 Sch. 8 para. 211(b)

(Represents Current Law in Force - for pending amendments see Prospective Law on Writings, UK.)