

Health and Social Care Alliance Scotland (the ALLIANCE)

Scottish Government Survey Response: Strengthening Scottish Charity Law 10 February 2021



Introduction

The Health and Social Care Alliance Scotland (the ALLIANCE) welcomes the opportunity to respond to this survey by the Scottish Government on strengthening Scottish charity law. The ALLIANCE is a national third sector intermediary for a range of health and social care organisations, as well as disabled people, people living with long term conditions and unpaid carers.

Proposal 1 – Publishing annual reports and accounts in full for all charities on the Scottish Charity Register

In what circumstances should there be a dispensation to full annual reports and accounts publication?

There are instances where the publication of personal information may put people at risk from a health, safety and security perspective. This is particularly true for individuals who may have unique or easily recognisable names, and where being associated with a particular charity may put them at risk. This gives rise to concern around publishing personal details, names, signatures and photographs of trustees. GOV.UK outlines useful and practical examples of instances where a dispensation may be appropriate.¹

Example 1: A trustee who is also a police officer has received threats in the course of their work. They have an unusual name and are easily identifiable. The charity holds frequent fundraising events that the trustee attends, and there are concerns of being in personal danger from threats received.²

Example 2: A prevent domestic abuse charity which works with women seeking to escape domestic violence has credible concerns that if their trustee's names are put into the public domain their trustees will be at risk of physical harm.³

¹ <https://www.gov.uk/guidance/addresses-and-trustee-names-in-your-charitys-public-details#who-can-apply-for-a-dispensation>

² Ibid.

³ Ibid.

The ALLIANCE recommends that the approach outlined in the Guidance for England and Wales regarding the display of trustee legal names on the charity register should be adopted.⁴

There is also concern that the publication of personal and sensitive information - including names, photographs, and signatures - may make trustees more susceptible to fraud and may contravene GDPR regulations. For example:

- Signatures should be removed from published accounts, as there have been instances of fraud in the past.
- If a registered address for a charity is the same as a home address, this should be removed.
- If the charity is a small organisation with only one or two staff members, then salary information should be removed.

Robust data protection measures should be instated to ensure that any sensitive information is adequately protected to prevent fraudulent use.

If dispensations are made, should some form of annual reports and accounts always be published, for example in a redacted or abbreviated form?

Yes. In the interests of strengthening accountability, transparency and public trust and confidence, it is important that some form of annual reports and accounts should be published. However, it is vital that rights to privacy and safety are upheld for those who wish to remain anonymous online. Redacted or abbreviated forms should be used where individuals have requested a dispensation.

Proposal 2 – An internal database and external register of charity trustees

What information should be included in an internal database?

An internal database would increase public confidence in the governance of charities and would promote transparency and openness. Information should include the trustee's full name and date of birth for identification purposes, and relevant contact information, such as an email address and telephone number.

However, it is imperative that this information is not used outside of its intended use and access to personal information on trustees must be securely controlled. Robust data protection processes and systems should be put in place to ensure personal information is used appropriately and proportionately. There should also be clear, accessible messaging to trustees outlining what information is included in the

⁴ Ibid.

internal database, why the information was required, and how it will be used, stored, and protected.

How should the internal database information be kept up to date?

The administrative burden and cost of maintaining the database should be fully considered to ensure that it is not unduly onerous on charities, particularly for smaller organisations who may have less capacity to keep such information up to date. There is scope to engage with charities to co-produce a system that is fair and sustainable, while progressing accountability and transparency within the sector.

What information should be included in a public list of charity trustees?

Many charities are also registered companies. This means that trustee names, addresses, dates of birth and nationalities are currently published on Companies House. The same information should be included in a public list of charity trustees to support aims for increased transparency and trust. However, it is important to establish appropriate safeguards to protect the privacy of trustees and prevent any data breaches or fraud. As outlined in the feedback to Proposal 1, there should be a right to dispensation if publicly available information would put a trustee at risk.

In what circumstances should there be an exception to being included in a public list?

As outlined in the feedback to Proposal 1, individuals should have a right to dispensation if being included in a public list would expose them to harm from a health, safety, or security perspective.

How long should a disqualified trustee remain on the list?

In the interest of transparency, accountability, and integrity across the charity sector, a disqualified trustee should remain on the list until their conviction is spent. This would improve consistency in charity law between different jurisdictions and would help to ensure that a disqualified trustee in one part of the UK cannot take up a trustee role in another organisation.

What information should be available in the disqualified trustee list?

The full name of the trustee, the charity name and number from which they were disqualified, and the date on which the disqualification order was made.

Proposal 3 – Criteria for automatic disqualification of charity trustees and individuals in senior management positions in charities

What factors should be considered in defining a 'senior manager'?

The definition of 'senior manager' should be extended to include the Chief Executive (or equivalent) and all directors within the organisation. Directors are responsible for different departments and are equally accountable for running the organisation.

Mismanagement and fraud relate to funds, which directors are responsible for in relation to their own departments, but it also relates to things like abuse of power, theft, and misuse of equipment for financial or material benefit. This would afford greater transparency, professionalism, and accountability across the sector, and would increase public confidence and trust.

Proposal 4 – A power to issue positive directions to charities

If a positive power of direction were to be specific, what areas should be subject to the power, or are there any areas that should not fall within that power?

The power to issue positive directions and produce an associated inquiry report is important to improve overall transparency and accountability, and to improve public trust and confidence in the sector. However, such powers should be used sparingly and in exceptional circumstances. A specific power of direction should relate to governance issues, such as adhering to legislation, rather than the day-to-day running of charities. Where the OSCR does issue a positive direction, appropriate support and advice should also be provided, particularly for smaller organisations. This will help to maintain the charity sector's independence from the public sector and ensure that any direction which is issued is not unduly onerous.

How long should a charity have to comply? What should be the consequences of non-compliance with a positive direction?

The timeframe for compliance should be reasonable and proportionate and should consider the size of the charity, its resources and capacity to comply with the power of direction. As outlined above, adequate support and advice must be offered to assist charities in complying with the positive direction. A remedial process should be established to ensure that each case of 'non-compliance' is investigated fairly, taking into account the individual circumstances of each charity and ensuring that any mitigating factors are fully considered.

Proposal 5 – Removal of Charities from the Scottish Register that are persistently failing to submit annual reports and accounts and may no longer exist

What factors need to be considered to define 'persistent' failure to submit annual reports and accounts?

Clear guidance and criteria must be set out to define ‘persistent failure’ and prevent arbitrary decision-making. A ‘persistent failure’ to submit annual reports and accounts should be continuous and within a clearly defined time-period (for example, where a charity has failed to submit annual reports and accounts each year, for a period of three years). Throughout the specified period, the OSCR should take a proactive approach by reminding charities of their reporting obligations, and accessible support and advice should be offered where appropriate. This will help to relieve the burden for charities who may face resource or capacity difficulties.

What steps should the Scottish Charity Regulator (OSCR) take prior to a decision to remove? Should a positive direction to provide accounts always be required first?

A supportive approach should be taken by the OSCR prior to a decision to remove a charity from the Register. A positive direction to provide accounts should be required prior to removal from the Register. Any positive direction which is issued should outline a clear timeframe for the requested documents, should make clear the implications of not doing so, and should signpost to accessible support, advice and guidance. Charities should be given sufficient time to comply with their reporting obligations, particularly for smaller organisations who may have limited capacity or resources.

Where it is suspected that a charity no longer exists, there must be clear grounds for removal, and this should only be done as a last resort. Full efforts should be made to locate and contact trustees of that charity prior to removing them from the Scottish Charity Register.

Proposal 6 – All charities in the Scottish Charity Register to have and retain a connection in Scotland

What factors should be considered when defining what ‘have and retain a connection to Scotland’ means? Does this have to require a physical presence in Scotland, such as an office address or trustee address?

The requirement to ‘have and retain a connection to Scotland’ should be interpreted broadly to include charities who carry out at least part of their activity in the Scotland, or whose work has an impact on Scotland. For example, this would include charities who have a habitual, physical presence in Scotland but whose work has an impact and benefit overseas, or a charity based in another part of the UK whose work has an impact and benefit in Scotland.

A clear definition of the requisite connection to Scotland should be outlined clearly in any legislative amendment and should consider the following factors:

- Whether charities should have held a ‘physical presence’ in Scotland for a minimum length of time
- Whether a ‘physical presence’ amounts to an established office-base or if trustees who are resident in Scotland would be sufficient
- Whether a UK-wide charity, whose work impacts on Scotland, would be considered as having a connection despite not having a physical presence

In the interests of increased transparency and in building public trust and confidence, the nature of the organisation and its connection to Scotland should be made publicly available.

About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. We have a growing membership of nearly 3,000 national and local third sector organisations, associates in the statutory and private sectors, disabled people, people living with long term conditions and unpaid carers. Many NHS Boards, Health and Social Care Partnerships, Medical Practices, Third Sector Interfaces, Libraries and Access Panels are also members.

The ALLIANCE is a strategic partner of the Scottish Government and has close working relationships, several of which are underpinned by Memorandum of Understanding, with many national NHS Boards, academic institutions and key organisations spanning health, social care, housing and digital technology.

Our vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self management, co-production and independent living.
- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.

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