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24 October 2014

Dear Sir,

OSCR: Targeted regulation of Scottish charities

I am pleased to submit the Institute's response to the above consultation and trust the comments are useful to your deliberations on the Office's development of its regulatory framework.

About ICSA

The Institute of Chartered Secretaries and Administrators (ICSA) is the professional body qualifying and supporting company secretaries and corporate administrators in all sectors of the UK economy. Members are educated in a range of topics including finance, HR, company law, administration and governance, which enable them to add value to any organisation.

ICSA is a leading international voice on corporate governance and delivers a professional education that gains its strength in the breadth of the syllabus; designed to assist boards and work with senior managers to identify and maximise opportunities within relevant legal frameworks and established best practice.

The Institute has some 10% of UK Members directly employed in the not-for-profit sector, with many more involved on a voluntary basis in capacities such as trustees and school governors. In formulating the Institute's response to the above consultation document, members ranging from those involved with large multi-million pound cross-border charities to small, local organisations were approached for their views given the depth of their knowledge of the sector, compliance with relevant legislation and the importance of sound governance arrangements in effecting a change within the communities in which they operate.

General comments

ICSA welcomes the Scottish Charity Regulator's approach to developing a regulatory framework that is proportionate and targeted. Combined with a sensitivity to not unduly burden charities with administrative reporting, the approach is evolutionary and progressive. In particular, the proposed changes covering the reporting requirements of cross-border charities are warmly supported. For many cross-border charities the dual regulation and reporting regime has presented administrative arrangements that did not always reflect the best use of charitable resources.



While ICSA appreciates that the information detailed below is of interest to the regulator, sector commentators, funders, beneficiaries and the general public there must be a balance that such measures are effective and proportionate. We are also keen to promote transparency within the sector as a means of encouraging charities to provide a better narrative to the public as to what they do and how they spend their resources. There is a growing call and need for charities to engage more proactively with the general public to explain what they do, how they are funded and the positive impact they make on society. Publishing the annual report and accounts of those charities with incomes over £25,000 will help provide an interesting insight into the diversity of the sector, the size of charities, their funding and staffing. It is likely that the information revealed will challenge some misconceptions, which in turn should provide a basis for improving knowledge of the sector.

Response to consultation questions

Q1. We welcome comments on the new questions being posed specifically:

- a) Are the questions clear and understandable?**
- b) Is more guidance needed to help understand what the questions mean? , if so, please explain which questions need this.**
- c) Will the new questions affect the ease of use of the Annual Return?**

As a general principle, ICSA would recommend that information only be collected by the regulator where there is an identified need for it and that is put to a specific use. All questions relating to the regulatory annual return should be limited to those questions from which OSCR seeks answers in order to perform its regulatory functions. Any further voluntary information can be posted on the charity's own website or any future option to add information to their register entry.

It is clear that the proposed questions will have great benefit to the work of the regulator. It is unclear as to the benefit to be received by the charity. Some questions are levelled at such an operational level that it could be viewed as micro-management by the regulator.

While the intention may be to get trustees to think about their governance and internal control mechanisms and make improvements accordingly, the questions could be viewed as a blunt instrument. As many of the questions are 'yes/no' responses it is a crude tool for assessing the governance framework of each charity – for instance, trustees may say they have not received HR training, but if the charity does not employ staff there would be no need for them to do so. Likewise, a charity might not have a policy for protecting vulnerable beneficiaries because it does not work with such groups of people. A negative answer should prompt a further qualifying question to be answered internally by the regulator as to why the answer may be 'no' – for example because the organisation is a conservation charity.

Those questions that relate to the review of the governing document and financial controls provide the opportunity for a superficial response, which does not properly address the needs of each charity, but can be positively answered. A positive answer may be provided because a trustee has looked at the constitution and identified those areas that require a change at some point in the future, but not immediately. The prompt may therefore do little to effect meaningful change within the organisation.

Furthermore, the question regarding whether 20% of a charity's income came from a source close to a trustee would benefit from additional explanation. For a family or even corporate trustee, it is likely that most (if not all) of the charity's income is acquired from a single source with staff or family members being one or more of the trustees. This is generally not seen as improper, as long as a majority of fellow trustees are deemed to be independent and act as such. However, the question without any additional information could be interpreted as something that is deemed inappropriate. OSCR's reasoning for the inclusion of this question would be welcomed.

Q2. As some of the questions are quite different from those previously asked, is there more that the Scottish Charity Regulator could do to support charities in terms of producing guidance or self-help resources?

There is some additional work to be done to explain why the new questions have been added and what is the intended outcome of their inclusion. For many trustees, the completion and submission of the annual report and accounts can be onerous and stressful, especially where there are no staff to facilitate their production. Introducing new questions that require the trustees to provide answers relating to reviews of their governing document and internal financial controls are likely to add to the list of work that needs to be done before the returns are submitted.

It is suggested that, in order to provide trustees with sufficient warning and time to undertake such reviews, OSCR give due warning to trustees that this information will be required with a long lead-in time. This will enable trustees to read about the changes, and the work involved, and provide sufficient time for those tasks to be completed in a meaningful manner. A rushed and ill-considered approach to performing those jobs in order to provide an affirmative answer is not the best environment for effecting positive improvements in these matters. In fact, it may provide a false assurance as trustees will think they have done what is required and not look at the issue again until the following year.

Detailed guidance to support each of the additional questions will be required, and must be proportionate. For example, it will not always be necessary for a full review of the governing document to be undertaken each year. A programme of review may be more appropriate which will mean that the matter is always subject to consideration, with a fuller examination and plans for changes scheduled into the corporate calendar at an appropriate time.

Q3. Do you support the retention of a threshold of £25,000 for the requirement of more detailed information?

Given the size and complexity of the charity sector in Scotland, it would appear sensible to maintain the current reporting thresholds. This will help build consistency and familiarity for trustees and the public.

Q4. How can OSCR encourage and support all charities to use online services?

For some charity trustees of small organisations with no staff and limited resources, the move to electronic filing may present some anxieties and challenges. While a large proportion of society has access to computers and the internet, this is not the case for everyone. There will be some established trustees who do not have any access and no knowledge of online filing.

It might therefore be advisable for the Scottish Charity Regulator to continue to use a mix of electronic and paper communications to ensure that information is correct. For example, when developing the trustee database, where a trustee does not provide an email address for regulator communications and it transpires they have resigned, a letter may be prudent to ensure that the situation is accurate. Such a 'belt and braces' approach may help counter any attempts by rogue trustees to obtain control of a charity for purposes that do not support the fulfilment of the charitable objects.

Q5. Would it be helpful for the Scottish Charity Regulator to provide specific guidance on Trustees' Annual Reports for smaller charities?

The question suggests that the regulator's experience has highlighted a need for smaller charities to improve their Trustee Annual Reports (TARs), but no information is provided as to what aspects are substandard. If the regulator has identified an area requiring greater improvement, in general it would appear sensible to provide more, better, targeted guidance to those categories of charities that are deficient. Without greater insight into how the TAR's are lacking it is difficult to provide a more constructive response.

Q6. Do you agree with the proposal to publish accounts for all charities beginning with SCIOs and charities with income of £25,000 or more?

By introducing the redacted publication of annual reports of SCIOs and charities with an income over £25,000 a large proportion of the Scottish charity sector will be covered, and provides a significant figure for testing the interim measures. Where a member of the public has read the redacted documents and has questions regarding the audit process or the role of trustees, they still have the power to request clean copies of the annual report and accounts from the charity.

For larger, cross-border charities who are already familiar with the publication of annual report and accounts on the regulator's website the proposal should not pose any real concerns. Indeed, many charities will publish their annual reports and accounts on their own website as a matter of course.

Q7. We have given examples of the benefits we expect to achieve from publishing accounts. Are there any others you would highlight or any risks that we should consider?

Due consideration should be given to information that may identify individuals involved in charities that could be subject to unwanted attention, such as a women's refuge, pro-choice services for pregnant women, and those charities that support medical research that may involve animals. These types of charities have a history of attracting attention from opponents that can be manifested in an illegal or intimidating way. Additional precautions should be taken to protect the identity and/or residential/personal contact addresses of those involved in the work of such charities. Existing measures would include the use of a registered office address for all trustees and the non-publication of sensitive data, where appropriate.

Q8. Would you view published accounts? If yes, for what purpose?

Experience in England and Wales has shown that many individuals and organisations will access published accounts for a variety of reasons. As an individual those reasons include:

- Research before making a donation or becoming a member
- Research before applying for a grant or seeking to otherwise benefit from the charity
- To research the impact of the charity's activities
- To gain an insight into the administrative costs of the charity, including executive pay
- To understand the different sources of income
- To undertake due diligence before applying for a job or trustee or volunteer role.

As an organisation, the reasons will mirror those above and include:

- To undertake due diligence as part of an application from the charity for a grant or as part of a service level agreement
- To research themes and trends within the sector, or sub-categories of it to inform public opinion
- Research for potential merger approaches and discussions
- Market research for any new activities or charities being established.

Q9. What benefits and risks would you highlight to OSCR when considering the development of a trustee database?

As detailed in response to question 7, there are a number of personal security concerns for those trustees involved in 'controversial' charities.

Furthermore, thought should be given to the means by which the regulator communicates with the charity and its trustees. As previously mentioned, not all charity trustees will have access to email and the internet. Where electronic communication is possible additional precautionary measures may be useful to ensure that no single individual, whether staff or trustee, controls important communication between the charity and OSCR. This should hopefully reduce the risk and incidence of charities being controlled by individuals for improper purposes.

Q10. Do you think the information stated above is appropriate for OSCR to collect and use for the purposes stated?

The proposed information to be collected from trustees covers most of the basic elements. The regulator may however, wish to include asking trustees to list details of other charity trusteeships they may have. This would enable the regulator to more easily cross-reference multiple trusteeships.

In addition to the home address, an alternative registered address may be useful in certain situations along with an email address, where the trustee has one.

Q11. Do you foresee any difficulties with collecting this information, if so, please explain.

Previous answers have detailed some of the issues the regulator may face in trying to collect this information.

Q12. Do you agree that the Scottish Charity Regulator should publish charity trustee names on the Scottish Charity Register?

The Charity Commission has published limited details of trustees on its website for a number of years with some success. The balance between confidential data and that required to promote transparency and accountability appears to be addressed in the consultation document.

Q13. Do you think OSCR should introduce Serious Incident Reporting?

Producing a clear list and supporting guidance to trustees on what is a serious incident could be useful to trustees in better understanding their legal requirements. Active promotion of the regime would be advisable as those trustees not fully engaged with the compliance and regulatory requirements of running a charity will not know to seek such information out.

Where initial information is provided in the annual return requirements, further signposting could be provided to trustees to enable them to fully appraise themselves of the different incidents covered and measures for prevent or remedying them. For example, it is not always evident that smaller charities understand their duty or have measures in place to undertake due diligence on new trustees. Guidance as to how this is done would be of great practical help, or where such information can be found might improve the awareness, recognition and fulfilment of these legal duties.

Q14. Are there any further serious incidents that should be included in the list above?

There are no other aspects of charity governance, management and operations that should be included in this list at the current time.

It is hoped that the above comments are useful to you in your deliberations relating to the development of the Scottish Charity Regulator's targeted regulatory approach. Should you wish to discuss any points in further detail, or how ICSA may be able to assist you in your endeavours on this topic, please do not hesitate to contact me.

Yours faithfully,

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ICSA

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