

Subject: FW: Application for Quarterly Grant

From:
Sent: 29 March 2019 10:40
To:
Cc:
Subject: RE: Application for Quarterly Grant

Dear xxx

I hope you and your family are well.

It's that time again so please find attached the signed Grant Acceptance and my application for the payment of the first quarterly grant.

Thank you and Kind Regards

xxx

From:
Sent: 28 March 2019 13:45
To:
Cc:
Subject: RE: MOJO Scotland SG funding - 2019-20, 2020-21 and 2021-22

The letter has been posted out.

xxx

From:
Sent: 28 March 2019 12:21
To:
Cc:
Subject: RE: MOJO Scotland SG funding - 2019-20, 2020-21 and 2021-22

XXXX

Please find attached an electronic version of the grant-in-aid letter. A hard copy will follow in the post.

Grateful if you could return the relevant part and we will process the first payment for 2019-20.

Content redacted – could you print out and send in the post please?

Thanks

Head of Criminal Law, Practice and Licensing Unit
Criminal Justice Division
Room GW, St Andrew's House, Edinburgh
Scottish Government

From:
Sent: 27 March 2019 13:53
To:
Subject: RE: MOJO Scotland SG funding - 2019-20, 2020-21 and 2021-22

Dear xxxx

Many thanks for your email.

We are grateful to the Scottish Government, both for the increased level of funding and for the structural improvement of three-year scheduling. We will look forward to receiving the relative grant-in-aid offer letter, and will respond to that when we have had the opportunity to consider its detailed terms.

Your assistance in this process is much appreciated.

Best wishes,

XXXX

Casework Team
Miscarriages of Justice Organisation
121-127 Saltmarket
Glasgow
G1 5LF

t: 0141 552 0009

w: www.miscarriagesofjustice.org



Company no: SC239555 Registered Charity No. SC033820
Registered Office 166 Buchanan Street Glasgow G1 2LS
A voluntary sector victim support organisation providing practical assistance to those affected by wrongful criminal conviction
The MOJO Aftercare Project is financially supported by the Scottish Government

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From:
Sent: 27 March 2019 12:46
To:
Cc:
Subject: MOJO Scotland SG funding - 2019-20, 2020-21 and 2021-22

Dear XXXX

Further to your meeting last week with the Cabinet Secretary for Justice, I am writing to advise on the Scottish Government's funding for MOJO Scotland for 2019-20 and indicative funding allocations for 2020-21 and 2021-22. A formal grant-in-aid letter and conditions will be sent separately.

We can advise that the Scottish Government will be funding MOJO Scotland as follows:

2019-20 - £105,000

Indicative allocation for 2020-21 - £105,000 plus increase based on retail price index as at March 2020

Indicative allocation for 2021-22 – Funding provided in 2020-21 plus increase based on retail price index as at March 2021

We hope this reassures MOJO Scotland as to the value the Scottish Government places on the activities you undertake. We understand this is not as much as you were seeking, but it is what we consider to be an appropriate settlement at a time of continuing scarce public resources.

I wanted to email you to let you know once a decision was made. And as I say above, we will send an updated grant-in-aid letter very shortly to formalise these arrangements.

I hope this is helpful.

Regards

Head of Criminal Law, Practice and Licensing Unit
Criminal Justice Division
Room GW, St Andrew's House, Edinburgh
Scottish Government

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Tha am post-d seo (agus faidhle neo ceanglan còmhla ris) dhan neach neo luchd-ainmichte a-mhàin. Chan eil e ceadaichte a chleachdadh ann an dòigh sam bith, a' toirt a-steach còraichean, foillseachadh neo sgaoileadh, gun chead. Ma 's e is gun d'fhuair sibh seo gun fhiosd', bu choir cur às dhan phost-d agus lethbhreac sam bith air an t-siostam agaibh agus fios a leigeil chun neach a sgaoil am post-d gun dàil.

Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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Schedule 2

APPLICATION FOR PAYMENT OF GRANT

You must complete this to claim instalments of grant in April, July, October and January. Please remember that the entire grant must be spent in the financial year in which it is received. If it is not, you must return it to the Scottish Government.

To: [REDACTED]
Scottish Government
Criminal Justice Division
Criminal Law & Practice Unit
GW14, St Andrew's House
Regent Road
Edinburgh
EH1 3DG

<p>A: Name and address of organisation: <i>MISCARRIAGES OF JUSTICE ORGANISATION</i> <i>121-127 SALT MARKET GLASGOW G1 5LF</i></p>	<p>B: Name of contact within organisation including position and telephone number: [REDACTED] <i>PROJECT MANAGER</i> <i>0141-552-0009</i> [REDACTED]</p>
<p>C: Bank Details (Name and address): [REDACTED] [REDACTED] [REDACTED] Sort Code: [REDACTED] Account Number: [REDACTED]</p>	<p>D: Total amount of Scottish Ministers grant offered in 2018-19.....<i>£105,000</i>.....</p> <p>Total received to date.....<i>0</i>.....</p> <p>Amount of grant spent to date.....<i>0</i>.....</p> <p>Forecast of total grant required by 31 March 2020.. <i>£105,000</i>.....</p> <p>Amount of grant requested.. <i>£26,250</i>.....</p>

Signed Name in Capitals

[REDACTED SIGNATURE]

Date... *29/3/19*

GRANT ACCEPTANCE

On behalf of Miscarriages of Justice Organisation (Scotland) (Company number SC239555) I certify that I have read the Scottish Ministers grant terms and conditions above together with the schedules here dated 28 March 2019.

I undertake that:-

1. the organisation will use the grant solely for the purposes stated in the Scottish Ministers grant offer letter;
2. the organisation will repay to the Scottish Ministers on demand any amount which fails to be repaid in accordance with the grant offer letter and related schedules;
3. the organisation will keep records indicating how the grant has been used and will submit the required statement of expenditure signed by the organisation's auditors to the Scottish Ministers by;
 - 30/09/20 in relation to financial year 2019-20
4. The organisation will observe all other conditions of grant specified above.

On behalf of Miscarriages of Justice Organisation (Scotland) (Company number SC239555), I accept core grant of up to;

- £105,00 for 2019-20.

Signed: [REDACTED]

(Director/Company Secretary/Authorised signatory)

Print Name: [REDACTED]

Position within organization:

PROJECT MANAGER

Address and telephone number:

121 - 127 SALTMARKET
GLASGOW

Date:

29/3/19

G15LF

0141-552-0009

Subject: FW: Arrange a Meeting

From:
Sent: 21 May 2019 15:14
To:
Subject: RE: Arrange a Meeting

XXX

Further to my e-mail below. I am happy to wait until next week to receive a response to my e-mail of 10 May.

Regards

XXX

From:
Sent: 21 May 2019 15:04
To:
Subject: RE: Arrange a Meeting

XXX

Thank you for your response to my e-mail of 10 May.

As you will be aware, XXXX sent a letter to MOJO Scotland today regarding the issues that have been raised with us. XXX has asked for a reply to his letter by Friday 7 June.

XXX also stated, once MOJO Scotland have sent the information requested and we have considered, we would be happy to meet with representatives of MOJO Scotland to discuss.

Therefore, we think it would be better for us to receive a formal response to XXX's letter from MOJO Scotland before arranging meetings. I am sorry about this xxxx but we think it would not be appropriate to meet separately with individual staff members of MOJO Scotland at this time.

Regards

XXXX

From:
Sent: 21 May 2019 14:44
To:
Subject: Re: Arrange a Meeting

Hi xxxx

I would be grateful if we could have a meeting away from the office. I have a clear diary and will be happy to meet you whenever you can make time. I am on my way home at the moment and would it be okay to answer the concerns raised in your email on Monday please.

Many thanks

xxxx

----- Original message -----

From:
Date: 10/05/2019 14:39 (GMT+00:00)
To:
Cc:
Subject: RE: Arrange a Meeting

Hi xxxx

Thank you for your response that is most helpful and an interesting development.

INFORMATION REDACTED.

I have to say, we have been getting rather concerned with all the correspondence we have been receiving and the negative impact such issues could have on providing a service to your clients. As you know, that is what we are most concerned about and that is why the SG funds MOJO.

It is key the governance structures within MOJO are sufficient and appropriate and that the management committee works effectively.

Thanks again for your helpful response and please keep me up to date on the outcome of the independent advice INFORMATION REDACTED.

I would be happy to come over to Glasgow next week to have a chat. We can meet for a coffee away from the MOJO offices if that would be helpful.

Let me know what day, time and where and I will be there.

Regards

xxxx

From:
Sent: 10 May 2019 14:16
To:
Subject: RE: Arrange a Meeting

Hi xxxx

I am sorry for the delay.

In answer to the questions you have asked:

The management committee is still in place and functioning in line with the previous constitution and are making the decisions about the running of MOJO in accordance with the conditions of the Grant offer letter.

As the management committee is still in place this will still happen.

INFORMATION REDACTED

I hope this helps xxxx and would welcome a meeting with you to discuss further.

Kind regards

xxxx

From:
Sent: 09 May 2019 10:46
To:
Subject: RE: Arrange a Meeting

Hi xxx

I have arranged a further meeting with my line manager, xxxx, and our deputy director, xxxx, tomorrow in order to discuss the current issues around MOJO Scotland and the correspondence we have received.

I have a couple of questions to help with our discussion tomorrow.

1. Is the management committee still in place and functioning in line with the previous constitution if not, who is making the decisions about the running of the organisation and ensuring MOJO complies with the conditions of the grant offer letter?
2. As you will appreciate, the grant offer letter states that as part of the SG's light touch monitoring process a Scottish Government official will attend at least two management committee meetings per year. If there is no longer a management committee how can an SG official attend such a meeting as part of our monitoring process?

INFORMATION REDACTED

I will get back in touch with you as soon as possible after that meeting.

Regards

xxxx

From:
Sent: 07 May 2019 12:30
To:
Subject: RE: Arrange a Meeting

XXXX

Thank you for the helpful update. I will speak to xxx tomorrow about this issues you have raised as well as the other correspondence we have received from MOJO.

Once we have discussed I will get back to you as soon as possible.

Regards

XXX

From:
Sent: 07 May 2019 12:15
To:
Subject: RE: Arrange a Meeting

Hi XXXX

INFORMATION REDACTED... to look at the constitution as INFORMATION REDACTED wanting to see if any changes needed to be made with the view of applying for funding in England.

INFORMATION REDACTED... looked at the constitution and found that it needed attention.
INFORMATION REDACTED.

INFORMATION REDACTED

I am trying to rectify a situation that is not of my doing and make sure that best practice continues within the organisation.

You know how dedicated I am to the work we do at The Miscarriages of Justice Organisation and to our service users therefore I would appreciate any advice you can give.

I hope this is helpful.

Kind Regards

XXXX

From:
Sent: 07 May 2019 11:22
To:
Subject: RE: Arrange a Meeting

XXXX

Thank you for your response. I suspected that would be the case. As you know I am always happy to meet with you.

As I said, I am meeting xxxx tomorrow to discuss further.

However, it is not clear to me what is going on here. INFORMATION REDACTED

As you will appreciate, it is difficult to give advice without knowing all the facts.

I appreciate there are likely to be sensitives about contacting me and wishing to have a meeting on your own.

However, any information you can provide about what is actually going on at MOJO would be most helpful.

Regards

XXXX

From:
Sent: 07 May 2019 11:02
To:
Subject: RE: Arrange a Meeting

Hi xxxx

I was hoping to have a meeting with you on my own to discuss the correspondence you have received and to ask your advice.

I would really appreciate any advice you can offer and I feel at this stage it would be best if we could meet away from the office.

I am happy to travel for the meeting.

Kind Regards

XXXX

From:
Sent: 07 May 2019 10:46
To:
Subject: RE: Arrange a Meeting

Hi XXXX

Thank you for your e-mail seeking a meeting. I hope you are well.

I am having a meeting with my line manager tomorrow to discuss some correspondence we have recently had from MOJO Scotland.

Are you seeking a meeting as part of the normal management committee meetings or is there some other reason for seeking a meeting with me?

As such, it would be most helpful if you could provide details of the purpose of your meeting request.

Once I have had a chat with xxxx I will get back to you regarding meeting.

Thanks for your help in this matter.

Regards

XXXX

From:
Sent: 03 May 2019 11:20
To:
Subject: Arrange a Meeting

Hi XXXX

Could I please arrange a meeting at a time which is convenient to you.

I am happy to travel to Edinburgh.

Thanks

XXXX

Project Manager

Miscarriages of Justice Organisation

121-127 Saltmarket

Glasgow

G1 5LF

t: 0141 552 0009

w: www.miscarriagesofjustice.org



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Registered Office 166 Buchanan Street Glasgow G1 2LS

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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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Subject:

FW: Meeting - 20 March 2019

From:

Sent: 29 March 2019 10:41

To:

Cc:

Subject: RE: Meeting - 20 March 2019

XXXX

Thanks for this. I understand what you are saying in terms of the test applied by the provisions in section 133 that operate in Scotland; however I would note that has been the case since the legislation was brought forward and is nothing new. As you indicate, the operation of the section 133 test is different and narrower from the circumstances of when an appeal court may indicate a miscarriage of justice has occurred and it does mean that cases where a court quashes a conviction may not be eligible for miscarriage of justice compensation due to the different definitions used as for what is a 'miscarriage of justice'.

Regards

Head of Criminal Law, Practice and Licensing Unit
Criminal Justice Division
Room GW, St Andrew's House, Edinburgh
Scottish Government

From:

Sent: 25 March 2019 13:58

To:

Subject: Meeting - 20 March 2019

Dear xxxxx

I write following on our meeting on 20 March. Specifically, I write to clarify my remarks in relation to the operation in Scotland of the statutory compensation scheme for miscarriage of justice.

I accept that the situation here is, in certain respects, different from that which now pertains in England. I believe that I suggested, at our meeting, that the two systems are effectively the same; I accept that in doing so I was simply wrong. For this, I apologise.

The foundation for the statutory scheme in Scotland is section 133 of the Criminal Justice Act 1988. This, similarly, founds the compensation scheme operating in England. Section 133(1) has, however, been amended in England by the Antisocial Behaviour, Crime and Policing Act 2014 so that the additional requirement I referenced in our meeting now applies in England, but not in Scotland.

The difficulty that we have, as an organisation, with the provisions applicable in Scotland is that these require both that a conviction be quashed as a result of fresh evidence and that this fresh evidence shows beyond reasonable doubt that there has been a miscarriage of justice. This, although not identical, is very similar in effect (and in application) to the current English provisions.

The simple fact of the quashing of a conviction presupposes a miscarriage of justice. Miscarriage of justice is the sole ground of appeal against conviction available in Scots criminal procedure. It therefore follows that, in order to meet the requirements for compensation, an applicant is obliged to satisfy Scottish Ministers, at their discretion, on a test which the courts have already found to have been met. It remains our view that this, in combination with the restrictive requirement of fresh evidence, is excessively onerous. This view is informed by our experience of the difficulty faced by our clients in securing compensation following on the quashing of their convictions. It is, we believe, supported by the available statistics. These disclose, *inter alia*, that whereas the Appeal Court recognised 110 miscarriages of justice in solemn appeals alone in the 5 years to 2017, the total number of exonerees compensated by the Scottish Government in the 17 years from 2000 to 2017 was 18.

Best wishes,

XXXXX

Casework Team
Miscarriages of Justice Organisation
121-127 Saltmarket
Glasgow
G1 5LF

t: 0141 552 0009

m:

e:

w: www.miscarriagesofjustice.org



Company no: SC239555 Registered Charity No. SC033820

Registered Office 166 Buchanan Street Glasgow G1 2LS

A voluntary sector victim support organisation providing practical assistance to those affected by wrongful criminal conviction

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Subject: FW: Miscarriages of Justice Organisation

From:
Sent: 28 February 2019 16:25
To:
Subject: FW: Miscarriages of Justice Organisation

[For info.](#)

From:
Sent: 28 February 2019 13:49
To:
Subject: RE: Miscarriages of Justice Organisation

Dear Xxxxx

Thank you for your recent emails. I apologise for the delay in replying.

I would advise that consideration is continuing to be given to MOJO Scotland's budget for 2019-20. The overall Scottish Government budget was only agreed by the Scottish Parliament in the last few days and it is only now there is certainty about the overall size of the budget that final decisions can be made. I hope to confirm what Scottish Government grant-in-aid funding will be available very soon.

Separate from the exact amount of funding, I am pleased to confirm that the Scottish Government will be able to offer an indicative funding allocation for the next three years which will give MOJO Scotland improved certainty rather than relying on one year allocations. I hope this gives some reassurance as to the value the Scottish Government places on the work done by MOJO Scotland.

I will be in touch soon with confirmation of the Scottish Government grant-in-aid offer.

Regards,

Deputy Director, Criminal Justice Division

Scottish Government | Room GW.09 | St Andrew's House | Regent Road | Edinburgh | EH1 3DG

From:
Sent: 28 February 2019 09:57
To:
Subject: FW: Miscarriages of Justice Organisation
Importance: High

Dear Xxxxx

I refer to my email to you of 19 February, copied below.

Can you let me have your response, please?

Yours sincerely,

Casework Team
Miscarriages of Justice Organisation
121-127 Saltmarket
Glasgow
G1 5LF

t: 0141 552 0009

m:

e:

w: www.miscarriagesofjustice.org



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From:

Sent: 19 February 2019 15:11

To:

Cc:

Subject: Miscarriages of Justice Organisation

Dear Xxx

I write following on our meeting on 17 December 2018, when we discussed the issues of the level, and term, of ongoing funding of this organisation.

You undertook to respond with a suggested timescale of early February.

Are you able to indicate the terms of your response at this time?

Best wishes,

Casework Team
Miscarriages of Justice Organisation
121-127 Saltmarket
Glasgow
G1 5LF

t: 0141 552 0009
m:
e:
w: www.miscarriagesofjustice.org



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Subject:

FW: Miscarriages of Justice Organisation (Scotland)

From:

Sent: 30 April 2019 13:08

To:

Subject: FW: Miscarriages of Justice Organisation (Scotland)

[I mentioned this email.](#)

[Cheers](#)

[XXXX](#)

From:

Sent: 29 April 2019 14:36

To:

Cc:

Subject: Miscarriages of Justice Organisation (Scotland)

Xxxxx

Following on the recent award of funding to this organisation, I am writing to make you aware of compliance issues which have recently come to my attention. I am doing so in terms of our "best practice" policy as that bears on the issues of transparency and good faith.

In the course of a compliance review of the organisational structure and practices of Miscarriages of Justice Organisation (Scotland) ("MOJO"), I have become aware of the following issues:

- 1) failure to maintain a Register of Members of MOJO;
- 2) failure to maintain a Register of Directors of MOJO;
- 3) failure to maintain a Register of Directors' Residential Addresses;
- 4) failure to maintain a PSC Register, from and after 6 April 2016;
- 5) failure to file at Companies House a PSC Statement in 2016;

Each of these failures of compliance has now been rectified. The appropriate Registers are available for inspection and can, if required, be provided to you. The appropriate PSC Statement has also now been filed at Companies House.

INFORMATION REDACTED. In the meantime, a replacement Director (xxxx) has been appointed. I should stress that the company, in terms of its membership, its Board of Trustees and its constitution, is entirely compliant with its obligations under the Companies Act 2006 and the Charities and Trustee Investment (Scotland) Act 2005.

Should you require any further information at this time, I will be happy to assist.

Best wishes,

Legal Officer
Miscarriages of Justice Organisation
121-127 Saltmarket
Glasgow
G1 5LF

t: 0141 552 0009
m:
e:
w: www.miscarriagesofjustice.org



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Subject: FW: Miscarriages of Justice Organisation

From:
Sent: 01 March 2019 09:21
To:
Subject: FW: Miscarriages of Justice Organisation

From:
Sent: 28 February 2019 17:00
To:
Subject: RE: Miscarriages of Justice Organisation

Dear Xxxx

I am grateful to you for your response. The extension of our allocation to a three year period is indeed welcome and I thank you for that.

I will look forward to hearing from you when you are able to advise the level of funding.

Best wishes,

Casework Team
Miscarriages of Justice Organisation
121-127 Saltmarket
Glasgow
G1 5LF

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From:
Sent: 28 February 2019 13:49
To:
Subject: RE: Miscarriages of Justice Organisation

Dear Xxxx

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Separate from the exact amount of funding, I am pleased to confirm that the Scottish Government will be able to offer an indicative funding allocation for the next three years which will give MOJO Scotland improved certainty rather than relying on one year allocations. I hope this gives some reassurance as to the value the Scottish Government places on the work done by MOJO Scotland.

I will be in touch soon with confirmation of the Scottish Government grant-in-aid offer.

Regards,

Deputy Director, Criminal Justice Division

Scottish Government | Room GW.09 | St Andrew's House | Regent Road | Edinburgh | EH1 3DG

tel: +44 (0)131 244 5063
e: willie.cowan@gov.scot

From:
Sent: 28 February 2019 09:57
To:
Subject: FW: Miscarriages of Justice Organisation
Importance: High

Dear Mr Cowan

I refer to my email to you of 19 February, copied below.

Can you let me have your response, please?

Yours sincerely,

Casework Team
Miscarriages of Justice Organisation

121-127 Saltmarket
Glasgow
G1 5LF

t: 0141 552 0009
m:
e:
w: www.miscarriagesofjustice.org



Company no: SC239555 Registered Charity No. SC033820
Registered Office 166 Buchanan Street Glasgow G1 2LS
A voluntary sector victim support organisation providing practical assistance to those affected by wrongful criminal conviction
The MOJO Aftercare Project is financially supported by the Scottish Government

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From:
Sent: 19 February 2019 15:11
To:
Cc:
Subject: Miscarriages of Justice Organisation

Dear Xxxxx

I write following on our meeting on 17 December 2018, when we discussed the issues of the level, and term, of ongoing funding of this organisation.

You undertook to respond with a suggested timescale of early February.

Are you able to indicate the terms of your response at this time?

Best wishes,

Casework Team
Miscarriages of Justice Organisation
121-127 Saltmarket
Glasgow
G1 5LF

t: 0141 552 0009
m:
e:
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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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Subject:

FW: MOJO Scotland SG funding - 2019-20, 2020-21 and 2021-22

From:

Sent: 28 March 2019 12:21

To:

Cc:

Subject: RE: MOJO Scotland SG funding - 2019-20, 2020-21 and 2021-22

XXX

Please find attached an electronic version of the grant-in-aid letter. A hard copy will follow in the post.

Grateful if you could return the relevant part and we will process the first payment for 2019-20.

xxxx – could you print out and send in the post please?

Thanks

Head of Criminal Law, Practice and Licensing Unit
Criminal Justice Division
Room GW, St Andrew's House, Edinburgh
Scottish Government

From:

Sent: 27 March 2019 13:53

To:

Subject: RE: MOJO Scotland SG funding - 2019-20, 2020-21 and 2021-22

Dear xxxx

Many thanks for your email.

We are grateful to the Scottish Government, both for the increased level of funding and for the structural improvement of three-year scheduling. We will look forward to receiving the relative grant-in-aid offer letter, and will respond to that when we have had the opportunity to consider its detailed terms.

Your assistance in this process is much appreciated.

Best wishes,

xxxx

Casework Team
Miscarriages of Justice Organisation

121-127 Saltmarket
Glasgow
G1 5LF

t: 0141 552 0009
m:
e:
w: www.miscarriagesofjustice.org



Company no: SC239555 Registered Charity No. SC033820
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From:
Sent: 27 March 2019 12:46
To:
Cc:
Subject: MOJO Scotland SG funding - 2019-20, 2020-21 and 2021-22

Dear Xxxx

Further to your meeting last week with the Cabinet Secretary for Justice, I am writing to advise on the Scottish Government's funding for MOJO Scotland for 2019-20 and indicative funding allocations for 2020-21 and 2021-22. A formal grant-in-aid letter and conditions will be sent separately.

We can advise that the Scottish Government will be funding MOJO Scotland as follows:

2019-20 - £105,000

Indicative allocation for 2020-21 - £105,000 plus increase based on retail price index as at March 2020

Indicative allocation for 2021-22 – Funding provided in 2020-21 plus increase based on retail price index as at March 2021

We hope this reassures MOJO Scotland as to the value the Scottish Government places on the activities you undertake. We understand this is not as much as you were seeking, but it is what we consider to be an appropriate settlement at a time of continuing scarce public resources.

I wanted to email you to let you know once a decision was made. And as I say above, we will send an updated grant-in-aid letter very shortly to formalise these arrangements.

I hope this is helpful.

Regards

Head of Criminal Law, Practice and Licensing Unit
Criminal Justice Division
Room GW, St Andrew's House, Edinburgh
Scottish Government

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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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T: 0131-244 1843
E: philip.lamont@gov.scot

Project Manager
Miscarriages of Justice Organisation Scotland
121-127 Saltmarket,
GLASGOW
G1 5LF

Your ref:
Our ref: MOJO(S)/Funding/2019-20
28 March 2019

Dear xxxx

On behalf of Scottish Ministers I hereby offer a grant not exceeding the sum of **ONE HUNDRED AND FIVE THOUSAND POUNDS STERLING, (£105,000) for the period 1 April 2019 to 31 March 2020** to the Miscarriages of Justice Organisation (Scotland), a company incorporated under the Companies Acts (company number SC239555) and having its registered office at 116 Buchanan Street, Glasgow, G1 2LS for the purpose of assisting with the core running costs of the Grantee.

We are satisfied that MOJO Scotland continues to be highly committed to their client group and we continue to consider that MOJO(S) is very well placed to provide services to those who have been victims of a miscarriage of justice, given the expertise of staff and their focus on this client group. We appreciate that this work is important and is nationally and internationally recognised. We consider that there are no other organisations that could provide this service for the amount of funding we provide. The continued funding of MOJO(S) will hopefully ensure that MOJO(S) can continue to help their service users to move from a chaotic lifestyle to a more manageable and productive lifestyle in the future.

We recognise the extensive work which is continuing to be undertaken by MOJO(S) to help their service users on a day to day basis and how this work has benefitted them and their families. We also recognise the increased work that has been undertaken by MOJO(S) in recent years to develop and professionalise the legal services provision within the organisation with the aid of its in house solicitor, working on a full time voluntary basis, and university student volunteers. We also recognise and appreciate the work being undertaken by the organisation in relation to the education and medical needs of their service users.

As a result of the continued improvements MOJO(S) has made and the professional approach taken in running the organisation we continue to believe that the current 'light touch' approach to monitoring should be continued. This will comprise of MOJO(S) sending quarterly monitoring reports to Criminal Justice Division and a Scottish Government official

attending at least two management committee meetings per year. Therefore, the first quarterly return will be on **1 July 2019**.

We believe, taking into consideration the budget constraints we are faced with, this funding settlement will help ensure that MOJO(S) can continue to operate and provide an appropriate service to their clients.

The grant is made on the following conditions.

Definitions and Interpretation

1. In these Conditions, the words and expressions set out in Schedule 3 shall have meaning ascribed to them in that Schedule.

Purpose of the Grant

2. The Grant is provided under section 10(1) of the Social Work (Scotland) Act 1968.

3. The Grant shall only be used as a contribution to core costs i.e.: **the day to day costs of the organisation and all other necessary purposes** and for no other purposes whatsoever, and is subject to the Grantee providing satisfactory quarterly reports detailing the service provided as indicated in Schedule 4 to this Grant.

4. No part of the Grant shall be used to fund any activity carried out, or material published by the Grantee, which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.

Payment of Grant

5. The Grant shall be paid by the Scottish Ministers to the Grantee in accordance with the terms of Schedule 1 attached hereto.

6. No later than six months after the end of the financial year in which grant is payable, the Grantee shall submit to Scottish Ministers its audited accounts showing all expenditure incurred by the Grantee during that Financial Year.

7. In the event that the amount of the Grant paid by the Scottish Ministers to the Grantee during that Financial Year exceeds the amount of the expenses reasonably and properly incurred by the Grantee in connection with the Project in that Financial Year, the Grantee shall within 28 days of receiving a written demand in respect thereof from the Scottish Ministers, repay to the Scottish Ministers the amount of such excess. In the event that the Grantee fails to pay such amount within the 28 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of 2 per cent per annum above the base lending rate (or the equivalent) of the Royal Bank of Scotland plc. prevailing at the time of the written demand from the date of the written demand until payment in full of both the sum and the interest thereon.

8. Notwithstanding any provision of this Agreement, the foregoing provisions of clauses 5, 6 & 7 and Schedule 1 shall be subject to the following: -

The Scottish Ministers shall not be bound to pay the Grantee, and the Grantee shall be deemed to have forfeited and to have no claim against the Scottish Ministers in respect of, any instalment of the Grant which has not been claimed by the Grantee in

accordance with the preceding clauses 5 & 6 by 31 March in the Financial Year in which it should have been claimed, irrespective of the cause of the Grantee not making such a claim.

Inspection and Information

9. The Grantee shall keep and maintain for a period of 3 years after the expenditure occurs, adequate and proper records and books of account recording all receipts and expenditure of monies paid to it by the Scottish Ministers by way of Grant. The Grantee shall afford the Scottish Ministers, their representatives, Audit Scotland and other such persons as the Scottish Ministers may reasonably specify from time to time, such access to those records and books of account as may be required by them at any reasonable time in response to a written request for such access from the person seeking it and the Grantee shall provide reasonable assistance and explanation as the person carrying out the inspection may from time to time require.

10. The Grantee shall ensure that adequate internal expenditure controls are in place and that resources are used economically, effectively and efficiently.

Assets and equipment

11. The Grantee shall not, without prior written consent of the Scottish Ministers, dispose of any equipment purchased with grant funds within 5 years of the award being made, where the equipment has a minimum value of £1,000 at the time of disposal.

Publicity

12. The Grantee shall where reasonably practicable acknowledge in all publicity material the contribution of the Scottish Ministers to its costs. The Scottish Ministers may require to approve the form of such acknowledgement prior to its first publication.

Compliance with the Law

13. The grantee shall ensure that in relation to the project, they and anyone acting on their behalf shall comply with the relevant law for the time being in force in Scotland.

Default

14. The Scottish Ministers may re-assess, vary, make a deduction from, withhold, or require immediate repayment of the Grant or any part of it in the event that: -

14.1 The Grantee commits a Default;

14.2 The Scottish Ministers consider that any change or departure from the purposes for which the Grant was awarded warrants an alteration in the amount of the Grant.

14.3 If at any time within the duration of the Agreement: -

(a) The Grantee passes a resolution that it be wound up, or a court makes an order that the Grantee be wound up, in either case otherwise that for the purposes of reconstruction or amalgamation, or circumstances arise which would enable a court to

make such an order or the Grantee is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(b) A receiver, manager, administrator or administrative receiver is appointed to the Grantee, or over all or part of the property which from time to time be comprised in the property and undertaking of it, or circumstances arise which would entitle a court or a creditor to appoint such a receiver, manager, administrator or administrative receiver.

15. In the event that the Grantee becomes bound to pay any sum to the Scottish Ministers in terms of the preceding clause 14, the Grantee shall pay the Scottish Ministers the appropriate sum within 28 days of a written demand for it being given by or on behalf of the Scottish Ministers to the Grantee. In the event that then Grantee fails to pay such sum within the said period of 28 days, the Scottish Ministers shall be entitled to interest on the said sum at a rate of 2 per cent per annum above the base lending rate or the equivalent of the Royal Bank of Scotland plc. prevailing at the time of the written demand, from a date of the written demand until payment in full of the said sum and interest.

16. Notwithstanding the provisions of the foregoing clause 15 in the event that the Grantee is in breach of any of the conditions specified in these Conditions, the Scottish Ministers may, provided that breach is capable of a remedy, postpone the exercise of their rights to recover any sum from the Grantee in terms of the said clause for such a period as they see fit, and may give written notice to the Grantee requiring it to remedy the breach within such period as may be specified in such notice, and in the event of the Grantee failing to remedy the said breach within the period specified, the Grantee shall be bound to pay the said sum in accordance with the provisions of the foregoing clauses.

17. Any failure or omission by the Scottish Ministers to exercise or delay by the Scottish Ministers in exercising, any rights or remedy to which they are entitled by virtue of the foregoing clause 16 shall not be construed as a waiver of such rights or remedy.

Assignment

18. The Grantee shall not be entitled to assign, sub-contract or otherwise transfer its rights or obligations under the Agreement without the prior written consent of the Scottish Ministers.

Termination

19. Notwithstanding clauses 13 and 14 of these Conditions, the Agreement may be terminated by Scottish Ministers giving not less than 3 months' notice in writing.

Continuation of Conditions

20. These conditions shall continue to apply for a period of 5 years after the end of the financial year in which the final instalment of the Grant was paid.

If you agree to accept the offer of grant and the conditions attached to it, you should sign and date one copy and return it to me as soon as possible. You should retain a second copy for your own records. It will not be possible to pay any grant instalment until a formal acceptance of the offer has been received.

Please contact me if there is anything to discuss.

Yours sincerely

XXXXX

GRANT ACCEPTANCE

On behalf of Miscarriages of Justice Organisation (Scotland) (Company number SC239555) I certify that I have read the Scottish Ministers grant terms and conditions above together with the schedules here dated 28 March 2019.

I undertake that:-

1. the organisation will use the grant solely for the purposes stated in the Scottish Ministers grant offer letter;
2. the organisation will repay to the Scottish Ministers on demand any amount which fails to be repaid in accordance with the grant offer letter and related schedules;
3. the organisation will keep records indicating how the grant has been used and will submit the required statement of expenditure signed by the organisation's auditors to the Scottish Ministers by;
 - 30/09/20 in relation to financial year 2019-20
4. The organisation will observe all other conditions of grant specified above.

On behalf of Miscarriages of Justice Organisation (Scotland) (Company number SC239555), I accept core grant of up to;

- **£105,00 for 2019-20.**

Signed:

(Director/Company Secretary/Authorised signatory)

Print Name:

Position within organization:

Address and telephone number:

Date:

Schedule 1

Payment of Grant

1. The Grant shall be paid by the Scottish Ministers to the Grantee in the following instalments:

2019-20

	Amount	Claim Date	Payment Date
Payment 1	£26,250	3 April 2019	
Payment 2	£26,250	2 July 2019	
Payment 3	£26,250	1 October 2019	
Payment 4	£26,250	7 January 2020	

2. The Grantee shall claim each Payment in writing in such form as the Scottish Ministers may from time to time specify, and shall submit a claim for each Payment not earlier than, but within 30 days of each Claim Date. A sample claim form is attached at Schedule 2.

Schedule 2

APPLICATION FOR PAYMENT OF GRANT

You must complete this to claim instalments of grant in April, July, October and January. Please remember **that the entire grant must be spent in the financial year in which it is received. If it is not, you must return it to the Scottish Government.**

To: Ronnie Fraser
Scottish Government
Criminal Justice Division
Criminal Law & Practice Unit
GW14, St Andrew's House
Regent Road
Edinburgh
EH1 3DG

A: Name and address of organisation:	B: Name of contact within organisation including position and telephone number:
C: Bank Details (Name and address) Sort Code: Account Number:	D: Total amount of Scottish Ministers grant offered in 2018-19..... £105,000 Total received to date..... Amount of grant spent to date..... Forecast of total grant required by 31 March 2020..... Amount of grant requested

Signed
Name in Capitals Date.....

Schedule 3

Definitions

This is an essential condition. However for running costs etc certain provisions can be deleted

“Agreement” means the agreement constituted by the Scottish Ministers’ invitation to apply for a grant, the Grantee’s Application, the Award Letter, the Grantee’s acceptance of the offer made in the Award Letter and these Conditions;

“Application” means the application for a Grant made by the Grantee;

“Claim Date” means each of the dates specified in Schedule 1 hereof;

“Conditions” means these grant conditions;

“Core Cost” means the day to day costs of the organization and all other necessary purposes, to be spent in accordance with the requirements set out in Schedule 4;

“Default” means:

- (a) Any breach of the obligations of either party under this Agreement (including, but not limited to, any breach of any undertaking or warranty given under or in terms of this Agreement);
- (b) Any failure to perform or the negligent performance of any obligation under this Agreement;
- (c) Any breach of any legislation; or
- (d) Any negligence or negligent or fraudulent miss-statement, or any other default,

In all cases by either party, its employees, agents or representatives;

“Financial Year” means a period from 1 April in one year until 31 March in the next;

“Grant” means the grant offered by the Scottish Ministers to the Grantee as specified in the Grant, as varied from time to time in accordance with these Conditions;

“Grantee” means the Miscarriages of Justice Organisation (Scotland) a company incorporated under the Companies Acts having company number SC239555 and having its Registered Office at 117 Cadzow Street, Hamilton, ML3 6JA

“Payment” means each of the payments specified in Schedule 1 hereto.

Schedule 4

CORE FUNDING COSTS THE SCOTTISH MINISTERS AND THE MISCARRIAGES OF JUSTICE ORGANISATION (SCOTLAND) (MOJO(S))

1. Expenditure on staff and related administrative and other costs incurred by MOJO(S) in pursuing its aims and objectives as set out in its application for grant.
2. MOJO(S) will attach **priority** to providing practical advice and assistance to:
 - 2.1 individuals whose case has been referred to the High Court by the Scottish Criminal Cases Review Commission;
 - 2.2 individuals who are released by the High Court following such a referral;
 - 2.3 individuals coming from other UK jurisdictions in similar circumstances who intend to settle in Scotland.
3. Assisting such individuals in the shorter term with gaining access to accommodation, income and health services immediately on release, and in the longer term with gaining access to counselling, reintegration and financial advice.
4. MOJO(S) will offer advice and assistance to individuals covered by paragraph 1 above and keep a record of the numbers who accept and the numbers who decline.
5. MOJO(S) will provide the Scottish Government with quarterly monitoring reports in each year funding is available.
6. The first report is due on 1 July 2019. These reports will be discussed at each biannual meeting.

Subject:

FW: MOJO Scotland SG funding - 2019-20, 2020-21 and 2021-22

From:

Sent: 27 March 2019 12:46

To:

Cc:

Subject: MOJO Scotland SG funding - 2019-20, 2020-21 and 2021-22

Dear Xxxxx

Further to your meeting last week with the Cabinet Secretary for Justice, I am writing to advise on the Scottish Government's funding for MOJO Scotland for 2019-20 and indicative funding allocations for 2020-21 and 2021-22. A formal grant-in-aid letter and conditions will be sent separately.

We can advise that the Scottish Government will be funding MOJO Scotland as follows:

2019-20 - £105,000

Indicative allocation for 2020-21 - £105,000 plus increase based on retail price index as at March 2020

Indicative allocation for 2021-22 – Funding provided in 2020-21 plus increase based on retail price index as at March 2021

We hope this reassures MOJO Scotland as to the value the Scottish Government places on the activities you undertake. We understand this is not as much as you were seeking, but it is what we consider to be an appropriate settlement at a time of continuing scarce public resources.

I wanted to email you to let you know once a decision was made. And as I say above, we will send an updated grant-in-aid letter very shortly to formalise these arrangements.

I hope this is helpful.

Regards

Head of Criminal Law, Practice and Licensing Unit
Criminal Justice Division
Room GW, St Andrew's House, Edinburgh
Scottish Government

Subject: FW: RE :Reply to Scottish Government letter to MOJO Scotland
Attachments: Legal Advice 20_5_19.pdf; Annex 1.pdf; Annex 2.pdf; Annex 3.pdf; Annex 4.pdf; Annex 5.pdf; Annex 6.pdf; Annex 7.pdf

From:
Sent: 28 May 2019 13:32
To:
Cc:
Subject: RE :Reply to Scottish Government letter to MOJO Scotland

Dear Xxxx

I apologise for the delay in answering your concerns.

Please find attached the information that you asked me to supply.

I am sorry that you have had to become involved in an internal governance issue and would like to give you my assurance that the Miscarriages of Justice is dealing with this matter and that we have the required governance in place.

INFORMATION REDACTED

The organisation is in the process of adopting two further Director/Trustees and voting new members onto our Management Committee to further strengthen our management structure.

We would welcome any help or advice that you wish to offer and are happy to meet with you to discuss further.

I hope this has helped in some way to allay any concerns that the Scottish Government has with regard to the conditions of the Miscarriages of Justice funding.

I would also like to give assurance the Miscarriages of Justice Organisation (Scotland) will notify you in advance of any changes to the constitution or governance structure.

If you have any further concerns or questions please do not hesitate in contacting me.

Yours Sincerely

Xxxx

From:
Sent: 21 May 2019 09:21
To:
Cc:
Subject: Scottish Government letter to MOJO Scotland

Dear xxxx

Please find attached a letter to MOJO Scotland.

We would be grateful for a response by Friday 7 June.

Regards

Head of Criminal Law, Practice and Licensing Unit
Criminal Justice Division
Room GW, St Andrew's House, Edinburgh
Scottish Government

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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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1 Overview

1.1 Miscarriages of Justice Organisation (Scotland) (“MOJO”) is a company limited by guarantee, registered with the Registrar of Companies under Company Number SC239555. It is also registered as a charity with the Office of the Scottish Charity Regulator (“OSCR”) under charity number SC033820.

1.2 MOJO is, in consequence of this structure, subject to oversight by two distinct regulators:¹

The Registrar of Companies; and
OSCR

1.3 MOJO is subject to two statutory frameworks:²

The Companies Act 2006; and
The Charities and Trustee Investment (Scotland) Act 2005

1.4 The obligations imposed on MOJO by these distinct regulatory and statutory frameworks are cumulative, not alternative. Being subject to dual regulation, it is necessary for MOJO to be fully compliant with both.

2 The MOJO Constitution

2.1 The term “constitution” is defined in statute.³ In the current context it is defined thus: “constitution in relation to a charity or other body which is a company, means its articles of association”.

2.2 The Companies Act 2006 also defines the constitution of a company as its articles of association.⁴ These may be amended, but only by resolution of the members of the company, filed with Companies House within 15 days of the passing of the resolution.⁵

2.3 No resolution amending the terms of the MOJO constitution has been passed by the members or filed with Companies House. The extant constitution of MOJO therefore remains, as a matter of law, the company’s articles of association. A copy of this document is attached at Annex 2.

2.4 It is submitted that this constitution meets the “charity test” requirements set out in the Charities and Trustee Investment (Scotland) 2005 Act at sections 7 and 8. Your attention is drawn, specifically, to clauses 3, 4 and 7 of the Memorandum.

¹ Per OSCR published guidance, “Legal Forms Factsheet” attached at Annex 1 – at page 1

² Per OSCR published guidance, “Legal Forms Factsheet” attached at Annex 1 – at page 1

³ Charities and Trustee Investment (Scotland) Act 2005, section 106

⁴ Section 17

⁵ Sections 29 and 30

3 The Replacement Constitution

- 3.1 In or around 2012 (for reasons identified below, the precise date is not material) a replacement “constitution” was drafted. A copy is attached at Annex 3. It will be referred to, hereinafter, as “the Model Constitution”.
- 3.2 The Model Constitution, whatever may have been the intention in its preparation, does not constitute the governing document of MOJO. This is because:
 - 3.2.1 To replace the articles of association as the constitution of MOJO, the Model Constitution would require to have been adopted by a resolution of the company’s members, per 2.2 and 2.3 above.
 - 3.2.2 To have effect as constituting either Rules or Bye Laws of the company, as provided for at clause 22 of the articles of association, the Model Constitution would require to have been adopted by a resolution of the Directors of the company. No such resolution has been passed, or recorded.
- 3.3 The Model Constitution, accordingly, has neither legal status nor legal effect.
- 3.4 The Model Constitution does not, in any event, meet MOJO’s compliance obligations, either to its dual regulators or in terms of its dual statutory frameworks. The principal issues in this context are:
 - 3.4.1 The document is in a form which is published by the Scottish Council for Voluntary Organisations as being, expressly, appropriate to unincorporated bodies.⁶
 - 3.4.2 It fails, at clause 1, competently to identify the company and purports to change the name of the charity, contrary to the Charities and Trustee Investment (Scotland) Act 2005 at section 11, and contrary to the Companies Act 2006 at section 77.
 - 3.4.3 It purports, at clause 4 (b) *{et seq}*, to create a “management committee” the stated functions of which are an appropriation of the functions of the charity trustees, contrary to the Charities and Trustee Investment (Scotland) Act 2005 at section 66. Your attention is drawn to the attached Annex 7 at page 7, numbered paragraph 1.
 - 3.4.4 It fails, at clause 5, to make competent provision for admission to membership of the company.

⁶ <https://scvo.org.uk/setting-up-a-charity/decide-on-structure/voluntary-or-unincorporated-association>

3.4.5 It disqualifies, at clause 29, every member of the purported management committee from membership of the management committee.

3.5 Since the purported management committee relies, for its legitimacy and its authority, on a “constitution” which itself has no legal legitimacy or authority, and since in any event all of the members of the management committee are expressly disqualified from membership, the purported management committee has no authority to act on behalf of the charity.

4 Membership and Management

4.1 As a private company limited by guarantee, the members of MOJO are its guarantors. There are two members, per the Register of Members attached at Annex 4. This is compliant with the Companies Act 2006, at section 113, and with the terms of the advice published by OSCR attached at Annex 1, at page 3.

4.2 As between themselves, for the purposes only of General Meetings of the members of the company, each of the members holds 50% of the total voting rights. In light of this the company is required, in terms of section 81 and schedule 3 of the Small Business, Enterprise and Employment Act 2015, to maintain a PSC Register. A copy of this register is attached at Annex 5.

4.3 The charity trustees, who exercise their functions in terms of the Charities and Trustee Investment (Scotland) Act 2005 at sections 66 and 106, are the directors of the company. There are currently four trustees, per the Register of Directors attached at Annex 6. The charity trustees act collectively and have parity in terms of voting rights in the administration and management of the charity’s activities. This is compliant both with the Charities and Trustee Investment (Scotland) Act 2005 and with the guidance published by OSCR as “Guidance and Good Practice for Charity Trustees”, attached at Annex 7.

4.4 One of the current directors is in process of being removed, for misconduct. The removal procedures specified in the Companies Act 2006⁷ have been followed.

4.5 Two further directors are in process of being appointed. Neither is related to any other director of the company. The charity will, accordingly, have a total of five trustees. This is compliant with the requirements specified in the company’s articles of association, and with the guidance published by OSCR attached at Annex 7, at page 7.

5 Summary/

⁷ At section 168

5 Summary

- 5.1 This paper is concerned with the question of legal compliance with the obligations imposed on MOJO by the regulatory and statutory frameworks within which it operates. Whilst its focus is on compliance as a charity, it is necessary also to consider compliance as a registered company. This is a legal obligation.
- 5.2 While the charity operated under the terms of the Model Constitution it was in breach of its compliance obligations under both charity law and company law, as identified above.
- 5.3 It has been suggested that the Model Constitution has been “ratified” by OSCR, and that this ratification renders it both effective and compliant. I have seen no record or other evidence of any such ratification, and I am unclear of the basis on which ratification was sought or, indeed, given. **Advice should be sought from OSCR as to whether, and in what circumstances, ratification of the Model Constitution was sought and/or given.** In any event, legal and regulatory compliance are obligations incumbent on MOJO. These obligations cannot be mitigated or removed by the regulator. The Model Constitution is, for the reasons identified, non-compliant.
- 5.4 The current membership and management structure of MOJO, operating under the terms of its articles of association, meet the statutory obligations placed on MOJO by both charity law and company law.
- 5.5 **Advice should be sought from OSCR as to any desirable amendments to structure, or otherwise, to bring the charity into line with current best practice.**

Legal Forms Factsheet

The table below sets out some of the key characteristics of the most common types of legal form used by Scottish charities. This comparison may help you consider which legal form is suitable for the proposed charity.

Each organisation should decide for itself which legal form suits it best. You should consider whether the key characteristics of each legal form will be suitable for your organisation's size and what it plans to do.

As a regulator, OSCR cannot offer advice on which legal form is the right choice for a particular charity. Any body considering applying for charitable status in Scotland should consider taking [advice from intermediary bodies, support organisations and/or professional advisers](#) before making an application to OSCR. [SCVO's website](#) provides advice to new organisations to help them decide on the most suitable structure for their needs.

Table of key characteristics of SCIOs and other common charitable forms

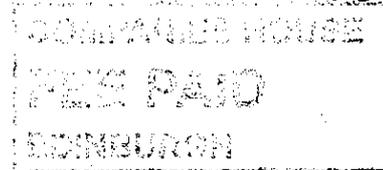
	SCIO	Unincorporated Association	Company	Trust
Regulator	Single regulator OSCR	Single regulator OSCR	Dual regulators OSCR and Companies House	Single regulator OSCR
Key legislation	Charities and Trustee Investment (Scotland) Act 2005	Charities and Trustee Investment (Scotland) Act 2005	Charities and Trustee Investment (Scotland) Act 2005 Companies Act 2006	Charities and Trustee Investment (Scotland) Act 2005 Trusts (Scotland) Act 1921
Legal status	Legal personality Can undertake transactions in its own right Title to land and buildings will be held in the name of the SCIO (advantage in terms of succession) Liability of charity trustees is limited (in most cases) providing they act lawfully Members are not liable to contribute to the assets if it is wound up	No legal personality Some or all of the charity trustees must undertake transactions on behalf of the body Title to land and buildings must be held in the name of one or more individuals on behalf of the charity The charity trustees may have personal liability for the body's actions and unlimited liability if it is wound up	Legal personality Can undertake transactions in its own right Title to land and buildings will be held in the name of the company (advantage in terms of succession) Liability of charity trustees is limited (in most cases) providing they act lawfully Liability of members is usually limited in the Articles of Association to £1	No legal personality Some or all of the charity trustees must undertake transactions on behalf of the body Title to land and buildings must be held in the name of one or more trustees (deed of assumption required to evidence new trustees) The charity trustees may have personal liability for the body's actions although there are certain protections for trustees in trust law and common law

	SCIO	Unincorporated Association	Company	Trust
Accounting requirements	<p>Charity accounting requirements</p> <p>Preparation of receipts & payments or accrued accounts depending largely on body's income level</p> <p>Discretion for charity trustees to choose to exceed minimum requirements if accrued accounts are more suited to the body's operations</p>	<p>Charity accounting requirements</p> <p>Preparation of receipts & payments or accrued accounts depending largely on body's income level</p> <p>Discretion for charity trustees to choose to exceed minimum requirements if accrued accounts are more suited to the body's operations</p>	<p>Charity and company accounting requirements</p> <p>Accrued accounts only regardless of income level</p>	<p>Charity accounting requirements</p> <p>Preparation of receipts & payments or accrued accounts depending largely on body's income level</p> <p>Discretion for charity trustees to choose to exceed minimum requirements if accrued accounts are more suited to the body's operations</p>
Extent of powers	<p>Unlimited powers in furtherance of purposes</p> <p>Subject to any restriction in the governing document</p>	<p>Unlimited powers in furtherance of purposes</p> <p>Subject to any restriction in the governing document</p>	<p>Unlimited powers in furtherance of purposes</p> <p>Subject to any restriction in the governing document</p> <p>Subject, in certain circumstances, to any restrictions in company law</p>	<p>Limited powers</p> <p>Powers set out in governing document – these vary from very restrictive to very wide</p> <p>Powers may be supplemented by those set out in trust law</p>

	SCIO	Unincorporated Association	Company	Trust
Membership	<p>Must have at least two members (who may also be charity trustees)</p> <p>May have a single-tier structure (governed by charity trustees with no additional members) or a two-tier structure (governed by charity trustees with a membership body which has certain powers or duties)</p> <p>Resolutions of members are required before certain actions can be taken</p> <p>Members are subject to some of the duties of charity trustees</p> <p>Meeting of members must be held at least every 15 months</p> <p>Membership cannot be transferred</p>	<p>Must have at least two members (who may also be charity trustees)</p> <p>May have a single-tier structure (governed by charity trustees with no additional members) or a two-tier structure (governed by charity trustees with a membership body which has certain powers or duties)</p> <p>Governing document sets out the powers that members have and how decisions may be taken</p> <p>Members are not subject to any of the duties of charity trustees</p>	<p>Must have at least one member</p> <p>May have a single-tier structure (governed by charity trustees with no additional members) or a two-tier structure (governed by charity trustees with a membership body which has certain powers or duties)</p> <p>Resolutions of members are required for certain decisions</p> <p>Members are not subject to any of the duties of charity trustees</p>	<p>Does not have a membership structure</p>
Specific duties and requirements	<p>Duty to keep registers of members and charity trustees, and to make these publicly available in certain circumstances</p> <p>Governing document must contain a number of basic elements in relation to the body's governance</p>	<p>No specific duties or requirements, other than those set out in the governing document or in policies and procedures adopted by the charity trustees</p>	<p>Wide-ranging duties and requirements set out by company law including duty to keep registers of members and directors</p>	<p>Duties as set out in the governing document</p> <p>Trustees are subject to the requirements of trust law</p>

	SCIO	Unincorporated Association	Company	Trust
Removal from the Register and dissolution	<p>Removal from the Register results in dissolution</p> <p>Dissolution by solvent or insolvent route</p> <p>Requirement for public notice of dissolution</p> <p>Option for creditors to instigate sequestration and subsequent dissolution</p> <p>No option for the body to be restored following dissolution</p>	<p>Removal from the Register does not lead to dissolution; body can continue to exist without charitable status but must use remaining charitable assets solely for charitable purposes</p> <p>Dissolution takes place in line with requirements set out in the governing document</p> <p>No requirement for public notice of dissolution (subject to any requirement set out in the governing document)</p>	<p>Removal from the Charity Register does not lead to dissolution; body can continue to exist without charitable status but must use remaining charitable assets solely for charitable purposes</p> <p>Dissolution takes place in line with constitutional requirements (normally following a resolution of the members) or at the instigation of Companies House</p> <p>Companies House dissolves the body by removing it from the Companies Register after a public notice period</p> <p>Option for creditors to instigate liquidation and subsequent dissolution</p> <p>Option for the body to be restored (through a court procedure) following dissolution to allow outstanding transactions with the body to take place</p>	<p>Removal from the Register does not lead to dissolution; body can continue to exist without charitable status but must use remaining charitable assets solely for charitable purposes</p> <p>Dissolution takes place when all trust property is expended or at the discretion of the charity trustees if their powers permit</p> <p>No requirement for public notice of dissolution</p>

239555



THE COMPANIES ACTS 1985 TO 1989

COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

MEMORANDUM OF ASSOCIATION OF



MISCARRIAGES OF JUSTICE ORGANISATION (SCOTLAND)

1. The Company's name is "MISCARRIAGES OF JUSTICE ORGANISATION (SCOTLAND)"
2. The Company's registered office is to be situated in Scotland.
3. This clause shall be interpreted as if it incorporated an over-riding qualification limiting the powers of the company such that any activity which would otherwise be permitted by the terms of the clause may be carried on only if that activity furthers a purpose which is regarded as charitable for the purposes of Section 505 of the Income and Corporation Taxes Act 1988 (including any statutory amendment or re-enactment for the time being in force). Subject to that over-riding qualification, the company's objects are:
 - (i) To promote the sound administration of human rights law including possible claims of violation of human rights in cases where the law permits the making of such claims; to promote good health and improve the conditions of life by the relief and rehabilitation of persons released from custody having been found to be the victims of a miscarriage of justice and to advance education by providing for or promoting their social integration through education and training.

In furtherance thereof, but not otherwise, the Organisation shall seek:

- (a) to assist individuals, their families and organisations in Scotland who consider they have been wrongfully convicted by providing legal advice, advocacy, casework and support in relation to appeals;
- (b) to provide centres for meetings and for giving advice, information, training and education, and for the provision of a telephone helpline; and
- (c) to establish and develop contacts between the beneficiaries and governments at local, national and international levels and between the legal profession, the probation service and any individual and organisation working within the criminal justice system.

In furtherance of the above objects but not further or otherwise the Company shall have the following powers:

- (ii)
 - (a) Subject to such consents as may be required by law, to borrow and raise money for the furtherance of the objects of the Company in such manner and on such security as the Company may think fit.
 - (b) To raise funds and to invite and receive contributions from any person or persons whatsoever by way of subscription, donation or otherwise provided that this shall be without prejudice to the ability of the Company to disclaim any gift, legacy or bequest in whole or in part in such circumstances as the Company may think fit and provided also that the Company

shall not undertake any permanent trading activities in raising funds for the above mentioned charitable objects.

(c) To hold, sponsor, arrange or organise meetings, conferences, lectures, seminars, film shows, appeals and educational classes and talks in the furtherance of the purposes of the company and to organise, manage, present, produce, and support, exhibitions, workshops, press conferences, trade fairs, festivals, advertising campaigns, promotions, displays and to assist in advising any person, corporation or organisation in relation thereto and to advertise and adopt such means as may seem expedient to promote the aims and services of the company.

(d) To make grants or loans (with or without security) to any other charitable body or charitable purpose and to grant guarantees or contracts of indemnity on behalf of any such charitable body or charitable purpose.

(e) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, and other negotiable, transferable, or mercantile instruments.

(f) To subscribe for either absolutely or conditionally or otherwise acquire and hold shares, stocks, debentures, debenture stock or other securities or obligations of any other company.

(g) To invest the moneys of the Company not immediately required for the furtherance of its objects in or upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law.

(h) To act as agents in the channelling of funds, grants and any other monies available from any source.

(i) To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property and any rights or privileges and to construct, maintain and alter any buildings or erections and to purchase or otherwise acquire plant, machinery, furniture, fixtures, fittings, equipment, and all other effects of every description necessary or convenient or usually or normally used in connection with or for the purposes of all or any of the objects of the company.

(j) Subject to such consents as may be required by law, to sell, let, mortgage, dispose of or turn to account all or any of the property or assets of the Company with a view to the furtherance of its objects.

(k) Subject to Clause 4 hereof to employ and pay such architects, surveyors, solicitors and other professional persons, workmen, clerks and other staff as are necessary for the furtherance of the objects of the Company.

(l) To insure the Company, its property and assets against such risks as the Directors shall consider it prudent and necessary to insure against.

(m) To make all reasonable and necessary provision for the payment of pensions and superannuation to or on behalf of employees and their widows and other dependants.

(n) To make payments towards insurance for any Director, officer or Auditor against any liability as is referred to in Section 310(1) of the Companies Act 1985.

(o) To establish, finance and manage in the United Kingdom any body, association or organisation (whether unincorporated or incorporated) including any subsidiary company to carry out the objects of the company.

(p) To make any charitable donation either in cash or assets in furtherance of the primary objects of the Company

(q) To subscribe to, become a member of, or amalgamate or co-operate with any other charitable organisation, institution, society or body not formed or established for purposes of profit (whether incorporated or not and whether in Great Britain or Northern Ireland) whose objects are wholly or in part similar to those of the Company and which by its constitution prohibits the distribution of its income and property amongst its members to an extent at least as great as is imposed on the Company under or by virtue of Clause 4 hereof and to purchase or otherwise acquire and undertake all such part of the property, assets, liabilities and engagements as may lawfully be acquired or undertaken by the Company of any such charitable organisation, institution, society or body.

(r) To establish and support or aid the establishment and support of any charitable trusts, associations or institutions and to subscribe or guarantee money for charitable purposes in any way connected with or calculated to further any of the objects of the Company.

(s) To do all or any of the things hereinbefore authorised either alone or in conjunction with any other charitable organisation, institution, society or body with which the Company is authorised to amalgamate.

(t) To purchase or otherwise acquire and undertake all or any of the property, assets, liabilities and engagements of one or more of the associations, foundations, institutions, companies, societies, or bodies with which the Company is authorised to co-operate or federate.

(u) To sell or otherwise dispose of the whole or any part of the property, undertaking and assets of the Company to any such persons or company with charitable objects.

(v) To enter into any arrangement with any government or authorities (supreme, municipal, local or otherwise) or any corporations, companies or persons that may seem conducive to the attainment of the Companies objects or any of them.

(w) To undertake any charitable activity which directly or indirectly promotes any of the objects of the Company, including acting as trustees thereof.

(x) To do all such other lawful things as are necessary for the attainment of the above objects or any of them.

Provided that:-

(a) In case the Company shall take or hold any property which may be subject to any trusts, the Company shall only deal with or invest the same in such manner as allowed by law, having regard to such trusts.

(b) The objects of the Company shall not extend to the regulation of relations between workers and employers or organisations of workers and organisations of employers.

4. The income and property of the Company shall be applied solely towards the promotion of its objects as set forth in this Memorandum of Association and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit, to members of the Company.

5. The liability of the members is limited.

6. Every member of the Company undertakes to contribute such amount as may be required (not exceeding £1) to the Company's assets if it should be wound up while he is a member, or within one year after he ceases to be a member, for payment of the Company's debts and liabilities contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

7. If upon the winding-up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Company, but shall be given or transferred to some other charitable institution or institutions having objects similar to the objects of the Company, and which shall prohibit the distribution of its or their income and property to an extent at least as great as is imposed on the Company under or by virtue of Clause 4 hereof, such institution or institutions to be determined by the members of the Company at or before the time of dissolution, and if and so far as effect cannot be given to such provision, then to some other charitable object.

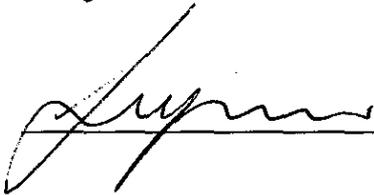
WE, the subscribers to this Memorandum of Association, wish to be formed into a Company pursuant to this Memorandum.

Names and addresses of Subscribers

Lorri McLean
29 (2F1) Browham Street
Edinburgh
EH3 9JP



Fatima Uygun
02/9 Albert Avenue
Queens Park
Glasgow

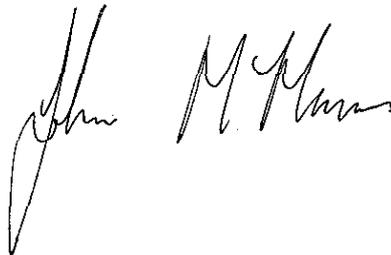


Dated this 15th day of October 2002

Witness to the above signatures

John McManus
Flat 186
145 Shawhill Road
Pollockshaws
Glasgow

Journalist



THE COMPANIES ACTS 1985 TO 1989

COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL

239555

ARTICLES OF ASSOCIATION OF

MISCARRIAGES OF JUSTICE ORGANISATION (SCOTLAND)

PRELIMINARY

1. (a) The regulations contained in Table A in the Schedule to the Companies (Tables A to F) Regulations 1985 (SI 1985 No. 805) as amended by the Companies (Tables A to F) (Amendment) Regulations 1985 (SI 1985 No. 1052) (such Table being hereinafter called "Table A") shall apply to the Company save in so far as they are excluded or varied hereby and such regulations (save as so excluded or varied) and the Articles hereinafter contained shall be the Regulations of the Company.

(b) In these Articles the expression "the Act" means the Companies Act 1985 but so that any reference in these Articles to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of that provision for the time being in force.

(c) Regulations 2 to 35 inclusive, 40, 41, 54, 55, 57, 59, 64, 82, 94 to 97, 101, 102 to 108 inclusive, 110, 114, 116 to 118 of Table A shall not apply to the Company.

(d) In Regulation 1 of Table A the definition of "the holder" shall be omitted.

MEMBERS

2. The subscribers to the Memorandum of Association of the Company and such other persons as are admitted to membership in accordance with the Articles shall be Members of the Company. No person shall be admitted a Member of the Company unless he is approved by the Directors. Every person who wishes to become a Member shall deliver to the Company an application for membership in such form as the Directors require executed by him.
3. Subject to the provisions of any Rules or Bye Laws made pursuant to these Articles a Member may at any time withdraw from the Company by giving at least seven clear days' notice to the Company. Membership shall not be transferable and shall cease on death.

NOTICE OF GENERAL MEETING

4. In Regulation 38 of Table A:-

(a) In paragraph (b) the words "of the total voting rights at the meeting of all the Members" shall be substituted for "in nominal value of the shares giving that right" and

(b) The words "The notice shall be given to all the Members and to the Directors and Auditors" shall be substituted for the last sentence.

(c) The following shall be added after the words "shall specify the meeting as such":-
"Provided that the notice shall contain particulars of any Directors who are to retire by rotation or otherwise at the meeting and of any persons who are to be proposed for appointment or re-appointment as Directors at the meeting".

PROCEEDINGS AT GENERAL MEETINGS

5. (a) If a quorum is not present within half an hour from the time appointed for a meeting, or if during a meeting such a quorum ceases to be present, the meeting if convened on the requisition of members shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Directors may determine.

(b) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. One person entitled to vote on the business to be transacted, being a member or proxy for a member or a duly authorised representative of a corporation, shall be the quorum.

6. The words "and at any separate meeting of the holders of any class of shares in the Company" shall be omitted from Regulation 44 of Table A.

7. Regulation 45 of Table A the second and third sentences shall be omitted and the following words substituted therefor:-

"When a meeting is adjourned for twenty-one days or more at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting. The provisions of Regulation 38 of Table A (as amended by these Articles) with respect to the notice to be given of the business to be conducted at a meeting shall apply to such notice of an adjourned meeting. Save as aforesaid it shall not be necessary to give any notice of an adjourned meeting".

8. In Regulation 46 of Table A :-

(a) paragraph (b) the words "a member" shall be substituted for "at least two members" and

(b) paragraph (d) shall be omitted.

VOTES OF MEMBERS

9. On a show of hands every Member present in person shall have one vote. On a poll every Member present in person or by proxy shall have one vote.

APPOINTMENT OF DIRECTORS

10. The maximum number and minimum number respectively of the Directors may be determined from time to time by ordinary resolution. Subject to and in default of any such determination there shall be no maximum number of Directors and the minimum number of Directors shall be two.

11. Regulations 65 to 69 inclusive of Table (alternate Directors) shall not apply to the Company. The clauses of Table A which apply to the Company shall be construed as if reference to alternate Directors were omitted therefrom.
12. Regulation 73 of Table A shall be amended by the addition thereto of the following:-

"Provided however that in the event of default in holding the first or any subsequent annual general meeting the Directors who were due to retire from office at such meeting shall continue in office until such meeting is duly held, when the provisions of these Articles with respect to retirement shall take effect as if such meeting had taken place timeously".
13. (a) The words "stating the particulars which would, if he were so appointed or re-appointed, to be required to be included in the Company's register of directors" shall be omitted from Regulation 76 of Table A.

(b) The second sentence of Regulation 77 of Table A shall be omitted.

DIRECTORS' EXPENSES

14. The words "of any class of shares or" shall be omitted from Regulation 83 of Table A.

DIRECTORS' GRATUITIES AND PENSIONS

15. The words "or with any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary" shall be omitted from Regulation 87 of Table A.

PROCEEDINGS OF DIRECTORS

16. A Director may vote at any meeting of the Directors or of any Committee of the Directors on any resolution notwithstanding that it in any way concerns or relates to a matter in which he has directly or indirectly any kind of interest whatsoever and if he shall vote on any such resolution as aforesaid his vote shall be counted; and in relation to any such resolution as aforesaid he shall (whether or not he shall vote on the same) be taken into account in calculating the quorum present at the meeting, PROVIDED THAT a Director shall not vote on either his conditions of service, or on the emoluments attaching thereto.

MINUTES

17. The words "of the holders of any class of shares in the Company" shall be omitted from Regulation 100 of Table A.

NOTICES

18. The second sentence of Regulation 112 of Table A shall be omitted.
19. The words "or of the holders of any class of shares in the Company" shall be omitted from Regulation 113 of Table A.

THE SEAL

20. If the Company has a seal the Directors shall provide for its safe custody and it shall only be used with the authority of the Directors or a committee of Directors. The Directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a Director and by the Secretary or a second Director. The obligation under Regulation 6 of Table A relating to the sealing of membership certificates shall apply only if the Company has a seal.

INDEMNITY

21. (a) Every Director or other officer of the Company shall be indemnified out of the assets of the Company against all losses or liabilities which he may sustain or incur in or about the execution of the duties of his office or otherwise in relation thereto including any liability incurred by him in defending any proceedings whether civil or criminal in which judgement is given in his favour or in which he is acquitted or in connection with any application under Section 727 of the Act in which relief is granted to him by the Court from liability for negligence, default, breach of duty or breach of trust in relation to the affairs of the company and no Director or other officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his office or in relation thereto. But this Article shall only have effect in so far as its provisions are not avoided by Section 310 of the Act.
- (b) The Directors shall have power to purchase and maintain for any Director, officer or Auditor of the Company insurance against any such liability as is referred to in Section 310(1) of the Act.

RULES OR BYE LAWS

22. The Directors may from time to time make such Rules or Bye Laws as they may deem necessary or expedient or convenient for the proper conduct and management of the Company and for the purposes of prescribing the classes of and conditions of membership, and in particular but without prejudice to the generality of the foregoing, they shall by such Rules or Bye Laws regulate:-
- (i) The admission and classification of Members of the Company, and the rights and privileges of such Members, and the conditions of membership and the terms on which Members may resign or have their membership terminated and the entrance fees, subscriptions and other fees or payments to be made by Members.
- (ii) The conduct of Members of the Company in relation to one another, and to the Company's servants.
- (iii) The setting aside of the whole or any part or parts of the Company's premises at any particular time or times or for any particular purpose or purposes.
- (iv) The procedure at General Meetings and meetings of the Directors and Committees of the Company in so far as such procedure is not regulated by these presents.
- (v) Generally, all such matters as are commonly the subject matter of similar Companies Rules or Bye Laws.

The Company in General Meeting shall have power to alter or repeal the Rules or Bye Laws and to make additions thereto and the Directors shall adopt such means as they deem sufficient to bring to the notice of Members of the Company all such Rules or Bye Laws, which so long as they shall be in force, shall be binding on all Members of the Company. Provided, nevertheless, that no Rule or Bye

Law shall be inconsistent with, or shall affect or repeal anything contained in, the Memorandum or Articles of Association of the Company.

COMPANY NOT FORMED FOR PROFIT

23. (a) Clauses 4 and 7 of the Memorandum of Association relating to the income and property of the Company and to the winding up and dissolution of the Company shall have effect as if the provisions thereof were repeated in these Articles.
- (b) Nothing herein shall prevent any payment in good faith by the Company:-
- (i) Of reasonable and proper remuneration to any member, officer or employee of the Company for any services rendered to the Company;
 - (ii) Of reasonable and proper consideration for the purchase by the Company of any property, asset or interest therein from any member, officer or employee of the Company;
 - (iii) Of interest on money lent by any member, officer or employee of the Company at a reasonable and proper rate per annum;
 - (iv) Of reasonable and proper rent or other periodic payment for property let or occupied by the Company to any member, officer or employee of the Company, or
 - (v) To any officer of reasonable out-of-pocket expenses.

- a) To provide advocacy for individuals who have suffered miscarriage of justice.
- b) To provide support to individuals who have suffered miscarriage of justice.
- b) To highlight the plight of those who have suffered a miscarriage of justice.

Powers

3. In pursuance of the objects set out in clause 2 (but not otherwise), the association shall have the following powers:-
 - (a) provision of advocacy, support and awareness raising activities
 - (b) To carry on any other activities which further any of the above objects.
 - (c) To purchase, take on lease, hire, or otherwise acquire, any property or rights which are suitable for the association's activities.
 - (d) To improve, manage, develop, or otherwise deal with, all or any part of the property and rights of the association.
 - (e) To sell, let, hire out, license, or otherwise dispose of, all or any part of the property and rights of the association.
 - (f) To borrow money, and to give security in support of any such borrowings by the association.
 - (g) To employ such staff as are considered appropriate for the proper conduct of the association's activities, and to make reasonable provision for the payment of pension and/or other benefits for members of staff, ex-members of staff and their dependants.
 - (h) To engage such consultants and advisers as are considered appropriate from time to time.
 - (i) To effect insurance of all kinds (which may include officers' liability insurance).
 - (j) To invest any funds which are not immediately required for the association's activities in such investments as may be considered appropriate (and to dispose of, and vary, such investments).
 - (k) To liaise with other voluntary sector bodies, local authorities, UK or Scottish government departments and agencies, and other bodies, all with a view to furthering the association's objects.
 - (l) To establish and/or support any other charity, and to make donations for any charitable purpose falling within the association's objects.
 - (m) To form any company which is a charity with similar objects to those of the association, and, if considered appropriate, to transfer to any such company (without any payment being required from the company) the whole or any part of the association's assets and undertaking.

- (n) To take such steps as may be deemed appropriate for the purpose of raising funds for the association's activities.
- (o) To accept grants, donations and legacies of all kinds (and to accept any reasonable conditions attaching to them).
- (p) To do anything which may be incidental or conducive to the furtherance of any of the association's objects.

General structure

- 4. The structure of the association shall consist of:-
 - (a) the MEMBERS - who have the right to attend the annual general meeting (and any special general meeting) and have important powers under the constitution; in particular, the members elect people to serve on the management committee and take decisions in relation to changes to the constitution itself
 - (b) the MANAGEMENT COMMITTEE - who hold regular meetings during the period between annual general meetings, and generally control and supervise the activities of the association; in particular, the management committee is responsible for monitoring the financial position of the association.
 - (c) *the MANAGEMENT COMMITTEE will be formed as a Collective Body responsible for upholding the constitution and everyday running of MOJO*

Qualifications for membership

- 5. Membership shall be open to individuals who have an interest in assisting the Group to achieve its aim and are willing to adhere to the rules of the Group, and who possess a skill related to an area of work associated with the general aims and objectives of the association. EG, Legal, Medical, Educational etc. Management Committee members will be proactive in furthering the aims and objectives of the association and to this end will be tasked with work to further the aims and objectives of the association as deemed appropriate
- 6. An employee shall be eligible for membership but will not be eligible to act as an office bearer of the Association.

Application for membership

- 7. Any person who wishes to become a member must sign, and lodge with the association, a written application for membership.
- 8. The management committee may, at its discretion, refuse to admit any person to membership.
- 9. The management committee shall consider each application for membership at the first management committee meeting which is held after receipt of the application; the management committee shall, within a reasonable time after the meeting, notify the applicant of its decision on the application.

Membership subscription

10. No membership subscription shall be payable.

Register of members

11. The management committee shall maintain a register of members, setting out the full name and address of each member, the date on which s/he was admitted to membership, and the date on which any person ceased to be a member.

Withdrawal from membership

12. Any person who wishes to withdraw from membership shall sign, and lodge with the association, a written notice to that effect; on receipt of the notice by the association, s/he shall cease to be a member.

Expulsion from membership

13. Any person may be expelled from membership by way of a resolution passed by majority vote at a general meeting (meeting of members), providing the following procedures have been observed:-
 - (a) at least 21 days' notice of the intention to propose the resolution must be given to the member concerned, specifying the grounds for the proposed expulsion
 - (b) the member concerned shall be entitled to be heard on the resolution at the general meeting at which the resolution is proposed.

General meetings (meetings of members)

14. The management committee shall convene an annual general meeting in each year (but excluding the year in which the association is formed); not more than 15 months shall elapse between one annual general meeting and the next.
15. The business of each annual general meeting shall include:-
 - (a) a report by the chair on the activities of the association
 - (b) consideration of the annual accounts of the association
 - (c) the election/re-election of members of the management committee, as referred to in clause 30.
16. The management committee may convene a special general meeting at any time.

Notice of general meetings

17. At least 14 clear days' notice must be given (in accordance with clause 63) of any annual general meeting or special general meeting; the notice must indicate the general nature of any business to be dealt with at the

meeting and, in the case of a resolution to alter the constitution, must set out the terms of the proposed alteration.

18. The reference to “clear days” in clause 17 shall be taken to mean that, in calculating the period of notice, the day after the notice is posted, and also the day of the meeting, should be excluded.
19. Notice of every general meeting shall be given (in accordance with clause 63) to all the members of the association, and to all the members of the management committee.

Procedure at general meetings

20. No business shall be dealt with at any general meeting unless a quorum is present; the quorum for a general meeting shall be one third of the membership plus one. Members may attend in person or by use of an electronic device or telephone.
21. If a quorum is not present within 15 minutes after the time at which a general meeting was due to commence - or if, during a meeting, a quorum ceases to be present - the meeting shall stand adjourned to such time and place as may be fixed by the chairperson of the meeting.
22. The chair of the association shall (if present and willing to act as chairperson) preside as chairperson of each general meeting; if the chair is not present and willing to act as chairperson within 15 minutes after the time at which the meeting was due to commence, the members of the management committee present at the meeting shall elect from among themselves the person who will act as chairperson of that meeting.
23. The chairperson of a general meeting may, with the consent of the meeting, adjourn the meeting to such time and place as the chairperson may determine.
24. Every member shall have one vote, which (whether on a show of hands or on a secret ballot) must be given personally.
25. The association will endeavour to operate on a collective basis, but where a vote is deemed necessary, issues will be decided by a majority vote. The Chairperson shall have no casting vote.
26. A resolution put to the vote at a general meeting shall be decided on a show of hands unless a secret ballot is demanded by the chairperson (or by at least two members present in person at the meeting); a secret ballot may be demanded either before the show of hands takes place, or immediately after the result of the show of hands is declared.

The association will endeavour to operate on a collective basis, but where a vote is deemed necessary, issues will be decided by a majority vote. The Chairperson shall have no casting vote.

27. If a secret ballot is demanded, it shall be taken at the meeting and shall be conducted in such a manner as the chairperson may direct; the result

of the ballot shall be declared at the meeting at which the ballot was demanded.

Maximum number of management committee members

28. The maximum number of members of the management committee shall be 11.

Eligibility

29. A person shall not be eligible for election/appointment to the management committee unless he/she is a member of the association.

Election, re-trial, re-election

30. At each annual general meeting, the members may (subject to clause 28) elect any member to be a member of the management committee.
31. The management committee may at any time appoint any member to be a member of the management committee (subject to clause 28).
32. At each annual general meeting, all of the members of the management committee shall retire from office - but shall then be eligible for re-election.

Termination of office

33. A member of the management committee shall automatically vacate office if:-
- (a) he/she becomes debarred under any statutory provision from being a charity trustee
 - (b) he/she becomes incapable for medical reasons of fulfilling the duties of his/her office and such incapacity is expected to continue for a period of more than six months
 - (c) he/she ceases to be a member of the association
 - (d) he/she resigns office by notice to the association
 - (e) he/she is absent (without permission of the management committee) from more than three consecutive meetings of the management committee, and the management committee resolve to remove him/her from office.

Register of management committee members

34. The management committee shall maintain a register of management committee members, setting out the full name and address of each member of the management committee, the date on which each such person became a management committee member, and the date on which any person ceased to hold office as a management committee member.

Office bearers

35. The management committee members shall elect from among themselves a chair, a treasurer and a secretary, and such other office bearers (if any) as they consider appropriate.

(a) **Role of Office Bearers.**

In the principal of collective working the responsibilities and rights of office bearers shall be limited to the following.

Chairperson:

- 1) To ensure meetings are properly facilitated.
- 2) Passing on information regarding legal and statutory requirements.
- 3) Bringing matters of constitutional interest to the attention of the association.

Secretary:

- 1) Maintaining a register of members
- 2) Ensuring minutes of meetings are taken, kept, and made available where appropriate.
- 3) Calling the AGM, EGM, and all general meetings of the association.

Treasurer:

- 1) Ensuring bills are paid.
- 2) Monitoring accounting procedures and informing the association of relevant financial information.
- 3) Ensuring the accounts are audited annually.

36. All of the office bearers shall cease to hold office at the conclusion of each annual general meeting, but shall then be eligible for re-election.

37. A person elected to any office shall cease to hold that office if he/she ceases to be a member of the management committee or if he/she resigns from that office by written notice to that effect.

Powers of management committee

38. Except as otherwise provided in this constitution, the association and its assets and undertaking shall be managed by the management committee, who may exercise all the powers of the association.

39. A meeting of the management committee at which a quorum is present may exercise all powers exercisable by the management committee.

Personal interests

40. A member of the management committee who has a personal interest in any transaction or other arrangement which the association is proposing to enter into, must declare that interest at a meeting of the management committee; he/she will be debarred (in terms of clause 52) from voting on the question of whether or not the association should enter into that arrangement.
41. For the purposes of clause 40, a person shall be deemed to have a personal interest in an arrangement if any partner or other close relative of his/hers **or** any firm of which he/she is a partner **or** any limited company of which he/she is a substantial shareholder or director, has a personal interest in that arrangement.
42. Provided
 - (a) he/she has declared his/her interest
 - (b) he/she has not voted on the question of whether or not the association should enter into the relevant arrangement and
 - (c) the requirements of clause 44 are complied with,a member of the management committee will not be debarred from entering into an arrangement with the association in which he/she has a personal interest (or is deemed to have a personal interest under clause 41) and may retain any personal benefit which he/she gains from his/her participation in that arrangement.
43. Where a management committee member provides services to the association or might benefit from any remuneration paid to a connected party for such services, then
 - (a) the maximum amount of the remuneration must be specified in a written agreement and must be reasonable
 - (b) the management committee members must be satisfied that it would be in the interests of the association to enter into the arrangement (taking account of that maximum amount)
 - (c) less than half of the management committee members must be receiving remuneration from the association (or benefit from remuneration of that nature).
44. The members of the management committee may be paid all travelling and other expenses reasonably incurred by them in connection with their attendance at meetings of the management committee, general meetings, or meetings of committees, or otherwise in connection with the carrying-out of their duties.

Procedure at management committee meetings

45. Any member of the management committee may call a meeting of the management committee or request the secretary to call a meeting of the management committee.
46. Questions arising at a meeting of the management committee shall be decided by a majority of votes; if an equality of votes arises, the chairperson of the meeting shall have a casting vote.
47. No business shall be dealt with at a meeting of the management committee unless a quorum is present; the quorum for meetings of the management committee shall be on third of members plus one.
48. If at any time the number of management committee members in office falls below the number fixed as the quorum, the remaining management committee member(s) may act only for the purpose of filling vacancies or of calling a general meeting.
49. Unless he/she is unwilling to do so, the chair of the association shall preside as chairperson at every management committee meeting at which he/she is present; if the chair is unwilling to act as chairperson or is not present within 15 minutes after the time when the meeting was due to commence, the management committee members present shall elect from among themselves the person who will act as chairperson of the meeting.
50. The management committee may, at its discretion, allow any person who they reasonably consider appropriate, to attend and speak at any meeting of the management committee; for the avoidance of doubt, any such person who is invited to attend a management committee meeting shall not be entitled to vote.
51. A management committee member shall not vote at a management committee meeting (or at a meeting of a committee) on any resolution concerning a matter in which he/she has a personal interest which conflicts (or may conflict) with the interests of the association; he/she must withdraw from the meeting while an item of that nature is being dealt with.
52. For the purposes of clause 52, a person shall be deemed to have a personal interest in a particular matter if any partner or other close relative of his/hers **or** any firm of which he/she is a partner **or** any limited company of which he/she is a substantial shareholder or director, has a personal interest in that matter.

Conduct of members of the management committee

53. Each of the members of the management committee shall, in exercising his/her functions as a member of the management committee of the association, act in the interests of the association; and, in particular, must

- (a) seek, in good faith, to ensure that the association acts in a manner which is in accordance with its objects (as set out in this constitution)
- (b) act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person
- (c) in circumstances giving rise to the possibility of a conflict of interest of interest between the association and any other party
 - (i) put the interests of the association before that of the other party, in taking decisions as a member of the management committee
 - (ii) where any other duty prevents him/her from doing so, disclose the conflicting interest to the association and refrain from participating in any discussions or decisions involving the other members of the management committee with regard to the matter in question
- (d) ensure that the association complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.

Delegation to sub-committees

- 54. The management committee may delegate any of their powers to any sub-committee consisting of one or more management committee members and such other persons (if any) as the management committee may determine; they may also delegate to the chair of the association (or the holder of any other post) such of their powers as they may consider appropriate.
- 55. Any delegation of powers under clause 55 may be made subject to such conditions as the management committee may impose and may be revoked or altered.
- 56. The rules of procedure for any sub-committee shall be as prescribed by the management committee.

Operation of accounts and holding of property

- 57. The signatures of two out of three signatories appointed by the management committee shall be required in relation to all operations (other than lodgement of funds) on the bank and building society accounts held by the association; at least one out of the two signatures must be the signature of a member of the management committee.
- 58. The title to all property (including any land or buildings, the tenant's interest under any lease and (so far as appropriate) any investments) shall be held either in the names of the chair, treasurer and secretary of the association (and their successors in office) or in name of a nominee company holding such property in trust for the association; any person or body in whose name the association's property is held shall act in accordance with the directions issued from time to time by the management committee.

Minutes

59. The management committee shall ensure that minutes are made of all proceedings at general meetings, management committee meetings and meetings of committees; a minute of any meeting shall include the names of those present, and (as far as possible) shall be signed by the chairperson of the meeting.

Accounting records and annual accounts

60. The management committee shall ensure that proper accounting records are maintained in accordance with all applicable statutory requirements.
61. The management committee shall prepare annual accounts, complying with all relevant statutory requirements; if an audit is required under any statutory provisions or if they otherwise think fit, they shall ensure that an audit of such accounts is carried out by a qualified auditor.

Notices

62. Any notice which requires to be given to a member under this constitution shall be in writing; such a notice may either be given personally to the member or be sent by post in a pre-paid envelope addressed to the member at the address last intimated by him/her to the association.

Dissolution

63. If the management committee determines that it is necessary or appropriate that the association be dissolved, it shall convene a meeting of the members; not less than 21 days' notice of the meeting (stating the terms of the proposed resolution) shall be given.
64. If a proposal by the management committee to dissolve the association is confirmed by a two-thirds majority of those present and voting at the general meeting convened under clause 64, the management committee shall have power to dispose of any assets held by or on behalf of the association - and any assets remaining after satisfaction of the debts and liabilities of the association shall be transferred to some other charity or charities having objects similar to those of the association; the identity of the body or bodies to which such assets are transferred shall be determined by the members of the association at, or prior to, the time of dissolution.
65. For the avoidance of doubt, no part of the income or property of the association shall (otherwise than in pursuance of the association's charitable purposes) be paid or transferred (directly or indirectly) to the members, either in the course of the association's existence or on dissolution.

Alterations to the constitution

66. Subject to clause 68, the constitution may be altered by a resolution passed by not less than two-thirds of those present and voting at a general meeting, providing due notice of the meeting, and of the resolution, is given in accordance with clauses 17, 18 and 19.

67. No amendment to clauses 3, 43, 65 or 66 of the constitution may be made if the effect would be that the association would cease to be a charity.

Interpretation

68. For the purposes of this constitution,
- (a) the expression “charity” shall mean a body which is either a “Scottish charity” within the meaning of section 13 of the Charities and Trustee Investment (Scotland) Act 2005 or a “charity” within the meaning of section 96 of the Charities Act 1993
 - (b) the expression “charitable purpose” shall mean a charitable purpose under section 7 of the Charities and Trustee Investment (Scotland) Act 2005 which is also regarded as a charitable purpose in relation to the application of the Taxes Acts;
69. Any reference in this constitution to a provision of any legislation shall include any statutory modification or re-enactment of that provision in force from time to time.

Initial members of the management committee

70. The initial members of the management committee, and the positions held by each, shall be as set out below.

This constitution was adopted on []

Signature	Name	Address	Position
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MISCARRIAGES OF JUSTICE ORGANISATION (SCOTLAND)

Private Company Limited by Guarantee
Incorporated in Scotland 13th November 2002

Company Number: SC239555

Register of Members

Name	Address	Date Commenced	Date Terminated	Guarantee
Lorri McLean (subscriber)	29 Browham Street Edinburgh EH3 9JP	13/11/2002	13/11/2002	£1.00
Fatima Uygun (subscriber)	02/9 Albert Avenue Queens Park Glasgow	13/11/2002	13/11/2002	£1.00
Patrick Joseph Hill	Flat 2 9 Grosvenor Road Muswell Hill London N10 2DR	13/11/2002	27/1/2003	£1.00
Tara Babel	6 Lincluden Path Pollokshields Glasgow G41 1HA	13/11/2002	27/1/2003	£1.00
Patrick Joseph Hill	Washingstone Lugton Beith KA15 2LL	27/1/2003		£1.00
Tara Babel	Washingstone Lugton Beith KA15 2LL	27/1/2003		£1.00

MISCARRIAGES OF JUSTICE ORGANISATION (SCOTLAND)

Private Company Limited by Guarantee
Incorporated in Scotland 13th November 2002

Company Number: SC239555

PSC Register

1	Name:	Patrick Joseph Hill
	Date of Birth:	20 December 1944
	Nationality:	Irish
	Country of Residence:	Scotland
	Service Address:	121-127 Saltmarket Glasgow G1 5LF
	Usual Residential Address:	Washingstone Lugton Ayrshire KA15 2LL
	Date Became PSC:	13 November 2002
	Date Entered into PSC Register:	11 April 2019
	Control Conditions Met:	Holds between 25% and 50% of voting rights
	Voting Rights Held:	50%

2	Name:	Tara Babel Hill (formerly Tara Babel)
	Date of Birth:	25 February 1960
	Nationality:	Irish
	Country of Residence:	Scotland
	Service Address:	121-127 Saltmarket Glasgow G1 5LF
	Usual Residential Address:	Washingstone Lugton Ayrshire KA15 2LL
	Date Became PSC:	13 November 2002
	Date Entered into PSC Register:	11 April 2019
	Control Conditions Met:	Holds between 25% and 50% of voting rights
	Voting Rights Held:	50%

MISCARRIAGES OF JUSTICE ORGANISATION (SCOTLAND)

Private Company Limited by Guarantee
Incorporated in Scotland 13th November 2002

Company Number: SC239555

Register of Directors

1	Name:	Patrick Joseph Hill
	Date of Birth:	20 December 1944
	Nationality:	Irish
	Country of Residence:	Scotland
	Service Address:	121-127 Saltmarket Glasgow G1 5LF
	Date of Appointment:	13 November 2002
	Date of Termination:	
	Occupation:	Campaigner
2	Name:	Willie Rennie
	Date of Birth:	27 September 1967
	Nationality:	British
	Country of Residence:	Scotland
	Service Address:	121-127 Saltmarket Glasgow G1 5LF
	Date of Appointment:	28 November 2011
	Date of Termination:	
	Occupation:	Politician



GUIDANCE AND GOOD PRACTICE

for Charity Trustees

OSCR
Scottish Charity Regulator

June 2016
Scottish Charity Regulator

We have updated our guidance to reflect the practical experience of many Scottish charities. The law and charity trustees duties have not changed. What we are trying to do is set out in a more straightforward way what charity trustees must consider, so that they meet legal requirements, ensure that their charities are well-run, and avoid some of the common problems that can arise.

CHARITY TRUSTEE GUIDANCE

Charity Trustee Duties





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INTRODUCTION

SUMMARY

Charities make a big difference in all aspects of our society. Achieving this requires the hard work and commitment of thousands of [charity trustees](#) who give their time and energy to Scotland's charities.

Charity trustees are the people who have general control and management of the [charity](#) and are responsible for making sure that the charity works to achieve its [charity's purposes](#) (the reasons the charity exists).

The role of a charity trustee is extremely important and can be very rewarding. It is important for both you and your charity, that you know what your responsibilities are, and understand what you are expected to do. This guidance will help you do this.

What this guidance covers

The charity trustee duties are set out in [The Charities and Trustee Investment \(Scotland\) Act 2005](#), referred to in this guidance as the **2005 Act**. We, the [Scottish Charity Regulator](#), are responsible for regulating charities registered in Scotland and their charity trustees. This guidance explains what the 2005 Act says charity trustees must do or must not do.

The guidance does not cover all the laws that might be applicable to your charity. It covers the legal duties of charity trustees set out in the 2005 Act, with good practice recommendations and links to sources of advice.

As charities come in all different shapes and sizes, not everything in this guidance will apply to all charities registered in Scotland. In addition, many charities have to comply with other legislation and regulation, for example, charitable companies must also comply with [company law](#).

Who is the guidance for?

This guidance is for:

- Anyone who is a trustee of a charity registered in Scotland.
- Anyone thinking of becoming a charity trustee.
- People working with, or advising, charity trustees.

How to use the guidance

In this guidance, we explore the [general duties](#) and [specific duties](#) of charity trustees in the 2005 Act. We give you examples of how these might work and share good practice from our experience as Regulator and from organisations in the charity sector.

Legal requirements are something that the law says you **must do** and are highlighted by the ‘Legal Duty’ icon:



LEGAL DUTY

Good practice is not required by law but is something you **could do** to help to make sure that your charity is doing its best to comply. What is good practice for your charity might depend on the size or type of charity you are. In this guidance, we try to give examples of good practice that will be applicable to many Scottish charities. Examples of good practice are highlighted with the ‘Good Practice’ icon:



GOOD PRACTICE

The **[glossary](#)** provides you with further information, definitions and descriptions of some key terms. We have highlighted these key terms in **bold purple type**. Clicking on these terms will take you straight to the glossary or the relevant section of the guidance.

The guidance is split into sections to help you find the information most relevant to you and your charity.

MORE DETAIL

Who are the charity trustees?

The people in charge of a charity and responsible for controlling its management and administration are its ‘charity trustees’. You may call yourselves a committee, a board, Directors or something less formal but the 2005 Act says you are the charity’s trustees and have legal responsibilities.

Charity trustees are the people who control and manage a charity. They are responsible for complying with the law.

There is no minimum age for charity trustees stated in the 2005 Act; however, we would expect charity trustees to be over the age of 16. If any charity trustees are under the age of 16, it would be best to get professional advice to determine if this is suitable and if there are any legal implications. Some model governing documents or specific legal forms (such as a company) state the minimum age of a charity trustee.

The 2005 Act states that charity trustees are the people who have “the general control and management” of a charity. However, there can be situations where people who are not formally appointed as charity trustees can exercise influence and even control over a charity. For example, an elected member or employee of a local authority attends meetings of the charity trustees. The 2005 Act makes the following two points clear:

1. Charity trustees are responsible for the charity and may not pass this responsibility onto anyone else as long as they remain a charity trustee.
2. Any person who, though not formally elected or appointed as a charity trustee, exercises some degree of control over a charity, may still be held legally liable as a charity trustee.

Who cannot be a charity trustee?

Some people are not allowed by law to be a charity trustee. Every charity trustee must make sure that he or she is not breaking the law by being a charity trustee.

Certain people are disqualified from acting as charity trustees:

- Someone with an unspent conviction for an offence involving dishonesty or an offence under the 2005 Act.
- Someone who is an undischarged bankrupt or has a Protected Trust Deed.
- Someone who has been removed under either Scottish or English Law or the courts from being a charity trustee.
- Someone who is disqualified from being a company director.

It is the responsibility of individuals to make sure they are not disqualified from being a charity trustee. Anyone who acts as a charity trustee whilst disqualified is guilty of an offence punishable by a fine or imprisonment, or both.

It is also the collective responsibility of all the charity trustees to make sure that none of them are disqualified. If you know that one of your fellow charity trustees is disqualified and you do not do anything about it, you could be in breach of your charity trustee duties.

If you are not sure if you can be a charity trustee, you can [ask us](#).

Good practice is to:

- Get prospective charity trustees to sign a declaration before their election or appointment to confirm they are not disqualified from acting as a charity trustee.
- Consider whether any other checks need to be carried out. For example, a [Disclosure Scotland](#) check for charity trustees working with vulnerable beneficiaries.

In some cases a charity's governing document might say who can and cannot be a charity trustee, for example some charity trustees can only be chosen from the membership of the charity.

Waivers

A disqualified person can apply to us for a waiver to lift the disqualification. You can do this in relation to a specific charity, type of charity or for charities in general. We will take into account all the circumstances when deciding if we can grant a waiver of disqualification. If you want to apply for a waiver please [contact us](#).

What does being a charity trustee mean?

Being a charity trustee means you are fully responsible for how your charity is run and what it does. It does not necessarily mean running the charity on a day-to-day basis and making operational decisions. Your charity might have volunteers or staff that do this.

All the charity trustees share responsibility

All of the group of charity trustees have charity trustee duties – no matter how small your charity is. A duty is something that you must do. The group shares the responsibility equally. No individual charity trustee, for example the Chair or Treasurer, has more responsibility than the other charity trustees do. We call this [collective responsibility](#).

See the section on [charity trustee duties](#) for more details.

How many charity trustees should your charity have?

Your charity's governing document may set a minimum and/or maximum number of charity trustees needed and the minimum number required for a **quorum**. A **Scottish Charitable Incorporated Organisation (SCIO)** must have at least three charity trustees as stated in the [SCIO Regulations](#). For other **legal forms** the law does not set a minimum number of charity trustees, but it is good practice to have at least three.

EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

SOURCES OF HELP, ADVICE AND BEST PRACTICE

Sources of help, advice and best practice:

- Local [Third Sector Interfaces](#) offer support to voluntary organisations.
- The [Scottish Council for Voluntary Organisations \(SCVO\)](#).
- You may also wish to consult a professional advisor. The [Law Society of Scotland](#) and the [Institute of Chartered Accountants in Scotland](#) may be able to help you to identify a professional firm with expertise in charity law and accounting.
- The [Association of Charity Independent Examiners](#) can help you find a qualified Independent Examiner.
- [HMRC](#) will be able to help you with any questions you may have about tax.

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Charity trustee general duties: [section 66 of the 2005 Act](#)
- Disqualification from being a charity trustee and waivers: [sections 69 and 70 of the 2005 Act](#)
- SCIO provisions: the [Scottish Charitable Incorporated Organisations General Regulations 2011](#)

CHARITY TRUSTEE DUTIES

SUMMARY

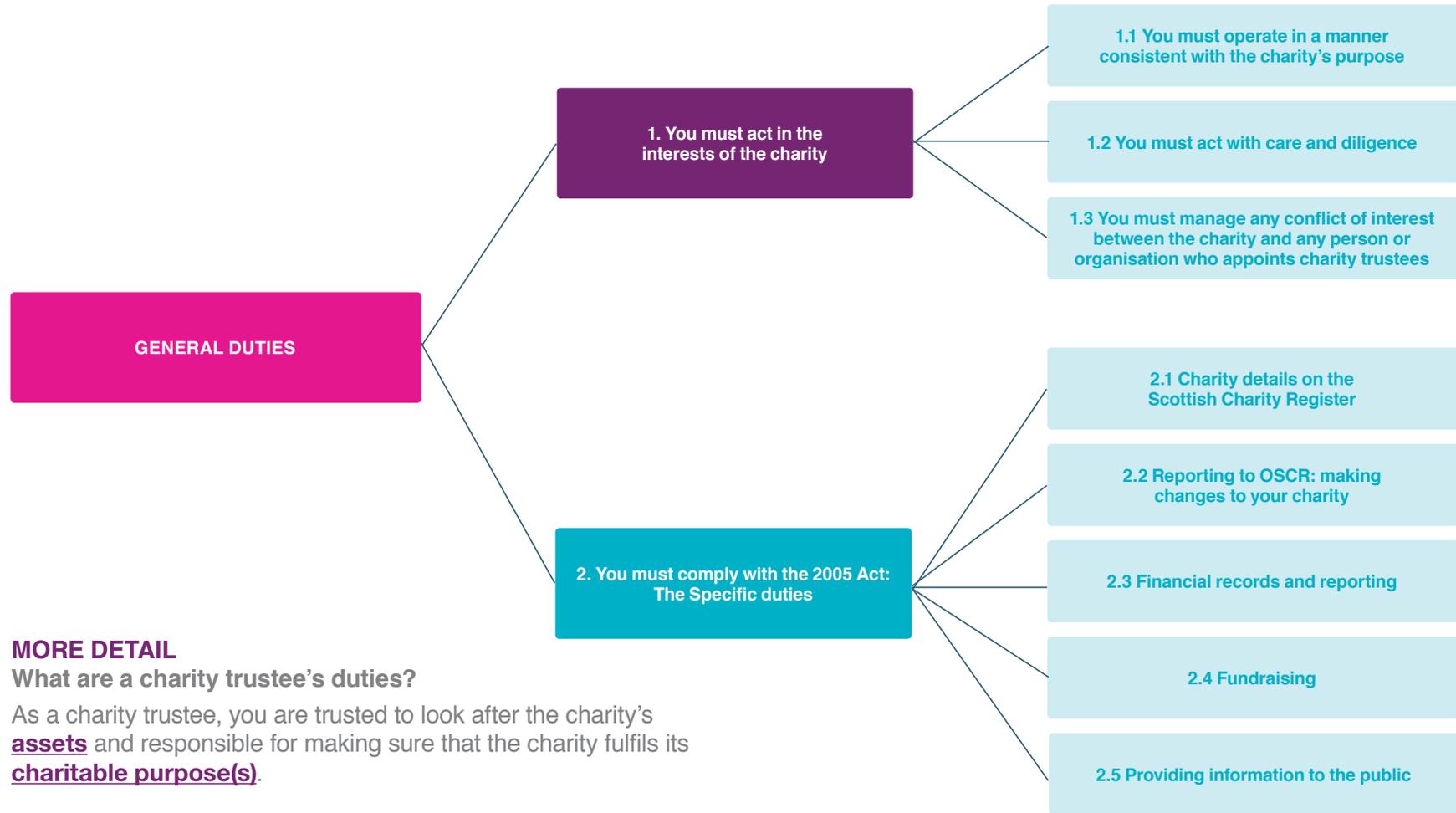
All charity trustees have legal duties and responsibilities under the [2005 Act](#). A duty is something that you must do, and all the duties must be met. These duties are separated out into general duties, that set out a broad framework that all charity trustees must work within, and specific duties detailed in the [2005 Act](#).

The general and specific duties apply equally to **all** charity trustees and to **all** charities registered in Scotland. All of the charity's trustees should work together to make sure that these duties are met.

We, the [Scottish Charity Regulator](#), work with charity trustees to make sure these duties are understood and complied with. We also have powers to take action where we have concerns about particular charities and their trustees. See our [Inquiry Policy](#) for more details.

In this section we explain what the duties are, what the law says you must do and ways that you can meet the duties.

General duties for all trustees



MORE DETAIL

What are a charity trustee's duties?

As a charity trustee, you are trusted to look after the charity's **assets** and responsible for making sure that the charity fulfils its **charitable purpose(s)**.

The charity trustee duties under the **2005 Act** set out a broad framework that all charity trustees must work within.

1. YOU MUST ACT IN THE INTERESTS OF THE CHARITY



- You must do what is best for the charity and its **beneficiaries**, not what is best for you, your friends or family or your business interests.
- You must put the needs of the charity before the needs of any other organisation that you are involved with, either in a personal or professional capacity.

Where you are faced with a decision where one option would be in your interest and the other in the interest of the charity you must choose the option that is in the charity's interest. To do this properly, you must declare what your interests are, know when it would be better that you did not take part in certain decisions and take appropriate action.

Good practice



- The charity has an up to date list (**register of interests**) detailing where charity trustees work and any other organisations they are involved with.
- The charity has a conflict of interest policy that says what charity trustees should do if there is a conflict of interest and what happens if a charity trustee does something wrong. See the **conflict of interest section** for more details.
- There is a policy that makes it clear when a charity trustee, their family or the organisation they work for can be paid, for services provided to the charity. See the **remuneration (payment) section** for more details.

- The charity has the power in its **governing document** to remove charity trustees if they are in serious or persistent breach of the charity trustee duties, or a breach of the requirements of that governing document.

If you are at all unsure, you should declare a potential conflict and the other charity trustees can decide whether it poses a conflict.

1.1 You must seek in good faith to ensure the charity operates in a manner consistent with its purposes



Your charity's purposes are set out in your governing document (often called a constitution, trust deed or articles of association).

- A charity's purposes are what your charity has been set up to achieve and are the reason your charity exists.
- You must always act honestly and reasonably ("in good faith") when acting for the charity and make sure that the activities advance its charitable purposes.
- You must make sure that the charity's assets are used to advance its charitable purposes. This can be done directly by using an asset to undertake activities or indirectly by investing assets to generate funds for the charity.
- You should understand what the governing document says and means.
- You must make sure that the other charity trustees and people working at the charity follow the rules in the governing document.
- When the charity makes plans, the charity trustees must make sure that any decisions or actions fit with the purposes and powers set out in the governing document.

Good practice

- Every charity trustee has the most recent copy of the charity's **governing document**.
- Every charity trustee gets an induction into the charity and their role when they start.



GOOD PRACTICE

See the **governing document and meetings section** for more details.



LEGAL DUTY

1.2 You must act with care and diligence

The role of a charity trustee will vary from charity to charity. Some charities have staff who are responsible for daily operations, with the charity trustees providing strategic oversight and governance. Other charities are run solely by charity trustees on a voluntary basis. Whatever your charity trustee role involves – hands on or strategic oversight – the decisions you make about the charity should show that you are acting with care and diligence that is reasonable to expect of a person who is managing the affairs of another person.

When you are dealing with the charity's affairs, you should do so as carefully as you would if you were looking after someone else's affairs, for example a relative or a friend.

For example:

You might decide to invest some of your own money on a high risk investment with potentially large returns. You would not be able to do that with the charity's money.

- As charity trustees, you must all work together to advance the charitable purposes, including making sure the charity is run properly, responsibly and lawfully.
- You have to protect your charity including its beneficiaries, assets and reputation. This means understanding and assessing potential risks to make sure decisions are as robust as possible.
- You should have a clear, up-to-date picture of how the charity is doing financially, and the charity should have procedures in place to reduce any risks. All the charity trustees should know what **assets** the charity has and understand any restrictions on how money can be spent. The charity must keep clear financial records and share them with all the charity trustees. See the **charity finances section** for more details.
- You can use the charity's money to get professional advice for the charity if needed.

For example:

If the charity was thinking about undertaking trading activities, it would be appropriate to seek professional advice around setting up a subsidiary company to carry out that trading.

Or

If the charity employs staff, some professional advice on HR matters might be needed.

As charity trustees:

- You must make sure that the charity has enough money to pay staff and other costs.
- You must make sure that any staff are treated properly and fairly.
- You must make sure that the charity's name and any logo are not used without the charity's permission.
- You are responsible for making sure your charity complies with any relevant laws. For example, health and safety, employment, data protection and equality laws.



LEGAL DUTY

Good practice

As charity trustees, you should:

- Review and update the charity's plans regularly.
- Agree financial budgets and monitor financial performance.
- Review the performance of the charity and, where necessary, agree steps to improve performance.
- Regularly compare what the charity proposes to do with the governing document to see if anything needs to be changed or updated. See our [Making Changes to Your Charity](#) guidance if the governing document needs to be amended.
- Make sure there are rules in place which set out what happens if the charity trustees cannot agree with each other. For example, set out in a **code of conduct**.



GOOD PRACTICE

- Provide charity trustee induction packs and review the training needs of the charity trustees every year.
- Agree expectations of charity trustees' attendance at meetings and what to do if these are not met.
- Keep up to date with changes in the law that might affect your charity, and make changes when necessary.
- If your charity employs staff make sure there are rules in place to deal with any grievances raised by the charity's staff and/or volunteers. For example, an internal complaints procedure.
- Treat volunteers properly and fairly.
- Report any [notifiable events to OSCR](#), and/or other relevant regulators.

You do not need to be a legal expert yourself but you should know the basics and the laws that apply to your charity's activities and where to get help if you need it. See the **Sources of help, advice and best practice** for details of organisations that can help.

1.3 You must manage any conflict of interest between the charity and any person or organisation who appoints trustees



As a charity trustee, you are required to act in the interests of the charity.

A conflict of interest which arises between a charity trustee and a person or organisation that appointed them is called an 'appointment conflict'. Where such a conflict arises, the charity trustee must put the interests of the charity first. However, where another duty prevents the charity trustee from putting the interests of the charity first they must:

- Disclose the conflict to the charity and
- not participate in any discussion or decision on the matter.

For example:

A charity trustee appointed to the charity by a Local Authority would need to put the interests of the charity first, above those of the Local Authority.

Conflicts of interest can and do happen in all shapes and sizes of charity, so we have a separate section of the guidance for how to manage them. See the [conflict of interest section](#) for more details.

Charitable companies also need to be aware of what [Company law](#) says about conflicts of interest.

2. YOU MUST COMPLY WITH THE 2005 ACT

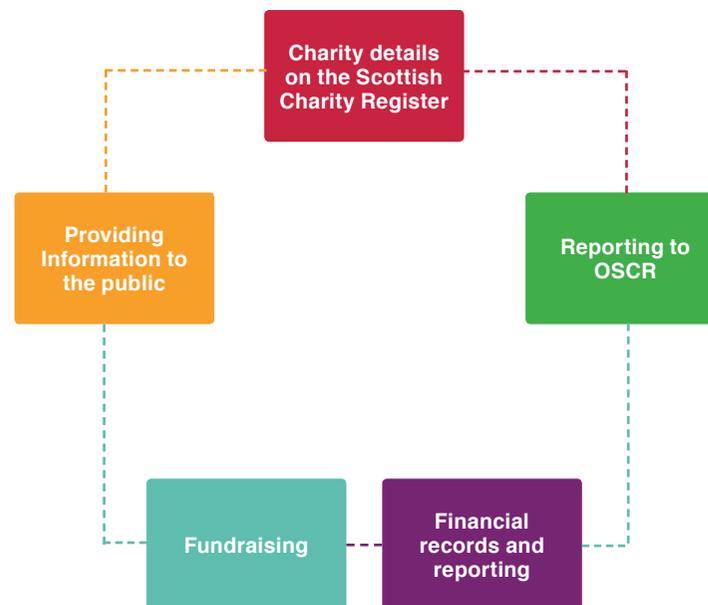


- You must understand the legal requirements of being a charity.
- You must comply with the specific duties of the 2005 Act.

See the **specific duties section** below for more information.

Specific duties for all charity trustees

There are **specific duties** in [the 2005 Act](#) that all charity trustees must meet. You might delegate the practical details of these duties to your charity's staff, volunteers or professional advisers (if you have them), but you, as charity trustees, are responsible for making sure the specific duties are met.



2.1 Charity details on the Scottish Charity Register

Your charity must give us the information we need to keep the **Scottish Charity Register** accurate and up to date.



This means making sure that we hold the latest information about your charity:

- The name of the charity.
- The principal office or the name and address of one of the charity trustees.
- The charity's purposes.

Your charity **must tell us** as soon as possible about any changes to the **principal contact** for the charity.

2.2 Reporting to OSCR: Making changes to your charity

If you want to make any changes to your charity, first check what the rules set out in your **governing document** say. If you do not follow these rules then any decisions you make could be invalid and we may refuse our consent to make the changes if it is required.

Under the 2005 Act you must seek our consent before making any of the changes listed below. You need to ask for our **consent** at least 6 weeks (42 days) before you plan to make the proposed change.



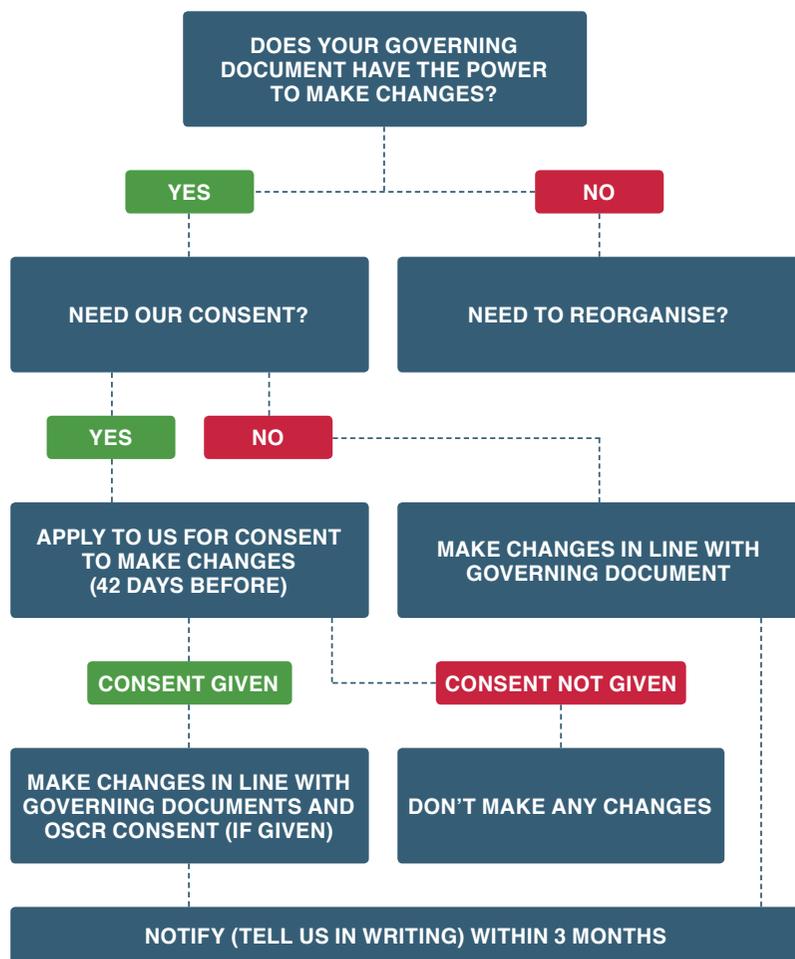
Changes that need our consent are:

- Changing the name of the charity.
- **Winding up or dissolving** the charity.
- Amending the **objects and purposes** of the charity.
- Amalgamating the charity with another body.
- Applying to the court to change purposes, amalgamate or wind-up.
- Changing your charity's **legal form**.

If we consent to the change you must notify us (tell us in writing) once you have made the change. Where a change to the governing document has been made you should send us the updated version.

If you have the power to make other changes to your governing document (that do not need our consent) you must tell us what the changes are and send an updated version of your governing document **within 3 months** of the changes being made.

See the flow chart below to decide if you can make changes and, if so, how. See our [Making Changes to Your Charity](#) page for more details.



2.3 Financial records and reporting

Every year, every charity must:

- Keep proper accounting records.
- Prepare a statement of account, including a report on its activities, at the end of each financial year.
- Have the statement of account independently examined or audited.
- Send a copy of the accounts, along with the **annual return**, to us, the Scottish Charity Regulator.

You must keep a copy of the accounting records for at least 6 years. Other laws or funding arrangements might require you to keep records for longer.

See our [charity finance section](#) and [Charity Accounting page](#) for more details.

2.4 Fundraising

As charity trustees you are responsible for taking control of how your charity raises funds.

You must make sure that anyone who professionally raises funds for the charity has an agreement that says how much they will get paid to do it.

See our [Fundraising page](#) for more details.

2.5 Providing information to the public

There is information that you must give to the public:



1. You must state your charity's name and Scottish charity number (SC0[zero]xxxxx) on your charity's website home page and all external documents, like letters, emails, adverts, posters, invoices and other publications. See the [publicising that you are a charity section](#) for more details.
2. You must give a copy of your [governing document](#) and/or the latest examined or audited [accounts](#) to anyone that asks for them. The reason a person asks for a copy of these documents does not matter; provided it is a reasonable request, you must give them a copy.

Good practice is to publish your governing document and accounts on the charity's website, if you have one.

What is an unreasonable request?

What is reasonable or unreasonable will depend on the circumstances of each case. It is important to understand that it is the request that must be unreasonable not the reasons for the request or the identity of the requester.

The examples below are when a request might be unreasonable:

- A request for copies of accounts and/or governing document that are already publicly available, in which case you should tell the person where to get the information, for example on the charity's website.
- A request for documents that the person already has.
- A request for the documents within an unreasonable timescale, for example within 24 hours, or in an unreasonable format.

If you decide a request is unreasonable you should be able to justify your decision, bearing in mind that a concern could be raised with us about it. Where appropriate, you should work with the requester to fulfil their request.

Can you charge a fee for the request?

Yes, you can, but only for any administrative costs in producing and sending a copy of the document, for example, the cost of photocopying and postage. You cannot charge for the costs associated with preparing the accounts or staff time taken to copy and post the documents.

Many charities publish their governing document and annual accounts on their own websites. You can put a link to your accounts on your entry in the [Scottish Charity Register](#) by emailing us the link and your charity's details.

What happens if you fail in your duties?

If you fail to comply with these duties then this is [misconduct](#) and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

SOURCES OF HELP, ADVICE AND BEST PRACTICE

These organisations can help with some or all of the duties.

- Local [Third Sector Interfaces](#) offer support to voluntary organisations.
- The [Scottish Council for Voluntary Organisations](#) (SCVO).
- You may also wish to consult a professional advisor. The [Law Society of Scotland](#) and the [Institute of Chartered Accountants in Scotland](#) may be able to help you to identify a professional firm with expertise in charity law and accounting.
- The [Association of Charity Independent Examiners](#) can help you find a qualified Independent Examiner
- [HMRC](#) will be able to help you with any questions you may have about tax.
- [Consent Flowchart pdf](#)

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

Specific duties:

- Charity details: [section 3 of the 2005 Act](#)
Reporting changes:
 - [sections 10 – 12 \(consent for change of name\)](#)
 - [sections 16 – 17 \(consent for changes including purposes\)](#)
 - [sections 39 – 43D \(reorganisation\)](#)
- Financial reporting: [sections 44 – 45 of the 2005 Act](#) and [The Charities Accounts \(Scotland\) Regulations 2006](#) as amended
- Fundraising: [sections 79 – 83 of the 2005 Act](#)
- Charity trustee general duties: [section 66 of the 2005 Act](#)
- OSCR's powers and duties following inquiries: [Sections 29 – 35 of the 2005 Act](#)

GOVERNING DOCUMENTS AND MEETINGS

SUMMARY

Knowing what your **governing document** says and understanding what it means, having well-run charity meetings and keeping good records of the meetings are all important factors in making sure that you are carrying out your **general charity trustee duties** set out in the **2005 Act**.

MORE DETAIL

Governing documents

A charity's governing document is the written statement that sets out its purpose, structure and describes how it will operate. The trustees must make sure that the charity complies with its governing document, which usually contains key information about:

- What the charity exists to do (its charitable purposes).
- What powers it has to further its charitable purposes.
- Who the trustees are, how many charity trustees there should be and how they are appointed and removed.
- Whether the charity has any members and if so who can be a member.
- Rules about charity trustees' and members' (if any) meetings, how they are arranged and conducted and how decisions are made and recorded, etc.
- How to change the governing document.
- How to close the charity down.

The name given to your charity's governing document will depend on its legal form.

The most common legal forms for charities are:

LEGAL FORM	TYPE OF CONSTITUTION OR GOVERNING DOCUMENT
Company	Articles of association
Unincorporated association	Constitution
Trust	Trust deed
Scottish Charitable Incorporated Organisation (SCIO)	SCIO constitution
Community Benefit Society	Rules

Some governing documents are made up of a combination of items, such as standing orders, rules or supplemental deeds. The key to any governing document and to the overall governance of the charity are the charity's purposes, which are the reason the charity exists.



LEGAL DUTY

Charity trustees must make sure that:

- The activities of the charity advance the **charitable purposes** set out in the governing document.
- The charity follows the rules of its governing document.
- The charity's **assets** are only used to advance the charitable purposes set out in the governing document.

Good practice

- Every charity trustee has an up-to-date copy of the governing document. You should know what it says and understand what it means.
- All new charity trustees get an induction pack which includes the governing document and up-to-date information about the activities of the charity.
- When planning what the charity will do, you make sure the plans fit with what the governing document says you can do.
- You read and review the governing document regularly to make sure it is still fit for purpose. You should do this at least once a year.



Can you change your governing document?

If you do want to make changes to your **governing document**, you need to follow any rules about changes set out in your document. This flows from the general principle that charities have to follow the specific terms of their governing document.

If you want to make any changes to your governing document see our [Making Changes to Your Charity](#) page. You must tell us of any changes that you make and in some cases ask for our **consent** first.



For example:

If you want to change the wording of charitable purposes in your governing document, you will need to get our consent first. This is because any changes to the charitable purposes could affect your ability to meet the charity test and to continue to be a charity.

Some charities do not have the power in their governing document to make changes. If you are not sure whether you have the power to make changes you should get professional advice.

If you do not have the power to make changes you can apply to us to reorganise your charity. See our [Charity reorganisation](#) page for more details.

Charity Trustee Meetings

Charity trustees have collective responsibility for running the charity. Meetings are often the best way to make decisions and make sure that you keep all of the charity trustees informed.

When and how meetings will be held will usually be set out in your governing document. You must follow the rules set out in your governing document about meetings. If you do not, any decisions you make could be invalid and you will not be acting in accordance with your charity trustee duties.

What should a governing document say about meetings?

If your governing document does not mention meetings or is not clear about how meetings should be run, then you may want to add some rules about:

- When you have meetings and how often you have them.
 - Plan your charity trustee meetings so you can meet at the right time to look at the **charity's accounts** before submitting them to OSCR.
- What type of meetings you have.
 - For example charity trustee meetings, annual general meetings (AGMs), membership meetings.
- Who is entitled to vote at meetings and how **proxies** can be appointed.
- Who can attend the meetings (just the charity trustees or members too?) and how many people have to be there to form a **quorum**.



- What you do if charity trustees have a **conflict of interest**.
- How you minute meetings and how long you keep records of the meetings.
 - It is a good idea to decide how long you will keep records of meetings and decisions, bearing in mind any other legal requirements you have to follow. For example, financial records must be kept for 6 years.
- What to do if a charity trustee misses too many meetings and/or does not follow the rules.
- What your governing document says about removing charity trustees.

What else do you need to think about for meetings?

- Make sure everyone knows about the meeting – when and where it is.
 - Make sure you know who should or can attend the meeting.
- Make sure everyone has the agenda and relevant papers – know what you are going to be talking about!
- Do not be afraid to ask questions if you do not understand or something is not clear – you all have responsibility, not just the chair or the treasurer.
- Follow the voting rules in your governing document – if you do not, any decisions you make could be invalid.
- Assign someone to prepare minutes of the meeting – note the decisions taken and the reasons for them.
- Make sure the minutes are agreed and approved at the next meeting.
- Have clear action points – know who is responsible for them and for following up on them.

NOTE: if you are a SCIO or a company and want to use telephone or video conferencing you must state this in your governing document.

A SCIO's governing document is a constitution.

A company's governing document is its Article of Association. For more information on the rules about meetings in company law, see the Companies House website.

See **Sources of help, advice and best practice** for agenda and minutes templates.

Quorum

This is the minimum number or proportion of people (members, charity trustees or their proxies) that can vote and must be present or represented at a meeting to make the proceedings and any decisions taken valid.

For example:

Your governing document says that 50% of trustees must be present at a meeting. If you have 10 trustees in total but only four are present at the meeting, then you will not have a quorum and the meeting will not be valid.

If you are having trouble always getting enough charity trustees to form a **quorum** then you may need to recruit more charity trustees or look at alternative ways of holding meetings such as telephone or video conferencing. You may need to amend your governing document to do so.

What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

SOURCES OF HELP, ADVICE AND BEST PRACTICE

- [Trustee Meetings: Agenda template](#)
- [Trustee Meetings: Minutes template](#)
- [SCVO model governing documents](#)
- [SCVO guide to Board meetings](#)
- OSCR: [Who's in charge](#)

The Charity Commission for England and Wales:

- [Charity trustee meetings: 15 questions you should ask](#)
- [Charities and meetings \(CC48\)](#)

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Charity trustee general duties and misconduct: [section 66 of the 2005 Act](#).
- OSCR's powers and duties following inquiry: [sections 29 to 35 of the 2005 Act](#).

CONFLICT OF INTEREST

SUMMARY

As a charity trustee, you must put the interests of the charity before your own interests or those of any other person or organisation including those responsible for your appointment. Where you cannot do that, there may be a conflict of interest.

A conflict of interest exists when your duty to act in the interests of the charity conflicts with:

- The interest of the person or organisation that appointed you as a charity trustee (an “appointment conflict”), or
- Conflicts with your own personal or business interest in relation to that matter (a “personal conflict”).

Conflicts of interest can and do come up: it is how you manage them that is important

In this section we explain how you as a charity trustee can prepare for potential conflicts of interest, what you could do if a conflict arises, and highlight common examples of conflicts of interest.

MORE DETAIL

What is a conflict of interest?

A conflict of interest is any situation where there is a potential for a **charity trustee’s** personal or business interests (or the interests of someone they are connected with) to be different from the interests of the **charity**. In this situation, it may sometimes be difficult for the charity trustee to make an impartial decision. However, with proper handling charity trustees can overcome these difficulties.

There are two main types of conflict of interest:

- 1. Appointment conflict:** This is a conflict of interest which can arise between a charity trustee and the person or organisation which appointed them.



LEGAL DUTY

For example:

A charity trustee appointed by a local school, church or Local Authority and a decision is required on a matter which affects both the charity and the other organisation.

2. Personal conflict: When you might not be able to do what is best for the charity because it conflicts with your own personal or business interest in relation to that matter.

For example:

When a charity is considering a contract with a business and one of the charity trustees is also a director of that business.

In both cases, the **charity trustee duties** require you to act in the interests of the charity.

Where there is an ‘appointment conflict’ the charity trustee must put the interests of the charity first. However, where another duty prevents the charity trustee from putting the interests of the charity first they must:

- disclose the conflict to the charity; and
- not participate in any discussion or decision making on the matter.

It is important that even where there appears to be a conflict of interest, whether it materialises or not, you take appropriate steps to manage the conflict and be seen to be acting in the best interests of the charity.

The term ‘conflict of interest’ can cover a range of situations and may also be called a ‘conflict of roles’ or ‘conflict of duty’.

For example:

- a charity trustee could get direct financial benefit from a decision the charity has to make
- a charity trustee is discussing a contract or business arrangement with an organisation their family have links to
- a charity trustee is also an employee of a company that the charity is doing business with
- an employee, or potential employee, of the charity is connected to one of the charity trustees.
- being a trustee of two or more charities that are competing with each other for the same grant(s) or funding
- being a trustee of a charity that gives out grants and a trustee of another charity applying for one of these grants
- being a trustee of a charity that is part of a group structure and being on the board of the parent charity
- being a trustee of a charity where you are also a service user or customer
- a charity trustee applying for a job in the charity.

Examples of what is not a conflict of interest:

- being a charity trustee and donating funds to the charity
- being both a volunteer and a trustee of charity.

What should you do if there is a conflict of interest?

Having a conflict of interest does not necessarily mean that anyone has acted improperly. As charity trustees you all have a **collective responsibility** to manage conflicts of interest and to act clearly in the charity's best interests.

There are four key steps to dealing with conflict of interest.

1. Identify:

- Have a conflict of interest policy so that all the charity trustees (and potential charity trustees) understand what could be a conflict of interest.
- Know what the charity's **governing document** says about conflicts of interest.
- Set up a **register of interests** for all charity trustees and make sure it is kept up to date.
- Have conflict of interest as a regular agenda item at the beginning of the charity trustee meetings.
- Declare any potential conflict of interest as soon as you become aware of them.



2. Manage:

- Have clear procedures in place that state what should happen if there is a conflict of interest and how the charity trustees will deal with it. For example, the conflicted charity trustee might withdraw from the meeting or part of the meeting.
- If the charity has a **conflict of interest policy** make sure it is applied in all situations where there is a conflict or potential conflict. The policy should also distinguish between the two different types of conflict, 'appointment conflicts' and 'personal conflicts'.

- Decide if the person(s) with a conflict of interest should be involved in any discussions or decisions about the situation – if it is decided they should be involved be prepared to justify that decision.
- Where there is a conflict, make sure that decisions are taken in the charity's interests.
- Make sure that your charity can still carry on its business and still form a quorum even if a number of charity trustees have to withdraw.

3. Record:

- Keep a written record of the situation and what the charity did about it, including:
 - Recording who the conflict affected.
 - Recording when the conflict was identified and declared.
 - Recording what was discussed and decided.
 - Recording who withdrew from the decisions and how the remaining charity trustees made a decision in the best interests of the charity.
 - Maintaining the charity's register of interests.

4. Learn:

- Learn from the experience, make improvements to the charity's policy and procedures and where necessary seek professional advice.
- Where conflicts of interest arise frequently and a number of charity trustees must withdraw from discussion, the charity should consider whether the make up of the Board is preventing the effective management of the charity.
- Make sure the charity's governing document has the power to remove charity trustees who are in serious or persistent breach of **the 2005 Act**.

If members from a linked organisation dominate the make-up of your Board of charity trustees this can lead to a risk of recurrent conflict of interest. How you manage this risk is very important.

What should be included in a conflict of interest policy?

A conflict of interest policy should set out:

- What a conflict of interest is and the conflicts that are likely to be relevant to your charity.
- The distinction between a “personal” conflict and an “appointment” conflict.
- When and how the charity trustees should declare a potential conflict of interest.
- What the charity’s governing document says (if anything) about conflicts of interest.
- When a conflicted charity trustee should withdraw from decision making and the procedures for making decisions in those circumstances.

SCIOs must have procedures for dealing with any conflict of interest within their SCIO constitution.

See the **sources of help, advice and best practice** section for links to example conflict of interest policies.

When should a charity trustee withdraw from a meeting?

When a charity trustee is aware of a conflict of interest and they feel unable to put the interests of the charity first, they must withdraw from the discussion or decision concerned.

It may also be appropriate for charity trustees to withdraw from discussions in other circumstances of conflict of interest. Where they do not, they should be able to demonstrate that they have acted in the interests of the charity.

The charity trustees should make sure there is a record of who took part in the discussions and decisions. Where there is a conflict and the conflicted charity trustee still takes part, how this is in the best interests of the charity needs to be explained.

For example:

A Board made up mainly of service users is asked to vote on an increase to the fees that service users pay to the charity. It is not practical for all the service user trustees to withdraw as there wouldn’t be enough trustees to form a quorum and make a valid decision.

The trustees need to put their own interests to one side and choose what is best for the charity. A clear record should be taken of the decision and why it was made.

However, if there is only one service user on the Board then it might be felt that they should withdraw, which would be easier for the person concerned and does not affect the quorum.

What should you do if another charity trustee has a conflict of interest?



All charity trustees must act in line with the duty to **protect the interests of the charity**. This means that you and the other charity trustees must take collective responsibility to make sure that a breach of charity trustee duties is corrected and not repeated.

If you know another charity trustee is conflicted, and it is not declared, it is your duty to speak up.

If there is serious or persistent breach of duty by an individual, the other charity trustees should look at whether the governing document has the power to remove the charity trustee.

What happens if a conflict of interest is not managed properly?

As charity trustees you must try to make sure that any breach of duty regarding conflict of interest is corrected and not repeated. Where there is a serious or persistent breach the charity trustee should be removed, providing the governing document allows. If the other charity trustees fail to do so, this could be considered **mismanagement or misconduct** in the administration of the charity.

As regulator, we are required to identify and investigate any apparent misconduct and, where appropriate can take protective action. See our [Inquiry Policy](#) for more details. Our response will be proportionate; where a charity trustee has acted honestly and reasonably.

What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

SOURCES OF HELP, ADVICE AND BEST PRACTICE

- OSCR: [Who's in charge?](#)
- SCVO: [how to avoid conflicts of interest](#)

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

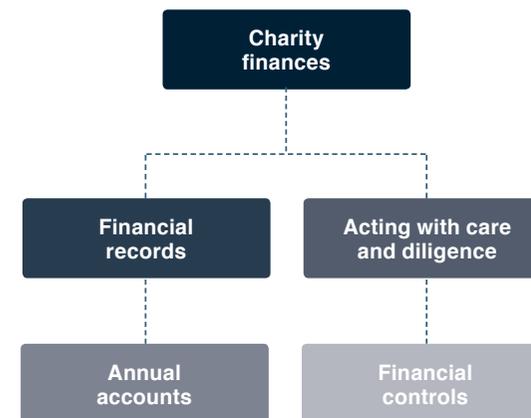
- Charity trustee general duties and misconduct: [section 66 of the 2005 Act](#).
- SCIO conflict of interest provision in constitution: [The Scottish Charitable Incorporated Organisations General Regulations 2011](#).

CHARITY FINANCES

SUMMARY

In this section, we explain the legal requirements and good practice for protecting your charity's finances. The section splits into two areas of charity finance:

- 1. Financial Records:** Charities have specific duties under the **2005 Act** to maintain financial records, prepare annual **accounts** and submit these accounts to us. It is the responsibility of all the charity trustees to make sure that these requirements are met.
- 2. Financial Controls:** The 2005 Act requires you, as charity trustees, to act with **care and diligence** when managing the affairs of the charity. This means that you must make sure you have suitable controls over financial procedures to protect the **assets** of the charity.



MORE DETAIL



Financial records and accounts

The **2005 Act** requires that as charity trustees, you must:

- keep proper accounting records
- prepare a statement of accounts, including a report on the charity's activities, each financial year
- have the accounts independently examined or audited
- send a copy of the accounts to us
- keep the accounting records for 6 years.

Anyone who has given time or money to a charity will have an interest in seeing its resources used properly. A well prepared and informative set of accounts will give members, funders, donors and anyone else with an interest in your charity a good picture of the activities and how well you are using the resources.

What are proper accounting records?

Proper accounting records must detail day by day the money received and spent by the charity, the assets and liabilities of the charity and show the financial position of the charity at any time.

How you keep the records will depend on the size and complexity of your charity. For small charities, a manual record or simple spreadsheet may be enough. Larger charities may need specialist accounting software.

However you keep the records they should be easy to follow and kept up to date so that the financial position of the charity is clear at all times.

What do I need to include in the accounts?



What you need to put in the accounts is set out in the [Charities Accounts \(Scotland\) Regulations 2006 \(as amended\)](#). These Regulations detail the different types of accounts that can be prepared and what you must include in them.

The Regulations also contain specific rules for reporting on the activities of the charity, as well as the financial information. This activities report is called the [Trustees' Annual Report](#).

For more details, please see our [guide to the accounts Regulations](#).

External scrutiny of the accounts

All sets of charity accounts must be scrutinised by someone outside of the charity. This means that an independent person checks that the information in the accounts is a fair reflection of the charity's financial position.



The type of scrutiny required is dependent on the charity's turnover, [government document](#) and the requirements of any funders.

For more details, please see our [Independent Examination: Guidance for Charities and Independent Examiners](#).



What financial information do you need to submit?

Every year you need to send us:

1. the [Annual Return](#)
2. [statement of accounts](#)
3. [trustees' annual report](#) and
4. [external scrutiny report](#)

We use the annual return to gather information about your charity. Depending on the income of your charity, we may ask more questions about the charity's finances and how it operates.

Note: Charitable Companies, Charities registered in England and Wales and Registered Social Landlords.

You will also need to follow the accounting requirements of the other regulators. See our [accounts guidance](#) for more information.

Financial controls

As a charity trustee, you have a duty under the 2005 Act to act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person.

This means that you must act with a higher level of care than you do with your own finances and affairs. You must make sure that you protect the charity's resources and that you do not put the assets of the charity at risk. One way of doing this is to make sure that there are proper **financial controls** in place.

What do we mean by financial controls?

Good financial controls are tools for making sure that you manage the charity effectively and meet your legal duty to act with care and diligence.

Financial controls are the systems you have in place to make sure that you protect the **assets** of the charity. The controls aim to identify and manage the risks of theft or fraud, loss and **conflicts of interest**.

■ Reviewing accounts

A major part of financial control is to review the accounts. A useful way to do this is to compare the amounts spent on individual expense categories since they were last reviewed with what was expected to be spent in that period. Ideally, a budget will be prepared and approved by the charity trustee board before the beginning of the financial year. Then the actual results can be compared to the expected or budgeted results, making it easier to investigate any differences or 'variances'.

In a small organisation it may be appropriate just to compare the expenditure of one period with that of the corresponding previous period, for example the month before.

■ Controls offer protection

It is important to remember that being a charity trustee is a significant responsibility. Where controls are correctly set up and used they will both protect the assets of the charity and you as a charity trustee.

What areas do you need to consider?

■ Collective responsibility

All of the charity trustees have responsibility for the financial records, not just the treasurer. As charity trustees, it is important that you all have a basic understanding of the finances of your charity and can quickly identify if there are any problems.

The financial information should be discussed at meetings to make sure that everyone knows the charity's financial situation. For example, finance should be a recurring item on the agenda of every board meeting. It is good practice that someone other than the treasurer also has an understanding of how the charity's financial records are kept.

■ Finance Committee

Some organisations find it helpful to set up a finance sub-committee of charity trustees and advisors with financial or accounting knowledge. They have additional meetings to spend extra time on detailed finance matters, like budget preparation, and then report back to the charity trustee board. Having a committee does not absolve the other charity trustees of their collective responsibility but can be helpful in clarifying matters that are submitted to the full charity trustee board.

■ Separation of duties

Where possible, you should separate out the administrative tasks so that no one individual has sole responsibility for the financial transactions of your charity. We call this '**separation of duties**'.

For example, when your charity makes a purchase the same individual (whether it is a charity trustee, employee or volunteer) should not be responsible for arranging the purchase, authorising the payment and making the payment. In very small charities, it can be difficult to have a separation of duties. You should make sure that checks are regularly carried out on financial records and transactions to compensate for this.



■ Written procedures

Your financial procedures should be documented. This will help where charity trustees change regularly and if something unexpected happens such as a treasurer being taken ill.

You should review your procedures annually to make sure they are still fit for purpose, being followed correctly and understood.

■ Controls over cash

Where possible, it is best to avoid the use of cash, as it is harder to maintain a trail of cash and much easier for theft or fraud to happen. You should encourage donations to be made by bank transfer, cheques or online and you should make payments in this way wherever possible.

If you do receive cash donations, two people should count these and then make sure the money is banked as soon as possible. You should issue receipts for the donations and not make any payments out of this cash before taking it to the bank.

You should keep petty cash to a minimum. Receipts should be required for all items of petty cash. Access to the petty cash box should be restricted. It should be held in a secure place, counted and agreed. A cash book should be kept to record what goes into the petty cash and what is paid out of it. Each time there is money added to or taken out of the petty cash it should be recorded in the cash book with supporting documentation, such as a copy of a donation receipt or expenditure receipt. The amount in the petty cash box should be regularly counted and compared to the balance in the cashbook to make sure that all money is properly recorded and accounted for.

■ Banking

Banking is an important part of the financial controls. When considering your charity's banking arrangements, you should think about the full range of services that you need and look for a bank that can provide them.

Banks will ask for details of all signatories and usually all the charity trustees, so be prepared to have this information available. You should be aware of the terms and conditions of your banking arrangements and advise the bank immediately of any changes that may affect these for example, a change of signatories. Bank statements should be agreed to the accounting records regularly, at least monthly, and someone other than the person who is otherwise involved in the banking process should review these reconciliations.

Bank reconciliations should be reviewed at trustee meetings. In smaller charities, bank statements and transactions may be checked at trustee meetings.

■ Cheque payments

Cheques should have a minimum of two signatories to make sure that it is not just one person who can make payments. You should have systems in place to check invoices and authorise payments before they are made.

You should not sign cheques where the amount and the recipient are not already filled in (blank cheques). You should ensure that the details on the cheque stub match the corresponding cheque. If this is not done the cheques may not be accounted for correctly and might result in lost or stolen money.

■ Automated payments

Automated payments from the bank account such as Direct Debits and Standing Orders should be subject to the same controls as other payments. A review of all such automated expenditure should take place regularly.

Internet banking and online payments: it can be more difficult to develop tight financial controls for bank transfers as access may be restricted to a single log in. You should consider making a rule that two people have to be present when large transactions are being processed.

- Some banks allow charities to provide more than one person to authorise payments (dual authority). You should ask your charity's bank for details of their dual authority options so that you can consider what is right for your charity.
- **Credit cards:** credit cards are often required to pay for travel or purchase items online. There should be internal control procedures to cover this including credit limits, authorisation procedures and review and authorisation of credit card statements.

What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

SOURCES OF HELP, ADVICE AND BEST PRACTICE

- [Independent Examination: Guidance for Charities and Independent Examiners](#)
- [Guidance on the Charities Accounts \(Scotland\) Regulations](#)
- The Charity Commission for England and Wales have produced detailed [guidance on internal financial controls](#) that are applicable to Scottish charities.
- [Banking for charities](#)

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Financial reporting: [sections 44 – 45 of the 2005 Act](#) and [The Charities Accounts \(Scotland\) Regulations 2006](#) as amended

REMUNERATION (PAYING CHARITY TRUSTEES AND CONNECTED PERSONS)

SUMMARY

The **2005 Act** sets out when charity trustees (and people who are connected to them) can receive payment from the charity for services provided to it. A charity must not pay charity trustees, and people who are connected to them, unless the charity can satisfy the conditions set out in the 2005 Act.

This section explains what those conditions are and gives examples of when it is and is not appropriate to pay **charity trustees** and **people connected** with them.

The rules on paying charity trustees do not apply to reclaiming expenses, like train fares to get to a charity trustee meeting.

MORE DETAIL

What is remuneration?

Remuneration in the **2005 Act** means any payment received for services provided to the charity either as a charity trustee or under a contract of employment with the charity, and includes **people connected** with charity trustees. It is any such payment from the charity's funds. Payment may be received in the form of a salary, payment for services or in the form of other benefits such as a company car, medical plan or pension plan.

For example:

Out of pocket expenses paid to charity trustees, for instance travel expenses to attend meetings, are not considered remuneration, although receipts for expenses are still required.

In this guidance, we refer to **remuneration** as 'payment' or 'paying charity trustees'.

What are the rules on paying charity trustees?

The **2005 Act** states that **you must not pay a charity trustee**, for services provided to the charity, either as a charity trustee or under contract, **unless** you meet **all** of these conditions:

- there is no restriction to the payment in the charity's **governing document**



- less than half the total number of charity trustees are getting paid (directly or indirectly) from the charity
- there is a written agreement between the charity and the charity trustee
- the written agreement sets out the maximum amount to be paid, and
- the charity trustees are satisfied it is in the interest of the charity for the services to be provided by the charity trustee for that maximum amount.

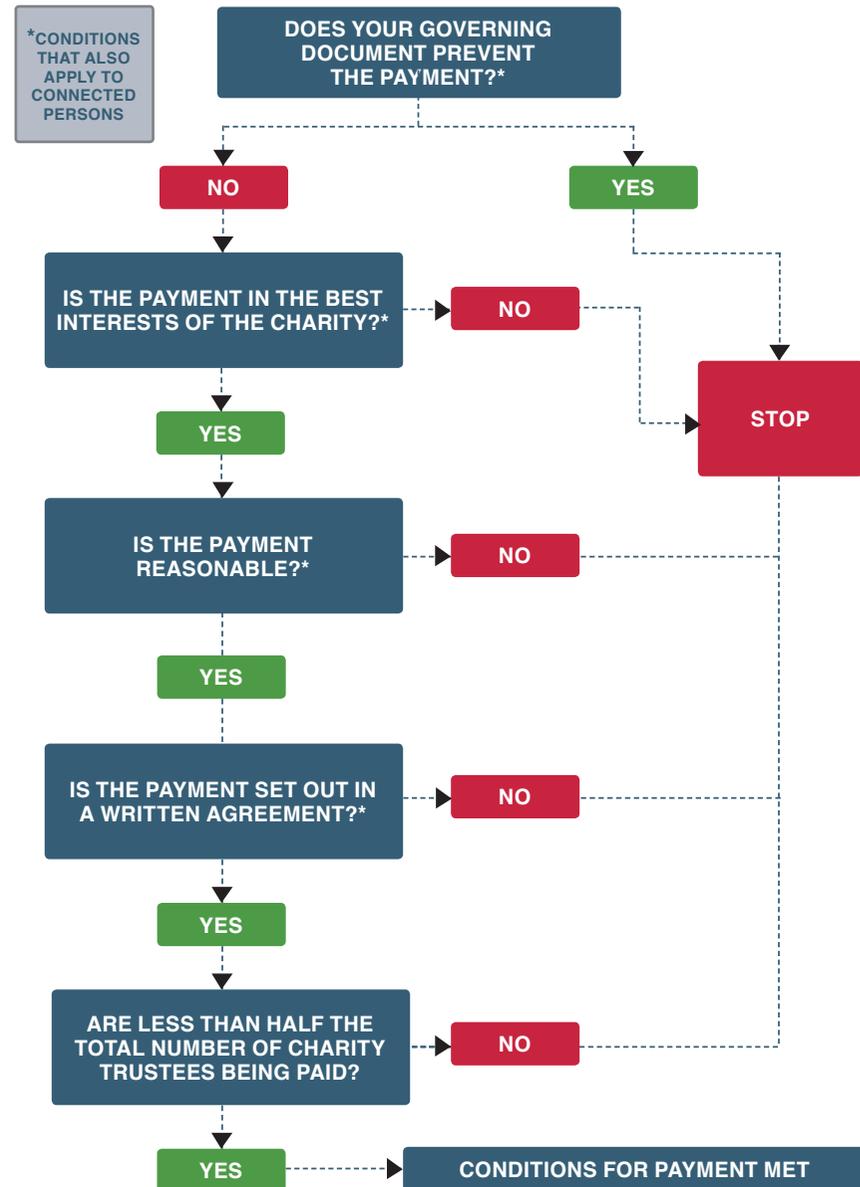
If your governing document says that the charity trustees cannot be paid, then even if the other rules from the 2005 Act are met, you will not be able to pay any of the charity trustees.

Examples of when it might be reasonable to pay a charity trustee, provided the conditions above are met:

- When a local tradesman is a charity trustee and provides services to the charity at a competitive rate.
- When employees of the charity are also charity trustees because of their position: for example, as chief executive or because they are elected as a staff representative.

An indirect payment to a charity trustee is where two or more charity trustees are connected and one of them is being paid.

See the flowchart opposite to see if a payment meets the conditions.



What are the rules for paying a connected person?

The **2005 Act** states that **you must not pay** a person connected to a charity trustee for services provided to the charity, **unless** you meet **all** of these conditions:

- there is no restriction on the payment within the charity's governing document
- the payment is reasonable
- there is a written agreement between the charity and the connected person
- the written agreement sets out the maximum amount to be paid
- the charity trustees are satisfied it is in the interest of the charity for the services to be provided by the connected person for that amount.

What happens if you want to pay charity trustees and/or connected persons for services provided to the charity?

In order to pay a charity trustee or connected person, provided the exemptions do not apply, the conditions detailed above must be met. If a decision is taken to pay a charity trustee or connected person, you should keep a record of the charity trustees considerations and must enter into a written agreement with them setting out the maximum amount to be paid.

What is a reasonable amount?

What is reasonable will depend on the circumstances. The important thing is that whatever the decision is, the interests of the charity come first and you can demonstrate that.

The process for deciding the level of payment must be open and transparent and **must not** involve the charity trustee who is to receive payment or is connected to the person who will.



You could compare payment amounts with similar roles at other charities or the wider market place.

If the payment appears to be excessive, there may have been a breach of charity trustee duties, which would be **misconduct**.

Good practice



- Have a payment policy that makes sure any payments to charity trustees and/or connected people complies with the conditions set out in the 2005 Act
- establish a register of charity trustees' interests
- obtain at least two separate quotes for services
- clearly minute the decision that paying a particular charity trustee or a person connected to them for services is in the charity's interest.

If you are not sure if a charity trustee, or connected person, can be paid for services you should get professional advice.

What else do you need to consider about payments?

If you are thinking about employing a charity trustee or connected person, you must make sure that:

- there is a genuine need for a paid position or for the services to be provided
- as charity trustees, you assess any potential risks, manage any conflicts of interest and are open and transparent about the decision
- any charity trustee who has a **conflict of interest** is not involved in the decision
- no one individual takes a decision about employment on their own

- any payments to charity trustees are declared in the **annual accounts**.

We have particular concerns where the charity trustees of a charity are the people benefiting from it as private individuals, or where those benefiting most are people connected with the charity trustees such as family members or companies in which the charity trustees have an interest.

Where there is such **private benefit** we may need to consider whether it causes the charity to fail the **charity test**. This is the legal test as to whether or not your organisation can be, or remain, a charity.

What is an honorarium?

An honorarium is generally a small amount of money paid to someone for a service; unlike a fee or salary, an honorarium is not contractual but is a gift.

We would not expect honoraria payments to be paid on a regular basis as a matter of course. As charity trustees, you should review the situation every year and only award a payment if there are exceptional reasons for doing so. We would expect you to clearly explain and record your decision.

In order to make payment of honoraria to a charity trustee or a connected person the remuneration conditions detailed above would have to be met.

Charities registered in England and Wales and Registered Social Landlords

If you are also registered with the Charity Commission for England and Wales you will also need to follow their rules on payments to charity trustees.

If you are a cross-border charity and you are paying charity trustees in line with the law of England and Wales you will need to take into account the rules under the 2005 Act and whether those rules allow the payment in question.

Registered Social Landlords must follow the rules set out by the Scottish Housing Regulator about payments to charity trustees.

Trustee indemnity insurance

You are allowed to use your charity's funds to provide your charity trustees with indemnity insurance.

What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

EXCEPTIONS

These rules for paying charity trustees and connected persons do not apply if:

- there is a provision authorising payment of the charity trustees (and/or connected persons) in the charity's **governing document** and this was in force on or before the 15 November 2004
- there is legislation or an order made by the Court of Session that allows charity trustees (or connected persons) to receive payment.

EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

SOURCES OF HELP, ADVICE AND BEST PRACTICE

- [Meeting the Charity Test – Private Benefit section](#)
- [Payment Flowchart pdf](#)

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- Remuneration: [sections 67 and 68 of the 2005 Act](#)
- Trustee indemnity insurance: [section 127 of the Public Services Reform \(Scotland\) Act 2010](#)

PUBLICISING THAT YOU ARE A CHARITY

SUMMARY

Making sure that people know you are a charity is one of the **specific charity trustee duties** set out in the **2005 Act**. You must provide certain **charity details** in certain **external documents** (hard copy and electronic). What you need to tell people and how you need to do this are set out in specific **Regulations**. This section sums up what you need to do, and gives suggestions about how best to do it.

MORE DETAIL

All charities registered in Scotland must publicise the fact that they are a charity. **Charity trustees** must make sure that certain **charity details** are on all of the charity's **external documents** listed below.

These rules also apply to any third parties who publish documents on behalf of your charity, for example legal advisors, accountants, or organisations working on your behalf.

What do you need to tell people?

You need display your **charity's details**. This means:

- your charity's name, as entered in the **Scottish Charity Register**
- any other name your charity is known as (the 'known as' name)
- your **Scottish Charity Number** (SC0[zero]xxxxx)
- the fact that you are a charity, if this is not already clear from your name.



LEGAL DUTY

It is good practice to state that the charity is regulated by OSCR.



GOOD PRACTICE

For example:

'Monkstown After School Club (known as Monkey Club) is a Scottish Charity, SC098765, regulated by the Scottish Charity Regulator (OSCR).'

If you are a **Scottish Charitable Incorporated Organisation (SCIO)**, you need to tell people:

- the SCIO's name as entered in the Scottish Charity Register
- if the name does not include the terms 'Scottish Charitable Incorporated Organisation' or 'SCIO', the fact that it is a SCIO.

As a SCIO, you do not have to include your Scottish Charity Number but we strongly recommend that you do.

For example:

'Monkstown After School Club (known as Monkey Club) is a Scottish Charitable Incorporated Organisation (SCIO) regulated by the Scottish Charity Regulator (OSCR), Scottish Charity number: SC098765.'

Which external documents need to have these details?

You must put the charity's details on:

1. all your external letters and emails
2. your website's home page
3. all your adverts, notices and official publications
4. documents that ask for donations for your charity
5. bills your charity issues
6. direct debit and standing order mandates
7. all invoices and receipts
8. annual accounts
9. educational, promotional or campaign materials
10. legal conveyance documents about land rights (buying, selling or transferring land)
11. contracts.

In addition to above requirements, it is good practice to put charity details on:

- all your website pages
- your charity's social media accounts
- campaigns or adverts that are online, on the radio or television
- business cards
- signs and displays.

Add the '[charity registration](#)' logo to your website to help you show the public that you're entered in the Scottish Charity Register.

Why do you need to tell people that you are a charity?

It is important that the people you come into contact with, the public, funders, contractors and other organisations, know and can check that you are a genuine **charity**.



It also gives people confidence in supporting your charity and knowing that we regulate you.



When do you have to put your charity's details on documents?

If you are a SCIO, you must have the details on your **external documents** as soon as possible after your charity is registered. For all other charities, you must put the charity details on your external documents as soon as possible and no later than **6 months** of becoming a charity.

What happens if you do not put the charity details on documents?

The rules about having these details on the documents are set out in [regulations](#). All charity trustees have responsibility for making sure that their charity complies with these regulations. A breach of the regulations is a breach of your **general duties** and is **misconduct**.

If you are a SCIO it is an offence to issue or sign any of the **external documents** which do not include the charity's details, or to authorise such actions.

Charitable companies

Charities whose **legal form** is a company must comply with both company law and charity law. Charitable companies must include **charity details** set out above and the information required by company law, for example the company number.

Find out more about company law requirements at the [Companies House website](#).



What happens if you fail in your duties?

If you fail to comply with these duties then this is **misconduct** and we do have powers to take action against charity trustees, where appropriate. Our response will be proportionate depending on the situation.

Where a charity trustee has acted reasonably and honestly it is unlikely to be treated as misconduct.

Find out more about what we can and cannot do and what to expect if we have [a concern about your charity](#).

EXAMPLES

For case studies and advice please see our [Good Governance pages](#).

SOURCES OF HELP, ADVICE AND BEST PRACTICE

- [Publicising Charitable Status](#)
- [The Charities References in Documents \(Scotland\) Regulations 2007](#) and [The Charities references in Documents \(Scotland\) Amendment Regulations 2008](#): these Regulations set out requirements for charities entered in the Scottish Charity Register and outlines the information which must be stated on certain documents.
- [SCIO's: A Guide](#)

LEGAL NOTE

Here we set out the specific sections of charity law in Scotland relevant to each part of the guidance.

- [The Charities References in Documents \(Scotland\) Regulations 2007](#) and [The Charities references in Documents \(Scotland\) Amendment Regulations 2008](#): these Regulations set out requirements for charities entered in the Scottish Charity Register and outlines the information which must be stated on certain documents.

GLOSSARY OF TERMS

This glossary provides you with further information, definitions and descriptions of some key terms. Where appropriate, it links to the relevant sections of law that underpin the terms.

TERMS	EXPLANATION	TERMS	EXPLANATION
2005 Act	The Charities and Trustee Investment (Scotland) Act 2005 : the primary piece of charity law in Scotland.	Assets	This means everything a charity owns; property, money, equipment, including heritable property (such as land and buildings and rights attached to it).
Accounts	Accounts represent the organisations finances for a particular period (usually a year). They show how much money was received and how much was spent, broken down into different categories. Charities must prepare accounts each year and must send a copy of to us (the Scottish Charity Regulator) each year. For more information see Charity Accounting .	Beneficiaries	These are the people your charity is set up to help, those who benefit from what you do.
Annual return	The online form charities complete each year to provide us with information about the charity (in particular for the Scottish Charity Register, and including information about the charity's finances). This can be completed in OSCR online .	Care and diligence	This means a very high level of care and thoroughness. This is set out in Section 66 of the 2005 Act .

TERMS	EXPLANATION	TERMS	EXPLANATION
Charitable Purposes	<p>A charity's purposes are usually set out in the objects, aims or purposes section of its governing document. The purposes say what your organisation has been set up to achieve, and should reflect its broad aims rather than the day-to-day activities. Each purpose your charity has must fit within at least one of the 16 charitable purposes set out in section 7(2) of the 2005 Act, that is:</p> <ul style="list-style-type: none"> (a) the prevention or relief of poverty, (b) the advancement of education, (c) the advancement of religion, (d) the advancement of health, (e) the saving of lives, (f) the advancement of citizenship or community development, (g) the advancement of the arts, heritage, culture or science, (h) the advancement of public participation in sport, (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended, 	Charitable Purposes	<ul style="list-style-type: none"> (j) the advancement of human rights, conflict resolution or reconciliation, (k) the promotion of religious or racial harmony, (l) the promotion of equality and diversity, (m) the advancement of environmental protection or improvement, (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage, (o) the advancement of animal welfare, (p) any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.
		Charity	<p>An organisation is a charity in Scotland when it is entered on the Scottish Charity Register.</p>

TERMS	EXPLANATION	TERMS	EXPLANATION
Charity Test	<p>This is the test set out under the Charities and Trustee Investment (Scotland) Act 2005, which determines whether an organisation can be a charity.</p> <p>The charity test has two main elements:</p> <ol style="list-style-type: none"> 1. an organisation has to show that it has only charitable purposes and 2. that it provides public benefit in achieving those purposes. <p>This is set out in sections 7 and 8 of the 2005 Act.</p>	Connected person	<p>The term connected person includes:</p> <ul style="list-style-type: none"> ■ spouses, civil partners and cohabitants of a charity trustee ■ child, stepchild, parent, grandchild, grandparent, brother or sister of a charity trustee (and a spouse of any such person) ■ an institution controlled by a charity trustee or a person connected with them or two or more trustees/connected persons when taken together ■ a body corporate or company in which the charity trustee or a person connected with them has a substantial interest, or ■ a Scottish partnership (business) in which the charity trustee or, a person connected with them is a partner.
Charity Trustee	<p>'Charity trustees' are defined in section 106 of the 2005 Act as people having the general control and management of the administration of a charity. Charity trustees can also sometimes be known as committee members, directors or board members.</p>	Conflict of interest (policy)	<p>A conflict of interest may arise in a situation where a charity trustee may obtain personal benefit from a particular decision in relation to the charity. A policy setting out what a conflict of interest is and how you will manage situations where a conflict arises is strongly recommended. See the Conflict of interest sources of help, advice and best practice section for links to example policies.</p>
Collective responsibility	<p>Charity trustees are not only responsible for their own actions, they are also responsible for the actions and decisions taken by the charity trustees when acting together.</p>		

TERMS	EXPLANATION	TERMS	EXPLANATION
Consent	<p>Section 16 of the 2005 Act says that you must seek OSCR’s consent before making any of the changes listed below. You need to ask for our consent at least 6 weeks (42 days) before you plan to implement the proposed change.</p> <p>Changes that need our consent are:</p> <ul style="list-style-type: none"> ■ changing the name of the charity ■ winding up the charity ■ amending the objects or purposes of the charity ■ amalgamating the charity with another body ■ changing the charity’s legal form ■ applying to the court to change purposes, amalgamate or wind-up. <p>For more information, see Making Changes to Your Charity.</p>	External scrutiny report	<p>Your charity’s accounts must be externally scrutinised. That is, someone who is independent of your charity must review the accounts and produce a report, attached to the accounts, that highlights any issues to the reader.</p>
		Governing Document	<p>A governing document (or constitution) is the document (or set of documents) that sets up an organisation and says what its purposes are. It will usually deal with other matters, including who will manage and control the organisation, what its powers are, what it can do with the organisation’s money and other assets, and membership of the organisation. For more information, see our FAQs.</p> <p>This is defined in section 106 of the 2005 Act.</p>
Disbenefit	<p>This is the opposite of benefit and is equivalent to detriment or harm.</p> <p>This is set out in section 8 (2) (ii) of the 2005 Act.</p>		

TERMS	EXPLANATION
Legal Form	<p>Charities can take a number of legal forms. The legal form is the structure or entity, which then becomes a charity. For example:</p> <ul style="list-style-type: none"> ■ Unincorporated associations ■ Companies ■ Scottish Charitable Incorporated Organisations (SCIO) ■ Trusts ■ Community Benefit Society ■ Statutory corporation established by an Act of Parliament or Royal Charter ■ Educational endowment
Ministerial direction or control	<p>This is where a governing document gives Scottish or UK Ministers the power to direct or otherwise control an organisation's activities.</p> <p>This is set out in section 7 (4) (b) of the 2005 Act.</p>

TERMS	EXPLANATION
Misconduct	<p>Misconduct (which includes mismanagement) means any action by charity trustees which may result in a significant loss or harm to the charity (and this includes failing to act). It arises where the general duties are not met and/or where charity trustees fail to comply with any direction, requirement, notice or duty imposed under the 2005 Act (section 66(2) of the 2005 Act).</p>
Principal contact	<p>The person who will act as the main point of contact for the charity.</p> <p>This can be updated in OSCR online.</p>
Private Benefit	<p>This is where benefit from the charities activities is provided to members of the organisation or other individuals not as a member of the public.</p> <p>This is set out in Section 8 (2) (a) (i) of the 2005 Act.</p>
Property	<p>By 'property' we mean all property and assets (money and other assets) belonging to a charity, including heritable property (such as land and buildings and rights attached to it).</p>

TERMS	EXPLANATION
Protect the interests of the charity	Trustees should put the interests of their charity before their own interests, or those of any other person or organisation. They must actively work towards the achievement of the charity's purposes. This is set out in Section 66 of the 2005 Act .
Proxy	Someone who is authorised to act as a substitute for another.
Public Benefit	This is the way a charity makes a positive difference to the public through the activities it carries out when advancing its charitable purposes. This is set out in Section 8 of the 2005 Act .
Quorum	The minimum number of people necessary to make decisions and conduct the charity's business. A quorum can refer to: <ul style="list-style-type: none"> ■ the number of charity trustees required for board meetings, or ■ the number of the charity's members required for membership meetings, for example Annual General Meetings (AGMs). <p>This number is often set out in the charity's governing document.</p>
Register of interests	A record of the personal, business and financial interests of a charity trustee that may potentially lead to a conflict of interest.

TERMS	EXPLANATION
Remuneration	Remuneration in the 2005 Act means any payment or benefit in kind. Sections 67 and 68 of the 2005 Act state that a charity trustee must not be remunerated for services provided to the charity (including services provided in the capacity as a charity trustee or under a contract of employment) from a charity's funds unless certain conditions are met. For more information, see Trustee Remuneration guide .
SCIO	The Scottish Charitable Incorporated Organisation is a legal form unique to Scottish charities and is able to enter into contracts, employ staff, incur debts, own property, sue and be sued. For more information see SCIO guidance .
Scottish Charity number	This is the unique number given to all Scottish charities, beginning with SC0 (zero) followed by five numbers.
Scottish Charity Register	This means the register of all Scottish charities kept by OSCR. For more information, see the Scottish Charity Register .

TERMS	EXPLANATION
Scottish Charity Regulator	<p>The independent regulator and registrar for over 23,500 Scottish charities, established by the 2005 Act.</p> <p>For more information, see About OSCR.</p>
Trustees Annual Report	<p>The Trustees Annual Report is a part of the annual Accounts and contains information about the charity and its activities and achievements in that year.</p>
Undue Restriction	<p>This is a restriction on who can access the benefit provided by a charity: it will be undue if excessive or unnecessary. It includes fees and charges.</p> <p>This is set out in Section 8 (2) (b) of the 2005 Act.</p>
Wind up	<p>To wind up or dissolve a charity means that the charity ceases to exist. Before winding up a charity must get OSCR's consent.</p> <p>This is set out in Section 16 of the 2005 Act. For more information, see Making Changes to Your Charity.</p>



OSCR Contact details:

The Scottish Charity Regulator (OSCR)
2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

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

Subject:

FW: RE :Reply to Scottish Government letter to MOJO Scotland

From:

Sent: 28 May 2019 13:43

To:

Cc:

Subject: RE: RE :Reply to Scottish Government letter to MOJO Scotland

Xxxxx

Thank you for your response to Philip's letter of 21 May and for attaching the documents asked for.

We will consider the content of your e-mail and documents attached and get back to you as soon as possible.

Regards

Xxxxx

From:

Sent: 28 May 2019 13:32

To:

Cc:

Subject: RE :Reply to Scottish Government letter to MOJO Scotland

Dear Xxxx

I apologise for the delay in answering your concerns.

Please find attached the information that you asked me to supply.

I am sorry that you have had to become involved in an internal governance issue and would like to give you my assurance that the Miscarriages of Justice is dealing with this matter and that we have the required governance in place.

INFORMATION REDACTED

The organisation is in the process of adopting two further Director/Trustees and voting new members onto our Management Committee to further strengthen our management structure.

We would welcome any help or advice that you wish to offer and are happy to meet with you to discuss further.

I hope this has helped in some way to allay any concerns that the Scottish Government has with regard to the conditions of the Miscarriages of Justice funding.

I would also like to give assurance the Miscarriages of Justice Organisation (Scotland) will notify you in advance of any changes to the constitution or governance structure.

If you have any further concerns or questions please do not hesitate in contacting me.

Yours Sincerely

Xxxx

From:
Sent: 21 May 2019 09:21
To:
Cc:
Subject: Scottish Government letter to MOJO Scotland

Dear Xxxxx

Please find attached a letter to MOJO Scotland.

We would be grateful for a response by Friday 7 June.

Regards

Head of Criminal Law, Practice and Licensing Unit
Criminal Justice Division
Room GW, St Andrew's House, Edinburgh
Scottish Government

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Tha am post-d seo (agus faidhle neo ceanglan còmhla ris) dhan neach neo luchd-ainmichte a-mhàin. Chan eil e ceadaichte a chleachdadh ann an dòigh sam bith, a' toirt a-steach còraichean, foillseachadh neo sgaoileadh, gun chead. Ma 's e is gun d'fhuair sibh seo gun fhiosd', bu choir cur às dhan phost-d agus lethbhreac sam bith air an t-siostam agaibh agus fios a leigeil chun neach a sgaoil am post-d gun dàil.

Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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Head of Criminal Law, Practice and Licensing Unit
Criminal Justice Division
Room GW, St Andrew's House, Edinburgh
Scottish Government

T:
E:

Miscarriages of Justice Organisation Scotland
121-127 Saltmarket
GLASGOW
G1 5LF

Your ref:
Our ref: MOJO(S)/Grant
21 May 2019

Dear MOJO Scotland

The Scottish Government has recently been made aware of changes that may have been made to MOJO Scotland's constitution and governance structures within the organisation. While the internal governance structures of MOJO Scotland are a matter for the organisation itself, you will appreciate the Scottish Government is committed to ensuring the funding provided to MOJO Scotland is used appropriately and it is a requirement of the funding that the conditions in the grant-in-aid letter are adhered to.

As such, the purpose of this letter is to seek assurance that the required governance structures are in place and in line with the conditions attached to the funding provided by the Scottish Government.

In order to help us with consideration of this matter, it would be helpful if you could provide us with the following information;

- the names of the current directors and their role within the organisation,
- the names of the current trustees and their role within the organisation,
- the name of the current secretary and their role within the organisation,
- the names of the current management committee and their role within the organisation,
- the names of the individuals on the register of members of MOJO and their role within the organisation, if any,
- a copy of the current constitution,
- details of the changes to that constitution that we understand may have been made and the reasons why it was felt necessary to amend the constitution, and
- confirmation that the current constitution adheres to all requirements of the Charities and Trustees Investment (Scotland) Act 2005 and the Companies Act 2006.

In addition, we would ask for an assurance that the Scottish Government will be informed in writing in advance regarding any future planned changes to the constitution and governance structures along with reasons why changes may be made.

Once you have sent the above information and we have considered, we would be happy to meet with you to discuss. Thank you for your help in this matter.

I look forward to receiving a response by Friday 7 June.

Yours sincerely

Unit Head
Criminal Law, Practice & Licensing Unit