

Risk Led Regulation - Charities Reference Group Meeting

Minutes 20 June 2013

Attending:	
Michael Brougham	Association of Charity Independent Examiners
Tom Mitchell	ICAS
Mags Harwood	Scottish Pre-school Play Association
Janette Wilson	Scottish Churches Committee
Gillian Wilson	Network of International Development Organisation in Scotland
Alison Adams	Voluntary Action Angus
Dr Patrick Ford	Law Society
John Fellow	Big Lottery Fund
Alistair Murray	Inspiring Scotland
Tim Hencher	Scottish Council for Voluntary Services
From OSCR	
David Robb	Chief Executive
Laura Anderson	Head of Enforcement
Lorna Edwards	Engagement Manager
Mark Simpson	Communications Manager
Apologies	
Ian Bruce	CVS Inverclyde
Linda Rodger	Scottish Women's Aid
William Rae	Helensburgh & Lomond Carers
Margaret Maclean	Wise Group
Colin Lee	Council for Ethnic Minority Voluntary Organisations

1 Introductions and apologies

1. The group were welcomed and apologies as stated above were noted.

2. Terms of reference

2. The group discussed and agreed the Terms of Reference as circulated in advance of the meeting.

3. Programme background

3. A presentation was given describing the background to the Risk Led Regulation change programme.
4. During the question and answer session following the presentation a number of issues were highlighted. These included the significant increase in accounts compliance experienced over the last seven years; striking the correct balance between general risks to charities and those with a regulatory or statutory dimension; and drawing a line if necessary between regulation and voluntary support (e.g. from umbrella bodies or Third Sector Interfaces).

4. Risk workshop

5. A short workshop was facilitated exploring risk for charities.
6. Risks were identified in terms of individual charities, particular types of charity and public confidence in charities.

Individual charities: In no particular order, these are:

Internal fraud
Charities dealing with cash donations
Size of boards
Data protection
External fraud
Failing to meet aims
Overlap between trustees and beneficiaries
Over reliance on staff
Trustee skills
Trustees not knowing roles and responsibilities
A high turnover of trustees
Bribery Act
Trustee recruitment
Poor behaviour
Liability for trustees due to legal form
Relationships versus systems
Compliance with other legislation
Financial failure
Pensions (esp. multi employer, balance sheet changes and auto enrolment)
Lots of individual giving (less accountability?)

Types of charities: These factors may not increase risk but could alter the risk profile for charities individually and/or collectively.

Working with children and vulnerable adults
Cash and associated lack of formal accountability
Lack of appropriate delivery
Growth points
Very large charities
Multiple regulators
Competition between similar charities – for funding, beneficiaries and trustees
Trading subsidiaries – oversight, governance, flow of money
New charities setting up in crowded marketplace

Public confidence: The following areas were identified as having the potential to affect public confidence in charities.

Very large charities
Variation in public perception of charity versus those on the Register – e.g. charities with close links to local authorities and fee-charging schools

Failure towards charity clients – e.g. child abuse, elder abuse
Inappropriate behaviour from staff or charity trustees, e.g. social media
Tax evasion or tax efficiency – individuals or corporate
High administration costs
Money not being spent for purpose its was given
Fraud

7. It was noted that there are two facets to risk as we move through the programme of change (1) risk to charities themselves and (2) risks to compliance with charity law. If risk is the ‘problem’ then governance is at least part of the solution. However, the term ‘governance’ is shorthand for a complex and changing set of processes, systems and behaviours which will vary between charities and over time, hopefully ensure probity and stewardship of charity assets.

5. Engagement and Communications

8. OSCR shared plans for communication activity related to the programme. Key challenges emerged during the associated discussion:

- the terminology of ‘risk’ being far from clear
- in the absence of clear messaging, the possibility that the public may wrongly assume OSCR thinks the sector is risky and stop giving in cash and in kind
- how we document the progress of our discussions without causing concern as we appraise options.

9. Clear suggestions from the group to mitigate the above included:

- avoiding using the work ‘risk’ if at all possible
- use case studies to highlight improvement rather than compliance failure
- support agencies promoting the use of quality improvement tools and standards
- focus on the programme’s role in building on public confidence which is already high
- explore the role of independent examiners and auditors in communicating these matters to charity trustees.

10. The group were thanked for their contribution.

11. Next meeting: Late August – date to be advised