

14 JAN 2013

PRIVATE & CONFIDENTIAL

Mr John Mason, MSP
 Constituency Office
 1335 Gallowgate
 Parkhead Cross
 GLASGOW G31 4DN

Our ref: IM/QRV/12-0380

11 January 2013

Dear Mr Mason

Glasgow East Regeneration Agency Ltd
Scottish charity number SC021112

I refer to previous correspondence and now write to inform you that the Office of the Scottish Charity Regulator (OSCR) has concluded its inquiry into the Glasgow East Regeneration Agency Ltd, Scottish charity number SC021112 (the charity), and to advise you of the outcome.

We became aware in January 2012 of reports in the national press about the severance package agreed for a former senior employee of the Glasgow East Regeneration Agency Ltd.

After considering the information contained in the press articles and conducting background inquiries, we decided that further inquiry was appropriate to determine whether the charity trustees had acted in the best interests of the charity and with the appropriate care and diligence as required by the charity trustee duties set out in section 66 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). We therefore contacted the former Chair of the charity to request information to help us assess the matter.

After contacting the former Chair, we received your letter asking OSCR to make inquiries into the press reports.



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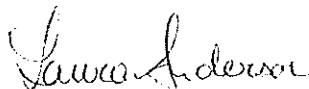
We have now completed our inquiry. I attach for information a copy of the report we have prepared under section 33 of the 2005 Act into the subject matter of our inquiry. The report sets out our findings, conclusions and recommendations.

As you will see from the report, we consider that the actions of the charity trustees in this instance constituted misconduct in the administration of the charity. However, the payment has already been made and the charity is in the final stages of being dissolved. We find this position wholly unsatisfactory but unfortunately have no powers to recoup the funds for use in the charitable sector. Within our Annual Report and Accounts, OSCR has previously recommended to Scottish Ministers that section 31 of the Charities and Trustee Investment (Scotland) Act 2005 be amended to allow OSCR to make positive directions requiring charity trustees to take specified actions in respect of the charity to protect charitable assets or to address misconduct. To date, no such amendment has been made.

In view of the media attention the matter has received, and in order to cascade learning points to the wider sector, we have decided to publish the report on our website, www.oscr.org.uk, on Tuesday, 15 January 2013. We would request that you keep this report confidential until its publication date.

Thank you for contacting OSCR with your concerns.

Yours sincerely



Laura Anderson
Head of Enforcement

Report under section 33 of the Charities and Trustee Investment (Scotland) Act 2005

Glasgow East Regeneration Agency Limited
Scottish charity number SC021112

1. Background

Glasgow East Regeneration Agency Ltd (GERA) (the charity) is a company limited by guarantee and was granted charitable status on 23 February 1993.

The charity's objects are:

- (a) To relieve and/or prevent poverty particularly among residents of the area served by the community health and care partnership structure for East Glasgow ("the Operating Area")
- (b) To relieve unemployment particularly among residents of the Operating Area for the public benefit in such ways as may be thought fit, including assistance to find employment
- (c) To advance education particularly among residents of the Operating Area, including the provision of training in skills of all kinds (particularly such skills as will assist the participants in obtaining paid employment)
- (d) To advance health particularly among residents of the Operating Area
- (e) To relieve those in need particularly within the Operating Area by reason of age, ill health, disability, financial hardship, alcohol or drugs dependency, or other disadvantage
- (f) To advance community development and regeneration particularly within the Operating Area through
 - i. Assisting in the planning of changes to the housing and physical environment as part of a wider strategy for relief of the problems of poverty
 - ii. The promotion of trade and industry, for the benefit of the general public
 - iii. The promotion of security, public safety, the prevention of crime and the reduction of the fear of crime, particularly among residents of the Operating Area
- (g) To advance citizenship particularly among residents of the Operating Area
- (h) To preserve, restore and improve the environment particularly within the Operating Area through the provision, maintenance or improvement of public parks, public open space and other public amenities and other environmental and townscape projects, and in doing so, to seek wherever appropriate (but subject to appropriate safeguards to ensure that the public benefit so arising clearly outweighs any private benefit thereby conferred on private landowners) to carry out works of reclamation, remediation, restoration and other operations to facilitate the use for those purposes of land whose use has been prevented or restricted because of previous use
- (i) To promote for the public benefit the preservation, maintenance, restoration, development and improvement of buildings and other structures of historic, religious and/or architectural significance
- (j) To provide recreational facilities particularly within the Operating Area, and organise recreational activities particularly within the Operating Area, with such facilities/activities being available to members of the public at large with the object of improving their conditions of life
- (k) To promote, operate, establish and/or support other similar projects and programmes which further charitable purposes particularly for the benefit of residents of the Operating Area

GERA was one of five local regeneration agencies set up by Glasgow City Council. In 2011 these five organisations merged into one Glasgow-wide organisation called Glasgow's Regeneration Agency. One of the local agencies, Glasgow South West Regeneration Agency, Scottish charity number SC023930, acted as the receiving company for the new organisation. GERA applied to OSCR for consent to wind up and this was granted on 1 March 2011. On 31 March 2011 GERA transferred the whole of its assets and undertakings to Glasgow South West Regeneration Agency, which retained its charitable status and changed its name and objects to reflect its new Glasgow-wide remit.

GERA's Memorandum & Articles of Association allows for a maximum of 11 charity trustees, of whom no more than seven may be Appointed Directors and no more than four may be Co-opted Directors. Of the seven Appointed Directors, the Memorandum & Articles of Association provides that up to three may be appointed by Glasgow City Council, two by Scottish Enterprise Glasgow and two by Glasgow Community Planning Ltd. The charity trustees have the power to co-opt up to four further charity trustees on the basis of their specialist skills or that they are from an organisation with which the charity has close contact in the course of its activities. As at 28 March 2011 the charity had eight charity trustees. Three of these charity trustees were Glasgow City Councillors.

2. Reasons for inquiry

In January 2012 we became aware of reports in the national press about an alleged high value severance package agreed by the charity trustees of GERA for the charity's Chief Executive when he was made redundant on 31 March 2011.

We had already begun inquiries into the charity when we received a complaint relating to the press reports.

We are publishing this report on the outcome of our inquiry in response to the press interest in the matter and to make our findings available to the wider charitable sector.

3. Scope of inquiry

OSCR's regulatory functions are set out in the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). These include the requirements to:

- Encourage, facilitate and monitor compliance by charities with the provisions of the 2005 Act
- Identify and investigate apparent misconduct in the administration of charities

Misconduct in the administration of the charity is defined as a breach of the charity trustee duties set out in section 66 of the 2005 Act.

Included in these duties is the requirement for charity trustees to act in the interests of the charity with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person. The Directors, as the people who are in general control and management of the charity, are defined in the 2005 Act as the charity trustees.

OSCR acts in the public interest, not on behalf of individuals or groups. OSCR's inquiry has been conducted in accordance with its powers under the 2005 Act. Further information on how we handle complaints can be found in our Inquiry & Intervention Policy.

4. Findings

The decision to augment the Chief Executive's pension

Our inquiries established that the severance package contained three elements. One was a statutory redundancy payment the charity was required to pay. Another was the strain on the fund payment to the Pension Scheme. This was a condition relating to the terms of employment agreed between the charity and the Chief Executive when he took up his post and, as such, the charity was required to make this payment as well.

The final element of the severance package was a payment to augment the Chief Executive's period of membership of the Strathclyde Pension Scheme by six and $\frac{2}{3}$ years. From the information provided, it appears this discretionary element of the severance package was agreed by the charity trustees in recognition of the Chief Executive's performance of his role within GERA and on the basis that it would put him on a par with some Glasgow City Council employees who had recently left employment with Glasgow City Council as a result of reductions in public sector funding, although the Chief Executive was not employed by Glasgow City Council. The cost of this discretionary augmentation agreed by the charity trustees amounted to £232,708 from the charity's assets.

The charity's chair signed the application to OSCR to wind up the charity. There was no indication in the documentation provided with this application that the Board might consider discretionary enhancement of the terms of any staff being made redundant and no enhancement policy was in place. OSCR consented to the proposal to wind up GERA on the basis of the information provided. The GERA Board

met four weeks after consent to wind up was granted and at that meeting the enhanced severance package for the Chief Executive was agreed. Five of the charity's eight charity trustees were present at that meeting and the decision to augment the Chief Executive's period of membership of the pension scheme was unanimous. From the information provided, none of the three charity trustees who sent apologies for not attending the meeting appear to have accessed the meeting papers sent to them.

An important element in our considerations of the decision made by the charity trustees is that charity trustees as a body are collectively or corporately responsible for the activities of the charity and are equally accountable for their organisation. This collective duty of care for the charity means that charity trustees are expected to act together as a board to realise the values and purposes of the charity and to comply with legislative and regulatory requirements. Collective responsibility applies even when:

- A charity trustee has limited time to spare for voluntary activities. A charity trustee whose time is limited should carefully consider their position, seeking advice if appropriate, about whether, in the circumstances, they are able to fulfil their duties as a charity trustee.
- A charity trustee is unable to attend a particular meeting of the board. A charity trustee unable to attend a trustee meeting has a responsibility to consider the papers for the meeting before it takes place and make their comments or views known to the committee so that these may be taken into account.

Having carefully considered the information provided about the decision by the GERA charity trustees in relation to the severance package agreed for the charity's Chief Executive, we have concluded that the charity trustees breached their section 66 duties when deciding to make the discretionary payment to augment the Chief Executive's period of membership of the Pension Scheme. This is considered misconduct in the administration of the charity. Our reasons for reaching this conclusion are as follows:

- 1 A very considerable sum of the charity's assets which should have been used to further the charity's purposes was removed from the charitable sector by the charity trustees for the private benefit of a former employee.
- 2 The decision to augment the Chief Executive's period of membership of the Pension Scheme was taken by the charity trustees without first obtaining external professional advice about the advisability of the proposal. Charity trustees were assured that the severance package was based on the discretion applied by Glasgow City Council at the time, the Chief Executive's former employer. A charity trustee who was also an elected member of Glasgow City Council told OSCR that the augmentation payment was "consistent with decisions applied by GCC which I considered an appropriate comparator".

- 3 During the course of his employment with GERA, the Chief Executive had already been rewarded for his achievements through the charity's performance management system. The chair of the charity told OSCR that "as [the Chief Executive] took on greater responsibilities and expanded the success of the company, this was reflected in his remuneration".
- 4 The charity trustees have not provided sufficient justification that this action was in the interests of the charity.

Attendance by charity trustees at board meetings

During the course of our inquiry we were made aware that one of the charity trustees had not attended board meetings of the charity for the past three years. This charity trustee had offered to resign but this offer had been turned down by the board. As a result, this charity trustee continued to be sent meeting papers and submitted apologies to the board secretary.

We would expect that when a charity trustee ceases to attend meetings that trustee should resign or the other charity trustees should resolve to remove that charity trustee and ensure the necessary succession steps are taken as required.

5. Conclusion

We consider that the actions of the charity trustees in this instance constituted misconduct in the administration of the charity. However, the payment has already been made and the charity is in the final stages of being dissolved. We find this position wholly unsatisfactory but unfortunately have no powers to recoup the funds for use in the charitable sector.

When we have evidence of misconduct, we have powers under the 2005 Act to apply to the Court of Session to disqualify individuals from acting as charity trustees in future. While this was a serious consideration in this case due to the clear and significant breach of charity trustee duties, in carrying out its functions OSCR must have regard to the principles of best regulatory practice. These include ensuring that any use of our powers is proportionate, accountable, consistent, transparent and targeted only where action is necessary. In this case, we consider that drawing the breach to the charity trustees' attention and setting out our expectation of them for the future is, on balance, the proportionate action to take. This is on the basis that we expect no such breach to recur now that we have made the charity trustees aware of their duties in respect of this matter.

We also considered the risk of misconduct the charity trustees of GERA might pose to other charities of which they are charity trustees and considered proactive monitoring of these charities in the future. In order to assess this risk we requested and received information from the charity trustees about other charities with which they are involved as charity trustees. Having fully considered the information we hold about these charities, we concluded, from our knowledge of the charities concerned and having made the charity trustees of GERA aware of their misconduct, that the risk of a similar situation arising is minimal. We do not therefore consider it would be proportionate to monitor the other charities with which the charity trustees of GERA are involved.

The charity trustees must ensure that they are aware of their section 66 duties to act with care and diligence in the interests of the charity and to ensure that all of a charity's assets are used to further its purposes.

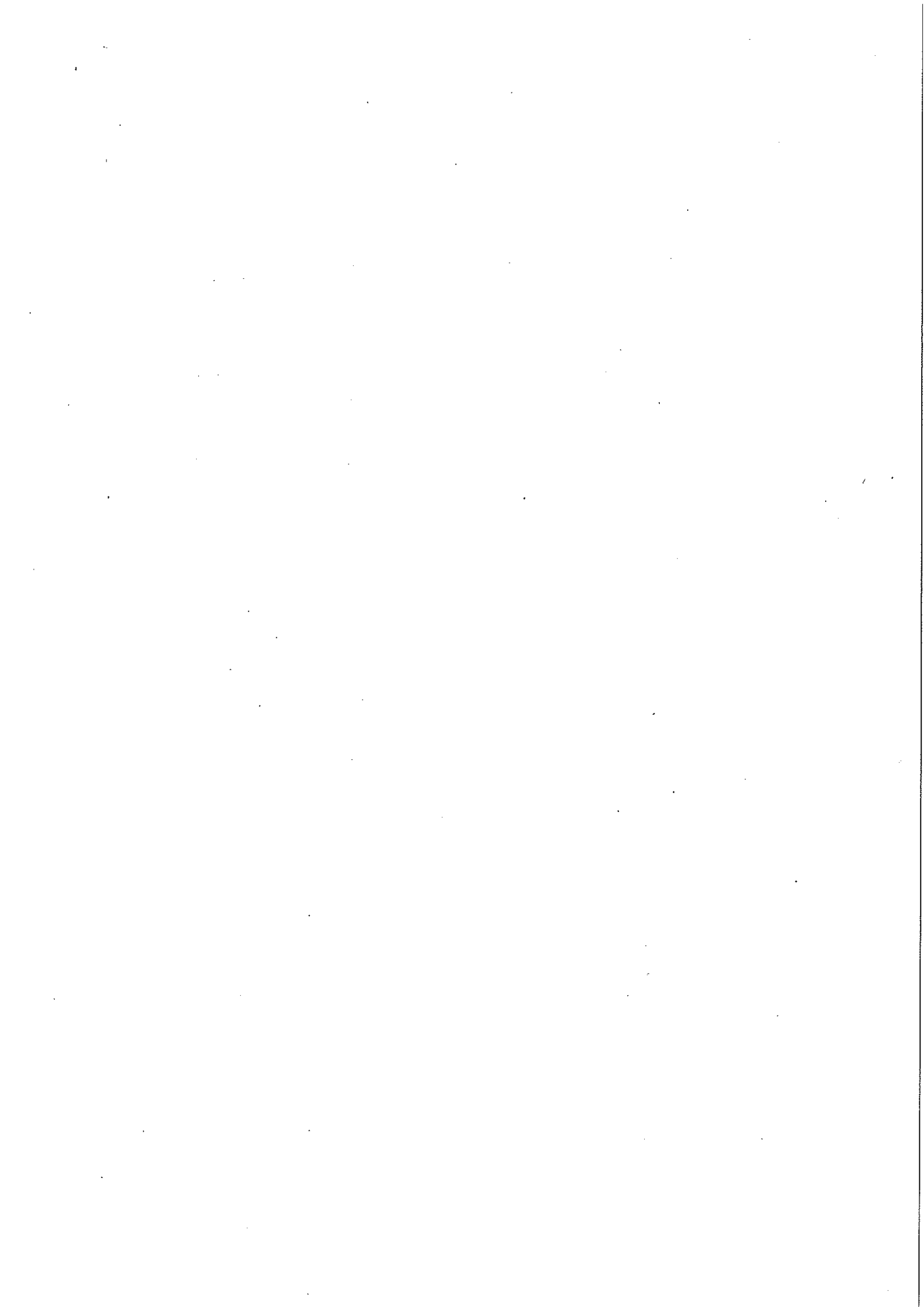
We have contacted all of the charity trustees of GERA who were serving as of 28 March 2011 to ensure that they are aware of the findings of our inquiry and to ensure that they act appropriately when acting as a trustee of any other charity.

6. Recommendation

Having fully considered the charity trustees' actions in agreeing the discretionary enhancement of the pension of a senior employee of GERA, we consider that the charity trustees' understanding of their duties under section 66 of the 2005 Act requires strengthening. We therefore strongly recommend that they obtain training in their section 66 duties to ensure that the risk of similar misconduct recurring in other charities with which they are involved as charity trustees is minimised. Training in their section 66 duties will ensure they are aware that they must meet the standard set in section 66 to act in the best interests of the charity and with the care and diligence it is reasonable to expect of a person who is managing the affairs of another person.

7. Learning Points for OSCR and the wider sector

- Charity trustees who are also elected members of a local authority should be aware that when their charity is considering policies relating to employees' conditions of service, redundancy and/or pension provision they should obtain a range of comparators, including those in the charitable sector.
- When a charity has links with a local authority, it may not be sufficient for the charity trustees to seek advice only from the local authority, which may not have the necessary expertise to advise a charity. Terms and conditions of service in a local authority may not be a suitable comparator on which charity trustees base decisions. It would be best practice to seek professional advice from an external source such as the Third Sector Interface or other specialist in charity law and to enable best practice to enable charity trustees to make an informed decision that takes fully into account their organisation's charitable status.
- Charity trustees should be aware that the section 66 charity trustee duties apply to charity trustees individually and collectively. All charity trustees are equally accountable for their organisation and decisions taken in running it. Charity trustees should familiarise themselves with OSCR's guidance, "Guidance for Charity Trustees: acting with care and diligence" and "Who's in Charge: Control and Independence in Scottish Charities".
- A learning point for OSCR is to review how our consent procedures deal with the possibility of actions such as these, in terms of:
 - the information we ask for from charities seeking consent to dissolve
 - our subsequent checks on their actions



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