



The Scottish Charity Regulator Equality Strategy 2016-2018



OSCR Board

Statement of commitment

Advancing the equal opportunities agenda is important and many charities play a key role in this. The Scottish Charity Regulator is committed to carrying out its work in a way that encourages equal opportunities, aims to eliminate unlawful discrimination, and fosters good relations among all people. We will continue to ensure that equality is an integral part of all our policies and practice. We will carefully consider whether any issues with charities' compliance with equality law affect their charitable status, or mean that their charity trustees are not fulfilling their duties. Our Board and Senior Management Team will show their personal commitment to equality and take responsibility for our progress in advancing equality.



Graham Forbes
Chair of OSCR Board



David Robb
Chief Executive

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1. OSCR

The Scottish Charity Regulator (OSCR) is responsible for granting charitable status, maintaining a public register of charities, identifying and investigating apparent misconduct, and encouraging, facilitating and monitoring compliance with charity law. We act in the public interest, regulating more than 24,000 charities. We work to further our vision of ‘charities that you can trust, and that provide public benefit’.

2. Legislation and OSCR's equality duties

OSCR's equality duties arise from two main sources: the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) and the Equality Act 2010 (the 2010 Act).

2.1 Charities and Trustee Investment (Scotland) Act 2005

Section 1(8) of the 2005 Act requires OSCR to perform its functions in a manner that encourages equal opportunities and in particular the observance of the equal opportunities requirement.

2.2 Equality Act 2010

The main provisions of the 2010 Act came into force on 1 October 2010 bringing together, updating and strengthening existing anti-discrimination laws. This Act makes it illegal to discriminate on the grounds of any one of the following 'protected characteristics':

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.

2.2.1 Application to charities

The 2010 Act applies to charities but, in certain cases, they may be covered by one or more of a number of exceptions. Those that may be relevant to OSCR's functions are:

- the exceptions for charities (sections 193 and 194);
- associations (sections 100 to 107);
- religious or belief organisations (various sections);
- schools (sections 84 to 89);
- further and higher education (sections 90 to 94); and
- positive action (sections 158 to 159).

These exceptions are qualified. Charities, broadly speaking, are permitted to restrict their benefits to people who share a protected characteristic if this is in pursuance of a charitable instrument. This restriction must also either be a proportionate means of achieving a legitimate aim or for the purpose of preventing or compensating for a disadvantage linked with the particular protected characteristic.

2.2.2 Application to OSCR as a public body

OSCR is also subject to a general public sector equality duty. This general duty is a single duty that takes in all the protected characteristics and requires public authorities, including OSCR, and those exercising public functions, in the exercise of their functions to have due regard to:

- the need to eliminate discrimination and other conduct prohibited under the Act;
- advance equality of opportunity; and
- foster good relations between persons who share a protected characteristic and those who do not.

2.3 Public Services Reform Act (Scotland) 2010

This strategy also contributes towards the delivery of our user focus duty set out by the Public Services Reform (Scotland) Act 2010.

This places a duty on OSCR to make arrangements to secure continuous improvement in user focus in the exercise of its scrutiny functions and demonstrate this improvement. OSCR considers its users as defined in this Act to be the beneficiaries or potential beneficiaries of the charities we scrutinise as well as charity trustees and members of the public generally. This strategy aims to ensure that a user focus is central to our work by considering users at the initial stages of development of new policy and procedure.

3. Regulatory principles

The 2005 Act requires OSCR, in performing its functions, to have regard to the need to be proportionate, accountable, consistent, transparent and targeted only at cases where action is needed. In addition OSCR has identified that it needs to be fair, informed and independent. This strategy is informed by these principles.

OSCR will engage with other regulatory bodies, particularly the Equality and Human Rights Commission (EHRC), which has the lead role with respect to the promotion, monitoring, and enforcement of equality legislation.

4. Previous equality strategies

This is OSCR's fourth Equality Strategy. Initial strategies had more of an internal focus and sought to ensure that we developed a good level of awareness about equality issues and integrated this awareness into the way we worked.

In 2012, as the new legislative framework came into force, we published a wider strategy with greater focus on how equalities impacted on our regulatory functions. This current strategy builds on previous achievements and includes an updated action plan.

5. Our commitment

Our Board and Senior Management Team will demonstrate a personal commitment to equality and take responsibility for progress of the implementation of this strategy.

6. Our equality focus

The 2010 Act significantly revised the statutory equality framework and OSCR's approach to equality has been changed to reflect this. Our various legal duties in respect of equality can be summarised as follows:

'OSCR will deliver its functions in a manner that encourages equal opportunities, aims to eliminate unlawful discrimination and other conduct prohibited by equality legislation and fosters good relations among all people, particularly between those who may face discrimination and others.'

To achieve this we will need to ensure that everyone within OSCR is aware of their obligations under the duty and understands the importance of equality in what we do. A key part of this is to ensure that we continue to fully incorporate an equalities focus into our work internally, across all our areas of activity. However, we must also take into account that our relationship with charities, those representing charities and members of the public inquiring or complaining about a charity have implications for our equality work.

Ultimately, the beneficiaries, potential beneficiaries and the general public who may be impacted by any given charitable activity are at the sharp end of any potential discrimination. OSCR will, therefore, ensure that our equality strategy includes the impact of anti-discrimination requirements on the activities of charities. We will carefully consider whether charities comply with equality law; whether they meet the requirement to provide public benefit without undue restriction and whether they are causing a level of detriment that outweighs any benefit.

We will also actively seek to increase our understanding of the impact of equality legislation on those groups of charities that restrict or prioritise their beneficiaries.

7. Implementation

OSCR will meet its equality duties through the following four areas of its work:

- regulatory functions
- service delivery
- policy development
- as an employer.

While the general equality duty does not require us to set equality objectives, we have included a detailed action plan at the end of this paper.

7.1 Regulatory functions

We will use our experience to continue to develop how we integrate equality into our regulatory work.

The issue of possible unlawful discrimination arises particularly with respect to two of our functions: identifying and investigating apparent misconduct in the administration of charities, and determining whether bodies are charities.

A breach of a legislative duty by charity trustees, including any of the duties set out in the 2010 Act, may be a breach of trustee duties (section 66 of the 2005 Act). OSCR would treat a significant breach as misconduct.

The assessment of public benefit in the context of the charity test can also give rise to questions of charity compliance with the 2010 Act. Section 8(2) of the 2005 Act sets out the factors which OSCR must first consider in deciding whether an organisation can be registered as a charity or whether an existing charity can remain on the

Register. OSCR will consider what benefit the organisation provides to the public in exercising its functions and conversely what disbenefit (harm) to the public, or private benefit to an individual arises. Once this has been done, OSCR will assess how the benefit compares to any private benefit and disbenefit.

If it appears that unlawful discrimination or indeed any other kind of unlawful conduct arises or will arise from an organisation's activities, this is a disbenefit. In the assessment of benefit against disbenefit, OSCR may be entitled to give such disbenefit considerable weight, depending on the particular facts and circumstances of the organisation.

The other factor which OSCR must take into account in reaching its decision on public benefit is whether any condition an organisation imposes on obtaining the benefit it provides is unduly restrictive.

Where an organisation operates a restriction on the provision of benefit which breaches equalities law this will ordinarily be regarded by OSCR as an undue restriction.

However, as our *Meeting the Charity Test* guidance states, OSCR is required to make a judgement on the whole picture of public benefit in the body being looked at. We will do this on the basis of all the facts and circumstances applying to the organisation.

7.2 Service delivery

All members of staff have a role to play in ensuring those with whom we come into contact are dealt with in a manner consistent with our equality duties. This requires a good level of staff training and that our services and information have a good level of accessibility.

7.2.1. Staff training

OSCR staff should be adequately trained to develop an understanding of equality issues and how these impact on their work. Training will be tailored depending on the degree to which a staff member will need to understand equality law.

A programme of training has been developed for all staff. Board members are required to keep up to date with equality issues as part of their own professional development.

7.2.2. Accessibility

Given OSCR's wide range of stakeholders and the diverse needs of individuals we deal with, we have put a lot of effort into ensuring that the services and information we provide are accessible. We will continue to review and monitor our main communication channels and identify areas for improvement such as developing guidance in varying formats and making our website widely accessible.

Our website provides a web-based reader service which converts text to speech. As participants of 'Happy to Translate', we consider all requests for translation, interpretation and transcription, demonstrating our commitment to ensure our information and services are available to all.

7.3 Policy development

Policy development is fundamental to the way OSCR plans, designs and delivers its functions and the consideration of equality is already part of policy development in OSCR.

We will continue to develop policy in a manner that is inclusive for OSCR stakeholders and we will include consideration of equality principles and impact in our policy development.

When developing policy, policy makers at all levels will carry out an analysis of the policy's effects on equality. If any detrimental impact is identified, the analysis will include consideration as to whether this can be mitigated. This analysis will be evidenced in writing, usually as part of either the project plan or Board papers. Where full Equality Impact Assessments are undertaken these will be consulted on and published on the OSCR website.

We will explore and develop routes of engagement and other possible sources of information that could provide an evidential base for our decision-making.



7.4 As an employer

OSCR is committed to encouraging diversity and promoting equality as an employer. Our recruitment and HR functions are carried out through Scottish Government, which develops its procedures and policies following best practice on equality. In line with these policies, we consider requests for flexible working or to adapt work stations for particular needs. The actions are not specifically outlined in the action plan because they are defined by overall Scottish Government policy.

8. ■ Recognising the challenges

OSCR is a relatively small organisation with a very specific statutory focus – the registration and regulation of more than 24,000 charities with a wide group of beneficiaries. As we consider charities' compliance with equality requirements, we will be particularly mindful of the principle of proportionality and relevance to ensure that our other regulatory functions are not neglected.

8.1 Equality information

A key challenge (and one identified in the previous strategies) is that OSCR has limited equality information about charities. This remains the position. When charities apply for status they must state their charitable purposes and beneficiary groups.

From our Register we know that a number of charities are concerned with the promotion of equality in one form or another and that a very large number of charities discriminate on grounds of one or more of the protected characteristics in that they identify their beneficiaries in this way. This provides us with a starting point.

Information taken from Scottish Charities Register August 2016

Charitable purposes (note that individual charities may register several charitable purposes, and may state they have both these purposes so there will be an overlap):

- 1,161 charities promoting equality and diversity (5% of sector)
- 1,007 charities advancing of human rights (4% of sector).

Beneficiary groups (note that charities may register they have more than one type of beneficiary):

- 11,907 children or young people (49% of sector)
- 5,478 older people (23% of sector)
- 5,724 people with disabilities or health problems (24% of sector)
- 1,345 people of a particular ethnic or racial origin (6% of sector).

Other information held about charities relates to the processes of status applications, reorganisation applications, requests for our consent to a range of actions, and through investigation and compliance work. The nature of these processes means that the information gathered that is relevant to equality is not always consistent or comprehensive.

OSCR recognises the importance of collecting and using equality information in identifying priorities for action, assessing the impact of our policies and practices and measuring progress made. We have identified other public sources of information relevant to equality about our users and the public, which we refer to where appropriate.

9. Action plan

Progress on the action plan will be reported annually to our Board, and we will feed back publicly in our Annual Review.

Workstream	Action	Resources	Responsible Officer	Timescale	Performance Measure
Regulatory Functions	Assess all complaints about unlawful discrimination by charities	Staff time	Head of Enforcement	Ongoing	Check of written record to ensure compliance No. of concerns recorded
	Assess all applications for charitable status or consent for changes to purpose to identify possible unlawful discrimination	Staff time	Head of Registration	Ongoing process	Check as part of quality assurance process of written record to ensure compliance
	Identify areas of possible unlawful discrimination by charities for potential proactive review	Staff time	Head of Registration/ Enforcement	Ongoing	Reported as part of TRU work-plan
	Issue guidance for charities on equality based on experience in first cases	Staff time and design cost for publication	Head of Registration	When appropriate depending on progress of cases	Guidance published on website
	Review Memorandum of Understanding with the Equality and Human Rights Commission	Staff time	Head of Engagement	October 2016	MOU published on website

Workstream	Action	Resources	Responsible Officer	Timescale	Performance Measure
Service Delivery	We will continue to develop our accessibility in line with e-accessibility guidelines	Around £2,000 per annum	Head of Engagement	Ongoing as required	Website meets standards
	Consider and record all requests for translation, interpretation and transcription through OSCR's commitment to the 'Happy to Translate' scheme	Staff time and cost for translation services. Varies but around £4,000 per annum (based on about 6 requests annually).	Head of Support Services	As required	Number of requests for translation, interpretation or transcription responded to
	All publications (guidance and forms) to take account of Plain English principles as outlined in OSCR's style guide	Staff time	Head of Engagement	Ongoing	Forms part of publications procedure
	All staff to undertake diversity courses as agreed on Civil Service Online	Staff time and training costs	Head of Support Services	Ongoing	Training audit undertaken every 6 months
	Plain English training as part of induction for all new staff	Staff time and training costs	Head of Support Services	Ongoing	All staff trained as part of induction
	Assess all complaints against OSCR to identify possible unlawful discrimination or harassment in respect of staff and/or complainer	Staff time	Head of Support Services	Ongoing	Number of complaints arising from unlawful discrimination or harassment
	Ensure staff have access to unacceptable behaviour guidance	Staff time	Head of Support Services	Ongoing	Staff confident in dealing with unacceptable behaviour
	Further develop equality contact list both to support consultation and dissemination of OSCR material	Staff time	Engagement Team	Ongoing	Equality contact list available and publicised to staff

Workstream	Action	Resources	Responsible Officer	Timescale	Performance Measure
Policy Development	Equality a key principle in OSCR policy development process	Staff time	Chief Executive/ Head of Engagement	Review compliance every 6 months	Compliance to form part of Quality Assurance framework
	Policy development at all levels will involve a written analysis of the policy's effects on equality. Where a detrimental effect is identified the analysis will include consideration as to whether this can be mitigated	Staff time	SMT and OSCR Board	Ongoing	Written analysis of effects of policies to be made available on request
	Completed EQIA's to be published on OSCR website	Staff time	SMT	Ongoing	Published EQIA's
	Engagement team to monitor legislative changes and best practice in order to inform OSCR policy and implementation of strategy	Staff time	Head of Engagement	Ongoing	Internal reports
	Explore and develop routes of engagement and other possible sources of information that could provide an evidential base for our decision-making	Staff time and other costs may arise if further research needed	Head of Engagement	Ongoing	Equality screening training and guidance available to staff



2nd Floor
Quadrant House
9 Riverside Drive
Dundee DD1 4NY

P. 01382 220446
E. info@oscr.org.uk
W. www.oscr.org.uk
T. @ScotCharityReg

APS Group Scotland 447365 (09/16)



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