

THE OFFICE OF THE SCOTTISH CHARITY REGULATOR

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

Moray Recycling Action Group – SC036192

6 April 2016

Introduction

As a result of an inquiry under section 28 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) it appears to OSCR that Moray Recycling Action Group no longer meets the charity test. We have therefore taken the decision to remove Moray Recycling Action Group from the Scottish Charity Register (the Register) after 21 days from the date of this report, under section 30(1)(b) of the 2005 Act.

Background

Moray Recycling Action Group was founded as an unincorporated association and was granted charitable status in January 2005. The charity's purposes are:

- The relief of poverty, hardship or distress of people in necessitous circumstances resident in Moray by the provision of refurbished furniture and other household goods.
- The advancement of education and training particularly among the unemployed by the provision of training and work experience.

Inquiry summary

OSCR contacted Moray Recycling Action Group in July 2014 because it noted from the accounts submitted that it had failed to comply with recommendations made following



an earlier inquiry including to appoint sufficient charity trustees to form a quorum and to review the charity's constitution as it no longer reflected the activities being carried out. The constitution requires three charity trustees to form a quorum and the charity had been operating with two.

At an AGM held in October 2014 the two serving charity trustees resigned and three new charity trustees were appointed. These charity trustees resigned in July 2015 never having met as a trustee body.

Further efforts were then made by the manager with assistance from the Third Sector Interface to find new charity trustees but this proved to be unsuccessful. Individuals identified as prospective charity trustees were unwilling to be appointed due to concerns about inadequate financial and management policies and practices and exposure to risks of personal liability. We consider it unlikely that the charity will be able to appoint new charity trustees.

Additional inquiries identified concerns about weak policies and governance practices, poor accountability, lack of public benefit being provided in furtherance of the charity's purposes and the level of private benefit.

How we reached our decision

The charity test requires bodies to have exclusively charitable purposes, to provide public benefit in Scotland or elsewhere and to meet certain other conditions. When we assess the charity test we look at the charity's governing document and the whole picture of what it does and the public benefit its activities provide. We also look at any benefit gained or likely to be gained by individuals other than as members of the public (private benefit) and any disbenefit incurred or likely to be incurred by the public in consequence of the charity carrying out its activities. We also consider whether any conditions attached to the public accessing benefit are unduly restrictive. The charity's activities must be in furtherance of its charitable purpose(s) as set out in its governing document.

The reasons for our decision to remove Moray Recycling Action Group from the Register are as follows:-

1. An unincorporated association exists when two or more people come together for one or more common purposes, other than for profit. An unincorporated association is founded by the agreement between the members. It appears to OSCR that Moray Recycling Action Group, which was an unincorporated association, no longer exists as a charitable body because it has no members.

2. Following our visits to the charity's premises and meetings with the manager it appears to us that the charity is not fulfilling its charitable purposes or providing public benefit. The charity's principal activity is the operation of a retail outlet for recycled furniture and other household items donated by the public. The charity does not restrict or specifically target benefit to those in poverty, hardship or distress. We confirmed that sale of goods is open to all members of the public and all customers pay the same price for goods they purchase, regardless of their personal financial circumstances.

In addition we found that the charity was not providing sufficient specific targeted education and training or work experience to the unemployed and had no plans or means to do so going forward.

3. We identified significant private benefit to the manager and his partner, who is also employed by the charity. This includes high levels of wages, unauthorised personal use of charity vehicles and other charitable property. We consider this level of private benefit is not incidental to or necessary for the achievement of the charity's purposes and outweighs any public benefit provided.

OSCR's duties and powers

Under section 30 of the 2005 Act, where it appears that a charity no longer meets the charity test, OSCR must either:

- direct the charity to take such steps as OSCR considers necessary for the purposes of meeting the charity test, or
- remove the charity from the Register.

In the present circumstances OSCR has taken the decision to remove Moray Recycling Action Group from the Register and has given the charity notice that it will be removed from the Register under section 30(1)(b) of the 2005 Act after 21 days from the date of this decision.

Protection of Assets – section 19 of the 2005 Act

The charity has been made aware that under section 19 of the 2005 Act it continues to be under a duty to apply any charitable assets held at the time the charity is removed from the Register in accordance with the purposes as set out in its entry in the Register immediately before its removal.

Review

The charity has the right to request OSCR to review the decision. To do so the charity must contact the Review Officer within 21 days of the date of OSCR's decision.

Where a review is requested, OSCR will not remove the charity from the Register while the review is taking place.